A bill for an act

relating to health and human services; clarifying hospital root cause analysis requirements; clarifying Minnesota Board of Nursing investigations; prohibiting hospital payment for certain hospital-acquired conditions and treatments; requiring a report; amending Minnesota Statutes 2008, sections 144.7065, subdivisions 8, 10; 256.969, by adding a subdivision.

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

Section 1. Minnesota Statutes 2008, section 144.7065, subdivision 8, is amended to read:

Subd. 8. **Root cause analysis; corrective action plan.** (a) Following the occurrence of an adverse health care event, the facility must conduct a root cause analysis of the event. Following the analysis, the facility must: (1) implement a corrective action plan to implement the findings of the analysis or (2) report to the commissioner any reasons for not taking corrective action. If the root cause analysis and the implementation of a corrective action plan are complete at the time an event must be reported, the findings of the analysis and the corrective action plan must be included in the report of the event. The findings of the root cause analysis and a copy of the corrective action plan must otherwise be filed with the commissioner within 60 days of the event.

(b) In conducting the root cause analysis of the event, the facility must consider as a factor the staffing levels and the impact of those staffing levels on the event. Factors that must be examined when considering staffing levels include, but are not limited to, the following:

(1) number of patients assigned to each registered nurse in the unit or department where the patient was receiving care at the time of the event;

(2) skill mix and the level of experience of the nursing staff, including registered nurses, licensed practical nurses, nursing assistants, and the temporary or pool staff available at the time the event occurred;

(3) acuity of patients in the unit or department where the event occurred; and

(4) nursing intensity as a measure of nursing care resources needed in the unit or department where the event occurred. For purposes of this subdivision, "nursing intensity" means a patient-specific, not diagnosis-specific, measurement of nursing care resources expended during a patient's hospitalization. A measurement of nursing intensity includes the complexity of care required for a patient and the knowledge and skill needed by a nurse for surveillance of patients in order to make continuous, appropriate clinical decisions in the care of the patients.

Sec. 2. Minnesota Statutes 2008, section 144.7065, subdivision 10, is amended to read:

Subd. 10. **Relation to other law; data classification.** (a) Adverse health events described in subdivisions 2 to 6 do not constitute "maltreatment," "neglect," or "a physical injury that is not reasonably explained" under section 626.556 or 626.557 and are excluded from the reporting requirements of sections 626.556 and 626.557, provided the facility makes a determination within 24 hours of the discovery of the event that this section is applicable and the facility files the reports required under this section in a timely fashion.

(b) A facility that has determined that an event described in subdivisions 2 to 6 has occurred must inform persons who are mandated reporters under section 626.556, subdivision 3, or 626.5572, subdivision 16, of that determination. A mandated reporter otherwise required to report under section 626.556, subdivision 3, or 626.557, subdivision 3, paragraph (e), is relieved of the duty to report an event that the facility determines under paragraph (a) to be reportable under subdivisions 2 to 6.

(c) The protections and immunities applicable to voluntary reports under sections 626.556 and 626.557 are not affected by this section.

(d) Notwithstanding section 626.556, 626.557, or any other provision of Minnesota statute or rule to the contrary, neither a lead agency under section 626.556, subdivision 3c, or 626.5572, subdivision 13, the commissioner of health, nor the director of the Office of Health Facility Complaints is required to conduct an investigation of or obtain or create investigative data or reports regarding an event described in subdivisions 2 to 6. If the facility satisfies the requirements described in paragraph (a), the review or investigation shall be conducted and data or reports shall be obtained or created only under sections 144.706 to 144.7069, except as permitted or required under sections 144.50 to 144.564, or as necessary to carry out the state's certification responsibility under the provisions of

sections 1864 and 1867 of the Social Security Act. If, acting in good faith, a registered nurse reports an event required to be reported under subdivisions 2 to 6, in a timely manner, the Minnesota Board of Nursing is not required to conduct an investigation of or obtain or create investigative data or reports regarding the individual reporting of the events described in subdivisions 2 to 6.

(e) Data contained in the following records are nonpublic and, to the extent they contain data on individuals, confidential data on individuals, as defined in section 13.02:

(1) reports provided to the commissioner under sections 147.155, 147A.155, 148.267, 151.301, and 153.255;

(2) event reports, findings of root cause analyses, and corrective action plans filed by a facility under this section; and

(3) records created or obtained by the commissioner in reviewing or investigating the reports, findings, and plans described in clause (2).

For purposes of the nonpublic data classification contained in this paragraph, the reporting facility shall be deemed the subject of the data.

Sec. 3. Minnesota Statutes 2008, section 256.969, is amended by adding a subdivision to read:

Subd. 3b. **Nonpayment for hospital-acquired conditions.** (a) The commissioner must not make medical assistance payments to a hospital for any costs of care that result from a condition listed in paragraph (c), if the condition was hospital-acquired.

(b) For purposes of this subdivision, a condition is hospital-acquired if it is not identified by the hospital as present on admission. For purposes of this subdivision, medical assistance includes general assistance medical care and MinnesotaCare.

(c) The prohibition in paragraph (a) applies to payment for:

(1) any hospital-acquired condition listed in this clause that is represented by an ICD-9-CM diagnosis code and is designated as a complicating condition or a major complicating condition:

(i) foreign object retained after surgery (ICD-9-CM code 998.4 or 998.7);

(ii) air embolism (ICD-9-CM code 999.1);

(iii) blood incompatibility (ICD-9-CM code 999.6);

(iv) pressure ulcers stage III or IV (ICD-9-CM code 707.23 or 707.24);

(v) falls and trauma, including fracture, dislocation, intracranial injury, crushing injury, burn, and electric shock (ICD-9-CM codes with these ranges on the complicating condition and major complicating condition list: 800-829; 830-839; 850-854; 925-929; 940-949; and 991-994);

(vi) catheter-associated urinary tract infection (ICD-9-CM code 996.64);

(vii) vascular catheter-associated infection (ICD-9-CM code 999.31);

(viii) manifestations of poor glycemic control (ICD-9-CM codes 249.10; 249.11; 249.20; 249.21; 250.10; 250.11; 250.12; 250.13; 250.20; 250.21; 250.22; 250.23; and 251.0);

(ix) surgical site infection (ICD-9-CM code 996.67 or 998.59) following certain orthopedic procedures (procedure codes 81.01; 81.02; 81.03; 81.04; 81.05; 81.06; 81.07; 81.08; 81.23; 81.24; 81.31; 81.32; 81.33; 81.34; 81.35; 81.36; 81.37; 81.38; 81.83; and 81.85);

(x) surgical site infection (ICD-9-CM code 998.59) following bariatric surgery (procedure code 44.38; 44.39; or 44.95) for a principal diagnosis of morbid obesity (ICD-9-CM code 278.01);

(xi) surgical site infection, mediastinitis (ICD-9-CM code 519.2) following coronary artery bypass graft (procedure codes 36.10 to 36.19); and

(xii) deep vein thrombosis (ICD-9-CM codes 453.40 to 453.42) or pulmonary embolism (ICD-9-CM code 415.11 or 415.91) following total knee replacement (procedure code 81.54) or hip replacement (procedure codes 00.85 to 00.87 or 81.51 to 81.52); and

(2) any hospital-acquired condition identified as nonpayable by the Medicare program including, but not limited to, conditions identified in current and future rules adopted by the Centers for Medicare and Medicaid Services in compliance with section 5001(c) of the Deficit Reduction Act of 2005.

(d) The prohibition in paragraph (a) applies to any additional payments that result from a hospital-acquired condition listed in paragraph (c) including, but not limited to, additional treatment or procedures, readmission to the facility after discharge, increased length of stay, change to a higher diagnostic category, or transfer to another hospital. In the event of a transfer to another hospital, the hospital where the condition listed under paragraph (c) was acquired is responsible for any costs incurred at the hospital to which the patient is transferred.

(e) A hospital shall not bill a recipient of services for any payment disallowed under this subdivision.

Sec. 4. **IMPACT OF ECONOMIC ENVIRONMENT ON STAFFING LEVELS.**

In the event that state funding to hospitals is reduced for the biennium beginning July 1, 2009, hospitals, licensed under Minnesota Statutes, sections 144.50 to 144.56, must submit to the legislature a report on the number of direct care employees, including registered nurses, licensed practical nurses, and nursing assistants, who were laid off by

the hospital and the number of direct care positions that were cut or left unfilled as a result of the reduction in state funding. Hospitals must report these numbers to the legislature by December 31, 2009, and by December 31, 2010.