

SENATE

STATE OF MINNESOTA

EIGHTY-NINTH SESSION

S.F. No. 1062

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DATE	D-PG	OFFICIAL STATUS
02/23/2015	397	Introduction and first reading
		Referred to Health, Human Services and Housing
04/07/2015		Comm report: To pass as amended and re-refer to Finance

A bill for an act
relating to human services; modifying the disability waiver rate system;
amending Minnesota Statutes 2014, sections 256B.49, subdivision 26;
256B.4913, subdivisions 4a, 5; 256B.4914, subdivisions 2, 7, 8, 10, 14, 15, 16.

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

Section 1. Minnesota Statutes 2014, section 256B.49, subdivision 26, is amended to read:

Subd. 26. **Excess allocations and underspending.** (a) County and tribal agencies will be responsible for authorizations in excess of the allocation made by the commissioner. In the event a county or tribal agency authorizes and allows spending in excess of the allocation made by the commissioner for a given allocation period, the county or tribal agency must submit a corrective action plan to the commissioner for approval. The plan must state the actions the agency will take to correct their its overspending for the year following the period when the overspending occurred. Failure to correct overauthorizations shall result in recoupment of authorizations in excess of the allocation. Nothing in this subdivision shall be construed as reducing the county's responsibility to offer and make available feasible home and community-based options to eligible waiver recipients within the resources allocated to them for that purpose. The commissioner may assume or reassign the agency's responsibility to authorize part or all of future allocations made by the commissioner if an agency fails to abide by its approved corrective action plan.

(b) A county or tribal agency that fails to spend 99 percent of the allocation made by the commissioner for a given allocation period must demonstrate to the commissioner in writing that any resulting underspending directly resulted from a decrease in the number of persons served by the agency. Agencies must allocate money available from a decrease

in persons served to eligible applicants for services on waiting lists, if any. Agencies with underspending in excess of two percent at the end of any allocation period must submit a corrective action plan to the commissioner for approval. The plan must state the actions the agency will take to correct its underspending for the next full waiver year following the period when the underspending occurred. The commissioner may assume or reassign the agency's responsibility to authorize part or all of future allocations made by the commissioner if an agency fails to abide by its approved corrective action plan.

(c) Nothing in this subdivision shall be construed as reducing the responsibility of a county or tribal agency to offer and make available feasible home and community-based options to eligible waiver recipients within the resources allocated to the agency for that purpose. A reduction of services to an eligible waiver recipient served must only be based on a change in that recipient's need.

Sec. 2. Minnesota Statutes 2014, section 256B.4913, subdivision 4a, is amended to read:

Subd. 4a. **Rate stabilization adjustment.** (a) For purposes of this subdivision, "implementation period" means the period beginning January 1, 2014, and ending on the last day of the month in which the rate management system is populated with the data necessary to calculate rates for substantially all individuals receiving home and community-based waiver services under sections 256B.092 and 256B.49. "Banding period" means the time period beginning on January 1, 2014, and ending upon the expiration of the 12-month period defined in paragraph (c), clause (5). "Rate adjustment moratorium period" means the 12-month period beginning immediately after the banding period.

(b) For purposes of this subdivision, the historical rate for all service recipients means the individual reimbursement rate for a recipient in effect on December 1, 2013, except that:

(1) for a day service recipient who was not authorized to receive these waiver services prior to January 1, 2014; added a new service or services on or after January 1, 2014; or changed providers on or after January 1, 2014, the historical rate must be the authorized rate for the provider in the county of service, effective December 1, 2013; or

(2) for a unit-based service with programming or a unit-based service without programming recipient who was not authorized to receive these waiver services prior to January 1, 2014; added a new service or services on or after January 1, 2014; or changed providers on or after January 1, 2014, the historical rate must be the weighted average authorized rate for each provider number in the county of service, effective December 1, 2013; or

(3) for residential service recipients who change providers on or after January 1, 2014, the historical rate must be set by each lead agency within their county aggregate

budget using their respective methodology for residential services effective December 1, 2013, for determining the provider rate for a similarly situated recipient being served by that provider.

(c) The commissioner shall adjust individual reimbursement rates determined under this section so that the unit rate is no higher or lower than:

(1) 0.5 percent from the historical rate for the implementation period;

(2) 0.5 percent from the rate in effect in clause (1), for the 12-month period immediately following the time period of clause (1);

(3) ~~1.0~~ 0.5 percent from the rate in effect in clause (2), for the 12-month period immediately following the time period of clause (2);

(4) 1.0 percent from the rate in effect in clause (3), for the 12-month period immediately following the time period of clause (3); ~~and~~

(5) 1.0 percent from the rate in effect in clause (4), for the 12-month period immediately following the time period of clause (4); ~~and~~

(6) no adjustment to the rate in effect in clause (5) for the 12-month rate adjustment moratorium period immediately following the time period of clause (5). During the rate adjustment moratorium period, the commissioner shall not enforce any rate decrease or increase that would otherwise result from the end of the banding period.

(d) The commissioner shall review all changes to rates that were in effect on December 1, 2013, to verify that the rates in effect produce the equivalent level of spending and service unit utilization on an annual basis as those in effect on October 31, 2013.

(e) By December 31, 2014, the commissioner shall complete the review in paragraph (d), adjust rates to provide equivalent annual spending, and make appropriate adjustments.

(f) During the banding period, the Medicaid Management Information System (MMIS) service agreement rate must be adjusted to account for change in an individual's need. The commissioner shall adjust the Medicaid Management Information System (MMIS) service agreement rate by:

(1) calculating a service rate under section 256B.4914, subdivision 6, 7, 8, or 9, for the individual with variables reflecting the level of service in effect on December 1, 2013;

(2) calculating a service rate under section 256B.4914, subdivision 6, 7, 8, or 9, for the individual with variables reflecting the updated level of service at the time of application; and

(3) adding to or subtracting from the Medicaid Management Information System (MMIS) service agreement rate, the difference between the values in clauses (1) and (2).

(g) This subdivision must not apply to rates for recipients served by providers new to a given county after January 1, 2014. Providers of personal supports services who also acted as fiscal support entities must be treated as new providers as of January 1, 2014.

Sec. 3. Minnesota Statutes 2014, section 256B.4913, subdivision 5, is amended to read:

Subd. 5. **Stakeholder consultation and county training.** (a) The commissioner shall continue consultation on regular intervals with the existing stakeholder group established as part of the rate-setting methodology process and others, to gather input, concerns, and data, to assist in the full implementation of the new rate payment system and to make pertinent information available to the public through the department's Web site.

(b) The commissioner shall train county personnel responsible for administering the rate-setting framework in a manner consistent with this section and section 256B.4914. Trainees shall not set the rates of any waiver recipients until they have demonstrated their proficiency to the satisfaction of the commissioner.

(c) The commissioner shall maintain an interactive online instruction manual explaining the rate-setting framework. The manual shall be consistent with this section and section 256B.4914, and shall be accessible to all stakeholders including recipients, representatives of recipients, counties, tribal agencies, and license holders.

(d) The commissioner shall not defer to the county or tribal agency on matters of technical application of the rate-setting framework, and a county or tribal agency shall not set rates in a manner that conflicts with this section or section 256B.4914.

Sec. 4. Minnesota Statutes 2014, section 256B.4914, subdivision 2, is amended to read:

Subd. 2. **Definitions.** (a) For purposes of this section, the following terms have the meanings given them, unless the context clearly indicates otherwise.

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

(c) "Component value" means underlying factors that are part of the cost of providing services that are built into the waiver rates methodology to calculate service rates.

(d) "Customized living tool" means a methodology for setting service rates that delineates and documents the amount of each component service included in a recipient's customized living service plan.

(e) "Disability waiver rates system" means a statewide system that establishes rates that are based on uniform processes and captures the individualized nature of waiver services and recipient needs.

(f) "Individual staffing" means the time spent as a one-to-one interaction specific to an individual recipient by staff brought in solely to provide direct support and assistance

with activities of daily living, instrumental activities of daily living, and training to participants, and is based on the requirements in each individual's coordinated service and support plan under section 245D.02, subdivision 4b; any coordinated service and support plan addendum under section 245D.02, subdivision 4c; an assessment tool; and provider observation of an individual's needs.

(g) "Lead agency" means a county, partnership of counties, or tribal agency charged with administering waived services under sections 256B.092 and 256B.49.

(h) "Median" means the amount that divides distribution into two equal groups, one-half above the median and one-half below the median.

(i) "Payment or rate" means reimbursement to an eligible provider for services provided to a qualified individual based on an approved service authorization.

(j) "Person-centered staffing environments" has the meaning described in subdivision 10, paragraph (i).

~~(j)~~ (k) "Rates management system" means a Web-based software application that uses a framework and component values, as determined by the commissioner, to establish service rates.

~~(k)~~ (l) "Recipient" means a person receiving home and community-based services funded under any of the disability waivers.

~~(l) "Shared staffing" means time spent by employees, not defined under paragraph (f), providing or available to provide more than one individual with direct support and assistance with activities of daily living as defined under section 256B.0659, subdivision 1, paragraph (b); instrumental activities of daily living as defined under section 256B.0659, subdivision 1, paragraph (i); ancillary activities needed to support individual services; and training to participants, and is based on the requirements in each individual's coordinated service and support plan under section 245D.02, subdivision 4b; any coordinated service and support plan addendum under section 245D.02, subdivision 4c; an assessment tool; and provider observation of an individual's service need. Total shared staffing hours are divided proportionally by the number of individuals who receive the shared service provisions.~~

(m) "Staffing ratio" means the number of recipients a service provider employee supports during a unit of service based on a uniform assessment tool, provider observation, case history, and the recipient's services of choice, and not based on the staffing ratios under section 245D.31.

(n) "Unit of service" means the following:

(1) for residential support services under subdivision 6, a unit of service is a day. Any portion of any calendar day, within allowable Medicaid rules, where an individual spends time in a residential setting is billable as a day;

- (2) for day services under subdivision 7:
- (i) for day training and habilitation services, a unit of service is either:
- (A) a day unit of service is defined as six or more hours of time spent providing direct services and transportation; or
- (B) a partial day unit of service is defined as fewer than six hours of time spent providing direct services and transportation; and
- (C) for new day service recipients after January 1, 2014, 15 minute units of service must be used for fewer than six hours of time spent providing direct services and transportation;
- (ii) for adult day and structured day services, a unit of service is a day or 15 minutes. A day unit of service is six or more hours of time spent providing direct services;
- (iii) for prevocational services, a unit of service is a day or an hour. A day unit of service is six or more hours of time spent providing direct service;
- (3) for unit-based services with programming under subdivision 8:
- (i) for supported living services, a unit of service is a day or 15 minutes. When a day rate is authorized, any portion of a calendar day where an individual receives services is billable as a day; and
- (ii) for all other services, a unit of service is 15 minutes; and
- (4) for unit-based services without programming under subdivision 9:
- (i) for respite services, a unit of service is a day or 15 minutes. When a day rate is authorized, any portion of a calendar day when an individual receives services is billable as a day; and
- (ii) for all other services, a unit of service is 15 minutes.

Sec. 5. Minnesota Statutes 2014, section 256B.4914, subdivision 7, is amended to read:

Subd. 7. Payments for day programs. Payments for services with day programs including adult day care, day treatment and habilitation, prevocational services, and structured day services must be calculated as follows:

(1) determine the number of units of service and staffing ratio to meet a recipient's needs:

(i) the staffing ratios for the units of service provided to a recipient in a typical week must be averaged to determine an individual's staffing ratio; and

(ii) the commissioner, in consultation with service providers, shall develop a uniform staffing ratio worksheet to be used to determine staffing ratios under this subdivision;

(2) personnel hourly wage rates 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 day program direct staff hours and nursing hours by the appropriate staff wage in subdivision 5, paragraph (a), or the customized direct-care rate;

(5) multiply the number of day direct staff hours by the product of the supervision span of control ratio in subdivision 5, paragraph (d), 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 (d), 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 support ratio in subdivision 5, paragraph (d), 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 (d), clause (3);

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

(10) for program facility costs, add ~~\$19.30~~ \$25.41 per week with consideration of staffing ratios to meet individual needs;

(11) for adult day bath services, add \$7.01 per 15 minute unit;

(12) this is the subtotal rate;

(13) sum the standard general and administrative rate, the program-related expense ratio, and the absence and utilization factor ratio of ten percent for day services;

(14) divide the result of clause (12) by one minus the result of clause (13). This is the total payment amount;

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

(16) for transportation provided as part of day training and habilitation for an individual who does not require a lift, add:

(i) \$10.50 for a one-way trip between zero and ten miles for a nonshared ride in a vehicle without a lift, \$8.83 for a shared ride in a vehicle without a lift, and \$9.25 for a shared ride in a vehicle with a lift;

(ii) \$15.75 for a one-way trip between 11 and 20 miles for a nonshared ride in a vehicle without a lift, \$10.58 for a shared ride in a vehicle without a lift, and \$11.88 for a shared ride in a vehicle with a lift;

(iii) \$25.75 for a one-way trip between 21 and 50 miles for a nonshared ride in a vehicle without a lift, \$13.92 for a shared ride in a vehicle without a lift, and \$16.88 for a shared ride in a vehicle with a lift; or

(iv) \$33.50 for a one-way trip of 51 miles or more for a nonshared ride in a vehicle without a lift, \$16.50 for a shared ride in a vehicle without a lift, and \$20.75 for a shared ride in a vehicle with a lift;

(17) for transportation provided as part of day training and habilitation for an individual who does require a lift, add:

(i) \$19.05 for a one-way trip between zero and ten miles for a nonshared ride in a vehicle with a lift, and \$15.05 for a shared ride in a vehicle with a lift;

(ii) \$32.16 for a one-way trip between 11 and 20 miles for a nonshared ride in a vehicle with a lift, and \$28.16 for a shared ride in a vehicle with a lift;

(iii) \$58.76 for a one-way trip between 21 and 50 miles for a nonshared ride in a vehicle with a lift, and \$58.76 for a shared ride in a vehicle with a lift; or

(iv) \$80.93 for a one-way trip of 51 miles or more for a nonshared ride in a vehicle with a lift, and \$80.93 for a shared ride in a vehicle with a lift.

Sec. 6. Minnesota Statutes 2014, section 256B.4914, subdivision 8, is amended to read:

Subd. 8. **Payments for unit-based services with programming.** Payments for unit-based ~~with program~~ services with programming, including behavior programming, housing access coordination, in-home family support, independent living skills training, hourly supported living services, and supported employment 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) divide the number of miles provided to the client during services provided per year by the number of units authorized for the year, and add the result to the result of clause (9);

~~(10)~~ (11) this is the subtotal rate;

~~(11)~~ (12) sum the standard general and administrative rate, the program-related expense ratio, and the absence and utilization factor ratio;

~~(12)~~ (13) divide the result of clause ~~(10)~~ (11) by one minus the result of clause ~~(11)~~ (12). This is the total payment amount;

~~(13)~~ (14) for supported employment provided in a shared manner, divide the total payment amount in clause ~~(12)~~ (13) 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)~~ (13) by the number of service recipients, not to exceed two; and

~~(14)~~ (15) adjust the result of clause ~~(13)~~ (14) by a factor to be determined by the commissioner to adjust for regional differences in the cost of providing services.

Sec. 7. Minnesota Statutes 2014, section 256B.4914, subdivision 10, is amended to read:

Subd. 10. **Updating payment values and additional information.** (a) From January 1, 2014, through December 31, 2017, the commissioner shall develop and implement uniform procedures to refine terms and adjust values used to calculate payment rates in this section.

(b) No later than July 1, 2014, the commissioner shall, within available resources, begin to conduct research and gather data and information from existing state systems or other outside sources on the following items:

(1) differences in the underlying cost to provide services and care across the state; and

(2) mileage, vehicle type, lift requirements, incidents of individual and shared rides, and units of transportation for all day services, which must be collected from providers using the rate management worksheet and entered into the rates management system; and

(3) the distinct underlying costs for services provided by a license holder under sections 245D.05, 245D.06, 245D.07, 245D.071, 245D.081, and 245D.09, and for services provided by a license holder certified under section 245D.33.

(c) Using a statistically valid set of rates management system data, the commissioner, in consultation with stakeholders, shall analyze for each service the average difference in the rate on December 31, 2013, and the framework rate at the individual, provider, lead agency, and state levels. The commissioner shall issue semiannual reports to the stakeholders on the difference in rates by service and by county during the banding period under section 256B.4913, subdivision 4a. The commissioner shall issue the first report by October 1, 2014.

(d) No later than July 1, 2014, the commissioner, in consultation with stakeholders, shall begin the review and evaluation of the following values already in subdivisions 6 to 9, or issues that impact all services, including, but not limited to:

- (1) values for transportation rates for day services;
- (2) values for transportation rates in residential services;
- (3) values for services where monitoring technology replaces staff time;
- (4) values for indirect services;
- (5) values for nursing;
- (6) component values for independent living skills;
- (7) component values for family foster care that reflect licensing requirements;
- (8) adjustments to other components to replace the budget neutrality factor;
- (9) remote monitoring technology for nonresidential services;
- (10) values for basic and intensive services in residential services;
- (11) ~~values for the facility use rate in day services~~ the weightings used in the day service ratios and adjustments to those weightings;
- (12) values for workers' compensation as part of employee-related expenses;
- (13) values for unemployment insurance as part of employee-related expenses;
- (14) a component value to reflect costs for individuals with rates previously adjusted for the inclusion of group residential housing rate 3 costs, only for any individual enrolled as of December 31, 2013; and
- (15) any changes in state or federal law with an impact on the underlying cost of providing home and community-based services.

(e) The commissioner shall report to the chairs and the ranking minority members of the legislative committees and divisions with jurisdiction over health and human services policy and finance with the information and data gathered under paragraphs (b) to (d) on the following dates:

- 11.1 (1) January 15, 2015, with preliminary results and data;
11.2 (2) January 15, 2016, with a status implementation update, and additional data
11.3 and summary information;
11.4 (3) January 15, 2017, with the full report; and
11.5 (4) January 15, 2019, with another full report, and a full report once every four
11.6 years thereafter.

11.7 (f) Based on the commissioner's evaluation of the information and data collected in
11.8 paragraphs (b) to (d), the commissioner shall make recommendations to the legislature by
11.9 January 15, 2015, to address any issues identified during the first year of implementation.
11.10 After January 15, 2015, the commissioner may make recommendations to the legislature
11.11 to address potential issues.

11.12 (g) The commissioner shall implement a regional adjustment factor to all rate
11.13 calculations in subdivisions 6 to 9, effective no later than January 1, 2015. Prior to
11.14 implementation, the commissioner shall consult with stakeholders on the methodology to
11.15 calculate the adjustment.

11.16 (h) The commissioner shall provide a public notice via LISTSERV in October of
11.17 each year beginning October 1, 2014, containing information detailing legislatively
11.18 approved changes in:

- 11.19 (1) calculation values including derived wage rates and related employee and
11.20 administrative factors;
11.21 (2) service utilization;
11.22 (3) county and tribal allocation changes; and
11.23 (4) information on adjustments made to calculation values and the timing of those
11.24 adjustments.

11.25 The information in this notice must be effective January 1 of the following year.

11.26 (i) By January 1, 2016, the commissioner shall develop, after consulting with
11.27 stakeholders, person-centered staffing environments that provide staffing ratios sufficient to
11.28 meet the needs of current residents and provide prospective residents with an understanding
11.29 of the environments from which they can choose an adult foster care setting. In developing
11.30 the staffing environments, the commissioner shall take into consideration individual needs,
11.31 including but not limited to community integration, nutritional, physical, behavioral,
11.32 on-site medical, and off-site medical needs. The commissioner must assure environments
11.33 are adaptable to current and new resident changes in needs and desired outcomes.

11.34 Sec. 8. Minnesota Statutes 2014, section 256B.4914, subdivision 14, is amended to read:

Subd. 14. **Exceptions.** (a) Notwithstanding rate stabilization under section 256B.4913, subdivision 4a, the exception request process provided in this section shall be available to all individuals receiving waived services without limitation and without regard to whether the rate in effect at the time of the exception request is banded. In a format prescribed by the commissioner, lead agencies must identify individuals with exceptional needs that cannot be met under the disability waiver rate system. The commissioner shall use that information to evaluate and, if necessary, approve an alternative payment rate for those individuals. Whether granted, denied, or modified, the commissioner shall respond to all exception requests in writing. The commissioner shall include in the written response the basis for the action and provide notification of the right to appeal under paragraph (h).

(b) Lead agencies must act on an exception request within 30 days and notify the initiator of the request of their recommendation in writing. A lead agency shall submit all exception requests along with its recommendation to the state commissioner for review and approval within ten days after the lead agency issues its recommendation. If the lead agency fails or refuses to submit the exception request and its recommendation to the commissioner, then the individual or provider serving the individual may directly submit the request to the commissioner. The commissioner may affirm, reject, or modify the request and the lead agency's recommendation, if any.

(c) An application for a rate exception may be submitted for the following criteria:

(1) an individual has service needs that cannot be met through additional units of service; ~~or~~

(2) an individual's rate determined under subdivisions 6, 7, 8, and 9 ~~results is so insufficient that it has resulted in an individual being discharged. receiving a notice of discharge from the individual's provider;~~

(3) an individual whose current rate is subject to banding and for whom, based on current needs, the projected final rate that will apply once banding is lifted will be insufficient to meet the individual's expected needs; or

(4) an individual's service needs, including behavioral changes, require a level of service which necessitates a change in provider or which requires the current provider to propose service changes beyond those currently authorized.

(d) Exception requests must include the following information:

(1) the service needs required by each individual that are not accounted for in subdivisions 6, 7, 8, and 9;

(2) the service rate requested and the difference from the rate determined in subdivisions 6, 7, 8, and 9;

13.1 (3) a basis for the underlying costs used for the rate exception and any accompanying
13.2 documentation;

13.3 ~~(4) the duration of the rate exception~~ except in cases under paragraph (c), clause
13.4 (3), the rate exception shall be retroactive to the date of the recipient's service change and
13.5 shall remain in effect until the recipient no longer requires the excepted rate due to the
13.6 recipient's change of need; and

13.7 (5) for cases under paragraph (c), clause (3), where the prospective, unbanded rate
13.8 will not be sufficient to meet the individual's expected service needs, the rate exception
13.9 shall be effective at the time that banding is lifted for that individual's service from that
13.10 provider; and

13.11 ~~(5)~~ (6) any contingencies for approval.

13.12 (e) Approved rate exceptions shall be managed within lead agency allocations under
13.13 sections 256B.092 and 256B.49.

13.14 (f) Individual disability waiver recipients or the license holder that would receive the
13.15 rate exception increase may request that a lead agency submit an exception request. A
13.16 lead agency that denies such a request shall notify the individual waiver recipient or the
13.17 license holder of its decision and the reasons for denying the request in writing no later
13.18 than 30 days after the individual's request has been made and shall submit its denial to
13.19 the commissioner in accordance with paragraph (b). The reasons for the denial must be
13.20 based on the failure to meet the criteria in paragraph (c).

13.21 (g) The commissioner shall determine whether to approve or deny an exception
13.22 request no more than 30 days after receiving the request. If the commissioner denies the
13.23 request, the commissioner shall notify the lead agency ~~and~~ the individual disability waiver
13.24 recipient, and the license holder in writing of the reasons for the denial. If the commissioner
13.25 fails to act on the exception request within 30 days, the exception is granted as submitted
13.26 if the lead agency did not respond to the initial request according to the timelines in
13.27 paragraph (b). If the lead agency recommended a rate increase, but the commissioner fails
13.28 to act within 30 days, the lead agency's recommendation is deemed granted.

13.29 (h) The individual disability waiver recipient or the license holder may appeal any
13.30 denial of an exception request by either the lead agency or the commissioner, pursuant to
13.31 sections 256.045 and 256.0451. When the denial of an exception request results in the
13.32 proposed demission of a waiver recipient from a residential or day habilitation program,
13.33 the commissioner shall issue a temporary stay of demission, when requested by the
13.34 disability waiver recipient, consistent with the provisions of section 256.045, subdivisions
13.35 4a and 6, paragraph (c). The temporary stay shall remain in effect until the lead agency can

14.1 provide an informed choice of appropriate, alternative services to the disability waiver,
14.2 but in no event shall the temporary stay exceed more than 30 days.

14.3 (i) Providers may petition lead agencies to update values that were entered
14.4 incorrectly or erroneously into the rate management system, based on past service level
14.5 discussions and determination in subdivision 4, without applying for a rate exception.

14.6 (j) The commissioner shall track all exception requests received and their
14.7 dispositions. The commissioner shall issue quarterly public exceptions statistical reports
14.8 categorized by lead agency, including the number of exception requests received and the
14.9 numbers granted, denied, and pending. The report shall include the average amount of
14.10 time required to process exceptions by each lead agency and by the commissioner.

14.11 Sec. 9. Minnesota Statutes 2014, section 256B.4914, subdivision 15, is amended to read:

14.12 Subd. 15. **County or tribal allocations.** (a) Upon implementation of the disability
14.13 waiver rates management system on January 1, 2014, the commissioner shall establish
14.14 a method of tracking and reporting the fiscal impact of the disability waiver rates
14.15 management system on individual lead agencies.

14.16 (b) Beginning January 1, 2014, the commissioner shall make annual adjustments to
14.17 lead agencies' home and community-based waived service budget allocations to adjust
14.18 for rate differences and the resulting impact on county allocations upon implementation of
14.19 the disability waiver rates system.

14.20 (c) ~~During the first two years of implementation under section 256B.4913,~~ Lead
14.21 agencies exceeding their allocations under sections 256B.092 and 256B.49 shall ~~only~~ not
14.22 be held liable for spending in excess of their allocations after a reallocation of resources
14.23 by the commissioner under paragraph (b) and shall be subject to the corrective action plan
14.24 requirements of section 256B.49. The commissioner shall reallocate resources under
14.25 sections 256B.092, subdivision 12, and 256B.49, subdivision 11a. ~~The commissioner~~
14.26 ~~shall notify lead agencies of this process by July 1, 2014.~~

14.27 Sec. 10. Minnesota Statutes 2014, section 256B.4914, subdivision 16, is amended to
14.28 read:

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

14.33 (1) for residential services: 1.003;

14.34 (2) for day services: 1.000;

15.1 (3) for unit-based services with programming: ~~0.941~~ 1.113; and

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

15.3 (b) ~~Within 12 months of January 1, 2014~~ Annually during the banding period, the

15.4 commissioner shall compare estimated spending for all home and community-based

15.5 waiver services under the new payment rates defined in subdivisions 6 to 9 with estimated

15.6 spending for the same recipients and services under the rates in effect on July 1, 2013.

15.7 This comparison must distinguish spending under each of subdivisions 6, 7, 8, and 9.

15.8 The comparison must be based on actual recipients and services for one or more service

15.9 months after the new rates have gone into effect. The commissioner shall consult with

15.10 the commissioner of management and budget on this analysis to ensure budget neutrality.

15.11 If estimated spending under the new rates for services under one or more subdivisions,

15.12 notwithstanding adjustments for the rate stabilization provisions of section 256B.4913,

15.13 subdivision 4a, paragraph (c), clauses (1) to (6), differs in this comparison by 0.3 percent

15.14 or more, the commissioner shall assure aggregate budget neutrality across all service areas

15.15 by adjusting the budget neutrality factor in paragraph (a) in each subdivision so that total

15.16 estimated spending for each subdivision under the new rates matches estimated spending

15.17 under the rates in effect on July 1, 2013.

15.18 **EFFECTIVE DATE.** The amendment to paragraph (a), clause (3), is effective

15.19 July 1, 2015.