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State of Minnesota

HOUSE OF REPRESENTATIVES

NINETY-SECOND SESSION

H. F. No. 4487

03/21/2022

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

1.1 A bill for an act  
1.2 relating to human services; modifying disproportionate share rate adjustments for  
1.3 certain customized living services; amending Minnesota Statutes 2021 Supplement,  
1.4 section 256S.205.

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

1.6 Section 1. Minnesota Statutes 2021 Supplement, section 256S.205, is amended to read:

1.7 **256S.205 CUSTOMIZED LIVING SERVICES; DISPROPORTIONATE SHARE**  
1.8 **RATE ADJUSTMENTS.**

1.9 Subdivision 1. **Definitions.** (a) For the purposes of this section, the terms in this  
1.10 subdivision have the meanings given.

1.11 (b) "Application year" means a year in which a facility submits an application for  
1.12 designation as a disproportionate share facility.

1.13 (c) ~~"Assisted living facility" or "facility" means an assisted living facility licensed under~~  
1.14 ~~chapter 144G~~ "Customized living resident" means a resident of a facility who is receiving  
1.15 either 24-hour customized living services or customized living services authorized under  
1.16 the elderly waiver, the brain injury waiver, or the community access for disability inclusion  
1.17 waiver.

1.18 (d) "Disproportionate share facility" means ~~an assisted living~~ a facility designated by  
1.19 the commissioner under subdivision 4.

1.20 (e) "Facility" means either an assisted living facility licensed under chapter 144G or a  
1.21 setting that is exempt from assisted living licensure under section 144G.08, subdivision 7,  
1.22 clauses (10) to (13).

2.1 (f) "Rate year" means January 1 to December 31 of the year following an application  
 2.2 year.

2.3 Subd. 2. **Rate adjustment application.** ~~An assisted living~~ A facility may apply to the  
 2.4 commissioner for designation as a disproportionate share facility. Applications must be  
 2.5 submitted annually between ~~October~~ September 1 and ~~October 31~~ September 30. The  
 2.6 applying facility must apply in a manner determined by the commissioner. The applying  
 2.7 facility must document ~~as a percentage the census of elderly waiver participants~~ each of the  
 2.8 following on the application:

2.9 (1) the number of customized living residents in the facility on September 1 of the  
 2.10 application year, broken out by specific waiver program; and

2.11 (2) the total number of people residing in the facility on ~~October~~ September 1 of the  
 2.12 application year.

2.13 Subd. 3. **Rate adjustment eligibility criteria.** Only facilities ~~with a census of at least~~  
 2.14 ~~80 percent elderly waiver participants~~ satisfying all of the following conditions on ~~October~~  
 2.15 September 1 of the application year are eligible for designation as a disproportionate share  
 2.16 facility:

2.17 (1) at least 80 percent of the residents of the facility are customized living residents; and

2.18 (2) at least 50 percent of the customized living residents are elderly waiver participants.

2.19 Subd. 4. **Designation as a disproportionate share facility.** (a) ~~By November~~ October  
 2.20 15 of each application year, the commissioner must designate as a disproportionate share  
 2.21 facility a facility that complies with the application requirements of subdivision 2 and meets  
 2.22 the eligibility criteria of subdivision 3.

2.23 (b) An annual designation is effective for one rate year.

2.24 Subd. 5. **Rate adjustment; rate floor.** (a) Notwithstanding the 24-hour customized  
 2.25 living monthly service rate limits under section 256S.202, subdivision 2, and the component  
 2.26 service rates established under section 256S.201, subdivision 4, the commissioner must  
 2.27 establish a rate floor equal to ~~\$119~~ \$139 per resident per day for 24-hour customized living  
 2.28 services provided to an elderly waiver participant in a designated disproportionate share  
 2.29 facility ~~for the purpose of ensuring the minimal level of staffing required to meet the health~~  
 2.30 ~~and safety needs of elderly waiver participants.~~

2.31 (b) The commissioner must apply the rate floor to the services described in paragraph

2.32 (a) provided during the rate year.

3.1 ~~(b)~~ (c) The commissioner must adjust the rate floor at least annually in the manner  
3.2 described under section 256S.18, subdivisions 5 and 6.

3.3 ~~(e)~~ (d) The commissioner shall not implement the rate floor under this section if the  
3.4 customized living rates established under sections 256S.21 to 256S.215 will be implemented  
3.5 at 100 percent on January 1 of the year following an application year.

3.6 Subd. 6. **Budget cap disregard.** The value of the rate adjustment under this section  
3.7 must not be included in an elderly waiver client's monthly case mix budget cap.

3.8 **EFFECTIVE DATE.** This section is effective July 1, 2022, or upon federal approval,  
3.9 whichever is later, and applies to services provided on or after October 1, 2022, or on or  
3.10 after the date upon which federal approval is obtained, whichever is later. The commissioner  
3.11 of human services shall notify the revisor of statutes when federal approval is obtained.

3.12 **Sec. 2. DIRECTION TO THE COMMISSIONER OF HUMAN SERVICES;**  
3.13 **PARTIAL YEAR IMPLEMENTATION OF DISPROPORTIONATE SHARE RATE**  
3.14 **ADJUSTMENTS.**

3.15 Subdivision 1. **Definitions.** For the purposes of this section, the definitions in Minnesota  
3.16 Statutes, section 256S.205, apply.

3.17 Subd. 2. **Partial year implementation.** (a) Notwithstanding the provisions of Minnesota  
3.18 Statutes, section 256S.205, subdivisions 2 to 5, regarding application dates, eligibility dates,  
3.19 designation dates, and payment adjustment dates, during the first partial year of  
3.20 implementation of the amendments in this act to Minnesota Statutes, section 256S.205, a  
3.21 facility may apply between July 1, 2022, and July 31, 2022, to be designated a  
3.22 disproportionate share facility on the basis of the conditions outlined in Minnesota Statutes,  
3.23 section 256S.205, subdivision 3, as of July 1, 2022. The commissioner shall designate  
3.24 disproportionate share facilities by August 15, 2022. Between October 1, 2022, and December  
3.25 31, 2022, the commissioner shall apply the rate floor under Minnesota Statutes, section  
3.26 256S.205, as amended in this act, to eligible customized living services provided in  
3.27 disproportionate share facilities between those dates.

3.28 Subd. 3. **Rate year 2023.** Beginning September 1, 2022, the timelines and dates described  
3.29 in Minnesota Statutes, section 256S.205, subdivisions 2 to 4, apply for the purposes of rate  
3.30 year 2023.

3.31 Subd. 4. **Treatment of prior rate adjustments.** (a) The commissioner shall apply rate  
3.32 adjustments required under Minnesota Statutes 2021 Supplement, section 256S.205, until

4.1 September 30, 2022. Beginning October 1, 2022, the commissioner shall remove all rate  
4.2 adjustments required under Minnesota Statutes 2021 Supplement, section 256S.205.

4.3 (b) A disproportionate share facility receiving a rate adjustment under Minnesota Statutes  
4.4 2021 Supplement, section 256S.205, as of July 1, 2022, may apply for an adjustment under  
4.5 this section.

4.6 **EFFECTIVE DATE.** (a) Subdivisions 1 to 3 are effective July 1, 2022, or upon federal  
4.7 approval, whichever is later, and apply to services provided on or after October 1, 2022, or  
4.8 on or after the date upon which federal approval is obtained, whichever is later. The  
4.9 commissioner of human services shall notify the revisor of statutes when federal approval  
4.10 is obtained.

4.11 (b) Subdivision 4 is effective July 1, 2022.