EMERGENCY AMENDMENT

13 CSR 70-10.016 Global Per Diem Adjustments to Nursing Facility and HIV Nursing Facility Reimbursement Rates. The division is adding paragraph (3)(A)24.

PURPOSE: This amendment provides for a per diem increase to nursing facility and HIV nursing facility per diem reimbursement rates of one dollar and sixty-one cents ($1.61) effective for dates of service August 1, 2019 through June 30, 2020. The per diem increase shall be reduced to one dollar and forty-nine cents ($1.49) effective for dates of service beginning July 1, 2020. These per diem adjustments correspond to the state fiscal year (SFY) 2020 appropriations for nursing facilities and are contingent upon approval by the Centers for Medicare and Medicaid Services (CMS).

EMERGENCY STATEMENT: The Department of Social Services, MO HealthNet Division, by rule and regulation, must define the reasonable costs, manner, extent, quantity, quality, charges, and fees of medical assistance provided to MO HealthNet participants. The General Assembly included additional funds to nursing facilities’ and HIV nursing facilities’ reimbursements to account for a trend adjustment for State Fiscal Year (SFY) 2020. The MO HealthNet Division is carrying out the General Assembly’s intent by providing for a per diem increase to nursing facility and HIV nursing facility reimbursement rates by implementing a trend adjustment of one dollar and sixty-one cents ($1.61) effective for dates of service beginning August 1, 2019 through June 30, 2020. The per diem increase shall be reduced to one dollar and forty-nine cents ($1.49) effective for dates of service beginning July 1, 2020. The trend adjustment is necessary to ensure that payments for nursing facility and HIV nursing facility per diem rates are in line with the funds appropriated for that purpose. There are a total of five hundred ten (510) nursing facilities and HIV nursing facilities currently enrolled in MO HealthNet that will receive a per diem increase to its reimbursement rate effective for dates of service beginning August 1, 2019. This emergency amendment will ensure payment for nursing facility and HIV nursing facility services to approximately twenty-four thousand (24,000) MO HealthNet participants in accordance with the appropriation authority. For the SFY 2020 payment to be made, the MO HealthNet Division was required to submit a Medicaid State Plan Amendment (SPA) to the Centers for Medicare and Medicaid Services (CMS). CMS approved the SPA on December 24, 2019. This emergency amendment is necessary to protect the public health and welfare of MO HealthNet participants in nursing facilities and HIV nursing facilities. This emergency amendment is necessary to protect a government interest to reimburse nursing facilities and HIV nursing facilities as required by the General Assembly, and to provide MO HealthNet participants with quality nursing facility services. As a result, the MO HealthNet Division finds an immediate danger to public health, safety, and/or welfare and a compelling governmental interest, which requires emergency action. The MO HealthNet Division has a compelling government interest in providing continued cash flow for nursing facility and HIV nursing facility services. The scope of this emergency amendment is limited to the circumstances creating the emergency and complies with the protections extended by the Missouri and United States Constitutions. The MO HealthNet Division believes this emergency amendment is fair to all interested persons and parties under the circumstances. This emergency amendment was filed January 16, 2020, becomes effective January 31, 2020, and expires July 28, 2020.
B. Facilities that were granted a prospective rate based on paragraph (12)(A)2. of 13 CSR 70-10.015 that is in effect on October 1, 1995, shall have their increase determined by subsection (3)(S) of 13 CSR 70-10.015.

7. FY-99 negotiated trend factor—
A. Facilities with either an interim rate or prospective rate in effect on October 1, 1998, shall be granted an increase to their per diem rate effective October 1, 1998, of two and one-tenth percent (2.1%) of the cost determined in subsections (11)(A), (11)(B), (11)(C), the property insurance and property taxes detailed in subsection (11)(D) of 13 CSR 70-10.015 for nursing facilities and 13 CSR 70-10.080 for HIV nursing facilities, and the minimum wage adjustments detailed in paragraphs (3)(A)4, and (3)(A)5. of this regulation; or

B. Facilities that were granted a prospective rate based on paragraph (12)(A)2. of 13 CSR 70-10.015 that is in effect on October 1, 1998, shall have their increase determined by subsection (3)(S) of 13 CSR 70-10.015.

8. FY-2000 negotiated trend factor—
A. Facilities with either an interim rate or prospective rate in effect on July 1, 1999, shall be granted an increase to their per diem rate effective July 1, 1999, of one and ninety-four hundredths percent (1.94%) of the cost determined in subsections (11)(A), (11)(B), (11)(C), the property insurance and property taxes detailed in subsection (11)(D) of 13 CSR 70-10.015 for nursing facilities and 13 CSR 70-10.080 for HIV nursing facilities, and the minimum wage adjustments detailed in paragraphs (3)(A)4, and (3)(A)5. of this regulation; or

B. Facilities that were granted a prospective rate based on paragraph (12)(A)2. of 13 CSR 70-10.015 that is in effect on July 1, 1999, shall have their increase determined by subsection (3)(S) of 13 CSR 70-10.015.

9. FY-2004 nursing facility operations adjustment—
A. Facilities with either an interim rate or prospective rate in effect on July 1, 2003, shall be granted an increase to their per diem rate effective for dates of service beginning July 1, 2003, through June 30, 2004, of four dollars and thirty-two cents ($4.32) for the cost of nursing facility operations. Effective for dates of service beginning July 1, 2004, the per diem adjustment shall be reduced to three dollars and seventy-eight cents ($3.78); and

B. The operations adjustment shall be added to the facility’s current rate as of June 30, 2003, and is effective for payment dates after August 1, 2003.

10. FY-2007 quality improvement adjustment—
A. Facilities with either an interim rate or prospective rate in effect on July 1, 2006, shall be granted an increase to their per diem rate effective for dates of service beginning July 1, 2006, of three dollars and seventeen cents ($3.17) to improve the quality of life for nursing facility residents; and

B. The quality improvement adjustment shall be added to the facility’s current rate as of June 30, 2006, and is effective for dates of service beginning July 1, 2006, and after.

11. FY-2007 trend adjustment—
A. Facilities with either an interim rate or a prospective rate in effect on February 1, 2007, shall be granted an increase to their per diem rate effective for dates of service beginning February 1, 2007, of three dollars and zero cents ($3.00) to allow for a trend adjustment to ensure quality nursing facility services; and

B. The trend adjustment shall be added to the facility’s reimbursement rate as of January 31, 2007, and is effective for dates of service beginning February 1, 2007, for payment dates after March 1, 2007.

12. FY-2008 trend adjustment—
A. Facilities with either an interim rate or a prospective rate in effect on July 1, 2007, shall be granted an increase to their per diem rate effective for dates of service beginning July 1, 2007, of six dollars and zero cents ($6.00) to allow for a trend adjustment to ensure quality nursing facility services; and

B. The trend adjustment shall be added to the facility’s current rate as of June 30, 2007, and is effective for dates of service beginning July 1, 2007.

13. FY-2009 trend adjustment—
A. Facilities with either an interim rate or a prospective rate in effect on July 1, 2008, shall be granted an increase to their per diem rate effective for dates of service beginning July 1, 2008, of six dollars and zero cents ($6.00) to allow for a trend adjustment to ensure quality nursing facility services; and

B. The trend adjustment shall be added to the facility’s current rate as of June 30, 2008, and is effective for dates of service beginning July 1, 2008.

14. FY-2010 trend adjustment—
A. Facilities with either an interim rate or a prospective rate in effect on October 1, 2009, shall be granted an increase to their per diem rate effective for dates of service beginning July 1, 2009, of five dollars and fifty cents ($5.50) to allow for a trend adjustment to ensure quality nursing facility services; and

B. The trend adjustment shall be added to the facility’s current rate as of June 30, 2009, and is effective for dates of service beginning July 1, 2009.

15. FY-2012 trend adjustment—
A. Facilities with either an interim rate or a prospective rate in effect on October 1, 2011, shall be granted an increase to their per diem rate effective for dates of service beginning October 1, 2011, of six dollars and zero cents ($6.00) to allow for a trend adjustment to ensure quality nursing facility services; and

B. The trend adjustment shall be added to the facility’s current rate as of September 30, 2011, and is effective for dates of service beginning October 1, 2011; and

C. This increase is contingent upon the federal assessment rate limit increasing to six percent (6%) and is subject to approval by the Centers for Medicare and Medicaid Services.

16. FY-2013 trend adjustment—
A. Facilities with either an interim rate or a prospective rate in effect on July 1, 2012, shall be granted an increase to their per diem rate effective for dates of service beginning July 1, 2012, of six dollars and zero cents ($6.00) to allow for a trend adjustment to ensure quality nursing facility services; and

B. The trend adjustment shall be added to the facility’s current rate as of June 30, 2012, and is effective for dates of service beginning July 1, 2012; and

C. This increase is contingent upon approval by the Centers for Medicare and Medicaid Services.

17. FY-2014 trend adjustment—
A. Facilities with either an interim rate or a prospective rate in effect on July 1, 2013, shall be granted an increase to their per diem rate effective for dates of service beginning July 1, 2013, of three percent (3.0%) of their current rate, less certain fixed cost items. The fixed cost items are the per diem amounts included in the facility’s current rate from the following: subsection (2)(O) of 13 CSR 70-10.110, paragraphs (11)(D)1., (11)(D)2., (11)(D)3., (11)(D)4., (13)(B)3., and (13)(B)10. of 13 CSR 70-10.015;

B. The trend adjustment shall be added to the facility’s current rate as of June 30, 2013, and is effective for dates of service beginning July 1, 2013; and

C. This increase is contingent upon approval by the Centers for Medicare and Medicaid Services.

18. FY-2015 trend adjustment—
A. Facilities with either an interim rate or a prospective rate in effect on July 1, 2014, shall be granted an increase to their per diem rate effective for dates of service beginning July 1, 2014, of one dollar and twenty-five cents ($1.25) to allow for a trend adjustment to ensure quality nursing facility services;
B. The trend adjustment shall be added to the facility’s current rate as of June 30, 2014, and is effective for dates of service beginning July 1, 2014; and
C. This increase is contingent upon approval by the Centers for Medicare and Medicaid Services.

A. Facilities with either an interim rate or a prospective rate in effect on January 1, 2016, shall be granted an increase to their per diem rate effective for dates of services beginning January 1, 2016, of two dollars and nine cents ($2.09) to allow for a trend adjustment to ensure quality nursing facility services;
B. The trend adjustment will not be added to the facility’s rate after June 30, 2016; and
C. This increase is contingent upon approval by the Centers for Medicare and Medicaid Services and sufficient funding available through the Tax Amnesty Fund.

20. Continuation of FY-2016 trend adjustment and FY-2017 trend adjustment—
A. Facilities with either an interim rate or a prospective rate in effect on July 1, 2016, shall continue to be granted an increase to their per diem rate effective for dates of service beginning July 1, 2016, of two dollars and nine cents ($2.09);
B. Facilities with either an interim rate or a prospective rate in effect on July 1, 2016, shall be granted an increase to their per diem rate effective for dates of services beginning July 1, 2016, of two dollars and eighty-three cents ($2.83) to allow for a trend adjustment to ensure quality nursing facility services;
C. The trend adjustment of two dollars and eighty-three cents ($2.83) shall be added to the facility’s rate as of June 30, 2016, which includes the two dollars and nine cents ($2.09) increase, and is effective for dates of service beginning July 1, 2016; and
D. These increases are contingent upon approval by the Centers for Medicare and Medicaid Services.

21. FY-2018 per diem adjustment—
A. Facilities with either an interim rate or a prospective rate in effect on August 1, 2017, shall be subject to a decrease in their per diem rate effective for dates of services August 1, 2017 through June 30, 2018, of five dollars and thirty-seven cents ($5.37);
B. The per diem adjustment of five dollars and thirty-seven cents ($5.37) shall be deducted from the facility’s current rate as of July 31, 2017, and is effective for dates of service beginning August 1, 2017;
C. Effective for dates of service beginning July 1, 2018, the per diem decrease shall be reduced to four dollars and eighty-three cents ($4.83). A per diem adjustment of fifty-four cents ($0.54) shall be added to the facilities current rate as of June 30, 2018, which includes the five dollars and thirty-seven cents ($5.37) decrease, and is effective for dates of service beginning July 1, 2018; and
D. This decrease is contingent upon approval by the Centers for Medicare and Medicaid Services.

22. FY-2019 trend adjustment—
A. Facilities with either an interim rate or a prospective rate in effect on July 1, 2018, shall be granted an increase to their per diem rate effective for dates of services beginning July 1, 2018, of seven dollars and seventy-six cents ($7.76) to allow for a trend adjustment to ensure quality nursing facility services;
B. The rate to which the FY-2019 trend adjustment of seven dollars and seventy-six cents ($7.76) shall be added is the facility’s rate as of July 1, 2018 set forth in subparagraph (3)(A)21.C. and is effective for dates of service beginning July 1, 2018. This trend adjustment shall result in a rate no greater than eight dollars and thirty cents ($8.30) higher than the rate in effect on January 1, 2018; and
C. This increase is contingent upon approval by the Centers for Medicare and Medicaid Services.

23. FY-2019 additional trend adjustment—
A. Facilities with either an interim rate or a prospective rate in effect on February 1, 2019, shall be granted an increase to their per diem rate effective for dates of service February 1, 2019 through June 30, 2019, of one dollar and twenty-nine cents ($1.29) to allow for a trend adjustment to ensure quality nursing facility services;
B. The per diem adjustment of one dollar and twenty-nine cents ($1.29) shall be added to the facility’s rate as of January 31, 2019, and is effective for dates of service beginning February 1, 2019 through June 30, 2019;
C. Effective for dates of service beginning July 1, 2019, the per diem increase shall be reduced to fifty-four cents ($0.54). A per diem adjustment of seventy-five cents ($0.75) shall be deducted from the facility’s rate as of June 30, 2019, which includes the one dollar and twenty-nine cents ($1.29) increase, and is effective for dates of service beginning July 1, 2019.
D. These per diem adjustments are contingent upon approval by the Centers for Medicare and Medicaid Services.

24. FY-2020 trend adjustment—
A. Facilities with either an interim rate or a prospective rate in effect on August 1, 2019, shall be granted an increase to their per diem rate effective for dates of service August 1, 2019 through June 30, 2020, of one dollar and sixty-one cents ($1.61) to allow for a trend adjustment to ensure quality nursing facility services;
B. The rate to which the FY-2020 trend adjustment of one dollar and sixty-one cents ($1.61) shall be added is the facility’s rate as of July 31, 2019 set forth in subparagraph (13)(A)23.C. The FY-2020 trend adjustment shall be effective for dates of service beginning August 1, 2019 through June 30, 2020.
C. Effective for dates of service beginning July 1, 2020, the per diem increase shall be reduced to one dollar and forty-nine cents ($1.49). A per diem adjustment of twelve cents ($0.12) shall be deducted from the facility’s rate as of June 30, 2020, which includes the one dollar and sixty-one cents ($1.61) increase, and is effective for dates of service beginning July 1, 2020.
D. These per diem adjustments are contingent upon approval by the Centers for Medicare and Medicaid Services.


I. **Department Title:** Title 13 - Department of Social Services  
**Division Title:** Division 70 - MO HealthNet Division  
**Chapter Title:** Chapter 10 - Nursing Home Program

<table>
<thead>
<tr>
<th>Rule Number and Name:</th>
<th>13 CSR 70-10.016 Global Per Diem Adjustments to Nursing Facility and HIV Nursing Facility Reimbursement Rates</th>
</tr>
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<tbody>
<tr>
<td>Type of Rulemaking:</td>
<td>Emergency Amendment</td>
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II. **SUMMARY OF FISCAL IMPACT**

<table>
<thead>
<tr>
<th>Affected Agency or Political Subdivision</th>
<th>Estimated Cost of Compliance in the Aggregate</th>
</tr>
</thead>
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<tr>
<td>Department of Social Services</td>
<td>Estimated Cost for the time the Emergency is Effective - $11,950,500</td>
</tr>
<tr>
<td>MO HealthNet Division</td>
<td></td>
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<tr>
<td>Non-State Government Owned Nursing Facilities (49)</td>
<td>No Estimated Costs of Compliance for the time the Emergency is Effective</td>
</tr>
</tbody>
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III. **WORKSHEET**

<table>
<thead>
<tr>
<th>Description</th>
<th>Nursing Facility Rate Increase</th>
<th>Hospice Nursing Home Room &amp; Board</th>
<th>Total Impact</th>
</tr>
</thead>
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<tr>
<td>Estimated Paid Days - SFY(^1) 2020</td>
<td>$8,025,724</td>
<td>$927,574</td>
<td>$14,340,604</td>
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<tr>
<td>Per Diem Increase - Effective August 1, 2019</td>
<td>$1.61</td>
<td>$1.35</td>
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<tr>
<td>Estimated Impact - SFY 2020</td>
<td>$12,921,416</td>
<td>$1,419,188</td>
<td>$14,340,604</td>
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<tr>
<td>State Share (34.412%)</td>
<td>$4,446,518</td>
<td>$488,371</td>
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<td>Federal Share (65.588%)</td>
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<tr>
<td>Total Annual Cost</td>
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<td>$14,340,604</td>
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<tr>
<td>Divided by 12 Months</td>
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<td>$1,195,050</td>
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<tr>
<td>Monthly Cost</td>
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<tr>
<td>Months Paid in the Time the Emergency is Effective: August 2019 – May 2020</td>
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<td>$11,950,500</td>
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<td>Cost in the Time the Emergency is Effective</td>
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IV. **ASSUMPTIONS**

The Department of Social Services (DSS), MO HealthNet Division (MHD): The above impact to DSS, MHD was calculated using the following assumptions:

\(^1\) State Fiscal Year.
Estimated Paid Days:

Nursing Facility:
The estimated paid days for SFY 2020 for nursing facilities are based on the Medicaid days paid for nursing facility services during SFY 2019 increased by 0.5% for SFY 2020 and prorated for August 2019 - June 2020.

Hospice:
The estimated paid days for SFY 2020 for hospice are based on the actual hospice days provided in nursing facilities from January 2018 through December 2018 and prorated for August 2019 - June 2020.

Non-State Government Owned Nursing Facilities (49): This emergency amendment provides for a per diem increase to nursing facility and HIV nursing facility per diem reimbursement rates of one dollar and sixty-one cents (\$1.61) effective for dates of service beginning August 1, 2019, through June 30, 2020. The per diem increase is reduced to one dollar and forty-nine cents (\$1.49) effective for dates of service beginning July 1, 2020. Therefore, there are no costs of compliance to Medicaid enrolled non-state government owned nursing facilities.

Hospice: Hospice providers may be impacted by this regulation because reimbursement for hospice services provided in nursing facilities is based on the nursing facility per diem rate. MHD conducted a fiscal analysis using 13 CSR 70-50.010 to estimate the impact to hospice. Please note that this is an estimated analysis with the assumption of hospice appropriation authority.

Hospice Nursing Home Room and Board services are reimbursed 95% of the nursing facility per diem rate. The per diem increase of $1.61 to the nursing facility rate effective for dates of service beginning August 1, 2019 through June 30, 2020 computes to an increase to hospice reimbursement rates resulting from this amendment of $1.53 ($1.61 x 95%).

Impact on Home and Community Based Services (HCBS):

HCBS provided on a monthly basis are limited to a percentage of the average monthly nursing facility payment (referred to as the HCBS cost cap). The HCBS cost cap for a given SFY is based on the average monthly nursing facility payments for the 12 months ending in April of the previous SFY. Therefore, the per diem increase of $1.61 to the nursing facility rate effective for dates of service beginning August 1, 2019, through June 30, 2020, will not impact the HCBS cost cap for SFY 2020, but may impact the HCBS cost cap for SFY 2021. For SFY 2021, the HCBS cost cap is estimated to increase by approximately 3.42% as a result of this amendment. This may increase the amount of services, and the payments, for MO HealthNet participants that are at the cap.