



March 12, 2013

The Honorable Wesley Chesbro
State Capitol, Room 2141
Sacramento, CA 95814

SUBJECT: AB 1054 (Chesbro) Mental Health: Skilled Nursing Facility: Reimbursement Rate, As Introduced February 22, 2013 – SUPPORT

Dear Assembly Member Chesbro:

On behalf of the California Mental Health Directors Association (CMHDA), which represents the directors of public mental health authorities in counties throughout California, I am writing in support of your bill, AB 1054, which CMHDA is sponsoring. AB 1054 enables the county in which an Institution for Mental Disease (IMD) is located to negotiate a rate with that facility and eliminates the substantial, mandated 4.7% annual IMD rate increase in current law.

Summary

AB 1054 enables the county in which an Institution for Mental Disease (IMD) is located to negotiate a rate with the IMD. This is similar to the way in which other providers that contract with county mental health departments are reimbursed, and provides counties with the local flexibility and control to manage county resources by negotiating rates for services they purchase in IMD facilities.

The automatic 4.7% IMD rate increase is unsustainable for counties, and represents the only part of the public mental health system that is guaranteed a significant increase each year, regardless of available resources. The automatic rate increase represents a substantial annual cost to our community mental health systems. For example, the rate increase is costing these counties the following amounts in the current year:

- Los Angeles County \$2,600,000
- Riverside County \$ 651,000
- San Francisco County \$ 627,000
- San Mateo County \$ 450,000
- Orange County \$ 396,835

Background

An IMD is a type of skilled nursing facility that provides 24-hour nursing care and supervision to individuals who need continuous nursing care, has 16 or more beds, and is primarily engaged in providing diagnosis, treatment, and/or care of persons with mental diseases (severe mental illnesses). Federal law statutorily prohibits federal Medicaid funds from being used for skilled

nursing facilities that are licensed as IMDs. When the responsibility for providing community-based mental health services was realigned from the state to counties in 1991, it included responsibility for providing and paying for services for individuals with serious mental illness (SMI) who need nursing level care in IMDs. **Due to the federal IMD exclusion, counties must pay 100% of the cost of IMD services with 1991 Realignment mental health funds.**

AB 1629 (Chapter 875, statutes of 2004) provided the nursing home rate structure that has been in place for many years. The skilled nursing facility (SNF) rates include a quality assurance fee, which enables the state to draw down additional Medicaid federal financial participation funding to provide rate increases to skilled nursing facilities at no additional cost to the state. The AB 1629 rate structure and additional Medicaid funds were intended by the Legislature to result in higher quality of care, including increased patient access to appropriate long-term services, decent wages and benefits for nursing home workers, and provider compliance with state and federal requirements.

While IMDs are licensed as SNFs, they are excluded from the rate increases generated by quality assurance fees because federal law prohibits them from receiving federal Medicaid funding. Therefore, AB 360 (Chapter 508, Statutes of 2005), which was characterized as "technical clean-up" to AB 1629, excluded IMDs from the quality assurance fees and AB 1629 rate structure. However, it also enacted automatic annual rate increases for IMDs: the annual increase for the first 3 years was 6.5%; from July 1, 2008 forward, the annual increase is 4.7%.

Due to the state budget crisis, the Budget Act of 2009 froze nursing home rates for many licensed facilities at 2008-09 levels. However, this rate freeze did not include SNFs licensed as IMDs, leaving counties at continued obligation to pay annual rate increases for IMDs, despite the counties' major funding shortfalls. In 2010, CMHDA sponsored AB 2645 by Assembly Member Chesbro (Chapter 554, statutes of 2010), which was signed into law and froze IMD rates for two fiscal years (from July 1, 2010, to June 30, 2012) at 2009-10 levels.

Facing continued state budget deficits in 2011, budget trailer bill AB 97 (Committee on Budget, Chapter 3, Statutes of 2011) reduced Medi-Cal payments for health care providers, including nursing facilities, by ten percent (10%). This rate reduction saved the state General Fund over \$650 million that year, but again, did not apply to IMDs since their costs are entirely borne by counties. The 10% Medi-Cal provider rate reduction was approved in October 2011 by the federal Centers for Medicare and Medicaid Services (CMS), and upheld in December 2012 by the 9th Circuit Court of Appeals. Next, AB 19 X1 (Blumenfield, Chapter 4, Statutes of 2011-12 First Extraordinary Session) provided a maximum rate increase of 2.4% in the 2012-13 rate year. Under the agreement with CMS, the state will be providing skilled nursing facilities (excluding IMDs) a maximum annual rate increase of 3% per year in 2013-14 and in 2014-15.

Additionally, after evaluations of the AB 1629 rate structure found no evidence that its reimbursement incentives were sufficient to improve the quality of nursing home care, the Legislature enacted SB 853 (Arambula, Chapter 717, Statutes of 2010), which established a Skilled Nursing Facility Quality and Accountability Supplemental Payment System, intended to improve the quality and accountability of care rendered to residents, and to penalize facilities that do not meet measurable standards. **Again, since the counties pay for care provided in IMDs, these reimbursement and quality of care incentives are not being applied to IMDs and counties are simply required to provide them with a 4.7% annual rate increase.**

Conclusion

Despite the complex history of rate-setting legislation intended to improve the quality of nursing home care in California, counties continue to be required to provide the facilities licensed as IMDs with an across-the-board 4.7% annual rate increase, regardless of the availability of local resources and without any requirements that providers demonstrate their costs and the quality of care they provide patients. Further, this unsustainable 4.7% automatic rate increase for IMDs represents the only the part of the public mental health system that is guaranteed a significant increase each year – diverting funds from other less restrictive community-based outpatient services -- and represents a substantial annual cost in the current year to county mental health systems.

AB 1054 enables the county in which an IMD is located to negotiate a rate with the facility. This is similar to the way in which other providers that contract with county mental health departments are reimbursed, and provides counties with the local flexibility and control to manage county resources by negotiating rates for services they purchase in IMD facilities. As you know, we are working with the California Association of Health Facilities (CAHF), which represents the IMD providers, and hope to reach an agreement soon on more specific details that can be added to the bill that ensure counties are authorized to pay fair rates to IMDs.

We appreciate your leadership and support on this bill, and look forward to working with you and your staff to achieve its enactment into law. Please do not hesitate to contact me at (916) 556-3477, ext. 112 or kbarlow@cmhda.org.

Sincerely,



Kirsten Barlow
Associate Director, Legislation & Public Policy

Cc: The Honorable Chair and Members of the Assembly Health Committee
Cassie Royce, Senior Consultant, Assembly Health Committee
Michelle Baca and Peter Anderson, Consultants, Assembly Republican Caucus
Kelly Brooks-Lindsey, California State Association of Counties
Cyndi Hillery, Rural County Representatives of California
Jolena L. Voorhis, Urban Counties Caucus
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