

Bulletin

July 21, 2003

Minnesota Department of Human Services ■ 444 Lafayette Rd. ■ St. Paul, MN 55155

OF INTEREST TO

- County Directors
- Nursing Facilities
- Nursing Facility Owners
- Nursing Facility Employee Unions

ACTION

Read and take action as appropriate.

DUE DATE

Some provisions are time sensitive.

Nursing Facility Policy and Rate Changes in 2003 Legislation

TOPIC

Policy and rate changes enacted during the 2003 legislative session.

PURPOSE

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

CONTACT

Nursing Facility Policy Center at 651-297-3583, or by email at: DHS.LTCpolicycenter@state.mn.us

SIGNED

LOREN COLMAN
Assistant Commissioner
Continuing Care

INTRODUCTION

The purpose of this bulletin is to describe provisions of law enacted in 2003 that affect nursing facilities and how these provisions will be implemented.

RATE ADJUSTMENTS FOR 2003

M.S. 256B.431, Subd. 38; Laws of Minnesota, 2003, First Special Session, Chapter 14, Article 2, Section 34

An increase to nursing facility payment rates for each case mix level, in the amount of \$5.56 per day, became effective on June 1, 2003. The 30 day advance notice requirement for residents who are private pay has been waived for this particular rate increase (this waiver does not apply to other rate increases that may occur in the future). However, as noted below, the resident or their responsible party must receive advance notification of this increase before it may take effect. This rate adjustment is intended to approximate the costs of the increase to the nursing home bed surcharge described below.

APS AUTOMATIC COLA

M.S. 256B.434, Subd. 4; Laws of Minnesota, 2003, First Special Session, Chapter 14, Article 2, Section 36

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, as regards the operating portion of the rate, because the legislature has taken different actions. It has now been set aside for rate years beginning July 1, 2003, and July 1, 2004, also, in order to treat all nursing facilities in an identical manner regarding operating payment rate adjustments. The statutory COLA of 2.5% will apply to the property portion of the rate.

RULE 50

M.S. 256B.431, Subd. 39; Laws of Minnesota, 2003, First Special Session, Chapter 14, Article 2, Section 35

This provision specifies that, for rate years starting on or after 7/1/2003, for Rule 50 facilities, the cost report shall not be used to establish operating payment rates. Rather, until specified otherwise in legislation, operating payment rates will carry forward from one year to the next. The property portion of the rate for Rule 50 facilities will be re-computed based on the law, the rule and the cost report.

For both APS and Rule 50 facilities, other non-operating portions of the rate will be re-computed as well.

NOTICE TO PRIVATE PAY RESIDENTS OF RATE INCREASES

M.S. 256B.47, Subd. 2; Minnesota Laws, 2003, First Special Session, Chapter 14, Article 3, Section 44

Facilities are required to give at least 30 days advance written notice of rate increases to private pay residents or the person responsible for payment. Exceptions to the 30 day notice requirement are permitted for case mix classification changes, and for when DHS does not set a July 1 rate increase by May 1. This new provision clarifies that even when the 30 day advance notice is not required, notice must still be given before a rate increase can take effect. This provision also permits facilities to give the advance notice and begin charging an estimated amount of an increase, on its effective date, before the actual amount is determined. If the estimated amount is greater than the allowable amount actually determined, the facility must refund the difference with interest, determined at the rate charged by the commissioner of revenue for late payment of taxes, 5% as of June 6, 2003. So, facilities have two choices about how to implement a rate increase when they have not received the rate notice before the effective date of the increase:

1. Notify residents or responsible parties that an increase will occur, effective on a specific future date, and that it will be billed to them retroactively once the amount of the increase is determined; or
2. Give notice as in #1, but estimate and bill the amount before it is determined, rather than bill retroactively, refunding any amounts relating to an over-estimate, with interest.

In either case, the rate increase must not be effective before the notice is given to the resident.

SURCHARGE

M.S. 256.9657, Subd. 1; Laws of Minnesota, 2003, First Special Session, Chapter 14, Article 2, Section 13

The nursing home surcharge has been increased by \$1,825 per bed per year. The surcharge currently in effect, \$990 per bed per year, will therefore go up to \$2,815. Invoices from DHS will reflect this change for payments due effective July 15, 2003.

In addition the Intergovernmental Transfer fees for some nursing facilities owned by governmental entities were increased. Affected facilities have been notified.

ASSUMING FULL PARTICIPATION IN THE MA PROGRAM

M.S. 256.9657, Subd. 1, (f); Laws of Minnesota, 2003, First Special Session, Chapter 14, Article 2, Section 13

Nursing homes that pay the surcharge may assume full participation in the MA Program. This provision will allow two things to happen:

- Nursing homes that do not participate in the MA Program may choose to fully participate, and
- Nursing homes that do participate in the MA Program but also have some licensed beds that are not MA certified may choose to participate fully.

The opportunity to assume full participation in the MA Program will be available until August 15, 2004. Requests will be considered timely if received by MDH or postmarked on or before August 15, 2004. Any nursing home interested in pursuing full MA participation should:

1. Request certification from Carol Hirschfeld at MDH, 651-215-8719
2. Request a Provider Agreement from DHS, Provider Enrollment, 651-282-5330, or, if calling from outside the metro area, 1-800-657-3991

To discuss the method by which rates will be set, call Greg TaBelle in DHS Continuing Care for the Elderly, 651-296-5597.

MEDICARE CO-PAYMENTS

M.S. 256B.431, Subd. 2t; Laws of Minnesota, 2003, First Special Session, Chapter 14, Article 2, Section 31

Under certain circumstances, Medicare provides up to 100 days of coverage in a skilled nursing facility, with a co-payment (the terms 'co-payment' and 'coinsurance' are used here and in other DHS instructional materials synonymously) for days 21 to 100. For calendar year 2003, the amount of the co-payment is \$105 per day. For nursing facility residents who are eligible for MA, the Medicare SNF co-payment is paid in full, by MA.

This new provision limits the amount of the Medicare co-payment that MA will pay. Effective for services rendered on or after July 1, 2003, MA will only pay the lesser of:

- the actual co-payment amount, or
- the amount by which the MA RUGS III case mix payment rate exceeds the Medicare rate less the co-payment amount. For co-payment days occurring during the 30 day period of the enhanced rate, described below, the higher MA rate will be used for this purpose.

Facilities are not permitted to charge these amounts against the recipient's resources, because the MA allowed amount for the co-payment must be considered payment in full, even if it is a zero payment. Nursing facilities may be able to consider co-payment amounts that are not paid in full by MA to be bad debt for Medicare purposes. The remittance advice will provide information that will be useful in claiming the bad debt payment from the Medicare Intermediary.

As is currently the case, this policy may result in an MA resident having recipient resources available to apply to nursing home care that are not required for that purpose. In other words, the amount of the client's contribution may exceed their obligation to the facility. When this occurs, refund the excess payment made by the resident to DHS at the following address:

DHS Benefit Recovery
P.O. Box 64836
St. Paul, MN 55164-0836

Include the following information when sending the refund:

Recipient Resources Refund
Month(s)/Amount(s) of Refund
Recipient ID/PMI
Recipient Name

This policy of limiting MA payments for Medicare co-payments applies only to MA recipients. It does not apply to residents who are private pay. In other words, the requirements of the rate equalization law do not limit the amount of the Medicare co-payments that a nursing facility may collect from a private pay resident to the amount that MA will pay.

BED HOLD PAYMENTS

M.S. 256B.431, Subd. 2r; Laws of Minnesota, 2003, First Special Session, Chapter 14, Article 2, Section 30

Under specific circumstances, nursing facilities may charge residents or MA for holding a bed when the resident is on a hospital or therapeutic leave from the facility.

For services rendered on or after July 1, 2003, bed hold payments for such leave days are reduced from 79% to 60% of the applicable RUGS III case mix payment rate for the resident. Bed hold policies are otherwise unchanged.

NURSING FACILITY EMPLOYEE SCHOLARSHIP PROGRAM

M.S. 256B.431, Subd. 36; Laws of Minnesota, 2003, First Special Session, Chapter 14, Article 2, Section 33

On July 1, 2003, the rate nursing facilities will receive to fund scholarships for eligible employees will be based on the reports submitted by facilities showing their actual allowable scholarship spending for the year ending September 30, 2002. This amount will replace the \$0.25 per day that was added to the rates effective July 1, 2001.

This new provision restricts the allowable costs that can be used to calculate scholarship rates to “only costs related to tuition and direct educational expenses.” The result of this restriction is that some previously allowed costs, (such as those for transportation, parking, child daycare, and computers) will not be used in the rates that will be computed from the report for the year ending September 30, 2003 and that will go into effect on July 1, 2004.

The department will consider tuition, mandatory fees, and required books and supplies to be direct educational expenses.

ENHANCED RATES FOR NEWLY ADMITTED RESIDENTS

M.S. 256B.431, Subd. 32; Laws of Minnesota, 2003, First Special Session, Chapter 14, Article 2, Section 32

When a resident is admitted to a nursing facility, the rate the facility is permitted to charge is enhanced for a specified number of days. This rate enhancement is changed in several ways:

- The enhanced rate now applies for 30 days, rather than 90 days.
- The eligible days are now calendar days rather than paid days. This means that eligible days are counted starting on the day of admission and end 30 days later, even if there are unpaid days during that period.
- These changes affect all admissions occurring on or after July 1, 2003. In addition, the enhanced rates for admissions prior to July 1, 2003, will only extend to July 29, 2003. On July 30, 2003, facilities may no longer charge an enhanced rate for a person admitted prior to July 1, 2003.
- Beginning with admissions occurring on or after January 1, 2004, the rate enhancement will no longer be allowed if during the 30 days before admission the resident was in the same facility, another nursing facility owned or operated by a related party, or moved because of a bed or facility closure.

If a resident leaves the facility during the 30 days after the eligible admission, and the bed is being held for them, then the enhancement applies to the bed hold rate. If the resident is discharged and then returns within 30 days of the discharge, then the exclusion applies and there will be no rate enhancement.

The MMIS payment system will be programmed to make the enhanced rate payments automatically. Facilities should notify the Provider Help Desk if errors are discovered. The Help Desk may be reached at 651-282-5455 or 1-800-366-5411.

MORATORIUM EXCEPTION FUNDING

M.S. 144A.073, Subd. 10 and Subd. 11; Laws of Minnesota, 2003, Regular Session, Chapter 72

New funding was not provided for approval of moratorium exception projects in fiscal years

2004 and 2005. However, the time frame for commencing construction, normally 18 months, was extended to 36 months for projects approved between July 1, 2001 and June 30, 2003. In addition, authority was provided for the carry-over of funds from approved projects that do not commence construction on a timely basis or that notify the commissioner of health that they will not be completing their approved project. This money may be made available during the remainder of that fiscal year or during the following two fiscal years for other moratorium exception projects.

APS QUALITY IMPROVEMENT REQUIREMENTS

M.S. 256B.434, Subd. 10; Laws of Minnesota, 2003, First Special Session, Chapter 14, Article 2, Section 37

In the APS Program, the contract requires annual continuous quality improvement (CQI) projects related to quality of care and quality of life. For contracts signed after July 1, 2003, facilities may satisfy this requirement, subject to approval by DHS, by conducting other CQI activities. Facilities conducting or participating in other CQI activities will be expected to provide relevant outcome measures to DHS prior to and upon completion of their CQI projects.

Similar language was included in Minnesota Laws, 2003, Regular Session, Chapter 55, Section 4, however it is superceded by the language cited above.

BED STUDY REPORT

M.S. 144A.351; Laws of Minnesota, 2003, First Special Session, Chapter 14, Article 2, Section 11.

Several bi-annual reports prepared by DHS and MDH for the legislature were consolidated and will be due on January 15, 2004 and then every two years. Recent versions of the reports that were consolidated may be viewed on the DHS Web Site at:

<http://www.dhs.state.mn.us/Agingint/lctaskforce/LegisReport0202.htm>

<http://www.dhs.state.mn.us/agingint/reports/RightsizingTheNursingHomeIndustry2001.pdf>

ALTERNATIVE FORMATS

This information is available in other forms to people with disabilities by contacting us at 651-297-3583, or through the Minnesota Relay Service at 1-800-627-3529 (TTD), 7-1-1 or 1-877-627-3848 (speech to speech relay service).

DHS BULLETINS

Official versions of DHS Bulletins can be found at:

<http://www.dhs.state.mn.us/fmo/legalmgt/bulletins/default.htm>