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Administrative Bulletin 20-53

101 CMR 206.00: Standard Payments to Nursing Facilities

Effective May 15, 2020

Accountability and Support Supplemental Payment Methodology Applicable to Nursing Facilities During the Coronavirus Disease 2019 (COVID-19) Public Health Emergency

Purpose, Scope, and Effective Period

The Executive Office of Health and Human Services (EOHHS) is issuing this administrative bulletin pursuant to the authority of [COVID-19 Order No. 20: Order Authorizing the Executive Office of Health and Human Services to Adjust Essential Provider Rates During the COVID-19 Public Health Emergency](#) and [Executive Order 591: Declaration of State of Emergency to Respond to COVID-19](#). In light of the state of emergency declared in the Commonwealth due to COVID-19, EOHHS, which administers the Massachusetts Medicaid program known as “MassHealth,” is establishing supplemental payments for MassHealth-covered nursing facility services, notwithstanding 101 CMR 206.00: *Standard Payments to Nursing Facilities*, as further described in this administrative bulletin.

The supplemental payments established by this administrative bulletin will remain effective for the duration of COVID-19 Order No. 20, provided that notwithstanding the expiration of COVID-19 Order No. 20, the supplemental payments described in this bulletin shall continue to be paid to eligible nursing facilities in accordance with the methodology described herein.

Background

As a result of the COVID-19 public health emergency, MassHealth is implementing measures to minimize the spread of the virus between residents and staff at nursing facilities. Specifically, MassHealth established strict infection control and COVID-19 testing requirements through MassHealth Nursing Facility Bulletins 145 and 146.

MassHealth Nursing Facility Bulletin 145 establishes a list of 28 infection control competencies for nursing facilities to implement as well as an audit policy to promote continued compliance and improvement. Under MassHealth Nursing Facility Bulletin 145, each nursing facility will receive an infection control adherence score and determination after each audit. Under MassHealth Nursing



Facility Bulletin 146, each nursing facility is required to complete COVID-19 testing of a minimum of:

- 1) 90 percent of its staff, and
- 2) 90 percent of its residents by May 25, 2020.

To promote the highest standards of care and infection control within nursing facilities, the adherence determinations and compliance with the COVID-19 testing requirements will impact supplemental payments issued under this administrative bulletin, as further described below.

EOHHS recognizes that the staffing, testing and infection control procedures necessary to mitigate the spread of COVID-19 may result in significant additional costs to nursing facilities, due to the need for more personal protective equipment, additional staff, additional sanitation measures, and regular screening of residents and staff. Accordingly, EOHHS is establishing supplemental payments to nursing facilities that will be distributed according to the methodology described below.

Calculation and Distribution of Supplemental Payments

EOHHS will calculate the payment for each qualifying nursing facility provider as follows:

1. A nursing facility's monthly supplemental payment will be based on the following factors:
 - a. The nursing facility's average daily number of Massachusetts Medicaid Days, as reported by the nursing facility on their Quarterly User Fee Assessment Forms for the period of October 1, 2018, through September 30, 2019 (or a different time period, as approved by EOHHS, in accordance with Section 3.e);
 - b. The nursing facility's initial infection control competency self-assessment, submitted in accordance with MassHealth Nursing Facility Bulletin 145;
 - c. The nursing facility's infection control adherence determination, based on the Commonwealth clinical auditors' assessments of the facility conducted in accordance with MassHealth Nursing Facility Bulletin 145;
 - d. The nursing facility's staffing level and other metrics, reported weekly in accordance with MassHealth Nursing Facility Bulletin 145;
 - e. The nursing facility's completion of baseline testing of staff and residents, in accordance with MassHealth Nursing Facility Bulletin 146;
 - f. The nursing facility's acceptance of offers of assistance from EOHHS through the use of a clinical rapid response team or the Massachusetts National Guard (MANG);
 - g. The nursing facility's submission of a financial plan and reports, as required under Sections 7 through 9 of this administrative bulletin;
 - h. The nursing facility's adherence with the spending requirements in Section 6 of this administrative bulletin; and
 - i. The nursing facility's compliance and cooperation with the audit requirements described in Section 11 of this administrative bulletin.
2. The following nursing facilities will not be eligible for any supplemental payments under this administrative bulletin:
 - a. Nursing facilities that have not successfully submitted a self-assessment and attestation attached to MassHealth Nursing Facility Bulletin 145 by May 4, 2020; and
 - b. Nursing facilities eligible for payment under Administrative Bulletin 20-19: *Payments for COVID-19 Nursing Facilities.*

3. For the first supplemental payment, to be calculated on May 15, 2020, and distributed not later than May 31, 2020, the payment for each eligible nursing facility will be calculated as follows:
 - a. Divide the number of Massachusetts Medicaid Days as reported by each nursing facility provider on their Quarterly User Fee Assessment Form for the period of October 1, 2018, through September 30, 2019, by the total number of Massachusetts Medicaid Days across all nursing facility providers, as reported by all nursing facility providers on the Quarterly User Fee Assessment Form for the same period;
 - b. Multiply the quotient calculated in Section 3.a. by 50 percent of the average monthly MassHealth fee-for-service payments made to all nursing facilities from October 1, 2018, through September 30, 2019 or, if the amount of additional funding for the month is insufficient to make such payments to all nursing facilities, by the amount of additional funding available for a given payment month.
 - c. Multiply the product calculated in Section 3.b by 0.5;
 - d. The product calculated in Paragraph 3.c. will equal the nursing facility's first supplemental payment, and will be referred to in this administrative bulletin as the "base payment."
 - e. Notwithstanding Sections 3.a and 3.b, if, during the period of October 1, 2018, through September 30, 2019, a nursing facility had a significant decrease in the number of licensed beds and had its residents temporarily relocated to another facility due to a disaster event, the facility may petition EOHHS for an amended period which should be used in the calculation of the supplemental payment. The facility may be required to submit documentation supporting the significant decrease in the number of beds and the circumstances in which the decrease in licensed beds happened. 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 period based on the facility's circumstances and may also adjust any payments made pursuant to Administrative Bulletin 20-20 or Administrative Bulletin 20-37 using the approved amended period.
4. A nursing facility is not eligible for the supplemental payments described in Section 5 if the facility fails to meet any of the following requirements:
 - a. Adheres to all COVID-19 testing and reporting requirements under MassHealth Nursing Facility Bulletin 146;
 - b. Submits an initial financial plan to EOHHS by May 21, 2020, under Section 7 of this administrative bulletin;
 - c. Provides all residents access to regular video conferencing by May 31, 2020, for the purpose of enabling live video communications with family members; and
 - d. Complies and cooperates with all audits initiated by EOHHS under Section 11 of this administrative bulletin.
5. Each eligible nursing facility will receive three additional supplemental payments, to be calculated not later than May 31, 2020, June 15, 2020, and June 30, 2020, respectively, and distributed not later than June 15, 2020, June 30, 2020, and July 15, 2020, respectively.
 - a. Except as provided under Sections 5.b and 5.c, the supplemental payments described in this Section 5 will be equal to a percentage of the base payment, as defined in Section 3.d, as follows:

- i. 100 percent of the base payment, if the nursing facility’s most recent audit adherence determination on or prior to the date of calculation was “in adherence”;
 - ii. 80 percent of the base payment, if the nursing facility’s most recent audit adherence determination on or prior to the date of calculation was “in adherence but warranting reinspection”;
 - iii. 60 percent of the base payment, if the nursing facility’s most recent audit adherence determination on or prior to the date of calculation was “not in adherence” and it was the nursing facility’s first time receiving such a determination;
 - iv. 40 percent of the base payment, if the nursing facility’s most recent audit adherence determination on or prior to the date of calculation was “not in adherence” and it was the nursing facility’s second time receiving such a determination;
 - v. Zero percent of the base payment, if the nursing facility’s most recent audit adherence determination on or prior to the date of calculation was “not in adherence” and it was at least the nursing facility’s third time receiving such a determination;
- b. If, on or prior to any date of calculation in this Section 5, EOHHS has offered a nursing facility assistance of an EOHHS clinical rapid response team or MANG and the nursing facility rejected or failed to meaningfully cooperate with the clinical rapid response team or MANG, the nursing facility’s supplemental payments under this Section 5 shall be \$0, unless EOHHS determines, in its sole discretion that, as of the next or any subsequent dates of calculation, circumstances at the nursing facility have changed sufficiently that such assistance is no longer necessary. If EOHHS determines that the offered assistance is no longer necessary, the supplemental payment will be calculated in accordance with Sections 5.a and 5.c beginning on the date of calculation following such determination by EOHHS.
- c. If the nursing facility has failed to timely submit any reports required under MassHealth Nursing Facility Bulletin 145 due on or after May 11, 2020, then the supplemental payment under this Section 5 shall be \$0 until the next date of calculation on or after the missed reporting deadline.

Permissible Uses of Funding, Financial Reporting Requirements, and Penalties

6. Each nursing facility is required to demonstrate that the funding received pursuant to this administrative bulletin was spent consistent with the following requirements:
- a. The entire amount of funding received pursuant to this administrative bulletin must be spent prior to September 1, 2020.
 - b. The entire supplemental payment received pursuant to Section 3 of this administrative bulletin must be spent prior to June 6, 2020.
 - c. The entire amount of funding received pursuant to this administrative bulletin may only be spent on the following permissible use categories:
 - i. Increased wages or retention bonuses for existing employees, increased wages or signing bonuses for employees hired as eligible staff between May 1, 2020, and July 31, 2020. For purposes of this administrative bulletin, eligible staff are defined as certified nursing assistants (CNAs), licensed practical nurses (LPNs), registered nurses (RNs), dietary aides, housekeeping

- aides, laundry aides, activities staff, social workers, and directors of nursing who are hired as full-time, part-time employees, or per-diem employees;
 - ii. Temporary nurse services;
 - iii. Infection control measures, including, but not limited to, contract housekeeping and servicing of heating, air conditioning and ventilation;
 - iv. Personal protective equipment and screening equipment, including coveralls, face shields, hand sanitizer, head covers, respirators, gloves, face masks, sanitizing wipes, shoe covers, surgical goggles, gowns, thermometers and pulse oximeters;
 - v. Hotel stays or other temporary lodging that directly benefit staff by allowing them to temporarily reside closer to the facility or isolate themselves from family or others in their home; and
 - vi. Tablet computers or similar technology to enable residents in the facility to have regular live video communications with family members.
7. Each facility will be required to submit an initial financial plan by May 21, 2020, listing the permissible use(s) on which it intends to spend the supplemental payment calculated under Section 3 of this administrative bulletin, along with the anticipated amount of expenditure for such permissible use(s). Nursing facilities must submit the initial financial plan, using the form designated as [Appendix A](#) of this Administrative Bulletin 20-53, by emailing CHIANursingFacilityData@state.ma.us by May 21, 2020, in order to be eligible for supplemental payments under this bulletin.
8. Each facility will be required to submit an interim financial report by June 30, 2020, in a format and manner determined by EOHHS and with supporting documentation including receipts or invoices, to account for the way in which the supplemental payments distributed pursuant to this administrative bulletin by May 31, 2020, were spent. EOHHS will notify providers of the format for submitting the interim financial report to EOHHS.
9. Each facility will be required to submit a final financial report by September 30, 2020, in a format and manner determined by EOHHS and with supporting documentation including receipts or invoices, to account for the way in which the supplemental payments distributed pursuant to this administrative bulletin were spent. EOHHS will notify providers of the format and deadline for submitting the final financial report to EOHHS.
10. Penalty amount and recovery:
- a. If EOHHS determines, after reviewing a facility's interim financial report submitted pursuant to Section 8, that the facility used the supplemental payments, distributed by May 31, 2020, to the facility under this administrative bulletin, on expenses other than the permissible uses described in Section 6.c or has failed to spend the entire amount by the deadline established by Section 6.b, EOHHS will pursue the unspent or impermissibly spent amounts as an overpayment pursuant to 130 CMR 450.235: *Overpayments*, may deny further supplemental payments under this administrative bulletin, and may pursue other additional sanctions or remedies, as appropriate.
 - b. If a facility fails to submit the interim financial report, EOHHS may consider the entire amount of the supplemental payments, distributed to the facility by May 31, 2020, to have been spent impermissibly and may pursue the entire amount of such supplemental payments as an overpayment pursuant to 130 CMR 450.235:

- Overpayments*, will deny further supplemental payments under this administrative bulletin, and may pursue other additional sanctions or remedies as appropriate.
- c. If EOHHS determines, after reviewing a facility's final financial report submitted pursuant to Section 9, that the facility used the supplemental payments paid to the facility under this administrative bulletin on expenses other than the permissible uses described in Section 6.c or has failed to spend the entire amount by the deadline established by Section 6.a, EOHHS will pursue the unspent or impermissibly spent amounts as an overpayment pursuant to 130 CMR 450.235: *Overpayments*, and may pursue other additional sanctions or remedies as appropriate.
 - d. If a facility fails to submit the final financial report, EOHHS may consider the entire amount of supplemental payments paid to the facility under this administrative bulletin to have been spent impermissibly and may pursue the entire amount of such supplemental payments an overpayment pursuant to 130 CMR 450.235: *Overpayments*, and may pursue other additional sanctions or remedies as appropriate.

Enforcement, Audits and Sanctions

11. As a condition of receiving supplemental payments under this administrative bulletin, the nursing facility must fully comply and cooperate with an audit, record request, or examination initiated by EOHHS under this section, consistent with the applicable provisions of 130 CMR 450.000: *Administrative and Billing Regulations* and 130 CMR 456.000 *Long Term Care Services*, including but not limited to 130 CMR 450.204: *Medical Necessity*, 130 CMR 450.205: *Recordkeeping and Disclosure*, and 130 CMR 450.206: *Determination of Compliance with Medical Standards*, as well as the applicable provisions of the nursing facility's MassHealth provider contract. Audits under this section may be financial or clinical in nature, and may involve on-site, full-facility visits and inspections by EOHHS employees or contractors and reviews of a nursing facility's financial, medical, and other records.
 - a. If a nursing facility refuses to allow EOHHS to access any requested records, refuses entry of EOHHS employees or contractors to the site, or otherwise does not fully cooperate or comply with an audit initiated under this section, the facility will be ineligible for any further supplemental payments under this administrative bulletin and may be subject to an overpayment action under 130 CMR 450.235: *Overpayments* to recover any supplemental payments already paid under this administrative bulletin.
 - b. If the results of an audit demonstrate that the nursing facility is out of compliance with any requirement of MassHealth Nursing Facility Bulletins 145 or 146 or any other applicable federal or state statutory or regulatory requirement, the nursing facility may:
 - i. Be ineligible for any further supplemental payments under this administrative bulletin;
 - ii. Be subject to overpayment action under 130 CMR 450.235: *Overpayment* to recover any supplemental payments already made under this administrative bulletin or any other overpayment identified by EOHHS during the audit; and
 - iii. Be subject to sanctions under 130 CMR 450.238: *Sanctions* which may include but are not limited to administrative fines, provider services restrictions (including, specifically, a freeze on the admission of MassHealth

members to the facility), or the suspension or termination of participation in the MassHealth program.

- c. In the event that EOHHS determines that a nursing facility is endangering the health, welfare, or safety of any MassHealth members, or is compromising the integrity of the MassHealth program, EOHHS may take immediate action against the nursing facility under 130 CMR 450.240(B): *Suspension, Termination, or Provider Service Restrictions upon Sanction Notice*, up to and including immediate termination from the MassHealth program. In determining whether a nursing facility is endangering the health, welfare, or safety of MassHealth members, EOHHS may consider factors including, but not limited to, whether:
 - i. The facility has repeatedly received a “not in adherence” infection control audit adherence determination under Nursing Facility Bulletin 145;
 - ii. The facility has a statistically significant higher mortality rate or infection rate compared to the state average or comparable facilities;
 - iii. The facility has reported or EOHHS has evidence of inadequate staffing ratios; or
 - iv. Any other circumstances that EOHHS reasonably determines could endanger the health, welfare, or safety of residents, based on the information it had before it.

12. As appropriate, EOHHS will refer a nursing facility to the Department of Public Health or the Attorney General’s Office.

Public Comment

EOHHS will accept comments on the payment methodologies established via this administrative bulletin through May 29, 2020. Individuals may submit written comments by emailing: ehs-regulations@state.ma.us. Please submit written comments as an attached Word document or as text within the body of the email with the name of this bulletin in the subject line. All submissions of comments must include the sender’s full name, mailing address, and organization or affiliation, if any. Individuals who are unable to submit comments by email may mail written comments to

EOHHS, c/o D. Briggs
100 Hancock Street, 6th Floor
Quincy, MA 02171.

EOHHS may adopt a revised version of this administrative bulletin taking into account relevant comments and any other practical alternatives that come to its attention.