

101 CMR: EXECUTIVE OFFICE OF HEALTH AND HUMAN SERVICES

101 CMR 129.00: RATE AND CHARGE DETERMINATION FOR CERTAIN INTERMEDIATE CARE FACILITIES OPERATED BY THE DEPARTMENT OF DEVELOPMENTAL SERVICES

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129.01: General Provisions

- (1) Scope, Purpose, and Effective Date. 101 CMR 129.00 governs the payment rates for all care and services provided to publicly-aided patients by Intermediate Care Facilities (ICFs) operated by the Department of Developmental Services rendered on or after July 1, 2013.
- (2) Disclaimer and Authorization of Services. 101 CMR 129.00 is neither authorization for nor approval of the program of health care and services included within 101 CMR 129.00. Governmental units that purchase health care and services under 101 CMR 129.00 are responsible for the definition, authorization, and approval of programs of care and services provided by health care facilities subject to 101 CMR 129.00.
- (3) Authority. 101 CMR 129.00 is adopted pursuant to M.G.L. c.118E.

129.02: Definitions

As used in 101 CMR 129.00, unless the context requires otherwise, terms shall have the following meanings.

Base Year. The fiscal year two years prior to the rate year.

Center. The Center for Health Information and Analysis established under M.G.L. c. 12C.

EOHHS. The Executive Office of Health and Human Services established under M.G.L. c. 6A.

Final Inpatient *Per Diem* Rate. The all-inclusive inpatient rate based upon the costs from the rate year filing of the ICF Cost Reports. This final rate is set once EOHHS's review is complete, thereby replacing the initial rate.

Governmental Unit. The Commonwealth of Massachusetts and any department, agency, board, commission, division, or political subdivision of the Commonwealth.

ICF Cost Report. The cost report for ICFs beginning with fiscal year 1996.

Initial *Per Diem* Rate. The temporary all-inclusive inpatient rate based upon the cost from the base year filing of the ICF Cost Reports, inflated to the rate year.

Inpatient Day. HURM standard unit of measure to report care of patients admitted to a hospital including the day of admission, but not the day of discharge. If both admission and discharge occurs on the same day, the day is considered a day of admission and counts as one inpatient day.

Intermediate Care Facility (ICF). An ICF is an institution whether operated for profit or charity, advertised, announced, established, or maintained for the purpose of providing diagnostic, medical, surgical, or restorative treatment for patients within or centrally based in an institution and licensed as a hospital by the Department of Public Health under M.G.L. c. 111, § 51 and any hospital licensed under M.G.L. c. 19, § 19.

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Publicly Aided Patient. A person who receives health care and services for which a governmental unit is in whole or part liable under a statutory program of public assistance.

Rate Year. The rate year is the 12-month period, July 1st through June 30th, to which the related rate applies.

129.03: Reporting Requirements

(1) Required Reports.

(a) On an annual basis, each ICF shall file with the Center one copy of the ICF Cost Report in portable document format, within 120 days of the close of its fiscal year. The ICF Cost Report is to be completed in accordance with the instructions set forth therein and pursuant to requirements of *Administrative Bulletin 97-1* and any pertinent administrative bulletins issued by EOHHS pursuant to 101 CMR 129.09.

(b) Each ICF shall file, when required, trial balances and supplemental financial information to support the facility's ICF Cost Report filing.

(c) Each ICF shall make available all books and records relating to its operation for audit and/or screening, if requested by the Center.

(d) The CEO or CFO of an ICF shall certify all reports, schedules, reporting forms, budget information, books, and records under pains and penalties of perjury as true, correct, and accurate.

(e) The Center may, from time to time, require ICFs to submit additional data and documentation needed for calculation of MassHealth rates of payment or charges.

(f) The Center may, for cause documented in writing, extend the filing date for the submission of reports, schedules, reporting forms, budget information, books, and records.

(2) Penalties. If the ICF does not submit documents required pursuant to 101 CMR 129.03, in a timely fashion, as described above, EOHHS may determine an effective date for the rates determined under 101 CMR 129.00 that reflects the time lost for late or inadequate filing.

129.04: General Payment Provisions

(1) Reimbursement as Full Payment. Each ICF that provides services to publicly aided patients shall, as a condition of receipt of payment, accept reimbursement at rates established by EOHHS as full payment and discharge of all obligations to such individuals. There shall be no duplication or supplementation of payment for services provided to publicly assisted patients.

(2) Reimbursement Limitation. Reimbursement determined under 101 CMR 129.00 for publicly assisted patients shall not exceed that reimbursement that would result from application of the Principles of Reimbursement of Provider Costs established under 42 U.S.C. §§ 1395 *et seq.*, the Medicare Act.

(3) Allowable Costs.

(a) Pursuant to the requirements and rate and charge determination formulas of 101 CMR 129.00, ICFs shall be reimbursed for allowable costs. These costs must be reasonable costs and must be directly related to health care and services.

(b) Except as otherwise required in 101 CMR 129.00 and the instructions to the ICF Cost Report, allowable costs for inpatient care and services shall be determined in accordance with the Principles of Reimbursement for Provider Costs under 42 U.S.C. §§ 1395 *et seq.* as set forth in 42 CFR 413, *et seq.* and the *Provider Reimbursement Manual*.

(c) Depreciation shall be an allowable cost provided that it is based on historical cost and is calculated by the straight line method. The useful life of assets shall be determined in accordance with the most recent version of the *American Hospital Association's Estimated Useful Lives of Depreciable Hospital Assets*.

(d) Costs for leased facilities and fixed equipment shall be an allowable cost to the extent that such costs do not exceed the allowable cost that would have been recognized if the ICF had purchased the equipment or facilities and to the extent that such costs do not exceed rental charges of comparable equipment or facilities.

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- (e) Costs for equipment and facilities leased under contractual provisions that provide a purchase option at the end of the lease term without more than nominal payment shall not be allowed. Depreciation shall be allowed pursuant to 101 CMR 129.04(3)(c).
 - (f) Interest expense in excess of interest income shall be an allowable cost.
 - (g) Administrative and general cost in excess of miscellaneous income shall be an allowable cost.
 - (h) Overhead expenses shall be allocated to non-patient services.
 - (i) Costs for consultants shall be amortized over the useful life of the asset that consultant work is related to, and the amortized cost shall be an allowable cost.
 - (j) Payments to professional organizations, trade associations and the like, and comprehensive health planning agencies shall be allowed.
 - (k) Limitation of basis for depreciation, interest, and equity. Where there has been a change of ownership on or after July 18, 1984, the allowable basis of fixed assets shall be the lower of the acquisition cost or the basis allowed the immediate prior owner reduced by the amount of actual depreciation paid to the prior owner of the facility during all years in which the prior owner participated in the MassHealth program.
- (4) Excluded Costs. The following costs are excluded under 101 CMR 129.00:
- (a) costs for whole blood, appliances, and patient take-home items;
 - (b) bad debts, charity, courtesy allowances, and free care to medically indigent persons; and
 - (c) costs (including legal fees, accounting and administrative costs, travel costs, and the costs of feasibility studies) attributable to the negotiation or settlement of the sale or purchase of any capital asset (by acquisition or merger) for which payment has previously been made by the MassHealth agency.

129.05: Determination of Inpatient Rate

- (1) General. EOHHS shall determine an Inpatient Rate for each ICF. EOHHS shall establish an Initial *Per Diem* Rate using a base year ICF Cost Report inflated to the rate year pursuant to 101 CMR 129.05(3) and a Final *Per Diem* Rate using the rate year ICF Cost Report.
- (2) Calculation of the Inpatient *Per Diem*.
- (a) Allowable Total Patient Care Costs. Allowable Total Patient Care Costs are the sum of the ICF's Total Inpatient Routine and Ancillary Costs plus Overhead costs associated with inpatient care as reviewed and adjusted pursuant to 101 CMR 129.04.
 - (b) EOHHS shall divide the Allowable Total Patient Care Costs pursuant to 101 CMR 129.05(2)(a) by Total Patient Days.
 - (c) The Initial *Per Diem* Rate may be adjusted pursuant to the provisions of 101 CMR 129.06(2)(e).
- (3) Cost Adjustment Factor. To calculate the Initial Inpatient *Per Diem* rate, EOHHS shall adjust the Allowable Base Year Total Patient Care Costs pursuant to 101 CMR 129.05(2)(a) to rate year inpatient care costs using a composite index comprised of two cost categories: labor and non-labor. EOHHS shall weight these categories according to the weights used by the Centers for Medicare and Medicaid Services (CMS) for PPS-exempt hospitals. EOHHS shall use the Massachusetts Consumer Price Index inflation proxy for the labor cost category and the CMS market basket for hospitals for the non-labor cost category.

129.06: Administrative Adjustment to Inpatient *Per Diem* Rate

- (1) Timing. An ICF may apply for a discretionary administrative adjustment to its Inpatient *Per Diem* Rate based upon the grounds set forth in 101 CMR 129.06(1)(a) and (b). Adjustments shall be effective on the later of:
- (a) the beginning of the quarter (July 1st, October 1st, January 1st, April 1st) in which a complete application is received; or
 - (b) the date the costs shall be incurred.
- (2) Limitations. The following are grounds for an administrative adjustment.
- (a) Mechanical Error. There has been a mechanical error in calculating the Inpatient *Per Diem* Rate approved under 101 CMR 129.00.

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(b) Governmental Requirements. Statutory or regulatory requirements of a governmental unit or the federal government have generated a substantial change in allowable costs as adjusted pursuant to 101 CMR 129.05. Documentation shall include written certification or a copy of an official notice from the governmental unit detailing the new requirements imposed on the ICF and the verification of the costs.

(c) Disaster Losses. The ICF has incurred disaster losses in excess of insurance or extraordinary costs related to disaster losses not covered by outside sources. Documentation shall include verification of loss or extraordinary cost and the insurance or outside source payment. If, however, the loss or extraordinary cost is caused by a facility being inadequately insured according to the standards of the ICF industry, or through negligence on the part of facility management, such losses or costs shall not be approved.

(d) Determination of Need (DON) Operating Costs. An ICF has incurred or expects to incur an increase in operating costs associated with a major capital expenditure or substantial change in services that is subject to and has received a DON pursuant to M.G.L. c. 111, §§ 25B through 25G. In its application, the ICF must segregate the increased costs from other allowed operating costs and must demonstrate that the increased costs requested are reasonable. If an approved DON results in increased patient days, those increased patient days shall be added to the Total Patient Days used in the Inpatient Rate.

(e) Substantial Change from Base Year Costs. An ICF may request an adjustment to its Initial Per Diem Rate if the ICF has determined that there shall be a substantial variance between base year costs and rate year costs. The ICF may request that EOHHS set the Initial *Per Diem* Rate without the cost adjustment factor determined pursuant to 101 CMR 129.05(3). The ICF may also request that EOHHS review more recent cost and utilization data to determine a revised Initial *Per Diem* Rate.

(3) Submission for Administrative Adjustment.

(a) An application for administrative adjustment shall be made to the Medicaid Director of EOHHS in writing and shall contain the following:

1. the name and address of the ICF;
2. the approved Inpatient Rate and change to be reviewed and the rate or change sought by administrative adjustment;
3. a clear, concise statement of the reasons for the application for administrative adjustment;
4. a detailed statement of financial, statistical and related information in support of the application;
5. all information and documentation required under 101 CMR 129.03;
6. a citation to any statutory, regulatory or contractual requirement in support of the application.
7. such other books, records and information as may be required by EOHHS; and
8. a certification by the chief executive officer or financial officer of the ICF that the application and all information, reports, schedules, budgets, books, and records submitted are true, correct, and accurate.

(b) Requests for an administrative adjustment shall be accompanied by full and complete documentation of the request. EOHHS may deny any request for an administrative adjustment for which documentation is not submitted.

(4) Administrative Adjustment Decision. Within 60 days from receipt of a complete and satisfactory application for administrative adjustment, EOHHS shall render a decision. A written statement of reasons for the decision shall be provided upon request.

129.07: Administrative Review

(1) Purpose of Administrative Review. To ensure that an ICF facility's rates are in continuing compliance with 101 CMR 129.00, EOHHS may, at any time and upon its own motion, review an approved rate upon notice to the facility.

(2) Administrative Review of Transfers of Cost. Where an ICF has reduced costs or increased costs by transfer of those costs to other persons or entities that provide health care and services, EOHHS may modify the Inpatient Rate to reflect the change in costs. In order to give effect to a transfer of cost, each ICF must file information concerning cost, volume, and revenue 30 days prior to implementation of a proposed transfer of cost, and must submit any additional information regarding the transfer of cost that EOHHS may require.

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(3) Administrative Review and Decision. Upon notice of administrative review, the ICF shall submit such books, records, documentation, and information as EOHHS may require. After review, EOHHS shall render a written decision and statement of reasons for its decision.

129.08: Appeal

An ICF that is aggrieved by any action or failure to act under 101 CMR 129.00 may file an appeal within 30 days to the Division of Administrative Law Appeals pursuant to the requirements of M.G.L. c. 118E and M.G.L. c. 7, § 4H. The pendency of an appeal does not limit EOHHS's right to undertake administrative review under 101 CMR 129.00.

129.09: Administrative Bulletins

EOHHS may, from time to time, issue administrative bulletins to clarify substantive provisions of 101 CMR 129.00. In addition, EOHHS may issue administrative bulletins that specify the information and documentation necessary to implement 101 CMR 129.00.

129.10: Severability

The provisions of 101 CMR 129.00 are hereby declared to be severable, and if such provisions or the application of such provisions to any person or any circumstances shall be held to be invalid or unconstitutional, such invalidity shall not be construed to affect the validity or constitutionality of any remaining provisions of 101 CMR 129.00 or the application of such provisions to ICFs or circumstances other than those held invalid.

REGULATORY AUTHORITY

101 CMR 129.00: M.G.L. c. 118E and M.G.L. c. 12C.

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