

## **Nursing Facility Direct Care Add-On Report: Update**

December 1, 2017

### **Summary**

The Massachusetts state fiscal year (SFY) 2017 budget, Chapter 133 of the Acts of 2016, line item 4000-0640, included an appropriation of \$35.5 million to fund a direct care add-on for nursing facilities. Specifically, the provision stated that *“not less than \$35,500,000 shall be expended to fund a rate-add on for wages, benefits, and related employee costs of direct care staff of nursing homes.”*

In January 2017, the Executive Office of Health and Human Services (EOHHS) submitted a report to the House and Senate Committees on Ways and Means outlining the approach for implementing the direct care add-on and the methodology that MassHealth intended to use to determine whether nursing facilities were spending add-on funds permissibly. In May 2017, EOHHS submitted a report to the House and Senate Committees on Ways and Means detailing interim filings to provide early indicators of the nursing facilities' compliance status with the direct care add-on requirement.

This report is a follow up to the May 2017 report, providing a further update on nursing facility compliance with the direct care add-on requirement to date. MassHealth has put in place policies and processes to ensure that direct care add-on funds are used for their intended purpose. MassHealth is tracking, auditing, and enforcing these requirements.

Nursing facilities were required to file final compliance reports with EOHHS by September 30, 2017 to document their use of direct care add-on funds for the FY17 year. As detailed below, of the 393 facilities required to file the final compliance reports,<sup>1</sup> 388 (99%) had filed final reports with the Commonwealth. Of these, 77% were in compliance, 9% were not in compliance and have 60 days from December 1<sup>st</sup>, 2017 to come into compliance, and 14% must provide additional information to demonstrate compliance. For the five nursing facilities that have failed to submit a final report, MassHealth is following up with them to ensure they come into compliance. For any nursing facility that fails to come into compliance by January 30<sup>th</sup>, 2018, MassHealth will recoup the add-on funds and impose penalties.

**This report describes the process for implementation of the direct care add-on, permissible uses of revenue, reporting requirements and compliance determination, and results from the final filing.**

### **Process for Implementation of the Direct Care Add-on**

Following the adoption of the SFY 2017 budget, EOHHS developed requirements for the use of the rate-add on and the related compliance criteria. In developing these requirements, EOHHS consulted with stakeholders, including representatives of the Massachusetts Senior Care Association and Leading Age Massachusetts, and the Service Employees International Union (SEIU). EOHHS reviewed prior administrative rules governing the use of funds and compliance tests for previous similar direct care add-on programs. EOHHS modeled the FY2017 compliance tests on the tests used for the 2003 program, with some modifications.

As a part of the 2017 nursing facility rates promulgated by regulation effective October 1, 2016, each facility was eligible to receive a rate which included a per-day direct care add-on. EOHHS also included an “annualization” adjustment to account for the time lag between the effective date of the state budget, July 1, 2016, and the effective date of the rates, October 1, 2016. The regulations, 101 CMR 206.06(13), established the method used to calculate the add-on revenue for each facility, specify the permissible uses

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<sup>1</sup> Twenty-two (22) facilities were exempted from filing because they did not have Medicaid days or otherwise did not receive add-on revenue.

of funds, and provide EOHHS the ability to recover unused or misused add-on revenue.

EOHHS also issued Administrative Bulletin 16-18 on November 7, 2016, which provided additional guidance to facilities regarding the compliance requirements, the penalty and recovery procedures, and reporting requirements (see Appendix 2). In early December 2016, EOHHS sponsored three training sessions for nursing facilities to educate them on the policy and reporting requirements, and to provide them with an opportunity to ask questions. These sessions were held in Boston, in Worcester, and via an online session. Following these sessions, EOHHS issued a Frequently Asked Questions (“FAQ”) document on February 13, 2017 to provide additional guidance to facilities (see Appendix 3).

### **Permissible Uses of Revenue**

Facilities were permitted to use the SFY 2017 direct care add-on revenue to pay bonuses, to increase wages and benefits, or to fund overtime pay or other benefits for eligible staff. Facility spending in the form of raises and benefit increases is deemed to be compliant if provided between July 1, 2016 and June 30, 2017. Facilities were permitted to issue bonuses through September 30, 2017 to enable them to reconcile their spending with actual funds received once the fiscal year had concluded. In order to be in compliance with MassHealth policy, facilities were required to spend all direct care add-on revenue on any of the following staff positions:

- Registered Nurses (RNs)
- Licensed Practical Nurses (LPNs)
- Certified Nursing Assistants (CNAs)
- Dietary Aides
- Housekeeping Aides
- Laundry Aides
- Activities Staff
- Social Workers

### **Reporting Requirements and Compliance Determination**

To ensure that nursing facilities were spending the direct care add-on revenue in accordance with EOHHS requirements, EOHHS required facilities to file both an interim and final compliance report. The reports required each facility to indicate the criteria they used to spend the direct care add-on revenue and to provide detailed spending data. EOHHS contracted with UMass Medical School to create a web-based electronic submission form to streamline and accelerate the collection and analysis of this information.

Using the data provided on the final compliance form, EOHHS determined the amount of spending that counted toward compliance, based on the sum of:

- The total amount paid by the facility in bonuses to eligible staff between July 1, 2016 and September 30, 2017; and
- The amount of increased spending in eligible staff wages, benefits, and overtime pay per hour between the base period of January 1, 2016 through June 30, 2016 and the rate period of July 1, 2016 through June 30, 2017.

The base period was selected because it is the six month period immediately preceding the effective date of the state budget. The rate period is SFY 2017, during which time the funds were available for facilities to spend. The impact of the add-on initiative was determined by comparing the direct care hourly rate during the base period and rate period. The amount of increased spending was determined by multiplying the difference in the direct care hourly rates for the rate and base periods by the number of direct care hours in the rate period. Bonuses were then added to the hourly spending amount to show the total amount of SFY 2017 direct care add-on spending by the facility. This total allowed spending was then compared to the

amount of SFY 2017 direct care add-on revenue received in order to determine if the facility complied with EOHHS policy in spending the entire amount of add-on funds.

All facilities that received SFY 2017 direct care add-on funds were required to submit an interim compliance form to provide EOHHS with interim data on the use of the direct care add-on revenue and to provide facilities with a preliminary assessment of their compliance status. Facilities that had not spent all of their revenue received as of the date of the interim form were not penalized, but were required to provide EOHHS with a spending plan to ensure full compliance, such as plans for bonuses or wage increases.

The final compliance form was due September 30, 2017. EOHHS contracted with UMass Medical School to review and analyze all data received from the interim and final compliance forms.

## Results from Final Filing

Of the 388 facilities that filed these reports:

- EOHHS has determined that approximately **300<sup>2</sup> are in compliance with the add-on requirement**, meaning that the entire amount of add-on funds the facility received was spent to pay bonuses, to increase wages and benefits, or to provide other rewards to the direct care staff.
  - The average bonus payment made by compliant facilities was \$268 per employee. The average wage increase provided by compliant facilities was \$1.23 per hour.
- EOHHS has determined that approximately **35<sup>3</sup> facilities were not in full compliance with the add-on requirement**.
  - This means that they did not spend the entire amount of SFY 2017 direct care add-on revenue they received to pay bonuses, to increase wages and benefits, or to provide other rewards to the direct care staff.
  - EOHHS has notified these facilities that, as detailed in Administrative Bulletin 16-18 (see Appendix 2), they may remedy their non-compliant status by paying a one-time bonus to direct care staff. The bonuses must be paid as an amount equal to the difference between their SFY 2017 direct care add-on revenue and their reported SFY 2017 direct care add-on spending. The bonuses must be paid within 60 days of the date of notification, which was dated November 30, 2017.
  - MassHealth will continue to monitor these 35 nursing facilities to ensure that they come into full compliance.
- **53 facilities submitted data that was not sufficient for EOHHS to determine whether facilities were in full compliance.** EOHHS has requested and received the necessary additional data from those facilities. These submissions are still under review.

In order to assure the accuracy of the reported use of the funds, EOHHS will conduct desk audits of approximately 20-30 facilities that passed the compliance test based on their final data submitted through the compliance form. These audits will be completed by spring 2018.

Any facility that fails to pass the desk audit may remedy its non-compliant status, as detailed in Administrative Bulletin 16-18 (see Appendix 2), by paying a one-time bonus to direct care staff in an amount equal to the difference between its SFY 2017 direct care add-on revenue and its SFY 2017 direct care add-on spending within 60 days of the date of notification of non-compliance.

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<sup>2</sup> As of November 22, 2017. The final count of compliant facilities will be dependent on the results of: (1) desk audits for selected facilities; and (2) review of additional data requested by EOHHS from facilities whose final compliance form data was incomplete and/or inconsistent.

<sup>3</sup> As of November 22, 2017.

Any facility that has not spent the entirety of its SFY 2017 direct care add-on revenue will be subject to a recoupment by MassHealth of any unspent funds as well as a 25% penalty. Final information detailing which facilities have (1) complied, (2) not complied, (3) been audited, and (4) are subject to recoupment and a 25% penalty will be available in May 2018, at which time, EOHHS will provide an updated final SFY 2017 direct care payment report to the House and Senate Committees on Ways and Means.

The following tables summarize the results of the final filing. These tables represent data from the 388 facilities that filed the final compliance form, including the 53 reports that are still under review by MassHealth. Five facilities did not submit the final compliance form; these are noted in Appendix 1.

Outliers have been removed from table calculations as appropriate.

**Table 1. Skilled Nursing Facility (SNF) Reporting Table**

	# SNFs
<b>Total number of SNFs required to file report</b>	393
Total SNFs that filed final reports	388
Total SNFs that did not file	5

**Table 2. Average Add-on revenue received by SNFs**

Item	Value
Average add-on revenue	\$87,741

**Table 3. Number of Facilities that used each spending method by job title\***

Job title	# SNFs that gave bonus(es) to employees	# SNFs that increased hourly wage amounts	# SNFs that increased spending on benefits	# SNFs that used other spending methods
<b>RNs</b>	122	351	158	10
<b>LPNs</b>	127	353	159	10
<b>CNAs</b>	136	360	168	12
<b>Dietary Aides</b>	98	316	148	9
<b>Housekeeping Aides</b>	42	179	76	5
<b>Laundry aides</b>	40	178	78	4
<b>Activities staff</b>	100	316	143	10
<b>Social workers</b>	75	288	130	10

\*If a facility used more than one spending method for a job title, then it is counted in each appropriate cell.

**Table 4. Summary of Other methods:**

Other uses	# SNFs
Opted out of State Unemployment Program for a Self-Insured Plan option available to Non-Profits	1
Added an additional FTE to social service department*	1
Shift differential	3
Gift Cards	4
Other	1
<b>Grand Total</b>	<b>10</b>

\*Note, although new staff can be hired, unless they are paid at a higher rate the average salary will not increase; hiring new staff is not the intended use of add-on funds and is therefore not deemed a permissible use of funds.

**Table 5. Average bonus per FTE for each job title**

	Average bonus per FTE	Average # FTEs receiving bonus	Average # employees receiving bonus
RNs	\$866	7	10
LPNs	\$1,112	12	17
CNAs	\$747	35	45
Dietary Aides	\$481	5	7
Housekeeping Aides	\$168	2	2
Laundry aides	\$181	1	1
Activities staff	\$385	2	3
Social workers	\$489	1	1

**Table 6. Criteria used to award bonuses**

Criteria	# SNFs	\$ average bonus per FTE*
Paid to all eligible employees	63	\$791
Paid to employees based months/years of service	35	\$918
Paid as performance bonus	52	\$1,123
Paid to certain job titles	27	\$1,219
Other**	25	\$950

\*If a facility used more than one criterion, its bonus amounts will be reflected in the averages for each of those criteria.

\*\*Facilities that selected "other" were required to provide the specific use in a text field box provided within the webform; reasons listed included covering open shifts, sign-on bonuses, and hours worked during the fiscal year.

**Table 7. Average and Median Spending**

Type of spending	Average	Median
Hourly wage increase	\$1.23	\$0.89*
Bonus per employee	\$268	\$143

\* Excluding outliers

**Appendix 1: List of non-filers as of November 22, 2017**

The following facilities registered for the web form but did not file a final compliance report. These facilities were notified that they have 60 days from December 1, 2017 to issue bonuses to eligible employees for the entire amount of their SFY 2017 direct care add-on revenue in order to remedy their non-compliant status. If a facility does not issue a bonus after 60 days, MassHealth will recoup its entire SFY 2017 direct care add-on revenue amount, plus a penalty of 25%.

<b>Non-filing Nursing Facilities</b>
BROCKTON HEALTH CENTER
DEN-MAR HEALTH & REHABILITATIO
QUINCY HEALTH & REHAB CTR
WALDEN HEALTH & REHAB CTR
WHITTIER WESTBOROUGH TRANSITIONAL CARE UNIT

**Appendix 2 (attached): Administrative Bulletin 16-18 (101 CMR 206.00: Standard Payments to Nursing Facilities: Nursing Facility Direct Care Add-On)**

**Appendix 3 (attached): Nursing Facility Direct Care Add-on Program Final Filing Frequently Asked Questions (FAQ)**