

Questions and Answers about the Proposed Enhanced Supplemental Payments

On August 7, 2010, the Department published a notice in the Pennsylvania Bulletin announcing its intent to offer an Enhanced Supplemental Payment (ESP) to qualified nonpublic Medical Assistance (MA) nursing facility providers. This document provides additional detail about which nursing facilities will qualify for these payments, what they will need to do to receive the payments and how the payments will be calculated and paid.

Payment of the ESP is contingent upon the qualified nursing facilities' signed agreement accepting the terms and conditions for receipt of the ESP.

Will my nursing facility qualify for the ESP?

To qualify for the ESP, a nursing facility must meet all of the following criteria:

1. Be a nursing facility as defined in 55 Pa. Code Chapter 1187, §1187.2 (relating to definitions).
2. Have reported PA MA Days to the Department for the 2008-2009 assessment period (July 1, 2008 to June 30, 2009) or the 2009-2010 assessment period (July 1, 2009 to June 30, 2010).
3. Be enrolled in the MA Program as a provider of nursing facility services on the date the ESP is made.

I think my nursing facility will meet these qualifications. Will I need to do anything to receive an ESP?

Yes. The Department is offering the ESP to qualified nursing facilities. To accept that offer and receive the payment, the nursing facility must agree in writing to certain conditions by signing and submitting an "ENHANCED SUPPLEMENTAL PAYMENTS CERTIFICATION AND SETTLEMENT AGREEMENT" form and an "ATTESTATION OF AUTHORITY TO BIND THE PROVIDER" form. By signing and submitting the forms, the qualified nursing facility is agreeing that, in return for the ESP:

- The qualified nursing facility will authorize the Department to withdraw all pending appeals, claims, actions, or other proceedings brought before the Bureau of Hearings and Appeals (BHA) that challenge its Case Mix Reimbursement for FY 08-09 or FY 09-10.
- The qualified nursing facility will withdraw all pending appeals, claims, actions or other proceedings before any administrative tribunal other than BHA or any judicial tribunal that challenge its Case Mix Reimbursement for FYE 08-09 or FY 09-10.
- It will not file or remain or become a party to any appeals, claims, actions, or proceedings that challenge its Case Mix Reimbursement for FY 08-09, FY 09-10 or FY 10 -11.

- It will not participate in or receive any benefit which may result from any litigation which has been or may be brought against the Commonwealth, the Department and their employees, agents and representatives to contest the adequacy and reasonableness of the case-mix per diem rates established for nonpublic nursing facilities for FY 08-09, FY 09-10 or FY 10 -11.
- If it is affiliated or associated with, or related to, one or more other nursing facilities that also qualify for an ESP, it must agree that it will not receive an ESP unless and until all such affiliated, associated and related facilities also agree to accept the ESP and agree in writing by signing and submitting an ENHANCED SUPPLEMENTAL PAYMENTS CERTIFICATION AND SETTLEMENT AGREEMENT form and an ATTESTATION OF AUTHORITY TO BIND THE PROVIDER form.

What is the deadline for submission of the ESP Certification & Settlement Form?

We must receive your completed and signed “Enhanced Supplemental Payment Certification and Settlement Agreement” form and “Attestation of Authority to Bind the Provider” form no later than 15 days from the date of our cover letter sending you these documents.

What do you mean by Case Mix Reimbursement?

When we use the term “Case Mix Reimbursement” for a fiscal year, we mean the facility’s peer group prices and per diem rates for that fiscal year, the facility’s Total Facility and MA CMIs that were used in computing those peer group prices and per diem rates, any audits of the facility’s cost reports that were used to establish its per diem rates for the fiscal year and which will not be used for rate setting purposes in fiscal years on or after FY 11-12, and the amounts paid to the facility for nursing facility services provided to MA recipients in the fiscal year.

What if my audits will continue to be used in setting rates for FY 11-12 or beyond?

If an audit report will be used for setting rates for FY 11-12 or beyond, and you have filed a timely appeal from that audit report, you will **not** be required to withdraw your appeal in order to accept the ESP. However, acceptance of the ESP will require that you relinquish any claim involving the effect of the audit report on Case Mix Reimbursement for any rate year from FY 08-09 through FY 10-11. Therefore, any changes to the audit as a result of the adjudication of your appeal or a separate settlement of your appeal will only affect your rates for FY 11-12 and beyond.

What about 180-Day exception requests?

If you accept the ESP, you will still be permitted to submit 180-day exception requests in accordance with 55 Pa. Code 1101.68 and to file appeals contesting the denials of those requests.

How will my ES Payment be computed and paid?

Your facility’s total ESP will depend on its particular circumstances.

The Department will use its best efforts to authorize the ES Payment to a qualified nursing facility within twenty (20) days of the date of the Bureau of Hearings and Appeals' Order that adopts the Providers' Certification and Settlement Agreement.

The ESPs will be calculated taking into account the enhanced FMAP in place during the first calendar quarter of 2011. Otherwise, the ESPs will be calculated based upon the FMAP rate in effect at the time payments of the ESPs are made. Below, we identify the 2 portions of the ESP payments

First Portion of the ES Payment The first portion of the ESP payment will consist of four components: an MA Occupancy Component; an MA CMI Component; a Rate Differential Adjustment (RDA) Component; and an MA Day Component. The PA MA Days and total resident days used in computing this installment will be those days reported for the 2008-2009 assessment period (July 1, 2008 to June 30, 2009) by July 1, 2010. If a qualified facility's reported PA MA Days or total resident days for this assessment period were adjusted by the Department prior to July 1, 2010, the adjusted days will be used in calculating the ESP portion.

MA Occupancy Component:

To receive the MA Occupancy Component, your facility must be a qualified nursing facility and have an annual overall occupancy percentage of at least 80% and an MA occupancy percentage of at least 65%. For purposes of calculating this Component, we will divide the facility's total resident days for the 2008-2009 assessment period by its total available bed days (i.e. the number of the facility's licensed nursing facility beds on June 30, 2009 multiplied by 365) to determine your facility's annual overall occupancy percentage. We will divide the facility's total PA MA Days by its total resident days for the 2008-2009 assessment period to determine its MA occupancy percentage. Finally we will multiply the facility's PA MA Days by the facility's MA occupancy percentage to determine the facility's Qualified MA Days.

The Department will allocate \$4,812,500 in state funds for the MA Occupancy Component. The Department will divide the total federal and state funds available for this Component by the sum of the Qualified MA Days for all qualified nursing facilities eligible to receive this Component to determine the MA Occupancy Component Rate.

Your facility's MA Occupancy Component will equal its total Qualified MA Days times the MA Occupancy Component Rate. If the Department receives the executed Agreement, Attestation and the Bureau of Hearings and Appeals' Order that adopts the Providers' Certification and Settlement Agreement in sufficient time to allow the Department to make the ESPs prior to April 1, 2011, the MA Occupancy Component Rate at the enhanced FMAP will be \$1.75. Otherwise, the MA Occupancy Component Rate will be less.

MA CMI Component:

To receive an MA CMI Component, your facility must be a qualified nursing facility and its February 1, 2008 MA CMI must be equal to or greater than 1.44.¹ For purposes of calculating this Component, we will determine your facility's Qualified MA Days as follows: If your facility's February 1, 2008 MA CMI equals or exceeds 1.74,² its Qualified MA Days will equal its total number of PA MA Days for the 2008-2009 assessment period. If your facility's February 1, 2008 MA CMI is at least 1.44 but less than 1.74, we will calculate your facility's Qualified MA Days by multiplying the facility's PA MA Days for the 2008-2009 assessment period by the difference between the facility's MA CMI and 1.12³ and then dividing the result by .62⁴

The Department will allocate \$3,062,500 in state funds for the MA CMI Component. The Department will divide the total federal and state funds available for this Component by the sum of the Qualified MA Days for all qualified nursing facilities eligible to receive this Component to determine the MA CMI Component Rate.

Your facility's MA CMI Component will equal its Qualified MA Days times the MA CMI Component Rate. If the Department receives the executed Agreement, Attestation and the Bureau of Hearings and Appeals' Order that adopts the Providers' Certification and Settlement Agreement in sufficient time to allow the Department to make the ESPs prior to April 1, 2011,, the MA CMI Component Rate at the enhanced FMAP will be \$1.45. Otherwise, the MA CMI Component Rate will be less.

RDA Component:

To receive an RDA Component, your facility must be a qualified nursing facility and its April 1, 2009 case-mix rate must be higher than its July 1, 2009 case-mix rate and its November 1, 2008 MA CMI must be equal to or less than its February 1, 2009 MA CMI. If your facility satisfies these conditions, the Department will multiply your facility's PA MA Days times the lesser of \$8.00 or the difference between your facility's April 1, 2009 and July 1, 2009 case-mix rates to determine your facility's Rate Differential. The Department will then sum the Rate Differentials for all qualified nursing facilities that satisfy the conditions for this Component to determine the Total Component Rate Differential.

The Department will allocate \$1,750,000 in state funds for the RDA Component. The Department will determine an RDA Factor by dividing the total federal and state dollars available for this Component by the Total Component Rate Differential.

¹ The statewide average February 1, 2008 MA CMI for all nonpublic nursing facilities.

² The MA CMI value of the 95th percentile of all nonpublic nursing facilities participating in the MA Program.

³ The MA CMI value of the 5th percentile of all nonpublic nursing facilities participating in the MA Program.

⁴ The difference between the 95th percentile and the 5th percentile MA CMI value of all nonpublic nursing facilities participating in the MA Program.

Your facility's RDA Component will equal the facility's Rate Differential times the RDA Factor. If the Department receives the executed Agreement, Attestation and the Bureau of Hearings and Appeals' Order that adopts the Providers' Certification and Settlement Agreement in sufficient time to allow the Department to make the ESPs prior to April 1, 2011, the RDA Factor at the enhanced FMAP will be 0.5904. Otherwise, the RDA Factor will be less.

MA Day Component:

To qualify for an MA Day Component, your facility must be a qualified nursing facility and must have one or more PA MA Days for the 2008-2009 assessment period.

The Department will allocate \$4,375,000 in state funds for the MA Day Component. The Department will divide the total federal and state funds available for this Component by the sum of the PA MA Days of all qualified nursing facilities eligible to receive this Component to determine the MA Day Component Rate.

Your facility's MA Day Component will equal its total PA MA Days times the MA Day Component Rate. If the Department receives the executed Agreement, Attestation and the Bureau of Hearings and Appeals' Order that adopts the Providers' Certification and Settlement Agreement in sufficient time to allow the Department to make the ESPs prior to April 1, 2011, the MA Day Component Rate, at the enhanced FMAP, will be \$0.76. Otherwise, the MA Day Component Rate will be less.

Second Portion of the ES Payment

The second ESP portion will consist of three components: an MA Occupancy Component; an MA CMI Component; and an MA Day Component. The PA MA Days and total resident days used in computing this installment will be those days reported for the 2009-2010 assessment period (July 1, 2009 to June 30, 2010) by July 1, 2010. If a qualified facility's reported PA MA Days or total resident days for this assessment period were adjusted by the Department prior to July 1, 2010, the adjusted days will be used in calculating the ESP installment.

MA Occupancy Component:

To receive the MA Occupancy Component, your facility must be a qualified nursing facility and must have an annual overall occupancy percentage of at least 80% and an MA occupancy percentage of at least 65%. For purposes of calculating this Component, we will divide the facility's total resident days for the 2009-2010 assessment period by its total available bed days (i.e. the number of the facility's licensed nursing beds on June 30, 2010 multiplied by 365) to determine your facility's annual overall occupancy percentage. We will divide the facility's total PA MA Days by its total resident days for the 2009-2010 assessment period to determine its MA occupancy percentage. Finally we will multiply the facility's PA MA Days by the facility's MA occupancy percentage to determine the facility's Qualified MA Days.

The Department will allocate \$3,125,000 in state funds for the MA Occupancy Component. The Department will divide the total federal and state funds available for this Component by the sum of the Qualified MA Days for all qualified nursing facilities eligible to receive this Component to determine the MA Occupancy Component Rate.

Your facility's MA Occupancy Component will equal its Qualified MA Days times the MA Occupancy Component Rate. If the Department receives the executed Agreement, Attestation and the Bureau of Hearings and Appeals' Order that adopts the Providers' Certification and Settlement Agreement in sufficient time to allow the Department to make the ESPs prior to April 1, 2011, the MA Occupancy Component Rate at the enhanced FMAP will be \$1.07. Otherwise, the MA Occupancy Component Rate will be less.

MA CMI Component:

To receive an MA CMI Component, your facility must be a qualified nursing facility and its February 1, 2009 MA CMI must be equal to or greater 1.50.⁵ If your facility's February 1, 2009 MA CMI equals or exceeds 1.82,⁶ its Qualified MA Days will equal the facility's total number of PA MA Days for the 2009-2010 assessment period. If the facility's February 1, 2009 MA CMI is at least 1.50 but less than 1.82, we will calculate your facility's Qualified MA Days by multiplying the facility's total PA MA Days for the 2009-2010 assessment period by the difference between the facility's MA CMI and 1.155⁷ and then dividing the result by .665⁸

The Department will allocate \$1,750,000 in state funds for the MA CMI Component. The Department will divide the total federal and state funds available for this Component by the sum of the Qualified MA Days for all qualified nursing facilities eligible to receive this Component to determine the MA CMI Component Rate.

Your facility's MA CMI Component will equal the facility's total Qualified MA Days times the MA CMI Component Rate. If the Department receives the executed Agreement, Attestation and the Bureau of Hearings and Appeals' Order that adopts the Providers' Certification and Settlement Agreement in sufficient time to allow the Department to make the ESPs prior to April 1, 2011, the MA CMI Component Rate at the enhanced FMAP will be \$0.83. Otherwise, the MA CMI Component Rate will be less.

MA Day Component:

To receive an MA Day Component, your facility must be a qualified nursing facility and must have one or more PA MA Days for the 2009-2010 assessment period.

The Department will allocate \$3,125,000 in state funds for the MA Day Component. The Department will divide the total federal and state funds available for this Component by the sum of the PA MA Days of all qualified nursing facilities eligible to receive this Component to determine the MA Day Component Rate.

⁵ The statewide average February 1, 2009 MA CMI for all nonpublic nursing facilities.

⁶ The MA CMI value of the 95th percentile of all nonpublic nursing facilities participating in the MA Program.

⁷ The MA CMI value of the 5th percentile of all nonpublic nursing facilities participating in the MA Program.

⁸ The difference between the 95th and the 5th percentile MA CMI value of all nonpublic nursing facilities participating in the MA Program.

Your facility's MA Day Component will equal its total PA MA Days times the MA Day Component Rate. If the Department receives the executed Agreement, Attestation and the Bureau of Hearings and Appeals' Order that adopts the Providers' Certification and Settlement Agreement in sufficient time to allow the Department to make the ESPs prior to April 1, 2011, the MA Day Component Rate at the enhanced FMAP will be \$0.54. Otherwise, the MA Day Component Rate will be less.

How did the Department come up with these formulas?

OLTL staff worked with representatives of PHCA and PANPHA to develop the formulas. As we stated in the public notice, the formulas were designed to provide nonpublic nursing facilities that serve a disproportionate number of MA residents or serve MA residents with high care needs, or both, the opportunity to receive enhanced MA Program funding.

What happens if I sell or purchase a nursing facility that qualifies for an ES Payment?

A qualified nursing facility that undergoes a change of ownership will still be eligible to receive an ESP so long as it otherwise meets the qualifications specified above and it has signed and submitted an ESP Certification & Settlement Form. The ESP will be made to the legal entity of the nursing facility on the date the payment is processed.

A county nursing facility that undergoes a change of ownership that results in the facility meeting the definition of a nursing facility as defined in 55 Pa. Code § 1187.2 (relating to definitions) – i.e., privatizes - will be eligible to receive an ESP as long as the facility meets all applicable qualifying criteria. Only those days for which the facility meets the § 1187.2 definition of nursing facility will be used to calculate the ESP. To determine the facility's PA MA Days, total resident days and total available bed days, the Department will assume the days were accumulated equally over the course of an assessment quarter and allocate the days in the assessment quarter based on the days before and after the effective date of the change of ownership.

How can I learn what my ES Payment will be?

We will send you a letter with the ***ESP Certification & Settlement Form*** for your nursing facility. That form will specify the total ESP for your facility.

When can I expect to receive my ES Payment?

Payment of the ESP is contingent upon and will not be made until you complete and submit a signed ESP Certification & Settlement Form accepting the terms and conditions for receipt of the ESP and the Department receives the Bureau of Hearings and Appeals' Order that adopts the Providers' Certification and Settlement Agreement.

The Department will use its best efforts to authorize payment to qualified nursing facilities that have submitted the ESP Certification & Settlement Form within twenty (20) days of the date of the Bureau of Hearings and Appeals' Order that adopts the Certification & Settlement Agreement.