

256B.495 NURSING FACILITY RECEIVERSHIP FEES.

Subdivision 1. **Payment of receivership fees.** The commissioner in consultation with the commissioner of health may establish a receivership fee that exceeds a nursing facility payment rate when the commissioner of health determines a nursing facility is subject to the receivership provisions under section 144A.14 or 144A.15. In establishing the receivership fee, the commissioner must reduce the receiver's requested receivership fee by amounts that the commissioner determines are included in the nursing facility's payment rate and that can be used to cover part or all of the receivership fee. Amounts that can be used to reduce the receivership fee shall be determined by reallocating facility staff or costs that were formerly paid by the nursing facility before the receivership and are no longer required to be paid. The amounts may include any efficiency incentive, allowance, and other amounts not specifically required to be paid for expenditures of the nursing facility.

If the receivership fee cannot be covered by amounts in the nursing facility's payment rate, a receivership fee shall be set according to paragraphs (a) and (b) and payment shall be according to paragraphs (c) to (e).

(a) The receivership fee per diem shall be determined by dividing the annual receivership fee by the nursing facility's resident days from the most recent cost report for which the commissioner has established a payment rate or the estimated resident days in the projected receivership fee period.

(b) The receivership fee per diem shall be added to the nursing facility's payment rate.

(c) Notification of the payment rate increase must meet the requirements of section 256B.47, subdivision 2.

(d) The payment rate in paragraph (b) for a nursing facility shall be effective the first day of the month following the receiver's compliance with the notice conditions in paragraph (c).

(e) The commissioner may elect to make a lump-sum payment of a portion of the receivership fee to the receiver or managing agent. In this case, the commissioner and the receiver or managing agent shall agree to a repayment plan. Regardless of whether the commissioner makes a lump-sum payment under this paragraph, the provisions of paragraphs (a) to (d) and subdivision 2 also apply.

Subd. 1a. Receivership payment rate adjustment. Upon receiving a recommendation from the commissioner of health for a review of rates under section 144A.154, the commissioner may grant an adjustment to the nursing home's payment rate. The commissioner shall review the recommendation of the commissioner of health, together with the nursing home's cost report to determine whether or not the deficiency or need can be corrected or met by reallocating nursing home staff, costs, revenues, or other resources including any investments, efficiency incentives, or allowances. If the commissioner determines that the deficiency cannot be corrected or the need cannot be met, the commissioner shall determine the payment rate adjustment by dividing the additional annual costs established during the commissioner's review by the nursing home's actual resident days from the most recent desk-audited cost report.

Subd. 2. Deduction of additional receivership payments. If the commissioner has established a receivership fee per diem for a nursing facility in receivership under subdivision 1 or a payment rate adjustment under subdivision 1a, the commissioner must deduct these receivership payments according to paragraphs (a) to (c).

(a) The total receivership fee payments shall be the receivership per diem plus the payment rate adjustment multiplied by the number of resident days for the period of the receivership. If actual resident days for the receivership period are not made available within two weeks of the commissioner's written request, the commissioner shall compute the resident days by prorating the facility's resident days based on the number of calendar days from each portion of the nursing facility's reporting years covered by the receivership period.

(b) The amount determined in paragraph (a) must be divided by the nursing facility's resident days for the reporting year in which the receivership period ends.

(c) The per diem amount in paragraph (b) shall be subtracted from the nursing facility's operating cost payment rate for the rate year following the reporting year in which the receivership period ends. This provision applies whether or not there is a sale or transfer of the nursing facility, unless the provisions of subdivision 5 apply.

Subd. 3. [Repealed, 1992 c 513 art 8 s 59]

Subd. 4. Downsizing and closing nursing facilities. (a) If the nursing facility is subject to a downsizing to closure process during the period of receivership, the commissioner may reestablish the nursing facility's payment rate. The payment rate shall be established based on the nursing facility's budgeted operating costs, the receivership property related costs, and the management fee costs for the receivership period divided by the facility's estimated resident days for the same period. The commissioner of health and the commissioner shall make every effort to first facilitate the transfer of private paying residents to alternate service sites prior to the effective date of the payment rate. The cost limits and the case mix provisions in the rate setting system shall not apply during the portion of the receivership period over which the nursing facility downsizes to closure.

(b) Any payment rate adjustment under this subdivision must meet the conditions in section 256B.47, subdivision 2, and shall remain in effect until the receivership ends, or until another date the commissioner sets.

Subd. 5. Sale or transfer of a nursing facility in receivership after closure. (a) Upon the subsequent sale or transfer of a nursing facility in receivership, the commissioner must recover any amounts paid through payment rate adjustments under subdivision 4 which exceed the normal cost of operating the nursing facility. Examples of costs in excess of the normal cost of operating the nursing facility include the managing agent's fee, directly identifiable costs of the managing agent, bonuses paid to employees for their continued employment during the downsizing to closure of the nursing facility, prereceivership expenditures paid by the receiver, additional professional services such as accountants, psychologists, and dietitians, and other similar costs incurred by the receiver to complete receivership. The buyer or transferee shall repay this amount to the commissioner within 60 days after the commissioner notifies the buyer or transferee of the obligation to repay. The buyer or transferee must also repay the private-pay resident the amount the private-pay resident paid through payment rate adjustment.

(b) If a nursing facility with payment rates subject to subdivision 4, paragraph (a), is later sold while the nursing facility is in receivership, the payment rates in effect prior to the receivership shall be the new owner's payment rates. Those payment rates shall continue to be in effect until the rate year following the reporting period ending on September 30 for the new owner. The reporting period shall, whenever possible, be at least five consecutive months. If the reporting period is less than five months but more than three months, the nursing facility's resident

days for the last two months of the reporting period must be annualized over the reporting period for the purpose of computing the payment rate for the rate year following the reporting period.

History: *1989 c 282 art 3 s 83; 1990 c 568 art 3 s 77; 1992 c 513 art 7 s 115-119,136*