

SENATE
STATE OF MINNESOTA
NINETY-SECOND SESSION

S.F. No. 2876

(SENATE AUTHORS: ABELER and Hoffman)

DATE	D-PG	OFFICIAL STATUS
02/03/2022	4893	Introduction and first reading Referred to Human Services Reform Finance and Policy
02/07/2022	4931	Author added Hoffman
02/10/2022	4939a	Comm report: To pass as amended and re-refer to Finance
02/17/2022	5019a	Comm report: To pass as amended
	5038	Second reading
02/21/2022	5090	Special Order
	5091	Third reading Passed
03/21/2022		Returned from House with amendment Senate concurred and repassed bill Third reading

- 1.1 A bill for an act
- 1.2 relating to health and human services; granting the commissioner of human services
- 1.3 temporary authority to reinstate waivers and modifications to certain human services
- 1.4 programs; granting the commissioner of health temporary emergency authority to
- 1.5 grant certain COVID waivers; temporarily modifying the authority of the
- 1.6 Emergency Medical Services Regulatory Board; modifying the membership and
- 1.7 duties of the task force on eliminating subminimum wages; exempting certain rate
- 1.8 increases from a contingent appropriation requirement; establishing a temporary
- 1.9 staffing pool; appropriating money; amending Laws 2021, First Special Session
- 1.10 chapter 7, article 16, section 28; article 17, section 14.
- 1.11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:
- 1.12 Section 1. Laws 2021, First Special Session chapter 7, article 16, section 28, is amended
- 1.13 to read:
- 1.14 **Sec. 28. CONTINGENT APPROPRIATIONS.**
- 1.15 Any appropriation in this act for a purpose included in Minnesota's initial state spending
- 1.16 plan as described in guidance issued by the Centers for Medicare and Medicaid Services
- 1.17 for implementation of section 9817 of the federal American Rescue Plan Act of 2021 is
- 1.18 contingent upon approval of that purpose by the Centers for Medicare and Medicaid Services,
- 1.19 except for the rate increases specified in article 11, sections 12 and 19. This section expires
- 1.20 June 30, 2024.
- 1.21 **EFFECTIVE DATE.** This section is effective the day following final enactment.

2.1 Sec. 2. Laws 2021, First Special Session chapter 7, article 17, section 14, is amended to
2.2 read:

2.3 Sec. 14. **TASK FORCE ON ELIMINATING SUBMINIMUM WAGES.**

2.4 Subdivision 1. **Establishment; purpose.** The Task Force on ~~Eliminating~~ Subminimum
2.5 Wages is established to develop a plan and make recommendations to ~~phase out payment~~
2.6 ~~of subminimum wages to people with disabilities on or before August 1, 2025~~ promote
2.7 independence and increase opportunities for people with disabilities to earn competitive
2.8 wages.

2.9 Subd. 2. **Definitions.** For the purposes of this section, "subminimum wage" means wages
2.10 authorized under section 14(c) of the federal Fair Labor Standards Act, Minnesota Statutes,
2.11 section 177.28, subdivision 5, or Minnesota Rules, parts 5200.0030 and 5200.0040.

2.12 Subd. 3. **Membership.** (a) The task force consists of ~~16~~ 20 members, appointed as
2.13 follows:

2.14 (1) the commissioner of human services or a designee;

2.15 (2) the commissioner of labor and industry or a designee;

2.16 (3) the commissioner of education or a designee;

2.17 (4) the commissioner of employment and economic development or a designee;

2.18 (5) a representative of the Department of Employment and Economic Development's
2.19 Vocational Rehabilitation Services Division appointed by the commissioner of employment
2.20 and economic development;

2.21 (6) one member appointed by the Minnesota Disability Law Center;

2.22 (7) one member appointed by The Arc of Minnesota;

2.23 (8) ~~three~~ four members who are persons with disabilities appointed by the commissioner
2.24 of human services, at least one of whom ~~must be~~ is neurodiverse, ~~and~~ at least one of whom
2.25 ~~must have~~ has a significant physical disability, and at least one of whom at the time of the
2.26 appointment is being paid a subminimum wage;

2.27 (9) two representatives of employers authorized to pay subminimum wage and one
2.28 representative of an employer who successfully transitioned away from payment of
2.29 subminimum wages to people with disabilities, appointed by the commissioner of human
2.30 services;

3.1 (10) one member appointed by the Minnesota Organization for Habilitation and
 3.2 Rehabilitation;

3.3 (11) one member appointed by ARRM; ~~and~~

3.4 (12) one member appointed by the State Rehabilitation Council; and

3.5 (13) three members who are parents or guardians of persons with disabilities appointed
 3.6 by the commissioner of human services, at least one of whom is a parent or guardian of a
 3.7 person who is neurodiverse, at least one of whom is a parent or guardian of a person with
 3.8 a significant physical disability, and at least one of whom is a parent or guardian of a person
 3.9 being paid a subminimum wage as of the date of the appointment.

3.10 (b) To the extent possible, membership on the task force under paragraph (a) shall reflect
 3.11 geographic parity throughout the state and representation from Black, Indigenous, and
 3.12 communities of color.

3.13 Subd. 4. **Appointment deadline; first meeting; chair.** Appointing authorities must
 3.14 complete member selections by January 1, 2022. The commissioner of human services shall
 3.15 convene the first meeting of the task force by February 15, 2022. The task force shall select
 3.16 a chair from among its members at its first meeting.

3.17 Subd. 5. **Compensation.** Members shall be compensated and may be reimbursed for
 3.18 expenses as provided in Minnesota Statutes, section 15.059, subdivision 3.

3.19 Subd. 6. **Duties; plan and recommendations.** The task force shall:

3.20 (1) develop a plan to ~~phase out the payment of subminimum wages to people with~~
 3.21 ~~disabilities by August 1, 2025~~ promote independence and increase opportunities for people
 3.22 with disabilities to earn competitive wages;

3.23 (2) consult with and advise the commissioner of human services on statewide plans for
 3.24 ~~limiting~~ reducing reliance on subminimum wages in medical assistance home and
 3.25 community-based services waivers under Minnesota Statutes, sections 256B.092 and
 3.26 256B.49;

3.27 (3) engage with employees with disabilities paid subminimum wages and conduct
 3.28 community education on the payment of subminimum wages to people with disabilities in
 3.29 Minnesota;

3.30 (4) identify and collaborate with employees, employers, businesses, organizations,
 3.31 agencies, and stakeholders ~~impacted by the phase out of subminimum wage~~ on how to
 3.32 implement the plan and create sustainable work opportunities for employees with disabilities;

4.1 (5) propose a plan to establish and evaluate benchmarks for measuring annual progress
4.2 toward ~~eliminating~~ reducing reliance on subminimum wages;

4.3 (6) propose a plan to monitor and track outcomes of employees with disabilities, including
4.4 those who transition to competitive employment;

4.5 (7) identify initiatives, investment, training, and services designed to improve wages,
4.6 reduce unemployment rates, and provide support and sustainable work opportunities for
4.7 persons with disabilities;

4.8 (8) identify benefits to the state ~~in eliminating~~ of reducing reliance on subminimum
4.9 ~~wage by August 1, 2025~~ wages;

4.10 (9) identify barriers to eliminating subminimum ~~wage by August 1, 2025~~ wages, including
4.11 the cost of implementing and providing ongoing employment services, training, and support
4.12 for employees with disabilities ~~and~~, the cost of paying minimum ~~wage~~ wages to employees
4.13 with disabilities, and the potential impact on persons with disabilities who would be unable
4.14 to find sustainable employment in the absence of a subminimum wage or who would not
4.15 choose competitive employment;

4.16 (10) make recommendations to eliminate the barriers identified in clause (9); and

4.17 (11) identify and make recommendations for sustainable financial support, funding, and
4.18 resources for ~~eliminating~~ reducing reliance on subminimum ~~wage by August 1, 2025~~ wages.

4.19 Subd. 7. **Duties; provider reinvention grants.** (a) The commissioner of human services
4.20 shall establish a provider reinvention grant program to promote independence and increase
4.21 opportunities for people with disabilities to earn competitive wages. The commissioner
4.22 shall make the grants available to at least the following:

4.23 (1) providers of disability services under Minnesota Statutes, sections 256B.092 and
4.24 256B.49, for developing and implementing a business plan to ~~shift the providers' business~~
4.25 ~~models away from paying waiver participants subminimum~~ promote independence and
4.26 increase opportunities for people with disabilities to earn competitive wages;

4.27 (2) organizations to develop peer-to-peer mentoring for people with disabilities who
4.28 have successfully transitioned to earning competitive wages;

4.29 (3) organizations to facilitate provider-to-provider mentoring to promote ~~shifting away~~
4.30 ~~from paying employees with disabilities a subminimum wage~~ independence and increase
4.31 opportunities for people with disabilities to earn competitive wages; and

5.1 (4) organizations to conduct family outreach and education on working with people with
 5.2 disabilities who are transitioning from subminimum wage employment to competitive
 5.3 employment.

5.4 (b) The provider reinvention grant program must be competitive. The commissioner of
 5.5 human services must develop criteria for evaluating responses to requests for proposals.
 5.6 Criteria for evaluating grant applications must be finalized no later than November 1, 2021.
 5.7 The commissioner of human services shall administer grants in compliance with Minnesota
 5.8 Statutes, sections 16B.97 and 16B.98, and related policies set forth by the Department of
 5.9 Administration's Office of Grants Management.

5.10 (c) Grantees must work with the commissioner to develop their business model ~~and, as~~
 5.11 ~~a condition of receiving grant funds, grantees must fully phase out the use of subminimum~~
 5.12 ~~wage by April 1, 2024, unless the grantee receives a waiver from the commissioner of~~
 5.13 ~~human services for a demonstrated need~~ to promote independence and increase opportunities
 5.14 for people with disabilities to earn competitive wages.

5.15 (d) Of the total amount available for provider reinvention grants, the commissioner may
 5.16 award up to 25 percent of the grant funds to providers who have already successfully shifted
 5.17 their business model away from paying employees with disabilities subminimum wages to
 5.18 provide provider-to-provider mentoring to providers receiving a provider reinvention grant.

5.19 Subd. 8. **Report.** By February 15, 2023, the task force shall submit to the chairs and
 5.20 ranking minority members of the committees and divisions in the senate and house of
 5.21 representatives with jurisdiction over employment and wages and over health and human
 5.22 services a report with recommendations to ~~eliminate by August 1, 2025, the payment of~~
 5.23 ~~subminimum wage~~ increase opportunities for people with disabilities to earn competitive
 5.24 wages, and any changes to statutes, laws, or rules required to implement the recommendations
 5.25 of the task force. The task force must include in the report a recommendation concerning
 5.26 continuing the task force beyond its scheduled expiration.

5.27 Subd. 9. **Administrative support.** The commissioner of human services shall provide
 5.28 meeting space and administrative services to the task force.

5.29 Subd. 10. **Expiration.** The task force shall conclude their duties and expire on March
 5.30 31, 2024.

5.31 **EFFECTIVE DATE.** This section is effective the day following final enactment. The
 5.32 commissioner of human services must make the additional appointments required under
 5.33 this section within 30 days following final enactment.

6.1 Sec. 3. **EMERGENCY MEDICAL SERVICES REGULATORY BOARD**
6.2 **TEMPORARY AUTHORITY.**

6.3 (a) Notwithstanding Minnesota Statutes, section 144E.266, the Emergency Medical
6.4 Services Regulatory Board may temporarily suspend any of the requirements of Minnesota
6.5 Statutes, sections 144E.10; 144E.101, subdivisions 1, 2, 3, 6, 7, 8, 9, 10, 11, and 13;
6.6 144E.103; 144E.12; 144E.121; 144E.123; 144E.127; and 144E.15. Any requirements
6.7 suspended under this section remain suspended until the earlier of the following:

6.8 (1) the board reinstates the requirement; or

6.9 (2) June 30, 2023.

6.10 (b) Upon adoption by the board of an internal operating procedure authorizing the
6.11 executive director to do so, the executive director may immediately temporarily suspend
6.12 requirements listed in paragraph (a) for no longer than 72 hours.

6.13 (c) This section expires June 30, 2023.

6.14 (d) No later than 48 hours after suspending a requirement under this section, the executive
6.15 director of the Emergency Medical Services Regulatory Board must provide written notice
6.16 to the chairs and ranking minority members of the legislative committees with jurisdiction
6.17 over the Emergency Medical Services Regulatory Board.

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

6.19 Sec. 4. **COMMISSIONER OF HEALTH; TEMPORARY EMERGENCY**
6.20 **AUTHORITY.**

6.21 Subdivision 1. **Temporary emergency authority granted.** The commissioner of health
6.22 is granted temporary emergency authority as described in and limited by this section. The
6.23 temporary emergency authority granted to the commissioner may only be used to grant
6.24 individual or blanket state waivers.

6.25 Subd. 2. **Individual or blanket waivers permitted.** Temporary individual or blanket
6.26 waivers may be granted to waive requirements in the following statutes provided a granted
6.27 waiver does not adversely affect resident or patient care or quality of the services:

6.28 (1) Minnesota Statutes, chapter 144, for hospitals relating to hospital construction
6.29 moratorium or bed capacity restrictions, except that no individual or blanket waiver may
6.30 be granted that will result in construction or other physical alterations of a hospital that
6.31 cannot be removed at the expiration of the waiver; and

7.1 (2) Minnesota Statutes, chapters 144 and 144A, for nursing homes relating to bed
 7.2 moratorium, bed capacity, layaway and nonlayaway beds, and the notice timeline
 7.3 requirements for residents who are transferred or discharged as a response to COVID-19.

7.4 Subd. 3. **Notice.** (a) No later than 48 hours after an individual waiver or blanket waiver
 7.5 under this section goes into effect, the commissioner must provide written notice of the
 7.6 waiver to the appropriate ombudsman, if any, and to the chairs and ranking minority members
 7.7 of the legislative committees with jurisdiction over the Department of Health.

7.8 (b) A waiver issued or granted under this section must be posted on the Department of
 7.9 Health's website within 48 hours after being issued or granted and must include a
 7.10 plain-language description of the waiver.

7.11 Subd. 4. **Expiration of waivers.** Any waiver granted by this section expires on June 30,
 7.12 2022. This subdivision does not apply to nursing home transfer and discharge waivers if
 7.13 necessary federal approval is not obtained prior to June 30, 2022.

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

7.15 Sec. 5. **REINSTATEMENT AND EXTENSION OF COVID-19 PROGRAM**
 7.16 **WAIVERS AND MODIFICATIONS.**

7.17 The commissioner of human services may reinstate waivers and modifications to human
 7.18 services programs as described in this section that were issued by the commissioner pursuant
 7.19 to the governor's Executive Order 20-12, including any amendments to the waivers and
 7.20 modifications. The waivers and modifications may remain in effect until June 30, 2022,
 7.21 except CV03 and CV04 may remain in effect until June 30, 2023. The following waivers
 7.22 and modifications to human services programs may be reinstated:

7.23 (1) CV03: allowing oral or written signatures by applicants on applications for public
 7.24 assistance programs;

7.25 (2) CV04: allowing oral or written permission from public assistance program participants
 7.26 for the Department of Human Services to contact third parties to verify reported information;

7.27 (3) CV11: allowing video conferencing in monthly foster care visits by a child's
 7.28 caseworker when there is a declaration of a federal or state emergency that prohibits or
 7.29 strongly discourages person-to-person contact for public health reasons;

7.30 (4) CV23: waiving mandatory direct contact supervision requirements to allow
 7.31 case-by-case decisions to permit certain individuals to work without supervision while that
 7.32 individual's background studies are being processed, as permitted under federal law and

8.1 regulation, and allowing the transition from name and date of birth studies of Minnesota
 8.2 records only, for both existing studies and studies that may be initiated during the transition
 8.3 period, to fingerprint-based background studies to resume on a schedule established by the
 8.4 commissioner and published on the department's website. Waiver provisions permitting the
 8.5 return to background studies of Minnesota records only for providers who are currently
 8.6 transitioned to fingerprint-based studies shall not be reinstated;

8.7 (5) CV53: allowing qualified professionals to provide required in-person oversight of
 8.8 personal care assistance workers via two-way interactive telecommunications for all program
 8.9 participants who receive personal care assistance services; and

8.10 (6) CV89: allowing program participants to give oral, written, or expressed approval of
 8.11 documents related to long-term services and supports that typically require in-person
 8.12 signatures.

8.13 **EFFECTIVE DATE.** This section is effective the day following final enactment except
 8.14 for clauses (5) and (6), which are effective retroactively from September 1, 2021.

8.15 Sec. 6. **CHILD CARE ASSISTANCE PROGRAM PAYMENT DURING**
 8.16 **TEMPORARY CLOSURES FOR HEALTH CONCERNS RELATED TO COVID-19.**

8.17 (a) The commissioner of human services may pay child care assistance to a child care
 8.18 provider through June 26, 2022, when:

8.19 (1) children are not attending child care because the child care provider has temporarily
 8.20 closed an entire program due to health concerns related to COVID-19; or

8.21 (2) a provider chooses to reduce or not charge fees for non-CCAP families because of
 8.22 closed or absent days due to health concerns related to COVID-19.

8.23 (b) Child care assistance payments during temporary closures related to COVID-19 are
 8.24 limited to up to eight weeks total per child care provider. A child care provider must report
 8.25 any closure to the commissioner of human services prior to submitting a request for payment
 8.26 under this section.

8.27 (c) A child care provider that receives a child care assistance payment under this section
 8.28 and that charges or charged fees to families because of closed or absent days due to health
 8.29 concerns related to COVID-19 shall not collect the amount charged from families for days
 8.30 that the provider receives a payment under this section.

8.31 (d) Child care assistance program payments made to a provider for absent or closed days
 8.32 are considered income for purposes of applying for a child care stabilization financial

9.1 hardship grant established pursuant to Laws 2021, First Special Session chapter 7, article
 9.2 14, section 21, subdivision 4, paragraph (c).

9.3 **EFFECTIVE DATE.** This section is effective retroactively from November 1, 2021,
 9.4 except paragraph (d) is effective the day following final enactment.

9.5 **Sec. 7. TEMPORARY MODIFICATIONS OF CHILD CARE CENTER STAFF;**
 9.6 **DISTRIBUTION REQUIREMENTS.**

9.7 (a) The commissioner of human services may temporarily suspend child care center
 9.8 staff distribution requirements under Minnesota Rules, part 9503.0040, subpart 2, item D,
 9.9 until June 30, 2022.

9.10 (b) A licensed child care center, except as allowed under Minnesota Rules, part
 9.11 9503.0040, subpart 2, item B, must have at least one person qualified as a teacher on site
 9.12 at all times when a child is in care at the licensed child care center. There must be a staff
 9.13 person who is at least 18 years of age with each group of children, except as allowed under
 9.14 Minnesota Rules, part 9503.0034, subpart 1.

9.15 (c) A licensed child care center must have a staff person on site who is responsible for
 9.16 overseeing the operation of the daily activities of the program, ensuring the health and safety
 9.17 of the children, and supervising staff. The on-site staff person is not required to meet the
 9.18 qualifications of a director.

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

9.20 **Sec. 8. COMMISSIONER OF HUMAN SERVICES; TEMPORARY STAFFING**
 9.21 **POOL; APPROPRIATION.**

9.22 (a) The commissioner of human services shall establish a temporary emergency staffing
 9.23 pool for congregate settings experiencing staffing crises. Vendor contracts may include
 9.24 retention bonuses, sign-on bonuses, and payment for hours on call. The commissioner may
 9.25 pay for necessary training, travel, and lodging expenses of the temporary staff. Contracts
 9.26 for temporary staffing executed under this section: (1) should minimize the recruitment
 9.27 away from providers' current workforces; and (2) may not be executed with an individual
 9.28 until at least 30 days since the individual was last employed in Minnesota by one of the
 9.29 types of facilities listed in paragraph (g).

9.30 (b) Temporary staff, at the request of the commissioner, may be deployed to long-term
 9.31 care facilities and other congregate care residential facilities and programs experiencing an

10.1 emergency staffing crisis on or after the effective date of this section. Temporary staff must
10.2 be provided at no cost to the facility or program receiving the temporary staff.

10.3 (c) Members of the temporary staffing pool under this section are not state employees.

10.4 (d) The commissioner must coordinate the activities under this section with any other
10.5 impacted state agencies, to appropriately prioritize locations to deploy contracted temporary
10.6 staff.

10.7 (e) The commissioner must give priority for deploying staff to facilities and programs
10.8 with the most significant staffing crises and where, but for this assistance, residents would
10.9 be at significant risk of injury due to the need to transfer to another facility or a hospital for
10.10 adequately staffed care.

10.11 (f) A facility or program may seek onetime assistance per setting from the temporary
10.12 staffing pool only after the facility or program has used all resources available to obtain
10.13 temporary staff but is unable to meet the facility's or program's temporary staffing needs.
10.14 A facility or program may apply for temporary staff for up to 21 days. Applicants must
10.15 submit a proposed plan for ensuring resident safety at the end of that time period.

10.16 (g) Facilities and programs eligible to obtain temporary staff from the temporary staffing
10.17 pool include:

10.18 (1) nursing facilities;

10.19 (2) assisted living facilities;

10.20 (3) intermediate care facilities for persons with developmental disabilities;

10.21 (4) adult foster care or community residential settings;

10.22 (5) licensed substance use disorder treatment facilities;

10.23 (6) unlicensed county-based substance use disorder treatment facilities;

10.24 (7) licensed facilities for adults with mental illness;

10.25 (8) licensed detoxification programs;

10.26 (9) licensed withdrawal management programs;

10.27 (10) licensed children's residential facilities;

10.28 (11) licensed child foster residence settings;

10.29 (12) unlicensed, Tribal-certified facilities that perform functions similar to the licensed
10.30 facilities listed in this paragraph;

- 11.1 (13) boarding care homes;
- 11.2 (14) board and lodging establishments serving people with disabilities or disabling
- 11.3 conditions;
- 11.4 (15) board and lodging establishments with special services;
- 11.5 (16) supervised living facilities;
- 11.6 (17) supportive housing;
- 11.7 (18) sober homes;
- 11.8 (19) community-based halfway houses for people exiting the correctional system;
- 11.9 (20) shelters serving people experiencing homelessness;
- 11.10 (21) drop-in centers for people experiencing homelessness;
- 11.11 (22) homeless outreach services for unsheltered individuals;
- 11.12 (23) shelters for people experiencing domestic violence; and
- 11.13 (24) temporary isolation spaces for people who test positive for COVID-19.
- 11.14 (h) Notwithstanding Minnesota Statutes, chapter 16C, the commissioner may maintain,
- 11.15 extend, or renew contracts for temporary staffing entered into on or after September 1, 2020.
- 11.16 The commissioner may also enter into new contracts with eligible entities for temporary
- 11.17 staff deployed in the temporary staffing pool. The commissioner may use up to 6.5 percent
- 11.18 of this funding for the commissioner's costs related to administration of this program.
- 11.19 (i) The commissioner shall seek all allowable FEMA reimbursement for the costs of this
- 11.20 activity.
- 11.21 **EFFECTIVE DATE.** This section is effective the day following final enactment.
- 11.22 **Sec. 9. APPROPRIATION; TEMPORARY STAFFING POOL.**
- 11.23 \$1,029,000 in fiscal year 2022 is appropriated from the general fund to the commissioner
- 11.24 of human services for the temporary staffing pool described in this act. This is a onetime
- 11.25 appropriation and is available until June 30, 2022.
- 11.26 **EFFECTIVE DATE.** This section is effective the day following final enactment.