

SENATE
STATE OF MINNESOTA
NINETIETH SESSION

S.F. No. 2106

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DATE	D-PG	OFFICIAL STATUS
03/14/2017	1460	Introduction and first reading Referred to Human Services Reform Finance and Policy

1.1 A bill for an act

1.2 relating to human services; modifying notice requirements to recipients of home

1.3 care services following provider termination; modifying reimbursement rates for

1.4 intermediate care facilities for persons with developmental disabilities and home

1.5 and community-based providers; ratifying the self-directed workforce contract;

1.6 increasing rates for self-directed workforce; appropriating money; amending

1.7 Minnesota Statutes 2016, sections 256B.0651, subdivision 17; 256B.5012, by

1.8 adding a subdivision; proposing coding for new law in Minnesota Statutes, chapter

1.9 256B.

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

1.11 Section 1. Minnesota Statutes 2016, section 256B.0651, subdivision 17, is amended to

1.12 read:

1.13 Subd. 17. **Recipient protection.** (a) Providers of home care services must provide each

1.14 recipient with a copy of the home care bill of rights under section 144A.44 at least 30 days

1.15 prior to terminating services to a recipient, if the termination results from provider sanctions

1.16 ~~under section 256B.064~~ imposed by the commissioner, such as a payment withhold, a

1.17 suspension of participation, or a notice of termination of participation. If a home care provider

1.18 determines it is unable to continue providing services to a recipient, the provider must notify

1.19 the recipient, the recipient's responsible party, and the commissioner 30 days prior to

1.20 terminating services to the recipient because of an action ~~under section 256B.064~~ taken by

1.21 the commissioner, and must assist the commissioner and lead agency in supporting the

1.22 recipient in transitioning to another home care provider of the recipient's choice.

1.23 (b) In the event of a payment withhold from a home care provider, a suspension of

1.24 participation, or a notice of termination of participation of a home care provider ~~under~~

1.25 ~~section 256B.064~~ imposed by the commissioner, the commissioner may inform the Office

2.1 of Ombudsman for Long-Term Care and the lead agencies for all recipients with active
 2.2 service agreements with the provider. At the commissioner's request, the lead agencies must
 2.3 contact recipients to ensure that the recipients are continuing to receive needed care, and
 2.4 that the recipients have been given free choice of provider if they transfer to another home
 2.5 care provider. In addition, the commissioner or the commissioner's delegate may directly
 2.6 notify recipients who receive care from the provider that payments have been withheld or
 2.7 that the ~~provider's~~ provider has been notified of a suspension or termination of participation
 2.8 in medical assistance ~~has been suspended or terminated~~, if the commissioner determines
 2.9 that notification is necessary to protect the welfare of the recipients. For purposes of this
 2.10 subdivision, "lead agencies" means counties, tribes, and managed care organizations.

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

2.12 **Sec. 2. [256B.4915] DISABILITY WAIVER REIMBURSEMENT RATE**

2.13 **ADJUSTMENTS.**

2.14 **Subdivision 1. Historical rate.** The commissioner of human services shall adjust the
 2.15 historical rates calculated in section 256B.4913, subdivision 4a, paragraph (b), in effect
 2.16 during the banding period under section 256B.4913, subdivision 4a, paragraph (a), for each
 2.17 reimbursement rate adjustment under section 256B.4919; Laws 2013, chapter 108, article
 2.18 7, sections 34 and 60; and Laws 2014, chapter 312, article 27, sections 57 and 75.

2.19 **Subd. 2. Disability waiver rates system.** The commissioner shall adjust the rates
 2.20 calculated in sections 256B.4914, subdivision 6, paragraphs (b), clause (4), and (c);
 2.21 256B.4914, subdivision 7, clauses (15) to (17); 256B.4914, subdivision 8, clause (14); and
 2.22 256B.4914, subdivision 9, clause (23), for each reimbursement rate adjustment under Laws
 2.23 2013, chapter 108, article 7, sections 34 and 60; and Laws 2014, chapter 312, article 27,
 2.24 sections 57 and 75.

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

2.26 **Sec. 3. [256B.4919] HOME AND COMMUNITY-BASED SERVICE PROVIDER**
 2.27 **RATE AND GRANT ADJUSTMENTS.**

2.28 **Subdivision 1. Definitions.** (a) For the purposes of this section, the terms in this
 2.29 subdivision have the meaning given, unless otherwise provided for in this section.

2.30 (b) "Employee" means a person directly employed by a provider and who provides direct
 2.31 care to an individual. Employee does not include:

3.1 (1) a person employed in the central office of a corporation or entity that has an ownership
3.2 interest in the provider or exercises control over the provider;

3.3 (2) a person paid by the provider under a management contract;

3.4 (3) a person employed by a provider that has less than five percent of the provider's
3.5 direct care employees providing services impacted by rate increases under subdivision 2;
3.6 or

3.7 (4) persons employed by counties.

3.8 (c) "Rates" means the payments made by the commissioner of human services for
3.9 services. Rates includes reimbursement rates, rate limits, individual limits, grants, or
3.10 allocations, as applicable.

3.11 (d) "Services" refers to:

3.12 (1) home and community-based services that have payment rates determined under
3.13 section 256B.4914;

3.14 (2) consumer-directed community supports as offered under community alternative care
3.15 waivered services, community alternatives for disabled individuals waived services, brain
3.16 injury waived services, and home and community-based services for persons with
3.17 developmental disabilities waived services;

3.18 (3) nursing services and home health services under section 256B.0625, subdivision 6a;

3.19 (4) personal care services and qualified professional supervision of personal care services
3.20 under section 256B.0625, subdivisions 6a and 19a;

3.21 (5) home care nursing services under section 256B.0625, subdivision 7;

3.22 (6) community first services and supports under section 256B.85;

3.23 (7) day training and habilitation services for adults with developmental disabilities under
3.24 sections 252.41 to 252.46, including the additional cost to counties of the rate adjustments
3.25 on day training and habilitation services provided as a social service;

3.26 (8) semi-independent living services under section 252.275;

3.27 (9) consumer support grants under section 256.476;

3.28 (10) housing access grants under section 256B.0658;

3.29 (11) self-advocacy grants under Laws 2009, chapter 101;

4.1 (12) deaf and hard-of-hearing grants, including community support services for deaf
4.2 and hard-of-hearing adults with mental illness who use or wish to use sign language as their
4.3 primary means of communication under section 256.01, subdivision 2;

4.4 (13) deaf and hard-of-hearing grants under sections 256C.233, 256C.25, and 256C.261;

4.5 (14) employment support grants under section 256B.021, subdivision 6; and

4.6 (15) grants provided to people who are eligible for the Housing Opportunities for Persons
4.7 with AIDS Program under section 256B.492.

4.8 Subd. 2. **Rate and grant adjustments.** (a) For the rate period beginning July 1, 2017,
4.9 the commissioner shall increase rates for services by an amount equal to four percent of
4.10 rates in effect on June 30, 2017.

4.11 (b) For the rate period beginning July 1, 2018, the commissioner shall increase rates for
4.12 services by an amount equal to four percent of rates in effect on June 30, 2018.

4.13 Subd. 3. **Application of increase to the disability waiver rate system.** For the services
4.14 under section 256B.4919, subdivision 1, paragraph (d), clause (1), the rate adjustments
4.15 under subdivision 2 shall be applied in the manner described in section 256B.4915.

4.16 Subd. 4. **Wage increases.** Except as provided in subdivision 6, a provider that receives
4.17 a rate increase under subdivision 2 must increase the wages for employees employed on or
4.18 after the effective date of each rate increase by a percentage equal to the percent increase
4.19 in rates.

4.20 Subd. 5. **Certification of wage increases.** (a) A provider that receives a rate increase
4.21 under subdivision 2 shall prepare and submit to the commissioner a certification that specifies
4.22 that all employees received a wage increase consistent with the requirements of subdivision
4.23 3.

4.24 (b) Within six months of the effective date of each rate increase, the provider shall post
4.25 a copy of the certification required under paragraph (a). The provider must post the
4.26 certification for at least six weeks in an area of the provider's operation to which all
4.27 employees have access and must provide instructions for employees who do not believe
4.28 they received the wage increases specified in the certification. The instructions must include
4.29 a mailing address, e-mail address, and telephone number that an employee may use to
4.30 contact the commissioner or the commissioner's representative.

4.31 Subd. 6. **Employees represented by exclusive bargaining representative.** For a
4.32 provider that has employees who are represented by an exclusive bargaining representative,
4.33 the provider shall obtain a letter of acceptance of the certification required under subdivision

5.1 4, relating to the members of the bargaining unit, signed by the exclusive bargaining agent.
5.2 Upon receipt of the letter of acceptance, the provider shall be deemed to have met all the
5.3 requirements of this section relating to the members of the bargaining unit. The provider
5.4 shall submit the letter of acceptance to the commissioner along with the certification required
5.5 by subdivision 4.

5.6 Subd. 7. **Public employees under collective bargaining agreement.** For public
5.7 employees under a collective bargaining agreement, the increases for wages are available
5.8 and wages may be increased, but only to the extent that the wage increases comply with
5.9 laws governing public employees' collective bargaining.

5.10 Subd. 8. **Lead agency waiver budget allocations.** On the effective date of each rate
5.11 adjustment under subdivision 2, the commissioner shall adjust home and community-based
5.12 waivered service budget allocations to lead agencies to reflect the rate adjustment.

5.13 Subd. 9. **State grant contracts.** The commissioner shall amend state grant contracts
5.14 that include direct personnel-related grant expenditures to include an increased allocation
5.15 for the portion of the contract related to employee wages. Grant contracts for wages for
5.16 direct care workers must be amended to pass through these adjustments within 60 days of
5.17 the effective date of each rate adjustment under subdivision 2 and must be retroactive to its
5.18 effective date.

5.19 Subd. 10. **Consumer-directed community supports.** Counties shall increase the budget
5.20 for each recipient of consumer-directed community supports by the amount of each rate
5.21 increase in subdivision 2 on its effective date.

5.22 Subd. 11. **County and tribal contracts.** County or tribal contracts for services must be
5.23 amended to pass through each rate increase within 60 days of the effective date of the
5.24 increase.

5.25 Subd. 12. **Direct care worker health care coverage.** For the rate period beginning July
5.26 1, 2019, and annually thereafter, the commissioner shall increase rates for each provider
5.27 reimbursed under this section in an amount equal to that provider's annualized cost to provide
5.28 single health care coverage for a provider's employees during the second most recent rate
5.29 period.

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

6.1 Sec. 4. Minnesota Statutes 2016, section 256B.5012, is amended by adding a subdivision
6.2 to read:

6.3 Subd. 17. **ICF/DD rate increases effective July 1, 2017, and July 1, 2018.** (a) For the
6.4 rate period beginning July 1, 2017, the commissioner shall increase operating payments for
6.5 each facility reimbursed under this section by an amount equal to four percent of the operating
6.6 payment rates in effect on June 30, 2017. For the rate period beginning July 1, 2018, the
6.7 commissioner shall increase operating payments for each facility reimbursed under this
6.8 section by an amount equal to four percent of the operating payment rates in effect on June
6.9 30, 2018.

6.10 (b) For each facility, the commissioner shall apply the rate increases based on occupied
6.11 beds, using the percentage specified in this subdivision multiplied by the total payment rate,
6.12 including the variable rate but excluding the property-related payment rate, in effect on the
6.13 last day of the prior rate period. The total rate increase shall include the adjustment provided
6.14 in section 256B.501, subdivision 12.

6.15 (c) Except as provided under paragraph (g), facilities that receive a rate increase under
6.16 this subdivision must increase by four percent the wages for employees employed on or
6.17 after the effective date of each rate increase. For the purposes of this subdivision, "employee"
6.18 means a person who is employed directly by the facility and who provides direct care to
6.19 individuals. Employee does not mean a person who is employed in the central office of a
6.20 corporation or entity that has an ownership interest in the facility or exercises control over
6.21 the facility, nor a person who is paid by the facility under a management contract.

6.22 (d) A facility that receives a rate adjustment under paragraph (a) shall prepare and submit
6.23 to the commissioner a certification that all employees received a wage increase consistent
6.24 with the requirements of paragraph (c).

6.25 (e) Within six months of the effective date of each rate adjustment, the facility shall post
6.26 a copy of the certification required under paragraph (d). The facility must post the
6.27 certification for at least six weeks in an area of the facility's operation to which all employees
6.28 have access and must provide instructions for employees who do not believe they received
6.29 the wage increases specified in the certification. The instructions must include a mailing
6.30 address, e-mail address, and telephone number that an employee may use to contact the
6.31 commissioner or the commissioner's representative.

6.32 (f) For a facility that has employees represented by an exclusive bargaining representative,
6.33 the provider shall obtain a letter of acceptance of the certification required under paragraph
6.34 (d), relating to the members of the bargaining unit, signed by the exclusive bargaining agent.

7.1 Upon receipt of the letter of acceptance, the facility shall be deemed to have met all the
7.2 requirements of this subdivision relating to the members of the bargaining unit. The facility
7.3 shall submit the letter of acceptance to the commissioner along with the certification as
7.4 required by paragraph (d).

7.5 (g) For public employees under a collective bargaining agreement, the increases for
7.6 wages are available and pay rates may be increased, but only to the extent that the pay rate
7.7 increases comply with laws governing public employees' collective bargaining.

7.8 (h) Paragraphs (f) and (g) shall not apply to county employees covered by a collective
7.9 bargaining agreement.

7.10 (i) The commissioner shall amend state grant contracts that include direct
7.11 personnel-related grant expenditures to include an increased allocation for the portion of
7.12 the contract related to employee wages. Grant contracts for wages for direct care workers
7.13 must be amended to pass through these adjustments within 60 days of the effective date of
7.14 the increase and must be retroactive to the effective date of the increase.

7.15 (j) For the rate period beginning July 1, 2019, and annually thereafter, the commissioner
7.16 shall increase operating payment rates for any provider reimbursed under this subdivision
7.17 by an amount equal to the provider's annualized cost to provide single health care coverage
7.18 for a provider's employees during the second most recent rate period.

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

7.20 **Sec. 5. INDIVIDUAL PROVIDERS OF DIRECT SUPPORT SERVICES.**

7.21 The labor agreement between the state of Minnesota and the Service Employees
7.22 International Union Healthcare Minnesota, submitted to the Legislative Coordinating
7.23 Commission on March 7, 2017, is ratified.

7.24 **EFFECTIVE DATE.** This section is effective July 1, 2017.

7.25 **Sec. 6. RATE INCREASE FOR SELF-DIRECTED WORKFORCE**
7.26 **NEGOTIATIONS.**

7.27 (a) The commissioner of human services shall:

7.28 (1) increase reimbursement rates, grants, or allocations by 3.09 percent for services
7.29 provided on or after July 1, 2017;

7.30 (2) increase reimbursement rates, grants, or allocations by 0.1 percent for services
7.31 provided on or after July 1, 2018; and

8.1 (3) increase the reimbursement rates, grants, or allocations by an additional ten percent
8.2 for services provided on or after July 1, 2018, for service recipients with complex needs,
8.3 defined as recipients with eligibility for 12 or more hours of personal care assistance services
8.4 per day according to Minnesota Statutes, section 256B.0652.

8.5 (b) The rate changes described in this section apply to direct support services provided
8.6 through a covered program, as defined by Minnesota Statutes, section 256B.0711, subdivision
8.7 1, paragraph (b).

8.8 **EFFECTIVE DATE.** This section is effective if the labor agreement between the state
8.9 and the Service Employees International Union Healthcare Minnesota according to Minnesota
8.10 Statutes, sections 3.855, 179A.22, and 179A.54, is ratified by the legislature. The
8.11 commissioner of human services shall notify the revisor of statutes when ratification occurs.

8.12 Sec. 7. **APPROPRIATION; INDIVIDUAL PROVIDER REGISTRY.**

8.13 \$375,000 in fiscal year 2018 and \$375,000 in fiscal year 2019 are for the registry of
8.14 individual providers of direct support services as defined in Minnesota Statutes, section
8.15 256B.0711, subdivision 1.

8.16 Sec. 8. **APPROPRIATION; TRAINING OF DIRECT SUPPORT SERVICES**
8.17 **PROVIDERS.**

8.18 \$400,000 in fiscal year 2018 and \$400,000 in fiscal year 2019 are for training and
8.19 orientation of individual providers of direct support services as defined in Minnesota Statutes,
8.20 section 256B.0711, subdivision 1. This is a onetime appropriation. This appropriation is
8.21 not available until the labor agreement between the state of Minnesota and the Service
8.22 Employees International Union Healthcare Minnesota under Minnesota Statutes, section
8.23 179A.54, is implemented under Minnesota Statutes, sections 3.855 and 179A.22. The funding
8.24 is available in either year of the biennium and is available until June 30, 2021.

8.25 Sec. 9. **APPROPRIATION; STIPENDS FOR DIRECT SUPPORT SERVICES**
8.26 **PROVIDERS.**

8.27 \$2,750,000 in fiscal year 2019 is for training of individual providers of direct support
8.28 services as defined in Minnesota Statutes, section 256B.0711, subdivision 1. Of this amount,
8.29 \$2,500,000 shall only be used for stipends of \$500 for up to 5,000 individual providers who
8.30 have completed designated, voluntary trainings. Up to \$250,000 may be used by the grantee
8.31 for grant administration. This appropriation is not available until the labor agreement between
8.32 the state of Minnesota and the Service Employees International Union Healthcare Minnesota

9.1 under Minnesota Statutes, section 179A.54, is implemented under Minnesota Statutes,
 9.2 sections 3.855 and 179A.22. If made available, this appropriation is onetime and is available
 9.3 until June 30, 2021.

9.4 Sec. 10. **REVISOR'S INSTRUCTION.**

9.5 The revisor of statutes shall renumber the provisions of Minnesota Statutes listed in
 9.6 column A to the references listed in column B. The revisor shall also make necessary
 9.7 cross-reference changes in Minnesota Statutes and Minnesota Rules consistent with the
 9.8 renumbering.

	<u>Column A</u>	<u>Column B</u>
9.9		
9.10	<u>256B.038</u>	<u>256B.4917</u>
9.11	<u>256B.765</u>	<u>256B.4918</u>