

**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 Tuesday, January 16, 2024, at 10:00 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 will go into effect as an emergency on January 1, 2024. There is no fiscal impact on cities and towns.

The proposed rates, effective January 1, 2024, were calculated according to the following methodology.

- Update the base year from 2020 to 2021.
 - Calculate allowed Variable and Fixed Cost Per Diems using 2021 costs.
 - Cap variable costs at the 85th percentile, or \$154.85. With a 13.18% cost adjustment factor (CAF) applied, the cap is at \$175.26. 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 CY2021 and a one-year rate period beginning October 1, 2023.
 - 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.
 - The Equity and Working Capital components that were part of prior years' rates have been removed from the rate setting process in this review.
- 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 2021 cost report. The facility's DTA Days Percentage Adjustment is equal to its DTA days percentage multiplied by \$30.31.
- For each rest home that had residents who were receiving MassHealth-covered GAFC services as of October 15, 2020, the proposed GAFC adjustment is equal to the GAFC adjustment the facility is receiving on December 31, 2023.
- For each rest home, calculate a new rate effective January 1, 2024, equal to the greater of:
 - The sum of the preliminary rate, the DTA Days Percentage Adjustment, the GAFC Adjustment, and a resident care add-on of \$8.00 or,
 - The facility's certified rate in effect on December 31, 2023, or
 - \$105.

- If the rate calculated above exceeds the current rate effective December 31, 2023 plus \$70, the facility will receive a negative adjustment such that the new rate effective January 1, 2024 will be equal to the current rate effective December 31, 2023 plus \$70.
- For each rest home, calculate its FY2023 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 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.
- For rates effective January 1 through January 31, 2023, apply an annualization adjustment of 596.77% of the difference between the new rate and the current rate, to cover the 185 days from July 1 through December 31, 2023.

The current daily rates for rest homes range from \$95.00 to \$212.62, with a median of \$125.84. For the period beginning February 1, 2023, the proposed rates range from \$103.95 to \$242.83, with a median of \$150.09. Note that the true minimum rate of \$103.95 is less than the minimum rate of \$105 described above due to the application of the RCC-Q Adjustment.

Further amendments to the regulation are proposed in addition to amendments related to the per diem rates in rest homes. The regulation includes a provision for certain COVID-19-related costs add-on payments for rate year 2023, incorporated in accordance with Chapter 268 of the Acts of 2022, also known as the 2022 "Economic Development" law. The provision describes the calculation methodology, permissible uses, and description of further guidance, and is to be paid to certain resident care facilities as described in the regulation. The proposed amendments update this language to further clarify the provision and carry forward these payments in rate year 2024, totaling \$14,334,990 for resident care facilities with rates payable under the terms of 101 CMR 204.00. Any Economic Development payments attributable to resident care units in nursing facilities are made pursuant to the terms of 101 CMR 206.00.

Additional amendments are proposed to remove descriptions of other COVID-19-related add-on payments for programs that have ended. As a result of these amendments, we anticipate approximately a \$9.52 million increase in annual aggregate state expenditures to eligible resident care facilities based on the changes to facility rates, and approximately a \$14.335 million increase in annual aggregate state expenditures to eligible resident care facilities as a result of the Economic Development payments. Due to the annualization adjustment applicable to the facility rates, the full \$9.52 million in fiscal impact on the facility rates is expected to be realized in FY2024.

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 Tuesday, January 16, 2024. 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/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. To view or download related supporting materials, go to www.mass.gov/service-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/service-details/executive-office-of-health-and-human-services-public-hearings.

December 26, 2023

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.