HOUSE RESEARCH

Bill Summary

FILE NUMBER: H.F. 3144 **DATE:** May 11, 2006

Version: Second engrossment

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Subject: Assisted Living and Long-Term Care

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Section

Article 1: Assisted Living

Overview

This article makes numerous changes in the regulation of assisted living services. The article establishes requirements for assisted living services in a new chapter 144G and prohibits persons or entities from using the term "assisted living" unless they are housing with services establishments or provide some or all of the components of assisted living as specified in chapter 144G. The article also establishes consumer protection and consumer information requirements and modifies licensure categories for home care services.

1 **Assisted living bill of rights addendum.** Adds § 144A.441. Requires assisted living clients to be provided with the home care bill of rights, with a modified clause (16) that requires at least 30 days' notice of service termination by a provider (compared to 10 days' notice under the standard home care bill of rights), except that ten days' notice is required if services are terminated due to nonpayment. Provides a January 1, 2007, effective date.

2 **Termination of home care services for assisted living clients.** Adds § 144A.442. Specifies the information that an arranged home care provider that is not also Medicare certified must provide to an assisted living client and the legal or designated representative, if any, with written termination of a service agreement or service plan. Provides a January 1,

Section

2007, effective date.

3 **Class F provider.** Amends § 144A.4605. Replaces references to "assisted living home care provider" with the term "class F home care provider" (this is related to the new requirements for assisted living and title protection for the term specified elsewhere in the bill). Replaces references to "class E" providers with the term "class B" provider (this is related to elimination of the class E category in the bill). Also eliminates obsolete language related to adult foster care providers. Provides a January 1, 2007, effective date.

4 **Arranged home care provider.** Amends § 144D.01, by adding subd. 2a. Defines "arranged home care provider" as a licensed home care provider that provides services to some or all residents of a housing with services establishment and that is either the establishment itself or another entity with which the establishment has an arrangement. Provides a January 1, 2007, effective date.

5 **Assisted living facility or assisted living residence definition for purposes of long-term care insurance.** Amends § 144D.015. Makes conforming changes in a provision allowing long-term care insurance policies to use the terms "assisted living facility" and "assisted living residence," by providing an exemption from the requirements of chapter 144G (the new assisted living chapter established by the bill) and adding a reference to arranged home care provider. Provides a January 1, 2007, effective date.

6 **Registration required.** Amends § 144D.02. Updates a reference to housing with services establishments. Provides a January 1, 2007, effective date.

7 **Surcharge for injunctive relief actions.** Amends § 144D.03, by adding subd. 1a. Requires the commissioner to assess each housing with services establishment that offers or provides assisted living a surcharge on the annual registration fee, to pay for costs related to bringing actions for injunctive relief. Requires the amount of the surcharge to be based on the client capacity of an establishment. Requires the commissioner to adjust the surcharge annually as necessary to recover the projected costs of bringing actions for injunctive relief.

8 **Registration information.** Amends § 144D.03, subd. 2. Updates a reference to housing with services establishments. Provides a January 1, 2007, effective date.

9 **Housing with services contracts.** Amends § 144D.04. Requires housing with services contracts to include a statement on the availability of and contact information for long-term care consultation services. Rephrases existing language and makes technical changes. Provides a January 1, 2007, effective date.

10 **Information concerning arranged home care providers.** Adds § 144D.045. Requires housing with services establishments with one or more arranged home care providers to arrange to have those providers deliver to prospective residents contact information, a description of the process by which the home care service agreement or plan can be modified, amended, or terminated, information on billing and payment procedures, and information on service limits. Provides a January 1, 2007, effective date.

11 **Authority of commissioner.** Amends § 144D.05. Updates a reference to housing with services establishments. Provides a January 1, 2007, effective date.

12 **Establishments that serve persons with Alzheimer's disease or related disorders.** Amends § 144D.065. Updates a reference to housing with services establishments. Provides a January 1, 2007, effective date.

13 **Definitions.** Adds § 144G.01. Defines the following terms - assisted living, assisted living client, and commissioner.

14 **Assisted living; protected title; restriction on use; regulatory functions.** Adds §

Section

144G.02.

Subdivision 1. Protected title; restriction on use. Prohibits use of the phrase "assisted living" by a person or entity, unless the person or entity is a housing with services establishment that meets the requirements of this chapter, or the person or entity provides some or all of the components of assisted living. Limits use of the phrase to the context of participation in assisted living that meets the requirements of this chapter. Requires a housing with services establishment that offers or provides assisted living that is not made available to residents in all units to identify the number or location of the units in which assisted living is available, and prohibits the establishment from using the term "assisted living" in its name.

Subd. 2. Authority of commissioner. (a) Allows the commissioner, upon receipt of information related to lack of compliance with legal requirements, to make appropriate referrals to other entities.

(b) States that the commissioner has standing to bring actions for injunctive relief in district court against housing with services establishments and arranged home care providers, to compel compliance with this chapter. Specifies that this authority is in addition to the commissioner's existing regulatory authority with respect to licensed home care providers and housing with services establishments, and that other sanctions are available.

Provides a January 1, 2007, effective date.

15 **Assisted living requirements.** Adds § 144G.03.

Subd. 1. Verification in annual registration. Requires a registered housing with services establishment using the phrase "assisted living" to verify compliance with the provisions of chapter 144G in its annual registration.

Subd. 2. Minimum requirements for assisted living. (a) Allows assisted living to be provided only to individuals residing in a housing with services establishment. Allows the person or entity offering assisted living to define the available services and offer assisted living to all or some residents. Allows services to be provided directly by a housing with services establishment or under arrangement.

(b) States that a person or entity may use the phrase "assisted living" only with respect to a housing with services establishment, or a service, service package, or program available within an establishment, that at a minimum:

(1) provides or makes available health related services under a class A or class F home care license. These must include assistance with self-administration of medication or medication administration and assistance with at least three activities of daily living;

(2) provides assessments of the physical and cognitive needs of assisted living clients

Section

by a registered nurse;

(3) has and maintains a system for delegation of health care activities to unlicensed assistive health care personnel by a registered nurse;

(4) provides staff access to an on-call registered nurse 24 hours per day, seven days per week;

(5) has and maintains a system to check on each assisted living client at least daily;

(6) provides a means for clients to request assistance for health and safety needs 24 hours per day, seven days per week;

(7) has a person or persons available 24 hours per day, seven days per week, to respond to requests of clients for assistance with health or safety needs, who meet specified criteria;

(8) offers to provide or make available specified supportive services to clients; and

(9) makes available to prospective and current clients information consistent with the uniform format and required components adopted by the commissioner under section 144G.06, within six months of availability.

Subd. 3. Exemption from awake-staff requirement. Provides an exemption from the 24-hour awake staff requirement for housing with services establishments that have a maximum capacity of 12 or fewer clients and that meet other specified requirements.

Subd. 4. Nursing assessment. Specifies requirements related to nursing assessments of prospective residents by registered nurses.

Subd. 5. Assistance with arranged home care provider. Requires housing with services establishments to provide assisted living clients with information and assistance related to addressing concerns about services provided by arranged home care providers.

Subd. 6. Termination of housing with services contract. Specifies information that a housing with services establishment must provide to an assisted living client, if the establishment terminates a housing with services contract.

Provides a January 1, 2007, effective date.

16 **Reservation of rights.** Adds § 144G.04.

Subd. 1. Use of services. Provides that nothing in the chapter requires an assisted living client to utilize any service provided or made available in assisted living.

Section

Subd. 2. Housing with services contracts. Provides that nothing in the chapter requires a housing with services establishment to execute or refrain from terminating a contract with a prospective or current resident who is unable or unwilling to meet the requirements of residency.

Subd. 3. Provision of services. Provides that nothing in the chapter requires the arranged home care provider to offer or continue to provide services to a prospective or current resident whose needs cannot be met.

Subd. 4. Altering operations; service packages. Provides that nothing in the chapter requires a housing with services establishment or arranged home care provider offering assisted living to fundamentally alter the nature of its operations to accommodate a client's need for facilities or services, or to refrain from requiring, as a condition of residency, that a client pay for a package of assisted living services even if the client does not utilize all or some of the services.

Provides a January 1, 2007, effective date.

17 **Reimbursement under assisted living service packages.** Adds § 144G.05. Provides that the requirements for the Elderly Waiver program's assisted living payment rates continue to be effective and providers who do not meet the requirements of this chapter may continue to receive MA payments as long as they meet federal requirements for assisted living plus. Also states that providers of assisted living under the Community Alternatives for Disabled Individuals (CADI) and Traumatic Brain Injury (TBI) waivers shall continue to receive payment as long as they continue to meet the definitions and standards for assisted living and assisted living plus in the federally approved waiver plan. Provides a January 1, 2007, effective date.

18 **Uniform consumer information guide.** Adds § 144G.06. (a) Requires the commissioner of health to establish an advisory committee to present recommendations on a format for a guide to be used by individual providers of assisted living, and requirements for informing assisted living clients of their legal rights.

(b) Requires the commissioner, after reviewing the recommendations of the advisory committee, to adopt a uniform guide format and the required components of materials to be used by providers to inform clients of their legal rights, and to make the format and components available to providers.

19 **Revisor's instructions.** (a) Requires the revisor to strike all references to "Class E assisted living home care licenses" and similar terms in Minnesota Rules, chapters 4668 and 4669, and make related changes.

(b) Requires the revisor to change the term "assisted living home care provider" and similar terms to "Class F home care provider" and similar terms, in Minnesota Rules, chapter 4668, and make related changes.

Provides a January 1, 2007, effective date.

20 **Appropriation; assisted living.** Appropriates money from the state government special revenue fund to the commissioner of health for costs related to bringing actions for injunctive relief related to assisted living. Increases the state government special revenue

Section

fund base.

21 **Repealer.** Repeals Minnesota Rules, part 4668.0215, effective January 1, 2007 (a provision related to Class E assisted living home care providers).

Article 2: Long-Term Care

Overview

This article contains various provisions related to long-term care. This article requires quarterly assessments of nursing facility residents, modifies criteria for community-based provider scholarships, establishes procedures for nursing facility property reimbursement, modifies the nursing facility planned closure process, provides additional incentive-based payments for nursing facilities, and makes other changes.

1 1 **Resident reimbursement classifications.** Amends § 144.0724, subd. 3. Corrects a reference to hemiplegia/hemiparesis in the section of law listing the nursing facility resident case-mix groups.

2 **Resident assessment schedule.** Amends § 144.0724, subd. 4. Beginning October 1, 2006, requires all quarterly assessments to be used to determine resident case mix classifications for reimbursement.

3 **Definitions.** Amends § 144A.071, subd. 1a. Updates language defining the completion date for a nursing facility construction project, by replacing references to the "certificate of occupancy" with references to "clearance for the construction project" and adding a reference to construction project assets.

4 **Exceptions for replacement beds.** Amends § 144A.071, subd. 4a. Allows beds placed on layaway status as part of a previous statutory exception to the moratorium to be removed from that status if this removal is part of a project approved by the commissioner under the competitive moratorium exception process.

5 **Use of fines.** Amends § 144A.10, by adding subd. 6e. Requires the commissioner of health, when determining the use of or providing recommendations for the use of fines collected from nursing facilities, to include two representatives of the nursing home industry and two consumer representatives in the process of developing or preparing information, reviews, or recommendations.

6 **Definitions.** Amends § 144A.161, subd. 1. Replaces the term "local agency" with the term "county social services agency," in a section dealing with nursing facility resident relocation. This change in terminology is also made in other subdivisions of the section.

7 **Scope.** Amends § 144A.161, by adding subd. 1a. Specifies that when a facility is undertaking closure, curtailment, reduction, or change in operations, the facility and the county social services agency must comply with the requirements of this section.

8 **Initial notice from licensee.** Amends § 144A.161, subd. 2. Requires facilities to inform prospective residents of the intent to close or curtail, reduce, or change operations, and of the relocation plan. Also makes a change in terminology.

9 **Planning process.** Amends § 144A.161, subd. 3. Requires the relocation plan to identify the steps that will be taken to address relocation needs of residents who may be difficult to place due to specialized care needs. Also changes terminology.

10 **Responsibilities of licensee for resident relocations.** Amends § 144A.161, subd. 4.

Section

Changes terminology.

11 **Licensee responsibilities prior to relocation.** Amends § 144A.161, subd. 5. Specifies additional requirements for the summary document that must be prepared for each resident and provided to the county social services agency. Also changes terminology.

12 **Licensee responsibilities to provide notice.** Amends § 144A.161, subd. 5a. Changes terminology.

13 **Licensee responsibility regarding placement information.** Amends § 144A.161, subd. 5c. Changes terminology.

14 **Responsibilities of the licensee during relocation.** Amends § 144A.161, subd. 6. Requires licensees to submit weekly rather than biweekly status reports, and changes terminology.

15 **Responsibilities of county social service agency.** Amends § 144A.161, subd. 8. Provides that the requirement that a member of the county social services agency staff visit certain relocated residents does not apply when a facility moved to a new location and residents chose to move to that location, nor to residents admitted after notice of closure who are discharged prior to the closure. Also changes terminology.

16 **Program criteria.** Amends § 256B.0918, subd. 1. Allows management staff with direct care duties to be eligible to receive scholarships under the home and community-based provider employee scholarship program.

17 **Provider selection criteria.** Amends § 256B.0918, subd. 3. Allows providers receiving at least $300,000 annually in MA payments to participate in the scholarship program (under current law, the dollar threshold is $500,000).

18 **Funding specifics.** Amends § 256B.0918, subd. 4. Increases the MA rate increase provided to fund scholarships from two-tenths to three-tenths.

19 **Alternate rates for nursing facilities.** Amends § 256B.434, subd. 4. Strikes a provision that allows facilities reimbursed under the alternative payment system to receive property rate adjustments for building projects. (This provision is replaced by more detailed language added in § 256B.434, subd. 4f.)

A new paragraph (d) requires the commissioner to develop additional incentive-based payments of up to 5 percent above a facility's operating payment rate for achieving contract outcomes. Allows the commissioner to solicit contract amendments and implement those that, on a competitive basis, best meet the state's policy objectives. Requires the commissioner to limit the amount of any incentive payment and the number of contract amendments within the funds appropriated. Allows incentive payments to be time-limited rate adjustments or supplemental payments. In establishing specified outcomes and related criteria, requires the commissioner to consider: successful diversion or discharge of residents to the community, adoption of new technology, improved quality as measured by the Nursing Home Report Card, reduced acute care costs, and any additional outcomes proposed by a facility that the commissioner finds desirable.

20 **Construction project rate adjustments effective October 1, 2006.** Amends § 256B.434, by adding subd. 4f. (a) Effective October 1, 2006, allows facilities reimbursed under the alternative payment system to receive a property rate adjustment for construction projects that exceed the minimum threshold of $231,000 but do not exceed the maximum threshold of $1.2 million. Specifies the requirements for counting capital assets purchased as construction costs. States that the definitions and methodologies that apply to moratorium exception projects and the cost-based (Rule 50) system are to be used unless specified

Section

otherwise, and also specifies the effective date of property rate adjustments.

(b) Allows facilities that have not converted from Rule 50 to the alternative payment system by September 30, 2006 to request rate adjustments through that date.

(c) Requires construction project rate adjustments for an individual facility to be at least 12 months apart.

(d) Specifies that capacity days are to be computed as provided under Rule 50.

(e) Provides the methodology to be used to determine the value of assets to be recognized, for total replacement and non-total replacement projects.

(f) Provides the methodology to be used to determine allowable debt, for projects approved under the competitive moratorium exception process.

(g) Provides the methodology to be used to determine allowable debt, for projects not approved through the competitive moratorium exception process.

(h) Adds interest on debt related to financing or refinancing, and interest on debt incurred in establishing a debt reserve fund, to allowed interest expenses.

(i) Provides the methodology for calculating the construction project rate adjustment. This adjustment is computed as: allowable assets minus average debt, multiplied by 5.66 percent and adding interest, and dividing this total by 95 percent of capacity days.

(j) For projects that are not a total replacement, requires the amount calculated in paragraph (i) to be adjusted for nonreimburseable areas and added to the property-related per diem.

(k) For total replacement projects, requires the amount calculated in paragraph (i) to become the new property per diem after being adjusted for nonreimburseable areas.

(l) States that no additional equipment allowance is to be provided, since allowable equipment is included in construction project costs.

(m) Allows construction project costs to be accumulated over two years, for inclusion in a future rate adjustment request.

(n) For subsequent rate years, requires the property rate that results from this subdivision to be the rate that is adjusted by the alternative payment system inflation factor.

(o) Allows construction projects to be eligible for an equity incentive.

21 **Facility rate increase effective October 1, 2007; Otter Tail County.** Amends § 256B.434, by adding subd. 4g. For the rate year beginning October 1, 2007, increases the operating rate for a 57-bed nursing facility in Otter Tail County to the 60th percentile of the operating rates of all other nursing facilities in the county.

Section

22 **Nursing facility rate increase effective October 1, 2007; Martin County.** Amends § 256B.434, by adding subd. 4h. For the rate year beginning October 1, 2007, requires the commissioner to increase the total operating payment rate for a nursing facility in Martin County licensed for 93 beds, by $5 per resident day for all case-mix classes.

23 **Applications for planned closure of nursing facilities.** Amends § 256B.437, subd. 3. For planned closure rate adjustments negotiated after March 1, 2006, removes the $2,080 per bed limit. Provides that removal of this limit does not constitute an increase in the per-bed dollar amount for purposes of the requirement that the commissioner recalculate planned closure rate adjustments if the per-bed amount is increased. Provides a retroactive effective date of March 1, 2006.

24 **Resident assessment schedule.** Amends § 256B.438, subd. 4. Requires the commissioner, effective October 1, 2006, to rebase payment rates in a facility specific, budget neutral manner, to account for the change to quarterly resident assessments for purposes of determining case mix classifications for reimbursement. States that the rebased rates apply only for the rate period October 1, 2006, through September 30, 2008. Also makes a conforming change related to the switch to all quarterly assessments.

25 **Reporting.** Amends § 256B.69, subd. 9. Requires the commissioner to develop data reporting methods in order to provide aggregate enrollee information on encounters and outcomes. Adds paragraph (b), which specifies that certain health plan data reported to the commissioners of health and commerce are public data that the commissioner shall make available and use in public reports. Specifies certain information that each health plan and county-based purchasing plan must provide to the commissioner.

26 **Alternative services; elderly and disabled persons.** Amends § 256B.69, subd. 23. Paragraph (a) allows the commissioner to contract with Medicare-approved special needs plans to provide Medicaid services. Makes a technical change.

Paragraph (f) limits expansion for MnDHO projects that include home and community-based services until January 1, 2008. Requires enrollment in integrated MnDHO programs that include home and community-based services to remain voluntary. Prohibits costs for home and community-based services included under MnDHO from exceeding costs that would have been incurred under the fee-for-service program. Requires the commissioner to involve and consult with certain groups in developing program specifications for expansion of integrated programs. Requires plans for further expansion of the MnDHO program to be presented to the chairs of the house and senate committees with jurisdiction over health and human services policy and finance by February 1, 2007.

Makes this section effective the day following final enactment.

27 **Medicare special needs plans and medical assistance basic health care for persons with disabilities.** Amends § 256B.69, by adding subd. 28. Paragraph (a) allows the commissioner to contract with qualified Medicare-approved special needs plans to provide MA basic health care services to persons with disabilities. Lists what is included in basic health care services. Specifies that enrollment in these plans for Medicaid services must be voluntary, unless a person is otherwise required to enroll in managed care.

Paragraph (b) allows the commissioner to contract, beginning January 1, 2007, with qualified Medicare special needs plans to provide basic health care services under MA to persons who are dually eligible for both Medicaid and Medicare and those Social Security

Section

beneficiaries eligible for Medicaid but in the waiting period for Medicare. Requires the commissioner to report to the chairs of the house and senate committees with jurisdiction over health and human services policy and finance by February 1, 2007, on implementation of these programs and the need for increased funding for the ombudsman for managed care and other consumer assistance and protections needed due to enrollment in managed care of persons with disabilities. Specifies when payment for Medicaid services provided under this subdivision shall be made.

Paragraph (c) allows the commissioner to expand contracting under this subdivision to all persons with disabilities not otherwise required to enroll in managed care beginning January 1, 2008.

Paragraph (d) requires the commissioner to establish a state-level stakeholder group to provide advice on managed care programs for persons with disabilities.

Paragraph (e) requires each plan under contract to provide MA basic health care services to establish a local or regional stakeholder group for advice on issues that arise in the local or regional area.

28 **Transfers from special revenue fund.** Amends Laws 2005, First Special Session, ch. 4, art. 9, sec. 5, subd. 8. Allows money appropriated from the state government special revenue fund for the home and community-based provider employee scholarship program that are not expended during a biennium to be carried over to the next biennium. Extends the expiration date for the rider from June 30, 2009 to June 30, 2011.

29 **Stakeholder participation.** Requires the commissioner to confer with one or more stakeholder groups to provide information and advice on the development of any substantial proposals for changes in the MA program authorized by the federal Deficit Reduction Act of 2005. Requires the commissioner to convene a stakeholder meeting and provide a 30-day comment period before any substantial Deficit Reduction Act-related MA change that affects recipients and that is proposed outside of the legislative or rulemaking process becomes effective. Requires notice to be given to the stakeholder group as soon as possible if the time frame required to comply with a federal mandate precludes the 30-day advance notice. Makes this section effective following final enactment.

30 **ICF/MR Plan.** Requires the commissioner to consult with ICF/MR providers, advocates, counties, and consumer families to develop a stakeholder plan and legislation concerning the future services provided to people served in ICFs/MR. Requires the plan to be reported to the house and senate committees with jurisdiction over health and human services policy and finance issues by December 15, 2008. Lists several items the commissioner must consider in preparing the plan. Makes this section effective the day following final enactment.

31 **Additional waiver allocations.** Allows the commissioner of human services to allocate an additional waiver allocation for a recipient of personal care services who received these services from a provider who was billing for a service delivery model other than individual or shared care on March 1, 2006.

32 **Report on new case mix indices.** Requires the commissioner of human services to report to the legislature by December 15, 2006 a mechanism to implement recommendations for new case mix indices.

33 **Commissioner of human services; continuing care base level adjustment.** Increases the

Section

general fund base for continuing care management.

34 **Repayment delay.** Delays county repayment of overspent waiver services allotments from calendar year 2004 and 2005 until May 31, 2007.