

Notice to Minnesota Health Care Providers of Optional COVID-19 Relief

To: Minnesota Health Care Providers

From: Jan K. Malcolm, Commissioner, Minnesota Department of Health

Date: January 12, 2022

RE: Temporary Emergency Provider Relief to Address COVID-19 Crisis

Since the fall of 2021, Minnesota has faced an extended COVID-19 surge and daily COVID-19 cases continue to increase dramatically in the wake of the holiday season. Despite several effective COVID-19 vaccines, the virus continues to thrive, due in large part to the highly transmissible Omicron and Delta variants and the impactful percentage of Minnesotans who remain unvaccinated or who have not yet received a recommended vaccine booster dose. The Minnesota Department of Health (MDH) remains dedicated to reducing the effects of COVID-19 on our state, including through rapid administration of vaccine boosters to eligible populations and measures that encourage unvaccinated individuals to get vaccinated. Beyond vaccination, we continue to depend on Minnesotans to think of their communities and follow CDC and MDH recommendations. To that end, MDH continues to offer numerous free COVID-19 testing options and provide up-to-date individual and setting-specific guidance emphasizing our collective responsibility to follow strategies shown to limit COVID-19 spread.

Unfortunately, these ongoing efforts are not an immediate fix to this crisis-level surge, so we again must depend on our health care providers to have the resources and capacity to care for those who experience serious COVID-19 complications. Since the COVID-19 peacetime emergency expired, MDH has reviewed and approved provider requests to modify the use of existing licensed beds to care for COVID-19 patients. But additional flexibility for these providers was an indispensable part of Minnesota's pandemic response throughout the COVID-19 peacetime emergency. For example, nursing home and hospital capacity waivers allowed several hundred Minnesota health care facilities and nursing homes to quickly add thousands of beds to address the state's critical need for COVID-19 care. A related nursing home waiver permitted providers to quickly transfer COVID-19-positive and at-risk nursing home residents to other facilities or within a facility—allowing for safe isolation of infected residents, timely quarantine of exposed residents, and specialized COVID-19 care units to contain further spread.

As the state regulatory authority for hospitals and nursing facilities, MDH is reinstating flexibility that allows:

- (1) Hospitals and nursing homes to apply for temporary COVID-19-related patient beds and a waiver of associated licensing fees;
- (2) Nursing homes to convert layaway beds to active status as necessary to address a COVID-19-related need without the delay imposed by ordinary statutory timelines; and
- (3) Nursing homes to timely address COVID-19 risks and establish COVID-19 care locations without transfer and discharge waiting periods, to the extent permitted by applicable federal law.

When the President declares a major disaster, Minnesota Statutes, section 12A.08 allows the commissioner of health to “take necessary steps to remediate the effects of [the] disaster to ensure public health is maintained.” As part of this authority, the commissioner is also directed to evaluate and address “access to health care; mental health concerns and needs; infectious disease concerns; and indoor environments of public and nonprofit buildings and facilities including nursing homes and mass care facilities . . .” Moreover, “in consultation with the commissioner of human services, the commissioner of health may waive [layaway bed] timelines specified in section 144A.071, subdivision 4b, at any time when a partial or complete evacuation occurs in response to a natural disaster, a possible natural disaster, or another event that threatens the health and safety of residents of a nursing home.” Minn. Stat. § 12A.10, subd. 4. On April 7, 2020, the President issued a major disaster declaration for the State of Minnesota, which remains in effect. This declaration emphasized the impact of COVID-19 and authorized Minnesota to receive federal assistance to deal with this continuing crisis. Further, the commissioner of human services and I consulted and agree that COVID-19 constitutes a threat to the health and safety of nursing home residents that can be addressed, in part, by waiving certain restrictions on beds and resident relocation.

Under the authority granted by Minnesota Statutes, sections 12A.08 and 12A.10, and the April 7, 2020 Presidential major disaster declaration for the State of Minnesota, I authorize the following temporary relief:

1. **General Relief Terms.** The temporary relief for hospitals and nursing facilities (“Providers”) described below is effective January 12, 2022 and continues until rescinded by the Commissioner of Health. Temporary relief is only available to address COVID-19-related needs and may not be authorized when the relief will adversely impact the quality of services or patient care.
2. **Existing Relief Available to Providers.** Providers are encouraged to take advantage of existing opportunities to modify currently licensed beds by completing the MDH request form available at:
<https://www.health.state.mn.us/facilities/regulation/docs/covidreliefrequest.pdf>
3. **Request to MDH.** Providers seeking temporary relief must fully complete and submit same request form. Temporary relief is authorized on the date a Provider receives a notice of approval from MDH. Providers must agree to comply with all terms and conditions in the MDH request form and any additional terms,

conditions, or modifications to the request established in the MDH notice of approval.

- 4. Hospital Bed Capacity.** Hospitals with a COVID-19-related need for temporary patient beds may request relief from any provisions of Minnesota Statutes, chapter 144 and related Minnesota Rules that restrict allowable bed capacity, including applicable licensure requirements and moratoriums on construction or modifications that increase hospital bed capacity; relocate hospital beds from one physical facility, complex, or site to another; or otherwise increase or redistribute hospital beds within the state. MDH may approve a request that sufficiently demonstrates a need for temporary COVID-19-related beds and waive any licensing fees associated with authorized temporary beds.
- 5. Nursing Home Bed Capacity, Transfers, and Discharges.**
 - A. Nursing homes with a COVID-19-related need may request relief from any provisions of Minnesota Statutes, chapters 144 and 144A and related Minnesota Rules that:
 - i. Restrict allowable bed capacity, including applicable licensure requirements and moratoriums on construction projects and bed increases;
 - ii. Institute requirements that delay or restrict the movement of beds between layaway and non-layaway status;
 - iii. Impose notice requirements and waiting periods prior to resident transfers or discharges, to the extent permitted by applicable federal law.¹
 - B. MDH may approve a request made under paragraph 4.A that sufficiently demonstrates COVID-19-related need and may waive licensing fees associated with any temporary beds authorized in response to a paragraph 4.A.i request.
- 6. Notice to MDH.** Within 24 hours, any Provider approved for temporary relief must notify MDH when:
 - A. It no longer has a COVID-19-related need for relief; or
 - B. A relief-related adverse service or care issue is identified.

¹ Many nursing facilities are required to follow U.S. Department of Health and Human Services laws and regulations. Federal transfer and discharge notice requirements were waived due to COVID-19, but that federal waiver was rescinded on April 8, 2021. In general, federal facilities are now required to provide 30 days advance notice of a transfer, discharge, or room change. However, if the circumstances prevent 30 days advance notice, notice must be given “as soon as practicable **before**” the transfer, discharge, or room change. Related federal waivers continue to allow facilities to transfer, discharge, or change resident rooms for the sole purpose of cohorting residents to prevent COVID-19 spread. For more information, see <https://www.cms.gov/files/document/qso-21-17-nh.pdf>.

7. Enforcement, Inspections, and Records. Pursuant to Minnesota Statutes, section 144.99, subdivision 2, a Provider approved for temporary relief must permit MDH to conduct inspections and must comply with MDH requests for records to verify compliance with any terms, conditions, and modifications of the approved relief. MDH may enforce relief terms, conditions, or modifications under the provisions of law, including but not limited to Minnesota Statutes, sections 144.989 to 144.993. *See Minn. Stat. § 144.99* (authorizing correction orders, penalty orders, injunctive relief, and additional sanctions for the violation of “all rules, orders stipulation agreements, settlements, [or] compliance agreements . . .” issued by MDH for the preservation of public health).

Sincerely,

Date: January 12, 2022

A handwritten signature in black ink, appearing to read "Jan K. Malcolm". The signature is fluid and cursive, with a long horizontal stroke at the end.

Jan K. Malcolm
Commissioner of Health