

SENATE
STATE OF MINNESOTA
EIGHTY-SEVENTH LEGISLATURE

S.F. No. 626

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DATE	D-PG	OFFICIAL STATUS
03/07/2011	429	Introduction and first reading Referred to Health and Human Services
03/16/2011	513a 518	Comm report: To pass as amended Second reading
03/24/2011	703a	General Orders: To pass as amended
04/07/2011	1242	Calendar: Third reading Passed
04/18/2011	1371	Returned from House with amendment
	1371	Laid on table
04/26/2011	1411	Taken from table Senate not concur, conference committee of 3 requested
04/27/2011	1436	Senate conferees Rosen; Hoffman; Sheran
04/28/2011	1453	House conferees Schomacker; Abeler; Fritz
05/10/2011	1922c 1938	Conference committee report, delete everything Senate adopted CC report and repassed bill Third reading
05/11/2011	1967	House adopted SCC report and repassed bill Presentment date 05/11/11
05/16/2011	2056 2056	Governor's action Approval 05/13/11 Secretary of State Chapter 22 05/13/11 Effective date 05/14/11

A bill for an act

relating to health; amending nursing facility provisions; making changes to nursing facility bed layaway status; providing exceptions for an increase of beds in certain hardship areas; modifying the nursing facility moratorium exception process; modifying medical assistance reimbursement rates; making conforming changes; amending Minnesota Statutes 2010, sections 12A.10, by adding a subdivision; 144A.071, subdivisions 3, 4a, by adding a subdivision; 144A.073, subdivision 3c, by adding a subdivision; 256B.431, subdivision 26, by adding a subdivision; 256B.437, subdivision 4; 256B.441, by adding a subdivision; repealing Minnesota Statutes 2010, section 144A.073, subdivisions 4, 5.

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

ARTICLE 1

NURSING FACILITIES

Section 1. Minnesota Statutes 2010, section 12A.10, is amended by adding a subdivision to read:

Subd. 4. **Nursing home bed layaway.** In consultation with the commissioner of human services, the commissioner of health may waive timelines specified in section 144A.071, subdivision 4b, at any time when a partial or complete evacuation occurs in response to a natural disaster, or another event that threatens the health and safety of residents of a nursing home. Property payment rates must not be adjusted for a nursing home placing beds in or removing them from layaway under this subdivision.

Sec. 2. Minnesota Statutes 2010, section 144A.071, subdivision 3, is amended to read:

Subd. 3. Exceptions authorizing increase in beds; hardship areas. (a) The commissioner of health, in coordination with the commissioner of human services, may approve the addition of a new ~~certified bed or the addition of a new~~ licensed and Medicare

2.1 and Medicaid certified nursing home ~~bed~~ beds, ~~under~~ using the following conditions:
2.2 criteria and process set forth in this subdivision.

2.3 ~~(a) to license or certify a new bed in place of one decertified after July 1, 1993, as~~
2.4 ~~long as the number of certified plus newly certified or recertified beds does not exceed the~~
2.5 ~~number of beds licensed or certified on July 1, 1993, or to address an extreme hardship~~
2.6 ~~situation, in a particular county that, together with all contiguous Minnesota counties, has~~
2.7 ~~fewer nursing home beds per 1,000 elderly than the number that is ten percent higher than~~
2.8 ~~the national average of nursing home beds per 1,000 elderly individuals. For the purposes~~
2.9 ~~of this section, the national average of nursing home beds shall be the most recent figure~~
2.10 ~~that can be supplied by the federal Centers for Medicare and Medicaid Services and the~~
2.11 ~~number of elderly in the county or the nation shall be determined by the most recent~~
2.12 ~~federal census or the most recent estimate of the state demographer as of July 1, of each~~
2.13 ~~year of persons age 65 and older, whichever is the most recent at the time of the request for~~
2.14 ~~replacement. An extreme hardship situation can only be found after the county documents~~
2.15 ~~the existence of unmet medical needs that cannot be addressed by any other alternatives;~~

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

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

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

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

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

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

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

3.10 (d) For each designated hardship area determined in paragraph (c), the commissioner
3.11 shall publish a request for proposals in accordance with section 144A.073 and Minnesota
3.12 Rules, parts 4655.1070 to 4655.1098. The request for proposals must be published in the
3.13 State Register by March 15 following receipt of responses to the request for information.
3.14 The request for proposals must specify the number of new beds which may be added
3.15 in the designated hardship area, which must not exceed the number which, if added to
3.16 the existing number of beds in the area, including beds in layaway status, would have
3.17 prevented it from being determined to be a hardship area under paragraph (b), clause
3.18 (1). Beginning July 1, 2011, the number of new beds approved must not exceed 200
3.19 beds statewide per biennium. After June 30, 2019, the number of new beds that may be
3.20 approved in a biennium must not exceed 300 statewide. For a proposal to be considered,
3.21 the commissioner must receive it within six months of the publication of the request for
3.22 proposals. The commissioner shall review responses to the request for proposals and
3.23 shall approve or disapprove each proposal by the following July 15, in accordance with
3.24 section 144A.073 and Minnesota Rules, parts 4655.1070 to 4655.1098. The commissioner
3.25 shall base approvals or disapprovals on a comparison and ranking of proposals using
3.26 only the criteria in subdivision 4a. Approval of a proposal expires after 18 months
3.27 unless the facility has added the new beds using existing space, subject to approval
3.28 by the commissioner, or has commenced construction as defined in section 144A.071,
3.29 subdivision 1a, paragraph (d). Operating payment rates shall be determined according
3.30 to Minnesota Rules, part 9549.0057, using the limits under section 256B.441. External
3.31 fixed payment rates must be determined according to section 256B.441, subdivision 53.
3.32 Property payment rates for facilities with beds added under this subdivision must be
3.33 determined in the same manner as rate determinations resulting from projects approved
3.34 and completed under section 144A.073.

3.35 ~~(b) to~~ (e) The commissioner may:

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

4.5 ~~(e) to~~ (2) license or certify beds in a facility that has been involuntarily delicensed or
4.6 decertified for participation in the medical assistance program, provided that an application
4.7 for relicensure or recertification is submitted to the commissioner by an organization that
4.8 is not a related organization as defined in section 256B.441, subdivision 34, to the prior
4.9 licensee within 120 days after delicensure or decertification;

4.10 ~~(d) to certify two existing beds in a facility with 66 licensed beds on January 1, 1994,~~
4.11 ~~that had an average occupancy rate of 98 percent or higher in both calendar years 1992 and~~
4.12 ~~1993, and which began construction of four attached assisted living units in April 1993; or~~

4.13 ~~(e) to certify four existing beds in a facility in Winona with 139 beds, of which 129~~
4.14 ~~beds are certified.~~

4.15 Sec. 3. Minnesota Statutes 2010, section 144A.071, is amended by adding a
4.16 subdivision to read:

4.17 Subd. 4d. **Consolidation of nursing facilities.** (a) The commissioner of health,
4.18 in consultation with the commissioner of human services, may approve a request for
4.19 consolidation of nursing facilities which includes the closure of one or more facilities
4.20 and the upgrading of the physical plant of the remaining nursing facility or facilities,
4.21 the costs of which exceed the threshold project limit under subdivision 2, clause (a).
4.22 The commissioners shall consider the criteria in this section, section 144A.073, and
4.23 section 256B.437, in approving or rejecting a consolidation proposal. In the event the
4.24 commissioners approve the request, the commissioner of human services shall calculate a
4.25 property rate adjustment according to clauses (1) to (3):

4.26 (1) the closure of beds shall not be eligible for a planned closure rate adjustment
4.27 under section 256B.437, subdivision 6;

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

4.31 (3) the property payment rate for a remaining facility or facilities shall be increased
4.32 by an amount equal to 65 percent of the projected net cost savings to the state calculated in
4.33 paragraph (b), divided by the state's medical assistance percentage of medical assistance
4.34 dollars, and then divided by estimated medical assistance resident days, as determined in
4.35 paragraph (c), of the remaining nursing facility or facilities in the request in this paragraph.

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

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

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

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

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

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

5.13 (6) the savings from not paying planned closure rate adjustments that the facilities
5.14 would otherwise be eligible for under section 256B.437; and

5.15 (7) the savings from not paying property payment rate adjustments from submission
5.16 of renovation costs that would otherwise be eligible as threshold projects under section
5.17 256B.434, subdivision 4f.

5.18 (c) For purposes of the calculation in paragraph (a), clause (3), the estimated medical
5.19 assistance resident days of the remaining facility or facilities shall be computed assuming
5.20 95 percent occupancy multiplied by the historical percentage of medical assistance
5.21 resident days of the remaining facility or facilities, as reported on the facility's or facilities'
5.22 most recent nursing facility statistical and cost report filed before the plan of closure
5.23 is submitted, multiplied by 365.

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

5.29 (e) To qualify for the property payment rate adjustment under this provision, the
5.30 closing facilities shall:

5.31 (1) submit an application for closure according to section 256B.437, subdivision
5.32 3; and

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

5.34 (f) The county or counties in which a facility or facilities are closed under this
5.35 subdivision shall not be eligible for designation as a hardship area under section 144A.071,
5.36 subdivision 3, for five years from the date of the approval of the proposed consolidation.

6.1 The applicant shall notify the county of this limitation and the county shall acknowledge
6.2 this in a letter of support.

6.3 Sec. 4. Minnesota Statutes 2010, section 144A.073, subdivision 3c, is amended to read:

6.4 Subd. 3c. **Cost neutral relocation projects.** (a) Notwithstanding subdivision 3, the
6.5 commissioner may at any time accept proposals, or amendments to proposals previously
6.6 approved under this section, for relocations that are cost neutral with respect to state costs
6.7 as defined in section 144A.071, subdivision 5a. The commissioner, in consultation with
6.8 the commissioner of human services, shall evaluate proposals according to subdivision
6.9 ~~4 4a, clauses (1), (2), (3), and (9) (4), (5), (6), and (8), and other criteria established in~~
6.10 ~~rule or law. The commissioner of human services shall determine the allowable payment~~
6.11 ~~rates of the facility receiving the beds in accordance with section 256B.441, subdivision~~
6.12 ~~60. The commissioner shall approve or disapprove a project within 90 days. Proposals~~
6.13 ~~and amendments approved under this subdivision are not subject to the six-mile limit~~
6.14 ~~in subdivision 5, paragraph (c).~~

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

6.17 Sec. 5. Minnesota Statutes 2010, section 144A.073, is amended by adding a
6.18 subdivision to read:

6.19 Subd. 4a. **Criteria for review.** In reviewing the application materials and submitted
6.20 costs by an applicant to the moratorium process, the review panel shall consider the
6.21 following criteria in recommending proposals:

6.22 (1) the extent to which the proposed nursing home project is integrated with other
6.23 health and long-term care services for older adults;

6.24 (2) the extent to which the project provides for the complete replacement of an
6.25 outdated physical plant;

6.26 (3) the extent to which the project results in a reduction of nursing facility beds in an
6.27 area that has a relatively high number of beds per thousand occupied by persons age 85
6.28 and over;

6.29 (4) the extent to which the project produces improvements in health; safety,
6.30 including life safety code corrections; quality of life; and privacy of residents;

6.31 (5) the extent to which, under the current facility ownership and management, the
6.32 provider has shown the ability to provide good quality of care based on health-related
6.33 findings on certification surveys, quality indicator scores, and quality-of-life scores,
6.34 including those from the Minnesota nursing home report card;

7.1 (6) the extent to which the project integrates the latest technology and design
7.2 features in a way that improves the resident experience and improves the working
7.3 environment for employees;

7.4 (7) the extent to which the sustainability of the nursing facility can be demonstrated
7.5 based on the need for services in the area and the proposed financing of the project; and

7.6 (8) the extent to which the project provides or maintains access to nursing facility
7.7 services needed in the community.

7.8 Sec. 6. Minnesota Statutes 2010, section 256B.431, is amended by adding a
7.9 subdivision to read:

7.10 **Subd. 44. Property rate increase for a facility in Bloomington effective**
7.11 **November 1, 2010.** Notwithstanding any other law to the contrary, money available for
7.12 moratorium projects under section 144A.073, subdivision 11, shall be used, effective
7.13 November 1, 2010, to fund an approved moratorium exception project for a nursing
7.14 facility in Bloomington licensed for 137 beds as of November 1, 2010, up to a total
7.15 property rate adjustment of \$19.33.

7.16 Sec. 7. Minnesota Statutes 2010, section 256B.441, is amended by adding a
7.17 subdivision to read:

7.18 **Subd. 60. Method for determining budget-neutral nursing facility rates for**
7.19 **relocated beds.** (a) Nursing facility rates for bed relocations must be calculated by
7.20 comparing the estimated medical assistance costs prior to and after the proposed bed
7.21 relocation using the calculations in this subdivision. All payment rates are based on a 1.0
7.22 case mix level, with other case mix rates determined accordingly. Nursing facility beds
7.23 on layaway status that are being moved must be included in the calculation for both the
7.24 originating and receiving facility and treated as though they were in active status with the
7.25 occupancy characteristics of the active beds of the originating facility.

7.26 (b) Medical assistance costs of the beds in the originating nursing facilities must
7.27 be calculated as follows:

7.28 (1) multiply each originating facility's total payment rate for a RUGS weight of 1.0
7.29 by the facility's percentage of medical assistance days on its most recent available cost
7.30 report;

7.31 (2) take the products in clause (1) and multiply by each facility's average case mix
7.32 score for medical assistance residents on its most recent available cost report;

7.33 (3) take the products in clause (2) and multiply by the number of beds being
7.34 relocated, times 365; and

8.1 (4) calculate the sum of the amounts determined in clause (3).

8.2 (c) Medical assistance costs in the receiving facility, prior to the bed relocation, must
8.3 be calculated as follows:

8.4 (1) multiply the facility's total payment rate for a RUGS weight of 1.0 by the medical
8.5 assistance days on the most recent cost report; and

8.6 (2) multiply the product in clause (1) by the average case mix weight of medical
8.7 assistance residents on the most recent cost report.

8.8 (d) The commissioner shall determine the medical assistance costs prior to the bed
8.9 relocation which must be the sum of the amounts determined in paragraphs (b) and (c).

8.10 (e) The commissioner shall estimate the medical assistance costs after the bed
8.11 relocation as follows:

8.12 (1) estimate the medical assistance days in the receiving facility after the bed
8.13 relocation. The commissioner may use the current medical assistance portion, or if data
8.14 does not exist, may use the statewide average, or may use the provider's estimate of the
8.15 medical assistance utilization of the relocated beds;

8.16 (2) estimate the average case mix weight of medical assistance residents in the
8.17 receiving facility after the bed relocation. The commissioner may use current average
8.18 case mix weight or, if data does not exist, may use the statewide average, or may use the
8.19 provider's estimate of the average case mix weight; and

8.20 (3) multiply the amount determined in clause (1) by the amount determined in
8.21 clause (2) by the total payment rate for a RUGS weight of 1.0 that is the highest rate of
8.22 the facilities from which the relocated beds either originate or to which they are being
8.23 relocated so long as that rate is associated with ten percent or more of the total number of
8.24 beds to be in the receiving facility after the bed relocation.

8.25 (f) If the amount determined in paragraph (e) is less than or equal to the amount
8.26 determined in paragraph (d), the commissioner shall allow a total payment rate equal to
8.27 the amount used in paragraph (e), clause (3).

8.28 (g) If the amount determined in paragraph (e) is greater than the amount determined
8.29 in paragraph (d), the commissioner shall allow a rate with a RUGS weight of 1.0 that
8.30 when used in paragraph (e), clause (3), results in the amount determined in paragraph (e)
8.31 being equal to the amount determined in paragraph (d).

8.32 (h) If the commissioner relies upon provider estimates in paragraph (e), clause (1)
8.33 or (2), then annually, for three years after the rates determined in this subdivision take
8.34 effect, the commissioner shall determine the accuracy of the alternative factors of medical
8.35 assistance case load and RUGS weight used in this subdivision and shall reduce the total
8.36 payment rate for a RUGS weight of 1.0 if the factors used result in medical assistance

9.1 costs exceeding the amount in paragraph (d). If the actual medical assistance costs exceed
9.2 the estimates by more than five percent, the commissioner shall also recover the difference
9.3 between the estimated costs in paragraph (e) and the actual costs according to section
9.4 256B.0641. The commissioner may require submission of data from the receiving facility
9.5 needed to implement this paragraph.

9.6 (i) When beds approved for relocation are put into active service at the destination
9.7 facility, rates determined in this subdivision must be adjusted by any adjustment amounts
9.8 that were implemented after the date of the letter of approval.

9.9 Sec. 8. **REPEALER.**

9.10 Minnesota Statutes 2010, section 144A.073, subdivisions 4 and 5, are repealed.

9.11 Sec. 9. **EFFECTIVE DATE.**

9.12 This article is effective the day following final enactment.

9.13 **ARTICLE 2**

9.14 **CONFORMING CHANGES**

9.15 Section 1. Minnesota Statutes 2010, section 144A.071, subdivision 4a, is amended to
9.16 read:

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

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

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

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

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

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

10.3 ~~(iv) the new facility is constructed on the same site as the destroyed facility or on~~
10.4 ~~another site subject to the restrictions in section 144A.073, subdivision 5;~~

10.5 ~~(v)~~ (iv) the number of licensed and certified beds in the new facility does not exceed
10.6 the number of licensed and certified beds in the destroyed facility; and

10.7 ~~(vi)~~ (v) the commissioner determines that the replacement beds are needed to
10.8 prevent an inadequate supply of beds.

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

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

10.14 (c) to license or certify beds in a project recommended for approval under section
10.15 144A.073;

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

10.19 (e) to certify and license as nursing home beds boarding care beds in a certified
10.20 boarding care facility if the beds meet the standards for nursing home licensure, or in a
10.21 facility that was granted an exception to the moratorium under section 144A.073, and if
10.22 the cost of any remodeling of the facility does not exceed \$1,000,000. If boarding care
10.23 beds are licensed as nursing home beds, the number of boarding care beds in the facility
10.24 must not increase beyond the number remaining at the time of the upgrade in licensure.
10.25 The provisions contained in section 144A.073 regarding the upgrading of the facilities
10.26 do not apply to facilities that satisfy these requirements;

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

11.1 (g) to license and certify nursing home beds to replace currently licensed and certified
11.2 boarding care beds which may be located either in a remodeled or renovated boarding care
11.3 or nursing home facility or in a remodeled, renovated, newly constructed, or replacement
11.4 nursing home facility within the identifiable complex of health care facilities in which the
11.5 currently licensed boarding care beds are presently located, provided that the number of
11.6 boarding care beds in the facility or complex are decreased by the number to be licensed
11.7 as nursing home beds and further provided that, if the total costs of new construction,
11.8 replacement, remodeling, or renovation exceed ten percent of the appraised value of
11.9 the facility or \$200,000, whichever is less, the facility makes a written commitment to
11.10 the commissioner of human services that it will not seek to receive an increase in its
11.11 property-related payment rate by reason of the new construction, replacement, remodeling,
11.12 or renovation. The provisions contained in section 144A.073 regarding the upgrading of
11.13 facilities do not apply to facilities that satisfy these requirements;

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

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

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

11.26 (k) to license and certify up to 20 new nursing home beds in a community-operated
11.27 hospital and attached convalescent and nursing care facility with 40 beds on April 21,
11.28 1991, that suspended operation of the hospital in April 1986. The commissioner of human
11.29 services shall provide the facility with the same per diem property-related payment rate
11.30 for each additional licensed and certified bed as it will receive for its existing 40 beds;

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

11.34 (m) to license and certify beds that are moved from one location to another for the
11.35 purposes of converting up to five four-bed wards to single or double occupancy rooms

12.1 in a nursing home that, as of January 1, 1993, was county-owned and had a licensed
12.2 capacity of 115 beds;

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

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

12.16 (p) to allow a facility that on April 16, 1993, was a 368-bed licensed and certified
12.17 nursing facility located in Minneapolis to layaway, upon 30 days prior written notice to
12.18 the commissioner, up to 30 of the facility's licensed and certified beds by converting
12.19 three-bed wards to single or double occupancy. Beds on layaway status shall have the
12.20 same status as voluntarily delicensed and decertified beds except that beds on layaway
12.21 status remain subject to the surcharge in section 256.9657, remain subject to the license
12.22 application and renewal fees under section 144A.07 and shall be subject to a \$100 per bed
12.23 reactivation fee. In addition, at any time within three years of the effective date of the
12.24 layaway, the beds on layaway status may be:

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

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

12.34 The property-related payment rate of a facility placing beds on layaway status
12.35 must be adjusted by the incremental change in its rental per diem after recalculating the
12.36 rental per diem as provided in section 256B.431, subdivision 3a, paragraph (c). The

13.1 property-related payment rate for a facility relicensing and recertifying beds from layaway
13.2 status must be adjusted by the incremental change in its rental per diem after recalculating
13.3 its rental per diem using the number of beds after the relicensing to establish the facility's
13.4 capacity day divisor, which shall be effective the first day of the month following the
13.5 month in which the relicensing and recertification became effective. Any beds remaining
13.6 on layaway status more than three years after the date the layaway status became effective
13.7 must be removed from layaway status and immediately delicensed and decertified;

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

13.15 (r) to license and certify up to 117 beds that are relocated from a licensed and
13.16 certified 138-bed nursing facility located in St. Paul to a hospital with 130 licensed
13.17 hospital beds located in South St. Paul, provided that the nursing facility and hospital are
13.18 owned by the same or a related organization and that prior to the date the relocation is
13.19 completed the hospital ceases operation of its inpatient hospital services at that hospital.
13.20 After relocation, the nursing facility's status under section 256B.431, subdivision 2j, shall
13.21 be the same as it was prior to relocation. The nursing facility's property-related payment
13.22 rate resulting from the project authorized in this paragraph shall become effective no
13.23 earlier than April 1, 1996. For purposes of calculating the incremental change in the
13.24 facility's rental per diem resulting from this project, the allowable appraised value of
13.25 the nursing facility portion of the existing health care facility physical plant prior to the
13.26 renovation and relocation may not exceed \$2,490,000;

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

13.29 (t) to allow 16 licensed and certified beds located on July 1, 1994, in a 142-bed
13.30 nursing home and 21-bed boarding care home facility in Minneapolis, notwithstanding
13.31 the licensure and certification after July 1, 1995, of the Minneapolis facility as a 147-bed
13.32 nursing home facility after completion of a construction project approved in 1993 under
13.33 section 144A.073, to be laid away upon 30 days' prior written notice to the commissioner.
13.34 Beds on layaway status shall have the same status as voluntarily delicensed or decertified
13.35 beds except that they shall remain subject to the surcharge in section 256.9657. The
13.36 16 beds on layaway status may be relicensed as nursing home beds and recertified at

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14.1 any time within five years of the effective date of the layaway upon relocation of some
14.2 or all of the beds to a licensed and certified facility located in Watertown, provided that
14.3 the total project construction costs related to the relocation of beds from layaway status
14.4 for the Watertown facility may not exceed the dollar threshold provided in subdivision
14.5 2 unless the construction project has been approved through the moratorium exception
14.6 process under section 144A.073.

14.7 The property-related payment rate of the facility placing beds on layaway status
14.8 must be adjusted by the incremental change in its rental per diem after recalculating the
14.9 rental per diem as provided in section 256B.431, subdivision 3a, paragraph (c). The
14.10 property-related payment rate for the facility relicensing and recertifying beds from
14.11 layaway status must be adjusted by the incremental change in its rental per diem after
14.12 recalculating its rental per diem using the number of beds after the relicensing to establish
14.13 the facility's capacity day divisor, which shall be effective the first day of the month
14.14 following the month in which the relicensing and recertification became effective. Any
14.15 beds remaining on layaway status more than five years after the date the layaway status
14.16 became effective must be removed from layaway status and immediately delicensed
14.17 and decertified;

14.18 (u) to license and certify beds that are moved within an existing area of a facility or
14.19 to a newly constructed addition which is built for the purpose of eliminating three- and
14.20 four-bed rooms and adding space for dining, lounge areas, bathing rooms, and ancillary
14.21 service areas in a nursing home that, as of January 1, 1995, was located in Fridley and had
14.22 a licensed capacity of 129 beds;

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

14.26 (w) to license and certify a total replacement project of up to 49 beds located in
14.27 Norman County that are relocated from a nursing home destroyed by flood and whose
14.28 residents were relocated to other nursing homes. The operating cost payment rates for
14.29 the new nursing facility shall be determined based on the interim and settle-up payment
14.30 provisions of Minnesota Rules, part 9549.0057, and the reimbursement provisions of
14.31 section 256B.431, except that subdivision 26, paragraphs (a) and (b), shall not apply until
14.32 the second rate year after the settle-up cost report is filed. Property-related reimbursement
14.33 rates shall be determined under section 256B.431, taking into account any federal or state
14.34 flood-related loans or grants provided to the facility;

14.35 (x) to license and certify a total replacement project of up to 129 beds located
14.36 in Polk County that are relocated from a nursing home destroyed by flood and whose

15.1 residents were relocated to other nursing homes. The operating cost payment rates for
15.2 the new nursing facility shall be determined based on the interim and settle-up payment
15.3 provisions of Minnesota Rules, part 9549.0057, and the reimbursement provisions of
15.4 section 256B.431, except that subdivision 26, paragraphs (a) and (b), shall not apply until
15.5 the second rate year after the settle-up cost report is filed. Property-related reimbursement
15.6 rates shall be determined under section 256B.431, taking into account any federal or state
15.7 flood-related loans or grants provided to the facility;

15.8 (y) to license and certify beds in a renovation and remodeling project to convert 13
15.9 three-bed wards into 13 two-bed rooms and 13 single-bed rooms, expand space, and
15.10 add improvements in a nursing home that, as of January 1, 1994, met the following
15.11 conditions: the nursing home was located in Ramsey County, was not owned by a hospital
15.12 corporation, had a licensed capacity of 64 beds, and had been ranked among the top 15
15.13 applicants by the 1993 moratorium exceptions advisory review panel. The total project
15.14 construction cost estimate for this project must not exceed the cost estimate submitted in
15.15 connection with the 1993 moratorium exception process;

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

15.25 (aa) to allow the commissioner of human services to license an additional 36 beds
15.26 to provide residential services for the physically disabled under Minnesota Rules, parts
15.27 9570.2000 to 9570.3400, in a 198-bed nursing home located in Red Wing, provided that
15.28 the total number of licensed and certified beds at the facility does not increase;

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

15.34 (cc) to license and certify four beds in a 16-bed certified boarding care home in
15.35 Minneapolis to replace beds that were voluntarily delicensed and decertified on or
15.36 before March 31, 1992. The licensure and certification is conditional upon the facility

16.1 periodically assessing and adjusting its resident mix and other factors which may
16.2 contribute to a potential institution for mental disease declaration. The commissioner of
16.3 human services shall retain the authority to audit the facility at any time and shall require
16.4 the facility to comply with any requirements necessary to prevent an institution for mental
16.5 disease declaration, including delicensure and decertification of beds, if necessary;

16.6 (dd) to license and certify 72 beds in an existing facility in Mille Lacs County with
16.7 80 beds as part of a renovation project. The renovation must include construction of
16.8 an addition to accommodate ten residents with beginning and midstage dementia in a
16.9 self-contained living unit; creation of three resident households where dining, activities,
16.10 and support spaces are located near resident living quarters; designation of four beds
16.11 for rehabilitation in a self-contained area; designation of 30 private rooms; and other
16.12 improvements;

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

16.15 (ff) to license and certify a total replacement project of up to 124 beds located
16.16 in Wilkin County that are in need of relocation from a nursing home significantly
16.17 damaged by flood. The operating cost payment rates for the new nursing facility shall
16.18 be determined based on the interim and settle-up payment provisions of Minnesota
16.19 Rules, part 9549.0057, and the reimbursement provisions of section 256B.431, except
16.20 that section 256B.431, subdivision 26, paragraphs (a) and (b), shall not apply until the
16.21 second rate year after the settle-up cost report is filed. Property-related reimbursement
16.22 rates shall be determined under section 256B.431, taking into account any federal or state
16.23 flood-related loans or grants provided to the facility;

16.24 (gg) to allow the commissioner of human services to license an additional nine beds
16.25 to provide residential services for the physically disabled under Minnesota Rules, parts
16.26 9570.2000 to 9570.3400, in a 240-bed nursing home located in Duluth, provided that the
16.27 total number of licensed and certified beds at the facility does not increase;

16.28 (hh) to license and certify up to 120 new nursing facility beds to replace beds in a
16.29 facility in Anoka County, which was licensed for 98 beds as of July 1, 2000, provided the
16.30 new facility is located within four miles of the existing facility and is in Anoka County.
16.31 Operating and property rates shall be determined and allowed under section 256B.431 and
16.32 Minnesota Rules, parts 9549.0010 to 9549.0080, or section 256B.434 or 256B.435. The
16.33 provisions of section 256B.431, subdivision 26, paragraphs (a) and (b), do not apply until
16.34 the second rate year following settle-up; or

16.35 (ii) to transfer up to 98 beds of a 129-licensed bed facility located in Anoka County
16.36 that, as of March 25, 2001, is in the active process of closing, to a 122-licensed bed

17.1 nonprofit nursing facility located in the city of Columbia Heights or its affiliate. The
17.2 transfer is effective when the receiving facility notifies the commissioner in writing of the
17.3 number of beds accepted. The commissioner shall place all transferred beds on layaway
17.4 status held in the name of the receiving facility. The layaway adjustment provisions of
17.5 section 256B.431, subdivision 30, do not apply to this layaway. The receiving facility
17.6 may only remove the beds from layaway for recertification and relicensure at the receiving
17.7 facility's current site, or at a newly constructed facility located in Anoka County. The
17.8 receiving facility must receive statutory authorization before removing these beds from
17.9 layaway status, or may remove these beds from layaway status if removal from layaway
17.10 status is part of a moratorium exception project approved by the commissioner under
17.11 section 144A.073.

17.12 Sec. 2. Minnesota Statutes 2010, section 256B.431, subdivision 26, is amended to read:

17.13 Subd. 26. **Changes to nursing facility reimbursement beginning July 1, 1997.**

17.14 The nursing facility reimbursement changes in paragraphs (a) to (e) shall apply in the
17.15 sequence specified in Minnesota Rules, parts 9549.0010 to 9549.0080, and this section,
17.16 beginning July 1, 1997.

17.17 (a) For rate years beginning on or after July 1, 1997, the commissioner shall limit a
17.18 nursing facility's allowable operating per diem for each case mix category for each rate
17.19 year. The commissioner shall group nursing facilities into two groups, freestanding and
17.20 nonfreestanding, within each geographic group, using their operating cost per diem for
17.21 the case mix A classification. A nonfreestanding nursing facility is a nursing facility
17.22 whose other operating cost per diem is subject to the hospital attached, short length of
17.23 stay, or the rule 80 limits. All other nursing facilities shall be considered freestanding
17.24 nursing facilities. The commissioner shall then array all nursing facilities in each grouping
17.25 by their allowable case mix A operating cost per diem. In calculating a nursing facility's
17.26 operating cost per diem for this purpose, the commissioner shall exclude the raw food
17.27 cost per diem related to providing special diets that are based on religious beliefs, as
17.28 determined in subdivision 2b, paragraph (h). For those nursing facilities in each grouping
17.29 whose case mix A operating cost per diem:

17.30 (1) is at or below the median of the array, the commissioner shall limit the nursing
17.31 facility's allowable operating cost per diem for each case mix category to the lesser of
17.32 the prior reporting year's allowable operating cost per diem as specified in Laws 1996,
17.33 chapter 451, article 3, section 11, paragraph (h), plus the inflation factor as established
17.34 in paragraph (d), clause (2), increased by two percentage points, or the current reporting
17.35 year's corresponding allowable operating cost per diem; or

18.1 (2) is above the median of the array, the commissioner shall limit the nursing
18.2 facility's allowable operating cost per diem for each case mix category to the lesser of
18.3 the prior reporting year's allowable operating cost per diem as specified in Laws 1996,
18.4 chapter 451, article 3, section 11, paragraph (h), plus the inflation factor as established
18.5 in paragraph (d), clause (2), increased by one percentage point, or the current reporting
18.6 year's corresponding allowable operating cost per diem.

18.7 For purposes of paragraph (a), if a nursing facility reports on its cost report a
18.8 reduction in cost due to a refund or credit for a rate year beginning on or after July 1, 1998,
18.9 the commissioner shall increase that facility's spend-up limit for the rate year following
18.10 the current rate year by the amount of the cost reduction divided by its resident days for
18.11 the reporting year preceding the rate year in which the adjustment is to be made.

18.12 (b) For rate years beginning on or after July 1, 1997, the commissioner shall limit the
18.13 allowable operating cost per diem for high cost nursing facilities. After application of the
18.14 limits in paragraph (a) to each nursing facility's operating cost per diem, the commissioner
18.15 shall group nursing facilities into two groups, freestanding or nonfreestanding, within each
18.16 geographic group. A nonfreestanding nursing facility is a nursing facility whose other
18.17 operating cost per diem are subject to hospital attached, short length of stay, or rule 80
18.18 limits. All other nursing facilities shall be considered freestanding nursing facilities. The
18.19 commissioner shall then array all nursing facilities within each grouping by their allowable
18.20 case mix A operating cost per diem. In calculating a nursing facility's operating cost per
18.21 diem for this purpose, the commissioner shall exclude the raw food cost per diem related to
18.22 providing special diets that are based on religious beliefs, as determined in subdivision 2b,
18.23 paragraph (h). For those nursing facilities in each grouping whose case mix A operating
18.24 cost per diem exceeds 1.0 standard deviation above the median, the commissioner shall
18.25 reduce their allowable operating cost per diem by three percent. For those nursing
18.26 facilities in each grouping whose case mix A operating cost per diem exceeds 0.5 standard
18.27 deviation above the median but is less than or equal to 1.0 standard deviation above the
18.28 median, the commissioner shall reduce their allowable operating cost per diem by two
18.29 percent. However, in no case shall a nursing facility's operating cost per diem be reduced
18.30 below its grouping's limit established at 0.5 standard deviations above the median.

18.31 (c) For rate years beginning on or after July 1, 1997, the commissioner shall
18.32 determine a nursing facility's efficiency incentive by first computing the allowable
18.33 difference, which is the lesser of \$4.50 or the amount by which the facility's other
18.34 operating cost limit exceeds its nonadjusted other operating cost per diem for that rate
18.35 year. The commissioner shall compute the efficiency incentive by:

18.36 (1) subtracting the allowable difference from \$4.50 and dividing the result by \$4.50;

- 19.1 (2) multiplying 0.20 by the ratio resulting from clause (1), and then;
19.2 (3) adding 0.50 to the result from clause (2); and
19.3 (4) multiplying the result from clause (3) times the allowable difference.

19.4 The nursing facility's efficiency incentive payment shall be the lesser of \$2.25 or the
19.5 product obtained in clause (4).

19.6 (d) For rate years beginning on or after July 1, 1997, the forecasted price index for
19.7 a nursing facility's allowable operating cost per diem shall be determined under clauses
19.8 (1) and (2) using the change in the Consumer Price Index-All Items (United States city
19.9 average) (CPI-U) as forecasted by Data Resources, Inc. The commissioner shall use the
19.10 indices as forecasted in the fourth quarter of the calendar year preceding the rate year,
19.11 subject to subdivision 21, paragraph (c).

19.12 (1) The CPI-U forecasted index for allowable operating cost per diem shall be based
19.13 on the 21-month period from the midpoint of the nursing facility's reporting year to the
19.14 midpoint of the rate year following the reporting year.

19.15 (2) For rate years beginning on or after July 1, 1997, the forecasted index for
19.16 operating cost limits referred to in subdivision 21, paragraph (b), shall be based on
19.17 the CPI-U for the 12-month period between the midpoints of the two reporting years
19.18 preceding the rate year.

19.19 (e) After applying these provisions for the respective rate years, the commissioner
19.20 shall index these allowable operating cost per diem by the inflation factor provided for in
19.21 paragraph (d), clause (1), and add the nursing facility's efficiency incentive as computed in
19.22 paragraph (c).

19.23 (f) For the rate years beginning on July 1, 1997, July 1, 1998, and July 1, 1999, a
19.24 nursing facility licensed for 40 beds effective May 1, 1992, with a subsequent increase of
19.25 20 Medicare/Medicaid certified beds, effective January 26, 1993, in accordance with an
19.26 increase in licensure is exempt from paragraphs (a) and (b).

19.27 ~~(g) For a nursing facility whose construction project was authorized according to~~
19.28 ~~section 144A.073, subdivision 5, paragraph (g), the operating cost payment rates for~~
19.29 ~~the new location shall be determined based on Minnesota Rules, part 9549.0057. The~~
19.30 ~~relocation allowed under section 144A.073, subdivision 5, paragraph (g), and the rate~~
19.31 ~~determination allowed under this paragraph must meet the cost neutrality requirements~~
19.32 ~~of section 144A.073, subdivision 3c. Paragraphs (a) and (b) shall not apply until the~~
19.33 ~~second rate year after the settle-up cost report is filed. Notwithstanding subdivision 2b,~~
19.34 ~~paragraph (g), real estate taxes and special assessments payable by the new location, a~~
19.35 ~~501(c)(3) nonprofit corporation, shall be included in the payment rates determined under~~
19.36 ~~this subdivision for all subsequent rate years.~~

20.1 ~~(h)~~ (g) For the rate year beginning July 1, 1997, the commissioner shall compute
20.2 the payment rate for a nursing facility licensed for 94 beds on September 30, 1996,
20.3 that applied in October 1993 for approval of a total replacement under the moratorium
20.4 exception process in section 144A.073, and completed the approved replacement in June
20.5 1995, with other operating cost spend-up limit under paragraph (a), increased by \$3.98,
20.6 and after computing the facility's payment rate according to this section, the commissioner
20.7 shall make a one-year positive rate adjustment of \$3.19 for operating costs related to the
20.8 newly constructed total replacement, without application of paragraphs (a) and (b). The
20.9 facility's per diem, before the \$3.19 adjustment, shall be used as the prior reporting year's
20.10 allowable operating cost per diem for payment rate calculation for the rate year beginning
20.11 July 1, 1998. A facility described in this paragraph is exempt from paragraph (b) for the
20.12 rate years beginning July 1, 1997, and July 1, 1998.

20.13 ~~(h)~~ (h) For the purpose of applying the limit stated in paragraph (a), a nursing facility
20.14 in Kandiyohi County licensed for 86 beds that was granted hospital-attached status on
20.15 December 1, 1994, shall have the prior year's allowable care-related per diem increased
20.16 by \$3.207 and the prior year's other operating cost per diem increased by \$4.777 before
20.17 adding the inflation in paragraph (d), clause (2), for the rate year beginning on July 1, 1997.

20.18 ~~(i)~~ (i) For the purpose of applying the limit stated in paragraph (a), a 117 bed nursing
20.19 facility located in Pine County shall have the prior year's allowable other operating cost
20.20 per diem increased by \$1.50 before adding the inflation in paragraph (d), clause (2), for
20.21 the rate year beginning on July 1, 1997.

20.22 ~~(j)~~ (j) For the purpose of applying the limit under paragraph (a), a nursing facility in
20.23 Hibbing licensed for 192 beds shall have the prior year's allowable other operating cost
20.24 per diem increased by \$2.67 before adding the inflation in paragraph (d), clause (2),
20.25 for the rate year beginning July 1, 1997.

20.26 Sec. 3. Minnesota Statutes 2010, section 256B.437, subdivision 4, is amended to read:

20.27 Subd. 4. **Criteria for review of application.** In reviewing and approving closure
20.28 proposals, the commissioner shall consider, but not be limited to, the following criteria:

20.29 (1) improved quality of care and quality of life for consumers;

20.30 (2) closure of a nursing facility that has a poor physical plant, ~~which may be~~
20.31 ~~evidenced by the conditions referred to in section 144A.073, subdivision 4, clauses (4)~~
20.32 ~~and (5);~~

20.33 (3) the existence of excess nursing facility beds, measured in terms of beds per
20.34 thousand persons aged 85 or older. The excess must be measured in reference to:

20.35 (i) the county in which the facility is located;

21.1 (ii) the county and all contiguous counties;

21.2 (iii) the region in which the facility is located; or

21.3 (iv) the facility's service area;

21.4 the facility shall indicate in its application the service area it believes is appropriate for this
21.5 measurement. A facility in a county that is in the lowest quartile of counties with reference
21.6 to beds per thousand persons aged 85 or older is not in an area of excess capacity;

21.7 (4) low-occupancy rates, provided that the unoccupied beds are not the result of
21.8 a personnel shortage. In analyzing occupancy rates, the commissioner shall examine
21.9 waiting lists in the applicant facility and at facilities in the surrounding area, as determined
21.10 under clause (3);

21.11 (5) evidence of coordination between the community planning process and the
21.12 facility application. If the planning group does not support a level of nursing facility
21.13 closures that the commissioner considers to be reasonable, the commissioner may approve
21.14 a planned closure proposal without its support;

21.15 (6) proposed usage of funds available from a planned closure rate adjustment for
21.16 care-related purposes;

21.17 (7) innovative use planned for the closed facility's physical plant;

21.18 (8) evidence that the proposal serves the interests of the state; and

21.19 (9) evidence of other factors that affect the viability of the facility, including
21.20 excessive nursing pool costs.

21.21 **Sec. 4. EFFECTIVE DATE.**

21.22 This article is effective the day following final enactment.

APPENDIX
Article locations in S0626-3

ARTICLE 1 NURSING FACILITIES Page.Ln 1.12
ARTICLE 2 CONFORMING CHANGES Page.Ln 9.13