

Division of Medical Assistance
Commonwealth of Massachusetts
Office of Medicaid

NOTICE OF PUBLIC HEARING

Under the authority of M.G.L. c. 6A, section 16 and in accordance with M.G.L. c. 30A, the Division of Medical Assistance (the Division) will hold a remote public hearing on May 17, 2024, at 12:00 p.m. relative to the adoption of amendments to the following regulation.

130 CMR 438.000: *Continuous Skilled Nursing Agency*

The proposed amendments to 130 CMR 438.000 provide updates and clarifications to the regulations, including definitions, incident and accident record requirements, clinical criteria for nursing services, limitations on covered services, biweekly supervision requirements for complex care assistant services, and providers authorized for face-to-face encounters. They also add annual staffing report requirements for continuous skilled nursing (CSN) agency services and conditions of payment for a high-tech rate add-on for CSN services.

The proposed regulation is planned to go into effect no sooner than August 30, 2024. 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/masshealth-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 masshealthpublicnotice@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 May 17, 2024. The Division specifically invites comments as to how the amendments may affect beneficiary access to care.

To review the current draft of the proposed regulation, go to www.mass.gov/service-details/masshealth-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.

The Division may adopt a revised version of the proposed 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/masshealth-public-hearings.

April 26, 2024

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

CMR No: 130 CMR 438.000: Continuous Skilled Nursing Agency

Estimate of the Number of Small Businesses Impacted by the Regulation: 64

Select Yes or No and Briefly Explain

Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>	Will small businesses have to create, file, or issue additional reports? Yes, small businesses will be required to submit an annual staffing report to the MassHealth agency.
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Will small businesses have to implement additional recordkeeping procedures? No, small businesses will not need to implement additional recordkeeping procedures.
Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>	Will small businesses have to provide additional administrative oversight? Yes, small businesses will have to provide additional administrative oversight to ensure compliance with the conditions of payment for a high-tech rate add-on for continuous skilled nursing (CSN) services.
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, small businesses will not have to hire additional employees to comply with the proposed regulation.
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 purpose of the regulation is to provide program requirements and conditions of payment for the provision of CSN and complex care assistant (CCA) services by CSN agency providers to MassHealth members.
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. This regulation requires CSN agency providers to submit documentation requested by MassHealth for purposes of utilization and provider review to ensure compliance with MassHealth requirements for the provision of CSN and CCA services.

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? No, the proposed 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? No. The regulation is not likely to deter the formation of small businesses in Massachusetts, as it governs MassHealth CSN agency providers, provides program requirements and conditions of payment for the provision of CSN and CCA services by CSN agencies to MassHealth members, and it is applied uniformly among all such MassHealth providers.
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 encourage the formation of small businesses in Massachusetts, as it governs MassHealth CSN agency providers, provides program requirements and conditions of payment for the provision of CSN and CCA services by CSN agencies to MassHealth members, and is applied uniformly among all such MassHealth providers.
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Does the regulation provide for less stringent compliance or reporting requirements for small businesses? No. This regulation requires CSN agencies to submit documentation requested by MassHealth for purposes of utilization and provider review to ensure compliance with MassHealth requirements, and it is applied uniformly among all MassHealth providers of CSN and CCA services.
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. This regulation requires CSN agency providers to submit documentation requested by MassHealth for purposes of utilization and provider review to ensure compliance with MassHealth requirements, including the timelines for reporting, and is applied uniformly among all MassHealth providers of CSN and CCA services.
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 requires CSN agency providers to submit documentation requested by MassHealth for purposes of utilization and provider review to ensure compliance with MassHealth requirements, including the timelines for reporting, and is applied uniformly among all MassHealth providers of CSN and CCA 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. 130 CMR 438.000 establishes uniform program requirements and conditions of payment for the provision of CSN and CCA services by CSN agencies to MassHealth members. These requirements are applied uniformly to maintain consistency in the care provided by CSN agency providers to MassHealth members.
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Are there alternative regulatory methods that would minimize the adverse impact on small businesses? No. This regulation does not have an adverse impact on small businesses. This regulation governs MassHealth CSN agency providers, provides program requirements and conditions of payment for the provision of CSN and CCA services by CSN agencies to MassHealth members, and is applied uniformly among all such MassHealth providers.