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State of Minnesota
HOUSE OF REPRESENTATIVES

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HOUSE FILE No. **721**

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The bill was read for the first time and referred to the Committee on Health and Human Services

1.1 A bill for an act
1.2 relating to human services; providing long-term care provider rate increases;
1.3 requiring the use of new nursing facility case mix indices; providing an
1.4 exemption from the MinnesotaCare program prohibition on employer-subsidized
1.5 coverage; requiring workforce initiatives; requiring a study of nursing facility
1.6 rate rebasing; amending Minnesota Statutes 2006, sections 256B.434, by adding
1.7 subdivisions; 256B.438, by adding a subdivision; 256B.5012, by adding a
1.8 subdivision; 256L.07, subdivision 2; proposing coding for new law in Minnesota
1.9 Statutes, chapter 256.

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

1.11 Section 1. **[256.9755] LONG-TERM CARE WORKFORCE TRAINING AND**
1.12 **DEVELOPMENT.**

1.13 Subdivision 1. **Access to standardized curriculum.** The commissioner, in
1.14 cooperation with the Minnesota job skills partnership program established under chapter
1.15 116L, shall subsidize student access to the health care core curriculum developed by the
1.16 Health Education-Industry Partnership, using a sliding tuition scale tied to income.

1.17 Subd. 2. **Additional workforce initiatives.** The commissioner shall develop and
1.18 implement initiatives to train and increase the supply of long-term caregivers who provide
1.19 specialized nursing facility care and community-based care to elderly and disabled persons
1.20 with chronic care needs. The commissioner shall present to the legislature by January 15,
1.21 2008, a description of the initiatives to be implemented and draft legislation incorporating
1.22 any statutory changes necessary to implement the initiatives.

1.23 Subd. 3. **Funding.** The subsidies and initiatives required by this subdivision are
1.24 funded using savings to the general fund that result from nursing facility closures and
1.25 downsizing.

2.1 Sec. 2. Minnesota Statutes 2006, section 256B.434, is amended by adding a
2.2 subdivision to read:

2.3 Subd. 19. **Rate increases for October 1, 2007, and October 1, 2008.** (a) For the
2.4 rate years beginning October 1, 2007, and October 1, 2008, the commissioner shall make
2.5 available to each nursing facility reimbursed under this section an adjustment equal to five
2.6 percent of the total operating payment rate.

2.7 (b) Seventy-five percent of the money resulting from the rate adjustment under
2.8 paragraph (a) must be used to increase wages and benefits and pay associated costs
2.9 for all employees, except management fees, the administrator, and central office staff.
2.10 Seventy-five percent of the money received by a facility as a result of the rate adjustment
2.11 provided in paragraph (a) must be used only for wage and benefit increases and payment
2.12 of associated costs, implemented on or after the effective date of the rate increase each
2.13 year, and must not be used for increases implemented prior to that date.

2.14 (c) Nursing facilities may apply for the portion of the rate adjustment under
2.15 paragraph (a) for employee wages and benefits and associated costs. The application
2.16 must be made to the commissioner and contain a plan by which the nursing facility
2.17 will distribute the funds according to paragraph (b). For nursing facilities in which the
2.18 employees are represented by an exclusive bargaining representative, an agreement
2.19 negotiated and agreed to by the employer and the exclusive bargaining representative
2.20 constitutes the plan. The commissioner shall not review and shall not require changes
2.21 to the portion or portions of the plan covered by collective bargaining agreements. A
2.22 negotiated agreement may constitute the plan only if the agreement is finalized after the
2.23 date of enactment of all increases for the rate year and signed by both parties prior to
2.24 submission to the commissioner. The commissioner shall review the plan to ensure that
2.25 the rate adjustments are used as provided in paragraph (b). To be eligible, a facility must
2.26 submit its distribution plan by March 31, 2008, and March 31, 2009, respectively. The
2.27 commissioner may approve distribution plans on or before June 30, 2008, and June 30,
2.28 2009, respectively. If a facility's distribution plan is effective after the first day of the
2.29 applicable rate period that the funds are available, the rate adjustments are effective the
2.30 same date as the facility's plan.

2.31 (d) A copy of the approved distribution plan must be made available to all employees
2.32 by giving each employee a copy or by posting a copy in an area of the nursing facility
2.33 to which all employees have access. If an employee does not receive the wage and
2.34 benefit adjustment described in the facility's approved plan and is unable to resolve the
2.35 problem with the facility's management or through the employee's union representative,

3.1 the employee may contact the commissioner at an address or telephone number provided
3.2 by the commissioner and included in the approved plan.

3.3 Sec. 3. Minnesota Statutes 2006, section 256B.434, is amended by adding a
3.4 subdivision to read:

3.5 Subd. 20. **Funding for staff increases.** (a) For the rate year beginning October 1,
3.6 2007, the commissioner shall make available to nursing facilities reimbursed under this
3.7 section an adjustment equal to one percent of the total operating payment rate.

3.8 (b) The money resulting from the rate adjustment under paragraph (a) may be used by
3.9 a nursing facility only for wages, benefits, and associated costs for direct care employees
3.10 hired on or after the effective date of the rate increase. For purposes of this requirement, a
3.11 direct care employee means a registered nurse, licensed practical nurse, or certified nursing
3.12 assistant for whom at least 75 percent of work hours are spent on direct care to patients.

3.13 (c) Nursing facilities shall apply to the commissioner for a rate increase by
3.14 submitting an application form developed by the commissioner. In granting requests for
3.15 rate adjustments, the commissioner shall give preference to nursing facilities that have low
3.16 ratios of direct care staff to residents, or that demonstrate that an increase in direct care
3.17 staff will lead to a significant improvement in the quality of care provided.

3.18 (d) The commissioner shall require nursing facilities to report information on the use
3.19 of the rate adjustment, and shall monitor nursing facility compliance with the requirements
3.20 of paragraph (b). The commissioner may recover money that the commissioner determines
3.21 was spent inappropriately by reducing nursing facility operating payment rates in future
3.22 rate years.

3.23 Sec. 4. Minnesota Statutes 2006, section 256B.438, is amended by adding a
3.24 subdivision to read:

3.25 Subd. 8. **New case mix indices.** (a) Effective with rates for the rate year beginning
3.26 October 1, 2007, the commissioner shall implement the case mix indices recommended
3.27 by the time study conducted under Laws 2001, First Special Session chapter 9, article 5,
3.28 section 35, paragraph (e). The commissioner shall implement the new case mix indices
3.29 as follows:

3.30 (1) the September 30, 2006, case mix component of the nursing facility operating
3.31 payment rate is multiplied by the new case mix indices to create 36 case mix adjusted rates;

3.32 (2) the 36 case mix adjusted rates determined in clause (1), plus the noncase mix
3.33 component, shall be the 36 nursing facility operating payment rates; and

4.1 (3) any rate increases authorized by the legislature to take effect October 1, 2007,
4.2 shall be applied to the rates determined under clause (2).

4.3 (b) The commissioner shall adjust the October 1, 2007, operating rates in paragraph
4.4 (a) for nursing facilities estimated to receive a decrease in operating revenue. The rate
4.5 interim adjustment is established as follows:

4.6 (1) the commissioner shall use the minimum data set to classify private and medical
4.7 assistance patient days by resource utilization group (RUG) classification for the rate year
4.8 ending June 30, 2007, according to both the case mix indices and resident assessment
4.9 schedule to be used on September 30, 2007, and the case mix indices and resident
4.10 assessment schedule to be used on October 1, 2007;

4.11 (2) the commissioner shall use the resident days in clause (1) and the nursing
4.12 facility's October 1, 2007, unadjusted operating payment rate to estimate operating
4.13 revenue according to both the case mix indices and resident assessment schedule to be
4.14 used on September 30, 2007, and the case mix indices and resident assessment schedule
4.15 to be used on October 1, 2007;

4.16 (3) the estimated operating revenue determined with the case mix indices and
4.17 resident assessment schedule to be used on September 30, 2007, minus the operating
4.18 revenue determined with the case mix indices and resident assessment schedule to be used
4.19 on October 1, 2007, equals the decrease in medical assistance and private pay operating
4.20 revenue;

4.21 (4) facilities with an estimated decrease in clause (3) receive an interim rate
4.22 adjustment equal to the value determined in clause (3) divided by the medical assistance
4.23 and private pay resident days in clause (1);

4.24 (5) the interim rate adjustment is in effect from October 1, 2007, through June
4.25 30, 2008, and does not become part of a facility's operating payment rate after June 30,
4.26 2008. The interim rate adjustment shall be applied to the case mix portion of the facility
4.27 operating rate; and

4.28 (6) the commissioner, by August 15, 2007, shall provide nursing facilities which the
4.29 commissioner has estimated will experience a decrease in operating revenue, with written
4.30 notice that specifies the amount of the estimated decrease in operating revenue and the
4.31 amount of the interim rate adjustment. Nursing facilities have 30 days to decline the
4.32 interim rate adjustment.

4.33 (c) The commissioner shall adjust the July 1, 2008, operating rates of facilities
4.34 receiving the interim rate adjustments in paragraph (b) and facilities that demonstrate a
4.35 decrease in operating revenue from the implementation of the case mix indices and use of
4.36 all quarterly assessments. The adjustment is calculated as follows:

5.1 (1) facilities that received the interim rate adjustment in paragraph (b) shall report
5.2 to the commissioner the number of medical assistance and private pay resident days
5.3 by RUG classification for the six-month period October 1, 2007, through March 31,
5.4 2008, according to both the case mix indices and resident assessment schedule used on
5.5 September 30, 2007, and the case mix indices and resident assessment schedule used on
5.6 October 1, 2007. A facility not receiving the rate adjustment in paragraph (b) that had a
5.7 decrease in operating revenue resulting from implementation of the new case mix indices
5.8 and the use of quarterly assessments may report to the commissioner the number of
5.9 medical assistance and private pay resident days by RUG classification for the six-month
5.10 period October 1, 2007, through March 31, 2008, according to both the case mix indices
5.11 and resident assessment schedule used on September 30, 2007, and the case mix indices
5.12 and resident assessment schedule used on October 1, 2007. Nursing facilities shall submit
5.13 the required information to the commissioner by May 15, 2008, in the manner specified by
5.14 the commissioner;

5.15 (2) the commissioner shall use the resident days reported in clause (1) and the
5.16 nursing facility's October 1, 2007, unadjusted operating payment rate to determine
5.17 operating revenue under both the case mix indices and resident assessment schedule
5.18 used on September 30, 2007, and the case mix indices and resident assessment schedule
5.19 used on October 1, 2007;

5.20 (3) the operating revenue determined using the case mix indices and resident
5.21 assessment schedule used on September 30, 2007, minus the operating revenue determined
5.22 using the case mix indices and resident assessment schedule used on October 1, 2007,
5.23 must equal the decrease in operating revenue;

5.24 (4) the July 1, 2008, operating payment rate adjustment is the decrease in operating
5.25 revenue determined in clause (3) divided by the total medical assistance and private pay
5.26 days reported in clause (1) for the six-month period October 1, 2007, through March 31,
5.27 2008. The operating payment rate adjustment is applied to the case mix portion of the
5.28 facility operating rate; and

5.29 (5) if the amount determined in clause (4) is greater than the amount determined
5.30 under paragraph (b), clause (4), the commissioner shall retroactively pay to nursing
5.31 facilities the difference between the two amounts for all paid medical assistance days
5.32 between October 1, 2007, and June 30, 2008.

5.33 **EFFECTIVE DATE.** This section is effective October 1, 2007.

5.34 Sec. 5. Minnesota Statutes 2006, section 256B.5012, is amended by adding a
5.35 subdivision to read:

6.1 Subd. 7. ICF/MR rate increases October 1, 2007, and October 1, 2008. (a) For
6.2 the rate periods beginning October 1, 2007, and October 1, 2008, the commissioner shall
6.3 make available to each facility reimbursed under this section an adjustment to the total
6.4 operating payment rate of percent.

6.5 (b) Seventy-five percent of the money resulting from the rate adjustment under
6.6 paragraph (a) must be used to increase wages and benefits and pay associated costs for
6.7 employees, except for administrative and central office employees. Seventy-five percent
6.8 of the money received by a facility as a result of the rate adjustment provided in paragraph
6.9 (a) must be used only for wage, benefit, and staff increases implemented on or after
6.10 the effective date of the rate increase each year, and must not be used for increases
6.11 implemented prior to that date. The wage adjustment eligible employees may receive may
6.12 vary based on merit, seniority, or other factors determined by the provider.

6.13 (c) For each facility, the commissioner shall make available an adjustment, based
6.14 on occupied beds, using the percentage specified in paragraph (a) multiplied by the total
6.15 payment rate, including variable rate but excluding the property-related payment rate, in
6.16 effect on the preceding day. The total payment rate must include the adjustment provided
6.17 in section 256B.501, subdivision 12.

6.18 (d) A facility whose payment rates are governed by closure agreements, receivership
6.19 agreements, or Minnesota Rules, part 9553.0075, is not eligible for an adjustment
6.20 otherwise granted under this subdivision.

6.21 (e) A facility may apply for the portion of the payment rate adjustment provided
6.22 under paragraph (a) for employee wages and benefits and associated costs. The application
6.23 must be made to the commissioner and contain a plan by which the facility will distribute
6.24 the funds according to paragraph (b). For facilities in which the employees are represented
6.25 by an exclusive bargaining representative, an agreement negotiated and agreed to by
6.26 the employer and the exclusive bargaining representative constitutes the plan. The
6.27 commissioner shall not review, and shall not require changes, to the portion or portions
6.28 of the plan covered by collective bargaining agreements. A negotiated agreement may
6.29 constitute the plan only if the agreement is finalized after the date of enactment of all rate
6.30 increases for the rate year. The commissioner shall review the plan to ensure that the
6.31 payment rate adjustment per diem is used as provided in this subdivision. To be eligible, a
6.32 facility must submit its plan by March 31, 2008, and December 31, 2008, respectively.
6.33 If a facility's plan is effective for its employees after the first day of the applicable rate
6.34 period that the funds are available, the payment rate adjustment per diem is effective
6.35 the same date as its plan.

7.1 (f) A copy of the approved distribution plan must be made available to all employees
7.2 by giving each employee a copy or by posting it in an area of the facility to which all
7.3 employees have access. If an employee does not receive the wage and benefit adjustment
7.4 described in the facility's approved plan and is unable to resolve the problem with the
7.5 facility's management or through the employee's union representative, the employee
7.6 may contact the commissioner at an address or telephone number provided by the
7.7 commissioner and included in the approved plan.

7.8 Sec. 6. Minnesota Statutes 2006, section 256L.07, subdivision 2, is amended to read:

7.9 Subd. 2. ~~Must not have access to Employer-subsidized coverage.~~ (a) To be
7.10 eligible, a family or individual must not have access to subsidized health coverage through
7.11 an employer and must not have had access to employer-subsidized coverage through
7.12 a current employer for 18 months prior to application or reapplication. A family or
7.13 individual whose employer-subsidized coverage is lost due to an employer terminating
7.14 health care coverage as an employee benefit during the previous 18 months is not eligible.

7.15 (b) This subdivision does not apply to a family or individual who was enrolled
7.16 in MinnesotaCare within six months or less of reapplication and who no longer has
7.17 employer-subsidized coverage due to the employer terminating health care coverage
7.18 as an employee benefit.

7.19 (c) For purposes of this requirement, subsidized health coverage means health
7.20 coverage for which the employer pays at least 50 percent of the cost of coverage for
7.21 the employee or dependent, or a higher percentage as specified by the commissioner.
7.22 Children are eligible for employer-subsidized coverage through either parent, including
7.23 the noncustodial parent. The commissioner must treat employer contributions to Internal
7.24 Revenue Code Section 125 plans and any other employer benefits intended to pay
7.25 health care costs as qualified employer subsidies toward the cost of health coverage for
7.26 employees for purposes of this subdivision.

7.27 (d) The commissioner, for the period July 1, 2007, through June 30, 2008, shall
7.28 exempt a family or individual from this subdivision if access to employer-subsidized
7.29 insurance is through employment at a nursing facility licensed under chapter 144A that
7.30 participates in the medical assistance program. The commissioner shall evaluate the extent
7.31 to which this exemption increases access to affordable health coverage, and shall present
7.32 recommendations to the legislature by February 1, 2008, as to whether this exemption
7.33 should be continued and whether the exemption should be extended to include families
7.34 and individuals with access to employer-subsidized insurance through other long-term
7.35 care providers.

8.1 **Sec. 7. STUDY OF NURSING FACILITY RATE REBASING.**

8.2 The commissioner of human services shall evaluate the extent to which medical
 8.3 assistance reimbursement rates for nursing facilities reflect the cost of providing services,
 8.4 both statewide and in different regions of the state. The commissioner shall present
 8.5 recommendations to the legislature by January 15, 2008, on whether the rebasing of
 8.6 rates on a statewide or regional basis is necessary to ensure that reimbursement rates are
 8.7 sufficient to cover the cost of providing services.

8.8 **Sec. 8. COMMUNITY SERVICES PROVIDER RATE INCREASES.**

8.9 (a) The commissioner of human services shall increase reimbursement rates or rate
 8.10 limits, as applicable, by percent for the rate period beginning October 1, 2007, and
 8.11 the rate period beginning October 1, 2008, effective for services rendered on or after
 8.12 those dates.

8.13 (b) The percent annual rate increase described in this section must be provided
 8.14 to:

8.15 (1) home and community-based waived services for persons with developmental
 8.16 disabilities or related conditions under Minnesota Statutes, section 256B.501;

8.17 (2) home and community-based waived services for the elderly under Minnesota
 8.18 Statutes, section 256B.0915;

8.19 (3) waived services under community alternatives for disabled individuals under
 8.20 Minnesota Statutes, section 256B.49;

8.21 (4) community alternative care waived services under Minnesota Statutes, section
 8.22 256B.49;

8.23 (5) traumatic brain injury waived services under Minnesota Statutes, section
 8.24 256B.49;

8.25 (6) nursing services and home health services under Minnesota Statutes, section
 8.26 256B.0625, subdivision 6a;

8.27 (7) personal care services and nursing supervision of personal care services under
 8.28 Minnesota Statutes, section 256B.0625, subdivision 19a;

8.29 (8) private duty nursing services under Minnesota Statutes, section 256B.0625,
 8.30 subdivision 7;

8.31 (9) day training and habilitation services for adults with developmental disabilities
 8.32 or related conditions under Minnesota Statutes, sections 252.40 to 252.46;

8.33 (10) alternative care services under Minnesota Statutes, section 256B.0913;

8.34 (11) adult residential program grants under Minnesota Rules, parts 9535.2000 to
 8.35 9535.3000;

9.1 (12) adult and family community support grants under Minnesota Rules, parts
9.2 9535.1700 to 9535.1760;

9.3 (13) the group residential housing supplementary service rate under Minnesota
9.4 Statutes, section 256I.05, subdivision 1a;

9.5 (14) adult mental health integrated fund grants under Minnesota Statutes, section
9.6 245.4661;

9.7 (15) semi-independent living services (SILS) under Minnesota Statutes, section
9.8 252.275, including SILS funding under county social services grants formerly funded
9.9 under Minnesota Statutes, chapter 256I;

9.10 (16) community support services for deaf and hard-of-hearing adults with mental
9.11 illness who use or wish to use sign language as their primary means of communication;

9.12 (17) living skills training programs for persons with intractable epilepsy who need
9.13 assistance in the transition to independent living;

9.14 (18) physical therapy services under sections 256B.0625, subdivision 8, and
9.15 256D.03, subdivision 4;

9.16 (19) occupational therapy services under sections 256B.0625, subdivision 8a, and
9.17 256D.03, subdivision 4;

9.18 (20) speech-language therapy services under section 256D.03, subdivision 4, and
9.19 Minnesota Rules, part 9505.0390; and

9.20 (21) respiratory therapy services under section 256D.03, subdivision 4, and
9.21 Minnesota Rules, part 9505.0295.

9.22 (c) Providers that receive a rate increase under this section shall use 75 percent of
9.23 the additional revenue to increase wages and benefits and pay associated costs for all
9.24 employees, except for management fees, the administrator, and central office staff.

9.25 (d) For public employees, the increase for wages and benefits for certain staff is
9.26 available and pay rates must be increased only to the extent that they comply with laws
9.27 governing public employees' collective bargaining. Money received by a provider for pay
9.28 increases under this section may be used only for increases implemented on or after the
9.29 first day of the rate period in which the increase is available and must not be used for
9.30 increases implemented prior to that date.

9.31 (e) A copy of the provider's plan for complying with paragraph (c) must be made
9.32 available to all employees by giving each employee a copy or by posting a copy in an area
9.33 of the provider's operation to which all employees have access. If an employee does not
9.34 receive the adjustment, if any, described in the plan and is unable to resolve the problem
9.35 with the provider, the employee may contact the employee's union representative. If the
9.36 employee is not covered by a collective bargaining agreement, the employee may contact

- 10.1 the commissioner at a telephone number provided by the commissioner and included in
- 10.2 the provider's plan.