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State of Minnesota

HOUSE OF REPRESENTATIVES

NINETY-SECOND SESSION

H. F. No. 3729

02/24/2022 Authored by Edelson, Klevorn, Poston, Ecklund, Morrison and others
The bill was read for the first time and referred to the Committee on Human Services Finance and Policy

1.1 A bill for an act
1.2 relating to human services; modifying nursing facility payment rates; modifying
1.3 elderly waiver rates; modifying payment rates for customized living services
1.4 provided under certain disability waivers; appropriating money; amending
1.5 Minnesota Statutes 2020, sections 256R.02, subdivisions 16, 24, 26, 29, 34, by
1.6 adding subdivisions; 256R.23, subdivisions 2, 3; 256R.24, subdivision 1; 256R.25;
1.7 256S.201, subdivision 3; 256S.211, by adding a subdivision; 256S.213, subdivision
1.8 1; Minnesota Statutes 2021 Supplement, section 256S.21; repealing Minnesota
1.9 Statutes 2021 Supplement, section 256S.2101.

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

1.11 Section 1. Minnesota Statutes 2020, section 256R.02, subdivision 16, is amended to read:

1.12 Subd. 16. Dietary costs. "Dietary costs" means the costs for the salaries and wages of
1.13 the dietary supervisor, dietitians, chefs, cooks, dishwashers, and other employees assigned
1.14 to the kitchen and dining room, and associated fringe benefits and payroll taxes. Dietary
1.15 costs also includes the salaries or fees of dietary consultants, dietary supplies, and food
1.16 preparation and serving.

1.17 EFFECTIVE DATE. This section is effective for the rate year beginning January 1,
1.18 2024, or upon federal approval, whichever occurs later. The commissioner of human services
1.19 shall inform the revisor of statutes when federal approval is obtained.

1.20 Sec. 2. Minnesota Statutes 2020, section 256R.02, is amended by adding a subdivision to
1.21 read:

1.22 Subd. 16a. Dietary labor costs. "Dietary labor costs" means the costs for the salaries
1.23 and wages of the dietary supervisor, dietitians, chefs, cooks, dishwashers, and other

2.1 employees assigned to the kitchen and dining room, and associated fringe benefits and  
2.2 payroll taxes.

2.3 **EFFECTIVE DATE.** This section is effective for the rate year beginning January 1,  
2.4 2024, or upon federal approval, whichever occurs later. The commissioner of human services  
2.5 shall inform the revisor of statutes when federal approval is obtained.

2.6 Sec. 3. Minnesota Statutes 2020, section 256R.02, subdivision 24, is amended to read:

2.7 Subd. 24. **Housekeeping costs.** "Housekeeping costs" means ~~the costs for the salaries~~  
2.8 ~~and wages of the housekeeping supervisor, housekeepers, and other cleaning employees~~  
2.9 ~~and associated fringe benefits and payroll taxes. It also includes~~ the cost of housekeeping  
2.10 supplies, including, but not limited to, cleaning and lavatory supplies and contract services.

2.11 **EFFECTIVE DATE.** This section is effective for the rate year beginning January 1,  
2.12 2024, or upon federal approval, whichever occurs later. The commissioner of human services  
2.13 shall inform the revisor of statutes when federal approval is obtained.

2.14 Sec. 4. Minnesota Statutes 2020, section 256R.02, is amended by adding a subdivision to  
2.15 read:

2.16 Subd. 24a. **Housekeeping labor costs.** "Housekeeping labor costs" means the costs for  
2.17 the salaries and wages of the housekeeping supervisor, housekeepers, and other cleaning  
2.18 employees, and associated fringe benefits and payroll taxes.

2.19 **EFFECTIVE DATE.** This section is effective for the rate year beginning January 1,  
2.20 2024, or upon federal approval, whichever occurs later. The commissioner of human services  
2.21 shall inform the revisor of statutes when federal approval is obtained.

2.22 Sec. 5. Minnesota Statutes 2020, section 256R.02, is amended by adding a subdivision to  
2.23 read:

2.24 Subd. 25b. **Known cost change factor.** "Known cost change factor" means 1.00 plus  
2.25 the forecasted percentage change in the CPI-U index from July 1 of the reporting period to  
2.26 July 1 of the rate year as determined by the national economic consultant used by the  
2.27 commissioner of management and budget.

2.28 **EFFECTIVE DATE.** This section is effective for the rate year beginning January 1,  
2.29 2024, or upon federal approval, whichever occurs later. The commissioner of human services  
2.30 shall inform the revisor of statutes when federal approval is obtained.

3.1 Sec. 6. Minnesota Statutes 2020, section 256R.02, subdivision 26, is amended to read:

3.2 Subd. 26. **Laundry costs.** "Laundry costs" means the costs ~~for the salaries and wages~~  
3.3 ~~of the laundry supervisor and other laundry employees, associated fringe benefits, and~~  
3.4 ~~payroll taxes. It also includes the costs~~ of linen and bedding, the laundering of resident  
3.5 clothing, laundry supplies, and contract services.

3.6 **EFFECTIVE DATE.** This section is effective for the rate year beginning January 1,  
3.7 2024, or upon federal approval, whichever occurs later. The commissioner of human services  
3.8 shall inform the revisor of statutes when federal approval is obtained.

3.9 Sec. 7. Minnesota Statutes 2020, section 256R.02, is amended by adding a subdivision to  
3.10 read:

3.11 Subd. 26a. **Laundry labor costs.** "Laundry labor costs" means the costs for the salaries  
3.12 and wages of the laundry supervisor and other laundry employees, and associated fringe  
3.13 benefits and payroll taxes.

3.14 **EFFECTIVE DATE.** This section is effective for the rate year beginning January 1,  
3.15 2024, or upon federal approval, whichever occurs later. The commissioner of human services  
3.16 shall inform the revisor of statutes when federal approval is obtained.

3.17 Sec. 8. Minnesota Statutes 2020, section 256R.02, subdivision 29, is amended to read:

3.18 Subd. 29. **Maintenance and plant operations costs.** "Maintenance and plant operations  
3.19 costs" means ~~the costs for the salaries and wages of the maintenance supervisor, engineers,~~  
3.20 ~~heating plant employees, and other maintenance employees and associated fringe benefits~~  
3.21 ~~and payroll taxes. It also includes~~ identifiable costs for maintenance and operation of the  
3.22 building and grounds, including, but not limited to, fuel, electricity, medical waste and  
3.23 garbage removal, water, sewer, supplies, tools, and repairs.

3.24 **EFFECTIVE DATE.** This section is effective for the rate year beginning January 1,  
3.25 2024, or upon federal approval, whichever occurs later. The commissioner of human services  
3.26 shall inform the revisor of statutes when federal approval is obtained.

3.27 Sec. 9. Minnesota Statutes 2020, section 256R.02, is amended by adding a subdivision to  
3.28 read:

3.29 Subd. 29a. **Maintenance and plant operations labor costs.** "Maintenance and plant  
3.30 operations labor costs" means the costs for the salaries and wages of the maintenance

4.1 supervisor, engineers, heating-plant employees, and other maintenance employees, and  
4.2 associated fringe benefits and payroll taxes.

4.3 **EFFECTIVE DATE.** This section is effective for the rate year beginning January 1,  
4.4 2024, or upon federal approval, whichever occurs later. The commissioner of human services  
4.5 shall inform the revisor of statutes when federal approval is obtained.

4.6 Sec. 10. Minnesota Statutes 2020, section 256R.02, subdivision 34, is amended to read:

4.7 Subd. 34. **Other care-related costs.** "Other care-related costs" means the sum of activities  
4.8 costs, other direct care costs, raw food costs, dietary labor costs, housekeeping labor costs,  
4.9 laundry labor costs, maintenance and plant operations labor costs, therapy costs, and social  
4.10 services costs.

4.11 **EFFECTIVE DATE.** This section is effective for the rate year beginning January 1,  
4.12 2024, or upon federal approval, whichever occurs later. The commissioner of human services  
4.13 shall inform the revisor of statutes when federal approval is obtained.

4.14 Sec. 11. Minnesota Statutes 2020, section 256R.23, subdivision 2, is amended to read:

4.15 Subd. 2. **Calculation of direct care cost per standardized day.** Each facility's direct  
4.16 care cost per standardized day is the product of the facility's direct care costs and the known  
4.17 cost change factor, divided by the sum of the facility's standardized days. A facility's direct  
4.18 care cost per standardized day is the facility's cost per day for direct care services associated  
4.19 with a case mix index of 1.00.

4.20 **EFFECTIVE DATE.** This section is effective for the rate year beginning January 1,  
4.21 2024, or upon federal approval, whichever occurs later. The commissioner of human services  
4.22 shall inform the revisor of statutes when federal approval is obtained.

4.23 Sec. 12. Minnesota Statutes 2020, section 256R.23, subdivision 3, is amended to read:

4.24 Subd. 3. **Calculation of other care-related cost per resident day.** Each facility's other  
4.25 care-related cost per resident day is the product of its other care-related costs and the known  
4.26 cost change factor, divided by the sum of the facility's resident days.

4.27 **EFFECTIVE DATE.** This section is effective for the rate year beginning January 1,  
4.28 2024, or upon federal approval, whichever occurs later. The commissioner of human services  
4.29 shall inform the revisor of statutes when federal approval is obtained.

5.1 Sec. 13. Minnesota Statutes 2020, section 256R.24, subdivision 1, is amended to read:

5.2 Subdivision 1. **Determination of other operating cost per day.** Each facility's other  
5.3 operating cost per day is the product of its other operating costs and the known cost change  
5.4 factor, divided by the sum of the facility's resident days.

5.5 **EFFECTIVE DATE.** This section is effective for the rate year beginning January 1,  
5.6 2024, or upon federal approval, whichever occurs later. The commissioner of human services  
5.7 shall inform the revisor of statutes when federal approval is obtained.

5.8 Sec. 14. Minnesota Statutes 2020, section 256R.25, is amended to read:

5.9 **256R.25 EXTERNAL FIXED COSTS PAYMENT RATE.**

5.10 (a) The payment rate for external fixed costs is the sum of the amounts in paragraphs  
5.11 (b) to (o).

5.12 (b) For a facility licensed as a nursing home, the portion related to the provider surcharge  
5.13 under section 256.9657 is equal to \$8.86 per resident day. For a facility licensed as both a  
5.14 nursing home and a boarding care home, the portion related to the provider surcharge under  
5.15 section 256.9657 is equal to \$8.86 per resident day multiplied by the result of its number  
5.16 of nursing home beds divided by its total number of licensed beds.

5.17 (c) The portion related to the licensure fee under section 144.122, paragraph (d), is the  
5.18 amount of the fee divided by the sum of the facility's resident days.

5.19 (d) The portion related to development and education of resident and family advisory  
5.20 councils under section 144A.33 is \$5 per resident day divided by 365.

5.21 (e) The portion related to scholarships is determined under section 256R.37.

5.22 (f) The portion related to planned closure rate adjustments is as determined under section  
5.23 256R.40, subdivision 5, and Minnesota Statutes 2010, section 256B.436.

5.24 (g) The portion related to consolidation rate adjustments shall be as determined under  
5.25 section 144A.071, subdivisions 4c, paragraph (a), clauses (5) and (6), and 4d.

5.26 (h) The portion related to single-bed room incentives is as determined under section  
5.27 256R.41.

5.28 (i) The portions related to real estate taxes, special assessments, and payments made in  
5.29 lieu of real estate taxes directly identified or allocated to the nursing facility are the allowable  
5.30 amounts divided by the sum of the facility's resident days. Allowable costs under this  
5.31 paragraph for payments made by a nonprofit nursing facility that are in lieu of real estate

6.1 taxes shall not exceed the amount which the nursing facility would have paid to a city or  
 6.2 township and county for fire, police, sanitation services, and road maintenance costs had  
 6.3 real estate taxes been levied on that property for those purposes.

6.4 (j) The portion related to employer health insurance costs is the product of the allowable  
 6.5 costs and the known cost change factor, divided by the sum of the facility's resident days.

6.6 (k) The portion related to the Public Employees Retirement Association is the allowable  
 6.7 costs divided by the sum of the facility's resident days.

6.8 (l) The portion related to quality improvement incentive payment rate adjustments is  
 6.9 the amount determined under section 256R.39.

6.10 (m) The portion related to performance-based incentive payments is the amount  
 6.11 determined under section 256R.38.

6.12 (n) The portion related to special dietary needs is the amount determined under section  
 6.13 256R.51.

6.14 (o) The portion related to the rate adjustments for border city facilities is the amount  
 6.15 determined under section 256R.481.

6.16 **EFFECTIVE DATE.** This section is effective for the rate year beginning January 1,  
 6.17 2024, or upon federal approval, whichever occurs later. The commissioner of human services  
 6.18 shall inform the revisor of statutes when federal approval is obtained.

6.19 Sec. 15. Minnesota Statutes 2020, section 256S.201, subdivision 3, is amended to read:

6.20 Subd. 3. **Customized living service rates.** The authorized rates for customized living  
 6.21 services and 24-hour customized living services must be based on the amount of component  
 6.22 services to be provided utilizing component rates established ~~by the commissioner~~ in section  
 6.23 256S.215. Counties and tribes shall use tools issued by the commissioner to develop and  
 6.24 document customized living service plans and rates.

6.25 **EFFECTIVE DATE.** This section is effective January 1, 2023, or upon federal approval,  
 6.26 whichever occurs later. The commissioner of human services shall inform the revisor of  
 6.27 statutes when federal approval is obtained.

6.28 Sec. 16. Minnesota Statutes 2021 Supplement, section 256S.21, is amended to read:

6.29 **256S.21 RATE SETTING; APPLICATION.**

6.30 The payment methodologies in sections ~~256S.2101~~ 256S.211 to 256S.215 apply to  
 6.31 elderly waiver, elderly waiver customized living, and elderly waiver foster care under this

7.1 chapter; alternative care under section 256B.0913; essential community supports under  
7.2 section 256B.0922; and community access for disability inclusion customized living and  
7.3 brain injury customized living under section 256B.49.

7.4 **EFFECTIVE DATE.** This section is effective January 1, 2023, or upon federal approval,  
7.5 whichever occurs later. The commissioner of human services shall inform the revisor of  
7.6 statutes when federal approval is obtained.

7.7 Sec. 17. Minnesota Statutes 2020, section 256S.211, is amended by adding a subdivision  
7.8 to read:

7.9 Subd. 1a. **Updating base wages.** Each January 1, the commissioner must update the  
7.10 base wages under section 256S.212 based on the most recently available Minneapolis-St.  
7.11 Paul-Bloomington, MN-WI MetroSA average wage data from the Bureau of Labor Statistics.

7.12 **EFFECTIVE DATE.** This section is effective January 1, 2023, or upon federal approval,  
7.13 whichever occurs later. The commissioner of human services shall inform the revisor of  
7.14 statutes when federal approval is obtained.

7.15 Sec. 18. Minnesota Statutes 2020, section 256S.213, subdivision 1, is amended to read:

7.16 Subdivision 1. **Payroll taxes and benefits factor.** The payroll taxes and benefits factor  
7.17 is the sum of net payroll taxes and benefits, divided by the sum of all salaries for all nursing  
7.18 facilities on the most recent and available cost report. The commissioner must update the  
7.19 payroll tax and benefit factor each January 1.

7.20 **EFFECTIVE DATE.** This section is effective January 1, 2023, or upon federal approval,  
7.21 whichever occurs later. The commissioner of human services shall inform the revisor of  
7.22 statutes when federal approval is obtained.

7.23 Sec. 19. **DIRECTION TO THE COMMISSIONER OF HUMAN SERVICES;**  
7.24 **PARTIAL YEAR RATE ADJUSTMENTS.**

7.25 (a) On July 1, 2022, the commissioner shall update the base wage indices in Minnesota  
7.26 Statutes, section 256S.212, based on the most recently available Minneapolis-St.  
7.27 Paul-Bloomington, MN-WI MetroSA average wage data from the Bureau of Labor Statistics.

7.28 (b) On July 1, 2022, the commissioner shall update the payroll tax and benefit factor in  
7.29 Minnesota Statutes, section 256S.213, subdivision 1, based on the most recently available  
7.30 nursing facility cost report data.

8.1 **EFFECTIVE DATE.** This section is effective July 1, 2022, or upon federal approval,  
 8.2 whichever occurs later. The commissioner of human services shall inform the revisor of  
 8.3 statutes when federal approval is obtained.

8.4 Sec. 20. **APPROPRIATION; NURSING FACILITY FUNDING.**

8.5 (a) \$..... in fiscal year 2022 and \$..... in fiscal year 2023 are appropriated from the  
 8.6 general fund to the commissioner of human services for payments to nursing facilities in  
 8.7 the amount of \$..... per bed per quarter. The commissioner shall make payments for each  
 8.8 quarter of calendar years 2022 and 2023. The general fund base for this appropriation is  
 8.9 \$..... in fiscal year 2024 and \$0 in fiscal year 2025.

8.10 (b) To be eligible to receive a payment under this section, a nursing facility must attest  
 8.11 to the commissioner of human services that the additional revenue will be used exclusively  
 8.12 to increase compensation-related costs for employees directly employed by the facility on  
 8.13 or after January 1, 2022. For the purposes of this paragraph, compensation-related costs  
 8.14 include:

8.15 (1) wages and salaries;

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

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

8.21 (4) benefits that address direct support professional workforce needs above and beyond  
 8.22 what employees were offered prior to January 1, 2022, including retention and recruitment  
 8.23 bonuses and tuition reimbursement.

8.24 (c) A facility that receives a payment under this section must prepare, and submit to the  
 8.25 commissioner upon request, a distribution plan that specifies the total amount of money the  
 8.26 facility expects to receive and how that money will be distributed to increase  
 8.27 compensation-related costs for employees. Within 60 days after receiving the first payment  
 8.28 under this section, a facility must post the distribution plan and leave it posted for a period  
 8.29 of at least six months in an area of the facility to which all employees have access.

8.30 (d) The commissioner shall not treat payments received under this section as an applicable  
 8.31 credit for the purposes of setting total payment rates under Minnesota Statutes, chapter  
 8.32 256R.

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

9.2 Sec. 21. **REPEALER.**

9.3 Minnesota Statutes 2021 Supplement, section 256S.2101, is repealed.

9.4 **EFFECTIVE DATE.** This section is effective July 1, 2022, or upon federal approval,  
9.5 whichever occurs later. The commissioner of human services shall inform the revisor of  
9.6 statutes when federal approval is obtained.

**256S.2101 RATE SETTING; PHASE-IN.**

Subdivision 1. **Phase-in for disability waiver customized living rates.** All rates and rate components for community access for disability inclusion customized living and brain injury customized living under section 256B.4914 shall be the sum of ten percent of the rates calculated under sections 256S.211 to 256S.215 and 90 percent of the rates calculated using the rate methodology in effect as of June 30, 2017.

Subd. 2. **Phase-in for elderly waiver rates.** Except for home-delivered meals as described in section 256S.215, subdivision 15, all rates and rate components for elderly waiver, elderly waiver customized living, and elderly waiver foster care under this chapter; alternative care under section 256B.0913; and essential community supports under section 256B.0922 shall be the sum of 18.8 percent of the rates calculated under sections 256S.211 to 256S.215, and 81.2 percent of the rates calculated using the rate methodology in effect as of June 30, 2017. The rate for home-delivered meals shall be the sum of the service rate in effect as of January 1, 2019, and the increases described in section 256S.215, subdivision 15.