

SENATE

STATE OF MINNESOTA

EIGHTY-NINTH SESSION

S.F. No. 1471

(SENATE AUTHORS: EKEN)

DATE	D-PG	OFFICIAL STATUS
03/09/2015	601	Introduction and first reading Referred to Health, Human Services and Housing
03/16/2015	892a	Comm report: To pass as amended and re-refer to Judiciary
03/23/2015		Comm report: To pass as amended and re-refer to Finance

1.1 A bill for an act

1.2 relating to health; making changes to provisions governing receivership of

1.3 nursing homes or certified boarding care homes; amending Minnesota Statutes

1.4 2014, sections 144A.15; 256B.0641, subdivision 3; 256B.495, subdivisions 1, 5;

1.5 repealing Minnesota Statutes 2014, sections 144A.14; 256B.495, subdivisions

1.6 1a, 2, 4.

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

1.8 Section 1. Minnesota Statutes 2014, section 144A.15, is amended to read:

1.9 **144A.15 INVOLUNTARY STATE RECEIVERSHIP.**

1.10 Subdivision 1. **Petition, notice.** In addition to any other remedy provided by law,

1.11 the commissioner of health may petition the district court in Ramsey or Hennepin County

1.12 or in the district in which a nursing home or certified boarding care home is located for

1.13 an order directing the controlling persons of the nursing home or certified boarding

1.14 care home to show cause why the commissioner of health ~~or a designee~~ should not be

1.15 appointed receiver to operate the facility. The petition to the district court shall contain

1.16 proof by affidavit that one or more of the following exists:

1.17 (1) the commissioner of health has either commenced proceedings to suspend or

1.18 revoke the state license suspension or revocation proceedings, suspended or revoked a

1.19 license, or decided not to renew the nursing home license, or that, or refuses to renew

1.20 a license;

1.21 (2) violations of section 1919(b), (c), or (d), of the Social Security Act, or the

1.22 regulations adopted under that section, or violations of state law laws or rules, create an

1.23 emergency; for the residents of the facility;

1.24 (3) there is a threat of imminent abandonment by the owner or operator;

2.1 (4) there is a pattern of failure to meet ongoing financial obligations such as failing
2.2 to pay for food, pharmaceuticals, personnel, or required insurance;

2.3 (5) the Centers for Medicare and Medicaid Services (CMS) has appointed a
2.4 temporary manager to oversee the operation of the facility; or

2.5 (6) notice by CMS has been given that the federal Medicare or Medicaid provider
2.6 agreement will be terminated, revoked, canceled, or not renewed.

2.7 The order to show cause shall be ~~returnable not less than five days after service is~~
2.8 ~~completed and shall provide for personal service of a copy to personally served to either~~
2.9 ~~the nursing home administrator and or to the persons person designated as agents the~~
2.10 ~~agent~~ by the controlling persons to accept service on their behalf pursuant to section
2.11 144A.03, subdivision 2.

2.12 Subd. 2. **Appointment of receiver, rental.** If, after hearing, the court finds that
2.13 ~~involuntary~~ receivership is necessary as a means of protecting the health, safety or welfare
2.14 of a resident of a ~~nursing home~~ the facility, the court shall appoint the commissioner
2.15 of health, ~~or any other person designated by the commissioner of health~~, as a receiver
2.16 to take charge of the facility. The commissioner may enter into an agreement for a
2.17 managing agent to work on the commissioner's behalf in operating the facility during the
2.18 receivership. The court shall determine a fair monthly rental for the facility, taking into
2.19 account all relevant factors including the condition of the facility. This rental fee shall
2.20 be paid by the receiver to the appropriate controlling ~~persons~~ person for each month
2.21 that the receivership remains in effect but shall be reduced by the amount that the costs
2.22 of the receivership provided under section 256B.495 are in excess of the facility rate.
2.23 The controlling person may agree to waive the fair monthly rent by affidavit to the
2.24 court. Notwithstanding any other law to the contrary, no payment made to a controlling
2.25 person by any state agency during a period of ~~involuntary~~ receivership shall include any
2.26 allowance for profit or be based on any formula which includes an allowance for profit.

2.27 Notwithstanding state contracting requirements in chapter 16C, the commissioner
2.28 shall establish and maintain a list of qualified licensed nursing home administrators,
2.29 or other qualified persons or organizations with experience in delivering skilled health
2.30 care services and the operation of long-term care facilities for those interested in being a
2.31 managing agent on the commissioner's behalf during a state receivership of a facility. This
2.32 list will be a resource for choosing a managing agent and the commissioner may update
2.33 the list at any time. A managing agent cannot be someone who: (1) is the owner, licensee,
2.34 or administrator of the facility; (2) has a financial interest in the facility at the time of the
2.35 receivership or is a related party to the owner, licensee, or administrator; or (3) has owned or
2.36 operated any nursing facility or boarding care home that has been ordered into receivership.

3.1 Subd. 2a. **Emergency procedure.** If it appears from the petition filed under
3.2 subdivision 1, or from an affidavit or affidavits filed with the petition, or from testimony
3.3 of witnesses under oath when the court determines that this is necessary, that there
3.4 is probable cause to believe that an emergency exists in a nursing home or certified
3.5 boarding care home requiring the receivership, the court shall issue a temporary order for
3.6 appointment of a receiver within ~~five days~~ one day after receipt of the petition. Notice
3.7 of the petition shall be served personally on the nursing home administrator ~~and~~ or on
3.8 the ~~persons~~ person designated as ~~agents~~ the agent by the controlling ~~persons~~ person to
3.9 accept service on their behalf according to section 144A.03, subdivision 2. A hearing on
3.10 the petition shall be held within five days' after notice is served unless the administrator
3.11 or designated agent consents to a later date. After the hearing, the court may continue,
3.12 modify, or terminate the temporary order.

3.13 Subd. 3. **Powers and duties of receiver.** (a) A nursing home receiver appointed
3.14 pursuant to this section shall with all reasonable speed, but in any case, within 18
3.15 months after the receivership order, determine whether to close the facility or to make
3.16 other provisions intended to keep it open. If facility closure is the determination, the
3.17 commissioner shall provide for the orderly transfer of all the nursing home's residents
3.18 to other facilities or make other provisions for their continued safety and health care,
3.19 pursuant to the relocation procedures required in section 144A.161. The commissioner
3.20 shall consider whether to keep the facility open and operating past the receivership and
3.21 may require the owners and controlling person interested in operating the facility after
3.22 the receivership to agree to measures and conditions necessary to protect the residents'
3.23 health and safety. During the receivership, the receiver may correct or eliminate those
3.24 deficiencies in the facility which seriously endanger the life, health or safety of the
3.25 residents unless the correction or elimination of deficiencies involves major alterations
3.26 in the physical structure of the nursing home. The receiver shall, during this period,
3.27 operate the nursing home in a manner designed to guarantee the safety and adequate health
3.28 care of the residents. The receiver shall take no action which impairs the legal rights of
3.29 a resident of the nursing home. The receiver shall have power to make contracts and
3.30 incur lawful expenses. The receiver shall use the building, fixtures, furnishings, and any
3.31 accompanying consumable goods in the provision of care and services to the residents
3.32 during the receivership period. The receiver shall collect incoming payments from all
3.33 sources, including payments for services provided before the receivership, and apply them
3.34 to the cost incurred in the performance of the receiver's functions. No security interest in
3.35 any real or personal property comprising the nursing home or contained within it, or in
3.36 any fixture of the facility, shall be impaired or diminished in priority by the receiver. The

receiver shall pay all valid obligations of the ~~nursing home~~ facility incurred during the course of the receivership and may pay obligations incurred prior to the receivership if, in the judgment of the commissioner, these payments must be made to ensure the health, safety, or welfare of the residents and shall deduct these expenses, ~~if appropriate~~, from rental payments owed to any controlling person by virtue of the receivership. The receiver has authority to hire, direct, manage, and discharge any employees of the facility including the administrator, director of nursing, medical director, or manager of the facility.

(b) Nothing in this section shall relieve any owner, operator, or controlling person of a facility placed in receivership of any civil or criminal liability incurred, or any duty imposed by law, by reason of acts or omissions of the owner, licensee, or controlling person prior to the order for receivership under this section, nor shall anything contained in this section be construed to suspend during the receivership any obligation of the owner, licensee, or controlling person for payment of taxes or other operating and maintenance expenses of the facility nor of the owner, licensee, or controlling person or any other person for the payment of mortgages or liens.

Subd. 4. **Receiver's fee; liability; commissioner assistance.** ~~A nursing home receiver~~ The commissioner of health, as receiver appointed pursuant to this section shall be by the court, may hire a managing agent to work on the commissioner's behalf to operate the facility during the receivership, and that managing agent is entitled to a reasonable receiver's fee as determined by the court. The receiver and its managing agent shall be liable only in an official capacity for injury to person and property by reason of the conditions of the nursing home. The receiver and its managing agent shall not be personally liable, except for gross negligence and intentional acts. The commissioner of health shall assist the receiver managing agent in carrying out these its duties.

Subd. 5. **Termination.** ~~An involuntary~~ Receivership imposed pursuant to this section shall terminate 18 months after the date on which it was ordered or at any other time designated by the court or upon the occurrence of any of the following events:

(a) (1) a determination by the commissioner of health that the nursing home's license should be renewed or should not be suspended or revoked;

(b) (2) the granting of a new license to the nursing home; or

(c) (3) a determination by the commissioner of health that all of the residents of the nursing home have been provided alternative health care, either in another facility or otherwise.

Subd. 6. **Postreceivership period; facility remaining open.** (a) If a facility remains open after the receivership is concluded, a new operator is only legally responsible under state law for its actions after the receivership has concluded.

(b) The commissioner of human services may adjust, reclassify, or disallow costs reported for a facility that was in receivership for periods of a reporting year during which the receivership was in effect and for the prior year.

Sec. 2. Minnesota Statutes 2014, section 256B.0641, subdivision 3, is amended to read:

Subd. 3. **Facility in receivership.** Subdivision 2 does not apply to the change of ownership of a facility to a nonrelated organization while the facility to be sold, transferred or reorganized is in receivership under section ~~144A.14~~, 144A.15, 245A.12, or 245A.13, and the commissioner during the receivership has not determined the need to place residents of the facility into a newly constructed or newly established facility. Nothing in this subdivision limits the liability of a former owner.

Sec. 3. Minnesota Statutes 2014, section 256B.495, subdivision 1, is amended to read:

Subdivision 1. **Payment of receivership fees.** (a) When the commissioner of health notifies the commissioner of human services that a nursing facility is subject to the receivership provisions under section 144A.15 and provides a recommendation in accordance with section 144A.154, the commissioner in consultation with the commissioner of health may establish a receivership fee that exceeds is added to a nursing facility payment rate when the commissioner of health determines a nursing facility is subject to the receivership provisions under section 144A.14 or 144A.15. In establishing the receivership fee, the commissioner must reduce the receiver's requested receivership fee by amounts that the commissioner determines are included in the nursing facility's payment rate and that can be used to cover part or all of the receivership fee. Amounts that can be used to reduce the receivership fee shall be determined by reallocating facility staff or costs that were formerly paid by the nursing facility before the receivership and are no longer required to be paid. The amounts may include any efficiency incentive, allowance, and other amounts not specifically required to be paid for expenditures of the nursing facility. The commissioner shall reduce the requested amount by any amounts the commissioner determines are included in the nursing facility's payment rate and that are not specifically required to be paid for expenditures of the nursing facility.

~~If the receivership fee cannot be covered by amounts in the nursing facility's payment rate, A receivership fee shall be set according to paragraphs (a) (b) and (b) (c) and payment shall be according to paragraphs (e) (d) to (e) (f).~~

(a) (b) The receivership fee per diem shall be determined and revised as necessary by dividing the annual estimated amount of needed additional funding or actual additional costs of the receivership fee by the nursing facility's estimated resident days from the

most recent cost report for which the commissioner has established a payment rate or the estimated resident days in the projected receivership fee period for the projected duration of the receivership.

~~(b)~~ (c) The receivership fee per diem shall be added to the nursing facility's payment rate.

~~(e)~~ (d) Notification of the payment rate increase must meet the requirements of section 256B.47, subdivision 2.

~~(d)~~ (e) The payment rate in paragraph ~~(b)~~ (c) for a nursing facility shall be effective the first day of the month following the receiver's compliance with the notice conditions in paragraph ~~(e)~~ receivership.

~~(e)~~ (f) The commissioner may elect to make a lump-sum payment of a portion of the receivership fee to the receiver or managing agent. In this case, the commissioner and the receiver or managing agent shall agree to a repayment plan. Regardless of whether the commissioner makes a lump-sum payment under this paragraph, the provisions of paragraphs ~~(a) to (d)~~ and subdivision 2 also (b) to (e) apply.

Sec. 4. Minnesota Statutes 2014, section 256B.495, subdivision 5, is amended to read:

Subd. 5. **Sale or transfer of a nursing facility in receivership after closure.** (a) Upon the subsequent sale or transfer of a nursing facility in receivership, the commissioner ~~must~~ shall seek to recover from the prior owner, prior licensee, or prior controlling party any amounts paid through payment rate adjustments under subdivision 4 ~~which exceed the normal cost of operating the nursing facility. Examples of costs in excess of the normal cost of operating the nursing facility include the managing agent's fee, directly identifiable costs of the managing agent, bonuses paid to employees for their continued employment during the downsizing to closure of the nursing facility, prereceivership expenditures paid by the receiver, additional professional services such as accountants, psychologists, and dietitians, and other similar costs incurred by the receiver to complete receivership~~ 1. The buyer or transferee prior owner, prior licensee, or prior controlling party shall repay this amount to the commissioner within 60 days after the commissioner notifies the buyer or transferee prior owner, prior licensee, or prior controlling party of the obligation to repay. The buyer or transferee must also repay the private-pay resident the amount the private-pay resident paid through payment rate adjustment.

(b) The commissioner may recover amounts paid through the receivership fee by means of withholding from payments due to the prior owner, prior licensee, or prior controlling party related to any other medical assistance provider of theirs in Minnesota.

7.1 The prior owner, prior licensee, or prior controlling party must also repay private-pay
7.2 residents the amount the private-pay resident paid for the receivership fee.

7.3 ~~(b) (c) If a nursing facility with payment rates subject to subdivision 4, paragraph (a),~~
7.4 ~~determined under subdivision 1 is later sold while the nursing facility is in receivership,~~
7.5 ~~the payment rates in effect prior to the receivership shall be the new owner's payment~~
7.6 ~~rates. Those payment rates shall continue to be in effect until the rate year following the~~
7.7 ~~reporting period ending on September 30 for the new owner. The reporting period shall,~~
7.8 ~~whenever possible, be at least five consecutive months. If the reporting period is less than~~
7.9 ~~five months but more than three months, the nursing facility's resident days for the last~~
7.10 ~~two months of the reporting period must be annualized over the reporting period for the~~
7.11 ~~purpose of computing the payment rate for the rate year following the reporting period.~~
7.12 The commissioner may apply to these rates any rate adjustment provided to other nursing
7.13 facilities for which the facility is qualified.

7.14 Sec. 5. **REVISOR'S INSTRUCTION.**

7.15 The revisor shall remove cross-references to the repealed sections in section 6 and
7.16 make conforming changes necessary to correct punctuation, grammar, or the structure of
7.17 the remaining text and preserve its meaning.

7.18 Sec. 6. **REPEALER.**

7.19 Minnesota Statutes 2014, sections 144A.14; and 256B.495, subdivisions 1a, 2,
7.20 and 4, are repealed.

144A.14 VOLUNTARY RECEIVERSHIP.

A majority in interest of the controlling persons of a nursing home may at any time request the commissioner of health to assume the operation of the nursing home through appointment of a receiver. Upon receiving a request for a receiver, the commissioner of health may, if the commissioner deems receivership desirable, enter into an agreement with a majority in interest of the controlling persons, providing for the appointment of a receiver to take charge of the facility under conditions deemed appropriate by both parties. The agreement shall specify all terms and conditions of the receivership and shall preserve all rights of the facility residents as granted by law. A receivership initiated in accordance with this section shall terminate at the time specified by the parties or at the time when either party notifies the other in writing that the party wishes to terminate the receivership agreement.

256B.495 NURSING FACILITY RECEIVERSHIP FEES.

Subd. 1a. **Receivership payment rate adjustment.** Upon receiving a recommendation from the commissioner of health for a review of rates under section 144A.154, the commissioner may grant an adjustment to the nursing home's payment rate. The commissioner shall review the recommendation of the commissioner of health, together with the nursing home's cost report to determine whether or not the deficiency or need can be corrected or met by reallocating nursing home staff, costs, revenues, or other resources including any investments, efficiency incentives, or allowances. If the commissioner determines that the deficiency cannot be corrected or the need cannot be met, the commissioner shall determine the payment rate adjustment by dividing the additional annual costs established during the commissioner's review by the nursing home's actual resident days from the most recent desk-audited cost report.

Subd. 2. **Deduction of additional receivership payments.** If the commissioner has established a receivership fee per diem for a nursing facility in receivership under subdivision 1 or a payment rate adjustment under subdivision 1a, the commissioner must deduct these receivership payments according to paragraphs (a) to (c).

(a) The total receivership fee payments shall be the receivership per diem plus the payment rate adjustment multiplied by the number of resident days for the period of the receivership. If actual resident days for the receivership period are not made available within two weeks of the commissioner's written request, the commissioner shall compute the resident days by prorating the facility's resident days based on the number of calendar days from each portion of the nursing facility's reporting years covered by the receivership period.

(b) The amount determined in paragraph (a) must be divided by the nursing facility's resident days for the reporting year in which the receivership period ends.

(c) The per diem amount in paragraph (b) shall be subtracted from the nursing facility's operating cost payment rate for the rate year following the reporting year in which the receivership period ends. This provision applies whether or not there is a sale or transfer of the nursing facility, unless the provisions of subdivision 5 apply.

Subd. 4. **Downsizing and closing nursing facilities.** (a) If the nursing facility is subject to a downsizing to closure process during the period of receivership, the commissioner may reestablish the nursing facility's payment rate. The payment rate shall be established based on the nursing facility's budgeted operating costs, the receivership property related costs, and the management fee costs for the receivership period divided by the facility's estimated resident days for the same period. The commissioner of health and the commissioner shall make every effort to first facilitate the transfer of private paying residents to alternate service sites prior to the effective date of the payment rate. The cost limits and the case mix provisions in the rate setting system shall not apply during the portion of the receivership period over which the nursing facility downsizes to closure.

(b) Any payment rate adjustment under this subdivision must meet the conditions in section 256B.47, subdivision 2, and shall remain in effect until the receivership ends, or until another date the commissioner sets.