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## Administrative Bulletin 22-02

### 101 CMR 206.00: Standard Payments to Nursing Facilities

Effective January 15, 2022

#### Payment Methodologies for New and Existing Nursing Facility Payments under 101 CMR 206.00: *Standard Payments to Nursing Facilities*

#### Purpose, Scope, and Effective Period

The Executive Office of Health and Human Services (EOHHS) is issuing this administrative bulletin to implement certain payment methodologies for new and existing nursing facility rate add-on and supplemental rate payments under 101 CMR 206.00: *Standard Payments to Nursing Facilities*.

This administrative bulletin is effective beginning January 15, 2022, for dates of service as described below. EOHHS intends to incorporate the payment methodologies described herein into the final amendments to 101 CMR 206.00: *Standard Payment to Nursing Facilities*, originally filed as emergency amendments effective for dates of service on or after October 1, 2021.

#### Implementing Supplemental COVID-19 Payments

A nursing facility will be eligible for a supplemental payment to offset increased costs of providing care not accounted for in the nursing facility's prospective payment system rates during the COVID-19 pandemic. The supplemental payment will be made in three equal installments in the months of January, February, and March 2022. The aggregate amount of funding available for these payments is \$29.3 million. This available funding will be distributed to nursing facilities based on their proportion of the total Medicaid Days reported by all nursing facility providers. The period used to determine each nursing facility's proportion of the total Medicaid Days is April 1, 2021, through September 30, 2021, as reported on each nursing facility's User Fee Assessment Forms for that period. These payments are to be used to pay for increased direct-care staffing costs incurred for dates of service beginning January 1, 2022, through March 31, 2022.

*Calculation of a monthly supplemental payment:* EOHHS will use the following methodology to calculate the COVID-19 supplemental payment for each MassHealth nursing facility provider:

- (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 April 1, 2021, through September 30, 2021, by the total number of Massachusetts Medicaid Days, including Fee-For-Service and Managed Care bed 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 paragraph (a), above, by \$29,300,000.



- (c) Divide the product calculated in paragraph (b), above, by three.
- (d) Each monthly supplemental payment shall equal the amount calculated in paragraph (c), above, for each nursing facility.

EOHHS may adjust any supplemental payment upon EOHHS's determination that there was a material error in the calculation of the payment. EOHHS will not adjust any supplemental payment solely because a facility under-reported Massachusetts Medicaid days in its Quarterly User Fee Assessment Form.

*Permissible uses of supplemental payments:* Facilities may use these supplemental payments only for the following direct-care staff expenses: increases in base wages or retention bonuses for directly employed staff, signing bonuses for new employees, premium pay, shift differentials, and expenses related to temporary nursing agency staff. *The permissible expenses to be funded through these supplemental payments must be incurred by March 31, 2022.*

For the purposes of this bulletin, direct-care staff shall include the following staff categories: registered nurses; licensed practical nurses, certified nurse aides; non-certified or resident care aides; director of nurses; in-house clerical staff regularly interacting with residents and caregivers (e.g., receptionists, unit clerks, business office staff working onsite); security staff; staff development coordinators; dietary staff; housekeeping/laundry staff; quality assurance professional staff; MMQ evaluation nurse/MDS coordinators; social service workers; behavioral health staff; plant operations/maintenance staff; interpreter service staff; restorative therapy staff; recreational therapy staff; physician services staff; and pharmacy consultant staff. Direct-care staff shall not include nursing facility administrators.

*Reporting requirements:* Each facility will be required to report to EOHHS on the ways in which it expects to use, and ultimately uses, its received supplemental payments. The required reporting will be incorporated in the interim and final DCC-Q reports that facilities are required to submit by March 1, 2022, and July 30, 2022, respectively, in accordance with 101 CMR 206.12(3). Failure to complete the required supplemental payment reporting on the interim and final DCC-Q reports, failure to timely submit the interim or final DCC-Q reports, use of funds on anything other than permissible uses described herein, failure to incur permissible expenses to be funded through these supplemental payments by March 31, 2022, or failure to actually pay the supplemental payments for such incurred permissible expenses may result in partial or full recoupment of received supplemental payments as an overpayment under 130 CMR 450.237: *Overpayments: Determination.*

All information included in the reports regarding supplemental payments is subject to verification and audit by EOHHS. Failure to submit the required reporting in accordance with this bulletin or comply with audits or document requests with respect to the requirements under this bulletin may result in partial or full recoupment of the supplemental payments as overpayments under 130 CMR 450.237: *Overpayments: Determination*, or sanctions under 130 CMR 450.238: *Sanctions: General.*

### **Updates to Payable Claims for the Administration of Certain COVID-19 Outpatient Treatments**

For dates of service beginning January 15, 2022, and notwithstanding any regulatory provision to the contrary, nursing facilities may submit separate claims to MassHealth on a fee-for-service basis for the administration of COVID-19 antiviral treatments requiring subcutaneous or intravenous injection and provided in a manner supported by medical evidence, provided in accordance with emergency use authorization (EUA) issued by the federal Food and Drug Administration (FDA), or provided in accordance with full FDA approval. Nursing facilities are required to ensure that any such COVID-19 antiviral treatments administered at the facility are administered by individuals whose education, credentials, and training qualify them to render such services.

The costs of administering COVID-19 antiviral treatments administered subcutaneously or intravenously are not included in the prospective payment system operating or nursing standard payment rates determined under 101 CMR 206.03 and 101 CMR 206.04. The costs of providing such services will be considered non-allowable costs under 101 CMR 206.08(3)(h)12.

Payments for separate fee-for-service claims submitted by the nursing facility for the services described in this bulletin shall be paid at the same rate established by EOHHS for such services administered in other outpatient

settings, under 101 CMR 317.00: *Rates for Medicine Services*. Such fee-for-service claims payments shall be considered payment in full for such services. Forthcoming guidance issued by MassHealth shall establish the specific monoclonal antibody treatments that may be administered by the nursing facility, as well as the specific codes and billing instructions for such services.

### **Updates to the Medicaid Transitional Add-on**

Nursing facilities may receive the Medicaid Transitional Add-on established under 101 CMR 206.10(7): *Medicaid Transitional Add-on*, as it is updated and described below. EOHHS will calculate the payment for each eligible nursing facility provider as follows:

For dates of service beginning January 15, 2022, a nursing facility will be eligible for a transitional add-on of \$200 per member per day for up to the first 60 days of the resident's nursing facility stay, not including any leaves of absence, if the resident meets all of the following criteria:

- (a) MassHealth is the resident's primary payer for nursing facility services at the time of admission;
- (b) The resident was transferred to the nursing facility directly from an acute or a non-acute inpatient hospital on or after January 15, 2022; and
- (c) The resident is not returning to the nursing facility from a medical leave of absence.

This methodology included in this bulletin increases the existing per member per day add-on from \$130 to \$200 and increases the time for which a nursing facility may receive the add-on for a member, from the first 30 days of admission to up to the first 60 days of admission.

### **Updates to the Add-on Rates for Severe Mental and Neurological Disorder Services**

The criteria required for a nursing facility to qualify for the Add-on Rates for Severe Mental and Neurological Disorder Services, established under 101 CMR 206.11(1): *Qualifying Nursing Facility*, is updated as described below.

Qualifying Nursing Facility. Effective for dates of service beginning January 15, 2022, qualifying nursing facilities will be able to receive a member-based *per diem* rate for residents with severe mental or neurological disorders, including residents with acquired or traumatic brain injuries, who are receiving specialized rehabilitation services for such disorders. In order to qualify for this member-based *per diem* rate, a nursing facility must:

- (a) as of August 1, 2020, operate to provide nursing facility services, including the specialized rehabilitative services described in paragraph (c), below, to residents with mental or neurological disorders (including residents with acquired or traumatic brain injuries);
- (b) demonstrate, in the form and manner requested by EOHHS, that the percentage of the facility's annual resident days for residents with mental or neurological disorders, including residents with acquired or traumatic brain injuries, is at least 90% of its total annual resident days;
- (c) provide the following specialized rehabilitation services for its residents:
  - 1. an individualized therapeutic skill development plan for each member;
  - 2. individual counseling;
  - 3. group counseling (therapeutic and life skills groups), with group sessions offered multiple times each week to ensure access based on member needs and preferences;
  - 4. sensory modulation and cognitive rehabilitation;
  - 5. neuropsychological testing, evaluation, and intervention;
  - 6. alcohol and substance abuse counseling and prevention;
  - 7. all mental health services as indicated by each resident's PASRR Level II evaluation, or coordinate with additional providers and practitioners, who may separately bill or be paid under the appropriate provider regulations, for services designated as specialized services under the PASRR program and therefore are services that are not included in standard nursing facility services;
  - 8. vocational programming; and
  - 9. community reintegration.

(d) Maintain a program staff of specially trained professionals, including but not limited to, a neuropsychiatrist, a neuropsychologist, licensed mental health counselors, vocational specialists, life skills counselors, certified brain injury specialists, substance abuse counselors, and therapeutic technicians. All such staff must be trained in behavior modification and de-escalation techniques.

These adjustments to the qualifying nursing facility criteria described in this bulletin enable nursing facilities operating *predominantly* to serve individuals with mental and neurological disorders to qualify for the Add-on Rates for Severe Mental and Neurological Disorder Services, rather than just nursing facilities operating *exclusively* to serve such residents.

### **Implementing New Homelessness Rate Add-on**

For dates of service beginning January 15, 2022, a nursing facility will be eligible for a member-based Homelessness Rate Add-on of \$200 per member per day for up to the first 180 days of the member's nursing facility stay, not including any leaves of absence, if the member meets all of the following criteria:

- (a) MassHealth is the member's primary payer for nursing facility services at the time of admission;
- (b) The member is clinically eligible for nursing facility services under 130 CMR 456.409; and
- (c) The member has been approved for the member-based Homelessness Rate Add-on by EOHHS because EOHHS has determined the member meets one or more of the following criteria:
  - 1. The member has experienced homelessness for at least 6 months directly prior to admission as documented by a homeless provider agency and confirmed by EOHHS;
  - 2. The member has been homeless directly prior to admission, as documented by a homeless provider agency and confirmed by EOHHS, and has a behavioral health condition;
  - 3. The member is at risk of homelessness and has a behavioral health condition;
  - 4. The member experienced a sudden or unexpected loss of primary residence (for example, due to fire, flooding, eviction, etc.) necessitating an emergency nursing facility admission; or
  - 5. The member's living situation directly prior to admission required the involvement of Elder Protective Services.

A nursing facility may not receive this add-on for a member for whom the facility is receiving on the same dates of service a rate add-on under 101 CMR 206.07, 101 CMR 206.10(2), 101 CMR 206.10(3), or 101 CMR 206.11, or the Substance Use Disorder (SUD) Rate Add-on implemented through this bulletin.

For the purposes of the new Homelessness Rate Add-on, a member experiencing homelessness is any member who lacks a fixed, regular, and adequate nighttime residence and who has a primary nighttime residence that is a public or private place not designed for or ordinarily used as a regular sleeping accommodation for human beings including a car, park, abandoned building, bus or train station, airport, or camping group; or who is living in a supervised publicly- or privately-operated emergency shelter designated to provide temporary living arrangements, including congregate shelters, transitional housing, and hotels and motels paid for by charitable organizations or by federal, state, or local government programs for low-income individuals.

For the purposes of the new Homelessness Rate Add-on, a member at risk of homelessness is any member who does not have sufficient resources or support networks (e.g., family, friends, faith-based or other social networks) immediately available to prevent them from moving to an emergency shelter or another place not meant for human habitation.

For authorization requests of the Homelessness add-on, please email: [ehsdischargesupport@mass.gov](mailto:ehsdischargesupport@mass.gov), with a copy to [meera.e.ramamoorthy@mass.gov](mailto:meera.e.ramamoorthy@mass.gov).

## **Implementing New Substance Use Disorder (SUD) Rate Add-on**

For dates of service beginning January 15, 2022, a nursing facility will be eligible for a member-specific Substance Use Disorder (SUD) Rate Add-on of \$30 per member per day for each member residing in the facility for whom MassHealth is the primary payer and who has a SUD diagnosis that falls under an eligible ICD-10 diagnosis group, if the facility meets all of the following criteria:

- (a) During the period of July 1, 2020, through June 30, 2021, at least 30% of MassHealth fee-for-service members residing in the facility had an SUD diagnosis, diagnosed within the previous 5 years, that falls under an eligible ICD-10 diagnosis group;
- (b) During the period of July 1, 2020, through June 30, 2021, the facility had at least 30 MassHealth fee-for-service members residing in the facility that had an SUD diagnosis, diagnosed within the previous 5 years, that falls under an eligible ICD-10 diagnosis group; and
- (c) The facility certifies that it will complete the SUD training offered to nursing facilities by the Massachusetts Department of Public Health (DPH) no later than June 30, 2022, and will complete any necessary additional SUD trainings, as determined by EOHHS, to account for staff turnover.

For the purposes of the new SUD Rate Add-on, eligible ICD-10 diagnosis groups include F10 – F16 (mental and behavioral disorders due to psychoactive substance), F19 (other psychoactive substance related disorders), and T40 (poisoning by, adverse effect of and underdosing of narcotics and psychodysleptics (hallucinogens)).

Facilities that fail to complete the SUD trainings required under paragraph (c), above, may be subject to overpayment action under 130 CMR 450.237: *Overpayments: Determination*.

## **Updates to the Surveillance Testing Supplemental Payment Requirements**

Notwithstanding any applicable provisions of 101 CMR 206.10(6): *Disallowance for COVID-19 Staff Testing Supplemental Payments* to the contrary, for dates of service beginning October 28, 2021, nursing facilities will not be disqualified for on-going COVID-19 staff testing supplemental payments due to accumulating three or more instances of non-compliant testing periods. However, for dates of service beginning October 28, 2022, nursing facilities will not receive reimbursement for those tests performed within periods of non-compliance. In other words, individual non-compliant testing periods will not be included in the calculation of the nursing facility's surveillance testing supplemental payments.

## **Public Comments**

EOHHS will accept comments on the payment methodologies established via this administrative bulletin, which are proposed to be codified as additional amendments to 101 CMR 206.00: *Standard Payments to Nursing Facilities* in the final adoption of the emergency amendments to that regulation that were originally filed on October 1, 2021. Comments will be accepted through January 28, 2022, at 5:00 p.m., and EOHHS will also hold a public hearing regarding these amendments on January 28, 2022, at 10:00 a.m.

To register to testify at the hearing and to get instructions on how to join the hearing online, go to [www.mass.gov/service-details/executive-office-of-health-and-human-services-public-hearings](http://www.mass.gov/service-details/executive-office-of-health-and-human-services-public-hearings). To join the hearing by phone, call (646) 558-8656 and enter meeting ID 935 397 8200# when prompted. Individuals may submit written comments by emailing: [ehs-regulations@mass.gov](mailto:ehs-regulations@mass.gov).

Please submit written comments as an attached Word document or as text within the body of the email with the name of this administrative 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.