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State of Minnesota  
HOUSE OF REPRESENTATIVES

EIGHTY-EIGHTH SESSION

H. F. No. **886**

02/25/2013 Authored by Fritz; Schomacker; Gunther; Anderson, P.; Swedzinski and others

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

03/18/2013 Adoption of Report: Pass as Amended and re-referred to the Committee on Health and Human Services Finance

1.1 A bill for an act  
1.2 relating to human services; providing nursing facility and elderly waiver rate  
1.3 increases; amending Minnesota Statutes 2012, section 256B.434, by adding a  
1.4 subdivision.

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

1.6 Section 1. Minnesota Statutes 2012, section 256B.434, is amended by adding a  
1.7 subdivision to read:

1.8 Subd. 19a. **Nursing facility rate adjustments beginning October 1, 2013, and**  
1.9 **October 1, 2014.** (a) For the rate years beginning October 1, 2013, and October 1, 2014,  
1.10 the commissioner shall make available to each nursing facility reimbursed under this  
1.11 section or any other section the following operating payment rate adjustments:

1.12 (1) a two percent increase to address general cost increases and staffing needs;

1.13 (2) a quality add-on equal to:

1.14 (i) a two percent increase on October 1, 2013, for each nursing facility that is  
1.15 a registered participant for the national program Advancing Excellence in America's  
1.16 Nursing Homes and sets two goals under that program's specified enrollment options; and

1.17 (ii) up to a two percent increase on October 1, 2014. Each facility shall report to  
1.18 the Department of Human Services in a manner prescribed by the commissioner on the  
1.19 progress toward the two goals set under item (i). A facility is eligible for a one percent  
1.20 rate increase for each goal that the facility has established a baseline, and demonstrated  
1.21 sustained improvement, up to a maximum two percent rate increase; and

1.22 (3) a one percent increase to address workforce needs. Spending to address these  
1.23 needs shall be in addition to the amount identified in clause (1). For this increase, in

addition to the staffing costs allowed under clause (1), funds can be spent on additional efforts to address workforce needs including the recruiting and training of employees.

(b) Seventy-three percent of the money resulting from the rate adjustments under paragraph (a), clauses (1) and (3), must be used for increases in compensation-related costs for employees directly employed by the nursing facility on or after the effective date of the rate adjustment, except:

(1) the administrator;

(2) persons employed in the central office of a corporation that has an ownership interest in the nursing facility or exercises control over the nursing facility; and

(3) persons paid by the nursing facility under a management contract.

(c) The commissioner shall allow as compensation-related costs all costs for:

(1) wages and salaries;

(2) FICA taxes, Medicare taxes, state and federal unemployment taxes, and workers' compensation;

(3) the employer's share of health and dental insurance, life insurance, disability insurance, long-term care insurance, uniform allowance, and pensions; and

(4) other benefits provided and workforce needs including the recruiting and training of employees, subject to the approval of the commissioner.

(d) Nursing facilities may apply for the portion of the rate adjustment under paragraph (a), clauses (1) and (3), that is subject to the requirements in paragraph (b). The application must be submitted to the commissioner within six months of the effective date of the rate adjustment, and the nursing facility must provide additional information required by the commissioner within nine months of the effective date of the rate adjustment. The commissioner must respond to all applications within three weeks of receipt. The commissioner may waive the deadlines in this paragraph under extraordinary circumstances, to be determined at the sole discretion of the commissioner.

The application must contain:

(1) an estimate of the amounts of money that must be used as specified in paragraph (b);

(2) a detailed distribution plan specifying the allowable compensation-related and wage increases the nursing facility will implement to use the funds available in clause (1);

(3) a description of how the nursing facility will notify eligible employees of the contents of the approved application, which must provide for giving each eligible employee a copy of the approved application, excluding the information required in clause (1), or posting a copy of the approved application, excluding the information required in

clause (1), for a period of at least six weeks in an area of the nursing facility to which all eligible employees have access; and

(4) instructions for employees who believe they have not received the compensation-related or wage increases specified in clause (2), as approved by the commissioner, and which must include a mailing address, e-mail address, and the telephone number that may be used by the employee to contact the commissioner or the commissioner's representative.

(e) For the October 1, 2013, rate increases, the commissioner shall ensure that cost increases in distribution plans under paragraph (d), clause (2), that may be included in approved applications, comply with the following requirements:

(1) a portion of the costs resulting from tenure-related wage or salary increases may be considered to be allowable wage increases, according to formulas that the commissioner shall provide, where employee retention is above the average statewide rate of retention of direct care employees;

(2) the annualized amount of increases in costs for the employer's share of health and dental insurance, life insurance, disability insurance, and workers' compensation shall be allowable compensation-related increases if they are effective on or after April 1, 2013, and prior to April 1, 2014; and

(3) for nursing facilities in which employees are represented by an exclusive bargaining representative, the commissioner shall approve the application only upon receipt of a letter of acceptance of the distribution plan, in regard to members of the bargaining unit, signed by the exclusive bargaining agent and dated after May 25, 2013. Upon receipt of the letter of acceptance, the commissioner shall deem all requirements of this provision as having been met in regard to the members of the bargaining unit.

(f) For the October 1, 2014, rate increases, the commissioner shall ensure that cost increases in distribution plans under paragraph (d), clause (2), that may be included in approved applications, comply with the following requirements:

(1) costs to be incurred during the applicable rate year resulting from wage and salary increases effective after October 1, 2013, and prior to the first day of the nursing facility's payroll period that includes October 1, 2014, shall be allowed if they were not used in the prior year's application;

(2) a portion of the costs resulting from tenure-related wage or salary increases may be considered to be allowable wage increases, according to formulas that the commissioner shall provide, where employee retention is above the average statewide rate of retention of direct care employees;

(3) the annualized amount of increases in costs for the employer's share of health and dental insurance, life insurance, disability insurance, and workers' compensation shall be allowable compensation-related increases if they are effective on or after April 1, 2014, and prior to April 1, 2015; and

(4) for nursing facilities in which employees are represented by an exclusive bargaining representative, the commissioner shall approve the application only upon receipt of a letter of acceptance of the distribution plan, in regard to members of the bargaining unit, signed by the exclusive bargaining agent and dated after May 25, 2014. Upon receipt of the letter of acceptance, the commissioner shall deem all requirements of this provision as having been met in regard to the members of the bargaining unit.

(g) The commissioner shall review applications received under paragraphs (e) and (f) and shall provide the portion of the rate adjustment under paragraph (b) if the requirements of this statute have been met.

(h) The increases in this subdivision shall be applied as a total percentage for all three items above to operating rates effective September 30, 2013, and September 30, 2014, except that they shall not increase any performance-based incentive payments under section 256B.434, subdivision 4, paragraph (d), awarded prior to October 1, 2013. For any employees represented by a collective bargaining unit, an agreement negotiated between the bargaining unit and the employer satisfies the requirement for a plan under paragraph (d).

**Sec. 2. RATE ADJUSTMENTS FOR OCTOBER 1, 2013, AND OCTOBER 1, 2014, FOR THE ELDERLY WAIVER PROGRAM.**

(a) Effective October 1, 2013, and October 1, 2014, the elderly waiver rates, including all components and limits, shall be increased by the following:

(1) a two percent increase to address general cost increases and staffing needs;

(2) a two percent increase for implementing a new quality improvement program. The quality improvement program shall be designed to improve recipient outcomes and shall be detailed on a report to be completed by September 30 of each year and shall be provided to the commissioner upon request; and

(3) a one percent increase to address workforce needs. Spending to address these needs shall be in addition to the amount identified in clause (1). In addition to the staffing costs allowed under clause (1), these funds may be spent on additional efforts to address workforce needs including recruiting and training of employees.

(b) A managed care plan receiving state payments for the services in this section must include these increases in their payments to providers on a prospective basis, effective on January 1 following the effective date of the rate increase.

(c) Providers that receive a rate increase under this section shall use 73 percent of the additional revenue from paragraph (a), clauses (1) and (3), to increase compensation-related costs for employees directly employed by the program on or after the effective date of the rate adjustments, except:

(1) the administrator;

(2) persons employed in the central office of a corporation or entity that has an ownership interest in the provider or exercises control over the provider; and

(3) persons paid by the provider under a management contract.

Compensation-related costs include: wages and salaries; FICA taxes, Medicare taxes, state and federal unemployment taxes, and workers' compensation; and the employer's share of health and dental insurance, life insurance, disability insurance, long-term care insurance, uniform allowance, and pensions.

(d) For public employees, the increase for wages and benefits for certain staff is available and pay rates must be increased only to the extent that they comply with laws governing public employees collective bargaining. Money received by a provider for pay increases under this section may be used only for increases implemented on or after the first day of the rate period in which the increase is available and must not be used for increases implemented prior to that date.

(e) Providers that receive a rate adjustment under paragraph (a) that is subject to paragraph (c) shall provide to the commissioner, and those counties with whom they have a contract, within six months after the effective date of each rate adjustment, a letter, in a format specified by the commissioner, that provides assurances that the provider has developed and implemented a compensation plan and complied with paragraph (c). The provider shall keep on file, and produce for the commissioner or county upon request, its plan, which must specify:

(1) an estimate of the amounts of money that must be used as specified in paragraph (c); and

(2) a detailed distribution plan specifying the allowable compensation-related and wage increases the provider will implement to use the funds available in clause (1).

(f) Within six months after the effective date of each rate adjustment, the provider shall post this plan, excluding the information required in paragraph (e), clause (1), for a period of at least six weeks in an area of the provider's operation to which all eligible employees have access and provide instructions for employees who believe they have not received the wage and other compensation-related increases specified in paragraph (e), clause (2). Instructions must include a mailing address, e-mail address, and the telephone number that may be used by the employee to contact the commissioner or the

6.1 commissioner's representative. Providers shall also make assurances to the commissioner  
6.2 and counties with whom they have a contract that they have complied with the requirement  
6.3 in this paragraph.

6.4 (g) The increases in this section shall be applied as a total percentage for all three  
6.5 items above to the elderly waiver rates, including all components and limits, effective  
6.6 September 30, 2013, and September 30, 2014. For any employees represented by a  
6.7 collective bargaining unit, an agreement negotiated between the bargaining unit and the  
6.8 employer satisfies the requirement for a plan under paragraph (e).