Minnesota Department of Human Services **Bulletin**

Nursing Facility Policy Changes in 2015 Legislation

NUMBER
#15-62-01

DATE
August 11, 2015

OF INTEREST TO
County Directors

Social Services Supervisors and Staff

Nursing Facility Administrators

Nursing Facility Owners

Nursing Facility Unions

ACTION/DUE DATE
Please read information and prepare for implementation

EXPIRATION DATE
August 11, 2017

TOPIC

Changes enacted during the 2015 legislative session

PURPOSE

To inform interested parties of 2015 legislative changes that apply to nursing facilities and to provide details on how the Department of Human Services (DHS) will implement these changes.

CONTACT

Nursing Facility Policy Center at:
(651) 431-2282; (651) 431-7415 (fax)
Nursing Facility Rates and Policy Division
Minnesota Department of Human Services
P.O. Box 64973 St. Paul, MN 55164-0973
DHS.LTCpolicycenter@state.mn.us

SIGNED

LOREN COLMAN
Assistant Commissioner
Continuing Care for Older Adults

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 2015 changes made to policy and rates that apply broadly to nursing facilities and to provide details on how DHS will implement these changes.

II. Pending Nursing Facility Payment Rate Changes

Most nursing facilities will receive rate changes on both October 1, 2015 and on January 1, 2016.

Possible rate changes effective October 1, 2015 include:

- Seed funding for facilities wishing to participate in the Scholarship Program that are not doing so already, as described in section IV, below
- Quality Improvement Incentive Payment (QIIP) rate increase as described in section III. A, below
- Minimum Wage related rate increases as described in section V, below
- Performance-based Incentive Payment Program (PIPP) payment may begin, change or end on October 1, 2015. Timing of PIPP rate adjustments may shift to January 1 in future years.
- Other rate adjustments, as applicable, related to property projects, planned closures etc.

DHS will implement rate changes related to the new nursing facility payment system effective January 1, 2016, as described in section III, below.

For the October 1, 2015 rate adjustments, rate notices should be available on the provider portal by August 15, 2015, and facilities should provide notice of the rate change to private paying residents by September 1, 2015. For the January 1, 2016 rate adjustments, rate notices should be available on the provider portal by November 15, 2015, and facilities should provide notice of the rate change to private paying residents by December 1, 2015. If a rate notice is posted late, facilities are permitted to reduce the required 30-day advance notice of the rate change by one day for each day the rate posting is delayed, but must give notice in advance of the actual rate increase.

III. New Nursing Facility Payment System - Value-based Reimbursement (VBR) to be Implemented

Minnesota Statutes, section 256B.441, Laws of Minnesota 2015, chapter 71, article 6, sections 9, 11-35, and 41-44

A. Overview

The Minnesota statute related to setting nursing facility payment rates was amended in numerous ways in the 2015 legislative session. This section of statute, titled "VALUE-BASED NURSING FACILITY REIMBURSEMENT SYSTEM," will be referred to as "Value-Based Reimbursement" (VBR) in this bulletin. Among the many amendments enacted were:

- The ban on taking further steps in the phase-in of VBR, enacted in 2011, was repealed
- The rate year will begin January 1, starting in 2016, rather than October 1
- Care related costs will be reimbursed at actual cost subject to a quality based limit
- Other operating costs will be reimbursed using a pricing model, meaning the rate for these costs will be the same for all nursing facilities in the state
- Qualified employer health insurance costs will be reimbursed as part of the external fixed payment rate and will be cost based, meaning the rate will be equal to actual allowable costs divided by resident days
- Nursing facilities that did not provide employee health insurance coverage as of May 1, 2015, and demonstrate that effective January 1, 2016, they have contracted to do so will be allowed a rate component for these costs, dependent upon the availability of funds
- Property insurance costs will be reimbursed as part of the other operating payment rate and cease to be in the external fixed rate
- Geographic (peer) groups and facility types are not used in this reimbursement formula
- A role for exclusive bargaining agents in defining allowable costs is created
- Alternative Payment System automatic inflation is suspended until January 1, 2018
- The general rate increase of 2.4%, approved in the 2013 legislative session and effective October 1, 2015, is repealed
- Continuation of the Equitable Cost-sharing for Publicly-owned Nursing facilities (ECPN) program allowing rates greater than full implementation of VBR, will be contingent on federal approval
- The Critical Access Nursing Facility Program is suspended for two years beginning January 1, 2016
- DHS will conduct a study of the property payment system, leading to a recommendation for a new system to be implemented on January 1, 2017
- A hold harmless will protect facilities from rates lower than the rate they received on December 31, 2015
- Facilities will be protected from large reductions in a single year to their care related limit
- The first Quality Improvement Incentive Payment (QIIP) rate increases will be effective October 1, 2015, through December 31, 2016. Future QIIP rate add-ons will be effective January 1 through December 31, starting in 2017.
- Four Rule 80 nursing facilities and one facility specializing in the treatment of Huntington's Disease are designated as specialized care facilities, and will be

allowed care related limits 50% higher than would otherwise apply

- DHS will evaluate various aspects of VBR and report to the legislature by January 1, 2017

Estimates of the rate and revenue effects of these changes on each nursing facility were provided to the legislature during the 2015 session. Actual resulting rates will differ from those estimates because actual costs for the report year ended on September 30, 2014 may differ from the data used, quality scores may change, resident days and acuity may change, etc. A rate estimator will be made available and adjusted periodically. The rate estimator will be available on the Payment System Reform web page. Several of the changes are discussed in greater detail below.

B. Rate Year

Each nursing facility is required to file a cost report annually. Cost reporting years begin every October 1 and end the following September 30. The report must be filed by the following February 1 and will be used to determine payment rates for the rate year that begins the following January 1. For the first cycle under the VBR system, the dates will be:

- The reporting year was October 1, 2013 through September 30, 2014
- The cost reports were filed by February 1, 2015
- Rate notices may be expected to be posted on the provider portal by November 15, 2015
- Rates will take effect on January 1, 2016

C. Care Related Costs

The care related cost category includes costs for nursing, activities, social services, raw food, therapy costs, and other direct care costs. The nursing portion of these costs is case mix adjusted, using the Resource Utilization Groups method. DHS will determine the median of these costs for all nursing facilities in the seven county metro area. A limit will be determined for each nursing facility based on its quality score using the most recently available data as provided in the Minnesota Nursing Home Report card. For a facility with a quality score of zero, the care related limit will be 89.375% of the median. For all other facilities the limit will be increased from this amount by their quality score multiplied by 0.5625. Therefore, a facility with the quality score of 100, the highest possible score, will have a care related limit of 145.625% of the median.

D. Other Operating Costs

The other operating cost category includes costs for dietary, other than raw food, housekeeping, laundry, maintenance, administration, and property insurance. As with care related costs, DHS will determine the median of these costs for all nursing facilities in the seven county metro area. A price will be calculated at 105% of this median and this price will apply to all nursing facilities.

We expect many questions to arise regarding cost categorization and allocation. The VBR statute states: "'Allowed costs' means the amounts reported by the facility which are necessary for the operation of the facility and the care of residents and which are reviewed by the department for accuracy; reasonableness, in accordance with the requirements set forth in title XVIII of the federal Social Security Act and the interpretations in the provider reimbursement manual; and compliance with this section and generally accepted accounting principles." The integrity of the VBR system requires consistency of cost categorization and allocation. DHS will provide direction on cost categorization and allocation in the cost report instruction manual, in published questions and answers as described in section J, below, and in other guidance to be provided as needed.

E. Health Insurance

Costs for certain health insurance will be allowable and classified in the external fixed category and a rate will be determined equal to the allowable costs divided by resident days. Allowable costs will include premium expenses for group coverage and reinsurance, actual expenses incurred for self-insured plans, and employer contributions to employee health reimbursement and qualified health savings accounts incurred by the employer for full-time employees, their spouses, and dependents, and part-time employees (excluding any costs for their spouses and dependents). Note that penalties are not an allowable cost. We advise facilities to consider consulting a qualified professional regarding such issues as ACA qualified plans, caps on contributions, tax implications, etc.

Facilities that did not provide health insurance coverage as of May 1, 2015, (meaning that a health insurance benefit, with an employer contribution, was not made available to either all employees, or at least to all employees defined as full time employees) and have a signed contract with the health insurance provider to begin providing health insurance coverage by January 1, 2016, may also be paid these costs for the period from January 1, 2016 through December 31, 2017. This payment will be contingent upon a determination by DHS that the costs of this provision can be incurred within the projected cost of the VBR program. Beginning January 1, 2018, the portion of the External Fixed payment rate for health insurance described in this paragraph will be computed based on actual reported costs. To be considered for inclusion in this rate increase, nursing facilities must notify DHS by October 1, 2015. Notifications should be sent by email to mai.h.khang@state.mn.us and must provide the following elements:

- A statement that the facility did not provide employee health insurance coverage as of May 1, 2015. "Did not provide employee health insurance coverage" means that no employees or only a select few employees were provided health insurance.
- A statement that the facility has a signed contract with a health insurance provider to begin providing employee health insurance coverage by January 1, 2016. DHS may request a copy of the contract. "To begin providing employee health insurance coverage" means that a health insurance benefit, with an employer contribution, will

be offered to all employees, or at least to all employees defined as full time employees).

- The estimated cost of the employee health insurance the facility has contracted to provide, including a calculation showing how this amount was determined.

F. Exclusive Bargaining Agents

The VBR amendments establish a new role for exclusive bargaining agents. In the Annual Statistical and Cost Report, nursing facilities will be required to report whether any employees are represented by an exclusive bargaining agent, which union this relationship is with, and which groups of employees are represented. The report will also ask if a collective bargaining agreement was in effect as of the last day of the cost reporting year (September 30) or was subsequently reached as of the cost report filing date. In addition, unions may notify DHS by March 1 following the filing due date of the Annual Statistical Cost Report if an agreement is not in place covering the last day of the cost reporting year. If DHS is notified by either the facility or the exclusive bargaining agent that they did not have an agreement effective on the last day of the cost reporting year and that none has been reached, both parties must notify DHS by October 1 if an agreement is reached. Cost increases associated with employees represented by an exclusive bargaining agent will be allowed only if an agreement was in place on the last day of the cost reporting year or if an agreement or understanding between the facility and the collective-bargaining agent is achieved by October 1 following the cost report due date.

G. Equitable Cost-Sharing for Publicly-Owned Nursing Facilities (ECPN)

The ECPN program, as currently structured allows operating payment rates up to full rebasing under certain circumstances and for certain facilities. This design will no longer apply after December 31, 2015, because all facilities will be reimbursed at full rebasing in accordance with the VBR system beginning January 1, 2016. Statute permits the ECPN program to continue, with rates above full rebasing. However, this provision requires federal approval, which is being sought. Eligible facilities that wish to participate in the ECPN program must notify DHS of their interest by September 30, 2015, by email to Marilyn.kaufenberg@state.mn.us. Interested facilities will be notified of the results of the request for federal approval.

H. Hold Harmless

For each nursing facility a pre-VBR payment rate will be determined. This rate, shall be the rate in effect on December 31, 2015, determined at a DDF, and shall be all operating rate components, including health insurance costs, plus the property insurance component of the external fixed rate. For any nursing facility in which the operating payment rate determined under the VBR system, plus the health insurance component in external fixed, is less than the pre-VBR payment rate, the pre-VBR payment system rate shall apply rather than the VBR rate. In addition, after the first year of operation of the VBR system no facility shall be subject to a reduction in their care related limit, in any one year, greater than 5% of the median used in calculating that limit.

I. Property Payment Rates

DHS is instructed to conduct a study of property payment rate setting, in consultation with stakeholders and experts. A findings report is due to the legislature by March 1, 2016. This report will include a recommendation and description of the proposed property rate setting system, options for adjusting the cost of this system, an analysis of the effects on individual nursing facilities of various models compared with current rates, recommended steps for transitioning from the current system to the new payment system, an analysis of the expected long-term incentives of the proposed system, and bill language to enact the recommended methodology.

As a part of this study, property appraisals of all nursing facilities will be conducted. At least two appraisal firms will be selected by DHS, and facilities will be randomly assigned to a firm for the appraisal. The appraisal shall determine the value of the land, building and equipment of each nursing facility, considering quality of construction and the current condition of the building. This information will be used to design a rental value or other system of determining property payment rates for facilities.

The appraisals are not subject to appeal. However, nursing facilities may request an appraisal by a second appraisal firm. DHS will use the findings of the second appraisal and will pay the cost of the second appraisal if it increases the appraisal value of the facility by more than 5%. Otherwise, the nursing facility shall pay the cost of the appraisal, and this cost will be an allowable cost in the General and Administrative cost category.

J. Further Questions

DHS anticipates receiving numerous policy questions that are not addressed in this bulletin. Staff of the NFRP division will post these questions and responses on the DHS website at Payment System Reform Q/As. Please be patient as responses to these questions are developed. Questions may be submitted to DHS at Ilya.garelik@state.mn.us.

IV. Nursing Facility Employee Scholarship Program Expanded

Minnesota Statutes, section 256B.431, subd. 36, Laws of Minnesota 2015, chapter 71, article 6, section 8

Several provisions of the nursing facility employee scholarship program were revised:

- Effective July 1, 2015:
    - The average weekly work requirement for scholarship recipients is reduced

from 20 hours per week to ten hours per week
  - Registered nurses and department supervisors may participate in the program
  - Eligible scholarship program expenses may include reasonable costs for childcare and transportation related to direct educational expenses
  - The employee scholarship program will provide for reimbursement of student loan expenses for newly hired and recently graduated licensed practical nurses and registered nurses Expenses include periodic required minimum amount loan payments, but not loan balances due.
  - Nursing facilities that close beds may request a recalculation of their scholarship rate for the remainder of the rate year, to reflect the reduction in resident days, when the resulting rate adjustment is $0.15 per day or greater
- The employee scholarship program will provide reimbursement for costs related to nurse aide training, testing and associated costs for newly hired and recently graduated nurse aides.
- Nursing facilities not currently participating in the employee scholarship program may request, for the period October 1, 2015 through December 31, 2017, a scholarship rate of up to $0.25, to be used exclusively to cover eligible scholarship program costs. This rate adjustment must be requested by September 30, 2015, by email to Munna Yasiri at: munna.yasiri@state.mn.us.

The Department will make available additional guidance and training on these program changes. For more information, please visit our webpage on the 2015 Employee Scholarship Program changes or contact Munna Yasiri at: munna.yasiri@state.mn.us.

V. Rate Increases Effective October 1, 2015, for Minimum Wage Related Costs

Minnesota Statutes, section 256B.441, subdivision 64

Nursing facilities may be eligible for rate increases on October 1, 2015, to cover the costs resulting from the implementation of the minimum wage increase. Detailed information regarding this rate increase was published in 2014 in Bulletin #14-62-01 and is available on the DHS website. To receive the October 1, 2015, rate adjustments for minimum wage increases, a nursing facility must submit an application to the commissioner by January 4, 2016. The rate adjustment application form and instructions will be located on the Nursing Facility Rates and Policy (NFRP) Division's website.

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.