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State of Minnesota

HOUSE OF REPRESENTATIVES

NINETY-THIRD SESSION

H. F. No. **2750**

03/08/2023 Authored by Noor
The bill was read for the first time and referred to the Committee on Health Finance and Policy

1.1 A bill for an act
1.2 relating to human services; modifying enteral nutrition and supplies payment
1.3 methodology; amending Minnesota Statutes 2022, section 256B.766.

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

1.5 Section 1. Minnesota Statutes 2022, section 256B.766, is amended to read:

1.6 **256B.766 REIMBURSEMENT FOR BASIC CARE SERVICES.**

1.7 (a) Effective for services provided on or after July 1, 2009, total payments for basic care
1.8 services, shall be reduced by three percent, except that for the period July 1, 2009, through
1.9 June 30, 2011, total payments shall be reduced by 4.5 percent for the medical assistance
1.10 and general assistance medical care programs, prior to third-party liability and spenddown
1.11 calculation. Effective July 1, 2010, the commissioner shall classify physical therapy services,
1.12 occupational therapy services, and speech-language pathology and related services as basic
1.13 care services. The reduction in this paragraph shall apply to physical therapy services,
1.14 occupational therapy services, and speech-language pathology and related services provided
1.15 on or after July 1, 2010.

1.16 (b) Payments made to managed care plans and county-based purchasing plans shall be
1.17 reduced for services provided on or after October 1, 2009, to reflect the reduction effective
1.18 July 1, 2009, and payments made to the plans shall be reduced effective October 1, 2010,
1.19 to reflect the reduction effective July 1, 2010.

1.20 (c) Effective for services provided on or after September 1, 2011, through June 30, 2013,
1.21 total payments for outpatient hospital facility fees shall be reduced by five percent from the
1.22 rates in effect on August 31, 2011.

2.1 (d) Effective for services provided on or after September 1, 2011, through June 30, 2013,
2.2 total payments for ambulatory surgery centers facility fees, medical supplies and durable
2.3 medical equipment not subject to a volume purchase contract, prosthetics and orthotics,
2.4 renal dialysis services, laboratory services, public health nursing services, physical therapy
2.5 services, occupational therapy services, speech therapy services, eyeglasses not subject to
2.6 a volume purchase contract, hearing aids not subject to a volume purchase contract, and
2.7 anesthesia services shall be reduced by three percent from the rates in effect on August 31,
2.8 2011.

2.9 (e) Effective for services provided on or after September 1, 2014, payments for
2.10 ambulatory surgery centers facility fees, hospice services, renal dialysis services, laboratory
2.11 services, public health nursing services, eyeglasses not subject to a volume purchase contract,
2.12 and hearing aids not subject to a volume purchase contract shall be increased by three percent
2.13 and payments for outpatient hospital facility fees shall be increased by three percent.
2.14 Payments made to managed care plans and county-based purchasing plans shall not be
2.15 adjusted to reflect payments under this paragraph.

2.16 (f) Payments for medical supplies and durable medical equipment not subject to a volume
2.17 purchase contract, and prosthetics and orthotics, provided on or after July 1, 2014, through
2.18 June 30, 2015, shall be decreased by .33 percent. Payments for medical supplies and durable
2.19 medical equipment not subject to a volume purchase contract, and prosthetics and orthotics,
2.20 provided on or after July 1, 2015, shall be increased by three percent from the rates as
2.21 determined under paragraphs (i) and (j).

2.22 (g) Effective for services provided on or after July 1, 2015, payments for outpatient
2.23 hospital facility fees, medical supplies and durable medical equipment not subject to a
2.24 volume purchase contract, prosthetics, and orthotics to a hospital meeting the criteria specified
2.25 in section 62Q.19, subdivision 1, paragraph (a), clause (4), shall be increased by 90 percent
2.26 from the rates in effect on June 30, 2015. Payments made to managed care plans and
2.27 county-based purchasing plans shall not be adjusted to reflect payments under this paragraph.

2.28 (h) This section does not apply to physician and professional services, inpatient hospital
2.29 services, family planning services, mental health services, dental services, prescription
2.30 drugs, medical transportation, federally qualified health centers, rural health centers, Indian
2.31 health services, and Medicare cost-sharing.

2.32 (i) Effective for services provided on or after July 1, 2015, the following categories of
2.33 medical supplies and durable medical equipment shall be individually priced items: ~~enteral~~
2.34 ~~nutrition and supplies~~, customized and other specialized tracheostomy tubes and supplies,

3.1 electric patient lifts, and durable medical equipment repair and service. This paragraph does
3.2 not apply to medical supplies and durable medical equipment subject to a volume purchase
3.3 contract, products subject to the preferred diabetic testing supply program, and items provided
3.4 to dually eligible recipients when Medicare is the primary payer for the item. The
3.5 commissioner shall not apply any medical assistance rate reductions to durable medical
3.6 equipment as a result of Medicare competitive bidding.

3.7 (j) Effective for services provided on or after July 1, 2015, medical assistance payment
3.8 rates for durable medical equipment, prosthetics, orthotics, or supplies shall be increased
3.9 as follows:

3.10 (1) payment rates for durable medical equipment, prosthetics, orthotics, or supplies that
3.11 were subject to the Medicare competitive bid that took effect in January of 2009 shall be
3.12 increased by 9.5 percent; and

3.13 (2) payment rates for durable medical equipment, prosthetics, orthotics, or supplies on
3.14 the medical assistance fee schedule, whether or not subject to the Medicare competitive bid
3.15 that took effect in January of 2009, shall be increased by 2.94 percent, with this increase
3.16 being applied after calculation of any increased payment rate under clause (1).

3.17 This paragraph does not apply to medical supplies and durable medical equipment subject
3.18 to a volume purchase contract, products subject to the preferred diabetic testing supply
3.19 program, items provided to dually eligible recipients when Medicare is the primary payer
3.20 for the item, and individually priced items identified in paragraph (i). Payments made to
3.21 managed care plans and county-based purchasing plans shall not be adjusted to reflect the
3.22 rate increases in this paragraph.

3.23 (k) Effective for nonpressure support ventilators provided on or after January 1, 2016,
3.24 the rate shall be the lower of the submitted charge or the Medicare fee schedule rate. Effective
3.25 for pressure support ventilators provided on or after January 1, 2016, the rate shall be the
3.26 lower of the submitted charge or 47 percent above the Medicare fee schedule rate. For
3.27 payments made in accordance with this paragraph, if, and to the extent that, the commissioner
3.28 identifies that the state has received federal financial participation for ventilators in excess
3.29 of the amount allowed effective January 1, 2018, under United States Code, title 42, section
3.30 1396b(i)(27), the state shall repay the excess amount to the Centers for Medicare and
3.31 Medicaid Services with state funds and maintain the full payment rate under this paragraph.

3.32 (l) Payment rates for durable medical equipment, prosthetics, orthotics or supplies, that
3.33 are subject to the upper payment limit in accordance with section 1903(i)(27) of the Social

4.1 Security Act, shall be paid the Medicare rate. Rate increases provided in this chapter shall
4.2 not be applied to the items listed in this paragraph.

4.3 (m) Beginning July 1, 2023, enteral nutrition and supplies must be paid according to the
4.4 applicable method in clauses (1) to (3). For methods based upon the 50th percentile, the
4.5 commissioner must determine the 50th percentile based on data that exists for that product
4.6 or supply on the effective date of that rate. The commissioner must make the 50th percentile
4.7 determination based on at least 100 paid claim lines by at least ten different providers for
4.8 a given product or supply. If the commissioner does not have at least 100 paid claim lines
4.9 from ten different providers for a given product or supply, the commissioner must make
4.10 the 50th percentile determination based on at least 20 claim lines by at least five different
4.11 providers for a product or supply. If the commissioner does not have at least 20 claim lines
4.12 by five different providers for a product or supply, payment for enteral nutrition and supplies
4.13 must be made according to clause (3).

4.14 (1) For dates of service on or after July 1, 2023, through December 31, 2023, payment
4.15 must be based on the 50th percentile of the usual and customary charges per product code
4.16 submitted to the commissioner for the previous fiscal year, using only charges submitted
4.17 per unit. Rate increases must not exceed 50 percent of the previous rate per code and product
4.18 combination.

4.19 (2) For dates of service on or after January 1, 2024, payment must be based on the 50th
4.20 percentile of the usual and customary charges per product code submitted to the commissioner
4.21 for the previous calendar year, using only charges submitted per unit. The commissioner
4.22 must update the payment rates effective for each calendar year annually using the previous
4.23 calendar year's data, not to exceed an increase of 50 percent of the previous year's rate per
4.24 code and product combination.

4.25 (3) For dates of service on or after July 1, 2023, if data are not available to calculate the
4.26 50th percentile for enteral products or supplies under clause (1) or (2), the payment must
4.27 be based on the manufacturer's suggested retail price of that product or supply minus 20
4.28 percent. If the manufacturer's suggested retail price is not available, payment must be based
4.29 on the actual acquisition cost of that product or supply plus 20 percent.

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