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State of Minnesota

HOUSE OF REPRESENTATIVES

SECOND SPECIAL SESSION

H. F. No. 33

- 07/13/2020 Authored by Cantrell, Liebling, Schultz, Moller, Freiberg and others
The bill was read for the first time and referred to the Committee on Ways and Means
- 07/14/2020 Adoption of Report: Placed on the General Register as Amended
Read for the Second Time
Referred to the Chief Clerk for Comparison with S. F. No. 12
- 07/20/2020 Postponed Indefinitely

1.1 A bill for an act

1.2 relating to human services; establishing retention grants for certain disability

1.3 service providers; modifying customized living quality improvement grants;

1.4 extending portions of a COVID-19 peacetime emergency modification to economic

1.5 assistance program application requirements; appropriating money; amending

1.6 Laws 2019, First Special Session chapter 9, article 4, section 28; article 14, section

1.7 2, subdivision 27; Laws 2020, First Special Session chapter 7, section 1, subdivision

1.8 2.

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

1.10 Section 1. Laws 2019, First Special Session chapter 9, article 4, section 28, is amended

1.11 to read:

1.12 Sec. 28. ~~DIRECTION TO COMMISSIONER; ELDERLY WAIVER CUSTOMIZED~~

1.13 ~~LIVING SERVICE PROVIDERS QUALITY IMPROVEMENT GRANTS.~~

1.14 (a) The commissioner of human services shall develop incentive-based grants to be

1.15 ~~available during fiscal years 2020 and 2021 only for elderly waiver providers of customized~~

1.16 ~~living service providers~~ services under the brain injury, community access for disability

1.17 inclusion, and elderly waivers for achieving outcomes specified in a contract. The

1.18 commissioner may solicit proposals from providers and implement those that, on a

1.19 competitive basis, best meet the state's policy objectives, ~~giving~~. Until June 30, 2021, the

1.20 commissioner shall give preference to providers that serve at least 75 percent elderly waiver

1.21 participants.

1.22 (b) Effective July 1, 2021, to be eligible for a grant under this section, a provider must

1.23 serve at least 75 waiver participants, and at least 75 percent of the clients served by the

1.24 provider must be waiver participants. For providers of customized living services under the

2.1 brain injury or community access for disability inclusion, the required 75 waiver participants
 2.2 must reside at multiple locations each with six or more residents. The commissioner shall
 2.3 give greater preference to those providers serving a higher percentage of waiver participants.

2.4 (c) The commissioner shall limit expenditures under this subdivision to the amount
 2.5 appropriated for this purpose.

2.6 (b) (d) In establishing the specified outcomes and related criteria, the commissioner shall
 2.7 consider the following state policy objectives:

2.8 (1) provide more efficient, higher quality services;

2.9 (2) encourage home and community-based services providers to innovate;

2.10 (3) equip home and community-based services providers with organizational tools and
 2.11 expertise to improve their quality;

2.12 (4) incentivize home and community-based services providers to invest in better services;
 2.13 and

2.14 (5) disseminate successful performance improvement strategies statewide.

2.15 **EFFECTIVE DATE.** This section is effective August 1, 2020.

2.16 Sec. 2. Laws 2019, First Special Session chapter 9, article 14, section 2, subdivision 27,
 2.17 is amended to read:

2.18 **Subd. 27. Grant Programs; Aging and Adult**
 2.19 **Services Grants** 32,311,000 32,495,000

2.20 **Incentive-Based Grants for Customized**
 2.21 **Living Service Providers.** \$500,000 in fiscal
 2.22 year 2020 and \$500,000 in fiscal year 2021
 2.23 are for incentive-based grants to brain injury,
 2.24 community access for disability inclusion, and
 2.25 elderly waiver customized living service
 2.26 providers under ~~article 4, section 28~~ Minnesota
 2.27 Statutes, section 256.479.

2.28 **EFFECTIVE DATE.** This section is effective August 1, 2020.

3.1 Sec. 3. Laws 2020, First Special Session chapter 7, section 1, subdivision 2, is amended
3.2 to read:

3.3 Subd. 2. **Waivers and modifications; extension to June 30, 2021.** When the peacetime
3.4 emergency declared by the governor in response to the COVID-19 outbreak expires, is
3.5 terminated, or is rescinded by the proper authority, the following waivers and modifications
3.6 to human services programs issued by the commissioner of human services pursuant to
3.7 Executive Orders 20-11 and 20-12, including any amendments to the waivers or modifications
3.8 issued before the peacetime emergency expires, shall remain in effect until June 30, 2021,
3.9 unless necessary federal approval is not received at any time for a waiver or modification:

3.10 (1) CV15: allowing phone or video visits for waiver programs;

3.11 (2) CV16: expanding access to telemedicine services for Children's Health Insurance
3.12 Program, Medical Assistance, and MinnesotaCare enrollees;

3.13 (3) CV21: allowing telemedicine alternative for school-linked mental health services
3.14 and intermediate school district mental health services;

3.15 (4) CV24: allowing phone or video use for targeted case management visits;

3.16 (5) CV30: expanding telemedicine in health care, mental health, and substance use
3.17 disorder settings;

3.18 (6) CV31: allowing partial waiver of county cost when COVID-19 delays discharges
3.19 from DHS-operated psychiatric hospitals;

3.20 (7) CV38: allowing flexibility in housing licensing requirements;

3.21 (8) CV43: expanding remote home and community-based services waiver services;

3.22 (9) CV44: allowing remote delivery of adult day services;

3.23 (10) CV45: modifying certain licensing requirements for substance use disorder treatment,
3.24 except that the extension shall be limited to the portions of this modification requiring
3.25 programs to become and remain familiar with Minnesota Department of Health and Centers
3.26 for Disease Control and Prevention guidance on COVID-19; requiring programs to follow
3.27 Minnesota Department of Health and Centers for Disease Control and Prevention guidance
3.28 specific to the situation and program capabilities if a person receiving services or a staff
3.29 person tests positive for COVID-19; permitting programs to temporarily suspend group
3.30 counseling or limit attendance at sessions when unable to accommodate requirements for
3.31 social distancing and community mitigation; permitting comprehensive assessments to be
3.32 completed by telephone or video communication; permitting a counselor, recovery peer, or

4.1 treatment coordinator to provide treatment services from their home by telephone or video
4.2 communication to a client in their home; permitting programs to follow the Substance Abuse
4.3 and Mental Health Services Administration guidelines as directed by the State Opioid
4.4 Treatment Authority within the Department of Human Services Behavioral Health division
4.5 to allow for an increased number of take-home doses in accordance with an assessment
4.6 conducted under Minnesota Statutes, section 245G.22, subdivision 6; removing the
4.7 requirement for opioid treatment programs to conduct outreach activities in the community;
4.8 and permitting programs to document a client's verbal approval of a treatment plan instead
4.9 of requiring the client's signature;

4.10 (11) CV49: modifying certain license requirements for adult day services;

4.11 (12) CV50: modifying certain requirements for early intensive developmental and
4.12 behavioral intervention (EIDBI) services;

4.13 (13) CV53: allowing flexibility for personal care assistance service oversight, except
4.14 that the portion of this modification permitting personal care assistance workers to bill 310
4.15 hours per month shall expire upon the expiration of the peacetime emergency; ~~and~~

4.16 (14) CV64: modifying certain certification requirements for mental health centers, except
4.17 that the extension shall be limited to the portions of this modification requiring programs
4.18 to become and remain familiar with Minnesota Department of Health and Centers for Disease
4.19 Control and Prevention guidance on COVID-19; requiring programs to follow Minnesota
4.20 Department of Health and Centers for Disease Control and Prevention guidance specific to
4.21 the situation and program capabilities if a person receiving services or a staff person tests
4.22 positive for COVID-19; permitting alternative mental health professional supervision of
4.23 clinical services at satellite locations; permitting an alternative process for case consultation
4.24 meetings; and permitting mental health professionals to provide required client-specific
4.25 supervisory contact by telephone or video communication instead of face-to-face supervision;
4.26 and

4.27 (15) CV03: suspending application requirements for economic assistance programs,
4.28 except that the extension shall be limited to the portions of this modification allowing remote
4.29 interviews for the Minnesota family investment program, and allowing the use of electronic
4.30 signatures for enrollment verification. Verbal signatures shall not be permitted for enrollment
4.31 verification.

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

5.1 Sec. 4. **APPROPRIATION; COVID-19-RELATED RETENTION GRANTS FOR**
5.2 **DISABILITY SERVICE PROVIDERS.**

5.3 Subdivision 1. **Appropriation.** \$53,000,000 in fiscal year 2021 is appropriated from
5.4 the coronavirus relief fund to the commissioner of human services for retention grants under
5.5 this section to eligible providers as defined under subdivision 2 to assist providers with the
5.6 costs of business interruptions caused by required closures, by reduced capacity to promote
5.7 social distancing measures, or by reduced demand for services due to the COVID-19
5.8 pandemic, and to help ensure the continuity of the disability services infrastructure and
5.9 prevent its failure during or following the COVID-19 pandemic. The appropriation in this
5.10 section is effective the day following final enactment. The commissioner may use up to
5.11 \$1,000,000 of this appropriation to administer the grants. This is a onetime appropriation
5.12 and is available until December 5, 2020. Any unexpended balance on December 5, 2020,
5.13 cancels to the coronavirus relief fund.

5.14 Subd. 2. **Eligible services and providers.** Enrolled providers of the following eligible
5.15 services are eligible for retention grants under this section:

5.16 (1) adult day services, day training and habilitation, day support services, prevocational
5.17 services, and structured day services provided by the home and community-based waiver
5.18 programs under Minnesota Statutes, sections 256B.092 and 256B.49, and Minnesota Statutes,
5.19 chapter 256S;

5.20 (2) employment exploration services, employment development services, and employment
5.21 support services provided by the home and community-based waiver programs under
5.22 Minnesota Statutes, sections 256B.092 and 256B.49;

5.23 (3) children's therapeutic services and supports under Minnesota Statutes, section
5.24 256B.0943;

5.25 (4) early intensive developmental and behavioral intervention under Minnesota Statutes,
5.26 section 256B.0949; and

5.27 (5) nonemergency medical transportation services under Minnesota Statutes, section
5.28 256B.0625, subdivision 17, except for nonemergency medical transportation provided by
5.29 public transit or not-for-hire vehicles.

5.30 Subd. 3. **Allowable uses of funds.** Grantees must use funds awarded under this section
5.31 for costs associated with maintaining the provider's capacity to provide services to the
5.32 provider's clients during or following the COVID-19 pandemic.

6.1 Subd. 4. **Emergency initial retention grants.** (a) Notwithstanding subdivisions 5 and
6.2 6, beginning August 1, 2020, and until the commissioner implements the monthly application
6.3 process described in subdivision 5 and begins awarding retention grants under subdivision
6.4 6, the commissioner shall make emergency initial retention grants monthly to all eligible
6.5 providers. The commissioner shall determine which enrolled providers qualify under
6.6 subdivision 2.

6.7 (b) The commissioner shall award emergency initial retention grants under this
6.8 subdivision in an amount equal to 25 percent of the provider's total revenue from medical
6.9 assistance for eligible services provided during January 2020. For the purposes of this
6.10 section, "total revenue from medical assistance" includes both fee-for-service revenue and
6.11 revenue from managed care organizations. The commissioner shall determine each provider's
6.12 total revenue from medical assistance for eligible services provided during January 2020,
6.13 based on the most recent data available to the commissioner.

6.14 (c) Emergency initial retention grants and the process of making grants under this
6.15 subdivision are exempt from the following statutes and related policies: Minnesota Statutes,
6.16 sections 16A.15, subdivision 3; 16B.97; 16B.98, subdivisions 5 and 7; and 16B.98,
6.17 subdivision 8, the express audit clause requirement.

6.18 (d) By accepting an emergency initial retention grant under this subdivision, the grantee
6.19 agrees to the conditions specified in subdivision 8 and the implied audit authority under
6.20 Minnesota Statutes, section 16B.98, subdivision 8. The commissioner shall develop an
6.21 expedited method of recording acknowledgment of acceptance of these conditions.

6.22 (e) If during any month the available appropriation is insufficient to make grants required
6.23 under this subdivision, the commissioner shall make the monthly grant under this subdivision
6.24 on a pro rata basis.

6.25 Subd. 5. **Application.** (a) The commissioner shall develop an application form and
6.26 monthly application process for retention grants under this section. An applicant must
6.27 provide and attest to the following information in the application:

6.28 (1) eligibility for existing state COVID-19-related emergency funding, including other
6.29 COVID-19-related grants or small business loans;

6.30 (2) the value of any emergency initial retention grants awarded to the provider under
6.31 subdivision 4, for the month for which a grant is requested;

6.32 (3) the value of any rate increases for eligible medical assistance services or grants
6.33 provided by managed care organizations;

7.1 (4) anticipated revenue for eligible services provided during the month for which a grant
7.2 is requested;

7.3 (5) how the applicant anticipates using the grant within the allowable uses;

7.4 (6) the month or months for which a grant is requested;

7.5 (7) the requested grant amount;

7.6 (8) an explanation of how the grant will allow the applicant to maintain the continuity
7.7 of the disability services infrastructure and prevent its failure during or following the
7.8 COVID-19 pandemic; and

7.9 (9) other information deemed necessary by the commissioner to evaluate grant
7.10 applications.

7.11 (b) An eligible provider may use a single application to apply for a retention grant
7.12 covering more than one prior month.

7.13 (c) An applicant may request a monthly grant amount no greater than 50 percent of the
7.14 provider's total revenue from medical assistance for eligible services provided during January
7.15 2020, minus:

7.16 (1) the value of any emergency initial retention grants awarded for the month for which
7.17 a grant is requested;

7.18 (2) the value of any rate increases for eligible services or grants provided by managed
7.19 care organizations; and

7.20 (3) the product of the provider's anticipated total revenue from medical assistance for
7.21 the month for which a grant is requested multiplied by the provider's anticipated revenue
7.22 ratio. A provider's anticipated revenue ratio is equal to the provider's anticipated total revenue
7.23 from medical assistance for eligible services provided during the month for which a grant
7.24 is requested divided by the provider's total revenue from medical assistance for eligible
7.25 services provided during January 2020.

7.26 (d) To avoid the reimbursement requirement under subdivision 9, the provider may
7.27 subtract the value of additional state COVID-19-related grants or small business loans from
7.28 the value of a grant request determined under paragraph (c). If the value of the additional
7.29 state COVID-19-related grants or small business loans exceeds the value of a grant request
7.30 determined under paragraph (c), the balance of the value of the additional state
7.31 COVID-19-related grants or small business loans carries forward to the next month for
7.32 which a grant is requested.

8.1 Subd. 6. Allocation of retention grants. (a) The commissioner may make retention
8.2 grants for the months of April 2020 to December 2020.

8.3 (b) Monthly retention grants must be equal to either 50 percent of the grantee's medical
8.4 assistance revenue for eligible services provided during January 2020, minus the value of
8.5 any emergency initial retention grants awarded under subdivision 4 for the same month, or
8.6 the amount requested, whichever is less.

8.7 (c) If during any month the available appropriation is insufficient to make grants required
8.8 under this subdivision, the commissioner shall make the monthly grant under this subdivision
8.9 on a pro rata basis.

8.10 Subd. 7. Payments for services provided. Providers who receive grants under this
8.11 section may continue to bill for services provided.

8.12 Subd. 8. Condition of accepting emergency retention grants. As a condition of
8.13 accepting retention grants under this section, an eligible provider must agree in writing to:

8.14 (1) cooperate with the commissioner of human services to deliver services according to
8.15 the program and service waivers and modifications issued under the commissioner's
8.16 temporary authority;

8.17 (2) plan, prepare, and implement, in a manner consistent with state policy as articulated
8.18 in Minnesota Statutes, section 256B.4905, changes to the provider's business practices to
8.19 reduce the provision of services in congregate settings to mitigate the exposure of service
8.20 recipients to SARS-CoV-2;

8.21 (3) notify the commissioner of human services of any additional state COVID-19-related
8.22 funding received, including other COVID-19-related grants or small business loans;

8.23 (4) repay retention grants as required by subdivision 9 from any COVID-19-related state
8.24 funding, excluding the unforgiven portion of any COVID-19-related loans;

8.25 (5) acknowledge that retention grants may be subject to recoupment if a state audit
8.26 determines that the provider received additional state COVID-19-related emergency funding
8.27 from the state; and

8.28 (6) acknowledge that retention grants may be subject to a special recoupment under this
8.29 section if a state audit performed under this section determines that inappropriate billing or
8.30 duplicate payments for services occurred or that the provider used awarded funds for purposes
8.31 not authorized under this section.

9.1 Subd. 9. Assistance from other source. If a provider receives any additional
 9.2 COVID-19-related state funding, the provider must notify the commissioner of human
 9.3 services of the amount received. From the additional COVID-19-related state funds received,
 9.4 excluding the unforgiven portion of any COVID-19-related loans and the amounts subtracted
 9.5 from grant requests under subdivision 5, the provider must reimburse the commissioner for
 9.6 the grants the provider received under subdivision 6 in an amount equal to either the amount
 9.7 of the grant received under subdivision 6 or the aggregate amount of the additional
 9.8 COVID-19-related funding received from the state, minus the unforgiven portion of any
 9.9 COVID-19-related loans, whichever is less. All money paid to the commissioner under this
 9.10 subdivision must be deposited in the coronavirus relief fund.

9.11 Subd. 10. Recoupment. (a) The commissioner may perform an audit under this section
 9.12 for up to six years after the grant contract expires to ensure the funds are utilized solely for
 9.13 the purposes stated in subdivision 1.

9.14 (b) If the commissioner determines that the provider received additional
 9.15 COVID-19-related state funding and failed to reimburse the commissioner as required under
 9.16 subdivision 9, or that the provider used awarded funds for purposes not authorized under
 9.17 this section, the commissioner shall treat any amount not reimbursed as required under
 9.18 subdivision 9 and any amount used for a purpose not authorized under this section as an
 9.19 overpayment. The commissioner shall recover any overpayment. All money recovered by
 9.20 the commissioner under this subdivision must be deposited in the coronavirus relief fund.

9.21 Subd. 11. Expiration. Except for subdivisions 9 and 10, this section expires January
 9.22 31, 2021, unless another date is specified in this section.

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

9.24 Sec. 5. REVISOR INSTRUCTION.

9.25 The revisor of statutes shall codify Laws 2019, First Special Session chapter 9, article
 9.26 4, section 28, as amended in this act, as Minnesota Statutes, section 256.479.

9.27 EFFECTIVE DATE. This section is effective August 1, 2020.