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State of Minnesota

HOUSE OF REPRESENTATIVES

NINETIETH SESSION

H. F. No. **1115**

02/13/2017 Authored by Schomacker, Kiel, Liebling, Hoppe, McDonald and others  
The bill was read for the first time and referred to the Committee on Health and Human Services Reform  
03/09/2017 Adoption of Report: Amended and re-referred to the Committee on Health and Human Services Finance

1.1 A bill for an act  
1.2 relating to human services; modifying license condition for swing bed eligibility;  
1.3 modifying provisions related to specialized care facilities; modifying criteria for  
1.4 determining when an area of the state is a hardship area with regard to access to  
1.5 nursing facility services; amending Minnesota Statutes 2016, sections 144.562,  
1.6 subdivision 2; 144A.071, subdivision 3; 256R.46.

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

1.8 Section 1. Minnesota Statutes 2016, section 144.562, subdivision 2, is amended to read:

1.9 Subd. 2. **Eligibility for license condition.** (a) A hospital is not eligible to receive a  
1.10 license condition for swing beds unless (1) it either has a licensed bed capacity of less than  
1.11 50 beds defined in the federal Medicare regulations, Code of Federal Regulations, title 42,  
1.12 section 482.66, or it has a licensed bed capacity of 50 beds or more and has swing beds that  
1.13 were approved for Medicare reimbursement before May 1, 1985, or it has a licensed bed  
1.14 capacity of less than 65 beds and the available nursing homes within 50 miles have had, in  
1.15 the aggregate, an average occupancy rate of 96 percent or higher in the most recent two  
1.16 years as documented on the statistical reports to the Department of Health; and (2) it is  
1.17 located in a rural area as defined in the federal Medicare regulations, Code of Federal  
1.18 Regulations, title 42, section 482.66.

1.19 (b) Except for those critical access hospitals established under section 144.1483, clause  
1.20 (9), and section 1820 of the federal Social Security Act, United States Code, title 42, section  
1.21 1395i-4, that have an attached nursing home or that owned a nursing home located in the  
1.22 same municipality as of May 1, 2005, eligible hospitals are allowed a total of 2,000 days  
1.23 of swing bed use per year. Critical access hospitals that have an attached nursing home or

2.1 that owned a nursing home located in the same municipality as of May 1, 2005, are allowed  
2.2 swing bed use as provided in federal law.

2.3 (c) Except for critical access hospitals that have an attached nursing home or that owned  
2.4 a nursing home located in the same municipality as of May 1, 2005, the commissioner of  
2.5 health may approve swing bed use beyond 2,000 days as long as there are no Medicare  
2.6 certified skilled nursing facility beds available within 25 miles of that hospital that are  
2.7 willing to admit the patient and the patient agrees to the referral being sent to the skilled  
2.8 nursing facility. Critical access hospitals exceeding 2,000 swing bed days must maintain  
2.9 documentation that they have contacted skilled nursing facilities within 25 miles to determine  
2.10 if any skilled nursing facility beds are available that are willing to admit the patient and the  
2.11 patient agrees to the referral being sent to the skilled nursing facility.

2.12 (d) After reaching 2,000 days of swing bed use in a year, an eligible hospital to which  
2.13 this limit applies may admit six additional patients to swing beds each year without seeking  
2.14 approval from the commissioner or being in violation of this subdivision. These six swing  
2.15 bed admissions are exempt from the limit of 2,000 annual swing bed days for hospitals  
2.16 subject to this limit.

2.17 (e) A health care system that is in full compliance with this subdivision may allocate its  
2.18 total limit of swing bed days among the hospitals within the system, provided that no hospital  
2.19 in the system without an attached nursing home may exceed 2,000 swing bed days per year.

2.20 Sec. 2. Minnesota Statutes 2016, section 144A.071, subdivision 3, is amended to read:

2.21 Subd. 3. **Exceptions authorizing increase in beds; hardship areas.** (a) The  
2.22 commissioner of health, in coordination with the commissioner of human services, may  
2.23 approve the addition of new licensed and Medicare and Medicaid certified nursing home  
2.24 beds, using the criteria and process set forth in this subdivision.

2.25 (b) The commissioner, in cooperation with the commissioner of human services, shall  
2.26 consider the following criteria when determining that an area of the state is a hardship area  
2.27 with regard to access to nursing facility services:

2.28 (1) a low number of beds per thousand in a specified area using as a standard the beds  
2.29 per thousand people age 65 and older, in five year age groups, using data from the most  
2.30 recent census and population projections, weighted by each group's most recent nursing  
2.31 home utilization, of the county at the 20th percentile, as determined by the commissioner  
2.32 of human services;

3.1 (2) a high level of out-migration for nursing facility services associated with a described  
3.2 area from the county or counties of residence to other Minnesota counties, as determined  
3.3 by the commissioner of human services, using as a standard an amount greater than the  
3.4 out-migration of the county ranked at the 50th percentile;

3.5 (3) an adequate level of availability of noninstitutional long-term care services measured  
3.6 as public spending for home and community-based long-term care services per individual  
3.7 age 65 and older, in five year age groups, using data from the most recent census and  
3.8 population projections, weighted by each group's most recent nursing home utilization, as  
3.9 determined by the commissioner of human services using as a standard an amount greater  
3.10 than the 50th percentile of counties;

3.11 (4) there must be a declaration of hardship resulting from insufficient access to nursing  
3.12 home beds by local county agencies and area agencies on aging; ~~and~~

3.13 (5) inadequate options for subacute care, transitional care, or residential outpatient  
3.14 treatment following the discharge from a hospital for patients who have major disorders of  
3.15 thought, mood, or cognition, whose disorders are concurrent with medical diagnoses or  
3.16 aggressive behaviors, who are unable to care for themselves, and who require nursing home  
3.17 level of care; and

3.18 ~~(5)~~ (6) other factors that may demonstrate the need to add new nursing facility beds.

3.19 (c) On August 15 of odd-numbered years, the commissioner, in cooperation with the  
3.20 commissioner of human services, may publish in the State Register a request for information  
3.21 in which interested parties, using the data provided under section 144A.351, along with any  
3.22 other relevant data, demonstrate that a specified area is a hardship area with regard to access  
3.23 to nursing facility services. For a response to be considered, the commissioner must receive  
3.24 it by November 15. The commissioner shall make responses to the request for information  
3.25 available to the public and shall allow 30 days for comment. The commissioner shall review  
3.26 responses and comments and determine if any areas of the state are to be declared hardship  
3.27 areas.

3.28 (d) For each designated hardship area determined in paragraph (c), the commissioner  
3.29 shall publish a request for proposals in accordance with section 144A.073 and Minnesota  
3.30 Rules, parts 4655.1070 to 4655.1098. The request for proposals must be published in the  
3.31 State Register by March 15 following receipt of responses to the request for information.  
3.32 The request for proposals must specify the number of new beds which may be added in the  
3.33 designated hardship area, which must not exceed the number which, if added to the existing  
3.34 number of beds in the area, including beds in layaway status, would have prevented it from

4.1 being determined to be a hardship area under paragraph (b), clause (1). Beginning July 1,  
4.2 2011, the number of new beds approved must not exceed 200 beds statewide per biennium.  
4.3 After June 30, 2019, the number of new beds that may be approved in a biennium must not  
4.4 exceed 300 statewide. For a proposal to be considered, the commissioner must receive it  
4.5 within six months of the publication of the request for proposals. The commissioner shall  
4.6 review responses to the request for proposals and shall approve or disapprove each proposal  
4.7 by the following July 15, in accordance with section 144A.073 and Minnesota Rules, parts  
4.8 4655.1070 to 4655.1098. The commissioner shall base approvals or disapprovals on a  
4.9 comparison and ranking of proposals using only the criteria in subdivision 4a. Approval of  
4.10 a proposal expires after 18 months unless the facility has added the new beds using existing  
4.11 space, subject to approval by the commissioner, or has commenced construction as defined  
4.12 in section 144A.071, subdivision 1a, paragraph (d). If, after the approved beds have been  
4.13 added, fewer than 50 percent of the beds in a facility are newly licensed, the operating  
4.14 payment rates previously in effect shall remain. If, after the approved beds have been added,  
4.15 50 percent or more of the beds in a facility are newly licensed, operating payment rates shall  
4.16 be determined according to Minnesota Rules, part 9549.0057, using the limits under ~~section~~  
4.17 ~~256B.441~~ chapter 256R. External fixed payment rates must be determined according to  
4.18 section ~~256B.441, subdivision 53~~ 256R.25. Property payment rates for facilities with beds  
4.19 added under this subdivision must be determined in the same manner as rate determinations  
4.20 resulting from projects approved and completed under section 144A.073.

4.21 (e) The commissioner may:

4.22 (1) certify or license new beds in a new facility that is to be operated by the commissioner  
4.23 of veterans affairs or when the costs of constructing and operating the new beds are to be  
4.24 reimbursed by the commissioner of veterans affairs or the United States Veterans  
4.25 Administration; and

4.26 (2) license or certify beds in a facility that has been involuntarily delicensed or decertified  
4.27 for participation in the medical assistance program, provided that an application for  
4.28 relicensure or recertification is submitted to the commissioner by an organization that is  
4.29 not a related organization as defined in section ~~256B.441~~ 256R.02, subdivision ~~34~~ 43, to  
4.30 the prior licensee within 120 days after delicensure or decertification.

4.31 Sec. 3. Minnesota Statutes 2016, section 256R.46, is amended to read:

4.32 **256R.46 SPECIALIZED CARE FACILITIES.**

4.33 (a) The total care-related payment rate limit for specialized care facilities shall be  
4.34 increased by:

5.1 (1) 50 percent for specialized care facilities under paragraph (b), clause (1); and

5.2 (2) 100 percent for up to 50 beds in specialized care facilities under paragraph (b), clause  
5.3 (2).

5.4 (b) "Specialized care facilities" are defined as:

5.5 (1) a facility having a program licensed under chapter 245A and Minnesota Rules, chapter  
5.6 9570, or a facility with 96 beds on January 1, 2015, located in Robbinsdale that specializes  
5.7 in the treatment of Huntington's Disease; or

5.8 (2) a nursing facility or a unit of a nursing facility that admits after discharge from a  
5.9 hospital persons who have major disorders of thought, mood, or cognition, whose disorders  
5.10 are concurrent with medical diagnoses or aggressive behaviors, who are unable to care for  
5.11 themselves, and who require nursing home level of care, but for whom no appropriate  
5.12 subacute care, transitional care, or residential outpatient options are available upon hospital  
5.13 discharge. The commissioner may allow higher rates for up to 50 beds statewide in  
5.14 specialized care facilities or units as defined in this clause to become effective when residents  
5.15 are first admitted to that facility or unit and to remain in effect until rates for that facility or  
5.16 unit are based on its actual costs set using the higher limits allowed in this section. The sum  
5.17 of the number of beds receiving interim rates under this clause and the number of beds  
5.18 subject to an increased care-related payment rate limit for patients must not exceed 50. The  
5.19 commissioner shall recover any amounts paid under this clause that exceeded the allowable  
5.20 reported costs for this initial period.

5.21 (c) Any hospital system that discharges a patient to a specialized care facility as defined  
5.22 in paragraph (b), clause (2), must provide the specialized nursing facility with programmatic  
5.23 supports for the patient. Programmatic supports include cooperating with the nursing facility  
5.24 in coordinating postdischarge care, ensuring the patient receives the appropriate level of  
5.25 care, and planning for discharge from the nursing facility.