

## **DEPARTMENT OF SOCIAL SERVICES**

### **Guidelines for Strike Cost Reimbursement**

**General** - Under Section 17b-340(a) of the Connecticut General Statutes (CGS), the Department may reimburse nursing facilities for extraordinary and unanticipated costs necessary to avoid an immediate negative impact on the health and safety of residents. Extraordinary circumstances are defined in federal regulations as circumstances beyond a provider's control including but not limited to strikes, fires, earthquakes, floods, or similar unusual occurrences with substantial cost effects. The following is intended to provide guidance on extraordinary and unanticipated strike related costs that will be considered for reimbursement in addition to payments made based upon the Medicaid per diem rate established in accordance with Section 17b-340 CGS and applicable regulations (Sec. 17-311-50).

As the statute provides, additional reimbursement is limited to **incremental** costs that are extraordinary and necessary for the health and safety of residents that are not accounted for as part of Medicaid per diem rate setting. Extraordinary and unanticipated costs are those costs that would not have been incurred if it were not for a strike or threat of strike. While circumstances may dictate the need for quick purchasing and staffing decisions, the quantity and prices of goods and services must be reasonable and obtained through prudent purchase practices to be allowable for additional Medicaid reimbursement. The Department encourages providers to use local nurse pool agencies whose rates have decreased whenever possible.

It is important to note the difference between an extraordinary additional cost and the timing of purchases due to a job action. For instance, the rental expense for a trailer to store additional food/dietary supplies in case of delivery interruptions during a strike action is extraordinary, while the advance purchases for extra stock are not since the items will eventually be used and future expenses will be lower.

It is imperative that owners enter into good faith bargaining with union representatives and fully comply with the National Labor Relations Act (NLRA). You should consult with legal counsel to assure that your dealings and actions adhere to all applicable federal and state laws. The Department reserves the right to recover all or, if appropriate, a portion, of direct reimbursement if the National Labor Relations Board (NLRB) determines in a finding that you have engaged in unfair labor practices.

**Medicaid Reimbursement Percentage** - The Department will issue direct reimbursement for allowable strike costs based on a facility's Medicaid utilization percentage for the most recent cost year. For example, a facility having \$100,000 in eligible costs with a 70% Medicaid utilization percentage would receive reimbursement of \$70,000.

**Staffing** - The Department will reimburse the incremental additional costs associated with facility staffing. Additional reimbursement for staffing costs is the difference between replacement staffing costs and an estimate of staffing costs that would have been incurred in the absence of the job action. Costs include wages and fringe benefits for replacement workers from other facilities in the same ownership group, overtime for hourly wage workers and payments to temporary staffing service/nurse pools. Bonus payments to employees will not be considered for strike-related reimbursement and all increased wages must be based on actual hours worked during the strike period. Costs for home office or management company employees are generally not allowable for direct reimbursement. Subject to a review for reasonableness, payments made under a contract for outside temporary staffing/nurse pools for travel, lodging, food allowance/stipends and incentive payments are allowable strike-related costs.

**Training**- Additional hours associated with training staff to perform direct care and other functions are allowable for direct reimbursement. These costs may be in the form of additional and/or overtime hours for non-striking staff or outside consultant contracts.

**Transportation** - Expenses relating to special transportation arrangements to ensure the safe departure and arrival of staff are allowable for direct payment. These costs would include van rental, gasoline, parking and driver.

**Security** - Additional costs associated with security services to maintain resident, employee, vendor and property safety are eligible. Costs associated with security services at the home office of a nursing facility chain or at the personal residences of the operators are not necessary for the health and safety of the residents and are not allowable for direct reimbursement. Costs associated with necessary changes to security systems, identification cards or related items would also generally qualify for direct payment.

**Legal** - Legal fees associated with professional advice concerning your rights and responsibilities during a strike as well as costs associated with labor negotiations, while an allowable Medicaid cost, are not eligible for strike related reimbursement since they are routine business costs for a unionized facility. Legal fees directly associated with the health and safety of the residents, such as picket line behavior are eligible for direct reimbursement.

It is important to point out that reasonable legal fees incurred by providers engaged in activities consistent with the National Labor Relations Act (NLRA) represent allowable Medicaid costs. As indicated in Medicare Provider Reimbursement Manual, Part 1 Section 2180.1, costs incurred for activities directly related to influencing employees with respect to unionization or related to attempts to coerce employees or otherwise interfere with or restrain the exercise of employee rights under the NLRA are not allowable.

**Miscellaneous** - A facility may incur other extraordinary expenses related to strike preparation and continuation of services under strike conditions. For example, reimbursement is provided for facility costs associated with the temporary rental of beepers for communication purposes. The

Department expects that these costs will be minor; however, we will consider reimbursement requests for such incidental strike related costs. Any such request should include an explanation of the necessity of goods and/or services. Additional food costs for facility staff working during a job action are not allowed as strike related as the Department has determined that the time and effort involved in assessing the need and reasonableness of such costs in relation to securing the health and safety of facility residents is excessive in relation to any such costs.

**Fixed Assets** - Any permanent improvements to the facility will be considered only for the depreciation expense during the strike. As improvements such as exterior lighting, installation of a fence or other security system provide future benefit outside the strike period, the majority of the cost would be reimbursed through the fair rent component of the routine room and board rate. Rental of a temporary fence or lighting would be eligible for direct reimbursement.

**Cost Savings** - While the Department will consider reimbursement for the incremental additional costs necessary to protect the health and safety of the residents, the provider should be aware that the Department will offset any eligible strike costs with cost savings realized by the facility. Cost savings represent routine costs that are reimbursed through the room and board rate, which may be reduced in the event of a strike. Examples of cost savings would be the payroll (including payroll taxes and fringe benefits) for the striking workers or normal temporary staffing/nurse pool costs that are replaced with another vendor.

**Requests for Expedited Reimbursement** - Any request for expedited reimbursement of strike related costs prior to or during a job action will only be granted when necessary to avoid an immediate negative impact on the health and safety of residents. Such a request must include the following:

1. Summary of actual and/or estimated strike related costs and offsetting savings (including payroll) associated with the strike (specify assumed duration not to exceed 7-days in initial submission). Please identify those costs that are in excess of the costs that would normally be incurred in the absence of a strike. Please list costs by category (e.g. replacement workers, security, transportation) and include the number of staff by job type (e.g. CNA, dietary) to be obtained through any temporary staffing entity.
2. Please provide a statement of cash flows for the facility, and consolidated for related entities with common ownership and control, for a two month period prior to the strike and/or commitment contract sign date. There should be a cash shortfall evidencing the need for expedited reimbursement.
3. Please identify any available sources of funds to finance strike costs such as credit lines, borrowing from related entities and other sources of funds.
4. Copy of the most recently compiled financial statements (balance sheet and income statement) for the facility and consolidated for related entities with common ownership

and control. Providers must have an up to date filed cost report along with any required related party profit/loss statements to be eligible for expedited reimbursement.

5. Provide any other information or changes pertinent to the financial condition of the facility and related entities and ability to maintain resident services during a strike.
6. If you have made a determination that expedited Medicaid reimbursement is necessary to avoid an immediate negative impact on the health and safety of residents during a job action then you must provide a signed statement indicating such and detailing the efforts and results of the facility at securing funds from all alternative sources.

**Cost Documentation** - Requests for retroactive strike cost reimbursement should be submitted within 60 days of the end of the job action and facilities that receive expedited reimbursement prior to or during the strike period must submit strike cost/payment reconciliation information within 60 days. All requests and reconciliation material must include a summary schedule of strike costs and detailed schedules for each expenditure category identifying vendors and check amounts. Please also include supporting documentation as appropriate (payrolls, checks, invoices and contracts). All costs submitted for reimbursement must be properly supported by invoice or contracts as well a proof of payment. Costs will not be considered for reimbursement without the proper documentation.

**Filing Requirements** - Requests for strike related reimbursement should be directed to:

Nicole Godburn  
Reimbursement & CON  
Department of Social Services  
55 Farmington Avenue  
Hartford, CT 06105

[con-ratesetting.dss@ct.gov](mailto:con-ratesetting.dss@ct.gov)

## SETTLEMENT AGREEMENT

The parties agree to resolve the claims made by District 1199 against the Department of Social Services and Commissioner Patricia Wilson-Coker as follows:

1. District 1199 will withdraw with prejudice the appeal of the Commissioner's declaratory petition that is pending in the Superior Court, docket number CV- 0200515744 - S.
2. In the event that there is a threat or possibility of a strike at a nursing home(s), DSS will notify nursing home operators and any other interested party, including any union representing the employees of the operators, that in the event the operator(s) believe(s) that a situation may develop which would cause an immediate negative impact on the health and safety of facility residents and which may involve extraordinary and unanticipated costs ("costs"), DSS will require the submission of financial information to determine whether the request is for "extraordinary and unanticipated costs" and whether there is a need for Medicaid funds, including, but not limited to, anticipatory and/or reimbursement funding in order to avoid an immediate negative impact on the health and safety of residents. Such requested financial information shall include, but not be limited to, current balance sheet and income statements, projected cash flows by week for at least four weeks, availability of loans and/or credit lines including potential for funding from related companies.
3. In the event DSS receives a request for funds and an operator submits financial information to the agency, any interested party, including any union representing the employees of the operator, may contact DSS to arrange for a mutually convenient time to inspect such information.
4. Any interested party, including any union representing the employees of the operators, may comment on the operator's request for funds under Conn. Gen. Stat. §17b-340 or may submit additional information related to the request. To the extent that any union submits additional information related to the request, such information must be submitted with an attestation that it is true and accurate to the best of the union's knowledge and belief.
5. It is the understanding of the parties that the opportunity to comment or to submit information on the request for funds will not delay or restrict DSS' decision making and/or payments, when DSS determines funding is necessary for extraordinary and unanticipated costs of providing services which were or may be incurred in order to avoid an immediate negative impact on the health and safety of residents.

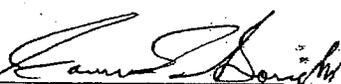
6. DSS may review and consider any comments or information it receives from any interested party, including any union representing the employees of the operators, with respect to the request for funds and take such action as it deems appropriate.

7. Any determination by DSS to provide emergency funding (anticipatory and/or reimbursement) for extraordinary and unanticipated costs shall be set forth in writing, with copies to interested parties who have contacted the department concerning the request for funds. Such anticipatory and/or reimbursement funding will only be made after a review that concludes that there is/was no immediately viable alternative to such payments to avoid an immediate negative impact on the health and safety of residents as a result of a strike or as a result of planned contingencies that necessitate(d) funding before a strike begins to maintain uninterrupted services to residents. The parties recognize that this determination is not intended to require findings of fact or to otherwise be a final decision in a contested case, a declaratory ruling, or a regulation under the uniform administrative procedure act.

8. By entering into this agreement neither party agrees to any claim or defense whatsoever raised by the other. This is a settlement for the purpose of avoiding the uncertainty of litigation, and both parties reserve the right to assert any of the positions taken during this litigation. In any future action challenging the Commissioner's exercise of her discretion to provide emergency funding (anticipatory and/or reimbursement) to avoid an immediate negative impact on the health and safety of residents as a result of a strike or as a result of planned contingencies that necessitate funding before a strike, the union will not claim that the Commissioner lacks such discretion under Conn. Gen. Stat. § 17b-340.

9. It is DSS' position that following a noticed or actual job action, nursing homes may request and, DSS may provide, reimbursement for incurred extraordinary and unanticipated costs that were necessary to avoid a negative immediate impact on the health and safety of residents.

New England Health Care  
Employees Union,  
District 1199, SEIU, AFL-CIO

By  12/16/03  
Carmen Boudier  
Secretary/Treasurer

Patricia Wilson-Coker, Michael P. Starkowski  
Commissioner of the  
Department of Social Services

By  12/29/03  
Michael P. Starkowski  
Deputy Commissioner