DATE: May 26, 2020

TO: MN Licensed and Medicaid Certified Nursing Facilities

FROM: Nursing Facility Rate and Policy Division, Minnesota Department of Human Services

## RE: Application Process for Waiver of SNSA Maximum Charges Request Form for MN Medicaid Certified Nursing Facilities

The Minnesota Department of Health (MDH) Health Regulation Division (HRD) has temporarily waived maximum charge amounts for supplemental nursing services agencies (SNSA) registered in MN when they are providing staff to work in MN Medicaid-certified nursing facilities that serve residents with COVID-19.

The waiver allows the State Emergency Operations Center (SEOC), in consultation with the Department of Human Services (DHS) Nursing Home Rates and Policy Division, to set new maximum charge amounts for supplemental nursing services agencies (SNSAs) **on a case by case basis and must be consistent with the State of Minnesota COVID Emergency Response.** This waiver will be in place for the duration of the peace-time emergency and up to 60 days past the end of the emergency.

The Application for Waiver of SNSA Maximum Charges Request Form for Medicaid Certified Nursing Facilities IS TO BE COMPLETED BY THE NURSING FACILITY. Any application form submitted by the SNSA will not be reviewed. The Minnesota SNSA law require a person, firm, corporation, partnership or association engaged for hire in the business of providing or procuring temporary employment in health care facilities for nurses, nursing assistants, nurse aides, and orderlies to register with the Minnesota Department of Health and pay a registration fee. A licensed MN Medicaid certified nursing facility may only use SNSAs on the current list of registered SNSAs when requesting a waiver of the Maximum Charges. For additional information regarded SNSA registration or to confirm a SNSA is a MN registered agency: See <https://www.health.state.mn.us/facilities/regulation/snsa/index.html>

Criteria for obtaining a waiver to the maximum charges:

* The waiver is necessary to provide staff to work in nursing homes that are serving residents with COVID-19.
* The waiver is needed to stabilize an existing or an expected COVID-19 related staffing emergency.
* Waiver of the maximum charges is not intended to apply to ongoing staffing issues in nursing facilities.
* Charges billed to nursing home in excess of the maximum charges will not be allowed unless the nursing home has submitted a Waiver of SNSA Maximum Charges Request Form for Medicaid Certified Nursing Facilities and received an approval of those charges from the MN Department of Human Services.
* Approval of any request is done on a case by case basis and must be consistent with the State of Minnesota COVID Emergency Response. Each individual nursing facility must submit a Request Form.
* Retroactive charges billed to nursing homes will not be allowed in excess of the maximum charges.
* The SNSA must make it clear in the contract between the nursing facility and the SNSA what the hourly charges for personnel wages are by type of personnel. Additional charges such as travel and housing costs must be itemized separately.
* The entire amount approved, less associated payroll taxes, in excess of the maximum charges must be paid to the employee as an increased hourly rate of pay, shift differential or overtime pay working in the nursing facility being charges. The SNSA may charge the nursing facility for the employer associated payroll taxes for the increased pay for the employee.

The Application for Waiver of SNSA Maximum Charges Request Form for Medicaid Certified Nursing Facilities is available at: [COVID-19: Nursing Facility News / Minnesota Department of Human Services](https://mn.gov/dhs/partners-and-providers/news-initiatives-reports-workgroups/nursing-homes/covid-19-news.jsp)

Please read the entire Application Request Form. It contains detailed information about the Conditions for Accessing the SNSA Maximum Charge Waiver. This Waiver is not intended to be used for ongoing staffing needs in facilities with no COVID cases.

The information requested on the Request Form is intentionally open ended. The nursing facility is asked to explain the circumstances necessitating a waiver of the maximum caps to the best of its ability.

There is a communication memo for SNSAs which nursing facilities may also access at: [COVID-19: Nursing Facility News / Minnesota Department of Human Services](https://mn.gov/dhs/partners-and-providers/news-initiatives-reports-workgroups/nursing-homes/covid-19-news.jsp)

Regulation of MN Registered SNSAs:

Under Minnesota Statutes 144a.70 to 144A.74, “Registration of Supplemental Nursing Services Agencies”, the commissioner of health is responsible for the oversight of SNSAs through annual unannounced surveys, complaint investigations, and other actions necessary to ensure compliance with sections 144A.70 to 144A.74.

Section 144A.72, Subdivision 1, SNSA REGISTRATION REQUIREMENTS, includes, in part, as a condition of registration that the supplemental nursing services agency shall retain all records for five calendar years. All records of the supplemental nursing services agency must be immediately available to the department**. These records may include SNSA payroll records, financials and any other documents necessary to ensure compliance with the requirement that the entire amount in excess of the maximum charges is paid to the employee for which the Medicaid certified nursing facility was charged.**

The amount in excess of the maximum charges must abide by the general cost principles contained in Sec. 256R.10 MN Statutes meaning the cost is ordinary, necessary, and related to resident care. Per the Provider Reimbursement Manual 2102.2, it is the intent that costs be reasonable, ordinary and what a prudent buyer would pay. **It is the expectation that providers seek to minimize its costs and that its actual costs do not exceed what a prudent and cost-conscious buyer would pay for a given service.**