

302.17

ARTICLE 9

302.18

NURSING FACILITY TECHNICAL CORRECTIONS

302.19 Section 1. Minnesota Statutes 2016, section 144.0722, subdivision 1, is amended to read:

302.20 Subdivision 1. **Resident reimbursement classifications.** The commissioner of health
302.21 shall establish resident reimbursement classifications based upon the assessments of residents
302.22 of nursing homes and boarding care homes conducted under section 144.0721, or under
302.23 rules established by the commissioner of human services under ~~sections 256B.41 to 256B.48~~
302.24 chapter 256R. The reimbursement classifications established by the commissioner must
302.25 conform to the rules established by the commissioner of human services.

302.26 Sec. 2. Minnesota Statutes 2016, section 144.0724, subdivision 1, is amended to read:

302.27 Subdivision 1. **Resident reimbursement case mix classifications.** The commissioner
302.28 of health shall establish resident reimbursement classifications based upon the assessments
302.29 of residents of nursing homes and boarding care homes conducted under this section and
302.30 according to section ~~256B.43~~ 256R.17.

303.1 Sec. 3. Minnesota Statutes 2016, section 144.0724, subdivision 2, is amended to read:

303.2 Subd. 2. **Definitions.** For purposes of this section, the following terms have the meanings
303.3 given.

303.4 (a) "Assessment reference date" or "ARD" means the specific end point for look-back
303.5 periods in the MDS assessment process. This look-back period is also called the observation
303.6 or assessment period.

303.7 (b) "Case mix index" means the weighting factors assigned to the RUG-IV classifications.

303.8 (c) "Index maximization" means classifying a resident who could be assigned to more
303.9 than one category, to the category with the highest case mix index.

303.10 (d) "Minimum data set" or "MDS" means a core set of screening, clinical assessment,
303.11 and functional status elements, that include common definitions and coding categories
303.12 specified by the Centers for Medicare and Medicaid Services and designated by the
303.13 Minnesota Department of Health.

303.14 (e) "Representative" means a person who is the resident's guardian or conservator, the
303.15 person authorized to pay the nursing home expenses of the resident, a representative of the
303.16 Office of Ombudsman for Long-Term Care whose assistance has been requested, or any
303.17 other individual designated by the resident.

- 303.18 (f) "Resource utilization groups" or "RUG" means the system for grouping a nursing
303.19 facility's residents according to their clinical and functional status identified in data supplied
303.20 by the facility's minimum data set.
- 303.21 (g) "Activities of daily living" means grooming, dressing, bathing, transferring, mobility,
303.22 positioning, eating, and toileting.
- 303.23 (h) "Nursing facility level of care determination" means the assessment process that
303.24 results in a determination of a resident's or prospective resident's need for nursing facility
303.25 level of care as established in subdivision 11 for purposes of medical assistance payment
303.26 of long-term care services for:
- 303.27 (1) nursing facility services under section 256B.434 or ~~256B.441~~ chapter 256R;
- 303.28 (2) elderly waiver services under section 256B.0915;
- 303.29 (3) CADI and BI waiver services under section 256B.49; and
- 303.30 (4) state payment of alternative care services under section 256B.0913.
- 304.1 Sec. 4. Minnesota Statutes 2016, section 144.0724, subdivision 9, is amended to read:
- 304.2 Subd. 9. **Audit authority.** (a) The commissioner shall audit the accuracy of resident
304.3 assessments performed under section ~~256B.438~~ 256R.17 through any of the following: desk
304.4 audits; on-site review of residents and their records; and interviews with staff, residents, or
304.5 residents' families. The commissioner shall reclassify a resident if the commissioner
304.6 determines that the resident was incorrectly classified.
- 304.7 (b) The commissioner is authorized to conduct on-site audits on an unannounced basis.
- 304.8 (c) A facility must grant the commissioner access to examine the medical records relating
304.9 to the resident assessments selected for audit under this subdivision. The commissioner may
304.10 also observe and speak to facility staff and residents.
- 304.11 (d) The commissioner shall consider documentation under the time frames for coding
304.12 items on the minimum data set as set out in the Long-Term Care Facility Resident Assessment
304.13 Instrument User's Manual published by the Centers for Medicare and Medicaid Services.
- 304.14 (e) The commissioner shall develop an audit selection procedure that includes the
304.15 following factors:

304.16 (1) Each facility shall be audited annually. If a facility has two successive audits in which
304.17 the percentage of change is five percent or less and the facility has not been the subject of
304.18 a special audit in the past 36 months, the facility may be audited biannually. A stratified
304.19 sample of 15 percent, with a minimum of ten assessments, of the most current assessments
304.20 shall be selected for audit. If more than 20 percent of the RUG-IV classifications are changed
304.21 as a result of the audit, the audit shall be expanded to a second 15 percent sample, with a
304.22 minimum of ten assessments. If the total change between the first and second samples is
304.23 35 percent or greater, the commissioner may expand the audit to all of the remaining
304.24 assessments.

304.25 (2) If a facility qualifies for an expanded audit, the commissioner may audit the facility
304.26 again within six months. If a facility has two expanded audits within a 24-month period,
304.27 that facility will be audited at least every six months for the next 18 months.

304.28 (3) The commissioner may conduct special audits if the commissioner determines that
304.29 circumstances exist that could alter or affect the validity of case mix classifications of
304.30 residents. These circumstances include, but are not limited to, the following:

304.31 (i) frequent changes in the administration or management of the facility;

304.32 (ii) an unusually high percentage of residents in a specific case mix classification;

305.1 (iii) a high frequency in the number of reconsideration requests received from a facility;

305.2 (iv) frequent adjustments of case mix classifications as the result of reconsiderations or
305.3 audits;

305.4 (v) a criminal indictment alleging provider fraud;

305.5 (vi) other similar factors that relate to a facility's ability to conduct accurate assessments;

305.6 (vii) an atypical pattern of scoring minimum data set items;

305.7 (viii) nonsubmission of assessments;

305.8 (ix) late submission of assessments; or

305.9 (x) a previous history of audit changes of 35 percent or greater.

305.10 (f) Within 15 working days of completing the audit process, the commissioner shall
305.11 make available electronically the results of the audit to the facility. If the results of the audit

305.12 reflect a change in the resident's case mix classification, a case mix classification notice
305.13 will be made available electronically to the facility, using the procedure in subdivision 7,
305.14 paragraph (a). The notice must contain the resident's classification and a statement informing
305.15 the resident, the resident's authorized representative, and the facility of their right to review
305.16 the commissioner's documents supporting the classification and to request a reconsideration
305.17 of the classification. This notice must also include the address and telephone number of the
305.18 Office of Ombudsman for Long-Term Care.

305.19 Sec. 5. Minnesota Statutes 2016, section 144A.071, subdivision 3, is amended to read:

305.20 Subd. 3. **Exceptions authorizing increase in beds; hardship areas.** (a) The
305.21 commissioner of health, in coordination with the commissioner of human services, may
305.22 approve the addition of new licensed and Medicare and Medicaid certified nursing home
305.23 beds, using the criteria and process set forth in this subdivision.

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

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

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

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

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

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

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

306.23 (d) For each designated hardship area determined in paragraph (c), the commissioner
306.24 shall publish a request for proposals in accordance with section 144A.073 and Minnesota
306.25 Rules, parts 4655.1070 to 4655.1098. The request for proposals must be published in the
306.26 State Register by March 15 following receipt of responses to the request for information.
306.27 The request for proposals must specify the number of new beds which may be added in the
306.28 designated hardship area, which must not exceed the number which, if added to the existing
306.29 number of beds in the area, including beds in layaway status, would have prevented it from
306.30 being determined to be a hardship area under paragraph (b), clause (1). Beginning July 1,
306.31 2011, the number of new beds approved must not exceed 200 beds statewide per biennium.
306.32 After June 30, 2019, the number of new beds that may be approved in a biennium must not
306.33 exceed 300 statewide. For a proposal to be considered, the commissioner must receive it
306.34 within six months of the publication of the request for proposals. The commissioner shall
307.1 review responses to the request for proposals and shall approve or disapprove each proposal
307.2 by the following July 15, in accordance with section 144A.073 and Minnesota Rules, parts
307.3 4655.1070 to 4655.1098. The commissioner shall base approvals or disapprovals on a
307.4 comparison and ranking of proposals using only the criteria in subdivision 4a. Approval of
307.5 a proposal expires after 18 months unless the facility has added the new beds using existing
307.6 space, subject to approval by the commissioner, or has commenced construction as defined
307.7 in section 144A.071, subdivision 1a, paragraph (d). If, after the approved beds have been
307.8 added, fewer than 50 percent of the beds in a facility are newly licensed, the operating
307.9 payment rates previously in effect shall remain. If, after the approved beds have been added,
307.10 50 percent or more of the beds in a facility are newly licensed, operating payment rates shall
307.11 be determined according to Minnesota Rules, part 9549.0057, using the limits under ~~section~~
307.12 ~~256B.441~~ sections 256R.23, subdivision 5, and 256R.24, subdivision 3. External fixed costs
307.13 payment rates must be determined according to section ~~256B.441, subdivision 5~~ 256R.25.
307.14 Property payment rates for facilities with beds added under this subdivision must be
307.15 determined in the same manner as rate determinations resulting from projects approved and
307.16 completed under section 144A.073.

307.17 (e) The commissioner may:

307.18 (1) certify or license new beds in a new facility that is to be operated by the commissioner
307.19 of veterans affairs or when the costs of constructing and operating the new beds are to be

307.20 reimbursed by the commissioner of veterans affairs or the United States Veterans
307.21 Administration; and

307.22 (2) license or certify beds in a facility that has been involuntarily delicensed or decertified
307.23 for participation in the medical assistance program, provided that an application for
307.24 relicensure or recertification is submitted to the commissioner by an organization that is
307.25 not a related organization as defined in section ~~256B.441, subdivision 34~~ 256R.02,
307.26 subdivision 43, to the prior licensee within 120 days after delicensure or decertification.

307.27 Sec. 6. Minnesota Statutes 2016, section 144A.071, subdivision 4a, is amended to read:

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

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

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

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

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

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

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

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

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

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

308.23 (c) to license or certify beds in a project recommended for approval under section
308.24 144A.073;

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

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

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

309.14 (g) to license and certify nursing home beds to replace currently licensed and certified
309.15 boarding care beds which may be located either in a remodeled or renovated boarding care
309.16 or nursing home facility or in a remodeled, renovated, newly constructed, or replacement
309.17 nursing home facility within the identifiable complex of health care facilities in which the
309.18 currently licensed boarding care beds are presently located, provided that the number of
309.19 boarding care beds in the facility or complex are decreased by the number to be licensed as
309.20 nursing home beds and further provided that, if the total costs of new construction,
309.21 replacement, remodeling, or renovation exceed ten percent of the appraised value of the

309.22 facility or \$200,000, whichever is less, the facility makes a written commitment to the
309.23 commissioner of human services that it will not seek to receive an increase in its
309.24 property-related payment rate by reason of the new construction, replacement, remodeling,
309.25 or renovation. The provisions contained in section 144A.073 regarding the upgrading of
309.26 facilities do not apply to facilities that satisfy these requirements;

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

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

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

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

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

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

310.18 (n) to allow a facility that on April 16, 1993, was a 106-bed licensed and certified nursing
310.19 facility located in Minneapolis to layaway all of its licensed and certified nursing home
310.20 beds. These beds may be relicensed and recertified in a newly constructed teaching nursing
310.21 home facility affiliated with a teaching hospital upon approval by the legislature. The
310.22 proposal must be developed in consultation with the interagency committee on long-term
310.23 care planning. The beds on layaway status shall have the same status as voluntarily delicensed

310.24 and decertified beds, except that beds on layaway status remain subject to the surcharge in
310.25 section 256.9657. This layaway provision expires July 1, 1998;

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

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

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

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

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

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

311.32 (r) to license and certify up to 117 beds that are relocated from a licensed and certified
311.33 138-bed nursing facility located in St. Paul to a hospital with 130 licensed hospital beds
311.34 located in South St. Paul, provided that the nursing facility and hospital are owned by the
312.1 same or a related organization and that prior to the date the relocation is completed the
312.2 hospital ceases operation of its inpatient hospital services at that hospital. After relocation,
312.3 the nursing facility's status shall be the same as it was prior to relocation. The nursing
312.4 facility's property-related payment rate resulting from the project authorized in this paragraph
312.5 shall become effective no earlier than April 1, 1996. For purposes of calculating the
312.6 incremental change in the facility's rental per diem resulting from this project, the allowable
312.7 appraised value of the nursing facility portion of the existing health care facility physical
312.8 plant prior to the renovation and relocation may not exceed \$2,490,000;

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

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

312.24 The property-related payment rate of the facility placing beds on layaway status must
312.25 be adjusted by the incremental change in its rental per diem after recalculating the rental
312.26 per diem as provided in section 256B.431, subdivision 3a, paragraph (c). The property-related
312.27 payment rate for the facility relicensing and recertifying beds from layaway status must be
312.28 adjusted by the incremental change in its rental per diem after recalculating its rental per
312.29 diem using the number of beds after the relicensing to establish the facility's capacity day

312.30 divisor, which shall be effective the first day of the month following the month in which
 312.31 the relicensing and recertification became effective. Any beds remaining on layaway status
 312.32 more than five years after the date the layaway status became effective must be removed
 312.33 from layaway status and immediately delicensed and decertified;

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

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

313.7 (w) to license and certify a total replacement project of up to 49 beds located in Norman
 313.8 County that are relocated from a nursing home destroyed by flood and whose residents were
 313.9 relocated to other nursing homes. The operating cost payment rates for the new nursing
 313.10 facility shall be determined based on the interim and settle-up payment provisions of
 313.11 Minnesota Rules, part 9549.0057, and the reimbursement provisions of ~~section 256B.434~~
 313.12 chapter 256R. Property-related reimbursement rates shall be determined under section
 313.13 ~~256B.434~~ 256R.26, taking into account any federal or state flood-related loans or grants
 313.14 provided to the facility;

313.15 (x) to license and certify to the licensee of a nursing home in Polk County that was
 313.16 destroyed by flood in 1997 replacement projects with a total of up to 129 beds, with at least
 313.17 25 beds to be located in Polk County and up to 104 beds distributed among up to three other
 313.18 counties. These beds may only be distributed to counties with fewer than the median number
 313.19 of age intensity adjusted beds per thousand, as most recently published by the commissioner
 313.20 of human services. If the licensee chooses to distribute beds outside of Polk County under
 313.21 this paragraph, prior to distributing the beds, the commissioner of health must approve the
 313.22 location in which the licensee plans to distribute the beds. The commissioner of health shall
 313.23 consult with the commissioner of human services prior to approving the location of the
 313.24 proposed beds. The licensee may combine these beds with beds relocated from other nursing
 313.25 facilities as provided in section 144A.073, subdivision 3c. The operating payment rates for
 313.26 the new nursing facilities shall be determined based on the interim and settle-up payment
 313.27 provisions of ~~section 256B.431, 256B.434, or 256B.441~~ or Minnesota Rules, parts 9549.0010
 313.28 to 9549.0080. Property-related reimbursement rates shall be determined under section
 313.29 ~~256B.431, 256B.434, or 256B.441~~ 256R.26. If the replacement beds permitted under this
 313.30 paragraph are combined with beds from other nursing facilities, the rates shall be calculated
 313.31 as the weighted average of rates determined as provided in this paragraph and section
 313.32 ~~256B.441, subdivision 60~~ 256R.50;

313.33 (y) to license and certify beds in a renovation and remodeling project to convert 13
313.34 three-bed wards into 13 two-bed rooms and 13 single-bed rooms, expand space, and add
313.35 improvements in a nursing home that, as of January 1, 1994, met the following conditions:
314.1 the nursing home was located in Ramsey County, was not owned by a hospital corporation,
314.2 had a licensed capacity of 64 beds, and had been ranked among the top 15 applicants by
314.3 the 1993 moratorium exceptions advisory review panel. The total project construction cost
314.4 estimate for this project must not exceed the cost estimate submitted in connection with the
314.5 1993 moratorium exception process;

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

314.15 (aa) to allow the commissioner of human services to license an additional 36 beds to
314.16 provide residential services for the physically disabled under Minnesota Rules, parts
314.17 9570.2000 to 9570.3400, in a 198-bed nursing home located in Red Wing, provided that
314.18 the total number of licensed and certified beds at the facility does not increase;

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

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

314.32 (dd) to license and certify 72 beds in an existing facility in Mille Lacs County with 80
314.33 beds as part of a renovation project. The renovation must include construction of an addition
314.34 to accommodate ten residents with beginning and midstage dementia in a self-contained
315.1 living unit; creation of three resident households where dining, activities, and support spaces

- 315.2 are located near resident living quarters; designation of four beds for rehabilitation in a
 315.3 self-contained area; designation of 30 private rooms; and other improvements;
- 315.4 (ee) to license and certify beds in a facility that has undergone replacement or remodeling
 315.5 as part of a planned closure under section ~~256B.437~~ 256R.40;
- 315.6 (ff) to license and certify a total replacement project of up to 124 beds located in Wilkin
 315.7 County that are in need of relocation from a nursing home significantly damaged by flood.
 315.8 The operating cost payment rates for the new nursing facility shall be determined based on
 315.9 the interim and settle-up payment provisions of Minnesota Rules, part 9549.0057, and the
 315.10 reimbursement provisions of ~~section 256B.431~~ chapter 256R. Property-related reimbursement
 315.11 rates shall be determined under section ~~256B.431~~ 256R.26, taking into account any federal
 315.12 or state flood-related loans or grants provided to the facility;
- 315.13 (gg) to allow the commissioner of human services to license an additional nine beds to
 315.14 provide residential services for the physically disabled under Minnesota Rules, parts
 315.15 9570.2000 to 9570.3400, in a 240-bed nursing home located in Duluth, provided that the
 315.16 total number of licensed and certified beds at the facility does not increase;
- 315.17 (hh) to license and certify up to 120 new nursing facility beds to replace beds in a facility
 315.18 in Anoka County, which was licensed for 98 beds as of July 1, 2000, provided the new
 315.19 facility is located within four miles of the existing facility and is in Anoka County. Operating
 315.20 and property rates shall be determined and allowed under ~~section 256B.431~~ chapter 256R
 315.21 and Minnesota Rules, parts 9549.0010 to 9549.0080, ~~or section 256B.434 or 256B.441~~; or
- 315.22 (ii) to transfer up to 98 beds of a 129-licensed bed facility located in Anoka County that,
 315.23 as of March 25, 2001, is in the active process of closing, to a 122-licensed bed nonprofit
 315.24 nursing facility located in the city of Columbia Heights or its affiliate. The transfer is effective
 315.25 when the receiving facility notifies the commissioner in writing of the number of beds
 315.26 accepted. The commissioner shall place all transferred beds on layaway status held in the
 315.27 name of the receiving facility. The layaway adjustment provisions of section 256B.431,
 315.28 subdivision 30, do not apply to this layaway. The receiving facility may only remove the
 315.29 beds from layaway for recertification and relicensure at the receiving facility's current site,
 315.30 or at a newly constructed facility located in Anoka County. The receiving facility must
 315.31 receive statutory authorization before removing these beds from layaway status, or may
 315.32 remove these beds from layaway status if removal from layaway status is part of a
 315.33 moratorium exception project approved by the commissioner under section 144A.073.
- 316.1 Sec. 7. Minnesota Statutes 2016, section 144A.071, subdivision 4c, is amended to read:
- 316.2 Subd. 4c. **Exceptions for replacement beds after June 30, 2003.** (a) The commissioner
 316.3 of health, in coordination with the commissioner of human services, may approve the

316.4 renovation, replacement, upgrading, or relocation of a nursing home or boarding care home,
316.5 under the following conditions:

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

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

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

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

316.28 (4) to license and certify up to 80 beds transferred from an existing state-owned nursing
316.29 facility in Cass County to a new facility located on the grounds of the Ah-Gwah-Ching
316.30 campus. The operating cost payment rates for the new facility shall be determined based
316.31 on the interim and settle-up payment provisions of Minnesota Rules, part 9549.0057, and
316.32 the reimbursement provisions of ~~section 256B.434~~ chapter 256R. The property payment
316.33 rate for the first three years of operation shall be \$35 per day. For subsequent years, the
316.34 property payment rate of \$35 per day shall be adjusted for inflation as provided in section
317.1 256B.434, subdivision 4, paragraph (c), as long as the facility has a contract under section
317.2 256B.434;

317.3 (5) to initiate a pilot program to license and certify up to 80 beds transferred from an
317.4 existing county-owned nursing facility in Steele County relocated to the site of a new acute
317.5 care facility as part of the county's Communities for a Lifetime comprehensive plan to create
317.6 innovative responses to the aging of its population. Upon relocation to the new site, the

- 317.7 nursing facility shall delicense 28 beds. The payment rate for external fixed costs for the
317.8 new facility shall be increased by an amount as calculated according to items (i) to (v):
- 317.9 (i) compute the estimated decrease in medical assistance residents served by the nursing
317.10 facility by multiplying the decrease in licensed beds by the historical percentage of medical
317.11 assistance resident days;
- 317.12 (ii) compute the annual savings to the medical assistance program from the delicensure
317.13 of 28 beds by multiplying the anticipated decrease in medical assistance residents, determined
317.14 in item (i), by the existing facility's weighted average payment rate multiplied by 365;
- 317.15 (iii) compute the anticipated annual costs for community-based services by multiplying
317.16 the anticipated decrease in medical assistance residents served by the nursing facility,
317.17 determined in item (i), by the average monthly elderly waiver service costs for individuals
317.18 in Steele County multiplied by 12;
- 317.19 (iv) subtract the amount in item (iii) from the amount in item (ii);
- 317.20 (v) divide the amount in item (iv) by an amount equal to the relocated nursing facility's
317.21 occupancy factor under section 256B.431, subdivision 3f, paragraph (c), multiplied by the
317.22 historical percentage of medical assistance resident days; and
- 317.23 (6) to consolidate and relocate nursing facility beds to a new site in Goodhue County
317.24 and to integrate these services with other community-based programs and services under a
317.25 communities for a lifetime pilot program and comprehensive plan to create innovative
317.26 responses to the aging of its population. Two nursing facilities, one for 84 beds and one for
317.27 65 beds, in the city of Red Wing licensed on July 1, 2015, shall be consolidated into a newly
317.28 renovated 64-bed nursing facility resulting in the delicensure of 85 beds. Notwithstanding
317.29 the carryforward of the approval authority in section 144A.073, subdivision 11, the funding
317.30 approved in April 2009 by the commissioner of health for a project in Goodhue County
317.31 shall not carry forward. The closure of the 85 beds shall not be eligible for a planned closure
317.32 rate adjustment under section ~~256B.437~~ 256R.40. The construction project permitted in this
317.33 clause shall not be eligible for a threshold project rate adjustment under section 256B.434,
318.1 subdivision 4f. The payment rate for external fixed costs for the new facility shall be
318.2 increased by an amount as calculated according to items (i) to (vi):
- 318.3 (i) compute the estimated decrease in medical assistance residents served by both nursing
318.4 facilities by multiplying the difference between the occupied beds of the two nursing facilities
318.5 for the reporting year ending September 30, 2009, and the projected occupancy of the facility
318.6 at 95 percent occupancy by the historical percentage of medical assistance resident days;

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

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

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

318.16 (v) multiply the amount in item (iv) by 57.2 percent; and

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

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

HOUSE ART. 9, SEC. 8 - SEE SENATE ART. 3, SEC. 3

320.21 Sec. 9. Minnesota Statutes 2016, section 144A.073, subdivision 3c, is amended to read:

320.22 Subd. 3c. **Cost neutral relocation projects.** (a) Notwithstanding subdivision 3, the
320.23 commissioner may at any time accept proposals, or amendments to proposals previously
320.24 approved under this section, for relocations that are cost neutral with respect to state costs
320.25 as defined in section 144A.071, subdivision 5a. The commissioner, in consultation with the
320.26 commissioner of human services, shall evaluate proposals according to subdivision 4a,
320.27 clauses (1), (4), (5), (6), and (8), and other criteria established in rule or law. The
320.28 commissioner of human services shall determine the allowable payment rates of the facility
320.29 receiving the beds in accordance with section ~~256B.441, subdivision 60~~ 256R.50. The
320.30 commissioner shall approve or disapprove a project within 90 days.

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

321.1 Sec. 10. Minnesota Statutes 2016, section 144A.10, subdivision 4, is amended to read:

321.2 Subd. 4. **Correction orders.** Whenever a duly authorized representative of the
321.3 commissioner of health finds upon inspection of a nursing home, that the facility or a
321.4 controlling person or an employee of the facility is not in compliance with sections 144.411
321.5 to 144.417, 144.651, 144.6503, 144A.01 to 144A.155, or 626.557 or the rules promulgated
321.6 thereunder, a correction order shall be issued to the facility. The correction order shall state
321.7 the deficiency, cite the specific rule or statute violated, state the suggested method of
321.8 correction, and specify the time allowed for correction. If the commissioner finds that the
321.9 nursing home had uncorrected or repeated violations which create a risk to resident care,
321.10 safety, or rights, the commissioner shall notify the commissioner of human services ~~who~~
321.11 ~~shall require the facility to use any efficiency incentive payments received under section~~
321.12 ~~256B.431, subdivision 2b, paragraph (d), to correct the violations and shall require the~~
321.13 ~~facility to forfeit incentive payments for failure to correct the violations as provided in~~
321.14 ~~section 256B.431, subdivision 2n. The forfeiture shall not apply to correction orders issued~~
321.15 ~~for physical plant deficiencies.~~

321.16 Sec. 11. Minnesota Statutes 2016, section 144A.15, subdivision 2, is amended to read:

321.17 Subd. 2. **Appointment of receiver, rental.** If, after hearing, the court finds that
321.18 receivership is necessary as a means of protecting the health, safety, or welfare of a resident
321.19 of the facility, the court shall appoint the commissioner of health as a receiver to take charge
321.20 of the facility. The commissioner may enter into an agreement for a managing agent to work
321.21 on the commissioner's behalf in operating the facility during the receivership. The court
321.22 shall determine a fair monthly rental for the facility, taking into account all relevant factors
321.23 including the condition of the facility. This rental fee shall be paid by the receiver to the
321.24 appropriate controlling person for each month that the receivership remains in effect but
321.25 shall be reduced by the amount that the costs of the receivership provided under section
321.26 ~~256B.495~~ 256R.52 are in excess of the facility rate. The controlling person may agree to
321.27 waive the fair monthly rent by affidavit to the court. Notwithstanding any other law to the
321.28 contrary, no payment made to a controlling person by any state agency during a period of
321.29 receivership shall include any allowance for profit or be based on any formula which includes
321.30 an allowance for profit.

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

322.7 Sec. 12. Minnesota Statutes 2016, section 144A.154, is amended to read:

322.8 **144A.154 RATE RECOMMENDATION.**

322.9 The commissioner may recommend to the commissioner of human services a review of
322.10 the rates for a nursing home or boarding care home that participates in the medical assistance
322.11 program that is in voluntary or involuntary receivership, and that has needs or deficiencies
322.12 documented by the Department of Health. If the commissioner of health determines that a
322.13 review of the rate under section ~~256B.495~~ 256R.52 is needed, the commissioner shall provide
322.14 the commissioner of human services with:

322.15 (1) a copy of the order or determination that cites the deficiency or need; and

322.16 (2) the commissioner's recommendation for additional staff and additional annual hours
322.17 by type of employee and additional consultants, services, supplies, equipment, or repairs
322.18 necessary to satisfy the need or deficiency.

322.19 Sec. 13. Minnesota Statutes 2016, section 144A.161, subdivision 10, is amended to read:

322.20 Subd. 10. **Facility closure rate adjustment.** Upon the request of a closing facility, the
322.21 commissioner of human services must allow the facility a closure rate adjustment equal to
322.22 a 50 percent payment rate increase to reimburse relocation costs or other costs related to
322.23 facility closure. This rate increase is effective on the date the facility's occupancy decreases
322.24 to 90 percent of capacity days after the written notice of closure is distributed under
322.25 subdivision 5 and shall remain in effect for a period of up to 60 days. The commissioner
322.26 shall delay the implementation of rate adjustments under section ~~256B.437, subdivisions~~
322.27 ~~3, paragraph (b), and 6, paragraph (a)~~ 256R.40, subdivisions 5 and 6, to offset the cost of
322.28 this rate adjustment.

322.29 Sec. 14. Minnesota Statutes 2016, section 144A.1888, is amended to read:

322.30 **144A.1888 REUSE OF FACILITIES.**

323.1 Notwithstanding any local ordinance related to development, planning, or zoning to the
323.2 contrary, the conversion or reuse of a nursing home that closes or that curtails, reduces, or
323.3 changes operations shall be considered a conforming use permitted under local law, provided
323.4 that the facility is converted to another long-term care service approved by a regional
323.5 planning group under section ~~256B.437~~ 256R.40 that serves a smaller number of persons
323.6 than the number of persons served before the closure or curtailment, reduction, or change
323.7 in operations.

323.8 Sec. 15. Minnesota Statutes 2016, section 144A.611, subdivision 1, is amended to read:

323.9 Subdivision 1. **Nursing homes and certified boarding care homes.** The actual costs
323.10 of tuition and textbooks and reasonable expenses for the competency evaluation or the

323.11 nursing assistant training program and competency evaluation approved under section
323.12 144A.61, which are paid to nursing assistants or adult training programs pursuant to
323.13 subdivisions 2 and 4, are a reimbursable expense for nursing homes and certified boarding
323.14 care homes under section ~~256B.431, subdivision 36~~ 256R.37.

323.15 Sec. 16. Minnesota Statutes 2016, section 144A.74, is amended to read:

323.16 **144A.74 MAXIMUM CHARGES.**

323.17 A supplemental nursing services agency must not bill or receive payments from a nursing
323.18 home licensed under this chapter at a rate higher than 150 percent of the sum of the weighted
323.19 average wage rate, plus a factor determined by the commissioner to incorporate payroll
323.20 taxes as defined in ~~Minnesota Rules, part 9549.0020, subpart 33~~ section 256R.02, subdivision
323.21 37, for the applicable employee classification for the geographic group to which the nursing
323.22 home is assigned under Minnesota Rules, part 9549.0052. The weighted average wage rates
323.23 must be determined by the commissioner of human services and reported to the commissioner
323.24 of health on an annual basis. Wages are defined as hourly rate of pay and shift differential,
323.25 including weekend shift differential and overtime. Facilities shall provide information
323.26 necessary to determine weighted average wage rates to the commissioner of human services
323.27 in a format requested by the commissioner. The maximum rate must include all charges for
323.28 administrative fees, contract fees, or other special charges in addition to the hourly rates for
323.29 the temporary nursing pool personnel supplied to a nursing home.

323.30 Sec. 17. Minnesota Statutes 2016, section 256.9657, subdivision 1, is amended to read:

323.31 Subdivision 1. **Nursing home license surcharge.** (a) Effective July 1, 1993, each
323.32 non-state-operated nursing home licensed under chapter 144A shall pay to the commissioner
324.1 an annual surcharge according to the schedule in subdivision 4. The surcharge shall be
324.2 calculated as \$620 per licensed bed. If the number of licensed beds is reduced, the surcharge
324.3 shall be based on the number of remaining licensed beds the second month following the
324.4 receipt of timely notice by the commissioner of human services that beds have been
324.5 delicensed. The nursing home must notify the commissioner of health in writing when beds
324.6 are delicensed. The commissioner of health must notify the commissioner of human services
324.7 within ten working days after receiving written notification. If the notification is received
324.8 by the commissioner of human services by the 15th of the month, the invoice for the second
324.9 following month must be reduced to recognize the delicensing of beds. Beds on layaway
324.10 status continue to be subject to the surcharge. The commissioner of human services must
324.11 acknowledge a medical care surcharge appeal within 30 days of receipt of the written appeal
324.12 from the provider.

324.13 (b) Effective July 1, 1994, the surcharge in paragraph (a) shall be increased to \$625.

324.14 (c) Effective August 15, 2002, the surcharge under paragraph (b) shall be increased to
324.15 \$990.

324.16 (d) Effective July 15, 2003, the surcharge under paragraph (c) shall be increased to
324.17 \$2,815.

324.18 (e) The commissioner may reduce, and may subsequently restore, the surcharge under
324.19 paragraph (d) based on the commissioner's determination of a permissible surcharge.

324.20 ~~(f) Between April 1, 2002, and August 15, 2004, a facility governed by this subdivision~~
324.21 ~~may elect to assume full participation in the medical assistance program by agreeing to~~
324.22 ~~comply with all of the requirements of the medical assistance program, including the rate~~
324.23 ~~equalization law in section 256B.48, subdivision 1, paragraph (a), and all other requirements~~
324.24 ~~established in law or rule, and to begin intake of new medical assistance recipients. Rates~~
324.25 ~~will be determined under Minnesota Rules, parts 9549.0010 to 9549.0080. Rate calculations~~
324.26 ~~will be subject to limits as prescribed in rule and law. Other than the adjustments in sections~~
324.27 ~~256B.431, subdivisions 30 and 32; 256B.437, subdivision 3, paragraph (b), Minnesota~~
324.28 ~~Rules, part 9549.0057, and any other applicable legislation enacted prior to the finalization~~
324.29 ~~of rates, facilities assuming full participation in medical assistance under this paragraph are~~
324.30 ~~not eligible for any rate adjustments until the July 1 following their settle-up period.~~

HOUSE ART. 9, SEC. 18 - SEE SENATE ART. 3, SEC. 8

326.16 Sec. 19. Minnesota Statutes 2016, section 256B.35, subdivision 4, is amended to read:

326.17 Subd. 4. **Field audits required.** The commissioner of human services shall conduct
326.18 field audits at the same time as cost report audits required under section ~~256B.27, subdivision~~
326.19 ~~2a 256R.13, subdivision 1,~~ and at any other time but at least once every four years, without
326.20 notice, to determine whether this section was complied with and that the funds provided
326.21 residents for their personal needs were actually expended for that purpose.

326.22 Sec. 20. Minnesota Statutes 2016, section 256B.431, subdivision 30, is amended to read:

326.23 Subd. 30. **Bed layaway and delicensure.** (a) For rate years beginning on or after July
326.24 1, 2000, a nursing facility reimbursed under this section which has placed beds on layaway
326.25 shall, for purposes of application of the downsizing incentive in subdivision 3a, paragraph
326.26 (c), and calculation of the rental per diem, have those beds given the same effect as if the
326.27 beds had been delicensed so long as the beds remain on layaway. At the time of a layaway,
326.28 a facility may change its single bed election for use in calculating capacity days under
326.29 Minnesota Rules, part 9549.0060, subpart 11. The property payment rate increase shall be
326.30 effective the first day of the month following the month in which the layaway of the beds
326.31 becomes effective under section 144A.071, subdivision 4b.

326.32 (b) For rate years beginning on or after July 1, 2000, notwithstanding any provision to
326.33 the contrary under section 256B.434 or chapter 256R, a nursing facility reimbursed under

- 327.1 that section or chapter which has placed beds on layaway shall, for so long as the beds
327.2 remain on layaway, be allowed to:
- 327.3 (1) aggregate the applicable investment per bed limits based on the number of beds
327.4 licensed immediately prior to entering the alternative payment system;
- 327.5 (2) retain or change the facility's single bed election for use in calculating capacity days
327.6 under Minnesota Rules, part 9549.0060, subpart 11; and
- 327.7 (3) establish capacity days based on the number of beds immediately prior to the layaway
327.8 and the number of beds after the layaway.
- 327.9 The commissioner shall increase the facility's property payment rate by the incremental
327.10 increase in the rental per diem resulting from the recalculation of the facility's rental per
327.11 diem applying only the changes resulting from the layaway of beds and clauses (1), (2), and
327.12 (3). If a facility reimbursed under section 256B.434 or chapter 256R completes a moratorium
327.13 exception project after its base year, the base year property rate shall be the moratorium
327.14 project property rate. The base year rate shall be inflated by the factors in section 256B.434,
327.15 subdivision 4, paragraph (c). The property payment rate increase shall be effective the first
327.16 day of the month following the month in which the layaway of the beds becomes effective.
- 327.17 (c) If a nursing facility removes a bed from layaway status in accordance with section
327.18 144A.071, subdivision 4b, the commissioner shall establish capacity days based on the
327.19 number of licensed and certified beds in the facility not on layaway and shall reduce the
327.20 nursing facility's property payment rate in accordance with paragraph (b).
- 327.21 (d) For the rate years beginning on or after July 1, 2000, notwithstanding any provision
327.22 to the contrary under section 256B.434 or chapter 256R, a nursing facility reimbursed under
327.23 that section or chapter, which has delicensed beds after July 1, 2000, by giving notice of
327.24 the delicensure to the commissioner of health according to the notice requirements in section
327.25 144A.071, subdivision 4b, shall be allowed to:
- 327.26 (1) aggregate the applicable investment per bed limits based on the number of beds
327.27 licensed immediately prior to entering the alternative payment system;
- 327.28 (2) retain or change the facility's single bed election for use in calculating capacity days
327.29 under Minnesota Rules, part 9549.0060, subpart 11; and
- 327.30 (3) establish capacity days based on the number of beds immediately prior to the
327.31 delicensure and the number of beds after the delicensure.

327.32 The commissioner shall increase the facility's property payment rate by the incremental
 327.33 increase in the rental per diem resulting from the recalculation of the facility's rental per
 328.1 diem applying only the changes resulting from the delicensure of beds and clauses (1), (2),
 328.2 and (3). If a facility reimbursed under section 256B.434 completes a moratorium exception
 328.3 project after its base year, the base year property rate shall be the moratorium project property
 328.4 rate. The base year rate shall be inflated by the factors in section 256B.434, subdivision 4,
 328.5 paragraph (c). The property payment rate increase shall be effective the first day of the
 328.6 month following the month in which the delicensure of the beds becomes effective.

328.7 (e) For nursing facilities reimbursed under this section ~~or~~ section 256B.434, or chapter
 328.8 256R, any beds placed on layaway shall not be included in calculating facility occupancy
 328.9 as it pertains to leave days defined in Minnesota Rules, part 9505.0415.

328.10 (f) For nursing facilities reimbursed under this section ~~or~~ section 256B.434, or chapter
 328.11 256R, the rental rate calculated after placing beds on layaway may not be less than the rental
 328.12 rate prior to placing beds on layaway.

328.13 (g) A nursing facility receiving a rate adjustment as a result of this section shall comply
 328.14 with section ~~256B.47, subdivision 2~~ 256R.06, subdivision 5.

328.15 (h) A facility that does not utilize the space made available as a result of bed layaway
 328.16 or delicensure under this subdivision to reduce the number of beds per room or provide
 328.17 more common space for nursing facility uses or perform other activities related to the
 328.18 operation of the nursing facility shall have its property rate increase calculated under this
 328.19 subdivision reduced by the ratio of the square footage made available that is not used for
 328.20 these purposes to the total square footage made available as a result of bed layaway or
 328.21 delicensure.

328.22 Sec. 21. Minnesota Statutes 2016, section 256B.50, subdivision 1, is amended to read:

328.23 Subdivision 1. **Scope.** A provider may appeal from a determination of a payment rate
 328.24 established pursuant to this chapter or allowed costs under ~~section 256B.441~~ chapter 256R
 328.25 if the appeal, if successful, would result in a change to the provider's payment rate or to the
 328.26 calculation of maximum charges to therapy vendors as provided by section ~~256B.433,~~
 328.27 ~~subdivision 3~~ 256R.54. Appeals must be filed in accordance with procedures in this section.
 328.28 This section does not apply to a request from a resident or long-term care facility for
 328.29 reconsideration of the classification of a resident under section 144.0722.

328.30 Sec. 22. **EFFECTIVE DATE.**

328.31 Sections 1 to 21 are effective the day following final enactment.