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Administrative Bulletin 20-03

101 CMR 206.00: Standard Payments to Nursing Facilities

Effective October 1, 2019

Nursing Facility Direct Care Staff Payments

The Executive Office of Health and Human Services (EOHHS) is issuing this Administrative Bulletin pursuant to 101 CMR 206.06(13): *Direct Care Staff Add-on* to set forth the compliance criteria, reporting requirements, penalty amount, and recovery and referral procedures for the State Fiscal Year (SFY) 2020 nursing facility direct care staff payments authorized by Section 2, Line Item 4000-0641 of Chapter 41 of the Acts of 2019 (the SFY2020 state budget).

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 staff payment 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 must prioritize spending of any direct care staff payment revenue received in SFY 2020 that exceeds the total direct care staff payment revenue received in SFY 2018 on hourly wage increases, shift differentials, or bonuses paid to CNAs and housekeeping, laundry, dietary and activities staff.
- (b) Facilities may not spend direct care revenue for temporary nursing services, contract employees, or directors of nursing.
- (c) Permissible Use. As specified at 101 CMR 206.06(13)(c), facilities must spend direct care staff payment revenue on one or more of the following uses for eligible staff identified in paragraph 1(a), above: increased wages, increased benefits, overtime pay, shift differentials, or bonuses. Spending for those permissible uses occurring on or after July 1, 2019, will be considered permissible use of SFY 2020 direct care staff payment funds.



2. Compliance Determination

(a) Facilities that received SFY2020 direct care staff payments will be required to submit data regarding their SFY 2020 direct care staff payments to EOHHS using the Nursing Facility Direct Care Staff Payment Compliance Form (“Compliance Form”) or an abbreviated compliance report, as described in section 3 below.

(b) Using the data provided on the Compliance Form or abbreviated compliance report, 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, 2019, and June 30, 2020, except for bonuses that were required to be paid during this time period to meet the SFY 2019 compliance test; and
- ii. the amount of increased spending in eligible staff wages, benefits, shift differentials and overtime pay per hour between a base period of January 1, 2016, through June 30, 2016, and a rate period of July 1, 2019, through June 30, 2020. 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 staff payment 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.

(d) EOHHS will determine the amount of direct care staff payment revenue for each nursing facility that *operated* between October 1, 2019, and June 30, 2020, as follows:

- i. Complete calculations as described in 101 CMR 206.06(13)(a)1–5.
- ii. Determine the number of paid Fee-For-Service MassHealth days for the nursing facility as of the last work week of June 2020, for the period of October 1, 2019, through May 31, 2020.
- iii. Calculate the monthly average of the number of paid Fee-For-Service MassHealth days as described in subparagraph 2.(d)ii, above, and add the average to the number of paid Fee-For-Service MassHealth days in said subparagraph 2.(d)ii in order to estimate the number of paid Fee-For-Service MassHealth days for the nursing facility for the period of October 1, 2019, through June 30, 2020.
- iv. Multiply the estimated number of paid Fee-For-Service MassHealth days for the period of October 1, 2019, through June 30, 2020, by the sum of the nursing facility’s direct care add-on and the nursing facility’s direct care add-on annualization adjustment.
- v. Calculate the average of the amount calculated in subparagraph 2.(d)(i) and the amount calculated in subparagraph 2.(d)iv.

(e) EOHHS will determine the amount of direct care staff payment revenue for each nursing facility that *closed* between October 1, 2019, and June 30, 2020, as follows:

- i. Complete calculations as described in 101 CMR 206.06(13)(a)1–5.
- ii. Prorate the amount calculated in subparagraph 2.(e)i by the number of days the nursing facility operated between July 1, 2019, and the day on which the nursing facility closed.
- iii. Determine the number of paid Fee-For-Service MassHealth days for the nursing facility as of the last work week of the following month after which the nursing facility closed.
- iv. Calculate the monthly average of the number of paid Fee-For-Service MassHealth days as described in subparagraph 2.(e)iii, above, and add the average to the number of paid Fee-For-Service MassHealth days in said subparagraph 2.(e)iii to estimate the number of paid Fee-For-Service MassHealth days for the nursing facility for the period between October 1, 2019, and the day on which the nursing facility closed.

- v. Multiply the estimated number of paid Fee-For-Service MassHealth days for the period between October 1, 2019, and the day on which the nursing facility closed, by the sum of the nursing facility's direct care add-on and the nursing facility's direct care add-on annualization adjustment.
- vi. Calculate the average of the amount calculated in subparagraph 2(e)ii and the amount calculated in subparagraph 2.(e)v.

(f) If there is a significant variance between (1) the estimated amounts calculated pursuant to paragraphs 2.(d) or 2.(e), above, (whichever paragraph applies) and (2) the amount estimated by the nursing facility, the facility may petition EOHHS for a redetermination of direct care payment.

3. Reporting Requirements

(a) Facilities that received SFY2020 direct care staff payments other than those specified in paragraph 3(c) will be required to complete an interim and final Compliance Form in the format specified by EOHHS.

(b) Facilities that received SFY2020 direct care staff payments other than those specified in paragraph 3(c) and subparagraph 3.(h)ii must submit a completed interim Compliance Form to EOHHS no later than March 2, 2020, and a completed final Compliance Form no later than July 31, 2020.

(c) Facilities that received SFY2020 direct care staff payments in the amount of \$40,000 or less are not required to complete an interim and final Compliance Form. Such facilities will be required to submit a single abbreviated compliance report to EOHHS by July 31, 2020, in the format specified by EOHHS. EOHHS may select such a facility for a desk review. Facilities that fail to submit the abbreviated compliance report by July 31, 2020, or fail to pass the desk review will be deemed noncompliant with the SFY 2020 direct care staff payment program requirements and will be subject to the penalty and recovery procedures described in section 5.

(d) All data reported on the Compliance Form or abbreviated compliance report 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: *Recordkeeping and Disclosure* and other applicable regulations. The audits may include field audits, desk audits, or desk reviews and facilities may be required to provide additional supporting documents including, but not limited to, payroll records.

(e) Facilities submitting a final Compliance Form must provide information on hours, wages, and expenses for all staff positions listed in paragraph 1.(a), above, employed by the facility, regardless of whether the facility used its SFY 2020 direct care staff payment funding for allowable purposes listed in section 1 and regardless of whether direct care staff received the funding through bonuses, increases to hourly wages, increased spending on benefits, shift differentials, or overtime pay.

(f) 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, if vacation time was not accrued in the base period, then it must not be accrued in the rate period. If vacation time was accrued in the base period, then it must be accrued in the rate period.

(g) 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 June 30, 2016, the facility must use base period data from the seller in its calculation. If the sale was before July 1, 2019, then rate period data will come from the current owner. If the sale was on or after July 1, 2019, the rate period data will come from the previous and current owners.

(h) New Facilities.

- i. Facilities that opened after July 1, 2016, and prior to April 1, 2019, and received SFY2020 direct care staff payments must complete the Compliance Form or abbreviated compliance report as directed by EOHHS and indicate the open date of the facility. To determine compliance, EOHHS will use the facility's first six months of operation as the base period.

ii. Facilities that opened on or after April 1, 2019, are not required to complete the Compliance Form or abbreviated compliance report for SFY2020.

iii. A change in ownership of a facility does not, on its own, constitute an opening of a facility for the purposes of subparagraphs 3.(h)i and 3.(h)ii, above.

(i) Closing Facilities. Facilities that close after October 1, 2019, are obligated to fulfill all SFY 2020 direct care staff payment program and reporting requirements. Closing facilities shall expend all SFY 2020 direct care staff payments received prior to closure and submit a final Compliance Form or abbreviated compliance report, as applicable, not more than 60 days after the closure date approved by the Department of Public Health (DPH), not more than 60 days after the transfer of the last resident, or by July 31, 2020, whichever occurs first.

(j) Significant Changes. If on or after January 1, 2016, a facility had a significant change in the number of licensed beds and had beds that were permanently or temporarily relocated to another location, the facility may petition EOHHS for an amended base period. The amended base period may begin no earlier than January 1, 2016. The facility will be required to submit documentation supporting the significant change. Upon review of the documentation, EOHHS will determine at its sole discretion whether to approve the petition. If approved, EOHHS will incorporate the appropriate changes to the base period based on the facility's circumstances.

(k) Facilities that did not receive SFY2020 direct care staff payments will not be required to complete an interim or final Compliance Form.

4. Penalty Amount

(a) If EOHHS determines that a facility has failed to spend the full amount or impermissibly spent any amount of its total SFY 2020 direct care staff payment 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.

(b) If a facility fails to submit its final Compliance Form or abbreviated compliance report to EOHHS by July 31, 2020, or within 60 days after the closure date approved by DPH for a closing facility, EOHHS will consider the entire amount of its total SFY 2020 direct care staff payment unspent.

5. Penalty, Recovery, and Referral Procedures

(a) If EOHHS notifies a facility that it has failed to spend the full amount or impermissibly spent any amount of its total SFY 2020 direct care staff payment according to the requirements of 101 CMR 206.06(13) and this administrative bulletin, the facility will have 30 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 30 days as described in paragraph 5.(a), above. EOHHS will recoup the entire amount of unspent or impermissibly spent direct care add-on funds from the facility pursuant to 130 CMR 450.260(F): *Recoupment*, plus a penalty of 25% of the unspent or impermissibly spent amount as described in section 3, above, pursuant to 130 CMR 450.238: *Sanctions: General, et seq.*

(c) EOHHS may refer the administrator of any facility that fails to comply with all SFY 2020 direct care staff payment program and reporting requirements, including submission of a direct care staff payment spending plan for closing facilities described in paragraph 3.(i), above, to the Board of Registration of Nursing Home Administrators.

6. Contact Information for Provider Questions Regarding Direct Care Staff Payments

For any *technical* questions regarding the interim or final Compliance Form or abbreviated compliance report, please email NFDirectCare@umassmed.edu. For all other questions, please email Pavel Terpelets, Deputy Director of Institutional Programs, at Pavel.Terpelets@MassMail.State.MA.US or Meera Ramamoorthy, Institutional Program Manager, at Meera.Ramamoorthy@MassMail.State.MA.US