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State of Minnesota

HOUSE OF REPRESENTATIVES

NINETY-THIRD SESSION

H. F. No. 2232

02/27/2023 Authored by Perryman
The bill was read for the first time and referred to the Committee on Health Finance and Policy

1.1 A bill for an act
1.2 relating to health; changing nursing home moratorium process; amending Minnesota
1.3 Statutes 2022, sections 144A.071, subdivision 2; 144A.073, subdivision 3b;
1.4 256B.434, subdivision 4f.

1.5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.6 Section 1. Minnesota Statutes 2022, section 144A.071, subdivision 2, is amended to read:

1.7 Subd. 2. Moratorium. (a) The commissioner of health, in coordination with the
1.8 commissioner of human services, shall deny each request for new licensed or certified
1.9 nursing home or certified boarding care beds except as provided in subdivision 3 or 4a, or
1.10 section 144A.073. "Certified bed" means a nursing home bed or a boarding care bed certified
1.11 by the commissioner of health for the purposes of the medical assistance program, under
1.12 United States Code, title 42, sections 1396 et seq. Certified beds in facilities which do not
1.13 allow medical assistance intake shall be deemed to be decertified for purposes of this section
1.14 only.

1.15 (b) The commissioner of human services, in coordination with the commissioner of
1.16 health, shall deny any request to issue a license under section 252.28 and chapter 245A to
1.17 a nursing home or boarding care home, if that license would result in an increase in the
1.18 medical assistance reimbursement amount.

1.19 (c) In addition, the commissioner of health must not approve any construction project
1.20 whose cost exceeds \$1,000,000, unless:

1.21 (a) (1) any construction costs exceeding \$1,000,000 are not added to the facility's
1.22 appraised value and are not included in the facility's payment rate for reimbursement under
1.23 the medical assistance program; or

2.1 ~~(b)~~ (2) the project:

2.2 ~~(1)~~ (i) has been approved through the process described in section 144A.073;

2.3 ~~(2)~~ (ii) meets an exception in subdivision 3 or 4a;

2.4 ~~(3)~~ (iii) is necessary to correct violations of state or federal law issued by the
2.5 commissioner of health;

2.6 ~~(4)~~ (iv) is necessary to repair or replace a portion of the facility that was damaged by
2.7 fire, lightning, ground shifts, or other such hazards, including environmental hazards,
2.8 provided that the provisions of subdivision 4a, clause (a), are met; or

2.9 ~~(5)~~ (v) is being proposed by a licensed nursing facility that is not certified to participate
2.10 in the medical assistance program and will not result in new licensed or certified beds.

2.11 (d) Prior to the final plan approval of any construction project, the commissioners of
2.12 health and human services shall be provided with an itemized cost estimate for the project
2.13 construction costs. If a construction project is anticipated to be completed in phases, the
2.14 total estimated cost of all phases of the project shall be submitted to the commissioners and
2.15 shall be considered as one construction project. Once the construction project is completed
2.16 and prior to the final clearance by the commissioners, the total project construction costs
2.17 for the construction project shall be submitted to the commissioners. If the final project
2.18 construction cost exceeds the dollar threshold in this subdivision, the commissioner of
2.19 human services shall not recognize any of the project construction costs or the related
2.20 financing costs in excess of this threshold in establishing the facility's property-related
2.21 payment rate.

2.22 (e) The dollar thresholds for construction projects are as follows: for construction projects
2.23 other than those authorized in ~~clauses (1) to (6)~~ paragraph (c), clause (2), items (i) to (v),
2.24 the dollar threshold is \$1,000,000. For projects authorized after July 1, 1993, under ~~clause~~
2.25 ~~(1)~~ paragraph (c), clause (2), item (i), the dollar threshold is the cost estimate submitted
2.26 with a proposal for an exception under section 144A.073, plus inflation as calculated
2.27 according to section 256B.431, subdivision 3f, paragraph (a). For projects authorized under
2.28 ~~clauses (2) to (4)~~ paragraph (c), clause (2), items (ii) to (iv), the dollar threshold is the
2.29 itemized estimate project construction costs submitted to the commissioner of health at the
2.30 time of final plan approval, plus inflation as calculated according to section 256B.431,
2.31 subdivision 3f, paragraph (a).

3.1 (f) The commissioner of health shall adopt rules to implement this section or to amend
 3.2 the emergency rules for granting exceptions to the moratorium on nursing homes under
 3.3 section 144A.073.

3.4 (g) All construction projects approved through section 144A.073, subdivision 3, after
 3.5 January 1, 2020, are subject to the fair rental value property rate as described in section
 3.6 256R.26.

3.7 **EFFECTIVE DATE.** This section is effective August 1, 2023

3.8 Sec. 2. Minnesota Statutes 2022, section 144A.073, subdivision 3b, is amended to read:

3.9 Subd. 3b. **Amendments to approved projects.** (a) Nursing facilities that have received
 3.10 approval ~~on or after July 1, 1993,~~ for exceptions to the moratorium on nursing homes through
 3.11 the process described in this section may request amendments to the designs of the projects
 3.12 by writing the commissioner within 15 months of receiving approval. Applicants shall
 3.13 submit supporting materials that demonstrate how the amended projects meet the criteria
 3.14 described in paragraph (b).

3.15 (b) The commissioner shall approve requests for amendments for projects approved ~~on~~
 3.16 ~~or after July 1, 1993,~~ according to the following criteria:

3.17 (1) the amended project designs must provide solutions to all of the problems addressed
 3.18 by the original application that are at least as effective as the original solutions;

3.19 (2) the amended project designs may not reduce the space in each resident's living area
 3.20 or in the total amount of common space devoted to resident and family uses by more than
 3.21 five percent;

3.22 (3) the costs ~~recognized for reimbursement~~ of amended project designs shall be ~~the~~
 3.23 ~~threshold amount of the original proposal as identified according to section 144A.071,~~
 3.24 ~~subdivision 2~~ the cost estimate associated with the project as originally approved, except
 3.25 under conditions described in clause (4); and

3.26 (4) total costs ~~up to ten percent greater than the cost identified in clause (3) may be~~
 3.27 ~~recognized for reimbursement if~~ of the amendment are no greater than ten percent of the
 3.28 cost estimate associated with the project as initially approved if the proposer can document
 3.29 that one of the following circumstances is true:

3.30 (i) changes are needed due to a natural disaster;

3.31 (ii) conditions that affect the safety or durability of the project that could not have
 3.32 reasonably been known prior to approval are discovered;

4.1 (iii) state or federal law require changes in project design; or

4.2 (iv) documentable circumstances occur that are beyond the control of the owner and
4.3 require changes in the design.

4.4 (c) Approval of a request for an amendment does not alter the expiration of approval of
4.5 the project according to subdivision 3.

4.6 (d) Reimbursement for amendments to approved projects is independent of the actual
4.7 construction costs and based on the allowable appraised value of the completed project. An
4.8 approved project may not be amended to reduce the scope of an approved project.

4.9 **EFFECTIVE DATE.** This section is effective August 1, 2023.

4.10 Sec. 3. Minnesota Statutes 2022, section 256B.434, subdivision 4f, is amended to read:

4.11 **Subd. 4f. Construction project rate adjustments effective October 1, 2006.** (a)
4.12 Effective October 1, 2006, facilities reimbursed under this section may receive a property
4.13 rate adjustment for construction projects exceeding the threshold in section 256B.431,
4.14 subdivision 16, and below the threshold in section 144A.071, subdivision 2, ~~clause (a)~~
4.15 paragraph (c), clause (1). For these projects, capital assets purchased shall be counted as
4.16 construction project costs for a rate adjustment request made by a facility if they are: (1)
4.17 purchased within 24 months of the completion of the construction project; (2) purchased
4.18 after the completion date of any prior construction project; and (3) are not purchased prior
4.19 to July 14, 2005. Except as otherwise provided in this subdivision, the definitions, rate
4.20 calculation methods, and principles in sections 144A.071 and 256B.431 and Minnesota
4.21 Rules, parts 9549.0010 to 9549.0080, shall be used to calculate rate adjustments for allowable
4.22 construction projects under this subdivision and section 144A.073. Facilities completing
4.23 construction projects between October 1, 2005, and October 1, 2006, are eligible to have a
4.24 property rate adjustment effective October 1, 2006. Facilities completing projects after
4.25 October 1, 2006, are eligible for a property rate adjustment effective on the first day of the
4.26 month following the completion date. Facilities completing projects after January 1, 2018,
4.27 are eligible for a property rate adjustment effective on the first day of the month of January
4.28 or July, whichever occurs immediately following the completion date.

4.29 (b) Notwithstanding subdivision 18, as of July 14, 2005, facilities with rates set under
4.30 section 256B.431 and Minnesota Rules, parts 9549.0010 to 9549.0080, that commenced a
4.31 construction project on or after October 1, 2004, and do not have a contract under subdivision
4.32 3 by September 30, 2006, are eligible to request a rate adjustment under section 256B.431,
4.33 subdivision 10, through September 30, 2006. If the request results in the commissioner

5.1 determining a rate adjustment is allowable, the rate adjustment is effective on the first of
5.2 the month following project completion. These facilities shall be allowed to accumulate
5.3 construction project costs for the period October 1, 2004, to September 30, 2006.

5.4 (c) Facilities shall be allowed construction project rate adjustments no sooner than 12
5.5 months after completing a previous construction project. Facilities must request the rate
5.6 adjustment according to section 256B.431, subdivision 10.

5.7 (d) Capacity days shall be computed according to Minnesota Rules, part 9549.0060,
5.8 subpart 11. For rate calculations under this section, the number of licensed beds in the
5.9 nursing facility shall be the number existing after the construction project is completed and
5.10 the number of days in the nursing facility's reporting period shall be 365.

5.11 (e) The value of assets to be recognized for a total replacement project as defined in
5.12 section 256B.431, subdivision 17d, shall be computed as described in clause (1). The value
5.13 of assets to be recognized for all other projects shall be computed as described in clause
5.14 (2).

5.15 (1) Replacement-cost-new limits under section 256B.431, subdivision 17e, and the
5.16 number of beds allowed under subdivision 3a, paragraph (c), shall be used to compute the
5.17 maximum amount of assets allowable in a facility's property rate calculation. If a facility's
5.18 current request for a rate adjustment results from the completion of a construction project
5.19 that was previously approved under section 144A.073, the assets to be used in the rate
5.20 calculation cannot exceed the lesser of the amount determined under sections 144A.071,
5.21 subdivision 2, and 144A.073, subdivision 3b, or the actual allowable costs of the construction
5.22 project. A current request that is not the result of a project under section 144A.073 cannot
5.23 exceed the limit under section 144A.071, subdivision 2, paragraph ~~(a)~~ (c), clause (1).
5.24 Applicable credits must be deducted from the cost of the construction project.

5.25 (2)(i) Replacement-cost-new limits under section 256B.431, subdivision 17e, and the
5.26 number of beds allowed under section 256B.431, subdivision 3a, paragraph (c), shall be
5.27 used to compute the maximum amount of assets allowable in a facility's property rate
5.28 calculation.

5.29 (ii) The value of a facility's assets to be compared to the amount in item (i) begins with
5.30 the total appraised value from the last rate notice a facility received when its rates were set
5.31 under section 256B.431 and Minnesota Rules, parts 9549.0010 to 9549.0080. This value
5.32 shall be indexed by the factor in section 256B.431, subdivision 3f, paragraph (a), for each
5.33 rate year the facility received an inflation factor on its property-related rate when its rates
5.34 were set under this section. The value of assets listed as previous capital additions, capital

6.1 additions, and special projects on the facility's base year rate notice and the value of assets
6.2 related to a construction project for which the facility received a rate adjustment when its
6.3 rates were determined under this section shall be added to the indexed appraised value.

6.4 (iii) The maximum amount of assets to be recognized in computing a facility's rate
6.5 adjustment after a project is completed is the lesser of the aggregate replacement-cost-new
6.6 limit computed in (i) minus the assets recognized in (ii) or the actual allowable costs of the
6.7 construction project.

6.8 (iv) If a facility's current request for a rate adjustment results from the completion of a
6.9 construction project that was previously approved under section 144A.073, the assets to be
6.10 added to the rate calculation cannot exceed the lesser of the amount determined under
6.11 sections 144A.071, subdivision 2, and 144A.073, subdivision 3b, or the actual allowable
6.12 costs of the construction project. A current request that is not the result of a project under
6.13 section 144A.073 cannot exceed the limit stated in section 144A.071, subdivision 2,
6.14 paragraph ~~(a)~~ (c), clause (1). Assets disposed of as a result of a construction project and
6.15 applicable credits must be deducted from the cost of the construction project.

6.16 (f) For construction projects approved under section 144A.073, allowable debt may
6.17 never exceed the lesser of the cost of the assets purchased, the threshold limit in section
6.18 144A.071, subdivision 2, or the replacement-cost-new limit less previously existing capital
6.19 debt.

6.20 (g) For construction projects that were not approved under section 144A.073, allowable
6.21 debt is limited to the lesser of the threshold in section 144A.071, subdivision 2, for such
6.22 construction projects or the applicable limit in paragraph (e), clause (1) or (2), less previously
6.23 existing capital debt. Amounts of debt taken out that exceed the costs of a construction
6.24 project shall not be allowed regardless of the use of the funds.

6.25 For all construction projects being recognized, interest expense and average debt shall
6.26 be computed based on the first 12 months following project completion. "Previously existing
6.27 capital debt" means capital debt recognized on the last rate determined under section
6.28 256B.431 and Minnesota Rules, parts 9549.0010 to 9549.0080, and the amount of debt
6.29 recognized for a construction project for which the facility received a rate adjustment when
6.30 its rates were determined under this section.

6.31 For a total replacement project as defined in section 256B.431, subdivision 17d, the
6.32 value of previously existing capital debt shall be zero.

7.1 (h) In addition to the interest expense allowed from the application of paragraph (f), the
7.2 amounts allowed under section 256B.431, subdivision 17a, paragraph (a), clauses (2) and
7.3 (3), will be added to interest expense.

7.4 (i) The equity portion of the construction project shall be computed as the allowable
7.5 assets in paragraph (e), less the average debt in paragraph (f). The equity portion must be
7.6 multiplied by 5.66 percent and the allowable interest expense in paragraph (f) must be added.
7.7 This sum must be divided by 95 percent of capacity days to compute the construction project
7.8 rate adjustment.

7.9 (j) For projects that are not a total replacement of a nursing facility, the amount in
7.10 paragraph (i) is adjusted for nonreimbursable areas and then added to the current property
7.11 payment rate of the facility.

7.12 (k) For projects that are a total replacement of a nursing facility, the amount in paragraph
7.13 (i) becomes the new property payment rate after being adjusted for nonreimbursable areas.
7.14 Any amounts existing in a facility's rate before the effective date of the construction project
7.15 for equity incentives under section 256B.431, subdivision 16; capital repairs and replacements
7.16 under section 256B.431, subdivision 15; or refinancing incentives under section 256B.431,
7.17 subdivision 19, shall be removed from the facility's rates.

7.18 (l) No additional equipment allowance is allowed under Minnesota Rules, part 9549.0060,
7.19 subpart 10, as the result of construction projects under this section. Allowable equipment
7.20 shall be included in the construction project costs.

7.21 (m) Capital assets purchased after the completion date of a construction project shall be
7.22 counted as construction project costs for any future rate adjustment request made by a facility
7.23 under section 144A.071, subdivision 2, ~~clause (a)~~ paragraph (c), clause (1), if they are
7.24 purchased within 24 months of the completion of the future construction project.

7.25 (n) In subsequent rate years, the property payment rate for a facility that results from
7.26 the application of this subdivision shall be the amount inflated in subdivision 4.

7.27 (o) Construction projects are eligible for an equity incentive under section 256B.431,
7.28 subdivision 16. When computing the equity incentive for a construction project under this
7.29 subdivision, only the allowable costs and allowable debt related to the construction project
7.30 shall be used. The equity incentive shall not be a part of the property payment rate and not
7.31 inflated under subdivision 4. Effective October 1, 2006, all equity incentives for nursing
7.32 facilities reimbursed under this section shall be allowed for a duration determined under
7.33 section 256B.431, subdivision 16, paragraph (c).