HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed

Rule making related to nursing facilities.

The Human Services Department hereby amends Chapter 81, "Nursing Facilities," Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code section 249A.4.

State or Federal Law Implemented

This rule making implements, in whole or in part, 2022 House File 761.

Purpose and Summary

This rule making provides for a quality incentive payment program (QIPP) for non-state government owned (NSGO) nursing facilities to promote, maintain and improve quality of care and health outcomes. The amendments identify the criteria the NSGO facility must meet to qualify for participation in the program. The goal is to issue additional payments for quality of care above what is required by the Centers for Medicare and Medicaid Services. There is no fiscal impact anticipated because the provider/nursing facility will be paying the state share of the add-on rate, similar to other intergovernmental transfer programs.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on December 28, 2022, as ARC 6766C.
No public comments were received.
No changes from the Notice have been made.

Adoption of Rule Making

This rule making was adopted by the Council on Human Services on February 9, 2023.

Fiscal Impact

This rule making has no fiscal impact to the State of Iowa. However, there will be a fiscal impact to counties or other local governmental agencies as they will be responsible for providing the provider's state share which is completed through the intergovernmental transfer process

Jobs Impact

After analysis and review of this rule making, no impact on jobs has been found.

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any pursuant to rule IAC 441_1.8(17A, 217)

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its regular monthly meeting or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

Effective Date

This rule making will become effective on April 1, 2023.

The following rule-making action is adopted:

Please see attached.

The following rule-making actions are adopted:

ITEM 1. Strike "non-state-owned nursing facility," "non-state-owned facility," and "non-state-operated nursing facility" wherever they appear in **441—Chapter 81** and insert "non-state government owned nursing facility" in lieu thereof.

ITEM 2. Strike "non-state-owned nursing facilities," "non-state-owned facilities," and "non-state-operated nursing facilities" wherever they appear in **441—Chapter 81** and insert "non-state government owned nursing facilities" in lieu thereof.

ITEM 3. Adopt the following **new** definition of "Non-state government owned nursing facility" in rule **441—81.1(249)** as follows:

"Non-state government owned nursing facility" or *"NSGO nursing facility*" is a nursing facility owned by a governmental entity that is not the state.

ITEM 4. Amend subparagraph **81.6(16)"c"(2)** as follows:

(2) Effective July 1, 2003, and each second year thereafter, the patient-day-weighted medians used in rate setting shall be recalculated. The ~~non-state-owned~~ non-state government owned nursing facility direct care and non-direct care patient-day-weighted medians and the Medicare-certified hospital-based nursing facility direct care and non-direct care patient-day-weighted medians shall be calculated using the latest completed cost report with a fiscal year end of the preceding December 31 or earlier. When patient-day-weighted medians are recalculated, inflation is applied from the midpoint of the cost report period to the first day of the state fiscal year rate period using the inflation factor specified in subrule 81.6(18).

ITEM 5. Adopt the following **new** paragraph **81.6(16)"i"**:

i. Quality incentive payment program (QIPP). The QIPP add-on rate shall be made to a qualified non-state government owned nursing facility (NSGO nursing facility) to promote, maintain, and improve resident quality of care and health outcomes.

(1) An NSGO nursing facility shall qualify for participation in the QIPP if all the following conditions are met:

1. The NSGO nursing facility has executed a participation agreement with the department.
2. The NSGO nursing facility has provided proof that the entity holds the NSGO nursing facility's license and has complete operational responsibility for the NSGO nursing facility.
3. The NSGO nursing facility has filed a certification of eligibility application for the QIPP add-on rate program with the department and has received approval from the department for participation in the program.
4. The NSGO nursing facility is in compliance with all care criteria requirements.
5. The non-state government entity (NSGE) has executed a nursing facility provider contract with an NSGO nursing facility.
6. The NSGE has provided and identified the source of state share dollars for the intergovernmental transfer (IGT).
7. The NSGO nursing facility has provided proof of ownership, if applicable, as the licensed operator of the NSGO nursing facility.
8. The NSGO nursing facility has provided to the department an executed management agreement between the NSGE and the NSGO nursing facility manager if applicable.

(2) If at any time a provider is determined not eligible due to not meeting survey standards, the provider will be disqualified for the remainder of the year.

(3) An NSGO nursing facility shall qualify for participation in the QIPP if all the following quality measures are met:

Quality Measures	Metrics	Tracking/Scoring	Data Resource

Staffing	**Metric 1:** Nursing facility maintains an additional four or more hours of registered nurse (RN) coverage per day beyond the CMS minimum standard (8 hrs/day). Does not include managerial hours. **Metric 2:** Nursing facility's per-resident day certified nursing assistants (CNAs), rehabilitation aid, and other contracted aid services are at or above one-half standard deviation above the statewide mean of per-resident-day CNA hours. CNA hours include those of CNAs, rehabilitation aid, and other contracted aide services. CNA hours shall be normalized to remove variations in staff hours associated with different levels of resident case mix. **Metric 3:** Nursing facility's per-resident day total nursing hours are at or above one-half standard deviation above the statewide mean of per-resident-day total nursing hours. Nursing hours include those of RNs and licensed practical nurses (LPNs) including restorative nurses. Nursing hours shall be normalized to remove variations in staff hours associated with different levels of resident case mix.	Staffing metrics 1, 2, and 3 must be met for facility to be eligible for per diem rate add-on payment.	Payroll-based journal (PBJ) or cost reports
Infection Control	**Metric 1:** Nursing facility has an infection control program that includes antibiotic stewardship. The program incorporates policies and training as well as monitoring, documenting, and providing staff with feedback. **Metric 2:** Percentage of residents with urinary tract infections (UTIs) at rates one-half standard deviation or more below the mean percentage of occurrences for all facilities, based on minimum data set (MDS) data as applied to the nationally reported quality measures. **Metric 3:** Percentage of residents with up-to-date pneumonia vaccine measured against a fixed benchmark that is set as the most recently published national average for the related MDS quality metric.	Infection control metrics 1, 2, and 3 must be met for facility to be eligible for per diem rate add-on payment.	Nursing facility will be required to provide its infection control policy and procedure. In addition, facilities will need to provide information regarding training, monitoring, documentation and monitoring of required elements to meet this metric on a periodic basis CASPER Report MDS Assessment Care Compare
Quality Measures	**Metric 1:** Percentage of high-risk residents with pressure ulcers (for longer-term stay residents) are at rates one-half standard deviation or more below the mean percentage of occurrences for all facilities, based on MDS data as applied to the nationally reported quality measures. **Metric 2:** Percentage of residents who had a fall with major injury (for	Quality measures metrics 1, 2, 3, and 4 must be met for the facility to be eligible for per diem rate add-on payment.	CASPER Report MDS Assessment Care Compare

	longer-term stay residents) are at rates one-half standard deviation or more below the mean percentage of occurrences for all facilities, based on MDS data as applied to the nationally reported quality measures. **Metric 3:** Percentage of residents who received antipsychotic medications are at rates one-half standard deviation or more below the mean percentage of occurrences for all facilities, based on MDS data as applied to the nationally reported quality measures. **Metric 4:** Percentage of residents who required increased activities of daily living (ADL) assistance (for longer-term stay residents) are at rates one-half standard deviation or more below the mean percentage of occurrences for all facilities, based on MDS data as applied to the nationally reported quality measures.		
State Survey Results	Number of deficiencies is at or below the state of Iowa average number of nursing facility deficiencies AND the facility has no deficiencies with a scope of F, H, I, J, K, or L.	State survey results must be met for the facility to be eligible for per diem rate add-on payment.	Department of inspections and appeals (DIA) surveys
Quality Assurance Performance Improvement (QAPI) Report	Nursing facility must submit QAPI reports on quarterly basis.	QAPI results must be submitted for the facility to be eligible for per diem rate add-on payment.	QAPI reports

(3) A provider must submit the Intent to Participate Agreement on or before September 30 each year and include all necessary documentation related to the quality measures.

1. Upon receipt of the participation agreement, the department will complete a determination of eligibility based on the care criteria defined above.

2. Providers will be notified of their eligibility annually within 60 days of the agreement due date.

(4) The nursing facility QIPP add-on rate provided to a participating NSGO nursing facility under the QIPP shall not exceed Medicare payment principles pursuant to 42 CFR §447.272 and shall be calculated pursuant to 42 CFR §438.6. The QIPP add-on rate shall be calculated and paid as follows:

1. The methodology utilized to calculate the upper payment limit shall be based on the data available during the calculation period.

2. The eligible amount used in determining the QIPP add-on rate shall be the difference between the state Medicaid payment and the Medicare upper payment limit as determined, on an annual basis, using all Medicaid claims, including fee-for-service (FFS) and Medicaid managed care claims.

3. The difference calculated under numbered paragraph "2" shall be divided by total patient days pursuant to subrule 81.6(7).

4. The QIPP add-on rate shall be paid prospectively.

(5) A participating NSGO nursing facility shall notify the department of any change of ownership that may affect the participating NSGO nursing facility's continued eligibility for the QIPP a minimum of 30 days prior to such change.

1. If a participating NSGO nursing facility changes ownership to a privately owned entity, on or

after the first day of the QIPP add-on rate calculation period, the privately owned provider is no longer eligible for the QIPP add-on rate.

2. A participating facility must meet the CMS and Iowa Medicaid requirements to be classified as an NSGO nursing facility. All changes of ownership must be a fair market value transaction.

3. If it is determined that a provider is not a qualified NSGO nursing facility per CMS and Iowa Medicaid, the provider shall repay all QIPP add-on payments to the department.

(6) Providers that do not meet eligibility requirements above will be notified of the metrics that were not met.

(7) A participating NSGO nursing facility shall secure allowable intergovernmental transfer funds from a participating NSGE to provide the state share amount. The process for the intergovernmental transfer shall comply with the following:

1. The department, or the department's designee, shall notify the participating NSGO nursing facility of the state share amount to be transferred in the form of an intergovernmental transfer for purposes of seeking federal financial participation for the QIPP add-on rate, within 15 business days after the end of each month. The participating NSGO shall have until the end of the month to remit payment of the state share amount in the form of an intergovernmental transfer to the department or the department's designee.

2. If there is any outstanding intergovernmental transfer amount at the end of the payment period, the provider will not be able to participate in the QIPP the following year.

Iowa Department of Human Services

Information on Proposed Rules

Name of Program Specialist	Telephone Number	Email Address
Jessica McBride	515-201-4157	jmcbrid@dhs.state.ia.us

1. Give a brief purpose and summary of the rulemaking:
   The quality incentive payment program is for non-state owned (NSGO) facilities to qualify for an additional payment based on quality measures met.

2. What is the legal basis for the change? (Cite the authorizing state and federal statutes and federal regulations):

3. Describe who this rulemaking will positively or adversely impact.
   This rule will positively impact the providers who are already a NSGO. It may incentivize other facilities to partner with their city or county governmental authority to open and operate a facility with governmental financial support. The goal is to issue additional payments for quality of care above CMS set expectations.

4. Does this rule contain a waiver provision? If not, why?
   No. A SPA is required to CMS.

5. What are the likely areas of public comment?
   Public comments will be both positive and negative. This program is limited to specific providers at this time. There are also provider concerns about the quality measures being set too high to qualify for add-on payments. Comments regarding the “all of nothing” quality measures will be received. At this time, the Department cannot issue a payment based off a percentage of quality measures met. There may be comments about the timing of the participation timeline.

6. Do these rules have an impact on private-sector jobs and employment opportunities in Iowa? (If yes, describe nature of impact, categories and number of jobs affected, state regions affected, costs to employer per employee.)
   Yes, but not quantifiable. There will be a positive effect due to increase rates.

Administrative Rule Fiscal Impact Statement

Date:

Agency: Human Services

IAC citation: 441 IAC

Agency contact:

Summary of the rule:

Fill in this box if the impact meets these criteria:

☐ No fiscal impact to the state.

☐ Fiscal impact of less than $100,000 annually or $500,000 over 5 years.

☐ Fiscal impact cannot be determined.

Brief explanation:

Budget Analysts must complete this section for ALL fiscal impact statements.

Fill in the form below if the impact does not fit the criteria above:

☐ Fiscal impact of $100,000 annually or $500,000 over 5 years.

Assumptions:

Describe how estimates were derived:

Estimated Impact to the State by Fiscal Year

	Year 1 (FY)	Year 2 (FY)
Revenue by each source:		
General fund		
Federal funds		
Other (specify):		
TOTAL REVENUE		
Expenditures:		
General fund		
Federal funds		
Other (specify):		
TOTAL EXPENDITURES		
NET IMPACT		

☐ This rule is required by state law or federal mandate.
Please identify the state or federal law:
Identify provided change fiscal persons:

☐ Funding has been provided for the rule change.
Please identify the amount provided and the funding source:

☐ Funding has not been provided for the rule.
Please explain how the agency will pay for the rule change:

Fiscal impact to persons affected by the rule:

Fiscal impact to counties or other local governments (required by Iowa Code 25B.6):

Agency representative preparing estimate:

Telephone number: