

12 - 0473



*Protecting, maintaining and improving the health of all Minnesotans*

February 7, 2012

The Honorable David Hann  
75 Rev. Dr. Martin Luther King Jr. Blvd  
Capitol Bldg. Room 328  
Saint Paul, Minnesota 55155

The Honorable Jim Abeler  
The Honorable Steve Gottwalt  
State Office Building  
100 Rev. Dr. Martin Luther King Jr. Blvd.  
Saint Paul, Minnesota 55155

Dear Senator Hann and Representatives Abeler and Gottwalt:

As directed by Laws of Minnesota, 2011 First Special Session, Chapter 9, article 2, Section 19, we are providing you with the status of obtaining a federal waiver to allow Minnesota to implement the following changes:

- (1) Eliminate the requirement for written plans of correction from nursing homes for federal deficiencies issued at a scope and severity that is not widespread, harmful, or in immediate jeopardy; and
- (2) Issue the federal survey form electronically to nursing homes.

Attached to this letter is a copy of the letter sent by MDH staff to the Associate Regional Administrator in the Chicago office of the Centers for Medicare and Medicaid Services, Division of Survey and Certification. In the letter we asked for permission to move ahead with issuing the survey form electronically if this was not going to be pursued on a national level by CMS.

In a conference call which occurred on January 31, 2012, we were given verbal responses to our requests, and we were advised that we would be sent written confirmation of those responses within a few weeks. In short, we were told that CMS does not have the authority to grant (1) because the requirement for written plans of correction is an integral part of federal oversight of nursing homes. CMS staff indicated they would ensure that CMS administrators in Baltimore were aware of the request and their response before they sent it to us in writing.

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We were advised that we could begin work to issue the federal survey forms electronically, and join the two other states in the country, which have begun to do so. They further advised us that although there has been some discussion of implementing a national system to do this, it is not a high priority for CMS, and that they couldn't anticipate when such a system might be implemented.

We have advised the provider associations and the Ombudsman for long-term care of the verbal responses we received, and we will keep them apprised of our progress to implement the electronic survey form. We have not determined whether there will be additional cost to the survey program to develop the system, and we will begin development work as soon as we receive the written confirmation from CMS.

We will forward a copy of that written response to you as soon as we receive it.

Thank you for your interest in improving the survey process and thereby improving the care provided to persons within federally certified skilled nursing facilities.

Sincerely,



Darcy Miner, Director  
Compliance Monitoring Division  
P.O. Box 64882  
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651-201-3700  
[darcy.miner@state.mn.us](mailto:darcy.miner@state.mn.us)



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January 11, 2012

Walter Kummer, Associate Regional Administrator  
Chicago Division of Survey and Certification  
233 N. Michigan Avenue, Suite 600  
Chicago, IL 60601

Dear Mr. Kummer:

During Minnesota's 2011 legislative session, the legislature amended Minnesota Statutes 144A.102 Waiver from Federal Rules and Regulations, directing the Minnesota Department of Health to apply for federal waivers as follows:

*(b) By January 2012, the commissioner of health shall work with providers and the ombudsman for long-term care to examine state and federal rules and regulations governing the provision of care in licensed nursing facilities and apply for federal waivers and identify necessary changes in state law to:*

*(1) eliminate the requirement for written plans of correction from nursing homes for federal deficiencies issued at a scope and severity that is not widespread, harmful, or in immediate jeopardy; and*

*(2) issue the federal survey form electronically to nursing homes.*

*The commissioner shall issue a report to the legislative chairs of the committees with jurisdiction over health and human services by January 31, 2012, on the status of implementation of this paragraph.*

MDH is requesting two waivers. The first is a waiver from requirements relative to Plans of Correction, Chapter 7, Survey and Enforcement Processes for Skilled Nursing Facilities and Nursing Facilities, of the State Operations Manual. Specifically:

- **Authority to waive the written Plan of Correction (POC) for those cases of noncompliance that have deficiencies at a scope and severity of level E or below.**

The second waiver requested is:

- **Authorization to issue the 2567 electronically to, and receive the Plan of Correction (POC) electronically from, skilled nursing facilities and nursing facilities.**

MDH is pleased with CMS' recent decision to elevate the national CMS priorities that now include development of the capacity to electronically issue 2567s and submit and receive POCs.

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MDH believes that a common and consistent approach nationally by CMS to permit submission of these documents electronically will be an effective and efficient outcome for providers, CMS and state agencies. If CMS pursues implementing this nationally, MDH will collaborate with all involved so that this project continues to move forward and remains a CMS priority. If CMS does not pursue national implementation at this time, MDH will need a waiver or authorization to submit the documents electronically.

In both cases, we would welcome the opportunity to discuss these waivers with you or other Region V staff.

Thank you very much for your assistance and consideration of our request. If you have questions about this request, please contact Mary Absolon, [mary.absolon@state.mn.us](mailto:mary.absolon@state.mn.us) or 651-201-4100, or me [darcy.miner@state.mn.us](mailto:darcy.miner@state.mn.us) or 651-201-3700.

Sincerely,

A handwritten signature in black ink that reads "Darcy Miner". The signature is written in a cursive style with a horizontal line above the name.

Darcy Miner, Director  
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Minnesota Department of Health  
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