

1.1 A bill for an act

1.2 relating to human services; increasing the nursing home surcharge; authorizing
1.3 negotiated rate increases for certain nursing facilities; increasing reimbursement
1.4 for nursing facility fixed costs; reducing the reimbursement rates for nursing
1.5 facilities with high operating rates; limiting growth in medical assistance waiver
1.6 slots; amending Minnesota Statutes 2008, sections 256.9657, subdivision 1;
1.7 256B.441, subdivisions 51a, 53, by adding a subdivision.

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

1.9 Section 1. Minnesota Statutes 2008, section 256.9657, subdivision 1, is amended to
1.10 read:

1.11 Subdivision 1. **Nursing home license surcharge.** (a) Effective July 1, 1993,
1.12 each non-state-operated nursing home licensed under chapter 144A shall pay to the
1.13 commissioner an annual surcharge according to the schedule in subdivision 4. The
1.14 surcharge shall be calculated as \$620 per licensed bed. If the number of licensed beds
1.15 is ~~reduced~~ changed, the surcharge shall be based on the number of remaining licensed
1.16 beds the second month following the receipt of timely notice by the commissioner of
1.17 human services that the number of beds have been delicensed has been changed. The
1.18 nursing home must notify the commissioner of health in writing when the number of beds
1.19 ~~are delicensed~~ is changed. The commissioner of health must notify the commissioner
1.20 of human services within ten working days after receiving written notification. If the
1.21 notification is received by the commissioner of human services by the ~~15th~~ third of the
1.22 month, the invoice for the second following month must be ~~reduced~~ changed to recognize
1.23 the ~~delicensing~~ change in the number of beds. ~~Beds on layaway status continue to be~~
1.24 ~~subject to the surcharge.~~ The commissioner of human services must acknowledge a

S.F. No. 2728, as introduced - 86th Legislative Session (2009-2010) [10-4966]

2.1 medical care surcharge appeal within 30 days of receipt of the written appeal from the
2.2 provider.

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

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

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

2.8 (e) Effective July 15, 2010, the surcharge under paragraph (d) shall be increased
2.9 to \$3,300.

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

2.12 ~~(f) (g) Between April 1, 2002, and August 15, 2004~~ July 1, 2010, and June 30,
2.13 2011, a facility governed by this subdivision may elect to assume full participation in
2.14 the medical assistance program by agreeing to comply with all of the requirements of
2.15 the medical assistance program, including the rate equalization law in section 256B.48,
2.16 subdivision 1, paragraph (a), and all other requirements established in law or rule, and
2.17 to begin intake of new medical assistance recipients. Rates will be determined under
2.18 Minnesota Rules, parts 9549.0010 to 9549.0080. Notwithstanding section 256B.431,
2.19 subdivision 27, paragraph (i), rate calculations will be subject to limits as prescribed
2.20 in rule and law. Other than the adjustments in sections 256B.431, subdivisions 30 and
2.21 32; 256B.437, subdivision 3, paragraph (b), Minnesota Rules, part 9549.0057, and any
2.22 other applicable legislation enacted prior to the finalization of rates, facilities assuming
2.23 full participation in medical assistance under this paragraph are not eligible for any rate
2.24 adjustments until the July 1 following their settle-up period.

2.25 Sec. 2. Minnesota Statutes 2008, section 256B.441, subdivision 51a, is amended to
2.26 read:

2.27 Subd. 51a. **Exception allowing contracting for specialized care.** (a) For rate years
2.28 beginning on or after October 1, 2010, and prior to October 1, 2016, the commissioner
2.29 may negotiate rate adjustments for nursing facilities that provide specialized care and that
2.30 receive rate adjustments under subdivision 60. These rate adjustments may restore to
2.31 these facilities a portion of the amount of the rate reduction resulting from subdivision
2.32 60. The commissioner shall publish a request for proposals and may negotiate these
2.33 rate adjustments according to paragraph (c), at a cost to the general fund not to exceed
2.34 a total of \$300,000 per year plus the value of the rate reductions these facilities receive
2.35 under subdivision 60.

3.1 **(b)** For rate years beginning on or after October 1, 2016, the commissioner may
3.2 negotiate increases to the care-related limit for nursing facilities that provide specialized
3.3 care, at a cost to the general fund not to exceed \$600,000 per year. The commissioner
3.4 shall publish a request for proposals annually, and may negotiate increases to the limits
3.5 that shall apply for either one or two years before the increase shall be subject to a new
3.6 proposal and negotiation. The care-related limit may be increased by up to 50 percent.

3.7 **(c)** In selecting facilities with which to negotiate, the commissioner shall
3.8 consider:

3.9 (1) the diagnoses or other circumstances of residents in the specialized program that
3.10 require care that costs substantially more than the RUG's rates associated with those
3.11 residents;

3.12 (2) the nature of the specialized program or programs offered to meet the needs
3.13 of these individuals; and

3.14 (3) outcomes achieved by the specialized program.

3.15 Sec. 3. Minnesota Statutes 2008, section 256B.441, subdivision 53, is amended to read:

3.16 Subd. 53. **Calculation of payment rate for external fixed costs.** The commissioner
3.17 shall calculate a payment rate for external fixed costs.

3.18 (a) For a facility licensed as a nursing home, the portion related to section 256.9657
3.19 shall be equal to ~~\$8.86~~ \$10.52. For a facility licensed as both a nursing home and a
3.20 boarding care home, the portion related to section 256.9657 shall be equal to ~~\$8.86~~ \$10.52
3.21 multiplied by the result of its number of nursing home beds divided by its total number of
3.22 licensed beds.

3.23 (b) The portion related to the licensure fee under section 144.122, paragraph (d),
3.24 shall be the amount of the fee divided by actual resident days.

3.25 (c) The portion related to scholarships shall be determined under section 256B.431,
3.26 subdivision 36.

3.27 (d) The portion related to long-term care consultation shall be determined according
3.28 to section 256B.0911, subdivision 6.

3.29 (e) The portion related to development and education of resident and family advisory
3.30 councils under section 144A.33 shall be \$5 divided by 365.

3.31 (f) The portion related to planned closure rate adjustments shall be as determined
3.32 under sections 256B.436 and 256B.437, subdivision 6. Planned closure rate adjustments
3.33 that take effect before October 1, 2014, shall no longer be included in the payment rate
3.34 for external fixed costs beginning October 1, 2016. Planned closure rate adjustments that
3.35 take effect on or after October 1, 2014, shall no longer be included in the payment rate

4.1 for external fixed costs beginning on October 1 of the first year not less than two years
4.2 after their effective date.

4.3 (g) The portions related to property insurance, real estate taxes, special assessments,
4.4 and payments made in lieu of real estate taxes directly identified or allocated to the nursing
4.5 facility shall be the actual amounts divided by actual resident days.

4.6 (h) The portion related to the Public Employees Retirement Association shall be
4.7 actual costs divided by resident days.

4.8 (i) The single bed room incentives shall be as determined under section 256B.431,
4.9 subdivision 42. Single bed room incentives that take effect before October 1, 2014, shall
4.10 no longer be included in the payment rate for external fixed costs beginning October 1,
4.11 2016. Single bed room incentives that take effect on or after October 1, 2014, shall no
4.12 longer be included in the payment rate for external fixed costs beginning on October 1 of
4.13 the first year not less than two years after their effective date.

4.14 (j) The payment rate for external fixed costs shall be the sum of the amounts in
4.15 paragraphs (a) to (i).

4.16 **EFFECTIVE DATE.** This section is effective July 1, 2010.

4.17 Sec. 4. Minnesota Statutes 2008, section 256B.441, is amended by adding a
4.18 subdivision to read:

4.19 **Subd. 60. Rate adjustments effective October 1, 2010.** (a) For the rate year
4.20 beginning October 1, 2010, nursing facility operating payment rates shall be reduced
4.21 for facilities that have the highest operating payment rates within their peer group. The
4.22 commissioner shall calculate the rate reductions in accordance with paragraphs (b) to (d).

4.23 (b) Within each peer group determine the operating payment rate at the 60th
4.24 percentile at a resource utilization group (RUGs) weight of 1.00.

4.25 (c) Each nursing facility with an operating payment rate greater than the 60th
4.26 percentile at a RUGs weight of 1.00 shall have the difference between its rates at a RUGs
4.27 weight of 1.00 and the 60th percentile amount determined in paragraph (b) reduced by
4.28 an amount equal to the sum of:

4.29 (1) 25 percent of the amount that is less than or equal to \$5;

4.30 (2) 37.5 percent of the amount of the difference that exceeds \$5 but is less than or
4.31 equal to \$10;

4.32 (3) 50 percent of the amount of the difference that exceeds \$10 but is less than or
4.33 equal to \$15;

4.34 (4) 62.5 percent of the amount of the difference that exceeds \$15 but is less than
4.35 or equal to \$20; and

5.1 (5) 75 percent of the amount of the difference that exceeds \$20.

5.2 (d) The reductions computed in paragraph (c), clauses (1) to (5), shall be apportioned
5.3 to the direct care per diem, the other care-related per diem, the other operating per diem,
5.4 and the efficiency incentive in accordance with clauses (1) to (3):

5.5 (1) the commissioner shall determine the percentage of the operating payment rate
5.6 determined in subdivisions 55 and 56, at a RUGs weight of 1.00 for October 1, 2010, that
5.7 is for the direct care per diem, the other care-related per diem, the other operating per
5.8 diem, and the efficiency incentive;

5.9 (2) the percentages determined in clause (1) shall be multiplied by the operating
5.10 payment rate reduction determined in paragraph (c); and

5.11 (3) for each RUGs level, the operating payment rate shall be reduced in accordance
5.12 with items (i) and (ii):

5.13 (i) the direct care rate reduction determined for a RUGs weight of 1.00 determined
5.14 in clause (2) multiplied by the corresponding weight in subdivision 14; and

5.15 (ii) the other care-related per diem, the other operating per diem, and the efficiency
5.16 incentive rate reduction determined for a RUGs weight of 1.00 determined in clause (2).

5.17 **Sec. 5. GROWTH IN DEVELOPMENTAL DISABILITIES, TRAUMATIC**
5.18 **BRAIN INJURY, AND COMMUNITY ALTERNATIVES FOR DISABLED**
5.19 **INDIVIDUALS WAIVERS.**

5.20 Notwithstanding the provisions of Laws 2009, chapter 79, article 13, section 3,
5.21 subdivision 8, the commissioner of human services shall implement the following
5.22 limitations on caseload growth in the developmental disabilities, traumatic brain injury,
5.23 and community alternatives for disabled individuals waivers:

5.24 (1) the commissioner shall manage the growth in the developmental disabilities
5.25 waiver by limiting the allocations included in the February 2009 forecast to five additional
5.26 diversion allocations each month for the period from January 1, 2011, to December 31,
5.27 2011. Additional allocations must be made available for transfers authorized by the
5.28 commissioner from the personal care assistance program of individuals having a home
5.29 care rating of CS, MT, or HL; and

5.30 (2) during the fiscal year beginning on July 1, 2010, the commissioner shall allocate
5.31 money for home and community-based waiver programs under Minnesota Statutes,
5.32 section 256B.49, to ensure a reduction in state spending that is equivalent to limiting the
5.33 caseload growth of the traumatic brain injury waiver to three allocations per month each
5.34 year of the biennium and the community alternatives for disabled individuals waiver to 75
5.35 allocations per month each year of the biennium. Limits do not apply:

S.F. No. 2728, as introduced - 86th Legislative Session (2009-2010) [10-4966]

6.1 (i) when there is an approved plan for nursing facility bed closures for individuals
6.2 under age 65 who require relocation due to the bed closure; or

6.3 (ii) to transfers authorized by the commissioner from the personal care assistance
6.4 program of individuals having a home care rating of CS, MT, or HL.

6.5 Priorities for the allocation of funds must be for individuals anticipated to be discharged
6.6 from institutional settings or who are at imminent risk of a placement in an institutional
6.7 setting.