

1.1 ..... moves to amend H.F. No. 1353 as follows:

1.2 Page 1, after line 8, insert:

1.3 "Sec. .... Minnesota Statutes 2016, section 144.0722, subdivision 1, is amended to read:

1.4 Subdivision 1. **Resident reimbursement classifications.** The commissioner of health  
1.5 shall establish resident reimbursement classifications based upon the assessments of residents  
1.6 of nursing homes and boarding care homes conducted under section 144.0721, or under  
1.7 rules established by the commissioner of human services under ~~sections 256B.41 to 256B.48~~  
1.8 chapter 256R. The reimbursement classifications established by the commissioner must  
1.9 conform to the rules established by the commissioner of human services."

1.10 Page 1, after line 13, insert:

1.11 "Sec. .... Minnesota Statutes 2016, section 144.0724, subdivision 2, is amended to read:

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

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

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

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

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

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

2.5 (f) "Resource utilization groups" or "RUG" means the system for grouping a nursing  
2.6 facility's residents according to their clinical and functional status identified in data supplied  
2.7 by the facility's minimum data set.

2.8 (g) "Activities of daily living" means grooming, dressing, bathing, transferring, mobility,  
2.9 positioning, eating, and toileting.

2.10 (h) "Nursing facility level of care determination" means the assessment process that  
2.11 results in a determination of a resident's or prospective resident's need for nursing facility  
2.12 level of care as established in subdivision 11 for purposes of medical assistance payment  
2.13 of long-term care services for:

2.14 (1) nursing facility services under section 256B.434 or ~~256B.441~~ chapter 256R;

2.15 (2) elderly waiver services under section 256B.0915;

2.16 (3) CADI and BI waiver services under section 256B.49; and

2.17 (4) state payment of alternative care services under section 256B.0913.

2.18 Sec. .... Minnesota Statutes 2016, section 144.0724, subdivision 9, is amended to read:

2.19 Subd. 9. **Audit authority.** (a) The commissioner shall audit the accuracy of resident  
2.20 assessments performed under section ~~256B.438~~ 256R.17 through any of the following: desk  
2.21 audits; on-site review of residents and their records; and interviews with staff, residents, or  
2.22 residents' families. The commissioner shall reclassify a resident if the commissioner  
2.23 determines that the resident was incorrectly classified.

2.24 (b) The commissioner is authorized to conduct on-site audits on an unannounced basis.

2.25 (c) A facility must grant the commissioner access to examine the medical records relating  
2.26 to the resident assessments selected for audit under this subdivision. The commissioner may  
2.27 also observe and speak to facility staff and residents.

2.28 (d) The commissioner shall consider documentation under the time frames for coding  
2.29 items on the minimum data set as set out in the Long-Term Care Facility Resident Assessment  
2.30 Instrument User's Manual published by the Centers for Medicare and Medicaid Services.

3.1 (e) The commissioner shall develop an audit selection procedure that includes the  
3.2 following factors:

3.3 (1) Each facility shall be audited annually. If a facility has two successive audits in which  
3.4 the percentage of change is five percent or less and the facility has not been the subject of  
3.5 a special audit in the past 36 months, the facility may be audited biannually. A stratified  
3.6 sample of 15 percent, with a minimum of ten assessments, of the most current assessments  
3.7 shall be selected for audit. If more than 20 percent of the RUG-IV classifications are changed  
3.8 as a result of the audit, the audit shall be expanded to a second 15 percent sample, with a  
3.9 minimum of ten assessments. If the total change between the first and second samples is  
3.10 35 percent or greater, the commissioner may expand the audit to all of the remaining  
3.11 assessments.

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

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

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

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

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

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

3.23 (v) a criminal indictment alleging provider fraud;

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

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

3.26 (viii) nonsubmission of assessments;

3.27 (ix) late submission of assessments; or

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

3.29 (f) Within 15 working days of completing the audit process, the commissioner shall  
3.30 make available electronically the results of the audit to the facility. If the results of the audit  
3.31 reflect a change in the resident's case mix classification, a case mix classification notice

4.1 will be made available electronically to the facility, using the procedure in subdivision 7,  
4.2 paragraph (a). The notice must contain the resident's classification and a statement informing  
4.3 the resident, the resident's authorized representative, and the facility of their right to review  
4.4 the commissioner's documents supporting the classification and to request a reconsideration  
4.5 of the classification. This notice must also include the address and telephone number of the  
4.6 Office of Ombudsman for Long-Term Care."

4.7 Page 11, after line 33, insert:

4.8 "Sec. .... Minnesota Statutes 2016, section 144A.071, subdivision 4c, is amended to read:

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

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

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

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

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

5.1 (4) to license and certify up to 80 beds transferred from an existing state-owned nursing  
5.2 facility in Cass County to a new facility located on the grounds of the Ah-Gwah-Ching  
5.3 campus. The operating cost payment rates for the new facility shall be determined based  
5.4 on the interim and settle-up payment provisions of Minnesota Rules, part 9549.0057, and  
5.5 the reimbursement provisions of ~~section 256B.431~~ chapter 256R. The property payment  
5.6 rate for the first three years of operation shall be \$35 per day. For subsequent years, the  
5.7 property payment rate of \$35 per day shall be adjusted for inflation as provided in section  
5.8 256B.434, subdivision 4, paragraph (c), as long as the facility has a contract under section  
5.9 256B.434;

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

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

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

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

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

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

5.30 (6) to consolidate and relocate nursing facility beds to a new site in Goodhue County  
5.31 and to integrate these services with other community-based programs and services under a  
5.32 communities for a lifetime pilot program and comprehensive plan to create innovative  
5.33 responses to the aging of its population. Two nursing facilities, one for 84 beds and one for  
5.34 65 beds, in the city of Red Wing licensed on July 1, 2015, shall be consolidated into a newly

6.1 renovated 64-bed nursing facility resulting in the delicensure of 85 beds. Notwithstanding  
6.2 the carryforward of the approval authority in section 144A.073, subdivision 11, the funding  
6.3 approved in April 2009 by the commissioner of health for a project in Goodhue County  
6.4 shall not carry forward. The closure of the 85 beds shall not be eligible for a planned closure  
6.5 rate adjustment under section ~~256B.437~~ 256R.40. The construction project permitted in this  
6.6 clause shall not be eligible for a threshold project rate adjustment under section 256B.434,  
6.7 subdivision 4f. The payment rate for external fixed costs for the new facility shall be  
6.8 increased by an amount as calculated according to items (i) to (vi):

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

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

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

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

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

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

6.27 (b) Projects approved under this subdivision shall be treated in a manner equivalent to  
6.28 projects approved under subdivision 4a."

6.29 Page 14, after line 27, insert:

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

6.31 Subd. 2. **Appointment of receiver, rental.** If, after hearing, the court finds that  
6.32 receivership is necessary as a means of protecting the health, safety, or welfare of a resident  
6.33 of the facility, the court shall appoint the commissioner of health as a receiver to take charge

7.1 of the facility. The commissioner may enter into an agreement for a managing agent to work  
7.2 on the commissioner's behalf in operating the facility during the receivership. The court  
7.3 shall determine a fair monthly rental for the facility, taking into account all relevant factors  
7.4 including the condition of the facility. This rental fee shall be paid by the receiver to the  
7.5 appropriate controlling person for each month that the receivership remains in effect but  
7.6 shall be reduced by the amount that the costs of the receivership provided under section  
7.7 ~~256B.495~~ 256R.52 are in excess of the facility rate. The controlling person may agree to  
7.8 waive the fair monthly rent by affidavit to the court. Notwithstanding any other law to the  
7.9 contrary, no payment made to a controlling person by any state agency during a period of  
7.10 receivership shall include any allowance for profit or be based on any formula which includes  
7.11 an allowance for profit.

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

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

7.23 **144A.154 RATE RECOMMENDATION.**

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

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

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

8.1 Page 15, line 3, after "256R.40" insert ", subdivisions 5 and 6"

8.2 Page 15, after line 3, insert:

8.3 "Sec. .... Minnesota Statutes 2016, section 144A.1888, is amended to read:

8.4 **144A.1888 REUSE OF FACILITIES.**

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

8.12 Renumber the sections in sequence and correct the internal references

8.13 Amend the title accordingly