Legislative Report

Human Services Legislative Report Sunsets

2023 Report

State Government Relations

January 2023

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I. Executive summary

This report fulfills the requirements of Minnesota Statute 256.01, subdivision 42. This provision creates a sunset for most of the recurring reports the Department of Human Services (DHS) is required to submit. The provision also requires DHS to submit a report each year which lists all report mandates set to expire in the following year pursuant to this statute.

Section four of this report outlines legislative report mandates that are set to expire in calendar year 2024, as well as several that have already expired as of January 1, 2023.

DHS recommends that nearly all mandates detailed in this report that have, or are scheduled to, expire be repealed as part of the annual Revisor's bill. The only exception is the Medicaid Pharmacy Cost-of-Dispensing Survey, which is set to expire on January 1, 2024, and which DHS recommends be continued and exempt from expiring.

This report does not cover report mandates that are one-time in nature, are exempt from expiring under 256.01, subdivision 42, or that are otherwise set to expire under current law.

II. Legislation

Minnesota Statute, Section 256.01:

Subd. 42. **Expiration of report mandates**.

(a) If the submission of a report by the commissioner of human services to the legislature is mandated by statute and the enabling legislation does not include a date for the submission of a final report or an expiration date, the mandate to submit the report shall expire in accordance with this section.

(b) If the mandate requires the submission of an annual or more frequent report and the mandate was enacted before January 1, 2021, the mandate shall expire on January 1, 2023. If the mandate requires the submission of a biennial or less frequent report and the mandate was enacted before January 1, 2021, the mandate shall expire on January 1, 2024.

(c) Any reporting mandate enacted on or after January 1, 2021, shall expire three years after the date of enactment, if the mandate requires the submission of an annual or more frequent report and shall expire five years after the date of enactment, if the mandate requires the submission of a biennial or less frequent report, unless, the enacting legislation provides for a different expiration date.

(d) By January 15 of each year, the commissioner shall submit a list of all reports set to expire during the following calendar year to the chairs and ranking minority members of the legislative committees with jurisdiction over human services. Notwithstanding paragraph (c), this paragraph does not expire.

III. Introduction

The Department of Human Services (DHS) submits a number of reports to the legislature each year. The agency is required to produce these reports by mandates in statute and in session law. Legislative reports often provide valuable information about DHS and about the programs the agency administers and regulates.

Most legislative report mandates require the agency to produce a one-time report. However, over the years there have been a number of mandates enacted by the legislature that require DHS to produce recurring reports on an annual, biennial, or other periodic basis. Currently, there are multiple mandates for recurring legislative reports in law that are duplicative, no longer provide relevant or useful information to inform policy development, or that do not match with how programs currently operate.

During the 2021 legislative session, a provision passed which addresses the issue of outdated and irrelevant report mandates. Minnesota Statute Section 256.01, Subdivision 42 sunsets most of the recurring report mandates for DHS and requires DHS to report annually to the legislature by January 15 of each year on reports set to expire in the following year. This mandate was updated and clarified in the 2022 session (Laws of Minnesota 2022, Chapter 98, Article 10, Section 2).

This report provides a list of all report mandates set to expire in calendar year 2024 as well as reports that have expired or will expire in 2023 under current law. DHS recommends that all of the mandates listed in this report be allowed to sunset, with one exception – Medicaid Pharmacy Cost-of-Dispensing Survey – which the Department recommends be continued and exempt from expiring.

Report mandates contained in this report that have expired or are set to expire will be recommended for repeal as part of the annual Revisor's bill, unless action is taken by the legislature to extend the mandate.

IV. Recommendations Regarding Expiring Reports

A. Report Mandates Expired as of January 1, 2023

The following reports have expired pursuant to 256.01, subdivision 42 as of January 1, 2023. DHS recommends these reports be repealed as part of the Revisor's clean-up bill.

County Out-of-Home Placement Costs

Citation

Minnesota Statute Section 477A.0126, subdivision 2

Description

This mandate requires each county to submit information to DHS about the amount paid out of the county's social service agency budget for out-of-home placement of Indian children in the calendar year immediately preceding the year in which the report was made and the number of days foster care maintenance payments were made for each Indian child in previous the calendar year. DHS is then required to certify and report to the legislature whether the data from counties accurately reflects total expenditures by counties for out-of-home placement costs of Indian children.

The final report under this mandate was submitted in January 2022.

County Performance Management Council

Citation

Minnesota Statute Section 402A.16, subdivision 2

Description

This report describes the work of the Human Services Performance Management system, which monitors the performance of Minnesota's 78 counties/service delivery authorities and supports efforts towards continuous improvement in delivering essential human services to Minnesotans. This report includes: an overview of the Performance Management system, information reported in the previous year about county performance in human services, a description of technical assistance provided to counties, and recommendations for improvements to the system.

The final report under this mandate was submitted in December 2022.

Dedicated Funds Report

Citation

Minnesota Statute Section 256.01, subdivision 39

Description

Minnesota Statute 256.01, subdivision 39 requires DHS to submit a report each year of report of all dedicated funds and accounts. The report must include the name of the dedicated fund or account; a description of its purpose, and the legal citation for its creation; the beginning balance, projected receipts, and expenditures; and the ending balance for each fund and account.

The final report under this mandate was submitted in July 2022.

Disability Waiver Rate System Exceptions

Citation

Minnesota Statute Section 256B.4914, subd. 14, paragraph k

Description

Minnesota Statute Section 256B.4914, subd. 14, paragraph k requires DHS to track all Disability Waiver Rate System (DWRS) exception requests received and their dispositions. DHS issues quarterly public reports to the DWRS Advisory Committee, including the number of exception requests received and the numbers granted, denied, withdrawn, and pending. The report also include the average amount of time required to process exceptions. This report is also filed with the legislative reference library.

The final report under this mandate will be submitted to the Legislative Reference Library in the spring of 2022. DHS will continue to provide these reports to the DWRS advisory committee and to others upon request.

Interagency Agreements and Interagency Transfers

Citation

Minnesota Statute Section 256.001, subdivision 41

Description

This mandate requires DHS to report quarterly on interagency agreements or service-level agreements that DHS has with other state agencies with a value of more than $100,000, related agreements with the same department or agency with a cumulative value of more than $100,000, and any renewals or extensions of existing agreements. The mandate also requires DHS to report quarterly on transfers of appropriations of more than $100,000 between accounts within or between agencies.

The final report under this mandate will be submitted in early 2023.

Managed Care Rate Actuarial Soundness

Citation

Minnesota Statute Section 256B.69, subdivision 5k

Description

DHS is required to develop capitated payment rates for managed care organizations and county-based purchasers providing health care coverage to people enrolled in Medical Assistance and MinnesotaCare. This mandate requires DHS to report to the legislature within 30 days of establishing new plan rates to certify how the conditions of actuarial soundness have been met.

The final report under this mandate will be submitted in early 2023.

MnChoices Benchmark Report

Citation

Minnesota Statute Section 256B.0911, subdivision 5(c)

Description

This report provides information about the process the DHS is using to develop a set of measurable benchmarks for lead agencies responsible for conducting long-term care consultation assessment and eligibility processes via MnChoices. It also includes an annual trend analysis of the data.

The final report under this mandate was submitted in November 2022.

B. Report Mandates Expiring in CY 2024 and Recommended for Repeal

The following reports are set to expire on January 1, 2024, unless otherwise noted. The relevant DHS policy areas have reviewed this list of reports and recommends these mandates expire and the relevant statutes be repealed as part of the Revisor's clean-up bill.

Alcohol and Drug Abuse Biennial Report

Citation

Minnesota Statute Section 254A.03, subdivision 1(6)

Description

This report includes information related to: 1) The nature and consequences of substance use disorder; 2) substance use, misuse and substance use disorder trends in Minnesota; 3) a description of substance use disorder reform efforts and the current continuum of care for substance use disorder in Minnesota, including recommendations to reduce barriers to services and improve the continuum by expanding the nature of services

available; 4) an overview of the publicly funded service delivery system in Minnesota; and 5) Identification of ongoing collaborative and cooperative efforts among state entities to increase positive outcomes.

The final report under this mandate will be submitted in 2023.

Behavioral Health Crisis Facility Bonding Projects

Citation

Minnesota Statutes Section 245G.011, subdivision 5

Description

The 2018 legislature established a competitive capital grant program to build behavioral health crisis facilities to provide mental health or substance use disorder services. DHS is required to report biennially about information on the projects funded and the programs and services provided in those facilities.

The final report under this mandate will be submitted in early 2023.

Compulsive Gambling Biennial Report

Citation

Minnesota Statutes Section 4.47

Description

DHS is required to report in odd-numbered years on problem gambling. The report includes: 1) A summary of available data describing the extent of the problem in Minnesota; 2) A summary of programs, both governmental and private, that provide diagnosis and treatment for compulsive gambling, enhance public awareness of the problem and the availability of compulsive gambling services, are designed to prevent compulsive gambling and other problem gambling by elementary and secondary school students and vulnerable adults, and offer professional training in the identification, referral, and treatment of compulsive gamblers; 3) The likely impact on compulsive gambling of each form of gambling; and 4) Budget recommendations for state-level compulsive gambling programs and activities.

The final report under this mandate will be submitted in February 2023.

County Input in Managed Health Care Purchasing

Citation

Minnesota Statutes Section 256B.69, subdivision 3a

Description

State law requires that DHS include the county board in the process of development, approval, and issuance of the request for proposals to provide managed health care for people enrolled in public health care programs. Prior to executing contracts, DHS is required to issue a report describing the activities undertaken by the

commissioner to ensure compliance with this requirement. The report must also provide an explanation for any decisions of the commissioner not to accept the recommendations of a county or group of counties required to be consulted.

The final report under this mandate will be submitted in December 2022.

Deaf and Hard-of-Hearing Services Biennial Report

Citation

Minnesota Statutes Section 256C.233, subdivision 2

Description

The 2017 Minnesota Legislature required the Department of Human Services to prepare a report on programs and services provided by the Department's Deaf and Hard of Hearing Services Division (DHHSD). The DHHSD offers direct services to Minnesotans who are deaf, deafblind, or hard of hearing, their families, service providers, policy makers, and the general public.

The final report under this mandate will be submitted in January 2023.

Disability Services Biennial Report

Citation

Minnesota Statutes Section 252.34

Description

DHS is required to report every two years on our goals and priorities for people with disabilities and how programs administered by DHS support those goals. The report must provide a summary of overarching goals and priorities for persons with disabilities, including the status of how each of the following programs administered by the commissioner is supporting the overarching goals and priorities:

The final report under this mandate will be submitted in March 2023

Disability Waiver Rate Setting: Research, Value Recommendations

Citation

Minnesota Statutes Section 256B.4914, subdivision 10(c)

Description

In January 2014, DHS implemented the Disability Waiver Rate Setting (DWRS) system, which transitioned the state from a variable, county-negotiated rate methodology to a standard, statewide methodology for most disability waiver services. The DWRS establishes rates through a framework of cost components. The DWRS was considered fully implemented on Dec. 31, 2020, and all rates in the system are now calculated using the DWRS methodology. DHS is required to conduct research and evaluation on the differences of costs among providers

across the state and review the component values that help set the rate. This report summarizes that research and is submitted in conjunction with report directly below.

The final report under this mandate was submitted in April 2022.

Disability Waiver Rate Setting: Cost Data for Wage and Component Values

Citation

Minnesota Statutes Section 256B.4914, subdivision 10a

Description

DHS is required to analyze cost information from Disability Wavier providers and make recommendations on component values and inflationary factor adjustments related to the Disability Waiver Rate Setting (DWRS) process. This report summarizes that analysis and is submitted in conjunction with report directly above.

The final report under this mandate was submitted in April 2022.

Homeless Youth Act Biennial Report

Citation

Minnesota Statutes Section 256K.45, subdivision 2

Description

DHS is required to submit a biennial report on Homeless Youth Act funding and activities to inform the Minnesota Legislature on the level and nature of needs for homeless youth in Minnesota, provide details on funding decisions and grants made, and give information on outcomes for populations served to determine the effectiveness of programs and use of funding.

The final report under this mandate was submitted in July 2021. DHS was exempted from completing the 2023 report pursuant to Laws of Minnesota 2021, 1st Special Session, Chapter 7, Article 7, Section 29. A one-time update was submitted in December 2022 pursuant to this session law.

Integrated Care for High-Risk Pregnant Women Biennial Report

Citation

Minnesota Statutes, Section 256B.79, subdivision 6

Description

The 2015 legislature established the Integrated Care for High Risk Pregnant Women grant program to improve birth outcomes and strengthen early parental resilience for pregnant women who are medical assistance enrollees, are at significantly elevated risk for adverse outcomes of pregnancy, and are in targeted populations. DHS is required to report every two years on the program.

The final report under this mandate will be submitted in early 2023.

C. Report Mandates Expiring in CY 2024 Recommended to Continue

The following report is set to expire on January 1, 2024 but DHS recommends this report mandates be continued

Medicaid Pharmacy Cost-of-Dispensing Survey

Citation

2021 Minnesota Statutes Section 256B.0625, subd. 13e

Description

To comply with the federal Covered Outpatient Drug Rule from 2016, DHS was required to revise the previous dispensing fee paid to fee-for-service (FFS) pharmacy providers to a new fee that was based on a survey of Minnesota pharmacy providers, or pharmacy providers in a similarly situated state. The legislature requires DHS to complete a Cost of Dispensing Survey of Minnesota pharmacy providers every three years and advise the legislature whether any changes to the dispensing fee(s) for the Medical Assistance program are recommended. This report contains the findings of the cost survey and outlines recommendations for an appropriate dispensing fee that will meet federal requirements.

This report is scheduled to expire on January 1, 2024 and DHS recommends it be continued on-going as the information contained in this report is necessary for on-going compliance with the federal regulations.

VI. Legislative Language

Reports that have or are set to expire are recommended to be repealed as part of the annual Revisor's clean-up bill, unless action is taken by the legislature to extend their mandate during the 2023 legislative session.

The language below reflects the recommendation of DHS for the one report set to expire that DHS recommends be extended and that it be continued on-going.

Continuation of Medicaid Pharmacy Cost-of-Dispensing Survey

Sec. X. Amend Section 256B.0624, subdivision 13e as follows:

Subd. 13e. **Payment rates.**

(a) The basis for determining the amount of payment shall be the lower of the ingredient costs of the drugs plus the professional dispensing fee; or the usual and customary price charged to the public. The usual and customary price means the lowest price charged by the provider to a patient who pays for the prescription by cash, check, or charge account and includes prices the pharmacy charges to a patient enrolled in a prescription savings club or prescription discount club administered by the pharmacy or pharmacy chain. The amount of payment basis must be reduced to reflect all discount amounts applied to the charge by any third-party provider/insurer agreement or contract for submitted charges to medical assistance programs. The net submitted charge may not be greater than the patient liability for the service. The professional dispensing fee shall be $10.77 for prescriptions filled with legend drugs meeting the definition of "covered outpatient drugs" according to United States Code, title 42, section 1396r-8(k)(2). The dispensing fee for intravenous solutions that must be compounded by the pharmacist shall be $10.77 per claim. The professional dispensing fee for prescriptions filled with over-the-counter drugs meeting the definition of covered outpatient drugs shall be $10.77 for dispensed quantities equal to or greater than the number of units contained in the manufacturer's original package. The professional dispensing fee shall be prorated based on the percentage of the package dispensed when the pharmacy dispenses a quantity less than the number of units contained in the manufacturer's original package. The pharmacy dispensing fee for prescribed over-the-counter drugs not meeting the definition of covered outpatient drugs shall be $3.65 for quantities equal to or greater than the number of units contained in the manufacturer's original package and shall be prorated based on the percentage of the package dispensed when the pharmacy dispenses a quantity less than the number of units contained in the manufacturer's original package. The National Average Drug Acquisition Cost (NADAC) shall be used to determine the ingredient cost of a drug. For drugs for which a NADAC is not reported, the commissioner shall estimate the ingredient cost at the wholesale acquisition cost minus two percent. The ingredient cost of a drug for a provider participating in the federal 340B Drug Pricing Program shall be either the 340B Drug Pricing Program ceiling price established by the Health Resources and Services Administration or NADAC, whichever is lower. Wholesale acquisition cost is defined as the manufacturer's list price for a drug or biological to wholesalers or direct purchasers in the United States, not including prompt pay or other discounts, rebates, or reductions in price, for the most recent month for which information is available, as reported in wholesale price guides or other publications of drug or biological pricing data. The maximum allowable cost of a multisource

drug may be set by the commissioner and it shall be comparable to the actual acquisition cost of the drug product and no higher than the NADAC of the generic product. Establishment of the amount of payment for drugs shall not be subject to the requirements of the Administrative Procedure Act.

(b) Pharmacies dispensing prescriptions to residents of long-term care facilities using an automated drug distribution system meeting the requirements of section 151.58, or a packaging system meeting the packaging standards set forth in Minnesota Rules, part 6800.2700, that govern the return of unused drugs to the pharmacy for reuse, may employ retrospective billing for prescription drugs dispensed to long-term care facility residents. A retrospectively billing pharmacy must submit a claim only for the quantity of medication used by the enrolled recipient during the defined billing period. A retrospectively billing pharmacy must use a billing period not less than one calendar month or 30 days.

(c) A pharmacy provider using packaging that meets the standards set forth in Minnesota Rules, part 6800.2700, is required to credit the department for the actual acquisition cost of all unused drugs that are eligible for reuse, unless the pharmacy is using retrospective billing. The commissioner may permit the drug clozapine to be dispensed in a quantity that is less than a 30-day supply.

(d) If a pharmacy dispenses a multisource drug, the ingredient cost shall be the NADAC of the generic product or the maximum allowable cost established by the commissioner unless prior authorization for the brand name product has been granted according to the criteria established by the Drug Formulary Committee as required by subdivision 13f, paragraph (a), and the prescriber has indicated "dispense as written" on the prescription in a manner consistent with section 151.21, subdivision 2.

(e) The basis for determining the amount of payment for drugs administered in an outpatient setting shall be the lower of the usual and customary cost submitted by the provider, 106 percent of the average sales price as determined by the United States Department of Health and Human Services pursuant to title XVIII, section 1847a of the federal Social Security Act, the specialty pharmacy rate, or the maximum allowable cost set by the commissioner. If average sales price is unavailable, the amount of payment must be lower of the usual and customary cost submitted by the provider, the wholesale acquisition cost, the specialty pharmacy rate, or the maximum allowable cost set by the commissioner. The commissioner shall discount the payment rate for drugs obtained through the federal 340B Drug Pricing Program by 28.6 percent. The payment for drugs administered in an outpatient setting shall be made to the administering facility or practitioner. A retail or specialty pharmacy dispensing a drug for administration in an outpatient setting is not eligible for direct reimbursement.

(f) The commissioner may establish maximum allowable cost rates for specialty pharmacy products that are lower than the ingredient cost formulas specified in paragraph (a). The commissioner may require individuals enrolled in the health care programs administered by the department to obtain specialty pharmacy products from providers with whom the commissioner has negotiated lower reimbursement rates. Specialty pharmacy products are defined as those used by a small number of recipients or recipients with complex and chronic diseases that require expensive and challenging drug regimens. Examples of these conditions include, but are not limited to: multiple sclerosis, HIV/AIDS, transplantation, hepatitis C, growth hormone deficiency, Crohn's Disease, rheumatoid arthritis, and certain forms of cancer. Specialty pharmaceutical products include injectable and infusion therapies, biotechnology drugs, antihemophilic factor products, high-cost therapies, and therapies that require complex care. The commissioner shall consult with the Formulary Committee to develop a list of

specialty pharmacy products subject to maximum allowable cost reimbursement. In consulting with the Formulary Committee in developing this list, the commissioner shall take into consideration the population served by specialty pharmacy products, the current delivery system and standard of care in the state, and access to care issues. The commissioner shall have the discretion to adjust the maximum allowable cost to prevent access to care issues.

(g) Home infusion therapy services provided by home infusion therapy pharmacies must be paid at rates according to subdivision 8d.

(h) The commissioner shall contract with a vendor to conduct a cost of dispensing survey for all pharmacies that are physically located in the state of Minnesota that dispense outpatient drugs under medical assistance. The commissioner shall ensure that the vendor has prior experience in conducting cost of dispensing surveys. Each pharmacy enrolled with the department to dispense outpatient prescription drugs to fee-for-service members must respond to the cost of dispensing survey. The commissioner may sanction a pharmacy under section 256B.064 for failure to respond. The commissioner shall require the vendor to measure a single statewide cost of dispensing for specialty prescription drugs and a single statewide cost of dispensing for nonspecialty prescription drugs for all responding pharmacies to measure the mean, mean weighted by total prescription volume, mean weighted by medical assistance prescription volume, median, median weighted by total prescription volume, and median weighted by total medical assistance prescription volume. The commissioner shall post a copy of the final cost of dispensing survey report on the department's website. The initial survey must be completed no later than January 1, 2021, and repeated every three years. The commissioner shall provide a summary of the results of each cost of dispensing survey and provide recommendations for any changes to the dispensing fee to the chairs and ranking members of the legislative committees with jurisdiction over medical assistance pharmacy reimbursement. Notwithstanding section 256.01, subdivision 42, this paragraph shall not expire.

(i) The commissioner shall increase the ingredient cost reimbursement calculated in paragraphs (a) and (f) by 1.8