

SENATE
STATE OF MINNESOTA
EIGHTY-NINTH SESSION

S.F. No. 3565

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DATE	D-PG	OFFICIAL STATUS
04/21/2016	5937	Introduction and first reading Referred to Health, Human Services and Housing

A bill for an act

relating to human services; modifying reimbursement rates for intermediate care facilities for persons with developmental disabilities and home and community-based services providers; amending Minnesota Statutes 2014, section 256B.5012, by adding a subdivision; proposing coding for new law in Minnesota Statutes, chapter 256B; repealing Minnesota Statutes 2014, section 256B.5012, subdivisions 4, 5, 6, 7, 8, 9, 10, 11, 14.

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

Section 1. **[256B.4915] DISABILITY WAIVER REIMBURSEMENT RATE**

ADJUSTMENTS.

Subdivision 1. **Historical rate.** The commissioner of human services shall adjust the historical rates calculated in section 256B.4913, subdivision 4a, paragraph (b), in effect during the banding period under section 256B.4913, subdivision 4a, paragraph (a), for each reimbursement rate increase effective on or after July 1, 2016.

Subd. 2. **Residential support services.** The commissioner shall adjust the rates calculated in section 256B.4914, subdivision 6, paragraphs (b) and (c), for each reimbursement rate increase effective on or after July 1, 2016.

Subd. 3. **Day programs.** The commissioner shall adjust the rates calculated in section 256B.4914, subdivision 7, for each reimbursement rate increase effective on or after July 1, 2016.

Subd. 4. **Unit-based services with programming.** The commissioner shall adjust the rate calculated in section 256B.4914, subdivision 8, for each reimbursement rate increase effective on or after July 1, 2016.

2.1 Subd. 5. Unit-based services without programming. The commissioner shall
2.2 adjust the rate calculated in section 256B.4914, subdivision 9, for each reimbursement rate
2.3 increase effective on or after July 1, 2016.

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

2.5 Sec. 2. Minnesota Statutes 2014, section 256B.5012, is amended by adding a
2.6 subdivision to read:

2.7 Subd. 17. ICF/DD rate increases effective July 1, 2016. (a) For the rate period
2.8 beginning July 1, 2016, the commissioner shall increase operating payments for each
2.9 facility reimbursed under this section equal to five percent of the operating payment rates
2.10 in effect on June 30, 2016. The five percent increase in operating payment rates shall
2.11 consist of a workforce compensation component of three percent, a quality component of
2.12 one percent, and a person-centered component of one percent.

2.13 (b) For each facility, the commissioner shall apply the rate increase based on
2.14 occupied beds, using the percentage specified in this subdivision multiplied by the total
2.15 payment rate, including the variable rate but excluding the property-related payment
2.16 rate in effect on the preceding date. The total rate increase shall include the adjustment
2.17 provided in section 256B.501, subdivision 12.

2.18 (c) Facilities that receive a rate increase under this subdivision shall use 90 percent
2.19 of the additional revenue attributed to the workforce compensation component of the
2.20 operating payment rate increase for compensation-related costs for employees directly
2.21 employed by the facility on or after July 1, 2016, except:

2.22 (1) persons employed in the central office of a corporation or entity that has an
2.23 ownership interest in the facility or exercises control over the facility; and

2.24 (2) persons paid by the facility under a management contract.

2.25 (d) Compensation-related costs include:

2.26 (1) wages and salaries;

2.27 (2) the employer's share of FICA taxes, Medicare taxes, state and federal
2.28 unemployment taxes, workers' compensation, and mileage reimbursement;

2.29 (3) the employer's share of health and dental insurance, life insurance, disability
2.30 insurance, long-term care insurance, uniform allowance, pensions, and contributions to
2.31 employee retirement accounts; and

2.32 (4) other benefits provided and workforce needs, including the recruiting and
2.33 training of employees as specified in the distribution plan required under paragraph (h).

2.34 (e) For public employees under a collective bargaining agreement, the increases for
2.35 wages and benefits for certain staff are available and pay rates must be increased only to

3.1 the extent that the increases comply with laws governing public employees' collective
3.2 bargaining. Money received by a facility under paragraph (c) for pay increases for public
3.3 employees must be used only for pay increases implemented between July 1, 2016, and
3.4 August 1, 2016.

3.5 (f) For a facility that has employees that are represented by an exclusive bargaining
3.6 representative, the provider shall obtain a letter of acceptance of the distribution plan
3.7 required under paragraph (h), relating to the members of the bargaining unit, signed by the
3.8 exclusive bargaining agent. Upon receipt of the letter of acceptance, the facility shall be
3.9 deemed to have met all the requirements of this subdivision relating to the members of
3.10 the bargaining unit. Upon request, the facility shall produce the letter of acceptance to
3.11 the commissioner.

3.12 (g) The commissioner shall amend state grant contracts that include direct
3.13 personnel-related grant expenditures to include the allocation for the portion of the
3.14 contract related to employee compensation. Grant contracts for compensation-related
3.15 services must be amended to pass through these adjustments within 60 days of the
3.16 effective date of the increase and must be retroactive to July 1, 2016.

3.17 (h) A facility that receives a rate adjustment under paragraph (a) that is subject to
3.18 paragraphs (c) and (d) shall prepare and, upon request, submit to the commissioner a
3.19 distribution plan that specifies the amount of money the facility expects to receive that is
3.20 subject to the requirements of paragraphs (c) and (d), including how that money will be
3.21 distributed to increase compensation for employees.

3.22 (i) Within six months of the effective date of the rate adjustment, the facility shall
3.23 post the distribution plan required under paragraph (h) for at least six weeks in an area
3.24 of the facility's operation to which all eligible employees have access and shall provide
3.25 instructions for employees who do not believe they have received the wage and other
3.26 compensation-related increases specified in the distribution plan. The instructions must
3.27 include a mailing address, e-mail address, and telephone number that an employee may
3.28 use to contact the commissioner or the commissioner's representative.

3.29 (j) To receive the quality component of the rate increase under paragraph (a),
3.30 a facility must submit to the commissioner documentation that identifies a quality
3.31 improvement project that the facility must implement by June 30, 2017. The project may be
3.32 a continuation or enhancement of projects developed under subdivision 16, paragraph (c).
3.33 Documentation must be provided in a format specified by the commissioner. Projects must:

3.34 (1) improve the quality of life of home and community-based services recipients in
3.35 a meaningful way;

3.36 (2) improve the quality of services in a meaningful way; or

4.1 (3) deliver good quality service more efficiently while using the savings to enhance
 4.2 the services for recipients served.

4.3 (k) To receive the person-centered component of the rate increase under paragraph
 4.4 (a), a facility must submit to the commissioner documentation that identifies a community
 4.5 integration improvement project that the facility must implement by June 30, 2017.

4.6 Documentation must be provided in a format specified by the commissioner. Projects must:

4.7 (1) incorporate person-centered thinking into the provision of services; or

4.8 (2) advance one or more of the goals adopted in the state's Olmstead plan.

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

4.10 Sec. 3. **[256B.745] HOME AND COMMUNITY-BASED SERVICE PROVIDER**
 4.11 **RATE AND GRANT INCREASES.**

4.12 Subdivision 1. **Rate and grant increases.** The commissioner of human services
 4.13 shall increase reimbursement rates, grants, allocations, individual limits, and rate limits,
 4.14 as applicable, by five percent for the rate period beginning July 1, 2016, for services
 4.15 rendered on or after that date. County or tribal contracts for services specified in this
 4.16 section must be amended to pass through this rate increase within 60 days of the effective
 4.17 date of the increase. The five percent increase shall consist of a workforce compensation
 4.18 component of three percent, a quality component of one percent, and a person-centered
 4.19 component of one percent.

4.20 Subd. 2. **Eligible services, grants, and programs.** The rate changes described
 4.21 in this section apply to:

4.22 (1) home and community-based waived services for persons with developmental
 4.23 disabilities, including consumer-directed community supports, under section 256B.092;

4.24 (2) waived services under community alternatives for disabled individuals,
 4.25 including consumer-directed community supports, under section 256B.49;

4.26 (3) community alternative care waived services, including consumer-directed
 4.27 community supports, under section 256B.49;

4.28 (4) brain injury waived services, including consumer-directed community
 4.29 supports, under section 256B.49;

4.30 (5) home and community-based waived services for the elderly under section
 4.31 256B.0915;

4.32 (6) nursing services and home health services under section 256B.0625, subdivision
 4.33 6a;

4.34 (7) personal care services and qualified professional supervision of personal care
 4.35 services under section 256B.0625, subdivisions 6a and 19a;

- 5.1 (8) home care nursing services under section 256B.0625, subdivision 7;
 5.2 (9) community first services and supports under section 256B.85;
 5.3 (10) essential community supports under section 256B.0922;
 5.4 (11) day training and habilitation services for adults with developmental disabilities
 5.5 under sections 252.41 to 252.46, including the additional cost to counties of the rate
 5.6 adjustments on day training and habilitation services provided as a social service;
 5.7 (12) alternative care services under section 256B.0913;
 5.8 (13) living skills training programs for persons with intractable epilepsy who need
 5.9 assistance in the transition to independent living under Laws 1988, chapter 689;
 5.10 (14) semi-independent living services (SILS) under section 252.275;
 5.11 (15) consumer support grants under section 256.476;
 5.12 (16) family support grants under section 252.32;
 5.13 (17) housing access grants under section 256B.0658;
 5.14 (18) self-advocacy grants under Laws 2009, chapter 101;
 5.15 (19) technology grants under Laws 2009, chapter 79;
 5.16 (20) aging grants under sections 256.975 to 256.977 and 256B.0917;
 5.17 (21) deaf and hard-of-hearing grants, including community support services for deaf
 5.18 and hard-of-hearing adults with mental illness who use or wish to use sign language as
 5.19 their primary means of communication under section 256.01, subdivision 2;
 5.20 (22) deaf and hard-of-hearing grants under sections 256C.233, 256C.25, and
 5.21 256C.261;
 5.22 (23) Disability Linkage Line grants under section 256.01, subdivision 24;
 5.23 (24) home and community-based transition initiative grants under section 256.478;
 5.24 (25) employment support grants under section 256B.021, subdivision 6; and
 5.25 (26) grants provided to people who are eligible for the Housing Opportunities for
 5.26 Persons with AIDS program under section 256B.492.
- 5.27 Subd. 3. **Managed care and county-based purchasing plans.** A managed
 5.28 care plan or county-based purchasing plan receiving state payments for the services,
 5.29 grants, and programs in subdivision 2 must include the increase in their payments to
 5.30 providers. For the purposes of this section, "providers" are entities that provide care
 5.31 coordination are providers. To implement the rate increase in subdivision 1, capitation
 5.32 rates paid by the commissioner to managed care plans and county-based purchasing plans
 5.33 under section 256B.69 shall reflect a five percent increase for the services, grants, and
 5.34 programs specified in subdivision 2 for the period beginning on the effective date of
 5.35 the rate adjustment under subdivision 1.

6.1 Subd. 4. **Consumer-directed community supports.** Counties shall increase the
6.2 budget for each recipient of consumer-directed community supports by the amount in
6.3 subdivision 1 on the effective date of the rate adjustment under subdivision 1.

6.4 Subd. 5. **Workforce compensation component.** Providers that receive a rate
6.5 increase under subdivision 1 shall use 90 percent of the additional revenue attributed to the
6.6 workforce compensation component of the rate increase to increase compensation-related
6.7 costs for employees directly employed by the program on or after the effective date of the
6.8 rate adjustment under subdivision 1, except:

6.9 (1) persons employed in the central office of a corporation or entity that has an
6.10 ownership interest in the provider or exercises control over the provider; and

6.11 (2) persons paid by the provider under a management contract.

6.12 Subd. 6. **Compensation-related costs.** Compensation-related costs include:

6.13 (1) wages and salaries;

6.14 (2) the employer's share of FICA taxes, Medicare taxes, state and federal
6.15 unemployment taxes, workers' compensation, and mileage reimbursement;

6.16 (3) the employer's share of health and dental insurance, life insurance, disability
6.17 insurance, long-term care insurance, uniform allowance, pensions, and contributions to
6.18 employee retirement accounts; and

6.19 (4) other benefits provided and workforce needs, including the recruiting and
6.20 training of employees as specified in the distribution plan required under subdivision 11.

6.21 Subd. 7. **Public employees under collective bargaining agreement.** For public
6.22 employees under a collective bargaining agreement, the increases for wages and benefits
6.23 are available and pay rates must be increased only to the extent that the increases comply
6.24 with laws governing public employees' collective bargaining. Money received by a
6.25 provider for pay increases for public employees under subdivision 5 must be used only for
6.26 pay increases implemented between July 1 and August 1 of the year the rate adjustment is
6.27 implemented under subdivision 1.

6.28 Subd. 8. **Employees represented by exclusive bargaining representative.** For a
6.29 provider that has employees who are represented by an exclusive bargaining representative,
6.30 the provider shall obtain a letter of acceptance of the distribution plan required under
6.31 subdivision 11, relating to the members of the bargaining unit, signed by the exclusive
6.32 bargaining agent. Upon receipt of the letter of acceptance, the provider shall be deemed to
6.33 have met all the requirements of this section relating to the members of the bargaining unit.
6.34 Upon request, the provider shall produce the letter of acceptance to the commissioner.

6.35 Subd. 9. **State grant contracts.** The commissioner shall amend state grant
6.36 contracts that include direct personnel-related grant expenditures to include the allocation

7.1 for the portion of the contract related to employee compensation. Grant contracts for
7.2 compensation-related services must be amended to pass through these adjustments within
7.3 60 days of the effective date of the rate adjustment under subdivision 1 and must be
7.4 retroactive to the effective date of the rate adjustment under subdivision 1.

7.5 Subd. 10. **Board on Aging; area agencies on aging.** The Board on Aging and its
7.6 area agencies on aging shall amend their grants that include direct personnel-related grant
7.7 expenditures to include the rate adjustments for the portion of the grant related to employee
7.8 compensation. Grants for compensation-related services must be amended to apply these
7.9 adjustments within 60 days of the effective date of the rate adjustment under subdivision 1
7.10 and must be retroactive to the effective date of the rate adjustment under subdivision 1.

7.11 Subd. 11. **Distribution plan.** (a) A provider that receives a rate adjustment under
7.12 subdivision 1 that is subject to subdivision 5 shall prepare and, upon request, submit to the
7.13 commissioner a distribution plan that specifies the amount of money the provider expects
7.14 to receive that is subject to the requirements of subdivision 5, including how that money
7.15 will be distributed to increase compensation for employees.

7.16 (b) Within six months of the effective date of the rate adjustment, the provider shall
7.17 post the distribution plan required under paragraph (a) for a period of at least six weeks in
7.18 an area of the provider's operation to which all eligible employees have access and shall
7.19 provide instructions for employees who do not believe they have received the wage and
7.20 other compensation-related increases specified in the distribution plan. The instructions
7.21 must include a mailing address, e-mail address, and telephone number that the employee
7.22 may use to contact the commissioner or the commissioner's representative.

7.23 Subd. 12. **Quality component.** To receive the quality component of the rate
7.24 increase under subdivision 1, a provider must submit to the commissioner documentation
7.25 that identifies a quality improvement project that the provider must implement by June 30
7.26 of the calendar year following the year in which the rate adjustment under subdivision 1 is
7.27 implemented. The project may be a continuation or enhancement of projects developed
7.28 under Laws 2014, chapter 312, article 27, section 75, paragraph (e). Documentation must
7.29 be provided in a format specified by the commissioner. Projects must:

7.30 (1) improve the quality of life of home and community-based services recipients in
7.31 a meaningful way;

7.32 (2) improve the quality of services in a meaningful way; or

7.33 (3) deliver good quality service more efficiently while using the savings to enhance
7.34 the services for recipients served.

7.35 Subd. 13. **Person-centered component.** To receive the person-centered component
7.36 of the rate increase under subdivision 1, a provider must submit to the commissioner

8.1 documentation that identifies a community integration improvement project that the
8.2 provider must implement by June 30 of the calendar year following the year in which the
8.3 rate adjustment under subdivision 1 is implemented. Documentation must be provided
8.4 in a format specified by the commissioner. Projects must:

8.5 (1) incorporate person-centered thinking into the provision of services;
8.6 (2) advance one or more of the goals adopted in the state's Olmstead plan; or
8.7 (3) for providers listed in subdivision 2, clause (5) or (12), meet the requirements
8.8 of subdivision 12.

8.9 Subd. 14. **Exemptions.** (a) Providers listed in subdivision 2, clauses (6) to (10) and
8.10 (13) to (26), are not subject to the requirements of subdivisions 12 and 13.

8.11 (b) Providers of home-delivered meals and congregate dining services are not
8.12 subject to the requirements of subdivisions 5, 12, and 13.

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

8.14 Sec. 4. **REPEALER.**

8.15 Minnesota Statutes 2014, section 256B.5012, subdivisions 4, 5, 6, 7, 8, 9, 10, 11,
8.16 and 14, are repealed.

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

256B.5012 ICF/DD PAYMENT SYSTEM IMPLEMENTATION.

Subd. 4. **ICF/DD rate increases beginning July 1, 2001, and July 1, 2002.** (a) For the rate years beginning July 1, 2001, and July 1, 2002, the commissioner shall make available to each facility reimbursed under this section an adjustment to the total operating payment rate of 3.5 percent. Of this adjustment, two-thirds must be used as provided under paragraph (b) and one-third must be used for operating costs.

(b) The adjustment under this paragraph must be used to increase the wages and benefits and pay associated costs of all employees except administrative and central office employees, provided that this increase must be used only for wage and benefit increases implemented on or after the first day of the rate year and must not be used for increases implemented prior to that date.

(c) For each facility, the commissioner shall make available an adjustment using the percentage specified in paragraph (a) multiplied by the total payment rate, excluding the property-related payment rate, in effect on the preceding June 30. The total payment rate shall include the adjustment provided in section 256B.501, subdivision 12.

(d) A facility whose payment rates are governed by closure agreements, receivership agreements, or Minnesota Rules, part 9553.0075, is not eligible for an adjustment otherwise granted under this subdivision.

(e) A facility may apply for the payment rate adjustment provided under paragraph (b). The application must be made to the commissioner and contain a plan by which the facility will distribute the adjustment in paragraph (b) to employees of the facility. For facilities in which the employees are represented by an exclusive bargaining representative, an agreement negotiated and agreed to by the employer and the exclusive bargaining representative constitutes the plan. A negotiated agreement may constitute the plan only if the agreement is finalized after the date of enactment of all rate increases for the rate year. The commissioner shall review the plan to ensure that the payment rate adjustment per diem is used as provided in this subdivision. To be eligible, a facility must submit its plan by March 31, 2002, and March 31, 2003, respectively. If a facility's plan is effective for its employees after the first day of the applicable rate year that the funds are available, the payment rate adjustment per diem is effective the same date as its plan.

(f) A copy of the approved distribution plan must be made available to all employees by giving each employee a copy or by posting it in an area of the facility to which all employees have access. If an employee does not receive the wage and benefit adjustment described in the facility's approved plan and is unable to resolve the problem with the facility's management or through the employee's union representative, the employee may contact the commissioner at an address or telephone number provided by the commissioner and included in the approved plan.

Subd. 5. **Rate increase effective June 1, 2003.** For rate periods beginning on or after June 1, 2003, the commissioner shall increase the total operating payment rate for each facility reimbursed under this section by \$3 per day. The increase shall not be subject to any annual percentage increase.

Subd. 6. **ICF/DD rate increases October 1, 2005, and October 1, 2006.** (a) For the rate periods beginning October 1, 2005, and October 1, 2006, the commissioner shall make available to each facility reimbursed under this section an adjustment to the total operating payment rate of 2.2553 percent.

(b) 75 percent of the money resulting from the rate adjustment under paragraph (a) must be used to increase wages and benefits and pay associated costs for employees, except for administrative and central office employees. 75 percent of the money received by a facility as a result of the rate adjustment provided in paragraph (a) must be used only for wage, benefit, and staff increases implemented on or after the effective date of the rate increase each year, and must not be used for increases implemented prior to that date. The wage adjustment eligible employees may receive may vary based on merit, seniority, or other factors determined by the provider.

(c) For each facility, the commissioner shall make available an adjustment, based on occupied beds, using the percentage specified in paragraph (a) multiplied by the total payment rate, including variable rate but excluding the property-related payment rate, in effect on the preceding day. The total payment rate shall include the adjustment provided in section 256B.501, subdivision 12.

(d) A facility whose payment rates are governed by closure agreements or receivership agreements is not eligible for an adjustment otherwise granted under this subdivision.

(e) A facility may apply for the portion of the payment rate adjustment provided under paragraph (a) for employee wages and benefits and associated costs. The application must be made to the commissioner and contain a plan by which the facility will distribute the funds according to paragraph (b). For facilities in which the employees are represented by an exclusive

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bargaining representative, an agreement negotiated and agreed to by the employer and the exclusive bargaining representative constitutes the plan. A negotiated agreement may constitute the plan only if the agreement is finalized after the date of enactment of all rate increases for the rate year. The commissioner shall review the plan to ensure that the payment rate adjustment per diem is used as provided in this subdivision. To be eligible, a facility must submit its plan by March 31, 2006, and December 31, 2006, respectively. If a facility's plan is effective for its employees after the first day of the applicable rate period that the funds are available, the payment rate adjustment per diem is effective the same date as its plan.

(f) A copy of the approved distribution plan must be made available to all employees by giving each employee a copy or by posting it in an area of the facility to which all employees have access. If an employee does not receive the wage and benefit adjustment described in the facility's approved plan and is unable to resolve the problem with the facility's management or through the employee's union representative, the employee may contact the commissioner at an address or telephone number provided by the commissioner and included in the approved plan.

Subd. 7. ICF/DD rate increases effective October 1, 2007, and October 1, 2008. (a) For the rate year beginning October 1, 2007, the commissioner shall make available to each facility reimbursed under this section operating payment rate adjustments equal to 2.0 percent of the operating payment rates in effect on September 30, 2007. For the rate year beginning October 1, 2008, the commissioner shall make available to each facility reimbursed under this section operating payment rate adjustments equal to 2.0 percent of the operating payment rates in effect on September 30, 2008. For each facility, the commissioner shall make available an adjustment, based on occupied beds, using the percentage specified in this paragraph multiplied by the total payment rate, including the variable rate but excluding the property-related payment rate, in effect on the preceding day. The total payment rate shall include the adjustment provided in section 256B.501, subdivision 12. A facility whose payment rates are governed by closure agreements or receivership agreements is not eligible for an adjustment otherwise granted under this subdivision.

(b) Seventy-five percent of the money resulting from the rate adjustments under paragraph (a) must be used for increases in compensation-related costs for employees directly employed by the facility on or after the effective date of the rate adjustments, except:

- (1) the administrator;
- (2) persons employed in the central office of a corporation that has an ownership interest in the facility or exercises control over the facility; and
- (3) persons paid by the facility under a management contract.

(c) Two-thirds of the money available under paragraph (b) must be used for wage increases for all employees directly employed by the facility on or after the effective date of the rate adjustments, except those listed in paragraph (b), clauses (1) to (3). The wage adjustment that employees receive under this paragraph must be paid as an equal hourly percentage wage increase for all eligible employees. All wage increases under this paragraph must be effective on the same date. Only costs associated with the portion of the equal hourly percentage wage increase that goes to all employees shall qualify under this paragraph. Costs associated with wage increases in excess of the amount of the equal hourly percentage wage increase provided to all employees shall be allowed only for meeting the requirements in paragraph (b). This paragraph shall not apply to employees covered by a collective bargaining agreement.

(d) The commissioner shall allow as compensation-related costs all costs for:

- (1) wages and salaries;
- (2) FICA taxes, Medicare taxes, state and federal unemployment taxes, and workers' compensation;
- (3) the employer's share of health and dental insurance, life insurance, disability insurance, long-term care insurance, uniform allowance, and pensions; and
- (4) other benefits provided, subject to the approval of the commissioner.

(e) The portion of the rate adjustments under paragraph (a) that is not subject to the requirements in paragraphs (b) and (c) shall be provided to facilities effective October 1 of each year.

(f) Facilities may apply for the portion of the rate adjustments under paragraph (a) that is subject to the requirements in paragraphs (b) and (c). The application must be submitted to the commissioner within six months of the effective date of the rate adjustments, and the facility must provide additional information required by the commissioner within nine months of the effective date of the rate adjustments. The commissioner must respond to all applications within three weeks of receipt. The commissioner may waive the deadlines in this paragraph under extraordinary circumstances, to be determined at the sole discretion of the commissioner. The application must contain:

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(1) an estimate of the amounts of money that must be used as specified in paragraphs (b) and (c);

(2) a detailed distribution plan specifying the allowable compensation-related and wage increases the facility will implement to use the funds available in clause (1);

(3) a description of how the facility will notify eligible employees of the contents of the approved application, which must provide for giving each eligible employee a copy of the approved application, excluding the information required in clause (1), or posting a copy of the approved application, excluding the information required in clause (1), for a period of at least six weeks in an area of the facility to which all eligible employees have access; and

(4) instructions for employees who believe they have not received the compensation-related or wage increases specified in clause (2), as approved by the commissioner, and which must include a mailing address, e-mail address, and the telephone number that may be used by the employee to contact the commissioner or the commissioner's representative.

(g) The commissioner shall ensure that cost increases in distribution plans under paragraph (f), clause (2), that may be included in approved applications, comply with requirements in clauses (1) to (4):

(1) costs to be incurred during the applicable rate year resulting from wage and salary increases effective after October 1, 2006, and prior to the first day of the facility's payroll period that includes October 1 of each year shall be allowed if they were not used in the prior year's application and they meet the requirements of paragraphs (b) and (c);

(2) a portion of the costs resulting from tenure-related wage or salary increases may be considered to be allowable wage increases, according to formulas that the commissioner shall provide, where employee retention is above the average statewide rate of retention of direct care employees;

(3) the annualized amount of increases in costs for the employer's share of health and dental insurance, life insurance, disability insurance, and workers' compensation shall be allowable compensation-related increases if they are effective on or after April 1 of the year in which the rate adjustments are effective and prior to April 1 of the following year; and

(4) for facilities in which employees are represented by an exclusive bargaining representative, the commissioner shall approve the application only upon receipt of a letter of acceptance of the distribution plan, as regards members of the bargaining unit, signed by the exclusive bargaining agent and dated after May 25, 2007. Upon receipt of the letter of acceptance, the commissioner shall deem all requirements of this section as having been met in regard to the members of the bargaining unit.

(h) The commissioner shall review applications received under paragraph (f) and shall provide the portion of the rate adjustments under paragraphs (b) and (c) if the requirements of this subdivision have been met. The rate adjustments shall be effective October 1 of each year. Notwithstanding paragraph (a), if the approved application distributes less money than is available, the amount of the rate adjustment shall be reduced so that the amount of money made available is equal to the amount to be distributed.

Subd. 8. **ICF/DD rate decreases effective July 1, 2009.** Effective July 1, 2009, the commissioner shall decrease each facility reimbursed under this section operating payment adjustments equal to 2.58 percent of the operating payment rates in effect on June 30, 2009. For each facility, the commissioner shall implement the rate reduction, based on occupied beds, using the percentage specified in this subdivision multiplied by the total payment rate, including the variable rate but excluding the property-related payment rate, in effect on the preceding date. The total rate reduction shall include the adjustment provided in subdivision 7.

Subd. 9. **ICF/DD rate increase effective July 1, 2011; Clearwater County.** Effective July 1, 2011, the commissioner shall increase the daily rate to \$138.23 at an intermediate care facility for the developmentally disabled located in Clearwater County and classified as a class A facility with 15 beds.

Subd. 10. **ICF/DD rate decrease effective July 1, 2011; exception for Clearwater County.** For each facility reimbursed under this section, except for a facility located in Clearwater County and classified as a class A facility with 15 beds, the commissioner shall decrease operating payment rates equal to 0.095 percent of the operating payment rates in effect on June 30, 2011. For each facility, the commissioner shall apply the rate reduction, based on occupied beds, using the percentage specified in this subdivision multiplied by the total payment rate, including the variable rate but excluding the property-related payment rate, in effect on the preceding date. The total rate reduction shall include the adjustment provided in section 256B.501, subdivision 12.

Subd. 11. **ICF/DD rate decrease effective July 1, 2011.** For each facility reimbursed under this section, the commissioner shall decrease operating payments equal to 1.5 percent of the operating payment rates in effect on June 30, 2011. For each facility, the commissioner shall apply

APPENDIX

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the rate reduction, based on occupied beds, using the percentage specified in this subdivision multiplied by the total payment rate, including the variable rate but excluding the property-related payment rate, in effect on the preceding date. The total rate reduction shall include the adjustment provided in section 256B.501, subdivision 12.

Subd. 14. **Rate increase effective June 1, 2013.** For rate periods beginning on or after June 1, 2013, the commissioner shall increase the total operating payment rate for each facility reimbursed under this section by \$7.81 per day. The increase shall not be subject to any annual percentage increase.