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State of Minnesota
HOUSE OF REPRESENTATIVES

EIGHTY-SIXTH
SESSION

HOUSE FILE No. **3442**

March 8, 2010

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

March 15, 2010

Committee Recommendation and Adoption of Report:

Amended and re-referred to the Committee on Finance without further recommendation

A bill for an act

relating to human services; increasing license and registration fees for certain home care providers; creating a nursing assistant registration fee; modifying housing with services establishments and personal care assistants; providing a rate reduction for customized living services; changing the phase-in for nursing facility rate rebasing; providing a nursing facility rate reduction; changing the rate a nursing facility may charge a private pay resident; amending Minnesota Statutes 2008, sections 144A.4605, subdivision 5; 144A.61, by adding a subdivision; 144D.03, subdivisions 1, 2; 144D.04, subdivision 2; 144G.06; 256B.0915, by adding a subdivision; 256B.441, by adding a subdivision; 256B.48, subdivision 1; Minnesota Statutes 2009 Supplement, sections 256.975, subdivision 7; 256B.0625, subdivision 19a; 256B.0659, subdivision 11; 256B.441, subdivision 55; proposing coding for new law in Minnesota Statutes, chapter 144D.

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

Section 1. Minnesota Statutes 2008, section 144A.4605, subdivision 5, is amended to read:

Subd. 5. **License fees.** The license fees for class F home care providers shall be as follows:

(1) ~~\$125~~ \$250 annually for those providers serving a monthly average of 15 or fewer clients, and for class F providers of all sizes during the first year of operation;

(2) ~~\$200~~ \$400 annually for those providers serving a monthly average of 16 to 30 clients;

(3) ~~\$375~~ \$750 annually for those providers serving a monthly average of 31 to 50 clients; and

(4) ~~\$625~~ \$1,250 annually for those providers serving a monthly average of 51 or more clients.

2.1 Sec. 2. Minnesota Statutes 2008, section 144A.61, is amended by adding a subdivision
2.2 to read:

2.3 Subd. 9. **Registry fee.** Nursing assistants required to register with the Department
2.4 of Health shall pay a \$50 annual registration fee. All fee revenue collected under this
2.5 subdivision shall be deposited into the state general fund.

2.6 **EFFECTIVE DATE.** This section is effective August 1, 2010.

2.7 Sec. 3. Minnesota Statutes 2008, section 144D.03, subdivision 1, is amended to read:

2.8 Subdivision 1. **Registration procedures.** The commissioner shall establish forms
2.9 and procedures for annual registration of housing with services establishments. The
2.10 commissioner shall charge an annual registration fee of ~~\$155~~ \$2,000. No fee shall be
2.11 refunded. A registered establishment shall notify the commissioner within 30 days of the
2.12 date it is no longer required to be registered under this chapter or of any change in the
2.13 business name or address of the establishment, the name or mailing address of the owner
2.14 or owners, or the name or mailing address of the managing agent. There shall be no
2.15 fee for submission of the notice. All fee revenue collected under this subdivision shall
2.16 be deposited into the state general fund.

2.17 Sec. 4. Minnesota Statutes 2008, section 144D.03, subdivision 2, is amended to read:

2.18 Subd. 2. **Registration information.** The establishment shall provide the following
2.19 information to the commissioner in order to be registered:

2.20 (1) the business name, street address, and mailing address of the establishment;

2.21 (2) the name and mailing address of the owner or owners of the establishment and, if
2.22 the owner or owners are not natural persons, identification of the type of business entity
2.23 of the owner or owners, and the names and addresses of the officers and members of the
2.24 governing body, or comparable persons for partnerships, limited liability corporations, or
2.25 other types of business organizations of the owner or owners;

2.26 (3) the name and mailing address of the managing agent, whether through
2.27 management agreement or lease agreement, of the establishment, if different from the
2.28 owner or owners, and the name of the on-site manager, if any;

2.29 (4) verification that the establishment has entered into a housing with services
2.30 contract, as required in section 144D.04, with each resident or resident's representative;

2.31 (5) verification that the establishment is complying with the requirements of section
2.32 325F.72, if applicable;

2.33 (6) the name and address of at least one natural person who shall be responsible
2.34 for dealing with the commissioner on all matters provided for in sections 144D.01 to

3.1 144D.06, and on whom personal service of all notices and orders shall be made, and who
3.2 shall be authorized to accept service on behalf of the owner or owners and the managing
3.3 agent, if any; ~~and~~

3.4 (7) the signature of the authorized representative of the owner or owners or, if
3.5 the owner or owners are not natural persons, signatures of at least two authorized
3.6 representatives of each owner, one of which shall be an officer of the owner; and

3.7 (8) whether services are included in the base rate to be paid by the resident.

3.8 Personal service on the person identified under clause (6) by the owner or owners in
3.9 the registration shall be considered service on the owner or owners, and it shall not be a
3.10 defense to any action that personal service was not made on each individual or entity. The
3.11 designation of one or more individuals under this subdivision shall not affect the legal
3.12 responsibility of the owner or owners under sections 144D.01 to 144D.06.

3.13 Sec. 5. Minnesota Statutes 2008, section 144D.04, subdivision 2, is amended to read:

3.14 Subd. 2. **Contents of contract.** A housing with services contract, which need not be
3.15 entitled as such to comply with this section, shall include at least the following elements
3.16 in itself or through supporting documents or attachments:

3.17 (1) the name, street address, and mailing address of the establishment;

3.18 (2) the name and mailing address of the owner or owners of the establishment and, if
3.19 the owner or owners is not a natural person, identification of the type of business entity
3.20 of the owner or owners;

3.21 (3) the name and mailing address of the managing agent, through management
3.22 agreement or lease agreement, of the establishment, if different from the owner or owners;

3.23 (4) the name and address of at least one natural person who is authorized to accept
3.24 service of process on behalf of the owner or owners and managing agent;

3.25 (5) a statement describing the registration and licensure status of the establishment
3.26 and any provider providing health-related or supportive services under an arrangement
3.27 with the establishment;

3.28 (6) the term of the contract;

3.29 (7) a description of the services to be provided to the resident in the base rate to be
3.30 paid by resident, including a delineation of the portion of the base rate that constitutes rent
3.31 and a delineation of charges for each service included in the base rate;

3.32 (8) a description of any additional services, including home care services, available
3.33 for an additional fee from the establishment directly or through arrangements with the
3.34 establishment, and a schedule of fees charged for these services;

4.1 (9) a description of the process through which the contract may be modified,
4.2 amended, or terminated;

4.3 (10) a description of the establishment's complaint resolution process available
4.4 to residents including the toll-free complaint line for the Office of Ombudsman for
4.5 Long-Term Care;

4.6 (11) the resident's designated representative, if any;

4.7 (12) the establishment's referral procedures if the contract is terminated;

4.8 (13) requirements of residency used by the establishment to determine who may
4.9 reside or continue to reside in the housing with services establishment;

4.10 (14) billing and payment procedures and requirements;

4.11 (15) a statement regarding the ability of residents to receive services from service
4.12 providers with whom the establishment does not have an arrangement;

4.13 (16) a statement regarding the availability of public funds for payment for residence
4.14 or services in the establishment; and

4.15 (17) a statement regarding the availability of and contact information for
4.16 long-term care consultation services under section 256B.0911 in the county in which the
4.17 establishment is located.

4.18 **Sec. 6. [144D.08] UNIFORM CONSUMER INFORMATION GUIDE.**

4.19 All housing with services establishments shall make available to all prospective
4.20 and current residents information consistent with the uniform format and the required
4.21 components adopted by the commissioner under section 144G.06.

4.22 **Sec. 7. [144D.09] TERMINATION OF LEASE.**

4.23 The housing with services establishment shall include with notice of termination
4.24 of lease information about how to contact the ombudsman for long-term care, including
4.25 the address and phone number along with a statement of how to request problem solving
4.26 assistance.

4.27 Sec. 8. Minnesota Statutes 2008, section 144G.06, is amended to read:

4.28 **144G.06 UNIFORM CONSUMER INFORMATION GUIDE.**

4.29 (a) The commissioner of health shall establish an advisory committee consisting
4.30 of representatives of consumers, providers, county and state officials, and other
4.31 groups the commissioner considers appropriate. The advisory committee shall present
4.32 recommendations to the commissioner on:

5.1 (1) a format for a guide to be used by individual providers of assisted living, as
5.2 defined in section 144G.01, that includes information about services offered by that
5.3 provider, which services may be covered by Medicare, service costs, and other relevant
5.4 provider-specific information, as well as a statement of philosophy and values associated
5.5 with assisted living, presented in uniform categories that facilitate comparison with guides
5.6 issued by other providers; and

5.7 (2) requirements for informing assisted living clients, as defined in section 144G.01,
5.8 of their applicable legal rights.

5.9 (b) The commissioner, after reviewing the recommendations of the advisory
5.10 committee, shall adopt a uniform format for the guide to be used by individual providers,
5.11 and the required components of materials to be used by providers to inform assisted
5.12 living clients of their legal rights, and shall make the uniform format and the required
5.13 components available to assisted living providers.

5.14 Sec. 9. Minnesota Statutes 2009 Supplement, section 256.975, subdivision 7, is
5.15 amended to read:

5.16 Subd. 7. **Consumer information and assistance and long-term care options**
5.17 **counseling; Senior LinkAge Line.** (a) The Minnesota Board on Aging shall operate a
5.18 statewide service to aid older Minnesotans and their families in making informed choices
5.19 about long-term care options and health care benefits. Language services to persons with
5.20 limited English language skills may be made available. The service, known as Senior
5.21 LinkAge Line, must be available during business hours through a statewide toll-free
5.22 number and must also be available through the Internet.

5.23 (b) The service must provide long-term care options counseling by assisting older
5.24 adults, caregivers, and providers in accessing information and options counseling about
5.25 choices in long-term care services that are purchased through private providers or available
5.26 through public options. The service must:

5.27 (1) develop a comprehensive database that includes detailed listings in both
5.28 consumer- and provider-oriented formats;

5.29 (2) make the database accessible on the Internet and through other telecommunication
5.30 and media-related tools;

5.31 (3) link callers to interactive long-term care screening tools and make these tools
5.32 available through the Internet by integrating the tools with the database;

5.33 (4) develop community education materials with a focus on planning for long-term
5.34 care and evaluating independent living, housing, and service options;

6.1 (5) conduct an outreach campaign to assist older adults and their caregivers in
6.2 finding information on the Internet and through other means of communication;

6.3 (6) implement a messaging system for overflow callers and respond to these callers
6.4 by the next business day;

6.5 (7) link callers with county human services and other providers to receive more
6.6 in-depth assistance and consultation related to long-term care options;

6.7 (8) link callers with quality profiles for nursing facilities and other providers
6.8 developed by the commissioner of health;

6.9 (9) incorporate information about the availability of housing options, as well as
6.10 registered housing with services and consumer rights within the MinnesotaHelp.info
6.11 network long-term care database to facilitate consumer comparison of services and costs
6.12 among housing with services establishments and with other in-home services and to
6.13 support financial self-sufficiency as long as possible. Housing with services establishments
6.14 and their arranged home care providers shall provide ~~information to the commissioner~~
6.15 ~~of human services that is consistent with information required by the commissioner of~~
6.16 ~~health under section 144G.06, the Uniform Consumer Information Guide~~ information that
6.17 will facilitate price comparisons, including delineation of charges for rent and for services
6.18 available. The commissioners of health and human services shall align the data elements
6.19 required by section 144G.06, the Uniform Consumer Information Guide, and this section
6.20 to provide consumers standardized information and ease of comparison of long-term care
6.21 options. The commissioner of human services shall provide the data to the Minnesota
6.22 Board on Aging for inclusion in the MinnesotaHelp.info network long-term care database;

6.23 (10) provide long-term care options counseling. Long-term care options counselors
6.24 shall:

6.25 (i) for individuals not eligible for case management under a public program or public
6.26 funding source, provide interactive decision support under which consumers, family
6.27 members, or other helpers are supported in their deliberations to determine appropriate
6.28 long-term care choices in the context of the consumer's needs, preferences, values, and
6.29 individual circumstances, including implementing a community support plan;

6.30 (ii) provide Web-based educational information and collateral written materials to
6.31 familiarize consumers, family members, or other helpers with the long-term care basics,
6.32 issues to be considered, and the range of options available in the community;

6.33 (iii) provide long-term care futures planning, which means providing assistance to
6.34 individuals who anticipate having long-term care needs to develop a plan for the more
6.35 distant future; and

7.1 (iv) provide expertise in benefits and financing options for long-term care, including
7.2 Medicare, long-term care insurance, tax or employer-based incentives, reverse mortgages,
7.3 private pay options, and ways to access low or no-cost services or benefits through
7.4 volunteer-based or charitable programs; and

7.5 (11) using risk management and support planning protocols, provide long-term care
7.6 options counseling to current residents of nursing homes deemed appropriate for discharge
7.7 by the commissioner. In order to meet this requirement, the commissioner shall provide
7.8 designated Senior LinkAge Line contact centers with a list of nursing home residents
7.9 appropriate for discharge planning via a secure Web portal. Senior LinkAge Line shall
7.10 provide these residents, if they indicate a preference to receive long-term care options
7.11 counseling, with initial assessment, review of risk factors, independent living support
7.12 consultation, or referral to:

7.13 (i) long-term care consultation services under section 256B.0911;

7.14 (ii) designated care coordinators of contracted entities under section 256B.035 for
7.15 persons who are enrolled in a managed care plan; or

7.16 (iii) the long-term care consultation team for those who are appropriate for relocation
7.17 service coordination due to high-risk factors or psychological or physical disability.

7.18 Sec. 10. Minnesota Statutes 2009 Supplement, section 256B.0625, subdivision 19a,
7.19 is amended to read:

7.20 Subd. 19a. **Personal care assistance services.** Medical assistance covers personal
7.21 care assistance services in a recipient's home. Effective January 1, 2010, to qualify for
7.22 personal care assistance services, a recipient must require assistance and be determined
7.23 dependent in one activity of daily living as defined in section 256B.0659, subdivision 1,
7.24 paragraph (b), or in a Level I behavior as defined in section 256B.0659, subdivision
7.25 1, paragraph (c). Beginning July 1, ~~2011~~ 2010, to qualify for personal care assistance
7.26 services, a recipient must require assistance and be determined dependent in at least two
7.27 activities of daily living as defined in section 256B.0659. Recipients or responsible parties
7.28 must be able to identify the recipient's needs, direct and evaluate task accomplishment,
7.29 and provide for health and safety. Approved hours may be used outside the home when
7.30 normal life activities take them outside the home. To use personal care assistance services
7.31 at school, the recipient or responsible party must provide written authorization in the care
7.32 plan identifying the chosen provider and the daily amount of services to be used at school.
7.33 Total hours for services, whether actually performed inside or outside the recipient's
7.34 home, cannot exceed that which is otherwise allowed for personal care assistance services
7.35 in an in-home setting according to sections 256B.0651 to 256B.0656. Medical assistance

8.1 does not cover personal care assistance services for residents of a hospital, nursing facility,
8.2 intermediate care facility, health care facility licensed by the commissioner of health, or
8.3 unless a resident who is otherwise eligible is on leave from the facility and the facility
8.4 either pays for the personal care assistance services or forgoes the facility per diem for the
8.5 leave days that personal care assistance services are used. All personal care assistance
8.6 services must be provided according to sections 256B.0651 to 256B.0656. Personal care
8.7 assistance services may not be reimbursed if the personal care assistant is the spouse or
8.8 paid guardian of the recipient or the parent of a recipient under age 18, or the responsible
8.9 party or the family foster care provider of a recipient who cannot direct the recipient's own
8.10 care unless, in the case of a foster care provider, a county or state case manager visits
8.11 the recipient as needed, but not less than every six months, to monitor the health and
8.12 safety of the recipient and to ensure the goals of the care plan are met. Notwithstanding
8.13 the provisions of section 256B.0659, the unpaid guardian or conservator of an adult,
8.14 who is not the responsible party and not the personal care provider organization, may be
8.15 reimbursed to provide personal care assistance services to the recipient if the guardian or
8.16 conservator meets all criteria for a personal care assistant according to section 256B.0659,
8.17 and shall not be considered to have a service provider interest for purposes of participation
8.18 on the screening team under section 256B.092, subdivision 7.

8.19 Sec. 11. Minnesota Statutes 2009 Supplement, section 256B.0659, subdivision 11,
8.20 is amended to read:

8.21 Subd. 11. **Personal care assistant; requirements.** (a) A personal care assistant
8.22 must meet the following requirements:

8.23 (1) be at least 18 years of age with the exception of persons who are 16 or 17 years
8.24 of age with these additional requirements:

8.25 (i) supervision by a qualified professional every 60 days; and

8.26 (ii) employment by only one personal care assistance provider agency responsible
8.27 for compliance with current labor laws;

8.28 (2) be employed by a personal care assistance provider agency;

8.29 (3) enroll with the department as a personal care assistant after clearing a background
8.30 study and pay an annual \$50 registration fee to the department. All fee revenue collected
8.31 under this subdivision shall be deposited into the state general fund. Before a personal
8.32 care assistant provides services, the personal care assistance provider agency must initiate
8.33 a background study on the personal care assistant under chapter 245C, and the personal
8.34 care assistance provider agency must have received a notice from the commissioner that
8.35 the personal care assistant is:

- 9.1 (i) not disqualified under section 245C.14; or
- 9.2 (ii) is disqualified, but the personal care assistant has received a set aside of the
- 9.3 disqualification under section 245C.22;
- 9.4 (4) be able to effectively communicate with the recipient and personal care
- 9.5 assistance provider agency;
- 9.6 (5) be able to provide covered personal care assistance services according to the
- 9.7 recipient's personal care assistance care plan, respond appropriately to recipient needs,
- 9.8 and report changes in the recipient's condition to the supervising qualified professional
- 9.9 or physician;
- 9.10 (6) not be a consumer of personal care assistance services;
- 9.11 (7) maintain daily written records including, but not limited to, time sheets under
- 9.12 subdivision 12;
- 9.13 (8) effective January 1, 2010, complete standardized training as determined by the
- 9.14 commissioner before completing enrollment. Personal care assistant training must include
- 9.15 successful completion of the following training components: basic first aid, vulnerable
- 9.16 adult, child maltreatment, OSHA universal precautions, basic roles and responsibilities of
- 9.17 personal care assistants including information about assistance with lifting and transfers
- 9.18 for recipients, emergency preparedness, orientation to positive behavioral practices, fraud
- 9.19 issues, and completion of time sheets. Upon completion of the training components,
- 9.20 the personal care assistant must demonstrate the competency to provide assistance to
- 9.21 recipients;
- 9.22 (9) complete training and orientation on the needs of the recipient within the first
- 9.23 seven days after the services begin; and
- 9.24 (10) be limited to providing and being paid for up to 310 hours per month of personal
- 9.25 care assistance services regardless of the number of recipients being served or the number
- 9.26 of personal care assistance provider agencies enrolled with.
- 9.27 (b) A legal guardian may be a personal care assistant if the guardian is not being paid
- 9.28 for the guardian services and meets the criteria for personal care assistants in paragraph (a).
- 9.29 (c) Effective January 1, 2010, persons who do not qualify as a personal care assistant
- 9.30 include parents and stepparents of minors, spouses, paid legal guardians, family foster
- 9.31 care providers, except as otherwise allowed in section 256B.0625, subdivision 19a, or
- 9.32 staff of a residential setting.

9.33 **EFFECTIVE DATE.** This section is effective August 1, 2010.

9.34 Sec. 12. Minnesota Statutes 2008, section 256B.0915, is amended by adding a

9.35 subdivision to read:

10.1 **Subd. 3i. Rate reduction for customized living and 24-hour customized living**
10.2 **services.** (a) The commissioner shall array counties by the number of housing with
10.3 services beds per 1,000 individuals age 65 and over, calculated based on each individual
10.4 county and contiguous counties. The commissioner shall then divide counties based upon
10.5 this measure of housing with services bed concentration into three groups of near equal
10.6 size: low, medium, and high concentration.

10.7 (b) Effective July 1, 2010, the commissioner shall reduce payment rates for
10.8 customized living services and 24-hour customized living services, from the rates in
10.9 effect on June 30, 2010, by:

10.10 (1) ... percent for facilities located in counties classified as having a low
10.11 concentration of housing with services beds;

10.12 (2) ... percent for facilities located in counties classified as having a medium
10.13 concentration of housing with services beds; and

10.14 (3) ... percent for facilities located in counties classified as having a high
10.15 concentration of housing with services beds.

10.16 (c) Effective January 1, 2011, the commissioner shall reduce capitation rates paid to
10.17 managed care and county-based purchasing plans under sections 256B.69 and 256B.692
10.18 to reflect this reduction. The commissioner shall reduce capitation rates for the period
10.19 January 1, 2011, through June 30, 2011, to provide savings equivalent to applying the
10.20 percentage reductions in paragraph (b) for all of fiscal year 2011.

10.21 **Sec. 13. Minnesota Statutes 2009 Supplement, section 256B.441, subdivision 55,**
10.22 **is amended to read:**

10.23 **Subd. 55. Phase-in of rebased operating payment rates.** (a) For the rate years
10.24 beginning October 1, 2008, to October 1, 2015, the operating payment rate calculated
10.25 under this section shall be phased in by blending the operating rate with the operating
10.26 payment rate determined under section 256B.434. For purposes of this subdivision, the
10.27 rate to be used that is determined under section 256B.434 shall not include the portion of
10.28 the operating payment rate related to performance-based incentive payments under section
10.29 256B.434, subdivision 4, paragraph (d). For the rate year beginning October 1, 2008, the
10.30 operating payment rate for each facility shall be 13 percent of the operating payment rate
10.31 from this section, and 87 percent of the operating payment rate from section 256B.434.
10.32 For the rate year beginning October 1, 2009, the operating payment rate for each facility
10.33 shall be 14 percent of the operating payment rate from this section, and 86 percent of
10.34 the operating payment rate from section 256B.434. ~~For rate years beginning October 1,~~
10.35 ~~2010; October 1, 2011; and October 1, 2012, no rate adjustments shall be implemented~~

11.1 ~~under this section, but shall be determined under section 256B.434.~~ For the rate year
11.2 beginning October 1, 2010, the operating payment rate for each facility shall be 14 percent
11.3 of the operating payment rate from this section, and 86 percent of the operating payment
11.4 rate from section 256B.434. For the rate year beginning October 1, 2011, the operating
11.5 payment rate for each facility shall be 31 percent of the operating payment rate from this
11.6 section, and 69 percent of the operating payment rate from section 256B.434. For the rate
11.7 year beginning October 1, 2012, the operating payment rate for each facility shall be 48
11.8 percent of the operating payment rate from this section, and 52 percent of the operating
11.9 payment rate from section 256B.434. For the rate year beginning October 1, 2013, the
11.10 operating payment rate for each facility shall be 65 percent of the operating payment rate
11.11 from this section, and 35 percent of the operating payment rate from section 256B.434.
11.12 For the rate year beginning October 1, 2014, the operating payment rate for each facility
11.13 shall be 82 percent of the operating payment rate from this section, and 18 percent of the
11.14 operating payment rate from section 256B.434. For the rate year beginning October 1,
11.15 2015, the operating payment rate for each facility shall be the operating payment rate
11.16 determined under this section. The blending of operating payment rates under this section
11.17 shall be performed separately for each RUG's class.

11.18 (b) For the rate year beginning October 1, 2008, the commissioner shall apply limits
11.19 to the operating payment rate increases under paragraph (a) by creating a minimum
11.20 percentage increase and a maximum percentage increase.

11.21 (1) Each nursing facility that receives a blended October 1, 2008, operating payment
11.22 rate increase under paragraph (a) of less than one percent, when compared to its operating
11.23 payment rate on September 30, 2008, computed using rates with RUG's weight of 1.00,
11.24 shall receive a rate adjustment of one percent.

11.25 (2) The commissioner shall determine a maximum percentage increase that will
11.26 result in savings equal to the cost of allowing the minimum increase in clause (1). Nursing
11.27 facilities with a blended October 1, 2008, operating payment rate increase under paragraph
11.28 (a) greater than the maximum percentage increase determined by the commissioner, when
11.29 compared to its operating payment rate on September 30, 2008, computed using rates with
11.30 a RUG's weight of 1.00, shall receive the maximum percentage increase.

11.31 (3) Nursing facilities with a blended October 1, 2008, operating payment rate
11.32 increase under paragraph (a) greater than one percent and less than the maximum
11.33 percentage increase determined by the commissioner, when compared to its operating
11.34 payment rate on September 30, 2008, computed using rates with a RUG's weight of 1.00,
11.35 shall receive the blended October 1, 2008, operating payment rate increase determined
11.36 under paragraph (a).

12.1 (4) The October 1, 2009, through October 1, 2015, operating payment rate for
12.2 facilities receiving the maximum percentage increase determined in clause (2) shall be
12.3 the amount determined under paragraph (a) less the difference between the amount
12.4 determined under paragraph (a) for October 1, 2008, and the amount allowed under clause
12.5 (2). This rate restriction does not apply to rate increases provided in any other section.

12.6 (c) A portion of the funds received under this subdivision that are in excess of
12.7 operating payment rates that a facility would have received under section 256B.434, as
12.8 determined in accordance with clauses (1) to (3), shall be subject to the requirements in
12.9 section 256B.434, subdivision 19, paragraphs (b) to (h).

12.10 (1) Determine the amount of additional funding available to a facility, which shall be
12.11 equal to total medical assistance resident days from the most recent reporting year times
12.12 the difference between the blended rate determined in paragraph (a) for the rate year being
12.13 computed and the blended rate for the prior year.

12.14 (2) Determine the portion of all operating costs, for the most recent reporting year,
12.15 that are compensation related. If this value exceeds 75 percent, use 75 percent.

12.16 (3) Subtract the amount determined in clause (2) from 75 percent.

12.17 (4) The portion of the fund received under this subdivision that shall be subject to
12.18 the requirements in section 256B.434, subdivision 19, paragraphs (b) to (h), shall equal
12.19 the amount determined in clause (1) times the amount determined in clause (3).

12.20 Sec. 14. Minnesota Statutes 2008, section 256B.441, is amended by adding a
12.21 subdivision to read:

12.22 Subd. 60. **Nursing facility rate reduction.** (a) Effective for the rate year beginning
12.23 October 1, 2010, the commissioner shall reduce the operating payment rates of nursing
12.24 facilities reimbursed under this section or section 256B.434 by the following percentages
12.25 after any blending and rebasing of rates under subdivision 55:

12.26 (1) a reduction of three percent for facilities with 50 percent or more of patient days
12.27 reimbursed through private pay;

12.28 (2) a reduction of two percent for facilities with greater than 25 percent but less than
12.29 50 percent of patient days reimbursed through private pay; and

12.30 (3) a reduction of one percent for facilities with 25 percent or less of patient days
12.31 reimbursed through private pay.

12.32 (b) In determining the percentage of private-pay patient days, the commissioner shall
12.33 use data from the reporting period ending September 30, 2009.

12.34 Sec. 15. Minnesota Statutes 2008, section 256B.48, subdivision 1, is amended to read:

13.1 Subdivision 1. **Prohibited practices.** A nursing facility is not eligible to receive
13.2 medical assistance payments unless it refrains from all of the following:

13.3 (a) Charging private paying residents rates for similar services which exceed those
13.4 which are approved by the state agency for medical assistance recipients as determined by
13.5 the prospective desk audit rate, except under the following circumstances:

13.6 (1) the nursing facility may ~~(1)~~ (i) charge private paying residents a higher rate for a
13.7 private room; and ~~(2)~~ (ii) charge for special services which are not included in the daily
13.8 rate if medical assistance residents are charged separately at the same rate for the same
13.9 services in addition to the daily rate paid by the commissioner;

13.10 (2) effective July 1, 2010, nursing facilities may charge private paying residents
13.11 rates up to two percent higher than the allowable payment rate in effect on June 30, 2010,
13.12 plus an adjustment equal to any other rate increase provided in law, for the RUGs group
13.13 currently assigned to the resident;

13.14 (3) effective October 1, 2011, nursing facilities may charge private paying residents
13.15 rates up to four percent higher than the allowable payment rate in effect on September 30,
13.16 2011, plus an adjustment equal to any other rate increase provided in law, for the RUGs
13.17 group currently assigned to the resident; and

13.18 (4) effective October 1, 2012, nursing facilities may charge private paying residents
13.19 rates up to six percent higher than the allowable payment rate in effect on September 30,
13.20 2012, plus an adjustment equal to any other rate increase provided in law, for the RUGs
13.21 group currently assigned to the resident.

13.22 For purposes of this subdivision, the allowable payment rate under section 256B.434
13.23 includes adjustments for enhanced rates during the first 30 days under section 256B.431,
13.24 subdivision 32, and private room differentials under clause (1), item (i), and Minnesota
13.25 Rules, part 9549.0060, subpart 11, item C. Nothing in this section precludes a nursing
13.26 facility from charging a rate allowable under the facility's single room election option
13.27 under Minnesota Rules, part 9549.0060, subpart 11. Services covered by the payment rate
13.28 must be the same regardless of payment source. Special services, if offered, must be
13.29 available to all residents in all areas of the nursing facility and charged separately at the
13.30 same rate. Residents are free to select or decline special services. Special services must
13.31 not include services which must be provided by the nursing facility in order to comply with
13.32 licensure or certification standards and that if not provided would result in a deficiency or
13.33 violation by the nursing facility. Services beyond those required to comply with licensure
13.34 or certification standards must not be charged separately as a special service if they were
13.35 included in the payment rate for the previous reporting year. A nursing facility that charges
13.36 a private paying resident a rate in violation of this clause is subject to an action by the state

14.1 of Minnesota or any of its subdivisions or agencies for civil damages. A private paying
14.2 resident or the resident's legal representative has a cause of action for civil damages against
14.3 a nursing facility that charges the resident rates in violation of this clause. The damages
14.4 awarded shall include three times the payments that result from the violation, together with
14.5 costs and disbursements, including reasonable attorneys' fees or their equivalent. A private
14.6 paying resident or the resident's legal representative, the state, subdivision or agency, or a
14.7 nursing facility may request a hearing to determine the allowed rate or rates at issue in
14.8 the cause of action. Within 15 calendar days after receiving a request for such a hearing,
14.9 the commissioner shall request assignment of an administrative law judge under sections
14.10 14.48 to 14.56 to conduct the hearing as soon as possible or according to agreement by
14.11 the parties. The administrative law judge shall issue a report within 15 calendar days
14.12 following the close of the hearing. The prohibition set forth in this clause shall not
14.13 apply to facilities licensed as boarding care facilities which are not certified as skilled or
14.14 intermediate care facilities level I or II for reimbursement through medical assistance.

14.15 (b) Effective October 1, 2013, paragraph (a) no longer applies, except that special
14.16 services, if offered, must be available to all residents of the nursing facility and charged
14.17 separately at the same rate. Residents are free to select or decline special services. Special
14.18 services must not include services that must be provided by the nursing facility in order to
14.19 comply with licensure or certification standards and that, if not provided, would result in a
14.20 deficiency or violation by the nursing facility.

14.21 (c)(1) Charging, soliciting, accepting, or receiving from an applicant for admission
14.22 to the facility, or from anyone acting in behalf of the applicant, as a condition of
14.23 admission, expediting the admission, or as a requirement for the individual's continued
14.24 stay, any fee, deposit, gift, money, donation, or other consideration not otherwise required
14.25 as payment under the state plan. For residents on medical assistance, medical assistance
14.26 payment according to the state plan must be accepted as payment in full for continued
14.27 stay, except where otherwise provided for under statute;

14.28 (2) requiring an individual, or anyone acting in behalf of the individual, to loan
14.29 any money to the nursing facility;

14.30 (3) requiring an individual, or anyone acting in behalf of the individual, to promise
14.31 to leave all or part of the individual's estate to the facility; or

14.32 (4) requiring a third-party guarantee of payment to the facility as a condition of
14.33 admission, expedited admission, or continued stay in the facility.

14.34 Nothing in this paragraph would prohibit discharge for nonpayment of services in
14.35 accordance with state and federal regulations.

15.1 ~~(e)~~ (d) Requiring any resident of the nursing facility to utilize a vendor of health
 15.2 care services chosen by the nursing facility. A nursing facility may require a resident
 15.3 to use pharmacies that utilize unit dose packing systems approved by the Minnesota
 15.4 Board of Pharmacy, and may require a resident to use pharmacies that are able to meet
 15.5 the federal regulations for safe and timely administration of medications such as systems
 15.6 with specific number of doses, prompt delivery of medications, or access to medications
 15.7 on a 24-hour basis. Notwithstanding the provisions of this paragraph, nursing facilities
 15.8 shall not restrict a resident's choice of pharmacy because the pharmacy utilizes a specific
 15.9 system of unit dose drug packing.

15.10 ~~(d)~~ (e) Providing differential treatment on the basis of status with regard to public
 15.11 assistance.

15.12 ~~(e)~~ (f) Discriminating in admissions, services offered, or room assignment on the
 15.13 basis of status with regard to public assistance ~~or refusal to purchase special services.~~

15.14 Discrimination in admissions ~~discrimination~~ shall include, but is not limited to:

15.15 ~~(1)~~ basing admissions decisions upon ~~assurance by the applicant to the nursing~~
 15.16 ~~facility, or the applicant's guardian or conservator, that the applicant is neither eligible for~~
 15.17 ~~nor will seek~~ information or assurances regarding current or future eligibility for public
 15.18 assistance for payment of nursing facility care costs; and.

15.19 ~~(2) engaging in preferential selection from waiting lists based on an applicant's~~
 15.20 ~~ability to pay privately or an applicant's refusal to pay for a special service.~~

15.21 The collection and use by a nursing facility of financial information of any applicant
 15.22 pursuant to a preadmission screening program established by law shall not raise an
 15.23 inference that the nursing facility is utilizing that information for any purpose prohibited
 15.24 by this paragraph.

15.25 ~~(f)~~ (g) Requiring any vendor of medical care as defined by section 256B.02,
 15.26 subdivision 7, who is reimbursed by medical assistance under a separate fee schedule,
 15.27 to pay any amount based on utilization or service levels or any portion of the vendor's
 15.28 fee to the nursing facility except as payment for renting or leasing space or equipment
 15.29 or purchasing support services from the nursing facility as limited by section 256B.433.
 15.30 All agreements must be disclosed to the commissioner upon request of the commissioner.
 15.31 Nursing facilities and vendors of ancillary services that are found to be in violation of
 15.32 this provision shall each be subject to an action by the state of Minnesota or any of its
 15.33 subdivisions or agencies for treble civil damages on the portion of the fee in excess of that
 15.34 allowed by this provision and section 256B.433. Damages awarded must include three
 15.35 times the excess payments together with costs and disbursements including reasonable
 15.36 attorney's fees or their equivalent.

16.1 ~~(g)~~ (h) Refusing, for more than 24 hours, to accept a resident returning to the same
16.2 bed or a bed certified for the same level of care, in accordance with a physician's order
16.3 authorizing transfer, after receiving inpatient hospital services.

16.4 (i) For a period not to exceed 180 days, the commissioner may continue to make
16.5 medical assistance payments to a nursing facility or boarding care home which is in
16.6 violation of this section if extreme hardship to the residents would result. In these cases
16.7 the commissioner shall issue an order requiring the nursing facility to correct the violation.
16.8 The nursing facility shall have 20 days from its receipt of the order to correct the violation.
16.9 If the violation is not corrected within the 20-day period the commissioner may reduce
16.10 the payment rate to the nursing facility by up to 20 percent. The amount of the payment
16.11 rate reduction shall be related to the severity of the violation and shall remain in effect
16.12 until the violation is corrected. The nursing facility or boarding care home may appeal the
16.13 commissioner's action pursuant to the provisions of chapter 14 pertaining to contested
16.14 cases. An appeal shall be considered timely if written notice of appeal is received by the
16.15 commissioner within 20 days of notice of the commissioner's proposed action.

16.16 In the event that the commissioner determines that a nursing facility is not eligible
16.17 for reimbursement for a resident who is eligible for medical assistance, the commissioner
16.18 may authorize the nursing facility to receive reimbursement on a temporary basis until the
16.19 resident can be relocated to a participating nursing facility.

16.20 Certified beds in facilities which do not allow medical assistance intake on July 1,
16.21 1984, or after shall be deemed to be decertified for purposes of section 144A.071 only.