

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) "Customized living resident" means a resident of a facility who is receiving either 24-hour customized living services or customized living services authorized under the elderly waiver, the brain injury waiver, or the community access for disability inclusion waiver.

(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.** (a) Effective through September 30, 2023, a facility may apply to the commissioner for an initial designation as a disproportionate share facility. Applications must be submitted annually between September 1 and September 30. The applying facility must apply in a manner determined by the commissioner. The applying facility must document 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 September 1 of the application year.

(b) Effective October 1, 2023, the commissioner must not process any new initial applications for disproportionate share facilities.

(c) A facility that received rate floor payments in rate year 2024 may submit an annual application under this subdivision to maintain its designation as a disproportionate share facility.

Subd. 3. **Rate adjustment eligibility criteria.** (a) Only facilities satisfying all of the following conditions on September 1 of the application year are eligible for designation as a disproportionate share facility:

(1) at least 83.5 percent of the residents of the facility are customized living residents; and

(2) at least 70 percent of the customized living residents are elderly waiver participants.

(b) A facility determined eligible for the disproportionate share rate adjustment in application year 2023 and receiving payments in rate year 2024 is eligible to receive payments in rate years beginning on or after January 1, 2025, only if the commissioner determines that the facility continues to meet the eligibility requirements under this subdivision as determined by the application process under subdivision 2, paragraph (c).

Subd. 4. **Designation as a disproportionate share facility.** (a) By 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 \$141 per resident per day for 24-hour customized living services provided to an elderly waiver participant in a designated disproportionate share facility.

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

Subd. 7. **Expiration.** This section expires May 31, 2028.

Subd. 8. **Coercion prohibited.** (a) A facility must not pressure, coerce, entice, or otherwise unduly influence a resident to become an elderly waiver participant. Every six months, each designated disproportionate share facility must submit a written attestation to the commissioner affirming that neither the facility nor any of its owners, operators, or employees pressured, coerced, enticed, or otherwise unduly influenced a resident to become an elderly waiver participant. If a facility fails to submit the required attestation to the commissioner within 60 days of the due date of the attestation, the commissioner must terminate the facility's designation. The facility may appeal the decision of the commissioner under section 256.045.

(b) The commissioner shall terminate a facility's designation as a disproportionate share facility upon a credible allegation of a facility violating this subdivision. The commissioner may also impose other sanctions under chapter 256B as the commissioner deems appropriate. The facility may appeal the decision of the commissioner under section 256.045.

Subd. 9. **Compensation requirements.** (a) A provider receiving a rate floor must use a minimum of 66 percent of the incremental increase in revenue generated by the rate floor under this section for direct care staff compensation.

(b) Compensation under this subdivision includes:

- (1) wages;
- (2) taxes and workers' compensation;
- (3) health insurance;
- (4) dental insurance;
- (5) vision insurance;
- (6) life insurance;
- (7) short-term disability insurance;
- (8) long-term disability insurance;
- (9) retirement spending;
- (10) tuition reimbursement;

- (11) wellness programs;
- (12) paid vacation time;
- (13) paid sick time; or
- (14) other items of monetary value provided to direct care staff.

History: *1Sp2021 c 7 art 13 s 62; 2022 c 98 art 7 s 31; 2024 c 125 art 2 s 18-21; 2024 c 127 art 47 s 18-21; 1Sp2025 c 9 art 1 s 25-30*

NOTE: The amendment to this section by Laws 2022, chapter 98, article 7, section 31, applies to services provided on or after January 1, 2023.