

This Document can be made available  
in alternative formats upon request

State of Minnesota  
HOUSE OF REPRESENTATIVES

EIGHTY-EIGHTH SESSION

H. F. No. 233

01/31/2013 Authored by Erickson, S.,  
The bill was read for the first time and referred to the Committee on Health and Human Services Finance

1.1 A bill for an act  
1.2 relating to human services; phasing out nursing facility rate equalization;  
1.3 amending Minnesota Statutes 2012, section 256B.48, subdivision 1.

1.4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.5 Section 1. Minnesota Statutes 2012, section 256B.48, subdivision 1, is amended to read:

1.6 Subdivision 1. **Prohibited practices.** (a) A nursing facility is not eligible to receive  
1.7 medical assistance payments unless it refrains from all of the following: complies with the  
1.8 prohibitions and requirements in this subdivision.

1.9 ~~(a) Charging~~ (b) A nursing facility must not charge private paying residents rates for  
1.10 similar services which exceed those which are approved by the state agency for medical  
1.11 assistance recipients as determined by the prospective desk audit rate, except under the  
1.12 following circumstances:

1.13 (1) the nursing facility may ~~(1)~~ (i) charge private paying residents a higher rate for a  
1.14 private room, and ~~(2)~~ (ii) charge for special services which are not included in the daily  
1.15 rate if medical assistance residents are charged separately at the same rate for the same  
1.16 services in addition to the daily rate paid by the commissioner;

1.17 (2) effective October 1, 2013, nursing facilities may charge private paying residents  
1.18 up to two percent higher than the sum of the medical assistance allowable payment rate in  
1.19 effect on September 30, 2013, plus an adjustment equal to the incremental increase of any  
1.20 other rate increase provided in law, for the RUGS group currently assigned to the resident;

1.21 (3) effective October 1, 2014, nursing facilities may charge private paying residents  
1.22 rates up to four percent higher than the sum of the medical assistance allowable payment  
1.23 rate in effect on September 30, 2014, plus an adjustment equal to the incremental increase

2.1 of any other rate increase provided in law, for the RUGS group currently assigned to the  
2.2 resident;

2.3 (4) effective October 1, 2015, nursing facilities may charge private paying residents  
2.4 rates up to six percent higher than the sum of the medical assistance allowable payment  
2.5 rate in effect on September 30, 2015, plus an adjustment equal to the incremental increase  
2.6 of any other rate increase provided in law, for the RUGS group currently assigned to the  
2.7 resident; and

2.8 (5) effective October 1, 2016, nursing facilities may charge private paying residents  
2.9 rates up to eight percent higher than the sum of the medical assistance allowable payment  
2.10 rate in effect on September 30, 2016, plus an adjustment equal to the incremental increase  
2.11 of any other rate increase provided in law, for the RUGS group currently assigned to  
2.12 the resident. Nothing in this section precludes a nursing facility from charging a rate  
2.13 allowable under the nursing facility's single room election option under Minnesota Rules,  
2.14 part 9549.0060, subpart 11, or the enhanced rates under section 256B.431, subdivision 32.

2.15 Services covered by the payment rate must be the same regardless of payment  
2.16 source. Special services, if offered, must be available to all residents in all areas of the  
2.17 nursing facility and charged separately at the same rate. Residents are free to select  
2.18 or decline special services. Special services must not include services which must be  
2.19 provided by the nursing facility in order to comply with licensure or certification standards  
2.20 and that if not provided would result in a deficiency or violation by the nursing facility.  
2.21 Services beyond those required to comply with licensure or certification standards must  
2.22 not be charged separately as a special service if they were included in the payment rate  
2.23 for the previous reporting year. A nursing facility that charges a private paying resident a  
2.24 rate in violation of this ~~clause~~ paragraph is subject to an action by the state of Minnesota  
2.25 or any of its subdivisions or agencies for civil damages. A private paying resident or the  
2.26 resident's legal representative has a cause of action for civil damages against a nursing  
2.27 facility that charges the resident rates in violation of this ~~clause~~ paragraph. The damages  
2.28 awarded shall include three times the payments that result from the violation, together with  
2.29 costs and disbursements, including reasonable attorney fees or their equivalent. A private  
2.30 paying resident or the resident's legal representative, the state, subdivision or agency, or a  
2.31 nursing facility may request a hearing to determine the allowed rate or rates at issue in  
2.32 the cause of action. Within 15 calendar days after receiving a request for such a hearing,  
2.33 the commissioner shall request assignment of an administrative law judge under sections  
2.34 14.48 to 14.56 to conduct the hearing as soon as possible or according to agreement by  
2.35 the parties. The administrative law judge shall issue a report within 15 calendar days  
2.36 following the close of the hearing. The prohibition set forth in this ~~clause~~ paragraph shall

3.1 not apply to facilities licensed as boarding care facilities which are not certified as skilled  
 3.2 or intermediate care facilities level I or II for reimbursement through medical assistance.

3.3 ~~(b)~~ (c) Effective October 1, 2017, paragraph (b) no longer applies, except that special  
 3.4 services, if offered, must be available to all residents of the nursing facility and charged  
 3.5 separately at the same rate. Residents are free to select or decline special services. Special  
 3.6 services must not include services that must be provided by the nursing facility in order to  
 3.7 comply with licensure or certification standards and that, if not provided, would result in a  
 3.8 deficiency or violation by the nursing facility.

3.9 (d) A nursing facility shall refrain from all of the following:

3.10 (1) charging, soliciting, accepting, or receiving from an applicant for admission to  
 3.11 the facility, or from anyone acting in behalf of the applicant, as a condition of admission,  
 3.12 expediting the admission, or as a requirement for the individual's continued stay, any  
 3.13 fee, deposit, gift, money, donation, or other consideration not otherwise required as  
 3.14 payment under the state plan. For residents on medical assistance, payment of the medical  
 3.15 assistance rate according to the state plan must be accepted as payment in full for services  
 3.16 included in the daily rate for continued stay, except where otherwise provided for in statute;

3.17 (2) requiring an individual, or anyone acting in behalf of the individual, to loan  
 3.18 any money to the nursing facility;

3.19 (3) requiring an individual, or anyone acting in behalf of the individual, to promise  
 3.20 to leave all or part of the individual's estate to the facility; or

3.21 (4) requiring a third-party guarantee of payment to the facility as a condition of  
 3.22 admission, expedited admission, or continued stay in the facility.

3.23 Nothing in this paragraph would prohibit discharge for nonpayment of services in  
 3.24 accordance with state and federal regulations.

3.25 ~~(e) Requiring~~ (e) A nursing facility must not require any resident of the nursing  
 3.26 facility to utilize a vendor of health care services chosen by the nursing facility. A  
 3.27 nursing facility may require a resident to use pharmacies that utilize unit dose packing  
 3.28 systems approved by the Minnesota Board of Pharmacy, and may require a resident to use  
 3.29 pharmacies that are able to meet the federal regulations for safe and timely administration  
 3.30 of medications such as systems with specific number of doses, prompt delivery of  
 3.31 medications, or access to medications on a 24-hour basis. Notwithstanding the provisions  
 3.32 of this paragraph, nursing facilities shall not restrict a resident's choice of pharmacy  
 3.33 because the pharmacy utilizes a specific system of unit dose drug packing.

3.34 ~~(d) Providing~~ (f) A nursing facility must not provide differential treatment on the  
 3.35 basis of status with regard to public assistance.

4.1 ~~(e) Discriminating~~ (g) A nursing facility must not discriminate in admissions,  
4.2 services offered, or room assignment on the basis of status with regard to public assistance  
4.3 or refusal to purchase special services. Discrimination in admissions ~~discrimination~~ shall  
4.4 include, but is not limited to:

4.5 ~~(1) basing admissions decisions upon assurance by the applicant to the nursing~~  
4.6 ~~facility, or the applicant's guardian or conservator, that the applicant is neither eligible for~~  
4.7 ~~nor will seek~~ information or assurances regarding current or future eligibility for public  
4.8 assistance for payment of nursing facility care costs; and

4.9 ~~(2) engaging in preferential selection from waiting lists based on an applicant's~~  
4.10 ~~ability to pay privately or an applicant's refusal to pay for a special service.~~

4.11 The collection and use by a nursing facility of financial information of any applicant  
4.12 pursuant to a preadmission screening program established by law shall not raise an  
4.13 inference that the nursing facility is utilizing that information for any purpose prohibited  
4.14 by this paragraph.

4.15 ~~(f) Requiring~~ (h) A nursing facility must not require any vendor of medical care as  
4.16 defined by section 256B.02, subdivision 7, who is reimbursed by medical assistance under  
4.17 a separate fee schedule, to pay any amount based on utilization or service levels or any  
4.18 portion of the vendor's fee to the nursing facility except as payment for renting or leasing  
4.19 space or equipment or purchasing support services from the nursing facility as limited by  
4.20 section 256B.433. All agreements must be disclosed to the commissioner upon request of  
4.21 the commissioner. Nursing facilities and vendors of ancillary services that are found to be  
4.22 in violation of this provision shall each be subject to an action by the state of Minnesota or  
4.23 any of its subdivisions or agencies for treble civil damages on the portion of the fee in  
4.24 excess of that allowed by this provision and section 256B.433. Damages awarded must  
4.25 include three times the excess payments together with costs and disbursements including  
4.26 reasonable attorney fees or their equivalent.

4.27 ~~(g) Refusing~~ (i) A nursing facility must not refuse, for more than 24 hours, to accept a  
4.28 resident returning to the same bed or a bed certified for the same level of care, in accordance  
4.29 with a physician's order authorizing transfer, after receiving inpatient hospital services.

4.30 (j) For a period not to exceed 180 days, the commissioner may continue to make  
4.31 medical assistance payments to a nursing facility or boarding care home ~~which~~ that is in  
4.32 violation of this ~~section~~ subdivision if extreme hardship to the residents would result. In  
4.33 these cases the commissioner shall issue an order requiring the nursing facility to correct  
4.34 the violation. The nursing facility shall have 20 days from its receipt of the order to correct  
4.35 the violation. If the violation is not corrected within the 20-day period the commissioner  
4.36 may reduce the payment rate to the nursing facility by up to 20 percent. The amount of the

5.1 payment rate reduction shall be related to the severity of the violation and shall remain  
5.2 in effect until the violation is corrected. The nursing facility or boarding care home may  
5.3 appeal the commissioner's action pursuant to the provisions of chapter 14 pertaining to  
5.4 contested cases. An appeal shall be considered timely if written notice of appeal is received  
5.5 by the commissioner within 20 days of notice of the commissioner's proposed action.

5.6 In the event that the commissioner determines that a nursing facility is not eligible  
5.7 for reimbursement for a resident who is eligible for medical assistance, the commissioner  
5.8 may authorize the nursing facility to receive reimbursement on a temporary basis until the  
5.9 resident can be relocated to a participating nursing facility.

5.10 Certified beds in facilities ~~which~~ that do not allow medical assistance intake on July  
5.11 1, 1984, or after shall be deemed to be decertified for purposes of section 144A.071 only.