

**SENATE
STATE OF MINNESOTA
NINETY-FIRST SESSION**

S.F. No. 2410

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DATE
03/13/2019

D-PG

Introduction and first reading
Referred to Family Care and Aging

OFFICIAL STATUS

1.1 A bill for an act
1.2 relating to human services; requiring housing with services establishments to set
1.3 aside capacity for elderly waiver participants; establishing a rate adjustment for
1.4 housing with service establishments serving a large portion of elderly waiver
1.5 participants; amending Minnesota Statutes 2018, section 256B.0915, subdivision
1.6 10, by adding a subdivision; proposing coding for new law in Minnesota Statutes,
1.7 chapter 144D.

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

1.9 Section 1. **[144D.12] REQUIRED ELDERLY WAIVER CAPACITY.**

1.10 Subdivision 1. Elderly waiver services required. Each housing with services
1.11 establishment that offers or provides assisted living under chapter 144G, except those
1.12 registered under section 144D.025, must, as a condition of maintaining its registration,
1.13 demonstrate that at least ten percent of its residents are elderly waiver participants. Newly
1.14 registered housing with services establishments must comply with this section by the date
1.15 of the establishment's second annual registration. If the commissioner determines that an
1.16 establishment is out of compliance with this section, the commissioner shall notify the
1.17 establishment that the establishment is out of compliance and allow the establishment 180
1.18 calendar days to come into compliance with this section. If after 180 days the commissioner
1.19 determines that the establishment remains out of compliance, the commissioner shall suspend
1.20 the establishment's registration until the establishment demonstrates compliance.

1.21 Subd. 2. Demonstrating proportion of elderly waiver participants. Each housing
1.22 with services establishment required under subdivision 1 to demonstrate that at least ten
1.23 percent of its residents are elderly waiver participants must document in a manner determined
1.24 by the commissioner the average daily census of elderly waiver participants living in the

2.1 establishment during the 12-month period prior to the date of the establishment's annual
2.2 registration.

2.3 Sec. 2. Minnesota Statutes 2018, section 256B.0915, subdivision 10, is amended to read:

2.4 Subd. 10. **Waiver payment rates; managed care organizations.** The commissioner
2.5 shall adjust the elderly waiver capitation payment rates for managed care organizations paid
2.6 under section 256B.69, subdivisions 6b and 23, to reflect the maximum service rate limits
2.7 for customized living services and 24-hour customized living services under subdivisions
2.8 ~~3e and 3h~~, and 18. Medical assistance rates paid to customized living providers by managed
2.9 care organizations under this section shall not exceed the maximum service rate limits and
2.10 component rates as determined by the commissioner under subdivisions ~~3e and 3h~~, and 18.

2.11 Sec. 3. Minnesota Statutes 2018, section 256B.0915, is amended by adding a subdivision
2.12 to read:

2.13 Subd. 18. **Disproportionate share establishment customized living rate**
2.14 **adjustment.** (a) For purposes of this section, "designated disproportionate share
2.15 establishment" means a housing with services establishment registered under chapter 144D
2.16 that meets the requirements of paragraph (d).

2.17 (b) A housing with services establishment registered under chapter 144D may apply
2.18 annually between June 1 and June 15 to the lead agency to be designated as a disproportionate
2.19 share establishment. The applying housing with services establishment must apply to the
2.20 lead agency in the manner determined by the commissioner. The applying housing with
2.21 services establishment must document as a percentage the average daily census of elderly
2.22 waiver participants residing in the establishment over the 12 months prior to submitting its
2.23 annual application.

2.24 (c) Only a housing with services establishment registered under chapter 144D with an
2.25 average daily census of at least 50 percent elderly waiver participants during the 12 months
2.26 prior to submitting its annual application is eligible under this section for designation as a
2.27 disproportionate share establishment. An applying housing with services establishment must
2.28 agree in writing to monitor each month its 12-month average daily census of elderly waiver
2.29 participants and, if in any month the 12-month average daily census decreases by more than
2.30 ten percentage points, notify the lead agency of the establishment's current 12-month average.
2.31 If an establishment's 12-month average falls below 40 percent, the establishment is no longer
2.32 eligible for designation as a disproportionate share establishment, and the lead agency shall
2.33 immediately revoke the designation and cease to apply the establishment's rate adjustment.

3.1 A revocation of a designation does not prohibit an establishment from applying for
3.2 designation in the future. If an establishment's 12-month average daily census of elderly
3.3 waiver participants decreases more than ten percentage points, but not below 40 percent,
3.4 the lead agency shall immediately recalculate the establishment's rate adjustment under
3.5 paragraph (f) using the establishment's current 12-month average.

3.6 (d) By June 30, the lead agency shall designate as a disproportionate share establishment
3.7 any housing with services establishment that complies with the requirements of paragraph
3.8 (b) and meets the eligibility criteria described in paragraph (c).

3.9 (e) When authorizing rates for customized living services and 24-hour customized living
3.10 services for elderly waiver participants who are residents of designated disproportionate
3.11 share establishments, the lead agency shall utilize the component values established by the
3.12 commissioner under subdivision 3e, and the component values established under subdivision
3.13 16, and shall multiply the component values by the establishment's customized living rate
3.14 adjustment as determined under paragraph (f).

3.15 (f) A designated disproportionate share establishment's customized living rate adjustment
3.16 is the sum of 0.89 plus the product of 0.29 multiplied by the 12-month average daily census
3.17 of elderly waiver participants as a percentage of the residents of the establishment as reported
3.18 on the establishment's most recent application for designation as a disproportionate share
3.19 establishment or as reported to the lead agency under paragraph (c). No establishment may
3.20 receive a customized living rate adjustment greater than 1.10.

3.21 (g) The customized living monthly service rate limit for housing with services
3.22 establishments designated as disproportionate share establishments under paragraph (d)
3.23 shall not exceed the product of half the monthly case mix budget determined under
3.24 subdivision 3e multiplied by the designated disproportionate share establishment's customized
3.25 living rate adjustment determined under paragraph (f).

3.26 (h) The 24-hour customized living monthly service limit for housing with services
3.27 establishments designated as disproportionate share establishments under paragraph (d) is
3.28 the limit determined under subdivision 3h multiplied by the designated disproportionate
3.29 share establishment's customized living rate adjustment determined under paragraph (f).

3.30 (i) When requesting or renewing an eligibility determination for elderly waiver services,
3.31 a participant who is a resident or a potential resident of a disproportionate share establishment
3.32 may request a disproportionate share monthly case mix budget cap for the cost of elderly
3.33 waiver services.

4.1 (j) Only a resident of a designated disproportionate share establishment is eligible under
4.2 this section for a disproportionate share monthly case mix budget cap.

4.3 (k) Effective each July, the disproportionate share monthly case mix budget cap for all
4.4 case mix classifications shall be the sum of half the monthly case mix budget cap determined
4.5 under subdivision 3a plus the product of half the monthly case mix budget cap multiplied
4.6 by the designated disproportionate share establishment's customized living rate adjustment
4.7 determined under paragraph (f).