



# THE COMMONWEALTH OF MASSACHUSETTS OFFICE OF THE ATTORNEY GENERAL

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## **Attorney General's Advisory: Rates for Temporary Nursing Services Charged to Long-Term Care Facilities**

The Attorney General's Office (AGO) issues this advisory to notify temporary nursing agencies concerning the permissible rates that may be charged to long-term care facilities.

The Executive Office of Health and Human Services (EOHHS) has promulgated regulations concerning the permissible rates that temporary nursing agencies may charge for services provided to long-term care facilities. See 101 C.M.R. §§ 345 et seq. A temporary nursing agency is “[a]ny person, firm, corporation, partnership, or association engaged for hire in the business of providing or procuring temporary employment in health care facilities for medical personnel.” 105 C.M.R. § 157.020. All temporary nursing agencies must register with the Department of Public Health (DPH) pursuant to 105 C.M.R. §§ 157 et seq.

The maximum rates that a temporary nursing agency may charge long-term care facilities, which vary by health service area, are identified at 101 C.M.R. § 345.03(2). The regulations outline six exceptions allowing temporary nursing agencies to charge above the rates at 101 C.M.R. § 345.03(2). See 101 C.M.R. §§ 345.03(1)(a)-(e); 101 C.M.R. § 345.03(4).

Those exceptions are the only exceptions allowing temporary nursing agencies to charge above the maximum rates at 101 C.M.R. § 345.03(2).

The rates identified in 101 C.M.R. §§ 345 et seq. are considered “full compensation for temporary nursing services rendered to a nursing facility . . . including any related administrative or supervising duties provided by the agency in connection with patient care.” 101 C.M.R. § 345.04(1). Furthermore, if a temporary nursing agency charges rates above those identified in 101 C.M.R. § 345.03(2) and said charges do not qualify for one of the six exemptions, the temporary nursing agency has committed an unfair or deceptive act or practice in violation of G.L. c. 93A. See 101 C.M.R. § 345.04(3).

The AGO has received allegations of the following conduct by temporary nursing agencies, operating in the Commonwealth, each of which constitutes a violation of 101 C.M.R. §§ 345 et seq. and an unfair or deceptive act or practice under G.L. c. 93A:

- Offering to contract with long-term care facilities for temporary nursing services at rates well in excess of the maximum rates at 101 C.M.R. § 345.03(2);
- Claiming that the maximum rates at 101 C.M.R. § 345.03(2) have been suspended due to COVID-19 when they have not;
- Requesting holiday pay for services rendered on dates that are not listed as agreed-to holidays in contracts between the temporary nursing agency and long-term care facility;

- Attempting to classify employees as travel nurses or fixed-term employees, even when those employees do not meet the definitions of those terms at 101 C.M.R. § 345.02;<sup>1</sup>
- Demanding an additional fee for a temporary nursing agency employee to pick up a shift, often shortly before a shift begins, which is commonly referred to as a “pickup bonus” and results in a rate in excess of the maximum rates at 101 C.M.R. § 345.03(2);
- Requesting an additional fee or higher rate for scheduling a temporary nursing agency employee to a shift within 48 hours of the start of the shift, resulting in a rate in excess of the maximum rates at 101 C.M.R. § 345.03(2);
- Offering long-term care facilities an opportunity to “boost” the rate to be paid to a temporary nursing agency employee, often shortly before a shift begins, which results in a rate in excess of the maximum rates at 101 C.M.R. § 345.03(2);
- Proposing rates in excess of the maximum rates at 101 C.M.R. § 345.03(2) during inclement weather;
- Proposing rates in excess of the maximum rates at 101 C.M.R. § 345.03(2) based on the number of current cases of COVID-19 at long-term care facilities; and
- Providing bonuses to temporary nursing employees and charging long-term care facilities for those bonuses, resulting in long-term care facilities paying the temporary nursing agency above the maximum rates at 101 C.M.R. § 345.03(2).

Pursuant to 101 C.M.R. § 345.04(4), the AGO will investigate and, as necessary, pursue litigation to seek penalties and/or injunctive relief if a temporary nursing agency is found to have committed an unfair or deceptive act or practice under these provisions. Pursuant to 105 C.M.R. §§ 157 *et seq.*, DPH may also take action to suspend or revoke a temporary nursing agency’s registration if it violates these provisions.

Temporary nursing agencies are further reminded of their requirement to be licensed as employment agencies or registered as placement agencies with the Department of Labor Standards under G.L. c. 140, § 46B and 454 C.M.R. § 24.00. Agencies are also subject to the provisions of the state’s Temporary Workers Right to Know Law at G.L. c. 149, § 159C and 454 C.M.R. § 24.00, requiring notice of temporary employee rights, information about their job assignment and certain standards of conduct by agencies including restrictions on any fees charged to workers. For more information about these laws, visit [www.mass.gov/service-details/temporary-workers](http://www.mass.gov/service-details/temporary-workers).

Employees of temporary nursing agencies are covered by state wage and hour laws under G.L. c. 149 and c. 151, which include requirements for minimum wage and overtime,<sup>2</sup> timely payment of wages, earned sick time and meal breaks. For more information about these laws, visit [www.mass.gov/wage-and-hour-laws](http://www.mass.gov/wage-and-hour-laws).

To report a concern or complaint, please contact the AGO’s Medicaid Fraud Division, which has statutory authority to prosecute acts or practices that result in abuse or neglect of

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<sup>1</sup> Fixed-term employees are defined in 101 C.M.R. § 345.02 as “[e]mployees who 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.” Travel nurses are defined in 101 C.M.R. § 345.02 as “[n]urses employed by temporary nursing agencies who are required to move to temporary housing to provide services with rate limits established by 101 CMR 345.00 and for whom such agencies cover costs that must include temporary housing costs, but which also may include other costs including, but not necessarily limited to, meals.”

<sup>2</sup> Note that any state law overtime exemption does not negate overtime requirements under federal law.

residents at long-term care facilities, at 617-963-2360, or DPH's Division of Health Care Facility Licensure and Certification at 617-753-8150.

Dated: March 29, 2023