SENATE
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SPECIAL SESSION

S.F. No. 67

(SENATE AUTHORS: MURPHY)

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A bill for an act

relating to health; establishing the Health Care Commission; proposing coding for new law as Minnesota Statutes, chapter 144I.

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

Section 1. **[144I.01] LEGISLATIVE FINDINGS.**

The legislature finds while this state enjoys superior medical resources, the state has a responsibility to ensure that these resources are available, accessible, and affordable to all residents regardless of geography or financial status, so that all residents of this state will benefit from high-quality health care. It is hereby declared to be in the public interest that the state develop and maintain a state health care plan and that the health care system in the state be regulated consistent with the state health care plan as provided in this chapter in order to ensure consumers of health care services in this state have adequate, accessible, convenient, and reliable health care services at reasonable rates, consistent with the financial and economic requirements of health care companies and health care providers and their need to construct, close, and consolidate health care facilities to provide health care services and to avoid unnecessary duplication of facilities and services.

Sec. 2. **[144I.02] HEALTH CARE COMMISSION ESTABLISHED.**

Subdivision 1. **Establishment.** There is created a Health Care Commission. The Health Care Commission shall have and possess all of the rights and powers and perform all of the duties vested in it by this chapter.

Subd. 2. **Purpose.** The purpose of the Health Care Commission is to promote the development of a health care regulatory system that provides financial and geographic

access to quality health care services at a reasonable cost by developing a state health care plan, facilitating development of regional health care plans, developing and implementing the regulatory powers of the commission consistent with the state health care plan, and issuing certificates of need based on the state health care plan.

Subd. 3. **Members.** (a) The Health Care Commission shall consist of seven members. The terms of members shall be six years and until their successors have been appointed and qualified, except that three of the initial appointments shall be six years, two of the initial appointments shall be four years, and two of the initial appointments shall be two years. Each commissioner shall be appointed by the governor with the advice and consent of the senate. The governor shall designate the length of term of each initial appointment prior to the nominee being qualified. At least one commissioner must have been domiciled at the time of appointment outside the seven-county metropolitan area. For purposes of this subdivision, "seven-county metropolitan area" means Anoka, Carver, Dakota, Hennepin, Ramsey, Scott, and Washington Counties.

(b) When selecting commissioners, the governor shall give consideration to persons who have engaged in the profession of health care economics, health care administration, medicine, nursing, public accounting, finance, and law, as well as being representative of the general public.

Subd. 4. **Removal; vacancy.** The removal of members and filling of vacancies on the commission shall be as provided in section 15.0575.

Subd. 5. **Chair.** The governor shall select one of the commissioners to serve as the chair for a term concurrent with that of the governor. If a vacancy occurs in the position of chair, the governor shall select a new chair to complete the unexpired term.

Subd. 6. **Powers and duties of chair.** The chair shall be the principal executive officer of the commission and shall preside at meetings of the commission. The chair shall organize the work of the commission and may make assignments to commission members, appoint committees, and give direction to the commission staff through the executive secretary subject to the approval of the commission.

Sec. 3. **[144I.03] DEFINITIONS.**

Subdivision 1. **Scope.** For the purposes of this chapter, the terms defined in this section have the meanings given.

Subd. 2. **Health care company.** "Health care company" means persons, corporations, or other legal entities and their lessees, trustees, and receivers, engaged in the business of

owning, operating, maintaining, or controlling equipment or facilities in this state for furnishing health care services in Minnesota.

Subd. 3. **Health care facility.** "Health care facility" means a structure or structures available for use within this state as a hospital, clinic, psychiatric residential treatment facility, birth center, outpatient surgical center, comprehensive outpatient rehabilitation facility, outpatient physical therapy or speech pathology facility, end-stage renal dialysis facility, medical laboratory, pharmacy, radiation therapy facility, diagnostic imaging facility, medical office building, residence for nurses or interns, residential hospice, prescribed pediatric extended care facility, or other facility related to the delivery of health care services.

Subd. 4. **Health care provider.** "Health care provider" or "provider" means a person or organization other than a nursing home that provides health care or medical care services within Minnesota for a fee and is eligible for reimbursement under the medical assistance program under chapter 256B. For purposes of this subdivision, "for a fee" includes traditional fee-for-service arrangements, capitation arrangements, and any other arrangement in which a provider receives compensation for providing health care services or has the authority to directly bill a group purchaser, health carrier, or individual for providing health care services. For purposes of this subdivision, "eligible for reimbursement under the medical assistance program" means that the provider's services would be reimbursed by the medical assistance program if the services were provided to medical assistance enrollees and the provider sought reimbursement, or that the services would be eligible for reimbursement under medical assistance except that those services are characterized as experimental, cosmetic, or voluntary.

Subd. 5. **Health care service.** (a) "Health care service" means:

(1) a service or item that would be covered by the medical assistance program under chapter 256B if provided in accordance with medical assistance requirements to an eligible medical assistance recipient; and

(2) a service or item that would be covered by medical assistance except that it is characterized as experimental, cosmetic, or voluntary.

(b) Health care service does not include retail, over-the-counter sales of nonprescription drugs and other retail sales of health-related products that are not generally paid for by medical assistance and other third-party coverage.

Sec. 4. **[144I.04] CONFLICT OF INTEREST.**

No person, while a member of the commission, while acting as executive secretary of the commission, or while employed in a professional capacity by the commission, shall receive any income, other than dividends or other earnings from a mutual fund or trust if these earnings do not constitute a significant portion of the person's income, directly or indirectly from any health care company or other organization subject to regulation by the commission.

Sec. 5. **[144I.05] EXECUTIVE SECRETARY; COMMISSION EMPLOYEES.**

Subdivision 1. **Selection of executive secretary.** The commission shall appoint an executive secretary, who is not a member, who shall be in the unclassified service of the state and shall serve at the pleasure of the commission. The executive secretary shall be subject to the same disqualifications as commissioners.

Subd. 2. **Officers and employees.** The commission may establish other positions in the unclassified service if the positions meet the criteria of section 43A.08, subdivision 1a, clauses (1) to (7). The commission may employ other persons as may be necessary to carry out the commission's functions.

Sec. 6. **[144I.06] COMMISSION FUNCTIONS AND POWERS.**

Subdivision 1. **Legislative and quasi-judicial functions.** The functions of the commission shall be legislative and quasi-judicial in nature. The commission may make investigations and determinations, hold hearings, prescribe rules, and issue orders with respect to the control and conduct of the businesses coming within its jurisdiction as the legislature itself might make, but only as the commission shall from time to time authorize. The commission may adjudicate all proceedings brought before it in which the violation of any law or rule administered by the department is alleged.

Subd. 2. **Powers generally.** The commission has sole authority to prepare and adopt the state health care plan and to issue certificates of need. The commission shall, to the extent prescribed by law:

(1) investigate the adequacy of health care services in the state by analyzing and studying the geographical distribution within the state of health care services, health care facilities and technologies, and of the allocation of health care financial resources;

(2) provide for a study of systems capacity in health care services;

(3) designate regional health care service areas in the state;

(4) establish regional health care planning boards corresponding to designated regional health care service areas;

(5) investigate the impact of reimbursement and payment systems on the adequacy of health care services in regional health care service areas;

(6) investigate the potential of greater collaboration among stakeholders within a regional health care service area, such as public health departments or county-based purchasing plans, to improve resource utilization and outcomes through improved investment in primary and preventive care and care coordination;

(7) adopt rules that ensure broad public input, public hearings, and consideration of regional health care in development of the state health care plan;

(8) adopt a state health care plan;

(9) adopt rules for applying for and issuing certificates of need;

(10) adopt rules that ensure broad public input, public hearings, and consideration of the state health care plan when considering requests for a certificate of need;

(11) issue certificates of need;

(12) periodically review, in collaboration with the commissioner of health, whether a health care facility is satisfying all conditions on which a certificate of need was authorized; and

(13) adopt rules governing appeals of certificate of need decisions.

Sec. 7. **[144I.07] STATE HEALTH CARE PLAN.**

Subdivision 1. **Initial and ongoing study.** (a) The commission shall periodically participate in or perform analyses and studies that relate to adequacy of health care services and financial resources to meet the needs of the population, distribution of health care resources, allocation of health care resources, or any other appropriate matter.

(b) The commission shall provide for a study of regional capacity in health care services. The study shall determine for all health care service areas where capacity should be increased or decreased to better meet the needs of the population; examine and describe the implementation methods and tools by which capacity should be altered to better meet the needs; and assess the impact of those methods and tools on the communities and health care delivery system.

Subd. 2. **Data and information.** (a) The commission may request, collect, and report any statistical or other information that in the opinion of the commission is needed by the commission to develop and revise the state health care plan.

(b) The commission may send to the department or a regional health care planning board any statistical or other information the commission is authorized to collect under paragraph (a).

Subd. 3. **The state health care plan.** On or before October 1 each year, the commission shall adopt a state health care plan. The plan shall include methodologies, standards, and criteria for certificate of need review. The commission shall adopt rules that ensure broad public input, public hearings, and consideration of regional health care planning boards and regional health care advisory opinions in development of the state health care plan.

Subd. 4. **Required comment by commissioner of health.** Annually, the commissioner of health shall make recommendations to the commission on the state health care plan. The commissioner of health may review and comment on any aspect of the plan, including the methodologies, standards, and criteria used to designate health care service areas, the plan, or certificate of need review.

Subd. 5. **Review and revision.** The commission shall assess annually the state health care plan, determine the chapter or chapters of the plan that should be reviewed and revised, establish at a public meeting the priority order and timeline of the plan chapter review and revision, and publish any changes in the state health care plan that the commission deems necessary.

Subd. 6. **Plan effective date.** The plan becomes effective 45 days following the publication of the state health plan or a revision of the plan.

Sec. 8. **[144I.08] REGIONAL HEALTH CARE PLANNING BOARDS.**

Subdivision 1. **General duties.** The regional health care planning boards are locally controlled boards consisting of health care companies, health care providers, health care systems, health plan companies, employers, consumers, and elected officials. Regional health care planning boards may:

(1) undertake voluntary activities to educate consumers, providers, and purchasers about community plans and projects impacting health care services, consumer accountability, access, and quality and efforts to maintain or improve in these areas;

(2) make recommendations to the commission regarding ways of improving affordability, accessibility, and quality of health care in the region and throughout the state;

(3) provide technical assistance to parties interested in proposing a project requiring a certificate of need under this chapter;

(4) develop and adopt a regional health care plan; and

(5) consult with the commission in drafting the state health plan.

Subd. 2. **Terms; compensation; removal; vacancies.** Regional health care planning boards are governed by section 15.0575, except that members do not receive per diem payments.

Sec. 9. **[144I.09] CERTIFICATE OF NEED.**

Subdivision 1. **Fees.** The commission may set an application fee for a certificate of need.

Subd. 2. **Rules.** The commission shall adopt rules for applying for and issuing certificates of need.

Subd. 3. **Minimum requirements for certificate of need applications.** The commission may adopt by rule thresholds or methods for determining the circumstances or minimum requirements under which a certificate of need application must be filed.

Subd. 4. **Standards of review.** The commission shall develop and adopt rules establishing standards and policies for certificate of need review that are consistent with the state health care plan. The standards shall address the availability, accessibility, cost, and quality of health care, and shall be reviewed and revised periodically to reflect new developments in health care, health care service delivery, and technology.

Sec. 10. **[144I.10] REQUIRED CERTIFICATES OF NEED.**

Subdivision 1. **Generally.** A person must have a certificate of need issued by the commission before the person develops, operates, or participates in any of the health care projects for which a certificate of need is required under this chapter.

Subd. 2. **New facilities.** A certificate of need is required before a new health care facility is built, developed, or established.

Subd. 3. **Relocated facilities.** A certificate of need is required before an existing or previously approved but not yet built health care facility is moved to another site.

Subd. 4. **Changes on hospital bed capacity.** A certificate of need is required before the bed capacity of a hospital is changed.

Subd. 5. **Hospital closures.** A certificate of need is required before a hospital is closed.

Subd. 6. **Change of services.** A certificate of need is required before the type or scope of any health care service is changed.

Subd. 7. **Other health care facility capital expenditures.** A certificate of need is required before any of the following capital expenditures are made by or on behalf of a health care facility other than a hospital:

(1) any expenditure that is not properly chargeable as an operating or maintenance expense under generally accepted accounting principles; and

(2) any expenditure that is made to lease or, by comparable arrangement, obtain any plant or equipment for the health care facility other than a hospital.

Sec. 11. **[144I.11] EXEMPTIONS FROM REQUIRED CERTIFICATE OF NEED.**

The commission shall develop and adopt rules for applying for and granting exceptions from required certificates of need for small and independent health care companies, particularly with respect to facilities located in rural areas.

Sec. 12. **[144I.12] PROPOSED PROJECTS AND APPLICATIONS FOR A CERTIFICATE OF NEED.**

Subdivision 1. **Notification of proposed projects; general requirement.** A health care facility, health care company, or health care system proposing to complete a project after October 1, 2023, shall submit notification of the proposed project to the commissioner and provide the commission with any relevant background information.

Subd. 2. **Required information; generally.** (a) Notification to the commission of a proposed project must include a report containing information as determined by the commission.

(b) The provider may submit any additional information that the provider deems relevant.

Subd. 3. **Required information; hospital closures.** Notification to the commission of a proposed project involving the voluntary closure of a hospital must include a local economic impact statement and a regional health care impact statement.

Subd. 4. **Incorporation of proposed projects into state plan.** The commission shall regard submission of a notification of a proposed project as a request for a review of the state health care plan.

Subd. 5. **Certificate of need application.** Following notification of a proposed project or concurrently with submission of a notification, a health care company shall submit an

application for a certificate of need. The application must meet any other standards established by the commission to approve applications under this chapter.

Subd. 6. **Public notice.** (a) If the commission receives an application for a certificate of need, the commission shall give public notice of the filing by posting notice online on a website developed and maintained by the commission for this purpose.

(b) If the commission receives an application for a certificate of need for a change in the bed capacity of a health care facility, for the closure of a health care facility, or for a health care project that would create a new health care service or abolish an existing health care service, the commission shall give notice of the filing by posting notice online and give notice to each member of the legislature in whose district the project is planned; each member of the governing body for the county where the project is planned; the county executive, mayor, or chief executive officer, if any, in whose county or city the action is planned; and any health care provider, third-party payer, regional health care planning board, or any other person the commission knows has an interest in the application.

(c) The commission's failure to give notice shall not adversely affect the application.

Sec. 13. **[144I.13] CERTIFICATE OF NEED REVIEW.**

Subdivision 1. **Commission authority.** Only the commission shall have final nondelegable authority to act upon an application for a certificate of need.

Subd. 2. **Consistency with state plan required.** (a) All decisions of the commission on an application for a certificate of need, except in emergency circumstances posing a threat to public health, shall be consistent with the state health care plan and the standards for review established by the commission.

(b) Failure of the state health care plan to address any particular project or health care service shall not render the project inconsistent with the state health care plan.

Subd. 3. **Public written comment.** Any interested party may submit written comments on the application in accordance with rules adopted by the commission.

Subd. 4. **Public hearing.** An applicant and any interested party may request the opportunity to present an oral argument to the commission, in accordance with rules adopted by the commission.

Subd. 5. **Final action.** The commission shall, after determining that the application is complete, vote to approve, to approve with conditions, or to deny the application on the basis of the record, exceptions, and arguments before the commission.

Subd. 6. **Reconsideration.** The applicant or any aggrieved party may petition the commission within 15 days of a vote for reconsideration. The commission shall decide whether or not it will reconsider its decision within 30 days of receipt of the petition for reconsideration. The commission shall issue its reconsideration decision within 30 days of its decision on the petition for reconsideration.

Sec. 14. **[144I.14] LICENSED BED CAPACITY FOLLOWING A DENIAL OF A CERTIFICATION OF NEED TO CLOSE.**

(a) Notwithstanding section 144.551, subdivision 1, paragraph (b), clause (8), following a denial of a certificate of need by the commission for the closure of a hospital, the relocation or redistribution of hospital beds within a hospital corporate system that involves the transfer of beds from a closed facility site or complex to an existing site or complex is not exempt from the prohibition against relocating beds under section 144.551, subdivision 1, paragraph (a).

(b) Notwithstanding section 144.551, the commissioner of health may make the licensed capacity of a hospital that is closed after a denial of a certificate of need available to existing organizations to increase available bed capacity. The commissioner may distribute the licensed capacity of the closed hospital first to existing hospitals in the same health care region as the closed hospital to increase the hospitals' available bed capacity. The commissioner may distribute the licensed capacity among multiple organizations. If a surplus of licensed capacity remains after meeting the available bed capacity needs of existing hospitals in the same health care region as the closed hospital, the commissioner may auction the remaining licensed capacity of the closed hospital in a manner determined by the commissioner. The organization that closed the hospital resulting in the capacity that is the object of the auction may not participate in the auction.

Sec. 15. **[144I.15] INVOLUNTARY RECEIVERSHIP.**

Subdivision 1. **Application.** (a) In addition to any other remedy provided by law, the commissioner of health may petition the district court in Ramsey County for an order directing a health care company to show cause why the commissioner should not be appointed receiver to operate a health care facility owned, operated, maintained, or controlled by the health care company. The petition to the district court must contain proof by affidavit that one or more of the following exists:

(1) that it appears to the commissioner that the health care company intends to voluntarily close the health care facility without having received a certificate of need from the commission to do so;

(2) that it appears to the commissioner that the health care company intends to change the type and scope of health care services offered at the health care facility without having received a certificate of need from the commission to do so; or

(3) that it appears to the commissioner that the health care company intends to reduce the bed capacity at the health care facility without having received a certificate of need from the commission to do so.

(b) If the health care company operates more than one health care facility, the commissioner's petition must specify and be limited to the facility for which the commissioner seeks receivership. The affidavit submitted by the commissioner must set forth alternatives to receivership that have been considered. The order to show cause is returnable not less than five days after service is completed and must provide for personal service of a copy to the health care facility administrator and to the persons designated as agents by the health care company to accept service on its behalf.

Subd. 2. **Appointment of receiver.** If the court finds after a hearing that involuntary receivership is necessary as a means of ensuring that the health care needs of the community in which the health care facility is located are met, the court shall appoint the commissioner as receiver to operate the health care facility. The commissioner as receiver may contract with another entity or group to act as the managing agent during the receivership period. The managing agent will be responsible for the day-to-day operations of the facility subject at all times to the review and approval of the commissioner.

Subd. 3. **Rental payments.** The court shall determine a fair monthly rental for the health care facility subject to involuntary receivership under this section, taking into account all relevant factors including the condition of the health care facility. This rental fee shall be paid by the receiver to the appropriate health care company for each month that the receivership remains in effect. The health care company may agree to waive the fair monthly rent by affidavit to the court. Notwithstanding any other law to the contrary, no payment made to a health care company by any state agency during a period of involuntary receivership shall include any allowance for profit or be based on any formula that includes an allowance for profit.

Subd. 4. **Termination.** An involuntary receivership terminates 36 months after the date on which it was ordered or at any other time designated by the court, or when any of the following events occurs:

(1) the commission issues a certificate of need for the health care facility that is in receivership;

(2) the commission determines that a certificate of need is no longer required; or

(3) the court determines that the receivership is no longer necessary because the conditions that gave rise to the receivership no longer exist.

Sec. 16. **[144I.16] SALE OF HEALTH CARE FACILITY IN RECEIVERSHIP; RIGHT OF FIRST REFUSAL FOR HOSPITAL OR HOSPITAL CAMPUS.**

Subdivision 1. **Prerequisite before sale or conveyance of a health care facility in receivership.** During the period of the receivership, the controlling persons of a health care facility in receivership under this chapter shall not sell or convey the health care facility, or offer to sell or convey the health care facility, unless the controlling persons have first made a good-faith offer to sell or convey the health care facility to the home rule charter or statutory city, county, town, or hospital district in which the hospital or hospital campus is located, and the good-faith offer has been declined by all potential purchasers eligible under this section.

Subd. 2. **Offer.** The offer to sell or convey the health care facility must be at a price that does not exceed the current fair market value of the health care facility. A party to whom an offer is made under subdivision 1 must accept or decline the offer within 365 days after receipt of a good-faith offer. If the party fails to respond within 365 days after receipt, the offer is deemed declined.

Subd. 3. **Duties of the commission.** If the controlling persons of a health care facility in receivership make a good-faith offer to sell or convey the health care facility to a potential buyer eligible under this section, the commission, in cooperation with the relevant regional health care planning board, must provide all appropriate technical assistance to the eligible buyer to evaluate the offer accurately, develop financing options, develop an appropriate governance structure, and make arrangements for the management and operation of the facility following a purchase.