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Important Notice: This fiscal note on unofficial draft legislation was requested by or on behalf of a member of the legislature who directed that it be classified under Minn. Stat. 13.64 Subd. 3 (b). Until the conditions outlined in this statute have been met, the existence and contents of this fiscal note remain classified as Nonpublic data.

Fiscal Note

2021-2022 Legislative Session

SF9077 - 0 - Customized Living Services; Rate Adjustments

Chief Author: **Unknown Author**
 Committee: **Unknown Committee**
 Date Completed: **2/1/2022 10:33:50 AM**
 Agency: **Human Services Dept**

State Fiscal Impact	Yes	No
Expenditures	X	
Fee/Departmental Earnings		X
Tax Revenue		X
Information Technology		X
Local Fiscal Impact		X

This table shows direct impact to state government only. Local government impact, if any, is discussed in the narrative. Reductions shown in the parentheses.

State Cost (Savings) Dollars in Thousands	Biennium			Biennium	
	FY2021	FY2022	FY2023	FY2024	FY2025
General Fund	-	-	3,257	5,763	7,268
Total	-	-	3,257	5,763	7,268
Biennial Total			3,257		13,031

Full Time Equivalent Positions (FTE)	Biennium			Biennium	
	FY2021	FY2022	FY2023	FY2024	FY2025
General Fund	-	-	-	-	-
Total	-	-	-	-	-

LBO Analyst's Comment

I have reviewed this fiscal note for reasonableness of content and consistency with the LBO's Uniform Standards and Procedures.

This is a classified unofficial fiscal note request. If identical language to that which the classified fiscal note was based upon is made available for consideration by the legislature, the fiscal note is considered public data. The LBO will process requests for copies of the classified fiscal note if the note is considered public data, and/or will process new requests for a regular fiscal note on the introduced language. If the language is offered for consideration by the legislature, it is recommended that a new request for a regular fiscal note be made so that the most updated and complete information on the fiscal effect can be made available.

LBO Signature: Steve McDaniel **Date:** 2/1/2022 10:33:50 AM
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State Cost (Savings) Calculation Details

This table shows direct impact to state government only. Local government impact, if any, is discussed in the narrative. Reductions are shown in parentheses.

*Transfers In/Out and Absorbed Costs are only displayed when reported.

State Cost (Savings) = 1-2		Biennium			Biennium	
Dollars in Thousands		FY2021	FY2022	FY2023	FY2024	FY2025
General Fund	-	-	3,257	5,763	7,268	
Total	-	-	3,257	5,763	7,268	
Biennial Total			3,257		13,031	
1 - Expenditures, Absorbed Costs*, Transfers Out*						
General Fund	-	-	3,257	5,763	7,268	
Total	-	-	3,257	5,763	7,268	
Biennial Total			3,257		13,031	
2 - Revenues, Transfers In*						
General Fund	-	-	-	-	-	
Total	-	-	-	-	-	
Biennial Total			-		-	

Bill Description

This bill has three main components:

- Expanded eligibility requirements. This bill amends eligibility for the customized living rate floor to facilities that have (1) at least 80 percent of facility residents who receive customized living services under the Elderly Waiver (EW), brain injury (BI) waiver, or community access for disability inclusion (CADI) waiver and (2) at least 50 percent of customized living residents are EW participants.
- Increased rate floor. This bill increases the 24 hour, CL rate floor for EW recipients in a disproportionate share facility to \$139.
- This bill creates a special application period July 1, 2022 to July 31, 2022 that applies the eligibility requirements and increases rate for services delivered starting October 1, 2022 through December 31, 2022.

Section 1 amends Minnesota Statutes 2021 Supplement, section 256S.205 as follows:

- Subdivision 1 adds text defining a customized living resident.
- Subdivisions 2 and 4 change the application period from October 1 through October 30 to September 1 through September 30, specifies the requirements of the application, updates the point in time when eligibility is determined and also the date by which facilities must be designated as eligible facilities.
- Subdivision 3 changes the eligible facility requirements and specifies facilities much (1) have at least 80 percent of the residents that are customized living residents and (2) at least 50 percent of the customized living resident are elderly waiver participant.
- Subdivision 5a increases the 24-hour customized living service rate from \$119 to \$139 per elderly waiver participant living in an eligible facility.
- Subdivision 5b-c. Requires the commissioner to apply the rate floor in 5a to the rate year, renumbers a-c to b-d.

This section is effective July 1, 2022 or upon federal approval whichever is later and applies to services provided on or after October 1, 2022 or on or after the date upon which federal approval is obtained, whichever is later.

Section 2 adds directions on partial year implementation of the new rate.

- Subdivisions 1 and 2 require current law rate floor be implemented as planned but during July 2022, a special application period be opened to allow facilities to apply under the new eligibility requirements. Newly eligible facilities will then be designated by August 15, 2022 and begin receiving the new floor rate for eligible services delivered October 1, 2022 through December 31, 2022.

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Subdivision 3 requires that section 1 timelines and dates apply for service rate year 2023.

- Subdivisions 4 and 5 allow existing qualified facilities to apply for adjustment under this section and requires the rate floor in current law be applied until September 30, 2022 and then remove adjustments October 1, 2022.

This section is effective July 1, 2022 or upon federal approval whichever is later and applies to services provided on or after October 1, 2022 or on or after the date upon which federal approval is obtained, whichever is later.

Assumptions

Effective Date: This bill is effective July 1, 2022, or upon federal approval, whatever is later. The rate increase applies to services provided on or after October 1, 2022. Minnesota has sought federal approval for the current customized living rate floor, and it is assumed that it will cover this amended eligibility and rate criteria. Therefore, this analysis assumes federal approval will be received by October 1, 2022. If it is determined that a new federal waiver amendment is needed, implementation may be delayed.

Services impacted: Customized living (CL) services provided through: Elderly Waiver (EW) fee-for-service (FFS) and managed care (MC).

This rate floor does not apply to customized living services provided under the CADI or BI disability waiver programs.

Eligibility Criteria: This bill amends eligibility for the customized living rate floor to facilities that have (1) at least 80 percent of facility residents who receive customized living services under the EW, brain injury (BI) waiver, or community access for disability inclusion (CADI) waiver and (2) at least 50 percent of customized living residents are EW participants.

This analysis accounts for facilities that are already eligible for a rate floor under current law. The current rate floor eligibility is expected to impact approximately 1.4% of Elderly Waiver expenditures. The eligibility criteria in this bill are projected to increase that to 3.7%. The difference of 2.3% represents the increase in newly eligible facilities as a result of this bill.

Rate Floor: For eligible facilities, this bill increases the 24 hour, CL service EW rate floor from \$119 to \$139. Customized living rates are based on an individual's service needs and calculated using the customized living rate tool. It is assumed that rates that are already above \$139 per day will not be impacted by this bill.

This analysis also accounts for the impact of the current rate floor. The current \$119 rate floor was projected to provide an average increase of 64 percent. It is estimated that increasing the floor to \$139 increases the average increase to 71 percent. Therefore:

- For facilities already eligible for the \$119 rate floor, it is estimated the incremental average increase to spending will be 7 percent.
- For newly eligible facilities, this analysis assumes the full 71 percent increase in average rate.

Annual increases to rate floor: This bill directs the established rate floor to be adjusted annually in the same manner as 256S.18 subdivision. 5 and 6. Subdivision 5, home and community-based adjustments, are based on legislative enacted rate adjustments. Since current law does not have a scheduled rate adjustment, it is not assumed to impact the rate floor. Subdivision 6 adjusts rates based on the average nursing facility operating payment and is assumed to impact the rate floor. Therefore, this analysis includes annual rate increases that will be applied to the rate floor beginning January 2023.

Implementation and phase-in: This change is effective July 1, 2022 and would be implemented for all payments with a service date on or after October 1, 2022. This analysis assumes there is no change to expenditures for July 1, 2022 to September 30, 2022, as current law continues to be in effect until September 30, 2022.

This analysis assumes that the temporary rate change can be implemented from October 1, 2022 to December 31, 2022. However, this requires three application periods and three different rate floors to be implemented within six months. There are significant administrative challenges to that requirement and it may not be implementable. For the purpose of this fiscal estimate, it is assumed that it will be implemented as written and take effect on October 1, with additional rate adjustments beginning January 1, 2023 and every year thereafter.

This analysis assumes a 30-day payment effect to account for the fact that fee-for-service Medical Assistance (MA) claims

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are paid retrospectively and the managed care payment timing.

Managed care: Approximately 90 percent of EW spending is paid through managed care organizations. This bill requires that managed care organizations implement this rate increase and directs DHS to adjust capitation rates accordingly.

State share: The forecast estimates state share for the EW program is 49.4 percent in FY2023, 49.2 percent in FY24, and 49.2 percent in FY25.

Systems Costs: The changes in this bill can be implemented within the systems structures for the current customized living rate floor.

Administrative Costs: This bill can be implemented with the existing administrative resources for the current customized living rate floor.

Expenditure and/or Revenue Formula

	FY 2023	FY 2024	FY 2025
Total EW (FFS &MC) Spending	582,663,860	640,160,099	702,834,762
State Share	287,679,059	315,203,255	345,864,986
Impact of Amended Eligibility Criteria			
Proportion of EW spending impacted by current law rate floor	1.4%	1.4%	1.4%
Portion of EW spending impacted as a result of amended eligibility in SF9077	3.7%	3.7%	3.7%
Additional proportion of spending eligible for the rate floor as a result of SF9077	2.3%	2.3%	2.3%
Estimated Impacted Spending	13,133,243	14,429,209	15,841,896
Impact of Amended Rate Floor			
Estimated average increase as a result of the \$119 rate floor for facilities eligible under current law	64%	64%	64%
Estimated average increase as a result of the \$139 amended rate floor in SF9077	71%	71%	71%
Incremental increase for facilities already eligible for the rate floor under current law	7%	7%	7%
Cost of higher rate floor for facilities eligible under current law	571,011	627,357	688,778
Cost of rate floor for facilities newly eligible as a result of this bill	9,324,603	10,244,738	11,247,746
Total impact of amended rate floor	9,895,613	10,872,095	11,936,524
Implementation & Payment Effect	67%	100%	100%
Estimated spending after rate increase	6,597,076	10,872,095	11,936,524
<u>Jan 2023 projected annual increase in the rate floor</u>	7.84%	7.84%	7.84%
Implementation & Payment Effect	0%	42%	100%

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Estimated spending after rate increase	-	833,121	2,177,828
Jan 2024 projected annual increase in the rate floor		5.21%	5.21%
Implementation & Payment Effect		0%	42%
Estimated spending after rate increase		-	655,503
Total Fiscal Impact	6,597,076	11,705,216	14,769,855
State Share	49.4%	49.2%	49.2%
State Share	3,257,179	5,763,437	7,268,245

Summary

Fiscal Tracking Summary (\$000's)						
Fund	BACT	Description	FY2022	FY2023	FY2024	FY2025
GF	33 MA LW	Elderly Waiver FFS (10%)	-	326	576	727
GF	33 MA ED	Elderly Waiver MC (90%)	-	2,931	5,187	6,541
		Total Net Fiscal Impact	-	3,257	5,763	7,268
		Full Time Equivalents		-	-	-

Long-Term Fiscal Considerations

This bill provides ongoing rate adjustments that will continue and increase annually beyond FY2025. In FY25, this bill is estimated to cost about \$7.3 million.

Federal funding (FFP) for Alternative Care (AC) for February 2020 - January 2025 is provided under an 1115 waiver agreement with CMS. The state is required to demonstrate budget neutrality of this waiver by keeping aggregate EW and AC spending over the waiver period beneath a set spending cap. If the spending cap is exceeded, the state may be required to pay back some part of the FFP received for the AC program. Under the November 2021 forecast, EW and AC expenditures are expected to be under the spending cap.

This proposal increases EW expenditures, but not so much as to exceed the spending cap.

Local Fiscal Impact

None

References/Sources

CCOA/CSA Research and Analysis

November 2021 Forecast

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