

101 CMR: EXECUTIVE OFFICE OF HEALTH AND HUMAN SERVICES

101 CMR 514.00: HOSPITAL ASSESSMENT

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514.01: General Provisions

(1) Scope and Purpose. 101 CMR 514.00 governs the collection of the hospital assessment established under M.G.L. c. 118E, § 67.

(2) Administrative Bulletins. EOHHS may issue administrative bulletins to clarify policies, update administrative requirements, and specify information and documentation necessary to comply with 101 CMR 514.00.

514.02: Definitions

As used in 101 CMR 514.00, unless the context requires otherwise, terms have the following meanings.

Acute Hospital. A hospital licensed under M.G.L. c. 111, § 51 that contains a majority of medical-surgical, pediatric, obstetric, and maternity beds, as defined by the Department of Public Health.

Assessed Charges. Gross patient service revenue attributable to all patients less gross patient service revenue attributable to programs administered pursuant to Titles XVIII, XIX, and XXI of the Social Security Act in each hospital's fiscal year 2023.

Assessment. The total payment due by each hospital each month or quarter, as set forth in 101 CMR 514.00.

Center for Health Information and Analysis (CHIA). The Center for Health Information and Analysis established under M.G.L. c. 12C.

Centers for Medicare & Medicaid Services (CMS). The federal agency under the U.S. Department of Health and Human Services that is responsible for administering the Medicare and Medicaid programs.

Department of Public Health (DPH). An agency of the Commonwealth of Massachusetts, established under M.G.L. c. 17, § 1.

Executive Office of Health and Human Services (EOHHS). The executive department of the Commonwealth of Massachusetts established under M.G.L. c. 6A, § 2 that, through the Department of Elder Affairs and other agencies within EOHHS, as appropriate, operates and

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administers the programs of medical assistance and medical benefits under M.G.L. c. 118E and that serves as the single state agency under section 1902(a)(5) of the Social Security Act.

Fiscal Year (FY). The 12-month period that hospitals use for financial reporting and budgeting.

Gross Patient Service Revenue. The total dollar amount of a hospital's charges for services rendered in a hospital's fiscal year, as reported to the Center for Health Information and Analysis (CHIA) through Hospital Cost Reports for 2023.

Health Safety Net. The payment program established and administered in accordance with M.G.L. c. 118E, § 8A, and §§ 64 through 69 and regulations promulgated thereunder, and other applicable legislation.

Health Safety Net Office. The office within the Office of Medicaid established under M.G.L. c. 118E, § 65.

Health Safety Net Trust Fund. The fund established under M.G.L. c. 118E, § 66.

Hospital Cost Report. The Massachusetts Hospital Statement of Costs, Revenues, and Statistics required to be reported to CHIA pursuant to 957 CMR 9.00: *Hospital Financial Data Reporting Requirements*.

Licensee. Any natural person, corporation, partnership, trust, estate, or other legal entity holding a license to operate a nonpublic acute or non-acute hospital in Massachusetts; and, in the case of a licensee that is not a natural person, includes

- (1) any shareholder owning not less than 5%, any officer, and any director of any corporate licensee;
- (2) any limited partner owning not less than 5% and any general partner of a partnership licensee;
- (3) any trustee of any trust licensee;
- (4) any sole proprietor of any licensee that is a sole proprietorship; or
- (5) any mortgagee in possession and any executor or administrator of any licensee that is an estate.

MassHealth Program (MassHealth). The medical assistance benefits plans operated and administered by EOHHS pursuant to M.G.L. c. 118E, § 1 *et seq.* and 42 U.S.C. § 1396 *et seq.*, Title XXI of the Social Security Act (42 U.S.C. 1397), and other applicable laws and waivers to provide and pay for medical services to eligible members (Medicaid).

Medicare. The federal health insurance program for people who are 65 years of age or older, certain younger people with disabilities, and people with end-stage renal disease (permanent kidney failure requiring dialysis or a transplant, sometimes called ESRD) established by Title XVIII of the Social Security Act.

Non-public Gross Patient Service Revenue. Total gross patient service revenues (as defined in Gross Patient Service Revenue) minus gross patient service revenues attributable to Medicare, Medicaid, and Out-of-state Medicaid, as determined by EOHHS.

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Non-acute Hospital. A nonpublic hospital that is

- (1) licensed by the Department of Public Health under M.G.L. c. 111, § 51 but not defined as an acute-care hospital under M.G.L. c. 111, § 25B; or
- (2) licensed as an inpatient facility by the Department of Mental Health (DMH) under M.G.L. c. 19, § 19 and regulations promulgated thereunder, but not categorized as Class VII licensees under the regulations.

Rate Year (RY). The 12 months from October 1<sup>st</sup> through September 30<sup>th</sup>.

Total Assessment Amount. A fixed amount equal to \$1,534,050,000, plus 50% of the estimated cost, as determined by the Secretary of Administration and Finance, of administering the Health Safety Net and related assessments in accordance with M.G.L. c. 118E, §§ 65 to 69.

514.03: Hospital Groups

(1) Hospital Assessment Liability. Hospital assessment liability will vary by hospital group and by inpatient versus outpatient revenues. The nine groups of hospitals for purposes of 101 CMR 514.00 are defined as follows.

- (a) Group I: Any acute hospital that had not less than 355 staffed beds in fiscal year 2022 as reported by CHIA and that is identified as a group 1 safety net hospital in the MassHealth demonstration waiver approved under subsection (a) of section 1115 of Title XI of the federal Social Security Act and in effect as of October 1, 2022.
- (b) Group II: Any acute hospital that had less than 355 staffed beds in fiscal year 2022 as reported by CHIA and that is identified as a group 1 safety net hospital in the MassHealth demonstration waiver approved under subsection (a) of section 1115 of Title XI of the federal Social Security Act and in effect as of October 1, 2022.
- (c) Group III: Any acute hospital that had not less than 355 staffed beds in fiscal year 2022 as reported by CHIA and that is identified as a group 2 safety net hospital in the MassHealth demonstration waiver approved under subsection (a) of section 1115 of Title XI of the federal Social Security Act and in effect as of October 1, 2022.
- (d) Group IV: Any acute hospital that had less than 355 staffed beds in fiscal year 2022 as reported by CHIA and that is identified as a group 2 safety net hospital in the MassHealth demonstration waiver approved under subsection (a) of section 1115 of Title XI of the federal Social Security Act and in effect as of October 1, 2022.
- (e) Group V: Any acute hospital that is a freestanding pediatric hospital.
- (f) Group VI: Any acute hospital that is an academic medical center, teaching hospital, or specialty hospital, as determined by CHIA as of September 30, 2019, but excluding any high public payer hospital as defined by CHIA or any hospital included in Group V.
- (g) Group VII: Any private acute hospital operating as of September 30, 2019, but excluding any hospital included in Groups I through VI.
- (h) Group VIII: The Commonwealth's only non-state-owned public hospital, operating as of September 30, 2019.
- (i) Group IX: Any nonpublic non-acute hospital operating as of September 30, 2019.

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(2) Consistent Application of Assessment. Hospitals will remain in the group they are in as of October 1, 2024, and will be subject to the same assessment rate established for their group, except as follows.

(a) New Acute Hospitals. New acute hospitals that come into operation subsequent to October 1, 2022, or for whom there is no FY 2019 hospital-specific gross patient service revenue data (as reported by CHIA based on the annual collection of cost report data), or acute hospitals otherwise not included in the approved waiver application, will be considered Group VI hospitals, under 101 CMR 514.03(1), until EOHHS determines the hospital's group eligibility.

(b) New Non-acute Hospitals. New non-acute hospitals that come into operation subsequent to October 1, 2022, or for whom there is no FY 2019 hospital-specific gross patient service revenue data (as reported by CHIA based on the annual collection of cost report data), or non-acute hospitals otherwise not included in the approved waiver application, will be considered Group IX hospitals, under 101 CMR 514.03(1), until EOHHS determines the hospital's group eligibility.

(c) Hospital Closures. If a hospital subject to the assessment closes, with no successor in interest or assignee as determined by EOHHS consistent with the criteria described in 101 CMR 514.03(2)(d), the former hospital will no longer be subject to the assessment, provided that the hospital is subject to the assessment up to and included its date of closure. No changes will be made to the assessment rates for remaining assessed hospitals as a result of a hospital's closure when there is no successor in interest or assignee.

(d) Mergers and Acquisitions. The original assessment obligation of any hospital is applied to and becomes an obligation of any successor in interest or assignee of such hospital, as determined by EOHHS. A successor in interest may include, but is not limited to, any purchaser of the assets or stock, any new licensee of an existing acute or non-acute hospital, any surviving entity resulting from merger or liquidation, or any receiver or any trustee of the original hospital. The assessment obligation of the successor in interest or assignee with respect to the acquired or merged hospital(s) will be equal to the assessment obligation of the affected hospitals prior to the merger or acquisition. The assessment will be applied to hospitals that merge, or hospitals that acquire another or are acquired, as if no such merger or acquisition occurred.

(e) Multi-factorial Changes. The assessment obligation will follow the rules established in 101 CMR 514.03(2)(a) through (d), provided that:

1. In the event an existing hospital has merged with or acquired only a portion of another existing hospital and the two hospitals both continue to exist as hospitals after the merger or acquisition, the original assessment obligations of the two hospitals will be applied proportionally to each hospital based on the gross patient service revenue attributable to each portion of each hospital after the merger or acquisition.
2. In the event that a new hospital opens and also acquires a portion or all of an existing hospital, and the portion of the hospital that is new accounts for greater than 50% of the gross patient service revenue of the total hospital entity, the hospital's assessment obligation will be determined in accordance with 101 CMR 514.03(2)(a) or (b), as applicable depending on the hospital's status as an acute or non-acute hospital.
3. In the event that a new hospital opens and also acquires a portion or all of an existing hospital, and the portion of the hospital that is new accounts for 50% or less of the gross patient service revenue of the total hospital entity, the hospital's assessment obligation will be equal to the portion of the assessment attributable to the acquired portion of the hospital.

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514.04: Calculation of Hospital Assessment

(1) To determine each hospital's annual assessment liability, the assessment rates established in 101 CMR 514.04(3) are applied to a static fiscal year 2019 dataset of non-public gross patient service revenues, except as described in 101 CMR 514.04(2).

(2) For new acute hospitals described in 101 CMR 514.03(2)(a) and new non-acute hospitals described in 101 CMR 514.03(2)(b), the assessment rates established in 101 CMR 514.04(3) are applied to an annual projection of non-public gross patient service revenues, provided by the hospital in accordance with 101 CMR 514.06(2), until such time as CHIA includes the new hospital in their release of fiscal year cost report data.

(a) For new acute hospitals, beginning with the first complete calendar month following the date of the new acute hospital's inclusion in CHIA's fiscal year cost report data, the assessment rates established in 101 CMR 514.04(3) are applied to the static data included in such fiscal year cost report data.

(b) For new non-acute hospitals, beginning with the first complete calendar quarter following the date of the new non-acute hospital's inclusion in CHIA's fiscal year cost report data, the assessment rates established in 101 CMR 514.04(3) are applied to the static data included in such fiscal year cost report data.

(3) Beginning hospital fiscal year 2026, the assessment will be applied as follows.

| <b>Assessment Group</b> | <b>Hospital Group Description</b>            | <b>Inpatient Assessment Rate</b> | <b>Outpatient Assessment Rate</b> |
|-------------------------|----------------------------------------------|----------------------------------|-----------------------------------|
| Group I                 | Large Group 1 Safety Net                     | 16.5100%                         | 8.0000%                           |
| Group II                | Small Group 1 Safety Net                     | 14.5000%                         | 5.5000%                           |
| Group III               | Large Group 2 Safety Net                     | 8.1000%                          | 16.2000%                          |
| Group IV                | Small Group 2 Safety Net                     | 16.4500%                         | 9.1000%                           |
| Group V                 | Freestanding Pediatric                       | 3.3000%                          | 2.6000%                           |
| Group VI                | Academic Medical Center, Teaching, Specialty | 4.6750%                          | 1.2900%                           |
| Group VII               | Other Private Acute                          | 8.2990%                          | 0.7200%                           |
| Group VIII              | Non-state Owned Public                       | 1.2500%                          | 1.2500%                           |
| Group IX                | Non-Acute                                    | 3.3000%                          | 3.3000%                           |

(4) EOHHS will provide each hospital its total annual assessment liability, and its required monthly or quarterly assessment amounts, as applicable, prior to the due date of the first payment.

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514.05: Payment of Hospital Assessment

- (1) Acute Hospital Monthly Assessment. Beginning October 1, 2025, each acute hospital must pay a monthly assessment to EOHHS in a form and manner specified by the Health Safety Net Office, equal to one twelfth of its total annual assessment.
- (2) Non-acute Hospital Quarterly Assessment. Beginning October 1, 2025, each non-acute hospital must pay a quarterly assessment to EOHHS in a form and manner specified by the Health Safety Net Office, equal to one fourth of its total annual assessment.
- (3) Due Date.
  - (a) Acute hospital assessment payments are due on a monthly basis, with each assessment payment due on the last day of each month.
  - (b) Non-acute hospital assessment payments are due on a quarterly basis, with each quarterly assessment payment due on the last day of each calendar quarter.
  - (c) If a hospital closes, it must pay any outstanding hospital assessment obligations within 30 days of the date of closure. If a hospital is acquired by or merges with another hospital, any outstanding hospital assessments owed by the hospital being acquired or merging must be paid within 30 days of the date of the acquisition or merger.
- (4) Administration. EOHHS may provide updates and further details, by administrative bulletin or other written issuance, regarding procedures for the payment and collection of the hospital assessment.
- (5) Interest and Late Fees.
  - (a) EOHHS may assess interest and late fees on unpaid liabilities. If a hospital fails to remit an assessment by the due date, EOHHS may assess interest at up to 3% per month on the outstanding balance and calculate the interest from the due date. EOHHS will calculate the interest on the outstanding balance as of the due date.
  - (b) EOHHS may assess up to an additional 3% penalty against the outstanding balance and prior penalties for each month that a hospital remains delinquent. EOHHS will credit partial payments from delinquent hospitals to the current outstanding liability. If any amount remains from the partial payment, EOHHS will then credit such amount to the penalty amount.
  - (c) In determining the penalty amount, EOHHS may consider factors including, but not limited to, the hospital's payment history, financial situation, and relative share of the payments.
- (6) Assessment Revenue. An amount equal to the total amount of assessments collected, plus any penalties and interest, will be credited to the Health Safety Net Trust Fund.

514.06: Reporting Requirements

- (1) General. Each hospital must file or make available information that EOHHS deems reasonably necessary for calculating and collecting the hospital assessment.

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- (2) Required Reporting for Hospitals with Change of Status. Any new hospital, merging hospital, acquiring or acquired hospital, or closing hospital, as described in 101 CMR 514.03(2)(a) through (c), must inform EOHHS of its change in status at least 14 days prior to such change in status. Any new acute or non-acute hospital, as described in 101 CMR 514.03(2)(a) and (b), must provide projected annual revenue information, and any additional supporting documentation as requested by EOHHS, in the form and format requested by EOHHS within 30 days of beginning operations.
- (3) Additional Documentation. Each hospital must submit any additional documentation requested by EOHHS or its designee to verify the accuracy of the data submitted.
- (4) Audit. EOHHS or its designee may inspect and copy the records of a hospital for purposes of auditing its calculation of the assessment. If EOHHS or its designee determines that a hospital has either overpaid or underpaid the assessment, it will notify the hospital of the amount due or refund the overpayment.
- (5) Penalties. EOHHS may impose a *per diem* penalty of \$100 per day if a hospital fails to furnish documentation required or requested under 101 CMR 514.06 within the timeframes specified in 101 CMR 514.05(3) or as specified by EOHHS upon request, or in administrative bulletins or other written issuances.
- (6) Enforcement Provisions. In addition to interest and late fees imposed pursuant to 101 CMR 514.05(5), EOHHS may take enforcement actions including, but not limited to, the following:
- (a) for hospitals licensed by the department of health, notifying the department of the unpaid assessments and such information shall be considered by the department in determining suitability in accordance with section 51 of chapter 111 for the hospital or its affiliate provider entities;
  - (b) offsetting delinquent assessment amounts owed, including any interest, penalties and reasonable attorneys' fees, against:
    - 1. the hospital's MassHealth claims payments, MassHealth supplemental or incentive payments, Health Safety Net payments, or other payments that may otherwise be due to the hospital from MassHealth or the Health Safety Net,
    - 2. other hospitals or MassHealth-contracted entities under common ownership as the delinquent hospital, or
    - 3. any successor in interest to the hospital or such provider entities under common ownership; or
  - (c) creating, after demand for payment, a lien in favor of the commonwealth in an amount not to exceed the delinquent fees owed, including any interest, penalties and reasonable attorneys' fees, encumbering the building in which the delinquent hospital is located, encumbering the real property upon which the delinquent hospital is located, including fixtures, equipment or goods used in the operation of the delinquent hospital, or encumbering any real property in which the delinquent hospital holds an interest
  - (d) take any other action, through EOHHS or in partnership with other state agencies, to collect on the delinquent debt permissible under law.

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514.07: Severability

The provisions of 101 CMR 514.00 are severable. If any provision or the application of any provision is held to be invalid or unconstitutional, such invalidity will not be construed to affect the validity or constitutionality of any remaining provisions of 101 CMR 514.00 or the application of such provisions.

REGULATORY AUTHORITY

101 CMR 514.00: M.G.L. c. 118E.