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CHAPTER 1--S.F.No. 1

An act relating to human services; modifying customized living quality improvement grants; extending portions of a COVID-19 peacetime emergency modification to economic assistance program application requirements; establishing retention and public health grants; appropriating money; amending Laws 2019, First Special Session chapter 9, article 4, section 28; article 14, section 2, subdivision 27; Laws 2020, First Special Session chapter 7, section 1, subdivision 2.

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

Section 1. Laws 2019, First Special Session chapter 9, article 4, section 28, is amended to read:

Sec. 28. ~~**DIRECTION TO COMMISSIONER; ELDERLY WAIVER**~~ **CUSTOMIZED LIVING** ~~**SERVICE PROVIDERS**~~ **QUALITY IMPROVEMENT GRANTS.** (a) The commissioner of human services shall develop incentive-based grants to ~~be available during fiscal years 2020 and 2021 only for elderly waiver~~ providers of customized living ~~service providers~~ services under the brain injury, community access for disability inclusion, and elderly waivers for achieving outcomes specified in a contract. The commissioner may solicit proposals from providers and implement those that, on a competitive basis, best meet the state's policy objectives~~, giving~~ . Until June 30, 2021, the commissioner shall give preference to providers that serve at least 75 percent elderly waiver participants.

(b) Effective July 1, 2021, to be eligible for a grant under this section, a provider must serve at least 75 waiver participants, and at least 75 percent of the clients served by the provider must be waiver participants. For providers of customized living services under the brain injury or community access for disability inclusion, the required 75 waiver participants must reside at multiple locations each with six or more residents. The commissioner shall give greater preference to those providers serving a higher percentage of waiver participants.

(c) The commissioner shall limit expenditures under this subdivision to the amount appropriated for this purpose.

~~(b)~~ (d) In establishing the specified outcomes and related criteria, the commissioner shall consider the following state policy objectives:

(1) provide more efficient, higher quality services;

(2) encourage home and community-based services providers to innovate;

(3) equip home and community-based services providers with organizational tools and expertise to improve their quality;

(4) incentivize home and community-based services providers to invest in better services; and

(5) disseminate successful performance improvement strategies statewide.

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

Sec. 2. Laws 2019, First Special Session chapter 9, article 14, section 2, subdivision 27, is amended to read:

Subd. 27. **Grant Programs; Aging and Adult Services Grants** 32,311,000 32,495,000

Incentive-Based Grants for Customized Living Service Providers. $500,000 in fiscal year 2020 and $500,000 in fiscal year 2021 are for incentive-based grants to brain injury, community access for disability inclusion, and elderly waiver customized living service providers under ~~article 4, section 28~~ Minnesota Statutes, section 256.479.

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

Sec. 3. Laws 2020, First Special Session chapter 7, section 1, subdivision 2, is amended to read:

Subd. 2. **Waivers and modifications; extension to June 30, 2021.** When the peacetime emergency declared by the governor in response to the COVID-19 outbreak expires, is terminated, or is rescinded by the proper authority, the following waivers and modifications to human services programs issued by the commissioner of human services pursuant to Executive Orders 20-11 and 20-12, including any amendments to the waivers or modifications issued before the peacetime emergency expires, shall remain in effect until June 30, 2021, unless necessary federal approval is not received at any time for a waiver or modification:

(1) CV15: allowing phone or video visits for waiver programs;

(2) CV16: expanding access to telemedicine services for Children's Health Insurance Program, Medical Assistance, and MinnesotaCare enrollees;

(3) CV21: allowing telemedicine alternative for school-linked mental health services and intermediate school district mental health services;

(4) CV24: allowing phone or video use for targeted case management visits;

(5) CV30: expanding telemedicine in health care, mental health, and substance use disorder settings;

(6) CV31: allowing partial waiver of county cost when COVID-19 delays discharges from DHS-operated psychiatric hospitals;

(7) CV38: allowing flexibility in housing licensing requirements;

(8) CV43: expanding remote home and community-based services waiver services;

(9) CV44: allowing remote delivery of adult day services;

(10) CV45: modifying certain licensing requirements for substance use disorder treatment, except that the extension shall be limited to the portions of this modification requiring programs to become and remain familiar with Minnesota Department of Health and Centers for Disease Control and Prevention guidance on COVID-19; requiring programs to follow Minnesota Department of Health and Centers for Disease Control and Prevention guidance specific to the situation and program capabilities if a person receiving services or a staff person tests positive for COVID-19; permitting programs to temporarily suspend group counseling or limit attendance at sessions when unable to accommodate requirements for social distancing and community mitigation; permitting comprehensive assessments to be completed by telephone or video communication; permitting a counselor, recovery peer, or treatment coordinator to provide treatment services from their home by telephone or video communication to a client in their home; permitting programs to follow the Substance Abuse and Mental Health Services Administration guidelines as directed by the State Opioid Treatment Authority within the Department of Human Services Behavioral Health division to allow for an increased number of take-home doses in accordance with an assessment conducted under Minnesota Statutes, section 245G.22, subdivision 6; removing the requirement for opioid treatment programs to conduct outreach activities in the community; and permitting programs to document a client's verbal approval of a treatment plan instead of requiring the client's signature;

(11) CV49: modifying certain license requirements for adult day services;

(12) CV50: modifying certain requirements for early intensive developmental and behavioral intervention (EIDBI) services;

(13) CV53: allowing flexibility for personal care assistance service oversight, except that the portion of this modification permitting personal care assistance workers to bill 310 hours per month shall expire upon the expiration of the peacetime emergency; ~~and~~

(14) CV64: modifying certain certification requirements for mental health centers, except that the extension shall be limited to the portions of this modification requiring programs to become and remain familiar with Minnesota Department of Health and Centers for Disease Control and Prevention guidance on COVID-19; requiring programs to follow Minnesota Department of Health and Centers for Disease Control and Prevention guidance specific to the situation and program capabilities if a person receiving services or a staff person tests positive for COVID-19; permitting alternative mental health professional supervision of clinical services at satellite locations; permitting an alternative process for case consultation meetings; and permitting mental health professionals to provide required client-specific supervisory contact by telephone or video communication instead of face-to-face supervision; and

(15) CV03: suspending application requirements for economic assistance programs, except that the extension shall be limited to the portions of this modification allowing remote interviews for the Minnesota family investment program, and allowing the use of electronic signatures for enrollment verification. Verbal signatures shall not be permitted for enrollment verification.

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

Sec. 4. **APPROPRIATION; COVID-19-RELATED RETENTION GRANTS FOR HOME AND COMMUNITY-BASED SERVICE PROVIDERS.**

Subdivision 1. **Appropriation.**

(a) $20,305,000 in fiscal year 2021 is appropriated from the coronavirus relief fund to the commissioner of human services for retention grants to eligible providers as defined in subdivision 2 to assist providers: (1) with the costs of business interruptions caused by required closures due to the COVID-19 pandemic; and (2) to help ensure access to eligible services during or following the COVID-19 pandemic.

(b) The commissioner may use up to $125,000 of this appropriation to administer this grant.

(c) Beginning October 31, 2020, any unencumbered appropriations may be used for disability services provider COVID-19-related public health grants.

(d) This is a onetime appropriation and is available until December 5, 2020.

Subd. 2. **Definitions.** (a) For purposes of this section, the following terms have the meanings given.

(b) "Eligible provider" means either an enrolled provider who provides either eligible services, as defined in paragraph (c), clauses (1) or (2), and meets the attestation and agreement requirements in subdivisions 5 and 6; or an agency, as defined in Minnesota Statutes, section 256B.0949, subdivision 2, paragraph (b), who provides eligible services as defined in paragraph (c), clause (3), and meets the attestation and agreement requirements in subdivisions 5 and 6.

(c) "Eligible services" means the following services:

(1) adult day services, day training and habilitation, day support services, prevocational services, and structured day services provided by the home and community-based waiver programs under Minnesota Statutes, sections 256B.0913, 256B.092, and 256B.49, and Minnesota Statutes, chapter 256S;

(2) employment exploration services, employment development services, and employment support services provided by the home and community-based waiver programs under Minnesota Statutes, sections 256B.092 and 256B.49; and

(3) early intensive developmental and behavioral interventions under Minnesota Statutes, section 256B.0949.

(d) "Fixed costs" means costs determined by the commissioner that do not fluctuate with changes in service provision. Eligible fixed costs under this section are costs similar to costs considered in the rate methodology component values under Minnesota Statutes, section 256B.4914, subdivision 5, paragraph (d), clauses (7) and (8); paragraph (e), clauses (7) and (8); paragraph (f), clauses (7) and (8); and subdivision 7, clause (11).

(e) "Total revenue from medical assistance" includes both fee-for-service revenue and revenue from managed care organizations. The commissioner shall determine each provider's total revenue from medical assistance for eligible services provided during January 2020, based on data for service claims paid as of August 1, 2020.

Subd. 3. **Allowable uses of funds.** Grantees must use funds awarded under this section for fixed costs incurred due to the COVID-19 pandemic from March 1, 2020, through December 30, 2020, associated with maintaining the provider's capacity to provide services.

Subd. 4. **Grant request.** Eligible providers must request a grant under this section no later than September 15, 2020. The commissioner shall develop an expedited request process that includes a form allowing providers to meet the requirements of subdivisions 5 and 6 in as timely a manner as possible. The commissioner shall allow the use of electronic submission of request forms and accept electronic signatures.

Subd. 5. **Attestation.** As a condition of obtaining funds under this section, an eligible provider must attest to the following on the grant request form:

(1) the intent to provide eligible services under this section through December 30, 2020;

(2) unreimbursed costs incurred between March 1, 2020, and December 30, 2020, related to COVID-19-related business interruptions caused by required closures, reduced capacity to promote social distancing measures, or reduced demand for services;

(3) revenue losses experienced between March 1, 2020, and August 31, 2020, due to the COVID-19 pandemic that resulted in monthly fixed costs incurred exceeding monthly revenue; and

(4) without additional funds, the provider will be unable to maintain the continuity of the services provided.

Subd. 6. **Agreement.** As a condition of obtaining funds under this section, an eligible provider must agree to the following on the grant request form:

(1) cooperate with the commissioner of human services to deliver services according to the program and service waivers and modifications issued under the commissioner's authority;

(2) maintain documentation sufficient to demonstrate the unreimbursed costs required in order to receive a grant under this section; and

(3) acknowledge that retention grants may be subject to a special recoupment under this section if a state audit performed under this section determines that the provider used awarded funds for purposes not authorized under this section.

Subd. 7. **Retention grants.** (a) No later than September 30, 2020, the commissioner shall begin issuing retention grants to eligible providers in an amount equal to 66 percent of the provider's total revenue from medical assistance for eligible services provided during January 2020.

(b) The commissioner shall implement retention grants and the process of making grants under this subdivision without compliance with time-consuming procedures and formalities prescribed in law such as the following statutes and related policies: Minnesota Statutes, sections 16A.15, subdivision 3; 16B.97; 16B.98, subdivisions 5 and 7; and 16B.98, subdivision 8, the express audit clause requirement.

(c) By accepting a grant under this subdivision, the grantee attests to the conditions specified in subdivisions 5 and 6.

(d) The commissioner's determination of the grant amount determined under this subdivision is final and is not subject to appeal. This paragraph does not apply to recoupment by the commissioner under subdivision 9.

Subd. 8. **Payments for services provided.** Providers who receive grants under this section may continue to bill for services provided.

Subd. 9. **Recoupment.** (a) The commissioner may perform an audit under this section up to six years after the grant is awarded to ensure the funds are utilized solely for the purposes stated in subdivision 1.

(b) If the commissioner determines that a provider used awarded funds for purposes not authorized under this section, the commissioner shall treat any amount used for a purpose not authorized under this section as an overpayment. The commissioner shall recover any overpayment.

Subd. 10. **Expiration.** This section expires December 30, 2020, except for subdivision 9.

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

Sec. 5. **APPROPRIATION; DISABILITY SERVICES PROVIDER COVID-19-RELATED PUBLIC HEALTH GRANTS.**

Subdivision 1. **Appropriation.**

(a) $10,125,000 in fiscal year 2021 is appropriated from the coronavirus relief fund to the commissioner of human services for COVID-19-related public health grants to eligible providers under subdivision 3 who have implemented or intend to implement COVID-19-related public health measures that facilitate social distancing practices that align with the most current social distancing guidelines issued by the United States Centers for Disease Control and Prevention (CDC) and are in accordance with the federal Coronavirus Aid, Relief, and Economic Security Act, Public Law 116-136, and related guidance.

(b) The commissioner may use up to $125,000 of this appropriation to administer this grant.

(c) This is a onetime appropriation.

Subd. 2. **Purpose.** Grants under this section are established to reduce the risk of exposure to and transmission of COVID-19 to people with disabilities and staff who support them by maintaining or increasing utilization of individualized day or employment services and reducing utilization of congregate and sheltered workshop settings.

Subd. 3. **Definitions.** (a) For purposes of this section, the following terms have the meanings given.

(b) "Eligible provider" means an enrolled provider who provides eligible services and who meets the attestation and application requirements in subdivisions 5 and 6.

(c) "Eligible services" means the following services:

(1) day training and habilitation, day support services, prevocational services, and structured day services provided by the home and community-based waiver programs under Minnesota Statutes, sections 256B.092 and 256B.49; and

(2) employment exploration services, employment development services, and employment support services provided by the home and community-based waiver programs under Minnesota Statutes, sections 256B.092 and 256B.49.

Subd. 4. **Allowable uses of funds.** Grants must be used to reduce the risk of exposure to and transmission of COVID-19 to people with disabilities and staff who support them by maintaining or increasing access to individualized employment services and reducing the use of congregate and sheltered workshop service settings. Funds must be used in accordance with the federal Coronavirus Aid, Relief, and Economic Security Act, Public Law 116-136, and guidance from the United States Department of the Treasury. Funds may be used for:

(1) expenses incurred as a result of actions to facilitate compliance with COVID-19-related public health measures, such as the provision of services in settings that optimize social distancing and health and safety precautions for people with disabilities and staff who support them;

(2) expenses to facilitate and ensure the availability of individualized services to enable compliance with COVID-19 public health precautions; and

(3) other activities as determined by the commissioner that align with the purpose in subdivision 2 and are in accordance with the federal Coronavirus Aid, Relief, and Economic Security Act, Public Law 116-136, and related guidance.

Subd. 5. **Attestation.** As a condition of applying for and accepting public health grants under this section, each provider must attest in writing that the provider:

(1) has or will have unreimbursed costs that are greater than or equal to grant awards under this section related to actions to facilitate compliance with COVID-19-related public health measures, such as the provision of services in settings that optimize social distancing and health and safety precautions for people with disabilities and staff who support them;

(2) agrees to return any funds determined by the commissioner to be ineligible uses according to the federal Coronavirus Aid, Relief, and Economic Security Act, Public Law 116-136, and related guidance; and

(3) will maintain documentation sufficient to demonstrate the unreimbursed costs required in order to receive a grant under this section.

Subd. 6. **Application.** (a) The commissioner shall develop an expedited application process and process for issuing grants under this section notwithstanding time-consuming procedures and formalities prescribed in law such as the following statutes and related policies: Minnesota Statutes, sections 16A.15, subdivision 3; 16B.97; 16B.98, subdivisions 5 and 7; and 16B.98, subdivision 8, the express audit clause requirement. The application and related processes must be consistent with allowable uses of funds under subdivision 4. The commissioner shall allow applicants to submit applications electronically and shall accept electronic signatures.

(b) Eligible providers must apply for a grant under this section no later than November 15, 2020.

Subd. 7. **Allocation.** (a) Beginning October 31, 2020, the commissioner shall award grants under this section to eligible providers who meet the attestation and application requirements under subdivisions 5 and 6.

(b) The commissioner may make public health grants in an amount determined by the commissioner and based on each grantee's application, up to a maximum grant amount of $200,000.

(c) Notwithstanding paragraph (b), if funds are available after all eligible providers have received a grant, the commissioner may award additional grant funds to providers who have already received the $200,000 maximum grant amount.

(d) If applications for grants exceed the available appropriations, the commissioner shall give priority to grant applications from providers whose applications demonstrate the most need or the most robust plan to ensure people have opportunities to participate in day or employment services that are not provided in a facility or sheltered or work crew setting.

(e) The commissioner's determination of the grant amount is final and not subject to appeal. This paragraph does not apply to recoupment by the commissioner under subdivision 8.

Subd. 8. **Recoupment.** (a) The commissioner may perform an audit under this section up to six years after the grant contract expires to ensure the funds are utilized solely for the purposes stated in subdivision 4.

(b) If the commissioner determines that a provider used awarded funds for purposes not authorized under this section, the commissioner shall treat any amount used for a purpose not authorized under this section as an overpayment. The commissioner shall recover any overpayment. All money recovered by the commissioner under this subdivision must be deposited in the federal fund.

Subd. 9. **Reporting.** The commissioner shall develop a reporting process for public health grants under this section. Each provider receiving funds under this section shall report to the commissioner by March 1, 2021, with a description of how the funds were utilized. By August 1, 2021, the commissioner shall report to the legislative committees with jurisdiction over human services policy and finance the total funds allocated to providers, uses of the funds, outcomes measured, people impacted, and other measures determined by the commissioner.

Subd. 10. **Expiration.** Subdivisions 1 to 7 expire December 30, 2020, or on a date determined by the United States Department of Treasury, whichever is later. Subdivision 9 expires August 1, 2021, or on the date the commissioner submits the report required under subdivision 9, whichever is later.

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

Sec. 6. **REVISOR INSTRUCTION.**

The revisor of statutes shall codify Laws 2019, First Special Session chapter 9, article 4, section 28, as amended in this act, as Minnesota Statutes, section 256.479.

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

Presented to the governor August 12, 2020

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