

Date: May 26, 2020 UPDATED July 1, 2020, UPDATED October 16, 2020

To: MN Registered Supplemental Nursing Services Agencies (SNSAs)

From: Nursing Facility Rates and Policy Division, MN Department of Human Services

RE: Supplemental Nursing Services Agency Waiver - 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 these agencies provide 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 Minnesota Department of Human Services (DHS) Nursing Facility Rates and Policy Division (NFRP), to set new maximum charge amounts for supplemental nursing services agencies (SNSAs) **on a temporary 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 **must be completed by the nursing facility requesting this waiver**. Any application form submitted by the SNSA will not be reviewed.

A licensed MN Medicaid-certified nursing facility may only use SNSAs on the current list of registered SNSAs, including when a nursing facility requests a waiver of the Maximum Charges. The Minnesota SNSA law requires 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. For additional information regarding SNSA registration, visit the following link:

<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 facilities that are serving residents with COVID-19 and/or that have staff out 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 that are unrelated to COVID-19.
- Charges billed to nursing facilities in excess of the maximum charges will not be allowed unless the nursing facility has submitted a Waiver of SNSA Maximum Charges Request Form for Medicaid Certified Nursing Facilities and received an approval of those charges from the Minnesota 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.
- Retroactive charges billed to nursing facilities 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 and must be at actual costs, not per diems.
- The entire amount approved, less associated payroll taxes, in excess of the maximum charges should be paid to the employee working in the nursing facility being charged as an increased hourly rate of pay, shift differential, hazard pay, or overtime pay (“pass through requirement”). The SNSA may charge the nursing facility for the employer associated payroll taxes for the increased pay for the employee.
- An authorized representative from the SNSA must sign a required Attestation Form that any amounts in excess of the maximum charges that are permitted under this waiver will be paid to the applicable employee(s) in addition to their regular wages. Alternatively, the SNSA must provide documentation to the commissioner describing the reasons and emergency situation justifying why the pass through requirement cannot currently be met and the duration for which a waiver of this requirement is necessary. The purpose of this waiver is to increase the pay to the frontline worker. This waiver is not intended to provide additional profit to staffing agencies. This Attestation Form or Request for Waiver of the pass through requirement must be received by the DHS NFRP Division before any application to waive the maximum charges will be approved. The nursing facility submitting the Application for Waiver of SNSA Maximum Charges Request Form for Medicaid Certified Nursing Facilities will provide the signed Attestation Form with the waiver request.

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, financial statements, 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 nursing facilities seek to minimize costs and that actual costs do not exceed what a prudent and cost-conscious buyer would pay for a given service.