

Commonwealth of Massachusetts  
Executive Office of Health and Human Services

NOTICE OF PUBLIC HEARING

Pursuant to the authority of M.G.L. c. 118E and in accordance with M.G.L. c. 30A, a remote public hearing will be held on January 27, 2023, at 12:00 p.m. (noon) relative to the adoption of:

**101 CMR 359.00: Rates for Home and Community-Based Services Waivers**

**Summary of Proposed Regulation**

The Executive Office of Health and Human Services is proposing amendments to 101 CMR 359.00: Rates for Home and Community-Based Services Waivers. The proposed amendments contain rates effective July 1, 2023.

Regulation 101 CMR 359.00 contains rates for services provided to participants of the Acquired Brain Injury (ABI) and Moving Forward Plan (MFP) Waivers. The ABI and MFP Waivers are Home and Community Based Services (HCBS) Waiver programs authorized under section 1915(c) of the Social Security Act. The ABI and MFP Waivers help transition eligible members from nursing facilities and chronic disease and rehabilitation (CDR) hospital settings to community-based care. The proposed amendments to 101 CMR 359.00 include the following:

- (1) **Updated Rate References:** Existing references to rates established in other Executive Office of Health and Human Services (EOHHS) regulations are being adjusted for the following service: Individual Support and Community Habilitation. The proposed updates reference a higher level of service to ensure the services are accessible to participants with more complex medical conditions.
- (2) **Rates Based on Analysis:** Services for which rates are established in 101 CMR 359.00 are proposed to be updated based on application of 4.93% cost adjustment factor (Assisted Living Services, Day Services, Independent Living Supports, Orientation and Mobility Services, and Prevocational Services) or by analysis based on data for comparable services purchased under the state-funded Home Care Program (Adult Companion, Chore, Homemaker, Personal Care, and Supportive Home Care Aide).
- (3) **Rates for New Services:** Home Delivered Meals (at \$10 per meal), Laundry (based on comparable data from the Executive Office of Elder Affairs), and Assistive Technology (Devices at individual consideration and Evaluation and Training referencing 101 CMR 423.00).
- (4) **Expansion of Existing Services:** Updating the services available through the ABI Waivers to align with the services available through the MFP Waivers.

The total estimated fiscal impact of the proposed amendments, including the rate updates effective for dates of service on or after July 1, 2023, is \$10.9 million for MassHealth. The proposed amended regulation contains rates effective for dates of service on or after 07/01/2023. There is no fiscal impact on cities and towns.

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.

You may also submit written testimony instead of, or in addition to, live testimony. To submit written testimony, please email your testimony to [ehs-regulations@mass.gov](mailto:ehs-regulations@mass.gov) as an attached Word or PDF document or as text within the body of the email with the name of the regulation in the subject line. All written testimony must include the sender's full name, mailing address, and organization or affiliation, if any. Individuals who are unable to submit testimony by email should mail written testimony to EOHHS, c/o D. Briggs, 100 Hancock Street, 6<sup>th</sup> Floor, Quincy, MA 02171. Written testimony will be accepted through 5:00 p.m. on January 27, 2023. EOHHS specifically invites comments as to how the amendments may affect beneficiary access to care.

To review the current draft of the proposed actions, 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) or request a copy in writing from MassHealth Publications, 100 Hancock Street, 6<sup>th</sup> Floor, Quincy, MA 02171.

Special accommodation requests may be directed to the Disability Accommodations Ombudsman by email at [ADAACcommodations@mass.gov](mailto:ADAACcommodations@mass.gov) or by phone at (617) 847-3468 (TTY: (617) 847-3788 for people who are deaf, hard of hearing, or speech disabled). Please allow two weeks to schedule sign language interpreters.

EOHHS may adopt a revised version of the proposed actions taking into account relevant comments and any other practical alternatives that come to its attention.

In case of inclement weather or other emergency, hearing cancellation announcements will be posted on the MassHealth website at [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).

January 6, 2023

<b>Small Business Impact Statement</b> <i>(As required by M.G.L. c. 30A §§ 2, 3 &amp; 5)</i>		
CMR No: 101 CMR 359.00		
Estimate of the Number of Small Businesses Impacted by the Regulation: 296 providers		
Select Yes or No and Briefly Explain		
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Will small businesses have to create, file, or issue additional reports? No. Small businesses will not have to create, file, or issue additional reports as a result of the proposed amendments to this regulation.
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Will small businesses have to implement additional recordkeeping procedures? No. Small businesses will not have additional responsibilities to keep records as a result of the proposed amendments to this regulation.
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Will small businesses have to provide additional administrative oversight? No. Small businesses are not required by this regulation to provide additional administration oversight as a result of the proposed amendments to this regulation.
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Will small businesses have to hire additional employees in order to comply with the proposed regulation? No. This regulation does not require small businesses to hire additional employees to remain in compliance.
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Does compliance with the regulation require small businesses to hire other professionals (e.g. a lawyer, accountant, engineer, etc.)? No. Small businesses are not required by this regulation to hire other professionals.
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Does the regulation require small businesses to purchase a product or make any other capital investments in order to comply with the regulation? No. This regulation does not require small businesses to purchase any particular product or make any capital investments.
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Are performance standards more appropriate than design/operational standards to accomplish the regulatory objective? (Performance standards express requirements in terms of outcomes, giving the regulated party flexibility to achieve regulatory objectives and design/operational standards specify exactly what actions regulated parties must take.) No. The regulation is required by statute under MGL Chapter 118E Section 13D, and establishes the rates to be paid by governmental units for certain home and community-based services.
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Do any other regulations duplicate or conflict with the proposed regulation? No regulations duplicate or conflict with this regulation.
Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>	Does the regulation require small businesses to cooperate with audits, inspections or other regulatory enforcement activities? Yes. The regulation requires providers to periodically file cost data to enable EOHHS to develop rates for certain HCBS Waiver services. This cost reporting requirement is applied uniformly to all providers and is necessary to enable EOHHS to develop accurate rates that reflect cost data from all providers.
Yes <input type="checkbox"/>	No <input type="checkbox"/>	Does the regulation require small businesses to provide educational services to keep up to date with

<input type="checkbox"/>	<input checked="" type="checkbox"/>	regulatory requirements? No. This regulation does not require small businesses to provide educational services to keep up to date with the regulatory requirements.
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Is the regulation likely to <i>deter</i> the formation of small businesses in Massachusetts? No. The regulation is not likely to deter or encourage the formation of small businesses in Massachusetts as this regulation establishes rates by which providers of HCBS services are to be paid when purchased by governmental units.
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Is the regulation likely to <i>encourage</i> the formation of small businesses in Massachusetts? No. The regulation is not likely to deter or encourage the formation of small businesses in Massachusetts as this regulation establishes rates by which providers of HCBS services are to be paid when purchased by governmental units.
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Does the regulation provide for less stringent compliance or reporting requirements for small businesses? No. The regulation contains uniform requirements for the reporting of cost data to EOHHS in order to enable EOHHS to develop rates that are reasonable and adequate to meet the costs which are incurred by efficiently and economically operated providers, as required of EOHHS by statute.
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Does the regulation establish less stringent schedules or deadlines for compliance or reporting requirements for small businesses? No. The regulation contains uniform requirements for the reporting of cost data to EOHHS in order to enable EOHHS to develop rates that are reasonable and adequate to meet the costs which are incurred by efficiently and economically operated providers, as required of EOHHS by statute.
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Did the agency consolidate or simplify compliance or reporting requirements for small businesses? No. This regulation does not consolidate or simplify compliance or reporting requirements for small businesses. The cost reporting requirements are applied uniformly to all providers in order for EOHHS to develop rates for services.
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Can performance standards for small businesses replace design or operational standards without hindering delivery of the regulatory objective? No. This regulation is in accordance with EOHHS statutory obligation under MGL Chapter 118E Section 13D, to establish, by regulation, the rates to be paid by governmental units to providers of certain home and community-based services.
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Are there alternative regulatory methods that would minimize the adverse impact on small businesses? No. The regulation does not have an adverse impact on small businesses. The regulation establishes uniform rates to be paid by governmental units to providers of HCBS services, and as required by statute.