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State of Minnesota

HOUSE OF REPRESENTATIVES

NINETIETH SESSION

H. F. No. 500

01/26/2017 Authored by Schomacker and Kiel The bill was read for the first time and referred to the Committee on Health and Human Services Reform

1.1 A bill for an act
1.2 relating to human services; making policy and technical changes to the nursing
1.3 facility payment system; requiring a report; amending Minnesota Statutes 2016,
1.4 sections 144.0724, subdivision 6; 256B.431, subdivision 30, by adding a
1.5 subdivision; 256B.434, subdivision 4; 256R.02, subdivisions 4, 17, 18, 19, 22, 42,
1.6 52, by adding subdivisions; 256R.07, subdivision 1, by adding a subdivision;
1.7 256R.10, by adding a subdivision; 256R.13, subdivision 4; 256R.37; 256R.40,
1.8 subdivisions 1, 5; 256R.41; 256R.47; 256R.49; proposing coding for new law in
1.9 Minnesota Statutes, chapter 256R; repealing Minnesota Statutes 2016, sections
1.10 256R.06, subdivision 7; 256R.54, subdivisions 5, 6, 7, 8, 9.

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

1.12 Section 1. Minnesota Statutes 2016, section 144.0724, subdivision 6, is amended to read:

1.13 Subd. 6. Penalties for late or nonsubmission. (a) A facility that fails to complete or
1.14 submit an assessment according to subdivisions 4 and 5 for a RUG-IV classification within
1.15 seven days of the time requirements listed in the Long-Term Care Facility Resident
1.16 Assessment Instrument User's Manual is subject to a reduced rate for that resident. The
1.17 reduced rate shall be the lowest rate for that facility. The reduced rate is effective on the
1.18 day of admission for new admission assessments, on the ARD for significant change in
1.19 status assessments, or on the day that the assessment was due for all other assessments and
1.20 continues in effect until the first day of the month following the date of submission and
1.21 acceptance of the resident's assessment.

1.22 (b) If loss of revenue due to penalties incurred by a facility for any period of 92 days
1.23 are equal to or greater than ~~1.0~~ 0.1 percent of the total operating costs on the facility's most
1.24 recent annual statistical and cost report, a facility may apply to the commissioner of human
1.25 services for a reduction in the total penalty amount. The commissioner of human services,
1.26 in consultation with the commissioner of health, may, at the sole discretion of the

2.1 commissioner of human services, limit the penalty for residents covered by medical assistance
 2.2 to ~~15~~ ten days.

2.3 **EFFECTIVE DATE.** This section is effective the day following final enactment.

2.4 Sec. 2. Minnesota Statutes 2016, section 256B.431, subdivision 30, is amended to read:

2.5 Subd. 30. **Bed layaway and delicensure.** (a) For rate years beginning on or after July
 2.6 1, 2000, a nursing facility reimbursed under this section which has placed beds on layaway
 2.7 shall, for purposes of application of the downsizing incentive in subdivision 3a, paragraph
 2.8 (c), and calculation of the rental per diem, have those beds given the same effect as if the
 2.9 beds had been delicensed so long as the beds remain on layaway. At the time of a layaway,
 2.10 a facility may change its single bed election for use in calculating capacity days under
 2.11 Minnesota Rules, part 9549.0060, subpart 11. The property payment rate increase shall be
 2.12 effective the first day of the month of January or July, whichever occurs first following the
 2.13 ~~month~~ date in which the layaway of the beds becomes effective under section 144A.071,
 2.14 subdivision 4b.

2.15 (b) For rate years beginning on or after July 1, 2000, notwithstanding any provision to
 2.16 the contrary under section 256B.434, a nursing facility reimbursed under that section which
 2.17 has placed beds on layaway shall, for so long as the beds remain on layaway, be allowed
 2.18 to:

2.19 (1) aggregate the applicable investment per bed limits based on the number of beds
 2.20 licensed immediately prior to entering the alternative payment system;

2.21 (2) retain or change the facility's single bed election for use in calculating capacity days
 2.22 under Minnesota Rules, part 9549.0060, subpart 11; and

2.23 (3) establish capacity days based on the number of beds immediately prior to the layaway
 2.24 and the number of beds after the layaway.

2.25 The commissioner shall increase the facility's property payment rate by the incremental
 2.26 increase in the rental per diem resulting from the recalculation of the facility's rental per
 2.27 diem applying only the changes resulting from the layaway of beds and clauses (1), (2), and
 2.28 (3). If a facility reimbursed under section 256B.434 completes a moratorium exception
 2.29 project after its base year, the base year property rate shall be the moratorium project property
 2.30 rate. The base year rate shall be inflated by the factors in section 256B.434, subdivision 4,
 2.31 paragraph (c). The property payment rate increase shall be effective the first day of the
 2.32 month of January or July, whichever occurs first following the ~~month~~ date in which the
 2.33 layaway of the beds becomes effective.

3.1 (c) If a nursing facility removes a bed from layaway status in accordance with section
3.2 144A.071, subdivision 4b, the commissioner shall establish capacity days based on the
3.3 number of licensed and certified beds in the facility not on layaway and shall reduce the
3.4 nursing facility's property payment rate in accordance with paragraph (b).

3.5 (d) For the rate years beginning on or after July 1, 2000, notwithstanding any provision
3.6 to the contrary under section 256B.434, a nursing facility reimbursed under that section,
3.7 which has delicensed beds after July 1, 2000, by giving notice of the delicensure to the
3.8 commissioner of health according to the notice requirements in section 144A.071, subdivision
3.9 4b, shall be allowed to:

3.10 (1) aggregate the applicable investment per bed limits based on the number of beds
3.11 licensed immediately prior to entering the alternative payment system;

3.12 (2) retain or change the facility's single bed election for use in calculating capacity days
3.13 under Minnesota Rules, part 9549.0060, subpart 11; and

3.14 (3) establish capacity days based on the number of beds immediately prior to the
3.15 delicensure and the number of beds after the delicensure.

3.16 The commissioner shall increase the facility's property payment rate by the incremental
3.17 increase in the rental per diem resulting from the recalculation of the facility's rental per
3.18 diem applying only the changes resulting from the delicensure of beds and clauses (1), (2),
3.19 and (3). If a facility reimbursed under section 256B.434 completes a moratorium exception
3.20 project after its base year, the base year property rate shall be the moratorium project property
3.21 rate. The base year rate shall be inflated by the factors in section 256B.434, subdivision 4,
3.22 paragraph (c). The property payment rate increase shall be effective the first day of the
3.23 month of January or July, whichever occurs first following the ~~month~~ date in which the
3.24 delicensure of the beds becomes effective.

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

3.28 (f) For nursing facilities reimbursed under this section or section 256B.434, the rental
3.29 rate calculated after placing beds on layaway may not be less than the rental rate prior to
3.30 placing beds on layaway.

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

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

4.8 Sec. 3. Minnesota Statutes 2016, section 256B.431, is amended by adding a subdivision
 4.9 to read:

4.10 Subd. 46. **Single-bed election.** A nursing facility may change its single-bed election for
 4.11 use in calculating capacity days under Minnesota Rules, part 9549.0060, subpart 11, for
 4.12 rates established on January 1 if the commissioner receives written notification from the
 4.13 nursing facility by August 15 of the preceding year.

4.14 Sec. 4. Minnesota Statutes 2016, section 256B.434, subdivision 4, is amended to read:

4.15 Subd. 4. **Alternate rates for nursing facilities.** A nursing facility's case mix payment
 4.16 rates for the second and subsequent years of a facility's contract under this section are the
 4.17 previous rate year's contract payment rates plus an inflation adjustment and, for facilities
 4.18 reimbursed under this section or section 256B.431, an adjustment to include the cost of any
 4.19 increase in Health Department licensing fees for the facility taking effect on or after July
 4.20 1, 2001. The index for the inflation adjustment must be based on the change in the Consumer
 4.21 Price Index-All Items (United States City average) (CPI-U) forecasted by the commissioner
 4.22 of management and budget's national economic consultant, as forecasted in the fourth quarter
 4.23 of the calendar year preceding the rate year. The inflation adjustment must be based on the
 4.24 12-month period from the midpoint of the previous rate year to the midpoint of the rate year
 4.25 for which the rate is being determined. For the rate years beginning on ~~July 1, 1999, July~~
 4.26 ~~1, 2000, July 1, 2001, July 1, 2002, July 1, 2003, July 1, 2004, July 1, 2005, July 1, 2006,~~
 4.27 ~~July 1, 2007, July 1, 2008, October 1, 2009, and October 1, 2010~~ and after January 1, 2018,
 4.28 this paragraph shall apply only to the property-related payment rate. ~~For the rate years~~
 4.29 ~~beginning on October 1, 2011, October 1, 2012, October 1, 2013, October 1, 2014, October~~
 4.30 ~~1, 2015, January 1, 2016, and January 1, 2017, the rate adjustment under this paragraph~~
 4.31 ~~shall be suspended.~~ Beginning in 2005, adjustment to the property payment rate under this
 4.32 section and section 256B.431 shall be effective on October 1. ~~In determining the amount~~
 4.33 ~~of the property-related payment rate adjustment under this paragraph, the commissioner~~

5.1 ~~shall determine the proportion of the facility's rates that are property-related based on the~~
5.2 ~~facility's most recent cost report.~~

5.3 Sec. 5. Minnesota Statutes 2016, section 256R.02, subdivision 4, is amended to read:

5.4 Subd. 4. **Administrative costs.** "Administrative costs" means the identifiable costs for
5.5 administering the overall activities of the nursing home. These costs include salaries and
5.6 wages of the administrator, assistant administrator, business office employees, security
5.7 guards, and associated fringe benefits and payroll taxes, fees, contracts, or purchases related
5.8 to business office functions, licenses, and permits except as provided in the external fixed
5.9 costs category, employee recognition, travel including meals and lodging, all training except
5.10 as specified in subdivision 17, voice and data communication or transmission, office supplies,
5.11 property and liability insurance and other forms of insurance ~~designated to other areas~~
5.12 including insurance that is an employee benefit, personnel recruitment, legal services,
5.13 accounting services, management or business consultants, data processing, information
5.14 technology, Web site, central or home office costs, business meetings and seminars, postage,
5.15 fees for professional organizations, subscriptions, security services, advertising, board of
5.16 directors fees, working capital interest expense, and bad debts and bad debt collection fees.

5.17 Sec. 6. Minnesota Statutes 2016, section 256R.02, subdivision 17, is amended to read:

5.18 Subd. 17. **Direct care costs.** "Direct care costs" means costs for the wages of nursing
5.19 administration, direct care registered nurses, licensed practical nurses, certified nursing
5.20 assistants, trained medication aides, employees conducting training in resident care topics
5.21 and associated fringe benefits and payroll taxes; services from a supplemental nursing
5.22 services agency; supplies that are stocked at nursing stations or on the floor and distributed
5.23 or used individually, including, but not limited to: alcohol, applicators, cotton balls,
5.24 incontinence pads, disposable ice bags, dressings, bandages, water pitchers, tongue
5.25 depressors, disposable gloves, enemas, enema equipment, soap, medication cups, diapers,
5.26 plastic waste bags, sanitary products, thermometers, hypodermic needles and syringes,
5.27 clinical reagents or similar diagnostic agents, drugs that are not paid on a separate fee
5.28 schedule by the medical assistance program or any other payer, and technology related to
5.29 the provision of nursing care to residents, such as electronic charting systems; costs of
5.30 materials used for resident care training, and training courses outside of the facility attended
5.31 by direct care staff on resident care topics; and costs for nurse consultants, pharmacy
5.32 consultants, and medical directors. Salaries and payroll taxes for nurse consultants who
5.33 work out of a central office must be allocated proportionately to the nursing facilities served
5.34 by that central office.

6.1 Sec. 7. Minnesota Statutes 2016, section 256R.02, subdivision 18, is amended to read:

6.2 Subd. 18. **Employer health insurance costs.** "Employer health insurance costs" means
 6.3 premium expenses for group coverage ~~and reinsurance~~, actual expenses incurred for
 6.4 self-insured plans including reinsurance and administrative costs, and employer contributions
 6.5 to employee health reimbursement and health savings accounts. Premium and expense costs
 6.6 and contributions are allowable for (1) all employees and (2) the spouse and dependents of
 6.7 employees who ~~meet the definition of full-time employees under the federal Affordable~~
 6.8 ~~Care Act, Public Law 111-148~~ work an average of 30 hours per week.

6.9 Sec. 8. Minnesota Statutes 2016, section 256R.02, subdivision 19, is amended to read:

6.10 Subd. 19. **External fixed costs.** "External fixed costs" means costs related to the nursing
 6.11 home surcharge under section 256.9657, subdivision 1; licensure fees under section 144.122;
 6.12 family advisory council fee under section 144A.33; scholarships under section 256R.37;
 6.13 planned closure rate adjustments under section 256R.40; consolidation rate adjustments
 6.14 under section 144A.071, subdivisions 4c, paragraph (a), clauses (5) and (6), and 4d;
 6.15 single-bed room incentives under section 256R.41; property taxes, assessments, and payments
 6.16 in lieu of taxes; employer health insurance costs; quality improvement incentive payment
 6.17 rate adjustments under section 256R.39; performance-based incentive payments under
 6.18 section 256R.38; special dietary needs under section 256R.51; rate adjustments for
 6.19 compensation-related costs for minimum wage changes under section 256R.49 provided
 6.20 on or after January 1, 2018; and Public Employees Retirement Association employer costs.

6.21 Sec. 9. Minnesota Statutes 2016, section 256R.02, subdivision 22, is amended to read:

6.22 Subd. 22. **Fringe benefit costs.** "Fringe benefit costs" means the costs for group life,
 6.23 dental, workers' compensation, ~~and other employee insurances and~~ profit sharing, health
 6.24 insurance costs not covered under subdivision 18, including costs associated with part-time
 6.25 employee family members or retirees, and pension and retirement plan contributions, except
 6.26 for the Public Employees Retirement Association ~~and employer health insurance costs;~~
 6.27 ~~profit sharing; and retirement plans for which the employer pays all or a portion of the costs.~~

6.28 Sec. 10. Minnesota Statutes 2016, section 256R.02, subdivision 42, is amended to read:

6.29 Subd. 42. **Raw food costs.** "Raw food costs" means the cost of food provided to nursing
 6.30 facility residents and the allocation of dietary credits. Also included are special dietary
 6.31 supplements used for tube feeding or oral feeding, such as elemental high nitrogen diet.

7.1 Sec. 11. Minnesota Statutes 2016, section 256R.02, is amended by adding a subdivision
7.2 to read:

7.3 Subd. 42a. **Real estate taxes.** "Real estate taxes" means the real estate tax liability shown
7.4 on the annual property tax statement of the nursing facility for the reporting period. The
7.5 term does not include personnel costs or fees for late payment.

7.6 Sec. 12. Minnesota Statutes 2016, section 256R.02, is amended by adding a subdivision
7.7 to read:

7.8 Subd. 48a. **Special assessments.** "Special assessments" means the actual special
7.9 assessments and related interest paid during the reporting period. The term does not include
7.10 personnel costs or fees for late payment.

7.11 Sec. 13. Minnesota Statutes 2016, section 256R.02, subdivision 52, is amended to read:

7.12 Subd. 52. **Therapy costs.** "Therapy costs" means any costs related to ~~medical assistance~~
7.13 therapy services provided to residents that are not ~~billed~~ separately billable from the daily
7.14 operating rate.

7.15 Sec. 14. Minnesota Statutes 2016, section 256R.07, subdivision 1, is amended to read:

7.16 Subdivision 1. **Criteria.** A nursing facility shall keep adequate documentation. In order
7.17 to be adequate, documentation must:

7.18 (1) be maintained in orderly, well-organized files;

7.19 (2) not include documentation of more than one nursing facility in one set of files unless
7.20 transactions may be traced by the commissioner to the nursing facility's annual cost report;

7.21 (3) include a paid invoice or copy of a paid invoice with date of purchase, vendor name
7.22 and address, purchaser name and delivery destination address, listing of items or services
7.23 purchased, cost of items purchased, account number to which the cost is posted, and a
7.24 breakdown of any allocation of costs between accounts or nursing facilities. If any of the
7.25 information is not available, the nursing facility shall document its good faith attempt to
7.26 obtain the information;

7.27 (4) include contracts, agreements, amortization schedules, mortgages, other debt
7.28 instruments, and all other documents necessary to explain the nursing facility's costs or
7.29 revenues; and

7.30 (5) be retained by the nursing facility to support the five most recent annual cost reports.
7.31 The commissioner may extend the period of retention if the field audit was postponed

8.1 because of inadequate record keeping or accounting practices as in section 256R.13,
8.2 subdivisions 2 and 4, the records are necessary to resolve a pending appeal, or the records
8.3 are required for the enforcement of sections 256R.04; 256R.05, subdivision 2; 256R.06,
8.4 subdivisions 2; and 6, and 7; 256R.08, subdivisions 1 to 3; and 256R.09, subdivisions 3 and
8.5 4.

8.6 Sec. 15. Minnesota Statutes 2016, section 256R.07, is amended by adding a subdivision
8.7 to read:

8.8 Subd. 6. **Electronic signature.** For documentation requiring a signature under this
8.9 chapter or section 256B.431 or 256B.434, use of an electronic signature as defined under
8.10 section 325L.02, paragraph (h), is allowed.

8.11 Sec. 16. Minnesota Statutes 2016, section 256R.10, is amended by adding a subdivision
8.12 to read:

8.13 Subd. 7. **Bad debts.** Bad debts of Medicaid and private pay recipients are allowable
8.14 only when:

8.15 (1) the debt is related to covered services;

8.16 (2) the debt arises from the recipient's required contribution toward the cost of care;

8.17 (3) the provider can establish reasonable collection efforts were made. Reasonable
8.18 collection efforts consist of at least three documented attempts by the contractor to obtain
8.19 payment demonstrating that the effort devoted to collecting the bad debts of a Medicaid
8.20 recipient is the same as the effort devoted to collecting the bad debts of a private pay
8.21 recipient;

8.22 (4) the debt was actually uncollectible when claimed as worthless; and

8.23 (5) sound business judgment established there was no likelihood of recovery at any time
8.24 in the future.

8.25 Sec. 17. Minnesota Statutes 2016, section 256R.13, subdivision 4, is amended to read:

8.26 Subd. 4. **Extended record retention requirements.** The commissioner shall extend the
8.27 period for retention of records under section 256R.09, subdivision 3, for purposes of
8.28 performing field audits as necessary to enforce sections 256R.04; 256R.05, subdivision 2;
8.29 256R.06, subdivisions 2; and 6, and 7; 256R.08, subdivisions 1 to 3; and 256R.09,
8.30 subdivisions 3 and 4, with written notice to the facility postmarked no later than 90 days
8.31 prior to the expiration of the record retention requirement.

9.1 Sec. 18. **[256R.18] BIENNIAL REPORT.**

9.2 The commissioner shall provide to the legislative committees with jurisdiction over
 9.3 nursing facility payment rates a biennial report including:

9.4 (1) the impact of using cost report data to set rates without updating the cost report data
 9.5 by the change in the Consumer Price Index for all urban consumers from the mid-point of
 9.6 the cost report to the mid-point of the rate year;

9.7 (2) the impact of the quality adjusted care limits;

9.8 (3) the ability of nursing facilities to retain employees, including whether rate increases
 9.9 are passed through to employees;

9.10 (4) the efficacy of the critical access nursing facility program under section 256R.47;

9.11 and

9.12 (5) the impact of payment rate limit reduction under section 256R.23, subdivision 6.

9.13 **EFFECTIVE DATE.** This section is effective January 1, 2019.

9.14 Sec. 19. Minnesota Statutes 2016, section 256R.37, is amended to read:

9.15 **256R.37 SCHOLARSHIPS.**

9.16 (a) For the 27-month period beginning October 1, 2015, through December 31, 2017,
 9.17 the commissioner shall allow a scholarship per diem of up to 25 cents for each nursing
 9.18 facility with no scholarship per diem that is requesting a scholarship per diem to be added
 9.19 to the external fixed payment rate to be used:

9.20 (1) for employee scholarships that satisfy the following requirements:

9.21 (i) scholarships are available to all employees who work an average of at least ten hours
 9.22 per week at the facility except the administrator, and to reimburse student loan expenses
 9.23 for newly hired ~~and recently graduated~~ registered nurses and licensed practical nurses, and
 9.24 training expenses for nursing assistants as specified in section 144A.611, subdivisions 2
 9.25 and 4, who are newly hired and have graduated within the last 12 months; and

9.26 (ii) the course of study is expected to lead to career advancement with the facility or in
 9.27 long-term care, including medical care interpreter services and social work; and

9.28 (2) to provide job-related training in English as a second language.

9.29 (b) All facilities may annually request a rate adjustment under this section by submitting
 9.30 information to the commissioner on a schedule and in a form supplied by the commissioner.

10.1 The commissioner shall allow a scholarship payment rate equal to the reported and allowable
10.2 costs divided by resident days.

10.3 (c) In calculating the per diem under paragraph (b), the commissioner shall allow costs
10.4 related to tuition, direct educational expenses, and reasonable costs as defined by the
10.5 commissioner for child care costs and transportation expenses related to direct educational
10.6 expenses.

10.7 (d) The rate increase under this section is an optional rate add-on that the facility must
10.8 request from the commissioner in a manner prescribed by the commissioner. The rate
10.9 increase must be used for scholarships as specified in this section.

10.10 (e) For instances in which a rate adjustment will be 15 cents or greater, nursing facilities
10.11 that close beds during a rate year may request to have their scholarship adjustment under
10.12 paragraph (b) recalculated by the commissioner for the remainder of the rate year to reflect
10.13 the reduction in resident days compared to the cost report year.

10.14 Sec. 20. Minnesota Statutes 2016, section 256R.40, subdivision 1, is amended to read:

10.15 Subdivision 1. **Definitions.** (a) The definitions in this subdivision apply to this section.

10.16 (b) "Closure" means the cessation of operations of a nursing facility and delicensure and
10.17 decertification of all beds within the facility.

10.18 (c) "Closure plan" means a plan to close a nursing facility and reallocate a portion of
10.19 the resulting savings to provide planned closure rate adjustments at other facilities.

10.20 (d) "Commencement of closure" means the date on which residents and designated
10.21 representatives are notified of a planned closure as provided in section 144A.161, subdivision
10.22 5a, as part of an approved closure plan.

10.23 (e) "Completion of closure" means the date on which the final resident of the nursing
10.24 facility designated for closure in an approved closure plan is discharged from the facility
10.25 or the date that beds from a partial closure are delicensed and decertified.

10.26 (f) "Partial closure" means the delicensure and decertification of a portion of the beds
10.27 within the facility.

10.28 (g) "Planned closure rate adjustment" means an increase in a nursing facility's operating
10.29 rates resulting from a planned closure or a planned partial closure of another facility.

11.1 Sec. 21. Minnesota Statutes 2016, section 256R.40, subdivision 5, is amended to read:

11.2 Subd. 5. **Planned closure rate adjustment.** (a) The commissioner shall calculate the
11.3 amount of the planned closure rate adjustment available under subdivision 6 according to
11.4 clauses (1) to (4):

11.5 (1) the amount available is the net reduction of nursing facility beds multiplied by \$2,080;

11.6 (2) the total number of beds in the nursing facility or facilities receiving the planned
11.7 closure rate adjustment must be identified;

11.8 (3) capacity days are determined by multiplying the number determined under clause
11.9 (2) by 365; and

11.10 (4) the planned closure rate adjustment is the amount available in clause (1), divided by
11.11 capacity days determined under clause (3).

11.12 (b) A planned closure rate adjustment under this section is effective on the first day of
11.13 the month of January or July, whichever occurs first following completion of closure of the
11.14 facility designated for closure in the application and becomes part of the nursing facility's
11.15 external fixed payment rate.

11.16 (c) Upon the request of a closing facility, the commissioner must allow the facility a
11.17 closure rate adjustment as provided under section 144A.161, subdivision 10.

11.18 (d) A facility that has received a planned closure rate adjustment may reassign it to
11.19 another facility that is under the same ownership at any time within three years of its effective
11.20 date. The amount of the adjustment is computed according to paragraph (a).

11.21 (e) If the per bed dollar amount specified in paragraph (a), clause (1), is increased, the
11.22 commissioner shall recalculate planned closure rate adjustments for facilities that delicense
11.23 beds under this section on or after July 1, 2001, to reflect the increase in the per bed dollar
11.24 amount. The recalculated planned closure rate adjustment is effective from the date the per
11.25 bed dollar amount is increased.

11.26 Sec. 22. Minnesota Statutes 2016, section 256R.41, is amended to read:

11.27 **256R.41 SINGLE-BED ROOM INCENTIVE.**

11.28 (a) Beginning July 1, 2005, the operating payment rate for nursing facilities reimbursed
11.29 under this chapter shall be increased by 20 percent multiplied by the ratio of the number of
11.30 new single-bed rooms created divided by the number of active beds on July 1, 2005, for
11.31 each bed closure that results in the creation of a single-bed room after July 1, 2005. The
11.32 commissioner may implement rate adjustments for up to 3,000 new single-bed rooms each

12.1 year. For eligible bed closures for which the commissioner receives a notice from a facility
 12.2 ~~during a calendar quarter~~ that a bed has been delicensed and a new single-bed room has
 12.3 been established, the rate adjustment in this paragraph shall be effective on either the first
 12.4 day of the ~~second~~ month of January or July, whichever occurs first following ~~that calendar~~
 12.5 ~~quarter~~ the date of the bed delicensure.

12.6 (b) A nursing facility is prohibited from discharging residents for purposes of establishing
 12.7 single-bed rooms. A nursing facility must submit documentation to the commissioner in a
 12.8 form prescribed by the commissioner, certifying the occupancy status of beds closed to
 12.9 create single-bed rooms. In the event that the commissioner determines that a facility has
 12.10 discharged a resident for purposes of establishing a single-bed room, the commissioner shall
 12.11 not provide a rate adjustment under paragraph (a).

12.12 Sec. 23. Minnesota Statutes 2016, section 256R.47, is amended to read:

12.13 **256R.47 RATE ADJUSTMENT FOR CRITICAL ACCESS NURSING**
 12.14 **FACILITIES.**

12.15 (a) The commissioner, in consultation with the commissioner of health, may designate
 12.16 certain nursing facilities as critical access nursing facilities. The designation shall be granted
 12.17 on a competitive basis, within the limits of funds appropriated for this purpose.

12.18 (b) The commissioner shall request proposals from nursing facilities every two years.
 12.19 Proposals must be submitted in the form and according to the timelines established by the
 12.20 commissioner. In selecting applicants to designate, the commissioner, in consultation with
 12.21 the commissioner of health, and with input from stakeholders, shall develop criteria designed
 12.22 to preserve access to nursing facility services in isolated areas, rebalance long-term care,
 12.23 and improve quality. To the extent practicable, the commissioner shall ensure an even
 12.24 distribution of designations across the state.

12.25 (c) The commissioner shall allow the benefits in clauses (1) to (5) for nursing facilities
 12.26 designated as critical access nursing facilities:

12.27 (1) partial rebasing, with the commissioner allowing a designated facility operating
 12.28 payment rates being the sum of up to 60 percent of the operating payment rate determined
 12.29 in accordance with section 256R.21, subdivision 3, and at least 40 percent, with the sum of
 12.30 the two portions being equal to 100 percent, of the operating payment rate that would have
 12.31 been allowed had the facility not been designated. The commissioner may adjust these
 12.32 percentages by up to 20 percent and may approve a request for less than the amount allowed;

13.1 (2) enhanced payments for leave days. Notwithstanding section 256R.43, upon
 13.2 designation as a critical access nursing facility, the commissioner shall limit payment for
 13.3 leave days to 60 percent of that nursing facility's total payment rate for the involved resident,
 13.4 and shall allow this payment only when the occupancy of the nursing facility, inclusive of
 13.5 bed hold days, is equal to or greater than 90 percent;

13.6 (3) two designated critical access nursing facilities, with up to 100 beds in active service,
 13.7 may jointly apply to the commissioner of health for a waiver of Minnesota Rules, part
 13.8 4658.0500, subpart 2, in order to jointly employ a director of nursing. The commissioner
 13.9 of health shall consider each waiver request independently based on the criteria under
 13.10 Minnesota Rules, part 4658.0040;

13.11 (4) the minimum threshold under section 256B.431, subdivision 15, paragraph (e), shall
 13.12 be 40 percent of the amount that would otherwise apply; and

13.13 (5) the quality-based rate limits under section 256R.23, subdivisions 5 to 7, apply to
 13.14 designated critical access nursing facilities.

13.15 (d) Designation of a critical access nursing facility is for a period of two years, after
 13.16 which the benefits allowed under paragraph (c) shall be removed. Designated facilities may
 13.17 apply for continued designation.

13.18 (e) This section is suspended and no state or federal funding shall be appropriated or
 13.19 allocated for the purposes of this section from January 1, 2016, to December 31, ~~2017~~ 2019.

13.20 Sec. 24. Minnesota Statutes 2016, section 256R.49, is amended to read:

13.21 **256R.49 RATE ADJUSTMENTS FOR COMPENSATION-RELATED COSTS**
 13.22 **FOR MINIMUM WAGE CHANGES.**

13.23 Subdivision 1. **Rate adjustments for compensation-related costs.** (a) Operating payment
 13.24 rates of all nursing facilities that are reimbursed under this chapter shall be increased effective
 13.25 for rate years beginning on and after October 1, 2014, to address changes in compensation
 13.26 costs for nursing facility employees ~~paid less than \$14 per hour~~ in accordance with this
 13.27 section. Rate increases provided under this section before October 1, 2016, expire effective
 13.28 January 1, 2018. Rate increases provided on or after October 1, 2016, expire two years after
 13.29 the effective date of the rate increases.

13.30 (b) Nursing facilities that receive approval of the applications in subdivision 2 must
 13.31 receive rate adjustments according to subdivision 4. ~~The rate adjustments must be used to~~
 13.32 ~~pay compensation costs for nursing facility employees paid less than \$14 per hour.~~

14.1 Subd. 2. **Application process.** To receive a rate adjustment, nursing facilities must
 14.2 submit applications to the commissioner in a form and manner determined by the
 14.3 commissioner. The applications for the rate adjustments shall include specified data, and
 14.4 spending plans that describe how the funds from the rate adjustments will be allocated for
 14.5 compensation to employees ~~paid less than \$14 per hour~~. The applications must be submitted
 14.6 within three months of the effective date of any operating payment rate adjustment under
 14.7 this section. The commissioner may request any additional information needed to determine
 14.8 the rate adjustment within three weeks of receiving a complete application. The nursing
 14.9 facility must provide any additional information requested by the commissioner within six
 14.10 months of the effective date of any operating payment rate adjustment under this section.
 14.11 The commissioner may waive the deadlines in this section under extraordinary circumstances.

14.12 Subd. 3. **Additional application requirements for facilities with employees**
 14.13 **represented by an exclusive bargaining representative.** For nursing facilities in which
 14.14 employees are represented by an exclusive bargaining representative, the commissioner
 14.15 shall approve the applications submitted under subdivision 2 only upon receipt of a letter
 14.16 or letters of acceptance of the spending plans in regard to members of the bargaining unit,
 14.17 signed by the exclusive bargaining agent and dated after May 31, 2014. Upon receipt of the
 14.18 letter or letters of acceptance, the commissioner shall deem all requirements of this section
 14.19 as having been met in regard to the members of the bargaining unit.

14.20 Subd. 4. **Determination of the rate adjustments for compensation-related costs.**
 14.21 Based on the application in subdivision 2, the commissioner shall calculate the allowable
 14.22 annualized compensation costs by adding the totals of clauses (1); and (2); ~~and (3)~~. The
 14.23 result must be divided by the standardized or resident days from the most recently available
 14.24 cost report to determine per day amounts, which must be included in the operating portion
 14.25 of the total payment rate and allocated to direct care or other operating as determined by
 14.26 the commissioner:

14.27 (1) the sum of the difference between \$9.50 and any hourly wage rate less than \$9.50
 14.28 for October 1, 2016; and between the indexed value of the minimum wage, as defined in
 14.29 section 177.24, subdivision 1, paragraph (f), or any other minimum wage implemented in
 14.30 statute or by any local ordinance, and any hourly wage less than that indexed value for rate
 14.31 years beginning on and after ~~October 1, 2017~~ January 1, 2018; multiplied by the number
 14.32 of compensated hours at that wage rate; and

14.33 ~~(2) using wages and hours in effect during the first three months of calendar year 2014,~~
 14.34 ~~beginning with the first pay period beginning on or after January 1, 2014; 22.2 percent of~~
 14.35 ~~the sum of items (i) to (viii) for October 1, 2016;~~

15.1 ~~(i) for all compensated hours from \$8 to \$8.49 per hour, the number of compensated~~
 15.2 ~~hours is multiplied by \$0.13;~~

15.3 ~~(ii) for all compensated hours from \$8.50 to \$8.99 per hour, the number of compensated~~
 15.4 ~~hours is multiplied by \$0.25;~~

15.5 ~~(iii) for all compensated hours from \$9 to \$9.49 per hour, the number of compensated~~
 15.6 ~~hours is multiplied by \$0.38;~~

15.7 ~~(iv) for all compensated hours from \$9.50 to \$10.49 per hour, the number of compensated~~
 15.8 ~~hours is multiplied by \$0.50;~~

15.9 ~~(v) for all compensated hours from \$10.50 to \$10.99 per hour, the number of compensated~~
 15.10 ~~hours is multiplied by \$0.40;~~

15.11 ~~(vi) for all compensated hours from \$11 to \$11.49 per hour, the number of compensated~~
 15.12 ~~hours is multiplied by \$0.30;~~

15.13 ~~(vii) for all compensated hours from \$11.50 to \$11.99 per hour, the number of~~
 15.14 ~~compensated hours is multiplied by \$0.20; and~~

15.15 ~~(viii) for all compensated hours from \$12 to \$13 per hour, the number of compensated~~
 15.16 ~~hours is multiplied by \$0.10; and~~

15.17 ~~(3) (2) the sum of the employer's share of FICA taxes, Medicare taxes, state and federal~~
 15.18 ~~unemployment taxes, workers' compensation, pensions, and contributions to employee~~
 15.19 ~~retirement accounts attributable to the amounts in ~~clauses~~ clause (1) ~~and (2).~~~~

15.20 Sec. 25. **REPEALER.**

15.21 Minnesota Statutes 2016, sections 256R.06, subdivision 7; and 256R.54, subdivisions
 15.22 5, 6, 7, 8, and 9, are repealed.

256R.06 PRIVATE PAY RESIDENTS; REQUIRED PRACTICES.

Subd. 7. **Notification to a spouse or health care agent.** (a) When a private pay resident who has not yet been screened by the preadmission screening team is admitted to a nursing facility or boarding care facility, the nursing facility or boarding care facility must notify the resident and the resident's spouse or health care agent of the following:

(1) their right to retain certain resources under sections 256B.0575, 256B.058, 256B.059, 256B.0595, and 256B.14, subdivision 2; and

(2) that the federal Medicare hospital insurance benefits program covers posthospital extended care services in a qualified skilled nursing facility for up to 100 days and that there are several limitations on this benefit. The resident and the resident's family or health care agent must be informed about all mechanisms to appeal limitations imposed under this federal benefit program.

(b) This notice may be included in the nursing facility's or boarding care facility's admission agreement and must clearly explain what resources the resident and spouse may retain if the resident applies for medical assistance. The Department of Human Services must notify nursing facilities and boarding care facilities of changes in the determination of medical assistance eligibility that relate to resources retained by a resident and the resident's spouse.

(c) The preadmission screening team has primary responsibility for informing all private pay applicants to a nursing facility or boarding care facility of the resources the resident and spouse may retain.

256R.54 ANCILLARY SERVICES.

Subd. 5. **Separate billings for therapy services; unrelated vendors.** Nursing facilities shall limit charges in total to vendors of therapy services for renting space, equipment, or obtaining other services during the rate year to 108 percent of the annualized cost removed from the reporting period cost report resulting from the requirement of the commissioner to ensure the avoidance of double payments as determined by section 256R.12, subdivisions 8 and 9. If the arrangement for therapy services is changed so that a nursing facility is subject to this subdivision instead of subdivision 4, the cost that is used to determine rent must be adjusted to exclude the annualized costs for therapy services that are not provided in the rate year. The maximum charges to the vendors shall be based on the commissioner's determination of annualized cost and may be subsequently adjusted upon resolution of appeals.

Subd. 6. **Separate billings for therapy services; cost to revenue ratio.** The commissioner shall require reporting of all revenues relating to the provision of therapy services and shall establish a therapy cost, as determined by section 256R.12, subdivisions 8 and 9, to revenue ratio for the reporting period ending in 1986. For subsequent reporting periods the ratio may increase five percentage points in total until a new base year is established under subdivision 7. Increases in excess of five percentage points may be allowed if adequate justification is provided to and accepted by the commissioner. Unless an exception is allowed by the commissioner, the amount of offset in subdivision 4 is the greater of the amount determined in subdivision 4 or the amount of offset that is imputed based on one minus the lesser of (1) the actual reporting period ratio or (2) the base reporting period ratio increased by five percentage points, multiplied by the revenues.

Subd. 7. **Separate billings for therapy services; base year.** The commissioner may establish a new base reporting period for determining the cost to revenue ratio.

Subd. 8. **Separate billings for therapy services; transition from unrelated to related vendor.** If the arrangement for therapy services is changed so that a nursing facility is subject to the provisions of subdivision 4 instead of subdivision 5, an average cost to revenue ratio based on the ratios of nursing facilities that are subject to the provisions of subdivision 4 shall be imputed for subdivision 6.

Subd. 9. **Separate billings for therapy services; prohibited practices.** This section does not allow unrelated nursing facilities to reorganize related organization therapy services and provide services among themselves to avoid offsetting revenues. Nursing facilities that are found to be in violation of this provision are subject to the penalty requirements of section 256R.04, subdivision 5.