CHAPTER 40--S.F.No. 2876

An act relating to health and human services; granting the commissioner of human services temporary authority to reinstate waivers and modifications to certain human services programs; granting the commissioner of health temporary emergency authority to grant certain COVID waivers; exempting certain rate increases from a contingent appropriation requirement; establishing a temporary staffing pool; appropriating money; amending Laws 2021, First Special Session chapter 7, article 16, section 28.

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

Section 1. Laws 2021, First Special Session chapter 7, article 16, section 28, is amended to read:

Sec. 28. **CONTINGENT APPROPRIATIONS.**

Any appropriation in this act for a purpose included in Minnesota's initial state spending plan as described in guidance issued by the Centers for Medicare and Medicaid Services for implementation of section 9817 of the federal American Rescue Plan Act of 2021 is contingent upon approval of that purpose by the Centers for Medicare and Medicaid Services, except for the rate increases specified in article 11, sections 12 and 19. This section expires June 30, 2024.

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

Sec. 2. **COMMISSIONER OF HEALTH; TEMPORARY EMERGENCY AUTHORITY.**

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

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

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

(2) Minnesota Statutes, chapters 144 and 144A, for nursing homes relating to bed moratorium, permitting an increase of licensed bed capacity only and no expansion of medical assistance certification to new or existing layaway and nonlayaway beds, and the notice timeline requirements for residents who are transferred or discharged as a response to COVID-19; and

(3) Minnesota Statutes, chapters 144 and 144A, and Minnesota Rules, chapters 4640 and 4658, for hospitals and nursing homes relating to licensing fees. On the waiver application form, the hospital or nursing home seeking a waiver must attest that the fee waiver is needed due to hardship.

Subd. 3. **Notice.** (a) No later than 48 hours after an individual wavier or blanket waiver under this section goes into effect, the commissioner must provide written notice of the waiver to the appropriate

ombudsman, if any, and to the chairs and ranking minority members of the legislative committees with jurisdiction over the Department of Health.

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

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

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

Sec. 3. **REINSTATEMENT AND EXTENSION OF COVID-19 PROGRAM WAIVERS AND MODIFICATIONS.**

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

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

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

(3) CV11: allowing video conferencing in monthly foster care visits by a child's caseworker when:

(i) there is a declaration of a federal or state emergency that prohibits or strongly discourages person-to-person contact for public health reasons; and

(ii) there is a person in the foster care household with a confirmed or suspected case of COVID-19. For purposes of this clause, "suspected case of COVID-19" means a person who is exhibiting the signs and symptoms of COVID-19 and has either been tested for COVID-19 and is waiting for test results or has not been tested for COVID-19;

(4) CV23: waiving mandatory direct contact supervision requirements to allow case-by-case decisions to permit certain individuals to work without supervision while that individual's background studies are being processed, as permitted under federal law and regulation, and allowing the transition from name and date of birth studies of Minnesota records only, for both existing studies and studies that may be initiated during the transition period, to fingerprint-based background studies to resume on a schedule established by the commissioner and published on the department's website. Waiver provisions permitting the return to background studies of Minnesota records only for providers who are currently transitioned to fingerprint-based studies shall not be reinstated;

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

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

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

Sec. 4. **CHILD CARE ASSISTANCE PROGRAM PAYMENT DURING TEMPORARY CLOSURES FOR HEALTH CONCERNS RELATED TO COVID-19.**

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

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

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

(b) Child care assistance payments during temporary closures related to COVID-19 are limited to up to eight weeks total per child care provider through June 26, 2022. A child care provider must report any closure to the commissioner of human services prior to submitting a request for payment under this section.

(c) A child care provider that receives a child care assistance payment under this section and that charges or charged fees to families because of closed or absent days due to health concerns related to COVID-19, through June 26, 2022, shall not collect the amount charged from families receiving child care assistance for days that the provider receives a payment under this section.

(d) Child care assistance program payments made to a provider for absent or closed days are considered income for purposes of applying for a child care stabilization financial hardship grant established pursuant to Laws 2021, First Special Session chapter 7, article 14, section 21, subdivision 4, paragraph (c).

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

Sec. 5. **TEMPORARY MODIFICATIONS OF CHILD CARE CENTER STAFF; DISTRIBUTION REQUIREMENTS.**

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

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

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

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

Sec. 6. **COMMISSIONER OF HUMAN SERVICES; TEMPORARY STAFFING POOL; APPROPRIATION.**

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

(b) Temporary staff, at the request of the commissioner, may be deployed to long-term care facilities and other congregate care residential facilities and programs experiencing an emergency staffing crisis on or after the effective date of this section. Temporary staff must be provided at no cost to the facility or program receiving the temporary staff.

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

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

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

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

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

(1) nursing facilities;

(2) assisted living facilities;

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

(4) adult foster care or community residential settings;

(5) licensed substance use disorder treatment facilities;

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

(7) licensed facilities for adults with mental illness;

(8) licensed detoxification programs;

(9) licensed withdrawal management programs;

(10) licensed children's residential facilities;

(11) licensed child foster residence settings;

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

(13) boarding care homes;

(14) board and lodging establishments serving people with disabilities or disabling conditions;

(15) board and lodging establishments with special services;

(16) supervised living facilities;

(17) supportive housing;

(18) sober homes;

(19) community-based halfway houses for people exiting the correctional system;

(20) shelters serving people experiencing homelessness;

(21) drop-in centers for people experiencing homelessness;

(22) homeless outreach services for unsheltered individuals;

(23) shelters for people experiencing domestic violence; and

(24) temporary isolation spaces for people who test positive for COVID-19.

(h) Notwithstanding Minnesota Statutes, chapter 16C, the commissioner may maintain, extend, or renew contracts for temporary staffing entered into on or after September 1, 2020. The commissioner may also enter into new contracts with eligible entities for temporary staff deployed in the temporary staffing pool. The commissioner may use up to 6.5 percent of this funding for the commissioner's costs related to administration of this program.

(i) The commissioner shall seek all allowable FEMA reimbursement for the costs of this activity.

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

Sec. 7. **APPROPRIATION; TEMPORARY STAFFING POOL.**

$1,029,000 in fiscal year 2022 is appropriated from the general fund to the commissioner of human services for the temporary staffing pool described in this act. This is a onetime appropriation and is available until June 30, 2022.

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

Presented to the governor March 24, 2022