Nursing Facility Policy
Changes in 2009 Legislation

TOPIC
Policy and rate changes enacted during the 2009 legislative session and subsequent unallotments.

PURPOSE
To inform interested parties of changes made to policy and rates that apply to nursing facilities

CONTACT
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1. INTRODUCTION
The purpose of this bulletin is to describe changes to law enacted in 2009 and unallottments that apply to nursing facilities and to provide details on how the Department of Human Services (DHS) will implement these changes.

2. COMMUNITY TRANSITIONS
*Laws of Minnesota 2009, chapter 79, article 8, sections 16 and 38*

The 2009 legislature appropriated funds to support an initiative to facilitate community discharge from nursing homes when a resident indicates a preference and/or has support to return to the community and fits a short-stay community discharge profile – health and functional conditions at admission that increase the probability of a successful community discharge. Specifics of the community discharge initiative will be published in a separate bulletin.

3. LEVEL OF CARE CRITERIA
*Laws of Minnesota 2009, chapter 79, article 8, sections 1-5, 16, 32-37, 39-44, 48, 51, 65-67*

Legislation was enacted in 2009 that changes the nursing facility level of care criteria effective January 1, 2011. This change will impact medical assistance payment for long-term care services. Details of the revised level of care criteria will be published in a separate bulletin.

4. CHANGES TO THE REBASING LAW
*Laws of Minnesota 2009, chapter 79, article 8, sections 61 and 62; and Chapter 159, sections 97, 98 and 99*

*Minnesota Statutes, section 256B.433, Subd. 1; and 256B.441, Subd. 5, 11, 55 and 58*

Legislation was enacted in 2007 requiring the rebasing of nursing facility operating payment rates. The phase-in of rebasing began on October 1, 2008, with a blend of 13% of the operating payment rate determined using the rebasing formula and 87% of the rate determined using the Alternative Payment System (APS) methodology provided in Minnesota Statutes, section 256B.434. The second step of rebasing, scheduled in statute, effective on October 1, 2009 for the period October 1, 2009, to September 30, 2013, will not take place as scheduled, due to unallotment by the governor. Instead, they will be made effective on July 1, 2011. Phase-in steps scheduled for October 1, 2010, 2011 and 2012 were suspended by legislation. The calculation of the external fixed portion of the payment rate is not affected by these changes.

In addition, clarifications were enacted in three areas of the rebasing formula:

- Training costs – all training costs related to provision of care are to be reported as direct care costs; all other training related costs are to be reported as administrative costs.
- Under Rule 50 (Minnesota Rules, parts 9549.0010-9549.0080), some facilities elected to have therapies and/or medical transportation costs included in their rates. These elections then carried forward into APS rates. Under rebasing, all Medical Assistance (MA) covered therapies and medical transportation will be billed separately.
And finally, the provisions regarding the rebasing of property rates in 2014 and limiting the duration of planned closure rate adjustments and single bed incentive rate adjustments beginning in 2016 will not take effect until the phase-in of rebasing has progressed to the point where 82% of the operating payment rate is determined under the rebasing law.

5. NATURAL DISASTERS

Laws of Minnesota 2009, chapter 93, article 2, section 14
Minnesota Statutes, section 12A.10

Minnesota Statutes, section 12A.10 was enacted in 2008 to cover certain costs incurred by human services providers in responding to a natural disaster. Revisions in 2009 clarify that the commissioner of human services has the authority to provide financial support to a nursing home or other human services provider that undertakes an evacuation in response to a disaster or potential disaster. These revisions are effective May 17, 2009. In its original form, this section of statute provided DHS with the authority to reimburse nursing facilities for costs incurred for evacuation, transportation, or medical or remedial services provided to residents. While this reimbursement will not cover costs for the repair of damages, it will cover costs that are:

- Necessary because of a flood, tornado, fire or any other event which would force emergency action to protect residents or which would cause a prudent manager to conclude that it would be wise to take emergency action
- Not reimbursed elsewhere
- Necessary to ensure the health and safety of medical assistance residents
- Incurred by nursing facilities that evacuate and by those that provide shelter, and
- Incurred during the disaster and up to 60 days following the disaster

The revisions in 2009 clarify several issues:

- Funding is appropriated to cover the costs related to the flooding in the Red River Valley in spring 2009.
- A presidential disaster declaration is not required.
- The uses of the funds may go beyond ‘recovery.’
- The funding may be used for events other than a natural disaster, and may be used when costs were incurred in anticipation of a natural disaster, even if that event does not occur.
- Costs for personal care are included, along with evacuation, transportation, medical and remedial services.
- Methods of determining amounts to be paid are specified: documented incremental costs, an estimate of costs as determined by the commissioner, or a combination of these methods.
- In residential programs, funding is only for costs allocated to the MA portion of residents, except in a nursing facility, where all allowable costs may be reimbursed.
- The appropriation for Medical Assistance (MA) is identified as the source of funds.

Nursing home administrators and others delegated responsibility as the person-in-charge of the nursing home should be aware that DHS will pay for costs incurred by the nursing home in a disaster situation for actions taken to ensure resident safety.
6. CHANGES TO PAYMENTS FOR SINGLE BED ROOMS  
Laws of Minnesota 2009, chapter 79, article 8, section 63  
Minnesota Statutes, section 256B.441, Subd. 59

Under certain circumstances, DHS will pay a nursing facility a higher rate when a MA resident is in a single bed room. These circumstances occur when the facility has elected to assign greater costs to single bed rooms in determining its property payment rate and that the resident has a demonstrated medical necessity for a single bed room, as approved by DHS. While these circumstances have not changed, beginning October 1, 2009, the amount of the payment increase has been reduced from 15% to 11.5%.

7. CHANGES TO PLANNED CLOSURE POLICY  
Laws of Minnesota 2009, chapter 79, article 8, section 60  
Minnesota Statutes, section 256B.437, Subd. 6

DHS has had authority almost continuously since 2001 to allow incentive payments to nursing facilities that close beds. Since 2006, the amount of the incentive payment has been negotiated between facilities and DHS, such that the cost of the incentive payments, cumulatively, could not exceed the savings to the state resulting from the closures. The incentive amount agreed to, referred to as the planned closure rate adjustment (PCRA) factor, is used to calculate a rate adjustment which is included in the external fixed portion of the total payment rate of the facility.

Beginning with planned closure applications approved after June 30, 2009, the negotiation process will no longer be used and the PCRA factor will be a fixed $2,080 per bed closed.

8. MORATORIUM EXCEPTION EXTENSION  
Laws of Minnesota 2009, chapter 79, article 8, section 6  
Minnesota Statutes, section 144A.073, Subd. 12

Proposals approved by the commissioner of health through the competitive moratorium exception process are allowed 18 months from the date of the approval to commence construction on the project. For projects approved between July 1, 2007 and June 30, 2009, an additional 18 months is allowed.

9. APS AUTOMATIC INFLATION SUSPENDED  
Laws of Minnesota 2009, chapter 79, article 8, section 58  
Minnesota Statutes, section 256B.434, Subd. 4

APS law provides for rate adjustments for facilities under contract, based on inflation. This provision has been set aside for every rate year since 1999, for the operating portion of the rate, because the legislature has taken different actions. Effective for the rate years beginning October 1, 2011 and October 1, 2012, the automatic inflation of the operating portion of the payment rate for APS facilities is suspended. Inflation adjustments will still apply for the
property portion of the rate. Automatic inflation for October 1, 2009 and October 1, 2010 was already suspended.

10. CHANGES TO OVERPAYMENT RECOVERY LAW
Laws of Minnesota 2009, chapter 79, article 8, section 22
Minnesota Statutes, section 256B.0641, Subd. 3

When a residential program licensed by DHS is placed into receivership and then purchased by an unrelated party, ending the receivership, DHS ceases any recovery from that facility of overpayments, including unpaid surcharges, and the obligation remains with the prior licensee. This provision has been expanded to include nursing facilities taken into receivership by the commissioner of health.

11. CHANGES AFFECTING RATE SETTING RELATED TO PENSIONS FOR PRIVATIZING FACILITIES
Laws of Minnesota 2009, chapter 79, article 8, section 59
Minnesota Statutes, section 256B.434, Subd. 21

Forty-two nursing facilities in Minnesota are governmentally owned and are required by law to participate in the Public Employees Retirement Association (PERA). If one of these facilities were to be privatized, they would no longer be eligible to participate in PERA. Several facilities have been privatized in recent years.

PERA expenses to the facility are fully reimbursed, as a pass-through expense in the external fixed category. When a facility privatizes and stops incurring these costs, their external fixed payment rate will be reduced. If the facility wishes to provide a pension benefit to replace PERA, the costs of this benefit will be reported as an operating cost and will not be reimbursed until the cost based rebasing formula is fully phased in. This provision incorporates an estimate of these costs into the APS portion of the rebasing phase-in formula for facilities that privatized after September 30, 2006, enabling privatized facilities to offer pensions comparable to those offered by other non-governmentally owned facilities.

12. NOTICE OF COMPLETION OF CONSTRUCTION PROJECTS
Laws of Minnesota 2009, chapter 159, section 96
Minnesota Statutes, section 256B.431, Subd. 10

Current law requires nursing facilities to give DHS notification within 60 days of the completion of a construction project. If the facility does not give notice within the allotted timeframe they may not receive a rate adjustment.

This provision eliminates the 60 day notice and, instead, makes the rate adjustments for a construction project effective on the later of two dates: 1) the first of the month following project completion, if DHS is notified within 60 days of project completion, or 2) the first of the month...
following the filing of the cost information for the rate adjustment, if DHS does not receive the notification within 60 days of project completion.

13. NURSING FACILITY INTERGOVERNMENTAL TRANSFERS (IGT) REPEALED
Laws of Minnesota 2009, chapter 79, article 8, section 86
Minnesota Statutes, section 256B.19, subdivision 1d; and 256B.431, subdivision 23

Two sections of statute were repealed in which facilities owned by a county made a payment (an IGT) to the state once per year, and then the state made a payment of about the same amount (an MA supplemental payment) back to the facility. The federal Centers for Medicare and Medicaid Services (CMS) did not approve the federal cost sharing on the supplemental payment, so the requirement for the money transfers was repealed.

Americans with Disabilities Act (ADA) Advisory
This information is available in alternative formats to individuals with disabilities by calling (651) 431-2282 (voice). TTY users can call through Minnesota Relay at (800) 627-3529. For Speech-to-Speech, call (877) 627-3848. For additional assistance with legal rights and protections for equal access to human services programs, contact your agency’s ADA coordinator.

DHS BULLETINS
DHS Bulletins can be found at:
http://www.dhs.state.mn.us/id_000305