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**Occupancy Penalty Issues under Medicaid Managed Care Transition**

**Background**

Part of the transition to Medicaid Managed Care relative to Long Term Services and Supports (known as “Pathways for Aging”) will be a renewed focus by FSSA and OMPP (Indiana’s Medicaid agency and office) on right-sizing occupancy rates at senior living facilities throughout the state. Accordingly, FSSA has issued new occupancy penalties that will start applying to bed counts as of January 1, 2024 relative to overall reimbursement rates effective January 1, 2025. The new Rules will apply to any/all Medicare/Medicaid certified beds in all Indiana facilities. Please visit the [Pathways For Aging website](https://www.in.gov/pathways/) for more general information or reach out to LeadingAge Indiana’s [Eric Essley](mailto:eessley@leadingageindiana.org) with questions.

**The current system**

Currently, FSSA imposes a 90% minimum occupancy for the direct care component of the overall Medicaid reimbursement rate. However, that occupancy penalty threshold is only applied against fixed expenses, which are 25% of the direct care component. To date, most facilities have not yet faced strong financial incentives to de-license and/or sell beds based on this occupancy penalty. FSSA believes that the state overall is over-bedded and has been looking for ways to reduce capacity for years; hence the new system.

**The new system**

The proposed approach will include a 70% occupancy minimum for the direct care component for both fixed and variable costs.  This may translate to significant negative rate impacts for facilities consistently below 70% occupancy.  In other words, facilities carrying too many beds given current and projected capacity concerns may consider selling or de-certifying a sufficient number of beds to consistently be at or near that 70% threshold. The timeline for this decision varies depending on which cost report is being considered.

More precisely, and by way of example, the 2023 Medicaid cost report will be used to set the July 1, 2025 Medicaid rate and occupancy percentage.  By way of further example, if a facility would have lowered their bed count effective January 1, 2024, that facility could have asked Myers & Stauffer to use the lower number of beds to determine the current occupancy percentage. They will do this every year by multiplying the lower number of beds x 365 to determine days available and occupancy percentage (which might get a facility at that snapshot in time above the 70% occupancy threshold).  Notably, any request to lower beds must be made 45-days before the effective date (e.g. Nov 16, 2023 to be effective Jan. 1, 2024). The next opportunity to voluntarily lower a facility’s bed count will be April 1, 2024 and will occur the first day of every calendar quarter thereafter.

\*Please note, subject to the CCRC non-applicability rule outlined below, if a facility removes beds, those beds cannot be easily re-obtained. This is an important decision and should be made in discussions with a financial consultant and/or healthcare attorney. Another notable factor is that this new system will be phased in over time. That is, in July 1, 2024, the rate will be 100% legacy (very little to no occupancy penalty impact); January 1, 2025: 83% legacy / 17% new system (still limited occupancy penalty impact); etc., etc. over time. The new system will not be fully implemented (at 100%) until July 1, 2027.

**Other considerations**

CCRCs that were registered before Jan. 1, 2008 are generally exempt from certificate of need limitations if they are required to expand bed capacity to meet contractual demands. See IC 16-29-7-1 (<https://www.in.gov/health/files/Certificate-of-Need-Statute.pdf>). In other words, if a CCRC is inclined to sell or de-license beds in order to evade the proposed 70% occupancy penalty, but sees a provable expansion need in the future, that CCRC should be able to increase bed capacity at that time without going through the more cumbersome certificate of need process.