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State of Minnesota

HOUSE OF REPRESENTATIVES

NINETIETH SESSION

H. F. No. **823**

02/06/2017 Authored by Schomacker, Baker, Kiel, Kresha, Albright and others
The bill was read for the first time and referred to the Committee on Health and Human Services Reform
03/02/2017 Adoption of Report: Amended and re-referred to the Committee on Health and Human Services Finance

1.1 A bill for an act
1.2 relating to human services; reforming the elderly waiver program; requiring a
1.3 report; appropriating money; amending Minnesota Statutes 2016, sections
1.4 256B.056, subdivision 5; 256B.0911, subdivision 3a; 256B.0915, subdivisions 3a,
1.5 3e, 3h, 5, by adding subdivisions; 256B.439, by adding a subdivision.

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

1.7 Section 1. Minnesota Statutes 2016, section 256B.056, subdivision 5, is amended to read:

1.8 Subd. 5. **Excess income.** (a) A person who has excess income is eligible for medical
1.9 assistance if the person has expenses for medical care that are more than the amount of the
1.10 person's excess income, computed by deducting incurred medical expenses from the excess
1.11 income to reduce the excess to the income standard specified in subdivision 5c. The person
1.12 shall elect to have the medical expenses deducted at the beginning of a one-month budget
1.13 period or at the beginning of a six-month budget period. The commissioner shall allow
1.14 persons eligible for assistance on a one-month spenddown basis under this subdivision to
1.15 elect to pay the monthly spenddown amount in advance of the month of eligibility to the
1.16 state agency in order to maintain eligibility on a continuous basis. If the recipient does not
1.17 pay the spenddown amount on or before the 20th of the month, the recipient is ineligible
1.18 for this option for the following month. The local agency shall code the Medicaid
1.19 Management Information System (MMIS) to indicate that the recipient has elected this
1.20 option. The state agency shall convey recipient eligibility information relative to the
1.21 collection of the spenddown to providers through the Electronic Verification System (EVS).
1.22 A recipient electing advance payment must pay the state agency the monthly spenddown
1.23 amount on or before the 20th of the month in order to be eligible for this option in the
1.24 following month.

2.1 (b) A person who is eligible for medical assistance and receiving services under section
2.2 256B.0915 shall be eligible to pay the person's monthly spenddown or waiver obligation
2.3 amount due to a provider of the person's choice. The state, or other payer acting on behalf
2.4 of the state, shall deduct that amount from the provider's claims for each month.

2.5 Sec. 2. Minnesota Statutes 2016, section 256B.0911, subdivision 3a, is amended to read:

2.6 Subd. 3a. **Assessment and support planning.** (a) Persons requesting assessment, services
2.7 planning, or other assistance intended to support community-based living, including persons
2.8 who need assessment in order to determine waiver or alternative care program eligibility,
2.9 must be visited by a long-term care consultation team within 20 calendar days after the date
2.10 on which an assessment was requested or recommended. Upon statewide implementation
2.11 of subdivisions 2b, 2c, and 5, this requirement also applies to an assessment of a person
2.12 requesting personal care assistance services and home care nursing. The commissioner shall
2.13 provide at least a 90-day notice to lead agencies prior to the effective date of this requirement.
2.14 Face-to-face assessments must be conducted according to paragraphs (b) to (i).

2.15 (b) Upon implementation of subdivisions 2b, 2c, and 5, lead agencies shall use certified
2.16 assessors to conduct the assessment. For a person with complex health care needs, a public
2.17 health or registered nurse from the team must be consulted.

2.18 (c) The MnCHOICES assessment provided by the commissioner to lead agencies must
2.19 be used to complete a comprehensive, person-centered assessment. The assessment must
2.20 include the health, psychological, functional, environmental, and social needs of the
2.21 individual necessary to develop a community support plan that meets the individual's needs
2.22 and preferences.

2.23 (d) The assessment must be conducted in a face-to-face interview with the person being
2.24 assessed and the person's legal representative. At the request of the person, other individuals
2.25 may participate in the assessment to provide information on the needs, strengths, and
2.26 preferences of the person necessary to develop a community support plan that ensures the
2.27 person's health and safety. Except for legal representatives or family members invited by
2.28 the person, persons participating in the assessment may not be a provider of service or have
2.29 any financial interest in the provision of services. For persons who are to be assessed for
2.30 elderly waiver customized living or adult day services under section 256B.0915, with the
2.31 permission of the person being assessed or the person's designated or legal representative,
2.32 the client's current or proposed provider of services may submit a copy of the provider's
2.33 nursing assessment or written report outlining its recommendations regarding the client's
2.34 care needs. The person conducting the assessment must notify the provider of the date by

3.1 which this information is to be submitted. This information shall be provided to the person
3.2 conducting the assessment prior to the assessment. For a person who is to be assessed for
3.3 waiver services under section 256B.092 or 256B.49, with the permission of the person being
3.4 assessed or the person's designated legal representative, the person's current provider of
3.5 services may submit a written report outlining recommendations regarding the person's care
3.6 needs prepared by a direct service employee with at least 20 hours of service to that client.
3.7 The person conducting the assessment or reassessment must notify the provider of the date
3.8 by which this information is to be submitted. This information shall be provided to the
3.9 person conducting the assessment and the person or the person's legal representative, and
3.10 must be considered prior to the finalization of the assessment or reassessment.

3.11 (e) The person or the person's legal representative must be provided with a written
3.12 community support plan within 40 calendar days of the assessment visit, regardless of
3.13 whether the individual is eligible for Minnesota health care programs.

3.14 (f) For a person being assessed for elderly waiver services under section 256B.0915, a
3.15 provider who submitted information under paragraph (d) shall receive a copy of the draft
3.16 assessment and have an opportunity to submit additional information to the assessor before
3.17 the assessment is final. The provider shall also receive a copy of the final written community
3.18 support plan when available, the case mix level, and the Residential Services Workbook.

3.19 (g) The written community support plan must include:

3.20 (1) a summary of assessed needs as defined in paragraphs (c) and (d);

3.21 (2) the individual's options and choices to meet identified needs, including all available
3.22 options for case management services and providers;

3.23 (3) identification of health and safety risks and how those risks will be addressed,
3.24 including personal risk management strategies;

3.25 (4) referral information; and

3.26 (5) informal caregiver supports, if applicable.

3.27 For a person determined eligible for state plan home care under subdivision 1a, paragraph
3.28 (b), clause (1), the person or person's representative must also receive a copy of the home
3.29 care service plan developed by the certified assessor.

3.30 ~~(f)~~ (h) A person may request assistance in identifying community supports without
3.31 participating in a complete assessment. Upon a request for assistance identifying community
3.32 support, the person must be transferred or referred to long-term care options counseling

4.1 services available under sections 256.975, subdivision 7, and 256.01, subdivision 24, for
4.2 telephone assistance and follow up.

4.3 ~~(g)~~ (i) The person has the right to make the final decision between institutional placement
4.4 and community placement after the recommendations have been provided, except as provided
4.5 in section 256.975, subdivision 7a, paragraph (d).

4.6 ~~(h)~~ (j) The lead agency must give the person receiving assessment or support planning,
4.7 or the person's legal representative, materials, and forms supplied by the commissioner
4.8 containing the following information:

4.9 (1) written recommendations for community-based services and consumer-directed
4.10 options;

4.11 (2) documentation that the most cost-effective alternatives available were offered to the
4.12 individual. For purposes of this clause, "cost-effective" means community services and
4.13 living arrangements that cost the same as or less than institutional care. For an individual
4.14 found to meet eligibility criteria for home and community-based service programs under
4.15 section 256B.0915 or 256B.49, "cost-effectiveness" has the meaning found in the federally
4.16 approved waiver plan for each program;

4.17 (3) the need for and purpose of preadmission screening conducted by long-term care
4.18 options counselors according to section 256.975, subdivisions 7a to 7c, if the person selects
4.19 nursing facility placement. If the individual selects nursing facility placement, the lead
4.20 agency shall forward information needed to complete the level of care determinations and
4.21 screening for developmental disability and mental illness collected during the assessment
4.22 to the long-term care options counselor using forms provided by the commissioner;

4.23 (4) the role of long-term care consultation assessment and support planning in eligibility
4.24 determination for waiver and alternative care programs, and state plan home care, case
4.25 management, and other services as defined in subdivision 1a, paragraphs (a), clause (6),
4.26 and (b);

4.27 (5) information about Minnesota health care programs;

4.28 (6) the person's freedom to accept or reject the recommendations of the team;

4.29 (7) the person's right to confidentiality under the Minnesota Government Data Practices
4.30 Act, chapter 13;

4.31 (8) the certified assessor's decision regarding the person's need for institutional level of
4.32 care as determined under criteria established in subdivision 4e and the certified assessor's

5.1 decision regarding eligibility for all services and programs as defined in subdivision 1a,
5.2 paragraphs (a), clause (6), and (b); and

5.3 (9) the person's right to appeal the certified assessor's decision regarding eligibility for
5.4 all services and programs as defined in subdivision 1a, paragraphs (a), clauses (6), (7), and
5.5 (8), and (b), and incorporating the decision regarding the need for institutional level of care
5.6 or the lead agency's final decisions regarding public programs eligibility according to section
5.7 256.045, subdivision 3.

5.8 ~~(i)~~ (k) Face-to-face assessment completed as part of eligibility determination for the
5.9 alternative care, elderly waiver, community access for disability inclusion, community
5.10 alternative care, and brain injury waiver programs under sections 256B.0913, 256B.0915,
5.11 and 256B.49 is valid to establish service eligibility for no more than ~~60~~ 90 calendar days
5.12 after the date of assessment.

5.13 ~~(i)~~ (l) The effective eligibility start date for programs in paragraph (i) can never be prior
5.14 to the date of assessment. If an assessment was completed more than ~~60~~ 90 days before the
5.15 effective waiver or alternative care program eligibility start date, assessment and support
5.16 plan information must be updated and documented in the department's Medicaid Management
5.17 Information System (MMIS). Notwithstanding retroactive medical assistance coverage of
5.18 state plan services, the effective date of eligibility for programs included in paragraph ~~(i)~~
5.19 (k) cannot be prior to the date the most recent updated assessment is completed.

5.20 Sec. 3. Minnesota Statutes 2016, section 256B.0915, subdivision 3a, is amended to read:

5.21 Subd. 3a. **Elderly waiver cost limits.** (a) Effective on ~~the first day of the state fiscal~~
5.22 ~~year in which the resident assessment system as described in section 256B.438 for nursing~~
5.23 ~~home rate determination is implemented and~~ the first day of each subsequent state fiscal
5.24 year, the monthly limit for the cost of waived services to an individual elderly waiver
5.25 client shall be the monthly limit of the case mix resident class to which the waiver client
5.26 would be assigned under Minnesota Rules, parts 9549.0051 to 9549.0059, in effect on the
5.27 last day of the previous state fiscal year, adjusted by any legislatively adopted home and
5.28 community-based services percentage rate adjustment. If a legislatively authorized increase
5.29 is service specific, the monthly cost limit shall be adjusted based on the overall average
5.30 increase to the affected program.

5.31 (b) The monthly limit for the cost of waived services under paragraph (a) to an
5.32 individual elderly waiver client assigned to a case mix classification A with:

5.33 (1) no dependencies in activities of daily living; or

6.1 (2) up to two dependencies in bathing, dressing, grooming, walking, and eating when
6.2 the dependency score in eating is three or greater as determined by an assessment performed
6.3 under section 256B.0911 shall be \$1,750 per month effective on July 1, 2011, for all new
6.4 participants enrolled in the program on or after July 1, 2011. This monthly limit shall be
6.5 applied to all other participants who meet this criteria at reassessment. This monthly limit
6.6 shall be increased annually as described in paragraphs (a) and (e).

6.7 (c) If extended medical supplies and equipment or environmental modifications are or
6.8 will be purchased for an elderly waiver client, the costs may be prorated for up to 12
6.9 consecutive months beginning with the month of purchase. If the monthly cost of a recipient's
6.10 waived services exceeds the monthly limit established in paragraph (a), (b), (d), or (e),
6.11 the annual cost of all waived services shall be determined. In this event, the annual cost
6.12 of all waived services shall not exceed 12 times the monthly limit of waived services
6.13 as described in paragraph (a), (b), (d), or (e).

6.14 (d) ~~Effective July 1, 2013,~~ The monthly cost limit of waiver services, including any
6.15 necessary home care services described in section 256B.0651, subdivision 2, for individuals
6.16 who meet the criteria as ventilator-dependent given in section 256B.0651, subdivision 1,
6.17 paragraph (g), shall be the average of the monthly medical assistance amount established
6.18 for home care services as described in section 256B.0652, subdivision 7, and the annual
6.19 average contracted amount established by the commissioner for nursing facility services
6.20 for ventilator-dependent individuals. This monthly limit shall be increased annually as
6.21 described in paragraphs (a) and (e).

6.22 (e) ~~Effective July 1, 2016~~ January 1, 2018, and each ~~July~~ January 1 thereafter, the monthly
6.23 cost limits for elderly waiver services in effect on the previous ~~June 30~~ December 31 shall
6.24 be increased by the difference between any legislatively adopted home and community-based
6.25 provider rate increases effective on ~~July~~ January 1 or since the previous ~~July~~ January 1 and
6.26 the average statewide percentage increase in nursing facility operating payment rates under
6.27 ~~sections 256B.431, 256B.434, and 256B.441~~ chapter 256R, effective the previous January
6.28 1. This paragraph shall only apply if the average statewide percentage increase in nursing
6.29 facility operating payment rates is greater than any legislatively adopted home and
6.30 community-based provider rate increases effective on ~~July~~ January 1, or occurring since
6.31 the previous ~~July~~ January 1.

6.32 Sec. 4. Minnesota Statutes 2016, section 256B.0915, subdivision 3e, is amended to read:

6.33 Subd. 3e. **Customized living service rate.** (a) Payment for customized living services
6.34 shall be a monthly rate authorized by the lead agency within the parameters established by

7.1 the commissioner. The payment agreement must delineate the amount of each component
7.2 service included in the recipient's customized living service plan. The lead agency, with
7.3 input from the provider of customized living services, shall ensure that there is a documented
7.4 need within the parameters established by the commissioner for all component customized
7.5 living services authorized.

7.6 (b) The payment rate must be based on the amount of component services to be provided
7.7 utilizing component rates established by the commissioner. Counties and tribes shall use
7.8 tools issued by the commissioner to develop and document customized living service plans
7.9 and rates.

7.10 (c) Component service rates must not exceed payment rates for comparable elderly
7.11 waiver or medical assistance services and must reflect economies of scale. Customized
7.12 living services must not include rent or raw food costs.

7.13 (d) The commissioner shall include a nursing component service that includes, but is
7.14 not limited to injections, catheterizations, wound care, infections, and diabetic and foot care.
7.15 The hourly unit service payment shall be based on the registered nurses component rate.

7.16 ~~(d)~~ (e) With the exception of individuals described in subdivision 3a, paragraph (b), the
7.17 individualized monthly authorized payment for the customized living service plan shall not
7.18 exceed 50 percent of the ~~greater of either the statewide or any of the geographic groups'~~
7.19 weighted average monthly nursing facility rate of the case mix resident class to which the
7.20 elderly waiver eligible client would be assigned under Minnesota Rules, parts 9549.0051
7.21 to 9549.0059, less the maintenance needs allowance as described in subdivision 1d, paragraph
7.22 (a). ~~Effective On July 1 of the state fiscal each year in which the resident assessment system~~
7.23 ~~as described in section 256B.438 for nursing home rate determination is implemented and~~
7.24 ~~July 1 of each subsequent state fiscal year,~~ the individualized monthly authorized payment
7.25 for the services described in this clause shall not exceed the limit which was in effect on
7.26 June 30 of the previous state fiscal year updated annually based on legislatively adopted
7.27 changes to all service rate maximums for home and community-based service providers.

7.28 (f) The monthly customized living service rate for a client may be increased temporarily
7.29 in lieu of the client being admitted to a hospital. The temporary increase shall cover additional
7.30 nursing and home care services needed to avoid hospitalization. A provider shall
7.31 communicate client need to the case manager in a form and manner prescribed by the
7.32 commissioner.

8.1 (g) Based on responses to questions 45 and 51 of the Minnesota long-term care
8.2 consultation assessment form, the elderly waiver payment for customized living services
8.3 includes a cognitive and behavioral needs factor for a client determined to have either:

8.4 (1) wandering or orientation issues; or

8.5 (2) anxiety, verbal aggression, physical aggression, repetitive behavior, agitation,
8.6 self-injurious behavior, or behavior related to property destruction.

8.7 An additional 15 percent is applied to the component service rates if the total monthly hours
8.8 of customized living services divided by 30.4 is less than 3.62. A client assessed as both
8.9 "oriented" and "behavior requires no intervention" or "no behaviors" shall not receive a
8.10 cognitive and behavioral needs factor.

8.11 ~~(e) Effective July 1, 2011,~~ (h) The individualized monthly payment for the customized
8.12 living service plan for individuals described in subdivision 3a, paragraph (b), must be the
8.13 monthly authorized payment limit for customized living for individuals classified as case
8.14 mix A, reduced by 25 percent. This rate limit must be applied to all new participants enrolled
8.15 in the program on or after July 1, 2011, who meet the criteria described in subdivision 3a,
8.16 paragraph (b). This monthly limit also applies to all other participants who meet the criteria
8.17 described in subdivision 3a, paragraph (b), at reassessment.

8.18 (i) The payment rate for a client qualifying for customized living services equals 120
8.19 percent of the statewide average 24-hour residential services rate for the first 62 days and
8.20 equals the rate established by the responsible case manager for the 63rd and subsequent
8.21 days.

8.22 ~~(f)~~ (j) Customized living services are delivered by a provider licensed by the Department
8.23 of Health as a class A or class F home care provider and provided in a building that is
8.24 registered as a housing with services establishment under chapter 144D. Licensed home
8.25 care providers are subject to section 256B.0651, subdivision 14.

8.26 ~~(g)~~ (k) A provider may not bill or otherwise charge an elderly waiver participant or their
8.27 family for additional units of any allowable component service beyond those available under
8.28 the service rate limits described in paragraph ~~(d)~~ (e), nor for additional units of any allowable
8.29 component service beyond those approved in the service plan by the lead agency.

8.30 ~~(h)~~ (l) Effective ~~July 1, 2016~~ January 1, 2018, and each ~~July~~ January 1 thereafter,
8.31 individualized service rate limits for customized living services under this subdivision shall
8.32 be increased by the difference between any legislatively adopted home and community-based
8.33 provider rate increases effective on ~~July~~ January 1 or since the previous ~~July~~ January 1 and

9.1 the average statewide percentage increase in nursing facility operating payment rates under
9.2 sections 256B.431, and 256B.434, and ~~256B.441~~ chapter 256R, effective the previous
9.3 January 1. This paragraph shall only apply if the average statewide percentage increase in
9.4 nursing facility operating payment rates is greater than any legislatively adopted home and
9.5 community-based provider rate increases effective on ~~July~~ January 1, or occurring since
9.6 the previous ~~July~~ January 1.

9.7 Sec. 5. Minnesota Statutes 2016, section 256B.0915, subdivision 3h, is amended to read:

9.8 Subd. 3h. **Service rate limits; 24-hour customized living services.** (a) The payment
9.9 rate for 24-hour customized living services is a monthly rate authorized by the lead agency
9.10 within the parameters established by the commissioner of human services. The payment
9.11 agreement must delineate the amount of each component service included in each recipient's
9.12 customized living service plan. The lead agency, with input from the provider of customized
9.13 living services, shall ensure that there is a documented need within the parameters established
9.14 by the commissioner for all component customized living services authorized. The lead
9.15 agency shall not authorize 24-hour customized living services unless there is a documented
9.16 need for 24-hour supervision.

9.17 (b) For purposes of this section, "24-hour supervision" means that the recipient requires
9.18 assistance due to needs related to one or more of the following:

9.19 (1) intermittent assistance with toileting, positioning, or transferring;

9.20 (2) cognitive or behavioral issues;

9.21 (3) a medical condition that requires clinical monitoring; or

9.22 (4) for all new participants enrolled in the program on or after July 1, 2011, and all other
9.23 participants at their first reassessment after July 1, 2011, dependency in at least three of the
9.24 following activities of daily living as determined by assessment under section 256B.0911:
9.25 bathing; dressing; grooming; walking; or eating when the dependency score in eating is
9.26 three or greater; and needs medication management and at least 50 hours of service per
9.27 month. The lead agency shall ensure that the frequency and mode of supervision of the
9.28 recipient and the qualifications of staff providing supervision are described and meet the
9.29 needs of the recipient.

9.30 (c) The payment rate for 24-hour customized living services must be based on the amount
9.31 of component services to be provided utilizing component rates established by the
9.32 commissioner. Counties and tribes will use tools issued by the commissioner to develop
9.33 and document customized living plans and authorize rates.

10.1 (d) Component service rates must not exceed payment rates for comparable elderly
10.2 waiver or medical assistance services and must reflect economies of scale.

10.3 (e) The individually authorized 24-hour customized living payments, in combination
10.4 with the payment for other elderly waiver services, including case management, must not
10.5 exceed the recipient's community budget cap specified in subdivision 3a. Customized living
10.6 services must not include rent or raw food costs.

10.7 (f) The individually authorized 24-hour customized living payment rates shall not exceed
10.8 the 95 percentile of statewide monthly authorizations for 24-hour customized living services
10.9 in effect and in the Medicaid management information systems on March 31, 2009, for each
10.10 case mix resident class under Minnesota Rules, parts 9549.0051 to 9549.0059, to which
10.11 elderly waiver service clients are assigned. When there are fewer than 50 authorizations in
10.12 effect in the case mix resident class, the commissioner shall multiply the calculated service
10.13 payment rate maximum for the A classification by the standard weight for that classification
10.14 under Minnesota Rules, parts 9549.0051 to 9549.0059, to determine the applicable payment
10.15 rate maximum. Service payment rate maximums shall be updated annually based on
10.16 legislatively adopted changes to all service rates for home and community-based service
10.17 providers.

10.18 (g) Notwithstanding the requirements of paragraphs (d) and (f), the commissioner may
10.19 establish alternative payment rate systems for 24-hour customized living services in housing
10.20 with services establishments which are freestanding buildings with a capacity of 16 or fewer,
10.21 by applying a single hourly rate for covered component services provided in either:

10.22 (1) licensed corporate adult foster homes; or

10.23 (2) specialized dementia care units which meet the requirements of section 144D.065
10.24 and in which:

10.25 (i) each resident is offered the option of having their own apartment; or

10.26 (ii) the units are licensed as board and lodge establishments with maximum capacity of
10.27 eight residents, and which meet the requirements of Minnesota Rules, part 9555.6205,
10.28 subparts 1, 2, 3, and 4, item A.

10.29 (h) Twenty-four-hour customized living services are delivered by a provider licensed
10.30 by the Department of Health as a class A or class F home care provider and provided in a
10.31 building that is registered as a housing with services establishment under chapter 144D.
10.32 Licensed home care providers are subject to section 256B.0651, subdivision 14.

11.1 (i) A provider may not bill or otherwise charge an elderly waiver participant or their
11.2 family for additional units of any allowable component service beyond those available under
11.3 the service rate limits described in paragraph (e), nor for additional units of any allowable
11.4 component service beyond those approved in the service plan by the lead agency.

11.5 (j) Effective ~~July 1, 2016~~ January 1, 2018, and each ~~July~~ January 1 thereafter,
11.6 individualized service rate limits for 24-hour customized living services under this
11.7 subdivision shall be increased by the difference between any legislatively adopted home
11.8 and community-based provider rate increases effective on ~~July~~ January 1 or since the previous
11.9 ~~July~~ January 1 and the average statewide percentage increase in nursing facility operating
11.10 payment rates under ~~sections 256B.431, 256B.434, and 256B.441~~ chapter 256R, effective
11.11 the previous January 1. This paragraph shall only apply if the average statewide percentage
11.12 increase in nursing facility operating payment rates is greater than any legislatively adopted
11.13 home and community-based provider rate increases effective on ~~July~~ January 1, or occurring
11.14 since the previous ~~July~~ January 1.

11.15 Sec. 6. Minnesota Statutes 2016, section 256B.0915, subdivision 5, is amended to read:

11.16 Subd. 5. **Assessments and reassessments for waiver clients.** (a) Each client shall
11.17 receive an initial assessment of strengths, informal supports, and need for services in
11.18 accordance with section 256B.0911, subdivisions 3, 3a, and 3b. A reassessment of a client
11.19 served under the elderly waiver must be conducted at least every 12 months ~~and at other~~
11.20 ~~times when the case manager determines that there has been significant change in the client's~~
11.21 ~~functioning. This may include instances where the client is discharged from the hospital.~~
11.22 There must be a determination that the client requires nursing facility level of care as defined
11.23 in section 256B.0911, subdivision 4e, at initial and subsequent assessments to initiate and
11.24 maintain participation in the waiver program.

11.25 (b) Regardless of other assessments identified in section 144.0724, subdivision 4, as
11.26 appropriate to determine nursing facility level of care for purposes of medical assistance
11.27 payment for nursing facility services, only face-to-face assessments conducted according
11.28 to section 256B.0911, subdivisions 3a and 3b, that result in a nursing facility level of care
11.29 determination will be accepted for purposes of initial and ongoing access to waiver service
11.30 payment.

11.31 (c) The lead agency shall conduct a change-in-condition reassessment before the annual
11.32 reassessment in cases where a client's condition changed due to a major health event, an
11.33 emerging need or risk, worsening health condition, or cases where the current services do
11.34 not meet the client's needs. A change-in-condition reassessment may be initiated by the lead

12.1 agency, or it may be requested by the client or requested on the client's behalf by another
12.2 party, such as a provider of services. The lead agency shall complete a change-in-condition
12.3 reassessment no later than 20 calendar days from the request. The lead agency shall conduct
12.4 these assessments in a timely manner and expedite urgent requests. The lead agency shall
12.5 evaluate urgent requests based on the client's needs and risk to the client if a reassessment
12.6 is not completed.

12.7 Sec. 7. Minnesota Statutes 2016, section 256B.0915, is amended by adding a subdivision
12.8 to read:

12.9 Subd. 11. **Payment rates; application.** The payment methodologies in subdivisions 12
12.10 to 15 apply to elderly waiver and elderly waiver customized living under this section,
12.11 alternative care under section 256B.0913, essential community supports under section
12.12 256B.0922, community access for disability inclusion customized living, brain injury
12.13 customized living, and elderly waiver foster care and residential care.

12.14 Sec. 8. Minnesota Statutes 2016, section 256B.0915, is amended by adding a subdivision
12.15 to read:

12.16 Subd. 12. **Payment rates; establishment.** (a) The commissioner shall use standard
12.17 occupational classification (SOC) codes from the Bureau of Labor Statistics as defined in
12.18 the most recent edition of the Occupational Handbook and data from the most recent and
12.19 available nursing facility cost report to establish rates and component rates every January
12.20 1 using Minnesota-specific wages taken from job descriptions.

12.21 (b) In creating the rates and component rates, the commissioner shall establish a base
12.22 wage calculation for each component service and value and add the following factors:

12.23 (1) payroll taxes and benefits;

12.24 (2) general and administrative;

12.25 (3) program plan support;

12.26 (4) registered nurse management and supervision; and

12.27 (5) social worker supervision.

12.28 Sec. 9. Minnesota Statutes 2016, section 256B.0915, is amended by adding a subdivision
12.29 to read:

12.30 Subd. 13. **Payment rates; base wage index.** (a) Base wages are calculated for customized
12.31 living, foster care, and residential care component services as follows:

13.1 (1) the home management and support services base wage equals 33.33 percent of the
13.2 Minneapolis-St. Paul-Bloomington, MN-WI MetroSA average wage for personal and home
13.3 care aide (SOC code 39-9021); 33.33 percent of the Minneapolis-St. Paul-Bloomington,
13.4 MN-WI MetroSA average wage for food preparation workers (SOC code 35-2021); and
13.5 33.34 percent of the Minneapolis-St. Paul-Bloomington, MN-WI MetroSA average wage
13.6 for maids and housekeeping cleaners (SOC code 37-2012);

13.7 (2) the home care aide base wage equals 50 percent of the Minneapolis-St.
13.8 Paul-Bloomington, MN-WI MetroSA average wage for home health aides (SOC code
13.9 31-1011); and 50 percent of the Minneapolis-St. Paul-Bloomington, MN-WI MetroSA
13.10 average wage for nursing assistants (SOC code 31-1014);

13.11 (3) the home health aide base wage equals 20 percent of the Minneapolis-St.
13.12 Paul-Bloomington, MN-WI MetroSA average wage for licensed practical and licensed
13.13 vocational nurses (SOC code 29-2061); and 80 percent of the Minneapolis-St.
13.14 Paul-Bloomington, MN-WI MetroSA average wage for nursing assistants (SOC code
13.15 31-1014); and

13.16 (4) the medication setups by licensed practical nurse base wage equals ten percent of
13.17 the Minneapolis-St. Paul-Bloomington, MN-WI MetroSA average wage for licensed practical
13.18 and licensed vocational nurses (SOC code 29-2061); and 90 percent of the Minneapolis-St.
13.19 Paul-Bloomington, MN-WI MetroSA average wage for registered nurses (SOC code
13.20 29-1141).

13.21 (b) Base wages are calculated for the following services as follows:

13.22 (1) the chore services base wage equals 100 percent of the Minneapolis-St.
13.23 Paul-Bloomington, MN-WI MetroSA average wage for landscaping and groundskeeping
13.24 workers (SOC code 37-3011);

13.25 (2) the companion services base wage equals 50 percent of the Minneapolis-St.
13.26 Paul-Bloomington, MN-WI MetroSA average wage for personal and home care aides (SOC
13.27 code 39-9021); and 50 percent of the Minneapolis-St. Paul-Bloomington, MN-WI MetroSA
13.28 average wage for maids and housekeeping cleaners (SOC code 37-2012);

13.29 (3) the homemaker services and assistance with personal care base wage equals 60
13.30 percent of the Minneapolis-St. Paul-Bloomington, MN-WI MetroSA average wage for
13.31 personal and home care aide (SOC code 39-9021); 20 percent of the Minneapolis-St.
13.32 Paul-Bloomington, MN-WI MetroSA average wage for nursing assistants (SOC code
13.33 31-1014); and 20 percent of the Minneapolis-St. Paul-Bloomington, MN-WI MetroSA
13.34 average wage for maids and housekeeping cleaners (SOC code 37-2012);

14.1 (4) the homemaker services and cleaning base wage equals 60 percent of the
14.2 Minneapolis-St. Paul-Bloomington, MN-WI MetroSA average wage for personal and home
14.3 care aide (SOC code 39-9021); 20 percent of the Minneapolis-St. Paul-Bloomington, MN-WI
14.4 MetroSA average wage for nursing assistants (SOC code 31-1014); and 20 percent of the
14.5 Minneapolis-St. Paul-Bloomington, MN-WI MetroSA average wage for maids and
14.6 housekeeping cleaners (SOC code 37-2012);

14.7 (5) the homemaker services and home management base wage equals 60 percent of the
14.8 Minneapolis-St. Paul-Bloomington, MN-WI MetroSA average wage for personal and home
14.9 care aide (SOC code 39-9021); 20 percent of the Minneapolis-St. Paul-Bloomington, MN-WI
14.10 MetroSA average wage for nursing assistants (SOC code 31-1014); and 20 percent of the
14.11 Minneapolis-St. Paul-Bloomington, MN-WI MetroSA average wage for maids and
14.12 housekeeping cleaners (SOC code 37-2012);

14.13 (6) the in-home respite care services base wage equals five percent of the Minneapolis-St.
14.14 Paul-Bloomington, MN-WI MetroSA average wage for registered nurses (SOC code
14.15 29-1141); 75 percent of the Minneapolis-St. Paul-Bloomington, MN-WI MetroSA average
14.16 wage for nursing assistants (SOC code 31-1014); and 20 percent of the Minneapolis-St.
14.17 Paul-Bloomington, MN-WI MetroSA average wage for licensed practical and licensed
14.18 vocational nurses (SOC code 29-2061); and

14.19 (7) the out-of-home respite care services base wage equals five percent of the
14.20 Minneapolis-St. Paul-Bloomington, MN-WI MetroSA average wage for registered nurses
14.21 (SOC code 29-1141); 75 percent of the Minneapolis-St. Paul-Bloomington, MN-WI MetroSA
14.22 average wage for nursing assistants (SOC code 31-1014); and 20 percent of the
14.23 Minneapolis-St. Paul-Bloomington, MN-WI MetroSA average wage for licensed practical
14.24 and licensed vocational nurses (SOC code 29-2061).

14.25 (c) Base wages are calculated for the following values as follows:

14.26 (1) the registered nurse base wage equals 100 percent of the Minneapolis-St.
14.27 Paul-Bloomington, MN-WI MetroSA average wage for registered nurses (SOC code
14.28 29-1141); and

14.29 (2) the social worker base wage equals 100 percent of the Minneapolis-St.
14.30 Paul-Bloomington, MN-WI MetroSA average wage for medical and public health social
14.31 workers (SOC code 21-1022).

14.32 (d) If any of the SOC codes and positions are no longer available, the commissioner
14.33 shall, in consultation with stakeholders, select a new SOC code and position that is the
14.34 closest match to the previously used SOC position.

15.1 Sec. 10. Minnesota Statutes 2016, section 256B.0915, is amended by adding a subdivision
15.2 to read:

15.3 Subd. 14. **Payment rates; factors.** The commissioner shall use the following factors:

15.4 (1) the payroll taxes and benefits factor is the sum of net payroll taxes and benefits
15.5 divided by the sum of all salaries for all nursing facilities on the most recent and available
15.6 cost report;

15.7 (2) the general and administrative factor is the sum of net general and administrative
15.8 expenses minus administrative salaries divided by total operating expenses for all nursing
15.9 facilities on the most recent and available cost report;

15.10 (3) the program plan support factor is defined as the direct service staff needed to provide
15.11 support for the home and community-based service when not engaged in direct contact with
15.12 clients. Based on the 2016 Non-Wage Provider Costs in Home and Community-Based
15.13 Disability Waiver Services Report, this factor equals 12.8 percent;

15.14 (4) the registered nurse management and supervision factor equals 15 percent of the
15.15 registered nurse value; and

15.16 (5) the social worker supervision factor equals 15 percent of the social worker value.

15.17 Sec. 11. Minnesota Statutes 2016, section 256B.0915, is amended by adding a subdivision
15.18 to read:

15.19 Subd. 15. **Payment rates; component rates.** (a) For the purposes of this subdivision,
15.20 the "adjusted base wage" for a position equals the position's base wage plus:

15.21 (1) the position's base wage multiplied by the payroll taxes and benefits factor;

15.22 (2) the position's base wage multiplied by the general and administrative factor; and

15.23 (3) the position's base wage multiplied by the program plan support factor.

15.24 (b) For medication setups by licensed nurse, registered nurse, and social worker services,
15.25 the component rate for each service equals the respective position's adjusted base wage.

15.26 (c) For home management and support services, home care aide, and home health aide
15.27 services, the component rate for each service equals the respective position's adjusted base
15.28 wage plus the registered nurse management and supervision factor.

15.29 (d) The home management and support services component rate shall be used for payment
15.30 for socialization and transportation component rates under elderly waiver customized living.

16.1 (e) The 15-minute unit rates for chore services and companion services are calculated
16.2 as follows:

16.3 (1) sum the adjusted base wage for the respective position and the social worker factor;
16.4 and

16.5 (2) divide the result of clause (1) by four.

16.6 (f) The 15-minute unit rates for homemaker services and assistance with personal cares,
16.7 homemaker services and cleaning, and homemaker services and home management are
16.8 calculated as follows:

16.9 (1) sum the adjusted base wage for the respective position and the registered nurse
16.10 management and supervision factor; and

16.11 (2) divide the result of clause (1) by four.

16.12 (g) The 15-minute unit rate for in-home respite care services is calculated as follows:

16.13 (1) sum the adjusted base wage for in-home respite care services and the registered nurse
16.14 management and supervision factor; and

16.15 (2) divide the result of clause (1) by four.

16.16 (h) The in-home respite care services daily rate equals the in-home respite care services
16.17 15-minute unit rate multiplied by 18.

16.18 (i) The 15-minute unit rate for out-of-home respite care is calculated as follows:

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

16.21 (2) divide the result of clause (1) by four.

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

16.24 (k) The individual community living support rate is calculated as follows:

16.25 (1) sum the adjusted base wage for the home care aide rate in subdivision 13, paragraph
16.26 (a), clause (2), and the social worker factor; and

16.27 (2) divide the result of clause (1) by four.

16.28 (l) The home delivered meals rate equals \$9.30. Beginning July 1, 2018, the commissioner
16.29 shall increase the home delivered meals rate every July 1 by the percent increase in the
16.30 nursing facility dietary per diem using the two most recent nursing facility cost reports.

17.1 (m) The adult day services rate is based on the home care aide rate under subdivision
17.2 13, paragraph (a), clause (2), plus the additional factors in subdivision 14, except that the
17.3 general and administrative factor used shall be 20 percent. The nonregistered nurse portion
17.4 of the rate shall be multiplied by 0.25, to reflect a staffing ratio of one caregiver to four
17.5 clients, and divided by four to determine the 15-minute unit rate. The registered nurse portion
17.6 is divided by four to determine the 15-minute unit rate and \$0.63 per 15-minute unit is added
17.7 to cover the cost of meals.

17.8 (n) The adult day services bath 15-minute unit rate is the same as the calculation of the
17.9 adult day services 15-minute unit rate without the adjustment for staffing ratio.

17.10 (o) If a bath is authorized for an adult day services client, at least two 15-minute units
17.11 must be authorized to allow for adequate time to meet client needs. Adult day services may
17.12 be authorized for up to 48 units, or 12 hours, per day based on client and family caregiver
17.13 needs.

17.14 Sec. 12. Minnesota Statutes 2016, section 256B.439, is amended by adding a subdivision
17.15 to read:

17.16 Subd. 2b. **Performance measures for elderly waiver customized living.** The
17.17 commissioner shall develop performance measures for housing with services establishments
17.18 that are enrolled in the elderly waiver program as a provider of customized living or 24-hour
17.19 customized living. According to methods determined by the commissioner in consultation
17.20 with stakeholders and experts, the commissioner shall develop the following performance
17.21 measures:

17.22 (1) an annual customer satisfaction survey measure for assisted living residents and
17.23 family members using a validated survey tool and set of questions chosen by the
17.24 commissioner in consultation with stakeholders;

17.25 (2) a measure utilizing level 3 or 4 citations from Department of Health home care survey
17.26 findings and substantiated Office of Health Facility Complaints findings against a home
17.27 care agency;

17.28 (3) a home care staff retention measure; and

17.29 (4) a measure that scores a provider's staff according to their level of training and
17.30 education.

18.1 Sec. 13. **DIRECTION TO COMMISSIONER; ADULT DAY SERVICES STAFFING**
18.2 **RATIOS.**

18.3 The commissioner of human services shall study the staffing ratio for adult day services
18.4 clients and shall provide the chairs and ranking minority members of the house of
18.5 representatives and senate committees with jurisdiction over adult day services with
18.6 recommendations to adjust staffing ratios based on client needs by January 1, 2018.

18.7 Sec. 14. **DIRECTION TO COMMISSIONER; EVALUATION OF RATE**
18.8 **METHODOLOGY.**

18.9 (a) The commissioner of human services, in consultation with stakeholders, shall conduct
18.10 a study to evaluate the following:

18.11 (1) base wages in Minnesota Statutes, section 256B.0915, subdivision 13, to determine
18.12 if the standard occupational classification codes for each rate and component rate are an
18.13 appropriate representation of staff who deliver such services; and

18.14 (2) factors in Minnesota Statutes, section 256B.0915, subdivision 14, and adjusted base
18.15 wage calculations in Minnesota Statutes, section 256B.0915, subdivision 15, to determine
18.16 if the factors and calculations appropriately address nonwage provider costs.

18.17 (b) By January 1, 2019, the commissioner shall submit a report to the chairs and ranking
18.18 minority members of the legislative committees with jurisdiction over human services policy
18.19 and finance on the changes to the rate methodology in Minnesota Statutes, section 256B.0915,
18.20 based on the results of the evaluation. Where feasible, the report shall address the impact
18.21 of the new rates on the workforce situation and client access to services. The report must
18.22 include any changes to the rate calculations that the commissioner recommends.

18.23 Sec. 15. **APPROPRIATION; PERFORMANCE MEASURES FOR ELDERLY**
18.24 **WAIVER CUSTOMIZED LIVING.**

18.25 \$5,000,000 in fiscal year 2018 is appropriated from the general fund to the commissioner
18.26 of human services for purposes of developing performance measures for elderly waiver
18.27 customized living under Minnesota Statutes, section 256B.439, subdivision 2b. This is a
18.28 onetime appropriation.

18.29 Sec. 16. **REVISOR'S INSTRUCTION.**

18.30 The revisor of statutes, in consultation with the House Research Department, Office of
18.31 Senate Counsel, Research, and Fiscal Analysis, and Department of Human Services shall

- 19.1 prepare legislation for the 2018 legislative session to recodify laws governing the elderly
- 19.2 waiver program in Minnesota Statutes, chapter 256B.
- 19.3 **EFFECTIVE DATE.** This section is effective the day following final enactment.