

SENATE
STATE OF MINNESOTA
NINETY-FIRST SESSION

S.F. No. 4388

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DATE	D-PG	OFFICIAL STATUS
03/16/2020	5515	Introduction and first reading Referred to Health and Human Services Finance and Policy

1.1 A bill for an act

1.2 relating to human services; requiring the commissioner of human services to

1.3 redesign and reform the procurement process for Minnesota health care programs;

1.4 amending Minnesota Statutes 2018, section 256B.69, subdivision 3a; proposing

1.5 coding for new law in Minnesota Statutes, chapter 256B; repealing Minnesota

1.6 Statutes 2018, section 256B.692, subdivision 7.

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

1.8 Section 1. Minnesota Statutes 2018, section 256B.69, subdivision 3a, is amended to read:

1.9 Subd. 3a. **County authority.** (a) The commissioner, when implementing the medical

1.10 assistance prepayment program within a county, must include the county board in the process

1.11 of development, approval, and issuance of the request for proposals to provide services to

1.12 eligible individuals within the proposed county. County boards must be given reasonable

1.13 opportunity to make recommendations regarding the development, issuance, review of

1.14 responses, and changes needed in the request for proposals. The commissioner must provide

1.15 county boards the opportunity to review each proposal based on the identification of

1.16 community needs under chapters 145A and 256E and county advocacy activities. If a county

1.17 board finds that a proposal does not address certain community needs, the county board and

1.18 commissioner shall continue efforts for improving the proposal and network prior to the

1.19 approval of the contract. The county board shall make recommendations regarding the

1.20 approval of local networks and their operations to ensure adequate availability and access

1.21 to covered services. The provider or health plan must respond directly to county advocates

1.22 and the state prepaid medical assistance ombudsperson regarding service delivery and must

1.23 be accountable to the state regarding contracts with medical assistance funds. The county

1.24 board may recommend a maximum number of participating health plans after considering

2.1 the size of the enrolling population; ensuring adequate access and capacity; considering the
2.2 client and county administrative complexity; and considering the need to promote the
2.3 viability of locally developed health plans. The county board or a single entity representing
2.4 a group of county boards and the commissioner shall mutually select health plans for
2.5 participation at the time of initial implementation of the prepaid medical assistance program
2.6 in that county or group of counties and at the time of contract renewal. The commissioner
2.7 shall also seek input for contract requirements from the county or single entity representing
2.8 a group of county boards at each contract renewal and incorporate those recommendations
2.9 into the contract negotiation process.

2.10 (b) At the option of the county board, the board may develop contract requirements
2.11 related to the achievement of local public health goals to meet the health needs of medical
2.12 assistance enrollees. These requirements must be reasonably related to the performance of
2.13 health plan functions and within the scope of the medical assistance benefit set. If the county
2.14 board and the commissioner mutually agree to such requirements, the department shall
2.15 include such requirements in all health plan contracts governing the prepaid medical
2.16 assistance program in that county at initial implementation of the program in that county
2.17 and at the time of contract renewal. The county board may participate in the enforcement
2.18 of the contract provisions related to local public health goals.

2.19 (c) For counties in which a prepaid medical assistance program has not been established,
2.20 the commissioner shall not implement that program if a county board submits an acceptable
2.21 and timely preliminary and final proposal under section 256B.692, until county-based
2.22 purchasing is no longer operational in that county. For counties in which a prepaid medical
2.23 assistance program is in existence on or after September 1, 1997, the commissioner must
2.24 terminate contracts with health plans according to section 256B.692, subdivision 5, if the
2.25 county board submits and the commissioner accepts a preliminary and final proposal
2.26 according to that subdivision. The commissioner is not required to terminate contracts that
2.27 begin on or after September 1, 1997, according to section 256B.692 until two years have
2.28 elapsed from the date of initial enrollment.

2.29 ~~(d) In the event that a county board or a single entity representing a group of county~~
2.30 ~~boards and the commissioner cannot reach agreement regarding: (i) the selection of~~
2.31 ~~participating health plans in that county; (ii) contract requirements; or (iii) implementation~~
2.32 ~~and enforcement of county requirements including provisions regarding local public health~~
2.33 ~~goals, the commissioner shall resolve all disputes after taking into account the~~
2.34 ~~recommendations of a three-person mediation panel. The panel shall be composed of one~~
2.35 ~~designee of the president of the association of Minnesota counties, one designee of the~~

3.1 ~~commissioner of human services, and one person selected jointly by the designee of the~~
 3.2 ~~commissioner of human services and the designee of the Association of Minnesota Counties.~~
 3.3 ~~Within a reasonable period of time before the hearing, the panelists must be provided all~~
 3.4 ~~documents and information relevant to the mediation. The parties to the mediation must be~~
 3.5 ~~given 30 days' notice of a hearing before the mediation panel.~~

3.6 ~~(e)~~ (d) If a county which elects to implement county-based purchasing ceases to
 3.7 implement county-based purchasing, it is prohibited from assuming the responsibility of
 3.8 county-based purchasing for a period of five years from the date it discontinues purchasing.

3.9 ~~(f)~~ (e) The commissioner shall not require that contractual disputes between county-based
 3.10 purchasing entities and the commissioner be mediated by a panel that includes a
 3.11 representative of the Minnesota Council of Health Plans.

3.12 ~~(g)~~ (f) At the request of a county-purchasing entity, the commissioner shall adopt a
 3.13 contract reprocurement or renewal schedule under which all counties included in the entity's
 3.14 service area are reprocured or renewed at the same time.

3.15 ~~(h)~~ (g) The commissioner shall provide a written report under section 3.195 to the chairs
 3.16 of the legislative committees having jurisdiction over human services in the senate and the
 3.17 house of representatives describing in detail the activities undertaken by the commissioner
 3.18 to ensure full compliance with this section. The report must also provide an explanation for
 3.19 any decisions of the commissioner not to accept the recommendations of a county or group
 3.20 of counties required to be consulted under this section. The report must be provided at least
 3.21 30 days prior to the effective date of a new or renewed prepaid or managed care contract
 3.22 in a county.

3.23 **Sec. 2. [256B.695] PROCUREMENT DESIGN AND REFORM.**

3.24 Subdivision 1. Definitions. (a) For purposes of this section, the following terms have
 3.25 the meanings given.

3.26 (b) "Managed care organization" means a demonstration provider as defined under
 3.27 section 256B.69, subdivision 2.

3.28 (c) "Minnesota health care program" means a public health care program administered
 3.29 by the commissioner of human services under this chapter and chapter 256L.

3.30 (d) "Responder" means a managed care organization that responds to the request for
 3.31 proposals issued by the commissioner of human services as part of the procurement process
 3.32 for Minnesota health care programs.

4.1 Subd. 2. **Procurement process; determine best practices.** (a) In compliance with state
4.2 and federal law, the commissioner of human services, in consultation with the commissioner
4.3 of administration, shall redesign and reform the procurement process for participation in
4.4 Minnesota health care programs. The purpose of the redesign and reform is to make the
4.5 procurement process more transparent for all responders.

4.6 (b) The commissioner, in consultation with the commissioner of administration, shall
4.7 review best practices from the Department of Administration's procurement process and
4.8 determine how the experience and expertise of the Department of Administration may
4.9 enhance the procurement process used by the commissioner of human services for Minnesota
4.10 health care programs.

4.11 Subd. 3. **Communication objectives.** (a) In redesigning the procurement process, the
4.12 commissioner shall improve communication with potential responders by:

4.13 (1) outlining the goals and objectives of the specific procurement and clarifying specific
4.14 procurement processes for potential responders prior to the start of the procurement process;

4.15 (2) publishing the goals, objectives, and a clear and consistent scoring methodology for
4.16 all components of the request for proposal at least 30 days prior to the start of the procurement
4.17 process; and

4.18 (3) applying the scoring methodology consistently.

4.19 (b) For purposes of this subdivision, the start of the procurement process refers to the
4.20 date the procurement process is published in the State Register.

4.21 Subd. 4. **Process improvement.** (a) In redesigning the procurement process, the
4.22 commissioner shall improve the integrity and efficiency of the process by:

4.23 (1) requesting feedback from potential responders and stakeholders and working closely
4.24 to implement responders' and stakeholders' recommendations into the procurement process;

4.25 (2) building adequate time into the procurement process so that potential problems that
4.26 are not appeal-related can be addressed without disrupting the procurement process;

4.27 (3) notwithstanding section 13.591, subdivision 3, providing each responder with the
4.28 responder's detailed quantitative and qualitative scoring data and evaluative comments when
4.29 notified by the commissioner of the commissioner's intent to contract or not contract with
4.30 the responder;

4.31 (4) allowing responders to make an actuarially sound best and final offer related to a
4.32 cost bid if the bid is included in the procurement;

5.1 (5) making all scores and evaluation materials, including detailed quantitative and
5.2 qualitative scoring data and evaluative comments, publicly available at the time the contracts
5.3 are signed, and keep all procurement materials nonpublic if the request for proposals is
5.4 canceled, consistent with section 13.591, subdivision 3, paragraph (b), with the exception
5.5 that responders will be able to receive their own scoring and evaluative comments;

5.6 (6) notifying all responders when a lawsuit or administrative appeal related to the
5.7 procurement is filed; and

5.8 (7) authorizing the Office of Administrative Hearings to hear appeals.

5.9 (b) The commissioner shall:

5.10 (1) require future schedules for the procurement process to occur on a rolling basis, with
5.11 each procurement cycle lasting at least five years;

5.12 (2) require contracts resulting from the procurement process to be at least two years in
5.13 length; and

5.14 (3) allow parties to the contract to enter into contract amendments for items to account
5.15 for rate changes to maintain actuarial soundness, statutorily required changes, and material
5.16 contract changes.

5.17 Subd. 5. **Fairness in procurement process.** In redesigning the procurement process,
5.18 the commissioner shall ensure equal opportunity for all responders by:

5.19 (1) requiring that all responders have an equal opportunity to administratively appeal
5.20 procurement results or any other issue through the Office of Administrative Hearings; and

5.21 (2) requiring adequate time in the procurement process to accommodate administrative
5.22 appeals without interrupting the procurement process.

5.23 Sec. 3. **REPEALER.**

5.24 Minnesota Statutes 2018, section 256B.692, subdivision 7, is repealed.

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

256B.692 COUNTY-BASED PURCHASING.

Subd. 7. **Dispute resolution.** In the event the commissioner rejects a proposal under subdivision 6, the county board may request the recommendation of a three-person mediation panel. The commissioner shall resolve all disputes after taking into account the recommendations of the mediation panel. The panel shall be composed of one designee of the president of the Association of Minnesota Counties, one designee of the commissioner of human services, and one person selected jointly by the designee of the commissioner of human services and the designee of the Association of Minnesota Counties. Within a reasonable period of time before the hearing, the panelists must be provided all documents and information relevant to the mediation. The parties to the mediation must be given 30 days' notice of a hearing before the mediation panel.