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Continuing Care for Older Adults Finance

ARTICLE 2

CONTINUING CARE FOR OLDER ADULTS

Section 1. Minnesota Statutes 2020, section 177.27, subdivision 4, is amended to read:

Subd. 4. Compliance orders. The commissioner may issue an order requiring an employer to comply with sections 177.21 to 177.435, 181.02, 181.03, 181.031, 181.032, 181.101, 181.11, 181.13, 181.14, 181.145, 181.15, 181.172, paragraphs (a) or (d), or with any rule promulgated under section 177.28 or 181.213. The commissioner shall issue an order requiring an employer to comply with sections 177.41 to 177.435 if the violation is repeated.

For purposes of this subdivision only, a violation is repeated if at any time during the two years that preceded the date of violation, the commissioner issued an order to the employer for violation of sections 177.41 to 177.435 and the order is final or the commissioner and the employer have entered into a settlement agreement that required the employer to pay back wages that were required by sections 177.41 to 177.435. The department shall serve the order upon the employer or the employer's authorized representative in person or by certified mail at the employer's place of business. An employer who wishes to contest the order must file written notice of objection to the order with the commissioner within 15 calendar days after being served with the order. A contested case proceeding must then be held in accordance with sections 14.57 to 14.69. If, within 15 calendar days after being served with the order, the employer fails to file a written notice of objection with the commissioner, the order becomes a final order of the commissioner.

Sec. 2. Minnesota Statutes 2020, section 177.27, subdivision 7, is amended to read:

Subd. 7. Employer liability. If an employer is found by the commissioner to have violated a section identified in subdivision 4, or any rule adopted under section 177.28 or 181.213, and the commissioner issues an order to comply, the commissioner shall order the employer to cease and desist from engaging in the violative practice and to take such affirmative steps that in the judgment of the commissioner will effectuate the purposes of the section or rule violated. The commissioner shall order the employer to pay to the aggrieved parties back pay, gratuities, and compensatory damages, less any amount actually paid to the employee by the employer, and for an additional equal amount as liquidated damages. Any employer who is found by the commissioner to have repeatedly or willfully violated a section or sections identified in subdivision 4 shall be subject to a civil penalty of up to $1,000 for each violation for each employee. In determining the amount of a civil penalty under this subdivision, the appropriateness of such penalty to the size of the employer's business and the gravity of the violation shall be considered. In addition, the commissioner may order the employer to reimburse the department and the attorney general for all appropriate litigation and hearing costs expended in preparation for and in conducting the contested case proceeding, unless payment of costs would impose extreme financial hardship on the employer. If the employer is able to establish extreme financial hardship, then the commissioner may order the employer to pay a percentage of the total costs that
will not cause extreme financial hardship. Costs include but are not limited to the costs of services rendered by the attorney general, private attorneys if engaged by the department, administrative law judges, court reporters, and expert witnesses as well as the cost of transcripts. Interest shall accrue on, and be added to, the unpaid balance of a commissioner’s order from the date the order is signed by the commissioner until it is paid, at an annual rate provided in section 549.09, subdivision 1, paragraph (c). The commissioner may establish escrow accounts for purposes of distributing damages.

Sec. 3. [181.211] DEFINITIONS.

Subd. 1. Application. The terms defined in this section apply to sections 181.211 to 181.217.

Subd. 2. Board. “Board” means the Minnesota Nursing Home Workforce Standards Board established under section 181.212.

Subd. 3. Certified worker organization. “Certified worker organization” means a worker organization that is certified by the board to conduct nursing home worker trainings under section 181.214.

Subd. 4. Commissioner. “Commissioner” means the commissioner of labor and industry.

Subd. 5. Employer organization. “Employer organization” means:

(1) an organization that is exempt from federal income taxation under section 501(c)(6) of the Internal Revenue Code and that represents nursing home employers; or

(2) an entity that employers, who together employ a majority of nursing home workers in Minnesota, have selected as a representative.

Subd. 6. Nursing home. “Nursing home” means a nursing home licensed under chapter 144A, or a boarding care home licensed under sections 144.50 to 144.56.

Subd. 7. Nursing home employer. “Nursing home employer” means an employer of nursing home workers.

Subd. 8. Nursing home worker. “Nursing home worker” means any worker who provides services in a nursing home in Minnesota, including direct care staff, administrative staff, and contractors.

Subd. 9. Retaliatory personnel action. “Retaliatory personnel action” means any form of intimidation, threat, reprisal, harassment, discrimination, or adverse employment action, including discipline, discharge, suspension, transfer, or reassignment to a lesser position in terms of job classification, job security, or other condition of employment; reduction in pay or hours or denial of additional hours; informing another employer that a nursing home worker has engaged in activities protected under sections 181.211 to 181.217; or reporting or threatening to report the actual or suspected citizenship or immigration status of a nursing home worker.
Subd. 10. Worker organization. "Worker organization" means an organization that is exempt from federal income taxation under section 501(c)(3), 501(c)(4), or 501(c)(5) of the Internal Revenue Code, that is not dominated or controlled by any nursing home employer within the meaning of United States Code, title 29, section 158a(2), and that has at least five years of demonstrated experience engaging with and advocating for nursing home workers.

Sec. 4. MINNESOTA NURSING HOME WORKFORCE STANDARDS BOARD; ESTABLISHMENT.

Subdivision 1. Board established; membership. The Minnesota Nursing Home Workforce Standards Board is created with the powers and duties established by law. The board is composed of the following members:

(1) the commissioner of human services or a designee;
(2) the commissioner of health or a designee;
(3) the commissioner of labor and industry or a designee;
(4) three members who represent nursing home employers or employer organizations, appointed by the governor; and
(5) three members who represent nursing home workers or worker organizations, appointed by the governor.

Subd. 2. Terms; vacancies. (a) Board members appointed under subdivision 1, clause (4) or (5), shall serve four-year terms following the initial staggered-lot determination. The initial terms of members appointed under subdivision 1, clauses (4) and (5), shall be determined by lot by the secretary of state and shall be as follows:

(1) one member appointed under each of subdivision 1, clauses (4) and (5), shall serve a two-year term;
(2) one member appointed under each of subdivision 1, clauses (4) and (5), shall serve a three-year term; and
(3) one member appointed under each of subdivision 1, clauses (4) and (5), shall serve a four-year term.

(b) For members appointed under subdivision 1, clause (4) or (5), the governor shall fill vacancies occurring prior to the expiration of a member's term by appointment for the unexpired term. A member appointed under subdivision 1, clause (4) or (5), must not be appointed to more than two consecutive four-year terms.
578.5 Subd. 3. Chairperson. The board shall elect a member by majority vote to serve as its chairperson and shall determine the term to be served by the chairperson.

578.7 Subd. 4. Staffing. The board may employ an executive director and other personnel to carry out duties of the board under sections 181.211 to 181.217.

578.9 Subd. 5. Compensation. Compensation of board members is governed by section 15.0575.

578.11 Subd. 6. Application of other laws. Meetings of the board are subject to chapter 13D.

578.13 Subd. 7. Voting. The affirmative vote of five board members is required for the board to take any action, including action to establish minimum nursing home employment standards under section 181.213.

578.15 Subd. 8. Hearings and investigations. To carry out its duties, the board shall hold public hearings on, and conduct investigations into, working conditions in the nursing home industry.

579.1 Subdivision 1. Authority to establish minimum nursing home employment standards. (a) The board must adopt rules establishing minimum nursing home employment standards that are reasonably necessary and appropriate to protect the health and welfare of nursing home workers, to ensure that nursing home workers are properly trained and fully informed of their rights under sections 181.211 to 181.217, and to otherwise satisfy the purposes of sections 181.211 to 181.217. Standards established by the board must include, as appropriate, standards on compensation, working hours, and other working conditions for nursing home workers. Any standards established by the board under this section must be at least as protective of or beneficial to nursing home workers as any other applicable statute or rule or any standard previously established by the board. In establishing standards under this section, the board may establish statewide standards, standards that apply to specific nursing home occupations, standards that apply to specific geographic areas within the state, or any combination thereof.

579.2 (b) The board must adopt rules establishing initial standards for wages and working hours for nursing home workers no later than August 1, 2023. The board may use the authority in section 14.389 to adopt rules under this paragraph.

579.3 (c) To the extent that any minimum standards that the board finds are reasonably necessary and appropriate to protect the health and welfare of nursing home workers fall within the jurisdiction of chapter 182, the board shall not adopt rules establishing the standards but shall instead recommend the standards to the commissioner of labor and industry. The commissioner of labor and industry shall adopt nursing home health and safety standards under section 182.655 as recommended by the board, unless the commissioner
determines that the recommended standard is outside the statutory authority of the
commissioner or is otherwise unlawful and issues a written explanation of this determination.

Subd. 2. Investigation of market conditions. The board must investigate market
conditions and the existing wages, benefits, and working conditions of nursing home workers
for specific geographic areas of the state and specific nursing home occupations. Based on
this information, the board must seek to adopt minimum nursing home employment standards
that meet or exceed existing industry conditions for a majority of nursing home workers in
the relevant geographic area and nursing home occupation. The board must consider the
following types of information in making wage rate determinations that are reasonably
necessary to protect the health and welfare of nursing home workers:

1. wage rate and benefit data collected by or submitted to the board for nursing home
   workers in the relevant geographic area and nursing home occupations;
2. statements showing wage rates and benefits paid to nursing home workers in the
   relevant geographic area and nursing home occupations;
3. signed collective bargaining agreements applicable to nursing home workers in the
   relevant geographic area and nursing home occupations;
4. testimony and information from current and former nursing home workers, worker
   organizations, nursing home employers, and employer organizations;
5. local minimum nursing home employment standards;
6. information submitted by or obtained from state and local government entities; and
7. any other information pertinent to establishing minimum nursing home employment
   standards.

Subd. 3. Review of standards. At least once every two years, the board shall:
1. conduct a full review of the adequacy of the minimum nursing home employment
   standards previously established by the board; and
2. following that review, adopt new rules, amend or repeal existing rules, or make
   recommendations to adopt new rules or amend or repeal existing rules, as appropriate to
   meet the purposes of sections 181.211 to 181.217.

Subd. 4. Conflict. In the event of a conflict between a standard established by the board
in rule and a rule adopted by another state agency, the rule adopted by the board shall apply
to nursing home workers and nursing home employers, except where the conflicting rule
is issued after the board's standard, and the rule issued by the other state agency is more
protective or more beneficial, then the subsequent more protective or more beneficial rule
must apply to nursing home workers and nursing home employers.
Subd. 5. **Effect on other agreements.** Nothing in sections 181.211 to 181.217 shall be construed to:

1. limit the rights of parties to a collective bargaining agreement to bargain and agree with respect to nursing home employment standards; or
2. diminish the obligation of a nursing home employer to comply with any contract, collective bargaining agreement, or employment benefit program or plan that meets or exceeds, and does not conflict with, the minimum standards and requirements in sections 181.211 to 181.217 or established by the board.

Sec. 6. **[181.214] DUTIES OF THE BOARD; TRAINING FOR NURSING HOME WORKERS.**

Subdivision 1. **Certification of worker organizations.** The board shall certify worker organizations that it finds are qualified to provide training to nursing home workers according to this section. The board shall by rule establish certification criteria that a worker organization must meet in order to be certified. In adopting rules to establish initial certification criteria under this subdivision, the board may use the authority in section 14.389. The criteria must ensure that a worker organization, if certified, is able to provide:

1. effective, interactive training on the information required by this section; and
2. follow-up written materials and responses to inquiries from nursing home workers in the languages in which nursing home workers are proficient.

Subdivision 2. **Curriculum.** The board shall establish requirements for the curriculum for the nursing home worker training required by this section. A curriculum must at least provide the following information to nursing home workers:

1. the applicable compensation, working hours, and working conditions in the minimum standards or local minimum standards established by the board;
2. the antiretaliation protections established in section 181.216;
3. information on how to enforce sections 181.211 to 181.217 and on how to report violations of sections 181.211 to 181.217 or of standards established by the board, including contact information for the Department of Labor and Industry, the board, and any local enforcement agencies, and information on the remedies available for violations;
4. the purposes and functions of the board and information on upcoming hearings, investigations, or other opportunities for nursing home workers to become involved in board proceedings;
5. other rights, duties, and obligations under sections 181.211 to 181.217;
6. any updates or changes to the information provided according to clauses (1) to (5) since the most recent training session;
any other information the board deems appropriate to facilitate compliance with sections 181.211 to 181.217; and

information on other applicable local, state, and federal laws, rules, and ordinances regarding nursing home working conditions or nursing home worker health and safety;

(b) Before establishing initial curriculum requirements, the board must hold at least one public hearing to solicit input on the requirements;

Subd. 3. Topics covered in training session. A certified worker organization is not required to cover all of the topics listed in subdivision 2 in a single training session. A curriculum used by a certified worker organization may provide instruction on each topic listed in subdivision 2 over the course of up to three training sessions.

Subd. 4. Annual review of curriculum requirements. The board must review the adequacy of its curriculum requirements at least annually and must revise the requirements as appropriate to meet the purposes of sections 181.211 to 181.217. As part of each annual review of the curriculum requirements, the board must hold at least one public hearing to solicit input on the requirements;

Subd. 5. Duties of certified worker organizations. A certified worker organization:

(1) must use a curriculum for its training sessions that meets requirements established by the board;

(2) must provide trainings that are interactive and conducted in the languages in which the attending nursing home workers are proficient;

(3) must, at the end of each training session, provide attending nursing home workers with follow-up written or electronic materials on the topics covered in the training session, in order to fully inform nursing home workers of their rights and opportunities under sections 181.211 to 181.217 and other applicable laws, rules, and ordinances governing nursing home working conditions or worker health and safety;

(4) must make itself reasonably available to respond to inquiries from nursing home workers during and after training sessions; and

(5) may conduct surveys of nursing home workers who attend a training session to assess the effectiveness of the training session and industry compliance with sections 181.211 to 181.217 and other applicable laws, rules, and ordinances governing nursing home working conditions or worker health and safety;

Subd. 6. Nursing home employer duties regarding training. (a) A nursing home employer must ensure, and must provide proof to the commissioner of labor and industry, that every six months each of its nursing home workers completes one hour of training that meets the requirements of this section and is provided by a certified worker organization;
A nursing home employer may, but is not required to, host training sessions on the premises of the nursing home.

(b) If requested by a certified worker organization, a nursing home employer must, after a training session provided by the certified worker organization, provide the certified worker organization with the names and contact information of the nursing home workers who attended the training session, unless a nursing home worker opts out according to paragraph (c).

(c) A nursing home worker may opt out of having the worker's nursing home employer provide the worker's name and contact information to a certified worker organization that provided a training session attended by the worker by submitting a written statement to that effect to the nursing home employer.

Subd. 7. Compensation. A nursing home employer must compensate its nursing home workers at their regular hourly rate of wages and benefits for each hour of training completed as required by this section.

Sec. 7. [181.215] REQUIRED NOTICES.

Subdivision 1. Provision of notice. (a) Nursing home employers must provide notices informing nursing home workers of the rights and obligations provided under sections 181.211 to 181.217 of applicable minimum nursing home employment standards or local minimum standards and that for assistance and information, nursing home workers should contact the Department of Labor and Industry. A nursing home employer must provide notice using the same means that the nursing home employer uses to provide other work-related notices to nursing home workers. Provision of notice must be at least as conspicuous as:

(1) posting a copy of the notice at each work site where nursing home workers work and where the notice may be readily observed and reviewed by all nursing home workers working at the site; or

(2) providing a paper or electronic copy of the notice to all nursing home workers and applicants for employment as a nursing home worker;

(b) The notice required by this subdivision must include text provided by the board that informs nursing home workers that they may request the notice to be provided in a particular language. The nursing home employer must provide the notice in the language requested by the nursing home worker. The board must assist nursing home employers in translating the notice in the languages requested by their nursing home workers.

Subd. 2. Minimum content and posting requirements. The board must adopt rules specifying the minimum content and posting requirements for the notices required in subdivision 1. The board must make available to nursing home employers a template or
583.23 sample notice that satisfies the requirements of this section and rules adopted under this
583.24 section.
583.25 Sec. 8. [181.216] RETALIATION ON CERTAIN GROUNDS PROHIBITED.
583.26 A nursing home employer must not retaliate against a nursing home worker, including
taking retaliatory personnel action, for:
583.27 (1) exercising any right afforded to the nursing home worker under sections 181.211 to
583.28 181.217;
583.29 (2) participating in any process or proceeding under sections 181.211 to 181.217,
583.30 including but not limited to board hearings, investigations, or other proceedings; or
583.31 (3) attending or participating in the training required by section 181.214;
583.32 Sec. 9. [181.217] ENFORCEMENT.
583.33 Subdivision 1. Minimum nursing home employment standards. The minimum wages,
583.34 maximum hours of work, and other working conditions established by the board in rule as
583.35 minimum nursing home employment standards shall be the minimum wages, maximum
583.36 hours of work, and standard conditions of labor for nursing home workers or a subgroup
583.37 of nursing home workers as a matter of state law. It shall be unlawful for a nursing home
583.38 employer to employ a nursing home worker for lower wages or for longer hours than those
583.39 established as the minimum nursing home employment standards or under any other working
583.40 conditions that violate the minimum nursing home employment standards
583.41 Subd. 2. Investigations. The commissioner may investigate possible violations of sections
583.42 181.214 to 181.217 or of the minimum nursing home employment standards established by
583.43 the board whenever it has cause to believe that a violation has occurred, either on the basis
583.44 of a report of a suspected violation or on the basis of any other credible information, including
583.45 violations found during the course of an investigation;
583.46 Subd. 3. Enforcement authority. The Department of Labor and Industry shall enforce
583.47 sections 181.214 to 181.217 and compliance with the minimum nursing home employment
583.48 standards established by the board according to the authority in section 177.27, subdivisions
583.49 4 and 5;
583.50 Subd. 4. Civil action by nursing home worker. (a) One or more nursing home workers
583.51 may bring a civil action in district court seeking redress for violations of sections 181.211
583.52 to 181.217 or of any applicable minimum nursing home employment standards or local
583.53 minimum nursing home employment standards. Such an action may be filed in the district
583.54 court of the county where a violation or violations are alleged to have been committed or
583.55 where the nursing home employer resides, or in any other court of competent jurisdiction,
583.56 and may represent a class of similarly situated nursing home workers;
583.57 (b) Upon a finding of one or more violations, a nursing home employer shall be liable
to each nursing home worker for the full amount of the wages, benefits, and overtime
compensation, less any amount the nursing home employer is able to establish was actually paid to each nursing home worker and for an additional equal amount as liquidated damages.

In an action under this subdivision, nursing home workers may seek damages and other appropriate relief provided by section 177.27, subdivision 1, or otherwise provided by law, including reasonable costs, disbursements, witness fees, and attorney fees. A court may also issue an order requiring compliance with sections 181.211 to 181.217 or with the applicable minimum nursing home employment standards or local minimum nursing home employment standards. A nursing home worker found to have experienced a retaliatory personnel action in violation of section 181.216 shall be entitled to reinstatement to the worker's previous position, wages, benefits, hours, and other conditions of employment.

An agreement between a nursing home employer and nursing home worker or labor union that fails to meet the minimum standards and requirements in sections 181.211 to 181.217 or established by the board is not a defense to an action brought under this subdivision.

Sec. 10. Minnesota Statutes 2020, section 256B.0913, subdivision 4, is amended to read:

Subd. 4. Eligibility for funding for services for nonmedical assistance recipients. (a) Funding for services under the alternative care program is available to persons who meet the following criteria:

(1) the person is a citizen of the United States or a United States national;

(2) the person has been determined by a community assessment under section 256B.0911 to be a person who would require the level of care provided in a nursing facility as determined under section 256B.0911; subdivision 4e, but for the provision of services under the alternative care program;

(3) the person is age 65 or older;

(4) the person would be eligible for medical assistance within 135 days of admission to a nursing facility;

(5) the person is not ineligible for the payment of long-term care services by the medical assistance program due to an asset transfer penalty under section 256B.0595 or equity interest in the home exceeding $500,000 as stated in section 256B.056;

(6) the person needs long-term care services that are not funded through other state or federal funding, or other health insurance or other third-party insurance such as long-term care insurance;

(7) except for individuals described in clause (8), the monthly cost of the alternative care services funded by the program for this person does not exceed 75 percent of the monthly limit described under section 256S.18. This monthly limit does not prohibit the alternative care client from payment for additional services, but in no case may the cost of additional services purchased under this section exceed the difference between the client's monthly service limit defined under section 256S.04; and the alternative care program

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monthly service limit defined in this paragraph. If care-related supplies and equipment or
environmental modifications and adaptations are or will be purchased for an alternative
care recipient, the costs may be prorated on a monthly basis for up to 12 consecutive
months beginning with the month of purchase. If the monthly cost of a recipient's other
alternative care services exceeds the monthly limit established in this paragraph, the annual
cost of the alternative care services shall must be determined. In this event, the annual cost
of alternative care services shall must not exceed 12 times the monthly limit described in
this paragraph.

(8) for individuals assigned a case mix classification A as described under section
256S.18, with (i) no dependencies in activities of daily living; or (ii) up to two dependencies
in bathing, dressing, grooming, walking, and eating when the dependency score in eating
is three or greater as determined by an assessment performed under section 256B.0911; the
monthly cost of alternative care services funded by the program cannot exceed $593 per
month for all new participants enrolled in the program on or after July 1, 2011. This monthly
limit shall be applied to all other participants who meet this criteria at reassessment. This
monthly limit shall must be increased annually as described in section 256S.18. This monthly
limit does not prohibit the alternative care client from payment for additional services, but
in no case may the cost of additional services purchased exceed the difference between the
client's monthly service limit defined in this clause and the limit described in clause (7) for
case mix classification A; and

(9) the person is making timely payments of the assessed monthly fee; and

(10) for a person participating in consumer-directed community supports, the person’s
monthly service limit must be equal to the monthly service limits in clause (7), except that
a person assigned a case mix classification L must receive the monthly service limit for
case mix classification A;

A person is ineligible if payment of the fee is over 60 days past due, unless the person agrees
to:

(i) the appointment of a representative payee;

(ii) automatic payment from a financial account;

(iii) the establishment of greater family involvement in the financial management of
payments; or

(iv) another method acceptable to the lead agency to ensure prompt fee payments;

The lead agency may extend the client’s eligibility as necessary while making
arrangements to facilitate payment of past-due amounts and future premium payments;
Following disenrollment due to nonpayment of a monthly fee, eligibility shall must not be
reinstated for a period of 30 days;

(b) Alternative care funding under this subdivision is not available for a person who is
a medical assistance recipient or who would be eligible for medical assistance without a
spenddown or waiver obligation. A person whose initial application for medical assistance and the elderly waiver program is being processed may be served under the alternative care program for a period up to 60 days. If the individual is found to be eligible for medical assistance, medical assistance must be billed for services payable under the federally approved elderly waiver plan and delivered from the date the individual was found eligible for the federally approved elderly waiver plan. Notwithstanding this provision, alternative care funds may not be used to pay for any service the cost of which: (i) is payable by medical assistance; (ii) is used by a recipient to meet a waiver obligation; or (iii) is used to pay a medical assistance income spenddown for a person who is eligible to participate in the federally approved elderly waiver program under the special income standard provision. (c) Alternative care funding is not available for a person who resides in a licensed nursing home, certified boarding care home, hospital, or intermediate care facility, except for case management services which are provided in support of the discharge planning process for a nursing home resident or certified boarding care home resident to assist with a relocation process to a community-based setting. (d) Alternative care funding is not available for a person whose income is greater than the maintenance needs allowance under section 256S.05, but equal to or less than 120 percent of the federal poverty guideline effective July 1 in the fiscal year for which alternative care eligibility is determined, who would be eligible for the elderly waiver with a waiver obligation. EFFECTIVE DATE. This section is effective January 1, 2023.

Minnesota Statutes 2020, section 256B.0913, subdivision 5, is amended to read:

Subd. 5. Services covered under alternative care. Alternative care funding may be used for payment of costs of:

1. adult day services and adult day services bath;
2. home care;
3. homemaker services;
4. personal care;
5. case management and conversion case management;
6. respite care;
7. specialized supplies and equipment;
8. home-delivered meals;
9. nonmedical transportation;
10. nursing services;
(11) chore services;
(12) companion services;
(13) nutrition services;
(14) family caregiver training and education;
(15) coaching and counseling;
(16) telehome care to provide services in their own homes in conjunction with in-home visits;
(17) consumer-directed community supports under the alternative care programs which are available statewide and limited to the average monthly expenditures representative of all alternative care program participants for the same care mix resident class assigned in the most recent fiscal year for which complete expenditure data is available;
(18) environmental accessibility and adaptations; and
(19) discretionary services, for which lead agencies may make payment from their alternative care program allocation for services not otherwise defined in this section or section 256B.0625, following approval by the commissioner.

Total annual payments for discretionary services for all clients served by a lead agency must not exceed 25 percent of that lead agency's annual alternative care program base allocation, except that when alternative care services receive federal financial participation under the 1115 waiver demonstration, funding shall be allocated in accordance with subdivision 17.

EFFECTIVE DATE. This section is effective January 1, 2023.

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

EFFECTIVE DATE. This section is effective for the rate year beginning January 1, 2024, or upon federal approval, whichever occurs later. The commissioner of human services shall notify the revisor of statutes when federal approval is obtained.
Sec. 2.  Minnesota Statutes 2020, section 256R.02, is amended by adding a subdivision to read:

Subd. 16a.  Dietary labor costs.  "Dietary labor costs" means the costs for the salaries and wages of the dietary supervisor, dietitians, chefs, cooks, dishwashers, and other employees assigned to the kitchen and dining room, and associated fringe benefits and payroll taxes.

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

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

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

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

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

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

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

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

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

EFFECTIVE DATE.  This section is effective for the rate year beginning January 1, 2024, or upon federal approval, whichever occurs later. The commissioner of human services shall notify the revisor of statutes when federal approval is obtained.
Sec. 6. Minnesota Statutes 2020, section 256R.02, subdivision 26, is amended to read:

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

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

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

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

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

SECTION 256R.02, SUBDIVISION 29, IS ALSO AMENDED IN UES4410-2, ARTICLE 11, SECTION 13.

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

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

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

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

Subd. 29a. Maintenance and plant operations labor costs. "Maintenance and plant operations labor costs" means the costs for the salaries and wages of the maintenance supervisor, engineers, heating-plant employees, and other maintenance employees, and associated fringe benefits and payroll taxes.

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Senate Language S4410-3
EFFECTIVE DATE. This section is effective for the rate year beginning January 1, 2024, or upon federal approval, whichever occurs later. The commissioner of human services shall notify the revisor of statutes when federal approval is obtained.

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

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

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

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

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

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

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

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

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

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

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

EFFECTIVE DATE. This section is effective for the rate year beginning January 1, 2024, or upon federal approval, whichever occurs later. The commissioner of human services shall notify the revisor of statutes when federal approval is obtained.
Sec. 14. Minnesota Statutes 2020, section 256R.25, is amended to read:

256R.25 EXTERNAL FIXED COSTS PAYMENT RATE.

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

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

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

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

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

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

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

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

(i) The portions related to real estate taxes, special assessments, and payments made in lieu of real estate taxes directly identified or allocated to the nursing facility are the allowable amounts divided by the sum of the facility's resident days. Allowable costs under this paragraph for payments made by a nonprofit nursing facility that are in lieu of real estate taxes shall not exceed the amount which the nursing facility would have paid to a city or township and county for fire, police, sanitation services, and road maintenance costs had real estate taxes been levied on that property for those purposes.

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

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

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

(m) The portion related to performance-based incentive payments is the amount determined under section 256R.38.
The portion related to special dietary needs is the amount determined under section 256R.51.

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

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

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Sec. 12. Minnesota Statutes 2020, section 256S.15, subdivision 2, is amended to read:

**Subd. 2. Foster care limit.** The elderly waiver payment for the foster care service in combination with the payment for all other elderly waiver services, including case management, must not exceed the monthly case mix budget cap for the participant as specified in sections 256S.18, subdivision 3, and 256S.19, subdivisions 3 and 4.

**EFFECTIVE DATE.** This section is effective January 1, 2023.

Sec. 13. Minnesota Statutes 2020, section 256S.18, is amended by adding a subdivision to read:

**Subd. 3a. Monthly case mix budget caps for consumer-directed community supports.** The monthly case mix budget caps for each case mix classification for consumer-directed community supports must be equal to the monthly case mix budget caps in subdivision 3.

**EFFECTIVE DATE.** This section is effective January 1, 2023.

Sec. 14. Minnesota Statutes 2020, section 256S.19, subdivision 3, is amended to read:

**Subd. 3. Calculation of monthly conversion budget cap without consumer-directed community supports.** (a) The elderly waiver monthly conversion budget cap for the cost of elderly waiver services without consumer-directed community supports must be based on the nursing facility case mix adjusted total payment rate of the nursing facility where the elderly waiver applicant currently resides for the applicant’s case mix classification as determined according to section 256R.17.

(b) The elderly waiver monthly conversion budget cap for the cost of elderly waiver services without consumer-directed community supports shall be calculated by multiplying the applicable nursing facility case mix adjusted total payment rate by 365, dividing by 12, and subtracting the participant’s maintenance needs allowance.

**EFFECTIVE DATE.** This section is effective January 1, 2023.
(c) A participant's initially approved monthly conversion budget cap for elderly waiver services without consumer-directed community supports shall must be adjusted at least annually as described in section 256S.18, subdivision 5.

(d) Conversion budget caps for individuals participating in consumer-directed community supports are also set as described in paragraphs (a) to (c).

EFFECTIVE DATE. This section is effective January 1, 2023.

Sec. 16. Minnesota Statutes 2021 Supplement, section 256S.205, is amended to read:

256S.205 CUSTOMIZED LIVING SERVICES; DISPROPORTIONATE SHARE RATE ADJUSTMENTS.

Subdivision 1. Definitions. (a) For the purposes of this section, the terms in this subdivision have the meanings given:

(b) "Application year" means a year in which a facility submits an application for designation as a disproportionate share facility.

(c) "Assisted living facility" or "facility" means an assisted living facility licensed under chapter 144G.

(d) "Disproportionate share facility" means a facility designated by the commissioner under subdivision 4.

(e) "Facility" means either an assisted living facility licensed under chapter 144G or a setting that is exempt from assisted living licensure under section 144G.08, subdivision 7, clauses (10) to (13).

(f) "Rate year" means January 1 to December 31 of the year following an application year.

Subd. 2. Rate adjustment application. An assisted living facility may apply to the commissioner for designation as a disproportionate share facility. Applications must be submitted annually between October 1 and October 31. The applying facility must apply in a manner determined by the commissioner. The applying facility must document as a percentage the census of elderly waiver participants each of the following on the application:

1. the number of customized living residents in the facility on September 1 of the application year, broken out by specific waiver program; and
(2) the total number of people residing in the facility on October September 1 of the application year.

Subd. 3. Rate adjustment eligibility criteria. Only facilities with a census of at least 80 percent elderly waiver participants satisfying all of the following conditions on October September 1 of the application year are eligible for designation as a disproportionate share facility:

(1) at least 80 percent of the residents of the facility are customized living residents; and
(2) at least 50 percent of the customized living residents are elderly waiver participants.

Subd. 4. Designation as a disproportionate share facility. (a) By November October 15 of each application year, the commissioner must designate as a disproportionate share facility a facility that complies with the application requirements of subdivision 2 and meets the eligibility criteria of subdivision 3;

(b) An annual designation is effective for one rate year.

Subd. 5. Rate adjustment; rate floor. (a) Notwithstanding the 24-hour customized living monthly service rate limits under section 256S.202, subdivision 2, and the component service rates established under section 256S.201, subdivision 4, the commissioner must establish a rate floor equal to $119 per resident per day for 24-hour customized living services provided to an elderly waiver participant in a designated disproportionate share facility for the purpose of ensuring the minimal level of staffing required to meet the health and safety needs of elderly waiver participants.

(b) The commissioner must apply the rate floor to the services described in paragraph (a) provided during the rate year.

(c) The commissioner shall not implement the rate floor under this section if the customized living rates established under sections 256S.21 to 256S.215 will be implemented at 100 percent on January 1 of the year following an application year.

Subd. 6. Budget cap disregard. The value of the rate adjustment under this section must not be included in an elderly waiver client's monthly case mix budget cap.

EFFECTIVE DATE. This section is effective July 1, 2022, or upon federal approval, whichever is later, and applies to services provided on or after October 1, 2022, or on or after the date upon which federal approval is obtained, whichever is later. The commissioner of human services shall notify the revisor of statutes when federal approval is obtained.
Sec. 15. Minnesota Statutes 2021 Supplement, section 256S.21, is amended to read:

256S.21 RATE SETTING; APPLICATION.

The payment methodologies in sections 256S.2101 to 256S.215 apply to:

(1) elderly waiver, elderly waiver customized living, and elderly waiver foster care under this chapter;

(2) alternative care under section 256B.0913;

(3) essential community supports under section 256B.0922; and

(4) homemaker services under the developmental disability waiver under section 256B.092 and community alternative care, community access for disability inclusion, and brain injury waiver under section 256B.49; and

(5) community access for disability inclusion customized living and brain injury customized living under section 256B.49.

EFFECTIVE DATE. This section is effective January 1, 2023.

Sec. 16. Minnesota Statutes 2021 Supplement, section 256S.2101, subdivision 2, is amended to read:

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 plus 27.2 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.

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

Sec. 17. Minnesota Statutes 2021 Supplement, section 256S.2101, is amended to read:

Subd. 2. 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 the service rate in effect as of January 1, 2019, and the increases described in section 256S.215, subdivision 15.

Subd. 3. Spending requirements. (a) At least 80 percent of the marginal increase in revenue from the implementation of adjusted phase-in proportions under this section, including any concurrent or subsequent adjustments to the base wage indices, for services rendered on or after the day of implementation of the modified phase-in proportion or
applicable adjustment to the base wage indices must be used to increase compensation-related costs for employees directly employed by the provider.

(b) For the purposes of this subdivision, compensation-related costs include:

1. wages and salaries;
2. the employer's share of FICA taxes, Medicare taxes, state and federal unemployment taxes, workers' compensation, and mileage reimbursement;
3. the employer's paid share of health and dental insurance, life insurance, disability insurance, long-term care insurance, uniform allowance, pensions, and contributions to employee retirement accounts; and
4. benefits that address direct support professional workforce needs above and beyond what employees were offered prior to the implementation of adjusted phase-in proportions under this section, including any concurrent or subsequent adjustments to the base wage index.

(c) Compensation-related costs for persons employed in the central office of a corporation or entity that has an ownership interest in the provider or exercises control over the provider, or for persons paid by the provider under a management contract, do not count toward the 80 percent requirement under this subdivision.

(d) A provider or individual provider that receives additional revenue subject to the requirements of this subdivision shall prepare, and upon request submit to the commissioner, a distribution plan that specifies the amount of money the provider expects to receive that is subject to the requirements of this subdivision, including how that money was or will be distributed to increase compensation-related costs for employees. Within 60 days of final implementation of the new phase-in proportion or adjustment to the base wage index, the provider must post the distribution plan and leave it posted for a period of at least six months in an area of the provider's operation to which all direct support professionals have access. The posted distribution plan must include instructions regarding how to contact the commissioner, or the commissioner's representative, if an employee has not received the compensation-related increase described in the plan.

EFFECTIVE DATE. This section is effective January 1, 2023, or upon federal approval, whichever is later. The commissioner of human services shall notify the revisor of statutes when federal approval is obtained.
section 256S.215; subdivision 15; and 35 percent of the rate calculated using the rate methodology in effect as of June 30, 2017. EFFECTIVE DATE. This section is effective January 1, 2023.

Sec. 18. Minnesota Statutes 2020, section 256S.211, is amended by adding a subdivision to read:

Subd. 3. Updating homemaker services rates. On January 1, 2023, and every two years thereafter, the commissioner shall recalculate rates for homemaker services as directed by section 256S.215, subdivisions 9 to 11. Prior to recalculating the rates, the commissioner shall:

(1) update the base wage index for homemaker services in section 256S.212, subdivisions 8 to 10, based on the most recently available Bureau of Labor Statistics Minneapolis-St. Paul-Bloomington, MN-WI MetroSA data;
(2) update the payroll taxes and benefits factor in section 256S.213, subdivision 1, and the general and administrative factor in section 256S.213, subdivision 2, based on the most recently available nursing facility cost report data;
(3) update the registered nurse management and supervision wage component in section 256S.213, subdivision 4, based on the most recently available Bureau of Labor Statistics Minneapolis-St. Paul-Bloomington, MN-WI MetroSA data; and
(4) update the adjusted base wage for homemaker services as directed in section 256S.214. EFFECTIVE DATE. This section is effective January 1, 2023.

Sec. 19. Minnesota Statutes 2020, section 256S.211, is amended by adding a subdivision to read:

Subd. 4. Updating the home-delivered meals rate. On July 1 of each year, the commissioner shall update the home-delivered meals rate in section 256S.215, subdivision 15, by the percent increase in the nursing facility dietary per diem using the two most recent and available nursing facility cost reports. EFFECTIVE DATE. This section is effective July 1, 2022.

Sec. 20. Minnesota Statutes 2020, section 256S.212, is amended to read:

256S.212 RATE SETTING; BASE WAGE INDEX.

Subdivision 1. Updating SOC codes. If any of the SOC codes and positions used in this section are no longer available, the commissioner shall, in consultation with stakeholders, select a new SOC code and position that is the closest match to the previously used SOC position.

Subd. 2. Home management and support services base wage. For customized living, and foster care, and residential care component services, the home management and support
services base wage equals 33.33 percent of the Minneapolis-St. Paul-Bloomington, MN-WI MetroSA average wage for home health and personal and home care aides (SOC code 31-1120); 33.33 percent of the Minneapolis-St. Paul-Bloomington, MN-WI MetroSA average wage for food preparation workers (SOC code 35-2021); and 33.34 percent of the Minneapolis-St. Paul-Bloomington, MN-WI MetroSA average wage for maids and housekeeping cleaners (SOC code 37-2012).

Subd. 3. Home care aide base wage. For customized living, and foster care, and residential care component services, the home care aide base wage equals 50 percent of the Minneapolis-St. Paul-Bloomington, MN-WI MetroSA average wage for home health and personal care aides (SOC code 31-1120); and 50 percent of the Minneapolis-St. Paul-Bloomington, MN-WI MetroSA average wage for nursing assistants (SOC code 31-1031).

Subd. 4. Home health aide base wage. For customized living, and foster care, and residential care component services, the home health aide base wage equals 20 percent of the Minneapolis-St. Paul-Bloomington, MN-WI MetroSA average wage for licensed practical and licensed vocational nurses (SOC code 29-2061); and 80 percent of the Minneapolis-St. Paul-Bloomington, MN-WI MetroSA average wage for nursing assistants (SOC code 31-1031); and 33.34 percent of the Minneapolis-St. Paul-Bloomington, MN-WI MetroSA average wage for home health and personal care aides (SOC code 31-1120).

Subd. 5. Medication setups by licensed nurse base wage. For customized living, and foster care, and residential care component services, the medication setups by licensed nurse base wage equals 10 percent of the Minneapolis-St. Paul-Bloomington, MN-WI MetroSA average wage for registered nurses (SOC code 29-1141); and 90 percent of the Minneapolis-St. Paul-Bloomington, MN-WI MetroSA average wage for landscaping and groundskeeping workers (SOC code 37-3011); and 50 percent of the Minneapolis-St. Paul-Bloomington, MN-WI MetroSA average wage for maids and housekeeping cleaners (SOC code 37-2012).

Subd. 6. Chore services base wage. The chore services base wage equals 100 percent of the Minneapolis-St. Paul-Bloomington, MN-WI MetroSA average wage for landscaping and groundskeeping workers (SOC code 37-3011); and 50 percent of the Minneapolis-St. Paul-Bloomington, MN-WI MetroSA average wage for maids and housekeeping cleaners (SOC code 37-2012).

Subd. 7. Companion services base wage. The companion services base wage equals 40 percent of the Minneapolis-St. Paul-Bloomington, MN-WI MetroSA average wage for home health and personal and home care aides (SOC code 31-1120); and 50 percent of the Minneapolis-St. Paul-Bloomington, MN-WI MetroSA average wage for maids and housekeeping cleaners (SOC code 37-2012).

Subd. 8. Homemaker services and assistance with personal care base wage. The homemaker services and assistance with personal care base wage equals 60 percent of the Minneapolis-St. Paul-Bloomington, MN-WI MetroSA average wage for home health and personal and home care aides (SOC code 31-1120); 20 percent of the Minneapolis-St. Paul-Bloomington, MN-WI MetroSA average wage for maids and housekeeping cleaners (SOC code 37-2012); and 50 percent of the Minneapolis-St. Paul-Bloomington, MN-WI MetroSA average wage for home health and personal and home care aides (SOC code 31-1120).
the Minneapolis-St. Paul-Bloomington, MN-WI MetroSA average wage for nursing assistants (SOC code 31-1014 31-1131); and 20 percent of the Minneapolis-St. Paul-Bloomington, MN-WI MetroSA average wage for maids and housekeeping cleaners (SOC code 37-2012).

Subd. 9. Homemaker services and cleaning base wage. The homemaker services and cleaning base wage equals 60 percent of the Minneapolis-St. Paul-Bloomington, MN-WI MetroSA average wage for personal and home care aides (SOC code 39-9021); 20 percent of the Minneapolis-St. Paul-Bloomington, MN-WI MetroSA average wage for nursing assistants (SOC code 31-1014); and 20 percent of the Minneapolis-St. Paul-Bloomington, MN-WI MetroSA average wage for maids and housekeeping cleaners (SOC code 37-2012).

Subd. 10. Homemaker services and home management base wage. The homemaker services and home management base wage equals 60 percent of the Minneapolis-St. Paul-Bloomington, MN-WI MetroSA average wage for home health and personal care aides (SOC code 31-1014 31-1120); and 20 percent of the Minneapolis-St. Paul-Bloomington, MN-WI MetroSA average wage for nursing assistants (SOC code 31-1014 31-1131); and 20 percent of the Minneapolis-St. Paul-Bloomington, MN-WI MetroSA average wage for maids and housekeeping cleaners (SOC code 37-2012).

Subd. 11. In-home respite care services base wage. The in-home respite care services base wage equals five percent of the Minneapolis-St. Paul-Bloomington, MN-WI MetroSA average wage for licensed practical and licensed vocational nurses (SOC code 29-2061); and 20 percent of the Minneapolis-St. Paul-Bloomington, MN-WI MetroSA average wage for registered nurses (SOC code 29-1141); and 75 percent of the Minneapolis-St. Paul-Bloomington, MN-WI MetroSA average wage for home health and personal care aides (SOC code 31-1014 31-1120); and 20 percent of the Minneapolis-St. Paul-Bloomington, MN-WI MetroSA average wage for nursing assistants (SOC code 31-1014 31-1131); and 20 percent of the Minneapolis-St. Paul-Bloomington, MN-WI MetroSA average wage for maids and housekeeping cleaners (SOC code 37-2012).

Subd. 12. Out-of-home respite care services base wage. The out-of-home respite care services base wage equals five percent of the Minneapolis-St. Paul-Bloomington, MN-WI MetroSA average wage for licensed practical and licensed vocational nurses (SOC code 29-2061); and 20 percent of the Minneapolis-St. Paul-Bloomington, MN-WI MetroSA average wage for registered nurses (SOC code 29-1141); and 75 percent of the Minneapolis-St. Paul-Bloomington, MN-WI MetroSA average wage for home health and personal care aides (SOC code 31-1014 31-1120); and 20 percent of the Minneapolis-St. Paul-Bloomington, MN-WI MetroSA average wage for nursing assistants (SOC code 31-1014 31-1131); and 20 percent of the Minneapolis-St. Paul-Bloomington, MN-WI MetroSA average wage for maids and housekeeping cleaners (SOC code 37-2012).

Subd. 13. Individual community living support base wage. The individual community living support base wage equals 20 percent of the Minneapolis-St. Paul-Bloomington, MN-WI MetroSA average wage for licensed practical and licensed vocational nurses (SOC code 29-2061); and 20 percent of the Minneapolis-St. Paul-Bloomington, MN-WI MetroSA average wage for registered nurses (SOC code 29-1141); and 75 percent of the Minneapolis-St. Paul-Bloomington, MN-WI MetroSA average wage for personal care aides (SOC code 31-1014 31-1120); and 20 percent of the Minneapolis-St. Paul-Bloomington, MN-WI MetroSA average wage for nursing assistants (SOC code 31-1014 31-1131); and 20 percent of the Minneapolis-St. Paul-Bloomington, MN-WI MetroSA average wage for maids and housekeeping cleaners (SOC code 37-2012).

Subd. 15. Social worker Unlicensed supervisor base wage. The social worker unlicensed supervisor base wage equals 100 percent of the Minneapolis-St. Paul-Bloomington, MN-WI MetroSA average wage for medical and public health first-line supervisors of personal service workers (SOC code 21-1022 39-1098).

Subd. 16. Adult day services base wage. The adult day services base wage equals 75 percent of the Minneapolis-St. Paul-Bloomington, MN-WI MetroSA average wage for home health and personal care aides (SOC code 31-1120); and 25 percent of the Minneapolis-St. Paul-Bloomington, MN-WI MetroSA average wage for nursing assistants (SOC code 31-1131).

EFFECTIVE DATE. This section is effective January 1, 2023.

Sec. 21. Minnesota Statutes 2020, section 256S.213, is amended to read:

256S.213 RATE SETTING; FACTORS AND SUPERVISION WAGE COMPONENTS.

Subdivision 1. Payroll taxes and benefits factor. The payroll taxes and benefits factor is the sum of net payroll taxes and benefits, divided by the sum of all salaries for all nursing facilities on the most recent and available cost report.

Subd. 2. General and administrative factor. The general and administrative factor is the difference of net general and administrative expenses and administrative salaries, divided by total operating expenses for all nursing facilities on the most recent and available cost report.

Subd. 3. Program plan support factor. (a) The program plan support factor is 10 percent for the following services to cover the cost of direct service staff needed to provide support for home and community based services when not engaged in direct contact with participants:

(1) adult day services;
(2) customized living;
(3) foster care;

(b) The program plan support factor is 15.5 percent for the following services to cover the cost of direct service staff needed to provide support for the service when not engaged in direct contact with participants:

(1) chore services;
(2) companion services;
(3) homemaker services and assistance with personal care;
(4) homemaker services and cleaning;
homemaker services and home management; (6) in-home respite care; (7) individual community living support; and (8) out-of-home respite care.

Subd. 4. Registered nurse management and supervision factor wage component. The registered nurse management and supervision factor wage component equals 15 percent of the registered nurse adjusted base wage as defined in section 256S.214.

Subd. 5. Social worker unlicensed supervisor supervision factor wage component. The social worker unlicensed supervisor supervision factor wage component equals 15 percent of the social worker unlicensed supervisor adjusted base wage as defined in section 256S.214.

Subd. 6. Facility and equipment factor. The facility and equipment factor for adult day services is 16.2 percent.

Subd. 7. Food, supplies, and transportation factor. The food, supplies, and transportation factor for adult day services is 24 percent.

Subd. 8. Supplies and transportation factor. The supplies and transportation factor for the following services is 1.56 percent: (1) chore services; (2) companion services; (3) homemaker services and assistance with personal care; (4) homemaker services and cleaning; (5) homemaker services and home management; (6) in-home respite care; (7) individual community living support; and (8) out-of-home respite care.

Subd. 9. Absence factor. The absence factor for the following services is 4.5 percent: (1) adult day services; (2) chore services; (3) companion services; (4) homemaker services and assistance with personal care;
(5) homemaker services and cleaning;
(6) homemaker services and home management;
(7) in-home respite care;
(8) individual community living support; and
(9) out-of-home respite care.

EFFECTIVE DATE. This section is effective January 1, 2023.

Sec. 22. Minnesota Statutes 2020, section 256S.214, is amended to read:

256S.214 RATE SETTING; ADJUSTED BASE WAGE.

For the purposes of section 256S.215, the adjusted base wage for each position equals the position's base wage under section 256S.212 plus:

1. the position's base wage multiplied by the payroll taxes and benefits factor under section 256S.213, subdivision 1;
2. the position's base wage multiplied by the general and administrative factor under section 256S.213, subdivision 2; and
3. the position's base wage multiplied by the applicable program plan support factor under section 256S.213, subdivision 3; and
4. the position's base wage multiplied by the absence factor under section 256S.213, subdivision 9, if applicable.

EFFECTIVE DATE. This section is effective January 1, 2023.

Sec. 23. Minnesota Statutes 2020, section 256S.215, is amended to read:

256S.215 RATE SETTING; COMPONENT RATES.

Subd. 1. Medication setups by licensed nurse component rate. The component rate for medication setups by a licensed nurse equals the medication setups by licensed nurse adjusted base wage.

Subd. 2. Home management and support services component rate. The component rate for home management and support services is calculated as follows:

1. sum the home management and support services adjusted base wage plus the registered nurse management and supervision wage component;
2. multiply the result of clause (1) by the general and administrative factor; and
3. sum the results of clauses (1) and (2).
Subd. 3. Home care aide services component rate. The component rate for home care aide services is calculated as follows:

1. Sum the home health aide services adjusted base wage plus the registered nurse management and supervision factor, wage component;
2. Multiply clause (1) by the general and administrative factor; and
3. Sum the results of clauses (1) and (2).

Subd. 4. Home health aide services component rate. The component rate for home health aide services is calculated as follows:

1. Sum the home health aide services adjusted base wage plus the registered nurse management and supervision factor, wage component;
2. Multiply the result of clause (1) by the general and administrative factor; and
3. Sum the results of clauses (1) and (2).

Subd. 5. Socialization component rate. The component rate under elderly waiver customized living for one-to-one socialization equals the home management and support services component rate.

Subd. 6. Transportation component rate. The component rate under elderly waiver customized living for one-to-one transportation equals the home management and support services component rate.

Subd. 7. Chore services rate. The 15-minute unit rate for chore services is calculated as follows:

1. Sum the chore services adjusted base wage and the social worker unlicensed supervisor supervision factor, wage component; and
2. Multiply the result of clause (1) by the general and administrative factor;
3. Multiply the result of clause (1) by the supplies and transportation factor; and
4. Sum the results of clauses (1) to (3) and divide the result of clause (2) by four.

Subd. 8. Companion services rate. The 15-minute unit rate for companion services is calculated as follows:

1. Sum the companion services adjusted base wage and the social worker unlicensed supervisor supervision factor, wage component; and
2. Multiply the result of clause (1) by the general and administrative factor;
3. Multiply the result of clause (1) by the supplies and transportation factor; and
4. Sum the results of clauses (1) to (3) and divide the result of clause (2) by four.
Subd. 9. Homemaker services and assistance with personal care rate. The 15-minute unit rate for homemaker services and assistance with personal care is calculated as follows:

1. sum the homemaker services and assistance with personal care adjusted base wage and the registered nurse management and unlicensed supervisor supervision factor wage component; and
2. multiply the result of clause (1) by the general and administrative factor; and
3. multiply the result of clause (1) by the supplies and transportation factor; and
4. sum the results of clauses (1) to (3) and divide the result of clause (1) by four.

Subd. 10. Homemaker services and cleaning rate. The 15-minute unit rate for homemaker services and cleaning is calculated as follows:

1. sum the homemaker services and cleaning adjusted base wage and the registered nurse management and unlicensed supervisor supervision factor base wage; and
2. multiply the result of clause (1) by the general and administrative factor; and
3. multiply the result of clause (1) by the supplies and transportation factor; and
4. sum the results of clauses (1) to (3) and divide the result of clause (1) by four.

Subd. 11. Homemaker services and home management rate. The 15-minute unit rate for homemaker services and home management is calculated as follows:

1. sum the homemaker services and home management adjusted base wage and the registered nurse management and unlicensed supervisor supervision factor wage component; and
2. multiply the result of clause (1) by the general and administrative factor; and
3. multiply the result of clause (1) by the supplies and transportation factor; and
4. sum the results of clauses (1) to (3) and divide the result of clause (1) by four.

Subd. 12. In-home respite care services rates. (a) The 15-minute unit rate for in-home respite care services is calculated as follows:

1. sum the in-home respite care services adjusted base wage and the registered nurse management and supervision factor wage component; and
2. multiply the result of clause (1) by the general and administrative factor; and
3. multiply the result of clause (1) by the supplies and transportation factor; and
4. sum the results of clauses (1) to (3) and divide the result of clause (1) by four.

(b) The in-home respite care services daily rate equals the in-home respite care services 15-minute unit rate multiplied by 18.
Subd. 13. Out-of-home respite care services rates. (a) The 15-minute unit rate for out-of-home respite care is calculated as follows:

(1) sum the out-of-home respite care services adjusted base wage and the registered nurse management and supervision factor wage component; and

(2) multiply the result of clause (1) by the general and administrative factor;

(3) multiply the result of clause (1) by the supplies and transportation factor; and

(4) sum the results of clauses (1) to (3) and divide the result of clause (2) by four.

(b) The out-of-home respite care services daily rate equals the 15-minute unit rate for out-of-home respite care services multiplied by 18.

Subd. 14. Individual community living support rate. The individual community living support rate is calculated as follows:

(1) sum the home care aide individual community living support adjusted base wage and the social worker registered nurse management and supervision factor wage component; and

(2) multiply the result of clause (1) by the general and administrative factor;

(3) multiply the result of clause (1) by the supplies and transportation factor; and

(4) sum the results of clauses (1) to (3) and divide the result of clause (1) by four.

Subd. 15. Home-delivered meals rate. The home-delivered meals rate equals $9.30. The commissioner shall increase the home delivered meals rate every July 1 by the percent increase in the nursing facility dietary per diem using the two most recent and available nursing facility cost reports.

Subd. 16. Adult day services rate. The 15-minute unit rate for adult day services, with an assumed staffing ratio of one staff person to four participants, is calculated as follows:

(1) one-sixteenth of the home care aide divide the adult day services adjusted base wage, except that the general and administrative factor used to determine the home care aide services adjusted base wage is 20 percent by five to reflect an assumed staffing ratio of one to five;

(2) one-fourth of the registered nurse management and supervision factor sum the result of clause (1) and the registered nurse management and supervision wage component; and

(3) $0.63 to cover the cost of meals multiply the result of clause (2) by the general and administrative factor;

(4) multiply the result of clause (2) by the facility and equipment factor.
(5) multiply the result of clause (2) by the food, supplies, and transportation factor; and

(6) sum the results of clauses (2) to (5) and divide the result by four.

Subd. 17. Adult day services bath rate. The 15-minute unit rate for adult day services bath is the sum of calculated as follows:

(1) one-fourth of the home care aide component; sum the adult day services adjusted base wage, except that the general and administrative factor used to determine the home care aide services adjusted base wage is 20 percent and the nurse management and supervision wage component;

(2) one-fourth of the registered nurse management and supervision factor multiply the result of clause (1) by the general and administrative factor; and

(3) $0.63 to cover the cost of meals multiply the result of clause (1) by the facility and equipment factor;

(4) multiply the result of clause (1) by the food, supplies, and transportation factor; and

(5) sum the results of clauses (1) to (4) and divide the result by four.

EFFECTIVE DATE. This section is effective the day following final enactment.
(1) "homemaker services and assistance with personal care" to "homemaker assistance with personal care services";

(2) "homemaker services and cleaning" to "homemaker cleaning services"; and

(3) "homemaker services and home management" to "homemaker home management services" wherever the terms appear.

(b) The revisor shall also make necessary grammatical changes related to the changes in terms.

Sec. 28. REPEALER.

Minnesota Statutes 2020, section 256S.19, subdivision 4, is repealed.

EFFECTIVE DATE. This section is effective January 1, 2023.

Sec. 18. NURSING FACILITY FUNDING.

(a) Effective July 1, 2022, through December 31, 2024, the total payment rate for all facilities reimbursed under this section must be increased by $28.65 per resident day.

(b) To be eligible to receive a payment under this section, a nursing facility must attest to the commissioner of human services that the additional revenue will be used exclusively to increase compensation-related costs for employees directly employed by the facility on or after July 1, 2022, excluding:

(1) owners of the building and operation;

(2) persons employed in the central office of an entity that has any ownership interest in the nursing facility or exercises control over the nursing facility;

(3) persons paid by the nursing facility under a management contract; and

(4) persons providing separately billable services.

(c) Contracted housekeeping, dietary, and laundry employees providing services on site at the nursing facility are eligible for compensation-related cost increases under this section, provided the agency that employs them submits to the nursing facility proof of the costs of the increases provided to those employees.

(d) For purposes of this section, compensation-related costs include:

(1) permanent new increases to wages and salaries implemented on or after July 1, 2022, and before September 1, 2022, for nursing facility employees;

(2) permanent new increases to wages and salaries implemented on or after July 1, 2022, and before September 1, 2022, for employees in the organization's shared services.
departments of hospital-attached nursing facilities for the nursing facility allocated share of wages; and

(3) the employer's share of FICA taxes, Medicare taxes, state and federal unemployment taxes, PERA, workers' compensation, and pension and employee retirement accounts directly associated with the wage and salary increases in clauses (1) and (2) incurred no later than December 31, 2024, and paid for no later than June 30, 2025.

(e) A facility that receives a rate increase under this section must complete a distribution plan in the form and manner determined by the commissioner. This plan must specify the total amount of money the facility is estimated to receive from this rate increase and how that money will be distributed to increase the allowable compensation-related costs described in paragraph (d) for employees described in paragraphs (b) and (c). This estimate must be computed by multiplying $28.65 by the sum of the medical assistance and private pay resident days as defined in Minnesota Statutes, section 256R.02, subdivision 45, for the period beginning October 1, 2020, through September 30, 2021, dividing this sum by 365 and multiplying the result by 915. A facility must submit its distribution plan to the commissioner by October 1, 2022. The commissioner may review the distribution plan to ensure that the payment rate adjustment per resident day is used in accordance with this section. The commissioner may allow for a distribution plan amendment under exceptional circumstances to be determined at the sole discretion of the commissioner.

(f) By September 1, 2022, a facility must post the distribution plan summary and leave it posted for a period of at least six months in an area of the facility to which all employees have access. The posted distribution plan summary must be in the form and manner determined by the commissioner. The distribution plan summary must include instructions regarding how to contact the commissioner or the commissioner's representative if an employee believes the employee is covered by paragraph (b) or (c) and has not received the compensation-related increases described in paragraph (d). The instruction to such employees must include the e-mail address and telephone number that may be used by the employee to contact the commissioner's representative. The posted distribution plan summary must demonstrate how the increase in paragraph (a) received by the nursing facility from July 6, 2022, through December 1, 2024, will be used in full to pay the compensation-related costs in paragraph (d) for employees described in paragraphs (b) and (c).

(g) If the nursing facility expends less on new compensation-related costs than the amount that was made available by the rate increase in this section for that purpose, the amount of this rate adjustment must be reduced to equal the amount utilized by the facility for purposes authorized under this section. If the facility fails to post the distribution plan summary in its facility as required, fails to submit its distribution plan to the commissioner by the due date, or uses these funds for unauthorized purposes, these rate increases must be treated as an overpayment and subsequently recovered.

(h) The commissioner shall not treat payments received under this section as an applicable credit for purposes of setting total payment rates under Minnesota Statutes, chapter 256R.
Sec. 19. DIRECTION TO COMMISSIONER OF HUMAN SERVICES; IMPLEMENTATION OF DISPROPORTIONATE SHARE RATE ADJUSTMENTS.

Subd. 1. Definitions. For the purposes of this section, the definitions in Minnesota Statutes, section 256S.205, apply.

Subd. 2. Modified implementation of rate years 2022 and 2023. (a) Notwithstanding the provisions of Minnesota Statutes, section 256S.205, subdivisions 2 to 5, regarding application dates, eligibility dates, designation dates, and payment adjustment dates, a facility may apply between July 1, 2022, and July 31, 2022, to be designated a disproportionate share facility on the basis of the conditions outlined in Minnesota Statutes, section 256S.205, subdivision 3, as of July 1, 2022. The commissioner shall designate disproportionate share facilities by August 15, 2022. Between October 1, 2022, and December 31, 2023, the commissioner shall apply the rate floor under Minnesota Statutes, section 256S.205, as amended in this act, to eligible customized living services provided in disproportionate share facilities between those dates. On January 1, 2023, the commissioner shall adjust the rate floor amount as directed in Minnesota Statutes, section 256S.205, subdivision 5, paragraph (c).

Subd. 3. Rate year 2023. The commissioner shall not administer an application between September 1, 2022, and September 30, 2022, as described in Minnesota Statutes, section 256S.205, subdivisions 2 to 4, for the purposes of rate year 2023.

Subd. 4. Treatment of prior rate adjustments. (a) The commissioner shall apply rate adjustments required under Minnesota Statutes 2021 Supplement, section 256S.205, until September 30, 2022. Beginning October 1, 2022, the commissioner shall remove all rate adjustments required under Minnesota Statutes 2021 Supplement, section 256S.205.

(b) A disproportionate share facility receiving a rate adjustment under Minnesota Statutes 2021 Supplement, section 256S.205, as of July 1, 2022, may apply for an adjustment under this section.

EFFECTIVE DATE. (a) Subdivisions 1 to 3 are effective July 1, 2022, or upon federal approval, whichever is later, and apply to services provided on or after October 1, 2022, or on or after the date upon which federal approval is obtained, whichever is later. The commissioner of human services shall notify the revisor of statutes when federal approval is obtained.

(b) Subdivision 4 is effective July 1, 2022.

Sec. 20. DIRECTION TO COMMISSIONER OF HUMAN SERVICES; ELDERLY WAIVER BASE WAGE INDEX ADJUSTMENTS.

On January 1, 2023, the commissioner shall update the base wage indices in Minnesota Statutes, section 256S.212, based on the most recently available Minneapolis-St. Paul-Bloomington, MN-WI MetroSA average wage data from the Bureau of Labor Statistics.
EFFECTIVE DATE. This section is effective January 1, 2023, or upon federal approval, whichever occurs later. The commissioner of human services shall inform the revisor of statutes when federal approval is obtained.