

Sec. 7. Minnesota Statutes 1974, Section 373.36, is repealed.

Sec. 8. **EFFECTIVE DATE.** This act shall be effective the day following final enactment.

Approved April 13, 1976.

CHAPTER 282—H.F.No.2203

[Coded]

An act relating to medical assistance for the needy; establishing guidelines for allowed costs of services furnished by nursing homes; prescribing certain responsibilities for the commissioner of public welfare.

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

Section 1. [256B.41] PUBLIC WELFARE; MEDICAL ASSISTANCE FOR NEEDY; NURSING HOME RATES; POLICY; INTENT. Subdivision 1. The state agency shall by rule establish a formula for establishing payment rates for nursing homes which qualify as vendors of medical assistance.

Subd. 2. It is the intent of the legislature to establish certain limitations on the state agency in setting standards for nursing home rate setting for the care of recipients of medical assistance pursuant to *Minnesota Statutes, Chapter 256B. It is not the intent of the legislature to repeal or change any existing or future rule promulgated by the state agency relating to the setting of rates for nursing homes unless the rule is clearly in conflict with sections 1 to 8 of this act. If any provision of sections 1 through 8 of this act is determined by the United States government to be in conflict with existing or future requirements of the United States government with respect to federal participation in medical assistance, the federal requirements shall prevail.*

Sec. 2. [256B.42] DEFINITIONS. Subdivision 1. For the purpose of this act the following terms and phrases shall have the meaning given to them.

Subd. 2. "Facility" means the building in which a nursing home is located and all permanent fixtures attached to it. "Facility" does not include the land or any supplies and equipment which are not fixtures.

Subd. 3. "Original value" means the value of the facility established pursuant to section 3, subdivisions 1 and 2.

Subd. 4. "Purchase" means the acquisition of a nursing home by a new owner or the construction of a new nursing home.

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Subd. 5. "Net asset value" means the total of the original value of the facility less accumulated depreciation on it and the value of the land.

Subd. 6. "Net debt" means the total of capital indebtedness and loans used for operating expenses.

Sec. 3. [256B.43] FIXED ASSETS; DEPRECIATION. Subdivision 1. The state agency shall by rule establish a depreciation allowance for nursing homes purchased on or after January 1, 1977. The depreciation allowance shall be based on the lesser of the purchase price or the appraised value of the facility at the time of the purchase. After the purchase of a nursing home, the purchaser of the nursing home or the state agency may request an appraisal of the facility pursuant to the provisions of subdivision 3. The value of the facility determined pursuant to this subdivision shall be the original value and shall be the basis for depreciation.

Subd. 2. If any nursing home expands its facility or makes any other capital expenditures which increases the value of the facility subsequent to January 1, 1977, the cost of the expansion or capital expenditure shall be added to the original value, and the total shall become the new original value and basis for depreciation. If the state agency disputes the cost attributed to the expansion or capital expenditure, it may request an appraisal pursuant to subdivision 3.

Subd. 3. The state agency shall establish a list of not more than 25 appraisers who have experience in appraising nursing homes. In the event that an appraisal is requested pursuant to this section, or section 5, *the state agency and the owner of the nursing home shall select an appraiser from the list in accordance with procedures established by the state agency by rule.* The appraisal shall be based on the depreciated replacement cost of the facility. The cost of the appraisal shall be paid by the party requesting it. The cost of an appraisal requested by a nursing home shall not be reimbursed by the state agency.

Subd. 4. Depreciation on any new construction or expansion of facilities commenced on or after January 1, 1977, other than governmentally owned facilities, shall be on a basis of not less than 30 years.

Sec. 4. [256B.44] INTEREST EXPENSE. Subdivision 1. Except as provided in subdivision 2, the state agency shall recognize interest expense as an allowable cost for any nonproprietary or governmentally owned nursing home if the interest rate is not in excess of what a borrower would have had to pay in an arms-length transaction in the money market at the time the loan was made, and the net debt is directly related to purchasing or improving the nursing home or providing patient care at the nursing home. Except as provided in subdivision 3, the state agency shall not recognize interest expense as an allowable cost for any proprietary nursing home.

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Subd. 2. After the first three years that a nonproprietary or governmentally owned nursing home has been owned by its current owners, the state agency shall not recognize as an allowable cost the expense of interest on net debt for any indebtedness and loans which exceed 100 percent of the net asset value of the facility.

Subd. 3. A proprietary nursing home which pays interest on capital indebtedness at an interest rate in excess of nine percent may be reimbursed for one-half of its interest expenses in excess of the nine percent up to 12 percent if (1) the proceeds of the indebtedness are used for the purchase or operation of the nursing home and (2) the interest rate is not in excess of what a borrower would have had to pay in an arms-length transaction at the time the loan was made.

Sec. 5. **[256B.45] INVESTMENT ALLOWANCE.** Subdivision 1. The state agency shall by rule establish an investment allowance for nursing homes. For the fiscal year beginning July 1, 1977, the allowance for proprietary homes shall be nine percent of the original value of the facility for depreciation purposes. For the fiscal year beginning July 1, 1977, the allowance for nonproprietary homes shall be two percent of the original value of the facility for depreciation purposes. Beginning in 1977 the state agency shall, no later than May 1 of each year, conduct a public hearing pursuant to the rule making provisions of chapter 15 to determine the percentages to be used in the following fiscal year. There shall be no other cost of capital or profit allowance for proprietary homes.

Subd. 2. The owner of a nursing home or the state agency may request a new appraisal of the facility not more often than every seven years. If a new appraisal is made, the new appraised value less depreciation, computed on the basis of the value established pursuant to this subdivision, shall become the new basis for that nursing home's investment allowance. The appraiser shall be selected and the appraisal undertaken in accordance with the provisions of section 3, subdivision 3. The basis for depreciation shall continue to be the original value of the facility established pursuant to section 3.

Subd. 3. The seven year period used for the purposes of subdivision 2 shall commence with the date of purchase. The state agency or the owner of any nursing home purchased before January 1, 1977, may request an appraisal on July 1, 1977 or seven years after the date of purchase, whichever occurs later in time.

Subd. 4. If a nursing home is operated on a lease basis, the state agency shall not recognize as an allowable cost any rental fee in excess of the total amount it would pay to the owner of the facility as interest, investment allowance and depreciation allowance.

Sec. 6. **[256B.46] INCENTIVE ALLOWANCE.** In the event that the United States government disallows the investment allowance provided for in section 5 for nonproprietary homes, the state agency shall

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by rule establish an incentive allowance for nonproprietary nursing homes consistent with federal requirements. The incentive allowance shall include incentives to reward efficient management and quality care. The incentive allowance may also be graduated so that it *increases with (1) the length of time that a nursing home is owned by the same owner and (2) the owner's net investment as a percentage of the net asset value of the facility.* The rule shall provide that if a nonproprietary nursing home is operated on a lease basis, the state agency shall not recognize as an allowable cost for the operator any rental fee in excess of the total amount it would pay for depreciation and pursuant to this section.

Sec. 7. [256B.47] RATE LIMITS. Subdivision 1. The state agency shall by rule establish separate overall limitations on the costs for items which directly relate to the provision of patient care to residents of nursing homes and those which do not directly relate to the provision of care. The state agency may also by rule, establish limitations for specific cost categories. All costs determined otherwise allowable shall be subject to these limitations. The categorical limits on patient care related items may be hourly limits based on the needs of the residents of the nursing home up to maximum limits established by the state agency.

Subd. 2. The following costs shall not be recognized as allowable: (1) political contributions; (2) salaries or expenses of a lobbyist, as defined in section 10A.01, subdivision 11, for lobbying activities; (3) advertising designed to encourage potential residents to select a particular nursing home; (4) assessments levied by the health department for uncorrected violations; (5) legal fees for unsuccessful challenges to decisions by state agencies; and (6) dues paid to a nursing home or hospital association. The state agency shall by rule exclude the costs of any other items which it determines are not directly related to the provision of patient care.

Subd. 3. On or before January 1, 1977 the state agency shall by rule establish a procedure affording notice of the approved rate for medical assistance recipients to nursing homes within 120 days after the close of the fiscal year of the nursing home.

Sec. 8. [256B.48] CONDITIONS FOR PARTICIPATION. Subdivision 1. No nursing home shall be eligible to receive medical assistance payments unless it agrees in writing that it will refrain from:

(a) Charging nonmedical assistance residents rates for similar services which exceed by more than ten percent those rates which are approved by the state agency for medical assistance recipients; effective July 1, 1978, no nursing home shall be eligible for medical assistance if it charges nonmedical assistance recipients rates for similar services which exceed those which are approved by the state agency for medical assistance recipients; provided, however, that the nursing home may (1) charge nonmedical assistance residents a higher rate for a pri-

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vate room, and (2) charge for special services which are not included in the daily rate if medical assistance patients are charged separately at the same rate for the same services in addition to the daily rate paid by the state agency;

(b) Requiring an applicant for admission to the home, or the guardian or conservator of the applicant, as a condition of admission, to pay an admission fee in excess of \$100, loan any money to the nursing home, or promise to leave all or part of the applicant's estate to the home; and

(c) Requiring any resident of the nursing home to utilize a vendor of health care services who is a licensed physician or pharmacist chosen by the nursing home.

The prohibitions set forth in clause (b) shall not apply to a non-proprietary retirement home which contains an identifiable unit of fewer than 20 percent of the total number of facility beds to provide nursing care to the residents of the home.

Subd. 2. Effective July 1, 1976, no nursing home shall be eligible to receive medical assistance payments unless it agrees in writing to:

(a) Provide the state agency with its most recent (1) balance sheet and statement of revenues and expenses as audited by a certified public accountant licensed by this state or by a public accountant as defined in section 412.222; (2) statement of ownership for the nursing home; and (3) a separate audited balance sheet and statement of revenues and expenses for each nursing home if more than one nursing home or other business operation is owned by the same owner; a governmentally owned nursing home may comply with the auditing requirements of this clause by submitting an audit report prepared by the state auditor's office;

(b) Provide the state agency with copies of leases, purchase agreements and other related documents related to the lease or purchase of the nursing home; and

(c) Provide to the state agency upon request copies of leases, purchase agreements, or similar documents for the purchase or acquisition of equipment, goods and services which are claimed as allowable costs.

Subd. 3. The state agency may reject any annual cost report filed by a nursing home pursuant to this chapter if it determines that the report or the information required in subdivision 2, clause (a) has been filed in a form that is incomplete or inaccurate. In the event that a report is rejected pursuant to this subdivision, the state agency may make payments to a nursing home at the rate determined for its prior fiscal year, or at an interim rate established by the state agency, until the information is completely and accurately filed.

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Sec. 9. **EFFECTIVE DATE.** Except as otherwise provided, this act shall be effective for cost reports filed after December 31, 1976.

Approved April 13, 1976.

CHAPTER 283—H.F.No.2204

[Coded in Part]

An act relating to collection and dissemination of data; providing definitions; requiring a public document on data collection; authorizing audits of data collection practices and policies; providing for emergency classification in certain situations; amending Minnesota Statutes 1974, Chapter 15, by adding a section; and Minnesota Statutes, 1975 Supplement, Sections 15.162, Subdivisions 2a, 5, 5a and 8, and by adding a subdivision; 15.163, Subdivisions 1 and 2.

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

Section 1. Minnesota Statutes 1974, Section 15.162, is amended by adding a subdivision to read:

Subd. 1a. STATE GOVERNMENT; COLLECTION; SECURITY AND DISSEMINATION OF RECORDS. "Arrest information" shall include (a) the name, age, and address of an arrested individual; (b) the nature of the charge against the arrested individual; (c) the time and place of the arrest; (d) the identity of the arresting agency; (e) information as to whether an individual has been incarcerated and the place of incarceration. "Arrest information" does not include data specifically made private, confidential or nonpublic pursuant to section 260.161 or any other statute.

Sec. 2. Minnesota Statutes, 1975 Supplement, Section 15.162, Subdivision 2a, is amended to read:

Subd. 2a. "Confidential data on individuals" means data which is : (a) made not public but is (a) expressly made confidential by law as by statute or federal law applicable to the data and is inaccessible to the individual subject of that data; or (b) collected by a civil or criminal investigative agency as part of an active investigation undertaken for the purpose of the commencement of a legal action, provided that the burden of proof as to whether such investigation is active or in anticipation of a legal action is upon the agency ; (c) data which supplies the basis for the diagnosis of the medical or psychiatric condition of an individual as determined by a licensed physician. Confidential data on individuals does not include arrest information that is reasonably contemporaneous with an arrest or incarceration. The provision of clause (b) in this subdivision shall terminate and cease to have force and effect with regard to the state agencies, political subdivisions, statewide systems, covered by the ruling, upon the granting or refusal to grant

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