

This Document can be made available in alternative formats upon request

State of Minnesota
HOUSE OF REPRESENTATIVES
NINETIETH SESSION

H. F. No. 2824

02/09/2018 Authored by Considine, Sundin, Kunesh-Podein, Becker-Finn, Sauke and others
The bill was referred to the Committee on Health and Human Services Reform

1.1 A bill for an act
1.2 relating to human services; modifying reimbursement rates for intermediate care
1.3 facilities for persons with developmental disabilities and home and
1.4 community-based services providers; amending Minnesota Statutes 2016, section
1.5 256B.5012, by adding a subdivision; proposing coding for new law in Minnesota
1.6 Statutes, chapter 256B; repealing Minnesota Statutes 2016, section 256B.5012,
1.7 subdivisions 4, 5, 6, 7, 8, 9, 10, 11, 14.

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

1.9 Section 1. [256B.4915] DISABILITY WAIVER REIMBURSEMENT RATE
1.10 ADJUSTMENTS.

1.11 Subdivision 1. Historical rates. The commissioner of human services shall adjust the
1.12 historical rates calculated in section 256B.4913, subdivision 4a, paragraph (b), in effect
1.13 during the banding period under section 256B.4913, subdivision 4a, paragraph (a), for each
1.14 reimbursement rate adjustment under section 256B.4916; Laws 2013, chapter 108, article
1.15 7, sections 34 and 60; and Laws 2014, chapter 312, article 27, sections 57 and 75.

1.16 Subd. 2. Disability waiver rates system. The commissioner shall adjust the rates
1.17 calculated in sections 256B.4914, subdivision 6, paragraphs (b), clause (4), and (c);
1.18 256B.4914, subdivision 7, clauses (15) to (17); 256B.4914, subdivision 8, clause (14); and
1.19 256B.4914, subdivision 9, clause (23), for each rate adjustment under Laws 2013, chapter
1.20 108, article 7, sections 34 and 60; and Laws 2014, chapter 312, article 27, sections 57 and
1.21 75.

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

2.1 Sec. 2. [256B.4916] HOME AND COMMUNITY-BASED SERVICES PROVIDER
2.2 RATE AND GRANT ADJUSTMENTS.

2.3 Subdivision 1. Rate and grant adjustments. The commissioner of human services shall
2.4 increase reimbursement rates, grants, allocations, individual limits, and rate limits, as
2.5 applicable, by an amount sufficient to provide employees directly employed by the program
2.6 with a compensation increase equal to 75 cents per hour or \$30 per week for the rate period
2.7 beginning July 1, 2018, for services rendered on or after that date. County or tribal contracts
2.8 for services specified in this section must be amended to pass through each rate increase
2.9 within 60 days of the effective date of each increase.

2.10 Subd. 2. Eligible services, grants, and programs. The rate adjustments described in
2.11 this section apply to:

2.12 (1) home and community-based waived services for persons with developmental
2.13 disabilities under section 256B.092, including consumer-directed community supports;

2.14 (2) waived services under community alternatives for disabled individuals under section
2.15 256B.49, including consumer-directed community supports;

2.16 (3) community alternative care waived services under section 256B.49, including
2.17 consumer-directed community supports;

2.18 (4) brain injury waived services under section 256B.49, including consumer-directed
2.19 community supports;

2.20 (5) home and community-based waived services for the elderly under section
2.21 256B.0915;

2.22 (6) nursing services and home health services under section 256B.0625, subdivision 6a;

2.23 (7) personal care services and qualified professional supervision of personal care services
2.24 under section 256B.0625, subdivisions 6a and 19a;

2.25 (8) home care nursing services under section 256B.0625, subdivision 7;

2.26 (9) community first services and supports under section 256B.85;

2.27 (10) essential community supports under section 256B.0922;

2.28 (11) day training and habilitation services for adults with developmental disabilities
2.29 under sections 252.41 to 252.46, including the additional cost to counties of the rate
2.30 adjustments on day training and habilitation services provided as a social service;

2.31 (12) alternative care services under section 256B.0913;

- 3.1 (13) living skills training programs for persons with intractable epilepsy who need
 3.2 assistance in the transition to independent living under Laws 1988, chapter 689;
- 3.3 (14) semi-independent living services (SILS) under section 252.275;
- 3.4 (15) consumer support grants under section 256.476;
- 3.5 (16) family support grants under section 252.32;
- 3.6 (17) housing access grants under section 256B.0658;
- 3.7 (18) self-advocacy grants under Laws 2009, chapter 101;
- 3.8 (19) technology grants under Laws 2009, chapter 79;
- 3.9 (20) aging grants under sections 256.975 to 256.977 and 256B.0917;
- 3.10 (21) deaf and hard-of-hearing grants under section 256.01, subdivision 2, including
 3.11 community support services for deaf and hard-of-hearing adults with mental illness who
 3.12 use or wish to use sign language as their primary means of communication;
- 3.13 (22) deaf and hard-of-hearing grants under sections 256C.233 and 256C.261;
- 3.14 (23) Disability Linkage Line grants under section 256.01, subdivision 24;
- 3.15 (24) home and community-based transition initiative grants under section 256.478;
- 3.16 (25) employment support grants under section 256B.021, subdivision 6; and
- 3.17 (26) grants provided to people who are eligible for the Housing Opportunities for Persons
 3.18 with AIDS program under section 256B.492.

3.19 Subd. 3. **Managed care and county-based purchasing plans.** A managed care plan or
 3.20 county-based purchasing plan receiving state payments for the services, grants, and programs
 3.21 in subdivision 2 must include the adjustments in their payments to providers. For the purposes
 3.22 of this section, "providers" means entities that provide care coordination. To implement the
 3.23 rate increase in subdivision 1, capitation rates paid by the commissioner to managed care
 3.24 plans and county-based purchasing plans under section 256B.69 shall reflect the increases
 3.25 for the services, grants, and programs specified in subdivision 2 for the periods beginning
 3.26 on the effective date of the rate adjustment under subdivision 1.

3.27 Subd. 4. **Consumer-directed community supports.** Counties shall increase the budget
 3.28 for each recipient of consumer-directed community supports by the amounts in subdivision
 3.29 1 on the effective date of the rate adjustment under subdivision 1.

3.30 Subd. 5. **Workforce compensation adjustment.** A provider that receives a rate
 3.31 adjustment under subdivision 1 shall use the additional revenue to increase

4.1 compensation-related costs for employees directly employed by the program on or after the
4.2 effective date of the rate adjustment under subdivision 1, except:

4.3 (1) persons employed in the central office of a corporation or entity that has an ownership
4.4 interest in the provider or exercises control over the provider; and

4.5 (2) persons paid by the provider under a management contract.

4.6 Subd. 6. **Compensation-related costs.** Compensation-related costs include wages and
4.7 salaries.

4.8 Subd. 7. **Public employees under collective bargaining agreement.** For public
4.9 employees under a collective bargaining agreement, the adjustments for wages are available
4.10 and pay rates must be increased only to the extent that the adjustments comply with laws
4.11 governing public employees' collective bargaining. Money received by a provider for
4.12 compensation increases for public employees under subdivision 5 must be used only for
4.13 compensation increases implemented between July 1, 2018, and August 1, 2018.

4.14 Subd. 8. **Employees represented by exclusive bargaining representative.** For a
4.15 provider that has employees who are represented by an exclusive bargaining representative,
4.16 the provider shall obtain a letter of acceptance of the distribution plan required under
4.17 subdivision 11, relating to the members of the bargaining unit, signed by the exclusive
4.18 bargaining agent. Upon receipt of the letter of acceptance, the provider shall be deemed to
4.19 have met all the requirements of this section relating to the members of the bargaining unit.
4.20 Upon request, the provider shall produce the letter of acceptance to the commissioner.

4.21 Subd. 9. **State grant contracts.** The commissioner shall amend state grant contracts
4.22 that include direct personnel-related grant expenditures to include the allocation for the
4.23 portion of the contract related to employee compensation. Grant contracts for
4.24 compensation-related services must be amended to pass through these adjustments within
4.25 60 days of the effective date of the rate adjustment under subdivision 1 and must be
4.26 retroactive to the effective date of the rate adjustment under subdivision 1.

4.27 Subd. 10. **Board on Aging; area agencies on aging.** The Board on Aging and its area
4.28 agencies on aging shall amend their grants that include direct personnel-related grant
4.29 expenditures to include the rate adjustments for the portion of the grant related to employee
4.30 compensation. Grants for compensation-related services must be amended to apply the
4.31 adjustments within 60 days of the effective date of the rate adjustment under subdivision 1
4.32 and must be retroactive to the effective date of the rate adjustment under subdivision 1.

5.1 Subd. 11. **Distribution plan.** (a) A provider that receives a rate adjustment under
5.2 subdivision 1 that is subject to subdivision 5 shall prepare and, upon request, submit to the
5.3 commissioner a distribution plan that specifies the amount of money the provider expects
5.4 to receive that is subject to the requirements of subdivision 5, including how that money
5.5 will be distributed to increase compensation for employees.

5.6 (b) Within six months of the effective date of the rate adjustment, the provider shall post
5.7 the distribution plan required under paragraph (a) for a period of at least six weeks in an
5.8 area of the provider's operation to which all eligible employees have access and shall provide
5.9 instructions for employees who do not believe they received the wage increases specified
5.10 in the distribution plan. The instructions must include a mailing address, e-mail address,
5.11 and telephone number that the employee may use to contact the commissioner or the
5.12 commissioner's representative.

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

5.14 Sec. 3. Minnesota Statutes 2016, section 256B.5012, is amended by adding a subdivision
5.15 to read:

5.16 Subd. 18. **ICF/DD rate adjustment effective July 1, 2018.** (a) For the rate period
5.17 beginning July 1, 2018, the commissioner shall increase operating payment rates for each
5.18 facility reimbursed under this section by an amount sufficient to provide employees directly
5.19 employed by the facility with a compensation increase equal to 75 cents per hour or \$30
5.20 per week compared to the compensation in effect on June 30, 2018.

5.21 (b) A facility that receives a rate increase under this subdivision shall use the additional
5.22 revenue for compensation-related costs for employees directly employed by the facility on
5.23 or after July 1, 2018, except:

5.24 (1) persons employed in the central office of a corporation or entity that has an ownership
5.25 interest in the facility or exercises control over the facility; and

5.26 (2) persons paid by the facility under a management contract.

5.27 (c) Compensation-related costs include wages and salaries.

5.28 (d) For public employees under a collective bargaining agreement, the increases for
5.29 wages for certain staff are available and pay rates must be increased only to the extent that
5.30 the increases comply with laws governing public employees' collective bargaining. Money
5.31 received by a facility under paragraph (b) for compensation increases for public employees
5.32 must be used only for compensation increases implemented between July 1, 2018, and
5.33 August 1, 2018.

6.1 (e) For a facility that has employees that are represented by an exclusive bargaining
 6.2 representative, the provider shall obtain a letter of acceptance of the distribution plan required
 6.3 under paragraph (g), relating to the members of the bargaining unit, signed by the exclusive
 6.4 bargaining agent. Upon receipt of the letter of acceptance, the facility shall be deemed to
 6.5 have met all the requirements of this subdivision relating to the members of the bargaining
 6.6 unit. Upon request, the facility shall produce the letter of acceptance to the commissioner.

6.7 (f) The commissioner shall amend state grant contracts that include direct
 6.8 personnel-related grant expenditures to include the allocation for the portion of the contract
 6.9 related to employee compensation. Grant contracts for compensation-related services must
 6.10 be amended to pass through these adjustments within 60 days of the effective date of the
 6.11 increase and must be retroactive to July 1, 2018.

6.12 (g) A facility that receives a rate adjustment under paragraph (a) that is subject to
 6.13 paragraphs (b) and (c) shall prepare and, upon request, submit to the commissioner a
 6.14 distribution plan that specifies the amount of money the facility expects to receive that is
 6.15 subject to the requirements of paragraphs (b) and (c), including how that money will be
 6.16 distributed to increase compensation for employees.

6.17 (h) Within six months of the effective date of the rate adjustment, the facility shall post
 6.18 the distribution plan required under paragraph (g) for at least six weeks in an area of the
 6.19 facility's operation to which all eligible employees have access and shall provide instructions
 6.20 for employees who do not believe they have received the wage increases specified in the
 6.21 distribution plan. The instructions must include a mailing address, e-mail address, and
 6.22 telephone number that an employee may use to contact the commissioner or the
 6.23 commissioner's representative.

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

6.25 Sec. 4. **REPEALER.**

6.26 Minnesota Statutes 2016, section 256B.5012, subdivisions 4, 5, 6, 7, 8, 9, 10, 11, and
 6.27 14, are repealed.

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

256B.5012 ICF/DD PAYMENT SYSTEM IMPLEMENTATION.

Subd. 4. **ICF/DD rate increases beginning July 1, 2001, and July 1, 2002.** (a) For the rate years beginning July 1, 2001, and July 1, 2002, the commissioner shall make available to each facility reimbursed under this section an adjustment to the total operating payment

rate of 3.5 percent. Of this adjustment, two-thirds must be used as provided under paragraph (b) and one-third must be used for operating costs.

(b) The adjustment under this paragraph must be used to increase the wages and benefits and pay associated costs of all employees except administrative and central office employees, provided that this increase must be used only for wage and benefit increases implemented on or after the first day of the rate year and must not be used for increases implemented prior to that date.

(c) For each facility, the commissioner shall make available an adjustment using the percentage specified in paragraph (a) multiplied by the total payment rate, excluding the property-related payment rate, in effect on the preceding June 30. The total payment rate shall include the adjustment provided in section 256B.501, subdivision 12.

(d) A facility whose payment rates are governed by closure agreements, receivership agreements, or Minnesota Rules, part 9553.0075, is not eligible for an adjustment otherwise granted under this subdivision.

(e) A facility may apply for the payment rate adjustment provided under paragraph (b). The application must be made to the commissioner and contain a plan by which the facility will distribute the adjustment in paragraph (b) to employees of the facility. For facilities in which the employees are represented by an exclusive bargaining representative, an agreement negotiated and agreed to by the employer and the exclusive bargaining representative constitutes the plan. A negotiated agreement may constitute the plan only if the agreement is finalized after the date of enactment of all rate increases for the rate year. The commissioner shall review the plan to ensure that the payment rate adjustment per diem is used as provided in this subdivision. To be eligible, a facility must submit its plan by March 31, 2002, and March 31, 2003, respectively. If a facility's plan is effective for its employees after the first day of the applicable rate year that the funds are available, the payment rate adjustment per diem is effective the same date as its plan.

(f) A copy of the approved distribution plan must be made available to all employees by giving each employee a copy or by posting it in an area of the facility to which all employees have access. If an employee does not receive the wage and benefit adjustment described in the facility's approved plan and is unable to resolve the problem with the facility's management or through the employee's union representative, the employee may contact the commissioner at an address or telephone number provided by the commissioner and included in the approved plan.

Subd. 5. **Rate increase effective June 1, 2003.** For rate periods beginning on or after June 1, 2003, the commissioner shall increase the total operating payment rate for each facility reimbursed under this section by \$3 per day. The increase shall not be subject to any annual percentage increase.

Subd. 6. **ICF/DD rate increases October 1, 2005, and October 1, 2006.** (a) For the rate periods beginning October 1, 2005, and October 1, 2006, the commissioner shall make available to each facility reimbursed under this section an adjustment to the total operating payment rate of 2.2553 percent.

(b) 75 percent of the money resulting from the rate adjustment under paragraph (a) must be used to increase wages and benefits and pay associated costs for employees, except for administrative and central office employees. 75 percent of the money received by a facility as a result of the rate adjustment provided in paragraph (a) must be used only for wage, benefit, and staff increases implemented on or after the effective date of the rate increase each year, and must not be used for increases implemented prior to that date. The wage adjustment eligible employees may receive may vary based on merit, seniority, or other factors determined by the provider.

(c) For each facility, the commissioner shall make available an adjustment, based on occupied beds, using the percentage specified in paragraph (a) multiplied by the total payment rate, including variable rate but excluding the property-related payment rate, in effect on the preceding day. The total payment rate shall include the adjustment provided in section 256B.501, subdivision 12.

(d) A facility whose payment rates are governed by closure agreements or receivership agreements is not eligible for an adjustment otherwise granted under this subdivision.

(e) A facility may apply for the portion of the payment rate adjustment provided under paragraph (a) for employee wages and benefits and associated costs. The application must be made to the commissioner and contain a plan by which the facility will distribute the funds according to paragraph (b). For facilities in which the employees are represented by an exclusive bargaining representative, an agreement negotiated and agreed to by the employer and the exclusive bargaining representative constitutes the plan. A negotiated agreement may constitute the plan only if the agreement is finalized after the date of enactment of all rate increases for the rate year. The commissioner shall review the plan to ensure that the payment rate adjustment per diem is used as provided in this subdivision. To be eligible, a facility must submit its plan by March 31, 2006, and December 31, 2006, respectively. If a facility's plan is effective for its employees after the first day of the

applicable rate period that the funds are available, the payment rate adjustment per diem is effective the same date as its plan.

(f) A copy of the approved distribution plan must be made available to all employees by giving each employee a copy or by posting it in an area of the facility to which all employees have access. If an employee does not receive the wage and benefit adjustment described in the facility's approved plan and is unable to resolve the problem with the facility's management or through the employee's union representative, the employee may contact the commissioner at an address or telephone number provided by the commissioner and included in the approved plan.

Subd. 7. ICF/DD rate increases effective October 1, 2007, and October 1, 2008. (a) For the rate year beginning October 1, 2007, the commissioner shall make available to each facility reimbursed under this section operating payment rate adjustments equal to 2.0 percent of the operating payment rates in effect on September 30, 2007. For the rate year beginning October 1, 2008, the commissioner shall make available to each facility reimbursed under this section operating payment rate adjustments equal to 2.0 percent of the operating payment rates in effect on September 30, 2008. For each facility, the commissioner shall make available an adjustment, based on occupied beds, using the percentage specified in this paragraph multiplied by the total payment rate, including the variable rate but excluding the property-related payment rate, in effect on the preceding day. The total payment rate shall include the adjustment provided in section 256B.501, subdivision 12. A facility whose payment rates are governed by closure agreements or receivership agreements is not eligible for an adjustment otherwise granted under this subdivision.

(b) Seventy-five percent of the money resulting from the rate adjustments under paragraph (a) must be used for increases in compensation-related costs for employees directly employed by the facility on or after the effective date of the rate adjustments, except:

(1) the administrator;

(2) persons employed in the central office of a corporation that has an ownership interest in the facility or exercises control over the facility; and

(3) persons paid by the facility under a management contract.

(c) Two-thirds of the money available under paragraph (b) must be used for wage increases for all employees directly employed by the facility on or after the effective date of the rate adjustments, except those listed in paragraph (b), clauses (1) to (3). The wage adjustment that employees receive under this paragraph must be paid as an equal hourly percentage wage increase for all eligible employees. All wage increases under this paragraph

must be effective on the same date. Only costs associated with the portion of the equal hourly percentage wage increase that goes to all employees shall qualify under this paragraph. Costs associated with wage increases in excess of the amount of the equal hourly percentage wage increase provided to all employees shall be allowed only for meeting the requirements in paragraph (b). This paragraph shall not apply to employees covered by a collective bargaining agreement.

(d) The commissioner shall allow as compensation-related costs all costs for:

(1) wages and salaries;

(2) FICA taxes, Medicare taxes, state and federal unemployment taxes, and workers' compensation;

(3) the employer's share of health and dental insurance, life insurance, disability insurance, long-term care insurance, uniform allowance, and pensions; and

(4) other benefits provided, subject to the approval of the commissioner.

(e) The portion of the rate adjustments under paragraph (a) that is not subject to the requirements in paragraphs (b) and (c) shall be provided to facilities effective October 1 of each year.

(f) Facilities may apply for the portion of the rate adjustments under paragraph (a) that is subject to the requirements in paragraphs (b) and (c). The application must be submitted to the commissioner within six months of the effective date of the rate adjustments, and the facility must provide additional information required by the commissioner within nine months of the effective date of the rate adjustments. The commissioner must respond to all applications within three weeks of receipt. The commissioner may waive the deadlines in this paragraph under extraordinary circumstances, to be determined at the sole discretion of the commissioner. The application must contain:

(1) an estimate of the amounts of money that must be used as specified in paragraphs (b) and (c);

(2) a detailed distribution plan specifying the allowable compensation-related and wage increases the facility will implement to use the funds available in clause (1);

(3) a description of how the facility will notify eligible employees of the contents of the approved application, which must provide for giving each eligible employee a copy of the approved application, excluding the information required in clause (1), or posting a copy of the approved application, excluding the information required in clause (1), for a period

of at least six weeks in an area of the facility to which all eligible employees have access;
and

(4) instructions for employees who believe they have not received the compensation-related or wage increases specified in clause (2), as approved by the commissioner, and which must include a mailing address, e-mail address, and the telephone number that may be used by the employee to contact the commissioner or the commissioner's representative.

(g) The commissioner shall ensure that cost increases in distribution plans under paragraph (f), clause (2), that may be included in approved applications, comply with requirements in clauses (1) to (4):

(1) costs to be incurred during the applicable rate year resulting from wage and salary increases effective after October 1, 2006, and prior to the first day of the facility's payroll period that includes October 1 of each year shall be allowed if they were not used in the prior year's application and they meet the requirements of paragraphs (b) and (c);

(2) a portion of the costs resulting from tenure-related wage or salary increases may be considered to be allowable wage increases, according to formulas that the commissioner shall provide, where employee retention is above the average statewide rate of retention of direct care employees;

(3) the annualized amount of increases in costs for the employer's share of health and dental insurance, life insurance, disability insurance, and workers' compensation shall be allowable compensation-related increases if they are effective on or after April 1 of the year in which the rate adjustments are effective and prior to April 1 of the following year; and

(4) for facilities in which employees are represented by an exclusive bargaining representative, the commissioner shall approve the application only upon receipt of a letter of acceptance of the distribution plan, as regards members of the bargaining unit, signed by the exclusive bargaining agent and dated after May 25, 2007. Upon receipt of the letter of acceptance, the commissioner shall deem all requirements of this section as having been met in regard to the members of the bargaining unit.

(h) The commissioner shall review applications received under paragraph (f) and shall provide the portion of the rate adjustments under paragraphs (b) and (c) if the requirements of this subdivision have been met. The rate adjustments shall be effective October 1 of each year. Notwithstanding paragraph (a), if the approved application distributes less money than is available, the amount of the rate adjustment shall be reduced so that the amount of money made available is equal to the amount to be distributed.

Subd. 8. **ICF/DD rate decreases effective July 1, 2009.** Effective July 1, 2009, the commissioner shall decrease each facility reimbursed under this section operating payment adjustments equal to 2.58 percent of the operating payment rates in effect on June 30, 2009. For each facility, the commissioner shall implement the rate reduction, based on occupied beds, using the percentage specified in this subdivision multiplied by the total payment rate, including the variable rate but excluding the property-related payment rate, in effect on the preceding date. The total rate reduction shall include the adjustment provided in subdivision 7.

Subd. 9. **ICF/DD rate increase effective July 1, 2011; Clearwater County.** Effective July 1, 2011, the commissioner shall increase the daily rate to \$138.23 at an intermediate care facility for the developmentally disabled located in Clearwater County and classified as a class A facility with 15 beds.

Subd. 10. **ICF/DD rate decrease effective July 1, 2011; exception for Clearwater County.** For each facility reimbursed under this section, except for a facility located in Clearwater County and classified as a class A facility with 15 beds, the commissioner shall decrease operating payment rates equal to 0.095 percent of the operating payment rates in effect on June 30, 2011. For each facility, the commissioner shall apply the rate reduction, based on occupied beds, using the percentage specified in this subdivision multiplied by the total payment rate, including the variable rate but excluding the property-related payment rate, in effect on the preceding date. The total rate reduction shall include the adjustment provided in section 256B.501, subdivision 12.

Subd. 11. **ICF/DD rate decrease effective July 1, 2011.** For each facility reimbursed under this section, the commissioner shall decrease operating payments equal to 1.5 percent of the operating payment rates in effect on June 30, 2011. For each facility, the commissioner shall apply the rate reduction, based on occupied beds, using the percentage specified in this subdivision multiplied by the total payment rate, including the variable rate but excluding the property-related payment rate, in effect on the preceding date. The total rate reduction shall include the adjustment provided in section 256B.501, subdivision 12.

Subd. 14. **Rate increase effective June 1, 2013.** For rate periods beginning on or after June 1, 2013, the commissioner shall increase the total operating payment rate for each facility reimbursed under this section by \$7.81 per day. The increase shall not be subject to any annual percentage increase.

256B.5012 ICF/DD PAYMENT SYSTEM IMPLEMENTATION.

Subd. 4. **ICF/DD rate increases beginning July 1, 2001, and July 1, 2002.** (a) For the rate years beginning July 1, 2001, and July 1, 2002, the commissioner shall make available to each facility reimbursed under this section an adjustment to the total operating payment rate of 3.5 percent. Of this adjustment, two-thirds must be used as provided under paragraph (b) and one-third must be used for operating costs.

(b) The adjustment under this paragraph must be used to increase the wages and benefits and pay associated costs of all employees except administrative and central office employees, provided that this increase must be used only for wage and benefit increases implemented on or after the first day of the rate year and must not be used for increases implemented prior to that date.

(c) For each facility, the commissioner shall make available an adjustment using the percentage specified in paragraph (a) multiplied by the total payment rate, excluding the property-related payment rate, in effect on the preceding June 30. The total payment rate shall include the adjustment provided in section 256B.501, subdivision 12.

(d) A facility whose payment rates are governed by closure agreements, receivership agreements, or Minnesota Rules, part 9553.0075, is not eligible for an adjustment otherwise granted under this subdivision.

(e) A facility may apply for the payment rate adjustment provided under paragraph (b). The application must be made to the commissioner and contain a plan by which the facility will distribute the adjustment in paragraph (b) to employees of the facility. For facilities in which the employees are represented by an exclusive bargaining representative, an agreement negotiated and agreed to by the employer and the exclusive bargaining representative constitutes the plan. A negotiated agreement may constitute the plan only if the agreement is finalized after the date of enactment of all rate increases for the rate year. The commissioner shall review the plan to ensure that the payment rate adjustment per diem is used as provided in this subdivision. To be eligible, a facility must submit its plan by March 31, 2002, and March 31, 2003, respectively. If a facility's plan is effective for its employees after the first day of the applicable rate year that the funds are available, the payment rate adjustment per diem is effective the same date as its plan.

(f) A copy of the approved distribution plan must be made available to all employees by giving each employee a copy or by posting it in an area of the facility to which all employees have access. If an employee does not receive the wage and benefit adjustment described in the facility's approved plan and is unable to resolve the problem with the facility's management or through the employee's union representative, the employee may contact the commissioner at an address or telephone number provided by the commissioner and included in the approved plan.

Subd. 5. **Rate increase effective June 1, 2003.** For rate periods beginning on or after June 1, 2003, the commissioner shall increase the total operating payment rate for each facility reimbursed under this section by \$3 per day. The increase shall not be subject to any annual percentage increase.

Subd. 6. **ICF/DD rate increases October 1, 2005, and October 1, 2006.** (a) For the rate periods beginning October 1, 2005, and October 1, 2006, the commissioner shall make available to each facility reimbursed under this section an adjustment to the total operating payment rate of 2.2553 percent.

(b) 75 percent of the money resulting from the rate adjustment under paragraph (a) must be used to increase wages and benefits and pay associated costs for employees, except for administrative and central office employees. 75 percent of the money received by a facility as a result of the rate adjustment provided in paragraph (a) must be used only for wage, benefit, and staff increases implemented on or after the effective date of the rate increase each year, and must not be used for increases implemented prior to that date. The wage adjustment eligible employees may receive may vary based on merit, seniority, or other factors determined by the provider.

(c) For each facility, the commissioner shall make available an adjustment, based on occupied beds, using the percentage specified in paragraph (a) multiplied by the total payment rate, including variable rate but excluding the property-related payment rate, in effect on the preceding day. The total payment rate shall include the adjustment provided in section 256B.501, subdivision 12.

(d) A facility whose payment rates are governed by closure agreements or receivership agreements is not eligible for an adjustment otherwise granted under this subdivision.

(e) A facility may apply for the portion of the payment rate adjustment provided under paragraph (a) for employee wages and benefits and associated costs. The application must be made to the

APPENDIX
Repealed Minnesota Statutes: HF2824-0

commissioner and contain a plan by which the facility will distribute the funds according to paragraph (b). For facilities in which the employees are represented by an exclusive bargaining representative, an agreement negotiated and agreed to by the employer and the exclusive bargaining representative constitutes the plan. A negotiated agreement may constitute the plan only if the agreement is finalized after the date of enactment of all rate increases for the rate year. The commissioner shall review the plan to ensure that the payment rate adjustment per diem is used as provided in this subdivision. To be eligible, a facility must submit its plan by March 31, 2006, and December 31, 2006, respectively. If a facility's plan is effective for its employees after the first day of the applicable rate period that the funds are available, the payment rate adjustment per diem is effective the same date as its plan.

(f) A copy of the approved distribution plan must be made available to all employees by giving each employee a copy or by posting it in an area of the facility to which all employees have access. If an employee does not receive the wage and benefit adjustment described in the facility's approved plan and is unable to resolve the problem with the facility's management or through the employee's union representative, the employee may contact the commissioner at an address or telephone number provided by the commissioner and included in the approved plan.

Subd. 7. ICF/DD rate increases effective October 1, 2007, and October 1, 2008. (a) For the rate year beginning October 1, 2007, the commissioner shall make available to each facility reimbursed under this section operating payment rate adjustments equal to 2.0 percent of the operating payment rates in effect on September 30, 2007. For the rate year beginning October 1, 2008, the commissioner shall make available to each facility reimbursed under this section operating payment rate adjustments equal to 2.0 percent of the operating payment rates in effect on September 30, 2008. For each facility, the commissioner shall make available an adjustment, based on occupied beds, using the percentage specified in this paragraph multiplied by the total payment rate, including the variable rate but excluding the property-related payment rate, in effect on the preceding day. The total payment rate shall include the adjustment provided in section 256B.501, subdivision 12. A facility whose payment rates are governed by closure agreements or receivership agreements is not eligible for an adjustment otherwise granted under this subdivision.

(b) Seventy-five percent of the money resulting from the rate adjustments under paragraph (a) must be used for increases in compensation-related costs for employees directly employed by the facility on or after the effective date of the rate adjustments, except:

- (1) the administrator;
- (2) persons employed in the central office of a corporation that has an ownership interest in the facility or exercises control over the facility; and
- (3) persons paid by the facility under a management contract.

(c) Two-thirds of the money available under paragraph (b) must be used for wage increases for all employees directly employed by the facility on or after the effective date of the rate adjustments, except those listed in paragraph (b), clauses (1) to (3). The wage adjustment that employees receive under this paragraph must be paid as an equal hourly percentage wage increase for all eligible employees. All wage increases under this paragraph must be effective on the same date. Only costs associated with the portion of the equal hourly percentage wage increase that goes to all employees shall qualify under this paragraph. Costs associated with wage increases in excess of the amount of the equal hourly percentage wage increase provided to all employees shall be allowed only for meeting the requirements in paragraph (b). This paragraph shall not apply to employees covered by a collective bargaining agreement.

(d) The commissioner shall allow as compensation-related costs all costs for:

- (1) wages and salaries;
- (2) FICA taxes, Medicare taxes, state and federal unemployment taxes, and workers' compensation;
- (3) the employer's share of health and dental insurance, life insurance, disability insurance, long-term care insurance, uniform allowance, and pensions; and
- (4) other benefits provided, subject to the approval of the commissioner.

(e) The portion of the rate adjustments under paragraph (a) that is not subject to the requirements in paragraphs (b) and (c) shall be provided to facilities effective October 1 of each year.

APPENDIX
Repealed Minnesota Statutes: HF2824-0

(f) Facilities may apply for the portion of the rate adjustments under paragraph (a) that is subject to the requirements in paragraphs (b) and (c). The application must be submitted to the commissioner within six months of the effective date of the rate adjustments, and the facility must provide additional information required by the commissioner within nine months of the effective date of the rate adjustments. The commissioner must respond to all applications within three weeks of receipt. The commissioner may waive the deadlines in this paragraph under extraordinary circumstances, to be determined at the sole discretion of the commissioner. The application must contain:

(1) an estimate of the amounts of money that must be used as specified in paragraphs (b) and (c);

(2) a detailed distribution plan specifying the allowable compensation-related and wage increases the facility will implement to use the funds available in clause (1);

(3) a description of how the facility will notify eligible employees of the contents of the approved application, which must provide for giving each eligible employee a copy of the approved application, excluding the information required in clause (1), or posting a copy of the approved application, excluding the information required in clause (1), for a period of at least six weeks in an area of the facility to which all eligible employees have access; and

(4) instructions for employees who believe they have not received the compensation-related or wage increases specified in clause (2), as approved by the commissioner, and which must include a mailing address, e-mail address, and the telephone number that may be used by the employee to contact the commissioner or the commissioner's representative.

(g) The commissioner shall ensure that cost increases in distribution plans under paragraph (f), clause (2), that may be included in approved applications, comply with requirements in clauses (1) to (4):

(1) costs to be incurred during the applicable rate year resulting from wage and salary increases effective after October 1, 2006, and prior to the first day of the facility's payroll period that includes October 1 of each year shall be allowed if they were not used in the prior year's application and they meet the requirements of paragraphs (b) and (c);

(2) a portion of the costs resulting from tenure-related wage or salary increases may be considered to be allowable wage increases, according to formulas that the commissioner shall provide, where employee retention is above the average statewide rate of retention of direct care employees;

(3) the annualized amount of increases in costs for the employer's share of health and dental insurance, life insurance, disability insurance, and workers' compensation shall be allowable compensation-related increases if they are effective on or after April 1 of the year in which the rate adjustments are effective and prior to April 1 of the following year; and

(4) for facilities in which employees are represented by an exclusive bargaining representative, the commissioner shall approve the application only upon receipt of a letter of acceptance of the distribution plan, as regards members of the bargaining unit, signed by the exclusive bargaining agent and dated after May 25, 2007. Upon receipt of the letter of acceptance, the commissioner shall deem all requirements of this section as having been met in regard to the members of the bargaining unit.

(h) The commissioner shall review applications received under paragraph (f) and shall provide the portion of the rate adjustments under paragraphs (b) and (c) if the requirements of this subdivision have been met. The rate adjustments shall be effective October 1 of each year. Notwithstanding paragraph (a), if the approved application distributes less money than is available, the amount of the rate adjustment shall be reduced so that the amount of money made available is equal to the amount to be distributed.

Subd. 8. ICF/DD rate decreases effective July 1, 2009. Effective July 1, 2009, the commissioner shall decrease each facility reimbursed under this section operating payment adjustments equal to 2.58 percent of the operating payment rates in effect on June 30, 2009. For each facility, the commissioner shall implement the rate reduction, based on occupied beds, using the percentage specified in this subdivision multiplied by the total payment rate, including the variable rate but excluding the property-related payment rate, in effect on the preceding date. The total rate reduction shall include the adjustment provided in subdivision 7.

Subd. 9. ICF/DD rate increase effective July 1, 2011; Clearwater County. Effective July 1, 2011, the commissioner shall increase the daily rate to \$138.23 at an intermediate care facility for

APPENDIX
Repealed Minnesota Statutes: HF2824-0

the developmentally disabled located in Clearwater County and classified as a class A facility with 15 beds.

Subd. 10. ICF/DD rate decrease effective July 1, 2011; exception for Clearwater County. For each facility reimbursed under this section, except for a facility located in Clearwater County and classified as a class A facility with 15 beds, the commissioner shall decrease operating payment rates equal to 0.095 percent of the operating payment rates in effect on June 30, 2011. For each facility, the commissioner shall apply the rate reduction, based on occupied beds, using the percentage specified in this subdivision multiplied by the total payment rate, including the variable rate but excluding the property-related payment rate, in effect on the preceding date. The total rate reduction shall include the adjustment provided in section 256B.501, subdivision 12.

Subd. 11. ICF/DD rate decrease effective July 1, 2011. For each facility reimbursed under this section, the commissioner shall decrease operating payments equal to 1.5 percent of the operating payment rates in effect on June 30, 2011. For each facility, the commissioner shall apply the rate reduction, based on occupied beds, using the percentage specified in this subdivision multiplied by the total payment rate, including the variable rate but excluding the property-related payment rate, in effect on the preceding date. The total rate reduction shall include the adjustment provided in section 256B.501, subdivision 12.

Subd. 14. Rate increase effective June 1, 2013. For rate periods beginning on or after June 1, 2013, the commissioner shall increase the total operating payment rate for each facility reimbursed under this section by \$7.81 per day. The increase shall not be subject to any annual percentage increase.