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State of Minnesota

HOUSE OF REPRESENTATIVES

NINETY-FIRST SESSION

H. F. No. **3520**

02/19/2020 Authored by Cantrell and Schomacker

The bill was read for the first time and referred to the Health and Human Services Finance Division

03/12/2020 By motion, recalled and re-referred to the Long-Term Care Division

- 1.1 A bill for an act
- 1.2 relating to human services; modifying the base wage in the disability waiver rate
- 1.3 system for employment exploration services staff; modifying required analysis of
- 1.4 the absence and utilization ratio in the disability waiver rate system for day
- 1.5 programs and unit-based services except respite; amending Minnesota Statutes
- 1.6 2019 Supplement, section 256B.4914, subdivisions 5, 10a.
- 1.7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:
- 1.8 Section 1. Minnesota Statutes 2019 Supplement, section 256B.4914, subdivision 5, is
- 1.9 amended to read:
- 1.10 Subd. 5. **Base wage index and standard component values.** (a) The base wage index
- 1.11 is established to determine staffing costs associated with providing services to individuals
- 1.12 receiving home and community-based services. For purposes of developing and calculating
- 1.13 the proposed base wage, Minnesota-specific wages taken from job descriptions and standard
- 1.14 occupational classification (SOC) codes from the Bureau of Labor Statistics as defined in
- 1.15 the most recent edition of the Occupational Handbook must be used. The base wage index
- 1.16 must be calculated as follows:
- 1.17 (1) for residential direct care staff, the sum of:
- 1.18 (i) 15 percent of the subtotal of 50 percent of the median wage for personal and home
- 1.19 health aide (SOC code 39-9021); 30 percent of the median wage for nursing assistant (SOC
- 1.20 code 31-1014); and 20 percent of the median wage for social and human services aide (SOC
- 1.21 code 21-1093); and
- 1.22 (ii) 85 percent of the subtotal of 20 percent of the median wage for home health aide
- 1.23 (SOC code 31-1011); 20 percent of the median wage for personal and home health aide

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

(2) for adult day services, 70 percent of the median wage for nursing assistant (SOC code 31-1014); and 30 percent of the median wage for personal care aide (SOC code 39-9021);

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

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

(5) for positive supports analyst staff, 100 percent of the median wage for mental health counselors (SOC code 21-1014);

(6) for positive supports professional staff, 100 percent of the median wage for clinical counseling and school psychologist (SOC code 19-3031);

(7) for positive supports specialist staff, 100 percent of the median wage for psychiatric technicians (SOC code 29-2053);

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

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

(10) for in-home family support and individualized home supports with family training staff, 20 percent of the median wage for nursing aide (SOC code 31-1012); 30 percent of the median wage for community social service specialist (SOC code 21-1099); 40 percent of the median wage for social and human services aide (SOC code 21-1093); and ten percent of the median wage for psychiatric technician (SOC code 29-2053);

(11) for individualized home supports with training services staff, 40 percent of the median wage for community social service specialist (SOC code 21-1099); 50 percent of

the median wage for social and human services aide (SOC code 21-1093); and ten percent of the median wage for psychiatric technician (SOC code 29-2053);

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

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

(14) for employment exploration services staff, 50 percent of the median wage for ~~rehabilitation counselor (SOC code 21-1015)~~ education, guidance, school, and vocational counselors (SOC code 21-1012); and 50 percent of the median wage for community and social services specialist (SOC code 21-1099);

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

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

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

(18) for night supervision staff, 20 percent of the median wage for home health aide (SOC code 31-1011); 20 percent of the median wage for personal and home health aide (SOC code 39-9021); 20 percent of the median wage for nursing assistant (SOC code 31-1014); 20 percent of the median wage for psychiatric technician (SOC code 29-2053); and 20 percent of the median wage for social and human services aide (SOC code 21-1093);

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

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

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

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

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

(b) Component values for corporate foster care services, corporate supportive living services daily, community residential services, and integrated community support services are:

(1) competitive workforce factor: 4.7 percent;

(2) supervisory span of control ratio: 11 percent;

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

(4) employee-related cost ratio: 23.6 percent;

(5) general administrative support ratio: 13.25 percent;

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

(7) absence and utilization factor ratio: 3.9 percent.

(c) Component values for family foster care are:

(1) competitive workforce factor: 4.7 percent;

(2) supervisory span of control ratio: 11 percent;

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

(4) employee-related cost ratio: 23.6 percent;

(5) general administrative support ratio: 3.3 percent;

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

(7) absence factor: 1.7 percent.

(d) Component values for day training and habilitation, day support services, and prevocational services are:

- 5.1 (1) competitive workforce factor: 4.7 percent;
- 5.2 (2) supervisory span of control ratio: 11 percent;
- 5.3 (3) employee vacation, sick, and training allowance ratio: 8.71 percent;
- 5.4 (4) employee-related cost ratio: 23.6 percent;
- 5.5 (5) program plan support ratio: 5.6 percent;
- 5.6 (6) client programming and support ratio: ten percent;
- 5.7 (7) general administrative support ratio: 13.25 percent;
- 5.8 (8) program-related expense ratio: 1.8 percent; and
- 5.9 (9) absence and utilization factor ratio: 9.4 percent.
- 5.10 (e) Component values for adult day services are:
- 5.11 (1) competitive workforce factor: 4.7 percent;
- 5.12 (2) supervisory span of control ratio: 11 percent;
- 5.13 (3) employee vacation, sick, and training allowance ratio: 8.71 percent;
- 5.14 (4) employee-related cost ratio: 23.6 percent;
- 5.15 (5) program plan support ratio: 5.6 percent;
- 5.16 (6) client programming and support ratio: 7.4 percent;
- 5.17 (7) general administrative support ratio: 13.25 percent;
- 5.18 (8) program-related expense ratio: 1.8 percent; and
- 5.19 (9) absence and utilization factor ratio: 9.4 percent.
- 5.20 (f) Component values for unit-based services with programming are:
- 5.21 (1) competitive workforce factor: 4.7 percent;
- 5.22 (2) supervisory span of control ratio: 11 percent;
- 5.23 (3) employee vacation, sick, and training allowance ratio: 8.71 percent;
- 5.24 (4) employee-related cost ratio: 23.6 percent;
- 5.25 (5) program plan supports ratio: 15.5 percent;
- 5.26 (6) client programming and supports ratio: 4.7 percent;
- 5.27 (7) general administrative support ratio: 13.25 percent;

6.1 (8) program-related expense ratio: 6.1 percent; and

6.2 (9) absence and utilization factor ratio: 3.9 percent.

6.3 (g) Component values for unit-based services without programming except respite are:

6.4 (1) competitive workforce factor: 4.7 percent;

6.5 (2) supervisory span of control ratio: 11 percent;

6.6 (3) employee vacation, sick, and training allowance ratio: 8.71 percent;

6.7 (4) employee-related cost ratio: 23.6 percent;

6.8 (5) program plan support ratio: 7.0 percent;

6.9 (6) client programming and support ratio: 2.3 percent;

6.10 (7) general administrative support ratio: 13.25 percent;

6.11 (8) program-related expense ratio: 2.9 percent; and

6.12 (9) absence and utilization factor ratio: 3.9 percent.

6.13 (h) Component values for unit-based services without programming for respite are:

6.14 (1) competitive workforce factor: 4.7 percent;

6.15 (2) supervisory span of control ratio: 11 percent;

6.16 (3) employee vacation, sick, and training allowance ratio: 8.71 percent;

6.17 (4) employee-related cost ratio: 23.6 percent;

6.18 (5) general administrative support ratio: 13.25 percent;

6.19 (6) program-related expense ratio: 2.9 percent; and

6.20 (7) absence and utilization factor ratio: 3.9 percent.

6.21 (i) On July 1, 2022, and every two years thereafter, the commissioner shall update the
6.22 base wage index in paragraph (a) based on wage data by SOC from the Bureau of Labor
6.23 Statistics available 30 months and one day prior to the scheduled update. The commissioner
6.24 shall publish these updated values and load them into the rate management system.

6.25 (j) Beginning February 1, 2021, and every two years thereafter, the commissioner shall
6.26 report to the chairs and ranking minority members of the legislative committees and divisions
6.27 with jurisdiction over health and human services policy and finance an analysis of the
6.28 competitive workforce factor. The report must include recommendations to update the
6.29 competitive workforce factor using:

(1) the most recently available wage data by SOC code for the weighted average wage for direct care staff for residential services and direct care staff for day services;

(2) the most recently available wage data by SOC code of the weighted average wage of comparable occupations; and

(3) workforce data as required under subdivision 10a, paragraph (g).

The commissioner shall not recommend an increase or decrease of the competitive workforce factor from the current value by more than two percentage points. If, after a biennial analysis for the next report, the competitive workforce factor is less than or equal to zero, the commissioner shall recommend a competitive workforce factor of zero.

(k) On July 1, 2022, and every two years thereafter, the commissioner shall update the framework components in paragraph (d), clause (6); paragraph (e), clause (6); paragraph (f), clause (6); and paragraph (g), clause (6); subdivision 6, paragraphs (b), clauses (9) and (10), and (e), clause (10); and subdivision 7, clauses (11), (17), and (18), for changes in the Consumer Price Index. The commissioner shall adjust these values higher or lower by the percentage change in the CPI-U from the date of the previous update to the data available 30 months and one day prior to the scheduled update. The commissioner shall publish these updated values and load them into the rate management system.

(l) Upon the implementation of the updates under paragraphs (i) and (k), rate adjustments authorized under section 256B.439, subdivision 7; Laws 2013, chapter 108, article 7, section 60; and Laws 2014, chapter 312, article 27, section 75, shall be removed from service rates calculated under this section.

(m) Any rate adjustments applied to the service rates calculated under this section outside of the cost components and rate methodology specified in this section shall be removed from rate calculations upon implementation of the updates under paragraphs (i) and (k).

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

Sec. 2. Minnesota Statutes 2019 Supplement, section 256B.4914, subdivision 10a, is amended to read:

Subd. 10a. Reporting and analysis of cost data. (a) The commissioner must ensure that wage values and component values in subdivisions 5 to 9 reflect the cost to provide the service. As determined by the commissioner, in consultation with stakeholders identified in subdivision 17, a provider enrolled to provide services with rates determined under this

8.1 section must submit requested cost data to the commissioner to support research on the cost
8.2 of providing services that have rates determined by the disability waiver rates system.
8.3 Requested cost data may include, but is not limited to:

8.4 (1) worker wage costs;

8.5 (2) benefits paid;

8.6 (3) supervisor wage costs;

8.7 (4) executive wage costs;

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

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

8.10 (7) administrative costs paid;

8.11 (8) program costs paid;

8.12 (9) transportation costs paid;

8.13 (10) staff vacancy rates; ~~and~~

8.14 (11) recipient absence rates; and

8.15 (12) other data relating to costs required to provide services requested by the
8.16 commissioner.

8.17 (b) At least once in any five-year period, a provider must submit cost data for a fiscal
8.18 year that ended not more than 18 months prior to the submission date. The commissioner
8.19 shall provide each provider a 90-day notice prior to its submission due date. If a provider
8.20 fails to submit required reporting data, the commissioner shall provide notice to providers
8.21 that have not provided required data 30 days after the required submission date, and a second
8.22 notice for providers who have not provided required data 60 days after the required
8.23 submission date. The commissioner shall temporarily suspend payments to the provider if
8.24 cost data is not received 90 days after the required submission date. Withheld payments
8.25 shall be made once data is received by the commissioner.

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

8.29 (d) The commissioner shall analyze cost documentation in paragraph (a) and, in
8.30 consultation with stakeholders identified in subdivision 17, may submit recommendations
8.31 on component values and inflationary factor adjustments to the chairs and ranking minority

9.1 members of the legislative committees with jurisdiction over human services every four
9.2 years beginning January 1, 2021. When analyzing the costs associated with absences from
9.3 day programs, unit-based services with programming, and unit-based services without
9.4 programming except respite, and when recommending adjustments to the absence and
9.5 utilization ratios for these services, the commissioner must use data from the most recently
9.6 available 24 consecutive months of cost reporting data or claims data if cost reporting data
9.7 is not available. The commissioner must not include in the commissioner's analysis or
9.8 recommendations factors unsupported by the cost or claims data, including but not limited
9.9 to assumptions regarding variable expenses. The commissioner shall make recommendations
9.10 in conjunction with reports submitted to the legislature according to subdivision 10, paragraph
9.11 (c). The commissioner shall release cost data in an aggregate form, and cost data from
9.12 individual providers shall not be released except as provided for in current law.

9.13 (e) The commissioner, in consultation with stakeholders identified in subdivision 17,
9.14 shall develop and implement a process for providing training and technical assistance
9.15 necessary to support provider submission of cost documentation required under paragraph
9.16 (a).

9.17 (f) By December 31, 2020, providers paid with rates calculated under subdivision 5,
9.18 paragraph (b), shall identify additional revenues from the competitive workforce factor and
9.19 prepare a written distribution plan for the revenues. A provider shall make the provider's
9.20 distribution plan available and accessible to all direct care staff for a minimum of one
9.21 calendar year. Upon request, a provider shall submit the written distribution plan to the
9.22 commissioner.

9.23 (g) Providers enrolled to provide services with rates determined under section 256B.4914,
9.24 subdivision 3, shall submit labor market data to the commissioner annually on or before
9.25 November 1, including but not limited to:

9.26 (1) number of direct care staff;

9.27 (2) wages of direct care staff;

9.28 (3) overtime wages of direct care staff;

9.29 (4) hours worked by direct care staff;

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

9.31 (6) benefits provided to direct care staff;

9.32 (7) direct care staff job vacancies; and

10.1 (8) direct care staff retention rates.

10.2 (h) The commissioner shall publish annual reports on provider and state-level labor
10.3 market data, including but not limited to the data obtained under paragraph (g).

10.4 (i) The commissioner may temporarily suspend payments to the provider if data requested
10.5 under paragraph (g) is not received 90 days after the required submission date. Withheld
10.6 payments shall be made once data is received by the commissioner.

10.7 (j) Providers who receive payment under this section for less than 25 percent of their
10.8 clients in the year prior to the report may attest to the commissioner in a manner determined
10.9 by the commissioner that they are declining to provide the data required under paragraph
10.10 (g) and will not be subject to the payment suspension in paragraph (i).