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Administrative Bulletin 16-18

101 CMR 206.00: Standard Payments to Nursing Facilities

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Nursing Facility Direct Care Add-On

The Executive Office of Health and Human Services is issuing this Administrative Bulletin pursuant to 101 CMR 206.06(13) to set forth the compliance criteria, reporting requirements, penalty amount, and recovery procedures for the add-on for direct care staff.

1. Compliance Criteria

- (a) **Eligible Staff:** As specified at 101 CMR 206.06(13)(c), each facility must spend the entire amount of its direct care add-on revenue for the following staff employed by the facility: certified nursing assistants (CNAs), licensed practical nurses (LPNs), registered nurses (RNs), dietary aides, housekeeping aides, laundry aides, activities staff, and social workers. Facilities may spend the amount for all of these positions or only a subset of these positions. Facilities may not spend direct care add-on revenue for temporary nursing service, contract employees, or directors of nursing.
- (b) **Permissible Use:** As specified at 101 CMR 206.06(13)(c), facilities must spend direct care add-on funding on one or more of the following uses for eligible staff identified in paragraph a above: increased wages, increased benefits, overtime pay, and bonuses. Spending for those permissible uses occurring on or after July 1, 2016, will be considered permissible use of direct care add-on funding.

2. Compliance Determination

- (a) Facilities will be required to submit data to EOHHS using the Nursing Facility Direct Care Add-on Compliance Form ("Compliance Form") as described in section 5 below.
- (b) Using the data provided on the Compliance Form, EOHHS will determine the amount of spending that will be counted toward compliance. These amounts will include the sum of two amounts:
 - i. the total amount paid by the facility in bonuses to eligible staff between July 1, 2016, and September 15, 2017; and
 - ii. the amount of increased spending in eligible staff wages, benefits, and overtime pay per hour between a base period of January 1, 2016, through June 30, 2016, and a rate period of July 1, 2016, through June 30, 2017. The amount of increased spending is determined by multiplying the difference in the direct care per hour spending between the rate period and the base period by the number of direct care hours in the rate period.
- (c) EOHHS will compare the amount of spending counted toward compliance with the amount of direct care add-on revenue received to determine if the facility has complied. EOHHS will provide each facility with a compliance calculation and notify the facility of its determination.

3. Penalty Amount

If EOHHS determines that facility has failed to spend the full amount or impermissibly spent any amount of its direct care add-on funding according to the requirements of 101 CMR 206.06(13) and this



administrative bulletin, the facility will be assessed a penalty of 25% of the unspent or impermissibly spent amount.

4. Penalty and Recovery Procedures

- (a) If EOHHS notifies a facility that it has failed to spend the full amount of its direct care add-on revenue according to the requirements of 101 CMR 206.06(13) and this administrative bulletin, the facility will have 60 days from the date of the notification to issue a one-time bonus to employees in the amount of the unspent funds. The facility will be required to provide to EOHHS documentation demonstrating that the bonus was paid to the employees.
- (b) If the facility fails to issue a one-time bonus within 60 days as described in 4(a), EOHHS may recoup the entire amount of unspent or impermissibly spent direct care add-on funds from the facility pursuant to 130 CMR 450.260(F), **plus** a penalty of 25% of the unspent or impermissibly spent amount as described in section 3 pursuant to 130 CMR 450.238-240.

5. Reporting Requirements

- (a) Facilities will be required to complete an Interim and Final Compliance Form in electronic format as specified by EOHHS. The website URL for the electronic submission will be provided at a later date along with compliance form instructions.
- (b) Facilities must submit a completed interim Compliance Form to EOHHS no later than April 30, 2017, and a final Compliance form no later than September 30, 2017.
- (c) All data reported on the Compliance Form is subject to review and audit by EOHHS, the Center for Health Information and Analysis, or their designated contractors in accordance with 130 CMR 450.205 and other applicable regulations. The audits may include field or desk audits, and facilities may be required to provide additional supporting documents including but not limited to payroll records.
- (d) All data reported on the Compliance Form must be reported on an accrual basis. Note that the accrual of paid leave time must be consistent between the base and rate periods. For example, do not accrue vacation time in the rate period while failing to accrue vacation time in the base period.
- (e) *Buyer/Seller Arrangements:* A provider that purchased a facility during or after the base period remains responsible for ensuring that the direct care add-on was used in compliance with EOHHS regulations. If the purchase occurred after September 30, 2016, the facility must use data from the seller in its calculation. If the sale was during the base period or rate period, the data must be summed for the two owners.
- (f) *New or Closed Facilities:* Facilities that closed or entered receivership during the rate period are still obligated to fulfill the requirements of the direct care add-on and complete the Compliance Form. New facilities must complete the Compliance Form as instructed and indicate the open date of the facility.