

114.5 CMR: DIVISION OF HEALTH CARE FINANCE AND POLICY
ADMINISTRATIVE SERVICES

114.5 CMR 4.00: RATES FOR CERTAIN SOCIAL, REHABILITATION AND HEALTH CARE SERVICES

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4.01: General Provisions

- (1) Scope and Purpose and Effective Date. 114.5 CMR 4.00 governs rates of payment by governmental units to providers of health care services which are not governed by any other Division regulation. 114.5 CMR 4.00 is effective January 1, 1999.
- (2) Disclaimer of Authorization of Services. 114.5 CMR 4.00 is not an authorization for or approval of the substantive services and accommodations included within 114.5 CMR 4.00. Governmental units which purchase health care services from providers are responsible for definition, authorization and approval of care and services extended publicly aided individuals. Information concerning substantive program requirements must be obtained from the appropriate government unit.
- (3) Authority. 114.5 CMR 4.00 is adopted pursuant to M.G.L. c. 118G.

4.02: Definitions

Approved Rate. The rate per service unit approved by the Division, or, in the case of cost reimbursement, the maximum obligation approved by the Division.

Client Resources. Revenue received in cash or kind from publicly aided clients to defray all or a portion of the cost of the service. These may include supplemental security income received by the operating agency to defray the room and board expense of residential clients, clients' food stamps, or payments made by clients according to ability to pay or sliding fee scale.

Consultant Services. Services rendered by individuals who provide social, rehabilitation, or health care related services to clients when the services are purchased directly by governmental units. These do not include consultant services purchased by a provider in order to deliver services purchased by a governmental unit.

Cost Reimbursement. A purchase arrangement, where the provider bills the purchasing governmental unit for costs incurred up to the stated maximum obligation.

Division. The Division of Health Care Finance and Policy established under M.G.L.c.118G.

Established Charge. The lowest fee that is charged by the provider to the general public or any third party payor other than a governmental unit, for the provision of one service unit. Fees which are based upon the purchaser's ability to pay, as in the case of a sliding fee scale, and fees which are subject to Division review and approval shall not be deemed to be established charges.

Fixed Costs. Those costs, as determined by the Division, which are independent of inflation and the level of occupancy include, but are not limited to interest associated with long-term debt, depreciation, insurance on buildings and equipment, real estate taxes, lease or rental payments, and the non-income related portion of the Massachusetts corporate excise tax.

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

Maximum Obligation. The maximum dollar amount by which a purchasing governmental unit(s) may obligate the Commonwealth under a contract for the purchase of health care services.

Out-of-State Governmental Unit. A state other than the Commonwealth of Massachusetts and any board, commission, department, division, or agency of that state or the government of the United States.

Out-of-State Provider. An individual, group or legal entity that operates or will operate a program of health care services which care and services have been or will be provided outside the Commonwealth of Massachusetts.

Program. The organization and delivery of a predetermined mix or configuration of health services designed to assist clients in achieving a common objective, alleviate a common problem or meet a common need.

Provider. Any person, partnership, corporation, trust or other entity providing health care services and meeting such conditions of participation as have been or may be adopted from time to time by a governmental unit purchasing such services.

Prudent Buyer Concept. An assumption that any amount paid for goods and services which is above the market price or the amount paid by comparable providers is unreasonable.

Publicly Assisted Client. A person who receives care in a program for which a governmental unit is in whole or in part liable for such care under a statutory program of financial assistance.

Related Party. A person or organization which is associated or affiliated with or has control of or is controlled by the provider or is related to the provider or any director, stockholder, trustee, partner or administrator of the provider by common ownership or control or in a manner specified in sections 267(b) and (c) of the Internal Revenue Code of 1954 as amended provided, however, that 10% shall be the operative factor as set out in sections 267(b)(2)(8)(10)(11) and (12) and f(1)(A) and provided further that the definition of "family members" found in section 267(c)(4) of said code shall include, for the purposes of 114.5 CMR 4.00, spouses and lineal descendants of the individual's brothers and sisters, brothers and sisters of the individual's spouse as well as spouses and lineal descendants of same and lineal ancestors of the individual's spouse.

Restricted Funds. Funds which have been restricted as to application by the donor or grantor, or which are generated from funds so restricted. Funds which have been restricted as to application by the board of the provider are not restricted funds.

Service Unit. A unit of care as determined by the purchasing governmental unit.

4.03: Filing and Reporting Requirements

- (1) Any governmental unit purchasing health care services under 114.5 CMR 4.00 shall file, or cause to be filed, a properly completed budget indicating the total proposed program or service operating costs to which the provider and purchasing governmental unit(s) have agreed.
- (2) Each provider and each purchasing governmental unit shall file such information as the Division shall reasonably request.
- (3) Each provider shall make available all books and records relating to the program(s) and service(s) purchased by any governmental unit.

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4.04: Reasonable Cost Principles

(1) Allowable Costs. Except as provided elsewhere in 114.5 CMR 4.04, all expenses 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, are allowable costs.

(2) Allocation of Costs and Income. If a provider conducts more than one program, it must allocate costs to each program using a basis which the Division deems reasonable. When a provider initiates a new program it may not allocate costs from any established program to the new program during the first year of operations.

(3) Imputed Values. The fair market value of donated goods and services is allowable to the extent that:

- (a) this value can be objectively and reliably determined; and
- (b) the provider would have to expend agency funds if the donated goods and services were not available and
- (c) the provider controls the donated goods in the same manner as goods owned by the agency and controls the donated services in the same manner as it controls its employees, including control over time, location, nature, and performance of the service.

The amount of allowable program cost shall be reduced by the imputed value of donated goods and services which are reported as income during the same period.

(4) Payments to Related Parties. The provider must identify any such related party and the expenses attributable to it and must demonstrate that such expenses do not exceed the lower of the cost to the related party or the price of comparable services, facilities or supplies that could be purchased elsewhere. The Division may request either the provider or the related party, or both, to submit information, books and records relating to such expenses for the purpose of determining their allowability.

(5) Fringe Benefits. Employer contributions to generally-available fringe benefits are allowable if the benefits are available to all employees under an established policy of the provider. Benefits may vary only in relation to disparities in length of service, collective bargaining agreements or regular hours of employment.

(6) Pension. Employer contributions to pension, annuity and retirement plans are allowable if:

- (a) the contributions are based on fair, reasonable and necessary compensation for services performed by employees,
- (b) the contributions are costs incurred on current year payrolls and do not include payments for prior year payrolls,
- (c) the plan does not provide for contributions by the employer based on the contingency of profit or at the discretion of the employer,
- (d) the pension plan must have met the current requirements of and, if applicable, received the approval of the Internal Revenue Service. The provider must file with the Division all applicable Internal Revenue Service forms documenting Internal Revenue Service approval along with copies of the plan; and
- (e) any forfeiture by an employee must be applied against the cost to reduce the premiums paid by the employer. A forfeiture shall be considered to have occurred when any employee who participated in the pension plan terminates employment prior to becoming vested. This reduction in the claim for reimbursement shall be made notwithstanding the terms or lack of terms in the pension plan.

(7) Reimbursement of Capital Expenditures.

- (a) Current Expensing of Capital Items. The full cost of acquisition of an asset having a useful life of more than one year and the full cost of repair, betterment or improvement of an asset which adds to the permanent value of the asset or which appreciably prolongs its useful life may be treated as an allowable cost of the period in which it was incurred, if the cost does not exceed \$500.00 or; in the case of a group of related assets, repairs, betterments, or improvements, the aggregate cost does not exceed \$500.00.

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- (b) Depreciation. Except as excluded by 114.5 CMR 4.04(8)(j), depreciation on plant, equipment and other assets is an allowable cost provided the amount thereof is computed:
1. upon an historical cost basis consistent with that used by the Internal Revenue Service;
 2. using a straight line method;
 3. charging ½ of the annual depreciation expense in each of the years of acquisition and disposal; and
 4. using the following schedule of useful lives:

Asset Category	Life (Years)	Yearly Rate (%)
<u>Buildings</u>		
1. Class I or II as classified by the Dept. of Public Safety	40	2.5
2. Class III or IV as classified by the Dept. of Public Safety	33.3	3
Improvements/Betterments	20	5
Equipment, Furniture and Fixtures	10	10
Motor Vehicles	5	20
Software used directly for benefit of publicly aided clients	3	33.3

(8) Disallowed Costs.

- (a) Bad Debts. Those amounts which represent uncollectible accounts receivable (whether estimated or actual) and any related costs including related legal costs.
- (b) Free Care. The cost of care furnished to individuals other than publicly assisted clients who, at the time of delivering care, have been or reasonably could have been determined to be financially unable to pay for such care.
- (c) Certain Salaries and Compensation. Those salaries and wages and other compensation determined by the Division to be excessive in light of salaries, wages and other compensation of comparable providers, and such other criteria of reasonableness as the Division may employ.
- (d) Fundraising. The cost of activities which have as their primary purpose the raising of capital or obtaining contributions, including the costs associated with financial campaigns, endowment drives, solicitation of gifts and bequests.
- (e) Research. These costs related to the conduct of grants, contracts investigations, or programs directed at the understanding, cure or alleviation of physical, mental or behavioral conditions. All costs of salaries, supplies, equipment, and occupancy which are directly related to research are to be excluded. Data gathering and program analysis are not considered to be research.
- (f) Federal Corporate Income Taxes and the Income Related Portion of the Massachusetts Corporate Excise Tax.
- (g) Certain Travel Allowances. Any amount advanced, paid or accrued to reimburse the provider's employees for use of a private motor vehicle on official agency business in excess of the amount allowed to employees of the Commonwealth.
- (h) Security Deposits. Money deposited by the provider with a lessor of real property as security for full and faithful performance of the terms of a lease.
- (i) Certain Interest.
 1. Any interest paid or accrued upon funds advanced or borrowed from any owner, partner, officer, stockholder, related party, or affiliated or parent organization to the extent that it exceeds the rate on obligations of the United States Treasury having comparable terms.
 2. Any interest accrued to inter-fund borrowings.
 3. Any interest paid or accrued during a reporting year which is not supported by documentation and certification to demonstrate that payment of interest and repayment of principal are required under a definite repayment schedule pursuant to a written contract.
 4. Any interest or penalties incurred because of late payments of loans or other indebtedness, late filing or payment of federal and state tax returns, municipal taxes, unemployment taxes, social security and the like.

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5. Any interest paid or accrued upon funds advanced or borrowed to the extent of any income received or accrued from the investment of restricted or unrestricted funds which were available to defray all or a portion of the expenses to which borrowed or advanced funds were applied.
- (j) Certain Depreciation.
1. Depreciation on idle or excess assets except such assets as are reasonably necessary for standby purposes.
 2. Depreciation on donated assets.
 3. Depreciation on any assets after the expiration of the applicable useful lives set forth in 114.5 CMR 4.04(7)(b)4.
 4. Depreciation of that portion of an asset's historical cost basis, as determined under 114.5 CMR 4.04(7)(b)1., which was paid from restricted funds.
 5. Where there has been a transfer of ownership of any asset, no depreciation shall be allowed on any increase in the cost basis or valuation of the assets resulting from the transfer.
- (k) Lobbying Costs. Funds used to compensate or reward lobbyists, consultants or staff to promote, oppose or influence legislation, or influence the governor's approval or veto thereof or to influence the decision of any Executive branch where such decision concerns legislation or the adoption, defeat, or postponement of a standard, rate, rule or regulation pursuant thereto, and any costs associated with lobbying activities. This prohibition shall apply where the lobbyists, consultants or staff, as any part of their regular and usual employment and not simply incidental thereto, attempt to promote, oppose or influence legislation, approval or veto, or regulations, whether or not any compensation in addition to the salary for such employment is received for such services.
- (l) Unreasonable Operating Costs. Costs which the Division determines exceed those justified under the prudent buyer concept.
- (m) Unauthorized Expenditures. Costs which are not reasonably necessary or appropriate for the provision of care or the efficient administration of the program. In determining whether a particular expenditure is unauthorized, the Division may rely upon the judgment of the principal purchasing governmental unit or the agreement of the parties.

4.05: Rate Determination

- (1) Rate Calculation. The Division will calculate the rate by determining total reimbursable rate year costs, subtracting client resources and, if necessary, dividing by projected service units.
- (a) For programs having at least one year of historical cost, the Division will determine total reimbursable rate year costs by:
1. Adjusting the most recent available annual cost data using the principles set forth in 114.5 CMR 4.04
 2. Increasing adjusted historical costs, exclusive of fixed costs as defined in 114.5 CMR 4.02, by a cost adjustment factor to project them to the rate year. The cost adjustment factor shall reflect appropriate projections of inflation indices and shall to the extent practicable be consistent with cost adjustment factors used in other Division regulations for similar providers. In appropriate circumstances the cost adjustment factor may be zero.
 3. Adjusting for the reasonable costs negotiated by the provider and purchasing governmental unit which relate to the following:
 - a. Increases in operating costs due to compliance with changes in the laws or regulations concerning licensing or safety;
 - b. Changes in operating costs due to negotiated changes in the program; or
 - c. Unforeseen or unusual increases in operating costs which are beyond the control of the provider and which are not contemplated in the cost adjustment factor.
- (b) For programs not having at least one year of historical cost, the Division will determine total reimbursable rate year costs by adjusting budgeted costs using the principles set forth in 114.5 CMR 4.04 and including negotiated costs as allowed for established programs pursuant to 114.5 CMR 4.05(1)(a)3.

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- (2) Rate Calculation for Out-of-State Providers. The Division will calculate the rate based upon, at its discretion, the provisions of 114.5 CMR 4.05, the out-of-state provider's current charge to the general public, or the rate established by an out-of-state governmental agency.
- (3) Requirements for Consultant Services.
- (a) Requirements of Rate Approval. Any governmental unit purchasing consultant services from a provider under 114.5 CMR 4.00 shall file, or cause to be filed, a copy of the agreement for the provision of consultant services with the Division. In the absence of a written agreement, the governmental unit shall provide a description of the services being purchased, the name of the provider of such services, and the rate of payment which the governmental unit proposes to pay such provider. In the absence of a specific provider, the governmental unit shall provide a description of the services and the rate which it proposes to pay such provider.
- (b) Standard of Review. If the Division determines that the consultant services are subject to its rate determination or approval authority but are not subject to rate determination under any other chapter of 114 CMR, it shall review the proposed rate of payment under 114.5 CMR 4.00. If the proposed rate of payment is reasonable for the consultant services provided, the rate shall be approved by the Division, in accordance with M.G.L. c. 118G. In reviewing the reasonableness of the proposed rate, the Division may refer to the prudent buyer concept, rates determined under the chapters of 114 CMR, rates determined under 801 CMR 4.07 and the payment Title Code Manual issued by the Division of Personnel Administration.
- (4) Rate Calculation where Information Is Insufficient. If there is insufficient information to apply the provisions of 114.5 CMR 4.05(1)(a) or (b) or 114.5 CMR 4.05(2), the Division in its discretion and with the consent of the provider and principal purchasing governmental unit, may certify a rate determined in any manner consistent with the principles set forth in 114.5 CMR 4.00 and the Division's authority under M.G.L. c. 118G.
- (5) Federally Determined Rate. The Division at its discretion may certify a rate equal to a rate established by an agency of the Federal Government, including, but not limited to, the Health Care Finance Administration(HCFA) or Indian Health Services.
- (6) Rate Limitations.
- (a) No rate approved under 114.5 CMR 4.00 shall exceed a program's established charge.
- (b) Except in the case of cost reimbursement, no purchasing governmental unit may pay less than the rate established by the Division.
- (7) Reimbursement as Full Payment. Each provider shall, as a condition of acceptance of payment made by one or more purchasing governmental units for care provided, accept the rate established by the Division as full payment and discharge of all obligations for the care so provided. There shall be no duplication or supplementation of payment from sources other than those expressly recognized or anticipated in the computation of the rate. Any client resources or third party payments on behalf of a publicly aided client, not expressly recognized or anticipated in the computation of the rate, shall reduce the obligation of the appropriate purchasing governmental unit for care rendered to that client.

4.06: Administrative Review

To assure that an approved program rate is adequate and appropriate, the Division may, at any time, review such rate upon notice to the provider and all purchasing governmental units.

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4.07: Administrative Information Bulletins

The Division may, from time to time, issue administrative information bulletins to clarify its policy upon and understanding of substantive provisions of 114.5 CMR 4.00. In addition, the Division may issue administrative information bulletins which specify the information and documentation necessary to implement 114.5 CMR 4.00 or necessary for informed consideration of program and rate requests.

4.08: Severability

The provisions of 114.5 CMR 4.00 are severable, and, if any provision of 114.5 CMR 4.00 or application of such provision to any operating agency or fiscal intermediary in 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 114.5 CMR 4.00 or application of such provisions to operating agencies or fiscal intermediaries in circumstances other than those held invalid.

REGULATORY AUTHORITY

114.5 CMR 4.00: M.G.L. c. 118G.

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