

144A.073 EXCEPTIONS TO MORATORIUM; REVIEW.

Subdivision 1. **Definitions.** For purposes of this section, the following terms have the meanings given them:

(a) "Conversion" means the relocation of a nursing home bed from a nursing home to an attached hospital.

(b) "Relocation" means the movement of licensed nursing home beds or certified boarding care beds as permitted under subdivision 4, clause (3), and subdivision 5.

(c) "Renovation" means extensive remodeling of an existing facility with a total cost exceeding ten percent of the appraised value of the facility or \$200,000, whichever is less. A renovation may include the replacement or upgrade of existing mechanical or electrical systems.

(d) "Replacement" means the construction of a complete new facility.

(e) "Addition" means the construction of new space to an existing facility.

(f) "Upgrading" means a change in the level of licensure of a bed from a boarding care bed to a nursing home bed in a certified boarding care facility.

(g) "Phased project" means a proposal that identifies construction occurring with more than one distinct completion date. To be considered a distinct completion, each phase must have construction that is ready for resident use, as determined by the commissioner, that is not dependent on similar commissioner approval for future phases of construction. The commissioner of human services shall only allow rate adjustments for construction projects in phases if the proposal from a facility identifies construction in phases and each phase can be approved for use independent of the other phases.

Subd. 2. **Request for proposals.** At the authorization by the legislature of additional medical assistance expenditures for exceptions to the moratorium on nursing homes, the commissioner shall publish in the State Register a request for proposals for nursing home and certified boarding care home projects for conversion, relocation, renovation, replacement, upgrading, or addition. The public notice of this funding and the request for proposals must specify how the approval criteria will be prioritized by the commissioner. The notice must describe the information that must accompany a request and state that proposals must be submitted to the commissioner within 150 days of the date of publication. The notice must include the amount of the legislative appropriation available for the additional costs to the medical assistance program of projects approved under this section. If money is appropriated, the commissioner shall initiate the application and review process described in this section at least once each biennium. A second application and review process must occur if remaining funds are either greater than \$300,000 or

more than 50 percent of the baseline appropriation for the biennium. Authorized funds may be awarded in full in the first review process of the biennium. Appropriated funds not encumbered within a biennium shall carry forward to the following biennium. To be considered for approval, a proposal must include the following information:

- (1) whether the request is for renovation, replacement, upgrading, conversion, addition, or relocation;
- (2) a description of the problems the project is designed to address;
- (3) a description of the proposed project;
- (4) an analysis of projected costs of the nursing facility proposed project, including:
 - (i) initial construction and remodeling costs;
 - (ii) site preparation costs;
 - (iii) equipment and technology costs;
 - (iv) financing costs, the current estimated long-term financing costs of the proposal, which is to include details of any proposed funding mechanism already arranged or being considered, including estimates of the amount and sources of money, reserves if required, annual payments schedule, interest rates, length of term, closing costs and fees, insurance costs, any completed marketing study or underwriting review; and
 - (v) estimated operating costs during the first two years after completion of the project;
- (5) for proposals involving replacement of all or part of a facility, the proposed location of the replacement facility and an estimate of the cost of addressing the problem through renovation;
- (6) for proposals involving renovation, an estimate of the cost of addressing the problem through replacement;
- (7) the proposed timetable for commencing construction and completing the project;
- (8) a statement of any licensure or certification issues, such as certification survey deficiencies;
- (9) the proposed relocation plan for current residents if beds are to be closed according to section 144A.161; and
- (10) other information required by permanent rule of the commissioner of health in accordance with subdivisions 4 and 8.

Subd. 3. Review and approval of proposals. Within the limits of money specifically appropriated to the medical assistance program for this purpose, the commissioner of health may

grant exceptions to the nursing home licensure or certification moratorium for proposals that satisfy the requirements of this section. The commissioner of health shall approve or disapprove a project. The commissioner of health shall base approvals or disapprovals on a comparison and ranking of proposals using only the criteria in subdivision 4 and in rules adopted by the commissioner. The cost to the medical assistance program of the proposals approved must be within the limits of the appropriations specifically made for this purpose. Approval of a proposal expires 18 months after approval by the commissioner of health unless the facility has commenced construction as defined in section 144A.071, subdivision 1a, paragraph (d).

Subd. 3a. [Repealed, 1995 c 207 art 7 s 43]

Subd. 3b. **Amendments to approved projects.** (a) Nursing facilities that have received approval on or after July 1, 1993, for exceptions to the moratorium on nursing homes through the process described in this section may request amendments to the designs of the projects by writing the commissioner within 15 months of receiving approval. Applicants shall submit supporting materials that demonstrate how the amended projects meet the criteria described in paragraph (b).

(b) The commissioner shall approve requests for amendments for projects approved on or after July 1, 1993, according to the following criteria:

(1) the amended project designs must provide solutions to all of the problems addressed by the original application that are at least as effective as the original solutions;

(2) the amended project designs may not reduce the space in each resident's living area or in the total amount of common space devoted to resident and family uses by more than five percent;

(3) the costs recognized for reimbursement of amended project designs shall be the threshold amount of the original proposal as identified according to section 144A.071, subdivision 2, except under conditions described in clause (4); and

(4) total costs up to ten percent greater than the cost identified in clause (3) may be recognized for reimbursement if the proposer can document that one of the following circumstances is true:

(i) changes are needed due to a natural disaster;

(ii) conditions that affect the safety or durability of the project that could not have reasonably been known prior to approval are discovered;

(iii) state or federal law require changes in project design; or

(iv) documentable circumstances occur that are beyond the control of the owner and require changes in the design.

(c) Approval of a request for an amendment does not alter the expiration of approval of the project according to subdivision 3.

Subd. 3c. **Cost neutral relocation projects.** (a) Notwithstanding subdivision 3, the commissioner may at any time accept proposals, or amendments to proposals previously approved under this section, for relocations that are cost neutral with respect to state costs as defined in section 144A.071, subdivision 5a. The commissioner, in consultation with the commissioner of human services, shall evaluate proposals according to subdivision 4, clauses (1), (2), (3), and (9) and other criteria established in rule. The commissioner shall approve or disapprove a project within 90 days. Proposals and amendments approved under this subdivision are not subject to the six-mile limit in subdivision 5, paragraph (e).

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

Subd. 3d. [Repealed by amendment, 2008 c 230 s 3]

Subd. 4. **Criteria for review.** The following criteria shall be used in a consistent manner to compare, evaluate, and rank all proposals submitted. Except for the criteria specified in clause (3), the application of criteria listed under this subdivision shall not reflect any distinction based on the geographic location of the proposed project:

(1) the extent to which the proposal furthers state long-term care goals, including the goal of enhancing the availability and use of alternative care services and the goal of reducing the number of long-term care resident rooms with more than two beds;

(2) the proposal's long-term effects on state costs including the cost estimate of the project according to section 144A.071, subdivision 5a;

(3) the extent to which the proposal promotes equitable access to long-term care services in nursing homes through redistribution of the nursing home bed supply, as measured by the number of beds relative to the population 85 or older using data published according to requirements in section 144A.351;

(4) the extent to which the project improves conditions that affect the health or safety of residents, such as narrow corridors, narrow door frames, unenclosed fire exits, and wood frame construction, and similar provisions contained in fire and life safety codes and licensure and certification rules;

(5) the extent to which the project improves conditions that affect the comfort or quality of life of residents in a facility or the ability of the facility to provide efficient care, such as a relatively high number of residents in a room; inadequate lighting or ventilation; poor access to bathing or

toilet facilities; a lack of available ancillary space for dining rooms, day rooms, or rooms used for other activities; problems relating to heating, cooling, or energy efficiency; inefficient location of nursing stations; or other provisions contained in the licensure and certification rules;

(6) the extent to which the applicant demonstrates the delivery of quality care, as defined in state and federal statutes and rules, to residents as evidenced by the two most recent state agency certification surveys and the applicants' response to those surveys;

(7) the extent to which the project removes the need for waivers or variances previously granted by either the licensing agency, certifying agency, fire marshal, or local government entity;

(8) the extent to which the project increases the number of private or single bed rooms;

(9) the extent to which the applicant demonstrates the continuing need for nursing facility care in the community and adjacent communities; and

(10) other factors that may be developed in permanent rule by the commissioner of health that evaluate and assess how the proposed project will further promote or protect the health, safety, comfort, treatment, or well-being of the facility's residents.

Subd. 5. Replacement restrictions. (a) Proposals submitted or approved under this section involving replacement must provide for replacement of the facility on the existing site except as allowed in this subdivision.

(b) Facilities located in a metropolitan statistical area other than the Minneapolis-St. Paul seven-county metropolitan area may relocate to a site within the same census tract or a contiguous census tract.

(c) Facilities located in the Minneapolis-St. Paul seven-county metropolitan area may relocate to a site within the same or contiguous health planning area as adopted in March 1982 by the Metropolitan Council.

(d) Facilities located outside a metropolitan statistical area may relocate to a site within the same city or township, or within a contiguous township.

(e) A facility relocated to a different site under paragraph (b), (c), or (d) must not be relocated to a site more than six miles from the existing site.

(f) The relocation of part of an existing first facility to a second location, under paragraphs (d) and (e), may include the relocation to the second location of up to four beds from part of an existing third facility located in a township contiguous to the location of the first facility. The six-mile limit in paragraph (e) does not apply to this relocation from the third facility.

(g) For proposals approved on January 13, 1994, under this section involving the replacement of 102 licensed and certified beds, the relocation of the existing first facility to the new location under paragraphs (d) and (e) may include the relocation of up to 75 beds of the existing facility. The six-mile limit in paragraph (e) does not apply to this relocation.

Subd. 6. **Conversion restrictions.** Proposals submitted or approved under this section involving conversion must satisfy the following conditions:

(a) Conversion is limited to a total of five beds.

(b) An equivalent number of hospital beds must be delicensed.

(c) The average occupancy rate in the existing nursing home beds must be greater than 96 percent according to the most recent annual statistical and cost report of the Department of Human Services.

(d) The cost of remodeling the hospital rooms to meet current nursing home construction standards must not exceed ten percent of the appraised value of the nursing home or \$200,000, whichever is less.

(e) The conversion must not result in an increase in operating costs.

Subd. 7. **Upgrading restrictions.** Proposals submitted or approved under this section involving upgrading must satisfy the following conditions:

(a) The facility must meet minimum nursing home licensure requirements.

(b) If beds are upgraded to nursing home beds, the number of boarding care beds in a facility must not increase in the future.

Subd. 8. **Rulemaking.** The commissioner of health shall adopt rules to implement this section. The permanent rules must be in accordance with and implement only the criteria listed in this section.

Subd. 9. **Budget request.** The commissioner of human services, in consultation with the commissioner of management and budget, shall include in each biennial budget request a line item for the nursing home moratorium exception process. If the commissioner of human services does not request funding for this item, the commissioner of human services must justify the decision in the budget pages.

Subd. 10. [Repealed by amendment, 2008 c 230 s 3]

Subd. 11. **Funding from expired and canceled proposals.** The commissioner shall monitor the status of projects approved under this section to identify, in consultation with each facility with an approved project, if projects will be canceled or will expire. For projects that have been

canceled or have expired, if originally approved after June 30, 2001, the commissioner's approval authority for the estimated annual state cost to medical assistance shall carry forward and shall be available for the issuance of a new moratorium round later in that fiscal year or in either of the following two fiscal years.

Subd. 12. **Extension of approval of moratorium exception projects.** Notwithstanding subdivision 3, the commissioner of health shall extend project approval by an additional 18 months for an approved proposal for an exception to the nursing home licensure and certification moratorium if the proposal was approved under this section between July 1, 2007, and June 30, 2009.

History: 1987 c 403 art 4 s 4; 1988 c 689 art 2 s 37-39; 1989 c 282 art 3 s 12; 1990 c 568 art 3 s 4; 1992 c 292 art 7 s 25; 1992 c 513 art 7 s 4-6; 1Sp1993 c 1 art 5 s 3-5; 1995 c 207 art 7 s 13-19; 1996 c 305 art 2 s 29; 1997 c 7 art 5 s 11; 1997 c 203 art 3 s 3,4; 1999 c 245 art 3 s 1; 2001 c 161 s 22-24; 1Sp2001 c 9 art 5 s 7,8; 2002 c 379 art 1 s 113; 2003 c 72 s 1,2; 1Sp2005 c 4 art 7 s 1,2; 2007 c 147 art 7 s 1; 2008 c 230 s 3; 2009 c 79 art 8 s 6; 2009 c 101 art 2 s 109