

1.1 CONFERENCE COMMITTEE REPORT ON S.F. No. 2933

1.2 A bill for an act
1.3 relating to human services; making changes to continuing care policy and
1.4 technical provisions; amending Minnesota Statutes 2008, sections 245A.03,
1.5 by adding a subdivision; 626.557, subdivision 9a; Minnesota Statutes 2009
1.6 Supplement, sections 144.0724, subdivision 11; 256B.0625, subdivision 19c;
1.7 256B.0651, by adding a subdivision; 256B.0652, subdivision 6; 256B.0659,
1.8 subdivisions 4, 10, 11, 13, 21, 30, by adding a subdivision; 256B.0911,
1.9 subdivision 2b.

1.10 May 10, 2010
1.11 The Honorable James P. Metzen
1.12 President of the Senate

1.13 The Honorable Margaret Anderson Kelliher
1.14 Speaker of the House of Representatives

1.15 We, the undersigned conferees for S.F. No. 2933 report that we have agreed upon
1.16 the items in dispute and recommend as follows:

1.17 That the House recede from its amendments and that S.F. No. 2933 be further
1.18 amended as follows:

1.19 Delete everything after the enacting clause and insert:

1.20 "ARTICLE 1
1.21 CONTINUING CARE POLICY

1.22 Section 1. Minnesota Statutes 2009 Supplement, section 144.0724, subdivision 11,
1.23 is amended to read:

1.24 Subd. 11. **Nursing facility level of care.** (a) For purposes of medical assistance
1.25 payment of long-term care services, a recipient must be determined, using assessments
1.26 defined in subdivision 4, to meet one of the following nursing facility level of care criteria:

1.27 (1) the person requires formal clinical monitoring at least once per day;

1.28 ~~(1)~~ (2) the person needs the assistance of another person or constant supervision to
1.29 begin and complete at least four of the following activities of living: bathing, bed mobility,
1.30 dressing, eating, grooming, toileting, transferring, and walking;

2.1 ~~(2)~~ (3) the person needs the assistance of another person or constant supervision
2.2 to begin and complete toileting, transferring, or positioning and the assistance cannot
2.3 be scheduled;

2.4 ~~(3)~~ (4) the person has significant difficulty with memory, using information, daily
2.5 decision making, or behavioral needs that require intervention;

2.6 ~~(4)~~ (5) the person has had a qualifying nursing facility stay of at least 90 days;

2.7 (6) the person meets the nursing facility level of care criteria determined 90 days
2.8 after admission or on the first quarterly assessment after admission, whichever is later; or

2.9 ~~(5)~~ (7) the person is determined to be at risk for nursing facility admission or
2.10 readmission through a face-to-face long-term care consultation assessment as specified
2.11 in section 256B.0911, subdivision 3a, 3b, or 4d, by a county, tribe, or managed care
2.12 organization under contract with the Department of Human Services. The person is
2.13 considered at risk under this clause if the person currently lives alone or will live alone
2.14 upon discharge and also meets one of the following criteria:

2.15 (i) the person has experienced a fall resulting in a fracture;

2.16 (ii) the person has been determined to be at risk of maltreatment or neglect,
2.17 including self-neglect; or

2.18 (iii) the person has a sensory impairment that substantially impacts functional ability
2.19 and maintenance of a community residence.

2.20 (b) The assessment used to establish medical assistance payment for nursing facility
2.21 services must be the most recent assessment performed under subdivision 4, paragraph
2.22 (b), that occurred no more than 90 calendar days before the effective date of medical
2.23 assistance eligibility for payment of long-term care services. In no case shall medical
2.24 assistance payment for long-term care services occur prior to the date of the determination
2.25 of nursing facility level of care.

2.26 (c) The assessment used to establish medical assistance payment for long-term care
2.27 services provided under sections 256B.0915 and 256B.49 and alternative care payment
2.28 for services provided under section 256B.0913 must be the most recent face-to-face
2.29 assessment performed under section 256B.0911, subdivision 3a, 3b, or 4d, that occurred
2.30 no more than 60 calendar days before the effective date of medical assistance eligibility
2.31 for payment of long-term care services.

2.32 Sec. 2. Minnesota Statutes 2008, section 144A.071, subdivision 4b, is amended to read:

2.33 Subd. 4b. **Licensed beds on layaway status.** A licensed and certified nursing
2.34 facility may lay away, upon prior written notice to the commissioner of health, ~~up to 50~~
2.35 ~~percent of its~~ licensed and certified beds. A nursing facility may not discharge a resident

3.1 in order to lay away a bed. Notice to the commissioner shall be given 60 days prior
3.2 to the effective date of the layaway. Beds on layaway shall have the same status as
3.3 voluntarily delicensed and decertified beds and shall not be subject to license fees and
3.4 license surcharge fees. In addition, beds on layaway may be removed from layaway at any
3.5 time on or after one year after the effective date of layaway in the facility of origin, with a
3.6 60-day notice to the commissioner. A nursing facility that removes beds from layaway
3.7 may not place beds on layaway status for one year after the effective date of the removal
3.8 from layaway. The commissioner may approve the immediate removal of beds from
3.9 layaway if necessary to provide access to those nursing home beds to residents relocated
3.10 from other nursing homes due to emergency situations or closure. In the event approval
3.11 is granted, the one-year restriction on placing beds on layaway after a removal of beds
3.12 from layaway shall not apply. Beds may remain on layaway for up to ~~five~~ ten years. The
3.13 commissioner may approve placing and removing beds on layaway at any time during
3.14 renovation or construction related to a moratorium project approved under this section
3.15 or section 144A.073. Nursing facilities are not required to comply with any licensure or
3.16 certification requirements for beds on layaway status.

3.17 Sec. 3. Minnesota Statutes 2008, section 144A.161, subdivision 1a, is amended to read:

3.18 Subd. 1a. **Scope.** Where a facility is undertaking closure, curtailment, reduction, or
3.19 change in operations, or where a housing with services unit registered under chapter 144D
3.20 is closed because the space that it occupies is being replaced by a nursing facility bed that
3.21 is being reactivated from layaway status, the facility and the county social services agency
3.22 must comply with the requirements of this section.

3.23 Sec. 4. Minnesota Statutes 2009 Supplement, section 245A.03, subdivision 7, is
3.24 amended to read:

3.25 Subd. 7. **Licensing moratorium.** (a) The commissioner shall not issue an
3.26 initial license for child foster care licensed under Minnesota Rules, parts 2960.3000 to
3.27 2960.3340, or adult foster care licensed under Minnesota Rules, parts 9555.5105 to
3.28 9555.6265, under this chapter for a physical location that will not be the primary residence
3.29 of the license holder for the entire period of licensure. If a license is issued during this
3.30 moratorium, and the license holder changes the license holder's primary residence away
3.31 from the physical location of the foster care license, the commissioner shall revoke the
3.32 license according to section 245A.07. Exceptions to the moratorium include:

3.33 (1) foster care settings that are required to be registered under chapter 144D;

4.1 (2) foster care licenses replacing foster care licenses in existence on May 15, 2009,
4.2 and determined to be needed by the commissioner under paragraph (b);

4.3 (3) new foster care licenses determined to be needed by the commissioner under
4.4 paragraph (b) for the closure of a nursing facility, ICF/MR, or regional treatment center;

4.5 (4) new foster care licenses determined to be needed by the commissioner under
4.6 paragraph (b) for persons requiring hospital level care; or

4.7 (5) new foster care licenses determined to be needed by the commissioner for the
4.8 transition of people from personal care assistance to the home and community-based
4.9 services.

4.10 (b) The commissioner shall determine the need for newly licensed foster care homes
4.11 as defined under this subdivision. As part of the determination, the commissioner shall
4.12 consider the availability of foster care capacity in the area in which the licensee seeks to
4.13 operate, and the recommendation of the local county board. The determination by the
4.14 commissioner must be final. A determination of need is not required for a change in
4.15 ownership at the same address.

4.16 (c) Residential settings that would otherwise be subject to the moratorium established
4.17 in paragraph (a), that are in the process of receiving an adult or child foster care license as
4.18 of July 1, 2009, shall be allowed to continue to complete the process of receiving an adult
4.19 or child foster care license. For this paragraph, all of the following conditions must be met
4.20 to be considered in the process of receiving an adult or child foster care license:

4.21 (1) participants have made decisions to move into the residential setting, including
4.22 documentation in each participant's care plan;

4.23 (2) the provider has purchased housing or has made a financial investment in the
4.24 property;

4.25 (3) the lead agency has approved the plans, including costs for the residential setting
4.26 for each individual;

4.27 (4) the completion of the licensing process, including all necessary inspections, is
4.28 the only remaining component prior to being able to provide services; and

4.29 (5) the needs of the individuals cannot be met within the existing capacity in that
4.30 county.

4.31 To qualify for the process under this paragraph, the lead agency must submit
4.32 documentation to the commissioner by August 1, 2009, that all of the above criteria are
4.33 met.

4.34 (d) The commissioner shall study the effects of the license moratorium under this
4.35 subdivision and shall report back to the legislature by January 15, 2011. This study shall
4.36 include, but is not limited to the following:

5.1 (1) the overall capacity and utilization of foster care beds where the physical location
5.2 is not the primary residence of the license holder prior to and after implementation
5.3 of the moratorium;

5.4 (2) the overall capacity and utilization of foster care beds where the physical
5.5 location is the primary residence of the license holder prior to and after implementation
5.6 of the moratorium; and

5.7 (3) the number of licensed and occupied ICF/MR beds prior to and after
5.8 implementation of the moratorium.

5.9 Sec. 5. Minnesota Statutes 2008, section 245A.03, is amended by adding a subdivision
5.10 to read:

5.11 Subd. 9. **Permitted services by an individual who is related.** Notwithstanding
5.12 subdivision 2, paragraph (a), clause (1), and subdivision 7, an individual who is related to a
5.13 person receiving supported living services may provide licensed services to that person if:

5.14 (1) the person who receives supported living services received these services in a
5.15 residential site on July 1, 2005;

5.16 (2) the services under clause (1) were provided in a corporate foster care setting for
5.17 adults and were funded by the developmental disabilities home and community-based
5.18 services waiver defined in section 256B.092;

5.19 (3) the individual who is related obtains and maintains both a license under
5.20 chapter 245B and an adult foster care license under Minnesota Rules, parts 9555.5105
5.21 to 9555.6265; and

5.22 (4) the individual who is related is not the guardian of the person receiving supported
5.23 living services.

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

5.25 Sec. 6. Minnesota Statutes 2009 Supplement, section 245A.11, subdivision 7b, is
5.26 amended to read:

5.27 **Subd. 7b. Adult foster care data privacy and security.** (a) An adult foster
5.28 care license holder who creates, collects, records, maintains, stores, or discloses any
5.29 individually identifiable recipient data, whether in an electronic or any other format,
5.30 must comply with the privacy and security provisions of applicable privacy laws and
5.31 regulations, including:

5.32 (1) the federal Health Insurance Portability and Accountability Act of 1996
5.33 (HIPAA), Public Law 104-1; and the HIPAA Privacy Rule, Code of Federal Regulations,
5.34 title 45, part 160, and subparts A and E of part 164; and

6.1 (2) the Minnesota Government Data Practices Act as codified in chapter 13.

6.2 (b) For purposes of licensure, the license holder shall be monitored for compliance
6.3 with the following data privacy and security provisions:

6.4 (1) the license holder must control access to data on foster care recipients according
6.5 to the definitions of public and private data on individuals under section 13.02;
6.6 classification of the data on individuals as private under section 13.46, subdivision 2;
6.7 and control over the collection, storage, use, access, protection, and contracting related
6.8 to data according to section 13.05, in which the license holder is assigned the duties
6.9 of a government entity;

6.10 (2) the license holder must provide each foster care recipient with a notice that
6.11 meets the requirements under section 13.04, in which the license holder is assigned the
6.12 duties of the government entity, and that meets the requirements of Code of Federal
6.13 Regulations, title 45, part 164.52. The notice shall describe the purpose for collection of
6.14 the data, and to whom and why it may be disclosed pursuant to law. The notice must
6.15 inform the recipient that the license holder uses electronic monitoring and, if applicable,
6.16 that recording technology is used;

6.17 (3) the license holder must not install monitoring cameras in bathrooms;

6.18 (4) electronic monitoring cameras must not be concealed from the foster care
6.19 recipients; and

6.20 (5) electronic video and audio recordings of foster care recipients shall ~~not~~ be
6.21 stored by the license holder for ~~more than~~ five days unless: (i) a foster care recipient or
6.22 legal representative requests that the recording be held longer based on a specific report
6.23 of alleged maltreatment; or (ii) the recording captures an incident or event of alleged
6.24 maltreatment under section 626.556 or 626.557 or a crime under chapter 609. When
6.25 requested by a recipient or when a recording captures an incident or event of alleged
6.26 maltreatment or a crime, the license holder must maintain the recording in a secured area
6.27 for no longer than 30 days to give the investigating agency an opportunity to make a copy
6.28 of the recording. The investigating agency will maintain the electronic video or audio
6.29 recordings as required in section 626.557, subdivision 12b.

6.30 (c) The commissioner shall develop, and make available to license holders and
6.31 county licensing workers, a checklist of the data privacy provisions to be monitored
6.32 for purposes of licensure.

6.33 Sec. 7. Minnesota Statutes 2009 Supplement, section 256B.0625, subdivision 19c,
6.34 is amended to read:

7.1 Subd. 19c. **Personal care.** Medical assistance covers personal care assistance
7.2 services provided by an individual who is qualified to provide the services according to
7.3 subdivision 19a and sections 256B.0651 to 256B.0656, provided in accordance with a
7.4 plan, and supervised by a qualified professional.
7.5 "Qualified professional" means a mental health professional as defined in section 245.462,
7.6 subdivision 18, or 245.4871, subdivision 27; or a registered nurse as defined in sections
7.7 148.171 to 148.285, a licensed social worker as defined in ~~section 148B.21~~ sections
7.8 148D.010 and 148D.055, or a qualified developmental disabilities specialist under section
7.9 245B.07, subdivision 4. The qualified professional shall perform the duties required in
7.10 section 256B.0659.

7.11 Sec. 8. Minnesota Statutes 2009 Supplement, section 256B.0651, is amended by
7.12 adding a subdivision to read:

7.13 Subd. 17. **Recipient protection.** (a) Providers of home care services must provide
7.14 each recipient with a copy of the home care bill of rights under section 144A.44 at
7.15 least 30 days prior to terminating services to a recipient, if the termination results from
7.16 provider sanctions under section 256B.064, such as a payment withhold, a suspension of
7.17 participation, or a termination of participation. If a home care provider determines it is
7.18 unable to continue providing services to a recipient, the provider must notify the recipient,
7.19 the recipient's responsible party, and the commissioner 30 days prior to terminating
7.20 services to the recipient because of an action under section 256B.064, and must assist the
7.21 commissioner and lead agency in supporting the recipient in transitioning to another
7.22 home care provider of the recipient's choice.

7.23 (b) In the event of a payment withhold from a home care provider, a suspension of
7.24 participation, or a termination of participation of a home care provider under section
7.25 256B.064, the commissioner may inform the Office of Ombudsman for Long-Term Care
7.26 and the lead agencies for all recipients with active service agreements with the provider.
7.27 At the commissioner's request, the lead agencies must contact recipients to ensure that the
7.28 recipients are continuing to receive needed care, and that the recipients have been given
7.29 free choice of provider if they transfer to another home care provider. In addition, the
7.30 commissioner or the commissioner's delegate may directly notify recipients who receive
7.31 care from the provider that payments have been withheld or that the provider's participation
7.32 in medical assistance has been suspended or terminated, if the commissioner determines
7.33 that notification is necessary to protect the welfare of the recipients. For purposes of this
7.34 subdivision, "lead agencies" means counties, tribes, and managed care organizations.

8.1 Sec. 9. Minnesota Statutes 2009 Supplement, section 256B.0652, subdivision 6,
8.2 is amended to read:

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

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

8.10 (b) The amount of personal care assistance services authorized must be based
8.11 on the recipient's home care rating. The home care rating shall be determined by the
8.12 commissioner or the commissioner's designee based on information submitted to the
8.13 commissioner identifying the following:

8.14 (1) total number of dependencies of activities of daily living as defined in section
8.15 256B.0659;

8.16 (2) ~~number~~ presence of complex health-related needs as defined in section
8.17 256B.0659; and

8.18 (3) ~~number~~ presence of Level I behavior ~~descriptions~~ as defined in section
8.19 256B.0659.

8.20 (c) The methodology to determine total time for personal care assistance services for
8.21 each home care rating is based on the median paid units per day for each home care rating
8.22 from fiscal year 2007 data for the personal care assistance program. Each home care rating
8.23 has a base level of hours assigned. Additional time is added through the assessment and
8.24 identification of the following:

8.25 (1) 30 additional minutes per day for a dependency in each critical activity of daily
8.26 living as defined in section 256B.0659;

8.27 (2) 30 additional minutes per day for each complex health-related function as
8.28 defined in section 256B.0659; and

8.29 (3) 30 additional minutes per day for each behavior issue as defined in section
8.30 256B.0659, subdivision 4, paragraph (d).

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

9.1 Sec. 10. Minnesota Statutes 2009 Supplement, section 256B.0659, subdivision 10,
9.2 is amended to read:

9.3 Subd. 10. **Responsible party; duties; delegation.** (a) A responsible party shall
9.4 enter into a written agreement with a personal care assistance provider agency, on a form
9.5 determined by the commissioner, to perform the following duties:

9.6 (1) be available while care is provided in a method agreed upon by the individual
9.7 or the individual's legal representative and documented in the recipient's personal care
9.8 assistance care plan;

9.9 (2) monitor personal care assistance services to ensure the recipient's personal care
9.10 assistance care plan is being followed; and

9.11 (3) review and sign personal care assistance time sheets after services are provided
9.12 to provide verification of the personal care assistance services.

9.13 Failure to provide the support required by the recipient must result in a referral to the
9.14 county common entry point.

9.15 (b) Responsible parties who are parents of minors or guardians of minors or
9.16 incapacitated persons may delegate the responsibility to another adult who is not the
9.17 personal care assistant during a temporary absence of at least 24 hours but not more
9.18 than six months. The person delegated as a responsible party must be able to meet the
9.19 definition of the responsible party. The responsible party must ensure that the delegate
9.20 performs the functions of the responsible party, is identified at the time of the assessment,
9.21 and is listed on the personal care assistance care plan. The responsible party must
9.22 communicate to the personal care assistance provider agency about the need for a ~~delegate~~
9.23 delegated responsible party, including the name of the delegated responsible party, ~~dates~~
9.24 ~~the delegated responsible party will be living with the recipient,~~ and contact numbers.

9.25 Sec. 11. Minnesota Statutes 2009 Supplement, section 256B.0659, subdivision 11,
9.26 is amended to read:

9.27 Subd. 11. **Personal care assistant; requirements.** (a) A personal care assistant
9.28 must meet the following requirements:

9.29 (1) be at least 18 years of age with the exception of persons who are 16 or 17 years
9.30 of age with these additional requirements:

9.31 (i) supervision by a qualified professional every 60 days; and

9.32 (ii) employment by only one personal care assistance provider agency responsible
9.33 for compliance with current labor laws;

9.34 (2) be employed by a personal care assistance provider agency;

10.1 (3) enroll with the department as a personal care assistant after clearing a background
10.2 study. Except as provided in subdivision 11a, before a personal care assistant provides
10.3 services, the personal care assistance provider agency must initiate a background study on
10.4 the personal care assistant under chapter 245C, and the personal care assistance provider
10.5 agency must have received a notice from the commissioner that the personal care assistant
10.6 is:

10.7 (i) not disqualified under section 245C.14; or

10.8 (ii) is disqualified, but the personal care assistant has received a set aside of the
10.9 disqualification under section 245C.22;

10.10 (4) be able to effectively communicate with the recipient and personal care
10.11 assistance provider agency;

10.12 (5) be able to provide covered personal care assistance services according to the
10.13 recipient's personal care assistance care plan, respond appropriately to recipient needs,
10.14 and report changes in the recipient's condition to the supervising qualified professional
10.15 or physician;

10.16 (6) not be a consumer of personal care assistance services;

10.17 (7) maintain daily written records including, but not limited to, time sheets under
10.18 subdivision 12;

10.19 (8) effective January 1, 2010, complete standardized training as determined by the
10.20 commissioner before completing enrollment. Personal care assistant training must include
10.21 successful completion of the following training components: basic first aid, vulnerable
10.22 adult, child maltreatment, OSHA universal precautions, basic roles and responsibilities of
10.23 personal care assistants including information about assistance with lifting and transfers
10.24 for recipients, emergency preparedness, orientation to positive behavioral practices, fraud
10.25 issues, and completion of time sheets. Upon completion of the training components,
10.26 the personal care assistant must demonstrate the competency to provide assistance to
10.27 recipients;

10.28 (9) complete training and orientation on the needs of the recipient within the first
10.29 seven days after the services begin; and

10.30 (10) be limited to providing and being paid for up to 310 hours per month of personal
10.31 care assistance services regardless of the number of recipients being served or the number
10.32 of personal care assistance provider agencies enrolled with.

10.33 (b) A legal guardian may be a personal care assistant if the guardian is not being paid
10.34 for the guardian services and meets the criteria for personal care assistants in paragraph (a).

10.35 (c) Effective January 1, 2010, persons who do not qualify as a personal care assistant
10.36 include parents and stepparents of minors, spouses, paid legal guardians, family foster

11.1 care providers, except as otherwise allowed in section 256B.0625, subdivision 19a, or
11.2 staff of a residential setting.

11.3 **EFFECTIVE DATE.** This section is effective retroactively from July 1, 2009.

11.4 Sec. 12. Minnesota Statutes 2009 Supplement, section 256B.0659, is amended by
11.5 adding a subdivision to read:

11.6 **Subd. 11a. Exception to personal care assistant; requirements.** The personal care
11.7 assistant for a recipient may be allowed to enroll with a different personal care assistant
11.8 provider agency upon initiation of a new background study according to chapter 245C, if
11.9 all of the following are met:

11.10 (1) the commissioner determines that a change in enrollment or affiliation of the
11.11 personal care assistant is needed in order to ensure continuity of services and protect the
11.12 health and safety of the recipient;

11.13 (2) the chosen agency has been continuously enrolled as a personal care assistance
11.14 provider agency for at least two years;

11.15 (3) the recipient chooses to transfer to the personal care assistance provider agency;

11.16 (4) the personal care assistant has been continuously enrolled with the former
11.17 personal care assistance provider agency since the last background study was completed;
11.18 and

11.19 (5) the personal care assistant continues to meet requirements of subdivision 11,
11.20 excluding paragraph (a), clause (3).

11.21 **EFFECTIVE DATE.** This section is effective retroactively from July 1, 2009.

11.22 Sec. 13. Minnesota Statutes 2009 Supplement, section 256B.0659, subdivision 13,
11.23 is amended to read:

11.24 Subd. 13. **Qualified professional; qualifications.** (a) The qualified professional
11.25 must ~~be employed by~~ work for a personal care assistance provider agency and meet the
11.26 definition under section 256B.0625, subdivision 19c. Before a qualified professional
11.27 provides services, the personal care assistance provider agency must initiate a background
11.28 study on the qualified professional under chapter 245C, and the personal care assistance
11.29 provider agency must have received a notice from the commissioner that the qualified
11.30 professional:

11.31 (1) is not disqualified under section 245C.14; or

11.32 (2) is disqualified, but the qualified professional has received a set aside of the
11.33 disqualification under section 245C.22.

12.1 (b) The qualified professional shall perform the duties of training, supervision, and
12.2 evaluation of the personal care assistance staff and evaluation of the effectiveness of
12.3 personal care assistance services. The qualified professional shall:

12.4 (1) develop and monitor with the recipient a personal care assistance care plan based
12.5 on the service plan and individualized needs of the recipient;

12.6 (2) develop and monitor with the recipient a monthly plan for the use of personal
12.7 care assistance services;

12.8 (3) review documentation of personal care assistance services provided;

12.9 (4) provide training and ensure competency for the personal care assistant in the
12.10 individual needs of the recipient; and

12.11 (5) document all training, communication, evaluations, and needed actions to
12.12 improve performance of the personal care assistants.

12.13 (c) Effective January 1, 2010, the qualified professional shall complete the provider
12.14 training with basic information about the personal care assistance program approved
12.15 by the commissioner within six months of the date hired by a personal care assistance
12.16 provider agency. Qualified professionals who have completed the required ~~trainings~~
12.17 training as an employee with a worker from a personal care assistance provider agency do
12.18 not need to repeat the required ~~trainings~~ training if they are hired by another agency, if
12.19 they have completed the training within the last three years.

12.20 Sec. 14. Minnesota Statutes 2009 Supplement, section 256B.0659, subdivision 21,
12.21 is amended to read:

12.22 Subd. 21. **Requirements for initial enrollment of personal care assistance**
12.23 **provider agencies.** (a) All personal care assistance provider agencies must provide, at the
12.24 time of enrollment as a personal care assistance provider agency in a format determined
12.25 by the commissioner, information and documentation that includes, but is not limited to,
12.26 the following:

12.27 (1) the personal care assistance provider agency's current contact information
12.28 including address, telephone number, and e-mail address;

12.29 (2) proof of surety bond coverage in the amount of \$50,000 or ten percent of the
12.30 provider's payments from Medicaid in the previous year, whichever is less;

12.31 (3) proof of fidelity bond coverage in the amount of \$20,000;

12.32 (4) proof of workers' compensation insurance coverage;

12.33 (5) proof of liability insurance;

13.1 ~~(5)~~ (6) a description of the personal care assistance provider agency's organization
13.2 identifying the names of all owners, managing employees, staff, board of directors, and
13.3 the affiliations of the directors, owners, or staff to other service providers;

13.4 ~~(6)~~ (7) a copy of the personal care assistance provider agency's written policies
13.5 and procedures including: hiring of employees; training requirements; service delivery;
13.6 and employee and consumer safety including process for notification and resolution
13.7 of consumer grievances, identification and prevention of communicable diseases, and
13.8 employee misconduct;

13.9 ~~(7)~~ (8) copies of all other forms the personal care assistance provider agency uses in
13.10 the course of daily business including, but not limited to:

13.11 (i) a copy of the personal care assistance provider agency's time sheet if the time
13.12 sheet varies from the standard time sheet for personal care assistance services approved
13.13 by the commissioner, and a letter requesting approval of the personal care assistance
13.14 provider agency's nonstandard time sheet;

13.15 (ii) the personal care assistance provider agency's template for the personal care
13.16 assistance care plan; and

13.17 (iii) the personal care assistance provider agency's template for the written
13.18 agreement in subdivision 20 for recipients using the personal care assistance choice
13.19 option, if applicable;

13.20 ~~(8)~~ (9) a list of all ~~trainings~~ training and classes that the personal care assistance
13.21 provider agency requires of its staff providing personal care assistance services;

13.22 ~~(9)~~ (10) documentation that the personal care assistance provider agency and staff
13.23 have successfully completed all the training required by this section;

13.24 ~~(10)~~ (11) documentation of the agency's marketing practices;

13.25 ~~(11)~~ (12) disclosure of ownership, leasing, or management of all residential
13.26 properties that is used or could be used for providing home care services; and

13.27 ~~(12)~~ (13) documentation that the agency will use the following percentages of
13.28 revenue generated from the medical assistance rate paid for personal care assistance
13.29 services for employee personal care assistant wages and benefits: 72.5 percent of revenue
13.30 in the personal care assistance choice option and 72.5 percent of revenue from other
13.31 personal care assistance providers.

13.32 (b) Personal care assistance provider agencies shall provide the information specified
13.33 in paragraph (a) to the commissioner at the time the personal care assistance provider
13.34 agency enrolls as a vendor or upon request from the commissioner. The commissioner
13.35 shall collect the information specified in paragraph (a) from all personal care assistance
13.36 providers beginning July 1, 2009.

14.1 (c) All personal care assistance provider agencies shall complete mandatory training
14.2 as determined by the commissioner before enrollment as a provider. Personal care
14.3 assistance provider agencies are required to send all owners, qualified professionals
14.4 employed by the agency, and all other managing employees to the initial and subsequent
14.5 ~~trainings~~ training. Personal care assistance provider agency billing staff shall complete
14.6 training about personal care assistance program financial management. This training is
14.7 effective July 1, 2009. Any personal care assistance provider agency enrolled before that
14.8 date shall, if it has not already, complete the provider training within 18 months of July 1,
14.9 2009. Any new owners, new qualified professionals, and new managing employees are
14.10 required to complete mandatory training as a requisite of hiring.

14.11 Sec. 15. Minnesota Statutes 2009 Supplement, section 256B.0659, subdivision 30,
14.12 is amended to read:

14.13 Subd. 30. **Notice of service changes to recipients.** The commissioner must provide:

14.14 (1) by October 31, 2009, information to recipients likely to be affected that (i)
14.15 describes the changes to the personal care assistance program that may result in the
14.16 loss of access to personal care assistance services, and (ii) includes resources to obtain
14.17 further information; and

14.18 (2) notice of changes in medical assistance ~~home care~~ personal care assistant services
14.19 to each affected recipient at least 30 days before the effective date of the change.

14.20 The notice shall include how to get further information on the changes, how to get help to
14.21 obtain other services, a list of community resources, and appeal rights. Notwithstanding
14.22 section 256.045, a recipient may request continued services pending appeal within the
14.23 time period allowed to request an appeal.

14.24 Sec. 16. Minnesota Statutes 2009 Supplement, section 256B.0911, subdivision 1a,
14.25 is amended to read:

14.26 Subd. 1a. **Definitions.** For purposes of this section, the following definitions apply:

14.27 (a) "Long-term care consultation services" means:

14.28 (1) assistance in identifying services needed to maintain an individual in the most
14.29 inclusive environment;

14.30 (2) providing recommendations on cost-effective community services that are
14.31 available to the individual;

14.32 (3) development of an individual's person-centered community support plan;

14.33 (4) providing information regarding eligibility for Minnesota health care programs;

15.1 (5) face-to-face long-term care consultation assessments, which may be completed
15.2 in a hospital, nursing facility, intermediate care facility for persons with developmental
15.3 disabilities (ICF/DDs), regional treatment centers, or the person's current or planned
15.4 residence;

15.5 (6) federally mandated screening to determine the need for a institutional level of
15.6 care under section 256B.0911, subdivision 4, paragraph (a);

15.7 (7) determination of home and community-based waiver service eligibility including
15.8 level of care determination for individuals who need an institutional level of care as
15.9 defined under section 144.0724, subdivision 11, or 256B.092, service eligibility including
15.10 state plan home care services identified in ~~section~~ sections 256B.0625, subdivisions 6,
15.11 7, and 19, paragraphs (a) and (c), and 256B.0657, based on assessment and support plan
15.12 development with appropriate referrals, including the option for consumer-directed
15.13 community supports;

15.14 (8) providing recommendations for nursing facility placement when there are no
15.15 cost-effective community services available; and

15.16 (9) assistance to transition people back to community settings after facility
15.17 admission.

15.18 (b) "Long-term care options counseling" means the services provided by the linkage
15.19 lines as mandated by sections 256.01 and 256.975, subdivision 7, and also includes
15.20 telephone assistance and follow up once a long-term care consultation assessment has
15.21 been completed.

15.22 (c) "Minnesota health care programs" means the medical assistance program under
15.23 chapter 256B and the alternative care program under section 256B.0913.

15.24 (d) "Lead agencies" means counties or a collaboration of counties, tribes, and health
15.25 plans administering long-term care consultation assessment and support planning services.

15.26 Sec. 17. Minnesota Statutes 2009 Supplement, section 256B.0911, subdivision 2b,
15.27 is amended to read:

15.28 Subd. 2b. **Certified assessors.** (a) Beginning January 1, 2011, each lead agency
15.29 shall use certified assessors who have completed training and the certification processes
15.30 determined by the commissioner in subdivision 2c. Certified assessors shall demonstrate
15.31 best practices in assessment and support planning including person-centered planning
15.32 principals and have a common set of skills that must ensure consistency and equitable
15.33 access to services statewide. Assessors must be part of a multidisciplinary team of
15.34 professionals that includes public health nurses, social workers, and other professionals
15.35 as defined in paragraph (b). For persons with complex health care needs, a public health

16.1 nurse or registered nurse from a multidisciplinary team must be consulted. A lead agency
16.2 may choose, according to departmental policies, to contract with a qualified, certified
16.3 assessor to conduct assessments and reassessments on behalf of the lead agency.

16.4 (b) Certified assessors are persons with a minimum of a bachelor's degree in social
16.5 work, nursing with a public health nursing certificate, or other closely related field with at
16.6 least one year of home and community-based experience or a two-year registered nursing
16.7 degree with at least three years of home and community-based experience that have
16.8 received training and certification specific to assessment and consultation for long-term
16.9 care services in the state.

16.10 Sec. 18. Minnesota Statutes 2009 Supplement, section 256B.0911, subdivision 3a,
16.11 is amended to read:

16.12 Subd. 3a. **Assessment and support planning.** (a) Persons requesting assessment,
16.13 services planning, or other assistance intended to support community-based living,
16.14 including persons who need assessment in order to determine waiver or alternative care
16.15 program eligibility, must be visited by a long-term care consultation team within 15
16.16 calendar days after the date on which an assessment was requested or recommended. After
16.17 January 1, 2011, these requirements also apply to personal care assistance services, private
16.18 duty nursing, and home health agency services, on timelines established in subdivision 5.
16.19 Face-to-face assessments must be conducted according to paragraphs (b) to (i).

16.20 (b) The county may utilize a team of either the social worker or public health nurse,
16.21 or both. After January 1, 2011, lead agencies shall use certified assessors to conduct the
16.22 assessment in a face-to-face interview. The consultation team members must confer
16.23 regarding the most appropriate care for each individual screened or assessed.

16.24 (c) The assessment must be comprehensive and include a person-centered
16.25 assessment of the health, psychological, functional, environmental, and social needs of
16.26 referred individuals and provide information necessary to develop a support plan that
16.27 meets the consumers needs, using an assessment form provided by the commissioner.

16.28 (d) The assessment must be conducted in a face-to-face interview with the person
16.29 being assessed and the person's legal representative, as required by legally executed
16.30 documents, and other individuals as requested by the person, who can provide information
16.31 on the needs, strengths, and preferences of the person necessary to develop a support plan
16.32 that ensures the person's health and safety, but who is not a provider of service or has any
16.33 financial interest in the provision of services.

16.34 (e) The person, or the person's legal representative, must be provided with written
16.35 recommendations for community-based services, including consumer-directed options,

17.1 or institutional care that include documentation that the most cost-effective alternatives
17.2 available were offered to the individual. For purposes of this requirement, "cost-effective
17.3 alternatives" means community services and living arrangements that cost the same as or
17.4 less than institutional care.

17.5 (f) If the person chooses to use community-based services, the person or the person's
17.6 legal representative must be provided with a written community support plan, regardless
17.7 of whether the individual is eligible for Minnesota health care programs. A person may
17.8 request assistance in identifying community supports without participating in a complete
17.9 assessment. Upon a request for assistance identifying community support, the person must
17.10 be transferred or referred to the services available under sections 256.975, subdivision 7,
17.11 and 256.01, subdivision 24, for telephone assistance and follow up.

17.12 (g) The person has the right to make the final decision between institutional
17.13 placement and community placement after the recommendations have been provided,
17.14 except as provided in subdivision 4a, paragraph (c).

17.15 (h) The team must give the person receiving assessment or support planning, or
17.16 the person's legal representative, materials, and forms supplied by the commissioner
17.17 containing the following information:

17.18 (1) the need for and purpose of preadmission screening if the person selects nursing
17.19 facility placement;

17.20 (2) the role of the long-term care consultation assessment and support planning in
17.21 waiver and alternative care program eligibility determination;

17.22 (3) information about Minnesota health care programs;

17.23 (4) the person's freedom to accept or reject the recommendations of the team;

17.24 (5) the person's right to confidentiality under the Minnesota Government Data
17.25 Practices Act, chapter 13;

17.26 (6) the long-term care consultant's decision regarding the person's need for
17.27 institutional level of care as determined under criteria established in section 144.0724,
17.28 subdivision 11, or 256B.092; and

17.29 (7) the person's right to appeal the decision regarding the need for nursing facility
17.30 level of care or the county's final decisions regarding public programs eligibility according
17.31 to section 256.045, subdivision 3.

17.32 (i) Face-to-face assessment completed as part of eligibility determination for
17.33 the alternative care, elderly waiver, community alternatives for disabled individuals,
17.34 community alternative care, and traumatic brain injury waiver programs under sections
17.35 256B.0915, 256B.0917, and 256B.49 is valid to establish service eligibility for no more
17.36 than 60 calendar days after the date of assessment. The effective eligibility start date

18.1 for these programs can never be prior to the date of assessment. If an assessment was
18.2 completed more than 60 days before the effective waiver or alternative care program
18.3 eligibility start date, assessment and support plan information must be updated in a
18.4 face-to-face visit and documented in the department's Medicaid Management Information
18.5 System (MMIS). The effective date of program eligibility in this case cannot be prior to
18.6 the date the updated assessment is completed.

18.7 Sec. 19. Minnesota Statutes 2009 Supplement, section 256B.0911, subdivision 3b,
18.8 is amended to read:

18.9 Subd. 3b. **Transition assistance.** (a) A long-term care consultation team shall
18.10 provide assistance to persons residing in a nursing facility, hospital, regional treatment
18.11 center, or intermediate care facility for persons with developmental disabilities who
18.12 request or are referred for assistance. Transition assistance must include assessment,
18.13 community support plan development, referrals to long-term care options counseling
18.14 under section 256B.975, subdivision 10, for community support plan implementation
18.15 and to Minnesota health care programs, including home and community-based waiver
18.16 services and consumer-directed options through the waivers, and referrals to programs
18.17 that provide assistance with housing. Transition assistance must also include information
18.18 about the Centers for Independent Living and the Senior LinkAge Line, and about other
18.19 organizations that can provide assistance with relocation efforts, and information about
18.20 contacting these organizations to obtain their assistance and support.

18.21 (b) The county shall develop transition processes with institutional social workers
18.22 and discharge planners to ensure that:

18.23 (1) persons admitted to facilities receive information about transition assistance
18.24 that is available;

18.25 (2) the assessment is completed for persons within ten working days of the date of
18.26 request or recommendation for assessment; and

18.27 (3) there is a plan for transition and follow-up for the individual's return to the
18.28 community. The plan must require notification of other local agencies when a person
18.29 who may require assistance is screened by one county for admission to a facility located
18.30 in another county.

18.31 (c) If a person who is eligible for a Minnesota health care program is admitted to a
18.32 nursing facility, the nursing facility must include a consultation team member or the case
18.33 manager in the discharge planning process.

19.1 Sec. 20. Minnesota Statutes 2008, section 256B.0911, subdivision 4d, is amended to
19.2 read:

19.3 Subd. 4d. **Preadmission screening of individuals under 65 years of age.** (a)

19.4 It is the policy of the state of Minnesota to ensure that individuals with disabilities or
19.5 chronic illness are served in the most integrated setting appropriate to their needs and have
19.6 the necessary information to make informed choices about home and community-based
19.7 service options.

19.8 (b) Individuals under 65 years of age who are admitted to a nursing facility from a
19.9 hospital must be screened prior to admission as outlined in subdivisions 4a through 4c.

19.10 (c) Individuals under 65 years of age who are admitted to nursing facilities with
19.11 only a telephone screening must receive a face-to-face assessment from the long-term
19.12 care consultation team member of the county in which the facility is located or from the
19.13 recipient's county case manager within 40 calendar days of admission.

19.14 (d) Individuals under 65 years of age who are admitted to a nursing facility
19.15 without preadmission screening according to the exemption described in subdivision 4b,
19.16 paragraph (a), clause (3), and who remain in the facility longer than 30 days must receive
19.17 a face-to-face assessment within 40 days of admission.

19.18 (e) At the face-to-face assessment, the long-term care consultation team member or
19.19 county case manager must perform the activities required under subdivision 3b.

19.20 (f) For individuals under 21 years of age, a screening interview which recommends
19.21 nursing facility admission must be face-to-face and approved by the commissioner before
19.22 the individual is admitted to the nursing facility.

19.23 (g) In the event that an individual under 65 years of age is admitted to a nursing
19.24 facility on an emergency basis, the county must be notified of the admission on the
19.25 next working day, and a face-to-face assessment as described in paragraph (c) must be
19.26 conducted within 40 calendar days of admission.

19.27 (h) At the face-to-face assessment, the long-term care consultation team member or
19.28 the case manager must present information about home and community-based options,
19.29 including consumer-directed options, so the individual can make informed choices. If the
19.30 individual chooses home and community-based services, the long-term care consultation
19.31 team member or case manager must complete a written relocation plan within 20 working
19.32 days of the visit. The plan shall describe the services needed to move out of the facility
19.33 and a time line for the move which is designed to ensure a smooth transition to the
19.34 individual's home and community.

19.35 (i) An individual under 65 years of age residing in a nursing facility shall receive a
19.36 face-to-face assessment at least every 12 months to review the person's service choices

20.1 and available alternatives unless the individual indicates, in writing, that annual visits are
20.2 not desired. In this case, the individual must receive a face-to-face assessment at least
20.3 once every 36 months for the same purposes.

20.4 (j) Notwithstanding the provisions of subdivision 6, the commissioner may pay
20.5 county agencies directly for face-to-face assessments for individuals under 65 years of age
20.6 who are being considered for placement or residing in a nursing facility.

20.7 Sec. 21. Minnesota Statutes 2009 Supplement, section 256D.44, subdivision 5, is
20.8 amended to read:

20.9 Subd. 5. **Special needs.** In addition to the state standards of assistance established in
20.10 subdivisions 1 to 4, payments are allowed for the following special needs of recipients of
20.11 Minnesota supplemental aid who are not residents of a nursing home, a regional treatment
20.12 center, or a group residential housing facility.

20.13 (a) The county agency shall pay a monthly allowance for medically prescribed
20.14 diets if the cost of those additional dietary needs cannot be met through some other
20.15 maintenance benefit. The need for special diets or dietary items must be prescribed by
20.16 a licensed physician. Costs for special diets shall be determined as percentages of the
20.17 allotment for a one-person household under the thrifty food plan as defined by the United
20.18 States Department of Agriculture. The types of diets and the percentages of the thrifty
20.19 food plan that are covered are as follows:

20.20 (1) high protein diet, at least 80 grams daily, 25 percent of thrifty food plan;

20.21 (2) controlled protein diet, 40 to 60 grams and requires special products, 100 percent
20.22 of thrifty food plan;

20.23 (3) controlled protein diet, less than 40 grams and requires special products, 125
20.24 percent of thrifty food plan;

20.25 (4) low cholesterol diet, 25 percent of thrifty food plan;

20.26 (5) high residue diet, 20 percent of thrifty food plan;

20.27 (6) pregnancy and lactation diet, 35 percent of thrifty food plan;

20.28 (7) gluten-free diet, 25 percent of thrifty food plan;

20.29 (8) lactose-free diet, 25 percent of thrifty food plan;

20.30 (9) antidumping diet, 15 percent of thrifty food plan;

20.31 (10) hypoglycemic diet, 15 percent of thrifty food plan; or

20.32 (11) ketogenic diet, 25 percent of thrifty food plan.

20.33 (b) Payment for nonrecurring special needs must be allowed for necessary home
20.34 repairs or necessary repairs or replacement of household furniture and appliances using

21.1 the payment standard of the AFDC program in effect on July 16, 1996, for these expenses,
21.2 as long as other funding sources are not available.

21.3 (c) A fee for guardian or conservator service is allowed at a reasonable rate
21.4 negotiated by the county or approved by the court. This rate shall not exceed five percent
21.5 of the assistance unit's gross monthly income up to a maximum of \$100 per month. If the
21.6 guardian or conservator is a member of the county agency staff, no fee is allowed.

21.7 (d) The county agency shall continue to pay a monthly allowance of \$68 for
21.8 restaurant meals for a person who was receiving a restaurant meal allowance on June 1,
21.9 1990, and who eats two or more meals in a restaurant daily. The allowance must continue
21.10 until the person has not received Minnesota supplemental aid for one full calendar month
21.11 or until the person's living arrangement changes and the person no longer meets the criteria
21.12 for the restaurant meal allowance, whichever occurs first.

21.13 (e) A fee of ten percent of the recipient's gross income or \$25, whichever is less,
21.14 is allowed for representative payee services provided by an agency that meets the
21.15 requirements under SSI regulations to charge a fee for representative payee services. This
21.16 special need is available to all recipients of Minnesota supplemental aid regardless of
21.17 their living arrangement.

21.18 (f)(1) Notwithstanding the language in this subdivision, an amount equal to the
21.19 maximum allotment authorized by the federal Food Stamp Program for a single individual
21.20 which is in effect on the first day of July of each year will be added to the standards of
21.21 assistance established in subdivisions 1 to 4 for adults under the age of 65 who qualify
21.22 as shelter needy and are: (i) relocating from an institution, or an adult mental health
21.23 residential treatment program under section 256B.0622; (ii) eligible for the self-directed
21.24 supports option as defined under section 256B.0657, subdivision 2; or (iii) home and
21.25 community-based waiver recipients living in their own home or rented or leased apartment
21.26 which is not owned, operated, or controlled by a provider of service not related by blood
21.27 or marriage, unless allowed under paragraph (g).

21.28 (2) Notwithstanding subdivision 3, paragraph (c), an individual eligible for the
21.29 shelter needy benefit under this paragraph is considered a household of one. An eligible
21.30 individual who receives this benefit prior to age 65 may continue to receive the benefit
21.31 after the age of 65.

21.32 (3) "Shelter needy" means that the assistance unit incurs monthly shelter costs that
21.33 exceed 40 percent of the assistance unit's gross income before the application of this
21.34 special needs standard. "Gross income" for the purposes of this section is the applicant's or
21.35 recipient's income as defined in section 256D.35, subdivision 10, or the standard specified
21.36 in subdivision 3, paragraph (a) or (b), whichever is greater. A recipient of a federal or

22.1 state housing subsidy, that limits shelter costs to a percentage of gross income, shall not be
22.2 considered shelter needy for purposes of this paragraph.

22.3 (g) Notwithstanding this subdivision, to access housing and services as provided
22.4 in paragraph (f), the recipient may choose housing that may ~~or may not~~ be owned,
22.5 operated, or controlled by the recipient's service provider ~~if the housing is located in a~~
22.6 ~~multifamily building of six or more units.~~ In a multifamily building of four or more units,
22.7 the maximum number of ~~units~~ apartments that may be used by recipients of this program
22.8 shall be 50 percent of the units in a building. ~~The department shall develop an exception~~
22.9 ~~process to the 50 percent maximum.~~ This paragraph expires on June 30, ~~2011~~ 2012.

22.10 Sec. 22. Minnesota Statutes 2008, section 326B.43, subdivision 2, is amended to read:

22.11 Subd. 2. **Agreement with municipality.** The commissioner may enter into an
22.12 agreement with a municipality, in which the municipality agrees to perform plan and
22.13 specification reviews required to be performed by the commissioner under Minnesota
22.14 Rules, part 4715.3130, if:

22.15 (a) the municipality has adopted:

22.16 (1) the plumbing code;

22.17 (2) an ordinance that requires plumbing plans and specifications to be submitted to,
22.18 reviewed, and approved by the municipality, except as provided in paragraph (n);

22.19 (3) an ordinance that authorizes the municipality to perform inspections required by
22.20 the plumbing code; and

22.21 (4) an ordinance that authorizes the municipality to enforce the plumbing code in its
22.22 entirety, except as provided in paragraph (p);

22.23 (b) the municipality agrees to review plumbing plans and specifications for all
22.24 construction for which the plumbing code requires the review of plumbing plans and
22.25 specifications, except as provided in paragraph (n);

22.26 (c) the municipality agrees that, when it reviews plumbing plans and specifications
22.27 under paragraph (b), the review will:

22.28 (1) reflect the degree to which the plans and specifications affect the public health
22.29 and conform to the provisions of the plumbing code;

22.30 (2) ensure that there is no physical connection between water supply systems that
22.31 are safe for domestic use and those that are unsafe for domestic use; and

22.32 (3) ensure that there is no apparatus through which unsafe water may be discharged
22.33 or drawn into a safe water supply system;

23.1 (d) the municipality agrees to perform all inspections required by the plumbing
23.2 code in connection with projects for which the municipality reviews plumbing plans and
23.3 specifications under paragraph (b);

23.4 (e) the commissioner determines that the individuals who will conduct the
23.5 inspections and the plumbing plan and specification reviews for the municipality do not
23.6 have any conflict of interest in conducting the inspections and the plan and specification
23.7 reviews;

23.8 (f) individuals who will conduct the plumbing plan and specification reviews for
23.9 the municipality are:

23.10 (1) licensed master plumbers;

23.11 (2) licensed professional engineers; or

23.12 (3) individuals who are working under the supervision of a licensed professional
23.13 engineer or licensed master plumber and who are licensed master or journeyman plumbers
23.14 or hold a postsecondary degree in engineering;

23.15 (g) individuals who will conduct the plumbing plan and specification reviews for
23.16 the municipality have passed a competency assessment required by the commissioner to
23.17 assess the individual's competency at reviewing plumbing plans and specifications;

23.18 (h) individuals who will conduct the plumbing inspections for the municipality
23.19 are licensed master or journeyman plumbers, or inspectors meeting the competency
23.20 requirements established in rules adopted under section 326B.135;

23.21 (i) the municipality agrees to enforce in its entirety the plumbing code on all
23.22 projects, except as provided in paragraph (p);

23.23 (j) the municipality agrees to keep official records of all documents received,
23.24 including plans, specifications, surveys, and plot plans, and of all plan reviews, permits
23.25 and certificates issued, reports of inspections, and notices issued in connection with
23.26 plumbing inspections and the review of plumbing plans and specifications;

23.27 (k) the municipality agrees to maintain the records described in paragraph (j) in the
23.28 official records of the municipality for the period required for the retention of public
23.29 records under section 138.17, and shall make these records readily available for review at
23.30 the request of the commissioner;

23.31 (l) the municipality and the commissioner agree that if at any time during the
23.32 agreement the municipality does not have in effect the plumbing code or any of ordinances
23.33 described in paragraph (a), or if the commissioner determines that the municipality is not
23.34 properly administering and enforcing the plumbing code or is otherwise not complying
23.35 with the agreement:

- 24.1 (1) the commissioner may, effective 14 days after the municipality's receipt of
24.2 written notice, terminate the agreement;
- 24.3 (2) the municipality may challenge the termination in a contested case before the
24.4 commissioner pursuant to the Administrative Procedure Act; and
- 24.5 (3) while any challenge is pending under clause (2), the commissioner shall perform
24.6 plan and specification reviews within the municipality under Minnesota Rules, part
24.7 4715.3130;
- 24.8 (m) the municipality and the commissioner agree that the municipality may terminate
24.9 the agreement with or without cause on 90 days' written notice to the commissioner;
- 24.10 (n) the municipality and the commissioner agree that the municipality shall forward
24.11 to the state for review all plumbing plans and specifications for the following types of
24.12 projects within the municipality:
- 24.13 (1) hospitals, nursing homes, supervised living facilities licensed for eight or
24.14 more individuals, and similar health-care-related facilities regulated by the Minnesota
24.15 Department of Health;
- 24.16 (2) buildings owned by the federal or state government; and
- 24.17 (3) projects of a special nature for which department review is requested by either
24.18 the municipality or the state;
- 24.19 (o) where the municipality forwards to the state for review plumbing plans and
24.20 specifications, as provided in paragraph (n), the municipality shall not collect any fee for
24.21 plan review, and the commissioner shall collect all applicable fees for plan review; and
- 24.22 (p) no municipality shall revoke, suspend, or place restrictions on any plumbing
24.23 license issued by the state.

24.24 Sec. 23. Minnesota Statutes 2008, section 626.557, subdivision 9a, is amended to read:

24.25 Subd. 9a. **Evaluation and referral of reports made to common entry point unit.**

24.26 The common entry point must screen the reports of alleged or suspected maltreatment for
24.27 immediate risk and make all necessary referrals as follows:

24.28 (1) if the common entry point determines that there is an immediate need for
24.29 adult protective services, the common entry point agency shall immediately notify the
24.30 appropriate county agency;

24.31 (2) if the report contains suspected criminal activity against a vulnerable adult, the
24.32 common entry point shall immediately notify the appropriate law enforcement agency;

24.33 (3) ~~if the report references alleged or suspected maltreatment and there is no~~
24.34 ~~immediate need for adult protective services,~~ the common entry point shall notify refer all

25.1 reports of alleged or suspected maltreatment to the appropriate lead agency as soon as
25.2 possible, but in any event no longer than two working days; and

25.3 ~~(4) if the report does not reference alleged or suspected maltreatment, the common~~
25.4 ~~entry point may determine whether the information will be referred; and~~

25.5 ~~(5)~~ (4) if the report contains information about a suspicious death, the common entry
25.6 point shall immediately notify the appropriate law enforcement agencies, the local medical
25.7 examiner, and the ombudsman established under section 245.92. Law enforcement
25.8 agencies shall coordinate with the local medical examiner and the ombudsman as provided
25.9 by law.

25.10 Sec. 24. Laws 2009, chapter 79, article 8, section 81, is amended to read:

25.11 Sec. 81. **ESTABLISHING A SINGLE SET OF STANDARDS.**

25.12 (a) The commissioner of human services shall consult with disability service
25.13 providers, advocates, counties, and consumer families to develop a single set of standards,
25.14 to be referred to as "quality outcome standards," governing services for people with
25.15 disabilities receiving services under the home and community-based waiver services
25.16 program to replace all or portions of existing laws and rules including, but not limited
25.17 to, data practices, licensure of facilities and providers, background studies, reporting
25.18 of maltreatment of minors, reporting of maltreatment of vulnerable adults, and the
25.19 psychotropic medication checklist. The standards must:

25.20 (1) enable optimum consumer choice;

25.21 (2) be consumer driven;

25.22 (3) link services to individual needs and life goals;

25.23 (4) be based on quality assurance and individual outcomes;

25.24 (5) utilize the people closest to the recipient, who may include family, friends, and
25.25 health and service providers, in conjunction with the recipient's risk management plan to
25.26 assist the recipient or the recipient's guardian in making decisions that meet the recipient's
25.27 needs in a cost-effective manner and assure the recipient's health and safety;

25.28 (6) utilize person-centered planning; and

25.29 (7) maximize federal financial participation.

25.30 (b) The commissioner may consult with existing stakeholder groups convened under
25.31 the commissioner's authority, including the home and community-based expert services
25.32 panel established by the commissioner in 2008, to meet all or some of the requirements
25.33 of this section.

26.1 (c) The commissioner shall provide the reports and plans required by this section to
26.2 the legislative committees and budget divisions with jurisdiction over health and human
26.3 services policy and finance by January 15, 2012.

26.4 Sec. 25. **ELDERLY WAIVER CONVERSION.**

26.5 Notwithstanding Minnesota Statutes, section 256B.0915, subdivision 3b, a person
26.6 age 65 or older with an MT home care rating on January 1, 2010, is eligible for the elderly
26.7 waiver program and shall be considered a conversion for purposes of accessing monthly
26.8 budget caps equal to no more than the person's monthly spending under the personal care
26.9 assistance program on January 1, 2010.

26.10 Sec. 26. **DIRECTION TO COMMISSIONER; CONSULTATION WITH**
26.11 **STAKEHOLDERS.**

26.12 The commissioner shall consult with stakeholders experienced in using and
26.13 providing services through the consumer-directed community supports option during
26.14 the identification of data to be used in future development of an individualized budget
26.15 methodology for the home and community-based waivers for individuals with disabilities
26.16 under the new comprehensive assessment.

26.17 Sec. 27. **CASE MANAGEMENT RECOMMENDATIONS.**

26.18 By February 1, 2011, the commissioner of human services shall provide specific
26.19 recommendations and language for proposed legislation to:

26.20 (1) define the administrative and the service functions of case management for
26.21 persons with disabilities and make changes to improve the funding for administrative
26.22 functions;

26.23 (2) standardize and simplify processes, standards, and timelines for case
26.24 management with the Department of Human Services Disability Services Division,
26.25 including eligibility determinations, resource allocation, management of dollars, provision
26.26 for assignment of one case manager at a time per person, waiting lists, quality assurance,
26.27 host county concurrence requirements, county of financial responsibility provisions, and
26.28 waiver compliance; and

26.29 (3) increase opportunities for consumer choice of case management functions
26.30 involving service coordination.

26.31 In developing these recommendations, the commissioner of human services shall
26.32 consider the recommendations of the 2007 Redesigning Case Management Services for
26.33 Persons with Disabilities Report and consult with existing stakeholder groups, which

27.1 include representatives of counties, disability and senior advocacy groups, service
27.2 providers, and representatives of agencies that provide contacted case management.

27.3 This section is effective the day following final enactment.

27.4 ARTICLE 2

27.5 PERSONAL CARE ASSISTANT SERVICES

27.6 Section 1. Minnesota Statutes 2009 Supplement, section 256B.0653, subdivision 3,
27.7 is amended to read:

27.8 Subd. 3. **Home health aide visits.** (a) Home health aide visits must be provided
27.9 by a certified home health aide using a written plan of care that is updated in compliance
27.10 with Medicare regulations. A home health aide shall provide hands-on personal care,
27.11 perform simple procedures as an extension of therapy or nursing services, and assist in
27.12 instrumental activities of daily living as defined in section 256B.0659, including assuring
27.13 that the person gets to medical appointments if identified in the written plan of care. Home
27.14 health aide visits must be provided in the recipient's home.

27.15 (b) All home health aide visits must have authorization under section 256B.0652.
27.16 The commissioner shall limit home health aide visits to no more than one visit per day
27.17 per recipient.

27.18 (c) Home health aides must be supervised by a registered nurse or an appropriate
27.19 therapist when providing services that are an extension of therapy.

27.20 Sec. 2. Minnesota Statutes 2009 Supplement, section 256B.0659, subdivision 1,
27.21 is amended to read:

27.22 Subdivision 1. **Definitions.** (a) For the purposes of this section, the terms defined in
27.23 paragraphs (b) to ~~(p)~~ (r) have the meanings given unless otherwise provided in text.

27.24 (b) "Activities of daily living" means grooming, dressing, bathing, transferring,
27.25 mobility, positioning, eating, and toileting.

27.26 (c) "Behavior," effective January 1, 2010, means a category to determine the home
27.27 care rating and is based on the criteria found in this section. "Level I behavior" means
27.28 physical aggression towards self, others, or destruction of property that requires the
27.29 immediate response of another person.

27.30 (d) "Complex health-related needs," effective January 1, 2010, means a category to
27.31 determine the home care rating and is based on the criteria found in this section.

27.32 (e) "Critical activities of daily living," effective January 1, 2010, means transferring,
27.33 mobility, eating, and toileting.

28.1 (f) "Dependency in activities of daily living" means a person requires assistance to
28.2 begin and complete one or more of the activities of daily living.

28.3 (g) "Extended personal care assistance service" means personal care assistance
28.4 services included in a service plan under one of the home and community-based services
28.5 waivers authorized under sections 256B.49, 256B.0915, and 256B.092, subdivision
28.6 5, which exceed the amount, duration, and frequency of the state plan personal care
28.7 assistance services for participants who:

28.8 (1) need assistance provided periodically during a week, but less than daily will not
28.9 be able to remain in their home without the assistance, and other replacement services
28.10 are more expensive or are not available when personal care assistance services are to be
28.11 terminated; or

28.12 (2) need additional personal care assistance services beyond the amount authorized
28.13 by the state plan personal care assistance assessment in order to ensure that their safety,
28.14 health, and welfare are provided for in their homes.

28.15 (h) "Health-related procedures and tasks" means procedures and tasks that can
28.16 be delegated or assigned by a licensed health care professional under state law to be
28.17 performed by a personal care assistant.

28.18 ~~(h)~~ (i) "Instrumental activities of daily living" means activities to include meal
28.19 planning and preparation; basic assistance with paying bills; shopping for food, clothing,
28.20 and other essential items; performing household tasks integral to the personal care
28.21 assistance services; communication by telephone and other media; and traveling, including
28.22 to medical appointments and to participate in the community.

28.23 ~~(i)~~ (j) "Managing employee" has the same definition as Code of Federal Regulations,
28.24 title 42, section 455.

28.25 ~~(j)~~ (k) "Qualified professional" means a professional providing supervision of
28.26 personal care assistance services and staff as defined in section 256B.0625, subdivision
28.27 19c.

28.28 ~~(k)~~ (l) "Personal care assistance provider agency" means a medical assistance
28.29 enrolled provider that provides or assists with providing personal care assistance services
28.30 and includes a personal care assistance provider organization, personal care assistance
28.31 choice agency, class A licensed nursing agency, and Medicare-certified home health
28.32 agency.

28.33 ~~(l)~~ (m) "Personal care assistant" or "PCA" means an individual employed by a
28.34 personal care assistance agency who provides personal care assistance services.

29.1 ~~(m)~~ (n) "Personal care assistance care plan" means a written description of personal
29.2 care assistance services developed by the personal care assistance provider according
29.3 to the service plan.

29.4 ~~(n)~~ (o) "Responsible party" means an individual who is capable of providing the
29.5 support necessary to assist the recipient to live in the community.

29.6 ~~(o)~~ (p) "Self-administered medication" means medication taken orally, by injection
29.7 or insertion, or applied topically without the need for assistance.

29.8 ~~(p)~~ (q) "Service plan" means a written summary of the assessment and description of
29.9 the services needed by the recipient.

29.10 (r) "Wages and benefits" means wages and salaries, the employer's share of FICA
29.11 taxes, Medicare taxes, state and federal unemployment taxes, workers' compensation,
29.12 mileage reimbursement, health and dental insurance, life insurance, disability insurance,
29.13 long-term care insurance, uniform allowance, and contributions to employee retirement
29.14 accounts.

29.15 Sec. 3. Minnesota Statutes 2009 Supplement, section 256B.0659, subdivision 3,
29.16 is amended to read:

29.17 Subd. 3. **Noncovered personal care assistance services.** (a) Personal care
29.18 assistance services are not eligible for medical assistance payment under this section
29.19 when provided:

29.20 (1) by the recipient's spouse, parent of a recipient under the age of 18, paid legal
29.21 guardian, licensed foster provider, except as allowed under section 256B.0651, subdivision
29.22 10, or responsible party;

29.23 (2) in lieu of other staffing options in a residential or child care setting;

29.24 (3) solely as a child care or babysitting service; or

29.25 (4) without authorization by the commissioner or the commissioner's designee.

29.26 (b) The following personal care services are not eligible for medical assistance
29.27 payment under this section when provided in residential settings:

29.28 (1) effective January 1, 2010, when the provider of home care services who is not
29.29 related by blood, marriage, or adoption owns or otherwise controls the living arrangement,
29.30 including licensed or unlicensed services; or

29.31 (2) when personal care assistance services are the responsibility of a residential or
29.32 program license holder under the terms of a service agreement and administrative rules.

29.33 (c) Other specific tasks not covered under paragraph (a) or (b) that are not eligible
29.34 for medical assistance reimbursement for personal care assistance services under this
29.35 section include:

- 30.1 (1) sterile procedures;
- 30.2 (2) injections of fluids and medications into veins, muscles, or skin;
- 30.3 (3) home maintenance or chore services;
- 30.4 (4) homemaker services not an integral part of assessed personal care assistance
30.5 services needed by a recipient;
- 30.6 (5) application of restraints or implementation of procedures under section 245.825;
- 30.7 (6) instrumental activities of daily living for children under the age of 18, except
30.8 when immediate attention is needed for health or hygiene reasons integral to the personal
30.9 care services and the need is listed in the service plan by the assessor; and
- 30.10 (7) assessments for personal care assistance services by personal care assistance
30.11 provider agencies or by independently enrolled registered nurses.

30.12 Sec. 4. Minnesota Statutes 2009 Supplement, section 256B.0659, subdivision 4,
30.13 is amended to read:

30.14 Subd. 4. **Assessment for personal care assistance services; limitations.** (a) An
30.15 assessment as defined in subdivision 3a must be completed for personal care assistance
30.16 services.

30.17 (b) The following limitations apply to the assessment:

30.18 (1) a person must be assessed as dependent in an activity of daily living based on
30.19 the person's daily need or need on the days during the week the activity is completed-
30.20 on a daily basis, for:

30.21 (i) cuing and constant supervision to complete the task; or

30.22 (ii) hands-on assistance to complete the task; and

30.23 (2) a child may not be found to be dependent in an activity of daily living if because
30.24 of the child's age an adult would either perform the activity for the child or assist the child
30.25 with the activity. Assistance needed is the assistance appropriate for a typical child of
30.26 the same age.

30.27 (c) Assessment for complex health-related needs must meet the criteria in this
30.28 paragraph. During the assessment process, a recipient qualifies as having complex
30.29 health-related needs if the recipient has one or more of the interventions that are ordered by
30.30 a physician, specified in a personal care assistance care plan, and found in the following:

30.31 (1) tube feedings requiring:

30.32 (i) a ~~gastro/jejunostomy~~ gastrojejunostomy tube; or

30.33 (ii) continuous tube feeding lasting longer than 12 hours per day;

30.34 (2) wounds described as:

30.35 (i) stage III or stage IV;

- 31.1 (ii) multiple wounds;
- 31.2 (iii) requiring sterile or clean dressing changes or a wound vac; or
- 31.3 (iv) open lesions such as burns, fistulas, tube sites, or ostomy sites that require
- 31.4 specialized care;
- 31.5 (3) parenteral therapy described as:
- 31.6 (i) IV therapy more than two times per week lasting longer than four hours for
- 31.7 each treatment; or
- 31.8 (ii) total parenteral nutrition (TPN) daily;
- 31.9 (4) respiratory interventions including:
- 31.10 (i) oxygen required more than eight hours per day;
- 31.11 (ii) respiratory vest more than one time per day;
- 31.12 (iii) bronchial drainage treatments more than two times per day;
- 31.13 (iv) sterile or clean suctioning more than six times per day;
- 31.14 (v) dependence on another to apply respiratory ventilation augmentation devices
- 31.15 such as BiPAP and CPAP; and
- 31.16 (vi) ventilator dependence under section 256B.0652;
- 31.17 (5) insertion and maintenance of catheter including:
- 31.18 (i) sterile catheter changes more than one time per month;
- 31.19 (ii) clean self-catheterization more than six times per day; or
- 31.20 (iii) bladder irrigations;
- 31.21 (6) bowel program more than two times per week requiring more than 30 minutes to
- 31.22 perform each time;
- 31.23 (7) neurological intervention including:
- 31.24 (i) seizures more than two times per week and requiring significant physical
- 31.25 assistance to maintain safety; or
- 31.26 (ii) swallowing disorders diagnosed by a physician and requiring specialized
- 31.27 assistance from another on a daily basis; and
- 31.28 (8) other congenital or acquired diseases creating a need for significantly increased
- 31.29 direct hands-on assistance and interventions in six to eight activities of daily living.
- 31.30 (d) An assessment of behaviors must meet the criteria in this paragraph. A recipient
- 31.31 qualifies as having a need for assistance due to behaviors if the recipient's behavior requires
- 31.32 assistance at least four times per week and shows one or more of the following behaviors:
- 31.33 (1) physical aggression towards self or others, or destruction of property that requires
- 31.34 the immediate response of another person;
- 31.35 (2) increased vulnerability due to cognitive deficits or socially inappropriate
- 31.36 behavior; or

32.1 (3) verbally aggressive and resistive to care.

32.2 Sec. 5. Minnesota Statutes 2009 Supplement, section 256B.0659, subdivision 11,
32.3 is amended to read:

32.4 Subd. 11. **Personal care assistant; requirements.** (a) A personal care assistant
32.5 must meet the following requirements:

32.6 (1) be at least 18 years of age with the exception of persons who are 16 or 17 years
32.7 of age with these additional requirements:

32.8 (i) supervision by a qualified professional every 60 days; and

32.9 (ii) employment by only one personal care assistance provider agency responsible
32.10 for compliance with current labor laws;

32.11 (2) be employed by a personal care assistance provider agency;

32.12 (3) enroll with the department as a personal care assistant after clearing a background
32.13 study. Before a personal care assistant provides services, the personal care assistance
32.14 provider agency must initiate a background study on the personal care assistant under
32.15 chapter 245C, and the personal care assistance provider agency must have received a
32.16 notice from the commissioner that the personal care assistant is:

32.17 (i) not disqualified under section 245C.14; or

32.18 (ii) is disqualified, but the personal care assistant has received a set aside of the
32.19 disqualification under section 245C.22;

32.20 (4) be able to effectively communicate with the recipient and personal care
32.21 assistance provider agency;

32.22 (5) be able to provide covered personal care assistance services according to the
32.23 recipient's personal care assistance care plan, respond appropriately to recipient needs,
32.24 and report changes in the recipient's condition to the supervising qualified professional
32.25 or physician;

32.26 (6) not be a consumer of personal care assistance services;

32.27 (7) maintain daily written records including, but not limited to, time sheets under
32.28 subdivision 12;

32.29 (8) effective January 1, 2010, complete standardized training as determined
32.30 by the commissioner before completing enrollment. The training must be available
32.31 in languages other than English and to those who need accommodations due to
32.32 disabilities. Personal care assistant training must include successful completion of the
32.33 following training components: basic first aid, vulnerable adult, child maltreatment,
32.34 OSHA universal precautions, basic roles and responsibilities of personal care assistants
32.35 including information about assistance with lifting and transfers for recipients, emergency

33.1 preparedness, orientation to positive behavioral practices, fraud issues, and completion of
33.2 time sheets. Upon completion of the training components, the personal care assistant must
33.3 demonstrate the competency to provide assistance to recipients;

33.4 (9) complete training and orientation on the needs of the recipient within the first
33.5 seven days after the services begin; and

33.6 (10) be limited to providing and being paid for up to 310 hours per month of personal
33.7 care assistance services regardless of the number of recipients being served or the number
33.8 of personal care assistance provider agencies enrolled with. The number of hours worked
33.9 per day shall not be disallowed by the department unless in violation of the law.

33.10 (b) A legal guardian may be a personal care assistant if the guardian is not being paid
33.11 for the guardian services and meets the criteria for personal care assistants in paragraph (a).

33.12 (c) Effective January 1, 2010, persons who do not qualify as a personal care assistant
33.13 include parents and stepparents of minors, spouses, paid legal guardians, family foster
33.14 care providers, except as otherwise allowed in section 256B.0625, subdivision 19a, or
33.15 staff of a residential setting.

33.16 Sec. 6. Minnesota Statutes 2009 Supplement, section 256B.0659, subdivision 13,
33.17 is amended to read:

33.18 Subd. 13. **Qualified professional; qualifications.** (a) The qualified professional
33.19 must be employed by a personal care assistance provider agency and meet the definition
33.20 under section 256B.0625, subdivision 19c. Before a qualified professional provides
33.21 services, the personal care assistance provider agency must initiate a background study on
33.22 the qualified professional under chapter 245C, and the personal care assistance provider
33.23 agency must have received a notice from the commissioner that the qualified professional:

33.24 (1) is not disqualified under section 245C.14; or

33.25 (2) is disqualified, but the qualified professional has received a set aside of the
33.26 disqualification under section 245C.22.

33.27 (b) The qualified professional shall perform the duties of training, supervision, and
33.28 evaluation of the personal care assistance staff and evaluation of the effectiveness of
33.29 personal care assistance services. The qualified professional shall:

33.30 (1) develop and monitor with the recipient a personal care assistance care plan based
33.31 on the service plan and individualized needs of the recipient;

33.32 (2) develop and monitor with the recipient a monthly plan for the use of personal
33.33 care assistance services;

33.34 (3) review documentation of personal care assistance services provided;

34.1 (4) provide training and ensure competency for the personal care assistant in the
34.2 individual needs of the recipient; and

34.3 (5) document all training, communication, evaluations, and needed actions to
34.4 improve performance of the personal care assistants.

34.5 (c) Effective ~~January~~ July 1, 2010, the qualified professional shall complete the
34.6 provider training with basic information about the personal care assistance program
34.7 approved by the commissioner within six months of the date hired by a personal care
34.8 assistance provider agency. Qualified professionals who have completed the required
34.9 trainings as an employee with a personal care assistance provider agency do not need to
34.10 repeat the required trainings if they are hired by another agency, if they have completed the
34.11 training within the last three years. The required training shall be available in languages
34.12 other than English and to those who need accommodations due to disabilities, online, or
34.13 by electronic remote connection, and provide for competency testing to demonstrate an
34.14 understanding of the content without attending in-person training. A qualified professional
34.15 is allowed to be employed and is not subject to the training requirement until the training is
34.16 offered online or through remote electronic connection. A qualified professional employed
34.17 by a personal care assistance provider agency certified for participation in Medicare as
34.18 a home health agency is exempt from the training required in this subdivision. The
34.19 commissioner shall ensure there is a mechanism in place to verify the identity of persons
34.20 completing the competency testing electronically.

34.21 Sec. 7. Minnesota Statutes 2009 Supplement, section 256B.0659, subdivision 14,
34.22 is amended to read:

34.23 Subd. 14. **Qualified professional; duties.** (a) Effective January 1, 2010, all personal
34.24 care assistants must be supervised by a qualified professional.

34.25 (b) Through direct training, observation, return demonstrations, and consultation
34.26 with the staff and the recipient, the qualified professional must ensure and document
34.27 that the personal care assistant is:

34.28 (1) capable of providing the required personal care assistance services;

34.29 (2) knowledgeable about the plan of personal care assistance services before services
34.30 are performed; and

34.31 (3) able to identify conditions that should be immediately brought to the attention of
34.32 the qualified professional.

34.33 (c) The qualified professional shall evaluate the personal care assistant within the first
34.34 14 days of starting to provide regularly scheduled services for a recipient except for the
34.35 personal care assistance choice option under subdivision 19, paragraph (a), clause (4). For

35.1 the initial evaluation, the qualified professional shall evaluate the personal care assistance
35.2 services for a recipient through direct observation of a personal care assistant's work.
35.3 Subsequent visits to evaluate the personal care assistance services provided to a recipient
35.4 do not require direct observation of each personal care assistant's work and shall occur:

35.5 (1) at least every 90 days thereafter for the first year of a recipient's services; ~~and~~
35.6 (2) every 120 days after the first year of a recipient's service or whenever needed for
35.7 response to a recipient's request for increased supervision of the personal care assistance
35.8 staff; and

35.9 (3) after the first 180 days of a recipient's service, supervisory visits may alternate
35.10 between unscheduled phone or Internet technology and in-person visits, unless the
35.11 in-person visits are needed according to the care plan.

35.12 (d) Communication with the recipient is a part of the evaluation process of the
35.13 personal care assistance staff.

35.14 (e) At each supervisory visit, the qualified professional shall evaluate personal care
35.15 assistance services including the following information:

35.16 (1) satisfaction level of the recipient with personal care assistance services;
35.17 (2) review of the month-to-month plan for use of personal care assistance services;
35.18 (3) review of documentation of personal care assistance services provided;
35.19 (4) whether the personal care assistance services are meeting the goals of the service
35.20 as stated in the personal care assistance care plan and service plan;

35.21 (5) a written record of the results of the evaluation and actions taken to correct any
35.22 deficiencies in the work of a personal care assistant; and

35.23 (6) revision of the personal care assistance care plan as necessary in consultation
35.24 with the recipient or responsible party, to meet the needs of the recipient.

35.25 (f) The qualified professional shall complete the required documentation in the
35.26 agency recipient and employee files and the recipient's home, including the following
35.27 documentation:

35.28 (1) the personal care assistance care plan based on the service plan and individualized
35.29 needs of the recipient;

35.30 (2) a month-to-month plan for use of personal care assistance services;

35.31 (3) changes in need of the recipient requiring a change to the level of service and the
35.32 personal care assistance care plan;

35.33 (4) evaluation results of supervision visits and identified issues with personal care
35.34 assistance staff with actions taken;

35.35 (5) all communication with the recipient and personal care assistance staff; and

35.36 (6) hands-on training or individualized training for the care of the recipient.

36.1 (g) The documentation in paragraph (f) must be done on agency forms.

36.2 (h) The services that are not eligible for payment as qualified professional services
36.3 include:

36.4 (1) direct professional nursing tasks that could be assessed and authorized as skilled
36.5 nursing tasks;

36.6 (2) supervision of personal care assistance completed by telephone;

36.7 (3) agency administrative activities;

36.8 (4) training other than the individualized training required to provide care for a
36.9 recipient; and

36.10 (5) any other activity that is not described in this section.

36.11 Sec. 8. Minnesota Statutes 2009 Supplement, section 256B.0659, subdivision 18,
36.12 is amended to read:

36.13 Subd. 18. **Personal care assistance choice option; generally.** (a) The
36.14 commissioner may allow a recipient of personal care assistance services to use a fiscal
36.15 intermediary to assist the recipient in paying and accounting for medically necessary
36.16 covered personal care assistance services. Unless otherwise provided in this section, all
36.17 other statutory and regulatory provisions relating to personal care assistance services apply
36.18 to a recipient using the personal care assistance choice option.

36.19 (b) Personal care assistance choice is an option of the personal care assistance
36.20 program that allows the recipient who receives personal care assistance services to be
36.21 responsible for the hiring, training, scheduling, and firing of personal care assistants
36.22 according to the terms of the written agreement with the personal care assistance choice
36.23 agency required under subdivision 20, paragraph (a). This program offers greater control
36.24 and choice for the recipient in who provides the personal care assistance service and when
36.25 the service is scheduled. The recipient or the recipient's responsible party must choose a
36.26 personal care assistance choice provider agency as a fiscal intermediary. This personal
36.27 care assistance choice provider agency manages payroll, invoices the state, is responsible
36.28 for all payroll-related taxes and insurance, and is responsible for providing the consumer
36.29 training and support in managing the recipient's personal care assistance services.

36.30 Sec. 9. Minnesota Statutes 2009 Supplement, section 256B.0659, subdivision 19,
36.31 is amended to read:

36.32 Subd. 19. **Personal care assistance choice option; qualifications; duties.** (a)

36.33 Under personal care assistance choice, the recipient or responsible party shall:

37.1 (1) recruit, hire, schedule, and terminate personal care assistants ~~and a qualified~~
37.2 ~~professional~~ according to the terms of the written agreement required under subdivision
37.3 20, paragraph (a);

37.4 (2) develop a personal care assistance care plan based on the assessed needs
37.5 and addressing the health and safety of the recipient with the assistance of a qualified
37.6 professional as needed;

37.7 (3) orient and train the personal care assistant with assistance as needed from the
37.8 qualified professional;

37.9 (4) effective January 1, 2010, supervise and evaluate the personal care assistant with
37.10 the qualified professional, who is required to visit the recipient at least every 180 days;

37.11 (5) monitor and verify in writing and report to the personal care assistance choice
37.12 agency the number of hours worked by the personal care assistant and the qualified
37.13 professional;

37.14 (6) engage in an annual face-to-face reassessment to determine continuing eligibility
37.15 and service authorization; and

37.16 (7) use the same personal care assistance choice provider agency if shared personal
37.17 assistance care is being used.

37.18 (b) The personal care assistance choice provider agency shall:

37.19 (1) meet all personal care assistance provider agency standards;

37.20 (2) enter into a written agreement with the recipient, responsible party, and personal
37.21 care assistants;

37.22 (3) not be related as a parent, child, sibling, or spouse to the recipient, qualified
37.23 professional, or the personal care assistant; and

37.24 (4) ensure arm's-length transactions without undue influence or coercion with the
37.25 recipient and personal care assistant.

37.26 (c) The duties of the personal care assistance choice provider agency are to:

37.27 (1) be the employer of the personal care assistant and the qualified professional for
37.28 employment law and related regulations including, but not limited to, purchasing and
37.29 maintaining workers' compensation, unemployment insurance, surety and fidelity bonds,
37.30 and liability insurance, and submit any or all necessary documentation including, but not
37.31 limited to, workers' compensation and unemployment insurance;

37.32 (2) bill the medical assistance program for personal care assistance services and
37.33 qualified professional services;

37.34 (3) request and complete background studies that comply with the requirements for
37.35 personal care assistants and qualified professionals;

38.1 (4) pay the personal care assistant and qualified professional based on actual hours
38.2 of services provided;

38.3 (5) withhold and pay all applicable federal and state taxes;

38.4 (6) verify and keep records of hours worked by the personal care assistant and
38.5 qualified professional;

38.6 (7) make the arrangements and pay taxes and other benefits, if any, and comply with
38.7 any legal requirements for a Minnesota employer;

38.8 (8) enroll in the medical assistance program as a personal care assistance choice
38.9 agency; and

38.10 (9) enter into a written agreement as specified in subdivision 20 before services
38.11 are provided.

38.12 Sec. 10. Minnesota Statutes 2009 Supplement, section 256B.0659, subdivision 20,
38.13 is amended to read:

38.14 Subd. 20. **Personal care assistance choice option; administration.** (a) Before
38.15 services commence under the personal care assistance choice option, and annually
38.16 thereafter, the personal care assistance choice provider agency, ~~recipient, or responsible~~
38.17 ~~party, each personal care assistant, and the qualified professional~~ and the recipient or
38.18 responsible party shall enter into a written agreement. The annual agreement must be
38.19 provided to the recipient or responsible party, each personal care assistant, and the
38.20 qualified professional when completed, and include at a minimum:

38.21 (1) duties of the recipient, qualified professional, personal care assistant, and
38.22 personal care assistance choice provider agency;

38.23 (2) salary and benefits for the personal care assistant and the qualified professional;

38.24 (3) administrative fee of the personal care assistance choice provider agency and
38.25 services paid for with that fee, including background study fees;

38.26 (4) grievance procedures to respond to complaints;

38.27 (5) procedures for hiring and terminating the personal care assistant; and

38.28 (6) documentation requirements including, but not limited to, time sheets, activity
38.29 records, and the personal care assistance care plan.

38.30 (b) Effective January 1, 2010, except for the administrative fee of the personal care
38.31 assistance choice provider agency as reported on the written agreement, the remainder
38.32 of the rates paid to the personal care assistance choice provider agency must be used to
38.33 pay for the salary and benefits for the personal care assistant or the qualified professional.

38.34 The provider agency must use a minimum of 72.5 percent of the revenue generated by

39.1 the medical assistance rate for personal care assistance services for employee personal
39.2 care assistant wages and benefits.

39.3 (c) The commissioner shall deny, revoke, or suspend the authorization to use the
39.4 personal care assistance choice option if:

39.5 (1) it has been determined by the qualified professional or public health nurse that
39.6 the use of this option jeopardizes the recipient's health and safety;

39.7 (2) the parties have failed to comply with the written agreement specified in this
39.8 subdivision;

39.9 (3) the use of the option has led to abusive or fraudulent billing for personal care
39.10 assistance services; or

39.11 (4) the department terminates the personal care assistance choice option.

39.12 (d) The recipient or responsible party may appeal the commissioner's decision in
39.13 paragraph (c) according to section 256.045. The denial, revocation, or suspension to
39.14 use the personal care assistance choice option must not affect the recipient's authorized
39.15 level of personal care assistance services.

39.16 Sec. 11. Minnesota Statutes 2009 Supplement, section 256B.0659, subdivision 21,
39.17 is amended to read:

39.18 Subd. 21. **Requirements for initial enrollment of personal care assistance**
39.19 **provider agencies.** (a) All personal care assistance provider agencies must provide, at the
39.20 time of enrollment as a personal care assistance provider agency in a format determined
39.21 by the commissioner, information and documentation that includes, but is not limited to,
39.22 the following:

39.23 (1) the personal care assistance provider agency's current contact information
39.24 including address, telephone number, and e-mail address;

39.25 (2) proof of surety bond coverage in the amount of \$50,000 or ten percent of the
39.26 provider's payments from Medicaid in the previous year, whichever is less;

39.27 (3) proof of fidelity bond coverage in the amount of \$20,000;

39.28 (4) proof of workers' compensation insurance coverage;

39.29 (5) a description of the personal care assistance provider agency's organization
39.30 identifying the names of all owners, managing employees, staff, board of directors, and
39.31 the affiliations of the directors, owners, or staff to other service providers;

39.32 (6) a copy of the personal care assistance provider agency's written policies and
39.33 procedures including: hiring of employees; training requirements; service delivery;
39.34 and employee and consumer safety including process for notification and resolution

40.1 of consumer grievances, identification and prevention of communicable diseases, and
40.2 employee misconduct;

40.3 (7) copies of all other forms the personal care assistance provider agency uses in
40.4 the course of daily business including, but not limited to:

40.5 (i) a copy of the personal care assistance provider agency's time sheet if the time
40.6 sheet varies from the standard time sheet for personal care assistance services approved
40.7 by the commissioner, and a letter requesting approval of the personal care assistance
40.8 provider agency's nonstandard time sheet;

40.9 (ii) the personal care assistance provider agency's template for the personal care
40.10 assistance care plan; and

40.11 (iii) the personal care assistance provider agency's template for the written
40.12 agreement in subdivision 20 for recipients using the personal care assistance choice
40.13 option, if applicable;

40.14 (8) a list of all trainings and classes that the personal care assistance provider agency
40.15 requires of its staff providing personal care assistance services;

40.16 (9) documentation that the personal care assistance provider agency and staff have
40.17 successfully completed all the training required by this section;

40.18 (10) documentation of the agency's marketing practices;

40.19 (11) disclosure of ownership, leasing, or management of all residential properties
40.20 that is used or could be used for providing home care services; ~~and~~

40.21 (12) documentation that the agency will use the following percentages of revenue
40.22 generated from the medical assistance rate paid for personal care assistance services
40.23 for employee personal care assistant wages and benefits: 72.5 percent of revenue in the
40.24 personal care assistance choice option and 72.5 percent of revenue from other personal
40.25 care assistance providers; and

40.26 (13) effective the day following final enactment, documentation that the agency does
40.27 not burden recipients' free exercise of their right to choose service providers by requiring
40.28 personal care assistants to sign an agreement not to work with any particular personal
40.29 care assistance recipient or for another personal care assistance provider agency after
40.30 leaving the agency and that the agency is not taking action on any such agreements or
40.31 requirements regardless of the date signed.

40.32 (b) Personal care assistance provider agencies shall provide the information specified
40.33 in paragraph (a) to the commissioner at the time the personal care assistance provider
40.34 agency enrolls as a vendor or upon request from the commissioner. The commissioner
40.35 shall collect the information specified in paragraph (a) from all personal care assistance
40.36 providers beginning July 1, 2009.

41.1 (c) All personal care assistance provider agencies shall require all employees in
41.2 management and supervisory positions and owners of the agency who are active in the
41.3 day-to-day management and operations of the agency to complete mandatory training as
41.4 determined by the commissioner before enrollment of the agency as a provider. ~~Personal~~
41.5 care assistance provider agencies are required to send all owners, qualified professionals
41.6 employed by the agency, and all other managing employees to the initial and subsequent
41.7 trainings. Employees in management and supervisory positions and owners who are
41.8 active in the day-to-day operations of an agency who have completed the required training
41.9 as an employee with a personal care assistance provider agency do not need to repeat
41.10 the required training if they are hired by another agency, if they have completed the
41.11 training within the past three years. By September 1, 2010, the required training must be
41.12 available in languages other than English and to those who need accommodations due
41.13 to disabilities, online, or by electronic remote connection, and provide for competency
41.14 testing. Personal care assistance provider agency billing staff shall complete training
41.15 about personal care assistance program financial management. This training is effective
41.16 July 1, 2009. Any personal care assistance provider agency enrolled before that date
41.17 shall, if it has not already, complete the provider training within 18 months of July 1,
41.18 2009. Any new owners, ~~new qualified professionals, and new managing~~ or employees in
41.19 management and supervisory positions involved in the day-to-day operations are required
41.20 to complete mandatory training as a requisite of hiring working for the agency. Personal
41.21 care assistance provider agencies certified for participation in Medicare as home health
41.22 agencies are exempt from the training required in this subdivision.

41.23 Sec. 12. Minnesota Statutes 2009 Supplement, section 256B.0659, subdivision 24,
41.24 is amended to read:

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

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

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

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

41.32 (4) comply with background study requirements;

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

- 42.1 (6) ~~market agency services only through printed information in brochures and on~~
42.2 ~~Web sites and~~ not engage in any agency-initiated direct contact or marketing in person, by
42.3 phone, or other electronic means to potential recipients, guardians, or family members;
- 42.4 (7) pay the personal care assistant and qualified professional based on actual hours
42.5 of services provided;
- 42.6 (8) withhold and pay all applicable federal and state taxes;
- 42.7 (9) effective January 1, 2010, document that the agency uses a minimum of 72.5
42.8 percent of the revenue generated by the medical assistance rate for personal care assistance
42.9 services for employee personal care assistant wages and benefits;
- 42.10 (10) make the arrangements and pay unemployment insurance, taxes, workers'
42.11 compensation, liability insurance, and other benefits, if any;
- 42.12 (11) enter into a written agreement under subdivision 20 before services are provided;
- 42.13 (12) report suspected neglect and abuse to the common entry point according to
42.14 section 256B.0651;
- 42.15 (13) provide the recipient with a copy of the home care bill of rights at start of
42.16 service; and
- 42.17 (14) request reassessments at least 60 days prior to the end of the current
42.18 authorization for personal care assistance services, on forms provided by the commissioner.

42.19 Sec. 13. Minnesota Statutes 2009 Supplement, section 256B.0659, subdivision 27,
42.20 is amended to read:

42.21 Subd. 27. **Personal care assistance provider agency; ~~ventilator training.~~** (a) The
42.22 personal care assistance provider agency is required to provide training for the personal
42.23 care assistant responsible for working with a recipient who is ventilator dependent. All
42.24 training must be administered by a respiratory therapist, nurse, or physician. Qualified
42.25 professional supervision by a nurse must be completed and documented on file in the
42.26 personal care assistant's employment record and the recipient's health record. If offering
42.27 personal care services to a ventilator-dependent recipient, the personal care assistance
42.28 provider agency shall demonstrate and document the ability to:

- 42.29 (1) train the personal care assistant;
- 42.30 (2) supervise the personal care assistant in ~~ventilator operation and maintenance~~ the
42.31 care of a ventilator-dependent recipient; and
- 42.32 (3) supervise the recipient and responsible party in ~~ventilator operation and~~
42.33 ~~maintenance~~ the care of a ventilator-dependent recipient; and
- 42.34 (4) provide documentation of the training and supervision in clauses (1) to (3)
42.35 upon request.

43.1 (b) A personal care assistant shall not undertake any clinical services, patient
43.2 assessment, patient evaluation, or clinical education regarding the ventilator or the patient
43.3 on the ventilator. These services may only be provided by health care professionals
43.4 licensed or registered in this state.

43.5 (c) A personal care assistant may only perform tasks associated with ventilator
43.6 maintenance that are approved by the Board of Medical Practice in consultation with the
43.7 Respiratory Care Practitioner Advisory Council and the Department of Human Services.

43.8 Sec. 14. Minnesota Statutes 2009 Supplement, section 256B.0659, subdivision 30,
43.9 is amended to read:

43.10 Subd. 30. **Notice of service changes to recipients.** The commissioner must provide:

43.11 (1) by October 31, 2009, information to recipients likely to be affected that (i)
43.12 describes the changes to the personal care assistance program that may result in the
43.13 loss of access to personal care assistance services, and (ii) includes resources to obtain
43.14 further information; ~~and~~

43.15 (2) notice of changes in medical assistance home care services to each affected
43.16 recipient at least 30 days before the effective date of the change.

43.17 The notice shall include how to get further information on the changes, how to get help to
43.18 obtain other services, a list of community resources, and appeal rights. Notwithstanding
43.19 section 256.045, a recipient may request continued services pending appeal within the
43.20 time period allowed to request an appeal; and

43.21 (3) a service agreement authorizing personal care assistance hours of service at
43.22 the previously authorized level, throughout the appeal process period, when a recipient
43.23 requests services pending an appeal.

43.24 Sec. 15. Minnesota Statutes 2008, section 256B.092, subdivision 4d, is amended to
43.25 read:

43.26 Subd. 4d. **Medicaid reimbursement; licensed provider; related individuals.** ~~The~~
43.27 ~~commissioner shall seek a federal amendment to the home and community-based services~~
43.28 ~~waiver for individuals with developmental disabilities, to allow Medicaid reimbursement~~
43.29 ~~for the provision of supported living services to a related individual~~ is allowed ~~when the~~
43.30 ~~following conditions have been met:~~ specified in section 245A.03, subdivision 9, are met.

43.31 ~~(1) the individual is 18 years of age or older;~~

43.32 ~~(2) the provider is certified initially and annually thereafter, by the county, as~~
43.33 ~~meeting the provider standards established in chapter 245B and the federal waiver plan;~~

44.1 ~~(3) the provider has been certified by the county as meeting the adult foster care~~
44.2 ~~provider standards established in Minnesota Rules, parts 9555.5105 to 9555.6265;~~

44.3 ~~(4) the provider is not the legal guardian or conservator of the related individual; and~~

44.4 ~~(5) the individual's service plan meets the standards of this section and specifies any~~
44.5 ~~special conditions necessary to prevent a conflict of interest for the provider.~~

44.6 Sec. 16. **REPEALER.**

44.7 Minnesota Statutes 2008, section 256B.0919, subdivision 4, is repealed."

44.8 Delete the title and insert:

44.9 "A bill for an act
44.10 relating to human services; amending continuing care policy and technical
44.11 provisions; modifying the nursing facility level of care criteria; modifying
44.12 nursing facilities layaway status; permitting certain services by related
44.13 individuals; requiring home care services providers to provide recipients with
44.14 copies of the home care bill of rights; allowing personal care assistants to
44.15 enroll with a different personal care assistance provider agency; allowing lead
44.16 agencies to contract for assessments and reassessments; providing an elderly
44.17 waiver conversion under the personal care assistance program; requiring the
44.18 commissioner of human services to consult with stakeholders; requiring the
44.19 commissioner of human services provide recommendations to improve case
44.20 management services; clarifying personal care assistance provisions; amending
44.21 Minnesota Statutes 2008, sections 144A.071, subdivision 4b; 144A.161,
44.22 subdivision 1a; 245A.03, by adding a subdivision; 256B.0911, subdivision
44.23 4d; 256B.092, subdivision 4d; 326B.43, subdivision 2; 626.557, subdivision
44.24 9a; Minnesota Statutes 2009 Supplement, sections 144.0724, subdivision 11;
44.25 245A.03, subdivision 7; 245A.11, subdivision 7b; 256B.0625, subdivision 19c;
44.26 256B.0651, by adding a subdivision; 256B.0652, subdivision 6; 256B.0653,
44.27 subdivision 3; 256B.0659, subdivisions 1, 3, 4, 10, 11, 13, 14, 18, 19, 20, 21,
44.28 24, 27, 30, by adding a subdivision; 256B.0911, subdivisions 1a, 2b, 3a, 3b;
44.29 256D.44, subdivision 5; Laws 2009, chapter 79, article 8, section 81; repealing
44.30 Minnesota Statutes 2008, section 256B.0919, subdivision 4."

45.1 We request the adoption of this report and repassage of the bill.

45.2 Senate Conferees:

45.3
45.4 Tony Lourey John Marty

45.5
45.6 Dennis Frederickson

45.7 House Conferees:

45.8
45.9 Larry Hosch Paul Thissen

45.10
45.11 Jim Abeler