

Analysis

Item 19: Department of Human Services

Nursing Facility Complaint Investigations

Analyst: Laurie Byerly

Request: Allocate \$255,882 from the Emergency Fund, increase the Federal Funds expenditure limitation by \$969,092, and establish fifteen new full-time permanent positions (3.75 FTE) for the Department of Human Services to address a federal mandate.

Analysis: On November 15, 2017, the federal Centers for Medicare and Medicaid Services (CMS) informed the Department of Human Services (DHS) that the agency's long-standing practice of splitting nursing facility complaint investigations between the Nursing Facility Survey Unit (NFSU) and local Adult Protective Services (APS) was unacceptable. That process divided the workload based on the types of allegations, with NFSU investigating only certain allegations (falls, fractures, pressure ulcers, hospitalizations, deaths, and restraints) and APS investigating abuse allegations. Per CMS directive, NFSU must handle screening, triage, and investigation of all nursing facility complaints.

Over the last year DHS worked with CMS on a plan that would gradually transition all investigations to NFSU. Initially, CMS seemed to support that plan, but in mid-October CMS reversed course and told DHS to make the full transition as of October 29, 2018. The agency complied with that directive and local APS offices began sending all nursing facility complaints to NFSU on that date. To manage the complaint workload in the short-term, NFSU is prioritizing complaints and abuse investigations over annual recertification surveys. This is expected to increase survey intervals beyond maximum thresholds, which puts the program at risk for federal penalties.

The agency's funding request supports, effective January 1, 2019, 12 surveyor positions, a manager, a policy analyst, and an administrative support position. Moving staff or positions from APS to NFSU to follow the complaint work is not feasible because NFSU surveyors are classified differently from APS staff and have other training or certification requirements; for example, some positions must be filled by registered nurses. The NFSU investigation process has more elements and shorter timelines than the APS system. Funding for the work is split between state (25%) and federal (75%) funding.

DHS will also need a budget adjustment during the upcoming legislative session to address 2019-21 costs; the biennial estimate for these positions is \$993,087 General Fund (\$5,026,892 total funds). A portion of the General Fund cost could potentially be covered by savings in APS due to the shift of work away from those offices if complaint and workload data support that premise.

Legislative Fiscal Office Recommendation: Allocate \$255,882 from the special purpose appropriation made to the Emergency Board for Oregon Health Authority or Department of Human Services budget challenges, increase the Federal Funds expenditure limitation by \$969,092, and authorize establishment of 15 permanent full-time positions (3.75 FTE), for the Department of Human Services to comply with a federal directive on nursing facility complaint investigations.

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Department of Human Services
Brickman

Request: Allocate \$255,882 from the State Emergency Fund and increase Federal Funds expenditure limitation by \$969,092 to establish 15 positions (3.75 FTE) within the Adults and People with Disabilities program in the Department of Human Services, to comply with a Centers for Medicare and Medicaid Services (CMS) directive regarding screening, triage and investigation of all nursing facility complaints.

Recommendation: Approve the request, with the following modification: Allocate the \$255,882 General Fund from the Special Purpose Appropriation made to the Emergency Board for the Department of Human Services and Oregon Health Authority for budgetary challenges.

Discussion: For years, the Department of Human Services (DHS) Nursing Facility Survey Unit (NFSU) has shared the Nursing Facility complaint process with the local Adults and People with Disabilities and Area Agencies on Aging Adult Protective Service investigators. The Centers for Medicare and Medicaid Services (CMS) has been aware of this practice for many years. While DHS divided the workload for the types of allegations, having the Nursing Facility Survey Unit investigate certain types of allegations (falls, fractures, pressure ulcers, hospitalizations, restraints, and death), the remaining types abuse allegations (financial, verbal/mental, sexual, and involuntary seclusion) were investigated by Adult Protective Service investigators.

On November 15, 2017, the Centers for Medicare and Medicaid Services informed the Adults and People with Disabilities that the division of labor was no longer acceptable. In response, the Adults and People with Disabilities submitted a short-term plan to the Centers for Medicare and Medicaid Services on December 19, 2017. The plan allowed for a gradual transition, to provide the Nursing Facility Survey Unit with time to increase staffing and capacity. After negotiating terms of the plan, the Centers for Medicare and Medicaid Services indicated acceptance on March 3, 2018. Then in June 2018, the Adults and People with Disabilities staff contacted CMS to request a change to the plan due to the implementation of the Centralized Abuse Management System. According to DHS, the Centers for Medicare and Medicaid Services accepted this change with an email confirmation. In October 2018, in a call between the Centers for Medicare and Medicaid Services and the Adults and People with Disabilities, the Centers for Medicare and Medicaid Services requested that all calls related to screening for abuse allegations at Nursing Facilities be handled directly by the Nursing Facility Survey Unit. As DHS was educating the Adult Protective Service investigators to comply with this request, the Centers for Medicare and Medicaid Services called the Adults and People with Disabilities on October 17, 2018 and explained that they had not fully understood “key elements” of the short-term plan, even though they had approved the plan, and Adult Protective Service investigators in the field were no longer able to investigate claims of abuse at Nursing Facilities. In that call, the Centers for Medicare and Medicaid Services instructed the Adults and People with Disabilities to require, as of October 29, 2018, all complaints related to Nursing Facilities be conducted by the Nursing Facility Survey Unit. Finally, the Adults and People with Disabilities must provide the Centers for Medicare and Medicaid Services with an update on a long-term plan by December 3, 2018.

For staffing, the short-term plan required the development, recruitment, hiring and training for intake purposes. Under the direction of the Centers for Medicare and Medicaid Services, the Nursing Facility Survey Unit has to be completely responsible for all complaints of abuse occurring at Nursing Facilities. This requires additional staff and capacity within the unit to

accomplish what the Centers for Medicare and Medicaid Services expects of the program. The request is for twelve Surveyor positions (six of which must be Registered Nurses to meet federal requirements), one Administrative Support position, one Operations and Policy Analyst 3 position, and one Principal Executive Manager D position. The Governor's Budget includes funding for the roll up of the FTE related costs in the 2019-21 biennium.

Legal Reference: Allocate \$255,882 General Fund from the Special Purpose Appropriation made to the Emergency Board for the Department of Human Services and Oregon Health Authority for budgetary challenges in Chapter 99, section 130(1), Oregon Laws 2018, to supplement General Fund appropriation established by chapter 597(1)(3), Oregon Laws 2017, and increase the Federal Funds expenditure limitation established by chapter 597(3)(3), Oregon Laws 2017, by \$969,092 for the 2017-19 biennium.



Oregon

Kate Brown, Governor

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October 29, 2018

The Honorable Senator Peter Courtney, Co-Chair
The Honorable Representative Tina Kotek, Co-Chair
State Emergency Board
900 Court Street NE
H-178 State Capitol
Salem, OR 97301-4048



Re: Staffing Request for Nursing Facility Investigators/Surveyors

Dear Co-Chairpersons:

Nature of the Request

The Department of Human Services, Aging and People with Disabilities (APD) program, requests the Legislature authorize fifteen positions to address a federal mandate imposed by Centers for Medicare and Medicaid Services (CMS) in recent weeks. This would increase the Department of Human Services' General Fund by \$255,882 and Federal Funds by \$969,092.

Background

Per CMS directive, the Nursing Facility Survey Unit (NFSU) must take over screening, triage and investigation of all nursing facility complaints beginning October 29, 2018 and use federal protocol and response standards. The addition of these functions to NFSU's current volume of work will necessitate additional staff and a reasonable timeframe for hiring and training staff to meet Federal (SMQT - Surveyor Minimum Qualifications Test) standards. CMS has already approved the majority of the funding needed for these critical positions.

NFSU has had a long-standing practice of sharing the Nursing Facility complaint process with local APD and AAA local Adult Protective Service (APS) investigators. CMS has been aware of Oregon's practice for many years. The current process divides the workload based on the types of allegations, with NFSU investigating only certain allegations (falls, fractures, pressure ulcers, hospitalizations, deaths and restraints) and APS investigating abuse allegations. On November 15, 2017, CMS informed APD that this division of labor was no longer

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acceptable. In response, APD submitted a short-term plan on December 19, 2017, which involved a gradual transition, allowing NFSU time to increase staffing and capacity. After a number of detailed conversations and revisions to the plan, it was initially accepted by CMS on March 3, 2018. In June, APD staff connected with CMS to request a change to the plan due to the roll out of the Centralized Abuse Management system, CMS accepted this request and confirmed in email. On October 2, 2018 on a call with CMS requested that all calls taken by field offices for screening about nursing facilities come directly to the NFSU instead of what the short-term plan detailed. APD was working toward this requirement by educating the field.

However, on October 17, 2018, during another phone call, CMS apologized and relayed that they didn't understand key elements of the short-term plan, even though it had been approved, and that we may no longer have any APS allegations investigated by field APS workers. They stated that full transition of both the screening and investigating of any complaint related to nursing facilities must be immediate and occur as of October 29, 2018.

NFSU will concentrate its resources on complaints and issues immediately impacting the safety of residents. These staff will attempt to meet state timeframes for abuse, for response and investigation, however, the emphasis will be on the Federal requirements which are different than the state timeframes.

This focus will create a gap in annual recertification survey/inspection work as we work toward recruiting, hiring and training enough staff to handle the additional workload. Over the next two years, survey intervals will increase beyond the CMS maximum thresholds of 12.9 State average and 15.9 months for any individual facility and likely result in federal penalties.

APD must provide CMS with an update on a long-term plan no later than December 3, 2018.

Rationale

Nursing facility practices and procedures are governed by both State and Federal law. The CMS process of investigating abuse allegations and other complaints is more systems-based and goes well beyond an inquiry regarding one individual victim. The CMS process entails looking at the facility's systems, a sample of residents, and addresses the abuse that may have occurred through the larger lens of licensing.

Proposed Process

With legislative approval, the Department will hire the following positions to meet the need.

- 12 Surveyor positions (6 of these need to be RNs to meet federal requirements)
- 1 Administrative support staff
- 1 OPA 3 policy analyst
- 1 PEM-D level manager

Conclusion

The Department must comply with the CMS directive to cease the practice of having APS workers screen and investigate certain abuse allegations and other complaints in Nursing Facilities.

Action Requested

The Department requests position authority for 15 positions and 3.75 FTE in the NFSU and \$255,882 General Fund and \$969,092 in Federal Funds limitation.

Legislation Affected

Chapter 597, section 1, subsection 3
Chapter 597, section 3, subsection 3

If there are questions regarding this request, please contact Ashley Carson Cottingham at 503-947-1100 or via email at ashley.b.carson-cottingham@state.or.us.

Sincerely,



Eric Luther Moore
DHS Chief Financial Officer

cc: Ken Rocco, Legislative Fiscal Office
Laurie Byerly, Legislative Fiscal Office
George Naughton, Department of Administrative Services
Tamara Brickman, Department of Administrative Services
Cathy Connolly, Department of Administrative Services