

Department of Human Services 2009-11 Policy Option Package

Division Name: Seniors and People with Disabilities

Policy Option Package Initiative: Seniors and people with disabilities live safely and independently in their communities.

Policy Option Package Title: Improving Quality of Long Term Care

Policy Option Package Number: 123

Summary Statement:

This POP improves quality in the long term care system using existing funds, sets state civil penalty fines at reasonable amounts, improves quality in the LTC system by supporting sufficient regulatory staff, and sets licensing fees at reasonable amounts and uses them to support program activities.

The POP has two major areas:

- It creates a Long Term Care Quality Fund from state civil penalties collected from long term care facilities, removes restrictions on state civil penalty amounts, and removes reversion of state civil penalties to the General Fund, and uses those funds to support provider training and technical assistance.
- It raises the licensing fees collected from long term care facilities and allocates those resources to enhancement and maintenance of the long term care facility licensing and regulatory activities.

This POP requires 18 positions.

1. WHAT WOULD THIS POLICY OPTION PACKAGE (POP) DO AND HOW WILL IT BE IMPLEMENTED? This policy initiative has two major areas, the first relating to civil penalties and the second relating to licensing fees.

1. Civil Penalties

This initiative creates a Long Term Care Quality Fund from state civil penalties collected from long term care facilities, removes restrictions on state civil penalty amounts, and removes reversion of state civil penalties to the General Fund.

Currently by statute, most state civil penalty funds are deposited in the General Fund. The legislation focuses those funds toward the improvement of quality in licensed facilities. Funds would be used for training, technical assistance, and quality improvement initiatives.

State civil penalty fines in community based care (CBC) facilities are extraordinarily low compared to other states and do not act as a deterrent to non-compliance by providers. Limits on the amount of state civil penalties per instance or in a quarter further limit the Department's ability to affect provider non-compliance with sanctions. Revision of CBC fines or civil penalty rates are indeterminate at this time but are under review and pending final recommendations.

Unlike state civil penalties, federal civil penalties are retained by the LTC program and under federal regulations must be used to improve the quality of life and quality of care for residents. These funds may be used to assist facilities to reach or maintain compliance through training, technical assistance and technology. Unspent federal civil penalty funds are carried forward to the next biennium as a beginning balance in the Federal Civil Penalty revenue line and continue to be available to the LTC program.

State civil penalties revert to the General Fund and are not available for the LTC program to use to assist facilities to reach or maintain compliance. This legislation retains state civil penalties in the LTC Quality Fund, allows those funds to be carried over across biennia, and focuses those funds towards improvement of quality in licensed facilities.

This initiative raises the licensing fees collected from long term care facilities and allocates those resources to enhancement and maintenance of the long term care facility licensing and regulatory activities.

2. Licensing Fees

Currently by statute, all licensing fees are deposited in the General Fund. The legislation supports the improvement of quality in licensed facilities by using licensing fees to enhance and maintain the licensing and regulatory functions performed by SPD. Funds would be used to insure adequate regulatory and corrective action staff.

Licensing fees have not been raised since 1979 and are inconsistent and variable across provider types. This updates the fees and brings consistency across provider types.

Currently, there are not sufficient inspection and corrective action staff to meet the federal and state statutory requirements for licensing and regulatory action. Corrective action activity has increased significantly in the past two years with no increase in staffing. In 2007, SPD issued 561 civil penalties to community based care or nursing facility providers who had either harmed or showed significant potential to harm residents. In 2006, SPD issued 405 penalty fines. In an additional 43 situations, SPD revoked, did not renew, or placed a condition (such as a ban on new admissions) on a facility license in response to significant non-compliance. In 2006, SPD took 26 of these actions.

Federal requirements specify that nursing facility complaints be investigated by certified nursing home surveyors. Currently in Oregon, surveyors in Client Care Monitoring Units (CCMU) investigate half of NF complaints and APS workers investigate half.

2. **WHY DOES DHS PROPOSE THIS POP?**

Improves quality in the LTC system using existing funds. Sets state civil penalty fines at reasonable amounts. Improves quality in the LTC system by supporting sufficient regulatory staff. Sets licensing fees at reasonable amounts and uses them to support program activities.

3. HOW DOES THIS FURTHER THE AGENCY’S MISSION OR GOALS?

This furthers the DHS mission of keeping people independent, healthy and safe by providing training and technical support to providers of long term care services.

4. IS THIS POP TIED TO A DHS PERFORMANCE MEASURE? IF YES, IDENTIFY THE PERFORMANCE MEASURE. IF NO, HOW WILL DHS MEASURE THE SUCCESS OF THIS POP?

KPM #16: Re-abuse of seniors and people with disabilities – reducing the percentage of seniors and adults with disabilities who are re-abused within 12 months of the first substantiated abuse.

5. DOES THIS POP REQUIRE A CHANGE(S) TO AN EXISTING STATUTE OR REQUIRE A NEW STATUTE? IF YES, IDENTIFY THE STATUTE AND THE LEGISLATIVE CONCEPT.

Revises or repeals ORS 441.020, 441.637, 441.715, 441.995, 443.400, 443.455, 443.475, 443.735, 443.775

6. WHAT ALTERNATIVES WERE CONSIDERED AND WHAT WERE THE REASONS FOR REJECTING THEM?

No change means continued inability to meet workload demands.

7. WHAT WOULD BE THE ADVERSE EFFECTS OF NOT FUNDING THIS POP?

Inadequate regulatory staffing means facilities are not inspected in accordance with statutory guidelines and can result in poor performance going unnoticed and uncorrected. Could have negative outcomes for residents; poor quality of care by providers.

8. WHAT OTHER AGENCIES (STATE, TRIBAL AND/OR LOCAL GOVERNMENT) WOULD BE AFFECTED BY THIS POP? HOW WOULD THEY BE AFFECTED?

Oregon Health Care Association-provider organization
The Alliance-provider organization
LTC Ombudsman-consumer advocate

9. WHAT ASSUMPTIONS AFFECT THE PRICING OF THIS POP?

Implementation Date: July 1, 2009

End Date (if applicable): None

a. Will there be new responsibilities for DHS? Specify which division(s) and describe their new responsibilities.

- | | |
|--|--|
| <input type="checkbox"/> Administrative Services | <input type="checkbox"/> Addictions and Mental Health |
| <input type="checkbox"/> Children, Adults and Families | <input type="checkbox"/> Public Health |
| <input type="checkbox"/> Division of Medical Assistance Programs | <input checked="" type="checkbox"/> Seniors and People With Disabilities |

SPD would manage the quality care fund that this initiative creates.

b. Will there be new administrative impacts? Specify which office(s) and describe how it will be affected.

- | | |
|---|--|
| <input checked="" type="checkbox"/> Human Resources | <input type="checkbox"/> Payment Recovery |
| <input type="checkbox"/> Information Security (privacy) | <input type="checkbox"/> Investigations and Training |
| <input type="checkbox"/> Document Management (imaging) | <input checked="" type="checkbox"/> Facilities |
| <input type="checkbox"/> Audit and Consulting | <input type="checkbox"/> Contracts |
| <input checked="" type="checkbox"/> Information Services (IT) | <input type="checkbox"/> Budget |
| <input checked="" type="checkbox"/> Financial Services (Accounting) | <input type="checkbox"/> Other (Specify) |

Financial Services would be impacted in helping SPD establish the quality care fund.
HR, Facilities and OIS would be impacted as a result of hiring of new staff.

c. Will there be changes to client caseloads or services provided to population groups? Specify how many in each relevant program.

No client caseload changes. There would be an increase in training and technical assistance for providers.

d. Will it take new staff to implement and maintain? For each classification, list the number of positions and the number of months the positions will work in each biennium. Specify if the positions are permanent, limited duration or temporary. Attach position descriptions.

Existing or contracted staff will be used to implement the quality care fund. A total of 18 staff will be necessary to respond to protective service issues and complaints, seven corrective action staff to ensure a swift response to all non-compliance in order to protect seniors and people with physical and developmental disabilities and eleven compliant investigations staff is needed for facilities.

- 5 CS2, 2 AS1, 9 Client Care Surveyors, 1 OS2, 1 PEMD

- e. What are the start-up costs, such as new or significant modifications to computer systems, new materials, outreach and training?**
None.
- f. What are the ongoing costs?**
Continued funding for staff.
- g. What are the potential savings?**
No.
- h. Based on these answers, is there a fiscal impact?**
Yes. Creation of new fund from provider penalties and for new staff.
- i. What are the sources of funding and the funding split for each one? Include grant names and fund type, such as “Medicaid, General and Federal Funds.”**
The quality care fund - Other Funds, which can be matched.

Corrective action and complaints: Medicaid Federal Funds, General Fund, Other Funds (fees, fines)
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