Market Study of Liability Insurance for Washington State Adult Family Homes

Presentation to Work Group Members Prepared at the Request of the Washington State Office of the Insurance Commissioner

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Presentation Structure

- Purpose and Approach of Study
- Washington Adult Family Home (AFH) Background
- Other States' AFH-Type Facilities
- Liability Insurance Environment for WA AFHs
- Data Call and Actuarial Analysis
- Policy Options
- Questions and Discussion

Purpose and Approach of Study

Purpose and Approach of Study

The Washington State Legislature in its 2024 supplemental operating budget (ESSB 5950) directed the Washington Office of the Insurance Commissioner (OIC) to convene a work group to:

- Review the availability and cost of liability insurance for WA AFHs
- Identify obstacles to AFHs' access to liability insurance including underwriting restrictions, market conditions, and legal and regulatory requirements
- Evaluate the financial risk to AFHs, their residents, the state Medicaid program, and others that exist as a result of the increased cost of insurance, or in the event that AFHs are uninsured due to lack of access to coverage
- Make policy recommendations to improve AFH access to liability insurance coverage
- Submit a preliminary report to the Legislature by December 31, 2024 and a final report by June 30, 2025

Purpose and Approach of Study

Davies was engaged by the Insurance Commissioner to conduct this study.

Our approach included:

- Research on WA AFH regulatory, legislative, insurance and administrative background
- Interviews and surveys with market participants including AFH representatives, the Department of Social and Health Services (DSHS) , insurance company representatives, and brokers
- Review of AFH-type facilities and regulations in other states
- Issuance of data call and conduct actuarial analysis on the data
- Formulate potential policy options for consideration

Washington Adult Family Home Background

WA AFH Background

Legislative and Regulatory Background

- RCW 70.128:
  - The development and operation of AFHs that promote the health, welfare and safety of residents. . . should be encouraged
  - Washington's long-term care system should more aggressively promote protections for the vulnerable population it serves
  - AFHs are licensed in WA as residential homes in which one or more resident caregivers provide room, board and services to between 1-8 adults not related by blood or marriage to the caregiver

WA AFH Background

Legislative and Regulatory Background

- WAC 388-76:
  - Requires that AFHs maintain commercial general liability insurance and professional liability insurance as a condition for licensure
  - Required minimum liability limits are $500,000 per occurrence/$1 million annual aggregate
- Note that liability insurance:
  - Provides security for the payment of damages to an injured party
  - Provides financial protection to the AFH

WA AFH Background

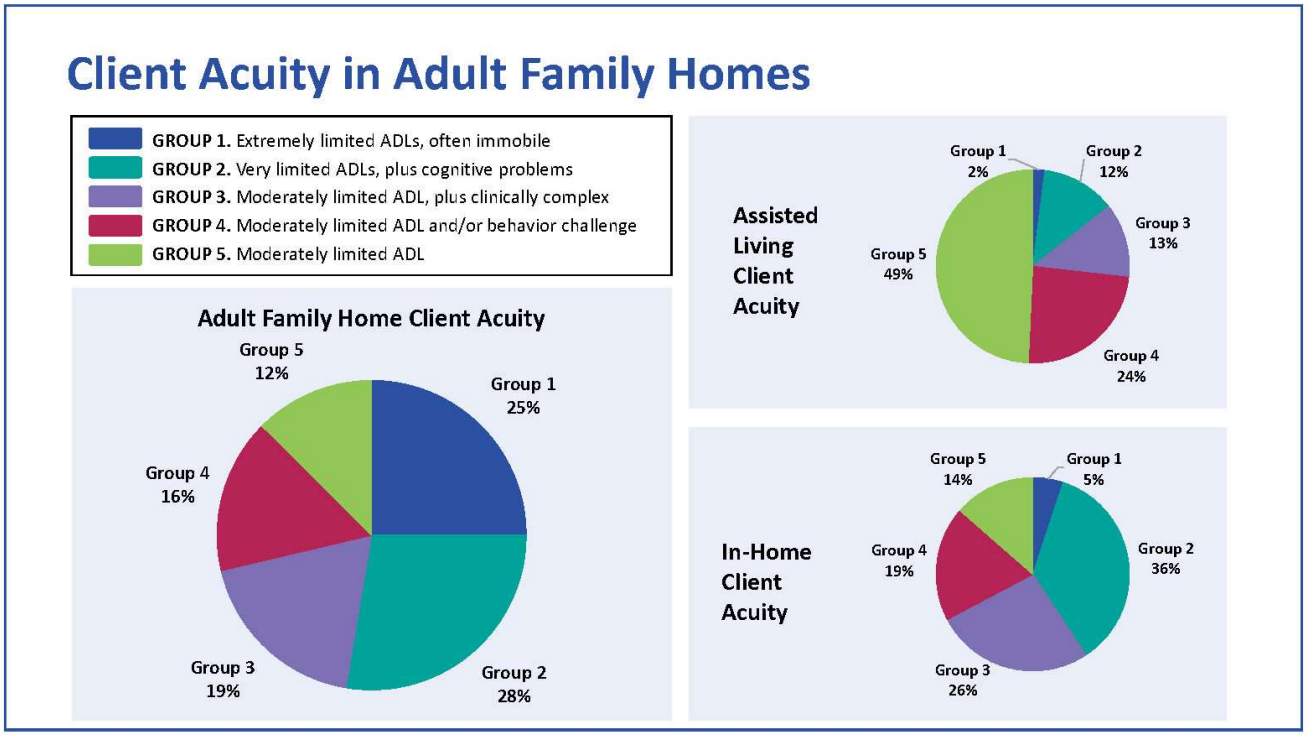
Resident Background (Provided by DSHS)

- WA AFHs provide services to residents with diverse needs, sometimes even within the same AFH
  - Elderly residents are the primary population for many AFHs
  - Special training is required for AFHs serving residents with special needs such as dementia, developmental disabilities, mental illness, and traumatic brain injury
- The WA Department of Social and Health Services (DSHS) oversees the licensing and regulation of AFHs. In the first work group meeting, representatives from DSHS presented helpful information

WA AFH Background

Resident Background (Provided by DSHS)

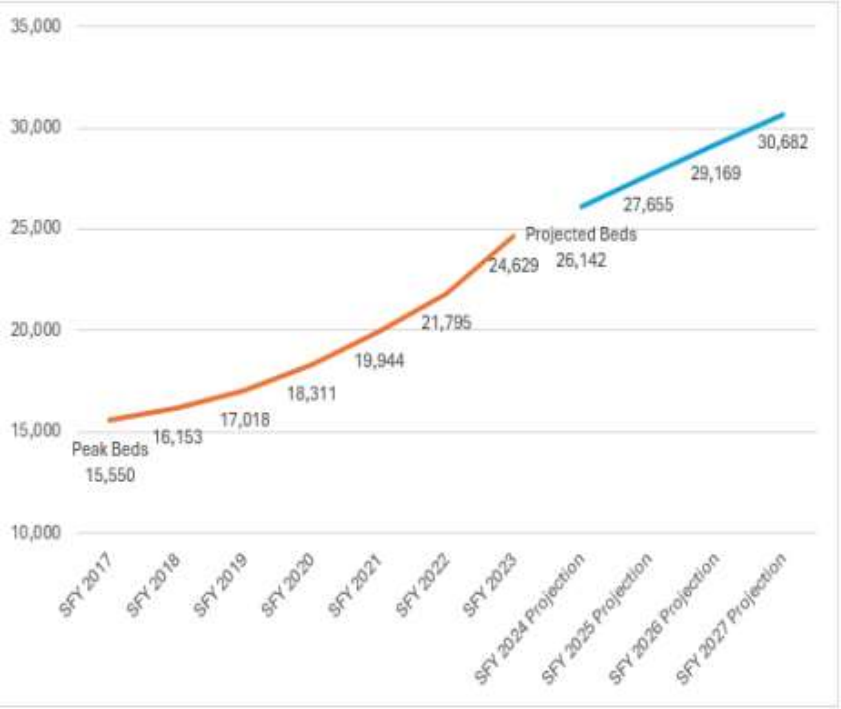
AFHs host many residents in Acuity Groups 1 and 2



WA AFH Background

Resident Background (Provided by DSHS)

The need for AFHs is great



WA AFH Background

Daily Bed Rate

- DSHS offers a variety of contracts to AFH operators who serve Medicaid-eligible residents.
  - The percentage of AFH residents who are Medicaid eligible is difficult to determine
    - Certainly higher than 50% and may be as much as 80%
- DSHS pays a daily bed rate to AFH owners for Medicaid-eligible residents
  - Rates are subject to collective bargaining
    - The Adult Family Home Council (AFHC) is the AFH representative
  - Rates vary based on the resident's care needs as determined by a Comprehensive Assessment Reporting Evaluation (CARE) assessment

WA AFH Background

Daily Bed Rate

- AFHs are cost effective
  - The **average** daily bed rate for AFHs is approximately half of the average rate provided to nursing homes and less than a quarter of the rate for state psychiatric hospitals.
    - Rates for certain AFH residents with higher acuities will be higher than the average
    - DSHS may provide additional funds for other contractors as needed based on the resident's CARE assessment
  - Nursing homes and hospitals have greater operational costs

WA AFH Background

AFHC Survey

- We were hoping to obtain (anonymized) financial statement information based on the survey, to understand the role of insurance expense in the total budget
  - A 2018 California study of Adult Residential Facilities includes several "sample budgets" with itemized income and expenses
- AFHC issued a survey to its members to inquire about insurance availability and affordability in recent years
  - There were 41 respondents out of approximately 4,300 providers
  - Respondents did not provide financial statements but did offer helpful comments/reports

WA AFH Background

AFHC Survey (continued)

- Key takeaways:
  - **AFH owners are operating on a very limited budget**
  - 35 of the respondents noted that at least some of their residents were eligible for Medicaid
  - 26 respondents stated that they accepted a wide variety of residents.
    - One respondent stated that they accepted residents with HIV, dementia, developmental disabilities, mental health issues, and behavioral issues
    - Another accepted residents with ventilator use, developmental disabilities, mental health issues, and behavioral issues
    - One (with a very high self reported premium of $36,000) said that they provide "medically complex private duty nursing care for the highest acuity. . . residents."

WA AFH Background

AFHC Survey (continued)

- Key takeaways:
  - Some AFHs self-reported premiums of less than $4,000 and stated that the premiums were crowding out other operational costs
  - It appears that some AFH providers may not realize that their policies are rated on licensed, not occupied, beds (discussed below)
  - Some AFH providers recognize that their premiums are related to the type of residents they admit and have had to make painful decisions about whom to admit to keep their premiums affordable (discussed further below)

Other States' AFH-Type Facilities

Other States AFH-Type Facilities

Introduction

- To place the market for AFH liability coverage in context, we examined the regulatory structure and market experience in other jurisdictions with analogous long-term care facilities.
  - Reviewed national surveys (US DHHS; AARP)
  - Selected six states for detailed study:
    - California, Florida, Hawaii, Idaho, Oregon, and Texas
- Although no state has the exact AFH model seen in Washington, our research regarding these 6 other states provided valuable information.

Other States AFH-Type Facilities

California

- California Department of Social Services licenses a broad category of residential facilities providing 24-hour **non-medical** residential care.
  - Populations served include: Elderly, children and adults with mental, physical, or developmental disabilities, those who require assistance recovering from mental illness, or who have HIV/AIDS or terminal illness.
  - Certain facilities are then specially licensed (Levels 1 through 4) based on the intensity and level of care and supervision required by residents
- Most analogous facilities, providing care in social-based settings:
  - Residential Care Facilities for the Elderly
    - Liability insurance mandate -- $1 million / $3 million limits.
  - Adult Residential Care Facilities

Other States AFH-Type Facilities

Florida

- Florida Agency for Persons with Disabilities and Agency for Healthcare Administration license several analogous facilities:
  - Group Homes
    - Supervision and care for physical, emotional and social needs of 4 to 15 residents in a family environment
  - Adult Family Care Homes
    - Resident caregiver provides personal care (not skilled nursing) to up to 5 individuals in a home environment.
    - Serve a broad population (e.g. developmentally disable, seniors, individuals with HIV/AIDS, etc…) but with limits on acuity (e.g. no bedridden residents)
    - No liability insurance mandate
  - Assisted Care Communities
    - Operated with goal of "most homelike environment" provide routine personal care and with specialty licenses may offer more intensive care
    - No liability insurance mandate

Other States AFH-Type Facilities

Hawaii

- Hawaii Department of Health licenses:
  - Adult Residential Care Homes (ARCHs)
    - Acuity management through license in three categories
      - Type I – five or fewer residents requiring some ADL assistance
      - Type II – six or more residents requiring some ADL assistance
      - Expanded ARCHs (E-ARCHs) – similar size and offering more intensive intermediate/skilled care
    - In 2024 Hawaii had 450 ARCH facilities representing nearly 2,700 beds
    - Financial responsibility requirement
      - Operators must maintain liability and auto insurance (limits are unclear)
  - Community Care Foster Family Homes
    - Provides personal care/homemaking services to up to 3 residents (with special license) receiving SSI and/or Medicaid
  - Developmental Disability Domiciliary Homes
    - Supervision or care, but not nursing services, to 5 or fewer adults in a home setting, with a resident caregiver

Other States AFH-Type Facilities

Idaho

- Idaho Department of Health and Welfare (ID DHW) licenses:
  - Certified Family Homes (CFHs)
    - Providing family-style environments for adults who need help with ADLs
      - May serve adults who are elderly, have mental illness, developmental disabilities, physical disabilities
      - Typically house 1-2 residents, in addition to resident provider (4 with variance)
    - Acuity management
      - 1 resident may require nursing facility level care (2 with variance)
      - ID DHW exercises prior approval before resident admittance
    - More than 2,500 CFHs licensed
    - Financial responsibility requirement
      - Homeowners/renters insurance required
      - No professional liability insurance requirement

Other States AFH-Type Facilities

Oregon

- Oregon Department of Human Services (OR DHS) licenses:
  - Adult Foster Homes -- Single family residences providing 24-hour care to older adults who have physical disabilities:
    - Acuity management through separate license classes
      - Class 1 – Residents require help with 4 or fewer ADLs
      - Class 2 – Residents require help in all ADLs, but full help in no more than 3 ADLs
      - Class 3 – Residents require hep with 4+ ADLs, includes 1 resident who is bedridden or dependent on all ADLs
    - 1,329 OR AFHs with approximately 6,100 beds (Fall 2022)
    - Financial responsibility requirement
      - Sufficient financial resources to operate "for at least two months without solely relying on potential resident income"
      - Unclear if professional liability insurance is required
  - Individual counties may also separately license AFHs
- Oregon Health Authority licenses homes for individuals with qualifying mental illness
- Separate office in OR DHS licenses homes for adults with developmental disabilities

Other States AFH-Type Facilities

Texas

- Texas Health and Human Services Commission (TX HHS) licenses:
  - Adult Foster Care Homes (AFC Homes)
    - Serve individuals unable to continue living independently because of physical, mental or emotional limitations
      - Homes for adults with intellectual disabilities separately licensed
      - Historically licensed for up to 4 residents; 8 now permitted
    - Approximately 365 facilities with 2,486 licensed beds (May 2025)
    - Acuity management
      - TX HHS provides prior approval for individual admission
    - Financial responsibility requirement –
      - Provider seeking the license must "demonstrate financial stability" independent of payments from TX HHS
      - It does not appear that insurance is mandatory.

Other States AFH-Type Facilities

Summary

- Each state has slightly different facilities for providing residential care

- Acuity/population management
  - Some states have narrower licensing categories or alternatively may approve each resident for a home
  - Some states do not license home-like residential facilities for residents that require intermediate or skilled nursing care

- Financial responsibility requirements
  - Some states require insurance
  - Some states require evidence of liquid financial assets/letters of credit

Liability Insurance Environment for Washington Adult Family Homes

Liability Insurance – WA AFHs

How Liability Insurance is Provided to WA AFHs

- All insurance companies[1] that provide general/professional liability insurance to WA AFHs provide insurance on an Excess & Surplus (E&S) lines basis OR is a Risk Retention Group (RRG)
- Insurance written on an E&S basis and RRGs is not regulated in the same manner as insurance written on an "admitted" basis
  - Admitted basis – Insurers licensed in Washington; All liability forms and rates must be filed with the Washington Office of the Insurance Commissioner (OIC)
  - E&S basis – Insurer operating from another state/country and exempt from most Washington regulation; Rates and forms not filed with OIC, typically used for specialty, unusual, or riskier business that insurance company will not cover on an admitted basis
  - RRGs – formed pursuant to the federal Liability Risk Retention Act, exempt from most state regulation, not required to file form or rates in states in which it does business

[1]Insurance currently may be available on an admitted basis for AFHs that are associated with non-profits, but these are a very small number of policies.

Liability Insurance – WA AFHs

General Rating/Underwriting Observations

Based on our interviews with several insurance professionals, and as substantiated in our data call, we understand:

- AFH insurance policies are rated according to *licensed*, not occupied, beds
- A review of underwriting material is performed at initial policy issuance or renewal only, not on an interim basis. This review can include (but is not restricted to):
  - Review of DSHS inspection reports
  - Review of loss experience
  - Review of characteristics of current residents

Liability Insurance – WA AFHs

General Rating/Underwriting Observations

- The vast majority of this insurance is written on a "claims-made" basis:
  - For a claims-made policy to provide coverage, **the date of report of the claim** must fall within the coverage period.
  - Narrower coverage so typically more affordable
- Contrast with insurance written on an "occurrence" basis
  - For an occurrence policy to provide coverage, **the date on which the incident occurred** must fall within the coverage period
  - Broader coverage so typically more expensive

Liability Insurance – WA AFHs

General Rating/Underwriting Observations

- Insurance companies each have their own underwriting guidelines. For example, some insurers will:
  - Only write AFHs that provide elder care
  - Not provide coverage to an AFH with residents who are bedbound
  - Decline coverage to AFHs with residents who have an elevated risk of violence or self-harm
  - Decline insuring AFHs with residents who need skilled nursing (for instance, those with feeding tubes)
  - Require 24/7 awake staff
  - Decline AFHs that have suffered a loss during a review period (e.g. last 3 years)

Liability Insurance – WA AFHs

General Rating/Underwriting Observations

- Insurance companies each have their own underwriting guidelines. For example, some insurers will:
  - Apply extra scrutiny to an AFH where residents have later stages of dementia
  - Declined AFHs that have patients have wounds or bedsores
  - Require wheelchair-bound residents to be housed on the ground floor or to demonstrate other methods of quick egress in case of emergency
  - Mandate special protocols for “wanderer” residents
  - Require a minimum of 3 years of clinical experience or healthcare administration
  - And more. . .

Liability Insurance – WA AFHs

General Rating/Underwriting Observations

- These underwriting guidelines can present challenges at various stages of the insurance cycle, and may necessitate a change to a new insurer
  - Upon the start of the AFH business, when the AFH is issued a broad license – insurers may be fearful of taking on unknown exposure
  - Upon renewal, when the AFH owner may have accepted residents that do not meet the insurer's underwriting guidelines
  - Upon renewal, when a resident may have experienced a change in condition and now no longer meets the underwriting guidelines
- RCW 70.129.110 prohibits an AFH from discharging or transferring a resident except in limited circumstances

Data Call and Actuarial Analysis

Data Call and Actuarial Analysis

Data Call

- We coordinated with the OIC to request premium and loss data from the key insurance companies writing this business:
  - Premium and loss data from the 2019 – 2024 period (ending Sep 2024)
  - We requested underwriting guidelines as well (see above)
  - Data is confidential and should only be used in the aggregate
- We reviewed the data for reasonability and provided follow-up questions to the companies, as well as summaries of the data for their review
- For the 2021-2023 years, the beds in our data call represented over 80% of DSHS licensed beds. This indicates that we received a very sizeable percentage of the market data.

Data Call and Actuarial Analysis

Actuarial Analysis – Premium Per Bed

- We reviewed the data to determine the 2023 (last full year of data) **average** premium per licensed bed and **distribution** of premium per licensed bed

- Over 70% of policies in the data call had 6 licensed beds, so we present our results on a per-bed basis and on an exemplar 6-licensed-bed basis

Data Call and Actuarial Analysis

Actuarial Analysis – Premium Per Bed

- **2023 average bed rate**: $480 (exemplar 6 beds premium of $2,880)
- Over 80% of the 2023 beds had an average rate of less than $550 (less than $3,300 for exemplar 6 beds)
- **Based on our industry knowledge, this rate appears reasonable**.

Data Call and Actuarial Analysis

Actuarial Analysis – Premium Per Bed

- Over 94% of the 2023 beds had an average rate of less than $900 (less than $5,400 for exemplar 6 beds)
  - The rates in the $550 to $899 range may be reasonable if they are representative of greater liability insurance risk
  - For example AFHs:
    - Serve residents with greater acuity
    - Operate from facilities with different risk profiles (e.g. multiple levels, upstairs bedrooms, exit alarms for “wanderer” control, etc…)
    - Have different history in terms of losses, DSHS inspection reports, etc…
    - Varying levels of provider training/experience

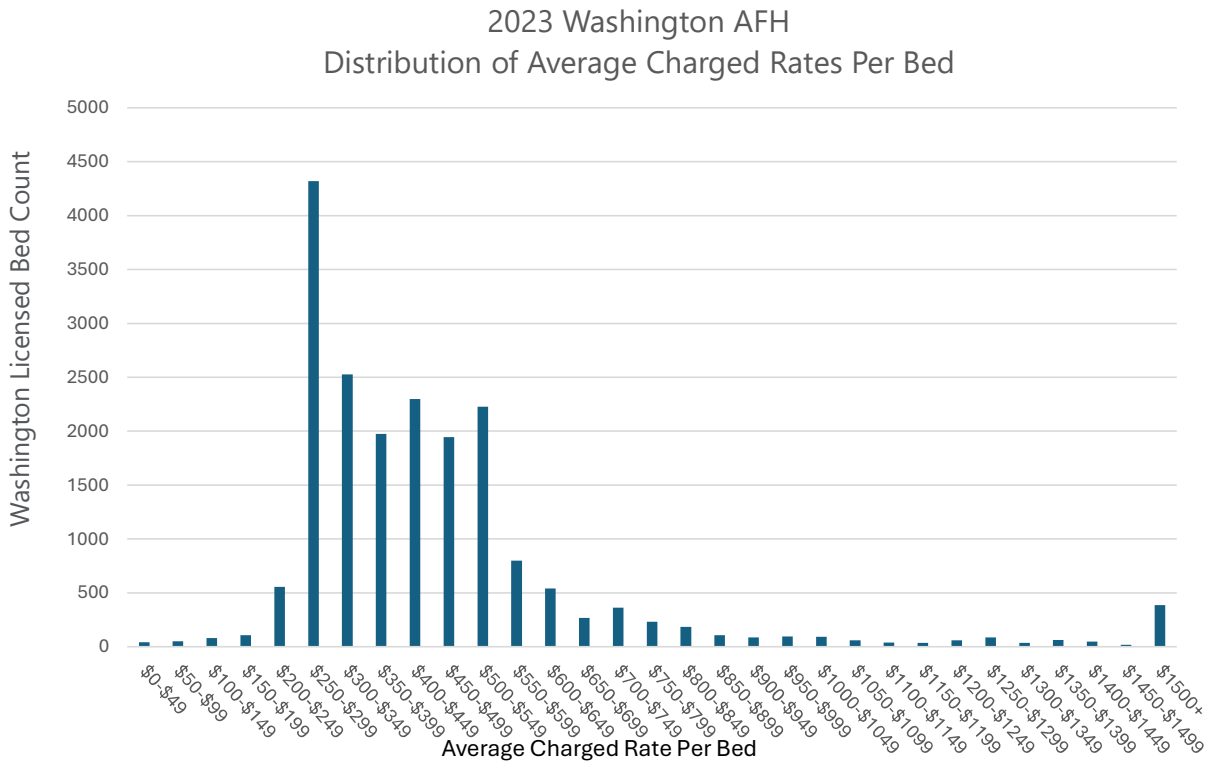
Data Call and Actuarial Analysis

Actuarial Analysis – Premium Per Bed

- For the 5.7% of 2023 beds for which rates are $900 per bed or more, the premiums can be very high
- Of the 10 policies with a per bed rate of $3750 or higher, 8 of them were written by companies which brokers identified as willing to write riskier policies.
- We do not have the information to assess the reasonability of this premium on a case-by-case basis.

Data Call and Actuarial Analysis

Actuarial Analysis – Premium Per Bed



Data Call and Actuarial Analysis

Actuarial Analysis – Projection of Ultimate Loss

- Additionally, we performed an actuarial projection based on the premium and loss data provided to us.
- We found that loss experience was volatile from year to year – in other words, in some years the losses and expenses paid by the insurers may substantially exceed the premiums collected and in other years they may be substantially less than the premiums collected. **This is to be expected in a market like this, when a small number of large losses may drive the experience**.

Data Call and Actuarial Analysis

Actuarial Analysis – Projection of Ultimate Loss

- Our actuarial projections across all years in our study indicated overall insurer profitability, but also that rates are not unreasonable
  - Admitted insurers are not participating in the market
  - Coverage is available only because the E&S/RRG market has stepped in
    - E&S carriers typically operate only where higher profit margins are available
  - Our projections are uncertain as they project future settlements and awards based on limited history
    - History is limited due to the size of the market
    - Compare this market (approximately 4,500 providers in 2024, according to DSHS) with the private auto insurance market in a state (millions of policies)

Policy Options

Policy Options

Introduction

- We found that there was generally not a strong "availability" concern in the market. For this reason, we are reluctant to suggest options which could disrupt the current market or cause withdrawal from any market participants.
- Our options focus on:
  - Creating a more flexible and responsive insurance market
  - Education of AFH owners
  - AFH owner compensation, and
  - Factors external to the AFH owner which may impact their premiums

Policy Options

POLICY OPTION 1

Implement licensing changes which

- may make the AFH liability insurance market more appealing to new market participants, and/or
- may allow current market participants to price policies with greater confidence

Policy Options

Policy Option 1.A – Create narrower DSHS licensure definitions for AFHs

The Legislature may wish to consider creating more specific licensure categories for Washington AFHs, such that insurance companies have a clearer understanding of the types of residents that will reside at the AFH.

Policy Options

Policy Option 1.A – Create narrower DSHS licensure definitions for AFHs

Rationale

- Similar to approach in other states
- Broad Washington license may decrease affordability for some AFHs
  - Insurance companies may be reluctant to offer coverage to a new AFH with no guarantee of what types of residents may be admitted
  - Established AFHs may encounter problems at renewal if newly admitted residents do not align with their insurance company's underwriting guidelines
  - Insurers may require higher premium to reflect risk of unexpected residents

Policy Options

Policy Option 1.A – Create narrower DSHS licensure definitions for AFHs

Potential Advantages

- Insurance affordability
  - More confident pricing as insurers are better able to select/price risks
  - May encourage more market participants
- AFH resident experience
  - Current and prospective residents may have confidence that the AFH they select will remain focused on their area of need
- AFH owners
  - May benefit from underwriting guidelines and risk mitigation tailored to their operation

Policy Options

Policy Option 1.A – Create narrower DSHS licensure definitions for AFHs

Potential Disadvantages

- Many current AFHs serve a wide variety of residents with evolving needs
  - New specialty license could be inconsistent with current residents' acuity
    - Current residents could be "grandfathered"
    - Specialization could create tension with "aging in place"
- Certain AFHs may see premiums increase as risks are concentrated in certain homes
  - Washington may need to allot more funds or a higher daily bed rate for these AFHs
- Reduced options for some residents

Policy Options

Policy Option 1.B – Enhance Licensure Requirements for New AFH Owners

The Legislature may consider requiring prospective AFH owners to gain three years of clinical experience or healthcare administration (including serving as a residence manager for an existing AFH) before becoming licensed themselves.

Policy Options

Policy Option 1.B – Enhance Licensure Requirements for New AFH Owners

Rationale

- Some insurers will not provide insurance coverage to AFH owners with less than three years of clinical experience or in healthcare administration
  - New providers perceived as higher risk
  - New AFH owners without this experience may be required to purchase more expensive insurance.
- If insurers are correct and lack of experience in these areas may track with greater potential for liability, it would be in the best interest of all parties to require more experience.

Policy Options

Policy Option 1.B – Enhance Licensure Requirements for New AFH Owners

Potential Advantages

- Prior to embarking on ownership of an AFH, a prospective owner would obtain hands-on experience to better understand the demands of the role
- Potential for better risk management and resident outcomes for AFHs, which should correlate with a lower risk profile and lower insurance premiums
- Greater experience with the rigor of compliance with AFH standards, thus leading to better resident outcomes and better initial DSHS inspections

Policy Options

Policy Option 1.B – Enhance Licensure Requirements for New AFH Owners

Potential Disadvantages

- Slowdown of time to market may be problematic depending on AFH needs in the coming years
- This option may replace one barrier to entry (expensive insurance premium) with another (increased experience requirement)

Policy Options

Policy Option 2 – Enhance AFH Owner Education and Awareness

The Legislature may wish to grant funds to one or more educational institutions to partner with DSHS, AFHs, the AFHC or others to conduct ongoing research and education aimed to improve fiscal sustainability, quality of care, and best practices.

Educational initiatives could include[2]:

- Small business planning and management
- Risk management training
- Training in DSHS-compliance
- Understanding the physical qualities of a location that may make it more or less insurable
- An introduction to human resources
- Work-life balance for a profession that occurs in the home

[2]Note that some training may be included in some courses educational licensure guidelines. However, based on information from market participants and AFH owners, it appears that additional small business and other education may be helpful

Policy Options

Policy Option 3 – Raising Daily Bed Rates for AFH Residents

The Legislature and/or DSHS may wish to consider providing more robust funding to AFHs, especially to high acuity residents, to ensure the continued fiscal viability of AFHs.

- Additionally, DSHS may wish to consider variance in operational costs when determining daily bed rate.
  - For example -- a non-ambulatory resident may have average care needs but trigger very high insurance premium

- AFHs are an alternative to nursing homes or psychiatric hospitals
  - Increased daily bed rates may create a more stable market, ensuring viable AFHs are available as an affordable alternative

Policy Options

POLICY OPTION 4 – Administrative DSHS Items

Policy Options

Policy Option 4.A – Eliminate Inspection Backlogs

The Legislature may wish to address any remaining DSHS inspection backlogs, perhaps by providing funding to DSHS to enhance their inspection-related staffing.

- During COVID-19, many AFH inspections were necessarily postponed, resulting in a backlog
  - Although DSHS has made efforts to reduce the backlog, inspections still may not occur on their scheduled annual timelines
- The DSHS inspection report is a key item used by underwriters to determine AFH acceptability to be underwritten and also in determination of price
  - Reports with deficiencies trigger increase rates/declinations and may increase the difficulty of soliciting customers
  - Prompt follow-up can demonstrate correction and incentivize improvement

Policy Options

Policy Option 4.B – Conforming the Standard AFH Contract to Statute and Market Conditions

Consideration should be given to conforming legislation and the standard AFH contract, leaving flexibility in the statute or contract to adapt to market conditions, to creating flexibility in the statute or contract that recognizes market realities, and to balancing minimum limit requirements against affordability/availability concerns.

- Limits – higher limits could increase affordability concerns
  - The standard DSHS contract requires $1 million per occurrence/$2 million annual aggregate
  - The WAC requires $500,000 per occurrence/$1 million annual aggregate
- Permitted insurers
  - The standard DSHS contract requires coverage be by a "an admitted insurer/carrier in the State of Washington, with a current Best's Reports rating of A-, Class VII, or better."
  - AFH liability insurance is not currently offered by admitted insurance companies.

Questions & Discussion