The
Long-Term Care
IMPERATIVE
A Minnesota Collaboration for Changes in Older Adult Services

Nursing Facility Rate Equalization: Fact vs. Fiction

Background: Since 1976, Minnesota has had a statute known as the rate equalization law for nursing homes, under a section titled "Conditions of Participation" (256B. 48). Under this law, facilities must provide equal services to nursing facility residents, regardless of payer source, and cannot charge private paying residents more (or less) than the rate paid by the state under its medical assistance (Medicaid) program. Third party payers (including Medicare and Long-Term Care Insurance companies) and some single room rates are exempt from this mandate.
During the 2003 legislative session, the House of Representatives and the Administration promoted a proposal to phase out this law, but their proposal was not accepted in the final omnibus bill. We are proposing to advance the 2003 legislative proposal to phase out the rate equalization law in 2006, using the same language from the 2003 session.

Some of the reasons expressed for maintaining the rate equalization law are based less on fact and more on belief. The following are some myths identified with rate equalization, and facts to negate the misconceptions.

Myth: Rate equalization for nursing facilities has kept Medicaid rates higher in Minnesota than in other states.
Fact: In the 2001 Guide to the Nursing Home Industry by Arthur Anderson, Medicaid rates for nursing homes in Minnesota were about equal to the median rate for the entire country.

Myth: Other states have embraced the concept of rate equalization.
Fact: While other states have examined this issue on numerous occasions over the years, only one state, North Dakota, has adopted a type of rate equalization law.

Myth: Rate equalization has only impacted private rates.
Fact: Even though third party payers are exempt from rate equalization, the industry practice has been to set the third party rate (from insurance, Veterans contracts and HMO contracts) at the average private pay rate. Since the private pay rate IS equalized, the net effect has been that all rates, excluding Medicare, have been tied to the state's Medicaid rate.

Myth: Nursing facilities will charge a huge differential payment to private paying residents when rate equalization is repealed.
Fact: When rate equalization was being implemented, a study was done on rate differentials being charged by Minnesota nursing facilities. The study found that the majority of facilities were not charging a differential rate, with only a few charging more than a ten percent differential. Nursing facilities will charge a differential amount based on local market preferences.

Myth: If nursing facility rates are reduced, there is a way to avoid reducing private pay rates without amending the rate equalization law.
Fact: Since the rate equalization law states that private paying residents cannot be charged more than Medicaid residents, if Medicaid rates are reduced, the rates for private paying residents must also be reduced unless the language in statute is changed.

Myth: If rate equalization disappears, the state will cut Medicaid rates for nursing facilities.
Fact: Nursing facilities in Minnesota, with rate equalization "protection," are already underpaid by the Medicaid program. Recent financial surveys have shown that if not for Medicare, many facilities would be operating in the red due to the low Medicaid payment rates.

Myth: The regulation of rates is needed to avoid the creation of private only and "welfare only" nursing homes.
Fact: The regulation has had the opposite effect. Private pay markets responded by creating assisted living, and a number of private pay only nursing facilities were granted into law.

Myth: Rate equalization protects consumers by helping them avoid discrimination by payor type.
Fact: Rate equalization is anti-consumer in practice. Rate equalization does not encourage innovation. Instead, rate equalization has created products that are indistinguishable from each other and unimaginative.

Myth: Rate equalization is easy to manage.
Fact: Rate equalization and the "quirks" that accompany the policy, such as special services, bed hold, and payment for single rooms, have made management very difficult.

Myth: Rate equalization is compatible with all types of payment systems.
Fact: The original court ruling that sided with the rate equalization law did so because the judge concluded that the state's support of a generous cost based system made rate equalization constitutional. The state no longer has a cost based system.

Myth: Private paying residents will spend down faster and cause more residents to be on Medicaid in nursing homes.
Fact: The proposal phases in a potential for a 2 percent rate differential each year – less than what would occur should facilities receive an inflationary adjustment. After the third year, the differential limitation is removed in statute. Local markets will drive how much private paying residents could be charged. This has been the experience in other states without rate equalization. The spend-down issue is more likely to occur in the housing–with-services entities that house many elderly prior to nursing home placement.