

**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 March 8, 2024, at 9:30 a.m., relative to the adoption of amendments to the following regulation.

101 CMR 361.00: *Rates for Continuous Skilled Nursing Agency and Independent Nursing Services*

The proposed amendments to 101 CMR 361.00 update payment rates used by state governmental units for continuous skilled nursing (CSN) agency services delivered by eligible CSN agency and independent nurse providers to publicly aided individuals in accordance with M.G.L. c. 118E, § 13D, which requires EOHHS to establish rates for health care services to be paid by governmental units. Specifically, the proposed amendments increase the CSN rates through a multistep analysis process. This process includes rebasing CSN rates to the average of the Massachusetts 2022 Bureau of Labor Statistics 50th and 75th percentile wages, including an additional 15% increase for licensed practical nurse (LPN) wages to account for the role of LPNs in the CSN workforce. It also includes increasing base rates by 13% to align with hospital nursing salary increases that were adopted in a bargaining unit agreement and will be effective July 1, 2024. Finally, the analysis applies a fringe benefit markup and administrative markups and applies a prospective cost adjustment factor to all rates. The proposed amendments also establish a high-tech rate add-on for CSN services.

The proposed amended regulation contains rates effective for dates of service on or after August 16, 2024. The estimated aggregate annual fiscal impact of the proposed amendments is \$38.8 million. 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 March 8, 2024. EOHHS specifically invites comments as to how the amendments may affect beneficiary access to care.

To review the current draft of the proposed actions, 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 revised version of the proposed actions 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.

February 16, 2024

Small Business Impact Statement

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

CMR No: 101 CMR 361.00

Estimate of the Number of Small Businesses Impacted by the Regulation: 48 MassHealth enrolled CSN agencies, 16 home health agencies providing CSN services, and 585 Independent Nurse providers enrolled with MassHealth.

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 101 CMR 361.00.
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 101 CMR 361.00.
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 101 CMR 361.00 to provide additional administrative 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. 101 CMR 361.00 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 101 CMR 361.00 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. 101 CMR 361.00 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 proposed amendment is to establish the rates to be paid by governmental units for continuous skilled nursing (CSN) agency and independent nursing services in accordance with M.G.L. Chapter 118E, Section 13D.
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 that providers periodically file cost data, which is required in order for the Executive Office of Health and Human Services (EOHHS) to develop and establish rates for these services. This cost reporting requirement is applied uniformly to all providers to enable EOHHS to develop 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. 101 CMR 361.00 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 it establishes uniform governmental rates of payment for CSN agency and independent nursing services for MassHealth members.
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 it establishes uniform governmental rates of payment for CSN agency and independent nursing services for MassHealth members.
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 establishes uniform program requirements and conditions of payment, including cost reporting, for the provision of CSN agency and independent nursing services to MassHealth members. These requirements are applied uniformly in order to maintain consistency in the care provided by CSN providers to MassHealth members.
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 establishes uniform program requirements and conditions of payment for the provision of CSN agency and independent nursing services to MassHealth members. These requirements are applied uniformly in order to maintain consistency in the care provided by CSN agencies and independent nurse providers to MassHealth members.
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Did the agency consolidate or simplify compliance or reporting requirements for small businesses? No. The regulation establishes uniform program requirements and conditions of payment for the provision of CSN agency and independent nursing services to MassHealth members. These requirements are applied uniformly in order to maintain consistency in the care provided by CSN agencies and independent nurse providers to MassHealth members.
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. 101 CMR 361.00 establishes uniform program requirements and conditions of payment for the provision of CSN agency and independent nursing services to MassHealth members. These requirements are applied uniformly in order to maintain consistency in the care provided by CSN 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. The regulation establishes uniform program requirements and conditions of payment for the provision of CSN agency and independent nursing services to MassHealth members. These requirements are applied uniformly in order to maintain consistency in the care provided by CSN providers to MassHealth members.