**Date: August 2, 2023**

**To: MN Medicaid Certified Nursing Facilities**

**From: Nursing Facility Rates and Policy Division**

## RE: Frequently Asked Questions (FAQ) re: The August 1st Payment to Nursing Facilities – 2nd Edition

2023 Minnesota Session Laws, Chapter 74, Section 2, Nursing Facilities must use the payment for nursing facility operations for the following specific expenses:

 **Allowable Uses for Payment.** Nursing Facility must use the payment for nursing facility operations for the following specific expenses:

 (1) covering operating- or property-related long-term debt payments;

 (2) closing lines of credit;

 (3) debt restructuring;

 (4) paying off covenants or avoiding receivership as of the day following enactment;

 (5) rent payments in arrears as of the day following enactment;

 (6) physical plant improvements and maintenance not claimed for a rate increase; and

 (7) any other item deemed allowable by the commissioner.

Payments for allowable expenses must be paid on or after August 1, 2023.

Nursing facilities must expend the total payment amount by September 30, 2025.

**Question:** We received a short- term loan from our city to cover the 3rd payroll in June. Would we be able to use the funds to pay that back?

**Answer:** Yes, paying back a short-term loan is an allowable use of the funds.

**Question:** What does the licensed beds must remain “active” mean?

**Answer:** The amount of total payment each nursing facility receives is based on active beds as of May 12, 2023. Active beds means those beds that are not in layaway or have been closed as of May 12, 2023. It is not required those beds stay in active status after this date. A change in bed status will not impact the second half of the payment in August 2024.

**Question:** Will payments on any existing lines of credit (LOC), or lines of credit used prior to the September 2025 use of funds deadline, be allowable use of funds regardless of the underlying expenses the LOC was incurred for? Or will additional detail on the underlying expenditures the LOC was used for need to be reported or considered to determine if the use was allowable?

**Answer:** Payments on any existing lines of credit or lines of credit used prior to the September 2025 use of funds deadline are an allowable use of the funds. However, if an organization has a shared line of credit with non-nursing home operations, details on the allocation of the nursing home portion will be required. Details on the underlying expenditures the line of credit was used for will not be required reporting.

**Question:** What happens if a nursing home is sold before the period of use of the funds ends?  Is the new owner responsible for reporting on the use of all funds received?  Is the new owner eligible for the second payment if the sale happens before next 8/1?

**Answer:** Per the APS contract, sale of a nursing home requires a 30-day notice be reported to DHS, attention David C. Hill. See Sections 9 and 10 of your APS contract. Section 14: Assignment. prohibits the facility from assigning or transferring any rights or obligations under the contract without prior consent of the State. A new APS contract must be put in place with the new owner. If you plan to sell your facility, you should notify DHS and report uses of the funds up to the closing date of the sale. If there are funds remaining, this should be addressed in your Transfer of Operations agreement with the purchaser. Unused funds distributed on August 1, 2023, but prior to the closing date of the sale can be either returned to the state or if transferred to a new owner, the new owner will be responsible for reporting allowable uses of funds remaining. The second distribution in August 2024 will be distributed to the new owner and the new owner will have the obligation to report allowable uses of the funds.

**Question:** Can you use the funds for non-cash payments to employees?  Examples would be scrubs, gift baskets, basically items that you would not include on their pay earnings.

**Answer:** No, non-cash payments such as gifts to employees are not an allowable use of these funds.

**Question**: Is a repair to our air conditioner an allowable use of the funds? We estimate the cost to be $50,000.

**Answer:** Yes, physical plant improvements and maintenance not claimed for a rate increase are allowable. Equipment repairs are reported on the cost report as maintenance and included in the “price” component of the rate. An individual facility incurring a repair expense would not receive a rate increase. A major repair above your facility’s capitalization policy should be reported on line 1366, Assets section of the cost report. However, please note if you submit a building project requesting a property rate increase, any repairs already paid for out of these funds cannot be submitted again for a property rate increase.

**Question:** We have a bill in arrears to an accounting firm that assisted us with an Employee Retention Credit application. Can we use the funds to pay for this service?

**Answer:** No, the authorizing legislation does not allow for using the funds for bills in arrears for professional services. A debt owed to an accounting firm would not be considered an operating or property-related long-term debt payment.

**Question:** When does debt have to be established to be eligible?  Does the debt have to exist prior to this August 1 to be eligible?

**Answer:** No, a debt does not have to be established prior to August 1st to be eligible if it is an eligible form of debt such as a lease or mortgage payment. This means a debt payment will not have a rate impact. For example, if money is owed to a vendor for services or supplies that does have a rate impact, that is not an allowable use of funds. A reminder however, loan payments or a lease payment to a related organization are not an allowable use of these funds. See Sec.2, Subd. 4 of the authorizing statute here [https://www.revisor.mn.gov/laws/2023/0/Session+Law/Chapter/74/](https://www.revisor.mn.gov/laws/2023/0/Session%2BLaw/Chapter/74/) Detailed documentation of the third-party costs related to the loan or lease will have to be provided.

 See also MN statute for definition of a related organization. <https://www.revisor.mn.gov/statutes/cite/256R.02#stat.256R.02.43>

**Question:** I found this previously answered question about what qualifies as long-term debt confusing*.**In accounting, long-term debt generally refers to a company's loans and other liabilities that will not become due within one year of the balance sheet date. (The amount that will be due within one year is reported on the balance sheet as a current liability.)* I just want to confirm that regularly scheduled payments on a long-term debt instrument like a mortgage are an allowable use of the funds.

**Answer:** Yes, regularly scheduled mortgage payments for the nursing facility is an allowable use of the funds.

**Question:** If a facility began some work on their building before the legislation was passed, will it be an allowable use of the funds if payment is made after August 1? Or does the work on the building need to be started on or after August 1?

**Answer:** Per the terms of your APS contract amendment, payments for allowable expenses must be paid on or after August 1, 2023. In this case if work began on the building prior to August 1, if the cash payment occurred after August 1, it is an allowable use of the funds. However, it should be noted this “cash basis” approach only applies to use of funds authorized under this chapter. It does not preclude the requirements of 256R.09, subd. 5 which requires the “accrual” method of accounting for cost reporting purposes. <https://www.revisor.mn.gov/statutes/cite/256R.09>

Additional Questions, please submit to David Hill at: David.c.hill@state.mn.us