

House Bill 23-1228 Nursing Facility Rate Setting Implementation Progress Report

November 1, 2023

Submitted to the Colorado Joint Budget Committee in
compliance with C.R.S § 25.5-6-202 (D)(14)(c)



Background

On May 30, 2023, House Bill (HB) 23-1228 was signed into law. The bill directs the Department of Health Care Policy and Financing (the Department) to:

1. Implement adjustments to existing nursing facility reimbursement policies between July 1, 2023 and June 30, 2026.
2. Implement additional payments for nursing facilities with disproportionately high Medicaid utilization, that are geographically critical to ensuring access to care, and facilities admitting compassionate release individuals from the Department of Corrections.
3. Implement additional financial oversight requirements and promote transparency in ownership, including collection of audited financial statements for nursing facilities and related parties.
4. Conduct broad stakeholder outreach in order to implement permanent changes to nursing home reimbursement by state fiscal year 2027.
5. Provide annual updates to the Joint Budget Committee regarding bill implementation.

Department Updates

Since the bill was signed, the Department has primarily focused on implementing regulation and seeking federal authorization to implement the reimbursement changes scheduled to go into effect in state fiscal year (SFY) 2024. These actions are summarized below:

Payment Adjustments

On May 17, 2023, the Department submitted a Medicaid State Plan Amendment to the Centers for Medicare and Medicaid Services (CMS) seeking authorization to adjust per diem reimbursement rates and increase payments for individuals with behavioral health and/or cognitive support needs for SFY 2024. Implementation is pending federal approval.

- On June 9, 2023, the Medical Services Board formally adopted regulations regarding reimbursement changes effective July 1, 2023 (pending federal approval of the State Plan Amendment). This includes increases to the nursing facility per diem reimbursement rate, doubling payments for the provision of services to individuals with behavioral and/or cognitive support needs and access to care payments for high Medicaid utilization, and geographically critical facilities.

On August 16, 2023, the Department submitted a Medicaid State Plan Amendment to CMS seeking authorization to provide enhanced payments to facilities admitting individuals paroled from the Department of Corrections. Implementation is pending federal approval.

On September 27, 2023, the Department submitted a Medicaid State Plan Amendment to CMS seeking authorization to provide enhanced payments to facilities with disproportionately high Medicaid utilization and/or geographically critical for providing access to care. Implementation is pending federal approval.

All pending changes to reimbursement utilize existing funding previously approved through HB 23-1228 or other existing funding sources and require no additional resources.

Financial Oversight Implementation

The Department discussed financial oversight guidelines with stakeholders in June, July, and September 2023 to gain insight into feasible timelines and cost considerations in implementing the requirement for submission of audited financial statements. The Department has been made aware of concerns regarding the availability of auditing firms in the short term and is in the process of developing comparable paths to compliance. Proposed regulations are expected to be available for stakeholder review and formal comment in early 2024.

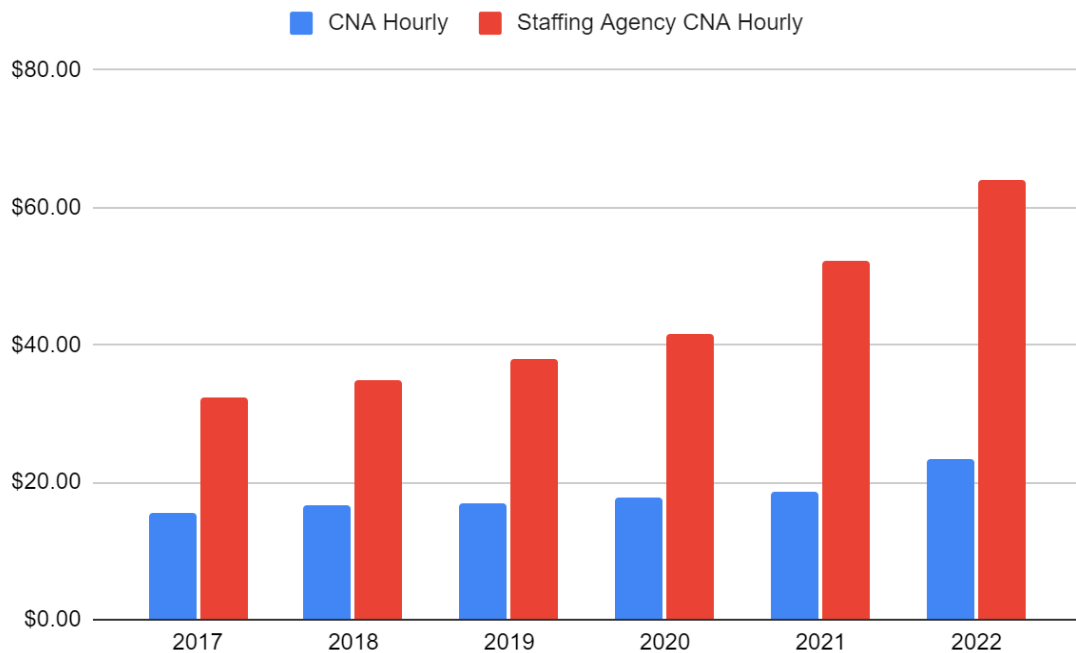
Financial Oversight Conclusions

The Department has completed review of financial data for calendar year 2022. This data will be considered for the evaluation of baseline data in measuring the impacts from HB 23-1228 in future years.

Calendar year 2022 data does not provide insight into HB 23-1228 impacts, but would include impacts from HB 22-1247 and HB 22-1333 funding (both aimed at workforce retention and recruitment). The Department notes the following trends:

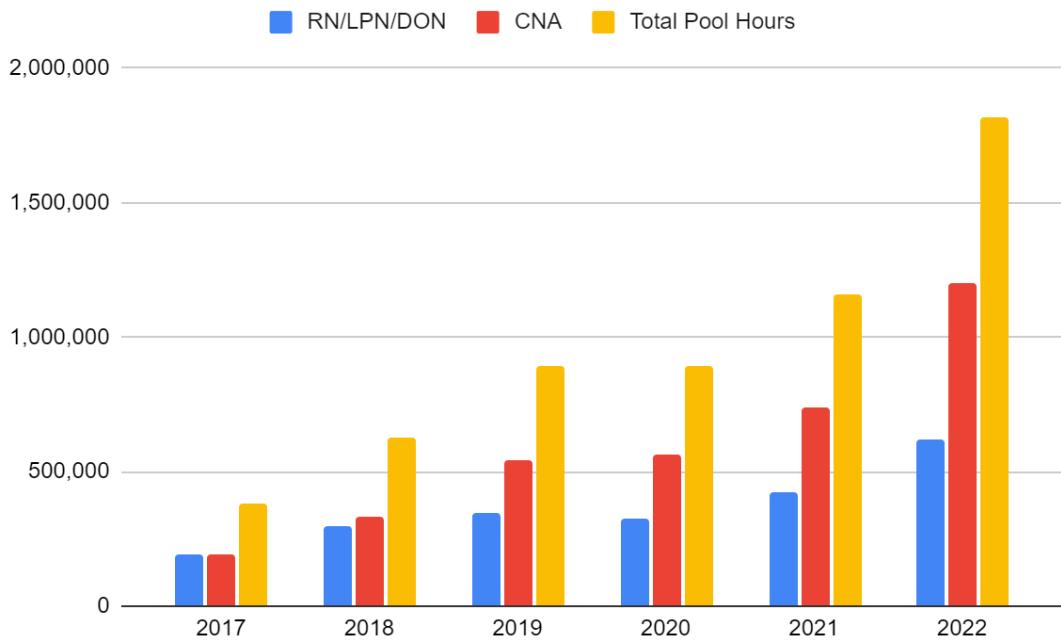
1. Full time certified nursing aide (CNA) wages increased more than 25% year over year to \$23.29/hr in 2022 (Table 1). This does suggest that additional funding was directed towards wages.

Table 1



- Total nursing hours (Registered Nurse (RN), Licensed Practical Nurse (LPN), Director of Nursing (DON), and CNA) have declined approximately 6.5% and temporary staffing utilization increased more than 50% in 2022 (Table 2). This measurable increase in staffing agencies illustrates the tremendous staffing challenges and shortfalls faced by the industry.

Table 2



SFY 2024 Next Steps

In SFY 2024, the Department plans to finalize financial oversight regulations, amend payments for the nursing facility pay-for-performance program, remove and reinvest reimbursement redundancies, measure initial HB 23-1228 impacts and engage stakeholders for reimbursement redesign to be implemented in SFY 2027.