

**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, July 28, 2023, at 10:00 a.m. relative to the emergency adoption of amendments to the following regulation.

This regulation is being filed on an emergency basis to provide increased funding to resident care facilities to ensure that facilities remain adequately funded and address these COVID-19-related costs.

The proposed amendments contain rates effective for dates of service on or after December 1, 2022. There is no fiscal impact on cities and towns.

101 CMR 204.00: Rates of Payment to Resident Care Facilities

The following amendments are proposed to be effective December 1, 2022, and January 1, 2023, or as described below.

The proposed amendments effective December 1, 2022, were calculated according to the following methodology.

- Update the base year from 2019 to 2020.
 - Calculate allowed variable, fixed cost, equity, and working capital per diems using 2020 costs.
 - Cap variable costs at the 85th percentile, or \$148.06. With a 13.57% cost adjustment factor (CAF) applied, the cap is at \$168.15.
 - Fixed cost and equity components are 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 2020 cost report. The facility's DTA days percentage adjustment is equal to its DTA days percentage multiplied by \$13.28.
- 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 November 30, 2022.
- For each rest home, calculate a new rate effective December 1, 2022, 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;
 - The sum of the facility's certified rate in effect on November 30, 2022 and a resident care add-on of \$8.00; or
 - \$95.
- If the rate calculated above exceeds the current rate effective November 30, 2022, plus \$34, the facility will receive a negative adjustment such that the new rate effective December 1, 2022, will be equal to the current rate effective November 30, 2022, plus \$34.
- For rates effective December 1 through December 31, 2022, apply an annualization adjustment of 493.55% of the difference between the new rate and the current rate, to cover the 153 days from July 1 through November 30, 2022.

Proposed amendments effective January 1, 2023:

- Add a provision for Certain COVID-19 Related Costs Add-on Payment for rate year 2023 incorporated in accordance with St. 2022, c. 268, the 2022 "Economic Development" law, including the calculation methodology, permissible uses, and description of further guidance, and which is to be paid to DPH-licensed resident care facilities. Note: This payment is intended to be made in calendar year 2023 and represents approximately half of the \$30M identified in St. 2022, c. 268, intended for resident care facilities with rates established in 101 CMR 204. EOHHS intends to make subsequent payments pursuant to future

amendments to 101 CMR 204.00 using the same or similar methodology and to be made in a subsequent calendar year.

- Align the interim RCC-Q report due date with the nursing facility timeline, specifically, and move the due date from February 1 to March 1.

Additional proposed amendments effective as described below.

- Clarify that this regulation pertains to COVID-19-related costs in addition to rates for services provided by resident care facilities.
- End surveillance testing payments effective April 30, 2023, to align with the end of the DPH requirement for surveillance testing in long-term care facilities.

The amendments to the regulation also describe a Resident Care Cost Quotient (RCC-Q). Beginning in SFY2023, facilities must have an RCC-Q of at least 80%. A downward rate adjustment may be applied in future rate years to facilities that failed to meet the RCC-Q threshold of 80%.

The proposed amendments to 101 CMR 204.00, in conjunction with amendments to residential care unit rates established at 101 CMR 206.00, meet FY23 state budget appropriation requirements. The proposed amendments to 101 CMR 204.00 will result in an approximate annual cost of \$9.93 million to eligible resident care providers. Due to the annualization adjustment, the full \$9.93 million in fiscal impact is expected to be realized in FY2023.

The proposed amendments to 101 CMR 204.00 effective January 1, 2023, in conjunction with amendments to residential care unit rates established at 101 CMR 206.00, meet St. 2022, c. 268, requirements. The proposed amendments to 101 CMR 204.00 effective January 1, 2023, will result in an approximate one-year increase of \$14.135M. These payments will be made from the dedicated reserve line item 1599-6064. Note: EOHHS intends to make additional amendments in subsequent years in accordance with St. 2022, c. 268, and any related fiscal impact will be noted at that time.

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 Friday, July 28, 2023. EOHHS specifically invites comments as to how the amendments may effect 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 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.

July 7, 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.