

**Bill Comparison Summary of
Senate File 4410 (second unofficial engrossment) / Senate File 4410
(third engrossment)**

**House Article 12: Continuing Care for Older Adults
Senate Article 2: Continuing Care for Older Adults**

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May 6, 2022

Comparison Summary of S.F. 4410 – House (S.F. 4410, second unofficial engrossment) / Senate (4410, third engrossment)

Section	HOUSE Article 12: Continuing Care for Older Adults		SENATE Article 2: Continuing Care for Older Adults
1	<p>Compliance orders. Amends § 177.27, subd. 4. Authorizes the commissioner of labor and industry to issue orders to comply with any rule establishing nursing home employment standards under § 181.213.</p>	House only	
2	<p>Employer liability. Amends § 177.27, subd. 7. Authorizes the commissioner of labor and industry to impose liability on employers for violations of any rule establishing nursing home employment standards under § 181.213. Under existing law, the commissioner must order an employer to pay back pay, gratuities, compensatory damages, and liquidated damages to an aggrieved employee, and may impose a civil penalty of up to \$1,000 for each willful or repeat violation.</p>	House only	
3	<p>Definitions. Adds § 181.211. Defines terms for sections governing the Nursing Home Workforce Standards Board. Terms defined are board, certified worker organization, commissioner, employer organization, nursing home, nursing home employer, nursing home worker, retaliatory personnel action, and worker organization.</p>	House only	
4	<p>Minnesota Nursing Home Workforce Standards Board; establishment. Adds § 181.212. Establishes the board, specifies board membership, and provides for terms, vacancies, election of a</p>	House only	

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	<p>chairperson, staffing, compensation, application of other laws, voting, and hearings and investigations.</p> <p>Subd. 1. Board established; membership. Establishes the Minnesota Nursing Home Workforce Standards Board and lists board membership: the commissioners of human services, health, and labor and industry or designees; three members who represent nursing home employers or employer organizations, appointed by the governor; and three members who represent nursing home workers or worker organizations, appointed by the governor.</p> <p>Subd. 2. Terms; vacancies. Provides that board members appointed to represent nursing home employers or employer organizations and nursing home workers or worker organizations shall serve four-year terms following the initial staggered lot determination of term length. Specifies that the governor shall fill vacancies of members representing nursing home employers or employer organizations and nursing home workers or worker organizations by appointment for the unexpired term, and prohibits members appointed to represent nursing home employers or employer organizations and nursing home workers or worker organizations from being appointed to more than two consecutive four-year terms.</p> <p>Subd. 3. Chairperson. Requires the board to elect a member to serve as its chairperson.</p> <p>Subd. 4. Staffing. Allows the board to employ an executive director and other personnel.</p>		

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	<p>Subd. 5. Compensation. Allows board members to be compensated at \$55 per day spent on board activities, plus expenses as authorized by the commissioner’s plan. Provides that members who are public employees must not receive the daily payment for activities unless they use vacation time or compensatory time for board activities, and allows members who are public employees to be reimbursed for expenses.</p> <p>Subd. 6. Application of other laws. Provides that board meetings must comply with Open Meeting Law requirements and that the board is subject to the data practices act.</p> <p>Subd. 7. Voting. Provides that an affirmative vote of five board members is required to take action.</p> <p>Subd. 8. Hearings and investigations. Requires the board to hold public hearings and conduct investigations into nursing home working conditions.</p>		
5	<p>Duties of the board; minimum nursing home employment standards. Adds § 181.213. Requires the board to adopt rules that establish minimum nursing home employment standards based on the board’s investigations of market conditions and existing wages, benefits, and working conditions for nursing home workers.</p> <p>Subd. 1. Authority to establish minimum nursing home employment standards. Requires the board to adopt rules establishing minimum nursing home employment standards</p>	House only	

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	<p>that include standards for compensation, working hours, and other working conditions. Requires standards to be at least as protective of nursing home workers as other applicable laws or standards previously adopted by the board. Allows the board to establish statewide standards, standards for specific occupations, and standards for specific geographic areas of the state. Requires initial standards to be adopted by August 1, 2023, and allows the board to use the expedited rulemaking process to adopt initial rules. If minimum standards considered by the board fall within the jurisdiction of occupational safety and health, requires the board to recommend those standards to the commissioner of labor and industry, and requires the commissioner to adopt rules establishing the recommended standards unless the recommended standard is outside the commissioner’s authority or is otherwise unlawful.</p> <p>Subd. 2. Investigation of market conditions. Requires the board to investigate market conditions and existing wages, benefits, and working conditions for nursing home workers, and to seek to adopt minimum standards that meet or exceed existing conditions for a majority of nursing home workers. Lists information the board must consider when making wage rate determinations.</p> <p>Subd. 3. Review of standards. Requires the board to review previously adopted minimum standards every two years and update the standards or recommend updates to them.</p> <p>Subd. 4. Conflict. If there is a conflict with a rule adopted by the board and a rule adopted by another state agency, provides that the board rule applies to nursing home workers and nursing home employers. However, if the</p>		

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	<p>conflicting rule adopted by the other state agency is adopted after the board’s rule and is more protective than the board’s rule, the rule of the other state agency applies to nursing home workers and nursing home employers.</p> <p>Subd. 5. Effect on other agreements. Provides that the statutes governing the Nursing Home Workforce Standards Board do not limit the rights of parties to a collective bargaining agreement to bargain and agree on nursing home employment standards, and do not diminish the obligations of nursing home employers to comply with contracts, collective bargaining agreements, and employment benefit programs and plans that meet or exceed and do not conflict with the requirements in statutes and board rules.</p>		
6	<p>Duties of the board; training for nursing home workers. Adds § 181.214. Requires the board to certify worker organizations to provide training to nursing home workers, establish curriculum requirements, and annually review the adequacy of curriculum requirements and revise them as appropriate. Also lists duties of certified worker organizations and nursing home employers, and requires nursing home workers to be compensated for training at their regular hourly rate.</p> <p>Subd. 1. Certification of worker organizations. Requires the board to certify worker organizations to provide training to nursing home workers, and to establish certification criteria in rule. Allows the board to use the</p>	House only	

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	<p>expedited rulemaking process to establish initial certification criteria.</p> <p>Subd. 2. Curriculum. Requires the board to establish curriculum requirements for nursing home worker training, and lists information a curriculum must provide. Requires the board to hold at least one public hearing to solicit input on the requirements before establishing initial curriculum requirements.</p> <p>Subd. 3. Topics covered in training session. Provides that a certified worker organization is not required to cover all training topics in a single training session, and allows the organization to provide instructions on the topics over the course of up to three training sessions.</p> <p>Subd. 4. Annual review of curriculum requirements. Requires the board to annually review the adequacy of its curriculum requirements, including holding at least one public hearing to solicit input, and to revise requirements as appropriate.</p> <p>Subd. 5. Duties of certified worker organizations. Lists requirements for certified worker organizations providing training to nursing home workers. Allows certified worker organizations to survey training attendees to assess the effectiveness of training sessions and industry compliance with laws governing nursing home working conditions or worker health and safety.</p> <p>Subd. 6. Nursing home employer duties regarding training. Requires a nursing home employer to provide proof to the commissioner of labor and industry that every</p>		

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	<p>six months each of its nursing home workers completed one hour of training. If requested by the certified worker organization, requires a nursing home employer to provide the organization with names and contact information of nursing home workers who attended the training, unless nursing home workers opt out of having their information provided.</p> <p>Subd. 7. Compensation. Requires a nursing home employer to compensate nursing home workers at their regular hourly rate for hours of training completed according to this section.</p>		
7	<p>Required notices. Adds § 181.215. Requires nursing home employers to provide notices informing nursing home workers of their rights and obligations regarding applicable minimum nursing home employment standards. Specifies minimum requirements for providing notice, and requires the notice to include text informing nursing home workers that they may request the notice to be provided in a specific language. Requires the board to adopt rules specifying minimum content and posting requirements for notices required in this section, and to make available a template or sample notice.</p>	House only	
8	<p>Retaliation on certain grounds prohibited. Adds § 181.216. Prohibits retaliation, including retaliatory personnel action such as discharge or demotion, against a nursing home worker for exercising any right under the Minnesota Nursing Home Workforce Standards Board Act or for</p>	House only	

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	participating in any hearing, investigation, proceeding, or training as provided under the Act.		
9	<p>Enforcement. Adds § 181.217. Provides for enforcement of the Minnesota Nursing Home Workforce Standards Board Act by the commissioner of labor and industry.</p> <p>Subd. 1. Minimum nursing home employment standards. Requires nursing home employers to follow at least the minimum employment standards for wages, maximum number of hours, and working conditions for nursing home workers. Prohibits nursing home employment that would provide lower wages, longer hours, or worse conditions than the minimum required by state law.</p> <p>Subd. 2. Investigations. Authorizes the commissioner of labor and industry to investigate suspected violations of the Minnesota Nursing Home Workforce Standards Board Act.</p> <p>Subd. 3. Enforcement authority. Authorizes the commissioner of labor and industry to issue compliance orders and impose liability on employers for violations of the Minnesota Nursing Home Workforce Standards Board Act, as provided under § 177.27, subdivisions 4 and 7.</p> <p>Subd. 4. Civil action by nursing home worker. Allows a nursing home worker or class of nursing home workers aggrieved by a violation of the minimum employment standards under the Act to bring a civil cause of action in district court. Requires the employer to pay any wages, benefits, or overtime owed, plus an additional equal</p>	House only	

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	<p>amount as liquidated damages. Allows employees to seek damages and other appropriate relief, including attorney’s fees. Also authorizes the court to issue orders to comply and to order reinstatement of an employee subject to retaliatory personnel action. Provides that a labor agreement that fails to meet minimum nursing home employment standards is not a defense.</p>		
10	<p>Eligibility for funding for services for nonmedical assistance recipients. Amends § 256B.0913, subd. 4. Specifies the monthly service limit for individuals participating in consumer-directed community supports (CDCS) under alternative care. Provides a January 1, 2023, effective date.</p>	House only	
11	<p>Services covered under alternative care. Amends § 256B.0913, subd. 5. Makes a conforming change related to the monthly service limits for individuals participating in CDCS under alternative care. Provides a January 1, 2023, effective date.</p>	House only	
		Senate only	<p>Section 1 to 4 and 6 to 10 (256R.02, subdivisions 16, 16a, 24, 24a, 26, 26a, 29, 29a and 34) modifies nursing facility payment rate calculations by recategorizing as other care related costs the labor costs associated with various other operating expenses. The result of this change is that these labor costs are not included in the industry-wide other operating payment</p>

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			rate, but instead included in the calculation of the facility specific other care related payment rate.
		Senate only	Section 5 (256R.02, subdivision 25b) for the purposes of calculating nursing facility payment rates, defines the known cost change factor as the annual forecasted percentage change in the CPI-U from the mid-point of the reporting year to the mid-point of the rate year.
		Senate only	Section 11 to 14 (256R.23, subdivisions 2 and 3, 256R.24, subdivision 1, and 256R.25, paragraph (j)) effective for nursing facility rate year 2024, applies the “known cost change factor” when calculating the direct care cost per standardized day, the other care-related cost per resident day, the other operating cost per days, and the employer health insurance costs portion of the external fixed cost payment rate.
12	<p>Foster care limit. Amends § 256S.15, subd. 2. Makes a conforming cross-reference change.</p> <p>Provides a January 1, 2023, effective date.</p>	House only	
13	<p>Monthly case mix budget caps for consumer-directed community supports. Amends § 256S.18, by adding subd. 3a. Modifies case mix budget caps for CDCS under the elderly waiver payment methodology.</p> <p>Provides a January 1, 2023, effective date.</p>	House only	

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14	<p>Calculation of monthly conversion budget caps. Amends § 256S.19, subd. 3. Modifies conversion budget caps for individuals participating in CDCS under the elderly waiver. Provides a January 1, 2023, effective date.</p>	House only	
		Senate only	<p>Section 16 (256S.205) modifies the existing disproportionate share facility rate floor statute by altering the eligibility requirements to allow facilities to count BI and CADI residents toward the facility’s disproportionate share of residents receiving services funded by medical assistance. This section also increases the rate floor for EW services only from \$119 dollars per resident per day to \$139 per resident per day.</p>
15	<p>Rate setting; application. Amends 256S.21. Applies the elderly waiver payment rate methodology to homemaker services under the MA disability waivers. Provides a January 1, 2023, effective date.</p>	House only	
16	<p>Phase-in for elderly waiver rates. Amends § 256S.2101, subd. 2. Modifies the elderly waiver payment rate phase-in under the new rate-setting methodology. Provides an immediate effective date.</p>	<p>Different Senate includes BI and CADI customized living in the rate changes; House does not. Senate increases the proportion of framework rates by <i>8.4 percentage points</i>; House by <i>2.8 percentage points</i>. House modifies the framework (see House sections 17 to 23); Senate does not.</p>	<p>Section 17 (256S.2101, subdivisions 1 and 2) increases the phase-in proportion of the framework enacted in 2017 and the prior rate methodology for elderly waiver services and for customized living provided under the BI and CADI waivers. For elderly waiver the proportion is increased by 8.4 percentage points. For BI and CADI customized living, the proportion of framework rate to historical methodology is increased 17.2 percentage points.</p>

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		<p>NOTE: Modifying the framework changes the impact of an increase in the proportion of framework rates.</p> <p>Senate includes employee compensation encumbrance language; House does not.</p>	<p>Subdivision 3 requires providers to use 80 percent of the marginal increase in provider revenue resulting from the implementation of the rate increases under this section to increase compensation-costs, defines compensation-costs, and requires a distribution plan describing how the provider will pass-through the required 80 percent of increased marginal revenue in the form of compensation.</p>
17	<p>Phase-in for home-delivered meals rate. Amends § 256S.2101, by adding subd. 3. Establishes a separate phase-in rate for home-delivered meals under elderly waiver, alternative care, and essential community supports.</p> <p>Provides a January 1, 2023, effective date.</p>	House only	
18	<p>Updating homemaker services rates. Amends § 256S.211, by adding subd. 3. Requires the commissioner to adjust homemaker services rates for inflation beginning January 1, 2023, and every two years thereafter.</p> <p>Provides a January 1, 2023, effective date.</p>	House only	
19	<p>Updating the home-delivered meals rate. Amends § 256S.211, by adding subd. 4. Requires the commissioner to annually update the home-delivered meals rate by the percent increase in the nursing facility dietary per diem using the two most recent and available nursing facility cost reports.</p>	House only	

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	Provides a July 1, 2022, effective date.		
20	<p>Rate setting; base wage index. Amends § 256S.212. Modifies base wage calculations for various positions and establishes a base wage calculation for adult day services under the elderly waiver payment rate methodology.</p> <p>Provides a January 1, 2023, effective date.</p>	House only	
21	<p>Rate setting; factors and supervision wage components. Amends § 256S.213. Modifies the general and administrative factor and program plan support factor under the elderly waiver payment rate methodology. Modifies terminology. Establishes a facility and equipment factor; food, supplies, and transportation factor; supplies and transportation factor; and an absence factor.</p> <p>Provides a January 1, 2023, effective date.</p>	House only	
22	<p>Rate setting; adjusted base wage. Amends § 256S.214. Modifies the adjusted base wage calculation under the elderly waiver payment rate methodology.</p> <p>Provides a January 1, 2023, effective date.</p>	House only	

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23	<p>Rate setting; component rates. Amends § 256S.215. Modifies various component rate calculations under the elderly waiver payment rate methodology.</p> <p>Provides an immediate effective date.</p>	House only	
24	<p>Direction to the commissioner; initial PACE implementation funding. Requires the commissioner of human services to: (1) work with stakeholders to develop recommendations for financing mechanisms to complete the actuarial work and cover the administrative costs of programs for all-inclusive care for the elderly (PACE); (2) recommend a financing mechanism that could begin by July 1, 2024; and (3) by December 15, 2023, inform the legislative committees with jurisdiction over health care funding on the commissioner’s progress toward developing a recommended funding mechanism.</p>	House only	
25	<p>Title. Provides that sections 181.212 to 181.217 may be cited as the Minnesota Nursing Home Workforce Standards Board Act.</p>	House only	
26	<p>Initial appointments. Requires the governor to make initial appointments to the Minnesota Nursing Home Workforce Standards Board no later than August 1, 2022.</p>	House only	

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27	<p>Revisor instruction. Instructs the revisor of statutes to change the following terms in the chapter of statutes governing MA elderly waiver: (1) “homemaker services and assistance with personal care” to “homemaker assistance with personal care services;” (2) “homemaker services and cleaning” to “homemaker cleaning services;” and (3) “homemaker services and home management” to “homemaker home management services.” Requires the revisor of statutes to make necessary grammatical changes related to the changes in terms.</p>	House only	
28	<p>Repealer. Repeals Minn. Stat. § 256S.19, subd. 4 (calculation of monthly conversion budget cap with consumer-directed community supports), effective January 1, 2023.</p>	House only	
		Senate only	<p>Section 18 (NURSING FACILITY FUNDING) establishes a temporary rate increase of \$28.65 per resident day, encumbers the entire rate increase for use to cover increased compensation related costs, defines compensation related costs, and requires a distribution plan for the revenue generated by the temporary rate increase.</p>
		Senate only	<p>Section 19 (DIRECTION TO COMMISSIONER OF HUMAN SERVICES; PARTIAL YEAR IMPLEMENTATION OF DISPROPORTIONATE SHARE RATE ADJUSTMENTS) directs the commissioner to implement the disproportionate share facility rate floor for a partial year between October 1 and December 31, 2022.</p>

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		Senate only	Section 20 (DIRECTION TO THE COMMISSIONER OF HUMAN SERVICES; ELDERLY WAIVER BASE WAGE INDEX ADJUSTMENTS) requires the commissioner to update the elderly waiver rate framework base wage indices on July 1, 2022.