

HOUSE OF REPRESENTATIVES

EIGHTY-SEVENTH SESSION

H. F. No. 2374

02/20/2012 Authored by Kiffmeyer, Gottwalt and Abeler

The bill was read for the first time and referred to the Committee on Health and Human Services Finance

03/05/2012 Adoption of Report: Pass and Read Second Time

A bill for an act

relating to human services; modifying nursing facility rate equalization;
amending Minnesota Statutes 2010, section 256B.48, subdivision 1.

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

Section 1. Minnesota Statutes 2010, section 256B.48, subdivision 1, is amended to read:

Subdivision 1. **Prohibited practices.** A nursing facility is not eligible to receive
medical assistance payments unless it refrains from all of the following:

(a) Charging private paying residents rates for similar services which exceed those
which are approved by the state agency for medical assistance recipients as determined by
the prospective desk audit rate, except under the following circumstances:

(1) the nursing facility may:

~~(1)~~ (i) charge private paying residents a higher rate for a private room; and

~~(2)~~ (ii) charge for special services which are not included in the daily rate if medical
assistance residents are charged separately at the same rate for the same services in
addition to the daily rate paid by the commissioner;

(2) effective July 1, 2012, through September 30, 2013, nursing facilities may
charge private paying residents rates up to two percent higher than the allowable medical
assistance payment rate determined by the commissioner for the RUGS group currently
assigned to the resident; and

(3) effective for rate years beginning October 1, 2013, and after, nursing facilities
may charge private paying residents rates greater than the allowable medical assistance
payment rate determined by the commissioner for the RUGS group currently assigned
to the resident by up to two percent more than the differential in effect on the prior
September 30. Nothing in this section precludes a nursing facility from charging a rate

allowable under the facility's single room election option under Minnesota Rules, part 9549.0060, subpart 11, or the enhanced rates under section 256B.431, subdivision 32. Services covered by the payment rate must be the same regardless of payment source. Special services, if offered, must be available to all residents in all areas of the nursing facility and charged separately at the same rate. Residents are free to select or decline special services. Special services must not include services which must be provided by the nursing facility in order to comply with licensure or certification standards and that if not provided would result in a deficiency or violation by the nursing facility. Services beyond those required to comply with licensure or certification standards must not be charged separately as a special service if they were included in the payment rate for the previous reporting year. A nursing facility that charges a private paying resident a rate in violation of this ~~clause paragraph~~ is subject to an action by the state of Minnesota or any of its subdivisions or agencies for civil damages. A private paying resident or the resident's legal representative has a cause of action for civil damages against a nursing facility that charges the resident rates in violation of this ~~clause paragraph~~. The damages awarded shall include three times the payments that result from the violation, together with costs and disbursements, including reasonable ~~attorneys'~~ attorney fees or their equivalent. A private paying resident or the resident's legal representative, the state, subdivision or agency, or a nursing facility may request a hearing to determine the allowed rate or rates at issue in the cause of action. Within 15 calendar days after receiving a request for such a hearing, the commissioner shall request assignment of an administrative law judge under sections 14.48 to 14.56 to conduct the hearing as soon as possible or according to agreement by the parties. The administrative law judge shall issue a report within 15 calendar days following the close of the hearing. The prohibition set forth in this ~~clause paragraph~~ shall not apply to facilities licensed as boarding care facilities which are not certified as skilled or intermediate care facilities level I or II for reimbursement through medical assistance.

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

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

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

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

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

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

(d) Providing differential treatment on the basis of status with regard to public assistance.

(e) Discriminating in admissions, services offered, or room assignment on the basis of status with regard to public assistance ~~or refusal to purchase special services.~~

Discrimination in admissions, discrimination, services offered, or room assignment shall include, but is not limited to:

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

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

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

(f) Requiring any vendor of medical care as defined by section 256B.02, subdivision 7, who is reimbursed by medical assistance under a separate fee schedule, to pay any amount based on utilization or service levels or any portion of the vendor's fee to the nursing facility except as payment for renting or leasing space or equipment or purchasing support services from the nursing facility as limited by section 256B.433. All agreements

4.1 must be disclosed to the commissioner upon request of the commissioner. Nursing
4.2 facilities and vendors of ancillary services that are found to be in violation of this provision
4.3 shall each be subject to an action by the state of Minnesota or any of its subdivisions or
4.4 agencies for treble civil damages on the portion of the fee in excess of that allowed by
4.5 this provision and section 256B.433. Damages awarded must include three times the
4.6 excess payments together with costs and disbursements including reasonable attorney's
4.7 fees or their equivalent.

4.8 (g) Refusing, for more than 24 hours, to accept a resident returning to the same
4.9 bed or a bed certified for the same level of care, in accordance with a physician's order
4.10 authorizing transfer, after receiving inpatient hospital services.

4.11 (h) For a period not to exceed 180 days, the commissioner may continue to make
4.12 medical assistance payments to a nursing facility or boarding care home which is in
4.13 violation of this section if extreme hardship to the residents would result. In these cases
4.14 the commissioner shall issue an order requiring the nursing facility to correct the violation.
4.15 The nursing facility shall have 20 days from its receipt of the order to correct the violation.
4.16 If the violation is not corrected within the 20-day period the commissioner may reduce
4.17 the payment rate to the nursing facility by up to 20 percent. The amount of the payment
4.18 rate reduction shall be related to the severity of the violation and shall remain in effect
4.19 until the violation is corrected. The nursing facility or boarding care home may appeal the
4.20 commissioner's action pursuant to the provisions of chapter 14 pertaining to contested
4.21 cases. An appeal shall be considered timely if written notice of appeal is received by the
4.22 commissioner within 20 days of notice of the commissioner's proposed action.

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

4.27 Certified beds in facilities which do not allow medical assistance intake on July 1,
4.28 1984, or after shall be deemed to be decertified for purposes of section 144A.071 only.