

**Commonwealth of Massachusetts
Executive Office of Health and Human Services**

NOTICE OF PUBLIC HEARING

Under the authority of M.G.L. c. 118E and in accordance with M.G.L. c. 30A, the Executive Office of Health and Human Services (EOHHS) will hold a remote public hearing on Friday, January 24, 2025, at 11:00 a.m. relative to the emergency adoption of amendments to the following regulation.

101 CMR 204.00: Rates of Payment to Resident Care Facilities

The regulation went into effect as an emergency on January 1, 2025. There is no fiscal impact on cities and towns.

101 CMR 204.00 governs payment rates for resident care services (“rest homes”) provided to publicly aided individuals by governmental units.

The proposed rates, effective January 1, 2025, were calculated according to the following methodology:

- Update the base year from 2021 to 2022.
 - Calculate allowed variable and fixed cost per diems using 2022 costs.
 - Cap variable costs at the 85th percentile, or \$165.93. (Variable costs include an imputed amount of \$121,380 for the personal services of an owner for rest homes that are sole proprietorships, since they do not report owner’s salary. There are currently no rest homes that are sole proprietorships.)
 - With a 6.98% cost adjustment factor (CAF) applied, the cap is at \$177.51. (The CAF is based on inflation indices derived by cost center from data provided by IHS Markit. The CAF was calculated with a base period of CY2022 and a one-year rate period beginning October 1, 2024.)
 - Fixed cost component is limited to the amounts described in 101 CMR 204.08(2)(a)1.d.
 - The methodology used to set the proposed rates applies a 90% occupancy standard when calculating per diem costs.
- For each rest home, the preliminary rate is the sum of the components listed above.
- For each rest home, calculate its DTA days percentage by dividing its DTA days by the facility’s total resident days, based on the 2022 cost report. The facility’s DTA days percentage adjustment is equal to its DTA days percentage multiplied by \$24.65.
- For each rest home, calculate a new rate effective January 1, 2025, equal to the greater of
 - The sum of the preliminary rate, the DTA days percentage adjustment, and a resident care add-on of \$4.60,

- The facility's certified rate in effect on December 31, 2024, or
- \$105.
- If the rate calculated above exceeds the current rate effective December 31, 2024, plus \$70, the facility will receive a negative adjustment such that the new rate effective January 1, 2025, will be equal to the current rate effective December 31, 2024, plus \$70.
- For each rest home, calculate its FY2024 RCC-Q by dividing certain rest home expenses by revenue, excluding any revenue from non-rest home lines of business, based on reports that facilities are required to file. For non-exempt facilities with RCC-Q scores that fall below the established threshold of 80%, a downward adjustment is applied to their rate. For every 1 percentage point that the facility's RCC-Q is below the threshold, the downward adjustment is 0.5% of the rate, up to a maximum of a 5% downward adjustment. Additionally, EOHHS may conduct an audit of RCC-Q data for selected facilities. Language has been added to the regulation to indicate that if a facility's audit shows that their score was in fact below the 80% threshold in the prior fiscal year, a downward adjustment to their currently effective rate will be calculated, and the dollar value of this adjustment will be applied to the newly established rate in the following rate period. An audit of FY23 RCC-Q scores that were used during the FY24 rate calculations found that two facilities' actual RCC-Q scores were below 80%. To account for this, a downward adjustment was calculated based on a percentage of their rates in effect December 31, 2024, and the dollar value of this adjustment is proposed to be applied beginning in their rates effective January 1, 2025.
- For rates effective January 1 through January 31, 2025, apply an annualization adjustment of 296.77% of the difference between the new rate and the current rate, to cover the 92 days from October 1 through December 31, 2024.

The current daily rates for rest homes range from \$103.95 to \$242.83, with a median of \$150.09. For the period beginning February 1, 2025, the proposed rates range from \$105.00 to \$242.83, with a median of \$149.65.

Additional amendments are proposed to remove descriptions of other COVID-19-related add-on payments for programs that have ended, to update the scope of the regulations and rates within, and to clarify the auditing process of RCC-Q reporting.

There is no anticipated change in annual aggregate state expenditures to eligible resident care facilities based on the proposed amendments.

To register to testify at the hearing and to get instructions on how to join the hearing online, go to www.mass.gov/info-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 Friday, January 24, 2025. EOHHS specifically invites comments as to how the amendments may affect beneficiary access to care for MassHealth-covered services.

To review the emergency regulation, go to www.mass.gov/info-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. To view or download related supporting materials, go to www.mass.gov/info-details/proposed-regulations-supporting-materials.

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/info-details/executive-office-of-health-and-human-services-public-hearings.

January 3, 2025

Small Business Impact Statement

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

CMR No.: 101 CMR 204.00: Rates of Payment to Resident Care Facilities

Estimate of the Number of Small Businesses Impacted by the Regulation: 60

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 does not establish new reporting requirements for resident care facilities.
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Will small businesses have to implement additional recordkeeping procedures? The regulation does not require 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? All resident care facilities using the rates under the regulation are subject to audit, if determined necessary by EOHHS, and the regulation amendment explicitly acknowledges such audit power. 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 establishes new and updated payment methodologies for providers and is unlikely to deter or encourage 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 establishes new and updated payment methodologies for providers and is unlikely to deter or encourage 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? Payment methodologies for resident care facilities are required by statute to be established through regulation.