

# Bulletin

July 25, 2007

Minnesota Department of Human Services □ P.O. Box 64973 □ St. Paul, MN 55164-0973

**OF INTEREST TO**

- County Directors
- Social Services Supervisors and Staff
- Nursing Facility Owners
- Nursing Home Administrators
- Nursing Facility Employee Unions

**ACTION/DUE DATE**

Please read.

Some provisions are time sensitive.

**EXPIRATION DATE**

The policies in this bulletin are effective only through July 25, 2009.

## Nursing Facility Policy Changes in 2007 Legislation

**TOPIC**

Policy and rate changes enacted during the 2007 legislative session.

**PURPOSE**

To inform interested parties of changes made to policy and rates for nursing facilities.

**CONTACT**Nursing Facility Policy Center at (651) 431-2282, or by email at: [DHS.LTCpolicycenter@state.mn.us](mailto:DHS.LTCpolicycenter@state.mn.us)**SIGNED**

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## 1.0 INTRODUCTION

The purpose of this bulletin is to describe how the Minnesota Department of Human Services (DHS) will implement the provisions of law enacted in 2007 that apply to nursing facilities.

## 2.0 RATE ADJUSTMENTS MADE AVAILABLE TO ALL NURSING FACILITIES

*Laws of Minnesota 2007, Chapter 147, Article 7, Section 22*

*Minnesota Statutes, section 256B.434, subdivision 19*

Section 2 of DHS bulletin 07-69-03 provides a detailed description of the rate adjustment, implementation requirements, what nursing facilities need to do to receive the full rate adjustment and what DHS will do to implement this provision.

## 3.0 QUALITY ADD-ON FOR OCTOBER 1, 2007

*Laws of Minnesota 2007, chapter 147, article 7, section 44*

*M.S. 256B.441, Subdivision 46a*

Beginning October 1, 2007, nursing facilities may receive an operating payment rate increase of up to 0.3% for each RUGS class in effect on September 30, 2007, as a quality add-on. The actual amount of a quality add-on that a facility will receive will depend on how well they perform on six quality measures. These are measures that are included in the Nursing Home Report Card published by the Minnesota Department of Health (MDH). The quality measures are:

- **RESIDENT QUALITY OF LIFE AND SATISFACTION** –Results from resident interviews will account for 20 points out of a possible 100 point score.
- **MINNESOTA QUALITY INDICATORS** - Clinical process and outcome quality indicators derived from the minimum data set will account for 35 points.
- **DIRECT CARE STAFFING LEVEL** – wage and acuity adjusted direct care staffing hours per resident day will account for 10 points
- **RETENTION** - Retention of direct care staff will account for 20 points.
- **POOL STAFF** - Use of nursing pool staff will account for 5 points.
- **MDH INSPECTION RESULTS** – A scoring system based on deficiency findings will account for 10 points. Appeals of deficiencies in which the facility prevails will be recognized retroactively if the resolution changes the quality score. This measure is based on the following five criteria:
  1. If the facility's **most-recent available health and life-safety code survey** had actual harm, substandard quality of care, or immediate jeopardy
  2. If the facility had a **substantiated complaint or facility self-report** of actual harm, substandard quality of care, or immediate jeopardy over the past year
  3. If the facility's **prior health survey** had substandard quality of care or immediate jeopardy

4. If the facility is on the **Special Focus** list of providers judged by MDH and the federal Centers for Medicare and Medicaid Services as needing additional oversight
5. If the facility has a **high number** of health deficiencies, defined as more than the average of  $\frac{1}{2}$  a standard deviation above the average number of health deficiencies for the survey district and  $\frac{1}{2}$  a standard deviation above the average number of health deficiencies for the state

The MDH survey measure combines these criteria for the following points:

- 10 Points    Most-recent available survey OK  
                 Prior survey OK  
                 Record on complaints and facility self-reports OK  
                 Not a Special Focus facility  
                 Not a high number of health deficiencies
- 7.5 Points    Most-recent available survey OK  
                 Record on complaints and facility self-reports OK  
                 Not a Special Focus facility
- 5 Points      Most-recent available survey OK, allowing ONE isolated instance of harm  
                 Record on complaints and facility self-reports OK
- 2.5 Points    Most-recent available survey **not** OK  
                 Record on complaints and facility self-reports OK  
                 OR  
                 Most-recent available survey OK, allowing ONE isolated instance of harm  
                 Record on complaints and facility self-reports **not** OK
- 0 Points      Most-recent available survey **not** OK  
                 Record on complaints and facility self-reports **not** OK

Each facility's total quality score will be translated into a quality add-on to the operating payment rate by use of a simple formula under which a score of 100 will result in a quality add-on of 0.3%, scores between 0 and 40 will result in no quality add-on, and scores between 40 and 100 will have a quality add-on based on a straight line relationship.

#### **4.0 SPECIAL RATE ADJUSTMENTS RELATED TO SPRINKLER SYSTEMS**

*Laws of Minnesota 2007, chapter 147, article 7, section 21*

*Minnesota Statutes, section 256B.434, subdivision 4*

Minnesota Statutes, section 256B.434, subdivision 4, (e), provides temporary rate increases for nursing facilities that make capital investments in sprinkler systems if certain criteria are met.

A separate announcement of this opportunity has been distributed to all nursing facilities and

applications were due on July 2, 2007. Further detail, instructions for applying for these rate adjustments and the form that was to be used are available at:

[http://www.dhs.state.mn.us/main/idcplg?IdcService=GET\\_FILE&RevisionSelectionMethod=LatestReleased&Rendition=Primary&allowInterrupt=1&noSaveAs=1&dDocName=dhs16\\_138480](http://www.dhs.state.mn.us/main/idcplg?IdcService=GET_FILE&RevisionSelectionMethod=LatestReleased&Rendition=Primary&allowInterrupt=1&noSaveAs=1&dDocName=dhs16_138480)

## **5.0 MORATORIUM EXCEPTION FUNDING**

*Laws of Minnesota 2007, Chapter 147 Article 7, Section 1, Minnesota Statutes, section 144A.073, subdivision 4, and Laws of Minnesota 2007, Article 19, Section 3, Subd. 8, (c)*

Authority was provided for approval, between July 1, 2007 and June 30, 2009, of capital projects costing more than the upper threshold, \$1,350,122 beginning October 1, 2007, with an annual general fund cost of \$3 million. Additional funding may be available due to expired or forfeited projects approved earlier. MDH expects to publish a request for proposals for eligible projects in July 2007 with a submittal deadline in October 2007.

Criteria for review of Moratorium Exception projects have been amended, by adding a ninth criterion, requiring consideration of “the extent to which the applicant demonstrates the continuing need for nursing facility care in the community and adjacent communities.”

## **6.0 CHANGES TO PROPERTY PAYMENT RATE DETERMINATION**

*Laws of Minnesota 2007, Chapter 147, Article 6, Section 42 Minnesota Statutes, section 256B.431, subdivision 3f, and Laws of Minnesota 2007, Chapter 147, Article 7, Section 20 Minnesota Statutes, section 256B.431, subdivision 17a*

### **6.1 Change in Inflation Indices for Property-related Limits**

For many years rate setting components have been increased by inflation factors. One of the factors used was the U.S. Census Bureau Composite Fixed-Weighted (1996 Weights) Price Index for the value of new construction put in place. The percentage change in the indices is used as the inflation value for these rate setting components:

- Replacement-Cost-New limits
- Minimum threshold for building projects
- Maximum threshold for building projects
- Appraised value

Because of the advances in computer power over the years the U.S. Census Bureau stopped computing the Fixed-Weighted Composite value. The Fixed-Weighted Composite Price Index was an old and relatively simple value to compute. With more electronic resources available, they decided to refine their data manipulations and do a more detailed analysis of price changes.

Additionally, the U.S. Census Bureau began focusing on single-family dwellings. The U.S. Bureau of Economic Analysis, however, has statistics on non-residential construction and it was suggested by one of their staff members that DHS switch to the Price Indexes for Private Fixed

Investments in Structures; Special Care as it includes nursing facilities in its calculations. This index can be found by selecting Table 5.4.4BU Price Indexes for Private Fixed Investments in Structures by Type (A)(O), at this link:

[http://www.bea.gov/bea/dn/nipaweb/nipa\\_underlying/SelectTable.asp?Benchmark=P#S5](http://www.bea.gov/bea/dn/nipaweb/nipa_underlying/SelectTable.asp?Benchmark=P#S5)

For October 1, 2007, the increase using the new index will be 6.75%.

### 6.2 Debt on Equipment in a Construction Project

For many years, Minnesota Statutes allowed facilities that complete a construction project to include interest expense on debt related to the cost of purchasing or replacing depreciable equipment, excluding vehicles, as long as the equipment costs did not exceed six percent of the total historical cost of the project.

In 2002, the statutes were amended to allow facilities to include equipment in construction costs and be eligible to be financed up to 100% of their value unless a facility elects to not include the equipment in the construction project.

This year the six percent limit was changed to ten percent. It will be effective for construction projects with a rate adjustment with an effective date on or after October 1, 2007.

## **7.0 LONG-TERM CARE CONSULTATION**

*Laws of Minnesota 2007, Chapter 147, Article 6, Section 27*

*Minnesota Statutes, section 256B.0911, subdivision 6a.*

The long-term care consultation (LTCC) service, intended to assist persons with long-term care needs in making care decisions and seeking options, is funded through a fee that counties assess against local nursing homes. This fee, in turn, is funded through an associated element of the facility's payment rate. If a nursing facility fails to make timely payment of long-term care consultation fees to their county, DHS will have the authority, pursuant to a request from a county, to withhold payments, penalties and interest, and pay these monies to the county. DHS will give at least ten days written notice to the facility before implementing the withhold. The facility may offer an informal objection to the withhold and may appeal by filing an appeal in Ramsey County District Court within 30 days of the date of the written notice of the withhold. Please refer to the LTCC policy bulletin, to be released a few weeks after the release of this bulletin for background on LTCC and pre-admission screening.

## **8.0 PERA**

*Laws of Minnesota 2007, Chapter 147, Article 7, Section 23*

*Minnesota Statutes, section 256B.434, subdivision 20.*

Facilities that are operated by local government agencies participate in the Public Employees Retirement Association (PERA), through which pensions are provided for their employees. Beginning October 1, 2007, the portion of the payment rate associated with PERA costs shall be

determined annually, based on actual costs. This cost-based amount shall replace the amount determined to have been included in the rates in the facility's first year in APS.

## **9.0 CHANGE TO IMPLEMENTATION OF COLA 06 AND COLA 07**

*Laws of Minnesota 2007, Chapter 147, Article 6, Section 44*

*Minnesota Statutes, section 256B.431, subdivision 41.*

The commissioner may, under extraordinary circumstances, agree to waive the deadlines for submission and final approval of applications for the rate adjustments effective on October 1, 2005, and October 1, 2006.

## **10.0 REBASING OF NURSING FACILITY OPERATING PAYMENT RATES BEGINNING IN 2008**

*Laws of Minnesota 2007, chapter 147, article 7, sections 25 to 57*

*Minnesota Statutes, section 256B.441, subdivisions 1 to 58*

### 10.1 New Rate Setting Method

2007 legislation implements a new method of setting operating payment rates. The law considers costs, establishes several definitions, distinguishes between facility types and peer (or geographic) groups with consideration of facilities in different peer groups but in close proximity, sets limits on spending that can be recognized in rates, incorporates new case mix indices, establishes a quality add-on for October 1, 2007, allows negotiation for higher limits for facilities providing specialized care, rewards efficiency in the other operating cost category, considers quality in setting limits for care related costs, provides for payment of external fixed costs and provides that the total payment rate will consist of operating, external fixed and property payment rates.

### 10.2 Phase-In

On October 1, 2008, DHS will begin to phase in operating payment rates in accordance with Minnesota Statutes, section 256B.441. The actual total payment rate will consist of several elements:

1. An operating payment rate which is a blending of the rate that would have been provided under Minnesota Statutes, section 256B.434, the alternative payment system (APS), and under the new cost based system in Minnesota Statutes, section 256B.441. For the year beginning October 1, 2008, the operating payment rate will be equal to 13% of the cost based rate, plus 87% of the APS rate. This blending will change from year to year until, on October 1, 2015, the operating payment rate will be completely cost based. The blending percentages will be:

Effective October 1 of:	The cost based portion shall be:	And the APS portion shall be
2008	13%	87%
2009	14%	86%

2010	14%	86%
2011	31%	69%
2012	48%	52%
2013	65%	35%
2014	82%	18%
2015	100%	0%

The cost based portion of the blended operating payment rate will be determined using the costs reported for the year October 1, 2006, to September 30, 2007.

2. An external fixed payment rate as provided in Minnesota Statutes, section 256B.441. Elements of the payment rate included in external fixed shall be removed from the APS portion of the operating payment rate blend. The external fixed payment rate includes portions related to:
  - a. the surcharge - \$8.86, prorated if a facility is licensed for both nursing home and boarding care home beds;
  - b. licensure fees;
  - c. scholarships;
  - d. LTC Consultation;
  - e. resident and family councils;
  - f. planned closure rate adjustments (these become time limited, see Section 10.5);
  - g. property insurance, real estate taxes, special assessments and payments in lieu of real estate taxes;
  - h. PERA; and
  - i. single bed incentives (these become time limited, see Section 10.5).
3. A property payment rate as provided in APS, which is to be rebased in 2014, subject to the contingency in Section 10.5.

### 10.3 Hold Harmless

During the phase-in of the operating portion of the payment rates, a hold harmless will apply. If the operating payment rate under the new system is lower than their rate would have been under APS, the facility will continue to be paid the APS rates until the phase-in is complete, or until the payment rate under the new system is higher. DHS will determine if the hold harmless applies by comparing the operating payment rate associated with a RUGS weight of 1.00, and if the blended rate is lower than the APS rate then the entire APS rate set will be used.

### 10.4 Encumbrance

During the phase-in, a portion of the increased funding that a facility receives will be subject to the encumbrance and application requirements referenced above in section 2 of this bulletin. The portion subject to these requirements will be the new funds times the difference between 75% and the portion of all operating costs reported by the facility in their most recent cost report that are compensation related, if that portion is less than 75%.

*As a simple example: If the increased revenue is \$100,000 and if the facility reports that 70% of their operating costs are compensation related, then \$5,000 will be subject to the requirements in section 2. [ $\$100,000 \times (75\% - 70\%) = \$5,000$ ]*

#### 10.5 Contingent Delay

Several features of the new rate setting system take place after the start of the phase-in. The limited duration of planned closure incentives and single bed incentives begins on 2011 and takes effect on October 1, 2013; the rebasing of property payment rates takes effect on October 1, 2014; and quality based limits for care related costs take effect on October 1, 2016. If, within six months prior to the effective dates of these provisions average operating payment rates are less than 92% of average operating costs, the provision shall be delayed until this cost coverage test is met.

#### Special Needs

This information is available in other forms to people with disabilities by contacting us at (651) 431-2282. TDD users can call the Minnesota Relay at 711 or (800) 627-3529. For the Speech-to-Speech Relay, call (877) 627-3848.

#### **DHS BULLETINS**

Official versions of DHS bulletins can be found at:

[http://www.dhs.state.mn.us/main/groups/publications/documents/pub/dhs\\_id\\_000305.hcsp](http://www.dhs.state.mn.us/main/groups/publications/documents/pub/dhs_id_000305.hcsp)