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# **Nursing Home Closures Under the Planned Closure Legislation**

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The  
Planned Closure Legislation

A Report to the Minnesota Legislature

Minnesota Department of Human Services  
Aging Initiative

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## INTRODUCTION

The Minnesota Legislature, 2001 session passed Minnesota Statutes 256B.437, commonly referred to as the “Planned Closure” program. The Planned Closure legislation was part of a host of reform legislation passed during the 2001 session that included:

- establishing a regional Long-Term Care (LTC) planning process;
- expansion of LTC consumer information;
- expansion of both the Elderly Waiver (EW) and Alternative Care (AC) programs;
- expansion of the Pre-Admission Screening (PAS) program to form the Long-Term Care Consultation program (LTCC); and
- several grant initiatives designed to expand home and community-based services.

These reform efforts were part of a pattern dating back nearly 20 years, of attempts to strike a “balance” in the provision of long-term care services in Minnesota. Previous strategies include the passage of nursing home legislation providing for:

- moratoriums on new nursing home beds;
- requiring pre-admission screening;
- the development and expansion of the EW and AC programs; and
- the NF Rate Equalization law.

All of these initiatives sought ways to achieve a reduction in the total number of nursing home beds, as previous studies have indicated that Minnesota ranks high in beds per 1,000 residents aged 65 and over. This heavy reliance on institutional care limits choices available to consumers and restricts the states’ ability to shift funding to less restrictive options, such as home and community-based services. The costs of institutional care are high and continue to burden state finances, with institutional long-term care being one of the largest expenditures in the state Medicaid budget.

The Planned Closure legislation passed during the 2001 session provided for an application process for the planned closure of nursing home beds. The application process specified criteria for the approval of applications such as:

- improved quality of care and quality of life for consumers;
- closure of a nursing facility that has a poor physical plant;
- existence of excess nursing facility beds in the service area;
- low occupancy rates;
- evidence of coordination between the community planning process and the facility application;
- proposed use of funds for care-related purposes;
- innovative uses planned for the facility's closed physical plant;
- evidence that the proposal serves the interests of the state; and
- evidence of others factors affecting the viability of the facility, including excessive nursing pool costs.

The planned closure process allowed for monetary incentives to be paid to nursing homes closing beds under an approved application, as well as limited funding for county costs related to the monitoring of closures and assisting in the relocation of residents. For the complete language of M.S. 256B.437, refer to Attachment A.

Immediately following passage of this legislation, the Department of Human Services issued Instructional Bulletin #01-62-04 to all nursing homes, informing them of the passage of the Planned Closure legislation and providing procedural guidance for applicants. The bulletin can be located at:

<http://www.dhs.state.mn.us/FMO/LegalMgt/Bulletins/pdf/2001/01-62-04.pdf>

The Department also initiated a series of training and information sessions statewide, covering the Planned Closure legislation, the new resident relocation law, and other new legislative initiatives, in over 15 cities. In addition, announcements went out in provider trade publications, and Department staff availed themselves for speaking engagements at a number of provider conferences.

## **CLOSURE ACTIVITY**

During the period between the effective date of the Planned Closure program, August 1, 2001 and January 6<sup>th</sup>, 2003, a total of 1,089 nursing home beds closed statewide. Of these closures, 885 were implemented through the 2001-2002 Planned Closure legislation, 26 beds were closed utilizing a similar closure provision passed during the 2000 legislative session, and 178 beds were closed without the benefit of a "planned" process. In addition, another 445 beds have been approved for closure through the Planned Closure process, but the closures have not been finalized yet, as of this date.

### Bed Closure Status Table 1.1

(as of 1/6/03)

| Status   | # Beds       |
|--|--------------|
| Closed through Planned Closure Process                         | 885          |
| Closed without Planned Closure <sup>1</sup>                    | 178          |
| Other Closures <sup>2</sup>                                    | 26           |
| <b>Total Beds Closed To-Date</b>                               | <b>1,089</b> |
| Approved under Planned Closure Legislation, but not yet Closed | 445          |
| <b>Total Closures (pending closures and closed beds)</b>       | <b>1,534</b> |

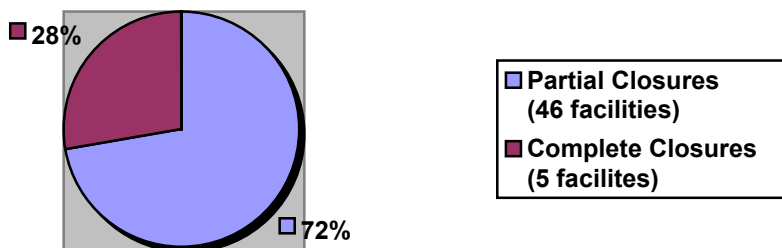
<sup>1</sup>A total of 15 nursing homes received rate increases as a result of the assignment provision, for nursing homes closing without an approved plan.

<sup>2</sup>Closure achieved through previous special planned closure provision passed during the 2000 legislative session.

Slightly over 10% of nursing homes have taken advantage, either through the total or partial closure of beds, of the Planned Closure legislation – with a total of 51 applicant facilities. Of these 51 applicant facilities, 11 facilities (representing 54 beds) had closures approved through legislation passed during the 2002 session, allowing nursing facilities to utilize an abbreviated planned closure process for closures of 5 or fewer beds or less than 6% of their total beds. Through the Planned Closure program, an overwhelming number of applicant nursing homes favored partial closures over complete closure of the home.

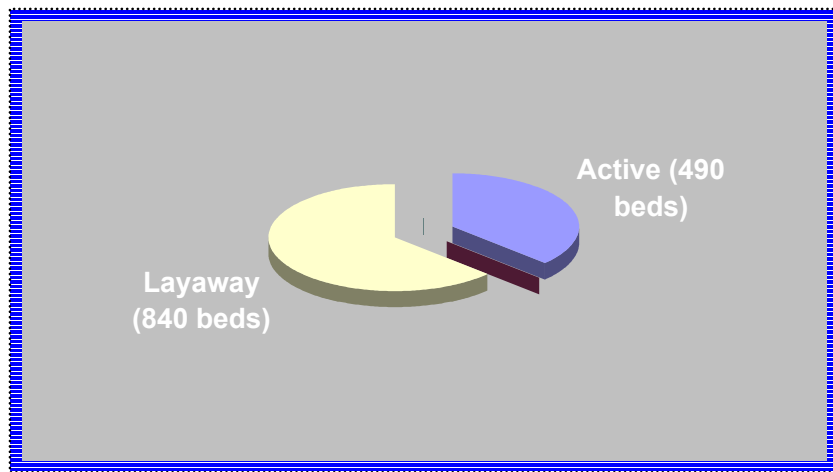
#### Chart 1.1 (Bed Closure Types)

(% Beds – Approved & Completed Planned Closures)



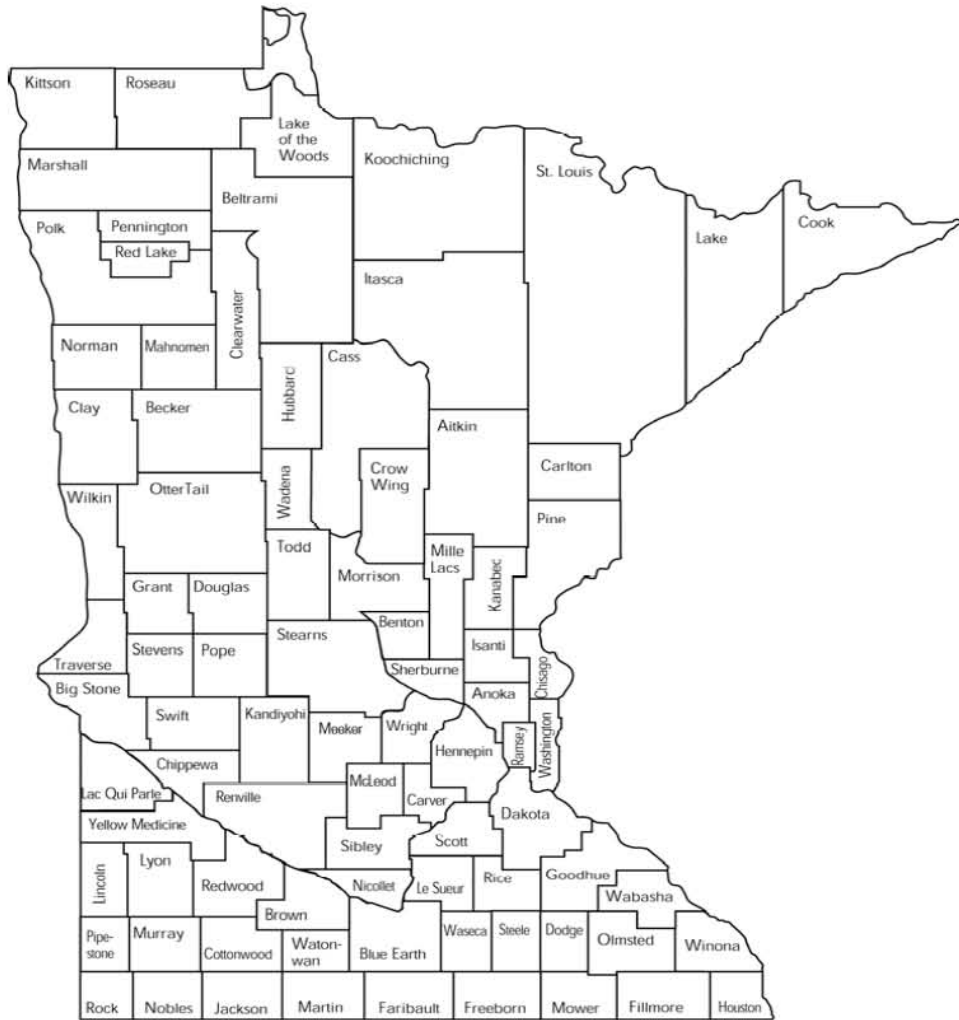
In addition, the closure of layaway beds was preferred over the closure of active beds. The positive result of this was a reduction in the numbers of resident relocations required as a result of bed closures. Layaway appears to have served as an intermediate step towards the permanent closure of beds. Even after the closure of these beds, the number of beds in layaway status remained fairly stable.

**Chart 1.2 (Planned Closure Bed Types)**  
(Active vs. Layaway Bed Closures – Approved & Completed)



While bed closures took place throughout the state, a higher number of closures were seen in the Metro area. Hennepin and Ramsey counties represent approximately 33% of the beds statewide, and approximately 43% of the closing beds were in these counties.

**Distribution of Bed Closures under the Planned Closure Program**  
 (Approved and Completed - by county)



## ALTERNATIVES TO NURSING HOME CARE

For alternatives to nursing home care, issues related to access to long-term care services and the regional planning process, we would refer readers of this report to the DHS Reports;

- *Keeping the Vision* (February 2002)  
<http://www.dhs.state.mn.us/agingint/lctaskforce/LegisReport0202.htm>  
and
- *Rightsizing the Nursing Home Industry* (March 2002)  
<http://www.dhs.state.mn.us/agingint/reports/RightsizingTheNursingHomeIndustry2001.pdf>

## FINDINGS

While the Planned Closure process did not achieve the number of closures projected, there were both positive and negative aspects to both its implementation and outcomes. Some of these include:

Pros:

- ◆ The process enabled the State to pursue long-term policy objectives (i.e. bed closures & less restrictive care).
- ◆ Allowed providers flexibility in making business decisions.
- ◆ The process was a voluntary one, thereby avoiding contentious disputes between providers and the state.
- ◆ The process included coordination with local planning for LTC, and therefore avoided controversy in most cases.

Cons:

- ◆ The number of closures was less than expected.
- ◆ The 2001 rate disparity legislation appeared to reduce interest in Planned Closures.
- ◆ Savings less than anticipated.
- ◆ Total closures remain controversial amongst families, residents, and employees, even those closures with local and/or regional support

## RECOMMENDATIONS

The Department recommends that the Planned Closure program be discontinued. In order to achieve the level of closures that were projected, it appears that a more aggressive strategy would be required.



## ATTACHMENT A

256B.437 – statutory Language

### **256B.437 Nursing facility voluntary closures; planning and development of community-based alternatives.**

Subdivision 1. **Definitions.** (a) The definitions in this subdivision apply to subdivisions 2 to 8.

(b) "Closure" means the cessation of operations of a nursing facility and delicensure and decertification of all beds within the facility.

(c) "Closure plan" means a plan to close a nursing facility and reallocate a portion of the resulting savings to provide planned closure rate adjustments at other facilities.

(d) "Commencement of closure" means the date on which residents and designated representatives are notified of a planned closure as provided in section 144A.161, subdivision 5a, as part of an approved closure plan.

(e) "Completion of closure" means the date on which the final resident of the nursing facility designated for closure in an approved closure plan is discharged from the facility.

(f) "Partial closure" means the delicensure and decertification of a portion of the beds within the facility.

(g) "Planned closure rate adjustment" means an increase in a nursing facility's operating rates resulting from a planned closure or a planned partial closure of another facility.

Subd. 2. **Planning and development of community-based services.** (a) The commissioner of human services shall establish a process to adjust the capacity and distribution of long-term care services to equalize the supply and demand for different types of services. This process must include community planning, expansion or establishment of needed services, and analysis of voluntary nursing facility closures.

(b) The purpose of this process is to support the planning and development of community-based services. This process must support early intervention, advocacy, and consumer protection while providing resources and incentives for expanded county planning and for nursing facilities to transition to meet community needs.

(c) The process shall support and facilitate expansion of community-based services under the county-administered alternative care program under section 256B.0913 and waivers for elderly under section 256B.0915, including, but not limited to, the development of supportive services such as housing and transportation. The process shall utilize community assessments and planning developed for the community health services plan and plan update and for the community social services act plan, and other relevant information.

(d) The commissioners of health and human services, as appropriate, shall provide, by July 15, 2001, available data necessary for the county, including, but not limited to, data on nursing facility bed distribution, housing with services options, the closure of nursing facilities that occur outside of the planned closure process, and approval of planned closures in the county and contiguous counties.

(e) Each county shall submit to the commissioner of human services, by October 15, 2001, a gaps analysis that identifies local service needs, pending development of services, and any other issues that would contribute to or impede further development of community-based services. The gaps analysis must also be sent to the local area agency on aging and, if applicable, local SAIL projects, for review and comment. The review and comment must assess needs across county boundaries. The area agencies on aging and SAIL projects must provide the commissioner and the counties with their review and analyses by November 15, 2001.

(f) The addendum to the biennial plan shall be submitted biennially, beginning December 31, 2001, and every other year thereafter in accordance with the Community Social Services Act plan timeline, and shall include recommendations for development of community-based services. Area agencies on aging and SAIL projects must provide the commissioner and the counties with their

review and analyses within 60 days following the Community Social Services Act plan submission date. Both planning and implementation shall be implemented within the amount of funding made available to the county board for these purposes.

(g) The plan, within the funding allocated, shall:

- (1) include the gaps analysis required by paragraph (e);
- (2) involve providers, consumers, cities, townships, businesses, and area agencies on aging in the planning process;
- (3) address the availability of alternative care and elderly waiver services for eligible recipients;
- (4) address the development of other supportive services, such as transit, housing, and workforce and economic development; and
- (5) estimate the cost and timelines for development.

(h) The biennial plan addendum shall be coordinated with the county mental health plan for inclusion in the community health services plan and included as an addendum to the community social services plan.

(i) The county board having financial responsibility for persons present in another county shall cooperate with that county for planning and development of services.

(j) The county board shall cooperate in planning and development of community-based services with other counties, as necessary, and coordinate planning for long-term care services that involve more than one county, within the funding allocated for these purposes.

(k) The commissioners of health and human services, in cooperation with county boards, shall report biennially to the legislature, beginning February 1, 2002, regarding the development of community-based services, transition or closure of nursing facilities, and specific gaps in services in identified geographic areas that may require additional resources or flexibility, as documented by the process in this subdivision.

**Subd. 3. Applications for planned closure of nursing facilities.** (a) By August 15, 2001, the commissioner of human services shall implement and announce a program for closure or partial closure of nursing facilities. Names and identifying information provided in response to the announcement shall remain private unless approved, according to the timelines established in the plan. The announcement must specify:

- (1) the criteria in subdivision 4 that will be used by the commissioner to approve or reject applications;
- (2) the information that must accompany an application; and
- (3) that applications may combine planned closure rate adjustments with moratorium exception funding, in which case a single application may serve both purposes.

Between August 1, 2001, and June 30, 2003, the commissioner may approve planned closures of up to 5,140 nursing facility beds, less the number of beds delicensed in facilities during the same time period without approved closure plans or that have notified the commissioner of health of their intent to close without an approved closure plan.

(b) A facility or facilities reimbursed under section [256B.431](#) or [256B.434](#) with a closure plan approved by the commissioner under subdivision 5 may assign a planned closure rate adjustment to another facility or facilities that are not closing or in the case of a partial closure, to the facility undertaking the partial closure. A facility may also elect to have a planned closure rate adjustment shared equally by the five nursing facilities with the lowest total operating payment rates in the state development region designated under section [462.385](#), in which the facility that is closing is located. The planned closure rate adjustment must be calculated under subdivision 6. Facilities that delicense beds without a closure plan, or whose closure plan is not approved by the commissioner, are not eligible to assign a planned closure rate adjustment under subdivision 6, unless they are delicensing five or fewer beds, or less than six percent of their total licensed bed capacity, whichever is greater, are located in a county in the top three quartiles of beds per 1,000 persons aged 65 or older, and have not delicensed beds in the prior three months. Facilities meeting these criteria are eligible to assign the amount calculated under subdivision 6 to

themselves. If a facility is delicensing the greater of six or more beds, or six percent or more of its total licensed bed capacity, and does not have an approved closure plan or is not eligible for the adjustment under subdivision 6, the commissioner shall calculate the amount the facility would have been eligible to assign under subdivision 6, and shall use this amount to provide equal rate adjustments to the five nursing facilities with the lowest total operating payment rates in the state development region designated under section 462.385, in which the facility that delicensed beds is located.

(c) To be considered for approval, an application must include:

- (1) a description of the proposed closure plan, which must include identification of the facility or facilities to receive a planned closure rate adjustment;
- (2) the proposed timetable for any proposed closure, including the proposed dates for announcement to residents, commencement of closure, and completion of closure;
- (3) if available, the proposed relocation plan for current residents of any facility designated for closure. If a relocation plan is not available, the application must include a statement agreeing to develop a relocation plan designed to comply with section 144A.161;
- (4) a description of the relationship between the nursing facility that is proposed for closure and the nursing facility or facilities proposed to receive the planned closure rate adjustment. If these facilities are not under common ownership, copies of any contracts, purchase agreements, or other documents establishing a relationship or proposed relationship must be provided;
- (5) documentation, in a format approved by the commissioner, that all the nursing facilities receiving a planned closure rate adjustment under the plan have accepted joint and several liability for recovery of overpayments under section 256B.0641, subdivision 2, for the facilities designated for closure under the plan; and
- (6) an explanation of how the application coordinates with planning efforts under subdivision 2. If the planning group does not support a level of nursing facility closures that the commissioner considers to be reasonable, the commissioner may approve a planned closure proposal without its support.

(d) The application must address the criteria listed in subdivision 4.

**Subd. 4. Criteria for review of application.** In reviewing and approving closure proposals, the commissioner shall consider, but not be limited to, the following criteria:

- (1) improved quality of care and quality of life for consumers;
- (2) closure of a nursing facility that has a poor physical plant, which may be evidenced by the conditions referred to in section 144A.073, subdivision 4, clauses (4) and (5);
- (3) the existence of excess nursing facility beds, measured in terms of beds per thousand persons aged 85 or older. The excess must be measured in reference to:
  - (i) the county in which the facility is located;
  - (ii) the county and all contiguous counties;
  - (iii) the region in which the facility is located; or
  - (iv) the facility's service area;

the facility shall indicate in its application the service area it believes is appropriate for this measurement. A facility in a county that is in the lowest quartile of counties with reference to beds per thousand persons aged 85 or older is not in an area of excess capacity;

- (4) low-occupancy rates, provided that the unoccupied beds are not the result of a personnel shortage. In analyzing occupancy rates, the commissioner shall examine waiting lists in the applicant facility and at facilities in the surrounding area, as determined under clause (3);
- (5) evidence of coordination between the community planning process and the facility application. If the planning group does not support a level of nursing facility closures that the commissioner considers to be reasonable, the commissioner may approve a planned closure proposal without its support;
- (6) proposed usage of funds available from a planned closure rate adjustment for care-related purposes;

- (7) innovative use planned for the closed facility's physical plant;
- (8) evidence that the proposal serves the interests of the state; and
- (9) evidence of other factors that affect the viability of the facility, including excessive nursing pool costs.

**Subd. 5. Review and approval of applications.** (a) The commissioner of human services, in consultation with the commissioner of health, shall approve or disapprove an application within 30 days after receiving it. The commissioner may appoint an advisory review panel composed of representatives of counties, SAIL projects, consumers, and providers to review proposals and provide comments and recommendations to the committee. The commissioners of human services and health shall provide staff and technical assistance to the committee for the review and analysis of proposals.

(b) Approval of a planned closure expires 18 months after approval by the commissioner of human services, unless commencement of closure has begun.

(c) The commissioner of human services may change any provision of the application to which the applicant, the regional planning group, and the commissioner agree.

**Subd. 6. Planned closure rate adjustment.** (a) The commissioner of human services shall calculate the amount of the planned closure rate adjustment available under subdivision 3, paragraph (b), for up to 5,140 beds according to clauses (1) to (4):

- (1) the amount available is the net reduction of nursing facility beds multiplied by \$2,080;
- (2) the total number of beds in the nursing facility or facilities receiving the planned closure rate adjustment must be identified;
- (3) capacity days are determined by multiplying the number determined under clause (2) by 365; and
- (4) the planned closure rate adjustment is the amount available in clause (1), divided by capacity days determined under clause (3).

(b) A planned closure rate adjustment under this section is effective on the first day of the month following completion of closure of the facility designated for closure in the application and becomes part of the nursing facility's total operating payment rate.

(c) Applicants may use the planned closure rate adjustment to allow for a property payment for a new nursing facility or an addition to an existing nursing facility or as an operating payment rate adjustment. Applications approved under this subdivision are exempt from other requirements for moratorium exceptions under section [144A.073](#), subdivisions 2 and 3.

(d) Upon the request of a closing facility, the commissioner must allow the facility a closure rate adjustment as provided under section [144A.161](#), subdivision 10.

(e) A facility that has received a planned closure rate adjustment may reassign it to another facility that is under the same ownership at any time within three years of its effective date. The amount of the adjustment shall be computed according to paragraph (a).

(f) If the per bed dollar amount specified in paragraph (a), clause (1), is increased, the commissioner shall recalculate planned closure rate adjustments for facilities that delicense beds under this section on or after July 1, 2001, to reflect the increase in the per bed dollar amount. The recalculated planned closure rate adjustment shall be effective from the date the per bed dollar amount is increased.

**Subd. 7. Other rate adjustments.** Facilities receiving planned closure rate adjustments remain eligible for any applicable rate adjustments provided under section [256B.431](#), [256B.434](#), or any other section.

**Subd. 8. County costs.** The commissioner of human services shall allocate funds for relocation costs incurred by counties for planned closures under this section as provided under section [144A.161](#), subdivision 11.

**Subd. 9. Transfer of beds.** The board of commissioners of Saint Louis county may amend their planned closure rate adjustment application to allow up to 50 beds of a 159-licensed bed county-owned nursing facility that is in the process of closing to be transferred to a hospital-attached

nursing facility in Aurora and up to 50 beds to a 235-bed nursing facility in Duluth, and may also assign all or a portion of the planned closure rate adjustment that would be received as a result of closure to the Aurora facility or the Duluth facility.