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Administrative Bulletin 23-01

101 CMR 512.00: Nursing Facility User Fees

Effective January 1, 2023

Offset Procedures for Non-Payment of User Fees

The Executive Office of Health and Human Services (EOHHS) is issuing this Administrative Bulletin pursuant to 101 CMR 512.00 to clarify EOHHS procedures with regard to collection of the user fee assessment from nursing facilities that are not compliant with the quarterly user fee payment and form submission requirements described in 101 CMR 512.05. This Administrative Bulletin shall apply to all outstanding user fee assessment forms and payments.

Pursuant to 101 CMR 512.05(3), each nursing facility, regardless of group classification, must determine the amount of the assessment owed for each quarter and submit a user fee filing form and full user fee payment on the schedule listed below.

Assessment Period	Payment and Form Due Date
July 1 – September 30	November 1
October 1 – December 31	February 1
January 1 – March 31	May 1
April 1 – June 30	August 1

1. If a nursing facility fails to submit a user fee filing form by the due date set forth in 101 CMR 512.05(3), EOHHS will assess a late fee of \$100 per day pursuant to 101 CMR 512.06(4) for each day the filing form is late, starting from the day after the due date.
2. If a nursing facility fails to submit a quarterly user fee payment by the due date set forth in 101 CMR 512.05(3), EOHHS will send a notice to the nursing facility stating that the nursing facility has 30 days from the payment due date set forth in 101 CMR 512.05(3) to pay in full, including interest and late fees. Pursuant to 101 CMR 512.05(5), EOHHS will assess interest of 1.5% per month on the outstanding balance up to the date that payment in full is received or the date of the final notice discussed in Section 4.
3. If a nursing facility fails to submit a user fee filing form by the date of the initial notice discussed in Section 2, above, EOHHS will establish a presumptive assessment amount for the quarter based on the nursing facility's prior quarterly assessments. Until such time as the nursing facility files the user fee filing form and/or EOHHS audits the nursing facility pursuant to 101 CMR 512.06(3), all penalties, interest, and offset payments will be based on this presumptive assessment amount.



4. If a nursing facility fails to pay in full within 30 days of the payment due date, EOHHS will send a final notice to the nursing facility notifying the nursing facility that in order to satisfy the nursing facility's total unpaid user fee assessment balance, including interest and late fees, MassHealth payments to the nursing facility will be offset beginning in the next MassHealth payment cycle, pursuant to M.G.L. c. 118E § 63(f) and 101 CMR 512.05(7)(a). Under 101 CMR 512.05(5), in lieu of continuing to assess interest and late fees during the term of the offset, EOHHS will include a one-time assessment of 5% late fee on the total unpaid user fee assessment principal balance as of the date of the final notice in the offset amount.
5. In MassHealth payment cycles beginning on or after January 1, 2023, the offset amount will be the lesser of 25% of a nursing facility's total MassHealth payments for the month or the nursing facility's total unpaid user fee assessment balance, including interest and late fees. MassHealth payments to the nursing facility will be offset in each MassHealth payment cycle until the total unpaid user fee assessment balance is satisfied by the offset payments and/or separate payments by the nursing facility.
6. The offset process described in Sections 4 and 5 will be applied in circumstances where a nursing facility is out of compliance with 101 CMR 512.00. Therefore, facilities subject to an offset will be considered out of compliance with 101 CMR 512.00.
7. If a nursing facility is out of compliance with the quarterly assessment, EOHHS may create, after a demand for payment, a lien in favor of the Commonwealth pursuant to M.G.L. c. 118E § 63(f) and 101 CMR 512.05(7)(b).
8. Nursing facilities out of compliance with the quarterly assessment may be referred to the Department of Public Health (DPH) for revocation of licensure pursuant to M.G.L. c. 118E § 63(f) and 101 CMR 512.05(7)(c).
9. Pursuant to 101 CMR 512.05(3)(b), if a nursing facility closes either voluntarily or pursuant to Section 8, it must pay any outstanding user fee obligations not later than 30 days prior to the closure date approved by DPH. If a nursing facility fails to pay all outstanding user fee amounts, including interest and late fees, in full not later than 30 days prior to the closure date, EOHHS will offset any outstanding MassHealth payments to the nursing facility by the nursing facility's total unpaid user fee assessment balance in each MassHealth payment cycle until the total unpaid user fee assessment balance is satisfied by the offset payments and/or separate payments by the nursing facility. If a nursing facility is already subject to an offset for unpaid user fee assessments when the nursing facility submits its notice of intent to close to DPH, EOHHS may increase the nursing facility's offset percentage above 25% such that the total unpaid user fee assessment balance is satisfied not later than 30 days prior to the closure date proposed by the nursing facility in its notice of intent to close. In the event that offsets of remaining claims for services rendered prior to closure are not sufficient to satisfy the total unpaid user fee assessment, EOHHS may apply any other remedy available to it under M.G.L. c. 118E, § 63(f), 101 CMR 512.05(7), or this bulletin.
10. Pursuant to M.G.L. c. 118E § 63(a) & (f) and 101 CMR 512.05(3)(c), the assessment obligation of any nursing facility is applied to any obligation of any successor in interest or assignee of such nursing facility, as determined by EOHHS. A successor in interest may include, but is not limited to, any purchaser of the assets or stock, any new operator or licensee of an existing nursing facility, any surviving entity resulting from merger or liquidation, or any receiver or any trustee of the original nursing facility.
11. EOHHS may refer the administrator of any nursing facility that fails to comply with all user fee program requirements to the Board of Registration of Nursing Home Administrators.