

101 CMR: EXECUTIVE OFFICE OF HEALTH AND HUMAN SERVICES

101 CMR 345.00: TEMPORARY NURSING SERVICES

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345.01: General Purpose

- (1) Scope and Purpose. 101 CMR 345.00 governs the rates paid by health-care providers to temporary nursing agencies registered with the Department of Public Health.
- (2) Effective Date. 101 CMR 345.00 is effective November 1, 2015.

345.02: Definitions

As used in 101 CMR 345.00, terms have the meanings ascribed in 101 CMR 345.02.

Center - the Center for Health Information and Analysis established under M.G.L. c. 12C.

Department - the Department of Public Health established under M.G.L. c. 111.

EOHHS - the Executive Office of Health and Human Services established under M.G.L. c. 6A.

Fixed-term Travel Employees - employees who

- (a) work exclusively at a particular health-care facility for a specified period of at least 90 days pursuant to a contract between the provider and a temporary nursing agency;
- (b) must relocate a distance of at least 200 miles and establish a temporary residence for the contract term to work at the contracting provider; and
- (c) incur expenses for temporary accommodations paid by the agency. Providers are required to maintain documentation concerning fixed-term travel employees for a period of two years following the expiration of the contract.

Governmental Unit - the Commonwealth, any department, agency, board, division, or commission of the Commonwealth, and any political subdivision of the Commonwealth.

Health Service Area (HSA) - regional boundaries created for the purposes of health-care planning pursuant to P.L. 93-641. A list of the municipalities in each HSA is included in an appendix to 101 CMR 345.00.

Hospital - a hospital licensed under M.G.L. c. 111, § 51, including but not limited to, an acute hospital, chronic hospital, rehabilitation hospital, or psychiatric hospital.

Medical Personnel - registered nurses, licensed practical nurses, and certified nursing assistants, associated with a temporary nursing agency. All such medical personnel are employees unless the agency demonstrates that they should be treated as independent contractors.

Nursing Facility - a nursing or convalescent home; an infirmary maintained in a town; a charitable home for the aged, as defined in M.G.L. c. 111, § 71; or a nursing facility operating under a hospital license issued by the Department pursuant to M.G.L. c. 111, and certified by the Department for participation in MassHealth. It includes facilities that operate a licensed residential-care unit within the nursing facility.

Overtime - per hour of care in excess of 40 hours per week or eight hours per day, as defined in an agreement between the health-care facility and the agency.

Price - the total amount per hour charged by the agency for a specific service to the provider.

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Registered Nurse, Specialist - a registered nurse with advanced nursing knowledge and clinical skills acquired through an appropriate nursing education program in accordance with 244 CMR 4.00: *Advanced Practice Registered Nursing*, including but not limited to, an operating room nurse, clinical nurse specialist, intensive-care unit nurse, coronary-care unit nurse, and infection-control nurse.

Related Party - an individual or organization associated or affiliated with, or that has control of, or is controlled by, the agency; or is related to the agency or any director, stockholder, trustee, partner, or administrator of the agency by common ownership or control or in a manner specified in §§ 267(b) and (c) of the Internal Revenue Code of 1954, provided, however, that 10% is the operative factor as set out in §§ 267(b) (2) and (3). Related individuals include spouses, parents, children, spouses of children, grandchildren, siblings, fathers-in-law, mothers-in-law, brothers-in-law, and sisters-in-law.

Temporary Nursing Agency (Agency) - an agency is defined in accordance with the provisions of 105 CMR 157.010: *Scope and Applicability*. It includes any person, firm, corporation, partnership, or association registered with the Department that is engaged for hire in the business of procuring or providing temporary employment in health-care facilities for medical personnel, referred to as "nursing pools" in M.G.L. c. 111, § 72Y. Each separate location of the business of an agency registered with the Department is an agency. An agency does not include a medical personnel staff arrangement set up by a health-care facility solely for its own use in which the only costs are the salaries paid to such medical personnel; or an individual who engages only in providing his or her own services on a temporary basis to health-care facilities.

345.03: Rate Provisions

(1) General. All prices are per hour. An agency's price for a service provided to a nursing facility or hospital may not exceed the maximum price set forth in 101 CMR 345.03(2) or (3). Rates vary by health service area (HSA). The location of the nursing facility or hospital determines the maximum price that may be charged.

(a) Holidays. Rates for holidays may not exceed 150% of the maximum prices set forth in 101 CMR 345.03(2) or (3). An agency and the purchasing nursing facility or hospital may define the specific times for each shift and the days that constitute holidays in the written agreement for services as required by 105 CMR 157.220: *Written Agreements*.

(b) Overtime. An agency and a nursing facility or hospital may agree to an overtime differential to be added to a maximum service price to compensate an employee for overtime hours worked.

(c) Exemptions. Fixed-term travel employees are not subject to the maximum prices set forth in 101 CMR 345.03.

(d) 12-hour Shift. An agency and a nursing facility or hospital may agree to a single price per hour for services provided during a 12-hour shift. The price per hour cannot exceed the weighted average of the combined maximum prices for the applicable shifts as set forth in 101 CMR 345.03(2) or (3). For example, an RN in HSA 1 providing weekday services at a nursing facility from 7:00 A.M. to 7:00 P.M. could be billed at a single rate of \$52.71, using eight hours at \$52.19 and four hours at \$53.74 (8 x \$52.19 + 4 x \$53.74 = \$632.48/12 = \$52.71).

(2) Maximum Prices, Nursing Facilities.

(a) Registered Nurse (RN) – Nursing Facility.

| Shift     | HSA 1<br>Western | HSA 2<br>Central | HSA 3<br>Merrimack<br>Valley | HSA 4<br>Greater<br>Boston | HSA 5<br>Southeastern | HSA 6<br>North Shore |
|-----------|------------------|------------------|------------------------------|----------------------------|-----------------------|----------------------|
| Weekday 1 | \$52.19          | \$51.85          | \$52.13                      | \$54.73                    | \$53.50               | \$53.92              |
| Weekday 2 | \$53.74          | \$53.40          | \$53.68                      | \$56.28                    | \$55.05               | \$55.47              |
| Weekday 3 | \$54.25          | \$53.91          | \$54.20                      | \$56.79                    | \$55.56               | \$55.99              |
| Weekend 1 | \$54.25          | \$53.91          | \$54.20                      | \$56.79                    | \$55.56               | \$55.99              |
| Weekend 2 | \$55.29          | \$54.94          | \$55.23                      | \$57.83                    | \$56.59               | \$57.02              |
| Weekend 3 | \$55.29          | \$54.94          | \$55.23                      | \$57.83                    | \$56.59               | \$57.02              |

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(b) Licensed Practical Nurse (LPN) – Nursing Facility.

| Shift     | HSA 1<br>Western | HSA 2<br>Central | HSA 3<br>Merrimack<br>Valley | HSA 4<br>Greater<br>Boston | HSA 5<br>Southeastern | HSA 6<br>North<br>Shore |
|-----------|------------------|------------------|------------------------------|----------------------------|-----------------------|-------------------------|
| Weekday 1 | \$45.72          | \$44.67          | \$46.21                      | \$48.50                    | \$46.07               | \$48.80                 |
| Weekday 2 | \$47.27          | \$46.22          | \$47.76                      | \$50.05                    | \$47.62               | \$50.35                 |
| Weekday 3 | \$47.78          | \$46.74          | \$48.28                      | \$50.57                    | \$48.13               | \$50.86                 |
| Weekend 1 | \$47.78          | \$46.74          | \$48.28                      | \$50.57                    | \$48.13               | \$50.86                 |
| Weekend 2 | \$48.82          | \$47.77          | \$49.31                      | \$51.60                    | \$49.17               | \$51.90                 |
| Weekend 3 | \$48.82          | \$47.77          | \$49.31                      | \$51.60                    | \$49.17               | \$51.90                 |

(c) Certified Nurse Aide (CNA) – Nursing Facility.

| Shift     | HSA 1<br>Western | HSA 2<br>Central | HSA 3<br>Merrimack<br>Valley | HSA 4<br>Greater<br>Boston | HSA 5<br>Southeastern | HSA 6<br>North Shore |
|-----------|------------------|------------------|------------------------------|----------------------------|-----------------------|----------------------|
| Weekday 1 | \$23.50          | \$23.99          | \$24.09                      | \$24.46                    | \$24.10               | \$25.00              |
| Weekday 2 | \$24.53          | \$25.03          | \$25.13                      | \$25.49                    | \$25.14               | \$26.03              |
| Weekday 3 | \$24.53          | \$25.03          | \$25.13                      | \$25.49                    | \$25.14               | \$26.03              |
| Weekend 1 | \$24.53          | \$25.03          | \$25.13                      | \$25.49                    | \$25.14               | \$26.03              |
| Weekend 2 | \$25.57          | \$26.06          | \$26.16                      | \$26.52                    | \$26.17               | \$27.06              |
| Weekend 3 | \$25.57          | \$26.06          | \$26.16                      | \$26.52                    | \$26.17               | \$27.06              |

(3) Maximum Prices, Hospitals.

(a) Registered Nurse (RN) - Hospital.

| Shift     | HSA 1<br>Western | HSA 2<br>Central | HSA 3<br>Merrimack<br>Valley | HSA 4<br>Greater<br>Boston | HSA 5<br>Southeastern | HSA 6<br>North Shore |
|-----------|------------------|------------------|------------------------------|----------------------------|-----------------------|----------------------|
| Weekday 1 | \$76.79          | \$80.09          | \$79.13                      | \$82.05                    | \$79.87               | \$78.58              |
| Weekday 2 | \$80.39          | \$83.68          | \$82.72                      | \$85.64                    | \$83.46               | \$82.17              |
| Weekday 3 | \$82.73          | \$86.02          | \$85.06                      | \$87.98                    | \$85.80               | \$84.51              |
| Weekend 1 | \$80.12          | \$83.42          | \$82.45                      | \$85.38                    | \$83.19               | \$81.91              |
| Weekend 2 | \$83.12          | \$86.41          | \$85.45                      | \$88.38                    | \$86.19               | \$84.91              |
| Weekend 3 | \$85.25          | \$88.55          | \$87.58                      | \$90.51                    | \$88.32               | \$87.04              |

(b) Registered Nurse Specialist (RN-Specialist) - Hospital.

| Shift     | HSA 1<br>Western | HSA 2<br>Central | HSA 3<br>Merrimack<br>Valley | HSA 4<br>Greater<br>Boston | HSA 5<br>Southeastern | HSA 6<br>North Shore |
|-----------|------------------|------------------|------------------------------|----------------------------|-----------------------|----------------------|
| Weekday 1 | \$84.49          | \$88.14          | \$90.34                      | \$91.82                    | \$94.49               | \$91.35              |
| Weekday 2 | \$87.85          | \$91.50          | \$93.70                      | \$95.18                    | \$97.86               | \$94.71              |
| Weekday 3 | \$90.35          | \$93.99          | \$96.20                      | \$97.67                    | \$100.35              | \$97.20              |
| Weekend 1 | \$87.70          | \$91.35          | \$93.55                      | \$95.03                    | \$97.70               | \$94.56              |
| Weekend 2 | \$90.53          | \$94.18          | \$96.38                      | \$97.85                    | \$100.53              | \$97.38              |
| Weekend 3 | \$92.83          | \$96.48          | \$98.68                      | \$100.16                   | \$102.84              | \$99.69              |

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(c) Licensed Practical Nurse (LPN) - Hospital.

| Shift     | HSA 1<br>Western | HSA 2<br>Central | HSA 3<br>Merrimack<br>Valley | HSA 4<br>Greater<br>Boston | HSA 5<br>Southeastern | HSA 6<br>North<br>Shore |
|-----------|------------------|------------------|------------------------------|----------------------------|-----------------------|-------------------------|
| Weekday 1 | \$51.36          | \$53.07          | \$54.29                      | \$52.60                    | \$56.43               | \$52.75                 |
| Weekday 2 | \$54.32          | \$56.03          | \$57.25                      | \$55.56                    | \$59.39               | \$55.71                 |
| Weekday 3 | \$56.24          | \$57.95          | \$59.17                      | \$57.48                    | \$61.31               | \$57.63                 |
| Weekend 1 | \$54.25          | \$55.96          | \$57.19                      | \$55.49                    | \$59.33               | \$55.64                 |
| Weekend 2 | \$56.67          | \$58.38          | \$59.61                      | \$57.91                    | \$61.75               | \$58.06                 |
| Weekend 3 | \$58.34          | \$60.05          | \$61.28                      | \$59.58                    | \$63.42               | \$59.73                 |

(d) Certified Nurse Aide (CNA) - Hospital.

| Shift     | HSA 1<br>Western | HSA 2<br>Central | HSA 3<br>Merrimack<br>Valley | HSA 4<br>Greater<br>Boston | HSA 5<br>Southeastern | HSA 6<br>North Shore |
|-----------|------------------|------------------|------------------------------|----------------------------|-----------------------|----------------------|
| Weekday 1 | \$29.66          | \$28.11          | \$29.09                      | \$29.49                    | \$28.68               | \$29.68              |
| Weekday 2 | \$32.02          | \$30.47          | \$31.44                      | \$31.84                    | \$31.04               | \$32.03              |
| Weekday 3 | \$33.71          | \$32.16          | \$33.14                      | \$33.54                    | \$32.73               | \$33.73              |
| Weekend 1 | \$32.11          | \$30.56          | \$31.54                      | \$31.94                    | \$31.13               | \$32.13              |
| Weekend 2 | \$33.91          | \$32.36          | \$33.34                      | \$33.74                    | \$32.93               | \$33.93              |
| Weekend 3 | \$35.36          | \$33.81          | \$34.79                      | \$35.18                    | \$34.38               | \$35.38              |

345.04: General Rate Provisions

- (1) The rates determined in accordance with 101 CMR 345.00 are full compensation for temporary nursing services rendered to a nursing facility or hospital, including any related administrative or supervising duties provided by the agency in connection with patient care.
- (2) An agency may charge a nursing facility or hospital less than the rate determined by 101 CMR 345.00.
- (3) An agency may not bill, receive payments, or propose to do business with a nursing facility or hospital at a rate greater than the rate established by EOHHS. If an agency violates this requirement, EOHHS may
  - (a) notify the Department to suspend or revoke the agency's registration in accordance with the provisions of 105 CMR 157.000: *The Registration and Operation of Temporary Nursing Service Agencies*; or
  - (b) request that the Attorney General bring an action to restrain or prevent the agency from operating.

345.05: Reporting Requirements

- (1) Temporary Nursing Service Cost Report. Each agency must complete and file a Temporary Nursing Service Cost Report with EOHHS or its designee each calendar year.
  - (a) EOHHS will issue an administrative bulletin to inform providers of the issuance of the Cost Report and the due date for filing the Cost Report. Agencies will have a minimum of 45 days' notice from the issuance of the Cost Report and the due date.
  - (b) Agencies that employ only fixed-term travel employees are not required to file a Temporary Nursing Service Cost Report. Such agencies must file a certified or audited financial statement with EOHHS or its designee annually, due no later than the required due date of the Temporary Nursing Service Cost Report.
- (2) Fixed-term Travel Employee Disclosure Form. Each agency that provides the services of a fixed-term travel employee must complete and file this form for all fixed-term travel employees in its employ who provided these services during the cost report year.

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- (3) Additional Information. Each agency must make available all records, books, and reports relating to its operation including such data and statistics as EOHHS or its designee may request.
- (4) Extension of Filing Date. EOHHS or its designee may grant a request for an extension of the filing due date for a maximum of 15 calendar days. In order to receive an extension, the agency must demonstrate exceptional circumstances that prevent the agency from meeting the deadline and file the request no later than the filing due date.
- (5) Audit. Agencies are subject to the duties and responsibilities set forth in M.G.L. c. 12C, § 22, whether or not receiving payment from a governmental unit. All information submitted by an agency is subject to audit. An agency must maintain supporting documentation sufficient to demonstrate compliance with all provisions of 101 CMR 345.00.
- (6) Failure to File Information. If an agency fails to file timely and complete information required by EOHHS or its designee, including cost reports and supporting documentation, EOHHS may notify the Department and request revocation of such agency's registration.

345.06: Transfer of Ownership

All issues related to the transfers of ownership including, but not limited to, merger, acquisition, or name change, are governed by the Department regulations set forth in 105 CMR 157.00: *The Registration and Operation of Temporary Nursing Service Agencies.*

345.07: Severability

The provisions of 101 CMR 345.00 are hereby declared to be severable. If any such provisions or the application of such provisions to any eligible provider or circumstances are held invalid or unconstitutional, such invalidity will not be construed to affect the validity or constitutionality of any remaining provisions of 101 CMR 345.00 or the application of such provisions to eligible providers or circumstances other than those held invalid.

REGULATORY AUTHORITY

101 CMR 345.00: M.G.L. c. 118E.