Nursing Facility Policy Changes in 2017 Legislation

TOPIC
Changes enacted during the 2017 legislative session.

PURPOSE
To inform interested parties of 2017 legislative changes that apply to nursing facilities and to provide details on how the Department of Human Services (DHS) will implement these changes.

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TERMINOLOGY NOTICE
The terminology used to describe people we serve has changed over time. The Minnesota Department of Human Services (DHS) supports the use of "People First" language.
I. Introduction

The purpose of this bulletin is to inform interested parties of 2017 changes made to policy and rates that apply broadly to nursing facilities and to provide details on how DHS will implement these changes.

II. Nursing Facility Payment Rate Changes

A. Property Rates Adjusted for Inflation

Minnesota Statutes, section 256B.434, Laws of Minnesota 2017, Chapter 6, Article 3, Section 23.

The property payment rate for nursing facilities will not be increased for inflation on January 1, 2018. The property payment rate for nursing facilities under an Alternate Payment System (APS) Contract will be adjusted for inflation annually on January 1st for the second and subsequent years of a facility’s APS contract for rate years beginning on and after January 1, 2019. Historically these property rate changes occurred annually on October 1. This change to January 1st was done to align the annual property rate adjustment with the effective date of the annual Value-Based Reimbursement (VBR) rate adjustment.

B. Critical Access Nursing Facilities

Minnesota Statutes, section 256R.47, Laws of Minnesota 2017, Chapter 6, Article 3, Section 45.

Legislation authorizing the creation of the Minnesota Critical Access Nursing Facility (CANF) program was first enacted in 2012. The goal of the program was to preserve access to NF services in isolated areas, rebalance long-term care, and improve quality. The benefits to a facility of this designation included operating rates based partially on actual operating costs, enhanced payments for leave days, and easier access to funding for capital projects.

By November 2013 the appropriation for this program was fully used and, since the legislature had not appropriated additional funding in the 2013 session, the program was terminated. In 2014, the legislature restored and enlarged the CANF program, providing ongoing state funding of $1.5 million per year. Twelve nursing facilities were selected to participate in this program in 2014.

In 2015, with the enactment of VBR which implements full rebasing of payment rates to facility costs, the partial rebasing available under the CANF program ceased to be of value. The legislature suspended the program for two years and all CANF contracts were terminated effective December 31, 2015. The suspension of the Critical Access Nursing Facility (CANF) rate adjustment has been extended to December 31, 2019.

DHS will be evaluating the impact of VBR to determine if the CANF program should be reinstated on January 1, 2020, and if so, its goals, benefits and selection criteria or other process for structuring the program.
C. Effective Dates of Certain Rate Changes

Minnesota Statutes, section 144A.071, Laws of Minnesota 2017, Chapter 6, Article 3, Section 4.
Minnesota Statutes, section 256B.431, Laws of Minnesota 2017, Chapter 6, Article 3, Sections 20 - 22.
Minnesota Statutes, section 256B.434, Laws of Minnesota 2017, Chapter 6, Article 3, Section 24.
Minnesota Statutes, section 256R.40, Laws of Minnesota 2017, Chapter 6, Article 3, Section 43.
Minnesota Statutes, section 256R.41, Laws of Minnesota 2017, Chapter 6, Article 3, Section 44.

The effective dates for several different existing types of nursing facility rate changes are being consolidated so that they occur at only two different times each year; on January 1 and/or July 1. This will provide administrative simplification for nursing facility staff and reduce the frequency private pay residents experience a rate change. Following are the rate adjustments that are moving to the twice annual consolidated schedule with the associated effective dates.

- Rate adjustments associated with placing the bed(s) in and out of lay away status will be effective the first day of the month of January or July, whichever occurs first following the month in which the layaway status of the bed(s) became effective. This is effective for the bed(s) with a layaway status change effective date after July 1, 2017.

- The planned closure rate adjustments (PCRA), and single-bed incentives (SBI) will take effect on the first day of the month of January or July, whichever occurs first following the date of the bed(s) delicensure. This is effective for bed closures occurring after August 1, 2017.

- For approved nursing facility consolidations the rate adjustment is effective on the first day of the month of January or July, whichever date occurs first following both the completion of the construction upgrades in the consolidation plan and the complete closure of the facility or facilities designated for closure in the consolidation plan. This is effective for consolidations occurring after August 1, 2017.

- Property rate increases associated with construction projects will be effective the first of the month of January or July, whichever occurs first following both the construction project's completion date and submission of the provider's rate adjustment request. This provision is effective for construction projects completed after January 1, 2018.

- For major additions and replacement projects the incremental rate increase will be added to the nursing facility’s property-related payment rate effective the first day of the month of January or July, whichever occurs first following the month in which the addition or replacement is completed. This is effective for additions or replacements completed after January 1, 2018.

- The effective dates for changes to the surcharge fees described in Minnesota Statutes, section 256.9657 and Minnesota Department of Health license fees associated with the rate adjustments described above are not impacted by the new rate consolidation schedule (January 1 and/or July 1); they remain unchanged.

D. Rate Increases Related to Minimum Wage Related Costs

Minnesota Statutes, section 256R.02, Laws of Minnesota 2017, Chapter 6, Article 3, Section 31.
Minnesota Statutes, section 256R.49, Laws of Minnesota 2017, Chapter 6, Article 3, Section 46.
The rate increases issued to nursing facilities associated with increases to the minimum wage rates that took effect prior to October 1, 2016 will expire effective January 1, 2018. Rate increases issued to nursing facilities after October 1, 2016 that are associated with increases to the minimum wage rate will expire effective January 1, 2019. These rate increases are sunsetting because these costs are now included in the cost basis under VBR.

There may be a small number of nursing facilities that will be eligible for a rate increase on January 1, 2018 based on the minimum wage rate increase as provided in Minnesota Statutes, section 177.24. The Department will make available additional guidance on this topic after October 1, 2017. For more information contact Mai Khang at Mai.khang@state.mn.us.

Rate increases provided on and after January 1, 2018 that are for compensation-related costs for minimum wage changes under Minnesota Statutes, section 256R.49 will be an adjustment to the external fixed rate component rather than the operating rate.

Minnesota’s minimum-wage rates can be accessed here: [Minnesota’s minimum wage](#)

### III. Notice to Private Pay Residents of Rate Increases

Minnesota Statutes, section 256R.06, Laws of Minnesota 2017, Chapter 6, Article 3, Section 37.

Nursing facilities are required to give at least 30 days advance written notice of rate increases for the per diem to private pay residents or the person responsible for payment. This section of law was modified to specify that written notifications of rate increases must include the amount of the rate increase, the new payment rate, and the date the rate increase is effective once the provider has this information from the state.

This provision was expanded to require nursing facilities to notify private pay residents of any rate increase related to a change in case mix classification. The notice must be issued in a timely manner after confirmation of the case mix classification change is received from the Department of Health. Minnesota Rules, part 9549.0059, subpart 9(c) specifies that the nursing facility must provide each nursing facility resident or the person responsible for payment the rate for the new classification within five days of the receipt of the classification letter. The requirement of providing a written notice 30 days in advance of rate increase does not apply when a rate increase is due to case mix classification changes.

There are instances when a facility will receive a rate increase retroactively. This will typically be related to provider requests for bed layaway, planned closure rate adjustments and building construction projects. In these instances the nursing facility must provide notification, on or before the effective date of the increase, that a rate increase will be effective on that date. The amount of a retroactive rate increase, the new payment rate and the effective date of the rate increase must be given to the private pay resident once the nursing facility receives this information from DHS.

This provision is effective August 1, 2017.

### IV. Supplemental Nursing Services

Minnesota Statutes, section 144A.74, Laws of Minnesota 2017, Chapter 6, Article 3, Sections 5 and 28.

Minnesota Statutes, section 144A.74, Laws of Minnesota 2017, Chapter 6, Article 14, Section 6.
Under current law there are three different sets of maximum charges for supplemental nursing services agency (SNSA) staff based upon three distinct geographic groups as defined in Minnesota Administrative Rules 9549.0052; commonly referred to as the “Rule 50 groups”. Effective January 1, 2018 there will be only one set of maximum charges and these new caps will be based upon the cost reports from nursing facilities in Anoka, Carver, Dakota, Hennepin, Ramsey, Scott, and Washington Counties. This new set of maximum charges will be published on the Minnesota Department of Health website in December of 2017.

A second change that goes into effect on January 1, 2018 pertains to the travel and housing costs of SNSA staff. A nursing home that pays for the actual travel and housing costs for SNSA staff working at the nursing facility will not be in violation of the maximum charges. These costs may be reimbursed directly to the SNSA employee, the SNSA agency, or another vendor.

The travel and housing costs for SNSA staff will not be included in the maximum charges rates and should be reported as an administrative cost on the annual and statistical cost report beginning October 1, 2017.

V. Case Mix Penalties

Minnesota Statutes, section 144.0724, Laws of Minnesota 2017, Chapter 6, Article 3, Section 2.

Case mix law provides a penalty rate equal to a facility’s lowest RUG (Resource Utilization Groups) reimbursement rate when timely resident assessments are not submitted. In 2013 the commissioner of Human Services was granted discretionary authority to limit these penalties when the loss of revenues in any 92 day period was equal to or greater than 1% of a facility’s total operating costs on the facility’s most recent annual and statistical cost report. This year this provision was modified to reduce the operating costs threshold test to 0.1 percent of the total operating costs. It also allows the commissioner to limit the penalty for residents covered by medical assistance to ten days; previously the threshold was 15 days. The objective of this provision is to allow for some relief in situations where systematic problems with MDS submissions have the potential to cause significant financial hardship for providers. These changes are effective for services provided on or after August 1, 2017.

VI. Biennial Report on Value-Based Reimbursement

Minnesota Statutes, section 256R.37, Laws of Minnesota 2017, Chapter 6, Article 3, Section 40.

DHS will evaluate various aspects of VBR and submit a report to the legislature by January 1, 2019. A legislative report on VBR is required on an ongoing biennial basis.

VII. Reimbursement of Nurse Aide Costs

Minnesota Statutes, section 144A.611, Laws of Minnesota 2017, Chapter 71, Section 2

Reimbursement of eligible CNA training, testing and associated costs shall be paid by the facility directly to the nursing assistant only when the nursing assistant actually incurs these expenses. When certain
organizations that receive state or federal funding for such expenses pay these costs on behalf of an individual, facilities must reimburse this third party organization directly, unless the nursing assistant has already reimbursed the third party entity.

Minnesota Statutes, section 144A.611, Laws of Minnesota 2017, Chapter 71, Section 3.

Nursing facilities and Boarding Care Homes are now required to reimburse of a portion of Adult Basic Education (ABE) training costs intended to help ensure individuals successfully complete certification as a Nursing Assistant (CNA). (See also related section V below). This provision is effective July 1, 2017.

The Department will make available detailed guidance and tools for facility use regarding these changes.

 VIII. Nursing Facility Employee Scholarship Program Expanded

Minnesota Statutes, section 256R.37, Laws of Minnesota 2017, Chapter 6, Article 3, Section 41.

Individuals seeking reimbursement of allowable student loan or nurse aide training expenses under the scholarship program are no longer required to be recent graduates. This provision is effective October 1, 2017.

Minnesota Statutes, section 144A.611, Laws of Minnesota 2017, Chapter 71, Section 1.

A portion of Adult Basic Education (ABE) training costs intended to help ensure individuals successfully complete certification as a Nursing Assistant (CNA) are now a covered expense under the scholarship program for participating Minnesota Medicaid-certified facilities. This provision is effective July 1, 2017.

The Department will make available additional guidance and tools for facility use regarding these scholarship program changes. For more information, visit our webpage on the Nursing Facility Employee Scholarship Program.

Americans with Disabilities Act (ADA) Advisory

This information is available in accessible formats for people with disabilities by calling (651) 431-2281 (voice) or by using your preferred relay service. For other information on disability rights and protections, contact the agency’s ADA coordinator.