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State of Minnesota

HOUSE OF REPRESENTATIVES

NINETY-FIRST SESSION

H. F. No. 2548

03/18/2019 Authored by Schultz
The bill was read for the first time and referred to the Committee on Ways and Means

1.1 A bill for an act
1.2 relating to human services; modifying continuing care for older adults provisions;
1.3 amending Minnesota Statutes 2018, sections 144.0724, subdivisions 4, 5, 8;
1.4 144A.071, subdivisions 1a, 2, 3, 4a, 4c, 5a; 144A.073, subdivision 3c; 256R.02,
1.5 subdivisions 8, 19; 256R.16, subdivision 1; 256R.21, by adding a subdivision;
1.6 256R.23, subdivision 5; 256R.24, subdivision 3; 256R.25; 256R.26; 256R.44;
1.7 256R.47; 256R.50, subdivision 6; proposing coding for new law in Minnesota
1.8 Statutes, chapter 256R; repealing Minnesota Statutes 2018, sections 144A.071,
1.9 subdivision 4d; 256B.431, subdivisions 3a, 3f, 3g, 3i, 13, 15, 17, 17a, 17c, 17d,
1.10 17e, 18, 21, 22, 30, 45; 256B.434, subdivisions 4, 4f, 4i, 4j; 256R.36; 256R.40;
1.11 256R.41; Minnesota Rules, parts 9549.0057; 9549.0060, subparts 4, 5, 6, 7, 10,
1.12 11, 14.

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

1.14 Section 1. Minnesota Statutes 2018, section 144.0724, subdivision 4, is amended to read:

1.15 Subd. 4. Resident assessment schedule. (a) A facility must conduct and electronically
1.16 submit to the commissioner of health MDS assessments that conform with the assessment
1.17 schedule defined by Code of Federal Regulations, title 42, section 483.20, and published
1.18 by the United States Department of Health and Human Services, Centers for Medicare and
1.19 Medicaid Services, in the Long Term Care Assessment Instrument User's Manual, version
1.20 3.0, and subsequent updates when issued by the Centers for Medicare and Medicaid Services.
1.21 The commissioner of health may substitute successor manuals or question and answer
1.22 documents published by the United States Department of Health and Human Services,
1.23 Centers for Medicare and Medicaid Services, to replace or supplement the current version
1.24 of the manual or document.

1.25 (b) The assessments used to determine a case mix classification for reimbursement
1.26 include the following:

- 2.1 (1) a new admission assessment;
- 2.2 (2) an annual assessment which must have an assessment reference date (ARD) within
2.3 92 days of the previous assessment and the previous comprehensive assessment;
- 2.4 (3) a significant change in status assessment must be completed within 14 days of the
2.5 identification of a significant change, whether improvement or decline, and regardless of
2.6 the amount of time since the last significant change in status assessment; Effective for
2.7 rehabilitation therapy completed on or after January 1, 2020, a facility must complete a
2.8 significant change in status assessment if for any reason all speech, occupational, and
2.9 physical therapies have ended. The ARD of the significant change in status assessment must
2.10 be the eighth day after all speech, occupational, and physical therapies have ended. The last
2.11 day on which rehabilitation therapy was furnished is considered day zero when determining
2.12 the ARD for the significant change in status assessment;
- 2.13 (4) all quarterly assessments must have an assessment reference date (ARD) within 92
2.14 days of the ARD of the previous assessment;
- 2.15 (5) any significant correction to a prior comprehensive assessment, if the assessment
2.16 being corrected is the current one being used for RUG classification; ~~and~~
- 2.17 (6) any significant correction to a prior quarterly assessment, if the assessment being
2.18 corrected is the current one being used for RUG classification; and
- 2.19 (7) modifications to the most recent assessment in clauses (1) to (6).
- 2.20 (c) In addition to the assessments listed in paragraph (b), the assessments used to
2.21 determine nursing facility level of care include the following:
- 2.22 (1) preadmission screening completed under section 256.975, subdivisions 7a to 7c, by
2.23 the Senior LinkAge Line or other organization under contract with the Minnesota Board on
2.24 Aging; and
- 2.25 (2) a nursing facility level of care determination as provided for under section 256B.0911,
2.26 subdivision 4e, as part of a face-to-face long-term care consultation assessment completed
2.27 under section 256B.0911, by a county, tribe, or managed care organization under contract
2.28 with the Department of Human Services.
- 2.29 Sec. 2. Minnesota Statutes 2018, section 144.0724, subdivision 5, is amended to read:
- 2.30 Subd. 5. **Short stays.** (a) A facility must submit to the commissioner of health an
2.31 admission assessment for all residents who stay in the facility 14 days or less.

3.1 (b) Notwithstanding the admission assessment requirements of paragraph (a), a facility
 3.2 may elect to accept a short stay rate with a case mix index of 1.0 for all facility residents
 3.3 who stay 14 days or less in lieu of submitting an admission assessment. Facilities shall make
 3.4 this election annually.

3.5 (c) Nursing facilities must elect one of the options described in paragraphs (a) and (b)
 3.6 by reporting to the commissioner of health, as prescribed by the commissioner. The election
 3.7 is effective on July 1 each year.

3.8 (d) An admission assessment is not required regardless of the facility's election status
 3.9 when a resident is admitted to and discharged from the facility on the same day.

3.10 **EFFECTIVE DATE.** This section is effective for admissions on or after July 1, 2019.

3.11 Sec. 3. Minnesota Statutes 2018, section 144.0724, subdivision 8, is amended to read:

3.12 Subd. 8. **Request for reconsideration of resident classifications.** (a) The resident, or
 3.13 resident's representative, or the nursing facility or boarding care home may request that the
 3.14 commissioner of health reconsider the assigned reimbursement classification including any
 3.15 items changed during the audit process. The request for reconsideration must be submitted
 3.16 in writing to the commissioner within 30 days of the day the resident or the resident's
 3.17 representative receives the resident classification notice. The request for reconsideration
 3.18 must include the name of the resident, the name and address of the facility in which the
 3.19 resident resides, the reasons for the reconsideration, and documentation supporting the
 3.20 request. The documentation accompanying the reconsideration request is limited to ~~a copy~~
 3.21 ~~of the MDS that determined the classification and other~~ documents that would support or
 3.22 change the MDS findings.

3.23 (b) Upon request, the nursing facility must give the resident or the resident's representative
 3.24 a copy of the assessment form and the other documentation that was given to the
 3.25 commissioner of health to support the assessment findings. The nursing facility shall also
 3.26 provide access to and a copy of other information from the resident's record that has been
 3.27 requested by or on behalf of the resident to support a resident's reconsideration request. A
 3.28 copy of any requested material must be provided within three working days of receipt of a
 3.29 written request for the information. Notwithstanding any law to the contrary, the facility
 3.30 may not charge a fee for providing copies of the requested documentation. If a facility fails
 3.31 to provide the material within this time, it is subject to the issuance of a correction order
 3.32 and penalty assessment under sections 144.653 and 144A.10. Notwithstanding those sections,
 3.33 any correction order issued under this subdivision must require that the nursing facility
 3.34 immediately comply with the request for information and that as of the date of the issuance

4.1 of the correction order, the facility shall forfeit to the state a \$100 fine for the first day of
4.2 noncompliance, and an increase in the \$100 fine by \$50 increments for each day the
4.3 noncompliance continues.

4.4 (c) In addition to the information required under paragraphs (a) and (b), a reconsideration
4.5 request from a nursing facility must contain the following information: (i) the date the
4.6 reimbursement classification notices were received by the facility; (ii) the date the
4.7 classification notices were distributed to the resident or the resident's representative; and
4.8 (iii) a copy of a notice sent to the resident or to the resident's representative. This notice
4.9 must inform the resident or the resident's representative that a reconsideration of the resident's
4.10 classification is being requested, the reason for the request, that the resident's rate will change
4.11 if the request is approved by the commissioner, the extent of the change, that copies of the
4.12 facility's request and supporting documentation are available for review, and that the resident
4.13 also has the right to request a reconsideration. If the facility fails to provide the required
4.14 information listed in item (iii) with the reconsideration request, the commissioner may
4.15 request that the facility provide the information within 14 calendar days. The reconsideration
4.16 request must be denied if the information is then not provided, and the facility may not
4.17 make further reconsideration requests on that specific reimbursement classification.

4.18 (d) Reconsideration by the commissioner must be made by individuals not involved in
4.19 reviewing the assessment, audit, or reconsideration that established the disputed classification.
4.20 The reconsideration must be based upon the assessment that determined the classification
4.21 and upon the information provided to the commissioner under paragraphs (a) and (b). If
4.22 necessary for evaluating the reconsideration request, the commissioner may conduct on-site
4.23 reviews. Within 15 working days of receiving the request for reconsideration, the
4.24 commissioner shall affirm or modify the original resident classification. The original
4.25 classification must be modified if the commissioner determines that the assessment resulting
4.26 in the classification did not accurately reflect characteristics of the resident at the time of
4.27 the assessment. The resident and the nursing facility or boarding care home shall be notified
4.28 within five working days after the decision is made. A decision by the commissioner under
4.29 this subdivision is the final administrative decision of the agency for the party requesting
4.30 reconsideration.

4.31 (e) The resident classification established by the commissioner shall be the classification
4.32 that applies to the resident while the request for reconsideration is pending. If a request for
4.33 reconsideration applies to an assessment used to determine nursing facility level of care
4.34 under subdivision 4, paragraph (c), the resident shall continue to be eligible for nursing
4.35 facility level of care while the request for reconsideration is pending.

5.1 (f) The commissioner may request additional documentation regarding a reconsideration
5.2 necessary to make an accurate reconsideration determination.

5.3 Sec. 4. Minnesota Statutes 2018, section 144A.071, subdivision 1a, is amended to read:

5.4 Subd. 1a. **Definitions.** For purposes of sections 144A.071 to 144A.073, the following
5.5 terms have the meanings given them:

5.6 (a) "Attached fixtures" has the meaning given in Minnesota Rules, part 9549.0020,
5.7 subpart 6.

5.8 (b) ~~"Buildings"~~ "Building" has the meaning given in ~~Minnesota Rules, part 9549.0020,~~
5.9 ~~subpart 7~~ section 256R.261, subdivision 4.

5.10 (c) "Capital assets" has the meaning given in section ~~256B.421, subdivision 16~~ 256R.02,
5.11 subdivision 8.

5.12 (d) "Commenced construction" means that all of the following conditions were met: the
5.13 final working drawings and specifications were approved by the commissioner of health;
5.14 the construction contracts were let; a timely construction schedule was developed, stipulating
5.15 dates for beginning, achieving various stages, and completing construction; and all zoning
5.16 and building permits were applied for.

5.17 (e) "Completion date" means the date on which clearance for the construction project
5.18 is issued, or if a clearance for the construction project is not required, the date on which the
5.19 construction project assets are available for facility use.

5.20 (f) "Construction" means any erection, building, alteration, reconstruction, modernization,
5.21 or improvement necessary to comply with the nursing home licensure rules.

5.22 (g) "Construction project" means:

5.23 (1) a capital asset addition to, or replacement of a nursing home or certified boarding
5.24 care home that results in new space or the remodeling of or renovations to existing facility
5.25 space; and

5.26 (2) the remodeling or renovation of existing facility space the use of which is modified
5.27 as a result of the project described in clause (1). This existing space and the project described
5.28 in clause (1) must be used for the functions as designated on the construction plans on
5.29 completion of the project described in clause (1) for a period of not less than 24 months.

5.30 (h) "Depreciation guidelines" ~~means the most recent publication of "The Estimated~~
5.31 ~~Useful Lives of Depreciable Hospital Assets," issued by the American Hospital Association,~~

6.1 ~~840 North Lake Shore Drive, Chicago, Illinois, 60611~~ has the meaning given in section
 6.2 256R.261, subdivision 9.

6.3 (i) "New licensed" or "new certified beds" means:

6.4 (1) newly constructed beds in a facility or the construction of a new facility that would
 6.5 increase the total number of licensed nursing home beds or certified boarding care or nursing
 6.6 home beds in the state; or

6.7 (2) newly licensed nursing home beds or newly certified boarding care or nursing home
 6.8 beds that result from remodeling of the facility that involves relocation of beds but does not
 6.9 result in an increase in the total number of beds, except when the project involves the upgrade
 6.10 of boarding care beds to nursing home beds, as defined in section 144A.073, subdivision
 6.11 1. "Remodeling" includes any of the type of conversion, renovation, replacement, or
 6.12 upgrading projects as defined in section 144A.073, subdivision 1.

6.13 ~~(j) "Project construction costs" means the cost of the following items that have a~~
 6.14 ~~completion date within 12 months before or after the completion date of the project described~~
 6.15 ~~in item (g), clause (1):~~

6.16 ~~(1) facility capital asset additions;~~

6.17 ~~(2) replacements;~~

6.18 ~~(3) renovations;~~

6.19 ~~(4) remodeling projects;~~

6.20 ~~(5) construction site preparation costs;~~

6.21 ~~(6) related soft costs; and~~

6.22 ~~(7) the cost of new technology implemented as part of the construction project and~~
 6.23 ~~depreciable equipment directly identified to the project, if the construction costs for clauses~~
 6.24 ~~(1) to (6) exceed the threshold for additions and replacements stated in section 256B.431,~~
 6.25 ~~subdivision 16. Technology and depreciable equipment shall be included in the project~~
 6.26 ~~construction costs unless a written election is made by the facility, to not include it in the~~
 6.27 ~~facility's appraised value for purposes of Minnesota Rules, part 9549.0020, subpart 5. Debt~~
 6.28 ~~incurred for purchase of technology and depreciable equipment shall be included as allowable~~
 6.29 ~~debt for purposes of Minnesota Rules, part 9549.0060, subpart 5, items A and C, unless the~~
 6.30 ~~written election is to not include it. Any new technology and depreciable equipment included~~
 6.31 ~~in the project construction costs that the facility elects not to include in its appraised value~~
 6.32 ~~and allowable debt shall be treated as provided in section 256B.431, subdivision 17;~~

7.1 ~~paragraph (b). Written election under this paragraph must be included in the facility's request~~
 7.2 ~~for the rate change related to the project, and this election may not be changed.~~

7.3 ~~(k) "Technology" means information systems or devices that make documentation,~~
 7.4 ~~charting, and staff time more efficient or encourage and allow for care through alternative~~
 7.5 ~~settings including, but not limited to, touch screens, monitors, hand-helds, swipe cards,~~
 7.6 ~~motion detectors, pagers, telemedicine, medication dispensers, and equipment to monitor~~
 7.7 ~~vital signs and self-injections, and to observe skin and other conditions.~~

7.8 **EFFECTIVE DATE.** This section is effective January 1, 2020.

7.9 Sec. 5. Minnesota Statutes 2018, section 144A.071, subdivision 2, is amended to read:

7.10 Subd. 2. **Moratorium.** The commissioner of health, in coordination with the
 7.11 commissioner of human services, shall deny each request for new licensed or certified
 7.12 nursing home or certified boarding care beds except as provided in subdivision 3 or 4a, or
 7.13 section 144A.073. "Certified bed" means a nursing home bed or a boarding care bed certified
 7.14 by the commissioner of health for the purposes of the medical assistance program, under
 7.15 United States Code, title 42, sections 1396 et seq. Certified beds in facilities which do not
 7.16 allow medical assistance intake shall be deemed to be decertified for purposes of this section
 7.17 only.

7.18 The commissioner of human services, in coordination with the commissioner of health,
 7.19 shall deny any request to issue a license under section 252.28 and chapter 245A to a nursing
 7.20 home or boarding care home, if that license would result in an increase in the medical
 7.21 assistance reimbursement amount.

7.22 In addition, the commissioner of health must not approve any construction project whose
 7.23 cost exceeds ~~\$1,000,000~~ \$1,500,000, unless:

7.24 (a) any construction costs exceeding ~~\$1,000,000~~ \$1,500,000 are not added to the facility's
 7.25 appraised value and are not included in the facility's payment rate for reimbursement under
 7.26 the medical assistance program; or

7.27 (b) the project:

7.28 (1) has been approved through the process described in section 144A.073;

7.29 (2) meets an exception in subdivision 3 or 4a;

7.30 (3) is necessary to correct violations of state or federal law issued by the commissioner
 7.31 of health;

8.1 (4) is necessary to repair or replace a portion of the facility that was damaged by fire,
8.2 lightning, ground shifts, or other such hazards, including environmental hazards, provided
8.3 that the provisions of subdivision 4a, clause (a), are met;

8.4 (5) as of May 1, 1992, the facility has submitted to the commissioner of health written
8.5 documentation evidencing that the facility meets the "commenced construction" definition
8.6 as specified in subdivision 1a, paragraph (d), or that substantial steps have been taken prior
8.7 to April 1, 1992, relating to the construction project. "Substantial steps" require that the
8.8 facility has made arrangements with outside parties relating to the construction project and
8.9 include the hiring of an architect or construction firm, submission of preliminary plans to
8.10 the Department of Health or documentation from a financial institution that financing
8.11 arrangements for the construction project have been made; or

8.12 (6) is being proposed by a licensed nursing facility that is not certified to participate in
8.13 the medical assistance program and will not result in new licensed or certified beds.

8.14 Prior to the final plan approval of any construction project, the ~~commissioner~~
8.15 commissioners of health and human services shall be provided with an itemized cost estimate
8.16 for the project construction costs. If a construction project is anticipated to be completed in
8.17 phases, the total estimated cost of all phases of the project shall be submitted to the
8.18 ~~commissioner~~ commissioners and shall be considered as one construction project. Once the
8.19 construction project is completed and prior to the final clearance by the ~~commissioner~~
8.20 commissioners, the total project construction costs for the construction project shall be
8.21 submitted to the ~~commissioner~~ commissioners. If the final project construction cost exceeds
8.22 the dollar threshold in this subdivision, the commissioner of human services shall not
8.23 recognize any of the project construction costs or the related financing costs in excess of
8.24 this threshold in establishing the facility's property-related payment rate.

8.25 The dollar thresholds for construction projects are as follows: for construction projects
8.26 other than those authorized in clauses (1) to (6), the dollar threshold is \$1,000,000. For
8.27 projects authorized after July 1, 1993, under clause (1), the dollar threshold is the cost
8.28 estimate submitted with a proposal for an exception under section 144A.073, plus inflation
8.29 as calculated according to section 256B.431, subdivision 3f, paragraph (a). For projects
8.30 authorized under clauses (2) to (4), the dollar threshold is the itemized estimate project
8.31 construction costs submitted to the commissioner of health at the time of final plan approval,
8.32 plus inflation as calculated according to section 256B.431, subdivision 3f, paragraph (a).

9.1 The commissioner of health shall adopt rules to implement this section or to amend the
9.2 emergency rules for granting exceptions to the moratorium on nursing homes under section
9.3 144A.073.

9.4 Sec. 6. Minnesota Statutes 2018, section 144A.071, subdivision 3, is amended to read:

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

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

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

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

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

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

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

9.30 (c) On August 15 of odd-numbered years, the commissioner, in cooperation with the
9.31 commissioner of human services, may publish in the State Register a request for information
9.32 in which interested parties, using the data provided under section 144A.351, along with any
9.33 other relevant data, demonstrate that a specified area is a hardship area with regard to access

10.1 to nursing facility services. For a response to be considered, the commissioner must receive
10.2 it by November 15. The commissioner shall make responses to the request for information
10.3 available to the public and shall allow 30 days for comment. The commissioner shall review
10.4 responses and comments and determine if any areas of the state are to be declared hardship
10.5 areas.

10.6 (d) For each designated hardship area determined in paragraph (c), the commissioner
10.7 shall publish a request for proposals in accordance with section 144A.073 and Minnesota
10.8 Rules, parts 4655.1070 to 4655.1098. The request for proposals must be published in the
10.9 State Register by March 15 following receipt of responses to the request for information.
10.10 The request for proposals must specify the number of new beds which may be added in the
10.11 designated hardship area, which must not exceed the number which, if added to the existing
10.12 number of beds in the area, including beds in layaway status, would have prevented it from
10.13 being determined to be a hardship area under paragraph (b), clause (1). Beginning July 1,
10.14 2011, the number of new beds approved must not exceed 200 beds statewide per biennium.
10.15 After June 30, 2019, the number of new beds that may be approved in a biennium must not
10.16 exceed 300 statewide. For a proposal to be considered, the commissioner must receive it
10.17 within six months of the publication of the request for proposals. The commissioner shall
10.18 review responses to the request for proposals and shall approve or disapprove each proposal
10.19 by the following July 15, in accordance with section 144A.073 and Minnesota Rules, parts
10.20 4655.1070 to 4655.1098. The commissioner shall base approvals or disapprovals on a
10.21 comparison and ranking of proposals using only the criteria in subdivision 4a. Approval of
10.22 a proposal expires after 18 months unless the facility has added the new beds using existing
10.23 space, subject to approval by the commissioner, or has commenced construction as defined
10.24 in subdivision 1a, paragraph (d). If, after the approved beds have been added, fewer than
10.25 50 percent of the beds in a facility are newly licensed, the operating payment rates previously
10.26 in effect shall remain. If, after the approved beds have been added, 50 percent or more of
10.27 the beds in a facility are newly licensed, operating and external fixed payment rates shall
10.28 be determined according to ~~Minnesota Rules, part 9549.0057, using the limits under sections~~
10.29 ~~256R.23, subdivision 5, and 256R.24, subdivision 3. External fixed costs payment rates~~
10.30 ~~must be determined according to section 256R.25~~ section 256R.21, subdivision 5. Property
10.31 payment rates for facilities with beds added under this subdivision must be determined ~~in~~
10.32 ~~the same manner as rate determinations resulting from projects approved and completed~~
10.33 ~~under section 144A.073~~ under section 256R.26.

10.34 (e) The commissioner may:

11.1 (1) certify or license new beds in a new facility that is to be operated by the commissioner
11.2 of veterans affairs or when the costs of constructing and operating the new beds are to be
11.3 reimbursed by the commissioner of veterans affairs or the United States Veterans
11.4 Administration; and

11.5 (2) license or certify beds in a facility that has been involuntarily delicensed or decertified
11.6 for participation in the medical assistance program, provided that an application for
11.7 relicensure or recertification is submitted to the commissioner by an organization that is
11.8 not a related organization as defined in section 256R.02, subdivision 43, to the prior licensee
11.9 within 120 days after delicensure or decertification.

11.10 **EFFECTIVE DATE.** This section is effective January 1, 2020.

11.11 Sec. 7. Minnesota Statutes 2018, section 144A.071, subdivision 4a, is amended to read:

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

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

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

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

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

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

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

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

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

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

12.8 (c) to license or certify beds in a project recommended for approval under section
12.9 144A.073;

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

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

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

12.31 (g) to license and certify nursing home beds to replace currently licensed and certified
12.32 boarding care beds which may be located either in a remodeled or renovated boarding care
12.33 or nursing home facility or in a remodeled, renovated, newly constructed, or replacement
12.34 nursing home facility within the identifiable complex of health care facilities in which the

13.1 currently licensed boarding care beds are presently located, provided that the number of
13.2 boarding care beds in the facility or complex are decreased by the number to be licensed as
13.3 nursing home beds and further provided that, if the total costs of new construction,
13.4 replacement, remodeling, or renovation exceed ten percent of the appraised value of the
13.5 facility or \$200,000, whichever is less, the facility makes a written commitment to the
13.6 commissioner of human services that it will not seek to receive an increase in its
13.7 property-related payment rate by reason of the new construction, replacement, remodeling,
13.8 or renovation. The provisions contained in section 144A.073 regarding the upgrading of
13.9 facilities do not apply to facilities that satisfy these requirements;

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

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

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

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

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

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

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

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

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

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

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

14.32 The property-related payment rate of a facility placing beds on layaway status must be
14.33 adjusted by the incremental change in its rental per diem after recalculating the rental per
14.34 diem as provided in section 256B.431, subdivision 3a, paragraph (c). The property-related

15.1 payment rate for a facility relicensing and recertifying beds from layaway status must be
15.2 adjusted by the incremental change in its rental per diem after recalculating its rental per
15.3 diem using the number of beds after the relicensing to establish the facility's capacity day
15.4 divisor, which shall be effective the first day of the month following the month in which
15.5 the relicensing and recertification became effective. Any beds remaining on layaway status
15.6 more than three years after the date the layaway status became effective must be removed
15.7 from layaway status and immediately delicensed and decertified;

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

15.15 (r) to license and certify up to 117 beds that are relocated from a licensed and certified
15.16 138-bed nursing facility located in St. Paul to a hospital with 130 licensed hospital beds
15.17 located in South St. Paul, provided that the nursing facility and hospital are owned by the
15.18 same or a related organization and that prior to the date the relocation is completed the
15.19 hospital ceases operation of its inpatient hospital services at that hospital. After relocation,
15.20 the nursing facility's status shall be the same as it was prior to relocation. The nursing
15.21 facility's property-related payment rate resulting from the project authorized in this paragraph
15.22 shall become effective no earlier than April 1, 1996. For purposes of calculating the
15.23 incremental change in the facility's rental per diem resulting from this project, the allowable
15.24 appraised value of the nursing facility portion of the existing health care facility physical
15.25 plant prior to the renovation and relocation may not exceed \$2,490,000;

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

15.28 (t) to allow 16 licensed and certified beds located on July 1, 1994, in a 142-bed nursing
15.29 home and 21-bed boarding care home facility in Minneapolis, notwithstanding the licensure
15.30 and certification after July 1, 1995, of the Minneapolis facility as a 147-bed nursing home
15.31 facility after completion of a construction project approved in 1993 under section 144A.073,
15.32 to be laid away upon 30 days' prior written notice to the commissioner. Beds on layaway
15.33 status shall have the same status as voluntarily delicensed or decertified beds except that
15.34 they shall remain subject to the surcharge in section 256.9657. The 16 beds on layaway
15.35 status may be relicensed as nursing home beds and recertified at any time within five years

16.1 of the effective date of the layaway upon relocation of some or all of the beds to a licensed
16.2 and certified facility located in Watertown, provided that the total project construction costs
16.3 related to the relocation of beds from layaway status for the Watertown facility may not
16.4 exceed the dollar threshold provided in subdivision 2 unless the construction project has
16.5 been approved through the moratorium exception process under section 144A.073.

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

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

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

16.24 (w) to license and certify a total replacement project of up to 49 beds located in Norman
16.25 County that are relocated from a nursing home destroyed by flood and whose residents were
16.26 relocated to other nursing homes. The operating cost payment rates for the new nursing
16.27 facility shall be determined based on the interim and settle-up payment provisions of
16.28 ~~Minnesota Rules, part 9549.0057,~~ section 256R.27 and the reimbursement provisions of
16.29 chapter 256R. Property-related reimbursement rates shall be determined under section
16.30 256R.26, taking into account any federal or state flood-related loans or grants provided to
16.31 the facility;

16.32 (x) to license and certify to the licensee of a nursing home in Polk County that was
16.33 destroyed by flood in 1997 replacement projects with a total of up to 129 beds, with at least
16.34 25 beds to be located in Polk County and up to 104 beds distributed among up to three other

17.1 counties. These beds may only be distributed to counties with fewer than the median number
17.2 of age intensity adjusted beds per thousand, as most recently published by the commissioner
17.3 of human services. If the licensee chooses to distribute beds outside of Polk County under
17.4 this paragraph, prior to distributing the beds, the commissioner of health must approve the
17.5 location in which the licensee plans to distribute the beds. The commissioner of health shall
17.6 consult with the commissioner of human services prior to approving the location of the
17.7 proposed beds. The licensee may combine these beds with beds relocated from other nursing
17.8 facilities as provided in section 144A.073, subdivision 3c. The operating payment rates for
17.9 the new nursing facilities shall be determined based on the interim and settle-up payment
17.10 provisions of Minnesota Rules, parts 9549.0010 to 9549.0080. Property-related
17.11 reimbursement rates shall be determined under section 256R.26. If the replacement beds
17.12 permitted under this paragraph are combined with beds from other nursing facilities, the
17.13 rates shall be calculated as the weighted average of rates determined as provided in this
17.14 paragraph and section 256R.50;

17.15 (y) to license and certify beds in a renovation and remodeling project to convert 13
17.16 three-bed wards into 13 two-bed rooms and 13 single-bed rooms, expand space, and add
17.17 improvements in a nursing home that, as of January 1, 1994, met the following conditions:
17.18 the nursing home was located in Ramsey County, was not owned by a hospital corporation,
17.19 had a licensed capacity of 64 beds, and had been ranked among the top 15 applicants by
17.20 the 1993 moratorium exceptions advisory review panel. The total project construction cost
17.21 estimate for this project must not exceed the cost estimate submitted in connection with the
17.22 1993 moratorium exception process;

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

17.32 (aa) to allow the commissioner of human services to license an additional 36 beds to
17.33 provide residential services for the physically disabled under Minnesota Rules, parts
17.34 9570.2000 to 9570.3400, in a 198-bed nursing home located in Red Wing, provided that
17.35 the total number of licensed and certified beds at the facility does not increase;

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

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

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

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

18.22 (ff) to license and certify a total replacement project of up to 124 beds located in Wilkin
18.23 County that are in need of relocation from a nursing home significantly damaged by flood.
18.24 The operating cost payment rates for the new nursing facility shall be determined based on
18.25 the interim and settle-up payment provisions of ~~Minnesota Rules, part 9549.0057, section~~
18.26 256R.27 and the reimbursement provisions of chapter 256R. Property-related reimbursement
18.27 rates shall be determined under section 256R.26, taking into account any federal or state
18.28 flood-related loans or grants provided to the facility;

18.29 (gg) to allow the commissioner of human services to license an additional nine beds to
18.30 provide residential services for the physically disabled under Minnesota Rules, parts
18.31 9570.2000 to 9570.3400, in a 240-bed nursing home located in Duluth, provided that the
18.32 total number of licensed and certified beds at the facility does not increase;

18.33 (hh) to license and certify up to 120 new nursing facility beds to replace beds in a facility
18.34 in Anoka County, which was licensed for 98 beds as of July 1, 2000, provided the new

19.1 facility is located within four miles of the existing facility and is in Anoka County. Operating
19.2 and property rates shall be determined and allowed under chapter 256R and Minnesota
19.3 Rules, parts 9549.0010 to 9549.0080; or

19.4 (ii) to transfer up to 98 beds of a 129-licensed bed facility located in Anoka County that,
19.5 as of March 25, 2001, is in the active process of closing, to a 122-licensed bed nonprofit
19.6 nursing facility located in the city of Columbia Heights or its affiliate. The transfer is effective
19.7 when the receiving facility notifies the commissioner in writing of the number of beds
19.8 accepted. The commissioner shall place all transferred beds on layaway status held in the
19.9 name of the receiving facility. The layaway adjustment provisions of section 256B.431,
19.10 subdivision 30, do not apply to this layaway. The receiving facility may only remove the
19.11 beds from layaway for recertification and relicensure at the receiving facility's current site,
19.12 or at a newly constructed facility located in Anoka County. The receiving facility must
19.13 receive statutory authorization before removing these beds from layaway status, or may
19.14 remove these beds from layaway status if removal from layaway status is part of a
19.15 moratorium exception project approved by the commissioner under section 144A.073.

19.16 Sec. 8. Minnesota Statutes 2018, section 144A.071, subdivision 4c, is amended to read:

19.17 Subd. 4c. **Exceptions for replacement beds after June 30, 2003.** (a) The commissioner
19.18 of health, in coordination with the commissioner of human services, may approve the
19.19 renovation, replacement, upgrading, or relocation of a nursing home or boarding care home,
19.20 under the following conditions:

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

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

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

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

20.10 (4) to license and certify up to 80 beds transferred from an existing state-owned nursing
20.11 facility in Cass County to a new facility located on the grounds of the Ah-Gwah-Ching
20.12 campus. The operating cost payment rates for the new facility shall be determined based
20.13 on the interim and settle-up payment provisions of ~~Minnesota Rules, part 9549.0057, section~~
20.14 256R.27 and the reimbursement provisions of chapter 256R. The property payment rate for
20.15 the first three years of operation shall be \$35 per day. For subsequent years, the property
20.16 payment rate of \$35 per day shall be adjusted for inflation as provided in section 256B.434,
20.17 subdivision 4, paragraph (c), as long as the facility has a contract under section 256B.434;

20.18 (5) to initiate a pilot program to license and certify up to 80 beds transferred from an
20.19 existing county-owned nursing facility in Steele County relocated to the site of a new acute
20.20 care facility as part of the county's Communities for a Lifetime comprehensive plan to create
20.21 innovative responses to the aging of its population. Upon relocation to the new site, the
20.22 nursing facility shall delicense 28 beds. The payment rate for external fixed costs for the
20.23 new facility shall be increased by an amount as calculated according to items (i) to (v):

20.24 (i) compute the estimated decrease in medical assistance residents served by the nursing
20.25 facility by multiplying the decrease in licensed beds by the historical percentage of medical
20.26 assistance resident days;

20.27 (ii) compute the annual savings to the medical assistance program from the delicensure
20.28 of 28 beds by multiplying the anticipated decrease in medical assistance residents, determined
20.29 in item (i), by the existing facility's weighted average payment rate multiplied by 365;

20.30 (iii) compute the anticipated annual costs for community-based services by multiplying
20.31 the anticipated decrease in medical assistance residents served by the nursing facility,
20.32 determined in item (i), by the average monthly elderly waiver service costs for individuals
20.33 in Steele County multiplied by 12;

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

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

21.4 (6) to consolidate and relocate nursing facility beds to a new site in Goodhue County
21.5 and to integrate these services with other community-based programs and services under a
21.6 communities for a lifetime pilot program and comprehensive plan to create innovative
21.7 responses to the aging of its population. Two nursing facilities, one for 84 beds and one for
21.8 65 beds, in the city of Red Wing licensed on July 1, 2015, shall be consolidated into a newly
21.9 renovated 64-bed nursing facility resulting in the delicensure of 85 beds. Notwithstanding
21.10 the carryforward of the approval authority in section 144A.073, subdivision 11, the funding
21.11 approved in April 2009 by the commissioner of health for a project in Goodhue County
21.12 shall not carry forward. The closure of the 85 beds shall not be eligible for a planned closure
21.13 rate adjustment under section 256R.40. The construction project permitted in this clause
21.14 shall not be eligible for a threshold project rate adjustment under section 256B.434,
21.15 subdivision 4f. The payment rate for external fixed costs for the new facility shall be
21.16 increased by an amount as calculated according to items (i) to (vi):

21.17 (i) compute the estimated decrease in medical assistance residents served by both nursing
21.18 facilities by multiplying the difference between the occupied beds of the two nursing facilities
21.19 for the reporting year ending September 30, 2009, and the projected occupancy of the facility
21.20 at 95 percent occupancy by the historical percentage of medical assistance resident days;

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

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

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

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

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

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

22.3 Sec. 9. Minnesota Statutes 2018, section 144A.071, subdivision 5a, is amended to read:

22.4 Subd. 5a. **Cost estimate of a moratorium exception project.** (a) For the purposes of
 22.5 this section and section 144A.073, the cost estimate of a moratorium exception project shall
 22.6 include the effects of the proposed project on the costs of the state subsidy for
 22.7 community-based services, nursing services, and housing in institutional and noninstitutional
 22.8 settings. The commissioner of health, in cooperation with the commissioner of human
 22.9 services, shall define the method for estimating these costs in the permanent rule
 22.10 implementing section 144A.073. The commissioner of human services shall prepare an
 22.11 estimate of the property-related payment rate to be established upon completion of the
 22.12 project and total state annual long-term costs of each moratorium exception proposal. The
 22.13 property-related payment rate estimate shall be made using the actual cost of the project
 22.14 but the final property rate must be based on the appraisal and subject to the limitations in
 22.15 section 256R.26, subdivision 6.

22.16 ~~(b) The interest rate to be used for estimating the cost of each moratorium exception~~
 22.17 ~~project proposal shall be the lesser of either the prime rate plus two percentage points, or~~
 22.18 ~~the posted yield for standard conventional fixed rate mortgages of the Federal Home Loan~~
 22.19 ~~Mortgage Corporation plus two percentage points as published in the Wall Street Journal~~
 22.20 ~~and in effect 56 days prior to the application deadline. If the applicant's proposal uses this~~
 22.21 ~~interest rate, the commissioner of human services, in determining the facility's actual~~
 22.22 ~~property-related payment rate to be established upon completion of the project must use the~~
 22.23 ~~actual interest rate obtained by the facility for the project's permanent financing up to the~~
 22.24 ~~maximum permitted under Minnesota Rules, part 9549.0060, subpart 6.~~

22.25 ~~The applicant may choose an alternate interest rate for estimating the project's cost. If~~
 22.26 ~~the applicant makes this election, the commissioner of human services, in determining the~~
 22.27 ~~facility's actual property-related payment rate to be established upon completion of the~~
 22.28 ~~project, must use the lesser of the actual interest rate obtained for the project's permanent~~
 22.29 ~~financing or the interest rate which was used to estimate the proposal's project cost. For~~
 22.30 ~~succeeding rate years, the applicant is at risk for financing costs in excess of the interest~~
 22.31 ~~rate selected.~~

22.32 **EFFECTIVE DATE.** This section is effective January 1, 2020.

23.1 Sec. 10. Minnesota Statutes 2018, section 144A.073, subdivision 3c, is amended to read:

23.2 Subd. 3c. **Cost-neutral Relocation projects.** ~~(a)~~ Notwithstanding subdivision 3, the
 23.3 commissioner may at any time accept proposals, or amendments to proposals previously
 23.4 approved under this section, for relocations ~~that are cost neutral with respect to state costs~~
 23.5 ~~as defined in section 144A.071, subdivision 5a.~~ The commissioner, in consultation with the
 23.6 commissioner of human services, shall evaluate proposals according to subdivision 4a,
 23.7 clauses (1), (4), (5), (6), and (8), and other criteria established in rule or law. ~~The~~
 23.8 ~~commissioner of human services shall determine the allowable payment rates of the facility~~
 23.9 ~~receiving the beds in accordance with section 256R.50.~~ The commissioner shall approve or
 23.10 disapprove a project within 90 days.

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

23.13 **EFFECTIVE DATE.** This section is effective January 1, 2020.

23.14 Sec. 11. Minnesota Statutes 2018, section 256R.02, subdivision 8, is amended to read:

23.15 Subd. 8. **Capital assets.** "Capital assets" means a nursing facility's buildings, ~~attached~~
 23.16 ~~fixtures~~ fixed equipment, land improvements, leasehold improvements, and all additions to
 23.17 or replacements of those assets used directly for resident care.

23.18 Sec. 12. Minnesota Statutes 2018, section 256R.02, subdivision 19, is amended to read:

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

23.30 **EFFECTIVE DATE.** This section is effective January 1, 2020.

24.1 Sec. 13. Minnesota Statutes 2018, section 256R.16, subdivision 1, is amended to read:

24.2 Subdivision 1. **Calculation of a quality score.** (a) The commissioner shall determine
24.3 a quality score for each nursing facility using quality measures established in section
24.4 256B.439, according to methods determined by the commissioner in consultation with
24.5 stakeholders and experts, and using the most recently available data as provided in the
24.6 Minnesota Nursing Home Report Card. These methods shall be exempt from the rulemaking
24.7 requirements under chapter 14.

24.8 (b) For each quality measure, a score shall be determined with the number of points
24.9 assigned as determined by the commissioner using the methodology established according
24.10 to this subdivision. The determination of the quality measures to be used and the methods
24.11 of calculating scores may be revised annually by the commissioner.

24.12 (c) The quality score shall include up to 50 points related to the Minnesota quality
24.13 indicators score derived from the minimum data set, up to 40 points related to the resident
24.14 quality of life score derived from the consumer survey conducted under section 256B.439,
24.15 subdivision 3, and up to ten points related to the state inspection results score.

24.16 (d) The commissioner, in cooperation with the commissioner of health, may adjust the
24.17 formula in paragraph (c), or the methodology for computing the total quality score, ~~effective~~
24.18 ~~July 1 of any year~~, with five months advance public notice. In changing the formula, the
24.19 commissioner shall consider quality measure priorities registered by report card users, advice
24.20 of stakeholders, and available research.

24.21 Sec. 14. Minnesota Statutes 2018, section 256R.21, is amended by adding a subdivision
24.22 to read:

24.23 Subd. 5. Total payment rate for new facilities. For a new nursing facility created under
24.24 section 144A.073, subdivision 3c, the total payment rate must be determined according to
24.25 this section, except:

24.26 (1) the direct care payment rate used in subdivision 2, clause (1), must be determined
24.27 according to section 256R.27;

24.28 (2) the other care-related payment rate used in subdivision 2, clause (2), must be
24.29 determined according to section 256R.27;

24.30 (3) the external fixed costs payment rate used in subdivision 4, clause (2), must be
24.31 determined according to section 256R.27; and

25.1 (4) the property payment rate used in subdivision 4, clause (3), must be determined
 25.2 according to section 256R.26.

25.3 **EFFECTIVE DATE.** This section is effective January 1, 2020.

25.4 Sec. 15. Minnesota Statutes 2018, section 256R.23, subdivision 5, is amended to read:

25.5 Subd. 5. **Determination of total care-related payment rate limits.** The commissioner
 25.6 must determine each facility's total care-related payment rate limit by:

25.7 (1) multiplying the facility's quality score, as determined under section 256R.16,
 25.8 subdivision 1, paragraph (d), by 0.5625 2.0;

25.9 (2) ~~adding 89.375 to~~ subtracting 40.0 from the amount determined in clause (1), and
 25.10 dividing the total by 100; ~~and~~

25.11 (3) multiplying the amount determined in clause (2) by the median total care-related
 25.12 cost per day; and

25.13 (4) multiplying the amount determined in clause (3) by the most-recent available
 25.14 Core-Based Statistical Area wage indices established by the Centers for Medicare and
 25.15 Medicaid Services for the Skilled Nursing Facility Prospective Payment System.

25.16 **EFFECTIVE DATE.** This section is effective January 1, 2020.

25.17 Sec. 16. Minnesota Statutes 2018, section 256R.24, subdivision 3, is amended to read:

25.18 Subd. 3. **Determination of the other operating payment rate.** A facility's other
 25.19 operating payment rate equals the lesser of (1) 105 percent of the median other operating
 25.20 cost per day as determined by subdivisions 1 and 2, or (2) the prior year operating payment
 25.21 rate adjusted by a forecasting market basket and forecasting index. The adjustment factor
 25.22 shall come from the Information Handling Services Healthcare Cost Review, the Skilled
 25.23 Nursing Facility Total Market Basket Index, and the four-quarter moving average percentage
 25.24 change line or a comparable index if this index ceases to be published. The commissioner
 25.25 shall use the fourth quarter index of the upcoming calendar year from the forecast published
 25.26 for the third quarter of the calendar year immediately prior to the rate year for which the
 25.27 rate is being determined.

26.1 Sec. 17. Minnesota Statutes 2018, section 256R.25, is amended to read:

26.2 **256R.25 EXTERNAL FIXED COSTS PAYMENT RATE.**

26.3 (a) The payment rate for external fixed costs is the sum of the amounts in paragraphs
26.4 (b) to ~~(n)~~ (k).

26.5 (b) For a facility licensed as a nursing home, the portion related to the provider surcharge
26.6 under section 256.9657 is equal to \$8.86 per resident day. For a facility licensed as both a
26.7 nursing home and a boarding care home, the portion related to the provider surcharge under
26.8 section 256.9657 is equal to \$8.86 per resident day multiplied by the result of its number
26.9 of nursing home beds divided by its total number of licensed beds.

26.10 (c) The portion related to the licensure fee under section 144.122, paragraph (d), is the
26.11 amount of the fee divided by the sum of the facility's resident days.

26.12 (d) The portion related to development and education of resident and family advisory
26.13 councils under section 144A.33 is \$5 per resident day divided by 365.

26.14 (e) The portion related to scholarships is determined under section 256R.37.

26.15 ~~(f) The portion related to planned closure rate adjustments is as determined under section~~
26.16 ~~256R.40, subdivision 5, and Minnesota Statutes 2010, section 256B.436.~~

26.17 ~~(g) The portion related to consolidation rate adjustments shall be as determined under~~
26.18 ~~section 144A.071, subdivisions 4c, paragraph (a), clauses (5) and (6), and 4d.~~

26.19 ~~(h) The portion related to single-bed room incentives is as determined under section~~
26.20 ~~256R.41.~~

26.21 ~~(i)~~ (f) The portions related to real estate taxes, special assessments, and payments made
26.22 in lieu of real estate taxes directly identified or allocated to the nursing facility are the ~~actual~~
26.23 allowable amounts divided by the sum of the facility's resident days. Allowable costs under
26.24 this paragraph for payments made by a nonprofit nursing facility that are in lieu of real
26.25 estate taxes shall not exceed the amount which the nursing facility would have paid to a
26.26 city or township and county for fire, police, sanitation services, and road maintenance costs
26.27 had real estate taxes been levied on that property for those purposes.

26.28 ~~(j)~~ (g) The portion related to employer health insurance costs is the allowable costs
26.29 divided by the sum of the facility's resident days.

26.30 ~~(k)~~ (h) The portion related to the Public Employees Retirement Association is ~~actual~~
26.31 allowable costs divided by the sum of the facility's resident days.

27.1 ~~(h)~~ (i) The portion related to quality improvement incentive payment rate adjustments
27.2 is the amount determined under section 256R.39.

27.3 ~~(m)~~ (j) The portion related to performance-based incentive payments is the amount
27.4 determined under section 256R.38.

27.5 ~~(n)~~ (k) The portion related to special dietary needs is the amount determined under
27.6 section 256R.51.

27.7 **EFFECTIVE DATE.** This section is effective January, 1, 2020.

27.8 Sec. 18. Minnesota Statutes 2018, section 256R.26, is amended to read:

27.9 **256R.26 PROPERTY PAYMENT RATE.**

27.10 Subdivision 1. **Generally.** The property payment rate for a nursing facility is the property
27.11 rate established for the facility under sections 256B.431 and 256B.434. (a) For rate years
27.12 beginning on or after January 1, 2020, the commissioner shall reimburse nursing facilities
27.13 participating in the medical assistance program for the rental use of real estate and depreciable
27.14 assets according to this section and sections 256R.261 to 256R.27. The property payment
27.15 rate made under this methodology is the only payment for costs related to capital assets,
27.16 including depreciation, interest and lease expenses for all depreciable assets, also including
27.17 movable equipment, land improvements, and land.

27.18 (b) The commercial valuation system selected by the commissioner must be utilized in
27.19 all appraisals. The appraisal is not intended to exactly reflect market value, and no
27.20 adjustments or substitutions are permitted for any alternative analysis of properties than the
27.21 selected commercial valuation system.

27.22 (c) Based on the valuation of a building and fixed equipment, the property appraisal
27.23 firm selected by the commissioner must produce a report detailing both the depreciated
27.24 replacement cost (DRC) and undepreciated replacement cost (URC) of the nursing facility.
27.25 The valuation excludes movable equipment, land, or land improvements. The valuation
27.26 must be adjusted for any shared area included in the DRC and URC not used for nursing
27.27 facility purposes. Physical plant for central office operations is not included in the appraisal.

27.28 (d) The appraisal initially may include the full value of all shared areas. The DRC, URC,
27.29 and square footage are established by an appraisal and must be adjusted to reflect only the
27.30 nursing facility usage of shared areas in the final nursing facility values. The adjustment
27.31 must be based on a Medicare-approved allocation basis for the type of service provided by
27.32 each area. Shared areas outside the appraised space must be added to the DRC, URC, and
27.33 related square footage using the average of each value from the space in the appraisal.

28.1 Subd. 2. **Appraised value.** For rate years beginning on or after January 1, 2020, the
28.2 DRC and URC are based on the appraisals of a building and attached fixtures as determined
28.3 by the contracted property appraisal firm using a commercial valuation system selected by
28.4 the commissioner.

28.5 Subd. 3. **Initial rate year.** The property payment rate calculated under section 256R.265
28.6 for the initial rate year effective January 1, 2020, must be a per diem amount based on the
28.7 DRC and URC of a nursing facility's building and attached fixtures, as estimated by a
28.8 commercial property appraisal firm in 2016. The initial values for both the DRC and URC,
28.9 adjusted for nonnursing facility space, must be increased by six percent.

28.10 Subd. 4. **Subsequent rate years.** (a) Beginning in calendar year 2020, the commissioner
28.11 shall contract with a property appraisal firm to appraise the building and attached fixtures
28.12 for nursing facilities using the commercial valuation system. Approximately one-third of
28.13 the nursing facilities must be appraised each year.

28.14 (b) If a nursing facility wishes to appeal findings of fact in the appraisal report, the
28.15 nursing facility must request a revision within 20 calendar days after receipt of the appraisal
28.16 report.

28.17 (c) The property payment rate for rate year beginning January 1, 2021, for the one-third
28.18 of nursing facilities that are newly appraised in 2020 must be based upon new DRCs and
28.19 URCs for buildings and attached fixtures as determined by the contracted property appraisal
28.20 firm.

28.21 (d) The property payment rate for rate years beginning January 1, 2021, and January 1,
28.22 2022, for the remainder of the nursing facilities that were not previously appraised, must
28.23 use the net DRC and URC used in the January 1, 2020, property payment rates adjusted for
28.24 inflation before any formula limitations are applied. The index for the inflation adjustment
28.25 must be based on the change in the United States All-Items Consumer Price Index (CPI-U)
28.26 forecasted by the Reports and Forecasts Division of the Department of Human Services in
28.27 the third quarter of the calendar year preceding the rate year. The inflation adjustment must
28.28 be based on the 12-month period from the midpoint of the previous rate year to the midpoint
28.29 of the rate year for which the rate is being determined. Nursing facilities under this paragraph
28.30 must have the property payment rates beginning January 1, 2022, and January 1, 2023,
28.31 based on new replacement costs and depreciated values as determined in appraisals based
28.32 on the three-year cycle.

28.33 (e) For the nursing facility's new physical appraisal after the nursing facility's 2016
28.34 appraisal, the most recent DRC and URC must be updated through the commercial valuation

29.1 system. These valuations are updates only and not subject to revisions of any of the original
29.2 valuations or appeal by the nursing facility.

29.3 Subd. 5. **Special reappraisals.** (a) A nursing facility that completes an addition to or
29.4 replacement of a building or attached fixtures as approved in section 144A.073 after January
29.5 1, 2020, may request a property rate adjustment effective the first of January, April, July,
29.6 or October after project completion. The nursing facility must submit all cost data related
29.7 to the project to the commissioner within 90 days of project completion. The commissioner
29.8 must add the nursing facility to the next group of scheduled appraisals. The nursing facility's
29.9 updated appraisal must be used to calculate a revised property rate effective the first of
29.10 January, April, July, or October after project completion. If an updated appraisal cannot be
29.11 scheduled within 90 days of the effective date of the revised property, the commissioner
29.12 must establish an interim valuation which must be adjusted retroactively when the updated
29.13 appraisal is available. For a nursing facility with projects approved under section 144A.073
29.14 prior to January 1, 2020, moratorium project construction adjustments must be calculated
29.15 under Minnesota Statutes 2018, section 256B.434, subdivision 4f, and the adjustment added
29.16 to the nursing facility's hold harmless rate effective the first of January, April, July, or
29.17 October after project completion. This adjustment is in addition to the updated appraisal
29.18 described in this paragraph.

29.19 (b) A nursing facility that completes a threshold construction project after January 1,
29.20 2020, may submit a project rate adjustment request to the commissioner if the building
29.21 improvement or addition costs exceed \$300,000 and the threshold construction project is
29.22 not reflected in an appraisal used for rate setting. The cost must be incurred by the nursing
29.23 facility, or if the nursing facility is leased and the cost is incurred by the lease holder, the
29.24 provider's lease has been increased for the project. Threshold project costs exceeding a total
29.25 of \$1,500,000 within a three-year period, or a prorated amount if the appraisals are less than
29.26 three years apart, must not be recognized. The property payment rate must be updated to
29.27 reflect the new DRC and URC values effective the first of January or July after project
29.28 completion. In subsequent property payment rate calculations, an addition to the DRC and
29.29 URC must be eliminated once a full appraisal is complete for the nursing facility after project
29.30 completion. At the option of the commissioner the appraisal schedule may be adjusted for
29.31 nursing facilities completing threshold projects. Threshold project costs are not considered
29.32 if the costs were incurred prior to the date of the last appraisal.

29.33 (c) Effective January 1, 2020, a nursing facility new to the medical assistance program
29.34 must have the building and fixed equipment appraised by the property appraisal firm upon
29.35 completion of construction of the nursing facility, or, if not newly constructed, upon entering

30.1 the medical assistance program. If an appraisal cannot be scheduled within 90 days of the
30.2 certification date, the commissioner must establish an interim valuation to be adjusted
30.3 retroactively when the appraisal is available.

30.4 Subd. 6. **Limitation on appraisal valuations.** Effective for appraisals conducted on or
30.5 after January 1, 2020, the increase in the URC is limited to \$500,000 per year since the last
30.6 completed appraisal plus any completed project costs approved under section 144A.073.
30.7 Any limitation to the URC must be applied in the same proportion to the DRC.

30.8 Subd. 7. **Total hold harmless rate.** (a) Total hold harmless rate includes closure
30.9 adjustments under Minnesota Statutes 2018, section 256R.40, subdivision 5; consolidation
30.10 adjustments under section 144A.071, subdivisions 4c, paragraph (a), clauses (5) and (6),
30.11 and 4d; equity incentives under sections 256B.431, subdivision 16, and Minnesota Statutes
30.12 2018, 256B.434, subdivision 4f; single-bed incentives under Minnesota Statutes 2018,
30.13 section 256R.41; project construction costs under Minnesota Statutes 2018, section 144A.071,
30.14 subdivision 1a, paragraph (j); and all components of the property payment rate under section
30.15 256R.26 in effect on December 31, 2019.

30.16 (b) For moratorium projects as defined under sections 144A.071 and 144A.073 that are
30.17 eligible for rate adjustments approved prior to January 1, 2020, but not reflected in the rate
30.18 on December 31, 2019, the moratorium rate adjustments determined under Minnesota
30.19 Statutes 2018, sections 256B.431, subdivisions 3f, 17, 17a, 17c, 17d, 17e, 21, 30, and 45,
30.20 and 256B.434, subdivisions 4f and 4j, must be added to the total hold harmless rate in effect
30.21 on the first of January, April, July, or October after project completion.

30.22 (c) Effective January 1, 2020, rate adjustments under Minnesota Statutes 2018, section
30.23 256R.25, paragraphs (f) to (h) from previous rate years shall be included in the total hold
30.24 harmless rate.

30.25 Subd. 8. **Phase out of hold harmless rate.** (a) For a nursing facility that has a higher
30.26 total hold harmless rate than the rate calculated in section 256R.265, the nursing facility
30.27 must receive 100 percent of the total hold harmless rate for the rate year beginning January
30.28 1, 2020.

30.29 (b) For rate years beginning January 1, 2021, to January 1, 2024, the property payment
30.30 rate is a blending of the total hold harmless rate and the property rate determined in section
30.31 256R.265, plus any adjustments issued for construction projects between appraisals, if a
30.32 higher rate results. If not, the property payment rate is determined according to section
30.33 256R.265.

31.1 (c) For the rate year beginning January 1, 2021, for eligible nursing facilities, the property
31.2 payment rate is 80 percent of the total hold harmless rate and 20 percent of the property
31.3 payment rate calculated in section 256R.265.

31.4 (d) For the rate year beginning January 1, 2022, for eligible nursing facilities, the property
31.5 payment rate is 60 percent of the total hold harmless rate and 40 percent of the property
31.6 payment rate calculated in section 256R.265.

31.7 (e) For the rate year beginning January 1, 2023, for eligible nursing facilities, the property
31.8 payment rate is 40 percent of the total hold harmless rate and 60 percent of the property
31.9 payment rate calculated in section 256R.265.

31.10 (f) For the rate year beginning January 1, 2024, for eligible nursing facilities, the property
31.11 payment rate is 20 percent of the total hold harmless rate and 80 percent of the property
31.12 payment rate calculated in section 256R.265.

31.13 (g) For rate years beginning January 1, 2025, and thereafter, the property payment rate
31.14 is as calculated under section 256R.265.

31.15 **Sec. 19. [256R.261] NURSING FACILITY PROPERTY RATE DEFINITIONS.**

31.16 Subdivision 1. **Definitions.** For purposes of sections 256R.26 to 256R.27, the following
31.17 terms have the meanings given them.

31.18 Subd. 2. **Addition.** "Addition" means an extension, enlargement, or expansion of the
31.19 nursing facility for the purpose of increasing the number of licensed beds or improving
31.20 resident care.

31.21 Subd. 3. **Appraisal.** "Appraisal" means an evaluation of the nursing facility's physical
31.22 real estate conducted by a property appraisal firm selected by the commissioner to establish
31.23 the valuation of a building and fixed equipment.

31.24 Subd. 4. **Building.** "Building" means the physical plant and fixed equipment used directly
31.25 for resident care and licensed under chapter 144A or sections 144.50 to 144.56. Building
31.26 excludes buildings or portions of buildings used by central, affiliated, or corporate offices.

31.27 Subd. 5. **Commercial valuation system.** "Commercial valuation system" means a
31.28 commercially available building valuation system selected by the commissioner that may
31.29 include the Marshall and Swift Valuation System.

31.30 Subd. 6. **Depreciable movable equipment.** "Depreciable movable equipment" means
31.31 the standard movable care equipment and support service equipment generally used in
31.32 nursing facilities. Depreciable movable equipment includes equipment specified in the major

32.1 movable equipment table of the depreciation guidelines. The general characteristics of this
32.2 equipment are: (1) a relatively fixed location in the building; (2) capable of being moved
32.3 as distinguished from building equipment; (3) a unit cost sufficient to justify ledger control;
32.4 and (4) sufficient size and identity to make control feasible by means of identification tags.

32.5 Subd. 7. **Depreciated replacement cost or DRC.** "Depreciated replacement cost" or
32.6 "DRC" means the depreciated replacement cost determined by an appraisal using the
32.7 commercial valuation system. DRC excludes costs related to parking structures.

32.8 Subd. 8. **Depreciation expense.** "Depreciation expense" means the portion of a capital
32.9 asset deemed to be consumed or expired over the life of the asset.

32.10 Subd. 9. **Depreciation guidelines.** "Depreciation guidelines" means the most recent
32.11 publication of "Estimated Useful Lives of Depreciable Hospital Assets" issued by the
32.12 American Hospital Association.

32.13 Subd. 10. **Equipment allowance.** "Equipment allowance" means the component of the
32.14 property-related payment rate which is a payment for the use of depreciable movable
32.15 equipment.

32.16 Subd. 11. **Fair rental value system.** "Fair rental value system" means a system that
32.17 establishes a price for the use of a space based on an appraised value of the property. The
32.18 price is established without consideration of the actual accounting cost to construct or
32.19 remodel the property. The price is the nursing facility value, subject to limits, multiplied
32.20 by an established rental rate.

32.21 Subd. 12. **Fixed equipment.** "Fixed equipment" means equipment affixed to the building
32.22 and not subject to transfer, including but not limited to wiring, electrical fixtures, plumbing,
32.23 elevators, and heating and air conditioning systems.

32.24 Subd. 13. **Land improvement.** "Land improvement" means improvement to the land
32.25 surrounding the nursing facility directly used for nursing facility operations as specified in
32.26 the land improvements table of the depreciation guidelines. Land improvement includes
32.27 construction of auxiliary buildings including sheds, garages, storage buildings, and parking
32.28 structures.

32.29 Subd. 14. **Rental rate.** "Rental rate" means the percentage applied to the allowable value
32.30 of the building and attached fixtures per year in the property payment calculation as
32.31 determined by the commissioner.

32.32 Subd. 15. **Shared area.** "Shared area" means square footage that a nursing facility shares
32.33 with a non-nursing facility operation to provide a support service.

33.1 Subd. 16. **Threshold project.** "Threshold project" means additions to a building or fixed
 33.2 equipment that exceed the costs specified in section 256R.26, subdivision 5, paragraph (b).
 33.3 Threshold projects exclude land, land improvements, and movable equipment purchases.

33.4 Subd. 17. **Undepreciated replacement cost or URC.** "Undepreciated replacement cost"
 33.5 or "URC" means the undepreciated replacement cost determined by the appraisal for building
 33.6 and attached fixtures using a commercial valuation system. URC excludes costs related to
 33.7 parking structures.

33.8 Subd. 18. **Undepreciated replacement cost (URC) per bed limit.** "Undepreciated
 33.9 replacement cost (URC) per bed limit" means the maximum allowed URC per nursing
 33.10 facility bed as established by the commissioner based on values across the industry and
 33.11 compared to an industry standard for reasonableness.

33.12 Sec. 20. **[256R.265] PROPERTY RATE CALCULATION UNDER FAIR RENTAL**
 33.13 **VALUE SYSTEM.**

33.14 Subdivision 1. **Square feet per bed limit.** The square feet per bed limit is calculated as
 33.15 follows:

33.16 (1) the URC of the nursing facility from the appraisal is divided by the allowable nursing
 33.17 facility square feet;

33.18 (2) the allowable total square feet is calculated by dividing the actual square feet from
 33.19 the appraisal, after adjustment for non-nursing facility area, by the number of licensed beds
 33.20 three months prior to the beginning of the rate year limited to the following maximum. The
 33.21 allowable square feet maximum is 800 square feet per bed plus 25 percent of the square
 33.22 feet over 800 up to 1,200 square feet per bed. Square feet over 1,200 square feet per bed is
 33.23 not recognized; and

33.24 (3) the allowable total square feet in clause (2) is multiplied by the amount in clause (1)
 33.25 and by the number of licensed beds three months prior to the beginning of the rate year to
 33.26 determine the square feet per bed limit.

33.27 Subd. 2. **Total URC limit.** The total URC limit is calculated as follows:

33.28 (1) the allowable square feet per bed limit as determined in subdivision 1 is divided by
 33.29 the number of licensed beds three months prior to the beginning of the rate year to determine
 33.30 allowable URC per bed limit for each nursing facility, adjusted for square feet limitation;

34.1 (2) the allowable URC per bed limit, adjusted for square feet limitation, for all nursing
34.2 facilities is placed in an array annually to determine the value at the 75th percentile. This
34.3 is the limit for URC per bed limit for non-single beds;

34.4 (3) the value determined in clause (2) is multiplied by 115 percent to determine the limit
34.5 for URC per bed limit for single beds;

34.6 (4) the number of non-single-licensed beds three months prior to the beginning of the
34.7 rate year is multiplied by the amount in clause (2);

34.8 (5) the number of single-licensed beds three months prior to the beginning of the rate
34.9 year is multiplied by the amount in clause (3); and

34.10 (6) the amounts in clauses (4) and (5) are summed to determine the total URC limit;

34.11 Subd. 3. **Calculation of total property rate.** The total property rate is calculated as
34.12 follows:

34.13 (1) the lower of the allowable URC based on square feet per bed limit as determined
34.14 under subdivision 1 or the total URC limit in subdivision 2 is the final allowed URC;

34.15 (2) the final allowed URC determined in clause (1) is divided by the URC from the
34.16 appraisal to determine the allowed percentage. The allowed percentage is multiplied by the
34.17 depreciated replacement value from the appraisal, adjusted for non-nursing facility area, to
34.18 determine the final allowed depreciated replacement value;

34.19 (3) the number of licensed beds three months prior to the beginning of the rate year is
34.20 multiplied by \$5,305 to determine reimbursement for land and land improvements. There
34.21 is no separate addition to the property rate for parking structures;

34.22 (4) the values in clauses (2) and (3) are summed and then multiplied by the rental rate
34.23 of 5.5 percent to determine allowable property reimbursement;

34.24 (5) the allowable property reimbursement determined in clause (4) is divided by 90
34.25 percent of capacity days to determine the building property rate. Capacity days are determined
34.26 by multiplying the number of licensed beds three months prior to the beginning of the report
34.27 year by 365;

34.28 (6) for the rate year beginning January 1, 2020, the equipment allowance is \$2.77 per
34.29 resident day. For the rate year beginning January 1, 2021, the equipment allowance must
34.30 be adjusted annually for inflation. The index for the inflation adjustment must be based on
34.31 the change in the United States All Items Consumer Price Index (CPI-U) forecasted by the
34.32 Reports and Forecasts Division of the Department of Human Services in the third quarter

35.1 of the calendar year preceding the rate year. The inflation adjustment must be based on the
35.2 12-month period from the midpoint of the previous rate year to the midpoint of the rate year
35.3 for which the rate is being determined; and

35.4 (7) the sum of the building property rate and the equipment allowance is the total property
35.5 rate.

35.6 **Sec. 21. [256R.27] INTERIM AND SETTLE UP TOTAL OPERATING AND**
35.7 **EXTERNAL FIXED COST PAYMENT RATES.**

35.8 Subdivision 1. **Generally.** (a) A newly constructed nursing facility, or a nursing facility
35.9 with a capacity increase of 50 percent or more, must receive an interim total operating rate
35.10 payment and settle up total operating cost payment according to this section.

35.11 (b) The nursing facility shall submit a written application to the commissioner to receive
35.12 an interim total operating payment rate. In its application, the nursing facility shall state
35.13 any reasons for noncompliance with this chapter.

35.14 (c) The effective date of the interim total operating payment rate is the earlier of either
35.15 the first day a resident is admitted to the newly constructed nursing facility or the date the
35.16 nursing facility bed is certified for the medical assistance program. The interim total operating
35.17 payment rate must not be in effect more than 17 months.

35.18 (d) The nursing facility must continue to receive the interim total operating payment
35.19 rate until the settle up total operating cost payment is determined under subdivision 3.

35.20 (e) The settle up total operating cost payment rate is effective retroactively to the
35.21 beginning of the interim cost report period, and is effective until the end of the interim rate
35.22 period.

35.23 (f) For the 15-month period following the settle up reporting period, the total operating
35.24 rate payment and external fixed cost payment rate must be determined according to
35.25 subdivision 3, paragraph (b).

35.26 (g) The total operating rate payment and external fixed cost payment rate for the rate
35.27 year beginning January 1 following the 15-month period in paragraph (f) must be determined
35.28 under this chapter.

35.29 (h) The commissioner shall determine interim total operating cost payment rates and
35.30 settle up total operating cost payment rates for a newly constructed nursing facility, or a
35.31 nursing facility with an increase in licensed capacity of 50 percent or more, according to
35.32 subdivisions 2 and 3.

36.1 Subd. 2. Determination of interim operating and external fixed cost payment rate. (a)
36.2 The nursing facility shall submit an interim cost report in a format similar to the Minnesota
36.3 Statistical and Cost Report and other supporting information as required by this chapter for
36.4 the reporting year in which the nursing facility plans to begin operation at least 60 days
36.5 before the first day a resident is admitted to the newly constructed nursing facility bed. The
36.6 interim cost report must include the nursing facility's anticipated interim costs and anticipated
36.7 interim resident days for each resident class in the interim cost report. The anticipated interim
36.8 resident days for each resident class is multiplied by the weight for that resident class to
36.9 determine the anticipated interim standardized days as defined in section 256R.02,
36.10 subdivision 50, and resident days as defined in section 256R.02, subdivision 45, for the
36.11 reporting period.

36.12 (b) The interim total operating cost payment rate is determined according to this section,
36.13 except that:

36.14 (1) the anticipated interim costs and anticipated interim resident days reported on the
36.15 interim cost report and the anticipated interim standardized days as defined by section
36.16 256R.02, subdivision 50, must be used for the interim;

36.17 (2) the commissioner shall use anticipated interim costs and anticipated interim
36.18 standardized days in determining the allowable historical direct care cost per standardized
36.19 day as determined under section 256R.23, subdivision 2;

36.20 (3) the commissioner shall use anticipated interim costs and anticipated interim resident
36.21 days in determining the allowable historical other care-related cost per resident day as
36.22 determined under section 256R.23, subdivision 3;

36.23 (4) the commissioner shall use anticipated interim costs and anticipated interim resident
36.24 days to determine the allowable historical external fixed cost per day under section 256R.25,
36.25 paragraphs (b) to (k);

36.26 (5) the total care-related payment rate limits established in section 256R.23, subdivision
36.27 5, and in effect at the beginning of the interim period, must be increased by ten percent; and

36.28 (6) the other operating payment rate as determined under section 256R.24 in effect for
36.29 the rate year must be used for the other operating cost per day.

36.30 Subd. 3. Determination of settle up operating and external fixed cost payment
36.31 rate. (a) When the interim payment rate begins between May 1 and September 30, the
36.32 nursing facility shall file settle up cost reports for the period from the beginning of the
36.33 interim payment rate through September 30 of the following year.

37.1 (b) When the interim payment rate begins between October 1 and April 30, the nursing
 37.2 facility shall file settle up cost reports for the period from the beginning of the interim
 37.3 payment rate to the first September 30 following the beginning of the interim payment rate.

37.4 (c) The settle up total operating cost payment rate is determined according to this section,
 37.5 except that:

37.6 (1) the allowable costs and resident days reported on the settle up cost report and the
 37.7 standardized days as defined by section 256R.02, subdivision 50, must be used for the
 37.8 interim and settle-up period;

37.9 (2) the commissioner shall use the allowable costs and standardized days in clause (1)
 37.10 to determine the allowable historical direct care cost per standardized day as determined
 37.11 under section 256R.23, subdivision 2;

37.12 (3) the commissioner shall use the allowable costs and the allowable resident days to
 37.13 determine both the allowable historical other care-related cost per resident day as determined
 37.14 under section 256R.23, subdivision 3;

37.15 (4) the commissioner shall use the allowable costs and the allowable resident days to
 37.16 determine the allowable historical external fixed cost per day under section 256R.25,
 37.17 paragraphs (b) to (k);

37.18 (5) the total care-related payment limits established in section 256R.23, subdivision 5,
 37.19 are the limits for the settle up reporting periods. If the interim period includes more than
 37.20 one July 1 date, the commissioner shall use the total care-related payment limit established
 37.21 in section 256R.23, subdivision 5, increased by ten percent for the second July 1 date; and

37.22 (6) the other operating payment rate as determined under section 256R.24 in effect for
 37.23 the rate year must be used for the other operating cost per day.

37.24 Sec. 22. Minnesota Statutes 2018, section 256R.44, is amended to read:

37.25 **256R.44 RATE ADJUSTMENT FOR PRIVATE ROOMS FOR MEDICAL**
 37.26 **NECESSITY.**

37.27 The amount paid for a private room is ~~111.5~~ 110 percent of the established total payment
 37.28 rate for a resident if the resident is a medical assistance recipient and the private room is
 37.29 considered a medical necessity for the resident or others who are affected by the resident's
 37.30 condition, ~~except as provided in Minnesota Rules, part 9549.0060, subpart 11, item C.~~

37.31 Conditions requiring a private room must be determined by the resident's attending physician

38.1 and submitted to the commissioner for approval or denial by the commissioner on the basis
38.2 of medical necessity.

38.3 **EFFECTIVE DATE.** This section is effective January 1, 2020.

38.4 Sec. 23. Minnesota Statutes 2018, section 256R.47, is amended to read:

38.5 **256R.47 RATE ADJUSTMENT FOR CRITICAL ACCESS NURSING**
38.6 **FACILITIES.**

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

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

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

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

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

38.30 (3) two designated critical access nursing facilities, with up to 100 beds in active service,
38.31 may jointly apply to the commissioner of health for a waiver of Minnesota Rules, part
38.32 4658.0500, subpart 2, in order to jointly employ a director of nursing. The commissioner

39.1 of health shall consider each waiver request independently based on the criteria under
39.2 Minnesota Rules, part 4658.0040;

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

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

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

39.10 (e) This section is suspended and no state or federal funding shall be appropriated or
39.11 allocated for the purposes of this section from January 1, 2016, ~~to December 31, 2019.~~
39.12 through December 31, 2023.

39.13 Sec. 24. Minnesota Statutes 2018, section 256R.50, subdivision 6, is amended to read:

39.14 Subd. 6. **Determination of rate adjustment.** (a) If the amount determined in subdivision
39.15 5 is less than or equal to the amount determined in subdivision 4, the commissioner shall
39.16 allow a total payment rate equal to the amount used in subdivision 5, clause (3).

39.17 (b) If the amount determined in subdivision 5 is greater than the amount determined in
39.18 subdivision 4, the commissioner shall allow a rate with a case mix index of 1.0 that when
39.19 used in subdivision 5, clause (3), results in the amount determined in subdivision 5 being
39.20 equal to the amount determined in subdivision 4.

39.21 (c) If the commissioner relies upon provider estimates in subdivision 5, clause (1) or
39.22 (2), then annually, for three years after the rates determined in this section take effect, the
39.23 commissioner shall determine the accuracy of the alternative factors of medical assistance
39.24 case load and the facility average case mix index used in this section and shall reduce the
39.25 total payment rate if the factors used result in medical assistance costs exceeding the amount
39.26 in subdivision 4. If the actual medical assistance costs exceed the estimates by more than
39.27 five percent, the commissioner shall also recover the difference between the estimated costs
39.28 in subdivision 5 and the actual costs according to section 256B.0641. The commissioner
39.29 may require submission of data from the receiving facility needed to implement this
39.30 paragraph.

39.31 (d) When beds approved for relocation are put into active service at the destination
39.32 facility, rates determined in this section must be adjusted by any adjustment amounts that
39.33 were implemented after the date of the letter of approval.

40.1 (e) Rate adjustments determined under this subdivision expire after three full rate years
40.2 following the effective date of the rate adjustment. This subdivision expires when the final
40.3 rate adjustment determined under this subdivision expires.

40.4 Sec. 25. **DIRECTION TO COMMISSIONER; MORATORIUM EXCEPTION**
40.5 **FUNDING.**

40.6 In fiscal year 2019, the commissioner of human services may approve moratorium
40.7 exception projects under Minnesota Statutes, section 144A.073, for which the full annualized
40.8 state share of medical assistance costs does not exceed \$1,500,000 plus any carryover of
40.9 previous appropriations for this purpose.

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

40.11 Sec. 26. **REPEALER.**

40.12 (a) Minnesota Statutes 2018, sections 144A.071, subdivision 4d; 256R.40; and 256R.41,
40.13 are repealed effective July 1, 2019.

40.14 (b) Minnesota Statutes 2018, sections 256B.431, subdivisions 3a, 3f, 3g, 3i, 13, 15, 17,
40.15 17a, 17c, 17d, 17e, 18, 21, 22, 30, and 45; 256B.434, subdivisions 4, 4f, 4i, and 4j; and
40.16 256R.36, and Minnesota Rules, parts 9549.0057; and 9549.0060, subparts 4, 5, 6, 7, 10, 11,
40.17 and 14, are repealed effective January 1, 2020.

144A.071 MORATORIUM ON CERTIFICATION OF NURSING HOME BEDS.

Subd. 4d. **Consolidation of nursing facilities.** (a) The commissioner of health, in consultation with the commissioner of human services, may approve a request for consolidation of nursing facilities which includes the closure of one or more facilities and the upgrading of the physical plant of the remaining nursing facility or facilities, the costs of which exceed the threshold project limit under subdivision 2, clause (a). The commissioners shall consider the criteria in this section, section 144A.073, and section 256R.40, in approving or rejecting a consolidation proposal. In the event the commissioners approve the request, the commissioner of human services shall calculate an external fixed costs rate adjustment according to clauses (1) to (3):

(1) the closure of beds shall not be eligible for a planned closure rate adjustment under section 256R.40, subdivision 5;

(2) the construction project permitted in this clause shall not be eligible for a threshold project rate adjustment under section 256B.434, subdivision 4f, or a moratorium exception adjustment under section 144A.073; and

(3) the payment rate for external fixed costs for a remaining facility or facilities shall be increased by an amount equal to 65 percent of the projected net cost savings to the state calculated in paragraph (b), divided by the state's medical assistance percentage of medical assistance dollars, and then divided by estimated medical assistance resident days, as determined in paragraph (c), of the remaining nursing facility or facilities in the request in this paragraph. The rate adjustment is effective on the first day of the month of January or July, whichever date occurs first following both the completion of the construction upgrades in the consolidation plan and the complete closure of the facility or facilities designated for closure in the consolidation plan. If more than one facility is receiving upgrades in the consolidation plan, each facility's date of construction completion must be evaluated separately.

(b) For purposes of calculating the net cost savings to the state, the commissioner shall consider clauses (1) to (7):

(1) the annual savings from estimated medical assistance payments from the net number of beds closed taking into consideration only beds that are in active service on the date of the request and that have been in active service for at least three years;

(2) the estimated annual cost of increased case load of individuals receiving services under the elderly waiver;

(3) the estimated annual cost of elderly waiver recipients receiving support under housing support under chapter 256I;

(4) the estimated annual cost of increased case load of individuals receiving services under the alternative care program;

(5) the annual loss of license surcharge payments on closed beds;

(6) the savings from not paying planned closure rate adjustments that the facilities would otherwise be eligible for under section 256R.40; and

(7) the savings from not paying external fixed costs payment rate adjustments from submission of renovation costs that would otherwise be eligible as threshold projects under section 256B.434, subdivision 4f.

(c) For purposes of the calculation in paragraph (a), clause (3), the estimated medical assistance resident days of the remaining facility or facilities shall be computed assuming 95 percent occupancy multiplied by the historical percentage of medical assistance resident days of the remaining facility or facilities, as reported on the facility's or facilities' most recent nursing facility statistical and cost report filed before the plan of closure is submitted, multiplied by 365.

(d) For purposes of net cost of savings to the state in paragraph (b), the average occupancy percentages will be those reported on the facility's or facilities' most recent nursing facility statistical and cost report filed before the plan of closure is submitted, and the average payment rates shall be calculated based on the approved payment rates in effect at the time the consolidation request is submitted.

(e) To qualify for the external fixed costs payment rate adjustment under this subdivision, the closing facilities shall:

(1) submit an application for closure according to section 256R.40, subdivision 2; and

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(2) follow the resident relocation provisions of section 144A.161.

(f) The county or counties in which a facility or facilities are closed under this subdivision shall not be eligible for designation as a hardship area under subdivision 3 for five years from the date of the approval of the proposed consolidation. The applicant shall notify the county of this limitation and the county shall acknowledge this in a letter of support.

256B.431 RATE DETERMINATION.

Subd. 3a. **Property-related costs after July 1, 1985.** (a) For rate years beginning on or after July 1, 1985, the commissioner, by permanent rule, shall reimburse nursing facility providers that are vendors in the medical assistance program for the rental use of real estate and depreciable equipment. "Real estate" means land improvements, buildings, and attached fixtures used directly for resident care. "Depreciable equipment" means the standard movable resident care equipment and support service equipment generally used in long-term care facilities.

(b) In developing the method for determining payment rates for the rental use of nursing facilities, the commissioner shall consider factors designed to:

(1) simplify the administrative procedures for determining payment rates for property-related costs;

(2) minimize discretionary or appealable decisions;

(3) eliminate any incentives to sell nursing facilities;

(4) recognize legitimate costs of preserving and replacing property;

(5) recognize the existing costs of outstanding indebtedness allowable under the statutes and rules in effect on May 1, 1983;

(6) address the current value of, if used directly for patient care, land improvements, buildings, attached fixtures, and equipment;

(7) establish an investment per bed limitation;

(8) reward efficient management of capital assets;

(9) provide equitable treatment of facilities;

(10) consider a variable rate; and

(11) phase-in implementation of the rental reimbursement method.

(c) For rate years beginning on or after July 1, 1987, a nursing facility which has reduced licensed bed capacity after January 1, 1986, shall be allowed to:

(1) aggregate the applicable investment per bed limits based on the number of beds licensed prior to the reduction; and

(2) establish capacity days for each rate year following the licensure reduction based on the number of beds licensed on the previous April 1 if the commissioner is notified of the change by April 4. The notification must include a copy of the delicensure request that has been submitted to the commissioner of health.

(d) For rate years beginning on or after July 1, 1989, the interest expense that results from a refinancing of a nursing facility's demand call loan, when the loan that must be refinanced was incurred before May 22, 1983, is an allowable interest expense if:

(1) the demand call loan or any part of it was in the form of a loan that was callable at the demand of the lender;

(2) the demand call loan or any part of it was called by the lender through no fault of the nursing facility;

(3) the demand call loan or any part of it was made by a government agency operating under a statutory or regulatory loan program;

(4) the refinanced debt does not exceed the sum of the allowable remaining balance of the demand call loan at the time of payment on the demand call loan and refinancing costs;

(5) the term of the refinanced debt does not exceed the remaining term of the demand call loan, had the debt not been subject to an on-call payment demand; and

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(6) the refinanced debt is not a debt between related organizations as defined in Minnesota Rules, part 9549.0020, subpart 38.

Subd. 3f. **Property costs after July 1, 1988.** (a) For the rate year beginning July 1, 1988, the replacement-cost-new per bed limit must be \$32,571 per licensed bed in multiple bedrooms and \$48,857 per licensed bed in a single bedroom. For the rate year beginning July 1, 1989, the replacement-cost-new per bed limit for a single bedroom must be \$49,907 adjusted according to Minnesota Rules, part 9549.0060, subpart 4, item A, subitem (1). Beginning January 1, 1990, the replacement-cost-new per bed limits must be adjusted annually as specified in Minnesota Rules, part 9549.0060, subpart 4, item A, subitem (1). Beginning January 1, 1991, the replacement-cost-new per bed limits will be adjusted annually as specified in Minnesota Rules, part 9549.0060, subpart 4, item A, subitem (1), except that the index utilized will be the Bureau of Economic Analysis: Price Indexes for Private Fixed Investments in Structures; Special Care.

(b) For the rate year beginning July 1, 1988, the commissioner shall increase the rental factor as established in Minnesota Rules, part 9549.0060, subpart 8, item A, by 6.2 percent rounded to the nearest 100th percent for the purpose of reimbursing nursing facilities for soft costs and entrepreneurial profits not included in the cost valuation services used by the state's contracted appraisers. For rate years beginning on or after July 1, 1989, the rental factor is the amount determined under this paragraph for the rate year beginning July 1, 1988.

(c) For rate years beginning on or after July 1, 1988, in order to determine property-related payment rates under Minnesota Rules, part 9549.0060, for all nursing facilities except those whose average length of stay in a skilled level of care within a nursing facility is 180 days or less, the commissioner shall use 95 percent of capacity days. For a nursing facility whose average length of stay in a skilled level of care within a nursing facility is 180 days or less, the commissioner shall use the greater of resident days or 80 percent of capacity days but in no event shall the divisor exceed 95 percent of capacity days.

(d) For rate years beginning on July 1, 1988, and July 1, 1989, the commissioner shall add ten cents per resident per day to each nursing facility's property-related payment rate. The ten-cent property-related payment rate increase is not cumulative from rate year to rate year. For the rate year beginning July 1, 1990, the commissioner shall increase each nursing facility's equipment allowance as established in Minnesota Rules, part 9549.0060, subpart 10, by ten cents per resident per day. For rate years beginning on or after July 1, 1991, the adjusted equipment allowance must be adjusted annually for inflation as in Minnesota Rules, part 9549.0060, subpart 10, item E. For the rate period beginning October 1, 1992, the equipment allowance for each nursing facility shall be increased by 28 percent. For rate years beginning after June 30, 1993, the allowance must be adjusted annually for inflation.

(e) For rate years beginning on or after July 1, 1990, Minnesota Rules, part 9549.0060, subpart 5, item E, shall not apply to outstanding related organization debt incurred prior to May 23, 1983, provided that the debt was an allowable debt under Minnesota Rules, parts 9510.0010 to 9510.0480, the debt is subject to repayment through annual principal payments, and the nursing facility demonstrates to the commissioner's satisfaction that the interest rate on the debt was less than market interest rates for similar arm's-length transactions at the time the debt was incurred. If the debt was incurred due to a sale between family members, the nursing facility must also demonstrate that the seller no longer participates in the management or operation of the nursing facility. Debts meeting the conditions of this paragraph are subject to all other provisions of Minnesota Rules, parts 9549.0010 to 9549.0080.

(f) For rate years beginning on or after July 1, 1990, a nursing facility with operating lease costs incurred for the nursing facility's buildings shall receive its building capital allowance computed in accordance with Minnesota Rules, part 9549.0060, subpart 8. If an operating lease provides that the lessee's rent is adjusted to recognize improvements made by the lessor and related debt, the costs for capital improvements and related debt shall be allowed in the computation of the lessee's building capital allowance, provided that reimbursement for these costs under an operating lease shall not exceed the rate otherwise paid.

Subd. 3g. **Property costs after July 1, 1990, for certain facilities.** (a) For rate years beginning on or after July 1, 1990, nursing facilities that, on or after January 1, 1976, but prior to January 1, 1987, were newly licensed after new construction, or increased their licensed beds by a minimum of 35 percent through new construction, and whose building capital allowance is less than their allowable annual principal and interest on allowable debt prior to the application of the replacement-cost-new per bed limit and whose remaining weighted average debt amortization schedule as of January 1, 1988, exceeded 15 years, must receive a property-related payment rate

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equal to the greater of their rental per diem or their annual allowable principal and allowable interest without application of the replacement-cost-new per bed limit, divided by their capacity days as determined under Minnesota Rules, part 9549.0060, subpart 11, as modified by subdivision 3f, paragraph (c), for the preceding reporting year, plus their equipment allowance. A nursing facility that is eligible for a property-related payment rate under this subdivision and whose property-related payment rate in a subsequent rate year is its rental per diem must continue to have its property-related payment rates established for all future rate years based on the rental reimbursement method in Minnesota Rules, part 9549.0060.

The commissioner may require the nursing facility to apply for refinancing as a condition of receiving special rate treatment under this subdivision.

(b) If a nursing facility is eligible for a property-related payment rate under this subdivision, and the nursing facility's debt is refinanced after October 1, 1988, the provisions in paragraphs (1) to (7) also apply to the property-related payment rate for rate years beginning on or after July 1, 1990.

(1) A nursing facility's refinancing must not include debts with balloon payments.

(2) If the issuance costs, including issuance costs on the debt refinanced, are financed as part of the refinancing, the historical cost of capital assets limit in Minnesota Rules, part 9549.0060, subpart 5, item A, subitem (6), includes issuance costs that do not exceed seven percent of the debt refinanced, plus the related issuance costs. For purposes of this paragraph, issuance costs means the fees charged by the underwriter, issuer, attorneys, bond raters, appraisers, and trustees, and includes the cost of printing, title insurance, registration tax, and a feasibility study for the refinancing of a nursing facility's debt. Issuance costs do not include bond premiums or discounts when bonds are sold at other than their par value, points, or a bond reserve fund. To the extent otherwise allowed under this paragraph, the straight-line amortization of the refinancing issuance costs is not an allowable cost.

(3) The annual principal and interest expense payments and any required annual municipal fees on the nursing facility's refinancing replace those of the refinanced debt and, together with annual principal and interest payments on other allowable debts, are allowable costs subject to the limitation on historical cost of capital assets plus issuance costs as limited in paragraph (2), if any.

(4) If the nursing facility's refinancing includes zero coupon bonds, the commissioner shall establish a monthly debt service payment schedule based on an annuity that will produce an amount equal to the zero coupon bonds at maturity. The term and interest rate is the term and interest rate of the zero coupon bonds. Any refinancing to repay the zero coupon bonds is not an allowable cost.

(5) The annual amount of annuity payments is added to the nursing facility's allowable annual principal and interest payment computed in paragraph (3).

(6) The property-related payment rate is equal to the amount in paragraph (5), divided by the nursing facility's capacity days as determined under Minnesota Rules, part 9549.0060, subpart 11, as modified by subdivision 3f, paragraph (c), for the preceding reporting year plus an equipment allowance.

(7) Except as provided in this subdivision, the provisions of Minnesota Rules, part 9549.0060 apply.

Subd. 3i. **Property costs for the rate year beginning July 1, 1990.** Notwithstanding Minnesota Rules, part 9549.0060, subpart 13, item H, the commissioner shall determine property-related payment rates for nursing facilities for the rate year beginning July 1, 1990, as follows:

(a) The property-related payment rate for a nursing facility that qualifies under subdivision 3g is the greater of the rate determined under that subdivision or the rate determined under paragraph (c), (d), or (e), whichever is applicable.

(b) Nursing facilities shall be grouped according to the type of property-related payment rate the commissioner determined for the rate year beginning July 1, 1989. A nursing facility whose property-related payment rate was determined under Minnesota Rules, part 9549.0060, subpart 13, item A (full rental reimbursement), shall be considered group A. A nursing facility whose property-related payment rate was determined under Minnesota Rules, part 9549.0060, subpart 13, item B (phase-down to full rental reimbursement), shall be considered group B. A nursing facility whose property-related payment rate was determined under Minnesota Rules, part 9549.0060, subpart 13, item C or D (phase-up to full rental reimbursement), shall be considered group C.

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(c) For the rate year beginning July 1, 1990, a group A nursing facility shall receive its property-related payment rate determined under Minnesota Rules, parts 9549.0010 to 9549.0080, and this section.

(d) For the rate year beginning July 1, 1990, a Group B nursing facility shall receive the greater of 87 percent of the property-related payment rate in effect on July 1, 1989; or the rental per diem rate determined under Minnesota Rules, parts 9549.0010 to 9549.0080, and this section in effect on July 1, 1990; or the sum of 100 percent of the nursing facility's allowable principal and interest expense, plus its equipment allowance multiplied by the resident days for the reporting year ending September 30, 1989, divided by the nursing facility's capacity days as determined under Minnesota Rules, part 9549.0060, subpart 11, as modified by subdivision 3f, paragraph (c); except that the nursing facility's property-related payment rate must not exceed its property-related payment rate in effect on July 1, 1989.

(e) For the rate year beginning July 1, 1990, a group C nursing facility shall receive its property-related payment rate determined under Minnesota Rules, parts 9549.0010 to 9549.0080, and this section, except the rate must not exceed the lesser of its property-related payment rate determined for the rate year beginning July 1, 1989, multiplied by 116 percent or its rental per diem rate determined effective July 1, 1990.

(f) The property-related payment rate for a nursing facility that qualifies for a rate adjustment under Minnesota Rules, part 9549.0060, subpart 13, item G (special reappraisals), shall have the property-related payment rate determined in paragraphs (a) to (e) adjusted according to the provisions in that rule.

(g) Except as provided in subdivision 4, paragraph (f), and subdivision 11, a nursing facility that has a change in ownership or a reorganization of provider entity is subject to the provisions of Minnesota Rules, part 9549.0060, subpart 13, item F.

Subd. 13. Hold-harmless property-related rates. (a) Terms used in subdivisions 13 to 21 shall be as defined in Minnesota Rules, parts 9549.0010 to 9549.0080, and this section.

(b) Except as provided in this subdivision, for rate periods beginning on October 1, 1992, and for rate years beginning after June 30, 1993, the property-related rate for a nursing facility shall be the greater of \$4 or the property-related payment rate in effect on September 30, 1992. In addition, the incremental increase in the nursing facility's rental rate will be determined under Minnesota Rules, parts 9549.0010 to 9549.0080, and this section.

(c) Notwithstanding Minnesota Rules, part 9549.0060, subpart 13, item F, a nursing facility that has a sale permitted under subdivision 14 after June 30, 1992, shall receive the property-related payment rate in effect at the time of the sale or reorganization. For rate periods beginning after October 1, 1992, and for rate years beginning after June 30, 1993, a nursing facility shall receive, in addition to its property-related payment rate in effect at the time of the sale, the incremental increase allowed under subdivision 14.

(d) For rate years beginning after June 30, 1993, the property-related rate for a nursing facility licensed after July 1, 1989, after relocating its beds from a separate nursing home to a building formerly used as a hospital and sold during the cost reporting year ending September 30, 1991, shall be its property-related rate prior to the sale in addition to the incremental increases provided under this section effective on October 1, 1992, of 29 cents per day, and any incremental increases after October 1, 1992, calculated by using its rental rate under Minnesota Rules, parts 9549.0010 to 9549.0080, and this section, recognizing the current appraised value of the facility at the new location, and including as allowable debt otherwise allowable debt incurred to remodel the facility in the new location prior to the relocation of beds.

Subd. 15. Capital repair and replacement cost reporting and rate calculation. For rate years beginning after June 30, 1993, a nursing facility's capital repair and replacement payment rate shall be established annually as provided in paragraphs (a) to (e).

(a) Notwithstanding Minnesota Rules, part 9549.0060, subpart 12, the costs of any of the following items not included in the equity incentive computations under subdivision 16 or reported as a capital asset addition under subdivision 18, paragraph (b), including cash payment for equity investment and principal and interest expense for debt financing, must be reported in the capital repair and replacement cost category:

- (1) wall coverings;
- (2) paint;

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- (3) floor coverings;
- (4) window coverings;
- (5) roof repair; and
- (6) window repair or replacement.

(b) Notwithstanding Minnesota Rules, part 9549.0060, subpart 12, the repair or replacement of a capital asset not included in the equity incentive computations under subdivision 16 or reported as a capital asset addition under subdivision 18, paragraph (b), must be reported under this subdivision when the cost of the item exceeds \$500, or in the plant operations and maintenance cost category when the cost of the item is equal to or less than \$500.

(c) To compute the capital repair and replacement payment rate, the allowable annual repair and replacement costs for the reporting year must be divided by actual resident days for the reporting year. The annual allowable capital repair and replacement costs shall not exceed \$150 per licensed bed. The excess of the allowed capital repair and replacement costs over the capital repair and replacement limit shall be a cost carryover to succeeding cost reporting periods, except that sale of a facility, under subdivision 14, shall terminate the carryover of all costs except those incurred in the most recent cost reporting year. The termination of the carryover shall have effect on the capital repair and replacement rate on the same date as provided in subdivision 14, paragraph (f), for the sale. For rate years beginning after June 30, 1994, the capital repair and replacement limit shall be subject to the index provided in subdivision 3f, paragraph (a). For purposes of this subdivision, the number of licensed beds shall be the number used to calculate the nursing facility's capacity days. The capital repair and replacement rate must be added to the nursing facility's total payment rate.

(d) Capital repair and replacement costs under this subdivision shall not be counted as either care-related or other operating costs, nor subject to care-related or other operating limits.

(e) If costs otherwise allowable under this subdivision are incurred as the result of a project approved under the moratorium exception process in section 144A.073, or in connection with an addition to or replacement of buildings, attached fixtures, or land improvements for which the total historical cost of these assets exceeds the lesser of \$150,000 or ten percent of the nursing facility's appraised value, these costs must be claimed under subdivision 16 or 17, as appropriate.

Subd. 17. Special provisions for moratorium exceptions. Notwithstanding Minnesota Rules, part 9549.0060, subpart 3, for rate periods beginning on October 1, 1992, and for rate years beginning after June 30, 1993, a nursing facility that (1) has completed a construction project approved under section 144A.071, subdivision 4a, clause (m); (2) has completed a construction project approved under section 144A.071, subdivision 4a, and effective after June 30, 1995; (3) has completed a construction project approved under section 144A.071, subdivision 4c; or (4) has completed a renovation, replacement, or upgrading project approved under the moratorium exception process in section 144A.073 shall be reimbursed for costs directly identified to that project as provided in subdivision 16 and subdivisions 17 to 17f.

Subd. 17a. Allowable interest expense. (a) Notwithstanding Minnesota Rules, part 9549.0060, subparts 5, item A, subitems (1) and (3), and 7, item D, allowable interest expense on debt shall include:

(1) interest expense on debt related to the cost of purchasing or replacing depreciable equipment, excluding vehicles, not to exceed ten percent of the total historical cost of the project; and

(2) interest expense on debt related to financing or refinancing costs, including costs related to points, loan origination fees, financing charges, legal fees, and title searches; and issuance costs including bond discounts, bond counsel, underwriter's counsel, corporate counsel, printing, and financial forecasts. Allowable debt related to items in this clause shall not exceed seven percent of the total historical cost of the project. To the extent these costs are financed, the straight-line amortization of the costs in this clause is not an allowable cost; and

(3) interest on debt incurred for the establishment of a debt reserve fund, net of the interest earned on the debt reserve fund.

(b) Debt incurred for costs under paragraph (a) is not subject to Minnesota Rules, part 9549.0060, subpart 5, item A, subitem (5) or (6).

Subd. 17c. Replacement-costs-new per bed limit. Notwithstanding subdivision 3f, paragraph (a), for rate periods beginning on October 1, 1992, and for rate years beginning after June 30, 1993, the replacement-costs-new per bed limit to be used in Minnesota Rules, part 9549.0060, subpart 4,

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item B, for a nursing facility that has completed a renovation, replacement, or upgrading project that has been approved under the moratorium exception process in section 144A.073, or that has completed an addition to or replacement of buildings, attached fixtures, or land improvements for which the total historical cost exceeds the lesser of \$150,000 or ten percent of the most recent appraised value, must be \$47,500 per licensed bed in multiple-bed rooms and \$71,250 per licensed bed in a single-bed room. These amounts must be adjusted annually as specified in subdivision 3f, paragraph (a), beginning January 1, 1993.

Subd. 17d. Determination of rental per diem for total replacement projects. (a) For purposes of this subdivision, a total replacement means the complete replacement of the nursing facility's physical plant through the construction of a new physical plant, the transfer of the nursing facility's license from one physical plant location to another, or a new building addition to relocate beds from three- and four-bed wards. For total replacement projects completed on or after July 1, 1992, the commissioner shall compute the incremental change in the nursing facility's rental per diem, for rate years beginning on or after July 1, 1995, by replacing its appraised value, including the historical capital asset costs, and the capital debt and interest costs with the new nursing facility's allowable capital asset costs and the related allowable capital debt and interest costs. If the new nursing facility has decreased its licensed capacity, the aggregate investment per bed limit in subdivision 3a, paragraph (c), shall apply.

(b) If the new nursing facility has retained a portion of the original physical plant for nursing facility usage, then a portion of the appraised value prior to the replacement must be retained and included in the calculation of the incremental change in the nursing facility's rental per diem. For purposes of this subdivision, the original nursing facility means the nursing facility prior to the total replacement project. The portion of the appraised value to be retained shall be calculated according to clauses (1) to (3):

(1) The numerator of the allocation ratio shall be the square footage of the area in the original physical plant which is being retained for nursing facility usage.

(2) The denominator of the allocation ratio shall be the total square footage of the original nursing facility physical plant.

(3) Each component of the nursing facility's allowable appraised value prior to the total replacement project shall be multiplied by the allocation ratio developed by dividing clause (1) by clause (2).

(c) In the case of either type of total replacement as authorized under section 144A.071 or 144A.073, the provisions of subdivisions 17 to 17f shall also apply.

(d) For purposes of the moratorium exception authorized under section 144A.071, subdivision 4a, paragraph (s), if the total replacement involves the renovation and use of an existing health care facility physical plant, the new allowable capital asset costs and related debt and interest costs shall include first the allowable capital asset costs and related debt and interest costs of the renovation, to which shall be added the allowable capital asset costs of the existing physical plant prior to the renovation, and if reported by the facility, the related allowable capital debt and interest costs.

Subd. 17e. Replacement-costs-new per bed limit effective October 1, 2007. Notwithstanding Minnesota Rules, part 9549.0060, subpart 11, item C, subitem (2), for a total replacement, as defined in subdivision 17d, authorized under section 144A.071 or 144A.073 after July 1, 1999, any building project that is a relocation, renovation, upgrading, or conversion completed on or after July 1, 2001, or any building project eligible for reimbursement under section 256B.434, subdivision 4f, the replacement-costs-new per bed limit shall be \$74,280 per licensed bed in multiple-bed rooms, \$92,850 per licensed bed in semiprivate rooms with a fixed partition separating the resident beds, and \$111,420 per licensed bed in single rooms. Minnesota Rules, part 9549.0060, subpart 11, item C, subitem (2), does not apply. These amounts must be adjusted annually as specified in subdivision 3f, paragraph (a), beginning January 1, 2000. These amounts must be increased annually as specified in subdivision 3f, paragraph (a), beginning October 1, 2012.

Subd. 18. Updating appraisals, additions, and replacements. (a) Notwithstanding Minnesota Rules, part 9549.0060, subparts 1 to 3, the appraised value, routine updating of the appraised value, and special reappraisals are subject to this subdivision.

For all rate years after June 30, 1993, the commissioner shall no longer conduct any appraisals under Minnesota Rules, part 9549.0060, for the purpose of determining property-related payment rates.

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(b) Notwithstanding Minnesota Rules, part 9549.0060, subpart 2, for rate years beginning after June 30, 1993, the commissioner shall routinely update the appraised value of each nursing facility by adding the cost of capital asset acquisitions to its allowable appraised value.

The commissioner shall also annually index each nursing facility's allowable appraised value by the inflation index referenced in subdivision 3f, paragraph (a), for the purpose of computing the nursing facility's annual rental rate. In annually adjusting the nursing facility's appraised value, the commissioner must not include the historical cost of capital assets acquired during the reporting year in the nursing facility's appraised value.

In addition, the nursing facility's appraised value must be reduced by the historical cost of capital asset disposals or applicable credits such as public grants and insurance proceeds. Capital asset additions and disposals must be reported on the nursing facility's annual cost report in the reporting year of acquisition or disposal. The incremental increase in the nursing facility's rental rate resulting from this annual adjustment as determined under Minnesota Rules, parts 9549.0010 to 9549.0080, and this section shall be added to the nursing facility's property-related payment rate for the rate year following the reporting year.

Subd. 21. **Indexing thresholds.** Beginning January 1, 1993, and each January 1 thereafter, the commissioner shall annually update the dollar thresholds in subdivisions 15, paragraph (e), 16, and 17, and in section 144A.071, subdivisions 2 and 4a, clauses (b) and (e), by the inflation index referenced in subdivision 3f, paragraph (a).

Subd. 22. **Changes to nursing facility reimbursement.** In the determination of incremental increases in the nursing facility's rental rate as required in subdivisions 14 to 21, except for a refinancing permitted under subdivision 19, the commissioner must adjust the nursing facility's property-related payment rate for both incremental increases and decreases in recomputations of its rental rate.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Subd. 45. Rate adjustments for some moratorium exception projects. Notwithstanding any other law to the contrary, money available for moratorium exception projects under section 144A.073, subdivisions 2 and 11, shall be used to fund the incremental rate increases resulting from this section for any nursing facility with a moratorium exception project approved under section 144A.073, and completed after August 30, 2010, where the replacement-costs-new limits under subdivision 17e were higher at any time after project approval than at the time of project completion. The commissioner shall calculate the property rate increase for these facilities using the highest set of limits; however, any rate increase under this section shall not be effective until on or after the effective date of this section, contingent upon federal approval. No property rate decrease shall result from this section.

256B.434 ALTERNATIVE PAYMENT DEMONSTRATION PROJECT.

Subd. 4. Alternate rates for nursing facilities. Effective for the rate years beginning on and after January 1, 2019, a nursing facility's property payment rate for the second and subsequent years of a facility's contract under this section are the previous rate year's property payment rate plus an inflation adjustment. The index for the inflation adjustment must be based on the change in the Consumer Price Index-All Items (United States City average) (CPI-U) forecasted by the Reports and Forecasts Division of the Department of Human Services, as forecasted in the fourth quarter of the calendar year preceding the rate year. The inflation adjustment must be based on the 12-month period from the midpoint of the previous rate year to the midpoint of the rate year for which the rate is being determined.

Subd. 4f. Construction project rate adjustments effective October 1, 2006. (a) Effective October 1, 2006, facilities reimbursed under this section may receive a property rate adjustment for construction projects exceeding the threshold in section 256B.431, subdivision 16, and below

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the threshold in section 144A.071, subdivision 2, clause (a). For these projects, capital assets purchased shall be counted as construction project costs for a rate adjustment request made by a facility if they are: (1) purchased within 24 months of the completion of the construction project; (2) purchased after the completion date of any prior construction project; and (3) are not purchased prior to July 14, 2005. Except as otherwise provided in this subdivision, the definitions, rate calculation methods, and principles in sections 144A.071 and 256B.431 and Minnesota Rules, parts 9549.0010 to 9549.0080, shall be used to calculate rate adjustments for allowable construction projects under this subdivision and section 144A.073. Facilities completing construction projects between October 1, 2005, and October 1, 2006, are eligible to have a property rate adjustment effective October 1, 2006. Facilities completing projects after October 1, 2006, are eligible for a property rate adjustment effective on the first day of the month following the completion date. Facilities completing projects after January 1, 2018, are eligible for a property rate adjustment effective on the first day of the month of January or July, whichever occurs immediately following the completion date.

(b) Notwithstanding subdivision 18, as of July 14, 2005, facilities with rates set under section 256B.431 and Minnesota Rules, parts 9549.0010 to 9549.0080, that commenced a construction project on or after October 1, 2004, and do not have a contract under subdivision 3 by September 30, 2006, are eligible to request a rate adjustment under section 256B.431, subdivision 10, through September 30, 2006. If the request results in the commissioner determining a rate adjustment is allowable, the rate adjustment is effective on the first of the month following project completion. These facilities shall be allowed to accumulate construction project costs for the period October 1, 2004, to September 30, 2006.

(c) Facilities shall be allowed construction project rate adjustments no sooner than 12 months after completing a previous construction project. Facilities must request the rate adjustment according to section 256B.431, subdivision 10.

(d) Capacity days shall be computed according to Minnesota Rules, part 9549.0060, subpart 11. For rate calculations under this section, the number of licensed beds in the nursing facility shall be the number existing after the construction project is completed and the number of days in the nursing facility's reporting period shall be 365.

(e) The value of assets to be recognized for a total replacement project as defined in section 256B.431, subdivision 17d, shall be computed as described in clause (1). The value of assets to be recognized for all other projects shall be computed as described in clause (2).

(1) Replacement-cost-new limits under section 256B.431, subdivision 17e, and the number of beds allowed under subdivision 3a, paragraph (c), shall be used to compute the maximum amount of assets allowable in a facility's property rate calculation. If a facility's current request for a rate adjustment results from the completion of a construction project that was previously approved under section 144A.073, the assets to be used in the rate calculation cannot exceed the lesser of the amount determined under sections 144A.071, subdivision 2, and 144A.073, subdivision 3b, or the actual allowable costs of the construction project. A current request that is not the result of a project under section 144A.073 cannot exceed the limit under section 144A.071, subdivision 2, paragraph (a). Applicable credits must be deducted from the cost of the construction project.

(2)(i) Replacement-cost-new limits under section 256B.431, subdivision 17e, and the number of beds allowed under section 256B.431, subdivision 3a, paragraph (c), shall be used to compute the maximum amount of assets allowable in a facility's property rate calculation.

(ii) The value of a facility's assets to be compared to the amount in item (i) begins with the total appraised value from the last rate notice a facility received when its rates were set under section 256B.431 and Minnesota Rules, parts 9549.0010 to 9549.0080. This value shall be indexed by the factor in section 256B.431, subdivision 3f, paragraph (a), for each rate year the facility received an inflation factor on its property-related rate when its rates were set under this section. The value of assets listed as previous capital additions, capital additions, and special projects on the facility's base year rate notice and the value of assets related to a construction project for which the facility received a rate adjustment when its rates were determined under this section shall be added to the indexed appraised value.

(iii) The maximum amount of assets to be recognized in computing a facility's rate adjustment after a project is completed is the lesser of the aggregate replacement-cost-new limit computed in (i) minus the assets recognized in (ii) or the actual allowable costs of the construction project.

(iv) If a facility's current request for a rate adjustment results from the completion of a construction project that was previously approved under section 144A.073, the assets to be added

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to the rate calculation cannot exceed the lesser of the amount determined under sections 144A.071, subdivision 2, and 144A.073, subdivision 3b, or the actual allowable costs of the construction project. A current request that is not the result of a project under section 144A.073 cannot exceed the limit stated in section 144A.071, subdivision 2, paragraph (a). Assets disposed of as a result of a construction project and applicable credits must be deducted from the cost of the construction project.

(f) For construction projects approved under section 144A.073, allowable debt may never exceed the lesser of the cost of the assets purchased, the threshold limit in section 144A.071, subdivision 2, or the replacement-cost-new limit less previously existing capital debt.

(g) For construction projects that were not approved under section 144A.073, allowable debt is limited to the lesser of the threshold in section 144A.071, subdivision 2, for such construction projects or the applicable limit in paragraph (e), clause (1) or (2), less previously existing capital debt. Amounts of debt taken out that exceed the costs of a construction project shall not be allowed regardless of the use of the funds.

For all construction projects being recognized, interest expense and average debt shall be computed based on the first 12 months following project completion. "Previously existing capital debt" means capital debt recognized on the last rate determined under section 256B.431 and Minnesota Rules, parts 9549.0010 to 9549.0080, and the amount of debt recognized for a construction project for which the facility received a rate adjustment when its rates were determined under this section.

For a total replacement project as defined in section 256B.431, subdivision 17d, the value of previously existing capital debt shall be zero.

(h) In addition to the interest expense allowed from the application of paragraph (f), the amounts allowed under section 256B.431, subdivision 17a, paragraph (a), clauses (2) and (3), will be added to interest expense.

(i) The equity portion of the construction project shall be computed as the allowable assets in paragraph (e), less the average debt in paragraph (f). The equity portion must be multiplied by 5.66 percent and the allowable interest expense in paragraph (f) must be added. This sum must be divided by 95 percent of capacity days to compute the construction project rate adjustment.

(j) For projects that are not a total replacement of a nursing facility, the amount in paragraph (i) is adjusted for nonreimbursable areas and then added to the current property payment rate of the facility.

(k) For projects that are a total replacement of a nursing facility, the amount in paragraph (i) becomes the new property payment rate after being adjusted for nonreimbursable areas. Any amounts existing in a facility's rate before the effective date of the construction project for equity incentives under section 256B.431, subdivision 16; capital repairs and replacements under section 256B.431, subdivision 15; or refinancing incentives under section 256B.431, subdivision 19, shall be removed from the facility's rates.

(l) No additional equipment allowance is allowed under Minnesota Rules, part 9549.0060, subpart 10, as the result of construction projects under this section. Allowable equipment shall be included in the construction project costs.

(m) Capital assets purchased after the completion date of a construction project shall be counted as construction project costs for any future rate adjustment request made by a facility under section 144A.071, subdivision 2, clause (a), if they are purchased within 24 months of the completion of the future construction project.

(n) In subsequent rate years, the property payment rate for a facility that results from the application of this subdivision shall be the amount inflated in subdivision 4.

(o) Construction projects are eligible for an equity incentive under section 256B.431, subdivision 16. When computing the equity incentive for a construction project under this subdivision, only the allowable costs and allowable debt related to the construction project shall be used. The equity incentive shall not be a part of the property payment rate and not inflated under subdivision 4. Effective October 1, 2006, all equity incentives for nursing facilities reimbursed under this section shall be allowed for a duration determined under section 256B.431, subdivision 16, paragraph (c).

Subd. 4i. Construction project rate adjustments for certain nursing facilities. (a) This subdivision applies to nursing facilities with at least 120 active beds as of January 1, 2015, that have projects approved in 2015 under the nursing facility moratorium exception process in section

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144A.073. When each facility's moratorium exception construction project is completed, the facility must receive the rate adjustment allowed under subdivision 4f. In addition to that rate adjustment, facilities with at least 120 active beds, but not more than 149 active beds, as of January 1, 2015, must have their construction project rate adjustment increased by an additional \$4; and facilities with at least 150 active beds, but not more than 160 active beds, as of January 1, 2015, must have their construction project rate adjustment increased by an additional \$12.50.

(b) Notwithstanding any other law to the contrary, money available under section 144A.073, subdivision 11, after the completion of the moratorium exception approval process in 2015 under section 144A.073, subdivision 3, shall be used to reduce the fiscal impact to the medical assistance budget for the increases allowed in this subdivision.

Subd. 4j. **Construction project rate increase for certain nursing facilities.** (a) This subdivision applies to nursing facilities:

(1) located in Ramsey County;

(2) with at least 130 active beds as of September 30, 2017;

(3) with a portion of beds dually certified for Medicare and Medicaid and a portion of beds certified for Medicaid only; and

(4) with debt service payments that are not being covered by the existing property payment rate on September 30, 2017.

(b) The commissioner shall increase the property rate of each facility meeting the qualifications of this subdivision by \$7.55.

(c) Notwithstanding any other law to the contrary, money available under section 144A.073, subdivision 15, after the completion of the 2018 moratorium exception approval process under section 144A.073, subdivision 3, shall be used to pay the medical assistance cost for the property rate increase in this subdivision.

256R.36 HOLD HARMLESS.

No nursing facility's operating payment rate, plus its employer health insurance costs portion of the external fixed costs payment rate, will be less than its prior system operating cost payment rate.

256R.40 NURSING FACILITY VOLUNTARY CLOSURE; ALTERNATIVES.

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

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

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

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

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

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

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

Subd. 2. **Applications for planned closure rate.** (a) To be considered for approval of a planned closure, an application must include:

(1) a description of the proposed closure plan, which must include identification of the facility or facilities to receive a planned closure rate adjustment;

(2) the proposed timetable for any proposed closure, including the proposed dates for announcement to residents, commencement of closure, and completion of closure;

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(3) if available, the proposed relocation plan for current residents of any facility designated for closure. If a relocation plan is not available, the application must include a statement agreeing to develop a relocation plan designed to comply with section 144A.161;

(4) a description of the relationship between the nursing facility that is proposed for closure and the nursing facility or facilities proposed to receive the planned closure rate adjustment. If these facilities are not under common ownership, copies of any contracts, purchase agreements, or other documents establishing a relationship or proposed relationship must be provided; and

(5) documentation, in a format approved by the commissioner, that all the nursing facilities receiving a planned closure rate adjustment under the plan have accepted joint and several liability for recovery of overpayments under section 256B.0641, subdivision 2, for the facilities designated for closure under the plan.

(b) The application must also address the criteria listed in subdivision 3.

Subd. 3. Criteria for review of application. In reviewing and approving closure proposals, the commissioner shall consider, but not be limited to, the following criteria:

(1) improved quality of care and quality of life for consumers;

(2) closure of a nursing facility that has a poor physical plant;

(3) the existence of excess nursing facility beds, measured in terms of beds per thousand persons aged 85 or older. The excess must be measured in reference to:

(i) the county in which the facility is located. A facility in a county that is in the lowest quartile of counties with reference to beds per thousand persons aged 85 or older is not in an area of excess capacity;

(ii) the county and all contiguous counties;

(iii) the region in which the facility is located; or

(iv) the facility's service area. The facility shall indicate in its application the service area it believes is appropriate for this measurement;

(4) low-occupancy rates, provided that the unoccupied beds are not the result of a personnel shortage. In analyzing occupancy rates, the commissioner shall examine waiting lists in the applicant facility and at facilities in the surrounding area, as determined under clause (3);

(5) evidence of coordination between the community planning process and the facility application. If the planning group does not support a level of nursing facility closures that the commissioner considers to be reasonable, the commissioner may approve a planned closure proposal without its support;

(6) proposed usage of funds available from a planned closure rate adjustment for care-related purposes;

(7) innovative use planned for the closed facility's physical plant;

(8) evidence that the proposal serves the interests of the state; and

(9) evidence of other factors that affect the viability of the facility, including excessive nursing pool costs.

Subd. 4. Review and approval of applications. (a) The commissioner, in consultation with the commissioner of health, shall approve or deny an application within 30 days after receiving it. The commissioner may appoint an advisory review panel composed of representatives of counties, consumers, and providers to review proposals and provide comments and recommendations to the committee. The commissioners of human services and health shall provide staff and technical assistance to the committee for the review and analysis of proposals.

(b) Approval of a planned closure expires 18 months after approval by the commissioner unless commencement of closure has begun.

(c) The commissioner may change any provision of the application to which the applicant, the regional planning group, and the commissioner agree.

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

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- (1) the amount available is the net reduction of nursing facility beds multiplied by \$2,080;
 - (2) the total number of beds in the nursing facility or facilities receiving the planned closure rate adjustment must be identified;
 - (3) capacity days are determined by multiplying the number determined under clause (2) by 365; and
 - (4) the planned closure rate adjustment is the amount available in clause (1), divided by capacity days determined under clause (3).
- (b) A planned closure rate adjustment under this section is effective on the first day of the month of January or July, whichever occurs immediately following completion of closure of the facility designated for closure in the application and becomes part of the nursing facility's external fixed payment rate.
- (c) Upon the request of a closing facility, the commissioner must allow the facility a closure rate adjustment as provided under section 144A.161, subdivision 10.
- (d) A facility that has received a planned closure rate adjustment may reassign it to another facility that is under the same ownership at any time within three years of its effective date. The amount of the adjustment is computed according to paragraph (a).
- (e) If the per bed dollar amount specified in paragraph (a), clause (1), is increased, the commissioner shall recalculate planned closure rate adjustments for facilities that delicense beds under this section on or after July 1, 2001, to reflect the increase in the per bed dollar amount. The recalculated planned closure rate adjustment is effective from the date the per bed dollar amount is increased.

Subd. 6. Assignment of closure rate to another facility. A facility or facilities reimbursed under this chapter with a closure plan approved by the commissioner under subdivision 4 may assign a planned closure rate adjustment to another facility or facilities that are not closing or in the case of a partial closure, to the facility undertaking the partial closure. A facility may also elect to have a planned closure rate adjustment shared equally by the five nursing facilities with the lowest total operating payment rates in the state development region designated under section 462.385, in which the facility that is closing is located. The planned closure rate adjustment must be calculated under subdivision 5. Facilities that delicense beds without a closure plan, or whose closure plan is not approved by the commissioner, are not eligible to assign a planned closure rate adjustment under subdivision 5, unless they: (1) are delicensing five or fewer beds, or less than six percent of their total licensed bed capacity, whichever is greater; (2) are located in a county in the top three quartiles of beds per 1,000 persons aged 65 or older; and (3) have not delicensed beds in the prior three months. Facilities meeting these criteria are eligible to assign the amount calculated under subdivision 5 to themselves. If a facility is delicensing the greater of six or more beds, or six percent or more of its total licensed bed capacity, and does not have an approved closure plan or is not eligible for the adjustment under subdivision 5, the commissioner shall calculate the amount the facility would have been eligible to assign under subdivision 5, and shall use this amount to provide equal rate adjustments to the five nursing facilities with the lowest total operating payment rates in the state development region designated under section 462.385, in which the facility that delicensed beds is located.

Subd. 7. Other rate adjustments. Facilities receiving planned closure rate adjustments remain eligible for any applicable rate adjustments provided under this chapter.

256R.41 SINGLE-BED ROOM INCENTIVE.

- (a) Beginning July 1, 2005, the operating payment rate for nursing facilities reimbursed under this chapter shall be increased by 20 percent multiplied by the ratio of the number of new single-bed rooms created divided by the number of active beds on July 1, 2005, for each bed closure that results in the creation of a single-bed room after July 1, 2005. The commissioner may implement rate adjustments for up to 3,000 new single-bed rooms each year. For eligible bed closures for which the commissioner receives a notice from a facility that a bed has been delicensed and a new single-bed room has been established, the rate adjustment in this paragraph shall be effective on either the first day of the month of January or July, whichever occurs first following the date of the bed delicensure.
- (b) A nursing facility is prohibited from discharging residents for purposes of establishing single-bed rooms. A nursing facility must submit documentation to the commissioner in a form prescribed by the commissioner, certifying the occupancy status of beds closed to create single-bed rooms. In the event that the commissioner determines that a facility has discharged a resident for

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purposes of establishing a single-bed room, the commissioner shall not provide a rate adjustment under paragraph (a).

9549.0057 DETERMINATION OF INTERIM AND SETTLE UP OPERATING COST PAYMENT RATES.

Subpart 1. **Conditions.** To receive an interim payment rate, a nursing facility must comply with the requirements and is subject to the conditions in part 9549.0060, subpart 14, items A to C. The commissioner shall determine interim and settle up operating cost payment rates for a newly constructed nursing facility, or one with an increase in licensed capacity of 50 percent or more according to subparts 2 and 3.

Subp. 2. **Interim operating cost payment rate.** For the rate year or portion of an interim period beginning on or after July 1, 1986, the interim total operating cost payment rate must be determined according to parts 9549.0050 to 9549.0059 (Temporary) in effect on March 1, 1987. For the rate year or portion of an interim period beginning on or after July 1, 1987, the interim total operating cost payment rate must be determined according to parts 9549.0051 to 9549.0059, except that:

A. The nursing facility must project its anticipated resident days for each resident class. The anticipated resident days for each resident class must be multiplied by the weight for that resident class as listed in part 9549.0058 to determine the anticipated standardized resident days for the reporting period.

B. The commissioner shall use anticipated standardized resident days in determining the allowable historical case mix operating cost standardized per diem.

C. The commissioner shall use the anticipated resident days in determining both the allowable historical other care related operating cost per diem and the allowable historical other operating cost per diem.

D. The annual adjustment factors determined in part 9549.0055, subpart 1, must not be applied to the nursing facility's allowable historical per diems as provided in part 9549.0056, subparts 2 and 4.

E. The limits established in part 9549.0055, subpart 2, items C and E, as indexed in part 9549.0055, subpart 3 and in effect at the beginning of the interim period, must be increased by ten percent.

F. The efficiency incentive in part 9549.0056, subpart 4, item A or B, must not apply.

G. The phase in provisions in part 9549.0056, subpart 7, must not apply.

Subp. 3. **Settle up operating cost payment rate.** The settle up total operating cost payment rate must be determined according to items A to C.

A. The settle up operating cost payment rate for interim periods before July 1, 1987, is subject to the rule parts that were in effect during the interim period.

B. To determine the settle up operating cost payment rate for interim periods or the portion of an interim period occurring after July 1, 1987, subitems (1) to (7) must be applied.

(1) The standardized resident days as determined in part 9549.0054, subpart 2, must be used for the interim period.

(2) The commissioner shall use the standardized resident days in subitem (1) in determining the allowable historical case mix operating cost standardized per diem.

(3) The commissioner shall use the actual resident days in determining both the allowable historical other care related operating cost per diem and the allowable historical other operating cost per diem.

(4) The annual adjustment factors determined in part 9549.0055, subpart 1, must not be applied to the nursing facility's allowable historical per diems as provided in part 9549.0056, subparts 2 and 4.

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(5) The limits established in part 9549.0055, subpart 2, item E, must be the limits for the settle up reporting periods occurring after July 1, 1987. If the interim period includes more than one July 1 date, the commissioner shall use the limit established in part 9549.0055, subpart 2, items C and E, as indexed in part 9549.0055, subpart 3, increased by ten percent for the second July 1 date.

(6) The efficiency incentive in part 9549.0056, subpart 4, item A or B, must not apply.

(7) The phase in provisions in part 9549.0056, subpart 7 must not apply.

C. For the nine month period following the settle up reporting period, the total operating cost payment rate must be determined according to item B except that the efficiency incentive as computed in part 9549.0056, subpart 4, item A or B, applies.

D. The total operating cost payment rate for the rate year beginning July 1 following the nine month period in item C must be determined under parts 9549.0050 to 9549.0059.

E. A newly constructed nursing facility or one with an increase in licensed capacity of 50 percent or more must continue to receive the interim total operating cost payment rate until the settle up total operating cost payment rate is determined under this subpart.

9549.0060 DETERMINATION OF THE PROPERTY-RELATED PAYMENT RATE.

Subp. 4. **Determination of allowable appraised value.** A nursing facility's appraised value must be limited by items A to C.

A. For rate years beginning after June 30, 1985, the replacement cost new per bed limit for licensed beds in single bedrooms and multiple bedrooms is determined according to subitems (1) to (4):

(1) Effective January 1, 1984, the replacement cost new per bed limit for licensed beds in single bedrooms is \$41,251 and for licensed beds in multiple bedrooms is \$27,500. On January 1, 1985, the commissioner shall adjust the replacement cost new per bed limit by the percentage change in the composite cost of construction index published by the Bureau of Economic Analysis of the United States Department of Commerce in the Survey of Current Business Statistics for the two previous Octobers. The index is incorporated by reference and is available at the James J. Hill Reference Library, Saint Paul, Minnesota.

(2) The average historical cost per bed for depreciable equipment is computed by adding the historical cost of depreciable equipment for each nursing facility as determined in subpart 10, item A, and dividing the sum by the total number of licensed beds in those nursing facilities. The amount is then subtracted from the replacement cost new per bed limits determined in subitem (1).

(3) The differences computed in subitem (2) are the replacement cost new per bed limits for licensed beds in single bedrooms and multiple bedrooms effective for the rate year beginning on July 1, 1985.

(4) On January 1, 1986, and each succeeding January 1, the commissioner shall adjust the limit in subitem (3) by the percentage change in the composite cost of construction index published by the Bureau of Economic Analysis of the United States Department of Commerce in the Survey of Current Business Statistics for the two previous Octobers.

B. Each nursing facility's maximum allowable replacement cost new is determined annually according to subitems (1) to (3):

(1) The multiple bedroom replacement cost new per bed limit in item A must be multiplied by the number of licensed beds in multiple bedrooms.

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(2) The single bedroom replacement cost new per bed limit in item A must be multiplied by the number of licensed beds in single bedrooms except as provided in subpart 11, item C, subitem (2).

(3) The nursing facility's maximum allowable replacement cost new is the sum of subitems (1) and (2).

C. The nursing facility's replacement cost new determined in subparts 1 to 3 must be reduced by the replacement cost new of portions of the nursing facility used for functions whose costs are disallowed under parts 9549.0010 to 9549.0080.

D. The adjusted replacement cost new is the lesser of item B or C.

E. The adjusted depreciation is determined by subtracting from the depreciation in subparts 1 to 3 the amount of depreciation, if any, related to the portion of the nursing facility's replacement cost new disallowed in item C or D.

F. The nursing facility's allowable appraised value is determined by subtracting the amount determined in item E from the amount in item D. If no adjustment to the replacement cost new is required in items C and D, then the nursing facility's allowable appraised value is the appraised value determined in subparts 1 to 3.

Subp. 5. **Allowable debt.** For purposes of determining the property-related payment rate, the commissioner shall allow or disallow debt according to items A to D.

A. Debt shall be limited as follows:

(1) Debt incurred for the purchase of land directly used for resident care and the purchase or construction of nursing facility buildings, attached fixtures, or land improvements or the capitalized replacement or capitalized repair of existing buildings, attached fixtures, or land improvements shall be allowed. Debt incurred for any other purpose shall not be allowed.

(2) Working capital debt shall not be allowed.

(3) An increase in the amount of a debt as a result of refinancing of capital assets which occurs after May 22, 1983, shall not be allowed except to the extent that the increase in debt is the result of refinancing costs such as points, loan origination fees, or title searches.

(4) An increase in the amount of total outstanding debt incurred after May 22, 1983, as a result of a change in ownership or reorganization of provider entities, shall not be allowed and the previous owner's allowable debt as of May 22, 1983, shall be allowed under item B.

(5) Any portion of the total allowable debt exceeding the appraised value as determined in subpart 4 shall not be allowed.

(6) Any portion of a debt of which the proceeds exceed the historical cost of the capital asset acquired shall not be allowed.

B. The nursing facility shall apportion debts incurred before October 1, 1984, among land and buildings, attached fixtures, land improvements, depreciable equipment and working capital by direct identification. If direct identification of any part of the debt is not possible, that portion of the debt which cannot be directly identified shall be apportioned to each component, except working capital debt, based on the ratio of the historical cost of the component to the total historical cost of all components. The portion of debt assigned to land and buildings, attached fixtures, and land improvements is allowable debt.

A hospital attached nursing facility that has debts that are not directly identifiable to the hospital or the nursing facility shall allocate the portion of allowable debt computed according to subpart 5, and allowable interest expense computed according to subpart 7

assigned to land and buildings, attached fixtures, and land improvements using the Medicare stepdown method described in subpart 1.

C. For debts incurred after September 30, 1984, the nursing facility shall directly identify the proceeds of the debt associated with specific land and buildings, attached fixtures, and land improvements, and keep records that separate such debt proceeds from all other debt. Only the debt identified with specific land and buildings, attached fixtures, and land improvement shall be allowed.

D. For reporting years ending on or after September 30, 1984, the total amount of allowable debt shall be the sum of all allowable debts at the beginning of the reporting year plus all allowable debts at the end of the reporting year divided by two. Nursing facilities which have a debt with a zero balance at the beginning or end of the reporting year must use a monthly average for the reporting year.

E. Debt incurred as a result of loans between related organizations must not be allowed.

Subp. 6. **Limitations on interest rates.** The commissioner shall limit interest rates according to items A to C.

A. Except as provided in item B, the effective interest rate of each allowable debt, including points, financing charges, and amortization bond premiums or discounts, entered into after September 30, 1984, is limited to the lesser of:

- (1) the effective interest rate on the debt; or
- (2) 16 percent.

B. Variable or adjustable rates for allowable debt are allowed subject to item A. For each allowable debt with a variable or adjustable rate, the effective interest rate must be computed by dividing the interest expense for the reporting year by the average allowable debt computed under subpart 5, item D.

C. For rate years beginning on July 1, 1985, and July 1, 1986, the effective interest rate for debts incurred before October 1, 1984, is allowed if the interest rate is not in excess of what the borrower would have had to pay in an arms length transaction in the market in which the debt was incurred. For rate years beginning after June 30, 1987, the effective interest rate for debts incurred before October 1, 1984, is allowed subject to item A.

Subp. 7. **Allowable interest expense.** The commissioner shall allow or disallow interest expense including points, finance charges, and amortization bond premiums or discounts under items A to G.

A. Interest expense is allowed only on the debt which is allowed under subpart 5 and within the interest rate limits in subpart 6.

B. A nonprofit nursing facility shall use its restricted funds to purchase or replace capital assets to the extent of the cost of those capital assets before it borrows funds for the purchase or replacement of those capital assets. For purposes of this item and part 9549.0035, subpart 2, a restricted fund is a fund for which use is restricted to the purchase or replacement of capital assets by the donor or by the nonprofit nursing facility's board.

C. Construction period interest expense must be capitalized as a part of the cost of the building. The period of construction extends to the earlier of either the first day a resident is admitted to the nursing facility, or the date the nursing facility is certified to receive medical assistance recipients.

D. Interest expense for allowable debts entered into after May 22, 1983, is allowed for the portion of the debt which together with all outstanding allowable debt does not exceed 100 percent of the most recent allowable appraised value as determined in subparts 1 to 4.

E. Increases in interest expense after May 22, 1983, which are the result of changes in ownership or reorganization of provider entities, are not allowable.

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F. Except as provided in item G, increases in total interest expense which are the result of refinancing of debt after May 22, 1983, are not allowed. The total interest expense must be computed as the sum of the annual interest expense over the remaining term of the debt refinanced.

G. Increases in total interest expense which result from refinancing a balloon payment on allowable debt after May 22, 1983, shall be allowed according to subitems (1) to (3).

(1) The interest rate on the refinanced debt shall be limited under subpart 6, item A.

(2) The refinanced debt shall not exceed the balloon payment.

(3) The term of the refinanced debt must not exceed the term of the original debt computed as though the balloon payment did not exist.

Subp. 10. **Equipment allowance.** For rate years beginning after June 30, 1985, the equipment allowance must be computed according to items A to E.

A. The historical cost of depreciable equipment for nursing facilities which do not have costs for operating leases for depreciable equipment in excess of \$10,000 during the reporting year ending September 30, 1984, is determined under subitem (1) or (2).

(1) The total historical cost of depreciable equipment reported on the nursing facility's audited financial statement for the reporting year ending September 30, 1984, must be multiplied by 70 percent. The product is the historical cost of depreciable equipment.

(2) The nursing facility may submit an analysis which classifies the historical cost of each item of depreciable equipment reported on September 30, 1984. The analysis must include an itemized description of each piece of depreciable equipment and its historical cost. The sum of the historical cost of each piece of equipment is the total historical cost of depreciable equipment for that nursing facility.

For purposes of this item, a hospital attached nursing facility shall use the allocation method in subpart 1 to stepdown the historical cost of depreciable equipment.

B. The historical cost per bed of depreciable equipment for each nursing facility must be computed by dividing the total historical cost of depreciable equipment determined in item A by the nursing facility's total number of licensed beds on September 30, 1984.

C. All nursing facilities must be grouped in one of the following:

(1) nursing facilities with total licensed beds of less than 61 beds;

(2) nursing facilities with total licensed beds of more than 60 beds and less than 101 beds; or

(3) nursing facilities with more than 100 total licensed beds.

D. Within each group determined in item C, the historical cost per bed for each nursing facility determined in item B must be ranked and the median historical cost per bed established.

E. The median historical cost per bed for each group in item C as determined in item D must be increased by ten percent. For rate years beginning after June 30, 1986, this amount shall be adjusted annually by the percentage change indicated by the urban consumer price index for Minneapolis-Saint Paul, as published by the Bureau of Labor Statistics, new series index (1967=100) for the two previous Decembers. This index is incorporated by reference and available at the James J. Hill Reference Library, Saint Paul, Minnesota.

F. The equipment allowance for each group in item C shall be the amount computed in item E multiplied by 15 percent and divided by 350.

Subp. 11. **Capacity days.** The number of capacity days is determined under items A to C.

A. The number of capacity days is determined by multiplying the number of licensed beds in the nursing facility by the number of days in the nursing facility's reporting period.

B. Except as in item C, nursing facilities shall increase the number of capacity days by multiplying the number of licensed single bedrooms by 0.5 and by the number of days in the nursing facility's reporting period.

C. The commissioner shall waive the requirements of item B if a nursing facility agrees in writing to subitems (1) to (3).

(1) The nursing facility shall agree not to request a private room payment in part 9549.0070, subpart 3 for any of its medical assistance residents in licensed single bedrooms.

(2) The nursing facility shall agree not to use the single bedroom replacement cost new limit for any of its licensed single bedrooms in the computation of the allowable appraised value in subpart 4.

(3) The nursing facility shall agree not to charge any private paying resident in a single bedroom a payment rate that exceeds the amount calculated under units (a) to (c).

(a) The nursing facility's average total payment rate shall be determined by multiplying the total payment rate for each case mix resident class by the number of resident days for that class in the nursing facility's reporting year and dividing the sum of the resident class amounts by the total number of resident days in the nursing facility's reporting year.

(b) The nursing facility's maximum single bedroom adjustment must be determined by multiplying its average total payment rate calculated under unit (a) by ten percent.

(c) The nursing facility's single bedroom adjustment which must not exceed the amount computed in unit (b) must be added to each total payment rate established in Minnesota Statutes, sections 256B.431, 256B.434, and 256B.441, to determine the nursing facility's single bedroom payment rates.

Subp. 14. **Determination of interim and settle-up payment rates.** The commissioner shall determine interim and settle-up payment rates according to items A to J.

A. A newly constructed nursing facility, or one with a capacity increase of 50 percent or more, may submit a written application to the commissioner to receive an interim payment rate. The nursing facility shall submit cost reports and other supporting information as required in parts 9549.0010 to 9549.0080 for the reporting year in which the nursing facility plans to begin operation at least 60 days before the first day a resident is admitted to the newly constructed nursing facility bed. The nursing facility shall state the reasons for noncompliance with parts 9549.0010 to 9549.0080. The effective date of the interim payment rate is the earlier of either the first day a resident is admitted to the newly constructed nursing facility or the date the nursing facility bed is certified for medical assistance. The interim payment rate for a newly constructed nursing facility, or a nursing facility with a capacity increase of 50 percent or more, is determined under items B to D.

B. The interim payment rate must not be in effect more than 17 months. When the interim payment rate begins between May 1 and September 30, the nursing facility shall file settle-up cost reports for the period from the beginning of the interim payment rate through September 30 of the following year. When the interim payment rate begins between October 1 and April 30, the nursing facility shall file settle-up cost reports for the period

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from the beginning of the interim payment rate to the first September 30 following the beginning of the interim payment rate.

C. The interim payment rate for a nursing facility which commenced construction prior to July 1, 1985, is determined by 12 MCAR S 2.05014 [Temporary] except that capital assets must be classified under parts 9549.0010 to 9549.0080.

D. The interim property-related payment rate for a nursing facility which commences construction after June 30, 1985, is determined as follows:

(1) At least 60 days before the first day a resident is admitted to the newly constructed nursing facility bed and upon receipt of written application from the nursing facility, the commissioner shall establish the nursing facility's appraised value according to subparts 1 and 4.

(2) The nursing facility shall project the allowable debt and the allowable interest expense according to subparts 5 and 7.

(3) The interim building capital allowance must be determined under subpart 8 or 9.

(4) The equipment allowance during the interim period must be the equipment allowance computed in accordance with subpart 10 which is in effect on the effective date of the interim property-related payment rate.

(5) The interim property-related payment rate must be the sum of subitems (3) and (4).

(6) Anticipated resident days may be used instead of 96 percent capacity days.

E. The settle-up property-related payment rate and the property-related payment rate for the nine months following the settle up for a nursing facility which commenced construction before July 1, 1985, is determined under 12 MCAR S 2.05014 [Temporary]. The property-related payment rate for the rate year beginning July 1 following the nine month period is determined under part 9549.0060.

F. The settle-up property-related payment rate for a nursing facility which commenced construction after June 30, 1985, shall be established as follows:

(1) The appraised value determined in item D, subitem (1), must be updated in accordance with subpart 2, item B prorated for each rate year, or portion of a rate year, included in the interim payment rate period.

(2) The nursing facility's allowable debt, allowable interest rate, and allowable interest expense for the interim rate period shall be computed in accordance with subparts 5, 6, and 7.

(3) The settle-up building capital allowance shall be determined in accordance with subpart 8 or 9.

(4) The equipment allowance shall be updated in accordance with subpart 10 prorated for each rate year, or portion of a rate year, included in the interim payment rate period.

(5) The settle-up property-related payment rate must be the sum of subitems (3) and (4).

(6) Resident days may be used instead of 96 percent capacity days.

G. The property-related payment rate for the nine months following the settle up for a nursing facility which commenced construction after June 30, 1985, shall be established in accordance with item F except that 96 percent capacity days must be used.

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H. The property-related payment rate for the rate year beginning July 1 following the nine month period in item G must be determined under this part.

I. A newly constructed nursing facility or one with a capacity increase of 50 percent or more must continue to receive the interim property-related payment rate until the settle-up property-related payment rate is determined under this subpart.

J. The interim real estate taxes and special assessments payment rate shall be established using the projected real estate taxes and special assessments cost divided by anticipated resident days. The settle-up real estate taxes and special assessments payment rate shall be established using the real estate taxes and special assessments divided by resident days. The real estate and special assessments payment rate for the nine months following the settle up shall be equal to the settle-up real estate taxes and special assessments payment rate.