

**THOUGHT LEADERSHIP**

LEGAL UPDATES

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Industry

Healthcare

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# Temporary Emergency Rate Increases for the Nursing Facility Program (Attestation Form)

On June 24, 2020, Texas Health and Human Services Commission (HHSC) published guidance, in the form of an information letter, to Nursing Facility (NFs) Providers (“Providers”), detailing the approval of Temporary Emergency Rate Increases (“Increased Rates”) as a result of the COVID-19 Pandemic. The Increased Rates will be effective retroactive to April 1, 2020, and will terminate at the end of the federally declared public health emergency, including any extensions, or at the time that HHSC determines the Increased Rates are no longer necessary. These Increased Rates will be paid in the form of add-on payments to applicable service Providers’ current rates. Providers should continue to bill their current services using their normal billing process as the electronic payment system was updated with the new rates on June 19, 2020.

As established in HHSC’s Emergency Rules related to Increased Rates, Providers may use the additional funding for COVID-related expenses; including direct care staff salary and wages, personal protective equipment (PPE), and dietary needs/supplies. In order to receive and retain the Increased Rates, the Provider must agree not to increase hourly wages paid to direct care staff on an ongoing basis, if those hourly wages will be reduced once the Increased Rates are discontinued. The funds used for staff compensation may be used to pay overtime to direct care staff, pay lump sum bonuses, pay bonuses for hazard pay, or other types of compensation that will not result in future reductions to hourly wages when the Increased Rates are discontinued.

**In order to retain the Increased Rates, the Providers must submit an electronic attestation of agreement, certifying that they will use the funds only in the manner prescribed above.** The electronic

attestation must be submitted no later than September 30, 2020, but Providers are encouraged to complete the attestation as soon as possible so as to not inadvertently overlook the requirement and fail to submit.

If a Provider fails to submit the attestation agreement, HHSC will recoup the add-on payments paid under these Increased Rates. To do so:

1. HHSC will reduce the Provider's reimbursement rates for any claim for services to the amount that would have been paid to the Provider absent the Increased Rates;
2. The Provider's claims will be reprocessed at the lower reimbursement rate and an accounts receivable will be established;
3. The Provider will be paid on a normal per claim basis after the equivalent amount of the account receivable has been collected by HHSC, or its designee; and then
4. After 270 days from the date of the establishment of the account receivable, HHSC will recoup any overpayments owed by virtue of the Increased Rates by demanding immediate repayment of any outstanding amount.

Furthermore, payments made under the Increased Rates may be subject to an adjustment for payments made in error or due to fraud. HHSC may recoup an amount equal to any such adjustments from the Providers in question.

Importantly, these rate add-ons have yet to be approved by The Centers for Medicare & Medicaid Services (CMS). If CMS were to disallow any payments under the Increased Rates, HHSC may recoup the amount of the disallowance from Providers that participated in the program associated with the disallowance. If the recoupment from a Provider for such a disallowance results in a subsequent disallowance, HHSC will recoup the amount of that subsequent disallowance from the same entity. HHSC will continue to enforce the reconciliation and recoupment processes after the termination of the temporary emergency rate increases.

## **Contact us**

For more information on this order or other Texas orders or regulations regarding COVID-19, please contact Joseph Geraci, Eric Weatherford, Michael Crowe, Mark Chouteau or your Husch Blackwell attorney.