



**STATE OF TENNESSEE  
DEPARTMENT OF FINANCE AND ADMINISTRATION  
DIVISION OF TENNCARE  
310 Great Circle Road  
NASHVILLE, TENNESSEE 37243**

**To: Nursing Facility Administrators**

**From: Zane Seals, Deputy Chief Financial Officer**

**Re: Direct Care Spending Floors After a Change of Ownership**

**Date: June 12, 2018**

**Requesting a Provisional Waiver of the Direct Care Spending Floor after a Change of Ownership**

**Overview**

As identified in the proposed rulemaking from the Tennessee Division of Finance and Administration (TennCare), nursing facilities undergoing a change of ownership (CHOW) through a non-related party transaction may request a provisional waiver for the spending floor requirement. If a direct care spending floor provisional waiver is granted by TennCare, the new NF provider reimbursement rate will be determined without a direct care spending floor reduction. However, for the entire period when a provisional waiver of the direct care spending floor is in effect, the new NF provider will be subject to a retroactive direct care spending floor settlement process, as follows:

1. If the new NF provider's cost reporting period(s) Medicaid direct care cost per diem(s) are less than the spending floor(s) calculated at each rate period, the new NF provider will be responsible for a retroactive recoupment of the difference between their cost per diem and the spending floor for each Medicaid paid day. At no time will the retroactive recoupment per diem exceed the per diem amount granted under the provisional waiver.
2. In the event there is more than one direct care spending floor active during the new provider's cost reporting period(s), the direct care spending floor settlement process will be independently applied to each spending floor. If the new NF provider's cost reporting period(s) Medicaid direct care cost per diem(s) are less than any of the active spending floor(s), the calculated differences will be multiplied by the number of provider paid Medicaid days associated with time period each direct care spending floor was active during the applicable cost reporting period. At no time will the

retroactive recoupment per diem exceed the per diem amount granted under the provisional waiver.

3. Provisional waivers of the direct care spending floor will not be granted following the first rebase period in which the new NF provider has a six (6) month or more cost reporting period that could have been used in a rebase period.

In other words, the retroactive settlement process involves calculating the direct care spending floor liability based on the provider's actual cost during the rate period the spending floor threshold is active. For example, if a calendar year reporting provider has an accepted provisional waiver starting with the July 1, 2018 rate period, then the provider's January 1, 2018 through December 31, 2018 cost report will be utilized in the establishment of the retroactive settlement.

### **Why Consider Requesting a Provisional Waiver?**

The provisional waiver process is designed to allow the new providers (after completion of a CHOW) the opportunity for their reimbursement rate to be affected by their own operational decisions, and avoid being penalized for the operations of prior owners. The waiver process encourages new owners to spend their financial resources in direct care areas and promote quality of service delivery and care for their nursing facility residents. Providers may choose to request a provisional waiver of the Direct Care spending floor at their discretion.

### **How to Request a Provisional Waiver**

Should a facility wish to request a provisional waiver of the direct care spending floor, the facility will need to submit a signed letter on official facility letterhead. The letter must be signed by the facility administrator or a member of the ownership group. Below is a checklist of information that should be included in the waiver request letter:

- Request for the provisional waiver of the direct care spending floor adjustment
- Date of CHOW
- Attestation that the CHOW was a result of a non-related party transaction
- New Provider NF 1 number (If available)
- New Provider NF 2 number (If available)
- New Provider Medicare number
- New Provider Name
- New Provider Owner Information
- New Provider Contact Information (If not communicated previously)
- Previous Provider NF 1 number
- Previous Provider NF 2 number
- Previous Provider Medicare number
- Previous Provider Name
- Previous Provider Owner

The above required documentation should be submitted electronically by emailing [TNCaseMix@mslc.com](mailto:TNCaseMix@mslc.com).

If the provider is unable to submit electronically, submissions may also be accepted via mail. Please use the following address for mailed submissions:

ATTN: Tennessee NF  
Myers and Stauffer  
700 W. 47<sup>th</sup> Street  
Suite 1100  
Kansas City, MO 64112

### **Provisions During the Case Mix Implementation Period**

During the initial implementation period of the Case Mix Reimbursement System, there are certain considerations that may impact provisional waivers of the direct care spending floor. From the July 1, 2018 rate period to the 1<sup>st</sup> system rate rebase period an annual process to update the Medicaid direct care cost per diem utilized in the spending floor calculation will be performed. On an annual basis the most recently audited or desk reviewed cost reports covering a period of six (6) months or more, with an end date eighteen (18) months or more prior to the July 1 rate setting period will be utilized in the reestablishment of the direct care spending floor adjustment calculation. For example, the July 1, 2018 and January 1, 2019 rate periods will utilize 2016 year end cost reports in a comparison process of determining the Medicaid direct care cost per diem used in the direct care spending floor adjustment calculation.

As a result of the initial annual direct care spending floor adjustment reestablishment process, providers with an audited or reviewed six (6) month or greater cost report period for the 2016 year end cost reporting period will not need to request a provisional waiver, as the new NF provider cost data from the 2016 cost report will be considered for the rate year beginning July 1, 2018.

For providers who do not have an audited or reviewed six (6) month or greater cost report for 2016, or who underwent a CHOW in 2017 or 2018, a provisional waiver may be requested. The provisional waiver and associated retroactive settlement process will only be in effect until such time that the provider has an audited or reviewed six (6) month or greater cost reporting period available for use in the annual direct care spending floor adjustment reestablishment process.

After the initial implementation period has concluded with the 1<sup>st</sup> system rebase, the provisional waiver and associated retroactive settlement process will be active until the succeeding rate rebase period.

Provisional waiver requests for the July 1, 2018 rate period should be submitted no later than **June 22, 2018.**

### **Questions**

Please contact Myers and Stauffer via email at [TNCaseMix@mslc.com](mailto:TNCaseMix@mslc.com) or phone at (800)374-6858 for questions and clarifications.