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State of Minnesota
HOUSE OF REPRESENTATIVES

EIGHTY-FIFTH
SESSION

HOUSE FILE No. 1078

February 19, 2007

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

March 21, 2007

Committee Recommendation and Adoption of Report:

To Pass as Amended and re-referred to the Committee on Finance

1.1 A bill for an act
1.2 relating to health; modifying the hospital public interest review; modifying
1.3 the alternative approval process; amending Minnesota Statutes 2006, sections
1.4 144.50, by adding subdivisions; 144.552; 144.553, subdivision 3; 144.699, by
1.5 adding a subdivision.

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

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

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

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

1.17 Subd. 1b. **Community care.** "Community care" means the costs for medical care
1.18 for which a hospital has determined is charity care, as defined under Minnesota Rules, part
1.19 4650.0115 or for which the hospital determines after billing for the services that there is a
1.20 demonstrated inability to pay. Any costs forgiven under a hospital's community care plan
1.21 or under section 62J.83 may be counted in the hospital's calculation of community care.
1.22 Bad debt expenses and discounted charges available to the uninsured shall not be included
1.23 in the calculation of community care. The amount of community care is the value of costs
1.24 incurred and not the charges made for services.

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

2.2 **144.552 PUBLIC INTEREST REVIEW.**

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

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

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

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

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

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

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

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

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

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

2.32 (5) the views of affected parties.

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

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

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

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

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

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

3.12 (g) If an exception to the moratorium is approved under section 144.551 after a
3.13 review under this section, the commissioner shall monitor the implementation of the
3.14 exception up to completion of the construction project to ensure that the project continues
3.15 to be in the public interest. If the commissioner determines that the project does not
3.16 reflect the details of the plan as submitted under the public interest review process of the
3.17 Department of Health, the commissioner may refuse to grant the license for the project
3.18 approved under section 144.551. Upon completion of the construction project and before
3.19 the final license approval is granted, the hospital shall submit to the commissioner a
3.20 report on how the construction has met the provisions of the plan originally submitted
3.21 under the public interest review process.

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

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

3.28 (b) The commissioner shall:

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

3.30 The criteria must include standards regarding:

3.31 (i) access to care;

3.32 (ii) quality of care;

3.33 (iii) cost of care; and

3.34 (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.
6.4 If the commissioner determines that the project does not reflect the details of the plan
6.5 as submitted under the public interest review process of the Department of Health, the
6.6 commissioner may refuse to grant or renew, or may suspend or revoke, the license for the
6.7 project approved 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.