

State of Minnesota

H. F. No. **4386**

1.1 A bill for an act

1.2 relating to health; modifying nursing home exceptions for replacement beds by

1.3 adding an exception for a facility in Duluth; amending Minnesota Statutes 2019

1.4 Supplement, section 144A.071, subdivision 4a.

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

1.6 Section 1. Minnesota Statutes 2019 Supplement, section 144A.071, subdivision 4a, is

1.7 amended to read:

1.8 Subd. 4a. **Exceptions for replacement beds.** It is in the best interest of the state to

1.9 ensure that nursing homes and boarding care homes continue to meet the physical plant

1.10 licensing and certification requirements by permitting certain construction projects. Facilities

1.11 should be maintained in condition to satisfy the physical and emotional needs of residents

1.12 while allowing the state to maintain control over nursing home expenditure growth.

1.13 The commissioner of health in coordination with the commissioner of human services,

1.14 may approve the renovation, replacement, upgrading, or relocation of a nursing home or

1.15 boarding care home, under the following conditions:

1.16 (a) to license or certify beds in a new facility constructed to replace a facility or to make

1.17 repairs in an existing facility that was destroyed or damaged after June 30, 1987, by fire,

1.18 lightning, or other hazard provided:

1.19 (i) destruction was not caused by the intentional act of or at the direction of a controlling

1.20 person of the facility;

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

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

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

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

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

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

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

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

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

(f) to license and certify up to 40 beds transferred from an existing facility owned and operated by the Amherst H. Wilder Foundation in the city of St. Paul to a new unit at the same location as the existing facility that will serve persons with Alzheimer's disease and other related disorders. The transfer of beds may occur gradually or in stages, provided the total number of beds transferred does not exceed 40. At the time of licensure and certification of a bed or beds in the new unit, the commissioner of health shall delicense and decertify

the same number of beds in the existing facility. As a condition of receiving a license or certification under this clause, the facility must make a written commitment to the commissioner of human services that it will not seek to receive an increase in its property-related payment rate as a result of the transfers allowed under this paragraph;

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

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

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

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

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

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

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

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

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

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

(1) relicensed and recertified upon relocation and reactivation of some or all of the beds to an existing licensed and certified facility or facilities located in Pine River, Brainerd, or International Falls; provided that the total project construction costs related to the relocation of beds from layaway status for any facility receiving relocated beds may not exceed the

5.1 dollar threshold provided in subdivision 2 unless the construction project has been approved
5.2 through the moratorium exception process under section 144A.073;

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

5.6 The property-related payment rate of a facility placing beds on layaway status must be
5.7 adjusted by the incremental change in its rental per diem after recalculating the rental per
5.8 diem as provided in section 256B.431, subdivision 3a, paragraph (c). The property-related
5.9 payment rate for a facility relicensing and recertifying beds from layaway status must be
5.10 adjusted by the incremental change in its rental per diem after recalculating its rental per
5.11 diem using the number of beds after the relicensing to establish the facility's capacity day
5.12 divisor, which shall be effective the first day of the month following the month in which
5.13 the relicensing and recertification became effective. Any beds remaining on layaway status
5.14 more than three years after the date the layaway status became effective must be removed
5.15 from layaway status and immediately delicensed and decertified;

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

5.23 (r) to license and certify up to 117 beds that are relocated from a licensed and certified
5.24 138-bed nursing facility located in St. Paul to a hospital with 130 licensed hospital beds
5.25 located in South St. Paul, provided that the nursing facility and hospital are owned by the
5.26 same or a related organization and that prior to the date the relocation is completed the
5.27 hospital ceases operation of its inpatient hospital services at that hospital. After relocation,
5.28 the nursing facility's status shall be the same as it was prior to relocation. The nursing
5.29 facility's property-related payment rate resulting from the project authorized in this paragraph
5.30 shall become effective no earlier than April 1, 1996. For purposes of calculating the
5.31 incremental change in the facility's rental per diem resulting from this project, the allowable
5.32 appraised value of the nursing facility portion of the existing health care facility physical
5.33 plant prior to the renovation and relocation may not exceed \$2,490,000;

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

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

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

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

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

(w) to license and certify a total replacement project of up to 49 beds located in Norman County that are relocated from a nursing home destroyed by flood and whose residents were relocated to other nursing homes. The operating cost payment rates for the new nursing facility shall be determined based on the interim and settle-up payment provisions of section 256R.27 and the reimbursement provisions of chapter 256R. Property-related reimbursement rates shall be determined under section 256R.26, taking into account any federal or state flood-related loans or grants provided to the facility;

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

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

(z) to license and certify up to 150 nursing home beds to replace an existing ~~285-bed~~ 285-bed nursing facility located in St. Paul. The replacement project shall include both the renovation of existing buildings and the construction of new facilities at the existing site.

The reduction in the licensed capacity of the existing facility shall occur during the construction project as beds are taken out of service due to the construction process. Prior to the start of the construction process, the facility shall provide written information to the commissioner of health describing the process for bed reduction, plans for the relocation of residents, and the estimated construction schedule. The relocation of residents shall be in accordance with the provisions of law and rule;

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

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

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

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

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

(ff) to license and certify a total replacement project of up to 124 beds located in Wilkin County that are in need of relocation from a nursing home significantly damaged by flood. The operating cost payment rates for the new nursing facility shall be determined based on

9.1 the interim and settle-up payment provisions of section 256R.27 and the reimbursement
9.2 provisions of chapter 256R. Property-related reimbursement rates shall be determined under
9.3 section 256R.26, taking into account any federal or state flood-related loans or grants
9.4 provided to the facility;

9.5 (gg) to allow the commissioner of human services to license an additional nine beds to
9.6 provide residential services for the physically disabled under Minnesota Rules, parts
9.7 9570.2000 to 9570.3400, in a 240-bed nursing home located in Duluth, provided that the
9.8 total number of licensed and certified beds at the facility does not increase;

9.9 (hh) to license and certify up to 120 new nursing facility beds to replace beds in a facility
9.10 in Anoka County, which was licensed for 98 beds as of July 1, 2000, provided the new
9.11 facility is located within four miles of the existing facility and is in Anoka County. Operating
9.12 and property rates shall be determined and allowed under chapter 256R and Minnesota
9.13 Rules, parts 9549.0010 to 9549.0080; ~~or~~

9.14 (ii) to transfer up to 98 beds of a 129-licensed bed facility located in Anoka County that,
9.15 as of March 25, 2001, is in the active process of closing, to a ~~122-licensed bed~~ 122-bed
9.16 licensed nonprofit nursing facility located in the city of Columbia Heights or its affiliate.
9.17 The transfer is effective when the receiving facility notifies the commissioner in writing of
9.18 the number of beds accepted. The commissioner shall place all transferred beds on layaway
9.19 status held in the name of the receiving facility. The layaway adjustment provisions of
9.20 section 256B.431, subdivision 30, do not apply to this layaway. The receiving facility may
9.21 only remove the beds from layaway for recertification and relicensure at the receiving
9.22 facility's current site, or at a newly constructed facility located in Anoka County. The
9.23 receiving facility must receive statutory authorization before removing these beds from
9.24 layaway status, or may remove these beds from layaway status if removal from layaway
9.25 status is part of a moratorium exception project approved by the commissioner under section
9.26 144A.073; or

9.27 (jj) to increase capacity by relocating up to five beds to a 54-bed licensed facility in
9.28 Duluth. The facility is not required to complete a construction project when relocating the
9.29 beds and must not receive a relocation rate adjustment for the addition of these beds.