Nursing Home Providers

June 27, 2023

Agenda

Welcome & Purpose	Maria King (MDH)
Advance Support	Kim Brenne (DHS)
2023 Legislative Updates	Val Cooke (DHS)
Nursing Home Closures	Muna Yasiri (DHS) & Shellae Dietrich (HRD)
Provider Perspective	Minneota Manor
Rate Adjustments	Kim Brenne (DHS) & Val Cooke (DHS)
Receiverships	Susan Winkelmann (HRD) & Val Cooke (DHS)
Governing Body	Maria King (HRD)

Types of Advance Support before Deciding to Close

Kim Brenne | Audit Director, Nursing Facility Rates & Policy Division, DHS

Seek Information Early

The Minnesota Department of Human Services (DHS) can provide useful information about possible ways to improve a facility's financial situation. Topic examples include:

- Options for bed count and bed configuration changes
- Elections; single-bed and short stay
- Maximizing participation in DHS administered funding programs
- Acting on layaway beds nearing their 10-year expiration date

2023 Legislative Action | Nursing Facility Funding

Val Cooke | Director, Nursing Facility Rates & Policy Division, DHS

Payments to Nursing Facilities - $173 Million

- The payments will be based on a calculation that includes a lump sum of $225,000 to each facility and the remainder distributed based on the number of active nursing facility beds as of May 12, 2023. Approximately $4000 per bed.
- Total payment to a facility ranges from approximately $281K to $1.5M
- The first payment will be on August 1, 2023 (1/2 of the total) and the second payment will be on or near August 1, 2024.
- Allowable uses of these funds is for expenses that will not impact future rates, such as rent or mortgage payments, closing lines of credit or physical plant improvements.
- Payments are not treated as “applicable credits”.

Nursing Facility Temporary Rate Add-On - $51 Million

- This program adds a temporary daily rate add-on of $12.35 for 18 months.
  - Effective July 1, 2023, through December 31, 2024.
- This rate add-on impacts private pay rates and is eligible for the federal match – total new revenue approximately $134M.
- Nearly all NFs should have a new rate notice posted or temporary rates have been increased.
- This rate adjustment is not treated as an “applicable credit”.

Workforce Incentive Grant Program - $75 Million

This new grant program is to assist with recruiting and retaining direct support professionals.

- Eligible workers may receive payments up to $3,000 per year from the workforce incentive fund.
- Eligible workers must earn $30 per hour or less and is currently employed or recruited to be employed by an eligible employer.
- Facilities may use the money to provide payments to eligible workers for retention, recruitment, and incentive payments, postsecondary loan and tuition payments, childcare costs, transportation-related costs; and other costs associated with retaining and recruiting workers.
- Funds received must be offset on the reporting year cost report (applicable credit).

Financially-Distressed Nursing Facility Loan Program - $100 Million

This new loan program will be an opportunity for financially distressed nursing facilities to apply for a loan to manage cash flow issues generated through the pandemic and high inflation.

- Application process at least once annually, may do a second round each year.
- Payments are in a lump sum; repayments do not start for 18 months.
- The loans would be interest-free, and facilities could determine a repayment plan of up to six years.
- Facilities will have flexibility on the payment plan to fit their respective needs.
- Expectation is loan application materials will be available in the next 3-4 months.

Critical Access Nursing Facility (CANF) - $2.5 Million Annual

This program is intended to address the financial viability of rural nursing homes at risk of closure in order to maintain access to nursing facility care within a reasonable distance from resident's homes and family.

- Under current law, there is authority for CANF with funding of $1.5M annual. This new law adds another $1M resulting in $2.5M each year going forward.
- Designation as a CANF is done through a competitive process. NFs may receive a rate increase (external fixed add-on) for up to two years.
- Effective date of July 1, 2023, pending federal approval.
- Request for proposals will be posted within the next 2-3 weeks. If approved, NFs may be eligible for retroactive rate increase to July 1, 2023.

Nursing Home Closures

Munna Yasiri | Director, Nursing Facility Rates & Policy Division, DHS
Shellae Dietrich | Health Regulation Division Federal Operations Manager, MDH

M.S. 144A.161

- MN Statute 144A.161
- Enacted in 2001
- Jointly sponsored legislation as a result of collaboration between nursing home providers, trade associations, office of ombudsman, County representatives, and the Minnesota Department of Human Services (DHS) and Minnesota Department of Health (MDH)

Nursing Home Resident Relocation

- Best interests of the residents
- Collaborative process that brings parties together
- Better communication among all involved parties
- Gather resources to provide a smoother relocation process
- Minimize transfer trauma to residents
- Provide for a planned, thoughtful process with more time to prepare for relocations
- Provides for confidentiality until the 60-day notice to residents/family

Applicability

- Complete closures
- Partial closures
- Change in operation (includes moratorium exceptions, remodeling, etc.)
- ANY situation that might result in *or* encourage the relocation of residents

Collaborative Process

- Department of Human Services (DHS)
- Department of Health (MDH)
- Office of Ombudsman for Long-Term Care
- Office of Ombudsman for Mental Health and Developmental Disabilities
- Moving Home Minnesota
- Medicaid Managed Care plans serving nursing home residents in the local area
- Local County Agency
- Representatives of the closing nursing facility

How is the process initiated?

- Letter of Intent to close the facility or change operations
- Within 5 working days, you will receive a response from the county representative
- Within 10 working days, meetings will begin to start the planning process

Start the Process Early

Allows for enough time to:

- Engage all parties involved in the process
- Meet and develop the relocation plan
- Conduct any required assessments
- Hold site visits for residents/families
- Provide for required notices to resident/family
- Allow for time to file/process PCRA/CRA applications

Timelines

Typical timeline for full (compliant) Resident Relocation process:

- 70 – 90 days

Timeline can be expedited *in limited circumstances* for:

- Emergency closures
- Other *non-conforming* closures

Focus of Meeting Process

- Engage all parties
- Develop a comprehensive relocation plan
- Discuss individual resident circumstances, especially those requiring special intervention or action

Resident/Family Notices

- 60-day advance notice of closure
- Notice immediately prior to the resident move

Role of the County

- Host/facilitate meetings
- Help with assessments and expedite case processing
- Oversee local agency response to emergencies
- Intervene and/or report in cases where the health and/or welfare of residents is at risk
- Provide resources when needed
- Conduct post-relocation follow-up work to evaluate resident adjustment

Resources

Nursing Facility Resident Relocation & Closure Guide (PDF) (https://mn.gov/dhs/assets/NF-Resident-relocation-closure-guide-facility_tcm1053-517051.pdf)

Index

GENERAL:

- Introduction
- Resident Relocation Checklist - Nursing Facility Use
- Role of Ombudsman Office
- Relocation Stress - Best Practice Tips for Addressing Resident Care

NOTICES:

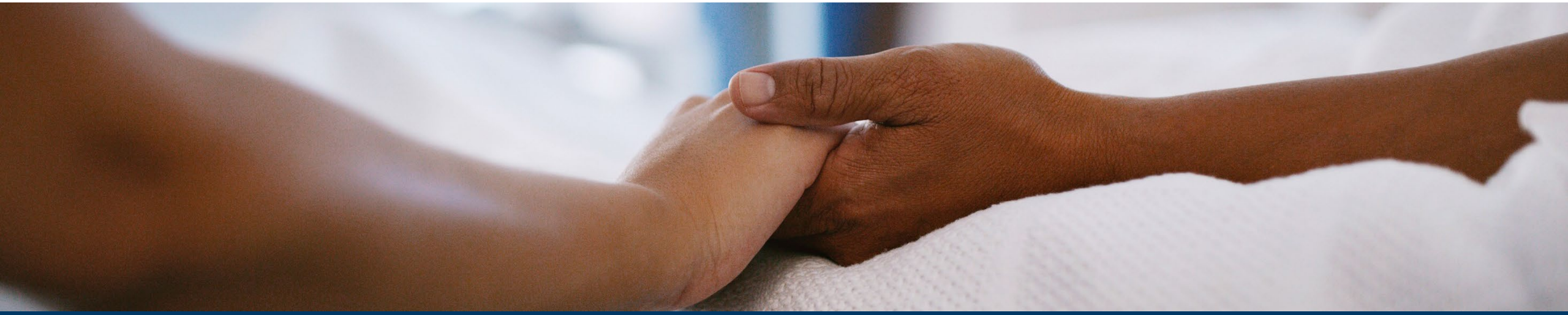
- Appendix A - Letter of Intent
- Appendix C - 60-Day Notice to residents, family, other parties
- Appendix D - Resident Census From
- Appendix E - Weekly Status Report Form
- Appendix F - Final Written Notice of Resident Relocation

CONTACTS:

- Appendix G - Planning Process, Intent Notice, 60-Day Notice
- Appendix H - Ombudsman for Long-Term Care
- Appendix I - Ombudsman for Mental Health & Developmental Disabilities
- Appendix J - Medicaid Managed Care Organizations
- Appendix K - Area Agencies on Aging (AAAs)
- Appendix L - Planned Closure Rate Adjustment (PCRA) & Single Bed Incentive (SBI)

RELOCATION PLAN:

- Appendix M - Resident Relocation Law (Statutory Language)
- Appendix N - Resident Relocation Plan Template



Provider Perspective

Jennifer Gleason | Former Minneota Manor Nursing Home

Lessons from a provider

- Be prepared, reach out to DHS/MDH early
- Talk to your lender in advance of any decisions to close or transition to another level of care
- Be thoughtful about how your decisions as an organization will affect your staff and your residents

Planned Closure/Closure Rate Adjustments

Kim Brenne| Audit Director, Nursing Facility Rates & Policy Division, DHS
Val Cooke| Director, Nursing Facility Rates & Policy Division, DHS

Planned Closure Rate Adjustment (PCRA)

- Financial incentive of $2,080 for each bed closed.
- Incentive is built into future rates, permanently, until if/when the facility enters the Fair Rental Value property rate system.
- If PCRA application process is not complete prior to MDH closing the beds (including those in layaway for 10 years), the provider will miss out on this rate increase.
- PCRA application process with DHS must be initiated at least 30 days in advance of the closure of the bed(s). 60+ is better.
- PCRA applications can be rescinded. The facility has 18 months from the date of the DHS approval letter to close the beds.

50% Closure Rate Adjustment

A rate increase of 50 percent of the total payment rate for up to 60 consecutive days will be available to a closing facility. The closure rate adjustment goes into after all the following conditions are met:

- The Department of Human Service receives an official request for a closure rate adjustment.
- The written notice of closure is distributed to residents and responsible parties per Minnesota Statutes 144A.161, Subd. 5a.
- The facility's occupancy is less than 90 percent of capacity.

Receiverships

Susan Winkelmann | Health Regulation Division Assistant Division Director, MDH
Val Cooke | Director, Nursing Facility Rates & Policy Division, DHS

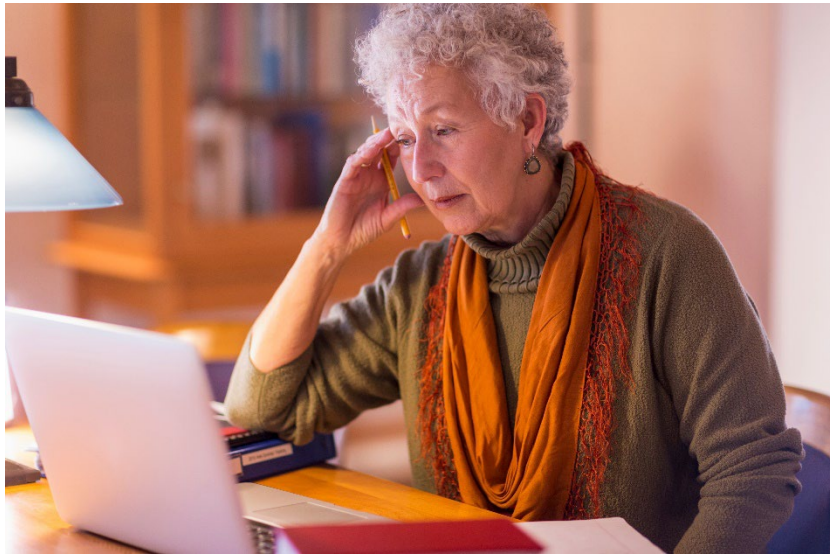
Nursing Home Receiverships

- Authorized by MN Statutes Sec. 144A.15
- From 2021-2022 MDH was granted authority for two (2) receiverships. Prior to 2021, there were three (3). They are very rare.
- The statute authorizes what happens during a receivership and what circumstances must exist before MDH pursues one.
- MDH must go to court and prove our case to a District Court Judge. The Judge decides whether a receivership is necessary.
- That Judge's order then is public information and enforceable.

Why a Receivership and what happens?

- There is always a healthcare and safety emergency or crisis occurring.
- There is often financial mismanagement; real *mismanagement.* Not the usual pressures.
- MDH hires a managing agent under an agreement between MDH, DHS and the agent, to run the day-to-day operations subject to the direction of MDH.
- MDH takes over the operation of the nursing home but does not become the owner of the building or property.
- MDH becomes the licensee and must comply with all state and federal laws just like any other licensee.

Landscape before MDH pursues a Receivership



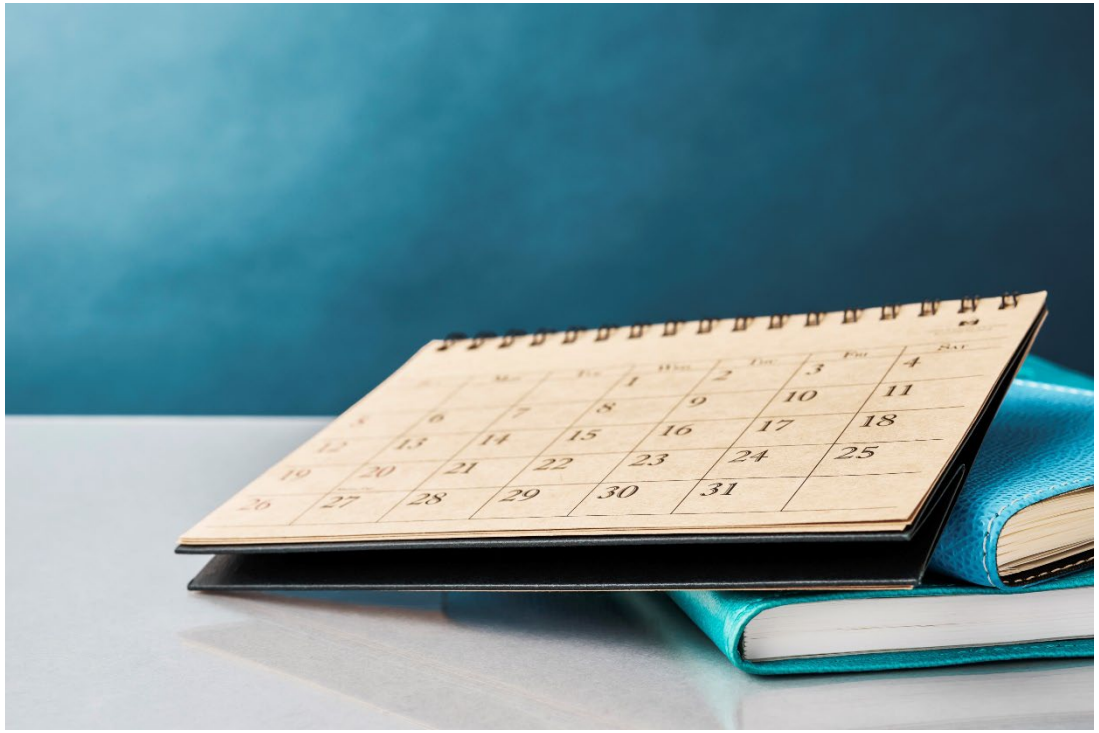
- A bad survey with numerous violations in all areas of operation with an inability to correct the violations in follow-ups
- Contacts from parties about their concerns (from nursing home staff, other nursing home providers, ombudsman for long term care, etc.)
- A pattern of substantiated maltreatment results or Immediate Jeopardies

What does MDH do onsite after a Receivership?

- Our managing agent brings the court order with them and informs the building management that MDH and the state are now in charge of the nursing home.
- As new licensee of the nursing home, we must do whatever we can to get the facility back into compliance as quickly as possible.
- We quickly get the payroll up and running.
- We decide which bills get paid or not. We do not pay for bills occurring before the receivership.
- We decide whether the facility needs to close and if so, we follow the resident relocation law just like any other licensee.

Ending a Receivership

- By state law, a receivership cannot last more than 18 months
- Either it closes within the timeline required or there is a new licensee
- MDH inventories the building and turns the building back to the owner (old or new)
- Importantly if a nursing home closes, the licensed beds close forever, and it cannot be re-used as a nursing home.



How are Receiverships Funded?

- During the receivership period, Medicaid, Medicare and Private Pay continue to be billed the applicable daily per diem rate. The managing agent will collect incoming payments from all sources and apply them to the costs incurred in operating the facility.
- In addition to payment for operational costs during the receivership fee, DHS has authority to pay a reasonable fee to the managing agent for operating the facility.
- Generally, outstanding payable balances for costs incurred prior to the start of the receivership are not paid by the receiver. Exceptions are made in those cases where it is necessary to pay an outstanding payable when it is necessary for the health and safety of the residents.
- At the end of the receivership, additional costs exceeding revenue during the receivership period is divided by resident days for the period to determine a receivership fee per day. The receivership fee is added to the nursing facility's Medicaid payment rate. Medicaid claims are reprocessed for the receivership period to cover the receivership costs.

Receiverships have negative impacts on communities

- Vendors don’t get all their debts paid
- The outgoing operator has often violated many employment laws in addition to the reasons why we undertake the receivership.
- The residents and families' lives are disrupted and it’s very stressful and upsetting
- The nursing home staff’s lives are also disrupted and it’s very stressful and upsetting

Governing Body

Maria King| Health Regulation Division Director, MDH

The administration of a facility is not limited to the facilities administrator but may also include the facilities Governing Body

F835

- **§483.70 Administration:** A facility must be administered in a manner that enables it to use its resources effectively and efficiently to attain or maintain the highest practicable physical, mental, and psychosocial well-being of each resident.
- **GUIDANCE §483.70:** Resources include but are not limited to a facility's operating budget, staff, supplies, or other services necessary to provide for the needs of residents.
- **PROCEDURES §483.70**: Cite this tag if the actions, inactions, or decisions in administering the facility contributed to deficient practice(s). **The facility's administration is not limited to the administrator and may also include the facility's governing body**, management company, and/or others identified by the facility as part of the facility administration.

The Governing Body is legally responsible for establishing & implementing policies regarding management & operation of facility

F837

- **§483.70(d) Governing body**
- **§483.70(d)(1):** The facility must have a **governing body**, or designated persons functioning as a governing body, that **is legally responsible** for establishing and implementing policies regarding the management and operation of the facility;
- **§483.70(d)(2): The governing body appoints the administrator** who is—
  (i) Licensed by the State, where licensing is required;
  (ii) Responsible for management of the facility; and
  (iii) Reports to and is accountable to the governing body.
- **§483.70(d)(3): The governing body is responsible and accountable for the QAPI program,** in accordance with §483.75(f).

F837 Intent & Definitions

- **INTENT§483.70(d):** This regulation is intended to ensure that the facility has an active (engaged and involved) governing body that is responsible for establishing and implementing policies regarding the management of the facility.
- **DEFINITIONS §483.70(d):** "**Governing body**" refers to individuals such as facility owner(s), Chief Executive Officer(s), or other individuals who are **legally responsible to establish and implement policies regarding the management and operations of the facility.**

F837 Guidance & Procedures

- **GUIDANCE §483.70(d):** The facility must determine:
  - **A process and frequency by which the administrator reports to the governing body**, the **method of communication between the administrator and the governing body** including, **how the governing body responds back** to the administrator and **what specific types of problems and information** (i.e., survey results, allegations of abuse or neglect, complaints, etc.) are reported or not reported directly to the governing body;
  - How the administrator is held accountable and reports information about the facility's management and operation (i.e., audits, budgets, staffing, supplies, etc.).; and
  - How the administrator and the governing body are involved with the facility wide assessment in §483.70(e) Facility assessment at F838.

- **SURVEY PROCEDURES §483.70(d):** Request the names and contact information of the members of the governing body at the Entrance Conference. If there are concerns, conduct an interview with the administrator and if possible, with one or more members of the governing body or designated person(s) functioning as the governing body.

The Governing Body responsibilities include QAPI processes to ensure work on priorities are implemented & maintained

F865

§483.75(f) Governance and leadership. The **governing body and/or executive leadership** (or organized group or individual who assumes full legal authority and responsibility for operation of the facility) **is responsible and accountable** for ensuring that:

- **§483.75(f)(1): An ongoing QAPI program is defined, implemented, and maintained and addresses identified priorities**.
- **§483.75(f)(2):** The QAPI program is sustained during transitions in leadership and staffing; §483.75(f)(3) The QAPI program is adequately resourced, including ensuring staff time, equipment, and technical training as needed;
- **§483.75(f)(4):** The QAPI program identifies and prioritizes problems and opportunities that reflect organizational process, functions, and services provided to residents based on performance indicator data, and resident and staff input, and other information.
- **§483.75(f)(5):** Corrective actions address gaps in systems, and are evaluated for effectiveness; and
- **§483.75(f)(6):** Clear expectations are set around safety, quality, rights, choice, and respect.

F865 Continued

F865

- **§483.75(h)Disclosure of information:** A State or the Secretary may not require disclosure of the records of such committee except in so far as such disclosure is related to the compliance of such committee with the requirements of this section.
- **§483.75(i) Sanctions:** Good faith attempts by the committee to identify and correct quality deficiencies will not be used as a basis for sanctions.

- **INTENT:** These requirements are intended to ensure that long-term care facilities (including multi-unit chains) implement a comprehensive QAPI program which addresses all the care and unique services a facility provides.
- **DEFINITIONS:** "Governing body" refers to individuals such as facility owner(s), Chief Executive Officer(s), or other individuals who are legally responsible to establish and implement policies regarding the management and operations of the facility.

Questions

Thank You!

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