

SENATE
STATE OF MINNESOTA
EIGHTY-SEVENTH LEGISLATURE **S.F. No. 348**

(SENATE AUTHORS: BERGLIN, Lourey and Hann)

| DATE | D-PG | OFFICIAL STATUS |
|------------|---------------|---|
| 02/17/2011 | 259 | Introduction and first reading Referred to Health and Human Services |
| 03/17/2011 | 535a | Comm report: To pass as amended and re-refer to Finance |
| 05/02/2011 | 1544a 1604 | Comm report: To pass as amended Second reading |
| 05/05/2011 | 1765 | General Orders: To pass |
| 05/10/2011 | 1952 | Calendar: Third reading Passed See SF760, Art. 10, Sec. 3 (vetoed) See HF25, Art. 7, Sec. 8-9, Art. 10, Sec. 3, Sub. 3(h) (First Special Session) |

1.1 A bill for an act

1.2 relating to human services; modifying personal care assistance services;

1.3 amending Minnesota Statutes 2010, sections 256B.0625, subdivision 19a;

1.4 256B.0652, subdivision 6; Laws 2009, chapter 79, article 13, section 3,

1.5 subdivision 8, as amended.

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

1.7 Section 1. Minnesota Statutes 2010, section 256B.0625, subdivision 19a, is amended to

1.8 read:

1.9 Subd. 19a. **Personal care assistance services.** Medical assistance covers personal

1.10 care assistance services in a recipient's home. Effective January 1, 2010, to qualify for

1.11 personal care assistance services, a recipient must require assistance and be determined

1.12 dependent in one activity of daily living as defined in section 256B.0659, subdivision 1,

1.13 paragraph (b), or in a Level I behavior as defined in section 256B.0659, subdivision 1,

1.14 paragraph (c). ~~Beginning July 1, 2011, to qualify for personal care assistance services, a~~

1.15 ~~recipient must require assistance and be determined dependent in at least two activities~~

1.16 ~~of daily living as defined in section 256B.0659.~~ Recipients or responsible parties must

1.17 be able to identify the recipient's needs, direct and evaluate task accomplishment, and

1.18 provide for health and safety. Approved hours may be used outside the home when normal

1.19 life activities take them outside the home. To use personal care assistance services at

1.20 school, the recipient or responsible party must provide written authorization in the care

1.21 plan identifying the chosen provider and the daily amount of services to be used at school.

1.22 Total hours for services, whether actually performed inside or outside the recipient's

1.23 home, cannot exceed that which is otherwise allowed for personal care assistance services

1.24 in an in-home setting according to sections 256B.0651 to 256B.0656. Medical assistance

1.25 does not cover personal care assistance services for residents of a hospital, nursing facility,

2.1 intermediate care facility, health care facility licensed by the commissioner of health, or
2.2 unless a resident who is otherwise eligible is on leave from the facility and the facility
2.3 either pays for the personal care assistance services or forgoes the facility per diem for the
2.4 leave days that personal care assistance services are used. All personal care assistance
2.5 services must be provided according to sections 256B.0651 to 256B.0656. Personal care
2.6 assistance services may not be reimbursed if the personal care assistant is the spouse or
2.7 paid guardian of the recipient or the parent of a recipient under age 18, or the responsible
2.8 party or the family foster care provider of a recipient who cannot direct the recipient's own
2.9 care unless, in the case of a foster care provider, a county or state case manager visits
2.10 the recipient as needed, but not less than every six months, to monitor the health and
2.11 safety of the recipient and to ensure the goals of the care plan are met. Notwithstanding
2.12 the provisions of section 256B.0659, the unpaid guardian or conservator of an adult,
2.13 who is not the responsible party and not the personal care provider organization, may be
2.14 reimbursed to provide personal care assistance services to the recipient if the guardian or
2.15 conservator meets all criteria for a personal care assistant according to section 256B.0659,
2.16 and shall not be considered to have a service provider interest for purposes of participation
2.17 on the screening team under section 256B.092, subdivision 7.

2.18 Sec. 2. Minnesota Statutes 2010, section 256B.0652, subdivision 6, is amended to read:

2.19 Subd. 6. **Authorization; personal care assistance and qualified professional.**

2.20 (a) All personal care assistance services, supervision by a qualified professional, and
2.21 additional services beyond the limits established in subdivision 11, must be authorized
2.22 by the commissioner or the commissioner's designee before services begin except for the
2.23 assessments established in subdivision 11 and section 256B.0911. The authorization for
2.24 personal care assistance and qualified professional services under section 256B.0659 must
2.25 be completed within 30 days after receiving a complete request.

2.26 (b) The amount of personal care assistance services authorized must be based
2.27 on the recipient's home care rating. The home care rating shall be determined by the
2.28 commissioner or the commissioner's designee based on information submitted to the
2.29 commissioner identifying the following for recipients with dependencies in two or more
2.30 activities of daily living:

2.31 (1) total number of dependencies of activities of daily living as defined in section
2.32 256B.0659;

2.33 (2) presence of complex health-related needs as defined in section 256B.0659; and

2.34 (3) presence of Level I behavior as defined in section 256B.0659.

3.1 (c) For persons meeting the criteria in paragraph (b), the methodology to determine
3.2 total time for personal care assistance services for each home care rating is based on
3.3 the median paid units per day for each home care rating from fiscal year 2007 data for
3.4 the personal care assistance program. Each home care rating has a base level of hours
3.5 assigned. Additional time is added through the assessment and identification of the
3.6 following:

3.7 (1) 30 additional minutes per day for a dependency in each critical activity of daily
3.8 living as defined in section 256B.0659;

3.9 (2) 30 additional minutes per day for each complex health-related function as
3.10 defined in section 256B.0659; and

3.11 (3) 30 additional minutes per day for each behavior issue as defined in section
3.12 256B.0659, subdivision 4, paragraph (d).

3.13 (d) Effective July 1, 2011, the home care rating for recipients who have a dependency
3.14 in one activity of daily living or level one behavior shall equal no more than two units per
3.15 day. Recipients with this home care rating are not subject to the methodology in paragraph
3.16 (c), and are not eligible for more than two units per day.

3.17 (e) A limit of 96 units of qualified professional supervision may be authorized for
3.18 each recipient receiving personal care assistance services. A request to the commissioner
3.19 to exceed this total in a calendar year must be requested by the personal care provider
3.20 agency on a form approved by the commissioner.

3.21 Sec. 3. Laws 2009, chapter 79, article 13, section 3, subdivision 8, as amended by
3.22 Laws 2009, chapter 173, article 2, section 1, subdivision 8, Laws 2010, First Special
3.23 Session chapter 1, article 15, section 5, and Laws 2010, First Special Session chapter 1,
3.24 article 25, section 16, is amended to read:

3.25 **Subd. 8. Continuing Care Grants**

3.26 The amounts that may be spent from the
3.27 appropriation for each purpose are as follows:

3.28 **(a) Aging and Adult Services Grants** 13,499,000 15,805,000

3.29 **Base Adjustment.** The general fund base is
3.30 increased by \$5,751,000 in fiscal year 2012
3.31 and \$6,705,000 in fiscal year 2013.

3.32 **Information and Assistance**

3.33 **Reimbursement.** Federal administrative
3.34 reimbursement obtained from information

4.1 and assistance services provided by the
4.2 Senior LinkAge or Disability Linkage lines
4.3 to people who are identified as eligible for
4.4 medical assistance shall be appropriated to
4.5 the commissioner for this activity.

4.6 **Community Service Development Grant**
4.7 **Reduction.** Funding for community service
4.8 development grants must be reduced by
4.9 \$260,000 for fiscal year 2010; \$284,000 in
4.10 fiscal year 2011; \$43,000 in fiscal year 2012;
4.11 and \$43,000 in fiscal year 2013. Base level
4.12 funding shall be restored in fiscal year 2014.

4.13 **Community Service Development Grant**
4.14 **Community Initiative.** Funding for
4.15 community service development grants shall
4.16 be used to offset the cost of aging support
4.17 grants. Base level funding shall be restored
4.18 in fiscal year 2014.

4.19 **Senior Nutrition Use of Federal Funds.**
4.20 For fiscal year 2010, general fund grants
4.21 for home-delivered meals and congregate
4.22 dining shall be reduced by \$500,000. The
4.23 commissioner must replace these general
4.24 fund reductions with equal amounts from
4.25 federal funding for senior nutrition from the
4.26 American Recovery and Reinvestment Act
4.27 of 2009.

4.28 **(b) Alternative Care Grants** 50,234,000 48,576,000

4.29 **Base Adjustment.** The general fund base is
4.30 decreased by \$3,598,000 in fiscal year 2012
4.31 and \$3,470,000 in fiscal year 2013.

4.32 **Alternative Care Transfer.** Any money
4.33 allocated to the alternative care program that
4.34 is not spent for the purposes indicated does

5.1 not cancel but must be transferred to the
 5.2 medical assistance account.

5.3 **(c) Medical Assistance Grants; Long-Term**
 5.4 **Care Facilities.** 367,444,000 419,749,000

5.5 **(d) Medical Assistance Long-Term Care**
 5.6 **Waivers and Home Care Grants** 853,567,000 1,039,517,000

5.7 **Manage Growth in TBI and CADI**

5.8 **Waivers.** During the fiscal years beginning
 5.9 on July 1, 2009, and July 1, 2010, the
 5.10 commissioner shall allocate money for home
 5.11 and community-based waiver programs
 5.12 under Minnesota Statutes, section 256B.49,
 5.13 to ensure a reduction in state spending that is
 5.14 equivalent to limiting the caseload growth of
 5.15 the TBI waiver to 12.5 allocations per month
 5.16 each year of the biennium and the CADI
 5.17 waiver to 95 allocations per month each year
 5.18 of the biennium. Limits do not apply: (1)
 5.19 when there is an approved plan for nursing
 5.20 facility bed closures for individuals under
 5.21 age 65 who require relocation due to the
 5.22 bed closure; (2) to fiscal year 2009 waiver
 5.23 allocations delayed due to unallotment; or (3)
 5.24 to transfers authorized by the commissioner
 5.25 from the personal care assistance program
 5.26 of individuals having a home care rating
 5.27 of "CS," "MT," or "HL." Priorities for the
 5.28 allocation of funds must be for individuals
 5.29 anticipated to be discharged from institutional
 5.30 settings or who are at imminent risk of a
 5.31 placement in an institutional setting.

5.32 **Manage Growth in DD Waiver.** The
 5.33 commissioner shall manage the growth in
 5.34 the DD waiver by limiting the allocations
 5.35 included in the February 2009 forecast to 15
 5.36 additional diversion allocations each month

6.1 for the calendar years that begin on January
6.2 1, 2010, and January 1, 2011. Additional
6.3 allocations must be made available for
6.4 transfers authorized by the commissioner
6.5 from the personal care program of individuals
6.6 having a home care rating of "CS," "MT,"
6.7 or "HL."

6.8 **Adjustment to Lead Agency Waiver**

6.9 **Allocations.** Prior to the availability of the
6.10 alternative license defined in Minnesota
6.11 Statutes, section 245A.11, subdivision 8,
6.12 the commissioner shall reduce lead agency
6.13 waiver allocations for the purposes of
6.14 implementing a moratorium on corporate
6.15 foster care.

6.16 ~~**Alternatives to Personal Care Assistance**~~

6.17 ~~**Services.** Base level funding of \$3,237,000~~
6.18 ~~in fiscal year 2012 and \$4,856,000 in~~
6.19 ~~fiscal year 2013 is to implement alternative~~
6.20 ~~services to personal care assistance services~~
6.21 ~~for persons with mental health and other~~
6.22 ~~behavioral challenges who can benefit~~
6.23 ~~from other services that more appropriately~~
6.24 ~~meet their needs and assist them in living~~
6.25 ~~independently in the community. These~~
6.26 ~~services may include, but not be limited to, a~~
6.27 ~~1915(i) state plan option.~~

6.28 **(e) Mental Health Grants**

| | Appropriations by Fund | |
|------|------------------------|-----------------------|
| 6.29 | | |
| 6.30 | General | 77,739,000 77,739,000 |
| 6.31 | Health Care Access | 750,000 750,000 |
| 6.32 | Lottery Prize | 1,508,000 1,508,000 |

6.33 **Funding Usage.** Up to 75 percent of a fiscal
6.34 year's appropriation for adult mental health
6.35 grants may be used to fund allocations in that

7.1 portion of the fiscal year ending December
7.2 31.

7.3 **(f) Deaf and Hard-of-Hearing Grants** 1,930,000 1,917,000

7.4 **(g) Chemical Dependency Entitlement Grants** 111,303,000 122,822,000

7.5 **Payments for Substance Abuse Treatment.**

7.6 For placements beginning during fiscal years
7.7 2010 and 2011, county-negotiated rates and
7.8 provider claims to the consolidated chemical
7.9 dependency fund must not exceed the lesser
7.10 of:

7.11 (1) rates charged for these services on
7.12 January 1, 2009; ~~and~~ or

7.13 (2) 160 percent of the average rate on January
7.14 1, 2009, for each group of vendors with
7.15 similar attributes.

7.16 Rates for fiscal years 2010 and 2011 must
7.17 not exceed 160 percent of the average rate on
7.18 January 1, 2009, for each group of vendors
7.19 with similar attributes.

7.20 Effective July 1, 2010, rates that were above
7.21 the average rate on January 1, 2009, are
7.22 reduced by five percent from the rates in
7.23 effect on June 1, 2010. Rates below the
7.24 average rate on January 1, 2009, are reduced
7.25 by 1.8 percent from the rates in effect on
7.26 June 1, 2010. Services provided under
7.27 this section by state-operated services are
7.28 exempt from the rate reduction. For services
7.29 provided in fiscal years 2012 and 2013, the
7.30 statewide aggregate payment under the new
7.31 rate methodology to be developed under
7.32 Minnesota Statutes, section 254B.12, must
7.33 not exceed the projected aggregate payment
7.34 under the rates in effect for fiscal year 2011

8.1 excluding the rate reduction for rates that
 8.2 were below the average on January 1, 2009,
 8.3 plus a state share increase of \$3,787,000 for
 8.4 fiscal year 2012 and \$5,023,000 for fiscal
 8.5 year 2013. Notwithstanding any provision
 8.6 to the contrary in this article, this provision
 8.7 expires on June 30, 2013.

8.8 **Chemical Dependency Special Revenue**
 8.9 **Account.** For fiscal year 2010, \$750,000
 8.10 must be transferred from the consolidated
 8.11 chemical dependency treatment fund
 8.12 administrative account and deposited into the
 8.13 general fund.

8.14 **County CD Share of MA Costs for**
 8.15 **ARRA Compliance.** Notwithstanding the
 8.16 provisions of Minnesota Statutes, chapter
 8.17 254B, for chemical dependency services
 8.18 provided during the period October 1, 2008,
 8.19 to December 31, 2010, and reimbursed by
 8.20 medical assistance at the enhanced federal
 8.21 matching rate provided under the American
 8.22 Recovery and Reinvestment Act of 2009, the
 8.23 county share is 30 percent of the nonfederal
 8.24 share. This provision is effective the day
 8.25 following final enactment.

| | | | |
|------|---|-----------|-----------|
| 8.26 | (h) Chemical Dependency Nonentitlement | | |
| 8.27 | Grants | 1,729,000 | 1,729,000 |

| | | | |
|------|---|------------|------------|
| 8.28 | (i) Other Continuing Care Grants | | |
| | | 19,201,000 | 17,528,000 |

8.29 **Base Adjustment.** The general fund base is
 8.30 increased by \$2,639,000 in fiscal year 2012
 8.31 and increased by \$3,854,000 in fiscal year
 8.32 2013.

8.33 **Technology Grants.** \$650,000 in fiscal
 8.34 year 2010 and \$1,000,000 in fiscal year
 8.35 2011 are for technology grants, case

9.1 consultation, evaluation, and consumer
9.2 information grants related to developing and
9.3 supporting alternatives to shift-staff foster
9.4 care residential service models.

9.5 **Other Continuing Care Grants; HIV**

9.6 **Grants.** Money appropriated for the HIV
9.7 drug and insurance grant program in fiscal
9.8 year 2010 may be used in either year of the
9.9 biennium.

9.10 **Quality Assurance Commission.** Effective
9.11 July 1, 2009, state funding for the quality
9.12 assurance commission under Minnesota
9.13 Statutes, section 256B.0951, is canceled.