Prepared by the North Dakota Legislative Council staff for the Budget Committee on Institutional Services
June 1999

NURSING FACILITY GRANT OR LOAN FUND ANNUAL REPORTS

Section 3 of Senate Bill No. 2168, a copy of which is attached as Appendix A, provides that the Department of Human Services provide reports to the Governor and the Legislative Council on or before August 31 of each year concerning grants awarded or loans approved for alternative nursing facility programs pursuant to provisions of the bill. Each report is to include the number of applicants and approved applicants, an overview of the grants awarded or loans approved, and reports on the cost of each project funded by a grant or loan and annual cost reports received from recipients of grants or loans.

The bill establishes a North Dakota health care trust fund to be used for making grants or loans to organizations for providing alternative nursing facility care. Moneys are generated to this fund as a result of the Department of Human Services making government nursing facility funding pool payments to the two governmental nursing facilities in the state--one located at McVille and the other at Dunseith. These payments are made based on the average cost of Medicaid rates as compared to Medicare rates for all nursing care facilities in the state multiplied by the total of all resident days of all nursing homes for Medicaid patients. The payments are expected to total $12,183,210 for the 1999-2001 biennium, of which $3,618,391 is from the general fund and $8,564,819 is federal funds (the general fund moneys are later returned to the general fund). The payments are made to the two governmental nursing facilities and subsequently returned to the state, less a $10,000 transaction fee retained by each of the two governmental nursing facilities. Once returned to the state, the general fund share is returned to the general fund and the balance is deposited in the health care trust fund.

The health care trust fund is anticipated to have $8,715,279 available during the 1999-2001 biennium, including $190,460 of estimated interest earnings. The moneys in the trust fund can be used for nursing alternative loans or grants as determined by the Department of Human Services. The loans or grants are for capital or one-time expenditures to assist a facility in converting to an alternative care facility. The department's share of a project's cost is limited to $1 million or 80 percent of the project cost, whichever is less. Of the estimated $8,715,279 of funding available in the trust fund during the 1999-2001 biennium, $4,262,410 is appropriated in Senate Bill No. 2012 for service payments for elderly and disabled (SPED) and the remaining $4,452,869 will be available for loans or grants during this biennium.

Please refer to Appendix B for a flow chart prepared by the Department of Human Services showing the funding transfers under the program.

COMMITTEE ACTION PLAN

The committee may wish to carry out this responsibility as follows:

1. Receive reports on this grant and loan program from the Department of Human Services and on the department's recommendation regarding continuing the programs.
2. Receive testimony from interested persons regarding this grant and loan program.
3. Consider making recommendations and draft legislation, if necessary, to implement any committee recommendations.

ATTACH:2

Fifty-sixth Legislative Assembly, State of North Dakota, begun in the Capitol in the City of Bismarck, on Tuesday, the fifth day of January, one thousand nine hundred and ninety-nine

SENATE BILL NO. 2168
(Human Services Committee)
(At the request of the Department of Human Services)

AN ACT to create and enact a new chapter to title 6, a new section to chapter 50-24.4, and a new chapter to title 50 of the North Dakota Century Code, relating to a funding pool to establish the North Dakota health care trust fund to make grants and loans to support development of basic care facilities, assisted living facilities, and other alternatives to nursing facility care; to repeal chapter 50-21 of the North Dakota Century Code, relating to the administration of a revolving fund for nursing homes and homes for aged; to provide continuing appropriations to make funding pool payments and disbursements from the North Dakota health care trust fund; to declare a retroactive application; to provide an appropriation; to provide an expiration date; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new chapter to title 6 of the North Dakota Century Code is created and enacted as follows:

Definitions. Terms defined in section 3 of this Act have the same meaning when used in this chapter.

Revolving loan fund - Appropriation. A revolving loan fund must be maintained in the Bank of North Dakota for the purpose of making loans to nursing facilities, basic care facilities, assisted living facilities, or other entities providing alternatives to nursing facility care, to encourage and support conversion of nursing facilities. All moneys transferred into the fund, interest upon moneys in the fund, and collections of interest and principal on loans made from the fund are hereby appropriated for disbursement pursuant to the requirements of this chapter.

Nursing facility alternative loan fund.

1. There is hereby created a nursing facility alternative loan fund. The fund shall include revenue transferred from the North Dakota health care trust fund, interest upon moneys in the fund, and collections of interest and principal on loans made from the fund.

2. The Bank of North Dakota shall administer the loan fund. Funds in the loan fund may be used for:

   a. Loans as provided in this chapter and as approved by the department under section 3 of this Act;

   b. The costs of administration of the fund; and

   c. Repayment of federal funds if the United States department of health and human services determines that funds were inappropriately claimed under section 2 of this Act.

3. Any money in the fund not required for use under subsection 2 must be transferred to the North Dakota health care trust fund.

Loan application - How made. All applications for loans under this chapter must be made to the department. The department may approve the applications of qualified applicants who propose projects that conform to requirements established under section 3 of this Act. Applications approved by the department must be forwarded to the Bank of North Dakota. Upon approval of the application by

the Bank of North Dakota, loans may be made from the revolving loan fund in accordance with the provisions of this chapter.

Amount of loans - Terms and conditions. Loans in an amount not exceeding eighty percent of project costs may be made by the Bank of North Dakota from the fund maintained pursuant to this chapter. Such loans must bear interest at a rate determined by the Bank of North Dakota to be two percentage points less than the market rate for similar commercial loans, provided that no loan may bear interest at a rate less than one half of one percent, or more than seven percent, of the outstanding principal balance of the loan. In consideration of the making of a loan under this chapter, each borrower shall execute a contract with the department to operate the project in accordance with standards established under section 3 of this Act. The contract must also provide that if the use of the project is discontinued or diverted to purposes other than those provided in the loan application without written consent of the department, the full amount of the loan provided under this chapter immediately becomes due and payable. The Bank of North Dakota may annually deduct, as a service fee for administering the revolving fund maintained under this chapter, one half of one percent of the principal balance of the outstanding loans from the revolving fund.

Powers of Bank of North Dakota. The Bank of North Dakota may do all acts or things necessary to negotiate loans and preserve security under this chapter, including the power to take such security as deemed necessary, to exercise any right of redemption, and to bring suit in order to collect interest and principal due the revolving fund under mortgages, contracts, and notes executed to obtain loans under the provisions of this chapter. If the applicant's plan for financing provides for a loan of funds from sources other than the state of North Dakota, the Bank of North Dakota may take a subordinate security interest. The bank may recover from the revolving loan fund amounts actually expended by it for legal fees and to effect a redemption.

SECTION 2. A new section to chapter 50-24.4 of the North Dakota Century Code is created and enacted as follows:

Government nursing facility funding pool - Appropriations.

1. For purposes of this section:

   a. "Fiscal period" means a twelve-month period determined by the department; and

   b. "Governmental nursing facility" means any nursing home administered by any political subdivision of this state for which a rate is set under this chapter.

2. The department shall establish a pool consisting of an amount annually calculated by multiplying the total of all resident days of all nursing homes during the fiscal period during which a resident was eligible for and received benefits under chapter 50-24.1 times an amount that does not exceed the amount that can reasonably be estimated to be paid under payment principles established under title XVIII of the Social Security Act [42 U.S.C. 1395, et seq.], reduced by the payment rates set for each such resident, for each such day, during the fiscal period.

3. In addition to any payment made pursuant to a rate set under this chapter, and notwithstanding any other provision of this chapter, the department shall pay to each governmental nursing facility an amount determined by:

   a. Dividing that facility's total inpatient days for the fiscal period by the total inpatient days of all governmental nursing facilities for the fiscal period; and

   b. Multiplying a decimal fraction determined under subdivision a times the pool amount determined under subsection 2.

4. Each governmental nursing facility, immediately upon receiving a payment under subsection 3, shall remit the amount of that payment, less a ten thousand dollar transaction fee, to the state treasurer for credit to:

a. The North Dakota health care trust fund in an amount equal to the federal medical assistance percentage for the fiscal period times the total remittance to the state treasurer, less ten thousand dollars; and

b. The general fund for all remaining amounts.

5. Notwithstanding any other provision of this code, or of any ordinance or code governing the operation of a governmental nursing facility, a governmental nursing facility is authorized to receive and, upon receipt, required to remit payments provided under this section.

6. No payment is required under this section for any period in which the funds otherwise appropriated under subdivision b of subsection 7 are unavailable due to action by the secretary of the United States department of health and human services.

7. The department of human services, subject to legislative appropriation, may make the payments described in subsection 3 for the pool amount annually determined under subsection 2, as follows:

a. From special funds derived from federal funds and other income, the pool amount determined under subsection 2 reduced by the amount determined under subdivision b; and

b. From the general fund, the "state percentage" as that term is used in defining the term "federal medical assistance percentage" for purposes of title XIX of the Social Security Act [42 U.S.C. 1396, et seq.], multiplied times the pool amount determined under subsection 2.

SECTION 3. A new chapter to title 50 of the North Dakota Century Code is created and enacted as follows:

Definitions. For purposes of this chapter:

1. "Alternative to nursing facility care" means services described in the home and community-based services waiver for aged persons under medical assistance.

2. "Assisted living facility" has the meaning provided in section 50-24.5-01, but if the term is not defined in that section, the term means a facility that:

a. Makes response staff available at all times;

b. Provides housing and:

(1) Congregate meals;

(2) Kitchen facilities in each resident's living quarters; or

(3) Any combination of congregate meals and kitchen facilities in each resident's living quarters sufficient to assure each resident adequate access to meals;

c. Assures provision of:

(1) Personal care, therapeutic care, and social and recreational programming;

(2) Supervision, safety, and security;

(3) Medication services; and

(4) Transportation services;

d. Fosters dignity, respect, and independence by allowing, to the maximum extent feasible, each resident to determine the resident's service providers, routines of care provision, and service delivery; and

e. Services five or more adult residents, unrelated to the proprietor, on a specified premises not licensed under chapter 23-20 or 25-16, which meets the requirements of the national fire protection association 101 Life Safety Code, as applicable.

3. "Basic care facility" has the meaning provided in section 23-09.3-01.

4. "Conversion" means:

a. The remodeling of existing space and, if necessary, the construction of additional space required to accommodate basic care facility services, assisted living facility services, or other alternatives to nursing facility care; or

b. New construction of a basic care facility, assisted living facility, or other alternative to nursing facility care if existing nursing facility beds are no longer licensed and the department determines that new construction is more cost effective than the conversion of existing space.

5. "Department" means the department of human services.

6. "Medical assistance" means a program established under title XIX of the Social Security Act [42 U.S.C. 1396, et seq.] and chapter 50-24.1.

7. "Nursing facility" has the same meaning as provided in section 50-24.4-01 for the term "nursing home".

North Dakota health care trust fund created - Appropriation. There is hereby created in the state treasury a special fund known as the North Dakota health care trust fund. The fund shall include revenue received from governmental nursing facilities for remittance to the fund under section 2 of this Act. The department shall administer the fund and shall adopt procedures for participation by governmental nursing facilities. All moneys designated for the fund from whatever source derived must be deposited with the state treasurer in the North Dakota health care trust fund. The state treasurer shall invest such funds in interest-bearing accounts, as designated by the department, and the interest earned must be deposited in the North Dakota health care trust fund. All moneys deposited in the North Dakota health care trust fund are available to the department, subject to legislative appropriation, for disbursement pursuant to the requirements of this chapter.

Nursing facility alternative grant fund.

1. There is hereby created a nursing facility alternative grant fund. The fund shall include revenue transferred from the North Dakota health care trust fund.

2. The department shall administer the distribution of funds in the nursing facility alternative grant fund. The nursing facility alternative grant fund may be used for:

a. Grants, as provided in this chapter;

b. The costs of administration of the grants; and

c. Repayment of federal funds if the United States department of health and human services determines that funds were inappropriately claimed under section 2 of this Act.

3. Any money in the fund not required for use under subsection 2 must be transferred to the North Dakota health care trust fund.

Department to award grants or make loan guarantees.

1. The department may award grants from the nursing facility alternative grant fund or approve loans from the nursing facility alternative loan fund established under section 1 of this Act for capital or one-time expenditures, including startup and training expenses and operating losses for the first year:

   a. To any nursing facility which has been approved for at least three years as a provider under the medical assistance program to convert all or a portion of the facility licensed to provide such care to a basic care facility, assisted living facility, or other alternative to nursing facility care; or

   b. To any other entity meeting conditions established by the department to develop a basic care facility, assisted living facility, or other alternative to nursing facility care.

2. A nursing facility or other entity may be eligible for a grant or loan only if the basic care facility, assisted living facility, or other alternative to nursing facility care is located in an underserved area as determined by the department.

3. To be eligible for a grant or loan under this section, the nursing facility or other entity approved by the department shall provide at least twenty percent of the total cost of any conversion. The department shall establish policies and procedures for certification of the required matching funds. The department's share of the total cost of any conversion is limited to one million dollars or eighty percent of the project cost, whichever is less.

4. The department shall annually establish a calendar for receiving and evaluating proposals and awarding grants or approving loans.

5. No grant or loan application may be approved by the department unless the applicant can demonstrate that:

   a. Conversion of the nursing facility or portion of the facility to a basic care facility, assisted living facility, or other alternative to nursing facility care may offer efficient and economical care to individuals requiring long-term care services in the area;

   b. Basic care, assisted living services, or other alternatives to nursing facility care are unlikely to be available in the area for individuals eligible for services under the medical assistance program; and

   c. The resulting reduction in the availability of nursing facility service is not expected to cause undue hardship on those individuals requiring nursing facility services.

6. No grant may be awarded or loan approved unless the applicant agrees:

   a. To maintain a minimum occupancy rate by individuals eligible for supplemental security income benefits provided under title XVI of the Social Security Act [42 U.S.C. 1382, et seq.]; and

   b. To refund to the nursing facility alternative grant fund or the nursing facility alternative loan fund, on an amortized basis, the amount of the grant or loan if the applicant or its successor in interest ceases to operate a basic care facility, assisted living facility, or other alternative to nursing facility care during the ten-year period after the date the applicant began operation of its facility as a basic care facility, assisted living facility, or other alternative to nursing facility care ceases to maintain the agreed minimum occupancy rate or fails to commence operations within a reasonable time.

7. In addition to other remedies provided by law or contract, the department may deduct the amount of any refund due from a recipient of grant or loan guarantee funds from any money owed by the department to such recipient or the recipient's successor in interest.

Department to adopt rules.

1. The department shall adopt rules that establish:

a. An application process for grants or loans;

b. Criteria, that need not be the same for grants as for loans, for nursing facilities and other entities to receive funding, including minimum occupancy rates, allowable costs, and refund methods;

c. Criteria for the rates and amounts of funding; and

d. Other procedures as the department deems necessary for the proper administration of this chapter.

2. Rules adopted under this chapter may be adopted as interim final rules without a finding that emergency rulemaking is necessary, and any interim final rules so adopted may take effect on a date no earlier than the date of first filing with the legislative council of the notice of proposed adoption of a rule.

Chapter does not create entitlement. This chapter does not create an entitlement to any funds available for grants or loans. The department may award grants or approve loans to the extent funds are available and, within its discretion, to the extent such applications are approved.

Annual cost reports. Recipients of grants and loans under this chapter shall annually submit cost reports to the department regarding the conversion project for a period of ten years after the date the recipient began operation of its facility as a basic care facility, an assisted living facility, or other alternative to nursing facility care. The department shall develop the cost report which must include revenue, costs, loans undertaken by the facility, fixed assets of the facility, a balance sheet, and a profit and loss statement.

Annual reports by the department. The department shall provide reports to the governor and the legislative council on or before August thirty-first of each year after the effective date of this Act, concerning grants awarded or loans approved under this chapter through June thirtieth of that year. Each report must include the number of applicants and approved applicants, an overview of the grants awarded or loans approved, and reports of the cost of each project funded by a grant or loan and annual cost reports received from recipients of grants or loans under this chapter.

SECTION 4. APPROPRIATION - GOVERNMENT NURSING FACILITY FUNDING POOL. There is hereby appropriated a total of $12,409,448, of which $3,618,391 is from the general fund, to the department of human services for the purpose of making the payments pursuant to section 2 of this Act and including $226,238 for department administrative costs for the biennium beginning July 1, 1999, and ending June 30, 2001. In the event that additional amounts in excess of $12,409,448 become available during the biennium based on the calculation in section 2 of this Act, the department of human services may increase the amount paid which funds are hereby appropriated, subject to emergency commission and budget section approval, and providing that any additional "state percentage" required be made available from a loan from the Bank of North Dakota which funds are hereby appropriated.

SECTION 5. APPROPRIATION - HEALTH CARE TRUST FUND. There is hereby appropriated a total of $8,715,279, including an estimated $190,460 of fund interest earnings from special funds derived from amounts available in the North Dakota health care trust fund to the department of human services for the purpose of the implementation of this Act for the biennium beginning July 1, 1999, and ending June 30, 2001. Of the first $8,524,820 deposited in the health care trust fund, $4,262,410 must be allocated by the department of human services for loans and grants pursuant to section 3 of this Act and $4,262,410 must be available for funding the service payments to the elderly and disabled program to be appropriated in Senate Bill No. 2012. If additional amounts in excess of $8,715,279 become available during the biennium based on the calculation of section 2 of this Act, the department of human services may increase the amount paid and the funds are hereby appropriated, subject to emergency commission and budget section approval.

SECTION 6. LEGISLATIVE INTENT - ADMINISTRATIVE STAFF. It is the intent of the legislative assembly that two full-time equivalent administrative staff positions shall be added to the positions authorized by the fifty-sixth legislative assembly for the department of human services for the

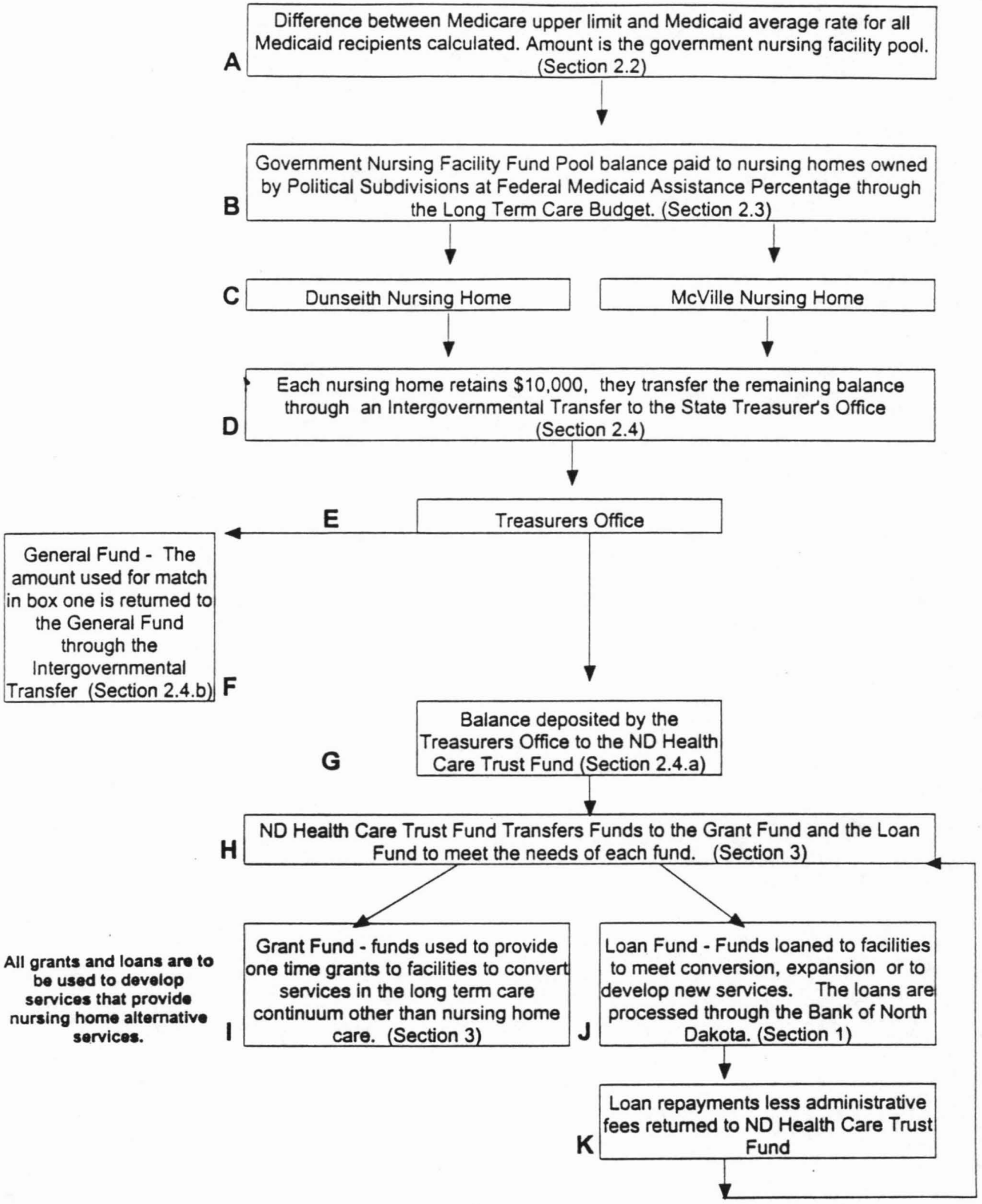
biennium beginning July 1, 1999, and ending June 30, 2001, for carrying out the purposes of this Act. The continuation of these positions, if required, must be requested of the fifty-seventh legislative assembly.

SECTION 7. REPEAL. Chapter 50-21 of the North Dakota Century Code is repealed.

SECTION 8. RETROACTIVE APPLICATION OF ACT. This Act is retroactive in application.

SECTION 9. EXPIRATION DATE. This Act is effective through June 30, 2001, and after that date is ineffective.

SECTION 10. EMERGENCY. This Act is declared to be an emergency measure.

Intergovernmental Transfer Program

The intergovernmental transfer program is designed to access federal funds. The funds are obtained by paying government owned facilities the difference between the average Medicaid rate and the Medicare upper limit