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HOUSE OF REPRESENTATIVES

EIGHTY-FIFTH
SESSION

HOUSE FILE No. **1078**

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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 health; modifying the hospital public interest review; modifying the
1.3 alternative approval process; establishing accountability requirements for certain
1.4 hospitals for tax purposes; amending Minnesota Statutes 2006, sections 144.50,
1.5 by adding subdivisions; 144.552; 144.553, subdivision 3; 144.699, by adding a
1.6 subdivision; 273.13, subdivision 25; 297A.70, subdivision 7.

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

1.8 Section 1. Minnesota Statutes 2006, section 144.50, is amended by adding a
1.9 subdivision to read:

1.10 Subd. 1a. **Community benefit.** "Community benefit" means the costs of community
1.11 care, underpayment for services provided under state health care programs, research
1.12 costs, community health services costs, financial and in-kind contributions, costs of
1.13 community building activities, and costs of community benefit operations. The cost of
1.14 bad debts and underpayment for Medicare services are not included in the calculation of
1.15 community benefit.

1.16 Sec. 2. Minnesota Statutes 2006, section 144.50, is amended by adding a subdivision
1.17 to read:

1.18 Subd. 1b. **Community care.** "Community care" means the costs for medical care
1.19 for which a hospital has determined either that there is no expectation of payment or for
1.20 which the hospital determines after billing for the services that there is a demonstrated
1.21 inability to pay. Any costs forgiven under a hospital's community care plan or under
1.22 section 62J.83 may be counted in the hospital's calculation of community care. Bad debt
1.23 expenses and discounted charges available to the uninsured shall not be included in the

2.1 calculation of community care. The amount of community care is the value of costs
2.2 incurred and not the charges made for services.

2.3 Sec. 3. Minnesota Statutes 2006, section 144.552, is amended to read:

2.4 **144.552 PUBLIC INTEREST REVIEW.**

2.5 (a) The following entities must submit a plan to the commissioner:

2.6 (1) a hospital seeking to increase its number of licensed beds; or

2.7 (2) an organization seeking to obtain a hospital license and notified by the
2.8 commissioner under section 144.553, subdivision 1, paragraph (c), that it is subject
2.9 to this section.

2.10 The plan must include information that includes an explanation of how the expansion will
2.11 meet the public's interest. When submitting a plan to the commissioner, an applicant shall
2.12 pay the commissioner for the commissioner's cost of reviewing the plan, as determined
2.13 by the commissioner and notwithstanding section 16A.1283. Money received by the
2.14 commissioner under this section is appropriated to the commissioner for the purpose of
2.15 administering this section.

2.16 (b) Plans submitted under this section shall include detailed information necessary
2.17 for the commissioner to review the plan and reach a finding. The commissioner may
2.18 request additional information from the hospital submitting a plan under this section and
2.19 from others affected by the plan that the commissioner deems necessary to review the
2.20 plan and make a finding.

2.21 (c) The commissioner shall review the plan and, within 90 days, but no more than
2.22 six months if extenuating circumstances apply, issue a finding on whether the plan is in
2.23 the public interest. In making the recommendation, the commissioner shall consider
2.24 issues including but not limited to:

2.25 (1) whether the new hospital or hospital beds are needed to provide timely access to
2.26 care or access to new or improved services;

2.27 (2) the financial impact of the new hospital or hospital beds on existing acute-care
2.28 hospitals that have emergency departments in the region;

2.29 (3) how the new hospital or hospital beds will affect the ability of existing hospitals
2.30 in the region to maintain existing staff;

2.31 (4) the extent to which the new hospital or hospital beds will provide services to
2.32 nonpaying or low-income patients relative to the level of services provided to these groups
2.33 by existing hospitals in the region; and

2.34 (5) the views of affected parties.

3.1 (d) If the plan is being submitted by an existing hospital seeking authority to
 3.2 construct a new hospital, the commissioner shall also consider:

3.3 (1) the ability of the applicant to maintain the applicant's current level of community
 3.4 benefit at the existing facility;

3.5 (2) the impact on the workforce at the existing facility; and

3.6 (3) the commitment of the applicant to provide to the existing workforce the right
 3.7 of first refusal for jobs the applicant is qualified for at the new facility, the applicant's
 3.8 commitment to retraining and employment security for the existing workforce, and, in the
 3.9 case of layoffs at the existing facility, the applicant's commitment to severance and other
 3.10 measures to minimize the loss to these workers.

3.11 (e) Prior to making a recommendation, the commissioner shall conduct a public
 3.12 hearing in the affected hospital service area to take testimony from interested persons.

3.13 ~~(d)~~ (f) Upon making a recommendation under paragraph (c), the commissioner shall
 3.14 provide a copy of the recommendation to the chairs of the house and senate committees
 3.15 having jurisdiction over health and human services policy and finance.

3.16 (g) If an exception to the moratorium is approved under section 144.551 after a
 3.17 review under this section, the commissioner shall monitor the implementation of the
 3.18 exception to ensure that the construction project continues to be in the public interest. If
 3.19 the commissioner determines that the project is no longer in the public interest as a result
 3.20 of changes made in the approved plan or because of other factors, the commissioner may
 3.21 refuse to grant or renew, or may suspend or revoke, the license for the project approved
 3.22 under section 144.551.

3.23 Sec. 4. Minnesota Statutes 2006, section 144.553, subdivision 3, is amended to read:

3.24 **Subd. 3. Process when hospital need is determined.** (a) If the commissioner
 3.25 determines that a new hospital is needed in the proposed service area, the commissioner
 3.26 shall notify the applicants of that finding and shall select the applicant determined under
 3.27 the process established in this subdivision to be best able to provide services consistent
 3.28 with the review criteria established in this subdivision.

3.29 (b) The commissioner shall:

3.30 (1) determine market-specific criteria that shall be used to evaluate all proposals.

3.31 The criteria must include standards regarding:

3.32 (i) access to care;

3.33 (ii) quality of care;

3.34 (iii) cost of care; and

3.35 (iv) overall project feasibility;

4.1 (2) establish additional criteria at the commissioner's discretion. In establishing the
4.2 criteria, the commissioner shall consider the need for:

4.3 (i) mental health services in the service area, including both inpatient and outpatient
4.4 services for adults, adolescents, and children;

4.5 (ii) a significant commitment to providing uncompensated care, including discounts
4.6 for uninsured patients and coordination with other providers of care to low-income
4.7 uninsured persons; and

4.8 (iii) coordination with other hospitals so that specialized services are not
4.9 unnecessarily duplicated and are provided in sufficient volume to ensure the maintenance
4.10 of high-quality care; and

4.11 (3) define a service area for the proposed hospital. The service area shall consist of:

4.12 (i) in the 11-county metropolitan area, in St. Cloud, and in Duluth, the zip codes
4.13 located within a 20-mile radius of the proposed new hospital location; and

4.14 (ii) in the remainder of the state, the zip codes within a 30-mile radius of the
4.15 proposed new hospital location.

4.16 (c) If the plan is being submitted by an existing hospital, the commissioner shall
4.17 also consider:

4.18 (1) the ability of the applicant to maintain the applicant's current level of community
4.19 benefit at the existing facility;

4.20 (2) the impact on the workforce at the existing facility; and

4.21 (3) the commitment of the applicant to provide to the existing workforce the right
4.22 of first refusal for jobs the applicant is qualified for at the new facility, the applicant's
4.23 commitment to retraining and employment security for the existing workforce, and, in the
4.24 case of layoffs at the existing facility, the applicant's commitment to severance and other
4.25 measures to minimize the loss to these workers.

4.26 (d) The commissioner shall publish the criteria determined under ~~paragraph~~
4.27 paragraphs (b) and (c) in the State Register within 60 days of the determination under
4.28 subdivision 2. Once published, the criteria shall not be modified with respect to the
4.29 particular project and applicants to which they apply. The commissioner shall publish with
4.30 the criteria guidelines for a proposal and submission review process.

4.31 ~~(d)~~ (e) For 60 days after the publication under paragraph ~~(e)~~ (d), the commissioner
4.32 shall accept proposals to construct a hospital from organizations that have submitted a
4.33 letter of intent under subdivision 1, paragraph (a), or have notified the commissioner under
4.34 subdivision 1, paragraph (b). The proposal must include a plan for the new hospital and
4.35 evidence of compliance with the criteria specified under ~~paragraph~~ paragraphs (b) and (c).
4.36 Once submitted, the proposal may not be revised except:

5.1 (1) to submit corrections of material facts; or

5.2 (2) in response to a request from the commissioner to provide clarification or
5.3 further information.

5.4 ~~(e)~~ (f) The commissioner shall determine within 90 days of the deadline for
5.5 applications under paragraph ~~(d)~~ (e), which applicant has demonstrated that it is best able
5.6 to provide services consistent with the published criteria. The commissioner shall make
5.7 this determination by order following a hearing according to this paragraph. The hearing
5.8 shall not constitute or be considered to be a contested case hearing under chapter 14 and
5.9 shall be conducted solely under the procedures specified in this paragraph. The hearing
5.10 shall commence upon at least 30 days' notice to the applicants by the commissioner.
5.11 The hearing may be conducted by the commissioner or by a person designated by the
5.12 commissioner. The designee may be an administrative law judge. The purpose of the
5.13 hearing shall be to receive evidence to assist the commissioner in determining which
5.14 applicant has demonstrated that it best meets the published criteria.

5.15 The parties to the hearing shall consist only of those applicants who have submitted
5.16 a completed application. Each applicant shall have the right to be represented by
5.17 counsel, to present evidence deemed relevant by the commissioner, and to examine and
5.18 cross-examine witnesses. Persons who are not parties to the proceeding but who wish to
5.19 present comments or submit information may do so in the manner determined by the
5.20 commissioner or the commissioner's designee. Any person who is not a party shall have
5.21 no right to examine or cross-examine witnesses. The commissioner may participate as an
5.22 active finder of fact in the hearing and may ask questions to elicit information or clarify
5.23 answers or responses.

5.24 ~~(f)~~ (g) Prior to making a determination selecting an application, the commissioner
5.25 shall hold a public hearing in the proposed hospital service area to accept comments from
5.26 members of the public. The commissioner shall take this information into consideration in
5.27 making the determination. The commissioner ~~may~~ shall appoint an advisory committee,
5.28 including legislators and local elected officials who represent the service area and outside
5.29 experts to assist in the recommendation process. The legislative appointees shall include,
5.30 at a minimum, the chairs of the senate and house of representatives committees with
5.31 jurisdiction over health care policy. The commissioner shall issue an order selecting an
5.32 application following the closing of the record of the hearing as determined by the hearing
5.33 officer. The commissioner's order shall include a statement of the reasons the selected
5.34 application best meets the published criteria.

5.35 ~~(g)~~ (h) Within 30 days following the determination under paragraph ~~(e)~~ (f), the
5.36 commissioner shall recommend the selected proposal to the legislature.

6.1 (i) If an exception to the moratorium is approved under section 144.551 after a
6.2 review under this section, the commissioner shall monitor the implementation of the
6.3 exception to ensure that the construction project continues to be in the public interest. If
6.4 the commissioner determines that the project is no longer in the public interest as a result
6.5 of changes made in the approved plan or because of other factors, the commissioner may
6.6 refuse to grant or renew, or may suspend or revoke, the license for the project approved
6.7 under section 144.551.

6.8 Sec. 5. Minnesota Statutes 2006, section 144.699, is amended by adding a subdivision
6.9 to read:

6.10 Subd. 5. **Annual reports on community benefit, community care amounts, and**
6.11 **state program underfunding.** For each hospital reporting health care cost information
6.12 under section 144.698 or 144.702, the commissioner shall report annually on the hospital's
6.13 community benefit, community care, and underpayment for state public health care
6.14 programs. For purposes of this subdivision, underpayment for services provided by state
6.15 public health care programs is the difference between hospital costs and public program
6.16 payments. The information shall be reported in terms of total dollars and as a percentage
6.17 of total operating costs for each hospital.

6.18 Sec. 6. Minnesota Statutes 2006, section 273.13, subdivision 25, is amended to read:

6.19 Subd. 25. **Class 4.** (a) Class 4a is residential real estate containing four or more
6.20 units and used or held for use by the owner or by the tenants or lessees of the owner
6.21 as a residence for rental periods of 30 days or more, excluding property qualifying for
6.22 class 4d. Class 4a also includes hospitals licensed under sections 144.50 to 144.56, other
6.23 than hospitals exempt under section 272.02, and contiguous property used for hospital
6.24 purposes, without regard to whether the property has been platted or subdivided, but
6.25 only if the hospital's level of community care plus state public health care program
6.26 underpayments, as reported by the commissioner of health under section 144.699,
6.27 equal at least six percent of total operating expenses for a calendar year. If the level
6.28 of community care plus state public health care program underpayments is below six
6.29 percent for a calendar year, as reported by the commissioner of health, the hospital shall
6.30 be classified under subdivision 31. The commissioner of revenue, in coordination with the
6.31 commissioner of health, may waive the six percent minimum expense requirement if its
6.32 enforcement would cause the hospital a significant hardship. The market value of class 4a
6.33 property has a class rate of 1.25 percent.

6.34 (b) Class 4b includes:

7.1 (1) residential real estate containing less than four units that does not qualify as class
7.2 4bb, other than seasonal residential recreational property;

7.3 (2) manufactured homes not classified under any other provision;

7.4 (3) a dwelling, garage, and surrounding one acre of property on a nonhomestead
7.5 farm classified under subdivision 23, paragraph (b) containing two or three units; and

7.6 (4) unimproved property that is classified residential as determined under subdivision
7.7 33.

7.8 The market value of class 4b property has a class rate of 1.25 percent.

7.9 (c) Class 4bb includes:

7.10 (1) nonhomestead residential real estate containing one unit, other than seasonal
7.11 residential recreational property; and

7.12 (2) a single family dwelling, garage, and surrounding one acre of property on a
7.13 nonhomestead farm classified under subdivision 23, paragraph (b).

7.14 Class 4bb property has the same class rates as class 1a property under subdivision 22.

7.15 Property that has been classified as seasonal residential recreational property at
7.16 any time during which it has been owned by the current owner or spouse of the current
7.17 owner does not qualify for class 4bb.

7.18 (d) Class 4c property includes:

7.19 (1) except as provided in subdivision 22, paragraph (c), real property devoted to
7.20 temporary and seasonal residential occupancy for recreation purposes, including real
7.21 property devoted to temporary and seasonal residential occupancy for recreation purposes
7.22 and not devoted to commercial purposes for more than 250 days in the year preceding
7.23 the year of assessment. For purposes of this clause, property is devoted to a commercial
7.24 purpose on a specific day if any portion of the property is used for residential occupancy,
7.25 and a fee is charged for residential occupancy. In order for a property to be classified as
7.26 class 4c, seasonal residential recreational for commercial purposes, at least 40 percent of
7.27 the annual gross lodging receipts related to the property must be from business conducted
7.28 during 90 consecutive days and either (i) at least 60 percent of all paid bookings by lodging
7.29 guests during the year must be for periods of at least two consecutive nights; or (ii) at least
7.30 20 percent of the annual gross receipts must be from charges for rental of fish houses,
7.31 boats and motors, snowmobiles, downhill or cross-country ski equipment, or charges for
7.32 marina services, launch services, and guide services, or the sale of bait and fishing tackle.
7.33 For purposes of this determination, a paid booking of five or more nights shall be counted
7.34 as two bookings. Class 4c also includes commercial use real property used exclusively
7.35 for recreational purposes in conjunction with class 4c property devoted to temporary
7.36 and seasonal residential occupancy for recreational purposes, up to a total of two acres,

8.1 provided the property is not devoted to commercial recreational use for more than 250
8.2 days in the year preceding the year of assessment and is located within two miles of the
8.3 class 4c property with which it is used. Owners of real property devoted to temporary and
8.4 seasonal residential occupancy for recreation purposes and all or a portion of which was
8.5 devoted to commercial purposes for not more than 250 days in the year preceding the year
8.6 of assessment desiring classification as class 1c or 4c, must submit a declaration to the
8.7 assessor designating the cabins or units occupied for 250 days or less in the year preceding
8.8 the year of assessment by January 15 of the assessment year. Those cabins or units and a
8.9 proportionate share of the land on which they are located will be designated class 1c or 4c
8.10 as otherwise provided. The remainder of the cabins or units and a proportionate share of
8.11 the land on which they are located will be designated as class 3a. The owner of property
8.12 desiring designation as class 1c or 4c property must provide guest registers or other
8.13 records demonstrating that the units for which class 1c or 4c designation is sought were
8.14 not occupied for more than 250 days in the year preceding the assessment if so requested.
8.15 The portion of a property operated as a (1) restaurant, (2) bar, (3) gift shop, and (4) other
8.16 nonresidential facility operated on a commercial basis not directly related to temporary and
8.17 seasonal residential occupancy for recreation purposes shall not qualify for class 1c or 4c;

8.18 (2) qualified property used as a golf course if:

8.19 (i) it is open to the public on a daily fee basis. It may charge membership fees or
8.20 dues, but a membership fee may not be required in order to use the property for golfing,
8.21 and its green fees for golfing must be comparable to green fees typically charged by
8.22 municipal courses; and

8.23 (ii) it meets the requirements of section 273.112, subdivision 3, paragraph (d).

8.24 A structure used as a clubhouse, restaurant, or place of refreshment in conjunction
8.25 with the golf course is classified as class 3a property;

8.26 (3) real property up to a maximum of one acre of land owned by a nonprofit
8.27 community service oriented organization; provided that the property is not used for a
8.28 revenue-producing activity for more than six days in the calendar year preceding the year
8.29 of assessment and the property is not used for residential purposes on either a temporary
8.30 or permanent basis. For purposes of this clause, a "nonprofit community service oriented
8.31 organization" means any corporation, society, association, foundation, or institution
8.32 organized and operated exclusively for charitable, religious, fraternal, civic, or educational
8.33 purposes, and which is exempt from federal income taxation pursuant to section 501(c)(3),
8.34 (10), or (19) of the Internal Revenue Code of 1986, as amended through December 31,
8.35 1990. For purposes of this clause, "revenue-producing activities" shall include but not be
8.36 limited to property or that portion of the property that is used as an on-sale intoxicating

9.1 liquor or 3.2 percent malt liquor establishment licensed under chapter 340A, a restaurant
9.2 open to the public, bowling alley, a retail store, gambling conducted by organizations
9.3 licensed under chapter 349, an insurance business, or office or other space leased or
9.4 rented to a lessee who conducts a for-profit enterprise on the premises. Any portion of
9.5 the property which is used for revenue-producing activities for more than six days in the
9.6 calendar year preceding the year of assessment shall be assessed as class 3a. The use of
9.7 the property for social events open exclusively to members and their guests for periods of
9.8 less than 24 hours, when an admission is not charged nor any revenues are received by the
9.9 organization shall not be considered a revenue-producing activity;

9.10 (4) postsecondary student housing of not more than one acre of land that is owned by
9.11 a nonprofit corporation organized under chapter 317A and is used exclusively by a student
9.12 cooperative, sorority, or fraternity for on-campus housing or housing located within two
9.13 miles of the border of a college campus;

9.14 (5) manufactured home parks as defined in section 327.14, subdivision 3;

9.15 (6) real property that is actively and exclusively devoted to indoor fitness, health,
9.16 social, recreational, and related uses, is owned and operated by a not-for-profit corporation,
9.17 and is located within the metropolitan area as defined in section 473.121, subdivision 2;

9.18 (7) a leased or privately owned noncommercial aircraft storage hangar not exempt
9.19 under section 272.01, subdivision 2, and the land on which it is located, provided that:

9.20 (i) the land is on an airport owned or operated by a city, town, county, Metropolitan
9.21 Airports Commission, or group thereof; and

9.22 (ii) the land lease, or any ordinance or signed agreement restricting the use of the
9.23 leased premise, prohibits commercial activity performed at the hangar.

9.24 If a hangar classified under this clause is sold after June 30, 2000, a bill of sale must
9.25 be filed by the new owner with the assessor of the county where the property is located
9.26 within 60 days of the sale;

9.27 (8) a privately owned noncommercial aircraft storage hangar not exempt under
9.28 section 272.01, subdivision 2, and the land on which it is located, provided that:

9.29 (i) the land abuts a public airport; and

9.30 (ii) the owner of the aircraft storage hangar provides the assessor with a signed
9.31 agreement restricting the use of the premises, prohibiting commercial use or activity
9.32 performed at the hangar; and

9.33 (9) residential real estate, a portion of which is used by the owner for homestead
9.34 purposes, and that is also a place of lodging, if all of the following criteria are met:

9.35 (i) rooms are provided for rent to transient guests that generally stay for periods
9.36 of 14 or fewer days;

10.1 (ii) meals are provided to persons who rent rooms, the cost of which is incorporated
10.2 in the basic room rate;

10.3 (iii) meals are not provided to the general public except for special events on fewer
10.4 than seven days in the calendar year preceding the year of the assessment; and

10.5 (iv) the owner is the operator of the property.

10.6 The market value subject to the 4c classification under this clause is limited to five rental
10.7 units. Any rental units on the property in excess of five, must be valued and assessed as
10.8 class 3a. The portion of the property used for purposes of a homestead by the owner must
10.9 be classified as class 1a property under subdivision 22.

10.10 Class 4c property has a class rate of 1.5 percent of market value, except that (i) each
10.11 parcel of seasonal residential recreational property not used for commercial purposes has
10.12 the same class rates as class 4bb property, (ii) manufactured home parks assessed under
10.13 clause (5) have the same class rate as class 4b property, (iii) commercial-use seasonal
10.14 residential recreational property has a class rate of one percent for the first \$500,000 of
10.15 market value, and 1.25 percent for the remaining market value, (iv) the market value of
10.16 property described in clause (4) has a class rate of one percent, (v) the market value of
10.17 property described in clauses (2) and (6) has a class rate of 1.25 percent, and (vi) that
10.18 portion of the market value of property in clause (9) qualifying for class 4c property
10.19 has a class rate of 1.25 percent.

10.20 (e) Class 4d property is qualifying low-income rental housing certified to the assessor
10.21 by the Housing Finance Agency under section 273.128, subdivision 3. If only a portion
10.22 of the units in the building qualify as low-income rental housing units as certified under
10.23 section 273.128, subdivision 3, only the proportion of qualifying units to the total number
10.24 of units in the building qualify for class 4d. The remaining portion of the building shall be
10.25 classified by the assessor based upon its use. Class 4d also includes the same proportion of
10.26 land as the qualifying low-income rental housing units are to the total units in the building.
10.27 For all properties qualifying as class 4d, the market value determined by the assessor must
10.28 be based on the normal approach to value using normal unrestricted rents.

10.29 Class 4d property has a class rate of 0.75 percent.

10.30 Sec. 7. Minnesota Statutes 2006, section 297A.70, subdivision 7, is amended to read:

10.31 Subd. 7. **Hospitals and outpatient surgical centers.** (a) Sales, except for those
10.32 listed in paragraph (c), to a hospital are exempt, if the items purchased are used in
10.33 providing hospital services. For purposes of this subdivision, "hospital" means a hospital
10.34 organized and operated for charitable purposes within the meaning of section 501(c)(3) of
10.35 the Internal Revenue Code, and licensed under chapter 144 or by any other jurisdiction,

11.1 and "hospital services" are services authorized or required to be performed by a "hospital"
11.2 under chapter 144. In order for a hospital to qualify for this exemption, the hospital's
11.3 level of community care plus underpayments for services provided under state public
11.4 health care programs, as reported by the commissioner of health under section 144.699,
11.5 must equal at least six percent of total operating expenses each year. If the level of
11.6 community care is below this percentage for a year, the hospital shall not qualify for the
11.7 exemption under this subdivision. The commissioner of revenue, in coordination with the
11.8 commissioner of health, may waive the six percent minimum expense requirement if its
11.9 enforcement would cause the hospital a significant hardship.

11.10 (b) Sales, except for those listed in paragraph (c), to an outpatient surgical center
11.11 are exempt, if the items purchased are used in providing outpatient surgical services. For
11.12 purposes of this subdivision, "outpatient surgical center" means an outpatient surgical
11.13 center organized and operated for charitable purposes within the meaning of section
11.14 501(c)(3) of the Internal Revenue Code, and licensed under chapter 144 or by any other
11.15 jurisdiction. For the purposes of this subdivision, "outpatient surgical services" means:
11.16 (1) services authorized or required to be performed by an outpatient surgical center under
11.17 chapter 144; and (2) urgent care. For purposes of this subdivision, "urgent care" means
11.18 health services furnished to a person whose medical condition is sufficiently acute to
11.19 require treatment unavailable through, or inappropriate to be provided by, a clinic or
11.20 physician's office, but not so acute as to require treatment in a hospital emergency room.

11.21 (c) This exemption does not apply to the following products and services:

11.22 (1) purchases made by a clinic, physician's office, or any other medical facility not
11.23 operating as a hospital or outpatient surgical center, even though the clinic, office, or
11.24 facility may be owned and operated by a hospital or outpatient surgical center;

11.25 (2) sales under section 297A.61, subdivision 3, paragraph (g), clause (2), and
11.26 prepared food, candy, and soft drinks;

11.27 (3) building and construction materials used in constructing buildings or facilities
11.28 that will not be used principally by the hospital or outpatient surgical center;

11.29 (4) building, construction, or reconstruction materials purchased by a contractor
11.30 or a subcontractor as a part of a lump-sum contract or similar type of contract with a
11.31 guaranteed maximum price covering both labor and materials for use in the construction,
11.32 alteration, or repair of a hospital or outpatient surgical center; or

11.33 (5) the leasing of a motor vehicle as defined in section 297B.01, subdivision 5.

11.34 (d) A limited liability company also qualifies for exemption under this subdivision if
11.35 (1) it consists of a sole member that would qualify for the exemption, and (2) the items
11.36 purchased qualify for the exemption.