

AN ACT

ENTITLED, An Act to implement certain amendments to Article XII of the Constitution of the State of South Dakota regarding trust funds.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

Section 1. That § 28-6-31 be amended to read as follows:

28-6-31. Each publicly owned and operated nursing facility participating under the provisions of §§ 28-6-28 to 28-6-36, inclusive, immediately upon receiving a payment under § 28-6-30, shall remit the amount of that payment, less a transaction fee, to the department for credit to:

- (1) The health care trust fund as provided in S.D. Const., Art. XII, § 5 in an amount equal to the applicable federal medical assistance percentage times the total remittance to the department, less the transaction fee; and
- (2) The department's other funds for all remaining amounts.

Section 2. That § 28-6-28 be amended to read as follows:

28-6-28. Terms used in §§ 28-6-28 to 28-6-36, inclusive, mean:

- (1) "Department," the Department of Social Services;
- (2) "Fiscal period," up to a twelve-month period determined by the department;
- (3) "Funding pool," pool of funds established in accordance with § 28-6-29;
- (4) "Health care trust fund," the fund established as provided in S.D. Const., Art. XII, § 5 to hold the federal portion of the monetary difference between the medicaid payment and the medicare upper limits maximum allowable reimbursement, less transaction fees paid to publicly owned and operated nursing facilities;
- (5) "Medical assistance," the medicaid program authorized by Title XIX of the Social Security Act, 42 U.S.C.1396d, as amended through January 1, 2000, which provides medical assistance to eligible individuals and is operated under § 28-6-1;

- (6) "Medicare," the Health Insurance for the Aged Act, Title XVIII of the Social Security Amendments of 1965 and as amended through January 1, 2000;
- (7) "Nursing facility," any facility participating in medicaid that is licensed, maintained, and operated for the express or implied purpose of providing care to one or more persons, whether for consideration or not, who are not acutely ill but require nursing care and related medical services of such complexity as to require professional nursing care under the direction of a physician twenty-four hours a day;
- (8) "Political subdivision," any municipality or county;
- (9) "Publicly owned and operated nursing facility," a nursing facility that is owned and operated by a political subdivision of the state and is participating in medicaid.

Section 3. That § 28-6-35 be amended to read as follows:

28-6-35. The department may promulgate rules pursuant to chapter 1-26 for the administration of §§ 28-6-28 to 28-6-36, inclusive. The rules may include criteria for establishing, funding, and administering the pool, criteria for participation in the intergovernmental transfer, penalties for failing to immediately remit the funds to the department, criteria for the transfer of funds, the establishment of transaction fees, and other policies to facilitate the administration of the health care trust fund or the funding pool.

Section 4. That § 28-6-33 be amended to read as follows:

28-6-33. The investment of moneys in the health care trust fund as provided in S.D. Const. Art., XII, § 5 is not restricted by the provisions of § 4-5-26, but is governed by the provisions of § 4-5-27.

Section 5. That § 10-50B-11 be amended to read as follows:

10-50B-11. Any money received from the Master Settlement Agreement signed on November 23, 1998, by attorneys general from several states and various tobacco companies shall be deposited in the education enhancement trust fund as provided in S.D. Const., Art. XII, § 6.

Section 6. That chapter 10-50B be amended by adding thereto a NEW SECTION to read as follows:

The investment of moneys in the education enhancement trust fund as provided in S.D. Const. Art., XII, § 6 is not restricted by the provisions of § 4-5-26, but is governed by the provisions of § 4-5-27.

Section 7. That § 10-50B-12 be repealed.

Section 8. That § 13-14-6 be repealed.

Section 9. That § 13-14-8 be repealed.

Section 10. This Act is effective only if the proposed amendment to the Constitution contained in Senate Joint Resolution 4 as previously adopted by the Seventy-sixth Legislature is approved by the voters on April 10, 2001. If this Act becomes effective, sections 7 and 8 of this Act are effective on July 1, 2002.

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I certify that the attached Act originated in the

SENATE as Bill No. 245

Secretary of the Senate

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President of the Senate

Attest:

Secretary of the Senate

Speaker of the House

Attest:

Chief Clerk

Senate Bill No. 245
File No. _____
Chapter No. _____

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Received at this Executive Office this _____ day of _____ ,

20____ at _____ M.

By _____
for the Governor

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The attached Act is hereby approved this _____ day of _____ , A.D., 20____

Governor

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STATE OF SOUTH DAKOTA,
ss.

Office of the Secretary of State

Filed _____ , 20____
at _____ o'clock __ M.

Secretary of State

By _____
Asst. Secretary of State