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State of Minnesota
HOUSE OF REPRESENTATIVES

EIGHTY-NINTH SESSION

H. F. No. 1073

02/19/2015 Authored by Backer, Schoen and Fischer

The bill was read for the first time and referred to the Committee on Health and Human Services Reform

03/19/2015 Adoption of Report: Re-referred to the Committee on Health and Human Services Finance

1.1 A bill for an act
1.2 relating to human services; modifying the community first services and supports
1.3 program; amending Minnesota Statutes 2014, section 256B.85, subdivisions 1,
1.4 2, 7.

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

1.6 Section 1. Minnesota Statutes 2014, section 256B.85, subdivision 1, is amended to read:

1.7 Subdivision 1. **Basis and scope.** (a) Upon federal approval, the commissioner
1.8 shall establish a medical assistance state plan option for the provision of home and
1.9 community-based personal assistance service and supports called "community first
1.10 services and supports (CFSS)."

1.11 (b) CFSS is a participant-controlled method of selecting and providing services
1.12 and supports that allows the participant maximum control of the services and supports.
1.13 Participants may choose the degree to which they direct and manage their supports by
1.14 choosing to have a significant and meaningful role in the management of services and
1.15 supports including by directly employing support workers with the necessary supports
1.16 to perform that function.

1.17 (c) CFSS is available statewide to eligible individuals to assist with accomplishing
1.18 activities of daily living (ADLs), instrumental activities of daily living (IADLs), and
1.19 health-related procedures and tasks through hands-on assistance to accomplish the task
1.20 or ~~constant~~ supervision and cueing to accomplish the task; and to assist with acquiring,
1.21 maintaining, and enhancing the skills necessary to accomplish ADLs, IADLs, and
1.22 health-related procedures and tasks. CFSS allows payment for certain supports and goods
1.23 such as environmental modifications and technology that are intended to replace or
1.24 decrease the need for human assistance.

2.1 (d) Upon federal approval, CFSS will replace the personal care assistance program
 2.2 under sections 256.476, 256B.0625, subdivisions 19a and 19c, and 256B.0659.

2.3 **EFFECTIVE DATE.** This section is effective upon federal approval. The service
 2.4 will begin 90 days after federal approval. The commissioner shall notify the revisor of
 2.5 statutes when this occurs.

2.6 Sec. 2. Minnesota Statutes 2014, section 256B.85, subdivision 2, is amended to read:

2.7 Subd. 2. **Definitions.** (a) For the purposes of this section, the terms defined in
 2.8 this subdivision have the meanings given.

2.9 (b) "Activities of daily living" or "ADLs" means eating, toileting, grooming,
 2.10 dressing, bathing, mobility, positioning, and transferring.

2.11 (c) "Agency-provider model" means a method of CFSS under which a qualified
 2.12 agency provides services and supports through the agency's own employees and policies.
 2.13 The agency must allow the participant to have a significant role in the selection and
 2.14 dismissal of support workers of their choice for the delivery of their specific services
 2.15 and supports.

2.16 (d) "Behavior" means a description of a need for services and supports used to
 2.17 determine the home care rating and additional service units. The presence of Level I
 2.18 behavior is used to determine the home care rating. "Level I behavior" means physical
 2.19 aggression towards self or others or destruction of property that requires the immediate
 2.20 response of another person. If qualified for a home care rating as described in subdivision
 2.21 8, additional service units can be added as described in subdivision 8, paragraph (f), for
 2.22 the following behaviors:

2.23 (1) Level I behavior;

2.24 (2) increased vulnerability due to cognitive deficits or socially inappropriate
 2.25 behavior; or

2.26 (3) increased need for assistance for participants who are verbally aggressive or
 2.27 resistive to care so that time needed to perform activities of daily living is increased.

2.28 (e) "Budget model" means a service delivery method of CFSS that allows the use of
 2.29 a service budget and assistance from a financial management services (FMS) contractor
 2.30 for a participant to directly employ support workers and purchase supports and goods.

2.31 (f) "Complex health-related needs" means an intervention listed in clauses (1) to
 2.32 (8) that has been ordered by a physician, and is specified in a community support plan,
 2.33 including:

2.34 (1) tube feedings requiring:

2.35 (i) a gastrojejunostomy tube; or

- 3.1 (ii) continuous tube feeding lasting longer than 12 hours per day;
- 3.2 (2) wounds described as:
- 3.3 (i) stage III or stage IV;
- 3.4 (ii) multiple wounds;
- 3.5 (iii) requiring sterile or clean dressing changes or a wound vac; or
- 3.6 (iv) open lesions such as burns, fistulas, tube sites, or ostomy sites that require
- 3.7 specialized care;
- 3.8 (3) parenteral therapy described as:
- 3.9 (i) IV therapy more than two times per week lasting longer than four hours for
- 3.10 each treatment; or
- 3.11 (ii) total parenteral nutrition (TPN) daily;
- 3.12 (4) respiratory interventions, including:
- 3.13 (i) oxygen required more than eight hours per day;
- 3.14 (ii) respiratory vest more than one time per day;
- 3.15 (iii) bronchial drainage treatments more than two times per day;
- 3.16 (iv) sterile or clean suctioning more than six times per day;
- 3.17 (v) dependence on another to apply respiratory ventilation augmentation devices
- 3.18 such as BiPAP and CPAP; and
- 3.19 (vi) ventilator dependence under section 256B.0652;
- 3.20 (5) insertion and maintenance of catheter, including:
- 3.21 (i) sterile catheter changes more than one time per month;
- 3.22 (ii) clean intermittent catheterization, and including self-catheterization more than
- 3.23 six times per day; or
- 3.24 (iii) bladder irrigations;
- 3.25 (6) bowel program more than two times per week requiring more than 30 minutes to
- 3.26 perform each time;
- 3.27 (7) neurological intervention, including:
- 3.28 (i) seizures more than two times per week and requiring significant physical
- 3.29 assistance to maintain safety; or
- 3.30 (ii) swallowing disorders diagnosed by a physician and requiring specialized
- 3.31 assistance from another on a daily basis; and
- 3.32 (8) other congenital or acquired diseases creating a need for significantly increased
- 3.33 direct hands-on assistance and interventions in six to eight activities of daily living.
- 3.34 (g) "Community first services and supports" or "CFSS" means the assistance and
- 3.35 supports program under this section needed for accomplishing activities of daily living,
- 3.36 instrumental activities of daily living, and health-related tasks through hands-on assistance

4.1 to accomplish the task or ~~constant~~ supervision and cueing to accomplish the task, or
4.2 the purchase of goods as defined in subdivision 7, clause (3), that replace the need for
4.3 human assistance.

4.4 (h) "Community first services and supports service delivery plan" or "service
4.5 delivery plan" means a written document detailing the services and supports chosen by the
4.6 participant to meet assessed needs that are within the approved CFSS service authorization
4.7 amount. Services and supports are based on the community support plan identified in
4.8 section 256B.0911 and coordinated services and support plan and budget identified in
4.9 section 256B.0915, subdivision 6, if applicable, that is determined by the participant to
4.10 meet the assessed needs, using a person-centered planning process.

4.11 (i) "Consultation services" means a Minnesota health care program enrolled provider
4.12 organization that is under contract with the department and has the knowledge, skills,
4.13 and ability to assist CFSS participants in using either the agency-provider model under
4.14 subdivision 11 or the budget model under subdivision 13.

4.15 (j) "Critical activities of daily living" means transferring, mobility, eating, and
4.16 toileting.

4.17 (k) "Dependency" in activities of daily living means a person requires hands-on
4.18 assistance or ~~constant~~ supervision and cueing to accomplish one or more of the activities
4.19 of daily living every day or on the days during the week that the activity is performed;
4.20 however, a child may not be found to be dependent in an activity of daily living if,
4.21 because of the child's age, an adult would either perform the activity for the child or assist
4.22 the child with the activity and the assistance needed is the assistance appropriate for
4.23 a typical child of the same age.

4.24 (l) "Extended CFSS" means CFSS services and supports included in a service plan
4.25 through one of the home and community-based services waivers and as approved and
4.26 authorized under sections 256B.0915; 256B.092, subdivision 5; and 256B.49, which
4.27 exceed the amount, duration, and frequency of the state plan CFSS services for participants.

4.28 (m) "Financial management services contractor or vendor" or "FMS contractor"
4.29 means a qualified organization required for participants using the budget model under
4.30 subdivision 13 that has a written contract with the department to provide vendor
4.31 fiscal/employer agent financial management services (FMS). Services include but are
4.32 not limited to: filing and payment of federal and state payroll taxes on behalf of the
4.33 participant; initiating criminal background checks; billing for approved CFSS services
4.34 with authorized funds; monitoring expenditures; accounting for and disbursing CFSS
4.35 funds; providing assistance in obtaining and filing for liability, workers' compensation, and
4.36 unemployment coverage; and providing participant instruction and technical assistance

5.1 to the participant in fulfilling employer-related requirements in accordance with Section
5.2 3504 of the Internal Revenue Code and related regulations and interpretations, including
5.3 Code of Federal Regulations, title 26, section 31.3504-1.

5.4 (n) "Health-related procedures and tasks" means procedures and tasks related to the
5.5 specific needs of an individual that can be taught or assigned by a state-licensed health
5.6 care or mental health professional and performed by a support worker.

5.7 (o) "Instrumental activities of daily living" means activities related to living
5.8 independently in the community, including but not limited to: meal planning, preparation,
5.9 and cooking; shopping for food, clothing, or other essential items; laundry; housecleaning;
5.10 assistance with medications; managing finances; communicating needs and preferences
5.11 during activities; arranging supports; and assistance with traveling around and
5.12 participating in the community.

5.13 (p) "Legal representative" means parent of a minor, a court-appointed guardian, or
5.14 another representative with legal authority to make decisions about services and supports
5.15 for the participant. Other representatives with legal authority to make decisions include
5.16 but are not limited to a health care agent or an attorney-in-fact authorized through a health
5.17 care directive or power of attorney.

5.18 (q) "Medication assistance" means providing verbal or visual reminders to take
5.19 regularly scheduled medication, and includes any of the following supports listed in clauses
5.20 (1) to (3) and other types of assistance, except that a support worker may not determine
5.21 medication dose or time for medication or inject medications into veins, muscles, or skin:

5.22 (1) under the direction of the participant or the participant's representative, bringing
5.23 medications to the participant including medications given through a nebulizer, opening a
5.24 container of previously set-up medications, emptying the container into the participant's
5.25 hand, opening and giving the medication in the original container to the participant, or
5.26 bringing to the participant liquids or food to accompany the medication;

5.27 (2) organizing medications as directed by the participant or the participant's
5.28 representative; and

5.29 (3) providing verbal or visual reminders to perform regularly scheduled medications.

5.30 (r) "Participant's representative" means a parent, family member, advocate, or
5.31 other adult authorized by the participant to serve as a representative in connection with
5.32 the provision of CFSS. This authorization must be in writing or by another method
5.33 that clearly indicates the participant's free choice. The participant's representative must
5.34 have no financial interest in the provision of any services included in the participant's
5.35 service delivery plan and must be capable of providing the support necessary to assist
5.36 the participant in the use of CFSS. If through the assessment process described in

6.1 subdivision 5 a participant is determined to be in need of a participant's representative, one
 6.2 must be selected. If the participant is unable to assist in the selection of a participant's
 6.3 representative, the legal representative shall appoint one. Two persons may be designated
 6.4 as a participant's representative for reasons such as divided households and court-ordered
 6.5 custodies. Duties of a participant's representatives may include:

6.6 (1) being available while services are provided in a method agreed upon by the
 6.7 participant or the participant's legal representative and documented in the participant's
 6.8 CFSS service delivery plan;

6.9 (2) monitoring CFSS services to ensure the participant's CFSS service delivery
 6.10 plan is being followed; and

6.11 (3) reviewing and signing CFSS time sheets after services are provided to provide
 6.12 verification of the CFSS services.

6.13 (s) "Person-centered planning process" means a process that is directed by the
 6.14 participant to plan for services and supports. The person-centered planning process must:

6.15 (1) include people chosen by the participant;

6.16 (2) provide necessary information and support to ensure that the participant directs
 6.17 the process to the maximum extent possible, and is enabled to make informed choices
 6.18 and decisions;

6.19 (3) be timely and occur at time and locations of convenience to the participant;

6.20 (4) reflect cultural considerations of the participant;

6.21 (5) include strategies for solving conflict or disagreement within the process,
 6.22 including clear conflict-of-interest guidelines for all planning;

6.23 (6) provide the participant choices of the services and supports they receive and the
 6.24 staff providing those services and supports;

6.25 (7) include a method for the participant to request updates to the plan; and

6.26 (8) record the alternative home and community-based settings that were considered
 6.27 by the participant.

6.28 (t) "Shared services" means the provision of CFSS services by the same CFSS
 6.29 support worker to two or three participants who voluntarily enter into an agreement to
 6.30 receive services at the same time and in the same setting by the same employer.

6.31 (u) "Support worker" means a qualified and trained employee of the agency-provider
 6.32 or of the participant employer under the budget model who has direct contact with the
 6.33 participant and provides services as specified within the participant's service delivery plan.

6.34 (v) "Wages and benefits" means the hourly wages and salaries, the employer's
 6.35 share of FICA taxes, Medicare taxes, state and federal unemployment taxes, workers'
 6.36 compensation, mileage reimbursement, health and dental insurance, life insurance,

7.1 disability insurance, long-term care insurance, uniform allowance, contributions to
7.2 employee retirement accounts, or other forms of employee compensation and benefits.

7.3 (w) "Worker training and development" means services for developing workers'
7.4 skills as required by the participant's individual CFSS delivery plan that are arranged for
7.5 or provided by the agency-provider or purchased by the participant employer. These
7.6 services include training, education, direct observation and supervision, and evaluation
7.7 and coaching of job skills and tasks, including supervision of health-related tasks or
7.8 behavioral supports.

7.9 **EFFECTIVE DATE.** This section is effective upon federal approval. The service
7.10 will begin 90 days after federal approval. The commissioner shall notify the revisor of
7.11 statutes when this occurs.

7.12 Sec. 3. Minnesota Statutes 2014, section 256B.85, subdivision 7, is amended to read:

7.13 Subd. 7. **Community first services and supports; covered services.** Within the
7.14 service unit authorization or service budget amount, services and supports covered under
7.15 CFSS include:

7.16 (1) assistance to accomplish activities of daily living (ADLs), instrumental activities
7.17 of daily living (IADLs), and health-related procedures and tasks through hands-on
7.18 assistance to accomplish the task or ~~constant~~ supervision and cueing to accomplish the task;

7.19 (2) assistance to acquire, maintain, or enhance the skills necessary for the participant
7.20 to accomplish activities of daily living, instrumental activities of daily living, or
7.21 health-related tasks;

7.22 (3) expenditures for items, services, supports, environmental modifications, or
7.23 goods, including assistive technology. These expenditures must:

7.24 (i) relate to a need identified in a participant's CFSS service delivery plan;

7.25 (ii) increase independence or substitute for human assistance to the extent that
7.26 expenditures would otherwise be made for human assistance for the participant's assessed
7.27 needs;

7.28 (4) observation and redirection for behavior or symptoms where there is a need for
7.29 assistance. An assessment of behaviors must meet the criteria in this clause. A participant
7.30 qualifies as having a need for assistance due to behaviors if the participant's behavior
7.31 requires assistance at least four times per week and shows one or more of the following
7.32 behaviors:

7.33 (i) physical aggression towards self or others, or destruction of property that requires
7.34 the immediate response of another person;

8.1 (ii) increased vulnerability due to cognitive deficits or socially inappropriate
8.2 behavior; or

8.3 (iii) increased need for assistance for participants who are verbally aggressive or
8.4 resistive to care so that time needed to perform activities of daily living is increased;

8.5 (5) back-up systems or mechanisms, such as the use of pagers or other electronic
8.6 devices, to ensure continuity of the participant's services and supports;

8.7 (6) services provided by a consultation services provider under contract with the
8.8 department and enrolled as a Minnesota health care program provider as defined under
8.9 subdivision 17;

8.10 (7) services provided by an FMS contractor under contract with the department
8.11 as defined under subdivision 13;

8.12 (8) CFSS services provided by a qualified support worker who is a parent, stepparent,
8.13 or legal guardian of a participant under age 18, or who is the participant's spouse. These
8.14 support workers shall not provide any medical assistance home and community-based
8.15 services in excess of 40 hours per seven-day period regardless of the number of parents,
8.16 combination of parents and spouses, or number of children who receive medical assistance
8.17 services; and

8.18 (9) worker training and development services as defined in subdivision 2, paragraph
8.19 (w), and described in subdivision 18a.

8.20 **EFFECTIVE DATE.** This section is effective upon federal approval. The service
8.21 will begin 90 days after federal approval. The commissioner shall notify the revisor of
8.22 statutes when this occurs.