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State of Minnesota  
**HOUSE OF REPRESENTATIVES**

NINETY-FIRST SESSION

**H. F. No. 168**

01/17/2019 Authored by Schultz, Lillie, Kunesh-Podein, Bierman, Hassan and others  
The bill was read for the first time and referred to the Committee on Health and Human Services Policy  
02/14/2019 Adoption of Report: Amended and re-referred to the Committee on Ways and Means

1.1 A bill for an act  
1.2 relating to human services; modifying the disability waiver rate system; amending  
1.3 Minnesota Statutes 2018, sections 256B.4913, subdivisions 4a, 5; 256B.4914,  
1.4 subdivisions 2, 4, 5, 6, 10, 10a, 14, by adding a subdivision; repealing Minnesota  
1.5 Statutes 2018, section 256B.4913, subdivisions 4a, 6, 7.

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

1.7 Section 1. Minnesota Statutes 2018, section 256B.4913, subdivision 4a, is amended to  
1.8 read:

1.9 Subd. 4a. **Rate stabilization adjustment.** (a) For purposes of this subdivision,  
1.10 "implementation period" means the period beginning January 1, 2014, and ending on the  
1.11 last day of the month in which the rate management system is populated with the data  
1.12 necessary to calculate rates for substantially all individuals receiving home and  
1.13 community-based waiver services under sections 256B.092 and 256B.49. "Banding period"  
1.14 means the time period beginning on January 1, 2014, and ending upon the expiration of the  
1.15 12-month period defined in paragraph (c), clause (5).

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

1.19 (1) for a day service recipient who was not authorized to receive these waiver services  
1.20 prior to January 1, 2014; added a new service or services on or after January 1, 2014; or  
1.21 changed providers on or after January 1, 2014, the historical rate must be the weighted  
1.22 average authorized rate for the provider number in the county of service, effective December  
1.23 1, 2013; or

2.1 (2) for a unit-based service with programming or a unit-based service without  
2.2 programming recipient who was not authorized to receive these waiver services prior to  
2.3 January 1, 2014; added a new service or services on or after January 1, 2014; or changed  
2.4 providers on or after January 1, 2014, the historical rate must be the weighted average  
2.5 authorized rate for each provider number in the county of service, effective December 1,  
2.6 2013; or

2.7 (3) for residential service recipients who change providers on or after January 1, 2014,  
2.8 the historical rate must be set by each lead agency within their county aggregate budget  
2.9 using their respective methodology for residential services effective December 1, 2013, for  
2.10 determining the provider rate for a similarly situated recipient being served by that provider.

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

2.13 (1) 0.5 percent from the historical rate for the implementation period;

2.14 (2) 0.5 percent from the rate in effect in clause (1), for the 12-month period immediately  
2.15 following the time period of clause (1);

2.16 (3) 0.5 percent from the rate in effect in clause (2), for the 12-month period immediately  
2.17 following the time period of clause (2);

2.18 (4) 1.0 percent from the rate in effect in clause (3), for the 12-month period immediately  
2.19 following the time period of clause (3);

2.20 (5) 1.0 percent from the rate in effect in clause (4), for the 12-month period immediately  
2.21 following the time period of clause (4); and

2.22 (6) no adjustment to the rate in effect in clause (5) for the 12-month period immediately  
2.23 following the time period of clause (5). During this banding rate period, the commissioner  
2.24 shall not enforce any rate decrease or increase that would otherwise result from the end of  
2.25 the banding period. ~~The commissioner shall, upon enactment, seek federal approval for the~~  
2.26 ~~addition of this banding period; and~~

2.27 ~~(7) one percent from the rate in effect in clause (6) for the 12-month period immediately~~  
2.28 ~~following the time period of clause (6).~~

2.29 (d) The commissioner shall review all changes to rates that were in effect on December  
2.30 1, 2013, to verify that the rates in effect produce the equivalent level of spending and service  
2.31 unit utilization on an annual basis as those in effect on October 31, 2013.

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

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

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

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

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

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

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

3.18 Sec. 2. Minnesota Statutes 2018, section 256B.4913, subdivision 5, is amended to read:

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

3.25 (b) The commissioner shall offer training at least annually for county personnel  
3.26 responsible for administering the rate-setting framework in a manner consistent with this  
3.27 section and section 256B.4914.

3.28 (c) The commissioner shall maintain an online instruction manual explaining the  
3.29 rate-setting framework. The manual shall be consistent with this section and section  
3.30 256B.4914, and shall be accessible to all stakeholders including recipients, representatives  
3.31 of recipients, county or tribal agencies, and license holders.

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

4.4 **EFFECTIVE DATE.** This section is effective January 1, 2020.

4.5 Sec. 3. Minnesota Statutes 2018, section 256B.4914, subdivision 2, is amended to read:

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

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

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

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

4.14 (e) "Direct care staff" means employees providing direct service to people receiving  
4.15 services under this section. Direct care staff excludes executive, managerial, and  
4.16 administrative staff.

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

4.20 ~~(f)~~ (g) "Individual staffing" means the time spent as a one-to-one interaction specific to  
4.21 an individual recipient by staff to provide direct support and assistance with activities of  
4.22 daily living, instrumental activities of daily living, and training to participants, and is based  
4.23 on the requirements in each individual's coordinated service and support plan under section  
4.24 245D.02, subdivision 4b; any coordinated service and support plan addendum under section  
4.25 245D.02, subdivision 4c; and an assessment tool. Provider observation of an individual's  
4.26 needs must also be considered.

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

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

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

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

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

5.6 ~~(l)~~ (m) "Shared staffing" means time spent by employees, not defined under paragraph  
5.7 (f), providing or available to provide more than one individual with direct support and  
5.8 assistance with activities of daily living as defined under section 256B.0659, subdivision  
5.9 1, paragraph (b); instrumental activities of daily living as defined under section 256B.0659,  
5.10 subdivision 1, paragraph (i); ancillary activities needed to support individual services; and  
5.11 training to participants, and is based on the requirements in each individual's coordinated  
5.12 service and support plan under section 245D.02, subdivision 4b; any coordinated service  
5.13 and support plan addendum under section 245D.02, subdivision 4c; an assessment tool; and  
5.14 provider observation of an individual's service need. Total shared staffing hours are divided  
5.15 proportionally by the number of individuals who receive the shared service provisions.

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

5.20 ~~(n)~~ (o) "Unit of service" means the following:

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

5.24 (2) for day services under subdivision 7:

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

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

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

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

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

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

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

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

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

6.10 (4) for unit-based services without programming under subdivision 9, a unit of service  
 6.11 is 15 minutes.

6.12 Sec. 4. Minnesota Statutes 2018, section 256B.4914, subdivision 4, is amended to read:

6.13 Subd. 4. **Data collection for rate determination.** (a) Rates for applicable home and  
 6.14 community-based waived services, including rate exceptions under subdivision 12, are  
 6.15 set by the rates management system.

6.16 ~~(b) Data for services under section 256B.4913, subdivision 4a, shall be collected in a~~  
 6.17 ~~manner prescribed by the commissioner.~~

6.18 ~~(e)~~ (b) Data and information in the rates management system may be used to calculate  
 6.19 an individual's rate.

6.20 ~~(d)~~ (c) Service providers, with information from the community support plan and  
 6.21 oversight by lead agencies, shall provide values and information needed to calculate an  
 6.22 individual's rate into the rates management system. The determination of service levels must  
 6.23 be part of a discussion with members of the support team as defined in section 245D.02,  
 6.24 subdivision 34. This discussion must occur prior to the final establishment of each individual's  
 6.25 rate. The values and information include:

6.26 (1) shared staffing hours;

6.27 (2) individual staffing hours;

6.28 (3) direct registered nurse hours;

6.29 (4) direct licensed practical nurse hours;

6.30 (5) staffing ratios;

7.1 (6) information to document variable levels of service qualification for variable levels  
7.2 of reimbursement in each framework;

7.3 (7) shared or individualized arrangements for unit-based services, including the staffing  
7.4 ratio;

7.5 (8) number of trips and miles for transportation services; and

7.6 (9) service hours provided through monitoring technology.

7.7 ~~(e)~~ (d) Updates to individual data must include:

7.8 (1) data for each individual that is updated annually when renewing service plans; and

7.9 (2) requests by individuals or lead agencies to update a rate whenever there is a change  
7.10 in an individual's service needs, with accompanying documentation.

7.11 ~~(f)~~ (e) Lead agencies shall review and approve all services reflecting each individual's  
7.12 needs, and the values to calculate the final payment rate for services with variables under  
7.13 subdivisions 6, 7, 8, and 9 for each individual. Lead agencies must notify the individual and  
7.14 the service provider of the final agreed-upon values and rate, and provide information that  
7.15 is identical to what was entered into the rates management system. If a value used was  
7.16 mistakenly or erroneously entered and used to calculate a rate, a provider may petition lead  
7.17 agencies to correct it. Lead agencies must respond to these requests. When responding to  
7.18 the request, the lead agency must consider:

7.19 (1) meeting the health and welfare needs of the individual or individuals receiving  
7.20 services by service site, identified in their coordinated service and support plan under section  
7.21 245D.02, subdivision 4b, and any addendum under section 245D.02, subdivision 4c;

7.22 (2) meeting the requirements for staffing under subdivision 2, paragraphs ~~(f)~~ (g), ~~(i)~~ (m),  
7.23 and ~~(m)~~ (n); and meeting or exceeding the licensing standards for staffing required under  
7.24 section 245D.09, subdivision 1; and

7.25 (3) meeting the staffing ratio requirements under subdivision 2, paragraph (n), and  
7.26 meeting or exceeding the licensing standards for staffing required under section 245D.31.

7.27 **EFFECTIVE DATE.** This section is effective January 1, 2020.

7.28 Sec. 5. Minnesota Statutes 2018, section 256B.4914, subdivision 5, is amended to read:

7.29 Subd. 5. **Base wage index and standard component values.** (a) The base wage index  
7.30 is established to determine staffing costs associated with providing services to individuals  
7.31 receiving home and community-based services. For purposes of developing and calculating

8.1 the proposed base wage, Minnesota-specific wages taken from job descriptions and standard  
8.2 occupational classification (SOC) codes from the Bureau of Labor Statistics as defined in  
8.3 the most recent edition of the Occupational Handbook must be used. The base wage index  
8.4 must be calculated as follows:

8.5 (1) for residential direct care staff, the sum of:

8.6 (i) 15 percent of the subtotal of 50 percent of the median wage for personal and home  
8.7 health aide (SOC code 39-9021); 30 percent of the median wage for nursing assistant (SOC  
8.8 code 31-1014); and 20 percent of the median wage for social and human services aide (SOC  
8.9 code 21-1093); and

8.10 (ii) 85 percent of the subtotal of 20 percent of the median wage for home health aide  
8.11 (SOC code 31-1011); 20 percent of the median wage for personal and home health aide  
8.12 (SOC code 39-9021); 20 percent of the median wage for nursing assistant (SOC code  
8.13 31-1014); 20 percent of the median wage for psychiatric technician (SOC code 29-2053);  
8.14 and 20 percent of the median wage for social and human services aide (SOC code 21-1093);

8.15 (2) for day services, 20 percent of the median wage for nursing assistant (SOC code  
8.16 31-1014); 20 percent of the median wage for psychiatric technician (SOC code 29-2053);  
8.17 and 60 percent of the median wage for social and human services aide (SOC code 21-1093);

8.18 (3) for residential asleep-overnight staff, the wage is the minimum wage in Minnesota  
8.19 for large employers, except in a family foster care setting, the wage is 36 percent of the  
8.20 minimum wage in Minnesota for large employers;

8.21 (4) for behavior program analyst staff, 100 percent of the median wage for mental health  
8.22 counselors (SOC code 21-1014);

8.23 (5) for behavior program professional staff, 100 percent of the median wage for clinical  
8.24 counseling and school psychologist (SOC code 19-3031);

8.25 (6) for behavior program specialist staff, 100 percent of the median wage for psychiatric  
8.26 technicians (SOC code 29-2053);

8.27 (7) for supportive living services staff, 20 percent of the median wage for nursing assistant  
8.28 (SOC code 31-1014); 20 percent of the median wage for psychiatric technician (SOC code  
8.29 29-2053); and 60 percent of the median wage for social and human services aide (SOC code  
8.30 21-1093);

8.31 (8) for housing access coordination staff, 100 percent of the median wage for community  
8.32 and social services specialist (SOC code 21-1099);



9.1 (9) for in-home family support staff, 20 percent of the median wage for nursing aide  
9.2 (SOC code 31-1012); 30 percent of the median wage for community social service specialist  
9.3 (SOC code 21-1099); 40 percent of the median wage for social and human services aide  
9.4 (SOC code 21-1093); and ten percent of the median wage for psychiatric technician (SOC  
9.5 code 29-2053);

9.6 (10) for individualized home supports services staff, 40 percent of the median wage for  
9.7 community social service specialist (SOC code 21-1099); 50 percent of the median wage  
9.8 for social and human services aide (SOC code 21-1093); and ten percent of the median  
9.9 wage for psychiatric technician (SOC code 29-2053);

9.10 (11) for independent living skills staff, 40 percent of the median wage for community  
9.11 social service specialist (SOC code 21-1099); 50 percent of the median wage for social and  
9.12 human services aide (SOC code 21-1093); and ten percent of the median wage for psychiatric  
9.13 technician (SOC code 29-2053);

9.14 (12) for independent living skills specialist staff, 100 percent of mental health and  
9.15 substance abuse social worker (SOC code 21-1023);

9.16 (13) for supported employment staff, 20 percent of the median wage for nursing assistant  
9.17 (SOC code 31-1014); 20 percent of the median wage for psychiatric technician (SOC code  
9.18 29-2053); and 60 percent of the median wage for social and human services aide (SOC code  
9.19 21-1093);

9.20 (14) for employment support services staff, 50 percent of the median wage for  
9.21 rehabilitation counselor (SOC code 21-1015); and 50 percent of the median wage for  
9.22 community and social services specialist (SOC code 21-1099);

9.23 (15) for employment exploration services staff, 50 percent of the median wage for  
9.24 rehabilitation counselor (SOC code 21-1015); and 50 percent of the median wage for  
9.25 community and social services specialist (SOC code 21-1099);

9.26 (16) for employment development services staff, 50 percent of the median wage for  
9.27 education, guidance, school, and vocational counselors (SOC code 21-1012); and 50 percent  
9.28 of the median wage for community and social services specialist (SOC code 21-1099);

9.29 (17) for adult companion staff, 50 percent of the median wage for personal and home  
9.30 care aide (SOC code 39-9021); and 50 percent of the median wage for nursing assistant  
9.31 (SOC code 31-1014);

9.32 (18) for night supervision staff, 20 percent of the median wage for home health aide  
9.33 (SOC code 31-1011); 20 percent of the median wage for personal and home health aide

10.1 (SOC code 39-9021); 20 percent of the median wage for nursing assistant (SOC code  
10.2 31-1014); 20 percent of the median wage for psychiatric technician (SOC code 29-2053);  
10.3 and 20 percent of the median wage for social and human services aide (SOC code 21-1093);

10.4 (19) for respite staff, 50 percent of the median wage for personal and home care aide  
10.5 (SOC code 39-9021); and 50 percent of the median wage for nursing assistant (SOC code  
10.6 31-1014);

10.7 (20) for personal support staff, 50 percent of the median wage for personal and home  
10.8 care aide (SOC code 39-9021); and 50 percent of the median wage for nursing assistant  
10.9 (SOC code 31-1014);

10.10 (21) for supervisory staff, 100 percent of the median wage for community and social  
10.11 services specialist (SOC code 21-1099), with the exception of the supervisor of behavior  
10.12 professional, behavior analyst, and behavior specialists, which is 100 percent of the median  
10.13 wage for clinical counseling and school psychologist (SOC code 19-3031);

10.14 (22) for registered nurse staff, 100 percent of the median wage for registered nurses  
10.15 (SOC code 29-1141); and

10.16 (23) for licensed practical nurse staff, 100 percent of the median wage for licensed  
10.17 practical nurses (SOC code 29-2061).

10.18 (b) Component values for residential support services are:

10.19 (1) supervisory span of control ratio: 11 percent;

10.20 (2) employee vacation, sick, and training allowance ratio: 8.71 percent;

10.21 (3) employee-related cost ratio: 23.6 percent;

10.22 (4) general administrative support ratio: 13.25 percent;

10.23 (5) program-related expense ratio: 1.3 percent; and

10.24 (6) absence and utilization factor ratio: 3.9 percent.

10.25 (c) Component values for family foster care are:

10.26 (1) supervisory span of control ratio: 11 percent;

10.27 (2) employee vacation, sick, and training allowance ratio: 8.71 percent;

10.28 (3) employee-related cost ratio: 23.6 percent;

10.29 (4) general administrative support ratio: 3.3 percent;

10.30 (5) program-related expense ratio: 1.3 percent; and

- 11.1 (6) absence factor: 1.7 percent.
- 11.2 (d) Component values for day services for all services are:
- 11.3 (1) supervisory span of control ratio: 11 percent;
- 11.4 (2) employee vacation, sick, and training allowance ratio: 8.71 percent;
- 11.5 (3) employee-related cost ratio: 23.6 percent;
- 11.6 (4) program plan support ratio: 5.6 percent;
- 11.7 (5) client programming and support ratio: ten percent;
- 11.8 (6) general administrative support ratio: 13.25 percent;
- 11.9 (7) program-related expense ratio: 1.8 percent; and
- 11.10 (8) absence and utilization factor ratio: 9.4 percent.
- 11.11 (e) Component values for unit-based services with programming are:
- 11.12 (1) supervisory span of control ratio: 11 percent;
- 11.13 (2) employee vacation, sick, and training allowance ratio: 8.71 percent;
- 11.14 (3) employee-related cost ratio: 23.6 percent;
- 11.15 (4) program plan supports ratio: 15.5 percent;
- 11.16 (5) client programming and supports ratio: 4.7 percent;
- 11.17 (6) general administrative support ratio: 13.25 percent;
- 11.18 (7) program-related expense ratio: 6.1 percent; and
- 11.19 (8) absence and utilization factor ratio: 3.9 percent.
- 11.20 (f) Component values for unit-based services without programming except respite are:
- 11.21 (1) supervisory span of control ratio: 11 percent;
- 11.22 (2) employee vacation, sick, and training allowance ratio: 8.71 percent;
- 11.23 (3) employee-related cost ratio: 23.6 percent;
- 11.24 (4) program plan support ratio: 7.0 percent;
- 11.25 (5) client programming and support ratio: 2.3 percent;
- 11.26 (6) general administrative support ratio: 13.25 percent;
- 11.27 (7) program-related expense ratio: 2.9 percent; and

- 12.1 (8) absence and utilization factor ratio: 3.9 percent.
- 12.2 (g) Component values for unit-based services without programming for respite are:
- 12.3 (1) supervisory span of control ratio: 11 percent;
- 12.4 (2) employee vacation, sick, and training allowance ratio: 8.71 percent;
- 12.5 (3) employee-related cost ratio: 23.6 percent;
- 12.6 (4) general administrative support ratio: 13.25 percent;
- 12.7 (5) program-related expense ratio: 2.9 percent; and
- 12.8 (6) absence and utilization factor ratio: 3.9 percent.
- 12.9 (h) ~~On July 1, 2017, the commissioner shall update the base wage index in paragraph~~
- 12.10 ~~(a) based on the wage data by standard occupational code (SOC) from the Bureau of Labor~~
- 12.11 ~~Statistics available on December 31, 2016. The commissioner shall publish these updated~~
- 12.12 ~~values and load them into the rate management system. On July January 1, 2022, and every~~
- 12.13 ~~five two years thereafter, the commissioner shall update the base wage index in paragraph~~
- 12.14 ~~(a) based on the most recently available wage data by SOC from the Bureau of Labor~~
- 12.15 ~~Statistics. The commissioner shall publish these updated values and load them into the rate~~
- 12.16 ~~management system.~~
- 12.17 (i) ~~On July 1, 2017, the commissioner shall update the framework components in~~
- 12.18 ~~paragraph (d), clause (5); paragraph (e), clause (5); and paragraph (f), clause (5); subdivision~~
- 12.19 ~~6, clauses (8) and (9); and subdivision 7, clauses (10), (16), and (17), for changes in the~~
- 12.20 ~~Consumer Price Index. The commissioner will adjust these values higher or lower by the~~
- 12.21 ~~percentage change in the Consumer Price Index - All Items, United States city average~~
- 12.22 ~~(CPI-U) from January 1, 2014, to January 1, 2017. The commissioner shall publish these~~
- 12.23 ~~updated values and load them into the rate management system. On July January 1, 2022,~~
- 12.24 ~~and every five two years thereafter, the commissioner shall update the framework components~~
- 12.25 ~~in paragraph (d), clause (5); paragraph (e), clause (5); and paragraph (f), clause (5);~~
- 12.26 ~~subdivision 6, clauses (8) and (9); and subdivision 7, clauses (10), (16), and (17), for changes~~
- 12.27 ~~in the Consumer Price Index. The commissioner shall adjust these values higher or lower~~
- 12.28 ~~by the percentage change in the CPI-U from the date of the previous update to the ~~date of~~~~
- 12.29 ~~the data most recently available prior to the scheduled update. The commissioner shall~~
- 12.30 ~~publish these updated values and load them into the rate management system.~~
- 12.31 (j) Upon the implementation of automatic inflation adjustments under paragraphs (h)
- 12.32 and (i), rate adjustments authorized under section 256B.439, subdivision 7; Laws 2013,

13.1 chapter 108, article 7, section 60; and Laws 2014, chapter 312, article 27, section 75, shall  
13.2 be removed from service rates calculated under this section.

13.3 (k) Any rate adjustments applied to the service rates calculated under this section outside  
13.4 of the cost components and rate methodology specified in this section shall be removed  
13.5 from rate calculations upon implementation of automatic inflation adjustments under  
13.6 paragraphs (h) and (i).

13.7 (j) (1) In this subdivision, if Bureau of Labor Statistics occupational codes or Consumer  
13.8 Price Index items are unavailable in the future, the commissioner shall recommend to the  
13.9 legislature codes or items to update and replace missing component values.

13.10 **EFFECTIVE DATE.** This section is effective the day following final enactment except:

13.11 (1) paragraphs (h) and (i) are effective January 1, 2022, or upon federal approval,  
13.12 whichever is later; and

13.13 (2) paragraph (j) is effective retroactively from July 1, 2018. The commissioner of human  
13.14 services shall notify the revisor of statutes when federal approval is obtained.

13.15 Sec. 6. Minnesota Statutes 2018, section 256B.4914, is amended by adding a subdivision  
13.16 to read:

13.17 Subd. 5a. **Direct care staff; wages.** (a) A provider paid with rates determined under this  
13.18 section shall:

13.19 (1) compensate direct care staff at an amount equal to or greater than the base wage  
13.20 established for the relevant position under subdivision 5, paragraph (a); and

13.21 (2) by December 31, 2020, upon request, submit a distribution plan to the commissioner  
13.22 detailing direct care staff compensation. A provider shall make the provider's distribution  
13.23 plan available and accessible to all direct care staff for a minimum of one calendar year.

13.24 (b) The commissioner shall temporarily suspend payments to a provider if the distribution  
13.25 plan under paragraph (a), clause (2), is not received 90 days after the required submission  
13.26 date. The commissioner shall make withheld payments once the distribution plan is received  
13.27 by the commissioner.

13.28 **EFFECTIVE DATE.** This section is effective January 1, 2020.

14.1 Sec. 7. Minnesota Statutes 2018, section 256B.4914, subdivision 6, is amended to read:

14.2 Subd. 6. **Payments for residential support services.** (a) Payments for residential support  
14.3 services, as defined in sections 256B.092, subdivision 11, and 256B.49, subdivision 22,  
14.4 must be calculated as follows:

14.5 (1) determine the number of shared staffing and individual direct staff hours to meet a  
14.6 recipient's needs provided on site or through monitoring technology;

14.7 (2) personnel hourly wage rate must be based on the 2009 Bureau of Labor Statistics  
14.8 Minnesota-specific rates or rates derived by the commissioner as provided in subdivision  
14.9 5. This is defined as the direct-care rate;

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

14.13 (4) multiply the number of shared and individual direct staff hours provided on site or  
14.14 through monitoring technology and nursing hours by the appropriate staff wages in  
14.15 subdivision 5, paragraph (a), or the customized direct-care rate;

14.16 (5) multiply the number of shared and individual direct staff hours provided on site or  
14.17 through monitoring technology and nursing hours by the product of the supervision span  
14.18 of control ratio in subdivision 5, paragraph (b), clause (1), and the appropriate supervision  
14.19 wage in subdivision 5, paragraph (a), clause (21);

14.20 (6) combine the results of clauses (4) and (5), excluding any shared and individual direct  
14.21 staff hours provided through monitoring technology, and multiply the result by one plus  
14.22 the employee vacation, sick, and training allowance ratio in subdivision 5, paragraph (b),  
14.23 clause (2). This is defined as the direct staffing cost;

14.24 (7) for employee-related expenses, multiply the direct staffing cost, excluding any shared  
14.25 and individual direct staff hours provided through monitoring technology, by one plus the  
14.26 employee-related cost ratio in subdivision 5, paragraph (b), clause (3);

14.27 (8) for client programming and supports, the commissioner shall add \$2,179; and

14.28 (9) for transportation, if provided, the commissioner shall add \$1,680, or \$3,000 if  
14.29 customized for adapted transport, based on the resident with the highest assessed need.

14.30 (b) The total rate must be calculated using the following steps:

15.1 (1) subtotal paragraph (a), clauses (7) to (9), and the direct staffing cost of any shared  
 15.2 and individual direct staff hours provided through monitoring technology that was excluded  
 15.3 in clause (7);

15.4 (2) sum the standard general and administrative rate, the program-related expense ratio,  
 15.5 and the absence and utilization ratio;

15.6 (3) divide the result of clause (1) by one minus the result of clause (2). This is the total  
 15.7 payment amount; and

15.8 (4) adjust the result of clause (3) by a factor to be determined by the commissioner to  
 15.9 adjust for regional differences in the cost of providing services.

15.10 (c) The payment methodology for customized living, 24-hour customized living, and  
 15.11 residential care services must be the customized living tool. Revisions to the customized  
 15.12 living tool must be made to reflect the services and activities unique to disability-related  
 15.13 recipient needs.

15.14 ~~(d) For individuals enrolled prior to January 1, 2014, the days of service authorized must~~  
 15.15 ~~meet or exceed the days of service used to convert service agreements in effect on December~~  
 15.16 ~~1, 2013, and must not result in a reduction in spending or service utilization due to conversion~~  
 15.17 ~~during the implementation period under section 256B.4913, subdivision 4a. If during the~~  
 15.18 ~~implementation period, an individual's historical rate, including adjustments required under~~  
 15.19 ~~section 256B.4913, subdivision 4a, paragraph (c), is equal to or greater than the rate~~  
 15.20 ~~determined in this subdivision, the number of days authorized for the individual is 365.~~

15.21 ~~(e)~~ (d) The number of days authorized for all individuals enrolling after January 1, 2014,  
 15.22 in residential services must include every day that services start and end.

15.23 **EFFECTIVE DATE.** This section is effective January 1, 2020.

15.24 Sec. 8. Minnesota Statutes 2018, section 256B.4914, subdivision 10, is amended to read:

15.25 Subd. 10. **Updating payment values and additional information.** ~~(a) From January~~  
 15.26 ~~1, 2014, through December 31, 2017, the commissioner shall develop and implement uniform~~  
 15.27 ~~procedures to refine terms and adjust values used to calculate payment rates in this section.~~

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

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

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

16.4 (3) the distinct underlying costs for services provided by a license holder under sections  
 16.5 245D.05, 245D.06, 245D.07, 245D.071, 245D.081, and 245D.09, and for services provided  
 16.6 by a license holder certified under section 245D.33.

16.7 ~~(e) Beginning January 1, 2014, through December 31, 2018, using a statistically valid~~  
 16.8 ~~set of rates management system data, the commissioner, in consultation with stakeholders,~~  
 16.9 ~~shall analyze for each service the average difference in the rate on December 31, 2013, and~~  
 16.10 ~~the framework rate at the individual, provider, lead agency, and state levels. The~~  
 16.11 ~~commissioner shall issue semiannual reports to the stakeholders on the difference in rates~~  
 16.12 ~~by service and by county during the banding period under section 256B.4913, subdivision~~  
 16.13 ~~4a. The commissioner shall issue the first report by October 1, 2014, and the final report~~  
 16.14 ~~shall be issued by December 31, 2018.~~

16.15 ~~(d)~~ (b) No later than July 1, 2014, the commissioner, in consultation with stakeholders,  
 16.16 shall begin the review and evaluation of the following values already in subdivisions 6 to  
 16.17 9, or issues that impact all services, including, but not limited to:

16.18 (1) values for transportation rates;

16.19 (2) values for services where monitoring technology replaces staff time;

16.20 (3) values for indirect services;

16.21 (4) values for nursing;

16.22 (5) values for the facility use rate in day services, and the weightings used in the day  
 16.23 service ratios and adjustments to those weightings;

16.24 (6) values for workers' compensation as part of employee-related expenses;

16.25 (7) values for unemployment insurance as part of employee-related expenses;

16.26 (8) direct care workforce labor market measures;

16.27 (9) any changes in state or federal law with a direct impact on the underlying cost of  
 16.28 providing home and community-based services; and

16.29 ~~(9)~~ (10) outcome measures, determined by the commissioner, for home and  
 16.30 community-based services rates determined under this section.



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

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

17.6 ~~(2) January 15, 2016, with a status implementation update, and additional data and~~  
 17.7 ~~summary information;~~

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

17.9 ~~(4) January 15, 2020~~ 2021, with ~~another~~ a full report, and a full report once every four  
 17.10 years thereafter.

17.11 ~~(f) The commissioner shall implement a regional adjustment factor to all rate calculations~~  
 17.12 ~~in subdivisions 6 to 9, effective no later than January 1, 2015.~~ (d) Beginning ~~July 1, 2017~~  
 17.13 January 1, 2022, the commissioner shall renew analysis and implement changes to the  
 17.14 regional adjustment factors ~~when adjustments required under subdivision 5, paragraph (h),~~  
 17.15 ~~occur~~ once every three years. Prior to implementation, the commissioner shall consult with  
 17.16 stakeholders on the methodology to calculate the adjustment.

17.17 ~~(g)~~ (e) The commissioner shall provide a public notice via LISTSERV in October of  
 17.18 each year ~~beginning October 1, 2014~~, containing information detailing legislatively approved  
 17.19 changes in:

17.20 (1) calculation values including derived wage rates and related employee and  
 17.21 administrative factors;

17.22 (2) service utilization;

17.23 (3) county and tribal allocation changes; and

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

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

17.27 ~~(h)~~ (f) When the available shared staffing hours in a residential setting are insufficient  
 17.28 to meet the needs of an individual who enrolled in residential services after January 1, 2014,  
 17.29 ~~or insufficient to meet the needs of an individual with a service agreement adjustment~~  
 17.30 ~~described in section 256B.4913, subdivision 4a, paragraph (f),~~ then individual staffing hours  
 17.31 shall be used.

18.1 ~~(i) The commissioner shall study the underlying cost of absence and utilization for day~~  
18.2 ~~services. Based on the commissioner's evaluation of the data collected under this paragraph,~~  
18.3 ~~the commissioner shall make recommendations to the legislature by January 15, 2018, for~~  
18.4 ~~changes, if any, to the absence and utilization factor ratio component value for day services.~~

18.5 ~~(j) Beginning July 1, 2017,~~ (g) The commissioner shall collect transportation and trip  
18.6 information for all day services through the rates management system.

18.7 **EFFECTIVE DATE.** This section is effective the day following final enactment, except  
18.8 for paragraph (f), which is effective January 1, 2020.

18.9 Sec. 9. Minnesota Statutes 2018, section 256B.4914, subdivision 10a, is amended to read:

18.10 Subd. 10a. **Reporting and analysis of cost data.** (a) The commissioner must ensure  
18.11 that wage values and component values in subdivisions 5 to 9 reflect the cost to provide the  
18.12 service. As determined by the commissioner, in consultation with stakeholders identified  
18.13 in section 256B.4913, subdivision 5, a provider enrolled to provide services with rates  
18.14 determined under this section must submit requested cost data to the commissioner to support  
18.15 research on the cost of providing services that have rates determined by the disability waiver  
18.16 rates system. Requested cost data may include, but is not limited to:

18.17 (1) worker wage costs;

18.18 (2) benefits paid;

18.19 (3) supervisor wage costs;

18.20 (4) executive wage costs;

18.21 (5) vacation, sick, and training time paid;

18.22 (6) taxes, workers' compensation, and unemployment insurance costs paid;

18.23 (7) administrative costs paid;

18.24 (8) program costs paid;

18.25 (9) transportation costs paid;

18.26 (10) vacancy rates; and

18.27 (11) other data relating to costs required to provide services requested by the  
18.28 commissioner.

18.29 (b) At least once in any five-year period, a provider must submit cost data for a fiscal  
18.30 year that ended not more than 18 months prior to the submission date. The commissioner

19.1 shall provide each provider a 90-day notice prior to its submission due date. If a provider  
19.2 fails to submit required reporting data, the commissioner shall provide notice to providers  
19.3 that have not provided required data 30 days after the required submission date, and a second  
19.4 notice for providers who have not provided required data 60 days after the required  
19.5 submission date. The commissioner shall temporarily suspend payments to the provider if  
19.6 cost data is not received 90 days after the required submission date. Withheld payments  
19.7 shall be made once data is received by the commissioner.

19.8 (c) The commissioner shall conduct a random validation of data submitted under  
19.9 paragraph (a) to ensure data accuracy. The commissioner shall analyze cost documentation  
19.10 in paragraph (a) and provide recommendations for adjustments to cost components.

19.11 (d) The commissioner shall analyze cost documentation in paragraph (a) and, in  
19.12 consultation with stakeholders identified in section 256B.4913, subdivision 5, may submit  
19.13 recommendations on component values and inflationary factor adjustments to the chairs  
19.14 and ranking minority members of the legislative committees with jurisdiction over human  
19.15 services every four years beginning January 1, 2020. The commissioner shall make  
19.16 recommendations in conjunction with reports submitted to the legislature according to  
19.17 subdivision 10, paragraph (e). The commissioner shall release cost data in an aggregate  
19.18 form, and cost data from individual providers shall not be released except as provided for  
19.19 in current law.

19.20 (e) The commissioner, in consultation with stakeholders identified in section 256B.4913,  
19.21 subdivision 5, shall develop and implement a process for providing training and technical  
19.22 assistance necessary to support provider submission of cost documentation required under  
19.23 paragraph (a).

19.24 (f) Beginning November 1, 2019, providers enrolled to provide services with rates  
19.25 determined under this section shall submit labor market data to the commissioner annually,  
19.26 including but not limited to:

19.27 (1) number of direct care staff;

19.28 (2) wages of direct care staff;

19.29 (3) overtime wages of direct care staff;

19.30 (4) hours worked by direct care staff;

19.31 (5) overtime hours worked by direct care staff;

19.32 (6) benefits provided to direct care staff;

20.1 (7) direct care staff job vacancies; and

20.2 (8) direct care staff retention rates.

20.3 (g) Beginning February 1, 2020, the commissioner shall publish annual reports on  
20.4 provider and state-level labor market data, including but not limited to the data obtained  
20.5 under paragraph (f).

20.6 (h) The commissioner shall temporarily suspend payments to the provider if data  
20.7 requested under paragraph (f) is not received 90 days after the required submission date.  
20.8 The commissioner shall make withheld payments once data is received by the commissioner.

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

20.10 Sec. 10. Minnesota Statutes 2018, section 256B.4914, subdivision 14, is amended to read:

20.11 Subd. 14. **Exceptions.** (a) In a format prescribed by the commissioner, lead agencies  
20.12 must identify individuals with exceptional needs that cannot be met under the disability  
20.13 waiver rate system. The commissioner shall use that information to evaluate and, if necessary,  
20.14 approve an alternative payment rate for those individuals. Whether granted, denied, or  
20.15 modified, the commissioner shall respond to all exception requests in writing. The  
20.16 commissioner shall include in the written response the basis for the action and provide  
20.17 notification of the right to appeal under paragraph (h).

20.18 (b) Lead agencies must act on an exception request within 30 days and notify the initiator  
20.19 of the request of their recommendation in writing. A lead agency shall submit all exception  
20.20 requests along with its recommendation to the commissioner.

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

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

20.23 (2) an individual's rate determined under subdivisions 6, 7, 8, and 9 is so insufficient  
20.24 that it has resulted in an individual receiving a notice of discharge from the individual's  
20.25 provider; or

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

20.29 (d) Exception requests must include the following information:

20.30 (1) the service needs required by each individual that are not accounted for in subdivisions  
20.31 6, 7, 8, and 9;

21.1 (2) the service rate requested and the difference from the rate determined in subdivisions  
21.2 6, 7, 8, and 9;

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

21.5 (4) any contingencies for approval.

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

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

21.15 (g) The commissioner shall determine whether to approve or deny an exception request  
21.16 no more than 30 days after receiving the request. If the commissioner denies the request,  
21.17 the commissioner shall notify the lead agency and the individual disability waiver recipient,  
21.18 the interested party, and the license holder in writing of the reasons for the denial.

21.19 (h) The individual disability waiver recipient may appeal any denial of an exception  
21.20 request by either the lead agency or the commissioner, pursuant to sections 256.045 and  
21.21 256.0451. When the denial of an exception request results in the proposed demission of a  
21.22 waiver recipient from a residential or day habilitation program, the commissioner shall issue  
21.23 a temporary stay of demission, when requested by the disability waiver recipient, consistent  
21.24 with the provisions of section 256.045, subdivisions 4a and 6, paragraph (c). The temporary  
21.25 stay shall remain in effect until the lead agency can provide an informed choice of  
21.26 appropriate, alternative services to the disability waiver.

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

21.30 (j) The starting date for the rate exception will be the later of the date of the recipient's  
21.31 change in support or the date of the request to the lead agency for an exception.

21.32 (k) The commissioner shall track all exception requests received and their dispositions.  
21.33 The commissioner shall issue quarterly public exceptions statistical reports, including the

22.1 number of exception requests received and the numbers granted, denied, withdrawn, and  
22.2 pending. The report shall include the average amount of time required to process exceptions.

22.3 ~~(l) No later than January 15, 2016, the commissioner shall provide research findings on~~  
22.4 ~~the estimated fiscal impact, the primary cost drivers, and common population characteristics~~  
22.5 ~~of recipients with needs that cannot be met by the framework rates.~~

22.6 ~~(m) No later than July 1, 2016, the commissioner shall develop and implement, in~~  
22.7 ~~consultation with stakeholders, a process to determine eligibility for rate exceptions for~~  
22.8 ~~individuals with rates determined under the methodology in section 256B.4913, subdivision~~  
22.9 ~~4a. Determination of eligibility for an exception will occur as annual service renewals are~~  
22.10 ~~completed.~~

22.11 ~~(n) (l) Approved rate exceptions will be implemented at such time that the individual's~~  
22.12 ~~rate is no longer banded and remain in effect in all cases until an individual's needs change~~  
22.13 ~~as defined in paragraph (c).~~

22.14 **EFFECTIVE DATE.** This section is effective January 1, 2020.

22.15 Sec. 11. **REVISOR INSTRUCTION.**

22.16 The revisor of statutes shall renumber Minnesota Statutes, section 256B.4913, subdivision  
22.17 5, as a subdivision in Minnesota Statutes, section 256B.4914. The revisor shall also make  
22.18 necessary cross-reference changes in Minnesota Statutes and Minnesota Rules consistent  
22.19 with the renumbering.

22.20 Sec. 12. **REPEALER.**

22.21 Minnesota Statutes 2018, section 256B.4913, subdivisions 4a, 6, and 7, are repealed  
22.22 effective January 1, 2020.

APPENDIX  
Repealed Minnesota Statutes: H0168-1

No active language found for: 256B.4913.4a

No active language found for: 256B.4913.6

No active language found for: 256B.4913.7