

State of Minnesota
HOUSE OF REPRESENTATIVES

EIGHTY-NINTH SESSION

H. F. No. 3616

03/24/2016 Authored by Halverson

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

1.1 A bill for an act
1.2 relating to human services; modifying employment waiver services; adjusting the
1.3 disability waiver rate system budget neutrality adjustment for unit-based services
1.4 with programming; amending Minnesota Statutes 2014, sections 256B.4913, by
1.5 adding a subdivision; 256B.4914, subdivisions 3, 5, 16; Minnesota Statutes 2015
1.6 Supplement, sections 245D.03, subdivision 1; 256B.4914, subdivision 8.

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

1.8 Section 1. Minnesota Statutes 2015 Supplement, section 245D.03, subdivision 1,
1.9 is amended to read:

1.10 Subdivision 1. **Applicability.** (a) The commissioner shall regulate the provision of
1.11 home and community-based services to persons with disabilities and persons age 65 and
1.12 older pursuant to this chapter. The licensing standards in this chapter govern the provision
1.13 of basic support services and intensive support services.

1.14 (b) Basic support services provide the level of assistance, supervision, and care that
1.15 is necessary to ensure the health and welfare of the person and do not include services that
1.16 are specifically directed toward the training, treatment, habilitation, or rehabilitation of
1.17 the person. Basic support services include:

1.18 (1) in-home and out-of-home respite care services as defined in section 245A.02,
1.19 subdivision 15, and under the brain injury, community alternative care, community access
1.20 for disability inclusion, developmental disability, and elderly waiver plans, excluding
1.21 out-of-home respite care provided to children in a family child foster care home licensed
1.22 under Minnesota Rules, parts 2960.3000 to 2960.3100, when the child foster care license
1.23 holder complies with the requirements under section 245D.06, subdivisions 5, 6, 7, and
1.24 8, or successor provisions; and section 245D.061 or successor provisions, which must

be stipulated in the statement of intended use required under Minnesota Rules, part 2960.3000, subpart 4;

(2) adult companion services as defined under the brain injury, community access for disability inclusion, and elderly waiver plans, excluding adult companion services provided under the Corporation for National and Community Services Senior Companion Program established under the Domestic Volunteer Service Act of 1973, Public Law 98-288;

(3) personal support as defined under the developmental disability waiver plan;

(4) 24-hour emergency assistance, personal emergency response as defined under the community access for disability inclusion and developmental disability waiver plans;

(5) night supervision services as defined under the brain injury waiver plan; and

(6) homemaker services as defined under the community access for disability inclusion, brain injury, community alternative care, developmental disability, and elderly waiver plans, excluding providers licensed by the Department of Health under chapter 144A and those providers providing cleaning services only.

(c) Intensive support services provide assistance, supervision, and care that is necessary to ensure the health and welfare of the person and services specifically directed toward the training, habilitation, or rehabilitation of the person. Intensive support services include:

(1) intervention services, including:

(i) behavioral support services as defined under the brain injury and community access for disability inclusion waiver plans;

(ii) in-home or out-of-home crisis respite services as defined under the developmental disability waiver plan; and

(iii) specialist services as defined under the current developmental disability waiver plan;

(2) in-home support services, including:

(i) in-home family support and supported living services as defined under the developmental disability waiver plan;

(ii) independent living services training as defined under the brain injury and community access for disability inclusion waiver plans; and

(iii) semi-independent living services;

(3) residential supports and services, including:

(i) supported living services as defined under the developmental disability waiver plan provided in a family or corporate child foster care residence, a family adult foster care residence, a community residential setting, or a supervised living facility;

(ii) foster care services as defined in the brain injury, community alternative care, and community access for disability inclusion waiver plans provided in a family or corporate child foster care residence, a family adult foster care residence, or a community residential setting; and

(iii) residential services provided to more than four persons with developmental disabilities in a supervised living facility, including ICFs/DD;

(4) day services, including:

(i) structured day services as defined under the brain injury waiver plan;

(ii) day training and habilitation services under sections 252.41 to 252.46, and as defined under the developmental disability waiver plan; and

(iii) prevocational services as defined under the brain injury and community access for disability inclusion waiver plans; and

~~(5) supported employment as defined under the brain injury, developmental disability, and community access for disability inclusion waiver plans~~ employment services, including:

(i) employment exploration services as defined under the brain injury, community alternative care, community access for disability inclusion, and developmental disability waiver plans;

(ii) employment development services as defined under the brain injury, community alternative care, community access for disability inclusion, and developmental disability waivers plans; and

(iii) employment support services as defined under the brain injury, community alternative care, community access for disability inclusion, and developmental disability waiver plans.

EFFECTIVE DATE. This section is effective upon federal approval.

Sec. 2. Minnesota Statutes 2014, section 256B.4913, is amended by adding a subdivision to read:

Subd. 7. **New services added after implementation.** Services added to section 256B.4914 after January 1, 2014, are not subject to rate stabilization adjustment in this section.

EFFECTIVE DATE. This section is effective upon federal approval. The commissioner of human services shall notify the revisor of statutes when federal approval is obtained.

4.1 Sec. 3. Minnesota Statutes 2014, section 256B.4914, subdivision 3, is amended to read:

4.2 Subd. 3. **Applicable services.** Applicable services are those authorized under
4.3 the state's home and community-based services waivers under sections 256B.092 and
4.4 256B.49, including the following, as defined in the federally approved home and
4.5 community-based services plan:

- 4.6 (1) 24-hour customized living;
- 4.7 (2) adult day care;
- 4.8 (3) adult day care bath;
- 4.9 (4) behavioral programming;
- 4.10 (5) companion services;
- 4.11 (6) customized living;
- 4.12 (7) day training and habilitation;
- 4.13 (8) housing access coordination;
- 4.14 (9) independent living skills;
- 4.15 (10) in-home family support;
- 4.16 (11) night supervision;
- 4.17 (12) personal support;
- 4.18 (13) prevocational services;
- 4.19 (14) residential care services;
- 4.20 (15) residential support services;
- 4.21 (16) respite services;
- 4.22 (17) structured day services;
- 4.23 (18) ~~supported~~ employment support services;
- 4.24 (19) supported living services;
- 4.25 (20) transportation services; ~~and~~
- 4.26 (21) employment exploration services;
- 4.27 (22) employment development services; and
- 4.28 (23) other services as approved by the federal government in the state home and
4.29 community-based services plan.

4.30 **EFFECTIVE DATE.** This section is effective upon federal approval. The
4.31 commissioner of human services shall notify the revisor of statutes when federal approval
4.32 is obtained.

4.33 Sec. 4. Minnesota Statutes 2014, section 256B.4914, subdivision 5, is amended to read:

4.34 Subd. 5. **Base wage index and standard component values.** (a) The base wage
4.35 index is established to determine staffing costs associated with providing services to

individuals receiving home and community-based services. For purposes of developing and calculating the proposed base wage, Minnesota-specific wages taken from job descriptions and standard occupational classification (SOC) codes from the Bureau of Labor Statistics as defined in the most recent edition of the Occupational Handbook must be used. The base wage index must be calculated as follows:

(1) for residential direct care staff, the sum of:

(i) 15 percent of the subtotal of 50 percent of the median wage for personal and home health aide (SOC code 39-9021); 30 percent of the median wage for nursing aide (SOC code 31-1012); and 20 percent of the median wage for social and human services aide (SOC code 21-1093); and

(ii) 85 percent of the subtotal of 20 percent of the median wage for home health aide (SOC code 31-1011); 20 percent of the median wage for personal and home health aide (SOC code 39-9021); 20 percent of the median wage for nursing aide (SOC code 31-1012); 20 percent of the median wage for psychiatric technician (SOC code 29-2053); and 20 percent of the median wage for social and human services aide (SOC code 21-1093);

(2) for day services, 20 percent of the median wage for nursing aide (SOC code 31-1012); 20 percent of the median wage for psychiatric technician (SOC code 29-2053); and 60 percent of the median wage for social and human services aide (SOC code 21-1093);

(3) for residential asleep-overnight staff, the wage will be \$7.66 per hour, except in a family foster care setting, the wage is \$2.80 per hour;

(4) for behavior program analyst staff, 100 percent of the median wage for mental health counselors (SOC code 21-1014);

(5) for behavior program professional staff, 100 percent of the median wage for clinical counseling and school psychologist (SOC code 19-3031);

(6) for behavior program specialist staff, 100 percent of the median wage for psychiatric technicians (SOC code 29-2053);

(7) for supportive living services staff, 20 percent of the median wage for nursing aide (SOC code 31-1012); 20 percent of the median wage for psychiatric technician (SOC code 29-2053); and 60 percent of the median wage for social and human services aide (SOC code 21-1093);

(8) for housing access coordination staff, 50 percent of the median wage for community and social services specialist (SOC code 21-1099); and 50 percent of the median wage for social and human services aide (SOC code 21-1093);

(9) for in-home family support staff, 20 percent of the median wage for nursing aide (SOC code 31-1012); 30 percent of the median wage for community social service specialist (SOC code 21-1099); 40 percent of the median wage for social and human

services aide (SOC code 21-1093); and ten percent of the median wage for psychiatric technician (SOC code 29-2053);

(10) for independent living skills staff, 40 percent of the median wage for community social service specialist (SOC code 21-1099); 50 percent of the median wage for social and human services aide (SOC code 21-1093); and ten percent of the median wage for psychiatric technician (SOC code 29-2053);

(11) for ~~supported employment~~ support services staff, ~~20 percent of the median wage for nursing aide (SOC code 31-1012); 20 percent of the median wage for psychiatric technician (SOC code 29-2053); and 60 percent of the median wage for social and human services aide (SOC code 21-1093)~~ 60 percent social and human services assistant (SOC code 21-1093); 20 percent psychiatric technician (SOC code 29-2053); and 20 percent nursing assistant (SOC code 31-1014);

(12) for employment exploration services staff, 20 percent rehabilitation counselor (SOC code 21-1015); 50 percent social and human services assistants (SOC code 21-1093); and 30 percent community and social services specialist (SOC code 21-1099);

(13) for employment development services staff, 50 percent education, guidance, school, and vocational counselor (SOC code 21-1012); and 50 percent community and social services specialist (SOC code 21-1099);

(14) for adult companion staff, 50 percent of the median wage for personal and home care aide (SOC code 39-9021); and 50 percent of the median wage for nursing aides, orderlies, and attendants (SOC code 31-1012);

~~(13)~~ (15) for night supervision staff, 20 percent of the median wage for home health aide (SOC code 31-1011); 20 percent of the median wage for personal and home health aide (SOC code 39-9021); 20 percent of the median wage for nursing aide (SOC code 31-1012); 20 percent of the median wage for psychiatric technician (SOC code 29-2053); and 20 percent of the median wage for social and human services aide (SOC code 21-1093);

~~(14)~~ (16) for respite staff, 50 percent of the median wage for personal and home care aide (SOC code 39-9021); and 50 percent of the median wage for nursing aides, orderlies, and attendants (SOC code 31-1012);

~~(15)~~ (17) for personal support staff, 50 percent of the median wage for personal and home care aide (SOC code 39-9021); and 50 percent of the median wage for nursing aides, orderlies, and attendants (SOC code 31-1012);

~~(16)~~ (18) for supervisory staff, the basic wage is \$17.43 per hour with exception of the supervisor of behavior analyst and behavior specialists, which must be \$30.75 per hour;

~~(17)~~ (19) for registered nurse, the basic wage is \$30.82 per hour; and

~~(18)~~ (20) for licensed practical nurse, the basic wage is \$18.64 per hour.

- 7.1 (b) Component values for residential support services are:
- 7.2 (1) supervisory span of control ratio: 11 percent;
- 7.3 (2) employee vacation, sick, and training allowance ratio: 8.71 percent;
- 7.4 (3) employee-related cost ratio: 23.6 percent;
- 7.5 (4) general administrative support ratio: 13.25 percent;
- 7.6 (5) program-related expense ratio: 1.3 percent; and
- 7.7 (6) absence and utilization factor ratio: 3.9 percent.
- 7.8 (c) Component values for family foster care are:
- 7.9 (1) supervisory span of control ratio: 11 percent;
- 7.10 (2) employee vacation, sick, and training allowance ratio: 8.71 percent;
- 7.11 (3) employee-related cost ratio: 23.6 percent;
- 7.12 (4) general administrative support ratio: 3.3 percent;
- 7.13 (5) program-related expense ratio: 1.3 percent; and
- 7.14 (6) absence factor: 1.7 percent.
- 7.15 (d) Component values for day services for all services are:
- 7.16 (1) supervisory span of control ratio: 11 percent;
- 7.17 (2) employee vacation, sick, and training allowance ratio: 8.71 percent;
- 7.18 (3) employee-related cost ratio: 23.6 percent;
- 7.19 (4) program plan support ratio: 5.6 percent;
- 7.20 (5) client programming and support ratio: ten percent;
- 7.21 (6) general administrative support ratio: 13.25 percent;
- 7.22 (7) program-related expense ratio: 1.8 percent; and
- 7.23 (8) absence and utilization factor ratio: 3.9 percent.
- 7.24 (e) Component values for unit-based services with programming are:
- 7.25 (1) supervisory span of control ratio: 11 percent;
- 7.26 (2) employee vacation, sick, and training allowance ratio: 8.71 percent;
- 7.27 (3) employee-related cost ratio: 23.6 percent;
- 7.28 (4) program plan supports ratio: 3.1 percent;
- 7.29 (5) client programming and supports ratio: 8.6 percent;
- 7.30 (6) general administrative support ratio: 13.25 percent;
- 7.31 (7) program-related expense ratio: 6.1 percent; and
- 7.32 (8) absence and utilization factor ratio: 3.9 percent.
- 7.33 (f) Component values for unit-based services without programming except respite
- 7.34 are:
- 7.35 (1) supervisory span of control ratio: 11 percent;
- 7.36 (2) employee vacation, sick, and training allowance ratio: 8.71 percent;

- 8.1 (3) employee-related cost ratio: 23.6 percent;
8.2 (4) program plan support ratio: 3.1 percent;
8.3 (5) client programming and support ratio: 8.6 percent;
8.4 (6) general administrative support ratio: 13.25 percent;
8.5 (7) program-related expense ratio: 6.1 percent; and
8.6 (8) absence and utilization factor ratio: 3.9 percent.

8.7 (g) Component values for unit-based services without programming for respite are:

- 8.8 (1) supervisory span of control ratio: 11 percent;
8.9 (2) employee vacation, sick, and training allowance ratio: 8.71 percent;
8.10 (3) employee-related cost ratio: 23.6 percent;
8.11 (4) general administrative support ratio: 13.25 percent;
8.12 (5) program-related expense ratio: 6.1 percent; and
8.13 (6) absence and utilization factor ratio: 3.9 percent.

8.14 (h) On July 1, 2017, the commissioner shall update the base wage index in paragraph
8.15 (a) based on the wage data by standard occupational code (SOC) from the Bureau of
8.16 Labor Statistics available on December 31, 2016. The commissioner shall publish these
8.17 updated values and load them into the rate management system. This adjustment occurs
8.18 every five years. For adjustments in 2021 and beyond, the commissioner shall use the data
8.19 available on December 31 of the calendar year five years prior.

8.20 (i) On July 1, 2017, the commissioner shall update the framework components
8.21 in paragraphs (b) to (g); subdivision 6, clauses (8) and (9); and subdivision 7, clauses
8.22 (16) and (17), for changes in the Consumer Price Index. The commissioner will adjust
8.23 these values higher or lower by the percentage change in the Consumer Price Index-All
8.24 Items, United States city average (CPI-U) from January 1, 2014, to January 1, 2017. The
8.25 commissioner shall publish these updated values and load them into the rate management
8.26 system. This adjustment occurs every five years. For adjustments in 2021 and beyond, the
8.27 commissioner shall use the data available on January 1 of the calendar year four years
8.28 prior and January 1 of the current calendar year.

8.29 **EFFECTIVE DATE.** This section is effective upon federal approval. The
8.30 commissioner of human services shall notify the revisor of statutes when federal approval
8.31 is obtained.

8.32 Sec. 5. Minnesota Statutes 2015 Supplement, section 256B.4914, subdivision 8,
8.33 is amended to read:

8.34 Subd. 8. **Payments for unit-based services with programming.** Payments for
8.35 unit-based services with programming, including behavior programming, housing access

coordination, in-home family support, independent living skills training, hourly supported living services, employment exploration services, employment development services, and supported employment support services provided to an individual outside of any day or residential service plan must be calculated as follows, unless the services are authorized separately under subdivision 6 or 7:

(1) determine the number of units of service to meet a recipient's needs;

(2) personnel hourly wage rate must be based on the 2009 Bureau of Labor Statistics Minnesota-specific rates or rates derived by the commissioner as provided in subdivision 5;

(3) for a recipient requiring customization for deaf and hard-of-hearing language accessibility under subdivision 12, add the customization rate provided in subdivision 12 to the result of clause (2). This is defined as the customized direct-care rate;

(4) multiply the number of direct staff hours by the appropriate staff wage in subdivision 5, paragraph (a), or the customized direct-care rate;

(5) multiply the number of direct staff hours by the product of the supervision span of control ratio in subdivision 5, paragraph (e), clause (1), and the appropriate supervision wage in subdivision 5, paragraph (a), clause (16);

(6) combine the results of clauses (4) and (5), and multiply the result by one plus the employee vacation, sick, and training allowance ratio in subdivision 5, paragraph (e), clause (2). This is defined as the direct staffing rate;

(7) for program plan support, multiply the result of clause (6) by one plus the program plan supports ratio in subdivision 5, paragraph (e), clause (4);

(8) for employee-related expenses, multiply the result of clause (7) by one plus the employee-related cost ratio in subdivision 5, paragraph (e), clause (3);

(9) for client programming and supports, multiply the result of clause (8) by one plus the client programming and supports ratio in subdivision 5, paragraph (e), clause (5);

(10) this is the subtotal rate;

(11) sum the standard general and administrative rate, the program-related expense ratio, and the absence and utilization factor ratio;

(12) divide the result of clause (10) by one minus the result of clause (11). This is the total payment amount;

(13) for supported employment provided in a shared manner, divide the total payment amount in clause (12) by the number of service recipients, not to exceed three.

For independent living skills training provided in a shared manner, divide the total payment amount in clause (12) by the number of service recipients, not to exceed two; and

(14) adjust the result of clause (13) by a factor to be determined by the commissioner to adjust for regional differences in the cost of providing services.

EFFECTIVE DATE. This section is effective upon federal approval. The commissioner of human services shall notify the revisor of statutes when federal approval is obtained.

Sec. 6. Minnesota Statutes 2014, section 256B.4914, subdivision 16, is amended to read:

Subd. 16. **Budget neutrality adjustments.** (a) The commissioner shall use the following adjustments to the rate generated by the framework to assure budget neutrality until the rate information is available to implement paragraph (b). The rate generated by the framework shall be multiplied by the appropriate factor, as designated below:

(1) for residential services: 1.003;

(2) for day services: 1.000;

(3) for unit-based services with programming: ~~0.941~~ 1.00; and

(4) for unit-based services without programming: 0.796.

(b) Within 12 months of January 1, 2014, the commissioner shall compare estimated spending for all home and community-based waiver services under the new payment rates defined in subdivisions 6 to 9 with estimated spending for the same recipients and services under the rates in effect on July 1, 2013. This comparison must distinguish spending under each of subdivisions 6, 7, 8, and 9. The comparison must be based on actual recipients and services for one or more service months after the new rates have gone into effect. The commissioner shall consult with the commissioner of management and budget on this analysis to ensure budget neutrality. If estimated spending under the new rates for services under one or more subdivisions differs in this comparison by 0.3 percent or more, the commissioner shall assure aggregate budget neutrality across all service areas by adjusting the budget neutrality factor in paragraph (a) in each subdivision so that total estimated spending for each subdivision under the new rates matches estimated spending under the rates in effect on July 1, 2013.

(c) Services rates developed using values in subdivision 5, paragraph (a), clauses (11), (12), and (13), are not subject to budget neutrality adjustments.

EFFECTIVE DATE. This section is effective upon federal approval. The commissioner of human services shall notify the revisor of statutes when federal approval is obtained.

Sec. 7. **DIRECTION TO THE COMMISSIONER.**

The commissioner of human services shall submit necessary waiver amendments to the Centers for Medicare and Medicaid Services to add employment exploration services, employment development services, and employment support services to the

- 11.1 home and community-based services waiver authorized under Minnesota Statutes,
- 11.2 sections 256B.092 and 256B.49. The commissioner shall submit the necessary waiver
- 11.3 amendments by October 1, 2016.