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HOUSE OF REPRESENTATIVES

**EIGHTY-FIFTH
SESSION**

HOUSE FILE No. 3635

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The bill was read for the first time and referred to the Committee on Finance

1.1 A bill for an act
1.2 relating to human services; providing additional rate adjustments for nursing
1.3 facilities and community-based long-term care providers; amending Minnesota
1.4 Statutes 2007 Supplement, section 256B.434, subdivision 19; Laws 2007,
1.5 chapter 147, article 7, section 71.

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

1.7 Section 1. Minnesota Statutes 2007 Supplement, section 256B.434, subdivision 19,
1.8 is amended to read:

1.9 Subd. 19. **Nursing facility rate increases beginning October 1, 2007, and**
1.10 **October 1, 2008.** (a) For the rate year beginning October 1, 2007, the commissioner
1.11 shall make available to each nursing facility reimbursed under this section operating
1.12 payment rate adjustments equal to 1.87 percent of the operating payment rates in effect on
1.13 September 30, 2007. For the rate year beginning October 1, 2008, the commissioner shall
1.14 make available to each nursing facility reimbursed under this section operating payment
1.15 rate adjustments equal to 2.0 percent of the operating payment rates in effect on September
1.16 30, 2008. The rate increases effective October 1, 2008, shall be in addition to the operating
1.17 rate adjustments facilities receive under the provisions of section 256B.441, and shall be
1.18 applied after the October 1, 2008, phase-in of rebased operating cost payments rates
1.19 under section 256B.441, subdivision 55.

1.20 (b) Seventy-five percent of the money resulting from the October 1, 2007, rate
1.21 adjustment under paragraph (a), and percent of the money resulting from the
1.22 October 1, 2008, rate adjustment under paragraph (a) must be used for increases in
1.23 compensation-related costs for employees directly employed by the nursing facility on
1.24 or after the effective date of the rate adjustment, except:

1.25 (1) the administrator;

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

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

2.4 (c) Two-thirds of the money available from the October 1, 2007, rate adjustment
2.5 under paragraph (b) must be used for wage increases for all employees directly employed
2.6 by the nursing facility on or after the effective date of the rate adjustment, except those
2.7 listed in paragraph (b), clauses (1) to (3). The wage adjustment that employees receive
2.8 under this paragraph must be paid as an equal hourly percentage wage increase for all
2.9 eligible employees. All wage increases under this paragraph must be effective on the same
2.10 date. Only costs associated with the portion of the equal hourly percentage wage increase
2.11 that goes to all employees shall qualify under this paragraph. Costs associated with wage
2.12 increases in excess of the amount of the equal hourly percentage wage increase provided
2.13 to all employees shall be allowed only for meeting the requirements in paragraph (b). This
2.14 paragraph shall not apply to employees covered by a collective bargaining agreement.
2.15 This paragraph shall also not apply to the October 1, 2008, rate adjustments received
2.16 by nursing facilities under paragraph (a).

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

2.18 (1) wages and salaries;

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

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

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

2.24 (e) The portion of the rate adjustment under paragraph (a) that is not subject to the
2.25 requirements in paragraphs (b) and (c) shall be provided to nursing facilities effective
2.26 October 1, 2007.

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

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

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

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

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

3.16 (g) The commissioner shall ensure that cost increases in distribution plans under
3.17 paragraph (f), clause (2), that may be included in approved applications, comply with the
3.18 following requirements:

3.19 (1) costs to be incurred during the applicable rate year resulting from wage and
3.20 salary increases effective after October 1, 2006, and prior to the first day of the nursing
3.21 facility's payroll period that includes October 1, 2007, shall be allowed if they were not
3.22 used in the prior year's application;

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

3.27 (3) for purposes of the October 1, 2007, rate increase, the annualized amount of
3.28 increases in costs for the employer's share of health and dental insurance, life insurance,
3.29 disability insurance, and workers' compensation shall be allowable compensation-related
3.30 increases if they are effective on or after April 1, 2007, and prior to April 1, 2008; and
3.31 for purposes of the October 1, 2008, rate increase, the annualized amount of increases
3.32 in costs for the employer's share of health and dental insurance, life insurance, disability
3.33 insurance, and workers' compensation shall be allowable compensation-related increases
3.34 if they are effective on or after April 1, 2008, and prior to April 1, 2009; and

3.35 (4) for nursing facilities in which employees are represented by an exclusive
3.36 bargaining representative, the commissioner shall approve the application only upon

4.1 receipt of a letter of acceptance of the distribution plan, in regard to members of the
4.2 bargaining unit, signed by the exclusive bargaining agent and dated after May 25, 2007.
4.3 Upon receipt of the letter of acceptance, the commissioner shall deem all requirements
4.4 of this section as having been met in regard to the members of the bargaining unit. A
4.5 letter of acceptance signed by the exclusive bargaining agent is required with respect to
4.6 both the 2007 and 2008 rate adjustments.

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

4.13 Sec. 2. Laws 2007, chapter 147, article 7, section 71, is amended to read:

4.14 Sec. 71. **PROVIDER RATE INCREASES.**

4.15 (a) The commissioner of human services shall increase allocations, reimbursement
4.16 rates, or rate limits, as applicable, by 2.0 percent beginning October 1, 2007, and by ~~2.0~~
4.17 3.0 percent beginning July 1, 2008, effective for services rendered on or after those dates.
4.18 County contracts for services specified in this section must be amended to pass through
4.19 these rate adjustments within 60 days of the effective date of the increase and must be
4.20 retroactive from the effective date of the rate adjustment.

4.21 (b) The annual rate increases described in this section must be provided to:

4.22 (1) home and community-based waived services for persons with developmental
4.23 disabilities or related conditions, including consumer-directed community supports, under
4.24 Minnesota Statutes, section 256B.501;

4.25 (2) home and community-based waived services for the elderly, including
4.26 consumer-directed community supports, under Minnesota Statutes, section 256B.0915;

4.27 (3) waived services under community alternatives for disabled individuals,
4.28 including consumer-directed community supports, under Minnesota Statutes, section
4.29 256B.49;

4.30 (4) community alternative care waived services, including consumer-directed
4.31 community supports, under Minnesota Statutes, section 256B.49;

4.32 (5) traumatic brain injury waived services, including consumer-directed
4.33 community supports, under Minnesota Statutes, section 256B.49;

4.34 (6) nursing services and home health services under Minnesota Statutes, section
4.35 256B.0625, subdivision 6a;

- 5.1 (7) personal care services and qualified professional supervision of personal care
5.2 services under Minnesota Statutes, section 256B.0625, subdivision 19a;
- 5.3 (8) private duty nursing services under Minnesota Statutes, section 256B.0625,
5.4 subdivision 7;
- 5.5 (9) day training and habilitation services for adults with developmental disabilities
5.6 or related conditions under Minnesota Statutes, sections 252.40 to 252.46, including the
5.7 additional cost of rate adjustments on day training and habilitation services, provided as a
5.8 social service under Minnesota Statutes, section 256M.60;
- 5.9 (10) alternative care services under Minnesota Statutes, section 256B.0913;
- 5.10 (11) adult residential program grants under Minnesota Statutes, section 245.73;
- 5.11 (12) children's community-based mental health services grants and adult community
5.12 support and case management services grants under Minnesota Rules, parts 9535.1700
5.13 to 9535.1760;
- 5.14 (13) the group residential housing supplementary service rate under Minnesota
5.15 Statutes, section 256I.05, subdivision 1a;
- 5.16 (14) adult mental health integrated fund grants under Minnesota Statutes, section
5.17 245.4661;
- 5.18 (15) semi-independent living services (SILS) under Minnesota Statutes, section
5.19 252.275, including SILS funding under county social services grants formerly funded
5.20 under Minnesota Statutes, chapter 256I;
- 5.21 (16) community support services for deaf and hard-of-hearing adults with mental
5.22 illness who use or wish to use sign language as their primary means of communication
5.23 under Minnesota Statutes, section 256.01, subdivision 2; and deaf and hard-of-hearing
5.24 grants under Minnesota Statutes, sections 256C.233 and 256C.25; Laws 1985, chapter 9,
5.25 article 1; and Laws 1997, First Special Session chapter 5, section 20;
- 5.26 (17) living skills training programs for persons with intractable epilepsy who need
5.27 assistance in the transition to independent living under Laws 1988, chapter 689;
- 5.28 (18) physical therapy services under sections 256B.0625, subdivision 8, and
5.29 256D.03, subdivision 4;
- 5.30 (19) occupational therapy services under sections 256B.0625, subdivision 8a, and
5.31 256D.03, subdivision 4;
- 5.32 (20) speech-language therapy services under section 256D.03, subdivision 4, and
5.33 Minnesota Rules, part 9505.0390;
- 5.34 (21) respiratory therapy services under section 256D.03, subdivision 4, and
5.35 Minnesota Rules, part 9505.0295;
- 5.36 (22) adult rehabilitative mental health services under section 256B.0623;

6.1 (23) children's therapeutic services and support services under section 256B.0943;
6.2 (24) tier I chemical health services under Minnesota Statutes, chapter 254B;
6.3 (25) consumer support grants under Minnesota Statutes, section 256.476;
6.4 (26) family support grants under Minnesota Statutes, section 252.32;
6.5 (27) grants for case management services to persons with HIV or AIDS under

6.6 Minnesota Statutes, section 256.01, subdivision 19; and

6.7 (28) aging grants under Minnesota Statutes, sections 256.975 to 256.977, 256B.0917,
6.8 and 256B.0928.

6.9 (c) For services funded through Minnesota disability health options, the rate
6.10 increases under this section apply to all medical assistance payments, including former
6.11 group residential housing supplementary rates under Minnesota Statutes, chapter 256I.

6.12 (d) The commissioner may recoup payments made under this section from a provider
6.13 that does not comply with paragraphs (f) and (g).

6.14 (e) A managed care plan receiving state payments for the services in this section
6.15 must include these increases in their payments to providers on a prospective basis,
6.16 effective on January 1 following the effective date of the rate increase.

6.17 (f) Providers that receive a rate increase under this section shall use 75 percent
6.18 of the additional revenue from the October 1, 2007, increase and percent of the
6.19 additional revenue from the July 1, 2008, increase to increase compensation-related costs
6.20 for employees directly employed by the program on or after the effective date of the
6.21 rate adjustments, except:

6.22 (1) the administrator;

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

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

6.26 Compensation-related costs include: wages and salaries; FICA taxes, Medicare taxes,
6.27 state and federal unemployment taxes, and workers' compensation; and the employer's
6.28 share of health and dental insurance, life insurance, disability insurance, long-term care
6.29 insurance, uniform allowance, and pensions.

6.30 (g) Two-thirds of the money from the October 1, 2007, rate increase available under
6.31 paragraph (f) must be used for wage increases for all employees directly employed by
6.32 the provider on or after the effective date of the rate adjustments, except those listed in
6.33 paragraph (f), clauses (1) to (3). The wage adjustment that employees receive under
6.34 this paragraph must be paid as an equal hourly percentage wage increase for all eligible
6.35 employees. All wage increases under this paragraph must be effective on the same date.

7.1 This paragraph shall not apply to employees covered by a collective bargaining agreement.

7.2 This paragraph shall also not apply to the July 1, 2008, rate increase.

7.3 (h) For public employees, the increase for wages and benefits for certain staff is
7.4 available and pay rates must be increased only to the extent that they comply with laws
7.5 governing public employees collective bargaining. Money received by a provider for pay
7.6 increases under this section may be used only for increases implemented on or after the
7.7 first day of the rate period in which the increase is available and must not be used for
7.8 increases implemented prior to that date.

7.9 (i) The commissioner shall amend state grant contracts that include direct
7.10 personnel-related grant expenditures to include the allocation for the portion of the contract
7.11 that is employee compensation related. Grant contracts for compensation-related services
7.12 must be amended to pass through these adjustments within 60 days of the effective date of
7.13 the increase and must be retroactive to the effective date of the rate adjustment.

7.14 (j) The Board on Aging and its Area Agencies on Aging shall amend their
7.15 grants that include direct personnel-related grant expenditures to include the rate
7.16 adjustment for the portion of the grant that is employee compensation related. Grants
7.17 for compensation-related services must be amended to pass through these adjustments
7.18 within 60 days of the effective date of the increase and must be retroactive to the effective
7.19 date of the rate adjustment.

7.20 (k) The calendar year 2008 rate for vendors reimbursed under Minnesota Statutes,
7.21 chapter 254B, shall be at least 2.0 percent above the rate in effect on January 1, 2007.
7.22 The calendar year 2009 rate shall be at least ~~2.0~~ 3.0 percent above the rate in effect on
7.23 January 1, 2008.

7.24 (l) Providers that receive a rate adjustment under paragraph (a) that is subject to
7.25 paragraphs (f) and (g) shall provide to the commissioner, and those counties with whom
7.26 they have a contract, within six months after the effective date of each rate adjustment, a
7.27 letter, in a format specified by the commissioner, that provides assurances that the provider
7.28 has developed and implemented a compensation plan and complied with paragraphs (f)
7.29 and (g). The provider shall keep on file, and produce for the commissioner or county
7.30 upon request, its plan, which must specify:

7.31 (1) an estimate of the amounts of money that must be used as specified in paragraphs
7.32 (f) and (g); and

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

7.35 (m) Within six months after the effective date of each rate adjustment, the provider
7.36 shall post this plan, excluding the information required in paragraph (l), clause (1), for

8.1 a period of at least six weeks in an area of the provider's operation to which all eligible
8.2 employees have access and provide instructions for employees who believe they have
8.3 not received the wage and other compensation-related increases specified in paragraph
8.4 (1), clause (2). Instructions must include a mailing address, e-mail address, and the
8.5 telephone number that may be used by the employee to contact the commissioner or the
8.6 commissioner's representative. Providers shall also make assurances to the commissioner
8.7 and counties with whom they have a contract that they have complied with the requirement
8.8 in this paragraph.