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State of Minnesota

HOUSE OF REPRESENTATIVES

NINETY-THIRD SESSION

H. F. No. 1880

02/16/2023 Authored by Hicks; Hanson, J.; Olson, L.; Baker; Davids and others
The bill was read for the first time and referred to the Committee on Human Services Policy

1.1 A bill for an act
1.2 relating to human services; modifying the disability waiver rate system; amending
1.3 Minnesota Statutes 2022, section 256B.4914, subdivisions 3, 5, 5a, 5b, 9, by adding
1.4 a subdivision; repealing Minnesota Statutes 2022, section 256B.4914, subdivisions
1.5 9a, 10c.

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

1.7 Section 1. Minnesota Statutes 2022, section 256B.4914, subdivision 3, is amended to read:

1.8 Subd. 3. Applicable services. Applicable services are those authorized under the state's
1.9 home and community-based services waivers under sections 256B.092 and 256B.49,
1.10 including the following, as defined in the federally approved home and community-based
1.11 services plan:

- 1.12 (1) 24-hour customized living;
1.13 (2) adult day services;
1.14 (3) adult day services bath;
1.15 (4) community residential services;
1.16 (5) customized living;
1.17 (6) day support services;
1.18 (7) employment development services;
1.19 (8) employment exploration services;
1.20 (9) employment support services;
1.21 (10) family residential services;

- 2.1 (11) individualized home supports;
- 2.2 (12) individualized home supports with family training;
- 2.3 (13) individualized home supports with training;
- 2.4 (14) integrated community supports;
- 2.5 (15) night supervision;
- 2.6 (16) positive support services;
- 2.7 (17) prevocational services;
- 2.8 (18) residential support services;
- 2.9 ~~(19) respite services;~~
- 2.10 ~~(20)~~ (19) transportation services; and
- 2.11 ~~(21)~~ (20) other services as approved by the federal government in the state home and
- 2.12 community-based services waiver plan.

2.13 **EFFECTIVE DATE.** This section is effective January 1, 2024, or upon federal approval,

2.14 whichever is later. The commissioner of human services shall notify the revisor of statutes

2.15 when federal approval is obtained.

2.16 Sec. 2. Minnesota Statutes 2022, section 256B.4914, subdivision 5, is amended to read:

2.17 Subd. 5. **Base wage index; establishment and updates.** (a) The base wage index is

2.18 established to determine staffing costs associated with providing services to individuals

2.19 receiving home and community-based services. For purposes of calculating the base wage,

2.20 Minnesota-specific wages taken from job descriptions and standard occupational

2.21 classification (SOC) codes from the Bureau of Labor Statistics as defined in the Occupational

2.22 Handbook must be used.

2.23 (b) The commissioner shall update the base wage index in subdivision 5a, publish these

2.24 updated values, and load them into the rate management system as follows:

2.25 (1) on January 1, ~~2022~~ 2024, based on the most recently available wage data by SOC

2.26 from the Bureau of Labor Statistics ~~available as of December 31, 2019~~;

2.27 (2) on ~~November 1, 2024~~ January 1, 2025, based on the most recently available wage

2.28 data by SOC from the Bureau of Labor Statistics ~~available as of December 31, 2021~~; and

3.1 (3) on ~~July 1, 2026~~ January 1, 2027, and every two years thereafter, based on the most
3.2 recently available wage data by SOC from the Bureau of Labor Statistics ~~available 30 months~~
3.3 ~~and one day prior to the scheduled update.~~

3.4 **EFFECTIVE DATE.** This section is effective January 1, 2024, or upon federal approval,
3.5 whichever is later. The commissioner of human services shall notify the revisor of statutes
3.6 when federal approval is obtained.

3.7 Sec. 3. Minnesota Statutes 2022, section 256B.4914, subdivision 5a, is amended to read:

3.8 Subd. 5a. **Base wage index; calculations.** The base wage index must be calculated as
3.9 follows:

3.10 (1) for supervisory staff, 100 percent of the median wage for community and social
3.11 services specialist (SOC code 21-1099), with the exception of the supervisor of positive
3.12 supports professional, positive supports analyst, and positive supports specialist, which is
3.13 100 percent of the median wage for clinical counseling and school psychologist (SOC code
3.14 19-3031). The base wage for supervisory staff must not be less than 130 percent of the total
3.15 hourly direct support wage, including the competitive workforce factor, for the service;

3.16 (2) for registered nurse staff, 100 percent of the median wage for registered nurses (SOC
3.17 code 29-1141);

3.18 (3) for licensed practical nurse staff, 100 percent of the median wage for licensed practical
3.19 nurses (SOC code 29-2061);

3.20 (4) for residential asleep-overnight staff, the minimum wage in Minnesota for large
3.21 employers, with the exception of asleep-overnight staff for family residential services, which
3.22 is 36 percent of the minimum wage in Minnesota for large employers;

3.23 (5) for residential direct care staff, the sum of:

3.24 (i) 15 percent of the subtotal of 50 percent of the median wage for home health and
3.25 personal care aide (SOC code 31-1120); 30 percent of the median wage for nursing assistant
3.26 (SOC code 31-1131); and 20 percent of the median wage for social and human services
3.27 aide (SOC code 21-1093); and

3.28 (ii) 85 percent of the subtotal of 40 percent of the median wage for home health and
3.29 personal care aide (SOC code 31-1120); 20 percent of the median wage for nursing assistant
3.30 (SOC code ~~31-1014~~ 31-1131); 20 percent of the median wage for psychiatric technician
3.31 (SOC code 29-2053); and 20 percent of the median wage for social and human services
3.32 aide (SOC code 21-1093);

4.1 (6) for adult day services staff, 70 percent of the median wage for nursing assistant (SOC
4.2 code 31-1131); and 30 percent of the median wage for home health and personal care aide
4.3 (SOC code 31-1120);

4.4 (7) for day support services staff and prevocational services staff, 20 percent of the
4.5 median wage for nursing assistant (SOC code 31-1131); 20 percent of the median wage for
4.6 psychiatric technician (SOC code 29-2053); and 60 percent of the median wage for social
4.7 and human services aide (SOC code 21-1093);

4.8 (8) for positive supports analyst staff, 100 percent of the median wage for substance
4.9 abuse, behavioral disorder, and mental health counselor (SOC code 21-1018);

4.10 (9) for positive supports professional staff, 100 percent of the median wage for clinical
4.11 counseling and school psychologist (SOC code 19-3031);

4.12 (10) for positive supports specialist staff, 100 percent of the median wage for psychiatric
4.13 technicians (SOC code 29-2053);

4.14 (11) for individualized home supports with family training staff, 20 percent of the median
4.15 wage for nursing aide (SOC code 31-1131); 30 percent of the median wage for community
4.16 social service specialist (SOC code 21-1099); 40 percent of the median wage for social and
4.17 human services aide (SOC code 21-1093); and ten percent of the median wage for psychiatric
4.18 technician (SOC code 29-2053);

4.19 (12) for individualized home supports with training services staff, 40 percent of the
4.20 median wage for community social service specialist (SOC code 21-1099); 50 percent of
4.21 the median wage for social and human services aide (SOC code 21-1093); and ten percent
4.22 of the median wage for psychiatric technician (SOC code 29-2053);

4.23 (13) for employment support services staff, 50 percent of the median wage for
4.24 rehabilitation counselor (SOC code 21-1015); and 50 percent of the median wage for
4.25 community and social services specialist (SOC code 21-1099);

4.26 (14) for employment exploration services staff, 50 percent of the median wage for
4.27 ~~rehabilitation counselor~~ education, guidance, school, and vocational counselors (SOC code
4.28 ~~21-1015~~ 21-1012); and 50 percent of the median wage for community and social services
4.29 specialist (SOC code 21-1099);

4.30 (15) for employment development services staff, 50 percent of the median wage for
4.31 education, guidance, school, and vocational counselors (SOC code 21-1012); and 50 percent
4.32 of the median wage for community and social services specialist (SOC code 21-1099);

5.1 (16) for individualized home support without training staff, 50 percent of the median
 5.2 wage for home health and personal care aide (SOC code 31-1120); and 50 percent of the
 5.3 median wage for nursing assistant (SOC code 31-1131); and

5.4 (17) for night supervision staff, 40 percent of the median wage for home health and
 5.5 personal care aide (SOC code 31-1120); 20 percent of the median wage for nursing assistant
 5.6 (SOC code 31-1131); 20 percent of the median wage for psychiatric technician (SOC code
 5.7 29-2053); and 20 percent of the median wage for social and human services aide (SOC code
 5.8 21-1093); and.

5.9 ~~(18) for respite staff, 50 percent of the median wage for home health and personal care~~
 5.10 ~~aide (SOC code 31-1131); and 50 percent of the median wage for nursing assistant (SOC~~
 5.11 ~~code 31-1014).~~

5.12 **EFFECTIVE DATE.** This section is effective January 1, 2024, or upon federal approval,
 5.13 whichever is later. The commissioner of human services shall notify the revisor of statutes
 5.14 when federal approval is obtained.

5.15 Sec. 4. Minnesota Statutes 2022, section 256B.4914, subdivision 5b, is amended to read:

5.16 Subd. 5b. **Standard component value adjustments.** The commissioner shall update
 5.17 the client and programming support, transportation, and program facility cost component
 5.18 values as required in subdivisions 6 to 9a for changes in the Consumer Price Index. The
 5.19 commissioner shall adjust these values higher or lower, publish these updated values, and
 5.20 load them into the rate management system as follows:

5.21 (1) on January 1, ~~2022~~ 2024, by the percentage change in the CPI-U from the date of
 5.22 the previous update to the data available on ~~December 31, 2019~~ June 30, 2023;

5.23 (2) on ~~November 1, 2024~~ January 1, 2025, by the percentage change in the CPI-U from
 5.24 the date of the previous update to the data available as of ~~December 31, 2021~~ June 30, 2024;
 5.25 and

5.26 (3) on ~~July 1, 2026~~ January 1, 2027, and every two years thereafter, by the percentage
 5.27 change in the CPI-U from the date of the previous update to the data available ~~30~~ six months
 5.28 and one day prior to the scheduled update.

5.29 **EFFECTIVE DATE.** This section is effective January 1, 2024, or upon federal approval,
 5.30 whichever is later. The commissioner of human services shall notify the revisor of statutes
 5.31 when federal approval is obtained.

6.1 Sec. 5. Minnesota Statutes 2022, section 256B.4914, is amended by adding a subdivision
6.2 to read:

6.3 Subd. 5f. **Competitive workforce factor adjustments.** (a) On January 1, 2024, January
6.4 1, 2025, and every two years thereafter beginning on January 1, 2027, the commissioner
6.5 shall update the competitive workforce factor to equal the percent difference between:

6.6 (1) the most recently available wage data by SOC for the weighted average wage for
6.7 direct care staff for residential services and direct care staff for day services; and

6.8 (2) the most recently available wage data by SOC of the weighted average wage of
6.9 comparable occupations.

6.10 (b) For each update of the competitive workforce factor, the update must not decrease
6.11 the competitive workforce factor by more than two percentage points. If the competitive
6.12 workforce factor is less than or equal to zero, then the competitive workforce factor is zero.

6.13 **EFFECTIVE DATE.** This section is effective January 1, 2024, or upon federal approval,
6.14 whichever is later. The commissioner of human services shall notify the revisor of statutes
6.15 when federal approval is obtained.

6.16 Sec. 6. Minnesota Statutes 2022, section 256B.4914, subdivision 9, is amended to read:

6.17 **Subd. 9. Unit-based services without programming; component values and**
6.18 **calculation of payment rates.** (a) For the purposes of this section, unit-based services
6.19 without programming include individualized home supports without training and night
6.20 supervision provided to an individual outside of any service plan for a day program or
6.21 residential support service. ~~Unit-based services without programming do not include respite.~~

6.22 (b) Component values for unit-based services without programming are:

6.23 (1) competitive workforce factor: 4.7 percent;

6.24 (2) supervisory span of control ratio: 11 percent;

6.25 (3) employee vacation, sick, and training allowance ratio: 8.71 percent;

6.26 (4) employee-related cost ratio: 23.6 percent;

6.27 (5) program plan support ratio: 7.0 percent;

6.28 (6) client programming and support ratio: 2.3 percent, updated as specified in subdivision
6.29 5b;

6.30 (7) general administrative support ratio: 13.25 percent;

- 7.1 (8) program-related expense ratio: 2.9 percent; and
- 7.2 (9) absence and utilization factor ratio: 3.9 percent.
- 7.3 (c) A unit of service for unit-based services without programming is 15 minutes.
- 7.4 (d) Payments for unit-based services without programming must be calculated as follows
- 7.5 unless the services are reimbursed separately as part of a residential support services or day
- 7.6 program payment rate:
- 7.7 (1) determine the number of units of service to meet a recipient's needs;
- 7.8 (2) determine the appropriate hourly staff wage rates derived by the commissioner as
- 7.9 provided in subdivisions 5 to 5a;
- 7.10 (3) except for subdivision 5a, clauses (1) to (4), multiply the result of clause (2) by the
- 7.11 product of one plus the competitive workforce factor;
- 7.12 (4) for a recipient requiring customization for deaf and hard-of-hearing language
- 7.13 accessibility under subdivision 12, add the customization rate provided in subdivision 12
- 7.14 to the result of clause (3);
- 7.15 (5) multiply the number of direct staffing hours by the appropriate staff wage;
- 7.16 (6) multiply the number of direct staffing hours by the product of the supervisory span
- 7.17 of control ratio and the appropriate supervisory staff wage in subdivision 5a, clause (1);
- 7.18 (7) combine the results of clauses (5) and (6), and multiply the result by one plus the
- 7.19 employee vacation, sick, and training allowance ratio. This is defined as the direct staffing
- 7.20 rate;
- 7.21 (8) for program plan support, multiply the result of clause (7) by one plus the program
- 7.22 plan support ratio;
- 7.23 (9) for employee-related expenses, multiply the result of clause (8) by one plus the
- 7.24 employee-related cost ratio;
- 7.25 (10) for client programming and supports, multiply the result of clause (9) by one plus
- 7.26 the client programming and support ratio;
- 7.27 (11) this is the subtotal rate;
- 7.28 (12) sum the standard general administrative support ratio, the program-related expense
- 7.29 ratio, and the absence and utilization factor ratio;
- 7.30 (13) divide the result of clause (11) by one minus the result of clause (12). This is the
- 7.31 total payment amount;

8.1 (14) for individualized home supports without training provided in a shared manner,
8.2 divide the total payment amount in clause (13) by the number of service recipients, not to
8.3 exceed two; and

8.4 (15) adjust the result of clause (14) by a factor to be determined by the commissioner
8.5 to adjust for regional differences in the cost of providing services.

8.6 **EFFECTIVE DATE.** This section is effective January 1, 2024, or upon federal approval,
8.7 whichever is later. The commissioner of human services shall notify the revisor of statutes
8.8 when federal approval is obtained.

8.9 Sec. 7. **REPEALER.**

8.10 Minnesota Statutes 2022, section 256B.4914, subdivisions 9a and 10c, are repealed
8.11 effective January 1, 2024, or upon federal approval, whichever is later. The commissioner
8.12 of human services shall notify the revisor of statutes when federal approval is obtained.

256B.4914 HOME AND COMMUNITY-BASED SERVICES WAIVERS; RATE SETTING.

Subd. 9a. **Respite services; component values and calculation of payment rates.** (a) For the purposes of this section, respite services include respite services provided to an individual outside of any service plan for a day program or residential support service.

(b) Component values for respite services are:

- (1) competitive workforce factor: 4.7 percent;
- (2) supervisory span of control ratio: 11 percent;
- (3) employee vacation, sick, and training allowance ratio: 8.71 percent;
- (4) employee-related cost ratio: 23.6 percent;
- (5) general administrative support ratio: 13.25 percent;
- (6) program-related expense ratio: 2.9 percent; and
- (7) absence and utilization factor ratio: 3.9 percent.

(c) A unit of service for respite services is 15 minutes.

(d) Payments for respite services must be calculated as follows unless the service is reimbursed separately as part of a residential support services or day program payment rate:

- (1) determine the number of units of service to meet an individual's needs;
- (2) determine the appropriate hourly staff wage rates derived by the commissioner as provided in subdivisions 5 and 5a;
- (3) except for subdivision 5a, clauses (1) to (4), multiply the result of clause (2) by the product of one plus the competitive workforce factor;
- (4) for a recipient requiring deaf and hard-of-hearing customization under subdivision 12, add the customization rate provided in subdivision 12 to the result of clause (3);
- (5) multiply the number of direct staffing hours by the appropriate staff wage;
- (6) multiply the number of direct staffing hours by the product of the supervisory span of control ratio and the appropriate supervisory staff wage in subdivision 5a, clause (1);
- (7) combine the results of clauses (5) and (6), and multiply the result by one plus the employee vacation, sick, and training allowance ratio. This is defined as the direct staffing rate;
- (8) for employee-related expenses, multiply the result of clause (7) by one plus the employee-related cost ratio;
- (9) this is the subtotal rate;
- (10) sum the standard general administrative support ratio, the program-related expense ratio, and the absence and utilization factor ratio;
- (11) divide the result of clause (9) by one minus the result of clause (10). This is the total payment amount;
- (12) for respite services provided in a shared manner, divide the total payment amount in clause (11) by the number of service recipients, not to exceed three; and
- (13) adjust the result of clause (12) by a factor to be determined by the commissioner to adjust for regional differences in the cost of providing services.

Subd. 10c. **Reporting and analysis of competitive workforce factor.** (a) Beginning February 1, 2021, and every two years thereafter, the commissioner shall report to the chairs and ranking minority members of the legislative committees and divisions with jurisdiction over health and human services policy and finance an analysis of the competitive workforce factor.

(b) The report must include recommendations to update the competitive workforce factor using:

- (1) the most recently available wage data by SOC code for the weighted average wage for direct care staff for residential services and direct care staff for day services;
- (2) the most recently available wage data by SOC code of the weighted average wage of comparable occupations; and

APPENDIX
Repealed Minnesota Statutes: 23-03561

(3) workforce data as required under subdivision 10b.

(c) The commissioner shall not recommend an increase or decrease of the competitive workforce factor from the current value by more than two percentage points. If, after a biennial analysis for the next report, the competitive workforce factor is less than or equal to zero, the commissioner shall recommend a competitive workforce factor of zero.