

SENATE
STATE OF MINNESOTA
NINETY-THIRD SESSION

S.F. No. 3247

(SENATE AUTHORS: HOFFMAN, Boldon, Fateh and Abeler)

DATE
04/12/2023

D-PG

Introduction and first reading
Referred to Human Services

OFFICIAL STATUS

1.1 A bill for an act
1.2 relating to human services; establishing professional competency and shift wage
1.3 differential enhanced payment rates for personal care assistant and community
1.4 first services and supports professionals; modifying use of enhanced rate revenue
1.5 for workers; establishing a temporary personal care assistance rate increase;
1.6 appropriating money; amending Minnesota Statutes 2022, sections 256B.0659,
1.7 subdivisions 17a, 24; 256B.85, subdivision 7a.

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

1.9 Section 1. Minnesota Statutes 2022, section 256B.0659, subdivision 17a, is amended to
1.10 read:

1.11 Subd. 17a. **Enhanced rate.** (a) An enhanced rate of ~~107.5~~143 percent of the rate paid
1.12 for personal care assistance services shall be paid for services provided to persons who
1.13 qualify for ten or more hours of personal care assistance services per day when provided
1.14 by a personal care assistant who meets the requirements of subdivision 11, paragraph (d).
1.15 Any change in the eligibility criteria for the enhanced rate for personal care assistance
1.16 services as described in this subdivision and referenced in subdivision 11, paragraph (d),
1.17 does not constitute a change in a term or condition for individual providers as defined in
1.18 section 256B.0711, and is not subject to the state's obligation to meet and negotiate under
1.19 chapter 179A.

1.20 (b) An enhanced rate of 25 percent on top of any enhancements in paragraph (a) must
1.21 be paid for services provided by a support worker certified or licensed as a registered nurse,
1.22 licensed practical nurse, home health aide, or certified nursing assistant.

2.1 (c) An enhanced rate of ten percent more on top of any other enhancement in this
2.2 subdivision must be paid for services provided from 9 p.m. Friday night to 9 a.m. Monday
2.3 morning.

2.4 (d) Additional revenue due to any enhanced rate under this subdivision must be used by
2.5 the agency to pay for the wages of the PCAs whose services meet the requirements under
2.6 subdivision 11, paragraph (d). The agency must not use the additional revenue due to any
2.7 enhanced rate under this subdivision to pay for mileage reimbursement, health and dental
2.8 insurance, life insurance, disability insurance, long-term care insurance, uniform allowance,
2.9 contributions to employee retirement accounts, or any other employee benefits.

2.10 **EFFECTIVE DATE.** This section is effective July 1, 2023, or upon federal approval,
2.11 whichever is later. The commissioner of human services shall notify the revisor of statutes
2.12 when federal approval is obtained.

2.13 Sec. 2. Minnesota Statutes 2022, section 256B.0659, subdivision 24, is amended to read:

2.14 Subd. 24. **Personal care assistance provider agency; general duties.** A personal care
2.15 assistance provider agency shall:

2.16 (1) enroll as a Medicaid provider meeting all provider standards, including completion
2.17 of the required provider training;

2.18 (2) comply with general medical assistance coverage requirements;

2.19 (3) demonstrate compliance with law and policies of the personal care assistance program
2.20 to be determined by the commissioner;

2.21 (4) comply with background study requirements;

2.22 (5) verify and keep records of hours worked by the personal care assistant and qualified
2.23 professional;

2.24 (6) not engage in any agency-initiated direct contact or marketing in person, by phone,
2.25 or other electronic means to potential recipients, guardians, or family members;

2.26 (7) pay the personal care assistant and qualified professional based on actual hours of
2.27 services provided;

2.28 (8) withhold and pay all applicable federal and state taxes;

2.29 (9) document that the agency uses a minimum of 72.5 percent of the revenue generated
2.30 by the medical assistance rate for personal care assistance services for employee personal
2.31 care assistant wages and benefits. The revenue generated by the qualified professional and

3.1 the reasonable costs associated with the qualified professional shall not be used in making
3.2 this calculation;

3.3 (10) make the arrangements and pay unemployment insurance, taxes, workers'
3.4 compensation, liability insurance, and other benefits, if any;

3.5 (11) enter into a written agreement under subdivision 20 before services are provided;

3.6 (12) report suspected neglect and abuse to the common entry point according to section
3.7 256B.0651;

3.8 (13) provide the recipient with a copy of the home care bill of rights at start of service;

3.9 (14) request reassessments at least 60 days prior to the end of the current authorization
3.10 for personal care assistance services, on forms provided by the commissioner;

3.11 (15) comply with the labor market reporting requirements described in section 256B.4912,
3.12 subdivision 1a; and

3.13 (16) document that the agency uses the additional revenue due to the enhanced rate under
3.14 subdivision 17a for the wages and benefits of the PCAs whose services meet the requirements
3.15 under subdivision 11, paragraph (d).

3.16 **EFFECTIVE DATE.** This section is effective July 1, 2023, or upon federal approval,
3.17 whichever is later. The commissioner of human services shall notify the revisor of statutes
3.18 when federal approval is obtained.

3.19 Sec. 3. Minnesota Statutes 2022, section 256B.85, subdivision 7a, is amended to read:

3.20 Subd. 7a. **Enhanced rate.** (a) An enhanced rate of ~~107.5~~ 143 percent of the rate paid
3.21 for CFSS must be paid for services provided to persons who qualify for ten or more hours
3.22 of CFSS per day when provided by a support worker who meets the requirements of
3.23 subdivision 16, paragraph (e). Any change in the eligibility criteria for the enhanced rate
3.24 for CFSS as described in this subdivision and referenced in subdivision 16, paragraph (e),
3.25 does not constitute a change in a term or condition for individual providers as defined in
3.26 section 256B.0711, and is not subject to the state's obligation to meet and negotiate under
3.27 chapter 179A.

3.28 (b) An enhanced rate of 25 percent on top of any enhancements in paragraph (a) must
3.29 be paid for services provided by a support worker certified or licensed as a registered nurse,
3.30 licensed practical nurse, home health aide, or certified nursing assistant.

4.1 (c) An enhanced rate of ten percent more on top of any other enhancement in this
4.2 subdivision must be paid for services provided from 9 p.m. Friday night to 9 a.m. Monday
4.3 morning.

4.4 (d) Additional revenue due to any enhanced rate under this subdivision must be used by
4.5 the agency to pay for the wages of the CFSS support workers whose services meet the
4.6 requirements under subdivision 16, paragraph (e). The agency must not use the additional
4.7 revenue due to any enhanced rate under this subdivision to pay for mileage reimbursement,
4.8 health and dental insurance, life insurance, disability insurance, long-term care insurance,
4.9 uniform allowance, contributions to employee retirement accounts, or any other employee
4.10 benefits.

4.11 **EFFECTIVE DATE.** This section is effective July 1, 2023, or upon federal approval,
4.12 whichever is later. The commissioner of human services shall notify the revisor of statutes
4.13 when federal approval is obtained.

4.14 Sec. 4. **DIRECT SUPPORT PROFESSIONALS TEMPORARY RATE INCREASE.**

4.15 Subd. 1. **Temporary rates for personal care assistance services and community first**
4.16 **services and supports.** (a) For the purposes of this section, "direct support professional"
4.17 means an individual employed to personally provide personal care assistance services
4.18 covered under Minnesota Statutes, section 256B.0659, or community first services and
4.19 supports services covered under Minnesota Statutes, section 256B.85. Direct support
4.20 professional does not include managerial or administrative staff who do not personally
4.21 provide the services described in this paragraph.

4.22 (b) The commissioner of human services must temporarily increase rates and enhanced
4.23 rates by 20 percent for personal care assistance services covered under Minnesota Statutes,
4.24 section 256B.0659, and community first services and supports services covered under
4.25 Minnesota Statutes, section 256B.85, while this section is effective.

4.26 (c) The temporary increase under this section must be funded entirely by state-only
4.27 money.

4.28 (d) Providers that receive a rate increase under this section must use the entire amount
4.29 of additional revenue to increase wages for direct support professionals and any
4.30 corresponding increase in the employer's share of FICA taxes, Medicare taxes, state and
4.31 federal unemployment taxes, and workers' compensation premiums. Providers must not use
4.32 the additional revenue under this section to pay for mileage reimbursement, health and

5.1 dental insurance, life insurance, disability insurance, long-term care insurance, uniform
 5.2 allowance, contributions to employee retirement accounts, or any other employee benefits.

5.3 Subd. 2. **Capitation rates and directed payments.** (a) To implement the temporary
 5.4 rate increase under this section, managed care plans and county-based purchasing plans
 5.5 must pay at least the fee-for-service rate inclusive of the 20 percent increase for personal
 5.6 care assistance services covered under Minnesota Statutes, section 256B.0659, and
 5.7 community first services and supports services covered under Minnesota Statutes, section
 5.8 256B.85.

5.9 (b) The commissioner must adjust capitation rates paid to managed care plans and
 5.10 county-based purchasing plans as needed to maintain managed care plans' required medical
 5.11 loss ratios.

5.12 Subd. 3. **Distribution plans.** (a) A provider agency or individual provider that receives
 5.13 a rate increase under subdivision 1 must prepare and, upon request, submit to the
 5.14 commissioner a distribution plan that specifies the anticipated amount and proposed uses
 5.15 of the additional revenue the provider will receive under subdivision 1.

5.16 (b) Within 30 days of final enactment of this section, the provider must post the
 5.17 distribution plan and leave it posted for a period of at least six weeks in an area of the
 5.18 provider's operation to which all direct support professionals have access. The provider
 5.19 must post with the distribution plan instructions on how to contact the commissioner, or the
 5.20 commissioner's representative, if a direct support professional does not believe they have
 5.21 received the wage increase specified in the distribution plan. The instructions must include
 5.22 a mailing address, email address, and telephone number that a direct support professional
 5.23 may use to contact the commissioner or the commissioner's representative.

5.24 Subd. 4. **Expiration.** This section expires upon implementation of the rate increases
 5.25 included in the labor agreement between the state of Minnesota and the Service Employees
 5.26 International Union Healthcare Minnesota, submitted to the Legislative Coordinating
 5.27 Commission on February 27, 2023.

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

5.29 Sec. 5. **APPROPRIATION; ENHANCED RATES FOR DIRECT SUPPORT**
 5.30 **PROFESSIONALS.**

5.31 \$ in fiscal year 2024 and \$ in fiscal year 2025 are appropriated from the general
 5.32 fund to the commissioner of human services for enhanced payment rates for direct support
 5.33 professionals under Minnesota Statutes, section 256B.0659, subdivision 17a, paragraphs

6.1 (b) and (c), and Minnesota Statutes, section 256B.85, subdivision 7a, paragraphs (b) and
6.2 (c).

6.3 **EFFECTIVE DATE.** This section is effective July 1, 2023.

6.4 Sec. 6. **APPROPRIATION; TEMPORARY RATE INCREASE FOR DIRECT**
6.5 **SUPPORT PROFESSIONALS.**

6.6 \$..... in fiscal year 2024 is appropriated from the general fund to the commissioner of
6.7 human services to implement the direct support professional temporary rate increase under
6.8 section 4. This is a onetime appropriation and is available until the expiration of section 4.

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