

**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 Monday, January 30, 2023, at 10 a.m. relative to the emergency adoption of:

101 CMR 512.00: Nursing Facility User Fees

The emergency amendment to 101 CMR 512.00 implements the new nursing facility user fee structure in accordance with the new waiver requested of the Centers for Medicare & Medicaid Services (CMS) pursuant to Section 252 of Chapter 268 of the Acts of 2022.

The proposed regulation re-defines the nursing facility groups paying the assessment, reducing the number of groups from four to two and applying an assessment per non-Medicare reimbursed day on all nursing facilities; sets the rate payments for each group; codifies enforcement provisions for late payments; and adds provisions explaining how EOHHS addresses merging, acquired or acquiring nursing facilities, or changes in ownership for the purposes of the assessment.

For fiscal year 2023, the assessed amount under the amended regulation will be approximately \$209 million, in accordance with the longstanding state statutory requirement at M.G.L. c. 118E, § 63(b).

The regulation was filed as an emergency on December 30, 2022, and will take effect on January 1, 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. 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 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, 6th Floor, Quincy, MA 02171. Written testimony will be accepted through 5:00 p.m. on Monday, January 30, 2023. EOHHS specifically invites comments as to how the amendments may affect beneficiary access to care.

To review the emergency regulation, go to 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, 6th Floor, Quincy, MA 02171.

Special accommodation requests may be directed to the Disability Accommodations Ombudsman by email at 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 final, revised version of the emergency regulation 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.

January 3, 2023

Small Business Impact Statement

(As required by M.G.L. c. 30A §§ 2, 3 & 5)

CMR No: 101 CMR 512.00: *Nursing Facility User Fees*

Estimate of the Number of Small Businesses Impacted by the Regulation: SBA database searches conducted according to the instructions in the Overview and Guidelines section of this document returned 28 results for NAICS code 623110 ("Nursing Care Facilities") and no results for 623311 ("Continuing Care Retirement Communities").

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? The regulation is intended to facilitate the new nursing facility user fee structure in accordance with the new waiver requested of CMS pursuant to Chapter 268 of the Acts of 2022. The amended regulation does not change the reporting requirements.
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Will small businesses have to implement additional recordkeeping procedures? The regulation does not require small businesses to implement additional recordkeeping procedures.
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Will small businesses have to provide additional administrative oversight? The regulation does not require additional administrative oversight.
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? Compliance does not require hiring additional employees.
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.)? Compliance does not require hiring 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? The regulation does not require purchases or capital investments.
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Are performance standards more appropriate than design or 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.) Performance standards are not more appropriate than design or operational standards.
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Do any other regulations duplicate or conflict with the proposed regulation? No other regulations duplicate or conflict with the proposed 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? The regulation requires all nursing facilities to comply with audits and produce records requested by EOHHS. The amended regulation does not change these requirements. The regulation does not distinguish between small and other businesses.
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Does the regulation require small businesses to provide educational services to keep up to date with regulatory requirements? The regulation does not require small businesses to provide educational services to keep up to date with 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? The regulation updates the structure of the already existing broad-based health care related tax on nursing facilities in Massachusetts and is unlikely to encourage or deter the formation of small businesses.
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Is the regulation likely to <i>encourage</i> the formation of small businesses in Massachusetts?

		The regulation updates the structure of the already existing broad-based health care related tax on nursing facilities in Massachusetts and is unlikely to encourage or deter the formation of small businesses.
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Does the regulation provide for less stringent compliance or reporting requirements for small businesses? The regulation does not distinguish between small and other businesses.
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? The regulation does not distinguish between small and other businesses.
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Did the agency consolidate or simplify compliance or reporting requirements for small businesses? The regulation does not distinguish between small and other businesses.
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? Distinguishing small businesses from other businesses would not be practicable for this regulation.
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Are there alternative regulatory methods that would minimize the adverse impact on small businesses? The regulations are required by statute to facilitate the new nursing facility user fee structure in accordance with the new waiver requested of CMS pursuant to Chapter 268 of the Acts of 2022.