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State of Minnesota

HOUSE OF REPRESENTATIVES

NINETY-THIRD SESSION

H. F. No. 3342

05/22/2023 Authored by Noor, Schomacker, Hortman, Demuth, Lislegard and others
The bill was read for the first time and referred to the Committee on Human Services Finance
R/S Rules Suspended, urgency declared
Read for the Second Time
Read Third Time as Amended
Passed by the House as Amended and transmitted to the Senate to include Floor Amendments
Passed by the Senate and returned to the House
05/23/2023 Presented to Governor
05/26/2023 Governor Approval

1.1 A bill for an act
1.2 relating to human services; providing for a nursing facility workforce incentive
1.3 program, nursing facility payments, and a nursing facility temporary rate add-on;
1.4 providing partial reimbursement to hospitals for qualifying avoidable patient days;
1.5 appropriating money; proposing coding for new law in Minnesota Statutes, chapter
1.6 256.

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

1.8 Section 1. 256.4766 **NURSING FACILITY WORKFORCE INCENTIVE GRANT**
1.9 **PROGRAM.**

1.10 Subdivision 1. Grant program established. The commissioner of human services shall
1.11 establish grants for nursing facilities to assist with recruiting and retaining eligible workers.

1.12 Subd. 2. Definitions. (a) For purposes of this section, the following terms have the
1.13 meanings given.

1.14 (b) "Commissioner" means the commissioner of human services.

1.15 (c) "Eligible employer" means a nursing facility as defined in section 256R.02,
1.16 subdivision 33.

1.17 (d) "Eligible worker" means a worker who earns \$30 per hour or less and is currently
1.18 employed or recruited to be employed by an eligible employer.

1.19 Subd. 3. Allowable uses of grant money. (a) Grantees must use grant money to provide
1.20 payments to eligible workers for the following purposes:

1.21 (1) retention, recruitment, and incentive payments;

2.1 (2) employee-owned benefits, such as health savings accounts, HRSA, and flexible
2.2 spending accounts;

2.3 (3) employee contributions to a 401k account;

2.4 (4) education, professional development, and financial counseling;

2.5 (5) child care, meals, transportation, and housing;

2.6 (6) health and wellness; and

2.7 (7) other flexible needs related to workforce challenges as determined by the
2.8 commissioner.

2.9 (b) An eligible worker may receive payments of up to \$3,000 per year from the workforce
2.10 incentive grant account and all other state money intended for the same purpose.

2.11 (c) The commissioner must develop a grant cycle distribution plan that allows for
2.12 equitable distribution of money among eligible employers. The commissioner's determination
2.13 of the grant awards and amounts is final and is not subject to appeal.

2.14 Subd. 4. **Attestation.** As a condition of obtaining grant payments under this section, an
2.15 eligible employer must attest and agree to the following:

2.16 (1) the employer is an eligible employer;

2.17 (2) the total number of eligible employees;

2.18 (3) the employer will distribute the entire value of the grant to eligible workers allowed
2.19 under this section;

2.20 (4) the employer will create and maintain records under subdivision 6;

2.21 (5) the employer will not use the money appropriated under this section for any purpose
2.22 other than the purposes permitted under this section; and

2.23 (6) the entire value of any grant amounts will be distributed to eligible workers identified
2.24 by the employer.

2.25 Subd. 5. **Distribution plan; report.** (a) Each grantee shall prepare, and upon request
2.26 submit to the commissioner, a distribution plan that specifies the amount of money the
2.27 grantee expects to receive and how that money will be distributed for workforce incentives
2.28 for eligible employees. Within 60 days of receiving the grant, the grantee must post the
2.29 distribution plan and leave the plan posted for a period of at least six months in an area of
2.30 the grantee's operation to which all direct support professionals have access.

3.1 (b) Within 12 months of receiving a grant under this section, each grantee that receives
3.2 a grant shall submit a report to the commissioner that includes the following information:

3.3 (1) a description of how grant money was distributed to eligible employees; and

3.4 (2) the total dollar amount distributed.

3.5 (c) Failure to submit the report under paragraph (b) will result in recoupment of grant
3.6 money.

3.7 Subd. 6. **Audits and recoupment.** (a) The commissioner may perform an audit under
3.8 this section up to six years after a grant is awarded to ensure that:

3.9 (1) the grantee used the money solely for allowable purposes under subdivision 3;

3.10 (2) the grantee was truthful when making attestations under subdivision 4; and

3.11 (3) the grantee complied with the conditions of receiving a grant under this section.

3.12 (b) If the commissioner determines that a grantee used grant money for purposes not
3.13 authorized under this section, the commissioner must treat any amount used for a purpose
3.14 not authorized under this section as an overpayment. The commissioner must recover any
3.15 overpayment.

3.16 Subd. 7. **Grants not to be considered income.** (a) Notwithstanding any law to the
3.17 contrary, grant awards under this section must not be considered income, assets, or personal
3.18 property for purposes of determining eligibility or recertifying eligibility for:

3.19 (1) child care assistance programs under chapter 119B;

3.20 (2) general assistance, Minnesota supplemental aid, and food support under chapter
3.21 256D;

3.22 (3) housing support under chapter 256I;

3.23 (4) the Minnesota family investment program and diversionary work program under
3.24 chapter 256J; and

3.25 (5) economic assistance programs under chapter 256P.

3.26 (b) The commissioner must not consider grant awards under this section as income or
3.27 assets under section 256B.056, subdivision 1a, paragraph (a), 3, or 3c, or for persons with
3.28 eligibility determined under section 256B.057, subdivision 3, 3a, 3b, 4, or 9.

3.29 Subd. 8. **Income tax subtractions.** (a) For the purposes of this section, "subtraction"
3.30 has the meaning given in section 290.0132, subdivision 1, and the rules in that subdivision
3.31 apply for this section. The definitions in section 290.01 apply to this section.

4.1 (b) The amount of a payment received under this section is a subtraction.

4.2 (c) Payments under this section are excluded from income as defined in sections 290.0674,
4.3 subdivision 2a, and 290A.03, subdivision 3.

4.4 Subd. 9. **Account created.** A nursing facility workforce incentive grant account is created
4.5 in the special revenue fund. Appropriations made for grants and payments administered
4.6 under this section may be transferred to this account. Amounts in the account are appropriated
4.7 to the commissioner of human services. Appropriations transferred to this account cancel
4.8 and are returned to the fund of origin on the date the original appropriations would have
4.9 lapsed.

4.10 Subd. 10. **Nursing facilities; applicable credit.** The commissioner must treat grant
4.11 payments awarded under this section as an applicable credit as defined under section 256R.10,
4.12 subdivision 6.

4.13 Sec. 2. **PAYMENTS TO NURSING FACILITIES NOT TO EXCEED FORECAST**
4.14 **SPENDING.**

4.15 Subdivision 1. **Payments established.** The commissioner of human services shall provide
4.16 a onetime payment to nursing facilities. For the purposes of this section, the payment is not
4.17 an applicable credit as defined under Minnesota Statutes, section 256R.02, subdivision 6,
4.18 and referenced in Minnesota Statutes, section 256R.10, subdivision 6.

4.19 Subd. 2. **Payment amount.** (a) Each nursing facility reimbursed under Minnesota
4.20 Statutes, chapter 256R, must receive a payment based on the sum of clauses (1) and (2):

4.21 (1) \$225,000; and

4.22 (2) the remainder of the appropriation divided by the total number of active nursing
4.23 facility beds in Minnesota as of May 12, 2023, multiplied by the total number of active beds
4.24 in the nursing facility as of May 12, 2023.

4.25 The total sum for each nursing facility shall be distributed in two equal payments on August
4.26 1, 2023, and August 1, 2024.

4.27 (b) The commissioner may adjust the amount in paragraph (a), clause (1), in order to
4.28 expend the full amount of this appropriation.

4.29 (c) Each facility must expend the total payment amount by September 30, 2025.

4.30 Subd. 3. **Allowable uses and attestation.** To receive a payment, each nursing facility
4.31 must attest on the forms and according to the timelines established by the commissioner
4.32 that the payment will be used for the following nursing facility related operations:

- 5.1 (1) covering operating- or property-related long-term debt payments;
5.2 (2) closing lines of credit;
5.3 (3) debt restructuring;
5.4 (4) paying off covenants or avoiding receivership as of the day following enactment;
5.5 (5) rent payments in arrears as of the day following enactment;
5.6 (6) physical plant improvements and maintenance not claimed for a rate increase; and
5.7 (7) any other item deemed allowable by the commissioner.

5.8 Subd. 4. **Payments to related organizations prohibited.** A payment awarded under
5.9 this section may not be used for payments to related organizations as defined in Minnesota
5.10 Statutes, section 256R.02, subdivision 43.

5.11 Subd. 5. **Reporting requirements.** Each nursing facility shall report to the commissioner
5.12 on the forms and according to the timelines established by the commissioner regarding uses
5.13 of payments awarded under this section.

5.14 Subd. 6. **Audits and recoupment.** (a) The commissioner may perform an audit under
5.15 this section up to six years after a payment is awarded to ensure that:

5.16 (1) the nursing facility used the money solely for allowable purposes under subdivision
5.17 3;

5.18 (2) the nursing facility was truthful when making attestations under subdivision 3; and

5.19 (3) the nursing facility complied with the conditions of receiving a payment under this
5.20 section.

5.21 (b) If the commissioner determines that a nursing facility used the payment for purposes
5.22 not authorized under this section, the commissioner must treat any amount used for a purpose
5.23 not authorized under this section as an overpayment. The commissioner must recover any
5.24 overpayment.

5.25 Subd. 7. **Overspending relative to forecast.** (a) The commissioner shall determine total
5.26 projected medical assistance payments to nursing facilities in fiscal years 2024 to 2027
5.27 based on the February 2023 forecast plus the impact of the temporary rate add-on in section
5.28 3 and any subsequent rate adjustments in the 2024 legislative session.

5.29 (b) By December 31, 2028, the commissioner shall determine actual total medical
5.30 assistance payments to nursing facilities for fiscal years 2024 to 2027. The determination

6.1 of total actual medical assistance payments shall not include the appropriation for the
6.2 payments under this section.

6.3 (c) The commissioner shall compare the amount in paragraph (a) to the amount in
6.4 paragraph (b). If the amount in paragraph (a) exceeds the amount in paragraph (b), the
6.5 payments in subdivision 2 shall be determined to have not increased medical assistance
6.6 payments to nursing facilities. If the amount in paragraph (b) exceeds the amount in paragraph
6.7 (a), the payments in subdivision 2 shall be determined to have increased medical assistance
6.8 payments to nursing facilities and the commissioner shall adjust each nursing facility's rates
6.9 in an amount proportional to the payment received by the nursing facility in subdivision 2
6.10 to reduce aggregate medical assistance payments to nursing facilities in rate year 2029 by
6.11 an amount equal to the amount by which actual total medical assistance payments to nursing
6.12 facilities for fiscal years 2024 to 2027, as determined in paragraph (b), exceeds the projected
6.13 medical assistance payments to nursing facilities for fiscal years 2024 to 2027 based on the
6.14 amount in paragraph (a).

6.15 (d) The commissioner's determinations under this subdivision are final and not subject
6.16 to appeal.

6.17 **EFFECTIVE DATE.** This section is effective the day following final enactment.

6.18 **Sec. 3. NURSING FACILITY TEMPORARY RATE ADD-ON.**

6.19 Effective July 1, 2023, the commissioner of human services shall provide a temporary
6.20 rate add-on for nursing facilities reimbursed under Minnesota Statutes, chapter 256R, in an
6.21 amount equal to \$12.35 per resident day. The rate add-on under this section shall expire
6.22 December 31, 2024.

6.23 **EFFECTIVE DATE.** This section is effective July 1, 2023, or upon federal approval,
6.24 whichever is later. The commissioner of human services shall notify the revisor of statutes
6.25 when federal approval is obtained.

6.26 **Sec. 4. PARTIAL REIMBURSEMENT TO HOSPITALS FOR QUALIFYING**
6.27 **AVOIDABLE PATIENT DAYS.**

6.28 Subdivision 1. Definitions. (a) For purposes of this section, the following terms have
6.29 the meanings given.

6.30 (b) "High-acuity patient" means a hospital patient with obesity or who has a disability,
6.31 has a need for wound care, has a mental illness, has high behavior needs, has a substance
6.32 use disorder, is receiving intravenous fluid or intravenous medication, or requires dialysis.

7.1 (c) "Qualifying avoidable patient day" means:

7.2 (1) any day a high-acuity patient was boarded in an emergency department because the
7.3 patient did not meet the applicable admission criteria and the hospital could not identify a
7.4 setting to which the patient could be safely released; or

7.5 (2) every day after the seventh consecutive day on which a high-acuity patient was
7.6 eligible for discharge from the hospital, but the hospital could not identify any setting to
7.7 which the patient could be safely discharged.

7.8 Subd. 2. **Partial reimbursement to hospitals.** (a) Beginning July 1, 2023, the
7.9 commissioner of human services shall make payments to hospitals as partial reimbursement
7.10 for qualifying avoidable patient days. The commissioner shall make payments of up to
7.11 \$1,400 per submitted qualifying avoidable patient day.

7.12 (b) By June 15, 2023, a hospital seeking a payment under this section must submit to
7.13 the commissioner of human services the total number of qualifying avoidable patient days
7.14 at the hospital between January 1, 2023, and May 31, 2023. To determine the payment
7.15 amount for each qualifying avoidable patient day, the commissioner must divide the
7.16 appropriation available for this purpose by the number of submitted qualifying avoidable
7.17 patient days. If a portion of the available appropriation remains after all payments have been
7.18 made based on the initial submission of qualifying avoidable patient days, the commissioner
7.19 must solicit the submission by hospitals of additional qualifying avoidable patient days
7.20 between June 1, 2023, and a date to be determined by the commissioner that the
7.21 commissioner estimates will result in the complete expenditure of the available appropriation
7.22 after making payments that closely approximate the amount of the original round of
7.23 payments.

7.24 (c) When making payments under this section, the commissioner must not consider the
7.25 source of reimbursement for the services provided to the high-acuity patient.

7.26 **EFFECTIVE DATE.** This section is effective the day following final enactment.

7.27 Sec. 5. **APPROPRIATIONS GIVEN EFFECT ONCE.**

7.28 If an appropriation or transfer in this act is enacted more than once during the 2023
7.29 regular session, the appropriation or transfer must be given effect once.

7.30 Sec. 6. **APPROPRIATIONS.**

7.31 Subdivision 1. **Nursing facility workforce incentive grant program.** \$74,500,000 in
7.32 fiscal year 2024 is appropriated from the general fund to the commissioner of human services

8.1 for the nursing facility workforce incentive grant program under Minnesota Statutes, section
8.2 256.4766. Notwithstanding Minnesota Statutes, section 16A.28, subdivisions 1 and 3, this
8.3 appropriation is available until June 30, 2029. This is a onetime appropriation.

8.4 Subd. 2. **Payments to nursing facilities not to exceed forecast spending.** \$173,137,000
8.5 in fiscal year 2024 is appropriated from the general fund to the commissioner of human
8.6 services for payments to nursing facilities not to exceed forecast spending. This is a onetime
8.7 appropriation and is available until June 30, 2025.

8.8 Subd. 3. **Nursing facility temporary rate add-on.** \$21,344,000 in fiscal year 2024 and
8.9 \$15,169,000 in fiscal year 2025 are appropriated from the general fund to the commissioner
8.10 of human services for a nursing facility temporary rate add-on.

8.11 Subd. 4. **Administration.** \$1,250,000 in fiscal year 2024 is appropriated from the general
8.12 fund to the commissioner of human services for the administration of the activities in
8.13 subdivisions 1 and 3. Notwithstanding Minnesota Statutes, section 16A.28, subdivisions 1
8.14 and 3, this amount is available until June 30, 2029. This is a onetime appropriation.

8.15 Subd. 5. **Payments to hospitals.** \$18,000,000 in fiscal year 2024 is appropriated from
8.16 the general fund to the commissioner of human services for payments to hospitals for partial
8.17 reimbursement for qualifying avoidable patient days.