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State of Minnesota
HOUSE OF REPRESENTATIVES

**EIGHTY-FIFTH
SESSION**

HOUSE FILE No. 1405

February 26, 2007

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The bill was read for the first time and referred to the Committee on Health and Human Services

March 8, 2007

Committee Recommendation and Adoption of Report:

To Pass as Amended and re-referred to the Committee on Finance

1.1 A bill for an act
1.2 relating to human services; allowing coverage of incidental nursing services
1.3 under the elderly waiver; providing rate exceptions; withholding long-term care
1.4 consultation payments for certain facilities in arrears; requiring a study and
1.5 report; amending Minnesota Statutes 2006, sections 256B.0911, subdivision 6;
1.6 256B.0915, subdivision 3e, by adding a subdivision.

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

1.8 Section 1. Minnesota Statutes 2006, section 256B.0911, subdivision 6, is amended to
1.9 read:

1.10 Subd. 6. **Payment for long-term care consultation services.** (a) The total payment
1.11 for each county must be paid monthly by certified nursing facilities in the county. The
1.12 monthly amount to be paid by each nursing facility for each fiscal year must be determined
1.13 by dividing the county's annual allocation for long-term care consultation services by 12
1.14 to determine the monthly payment and allocating the monthly payment to each nursing
1.15 facility based on the number of licensed beds in the nursing facility. Payments to counties
1.16 in which there is no certified nursing facility must be made by increasing the payment
1.17 rate of the two facilities located nearest to the county seat.

1.18 (b) The commissioner shall include the total annual payment determined under
1.19 paragraph (a) for each nursing facility reimbursed under section 256B.431 or 256B.434
1.20 according to section 256B.431, subdivision 2b, paragraph (g), or 256B.435. Facilities
1.21 whose payments to one or more counties are more than three months in arrears shall have
1.22 their long-term care consultation payments from the commissioner withheld, and the
1.23 commissioner is authorized to send withheld amounts directly to affected counties.

1.24 (c) In the event of the layaway, delicensure and decertification, or removal from
1.25 layaway of 25 percent or more of the beds in a facility, the commissioner may adjust

2.1 the per diem payment amount in paragraph (b) and may adjust the monthly payment
2.2 amount in paragraph (a). The effective date of an adjustment made under this paragraph
2.3 shall be on or after the first day of the month following the effective date of the layaway,
2.4 delicensure and decertification, or removal from layaway.

2.5 (d) Payments for long-term care consultation services are available to the county
2.6 or counties to cover staff salaries and expenses to provide the services described in
2.7 subdivision 1a. The county shall employ, or contract with other agencies to employ, within
2.8 the limits of available funding, sufficient personnel to provide long-term care consultation
2.9 services while meeting the state's long-term care outcomes and objectives as defined in
2.10 section 256B.0917, subdivision 1. The county shall be accountable for meeting local
2.11 objectives as approved by the commissioner in the biennial home and community-based
2.12 services quality assurance plan on a form provided by the commissioner.

2.13 (e) Notwithstanding section 256B.0641, overpayments attributable to payment of the
2.14 screening costs under the medical assistance program may not be recovered from a facility.

2.15 (f) The commissioner of human services shall amend the Minnesota medical
2.16 assistance plan to include reimbursement for the local consultation teams.

2.17 (g) The county may bill, as case management services, assessments, support
2.18 planning, and follow-along provided to persons determined to be eligible for case
2.19 management under Minnesota health care programs. No individual or family member
2.20 shall be charged for an initial assessment or initial support plan development provided
2.21 under subdivision 3a or 3b.

2.22 Sec. 2. Minnesota Statutes 2006, section 256B.0915, subdivision 3e, is amended to
2.23 read:

2.24 Subd. 3e. **Assisted living service rate.** (a) Payment for assisted living service
2.25 shall be a monthly rate negotiated and authorized by the county agency based on an
2.26 individualized service plan for each resident and may not cover direct rent or food costs.

2.27 (b) The individualized monthly negotiated payment for assisted living services as
2.28 described in section 256B.0913, subdivisions 5d to 5f, and residential care services as
2.29 described in section 256B.0913, subdivision 5c, shall not exceed the nonfederal share, in
2.30 effect on July 1 of the state fiscal year for which the rate limit is being calculated, of the
2.31 greater of either the statewide or any of the geographic groups' weighted average monthly
2.32 nursing facility rate of the case mix resident class to which the elderly waiver eligible
2.33 client would be assigned under Minnesota Rules, parts 9549.0050 to 9549.0059, less the
2.34 maintenance needs allowance as described in subdivision 1d, paragraph (a), until the July
2.35 1 of the state fiscal year in which the resident assessment system as described in section

3.1 256B.437 for nursing home rate determination is implemented. Effective on July 1 of the
3.2 state fiscal year in which the resident assessment system as described in section 256B.437
3.3 for nursing home rate determination is implemented and July 1 of each subsequent state
3.4 fiscal year, the individualized monthly negotiated payment for the services described
3.5 in this clause shall not exceed the limit described in this clause which was in effect on
3.6 June 30 of the previous state fiscal year and which has been adjusted by the greater of
3.7 any legislatively adopted home and community-based services cost-of-living percentage
3.8 increase or any legislatively adopted statewide percent rate increase for nursing facilities.

3.9 (c) The individualized monthly negotiated payment for assisted living services
3.10 described in section 144A.4605 and delivered by a provider licensed by the Department
3.11 of Health as a class A home care provider or an assisted living home care provider and
3.12 provided in a building that is registered as a housing with services establishment under
3.13 chapter 144D and that provides 24-hour supervision in combination with the payment for
3.14 other elderly waiver services, including case management, must not exceed the limit
3.15 specified in subdivision 3a.

3.16 (d) Subject to the requirements of this section, customized living services and
3.17 24-hour customized living services include incidental nursing services that are provided
3.18 directly by a licensed nurse under a Class A or Class F home care license issued under
3.19 Minnesota Rules, chapter 4668, and that are not eligible to be covered by Medicare.
3.20 For purposes of this paragraph, "incidental nursing services" means medication set-ups,
3.21 injections, diabetic foot care, catheter insertion, monitoring of blood tests for therapeutic
3.22 treatments, nursing assessments, and any other service identified by the commissioner
3.23 of human services. If the commissioner determines that incidental nursing services, as
3.24 defined, are not permitted under the terms of the federally approved elderly home and
3.25 community-based services waiver, the commissioner shall apply to amend the waiver to
3.26 permit coverage of the services within customized living and 24-hour customized living.

3.27 Sec. 3. Minnesota Statutes 2006, section 256B.0915, is amended by adding a
3.28 subdivision to read:

3.29 Subd. 3h. **Individual rate exceptions authorized.** Based on the determination of
3.30 the case manager, in consultation with the provider serving the elderly waiver client, if
3.31 the client needs additional services for 30 days or less in order to avoid a hospitalization
3.32 or nursing facility placement, the case manager may authorize additional elderly waiver
3.33 services that exceed the client's monthly cost limit. For these clients, the total cost of all
3.34 elderly waiver services may not exceed the monthly conversion limit for elderly waiver
3.35 applicants who reside in a nursing facility, as defined in subdivision 3b.

4.1 Sec. 4. **STUDY AND REPORT ON ELDERLY WAIVER.**

4.2 The commissioner of human services, after consulting with counties, by January
4.3 15, 2008, shall present a report to the legislature addressing the following aspects of the
4.4 home and community-based waived services program for the elderly under Minnesota
4.5 Statutes, section 256B.0915:

4.6 (1) the length of time it takes each county, or joint-county consultation team, as
4.7 applicable, to complete a long-term care consultation under Minnesota Statutes, section
4.8 256B.0911, for a person who is seeking to qualify for, or is a current recipient of, elderly
4.9 waiver services, including recommendations on how to improve the process, to the extent
4.10 counties or joint-county consultation teams are not achieving compliance with Minnesota
4.11 Statutes, section 256B.0911, subdivision 3a;

4.12 (2) the methods and tools that lead agencies use to establish the level of, and payment
4.13 rates for, customized living and 24-hour customized living services provided under the
4.14 elderly waiver program, including recommendations for how to achieve consistency
4.15 across these lead agencies in providing access to and funding for these services; and

4.16 (3) options to fully fund the county responsibilities for long-term care consultations
4.17 as required under section 256B.0911 in a manner that will sustain and support these
4.18 responsibilities as a core county function to assist persons with long-term or chronic care
4.19 needs in making long-term care decisions and selecting options that meet their needs and
4.20 reflect their preferences, and to ensure the availability of, and access to, information and
4.21 other types of assistance intended to prevent or delay certified nursing facility placements
4.22 and to provide transition assistance after admission.