

4731.3175 ASSURING DECOMMISSIONING FUNDS; NONPROFIT ENTITIES.

Subpart 1. **General requirement.** This part applies to an applicant or licensee that is a nonprofit entity, such as a college, university, or nonprofit hospital, and wishes to self-guarantee. An applicant or licensee may provide reasonable assurance of the availability of funds for decommissioning based on furnishing its own guarantee that funds will be available for decommissioning costs and on a demonstration that the applicant or licensee passes the financial test under subpart 2. This part establishes criteria for passing the financial test for the self-guarantee and establishes the terms for a self-guarantee.

Subp. 2. **Financial test requirements.**

A. To pass the financial test, a college or university must:

(1) for applicants or licensees that issue bonds, have a current rating for its most recent uninsured, uncollateralized, and unencumbered bond issuance of AAA, AA, or A as issued by Standard and Poor's or Aaa, Aa, or A as issued by Moody's; or

(2) for applicants or licensees that do not issue bonds, have an unrestricted endowment consisting of assets located in the United States of at least \$50,000,000, or at least 30 times the total current decommissioning cost estimate, or the current amount required if certification is used, whichever is greater, for all decommissioning activities for which the college or university is responsible as a self-guaranteeing licensee.

B. To pass the financial test, a hospital must:

(1) for applicants or licensees that issue bonds, have a current rating for its most recent uninsured, uncollateralized, and unencumbered bond issuance of AAA, AA, or A as issued by Standard and Poor's or Aaa, Aa, or A as issued by Moody's; or

(2) for applicants or licensees that do not issue bonds, meet all the following tests:

(a) total revenues less total expenditures, divided by total revenues, must be equal to or greater than 0.04;

(b) long-term debt divided by net fixed assets must be less than or equal to 0.67;

(c) current assets and depreciation fund, divided by current liabilities, must be greater than or equal to 2.55; and

(d) operating revenues must be at least 100 times the total current decommissioning cost estimate, or the current amount required if certification is used, for all decommissioning activities for which the hospital is responsible as a self-guaranteeing licensee.

Subp. 3. **Audit.** A licensee's independent certified public accountant must compare the data used by the licensee in the financial test, which must be derived from the independently audited, year-end financial statements, based on United States generally accepted accounting practices, for the latest fiscal year, with the amounts in such financial statements. In connection with that procedure, the licensee must inform the commissioner within 90 days of any matters coming to the attention of the auditor that cause the auditor to believe that the data in the financial test should be adjusted and that the licensee no longer passes the test.

Subp. 4. **Continued compliance.**

A. After the initial financial test, a licensee must repeat passage of the test within 90 days after the close of each succeeding fiscal year.

B. If a licensee no longer meets the requirements of subpart 2, the licensee must send notice to the commissioner of its intent to establish alternative financial assurance according to this chapter. The notice must be sent by certified mail, return receipt requested, within 90 days after the end of the fiscal year for which the year-end financial data show that the licensee no longer meets the financial test requirements. The licensee must provide alternate financial assurance within 120 days after the end of the fiscal year.

Subp. 5. **Terms of guarantee.** The terms of a self-guarantee that an applicant or licensee furnishes must provide that:

A. the guarantee remains in force unless the licensee sends notice of cancellation by certified mail or return receipt requested to the commissioner. Cancellation may not occur unless an alternative financial assurance mechanism is in place;

B. the licensee must provide alternative financial assurance according to this chapter within 90 days following receipt by the commissioner of a notice of cancellation of the guarantee;

C. the guarantee and financial test provisions remain in effect until the commissioner terminates the license or until another financial assurance method acceptable to the commissioner is put in effect by the licensee;

D. the applicant or licensee must provide to the commissioner a written guarantee (a written commitment by a corporate officer or officer of the institution) that states that the licensee shall fund and carry out the required decommissioning activities or, upon issuance of an order by the commissioner, the licensee shall set up and fund a trust in the amount of the current cost estimates for decommissioning; and

E. if, at any time, the licensee's most recent bond issuance ceases to be rated in any category of A or above by either Standard and Poor's or Moody's, the licensee must provide notice in writing of the fact to the commissioner within 20 days after publication of the change by the rating service.

Statutory Authority: *MS s 144.1202; 144.1203*

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