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# Massachusetts

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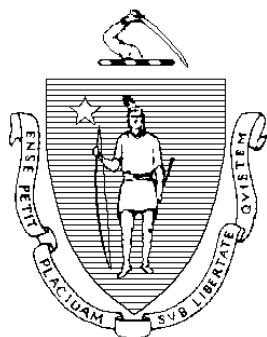
# Register

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**Published by:**  
**The Secretary of the Commonwealth,**  
**William Francis Galvin, Secretary**

**\$15.00**





# THE COMMONWEALTH OF MASSACHUSETTS

*Secretary of the Commonwealth - William Francis Galvin*

## The Massachusetts Register

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## **Notice of Expiration of Emergency Regulations**

There are no Expiration of Emergency Regulations.

## **Emergency Regulations**

<b>101 CMR</b>	<b>Executive Office of Health and Human Services</b>	
204.00	Rates of Payment to Resident Care Facilities	87
	<i>Governs payment rates for resident care services ("rest homes") provided to publicly aided individuals by governmental units.</i>	
206.00	Standard Payments to Nursing Facilities - <i>Refile</i>	89
327.00	Rates for Ambulance and Wheelchair Van Services - <i>Refile</i>	91
<b>220 CMR</b>	<b>Department of Public Utilities</b>	
272.00	Rates for the Towing of Motor Vehicles	93
	<i>Establishes the maximum rates applicable for involuntary tows, those tows ordered by the police or other public authority, or by a person having lawful control over private real property (i.e., a trespass tow). Includes an across the board increase of approximately 22% to all rates specified in 220 CMR 272.00 on an inflation adjustment using the consumer price index.</i>	
<b>940 CMR</b>	<b>Office of the Attorney General</b>	
37.00	Regulations Authorizing Disclosure of Massachusetts License or Learner's Permit Applicant or Holder Information - <i>Refile</i>	95

## **Permanent Regulations**

<b>101 CMR</b>	<b>Executive Office of Health and Human Services</b>	
352.00	Rates for Certain Children's Behavioral Health Services - <i>Compliance</i>	97
<b>105 CMR</b>	<b>Department of Public Health</b>	
159.000	COVID-19 Vaccinations for Certain Staff Providing Home Care Services in Massachusetts	99
	<i>Sets forth vaccination requirements for certain home care workers in Massachusetts.</i>	
<b>130 CMR</b>	<b>Division of Medical Assistance</b>	
519.000	MassHealth: Coverage Types - <i>Correction</i>	101

<b>205 CMR</b>	<b>Massachusetts Gaming Commission</b>	
238.00	Additional Uniform Standards of Accounting Procedures and Internal Controls for Sports Wagering	103
	<i>Establishes a system of controls for Operators to utilize. Amends 205 CMR 238.12 to require that Sports Wagering Operators obtain a letter of credit that is proportional to the portion of its reserve amount that is allocated to unpaid wagers. So, if an Operator does cease operations within the Commonwealth, there is a mechanism by which patrons can receive funds held by an Operator.</i>	
258.00	Sports Wagering Operator Cessation - Compliance	105
<b>301 CMR</b>	<b>Executive Office of Energy and Environmental Affairs</b>	
41.00	Toxic or Hazardous Substance List	107
	<i>(Corrects Filing Form only from Massachusetts Register No. 1511.) Companies that use large quantities of chemicals on the TURA Toxic or Hazardous Substance List annually report the use of these chemicals to MassDEP. Adds new substances to the list.</i>	
<b>310 CMR</b>	<b>Department of Environmental Protection</b>	
9.00	Waterways	109
	<i>Protects and promotes the public's interest in filled and flowed tidelands, Great Ponds, and non-tidal rivers and streams in accordance with the Public Trust Doctrine. Ratifies and confirms MassDEP approval of the previously approved Chelsea Municipal Harbor Plan and Designated Port Area Master Plan.</i>	
<b>831 CMR</b>	<b>Appellate Tax Board</b>	
1.00	Appellate Tax Board Rules of Practice and Procedure	111
	<i>These Rules of Practice and Procedure revisions are offered for two primary reasons: (1) to make litigation of tax appeals at the ATB more transparent and understandable for both taxpayers and boards of assessors who are not represented by counsel and for attorneys representing parties in ATB proceedings; and (2) to encourage parties to confer at various stages of the litigation process to narrow contested issues and reach settlements of disputes.</i>	
<b>940 CMR</b>	<b>Office of the Attorney General</b>	
37.00	Regulations Authorizing Disclosure of Massachusetts License or Learner's Permit Applicant or Holder Information	113
	<i>Relates to the public records status and disclosure by the Registrar of Motor Vehicles of information relating to applicants and holders of Massachusetts licenses and learner's permits, pursuant to the Attorney General's authority in the Act Relative to Work and Family Mobility, St. 2022, c. 81, § 7.</i>	



## Acts 2023

CHAPTER NUMBER	BILL NUMBER	TITLE	DATE
65	H 3842	Changing the Name of the Board of Selectmen of the Town of Gosnold to Select Board.	11/17/2023
66	H 283	Authorizing the Town of Raynam to Grant 2 Additional Licenses for the Sale of All Alcoholic Beverages Not to Be Drunk on the Premises.	11/20/2023
67	H 4110	Establishing a Sick Leave Bank for Jaer J. Martinez, an Employee of the Department of Transitional Assistance.	11/20/2023
68	H 4144	Establishing a Sick Leave Bank for Corinne Senna, an Employee of the Trial Court of the Commonwealth.	11/20/2023
69	S 2503	Authorizing the Conveyance of a Certain Parcel of Land in the City of Fall River.	11/20/2023
70	H 4048	Authorizing the Town of Northfield to Continue the Employment of Floyd Dunnell III.	11/20/2023
71	H 4062	Authorizing the Town of Wakefield to Convey an Easement to the Wakefield Municipal Gas and Light Department.	11/20/2023
72	H 4157	Validating the Results of the Annual Town Election Held in the Town of Deerfield on May 2, 2022.	11/28/2023
73	H 2072	Increasing the Membership of the Board of Health in the Town of Reading.	11/28/2023
74	H 3746	Changing the Board of Selectmen of the Town of Avon to a Select Board.	11/28/2023
75	H 3903	Amending the Charter of the Town of Northborough.	11/28/2023
76	H 3952	Authorizing the City of Northampton to Grant 7 Additional Licenses for the Sale of All Alcoholic Beverages to Be Drunk on the Premises.	11/28/2023
77	H 4204	Making Appropriations for the Fiscal Year 2023 for Supplementing Certain Existing Appropriations and for Certain Other Activities and Projects.	12/4/2023
78	H 3720	Exempting the Position of Deputy Fire Chief in the Town of Wrentham from the Civil Service Law.	12/14/2023
79	H 3909	Changing the Town of Plymouth's 1820 Courthouse Fund to the Facilities Improvement Fund.	12/14/2023
80	H 2045	Authorizing the City of Pittsfield to Award a 1-Year or Multiple-Year Contract for an Audit of the Books and Accounts of the City.	12/14/2023
81	H 2448	Authorizing the Town of Conway to Continue the Employment of Police Officer Randall Williams.	12/14/2023

## **Acts 2023**

<b>CHAPTER NUMBER</b>	<b>BILL NUMBER</b>	<b>TITLE</b>	<b>DATE</b>
82	H 3751	Changing the Name of the Board of Selectmen of the Town of Westport to Select Board.	12/14/2023
83	H 4168	Relative to Creditable Service for Abby Levin, a Member of the Massachusetts Teachers' Retirement System.	12/14/2023





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MASSHEALTH

## **Administrative Bulletin 23-29**

### **101 CMR 324.00: Nonpublic Ambulance Service Reimbursement Trust Fund Assessment and Funding, and 101 CMR 327.00 Rates for Ambulance and Wheelchair Van Services**

Effective December 18, 2023

## **End of Administrative Pause to Nonpublic Ambulance Assessment**

### **Introduction**

Through [Administrative Bulletin 23-14](#), the Executive Office of Health and Human Services (EOHHS) announced an administrative pause to the nonpublic ambulance assessment. The pause became effective May 19, 2023. EOHHS is now ending that pause.

This bulletin provides information about how the nonpublic ambulance assessment and related supplemental payments will be determined going forward.

### **Background**

The administrative pause was a response to guidance from the Centers for Medicare & Medicaid Services (CMS), which issued an [Informational Bulletin](#) on February 17, 2023, reiterating certain federal requirements that pertain to health care-related taxes such as the nonpublic ambulance assessment, including a prohibition on so-called “hold harmless” arrangements. The Informational Bulletin defined hold harmless arrangements as those in which the “State or other unit of government imposing the tax provides (directly or indirectly) for any payment, offset, or waiver that guarantees to hold taxpayers harmless for any portion of the costs of the tax.” The Informational Bulletin included specific examples of prohibited hold harmless arrangements, including hold harmless arrangements established entirely by non-state actors.

EOHHS paused the nonpublic ambulance assessment and related supplemental payments while it reviewed compliance with the Informational Bulletin.

### **End of Administrative Pause**

EOHHS has taken steps since the pause began to address provider concern around the payment methodology of nonpublic ambulance supplemental payments and to ensure compliance with federal guidance. Accordingly, it is ending the pause in the nonpublic ambulance assessment.

On September 29, 2023, EOHHS filed [emergency amendments](#) to 101 CMR 327.00: *Rates for Ambulance and Wheelchair Van Services*. These changes adjust the nonpublic ambulance supplemental payment methodology to increase MassHealth members' access to medical services, and to further the sustainability of services provided by nonpublic ambulance providers. In addition, EOHHS has explicit authority to require providers to affirm that they are not parties to hold harmless arrangements as a condition of payment. A public hearing was held on Friday, October 27, 2023.

On September 29, 2023, EOHHS also filed a state plan amendment with CMS seeking federal expenditure authority for the new nonpublic ambulance supplemental payment methodology. CMS approved the state plan amendment.

### **Year 3**

For state fiscal year 2024 (Year 3), EOHHS anticipates assessing nonpublic ambulance providers on their most recently reported Massachusetts emergency ground ambulance net operating revenue, excluding any municipal subsidies. For most providers, this will be their fiscal year 2022 revenue reported to the Center for Health Information and Analysis (CHIA). For providers who have not submitted their fiscal year 2022 revenue, EOHHS may assess based on revenue reported in an earlier year. The assessment will be set at 5.75% of Massachusetts emergency ground ambulance net operating revenue, the minimum amount allowed under the legislation requiring the assessment.

EOHHS will pay nonpublic ambulance providers supplemental payments consistent with the revised methodology described above. EOHHS anticipates notifying providers in December 2023 or January 2024 of the first quarterly amount owed under the nonpublic ambulance assessment, as well as the nonpublic ambulance supplemental payment they will receive. To avoid liquidity issues for providers, EOHHS anticipates paying the nonpublic ambulance supplemental payment before the due date for the ambulance assessment. EOHHS will provide detailed information in individual correspondence to each nonpublic ambulance provider.

As a condition of payment, EOHHS will require providers to certify that they are not parties to hold harmless arrangements on a form that EOHHS will draft and distribute.

### **Years 1 and 2**

For state fiscal years 2022 and 2023 (Years 1 and 2, respectively), one quarterly nonpublic ambulance assessment payment was collected, and one nonpublic ambulance supplemental

payment was paid out. The administrative pause was then implemented before further payments were collected or paid out, leaving seven remaining quarters. With the regulatory changes described above, EOHHS believes that the nonpublic ambulance assessment and nonpublic ambulance supplemental payments are in full compliance with federal law and so is ending the pause for Years 1 and 2 as well.

EOHHS anticipates it will collect assessments and make supplemental payments for Years 1 and 2 in early 2024. EOHHS anticipates paying nonpublic ambulance providers supplemental payments consistent with the revised payment methodology described above. It will notify providers with the specific amounts for supplemental payments and ambulance assessment owed. As with Year 3, EOHHS anticipates paying the nonpublic ambulance supplemental payment before the due date for the ambulance assessment.

Also, as in Year 3, the nonpublic ambulance assessment will be set at 5.75% of Massachusetts emergency ground ambulance net operating revenue for Years 1 and 2, the minimum amount allowed under the legislation requiring the assessment. Similarly, as a condition of payment, EOHHS will require providers to certify that they are not parties to hold harmless arrangements on a form that EOHHS will draft and distribute.





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December 21, 2023

Steven P. Kfoury, Fourth Deputy Secretary  
State Publications and Regulations Division  
Secretary of the Commonwealth  
State House, Room 117  
Boston, MA 02133

Dear Mr. Kfoury:

As required by G.L. c. 30A, § 6D, I am providing the following list of regulations that either the Executive Office for Administration and Finance ("A&F") or one of its constituent agencies anticipate, at this time, will be adopted or amended within the next twelve months. This listing does not cover any regulations that may be required to be promulgated as a result of legislation passed during the upcoming legislative session.

- **Executive Office for Administration and Finance**

No anticipated regulatory changes.

- **Department of Revenue**

830 CMR 62.3.2: Charitable Contribution Deduction  
830 CMR 62.5A.1: Non-Resident Income Tax  
830 CMR 62.6.X: Offshore Wind Capital Investment Credit  
830 CMR 62.6.XX: Offshore Wind Jobs Credit  
830 CMR 62C.16.2: Sales and Use Tax Returns and Payments  
830 CMR 62C.16B.1: Advance Payments of Sales and Use Tax and Room Occupancy Excise  
830 CMR 62C.33.1: Interest, Penalties and Application of Payments  
830 CMR 62C.55A.1: Determination of Amount Exempt from Levy  
830 CMR 62C.64.1: Release of Levy  
830 CMR 63.30.2: Net Operating Loss Deductions and Carry Forward  
830 CMR 63.381.1: Apportionment of Income  
830 CMR 63.38.2: Apportionment of Income of Airlines  
830 CMR 63.38.3: Apportionment of Income of Motor Carriers  
830 CMR 63.38.4: Apportionment of Income of Courier and Package Delivery Services  
830 CMR 63.38.8: Apportionment of Income of Pipeline Companies

830 CMR 63.38.10: Apportionment of Income of Electric Industry  
830 CMR 63.38.11: Apportionment of Income of Telecommunications Industry  
830 CMR 63.38M.2: Massachusetts Qualified Research Expense Credit  
830 CMR 63.38N.2: Economic Development Incentive Program  
830 CMR 63.38GG.1, Veteran's Hire Tax Credit  
830 CMR 63.38HH.1: Apprentice Credit  
830 CMR 63.38KK.1: National Guard Hiring Tax Credit  
830 CMR 63.39.1: Corporate Nexus  
830 CMR 64G.1.1: Massachusetts Room Occupancy Excise  
830 CMR 64H.1.3: Computer Industry Services and Products  
830 CMR 64H.1.9: Remote Retailers and Marketplace Facilitators  
830 CMR 64H.6.5: Sales Tax on Meals  
830 CMR 64H.25.1: Motor Vehicles  
830 CMR 65.3.1: Farmland Valuation for Estate Tax

- **Group Insurance Commission**

No anticipated regulatory changes.

- **Division of Capital Asset Management and Maintenance**

810 CMR 4 – Certification of contractors and sub-bidders to bid on public building construction contracts

- **Designer Selection Board**

No anticipated regulatory changes.

- **Appellate Tax Board**

No anticipated regulatory changes.

- **Human Resources Division**

No anticipated regulatory changes.

- **Operational Services Division**

No anticipated regulatory changes.

- **Supplier Diversity Office**

808 CMR 1.00 - Compliance Reporting and Auditing for Human and Social Services

- **State Library of Massachusetts**

No anticipated regulatory changes.

- **Division of Administrative Law Appeals**

No anticipated regulatory changes.

- **Civil Service Commission**

No anticipated regulatory changes.

- **Bureau of the State House**

No anticipated regulatory changes.

This list is subject to revision. If you need more information, please feel free to contact me at [martha.a.kwasnik2@mass.gov](mailto:martha.a.kwasnik2@mass.gov) or by phone at 617-727-2040.

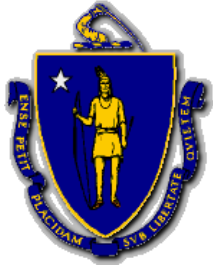
Sincerely,

/s/ Martha Kwasnik

Martha Kwasnik  
General Counsel







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December 22<sup>nd</sup>, 2023

**VIA E-MAIL ONLY** ([Regulations@sec.state.ma.us](mailto:Regulations@sec.state.ma.us))

Stephen P. Kfoury  
Executive Director  
State Publications and Regulations Division  
Secretary of the Commonwealth  
One Asburton Place  
Boston, MA 02108

Re: **Annual List of Prospective Regulations**

Dear Mr. Kfoury:

The Executive Office of Economic Development (EOED) submits the following list of the regulations expected to be promulgated, amended or rescinded. This list is based on reasonable inquiry made with each of the agencies listed below and information provided by them as of the date of this letter.

**EXECUTIVE OFFICE OF ECONOMIC DEVELOPMENT**

400 CMR 6.00: Notices to Quit Attestation Form (rescind)

400 CMR 7.00: National Guard Hiring Tax Credit (new regulation)

400 CMR 8.00: Cannabis Social Equity Trust Fund (new regulation)

402 CMR 2.00: Economic Assistance Coordinating Council (amendment)

**OFFICE OF CONSUMER AFFAIRS AND BUSINESS REGULATION**

201 CMR 11:00: New and Used Motor Vehicle Arbitration (amendment)

201 CMR 14.00: Home improvement contractor arbitration and guaranty fund (amendment)

201 CMR 17.00: Standards for the protection of personal information of residents of the Commonwealth (amendment)

201 CMR 18.00: Registration and enforcement of home improvement contractor program (amendment)

### **Department of Telecommunications and Cable**

207 CMR 1.00: Procedural Rules (amendment)

207 CMR 3.00: Cable Licensing (amendment)

207 CMR 12.00: Tariffs and Rate Schedules (amendment)

220 CMR 45.00: Pole Attachment, Duct, Conduit and Right-of-Way Complaint and Enforcement Procedures (amendment)

### **Division of Banks**

209 CMR 18.00: Conduct of the Business of Debt Collectors and Loan Servicers (amendment)

209 CMR 42.00: The Licensing of Mortgage Lenders and Mortgage Brokers (amendment)

209 CMR 43.00: Audit and Security Requirements for Credit Unions (amendment)

209 CMR 45.00: The Licensing and Regulation of Money Services Businesses (amendment)

209 CMR 46.00: Community Reinvestment (amendment)

209 CMR 48.00: Licensee Record Keeping (amendment)

209 CMR 50.00: Parity with Federal Credit Unions (amendment)

209 CMR 54.00: Mortgage Lender Community Investment (amendment)

### **Division of Insurance**

211 CMR 7.00: Massachusetts Insurance Holding Company System (amendment)

211 CMR 34.00: The Replacement of Life Insurance and Annuities (amendment)

211 CMR 40.00: Marketing of Insurance Health Plans (amendment)

211 CMR 97: Procedure for Cancellation and Non-renewal for Motor Vehicle Policies (amendment)

211 CMR 123.00: Direct Payment of Motor Vehicle Collision and Comprehensive Coverage Claims and Referral Repairs Shop Programs (amendment)

211 CMR 133.00: Standards for the Repair of Damaged Motor Vehicles (amendment)

211 CMR 149.00: Annual Comprehensive Financial Statements Pursuant to M.G.L. c. 176O, § 21 (amendment)

211 CMR XXX – Dental Insurance Medical Loss Ratios pursuant to Massachusetts Question 2, Medical Loss Ratios for Dental Insurance Plan Initiative (new)

### **Division of Occupational Licensure**

#### **Private Occupational Schools**

230 CMR 2.00 - Standard Examinations (amendment)

230 CMR 12.00 - Private Occupational Schools: Definitions (amendment)

230 CMR 13.00 - Private Occupational Schools: Licensing of Schools and Sales Representatives (amendment)

230 CMR 14.00 - Facilities, Equipment, Curriculum, Instructors, and Staff (amendment)

230 CMR 15.00 - Private Occupational Schools: General Provisions and Standards of Practice - (amendment)

230 CMR 16.00 - Private Occupational Schools: Denials of Licensure and Disciplinary Action - (amendment)

230 CMR 17.00 - Private Occupational Schools: Effective Dates (amendment)

#### **Board of Registration of Architects**

231 CMR 2.00 - General provisions (amendment)

231 CMR 3.00 - Procedures for application, examination, resignation, and renewal - (amendment)

231 CMR 4.00 - Rules of professional conduct (amendment)

#### **Board of Certification of Operators of Drinking Water Supply Facilities**

236 CMR 2.00 – General Provisions (amendment)

236 CMR 3.00 – Classification of Public Water Systems and Public Water Systems Operators (amendment)

236 CMR 4.00 – Certification of Operators of Public Water Systems (amendment)

236 CMR 5.00 – Disciplinary Action (amendment)

Board of State Examiners of Electricians

237 CMR 12.00 - Definitions (amendment)

237 CMR 13.00 - Eligibility criteria for initial licensure (amendment)

237 CMR 14.00 - Examinations for licensure (amendment)

237 CMR 15.00 - Licensure without examination (amendment)

237 CMR 16.00 - Business and other license procedures (amendment)

237 CMR 17.00 - Mandatory continuing education (amendment)

237 CMR 18.00 - Rules governing practice (amendment)

237 CMR 22.00 - Required electrical education (amendment)

237 CMR 23.00 - Insurance requirements for limited liability corporations and limited liability (amendment)

Board of Registration in Embalming and Funeral Directing

239 CMR 3.00 - Registration requirements: standards of business and professional practice (amendment)

239 CMR 4.00 - Pre-need funeral contracts and arrangements (amendment)

239 CMR 5.00 - Continuing education (amendment)

Board of Registration of Cosmetology and Barbering

240 CMR 2.00 – Licensure of Cosmetologists, Manicurists, Aestheticians, Demonstrators and Instructors (amendment)

240 CMR 3.00 – Cosmetology Salons (amendment)

240 CMR 4.00 – Operation of Cosmetology Schools and Post-Secondary Institutions (amendment)

240 CMR 5.00 – Operation of Aesthetics Schools and Post-Secondary Institutions (amendment)

240 CMR 7.00 – Operation of Manicuring Schools (amendment)

240 CMR 8.00 – Barber Regulations (amendment)

240 CMR 9.00 – Administrative practices for electrolysis (amendment)

240 CMR 10.00 – Licensure of electrolysis schools (amendment)

240 CMR 11.00 – Continuing education for electrolysis (amendment)

Board of State Examiners of Plumbers and Gas Fitters

248 CMR 3.00 – General Provisions (amendment)

248 CMR 4.00 – Massachusetts fuel gas code (amendment)

248 CMR 5.00 – Amendments to the 2012 Edition of NFPA 54 (amendment)

248 CMR 7.00 – Large gas utilization equipment (amendment)

248 CMR 8.00 – Amendments to NFPA 58

248 CMR 10.00 – Uniform State Plumbing Code (amendment)

248 CMR 11.00 – Education and Experience Standards and Requirements for Licensure (amendment)

Board of Registration of Professional Engineers and of Land Surveyors

250 CMR 2.00 – General Provisions, Board Procedures and Definitions (amendment)

250 CMR 3.00 – The Registration Process (amendment)

250 CMR 5.00 – Professional Practice (amendment)

250 CMR 6.00 – Land Surveying Procedures and Standards (amendment)

250 CMR 7.00 – Enforcement and Discipline (amendment)

Board of Public Accountancy

252 CMR 2.00 – Requirements of Certification (amendment)

Board of Registration of Real Estate Brokers and Salespersons

254 CMR 2.00 – Licensure (amendment)

254 CMR 3.00 – Professional Standards of Practice (amendment)

254 CMR 4.00 - Real Estate School Authorization (amendment)

254 CMR 5.00 – Continuing Education (amendment)

254 CMR 6.00 – Promotional Sales of Out of State Real Property (amendment)

254 CMR 7.00 – Apartment Rentals (amendment)

Board of Registration in Veterinary Medicine

256 CMR 2.00 - Definitions (amendment)

256 CMR 3.00 – Licenses (amendment)

256 CMR 4.00 - Temporary permits (amendment)

256 CMR 5.00 – Practice (amendment)

256 CMR 7.00 - Code of professional conduct (amendment)

256 CMR 8.00 – Supervision of veterinary assistants/technicians (new)

256 CMR 9.00 - Continuing education (amendment)

256 CMR 10.00 - Limited liability corporations and limited liability partnerships (amendment)

#### Board of Real Estate Appraisers

264 CMR 2.00 – General Provisions

264 CMR 3.00 – Application, Examination and Registration Procedures (amendment)

264 CMR 4.00 – Renewal Procedures and Continuing Education Requirements (amendment)

264 CMR 5.00 – Licensure/Certification Requirements (amendment)

264 CMR 6.00 – Practice of Real Estate Appraisal (amendment)

264 CMR 9.00 – Course Approval Requirements for Providers of Primary and Continuing Education (amendment)

#### Board of Registration of Home Inspectors

266 CMR 2.00 - Definitions (amendment)

266 CMR 3.00 - Procedure for registration (amendment)

266 CMR 4.00 - Associate home inspector training program requirements (amendment)

266 CMR 5.00 - Continuing education (amendment)

266 CMR 6.00 - Standards of practice (amendment)

266 CMR 8.00 - Professional competence and conduct (amendment)

266 CMR 9.00 - Complaint process (amendment)

266 CMR 10.00 - Procedures for hearings and appeals (amendment)

266 CMR 11.00 - Insurance requirements for limited liability corporations and limited liability partnerships (amendment)

#### Board of Registration of Massage Therapy

269 CMR 2.00 – Definitions (amendment)

269 CMR 3.00 – Individual Licensure (amendment)

269 CMR 4.00 – Continuing Education (new)

269 CMR 5.00 – Code of Professional Ethics and Standards of Professional Practice (amendment)

269 CMR 6.00 – Facility Licensure (amendment)

Board of Registration of Landscape Architects

242 CMR 3.00 – Policy Rules and Regulations

Board of Examiners of Sheet Metal Workers

271 CMR 2.00 - Definitions (amendment)

271 CMR 3.00 - Individual licensure (amendment)

271 CMR 4.00 - Continuing education (amendment)

271 CMR 5.00 - Code of professional ethics and standards of professional practice (amendment)

271 CMR 6.00 - Uniform sheet metal installation rules (amendment)

271 CMR 7.00 - Business licensure (amendment)

271 CMR 8.00 - Sheet metal worker training programs (amendment)

271 CMR 9.00 - Permits and inspections (amendment)

**Office of Public Safety and Inspections**

520 CMR 1.00: Enforcement of Civil Fines (amendment)

520 CMR 5.00: Amusement Devices (amendment)

520 CMR 6.00: Hoisting Machinery (amendment)

520 CMR 14.00: Excavation and Trench Safety (amendment)

520 CMR 16.00: Enforcement of Civil Fines for Expired Elevator Certificates (amendment)

State Athletic Commission

523 CMR 5.00—General Provisions (amendment)

523 CMR 6.00—Licensing and Registration (amendment)

523 CMR 10.00—Arranging and Promoting Programs of Unarmed Combat (amendment)

523 CMR 12.00—Facilities, Equipment and Supplies (amendment)

523 CMR 13.00—Weight Classes, Weigh-Ins, Pre- and Post-Fight Physical Examinations and Medical Conditions (amendment)

523 CMR 14.00—General Requirements for all Unarmed Combat Contests and Exhibitions (amendment)

523 CMR 15.00—Boxing Contests and Exhibitions (amendment)

523 CMR 16.00—Mixed Martial Arts Contests and Exhibitions (amendment)

523 CMR 23.00—Southeast Asian Kickboxing (amendment)

#### Board of Elevator Regulations

801 CMR 4.02, § 524 Board of Elevator Regulations (amendment)

524 CMR 1.00 Scope and administration (amendment)

524 CMR 4.00 Accident and injury reporting requirements (amendment)

524 CMR 5.00 Elevator contractors (amendment)

524 CMR 8.00 Practical tests and inspections (amendment)

524 CMR 9.00 Operation of non-automatic elevators (amendment)

524 CMR 10.00 Requirements for permits and inspections of existing elevators undergoing alterations and replacements (amendment)

524 CMR 11.00 Elevators placed out of service or decommissioned (amendment)

524 CMR 26.00 Certain elevator equipment used as motor vehicle parking devices (amendment)

524 CMR 29.00 Stage, orchestra, and organ console elevators (amendment)

524 CMR 31.00 Casket lifts installed in licensed funeral homes, memorial chapels, or preparation rooms (amendment)

524 CMR 32.00 Vertical reciprocating conveyors (amendment)

524 CMR 35.00 Safety code for elevators and escalators A17.1-2013 and the Massachusetts modifications of that code (amendment)

524 CMR 36.00 Personnel hoists and employee elevators on construction and demolition sites (amendment)



Recreational Tramway Board

526 CMR 10.00 Recreational tramways (amendment)

Bureau of Pipefitters, Refrigeration Technicians, and Sprinkler Fitters

528 CMR 2.00 – Purpose, Scope and Definitions (amendment)

528 CMR 3.00 - Standards Adopted (amendment)

528 CMR 11.00 - Prerequisites for Examinations for Pipefitters, Refrigeration Technicians, and Sprinkler Fitters (amendment)

Boxers' Fund Board

529 CMR 2.00 - Administration of the Fund (amendment)

Board of Building Regulations and Standards

780 CMR 1.00 to 115.00 - State Building Code (amendment)

**Division of Standards**

202 CMR 5.00: Unit Pricing and Automatic Retail Checkout Systems (amendment)

Sincerely,

A handwritten signature in black ink, appearing to read "Robert J. McGovern", with a long horizontal flourish extending to the right.

Robert McGovern  
Deputy General Counsel





THE COMMONWEALTH OF MASSACHUSETTS

EXECUTIVE OFFICE OF EDUCATION

ONE ASHBURTON PLACE ■ ROOM 1403

BOSTON, MA 02108

MAURA T. HEALEY  
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December 22, 2023

**By E-mail**

Steven P. Kfoury  
Executive Director, State Publications and Regulations Division  
Office of the Secretary of the Commonwealth  
State House, Room 117  
Boston, Massachusetts 02108  
[Steven.kfoury@sec.state.ma.us](mailto:Steven.kfoury@sec.state.ma.us)

**Re: Annual List of Prospective Regulations**

Dear Mr. Kfoury:

As required by G.L. c. 30A, section 6D, I am providing the following list of Education Secretariat regulations that either the Executive Office of Education (EOE) or one of the three education departments within EOE anticipate will be amended or rescinded in the next 12 months:

**Executive Office of Education**

No anticipated regulatory changes.

**Department of Early Education and Care**

102 CMR 1.00 – Enforcement Standards and Definitions for Licensure or Approval (*possible revisions*)

606 CMR 3.00 – Standards for the Licensure or Approval of Residential Programs Serving Children and Teen Parents (*possible revisions*)

606 CMR 5.00 - Standards for the Licensure or Approval of Child Placement and Adoption Services (*possible revisions*)

606 CMR 7.00 – Standards for the Licensure or Approval of Family Child Care; Small Group and School Age and Large Group & School Age Child Care Programs (*possible revisions*)

606 CMR 15.00 – Early Education and Out of School Time Capital Fund Program (*promulgate revisions in 2024*)

### **Department of Elementary and Secondary Education**

603 CMR 46.00 – Prevention of Physical Restraint and Requirements if Used (*possible revisions*)

### **Department of Higher Education**

610 CMR 2.00 – Degree-Granting Regulations for Independent Institutions of Higher Education (*possible revisions*)

610 CMR 15 – Programmatic Regulations for the Massachusetts Inclusive Concurrent Enrollment Initiative

This list is subject to revision. If you need further information, please contact me at Abigail.fee2@mass.gov.

Regards,

/s/Abigail Fee  
Abigail Fee  
General Counsel  
Executive Office of Education

Cc: Blair Brown, Assistant Secretary for Strategic Initiatives and Legislative Affairs, Executive Office of Education (via email)  
Neil J. Flynn, Acting General Counsel, Department of Early Education and Care (via email)  
Constantia Papanikolaou, General Counsel, Department of Higher Education (via email)  
Rhoda E. Schneider, General Counsel, Department of Elementary and Secondary Education (via email)  
Tod Rasmussen, Publications and Regulations Division, Secretary of the Commonwealth (via email)



*The Commonwealth of Massachusetts*  
*Executive Office of Energy and Environmental Affairs*  
*100 Cambridge Street, Suite 900*  
*Boston, MA 02114*

Maura Healey  
GOVERNOR

Kim Driscoll  
LIEUTENANT GOVERNOR

Rebecca Tepper  
SECRETARY

Tel: (617) 626-1000  
Fax: (617) 626-1081  
<http://www.mass.gov/eea>

**To:** Steven P. Kfoury, Fourth Deputy Secretary,  
State Publications and Regulations Division  
**Cc:** Tod Rasmussen  
State Publications and Regulations Division  
**From:** Peter C. Mulcahy, General Counsel,  
Executive Office of Energy and Environmental Affairs  
**Re:** Annual List of Prospective Regulations - Update  
**Date:** December 22, 2023

On behalf of the Energy and Environmental Affairs Secretariat, I provide the following list of regulatory changes expected to be promulgated during the next twelve months, pursuant to the requirements of M.G.L. c. 30A.

**Department of Fish and Game**

**Office of Fishing and Boating Access**

320 CMR 2.00 Public Access Facilities

**Division of Fisheries and Wildlife**

321 CMR 2.00 Miscellaneous Regulations  
321 CMR 3.00 Hunting  
321 CMR 4.00 Fishing  
321 CMR 6.00 Interstate Wildlife Violator Compact  
321 CMR 7.00 Wildlife Sanctuaries  
321 CMR 9.00 Exemption List  
321 CMR 10.00 Massachusetts Endangered Species Act

**Division of Marine Fisheries**

322 CMR X.XX Interstate Wildlife Violator Compact  
322 CMR 4.00 Fishing and Shellfish Equipment  
322 CMR 6.00 Regulation of Catch  
322 CMR 7.00 Permits  
322 CMR 8.00 Coastal Fisheries Conservation and Management  
322 CMR 10.00 Management of Moderately Contaminated Shellfish  
322 CMR 12.00 Protected Species

322 CMR 15.00	Management of Marine Aquaculture
322 CMR 16.00	Shellfish Sanitation, Harvest, Handling and Management

### **Department of Conservation and Recreation**

302 CMR 3.00	Scenic and Recreational Rivers Orders
302 CMR 8.00	Major Capital Improvements Within Mount Greylock State Reservation
302 CMR 10.00	Dam Safety
302 CMR 11.00	Parkways, Traffic, and Pedestrian Rules
302 CMR 12.00	Parks and Recreation Rules
302 CMR 14.00	Forester Licensing
302 CMR 15.00	Ch. 61, Forest Classification
302 CMR 16.00	Forest Cutting Practices
302 CMR 17.00	Classification and Rating of Prospective Bidders
302 CMR 18.00	Aquatic Nuisance Control
302 CMR 19.00	Small Wireless Facility and New Small Cell Structure Licensing
302 CMR 20.00	Stormwater Drainage Systems
304 CMR 7.00	Management Plans and Wildlands
313 CMR 11.00	Watershed Protection
801 CMR 4.02[302]	Fees for Licenses, Permits and Services to be Charged by State Agencies

### **Department of Agricultural Resources**

330 CMR X.XX	Farm Viability Program
330 CMR X.XX	Processing and Manufacturing of Hemp and Hemp-Derived Products
333 CMR 9.00	Licensing Pesticide Dealers
333 CMR 10.00	Certification and Licensing of Pesticide Applicators
333 CMR 14.00	Protection of Families and Children from Harmful Pesticides
801 CMR 4.00	Rates: Hemp Program Fees
330 CMR 35.00	Regulations Implementing the Act to Prevent Cruelty to Animals

### **Department of Public Utilities**

220 CMR 8.00	Sales of Electricity by Qualifying Facilities and On-Site Generating Facilities to Distribution Companies, and Sales of Electricity by Distribution Companies to Qualifying Facilities and On-Site Generation Facilities
220 CMR 18.00	Net Metering
220 CMR 99.00	Procedures for the Determination and Enforcement of Violations of Safety Codes Pertaining to Damage Prevention
220 CMR 100.00	Massachusetts Gas Distribution Code
220 CMR 101.00	Natural Gas Pipeline Safety Code
220 CMR 151.00	Rail Fixed Guideway System: System Safety/Security Program Standard
220 CMR 272.00	Rates for the Towing of Motor Vehicles
220 CMR 274.00	Transportation Network Company Oversight
220 CMR 275.00	Suitability Standards for Transportation Network Drivers
220 CMR 276.00	Transportation Network Company Division Practice and Procedures

220 CMR 277.00	Transportation Network Vehicle Electrification
980 CMR 1.00	Rules for the Conduct of Adjudicatory Proceedings
980 CMR 2.00	General Information and Conduct of Board Business
980 CMR 4.00	Freedom of Information: Protection of Trade Secrets
980 CMR 5.00	Environmental Assessment and Environmental Impact Reports
980 CMR 6.00	Certification of Environmental Impact and Public Need
980 CMR 7.00	Long-Range Forecasts and Supplements
980 CMR 8.00	Notices of Intention to Construct an Oil Facility
980 CMR 9.00	Coastal Zone Facility Site Selection, Evaluation and Assessment
980 CMR 10.00	Siting of Intrastate Liquefied Natural Gas Storage
980 CMR 11.00	Licensing of Hydropower Generating Facilities
980 CMR 12.00	Technology Performance Standards

### **Department of Energy Resources**

225 CMR 16.00	Alternative Energy Portfolio Standard (APS)
225 CMR 20.00	Solar Massachusetts Renewable Target (SMART) Program
225 CMR 21.00	Clean Peak Energy Portfolio Standard (CPS)
225 CMR 23.00	Massachusetts Front-End Amendments to the International Energy Conservation Code 2021 Massachusetts Stretch Energy Code – 2023 Commercial Amendments to IECC2021
225 CMR 25.00	Participation in the Green Communities Program
225 CMR XX.XX	Building Energy Reporting

### **Department of Environmental Protection**

310 CMR 1.00	Adjudicatory Proceedings
310 CMR 3.00	Access to and Confidentiality of Department Records
310 CMR 4.00	Timely Action and Fees
310 CMR 7.00	Cumulative Impact Analysis for Certain Air Permits
310 CMR 7.40	Low Emission Vehicle Program
310 CMR 7.71	Reporting of Greenhouse Gas Emissions
310 CMR 7.74	Reducing CO2 Emissions from Electricity Generating Facilities - Air Pollution Control
310 CMR 7.75	Clean Energy Standard
310 CMR 7.77	Clean Heat Standard
310 CMR 9.00	Waterways
310 CMR 10.00	Wetlands Protection
310 CMR 16.00	Solid Waste
310 CMR 19.00	Solid Waste
310 CMR 22.00	Drinking Water
310 CMR 30.000	Hazardous Waste
310 CMR 32.00	Land Application of Sludge and Septage
310 CMR 46.00	Well Services
314 CMR 2.00	Permit Procedures for Wastewater Discharges
314 CMR 3.00	Surface Water Discharge Permits
314 CMR 5.00	Ground Water Quality Standards
314 CMR 9.00	Water Quality Certification
314 CMR 12.00	Operation and Maintenance of Wastewater Treatment Plants
310 CMR 78.00	Flame Retardants

## **Executive Office of Energy and Environmental Affairs**

### **Executive Office of Energy and Environmental Affairs**

301 CMR X.XX	Transfer of Development Rights
301 CMR X.XX	Public Land Protection
301 CMR X.XX	Citizen Petitions Procedure
301 CMR X.XX	Natural Resource Damages

### **Massachusetts Environmental Policy Act Office**

301 CMR 11.00	MEPA Regulations
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### **Coastal Zone Management**

301 CMR 25.00	Designation of Port Areas
301 CMR 28.00	Ocean Management Plan

### **Office of Technical Assistance**

301 CMR 40.00	Toxic Use Fee
301 CMR 41.00	Toxic or Hazardous Substance List

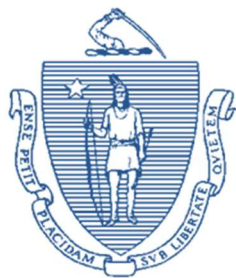
### **Massachusetts Environmental Police**

323 CMR 1.00	Motorboat Titling
323 CMR 2.00	Use of Vessels
323 CMR 4.00	Operation of Personal Watercraft

## **Massachusetts Water Resources Authority**

360 CMR 10.000	Sewer Use
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EXECUTIVE OFFICE OF HEALTH AND HUMAN SERVICES  
**COMMONWEALTH OF MASSACHUSETTS**  
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**MAURA T. HEALEY**  
GOVERNOR

**KATHLEEN E. WALSH**  
SECRETARY

**KIMBERLEY DRISCOLL**  
LIEUTENANT GOVERNOR

**To: State Publications & Regulations Division**

**From: Sharon Boyle, General Counsel**

**Re: Annual List of Prospective Regulations**

**Date: December 19, 2023**

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As per your request and in compliance with M.G.L. C.30A: section 6D. The following is the updated list of regulations expected to be promulgated by the Executive Office of Health and Human Service Agencies in FY 2024.

**Executive Office of Health and Human Services**

101 CMR 17.00	Unified Planning Teams
101 CMR 23.00	COVID-19 and Influenza Vaccinations for Staff at Certain Agency Facilities
101 CMR 27.00	Interagency Review of Complex Cases
101 CMR 204.00	Rates of Payment to Resident Care Facilities
101 CMR 206.00	Standard Payments to Nursing Facilities
101 CMR 307.00	Rates for Psychiatric Day Treatment Center Services
101 CMR 310.00	Rates for Adult Day Health Services
101 CMR 314.00	Rates for Dental Services
101 CMR 316.00	Rates for Surgery and Anesthesia Services
101 CMR 317.00	Rates for Medicine Services
101 CMR 327.00	Rates of Payment for Ambulance and Wheelchair Van Services
101 CMR 330.00	Rates for Team Evaluation Services
101 CMR 334.00	Rates for Prostheses, Prosthetic Devices and Orthotic Devices
101 CMR 337.00	Rates for Chronic Maintenance Dialysis Treatments and Home Dialysis
101 CMR 339.00	Rates for Restorative Services
101 CMR 343.00	Rates for Hospice Services
101 CMR 345.00	Rates for Temporary Nursing Services
101 CMR 346.00	Rates for Certain Substance-Related and Addictive Disorders Programs
101 CMR 347.00	Rates for Freestanding Ambulatory Surgery Center Services

**Executive Office of Health and Human Services (cont.)**

101 CMR 348.00	Rates for Day Habilitation Services
101 CMR 349.00	Rates for Early Intervention Services
101 CMR 355.00	Rates for Freestanding Birth Control Centers
101 CMR 356.00	Rates for Money Follows the Person Demonstration Services
101 CMR 361.00	Rates for Continuous Skilled Nursing Agency and Independent Nursing Services
101 CMR 362.00	Rates for Community Support Program Services
101 CMR 402.00	Vision Care Services
101 CMR 410.00	Rates for Competitive Integrated Employment Services
101 CMR 411.00	Rates for Certain Placement, Support and Shared Living Services
101 CMR 413.00	Payments for Youth Intermediate Term Stabilization Services
101 CMR 414.00	Rates for Family Stabilization Services
101 CMR 416.00	Rates for Clubhouse Services
101 CMR 417.00	Rates for Certain Elder Care Services
101 CMR 419.00	Rates for Community-Based Day Support Services
101 CMR 422.00	Rates for General Programs - Disability Services
101 CMR 446.00	Public Health Emergency Payment Rates for Certain Community Health Care Providers
101 CMR 451.00	Rates for Certain Youth and Children Services

**Department of Mental Health**

104 CMR 25.00	Authority, Vision, Mission, Definitions and Computation of Time
104 CMR 26.00	Organizational Structure and Citizen Participation
104 CMR 27.00	Licensing and Operational Standards for Mental Health Facilities
104 CMR 28.00	Licensing and Operational Standards for Community Services
104 CMR 29.00	Application for DMH Services, Referral, Service Planning and Appeals
104 CMR 32.00	Investigation and Reporting Responsibilities

**Department of Public Health**

105 CMR 120.000	The Control of Radiation
105 CMR 130.000	Hospital Licensure
105 CMR 140.000	Licensure of Clinics
105 CMR 142.000	Birth Centers
105 CMR 159.000	COVID-19 Vaccinations for Certain Staff Providing Home Care Services in Massachusetts
105 CMR 168.000	Licensure of Alcohol and Drug Counselors
105 CMR 173.000	Mobile Integrated Health Care Programs
105 CMR 180.000	The Operation, Approval and Licensing of Clinical Laboratories
105 CMR 210.000	The Administration of Prescription Medications in Public and Private Schools
105 CMR 222.000	Massachusetts Immunization Information System (MIIS)
105 CMR 270.000	Blood Screen of Newborns for Treatable Diseases and Disorders
105 CMR 300.000	Reportable Diseases, Surveillance, and Isolation and Quarantine Requirements
105 CMR 430.000	Minimum Standards for Recreational Camps for Children (State Sanitary Code, Chapter IV)
105 CMR 435.000	Sanitary Standards for Swimming pools

**Department of Public Health (cont.)**

105 CMR 445.000	Minimum Standards for Bathing Beaches (State Sanitary Code Chapter VII)
105 CMR 460.000	Lead Poisoning Prevention and Control
105 CMR 590.000	Minimum sanitation standards for food establishments
105 CMR 700.000	Implementation of M.G.L. c.94C
105 CMR 721.000	Standards for Prescription Format and Security in Massachusetts
105 CMR 722.000	Dispensing Procedures for Clinic and Hospital Pharmacies
105 CMR 970.000	Pharmaceutical and Medical Device Manufacturer Conduct
234 CMR 2.00	Purpose and Definitions
234 CMR 5.00	Requirements for the Practice of Dentistry, Dental Hygiene and Dental Assisting
234 CMR 6.00	Administration of Anesthesia and Sedation
234 CMR 7.00	Mobile and Portable Dentistry
235 CMR 2.00	Definitions, board procedures and requirements for full licensure
247 CMR 2.00	Definitions
247 CMR 5.00	Orally and Electronically Transmitted Prescriptions: Prescription Monitoring Program (PMP) Reporting Requirements
247 CMR 6.00	Registration, Management and Operation of a Pharmacy Department
247 CMR 9.00	Code for Professional Conduct: Professional Standards for Registered Pharmacists, Pharmacies, and Pharmacy Departments
247 CMR 12.00	Restricted Pharmacy
247 CMR 15.00	Continuous Quality Improvement Program
247 CMR 17.00	Sterile Compounding
247 CMR 18.00	Non-Sterile Compounding
247 CMR 20.00	Reporting
247 CMR 22.00	Fining
251 CMR 3.00	Registration of Psychologists
260 CMR 1.00	Standards, complaint, and grievance procedure
260 CMR 2.00	Application and licensing requirements
262 CMR 2.00	Requirements for licensure as a mental health counselor
262 CMR 3.00	Requirements for licensure as a marriage and family therapist
262 CMR 8.00	Ethical codes and standards of conduct
263 CMR 5.00	Scope of Practice Employment of Physician Assistants and Standards of Conduct
265 CMR 6.00	Standards of Practice
801 CMR 4.02	Rates (Fees – 247, 260, 262)

**Department of Transitional Assistance**

106 CMR 701.000	Transitional Cash Assistance Programs
106 CMR 327.000	State Supplement Program
106 CMR 360.000	Supplemental Nutrition Assistance Program
106 CMR 343.000	Fair Hearing Rules

**Massachusetts Rehabilitation Commission**

No prospective regulatory action anticipated

**Department of Youth Services**

109 CMR 4.00	Classification of Youth Committed to the Department of Youth Services
109 CMR 8.00	The Granting and Revocation of Conditional Liberty for Youth Committed to the Department of Youth Services

**Department of Children and Families**

110 CMR 2.00	Glossary
110 CMR 4.00	Intake
110 CMR 5.00	Family Assessment and Action Planning
110 CMR 7.00	Services
110 CMR 9.00	Case Closure
110 CMR 18.00	Background Record Checks
110 CMR 19.00	Foster Care

**Massachusetts Commission for the Blind**

111 CMR 3.00	Vending Facility Program
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**Massachusetts Commission for the Deaf and Hard of Hearing**

112 CMR 3.00	Interpreter Services for the deaf and hard of hearing: procedures and structures for the provision of interpreters for the deaf and hard of hearing by state agencies
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**Department of Developmental Services**

115 CMR 2.00	Definitions
115 CMR 4.00	Records
115 CMR 5.00	Standards to Promote Dignity
115 CMR 9.00	Investigations and Reporting Responsibilities
115 CMR 14.00	Self Directed Programs

**MA Office of Refugees and Immigrants**

121 CMR 2.000	Massachusetts Refugee Resettlement Program
121 CMR 3.000	Massachusetts Refugee Resettlement Program Auxiliary Activities

**Office of Medicaid**

130 CMR 427.000	Oxygen and Respiratory Therapy Equipment
130 CMR 434.000	Psychiatric Outpatient Hospital Services
101 CMR 438.000	Continuous Skilled Nursing Agency Services
130 CMR 450.000	Administrative and Billing Regulations
130 CMR 457.000	Freestanding Birth Center Services
130 CMR 464.000	Program of Assertive Community Treatment Services
130 CMR 501.000	Health Care Reform: MassHealth: General Policies
130 CMR 502.000	Health Care Reform: MassHealth: The Eligibility Process
130 CMR 505.000	Health Care Reform: MassHealth: Coverage Types
130 CMR 506.000	Health Care Reform: MassHealth Financial Requirements
130 CMR 508.000	MassHealth Managed Care Requirements
130 CMR 519.000	MassHealth: Coverage Types
130 CMR 520.000	MassHealth: Financial Eligibility
130 CMR 610.000	MassHealth: Fair Hearing Rules

**Board of Registration in Medicine**

243 CMR 2.00	Licensing and the Practice of Medicine
243 CMR 4.00	Rules of Procedure Governing Disciplinary Proceedings for Acupuncturists
243 CMR 5.00	The Practice of Acupuncture

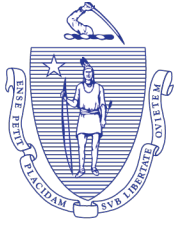
**Executive Office of Elder Affairs**

651 CMR 14.00      Aging Services Access Points

651 CMR xx.xx      POLST

651 CMR 12.00      Certification Procedures and Standards for Assisted Living Residences





THE COMMONWEALTH OF MASSACHUSETTS  
EXECUTIVE OFFICE OF LABOR AND WORKFORCE DEVELOPMENT

CHARLES D. BAKER  
GOVERNOR  
KARYN E. POLITO  
LIEUTENANT GOVERNOR

ROSALIN ACOSTA  
SECRETARY

December 22, 2023

*By Electronic Mail ([steven.kfoury@sec.state.ma.us](mailto:steven.kfoury@sec.state.ma.us))*

Steven P. Kfoury, Executive Director  
State Publications and Regulations Division  
Office of the Secretary of State  
State House, Room 117  
Boston, MA 02133

**Re:      Semi-Annual List of EOLWD Regulations**

Dear Mr. Kfoury:

Following is the list of regulations that EOLWD agencies expect to promulgate or amend within the next six months.

Department of Industrial Accidents

452 CMR 1.00 – Adjudicatory Rules of the Industrial Accident Board  
452 CMR 6.00 – Utilization Review & Quality Assessment  
452 CMR 7.00 – Practice by Insurers

Department of Family and Medical Leave

458 CMR 2.00 – Department of Family and Medical Leave

Department of Labor Relations

456 CMR 2.01– Definitions  
456 CMR 11.03 – Definitions  
456 CMR 12.12 – Filing with the Department  
456 CMR 14.05 – Showing of Interest  
456 CMR 14.06 – Bars to Petitions: Elections  
456 CMR 14.08 – Investigation and Hearing

456 CMR 14.19 – Certification by Written Majority Authorization  
456 CMR 14.20 – Bars to Petitions for Certification by Written Majority Authorization  
456 CMR 15.00 – Investigations  
456 CMR 17.00 – Agency Service Fee  
456 CMR 21.10 – Withdrawal of Fact-Finding Petition  
456 CMR 23.10 – Request for Arbitration Before Outside Arbitrator

Department of Unemployment Assistance

430 CMR 11.00 – Procedures for Non-Monetary Redeterminations under MGL c. 151A, § 71

Department of Labor Standards

454 CMR 24.00 – Employment Agency & Temporary Workers Right to Know Regulations

Department of Labor Standards - Division of Apprentice Standards

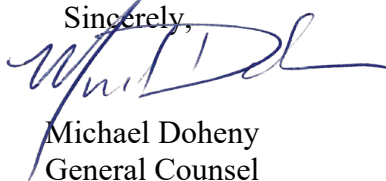
454 CMR 26.00 – Apprentice Standards

Massachusetts Department of Career Services

None expected at this time

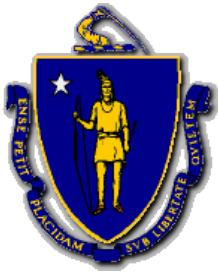
Thank you for your attention to this matter.

Sincerely,

A handwritten signature in blue ink, appearing to read "Michael Doheny", is written over the printed name and title.

Michael Doheny  
General Counsel





# The Commonwealth of Massachusetts Executive Office of Public Safety and Security

One Ashburton Place, Room 2133  
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**Maura T. Healey**  
Governor

**Kimberley L. Driscoll**  
Lt. Governor

**TERRENCE M. REIDY**  
Secretary

December 22, 2023

## **VIA EMAIL**

Steven P. Kfoury  
Fourth Deputy Secretary  
State Publications and Regulations Division  
Office of the Secretary of the Commonwealth  
State House, Room 117  
Boston, MA 02133

## **RE: Annual Regulation Update for 2024**

Dear Deputy Secretary Kfoury:

The following is a list of prospective regulations and regulations that may be added or amended in calendar year 2023 from the Executive Office of Public Safety and Security ("EOPSS"), on behalf of EOPSS and all of the agencies within the Secretariat, pursuant to G.L. c. 30A, § 6D.

### **Executive Office of Public Safety and Security**

501 CMR 2.00: Safe Roads

501 CMR 14.00: Testing, Certification, Marking, and Enforcement of Massachusetts' Fire Standard Compliant Cigarettes

501 CMR 8.00: Electronic Control Weapons

### **Department of Criminal Justice Information Services**

803 CMR 2.00: Criminal Offender Record Information (CORI)

### **Department of Correction**

103 CMR 155: Inmate Six-Part Folder

103 CMR 179: Restrictive Housing Oversight Committee

103 CMR 405: Inmate Funds

103 CMR 410: Sentence Computation

103 CMR 411: Deductions from Sentence  
103 CMR 420: Classification  
103 CMR 431: Observation of Behavior Reports  
103 CMR 455: Correctional Industries  
103 CMR 462: International Transfer Policy  
103 CMR 900: County Correctional Facilities

#### **Department of Fire Services**

522 CMR 1.00: Board of Boiler Rules  
527 CMR 1.00: Massachusetts State Fire Code  
527 CMR 12.00: Massachusetts Electrical Code

#### **Massachusetts State Police (including Crime Lab)**

515 CMR 1.00: Collection, Submission, Receipt, ID, Storage, and Disposal of DNA Samples  
515 CMR 2.00: Testing and Analysis, Quality Assurance for State DNA  
515 CMR 7.00: Long Term Retention and Preservation of Evidence by Governmental Entities

#### **Municipal Police Training Committee**

550 CMR 3.00: Requirements for Law Enforcement Officer Training  
550 CMR 6.00: Use of Force  
550 CMR XX: Officer Wellness

#### **Office of the Chief Medical Examiner**

None.

#### **Parole Board**

120 CMR 200: Parole Eligibility  
120 CMR 600: Compliance Credits

#### **Sex Offender Registry Board**

803 CMR 1.00: Sex Offender Registry Board: Registration, Classification and Dissemination

#### **State 911 Department**

560 CMR 3.00: Establishing an Equitable and Reasonable Method for the Remittance and Collection of a Surcharge on Prepaid Wireless Telephone Service

560 CMR 5.00: Establishing Certification Requirements for Enhanced 911 Telecommunicators, Governing  
Emergency Medical Dispatch, and Establishing 911 Call Handling Procedures

If you have any questions or need any further information, please contact me at (617) 274-5579.

Sincerely,

A handwritten signature in black ink, appearing to read "John Melander". The signature is fluid and cursive, with the first name "John" and last name "Melander" clearly distinguishable.

John H. Melander, Jr.  
Deputy General Counsel





Maura Healey, Governor  
Kimberley Driscoll, Lieutenant Governor  
Monica Tibbitts-Nutt, Secretary & CEO  
Phillip Eng, MBTA General Manager

**massDOT**  
Massachusetts Department of Transportation



Via Email – [regulations@sec.state.ma.us](mailto:regulations@sec.state.ma.us)

December 21, 2023

Mr. Steven P. Kfoury, Fourth Deputy Secretary, State Publications and Regulations  
The Commonwealth of Massachusetts  
Office of the Secretary of the Commonwealth  
State House, Room 117  
Boston, Massachusetts 02133

Re: Annual List of Prospective Regulations – MassDOT and MBTA

Dear Mr. Kfoury,

The Massachusetts Department of Transportation (“MassDOT”) and the Massachusetts Bay Transit Authority (“MBTA”) have undertaken a review of MassDOT and MBTA regulations currently published in the Code of Massachusetts Regulations (“CMR”). In accordance with M.G.L. c. 30A, §6D, we have preliminarily identified the subject and CMR designation of the regulations we expect to promulgate, amend, or repeal in the next twelve-month period. They are attached hereto as “Attachment A”.

Please contact me at [Eileen.Fenton@state.ma.us](mailto:Eileen.Fenton@state.ma.us) if you have questions or require additional information.

Sincerely,

Eileen M. Fenton  
MassDOT/MBTA Managing Counsel – Corporate and Regulatory

**Attachment A**  
**Massachusetts Department of Transportation**  
**&**  
**December 2023, Annual List of Prospective Regulations**

➤ **540 CMR: Registry of Motor Vehicles**

- 2.00 – Motor Vehicle Regulations – (Amend)
- 4.00 – Annual Safety and Combined Safety and Emissions Inspection of All Motor Vehicles, Trailers, Semitrailers and Converter Dollies – (Amend)

➤ **700 CMR: Massachusetts Department of Transportation**

- 3.00 – Control and Restriction of Billboards, Signs, and Other Advertising Devices – (Amend)
- 5.00 – Regulation of Certain Roadways and Bridges – (Amend)
- 19.00 – Permitted Removal and Storage of Abandoned Vehicles at Massachusetts Department of Transportation-Owned Park and Ride Facilities – (Promulgate)
- 20.00 – Licensure Process to Oversee Quarries Producing Concrete Aggregate (Promulgate)

➤ **701 CMR: Executive Office of Transportation and Construction**

- 4.00 – The Massachusetts Intercity Bus Capital Assistance Program - (Repeal)

➤ **702 CMR: Aeronautics Division**

- 5.00 – Airports, Heliports and Restricted Landing Areas – (Amend)



COMMONWEALTH OF MASSACHUSETTS  
EXECUTIVE OFFICE OF VETERANS' SERVICES

600 Washington Street, 7<sup>th</sup> floor  
Boston, MA 02111

TEL: (617) 210-5480 FAX: (617) 210-5883 TTY: (617) 210-5883  
[www.mass.gov/veterans](http://www.mass.gov/veterans)

**MAURA T. HEALEY**  
GOVERNOR

**JON SANTIAGO, MD, MPH**  
SECRETARY

**KIMBERLEY DRISCOLL**  
LIEUTENANT GOVERNOR

December 22, 2023

Secretary of the Commonwealth  
State Publications and Regulations Division  
McCormack Building  
1 Ashburton Place  
Boston, MA 02108

Re: **Annual List of Prospective Regulations**

Dear Sir/Madam,

Pursuant to the requirement under M.G.L. 30A, Section 6D, the Executive Office of Veterans' Services (EOVS) hereby submits the following list of prospective modified regulations expected to be promulgated during the next twelve (12) month period:

108 CMR 2.00 – General Provisions  
108 CMR 3.00 – Eligibility for Veterans' Benefits  
108 CMR 4.00 – Interview and Application Procedure  
108 CMR 5.00 – Determination of Benefits  
108 CMR 6.00 – Alternative Sources of Income  
108 CMR 7.00 – Payments to Applicants in Special Circumstances  
108 CMR 8.00 – Investigations, Appeals, Terminations and Refunds  
108 CMR 9.00 – Annuities and Burials  
108 CMR 10.00 – Medical Care  
108 CMR 15.00 – Criminal Offender Record Information (already scheduled for public hearing and submitted to the Register)  
108 CMR 16.00 – Veterans Hire Tax Credit

Please contact me with any questions.

Sincerely,

Jenna Buonopane, Paralegal (617) 821-2407  
on behalf of Matthew Deacon, General Counsel, Executive Office of Veterans' Services







THE TRIAL COURT OF MASSACHUSETTS  
**OFFICE OF COURT MANAGEMENT**

Language Access and Court Records Department

Two Center Plaza, Suite 540  
Boston, MA 02108

Jeffrey A. Locke  
Chief Justice of the Trial Court

Thomas G. Ambrosino  
Court Administrator

Sybil A. Martin, Ph.D.  
Director

**Thursday, December 21, 2023**

**NOTICE OF PUBLIC HEARING**

In accordance with G.L. c. 221C § 7(d), and G.L. c. 30A § 2, notice is hereby given that the Committee for the Administration of Interpreters for the Trial Court will conduct two (2) public hearings on proposed amendments to the ***Standards and Procedures of the Office of Language Access***, pursuant to G.L. c. 221 § 7(d). Two (2) public hearings will be conducted to receive verbal and written comments on the proposed Standards and Procedures. For video remote access to these public hearings, please enter the respective Meeting ID and Passcode for the Zoom Meeting as follows:

**Tuesday, March 12, 2024**

2:00 p.m. – 4:00 p.m.

Room 2-100, Second Floor

John Adams Courthouse

One Pemberton Square

Boston, MA 02108

[Click Here to Join Zoom Meeting](#)

Meeting ID: 160 046 7703

Passcode: 233 182

**Tuesday, March 19, 2024**

2:00 p.m. – 4:00 p.m.

Room 300, Third Floor

Worcester Law Library

184 Main Street

Worcester, MA 01608

[Click Here to Join Zoom Meeting](#)

Meeting ID: 161 136 3222

Passcode: 602 281

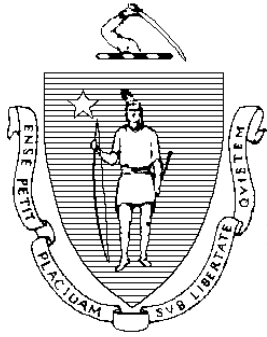
All post-hearing comments should be emailed to [CAI2@jud.state.ma.us](mailto:CAI2@jud.state.ma.us) within two (2) weeks of the hearing date. The Committee will only accept written comments electronically submitted by email.

A PDF copy of the proposed amendments to the ***Standards and Procedures*** are accessible at the [link below](#) and the [LINK here](#).

<https://www.mass.gov/doc/proposed-amendments-to-the-standards-and-procedures-of-the-trial-court-office-of-language-access-november-27-2023/download>.

**BY ORDER OF:** The Honorable Jeffrey A. Locke, Chief Justice of the Trial Court, **Thursday, December 21, 2023**





# THE COMMONWEALTH OF MASSACHUSETTS

*Secretary of the Commonwealth - William Francis Galvin*

## NOTICES OF PUBLIC REVIEW OF PROSPECTIVE REGULATIONS PUBLISHED IN COMPLIANCE WITH M.G.L. c. 30A, §§ 2 AND 3

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January 5, 2024

Economic Development, Executive Office of	400 CMR 6.00	Written public comments accepted until 1/12/24 by 5:00 P.M.
	400 CMR 8.00	1/12/24 @ 10:00 A.M. Written comments accepted until 1/12/24 by 5:00 P.M.
Elder Affairs, Executive Office of	651 CMR 12.00	1/12/24 @ 2:00 P.M. Written comments will be accepted until 1/12/24 by 5:00 P.M.
Environmental Protection, Department of	310 CMR 7.00	2/6/24 @ 10:00 A.M. & 6:00 P.M. Written comments accepted until 2/23/24 by 5:00 P.M.
Health and Human Services, Executive Office of	101 CMR 204.00	1/16/24 @ 10:00 A.M. Written testimony accepted until 1/16/24 @ 5:00 P.M.
Pipefitters, Refrigeration Technicians, and Sprinkler Fitters, Bureau of	528 CMR 2.00, 3.00 & 11.00	1/23/24 @ 9:30 A.M. Written comments accepted until 1/23/24.
Public Utilities, Department of	220 CMR 272.00	1/23/24 @ 2:00 P.M. Written comments accepted until 1/17/24 by 5:00 P.M. Written reply comments accepted until 1/30/24 by 5:00 P.M.
School Building Authority, Massachusetts	963 CMR 2.00	1/17/24 @ 4:00 P.M., 1/19/24 @ 8:00 A.M. Written comments accepted until 1/31/24 @ 5:00 P.M.
Supplier Diversity Office	425 CMR 2.00	1/25/24 @ 10:00 A.M. Written comments accepted until 1/31/24 @ 5:00 P.M.
Veterans' Services, Executive Office of	108 CMR 15.00	1/12/24 @ 10:00 A.M. Written comments accepted by 1/15/24 @ 5:00 P.M.



*Commonwealth of Massachusetts*  
**EXECUTIVE OFFICE OF ECONOMIC DEVELOPMENT**  
(Previously Named: EXECUTIVE OFFICE OF HOUSING AND ECONOMIC DEVELOPMENT)  
ONE ASHBURTON PLACE, ROOM 2101  
BOSTON, MA 02108  
<https://www.mass.gov/eoed>

MAURA T. HEALEY  
GOVERNOR

KIMBERLEY DRISCOLL  
LIEUTENANT GOVERNOR

YVONNE HAO  
SECRETARY

TELEPHONE  
(617) 788-3610

FACSIMILE  
(617) 788-3605

**NOTICE OF PROPOSED REPEAL OF REGULATION**  
**400 CMR 6.00**

**Notices to Quit Attestation Form**

Notice is hereby given pursuant to Massachusetts General Laws chapter 30A that the Executive Office of Economic Development ("EOED") is proposing to repeal and rescind the regulation at 400 CMR 6.00 entitled "Notices to Quit Attestation Form" ("Regulation").

The Regulation implemented certain sections of Section 1 of Chapter 257 of the Acts of 2020, as amended (the "Act"), requiring EOED to promulgate regulations to develop and receive copies of a form landlords were required to provide containing certain information related to residential tenant's rights and available resources when given a written notice to quit for nonpayment of rent. Section 30 of Chapter 42 of the Acts of 2022 repealed Section 1 of Chapter 257 of the Acts of 2020 on March 31, 2023, thereby rescinding the authority for the Regulation.

Written public comments on the Regulation shall be accepted from December 22, 2023 until 5:00 pm on January 12, 2024 and should be submitted via email to [Robert.McGovern@mass.gov](mailto:Robert.McGovern@mass.gov) or mailed to: Robert McGovern, Executive Office of Economic Development, 1 Ashburton Place, 21<sup>st</sup> Floor, Boston, MA 02108. Copies of the proposed regulations are available at the following - <https://www.mass.gov/doc/400-cmr-6-notices-to-quit-attestation-form/download>.

By Yvonne Hao

Secretary of the Executive Office of Economic Development

## Small Business Impact Statement

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

### CMR No: 400 CMR 6.00: Notices to Quit Attestation Form

#### Estimate of the Number of Small Businesses Impacted by the Regulation:

The regulation may impact small businesses that own residential properties with tenants.

#### 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? Yes – small businesses that own residential properties that seek to evict a tenant due to nonpayment of rent are required to submit a copy of the Notice to Quit to the Executive Office of Housing and Economic Development.
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Will small businesses have to implement additional recordkeeping procedures? No.
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Will small businesses have to provide additional administrative oversight? No.
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.
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.
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.
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.
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Do any other regulations duplicate or conflict with the proposed regulation? No.
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Does the regulation require small businesses to cooperate with audits, inspections or other regulatory enforcement activities? No.
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.
Yes <input type="checkbox"/>	No <input type="checkbox"/>	Is the regulation likely to <i>deter</i> the formation of small businesses in Massachusetts?

<input type="checkbox"/>	<input checked="" type="checkbox"/>	No.
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.
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Does the regulation provide for less stringent compliance or reporting requirements for small businesses? No.
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.
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Did the agency consolidate or simplify compliance or reporting requirements for small businesses? No.
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.
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Are there alternative regulatory methods that would minimize the adverse impact on small businesses? No.



*Commonwealth of Massachusetts*  
**EXECUTIVE OFFICE OF ECONOMIC DEVELOPMENT**  
ONE ASHBURTON PLACE, ROOM 2101  
BOSTON, MA 02108  
<https://www.mass.gov/eoed>

MAURA T. HEALEY  
GOVERNOR

KIMBERLEY DRISCOLL  
LIEUTENANT GOVERNOR

YVONNE HAO  
SECRETARY

TELEPHONE  
(617) 788-3610

FACSIMILE  
(617) 788-3605

**NOTICE OF PUBLIC COMMENT AND VIRTUAL HEARING**  
**FOR PROPOSED NEW REGULATION**

**400 CMR 8.00 "Cannabis Social Equity Trust Fund"**

Notice is hereby given in accordance with Massachusetts General Laws chapter 30A that the Executive Office of Economic Development ("EOED") will hold a virtual public hearing relative to the adoption of a new regulation, 400 CMR 8.00, entitled "Cannabis Social Equity Trust Fund." ("Regulation").

Section 14A of Chapter 94G of the Massachusetts General Laws ("Authorizing Statute") establishes the Cannabis Social Equity Trust Fund ("Trust Fund") to encourage the full participation in the Commonwealth's regulated marijuana industry for entrepreneurs from communities that have been disproportionately harmed by marijuana prohibition and enforcement. The Authorizing Statute requires EOED to administer the Trust Fund by making grants or loans to eligible applicants and to promulgate regulations that govern the structure and administration of the Trust Fund.

A virtual public hearing will be conducted on the proposed Regulation.

**Location:** Virtual Hearing via Zoom  
<https://us06web.zoom.us/join/9tZAcOqrqjIoEtY6tgjL5GVtEWzMvWUk5pcN#/registration>

**Date:** Friday, January 12<sup>th</sup>, 2024 at 10:00 am

Verbal testimony will be accepted at the hearing. Written comments will be accepted from December 22, 2023 until 5:00 pm on Friday, January 12, 2024 and may be submitted via email to [Robert.McGovern@mass.gov](mailto:Robert.McGovern@mass.gov) or mailed to: Robert McGovern, Executive Office of Economic Development, 1 Ashburton Place, Room 2101, Boston, MA 02108. Copies of the proposed regulations may be obtained from the EOED website available at <https://mass.gov/regulations/400-CMR-800-cannabis-social-equity-trust-fund>.

By Yvonne Hao  
Secretary of the Executive Office of Economic Development

### Small Business Impact Statement

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

**CMR No: 400 CMR 8.00: Cannabis Social Equity Trust Fund**

**Estimate of the Number of Small Businesses Impacted by the Regulation:** N/A.

#### 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.
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Will small businesses have to implement additional recordkeeping procedures? No.
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Will small businesses have to provide additional administrative oversight? No.
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.
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.
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.
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.
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Do any other regulations duplicate or conflict with the proposed regulation? No.
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Does the regulation require small businesses to cooperate with audits, inspections or other regulatory enforcement activities? No.
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.
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.



Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>	Is the regulation likely to <i>encourage</i> the formation of small businesses in Massachusetts? Yes. Entrepreneurs that may not be able to enter the regulatory marijuana industry may be encouraged to form small businesses with financial assistance from the Cannabis Social Equity Trust Fund.
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Does the regulation provide for less stringent compliance or reporting requirements for small businesses? No.
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.
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Did the agency consolidate or simplify compliance or reporting requirements for small businesses? No.
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.
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Are there alternative regulatory methods that would minimize the adverse impact on small businesses? No.



**EXECUTIVE OFFICE OF ELDER AFFAIRS**  
**COMMONWEALTH OF MASSACHUSETTS**  
ONE ASHBURTON PLACE, BOSTON, MA 02108  
(617) 727-7750 | [Mass.gov/elders](https://www.mass.gov/elders)

**MAURA T. HEALEY**  
GOVERNOR

**KATHLEEN E. WALSH**  
SECRETARY, EXECUTIVE OFFICE OF  
HEALTH AND HUMAN SERVICES

**KIMBERLEY DRISCOLL**  
LIEUTENANT GOVERNOR

**ELIZABETH C. CHEN, PhD, MBA, MPH**  
SECRETARY, EXECUTIVE OFFICE OF ELDER AFFAIRS

Notice is hereby given pursuant to M.G.L. c. 30A that the Executive Office of Elder Affairs (EOEA) will hold a remote public hearing on Friday, January 12, 2024 at 2 p.m. and accept public comment through Friday, January 12, 2024 at 5:00 p.m. concerning the following regulatory action:

651 CMR 12.00: Certification Procedures and Standards for Assisted Living Residences.

Pursuant to its authority under G.L. c. 19A, § 6, EOEA seeks to modify existing vaccination requirements in Assisted Living Residences to reflect updated standards since the end of the state and federal public health emergencies.

EOEA is mandated and authorized under M.G.L. c. 19D to establish processes for the certification and renewal of certification for Applicants and Sponsors of Assisted Living Residences (ALRs). 651 CMR 12.00 sets forth the standards for premises which, in part or in total, constitute an ALR in the Commonwealth of Massachusetts and provides penalties for operating such premises without Certification.

The proposed regulation modifications will modify existing vaccination requirements in ALRs to reflect updated standards since the end of the state and federal COVID-19 public health emergencies.

The vaccination requirements apply to all personnel who either work at or come to an ALR and who are employed by or affiliated with the ALR, whether directly, by contract with another entity, or as an independent contractor, paid or unpaid including, but not limited to, employees, members of the medical staff, contract employees or staff, students, and volunteers, whether or not such individual(s) provide direct care.

Each ALR shall ensure that all personnel are vaccinated annually with seasonal influenza and COVID-19 vaccinations. ALRs must provide all personnel with information about the risks and benefits of the vaccines, notify all personnel of the vaccination requirements, and provide guidance to personnel regarding how to receive the vaccinations.

If an individual declines the vaccine, they shall sign a statement on a form to be provided by EOEA certifying that they are exempt from vaccination and they received information about the

risks and benefits of vaccination. An ALR shall not require exempt personnel to receive a vaccine.

An ALR shall require exempt individuals to take mitigation measures consistent with guidance from EOE. An ALR shall also require, and maintain for all personnel, proof of current vaccination, or the personnel's exemption statement. In addition, each ALR shall ensure all personnel are vaccinated against other novel pandemic or novel influenza virus(es) in accordance with guidelines issued by the Commissioner of Department of Public Health.

Public Hearing Information:

Zoom Meeting Information:

<https://zoom.us/j/94204492629?pwd=Y1FCYkNQWGZFS0I0MWJDdm8xeE1kUT09>

Call-in Only Information:

+1 646 558 8656 US (New York)  
+1 301 715 8592 US (Washington DC)

Meeting ID: 942 0449 2629

Passcode: 920997

Find your local number: <https://zoom.us/u/akBtb70T9>

Individuals who provide notice of their intent to testify will be afforded an earlier opportunity to speak. Speakers are strongly encouraged to provide notice of their intent to testify by emailing [francis.p.sullivan2@mass.gov](mailto:francis.p.sullivan2@mass.gov) with the subject line: "Regulation Hearing Comment--651 CMR 12.00." Written comments will be accepted through Friday, January 12, 2024 at 5:00 p.m. Please email written comments to [francis.p.sullivan2@mass.gov](mailto:francis.p.sullivan2@mass.gov).

Written testimony may also be submitted to the following address:

Executive Office of Elder Affairs  
One Ashburton Place  
Boston, MA 02108  
Attention: Patrick Sullivan

A copy of the above-listed regulations may be obtained by contacting the above address or email address or by visiting: <https://www.mass.gov/info-details/the-executive-office-of-elder-affairs-elder-proposed-amendments-to-regulations>.

To request interpretive services, please submit your request at least five (5) business days prior to the public hearing.

**Small Business Impact Statement**  
(As required by M.G.L. c. 30A §§ 2, 3 & 5)

**CMR No: 651 CMR 12.00**

**Estimate of the Number of Small Businesses Impacted by the Regulation: 270**

**Select Yes or No and Briefly Explain**

Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	<p>Will small businesses have to create, file, or issue additional reports?</p> <p>No, small businesses will not have to create, file or issue additional reports.</p>
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	<p>Will small businesses have to implement additional recordkeeping procedures?</p> <p>There will be no additional recordkeeping procedures, but existing procedures may have to be slightly modified.</p>
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	<p>Will small businesses have to provide additional administrative oversight?</p> <p>No, small businesses will have not provide additional administrative oversight.</p>
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	<p>Will small businesses have to hire additional employees in order to comply with the proposed regulation?</p> <p>No, no small businesses will not have to hire additional employees in order to comply with the proposed regulation.</p>
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	<p>Does compliance with the regulation require small businesses to hire other professionals (e.g. a lawyer, accountant, engineer, etc.)?</p> <p>No, compliance does not require small businesses to hire other professionals.</p>
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	<p>Does the regulation require small businesses to purchase a product or make any other capital investments in order to comply with the regulation?</p> <p>No, the regulation does not require small businesses to purchase a product or make any other capital investments in order to comply.</p>
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	<p>Are performance standards more appropriate than design/operational standards to accomplish the regulatory objective?</p> <p>(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.)</p> <p>No, performance standards are not more appropriate than design/operational standards to accomplish the regulatory objective.</p>
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	<p>Do any other regulations duplicate or conflict with the proposed regulation?</p> <p>No, no other regulations duplicate or conflict with the proposed regulation.</p>

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 regulatory amendments require small businesses to cooperate with audits, inspections or other regulatory enforcement activities.
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, the regulatory amendments do not require small businesses to provide educational services to keep up to date.
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 impact the formation of small businesses in Massachusetts.
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 impact the formation of small businesses in Massachusetts.
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 regulatory amendments do not provide for less stringent compliance or reporting requirements for small 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?  No, the regulatory amendments do not require less stringent schedules or deadlines for compliance or reporting requirements for small businesses.
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Did the agency consolidate or simplify compliance or reporting requirements for small businesses?  No, the regulatory amendments do not consolidate or simplify compliance or reporting requirements.
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, regulatory amendments are required.
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Are there alternative regulatory methods that would minimize the adverse impact on small businesses?  No, no regulatory amendments are required.



Commonwealth of Massachusetts  
Executive Office of Energy & Environmental Affairs

# Department of Environmental Protection

100 Cambridge Street Suite 900 Boston, MA 02114 • 617-292-5500

Maura T. Healey  
Governor

Kimberley Driscoll  
Lieutenant Governor

Rebecca L. Tepper  
Secretary

Bonnie Heiple  
Commissioner

## PUBLIC HEARING NOTICE

This Public Hearing Notice is available in alternative languages (Español -- Tiếng Việt -- Chinese -- Kreyòl Ayisyen -- Português -- Khmer) on MassDEP's website at: <https://www.mass.gov/service-details/massdep-public-hearings-comment-opportunities>

The Massachusetts Department of Environmental Protection (MassDEP), under the authority of M.G.L. c. 21A, sections 2, 8, and 16, M.G.L. c. 21N, and M.G.L. c. 111, sections 2C, 142A through 142E, will hold public hearings in accordance with M.G.L. Chapter 30A on proposed amendments to 310 CMR 7.71: *Reporting of Greenhouse Gas Emissions*. The proposed amendments implement registration and greenhouse gas (GHG) emissions reporting requirements for companies selling and distributing heating fuels to homes and businesses in Massachusetts, including suppliers of natural gas, fuel oil, and propane and implement a reporting requirement for fuel storage facilities.

The proposed amendments and a background document are available on MassDEP's website at: <https://www.mass.gov/service-details/massdep-public-hearings-comment-opportunities>

Two public hearings will be conducted online and via telephone. The public hearings will be held:

Tuesday, February 6, 2024 at 10:00 am

Register in advance for this hearing:

<https://us06web.zoom.us/meeting/register/tZcsd-igrj8jG9UwWrFEgh4sWB6I8f3A8qDn>

Tuesday, February 6, 2024 at 6:00 pm

Register in advance for this hearing:

<https://us06web.zoom.us/meeting/register/tZUrfuCurDgsHdBhiM3PiLsEsPC0C5UjDeIB>

Please join the public hearing from your computer, tablet, or smartphone. You can also dial in using your phone. Testimony may be presented orally at the public hearing, or written comments may be submitted until 5:00 PM on February 23, 2024. Written comments must be submitted via email to [climate.strategies@mass.gov](mailto:climate.strategies@mass.gov), or by mail to Climate Strategies, MassDEP, 100 Cambridge Street, Boston, MA 02114.

For special accommodations for these hearings, please call the EEA Diversity Office at 617-626-1282. TTY# MassRelay Service 1-800-439-2370. This information is available in alternate format upon request. MassDEP provides language access interpreter/translation services to limited English proficient individuals free of charge. If you need an interpreter to participate in this meeting, translation services, please reach out to Joshua Cook at [joshua.cook@mass.gov](mailto:joshua.cook@mass.gov) or 781-429-9656.

By Order of the Department of Environmental Protection  
Bonnie Heiple  
Commissioner

### Small Business Impact Statement

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

**CMR No: 310 CMR 7.71**

**Estimate of the Number of Small Businesses Impacted by the Regulation:** The amendments will impact several hundred heating oil suppliers and storage facilities, many or most of which are likely small businesses.

#### Select Yes or No and Briefly Explain

Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>	Will small businesses have to create, file, or issue additional reports?  Small businesses will be required to file additional reports covering their heating fuel sales and shipments.
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Will small businesses have to implement additional recordkeeping procedures?  The reporting can draw from records that are currently maintained by heating fuel suppliers.
Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>	Will small businesses have to provide additional administrative oversight?  Small businesses will need to oversee their reporting obligations.
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?  It is unlikely that heating oil suppliers and storage facilities will have to hire additional employees because the new requirements are designed to take into account existing requirements and practices.
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.)?  There is no requirement to hire other professionals, and it is unlikely businesses will have to hire professionals to comply with the proposed amendments.
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?  There is no requirement to purchase a product or make any other 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.)  The proposed amendments do not include standards that require actions beyond reporting.
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?



		Heating oil suppliers would be required to cooperate with audits, inspections or other regulatory enforcement activities.
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 additional educational services must be provided.
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 proposed amendments are not likely to deter 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 proposed amendments are not likely to 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 proposed amendments do not provide for less stringent reporting requirements for small 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 proposed amendments do not provide for less stringent schedules or deadlines for compliance or reporting requirements for small businesses.
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Did the agency consolidate or simplify compliance or reporting requirements for small businesses?  Although MassDEP does not consolidate or simplify compliance or reporting requirements for small businesses, the requirements are simplified in that they are consistent with existing regulations and practices.
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?  The proposed amendments do not include standards that require action beyond reporting.
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Are there alternative regulatory methods that would minimize the adverse impact on small businesses?  There are no alternative regulatory methods for obtaining the greenhouse gas emissions data reporting under the proposed amendments that would minimize the adverse impact on small businesses.

**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 85<sup>th</sup> 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](https://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](mailto: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, 6<sup>th</sup> 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](http://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, 6<sup>th</sup> Floor, Quincy, MA 02171. To view or download related supporting materials, go to [www.mass.gov/service-details/proposed-regulations-supporting-materials](http://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](mailto: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](http://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.



MAURA HEALEY  
GOVERNOR

KIM DRISCOLL  
LIEUTENANT GOVERNOR

YVONNE HAO  
SECRETARY, EXECUTIVE OFFICE  
OF ECONOMIC DEVELOPMENT

**Commonwealth of Massachusetts**  
**Division of Occupational Licensure**  
**Office of Public Safety and Inspections**  
1000 Washington Street, Suite 710  
Boston, Massachusetts 02118

LAYLA R. D'EMILIA  
UNDERSECRETARY, CONSUMER  
AFFAIRS AND BUSINESS  
REGULATION

SARAH R. WILKINSON  
COMMISSIONER, DIVISION OF  
OCCUPATIONAL LICENSURE

**Bureau of Pipefitters, Refrigeration Technicians, and Sprinkler Fitters**

**NOTICE OF PUBLIC HEARING AND PUBLIC COMMENT**

Pursuant to Massachusetts General Laws c. 30A, s. 2; c. 22, s. 10A; and c. 146, s. 82, the Bureau of Pipefitters, Refrigeration Technicians, and Sprinkler Fitters will hold a public hearing regarding amendments to regulations 528 CMR 2.00, 3.00 and 11.00, which establish licensing requirements for pipefitters, refrigeration technicians and sprinkler fitters. **The hearing will be held at 9:30 a.m. on Tuesday, January 23, 2024.** in person at the Division of Occupational Licensure, 1000 Washington Street – Room 1D, Boston, Massachusetts 02118 and by videoconference at <https://www.microsoft.com/en-us/microsoft-teams/join-a-meeting>, Meeting ID: 257 249 666 227, Passcode: 3XXkxM, or call in to (857) 327-9245, Phone Conference ID: 938 800 959#. Interested parties will be given an opportunity to present testimony orally or in writing at the hearing. Written comments may be emailed to [martin.edwards@mass.gov](mailto:martin.edwards@mass.gov) or mailed to the Bureau of Pipefitters, Refrigeration Technicians and Sprinkler Fitters, 1000 Washington Street, Suite 710, Boston, Massachusetts, 02118-6100, Attention: Martin Edwards. A copy of the proposed amendments to the Bureau's regulations may be obtained at the Bureau's website at [Bureau of Pipefitters, Refrigeration Technicians, and Sprinkler Fitters | Mass.gov](#) or by contacting Mr. Edwards at Phone (617) 701-8752. The Bureau will also accept written comments regarding the regulations until 5:00 p.m. on Tuesday, January 23, 2024.



## Small Business Impact Statement

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

**CMR No: 528 CMR 2.00**

**Estimate of the Number of Small Businesses Impacted by the Regulation: The Bureau of Pipefitters, Refrigeration Technicians, and Sprinkler Fitters presently has issued approximately 7,907 pipefitting personal licenses, 5,310 refrigeration personal licenses, and 3,340 sprinkler fitting personal licenses; the great majority of these licensees are believed to be, or work within, small businesses.**

### 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?  This regulation only supplies definitions, it does not create a reporting requirement.
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Will small businesses have to implement additional recordkeeping procedures?  This regulation only supplies definitions, it does not create recordkeeping procedures.
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Will small businesses have to provide additional administrative oversight?  This regulation does not create new mandates requiring 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?  This regulation does not create regulatory burdens necessitating 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.)?  This regulation does not create regulatory burdens necessitating the hiring of 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?  This regulation does not mandate purchasing a product or making other 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.) Prerequisites for licensure must be based on operational standards to ensure a minimum baseline and ensure licensees are adequately trained in these sensitive public safety professions.
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Do any other regulations duplicate or conflict with the proposed regulation?  No other regulations are known to duplicate/conflict with this section.
Yes <input type="checkbox"/>	No <input type="checkbox"/>	Does the regulation require small businesses to cooperate with audits, inspections or other regulatory enforcement activities?



<input type="checkbox"/>	<input checked="" type="checkbox"/>	This definitional regulation does not mandate cooperation with regulatory enforcement activities (other related regulations do).
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?  This regulation does not mandate continuing education
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Is the regulation likely to <i>deter</i> the formation of small businesses in Massachusetts?  This regulation adopts definitions only, it would not impact formation of businesses.
Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>	Is the regulation likely to <i>encourage</i> the formation of small businesses in Massachusetts?  This regulation adopts definitions only, it would not impact formation of businesses.
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Does the regulation provide for less stringent compliance or reporting requirements for small businesses?  This definitional regulation does not create compliance or reporting requirements.
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?  This definitional regulation does not create compliance or reporting requirements.
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Did the agency consolidate or simplify compliance or reporting requirements for small businesses?  This definitional regulation does not create compliance or reporting requirements.
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?  Prerequisites for licensure must be based on operational standards to ensure a minimum baseline is met to ensure licensees are adequately trained in these sensitive public safety professions.
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Are there alternative regulatory methods that would minimize the adverse impact on small businesses?  This regulation creates common sense definitions for the profession, it could not fairly reduce those requirements for any one sector of the industry.

## Small Business Impact Statement

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

**CMR No: 528 CMR 3.00**

**Estimate of the Number of Small Businesses Impacted by the Regulation: The Bureau of Pipefitters, Refrigeration Technicians, and Sprinkler Fitters presently has issued approximately 7,907 pipefitting personal licenses, 5,310 refrigeration personal licenses, and 3,340 sprinkler fitting personal licenses; the great majority of these licensees are believed to be, or work within, small businesses.**

### 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?  This regulation only supplies standards applicable to licensure, it does not create a reporting requirement.
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Will small businesses have to implement additional recordkeeping procedures?  This regulation only supplies standards applicable to licensure, it does not create new recordkeeping procedures.
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Will small businesses have to provide additional administrative oversight?  This regulation does not create new mandates requiring 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?  This regulation does not create regulatory burdens necessitating 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.)?  This regulation does not create regulatory burdens necessitating the hiring of 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?  While this regulation adopts third party standards for licensure purposes which would need to be purchased, businesses engaged in the subject regulatory activities would have already needed to possess these standards to meet other regulations (such as 527 CMR and 780 CMR). Accordingly, this regulation section does not mandate purchasing a new product or making other 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.) Prerequisites for licensure must be based on operational standards to ensure a minimum baseline is met to ensure licensees are adequately trained in these sensitive public safety professions.
Yes <input type="checkbox"/>	No <input type="checkbox"/>	Do any other regulations duplicate or conflict with the proposed regulation?

<input type="checkbox"/>	<input checked="" type="checkbox"/>	No other regulations are known to duplicate/conflict with this section.
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Does the regulation require small businesses to cooperate with audits, inspections or other regulatory enforcement activities?  This regulation only supplies standards applicable to licensure, it does not mandate cooperation with regulatory enforcement activities (other related regulations do).
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?  This regulation only supplies standards applicable to licensure, it does not mandate continuing education
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Is the regulation likely to <i>deter</i> the formation of small businesses in Massachusetts?  This regulation only supplies standards applicable to licensure, it would not impact formation of businesses.
Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>	Is the regulation likely to <i>encourage</i> the formation of small businesses in Massachusetts?  This regulation only supplies standards applicable to licensure, it would not impact formation of businesses.
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Does the regulation provide for less stringent compliance or reporting requirements for small businesses?  This regulation only supplies standards applicable to licensure, it does not create compliance or reporting requirements.
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?  This regulation only supplies standards applicable to licensure, it does not create compliance or reporting requirements.
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Did the agency consolidate or simplify compliance or reporting requirements for small businesses?  This definitional regulation does not create compliance or reporting requirements.
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?  Prerequisites for licensure must be based on operational standards to ensure a minimum baseline is met to ensure licensees are adequately trained in these sensitive public safety professions.
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Are there alternative regulatory methods that would minimize the adverse impact on small businesses?  This regulation adopts third party standards (already adopted by other Massachusetts government bodies) as the baseline for the profession, it could not fairly reduce those requirements for any one sector of the industry.

## Small Business Impact Statement

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

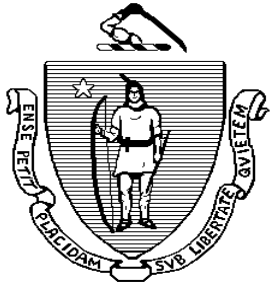
**CMR No:528 CMR 11.00**

**Estimate of the Number of Small Businesses Impacted by the Regulation: The Bureau of Pipefitters, Refrigeration Technicians, and Sprinkler Fitters presently has issued approximately 7,907 pipefitting personal licenses, 5,310 refrigeration personal licenses, and 3,340 sprinkler fitting personal licenses; the great majority of these licensees are believed to be, or work within, small businesses.**

### 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?  This regulation does not create reporting requirements.
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Will small businesses have to implement additional recordkeeping procedures?  This regulation does not mandate recordkeeping provisions.
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Will small businesses have to provide additional administrative oversight?  This regulation does not require 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?  This regulation does not impose requirements mandating hiring of 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.)?  This regulation does not require hiring of 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?  This regulation mandates prospective licensees obtain education and experience which is necessary to ensure licensees are properly trained in the safe installation of pipefitting, refrigeration, and sprinkler systems.
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.) Prerequisites for licensure must be based on exact operational standards to ensure fairness and enforceability.
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Do any other regulations duplicate or conflict with the proposed regulation?  There are no other regulations known to be duplicative with this section.
Yes <input type="checkbox"/>	No <input type="checkbox"/>	Does the regulation require small businesses to cooperate with audits, inspections or other regulatory enforcement activities?

<input checked="" type="checkbox"/>	<input type="checkbox"/>	This regulation mandates all licensees to cooperate with Bureau investigations.
Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>	Does the regulation require small businesses to provide educational services to keep up to date with regulatory requirements?  This regulation mandates education and work experience as a prerequisite to licensure.
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Is the regulation likely to <i>deter</i> the formation of small businesses in Massachusetts?  As education and work experience prerequisites to licensure are necessary to ensure pipefitters, refrigeration technicians and sprinkler fitters are qualified to perform their work, its mandate will not deter formation of businesses.
Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>	Is the regulation likely to <i>encourage</i> the formation of small businesses in Massachusetts?  The requirement of education and experience prerequisites to licensure may create business in the form of schools and other education providers.
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Does the regulation provide for less stringent compliance or reporting requirements for small businesses?  This regulation mandates equal requirements for all prospective and current licensees, it could not fairly reduce those requirements for any one sector of the industry.
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?  This regulation mandates equal requirements for all prospective and current licensees, it could not fairly reduce those requirements for any one sector of the industry.
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Did the agency consolidate or simplify compliance or reporting requirements for small businesses?  This regulation mandates equal requirements for all prospective and current licensees, it could not fairly reduce those requirements for any one sector of the industry.
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?  Prerequisites for licensure must be based on exact operational standards to ensure fairness and enforceability.
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Are there alternative regulatory methods that would minimize the adverse impact on small businesses?  This regulation mandates equal requirements for all prospective and current licensees, it could not fairly reduce those requirements for any one sector of the industry.



# The Commonwealth of Massachusetts

## DEPARTMENT OF PUBLIC UTILITIES

### NOTICE OF PUBLIC HEARING AND REQUEST FOR COMMENTS

D.P.U. 23-145

December 13, 2023

Investigation by the Department of Public Utilities, on its own motion, commencing a rulemaking pursuant to G.L. c. 30A, § 2; G.L. c. 159B, § 6B; and 220 CMR 2.00 to amend Rates for the Towing of Motor Vehicles at 220 CMR 272.00.

On December 11, 2023, the Department of Public Utilities (“Department”) opened a rulemaking proceeding pursuant to G.L. c. 30A, § 2, and 220 CMR 2.00 to amend 220 CMR 272.00: Rates for the Towing of Motor Vehicles. The Department has docketed this matter as D.P.U. 23-145.

The Department issued an emergency regulation increasing the maximum rates and charges applicable to involuntary tows in Massachusetts pursuant to G.L. c. 159B, § 6B. The Department found that immediate implementation of the emergency regulation, without delay, was necessary for the preservation of public safety to ensure the continued availability of adequate towing services for disabled vehicles and police-ordered tows. The emergency regulation became effective upon filing with the Secretary of the Commonwealth on December 13, 2023. As described in this Notice, the Department will solicit comments on the emergency regulation, conduct a public hearing, and promulgate a final regulation. The Department will conclude this rulemaking process before the end of the effective period of the emergency regulation.

The emergency regulation increases the maximum rates and charges applicable to involuntary tows in Massachusetts. For passenger automobiles: (1) the maximum charge per tow will increase from \$108.00 to \$132.00; (2) the service and waiting time in excess of one hour charge will increase from \$42.00 to \$51.00 per half hour; (3) the additional service vehicle charge will increase from \$108.00 to \$132.00; (4) the excessive mileage rate will increase from \$3.60 per mile to \$4.40 per mile; and (5) the additional labor charge will increase from \$38.40 per hour to \$46.00 per hour. For commercial vehicles: (1) the maximum charge per tow will increase from \$108.00 to \$132.00; and (2) the excessive mileage rate will increase from \$5.40 per mile to \$6.60 per mile. The threshold for applying the fuel surcharge set forth in 220 CMR 272.05 will increase from \$2.622 to \$3.196. The embedded cost of fuel in the basic tow rate used to calculate the fuel surcharge will increase from \$7.32 to \$8.92.

The Department will conduct a virtual public hearing to receive comments on the rulemaking. The Department will conduct the hearing using Zoom videoconferencing on

**Tuesday, January 23, 2024, beginning at 2:00 p.m.** Attendees can join by entering the link, <https://us06web.zoom.us/j/82934979082>, from a computer, smartphone, or tablet. For audio-only access to the hearings, attendees can dial in at 1 (646) 558-8656 (**not toll free**) and then enter **Meeting ID# 829 3497 9082**. If you anticipate providing comments during the public hearing, please send an email by **Wednesday, January 17, 2024**, to [timothy.m.federico@mass.gov](mailto:timothy.m.federico@mass.gov) with your name, email address, and mailing address.

Any person interested in commenting may also submit written comments to the Department no later than 5:00 p.m. on **Wednesday, January 17, 2024**. Written reply comments must be filed no later than 5:00 p.m. on **Tuesday, January 30, 2024**. Written comments and reply comments shall be limited to a maximum of ten one-sided, double-spaced, typewritten pages.

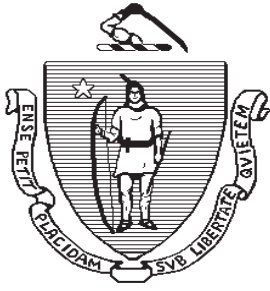
All documents must be submitted to the Department in **.pdf format** by e-mail attachment to [dupe.filing@mass.gov](mailto:dupe.filing@mass.gov) and [timothy.m.federico@mass.gov](mailto:timothy.m.federico@mass.gov). The text of the e-mail must specify: (1) the docket number of the proceeding (D.P.U. 23-145); (2) the name of the person or company submitting the filing; and (3) a brief descriptive title of the document. All documents submitted in electronic format will be posted on the Department's website through our online File Room as soon as practicable (enter "23-145") at: <https://eeaonline.eea.state.ma.us/DPU/Fileroom/dockets/bynumber>.

Please note that in the interest of transparency any comments will be posted to our website as received and without redacting personal information, such as addresses, telephone numbers, or email addresses. As such, consider the extent of information you wish to share when submitting comments. The Department strongly encourages public comments to be submitted by email. If, however, a member of the public is unable to send written comments by email, a paper copy may be sent to Mark D. Marini, Secretary, Department of Public Utilities, One South Station, Boston, Massachusetts, 02110.

All documents, pleadings, or filings submitted to or issued by the Department will be available on the Department's website as referenced above as soon as practicable. To the extent a person or entity wishes to submit comments in accordance with this Notice, electronic submission, as detailed above, is sufficient. To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), contact the Department's ADA coordinator at [Gabriella.Knight@mass.gov](mailto:Gabriella.Knight@mass.gov). For further information regarding this notice, please contact Timothy Federico, Hearing Officer, Department of Public Utilities, at [timothy.m.federico@mass.gov](mailto:timothy.m.federico@mass.gov).

By Order of the Department,

\_\_\_\_\_  
/s/  
Mark D. Marini, Secretary



# The Commonwealth of Massachusetts

## DEPARTMENT OF PUBLIC UTILITIES

December 13, 2023

<b>Small Business Impact Statement</b> <i>(As required by M.G.L. c. 30A §§ 2, 3 &amp; 5)</i>		
<b>CMR No: 220 CMR 272.00: Rates for the Towing of Motor Vehicles</b>		
<b>Estimate of the Number of Small Businesses Impacted by the Regulation: 557</b>		
<b>Select Yes or No and Briefly Explain</b>		
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Will small businesses have to create, file, or issue additional reports? Small businesses will not have to create, file, or issue additional reports.
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Will small businesses have to implement additional recordkeeping procedures? Small businesses do not have to implement additional recordkeeping procedures.
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Will small businesses have to provide additional administrative oversight? Small businesses will not have to provide 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? Small businesses will not have to hire additional employees in order to comply with the regulation.
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 with the regulation will not require small businesses 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? The regulation will not require small businesses to purchase a product or make any other capital investments in order to comply with the regulation.
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.) G.L. c. 159B, § 6B directs the DPU to “establish the maximum charges that may be made by persons subject to the provisions of this chapter for the towing away of motor vehicles, when such towing is ordered by the police or other public authority.” This regulation ensures that the statutory requirements are met and that charges for involuntary motor vehicle towing in the Commonwealth are consistent and transparent. Performance standards are not more appropriate to accomplish the regulatory objective.



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 the regulation.
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Does the regulation require small businesses to cooperate with audits, inspections or other regulatory enforcement activities? The regulation does not require small businesses to cooperate with audits, inspections or other regulatory enforcement activities.
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 is not likely to deter the formation of small businesses in Massachusetts.
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 is not likely to encourage the formation of small businesses in Massachusetts.
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Does the regulation provide for less stringent compliance or reporting requirements for small businesses? All businesses must comply with the compliance or reporting requirements of the regulation.
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? All businesses must adhere to the same schedules or deadlines for compliance or reporting requirements.
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Did the agency consolidate or simplify compliance or reporting requirements for small businesses? The Department of Public Utilities did not consolidate or simplify compliance or reporting requirements for small 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? All businesses must adhere to the same standards, and as noted above, performance standards are not more appropriate than design or operational standards in accomplishing the regulatory objective.
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Are there alternative regulatory methods that would minimize the adverse impact on small businesses? There are no alternative regulatory methods that would minimize the adverse impact on small businesses.



# Massachusetts School Building Authority

**Deborah B. Goldberg**  
*Chair, State Treasurer*

**James A. MacDonald**  
*Chief Executive Officer*

**Mary L. Pichetti**  
*Executive Director / Deputy CEO*

## **Massachusetts School Building Authority NOTICE OF PUBLIC HEARINGS AND PUBLIC COMMENT PERIOD**

Notice is hereby given that, in accordance with M.G.L. c. 30A, §2, the Massachusetts School Building Authority will hold a series of public hearings and a public comment period to obtain comments in connection with the proposed revisions to the MSBA's Regulations, 963 CMR 2.00, *et seq.*

### **Statutory Authority:**

The revisions to the MSBA's regulations (963 CMR, 2.00 *et seq.*) will be promulgated pursuant to the rule-making authority conferred to the Authority by M.G.L. c. 70B and St. 2004, c. 208, and in accordance with M.G.L. 30A.

### **Summary of the Proposed Revisions:**

The MSBA's regulations, 963 CMR 2.00 *et seq.*, set forth the MSBA's authority and responsibility to achieve the effective planning, management and financial sustainability of a grant program to provide financial assistance for the construction and renovation of municipally-owned school facilities. The regulations set forth the requirements which shall be met, the standards which shall be applied, and the procedures which shall be followed in the application for and the awarding of school building grants by the MSBA.

The MSBA is now proposing revisions to these regulations to accurately reflect how the MSBA's grant process has evolved, to provide clarity and make the regulations more user friendly, and to make the regulations easier to follow by arranging the sections in chronological order and matching the MSBA modules. The following is a summary of the key revisions to the regulations:

- The revised regulations will proceed from MSBA Module 1 through Module 9 as projects do, making it easier for districts and external stakeholders to understand the process.
- The MSBA added stand-alone sections to the revised regulations such as: Accelerated Repair Program; Construction (Module 7); Post Occupancy Evaluation (Module 9); and Model School Program.
- The MSBA made changes to the regulations to allow for the regulations to stay current year after year by eliminating references to outside standards and codes that periodically change.
- The MSBA clarified terminology used in the regulations and made technical changes to better capture our process and provide increased clarity for stakeholders.
- The MSBA updated the timing in the Statement of Interest section of the regulations to match the timing that the MSBA follows for the Statement of Interest submission period.
- The MSBA updated the incentive points portion of the regulations, removing Construction Manager at Risk and Model School incentive references from this section because the MSBA no longer provides these incentive points.

- The MSBA updated the Green School Program incentive to allow for three incentive points and also included an additional point for Indoor Air Quality.
- The MSBA added greater details about the grant program, where appropriate, such as the addition of the educational profile questionnaire that is required during Eligibility Period.

### **Public Hearings:**

In November and December, the MSBA held a series of public hearings throughout the Commonwealth. Please see the list below of the remaining hearings and note that these are the final hearings.

#### **Wednesday, January 17, 2024 – Remote Hearing via Zoom**

**4:00 pm – 6:00 pm**

#### **Friday, January 19, 2024 – Remote Hearing via Zoom**

**8:00 am – 10:00 am**

Those who would like to attend a remote hearing should contact [Anne.Hudson@MassSchoolBuildings.org](mailto:Anne.Hudson@MassSchoolBuildings.org) for the information and instructions to access the meeting. If you prefer or have questions related to accessing the meeting, please call 617-960-3075. Information to register for and to access the meetings will be available throughout the duration of the meetings.

### **Public Comment Period:**

Written Public Comments will be accepted through January 31, 2024 at 5:00 pm. Written comments may be submitted via email to [Anne.Hudson@MassSchoolBuildings.org](mailto:Anne.Hudson@MassSchoolBuildings.org), or by mail to:

Anne Hudson – Legal Assistant  
Massachusetts School Building Authority  
40 Broad Street, Suite 500  
Boston, MA 02109

**Written comments must be received by 5:00 p.m. on January 31, 2024.**

### **Copy of the proposed regulations:**

A copy of the proposed Regulations referenced above may be viewed by visiting [www.massschoolbuildings.org/regulations](http://www.massschoolbuildings.org/regulations). Those who wish to receive a written copy of the proposed Regulations, may contact Anne at [Anne.Hudson@MassSchoolBuildings.org](mailto:Anne.Hudson@MassSchoolBuildings.org), or by mail at the address above.

### **Interpretation/Accommodations:**

To request written language translation or oral interpretation at the public hearings, please contact [Anne.Hudson@MassSchoolBuildings.org](mailto:Anne.Hudson@MassSchoolBuildings.org). For oral language interpretation, the request must be received at least five (5) business days prior to the public hearing date at which the interpretation is requested. To request other reasonable accommodations, please contact [Anne.Hudson@MassSchoolBuildings.org](mailto:Anne.Hudson@MassSchoolBuildings.org).



# Massachusetts School Building Authority

**Deborah B. Goldberg**  
*Chair, State Treasurer*

**James A. MacDonald**  
*Chief Executive Officer*

**Mary L. Pichetti**  
*Executive Director / Deputy CEO*

## **MSBA Small Business Impact Statement:**

Below please find the accompanying Small Business Impact Statement provided in accordance with M.G.L. c. 30A, §2.

The MSBA does not expect that the proposed revisions to the MSBA's regulations will have a new or different impact on small businesses in the Commonwealth. The proposed changes are intended to be helpful to stakeholders, including small businesses.

1. An estimate of the number of small businesses subjected to the proposed regulation. To the extent that the MSBA's existing regulations affect small businesses, the MSBA does not anticipate that the proposed revisions will impact any additional or fewer small businesses.

2. Projected reporting, recordkeeping and other administrative costs required for compliance with the proposed regulation;

To the extent that the MSBA's existing regulations impact reporting, recordkeeping and other administrative costs for small businesses required for compliance with the current regulations, the MSBA does not anticipate that the proposed revisions will have any different impact on small businesses in this regard. Any record keeping procedures outlined in the regulations do not alter the applicable requirements of M.G.L., c. 66.

3. The appropriateness of performance standards versus design standards; To the extent that the MSBA's existing regulations impact the appropriateness of performance standards versus design standards for small businesses, the MSBA does not anticipate that the proposed revisions will have any different impact on small businesses in this regard.

4. An identification of regulations of the promulgating agency, or any other state agency, which may duplicate or conflict with the proposed regulation; and  
The MSBA does not expect the revisions to the MSBA's regulations to duplicate or conflict with other regulations.

5. An analysis of whether the proposed regulation is likely to deter or encourage the formation of new businesses in the state.  
The MSBA has been an economic driver of the state economy since our inception in 2004. The nature of the proposed revisions to the regulations should not deter or necessarily encourage the formation of new businesses in the state.



The Commonwealth of Massachusetts  
Executive Office for Administration and Finance  
**Supplier Diversity Office**

**William M. McAvoy**  
Executive Director

**Maura Healey**  
Governor  
**Kim Driscoll**  
Lieutenant Governor  
**Matthew Gorzkowicz**  
Secretary

**Notice of Public Hearing and Comment Period**

The Massachusetts Supplier Diversity Office (SDO) hereby gives notice that, pursuant to M.G.L. C. 30A § 2, it will hold a virtual public hearing and comment period on the proposed amendment to 425 CMR 2.00 *et. seq.*, enacted pursuant to [M.G.L. c. 7 § 61\(a\)](#). The SDO is proposing two amendments to its certification regulations. The first amendment will update the definition of “Eligible person” to include US citizens, permanent residents, and persons residing under the color of law. The second amendment will update the appeals process to allow the Division of Administrative Law Appeals to conduct SDO’s appeals. The SDO is also considering technical changes to improve the readability of the regulations.

The Public Hearing will be held online on January 25, 2024, from 10:00 AM to 12:00 PM Eastern Time, using Zoom. See below for how to access the hearing:

Link to register in advance:

<https://us02web.zoom.us/meeting/register/tZwpfuysqz8pGNTD09OYQ1XsblQW4XgSlrSj>

Zoom Details:

Meeting ID: 884 9545 4320

Passcode: 364955

A copy of the proposed amendments may be viewed on SDO’s website at [www.mass.gov/sdo](http://www.mass.gov/sdo), or they may be requested from the Office of the General Counsel by emailing [sdoregulations@mass.gov](mailto:sdoregulations@mass.gov).

While it is not necessary to pre-register to provide oral testimony, anyone who emails their intention to provide oral testimony at the hearing in advance will receive preference in the order of testimony provided. Such optional notice must include the person’s name, telephone number, and email address. Please send via email to [sdoregulations@mass.gov](mailto:sdoregulations@mass.gov) by January 22, 2024 by 5:00 p.m.

Speakers who testify at the hearing are asked to submit a copy of their oral comment. All submissions must include the sender’s full name and address.

In addition, for anyone who does not wish to provide oral testimony at the Public Hearing, written comments can also be submitted. Please submit any written comments via email to [sdoregulations@mass.gov](mailto:sdoregulations@mass.gov) by no later than 5:00 p.m. on January 31, 2024.

Note that all written testimony and comments received as part of this process may be released in response to a public records request.

If you require a reasonable accommodation, please email [sdoregulations@mass.gov](mailto:sdoregulations@mass.gov) at least 10 days before the hearing.

## Small Business Impact Statement

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

**CMR No: 425 CMR 2.00**

**Estimate of the Number of Small Businesses Impacted by the Regulation: 0**

**Select Yes or No and Briefly Explain**

Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	<u>Will small businesses have to create, file, or issue additional reports?</u>
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	<u>Will small businesses have to implement additional recordkeeping procedures?</u>
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	<u>Will small businesses have to provide additional administrative oversight?</u>
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	<u>Will small businesses have to hire additional employees in order to comply with the proposed regulation?</u>
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	<u>Does compliance with the regulation require small businesses to hire other professionals (e.g. a lawyer, accountant, engineer, etc.)?</u>
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	<u>Does the regulation require small businesses to purchase a product or make any other capital investments in order to comply with the regulation?</u>
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Are performance standards more appropriate than design/operational standards to accomplish the regulatory objective?
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	<u>Do any other regulations duplicate or conflict with the proposed regulation?</u>
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Does the regulation require small businesses to cooperate with audits, inspections or other regulatory enforcement activities?
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?
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Is the regulation likely to <i>deter</i> the formation of small businesses in Massachusetts?

Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>	Is the regulation likely to <i>encourage</i> the formation of small businesses in Massachusetts?  <i>With a more inclusive definition of eligible person, more businesses may decide to form and become certified.</i>
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Does the regulation provide for less stringent compliance or reporting requirements for small 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?
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Did the agency consolidate or simplify compliance or reporting requirements for small 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?
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Are there alternative regulatory methods that would minimize the adverse impact on small businesses?



COMMONWEALTH OF MASSACHUSETTS  
EXECUTIVE OFFICE OF VETERANS' SERVICES

600 Washington Street, 7<sup>th</sup> floor

Boston, MA 02111

TEL: (617) 210-5480 FAX: (617) 210-5883 TTY: (617) 210-5883

[www.mass.gov/veterans](http://www.mass.gov/veterans)

**MAURA T. HEALEY**  
GOVERNOR

**JON SANTIAGO, MD, MPH**  
SECRETARY

**KIMBERLEY DRISCOLL**  
LIEUTENANT GOVERNOR

***EXECUTIVE OFFICE OF VETERANS' SERVICES***

**NOTICE OF PUBLIC HEARING**

Please be advised that, in accordance with M.G.L. c. 30A, §2, Notice is hereby given that the Commonwealth of Massachusetts Executive Office of Veterans' Services ("EOVS") will hold a public hearing for the purpose of hearing any comments in connection with the proposed Regulations at 108 CMR 15.00: Criminal Offender Record Checks. The proposed Regulations establish a core standardized policy and procedure for EOVS, its agencies, and vendor programs regarding the review of criminal records of candidates for employment, applicants to the state operated veterans' homes, and volunteers. and are authorized 108 CMR 65.00: M.G.L. c. 115, § 2 and c. 115A, § 13.

EOVS will hold this public hearing remotely on Friday, January 12, 2024 at 10:00 AM via WebEx. To participate in the remote public hearing, please join from the meeting link <https://eohhs.webex.com/eohhs/j.php?MTID=m550fe4cbcd3974948783469d7931e0c5> or join by phone by dialing +1-617-315-0704 United States Toll (Boston) or +1-650-479-3208 United States Toll] when prompted.

A copy of the proposed Regulations referenced above may be viewed by visiting [Executive Office of Veterans Services Notice of Public Hearing | Mass.gov](#). Any person who would like to offer comments may participate in the public hearing at the date and time indicated above or submit written comments. Those who wish to receive a written copy of the proposed Regulations, or to submit written comments, may do so by sending an email to [jenna.buonopane5@mass.gov](mailto:jenna.buonopane5@mass.gov), or by mail to:

Jenna Buonopane - Paralegal  
Commonwealth of Massachusetts  
Executive Office of Veterans' Services  
600 Washington Street, 2<sup>nd</sup> Floor  
Boston, MA 02111

Written comments must be received by 5:00 P.M. on January 15, 2024.

Attached please find the accompanying Small Business Impact Statement in accordance with M.G.L. c. 30A, §2.



## Small Business Impact Statement

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

**Agency:** Executive Office of Veterans' Services

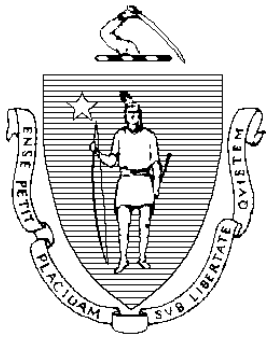
**CMR No:** 108 CMR 15.00: Criminal Offender Record Checks

**Estimate of the Number of Small Businesses Impacted by the Regulation:** None

**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 additional reports are required by these amendments
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Will small businesses have to implement additional recordkeeping procedures?  Small businesses will not have to implement additional recordkeeping procedures as a result of these amendments.
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Will small businesses have to provide additional administrative oversight?  Small businesses will not have to provide additional administrative oversight as a result of these amendments.
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?  Small businesses will not have to hire additional employees as a result of these amendments.
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.)?  Small businesses will not have to hire other professionals as a result of these amendments.
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?  Small business will not have to purchase a product or make capital investments as a result of these amendments.
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.)  The law requires regulatory requirements.
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 these proposed amendments..

Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	<p>Does the regulation require small businesses to cooperate with audits, inspections or other regulatory enforcement activities?</p> <p>The regulations do require regulated facilities, including any small businesses, to cooperate with reporting requirements and data requests.</p>
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	<p>Does the regulation require small businesses to provide educational services to keep up to date with regulatory requirements?</p> <p>The proposed amendments do not require small businesses to provide educational services.</p>
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	<p>Is the regulation likely to <i>deter</i> the formation of small businesses in Massachusetts?</p> <p>The regulation is not likely to deter the formation of small businesses in Massachusetts.</p>
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	<p>Is the regulation likely to <i>encourage</i> the formation of small businesses in Massachusetts?</p> <p>The regulation is not likely to encourage the formation of small businesses in Massachusetts.</p>
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	<p>Does the regulation provide for less stringent compliance or reporting requirements for small businesses?</p> <p>The regulation does not provide for less stringent compliance or reporting requirements for small businesses. All regulated facilities must follow the same reporting standards.</p>
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	<p>Does the regulation establish less stringent schedules or deadlines for compliance or reporting requirements for small businesses?</p> <p>The regulation does not establish less stringent schedules or deadlines for compliance or reporting requirements for small businesses. All regulated facilities must follow the same reporting requirements.</p>
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	<p>Did the agency consolidate or simplify compliance or reporting requirements for small businesses?</p> <p>There is no compliance or reporting requirements for small businesses under this regulation. The Department did not consolidate or simplify compliance or reporting requirements for small businesses.</p>
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	<p>Can performance standards for small businesses replace design or operational standards without hindering delivery of the regulatory objective?</p> <p>Performance standards cannot replace design or operational standards without hindering delivery of the regulation's objective.</p>
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	<p>Are there alternative regulatory methods that would minimize the adverse impact on small businesses?</p> <p>There are no alternative regulatory methods to implement veteran eligibility requirements. This regulation has no adverse impact on small businesses.</p>



# THE COMMONWEALTH OF MASSACHUSETTS

## *Secretary of the Commonwealth - William Francis Galvin*

### 2024 CUMULATIVE TABLE TO THE MASSACHUSETTS REGISTER 1512

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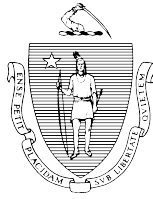
The Cumulative Tables lists all regulations and amendments thereto published in the Massachusetts Register during the current year. The Table is published in each Register.

State agencies are listed in the Table as they appear in the Code of Massachusetts Regulations (CMR or Code) in CMR numerical order which is based on the cabinet structure. For example, all Human Service agencies are prefaced by the number "1" and are designated as 101 CMR through 130 CMR.

The Cumulative Tables published in the last issue of previous years will have a listing of all regulations published for that year. These Registers are:

April 6, 1976 - 1977	Register: # 88	Date: 2001	Register: #937
1978	138	2002	963
1979	193	2003	989
1980	241	2004	1016
1981	292	2005	1042
1982	344	2006	1068
1983	396	2007	1094
1984	448	2008	1120
1985	500	2009	1146
1986	546	2010	1172
1987	572	2011	1198
1988	598	2012	1224
1989	624	2013	1250
1990	650	2014	1276
1991	676	2015	1302
1992	702	2016	1329
1993	729	2017	1355
1994	755	2018	1381
1995	871	2019	1407
1996	Supp. # 2 807	2020	1433
1997	833	2021	1459
1998	859	2022	1485
1999	885	2023	1511
2000	911		

		<i>Issue</i>	<i>Effective Date</i>
<b>101 CMR</b>	<b>Executive Office of Health and Human Services</b>		
204.00	Rates of Payment to Resident Care Facilities - <i>Emergency</i> . . . . .	1512	1/1/24
206.00	Standard Payments to Nursing Facilities - <i>Emergency Refile</i> (MA Reg. # 1506) . . . . .	1512	10/1/23
327.00	Rates of Payment for Ambulance and Wheelchair Van Services - <i>Emergency Refile</i> (MA Reg. # 1506) . . . . .	1512	9/29/23
352.00	Rates for Certain Children's Behavioral Health Services - <i>Compliance</i> (MA Reg. # 1501) . . . . .	1512	8/1/23
<b>105 CMR</b>	<b>Department of Public Health</b>		
159.000	COVID-19 Vaccinations for Certain Staff Providing Home Care Services in Massachusetts. . . . .	1512	1/5/24
<b>130 CMR</b>	<b>Division of Medical Assistance</b>		
519.000	MassHealth: Coverage Types - <i>Correction</i> (MA Reg. # 1509). . . . .	1512	11/24/23
<b>205 CMR</b>	<b>Massachusetts Gaming Commission</b>		
238.00	Additional Uniform Standards of Accounting Procedures and Internal Controls for Sports Wagering. . . . .	1512	1/5/24
258.00	Sports Wagering Operator Cessation - <i>Compliance</i> (MA Reg. # 1508). . . . .	1512	10/25/23
<b>220 CMR</b>	<b>Department of Public Utilities</b>		
272.00	Rates for the Towing of Motor Vehicles - <i>Emergency</i> . . . . .	1512	12/13/23
<b>301 CMR</b>	<b>Executive Office of Energy and Environmental Affairs</b>		
41.00	Toxic or Hazardous Substance List - ( <i>Filing Form Correction only</i> ) .	1512	12/22/23
<b>310 CMR</b>	<b>Department of Environmental Protection</b>		
9.00	Waterways . . . . .	1512	1/5/24
<b>831 CMR</b>	<b>Appellate Tax Board</b>		
1.00	Appellate Tax Board Rules of Practice and Procedure . . . . .	1512	1/5/24
<b>940 CMR</b>	<b>Office of the Attorney General</b>		
37.00	Regulations Authorizing Disclosure of Massachusetts License or Learner's Permit Applicant or Holder Information - <i>Emergency Refile</i> (MA Reg. # 1500) . . . . .	1512	6/30/23
	. . . . .	1512	1/5/24

**THE COMMONWEALTH OF MASSACHUSETTS****William Francis Galvin**

Secretary of the Commonwealth

**Regulation Filing***To be completed by filing agency*CHAPTER NUMBER: **101 CMR 204.00**CHAPTER TITLE: **Rates of Payment to Resident Care Facilities**AGENCY: **Executive Office of Health and Human Services**SUMMARY OF REGULATION: *State the general requirements and purposes of this regulation.***101 CMR 204.00 governs payment rates for resident care services ("rest homes") provided to publicly aided individuals by governmental units.**REGULATORY AUTHORITY: **M.G.L. c. 118E**AGENCY CONTACT: **Deborah Briggs, MassHealth Publications** PHONE: **617-847-3302**ADDRESS: **100 Hancock Street, 6th Floor, Quincy, MA 02171****Compliance with M.G.L. c. 30A**EMERGENCY ADOPTION - *if this regulation is adopted as an emergency, state the nature of the emergency.***The amendments to 101 CMR 204.00 are being promulgated as an emergency to ensure that rest homes continue to be adequately funded to provide rest home services and to satisfy statutory requirements to establish rates by regulation.**PRIOR NOTIFICATION AND/OR APPROVAL - *If prior notification to and/or approval of the Governor, Legislature or others was required, list each notification, and/or approval and date, including notice to the Local Government Advisory Commission.***ANF approval: 12/22/23**PUBLIC REVIEW - *M.G.L. c. 30A sections 2 and/or 3 requires notice of the hearing or comment period, including a small business impact statement, be filed with the Secretary of the Commonwealth, published in appropriate newspapers, and sent to persons to whom specific notice must be given at least 21 days prior to such hearing or comment period.*Date of public hearing or comment period: **N/A**

FISCAL EFFECT - *Estimate the fiscal effect of the public and private sectors.*

For the first and second year: **estimated total increase of \$23.855 million in the first year;; \$9.52 million annually thereafter**

For the first five years: \_\_\_\_\_

No fiscal effect: \_\_\_\_\_

SMALL BUSINESS IMPACT - *M.G.L. c. 30A section 5 requires each agency to file an amended small business impact statement with the Secretary of the Commonwealth prior to the adoption of a proposed regulation. If the purpose of this regulation is to set rates for the state, this section does not apply.*

Date amended small business impact statement was filed: **N/A**

CODE OF MASSACHUSETTS REGULATIONS INDEX - *List key subjects that are relevant to this regulation:*

PROMULGATION - *State the action taken by this regulation and its effect on existing provisions of the Code of Massachusetts Regulations (CMR) or repeal, replace or amend. List by CMR number:*

**101 CMR 204.00 is being amended.**

ATTESTATION - *The regulation described herein and attached hereto is a true copy of the regulation adopted by this agency.* ATTEST:

SIGNATURE: \_\_\_\_\_ SIGNATURE ON FILE \_\_\_\_\_ DATE: **Dec 22 2023**

Publication - *To be completed by the regulations Division*

MASSACHUSETTS REGISTER NUMBER: **1512** DATE: **1/5/24**

EFFECTIVE DATE: **1/1/24**

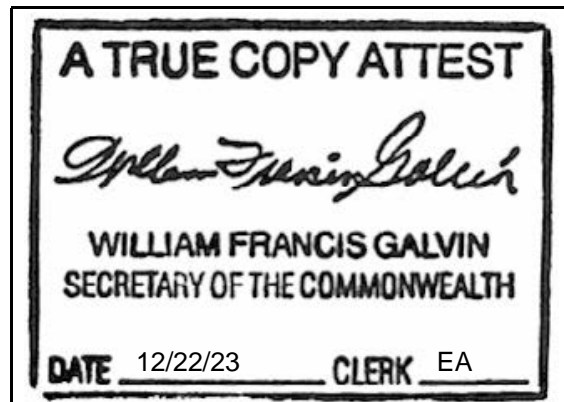
CODE OF MASSACHUSETTS REGULATIONS

*Remove these Pages:*

*Insert these Pages:*

**This is an Emergency Regulation.**

**There are no Replacement Pages.**



101 CMR 204.00: RATES OF PAYMENT TO RESIDENT CARE FACILITIES

Section

- 204.01: General Provisions
- 204.02: General Definitions
- 204.03: General Rate Provisions
- 204.04: Variable Cost Allowance
- 204.05: Capital and Other Fixed Costs
- 204.07: Reporting Requirements
- 204.08: Other Provisions
- 204.09: Certain COVID-19-related Costs Add-on Payment Provisions
- 204.10: Resident Care Cost Quotient

204.01: General Provisions

(1) Scope. 101 CMR 204.00 governs the payment rates for services provided by resident care facilities to publicly aided and industrial accident residents, and pertaining to certain COVID-19 related costs as described in 101 CMR 204.00. Residential care units of nursing facilities are governed by 101 CMR 206.00: *Standard Payments to Nursing Facilities*.

(2) Applicable Dates of Service. Rates contained in 101 CMR 204.00 apply for services provided on or after January 1, 2024.

(3) Disclaimer of Authorization of Services. 101 CMR 204.00 is not authorization for or approval of the substantive services or the time period for which rates are determined pursuant to 101 CMR 204.00. Governmental units and insurers that purchase services from eligible providers are responsible for the definition, authorization, and approval of services provided to publicly aided or industrial accident residents.

204.02: General Definitions

As used in 101 CMR 204.00, unless the context requires otherwise, terms have the meanings in 101 CMR 204.02.

Actual Utilization Rate. The percentage of occupancy of a resident care facility. It is calculated by dividing total resident days by maximum available bed days.

Additions. New units or enlargements of existing units that may or may not be accompanied by an increase in licensed bed capacity.

Base Year. The calendar year or portion of the calendar year that is used to compute the prospective rates as defined in 101 CMR 204.04. The base year for rates effective January 1, 2024 is 2021.

Building. The structure that houses residents. Building costs include the direct cost of construction of the shell and expenditures for service equipment and fixtures such as elevators, plumbing, and electrical fixtures that are made a permanent part of the structure. Building costs also include the cost of bringing the building to productive use, such as permits, engineering and architect's fees, and certain legal fees. Building costs include interest paid during construction, but not mortgage acquisition costs. When the fixed assets of a facility are sold, the allowable book value of all improvements will become part of the allowable basis of the building for the buyer.

Center. The Center for Health Information and Analysis (CHIA), established under M.G.L. c. 12C.

204.02: continued

Change of Ownership. A *bona fide* transfer, for reasonable consideration, of all the powers and *indicia* of ownership. A change of ownership may not occur between related parties and must be a sale of assets of the facility rather than a method of financing. A change in the legal form of the provider does not constitute a change of ownership, unless the other criteria are met.

Community Support Facility. A resident care facility licensed by the Department in compliance with 105 CMR 150.000: *Standards for Long-term Care Facilities* that provides or makes arrangements to provide appropriate mental health services in addition to the minimum basic care and services required by 105 CMR 150.000 for residents who do not routinely require nursing or other medically related services.

Community Support Resident. An individual in need of resident care facility services, who is 50 years of age or older, and who, upon the written consent of the individual (if he or she is competent to give such consent) or guardian (if he or she is not competent), and a physical evaluation by a psychiatrist or other physician, and a psychiatric evaluation by a psychiatrist, is deemed appropriate by both for residency and services provided by a community support facility pursuant to 105 CMR 150.000: *Licensing of Long Term Care Facilities* or its most recent applicable regulation. Any exceptions and additional factors used to determine whether a resident is a community support facility resident will be in accordance with 105 CMR 150.000.

Community Support Resident Days. The number of days of occupancy by community support residents in a community support facility or a resident care facility with community support residents. Community support resident days include the day of admission, but not the day of discharge. Where admission and discharge occur on the same day, one community support resident day will be used. Those days a bed is held vacant for a publicly aided community support resident temporarily placed in a different care situation, pursuant to an agreement between the provider and the Department of Transitional Assistance in accordance with duly established policies of said Department, are included as community support resident days. Those days a bed is held vacant for a non-publicly aided resident, whether or not there is a charge for such reservation by the facility, are included as community support resident days.

Constructed Bed Capacity. A resident care facility's bed capacity (or clinical bed capacity) as defined in 105 CMR 100.100: *Definitions*, which states: the capacity of a building to accommodate a bed and the necessary physical appurtenances in accordance with the applicable standards imposed as a condition of operation under state law. It includes a room designed or able to accommodate a bed and necessary physical appurtenances, whether or not a bed and all such appurtenances are actually in place, with any necessary utilities (*e.g.*, drinking water, sprinkler lines, oxygen, electric current, electric signals, *etc.*), with either outlets or capped lines within the room.

Deferred Charges. Expenditures, such as prepaid insurance, rent or licenses, not recognized as a cost of operations for the period in which they were incurred, but carried forward to be written off in one or more future periods. Deferred charges are not expenditures that can be identified with and justified as relating to physical assets that will contribute services to future operations.

Department. The Massachusetts Department of Public Health.

Department of Transitional Assistance Days (DTA Days). Days of resident care facility services provided to residents who are recipients of Emergency Assistance for the Elderly, Disabled and Children (EAEDC) or Supplemental Security Income/State Supplemental Payments (SSI/SSP) funded by DTA.

Desk Audit. A comprehensive audit performed at the Center's offices in which the auditor evaluates the accuracy of the information in the cost reports and supporting documentation in accordance with an audit program.

Direct Restorative Therapy. Services of physical therapists, occupational therapists, and speech, hearing, and language therapists provided directly to individual residents to reduce physical or mental disability and to restore the resident to maximum functional level. Direct restorative therapy services are provided only upon written order of a physician, physician assistant, or nurse practitioner who has indicated anticipated goals and frequency of treatment to the individual resident.



## 204.02: continued

Resident Care Facility (Facility). A facility licensed by the Department in compliance with 105 CMR 150.000: *Standards for Long-term Care Facilities* or exempt from licensure under M.G.L. c. 111, § 73B providing protective supervision in addition to the minimum basic care required by 105 CMR 150.000 for residents who do not routinely require nursing or other medically related services.

Resident Days. The number of days of occupancy by residents in a facility. Included in the computation of resident days is the day of admission, but not the day of discharge. Where admission and discharge occur on the same day, one resident day is used. Those days in which a bed is held vacant and reserved for a publicly aided resident temporarily placed in a different care situation, are included as resident days. Those days on which a bed is held vacant and reserved for a non-publicly aided resident, whether or not there is a charge for such reservation by the facility, are included as resident days.

Responsible Person. A person 21 years of age or older who has received a high school diploma, is of good moral character, and has the ability to communicate orally and in writing in English or the primary language used by residents of the facility, and who will make mature and accurate judgments regarding the care needs of the residents as required by 105 CMR 150.000: *Standards for Long-term Care Facilities*.

Sole Proprietor. A business enterprise other than a corporation or partnership in which the net worth belongs entirely to one individual.

Support Service Coordinator. A person who has received a BA or BS degree in a human service field of study such as psychology, nursing, or social work and who is employed by a community support facility to identify, monitor, and meet the support service needs of community support residents.

Support Services. Those services provided for the benefit of community support resident(s) in order to enhance psycho-social and physical functioning as defined by the Department in 105 CMR 150.000: *Standards for Long-term Care Facilities*.

Unit. Unit has the same definition as in 105 CMR 150.000: *Standards for Long-term Care Facilities*.

Variable Costs. Costs that change depending on the volume of occupancy. Variable costs include the allowable amounts reported in the following accounts from the cost report: administrator/responsible person salaries and benefits; clerical salaries; EDP/payroll/bookkeeping services; office supplies; telephone, except directory advertising; motor vehicle expense; conventions and meetings; advertising, help wanted; licenses and dues, resident care related; total education and training; total employee benefits, except officers, profit sharing and other benefits; accounting services not related to appeals; total payroll taxes, except officer; nonprofit DES claims; malpractice and general liability insurance; total Workers' Compensation, except officer; total group life/health, except officer; total plant operations; total dietary; total laundry; total housekeeping; total nursing; quality assurance professional; community support coordinator; total physician services; house supplies, not resold; pharmacy consultant; social service worker; indirect therapy salaries; indirect therapy consultants; total recreation, except transportation; realty company variable add-back; management company variable and fixed cost add-back, less non-allowable self-disallowances; vending machine income; and other operating cost recoverable income.

204.03: General Rate Provisions

(1) General. EOHHS will determine a payment rate for dates of service on or after January 1, 2024, for each facility as follows.

(a) Preliminary Rate. The facility's preliminary rate is equal to the sum of

1. allowable variable costs determined under 101 CMR 204.04; and
2. allowable capital and other fixed costs as determined under 101 CMR 204.05.

(b) Rate Adjustments. The preliminary rate as calculated in 101 CMR 204.03(1)(a) will be adjusted as follows.

## 204.03: continued

1. DTA Days Percentage Adjustment.
    - a. For each facility, calculate its DTA days percentage by dividing its DTA days by the facility's total resident days, as reported on Schedule 3 of the 2021 HCF-4.
    - b. Each facility will receive a DTA days percentage adjustment equal to \$30.31 multiplied by the percentage calculated in 101 CMR 204.03(1)(b)1.a.
  2. GAFC Adjustment. For each eligible facility, apply the GAFC adjustment in the same amount as applied to the rate in effect on December 31, 2023.
  - (c) Payment Rate. Subject to the Payment Rate Maximum Increase as described in 101 CMR 204.03(1)(d) and the Resident Care Cost Quotient as described in 101 CMR 204.03(1)(e), the facility's January 1, 2024, payment rate is equal to the greater of
    1. the sum of the preliminary rate as determined in 101 CMR 204.03(1)(a) and the payment rate adjustments as determined in 101 CMR 204.03(1)(b), plus \$8.00;
    2. the facility's certified rate in effect on December 31, 2023; or
    3. \$105.
  - (d) Payment Rate Maximum Increase. If the facility's payment rate as calculated in 101 CMR 204.03(1)(c) is greater than the facility's certified rate in effect on December 31, 2023, plus \$70, the facility will receive a downward adjustment such that the total payment rate effective January 1, 2024, is equal to the facility's certified rate in effect on December 31, 2023, plus \$70.
  - (e) Resident Care Cost Quotient (RCC-Q). If the facility's RCC-Q score is less than the RCC-Q threshold established pursuant to 101 CMR 204.10(1), the facility will receive a downward adjustment as described in 101 CMR 204.10.
  - (f) Annualization Adjustment. For the period from January 1, 2024, through January 31, 2024, EOHHS will apply an annualization adjustment of 596.77% of the difference between the facility's January 1, 2024, rate as determined in 101 CMR 204.03(1)(c), (d), and (e) and its certified rate in effect on December 31, 2023, which accounts for the period July 1, 2023, through December 31, 2023.
- (2) Other Provisions.
- (a) Audits. EOHHS will establish rates after a comprehensive desk audit of the base year cost report. The Center may also, whenever possible, conduct on-site field audits to ensure the accuracy of the claims for reimbursement and consistency in reporting. EOHHS will disallow any cost for which the provider does not produce adequate documentation requested by the Center during a desk or field audit.
  - (b) General Cost Principles. In order to be reimbursed, a cost must
    1. be ordinary, necessary, and directly related to the care of publicly aided residents;
    2. be consistent with the prudent buyer concept;
    3. be for goods and services actually provided in the resident care facility;
    4. not have the transaction effect of circumventing 101 CMR 204.00 under the principle that the substance of the transaction must prevail over form;
    5. actually be paid by the provider. Examples of costs that are not considered paid for purposes of reimbursement include, but are not limited to, costs that are discharged in bankruptcy; forgiven; converted to a promissory note; and accruals of self-insured costs based on actuarial estimates; and
    6. not be paid to a related party that has not been identified on the reports.
  - (c) Non-allowable Costs. Rates will not include those costs that are not reimbursable, as defined below, are reimbursed through an allowance, or are for services that are billed directly.
    1. Costs that are not reimbursable include
      - a. bad debts, refunds, charity and courtesy allowances, and contractual adjustments to the Commonwealth and other third parties;
      - b. 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 residents, telephone income, vending machine income, and medical records income. Vending machine income will be recovered against the variable cost, included in the variable cost allowance;
      - c. federal and state income taxes, except the non-income related portion of the Massachusetts corporate excise tax;

## 204.03: continued

- d. expenses that are not directly related to the provision of resident care including, but not limited to, expenses related to other business activities and fundraising, gift shop expenses, research expenses, rental expense for space not required by the Department and expenditure of funds received under federal grants for compensation paid for training personnel, and expenses related to grants or contracts for special projects;
  - e. compensation and fringe benefits for residents on a provider's payroll;
  - f. any amounts in excess of any schedule or limitation contained in 101 CMR 204.00;
  - g. 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;
  - h. any increase in compensation or fringe benefits granted as an unfair labor practice after a final adjudication by the court of last resort;
  - i. accrued expenses that remain unpaid more than 120 days after the close of the reporting year, excluding vacation and sick time accruals, are not included in the prospective rates. When the Center receives satisfactory evidence of payment, EOHHS may reverse the adjustment and include that cost, if otherwise allowable, in the applicable prospective rates. Except as provided above, a cost must actually be paid by the provider in order to be reimbursable. Examples of costs that are not considered paid for purposes of reimbursement include, but are not limited to, costs that are discharged in bankruptcy; costs that are forgiven; costs that are converted to a promissory note; and accruals of self-insured costs that are based on actuarial estimates;
  - j. expenses for purchased service nursing services purchased from temporary nursing agencies that are not registered with the Department under 105 CMR 157.000: *The Registration and Operation of Temporary Nursing Service Agencies*;
  - k. any expense or amortization of a capitalized cost relating to costs incurred prior to the opening of the facility;
  - l. expenses relating to the financing of or otherwise supporting political or lobbying activities regarding legislation to affect reimbursement methods; campaign contributions; and advertising to create goodwill or otherwise affect payments made by governmental units;
  - m. all legal expenses; and those accounting expenses and filing fees associated with any appeal process;
  - n. additional rental payments or charges based upon receipts or income will not be considered as additional rental expense;
  - o. interest payments and charges based upon the provider's receipts or income will not be considered as allowable interest expense;
  - p. any costs that were incurred in periods other than the base year;
  - q. an adjustment to base year costs to reflect the difference between the rates charged to private residents in the base year if those rates are less than the public rates certified in the base year. EOHHS will multiply the difference between the base year rate for publicly aided residents and the average rate charged private residents corresponding to the base year above. The adjustment is calculated as follows:  $[(\text{private income/resident private patient days}) - \text{public base year rate per diem}] \times (\text{base year resident private patient days/base year patient days}) = \text{the per diem amount}$  by which the publicly aided rate will be reduced. In no instances will the certified rate be lower than the lowest private rate assigned to an individual for that period;
  - r. any costs, including rental and leasehold expenses, for buildings and equipment that are not located at the site of the resident care facility will not be allowable as fixed costs; and
  - s. costs of ancillary services that are required to be billed on a direct basis to the purchasing government agency.
2. Other Recoverable Income. Costs reimbursed through an allowance or other specified methodology include other recoverable income. Other recoverable income will be recovered against an account in the appropriate cost group category, such as variable cost allowance and fixed costs.
3. Costs for Services Billed Directly. The following supplies or services must be billed directly to the purchaser in accordance with the purchaser's regulations or policies.

## 204.03: continued

- a. Physician. Direct physician services to individual residents, including emergency physician services required by 105 CMR 150.000: *Standards for Long-term Care Facilities*.
- b. Medical Supplies. Direct medical services or supplies in accordance with the regulations or written policy of the governmental unit responsible for paying for such services or supplies in the *per diem* rates.
- c. Prescriptions. Pharmacy costs related to legend drug prescriptions and prescribed legend drugs for individual residents.
- d. Therapy. Direct restorative services provided upon written order of a physician.

204.04: Variable Cost Allowance

- (1) Scope. EOHHS will include in each provider's rate a variable cost allowance to compensate for variable costs.
- (2) Base Year Variable Cost Per Diem. EOHHS will calculate the base year variable cost *per diem* for each provider by dividing the total allowable base year variable costs by the greater of base year resident days or 90% of the mean licensed bed capacity in the base year times the days in the base year. For providers that are organized as sole proprietors, EOHHS will include an imputed amount of \$104,205 for the personal services of an owner.
- (3) Cost Adjustment Factor. EOHHS will apply a cost adjustment factor of 13.18% to 2021 base year costs. If there has been a change of ownership in the base year, and the rates are based on the new owner's reported base year costs, EOHHS will modify the cost adjustment factor to reflect the number of months from the midpoint of the new owner's reporting period to the midpoint of the prospective rate period.
- (4) Variable Cost Allowance. The variable cost allowance equals the lower of base year variable cost *per diem* or \$154.85, which is further adjusted by the cost adjustment factor.
- (5) Special Provisions.
  - (a) Accrued Expenses. EOHHS will not allow accrued expenses that remain unpaid for more than 120 days after the close of the reporting year, excluding vacation and sick time accruals. If the provider submits evidence of satisfactory payment to the Center, EOHHS may reverse the adjustment and include that cost, if otherwise allowable, in the applicable rates.
  - (b) Accounting and Auditing Expenses. Reasonable and necessary accounting and auditing expenses in matters directly related to providing adequate care to publicly aided residents are included, provided that the books and records of the provider are maintained in accordance with generally accepted accounting principles.
  - (c) Staff Training Expenses. The net cost, which is the cost of required staff training activities less any reimbursement from grants, tuition, specific donations, employee contributions, or other sources is included, only if the training is
    - 1. conducted within the Commonwealth of Massachusetts;
    - 2. directly related to improving resident care to publicly aided residents; and
    - 3. conducted by a recognized school, other authorized organization, or a qualified professional as required in 105 CMR 150.000: *Standards for Long-term Care Facilities*.
  - (d) Advertising Expenses. The reasonable and necessary expense of newspaper or other public media advertisements for the purpose of hiring necessary employees.
  - (e) Generally Available Employee Benefits. The extent of the facility's contribution to the cost of generally available fringe benefits are included so long as they are nondiscriminatory.
  - (f) Membership Dues. Reasonable and necessary membership dues are included if the organization's function and purpose are directly related to the development and operation of the facility and providing adequate resident care.
  - (g) Services of Volunteer Workers. Services performed under an agreement between the organization and the provider for the performance of the services without direct payment. The value of services normally provided on a voluntary basis, such as distribution of magazines and newspapers to residents, does not constitute a reasonable variable cost. The net value of services for unpaid persons in positions customarily held by paid employees, performing such services on a regular basis as unpaid members of religious or other organizations, is allowable as a variable cost if

204.05: continued

Asset	Life	Rate
Building Class I or II as classified by the Dept. of Public Safety	40 years	2.5%
Class III or IV as classified by the Dept. of Public Safety	33 years	3.0%
Building Improvements and Leasehold Improvements	Varies	up to 5%
Equipment, Furniture, and Fixtures	ten years	10%
Motor Vehicle Equipment	four years	25%
Limited Life Assets Acquired after December 31, 1996	three years	33.3%

- (d) Change of Ownership.
1. Building and Building Improvements. EOHHS will add building and building improvements to determine the buyer's allowable basis for building. The buyer's allowable basis will be depreciated over the remaining useful life of the building.
  2. Equipment and Limited Life Assets. Equipment and limited life assets will be depreciated in accordance with 101 CMR 204.05(3)(c).
  3. Depreciation on Assets. EOHHS will limit the annual amount of depreciation on transferred assets to the seller's annual allowed depreciation.

(4) Interest. A facility's rate will include reasonable and necessary interest expense determined as follows.

- (a) Interest on Long-term Debt. EOHHS will include reasonable and necessary interest on allowable long-term debt, supported by depreciable fixed assets subject to 101 CMR 204.05(2). EOHHS will not reimburse long-term interest expense on debt that exceeds the allowable basis of fixed assets.
1. Long-term Loans. Long-term interest will be limited to an annually determined percentage of simple interest on all outstanding long-term loans, weighted by the dollar amount of the funds borrowed. For allowable long-term loans secured prior to January 1, 1984, the annually determined percentage will be the rate as stated in the debt instrument at the time of borrowing. For allowable long-term loans secured on or after January 1, 1984, the annually determined percentage will be the lower of the rate as stated in the debt instrument at the time of borrowing or the percentage equal to the monthly rate of interest on special issues of public debt obligations issued to the federal Hospital Insurance Trust Fund for the third month prior to the month in which the financing occurred, plus 3%. EOHHS will limit the allowable interest rate to 15%.
  2. Refinancing.
    - a. EOHHS will recognize the refinancing of an existing allowable debt under the following circumstances.
      - i. Crossover. When the accumulated principal payments on the existing allowable debt exceeds the accumulated depreciation allowed by EOHHS on the allowable fixed assets financed by that debt;
      - ii. Demand Note. When an existing, allowable debt becomes payable on demand;
      - iii. Lowered Expense. When the long-term interest expense over the life of the refinanced debt is lower than it would have been under the remainder of the existing, allowable debt. The provider must submit comparative schedules showing total long-term interest expense under the existing allowable debt and the refinanced debt; or
      - iv. Allowable Additions. When a provider refinances for an amount greater than the existing allowable debt, and the purpose of the additional indebtedness is to finance a significant addition of allowable fixed assets. EOHHS will not reimburse long-term interest expense for additional refinancing that exceeds the amount of allowable fixed assets.
    - b. Allowable Interest Rate. The allowable interest rate for an allowable or partially allowable refinancing will be determined in accordance with 101 CMR 204.05(4)(b)1.

## 204.05: continued

- c. When a refinancing, or a portion of a refinancing, is not allowable under 101 CMR 204.05(4)(b)2., EOHHS will calculate allowable long-term interest as though the non-allowable refinancing did not occur.
- (b) Other Provisions.
  1. Interest. Interest related to the financing of newly acquired fixed assets will be allowed only if the asset acquisition and financing occur concurrently. If the provider presents documentation sufficient to demonstrate that all reasonable attempts were made to finance the asset at the time of acquisition, EOHHS will recognize financing obtained no more than 90 days after the date of acquisition of the assets.
  2. Loans from Owner, Officer, or Related Party. Interest expense does not include interest on loans to the facility from an owner, officer, or related party.
  3. Mortgage Acquisition Costs. Mortgage acquisition costs must be amortized over the life of the mortgage. Amortized mortgage acquisition costs are treated as long-term interest expense. For allowable long-term debts secured on or after January 1, 1984, mortgage acquisition costs are subject to the ceiling on maximum interest rates in accordance with 101 CMR 204.05(4)(b).

204.07: Reporting Requirements

- (1) Required Reports.
  - (a) Resident Care Facility Cost Report. Each provider must complete and file a residential care cost report each calendar year with the Center, containing the facility's claim for reimbursement and the complete financial condition of the facility, including all applicable management company, central office, and real estate expenses.

204.07: continued

(b) Realty Company Cost Report. A provider that does not own the real property of the facility, and pays rent to an affiliated or non-affiliated realty trust or other business entity, must file or cause to be filed a realty company cost report with the Center. If no report is filed, EOHHS will not reimburse the costs associated with the provider's rental expense.

(c) Management Company Cost Report. A provider that claims management or central office expenses must file a separate management company cost report with the Center for each entity for which it claims management or central office expense. If these costs are claimed for reimbursement, the provider must certify that costs are reasonable and necessary for the care of publicly aided residents in Massachusetts.

(2) General Cost Reporting Requirements.

(a) Accrual Method. Providers must complete all required reports using the accrual method of accounting.

(b) Documentation of Reported Costs. Providers must maintain accurate, detailed, and original financial records to substantiate reported costs for a period of at least five years following the submission of required reports or until the final resolution of any appeal involving a rate for the period covered by the report, whichever occurs later. Providers must maintain complete documentation of all of the financial transactions and census activity of the facility and affiliated entities including, but not limited to, the books, invoices, bank statements, canceled checks, payroll records, governmental filings, and any other records necessary to document the provider's claim for reimbursement. Providers must be able to document expenses relating to affiliated entities for which reimbursement is claimed whether or not they are related parties.

(c) Fixed Asset Ledger. Providers must maintain a fixed asset ledger that clearly identifies each asset for which reimbursement is being claimed, including its location, the date of purchase, the cost, salvage value, accumulated depreciation, and the disposition of sold, lost, or fully depreciated assets.

(d) Job Descriptions and Time Records. Providers and management companies must maintain written job descriptions including time records, qualifications, duties, and responsibilities for all positions for which reimbursement is claimed. EOHHS will not reimburse the salary and fringe benefits or the imputed amount for sole proprietors as specified in 101 CMR 204.04(2) for any individual for which the provider does not maintain a job description and time record.

(e) Other Cost Reporting Requirements.

1. Expenses that Generate Income. Providers must identify the expense accounts that generate income. EOHHS will offset reported ancillary income if the provider does not identify the associated expense account.

2. Laundry Expense. Providers must separately identify the expense associated with laundry services not provided to all residents. Providers may not claim reimbursement for such expense.

3. Fixed Costs.

a. Providers must allocate all fixed costs, except equipment, on the basis of square footage. Providers may elect to specifically identify equipment related to the facility. The provider must document each piece of equipment in the fixed asset ledger. If a provider elects not to identify equipment, it must allocate equipment on the basis of square footage.

b. If a provider undertakes construction to replace beds, it must write off the fixed assets that are no longer used to provide care to publicly aided residents and may not claim reimbursement for the assets.

c. Providers must separately identify fully depreciated assets. Providers must report the costs of fully depreciated assets and related accumulated depreciation on all reports unless they have removed such costs and accumulated depreciation from the provider's books and records. Providers must attach to the cost report a schedule of the cost of the retired equipment, accumulated depreciation, and the accounting entries on the books and records of the facility when the equipment is retired.

d. Providers may not report expenditures for major repair projects whose useful life is greater than one year as expenses. Providers must not report such expenditures as pre-paid expenses.

4. Mortgage Acquisition Costs. Providers must classify mortgage acquisition costs as other assets. Providers may not add mortgage acquisition costs to fixed asset accounts.

## 204.07: continued

5. Related Parties. Providers must report salary expenses paid to a related party and must identify all goods and services purchased from a related party. If a provider purchases goods and services from a related party, it must disclose the related party's cost of the goods and services. EOHHS will limit reimbursement for such goods and services to the lower of the related party's cost or the cost determined using the prudent buyer concept.
  6. Service of Non-paid Workers. The services must be fully disclosed in the footnotes and explanations section of the cost report. Both the total expense and the account(s) in which the expense is reported must be identified.
  7. Facilities in Which Other Programs Are Operated. If a provider operates an adult day health program, an assisted living program, or provides outpatient services, the provider must not claim reimbursement for the expenses of such programs. If the provider converts a portion of the facility to another program, the provider must
    - a. identify existing equipment no longer used in facility operations. Such equipment must be removed from the facility's records;
    - b. identify the square footage of the existing building and improvement costs associated with the program, and the equipment associated with the program; and
    - c. allocate shared costs, including shared capital costs, using a well-documented and generally accepted allocation method. The provider must directly assign to the program any additional capital expenditures associated with the program.
- (3) Filing Deadlines.
- (a) General. Except as provided in 101 CMR 204.07(3)(b) and (c), or in accordance with alternative deadlines established by EOHHS or the Center through administrative bulletin or other written issuance, providers must file required cost reports for the calendar year within 60 days of the deployment of the annual Residential Care Facility Cost Report. If the 60th day falls on a weekend or holiday, the reports are due by 5:00 P.M. on the following business day.
  - (b) Special Provisions.
    1. Change of Ownership. The transferor must file cost reports with the Center within 60 days after a change of ownership. The Center will notify the Department of Transitional Assistance if required reports are not filed timely for payments to be withheld or other appropriate action by that agency.
    2. New Facilities and Facilities with Major Additions. New facilities and facilities with major additions that become operational during the rate year must file year end cost reports with the Center within 60 days after the close of the first and second rate years.
    3. Appointment of a Resident Protector Receiver. If a receiver is appointed pursuant to M.G.L. c. 111, § 72N, the provider must file cost reports for the pre-receivership reporting period or portion thereof with the Center within 60 days of the receiver's appointment.
    4. Closed Facilities. A facility that permanently closes is not required to file the reports cited in 101 CMR 204.07(1) for the year in which the facility closed.
  - (c) Extension of Filing Date. The director of the Center's pricing group may grant a request for an extension of the filing due date for a maximum of 30 calendar days. In order to receive an extension, the provider must
    1. submit the request itself rather than through agents or other representatives;
    2. demonstrate exceptional circumstances that prevent the provider from meeting the deadline; and
    3. file the request no later than 15 calendar days before the due date.
- (4) Incomplete Submissions. If the cost reports are incomplete, the Center will notify the provider in writing within 120 days of the receipt. The Center will specify the additional information that the provider must submit to complete the cost reports. The provider must file the necessary information within 25 days of the date of notification. If the Center fails to notify the provider within the 120-day period, the cost reports will be considered complete and deemed to be filed on the date of receipt.



## 204.07: continued

(5) Additional Information. The Center may require the provider to submit additional data and documentation during a desk or field audit even if the Center has accepted the provider's cost reports. In addition, the Center may request additional information and data relating to the operations of the provider and any related party.

(6) Failure to File Timely. If the provider does not file the required cost reports by the due date, EOHHS may reduce the provider's rate for current services by 5% on the day following the date the submission is due and 5% for each month of noncompliance thereafter. The reduction accrues cumulatively such that the rate reduction equals 5% for the first month late, 10% for the second month late, and so on. The reduction will be reversed effective on the date the cost reports are filed.

## 204.08: Other Provisions

(1) Special Rate Provisions.

(a) New Facilities and Major Additions. EOHHS will calculate projected rates for new facilities and facilities with major additions in the rate year. The provider must file a projected cost report that projects the reasonably anticipated costs and anticipated resident days for a 12-month period commencing with the first date of licensure.

1. New Facilities and Facilities with Major Additions Becoming Operational Prior to July 1<sup>st</sup> of the Rate Year.

a. First Rate Year. EOHHS will calculate a projected rate based on the projected cost report. The effective date of the rate will be the first date of licensure through December 31<sup>st</sup> of the first rate year that the facility becomes operational.

b. Second Rate Year. EOHHS will calculate the rate for the second rate year based on the projected cost report described in 101 CMR 204.07.

c. Third Rate Year. The rate for the third rate year is based on the first calendar year cost report of actual expenditures.

2. New Facilities and Facilities with Major Additions Becoming Operational on or after July 1<sup>st</sup> of the Rate Year.

a. First Rate Year. EOHHS will calculate the rates based upon the projected cost report as described in 101 CMR 204.07. The effective dates of the rate will be the first date of licensure through December 31<sup>st</sup> of the first rate year that the facility becomes operational.

b. Second Rate Year. The rate for the second rate year is based on the same projected cost report that was used for the first rate year.

c. Third Rate Year. EOHHS will calculate the rate for the third rate year based on the cost report of actual expenditures filed for the second calendar year.

3. Cost Ceilings. EOHHS will use the cost reports as described in 101 CMR 204.07(1) subject to appropriately inflated ceilings and limitations for each cost center.

4. EOHHS will recalculate projected rates based upon actual cost data, once a provider files a cost report(s) that covers the projected rate period.

(b) Facilities Sold during the Base Year. If a provider is sold during the base year, EOHHS will use the buyer's cost reports for the buyer's period of ownership to determine allowable base year costs. If the Center determines that the buyer's period of ownership was not long enough to ensure that it is representative of annualized costs, EOHHS may determine the rate using the seller's cost report.

(c) Facilities Closed after the Base Year. If a provider closed after the base year and subsequently reopened, EOHHS will use the base year cost report to calculate the rate. If no base year cost report was filed, EOHHS will calculate the rate using the latest filed cost report and increase the variable cost allowance by an appropriate cost adjustment factor.

(d) Private Resident Care Facilities. A facility that was a private facility during the base year and subsequently signs a provider agreement to provide services to publicly aided residents must file a cost report for the latest full year prior to the date of the provider agreement. EOHHS will calculate allowable variable costs using the appropriate ceilings and cost adjustment factor. EOHHS may limit the rate to the amount of the facility's average rate charges to private patients.

204.08: continued

- (e) Facilities Purchased from a Receiver. If a facility is purchased from a receiver, the Center may use the cost report from a year different from the base year if it determines that the costs for that year more accurately reflect the reasonable and necessary costs of providing resident care, subject to approval of the Department of Transitional Assistance. In such cases, EOHHS will increase the variable cost allowance by an appropriate cost adjustment factor.
- (f) Rates for Special Programs. EOHHS may include an allowance for costs and expenses to maintain a special program if the provider has received prior written approval from the purchasing agency.

(2) Administrative Adjustments.

- (a) Types of Administrative Adjustments. A provider may file a petition with the Center for an administrative adjustment during the rate year for the following reasons.
1. Substantial Capital Expenditures. A provider may petition for an administrative adjustment for a substantial capital expenditure of at least \$10,000 for improvements and limited life assets and \$5,000 for equipment if it has either made, or expects to make, a substantial capital expenditure that meets the criteria set forth in 101 CMR 204.08(2)(a)1.a. through f.
- a. Qualifying Expenses. The provider may petition for recognition of increased depreciation and interest expense as a result of the expenditure. The provider may not petition for mortgage acquisition costs, or increased operating costs as a result of the expenditure.
- b. Expenditures Not Subject to Determination of Need. For improvements, the expenditure amount must be at least 1.5 times the allowable annual base year depreciation expense of building, improvements, and limited life assets. For equipment, the expenditure amount must be at least 1.5 times the allowable base year depreciation on equipment.
- c. Expenditures Subject to Determination of Need. If the expenditure is subject to determination of need approval, the provider may petition for an adjustment after the Department has determined that need exists for the project and after the time for making an appeal to the Health Facilities Appeals Board has expired or all administrative and judicial reviews of the Department's determination have been concluded. The provider may petition for an adjustment before the Department has made a determination on the project if the Commissioner of Public Health requests that EOHHS determine the appropriate amount of an adjustment before a determination of need is made with respect to the provider's proposed expenditure.
- d. Limitation on Capital. The maximum amount allowed for fixed costs for a facility is described in 101 CMR 204.08(2)(a)1.d. If the provider has not yet incurred the expenses, it must submit satisfactory evidence of its commitment to incur the expenditure.

Effective Date	Payment Amount
Prior to July 1, 2004	\$17.29
July 1, 2004, to December 31, 2006	\$22.56
January 1, 2007, to December 31, 2007	\$25.82
January 1, 2008, to December 31, 2012	\$27.30
January 1, 2013 - November 30, 2018	\$28.06
December 1, 2018 - Forward	\$37.60

- e. EOHHS will certify a temporary administrative adjustment of up to \$37.60 upon receipt of the notification of the petition request for the substantial capital expenditure, rate adjustment request, and required supporting documentation.
- f. Whenever a capital petition is granted, the provider's allowable basis will be adjusted by increasing the accumulated depreciation by the amounts included in the rates from the effective date of the petition.

204.08: continued

2. New Governmental Requirements. A provider may petition for an administrative adjustment if it has incurred, or presents satisfactory evidence of a commitment to incur, substantially different costs necessary to satisfy new requirements of a governmental unit of the Commonwealth or the federal government. Such requirements must be related to provision of resident care. An increase in existing government requirements is not considered a new government requirement. EOHHS will not approve a petition for costs incurred to correct Department of Public Health resident care deficiencies.
  3. Certain Increases in Operating Costs. A provider may petition for an adjustment if it has experienced unusual or unforeseen increases in operating costs that are not reflected in the rate. Unusual and unforeseen circumstances are events of a catastrophic nature (for example, fire, flood, or earthquake). The cost increases must gravely threaten the financial stability of the provider. In measuring the financial stability of the provider, EOHHS will consider all of the provider's expenditures and revenues.
  4. Receiver Fees. A receiver appointed under M.G.L. c. 111, § 72N may petition for a rate adjustment to reimburse reasonable receiver compensation and payment of his or her bond.
    - a. The receiver must submit detailed invoices that document the hours expended, a brief description of each activity, and the hourly rate. EOHHS will limit the reimbursement to the reasonable and necessary cost to safeguard the health, safety, and continuity of care to residents and to protect them from adverse health effects of unsuitable transfer.
    - b. EOHHS will limit reasonable receiver compensation to the lower of actual receiver fees or \$10,000 for the first 30 days, \$7,500 for the second 30 days, \$2,500 for the third 30 days, and \$1,500 for each 30-day period thereafter. EOHHS may include additional receiver compensation if both the Department of Public Health and the Department of Transitional Assistance approve additional compensation to the receiver due to unique circumstances. EOHHS, the Department, and the Department of Transitional Assistance will evaluate such requests for additional compensation for reasonableness.
  5. Transfer of a Facility. If a facility is transferred during the first six months of the year subsequent to the base year, the buyer may file a petition requesting that EOHHS use the buyer's cost report to determine its rate. The buyer must demonstrate that use of the seller's base year cost report is not appropriate to project rate year costs. The Center will determine whether use of the buyer's cost report is appropriate to reflect reasonable and necessary patient care costs. EOHHS will make the appropriate adjustments to reflect the use of a non-base year cost report.
- (b) General. A petition for an administrative adjustment must contain the following.
1. A petition must include the provider's name, address, a detailed explanation, under oath, of the basis of the petition and documentation supporting the amount requested including, but not limited to, invoices, canceled checks, loan documents, any construction contracts, and the project beginning and ending dates.
  2. The provider must submit any other information that EOHHS requires within 30 days of the request. EOHHS will not allow the petition if the provider fails to timely submit the requested information.
  3. EOHHS will suspend review of any petition if the provider has failed to submit reports or other information required by 101 CMR 204.00 in a timely manner. If the provider fails to file the required information within 60 days after notification by EOHHS, EOHHS will dismiss the petition for administrative adjustment.
  4. EOHHS will suspend review of any petition if the Department notifies the provider that it has identified a quality of care problem.
  5. The Center may require that the provider demonstrate that the changes in costs have actually occurred and that the year-end cost report substantiates the financial condition stated in the petition. If the provider fails to provide evidence of such costs within 45 days of the Center request, EOHHS may retroactively reverse the adjustment.
- (c) Effective Date. An administrative adjustment will be effective on the later of the date the petition is filed with EOHHS or the date on which the event that is the basis of the petition is completed.
- (d) Standard of Review.
1. In reviewing the petition, EOHHS will consider the following:
    - a. whether the adjustment would result in a significant difference in the rate;

## 204.08: continued

- b. the costs of other providers offering the same or comparable level of care; and
  - c. the ability of the Department of Transitional Assistance to collect any overpayments that may result from the petition. EOHHS will notify the Department of Transitional Assistance of the petition.
- 2. EOHHS will review petitions in accordance with the criteria set forth in 101 CMR 204.00 in effect in the year in which they are received by EOHHS, notwithstanding the effective date.
- (3) Notice of Proposed Rate. EOHHS will send the provider a notice of the proposed rate as follows.
  - (a) Desk Audit. Prior to certification of a prospective rate based upon a desk audit, EOHHS will send the provider a notice of the proposed rate and a copy of adjustments at least ten calendar days prior to the scheduled date of certification. The provider may comment, in writing, on the proposed rate and adjustments during the period between the notice and scheduled date of EOHHS action. Providers requiring additional time to respond may request that EOHHS postpone the scheduled certification.
  - (b) Field Audit. EOHHS will not send a notice prior to certification of a proposed rate that is based upon a field audit if the rate is amended solely to incorporate field audit adjustments that have been discussed at an exit conference. The Center will provide a copy of the field audit adjustments to the provider following the exit conference.
- (4) Rate Filings. EOHHS will file certified rates of payment for resident care facilities with the Secretary of the Commonwealth.
- (5) Appeals. Any provider aggrieved by a rate of payment established pursuant to 101 CMR 204.00 may file an appeal with the Division of Administrative Law Appeals, established under M.G.L. c. 7, § 4H within 30 days of the filing of any such rate with the Secretary of the Commonwealth.
- (6) Administrative Bulletins. EOHHS may issue administrative bulletins to clarify provisions of 101 CMR 204.00, which will be deemed to be incorporated in 101 CMR 204.00. EOHHS will file with the Secretary of the Commonwealth, distribute copies to providers, and make the bulletins accessible to the public at EOHHS's offices during business hours.
- (7) Severability. The provisions of 101 CMR 204.00 are severable. If any provision of 101 CMR 204.00 or the application of any provision of 101 CMR 204.00 is held invalid or unconstitutional, such provision will not be construed to affect the validity or constitutionality of any other provision of 101 CMR 204.00 or the application of any other provision.

204.09: Certain COVID-19-related Costs Add-on Payment Provisions

- (1) General Provision. Resident care facilities eligible under 101 CMR 204.09 will receive an add-on payment that must be used to reimburse for costs related to COVID-19 in accordance with St. 2022, c. 268. This add-on payment, which is to be made in accordance with St. 2022, c. 268, is intended to be made in calendar year 2024 and represents approximately half of the payments intended to be made to resident care facilities with rates established in 101 CMR 204.00.
- (2) Calculation of Certain COVID-19 Related Costs Add-on Payment. EOHHS will calculate the add-on payment for each facility as follows.
  - (a) Determine the total number of resident care beds as of June 7, 2023 that are:
    - 1. in resident care facilities licensed by DPH;
    - 2. in resident care facilities that are not subject to licensure pursuant to M.G.L. c. 111, §73B, and had SSI/SSP or EAEDC days in calendar year 2021; or
    - 3. in facilities that are licensed by DPH as nursing facilities, but where such facility has a majority of resident care beds over nursing beds, and where such facility has not otherwise received payments for either resident care or nursing beds pursuant to 101 CMR 206.00.
  - (b) Divide \$14,334,990 by the total number of DPH-licensed beds identified pursuant to 101 CMR 204.09(2)(a).

## 204.09: continued

(c) Multiply the quotient determined by the methodology described at 101 CMR 204.09(2)(b) by the number of DPH-licensed beds for the facility as of the date identified 101 CMR 204.09(2)(a).

(3) Permissible Uses of Certain COVID-19 Related Costs Add-on Payments. Facilities may use the add-on payments made in accordance with 101 CMR 204.09 only for COVID-19-related costs including, but not necessarily limited to, investments to support the direct care workforce; COVID-19 preparedness efforts or measures including, but not limited to, increasing uptake of the COVID-19 vaccine, infection control and quality improvement, and personal protective equipment; capital improvements to improve the health, safety, and care of residents; and other COVID-19 related costs.

(4) Further Guidance. EOHHS may, by administrative bulletin or other written issuance, clarify substantive provisions of 101 CMR 204.09, update permissible uses of certain COVID-19 related costs add-on payments, or establish additional reporting or record-keeping requirements with respect to COVID-19 related costs add-on payments.

204.10: Resident Care Cost Quotient

(1) Beginning July 1, 2022, residential care facilities must have a Resident Care Cost Quotient (RCC-Q), that meets or exceeds a threshold of 80%. For the rate year beginning in SFY2024, a residential care facility's rate may be subject to a downward adjustment if the facility fails to be at or above the specified RCC-Q threshold in the previous state fiscal year.

(2) The RCC-Q will be calculated by dividing certain resident care expenses by the facility's total revenue, excluding the revenue for non-residential care facility lines of business, and excluding endowment income. EOHHS may further identify or clarify these certain resident care expenses by administrative bulletin or other written issuance. A multiplier may be applied to certain resident care expenses related to one or more resident care workforce position types. EOHHS may establish the workforce position types eligible for any multiplier, details related to application of such multiplier, and the magnitude of such multiplier in calculating the RCC-Q, by administrative bulletin or other written issuance.

(3) All resident care facilities, including facilities described in 101 CMR 204.10(5), will be required to submit an interim compliance report by March 1<sup>st</sup> of each year and a final compliance report by September 1<sup>st</sup> of each year. The interim report will be used to inform facilities if they are on track to meet the RCC-Q threshold in the reporting period. The final compliance report will be used for determining whether the facility met that threshold and whether a downward adjustment will be applied to the facility's rate in the following rate year.

(4) The downward adjustment to the rate will be applied in the following rate year to facilities that failed to meet the RCC-Q threshold or failed to submit the final report by the final compliance report due date. Such downward adjustment will be applied as follows.

(a) For every 1% below the 80% RCC-Q threshold, a 0.5% downward adjustment will be applied to the facility's rate.

(b) The maximum downward adjustment calculated in accordance with 101 CMR 204.10(4)(a) may be no more than 5% of the facility's rate. EOHHS may apply the maximum downward adjustment of 5% in the following rate year for facilities that fail to submit the final report by the due date established in 101 CMR 204.10(3).

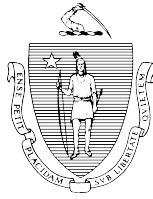
204.10: continued

(5) Residential care facilities that have fewer than 1,700 SSI/SSP and EAEDC days (also known as DTA days), based on the most recent cost report data available to CHIA, for a particular state fiscal year, starting the state fiscal year of July 1, 2022, through June 30, 2023, except for the facilities that failed to submit the final compliance report by September 1st in accordance with 101 CMR 204.10(3) immediately following the end of the particular state fiscal year, will be exempt from the downward adjustment established at 101 CMR 204.10(4). For purposes of 101 CMR 204.10(5), the RCC-Q minimum paid DTA days will be established by EOHHS by administrative bulletin or other written issuance.

(6) EOHHS may issue an administrative bulletin or other written issuance to clarify provisions of 101 CMR 204.10, and as otherwise provided at 101 CMR 204.10.

REGULATORY AUTHORITY

101 CMR 204.00: M.G.L. c. 118E.

**THE COMMONWEALTH OF MASSACHUSETTS****William Francis Galvin**

Secretary of the Commonwealth

**Regulation Filing***To be completed by filing agency*CHAPTER NUMBER: **101 CMR 206.00**CHAPTER TITLE: **Standard Payments to Nursing Facilities**AGENCY: **Executive Office of Health and Human Services**SUMMARY OF REGULATION: *State the general requirements and purposes of this regulation.***101 CMR 206.00 governs the payments for services rendered to publicly aided and industrial accident residents by nursing facilities including residents in a residential care unit of a nursing facility.**REGULATORY AUTHORITY: **M.G.L. c. 118E**AGENCY CONTACT: **Deborah M. Briggs, MassHealth PHONE: 617-847-3302**  
**Publications**ADDRESS: **100 Hancock Street, 6th Floor, Quincy, MA 02171****Compliance with M.G.L. c. 30A**EMERGENCY ADOPTION - *if this regulation is adopted as an emergency, state the nature of the emergency.***This is an emergency refile. The amendments are being filed as an emergency in order to meet the statutory requirement in M.G.L. c. 118E, § 13D to set rates for nursing facilities by October 1st of each year, and to ensure that nursing facility rates continue to be adequate to meet the costs incurred by efficiently and economically operated facilities as required under M.G.L. c. 118E, § 13C.**PRIOR NOTIFICATION AND/OR APPROVAL - *If prior notification to and/or approval of the Governor, Legislature or others was required, list each notification, and/or approval and date, including notice to the Local Government Advisory Commission.***Executive Order 145 Notification: September 27, 2023****Executive Order 562 Approval: September 15, 2023**PUBLIC REVIEW - *M.G.L. c. 30A sections 2 and/or 3 requires notice of the hearing or comment period, including a small business impact statement, be filed with the Secretary of the Commonwealth, published in appropriate newspapers, and sent to persons to whom specific notice must be given at least 21 days prior to such hearing or comment period.*

Date of public hearing or comment period: \_\_\_\_\_

FISCAL EFFECT - Estimate the fiscal effect of the public and private sectors.

For the first and second year: The annual fiscal effect is estimated to be \$113,931,000

For the first five years: \_\_\_\_\_

No fiscal effect: \_\_\_\_\_

SMALL BUSINESS IMPACT - M.G.L. c. 30A section 5 requires each agency to file an amended small business impact statement with the Secretary of the Commonwealth prior to the adoption of a proposed regulation. If the purpose of this regulation is to set rates for the state, this section does not apply.

Date amended small business impact statement was filed: \_\_\_\_\_

CODE OF MASSACHUSETTS REGULATIONS INDEX - List key subjects that are relevant to this regulation:

PROMULGATION - State the action taken by this regulation and its effect on existing provisions of the Code of Massachusetts Regulations (CMR) or repeal, replace or amend. List by CMR number:

**101 CMR 206.00 is being amended.**

ATTESTATION - The regulation described herein and attached hereto is a true copy of the regulation adopted by this agency. ATTEST:

SIGNATURE: \_\_\_\_\_ SIGNATURE ON FILE \_\_\_\_\_ DATE: Dec 22 2023

Publication - To be completed by the regulations Division

MASSACHUSETTS REGISTER NUMBER: 1512 DATE: 1/5/24

EFFECTIVE DATE: 10/1/23

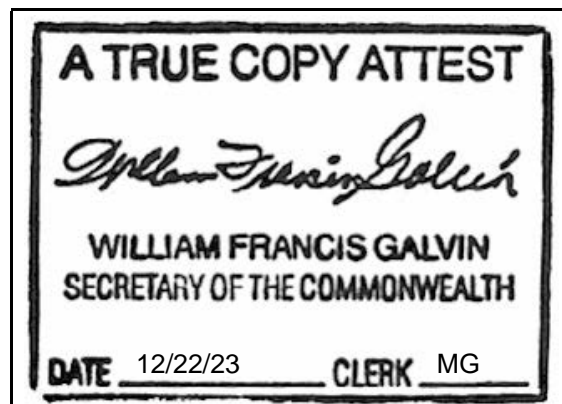
CODE OF MASSACHUSETTS REGULATIONS

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101 CMR 206.00: STANDARD PAYMENTS TO NURSING FACILITIES

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206.01: Scope and Purpose

101 CMR 206.00 governs the payments effective October 1, 2023, for services rendered to publicly aided and industrial accident residents by nursing facilities including residents in a residential care unit of a nursing facility. 101 CMR 206.00 does not govern nursing facility payments pursuant to a contract with the Office of Medicaid.

206.02: General Definitions

As used in 101 CMR 206.00, unless the context requires otherwise, terms have the following meanings.

Administrative and General Costs. Administrative and general costs include the amounts reported in the following accounts: administrator salaries; payroll taxes - administrator; worker's compensation - administrator; group life/health - administrator; administrator pensions; other administrator benefits; clerical; EDP/payroll/bookkeeping services; administrator-in-training; office supplies; phone; conventions and meetings; help wanted advertisement; licenses and dues, resident-care related; education and training - administration; accounting - other; insurance - malpractice; other operating expenses; realty company variable costs; management company allocated variable costs; and management company allocated fixed costs.

Administrator in Training. A person registered with the Board of Registration of Nursing Home Administrators and involved in a course of training as described in 245 CMR: *Board of Registration of Nursing Home Administrators*.

Advanced Dementia Exclusion. A determination by the Department of Mental Health or its designee, the Massachusetts Medical School Pre-admission Screening and Resident Review (PASRR) Unit, that a diagnosis of serious mental illness does not apply to an individual, for the purposes of PASRR, when that individual has a diagnosis of dementia or Alzheimer's disease and/or related disorder (ARD) that co-occurs with a mental illness/disorder diagnosis, and the dementia/ARD is both primary and so severe that the individual would be unable to benefit from treatment.

Audit. An examination of the provider's cost report and supporting documentation to evaluate the accuracy of the financial statements and identification of Medicaid patient-related costs.

Base Year. The calendar year used to compute the standard payments.

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Capital Costs. Capital costs include depreciation expenses on building, improvements, equipment, software, and other limited life assets; long-term interest expense; building insurance; real estate tax; non-income portion of Massachusetts Corporate Excise Taxes; personal property taxes on nursing facility equipment; other rental expenses for fixed costs; and other fixed costs.

Center. The Center for Health Information and Analysis established under M.G.L. c. 12C.

Centers for Medicare and Medicaid Services (CMS). The federal agency under the U.S. Department of Health and Human Services that is responsible for administering the Medicare and Medicaid programs.

Department of Public Health (DPH). An agency of the Commonwealth of Massachusetts, established under M.G.L. c. 17, § 1.

Direct Restorative Therapy. Services of physical therapists, occupational therapists, and speech, hearing, and language therapists provided directly to individual residents to reduce physical or mental disability and to restore the resident to maximum functional level. Direct restorative therapy services are provided only upon written order of a physician, physician assistant, or nurse practitioner who has indicated anticipated goals and frequency of treatment to the individual resident. Direct restorative therapy services include supervisory, administrative, and consulting time associated with provision of the services. These include, but are not limited to, reviewing preadmission referrals, informally communicating with families, scheduling treatments, completing resident care documentation including MDS documentation, screening of patients, writing orders, meeting with aides to discuss patients, consulting with physicians and nurse practitioners, managing equipment, and assessing equipment needs of patients.

Equipment. A fixed asset, usually moveable, accessory or supplemental to the building, including such items as beds, tables, and wheelchairs.

Executive Office of Health and Human Services (EOHHS). The executive department of the Commonwealth of Massachusetts established under M.G.L. c. 6A, § 2 that, through the Executive Office of Elder Affairs, the MassHealth program, and other agencies within EOHHS, as appropriate, operates and administers the programs of medical assistance and medical benefits under M.G.L. c. 118E and that serves as the single state agency under § 1902(a)(5) of the Social Security Act.

Financing Contribution. Payment for the use of necessary capital assets whether internally or externally funded.

Generally Available Employee Benefits. Employee benefits that are nondiscriminatory and available to all full-time employees.

Hospital-based Nursing Facility. A separate nursing facility unit or units located in a hospital building licensed for both hospital and nursing facility services in which the nursing facility licensed beds are less than a majority of the facility's total licensed beds and the nursing facility patient days are less than a majority of the facility's total patient days. It does not include freestanding nursing facilities owned by hospitals.

Improvements. Expenditures that increase the quality of the building by rearranging the building layout or substituting improved components for old components so that the provider is in some way better than it was before the renovation. Improvements do not add to or expand the square footage of the building. An improvement is measured by the provider's increased productivity, greater capacity, or longer life.

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Indirect Restorative Therapy. Indirect restorative therapy services consist only of services of physical therapists, occupational therapists, and speech, hearing, and language therapists to provide the following: orientation programs for aides and assistants; in-service training to staff; consultation and planning for continuing care after discharge; preadmission meetings with families; quality improvement activities such as record reviews, analysis of information and writing reports; personnel activities including hiring, firing, and interviewing; rehabilitation staff scheduling; and attending team meetings including quality improvement, falls, skin team, daily admissions, interdisciplinary, departmental staff, discharge planning, and family meetings when resident is not present.

Induction Period. Days that a nursing facility patient is transported to an Opioid Treatment Program by a nursing facility direct care staff for the purpose of induction on medication assisted treatment at the Opioid Treatment Program.

Industrial Accident Resident. A person receiving nursing facility services for which an employer or an insurer is liable under the Workers' Compensation Act, M.G.L. c. 152.

Management Minute Questionnaire (MMQ). A method of measuring resident care intensity, or case mix, by discrete care giving activities or the characteristics of residents found to require a given amount of care.

Massachusetts Corporate Excise Tax. Those taxes that have been paid to the Massachusetts Department of Revenue in connection with the filing of Form 355A, Massachusetts Corporate Excise Tax Return.

Minimum Data Set (MDS). A CMS-provided standardized assessment tool for nursing facilities to determine a nursing facility patient's Patient Driven Payment Model (PDPM) case mix category.

Mortgage Acquisition Costs. Those costs (such as finder's fees, certain legal fees, and filing fees) necessary to obtain long-term financing through a mortgage, bond, or other long-term debt instrument.

Nursing Costs. Nursing costs include the reported costs for director of nurses, registered nurses, licensed practical nurses, nursing aides, nursing assistants, orderlies, nursing purchased services, and the workers compensation expense, payroll tax expense, and fringe benefits, including pension expense, associated with those salaries.

Nursing Facility. A nursing or convalescent home; an infirmary maintained in a town; a charitable home for the aged, as defined in M.G.L. c. 111, § 71; or a nursing facility operating under a hospital license issued by the Department of Public Health pursuant to M.G.L. c. 111, and certified by the Department of Public Health for participation in MassHealth. It includes facilities that operate a licensed residential care unit within the nursing facility.

Operating Costs. Operating costs include, but are not limited to, the following reported costs: plant, operations and maintenance; dietary; laundry; housekeeping; ward clerks and medical records librarian; medical director; advisory physician; Utilization Review Committee; employee physical exams; other physician services; house medical supplies not resold; pharmacy consultant; social service worker; indirect restorative and recreation therapy expense; other required education; job related education; quality assurance professionals; Management Minute Questionnaire nurses; staff development coordinator; motor vehicle expenses including, but not limited to, depreciation, mileage payments, repairs, insurance, excise taxes, finance charges, and sales tax; and administrative and general costs.

Patient Days. The total number of days of occupancy by residents in the facility. The day of admission is included in the computation of patient days; the day of discharge is not included. If admission and discharge occur on the same day, one resident day is included in the computation. It includes days for which a provider reserves a vacant bed for a publicly aided resident temporarily placed in a different care situation, pursuant to an agreement between the provider and the MassHealth agency. It also includes days for which a bed is held vacant and reserved for a non-publicly aided resident.

## 206.02: continued

Patient Driven Payment Model (PDPM). The case mix classification system provided by CMS to classify nursing facility patients into payment groups.

Patient Driven Payment Model (PDPM) Nursing Case Mix. One of the five case-mix adjusted components of the CMS Patient Driven Payment Model.

Private Nursing Facility. A nursing facility that formerly served only non-Medicaid residents and does not have a provider agreement with the MassHealth agency to provide services to public residents.

Provider. A nursing facility providing care to publicly aided residents or industrial accident residents.

Prudent Buyer Concept. The assumption that a purchase price that exceeds the market price for a supply or service is an unreasonable cost.

Publicly Aided Resident. A person for whom care in a nursing facility is in whole or in part subsidized by the Commonwealth or a political subdivision of the Commonwealth. Publicly aided residents do not include residents whose care is in whole or in part subsidized by Medicare.

Rate Year. The 12-month period from October 1<sup>st</sup> through September 30<sup>th</sup>.

Related Party. An individual or organization associated or affiliated with, or that has control of, or is controlled by, the provider; or is related to the provider, or any director, stockholder, trustee, partner, or administrator of the provider by common ownership or control or in a manner specified in §§ 267(b) and (c) of the Internal Revenue Code of 1954 provided, however, that 10% is the operative factor as set out in §§ 267(b)(2) and (3). Related individuals include spouses, parents, children, spouses of children, grandchildren, siblings, fathers-in-law, mothers-in-law, brothers-in-law, and sisters-in-law.

Replacement Facility. A nursing facility that replaces its entire building with a newly constructed facility pursuant to an approved determination of need under 105 CMR 100.000: *Determination of Need*. A facility that renovates a building previously licensed as a nursing facility is not a replacement facility.

Reported Costs. All costs reported in the cost report.

Required Education. Educational activities, conducted by a recognized school or authorized organization, required to maintain a professional license of employees that provide care to publicly aided residents. Required education also includes training for nurses' aides.

Residential Care. The minimum basic care and services and protective supervision required by the Department of Public Health in accordance with 105 CMR 150.000: *Licensing of Long-term Care Facilities* for residents who do not routinely require nursing or other medically related services.

Residential Care Unit. A unit within a nursing facility licensed by the Department of Public Health to provide residential care.

State Fiscal Year (SFY). The 12-month period from July 1<sup>st</sup> through June 30<sup>th</sup>.

Unit. A unit is an identifiable section of a nursing facility such as a wing, floor, or ward as defined in 105 CMR 150.000: *Licensing of Long term Care Facilities*.

206.03: General Payment Provisions

(1) General. Nursing facility payments are prospective rates based on reported costs for a prior base year.

206.03: continued

- (a) The nursing standard payments and the operating cost standard payments are established in 101 CMR 206.04. The base year for the nursing standard payments and the operating cost standard payments effective October 1, 2023, is 2019. The nursing and operating payments are increased from the base year by a cost adjustment factor of 21.94%.
- (b) The capital payments are established in 101 CMR 206.05. The base year for the capital payments effective October 1, 2023, is 2019. The capital payments are increased from the base year by a cost adjustment factor of 7.55%.
- (c) Payments may be adjusted to include additional payments in accordance with 101 CMR 206.06.

- (2) Ancillary Costs. Unless a provider participates in the Ancillary Pilot Program with the MassHealth agency, or a provider's payments include ancillary services pursuant to the regulations or written policy of the purchasing agency, the provider must bill ancillary services directly to the purchaser in accordance with the purchaser's regulations or policies.
- (3) Disclaimer of Authorization of Services. 101 CMR 206.00 is not authorization for or approval of the substantive services, or lengths of time, for which rates are determined pursuant to 101 CMR 206.00. Governmental units that purchase services from eligible providers are responsible for the definition, authorization, and approval of services and lengths of time provided to publicly aided individuals. Information concerning substantive program requirements must be obtained from purchasing governmental units.

206.04: Nursing Standard Payments and Operating Cost Standard Payments

- (1) Nursing Standard Payments.
  - (a) Nursing Standard Payment Calculation. Effective October 1, 2023, nursing facilities will receive the following nursing standard payments:

PDPM Nursing HIPPS Code (Acuity Level)	PDPM Nursing Case Mix Index (2022)	Nursing Standard Payment
A (ES3)	3.95	\$ 390.73
B (ES2)	2.99	\$ 295.77
C (ES1)	2.85	\$ 281.92
D (HDE2)	2.33	\$ 230.48
E (HDE1)	1.94	\$ 191.90
F (HBC2)	2.18	\$ 215.65
G (HBC1)	1.81	\$ 179.05
H (LDE2)	2.02	\$ 199.82
I (LDE1)	1.68	\$ 166.19
J (LBC2)	1.67	\$ 165.20
K (LBC1)	1.39	\$ 137.50
L (CDE2)	1.82	\$ 180.03
M (CDE1)	1.58	\$ 156.29
N (CBC2)	1.51	\$ 149.37
O (CA2)	1.06	\$ 104.86
P (CBC1)	1.30	\$ 128.60

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PDPM Nursing HIPPS Code (Acuity Level)	PDPM Nursing Case Mix Index (2022)	Nursing Standard Payment
Q (CA1)	0.91	\$ 90.02
R (BAB2)	1.01	\$ 99.91
S (BAB1)	0.96	\$ 94.96
T (PDE2)	1.53	\$ 151.35
U (PDE1)	1.43	\$ 141.46
V (PBC2)	1.19	\$ 117.71
W (PA2)	0.69	\$ 68.25
X (PBC1)	1.10	\$ 108.81
Y (PA1)	0.64	\$ 63.31

- (b) Nursing Standard Payment Adjustment. Effective October 1, 2023, eligible nursing facilities will receive adjustments to their standard nursing payments at 101 CMR 206.04(1)(a), which will be calculated and determined as follows.
1. Calculate each facility's average nursing rate in effect as of September 30, 2023, weighted by the facility's Management Minute Questionnaire (MMQ) case mix during the period of rate year 2022.
  2. Calculate each facility's average proposed nursing rate, to be effective October 1, 2023, using the nursing rates as defined in 206.04(1)(a) and weighted by the facility's average PDPM nursing case mix index during the period of calendar year 2022.
  3. To determine a facility's eligibility for the Nursing Payment Adjustment
    - a. First, determine whether the facility is a pediatric facility. If the facility is a pediatric facility, then
      - i. Determine whether the value calculated in 101 CMR 206.04(1)(b)2. is less than the value calculated in 101 CMR 206.04(1)(b)1.
      - ii. If the value calculated in 101 CMR 206.04(1)(b)2. is less than the value calculated in 206.04(1)(b)1., then calculate an "average nursing rate adjustment" such that the sum of this adjustment and the value calculated in 101 CMR 206.04(1)(b)2. will be equal to the value calculated in 101 CMR 206.04(1)(b)1.
      - iii. Divide the "average nursing rate adjustment" by the value calculated in 101 CMR 206.04(1)(b)2. The resulting percentage, rounded to the nearest hundredth of a percent, will be the Nursing Payment Adjustment.
    - b. If the facility is not a pediatric facility, then determine whether the facility is a high Medicaid facility. For the purposes of the Nursing Payment Adjustment, a high Medicaid facility is defined as a facility for which Massachusetts Medicaid days are at least 75.00% of its total resident days, as reported on quarterly User Fee Assessment Forms for the period July 1, 2022, through June 30, 2023. If the facility is a high Medicaid facility, then
      - i. Determine whether the value calculated in 101 CMR 206.04(1)(b)2. is less than 98.5% of the value calculated in 101 CMR 206.04(1)(b)1.
      - ii. If the value calculated in 101 CMR 206.04(1)(b)2. is less than 98.5% of the value calculated in 101 CMR 206.04(1)(b)1., then calculate an "average nursing rate adjustment" such that the sum of this adjustment and the value calculated in 101 CMR 206.04(1)(b)2. will be equal to 98.5% of the value calculated in 101 CMR 206.04(1)(b)1.
      - iii. Divide the "average nursing rate adjustment" by the value calculated in 101 CMR 206.04(1)(b)2. The resulting percentage, rounded to the nearest hundredth of a percent, will be the Nursing Payment Adjustment.
  4. For eligible facilities, the Nursing Payment Adjustment will be calculated as an adjustment to the nursing standard rate, applied at each PDPM nursing case mix category.

## 206.04: continued

- (2) Operating Cost Standard Payments. Effective October 1, 2023, nursing facilities will receive operating cost standard payments of \$123.83.

206.05: Capital Payments

- (1) Nursing Facility Capital Payments. Effective October 1, 2023, nursing facilities will receive capital payments calculated as follows, with exceptions as described in 101 CMR 206.05(2) through 101 CMR 206.05(5).

(a) Calculate the sum of the allowable portion of capital costs during the base year, less any recoverable fixed cost income. Apply a cost adjustment factor as described in 101 CMR 206.03(1)(b).

(b) Multiply the number of beds by the number of days in the rate year and then multiply the product by the greater of 90% or the actual utilization rate in the base year.

(c) EOHHS will calculate the provider's capital payment by dividing the result of 101 CMR 206.05(1)(a) by the result of 101 CMR 206.05(1)(b), subject to the limitations described in 101 CMR 206.05(4).

- (2) Nursing Facility Capital Payment Adjustments. Effective October 1, 2023, nursing facilities will receive capital payment adjustments calculated as follows.

(a) If a nursing facility's capital payment as calculated in 101 CMR 206.05(1) is less than 90% of its capital payment as of September 30, 2021, the facility will receive the capital payment listed in 101 CMR 206.05(1), plus an upward adjustment equal to the difference between the capital payment as calculated in 101 CMR 206.05(1) and 90% of the facility's capital payment as of September 30, 2021, subject to the limitations described in 101 CMR 206.05(4).

(b) If a nursing facility's capital payment as calculated in 101 CMR 206.05(1) is greater than 130% of its capital payment as of September 30, 2021, the facility will receive the capital payment calculated in 101 CMR 206.05(1), less a downward adjustment equal to the difference between the capital payment as calculated in 101 CMR 206.05(1) and 130% of the facility's capital payment as of September 30, 2021.

- (3) Revised Capital Payment.

(a) General Notification Requirements. All providers must notify the Center when they open, add new beds, renovate, or reopen beds. The notification must contain the provider's name, address, vendor payment number, date of bed change, type of change, and description of project.

(b) Request for Revised Capital Payment. Eligible providers may request a revised capital payment for capital costs associated with the change or renovation of licensed beds. Facilities that may request a revised capital payment include

1. new facilities that open pursuant to a determination of need and facilities with newly licensed beds that are added pursuant to a determination of need;
2. facilities with renovations made pursuant to a determination of need;
3. facilities that submitted detailed architectural or engineering plans for, or evidence of, applications made to local government agencies for planning, zoning, or building permits or other regulatory approvals, including approvals required by the Department of Public Health, required in connection with conversion of rooms with three or more residents to one- and two-bedded rooms or two-bedded rooms to one-bedded rooms.

(c) Eligibility Requirements. A nursing facility specified in 101 CMR 206.05(3)(b)2. will be eligible for a revised capital payment if the facility has expended at least 50% of the maximum capital expenditure for an approved determination of need, or in the instance of a second request, at least 25% additional from the previous approved request and in the instance of a third request, only upon completion of the project.

(d) Required Documentation. Providers meeting the criteria in 101 CMR 206.05(3)(b) must submit the following to the Center with its request for a revised capital payment, as well as any additional information that EOHHS determines necessary to calculate a revised capital payment:

1. a copy of the approved determination of need and any approved amendments, or, in the case of capital projects that do not require a determination of need, a detailed description of the project;

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2. a copy of the construction contract;
  3. a listing of construction costs;
  4. copies of invoices and cancelled checks for construction costs;
  5. a copy of the Department of Public Health's licensure notification associated with the increase or decrease in licensed beds, as applicable;
  6. a copy of the mortgage or financing obtained;
  7. a copy of the calculation of the requested increase, the format of which may be specified by EOHHS; and
  8. a listing of any assets such as land, building, improvements, or equipment that are either destroyed or no longer used for patient care.
- (e) Revised Capital Payment. Nursing facilities that meet the criteria listed in 101 CMR 206.05(3)(b) and that have submitted all required documentation under 101 CMR 206.05(3)(d) will be eligible for a revised capital payment in place of the capital rates calculated under 101 CMR 206.05(1), subject to the limitations of 101 CMR 206.05(4):
1. Adding the following costs:
    - a. the allowed capital expenses associated with a project described in 101 CMR 206.05(3)(b), subject to the divisor described in 101 CMR 206.05(1)(b) adjusted for any increase or decrease in licensed beds; and
    - b. the lesser of the following costs, subject to the divisor described in 101 CMR 206.05(1)(b) adjusted for any increase or decrease in licensed beds,
      - i. 101 CMR 206.05(1); or
      - ii. The sum of the amount calculated in 101 CMR 206.05(1) and the amount calculated in 101 CMR 206.05(2).
  2. The revised capital payment shall be the total calculated in 101 CMR 206.05(3)(c), and shall be the new capital rate, in place of the rate calculated under 101 CMR 206.05(1) or 101 CMR 206.05(2), effective on the later of the date the facility submits their request for the revised capital payment, including all required documentation, or the effective date of the change in licensed beds.
- (4) Maximum Capital Payment. Capital payments shall not exceed \$50.00.
- (5) New or Relocated Nursing Facilities. A nursing facility that becomes operational on or after October 1, 2023, an existing nursing facility that replaces its current building on or after October 1, 2023, or an existing nursing facility that fully relocates to a newly constructed location on or after October 1, 2023, will be eligible for a capital payment in the amount of \$50.00. Such facility will not be eligible for additional capital payments as listed 101 CMR 206.05(1) or for an adjustment to its capital payment as described in 101 CMR 206.05(2).
- (6) Licensed Bed Changes. A nursing facility will not receive an adjustment to its capital payment rate solely because of an increase or decrease in its number of licensed beds, except as described in 101 CMR 206.05(3)(b)3.
- (7) Rate Adjustments. EOHHS may adjust any capital payment upon EOHHS's determination that there was a material error in the calculation of the payment or in the facility's documentation of its capital costs.

206.06: Adjustments to Standard Nursing Facility Rates

- (1) Certification of Public Expenditures of a Nursing Facility Owned and Operated by a Municipality.
- (a) Within 60 days after the filing of its Medicare CMS-2540 cost report, a nursing facility, which is owned and operated by a municipality, may submit a request for Certified Public Expenditures (CPE) to EOHHS. This CPE will account for its public expenditures of providing Medicaid services to eligible Medicaid recipients. The submission will be based on the inpatient routine service cost reported on the CMS-2540 Medicare cost report.



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- (b) Following review of the nursing facility's submission, EOHHS will, within 60 days of the submission, approve, deny, or revise the amount of the CPE request based upon its evaluation of the reported costs and payments. The final approved amount will be equal to the difference between the Medicaid interim payments and the total allowable Medicaid costs as determined by EOHHS. This final determined amount will be certified by the municipality as eligible for federal match.
- (c) Interim payments are based on the standard payment methodology pursuant to 101 CMR 206.00.
- (d) EOHHS will determine total allowable Medicaid costs based on the Medicare CMS-2540 Cost Report and will determine a *per diem* rate calculated as follows.
1. Medicaid Allowable Skilled Nursing Facility Costs. Total allowable costs (Worksheet B, Part I, Line 30, Col 18), divided by total days (Worksheet S-3, Line 1, Col 7), times Medicaid days (worksheet S-3, Line 1, Col 5).
  2. Medicaid Allowable Nursing Facility Costs. Total allowable costs (Worksheet B, Part I, Line 31, Col 18), divided by total days (Worksheet S-3, Line 3, Col 7), times Medicaid days (Worksheet S-3, Line 3, Col 5).
  3. Total Allowable Medicaid Costs. The sum of the amount determined in 101 CMR 206.06(1)(d)1. and 2.
- (e) EOHHS will calculate an interim reconciliation based on the difference between the interim payments and total allowable Medicaid costs from the as-filed CMS-2540 Cost Report. The nursing facility must notify EOHHS immediately if the CMS-2540 is reopened or an audit is completed. Within 60 days after receiving notification of the final Medicare settlement EOHHS will retroactively adjust the final settlement amount.

(2) Quality Adjustments. Effective October 1, 2023, a nursing facility may be eligible for a quality adjustment in the form of an increase or decrease applied to the facility's nursing standard rate and operating standard rate at each PDPM nursing case mix category. The quality adjustment will be equal to the sum of the percent increase or decrease assessed for performance on each of the following four quality measures: Quality Achievement Based on CMS Score, Quality Improvement Based on CMS Score, Quality Achievement Based on DPH Score, and Quality Improvement based on DPH Score.

- (a) Quality Achievement Based on CMS Score. The quality adjustment a nursing facility will incur under the measure "Quality Achievement Based on CMS Score" will be based on the facility's overall rating on the Centers for Medicare and Medicaid Services Nursing Home Compare 5-Star Quality Rating Tool as of June 2023, as described in the table below. Facilities that CMS has designated as not rated due to a history of serious quality issues (*i.e.*, Special Focus Facilities) will be considered to have a score of 1 for the purposes of this quality adjustment.

CMS Overall Score as of June 2023	Adjustment Percentage
1	-1.00%
2	-0.75%
3	0.00%
4	0.75%
5	1.00%

- (b) Quality Improvement Based on CMS Score. The quality adjustment a nursing facility will incur under the measure "Quality Improvement Based on CMS Score" will be based on the facility's overall rating on the Centers for Medicare and Medicaid Services Nursing Home Compare 5-Star Quality Rating Tool, as follows. If a facility has a score of 5 Stars as of June 2023, its adjustment for this measure will be 2.0%, regardless of whether it meets any other criteria in the following table. If a facility meets the criteria for "CMS Chronic Low Quality," its adjustment for this measure will be -3.0%, regardless of whether it meets any other criteria in the following table. Facilities that CMS has designated as not rated due to a history of serious quality issues (*i.e.*, Special Focus Facilities) will be considered to meet the criteria for "CMS Chronic Low Quality" for the purposes of this quality adjustment.

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Criteria Based on CMS Rating	Adjustment Percentage
Facility has a score of five Stars as of June 2023	2%
Facility experienced an increase of two or more Stars from June 2022, to June 2023	1.5%
Facility experienced an increase of one Star from June 2022, to June 2023	1%
Facility experienced no change to its Star rating from June 2022, to June 2023	0%
Facility experienced a decrease of one Star from June 2022, to June 2023, and had a score of five Stars as of June 2022	0%
Facility experienced a decrease of one Star from June 2022, to June 2023, and did not have a score of five Stars as of June 2022	-2%
Facility experienced a decrease of two or more Stars from June 2022, to June 2023	-2.5%
CMS Chronic Low Quality: The average of a facility's scores as of June 2020, June 2021, June 2022, and June 2023 is less than or equal to 1.5 Stars	-3%

(c) Quality Achievement Based on DPH Score. The quality adjustment a nursing facility will incur under the measure "Quality Achievement Based on DPH Score" will be based on the facility's performance on the Department of Public Health's Nursing Facility Survey Performance Tool (DPH NFSPT) as of July 1, 2023, as follows:

DPH NFSPT Score as of July 1, 2023	Adjustment Percentage
110 or less	-1.00%
111 - 115	-0.75%
116 - 119	0.00%
120 - 123	0.75%
124+	1.00%

(d) Quality Improvement Based on DPH Score. The quality adjustment a nursing facility will incur under the measure "Quality Improvement Based on DPH Score" will be based on the facility's performance on the DPH NFSPT, as follows. If a facility has a DPH NFSPT score of 124 or higher as of July 1, 2023, its adjustment for this measure will be 2.0%, regardless of whether it meets any other criteria in the following table . If a facility meets the criteria for "DPH Chronic Low Quality," its adjustment for this measure will be -3.0%, regardless of whether it meets any other criteria in the following table.

Criteria based on DPH FSPT Score	Adjustment Percentage
Facility has a score of 124 or higher as of July 1, 2023	2.0%
Facility experienced an increase of four or more points from July 1, 2022, to July 1, 2023	1.5%
Facility experienced an increase of one, two, or three points from July 1, 2022, to July 1, 2023	1.0%

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Criteria based on DPH FSPT Score	Adjustment Percentage
Facility experienced no change to its score from July 1, 2022, to July 1, 2023	0.0%
Facility experienced a decrease of one, two, or three points from July 1, 2022, to July 1, 2023, and had a score of 124 or higher as of July 1, 2022	0.0%
Facility experienced a decrease of one, two, or three points from July 1, 2022, to July 1, 2023, and did not have a score of 124 or higher as of July 1, 2022	-2.0%
Facility experienced a decrease of four or more points from July 1, 2022, to July 1, 2023	-2.5%
DPH Chronic Low Quality: Facility had a score of less than 100 as of each of the following dates: July 1, 2021; July 1, 2022; and July 1, 2023	-3%

(3) Kosher Food Services. Nursing facilities with kosher kitchen and food service operations may receive an add-on of up to \$5 per day to reflect the additional costs of these operations.

(a) Eligibility. To be eligible for this add-on, the nursing facility must

1. maintain a fully kosher kitchen and food service operation that is, at least annually, rabbinically approved or certified; and in accordance with all applicable requirements of law related to kosher food and food products including, but not limited to, M.G.L. c. 94, § 156;
2. provide to the Center a written certification from a certifying authority, including the complete name, address, and phone number of the certifying authority, that the applicant's nursing facility maintains a fully kosher kitchen and food service operation in accordance with Jewish religious standards. For purpose of 101 CMR 206.06(3)(a)2., the phrase "certifying authority" will mean a recognized kosher certifying organization or rabbi who has received Orthodox rabbinical ordination and is educated in matters of Orthodox Jewish law;
3. provide a written certification from the administrator of the nursing facility that the percentage of the nursing facility's residents requesting kosher foods or products prepared in accordance with Jewish religious dietary requirements is at least 50%; and
4. upon request, provide the Center with documentation of expenses related to the provision of kosher food services, including but not limited to, invoices and payroll records.

(b) Payment Amounts.

1. To determine the add-on amount, EOHHS will determine the statewide median dietary expense per day for all facilities. The add-on equals the difference between the eligible nursing facility's dietary expense per day and the statewide median dietary expense per day, not to exceed \$5 per day. In calculating the per day amount, EOHHS will include allowable expenses for dietary and dietician salaries, payroll taxes and related benefits, food, dietary purchased service expense, dietician purchased service expense, and dietary supplies and expenses. The days used in the denominator of the calculation will be the higher of the nursing facility's actual days or 96% of available bed days.
2. EOHHS will compare the sum of the add-on amounts multiplied by each nursing facility's projected annual rate period Medicaid days to the state appropriation. In the event that the sum exceeds the state appropriation, each nursing facility's add-on will be proportionally adjusted.

(5) Leaves of Absence. If a purchasing agency pays for leaves of absence, the payment rate for a leave of absence day is \$80.10 per day, unless otherwise determined by the purchasing agency.

(6) Nursing Cost. Eligible facilities will receive an \$91.79 *per diem* add-on to reflect the difference between the standard payment amounts and actual base year nursing spending. To be eligible for such payment, the Department of Public Health must certify to EOHHS that over 75% of the nursing facility's residents have a primary diagnosis of multiple sclerosis.

## 206.06: continued

(7) Pediatric Nursing Facilities.

- (a) Effective October 1, 2023, EOHHS will determine payments to facilities licensed to provide pediatric nursing facility services using allowable reported operating costs, excluding administrative and general costs, from the nursing facility's 2019 Cost Report. EOHHS will include an administrative and general payment capped at the 85<sup>th</sup> percentile of the 2019 statewide administrative and general costs. EOHHS will apply an appropriate cost adjustment factor to operating, and administrative and general costs.
- (b) The operating component of the rate is increased by a cost adjustment factor of 21.94%.
- (c) Facilities licensed to provide pediatric nursing facility services will receive the operating rate which is the greater of
  1. the rates calculated as described in 101 CMR 206.06(7)(a) and 101 CMR 206.06(7)(b), or
  2. the Operating Cost Standard rate as listed in 101 CMR 206.04(2).

(9) Receiverships. EOHHS may adjust a nursing facility's standard rates if a receiver has been appointed under M.G.L. c. 111, § 72N solely to reflect the reasonable costs, as determined by EOHHS and the MassHealth agency, associated with the court-approved closure or sale of the nursing facility or other appropriate situation.

(10) Residential Care Beds. Effective October 1, 2023, the total payment for nursing and other operating costs for residential care beds in a dually licensed nursing facility is \$140.41.

(11) State-operated Nursing Facilities. A nursing facility operated by the Commonwealth will be paid at the nursing facility's reasonable cost of providing covered Medicaid services to eligible Medicaid recipients.

- (a) EOHHS will establish an interim *per diem* rate using a base year CMS-2540 cost report inflated to the rate year using the cost adjustment factor calculated pursuant to 101 CMR 206.06(11)(b) and a final rate using the final rate year CMS-2540 cost report.
- (b) EOHHS will determine a cost adjustment factor using a composite index using price level data from the CMS Nursing Home without capital forecast, and regional health care consumer price indices, and the Massachusetts-specific consumer price index (CPI), optimistic forecast. EOHHS will use the Massachusetts CPI as proxy for wages and salaries.
- (c) EOHHS may retroactively adjust the final settled amount when the Medicare CMS-2540 cost report is reopened or for audit adjustments.

(13) Direct Care Add-on.

- (a) General. Effective October 1, 2023, a nursing facility will be eligible for an upward adjustment of 3.252% applied to its nursing standard rate and operating standard rate at each PDPM nursing case mix category. Facilities must use the funds from this Direct Care Add-on solely for direct care staff wages, benefits, incentive payments, or other direct care compensation.
- (b) Reporting.
  1. Each facility will be required to report to EOHHS on the ways in which it uses its received direct care add-on funds. The required reporting will be incorporated in the interim or final DCC-Q reports that facilities are required to submit by March 1, 2024, and July 30, 2024, respectively, in accordance with 101 CMR 206.12(3). Failure to complete the required supplemental payment reporting on the interim or final DCC-Q reports, as specified and required by MassHealth through administrative bulletin or other written issuance, failure to timely submit the interim or final DCC-Q reports, or failure to use direct care add-on funds on anything other than direct care staff wages, benefits, incentive payments, or other direct care compensation may result in partial or full recoupment of direct care add-on funds as an overpayment under 130 CMR 450.237: *Overpayments: Determination*.
  2. All information included in the reports regarding the direct care add-on funds is subject to verification and audit by MassHealth. Failure to submit the required reporting or comply with audits or document requests with respect to the requirements herein may result in partial or full recoupment of the direct care add-on funds as overpayments under 130 CMR 450.237: *Overpayments: Determination*, or sanctions under 130 CMR 450.238: *Sanctions: General*.

## 206.06: continued

(14) High Medicaid Adjustment. Effective October 1, 2023, a nursing facility may be eligible for a High Medicaid Adjustment to its payment rate, based on the proportion of the facility's total resident days which are Massachusetts Medicaid days, as reported on the facility's quarterly User Fee Assessment Forms covering the period July 1, 2022, through June 30, 2023. For the purpose of determining eligibility for the High Medicaid Adjustment, the proportion of the facility's total resident days which are Massachusetts Medicaid days will be rounded to the nearest hundredth of a percent.

- (a) A facility for which its Massachusetts Medicaid days are at least 75.00% and less than 90.00% of its total resident days will receive a 7% upward adjustment applied to its nursing standard rate and operating standard rate at each PDPM nursing case mix category.
- (b) A facility for which Massachusetts Medicaid days are at least 90.00% of its total resident days will receive a 9% upward adjustment applied to its nursing standard rate and operating standard rate at each PDPM nursing case mix category.
- (c) EOHHS will not adjust any High Medicaid Adjustment solely because a facility under-reported Massachusetts Medicaid days in its quarterly User Fee Assessment Form.

(15) Maximum Change Adjustment. Effective October 1, 2023, a nursing facility will be subject to an adjustment to its total standard nursing facility *per diem* rate at each PDPM nursing case mix category established through 101 CMR 206.04, 101 CMR 206.05, 101 CMR 206.06(2) through (14), and 101 CMR 206.12(4), if a facility's proposed total average *per diem* rate, effective October 1, 2023, calculated using the facility's PDPM nursing case mix index in calendar year 2022, is greater than 115% of the facility's total average *per diem* standard nursing facility rate that was in effect on September 30, 2023, calculated using the facility's MMQ case mix in rate year 2022. The adjustment will be calculated as follows:

- (a) determine the facility's proposed total average *per diem* rate, calculated using PDPM nursing case mix in calendar year 2022, pursuant to 101 CMR 206.04, 101 CMR 206.05, 101 CMR 206.06(2) through (14), and 101 CMR 206.12(4);
- (b) determine 115% of the facility's average *per diem* rate that was in effect on September 30, 2023, calculated using the facility's MMQ case mix in rate year 2022;
- (c) subtract the amount calculated in 101 CMR 206.06(15)(a) from the amount calculated in 101 CMR 206.06(15)(b);
- (d) divide the amount calculated in 101 CMR 206.06(15)(c) by the amount calculated in 101 CMR 206.06(15)(a);
- (e) the percentage calculated in 101 CMR 206.06(15)(d) will be applied as a downward adjustment to the total proposed standard nursing facility *per diem* rate, as established through 101 CMR 206.04, 101 CMR 206.05, 101 CMR 206.06(2) through (14), and 101 CMR 206.12(4), at each PDPM nursing case mix category.

206.07: Payments for Individuals in a Disaster Struck Nursing Facility

(1) Payment to a Disaster Struck Nursing Facility for individuals that must be temporarily evacuated to another facility (Resident Accepting Nursing Facility) may continue for up to 30 days after the disaster event.

(2) Payment will be the same as if the individual was residing in the Disaster Struck Nursing Facility. No other payment will be made to either the Disaster Struck Nursing Facility or the Resident Accepting Nursing Facility for evacuated individuals. The Disaster Struck Nursing Facility must meet the following conditions in order to receive payment for evacuated individuals:

- (a) The Disaster Struck Nursing Facility must have a contract with the Resident Accepting Nursing Facility. The contract must include:
  - 1. terms of payment and mechanisms to resolve any contract disputes;
  - 2. protocols for sharing care and treatment information between the two facilities; and
  - 3. requirements that both facilities meet all conditions of Medicaid participation, as determined by the MassHealth agency.
- (b) The Disaster Struck Nursing Facility must notify the MassHealth agency of the disaster event, maintain records of all evacuated individuals that include each individual's name, date of evacuation, and Resident Accepting Nursing Facility, and update the MassHealth agency on the status of any necessary repairs.

## 206.07: continued

(c) The Disaster Struck Nursing Facility must determine within 15 days of the disaster event whether evacuated individuals will be able to return to the facility within 30 days of the disaster event. If the Disaster Struck Nursing Facility determines that it is not able to reopen within 30 days, it must discharge all evacuated individuals and work with them to choose admission to other facilities or alternative placements. Nothing precludes an evacuated individual from asking to be discharged and admitted to another facility or alternative placement. Payment to the Disaster Struck Nursing Facility will cease when an individual is discharged from the facility.

206.08: Reporting Requirements(1) Required Cost Reports.

(a) Nursing Facility Cost Report. Each provider must complete and file a Nursing Facility Cost Report (SNF-CR) each calendar year with the Center. The Nursing Facility Cost Report must contain the complete financial condition of the provider, including all applicable management company, central office, and real estate expenses. If a provider has closed on or before November 30<sup>th</sup>, the provider is not required to file an SNF-CR report.

(b) Realty Company Cost Report. A provider that does not own the real property of the nursing facility and pays rent to an affiliated or nonaffiliated realty company, trust, or other business entity must file or cause to be filed a separate Realty Company Cost Report with the Center.

(c) Management Company Cost Report. A provider must file a separate Management Company Cost Report with the Center for each entity for which it reports management or central office expenses related to the care of Massachusetts publicly aided residents. If the provider identifies such costs, the provider must certify that costs are reasonable and necessary for the care of publicly aided residents in Massachusetts.

(d) Financial Statements. If a provider or its parent organization is required or elects to obtain compiled, reviewed, or independent audited financial statements for purposes other than filing an annual Nursing Facility Cost Report in accordance with 101 CMR 206.00, the provider must file a complete copy of these financial statements with the Center, that most closely correspond to the provider's Nursing Facility Cost Report fiscal period. Nothing in 101 CMR 206.08(1)(d) will be construed as an additional requirement that nursing homes complete audited, reviewed, or compiled financial statements solely to comply with the Center's annual cost reporting requirements.

(e) Clinical Data. EOHHS may require providers to submit patient level data for the purpose of measuring clinical performance in a format specified by EOHHS. EOHHS may designate required data, data specifications, and other data collection requirements by administrative bulletin.

(f) CMS-2540 Reports. State operated nursing facilities that meet the definition in 42 CFR 433.50(a)(i) must file a CMS-2540 report with the Center annually. The state-operated nursing facility must report the final disposition made by the Medicare intermediary.

(2) General Cost Reporting Requirements.

(a) Accrual Method. Providers must complete all required reports using the accrual method of accounting.

(b) Documentation of Reported Costs. Providers must maintain accurate, detailed, and original financial records to substantiate reported costs for a period of at least five years following the submission of required reports or until the final resolution of any appeal of a rate for the period covered by the report, whichever is later. Providers must maintain complete documentation of all of the financial transactions and census activity of the provider and affiliated entities including, but not limited to, the books, invoices, bank statements, canceled checks, payroll records, governmental filings, and any other records necessary to document the provider's reported costs. Providers must be able to document expenses relating to affiliated entities for which it has identified costs related to the care of Massachusetts publicly aided residents whether or not they are related parties.

(c) Fixed Asset Ledger. Providers must maintain a fixed asset ledger that clearly identifies each asset for which expenses are reported, including location, date of purchase, cost, salvage value, accumulated depreciation, and the disposition of sold, lost, or fully depreciated assets.

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- (d) Job Descriptions and Time Records. Providers and management companies must maintain written job descriptions including qualifications, duties, responsibilities, and time records such as time cards for all positions that the provider identifies as related to the care of Massachusetts publicly aided residents. Facilities organized as sole proprietors or partnerships in which the sole proprietor or partner functions as administrator with no reported administrator salary or benefits must maintain documentation to support the provision of administrator services by the sole proprietor or partner.
- (e) Indirect Restorative Therapy Services Record. Providers must maintain a record of indirect restorative therapy services documented by a written summary available for inspection in the nursing facility as required by 105 CMR 150.010(F): *Records and Reports*.
- (f) Other Cost Reporting Requirements.
1. Administrative Costs.
    - a. The following expenses must be reported as administrative:
      - i. all compensation, including payroll taxes and benefits, for the positions of administrator, assistant administrator, administrator-in-training, business manager, secretarial and clerical staff, bookkeeping staff, and all staff or consultants whose duties are primarily administrative rather than directly related to the provision of on-site care to residents or to the on-site physical upkeep of the nursing facility;
      - ii. expenses related to tasks performed by persons at a management level above that of an on-site provider department head, that are associated with monitoring, supervising, and/or directing services provided to residents in a nursing facility as well as legal, accounting, financial, and managerial services or advice including computer services and payroll processing; and
      - iii. expenses related to policy making, planning, and decision making activities necessary for the general and long-term management of the affairs of a nursing facility, including but not limited to the following: the financial management of the provider, including the cost of financial accounting and management advisory consultants, the establishment of personnel policies, the planning of resident admission policies, and the planning of the expansion and financing of the provider.
    - b. Providers must report the cost of administrative personnel to the appropriate account. The cost of administrative personnel includes all expenses, fees, payroll taxes, fringe benefits, salaries, or other compensation.
    - c. Providers may allocate administrative costs among two or more accounts. The provider must maintain specific and detailed time records to support the allocation.
  2. Draw Accounts. Providers may not report or claim proprietorship or partnership drawings as salary expense.
  3. Expenses that Generate Income. Providers must identify the expense accounts that generate income.
  4. Fixed Costs.
    - a. Additions. If the square footage of the building is enlarged, providers must report all additions and renovations as building additions.
    - b. Allocation. Providers must allocate all fixed costs, except equipment, on the basis of square footage. A provider may elect to specifically identify equipment related to the nursing facility. The provider must document each piece of equipment in the fixed asset ledger. If a provider elects not to identify equipment, it must allocate equipment on the basis of square footage.
    - c. Replacement of Beds. If a provider undertakes construction to replace beds, it must write off the fixed assets that are no longer used to provide care to publicly aided residents and may not identify associated expenses as related to the care of Massachusetts publicly aided residents.
    - d. Fully Depreciated Assets. Providers must separately identify fully depreciated assets. Providers must report the costs of fully depreciated assets and related accumulated depreciation on all cost reports unless they have removed such costs and accumulated depreciation from the provider's books and records. Providers must attach a schedule of the cost of the retired equipment, accumulated depreciation, and the accounting entries on the books and records of the provider to the cost report when equipment is retired.

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- e. Major Repair Projects. Providers must report all expenditures for major repair projects whose useful life is greater than one year, including, but not limited to, wallpapering and painting as improvements. Providers may not report such expenditures as prepaid expenses.
- 5. Laundry Expense. Providers must separately identify the expense associated with laundry services for which non-publicly aided residents are billed. Providers must identify such expense as non-related to Medicaid patient care.
- 6. Mortgage Acquisition Costs. Providers must classify mortgage acquisition costs as other assets. Providers may not add mortgage acquisition costs to fixed asset accounts.
- 7. Nursing Costs. The costs must be associated with direct resident care personnel and be required to meet federal and state laws.
- 8. Related Parties. Providers must disclose salary expense paid to a related party and must identify all goods and services purchased from a related party. If a provider purchases goods and services from a related party, it must disclose the related party's cost of the goods and services.
- (g) Special Cost Reporting Requirements.
  - 1. Facilities in Which Other Programs Are Operated. If a provider operates an adult day health program, an assisted living program, or provides outpatient services, the provider must exclude the expenses of such programs because they are not related to the provision of nursing facility care of Massachusetts publicly aided residents.
    - a. If the provider converts a portion of the facility to another program, the provider must identify the existing equipment no longer used in nursing facility operations and remove such equipment from the nursing facility records. Related depreciation expense for these fixed assets is no longer an allowable expense.
    - b. The provider must identify the total square footage of the existing building, the square footage associated with the program, and the equipment associated with the program.
    - c. The provider must allocate all shared costs, including shared capital costs, using a well-documented and generally accepted allocation method. The provider must directly assign to the program any additional capital expenditures associated with the program.
  - 2. Hospital-based Nursing Facilities. A hospital-based nursing facility must file cost reports on a fiscal year basis consistent with the fiscal year used in the Massachusetts Hospital Cost Report.
    - a. The provider must identify the existing building and improvement costs associated with the nursing facility. The provider must allocate such costs on a square footage basis.
    - b. The provider must report major moveable equipment and fixed equipment in a manner consistent with the Hospital Cost Report. In addition, the provider must classify fixed equipment as either building improvements or equipment in accordance with the definitions contained in 101 CMR 206.02. The provider may elect to report major moveable and fixed equipment by one of two methods.
      - i. A provider may elect to specifically identify the major moveable and fixed equipment directly related to the care of publicly aided residents in the nursing facility. The provider must maintain complete documentation in a fixed asset ledger that clearly identifies each piece of equipment and its cost, date of purchase, and accumulated depreciation. The provider must submit this documentation to the Center with its first Notification of Change in Beds.
      - ii. If the provider elects not to identify specifically each item of major moveable and fixed equipment, EOHHS will allocate fixed equipment on a square footage basis.
    - c. The provider must report additional capital expenditures directly related to the establishment of the nursing facility within the hospital as additions. EOHHS will allocate capital expenditures that relate to the total plant on a square footage basis.
    - d. The provider must use direct costing whenever possible to obtain operating expenses associated with the nursing facility. The provider must allocate all costs shared by the hospital and the nursing facility using the statistics specified in the Hospital Cost Report instructions. The provider must disclose all analysis, allocations, and statistics used in preparing the Nursing Facility Cost Report.



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(3) General Cost Principles. In order to report a cost as related to Medicaid patient care, a cost must satisfy the following criteria.

- (a) The cost must be ordinary, necessary, and directly related to the care of publicly aided residents.
- (b) The cost must adhere to the prudent buyer concept.
- (c) Expenses otherwise allowable will not be included for purposes of determining rates under 101 CMR 206.00 where such expenses are paid to a related party unless the provider identifies any such related party and expenses attributable to it in the reports submitted under 101 CMR 206.00 and demonstrates that such expenses do not exceed the lower of the cost to the related party or the price of comparable services, facilities, or supplies that could be purchased elsewhere. The Center may request either the provider or the related party, or both, to submit information, books, and records relating to such expenses for the purpose of determining whether the expenses are allowable.
- (d) Only the provider's contribution of generally available employee benefits will be deemed an allowable cost. Providers may vary generally available employee benefits by groups of employees at the option of the employer. To qualify as a generally available employee benefit, the provider must establish and maintain evidence of its nondiscriminatory nature. Generally available employee benefits include, but are not limited to, group health and life insurance, pension plans, seasonal bonuses, child care, and job related education and staff training. Bonuses related to profit, private occupancy, or directly or indirectly to rates of reimbursement will not be included for calculation of prospective rates. Benefits that are related to salaries will be limited to allowable salaries. Benefits, including pensions, related to non-administrative and non-nursing personnel must be included as part of operating costs. Benefits that are related to the director of nurses, including pensions and education, must be included as part of nursing costs. Providers may accrue expenses for employee benefits such as vacation, sick time, and holidays that employees have earned but have not yet taken, provided that these benefits are both stated in the written policy and are the actual practice of the provider and that such benefits are guaranteed to the employee even upon death or termination of employment. Such expenses may be recorded and claimed for reimbursement purposes only as of the date that a legal liability has been established.
- (e) The cost must be for goods or services actually provided in the nursing facility.
- (f) The cost must be reasonable.
- (g) The cost must actually be paid by the provider. Costs not considered related to the care of Massachusetts publicly aided residents 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.
- (h) A provider must report the following costs as non-allowable costs:
  - 1. bad debts, refunds, charitable contributions, and courtesy allowances and contractual adjustments to the Commonwealth and other third parties;
  - 2. federal and state income taxes, except the non income related portion of the Massachusetts corporate excise tax;
  - 3. expenses not directly related to the provision of 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 and expenditure of funds received under federal grants for compensation paid for training personnel and expenses related to grants of contracts for special projects;
  - 4. compensation and fringe benefits of residents on a provider's payroll;
  - 5. 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;
  - 6. any increase in compensation or fringe benefits granted as an unfair labor practice after a final adjudication by the court of last resort;
  - 7. expenses for purchased service nursing services purchased from temporary nursing agencies not registered with the Department under 105 CMR 157.000: *The Registration and Operation of Temporary Nursing Service Agencies* or paid for at rates greater than the rates established by EOHHS pursuant to 101 CMR 345.00: *Temporary Nursing Services*;
  - 8. any expense or amortization of a capitalized cost that relates to costs or expenses incurred prior to the opening of the nursing facility;

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9. all legal expenses, including those accounting expenses and filing fees associated with any appeal process;
10. prescribed legend drugs for individual patients;
11. 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 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 must be identified and eliminated from the facility's claim 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;
12. costs of ancillary services required by a purchasing agency to be billed on a direct basis, such as prescribed drugs and direct therapy costs;
13. accrued expenses that remain unpaid more than 120 days after the close of the reporting year, excluding vacation and sick time accruals, will not be included in the prospective rates. When the Center receives satisfactory evidence of payment, EOHHS may reverse the adjustment and include that cost, if otherwise allowable, in the applicable prospective rates;
14. interest expense from related-party loans or on long-term debt that was not used to finance the purchase of nursing facility fixed asset additions; and
15. expenses paid for using funds from any low-interest or forgivable loan administered by EOHHS.

(4) Filing Deadlines.

(a) General. Except as provided in 101 CMR 206.08(4)(a)1. and 2., or in accordance with alternative deadlines established by EOHHS or the Center through administrative bulletin or other written issuance, providers must file required cost reports for the calendar year within 60 days of the deployment of the annual Nursing Facility Cost Report. If the 60<sup>th</sup> day falls on a weekend or holiday, the reports are due by 5:00 P.M. on the following business day.

1. Hospital-based Nursing Facilities. Hospital-based nursing facilities must file cost reports no later than 90 days after the close of the hospital's fiscal year.

2. Appointment of a Resident Protector Receiver. If a receiver is appointed pursuant to M.G.L. c. 111, § 72N, the provider must file cost reports for the current reporting period or portion thereof, within 60 days of the receiver's appointment.

(b) Extension of Filing Date. The Center may grant a request for an extension of the filing due date for a maximum of 30 calendar days. In order to receive an extension, the provider must

1. submit the request itself, and not by agent or other representative;
2. demonstrate exceptional circumstances that prevent the provider from meeting the deadline; and
3. file the request with the Center no later than 30 calendar days before the due date.

(c) Administrative Bulletin. The Center may modify the filing deadlines by issuing an administrative bulletin 30 days prior to any proposed change.

(5) Incomplete Submissions. If the cost reports are incomplete, the Center will notify the provider in writing within 120 days of receipt. The Center will specify the additional information that the provider must submit to complete the cost reports. The provider must file the required information within 25 days of the date of notification or by April 1<sup>st</sup> of the year the cost reports are filed, whichever is later. If the Center fails to notify the provider within the 120-day period, the cost reports will be considered complete and will be deemed to be filed on the date of receipt.

(6) Audits. The Center and the MassHealth agency may conduct desk audits or field audits to ensure accuracy and consistency in reporting. Providers must submit additional data and documentation relating to the cost report, the operations of the provider and any related party as requested during a desk or field audit even if the Center has accepted the provider's cost reports.

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(7) Penalties. If a provider does not file the required cost reports by the due date, EOHHS may reduce the provider's rates for current services by 5% on the day following the date the submission is due and 5% for each month of noncompliance thereafter. The reduction accrues cumulatively such that the rate reduction equals 5% for the first month late, 10% for the second month late, and so on. The rate will be restored effective on the first of the month following the date the cost report is filed.

206.09: Special Provisions

(1) Rate Filings. EOHHS will file certified rates of payment for nursing facilities with the Secretary of the Commonwealth.

(2) Appeals. A provider may file an appeal at the Division of Administrative Law Appeals of any rate established pursuant to 101 CMR 206.00 within 30 calendar days after EOHHS files the rate with the Secretary of the Commonwealth. EOHHS may amend a rate or request additional information from the provider even if the provider has filed a pending appeal.

(3) Administrative Bulletins. EOHHS and the Center may issue administrative bulletins to clarify provisions of 101 CMR 206.00 or to specify data collection requirements. Such bulletins will be deemed to be incorporated in the provisions of 101 CMR 206.00. EOHHS and the Center will file the bulletins with the Secretary of the Commonwealth, distribute copies to providers, and make the bulletins accessible to the public at EOHHS's and the Center's offices during regular business hours.

(4) Severability. The provisions of 101 CMR 206.00 are severable. If any provision of 101 CMR 206.00 or the application of any provision of 101 CMR 206.00 is held invalid or unconstitutional, such provision will not be construed to affect the validity or constitutionality of any other provision of 101 CMR 206.00 or the application of any other provision.

206.10: Other Payment Provisions(1) Temporary Resident Add-on.

(a) For dates of service beginning October 1, 2022, a nursing facility will be eligible for a member-specific temporary resident add-on if the resident meets all of the following criteria:

1. MassHealth is the resident's primary payer for nursing facility services at the time of admission;
2. the resident is medically eligible for nursing facility services under 130 CMR 456.409: *Services Requirement for Medical Eligibility*;
3. the resident was transferred to the nursing facility for temporary residence purposes directly from their home; and
4. the resident was discharged from the nursing facility to their home within 30 calendar days of the admission date.

(b) Payment Amount. For individuals younger than 22 years old, the add-on is \$250 per member per day. For individuals 22 years of age or older, the add-on is \$130 per member per day.

(2) Ventilator Add-on. For dates of service beginning November 1, 2021, a nursing facility that provides ventilator services to ventilator-dependent MassHealth members will receive a member-specific ventilator add-on of \$343 per member per day, provided all of the following criteria are met:

- (a) MassHealth is the resident's primary payer for nursing facility services at the time of admission;
- (b) The resident requires ventilator services at least daily;
- (c) The facility was an approved specialized ventilator service vendor under an EOHHS-issued request for applications for nursing facilities to provide specialized ventilator-dependent services, with an executed special conditions contract for such specialized ventilator-dependent services under such request for applications in effect as of October 1, 2021;

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(d) The facility maintains a program for specialized ventilator services, in accordance with MassHealth requirements established through administrative bulletin or other written issuance; and

(e) The facility is not receiving the communication-limited resident ventilator add-on described in 101 CMR 206.10(3) or the tracheostomy add-on described in 101 CMR 206.10(6) for the resident.

(3) Communication-limited Resident Ventilator Add-on. For dates of service beginning November 1, 2021, a nursing facility that provides services to ventilator-dependent MassHealth members will receive a member-specific add-on of \$457 per member per day, provided all of the following criteria are met:

(a) MassHealth is the resident's primary payer for nursing facility services at the time of admission;

(b) The resident requires ventilator services at least daily and is unable to communicate without the assistance of specialized communication technology that relies on eye movements, such as certain individuals with advanced amyotrophic lateral sclerosis (ALS);

(c) The facility was an approved specialized ventilator service vendor under an EOHHS-issued request for applications for nursing facilities to provide specialized ventilator-dependent services, with an executed special conditions contract for such specialized ventilator-dependent services under such request for applications in effect as of October 1, 2021;

(d) The facility maintains a program for specialized ventilator services, in accordance with MassHealth requirements established through administrative bulletin or other written issuance; and

(e) The facility is not receiving the ventilator add-on described in 101 CMR 206.10(2) or the tracheostomy add-on described in 101 CMR 206.10(6) for the resident.

(4) COVID-19 Testing Supplemental Payment.

(a) Supplemental Payment Methodology. For the period of July 1, 2022, through April 30, 2023, EOHHS will pay nursing facilities a monthly supplemental payment to offset the cost of COVID-19 tests needed for staff surveillance testing requirements established by DPH, resident testing, and visitor testing. Each monthly supplemental payment shall be calculated as follows for each facility.

1. Determine the total staff who were up to date with their COVID-19 vaccination status and multiply by 4.

2. Determine the total staff who are not up to date with their COVID-19 vaccination status and multiply by 8.

3. Determine the total resident census and multiply by 5 to account for resident and visitor testing.

4. Add together the three products calculated in 101 CMR 206.10(4)(a)1. through 3.

5. Multiply the sum calculated in 101 CMR 206.10(4)(a)4. by \$12. This product will equal the facility's monthly COVID-19 testing supplemental payment.

(b) Definitions. For the purposes of 101 CMR 206.10(4), the following terms shall have the following meanings.

1. Calendar Quarter. Each of the four three-month periods in a given calendar year, running from January 1<sup>st</sup> through March 31<sup>st</sup>, April 1<sup>st</sup> through June 30<sup>th</sup>, July 1<sup>st</sup> through September 30<sup>th</sup>, and October 1<sup>st</sup> through December 31<sup>st</sup>.

2. Total Staff. The total quarterly average number of staff working at the facility as reported by the facility through the Centers for Disease Control and Prevention's National Healthcare Safety Network reporting tool (NHSN) for the most recent complete calendar quarter.

3. Total Resident Census. The total quarterly average number of residents in the facility as reported by the facility through NHSN for the most recent complete calendar quarter.

4. COVID-19 Vaccination Status. A determination of whether a person is up to date or not up to date in receiving their COVID-19 vaccines in accordance with DPH COVID-19 vaccination guidance for long term care facility staff, as reported by the facility through NHSN for the most recent complete calendar quarter.

## 206.10: continued

- (c) Disbursement of Supplemental Payments. The supplemental payments are paid on a monthly basis, and the payment amount shall be updated every three months, based on the previous, available calendar quarter data.
  - (d) Additional Guidance. EOHHS may, *via* administrative bulletin or other written issuance, establish a different data source for calculating the COVID-19 testing supplemental payments under 101 CMR 206.10(4), or establish additional rules governing such payments including, but not limited to, information on the relevant staff that must be tested, the frequency of testing, or additional reporting requirements.
  - (e) Correction of Material Error. EOHHS may adjust any testing supplemental payment upon EOHHS's determination that there was a material error in the calculation of the payment. EOHHS will not adjust any supplemental payment solely because a facility under-reported staff or resident numbers in its NHSN report.
  - (f) Audits and Enforcement. All information included in the NHSN reports is subject to verification and audit by EOHHS. Such verification or audit may include an in-person or desk audit, comparison of data to other data sources available to EOHHS, such as the federal Payroll Based Journal staffing level reporting tool, or other verification or audit mechanisms available to EOHHS. In the event that EOHHS determines a facility materially misstated or inaccurately reported information relevant to calculating the COVID-19 testing supplemental payment, EOHHS may pursue overpayment or sanction action under 130 CMR 450.000: *Administrative and Billing Regulations*.
- (6) Tracheostomy Add-on. For dates of service beginning October 1, 2022, a nursing facility that provides tracheostomy services to tracheostomy-dependent MassHealth members will receive a member-specific tracheostomy add-on of \$220 per member per day, provided all of the following criteria are met:
- (a) MassHealth is the resident's primary payer for nursing facility services at the time of admission;
  - (b) the resident requires tracheostomy services; and
  - (c) the facility is not receiving the ventilator add-on described in 101 CMR 206.10(2) or the communication-limited resident ventilator add-on described in 101 CMR 206.10(3) for the resident.
- (7) Medicaid Transitional Add-on. For dates of service beginning January 15, 2022, a nursing facility will be eligible for a transitional add-on of \$200 per member per day for the first 60 days of the resident's nursing facility stay, not including any leaves of absence, if the resident meets all of the following criteria:
- (a) MassHealth is the resident's primary payer for nursing facility services at the time of admission;
  - (b) The resident was transferred to the nursing facility directly from an acute or a non-acute inpatient hospital on or after January 15, 2022; and
  - (c) The resident is not returning to the nursing facility from a medical leave of absence.
- (8) COVID-19 Monoclonal Antibody Treatment and COVID-19 Antiviral Treatment Claims.
- (a) For dates of service beginning December 22, 2021, and notwithstanding any regulatory provision to the contrary, nursing facilities may submit separate claims to MassHealth on a fee-for-service basis for the administration of COVID-19 monoclonal antibody treatments and COVID-19 antiviral treatments to eligible MassHealth members and provided in a manner supported by medical evidence, provided in accordance with the emergency use authorization (EUA) issued by the federal Food and Drug Administration (FDA) or provided in accordance with full FDA approval, and provided in accordance with any guidance issued by DPH, the FDA, or CMS with respect to such treatments. Nursing facilities are required to ensure that any such monoclonal antibody treatments or antiviral treatments administered at the facility are administered by individuals whose education, credentials, and training qualify them to render such services.
  - (b) The costs of services described in 101 CMR 206.10(8)(a) are not included in the prospective payment system operating or nursing standard payment rates determined under 101 CMR 206.03 and 101 CMR 206.04. The costs of providing such services will be considered non-allowable costs under 101 CMR 206.08(3)(h)12.

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(c) MassHealth payments for separate fee-for-service claims submitted by the nursing facility for the services described in 101 CMR 206.10(8)(a) shall be paid at the rates established under 101 CMR 446.03(2) or 101 CMR 317.00, as applicable. Such fee-for-service claims payments shall be considered payment in full for such services.

(d) EOHHS shall establish, through administrative bulletin or other written issuance, the specific COVID-19 monoclonal antibody treatments or COVID-19 antiviral treatments that may be administered by the nursing facility, as well as the specific codes and billing instructions for such services.

(9) COVID-19 Vaccine Administration Claims.

(a) For dates of service beginning October 1, 2021, and notwithstanding any regulatory provision to the contrary, nursing facilities may submit separate claims to MassHealth on a fee-for-service basis for COVID-19 vaccine administration services, provided to eligible MassHealth members in accordance with an EUA issued by the FDA or full FDA approval, and in accordance with any guidance issued by the FDA or CMS with respect to such services. Nursing facilities are required to ensure that any such services administered by the facility are administered by individuals whose education, credentials, and training qualify them to render such services.

(b) The costs of services described in 101 CMR 206.10(9)(a) are not included in the prospective payment system operating or nursing standard payment rates determined under 101 CMR 206.03 and 101 CMR 206.04. The costs of providing such services will be considered non-allowable costs under 101 CMR 206.08(3)(h)12.

(c) MassHealth payments for separate fee-for-service claims submitted by the nursing facility for the services described in 101 CMR 206.10(9)(a) shall be paid at the rates established under 101 CMR 446.03(2): *Medicine*. Such fee-for-service claims shall be considered payment in full for such services.

(d) EOHHS shall establish, through administrative bulletin or other written issuance, the specific codes and billing instructions for such services.

(13) Homelessness Rate Add-on.

(a) Eligibility Criteria. For dates of service beginning January 15, 2022, a nursing facility will be eligible for a member-based Homelessness Rate Add-on of \$200 per member per day for up to the first 180 days of the member's nursing facility stay, not including any leaves of absence, if the member meets all of the following criteria.

1. MassHealth is the member's primary payer for nursing facility services at the time of admission;
2. The member is clinically eligible for nursing facility services under 130 CMR 456.409: *Services Requirement for Medical Eligibility*; and
3. The member has been approved for the member-based Homelessness Rate Add-on by EOHHS because EOHHS has determined the member meets one or more of the following criteria:
  - a. The member has experienced homelessness for at least six months directly prior to admission as documented by a homeless provider agency and confirmed by EOHHS;
  - b. The member has been homeless directly prior to admission, as documented by a homeless provider agency and confirmed by EOHHS, and has a behavioral health condition;
  - c. The member is at risk of homelessness and has a behavioral health condition;
  - d. The member experienced a sudden or unexpected loss of primary residence (for example, due to fire, flooding, eviction, *etc.*) necessitating an emergency nursing facility admission; or
  - e. The member's living situation directly prior to admission required the involvement of Elder Protective Services.

(b) Non-applicability with Other Payments. A nursing facility may not receive this add-on for a member for whom the facility is receiving on the same dates of service a Medicaid transitional add-on under 101 CMR 206.10(7), a substance use disorder add-on or a substance use disorder induction period add-on under 101 CMR 206.10(14), a behavioral indicator add-on under 101 CMR 206.10(16), a *per diem* rate for severe mental or neurological disorders under 101 CMR 206.11, or a complicated high-cost care need add-on under 101 CMR 206.15.

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(c) Relevant Definitions.

1. For the purposes of the Homelessness Rate Add-on, a member experiencing homelessness is any member who lacks a fixed, regular, and adequate nighttime residence and who has a primary nighttime residence that is a public or private place not designed for or ordinarily used as a regular sleeping accommodation for human beings including a car, park, abandoned building, bus or train station, airport, or camping group; or who is living in a supervised publicly- or privately-operated emergency shelter designated to provide temporary living arrangements, including congregate shelters, transitional housing, and hotels and motels paid for by charitable organizations or by federal, state, or local government programs for low-income individuals.
2. For the purposes of the Homelessness Rate Add-on, a member at risk of homelessness is any member who does not have sufficient resources or support networks (e.g., family, friends, faith-based or other social networks) immediately available to prevent them from moving to an emergency shelter or another place not meant for human habitation.

(14) Substance Use Disorder (SUD) Add-on and SUD Induction Period Add-on.(a) Eligibility Criteria.

1. For dates of service beginning October 1, 2023, a nursing facility will be eligible for a member specific Substance Use Disorder (SUD) Add-on of \$50 per member per day for each member residing in the facility for whom MassHealth is the primary payer and who has a documented SUD diagnosis listed in 101 CMR 206.10(14)(b), if the facility submits to EOHHS by February 1, 2024, an attestation in a form and manner specified by EOHHS confirming that the facility has processes in place to provide services to SUD patients. EOHHS will provide further instructions regarding the requirements of the attestation *via* administrative bulletin or other written issuance.
2. For dates of services beginning October 1, 2023, a nursing facility will be eligible for a member specific Substance Use Disorder (SUD) Induction Period Add-on of \$200 per member per day of Induction Period for each member residing in the facility, for whom MassHealth is the primary payer, who has a documented SUD diagnosis listed in 101 CMR 206.10(14)(b), and who requires transportation with direct care staff to an Opioid Treatment Program clinic for the member's Induction Period, if the facility submits to EOHHS by February 1, 2024 an attestation in a form and manner specified by EOHHS confirming that the facility has processes in place to provide services to SUD patients. EOHHS will provide further instructions regarding the requirements of the attestation *via* administrative bulletin or other written issuance.

(b) ICD-10 Groups. For the purposes of the SUD add-on and the SUD Induction Period add-on, eligible ICD-10 diagnosis groups include F10 through F16 (mental and behavioral disorders due to psychoactive substance), F19 (other psychoactive substance related disorders), and T40 (poisoning by, adverse effect of and underdosing of narcotics and psychodysleptics (hallucinogens)).

(c) Denial of Payment and Overpayments. Facilities that fail to meet the requirements under 101 CMR 206.10(14)(a) may be denied further SUD add-on payments and may be subject to overpayment action under 130 CMR 450.237: *Overpayments: Determination*. In addition, facilities that fail to admit a patient with an SUD solely because of the SUD will be denied the SUD add-on for the rest of the rate year and may be subject to sanctions under 130 CMR 450.238: *Sanctions: General*.

(d) Additional Guidance. EOHHS may issue, *via* administrative bulletin or other written issuance, additional guidance on billing procedures for the SUD add-on and verification of medical records required to support the SUD diagnoses.

(15) Add-on for Home Dialysis in a Nursing Facility Setting.

(a) Dialysis Treatment for Members. Nursing facilities may have home dialysis services available on-site at the facility, after receiving approval from the Department of Public Health to operate an on-site home dialysis services program, in coordination with a licensed dialysis services provider.

(b) Add-on Rate of \$85 Per Member Per Dialysis Treatment. Nursing facilities with an approved on-site home dialysis services program in accordance with 101 CMR 206.10(15)(a) may receive a rate add-on of \$85 per member residing in the facility and receiving home dialysis services in the facility, for each instance of home dialysis services received in the nursing facility for which the following two conditions are concurrently met:

## 206.10: continued

1. MassHealth is not the primary payer for the member's home dialysis services received in the nursing facility; and
  2. MassHealth is the primary payer for the member's nursing facility services at the time of home dialysis services received in the nursing facility.
- (c) Add-on Rate of \$379 Per Member Per Dialysis Treatment. Nursing facilities with an approved on-site home dialysis services program in accordance with 101 CMR 206.10(15)(a) may receive a rate add-on of \$379 per member residing in the facility and receiving home dialysis services in the facility, for each instance of home dialysis services received in the nursing facility for which the following two conditions are concurrently met:
1. MassHealth would be the primary payer for the dialysis services if they were received outside of the nursing facility; and
  2. MassHealth is the primary payer for the member's nursing facility services at the time of home dialysis services received in the nursing facility.
- (16) Behavioral Indicator Add-on.
- (a) Eligibility Criteria. For dates of service beginning October 1, 2022, a nursing facility will be eligible for a member-specific behavioral indicator add-on of \$50 per member per day for each member residing in the facility for whom MassHealth is the primary payer and who was coded as 2 or 3 on one or more of the following Minimum Data Set 3.0 (MDS 3.0) indicators: Behavioral Health (E0200A, E0200B, or E0200C), Rejection of Care (E0800), or Wandering (E0900). The add-on is meant to offset additional costs associated with certain members with behavioral conditions (for example, members with severe dementia).
- (b) Additional Guidance. EOHHS may issue, *via* administrative bulletin or other written issuance, additional guidance on billing procedures for the behavioral indicator add-on and verification of medical records required to support the MDS coding for the add-on.
- (18) Payments for Quality Improvements through COVID-19 Preparedness.
- (a) General. A nursing facility will be eligible for a COVID-19 preparedness payment, as calculated in 101 CMR 206.10(18)(c), to be made upon verification of eligibility criteria described in 101 CMR 206.10(18)(b).
- (b) Eligibility Criteria. A nursing facility will be eligible for a COVID-19 preparedness payment if the facility meets all of the criteria in 101 CMR 206.10(18)(b)1. through 5. MassHealth may provide further detail on such criteria, including on the specific infection control requirements, attestation forms and deadlines, any necessary reporting deadlines, specific requirements for COVID-19 therapeutic plans, and other information as MassHealth determines necessary pursuant to 101 CMR 206.10(18)(f).
1. The nursing facility
    - a. had an HPPD of 3.58 or higher in the most recent complete calendar quarter for which HPPD data is publicly available on the federal Payroll Based Journal dataset; or
    - b. if the nursing facility's HPPD is below 3.58 in the most recent complete calendar quarter for which HPPD data is publicly available through the federal Payroll Based Journal dataset, the facility must demonstrate meaningful improvement, as defined by MassHealth through administrative bulletin or other written issuance, over the period of October 1, 2022, through June 30, 2023.
  2. The nursing facility meets a minimum threshold of staff and residents who are up-to-date with COVID-19 vaccinations, with thresholds and deadlines established by MassHealth through administrative bulletin or other written issuance.
  3. The nursing facility must attest to implementing core components of infection control requirements and outline a plan for ensuring compliance with these requirements and be in continuous substantial compliance with such requirements during the rate year.
  4. A nursing facility must attest to having a plan in place to administer COVID-19 therapeutics, including monoclonal antibodies and antiviral therapies, to its residents as clinically appropriate.
  5. The nursing facility must meet the 75% DCC-Q threshold established under 101 CMR 206.12(1).
- (c) Payment Methodology. EOHHS will use the following methodology to calculate COVID-19 preparedness payments for each eligible nursing facility.



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1. Determine the total number of Massachusetts Medicaid days, including fee-for-service (FFS) days and managed care days, as reported by eligible nursing facilities in their Quarterly User Fee Assessment Forms for the period of July 1, 2021, through June 30, 2022.
2. Determine which of the two thresholds of staff and residents who are up-to-date with COVID-19 vaccinations a nursing facility meets.
3. If the facility meets the higher of the two thresholds in 101 CMR 206.10(18)(c)2., multiply by 3 the number of Massachusetts Medicaid days, including fee-for-service (FFS) days and managed care days, as reported by an eligible nursing facility in its Quarterly User Fee Assessment Forms for the period of July 1, 2021, through June 30, 2022.
4. If the facility meets the lower of the two thresholds in 101 CMR 206.10(18)(c)2., keep the same the number of Massachusetts Medicaid days, including fee-for-service (FFS) days and managed care days, as reported by an eligible nursing facility in its Quarterly User Fee Assessment Forms for the period of July 1, 2021, through June 30, 2022.
5. Sum up Massachusetts Medicaid days in 101 CMR 206.10(18)(c)3. and 101 CMR 206.10(18)(c)4.
6. Divide the total amount of available funds, \$16,550,000, by the total number of Massachusetts Medicaid days as determined in 101 CMR 206.10(18)(c)5.
7. For each eligible nursing facility meeting the higher of the two thresholds in 101 CMR 206.10(18)(c)2., multiply the quotient calculated in 101 CMR 206.10(18)(c)6. by the eligible nursing facility's Massachusetts Medicaid days, as calculated in 101 CMR 206.10(18)(c)3.
8. For each eligible nursing facility meeting the lower of the two thresholds in 101 CMR 206.10(18)(c)2., multiply the quotient calculated in 101 CMR 206.10(18)(c)6. by the eligible nursing facility's Massachusetts Medicaid days, as they appear in 101 CMR 206.10(18)(c)4.
9. If the product in 101 CMR 206.10(18)(c)7. is greater than \$700,000, cap the total calculated for each eligible nursing facility at \$700,000; otherwise keep the total as is.
10. If the product in 101 CMR 206.10(18)(c)8. is greater than \$300,000, cap the total calculated for each eligible nursing facility at \$300,000; otherwise keep the total as is.
11. Sum up the amounts calculated in 101 CMR 206.10(18)(c)9. and 101 CMR 206.10(18)(c)10.
12. Subtract the sum calculated in 101 CMR 206.10(18)(c)11. from \$16,550,000.
13. Sum up Massachusetts Medicaid days for eligible nursing facilities in 101 CMR 206.10(18)(c)4. whose amounts calculated in 101 CMR 206.10(18)(c)10. are less than \$300,000.
14. Divide the amount calculated in 101 CMR 206.10(18)(c)12. by the number calculated in 101 CMR 206.10(18)(c)13.
15. For each eligible nursing facility in 101 CMR 206.10(18)(c)4. whose amounts calculated in 101 CMR 206.10(18)(c)10. are less than \$300,000, multiply the quotient calculated in 101 CMR 206.10(18)(c)14. by the eligible nursing facility's Massachusetts Medicaid days, as calculated in 101 CMR 206.10(18)(c)4.
16. For each eligible nursing facility in 101 CMR 206.10(18)(c)4. whose amounts calculated in 101 CMR 206.10(18)(c)10. are less than \$300,000, sum up the amount in 101 CMR 206.10(18)(c)10. and the product calculated in 101 CMR 206.10(18)(c)15.
17. If the amount calculated in 101 CMR 206.10(18)(c)16. is greater than \$300,000, cap the total calculated for each eligible nursing facility at \$300,000; otherwise keep the total as is.
18. Sum up the amounts calculated in 101 CMR 206.10(18)(c)9. and 101 CMR 206.10(18)(c)10. for eligible facilities that reached the \$300,000 cap, and in 101 CMR 206.10(18)(c)17.
19. Subtract the sum calculated in 101 CMR 206.10(18)(c)18. from \$16,550,000.
20. Repeat the above steps for eligible facilities in 101 CMR 206.10(18)(c)4. whose amounts are less than \$300,000 until the remaining funds are fully distributed.
21. The COVID-19 preparedness payments, for each eligible nursing facility, will equal the total calculated in 101 CMR 206.10(18)(c)9., 101 CMR 206.10(18)(c)10., 101 CMR 206.10(18)(c)17., or 101 CMR 206.10(18)(c)20., depending on whether an eligible facility was above or below the allowable cap.

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(d) Overpayments. A nursing facility that fails to demonstrate meaningful improvement in HPPD over the period of October 1, 2022, through June 30, 2023, under 101 CMR 206.10(18)(b)1. and/or remain in compliance with all infection control requirements during the period of December 1, 2022, through June 30, 2023, under 101 CMR 206.10(18)(b)4. may be subject to overpayment action under 130 CMR 450.237: *Overpayments: Determination.*

(e) Correction of Material Error. EOHHS may adjust any supplemental payment upon EOHHS's determination that there was a material error in the calculation of the payment. EOHHS will not adjust any supplemental payment solely because a facility under-reported Massachusetts Medicaid days in its Quarterly User Fee Assessment Form.

(f) Additional Guidance. EOHHS may issue, *via* administrative bulletin or other written issuance, additional guidance regarding this add-on.

206.11: Rates for Severe Mental and Neurological Disorder Services

(1) Qualifying Nursing Facility. Effective for dates of service beginning January 15, 2022, qualifying nursing facilities will be able to receive a member-based *per diem* rate for residents with severe mental or neurological disorders who are receiving specialized rehabilitation services for such disorders. In order to qualify for this member-based *per diem* rate, a nursing facility must

(a) as of August 1, 2020, operate to provide nursing facility services, including the specialized rehabilitative services described in 101 CMR 206.11(1)(c), to residents with mental or neurological disorders, including residents with acquired brain injuries;

(b) demonstrate, in the form and manner requested by EOHHS, that the percentage of the facility's annual resident days for residents with mental or neurological disorders, including residents with acquired or traumatic brain injuries, is at least 50% of its total annual resident days;

(c) provide the following specialized rehabilitation services for its residents:

1. an individualized therapeutic skill development plan for each member;
2. individual counseling;
3. group counseling (therapeutic and life skills groups), with group sessions offered multiple times each week to ensure access based on member needs and preferences;
4. sensory modulation and cognitive rehabilitation;
5. neuropsychological testing, evaluation, and intervention;
6. alcohol and substance abuse counseling and prevention;
7. all mental health services as indicated by each resident's PASRR Level II evaluation, or coordinate with additional providers and practitioners, who may separately bill or be paid under the appropriate provider regulations, for services designated as specialized services under the PASRR program and therefore are services that are not included in standard nursing facility services;
8. vocational programming; and
9. community reintegration.

(d) Maintain a program staff of specially trained professionals including, but not limited to, a neuropsychiatrist, a neuropsychologist, licensed mental health counselors, vocational specialists, life skills counselors, certified brain injury specialists, substance abuse counselors, and therapeutic technicians. All such staff must be trained in behavior modification and de-escalation techniques.

(2) Per Diem Rate for Approved Admitted Members. Effective for dates of service beginning October 1, 2023, qualifying nursing facilities may receive a flat member-based *per diem* rate of \$486 for members with a mental or neurological disorder that severely affects the member's behavior who are admitted on or after August 1, 2020, provided that the qualifying nursing facility receives approval from MassHealth prior to the member's admission that the member requires specialized rehabilitative services described in 101 CMR 206.11(1) and is therefore eligible for this enhanced rate. The specialized rehabilitative services program is designed to transition the member back to community-based care or less-restrictive placement, and such rate applies only during the time that the member has been approved by MassHealth for the enhanced rate. Qualifying nursing facilities receiving this *per diem* rate are not eligible for any other *per diem* rates or payments established under 101 CMR 206.00 with respect to such approved

## 206.11: continued

members, except as provided in 101 CMR 206.11(3) or, if applicable, 101 CMR 206.10. Qualifying facilities may also admit members without seeking approval from the MassHealth agency. In such circumstances, qualifying nursing facilities will receive the standard nursing facility rate established under 101 CMR 206.00 with respect to those members.

(3) High-cost Member Additional Rate. Qualifying nursing facilities may receive an additional member-based rate of \$150 in addition to the *per diem* rate set by 101 CMR 206.11(2) for any member approved for admittance to the nursing facility for whom reasonable and allowable direct care costs associated with providing for such member's clinical care needs is more than 100% greater than the facility's average direct care costs per resident, provided that the facility

- (a) certifies that the direct care costs associated with providing services to such member meets the requirements of 101 CMR 206.11(3);
- (b) submits a summary of expected direct care costs associated with providing services to such member demonstrating that the requirements of 101 CMR 206.11(3) have been met; and
- (c) receives approval from the MassHealth agency for the additional rate, to be applied prospectively from the date of approval, with respect to such member.

The MassHealth agency reserves the right to request additional documentation in support of the expected direct care costs prior to granting approval for this additional rate.

(4) Non-applicability with Other Payments. A nursing facility may not receive this payment for a member for whom the facility is receiving on the same dates of service a Medicaid transitional add-on under 101 CMR 206.10(7), a homelessness rate add-on under 101 CMR 206.10(13), a substance use disorder add-on or a substance use disorder induction period add-on under 101 CMR 206.10(14), a behavioral indicator add-on under 101 CMR 206.10(16), or a complicated high-cost care need add-on under 101 CMR 206.15.

206.12: Direct Care Cost Quotient

(1) Beginning October 1, 2020, nursing facilities must have a Direct Care Cost Quotient (DCC-Q), as described in 101 CMR 206.12(2), of at least 75%. For the rate year beginning October 1, 2022, a nursing facility rate will be subject to a downward adjustment if the facility failed to be at or above the 75% DCC-Q threshold for the period of July 1, 2021, through June 30, 2022. For rate years beginning on or after October 1, 2023, a nursing facility rate will be subject to a downward adjustment if the facility fails to be at or above the 75% DCC-Q threshold in the previous full fiscal year.

(2) The DCC-Q will be calculated by dividing certain direct care workforce expenses, such as nursing, dietary, restorative therapy, or social worker staff expenses, by the facility's total revenue, excluding the revenue for non-nursing facility lines of business and subtracting the User Fee Assessments, certain federal and state payments, certain prescription drug expenses, and certain other ancillary costs related to services provided to Medicare residents, to be identified *via* administrative bulletin or other written issuance.

- (a) A multiplier may be applied to one or more direct care workforce position types as an incentive. A multiplier must be calculated by multiplying the cost associated with a given direct care workforce position type in the numerator by 1.5 or more, but not to exceed 3.
- (b) The workforce position types eligible for any multiplier described in 101 CMR 206.12(2) and the magnitude of such multiplier in calculating the DCC-Q may be established by EOHHS *via* administrative bulletin or other written issuance.

(3) All nursing facilities, including facilities in 101 CMR 206.12(5), will be required to submit an interim compliance report by March 1st of each year and a final compliance report by July 31<sup>st</sup> of each year. The interim report will be used to inform nursing facilities if they are on track to meet the 75% DCC-Q threshold set forth in 101 CMR 206.12(1). The final compliance report will be used for determining whether the facility met that threshold.

(4) The downward adjustment to the rate will be applied in the following rate year to facilities that failed to meet the 75% DCC-Q threshold. Such downward adjustment will be calculated as follows.

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(a) For every 1% below the 75% DCC-Q threshold, a 0.5% downward adjustment will be applied to the facility's nursing and operating standard payments at each PDPM nursing case mix category.

(b) The maximum downward adjustment calculated in 101 CMR 206.12(3)(a) may be no more than 5% of the facility's nursing and operating standard payments at each PDPM nursing case mix. EOHHS may apply the maximum downward adjustment of 5% in the following rate year for facilities that fail to submit the final report by the due date established in 101 CMR 206.12(3).

(5) Nursing facilities that had less than 5,000 Massachusetts Medicaid Days in SFY 2023, as reported on their Quarterly User Fee Assessment Forms for the period of July 1, 2022, through June 30, 2023, will be exempt from the downward adjustment set forth in 101 CMR 206.12(4).

(6) EOHHS may issue an administrative bulletin or other written issuance to clarify provisions of 101 CMR 206.12, and to provide further detail on the types of staffing and direct care expenditures that qualify towards the DCC-Q and the data reporting requirements.

206.13: Average Staffing Hours Incentive

(1) As of October 5, 2020, each nursing facility is required to submit information on its staffing levels, including information demonstrating the facility's average hours per patient day to EOHHS, in the manner and format requested by EOHHS *via* administrative bulletin or other written issuance.

(2) As of January 1, 2021, a nursing facility that fails to meet an average of at least 3.58 hours per patient day in accordance with 101 CMR 206.13(1), is subject to a downward adjustment equal to 2% of the facility's standard rate for that calendar quarter. The dollar amount resulting from this adjustment will be considered an overpayment pursuant to 130 CMR 450.235: *Overpayments*.

(3) To determine a facility's average hours per patient day in each calendar quarter, EOHHS will divide the facility's total number of productive hours worked by nursing staff, including registered nurses, licensed practical nurses and nurses' aides, in the calendar quarter by the facility's total number of patient days in that calendar quarter.

(4) EOHHS may issue administrative bulletins or other written issuance to further clarify these provisions and to provide additional guidance regarding what qualifies as productive hours, what staff types are included in nursing staff, the reporting requirements, and the requirements for disputing the calculation described in 101 CMR 206.13(3).

206.14: Special Requirements Related to St. 2022, c. 268

Recognizing the constraints on nursing facility capacity and the intent of St. 2022, c. 268 to support economic growth and relief in the Commonwealth, nursing facilities are expected to use the incremental increases in funding resulting from the increased nursing and operating standard rates cost adjustment factor funded by St. 2022, c. 268 and implemented in 101 CMR 206.03(1)(a) and 101 CMR 206.06(7)(b), to support nursing facility workforce, direct care staffing, and capacity in order to increase capacity and the timeliness of admissions.

206.15: Add-on for Members with Complicated High-cost Care Needs

(1) Members with Complicated High-cost Care Needs. Nursing facilities may receive a member-based rate add-on, in addition to the facility's standard *per diem* rate established under 101 CMR 206.00, for any member (for example, a bariatric resident), for whom reasonable and allowable direct care costs associated with providing for such member's clinical care needs are significantly greater than the standard nursing facility rate (for example, because the member's care needs necessitates the purchase or rental of specialized equipment or hiring of additional staff). The facility may receive an add-on for such member, as calculated according to 101 CMR 206.15(2), provided that all of the following conditions are met:

## 206.15: continued

- (a) Prior to admission, the facility certifies that the direct care costs associated or expected to be associated with providing services to such member are necessary to provide the services recommended by the member's physician and care team, and documented in the member's care plan;
- (b) The facility submitted a summary of expected direct care costs associated with providing services to such member demonstrating that the requirements of 101 CMR 206.15 have been met;
- (c) The facility provides the MassHealth agency with any additional or clarifying documentation in support of the actual or expected direct care costs associated with the resident's care needs; and
- (d) The facility receives approval from the MassHealth agency for the add-on.

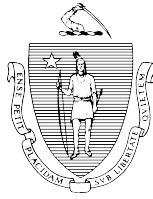
(2) Complicated and High-cost Care Add-on Calculation. The add-on rate shall be a daily rate equal to the total reasonable and allowable costs associated with the high-cost member as determined by EOHHS, above the standard nursing, capital, and operating costs considered and included in calculating the nursing facility's standard *per diem* rates established under 101 CMR 206.00, up to a maximum add-on of \$600 per day. EOHHS shall have sole discretion over what may be considered a reasonable and allowable cost for the purposes of calculating this add-on. The add-on for each resident shall be effective on the later of the date the nursing facility receives MassHealth approval for the add-on or the date of the member's admission to the nursing facility. A nursing facility may not receive this add-on for a member for whom the facility is receiving on the same dates of service a Medicaid transitional add-on under 101 CMR 206.10(7), a homelessness rate add-on under 101 CMR 206.10(13), a substance use disorder add-on or a substance use disorder induction period add-on under 101 CMR 206.10(14), a behavioral indicator add-on under 101 CMR 206.10(16), or a *per diem* rate for severe mental or neurological disorders under 101 CMR 206.11.

(3) Periodic Recertification. A nursing facility that receives the add-on under 101 CMR 206.15 may be required periodically to recertify to MassHealth that all conditions established under 101 CMR 206.15(1)(a) continue to be met with respect to each member for whom it receives the add-on, and must submit updated direct care cost information for each member. If the facility fails to provide such certification and information, MassHealth may terminate the add-on received by the nursing facility for the member.

## REGULATORY AUTHORITY

101 CMR 206.00: M.G.L. c. 118E.

NON-TEXT PAGE

**THE COMMONWEALTH OF MASSACHUSETTS****William Francis Galvin**

Secretary of the Commonwealth

**Regulation Filing***To be completed by filing agency*CHAPTER NUMBER: **101 CMR 327.00**CHAPTER TITLE: **Rates for Ambulance and Wheelchair Van Services**AGENCY: **Executive Office of Health and Human Services**SUMMARY OF REGULATION: *State the general requirements and purposes of this regulation.***The proposed regulation 101 CMR 327.00 governs the rates of payment used by state governmental units for ambulance and chair car services rendered to publicly aided individuals.**REGULATORY AUTHORITY: **M.G.L. c. 118E, §§ 7 and 12**AGENCY CONTACT: **Deborah M. Briggs** PHONE: **617-847-3302**ADDRESS: **100 Hancock Street, 6th Floor, Quincy, MA 02171****Compliance with M.G.L. c. 30A**EMERGENCY ADOPTION - *if this regulation is adopted as an emergency, state the nature of the emergency.***This is an emergency re-file. The proposed amendments adjust the supplemental payment methodology for nonpublic ambulance providers to reflect differing payment rates depending on Emergency Medical Service (EMS) regions and classifications of nonpublic ambulance providers (for-profit, non-profit hospital affiliated;; and other non-profit).**PRIOR NOTIFICATION AND/OR APPROVAL - *If prior notification to and/or approval of the Governor, Legislature or others was required, list each notification, and/or approval and date, including notice to the Local Government Advisory Commission.***ANF approval: September 28, 2023****145 Letters: September 29, 2023**PUBLIC REVIEW - *M.G.L. c. 30A sections 2 and/or 3 requires notice of the hearing or comment period, including a small business impact statement, be filed with the Secretary of the Commonwealth, published in appropriate newspapers, and sent to persons to whom specific notice must be given at least 21 days prior to such hearing or comment period.*Date of public hearing or comment period: **October 27, 2023**

FISCAL EFFECT - Estimate the fiscal effect of the public and private sectors.

For the first and second year: n/a

For the first five years: n/a

No fiscal effect: No fiscal effect

SMALL BUSINESS IMPACT - M.G.L. c. 30A section 5 requires each agency to file an amended small business impact statement with the Secretary of the Commonwealth prior to the adoption of a proposed regulation. If the purpose of this regulation is to set rates for the state, this section does not apply.

Date amended small business impact statement was filed: \_\_\_\_\_

CODE OF MASSACHUSETTS REGULATIONS INDEX - List key subjects that are relevant to this regulation:

PROMULGATION - State the action taken by this regulation and its effect on existing provisions of the Code of Massachusetts Regulations (CMR) or repeal, replace or amend. List by CMR number:

**101 CMR 327.00 is being amended.**

ATTESTATION - The regulation described herein and attached hereto is a true copy of the regulation adopted by this agency. ATTEST:

SIGNATURE: \_\_\_\_\_ SIGNATURE ON FILE \_\_\_\_\_ DATE: Dec 22 2023

Publication - To be completed by the regulations Division

MASSACHUSETTS REGISTER NUMBER: 1512 DATE: 1/5/24

EFFECTIVE DATE: 9/29/23

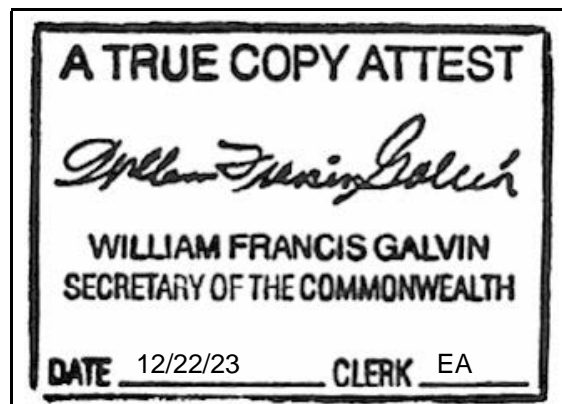
CODE OF MASSACHUSETTS REGULATIONS

Remove these Pages:

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This is an Emergency Regulation.

There are no Replacement Pages.





101 CMR 327.00: RATES FOR AMBULANCE AND WHEELCHAIR VAN SERVICES

Section

- 327.01: General Provisions
- 327.02: General Definitions
- 327.03: General Rate Provisions and Payment
- 327.04: Special Contracts
- 327.05: Nonpublic Ambulance Supplemental Payment Provisions
- 327.06: Reporting and Registration Requirements
- 327.07: Reductions in Payment
- 327.08: Severability

327.01: General Provisions

- (1) Scope and Purpose. 101 CMR 327.00 governs the rates of payment to eligible ambulance and wheelchair van service providers to be used by all governmental units for services provided to publicly aided individuals. The ground transport rates set forth in 101 CMR 327.00 also apply to individuals covered by the Workers' Compensation Act, M.G.L. c. 152.
- (2) Applicable Dates of Service. Rates in 101 CMR 327.00 are applicable for dates of service on or after November 1, 2022, except as otherwise noted.
- (3) Disclaimer of Authorization of Services. 101 CMR 327.00 is not authorization for or approval of the services for which rates are determined pursuant to 101 CMR 327.00. Governmental units that purchase services are responsible for the definition, authorization, and approval of care and services provided to publicly aided individuals.
- (4) Coverage. The rates of payment in 101 CMR 327.00 constitute payment in full for all services provided by an eligible provider, including administration and professional supervision services. The payment rates will apply to ambulance and wheelchair van services provided by eligible providers to publicly aided individuals whose medical condition requires the use of such vehicles under the conditions described by the purchasing governmental unit.
- (5) Exclusion. 101 CMR 327.00 and the payment rates in 101 CMR 327.03 will not, under any conditions, apply when the purchasing governmental unit determines that:
  - (a) no medical necessity exists; or
  - (b) some means of transportation other than an ambulance or wheelchair van may be used without endangering the patient's health; or
  - (c) ambulance or wheelchair van usage is for an unauthorized purpose.
- (6) Coding Updates and Corrections. EOHHS may publish service code updates and corrections in the form of an administrative bulletin. Updates may reference coding systems including, but not limited to, the Healthcare Common Procedure Coding System (HCPCS). The publication of such updates and corrections will list:
  - (a) codes for which the code numbers change, with the corresponding cross references between existing and new codes and the codes being replaced. Rates for such new codes are set at the rate of the code that is being replaced;
  - (b) codes for which the code number remains the same, but the description has changed;
  - (c) deleted codes for which there are no corresponding new codes; and
  - (d) codes for entirely new services that require pricing. EOHHS will list these codes and apply individual consideration (I.C.) payment for these codes until appropriate rates can be developed.
- (7) Administrative Bulletins. EOHHS may issue administrative bulletins to clarify its policy on and understanding of substantive provisions of 101 CMR 327.00, to issue coding updates and corrections under 101 CMR 327.01(6); to describe services, rates, or payment methods set forth in a special contract with a provider or selective contract with a broker under 101 CMR 327.04, as determined necessary by EOHHS; to describe conditions of payment for the nonpublic ambulance supplemental payments under 101 CMR 327.05(2); or to update the classification percentage multiplier for the nonpublic ambulance assessment as provided under 101 CMR 327.05(5)(a).

327.02: General Definitions

Terms, as used in 101 CMR 327.00, have the meanings set forth in 101 CMR 327.02.

Ambulance. An aircraft, boat, motor vehicle or other means of transportation, however named, whether privately or publicly owned, which is intended to be used for, and is maintained and operated for, the response to and the transportation of sick or injured individuals.

Center. The Center for Health Information and Analysis, established under M.G.L. c. 12C.

Eligible Provider. A person, partnership, corporation, governmental unit, or other entity that provides authorized emergency ambulance, nonemergency ambulance, and/or wheelchair van services and that also meets such conditions of participation as have been or may be adopted from time to time by a governmental unit purchasing ambulance services.

EOHHS. The Executive Office of Health and Human Services, established under M.G.L. c. 6A.

Governmental Unit. The Commonwealth of Massachusetts or any of its departments, agencies, boards, commissions, or political subdivisions.

Individual Consideration (I.C.). Rates of payment to eligible providers for services authorized, but not listed herein, or authorized services performed in exceptional circumstances will be determined on an individual consideration basis by the governmental unit upon receipt of a bill that describes the services rendered. Eligible providers must maintain adequate records to determine the appropriateness of their I.C. claims and must provide these documents to the governmental unit upon request.

Loaded Mileage. The actual distance a person or persons is (are) transported in an ambulance or wheelchair van.

MassHealth. The medical assistance and benefit programs administered by EOHHS pursuant to Title XIX of the Social Security Act ( 42 U.S.C. 1396a *et seq.*), Title XXI of the Social Security Act (42 U.S.C. 1397aa *et seq.*), M.G.L. c. 118E, and other applicable laws and waivers to provide and pay for medical services to eligible members.

Nonpublic Ambulance Service. Ambulance services which are not provided by a city or town, county, district, or other governmental body and are licensed pursuant to M.G.L. c. 111C § 6.

Publicly Aided Individual. A person for whose medical and other services a governmental unit is in whole or in part liable under a statutory program.

Trip. The event of pick-up, transport, and delivery of a person or persons to or from a hospital or other health care facility by an ambulance or wheelchair van.

Trust Fund. The Nonpublic Ambulance Service Reimbursement Trust Fund established under M.G.L. c. 29, § 2KKKKK, to provide money to be expended for Medicaid payments to nonpublic ambulance services, as specified in 101 CMR 324.00: *Nonpublic Ambulance Service Reimbursement Trust Fund Assessment and Funding*. The Secretary of Health and Human Services, as trustee, will administer the fund and will make expenditures from the fund consistent with M.G.L. c. 29, § 2KKKKK.

Wheelchair Van. A motor vehicle that is specifically equipped to carry one or more persons who have a mobility disability or who are using a wheelchair.

327.03: General Rate Provisions and Payment

(1) Rate Determination. The rates for authorized ambulance and wheelchair van services under 101 CMR 327.00 are the lowest of:

- (a) the eligible provider's usual fee to patients other than publicly-aided individuals; or
- (b) the eligible provider's actual charge submitted; or
- (c) the schedule of fees set forth in 101 CMR 327.03.

327.03: continued

(2) Allowable Trip Fees for Ambulance Services.

Code	Allowable Fee	Description of Code
A0425	\$6.45	Ground mileage, per statute mile (loaded mileage)
A0426	\$250.65	Ambulance service, advanced life support, nonemergency transport, level 1 (ALS 1)
A0427	\$396.86	Ambulance service, advanced life support, emergency transport, level 1 (ALS 1 - emergency)
A0428	\$208.87	Ambulance service, basic life support, nonemergency transport (BLS)
A0429	\$334.19	Ambulance service, basic life support, emergency transport (BLS-emergency)
A0430	\$4,036.04	Ambulance service, conventional air services, transport, one way (fixed wing)
A0431	\$4,036.04	Ambulance service, conventional air services, transport, one way (rotary wing)
A0433	\$574.40	Advanced life support, level 2 (ALS 2)
A0434	\$678.83	Specialty care transport (SCT)
A0170	I.C.	Transportation ancillary; parking fees, tolls, other (used only for ferry charges)
A0999	I.C.	Unlisted ambulance service. (Used for transporting patients who require special resources to be safely transported including, but not limited to, bariatric patients.)

(3) Billing Certification. Each eligible provider who submits an invoice to a governmental unit for authorized ambulance services must certify to the accuracy of the level of services provided, as listed on its invoice.

(4) Allowable Trip Fees for Wheelchair Van Services.

Code	Allowable Fee	Description of Code
A0130	\$40.55	Nonemergency transportation; wheelchair van (each way)
S0215	\$1.46	Nonemergency transportation; mileage, per mile (wheelchair van, loaded mileage)
T2001	\$8.00	Nonemergency transportation; patient attendant/escort (wheelchair van, each way)

327.04: Special Contracts

(1) Notwithstanding 101 CMR 327.03, a governmental unit may enter into a special contract with an eligible provider under which the governmental unit will pay for services authorized but not listed in 101 CMR 327.00, or authorized services performed in exceptional circumstances.

327.04: continued

- (2) Notwithstanding 101 CMR 327.03, a governmental unit may enter into a selective contract with a transportation broker under which the governmental unit will pay for authorized services arranged by the broker at rates or through payment methodologies different than those set forth in 101 CMR 327.03.

327.05: Nonpublic Ambulance Supplemental Payment Provisions

- (1) Provider Eligibility. To be eligible to receive supplemental payments from the Trust Fund, a nonpublic ambulance provider must be
- licensed under M.G.L. c. 111C, § 6, as defined by the Department of Public Health (DPH);
  - a MassHealth enrolled provider; and
  - in compliance with the payment conditions set forth in 101 CMR 327.05(2).
- (2) Payment Conditions.
- Nonpublic ambulance service expenditures will be made only under federally approved payment methods and consistent with federal funding requirements and all federal payment limits as determined by the Secretary of Health and Human Services.
  - Payments under the Trust Fund will only be made to eligible nonpublic ambulance providers that
    - provide service to MassHealth members without limitations or restrictions based on origin point or diagnosis code, so long as the origin point is consistent with the locality requirements under 130 CMR 407.411(C): *Locality Restriction*;
    - meet service quality standards as defined by EOHHS *via* administrative bulletin or other written issuance, including quality standards related to timely service and waiting times;
    - demonstrate compliance with other conditions of payment as described by EOHHS *via* administrative bulletin or other written issuance, including compliance with applicable requirements under 42 CFR § 433.68; and
    - comply with all applicable requirements of 130 CMR 407.000: *Transportation Services*.
- (3) Compliance with Conditions of Payment.
- EOHHS may audit compliance with conditions of payment.
  - EOHHS may, *via* administrative bulletin or other written issuance, establish standards governing various conditions of payment including, but not limited to, attestations, reporting requirements, compliance with payment conditions, penalties for noncompliance, and recovery.
- (4) Timing of Payments.
- EOHHS will direct payments to eligible nonpublic ambulance providers from the Trust Fund each state fiscal year in which funding is available in the Trust Fund. Within 45 days of the end of each quarter, starting with the quarter beginning July 1, 2021, EOHHS will calculate and distribute payments to eligible nonpublic ambulance providers consistent with the payment methodology described in 101 CMR 327.05(5).
  - Notwithstanding 101 CMR 327.05(4)(a), EOHHS will not make final supplemental payments to nonpublic ambulance providers, unless and until EOHHS receives notice of approval from the Centers for Medicare & Medicaid Services (CMS) for federal financial participation for expenditures related to the assessment described in 101 CMR 324.00: *Nonpublic Ambulance Service Reimbursement Trust Fund Assessment and Funding*. Upon receiving such approval, EOHHS will make supplemental payments for dates of service on or after July 1, 2021, within 180 days of such approval or the end of the relevant quarter, whichever is later.
  - EOHHS may elect to make interim supplemental payments to nonpublic ambulance providers prior to receiving notice of approval from CMS for federal financial participation for expenditures related to the assessment. Any interim supplemental payment made to a provider is subject to adjustment to conform final supplement payments to the payment methodology ultimately approved by CMS. In the event CMS does not approve federal financial participation for such expenditures, EOHHS may recover any portion of the interim supplemental payment made to a provider. The adjustment or recovery may include, without limitation, the denial, reduction, or withholding of future payment to that provider or its successor in interest or any provider under common interest.

327.05: continued

(5) Payment Methodology. Each quarter starting with the quarter beginning July 1, 2023, and subject to available state and federal funding and allowable under federal law, EOHHS will allocate payments to eligible nonpublic ambulance providers in the following amounts, subject to the limitations describes in 101 CMR 327.05(5)(c):

(a) To calculate the supplemental payments, eligible nonpublic ambulance providers will be assigned to one of the following classifications, as determined by EOHHS, with the specified percentage multiplier applied to the eligible nonpublic ambulance providers' supplemental payments as follows, provided that EOHHS may prospectively update the percentage multipliers for a given quarterly payment by not more than plus or minus 5% *via* administrative bulletin or other written issuance.

1. Not-for-profit nonpublic ambulance providers, 126.33%;
2. Not-for-profit hospital nonpublic ambulance providers, 100.79%;
3. For-profit nonpublic ambulance providers in region 1 as defined by DPH Office of Emergency Medical Services (OEMS), 128.46%;
4. For-profit nonpublic ambulance providers in region 2 as defined by DPH OEMS, 111.33%;
5. For-profit nonpublic ambulance providers in region 3 as defined by DPH OEMS, 91.59%;
6. For-profit nonpublic ambulance providers in region 4 as defined by DPH OEMS, 106.57%;
7. For-profit nonpublic ambulance providers in region 5 as defined by DPH OEMS, 84.58%; and
8. For-profit nonpublic ambulance providers assigned to multiple regions or no region as defined by DPH OEMS, 86.27%.

EOHHS will assign affiliated for-profit nonpublic ambulance providers located in multiple regions as defined by DPH OEMS to classification 8.

(b) EOHHS will distribute 100 % of the payment to eligible nonpublic ambulance providers as follows, with the amount paid to each nonpublic ambulance provider equaling the product of

1. the ratio of the amount of ground ambulance services billed to MassHealth by that nonpublic ambulance provider to the amount of all nonpublic ambulance providers' billing to MassHealth for ground ambulance services;
2. 100% of the amount calculated to be payable from the Trust Fund; and
3. the applicable percentage multiplier described in 101 CMR 327.05(5)(a).

(c) The payments to eligible nonpublic ambulance providers described in 101 CMR 327.05(5)(b) may not exceed the sum of the difference between the Medicaid payments otherwise made to these providers for the provision of ground ambulance services and the amount that would have been paid at the equivalent average commercial rate (ACR) in aggregate, as follows:

1. For all eligible nonpublic ambulance providers, EOHHS will identify the emergency and non-emergency ground ambulance services for which the provider is eligible to receive supplemental payment.
2. The supplemental payment amount will be calculated by first determining the equivalent ACR for all eligible emergency and non-emergency ground ambulance services identified under 101 CMR 327.05(5)(c)1.
3. EOHHS will then subtract an amount equal to the base Medicaid reimbursement amount for all of the emergency and non-emergency ground ambulance services from the ACR calculated in 101 CMR 327.05(5)(c)2. and divide that by the base Medicaid reimbursement amount to determine the percentage increase for each emergency and non-emergency ground ambulance service provided by eligible nonpublic ambulance providers.
4. The supplemental payment due to eligible nonpublic ambulance providers will be subject to available funding and will not exceed the product of
  - a. the percentage increase calculated in 101 CMR 327.05(5)(c)3.;
  - b. multiplied by the base Medicaid reimbursement amount; and
  - c. multiplied by the total number of units for each service.

327.06: Reporting and Registration Requirements

(1) Required Reports. Reporting requirements are governed by 957 CMR 6.00: *Cost Reporting Requirements* and any reporting or registration requirements set forth in 101 CMR 324.00: *Nonpublic Ambulance Service Reimbursement Trust Fund Assessment and Funding*. In addition, each eligible nonpublic ambulance provider that receives a supplemental payment pursuant to 101 CMR 327.05 must file or make available all records and information necessary to demonstrate compliance with conditions of payment upon EOHHS request, including documentation of the uses of such payments.

(2) Penalty for Noncompliance. The purchasing governmental unit may impose a penalty in the amount of up to 15% of its payments to any provider that fails to submit required information. The purchasing governmental unit will notify the provider in advance of its intention to impose a penalty under 101 CMR 327.06(2).

327.07: Reductions in Payment

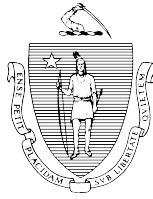
EOHHS may deny, reduce, or withhold payment to an eligible nonpublic ambulance provider that fails to comply with any condition of payment set forth in 101 CMR 327.05. EOHHS will notify the nonpublic ambulance provider of its intention to deny, reduce, or withhold payment. EOHHS may apply reductions in payments to the successor in interest or any provider under common interest.

327.08: Severability

The provisions of 101 CMR 327.00 are severable, and if any provisions of 101 CMR 327.00 or the application of such provisions to any person or circumstances is held to be invalid or unconstitutional, such invalidity will not be construed to affect the validity or constitutionality of any remaining provisions of 101 CMR 327.00 or application of such provisions to eligible providers or circumstances other than those held invalid.

REGULATORY AUTHORITY

101 CMR 327.00: M.G.L. c. 118E.

**THE COMMONWEALTH OF MASSACHUSETTS****William Francis Galvin**

Secretary of the Commonwealth

**Regulation Filing***To be completed by filing agency*CHAPTER NUMBER: **220 CMR 272.00**CHAPTER TITLE: **Rates for the Towing of Motor Vehicles**AGENCY: **Department of Public Utilities**SUMMARY OF REGULATION: *State the general requirements and purposes of this regulation.*

**220 CMR 272.00** establishes the maximum rates applicable for involuntary tows, those tows ordered by the police or other public authority, or by a person having lawful control over private real property (i.e., a trespass tow). The emergency regulation includes an across the board increase of approximately 22 percent to all rates specified in the regulation based on an inflation adjustment using the consumer price index.

REGULATORY AUTHORITY: **M.G.L. c. 159B, § 6B; c. 266, § 120D**AGENCY CONTACT: **Timothy Federico** PHONE: **(617) 305-3657**ADDRESS: **One South Station, Boston, MA 02110****Compliance with M.G.L. c. 30A**EMERGENCY ADOPTION - *if this regulation is adopted as an emergency, state the nature of the emergency.*

**The cost of providing towing-related services has increased since the current maximum rates for involuntary tows took effect in 2017. Immediate implementation of the increased rates set forth in the emergency regulation is necessary for the preservation of public safety to ensure the continued availability of adequate towing services for disabled vehicles and police ordered tows.**

PRIOR NOTIFICATION AND/OR APPROVAL - *If prior notification to and/or approval of the Governor, Legislature or others was required, list each notification, and/or approval and date, including notice to the Local Government Advisory Commission.***Notified Local Government Advisory Committee: 12/13/23****Notified Department of Environmental Protection: 12/13/23****Executive Office of Administration and Finance Approval: 12/13/23**

**PUBLIC REVIEW** - *M.G.L. c. 30A sections 2 and/or 3 requires notice of the hearing or comment period, including a small business impact statement, be filed with the Secretary of the Commonwealth, published in appropriate newspapers, and sent to persons to whom specific notice must be given at least 21 days prior to such hearing or comment period.*

Date of public hearing or comment period: **Public hearing 1/23/24; Comments 1/17/24 – 1/30/24**

FISCAL EFFECT - *Estimate the fiscal effect of the public and private sectors.*

For the first and second year: **The general public will pay more for involuntary tows;; no fiscal effect for public sector**

For the first five years: **The general public will pay more for involuntary tows;; no fiscal effect for public sector**

No fiscal effect:

SMALL BUSINESS IMPACT - *M.G.L. c. 30A section 5 requires each agency to file an amended small business impact statement with the Secretary of the Commonwealth prior to the adoption of a proposed regulation. If the purpose of this regulation is to set rates for the state, this section does not apply.*

Date amended small business impact statement was filed: **N/A**

CODE OF MASSACHUSETTS REGULATIONS INDEX - *List key subjects that are relevant to this regulation:*  
**Fuel Price Surcharge; Motor Vehicles; Police-ordered Towing; Towing; Towing Charges**

PROMULGATION - *State the action taken by this regulation and its effect on existing provisions of the Code of Massachusetts Regulations (CMR) or repeal, replace or amend. List by CMR number:*

**This regulation amends 220 CMR 272.00.**

ATTESTATION - *The regulation described herein and attached hereto is a true copy of the regulation adopted by this agency.* ATTEST:

SIGNATURE: \_\_\_\_\_ SIGNATURE ON FILE \_\_\_\_\_ DATE: **Dec 13 2023**

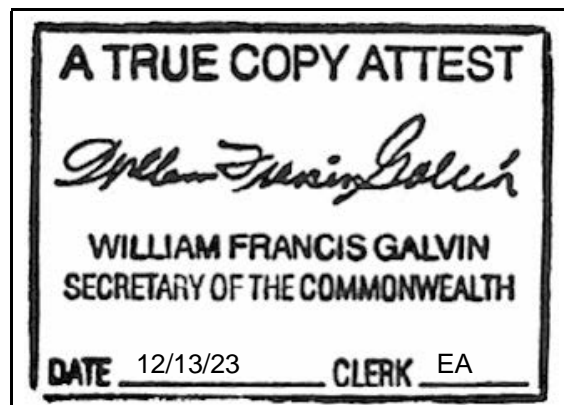
Publication - *To be completed by the regulations Division*

MASSACHUSETTS REGISTER NUMBER: **1512** DATE: **1/5/24**

EFFECTIVE DATE: **12/13/23**

CODE OF MASSACHUSETTS REGULATIONS

<i>Remove these Pages:</i>	<i>Insert these Pages:</i>
<b>This is an Emergency Regulation.</b>	<b>There are no Replacement Pages.</b>





220 CMR 272.00: RATES FOR THE TOWING OF MOTOR VEHICLES

Section

272.01: Definitions

272.02: Scope

272.03: Maximum Charges for Passenger Automobiles, Motorcycles, Motor Bikes or Motor Scooters

272.04: Maximum Charges for Commercial Motor Vehicles

272.05: Fuel Price Surcharge

272.01: Definitions

Commercial Motor Vehicle. A motor vehicle or combination of motor vehicles used to transport passengers or property. This shall include:

- (a) a bus or van used in commerce, having the manufacturer's rated seating capacity of at least nine passengers and a driver;
- (b) a truck used to transport property; or
- (c) any other vehicle which may display a plate other than a passenger or motorcycle plate.

Fuel-burning Operations. The services included in the basic tow rate, rate for tows in excess of five miles or the charges otherwise established in sections 220 CMR 272.03(1) through (4).

Passenger Automobile. A motor vehicle capable of transporting not more than eight passengers and a driver displaying a passenger or motorcycle plate.

Recovery. Wrecker working, winching, Waiting Time, clean up time and the provisions of special equipment needed to place a disabled motor vehicle in position to be towed.

Service Vehicle. The vehicle used to tow or transport the disabled vehicle.

Service or Waiting Time. Elapsed time the Service Vehicle is waiting to provide service at the scene, winching or utilizing Service Vehicle equipped industry standard tools or equipment.

272.02: Scope

The maximum charges established in 220 CMR 272.00 shall only apply to the towing and transportation of motor vehicles when said transportation is ordered by the police or other public authority pursuant to M.G.L. c. 159B, § 6B or for trespass pursuant to M.G.L. c. 266, § 120D. Rates stated in 220 CMR 272.00 shall not apply to towing which results from a call made by a police officer or other public employee at the request of the owner/operator to transport the vehicle to a location other than the carrier's garage.

If, at the scene, the owner/operator requests that the vehicle be transported to a location other than the carrier's garage, the maximum tow rate may not apply.

272.03: Maximum Charges for Passenger Automobiles, Motorcycles, Motor Bikes or Motor Scooters

(1) For all Passenger Automobiles, motorcycles, motor bikes, motor scooters and all vehicles capable of being transported by crane and dolly or on a ramp truck, the maximum charge for towing up to five miles shall not exceed \$132.00 per vehicle towed regardless of day of week or time of day; provided however that, the maximum charge shall include one hour of Service or Waiting Time. The Service or Waiting Time shall be computed from the time of arrival at the scene.

(2) If Service or Waiting Time exceeds one hour, a \$51.00 per ½ hour charge may be assessed for each vehicle towed when the additional time is necessary to remove the disabled vehicle or if requested by the police or other public authority; provided however that this charge shall not apply to trespass tows or snow removal tows. The starting and ending time shall be recorded on the tow slip at time of service for 220 CMR 272.03(2) to be applicable.

## 272.03: continued

(3) If an additional Service Vehicle or Vehicles is required, the maximum additional Service Vehicle charge shall not exceed \$132.00 per additional Service Vehicle; provided however that this charge shall not apply to trespass tows or snow removal tows. The starting and ending time shall be recorded on the tow slip at the time of service for 220 CMR 272.03(3) to be applicable. Time shall be computed from the time the Service Vehicle is dispatched until it returns to the carrier's garage or is back in service.

(4) For miles towed in excess of five miles, a surcharge of \$4.40 per mile for each mile over the five miles may be assessed.

(5) When additional labor is required and supplied because it is necessary to remove the disabled vehicle from the scene or is required by the police or other public authority, a maximum rate of \$46.00 per man hour, or any fraction thereof, shall apply. The additional labor shall be computed from the time of leaving the carrier's garage until return to the garage. A minimum charge of one hour may be assessed when additional labor is supplied under 220 CMR 272.03(5).

(6) If the carrier has to employ any extraordinary or additional services outside of its capabilities, including but not limited to, renting cranes, renting bulldozers, employing specialized labor, or utilizing services to handle hazardous material or dangerous goods (HAZMAT), the maximum charge shall not exceed the amount of such extraordinary or additional services.

(7) When determining fractions of mileage under 220 CMR 272.03(1) and (4), omit fractions of less than 5/10 and increase fractions of 5/10 or more to the next whole figure.

(8) Mileage shall be based on round trip mileage from the carrier's garage to return thereto. If the Service Vehicle is dispatched from a location other than the carrier's garage, the one-way mileage may be doubled. The carrier shall establish the mileage from the Service Vehicle odometer and shall include the odometer readings on the tow slip.

(9) When more than one vehicle is transported on a Service Vehicle between municipalities and a mileage charge would result in a charge greater than five miles, the mileage charge shall be computed according to a commercial global positioning system (GPS) tracking application and then doubled to arrive at the round trip mileage.

(10) The owner/operator shall be responsible for all toll charges.

272.04: Maximum Charges for Commercial Motor Vehicles

(1) For all Commercial Motor Vehicles, the maximum charge for towing up to five miles shall not exceed \$132.00 per tow regardless of day of week or time of day.

(2) For services necessary to the Recovery of a disabled Commercial Motor Vehicle, the carrier shall establish the charges.

(3) For miles towed in excess of five miles, a surcharge of \$6.60 per mile for each mile over the five miles may be assessed.

(4) When determining fractions of mileage under 220 CMR 272.04(1) and (3), omit fractions of less than 5/10 and increase fractions of 5/10 or more to the next whole figure.

(5) Mileage shall be based on round trip mileage from the carrier's garage to return thereto. If the Service Vehicle is dispatched from a location other than the carrier's garage, the one-way mileage may be doubled. The carrier shall establish the mileage from the Service Vehicle odometer and shall include the odometer readings on the tow slip.

(6) The owner/operator shall be responsible for all toll charges.

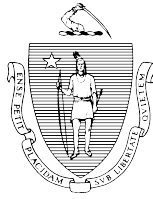
272.05: Fuel Price Surcharge

- (1) When the average cost of diesel fuel in New England exceeds \$3.196 per gallon, the Department shall authorize a fuel surcharge under 220 CMR 272.00. The Department shall calculate the fuel surcharge as a factor that may be multiplied by the sum of those applicable rates and charges relating to Fuel-burning Operations of the Service Vehicles.
- (2) The Department shall obtain the retail on-highway price per gallon of diesel fuel for New England as reported by the Energy Information Administration of the U.S. Department of Energy on its website, [www.eia.doe.gov](http://www.eia.doe.gov), for the first three Mondays of each month (Retail Prices).
- (3) The Department shall calculate the average cost of diesel fuel by taking the average of the Retail Prices as determined in 220 CMR 272.05 (Average Cost).
- (4) To determine the appropriate fuel surcharge factor, the Department shall divide the Average Cost by \$3.196 to produce a multiplication factor (Fuel Multiplication Factor or FMF). The Fuel Multiplication Factor is then multiplied by \$8.92, the embedded cost of fuel in the basic tow rate, to arrive at the current fuel cost per basic tow (Current Fuel Cost). The Current Fuel Cost is then divided by the fuel-adjusted basic tow revenue requirement, which is the sum of the \$132.00 basic tow rate, plus the product of the Fuel Multiplication Factor multiplied by \$8.92, minus the embedded fuel cost of \$8.92 (Fuel-adjusted Revenue Requirement). Dividing the Current Fuel Cost by the Fuel-adjusted Revenue Requirement and subtracting the current embedded 6.8 % yields a fuel surcharge factor (Fuel Surcharge Factor) that may be applied in the next month to the sum of the applicable rates and charges relating to Fuel-burning Operations of the Service Vehicles. This formula is mathematically represented as:  $((\$8.92 \times \text{FMF}) \div (\$132.00 + ((\$8.92 \times \text{FMF}) - \$8.92))) - .068 = \text{Fuel Surcharge Factor}$ .
- (5) On the fourth Monday of each month (or the next business day if this falls on a holiday) preceding a month in which the Department will authorize a surcharge, the Transportation Oversight Division will issue an Administrative Order setting forth the amount of the Fuel Surcharge Factor effective for the following calendar month by:
  - (a) posting on the Department's website the Fuel Surcharge Factor and the month and year for which it applies, where it will remain at least until the expiration of the month to which it relates; and
  - (b) recording a message accessible by telephone stating the Fuel Surcharge Factor and the month and year for which it applies, where it will remain at least until the expiration of the month to which it relates.
- (6) To apply a fuel surcharge, the towing slip shall record the following:
  - (a) each applicable rate and charge relating to Fuel-burning Operations of the Service Vehicles and a sum total;
  - (b) the amount of the authorized Fuel Surcharge Factor; and
  - (c) the amount of the applicable surcharge (the product of multiplying the sum total from 220 CMR 272.05(6)(a) by 220 CMR 272.05(6)(b)).
- (7) The authorization of the Fuel Surcharge Factor shall expire on the last day of the calendar month for which it is authorized.
- (8) The application of the surcharge is voluntary.

## REGULATORY AUTHORITY

220 CMR 272.00: M.G.L. c. 159B, § 6B; c. 266, § 120D.

(PAGES 959 AND 960 ARE RESERVED FOR FUTURE USE.)

**THE COMMONWEALTH OF MASSACHUSETTS****William Francis Galvin**

Secretary of the Commonwealth

**Regulation Filing***To be completed by filing agency*CHAPTER NUMBER: **940 CMR 37.00**CHAPTER TITLE: **REGULATIONS AUTHORIZING DISCLOSURE OF MASSACHUSETTS  
LICENSE OR LEARNER'S PERMIT APPLICANT OR HOLDER INFORMATION**AGENCY: **Office of the Attorney General**SUMMARY OF REGULATION: *State the general requirements and purposes of this regulation.*

**Relates to the public records status and disclosure by the Registrar of Motor Vehicles of information relating to applicants and holders of Massachusetts licenses and learner's permits, pursuant to the Attorney General's authority in the Act Relative to Work and Family Mobility, Section 7 of chapter 81 of the Acts of 2022.**

REGULATORY AUTHORITY: **Section 7 of Chapter 81 of the Acts of 2022**AGENCY CONTACT: **Jamie D. Hoag** PHONE: **617-963-2057**ADDRESS: **One Ashburton Place, 20th Floor, Boston, MA 02108****Compliance with M.G.L. c. 30A**EMERGENCY ADOPTION - *if this regulation is adopted as an emergency, state the nature of the emergency.*

**The emergency adoption of 940 CMR 37.00 is necessary for the immediate preservation of the public safety and welfare by allowing for the sharing of certain information by the Registry of Motor Vehicles as the Registry implements the Work and Family Mobility Act, effective July 1, 2023.**

PRIOR NOTIFICATION AND/OR APPROVAL - *If prior notification to and/or approval of the Governor, Legislature or others was required, list each notification, and/or approval and date, including notice to the Local Government Advisory Commission.*

PUBLIC REVIEW - *M.G.L. c. 30A sections 2 and/or 3 requires notice of the hearing or comment period, including a small business impact statement, be filed with the Secretary of the Commonwealth, published in appropriate newspapers, and sent to persons to whom specific notice must be given at least 21 days prior to such hearing or comment period.*

Date of public hearing or comment period: \_\_\_\_\_

FISCAL EFFECT - *Estimate the fiscal effect of the public and private sectors.*

For the first and second year: \$230,000

For the first five years: Minimal additional fiscal effect following \$230,000 in original implementation

No fiscal effect: \_\_\_\_\_

SMALL BUSINESS IMPACT - *M.G.L. c. 30A section 5 requires each agency to file an amended small business impact statement with the Secretary of the Commonwealth prior to the adoption of a proposed regulation. If the purpose of this regulation is to set rates for the state, this section does not apply.*

Date amended small business impact statement was filed: \_\_\_\_\_

CODE OF MASSACHUSETTS REGULATIONS INDEX - *List key subjects that are relevant to this regulation:*  
**Registry of Motor Vehicles;; Work and Family Mobility Act;; Data Privacy and Security**

PROMULGATION - *State the action taken by this regulation and its effect on existing provisions of the Code of Massachusetts Regulations (CMR) or repeal, replace or amend. List by CMR number:*

**Promulgates new emergency regulation, 940 CMR 37.00.**

ATTESTATION - *The regulation described herein and attached hereto is a true copy of the regulation adopted by this agency.* ATTEST:

SIGNATURE: \_\_\_\_\_ SIGNATURE ON FILE \_\_\_\_\_ DATE: Dec 22 2023

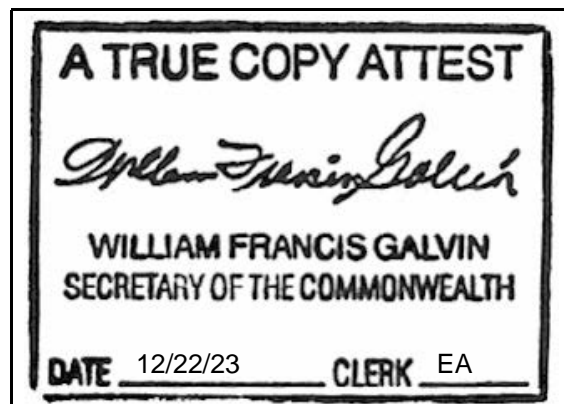
Publication - *To be completed by the regulations Division*

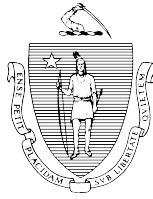
MASSACHUSETTS REGISTER NUMBER: 1512 DATE: 1/5/24

EFFECTIVE DATE: 6/30/23

CODE OF MASSACHUSETTS REGULATIONS

<i>Remove these Pages:</i>	<i>Insert these Pages:</i>
<b>This is an Emergency Regulation.</b>	<b>There are no Replacement Pages.</b>  <b>See Docket 94 under Permanent Regulations.</b>





## THE COMMONWEALTH OF MASSACHUSETTS

William Francis Galvin

Secretary of the Commonwealth

**Notice of Compliance**Regulation Filing *To be completed by filing agency*CHAPTER NUMBER: **101 CMR 352.00**CHAPTER TITLE: **Rates for Certain Children's Behavioral Health Services**AGENCY: **Executive Office of Health and Human Services**

THIS REGULATION WAS ORIGINALLY FILED AS AN EMERGENCY:

*Published in Massachusetts Register  
Number:***1501**

Date:

**8/4/23**

PRIOR NOTIFICATION AND/OR APPROVAL - *If prior notification to and/or approval of the Governor, Legislature or others was required, list each notification, and/or approval and date, including notice to the Local Government Advisory Commission.*

**EO 145 notifications: July 21, 2023****A&F approval: October 13, 2023**

PUBLIC REVIEW - *M.G.L. c. 30A sections 2 and/or 3 requires notice of the hearing or comment period, including a small business impact statement, be filed with the Secretary of the Commonwealth, published in appropriate newspapers, and sent to persons to whom specific notice must be given at least 21 days prior to such hearing or comment period.*

Date of public hearing or comment period: **08/18/2023**

SMALL BUSINESS IMPACT - *M.G.L. c. 30A section 5 requires each agency to file an amended small business impact statement with the Secretary of the Commonwealth prior to the adoption of a proposed regulation. If the purpose of this regulation is to set rates for the state, this section does not apply.*

Date amended small business impact statement was filed: **N/A**AGENCY CONTACT: **Deborah M. Briggs, MassHealth  
Publications**PHONE: **617-847-3302**ADDRESS: **100 Hancock Street, 6th Floor, Quincy, MA 02171**

ATTESTATION - *The regulation described herein and attached hereto is a true copy of the regulation adopted by this agency.*  
ATTEST:

SIGNATURE: **SIGNATURE ON FILE**DATE: **Dec 22 2023**

MASSACHUSETTS REGISTER NUMBER: 1512 DATE: 1/5/24

EFFECTIVE DATE: 8/1/23

CODE OF MASSACHUSETTS REGULATIONS

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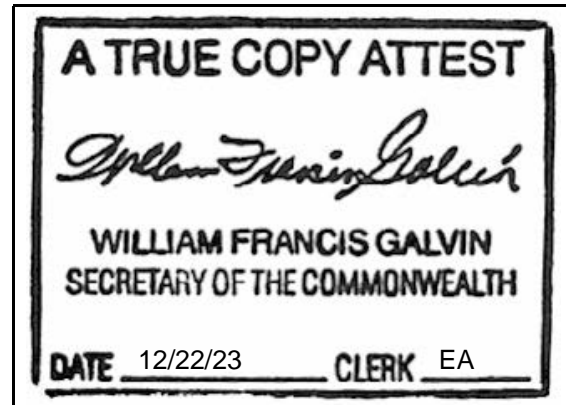




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101 CMR 352.00: RATES FOR CERTAIN CHILDREN'S BEHAVIORAL HEALTH SERVICES

Section

- 352.01: General Provisions
- 352.02: General Definitions
- 352.03: Rate Provisions
- 352.04: Filing and Reporting Requirements
- 352.05: Severability

352.01: General Provisions

(1) Scope and Purpose. 101 CMR 352.00 governs the rates to be used by all governmental units for certain outpatient children's behavioral health services provided by community service agencies and other eligible providers. 101 CMR 352.00 does not govern rates for psychological testing services, which are governed by 101 CMR 329.00: *Rates for Psychological and Independent Clinical Social Work Services*, or rates for mental health services, which are governed by 101 CMR 306.00: *Rates of Payment for Mental Health Services Provided in Community Health Centers and Mental Health Centers*. In addition, 101 CMR 352.00 does not govern rates for other services, care, and supplies provided to publicly aided patients including, but not limited to, psychiatric day treatment services, early intervention services, and medical services provided in community health centers.

(2) Applicable Dates of Service. Rates contained in 101 CMR 352.00 apply for dates of service provided on or after August 1, 2023, or as indicated in 101 CMR 352.03(3).

(3) Disclaimer of Authorization of Services. 101 CMR 352.00 is not authorization for or approval of the procedures for which rates are determined pursuant to 101 CMR 352.00. Purchasing agencies and insurers are responsible for the definition, authorization, and approval of care and services extended to publicly aided clients.

(4) Administrative Bulletins. EOHHS may issue administrative bulletins to clarify its policy on and understanding of substantive provisions of 101 CMR 352.00.

352.02: General Definitions

Meaning of Terms. Terms used in 101 CMR 352.00 have the meaning ascribed in 101 CMR 352.02.

Behavior Management Monitoring. This service includes implementation of the behavior treatment plan; monitoring the youth's behavior; reinforcing implementation of the treatment plan by the parents, guardians, and caregivers; and reporting to the behavior management therapist on implementation of the treatment plan and progress toward behavioral objectives or performance goals. Phone contact and consultation may be provided as part of the intervention. Behavior management monitoring is provided by eligible providers.

Behavioral Management Therapy. This service includes a behavioral assessment (including observing the youth's behavior, antecedents of behaviors, and identification of motivators); development of a highly specific behavior treatment plan; supervision and coordination of interventions; and training other interveners to address specific behavioral objectives or performance goals. This service is designed to treat challenging behaviors that interfere with the child's successful functioning. The behavior management therapist develops specific behavioral objectives and interventions that are designed to diminish, extinguish, or improve specific behaviors related to the child's behavioral health condition(s) and that are incorporated into the behavior management treatment plan and the risk management/safety plan. Behavior management therapy is provided by eligible providers.

Care Manager. A single care manager who works with the child's parents and guardians to provide targeted case management.

Center. The Center for Health Information and Analysis established under M.G.L. c. 12C.

352.02: continued

Clinic. A clinic that is licensed by the Department of Mental Health as a provider of mental health clinic services that is not a community health center or a community mental health center.

Community-based Sites of Service. A service provided to a member located outside of a hospital.

Community Behavioral Health Center (CBHC). An entity that serves as a hub of coordinated and integrated behavioral health disorder treatment for individuals of all ages, including routine and urgent outpatient behavioral health services, mobile crisis services for adults and youth, and community crisis stabilization services for adults and youth.

Community Health Center. A clinic that provides comprehensive ambulatory services and that is not financially or physically an integral part of a hospital.

Community Mental Health Center. A clinic that provides comprehensive ambulatory mental health services and that is not financially or physically an integral part of a hospital.

Community Service Agency (CSA). A clinic, community health center, community mental health center, or other provider entity that meets all other requirements established by MassHealth.

Day. As used in 101 CMR 352.00 as a unit of payment, refers to a billable day in which the child is enrolled in the program.

Eligible Provider. Eligible providers of targeted case management are designated CSAs. Eligible providers of parent/caregiver peer-to-peer support, in-home behavior management services, in-home behavior monitoring services, in-home therapy services, therapeutic training and support, therapeutic mentoring, mobile crisis intervention, and crisis stabilization are providers that meet the conditions of participation established by MassHealth.

EOHHS. The Executive Office of Health and Human Services established under M.G.L. c. 6A: *Executive Offices*.

Family Partner. A family partner must have experience as a caregiver of youth with special needs, preferably youth with mental health needs, experience in navigating any of the youth-and family-serving systems, and either a bachelor's degree in a human services field from an accredited academic institution, or an associate's degree in a human services field from an accredited academic institution and one year of experience working with children, adolescents, or transition-age youth and families, or a high school diploma or equivalent and a minimum of two years of experience working with children, adolescents, or transition-age youth and families. If the bachelor's or associate's degree is not in a human services field, additional life or work experience may be considered in place of the human services degree.

Governmental Unit. The Commonwealth of Massachusetts or any of its departments, agencies, boards, commissions, or political subdivisions.

Individual Consideration (I.C.). Payment rates to eligible providers for services authorized in accordance with 101 CMR 352.03(2), but not listed in 101 CMR 352.00 or authorized services performed in exceptional circumstances are determined on an individual consideration basis by the governmental unit or purchaser under M.G.L. c. 152: *Workers' Compensation* upon receipt of a bill that describes the services rendered. The determination of rates of payment for authorized individual consideration procedures are in accordance with the following criteria:

- (a) time required to perform the service;
- (b) degree of skill required for service rendered;
- (c) severity and/or complexity of the client's disorder or disability;
- (d) policies, procedures, and practices of other third party purchasers of care; and
- (e) such other standards and criteria as may be adopted from time to time by EOHHS pursuant to 101 CMR 352.03(4).

## 352.02: continued

In-home Therapy. This service is a structured, consistent, therapeutic relationship between a licensed clinician and the youth and family for the purpose of treating the youth's behavioral health needs, including improving the family's ability to provide effective support for the youth to promote healthy functioning of the youth within the family. In-home therapy is provided by eligible providers.

Mobile Crisis Intervention. A behavioral health service available 24/7/365 providing short-term mobile, on-site, face-to-face crisis assessment, intervention, and stabilization to individuals younger than 21 years old experiencing a behavioral health crisis. Transition-aged youth older than 17 years of age and younger than 21 years old may be served by adult-trained clinicians with a certified peer specialist instead of a family partner based on an individual's clinical needs. Services may be provided in community-based settings, or in emergency department sites of services to support stabilization for transition into the community. Services may be provided *via* telehealth. The purpose is to identify, assess, treat, and stabilize the situation and reduce the immediate risk of danger to the youth or others consistent with the youth's risk management/safety plan, if any.

Parent-caregiver Peer-to-peer Support. This service provides a structured one-to-one relationship between a family partner and a parent or caregiver for the purpose of resolving or ameliorating the child's emotional and behavioral needs by improving the capacity of the parent or caregiver to parent the child with a serious emotional disturbance. Services may include education, support, and training for the parent or caregiver. Family partners do not provide respite care or babysitting services.

Per Diem. A unit of payment that refers to a billable day in which the member is enrolled in the program.

Publicly Aided Individual. A person for whose medical and other services a governmental unit is in whole or in part liable under a statutory program.

Targeted Case Management (TCM). This service is for individuals younger than 21 years old with serious emotional disturbance and includes assessment of the member, development of an individualized care plan, referral and coordination of other services and supports, and monitoring and follow-up on the implementation of the care plan. Targeted case management is also referred to as intensive care coordination (ICC).

Therapeutic Mentoring. Therapeutic mentoring services are designed to support age-appropriate social functioning or ameliorate deficits in the youth's age-appropriate social functioning. Therapeutic mentoring offers structured, one-to-one, strength-based support services between a therapeutic mentor and a youth for the purpose of addressing daily living, social, and communication needs. Therapeutic mentoring services include supporting, coaching, and training the youth in age-appropriate behaviors, interpersonal communication, problem-solving and conflict resolution, and relating appropriately to other youth and adults. Therapeutic mentoring is provided by eligible providers.

Therapeutic Training and Support. This service is provided by a therapeutic training and support staff working under the supervision of an in-home therapist to support implementation of the licensed clinician's treatment plan to achieve the goals of that plan. The therapeutic training and support staff assists the in-home therapist in implementing the therapeutic objectives of the treatment plan designed to address the youth's emotional, behavioral, and mental health needs. This service includes teaching the youth to understand, direct, interpret, manage, and control feelings and emotional responses to situations, and to assist the family to address the youth's emotional, behavioral, and mental health needs. Therapeutic training and support is provided by eligible providers.

352.03: Rate Provisions

(1) Rates as Full Compensation. The rates under 101 CMR 352.03 constitute full compensation for children's behavioral health services provided by community service agencies to publicly aided patients, including full compensation for necessary administration and professional supervision associated with patient care.

352.03: continued

- (2) Rates of Payment. Payment rates under 101 CMR 352.03 are the lowest of
- (a) the eligible provider's usual charge to the general public;
  - (b) the amount accepted as payment from another payer; or
  - (c) the schedule of allowable rates for services as set forth in 101 CMR 352.03(3).
- (3) Fee Schedule.
- (a) Unit of service is per 15 minutes, unless otherwise indicated. Allowable fee for dates of service on or after August 1, 2023.

H0038	\$24.69	Self-help/peer services, per 15 minutes (parent-caregiver peer-to-peer support service provided by a family partner)
H2011-HN	\$30.57	Crisis intervention service, per 15 minutes (mobile crisis intervention service provided by a paraprofessional, hospital emergency department)
H2011-HO	\$39.70	Crisis intervention service, per 15 minutes (mobile crisis intervention service provided by a master-level clinician, hospital emergency department.)
H2014-HN	\$20.15	Skills training and development, per 15 minutes (behavior management monitoring provided by a bachelor-level clinician)
H2014-HO	\$33.86	Skills training and development, per 15 minutes (behavior management therapy provided by a master-level clinician)
H2019-HN	\$22.67	Therapeutic behavioral services, per 15 minutes (therapeutic training and support services provided by a bachelor-level clinician)
H2019-HO	\$32.33	Therapeutic behavioral services, each 15 minutes (in-home therapy provided by a master-level clinician)
T1027-EP	\$23.24	Family training and counseling for child development, per 15 minutes (therapeutic mentoring service)
H0023-HT	\$66.99	Behavioral Health Outreach Service (Targeted Case Management (multi-disciplinary team) that includes family support and training and intensive care coordination per day)

(b) For mobile crisis intervention services at community-based sites of service, refer to 101 CMR 305.00: *Rates for Behavioral Health Services Provided in Community Behavioral Health Centers.*

- (4) Coding Updates and Corrections. EOHHS may publish procedure code updates and corrections in the form of an administrative bulletin. The publication of such updates and corrections will list
- (a) codes for which only the code numbers changed, with the corresponding cross-walk;
  - (b) codes for which the code number remains the same but the description has changed; and
  - (c) deleted codes for which there is no cross-walk. In addition, for entirely new codes that require new pricing, EOHHS will list these codes and apply individual consideration in reimbursing these new codes until rates are established.
- (5) Administrative Bulletins. EOHHS may issue administrative bulletins to clarify its policy on, and understanding of, substantive provisions of 101 CMR 352.00.
- (6) Billing. Each eligible provider must bill the governmental unit according to the appropriate fee schedule on a prescribed form. Each specific service must be separately enumerated on the bill.

352.04: Filing and Reporting Requirements

- (1) General Provisions.
  - (a) Accurate Data. All reports, schedules, additional information, books, and records that are filed or made available to the Center pursuant to M.G.L. c. 12C, § 22, shall be certified under pains and penalties of perjury as true, correct, and accurate by the executive director or chief financial officer of the provider.
  - (b) Examination of Records. Each provider must make available to the Center or purchasing governmental unit upon request all records relating to its reported costs, including costs of any entity related by common ownership or control.
- (2) Required Reports. Each provider must file
  - (a) an annual uniform financial statement and independent auditor's report completed in accordance with the filing requirements of Division of Purchased Services regulation 808 CMR 1.00: *Compliance, Reporting and Auditing for Human and Social Services*;
  - (b) any cost report supplemental schedule as issued by the Center; and
  - (c) any additional information requested by the Center within 21 days of a written request.
- (3) Penalty for Noncompliance. The purchasing governmental unit may impose a penalty in the amount of up to 15% of its payments to any provider that fails to submit required information. The purchasing governmental unit will notify the provider in advance of its intention to impose a penalty under 101 CMR 352.04(3).

352.05: Severability

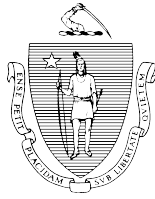
The provisions of 101 CMR 352.00 are severable. If any provision of 101 CMR 352.00 or application of any provision to an applicable individual, entity, or circumstance is held invalid or unconstitutional, that holding will not be construed to affect the validity or constitutionality of any remaining provisions of 101 CMR 352.00 or application of those provisions to applicable individuals, entities, or circumstances.

REGULATORY AUTHORITY

101 CMR 352.00: M.G.L. c. 118E.

NON-TEXT PAGE





Docket # 1274

**THE COMMONWEALTH OF MASSACHUSETTS**

**William Francis Galvin**

Secretary of the Commonwealth

**Regulation Filing**

*To be completed by filing agency*

CHAPTER NUMBER: **105 CMR 159.000**

CHAPTER TITLE: **COVID-19 VACCINATIONS FOR CERTAIN STAFF PROVIDING HOME CARE SERVICES IN MASSACHUSETTS**

AGENCY: **Department of Public Health**

SUMMARY OF REGULATION: *State the general requirements and purposes of this regulation.*  
**105 CMR 159 sets forth vaccination requirements for certain home care workers in Massachusetts**

REGULATORY AUTHORITY: **G.L. c. 111, §§ 3 and 6**

AGENCY CONTACT: **Joshua O. Boeh-Ocansey, Jr.** PHONE: **7817198721**

ADDRESS: **Massachusetts Department of Public Health, 250 Washington St., 2nd Floor, Boston, MA 02108**

**Compliance with M.G.L. c. 30A**

EMERGENCY ADOPTION - *if this regulation is adopted as an emergency, state the nature of the emergency.*

PRIOR NOTIFICATION AND/OR APPROVAL - *If prior notification to and/or approval of the Governor, Legislature or others was required, list each notification, and/or approval and date, including notice to the Local Government Advisory Commission.*

**Notice to Executive Office of Housing and Livable Communities (EOHLC) (previously Department of Housing and Community Development (DHCD) - 6/6/2023, Notice to Massachusetts Municipal Association (MMA) - 6/6/2023**

PUBLIC REVIEW - *M.G.L. c. 30A sections 2 and/or 3 requires notice of the hearing or comment period, including a small business impact statement, be filed with the Secretary of the Commonwealth, published in appropriate newspapers, and sent to persons to whom specific notice must be given at least 21 days prior to such hearing or comment period.*

Date of public hearing or comment period: **10/16/2023**

FISCAL EFFECT - *Estimate the fiscal effect of the public and private sectors.*

For the first and second year: Little to no fiscal effect

For the first five years: Little to no fiscal effect

No fiscal effect: Little to no fiscal effect

SMALL BUSINESS IMPACT - *M.G.L. c. 30A section 5 requires each agency to file an amended small business impact statement with the Secretary of the Commonwealth prior to the adoption of a proposed regulation. If the purpose of this regulation is to set rates for the state, this section does not apply.*

Date amended small business impact statement was filed: 12/20/2023

CODE OF MASSACHUSETTS REGULATIONS INDEX - *List key subjects that are relevant to this regulation:*

**Vaccination of certain home care workers**

PROMULGATION - *State the action taken by this regulation and its effect on existing provisions of the Code of Massachusetts Regulations (CMR) or repeal, replace or amend. List by CMR number:*

**Rescinds 105 CMR 159.000.**

ATTESTATION - *The regulation described herein and attached hereto is a true copy of the regulation adopted by this agency.* ATTEST:

SIGNATURE: \_\_\_\_\_ SIGNATURE ON FILE \_\_\_\_\_ DATE: Dec 21 2023

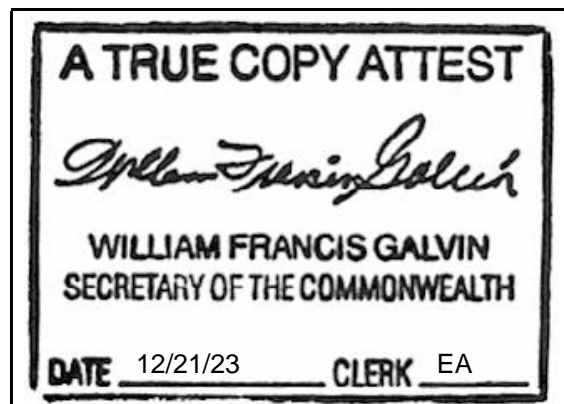
Publication - *To be completed by the regulations Division*

MASSACHUSETTS REGISTER NUMBER: 1512 DATE: 1/5/24

EFFECTIVE DATE: 1/5/24

CODE OF MASSACHUSETTS REGULATIONS

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925 - 930	925, 926



105 CMR: DEPARTMENT OF PUBLIC HEALTH

(105 CMR 159.000 THROUGH 163.000: RESERVED)

(PAGES 927 THROUGH 948 ARE RESERVED FOR FUTURE USE.)



Docket # 1138

## THE COMMONWEALTH OF MASSACHUSETTS

William Francis Galvin

Secretary of the Commonwealth

**Notice of Correction**Regulation Filing *To be completed by filing agency*CHAPTER NUMBER: **130 CMR 519.000**CHAPTER TITLE: **MassHealth: Coverage Types**AGENCY: **Division of Medical Assistance**ORIGINAL PUBLICATION REFERENCE: **1509** Date: **11/24/23**

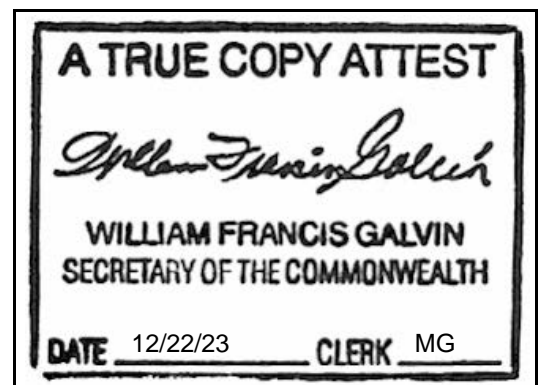
## SUMMARY OF CORRECTION:

**Section 519.011(B) is listed twice. The first instance, (B) MassHealth Buy-in for Qualifying Individuals (QI), should be deleted. Amends 130 CMR 519.010(A)(3) and 519.011(A)(1)(c).**

AGENCY CONTACT: **Deborah M. Briggs, MassHealth Publications** PHONE: **617-847-3302**ADDRESS: **100 Hancock Street, 6th Floor, Quincy, MA 02171**ATTESTATION - *The regulation described herein and attached hereto is a true copy of the regulation adopted by this agency.* ATTEST:SIGNATURE: SIGNATURE ON FILE DATE: **Dec 22 2023**Publication - *To be completed by the regulations Division*MASSACHUSETTS REGISTER NUMBER: **1512** DATE: **1/5/24**EFFECTIVE DATE: **11/24/23**

## CODE OF MASSACHUSETTS REGULATIONS

<i>Remove these Pages:</i>	<i>Insert these Pages:</i>
<b>796.5 &amp; 796.6</b>	<b>796.5 &amp; 796.6</b>





519.009: continued

(B) Use of Potential Benefits. All individuals who meet the requirements of 130 CMR 519.009 must use potential health-insurance benefits in accordance with 130 CMR 517.008: *Potential Sources of Health Care* and must enroll in health insurance, including Medicare, if available at no greater cost to the applicant or member than he or she would pay without access to health insurance. Members must access those other health-insurance benefits and must show both their private health-insurance card and their MassHealth card to providers at the time services are provided.

(C) Coverage Date. The begin date of medical coverage is established in accordance with 130 CMR 516.005: *Coverage Date*.

519.010: Medicare Savings Program (MSP) Qualified Medicare Beneficiaries (QMB)

(A) Eligibility Requirements. MSP (Buy-in) (QMB) coverage is available to Medicare beneficiaries who

- (1) are entitled to hospital benefits under Medicare Part A;
- (2) have a countable income amount (including the income of the spouse with whom he or she lives) that is less than or equal to 190% of the federal poverty level. MassHealth will disregard all assets or resources when determining eligibility for MSP only benefits; and
- (3) effective until February 29, 2024, have countable assets less than or equal to two times the amount of allowable assets for Medicare Savings Programs as identified by the Centers for Medicare and Medicaid Services. Each calendar year, the allowable asset limits shall be made available on MassHealth's website.

Effective March 1, 2024, MassHealth will disregard all assets or resources when determining eligibility for MSP-only benefits; and

(B) Benefits. The MassHealth agency pays for Medicare Part A and Part B premiums and for deductibles and coinsurance under Medicare Parts A and B for members who establish eligibility for MSP coverage in accordance with 130 CMR 519.010(A).

(C) Begin Date. The begin date for MSP coverage is the first day of the calendar month following the date of the MassHealth eligibility determination.

519.011: Medicare Savings Program (MSP) – Specified Low Income Medicare Beneficiaries and Qualifying Individuals

(A) MSP (Buy-in) for Specified Low Income Medicare Beneficiaries (SLMB).

(1) Eligibility Requirements. MSP is available for Specified Low Income Beneficiaries who

- (a) are entitled to hospital benefits under Medicare Part A;
- (b) have a countable income amount (including the income of the spouse with whom they live) greater than 190% and less than or equal to 210% of the federal poverty level. MassHealth will disregard all assets or resources when determining eligibility for MSP only benefits; and
- (c) effective until February 29, 2024, have countable assets less than or equal to two times the amount of allowable assets for Medicare Savings Programs as identified by the Centers for Medicare and Medicaid Services. Each calendar year, the allowable asset limits shall be made available on MassHealth's website.

Effective March 1, 2024, MassHealth will disregard all assets or resources when determining eligibility for MSP-only benefits; and

(2) Benefits. The MassHealth agency pays the entire Medicare Part B premium, in accordance with section 1933 of the Social Security Act (42 U.S.C. § 1396u-3), for members who establish eligibility for MSP for QI coverage in accordance with 130 CMR 519.011(B).

(3) Begin Date. MSP for SLMB coverage, in accordance with 130 CMR 519.011(A), begins with the month of application and may be retroactive up to three calendar months before the month of application.

519.011: continued

(B) MSP for Qualifying Individuals (QI).(1) Eligibility Requirements. MSP for Qualifying Individuals (QI) coverage is available to Medicare beneficiaries who

- (a) are entitled to hospital benefits under Medicare Part A;
- (b) have a countable income amount (including the income of the spouse with whom he or she lives) that is greater than 210% of the federal poverty level and less than or equal to 225% of the federal poverty level;
- (c) effective until February 29, 2024, have countable assets less than or equal to two times the amount of allowable assets for Medicare Savings Programs as identified by the Centers for Medicare & Medicaid Services. Each calendar year, the allowable asset limits shall be made available on MassHealth's website.

Effective March 1, 2024, MassHealth will disregard all assets or resources when determining eligibility for MSP-only benefits; and

- (d) meet the universal requirements of MassHealth benefits in accordance with 130 CMR 503.000: *Health Care Reform: MassHealth: Universal Eligibility Requirements* or 130 CMR 517.000: *MassHealth: Universal Eligibility Requirements*, as applicable.

(2) Benefits. The MassHealth agency pays the entire Medicare Part B premium, in accordance with section 1933 of the Social Security Act (42 U.S.C. § 1396u-3), for members who establish eligibility for MSP for QI coverage in accordance with 130 CMR 519.011(B).(3) Eligibility Coverage Period.

- (a) MSP for QI coverage, in accordance with 130 CMR 519.011(B), begins with the month of application. Coverage may be retroactive up to three months before the month of application provided

- 1. the retroactive date does not extend into a calendar year in which the expenditure cap described at 130 CMR 519.011(B)(4) has been met; and
- 2. the applicant was not receiving MassHealth benefits under the Medicaid State Plan during the retroactive period.

- (b) Once determined eligible, a member who continues to meet the requirements of 130 CMR 519.011(B) is eligible for the balance of the calendar year. Such members are not adversely impacted by the provisions of 130 CMR 519.011(B)(4).

(4) Cap on Expenditures.

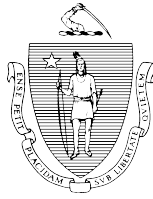
- (a) The MassHealth agency does not extend eligibility to individuals who meet the requirements of the MSP for QI in accordance with 130 CMR 519.011(B), if the MassHealth agency estimates the amount of assistance provided to these members during the calendar year will exceed the state's allocation, as described in the *Social Security Act* § 1933.

- (b) The MassHealth agency gives preference to members who were eligible for MSP for Specified Low Income Medicare Beneficiaries, as described in 130 CMR 519.011, or MSP for Qualified Medicare Beneficiaries, as described in 130 CMR 519.010, in December of the previous calendar year when determining an individual's eligibility for MSP for QI, as described in 130 CMR 519.011(B), in the subsequent calendar year.

519.012: MassHealth CommonHealth(A) Working Disabled Adults.(1) Eligibility Requirements. MassHealth CommonHealth for working disabled adults is available to community residents 65 years of age or older in the same manner as it is available to those younger than 65 years old. This means that eligible applicants must meet the requirements of 130 CMR 505.004(B)(2), (3) and (5) to be eligible for CommonHealth.(2) Other Provisions. The following provisions apply to CommonHealth applicants and members 65 years of age or older: 130 CMR 505.004(A)(2), (H) through (J), (M)(1) and (2), and (N).(B) Certain Disabled Institutionalized Who Are Noncitizens Children.(1) Eligibility Requirements. MassHealth CommonHealth is available to institutionalized disabled children who meet the requirements of 130 CMR 505.004(G): *Disabled Children Younger than 18 Years Old*, and 130 CMR 519.006(A)(2), and who

- (a) have attained the immigration status described in 130 CMR 518.003(A)(2): *Qualified Noncitizens Barred*, and five years have not passed from the date they attained such status;



**THE COMMONWEALTH OF MASSACHUSETTS****William Francis Galvin**

Secretary of the Commonwealth

**Regulation Filing***To be completed by filing agency*CHAPTER NUMBER: **205 CMR 238.00**CHAPTER TITLE: **Additional Uniform Standards of Accounting Procedures and Internal Controls for Sports Wagering**AGENCY: **Massachusetts Gaming Commission**SUMMARY OF REGULATION: *State the general requirements and purposes of this regulation.*

**205 CMR 238.00 establishes a system of controls for Operators to utilize. 205 CMR 238.12 is being amended to require that Sports Wagering Operators obtain a letter of credit that is proportional to the portion of its reserve amount that is allocated to unpaid wagers. So, if an Operator does cease operations within the Commonwealth, there is a mechanism by which patrons can receive funds held by an Operator.**

REGULATORY AUTHORITY: **M.G.L. c. 23N, § 4**AGENCY CONTACT: **Judith Young** PHONE: **857-406-4277**ADDRESS: **101 Federal Street, Floor 12, Boston MA, 02110****Compliance with M.G.L. c. 30A**EMERGENCY ADOPTION - *if this regulation is adopted as an emergency, state the nature of the emergency.*PRIOR NOTIFICATION AND/OR APPROVAL - *If prior notification to and/or approval of the Governor, Legislature or others was required, list each notification, and/or approval and date, including notice to the Local Government Advisory Commission.***LGAC Filed 10/19/2023****SBIS and Hearing Notice sent to Secretary's Office 11/10/2023****Hearing Notice Published in Herald 11/14/2023**PUBLIC REVIEW - *M.G.L. c. 30A sections 2 and/or 3 requires notice of the hearing or comment period, including a small business impact statement, be filed with the Secretary of the Commonwealth, published in appropriate newspapers, and sent to persons to whom specific notice must be given at least 21 days prior to such hearing or comment period.*Date of public hearing or comment period: **12/5/2023**

FISCAL EFFECT - *Estimate the fiscal effect of the public and private sectors.*

For the first and second year: 0.00

For the first five years: 0.00

No fiscal effect: 0.00

SMALL BUSINESS IMPACT - *M.G.L. c. 30A section 5 requires each agency to file an amended small business impact statement with the Secretary of the Commonwealth prior to the adoption of a proposed regulation. If the purpose of this regulation is to set rates for the state, this section does not apply.*

Date amended small business impact statement was filed: 12/15/2023

CODE OF MASSACHUSETTS REGULATIONS INDEX - *List key subjects that are relevant to this regulation:*

**Massachusetts Gaming Commission, Sports Wagering, Internal Controls, House Rules, Licensees, Operators**

PROMULGATION - *State the action taken by this regulation and its effect on existing provisions of the Code of Massachusetts Regulations (CMR) or repeal, replace or amend. List by CMR number:*

**Amends the existing version of 205 CMR 238.00; specifically, 205 CMR 238.12: Reserve Requirements.**

ATTESTATION - *The regulation described herein and attached hereto is a true copy of the regulation adopted by this agency.* ATTEST:

SIGNATURE: \_\_\_\_\_ SIGNATURE ON FILE \_\_\_\_\_ DATE: Dec 21 2023

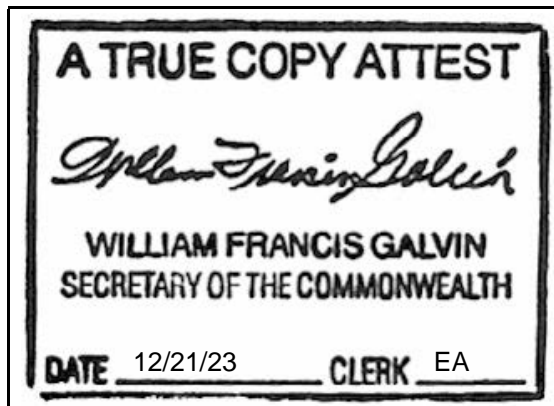
Publication - *To be completed by the regulations Division*

MASSACHUSETTS REGISTER NUMBER: 1512 DATE: 1/5/24

EFFECTIVE DATE: 1/5/24

CODE OF MASSACHUSETTS REGULATIONS

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4.17, 4.18 744.6.1, 744.6.2	4.17, 4.18 744.6.1, 744.6.2



205 CMR: MASSACHUSETTS GAMING COMMISSION

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## 205 CMR: MASSACHUSETTS GAMING COMMISSION

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238.11: Personnel Assigned to the Operation and Conduct of Sports Wagering

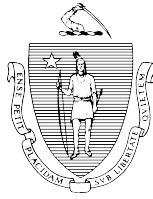
Each Sports Wagering Operator shall be required to employ the following personnel in the following manner in the operation of its Sports Wagering regardless of the position titles assigned to such personnel by the Operator in its approved jobs compendium:

- (1) Each Sports Wagering Operator shall at all times maintain a level of staffing that ensures the proper operation and effective supervision of all Sports Wagering.
- (2) Each Category 1 Sports Wagering Operator or Category 2 Sports Wagering Operator shall be required to employ a Sports Wagering manager. The Sports Wagering manager shall be the executive assigned the responsibility and authority for the supervision and management of Sports Wagering employees in a Sports Wagering Area or Sports Wagering Facility, including, without limitation, the hiring and termination of all Sports Wagering employees within a Sports Wagering Area or Sports Wagering Facility.
- (3) The following personnel shall be used to operate Sports Wagering in a Sports Wagering Area or Sports Wagering Facility:
  - (a) Ticket Writers shall be the Persons assigned the responsibility for the operation of a Ticket Writer Station;
  - (b) Sports Wagering supervisors shall be the first level supervisors assigned the responsibility for directly supervising the operation of Sports Wagering in a Sports Wagering Area or Sports Wagering Facility;
  - (c) Sports Wagering shift managers shall be the second level supervisor with the responsibility for the overall supervision of Sports Wagering in a Sports Wagering Area or Sports Wagering Facility for each shift; and
  - (d) The Sports Wagering department manager shall be the executive assigned the responsibility and authority for the supervision and management of the overall operation of the Operator's Sports Wagering Operation. In the absence of the Sports Wagering department manager, the Sports Wagering shift manager shall have the authority of the Sports Wagering department manager.

238.12: Reserve Requirement

- (1) A system of Internal Controls submitted by a Sports Wagering Operator in accordance with 205 CMR 238.02 shall include a plan to maintain and protect sufficient cash and other supplies to conduct Sports Wagering at all times through a reserve in the amount necessary to ensure the security of funds held in Sports Wagering Accounts and the ability to cover the outstanding Sports Wagering liability, including the amounts accepted by the Sports Wagering Operator on Sports Wagers whose outcomes have not been determined and amounts owed but unpaid on winning Sports Wagering tickets or vouchers. The reserve may be in the form of Cash, Cash Equivalents, payment processor reserves, payment processor receivables, an irrevocable letter of credit, a bond, or a combination thereof; provided that the amount of the reserve intended to cover the Sports Wagering liability must be in the form of, or backed up by, an irrevocable letter of credit approved by the Commission and which may be drawn by the Commission in the event of cessation of Sports Wagering Operations in accordance with 205 CMR 258.00.
- (2) A system of Internal Controls submitted by a Sports Wagering Operator in accordance with 205 CMR 238.02 shall ensure funds in Sports Wagering Accounts, including pending withdrawals, are either held:

NON-TEXT PAGE

**THE COMMONWEALTH OF MASSACHUSETTS****William Francis Galvin**

Secretary of the Commonwealth

**Notice of Compliance**Regulation Filing *To be completed by filing agency*CHAPTER NUMBER: **205 CMR 258.00**CHAPTER TITLE: **Sports Wagering Operator Cessation**AGENCY: **Massachusetts Gaming Commission**

THIS REGULATION WAS ORIGINALLY FILED AS AN EMERGENCY:

*Published in Massachusetts Register  
Number:***1508**

Date:

**11/10/23**

PRIOR NOTIFICATION AND/OR APPROVAL - *If prior notification to and/or approval of the Governor, Legislature or others was required, list each notification, and/or approval and date, including notice to the Local Government Advisory Commission.*

**LGAC Filed 10/19/2023****SBIS and Hearing Notice sent to Secretary's Office - 11/10/2023****Hearing Notice Published in Herald 11/10/2023**

PUBLIC REVIEW - *M.G.L. c. 30A sections 2 and/or 3 requires notice of the hearing or comment period, including a small business impact statement, be filed with the Secretary of the Commonwealth, published in appropriate newspapers, and sent to persons to whom specific notice must be given at least 21 days prior to such hearing or comment period.*

Date of public hearing or comment period: **12/5/2023**

SMALL BUSINESS IMPACT - *M.G.L. c. 30A section 5 requires each agency to file an amended small business impact statement with the Secretary of the Commonwealth prior to the adoption of a proposed regulation. If the purpose of this regulation is to set rates for the state, this section does not apply.*

Date amended small business impact statement was filed: **12/15/2023**AGENCY CONTACT: **Judith Young** PHONE: **857-406-4277**ADDRESS: **101 Federal Street, Floor 12, Boston MA, 02110**

ATTESTATION - *The regulation described herein and attached hereto is a true copy of the regulation adopted by this agency.*  
ATTEST:

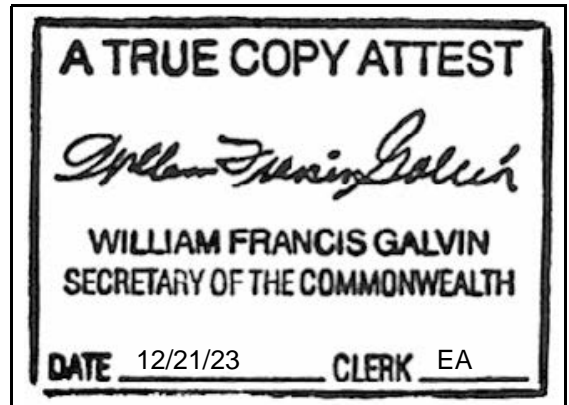
SIGNATURE: **SIGNATURE ON FILE** DATE: **Dec 21 2023**

MASSACHUSETTS REGISTER NUMBER: 1512 DATE: 1/5/24

EFFECTIVE DATE: 10/25/23

CODE OF MASSACHUSETTS REGULATIONS

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205 CMR 258.00: SPORTS WAGERING OPERATOR CESSATION

Section

- 258.01: Notification
- 258.02: Commission Action Upon Receipt of Notice of Cessation
- 258.03: Cessation Plan
- 258.04: Reporting
- 258.05: Cessation Effective
- 258.06: Surrender of License
- 258.07: Bankruptcy

258.01: Notification

- (1) A Sports Wagering Operator that intends to cease Sports Wagering Operations in the Commonwealth shall immediately, and in no event fewer than 90 days before such cessation of operations is anticipated to become effective, notify the Commission in writing of its anticipated cessation, as well the circumstances leading to the anticipated cessation.
- (2) The notice required pursuant to 205 CMR 258.01(1) shall be given regardless of whether the anticipated cessation of Sports Wagering Operations is permanent or indefinite, and whether the cessation is through voluntary or involuntary dissolution, liquidation, or bankruptcy of the Sports Wagering Operator.

258.02: Commission Action Upon Receipt of Notice of Cessation

Upon receiving written notification of a Sports Wagering Operator's anticipated cessation, the Commission may:

- (1) Order the Sports Wagering Operator to cease offering or accepting new Sports Wagers within five business days or such longer period as determined by the Commission;
- (2) Appoint a conservator or receiver to manage and operate the business of the Sports Wagering Operator in the Commonwealth through and after the intended date of cessation. The appointment, duties and obligations of the conservator or receiver shall be subject to the same procedures and requirements as those described in 205 CMR 130.00: *Conservators*, which shall be construed relative to Sports Wagering for the purposes of 205 CMR 258.02; or
- (3) Take any other action it deems necessary in its discretion to protect the integrity of Sports Wagering in the Commonwealth, or otherwise protect the interests of the Commonwealth.

258.03: Cessation Plan

- (1) Within five business days of providing notice of its intended cessation of activities pursuant to 205 CMR 258.01, the Sports Wagering Operation shall submit a plan to the Commission that addresses:
  - (a) The distribution of winnings to patrons holding unredeemed Wagers;
  - (b) The refund of pending Wagers that will not be paid out before the cessation of operation;
  - (c) The distribution of funds in a patron's Sports Wagering Account maintained by a Sports Wagering Operator to that patron;
  - (d) The closure of Sports Wagering Accounts maintained by the Sports Wagering Operator;
  - (e) The closure of the Sports Wagering Operator's Sports Wagering Area, Sports Wagering Facility, or Sports Wagering Platform;
  - (f) The Sports Wagering Operator's plan to satisfy outstanding debts and obligations, including excises taxes due to the Commission pursuant to M.G.L. c. 23N, § 14 and 205 CMR 240.00: *Adjusted Gross Sports Wagering and Adjusted Gross Fantasy Wagering Receipts Tax Remittance and Reporting*;
  - (g) The Sports Wagering Operator's plan to communicate the cessation plan to the public, patrons, and vendors, including applicable timelines for cessation; and

258.03: continued

- (h) A description of the status and current balance of the letter of credit or other financial assurance mechanism held by the Sports Wagering Operator pursuant to 205 CMR 238.12(6) and any information necessary to permit the Commission or its appointed conservator or receiver to access and use such letter of credit or other financial assurance mechanism to satisfy the obligations in 205 CMR 258.03(1)(a) through (f) to the extent feasible.
- (2) The Commission or its designee shall review the cessation plan required pursuant to 205 CMR 258.03(1) and issue a determination approving or denying the plan, or requiring reasonable modifications or conditions to the plan.
- (3) Upon approval of the plan specified in 205 CMR 258.03(1), the Sports Wagering Operator shall publish notice of cessation in a form to be approved the Commission that shall include instructions on how patrons may:
  - (a) Collect winnings on unredeemed Wagers; and
  - (b) Collect remaining funds in their Sports Wagering Account.
- (4) The notice specified in 205 CMR 258.03(3) shall, within five business days be published in:
  - (a) A conspicuous location in the Sports Wagering Area, Sports Wagering Facility, or on the Sports Wagering Platform;
  - (b) On the Sports Wagering Operator's website and social media platforms; and
  - (c) A daily newspaper of general distribution in the Commonwealth, including on that newspaper's website.

258.04: Reporting

- (1) The Sports Wagering Operator shall provide the Commission written reports on its implementation of the cessation plan at least every ten days after providing notice pursuant to 205 CMR 258.01. Such reports shall state whether the Sports Wagering Operator is on track to complete cessation by its approved effective cessation date or whether the Sports Wagering Operator requires a delay of its effective cessation date, and whether the Sports Wagering Operator seeks to amend or deviate from its approved cessation plan.
- (2) If a Sports Wagering Operator seeks to amend or deviate from its approved cessation plan, the Sports Wagering Operator's request shall be accompanied by a statement of reasons explaining why its original approved cessation plan will no longer enable it to accomplish cessation, and why such amendment or deviation is necessary to accomplish cessation. The Commission or its designee shall review the request and issue a determination approving or denying the request and may require reasonable modifications or impose conditions to its approval of the request. The Sports Wagering Operator shall not implement the amendment or deviation until it receives approval from the Commission or its designee.
- (3) In addition to 205 CMR 258.04(2), the Commission or its designee, may, upon review of a report due under 205 CMR 258.04(1), require reasonable modification or impose conditions on a Sports Wagering Operator's cessation plan without request of the Sports Wagering Operator.

258.05: Cessation Effective

- (1) When the Sports Wagering Operator has completed all actions called for in its cessation plan or on the approved effective cessation date, whichever is earlier, the Sports Wagering Operator shall submit a written report to the Commission notifying the Commission that it has completed all actions necessary for cessation and requesting that cessation become effective. The Commission or its designee shall review the report and issue a written decision approving or denying the cessation request. If the Commission or its designee denies the cessation request, the Commission or its designee may require reasonable modification or impose conditions on the Sports Wagering Operator necessary for effective cessation.
- (2) Cessation shall not be effective until the Commission issues a written decision approving the Sports Wagering Operator's cessation request.

258.06: Surrender of License

- (1) Upon cessation, a Sports Wagering Operator shall surrender its Sports Wagering License to the Commission, at which time the Sports Wagering License shall be deemed to have expired, except to the extent any obligations of the Sports Wagering Operator to the Commonwealth, the Commission, vendors, or patrons thereunder are deemed to survive.
- (2) Within ten days of a Sports Wagering Operator's surrender of its Sports Wagering Operator License, all persons and entities possessing an Occupational License, Sports Wagering Vendor License, Tethered Category 3 License, or other license in connection with the affected Sports Wagering License only, and no other Sports Wagering License, shall surrender their license to the Commission, at which time the license shall be deemed to have lapsed.
- (3) A Sports Wagering Operator shall maintain records sufficient to enable the Commission to conduct audits for a period of seven years following the effective date of cessation.

258.07: Bankruptcy

(a) Notwithstanding 205 CMR 258.01(1), if cessation is caused in part, or in whole, by the filing of a petition in bankruptcy court or the appointment of a receiver or conservator, the Sports Wagering Operator shall as soon as practicable notify the Commission in writing of the petition or the appointment of a receiver or conservator. The Sports Wagering Operator's notification shall include a copy of the petition filed in bankruptcy court, the order appointing a receiver or conservator, or any other applicable filing or order.

In the event that a court of competent jurisdiction appoints a receiver or conservator, the receiver or conservator shall immediately apply for the necessary qualifications and licenses, including without limitation qualification pursuant to 205 CMR 215.00: *Applicant and Qualifier Suitability Determination, Standards, and Procedures* and licensure pursuant to 205 CMR 235.00: *Sports Wagering Occupational Licenses*, to operate the Sports Wagering Operator's Sports Wagering Area, Sports Wagering Facility, or Sports Wagering Platform. The receiver or conservator shall not commence operating the Sports Wagering Operator's Sports Wagering Area, Sports Wagering Facility, or Sports Wagering Platform until the Commission has issued a license authorizing the same. The Commission may revoke the receiver's or conservator's license at any time at its discretion without the necessity of revocation or suspension hearing.

(b) The appointment of a receiver or conservator by a court of competent jurisdiction and subsequent authorization of the same receiver or conservator pursuant to 205 CMR 258.08(2) shall not bar the Commission from appointing an additional receiver or conservator pursuant to 205 CMR 258.02.

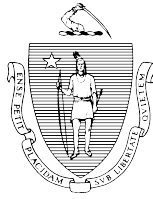
(c) A Sports Wagering Operator subject to cessation based on the filing of a petition in bankruptcy court or the appointment of a receiver or conservator shall not be required to meet the requirements of 205 CMR 258.03 through 258.07 to the extent such requirements are inconsistent with the orders of the court.

(d) Upon notification of cessation based in part, or in whole, by the filing of a petition in bankruptcy court or the appointment of a receiver or conservator, the Sports Wagering Operator shall provide the Commission or the conservator or receiver appointed pursuant to 205 CMR 258.02(1) adequate means to access and use the letter of credit or other financial assurance issued pursuant to 205 CMR 238.12(6).

REGULATORY AUTHORITY

205 CMR 258.00: M.G.L. c. 23N §§ 4, 14

NON-TEXT PAGE

**THE COMMONWEALTH OF MASSACHUSETTS****William Francis Galvin**

Secretary of the Commonwealth

**Regulation Filing***To be completed by filing agency*CHAPTER NUMBER: **301 CMR 41.00**CHAPTER TITLE: **Toxic or Hazardous Substance List**AGENCY: **Executive Office of Energy and Environmental Affairs**SUMMARY OF REGULATION: *State the general requirements and purposes of this regulation.***(Corrects Filing Form only from Massachusetts Register No. 1511.) Companies that use large quantities of chemicals on the TURA Toxic or Hazardous Substance List annually report the use of these chemicals to MassDEP. Adds new substances to the list.**REGULATORY AUTHORITY: **M.G.L. c. 21I**AGENCY CONTACT: **Tiffany Skogstrom** PHONE: **857-275-1561**ADDRESS: **100 Cambridge St., Suite 900, Boston, MA 02114****Compliance with M.G.L. c. 30A**EMERGENCY ADOPTION - *if this regulation is adopted as an emergency, state the nature of the emergency.*PRIOR NOTIFICATION AND/OR APPROVAL - *If prior notification to and/or approval of the Governor, Legislature or others was required, list each notification, and/or approval and date, including notice to the Local Government Advisory Commission.***TURA Administrative Council - August 27, 2023****Local Government Advisory Commission - September 25, 2023**PUBLIC REVIEW - *M.G.L. c. 30A sections 2 and/or 3 requires notice of the hearing or comment period, including a small business impact statement, be filed with the Secretary of the Commonwealth, published in appropriate newspapers, and sent to persons to whom specific notice must be given at least 21 days prior to such hearing or comment period.*Date of public hearing or comment period: **11/3/2023**

FISCAL EFFECT - Estimate the fiscal effect of the public and private sectors.

For the first and second year: **5 to 7 businesses may be subject to reporting, some may pay additional fees**

For the first five years: **5 to 7 businesses may be subject to reporting, with number decreasing over time**

No fiscal effect:

SMALL BUSINESS IMPACT - M.G.L. c. 30A section 5 requires each agency to file an amended small business impact statement with the Secretary of the Commonwealth prior to the adoption of a proposed regulation. If the purpose of this regulation is to set rates for the state, this section does not apply.

Date amended small business impact statement was filed: **12/6/23**

CODE OF MASSACHUSETTS REGULATIONS INDEX - List key subjects that are relevant to this regulation:  
**Toxic use reduction;; chemical;; hazardous;; toxics**

PROMULGATION - State the action taken by this regulation and its effect on existing provisions of the Code of Massachusetts Regulations (CMR) or repeal, replace or amend. List by CMR number:

**Amends 301 CMR 41.00.**

ATTESTATION - The regulation described herein and attached hereto is a true copy of the regulation adopted by this agency. ATTEST:

SIGNATURE: SIGNATURE ON FILE DATE: **Dec 21 2023**

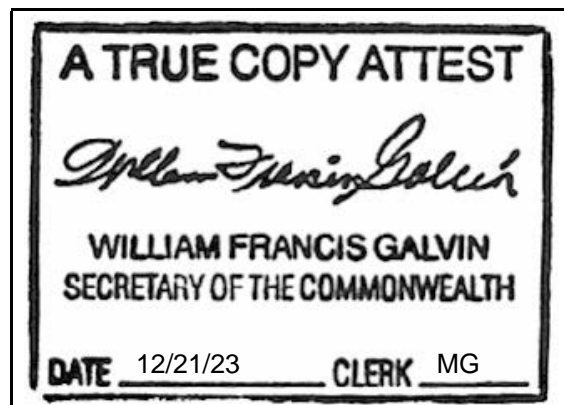
Publication - To be completed by the regulations Division

MASSACHUSETTS REGISTER NUMBER: **1512** DATE: **1/5/24**

EFFECTIVE DATE: **12/22/23**

CODE OF MASSACHUSETTS REGULATIONS

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**THE COMMONWEALTH OF MASSACHUSETTS****William Francis Galvin**

Secretary of the Commonwealth

**Regulation Filing***To be completed by filing agency*CHAPTER NUMBER: **310 CMR 9.00**CHAPTER TITLE: **Waterways**AGENCY: **Department of Environmental Protection**SUMMARY OF REGULATION: *State the general requirements and purposes of this regulation.*

The purpose of MassDEP's Waterways Regulations, 310 CMR 9.00, is to protect and promote the public's interest in filled and flowed tidelands, Great Ponds, and non-tidal rivers and streams in accordance with the Public Trust Doctrine. These amendments ratify and confirm MassDEP approval of the previously approved Chelsea Municipal Harbor Plan and Designated Port Area Master Plan.

REGULATORY AUTHORITY: **MGL Chapter 91, Sections 1 through 63 and MGL Chapter 21A, Sections 2, 4, 8, and 14**AGENCY CONTACT: **Stephanie Moura** PHONE: **857-338-5944**ADDRESS: **100 Cambridge St., Suite 900, Boston, MA 02114****Compliance with M.G.L. c. 30A**EMERGENCY ADOPTION - *if this regulation is adopted as an emergency, state the nature of the emergency.*PRIOR NOTIFICATION AND/OR APPROVAL - *If prior notification to and/or approval of the Governor, Legislature or others was required, list each notification, and/or approval and date, including notice to the Local Government Advisory Commission.*

**Pre-Pub Notices sent 11/22/22 to Local Gov Advisory Cmte of MMA, MA Dept of Housing and Community Dev, MA Historic Comm, MA EFSB, MEPA, EOHED, DPH, DPU, EOEEA. Legislative Notices sent 10/20/23 to Joint Cmte on Envir. & Natural Resources, House & Senate Ways & Means Cmtes.**

PUBLIC REVIEW - *M.G.L. c. 30A sections 2 and/or 3 requires notice of the hearing or comment period, including a small business impact statement, be filed with the Secretary of the Commonwealth, published in appropriate newspapers, and sent to persons to whom specific notice must be given at least 21 days prior to such hearing or comment period.*

Date of public hearing or comment period: **Comment Period: 12/9/22-1/16/23**

FISCAL EFFECT - Estimate the fiscal effect of the public and private sectors.

For the first and second year: \$0

For the first five years: \$0

No fiscal effect: There are no anticipated new costs to the public or private sector due to the final regulation.

SMALL BUSINESS IMPACT - M.G.L. c. 30A section 5 requires each agency to file an amended small business impact statement with the Secretary of the Commonwealth prior to the adoption of a proposed regulation. If the purpose of this regulation is to set rates for the state, this section does not apply.

Date amended small business impact statement was filed: 12/19/23

CODE OF MASSACHUSETTS REGULATIONS INDEX - List key subjects that are relevant to this regulation:  
**waterways, tidelands, municipal harbor plan, approved municipal harbor plan, license**

PROMULGATION - State the action taken by this regulation and its effect on existing provisions of the Code of Massachusetts Regulations (CMR) or repeal, replace or amend. List by CMR number:

**Amend 310 CMR 9.00**

ATTESTATION - The regulation described herein and attached hereto is a true copy of the regulation adopted by this agency. ATTEST:

SIGNATURE: \_\_\_\_\_ SIGNATURE ON FILE \_\_\_\_\_ DATE: Dec 20 2023

Publication - To be completed by the regulations Division

MASSACHUSETTS REGISTER NUMBER: 1512 DATE: 1/5/24

EFFECTIVE DATE: 1/5/24

CODE OF MASSACHUSETTS REGULATIONS

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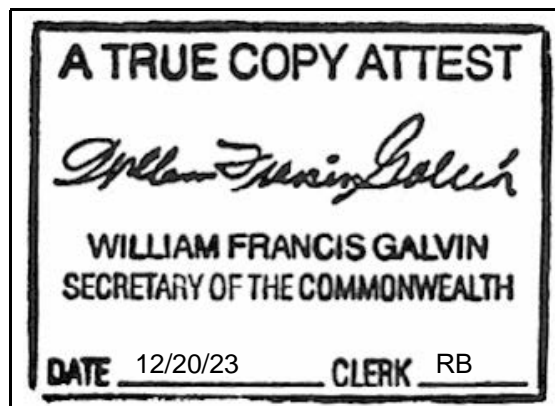




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## 9.02: continued

Historic Low Water Mark means the low water mark which existed prior to human alteration of the shoreline by filling, dredging, excavating, impounding or other means. In areas where there is evidence of such alteration by fill, the Department shall make its determination of the position of the historic low water mark in the same manner as described in 310 CMR 9.02: *Definitions: Historic High Water Mark*.

Improvement Dredging means any dredging under a license or a permit in an area which has not been previously dredged or which extends the original dredged width, depth, length, or otherwise alters the original boundaries of a previously dredged area.

Infrastructure Crossing Facility means any infrastructure facility which is a bridge, tunnel, pipeline, aqueduct, conduit, cable, or wire, including associated piers, bulkheads, culverts, or other vertical support structures, which is located over or under the water and which connects existing or new infrastructure facilities located on the opposite banks of the waterway. Any structure which is operationally related to such crossing facility and requires an adjacent location shall be considered an ancillary facility thereto. Such ancillary facilities generally include, but are not limited to, power transmission substations, gas meter stations, sewage headworks and pumping facilities, toll booths, tunnel ventilation buildings, drainage structures, and approaches, ramps, and interchanges which connect bridges or tunnels to adjacent highways or railroads.

Infrastructure Facility means a facility which produces, delivers, or otherwise provides electric, gas, water, sewage, transportation, or telecommunication services to the public.

Innovative Technology means technology that has not been commercially deployed or is in limited deployment in Massachusetts, and includes, but is not limited to, energy technology that obtains energy from the ocean, waterway, or conditions associated with the ocean or waterway, other forms of renewable energy technology.

Landlocked Tidelands means any filled tidelands which on January 1, 1984 were entirely separated by a public way or interconnected public ways from any flowed tidelands, except for that portion of such filled tidelands which are presently located:

- (a) within 250 feet of the high water mark, or
- (b) within any Designated Port Area. Said public way or ways shall also be defined as landlocked tidelands, except for any portion thereof which is presently within 250 feet of the high water mark.

Licensee means the person to whom a license is issued and shall include the heirs, assignees, and successors in interest to such person.

Local Economic Development Authority means a municipal planning board, zoning board, or other board or commission so designated by a municipality; community development corporations designated in accordance with M.G.L. c. 40H; municipal economic development and industrial corporations designated in accordance with M.G.L. c. 121C; municipal housing authorities designated in accordance with M.G.L. c. 121B, § 3; municipal redevelopment authorities designated in accordance with M.G.L. c. 121B, § 4; urban development corporations designated in accordance with M.G.L. c. 121A; and 40B district planning commissions established under M.G.L. c. 40B, including, but not limited to, the Cape Cod Commission, the Martha's Vineyard Commission and the Boston Redevelopment Authority.

Low Water Mark means the present mean low tide line, as established by the present arithmetic mean of water heights observed at low tide over a specific 19-year Metonic Cycle (the National Tidal Datum Epoch), and shall be determined using hydrographic survey data of the National Ocean Survey of the U.S. Department of Commerce.

Maintenance Dredging means dredging in accordance with a license or permit in any previously authorized dredged area which does not extend the originally dredged depth, width, or length.

Marina means a berthing area with docking facilities under common ownership or control and with berths for ten or more vessels, including commercial marinas, boat basins, and yacht clubs. A marina may be an independent facility or may be associated with a boatyard.

## 9.02: continued

Marine Industrial Park means a multi-use complex on tidelands within a DPA, at which:

- (a) the predominant use is for water-dependent industrial purposes; in general, at least  $\frac{2}{3}$  of the park site landward of any project shoreline must be used exclusively for such purposes;
- (b) spaces and facilities not dedicated to water-dependent industrial use are available primarily for general industrial purposes; uses that are neither water-dependent nor industrial may occur only in a manner that is incidental to and supportive of the water-dependent industrial uses in the park, and may not include general residential or hotel facilities; and
- (c) any commitment of spaces and facilities to uses other than water-dependent industry is governed by a comprehensive park plan, prepared in accordance with M.G.L. c. 30, §§ 61 through 62H, if applicable, and accepted by the Department in a written determination issued pursuant to 310 CMR 9.14.

MEPA means the Massachusetts Environmental Policy Act, M.G.L. c. 30, §§ 61 through 62H, and 301 CMR 11.00: *MEPA Regulations*.

MOU means a Memorandum of Understanding between the Department and another public agency. The draft text of any such document or other written interagency agreement shall be published in the *Environmental Monitor* for public review and comment, and the final text shall be published therein upon adoption and made available by the Department upon request.

Municipal Harbor Plan (MHP) means a document (in words, maps, illustrations, and other media of communication) setting forth, among other things: a community's objectives, standards, and policies for guiding public and private utilization of land and water bodies within a defined harbor or other waterway planning area; and an implementation program which specifies the legal and institutional arrangements, financial strategies, and other measures that will be taken to achieve the desired sequence, patterns, and characteristics of development and other human activities within the harbor area. Such plan shall take effect under 310 CMR 9.00 only upon approval by the Department through the adoption of the substitute provisions of Approved Municipal Harbor Plans listed in 310 CMR 9.57.

Municipal Official means the mayor of a city, the board of selectmen of a town, or the council of a municipality having a manager-council form of government.

Natural High Water Mark means the historic high water mark of a Great Pond.

Natural Low Water Mark means the historic low water mark of a Great Pond.

Net Operating Income means the rental income from a Facility of Limited Accommodation within the licensed structure minus its operating expenses and property taxes calculated as an amount per square foot for the licensed structure or a comparable value if owner occupied. Operating expenses may include expenses for management, legal and accounting services, insurance, janitorial and security services, maintenance, supplies, and utilities.

Noncommercial Community Docking Facility means a facility for berthing of recreational vessels accessory to residential or nonprofit seasonal camp use (*e.g.*, summer camps).

Nonprofit Organization means an organization exempt from federal income taxation under § 501(c)(3) of the U.S. Internal Revenue Code.

Nonwater-dependent Use means a use as specified in 310 CMR 9.12.

Nonwater-dependent Use Project means a project consisting of one or more nonwater-dependent uses, or a mix of water-dependent and nonwater-dependent uses, as specified in 310 CMR 9.12(1).

Notification Date means a specified date by which a public notice must be published in the newspaper and/or the *Environmental Monitor*, and mailed to municipal officials, and on which the public comment period commences.

9.07: Activities Subject to Annual Permit

(1) General. A written application for an annual permit must be submitted to the harbormaster of a city or town or, in a municipality where no harbormaster has been appointed, to the municipal official or other designated local official(s), for the placement on a temporary basis of moorings, floats or rafts held by bottom-anchor, and ramps associated thereto, which are located within the territorial jurisdiction of the municipality. A written application for an annual permit for small structures accessory to residences must be submitted to the harbormaster or other designated local official when a city or town has been approved by the Department to administer a local permitting program under 310 CMR 9.07(3), unless a license or other authorization under 310 CMR 9.00 is obtained from the Department. The harbormaster or other designated local official shall establish a schedule for receipt of applications. Completed applications shall be acted upon within a period of 15 days from receipt, according to the schedule. Any permit may contain such terms, conditions and restrictions as deemed necessary, consistent with the requirements of 310 CMR 9.07. No license shall be required from the Department if an annual permit is issued pursuant to 310 CMR 9.07. A city or town implementing 310 CMR 9.07 shall not discriminate against any citizen of the Commonwealth on the basis of residency, race, religion, sex, age, disability, or other illegal distinction. The provisions of 310 CMR 9.07 shall be enforced by local officials. The Department may enforce the provisions of 310 CMR 9.07 upon the request of a local permitting program or upon a finding that local enforcement is inadequate.

(2) Annual Permits for Moorings, Floats and Rafts.

(a) The harbormaster or other local official shall provide a written procedure for the fair and equitable assignment from a waiting list for use of vacant or new moorings, floats or rafts held by bottom-anchor and ramps associated thereto. Methods for mooring assignment which are appropriate include, but are not limited to, one or more of the following:

1. date of application;
2. physical characteristics of vessels, *e.g.*, size and type;
3. purpose of vessel use, *e.g.*, commercial *vs.* recreational or public *vs.* private.

The harbormaster, however, may allow the previous permit holder of a mooring to renew, on an annual basis, that mooring or another mooring within the control of the harbormaster.

(b) If the placement of floats or rafts for public recreational boating facilities, exclusive of moorings, extends beyond any established state harbor line, encompasses an area greater than 2,000 square feet, or constitutes a marina, additional procedures apply:

1. a public hearing must be held by the harbormaster or other local official in the affected municipality with notice at least seven days in advance published in the local newspaper at the expense of the applicant; and
2. the harbormaster or other local official must set forth the reasons for issuing such permit in a written statement, which must include findings to the effect that the project will serve a public purpose, will not unreasonably interfere with navigation in the harbor, and:
  - a. cannot be located reasonably within the harbor line, if the project extends beyond such line; and/or
  - b. complies with the provisions of 310 CMR 9.39(1), if the project includes a marina.

A copy of the permit and written statement shall be submitted upon issuance to the Department. The Department may review any such permit within 30 days of receipt and may either affirm the permit, set such action aside or amend such action by imposing its own conditions and restrictions as deemed necessary.

(c) A copy of the permit and written statement shall be submitted upon issuance to the Department. The Department may review any such permit within 30 days of receipt and may either affirm the permit, set such action aside or amend such action by imposing its own conditions and restrictions as deemed necessary. No permit for a mooring, float or raft may authorize unreasonable interference with the public rights to use waterways for any lawful purposes including fishing, fowling, and navigation in tidelands and Great Ponds. All permits shall meet the terms and conditions described in 310 CMR 9.07(4).

(d) No permit for a mooring, float or raft shall be transferrable to another person, except to a person within the immediate family of the permittee upon approval of the harbormaster. Nothing in 310 CMR 9.07 shall be construed to prevent moorings for which permits are issued to a recreational boating facility from being assigned to individual patrons or members of such facility.

## 9.07: continued

(3) Annual Permits for Small Structures Accessory to Residences.

(a) Petition for Local Permitting Program. A city or town may petition the Department for approval to administer a local permitting program for small structures accessory to residences. The Department shall state the basis for approval or denial of any petition in writing. The Department may withdraw its approval of a local permitting program if it determines that the local program exhibits a repeated failure to comply with the provisions of 310 CMR 9.07.

1. A city or town may elect to issue permits for small structures accessory to residences under the provisions of 310 CMR 9.07. The city or town shall provide public notice and an opportunity to comment on the petition for approval prior to its submittal to the Department. The petition shall include:

- a. the designation of a local official or local governmental body to administer the program;
- b. a demonstration that public access has been or will be provided to waterbodies within the town, including at least one formal means of access to the waterway, reasonable in type and scope for the waterway and its anticipated use by any citizen of the Commonwealth, established prior to the date of the petition or scheduled to be available within a reasonable period of time; and
- c. provision that any fees collected be used for support of the local permitting program, the improvement of waterways, or the enhancement of public access to or along waterways.

2. Where the Legislature has created a lake commission (*e.g.*, the Lake Quinsigamond Commission) with authority to issue permits, the commission may petition the Department for approval under 310 CMR 9.07(3), without designation by a city or town.

3. A local permitting program may also be approved by the Department if it provides substantially equivalent procedures and protection of public rights as 310 CMR 9.07. A city or town may petition for approval of a local permitting program pursuant to a local ordinance or bylaw. Where the Legislature has created a lake commission with authority to issue permits, the commission may petition the Department for approval of regulations implementing a local permitting program. Upon request, the Department shall provide advisory opinions on draft petitions for approval.

(b) Eligibility. An application for a local permit under 310 CMR 9.07(3) may be submitted only for a project consisting entirely of a dock, pier, seawall, bulkhead, or other small-scale structure that is accessory to a residential use or serves as a noncommercial community docking facility, provided that:

1. for proposed structures, or for structures built or substantially altered after January 1, 1984:

- a. any structure is water-dependent and pile-supported (*e.g.*, by wooden or metal posts) or bottom-anchored, without any fill;
- b. any structures total no more than 600 square feet below the mean high water shoreline for coastal waters or below the ordinary high water shoreline for inland waters;
- c. the structure is not a marina (*i.e.*, does not serve ten or more vessels);
- d. if within an ACEC, such structures were existing on October 4, 1990 or the effective date of the ACEC designation, whichever is later, and, if a resource management plan for the ACEC has been adopted by the municipality and approved by the Secretary, said structures are consistent with said plan;
- e. if within an ACEC, such structures, if built or substantially altered after October 4, 1990 or the effective date of the ACEC designation, whichever is later, are consistent with a resource management plan adopted by the municipality and approved by the Secretary;

2. for structures or fill constructed prior to January 1, 1984 and not substantially altered since that date:

- a. any structure or fill must be water-dependent;
- b. any structure and fill total no more than 600 square feet below the mean high water shoreline for coastal waters and below the ordinary high water shoreline for inland waters;
- c. the structure is not a marina (*i.e.*, does not serve ten or more vessels).

9.08: continued

(3) Pursuant to M.G.L. c. 30, § 62I and 310 CMR 9.08(4), the Department may enforce any conditions required by the Secretary in a MEPA certificate for projects proposed within landlocked tidelands.

(4) In addition to any remedy specified pursuant to M.G.L. c. 91, to the Civil Administrative Penalties Statute, M.G.L. c. 21A, § 16, or to other laws of the Commonwealth, the Department may issue Enforcement Orders requiring compliance with any regulation or with any condition of any license or permit issued by the Department. The employees of the Department may enter at reasonable hours upon any property subject to a license, permit, grant, or public easement to inspect for compliance either prior to or following completion of construction of the authorized structure.

9.09: Effective Date and Severability

(1) 310 CMR 9.00 shall take effect on October 4, 1990. Revisions to 310 CMR 9.07 and 9.10 shall take effect on April 19, 1996. Revisions to 310 CMR 9.00 shall take effect on July 1, 2000. Revisions to 310 CMR 9.10 shall take effect on February 25, 2005. Certain revisions to 310 CMR 9.00 shall take effect on October 3, 2008. 310 CMR 9.29: *General License Certification*, 310 CMR 9.30: *Permitting Test Projects*, and revisions to 310 CMR 9.02, 9.05(2), 9.05(3), 9.09, 9.10, 9.11(2), 9.11(3), 9.13 and 9.14, 9.16, 9.17(4), and 9.40(1) shall take effect on May 23, 2014.

(2) Except as provided in 310 CMR 9.28, 310 CMR 9.00 shall apply to any application for a license, permit, or amendment thereto, and to all subsequent proceedings related thereto, if:

- (a) said application is filed on or after the effective date of 310 CMR 9.00; or
- (b) in the case of an application for a nonwater-dependent use project including one or more activities requiring an EIR, except for any such project which the Department determines, with the concurrence of the municipal planning board, provides essential economic support to an associated water-dependent use project of particular statewide or regional significance, a Certificate of the Secretary stating that a Draft EIR adequately and properly complies with M.G.L. c. 30, §§ 61 through 62H had not been issued as of May 23, 2014.

(3) In the case of any application for license, permit, or amendment thereto filed prior to the effective date of 310 CMR 9.00, except for that to which 310 CMR 9.00 apply pursuant to 310 CMR 9.09(2)(b), the prior applicable regulations shall remain in full force and effect for all subsequent proceedings related thereto; such application shall be subject to the content and other requirements of 310 CMR 9.11(2)(a), 9.11(2)(b)1. through 3., and 9.11(5) only.

(4) 310 CMR 9.08, 9.22, 9.23, 9.25, 9.26 and 9.27 shall apply to all projects for which a license or permit was in effect on the effective date of 310 CMR 9.00, or is obtained in accordance with 310 CMR 9.09(3), and for which a new license or permit application is not required pursuant to 310 CMR 9.05(3).

(5) A Certification of the General License affirmed by the Department in accordance with 310 CMR 9.29 shall take effect when the proponent records the Certification in accordance with 9.29(6).

(6) Severability. If any provision of any part of 310 CMR 9.00, or the application thereof, is held to be invalid, such invalidity shall not affect any other provision of 310 CMR 9.00.

9.10: Simplified Procedures for Small Structures Accessory to Residences

(1) Projects Eligible for Simplified Procedures. Notwithstanding other procedural provisions of 310 CMR 9.00 to the contrary, the procedural standards of 310 CMR 9.10 shall apply to the licensing of certain small-scale structures by the Department. An application for a license under 310 CMR 9.10 may be submitted only for a project consisting entirely of a dock, pier, seawall, bulkhead, or other small-scale structure that is accessory to a residential use or serves as a noncommercial community docking facility, provided that:

## 9.10: continued

(a) for proposed structures, or for structures built or substantially altered after January 1, 1984:

1. any structure is water-dependent and pile-supported (*e.g.*, by wooden or metal posts) or bottom-anchored, without any fill;
2. any structures total no more than 600 square feet below the mean high water shoreline for coastal waters or below the ordinary high water shoreline for inland waters;
3. any structure is not a marina (*i.e.*, does not serve ten or more vessels);
4. if within an ACEC, such structures were existing on October 4, 1990 or the effective date of the ACEC designation, whichever is later, and if a resource management plan for the ACEC has been adopted by the municipality and approved by the Secretary, said structures are consistent with said plan; and
5. if within an ACEC, any structure built or substantially altered after October 4, 1990 or the effective date of the ACEC designation, whichever is later, is consistent with a resource management plan adopted by the municipality and approved by the Secretary; and

(b) for structures or fill constructed prior to January 1, 1984 and not substantially altered since that date:

1. any structure or fill may be water-dependent or nonwater-dependent;
2. any structures and fill total no more than 600 square feet below the mean high water shoreline for coastal waters or below the ordinary high water shoreline for inland waters; and
3. the structure is not a marina (*i.e.*, does not serve ten or more vessels).

The above thresholds are established for determination of eligibility only; structures licensed under 310 CMR 9.10 shall be the minimum size necessary to achieve the intended water-related purposes. Projects meeting the provisions of 310 CMR 9.10(1), which previously obtained a license, amnesty license or interim approval, may apply for renewal under 310 CMR 9.07, 9.10, or 9.25.

(c) projects eligible for general license certification under 310 CMR 9.29 shall comply with the certification procedures of 310 CMR 9.29 to obtain an affirmed certification under 310 CMR 9.29, instead of a simplified license pursuant to 310 CMR 9.10.

(2) Standards. The project shall preserve any rights held by the Commonwealth in trust for the public to use tidelands, Great Ponds and other waterways for lawful purposes. The project shall preserve public rights of access on private tidelands that are associated with fishing, fowling, and navigation, and public rights to use Commonwealth tidelands, Great Ponds, and other waterways for any lawful use. The provisions of 310 CMR 9.33 through 9.38 apply to projects authorized under 310 CMR 9.10 except that, notwithstanding the provisions of 310 CMR 9.37(1)(a), fill and structures need not be certified by a Registered Professional Engineer except as specified in 310 CMR 9.10(3). For eligible nonwater-dependent structures or fill, the Department will generally presume that a proper public purpose is served through the provision of on-foot passage to ensure lateral public access along the shore for any lawful purpose.

(3) Applications Under Simplified Procedures. For purpose of authorizing eligible projects under simplified procedures the following provisions apply:

(a) Application and Plans. An applicant for a license shall submit a written application on forms provided by the Department, signed by the applicant and the landowner if other than the applicant. The application shall be prepared in accordance with all applicable instructions contained in the Department's application package. When plans have been submitted with a Notice of Intent or referenced in an Order of Conditions under the Wetlands Protection Act, M.G.L. c. 131, § 40, a copy of those plans shall accompany the application. Under the Wetlands Protection Act, Conservation Commissions and the Department generally require plans for new structures to be certified by a Registered Professional Engineer or Registered Land Surveyor where there are questions relating to structural integrity (*e.g.*, where a structure is located in a velocity zone or floodway) or to the location of important wetland resource areas (*e.g.*, salt marsh or eelgrass), as well as in other circumstances at the discretion of the issuing authority; see instructions for filing a Notice of Intent pursuant to 310 CMR 10.00: *Wetlands Protection*.



## 9.10: continued

payment of an occupation fee (\$1 per square yard per year for the term of the license), in accordance with the provisions of 310 CMR 9.16. Unless otherwise provided in the license, a valid license shall run with the land and shall automatically be transferred upon a change of ownership of the affected property within the chain of title of which the license has been recorded. All rights, privileges, obligations, and responsibilities specified in the license shall be transferred to the new landowner upon recording of the changed ownership.

(7) Appeals. The appeal provisions in 310 CMR 9.17 apply to projects licensed under 310 CMR 9.10.

9.11: Application Requirements(1) Pre-application Consultation

(a) Upon request of a prospective applicant for a license for any large or complex project, including those required to file an EIR, the Department shall conduct a pre-application consultation meeting in order to receive a presentation of the project proposal, provide preliminary guidance on the applicability of the substantive standards of 310 CMR 9.00 to the project, explain the necessary licensing procedures, and answer any appropriate inquiries concerning the program or 310 CMR 9.00. When appropriate, the Department may invite representatives of CZM, any other state agency, or representatives of the municipality in which the project is located, including the lead agency responsible for implementation of a Municipal Harbor Plan. The participants in the pre-application consultation meeting may make arrangements for further consultation sessions and for coordinated review of the project.

(b) In the case of an unusually large and complex set of activities undertaken by a public agency the Department may establish, in cooperation with the prospective applicant, a special procedure for the review of one or more applications for such activities. Such procedure may include, without limitation, as deemed appropriate by the Department, consolidation procedures, expedited review, and single or multiple licenses, permits, or written determinations. Public notice of any such procedure established under 310 CMR 9.11 shall be published in the *Environmental Monitor*.

(2) Application Review Schedules

(a) For a water-dependent use project, the Department shall, within 45 days of receipt of the information required under 310 CMR 9.11(3)(a) and (b), assign a file number, make a determination of water-dependency under 310 CMR 9.12, and issue a public notice under 310 CMR 9.13(1). Within 20 days of the notification date, the Department may hold a public hearing under 310 CMR 9.13(2). The public comment period shall begin at the notification date and end no less than 30 days and no more than 60 days from the notification date. Within 60 days of the close of the public comment period and notification by the applicant that the public notice has been published, the Department shall conduct an administrative completeness review under 310 CMR 9.11(3)(c) and either determine the application to be complete or request additional information. Within 90 days of making a determination of administrative completeness, the Department shall complete a technical review and issue either a draft license or a final license as specified in 310 CMR 9.14.

(b) For a nonwater-dependent use project, the applicant may elect one of four application options by submitting the selected category of application under the Timely Action and Fee Schedule at 310 CMR 4.00: *Timely Action Schedule and Fee Provisions*.

1. Partial Application. Within 45 days of receiving an application with all information identified in 310 CMR 9.11(3)(a) and (b), the Department shall assign a file number, make a determination of water-dependency under 310 CMR 9.12, and issue a public notice under 310 CMR 9.13(1). The public comment period shall begin at the notification date and end no less than 30 days and no more than 60 days from the notification date. Within 20 days of the notification date, the Department shall hold the public hearing under 310 CMR 9.13(3). The applicant shall submit the information identified in 310 CMR 9.11(3)(c)2. prior to the close of the public comment period, and the information identified in 310 CMR 9.11(3)(c)1. and 3. prior to the issuance of the written determination. Within 30 days of the close of the public comment period and notification by the applicant that the public notice has been published, the Department

## 9.11: continued

shall conduct its administrative completeness review and determine the application to be complete or request additional information. Within 60 days of determining the application to be complete, or 90 days from the close of the public comment period, whichever comes later, the Department shall issue the written determination under 310 CMR 9.14(1). The Department shall issue the final license under 310 CMR 9.14(5) within 45 days of the expiration of the appeal period or final decision, or 15 days from the date of the Governor's signature, whichever is later.

2. Full Application. Within 45 days of receiving an application with all information identified in 310 CMR 9.11(3)(a), and 310 CMR 9.11(3)(b)1., 2., 6., and 7., and 310 CMR 9.11(3)(c)1. through 3., the Department shall assign a file number, make a determination of water-dependency under 310 CMR 9.12, conduct an administrative completeness review of the information received, and determine the application to be complete or request additional information. The Department shall issue a public notice under 310 CMR 9.13(1) upon determination that the application is complete. The public comment period shall begin at the notification date and end no less than 30 days and no more than 60 days from the notification date. The Department shall provide upon request the draft license conditions seven days prior to the public hearing. Within 20 days of the notification date, the Department shall hold the public hearing under 310 CMR 9.13(3). Within 60 days from the close of the public comment period and notification by the applicant that the public notice has been published, or the submission of the information identified in 310 CMR 9.11(3)(c)4., and 5., whichever is later, the Department shall issue the written determination under 310 CMR 9.14(1). The Department shall issue the final license under 310 CMR 9.14(5) within 45 days of the expiration of the appeal period or final decision, or 15 days from the date of the Governor's signature, whichever is later.

3. Municipal Harbor Plan Application. For a project within an area governed by and in compliance with an Approved Municipal Harbor Plan approved under 301 CMR 23.00: *Review and Approval of Municipal Harbor Plans* and listed in 310 CMR 9.57, within 45 days of receiving an application containing the information identified in 310 CMR 9.11(3)(a) and (b), the Department shall assign a file number, make a determination of water-dependency under 310 CMR 9.12, and issue a public notice under 310 CMR 9.13(1). The public comment period shall begin at the notification date and end no less than 30 days and no more than 60 days from the notification date. Within 20 days of the notification date, the Department shall hold the public hearing under 310 CMR 9.13(3). Within 30 days of the close of the public comment period and notification by the applicant that the public notice has been published, the Department shall conduct its administrative completeness review and determine an application to be complete or request additional information. Within 45 days of determining an application to be complete, the Department shall issue a written determination under 310 CMR 9.14(1). The Department shall issue the final license under 310 CMR 9.14(5) within 45 days of the expiration of the appeal period or final decision, or 15 days from the date of the Governor's signature, whichever is later.

4. Joint MEPA EIR Application. An applicant may initiate coordinated review under MEPA and 310 CMR 9.00 by specifying in the Environmental Notification Form (ENF) filing under 301 CMR 11.05: *ENF Preparation and Filing* the intent to pursue a joint filing. The Draft EIR submitted under 301 CMR 11.07(3) shall also include information to meet the application requirements of 310 CMR 9.11(3)(a) through (c)2. for pre-application review by the Department. Within 25 days of receipt of a Final EIR meeting the requirements of 310 CMR 9.11(3)(a) through (c)2., the Department shall assign a file number, make a determination of water-dependency under 310 CMR 9.12, conduct an administrative completeness review, and issue the text for the public notice under 310 CMR 9.13(1). The Department shall hold a public hearing within 20 days of the notification date or ten days after the date of the Secretary's Final Certificate, whichever is later. The public comment period shall begin at the notification date and end no less than 30 days and no more than 60 days from the notification date. The Department shall send to the applicant, within ten days of the close of the public comment period and receipt by the Department of notification from the applicant that the public notice has been published, whichever is later, any public comment submitted within the comment period for response and may request additional information or determine the application to be complete in accordance with 310 CMR 9.11(3)(c). Any response to comments provided by the applicant shall also be distributed by the applicant to all persons that

## 9.12: continued

(e) In the case of a facility generating electricity from wind power (wind turbine facility), or any ancillary facility thereto, for which an EIR is submitted, the Department shall presume such facility to be water-dependent if the Secretary has determined that such facility requires direct access to or location in tidal waters and cannot reasonably be located or operated away from tidal or inland waters, based on a comprehensive analysis of alternatives and other information analyzing measures that can be taken to avoid or minimize adverse impacts on the environment, in accordance with M.G.L. c. 30, §§ 61 through 62I. If an EIR is not submitted, the Department shall presume such facility to be water-dependent. Whether or not an EIR is filed, this presumption may be overcome only upon a clear showing that the proposed facility can reasonably be located or operated away from tidal or inland waters.

(f) The Department shall not find the following uses to be water-dependent:

1. restaurants and other food/beverage service establishments;
2. retail shops and stores;
3. parking facilities;
4. office facilities;
5. housing units and other residential facilities;
6. hotels, motels, and other facilities for transient lodging;
7. parks, esplanades, boardwalks, and other pedestrian facilities other than those described in 310 CMR 9.12(2)(a)4.;
8. roads, causeways, railways, and other facilities for land-based vehicular movement, other than those found to be water-dependent in accordance with 310 CMR 9.12(2)(c) or (d); and
9. subaqueous disposal, below the low water mark, of material excavated or otherwise originating on land.

(3) Accessory Uses.

(a) The Department may determine a use to be accessory to a water-dependent use upon a finding that said use is customarily associated with and necessary to accommodate a principal water-dependent use. Such a finding shall be made only if the proposed use is:

1. integral in function to the construction or operation of the water-dependent use in question, or provides related goods and services primarily to persons engaged in such use; and
2. commensurate in scale with the operation of the water-dependent use in question.

Examples of uses that may be determined to be accessory to a water-dependent use include, but are not limited to, access and interior roadways, parking facilities, administrative offices and other offices primarily providing services to water-dependent uses on the site, yacht clubhouses, restaurants and retail facilities primarily serving patrons of the water-dependent use on the site, bait shops, chandleries, boat sales, and other marine-oriented retail facilities. Uses that may not be determined to be accessory to a water-dependent use include, but are not limited to, general residential facilities, hotels, general office facilities, and major retail establishments.

(b) The Department may find a use to be accessory to a water-dependent industrial use if, in addition to the criteria listed in 310 CMR 9.12(3)(a)1. and 2., the hours of operation of the use do not extend beyond the hours of operation of the water-dependent industrial use, except for support services which occur outside of the hours of the accessory use, and the use does not require a significant additional investment in infrastructure apart from that necessary for the primary water-dependent industrial use. Examples of water-dependent industrial accessory uses include, but are not limited to, ticketing booths for ferry operations, snack bars, and administrative offices associated with the water-dependent industrial use.

(4) The Department shall find to be nonwater-dependent any use which has not been found to be water-dependent or accessory to a water-dependent use, pursuant to 310 CMR 9.12(2) and (3).

9.13: Public Notice and Participation Requirements

(1) Notice Requirements.

(a) Public notice shall be issued by the Department but distributed and published by the applicant. The date of the public notice and, when required, the date of the public hearing, shall be determined by the Department. The applicant shall send a notice of license or permit application as described in 310 CMR 9.13(1)(c), by first class mail, return receipt, and provide proof of such notification to the Department, to:

## 9.13: continued

1. the municipal official, the planning board, the conservation commission, and the harbormaster, if any, in the city or town where the project is located;
  2. if the application is for a proposed bridge, dam or similar structure across a tidal river, cove or inlet, the municipal official, the planning board, the conservation commission, and the harbormaster of every municipality into which the tidewater of said river, cove, or inlet extends;
  3. the Martha's Vineyard Commission or the Cape Cod Commission, if the project is located within an area subject to the jurisdiction of said Commission;
  4. CZM, if the project is located within the coastal zone; DCR, if the project is located in an Ocean Sanctuary; and the Department of Fish and Game.
  5. the *Environmental Monitor* for all projects exceeding M.G.L. c. 30, §§ 61 through 62H review thresholds for Waterways activities;
  6. all landowners and easement holders of the project site and abutters thereto, as identified pursuant to 310 CMR 9.11(3)(b)1.; and
  7. U.S. Army Corps of Engineers, New England Division.
- (b) At least 45 days prior to issuance of a license, or 21 days prior to issuance of a permit, the applicant shall cause, at his own expense and at the direction of the Department, notice as described in 310 CMR 9.13(1)(c)1. through 9., to be published in one or more newspapers having circulation in the area affected by the project.
- (c) Notice shall contain:
1. the name and address of the applicant and the applicant's representative, if any;
  2. a description of the location of the project, including whether it is located in an ACEC, DPA, or an Ocean Sanctuary;
  3. a description of the project including a listing of uses and the Department's determination of water-dependency;
  4. for nonwater-dependent use projects, and for any water-dependent use project for which the Department decides to hold a hearing, the time, place and location of the public hearing and the date on which the public comment period ends;
  5. for other water-dependent use projects, a statement that within 30 days of the notification date of a license application or within 15 days of the notification date of a permit application, written comments will be accepted, and that a public hearing may be held upon request by the municipal official;
  6. the address where the application may be viewed, where a copy of the draft license conditions may be obtained if applicable, and where public comments regarding the application may be sent;
  7. a statement that a municipality, ten citizen group or any aggrieved person that has submitted written comments before the close of the public comment period may appeal and that failure to submit written comments will result in the waiver of any right to an adjudicatory hearing;
  8. the notification date, as defined in 310 CMR 9.02;
  9. for applications submitted under 310 CMR 9.11(2)(b)2. and 4., the date that copies of the Department's draft license conditions will be available seven days prior to the public hearing; and
  10. an 8½" x 11" copy of the site plan, including a locus insert, of the project site.
- (d) An applicant for a license, permit or other written approval pursuant to 310 CMR 9.00 and whose project is also subject to 314 CMR 9.00: *401 Water Quality Certification for Discharge of Dredged or Fill Material, Dredging, and Dredged Material Disposal in Waters of the United States Within the Commonwealth* and/or 310 CMR 10.00: *Wetlands Protection* may provide joint public notice by appending to the notice required under 310 CMR 10.05(5): *Public Hearings by Conservation Commissions* or 314 CMR 9.05(3): *Public Notice of an Application* a statement that an application for a license, permit or other written approval pursuant to 310 CMR 9.00 is pending before the Department, provided that the joint notice contains the information required by 310 CMR 9.13(1)(c). An applicant may provide a joint public notice even if the application is not a Combined Application.

## 9.20: continued

- (2) Emergency approval shall be issued in writing and shall specify the limits of activities necessary to abate the emergency.
- (3) When the necessity for undertaking the emergency action no longer exists, any emergency action taken under 310 CMR 9.20 shall cease until the provisions of 310 CMR 9.00 have been complied with. In any event, the time limit for performance of emergency work shall not exceed 30 days, unless a written extension is approved by the Commissioner or appropriate Regional Director.
- (4) In all cases under 310 CMR 9.20, the person performing any emergency work is required to submit a license or permit application in accordance with 310 CMR 9.11 within 30 days of the date of emergency approval unless a written extension is approved by the Commissioner. Following the review of the application, the Department may require any modification to the emergency work that it deems necessary.
- (5) In emergency situations where written notice is not feasible, verbal notice to and approval by the Commissioner or appropriate Regional Director may be substituted until written notice can be feasibly submitted.
- (6) No work authorized under an emergency approval pursuant to 310 CMR 9.00 may be undertaken without emergency authorization under M.G.L. c. 131, § 40 and 310 CMR 10.00: *Wetlands Protection* and M.G.L. c. 30, §§ 61 through 62H, where applicable.

9.21: Variances

- (1) Required Findings. The Commissioner may waive the application of any other section of 310 CMR 9.00 by making a written finding following a public hearing that:
  - (a) there are no reasonable conditions or alternatives that would allow the project to proceed in compliance with 310 CMR 9.00;
  - (b) the project includes mitigation measures to minimize interference with the public interests in waterways and that the project incorporates measures designed to compensate the public for any remaining detriment to such interests; and
  - (c) the variance is necessary:
    - 1. to accommodate an overriding municipal, regional, state or federal interest; or
    - 2. to avoid such restriction on the use of private property as to constitute an unconstitutional taking without compensation; or
    - 3. to avoid substantial hardship for the continuation of any use or structure existing as of October 4, 1990, and for which no substantial change in use or substantial structural alteration has occurred since that date.
- (2) Procedure
  - (a) A request for a variance shall be filed by the applicant prior to publication of the notice of public hearing pursuant to 310 CMR 9.13(1). The request shall be in writing and shall include, at a minimum, the following information:
    - 1. an identification of the regulation(s) from which the variance is sought;
    - 2. a description of alternative designs, locations, or construction methods which would achieve the purpose of the project without the need for the variance;
    - 3. an explanation of why each of the alternatives is unreasonable;
    - 4. an analysis of any detriments to interests of the public in waterways due to the proposed project and an explanation of how the detriments have been minimized;
    - 5. a description of the measures that will be provided to compensate for any remaining detriment to public interests in waterways; and
    - 6. a description and supporting documentation of the overriding public interest served by the project, if applicable; or
    - 7. documentation that the project is a continuation of a use or structure existing as of October 4, 1990; that there has not been a substantial change in use or substantial structural alteration since that date; and that application of 310 CMR 9.00 would cause substantial hardship to the applicant, if applicable; or

## 9.21: continued

8. a legal analysis, with supporting documentation, explaining why application of 310 CMR 9.00 would so restrict the use of private property as to constitute an unconstitutional taking without compensation, if applicable.
- (b) Notice of the variance request shall be published in accordance with 310 CMR 9.13(1) and shall explicitly indicate that a variance is being requested. The Department shall hold a public hearing in accordance with 310 CMR 9.13(3) upon which the Commissioner's findings shall be based. Upon issuance of a variance an adjudicatory hearing is available in accordance with 310 CMR 9.17.
- (c) For projects for which an EIR will be prepared in accordance with M.G.L. c. 30, §§ 61 through 62H, the information required pursuant to the provisions of 310 CMR 9.21(2)(a)1. through 7., should be included in the EIR if the need for a variance is reasonably foreseeable. If the variance issue was addressed in the final EIR, the Commissioner shall presume that the description of alternatives contained therein satisfies the requirements of 310 CMR 9.21(2)(a)2. Notwithstanding this presumption, the Commissioner may require any modification of the project reasonably within the scope of an alternative within the final EIR.
- (3) Commentary. The variance process is intended to apply in the rare and unusual circumstance where a proposed project satisfies a public interest which overrides the public interest in waterways but cannot be implemented in a manner which is fully consistent with the provisions of 310 CMR 9.00; where application of 310 CMR 9.00 would so restrict the use of private property as to constitute an unconstitutional taking of property; or where application of 310 CMR 9.00 would cause substantial hardship for the continuation of a use or structure existing as of October 4, 1990. The variance process is designed to ensure that a full investigation is made to determine whether the proposed project serves an overriding public interest which outweighs harm to the public resulting from lack of adherence to 310 CMR 9.21 and whether all measures are taken which ensure that detriments to the public interests in waterways are minimized.

9.22: Maintenance, Repair, and Minor Project Modifications

- (1) Maintenance and Repair of Fill and Structures. During the term for which the license is in effect, the licensee shall maintain and repair all authorized fill and structures in good working order for the uses authorized in the license, and in accordance with the conditions specified therein. No application for license or license amendment shall be required for such activity. Maintenance and repair include, among other things, the following activities:
- (a) replacement of old pilings, decking, or rip-rap, all with material of the same dimensions and quality and in the same locations and elevations as that authorized in the license;
  - (b) repaving of road surfaces, installation of road curbs and lighting, replacement of railroad track, stabilization of road or rail beds, reconstruction of culverts and catch basins, and other maintenance or repair of existing public transportation facilities and associated drainage systems, as necessary to preserve or restore the serviceability of such facilities for the original use, provided that maintenance and repair shall not include the substantial enlargement of such facilities, such as roadway widening, adding shoulders, or upgrading substandard intersections;
  - (c) restoration to the original license specifications of licensed fill or structures that have been damaged by catastrophic events, provided that no change in use occurs and that:
    - 1. such restoration is completed within two years of the damage-causing event;
    - 2. in the case of flood-related damage, the cost of such restoration does not exceed 50% of the cost of total replacement according to the original license specifications;
    - 3. the licensee provides the Department with written notice of the restoration at least ten days prior to commencement of such work; in the case of flood-related damage, said notice shall include written estimates of restoration and replacement costs; and
    - 4. the licensee provides the Department with written notice that the repair work has been completed in accordance with the license specifications, as certified by a Registered Professional Engineer, within 60 days of such completion; and
  - (d) demolition and removal of unused structures that are obsolete or otherwise no longer suitable for the uses authorized in the license, provided that written approval by the Department is obtained prior to the commencement of such work.

## 9.22: continued

(2) Maintenance Dredging. Maintenance dredging may occur for five years from the date of issuance of the license or permit or for such other term, not exceeding ten years, specified therein, provided that the written notice required pursuant to the Wetlands Protection Act (M.G.L. c. 131, § 40 and 310 CMR 10.00: *Wetlands Protection*) has been filed with the Conservation Commission and a copy has been sent to the Department.

(3) Minor Project Modifications. The licensee may undertake minor modifications to a licensed project, or a project exempt from licensing pursuant to 310 CMR 9.05(3)(b) through (h), without filing an application for license or license amendment. Such modifications are limited to:

- (a) structural alterations which are confined to the existing footprint of the fill or structures being altered and which represent an insignificant deviation from the original specifications of the license, in terms of size, configuration, materials, or other relevant design or fabrication parameters;
- (b) changes of use which maintain or enhance public benefits provided by the project and which represent an insignificant deviation from the original use statement of the license, in terms of function, character, duration, patronage, or other relevant parameters; or
- (c) replacement of subsurface utilities, or installation of additional utility lines in an existing right of way within previously authorized filled tidelands connecting to existing structures, provided the work will not restrict or impair access to water-dependent uses.

No such modifications shall be undertaken until the licensee has submitted written notice to the Department describing the proposed work in sufficient detail, with reference to any relevant license plans, for the Department to determine compliance with the above conditions. If the Department does not object within 30 days, the licensee may proceed with the described work without further approval by the Department.

(4) Nothing in 310 CMR 9.22(1) through (3) provisions shall be construed to exempt the work in question from obtaining other applicable approvals, including but not limited to an order of conditions under M.G.L. c. 131, § 40 and 310 CMR 10.00: *Wetlands Protection*.

### 9.23: Transfer of License Upon Change of Ownership

(1) Unless otherwise provided in the license, a valid license shall run with the land and shall automatically be transferred upon a change of ownership of the affected property within the chain of title of which the license has been recorded. All rights, privileges, obligations, and responsibilities specified in the license shall be transferred to the new landowner upon recording of the changed ownership.

(2) For transferability of permits issued by the harbormaster for the temporary placement of moorings, floats, and rafts, see 310 CMR 9.07(2)(d).

### 9.24: Amendments

(1) Upon written request by the licensee accompanied by appropriate plans, the Department may amend a license and associated written determination to authorize a structural alteration or change in use not defined as substantial in accordance with 310 CMR 9.02, or to delineate a reconfiguration zone within a marina in accordance with 310 CMR 9.39(1)(b), or to renew a term of license in accordance with 310 CMR 9.25(2). A written request may also be made to amend a permit. No license or permit shall be amended unless the project, as modified, complies with the applicable provisions of 310 CMR 9.00 wherever feasible.

(2) The Department shall review the request for amendment and determine whether the proposed changes are so significant as to require a new license or permit application or are appropriate for consideration of an amendment to the existing license or permit.

(3) If the Department determines that the proposed changes are appropriate to allow consideration of an amendment, notice shall be provided in accordance with the requirements of 310 CMR 9.13(1), and to any intervenor on the original license application to the maximum reasonable extent.

9.24: continued

- (4) The Department may, at its discretion, conduct a public hearing on the request for amendment. Any such hearing shall be conducted in accordance with the requirements of 310 CMR 9.13(3).
- (5) Any person who would otherwise have the right to an adjudicatory hearing pursuant to 310 CMR 9.17 may appeal the issuance of any amendment within 21 days of the date of its issuance, in accordance with the procedures set forth at 310 CMR 9.17.
- (6) The amended license and accompanying plan shall be recorded within 60 days of the date of issuance in accordance with the procedures set forth in 310 CMR 9.18.
- (7) Notwithstanding the procedures for amendment described above, the Department may issue in writing, at the request of the licensee, clarification and corrections regarding any license or permit previously issued.

9.25: Expiration and Renewal

- (1) Expiration.
  - (a) Any license, permit, or legislative authorization shall expire as to all work licensed, permitted, or authorized which is not completed within five years of the date thereof, or such other period of time specified therein; provided, however, that for good cause shown the Department may extend, without public hearing or notice, the construction period of the license, permit, or legislative authorization for one or more one year periods upon written request of the licensee or permittee.
  - (b) All licenses or permits shall expire upon reaching the term, if any, stated in the license or permit or any extension thereof.
  - (c) Any license shall expire if the fill or structures are abandoned and not used for the purpose for which they were licensed for a period of five consecutive years or more.
- (2) Renewal of Licenses and Permits. A renewal may be granted for a term of years not to exceed that authorized in the original license or permit, in accordance with 310 CMR 9.15, upon written application by the licensee or permittee and in accordance with the procedures for amendments set forth at 310 CMR 9.24.

9.26: Revocation and Nullification

- (1) Revocation.
  - (a) Unless otherwise specifically provided by law, the Department may revoke a license or permit for non-compliance with the terms and conditions set forth therein, including any change of use from that expressly authorized in said license or permit or, if no such statement was included, from that reasonably determined by the Department to be implicit therein. Such revocation may not occur until after the Department has given notice of the alleged non-compliance to the licensee or permittee and any person who has filed a written request for such notice with the Department, and after it has afforded them an opportunity for a hearing and a reasonable opportunity to correct said non-compliance.
  - (b) In accordance with the procedures established in 310 CMR 9.26(1)(a), the Department may revoke any license or permit upon a finding that the licensee denies access to project services and facilities in a discriminatory manner, as determined in accordance with the constitution of the Commonwealth of Massachusetts, of the United States of America, or with any statute, regulation, or executive order governing the prevention of discrimination. Such a finding shall be made upon a final determination of discrimination, issued by any federal, state or local court or agency with jurisdiction to investigate discrimination issues.
  - (c) Notice of revocation of a license shall be recorded at the Registry of Deeds or Land Court by the Department, in accordance with 310 CMR 9.18.
- (2) Nullification.
  - (a) All licenses issued prior to January 1, 1984 are void if:
    1. the license and the accompanying plan were not recorded within one year of date of issuance at the Registry of Deeds for the county or district where the work was to be performed;



## 9.56: continued

(2) An application for a building greater than 75' in height that can demonstrate that its project site is unable to fully support Facilities of Public Accommodation, based on foot traffic and density, may apply for a short-term condition in a license to authorize up to 50% of the interior space required to be devoted to Facilities of Limited Accommodation in accordance with 310 CMR 10.51 and 10.53 for some portion of the ground floor interior space otherwise required to be devoted to Facilities of Public Accommodation, provided that no less than 25% of such required interior space shall be devoted to Facilities of Public Accommodation. The requirement that no less than 25% of the ground floor interior space otherwise required be devoted to Facilities of Public Accommodation may not be waived by the Department, regardless of foot traffic, density, level of economic development, or the absence of potential revenues generated by the Facility of Public Accommodation. The short-term condition in the license may not exceed ten years. At the expiration of the term, the ground floor shall be devoted to Facilities of Public Accommodation, unless the licensee applies for an extension for no more than ten years and proves that the provisions of 310 CMR 9.56(2)(a) through (d) are met. Applications for extensions prior to expiration of the term may be allowed only where necessary to maintain occupancy. For an Applicant seeking a short-term condition in the license to authorize Facilities of Limited Accommodation in the interior space otherwise required to be devoted to Facilities of Public Accommodation, 20% of net operating income per year generated from the Facilities of Limited Accommodation shall be paid by the licensee annually to fund specific construction or activities, approved by the Department, to activate the waterfront. The activation provided by the specific construction or activities shall extend to evening and/or weekend hours wherever feasible to compensate for any lack of activation that may result in the substitution of Facilities of Limited Accommodation for Facilities of Public Accommodation. The specific construction or activities to be funded shall be identified by the Applicant and approved by the Department prior to licensing. The funding of specific construction or activities shall be in addition to applicable requirements at 310 CMR 9.52(1) and 9.53(2). A project seeking a short term condition in a license shall:

- (a) not be inconsistent with any substitutions, offsets or conditions of approval established in an Approved Municipal Harbor Plan as provided in 310 CMR 9.34(2);
- (b) demonstrate that marketing efforts for at least one year have failed to identify any prospective Facility of Public Accommodation, even with the offer of up to 50% below market rents to civic or cultural not-for-profit organizations and a diligent good faith attempt to locate tenants which shall include advertisements in at least two commercial real estate marketing publications and listing with a commercial real estate brokerage;
- (c) comply with the conditions in the license requiring Facilities of Public Accommodation unless or until another use is authorized; this requirement may not be waived by the Department, regardless of foot traffic, density, level of economic development, or the absence of potential revenues generated by the Facility of Public Accommodation;
- (d) obtain the written concurrence of the Local Economic Development Authority that the project area lacks the level of development to support a Facility of Public Accommodation at the time of licensing or amendment. If the Local Economic Development Authority does not respond to the notice and the Department does not request additional information within 60 days of receipt of a license application, the Local Economic Development Authority will be deemed to concur with the request;
- (e) ensure that the first floor design will be capable of accommodating a Facility of Public Accommodation at the end of the term; and
- (f) certify annually the space devoted to Facilities of Limited Accommodation, the use of the space, the net operating income from those facilities, and demonstration of payment.

(3) A licensee may request an amendment of an existing license to authorize Facilities of Limited Accommodation, provided the request meets the requirements for an amendment at 310 CMR 9.24, the requirements identified in 310 CMR 9.56(2)(a) through (d), and other applicable requirements of 310 CMR 9.56(1) or (2). A short-term license condition for Facilities of Limited Accommodation amending an existing license may be for a limited term of ten years or 15 years, depending on the height of the building.

9.57: Approved Municipal Harbor Plans

(1) The following Municipal Harbor Plans are Approved Municipal Harbor Plans:

- (a) East Boston Waterfront District Municipal Harbor Plan (July 15, 2002, as renewed and amended on December 17, 2008, March 4, 2009, and August 2, 2012);
- (b) Fort Point Downtown (Boston) Municipal Harbor Plan Phase I (October 10, 2002, as renewed on February 12, 2013);
- (c) Fort Point Downtown (Boston) Municipal Harbor Plan Phase II (March 8, 2004, as renewed on April 9, 2014);
- (d) Harborpark (Boston) Plan (May 22, 1991, as renewed and amended on July 29, 1999, October 12, 2006, and April 4, 2008);
- (e) South Boston Waterfront District Municipal Harbor Plan (December 6, 2000, as renewed and amended on December 31, 2002, October 22, 2009, and December 21, 2016);
- (f) Cohasset Municipal Harbor Plan (November 25, 2020);
- (g) Central Waterfront (Everett) Municipal Harbor Plan (February 10, 2014);
- (h) Gloucester Municipal Harbor Plan and DPA Master Plan (July 6, 1999, as renewed and amended on December 11, 2009 and December 19, 2014);
- (i) Lynn Municipal Harbor Plan and DPA Master Plan (June 28, 2010, as renewed and amended on November 25, 2020);
- (j) Nantucket and Madaket Municipal Harbor Plan (December 21, 2009);
- (k) New Bedford Fairhaven Municipal Harbor Plan and DPA Master Plan (September 24, 2002, as renewed and amended on June 14, 2010);
- (l) Provincetown Harbor Management Plan (May 4, 1999, as renewed and amended on February 29, 2012 and April 10, 2019);
- (m) Salem Municipal Harbor Plan and DPA Master Plan (June 24, 2008);
- (n) Hull Harbor Plan (February 14, 2000);
- (o) South Coastal Harbor (Chatham) Management Plan (August 19, 1994, as renewed on July 23, 1999, October 21, 2005, and May 12, 2015);
- (p) Edgartown Municipal Harbor Plan (October 2, 1997, as renewed on April 30, 2003); and
- (q) Chelsea Municipal Harbor Plan and Designated Port Area Master Plan (April 1, 2022).

(2) Approved Substitute Provisions: Substitute Standards, Offsets, Amplifications, and Other Provisions.

- (a) East Boston Waterfront District Municipal Harbor Plan, (July 15, 2002, as renewed and amended on December 17, 2008, March 4, 2009, and August 2, 2012).

9.57: continued

Regulatory Provision	Chapter 91 Standard	Approved Substitution	Approved Offsetting Measures
310 CMR 9.52(1)(b)1.: Utilization of Shoreline for Water-dependent Purposes (Pedestrian access network).	“...walkways and related facilities along the entire length of the Water-Dependent Use Zone; wherever feasible, such walkways shall be adjacent to the project shoreline and, except as otherwise provided in a municipal harbor plan, shall be no less than ten feet in width...”	Require a dedicated 20-foot wide public walkway around the South River, of which a minimum of ten feet shall be an unobstructed pathway. The inland ten feet will be used for landscaping and accessory amenities to enhance the general public’s waterfront experience.  Applies only in the South River Waterfront Sub-area	The substitution directly benefits the public through improved access of 20 feet instead of ten feet. No additional offsetting benefit is required.

2. Table 2. Summary of Amplifications.

Regulatory Provision	Chapter 91 Standard	Approved Amplification
310 CMR 9.02: <i>Definitions</i> (Supporting DPA Uses)	The amount of supporting Designated Port Area Uses on filled tidelands within a DPA shall not exceed 25% of the area of the project site.	Only water-dependent industrial uses and temporary uses will be allowed in the Industrial Port District sub-area of the DPA.

- (n) Hull Harbor Plan (February 14, 2000)  
This Approved Harbor Plan does not include any substitute provisions.
- (o) South Coastal Harbor (Chatham) Management Plan (August 19, 1994, as renewed on July 23, 1999, October 21, 2005, and May 12, 2015)  
This Approved Harbor Plan does not include any substitute provisions.
- (p) Edgartown Municipal Harbor Plan (October 2, 1997, as renewed on April 30, 2003)  
This Approved Harbor Plan does not include any substitute provisions.
- (q) Chelsea Municipal Harbor Plan and Designated Port Area Master Plan (April 1, 2022)

The text of the regulations published in the electronic version of the Massachusetts Register is unofficial and for informational purposes only. The official version is the printed copy which is available from the State Bookstore at <http://www.sec.state.ma.us/spr/sprcat/catidx.htm>.

9.57: continued

1. Table 1. Summary of Alternative Site Coverage Ratio and Offsets

Regulatory Provision	Chapter 91 Standard	Alternative Site Coverage Ratio	Offsetting Measure(s)
SUPPORTING DPA USES: 310 CMR 9.32(1)(b)5	The Department shall waive the numerical standard for Supporting DPA Uses as defined at 310 CMR 9.02, if the project conforms to a DPA Master Plan or Marine Industrial Park Master Plan which specifies alternative site coverage ratios and other requirements which ensure that: 1. said Supporting Uses are relatively condensed in footprint and compatible with existing water-dependent industrial uses on said pier; 2. said Supporting Use locations shall preserve and maintain the site's utility for existing and prospective water-dependent industrial uses; 3. parking associated with a Supporting Use is limited to the footprint of existing licensed fill and is not located within a Water-dependent Use Zone; and 4. The use of tidelands for this purpose in a DPA shall be governed by the provisions of 310 CMR 9.15(1)(d)1 and 310 CMR 9.36(5).	Applicable to 111 Eastern Avenue:  Supporting DPA Uses may occupy up to 35% of filled tidelands outside of the water-dependent use zone.	For any area of Supporting DPA Use in excess of 25% of the project site within Chapter 91 jurisdiction, direct operational or economic support shall be provided to an extent that adequately compensates for the reduced amount of tidelands on the project site available for water-dependent industrial use during the term of the license.  Offset in the capacity of operational support shall be preferred.  If employed, economic support shall be calculated at a premium rate, to be determined during the Chapter 91 licensing process.  Economic support payments may be made to the Waterfront Improvement Fund to provide direct support to Water-dependent Industrial Use in the DPA.

2. Table 2. Summary of Substitute Provisions

Regulatory Provision	Chapter 91 Standard	Approved Substitution	Offsetting Measure(s)
HEIGHT LIMITS: 310 CMR 9.51(3)(e)	New or expanded buildings for non-water-dependent use shall not exceed 55 feet in height if located over the water or within 100 feet of the high-water mark; for every foot beyond 100 feet from the shoreline, the height of the building can increase by 0.5 feet.	Applicable to 111 Eastern Avenue:  Allow new or expanded buildings for non-water- dependent use to be built to 80 feet in height within 100 feet of the shoreline.	The maximum height of any proposed structure on the project site shall be limited to 80 feet and result in decreased massing from what is allowed under the regulation.  DEP will evaluate the need for additional offsetting measures during licensing.

9.57: continued

Regulatory Provision	Chapter 91 Standard	Approved Substitution	Offsetting Measure(s)
WATER DEPENDENT USE ZONE: 310 CMR 9.51(3)(c)	New or expanded buildings for nonwater-dependent use, and parking facilities at or above grade for any use, shall not be located within a water-dependent use zone; except as provided below, the width of said zone shall be determined as follows: 1. along portions of a project shoreline other than the edges of piers and wharves, the zone extends for the lesser of 100 feet or 25% of the weighted average distance from the present high-water mark to the landward lot line of the property, but no less than 25 feet; and 2. along the ends of piers and wharves, the zone extends for the lesser of 100 feet or 25% of the distance from the edges in question to the base of the pier or wharf, but no less than 25 feet; and 3. along all sides of piers and wharves, the zone extends for the lesser of 50 feet or 15% of the distance from the edges in question to the edges immediately opposite, but no less than ten feet.	Applicable planning area wide:  The required WDUZ dimensions may be modified on any project site within the planning area as long as a minimum width of 25 feet is maintained along the project shoreline and as long as the modification results in no net loss of WDUZ area within Chapter 91 jurisdiction.	The reconfigured WDUZ shall result in no net loss of total WDUZ area and must be adjacent to the waterfront and within Chapter 91 jurisdiction and achieve a greater effectiveness in the use of the water's edge for water-dependent industrial use if within the DPA or water-dependent use outside of the DPA.  This substitution does not alter the calculation for WDUZ on piers and wharfs.

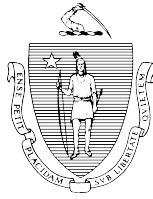
9.57: continued

3. Table 3. Summary of Amplifications

Regulatory Provision	Chapter 91 Standard	Approved Substitution
COASTAL OR SHORELINE ENGINEERING STRUCTURES: 310 CMR 9.37(2)(b)(2) and (3)	<p>9.37(2)(b)(2) incorporate projected sea level rise during the design life of the buildings; at a minimum, such projections shall be based on historical rates of increase in sea level in New England coastal areas.</p> <p>9.37(3) Projects with coastal or shoreline engineering structures shall comply with several requirements relating to location, design, size, function, materials, impact on water and sediment flow, preference for non-structural alternatives where feasible, compatibility with abutting coastal or shoreline engineering structures, and minimizing adverse effects on the project site or adjacent or downcoast and downstream areas after construction of any coastal or shoreline engineering structure.</p>	<p>Applicable planning area wide:</p> <p>Coastal or shoreline engineering structures shall be designed to accommodate future sea level rise for the life of the structures on site and shall not negatively affect the capacity of the DPA to support water-dependent industrial uses.</p>

REGULATORY AUTHORITY

310 CMR 9.00: M.G.L. c. 21A, §§ 2, 4, 8 and 14; M.G.L. c. 91, §§ 1 through 63; M.G.L. c. 91, § 18.

**THE COMMONWEALTH OF MASSACHUSETTS****William Francis Galvin**

Secretary of the Commonwealth

**Regulation Filing***To be completed by filing agency*CHAPTER NUMBER: **831 CMR 1.00**CHAPTER TITLE: **Appellate Tax Board Rules of Practice and Procedure**AGENCY: **Appellate Tax Board**SUMMARY OF REGULATION: *State the general requirements and purposes of this regulation.*

The Appellate Tax Board ("ATB") is proposing revisions to its Rules of Practice and Procedure. The revisions are offered for two primary reasons: (1) to make litigation of tax appeals at the ATB more transparent and understandable for both taxpayers and boards of assessors who are not represented by counsel and for attorneys representing parties in ATB proceedings; and (2) to encourage parties to confer at various stages of the litigation process to narrow contested issues and reach settlements of disputes.

REGULATORY AUTHORITY: **G.L. c. 58A, sec. 8**AGENCY CONTACT: **Mark J. DeFrancisco** PHONE: **617-727-3100**ADDRESS: **100 Cambridge Street, Suite 200, Boston, MA 02114****Compliance with M.G.L. c. 30A**EMERGENCY ADOPTION - *if this regulation is adopted as an emergency, state the nature of the emergency.*PRIOR NOTIFICATION AND/OR APPROVAL - *If prior notification to and/or approval of the Governor, Legislature or others was required, list each notification, and/or approval and date, including notice to the Local Government Advisory Commission.***Notice to Local Government Advisory Commission on August 1, 2023**PUBLIC REVIEW - *M.G.L. c. 30A sections 2 and/or 3 requires notice of the hearing or comment period, including a small business impact statement, be filed with the Secretary of the Commonwealth, published in appropriate newspapers, and sent to persons to whom specific notice must be given at least 21 days prior to such hearing or comment period.*Date of public hearing or comment period: **September 12, 2023**

FISCAL EFFECT - Estimate the fiscal effect of the public and private sectors.

For the first and second year: \_\_\_\_\_

For the first five years: \_\_\_\_\_

No fiscal effect: no fiscal effect

SMALL BUSINESS IMPACT - M.G.L. c. 30A section 5 requires each agency to file an amended small business impact statement with the Secretary of the Commonwealth prior to the adoption of a proposed regulation. If the purpose of this regulation is to set rates for the state, this section does not apply.

Date amended small business impact statement was filed: December 18, 2023

CODE OF MASSACHUSETTS REGULATIONS INDEX - List key subjects that are relevant to this regulation:

**Practice and procedure applicable to the Appellate Tax Board**

PROMULGATION - State the action taken by this regulation and its effect on existing provisions of the Code of Massachusetts Regulations (CMR) or repeal, replace or amend. List by CMR number:

**Amendment and revision of existing Appellate Tax Board Rules of Practice and Procedure at 831 CMR 1.00 et seq.**

ATTESTATION - The regulation described herein and attached hereto is a true copy of the regulation adopted by this agency. ATTEST:

SIGNATURE: \_\_\_\_\_ SIGNATURE ON FILE \_\_\_\_\_ DATE: Dec 19 2023

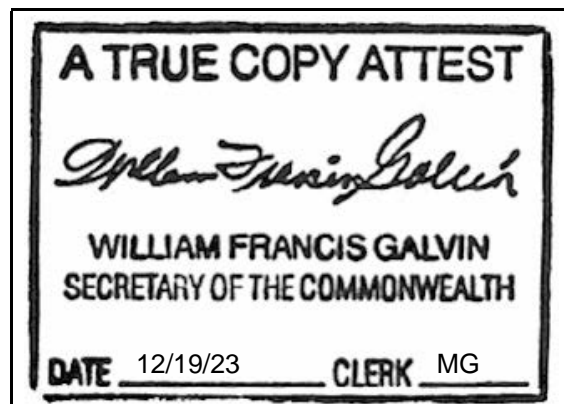
Publication - To be completed by the regulations Division

MASSACHUSETTS REGISTER NUMBER: 1512 DATE: 1/5/24

EFFECTIVE DATE: 1/5/24

CODE OF MASSACHUSETTS REGULATIONS

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# 831 CMR: APPELLATE TAX BOARD

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## 831 CMR: APPELLATE TAX BOARD

### 831 CMR 1.00: APPELLATE TAX BOARD RULES OF PRACTICE AND PROCEDURE

#### Section

##### General Matters

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1.01: Rule-Making Authority, Scope of Rules, and Definitions

- (1) Rule-Making Authority. In accordance with M.G.L. c. 58A, § 8, the Appellate Tax Board promulgates these Rules of Practice and Procedure (Rules). The Rules are promulgated as a regulation pursuant to M.G.L. c. 30A, § 1. As a regulation, the Rules are numbered sequentially in accordance with 950 CMR 20.00: *Preparing and Filing Regulations* and *The Regulations Manual* published by the Secretary of the Commonwealth of Massachusetts. When citing to a particular Rule, parties may use: the regulation format beginning with 831 CMR followed by the section, subsection, and subpart; or, they may reference a particular Rule by using the whole number appearing to the right of the decimal point in the regulation format. For example, this Rule may be cited as either 831 CMR 1.01(1) or Rule 1(1).
- (2) Scope of Rules. The Rules will be construed, administered, and employed to secure the just and efficient determination of every appeal before the Board.
- (3) Definitions. As used in the Rules, the following terms have the following meanings:
- (a) Appellant - the party filing an appeal with the Board;
  - (b) Appellee - the Commissioner of Revenue or the Board of Assessors;
  - (c) Assessors - a Board of Assessors;
  - (d) Board - the Appellate Tax Board;
  - (e) Chairman - the Chairman of the Board;
  - (f) Clerk - the Clerk of the Board;
  - (g) Commissioner - the Commissioner of Revenue;
  - (h) Hard Copy - a document on a physical medium such as paper, as contrasted with an electronic version that is transmitted *via* email;
  - (i) Massachusetts Attorney - an attorney admitted to practice before the courts of the Commonwealth and engaged in the practice of law in the Commonwealth;
  - (j) Member - a member of the Board; and
  - (k) Non-Massachusetts Attorney - an attorney engaged in the practice of law who is not admitted to practice before the courts of the Commonwealth.

1.02: Appearance and Practice before the Board

- (1) In any proceeding before the Board, persons may appear and act for: themselves; partnerships of which they are partners; corporations of which they are officers; limited liability companies of which they are members or managers; a municipal or other board of which they are members; or a city or town for which they have been elected or appointed as an assessor.
- (2) A Massachusetts attorney may appear and practice before the Board.
- (3) A non-Massachusetts attorney must obtain the permission of the Board to appear *pro hac vice* for a particular Board appeal. A motion to appear *pro hac vice* must be filed by a Massachusetts attorney and be accompanied by an affidavit of the Non-Massachusetts attorney setting forth facts sufficient to demonstrate that the non-Massachusetts attorney is a member in good standing of the bar of one or more jurisdictions. If the Board permits a non-Massachusetts attorney to appear *pro hac vice*, a Massachusetts attorney must appear as co-counsel on any pleading or other document filed with the Board and must appear at all Board proceedings, unless excused by the Board.
- (4) Attorneys, including attorneys admitted *pro hac vice*, shall conduct themselves in a manner conforming to the disciplinary rules of the Massachusetts Supreme Judicial Court.
- (5) Except as provided in Rule 2(1) and Rule 10(14), a non-attorney is not permitted to appear before the Board or to sign any pleading or motion in any appeal from the refusal of the Commissioner to abate a tax or take an action.
- (6) The filing of any pleading, motion, or similar document shall constitute an appearance by the attorney who signs it, unless the document states otherwise.
- (7) Notice of any change of attorney shall be given promptly to the Clerk and to the opposing party.

1.02: continued

- (8) An attorney may withdraw an appearance with the permission of the Board on such terms as the Board may prescribe.
- (9) The Board may, for cause, deny or suspend the right of any person to practice before it.
- (10) The Board in its discretion may allow such other person to appear on behalf of a party as the Board deems appropriate.

1.03: Form of Documents Filed with the Board

- (1) All hard copies of pleadings, motions, and other documents filed with the Board shall be either printed or typewritten on one side only of plain white paper measuring 8½ x 11 inches with adequate margins, shall be clearly legible, and shall be signed by the party or the person appearing on behalf of the party.
- (2) The Board encourages parties to file pleadings, other than the petitions described in Rules 5 and 10 and the statement under informal procedure described in Rule 7, by email to the Clerk at the email address listed for the Clerk on the Board's website at <https://www.mass.gov/orgs/appellate-tax-board>.
- (3) Signatures on pleadings, motions, and other documents filed with the Board may be electronic. An electronic signature may take the form of:
  - (a) a scan of the signatory's handwritten signature;
  - (b) an electronic signature made by means of a stylus, an electronic pen, a computer mouse, a touch screen, or other similar method;
  - (c) an electronically inserted image intended to substitute for a signature; or
  - (d) a "/s/ name of signatory" block.

1.04: Jurisdiction

- (1) The Board's jurisdiction to hear and decide appeals is governed by statute. The Board cannot waive statutory jurisdictional requirements or excuse the failure of Appellants to comply with these requirements, regardless of the reason. Appellants should therefore ensure that they have complied with all jurisdictional requirements prior to filing an appeal with the Board.
- (2) The Board's receipt and docketing of an appeal does not constitute an acknowledgment that jurisdictional requirements have been met.
- (3) The Board, on its own motion or the motion of an Appellee, may determine at any point in the proceedings that the Board has no jurisdiction and dismiss the appeal for lack of jurisdiction

1.05: Content of Petition under Formal Procedure

- (1) An Appellant may elect the formal procedure under M.G.L. c. 58A, § 7A by filing a petition under formal procedure that contains all facts and dates necessary for the determination of the Board's jurisdiction and includes:
  - (a) a caption in the following form:

Commonwealth of Massachusetts  
Appellate Tax Board

PETITION UNDER FORMAL PROCEDURE

Docket No. \_\_\_\_\_

\_\_\_\_\_  
*Appellant*

\_\_\_\_\_  
*Appellee*

## 1.05: continued

(b) if the appeal is from the Assessors' refusal to abate a real estate or personal property tax, or to take an action, the petition should include:

1. in the caption, the Appellant's name as the Appellant and the Assessors of the city or town in which the property is located as the Appellee;
2. the type of tax at issue;
3. the tax period(s) at issue;
4. the filing date(s) of the tax return(s) for the tax period(s) at issue;
5. the date(s) and amount(s) of the disputed assessment(s) or refund(s) requested, including tax, penalties, and interest;
6. the date(s) and amount(s) of any payment(s) made by the Appellant for the tax period(s) at issue;
7. the date(s) the Appellant filed an abatement application(s), amended return(s), or other request(s) with the Commissioner; and
8. the date(s) the Commissioner denied the Appellant's abatement application(s) or other request(s).

(c) if the appeal is from the refusal of the Commissioner to abate a tax or to take an action, the petition should include:

1. in the caption, the Appellant's name as the Appellant and the Commissioner as the
2. the type of tax at issue;
3. the tax period(s) at issue;
4. the filing date of the tax return(s) for the tax period(s) at issue
5. the date and amount of the disputed assessment or refund requested, including tax, penalties, and interest;
6. the date(s) and amount(s) of any payments made by the Appellant for the tax period(s) at issue;
7. the date(s) the Appellant filed an abatement application(s), amended return(s), or other request(s) with the Commissioner; and
8. the date(s) the Commissioner denied the Appellant's abatement application(s) or other request(s).

(d) petitions under formal procedure should also include:

1. a clear and concise statement of the Appellant's objections to the decision or determination appealed from, the facts on which the Appellant relies and the contentions of law, if any, which the Appellant desires to raise;
2. a statement of the relief sought;
3. the name, address, telephone number, and email address of the Appellant and any person appearing on behalf of the Appellant; and
4. the dated signature of the Appellant or any person appearing on behalf of the Appellant.

(2) Appeals involving real estate or personal property taxes for two or more years shall not be included in one petition.

(3) The Appellant must request the Board's permission to include two or more parcels of real estate in a single petition under formal procedure. The request should include a description of the parcels, including their location, their assessed values, and whether the parcels were included in a single decision of the Assessors. In its discretion, the Board may require that each parcel be the subject of a separate petition, with a separate entry fee required for each petition.

(4) The Assessors or the Commissioner, as the case may be, shall be designated as Appellee by their official title, without naming the individual or individuals holding the title, and if, while the appeal is pending, a change occurs in the individual or individuals holding the title, no substitution of parties shall be necessary.

#### 1.06: Filing and Service of Petition under Formal Procedure

(1) The Appellant shall file an original and two copies of the petition under formal procedure with the Clerk. Filing must be made with the Board by: in-hand delivery; first-class mail; or one of the alternative delivery services designated in Rule 11.

1.06: continued

- (2) The Appellant shall, at the time of filing a petition under formal procedure, pay to the Clerk the appropriate entry fee as described in the Board's Schedule of Entry Fees on its website at <https://www.mass.gov/orgs/appellate-tax-board>.
- (3) The Appellant shall serve the Appellee with a copy of the petition under formal procedure stamped with the docket number assigned by the Board. Service of the petition may be made on the Appellee by: in-hand delivery; first-class mail addressed to the usual place of business of the Appellee; or by email to the email address of the Appellee.
- (4) The Appellant shall file with the Clerk a signed acknowledgment or certificate of service affirming that a copy of the petition under formal procedure has been served on the Appellee in accordance with Rule 6(3). The signed acknowledgment or certificate of service shall give the address or email address to which the copy has been hand-delivered, mailed, or emailed to the Appellee and the date of hand-delivery, mailing, or emailing. The signed acknowledgment or certificate of service may be filed with the Board by email to the Clerk.
- (5) Failure to conform to the requirements of this Rule shall be grounds, in the discretion of the Board, for dismissal of the appeal.
- (6) At the joint request of the Appellant and Appellee in an appeal from the refusal of the Commissioner to abate a tax or take an action, and with the approval of the Board, an appeal may be transferred from the formal procedure to the small claims procedure if the appeal otherwise qualifies for the small claims procedure under M.G.L. c. 58A, § 7B.

1.07: Content of Statement under Informal Procedure and Waiver of Appeal

- (1) If an appeal is from the Assessors' refusal to abate a real estate or personal property tax or to take an action, an Appellant may elect to file an appeal under the informal procedure in accordance with M.G.L. c. 58A, § 7A. To elect the informal procedure, the Appellant should file a statement under informal procedure that contains all facts and dates necessary for the determination of the Board's jurisdiction and includes:
  - (a) a caption in the following form:

Commonwealth of Massachusetts  
Appellate Tax Board

STATEMENT UNDER INFORMAL PROCEDURE

Docket No. \_\_\_\_\_

\_\_\_\_\_  
*Appellant*

\_\_\_\_\_  
*Appellee*

- (b) the statement under informal procedure should include the following information:
  - 1. in the caption, the Appellant's name as the Appellant and the Assessors of the city or town in which the property is located as the Appellee;
  - 2. the fiscal year at issue;
  - 3. a description of the property taxed, including the address or location of the property;
  - 4. the assessed value of the property;
  - 5. the rate and amount of the tax;
  - 6. the amounts and dates of all payments made for the fiscal year at issue;
  - 7. the date the Appellant filed the abatement application with the Assessors;
  - 8. the date the Assessors denied the Appellant's abatement application;
  - 9. a short statement of the Appellant's objections to the decision or determination appealed from and the relief requested

1.07: continued

10. the name, address, telephone number, and email address of the Appellant and any person appearing on behalf of the Appellant; and
  11. the dated signature of the Appellant or any person appearing on behalf of the Appellant
- (2) The statement under informal procedure must include a signed waiver of the right to appeal the decision of the Board and the right to a findings of fact and report or other statement of reasons for the Board's decision, except as provided in M.G.L. c. 58A, § 7A.
- (3) The Appellant must request the Board's permission to include two or more parcels of real estate in a single statement under informal procedure. The request should include a description of the parcels, including their location, their assessed values, and whether the parcels were included in a single decision of the Assessors. The Board may require that each parcel be the subject of a separate statement under informal procedure with a separate entry fee required for each statement under informal procedure
- (4) No pre-trial discovery will be permitted in appeals under the informal procedure.
- (5) The Chairman will provide for the speedy hearing of all appeals to be heard under the informal procedure.

1.08: Filing and Service of Statement under Informal Procedure

- (1) The Appellant shall file an original and two copies of the statement under informal procedure with the Clerk. Filing must be made with the Board by: in-hand delivery; first-class mail; or one of the alternative delivery services designated in Rule 11.
- (2) The Clerk will serve one copy of the Appellant's statement under informal procedure on the Assessors and return one copy to the Appellant. The Clerk may use email to serve a copy of the statement under informal procedure on the Assessors and to return a copy of the statement under informal procedure to the Appellant.
- (3) The Appellant shall, at the time of filing a statement under informal procedure, pay to the Clerk the appropriate entry fee as described in the Board's Schedule of Entry Fees on its website at <https://www.mass.gov/orgs/appellate-tax-board>.

1.09: Transfer of Appeals from Informal to Formal Procedure

- (1) If the assessed value of the property at issue exceeds \$20,000, the Assessors may, within 30 days of the date of service of a statement under informal procedure, elect to have the appeal heard under the formal procedure by so notifying the Clerk in writing, by first-class mail or email, and by paying to the Clerk the appropriate entry fee as described in the Board's Schedule of Entry Fees on its website at <https://www.mass.gov/orgs/appellate-tax-board>.
- (2) The Clerk will transfer the appeal to the formal procedure and give notice of the transfer to both parties by first-class mail or email. If so transferred, all future proceedings relating to the appeal will be conducted under the formal procedure and the Appellant's waiver of the right of appeal and the right to a findings of fact and report shall be void.

1.10: Content of Petition under Small Claims Procedure and Waiver of Appeal

- (1) If an appeal is from the refusal of the Commissioner to abate a tax or to take an action, the Appellant may elect to file an appeal under the small claims procedure in accordance with M.G.L. c. 58A, § 7B. To elect the small claims procedure, the amount of tax in dispute shall not exceed the following limits:
  - (a) \$25,000 for any taxable year, in the case of a tax imposed by taxable year;
  - (b) \$25,000 for any calendar year, in the case of a tax imposed by calendar year;
  - (c) \$25,000 for any calendar year, in the case of a tax imposed by M.G.L. c. 64A through 64J, and M.G.L. c. 138, § 21;
  - (d) \$25,000 in the case of a tax imposed by M.G.L. c. 65C; or
  - (e) \$25,000 for any taxable event or transaction in the case of any other tax.



## 1.10: continued

(2) For purposes of M.G.L. c. 58A, § 7B, the amount of any tax placed in dispute does not include any interest, penalty, or addition to tax imposed by M.G.L. c. 62C, § 28 or any statute referred to in M.G.L. c. 62C, § 2. If, however, only the imposition or the amount of interest or penalties is in dispute, the interest or penalties shall not exceed \$25,000 for any tax period or taxable event or transaction as specified in M.G.L. c. 58A, § 7B and this Rule.

(3) If the amount in dispute exceeds these limitations, the Appellant may still elect the small claims procedure but, unless the small claims procedure is discontinued, any abatement granted to the Appellant by the Board cannot exceed the limitations set by M.G.L. c. 58A, § 7B and this Rule.

(4) To elect the small claims procedure, the Appellant should file a petition under small claims procedure that contains all facts and dates necessary for the determination of the Board's jurisdiction and includes:

(a) a caption in the following form:

Commonwealth of Massachusetts  
Appellate Tax Board

PETITION UNDER SMALL CLAIMS PROCEDURE

Docket No. \_\_\_\_\_

\_\_\_\_\_  
*Appellant*

\_\_\_\_\_  
*Appellee*

(b) in the caption, the Appellant's name as the Appellant and the Commissioner as the Appellee;

(c) the type of tax at issue;

(d) the tax period(s) at issue;

(e) the filing date(s) of the tax return(s) for the tax period(s) at issue;

(f) the date(s) and amount(s) of the disputed assessment(s) or refund(s) requested, including tax, penalties, and interest;

(g) the date(s) and amount(s) of any payment(s) made by the Appellant for the tax period(s) at issue;

(h) the date(s) the Appellant filed an abatement application(s), amended return(s), or other request(s) with the Commissioner;

(i) the date(s) the Commissioner denied the Appellant's abatement application(s) or other request(s);

(j) the name, address, telephone number, and email address of the Appellant and any person appearing on behalf of the Appellant; and

(k) the signature of the Appellant or any person appearing on behalf of the Appellant.

(4) The petition under small claims procedure must include a signed waiver of the right to appeal the decision of the Board.

(5) The Appellant shall file an original and two copies of the petition under small claims procedure with the Clerk. Filing must be made with the Board by: in-hand delivery; first-class mail; or one of the alternative delivery services designated in Rule 11.

(6) The Appellant must, at the time of filing the petition under small claims procedure, pay to the Clerk the appropriate entry fee as described in the Board's Schedule of Entry Fees on its website at <https://www.mass.gov/orgs/appellate-tax-board>.

(7) The Clerk will serve one copy of the petition on the Commissioner and return one copy to the Appellant.

## 1.10: continued

- (8) At any time before the commencement of the hearing, the Board on its own motion or at the request of either party to the appeal may order the small claims designation removed and the proceedings transferred to the formal procedure.
- (9) Dispositive motions in appeals under the small claims procedure shall be filed and served in accordance with Rule 16 and Rule 17.
- (10) No pre-trial discovery will be permitted in appeals under the small claims procedure except upon prior motion and a showing that the requested information: is necessary to the moving party's case; is not available from other sources; and is being sought by the least burdensome method available.
- (11) Hearings of appeals under the small claims procedure will be conducted as informally as possible consistent with orderly procedure. Evidence determined by the Board to have probative value will be admissible.
- (12) Neither briefs nor oral arguments will be required in appeals under the small claims procedure, but the Board in its discretion may permit the filing of briefs.
- (13) The Chairman will provide for the speedy hearing of all appeals to be heard under the small claims procedure.
- (14) In appeals under the small claims procedure, the Appellant may be represented by a person of the Appellant's choosing upon written authorization of the Appellant and permission of the Board.
- (15) The provisions of Rule 26 regarding subpoenas and the summoning of witnesses shall be applicable under the small claims procedure.
- (16) The Board will issue a brief written summary of the reasons for its decision in each appeal decided under the small claims procedure. The Board will not issue findings of fact and reports in appeals decided under the small claims procedure.
- (17) Decisions issued in appeals under the small claims procedure will not be reviewed by any court and will not be treated as precedent in any other case.

1.11: The Postmark Rule, Alternative Delivery Services, and Substantiating Marks

- (1) Generally, a document is considered filed when it is delivered to the Board. If, however, a document is delivered to the Board by United States mail after the statutory due date in a properly addressed envelope, then the date of the United States postmark is deemed to be the date of delivery if the date of the United States postmark is on or before the due date ("postmark rule"). For purposes of a document delivered to the Board by United States mail, the Board also will recognize the following substantiating marks in applying the postmark rule:
  - (a) Registered Mail: The date affixed by the United States Post Office as the date of registration is treated as the postmark date for purposes of the postmark rule.
  - (b) Certified Mail: The date of the United States postmark on the sender's United States Post Office receipt is treated as the postmark date for purposes of the postmark rule.
  - (c) Certificate of Mailing: The date affixed by the United States Post Office on a Certificate of Mailing is treated as the postmark date for purposes of the postmark rule.
- (2) Pursuant to the authority granted by M.G.L. c. 58A, § 7, M.G.L. c. 59, § 64, and M.G.L. c. 62C, § 39, the Board permits delivery by all private delivery services recognized by the Internal Revenue Service at the time of filing a document with the Board ("alternative delivery service"). Only a substantiating mark produced or affixed by the alternative delivery service, and not by the party relying on the mark, will be treated as valid for purposes of the postmark rule.
- (3) The Board may determine, on a case-by-case basis, whether any other private delivery service qualifies as an alternative delivery service for purposes of applying the postmark rule. The Board will consider the criteria enumerated in Internal Revenue Service § 7502(f)(2) in making this determination.

1.11: continued

(4) In the event that a United States postmark or other authorized substantiating mark is illegible or missing when delivered to the Board, the Board may make such inferences concerning the United States postmark or other authorized substantiating mark as are consistent with the purposes of the foregoing statutes and this Rule.

1.12: Docketing of Appeals

The Clerk will assign to each appeal a docket number and will notify the parties of the docket number. The parties shall place the docket number on all documents thereafter filed in the appeal, including all correspondence with the Board.

1.13: Answers, Responsive Pleadings, and Service Thereof

(1) The Appellee shall file with the Clerk and serve on the Appellant an answer within 30 days of the service of the petition under formal procedure or statement under informal procedure or 25 business days of the service of the petition under small claims procedure.

(2) The Board may grant further time for the Appellee to file an answer.

(3) If the Appellant files an amended petition pursuant to Rule 14, the Appellee shall file an answer or amended answer within 30 days of service of the amended petition or such further time as the Board may allow.

(4) In *lieu* of filing an answer, the Appellee may file a motion to dismiss the appeal or other motion identified in Rule 16(6). If the motion to dismiss or other motion identified in Rule 16(6) is denied, the Appellee shall file the answer within ten days of the denial of the motion or within such further time as the Board may allow.

(5) Pursuant to M.G.L. c. 58A, §§ 7 and 7A, in an appeal from the Assessors' refusal to abate a real estate or personal property tax, no answer need be filed where the Appellee contests only the Appellant's allegation of overvaluation or improper classification of the property at issue. Challenges to the jurisdiction of the Board may be raised at any time regardless of whether an answer was filed.

(6) If the Appellee files an answer, the Appellee must serve a copy of the answer on the Appellant or person appearing on behalf of the Appellant, by in-hand delivery, first-class mail, or email to the email address of the Appellant or the person appearing on behalf of the Appellant. The answer should contain:

- (a) a specific admission or denial of each allegation of fact contained in the petition;
- (b) a clear and concise statement of any other facts or rulings of law upon which the Appellee relies; and
- (c) an address, telephone number, and email address where service of notices, pleadings, and other documents concerning the appeal may be made.

1.14: Amended and Supplemental Pleadings

(1) Parties may amend their pleadings with consent of the opposing party or permission of the Board.

(2) A further and clearer statement of the nature of the claim or defense, or of any matter stated in any pleading, may be ordered by the Board in its discretion.

1.15: Substitution of Parties

(1) In the event of the death of the Appellant, or for other cause, the Board in its discretion may order the substitution of the proper parties.

(2) All motions for substitution of a party shall be filed with the Board and served upon the opposing party in accordance with Rule 16. The Board may order further service in its discretion.

1.16: Motions

- (1) Motions must be in writing with a copy served on the opposing party or the person appearing on behalf of the opposing party. A party may file and serve motions by email. Motions may also be made orally at the hearing on the merits of the appeal, but the Board may order that they be reduced to writing within such time and in such form as the Board may order.
- (2) Motions will be heard on the day and time designated in the current Board Standing Order governing motions or such other time as the Board may designate, as posted on the Board's website.
- (3) Motion hearings will be held by video conference unless the Board approves a request for an in-person or telephonic hearing on the motion. The Clerk will initiate all video or telephonic motion hearings unless other arrangements have been made and approved by the Board.
- (4) Prior to filing any discovery-related motion, the moving party shall confer with the opposing party and shall be responsible for initiating the pre-motion conference between the parties. All discovery-related motions shall include a certificate stating that the required conference was held, together with the date and time of the conference and the names of all participating parties. If the conference was not held despite reasonable efforts by the moving party to initiate the conference, the certificate shall set forth the efforts made to hold the conference. Discovery-related motions not accompanied by a certificate will not be scheduled for a motion hearing.
- (5) Except as provided in Rule 16(6) or otherwise allowed by the Board, motions must include a notice of hearing setting forth the requested date and time of the motion hearing and a certificate of service indicating how a copy of the motion and notice of hearing were served on the opposing party. The motion, notice of hearing, and certificate of service must be filed with the Clerk and served on the opposing party no later than seven days before the date requested for the motion hearing, unless a different period is fixed by the Board. Any opposition to a motion or affidavits in support of or in opposition to a motion should be filed and served no later than one day in advance of the motion hearing, unless the Board orders them to be filed and served at some other time.
- (6) If the non-moving party assents to the motion, or otherwise in the discretion of the Board, the Board may rule on a non-dispositive motion without a hearing.
- (7) Objections to the sufficiency or form of pleadings or to the jurisdiction of the Board shall be made by motion to dismiss, or to strike, or by other appropriate motion stating specifically the ground(s) for the objection
- (8) All motions to dismiss based on lack of jurisdiction, including motions to dismiss for failure to timely pay the tax at issue and for failure to timely file an abatement application or appeal to the Board, must be supported by an affidavit as to the specific facts and authenticity of documents on which the motion to dismiss is based.
- (9) Motions for summary judgment shall be filed and heard in accordance with Rule 17.
- (10) If a party fails to appear at the time set for hearing of the motion, the Board may proceed *ex parte*.

1.17: Summary Judgment

- (1) Either party may file a motion for summary judgment no later than 30 days prior to the date set for the hearing of the appeal unless the Board in its discretion permits otherwise.
- (2) The moving party shall file with the motion and serve on the opposing party:
  - (a) a brief statement of the applicable law; and
  - (b) affidavits and/or copies of those portions of deposition transcripts, pleadings, admissions, or other documents demonstrating that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law.

## 1.17: continued

- (3) If the moving party is relying on facts based on requests or demands for admissions, the moving party must provide proof of compliance with the filing and notice requirements of M.G.L. c. 231, § 69.
- (4) The non-moving party shall have 21 days from the date of service of the motion for summary judgment to file with the Board and serve on the moving party an opposition, together with any affidavits or other documents that support a denial of the motion.
- (5) In the alternative, the non-moving party may file a cross-motion for summary judgment, which shall be subject to the same requirements as the original motion for summary judgment. An opposition to a cross-motion for summary judgment shall be filed within 21 days from the date of service of the cross-motion.
- (6) The Board will schedule the hearing of the motion(s).
- (7) Summary judgment will be granted if the Board determines that no genuine issue of material fact exists and a party is entitled to judgment as a matter of law. Summary judgment, when appropriate, may be rendered against the moving party.
- (8) If, after consideration of a motion for summary judgment and any related cross-motion for summary judgment, the Board cannot make a judgment on the entire appeal or grant all of the relief requested, the Board may nonetheless narrow the scope of any subsequent hearing on the merits by:
  - (a) ruling on one or more legal issues raised in the motion or cross-motion for summary judgment as to which there is no genuine issue of material fact; and
  - (b) determining those facts as to which there is no dispute and those facts shall be deemed established for purposes of the hearing on the merits, reserving all disputed facts for the hearing on the merits.

1.18: Mediation

- (1) The Board's Mediation Program is established under the authority of M.G.L. c. 58A, § 8A to "employ alternative dispute resolution techniques including, without limitation, mediation and arbitration". Mediation affords parties the opportunity to meet confidentially with Board mediators to facilitate the expeditious and informal resolution of appeals.
- (2) One or more attorneys in the Board's legal department will serve as Board mediators. To ensure that the parties will receive a full and impartial hearing if cases are not resolved at mediation, Members do not serve as mediators and there are no discussions between Board mediators and Members regarding issues discussed at mediation conferences.
- (3) Either party may request mediation. In accordance with M.G.L. c. 58A, § 8A, both parties must agree to mediation. If the Board determines that a case is appropriate for mediation, it will contact the parties to schedule a date and time for the mediation conference. If the Board determines that the case is not appropriate for mediation, the parties will be notified that the case will be scheduled for a hearing on the merits of the appeal.
- (4) The Board's jurisdiction over an appeal must be established prior to commencement of a mediation conference and Board mediators will require the Assessors or the Commissioner to provide documentation to confirm jurisdiction.
- (5) While no formal presentation of evidence or testimony is expected at the mediation conference, Board mediators may request that each party provide a position statement to the Board mediators and the opposing party no later than one week before the date of the mediation conference. Any such documentation will be kept confidential and will not form a part of the Board's case file.
- (6) Board mediators may, in their discretion, hold the mediation conference at the Board's offices or by video conference.

## 1.18: continued

(7) During the mediation conference, Board mediators will facilitate discussions between the parties but will not impose a resolution. Recommendations offered by Board mediators are not binding on either party. Any discussions held during the mediation conference will be treated as confidential by Board mediators and will not be shared with any other persons outside the mediation conference.

(8) If a resolution is achieved at the mediation conference, the parties are responsible for negotiating and executing the terms of any settlement documents and for filing an appropriate withdrawal of the appeal with the Board.

(9) Appeals not resolved through the mediation process will proceed to a hearing on the merits that will be presided over by a Member who will have no knowledge of any discussions held in the mediation conference.

1.19: Status Conferences

(1) The Board may, in its discretion, schedule one or more status conferences in pending appeals. Status conferences are designed to bring the parties together to discuss, among other topics: the progress of discussions regarding settlement; the formal or informal exchange of relevant information; the option of a mediation conference; a schedule for discovery, expert report exchange, submission of an agreed statement of facts, and a hearing date; and the narrowing of issues for hearing.

(2) If the Board determines that a status conference is warranted, the Clerk will contact the parties to schedule the conference. In addition, if the parties believe that a status conference would be beneficial, they may contact the Clerk to request the scheduling of a conference.

(3) Status conferences may be held by video conference, telephone, or in-person at the Board's offices. The Clerk will inform the parties of the medium by which the conference will be held, but the parties may request a particular medium for the conference.

(4) Prior to the commencement of the status conference, the parties are expected to: confer regarding the topics to be discussed at the conference; agree on a date for a further status conference if they believe one will be beneficial; and, if necessary, provide a proposed scheduling order covering the matters outlined in this Rule.

1.20: Interrogatories

(1) In accordance with M.G.L. c. 231, § 61, either party in appeals under the formal procedure may interrogate the opposing party for the discovery of facts and documents admissible in evidence at the hearing of the appeal.

(2) If information responsive to an interrogatory is stored in electronic form, the responding party shall produce it in the form or forms in which it is maintained or in a reasonably usable form.

(3) When a party withholds information otherwise discoverable by claiming that the information is privileged or subject to protection as trial-preparation material, the party must:

- (a) expressly make the claim; and
- (b) describe the nature of the documents, communications, or tangible things not produced or disclosed, and do so in a manner that, without revealing information itself privileged or protected, will enable the other party and the Board to assess the claim.

(4) Unless the Board orders otherwise, interrogatories and responses shall not be filed with the Clerk except when a motion to compel further responses to discovery is filed.

### 1.21: Depositions

- (1) Parties must request permission of the Board by motion to conduct a deposition. The motion to take a deposition must set forth the following:
  - (a) the name and address of each proposed deponent;
  - (b) the subject matters concerning which the proposed deponent is to testify, together with a statement of the relevance of the subject matter to the resolution of the appeal; and
  - (c) the time and place of the proposed deposition(s).
- (2) The motion to take a deposition shall be served and marked in accordance with Rule 16.
- (3) Approval to take a deposition, either within or without the Commonwealth, is within the discretion of the Board.
- (4) If the Board grants permission to take a deposition, the procedures set forth in Rule 30 of the Massachusetts Rules of Civil Procedure applicable to depositions will be followed by the parties.
- (5) In the case of the deposition of a public or private corporation, partnership, association, government agency or other business entity under Rule 30(b)(6) of the Massachusetts Rules of Civil Procedure, the deponent organization must designate one or more persons who consent to testify on its behalf. The persons designated must testify about information known or reasonably available to the organization.

### 1.22: Stipulations and Agreed Statements of Fact

- (1) The parties shall use best efforts to stipulate, to the fullest extent possible, to all matters not privileged that are relevant to the appeal.
- (2) The parties' stipulations must be reduced to writing in an agreed statement of fact signed by each party or the person appearing on behalf of a party.
- (3) Where facts are not disputed, an objection on the ground of materiality or relevance may be raised by either party, but such an objection is not cause for refusal to stipulate.
- (4) Documents or other exhibits annexed to or filed with an agreed statement of facts will be part of the agreed statement of facts.
- (5) An agreed statement of facts prepared pursuant to this Rule, including documents or other exhibits that are part of the agreed statement of fact, shall be filed by the parties at least seven days in advance of the hearing of the appeal, unless the Board otherwise specifies.
- (6) Nothing in this Rule prevents a party from: objecting at a hearing on the merits to the introduction in evidence of documents or facts on the ground of materiality or relevance; or maintaining that a genuine issue of fact exists for resolution by the Board.

### 1.23: Scheduling of Hearings

- (1) The Clerk will place appeals on the hearing list sequentially by docket number, unless the Board otherwise directs.
- (2) The Clerk will send notices of hearing dates to the parties or the person appearing on behalf of a party.
- (3) In the discretion of the Board, hearings will be conducted either in person at the Board's offices, by video conference, or in a suitable place outside of Boston.
- (4) The Board may continue the scheduled hearing date on its own motion or at the request of either party. A request for a continuance must be made in writing and will not be effective unless the Board in its discretion grants the request. The party requesting the continuance must confer with the opposing party in an effort to agree on a proposed continuance date. If the parties do not agree to a continuance, the party requesting the continuance must do so by motion in accordance with Rule 16.

1.23: continued

- (5) If a party fails to appear at the time set for the hearing, the Board may proceed *ex parte*.
- (6) The Board may place an appeal on a reserve list without a hearing date for good cause shown, as, for example, to await the decision in another case.

1.24: Inactive Appeals

- (1) Any appeal that has remained on the Board's docket for three or more years without action by either party will be marked inactive. The Clerk will notify the parties that the appeal has been marked inactive and that the appeal may be dismissed if no action is taken within 30 days.
- (2) If neither party contacts the Board within 30 days of such notice, the Board will dismiss the appeal.

1.25: Conduct of Hearings

- (1) The Board may make hearings and proceedings as informal as possible, so that substance and not form will govern, and that a final and just determination of all matters before it may be promptly reached, provided that the Board shall observe the rules of privilege recognized by law.
- (2) The Board will not consider, unless equity and good conscience so require, any issue of fact or contention of law not raised in the pleadings.
- (3) In proceedings under the formal procedure, subject to the discretion of the Board, the Board shall observe the rules of evidence observed by the courts of this Commonwealth. All evidence shall be admitted which is admissible under the statutes of this Commonwealth or under rules of evidence applied in this Commonwealth.
- (4) In proceedings under the informal and small claims procedures, rules of pleadings, practice, and evidence will be eliminated to the extent practicable. In such proceedings, evidence may be given probative effect if it is the kind of evidence on which reasonable persons are accustomed to rely in the conduct of serious affairs.

1.26: Subpoenas

- (1) Either party may summon witnesses or may require the production of documents in the same manner in which witnesses may be summoned and documents may be required to be produced for the purpose of trial in the courts of the Commonwealth.
- (2) The Board may summon and examine witnesses and require, by subpoena signed by the Chairman, the production of all returns, books, papers, documents, correspondence, and other evidence pertinent to the appeal.

1.27: Evidence

- (1) Any document that a party intends to introduce as evidence at the hearing of an appeal, other than documents to impeach the credibility of a witness, must be submitted to the Board and provided to the opposing party by in-hand delivery, first-class mail, or email no later than seven days prior to the scheduled hearing, except upon good cause shown. Any document that is not timely submitted and provided may be excluded from evidence, or the Board may order the continuance of the hearing.
- (2) The Board may require that hard copies of proposed documentary evidence be provided to the Board and the opposing party. Demonstratives and chalks not constituting evidence but intended by a party to facilitate testimony, or to summarize evidence or legal analysis, must be submitted to the Board and provided to the opposing party prior to the scheduled hearing.
- (3) For appeals from a decision of the Assessors, the following documents must be introduced as evidence by the Assessors and, therefore, submitted to the Board and provided to the opposing party as provided in this Rule:



1.27: continued

- (a) a date-stamped copy of the Appellant's abatement application showing the date of filing;
  - (b) the notice of the Assessors' action or inaction on the Appellant's abatement application;
  - (c) the tax bills for each installment of the tax for the fiscal year(s) at issue;
  - (d) affidavit(s) from the municipality's treasurer showing: the date the tax bill for the fiscal year(s) at issue was mailed; the amount due and the amount paid for each installment of the tax bill; the date that each installment of the tax bill was paid; and interest incurred, if any, on each installment of the tax bill; and
  - (e) on appeals for exemption under M.G.L. c. 59, § 5, clause third, date-stamped copies of the Form 3ABC and Form PC filed with the Assessors showing the date of filing.
- (4) For appeals from a decision of the Commissioner, the following documents, if applicable, must be introduced as evidence by the Commissioner and, therefore, submitted to the Board and provided to the opposing party as provided in this Rule:
- (a) the tax return(s) filed by the taxpayer for the tax period(s) at issue, with the date(s) of filing;
  - (b) the notice of intention to assess issued by the Commissioner, with the date of notice, in the case of a disputed assessment;
  - (c) the notice of assessment, or other determination at issue, with the date of notice;
  - (d) the abatement application or amended return filed with the Commissioner, with the date of filing;
  - (e) the notice of the Commissioner's action on the abatement application or amended return, with the date of notice; and
  - (f) the date(s) and amount(s) of any tax payments for the tax period(s) at issue.
- (5) The Board may require that additional documents be introduced as evidence and, therefore, submitted to the Board and provided to the opposing party as provided in this Rule.
- (6) The Board may accept as evidence a clear and legible copy of any original book, document, record, model, diagram, or other proposed exhibit offered at the hearing of an appeal.
- (7) The Board may take judicial notice of matters of law and fact to the same extent that such matters may be the subject of judicial notice in Massachusetts courts. Such matters include federal and state statutes and cases and regulations of the Internal Revenue Service and the Commissioner. However, proof of municipal law, including bylaws, ordinances, regulations, and adoption of state local option statutes, must be made by testimony of a municipal official or by certified copy of the municipal law or action in question.

1.28: Public Records

- (1) All evidence marked as exhibits and all pleadings, briefs, and other documents that the parties file with or otherwise provide to the Board, whether in hard-copy or electronic form, and all other documents specified in M.G.L. c. 58A, § 13, shall be open to the inspection of the public, except for documents provided to the Board in connection with the Board's mediation program under Rule 18.
- (2) In accordance with M.G.L. c. 58A, § 13, if a party requests withdrawal from the Board's custody the originals of books, documents, records, models, diagrams or other exhibits introduced into evidence, the party must substitute a legible copy of the original and comply with such other terms as the Board may in its discretion prescribe.
- (3) To the extent not covered in M.G.L. c. 58A, § 13, all "public records" as defined in M.G.L. c. 4, § 7, clause 26, shall be open to the inspection of the public.
- (4) No document specified in M.G.L. c. 58A, § 13, defined in M.G.L. c. 4, § 7, clause 26, or covered by this Rule, will be the subject of a protective order.

1.29: Recording and Transcription of Hearings and Other Proceedings

- (1) At the request of any party or in the discretion of the Board, the Board may order that a hearing or other proceedings in an appeal be recorded by a stenographer present at the hearing and that a transcript of the hearing or other proceedings be produced. Written notice of the request for a stenographer in a form approved by the Clerk shall be given to the Clerk at least five days before the hearing or other proceedings is scheduled to commence, but the Board in its discretion may permit later notice.
- (2) Subject to availability of appropriate recording devices, the Board will digitally record hearings or other proceedings. As an alternative to Rule 1.29(1), any party may request the digital file of the Board's recording of the hearing or other proceedings within fourteen days of the completion of the hearing or other proceedings. The party requesting the digital file is responsible for facilitating transcription of the audio recording by a transcriber listed on the Board's website.
- (3) The Board in its discretion may deny a party's request for a recording and/or transcript for certain proceedings including, for example, status conferences.
- (4) The cost of a transcript shall be borne by the party requesting the transcript. If the opposing party also wishes to receive a copy of the transcript, the parties will share equally in the cost imposed for producing the transcript. In the case of a digital recording, the Board shall provide the requesting party with a digital copy of the audio of the hearing or other proceedings. The party shall be responsible for facilitating transcription of the audio recording by a transcriber prescribed in Rule 1.29(2).
- (5) In every hearing or other proceedings for which a transcript is produced, the cost of producing the transcript shall include one copy of the transcript to be submitted to the Board without cost to the Board.
- (6) With the exception of the digital file of a hearing or other proceedings, if no party requests that a hearing or other proceedings be officially recorded in accordance with this Rule, stenographic notes, transcripts, or recordings of such hearing or other proceedings that may be created by the Board shall be for the information of the Board only, and will not be open to inspection or available for the use of the parties, unless otherwise ordered in the discretion of the Board.
- (7) The Board may issue standing orders from time to time as needed to clarify and implement Rule 1.29.

1.30: Submission for Decision without a Hearing

- (1) The parties may, with the approval of the Board and on such conditions as the Board may prescribe, submit an appeal to the Board for decision without a hearing.
- (2) The Board may, in its discretion, require that the parties appear for argument or file briefs in connection with a submission of an appeal for decision without a hearing.

1.31: Briefs

- (1) At the conclusion of a hearing, the Board may order, or the parties may request, that briefs be filed. The Member presiding at the hearing will establish a briefing schedule.
- (2) The parties may also file briefs prior to or at the time of the hearing.
- (3) Briefs will be filed with the Board and served on the opposing party by email, unless otherwise ordered by the Board.

1.32: Decision by a Single Member

- (1) In accordance with M.G.L. c. 58A, § 1, a single Member may decide the following appeals:
  - (a) an appeal under the formal procedure from a decision of the Assessors in which the assessed value of the property involved does not exceed \$500,000;

1.32: continued

- (b) an appeal under the formal procedure from a decision of the Assessors in which the value of the property involved exceeds \$500,000 but does not exceed \$750,000, if both parties give written consent to a decision by a single Member;
- (c) an appeal under the informal procedure from a decision of the Assessors in which the assessed value of the property involved is less than \$1,000,000; and
- (d) an appeal under the small-claims procedure from a decision of the Commissioner.

(2) In the discretion of the Member presiding at the hearing of an appeal that may be decided by a single Member, the appeal may be submitted to the full Board for decision.

1.33: Computation for Final Determination

- (1) If the Board determines all issues necessary to decide an appeal except for the abatement amount, the Board will order the parties to compute the abatement amount based on the Board's determination of the issues.
- (2) The parties shall, if they agree on the abatement amount, file with the Clerk a computation showing the abatement amount.
- (3) If the parties do not agree on the abatement amount, either party may file with the Clerk a computation showing their proposed abatement amount.
- (4) Based on the parties' joint or separate computation(s) of the abatement amount(s), or after a hearing on the parties' computation(s), the Board will determine the correct abatement amount and enter a final decision with respect to the appeal.
- (5) The response to the Board's Order for computation of the abatement amount under this Rule shall be limited to the amount based on the Board's determination of the issues. The response is not an opportunity to request a rehearing or reconsideration of the issues the Board has determined. A response to the Board's Order under this Rule will not prevent a party from appealing the final decision entered by the Board.

1.34: Request for Findings of Fact and Report

- (1) After the issuance of a decision under the formal procedure without findings of fact, the Board will promulgate a findings of fact and report if either party files a request with the Clerk within ten days of the date of the Board's decision in accordance with M.G.L. c. 58A, § 13.
- (2) A request for findings of fact and report may be filed in-person at the Board's offices, by first-class mail, or by emailing the Clerk, with a copy to the opposing party.

1.35: Claim of Appeal

- (1) In accordance with M.G.L. c. 58A, § 13, appeals from final decisions of the Board are governed by the Massachusetts Rules of Appellate Procedure (MRAP).
- (2) A claim of appeal from a final decision of the Board must be filed with the Board in accordance with Rule 4 of MRAP.
- (3) For the purposes of Rule 4 of MRAP, the date the Board's decision is issued shall be the date of the entry of judgment if no timely request for findings of fact and report is made. If a timely request for findings of fact and report is made, the date of promulgation of the Board's findings of fact and report will be the date of the entry of judgment.
- (4) The Board will prepare the record on appeal and notify the parties in accordance with the relevant provisions of Rules 8 and 9 of MRAP.
- (5) The party taking the appeal must then docket the appeal in the Massachusetts Appeals Court in accordance with Rule 10 of MRAP.

1.36: Computation of Time

In computing any period of time prescribed or allowed by these Rules, the day of the act, event, or default after which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a legal holiday, in which event the period runs until the end of the next day which is not a Saturday, a Sunday, or a legal holiday. When the period of time prescribed or allowed is less than seven days, intermediate Saturdays, Sundays, and legal holidays shall be excluded in the computation. As used in this rule, "legal holiday" includes those days specified in M.G.L. c. 4, § 7 and any other day appointed as a holiday by the President or the Congress of the United States or designated by the laws of the Commonwealth.

1.37: Exceptions Unnecessary

Formal exceptions to rulings of the Board sustaining or overruling objections are unnecessary to preserve the right to review.

REGULATORY AUTHORITY:

831 CMR 1.00: M.G.L. c. 58A, § 8.

**THE COMMONWEALTH OF MASSACHUSETTS****William Francis Galvin**

Secretary of the Commonwealth

**Regulation Filing***To be completed by filing agency*CHAPTER NUMBER: **940 CMR 37.00**CHAPTER TITLE: **REGULATIONS AUTHORIZING DISCLOSURE OF MASSACHUSETTS  
LICENSE OR LEARNER'S PERMIT APPLICANT OR HOLDER INFORMATION**AGENCY: **Office of the Attorney General**SUMMARY OF REGULATION: *State the general requirements and purposes of this regulation.*

**Relates to the public records status and disclosure by the Registrar of Motor Vehicles of information relating to applicants and holders of Massachusetts licenses and learner's permits, pursuant to the Attorney General's authority in the Act Relative to Work and Family Mobility, Section 7 of chapter 81 of the Acts of 2022.**

REGULATORY AUTHORITY: **Section 7 of Chapter 81 of the Acts of 2022**AGENCY CONTACT: **Jamie D. Hoag** PHONE: **617-963-2057**ADDRESS: **One Ashburton Place, 20th Floor, Boston, MA 02108****Compliance with M.G.L. c. 30A**EMERGENCY ADOPTION - *if this regulation is adopted as an emergency, state the nature of the emergency.*PRIOR NOTIFICATION AND/OR APPROVAL - *If prior notification to and/or approval of the Governor, Legislature or others was required, list each notification, and/or approval and date, including notice to the Local Government Advisory Commission.***Notice to Local Government Advisory Commission sent on August 11, 2023.**PUBLIC REVIEW - *M.G.L. c. 30A sections 2 and/or 3 requires notice of the hearing or comment period, including a small business impact statement, be filed with the Secretary of the Commonwealth, published in appropriate newspapers, and sent to persons to whom specific notice must be given at least 21 days prior to such hearing or comment period.*Date of public hearing or comment period: **September 22, 2023**

FISCAL EFFECT - *Estimate the fiscal effect of the public and private sectors.*

For the first and second year: \$230,000

For the first five years: Minimal additional fiscal effect following \$230,000 in original implementation

No fiscal effect: \_\_\_\_\_

SMALL BUSINESS IMPACT - *M.G.L. c. 30A section 5 requires each agency to file an amended small business impact statement with the Secretary of the Commonwealth prior to the adoption of a proposed regulation. If the purpose of this regulation is to set rates for the state, this section does not apply.*

Date amended small business impact statement was filed: 12/21/2023

CODE OF MASSACHUSETTS REGULATIONS INDEX - *List key subjects that are relevant to this regulation:*  
**Registry of Motor Vehicles;; Work and Family Mobility Act;; Data Privacy and Security**

PROMULGATION - *State the action taken by this regulation and its effect on existing provisions of the Code of Massachusetts Regulations (CMR) or repeal, replace or amend. List by CMR number:*

**Promulgates permanent regulation, 940 CMR 37.00.**

ATTESTATION - *The regulation described herein and attached hereto is a true copy of the regulation adopted by this agency.* ATTEST:

SIGNATURE: \_\_\_\_\_ SIGNATURE ON FILE \_\_\_\_\_ DATE: Dec 22 2023

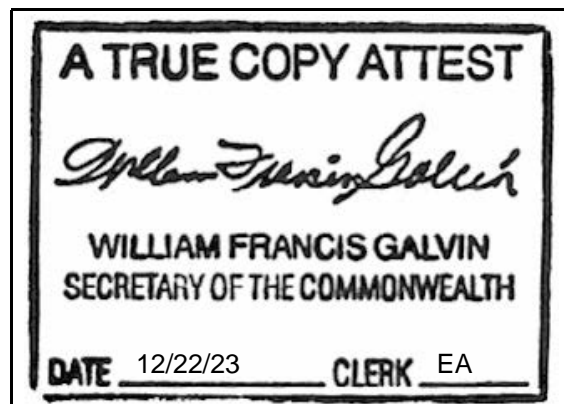
Publication - *To be completed by the regulations Division*

MASSACHUSETTS REGISTER NUMBER: 1512 DATE: 1/5/24

EFFECTIVE DATE: 1/5/24

CODE OF MASSACHUSETTS REGULATIONS

<i>Remove these Pages:</i>	<i>Insert these Pages:</i>
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940 CMR 37.00: REGULATIONS AUTHORIZING DISCLOSURE OF MASSACHUSETTS  
LICENSE OR LEARNER'S PERMIT APPLICANT OR HOLDER INFORMATION

Section

- 37.01: Purpose
- 37.02: Definitions
- 37.02: Scope
- 37.04: Requirements for Disclosure
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37.01: Purpose

The Attorney General promulgates 940 CMR 37.00, relating to the public records status and disclosure by the Registrar of Motor Vehicles of information relating to applicants and holders of Massachusetts licenses and learner's permits, pursuant to her authority in St. 2022, c. 81, § 7: *An Act Relative to Work and Family Mobility*.

37.02: Definitions

As used in 940 CMR 37.00, the following terms when capitalized shall, unless the context clearly requires otherwise, have the following meanings:

Applicant. An individual who files an application by mail or otherwise to the Registrar of Motor Vehicles or any agent designated by them for the purpose.

Registrar. The Massachusetts Department of Transportation's Registrar of Motor Vehicles established pursuant to M.G.L. c. 6C, § 56, or the Registrar's officer, employee, agent, or contractor, including the members of the Fraud Unit of the Massachusetts State Police pursuant to M.G.L. c. 22C and St. 1991, c. 412, as well as any and all AAA employees who provide Registry of Motor Vehicles-related services at AAA locations in Massachusetts.

37.03: Scope

- (1) 940 CMR 37.00 applies only to the following, as defined in St. 2022, c. 81, § 7:
  - (a) any information provided by or relating to an applicant for a Massachusetts license under M.G.L. c. 90, § 8;
  - (b) any information provided by or relating to an applicant for a learner's permit under M.G.L. c. 90, § 8B;
  - (c) any information provided by or relating to the holder of a Massachusetts license issued under M.G.L. c. 90, § 8; and
  - (d) any information provided by or relating to the holder of a learner's permit issued under M.G.L. c. 90, § 8B.
- (2) Such information includes, but is not limited to, personally identifying information, documents, and communications between the applicant or holder of a Massachusetts license or learner's permit and the Registrar. Furthermore, such information includes, but is not limited to, failure to provide proof of lawful presence as defined in M.G.L. c. 90, § 1. For purposes of 940 CMR 37.00, "personally identifying information" shall include, but not be limited to, "personal information" and "highly restricted personal information" as those terms are defined in 18 U.S.C. § 2725.
- (3) The Registrar is authorized to disclose such information unless prohibited by 940 CMR 37.04 or federal law.
- (4) Nothing in 940 CMR 37.00 shall prohibit an individual, or their attorney, from obtaining a copy of their own records, provided they furnish the Registrar with sufficient documentation.

37.04: Requirements for Disclosure

(1) Any information or record disclosed pursuant to St. 2022, c. 81, § 7 may only be disclosed consistent with the Registrar's functions under federal and state law and not for the purpose of enforcing federal immigration law or provided to an agency that primarily enforces immigration law, unless the Registrar is provided with a lawful court order or judicial warrant signed by a judge appointed pursuant to Article III of the United States Constitution, a federal grand jury or trial subpoena, or as otherwise required by federal law. When responding to such an order, warrant, or subpoena, the Registrar may only disclose those records or information specifically requested in the order, warrant, or subpoena.

Upon the Registrar's receipt of a lawful court order, judicial warrant, or subpoena, the Registrar shall, prior to disclosing the records or information and no later than three business days after receipt of such request, make reasonable efforts to notify the individual about whom such information was requested, informing such individual of the request and the identity of the agency that made such request, unless disclosure would impede a criminal investigation.

(2) For purposes of 940 CMR 37.04, the term "agency that primarily enforces immigration law" shall include, but not be limited to, United States Immigration and Customs Enforcement and United States Customs and Border Protection, and any successor agencies having similar duties. Enforcing federal immigration law includes, but is not limited to, investigating for, participating in, cooperating with, or assisting in federal immigration enforcement, including enforcement of civil immigration laws and 8 U.S.C. §§ 1325 or 1326.

(3) Except as required by federal law and in the specific circumstances delineated in 940 CMR 37.04(3)(a) and (b), the Registrar shall under no circumstances disclose any documents used to prove identity, date of birth, social security status, or Massachusetts residency submitted with an application for either a Massachusetts license pursuant to M.G.L. c. 90, § 8 or a learner's permit pursuant to M.G.L. c. 90, § 8B, nor identify as part of any disclosure which such documents were submitted as part of any such application.

(a) Where the Registrar determines there are indicia of criminal fraud, the Registrar may disclose such documents or information to state or local law enforcement officials when needed to conduct a criminal investigation of said fraud.

(b) The Registrar may, pursuant to a memorandum of understanding under M.G.L. c. 51, § 42G½, disclose to the State Secretary such documents or information to the extent necessary to identify eligible voters.

(4) Except as required by federal law, or to local and state law enforcement where the Registrar determines there are indicia of criminal fraud, the Registrar shall under no circumstances disclose information pertaining to whether an Applicant has submitted a social security denial letter or affidavit of no social security number as part of their application for a Massachusetts license or a learner's permit, including any subsequent renewal application. Except as required by federal law, and in the specific circumstances delineated in 940 CMR 37.04(4)(a), (b) and (c), the Registrar shall under no circumstances disclose an Applicant's social security number, information pertaining to whether an Applicant has submitted a social security number, or information pertaining to or that otherwise may reveal whether an Applicant is eligible for a social security number.

(a) The Registrar may provide such information to state or local law enforcement where the Registrar determines there are indicia of criminal fraud.

(b) The Registrar may provide an individual's social security number to a state agency where the state agency has a legitimate state governmental purpose requiring use of that individual's social security number.

(c) The Registrar may provide an individual's social security number to the administrator of the Driver License Compact, entered into pursuant to M.G.L. c. 90, § 30B, including for use within the state-to-state verification system and any subsequent or similar multi-state data sharing program used in connection with matters related to motor vehicle or driver safety, or status of motor vehicle or driver credentials.

37.04: continued

(5) Except as specified in 940 CMR 37.04(7), (8), (9), (10), (11) and (13), the Registrar shall require any person or entity that receives or has access to records or information from the Registrar pursuant to 940 CMR 37.04, including through a database or automated network, to certify under penalty of perjury to the Registrar, before such receipt or access, and as a condition of renewal of any agreement for such receipt or access, that such person or entity shall not:

- (a) use or disclose such records or information for the purpose of enforcing federal immigration law; or
- (b) disclose such records or information to any agency that primarily enforces immigration law or to any employee or agent of any such agency, unless provided with a lawful court order or judicial warrant signed by a judge appointed pursuant to Article III of the United States Constitution, a federal grand jury or trial subpoena, or as otherwise required by federal law.

(6) Violation of 940 CMR 37.00, including the certification requirement of 940 CMR 37.04(5) and the written agreement requirements of 940 CMR 37.04(7) and (8) shall be unlawful. The Registrar shall immediately revoke access to information to any individual or entity that the Registrar has reason to believe has violated or will violate 940 CMR 37.00, including by violating agreements or certifications made pursuant to 940 CMR 37.04(5), (7) or (8).

(7) Notwithstanding 940 CMR 37.04(5)(b), the Registrar may disclose records and information to the Department of Criminal Justice Information Services and state and local law enforcement agencies pursuant to certifications from such entities that permit these entities to provide records or information to the United States Department of Homeland Security, Homeland Security Investigations (HSI), provided that HSI agrees in writing to use the information only to investigate alleged crimes and not to enforce civil immigration laws or 8 U.S.C. §§ 1325 and 1326, and that any such written agreement is provided to the Registrar and renewed at least annually.

(8) Notwithstanding 940 CMR 37.04(5)(b), the Registrar may disclose records and information to the Department of Criminal Justice Information Services and state and local law enforcement agencies pursuant to certifications from such entities that permit these entities to provide records or information to the United States Department of Homeland Security, Customs and Border Protection (CBP), provided that CBP agrees in writing to use the information only as necessary for an individual who is seeking acceptance into a trusted traveler program or trusted worker program, seeking to participate in CBP's employee and applicant suitability process, or seeking to obtain temporary and permanent waivers of inadmissibility, and not to enforce civil immigration laws or 8 U.S.C. §§ 1325 and 1326, and that any such written agreement is provided to the Registrar and renewed at least annually.

(9) Notwithstanding 940 CMR 37.04(5), if the Massachusetts Bay Transit Authority or any Massachusetts city or town fails to certify, the Registrar may provide an extension of 30 business days after the deadline before revoking access related to transit operations, traffic enforcement or tax collection purposes.

(10) Subject to the limitations set forth in 940 CMR 37.04(1), (3) and (4), the Registrar may provide Registry and Merit Rating Board records and information without the certification requirement contained in 940 CMR 37.04(5) to:

- (a) any Court, inclusive of its agents and employees, for the purpose of carrying out its functions;
- (b) any state Department of Motor Vehicles or state agency responsible for toll management, inclusive of their agents, for use in connection with matters relating to motor vehicle or driver safety, status of driver credentials, or the operation of toll transportation facilities; or
- (c) any individual who is conducting a motor vehicle transaction, including but not limited to a registration or a title transaction, and presents a completed application for such transaction, provided, however, that the individual presenting the completed application may not receive any personally identifiable information other than what is contained in the completed application. For the purpose of 940 CMR 37.04, a motor vehicle transaction does not include any commercial or passenger license or permit transactions.

37.04: continued

(11) The Registry may provide Registry and/or Merit Rating Board records or information without the certification requirement contained in 940 CMR 37.04(5) to the extent necessary to defend itself in litigation or respond to an appeal under M.G.L. c. 90, § 28 to a court or the Division of Insurance's Board of Appeal on Motor Vehicle Liability Policies and Bonds.

(12) Nothing in 940 CMR 37.00 shall be interpreted to authorize the designation as a public record of any information provided by or relating to:

- (a) the applicant for a Massachusetts license;
- (b) the applicant for a learner's permit;
- (c) the holder of a Massachusetts license; or
- (d) the holder of a learner's permit.

(13) Notwithstanding 940 CMR 37.04(12), the Registrar may release the following Registry and Merit Rating Board data as a public record, provided that all personal information and highly restricted personal information, as defined in 18 U.S.C. § 2725, and all information required to be shielded under M.G.L. c. 90, § 30, have been redacted;

- (a) vehicle information, such as vehicle inspection data, titles, VIN numbers, and license plate numbers, provided that the data does not, through ordinary means, identify a license or permit applicant, or a license or permit holder; and
- (b) documents provided to the Registrar by state or local government agencies, so long as these documents would have been considered public records before they were provided to the Registrar.

37.05: Severability

If any provision of 940 CMR 37.00 or the application of any provision of a regulation to any person or circumstance is held to be invalid, the validity of the remainder of 940 CMR 37.00 and the applicability of such provision to other persons or circumstances will not be affected.

REGULATORY AUTHORITY

940 CMR 37.00: St. 2022, c. 81, § 7.

