South Dakota Legislative Research Council

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NURSING HOME AND ALTERNATIVE SERVICES PROVIDED TO ELDERLY NATIVE AMERICANS

Introduction

Each year, states and the federal government devote a large portion of their budgets to programs which serve the elderly. In South Dakota in fiscal year 1995, of the Department of Social Services general fund budget of slightly more than $102 million, approximately $31 million was budgeted for services to the elderly. The state provides a variety of services to help the elderly stay in their homes, but the vast majority of this money is devoted to paying for nursing home care under the Medicaid program. The fiscal year 1995 budget includes approximately $92 million, including nearly $29 million in general funds, to pay for nursing home care, which costs about $19,860 per resident for a full year.

Due to the high cost of nursing home care, the state has been attempting to expand access to alternative services and to control placement in nursing homes over the last several years. Despite these efforts, 91% of the general funds for elderly programs are spent on nursing home care; this percentage has remained virtually unchanged since fiscal year 1992. Under the current Medicaid program, state and federal governments split the cost of all nursing home care, including care provided to the state's Native American population at sites off the reservations. Due to the failure of the federal government to completely fund nursing home services for Native Americans and the unwillingness of the state government to adopt a policy allowing nursing homes to operate on reservations, the current system is financially burdensome to the state and provides fragmented services to elderly Native Americans.

Federal Government Health Services for Native Americans

The federal Indian Health Service (IHS) provides a variety of hospital and clinic services to Medicaid-eligible Native Americans residing on reservations throughout the country. IHS participates in the federal Medicaid program in much the same way as other medical care providers, except that IHS services are fully paid by federal money with no state match requirement. In fiscal year 1995, IHS has a budget of approximately $12.4 million to provide medical services to Native Americans in South Dakota. IHS exists exclusively to serve Native Americans; however, because of their rights as state citizens, Medicaid-

eligible Native Americans can receive services from any Medicaid provider. Thus, in many cases, the state does pay one-third of the cost of Despite various commitments by the federal government to provide health services to tribes, IHS does not provide any in-home or nursing home services to elderly Native Americans. This omission in the federal health care system passes a significant cost burden to state governments, which are required to provide Medicaid services to all eligible individuals. Federal policymakers are unlikely to expand health services to Native Americans to include nursing home care in the near future, considering the current focus in Washington on eliminating federal budget deficits while simultaneously reducing federal revenues. For example, if IHS were to begin funding nursing home care for 60% of South Dakota's Medicaid-eligible Native American nursing home population, it would cost about $2.3 million per year at the current cost of care. Providing nursing home care on reservations throughout the country would be an expensive undertaking for IHS, which is concerned that its resources for meeting current commitments will be reduced. Thus, elderly Native Americans in South Dakota will continue to depend on the state's social services programs, which do not include institutional care on reservations.

State Services to Elderly Native Americans

In the 1995 session, the Legislature passed and the Governor signed Senate Bill 208, which extended a moratorium on new nursing home beds for five more years. The medical care provided to Native Americans.

passage of this legislation means that the number of nursing home beds in the state will be frozen from 1991 until at least the early part of the next century. State officials argued in favor of the moratorium extension by stating that the existing bed total is adequate to meet the needs of the state's elderly population. In addition, in part as a cost-saving measure, the Department of Social Services continues to expand alternative services which allow elderly individuals to avoid placement in nursing homes.

As of this April, 7,643 individuals resided in the state's nursing homes. Of these, 238, or 3.1%, were Native American. Since census figures indicate that Native Americans make up 2.6% of the state's elderly population, it appears that Native Americans are able to access necessary institutional care as often as the rest of the population. However, due to the lack of any IHS facilities on reservations, reservation residents in need of nursing home care must be placed in facilities which are outside their communities.

Because of the high cost of nursing home care, nearly all residents eventually become eligible for Medicaid. As of April, 4,357 individuals were receiving Medicaid payments for nursing home care, and, of these, 191 were Native Americans. These figures indicate that Native Americans make up 4.4% of the Medicaid nursing home patients, so they are somewhat more likely to receive public support for such care

than the rest of the state's population. The failure of IHS to provide nursing home care burdens the state budget, because the state, under the Medicaid program, pays a third of the cost for the care of Native Americans in nursing homes off the reservations.

Due to the lack of nursing homes on tribal land, nursing homes in communities bordering reservations serve a disproportionate number of Native American clients. Of the 238 Native American nursing home patients in April, 121 are in only five facilities, all of which are close to reservations. These facilities depend on Native Americans for a significant amount of their business, since 33% of their total beds were filled with Native American clients in April.

Some facilities are particularly dependent, with more than half of their beds filled by Native Americans. The following table shows the five nursing homes with a large concentration of Native American patients.

Nursing Homes Serving A Large Proportion Of Native Americans

Community Where Nursing Home is Located	Number of Native American Patients	Percentage of Beds with Native American Patients
White River	31	59.6
Martin	28	58.3
Mobridge	28	23.9
Sisseton	24	23.8
Lake Andes	10	19.2

As the table illustrates, the lack of nursing homes on tribal land has a particularly acute effect in West River areas with relatively large and populous reservations. Nursing homes in Rapid City also serve a large number of elderly Native Americans. In April, 35 Native Americans were residing in Rapid City nursing homes. However, those facilities are not as dependent on Native American patients as facilities nearer the reservations, because of the larger population base in Rapid City. South Dakota's population of Native American nursing home patients, much like the total Native American population, is quite concentrated, with nearly two-thirds residing in a facility either in Rapid City or in one of the communities included in the table.

In addition to paying for institutional

care, the office of Adult Services and Aging of the Department of Social Services (DSS) provides a variety of services to elderly individuals throughout the state, including reservation areas. These services range from in-home health and personal care to nutrition to transportation; the department attempts through these services to allow individuals to remain in their homes, and out of nursing homes, for as long as possible. Alternative services are much less costly than nursing home care, and the department has been expanding this form of assistance, which saves money and helps individuals avoid unwanted and unnecessary institutional placements.

In March, 681 of DSS' alternative service clients were Native Americans; this figure represents 12.3% of the total client load. This disproportionate total of Native American clients indicates that the department is providing services which can assist elderly Native Americans in their attempts to stay in their homes. Proof that these services are well targeted is that the department has 297 clients on the Pine Ridge and Rosebud reservations, which have great social services needs and no nursing homes. Despite the expanded efforts to provide alternative services, institutional care is necessary and appropriate in many cases, and reservation residents in need of such care are often forced to move considerable distances to receive it.

Tribal Nursing Home Plans

Because of IHS' unwillingness to provide nursing homes on reservation land, some of the larger tribes in South Dakota have begun searching for ways to operate such facilities on their land. Because of the considerable expense of nursing home care, a majority of the state's nursing home patients currently receive public support. Thus, any nursing home on tribal land would require some form of public financing. One alternative the tribes have considered to support facilities on their land is participation in the state's Medicaid program.

The possibility of tribal nursing homes receiving funding from the state's Medicaid program raises a couple of difficult legal questions. First, tribal governments are recognized as sovereign entities by the federal government; thus, tribes can govern many of their own affairs just as states do. Since state law cannot be enforced on tribal land, a tribal nursing home would not be subject to state regulation. All nursing homes in the state must meet the licensing requirements outlined in Chapter 34-12 of SDCL, but this law cannot be applied to reservation facilities. Therefore, any tribal nursing home which wants to receive Medicaid payments would not be subject to the licensing requirements applied to facilities elsewhere in the state, which means that the state could not guarantee that the care it pays for is provided in an acceptable manner.

If a tribal nursing home were to somehow be included in the state's jurisdiction, the moratorium on new nursing home beds which was extended during the 1995 legislative session would prevent it from receiving reimbursement from the state's Medicaid program. Despite the fact that reservation areas lack facilities, the moratorium legislation contains no allowance for exceptions. A committee has been formed to study the possibility of transferring beds to areas with need for them, but that approach is fraught with difficulties because the prospects for any beds being relinquished by existing nursing homes are limited.

During the House of Representatives' consideration of Senate Bill 208, the legislation which extended the moratorium, legislators debated a proposed amendment which would have allowed tribal nursing homes to participate in the state's Medicaid program. The amendment would have specifically exempted tribal nursing homes from the moratorium, while allowing tribes to grant to the state complete jurisdiction for licensing such facilities. The proposed amendment solved the legal problems regarding construction of nursing homes on reservations, but it raised other concerns which led to significant opposition and doomed its passage.

The addition of nursing home beds in reservation communities would likely have an effect on the state budget, since the licensing of new beds would require an increase in the budget for the nursing home program if the overall occupancy rate stayed nearly the same. A fiscal note on the proposed amendment predicted that sixty new nursing home beds on tribal land would increase the state's share of Medicaid payments for nursing home care by more than $300 thousand per year. This cost could be more or less depending on a variety of factors, including the number of beds in tribal facilities, the number of patients who are eligible for Medicaid, and the impact of expanded bed capacity on the occupancy rate.

In addition to increasing the state's budget for nursing home care, the proposed amendment might have adversely impacted nursing homes which currently serve a large number of Native American clients. It seems logical to assume that a tribal nursing home would draw patients who would previously have been placed in the care of facilities in communities outside the borders of the reservation. If those facilities are unable to replace the patients lost to tribal nursing homes, it could undermine their economic feasibility. This scenario would be most likely to develop in White River and Martin, where a majority of the nursing home beds are occupied by Native Americans, many of whom would be logical clients for a tribal facility.

If a tribal facility does join the state's Medicaid program, both of the above effects could not be the ultimate result. For example, if the budget for

nursing home services increases because of additional patients, that would mean that nursing homes which lost Native American patients were able to replace them and avoid dire financial consequences. However, both issues concerned legislators enough that the proposed amendment to Senate Bill 208 ultimately failed.

When originally proposed on the House floor, an amendment to allow Medicaid payments to reservation nursing homes passed. However, final action on the bill was deferred, and after discussion of the potential impacts of the amendment, it was removed when the bill was heard again on the floor. The final effort to restore the amendment, which included a limit of sixty additional beds, was defeated by a vote of 39-30. As a result, reservations in South Dakota will be without nursing homes for the foreseeable future.

Conclusion

The future of nursing homes on reservations does not appear encouraging. The federal government is unlikely to expand the services provided by IHS at a time of budgetary austerity, and sentiment throughout the Legislature during the debate on the proposed amendment to the moratorium bill indicates that many state policy makers believe that financing tribal health care is a federal responsibility. Barring a change in legislative opinion, any future proposal to develop state-supported nursing homes on tribal land is unlikely to win acceptance.

A faint hope exists that state-supported nursing homes could be developed on reservations without impacting the state budget. Such a situation could come about if a system of transferring beds from existing homes to high need areas is developed, but no such plan has been proposed to date. Senate Bill 208 mandates a report, which must include input from tribes, addressing the transfer of voluntarily decertified nursing home beds; this report will be submitted to the Legislature and the Governor prior to the next legislative session. However, the difficulties involved in developing a bed transfer policy are daunting enough to make it an unlikely solution to the need for facilities on reservations.

Tribes may also investigate the possibility of financing a portion of the care provided to patients with tribal revenue. Offering to split the state share of Medicaid payments might make the Legislature more receptive to a proposal to place homes on tribal land. As gaming revenue grows, tribes may accumulate the resources necessary to implement such a policy. However, the reservations with the greatest need for nursing homes and other services are also those with the least developed gaming operations, so those tribes would have difficulty finding funds in their budgets to pay for nursing home care. Most likely, as long as the federal and state governments refuse to fund facilities

on the reservations, Native Americans can expect to be forced to leave reservations if they are in need of institutional long-term care services.

This issue memorandum was written by Jeff Bostic, Fiscal Analyst for the Legislative Research Council. It is designed to supply background information on the subject and is not a policy statement made by the Legislative Research Council.
