

Updated April 20, 2020

## **Medicaid Payments to Direct Care Workers in Long-term Services and Supports (LTSS) Settings Frequently Asked Questions**

### Overview

On April 15, 2020, Governor Asa Hutchinson announced that the Centers for Medicare and Medicaid Services (CMS) had approved Arkansas Medicaid's request due to the COVID-19 public health emergency to make additional payments to direct care workers who provide long-term services and supports (LTSS) in institutional and noninstitutional settings. These payments will be made through the worker's employer for the period April 5 through May 30, 2020. The employer must be a Medicaid-enrolled provider.

On April 16, the Department of Human Services (DHS) released guidance and the necessary reporting forms to employers. The link to those resources can be accessed at <https://humanservices.arkansas.gov/resources/response-covid-19>

DHS will continue to respond to Frequently Asked Questions (FAQs) and update these periodically.

4/20/20

Q1: Will caregivers under the PALCO contract receive the LTSS direct care worker payments?

Response: No. Caregivers under the PALCO contract have a different employer-employee relationship than through a facility or agency model. The Medicaid beneficiary "self-directs" the caregiver who is frequently a family member.

Q2: Will social workers whose primary role is to perform administrative functions (discharge planning, case management, referrals) receive the LTSS direct care worker payment?

Response: No. These payments are intended for workers who are providing direct care to patients/clients as their regular duty. An important consideration in structuring the COVID-19 payments is the ability of the worker to avoid exposure and therefore mitigate risk in the performance of his/her duties. These administrative functions can be conducted in a variety of manners that can maintain separation from the beneficiary. The employer must consider how an individual who is in an administrative role will be accounted for in an audit.

Q3: Are licensed social workers providing direct care as clinicians be eligible for the LTSS payments?

Response: Yes.

Q4: How will individuals or facilities be notified if they qualify for the LTSS payments?

Response: The employer will submit its report to the Division of Medical Services (DMS) which will make payment to the employer which will pass the payment to the worker less applicable taxes/deductions.

Q5: How do you calculate direct care?

Response: These payments are intended for workers who are providing direct care to patients/clients as their regular duty. We recognize that during the course of the day, there must be time for documentation, charting, taking orders, etc. in which a worker is not in the same room as a patient. We do not distinguish the amount of time *during a day* for a direct care worker. The determination of a full-time or part-time worker is based on the documentation provided by the employer which will be audited.

Q6: What is considered "administrative time" --is this specifically referring to clinicians that only provide administrative support, etc.?

Response: These payments are intended for workers who are providing direct care to patients/clients as their regular duty. The employer must consider how an individual who is in an administrative role will be accounted for in an audit.

Q7: Per COVID guidance we have encouraged our clinicians not to spend much time in the homes but to document outside of their residence, etc.... to reduce exposures. How is their time calculated?

Response: We recognize that during the course of the day, there must be time for documentation, charting, taking orders, etc. in which a worker is not physically in the same room as a patient. And we certainly recognize that minimizing direct contact by maintaining some distance is vital at this time. We do not distinguish the amount of time *during a day* for a direct care worker in which a worker is physically present with the client. The determination of a full-time or part-time worker is based on the documentation provided by the employer which will be audited.

Q8: If individuals or facilities disagree with payment amount, who do they contact?

Response: An individual worker would resolve any disagreement with his/her employer. DMS will make payment to an employer based on the information submitted by the employer. DMS has access to data through the Arkansas Department of Health (ADH) on the number of facilities with COVID-19 positive patients. Any employer requesting the higher payment for treating a COVID-19 patient will be immediately checked against DHS data. All information is subject to audit. Therefore, a disagreement between the employer and DMS will follow normal procedures for resolution, including review by the Office of the Medicaid Inspector General (OMIG) which include a variety of penalties for submitting inaccurate information.

Q10: I read that on April 15, the Governor's request for the healthcare bonus for nursing home workers, among other facilities, was approved. Is the Arkansas State Hospital included?

Response: Workers in public LTSS facilities (nursing facilities, intermediate care facilities, Human Development Centers) are included in these payments. However, ASH is a hospital rather than a LTSS

facility, so it is not included in these direct care worker payments. Therefore, ASH employees will be included in the hospital payments.

Q11: Regarding Hospices – Are you only referring to In-Patient Hospice facilities or Hospice Agencies that provide care in the patient’s homes?

Response: Both are included.

Q12: As the Director of Nursing of a private assisted living in Arkansas, I ask that you consider including bonuses for front-line direct care workers in non-Medicaid facilities in Arkansas. I respectfully ask that you prioritize direct care staff in private pay Long Term Care facilities when the CARES Act funds are being allocated. They are a very deserving group who are putting themselves at risk every day as we are caring for our residents.

Response: The source of funding for these direct care workers is Medicaid so the facility must be a Medicaid-enrolled provider serving Medicaid beneficiaries.

The CARES Act is not funded by Medicaid, however, private pay facilities are not restricted by Medicaid rates and have greater flexibility to also make enhanced payments to their direct care workers.

Q13: I am a nurse at a mental health hospital. I am exposed to homeless persons, drug and alcohol addicts and severely mentally ill persons. We have persons at our hospital on isolation units with presumptively positive COVID-19. Why are we not included in this supportive payment the Governor announced? He did not say during his announcement at his news conference that it was only certain health care workers.

Response: These payments are specifically for direct care workers in LTSS settings. On April 15, 2020, the Governor’s CARES Act Steering Committee approved a recommendation to spend up to \$80 million to make payments to three groups: (1) direct care workers in hospital settings; (2) payments to non-direct care personnel in hospitals; and 3) and non-direct care personnel in LTSS institutional settings who were not eligible to receive payments. Guidance to hospitals and their workers will be announced in the near future.

For future reference, the highest payment amount (\$500 per week) is allowable only for patients that have tested positively for COVID-19. DMS has access to data through the Arkansas Department of Health (ADH) on the number of facilities with COVID-19 positive patients. Any employer requesting the higher payment for treating a COVID-19 patient will be immediately checked against DHS data. All information is subject to audit. Therefore, a disagreement between the employer and DMS will follow normal procedures for resolution, including review by the Office of the Medicaid Inspector General (OMIG) which include a variety of penalties for submitting inaccurate information.

Q14: I am asking for information on how we can get our employees paid. Arkansas Healthcare Personnel Inc is a medical staffing company that staffs many facilities across the state. We are staffing AHC and Human Development centers and private facilities too. We are not Medicaid enrolled as we are paid by our clients. We bill them for hours worked. We pay our employees. How will this work for us? Will the money be paid to our clients and then passed to us to make the payments through our payroll or will we be allowed to submit our employees directly to you for payment?

Response: Payments are allowed for employees and contracted workers. Payment are made through the employer who is the Medicaid-enrolled provider.

Q15: Does that cover Medicaid Private Duty Nursing RN's or LPN's or no?

Response: Yes. The Medicaid-enrolled employer will submit the requests to DMS.

Q16: For ADDT programs, we do not have waiver clients so extra direct care payments don't apply, is that correct?

Response: There is no payment because they are not a Long-Term Support Service (LTSS) provider. They are providing a clinic-based service that is not eligible for the payment.

Q17: I don't have any information on taxes or payroll information as that relates to the LTSS direct care payments.

Response: This taxable just like other income to worker.

Q18: In my Intermediate Care Facility, the clients attend a day service on site. The Vocational Skills Instructors at the day center assist with monitoring and teaching vocational job skills, domestic skills and social skills. They also provide (cook) one meal with the clients, assist with brushing teeth, and hand washing. However, the majority of their role day to day is providing activities that aide in promoting their domestic, vocational and/or social skills. Since this is a bit different from long term care, do these types of workers qualify?

Response: No. This is not a LTSS Provider.

Q19: On the Direct Care Payment Form how do we select the additional weeks or does the form have to be submitted weekly?

Response: Provider report form may be submitted weekly or with the provider's payroll schedule.

Q20: Is my facility eligible for payment? As Director of Nursing Services, my concern is that though my staff is working tirelessly to protect and care for our residents, they will be excluded from these highly touted and much anticipated payments.

Retaining staff, even in the best of times, is often a challenging task, so I'm sure that you can appreciate that in our current climate, we work to not only retain staff, but also to maintain morale. I have an excellent staff, most of whom have been with our facility for years. However, they are going to have questions and I want to be able to explain this to them in a meaningful way. I feel that giving them a general bureaucratic explanation not only is doing them a disservice but will make them feel as if the work they do is not valued or appreciated by our CMS or the State of Arkansas. They will see their peers, who do the exact same job down the street, rewarded for their hard work, while they receive none. If we are truly all in this together, then front-line staff is front-line staff. I value your opinion and appreciate your input regarding these matters.

Response: No. The source of funding for these direct care workers is Medicaid so the facility must be a Medicaid-enrolled provider serving Medicaid beneficiaries.

#### **4/17/2020 FAQ's**

Q1: How often do we need to submit the provider report for reimbursement?

Response: Provider report form may be submitted weekly or in accordance with the provider's payroll schedule.

Q2: Will the payments to the provider be in the form of a check or EFT?

Response: Providers will receive payment the same way as received with claims.

Q3. Are these payments subject to FICA and other applicable taxes?

Response: Yes. This is taxable just like other income to worker.

Q4. Many CNAs work shifts that are 7.5 hours a day = 37.5 hours a week to be considered a FTE. Our state minimum staffing shifts are in statute, most facilities follow those precisely, and FTE matches our PBJ reporting. Will these workers qualify as full time?

Response: Yes, they would qualify.

Q5. Official state interpretation that the direct care worker wage payments (and any future non-direct care worker wage payments) are NOT gross receipts (as defined AR Code § 20-10-1601 (3)) for purposes of the Quality Assurance Fee (QAF). Does this apply to new payments?

Response: Yes, they are treated the same way.

Q 6. Official CMS interpretation that excluding the direct care work wage payments (and any future non-direct care worker payments) from gross receipts for purposes of determining the QAF each facility owes is NOT a violation of s. 1903(w) or related CMS regulations on provider tax. Does this apply to new payments?

Response: Yes, they are excluded.

Q 7. Are nurse aides who are students that have not yet passed the CNA exam (because the sites are closed due to COVID), but are working in the facility on the floor as CNAs eligible?

Response: If they are providing direct care for which they are being paid, then they are covered. Clinical hours would be excluded.

Q8. Are LPN medical records nurses eligible? Some of them are working on the floor during this time, especially in COVID positive buildings.

Response: Any hours spent providing direct patient care should be included. Administrative hours would not be included.

Q9. Are RN directors of nursing eligible?

Response: Any hours spent providing direct patient care should be included. Administrative hours would not be included.

Q10. Should the employer apply child support and wage garnishments to these payments?

Response: Yes

Q11. If a facility has a positive test in the middle of a week, is that entire week considered at the COVID positive rate? Or is not considered until a full week?

Response: Yes, it will increase the rate for the entire week

Q12. For PBJ purposes, salaried employees are only allowed to be counted for 40 hours. If a facility has a salaried administrative employee who works, the floor above and beyond their 40 hours the facility can't count them for PBJ. Can the facility count those above and beyond hours for the bonus payments?

Response: Any hours spent providing direct patient care should be included. Administrative hours would not be included.

Q13. How are direct care workers defined for assisted living? (what positions?)

Response: A direct care worker is a staff member who is providing face-to-face care assisting with ADL's or administering medications and treatments.

Q14. What about agency staff that are contracted but working full time direct care in the facility?

Response: The provider should include them in the report and pass through payment to the agency staff through their agency

Q15. Can facilities make these payments with their normal pay cycles bi-weekly?

Response: Yes

Q16. What about contracted speech, occupational and physical therapists in nursing homes?

Response: If a therapist is billing Medicaid, individually, they will not qualify.

Q17. What if a CNA works full time at one facility and part time at another facility?

Response: Both facilities will submit separate reports and they would qualify from both

Q18. Should these payments be taxed as bonus or regular payroll?

Response: DHS considers this part of your regular payroll and your financial representative should be consulted for this decision.

#### **4/16/2020 FAQ's**

Q1. Would a city owned home health provider qualify for the home worker incentive pay? The question came up during the home health provider call. I thought they would as we are a state entity and our staff qualify.

Response: If they are a current enrolled Medicaid Provider.

Q2. On this press release, “Governor Hutchinson Announces CMS Approval of Additional Pay For Eligible LTSS Direct Care Workers Due to COVID-19 Emergency” does this include DMEs that provide in home care/delivery of vents, oxygen and more to aid those diagnosed with COVID-19 or being treated with the similar symptoms?

Response: No

Q3. Who is eligible for these payments?

Response:

The payments are for direct care workers in LTSS settings. These include:

- Registered Nurses
- Licensed practical nurses/Licensed vocational nurses
- Nurse aides/techs/assistants
- Personal care aides assisting with activities of daily living
- Home health aides assisting with activities of daily living
- Direct care workers providing services under home and community-based waivers
- Intermediate Care Facility direct care staff members including those that work for a state-run Human Development Center
- Assisted Living direct care staff members
- Therapists employed in one of the eligible service providers

The employers are Medicaid-enrolled providers that are:

- Public and Private Intermediate Care Facilities
- Public and Private Nursing Facilities
- Home Health Agencies
- Personal Care Agencies
- Hospice



- Assisted Living Facilities
- Residential Care Facilities
- Psychiatric Residential Treatment Facilities
- AR Choices Waiver Adult Day Health Providers, Adult Day Service Providers, Adult Family Home Providers, Attendant Care Providers, and Respite Care Providers
- Living Choices Waiver nursing, personal care and attendant care providers
- CES Waiver Supportive Living and Respite Providers

Q4. What is the payment structure?

Response: The base payment amount applies to workers in settings in which there are no COVID-19 positive clients:

A) work 20-39 hours per week--\$125.00

B) work 40+ hours per week--\$250.00

C) work a regularly planned split shift schedule that overlap weeks that equal or exceed 150 hours per month, not including overtime--\$250.00/week

If a client has tested positive for COVID-19, the direct care workers in that facility or home and community-based setting, will receive an enhanced payment as follows:

A) work 1-19 hours per week--\$125.00

B) work 20-39 hours per week--\$250.00

C) work 40+ hours per week--\$500.00

D) work a regularly planned split shift schedule that overlap weeks that equal or exceed 150 hours per month, not including overtime--\$500.00/week

Q5. For base and tiered payments, what if their hours vary each week? One week they might work 15 hours and the next 40 plus hours.

Response: We recognize some workers are on split shift schedules. Therefore, those who work a regularly planned split shift schedule that overlaps weeks that equal or exceed 150 hours per month, not including overtime, are considered full-time workers and qualify for the highest amount.

Q6. How do we get the money?

Response: Workers will receive the additional payments through their employer. The link to those resources can be accessed at <https://humanservices.arkansas.gov/resources/response-covid-19>

Q7. When and how will the payments be made?

Response: The Division of Medical Services (DMS) will make payments on a weekly basis to an employer the week after the employer files for payment. The payments are retroactive to April 5 (week 1). The necessary forms and guidance were released on April 16 (week 2). Assume that the employer filed its report by Close of Business (COB) on Wednesday, April 22 for week 1 and week 2. The payment would be made to the employer on the following Friday (May 1<sup>st</sup>)

Q8. How will DHS know how much to pay the provider?

Response: The employer must complete the report which details the number of workers of full-time and part-time workers and whether a COVID-19 positive client was being treated. DHS will determine the total payment to the employer.

Q9. I am a home health physical therapist for Baptist here in Little Rock. After listening to and reading the press release from Governor Hutchinson today it looks like I am in a setting (home health care) that would qualify for his new executive order but there was nothing stating physical therapist. Would you be able to let me know if physical therapist is included in this order?

Response: Therapists will be included in this payment if they are employed by or contracted by an eligible Medicaid provider or a staffing agency used by the provider.

Q10: Are dialysis technicians eligible for the payments?

Response: This payment is directed to direct care workers, which include technicians, who are providing long term services and support in either a facility or home and community-based setting.

Q11. I listened with interest today as the Governor and you announced the incentives for direct care workers. If I understood you correctly, you also stated that there is another "round" of assistance that may be available for other workers. I believe you mentioned hospital laundry workers, janitors, etc. I

respectfully request that you consider adding for this incentive round, the Medicaid targeted case managers, as they are still doing face-to-face assessments, reassessments, monitoring, and linkage to community resources.

Response: Please know that the Governor's Steering Committee has approved a recommendation on non-direct care workers and separate guidance will be issued in the near future.