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Administrative Bulletin 20-19

101 CMR 206.00: Standard Payments to Nursing Facilities

Effective April 16, 2020

Payments for COVID-19 Nursing Facilities

Purpose, Scope, and Effective Period

The Executive Office of Health and Human Services (EOHHS) is issuing this administrative bulletin pursuant to the authority of [COVID-19 Order No. 20](#): *Order Authorizing the Executive Office of Health and Human Services to Adjust Essential Provider Rates During the COVID-19 Public Health Emergency* and [Executive Order 591](#): *Declaration of State of Emergency to Respond to COVID-19*. Pursuant to COVID-19 Order No. 20, EOHHS has designated certain nursing facilities as eligible for temporary rates and supplemental payments, as further described in this administrative bulletin.

Specifically, and notwithstanding 101 CMR 206.00: *Standard Payments to Nursing Facilities*, this administrative bulletin establishes temporary per diem rates and supplemental payments for COVID-19 Providers who operate a COVID-19 Nursing Facility providing Nursing Facility services to COVID-19 Residents, as such capitalized terms are defined below.

The per diem rates and supplemental payments established by this administrative bulletin will remain effective for the duration of COVID-19 Order No. 20, provided that notwithstanding the expiration of COVID-19 Order No. 20, the per diem rates and supplemental payments described in this bulletin shall continue to be paid to COVID-19 Providers in accordance with the methodologies described herein.

Disclaimer: This bulletin is not authorization of a provider's eligibility for the temporary rates and supplemental payments described herein. Eligibility for these rates and supplemental payments is governed by special amendment to the provider's MassHealth provider contract.

Background

In response to the public health emergency, Massachusetts is taking unprecedented steps to establish dedicated COVID-19 Nursing Facilities to care for COVID-19 Residents. These measures are being taken

primarily to offset the anticipated surge in demand at acute care hospitals. The dedicated COVID-19 Nursing Facilities are themselves anticipated to face extraordinary demand due to the public health emergency, while in many cases simultaneously suffering disruption to their normal operation. Accordingly, EOHHS is establishing updated rates and methodologies as described below.

Definitions, Payment Methodologies, and Allowable Costs for COVID-19 Providers

1. Definitions

For the purposes of this administrative bulletin, the following terms have the meanings specified below. All capitalized terms not defined herein shall have the meanings ascribed to those terms by 101 CMR 206.00: *Standard Payments to Nursing Facilities*, 130 CMR 456.000: *Long Term Care Services*, or 130 CMR 450.000: *Administrative and Billing Regulations*.

“Baseline Facility Revenue” (BFR) shall mean the Nursing Facility’s annualized fourth quarter 2019 net patient services revenue, or another quarter determined by EOHHS if the fourth quarter of 2019 does not accurately represent the facility’s baseline revenue. Net patient services revenue includes non-Nursing Facility Resident care services. Baseline Facility Revenue shall not include investment or interest income.

“COVID-19 Nursing Facility Beds” is the total number of beds in the COVID-19 Nursing Facility as stated in the special amendment to the COVID-19 Provider’s MassHealth Provider Contract. The number of beds shall be maintained by the COVID-19 Provider and fixed for the duration of the contract, unless a change in the number of beds is mutually agreed upon by the COVID-19 Provider and EOHHS.

“COVID-19 Nursing Facility” is a stand-alone facility that has been deemed appropriate for providing Nursing Facility services to COVID-19 Residents, and that is operated by a COVID-19 Provider to provide such services. A COVID-19 Nursing Facility must meet all federal and state statutory and regulatory requirements as such requirements apply and are in effect during the State of Emergency, including those in 101 CMR 206.00: *Standard Payments to Nursing Facilities*, 130 CMR 456.00: *Long Term Care Services*, 130 CMR 450.00: *Administrative and Billing Regulations*.

“COVID-19 Provider” is a Provider that has executed a special amendment to their MassHealth Provider Contract to provide Nursing Facility services to COVID-19 Residents in a COVID-19 Nursing Facility.

“COVID-19 Resident” is an individual who is admitted to the COVID-19 Nursing Facility to receive Nursing Facility services, consistent with 130 CMR 456.000: *Long Term Care Services*, and who is being treated in a contained area due to COVID-19 exposure, diagnosis, or recovery. Any individual admitted to a COVID-19 Nursing Facility shall be considered a COVID-19 Resident, regardless of whether the services rendered are specific to treating COVID-19 symptoms or specialized COVID-19 related needs. COVID-19 Residents include both MassHealth Members and non-Members who are Residents of the COVID-19 Nursing Facility.

“Occupancy Rate” shall mean, for a given time period, Patient Days divided by the total number of COVID-19 Nursing Facility Beds in the COVID-19 Nursing Facility.

“Profit” shall mean net patient service revenue for the COVID-19 Nursing Facility minus allowable operating expenses, as described in **Section 4**, for the COVID-19 Nursing Facility.

“Transition Day” shall mean the day after the last COVID-19 Resident is transferred or discharged from the COVID-19 Nursing Facility, or on the day that testing or provider's clinical assessment, using the Department of Public Health's clearance guidance, demonstrates that no residents have an active diagnosis of COVID-19, with no further COVID-19 Residents expected to be admitted as determined by EOHHS.

2. Per Diem Rates for COVID-19 Residents who are MassHealth Members

Effective for dates of service beginning April 1, 2020, and notwithstanding any rates established under 101 CMR 206: *Standard Payments to Nursing Facilities*, the per diem payment rate for MassHealth Members who are COVID-19 Residents in a COVID-19 Nursing Facility shall be not less than \$600 per Member per day. This per diem rate shall apply until the Transition Day, at which point the Nursing Facility's per diem rates shall revert to the rates applicable to the nursing facility under 101 CMR 206.00: *Standard Payments to Nursing Facilities* for services provided to MassHealth Members at the Nursing Facility.

3. Supplemental Payments to COVID-19 Providers

- a. Weekly supplemental payments for COVID-19 Providers who transferred Residents to establish a COVID-19 Nursing Facility on or before the Transition Day. EOHHS shall provide weekly supplemental payments to COVID-19 Providers who transferred existing Residents out of their Nursing Facility in order to establish a COVID-19 Nursing Facility as follows:
 - i. For dates beginning March 27, 2020 until the date the Transition Day:
 - A. Multiply the total number of weekly Patient Days for the COVID-19 Nursing Facility by \$600;
 - B. Subtract the product calculated in Section 3.a.i.A from 115% of the COVID-19 Provider's weekly Baseline Facility Revenue;
 - C. The weekly supplemental payment shall be the greater of \$0 or the figure calculated in Section 3.a.i.B.
 - ii. Weekly supplemental payments may be calculated on a prorated basis for any week that does not fall entirely within the period described in Section 3.a.i, provided that for purposes of this section, a week shall begin on Friday.
- b. Monthly supplemental payments for COVID-19 Providers who transferred Residents to establish a COVID-19 Nursing Facility after the Transition Day. EOHHS shall provide monthly supplemental payments to COVID-19 Providers who transferred existing Residents out of their Nursing Facility in order to establish a COVID-19 Nursing Facility as follows:
 - i. Starting with the first calendar month beginning after the Transition Day, and for the calendar month that follows on or after the Transition Day:
 - A. Multiply the total number of Patient Days in the month by the per diem rates established, effective October 1, 2019, for the Nursing Facility under 101 CMR 206.00: *Standard Payment to Nursing Facilities* using the average rate received by all facilities;
 - B. Subtract the product calculated in Section 3.b.i.A from the monthly BFR
 - C. The monthly supplemental payment shall be the greater of \$0 or the figure calculated in Section 3.b.i.B.
 - ii. Starting with the first calendar month beginning after the Transition Day, and for the eight calendar months that follow, EOHHS shall provide monthly payments to the Provider to incentivize the Provider to increase occupancy in the facility. These supplemental payments shall be equal to 1% of BFR for each 10% gain in occupancy using monthly average occupancy rate rounded to the nearest 10%.

- c. Weekly supplemental payments for previously vacant COVID-19 Nursing Facilities on or before the Transition Day. For dates beginning March 27, 2020 until the Transition Day, EOHHS shall provide weekly supplemental payments to COVID-19 Providers who operated a COVID-19 Nursing Facility in a previously vacant location as follows:
 - i. Multiply the total Patient Days by \$600;
 - ii. Multiply the total number of existing COVID-19 Nursing Facility Beds in the COVID-19 Nursing Facility for each day of the week by \$600;
 - iii. Subtract the product calculated in Section 3.c.i from Section 3.c.ii;
 - iv. The weekly supplemental payment shall be the greater of \$0 or the figure calculated in Section 3.c.iii.
 - v. Weekly supplemental payments may be calculated on a prorated basis for the first week and, if necessary, the last week of the period described in Section 3.c.
- d. Monthly supplemental payments for previously vacant COVID-19 Nursing Facilities after the Transition Day. For the following two calendar months beginning on or after the Transition Day, EOHHS shall provide monthly supplemental payments to COVID-19 Providers who established a COVID-19 Nursing Facility in a previously vacant location totaling \$300 per COVID-19 Nursing Facility Bed in the COVID-19 Nursing Facility per day for each day of the month.
- e. Quarterly supplemental payments. EOHHS shall pay quarterly supplemental payments to COVID-19 Providers as follows:
 - i. Quarterly supplemental payments for all COVID-19 Nursing Facilities on or before the Transition Day. In any quarter, beginning after March 31, 2020 but before the Transition Day, for which the COVID-19 Provider's quarterly Profit margin was less 5%, EOHHS shall pay a quarterly supplemental payment equal to the difference between the quarterly revenue and the revenue that would result in a 5% profit margin. Costs incurred to establish a COVID-19 Nursing Facility from March 27, 2020 to March 31, 2020 shall be included when calculating the first quarterly supplemental payment under this Section 3.e.i.
 - ii. Quarterly supplemental payments for COVID-19 Providers that transferred Residents to establish a COVID-19 Nursing Facility on or before the Transition Day. For COVID-19 Providers that transferred existing Residents out of their Nursing Facility in order to establish a COVID-19 Nursing Facility, in any of the following three quarters beginning on or after the Transition Day for which the COVID-19 Provider's quarterly Profits were negative for that quarter, EOHHS shall pay a quarterly supplemental payment equal to the amount by which such Profits were negative. For the purposes of calculating the supplemental payment described in this Section 3.e.ii the supplemental payment described in said Section 3.b.ii shall not be included for the definition of revenue;
 - iii. Quarterly supplemental payments for previously vacant COVID-19 Nursing Facilities. For COVID-19 Providers that operated a COVID-19 Nursing Facility in a previously vacant location, in any of the following two quarters beginning on or after the Transition Day for which the COVID-19 Provider's quarterly Profits were negative for that quarter, EOHHS shall pay a quarterly supplemental payment equal to the amount by which such Profits were negative.
 - iv. If the Transition Day falls in the middle of a quarter, the calculation of that quarterly supplemental payment shall be determined by applying the provisions of Section 3.e.i and, as applicable, Section 3.e.ii or Section 3.e.iii on a prorated basis proportionally to the number of days in the quarter on or before the Transition Day and after the Transition Day.
- f. If a COVID-19 Provider closes, no supplemental payments shall be provided to the COVID-19 Provider after the closure date.

4. Allowable Costs

Allowable costs shall have the following meaning for COVID-19 Providers, notwithstanding 101 CMR 206.08 (3): *General Cost Principles*:

- a. General Cost Principles. In order for any cost to be considered allowable, it must satisfy the following criteria:
 - i. The cost must be directly related to the provision of services to COVID-19 Residents or for establishing, operating, or closing a COVID-19 Nursing Facility.
 - ii. The cost must be reasonable, provided that in the context of the public health emergency, certain costs that may otherwise appear unreasonable may be considered reasonable under the totality of the circumstances.
 - iii. The cost must actually be paid by the COVID-19 Provider. Costs not considered to have been paid by the COVID-19 Provider include, but are not limited to: costs discharged in bankruptcy; costs forgiven; costs converted to a promissory note; and accruals of self-insured costs based on actuarial estimates.

- b. The following costs shall be considered non-allowable costs:
 - i. Bad debts, refunds, charity, and courtesy allowances and contractual adjustments to the Commonwealth and other third parties.
 - ii. Federal and state income taxes, except the non-income related portion of the Massachusetts corporate excise tax.
 - iii. the user fee assessment as applicable under 101 CMR 512.00: *Nursing Facility User Fees*.
 - iv. Expenses not directly related to the provision of COVID-19 Resident care including, but not limited to, expenses related to other business activities and fund raising, gift shop expenses, research expenses, rental expense for space not required by the Department of Public Health and expenditure of funds received under federal grants for compensation paid for training personnel and expenses related to grants of contracts for special projects.
 - v. Bonuses related to profit, private occupancy, or directly or indirectly to rates of reimbursement.
 - vi. Compensation and fringe benefits of Residents on a COVID-19 Provider's payroll.
 - vii. Penalties and interest incurred because of late payment of loans or other indebtedness, late filing of federal and state tax returns, or from late payment of municipal taxes.
 - viii. Any increase in compensation or fringe benefits granted as an unfair labor practice after a final adjudication by the court of last resort.
 - ix. Any expense or amortization of a capitalized cost that relates to costs or expenses incurred prior to the initial opening of the COVID-19 Nursing Facility, unless the COVID-19 Nursing Facility was opened specifically to serve as such.
 - x. Prescribed drugs for individual MassHealth Members.
 - xi. Recovery of expense items, that is, expenses that are reduced or eliminated by applicable income including, but not limited to, rental of quarters to employees and others, income from meals sold to persons other than COVID-19 Residents, telephone income, vending machine income, and medical records income. Vending machine income will be recovered against other operating costs. Other recoverable income will be recovered against an account in the appropriate cost group category, such as administrative and general costs, other operating costs, nursing costs, and capital costs. The cost associated with laundry income that is generated from special services rendered to private patients will be identified and eliminated from claims for reimbursement. Special services are those services not rendered to all patients (e.g., dry cleaning, etc.). If the cost of special services cannot be determined, laundry income will be recovered against laundry expense.

- xii. Any costs related to or arising from any affirmative or defensive litigation involving the COVID-19 Nursing Facility, COVID-19 Provider, or a related party, and any costs related to or arising from any legal or administrative action involving the Commonwealth of Massachusetts.
 - xiii. Expenses otherwise allowable will not be recognized if such expenses are paid to a related party unless the COVID-19 Provider identifies any such related party and expenses are reasonably necessary to fulfill obligations as a COVID-19 Nursing Facility, and are provided at fair market value.
- c. Notwithstanding 101 CMR 206.08 (3): *General Cost Principles*, but subject to the general cost principles set forth in Section 4.a., the following costs shall be considered allowable costs:
- i. Except as provided in Sections 4.b.v., 4.b.vi. and 4.b.viii., benefits paid to or on behalf of employees of the COVID-19 Provider, provided that such benefits are generally available and not discriminatory.
 - ii. Reasonable costs incurred by the COVID-19 Provider necessary for the COVID-19 Nursing Facility to provide services to COVID-19 Residents, including transportation of Residents. Such costs may be operating or capital in nature and may include depreciation, as defined by Generally Accepted Accounting Principles, for reasonable and necessary assets purchased or investments made to provide care or fulfill obligations as a COVID-19 Nursing Facility.
 - iii. Reasonable costs incurred by the COVID-19 Provider necessary to return the COVID-19 Nursing Facility to a condition equivalent to its condition immediately prior to becoming a COVID-19 Nursing Facility. Such costs may be operating or capital in nature and may include depreciation, as defined by Generally Accepted Accounting Principles, for reasonable and necessary assets purchased or investments made to restore the facility to its former condition after the Transition Day.
 - iv. Reasonable costs incurred by the COVID-19 Provider for consultation with a professional public relations firm or appropriate promotional advertising for the purpose of facilitating a COVID-19 Nursing Facility's return to operation as a Nursing Facility at a substantially similar occupancy rate reported by the Nursing Facility prior to operating as a COVID-19 Nursing Facility, provided that such costs shall not be allowable if the COVID-19 Nursing Facility was not operating as a Nursing Facility immediately prior to becoming a COVID-19 Nursing Facility.
 - v. A reasonable allocation of the COVID-19 Provider's central office overhead attributable to the COVID-19 Nursing Facility in the most recent cost report filed with the Center for Health Information and Analysis by the Provider prior to operating a COVID-19 Nursing Facility or by other reasonable allocation methodologies approved by EOHHS, provided that such costs may be adjusted to include costs that were disallowed when originally reported but that would be allowable under this Section.
 - vi. Reasonable direct financing costs incurred by the COVID-19 Provider under a financing arrangement with a third-party financial institution, provided that such arrangement must have been in place prior to March 15, 2020.

Public Comment

EOHHS will accept comments on the payment methodologies established via this administrative bulletin through April 30, 2020. Individuals may submit written comments by emailing: ehs-regulations@state.ma.us. Please submit written comments as an attached Word document or as text within the body of the email with the name of this administrative bulletin in the subject line. All submissions of comments must include the sender's full name, mailing address, and organization or affiliation, if any. Individuals who are unable to submit comments by email may mail written comments to EOHHS, c/o D. Briggs, 100 Hancock Street, Quincy, MA 02171.

EOHHS may adopt a revised version of this administrative bulletin taking into account relevant comments and any other practical alternatives that come to its attention.

Questions

If you have any questions about the information in this administrative bulletin, please email Meera.Ramamoorthy@state.ma.us and Jacqueline.Fratus@mass.gov.