

**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 10:00 a.m., relative to the adoption of amendments to the following regulation.

101 CMR 345.00: Rates for Temporary Nursing Services

The proposed regulation contains rates effective for dates of service on or after March 1, 2025. There is no fiscal impact on cities and towns.

101 CMR 345.00 establishes annual industry-wide maximum class rates of payment for temporary nursing services (TNS) paid by nursing facilities and hospitals. Pursuant to M.G.L. c. 111, §72Y and c. 118E, §13D, the Executive Office of Health and Human Services (EOHHS) must provide an annual industry-wide class rate for TNS providers. The statute also specifies that the maximum rates are to be set by region (Massachusetts has six Health Service Areas (HSA)), type of facility (hospital or nursing facility (NF)), position type (RN, RN-Specialty, LPN, CNA), and shift (weekday shifts 1 through 3 and weekend shifts 1 through 3). This regulation was last amended effective October 1, 2021.

The wage components were calculated using the median wages and benefits from the FY2022 SNF-CR and the 2022 hospital cost report (HCF-403). TNS hours from the FY2022 NSR were used to calculate spending and fiscal impact. The estimated historical spending based on reported units in the FY2022 TNS cost report was decreased by a factor of 11.71%, in order to align with the total expenses for TNS in nursing facilities as reported in FY2022 SNF-CRs.

For each HSA, the median hospital wages by type of service were blended with the statewide median for those services (50:50). The nursing facility medians were based on FY2022 SNF-CR median wages by HSA and type of position.

The median wages were then adjusted by a cost adjustment factor (CAF) of 6.87%. The CAF is calculated with a base period of Q1 2022 through Q4 2022, and a prospective rate period of Q1 2025 through Q4 2025 using the Spring 2024 Massachusetts Consumer Price Index (CPI) optimistic forecast provided by S&P Global Market Intelligence.

The inflated wages were next adjusted by an hourly position-specific administrative markup and a historical profit factor of 5.31%. The administrative markup was calculated by adding the weighted average of variable administrative expenses and fixed administrative expenses across all agencies as reported on the FY2022 NSRs,

and applying the CAF of 6.87%. This inflated administrative expense per hour (\$18.47) was divided by the statewide median of hourly wages reported on the FY2022 SNF-CR (\$39.63), to calculate the administrative markup of 46.62%. This factor was then applied to the NF and hospital median wages to calculate the hourly administrative cost by position.

Median wages were next adjusted by shift differentials. The hospital shift differentials were calculated by dividing Massachusetts Hospital Association's Hospital Salary Survey shift differentials for 2015-2017 by the median hospital wages for the respective year. This is the most recent data made available to the Center for Health Information and Analysis (CHIA) by the Massachusetts Hospital Association. The median percentage was then taken to identify a shift differential percentage by position and shift. These percentages were then applied to median wages by position from the 2022 hospital cost report to calculate hourly shift differentials. The nursing facility shift differentials were calculated by taking the medians of the differentials reported by shift and position on the FY2022 SNF-CR.

For NF and hospital TNS rates, a fringe benefit factor was then applied to the shift differentials. For hospitals, this was calculated based on the 2022 hospital cost reports, resulting in a 28.82% fringe benefit. For nursing facilities, the fringe benefit of 20.35% was calculated using FY2022 SNF-CR data. The previously calculated CAF of 6.87% was then applied. The administrative markup factor of 46.62%, as well as the 5.31% profit factor, were then applied.

The final hourly rates were determined for each HSA by adding the median wage, administrative mark-up, profit factor add-on, and shift differentials.

Further, the travel nurse factor was updated to represent an 18.4% travel factor. This updated travel factor was calculated by dividing agencies' direct care travel expense by direct care staff expenses as reported on the FY2022 NSRs. Only agencies that reported direct care travel expenses in the FY2022 NSR were included in this calculation.

The median percentage across all agencies was then taken.

Any fiscal impact to the purchasing organizations (hospitals and nursing facilities) depends on the actual dollar value of the rates used. The proposed rates in 101 CMR 345.03(2) are maximum rates, but the purchasers and TNS agencies can negotiate any lesser amount. Additionally, the fiscal impact would include any additional spending that could occur as a result of changing the travel nurse factor.

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 current draft of the proposed 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 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/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 345.00: Rates for Temporary Nursing Services

Estimate of the Number of Small Businesses Impacted by the Regulation: Approximately 800 agencies are registered to provide TNS, but that does not necessarily represent the number of agencies providing these services.

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 M.G.L. c. 111, §72Y and c. 118E, §13D and establishes the maximum rates health-care facilities may pay for services provided by temporary nursing agencies.
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 for the development of rates for resident care facility services. This cost reporting requirement is applied uniformly to all providers to enable development of accurate rates that reflect cost data from all providers.

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. 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 the maximum rates healthcare facilities may pay for services provided by temporary nursing agencies, as required by statute.
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 the maximum rates healthcare facilities may pay for services provided by temporary nursing agencies, as required by statute.
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 requirements to report cost data to enable development of rates for resident care facility services. This cost reporting requirement is applied uniformly to all providers to enable development of accurate rates that reflect cost data from all providers.
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 requirements to report cost data to enable development of rates for temporary nursing services. This time frame for cost reporting is applied uniformly to all providers to enable timely development of accurate rates that reflect cost data from all providers.
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Did the agency consolidate or simplify compliance or reporting requirements for small businesses? No. The agency did not consolidate or simplify compliance or reporting requirements for small businesses. The requirement to report cost data is applied uniformly to all providers to enable timely development of accurate rates that reflect cost data from all providers.
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. The establishment of maximum rates healthcare facilities may pay for services provided by temporary nursing agencies is a statutory requirement under M.G.L. c. 111, §72Y and c. 118E, §13D.
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 the maximum rates healthcare facilities may pay for services provided by temporary nursing agencies, which is a statutory requirement under M.G.L. c. 111, §72Y and c. 118E, §13D.