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State of Minnesota  
**HOUSE OF REPRESENTATIVES**

EIGHTY-NINTH SESSION

**H. F. No. 2607**

- 03/08/2016 Authored by Kelly  
The bill was read for the first time and referred to the Committee on Aging and Long-Term Care Policy
- 03/21/2016 Adoption of Report: Amended and re-referred to the Committee on Health and Human Services Reform
- 04/01/2016 Adoption of Report: Placed on the General Register  
Read Second Time
- 05/12/2016 Calendar for the Day, Amended  
Read Third Time as Amended  
Passed by the House as Amended and transmitted to the Senate to include Floor Amendments
- 05/18/2016 Passed by the Senate and returned to the House
- 05/19/2016 Presented to Governor
- 05/22/2016 Governor Approval

1.1 A bill for an act  
1.2 relating to human services; modifying certain nursing facilities requirements;  
1.3 amending Minnesota Statutes 2014, section 144A.071, subdivisions 4c, 4d;  
1.4 Minnesota Statutes 2015 Supplement, section 256B.441, subdivisions 13, 53.

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

1.6 Section 1. Minnesota Statutes 2014, section 144A.071, subdivision 4c, is amended to  
1.7 read:

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

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

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

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

2.1 (3) to license and certify a new 60-bed facility in Austin, provided that: (i) 45 of  
2.2 the new beds are transferred from a 45-bed facility in Austin under common ownership  
2.3 that is closed and 15 of the new beds are transferred from a 182-bed facility in Albert Lea  
2.4 under common ownership; (ii) the commissioner of human services is authorized by the  
2.5 2004 legislature to negotiate budget-neutral planned nursing facility closures; and (iii)  
2.6 money is available from planned closures of facilities under common ownership to make  
2.7 implementation of this clause budget-neutral to the state. The bed capacity of the Albert  
2.8 Lea facility shall be reduced to 167 beds following the transfer. Of the 60 beds at the  
2.9 new facility, 20 beds shall be used for a special care unit for persons with Alzheimer's  
2.10 disease or related dementias;

2.11 (4) to license and certify up to 80 beds transferred from an existing state-owned  
2.12 nursing facility in Cass County to a new facility located on the grounds of the  
2.13 Ah-Gwah-Ching campus. The operating cost payment rates for the new facility shall be  
2.14 determined based on the interim and settle-up payment provisions of Minnesota Rules,  
2.15 part 9549.0057, and the reimbursement provisions of section 256B.431. The property  
2.16 payment rate for the first three years of operation shall be \$35 per day. For subsequent  
2.17 years, the property payment rate of \$35 per day shall be adjusted for inflation as provided  
2.18 in section 256B.434, subdivision 4, paragraph (c), as long as the facility has a contract  
2.19 under section 256B.434;

2.20 (5) to initiate a pilot program to license and certify up to 80 beds transferred from  
2.21 an existing county-owned nursing facility in Steele County relocated to the site of a new  
2.22 acute care facility as part of the county's Communities for a Lifetime comprehensive plan  
2.23 to create innovative responses to the aging of its population. Upon relocation to the new  
2.24 site, the nursing facility shall delicense 28 beds. The ~~property~~ payment rate for the first  
2.25 ~~three years of operation of~~ external fixed costs for the new facility shall be increased by an  
2.26 amount as calculated according to items (i) to (v):

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

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

2.34 (iii) compute the anticipated annual costs for community-based services by  
2.35 multiplying the anticipated decrease in medical assistance residents served by the nursing

3.1 facility, determined in item (i), by the average monthly elderly waiver service costs for  
3.2 individuals in Steele County multiplied by 12;

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

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

3.7 ~~For subsequent years, the adjusted property payment rate shall be adjusted for~~  
3.8 ~~inflation as provided in section 256B.434, subdivision 4, paragraph (e), as long as the~~  
3.9 ~~facility has a contract under section 256B.434; and~~

3.10 (6) to consolidate and relocate nursing facility beds to a new site in Goodhue County  
3.11 and to integrate these services with other community-based programs and services under a  
3.12 communities for a lifetime pilot program and comprehensive plan to create innovative  
3.13 responses to the aging of its population. ~~Eighty beds in the city of Red Wing shall be~~  
3.14 ~~transferred from the downsizing and relocation of an existing 84-bed, hospital-owned~~  
3.15 ~~nursing facility and the entire closure or downsizing of beds from a 65-bed nonprofit~~  
3.16 ~~nursing facility in the community resulting in the delicensure of 69 beds in the two~~  
3.17 ~~existing facilities~~ Two nursing facilities, one for 84 beds and one for 65 beds, in the city of  
3.18 Red Wing licensed on July 1, 2015, shall be consolidated into a newly renovated 64-bed  
3.19 nursing facility resulting in the delicensure of 85 beds. Notwithstanding the carryforward  
3.20 of the approval authority in section 144A.073, subdivision 11, the funding approved in  
3.21 April 2009 by the commissioner of health for a project in Goodhue County shall not carry  
3.22 forward. The closure of the ~~69~~ 85 beds shall not be eligible for a planned closure rate  
3.23 adjustment under section 256B.437. The construction project permitted in this clause shall  
3.24 not be eligible for a threshold project rate adjustment under section 256B.434, subdivision  
3.25 4f. ~~The property payment rate for the first three years of operation of~~ external fixed costs for  
3.26 the new facility shall be increased by an amount as calculated according to items (i) to (vi):

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

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

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

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

4.6 (v) multiply the amount in item (iv) by ~~48.5~~ 57.2 percent; and

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

4.11 ~~For subsequent years, the adjusted property payment rate shall be adjusted for~~  
4.12 ~~inflation as provided in section 256B.434, subdivision 4, paragraph (c), as long as the~~  
4.13 ~~facility has a contract under section 256B.434.~~

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

4.16 **EFFECTIVE DATE.** This section is effective for rate years beginning on or after  
4.17 January 1, 2017, except that the amendment to paragraph (a), clause (6), transferring the  
4.18 rate adjustment in items (i) to (vi) from the property payment rate to the payment rate for  
4.19 external fixed costs, is effective for rate years beginning on or after January 1, 2017, or  
4.20 upon completion of the closure and new construction authorized in paragraph (a), clause  
4.21 (6), whichever is later. The commissioner of human services shall notify the revisor  
4.22 of statutes when the section is effective.

4.23 Sec. 2. Minnesota Statutes 2014, section 144A.071, subdivision 4d, is amended to read:

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

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

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

5.4 (3) the ~~property~~ payment rate for external fixed costs for a remaining facility or  
5.5 facilities shall be increased by an amount equal to 65 percent of the projected net cost  
5.6 savings to the state calculated in paragraph (b), divided by the state's medical assistance  
5.7 percentage of medical assistance dollars, and then divided by estimated medical assistance  
5.8 resident days, as determined in paragraph (c), of the remaining nursing facility or facilities  
5.9 in the request in this paragraph. The rate adjustment is effective on the later of the first  
5.10 day of the month following completion of the construction upgrades in the consolidation  
5.11 plan or the first day of the month following the complete closure of a facility designated  
5.12 for closure in the consolidation plan. If more than one facility is receiving upgrades in  
5.13 the consolidation plan, each facility's date of construction completion must be evaluated  
5.14 separately.

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

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

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

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

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

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

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

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

5.32 (c) For purposes of the calculation in paragraph (a), clause (3), the estimated medical  
5.33 assistance resident days of the remaining facility or facilities shall be computed assuming  
5.34 95 percent occupancy multiplied by the historical percentage of medical assistance  
5.35 resident days of the remaining facility or facilities, as reported on the facility's or facilities'

6.1 most recent nursing facility statistical and cost report filed before the plan of closure  
6.2 is submitted, multiplied by 365.

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

6.8 (e) To qualify for the ~~property~~ external fixed costs payment rate adjustment under  
6.9 this ~~provision~~ subdivision, the closing facilities shall:

6.10 (1) submit an application for closure according to section 256B.437, subdivision  
6.11 3; and

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

6.13 (f) The county or counties in which a facility or facilities are closed under this  
6.14 subdivision shall not be eligible for designation as a hardship area under section 144A.071,  
6.15 subdivision 3, for five years from the date of the approval of the proposed consolidation.  
6.16 The applicant shall notify the county of this limitation and the county shall acknowledge  
6.17 this in a letter of support.

6.18 **EFFECTIVE DATE.** This section is effective for rate years beginning on or after  
6.19 January 1, 2017.

6.20 Sec. 3. Minnesota Statutes 2015 Supplement, section 256B.441, subdivision 13,  
6.21 is amended to read:

6.22 Subd. 13. **External fixed costs.** "External fixed costs" means costs related to the  
6.23 nursing home surcharge under section 256.9657, subdivision 1; licensure fees under  
6.24 section 144.122; family advisory council fee under section 144A.33; scholarships under  
6.25 section 256B.431, subdivision 36; planned closure rate adjustments under section  
6.26 256B.437; consolidation rate adjustments under section 144A.071, subdivisions 4c,  
6.27 paragraph (a), clauses (5) and (6), and 4d; single bed room incentives under section  
6.28 256B.431, subdivision 42; property taxes, assessments, and payments in lieu of taxes;  
6.29 employer health insurance costs; quality improvement incentive payment rate adjustments  
6.30 under subdivision 46c; performance-based incentive payments under subdivision 46d;  
6.31 special dietary needs under subdivision 51b; and PERA.

6.32 Sec. 4. Minnesota Statutes 2015 Supplement, section 256B.441, subdivision 53,  
6.33 is amended to read:

7.1 Subd. 53. **Calculation of payment rate for external fixed costs.** The commissioner  
7.2 shall calculate a payment rate for external fixed costs.

7.3 (a) For a facility licensed as a nursing home, the portion related to section 256.9657  
7.4 shall be equal to \$8.86. For a facility licensed as both a nursing home and a boarding care  
7.5 home, the portion related to section 256.9657 shall be equal to \$8.86 multiplied by the  
7.6 result of its number of nursing home beds divided by its total number of licensed beds.

7.7 (b) The portion related to the licensure fee under section 144.122, paragraph (d),  
7.8 shall be the amount of the fee divided by actual resident days.

7.9 (c) The portion related to development and education of resident and family advisory  
7.10 councils under section 144A.33 shall be \$5 divided by 365.

7.11 (d) The portion related to scholarships shall be determined under section 256B.431,  
7.12 subdivision 36.

7.13 (e) The portion related to planned closure rate adjustments shall be as determined  
7.14 under section 256B.437, subdivision 6, and Minnesota Statutes 2010, section 256B.436.

7.15 (f) The portion related to consolidation rate adjustments shall be as determined under  
7.16 section 144A.071, subdivisions 4c, paragraph (a), clauses (5) and (6), and 4d.

7.17 ~~(f)~~ (g) The single bed room incentives shall be as determined under section  
7.18 256B.431, subdivision 42.

7.19 ~~(g)~~ (h) The portions related to real estate taxes, special assessments, and payments  
7.20 made in lieu of real estate taxes directly identified or allocated to the nursing facility shall  
7.21 be the actual amounts divided by actual resident days.

7.22 ~~(h)~~ (i) The portion related to employer health insurance costs shall be the allowable  
7.23 costs divided by resident days.

7.24 ~~(i)~~ (j) The portion related to the Public Employees Retirement Association shall  
7.25 be actual costs divided by resident days.

7.26 ~~(j)~~ (k) The portion related to quality improvement incentive payment rate  
7.27 adjustments shall be as determined under subdivision 46c.

7.28 ~~(k)~~ (l) The portion related to performance-based incentive payments shall be as  
7.29 determined under subdivision 46d.

7.30 ~~(l)~~ (m) The portion related to special dietary needs shall be the per diem amount  
7.31 determined under subdivision 51b.

7.32 ~~(m)~~ (n) The payment rate for external fixed costs shall be the sum of the amounts in  
7.33 paragraphs (a) to ~~(l)~~ (m).