

**Date:** August 30, 2023

**To:** MN Medicaid Certified Nursing Facilities

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

## **Frequently Asked Questions (FAQ) August 1st Payment to Nursing Facilities – 3rd Edition**

This edition is a compilation of the first and second edition previously published. Clarification on some items from previous editions have been added to this version with red font.

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.

1. **Question:** Can payments be used for moveable equipment (beds, mattresses, wheelchairs)?  
**Answer:** If you submit a threshold building project completed after July 1<sup>st</sup> for a property rate adjustment, meaning over the current minimum threshold of \$461,215 but under the Moratorium Exception Limit of \$2,359,742, you may not claim moveable equipment already paid for using the August 1 payment distribution. In situations outside of a threshold project, equipment purchased should be capitalized per your facility's capitalization policy, but it is an allowable use of the August 1 payment. If an equipment purchase is under \$5000 for example

and will not be capitalized per your policy but reported as a maintenance cost, yes, it is an allowable use of the funds.

2. **Question:** is there a method for determining what debt payments are tied to a particular nursing home, when the underlying debt is tied to multiple nursing homes and/or non-nursing home buildings like an AL?

**Answer:** Debt must be allocated based on the original fund uses when it is taken out if used for asset purchases. Long term debt would have a location based on the uses of funds statement at the time the debt was incurred. The allocation amount may also be noted on your financial statement. Debt that has been historically assigned to the nursing home is reported on your annual cost report. We would accept the facility's share of the debt as supported by financial statements or historical allocations from the cost report. If your organization has a line of credit not specifically identified with any facility, the amount should be prorated among the chain facilities based on operating expenses since that is the home office cost allocation basis.

3. **Question:** If the funds are being used to pay ongoing monthly debt payments, what's the first date a loan payment can count against these funds?

**Answer:** Per the terms of your APS contract amendment, payments for allowable expenses must be paid on or after August 1, 2023.

4. **Question:** I've been told the payment will be distributed as a "gross adjustment through MMIS" on August 1<sup>st</sup>. What does that mean?

**Answer:** The first payment will be included in your EFT deposit on August 1, 2023. It'll appear on your remittance advice with the following note: 2023 Legislature One-Time Payment to Nursing Facilities.

5. **Question:** Also, if a facility closes before September 30, 2025 are they subject to audit and recovery of any funds received that they didn't use for approved purposes before closing?

**Answer:** Yes, if the funds were not used for allowable expenses prior to closure of the facility, the funds would need to be returned to DHS.

6. **Question:** What qualifies as "long-term debt"?

**Answer:** 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.)

7. **Question:** Are lease payments an allowable use of funds?

**Answer:** Yes, as long as the lease payments are for the physical plant or equipment.

8. **Question:** Must lease payments be in arrears to qualify?

**Answer:** No, lease payments are not required to be in arrears. They would qualify as long-term debt and be eligible as noted in the question above.

9. **Question:** Is it necessary to “close” a line of credit with these funds or can we use the funds to pay down a line credit even if we are not paying it off?

**Answer:** Yes, the funds can be used to pay down a line of credit.

10. **Question:** Our organization has multiple facilities on one corporate APS contract amendment. Do we need to track the spending by specific facility?

**Answer:** Yes, spending should be tracked by individual facilities. The amount distributed for each facility must be spent on expenses directly related to that specific facility operations.

11. **Question:** We intend to spend the funds on debt services and capital but in the event we are unable to use all the funds for authorized purposes, would we have the option to send back unused funds?

**Answer:** Yes, arrangements can be made with DHS to return any unused funds.

12. **Question:** Can you clarify if there will be specific forms that we get from DHS to track the spending?

**Answer:** Yes, there will be specific instructions and forms to report the use of funds as stated in the legislation. You have two years to spend the funding so DHS will issue those forms at some future date. In the meantime, each facility should establish an internal mechanism for tracking the spending to more easily comply with future reporting.

13. **Question:** What does item (7) in the statute that says: “any other item deemed allowable by the commissioner” mean?

**Answer:** Generally, use of these funds cannot have a future rate impact and must be used for operations of the facility. We would highly recommend you reach out to DHS if you are considering using the funds in a manner that doesn’t seem to fit clearly into items (1) through (6) as stated in the law. It is best to clarify before the funds are used rather than face a recovery because the funds were not used in an authorized manner.

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

**Answer (3rd Edition Updated):** Yes, paying back a short-term loan is an allowable use of the funds. **However, if the city is a related party, then the restrictions noted in question #21 for related organizations does apply. For example, if the city owns the facility, then the documentation that the city has third-party costs related to the loan will have to be provided.**

15. **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.

16. **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 (3rd Edition Updated):** Payments on any existing lines of credit are an allowable use of the funds. Establishing a new line of credit is not an allowable use of funds. If a facility has an existing line of credit and chooses to increase the balance in that line of credit, the additional funds must be used for an authorized purpose such as physical plant improvements and any use of the funds increasing the line of credit balance would need to be reported. When paying down a balance on an existing line of credit, details on the underlying expenditures the line of credit was used for will not be required reporting as the original use of those funds were expended prior to August 1<sup>st</sup> and would not have any new impact on the operating rate. Also note 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.

17. **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.

18. **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.

19. **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.

20. **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.

21. **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 (3rd Edition Updated):** No, a debt does not have to be established prior to August 1<sup>st</sup> to be eligible if it is an eligible form of debt such as a lease or mortgage payment **which is tied to construction or purchase of a building**. 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 except to the extent the related party has third party costs related to the loan or lease. See Sec.2, Subd. 4 of the authorizing statute here:

<https://www.revisor.mn.gov/laws/2023/0/Session+Law/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 here:

<https://www.revisor.mn.gov/statutes/cite/256R.02#stat.256R.02.43>

22. **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. However, if an organization has a shared mortgage with non-nursing home operations, details on the allocation of the nursing home portion will be required.

23. **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](mailto:David.c.hill@state.mn.us)