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HOUSE OF REPRESENTATIVES

NINETIETH SESSION

H. F. No. **1353**

02/16/2017 Authored by Schomacker and Kiel
The bill was read for the first time and referred to the Committee on Health and Human Services Reform
03/02/2017 Adoption of Report: Amended and re-referred to the Committee on Health and Human Services Finance
03/07/2017 Adoption of Report: Placed on the General Register
Read for the Second Time
05/22/2017 Pursuant to Rule 4.20, returned to the Committee on Environment and Natural Resources Policy and Finance

1.1 A bill for an act
1.2 relating to human services; correcting obsolete nursing facility cross-references;
1.3 amending Minnesota Statutes 2016, sections 144.0722, subdivision 1; 144.0724,
1.4 subdivisions 1, 2, 9; 144A.071, subdivisions 3, 4a, 4c, 4d; 144A.073, subdivision
1.5 3c; 144A.10, subdivision 4; 144A.15, subdivision 2; 144A.154; 144A.161,
1.6 subdivision 10; 144A.1888; 144A.611, subdivision 1; 144A.74; 256.9657,
1.7 subdivision 1; 256B.0915, subdivision 3e; 256B.35, subdivision 4; 256B.431,
1.8 subdivision 30; 256B.50, subdivision 1.

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

1.10 Section 1. Minnesota Statutes 2016, section 144.0722, subdivision 1, is amended to read:

1.11 Subdivision 1. **Resident reimbursement classifications.** The commissioner of health
1.12 shall establish resident reimbursement classifications based upon the assessments of residents
1.13 of nursing homes and boarding care homes conducted under section 144.0721, or under
1.14 rules established by the commissioner of human services under ~~sections 256B.41 to 256B.48~~
1.15 chapter 256R. The reimbursement classifications established by the commissioner must
1.16 conform to the rules established by the commissioner of human services.

1.17 Sec. 2. Minnesota Statutes 2016, section 144.0724, subdivision 1, is amended to read:

1.18 Subdivision 1. **Resident reimbursement case mix classifications.** The commissioner
1.19 of health shall establish resident reimbursement classifications based upon the assessments
1.20 of residents of nursing homes and boarding care homes conducted under this section and
1.21 according to section ~~256B.438~~ 256R.17.

2.1 Sec. 3. Minnesota Statutes 2016, section 144.0724, subdivision 2, is amended to read:

2.2 Subd. 2. **Definitions.** For purposes of this section, the following terms have the meanings
2.3 given.

2.4 (a) "Assessment reference date" or "ARD" means the specific end point for look-back
2.5 periods in the MDS assessment process. This look-back period is also called the observation
2.6 or assessment period.

2.7 (b) "Case mix index" means the weighting factors assigned to the RUG-IV classifications.

2.8 (c) "Index maximization" means classifying a resident who could be assigned to more
2.9 than one category, to the category with the highest case mix index.

2.10 (d) "Minimum data set" or "MDS" means a core set of screening, clinical assessment,
2.11 and functional status elements, that include common definitions and coding categories
2.12 specified by the Centers for Medicare and Medicaid Services and designated by the
2.13 Minnesota Department of Health.

2.14 (e) "Representative" means a person who is the resident's guardian or conservator, the
2.15 person authorized to pay the nursing home expenses of the resident, a representative of the
2.16 Office of Ombudsman for Long-Term Care whose assistance has been requested, or any
2.17 other individual designated by the resident.

2.18 (f) "Resource utilization groups" or "RUG" means the system for grouping a nursing
2.19 facility's residents according to their clinical and functional status identified in data supplied
2.20 by the facility's minimum data set.

2.21 (g) "Activities of daily living" means grooming, dressing, bathing, transferring, mobility,
2.22 positioning, eating, and toileting.

2.23 (h) "Nursing facility level of care determination" means the assessment process that
2.24 results in a determination of a resident's or prospective resident's need for nursing facility
2.25 level of care as established in subdivision 11 for purposes of medical assistance payment
2.26 of long-term care services for:

2.27 (1) nursing facility services under section 256B.434 or ~~256B.441~~ chapter 256R;

2.28 (2) elderly waiver services under section 256B.0915;

2.29 (3) CADI and BI waiver services under section 256B.49; and

2.30 (4) state payment of alternative care services under section 256B.0913.

3.1 Sec. 4. Minnesota Statutes 2016, section 144.0724, subdivision 9, is amended to read:

3.2 Subd. 9. **Audit authority.** (a) The commissioner shall audit the accuracy of resident
3.3 assessments performed under section ~~256B.438~~ 256R.17 through any of the following: desk
3.4 audits; on-site review of residents and their records; and interviews with staff, residents, or
3.5 residents' families. The commissioner shall reclassify a resident if the commissioner
3.6 determines that the resident was incorrectly classified.

3.7 (b) The commissioner is authorized to conduct on-site audits on an unannounced basis.

3.8 (c) A facility must grant the commissioner access to examine the medical records relating
3.9 to the resident assessments selected for audit under this subdivision. The commissioner may
3.10 also observe and speak to facility staff and residents.

3.11 (d) The commissioner shall consider documentation under the time frames for coding
3.12 items on the minimum data set as set out in the Long-Term Care Facility Resident Assessment
3.13 Instrument User's Manual published by the Centers for Medicare and Medicaid Services.

3.14 (e) The commissioner shall develop an audit selection procedure that includes the
3.15 following factors:

3.16 (1) Each facility shall be audited annually. If a facility has two successive audits in which
3.17 the percentage of change is five percent or less and the facility has not been the subject of
3.18 a special audit in the past 36 months, the facility may be audited biannually. A stratified
3.19 sample of 15 percent, with a minimum of ten assessments, of the most current assessments
3.20 shall be selected for audit. If more than 20 percent of the RUG-IV classifications are changed
3.21 as a result of the audit, the audit shall be expanded to a second 15 percent sample, with a
3.22 minimum of ten assessments. If the total change between the first and second samples is
3.23 35 percent or greater, the commissioner may expand the audit to all of the remaining
3.24 assessments.

3.25 (2) If a facility qualifies for an expanded audit, the commissioner may audit the facility
3.26 again within six months. If a facility has two expanded audits within a 24-month period,
3.27 that facility will be audited at least every six months for the next 18 months.

3.28 (3) The commissioner may conduct special audits if the commissioner determines that
3.29 circumstances exist that could alter or affect the validity of case mix classifications of
3.30 residents. These circumstances include, but are not limited to, the following:

3.31 (i) frequent changes in the administration or management of the facility;

3.32 (ii) an unusually high percentage of residents in a specific case mix classification;

- 4.1 (iii) a high frequency in the number of reconsideration requests received from a facility;
- 4.2 (iv) frequent adjustments of case mix classifications as the result of reconsiderations or
- 4.3 audits;
- 4.4 (v) a criminal indictment alleging provider fraud;
- 4.5 (vi) other similar factors that relate to a facility's ability to conduct accurate assessments;
- 4.6 (vii) an atypical pattern of scoring minimum data set items;
- 4.7 (viii) nonsubmission of assessments;
- 4.8 (ix) late submission of assessments; or
- 4.9 (x) a previous history of audit changes of 35 percent or greater.

4.10 (f) Within 15 working days of completing the audit process, the commissioner shall

4.11 make available electronically the results of the audit to the facility. If the results of the audit

4.12 reflect a change in the resident's case mix classification, a case mix classification notice

4.13 will be made available electronically to the facility, using the procedure in subdivision 7,

4.14 paragraph (a). The notice must contain the resident's classification and a statement informing

4.15 the resident, the resident's authorized representative, and the facility of their right to review

4.16 the commissioner's documents supporting the classification and to request a reconsideration

4.17 of the classification. This notice must also include the address and telephone number of the

4.18 Office of Ombudsman for Long-Term Care.

4.19 Sec. 5. Minnesota Statutes 2016, section 144A.071, subdivision 3, is amended to read:

4.20 Subd. 3. **Exceptions authorizing increase in beds; hardship areas.** (a) The

4.21 commissioner of health, in coordination with the commissioner of human services, may

4.22 approve the addition of new licensed and Medicare and Medicaid certified nursing home

4.23 beds, using the criteria and process set forth in this subdivision.

4.24 (b) The commissioner, in cooperation with the commissioner of human services, shall

4.25 consider the following criteria when determining that an area of the state is a hardship area

4.26 with regard to access to nursing facility services:

4.27 (1) a low number of beds per thousand in a specified area using as a standard the beds

4.28 per thousand people age 65 and older, in five year age groups, using data from the most

4.29 recent census and population projections, weighted by each group's most recent nursing

4.30 home utilization, of the county at the 20th percentile, as determined by the commissioner

4.31 of human services;

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

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

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

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

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

5.23 (d) For each designated hardship area determined in paragraph (c), the commissioner
5.24 shall publish a request for proposals in accordance with section 144A.073 and Minnesota
5.25 Rules, parts 4655.1070 to 4655.1098. The request for proposals must be published in the
5.26 State Register by March 15 following receipt of responses to the request for information.
5.27 The request for proposals must specify the number of new beds which may be added in the
5.28 designated hardship area, which must not exceed the number which, if added to the existing
5.29 number of beds in the area, including beds in layaway status, would have prevented it from
5.30 being determined to be a hardship area under paragraph (b), clause (1). Beginning July 1,
5.31 2011, the number of new beds approved must not exceed 200 beds statewide per biennium.
5.32 After June 30, 2019, the number of new beds that may be approved in a biennium must not
5.33 exceed 300 statewide. For a proposal to be considered, the commissioner must receive it
5.34 within six months of the publication of the request for proposals. The commissioner shall

6.1 review responses to the request for proposals and shall approve or disapprove each proposal
6.2 by the following July 15, in accordance with section 144A.073 and Minnesota Rules, parts
6.3 4655.1070 to 4655.1098. The commissioner shall base approvals or disapprovals on a
6.4 comparison and ranking of proposals using only the criteria in subdivision 4a. Approval of
6.5 a proposal expires after 18 months unless the facility has added the new beds using existing
6.6 space, subject to approval by the commissioner, or has commenced construction as defined
6.7 in section 144A.071, subdivision 1a, paragraph (d). If, after the approved beds have been
6.8 added, fewer than 50 percent of the beds in a facility are newly licensed, the operating
6.9 payment rates previously in effect shall remain. If, after the approved beds have been added,
6.10 50 percent or more of the beds in a facility are newly licensed, operating payment rates shall
6.11 be determined according to Minnesota Rules, part 9549.0057, using the limits under ~~section~~
6.12 ~~256B.441~~ sections 256R.23, subdivision 5, and 256R.24, subdivision 3. External fixed costs
6.13 payment rates must be determined according to section ~~256B.441, subdivision 53~~ 256R.25.
6.14 Property payment rates for facilities with beds added under this subdivision must be
6.15 determined in the same manner as rate determinations resulting from projects approved and
6.16 completed under section 144A.073.

6.17 (e) The commissioner may:

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

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

6.27 Sec. 6. Minnesota Statutes 2016, section 144A.071, subdivision 4a, is amended to read:

6.28 Subd. 4a. **Exceptions for replacement beds.** It is in the best interest of the state to
6.29 ensure that nursing homes and boarding care homes continue to meet the physical plant
6.30 licensing and certification requirements by permitting certain construction projects. Facilities
6.31 should be maintained in condition to satisfy the physical and emotional needs of residents
6.32 while allowing the state to maintain control over nursing home expenditure growth.

7.1 The commissioner of health in coordination with the commissioner of human services,
7.2 may approve the renovation, replacement, upgrading, or relocation of a nursing home or
7.3 boarding care home, under the following conditions:

7.4 (a) to license or certify beds in a new facility constructed to replace a facility or to make
7.5 repairs in an existing facility that was destroyed or damaged after June 30, 1987, by fire,
7.6 lightning, or other hazard provided:

7.7 (i) destruction was not caused by the intentional act of or at the direction of a controlling
7.8 person of the facility;

7.9 (ii) at the time the facility was destroyed or damaged the controlling persons of the
7.10 facility maintained insurance coverage for the type of hazard that occurred in an amount
7.11 that a reasonable person would conclude was adequate;

7.12 (iii) the net proceeds from an insurance settlement for the damages caused by the hazard
7.13 are applied to the cost of the new facility or repairs;

7.14 (iv) the number of licensed and certified beds in the new facility does not exceed the
7.15 number of licensed and certified beds in the destroyed facility; and

7.16 (v) the commissioner determines that the replacement beds are needed to prevent an
7.17 inadequate supply of beds.

7.18 Project construction costs incurred for repairs authorized under this clause shall not be
7.19 considered in the dollar threshold amount defined in subdivision 2;

7.20 (b) to license or certify beds that are moved from one location to another within a nursing
7.21 home facility, provided the total costs of remodeling performed in conjunction with the
7.22 relocation of beds does not exceed \$1,000,000;

7.23 (c) to license or certify beds in a project recommended for approval under section
7.24 144A.073;

7.25 (d) to license or certify beds that are moved from an existing state nursing home to a
7.26 different state facility, provided there is no net increase in the number of state nursing home
7.27 beds;

7.28 (e) to certify and license as nursing home beds boarding care beds in a certified boarding
7.29 care facility if the beds meet the standards for nursing home licensure, or in a facility that
7.30 was granted an exception to the moratorium under section 144A.073, and if the cost of any
7.31 remodeling of the facility does not exceed \$1,000,000. If boarding care beds are licensed
7.32 as nursing home beds, the number of boarding care beds in the facility must not increase

8.1 beyond the number remaining at the time of the upgrade in licensure. The provisions
8.2 contained in section 144A.073 regarding the upgrading of the facilities do not apply to
8.3 facilities that satisfy these requirements;

8.4 (f) to license and certify up to 40 beds transferred from an existing facility owned and
8.5 operated by the Amherst H. Wilder Foundation in the city of St. Paul to a new unit at the
8.6 same location as the existing facility that will serve persons with Alzheimer's disease and
8.7 other related disorders. The transfer of beds may occur gradually or in stages, provided the
8.8 total number of beds transferred does not exceed 40. At the time of licensure and certification
8.9 of a bed or beds in the new unit, the commissioner of health shall delicense and decertify
8.10 the same number of beds in the existing facility. As a condition of receiving a license or
8.11 certification under this clause, the facility must make a written commitment to the
8.12 commissioner of human services that it will not seek to receive an increase in its
8.13 property-related payment rate as a result of the transfers allowed under this paragraph;

8.14 (g) to license and certify nursing home beds to replace currently licensed and certified
8.15 boarding care beds which may be located either in a remodeled or renovated boarding care
8.16 or nursing home facility or in a remodeled, renovated, newly constructed, or replacement
8.17 nursing home facility within the identifiable complex of health care facilities in which the
8.18 currently licensed boarding care beds are presently located, provided that the number of
8.19 boarding care beds in the facility or complex are decreased by the number to be licensed as
8.20 nursing home beds and further provided that, if the total costs of new construction,
8.21 replacement, remodeling, or renovation exceed ten percent of the appraised value of the
8.22 facility or \$200,000, whichever is less, the facility makes a written commitment to the
8.23 commissioner of human services that it will not seek to receive an increase in its
8.24 property-related payment rate by reason of the new construction, replacement, remodeling,
8.25 or renovation. The provisions contained in section 144A.073 regarding the upgrading of
8.26 facilities do not apply to facilities that satisfy these requirements;

8.27 (h) to license as a nursing home and certify as a nursing facility a facility that is licensed
8.28 as a boarding care facility but not certified under the medical assistance program, but only
8.29 if the commissioner of human services certifies to the commissioner of health that licensing
8.30 the facility as a nursing home and certifying the facility as a nursing facility will result in
8.31 a net annual savings to the state general fund of \$200,000 or more;

8.32 (i) to certify, after September 30, 1992, and prior to July 1, 1993, existing nursing home
8.33 beds in a facility that was licensed and in operation prior to January 1, 1992;

9.1 (j) to license and certify new nursing home beds to replace beds in a facility acquired
9.2 by the Minneapolis Community Development Agency as part of redevelopment activities
9.3 in a city of the first class, provided the new facility is located within three miles of the site
9.4 of the old facility. Operating and property costs for the new facility must be determined and
9.5 allowed under section 256B.431 or 256B.434 or chapter 256R;

9.6 (k) to license and certify up to 20 new nursing home beds in a community-operated
9.7 hospital and attached convalescent and nursing care facility with 40 beds on April 21, 1991,
9.8 that suspended operation of the hospital in April 1986. The commissioner of human services
9.9 shall provide the facility with the same per diem property-related payment rate for each
9.10 additional licensed and certified bed as it will receive for its existing 40 beds;

9.11 (l) to license or certify beds in renovation, replacement, or upgrading projects as defined
9.12 in section 144A.073, subdivision 1, so long as the cumulative total costs of the facility's
9.13 remodeling projects do not exceed \$1,000,000;

9.14 (m) to license and certify beds that are moved from one location to another for the
9.15 purposes of converting up to five four-bed wards to single or double occupancy rooms in
9.16 a nursing home that, as of January 1, 1993, was county-owned and had a licensed capacity
9.17 of 115 beds;

9.18 (n) to allow a facility that on April 16, 1993, was a 106-bed licensed and certified nursing
9.19 facility located in Minneapolis to layaway all of its licensed and certified nursing home
9.20 beds. These beds may be relicensed and recertified in a newly constructed teaching nursing
9.21 home facility affiliated with a teaching hospital upon approval by the legislature. The
9.22 proposal must be developed in consultation with the interagency committee on long-term
9.23 care planning. The beds on layaway status shall have the same status as voluntarily delicensed
9.24 and decertified beds, except that beds on layaway status remain subject to the surcharge in
9.25 section 256.9657. This layaway provision expires July 1, 1998;

9.26 (o) to allow a project which will be completed in conjunction with an approved
9.27 moratorium exception project for a nursing home in southern Cass County and which is
9.28 directly related to that portion of the facility that must be repaired, renovated, or replaced,
9.29 to correct an emergency plumbing problem for which a state correction order has been
9.30 issued and which must be corrected by August 31, 1993;

9.31 (p) to allow a facility that on April 16, 1993, was a 368-bed licensed and certified nursing
9.32 facility located in Minneapolis to layaway, upon 30 days prior written notice to the
9.33 commissioner, up to 30 of the facility's licensed and certified beds by converting three-bed
9.34 wards to single or double occupancy. Beds on layaway status shall have the same status as

10.1 voluntarily delicensed and decertified beds except that beds on layaway status remain subject
10.2 to the surcharge in section 256.9657, remain subject to the license application and renewal
10.3 fees under section 144A.07 and shall be subject to a \$100 per bed reactivation fee. In
10.4 addition, at any time within three years of the effective date of the layaway, the beds on
10.5 layaway status may be:

10.6 (1) relicensed and recertified upon relocation and reactivation of some or all of the beds
10.7 to an existing licensed and certified facility or facilities located in Pine River, Brainerd, or
10.8 International Falls; provided that the total project construction costs related to the relocation
10.9 of beds from layaway status for any facility receiving relocated beds may not exceed the
10.10 dollar threshold provided in subdivision 2 unless the construction project has been approved
10.11 through the moratorium exception process under section 144A.073;

10.12 (2) relicensed and recertified, upon reactivation of some or all of the beds within the
10.13 facility which placed the beds in layaway status, if the commissioner has determined a need
10.14 for the reactivation of the beds on layaway status.

10.15 The property-related payment rate of a facility placing beds on layaway status must be
10.16 adjusted by the incremental change in its rental per diem after recalculating the rental per
10.17 diem as provided in section 256B.431, subdivision 3a, paragraph (c). The property-related
10.18 payment rate for a facility relicensing and recertifying beds from layaway status must be
10.19 adjusted by the incremental change in its rental per diem after recalculating its rental per
10.20 diem using the number of beds after the relicensing to establish the facility's capacity day
10.21 divisor, which shall be effective the first day of the month following the month in which
10.22 the relicensing and recertification became effective. Any beds remaining on layaway status
10.23 more than three years after the date the layaway status became effective must be removed
10.24 from layaway status and immediately delicensed and decertified;

10.25 (q) to license and certify beds in a renovation and remodeling project to convert 12
10.26 four-bed wards into 24 two-bed rooms, expand space, and add improvements in a nursing
10.27 home that, as of January 1, 1994, met the following conditions: the nursing home was located
10.28 in Ramsey County; had a licensed capacity of 154 beds; and had been ranked among the
10.29 top 15 applicants by the 1993 moratorium exceptions advisory review panel. The total
10.30 project construction cost estimate for this project must not exceed the cost estimate submitted
10.31 in connection with the 1993 moratorium exception process;

10.32 (r) to license and certify up to 117 beds that are relocated from a licensed and certified
10.33 138-bed nursing facility located in St. Paul to a hospital with 130 licensed hospital beds
10.34 located in South St. Paul, provided that the nursing facility and hospital are owned by the

11.1 same or a related organization and that prior to the date the relocation is completed the
11.2 hospital ceases operation of its inpatient hospital services at that hospital. After relocation,
11.3 the nursing facility's status shall be the same as it was prior to relocation. The nursing
11.4 facility's property-related payment rate resulting from the project authorized in this paragraph
11.5 shall become effective no earlier than April 1, 1996. For purposes of calculating the
11.6 incremental change in the facility's rental per diem resulting from this project, the allowable
11.7 appraised value of the nursing facility portion of the existing health care facility physical
11.8 plant prior to the renovation and relocation may not exceed \$2,490,000;

11.9 (s) to license and certify two beds in a facility to replace beds that were voluntarily
11.10 delicensed and decertified on June 28, 1991;

11.11 (t) to allow 16 licensed and certified beds located on July 1, 1994, in a 142-bed nursing
11.12 home and 21-bed boarding care home facility in Minneapolis, notwithstanding the licensure
11.13 and certification after July 1, 1995, of the Minneapolis facility as a 147-bed nursing home
11.14 facility after completion of a construction project approved in 1993 under section 144A.073,
11.15 to be laid away upon 30 days' prior written notice to the commissioner. Beds on layaway
11.16 status shall have the same status as voluntarily delicensed or decertified beds except that
11.17 they shall remain subject to the surcharge in section 256.9657. The 16 beds on layaway
11.18 status may be relicensed as nursing home beds and recertified at any time within five years
11.19 of the effective date of the layaway upon relocation of some or all of the beds to a licensed
11.20 and certified facility located in Watertown, provided that the total project construction costs
11.21 related to the relocation of beds from layaway status for the Watertown facility may not
11.22 exceed the dollar threshold provided in subdivision 2 unless the construction project has
11.23 been approved through the moratorium exception process under section 144A.073.

11.24 The property-related payment rate of the facility placing beds on layaway status must
11.25 be adjusted by the incremental change in its rental per diem after recalculating the rental
11.26 per diem as provided in section 256B.431, subdivision 3a, paragraph (c). The property-related
11.27 payment rate for the facility relicensing and recertifying beds from layaway status must be
11.28 adjusted by the incremental change in its rental per diem after recalculating its rental per
11.29 diem using the number of beds after the relicensing to establish the facility's capacity day
11.30 divisor, which shall be effective the first day of the month following the month in which
11.31 the relicensing and recertification became effective. Any beds remaining on layaway status
11.32 more than five years after the date the layaway status became effective must be removed
11.33 from layaway status and immediately delicensed and decertified;

11.34 (u) to license and certify beds that are moved within an existing area of a facility or to
11.35 a newly constructed addition which is built for the purpose of eliminating three- and four-bed

12.1 rooms and adding space for dining, lounge areas, bathing rooms, and ancillary service areas
12.2 in a nursing home that, as of January 1, 1995, was located in Fridley and had a licensed
12.3 capacity of 129 beds;

12.4 (v) to relocate 36 beds in Crow Wing County and four beds from Hennepin County to
12.5 a 160-bed facility in Crow Wing County, provided all the affected beds are under common
12.6 ownership;

12.7 (w) to license and certify a total replacement project of up to 49 beds located in Norman
12.8 County that are relocated from a nursing home destroyed by flood and whose residents were
12.9 relocated to other nursing homes. The operating cost payment rates for the new nursing
12.10 facility shall be determined based on the interim and settle-up payment provisions of
12.11 Minnesota Rules, part 9549.0057, and the reimbursement provisions of ~~section 256B.431~~
12.12 chapter 256R. Property-related reimbursement rates shall be determined under section
12.13 ~~256B.431~~ 256R.26, taking into account any federal or state flood-related loans or grants
12.14 provided to the facility;

12.15 (x) to license and certify to the licensee of a nursing home in Polk County that was
12.16 destroyed by flood in 1997 replacement projects with a total of up to 129 beds, with at least
12.17 25 beds to be located in Polk County and up to 104 beds distributed among up to three other
12.18 counties. These beds may only be distributed to counties with fewer than the median number
12.19 of age intensity adjusted beds per thousand, as most recently published by the commissioner
12.20 of human services. If the licensee chooses to distribute beds outside of Polk County under
12.21 this paragraph, prior to distributing the beds, the commissioner of health must approve the
12.22 location in which the licensee plans to distribute the beds. The commissioner of health shall
12.23 consult with the commissioner of human services prior to approving the location of the
12.24 proposed beds. The licensee may combine these beds with beds relocated from other nursing
12.25 facilities as provided in section 144A.073, subdivision 3c. The operating payment rates for
12.26 the new nursing facilities shall be determined based on the interim and settle-up payment
12.27 provisions of ~~section 256B.431, 256B.434, or 256B.441~~ or Minnesota Rules, parts 9549.0010
12.28 to 9549.0080. Property-related reimbursement rates shall be determined under section
12.29 ~~256B.431, 256B.434, or 256B.441~~ 256R.26. If the replacement beds permitted under this
12.30 paragraph are combined with beds from other nursing facilities, the rates shall be calculated
12.31 as the weighted average of rates determined as provided in this paragraph and section
12.32 ~~256B.441, subdivision 60~~ 256R.50;

12.33 (y) to license and certify beds in a renovation and remodeling project to convert 13
12.34 three-bed wards into 13 two-bed rooms and 13 single-bed rooms, expand space, and add
12.35 improvements in a nursing home that, as of January 1, 1994, met the following conditions:

13.1 the nursing home was located in Ramsey County, was not owned by a hospital corporation,
13.2 had a licensed capacity of 64 beds, and had been ranked among the top 15 applicants by
13.3 the 1993 moratorium exceptions advisory review panel. The total project construction cost
13.4 estimate for this project must not exceed the cost estimate submitted in connection with the
13.5 1993 moratorium exception process;

13.6 (z) to license and certify up to 150 nursing home beds to replace an existing 285 bed
13.7 nursing facility located in St. Paul. The replacement project shall include both the renovation
13.8 of existing buildings and the construction of new facilities at the existing site. The reduction
13.9 in the licensed capacity of the existing facility shall occur during the construction project
13.10 as beds are taken out of service due to the construction process. Prior to the start of the
13.11 construction process, the facility shall provide written information to the commissioner of
13.12 health describing the process for bed reduction, plans for the relocation of residents, and
13.13 the estimated construction schedule. The relocation of residents shall be in accordance with
13.14 the provisions of law and rule;

13.15 (aa) to allow the commissioner of human services to license an additional 36 beds to
13.16 provide residential services for the physically disabled under Minnesota Rules, parts
13.17 9570.2000 to 9570.3400, in a 198-bed nursing home located in Red Wing, provided that
13.18 the total number of licensed and certified beds at the facility does not increase;

13.19 (bb) to license and certify a new facility in St. Louis County with 44 beds constructed
13.20 to replace an existing facility in St. Louis County with 31 beds, which has resident rooms
13.21 on two separate floors and an antiquated elevator that creates safety concerns for residents
13.22 and prevents nonambulatory residents from residing on the second floor. The project shall
13.23 include the elimination of three- and four-bed rooms;

13.24 (cc) to license and certify four beds in a 16-bed certified boarding care home in
13.25 Minneapolis to replace beds that were voluntarily delicensed and decertified on or before
13.26 March 31, 1992. The licensure and certification is conditional upon the facility periodically
13.27 assessing and adjusting its resident mix and other factors which may contribute to a potential
13.28 institution for mental disease declaration. The commissioner of human services shall retain
13.29 the authority to audit the facility at any time and shall require the facility to comply with
13.30 any requirements necessary to prevent an institution for mental disease declaration, including
13.31 delicensure and decertification of beds, if necessary;

13.32 (dd) to license and certify 72 beds in an existing facility in Mille Lacs County with 80
13.33 beds as part of a renovation project. The renovation must include construction of an addition
13.34 to accommodate ten residents with beginning and midstage dementia in a self-contained

14.1 living unit; creation of three resident households where dining, activities, and support spaces
14.2 are located near resident living quarters; designation of four beds for rehabilitation in a
14.3 self-contained area; designation of 30 private rooms; and other improvements;

14.4 (ee) to license and certify beds in a facility that has undergone replacement or remodeling
14.5 as part of a planned closure under section ~~256B.437~~ 256R.40;

14.6 (ff) to license and certify a total replacement project of up to 124 beds located in Wilkin
14.7 County that are in need of relocation from a nursing home significantly damaged by flood.
14.8 The operating cost payment rates for the new nursing facility shall be determined based on
14.9 the interim and settle-up payment provisions of Minnesota Rules, part 9549.0057, and the
14.10 reimbursement provisions of ~~section 256B.431~~ chapter 256R. Property-related reimbursement
14.11 rates shall be determined under section ~~256B.431~~ 256R.26, taking into account any federal
14.12 or state flood-related loans or grants provided to the facility;

14.13 (gg) to allow the commissioner of human services to license an additional nine beds to
14.14 provide residential services for the physically disabled under Minnesota Rules, parts
14.15 9570.2000 to 9570.3400, in a 240-bed nursing home located in Duluth, provided that the
14.16 total number of licensed and certified beds at the facility does not increase;

14.17 (hh) to license and certify up to 120 new nursing facility beds to replace beds in a facility
14.18 in Anoka County, which was licensed for 98 beds as of July 1, 2000, provided the new
14.19 facility is located within four miles of the existing facility and is in Anoka County. Operating
14.20 and property rates shall be determined and allowed under ~~section 256B.431~~ chapter 256R
14.21 and Minnesota Rules, parts 9549.0010 to 9549.0080, ~~or section 256B.434 or 256B.441~~; or

14.22 (ii) to transfer up to 98 beds of a 129-licensed bed facility located in Anoka County that,
14.23 as of March 25, 2001, is in the active process of closing, to a 122-licensed bed nonprofit
14.24 nursing facility located in the city of Columbia Heights or its affiliate. The transfer is effective
14.25 when the receiving facility notifies the commissioner in writing of the number of beds
14.26 accepted. The commissioner shall place all transferred beds on layaway status held in the
14.27 name of the receiving facility. The layaway adjustment provisions of section 256B.431,
14.28 subdivision 30, do not apply to this layaway. The receiving facility may only remove the
14.29 beds from layaway for recertification and relicensure at the receiving facility's current site,
14.30 or at a newly constructed facility located in Anoka County. The receiving facility must
14.31 receive statutory authorization before removing these beds from layaway status, or may
14.32 remove these beds from layaway status if removal from layaway status is part of a
14.33 moratorium exception project approved by the commissioner under section 144A.073.

15.1 Sec. 7. Minnesota Statutes 2016, section 144A.071, subdivision 4c, is amended to read:

15.2 Subd. 4c. **Exceptions for replacement beds after June 30, 2003.** (a) The commissioner
15.3 of health, in coordination with the commissioner of human services, may approve the
15.4 renovation, replacement, upgrading, or relocation of a nursing home or boarding care home,
15.5 under the following conditions:

15.6 (1) to license and certify an 80-bed city-owned facility in Nicollet County to be
15.7 constructed on the site of a new city-owned hospital to replace an existing 85-bed facility
15.8 attached to a hospital that is also being replaced. The threshold allowed for this project
15.9 under section 144A.073 shall be the maximum amount available to pay the additional
15.10 medical assistance costs of the new facility;

15.11 (2) to license and certify 29 beds to be added to an existing 69-bed facility in St. Louis
15.12 County, provided that the 29 beds must be transferred from active or layaway status at an
15.13 existing facility in St. Louis County that had 235 beds on April 1, 2003.

15.14 The licensed capacity at the 235-bed facility must be reduced to 206 beds, but the payment
15.15 rate at that facility shall not be adjusted as a result of this transfer. The operating payment
15.16 rate of the facility adding beds after completion of this project shall be the same as it was
15.17 on the day prior to the day the beds are licensed and certified. This project shall not proceed
15.18 unless it is approved and financed under the provisions of section 144A.073;

15.19 (3) to license and certify a new 60-bed facility in Austin, provided that: (i) 45 of the new
15.20 beds are transferred from a 45-bed facility in Austin under common ownership that is closed
15.21 and 15 of the new beds are transferred from a 182-bed facility in Albert Lea under common
15.22 ownership; (ii) the commissioner of human services is authorized by the 2004 legislature
15.23 to negotiate budget-neutral planned nursing facility closures; and (iii) money is available
15.24 from planned closures of facilities under common ownership to make implementation of
15.25 this clause budget-neutral to the state. The bed capacity of the Albert Lea facility shall be
15.26 reduced to 167 beds following the transfer. Of the 60 beds at the new facility, 20 beds shall
15.27 be used for a special care unit for persons with Alzheimer's disease or related dementias;

15.28 (4) to license and certify up to 80 beds transferred from an existing state-owned nursing
15.29 facility in Cass County to a new facility located on the grounds of the Ah-Gwah-Ching
15.30 campus. The operating cost payment rates for the new facility shall be determined based
15.31 on the interim and settle-up payment provisions of Minnesota Rules, part 9549.0057, and
15.32 the reimbursement provisions of ~~section 256B.431~~ chapter 256R. The property payment
15.33 rate for the first three years of operation shall be \$35 per day. For subsequent years, the
15.34 property payment rate of \$35 per day shall be adjusted for inflation as provided in section

16.1 256B.434, subdivision 4, paragraph (c), as long as the facility has a contract under section
16.2 256B.434;

16.3 (5) to initiate a pilot program to license and certify up to 80 beds transferred from an
16.4 existing county-owned nursing facility in Steele County relocated to the site of a new acute
16.5 care facility as part of the county's Communities for a Lifetime comprehensive plan to create
16.6 innovative responses to the aging of its population. Upon relocation to the new site, the
16.7 nursing facility shall delicense 28 beds. The payment rate for external fixed costs for the
16.8 new facility shall be increased by an amount as calculated according to items (i) to (v):

16.9 (i) compute the estimated decrease in medical assistance residents served by the nursing
16.10 facility by multiplying the decrease in licensed beds by the historical percentage of medical
16.11 assistance resident days;

16.12 (ii) compute the annual savings to the medical assistance program from the delicensure
16.13 of 28 beds by multiplying the anticipated decrease in medical assistance residents, determined
16.14 in item (i), by the existing facility's weighted average payment rate multiplied by 365;

16.15 (iii) compute the anticipated annual costs for community-based services by multiplying
16.16 the anticipated decrease in medical assistance residents served by the nursing facility,
16.17 determined in item (i), by the average monthly elderly waiver service costs for individuals
16.18 in Steele County multiplied by 12;

16.19 (iv) subtract the amount in item (iii) from the amount in item (ii);

16.20 (v) divide the amount in item (iv) by an amount equal to the relocated nursing facility's
16.21 occupancy factor under section 256B.431, subdivision 3f, paragraph (c), multiplied by the
16.22 historical percentage of medical assistance resident days; and

16.23 (6) to consolidate and relocate nursing facility beds to a new site in Goodhue County
16.24 and to integrate these services with other community-based programs and services under a
16.25 communities for a lifetime pilot program and comprehensive plan to create innovative
16.26 responses to the aging of its population. Two nursing facilities, one for 84 beds and one for
16.27 65 beds, in the city of Red Wing licensed on July 1, 2015, shall be consolidated into a newly
16.28 renovated 64-bed nursing facility resulting in the delicensure of 85 beds. Notwithstanding
16.29 the carryforward of the approval authority in section 144A.073, subdivision 11, the funding
16.30 approved in April 2009 by the commissioner of health for a project in Goodhue County
16.31 shall not carry forward. The closure of the 85 beds shall not be eligible for a planned closure
16.32 rate adjustment under section ~~256B.437~~ 256R.40. The construction project permitted in this
16.33 clause shall not be eligible for a threshold project rate adjustment under section 256B.434,

17.1 subdivision 4f. The payment rate for external fixed costs for the new facility shall be
17.2 increased by an amount as calculated according to items (i) to (vi):

17.3 (i) compute the estimated decrease in medical assistance residents served by both nursing
17.4 facilities by multiplying the difference between the occupied beds of the two nursing facilities
17.5 for the reporting year ending September 30, 2009, and the projected occupancy of the facility
17.6 at 95 percent occupancy by the historical percentage of medical assistance resident days;

17.7 (ii) compute the annual savings to the medical assistance program from the delicensure
17.8 by multiplying the anticipated decrease in the medical assistance residents, determined in
17.9 item (i), by the hospital-owned nursing facility weighted average payment rate multiplied
17.10 by 365;

17.11 (iii) compute the anticipated annual costs for community-based services by multiplying
17.12 the anticipated decrease in medical assistance residents served by the facilities, determined
17.13 in item (i), by the average monthly elderly waiver service costs for individuals in Goodhue
17.14 County multiplied by 12;

17.15 (iv) subtract the amount in item (iii) from the amount in item (ii);

17.16 (v) multiply the amount in item (iv) by 57.2 percent; and

17.17 (vi) divide the difference of the amount in item (iv) and the amount in item (v) by an
17.18 amount equal to the relocated nursing facility's occupancy factor under section 256B.431,
17.19 subdivision 3f, paragraph (c), multiplied by the historical percentage of medical assistance
17.20 resident days.

17.21 (b) Projects approved under this subdivision shall be treated in a manner equivalent to
17.22 projects approved under subdivision 4a.

17.23 Sec. 8. Minnesota Statutes 2016, section 144A.071, subdivision 4d, is amended to read:

17.24 Subd. 4d. **Consolidation of nursing facilities.** (a) The commissioner of health, in
17.25 consultation with the commissioner of human services, may approve a request for
17.26 consolidation of nursing facilities which includes the closure of one or more facilities and
17.27 the upgrading of the physical plant of the remaining nursing facility or facilities, the costs
17.28 of which exceed the threshold project limit under subdivision 2, clause (a). The
17.29 commissioners shall consider the criteria in this section, section 144A.073, and section
17.30 ~~256B.437~~ 256R.40, in approving or rejecting a consolidation proposal. In the event the
17.31 commissioners approve the request, the commissioner of human services shall calculate an
17.32 external fixed costs rate adjustment according to clauses (1) to (3):

18.1 (1) the closure of beds shall not be eligible for a planned closure rate adjustment under
18.2 section ~~256B.437, subdivision 6~~ 256R.40, subdivision 5;

18.3 (2) the construction project permitted in this clause shall not be eligible for a threshold
18.4 project rate adjustment under section 256B.434, subdivision 4f, or a moratorium exception
18.5 adjustment under section 144A.073; and

18.6 (3) the payment rate for external fixed costs for a remaining facility or facilities shall
18.7 be increased by an amount equal to 65 percent of the projected net cost savings to the state
18.8 calculated in paragraph (b), divided by the state's medical assistance percentage of medical
18.9 assistance dollars, and then divided by estimated medical assistance resident days, as
18.10 determined in paragraph (c), of the remaining nursing facility or facilities in the request in
18.11 this paragraph. The rate adjustment is effective on the later of the first day of the month
18.12 following completion of the construction upgrades in the consolidation plan or the first day
18.13 of the month following the complete closure of a facility designated for closure in the
18.14 consolidation plan. If more than one facility is receiving upgrades in the consolidation plan,
18.15 each facility's date of construction completion must be evaluated separately.

18.16 (b) For purposes of calculating the net cost savings to the state, the commissioner shall
18.17 consider clauses (1) to (7):

18.18 (1) the annual savings from estimated medical assistance payments from the net number
18.19 of beds closed taking into consideration only beds that are in active service on the date of
18.20 the request and that have been in active service for at least three years;

18.21 (2) the estimated annual cost of increased case load of individuals receiving services
18.22 under the elderly waiver;

18.23 (3) the estimated annual cost of elderly waiver recipients receiving support under group
18.24 residential housing;

18.25 (4) the estimated annual cost of increased case load of individuals receiving services
18.26 under the alternative care program;

18.27 (5) the annual loss of license surcharge payments on closed beds;

18.28 (6) the savings from not paying planned closure rate adjustments that the facilities would
18.29 otherwise be eligible for under section ~~256B.437~~ 256R.40; and

18.30 (7) the savings from not paying external fixed costs payment rate adjustments from
18.31 submission of renovation costs that would otherwise be eligible as threshold projects under
18.32 section 256B.434, subdivision 4f.

19.1 (c) For purposes of the calculation in paragraph (a), clause (3), the estimated medical
19.2 assistance resident days of the remaining facility or facilities shall be computed assuming
19.3 95 percent occupancy multiplied by the historical percentage of medical assistance resident
19.4 days of the remaining facility or facilities, as reported on the facility's or facilities' most
19.5 recent nursing facility statistical and cost report filed before the plan of closure is submitted,
19.6 multiplied by 365.

19.7 (d) For purposes of net cost of savings to the state in paragraph (b), the average occupancy
19.8 percentages will be those reported on the facility's or facilities' most recent nursing facility
19.9 statistical and cost report filed before the plan of closure is submitted, and the average
19.10 payment rates shall be calculated based on the approved payment rates in effect at the time
19.11 the consolidation request is submitted.

19.12 (e) To qualify for the external fixed costs payment rate adjustment under this subdivision,
19.13 the closing facilities shall:

19.14 (1) submit an application for closure according to section ~~256B.437, subdivision 3~~
19.15 256R.40, subdivision 2; and

19.16 (2) follow the resident relocation provisions of section 144A.161.

19.17 (f) The county or counties in which a facility or facilities are closed under this subdivision
19.18 shall not be eligible for designation as a hardship area under subdivision 3 for five years
19.19 from the date of the approval of the proposed consolidation. The applicant shall notify the
19.20 county of this limitation and the county shall acknowledge this in a letter of support.

19.21 Sec. 9. Minnesota Statutes 2016, section 144A.073, subdivision 3c, is amended to read:

19.22 Subd. 3c. **Cost neutral relocation projects.** (a) Notwithstanding subdivision 3, the
19.23 commissioner may at any time accept proposals, or amendments to proposals previously
19.24 approved under this section, for relocations that are cost neutral with respect to state costs
19.25 as defined in section 144A.071, subdivision 5a. The commissioner, in consultation with the
19.26 commissioner of human services, shall evaluate proposals according to subdivision 4a,
19.27 clauses (1), (4), (5), (6), and (8), and other criteria established in rule or law. The
19.28 commissioner of human services shall determine the allowable payment rates of the facility
19.29 receiving the beds in accordance with section ~~256B.441, subdivision 60~~ 256R.50. The
19.30 commissioner shall approve or disapprove a project within 90 days.

19.31 (b) For the purposes of paragraph (a), cost neutrality shall be measured over the first
19.32 three 12-month periods of operation after completion of the project.

20.1 Sec. 10. Minnesota Statutes 2016, section 144A.10, subdivision 4, is amended to read:

20.2 Subd. 4. **Correction orders.** Whenever a duly authorized representative of the
20.3 commissioner of health finds upon inspection of a nursing home, that the facility or a
20.4 controlling person or an employee of the facility is not in compliance with sections 144.411
20.5 to 144.417, 144.651, 144.6503, 144A.01 to 144A.155, or 626.557 or the rules promulgated
20.6 thereunder, a correction order shall be issued to the facility. The correction order shall state
20.7 the deficiency, cite the specific rule or statute violated, state the suggested method of
20.8 correction, and specify the time allowed for correction. If the commissioner finds that the
20.9 nursing home had uncorrected or repeated violations which create a risk to resident care,
20.10 safety, or rights, the commissioner shall notify the commissioner of human services ~~who~~
20.11 ~~shall require the facility to use any efficiency incentive payments received under section~~
20.12 ~~256B.431, subdivision 2b, paragraph (d), to correct the violations and shall require the~~
20.13 ~~facility to forfeit incentive payments for failure to correct the violations as provided in~~
20.14 ~~section 256B.431, subdivision 2n. The forfeiture shall not apply to correction orders issued~~
20.15 ~~for physical plant deficiencies.~~

20.16 Sec. 11. Minnesota Statutes 2016, section 144A.15, subdivision 2, is amended to read:

20.17 Subd. 2. **Appointment of receiver, rental.** If, after hearing, the court finds that
20.18 receivership is necessary as a means of protecting the health, safety, or welfare of a resident
20.19 of the facility, the court shall appoint the commissioner of health as a receiver to take charge
20.20 of the facility. The commissioner may enter into an agreement for a managing agent to work
20.21 on the commissioner's behalf in operating the facility during the receivership. The court
20.22 shall determine a fair monthly rental for the facility, taking into account all relevant factors
20.23 including the condition of the facility. This rental fee shall be paid by the receiver to the
20.24 appropriate controlling person for each month that the receivership remains in effect but
20.25 shall be reduced by the amount that the costs of the receivership provided under section
20.26 ~~256B.495~~ 256R.52 are in excess of the facility rate. The controlling person may agree to
20.27 waive the fair monthly rent by affidavit to the court. Notwithstanding any other law to the
20.28 contrary, no payment made to a controlling person by any state agency during a period of
20.29 receivership shall include any allowance for profit or be based on any formula which includes
20.30 an allowance for profit.

20.31 Notwithstanding state contracting requirements in chapter 16C, the commissioner shall
20.32 establish and maintain a list of qualified licensed nursing home administrators, or other
20.33 qualified persons or organizations with experience in delivering skilled health care services
20.34 and the operation of long-term care facilities for those interested in being a managing agent

21.1 on the commissioner's behalf during a state receivership of a facility. This list will be a
21.2 resource for choosing a managing agent and the commissioner may update the list at any
21.3 time. A managing agent cannot be someone who: (1) is the owner, licensee, or administrator
21.4 of the facility; (2) has a financial interest in the facility at the time of the receivership or is
21.5 a related party to the owner, licensee, or administrator; or (3) has owned or operated any
21.6 nursing facility or boarding care home that has been ordered into receivership.

21.7 Sec. 12. Minnesota Statutes 2016, section 144A.154, is amended to read:

21.8 **144A.154 RATE RECOMMENDATION.**

21.9 The commissioner may recommend to the commissioner of human services a review of
21.10 the rates for a nursing home or boarding care home that participates in the medical assistance
21.11 program that is in voluntary or involuntary receivership, and that has needs or deficiencies
21.12 documented by the Department of Health. If the commissioner of health determines that a
21.13 review of the rate under section ~~256B.495~~ 256R.52 is needed, the commissioner shall provide
21.14 the commissioner of human services with:

21.15 (1) a copy of the order or determination that cites the deficiency or need; and

21.16 (2) the commissioner's recommendation for additional staff and additional annual hours
21.17 by type of employee and additional consultants, services, supplies, equipment, or repairs
21.18 necessary to satisfy the need or deficiency.

21.19 Sec. 13. Minnesota Statutes 2016, section 144A.161, subdivision 10, is amended to read:

21.20 Subd. 10. **Facility closure rate adjustment.** Upon the request of a closing facility, the
21.21 commissioner of human services must allow the facility a closure rate adjustment equal to
21.22 a 50 percent payment rate increase to reimburse relocation costs or other costs related to
21.23 facility closure. This rate increase is effective on the date the facility's occupancy decreases
21.24 to 90 percent of capacity days after the written notice of closure is distributed under
21.25 subdivision 5 and shall remain in effect for a period of up to 60 days. The commissioner
21.26 shall delay the implementation of rate adjustments under section ~~256B.437, subdivisions~~
21.27 ~~3, paragraph (b), and 6, paragraph (a)~~ 256R.40, subdivisions 5 and 6, to offset the cost of
21.28 this rate adjustment.

21.29 Sec. 14. Minnesota Statutes 2016, section 144A.1888, is amended to read:

21.30 **144A.1888 REUSE OF FACILITIES.**

22.1 Notwithstanding any local ordinance related to development, planning, or zoning to the
22.2 contrary, the conversion or reuse of a nursing home that closes or that curtails, reduces, or
22.3 changes operations shall be considered a conforming use permitted under local law, provided
22.4 that the facility is converted to another long-term care service approved by a regional
22.5 planning group under section ~~256B.437~~ 256R.40 that serves a smaller number of persons
22.6 than the number of persons served before the closure or curtailment, reduction, or change
22.7 in operations.

22.8 Sec. 15. Minnesota Statutes 2016, section 144A.611, subdivision 1, is amended to read:

22.9 Subdivision 1. **Nursing homes and certified boarding care homes.** The actual costs
22.10 of tuition and textbooks and reasonable expenses for the competency evaluation or the
22.11 nursing assistant training program and competency evaluation approved under section
22.12 144A.61, which are paid to nursing assistants or adult training programs pursuant to
22.13 subdivisions 2 and 4, are a reimbursable expense for nursing homes and certified boarding
22.14 care homes under section ~~256B.431, subdivision 36~~ 256R.37.

22.15 Sec. 16. Minnesota Statutes 2016, section 144A.74, is amended to read:

22.16 **144A.74 MAXIMUM CHARGES.**

22.17 A supplemental nursing services agency must not bill or receive payments from a nursing
22.18 home licensed under this chapter at a rate higher than 150 percent of the sum of the weighted
22.19 average wage rate, plus a factor determined by the commissioner to incorporate payroll
22.20 taxes as defined in ~~Minnesota Rules, part 9549.0020, subpart 33~~ section 256R.02, subdivision
22.21 37, for the applicable employee classification for the geographic group to which the nursing
22.22 home is assigned under Minnesota Rules, part 9549.0052. The weighted average wage rates
22.23 must be determined by the commissioner of human services and reported to the commissioner
22.24 of health on an annual basis. Wages are defined as hourly rate of pay and shift differential,
22.25 including weekend shift differential and overtime. Facilities shall provide information
22.26 necessary to determine weighted average wage rates to the commissioner of human services
22.27 in a format requested by the commissioner. The maximum rate must include all charges for
22.28 administrative fees, contract fees, or other special charges in addition to the hourly rates for
22.29 the temporary nursing pool personnel supplied to a nursing home.

22.30 Sec. 17. Minnesota Statutes 2016, section 256.9657, subdivision 1, is amended to read:

22.31 Subdivision 1. **Nursing home license surcharge.** (a) Effective July 1, 1993, each
22.32 non-state-operated nursing home licensed under chapter 144A shall pay to the commissioner

23.1 an annual surcharge according to the schedule in subdivision 4. The surcharge shall be
23.2 calculated as \$620 per licensed bed. If the number of licensed beds is reduced, the surcharge
23.3 shall be based on the number of remaining licensed beds the second month following the
23.4 receipt of timely notice by the commissioner of human services that beds have been
23.5 delicensed. The nursing home must notify the commissioner of health in writing when beds
23.6 are delicensed. The commissioner of health must notify the commissioner of human services
23.7 within ten working days after receiving written notification. If the notification is received
23.8 by the commissioner of human services by the 15th of the month, the invoice for the second
23.9 following month must be reduced to recognize the delicensing of beds. Beds on layaway
23.10 status continue to be subject to the surcharge. The commissioner of human services must
23.11 acknowledge a medical care surcharge appeal within 30 days of receipt of the written appeal
23.12 from the provider.

23.13 (b) Effective July 1, 1994, the surcharge in paragraph (a) shall be increased to \$625.

23.14 (c) Effective August 15, 2002, the surcharge under paragraph (b) shall be increased to
23.15 \$990.

23.16 (d) Effective July 15, 2003, the surcharge under paragraph (c) shall be increased to
23.17 \$2,815.

23.18 (e) The commissioner may reduce, and may subsequently restore, the surcharge under
23.19 paragraph (d) based on the commissioner's determination of a permissible surcharge.

23.20 ~~(f) Between April 1, 2002, and August 15, 2004, a facility governed by this subdivision~~
23.21 ~~may elect to assume full participation in the medical assistance program by agreeing to~~
23.22 ~~comply with all of the requirements of the medical assistance program, including the rate~~
23.23 ~~equalization law in section 256B.48, subdivision 1, paragraph (a), and all other requirements~~
23.24 ~~established in law or rule, and to begin intake of new medical assistance recipients. Rates~~
23.25 ~~will be determined under Minnesota Rules, parts 9549.0010 to 9549.0080. Rate calculations~~
23.26 ~~will be subject to limits as prescribed in rule and law. Other than the adjustments in sections~~
23.27 ~~256B.431, subdivisions 30 and 32; 256B.437, subdivision 3, paragraph (b), Minnesota~~
23.28 ~~Rules, part 9549.0057, and any other applicable legislation enacted prior to the finalization~~
23.29 ~~of rates, facilities assuming full participation in medical assistance under this paragraph are~~
23.30 ~~not eligible for any rate adjustments until the July 1 following their settle-up period.~~

23.31 Sec. 18. Minnesota Statutes 2016, section 256B.0915, subdivision 3e, is amended to read:

23.32 Subd. 3e. **Customized living service rate.** (a) Payment for customized living services
23.33 shall be a monthly rate authorized by the lead agency within the parameters established by

24.1 the commissioner. The payment agreement must delineate the amount of each component
24.2 service included in the recipient's customized living service plan. The lead agency, with
24.3 input from the provider of customized living services, shall ensure that there is a documented
24.4 need within the parameters established by the commissioner for all component customized
24.5 living services authorized.

24.6 (b) The payment rate must be based on the amount of component services to be provided
24.7 utilizing component rates established by the commissioner. Counties and tribes shall use
24.8 tools issued by the commissioner to develop and document customized living service plans
24.9 and rates.

24.10 (c) Component service rates must not exceed payment rates for comparable elderly
24.11 waiver or medical assistance services and must reflect economies of scale. Customized
24.12 living services must not include rent or raw food costs.

24.13 (d) With the exception of individuals described in subdivision 3a, paragraph (b), the
24.14 individualized monthly authorized payment for the customized living service plan shall not
24.15 exceed 50 percent of the greater of either the statewide or any of the geographic groups'
24.16 weighted average monthly nursing facility rate of the case mix resident class to which the
24.17 elderly waiver eligible client would be assigned under Minnesota Rules, parts 9549.0051
24.18 to 9549.0059, less the maintenance needs allowance as described in subdivision 1d, paragraph
24.19 (a). Effective on July 1 of the state fiscal year in which the resident assessment system as
24.20 described in section ~~256B.438~~ 256R.17 for nursing home rate determination is implemented
24.21 and July 1 of each subsequent state fiscal year, the individualized monthly authorized
24.22 payment for the services described in this clause shall not exceed the limit which was in
24.23 effect on June 30 of the previous state fiscal year updated annually based on legislatively
24.24 adopted changes to all service rate maximums for home and community-based service
24.25 providers.

24.26 (e) Effective July 1, 2011, the individualized monthly payment for the customized living
24.27 service plan for individuals described in subdivision 3a, paragraph (b), must be the monthly
24.28 authorized payment limit for customized living for individuals classified as case mix A,
24.29 reduced by 25 percent. This rate limit must be applied to all new participants enrolled in
24.30 the program on or after July 1, 2011, who meet the criteria described in subdivision 3a,
24.31 paragraph (b). This monthly limit also applies to all other participants who meet the criteria
24.32 described in subdivision 3a, paragraph (b), at reassessment.

24.33 (f) Customized living services are delivered by a provider licensed by the Department
24.34 of Health as a class A or class F home care provider and provided in a building that is

25.1 registered as a housing with services establishment under chapter 144D. Licensed home
25.2 care providers are subject to section 256B.0651, subdivision 14.

25.3 (g) A provider may not bill or otherwise charge an elderly waiver participant or their
25.4 family for additional units of any allowable component service beyond those available under
25.5 the service rate limits described in paragraph (d), nor for additional units of any allowable
25.6 component service beyond those approved in the service plan by the lead agency.

25.7 (h) Effective July 1, 2016, and each July 1 thereafter, individualized service rate limits
25.8 for customized living services under this subdivision shall be increased by the difference
25.9 between any legislatively adopted home and community-based provider rate increases
25.10 effective on July 1 or since the previous July 1 and the average statewide percentage increase
25.11 in nursing facility operating payment rates under ~~sections 256B.431, 256B.434, and 256B.441~~
25.12 chapter 256R, effective the previous January 1. This paragraph shall only apply if the average
25.13 statewide percentage increase in nursing facility operating payment rates is greater than any
25.14 legislatively adopted home and community-based provider rate increases effective on July
25.15 1, or occurring since the previous July 1.

25.16 Sec. 19. Minnesota Statutes 2016, section 256B.35, subdivision 4, is amended to read:

25.17 Subd. 4. **Field audits required.** The commissioner of human services shall conduct
25.18 field audits at the same time as cost report audits required under section ~~256B.27, subdivision~~
25.19 ~~2a~~ 256R.13, subdivision 1, and at any other time but at least once every four years, without
25.20 notice, to determine whether this section was complied with and that the funds provided
25.21 residents for their personal needs were actually expended for that purpose.

25.22 Sec. 20. Minnesota Statutes 2016, section 256B.431, subdivision 30, is amended to read:

25.23 Subd. 30. **Bed layaway and delicensure.** (a) For rate years beginning on or after July
25.24 1, 2000, a nursing facility reimbursed under this section which has placed beds on layaway
25.25 shall, for purposes of application of the downsizing incentive in subdivision 3a, paragraph
25.26 (c), and calculation of the rental per diem, have those beds given the same effect as if the
25.27 beds had been delicensed so long as the beds remain on layaway. At the time of a layaway,
25.28 a facility may change its single bed election for use in calculating capacity days under
25.29 Minnesota Rules, part 9549.0060, subpart 11. The property payment rate increase shall be
25.30 effective the first day of the month following the month in which the layaway of the beds
25.31 becomes effective under section 144A.071, subdivision 4b.

25.32 (b) For rate years beginning on or after July 1, 2000, notwithstanding any provision to
25.33 the contrary under section 256B.434 or chapter 256R, a nursing facility reimbursed under

26.1 that section or chapter which has placed beds on layaway shall, for so long as the beds
26.2 remain on layaway, be allowed to:

26.3 (1) aggregate the applicable investment per bed limits based on the number of beds
26.4 licensed immediately prior to entering the alternative payment system;

26.5 (2) retain or change the facility's single bed election for use in calculating capacity days
26.6 under Minnesota Rules, part 9549.0060, subpart 11; and

26.7 (3) establish capacity days based on the number of beds immediately prior to the layaway
26.8 and the number of beds after the layaway.

26.9 The commissioner shall increase the facility's property payment rate by the incremental
26.10 increase in the rental per diem resulting from the recalculation of the facility's rental per
26.11 diem applying only the changes resulting from the layaway of beds and clauses (1), (2), and
26.12 (3). If a facility reimbursed under section 256B.434 or chapter 256R completes a moratorium
26.13 exception project after its base year, the base year property rate shall be the moratorium
26.14 project property rate. The base year rate shall be inflated by the factors in section 256B.434,
26.15 subdivision 4, paragraph (c). The property payment rate increase shall be effective the first
26.16 day of the month following the month in which the layaway of the beds becomes effective.

26.17 (c) If a nursing facility removes a bed from layaway status in accordance with section
26.18 144A.071, subdivision 4b, the commissioner shall establish capacity days based on the
26.19 number of licensed and certified beds in the facility not on layaway and shall reduce the
26.20 nursing facility's property payment rate in accordance with paragraph (b).

26.21 (d) For the rate years beginning on or after July 1, 2000, notwithstanding any provision
26.22 to the contrary under section 256B.434 or chapter 256R, a nursing facility reimbursed under
26.23 that section or chapter, which has delicensed beds after July 1, 2000, by giving notice of
26.24 the delicensure to the commissioner of health according to the notice requirements in section
26.25 144A.071, subdivision 4b, shall be allowed to:

26.26 (1) aggregate the applicable investment per bed limits based on the number of beds
26.27 licensed immediately prior to entering the alternative payment system;

26.28 (2) retain or change the facility's single bed election for use in calculating capacity days
26.29 under Minnesota Rules, part 9549.0060, subpart 11; and

26.30 (3) establish capacity days based on the number of beds immediately prior to the
26.31 delicensure and the number of beds after the delicensure.

26.32 The commissioner shall increase the facility's property payment rate by the incremental
26.33 increase in the rental per diem resulting from the recalculation of the facility's rental per

27.1 diem applying only the changes resulting from the delicensure of beds and clauses (1), (2),
27.2 and (3). If a facility reimbursed under section 256B.434 completes a moratorium exception
27.3 project after its base year, the base year property rate shall be the moratorium project property
27.4 rate. The base year rate shall be inflated by the factors in section 256B.434, subdivision 4,
27.5 paragraph (c). The property payment rate increase shall be effective the first day of the
27.6 month following the month in which the delicensure of the beds becomes effective.

27.7 (e) For nursing facilities reimbursed under this section ~~or~~ section 256B.434, or chapter
27.8 256R, any beds placed on layaway shall not be included in calculating facility occupancy
27.9 as it pertains to leave days defined in Minnesota Rules, part 9505.0415.

27.10 (f) For nursing facilities reimbursed under this section ~~or~~ section 256B.434, or chapter
27.11 256R, the rental rate calculated after placing beds on layaway may not be less than the rental
27.12 rate prior to placing beds on layaway.

27.13 (g) A nursing facility receiving a rate adjustment as a result of this section shall comply
27.14 with section ~~256B.47, subdivision 2~~ 256R.06, subdivision 5.

27.15 (h) A facility that does not utilize the space made available as a result of bed layaway
27.16 or delicensure under this subdivision to reduce the number of beds per room or provide
27.17 more common space for nursing facility uses or perform other activities related to the
27.18 operation of the nursing facility shall have its property rate increase calculated under this
27.19 subdivision reduced by the ratio of the square footage made available that is not used for
27.20 these purposes to the total square footage made available as a result of bed layaway or
27.21 delicensure.

27.22 Sec. 21. Minnesota Statutes 2016, section 256B.50, subdivision 1, is amended to read:

27.23 Subdivision 1. **Scope.** A provider may appeal from a determination of a payment rate
27.24 established pursuant to this chapter or allowed costs under ~~section 256B.441~~ chapter 256R
27.25 if the appeal, if successful, would result in a change to the provider's payment rate or to the
27.26 calculation of maximum charges to therapy vendors as provided by section ~~256B.433,~~
27.27 ~~subdivision 3~~ 256R.54. Appeals must be filed in accordance with procedures in this section.
27.28 This section does not apply to a request from a resident or long-term care facility for
27.29 reconsideration of the classification of a resident under section 144.0722.

27.30 Sec. 22. **EFFECTIVE DATE.**

27.31 Sections 1 to 21 are effective the day following final enactment.