

A bill for an act

relating to human services; providing long-term care rate adjustments; providing funding for long-term care employee health insurance costs; modifying MinnesotaCare eligibility for long-term care employees; requiring development of a new nursing facility rate rebasing methodology; requiring a study of direct care staffing; amending Minnesota Statutes 2006, sections 256B.434, by adding a subdivision; 256B.441, by adding a subdivision; 256B.5012, by adding a subdivision; 256L.07, subdivision 2; Minnesota Statutes 2007 Supplement, sections 256B.434, subdivision 19; 256B.441, subdivisions 1, 50, 51a; 256B.5012, subdivision 7; Laws 2007, chapter 147, article 7, section 71; repealing Minnesota Statutes 2007 Supplement, section 256B.441, subdivisions 55, 56.

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

Section 1. Minnesota Statutes 2007 Supplement, section 256B.434, subdivision 19, is amended to read:

Subd. 19. **Nursing facility rate increases beginning October 1, 2007, and October 1, 2008.** (a) For the rate year beginning October 1, 2007, the commissioner shall make available to each nursing facility reimbursed under this section operating payment rate adjustments equal to 1.87 percent of the operating payment rates in effect on September 30, 2007. For the rate year beginning October 1, 2008, the commissioner shall make available to each nursing facility reimbursed under this section, operating payment rate adjustments equal to 5.0 percent of the operating payment rates in effect on September 30, 2008.

(b) Seventy-five percent of the money resulting from the rate adjustment under paragraph (a) must be used for increases in compensation-related costs for employees directly employed by the nursing facility on or after the effective date of the rate adjustment, except:

(1) the administrator;

(2) persons employed in the central office of a corporation that has an ownership interest in the nursing facility or exercises control over the nursing facility; and

(3) persons paid by the nursing facility under a management contract.

(c) Two-thirds of the money available under paragraph (b) must be used for wage increases for all employees directly employed by the nursing facility on or after the effective date of the rate adjustment, except those listed in paragraph (b), clauses (1) to (3). The wage adjustment that employees receive under this paragraph must be paid as an equal hourly percentage wage increase for all eligible employees. All wage increases under this paragraph must be effective on the same date. Only costs associated with the portion of the equal hourly percentage wage increase that goes to all employees shall qualify under this paragraph. Costs associated with wage increases in excess of the amount of the equal hourly percentage wage increase provided to all employees shall be allowed only for meeting the requirements in paragraph (b). This paragraph shall not apply to employees covered by a collective bargaining agreement.

(d) The commissioner shall allow as compensation-related costs all costs for:

(1) wages and salaries;

(2) FICA taxes, Medicare taxes, state and federal unemployment taxes, and workers' compensation;

(3) the employer's share of health and dental insurance, life insurance, disability insurance, long-term care insurance, uniform allowance, and pensions; and

(4) other benefits provided, subject to the approval of the commissioner.

(e) The portion of the rate adjustment under paragraph (a) that is not subject to the requirements in paragraphs (b) and (c) shall be provided to nursing facilities effective October 1, 2007, or October 1, 2008, as applicable.

(f) Nursing facilities may apply for the portion of the rate adjustment under paragraph (a) that is subject to the requirements in paragraphs (b) and (c). The application must be submitted to the commissioner within six months of the effective date of the rate adjustment, and the nursing facility must provide additional information required by the commissioner within nine months of the effective date of the rate adjustment. The commissioner must respond to all applications within three weeks of receipt. The commissioner may waive the deadlines in this paragraph under extraordinary circumstances, to be determined at the sole discretion of the commissioner. The application must contain:

(1) an estimate of the amounts of money that must be used as specified in paragraphs (b) and (c);

(2) a detailed distribution plan specifying the allowable compensation-related and wage increases the nursing facility will implement to use the funds available in clause (1);

(3) a description of how the nursing facility will notify eligible employees of the contents of the approved application, which must provide for giving each eligible employee a copy of the approved application, excluding the information required in clause (1), or posting a copy of the approved application, excluding the information required in clause (1), for a period of at least six weeks in an area of the nursing facility to which all eligible employees have access; and

(4) instructions for employees who believe they have not received the compensation-related or wage increases specified in clause (2), as approved by the commissioner, and which must include a mailing address, e-mail address, and the telephone number that may be used by the employee to contact the commissioner or the commissioner's representative.

(g) The commissioner shall ensure that cost increases in distribution plans under paragraph (f), clause (2), that may be included in approved applications, comply with the following requirements:

(1) costs to be incurred during the applicable rate year resulting from wage and salary increases effective after October 1, 2006, and prior to the first day of the nursing facility's payroll period that includes October 1, ~~2007~~ of each year, shall be allowed if they were not used in the prior year's application;

(2) a portion of the costs resulting from tenure-related wage or salary increases may be considered to be allowable wage increases, according to formulas that the commissioner shall provide, where employee retention is above the average statewide rate of retention of direct care employees;

(3) the annualized amount of increases in costs for the employer's share of health and dental insurance, life insurance, disability insurance, and workers' compensation shall be allowable compensation-related increases if they are effective on or after April 1, ~~2007~~, of the year in which the rate adjustments are effective and prior to April 1, ~~2008~~ of the following year; and

(4) for nursing facilities in which employees are represented by an exclusive bargaining representative, the commissioner shall approve the application only upon receipt of a letter of acceptance of the distribution plan, in regard to members of the bargaining unit, signed by the exclusive bargaining agent and dated after May 25, 2007. Upon receipt of the letter of acceptance, the commissioner shall deem all requirements of this section as having been met in regard to the members of the bargaining unit.

(h) The commissioner shall review applications received under paragraph (f) and shall provide the portion of the rate adjustment under paragraphs (b) and (c) if the requirements of this subdivision have been met. The rate adjustment shall be effective October 1. Notwithstanding paragraph (a), if the approved application distributes less money than is available, the amount of the rate adjustment shall be reduced so that the amount of money made available is equal to the amount to be distributed.

Sec. 2. Minnesota Statutes 2006, section 256B.434, is amended by adding a subdivision to read:

Subd. 21. **Nursing facility employee health insurance costs.** (a) For the period between October 1, 2008, and September 30, 2010, the commissioner shall provide to each nursing facility reimbursed under this section or any other section a health insurance per diem of cents to the total operating payment rate, to be used by the facility to purchase private sector health insurance coverage for employees.

(b) A facility receiving the health insurance per diem shall report to the commissioner, in the form and manner specified by the commissioner, a calculation of the health insurance per diem, including: the amount received from this rate adjustment, the type and cost of health insurance coverage purchased, the number of persons for whom health coverage was purchased, a calculation of the per diem amount of health coverage costs based on actual resident days, and other information as required by the commissioner.

(c) On October 1, 2010, the commissioner shall remove the health insurance per diem from the total operating payment rate of each facility.

(d) For rate periods and rate years beginning on or after October 1, 2010, the commissioner shall provide to each facility the health insurance per diem as determined by using the methods in paragraph (b) and the most recently reported information, subject to an upper limit determined by the commissioner, based on the results of the study of health coverage for long-term care workers required by section 13.

Sec. 3. Minnesota Statutes 2007 Supplement, section 256B.441, subdivision 1, is amended to read:

Subdivision 1. **Rebasing of nursing facility operating cost payment rates.** (a) The commissioner shall rebase nursing facility operating cost payment rates to align payments to facilities with the cost of providing care, only upon authorization in law as required by subdivision 1a. The rebased operating cost payment rates shall be calculated using the statistical and cost report filed by each nursing facility for the report period ending one year prior to the rate year.

H.F. No. 3400, 1st Engrossment - 2007-2008th Legislative Session (2007-2008)

~~(b) The new operating cost payment rates based on this section shall take effect beginning with the rate year beginning October 1, 2008, and shall be phased in over eight rate years through October 1, 2015.~~

~~(c) Operating cost payment rates shall be rebased on October 1, 2016, and every two years after that date.~~

~~(d)~~ (b) Each cost reporting year shall begin on October 1 and end on the following September 30. Beginning in 2006, a statistical and cost report shall be filed by each nursing facility by January 15. Notice of rates shall be distributed by August 15 and the rates shall go into effect on October 1 for one year.

~~(e)~~ (c) Effective October 1, 2014 upon full implementation of rebased operating cost payment rates, property rates shall be rebased in accordance with section 256B.431 and Minnesota Rules, chapter 9549. The commissioner shall determine what the property payment rate for a nursing facility would be had the facility not had its property rate determined under section 256B.434. The commissioner shall allow nursing facilities to provide information affecting this rate determination that would have been filed annually under Minnesota Rules, chapter 9549, and nursing facilities shall report information necessary to determine allowable debt. The commissioner shall use this information to determine the property payment rate.

Sec. 4. Minnesota Statutes 2006, section 256B.441, is amended by adding a subdivision to read:

Subd. 1a. **Prohibition on implementation.** The commissioner is prohibited from rebasing nursing facility payment rates, and from implementing any provision of this section related to rebasing, without specific authorization in law.

Sec. 5. Minnesota Statutes 2007 Supplement, section 256B.441, subdivision 50, is amended to read:

Subd. 50. **Determination of total care-related limit.** (a) The limit on the total care-related per diem shall be determined for each peer group and facility type group combination. A facility's total care-related per diems shall be limited to 120 percent of the median for the facility's peer and facility type group. The facility-specific direct care costs used in making this comparison and in the calculation of the median shall be based on a RUG's weight of 1.00. A facility that is above that limit shall have its total care-related per diem reduced to the limit. If a reduction of the total care-related per diem is necessary because of this limit, the reduction shall be made proportionally to both the direct care per diem and the other care-related per diem.

(b) ~~Beginning with rates determined for October 1, 2016~~ Effective upon full implementation of rebased operating cost payment rates, the total care-related limit shall be a variable amount based on each facility's quality score, as determined under section 256B.441, subdivision 44, in accordance with clauses (1) to (4):

(1) for each facility, the commissioner shall determine the quality score, subtract 40, divide by 40, and convert to a percentage;

(2) if the value determined in clause (1) is less than zero, the total care-related limit shall be 105 percent of the median for the facility's peer and facility type group;

(3) if the value determined in clause (1) is greater than 100 percent, the total care-related limit shall be 125 percent of the median for the facility's peer and facility type group; and

(4) if the value determined in clause (1) is greater than zero and less than 100 percent, the total care-related limit shall be 105 percent of the median for the facility's peer and facility type group plus one-fifth of the percentage determined in clause (1).

Sec. 6. Minnesota Statutes 2007 Supplement, section 256B.441, subdivision 51a, is amended to read:

Subd. 51a. **Exception allowing contracting for specialized care.** (a) ~~For rate years beginning on or after October 1, 2016~~ Effective upon full implementation of rebased operating cost payment rates, the commissioner may negotiate increases to the care-related limit for nursing facilities that provide specialized care, at a cost to the general fund not to exceed \$600,000 per year. The commissioner shall publish a request for proposals annually, and may negotiate increases to the limits that shall apply for either one or two years before the increase shall be subject to a new proposal and negotiation. The care-related limit may be increased by up to 50 percent.

(b) In selecting facilities with which to negotiate, the commissioner shall consider:

(1) the diagnoses or other circumstances of residents in the specialized program that require care that costs substantially more than the RUG's rates associated with those residents;

(2) the nature of the specialized program or programs offered to meet the needs of these individuals; and

(3) outcomes achieved by the specialized program.

Sec. 7. Minnesota Statutes 2007 Supplement, section 256B.5012, subdivision 7, is amended to read:

Subd. 7. ICF/MR rate increases effective October 1, 2007, and October 1, 2008.

(a) For the rate year beginning October 1, 2007, the commissioner shall make available to each facility reimbursed under this section operating payment rate adjustments equal to 2.0 percent of the operating payment rates in effect on September 30, 2007. For the rate year beginning July 1, 2008, the commissioner shall make available to each facility reimbursed under this section operating payment rate adjustments equal to ~~2.0~~ 5.0 percent of the operating payment rates in effect on June 30, 2008. For each facility, the commissioner shall make available an adjustment, based on occupied beds, using the percentage specified in this paragraph multiplied by the total payment rate, including the variable rate but excluding the property-related payment rate, in effect on the preceding day. The total payment rate shall include the adjustment provided in section 256B.501, subdivision 12. A facility whose payment rates are governed by closure agreements, receivership agreements, or Minnesota Rules, part 9553.0075, is not eligible for an adjustment otherwise granted under this subdivision.

(b) Seventy-five percent of the money resulting from the rate adjustments under paragraph (a) must be used for increases in compensation-related costs for employees directly employed by the facility on or after the effective date of the rate adjustments, except:

- (1) the administrator;
- (2) persons employed in the central office of a corporation that has an ownership interest in the facility or exercises control over the facility; and
- (3) persons paid by the facility under a management contract.

(c) Two-thirds of the money available under paragraph (b) must be used for wage increases for all employees directly employed by the facility on or after the effective date of the rate adjustments, except those listed in paragraph (b), clauses (1) to (3). The wage adjustment that employees receive under this paragraph must be paid as an equal hourly percentage wage increase for all eligible employees. All wage increases under this paragraph must be effective on the same date. Only costs associated with the portion of the equal hourly percentage wage increase that goes to all employees shall qualify under this paragraph. Costs associated with wage increases in excess of the amount of the equal hourly percentage wage increase provided to all employees shall be allowed only for meeting the requirements in paragraph (b). This paragraph shall not apply to employees covered by a collective bargaining agreement.

(d) The commissioner shall allow as compensation-related costs all costs for:

- (1) wages and salaries;

(2) FICA taxes, Medicare taxes, state and federal unemployment taxes, and workers' compensation;

(3) the employer's share of health and dental insurance, life insurance, disability insurance, long-term care insurance, uniform allowance, and pensions; and

(4) other benefits provided, subject to the approval of the commissioner.

(e) The portion of the rate adjustments under paragraph (a) that is not subject to the requirements in paragraphs (b) and (c) shall be provided to facilities effective October 1 of each year.

(f) Facilities may apply for the portion of the rate adjustments under paragraph (a) that is subject to the requirements in paragraphs (b) and (c). The application must be submitted to the commissioner within six months of the effective date of the rate adjustments, and the facility must provide additional information required by the commissioner within nine months of the effective date of the rate adjustments. The commissioner must respond to all applications within three weeks of receipt. The commissioner may waive the deadlines in this paragraph under extraordinary circumstances, to be determined at the sole discretion of the commissioner. The application must contain:

(1) an estimate of the amounts of money that must be used as specified in paragraphs (b) and (c);

(2) a detailed distribution plan specifying the allowable compensation-related and wage increases the facility will implement to use the funds available in clause (1);

(3) a description of how the facility will notify eligible employees of the contents of the approved application, which must provide for giving each eligible employee a copy of the approved application, excluding the information required in clause (1), or posting a copy of the approved application, excluding the information required in clause (1), for a period of at least six weeks in an area of the facility to which all eligible employees have access; and

(4) instructions for employees who believe they have not received the compensation-related or wage increases specified in clause (2), as approved by the commissioner, and which must include a mailing address, e-mail address, and the telephone number that may be used by the employee to contact the commissioner or the commissioner's representative.

(g) The commissioner shall ensure that cost increases in distribution plans under paragraph (f), clause (2), that may be included in approved applications, comply with requirements in clauses (1) to (4):

(1) costs to be incurred during the applicable rate year resulting from wage and salary increases effective after October 1, 2006, and prior to the first day of the facility's payroll period that includes October 1 of each year shall be allowed if they were not used in the prior year's application and they meet the requirements of paragraphs (b) and (c);

(2) a portion of the costs resulting from tenure-related wage or salary increases may be considered to be allowable wage increases, according to formulas that the commissioner shall provide, where employee retention is above the average statewide rate of retention of direct care employees;

(3) the annualized amount of increases in costs for the employer's share of health and dental insurance, life insurance, disability insurance, and workers' compensation shall be allowable compensation-related increases if they are effective on or after April 1 of the year in which the rate adjustments are effective and prior to April 1 of the following year; and

(4) for facilities in which employees are represented by an exclusive bargaining representative, the commissioner shall approve the application only upon receipt of a letter of acceptance of the distribution plan, as regards members of the bargaining unit, signed by the exclusive bargaining agent and dated after May 25, 2007. Upon receipt of the letter of acceptance, the commissioner shall deem all requirements of this section as having been met in regard to the members of the bargaining unit.

(h) The commissioner shall review applications received under paragraph (f) and shall provide the portion of the rate adjustments under paragraphs (b) and (c) if the requirements of this subdivision have been met. The rate adjustments shall be effective October 1 of each year. Notwithstanding paragraph (a), if the approved application distributes less money than is available, the amount of the rate adjustment shall be reduced so that the amount of money made available is equal to the amount to be distributed.

Sec. 8. Minnesota Statutes 2006, section 256B.5012, is amended by adding a subdivision to read:

Subd. 8. ICF/MR employee health insurance costs. (a) For the period between July 1, 2008, and June 30, 2009, the commissioner shall provide to each ICF/MR facility reimbursed under this section, or any other section, a health insurance per diem of ... cents to the total operating payment rate, to be used by the facility to purchase private sector health insurance coverage for employees.

(b) A facility receiving the health insurance per diem shall annually report to the commissioner, in the form and manner specified by the commissioner, a calculation of the health insurance per diem, including: the amount received from this rate adjustment, the

type and cost of health insurance coverage purchased, the number of persons for whom health coverage was purchased, a calculation of the per diem amount of health coverage costs based on actual resident days, and other information required by the commissioner.

(c) On July 1, 2009, the commissioner shall remove the health insurance per diem from the total operating payment rate of each facility.

(d) For rate periods and rate years beginning on or after July 1, 2009, the commissioner shall provide to each facility the health insurance per diem as determined by using the methods in paragraph (b) and the most recently reported information, subject to an upper limit determined by the commissioner, based on the results of the study of health coverage for long-term care workers required by section 13.

Sec. 9. Minnesota Statutes 2006, section 256L.07, subdivision 2, is amended to read:

Subd. 2. **Must not have access to employer-subsidized coverage.** (a) To be eligible, a family or individual must not have access to subsidized health coverage through an employer and must not have had access to employer-subsidized coverage through a current employer for 18 months prior to application or reapplication. A family or individual whose employer-subsidized coverage is lost due to an employer terminating health care coverage as an employee benefit during the previous 18 months is not eligible.

(b) This subdivision does not apply to a family or individual who was enrolled in MinnesotaCare within six months or less of reapplication and who no longer has employer-subsidized coverage due to the employer terminating health care coverage as an employee benefit.

(c) For purposes of this requirement, subsidized health coverage means health coverage for which the employer pays at least 50 percent of the cost of coverage for the employee or dependent, or a higher percentage as specified by the commissioner. Children are eligible for employer-subsidized coverage through either parent, including the noncustodial parent. The commissioner must treat employer contributions to Internal Revenue Code Section 125 plans and any other employer benefits intended to pay health care costs as qualified employer subsidies toward the cost of health coverage for employees for purposes of this subdivision.

(d) The commissioner, for the period between July 1, 2008, and June 30, 2009, shall exempt a family or individual from this subdivision if access to employer-subsidized insurance is through employment at: (1) a nursing facility licensed under chapter 144A that participates in the medical assistance program; (2) a service provider eligible for a rate increase provided under Laws 2007, chapter 147, article 7, section 71; or (3) an ICF/MR reimbursed under sections 256B.5011 to 256B.5015.

11.1 **EFFECTIVE DATE.** This section is effective July 1, 2008, or upon federal
11.2 approval, whichever is later. The commissioner of human services shall inform the revisor
11.3 of statutes when federal approval is obtained.

11.4 Sec. 10. Laws 2007, chapter 147, article 7, section 71, is amended to read:

11.5 Sec. 71. **PROVIDER RATE INCREASES.**

11.6 (a) The commissioner of human services shall increase allocations, reimbursement
11.7 rates, or rate limits, as applicable, by 2.0 percent beginning October 1, 2007, and by ~~2.0~~
11.8 5.0 percent beginning July 1, 2008, effective for services rendered on or after those dates.
11.9 County contracts for services specified in this section must be amended to pass through
11.10 these rate adjustments within 60 days of the effective date of the increase and must be
11.11 retroactive from the effective date of the rate adjustment.

11.12 (b) The annual rate increases described in this section must be provided to:

11.13 (1) home and community-based waived services for persons with developmental
11.14 disabilities or related conditions, including consumer-directed community supports, under
11.15 Minnesota Statutes, section 256B.501;

11.16 (2) home and community-based waived services for the elderly, including
11.17 consumer-directed community supports, under Minnesota Statutes, section 256B.0915;

11.18 (3) waived services under community alternatives for disabled individuals,
11.19 including consumer-directed community supports, under Minnesota Statutes, section
11.20 256B.49;

11.21 (4) community alternative care waived services, including consumer-directed
11.22 community supports, under Minnesota Statutes, section 256B.49;

11.23 (5) traumatic brain injury waived services, including consumer-directed
11.24 community supports, under Minnesota Statutes, section 256B.49;

11.25 (6) nursing services and home health services under Minnesota Statutes, section
11.26 256B.0625, subdivision 6a;

11.27 (7) personal care services and qualified professional supervision of personal care
11.28 services under Minnesota Statutes, section 256B.0625, subdivision 19a;

11.29 (8) private duty nursing services under Minnesota Statutes, section 256B.0625,
11.30 subdivision 7;

11.31 (9) day training and habilitation services for adults with developmental disabilities
11.32 or related conditions under Minnesota Statutes, sections 252.40 to 252.46, including the
11.33 additional cost of rate adjustments on day training and habilitation services, provided as a
11.34 social service under Minnesota Statutes, section 256M.60;

11.35 (10) alternative care services under Minnesota Statutes, section 256B.0913;

H.F. No. 3400, 1st Engrossment - 2007-2008th Legislative Session (2007-2008)

- 12.1 (11) adult residential program grants under Minnesota Statutes, section 245.73;
- 12.2 (12) children's community-based mental health services grants and adult community
- 12.3 support and case management services grants under Minnesota Rules, parts 9535.1700
- 12.4 to 9535.1760;
- 12.5 (13) the group residential housing supplementary service rate under Minnesota
- 12.6 Statutes, section 256I.05, subdivision 1a;
- 12.7 (14) adult mental health integrated fund grants under Minnesota Statutes, section
- 12.8 245.4661;
- 12.9 (15) semi-independent living services (SILS) under Minnesota Statutes, section
- 12.10 252.275, including SILS funding under county social services grants formerly funded
- 12.11 under Minnesota Statutes, chapter 256I;
- 12.12 (16) community support services for deaf and hard-of-hearing adults with mental
- 12.13 illness who use or wish to use sign language as their primary means of communication
- 12.14 under Minnesota Statutes, section 256.01, subdivision 2; and deaf and hard-of-hearing
- 12.15 grants under Minnesota Statutes, sections 256C.233 and 256C.25; Laws 1985, chapter 9,
- 12.16 article 1; and Laws 1997, First Special Session chapter 5, section 20;
- 12.17 (17) living skills training programs for persons with intractable epilepsy who need
- 12.18 assistance in the transition to independent living under Laws 1988, chapter 689;
- 12.19 (18) physical therapy services under sections 256B.0625, subdivision 8, and
- 12.20 256D.03, subdivision 4;
- 12.21 (19) occupational therapy services under sections 256B.0625, subdivision 8a, and
- 12.22 256D.03, subdivision 4;
- 12.23 (20) speech-language therapy services under section 256D.03, subdivision 4, and
- 12.24 Minnesota Rules, part 9505.0390;
- 12.25 (21) respiratory therapy services under section 256D.03, subdivision 4, and
- 12.26 Minnesota Rules, part 9505.0295;
- 12.27 (22) adult rehabilitative mental health services under section 256B.0623;
- 12.28 (23) children's therapeutic services and support services under section 256B.0943;
- 12.29 (24) tier I chemical health services under Minnesota Statutes, chapter 254B;
- 12.30 (25) consumer support grants under Minnesota Statutes, section 256.476;
- 12.31 (26) family support grants under Minnesota Statutes, section 252.32;
- 12.32 (27) grants for case management services to persons with HIV or AIDS under
- 12.33 Minnesota Statutes, section 256.01, subdivision 19; and
- 12.34 (28) aging grants under Minnesota Statutes, sections 256.975 to 256.977, 256B.0917,
- 12.35 and 256B.0928.

(c) For services funded through Minnesota disability health options, the rate increases under this section apply to all medical assistance payments, including former group residential housing supplementary rates under Minnesota Statutes, chapter 256I.

(d) The commissioner may recoup payments made under this section from a provider that does not comply with paragraphs (f) and (g).

(e) A managed care plan receiving state payments for the services in this section must include these increases in their payments to providers on a prospective basis, effective on January 1 following the effective date of the rate increase.

(f) Providers that receive a rate increase under ~~this section~~ paragraph (a) shall use 75 percent of the additional revenue to increase compensation-related costs for employees directly employed by the program on or after the effective date of the rate adjustments, except:

(1) the administrator;

(2) persons employed in the central office of a corporation or entity that has an ownership interest in the provider or exercises control over the provider; and

(3) persons paid by the provider under a management contract.

Compensation-related costs include: wages and salaries; FICA taxes, Medicare taxes, state and federal unemployment taxes, and workers' compensation; and the employer's share of health and dental insurance, life insurance, disability insurance, long-term care insurance, uniform allowance, and pensions.

(g) Two-thirds of the money available under paragraph (f) must be used for wage increases for all employees directly employed by the provider on or after the effective date of the rate adjustments, except those listed in paragraph (f), clauses (1) to (3). The wage adjustment that employees receive under this paragraph must be paid as an equal hourly percentage wage increase for all eligible employees. All wage increases under this paragraph must be effective on the same date. This paragraph shall not apply to employees covered by a collective bargaining agreement.

(h) For public employees, the increase for wages and benefits for certain staff is available and pay rates must be increased only to the extent that they comply with laws governing public employees collective bargaining. Money received by a provider for pay increases under this section may be used only for increases implemented on or after the first day of the rate period in which the increase is available and must not be used for increases implemented prior to that date.

(i) The commissioner shall amend state grant contracts that include direct personnel-related grant expenditures to include the allocation for the portion of the contract that is employee compensation related. Grant contracts for compensation-related services

14.1 must be amended to pass through these adjustments within 60 days of the effective date of
14.2 the increase and must be retroactive to the effective date of the rate adjustment.

14.3 (j) The Board on Aging and its Area Agencies on Aging shall amend their
14.4 grants that include direct personnel-related grant expenditures to include the rate
14.5 adjustment for the portion of the grant that is employee compensation related. Grants
14.6 for compensation-related services must be amended to pass through these adjustments
14.7 within 60 days of the effective date of the increase and must be retroactive to the effective
14.8 date of the rate adjustment.

14.9 (k) The calendar year 2008 rate for vendors reimbursed under Minnesota Statutes,
14.10 chapter 254B, shall be at least 2.0 percent above the rate in effect on January 1, 2007.
14.11 The calendar year 2009 rate shall be at least ~~2.0~~ 5.0 percent above the rate in effect on
14.12 January 1, 2008.

14.13 (l) Providers that receive a rate adjustment under paragraph (a) that is subject to
14.14 paragraphs (f) and (g) shall provide to the commissioner, and those counties with whom
14.15 they have a contract, within six months after the effective date of each rate adjustment, a
14.16 letter, in a format specified by the commissioner, that provides assurances that the provider
14.17 has developed and implemented a compensation plan and complied with paragraphs (f)
14.18 and (g). The provider shall keep on file, and produce for the commissioner or county
14.19 upon request, its plan, which must specify:

14.20 (1) an estimate of the amounts of money that must be used as specified in paragraphs
14.21 (f) and (g); and

14.22 (2) a detailed distribution plan specifying the allowable compensation-related and
14.23 wage increases the provider will implement to use the funds available in clause (1).

14.24 (m) Within six months after the effective date of each rate adjustment, the provider
14.25 shall post this plan, excluding the information required in paragraph (l), clause (1), for
14.26 a period of at least six weeks in an area of the provider's operation to which all eligible
14.27 employees have access and provide instructions for employees who believe they have
14.28 not received the wage and other compensation-related increases specified in paragraph
14.29 (l), clause (2). Instructions must include a mailing address, e-mail address, and the
14.30 telephone number that may be used by the employee to contact the commissioner or the
14.31 commissioner's representative. Providers shall also make assurances to the commissioner
14.32 and counties with whom they have a contract that they have complied with the requirement
14.33 in this paragraph.

14.34 (n) Beginning July 1, 2008, the commissioner shall provide a rate adjustment of
14.35 percent for employee health insurance costs for the providers of the services listed in
14.36 paragraph (b). County contracts for services specified in this section must be amended to

15.1 pass through this rate adjustment within 60 days of the effective date of the increase and
15.2 must be retroactive from the date of the rate adjustment. This rate adjustment is in addition
15.3 to the increase provided in paragraph (a) and shall be calculated after determination of
15.4 the rate increase provided by that paragraph. In order to receive the increase, providers
15.5 must document use of the increase in the form and manner specified by the commissioner.
15.6 The commissioner may recoup from providers any portion of the increase not used to
15.7 provide employee health insurance coverage.

15.8 Sec. 11. **REBASING.**

15.9 It is the intent of the legislature to establish in law a revised rebasing methodology
15.10 for nursing facility rates during the 2009 legislative session. Prior to enactment of a revised
15.11 rebasings methodology, the chairs of the house and senate committees with jurisdiction over
15.12 health care policy and financing shall hold committee hearings to allow representatives of
15.13 nursing facility and other long-term care service providers, consumers, and employees,
15.14 representatives of the commissioners of human services and health, and other interested
15.15 parties, to present recommendations for rebasing methods and objectives, including
15.16 recommendations on whether the rebasing of nursing facility rates should be accompanied
15.17 by the rebasing of rates for home and community-based long-term care providers.

15.18 Sec. 12. **STAFFING CRITERIA.**

15.19 The commissioners of human services and health shall convene a working group of
15.20 consumers, nursing facility providers, and nursing facility employees, to: (1) review the
15.21 definitions of nursing facility direct care staff in Minnesota Statutes, Minnesota Rules,
15.22 and agency bulletins; (2) determine how to standardize definitions to allow the public to
15.23 compare direct care staffing across facilities; and (3) examine how new and emerging
15.24 staff positions and titles, including but not limited to "resident assistant," should be
15.25 incorporated over time into direct care staffing. The commissioners shall present working
15.26 group recommendations to the legislature by December 15, 2008.

15.27 Sec. 13. **HEALTH COVERAGE FOR LONG-TERM CARE WORKERS.**

15.28 The commissioner of human services, in consultation with long-term care providers
15.29 and their employees, and other stakeholders, shall determine the cost of a rate increase to
15.30 long-term care employers to be used to purchase employee health insurance in the private
15.31 insurance market, and shall present this cost estimate to the legislature by December 15,
15.32 2008. For purposes of this section, "long-term care providers" means nursing facilities,
15.33 intermediate care facilities for persons with developmental disabilities, and service

H.F. No. 3400, 1st Engrossment - 2007-2008th Legislative Session (2007-2008)

16.1 providers eligible for a rate increase provided under Laws 2007, chapter 147, article
16.2 7, section 71. The commissioner shall collect, from long-term care providers, the data
16.3 necessary to determine the cost of a future rate increase to long-term care employers for
16.4 the purchase of employee health insurance. The data to be collected must include, but is
16.5 not limited to, the number of full-time and part-time long-term care workers, their claims
16.6 patterns and histories, and the current levels of employer investment in health insurance.
16.7 Long-term care providers shall submit the data in the form and manner specified by the
16.8 commissioner.

16.9 Sec. 14. **USE OF REBASING APPROPRIATION.**

16.10 The commissioner of human services shall use money appropriated for fiscal year
16.11 2009 for the phase-in of rebased operating payment rates under Minnesota Statutes,
16.12 section 256B.441, subdivision 55, that is not spent due to the delay in implementing
16.13 rebasings, to provide rate adjustments to long-term care providers as provided in this act.

16.14 Sec. 15. **REPEALER.**

16.15 Minnesota Statutes 2007 Supplement, section 256B.441, subdivisions 55 and 56, are
16.16 repealed.

256B.441 VALUE-BASED NURSING FACILITY REIMBURSEMENT SYSTEM.

Subd. 55. **Phase-in of rebased operating cost payment rates.** (a) For the rate years beginning October 1, 2008, to October 1, 2012, the operating cost payment rate calculated under this section shall be phased in by blending the operating cost rate with the operating cost payment rate determined under section 256B.434. For the rate year beginning October 1, 2008, the operating cost payment rate for each facility shall be 13 percent of the operating cost payment rate from this section, and 87 percent of the operating cost payment rate from section 256B.434. For the rate year beginning October 1, 2009, the operating cost payment rate for each facility shall be 14 percent of the operating cost payment rate from this section, and 86 percent of the operating cost payment rate from section 256B.434. For the rate year beginning October 1, 2010, the operating cost payment rate for each facility shall be 14 percent of the operating cost payment rate from this section, and 86 percent of the operating cost payment rate from section 256B.434. For the rate year beginning October 1, 2011, the operating cost payment rate for each facility shall be 31 percent of the operating cost payment rate from this section, and 69 percent of the operating cost payment rate from section 256B.434. For the rate year beginning October 1, 2012, the operating cost payment rate for each facility shall be 48 percent of the operating cost payment rate from this section, and 52 percent of the operating cost payment rate from section 256B.434. For the rate year beginning October 1, 2013, the operating cost payment rate for each facility shall be 65 percent of the operating cost payment rate from this section, and 35 percent of the operating cost payment rate from section 256B.434. For the rate year beginning October 1, 2014, the operating cost payment rate for each facility shall be 82 percent of the operating cost payment rate from this section, and 18 percent of the operating cost payment rate from section 256B.434. For the rate year beginning October 1, 2015, the operating cost payment rate for each facility shall be the operating cost payment rate determined under this section. The blending of operating cost payment rates under this section shall be performed separately for each RUG's class.

(b) A portion of the funds received under this subdivision that are in excess of operating cost payment rates that a facility would have received under section 256B.434, as determined in accordance with clauses (1) to (3), shall be subject to the requirements in section 256B.434, subdivision 19, paragraphs (b) to (h).

(1) Determine the amount of additional funding available to a facility, which shall be equal to total medical assistance resident days from the most recent reporting year times the difference between the blended rate determined in paragraph (a) for the rate year being computed and the blended rate for the prior year.

(2) Determine the portion of all operating costs, for the most recent reporting year, that are compensation related. If this value exceeds 75 percent, use 75 percent.

(3) Subtract the amount determined in clause (2) from 75 percent.

(4) The portion of the fund received under this subdivision that shall be subject to the requirements in section 256B.434, subdivision 19, paragraphs (b) to (h), shall equal the amount determined in clause (1) times the amount determined in clause (3).

Subd. 56. **Hold harmless.** For the rate years beginning October 1, 2008, to October 1, 2016, no nursing facility shall receive an operating cost payment rate less than its operating cost payment rate under section 256B.434. The comparison of operating cost payment rates under this section shall be made for a RUG's rate with a weight of 1.00.