

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	1430a	Comm report: To pass as amended and re-refer to Finance See SF1458, Art. 7, Sec. 30, 36

1.1 A bill for an act

1.2 relating to human services; modifying the disability waiver rate system;

1.3 modifying provisions governing allocation of funds for waiver services; requiring

1.4 reports; amending Minnesota Statutes 2014, sections 256B.0916, subdivisions 2,

1.5 4, 11, by adding subdivisions; 256B.49, subdivision 26, by adding subdivisions;

1.6 256B.4913, subdivisions 4a, 5; 256B.4914, subdivisions 2, 7, 8, 10, 14, 15, 16;

1.7 proposing coding for new law in Minnesota Statutes, chapter 256B.

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

1.9 Section 1. Minnesota Statutes 2014, section 256B.0916, subdivision 2, is amended to

1.10 read:

1.11 Subd. 2. **Distribution of funds; partnerships.** (a) Beginning with fiscal year 2000,

1.12 the commissioner shall distribute all funding available for home and community-based

1.13 waiver services for persons with developmental disabilities to individual counties or to

1.14 groups of counties that form partnerships to jointly plan, administer, and authorize funding

1.15 for eligible individuals. The commissioner shall encourage counties to form partnerships

1.16 that have a sufficient number of recipients and funding to adequately manage the risk

1.17 and maximize use of available resources.

1.18 (b) Counties must submit a request for funds and a plan for administering the

1.19 program as required by the commissioner. The plan must identify the number of clients to

1.20 be served, their ages, and their priority listing based on:

- 1.21 (1) requirements in Minnesota Rules, part 9525.1880; and
- 1.22 (2) statewide priorities identified in section 256B.092, subdivision 12.

1.23 The plan must also identify changes made to improve services to eligible persons and to

1.24 improve program management.

(c) In allocating resources to counties, priority must be given to groups of counties that form partnerships to jointly plan, administer, and authorize funding for eligible individuals and to counties determined by the commissioner to have sufficient waiver capacity to maximize resource use.

(d) Within 30 days after receiving the county request for funds and plans, the commissioner shall provide a written response to the plan that includes the level of resources available to serve additional persons.

(e) Counties are eligible to receive medical assistance administrative reimbursement for administrative costs under criteria established by the commissioner.

(f) The commissioner shall manage waiver allocations in such a manner as to fully use available waiver funding.

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

Sec. 2. Minnesota Statutes 2014, section 256B.0916, subdivision 4, is amended to read:

Subd. 4. **Allowed reserve.** Counties or groups of counties participating in partnerships that have submitted a plan under this section may develop an allowed reserve amount to meet crises and other unmet needs of current home and community-based waiver recipients. The amount of the allowed reserve shall be a county specific amount based upon documented past experience and projected need for the coming year described in an allowed reserve plan submitted for approval to the commissioner with the allocation request for the fiscal year. At the end of the fiscal year, any available waiver funding shall be contributed to the reserve account under section 256B.4911.

This section expires June 30, 2015.

Sec. 3. Minnesota Statutes 2014, section 256B.0916, is amended by adding a subdivision to read:

Subd. 7a. **Annual report by commissioner.** Beginning November 1, 2015, and each November 1 thereafter, the commissioner shall issue an annual report on county and state use of available resources for the home and community-based waiver for persons with developmental disabilities under section 256B.092. For each county or county partnership, the report shall include:

- (1) the amount of funds allocated but not used;
- (2) the percentage of funds allocated but not used;
- (3) the capacity for additional enrollment within each lead agency and statewide based on existing funds that are allocated but not used;

(4) the county or county partnership-specific allowed reserve amount approved and used, if applicable, or county or county partnership contributions to and distributions from the home and community-based services waiver reserve account under section 256B.4911;

(5) the number, ages, and living situations of individuals screened and waiting for services;

(6) the urgency of need for services to begin within one, two, or more than two years for each individual;

(7) the services needed;

(8) the number of additional persons served by approval of increased capacity within existing allocations;

(9) a list of counties with approved corrective action plans that are in violation of their corrective action plans, that have had their responsibility to authorize services assumed or reassigned by the commissioner, or that are subject to recoupment;

(10) results of action by the commissioner to streamline administrative requirements and improve county resource management; and

(11) additional action that would decrease the number of those eligible and waiting for waived services.

The commissioner shall specify intended outcomes for the program and the degree to which these specified outcomes are attained.

Sec. 4. Minnesota Statutes 2014, section 256B.0916, subdivision 11, is amended to read:

Subd. 11. **Excess spending.** (a) County and tribal agencies are responsible for spending in excess of the allocation made by the commissioner. In the event a county or tribal agency spends in excess of the allocation made by the commissioner for a given allocation period, they must submit a corrective action plan to the commissioner for approval. The plan must state the actions the agency will take to correct their overspending for the year two years following the period when the overspending occurred. Failure to correct overspending shall result in recoupment of spending in excess of the allocation. When evaluating a corrective action plan, the commissioner must consider whether the plan will likely lead to exiguous spending that violates the requirements of subdivision 12. If an agency fails to abide by its approved corrective action plan, the commissioner may perform one or both of the following actions:

(1) assume or reassign the agency's responsibility to spend part or all of future allocations made by the commissioner; or

(2) recoup spending in excess of the allocations.

(b) The commissioner must not recoup spending in excess of an allocation unless the total statewide aggregate spending on home and community-based waiver services in a fiscal year exceeds the total medical assistance appropriation dedicated to home and community-based waiver services during the same fiscal year.

(c) 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. A reduction of services to an eligible waiver recipient served must only be based on a change in that recipient's need or the recipient's choice.

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

Sec. 5. Minnesota Statutes 2014, section 256B.0916, is amended by adding a subdivision to read:

Subd. 12. **Exiguous spending.** (a) County and tribal agencies are responsible for spending the allocation made by the commissioner. A county or tribal agency that fails to spend 99 percent of the allocation for a given allocation period while maintaining a list of persons waiting for waiver services, must demonstrate to the commissioner in writing that any resulting underspending resulted directly from the choices or reduced needs of current waiver recipients served by the agency. To the maximum extent feasible, agencies must reallocate to eligible applicants on waiting lists for waiver services money made available as a result of the choices or reduced needs of persons currently served.

(b) In the event a county or tribal agency spends less than 97 percent of its allocation while maintaining a list of persons waiting for waiver services, 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 during the two years following the period when the underspending occurred to ensure reasonable and timely access to home and community-based waiver services for persons waiting for services. When evaluating a corrective action plan, the commissioner must consider whether the plan is likely to lead to excessive spending that violates the requirements of subdivision 11. If an agency fails to abide by its approved corrective action plan, the commissioner may assume or reassign the agency's responsibility to authorize part or all of future allocations made by the commissioner.

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

Sec. 6. Minnesota Statutes 2014, section 256B.49, subdivision 26, is amended to read:

5.1 Subd. 26. **Excess ~~allocations~~ authorizations.** (a) County and tribal agencies will
5.2 be responsible for authorizations in excess of the allocation made by the commissioner.
5.3 In the event a county or tribal agency authorizes in excess of the allocation made by the
5.4 commissioner for a given allocation period, the county or tribal agency must submit a
5.5 corrective action plan to the commissioner for approval. The plan must state the actions
5.6 the agency will take to correct ~~their overspending~~ its excessive authorizations for the year
5.7 two years following the period when the ~~overspending~~ excessive authorizations occurred.
5.8 ~~Failure to correct overauthorizations shall result in recoupment of authorizations in excess~~
5.9 ~~of the allocation.~~ When evaluating a corrective action plan for approval, the commissioner
5.10 must consider whether the plan is likely to lead to exiguous authorizations that violate
5.11 the requirements of subdivision 27. If an agency fails to abide by its approved corrective
5.12 action plan, the commissioner may perform one or both of the following actions:

5.13 (1) assume or reassign the agency's responsibility to authorize part or all of future
5.14 allocations made by the commissioner; or

5.15 (2) recoup authorizations in excess of the allocations.

5.16 (b) The commissioner may not recoup authorizations in excess of an allocation
5.17 unless the total statewide aggregate spending on home and community-based waiver
5.18 services in a fiscal year exceeds the total medical assistance appropriation dedicated to
5.19 home and community-based waiver services.

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

5.25 Sec. 7. Minnesota Statutes 2014, section 256B.49, is amended by adding a subdivision
5.26 to read:

5.27 Subd. 27. **Exiguous authorizations.** (a) County and tribal agencies are responsible
5.28 for authorizing the allocation made by the commissioner. A county or tribal agency
5.29 that fails to authorize 99 percent of its allocation for a given allocation period must
5.30 demonstrate to the commissioner in writing that any resulting underauthorization resulted
5.31 directly from a decrease in the needs or choices of current waiver recipients served by the
5.32 agency. Agencies must allocate to eligible applicants for services on waiting lists money
5.33 made available as a result of a decrease in authorizations.

5.34 (b) In the event a county or tribal agency authorizes less than 97 percent of its
5.35 allocation while maintaining a list of persons waiting for waiver services, 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 during the next two years following the period when the underauthorization occurred to assure reasonable and timely access to home and community-based waiver services for persons waiting for services. When evaluating a corrective action plan for approval, the commissioner must consider whether the plan is likely to lead to excessive authorizations that violate the requirements of subdivision 26. If an agency fails to abide by its approved corrective action plan, the commissioner may assume or reassign the agency's responsibility to authorize part or all of future allocations made by the commissioner.

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

Sec. 8. Minnesota Statutes 2014, section 256B.49, is amended by adding a subdivision to read:

Subd. 28. **Annual report by commissioner.** Beginning November 1, 2015, and each November 1 thereafter, the commissioner shall issue an annual report on county and state use of available resources for the home and community-based waiver services for persons with disabilities under section 256B.49. For each county or county partnership, the report shall include:

(1) the amount of funds allocated but not used;

(2) the percentage of funds allocated but not used;

(3) the capacity for additional enrollment within each lead agency and statewide based on existing funds that are allocated but not used;

(4) if applicable, county or county partnership-specific contributions to and distributions from the home and community-based services waiver reserve account under section 256B.4911;

(5) the number, ages, and living situations of individuals screened and waiting for services;

(6) the urgency of need for services to begin within one, two, or more than two years for each individual;

(7) the services needed;

(8) the number of additional persons served by approval of increased capacity within existing allocations;

(9) a list of counties with approved corrective action plans that are in violation of their corrective action plans, that have had their responsibility to authorize services assumed or reassigned by the commissioner, or that are subject to recoupment;

(10) results of action by the commissioner to streamline administrative requirements and improve county resource management; and

(11) additional action that would decrease the number of those eligible and waiting for waived services.

The commissioner shall specify intended outcomes for the program and the degree to which these specified outcomes are attained.

Sec. 9. [256B.4911] HOME AND COMMUNITY-BASED WAIVER SERVICES RESERVE ACCOUNT.

Subdivision 1. Establishment and purpose. In order to provide county and tribal agencies with the resources required to adequately manage their financial risk when administering disability waiver services and to ensure that all of the medical assistance appropriation dedicated to waiver services is spent, the home and community-based waiver services reserve account is created in the general fund. Funds in the reserve account may be used only in the manner permitted under this section. Funds in the account may not be used to offset other medical assistance spending, nor may they be used to prevent a deficiency in the medical assistance appropriation, except as provided for in this section.

Subd. 2. Contributions to the account. (a) In fiscal year 2015, the unexpended appropriation designated for waiver services under sections 256B.092 and 256B.49 shall be deposited in the reserve fund. The commissioner shall determine the unexpended amount by comparing the amount in the enacted budget in 2014 designated for waiver services under sections 256B.092 and 256B.49 to the actual spending for these same services at the close of fiscal year 2015. The amount of the difference must be deposited in the reserve account.

(b) Beginning with the 2016-2017 biennium and each biennium thereafter, the unexpended amount designated for waiver services under sections 256B.092 and 256B.49 shall be deposited in the reserve account. The commissioner shall determine the unexpended amount by comparing the amount in the enacted budget in each odd-numbered year designated for waiver services under sections 256B.092 and 256B.49 to the actual spending on these same services at the end of each biennium.

(c) At the end of each biennium, the commissioner shall determine what proportion of aggregate underspending of the appropriation designated for waiver services is contributed to the account by each county agency, county partnership, or tribal agency. The commissioner will determine this proportion by:

(1) determining what proportion of total aggregate unspent and unauthorized allocations are attributable to each county agency, county partnership, or tribal agency; and

8.1 (2) attributing to each county agency, county partnership, and tribal agency a
8.2 proportion of the statewide unspent appropriation that is equal to their respective
8.3 proportions determined in clause (1).

8.4 (d) Any county or tribal agency that contributes to the account is subject to any
8.5 applicable corrective action plan provisions under section 256B.0916, subdivision 12, or
8.6 section 256B.49, subdivision 27.

8.7 Subd. 3. **Distributions.** (a) If a county, county partnership, or tribal agency
8.8 has actual spending in excess of the allocation made by the commissioner for a given
8.9 allocation period, the commissioner may, at any time, make to the agency a distribution
8.10 from any available funds in the reserve account. The amount of the distribution may not
8.11 exceed the amount of the excess spending.

8.12 (b) A county or tribal agency may receive a distribution from the home and
8.13 community-based waiver services reserve account to cover all or part of the cost of the
8.14 agency's excess spending. In order to be eligible for a distribution from the reserve
8.15 account, the agency must demonstrate to the commissioner that its excess spending was
8.16 necessary to meet a crisis or unmet need of a current home and community-based waiver
8.17 recipient. A distribution from the account does not absolve the agency of its duties and
8.18 responsibilities under section 256B.0916, subdivision 11, paragraphs (a) and (c); or
8.19 section 256B.49, subdivision 26, paragraphs (a) and (c).

8.20 (c) Any county or tribal agency to which a distribution is made is subject to the
8.21 applicable corrective action plan provisions under section 256B.0916, subdivision 11, or
8.22 section 256B.49, subdivision 26.

8.23 Subd. 4. **Reporting by county.** By November 1 of each year, the commissioner
8.24 must provide to the legislature a report of distributions from and contributions to the
8.25 account by county, county partnership, and tribal agency.

8.26 Subd. 5. **Money does not cancel.** Money in the fund does not cancel but remains
8.27 available for transfers and distributions as permitted under this section.

8.28 Subd. 6. **Transfers.** (a) If at the end of any biennium the appropriation designated
8.29 for waiver services is overspent and the balance in the reserve account exceeds five
8.30 percent of the appropriation designated for waiver services in the subsequent biennium,
8.31 a transfer out of the reserve account must be made. Any money transferred out of the
8.32 reserve account under these circumstances must be used only to offset any statewide
8.33 aggregate overspending of the appropriation designated for waiver services. The amount
8.34 of the transfer must not exceed an amount that would result in the remaining balance in the
8.35 reserve account being less than five percent of the subsequent biennium's appropriation.

(b) If at the end of any biennium the appropriation designated for waiver services is not overspent and the balance in the reserve account exceeds five percent of the appropriation designated for waiver services in the subsequent biennium, a transfer out of the reserve account must be made. Any money transferred out of the reserve account under these circumstances must be added to the subsequent biennium's appropriation designated for waiver services. The amount of the transfer must be equal to the amount that will result in the remaining balance in the reserve account being equal to five percent of the appropriation designated for waiver services plus the transfer.

Sec. 10. 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. 11. Minnesota Statutes 2014, section 256B.4913, subdivision 5, is amended to read:

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

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

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

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

11.17 Sec. 12. Minnesota Statutes 2014, section 256B.4914, subdivision 2, is amended to read:

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

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

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

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

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

11.29 (f) "Individual staffing" means the time spent as a one-to-one interaction specific to
11.30 an individual recipient by staff brought in solely to provide direct support and assistance
11.31 with activities of daily living, instrumental activities of daily living, and training to
11.32 participants, and is based on the requirements in each individual's coordinated service and
11.33 support plan under section 245D.02, subdivision 4b; any coordinated service and support
11.34 plan addendum under section 245D.02, subdivision 4c; an assessment tool; and provider
11.35 observation of an individual's needs.

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

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

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

12.7 (j) "Person-centered staffing environments" has the meaning described in subdivision
12.8 10, paragraph (i).

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

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

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

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

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

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

12.32 (2) for day services under subdivision 7:

12.33 (i) for day training and habilitation services, a unit of service is either:

12.34 (A) a day unit of service is defined as six or more hours of time spent providing
12.35 direct services and transportation; or

13.1 (B) a partial day unit of service is defined as fewer than six hours of time spent
13.2 providing direct services and transportation; and

13.3 (C) for new day service recipients after January 1, 2014, 15 minute units of
13.4 service must be used for fewer than six hours of time spent providing direct services
13.5 and transportation;

13.6 (ii) for adult day and structured day services, a unit of service is a day or 15 minutes.
13.7 A day unit of service is six or more hours of time spent providing direct services;

13.8 (iii) for prevocational services, a unit of service is a day or an hour. A day unit of
13.9 service is six or more hours of time spent providing direct service;

13.10 (3) for unit-based services with programming under subdivision 8:

13.11 (i) for supported living services, a unit of service is a day or 15 minutes. When a
13.12 day rate is authorized, any portion of a calendar day where an individual receives services
13.13 is billable as a day; and

13.14 (ii) for all other services, a unit of service is 15 minutes; and

13.15 (4) for unit-based services without programming under subdivision 9:

13.16 (i) for respite services, a unit of service is a day or 15 minutes. When a day rate is
13.17 authorized, any portion of a calendar day when an individual receives services is billable
13.18 as a day; and

13.19 (ii) for all other services, a unit of service is 15 minutes.

13.20 Sec. 13. Minnesota Statutes 2014, section 256B.4914, subdivision 7, is amended to read:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

14.18 (12) this is the subtotal rate;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

15.15 Subd. 8. **Payments for unit-based services with programming.** Payments for
15.16 unit-based ~~with program~~ services with programming, including behavior programming,
15.17 housing access coordination, in-home family support, independent living skills training,
15.18 hourly supported living services, and supported employment provided to an individual
15.19 outside of any day or residential service plan must be calculated as follows, unless the
15.20 services are authorized separately under subdivision 6 or 7:

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

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

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

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

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

15.32 (6) combine the results of clauses (4) and (5), and multiply the result by one plus
15.33 the employee vacation, sick, and training allowance ratio in subdivision 5, paragraph (e),
15.34 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. 15. 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:

18.1 (1) January 15, 2015, with preliminary results and data;

18.2 (2) January 15, 2016, with a status implementation update, and additional data
18.3 and summary information;

18.4 (3) January 15, 2017, with the full report; and

18.5 (4) January 15, 2019, with another full report, and a full report once every four
18.6 years thereafter.

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

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

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

18.19 (1) calculation values including derived wage rates and related employee and
18.20 administrative factors;

18.21 (2) service utilization;

18.22 (3) county and tribal allocation changes; and

18.23 (4) information on adjustments made to calculation values and the timing of those
18.24 adjustments.

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

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

18.34 Sec. 16. Minnesota Statutes 2014, section 256B.4914, subdivision 14, is amended to
18.35 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;

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

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

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

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

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

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

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

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

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

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

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

21.11 Sec. 17. Minnesota Statutes 2014, section 256B.4914, subdivision 15, is amended to
21.12 read:

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

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

21.21 (c) ~~During the first two years of implementation under section 256B.4913, Lead~~
21.22 ~~agencies exceeding their allocations under sections 256B.092 and 256B.49 shall only be~~
21.23 ~~held liable for spending in excess of their allocations after a reallocation of resources by~~
21.24 ~~the commissioner under paragraph (b). The commissioner shall reallocate resources under~~
21.25 ~~sections 256B.092, subdivision 12, and 256B.49, subdivision 11a. The commissioner shall~~
21.26 ~~notify lead agencies of this process by July 1, 2014~~ are subject to all the provisions under
21.27 section 256B.0916, subdivisions 11 and 12, and section 256B.49, subdivisions 26 and 27.

21.28 Sec. 18. Minnesota Statutes 2014, section 256B.4914, subdivision 16, is amended to
21.29 read:

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

21.34 (1) for residential services: 1.003;

22.1 (2) for day services: 1.000;

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

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

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

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

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

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

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

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

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

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

22.12 If estimated spending under the new rates for services under one or more subdivisions₂

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

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

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

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

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

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

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

22.20 July 1, 2015.