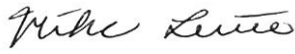




MassHealth
Nursing Facility Bulletin 182
October 2023

TO: Nursing Facilities Participating in MassHealth

FROM: Mike Levine, Assistant Secretary for MassHealth 

RE: Updated Reporting on Staff Hours and Staffing Preparedness for Nursing Facilities

Background

In accordance with 101 CMR 206.13: *Average Staffing Hours Incentive*, MassHealth is proactively monitoring nursing facilities for safe and adequate staffing levels and ensuring that standards and rate adjustments authorized by such regulation are applied appropriately.

The requirements described in this bulletin are in effect beginning October 1, 2023, and supersede the requirements outlined in [Nursing Facility Bulletin 166](#). All requirements described herein apply to nursing facilities that are enrolled as MassHealth providers.

Nursing facilities are required, under 42 CFR 483.70(q), to report their staffing levels to the Centers for Medicare and Medicaid Services (CMS) on a quarterly basis. CMS has developed a tool called the Payroll-Based Journal (PBJ), through which nursing facilities submit their staffing levels. MassHealth will use the quarterly reporting submitted through the PBJ by each MassHealth nursing facility to determine staffing levels for the purpose of proactively monitoring facilities for safe and adequate staffing, and rate adjustments under 101 CMR 206.13(2). As described below, **use of the PBJ for the purpose of monitoring safe and adequate staffing will replace the current requirement for facilities to report monthly staffing level reports directly to MassHealth.**

Definitions

For the purposes of this bulletin, the terms listed below will have the following meanings.

Contract hours. Hours worked by individuals under contract, as well as individuals who provide services through organizations that are under contract (e.g., temporary nursing agencies).

Day. Each 24-hour period from 12:00 a.m. (midnight) through 11:59 p.m.

Exempt hours. Hours worked by employees of the nursing facility who are not subject to the federal Fair Labor Standards Act and who therefore are not entitled to overtime pay.

Hours Per Patient Day (HPPD). The number of direct care hours worked by nursing staff divided by the total number of patients in the facility.

Non-exempt hours. Hours worked by employees of the nursing facility who are subject to the federal Fair Labor Standards Act and who therefore may be entitled to overtime pay.

Reporting period. Each federal fiscal calendar quarter-long period reported as part of a single PBJ quarterly submission, in accordance with PBJ submission guidance published by CMS.

Reporting deadline. The 45th calendar day after the last day of each reporting period, reporting on the previous quarterly reporting period, in accordance with PBJ submission guidance published by CMS.

Reporting Requirements

All nursing facilities must complete the reporting requirements of this provider bulletin by submitting census data and the staffing levels for the staffing categories described below through the PBJ. Facilities must submit their quarterly staffing levels through the PBJ on a quarterly basis, beginning with the fourth federal fiscal quarter of 2021, with the first required PBJ submission covering the months of July, August, and September of 2021. The PBJ submission deadline is the 45th calendar day after the last day of the federal fiscal quarter. Providers should review the CMS guidance [Electronic Staffing Data Submission Payroll-Based Journal Long-term Care Facility Policy Manual, Version 2.6](#), or any subsequent versions or superseding CMS guidance, for further details or updates on submission requirements.

As part of the PBJ quarterly submission, each facility must provide the following information, which must be complete, accurate, and up to date as of the date of submission.

- The exempt hours, non-exempt hours, and contract hours worked each day of the reporting period, as well as the total exempt hours, non-exempt hours, and contract hours worked by each of the following staff categories:
 - Registered nurses who are directors of nursing
 - Registered nurses who have administrative duties
 - Registered nurses who are not directors of nursing or administrators
 - Licensed practical nurses or vocational nurses who have administrative duties
 - Licensed practical nurses or vocational nurses who do not have administrative duties
 - Certified nursing assistants
 - Nurse aides in training¹
 - Medication aides or technicians
- The number of residents present in the facility on each day of the reporting period, not including residents on medical or non-medical leave of absence for the entire 24 hours of the day.

Nursing facilities should refer to [guidance](#) issued by CMS, including the *Electronic Staffing Data Submission Payroll-Based Journal Long-term Care Facility Policy Manual, Version 2.6*, or any subsequent versions or superseding CMS guidance, for further details on data submission specifications for the data fields required by this bulletin.

¹ Nurse aides in training may only be counted for the first four months of their employment, provided they are enrolled in a state-approved nurse aide training program. After the first four months of employment, the individual who was a nurse aide in training may be counted towards staffing levels only if they obtain certification or other licensure credentials that may be reported through another staffing category.

MassHealth HPPD Overpayment Notices, Dispute Procedures, and Determinations

A facility that falls below an average of 3.58 nursing HPPD for the federal fiscal quarter will receive a 2% downward adjustment on its standard per diem rates for that quarter, in accordance with 101 CMR 206.13(2). Such downward adjustment will be recouped as an overpayment from a facility for each federal fiscal quarter that the facility failed to meet the 3.58 nursing HPPD threshold established in 101 CMR 206.13(2).

If it is determined that a facility fell below an average of 3.58 nursing HPPD for a federal fiscal quarter, that facility will receive an Initial Notice of Overpayment (INOP) to inform the facility that they failed to comply with nursing facility program requirements established through 101 CMR 206.00: *Standard Payments to Nursing Facilities*, resulting in an overpayment.

In accordance with 130 CMR 450.237(B): *Timely Reply*, if a facility wants to dispute the identified overpayment or proposed sanction, the facility must reply in writing to EOHHS, and EOHHS must receive the reply within 30 calendar days of the date of the INOP. See 130 CMR 450.237. The reply must specifically identify and address all allegations in the INOP that the facility disagrees with and explain any objection to the identified overpayment. With the reply, the facility may also submit additional data or documentary evidence it wants EOHHS to consider with respect to the identified overpayment. See 130 CMR 450.237(B).

While EOHHS will consider any material submitted with the dispute in accordance with 130 CMR 450.237(B), EOHHS considers the following documents to contain the information needed for EOHHS to consider a recalculation of a facility's PBJ HPPD:

1. **For reconsideration of the total number of patient days in that calendar quarter,**
 - a. Casper report 1704 D (list of the residents that the MDS-based census is comprised of on a given date or dates);
 - b. Casper report 1704S (daily MDS-based resident census, i.e., the count of residents for each day in a quarter); and
 - c. a verified/system generated census, such as a payer-detailed summary census for the quarter in dispute.
2. **For reconsideration of the total number of productive hours worked by nursing staff,**
 - a. Casper report 1702S: staffing summary report (staffing information by job title);
 - b. Casper report 1702D: individual daily staffing report (facility staffing information during a specified period, including the employee ID and job title codes); and
 - c. a copy of the facility's automated payroll/attendance in Excel format generated by the facility's payroll system, identifying any misreporting of hours or hours that were not submitted through the PBJ. These hours should be specifically identified as having been left out of or misreported. This report should also include the employee's job title code that is used when reporting for the PBJ.

Upon receipt of a facility's dispute, MassHealth will review all submitted materials and notify the facility of its final determination in a Final Notice of Overpayment (FNOP).

Non-compliance with PBJ Reporting

All participating MassHealth nursing facility providers must submit a complete and accurate report of their staffing levels through the PBJ on a quarterly basis. As of January 1, 2021, the staffing level information reported, as required by this bulletin, MassHealth Nursing Facility Bulletin 155, MassHealth Nursing Facility Bulletin 163, or MassHealth Nursing Facility Bulletin 166, is being used to proactively monitor facilities for safe and adequate staffing, and determine the facility's average staffing hours per patient day for each federal fiscal quarter.

Facilities that fail to report their staffing levels through the PBJ will be considered to have 0.00 hours per patient day for the period of time that was not reported.

Furthermore, if MassHealth determines that a nursing facility provider has dangerously low staffing levels or made false or misleading representations through their PBJ submissions required by this bulletin, MassHealth may pursue sanctions against the provider under 130 CMR 450.238:

Sanctions: General. MassHealth reserves the right to request and review documentation, conduct onsite audits, or use any information available to it to determine if a facility is accurately representing its staffing levels through its submissions under this bulletin.

MassHealth will also refer providers to the Medicaid Fraud Division in the Attorney General's Office, as appropriate.

MassHealth Website

This bulletin is available on the [MassHealth Provider Bulletins](#) web page.

[Sign up](#) to receive email alerts when MassHealth issues new bulletins and transmittal letters.

Questions

If you have any questions about the information in this bulletin, please contact the Long-Term Services and Supports (LTSS) Provider Service Center.

Phone: Toll free (844) 368-5184

Email: support@masshealthltss.com

Portal: www.MassHealthLTSS.com

Mail: **MassHealth LTSS**
P.O. Box 159108
Boston, MA 02215

Fax: (888) 832-3006