

SENATE
STATE OF MINNESOTA
EIGHTY-SEVENTH LEGISLATURE **S.F. No. 1804**

(SENATE AUTHORS: HANN)

DATE	D-PG	OFFICIAL STATUS
02/13/2012	3797	Introduction and first reading Referred to Health and Human Services
03/01/2012	4003a	Comm report: To pass as amended and re-refer to Judiciary and Public Safety
03/19/2012		Comm report: To pass as amended Second reading

A bill for an act

1.1 relating to state government; making changes to health and human services
1.2 policy provisions; modifying provisions related to continuing care, the telephone
1.3 equipment program, chemical and mental health, and health care; reforming
1.4 comprehensive assessment and case management services; requiring reports;
1.5 amending Minnesota Statutes 2010, sections 144A.071, subdivision 5a;
1.6 237.50; 237.51; 237.52; 237.53; 237.54; 237.55; 237.56; 245.461, by adding
1.7 a subdivision; 245.462, subdivision 20; 245.487, by adding a subdivision;
1.8 245.4871, subdivision 15; 245.4932, subdivision 1; 245A.11, subdivisions 2a, 8;
1.9 246.53, by adding a subdivision; 252.32, subdivision 1a; 252A.21, subdivision
1.10 2; 256.476, subdivision 11; 256.9657, subdivision 1; 256B.04, subdivision 14;
1.11 256B.056, subdivision 3c; 256B.0595, subdivision 2; 256B.0625, subdivisions
1.12 13, 13d, 19c, 42; 256B.0659, subdivisions 1, 2, 3, 3a, 4, 9, 13, 14, 19, 20,
1.13 21, 24, 30; 256B.0911, subdivisions 1, 2b, 2c, 3, 3b, 4c, 6; 256B.0913,
1.14 subdivisions 7, 8; 256B.0915, subdivisions 1a, 1b, 3c, 6; 256B.0916, subdivision
1.15 7; 256B.092, subdivisions 1, 1a, 1b, 1e, 1g, 2, 3, 5, 7, 8, 8a, 9, 11; 256B.096,
1.16 subdivision 5; 256B.15, subdivisions 1c, 1f; 256B.19, subdivision 1c; 256B.441,
1.17 subdivisions 13, 31, 53; 256B.49, subdivisions 13, 21; 256B.69, subdivision
1.18 5; 256F.13, subdivision 1; 256G.02, subdivision 6; 256L.05, subdivision 3;
1.19 514.982, subdivision 1; Minnesota Statutes 2011 Supplement, sections 125A.21,
1.20 subdivision 7; 144A.071, subdivisions 3, 4a; 245A.03, subdivision 7; 254B.04,
1.21 subdivision 2a; 256B.056, subdivision 3; 256B.057, subdivision 9; 256B.0625,
1.22 subdivisions 13e, 13h, 14, 56; 256B.0631, subdivisions 1, 2; 256B.0659,
1.23 subdivision 11; 256B.0911, subdivisions 1a, 3a, 4a; 256B.0915, subdivision
1.24 10; 256B.49, subdivisions 14, 15; 256B.69, subdivisions 5a, 28; 256L.15,
1.25 subdivision 1; 626.557, subdivision 9; Laws 2009, chapter 79, article 8, section
1.26 81, as amended; proposing coding for new law in Minnesota Statutes, chapter
1.27 252; repealing Minnesota Statutes 2010, sections 256.01, subdivision 18b;
1.28 256B.431, subdivisions 2c, 2g, 2i, 2j, 2k, 2l, 2o, 3c, 11, 14, 17b, 17f, 19, 20,
1.29 25, 27, 29; 256B.434, subdivisions 4a, 4b, 4c, 4d, 4e, 4g, 4h, 7, 8; 256B.435;
1.30 256B.436; Minnesota Statutes 2011 Supplement, section 256B.431, subdivision
1.31 26; Minnesota Rules, part 9555.7700.

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

ARTICLE 1

CONTINUING CARE

Section 1. Minnesota Statutes 2011 Supplement, section 144A.071, subdivision 3, is amended to read:

Subd. 3. **Exceptions authorizing increase in beds; hardship areas.** (a) The commissioner of health, in coordination with the commissioner of human services, may approve the addition of new licensed and Medicare and Medicaid certified nursing home beds, using the criteria and process set forth in this subdivision.

(b) The commissioner, in cooperation with the commissioner of human services, shall consider the following criteria when determining that an area of the state is a hardship area with regard to access to nursing facility services:

(1) a low number of beds per thousand in a specified area using as a standard the beds per thousand people age 65 and older, in five year age groups, using data from the most recent census and population projections, weighted by each group's most recent nursing home utilization, of the county at the 20th percentile, as determined by the commissioner of human services;

(2) a high level of out-migration for nursing facility services associated with a described area from the county or counties of residence to other Minnesota counties, as determined by the commissioner of human services, using as a standard an amount greater than the out-migration of the county ranked at the 50th percentile;

(3) an adequate level of availability of noninstitutional long-term care services measured as public spending for home and community-based long-term care services per individual age 65 and older, in five year age groups, using data from the most recent census and population projections, weighted by each group's most recent nursing home utilization, as determined by the commissioner of human services using as a standard an amount greater than the 50th percentile of counties;

(4) there must be a declaration of hardship resulting from insufficient access to nursing home beds by local county agencies and area agencies on aging; and

(5) other factors that may demonstrate the need to add new nursing facility beds.

(c) On August 15 of odd-numbered years, the commissioner, in cooperation with the commissioner of human services, may publish in the State Register a request for information in which interested parties, using the data provided under section 144A.351, along with any other relevant data, demonstrate that a specified area is a hardship area with regard to access to nursing facility services. For a response to be considered, the commissioner must receive it by November 15. The commissioner shall make responses

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3.1 to the request for information available to the public and shall allow 30 days for comment.
3.2 The commissioner shall review responses and comments and determine if any areas of
3.3 the state are to be declared hardship areas.

3.4 (d) For each designated hardship area determined in paragraph (c), the commissioner
3.5 shall publish a request for proposals in accordance with section 144A.073 and Minnesota
3.6 Rules, parts 4655.1070 to 4655.1098. The request for proposals must be published in the
3.7 State Register by March 15 following receipt of responses to the request for information.
3.8 The request for proposals must specify the number of new beds which may be added
3.9 in the designated hardship area, which must not exceed the number which, if added to
3.10 the existing number of beds in the area, including beds in layaway status, would have
3.11 prevented it from being determined to be a hardship area under paragraph (b), clause
3.12 (1). Beginning July 1, 2011, the number of new beds approved must not exceed 200
3.13 beds statewide per biennium. After June 30, 2019, the number of new beds that may be
3.14 approved in a biennium must not exceed 300 statewide. For a proposal to be considered,
3.15 the commissioner must receive it within six months of the publication of the request for
3.16 proposals. The commissioner shall review responses to the request for proposals and
3.17 shall approve or disapprove each proposal by the following July 15, in accordance with
3.18 section 144A.073 and Minnesota Rules, parts 4655.1070 to 4655.1098. The commissioner
3.19 shall base approvals or disapprovals on a comparison and ranking of proposals using
3.20 only the criteria in subdivision 4a. Approval of a proposal expires after 18 months
3.21 unless the facility has added the new beds using existing space, subject to approval
3.22 by the commissioner, or has commenced construction as defined in section 144A.071,
3.23 subdivision 1a, paragraph (d). ~~Operating~~ If, after the approved beds have been added,
3.24 fewer than 50 percent of the beds in a facility are newly licensed, the operating payment
3.25 rates previously in effect shall remain. If, after the approved beds have been added, 50
3.26 percent or more of the beds in a facility are newly licensed, operating payment rates shall
3.27 be determined according to Minnesota Rules, part 9549.0057, using the limits under
3.28 section 256B.441. External fixed payment rates must be determined according to section
3.29 256B.441, subdivision 53. Property payment rates for facilities with beds added under this
3.30 subdivision must be determined in the same manner as rate determinations resulting from
3.31 projects approved and completed under section 144A.073.

3.32 (e) The commissioner may:

3.33 (1) certify or license new beds in a new facility that is to be operated by the
3.34 commissioner of veterans affairs or when the costs of constructing and operating the new
3.35 beds are to be reimbursed by the commissioner of veterans affairs or the United States
3.36 Veterans Administration; and

4.1 (2) license or certify beds in a facility that has been involuntarily delicensed or
4.2 decertified for participation in the medical assistance program, provided that an application
4.3 for relicensure or recertification is submitted to the commissioner by an organization that
4.4 is not a related organization as defined in section 256B.441, subdivision 34, to the prior
4.5 licensee within 120 days after delicensure or decertification.

4.6 Sec. 2. Minnesota Statutes 2011 Supplement, section 144A.071, subdivision 4a,
4.7 is amended to read:

4.8 Subd. 4a. **Exceptions for replacement beds.** It is in the best interest of the state
4.9 to ensure that nursing homes and boarding care homes continue to meet the physical
4.10 plant licensing and certification requirements by permitting certain construction projects.
4.11 Facilities should be maintained in condition to satisfy the physical and emotional needs
4.12 of residents while allowing the state to maintain control over nursing home expenditure
4.13 growth.

4.14 The commissioner of health in coordination with the commissioner of human
4.15 services, may approve the renovation, replacement, upgrading, or relocation of a nursing
4.16 home or boarding care home, under the following conditions:

4.17 (a) to license or certify beds in a new facility constructed to replace a facility or to
4.18 make repairs in an existing facility that was destroyed or damaged after June 30, 1987, by
4.19 fire, lightning, or other hazard provided:

4.20 (i) destruction was not caused by the intentional act of or at the direction of a
4.21 controlling person of the facility;

4.22 (ii) at the time the facility was destroyed or damaged the controlling persons of the
4.23 facility maintained insurance coverage for the type of hazard that occurred in an amount
4.24 that a reasonable person would conclude was adequate;

4.25 (iii) the net proceeds from an insurance settlement for the damages caused by the
4.26 hazard are applied to the cost of the new facility or repairs;

4.27 (iv) the number of licensed and certified beds in the new facility does not exceed the
4.28 number of licensed and certified beds in the destroyed facility; and

4.29 (v) the commissioner determines that the replacement beds are needed to prevent an
4.30 inadequate supply of beds.

4.31 Project construction costs incurred for repairs authorized under this clause shall not be
4.32 considered in the dollar threshold amount defined in subdivision 2;

4.33 (b) to license or certify beds that are moved from one location to another within a
4.34 nursing home facility, provided the total costs of remodeling performed in conjunction
4.35 with the relocation of beds does not exceed \$1,000,000;

5.1 (c) to license or certify beds in a project recommended for approval under section
5.2 144A.073;

5.3 (d) to license or certify beds that are moved from an existing state nursing home to
5.4 a different state facility, provided there is no net increase in the number of state nursing
5.5 home beds;

5.6 (e) to certify and license as nursing home beds boarding care beds in a certified
5.7 boarding care facility if the beds meet the standards for nursing home licensure, or in a
5.8 facility that was granted an exception to the moratorium under section 144A.073, and if
5.9 the cost of any remodeling of the facility does not exceed \$1,000,000. If boarding care
5.10 beds are licensed as nursing home beds, the number of boarding care beds in the facility
5.11 must not increase beyond the number remaining at the time of the upgrade in licensure.
5.12 The provisions contained in section 144A.073 regarding the upgrading of the facilities
5.13 do not apply to facilities that satisfy these requirements;

5.14 (f) to license and certify up to 40 beds transferred from an existing facility owned and
5.15 operated by the Amherst H. Wilder Foundation in the city of St. Paul to a new unit at the
5.16 same location as the existing facility that will serve persons with Alzheimer's disease and
5.17 other related disorders. The transfer of beds may occur gradually or in stages, provided
5.18 the total number of beds transferred does not exceed 40. At the time of licensure and
5.19 certification of a bed or beds in the new unit, the commissioner of health shall delicense
5.20 and decertify the same number of beds in the existing facility. As a condition of receiving
5.21 a license or certification under this clause, the facility must make a written commitment
5.22 to the commissioner of human services that it will not seek to receive an increase in its
5.23 property-related payment rate as a result of the transfers allowed under this paragraph;

5.24 (g) to license and certify nursing home beds to replace currently licensed and certified
5.25 boarding care beds which may be located either in a remodeled or renovated boarding care
5.26 or nursing home facility or in a remodeled, renovated, newly constructed, or replacement
5.27 nursing home facility within the identifiable complex of health care facilities in which the
5.28 currently licensed boarding care beds are presently located, provided that the number of
5.29 boarding care beds in the facility or complex are decreased by the number to be licensed
5.30 as nursing home beds and further provided that, if the total costs of new construction,
5.31 replacement, remodeling, or renovation exceed ten percent of the appraised value of
5.32 the facility or \$200,000, whichever is less, the facility makes a written commitment to
5.33 the commissioner of human services that it will not seek to receive an increase in its
5.34 property-related payment rate by reason of the new construction, replacement, remodeling,
5.35 or renovation. The provisions contained in section 144A.073 regarding the upgrading of
5.36 facilities do not apply to facilities that satisfy these requirements;

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6.1 (h) to license as a nursing home and certify as a nursing facility a facility that is
6.2 licensed as a boarding care facility but not certified under the medical assistance program,
6.3 but only if the commissioner of human services certifies to the commissioner of health that
6.4 licensing the facility as a nursing home and certifying the facility as a nursing facility will
6.5 result in a net annual savings to the state general fund of \$200,000 or more;

6.6 (i) to certify, after September 30, 1992, and prior to July 1, 1993, existing nursing
6.7 home beds in a facility that was licensed and in operation prior to January 1, 1992;

6.8 (j) to license and certify new nursing home beds to replace beds in a facility acquired
6.9 by the Minneapolis Community Development Agency as part of redevelopment activities
6.10 in a city of the first class, provided the new facility is located within three miles of the site
6.11 of the old facility. Operating and property costs for the new facility must be determined
6.12 and allowed under section 256B.431 or 256B.434;

6.13 (k) to license and certify up to 20 new nursing home beds in a community-operated
6.14 hospital and attached convalescent and nursing care facility with 40 beds on April 21,
6.15 1991, that suspended operation of the hospital in April 1986. The commissioner of human
6.16 services shall provide the facility with the same per diem property-related payment rate
6.17 for each additional licensed and certified bed as it will receive for its existing 40 beds;

6.18 (l) to license or certify beds in renovation, replacement, or upgrading projects as
6.19 defined in section 144A.073, subdivision 1, so long as the cumulative total costs of the
6.20 facility's remodeling projects do not exceed \$1,000,000;

6.21 (m) to license and certify beds that are moved from one location to another for the
6.22 purposes of converting up to five four-bed wards to single or double occupancy rooms
6.23 in a nursing home that, as of January 1, 1993, was county-owned and had a licensed
6.24 capacity of 115 beds;

6.25 (n) to allow a facility that on April 16, 1993, was a 106-bed licensed and certified
6.26 nursing facility located in Minneapolis to layaway all of its licensed and certified nursing
6.27 home beds. These beds may be relicensed and recertified in a newly constructed teaching
6.28 nursing home facility affiliated with a teaching hospital upon approval by the legislature.
6.29 The proposal must be developed in consultation with the interagency committee on
6.30 long-term care planning. The beds on layaway status shall have the same status as
6.31 voluntarily delicensed and decertified beds, except that beds on layaway status remain
6.32 subject to the surcharge in section 256.9657. This layaway provision expires July 1, 1998;

6.33 (o) to allow a project which will be completed in conjunction with an approved
6.34 moratorium exception project for a nursing home in southern Cass County and which is
6.35 directly related to that portion of the facility that must be repaired, renovated, or replaced,

7.1 to correct an emergency plumbing problem for which a state correction order has been
7.2 issued and which must be corrected by August 31, 1993;

7.3 (p) to allow a facility that on April 16, 1993, was a 368-bed licensed and certified
7.4 nursing facility located in Minneapolis to layaway, upon 30 days prior written notice to
7.5 the commissioner, up to 30 of the facility's licensed and certified beds by converting
7.6 three-bed wards to single or double occupancy. Beds on layaway status shall have the
7.7 same status as voluntarily delicensed and decertified beds except that beds on layaway
7.8 status remain subject to the surcharge in section 256.9657, remain subject to the license
7.9 application and renewal fees under section 144A.07 and shall be subject to a \$100 per bed
7.10 reactivation fee. In addition, at any time within three years of the effective date of the
7.11 layaway, the beds on layaway status may be:

7.12 (1) relicensed and recertified upon relocation and reactivation of some or all of
7.13 the beds to an existing licensed and certified facility or facilities located in Pine River,
7.14 Brainerd, or International Falls; provided that the total project construction costs related to
7.15 the relocation of beds from layaway status for any facility receiving relocated beds may
7.16 not exceed the dollar threshold provided in subdivision 2 unless the construction project
7.17 has been approved through the moratorium exception process under section 144A.073;

7.18 (2) relicensed and recertified, upon reactivation of some or all of the beds within the
7.19 facility which placed the beds in layaway status, if the commissioner has determined a
7.20 need for the reactivation of the beds on layaway status.

7.21 The property-related payment rate of a facility placing beds on layaway status
7.22 must be adjusted by the incremental change in its rental per diem after recalculating the
7.23 rental per diem as provided in section 256B.431, subdivision 3a, paragraph (c). The
7.24 property-related payment rate for a facility relicensing and recertifying beds from layaway
7.25 status must be adjusted by the incremental change in its rental per diem after recalculating
7.26 its rental per diem using the number of beds after the relicensing to establish the facility's
7.27 capacity day divisor, which shall be effective the first day of the month following the
7.28 month in which the relicensing and recertification became effective. Any beds remaining
7.29 on layaway status more than three years after the date the layaway status became effective
7.30 must be removed from layaway status and immediately delicensed and decertified;

7.31 (q) to license and certify beds in a renovation and remodeling project to convert 12
7.32 four-bed wards into 24 two-bed rooms, expand space, and add improvements in a nursing
7.33 home that, as of January 1, 1994, met the following conditions: the nursing home was
7.34 located in Ramsey County; had a licensed capacity of 154 beds; and had been ranked
7.35 among the top 15 applicants by the 1993 moratorium exceptions advisory review panel.

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8.1 The total project construction cost estimate for this project must not exceed the cost
8.2 estimate submitted in connection with the 1993 moratorium exception process;

8.3 (r) to license and certify up to 117 beds that are relocated from a licensed and
8.4 certified 138-bed nursing facility located in St. Paul to a hospital with 130 licensed
8.5 hospital beds located in South St. Paul, provided that the nursing facility and hospital are
8.6 owned by the same or a related organization and that prior to the date the relocation is
8.7 completed the hospital ceases operation of its inpatient hospital services at that hospital.
8.8 After relocation, the nursing facility's status ~~under section 256B.431, subdivision 2j~~, shall
8.9 be the same as it was prior to relocation. The nursing facility's property-related payment
8.10 rate resulting from the project authorized in this paragraph shall become effective no
8.11 earlier than April 1, 1996. For purposes of calculating the incremental change in the
8.12 facility's rental per diem resulting from this project, the allowable appraised value of
8.13 the nursing facility portion of the existing health care facility physical plant prior to the
8.14 renovation and relocation may not exceed \$2,490,000;

8.15 (s) to license and certify two beds in a facility to replace beds that were voluntarily
8.16 delicensed and decertified on June 28, 1991;

8.17 (t) to allow 16 licensed and certified beds located on July 1, 1994, in a 142-bed
8.18 nursing home and 21-bed boarding care home facility in Minneapolis, notwithstanding
8.19 the licensure and certification after July 1, 1995, of the Minneapolis facility as a 147-bed
8.20 nursing home facility after completion of a construction project approved in 1993 under
8.21 section 144A.073, to be laid away upon 30 days' prior written notice to the commissioner.
8.22 Beds on layaway status shall have the same status as voluntarily delicensed or decertified
8.23 beds except that they shall remain subject to the surcharge in section 256.9657. The
8.24 16 beds on layaway status may be relicensed as nursing home beds and recertified at
8.25 any time within five years of the effective date of the layaway upon relocation of some
8.26 or all of the beds to a licensed and certified facility located in Watertown, provided that
8.27 the total project construction costs related to the relocation of beds from layaway status
8.28 for the Watertown facility may not exceed the dollar threshold provided in subdivision
8.29 2 unless the construction project has been approved through the moratorium exception
8.30 process under section 144A.073.

8.31 The property-related payment rate of the facility placing beds on layaway status
8.32 must be adjusted by the incremental change in its rental per diem after recalculating the
8.33 rental per diem as provided in section 256B.431, subdivision 3a, paragraph (c). The
8.34 property-related payment rate for the facility relicensing and recertifying beds from
8.35 layaway status must be adjusted by the incremental change in its rental per diem after
8.36 recalculating its rental per diem using the number of beds after the relicensing to establish

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9.1 the facility's capacity day divisor, which shall be effective the first day of the month
9.2 following the month in which the relicensing and recertification became effective. Any
9.3 beds remaining on layaway status more than five years after the date the layaway status
9.4 became effective must be removed from layaway status and immediately delicensed
9.5 and decertified;

9.6 (u) to license and certify beds that are moved within an existing area of a facility or
9.7 to a newly constructed addition which is built for the purpose of eliminating three- and
9.8 four-bed rooms and adding space for dining, lounge areas, bathing rooms, and ancillary
9.9 service areas in a nursing home that, as of January 1, 1995, was located in Fridley and had
9.10 a licensed capacity of 129 beds;

9.11 (v) to relocate 36 beds in Crow Wing County and four beds from Hennepin County
9.12 to a 160-bed facility in Crow Wing County, provided all the affected beds are under
9.13 common ownership;

9.14 (w) to license and certify a total replacement project of up to 49 beds located in
9.15 Norman County that are relocated from a nursing home destroyed by flood and whose
9.16 residents were relocated to other nursing homes. The operating cost payment rates for
9.17 the new nursing facility shall be determined based on the interim and settle-up payment
9.18 provisions of Minnesota Rules, part 9549.0057, and the reimbursement provisions of
9.19 section 256B.431, ~~except that subdivision 26, paragraphs (a) and (b), shall not apply until~~
9.20 ~~the second rate year after the settle-up cost report is filed.~~ Property-related reimbursement
9.21 rates shall be determined under section 256B.431, taking into account any federal or state
9.22 flood-related loans or grants provided to the facility;

9.23 (x) to license and certify a total replacement project of up to 129 beds located
9.24 in Polk County that are relocated from a nursing home destroyed by flood and whose
9.25 residents were relocated to other nursing homes. The operating cost payment rates for
9.26 the new nursing facility shall be determined based on the interim and settle-up payment
9.27 provisions of Minnesota Rules, part 9549.0057, and the reimbursement provisions of
9.28 section 256B.431, ~~except that subdivision 26, paragraphs (a) and (b), shall not apply until~~
9.29 ~~the second rate year after the settle-up cost report is filed.~~ Property-related reimbursement
9.30 rates shall be determined under section 256B.431, taking into account any federal or state
9.31 flood-related loans or grants provided to the facility;

9.32 (y) to license and certify beds in a renovation and remodeling project to convert 13
9.33 three-bed wards into 13 two-bed rooms and 13 single-bed rooms, expand space, and
9.34 add improvements in a nursing home that, as of January 1, 1994, met the following
9.35 conditions: the nursing home was located in Ramsey County, was not owned by a hospital
9.36 corporation, had a licensed capacity of 64 beds, and had been ranked among the top 15

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10.1 applicants by the 1993 moratorium exceptions advisory review panel. The total project
10.2 construction cost estimate for this project must not exceed the cost estimate submitted in
10.3 connection with the 1993 moratorium exception process;

10.4 (z) to license and certify up to 150 nursing home beds to replace an existing 285
10.5 bed nursing facility located in St. Paul. The replacement project shall include both the
10.6 renovation of existing buildings and the construction of new facilities at the existing
10.7 site. The reduction in the licensed capacity of the existing facility shall occur during the
10.8 construction project as beds are taken out of service due to the construction process. Prior
10.9 to the start of the construction process, the facility shall provide written information to the
10.10 commissioner of health describing the process for bed reduction, plans for the relocation
10.11 of residents, and the estimated construction schedule. The relocation of residents shall be
10.12 in accordance with the provisions of law and rule;

10.13 (aa) to allow the commissioner of human services to license an additional 36 beds
10.14 to provide residential services for the physically disabled under Minnesota Rules, parts
10.15 9570.2000 to 9570.3400, in a 198-bed nursing home located in Red Wing, provided that
10.16 the total number of licensed and certified beds at the facility does not increase;

10.17 (bb) to license and certify a new facility in St. Louis County with 44 beds
10.18 constructed to replace an existing facility in St. Louis County with 31 beds, which has
10.19 resident rooms on two separate floors and an antiquated elevator that creates safety
10.20 concerns for residents and prevents nonambulatory residents from residing on the second
10.21 floor. The project shall include the elimination of three- and four-bed rooms;

10.22 (cc) to license and certify four beds in a 16-bed certified boarding care home in
10.23 Minneapolis to replace beds that were voluntarily delicensed and decertified on or
10.24 before March 31, 1992. The licensure and certification is conditional upon the facility
10.25 periodically assessing and adjusting its resident mix and other factors which may
10.26 contribute to a potential institution for mental disease declaration. The commissioner of
10.27 human services shall retain the authority to audit the facility at any time and shall require
10.28 the facility to comply with any requirements necessary to prevent an institution for mental
10.29 disease declaration, including delicensure and decertification of beds, if necessary;

10.30 (dd) to license and certify 72 beds in an existing facility in Mille Lacs County with
10.31 80 beds as part of a renovation project. The renovation must include construction of
10.32 an addition to accommodate ten residents with beginning and midstage dementia in a
10.33 self-contained living unit; creation of three resident households where dining, activities,
10.34 and support spaces are located near resident living quarters; designation of four beds
10.35 for rehabilitation in a self-contained area; designation of 30 private rooms; and other
10.36 improvements;

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11.1 (ee) to license and certify beds in a facility that has undergone replacement or
11.2 remodeling as part of a planned closure under section 256B.437;

11.3 (ff) to license and certify a total replacement project of up to 124 beds located
11.4 in Wilkin County that are in need of relocation from a nursing home significantly
11.5 damaged by flood. The operating cost payment rates for the new nursing facility shall
11.6 be determined based on the interim and settle-up payment provisions of Minnesota
11.7 Rules, part 9549.0057, and the reimbursement provisions of section 256B.431, ~~except~~
11.8 ~~that section 256B.431, subdivision 26, paragraphs (a) and (b), shall not apply until the~~
11.9 ~~second rate year after the settle-up cost report is filed.~~ Property-related reimbursement
11.10 rates shall be determined under section 256B.431, taking into account any federal or state
11.11 flood-related loans or grants provided to the facility;

11.12 (gg) to allow the commissioner of human services to license an additional nine beds
11.13 to provide residential services for the physically disabled under Minnesota Rules, parts
11.14 9570.2000 to 9570.3400, in a 240-bed nursing home located in Duluth, provided that the
11.15 total number of licensed and certified beds at the facility does not increase;

11.16 (hh) to license and certify up to 120 new nursing facility beds to replace beds in a
11.17 facility in Anoka County, which was licensed for 98 beds as of July 1, 2000, provided the
11.18 new facility is located within four miles of the existing facility and is in Anoka County.
11.19 Operating and property rates shall be determined and allowed under section 256B.431
11.20 and Minnesota Rules, parts 9549.0010 to 9549.0080, or section 256B.434 or ~~256B.435.~~
11.21 ~~The provisions of section 256B.431, subdivision 26, paragraphs (a) and (b), do not apply~~
11.22 ~~until the second rate year following settle-up 256B.441;~~ or

11.23 (ii) to transfer up to 98 beds of a 129-licensed bed facility located in Anoka County
11.24 that, as of March 25, 2001, is in the active process of closing, to a 122-licensed bed
11.25 nonprofit nursing facility located in the city of Columbia Heights or its affiliate. The
11.26 transfer is effective when the receiving facility notifies the commissioner in writing of the
11.27 number of beds accepted. The commissioner shall place all transferred beds on layaway
11.28 status held in the name of the receiving facility. The layaway adjustment provisions of
11.29 section 256B.431, subdivision 30, do not apply to this layaway. The receiving facility
11.30 may only remove the beds from layaway for recertification and relicensure at the receiving
11.31 facility's current site, or at a newly constructed facility located in Anoka County. The
11.32 receiving facility must receive statutory authorization before removing these beds from
11.33 layaway status, or may remove these beds from layaway status if removal from layaway
11.34 status is part of a moratorium exception project approved by the commissioner under
11.35 section 144A.073.

12.1 Sec. 3. Minnesota Statutes 2011 Supplement, section 245A.03, subdivision 7, is
12.2 amended to read:

12.3 Subd. 7. **Licensing moratorium.** (a) The commissioner shall not issue an
12.4 initial license for child foster care licensed under Minnesota Rules, parts 2960.3000 to
12.5 2960.3340, or adult foster care licensed under Minnesota Rules, parts 9555.5105 to
12.6 9555.6265, under this chapter for a physical location that will not be the primary residence
12.7 of the license holder for the entire period of licensure. If a license is issued during this
12.8 moratorium, and the license holder changes the license holder's primary residence away
12.9 from the physical location of the foster care license, the commissioner shall revoke the
12.10 license according to section 245A.07. Exceptions to the moratorium include:

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

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

12.14 (3) new foster care licenses determined to be needed by the commissioner under
12.15 paragraph (b) for the closure of a nursing facility, ICF/MR, or regional treatment center, or
12.16 restructuring of state-operated services that limits the capacity of state-operated facilities;

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

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

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

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

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

12.35 ~~(2) the provider has purchased housing or has made a financial investment in the~~
12.36 ~~property;~~

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13.1 ~~(3) the lead agency has approved the plans, including costs for the residential setting~~
13.2 ~~for each individual;~~

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

13.5 ~~(5) the needs of the individuals cannot be met within the existing capacity in that~~
13.6 ~~county.~~

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

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

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

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

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

13.21 ~~(e)~~ (d) When a foster care recipient moves out of a foster home that is not the
13.22 primary residence of the license holder according to section 256B.49, subdivision 15,
13.23 paragraph (f), the county shall immediately inform the Department of Human Services
13.24 Licensing Division, and the department shall immediately decrease the licensed capacity
13.25 for the home. A decreased licensed capacity according to this paragraph is not subject to
13.26 appeal under this chapter.

13.27 (e) At the time of application and reapplication for licensure, the applicant and the
13.28 license holder that are subject to the moratorium or an exclusion established in paragraph
13.29 (a) are required to inform the commissioner whether the physical location where the foster
13.30 care will be provided is or will be the primary residence of the license holder for the entire
13.31 period of licensure. If the primary residence of the applicant or license holder changes, the
13.32 applicant or license holder must notify the commissioner immediately. The commissioner
13.33 shall print on the foster care license certificate whether or not the physical location is the
13.34 primary residence of the license holder.

13.35 (f) License holders of foster care homes identified under paragraph (e) that are not
13.36 the primary residence of the license holder and that also provide services in the foster care

14.1 home that are covered by a federally approved home and community-based services
14.2 waiver, as authorized under section 256B.0915, 256B.092, or 256B.49 must inform the
14.3 human services licensing division that the license holder provides or intends to provide
14.4 these waiver-funded services. These license holders must be considered registered under
14.5 section 256B.092, subdivision 11, paragraph (c), and this registration status must be
14.6 identified on their license certificates.

14.7 Sec. 4. Minnesota Statutes 2010, section 245A.11, subdivision 2a, is amended to read:

14.8 Subd. 2a. **Adult foster care license capacity.** (a) The commissioner shall issue
14.9 adult foster care licenses with a maximum licensed capacity of four beds, including
14.10 nonstaff roomers and boarders, except that the commissioner may issue a license with a
14.11 capacity of five beds, including roomers and boarders, according to paragraphs (b) to (f).

14.12 (b) An adult foster care license holder may have a maximum license capacity of five
14.13 if all persons in care are age 55 or over and do not have a serious and persistent mental
14.14 illness or a developmental disability.

14.15 (c) The commissioner may grant variances to paragraph (b) to allow a foster care
14.16 provider with a licensed capacity of five persons to admit an individual under the age of 55
14.17 if the variance complies with section 245A.04, subdivision 9, and approval of the variance
14.18 is recommended by the county in which the licensed foster care provider is located.

14.19 (d) The commissioner may grant variances to paragraph (b) to allow the use of a fifth
14.20 bed for emergency crisis services for a person with serious and persistent mental illness
14.21 or a developmental disability, regardless of age, if the variance complies with section
14.22 245A.04, subdivision 9, and approval of the variance is recommended by the county in
14.23 which the licensed foster care provider is located.

14.24 (e) If the 2009 legislature adopts a rate reduction that impacts providers of adult
14.25 foster care services, the commissioner may issue an adult foster care license with a
14.26 capacity of five adults if the fifth bed does not increase the overall statewide capacity of
14.27 licensed adult foster care beds in homes that are not the primary residence of the license
14.28 holder, over the licensed capacity in such homes on July 1, 2009, as identified in a plan
14.29 submitted to the commissioner by the county, when the capacity is recommended by
14.30 the county licensing agency of the county in which the facility is located and if the
14.31 recommendation verifies that:

14.32 (1) the facility meets the physical environment requirements in the adult foster
14.33 care licensing rule;

14.34 (2) the five-bed living arrangement is specified for each resident in the resident's:

14.35 (i) individualized plan of care;

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15.1 (ii) individual service plan under section 256B.092, subdivision 1b, if required; or
15.2 (iii) individual resident placement agreement under Minnesota Rules, part
15.3 9555.5105, subpart 19, if required;

15.4 (3) the license holder obtains written and signed informed consent from each
15.5 resident or resident's legal representative documenting the resident's informed choice to
15.6 living in the home and that the resident's refusal to consent would not have resulted in
15.7 service termination; and

15.8 (4) the facility was licensed for adult foster care before March 1, 2009.

15.9 (f) The commissioner shall not issue a new adult foster care license under paragraph
15.10 (e) after June 30, ~~2011~~ 2014. The commissioner shall allow a facility with an adult foster
15.11 care license issued under paragraph (e) before June 30, ~~2011~~ 2014, to continue with a
15.12 capacity of five adults if the license holder continues to comply with the requirements in
15.13 paragraph (e).

15.14 Sec. 5. Minnesota Statutes 2010, section 245A.11, subdivision 8, is amended to read:

15.15 Subd. 8. **Community residential setting license.** (a) The commissioner shall
15.16 establish provider standards for residential support services that integrate service standards
15.17 and the residential setting under one license. The commissioner shall propose statutory
15.18 language and an implementation plan for licensing requirements for residential support
15.19 services to the legislature by January 15, ~~2011~~ 2012, as a component of the quality outcome
15.20 standards recommendations required by Laws 2010, chapter 352, article 1, section 24.

15.21 (b) Providers licensed under chapter 245B, and providing, contracting, or arranging
15.22 for services in settings licensed as adult foster care under Minnesota Rules, parts
15.23 9555.5105 to 9555.6265, or child foster care under Minnesota Rules, parts 2960.3000 to
15.24 2960.3340; and meeting the provisions of section 256B.092, subdivision 11, paragraph
15.25 (b), must be required to obtain a community residential setting license.

15.26 Sec. 6. Minnesota Statutes 2010, section 252.32, subdivision 1a, is amended to read:

15.27 Subd. 1a. **Support grants.** (a) Provision of support grants must be limited to
15.28 families who require support and whose dependents are under the age of 21 and who
15.29 have been certified disabled under section 256B.055, subdivision 12, paragraphs (a),
15.30 (b), (c), (d), and (e). Families who are receiving: home and community-based waived
15.31 services for persons with ~~developmental~~ disabilities authorized under section 256B.092 or
15.32 256B.49; personal care assistance under section 256B.0652; or a consumer support grant
15.33 under section 256.476 are not eligible for support grants.

16.1 Families whose annual adjusted gross income is \$60,000 or more are not eligible for
16.2 support grants except in cases where extreme hardship is demonstrated. Beginning in state
16.3 fiscal year 1994, the commissioner shall adjust the income ceiling annually to reflect the
16.4 projected change in the average value in the United States Department of Labor Bureau of
16.5 Labor Statistics Consumer Price Index (all urban) for that year.

16.6 (b) Support grants may be made available as monthly subsidy grants and lump-sum
16.7 grants.

16.8 (c) Support grants may be issued in the form of cash, voucher, and direct county
16.9 payment to a vendor.

16.10 (d) Applications for the support grant shall be made by the legal guardian to the
16.11 county social service agency. The application shall specify the needs of the families, the
16.12 form of the grant requested by the families, and the items and services to be reimbursed.

16.13 Sec. 7. **[252.34] REPORT BY COMMISSIONER OF HUMAN SERVICES.**

16.14 Beginning January 1, 2013, the commissioner of human services shall provide a
16.15 biennial report to the chairs and ranking minority members of the legislative committees
16.16 with jurisdiction over health and human services policy and funding. The report must
16.17 provide a summary of overarching goals and priorities for persons with disabilities,
16.18 including the status of how each of the following programs administered by the
16.19 commissioner is supporting the overarching goals and priorities:

16.20 (1) home and community-based services waivers for persons with disabilities under
16.21 sections 256B.092 and 256B.49;

16.22 (2) home care services under section 256B.0652; and

16.23 (3) other relevant programs and services as determined by the commissioner.

16.24 Sec. 8. Minnesota Statutes 2010, section 252A.21, subdivision 2, is amended to read:

16.25 Subd. 2. **Rules.** The commissioner shall adopt rules to implement this chapter.
16.26 The rules must include standards for performance of guardianship or conservatorship
16.27 duties including, but not limited to: twice a year visits with the ward; ~~quarterly reviews~~
16.28 ~~of records from day, residential, and support services;~~ a requirement that the duties of
16.29 guardianship or conservatorship and case management not be performed by the same
16.30 person; specific standards for action on "do not resuscitate" orders, sterilization requests,
16.31 and the use of psychotropic medication and aversive procedures.

16.32 Sec. 9. Minnesota Statutes 2010, section 256.476, subdivision 11, is amended to read:

17.1 Subd. 11. **Consumer support grant program after July 1, 2001.** Effective
17.2 July 1, 2001, the commissioner shall allocate consumer support grant resources to
17.3 serve additional individuals based on a review of Medicaid authorization and payment
17.4 information of persons eligible for a consumer support grant from the most recent fiscal
17.5 year. The commissioner shall use the following methodology to calculate maximum
17.6 allowable monthly consumer support grant levels:

17.7 (1) For individuals whose program of origination is medical assistance home care
17.8 under sections 256B.0651 and 256B.0653 to 256B.0656, the maximum allowable monthly
17.9 grant levels are calculated by:

17.10 (i) determining ~~50 percent of the average~~ the service authorization for each
17.11 individual based on the individual's home care rating assessment;

17.12 (ii) calculating the overall ratio of actual payments to service authorizations by
17.13 program;

17.14 (iii) applying the overall ratio to ~~the average~~ 50 percent of the service authorization
17.15 level of each home care rating; and

17.16 (iv) adjusting the result for any authorized rate ~~increases~~ changes provided by the
17.17 legislature; ~~and.~~

17.18 ~~(v) adjusting the result for the average monthly utilization per recipient.~~

17.19 (2) The commissioner ~~may review and evaluate~~ shall ensure the methodology ~~to~~
17.20 ~~reflect changes in~~ is consistent with the home care programs.

17.21 Sec. 10. Minnesota Statutes 2010, section 256.9657, subdivision 1, is amended to read:

17.22 Subdivision 1. **Nursing home license surcharge.** (a) Effective July 1, 1993,
17.23 each non-state-operated nursing home licensed under chapter 144A shall pay to the
17.24 commissioner an annual surcharge according to the schedule in subdivision 4. The
17.25 surcharge shall be calculated as \$620 per licensed bed. If the number of licensed beds
17.26 is reduced, the surcharge shall be based on the number of remaining licensed beds the
17.27 second month following the receipt of timely notice by the commissioner of human
17.28 services that beds have been delicensed. The nursing home must notify the commissioner
17.29 of health in writing when beds are delicensed. The commissioner of health must notify
17.30 the commissioner of human services within ten working days after receiving written
17.31 notification. If the notification is received by the commissioner of human services by
17.32 the 15th of the month, the invoice for the second following month must be reduced
17.33 to recognize the delicensing of beds. Beds on layaway status continue to be subject to
17.34 the surcharge. The commissioner of human services must acknowledge a medical care
17.35 surcharge appeal within 30 days of receipt of the written appeal from the provider.

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18.1 (b) Effective July 1, 1994, the surcharge in paragraph (a) shall be increased to \$625.

18.2 (c) Effective August 15, 2002, the surcharge under paragraph (b) shall be increased
18.3 to \$990.

18.4 (d) Effective July 15, 2003, the surcharge under paragraph (c) shall be increased
18.5 to \$2,815.

18.6 (e) The commissioner may reduce, and may subsequently restore, the surcharge
18.7 under paragraph (d) based on the commissioner's determination of a permissible surcharge.

18.8 (f) Between April 1, 2002, and August 15, 2004, a facility governed by this
18.9 subdivision may elect to assume full participation in the medical assistance program
18.10 by agreeing to comply with all of the requirements of the medical assistance program,
18.11 including the rate equalization law in section 256B.48, subdivision 1, paragraph (a), and
18.12 all other requirements established in law or rule, and to begin intake of new medical
18.13 assistance recipients. Rates will be determined under Minnesota Rules, parts 9549.0010
18.14 to 9549.0080. ~~Notwithstanding section 256B.431, subdivision 27, paragraph (i),~~ Rate
18.15 calculations will be subject to limits as prescribed in rule and law. Other than the
18.16 adjustments in sections 256B.431, subdivisions 30 and 32; 256B.437, subdivision 3,
18.17 paragraph (b), Minnesota Rules, part 9549.0057, and any other applicable legislation
18.18 enacted prior to the finalization of rates, facilities assuming full participation in medical
18.19 assistance under this paragraph are not eligible for any rate adjustments until the July 1
18.20 following their settle-up period.

18.21 Sec. 11. Minnesota Statutes 2010, section 256B.0625, subdivision 19c, is amended to
18.22 read:

18.23 Subd. 19c. **Personal care.** Medical assistance covers personal care assistance
18.24 services provided by an individual who is qualified to provide the services according to
18.25 subdivision 19a and sections 256B.0651 to 256B.0656, provided in accordance with a
18.26 plan, and supervised by a qualified professional.

18.27 "Qualified professional" means a mental health professional as defined in section
18.28 245.462, subdivision 18, clauses (1) to (6), or 245.4871, subdivision 27, clauses (1) to (6);
18.29 or a registered nurse as defined in sections 148.171 to 148.285, a licensed social worker
18.30 as defined in sections 148D.010 and 148D.055, or a qualified developmental disabilities
18.31 specialist under section 245B.07, subdivision 4. The qualified professional shall perform
18.32 the duties required in section 256B.0659.

18.33 Sec. 12. Minnesota Statutes 2010, section 256B.0659, subdivision 1, is amended to
18.34 read:

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

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

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

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

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

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

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

19.20 (1) need assistance provided periodically during a week, but less than daily will not
19.21 be able to remain in their homes without the assistance, and other replacement services
19.22 are more expensive or are not available when personal care assistance services are to
19.23 be ~~terminated~~ reduced; or

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

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

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

19.35 (j) "Managing employee" has the same definition as Code of Federal Regulations,
19.36 title 42, section 455.

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

20.3 (l) "Personal care assistance provider agency" means a medical assistance enrolled
20.4 provider that provides or assists with providing personal care assistance services and
20.5 includes a personal care assistance provider organization, personal care assistance choice
20.6 agency, class A licensed nursing agency, and Medicare-certified home health agency.

20.7 (m) "Personal care assistant" or "PCA" means an individual employed by a personal
20.8 care assistance agency who provides personal care assistance services.

20.9 (n) "Personal care assistance care plan" means a written description of personal
20.10 care assistance services developed by the personal care assistance provider according
20.11 to the service plan.

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

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

20.16 (q) "Service plan" means a written summary of the assessment and description of the
20.17 services needed by the recipient.

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

20.23 Sec. 13. Minnesota Statutes 2010, section 256B.0659, subdivision 3, is amended to
20.24 read:

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

20.28 (1) by the recipient's spouse, parent of a recipient under the age of 18, paid legal
20.29 guardian, licensed foster provider, except as allowed under section 256B.0652, subdivision
20.30 10, or responsible party;

20.31 (2) ~~in lieu of other staffing options~~ order to meet staffing or license requirements in a
20.32 residential or child care setting;

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

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

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

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

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

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

21.11 (1) sterile procedures;

21.12 (2) injections of fluids and medications into veins, muscles, or skin;

21.13 (3) home maintenance or chore services;

21.14 (4) homemaker services not an integral part of assessed personal care assistance
21.15 services needed by a recipient;

21.16 (5) application of restraints or implementation of procedures under section 245.825;

21.17 (6) instrumental activities of daily living for children under the age of 18, except
21.18 when immediate attention is needed for health or hygiene reasons integral to the personal
21.19 care services and the need is listed in the service plan by the assessor; and

21.20 (7) assessments for personal care assistance services by personal care assistance
21.21 provider agencies or by independently enrolled registered nurses.

21.22 Sec. 14. Minnesota Statutes 2010, section 256B.0659, subdivision 9, is amended to
21.23 read:

21.24 Subd. 9. **Responsible party; generally.** (a) "Responsible party" means an
21.25 individual who is capable of providing the support necessary to assist the recipient to live
21.26 in the community.

21.27 (b) A responsible party must be 18 years of age, actively participate in planning and
21.28 directing of personal care assistance services, and attend all assessments for the recipient.

21.29 (c) A responsible party must not be the:

21.30 (1) personal care assistant;

21.31 (2) qualified professional;

21.32 (3) home care provider agency owner or ~~staff manager~~; ~~or~~

21.33 (4) home care provider agency staff unless staff who are not listed in clauses (1) to

21.34 (3) are related to the recipient by blood, marriage, or adoption; or

21.35 ~~(3)~~ (5) county staff acting as part of employment.

22.1 (d) A licensed family foster parent who lives with the recipient may be the
22.2 responsible party as long as the family foster parent meets the other responsible party
22.3 requirements.

22.4 (e) A responsible party is required when:

22.5 (1) the person is a minor according to section 524.5-102, subdivision 10;

22.6 (2) the person is an incapacitated adult according to section 524.5-102, subdivision
22.7 6, resulting in a court-appointed guardian; or

22.8 (3) the assessment according to subdivision 3a determines that the recipient is in
22.9 need of a responsible party to direct the recipient's care.

22.10 (f) There may be two persons designated as the responsible party for reasons such
22.11 as divided households and court-ordered custodies. Each person named as responsible
22.12 party must meet the program criteria and responsibilities.

22.13 (g) The recipient or the recipient's legal representative shall appoint a responsible
22.14 party if necessary to direct and supervise the care provided to the recipient. The
22.15 responsible party must be identified at the time of assessment and listed on the recipient's
22.16 service agreement and personal care assistance care plan.

22.17 Sec. 15. Minnesota Statutes 2011 Supplement, section 256B.0659, subdivision 11,
22.18 is amended to read:

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

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

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

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

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

22.27 (3) enroll with the department as a personal care assistant after clearing a background
22.28 study. Except as provided in subdivision 11a, before a personal care assistant provides
22.29 services, the personal care assistance provider agency must initiate a background study on
22.30 the personal care assistant under chapter 245C, and the personal care assistance provider
22.31 agency must have received a notice from the commissioner that the personal care assistant
22.32 is:

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

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

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

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

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

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

23.10 (8) effective January 1, 2010, complete standardized training as determined
23.11 by the commissioner before completing enrollment. The training must be available
23.12 in languages other than English and to those who need accommodations due to
23.13 disabilities. Personal care assistant training must include successful completion of the
23.14 following training components: basic first aid, vulnerable adult, child maltreatment,
23.15 OSHA universal precautions, basic roles and responsibilities of personal care assistants
23.16 including information about assistance with lifting and transfers for recipients, emergency
23.17 preparedness, orientation to positive behavioral practices, fraud issues, and completion of
23.18 time sheets. Upon completion of the training components, the personal care assistant must
23.19 demonstrate the competency to provide assistance to recipients;

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

23.22 (10) be limited to providing and being paid for up to 275 hours per month, ~~except~~
23.23 ~~that this limit shall be 275 hours per month for the period July 1, 2009, through June 30,~~
23.24 ~~2011~~, of personal care assistance services regardless of the number of recipients being
23.25 served or the number of personal care assistance provider agencies enrolled with. The
23.26 number of hours worked per day shall not be disallowed by the department unless in
23.27 violation of the law.

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

23.30 (c) Persons who do not qualify as a personal care assistant include parents ~~and~~₂
23.31 stepparents, and legal guardians of minors₂; spouses₂; paid legal guardians; of adults;
23.32 family foster care providers, except as otherwise allowed in section 256B.0625,
23.33 subdivision 19a, ~~or~~ and staff of a residential setting. When the personal care assistant is a
23.34 relative of the recipient, the commissioner shall pay 80 percent of the provider rate. For
23.35 purposes of this section, relative means the parent or adoptive parent of an adult child, a
23.36 sibling aged 16 years or older, an adult child, a grandparent, or a grandchild.

24.1 Sec. 16. Minnesota Statutes 2010, section 256B.0659, subdivision 13, is amended to
24.2 read:

24.3 Subd. 13. **Qualified professional; qualifications.** (a) The qualified professional
24.4 must work for a personal care assistance provider agency and meet the definition under
24.5 section 256B.0625, subdivision 19c. Before a qualified professional provides services, the
24.6 personal care assistance provider agency must initiate a background study on the qualified
24.7 professional under chapter 245C, and the personal care assistance provider agency must
24.8 have received a notice from the commissioner that the qualified professional:

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

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

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

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

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

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

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

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

24.24 (c) Effective July 1, ~~2010~~ 2011, the qualified professional shall complete the provider
24.25 training with basic information about the personal care assistance program approved by
24.26 the commissioner. Newly hired qualified professionals must complete the training within
24.27 six months of the date hired by a personal care assistance provider agency. Qualified
24.28 professionals who have completed the required training as a worker from a personal care
24.29 assistance provider agency do not need to repeat the required training if they are hired
24.30 by another agency, if they have completed the training within the last three years. The
24.31 required training ~~shall~~ must be available ~~in languages other than English and to those who~~
24.32 ~~need accommodations due to disabilities,~~ with meaningful access according to title VI of
24.33 the Civil Rights Act and federal regulations adopted under that law or any guidance from
24.34 the United States Health and Human Services Department. The required training must
24.35 be available online; or by electronic remote connection, ~~and~~. The required training must
24.36 provide for competency testing to demonstrate an understanding of the content without

25.1 attending in-person training. A qualified professional is allowed to be employed and is not
25.2 subject to the training requirement until the training is offered online or through remote
25.3 electronic connection. A qualified professional employed by a personal care assistance
25.4 provider agency certified for participation in Medicare as a home health agency is exempt
25.5 from the training required in this subdivision. When available, the qualified professional
25.6 working for a Medicare-certified home health agency must successfully complete the
25.7 competency test. The commissioner shall ensure there is a mechanism in place to verify
25.8 the identity of persons completing the competency testing electronically.

25.9 **EFFECTIVE DATE.** This section is effective retroactively from July 1, 2011.

25.10 Sec. 17. Minnesota Statutes 2010, section 256B.0659, subdivision 14, is amended to
25.11 read:

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

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

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

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

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

25.22 (c) The qualified professional shall evaluate the personal care assistant within the
25.23 first 14 days of starting to provide regularly scheduled services for a recipient, or sooner as
25.24 determined by the qualified professional, except for the personal care assistance choice
25.25 option under subdivision 19, paragraph (a), clause (4). For the initial evaluation, the
25.26 qualified professional shall evaluate the personal care assistance services for a recipient
25.27 through direct observation of a personal care assistant's work. The qualified professional
25.28 may conduct additional training and evaluation visits, based upon the needs of the
25.29 recipient and the personal care assistant's ability to meet those needs. Subsequent visits to
25.30 evaluate the personal care assistance services provided to a recipient do not require direct
25.31 observation of each personal care assistant's work and shall occur:

25.32 (1) at least every 90 days thereafter for the first year of a recipient's services;

25.33 (2) every 120 days after the first year of a recipient's service or whenever needed for
25.34 response to a recipient's request for increased supervision of the personal care assistance
25.35 staff; and

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

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

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

26.8 (1) satisfaction level of the recipient with personal care assistance services;

26.9 (2) review of the month-to-month plan for use of personal care assistance services;

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

26.11 (4) whether the personal care assistance services are meeting the goals of the service
26.12 as stated in the personal care assistance care plan and service plan;

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

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

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

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

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

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

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

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

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

26.29 (g) The documentation in paragraph (f) must be done on agency ~~forms~~ templates.

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

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

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

26.35 ~~(3) (2)~~ agency administrative activities;

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27.1 ~~(4)~~(3) training other than the individualized training required to provide care for a
27.2 recipient; and
27.3 ~~(5)~~(4) any other activity that is not described in this section.

27.4 Sec. 18. Minnesota Statutes 2010, section 256B.0659, subdivision 19, is amended to
27.5 read:

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

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

27.8 (1) recruit, hire, schedule, and terminate personal care assistants according to the
27.9 terms of the written agreement required under subdivision 20, paragraph (a);

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

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

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

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

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

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

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

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

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

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

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

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

27.33 (1) be the employer of the personal care assistant and the qualified professional for
27.34 employment law and related regulations including, but not limited to, purchasing and
27.35 maintaining workers' compensation, unemployment insurance, surety and fidelity bonds,

28.1 and liability insurance, and submit any or all necessary documentation including, but not
28.2 limited to, workers' compensation and unemployment insurance;

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

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

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

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

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

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

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

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

28.18 Sec. 19. Minnesota Statutes 2010, section 256B.0659, subdivision 20, is amended to
28.19 read:

28.20 Subd. 20. **Personal care assistance choice option; administration.** (a) Before
28.21 services commence under the personal care assistance choice option, and annually
28.22 thereafter, the personal care assistance choice provider agency and the recipient or
28.23 responsible party shall enter into a written agreement. The annual agreement must be
28.24 provided to the recipient or responsible party, each personal care assistant, and the
28.25 qualified professional when completed, and include at a minimum:

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

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

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

28.31 (4) grievance procedures to respond to complaints;

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

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

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29.1 (b) Effective January 1, 2010, except for the administrative fee of the personal care
29.2 assistance choice provider agency as reported on the written agreement, the remainder
29.3 of the rates paid to the personal care assistance choice provider agency must be used to
29.4 pay for the salary and benefits for the personal care assistant or the qualified professional.
29.5 The provider agency must use a minimum of 72.5 percent of the revenue generated by
29.6 the medical assistance rate for personal care assistance services for employee personal
29.7 care assistant wages and benefits. The revenue generated by the qualified professional
29.8 and the reasonable costs associated with the qualified professional shall not be used in
29.9 making this calculation.

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

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

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

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

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

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

29.23 Sec. 20. Minnesota Statutes 2010, section 256B.0659, subdivision 21, is amended to
29.24 read:

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

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

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

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

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

30.1 (5) proof of liability insurance;

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

30.5 (7) a copy of the personal care assistance provider agency's written policies and
30.6 procedures including: hiring of employees; training requirements; service delivery;
30.7 and employee and consumer safety including process for notification and resolution
30.8 of consumer grievances, identification and prevention of communicable diseases, and
30.9 employee misconduct;

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

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

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

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

30.21 (9) a list of all training and classes that the personal care assistance provider agency
30.22 requires of its staff providing personal care assistance services;

30.23 (10) documentation that the personal care assistance provider agency and staff have
30.24 successfully completed all the training required by this section;

30.25 (11) documentation of the agency's marketing practices;

30.26 (12) disclosure of ownership, leasing, or management of all residential properties
30.27 that is used or could be used for providing home care services;

30.28 (13) documentation that the agency will use the following percentages of revenue
30.29 generated from the medical assistance rate paid for personal care assistance services
30.30 for employee personal care assistant wages and benefits: 72.5 percent of revenue in the
30.31 personal care assistance choice option and 72.5 percent of revenue from other personal
30.32 care assistance providers. The revenue generated by the qualified professional and the
30.33 reasonable costs associated with the qualified professional shall not be used in making
30.34 this calculation; and

30.35 (14) effective May 15, 2010, documentation that the agency does not burden
30.36 recipients' free exercise of their right to choose service providers by requiring personal

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31.1 care assistants to sign an agreement not to work with any particular personal care
31.2 assistance recipient or for another personal care assistance provider agency after leaving
31.3 the agency and that the agency is not taking action on any such agreements or requirements
31.4 regardless of the date signed.

31.5 (b) Personal care assistance provider agencies shall provide the information specified
31.6 in paragraph (a) to the commissioner at the time the personal care assistance provider
31.7 agency enrolls as a vendor or upon request from the commissioner. The commissioner
31.8 shall collect the information specified in paragraph (a) from all personal care assistance
31.9 providers beginning July 1, 2009.

31.10 (c) All personal care assistance provider agencies shall require all employees in
31.11 management and supervisory positions and owners of the agency who are active in the
31.12 day-to-day management and operations of the agency to complete mandatory training
31.13 as determined by the commissioner before enrollment of the agency as a provider.
31.14 Employees in management and supervisory positions and owners who are active in
31.15 the day-to-day operations of an agency who have completed the required training as
31.16 an employee with a personal care assistance provider agency do not need to repeat
31.17 the required training if they are hired by another agency, if they have completed the
31.18 training within the past three years. By September 1, 2010, the required training must be
31.19 available ~~in languages other than English and to those who need accommodations due~~
31.20 ~~to disabilities;~~ with meaningful access according to title VI of the Civil Rights Act and
31.21 federal regulations adopted under that law or any guidance from the United States Health
31.22 and Human Services Department. The required training must be available online; or by
31.23 electronic remote connection, ~~and~~ The required training must provide for competency
31.24 testing. Personal care assistance provider agency billing staff shall complete training about
31.25 personal care assistance program financial management. This training is effective July 1,
31.26 2009. Any personal care assistance provider agency enrolled before that date shall, if it
31.27 has not already, complete the provider training within 18 months of July 1, 2009. Any new
31.28 owners or employees in management and supervisory positions involved in the day-to-day
31.29 operations are required to complete mandatory training as a requisite of working for the
31.30 agency. Personal care assistance provider agencies certified for participation in Medicare
31.31 as home health agencies are exempt from the training required in this subdivision. When
31.32 available, Medicare-certified home health agency owners, supervisors, or managers must
31.33 successfully complete the competency test.

31.34 Sec. 21. Minnesota Statutes 2010, section 256B.0659, subdivision 24, is amended to
31.35 read:

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

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

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

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

32.8 (4) comply with background study requirements;

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

32.11 (6) not engage in any agency-initiated direct contact or marketing in person, by
32.12 phone, or other electronic means to potential recipients, guardians, or family members;

32.13 (7) pay the personal care assistant and qualified professional based on actual hours
32.14 of services provided;

32.15 (8) withhold and pay all applicable federal and state taxes;

32.16 (9) effective January 1, 2010, document that the agency uses a minimum of 72.5
32.17 percent of the revenue generated by the medical assistance rate for personal care assistance
32.18 services for employee personal care assistant wages and benefits. The revenue generated
32.19 by the qualified professional and the reasonable costs associated with the qualified
32.20 professional shall not be used in making this calculation;

32.21 (10) make the arrangements and pay unemployment insurance, taxes, workers'
32.22 compensation, liability insurance, and other benefits, if any;

32.23 (11) enter into a written agreement under subdivision 20 before services are provided;

32.24 (12) report suspected neglect and abuse to the common entry point according to
32.25 section 256B.0651;

32.26 (13) provide the recipient with a copy of the home care bill of rights at start of
32.27 service; and

32.28 (14) request reassessments at least 60 days prior to the end of the current
32.29 authorization for personal care assistance services, on forms provided by the commissioner.

32.30 Sec. 22. Minnesota Statutes 2010, section 256B.0659, subdivision 30, is amended to
32.31 read:

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

32.33 (1) by October 31, 2009, information to recipients likely to be affected that (i)
32.34 describes the changes to the personal care assistance program that may result in the

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33.1 loss of access to personal care assistance services, and (ii) includes resources to obtain
33.2 further information; and

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

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

33.9 ~~(3)~~ (2) a service agreement authorizing personal care assistance hours of service at
33.10 the previously authorized level, throughout the appeal process period, when a recipient
33.11 requests services pending an appeal.

33.12 **EFFECTIVE DATE.** This section is effective July 1, 2012.

33.13 Sec. 23. Minnesota Statutes 2010, section 256B.0916, subdivision 7, is amended to
33.14 read:

33.15 Subd. 7. **Annual report by commissioner.** (a) Beginning November 1, 2001, and
33.16 each November 1 thereafter, the commissioner shall issue an annual report on county and
33.17 state use of available resources for the home and community-based waiver for persons with
33.18 developmental disabilities. For each county or county partnership, the report shall include:

33.19 (1) the amount of funds allocated but not used;

33.20 (2) the county specific allowed reserve amount approved and used;

33.21 (3) the number, ages, and living situations of individuals screened and waiting for
33.22 services;

33.23 (4) the urgency of need for services to begin within one, two, or more than two
33.24 years for each individual;

33.25 (5) the services needed;

33.26 (6) the number of additional persons served by approval of increased capacity within
33.27 existing allocations;

33.28 (7) results of action by the commissioner to streamline administrative requirements
33.29 and improve county resource management; and

33.30 (8) additional action that would decrease the number of those eligible and waiting
33.31 for waived services.

33.32 The commissioner shall specify intended outcomes for the program and the degree to
33.33 which these specified outcomes are attained.

33.34 (b) This subdivision expires January 1, 2013.

34.1 Sec. 24. Minnesota Statutes 2010, section 256B.092, subdivision 11, is amended to
34.2 read:

34.3 Subd. 11. **Residential support services.** (a) Upon federal approval, there is
34.4 established a new service called residential support that is available on the community
34.5 alternative care, community alternatives for disabled individuals, developmental
34.6 disabilities, and traumatic brain injury waivers. Existing waiver service descriptions
34.7 must be modified to the extent necessary to ensure there is no duplication between
34.8 other services. Residential support services must be provided by vendors licensed as a
34.9 community residential setting as defined in section 245A.11, subdivision 8.

34.10 (b) Residential support services must meet the following criteria:

34.11 (1) providers of residential support services must own or control the residential site;

34.12 (2) the residential site must not be the primary residence of the license holder;

34.13 (3) the residential site must have a designated program supervisor responsible for
34.14 program oversight, development, and implementation of policies and procedures;

34.15 (4) the provider of residential support services must provide supervision, training,
34.16 and assistance as described in the person's community support plan; and

34.17 (5) the provider of residential support services must meet the requirements of
34.18 licensure and additional requirements of the person's community support plan.

34.19 (c) Providers of residential support services that meet the definition in paragraph
34.20 (a) must be registered using a process determined by the commissioner beginning July
34.21 1, 2009. Providers licensed to provide child foster care under Minnesota Rules, parts
34.22 2960.3000 to 2960.3340, or adult foster care licensed under Minnesota Rules, parts
34.23 9555.5105 to 9555.6265, and that meet the requirements in section 245A.03, subdivision
34.24 7, paragraph (e), are considered registered under this section.

34.25 Sec. 25. Minnesota Statutes 2010, section 256B.096, subdivision 5, is amended to read:

34.26 Subd. 5. **Biennial report.** (a) The commissioner shall provide a biennial report to
34.27 the chairs of the legislative committees with jurisdiction over health and human services
34.28 policy and funding beginning January 15, 2009, on the development and activities of the
34.29 quality management, assurance, and improvement system designed to meet the federal
34.30 requirements under the home and community-based services waiver programs for persons
34.31 with disabilities. By January 15, 2008, the commissioner shall provide a preliminary
34.32 report on priorities for meeting the federal requirements, progress on development and
34.33 field testing of the annual survey, appropriations necessary to implement an annual survey
34.34 of service recipients once field testing is completed, recommendations for improvements

35.1 in the incident reporting system, and a plan for incorporating quality assurance efforts
35.2 under section 256B.095 and other regional efforts into the statewide system.

35.3 (b) This subdivision expires January 1, 2013.

35.4 Sec. 26. Minnesota Statutes 2010, section 256B.441, subdivision 13, is amended to
35.5 read:

35.6 Subd. 13. **External fixed costs.** "External fixed costs" means costs related to the
35.7 nursing home surcharge under section 256.9657, subdivision 1; licensure fees under
35.8 section 144.122; long-term care consultation fees under section 256B.0911, subdivision 6;
35.9 family advisory council fee under section 144A.33; scholarships under section 256B.431,
35.10 subdivision 36; planned closure rate adjustments under section ~~256B.436~~ or 256B.437; or
35.11 single bed room incentives under section 256B.431, subdivision 42; property taxes and
35.12 property insurance; and PERA.

35.13 Sec. 27. Minnesota Statutes 2010, section 256B.441, subdivision 31, is amended to
35.14 read:

35.15 Subd. 31. **Prior system operating cost payment rate.** "Prior system operating
35.16 cost payment rate" means the operating cost payment rate in effect on September 30,
35.17 2008, under Minnesota Rules and Minnesota Statutes, not including planned closure rate
35.18 adjustments under section ~~256B.436~~ or 256B.437, or single bed room incentives under
35.19 section 256B.431, subdivision 42.

35.20 Sec. 28. Minnesota Statutes 2010, section 256B.441, subdivision 53, is amended to
35.21 read:

35.22 Subd. 53. **Calculation of payment rate for external fixed costs.** The commissioner
35.23 shall calculate a payment rate for external fixed costs.

35.24 (a) For a facility licensed as a nursing home, the portion related to section 256.9657
35.25 shall be equal to \$8.86. For a facility licensed as both a nursing home and a boarding care
35.26 home, the portion related to section 256.9657 shall be equal to \$8.86 multiplied by the
35.27 result of its number of nursing home beds divided by its total number of licensed beds.

35.28 (b) The portion related to the licensure fee under section 144.122, paragraph (d),
35.29 shall be the amount of the fee divided by actual resident days.

35.30 (c) The portion related to scholarships shall be determined under section 256B.431,
35.31 subdivision 36.

35.32 (d) The portion related to long-term care consultation shall be determined according
35.33 to section 256B.0911, subdivision 6.

36.1 (e) The portion related to development and education of resident and family advisory
36.2 councils under section 144A.33 shall be \$5 divided by 365.

36.3 (f) The portion related to planned closure rate adjustments shall be as determined
36.4 under ~~sections 256B.436 and~~ section 256B.437, subdivision 6, and Minnesota Statutes
36.5 2010, section 256B.436. Planned closure rate adjustments that take effect before October
36.6 1, 2014, shall no longer be included in the payment rate for external fixed costs beginning
36.7 October 1, 2016. Planned closure rate adjustments that take effect on or after October 1,
36.8 2014, shall no longer be included in the payment rate for external fixed costs beginning on
36.9 October 1 of the first year not less than two years after their effective date.

36.10 (g) The portions related to property insurance, real estate taxes, special assessments,
36.11 and payments made in lieu of real estate taxes directly identified or allocated to the nursing
36.12 facility shall be the actual amounts divided by actual resident days.

36.13 (h) The portion related to the Public Employees Retirement Association shall be
36.14 actual costs divided by resident days.

36.15 (i) The single bed room incentives shall be as determined under section 256B.431,
36.16 subdivision 42. Single bed room incentives that take effect before October 1, 2014, shall
36.17 no longer be included in the payment rate for external fixed costs beginning October 1,
36.18 2016. Single bed room incentives that take effect on or after October 1, 2014, shall no
36.19 longer be included in the payment rate for external fixed costs beginning on October 1 of
36.20 the first year not less than two years after their effective date.

36.21 (j) The payment rate for external fixed costs shall be the sum of the amounts in
36.22 paragraphs (a) to (i).

36.23 Sec. 29. Minnesota Statutes 2010, section 256B.49, subdivision 21, is amended to read:

36.24 Subd. 21. **Report.** (a) The commissioner shall expand on the annual report required
36.25 under section 256B.0916, subdivision 7, to include information on the county of residence
36.26 and financial responsibility, age, and major diagnoses for persons eligible for the home
36.27 and community-based waivers authorized under subdivision 11 who are:

- 36.28 (1) receiving those services;
36.29 (2) screened and waiting for waiver services; and
36.30 (3) residing in nursing facilities and are under age 65.

36.31 (b) This subdivision expires January 1, 2013.

36.32 Sec. 30. Minnesota Statutes 2011 Supplement, section 626.557, subdivision 9, is
36.33 amended to read:

37.1 Subd. 9. **Common entry point designation.** (a) Each county board shall designate
37.2 a common entry point for reports of suspected maltreatment. Two or more county boards
37.3 may jointly designate a single common entry point. The common entry point is the unit
37.4 responsible for receiving the report of suspected maltreatment under this section.

37.5 (b) The common entry point must be available 24 hours per day to take calls from
37.6 reporters of suspected maltreatment. The common entry point shall use a standard intake
37.7 form that includes:

37.8 (1) the time and date of the report;

37.9 (2) the name, address, and telephone number of the person reporting;

37.10 (3) the time, date, and location of the incident;

37.11 (4) the names of the persons involved, including but not limited to, perpetrators,
37.12 alleged victims, and witnesses;

37.13 (5) whether there was a risk of imminent danger to the alleged victim;

37.14 (6) a description of the suspected maltreatment;

37.15 (7) the disability, if any, of the alleged victim;

37.16 (8) the relationship of the alleged perpetrator to the alleged victim;

37.17 (9) whether a facility was involved and, if so, which agency licenses the facility;

37.18 (10) any action taken by the common entry point;

37.19 (11) whether law enforcement has been notified;

37.20 (12) whether the reporter wishes to receive notification of the initial and final
37.21 reports; and

37.22 (13) if the report is from a facility with an internal reporting procedure, the name,
37.23 mailing address, and telephone number of the person who initiated the report internally.

37.24 (c) The common entry point is not required to complete each item on the form prior
37.25 to dispatching the report to the appropriate lead investigative agency.

37.26 (d) The common entry point shall immediately report to a law enforcement agency
37.27 any incident in which there is reason to believe a crime has been committed.

37.28 (e) If a report is initially made to a law enforcement agency or a lead investigative
37.29 agency, those agencies shall take the report on the appropriate common entry point intake
37.30 forms and immediately forward a copy to the common entry point.

37.31 (f) The common entry point staff must receive training on how to screen and
37.32 dispatch reports efficiently and in accordance with this section.

37.33 (g) ~~When a centralized database is available, the common entry point has access to~~
37.34 ~~the centralized database and must log the reports into the database.~~ The commissioner of
37.35 human services shall maintain a centralized database for the collection of common entry

38.1 point data, lead investigative agency data including maltreatment report disposition, and
38.2 appeals data.

38.3 Sec. 31. Laws 2009, chapter 79, article 8, section 81, as amended by Laws 2010,
38.4 chapter 352, article 1, section 24, is amended to read:

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

38.6 (a) The commissioner of human services shall consult with disability service
38.7 providers, advocates, counties, and consumer families to develop a single set of standards,
38.8 to be referred to as "quality outcome standards," governing services for people with
38.9 disabilities receiving services under the home and community-based waiver services
38.10 program, with the exception of customized living services because the service license
38.11 is under the jurisdiction of the Department of Health, to replace all or portions of
38.12 existing laws and rules including, but not limited to, data practices, licensure of facilities
38.13 and providers, background studies, reporting of maltreatment of minors, reporting of
38.14 maltreatment of vulnerable adults, and the psychotropic medication checklist. The
38.15 standards must:

38.16 (1) enable optimum consumer choice;

38.17 (2) be consumer driven;

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

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

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

38.24 (6) utilize person-centered planning; and

38.25 (7) maximize federal financial participation.

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

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

38.33 Sec. 32. **DISABILITY HOME AND COMMUNITY-BASED WAIVER**
38.34 **REQUEST.**

39.1 By December 1, 2012, the commissioner shall request all federal approvals and
39.2 waiver amendments to the disability home and community-based waivers to allow properly
39.3 licensed adult foster care homes to provide residential services for up to five individuals.

39.4 **EFFECTIVE DATE.** This section is effective July 1, 2012.

39.5 Sec. 33. **HOURLY NURSING DETERMINATION MATRIX.**

39.6 A service provider applying for medical assistance payments for private duty nursing
39.7 services under Minnesota Statutes, section 256B.0654, must complete and submit to the
39.8 commissioner of human services an hourly nursing determination matrix for each recipient
39.9 of private duty nursing services. The commissioner of human services will collect and
39.10 analyze data from the hourly nursing determination matrix.

39.11 Sec. 34. **REPEALER.**

39.12 (a) Minnesota Statutes 2010, sections 256B.431, subdivisions 2c, 2g, 2i, 2j, 2k, 2l,
39.13 2o, 3c, 11, 14, 17b, 17f, 19, 20, 25, 27, and 29; 256B.434, subdivisions 4a, 4b, 4c, 4d, 4e,
39.14 4g, 4h, 7, and 8; 256B.435; and 256B.436, are repealed.

39.15 (b) Minnesota Statutes 2011 Supplement, section 256B.431, subdivision 26, is
39.16 repealed.

39.17 (c) Minnesota Rules, part 9555.7700, is repealed.

39.18 **ARTICLE 2**

39.19 **TELEPHONE EQUIPMENT PROGRAM**

39.20 Section 1. Minnesota Statutes 2010, section 237.50, is amended to read:

39.21 **237.50 DEFINITIONS.**

39.22 Subdivision 1. **Scope.** The terms used in sections 237.50 to 237.56 have the
39.23 meanings given them in this section.

39.24 Subd. 3. **Communication ~~impaired~~ disability.** "Communication ~~impaired~~
39.25 disability" means certified as ~~deaf, severely hearing impaired, hard-of-hearing~~ having
39.26 a hearing loss, speech ~~impaired, deaf and blind~~ disability, or ~~mobility impaired if the~~
39.27 ~~mobility impairment significantly impedes the ability~~ physical disability that makes it
39.28 difficult or impossible to use ~~standard customer premises~~ telecommunications services
39.29 and equipment.

39.30 ~~Subd. 4. **Communication device.** "Communication device" means a device that~~
39.31 ~~when connected to a telephone enables a communication-impaired person to communicate~~
39.32 ~~with another person utilizing the telephone system. A "communication device" includes a~~

40.1 ~~ring signaler, an amplification device, a telephone device for the deaf, a Braille device~~
40.2 ~~for use with a telephone, and any other device the Department of Human Services deems~~
40.3 ~~necessary.~~

40.4 Subd. 4a. **Deaf.** "Deaf" means a hearing ~~impairment~~ loss of such severity that the
40.5 individual must depend primarily upon visual communication such as writing, lip reading,
40.6 ~~manual communication~~ sign language, and gestures.

40.7 Subd. 4b. **Deafblind.** "Deafblind" means any combination of vision and hearing
40.8 loss which interferes with acquiring information from the environment to the extent that
40.9 compensatory strategies and skills are necessary to access that or other information.

40.10 ~~Subd. 5. **Exchange.** "Exchange" means a unit area established and described by the~~
40.11 ~~tariff of a telephone company for the administration of telephone service in a specified~~
40.12 ~~geographical area, usually embracing a city, town, or village and its environs, and served~~
40.13 ~~by one or more central offices, together with associated facilities used in providing~~
40.14 ~~service within that area.~~

40.15 Subd. 6. **Fund.** "Fund" means the telecommunications access Minnesota fund
40.16 established in section 237.52.

40.17 Subd. 6a. **Hard-of-hearing.** "Hard-of-hearing" means a hearing ~~impairment~~ loss
40.18 resulting in a functional ~~loss~~ limitation, but not to the extent that the individual must
40.19 depend primarily upon visual communication.

40.20 ~~Subd. 7. **Interexchange service.** "Interexchange service" means telephone service~~
40.21 ~~between points in two or more exchanges.~~

40.22 ~~Subd. 8. **Inter-LATA interexchange service.** "Inter-LATA interexchange service"~~
40.23 ~~means interexchange service originating and terminating in different LATAs.~~

40.24 ~~Subd. 9. **Local access and transport area.** "Local access and transport area~~
40.25 ~~(LATA)" means a geographical area designated by the Modification of Final Judgment~~
40.26 ~~in U.S. v. Western Electric Co., Inc., 552 F. Supp. 131 (D.D.C. 1982), including~~
40.27 ~~modifications in effect on the effective date of sections 237.51 to 237.54.~~

40.28 ~~Subd. 10. **Local exchange service.** "Local exchange service" means telephone~~
40.29 ~~service between points within an exchange.~~

40.30 Subd. 10a. **Telecommunications device.** "Telecommunications device" means
40.31 a device that (1) allows a person with a communication disability to have access to
40.32 telecommunications services as defined in subdivision 13, and (2) is specifically
40.33 selected by the Department of Human Services for its capacity to allow persons with
40.34 communication disabilities to use telecommunications services in a manner that is
40.35 functionally equivalent to the ability of an individual who does not have a communication
40.36 disability. A telecommunications device may include a ring signaler, an amplified

41.1 telephone, a hands-free telephone, a text telephone, a captioned telephone, a wireless
41.2 device, a device that produces Braille output for use with a telephone, and any other
41.3 device the Department of Human Services deems appropriate.

41.4 Subd. 11. ~~Telecommunication~~ Telecommunications Relay service Services.
41.5 "~~Telecommunication~~ Telecommunications Relay service Services" or "TRS" means
41.6 ~~a central statewide service through which a communication-impaired person,~~
41.7 ~~using a communication device, may send and receive messages to and from a~~
41.8 ~~non-communication-impaired person whose telephone is not equipped with a~~
41.9 ~~communication device and through which a non-communication-impaired person~~
41.10 ~~may, by using voice communication, send and receive messages to and from a~~
41.11 ~~communication-impaired person~~ the telecommunications transmission services required
41.12 under Federal Communications Commission (FCC) regulations at Code of Federal
41.13 Regulations, title 47, sections 64.604 to 64.606. TRS allows an individual who has
41.14 a communication disability to use telecommunications services in a manner that is
41.15 functionally equivalent to the ability of an individual who does not have a communication
41.16 disability.

41.17 Subd. 12. Telecommunications. "Telecommunications" means the transmission,
41.18 between or among points specified by the user, of information of the user's choosing,
41.19 without change in the form or content of the information as sent and received.

41.20 Subd. 13. Telecommunications services. "Telecommunications services" means
41.21 the offering of telecommunications for fee directly to the public, or to such classes of users
41.22 as to be effectively available to the public, regardless of the facilities used.

41.23 Sec. 2. Minnesota Statutes 2010, section 237.51, is amended to read:

41.24 **237.51 TELECOMMUNICATIONS ACCESS MINNESOTA PROGRAM**
41.25 **ADMINISTRATION.**

41.26 Subdivision 1. **Creation.** The commissioner of commerce shall:

41.27 (1) administer through interagency agreement with the commissioner of human
41.28 services a program to distribute ~~communication~~ telecommunications devices to eligible
41.29 ~~communication-impaired~~ persons who have communication disabilities; and

41.30 (2) contract with ~~a~~ one or more qualified ~~vendor~~ vendors that ~~serves~~
41.31 ~~communication-impaired~~ serve persons who have communication disabilities to ~~create~~
41.32 ~~and maintain a telecommunication~~ provide telecommunications relay service services.

41.33 For purposes of sections 237.51 to 237.56, the Department of Commerce and any
41.34 organization with which it contracts pursuant to this section or section 237.54, subdivision

42.1 2, are not telephone companies or telecommunications carriers as defined in section
42.2 237.01.

42.3 Subd. 5. **Commissioner of commerce duties.** In addition to any duties specified
42.4 elsewhere in sections 237.51 to 237.56, the commissioner of commerce shall:

42.5 (1) prepare the reports required by section 237.55;

42.6 (2) administer the fund created in section 237.52; and

42.7 (3) adopt rules under chapter 14 to implement the provisions of sections 237.50
42.8 to 237.56.

42.9 Subd. 5a. ~~Department~~ **Commissioner of human services duties.** (a) In addition to
42.10 any duties specified elsewhere in sections 237.51 to 237.56, the commissioner of human
42.11 services shall:

42.12 (1) define economic hardship, special needs, and household criteria so as to
42.13 determine the priority of eligible applicants for initial distribution of devices and to
42.14 determine circumstances necessitating provision of more than one ~~communication~~
42.15 telecommunications device per household;

42.16 (2) establish a method to verify eligibility requirements;

42.17 (3) establish specifications for ~~communication~~ telecommunications devices to be
42.18 purchased provided under section 237.53, subdivision 3; ~~and~~

42.19 (4) inform the public and specifically ~~the community of communication-impaired~~
42.20 persons who have communication disabilities of the program; ~~and~~

42.21 (5) provide devices based on the assessed need of eligible applicants.

42.22 (b) The commissioner may establish an advisory board to advise the department
42.23 in carrying out the duties specified in this section and to advise the commissioner of
42.24 commerce in carrying out duties under section 237.54. If so established, the advisory
42.25 board must include, at a minimum, the following ~~communication-impaired~~ persons:

42.26 (1) at least one member who is deaf;

42.27 (2) at least one member who ~~is~~ has a speech impaired disability;

42.28 (3) at least one member who ~~is mobility-impaired~~ has a physical disability that
42.29 makes it difficult or impossible for the person to access telecommunications services; and

42.30 (4) at least one member who is hard-of-hearing.

42.31 The membership terms, compensation, and removal of members and the filling of
42.32 membership vacancies are governed by section 15.059. Advisory board meetings shall be
42.33 held at the discretion of the commissioner.

42.34 Sec. 3. Minnesota Statutes 2010, section 237.52, is amended to read:

42.35 **237.52 TELECOMMUNICATIONS ACCESS MINNESOTA FUND.**

43.1 Subdivision 1. **Fund established.** A telecommunications access Minnesota fund is
43.2 established as an account in the state treasury. Earnings, such as interest, dividends, and
43.3 any other earnings arising from fund assets, must be credited to the fund.

43.4 Subd. 2. **Assessment.** (a) The commissioner of commerce, the commissioner
43.5 of employment and economic development, and the commissioner of human services
43.6 shall annually recommend to the Public Utilities Commission (PUC) an adequate and
43.7 appropriate surcharge and budget to implement sections 237.50 to 237.56, 248.062,
43.8 and 256C.30, respectively. The maximum annual budget for section 248.062 must not
43.9 exceed \$100,000 and for section 256C.30 must not exceed \$300,000. The Public Utilities
43.10 Commission shall review the budgets for reasonableness and may modify the budget
43.11 to the extent it is unreasonable. The commission shall annually determine the funding
43.12 mechanism to be used within 60 days of receipt of the recommendation of the departments
43.13 and shall order the imposition of surcharges effective on the earliest practicable date. The
43.14 commission shall establish a monthly charge no greater than 20 cents for each customer
43.15 access line, including trunk equivalents as designated by the commission pursuant to
43.16 section 403.11, subdivision 1.

43.17 (b) If the fund balance falls below a level capable of fully supporting all programs
43.18 eligible under subdivision 5 and sections 248.062 and 256C.30, expenditures under
43.19 sections 248.062 and 256C.30 shall be reduced on a pro rata basis and expenditures under
43.20 sections 237.53 and 237.54 shall be fully funded. Expenditures under sections 248.062
43.21 and 256C.30 shall resume at fully funded levels when the commissioner of commerce
43.22 determines there is a sufficient fund balance to fully fund those expenditures.

43.23 Subd. 3. **Collection.** Every ~~telephone company or communications carrier that~~
43.24 ~~provides service~~ provider of services capable of originating a ~~telecommunications relay~~
43.25 TRS call, including cellular communications and other nonwire access services, in this
43.26 state shall collect the charges established by the commission under subdivision 2 and
43.27 transfer amounts collected to the commissioner of public safety in the same manner as
43.28 provided in section 403.11, subdivision 1, paragraph (d). The commissioner of public
43.29 safety must deposit the receipts in the fund established in subdivision 1.

43.30 Subd. 4. **Appropriation.** Money in the fund is appropriated to the commissioner of
43.31 commerce to implement sections 237.51 to 237.56, to the commissioner of employment
43.32 and economic development to implement section 248.062, and to the commissioner of
43.33 human services to implement section 256C.30.

43.34 Subd. 5. **Expenditures.** (a) Money in the fund may only be used for:

44.1 (1) expenses of the Department of Commerce, including personnel cost, public
44.2 relations, advisory board members' expenses, preparation of reports, and other reasonable
44.3 expenses not to exceed ten percent of total program expenditures;

44.4 (2) reimbursing the commissioner of human services for purchases made or services
44.5 provided pursuant to section 237.53;

44.6 (3) reimbursing telephone companies for purchases made or services provided
44.7 under section 237.53, subdivision 5; and

44.8 (4) contracting for ~~establishment and operation of the telecommunication relay~~
44.9 ~~service~~ the provision of TRS required by section 237.54.

44.10 (b) All costs directly associated with the establishment of the program, the purchase
44.11 and distribution of ~~communication~~ telecommunications devices, and the ~~establishment~~
44.12 ~~and operation of the telecommunication relay service~~ provision of TRS are either
44.13 reimbursable or directly payable from the fund after authorization by the commissioner
44.14 of commerce. The commissioner of commerce shall contract with ~~the message relay~~
44.15 ~~service operator~~ one or more TRS providers to indemnify the ~~local exchange carriers of~~
44.16 ~~the relay telecommunications~~ service providers for any fines imposed by the Federal
44.17 Communications Commission related to the failure of the relay service to comply with
44.18 federal service standards. Notwithstanding section 16A.41, the commissioner may
44.19 advance money to the ~~contractor of the telecommunication relay service~~ TRS providers if
44.20 the ~~contractor establishes~~ providers establish to the commissioner's satisfaction that the
44.21 advance payment is necessary for the ~~operation~~ provision of the service. The advance
44.22 payment may be used only for working capital reserve for the operation of the service.
44.23 The advance payment must be offset or repaid by the end of the contract fiscal year
44.24 together with interest accrued from the date of payment.

44.25 Sec. 4. Minnesota Statutes 2010, section 237.53, is amended to read:

44.26 **237.53 ~~COMMUNICATION~~ TELECOMMUNICATIONS DEVICE.**

44.27 Subdivision 1. **Application.** A person applying for a ~~communication~~
44.28 telecommunications device under this section must apply to the program administrator on
44.29 a form prescribed by the Department of Human Services.

44.30 Subd. 2. **Eligibility.** To be eligible to obtain a ~~communication~~ telecommunications
44.31 device under this section, a person must ~~be~~:

44.32 (1) be able to benefit from and use the equipment for its intended purpose;

44.33 (2) have a communication ~~impaired~~ disability;

44.34 (3) be a resident of the state;

45.1 (4) be a resident in a household that has a median income at or below the applicable
45.2 median household income in the state, except a ~~deaf and blind~~ person who is deafblind
45.3 applying for a ~~telebraille unit~~ Braille device may reside in a household that has a median
45.4 income no more than 150 percent of the applicable median household income in the
45.5 state; and

45.6 (5) be a resident in a household that has ~~telephone~~ telecommunications service
45.7 or that has made application for service and has been assigned a telephone number; or
45.8 a resident in a residential care facility, such as a nursing home or group home where
45.9 ~~telephone~~ telecommunications service is not included as part of overall service provision.

45.10 Subd. 3. **Distribution.** The commissioner of human services shall purchase and
45.11 distribute a sufficient number of ~~communication~~ telecommunications devices so that each
45.12 eligible household receives ~~an appropriate device~~ devices as determined under section
45.13 237.51, subdivision 5a. The commissioner of human services shall distribute the devices
45.14 to eligible households ~~in each service area~~ free of charge ~~as determined under section~~
45.15 ~~237.51, subdivision 5a.~~

45.16 Subd. 4. **Training; maintenance.** The commissioner of human services shall
45.17 maintain the ~~communication~~ telecommunications devices until the warranty period
45.18 expires, and provide training, without charge, to first-time users of the devices.

45.19 ~~Subd. 5. **Wiring installation.** If a communication-impaired person is not served by~~
45.20 ~~telephone service and is subject to economic hardship as determined by the Department~~
45.21 ~~of Human Services, the telephone company providing local service shall at the direction~~
45.22 ~~of the administrator of the program install necessary outside wiring without charge to~~
45.23 ~~the household.~~

45.24 Subd. 6. **Ownership.** ~~All communication~~ Telecommunications devices purchased
45.25 pursuant to subdivision 3 ~~will become~~ are the property of the state of Minnesota. Policies
45.26 and procedures for the return of devices from individuals who withdraw from the program
45.27 or whose eligibility status changes shall be determined by the commissioner of human
45.28 services.

45.29 Subd. 7. **Standards.** The ~~communication~~ telecommunications devices distributed
45.30 under this section must comply with the electronic industries ~~association~~ alliance standards
45.31 and be approved by the Federal Communications Commission. The commissioner of
45.32 human services must provide each eligible person a choice of several models of devices,
45.33 the retail value of which may not exceed \$600 for a ~~communication device for the deaf~~
45.34 text telephone, and a retail value of \$7,000 for a ~~telebraille~~ Braille device, or an amount
45.35 authorized by the Department of Human Services for a ~~telephone device for the deaf with~~

46.1 ~~auxiliary equipment~~ all other telecommunications devices and auxiliary equipment it
46.2 deems cost-effective and appropriate to distribute according to sections 237.51 to 237.56.

46.3 Sec. 5. Minnesota Statutes 2010, section 237.54, is amended to read:

46.4 **237.54 TELECOMMUNICATION TELECOMMUNICATIONS RELAY**
46.5 **SERVICE SERVICES (TRS).**

46.6 Subd. 2. **Operation.** (a) The commissioner of commerce shall contract with
46.7 ~~a one or more qualified vendor vendors~~ for the ~~operation and maintenance of the~~
46.8 telecommunication relay system provision of Telecommunications Relay Services (TRS).

46.9 (b) The ~~telecommunication relay service provider~~ TRS providers shall operate the
46.10 relay service within the state of Minnesota. The ~~operator of the system~~ TRS providers
46.11 shall ~~keep all messages confidential, shall train personnel in the unique needs of~~
46.12 ~~communication-impaired people, and shall inform communication-impaired persons~~
46.13 ~~and the public of the availability and use of the system. Except in the case of a speech-~~
46.14 ~~or mobility-impaired person, the operator shall not relay a message unless it originates~~
46.15 ~~or terminates through a communication device for the deaf or a Braille device for use~~
46.16 with a telephone comply with all current and subsequent FCC regulations at Code of
46.17 Federal Regulations, title 47, sections 64.601 to 64.606, and shall inform persons who
46.18 have communication disabilities and the public of the availability and use of TRS.

46.19 Sec. 6. Minnesota Statutes 2010, section 237.55, is amended to read:

46.20 **237.55 ANNUAL REPORT ON COMMUNICATION**
46.21 **TELECOMMUNICATIONS ACCESS.**

46.22 The commissioner of commerce must prepare a report for presentation to the Public
46.23 Utilities Commission by January 31 of each year. Each report must review the accessibility
46.24 ~~of the telephone system to communication-impaired persons, review the ability of~~
46.25 ~~non-communication-impaired persons to communicate with communication-impaired~~
46.26 ~~persons via the telephone system~~ telecommunications services to persons who have
46.27 communication disabilities, describe services provided, account for money received and
46.28 ~~disbursed annually~~ annual revenues and expenditures for each aspect of the program fund
46.29 to date, and include predicted program future operation.

46.30 Sec. 7. Minnesota Statutes 2010, section 237.56, is amended to read:

46.31 **237.56 ADEQUATE SERVICE ENFORCEMENT.**

47.1 The services required to be provided under sections 237.50 to 237.55 may be
47.2 enforced under section 237.081 upon a complaint of at least two ~~communication-impaired~~
47.3 persons within the service area of any one ~~telephone company~~ telecommunications
47.4 service provider, provided that if only one person within the service area of a company
47.5 is receiving service under sections 237.50 to 237.55, the ~~commission~~ Public Utilities
47.6 Commission may proceed upon a complaint from that person.

47.7 **ARTICLE 3**

47.8 **COMPREHENSIVE ASSESSMENT AND CASE MANAGEMENT REFORM**

47.9 Section 1. Minnesota Statutes 2011 Supplement, section 256B.0625, subdivision 56,
47.10 is amended to read:

47.11 Subd. 56. **Medical service coordination.** (a) Medical assistance covers in-reach
47.12 community-based service coordination that is performed ~~in~~ through a hospital emergency
47.13 department as an eligible procedure under a state healthcare program ~~or private insurance~~
47.14 for a frequent user. A frequent user is defined as an individual who has frequented the
47.15 hospital emergency department for services three or more times in the previous four
47.16 consecutive months. In-reach community-based service coordination includes navigating
47.17 services to address a client's mental health, chemical health, social, economic, and housing
47.18 needs, or any other activity targeted at reducing the incidence of emergency room and
47.19 other nonmedically necessary health care utilization.

47.20 (b) Reimbursement must be made in 15-minute increments ~~under current Medicaid~~
47.21 ~~mental health social work reimbursement methodology~~ and allowed for up to 60 days
47.22 posthospital discharge based upon the specific identified emergency department visit or
47.23 inpatient admitting event. ~~A frequent user who is participating in care coordination within~~
47.24 ~~a health care home framework is ineligible for reimbursement under this subdivision.~~

47.25 In-reach community-based service coordination shall seek to connect frequent users with
47.26 existing covered services available to them, including but not limited to targeted case
47.27 management, waiver case management, or care coordination in a health care home.

47.28 Eligible in-reach service coordinators must hold a minimum of a bachelor's degree in
47.29 social work, public health, corrections, or a related field. The commissioner shall submit
47.30 any necessary application for waivers to the Centers for Medicare and Medicaid Services
47.31 to implement this subdivision.

47.32 (c) For the purposes of this subdivision, "in-reach community-based service
47.33 coordination" means the practice of a community-based worker with training, knowledge,
47.34 skills, and ability to access a continuum of services, including housing, transportation,
47.35 chemical and mental health treatment, employment, and peer support services, by working

48.1 with an organization's staff to transition an individual back into the individual's living
48.2 environment. In-reach community-based service coordination includes working with the
48.3 individual during their discharge and for up to a defined amount of time in the individual's
48.4 living environment, reducing the individual's need for readmittance.

48.5 Sec. 2. Minnesota Statutes 2010, section 256B.0659, subdivision 1, is amended to read:

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

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

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

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

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

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

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

48.25 (1) need assistance provided periodically during a week, but less than daily will not
48.26 be able to remain in their homes without the assistance, and other replacement services
48.27 are more expensive or are not available when personal care assistance services are to be
48.28 terminated; or

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

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

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

49.6 (j) "Managing employee" has the same definition as Code of Federal Regulations,
49.7 title 42, section 455.

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

49.10 (l) "Personal care assistance provider agency" means a medical assistance enrolled
49.11 provider that provides or assists with providing personal care assistance services and
49.12 includes a personal care assistance provider organization, personal care assistance choice
49.13 agency, class A licensed nursing agency, and Medicare-certified home health agency.

49.14 (m) "Personal care assistant" or "PCA" means an individual employed by a personal
49.15 care assistance agency who provides personal care assistance services.

49.16 (n) "Personal care assistance care plan" means a written description of personal
49.17 care assistance services developed by the personal care assistance provider according
49.18 to the service plan.

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

49.21 (p) "Self-administered medication" means medication taken orally, by injection,
49.22 nebulizer, or insertion, or applied topically without the need for assistance.

49.23 (q) "Service plan" means a written summary of the assessment and description of the
49.24 services needed by the recipient.

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

49.30 Sec. 3. Minnesota Statutes 2010, section 256B.0659, subdivision 2, is amended to read:

49.31 Subd. 2. **Personal care assistance services; covered services.** (a) The personal
49.32 care assistance services eligible for payment include services and supports furnished
49.33 to an individual, as needed, to assist in:

49.34 (1) activities of daily living;

49.35 (2) health-related procedures and tasks;

50.1 (3) observation and redirection of behaviors; and

50.2 (4) instrumental activities of daily living.

50.3 (b) Activities of daily living include the following covered services:

50.4 (1) dressing, including assistance with choosing, application, and changing of
50.5 clothing and application of special appliances, wraps, or clothing;

50.6 (2) grooming, including assistance with basic hair care, oral care, shaving, applying
50.7 cosmetics and deodorant, and care of eyeglasses and hearing aids. Nail care is included,
50.8 except for recipients who are diabetic or have poor circulation;

50.9 (3) bathing, including assistance with basic personal hygiene and skin care;

50.10 (4) eating, including assistance with hand washing and application of orthotics
50.11 required for eating, transfers, and feeding;

50.12 (5) transfers, including assistance with transferring the recipient from one seating or
50.13 reclining area to another;

50.14 (6) mobility, including assistance with ambulation, including use of a wheelchair.

50.15 Mobility does not include providing transportation for a recipient;

50.16 (7) positioning, including assistance with positioning or turning a recipient for
50.17 necessary care and comfort; and

50.18 (8) toileting, including assistance with helping recipient with bowel or bladder
50.19 elimination and care including transfers, mobility, positioning, feminine hygiene, use of
50.20 toileting equipment or supplies, cleansing the perineal area, inspection of the skin, and
50.21 adjusting clothing.

50.22 (c) Health-related procedures and tasks include the following covered services:

50.23 (1) range of motion and passive exercise to maintain a recipient's strength and
50.24 muscle functioning;

50.25 (2) assistance with self-administered medication as defined by this section, including
50.26 reminders to take medication, bringing medication to the recipient, and assistance with
50.27 opening medication under the direction of the recipient or responsible party, including
50.28 medications given through a nebulizer;

50.29 (3) interventions for seizure disorders, including monitoring and observation; and

50.30 (4) other activities considered within the scope of the personal care service and
50.31 meeting the definition of health-related procedures and tasks under this section.

50.32 (d) A personal care assistant may provide health-related procedures and tasks
50.33 associated with the complex health-related needs of a recipient if the procedures and
50.34 tasks meet the definition of health-related procedures and tasks under this section and the
50.35 personal care assistant is trained by a qualified professional and demonstrates competency
50.36 to safely complete the procedures and tasks. Delegation of health-related procedures and

51.1 tasks and all training must be documented in the personal care assistance care plan and the
51.2 recipient's and personal care assistant's files. A personal care assistant must not determine
51.3 the medication dose or time for medication.

51.4 (e) Effective January 1, 2010, for a personal care assistant to provide the
51.5 health-related procedures and tasks of tracheostomy suctioning and services to recipients
51.6 on ventilator support there must be:

51.7 (1) delegation and training by a registered nurse, certified or licensed respiratory
51.8 therapist, or a physician;

51.9 (2) utilization of clean rather than sterile procedure;

51.10 (3) specialized training about the health-related procedures and tasks and equipment,
51.11 including ventilator operation and maintenance;

51.12 (4) individualized training regarding the needs of the recipient; and

51.13 (5) supervision by a qualified professional who is a registered nurse.

51.14 (f) Effective January 1, 2010, a personal care assistant may observe and redirect the
51.15 recipient for episodes where there is a need for redirection due to behaviors. Training of
51.16 the personal care assistant must occur based on the needs of the recipient, the personal
51.17 care assistance care plan, and any other support services provided.

51.18 (g) Instrumental activities of daily living under subdivision 1, paragraph (i).

51.19 Sec. 4. Minnesota Statutes 2010, section 256B.0659, subdivision 3a, is amended to
51.20 read:

51.21 Subd. 3a. **Assessment; defined.** (a) "Assessment" means a review and evaluation
51.22 of a recipient's need for ~~home~~ personal care assistance services conducted in person.

51.23 Assessments for personal care assistance services shall be conducted by the county public
51.24 health nurse or a certified public health nurse under contract with the county except when a
51.25 long-term care consultation assessment is being conducted for the purposes of determining

51.26 a person's eligibility for home and community-based waiver services including personal
51.27 care assistance services according to section 256B.0911. An in-person assessment

51.28 must include: documentation of health status, determination of need, evaluation of
51.29 service effectiveness, identification of appropriate services, service plan development
51.30 or modification, coordination of services, referrals and follow-up to appropriate payers
51.31 and community resources, completion of required reports, recommendation of service
51.32 authorization, and consumer education. Once the need for personal care assistance
51.33 services is determined under this section ~~or sections 256B.0651, 256B.0653, 256B.0654,~~

51.34 ~~and 256B.0656,~~ the county public health nurse or certified public health nurse under
51.35 contract with the county is responsible for communicating this recommendation to the

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52.1 commissioner and the recipient. An in-person assessment must occur at least annually or
52.2 when there is a significant change in the recipient's condition or when there is a change
52.3 in the need for personal care assistance services. A service update may substitute for
52.4 the annual face-to-face assessment when there is not a significant change in recipient
52.5 condition or a change in the need for personal care assistance service. A service update
52.6 may be completed by telephone, used when there is no need for an increase in personal
52.7 care assistance services, and used for two consecutive assessments if followed by a
52.8 face-to-face assessment. A service update must be completed on a form approved by the
52.9 commissioner. A service update or review for temporary increase includes a review of
52.10 initial baseline data, evaluation of service effectiveness, redetermination of service need,
52.11 modification of service plan and appropriate referrals, update of initial forms, obtaining
52.12 service authorization, and on going consumer education. Assessments or reassessments
52.13 must be completed on forms provided by the commissioner within 30 days of a request for
52.14 home care services by a recipient or responsible party ~~or personal care provider agency.~~

52.15 (b) This subdivision expires when notification is given by the commissioner as
52.16 described in section 256B.0911, subdivision 3a.

52.17 Sec. 5. Minnesota Statutes 2010, section 256B.0659, subdivision 4, is amended to read:

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

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

52.22 (1) a person must be assessed as dependent in an activity of daily living based on the
52.23 person's daily need or need on the days during the week the activity is completed for:

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

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

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

52.30 (c) Assessment for complex health-related needs must meet the criteria in this
52.31 paragraph. ~~During the assessment process,~~ A recipient qualifies as having complex
52.32 health-related needs if the recipient has one or more of the interventions that are ordered
52.33 by a physician, specified in a personal care assistance care plan or community support
52.34 plan developed under section 256B.0911, and found in the following:

52.35 (1) tube feedings requiring:

- 53.1 (i) a gastrojejunostomy tube; or
- 53.2 (ii) continuous tube feeding lasting longer than 12 hours per day;
- 53.3 (2) wounds described as:
- 53.4 (i) stage III or stage IV;
- 53.5 (ii) multiple wounds;
- 53.6 (iii) requiring sterile or clean dressing changes or a wound vac; or
- 53.7 (iv) open lesions such as burns, fistulas, tube sites, or ostomy sites that require
- 53.8 specialized care;
- 53.9 (3) parenteral therapy described as:
- 53.10 (i) IV therapy more than two times per week lasting longer than four hours for
- 53.11 each treatment; or
- 53.12 (ii) total parenteral nutrition (TPN) daily;
- 53.13 (4) respiratory interventions₂ including:
- 53.14 (i) oxygen required more than eight hours per day;
- 53.15 (ii) respiratory vest more than one time per day;
- 53.16 (iii) bronchial drainage treatments more than two times per day;
- 53.17 (iv) sterile or clean suctioning more than six times per day;
- 53.18 (v) dependence on another to apply respiratory ventilation augmentation devices
- 53.19 such as BiPAP and CPAP; and
- 53.20 (vi) ventilator dependence under section 256B.0652;
- 53.21 (5) insertion and maintenance of catheter₂ including:
- 53.22 (i) sterile catheter changes more than one time per month;
- 53.23 (ii) clean intermittent catheterization, and including self-catheterization more than
- 53.24 six times per day; or
- 53.25 (iii) bladder irrigations;
- 53.26 (6) bowel program more than two times per week requiring more than 30 minutes to
- 53.27 perform each time;
- 53.28 (7) neurological intervention₂ including:
- 53.29 (i) seizures more than two times per week and requiring significant physical
- 53.30 assistance to maintain safety; or
- 53.31 (ii) swallowing disorders diagnosed by a physician and requiring specialized
- 53.32 assistance from another on a daily basis; and
- 53.33 (8) other congenital or acquired diseases creating a need for significantly increased
- 53.34 direct hands-on assistance and interventions in six to eight activities of daily living.

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54.1 (d) An assessment of behaviors must meet the criteria in this paragraph. A recipient
54.2 qualifies as having a need for assistance due to behaviors if the recipient's behavior requires
54.3 assistance at least four times per week and shows one or more of the following behaviors:

54.4 (1) physical aggression towards self or others, or destruction of property that requires
54.5 the immediate response of another person;

54.6 (2) increased vulnerability due to cognitive deficits or socially inappropriate
54.7 behavior; or

54.8 (3) increased need for assistance for recipients who are verbally aggressive and or
54.9 resistive to care so that the time needed to perform activities of daily living is increased.

54.10 Sec. 6. Minnesota Statutes 2010, section 256B.0911, subdivision 1, is amended to read:

54.11 Subdivision 1. **Purpose and goal.** (a) The purpose of long-term care consultation
54.12 services is to assist persons with long-term or chronic care needs in making ~~long-term~~ care
54.13 decisions and selecting support and service options that meet their needs and reflect their
54.14 preferences. The availability of, and access to, information and other types of assistance,
54.15 including assessment and support planning, is also intended to prevent or delay ~~certified~~
54.16 ~~nursing facility~~ institutional placements and to provide access to transition assistance
54.17 after admission. Further, the goal of these services is to contain costs associated with
54.18 unnecessary ~~certified nursing facility~~ institutional admissions. Long-term consultation
54.19 services must be available to any person regardless of public program eligibility. The
54.20 commissioner of human services shall seek to maximize use of available federal and state
54.21 funds and establish the broadest program possible within the funding available.

54.22 (b) These services must be coordinated with long-term care options counseling
54.23 provided under section 256.975, subdivision 7, and section 256.01, subdivision 24, ~~for~~
54.24 ~~telephone assistance and follow up and to offer a variety of cost-effective alternatives~~
54.25 ~~to persons with disabilities and elderly persons.~~ The ~~county or tribal~~ lead agency or
54.26 ~~managed care plan~~ providing long-term care consultation services shall encourage the use
54.27 of volunteers from families, religious organizations, social clubs, and similar civic and
54.28 service organizations to provide community-based services.

54.29 Sec. 7. Minnesota Statutes 2011 Supplement, section 256B.0911, subdivision 1a,
54.30 is amended to read:

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

54.32 (a) Until additional requirements apply under paragraph (b), "long-term care
54.33 consultation services" means:

- 55.1 (1) intake for and access to assistance in identifying services needed to maintain an
55.2 individual in the most inclusive environment;
- 55.3 (2) providing recommendations ~~on~~ for and referrals to cost-effective community
55.4 services that are available to the individual;
- 55.5 (3) development of an individual's person-centered community support plan;
- 55.6 (4) providing information regarding eligibility for Minnesota health care programs;
- 55.7 (5) face-to-face long-term care consultation assessments, which may be completed
55.8 in a hospital, nursing facility, intermediate care facility for persons with developmental
55.9 disabilities (ICF/DDs), regional treatment centers, or the person's current or planned
55.10 residence;
- 55.11 (6) federally mandated preadmission screening ~~to determine the need for an~~
55.12 ~~institutional level of care under subdivision 4a~~ activities described under subdivisions
55.13 4a and 4b;
- 55.14 (7) determination of home and community-based waiver and other service eligibility
55.15 as required under sections 256B.0913, 256B.0915, and 256B.49, including level of
55.16 care determination for individuals who need an institutional level of care as determined
55.17 under section 256B.0911, subdivision 4a, paragraph (d), ~~or 256B.092, service eligibility~~
55.18 ~~including state plan home care services identified in sections 256B.0625, subdivisions 6,~~
55.19 ~~7, and 19, paragraphs (a) and (c), and 256B.0657~~, based on assessment and community
55.20 support plan development with, appropriate referrals to obtain necessary diagnostic
55.21 information, and including the option an eligibility determination for consumer-directed
55.22 community supports;
- 55.23 (8) providing recommendations for ~~nursing facility~~ institutional placement when
55.24 there are no cost-effective community services available; ~~and~~
- 55.25 (9) providing access to assistance to transition people back to community settings
55.26 after ~~facility~~ institutional admission; and
- 55.27 (10) providing information about competitive employment, with or without supports,
55.28 for school-age youth and working-age adults and referrals to the Disability Linkage
55.29 Line and Disability Benefits 101 to ensure that an informed choice about competitive
55.30 employment can be made. For the purposes of this subdivision, "competitive employment"
55.31 means work in the competitive labor market that is performed on a full-time or part-time
55.32 basis in an integrated setting, and for which an individual is compensated at or above the
55.33 minimum wage, but not less than the customary wage and level of benefits paid by the
55.34 employer for the same or similar work performed by individuals without disabilities.
- 55.35 (b) Upon statewide implementation of lead agency requirements in subdivisions 2b,
55.36 2c, and 3a, "long-term care consultation services" also means:

56.1 (1) service eligibility determination for state plan home care services identified in:

56.2 (i) section 256B.0625, subdivisions 7, 19a, and 19c;

56.3 (ii) section 256B.0657; or

56.4 (iii) consumer support grants under section 256.476;

56.5 (2) notwithstanding provisions in Minnesota Rules, parts 9525.0004 to 9525.0024,

56.6 determination of eligibility for case management services available under sections

56.7 256B.0621, subdivision 2, paragraph (4), and 256B.0924 and Minnesota Rules, part

56.8 9525.0016;

56.9 (3) determination of institutional level of care, home and community-based service

56.10 waiver, and other service eligibility as required under section 256B.092, determination

56.11 of eligibility for family support grants under section 252.32, semi-independent living

56.12 services under section 252.275, and day training and habilitation services under section

56.13 256B.092; and

56.14 (4) obtaining necessary diagnostic information to determine eligibility under clauses

56.15 (2) and (3).

56.16 ~~(b)~~ (c) "Long-term care options counseling" means the services provided by the

56.17 linkage lines as mandated by sections 256.01 and 256.975, subdivision 7, and also

56.18 includes telephone assistance and follow up once a long-term care consultation assessment

56.19 has been completed.

56.20 ~~(e)~~ (d) "Minnesota health care programs" means the medical assistance program

56.21 under chapter 256B and the alternative care program under section 256B.0913.

56.22 ~~(d)~~ (e) "Lead agencies" means counties administering or ~~a collaboration of counties,~~

56.23 tribes; and health plans administering under contract with the commissioner to administer

56.24 long-term care consultation assessment and support planning services.

56.25 Sec. 8. Minnesota Statutes 2010, section 256B.0911, subdivision 2b, is amended to

56.26 read:

56.27 Subd. 2b. **Certified assessors.** ~~(a) Beginning January 1, 2011,~~ Each lead agency

56.28 shall use certified assessors who have completed training and the certification processes

56.29 determined by the commissioner in subdivision 2c. Certified assessors shall demonstrate

56.30 best practices in assessment and support planning including person-centered planning

56.31 principals and have a common set of skills that must ensure consistency and equitable

56.32 access to services statewide. ~~Assessors must be part of a multidisciplinary team of~~

56.33 ~~professionals that includes public health nurses, social workers, and other professionals~~

56.34 ~~as defined in paragraph (b). For persons with complex health care needs, a public health~~

56.35 ~~nurse or registered nurse from a multidisciplinary team must be consulted.~~ A lead agency

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57.1 may choose, according to departmental policies, to contract with a qualified, certified
57.2 assessor to conduct assessments and reassessments on behalf of the lead agency.

57.3 (b) Certified assessors are persons with a minimum of a bachelor's degree in social
57.4 work, nursing with a public health nursing certificate, or other closely related field with at
57.5 least one year of home and community-based experience, or a ~~two-year~~ registered ~~nursing~~
57.6 ~~degree nurse without public health certification~~ with at least ~~three~~ two years of home and
57.7 community-based experience that ~~have~~ has received training and certification specific to
57.8 assessment and consultation for long-term care services in the state.

57.9 Sec. 9. Minnesota Statutes 2010, section 256B.0911, subdivision 2c, is amended to
57.10 read:

57.11 Subd. 2c. **Assessor training and certification.** The commissioner shall develop
57.12 and implement a curriculum and an assessor certification process ~~to begin no later than~~
57.13 ~~January 1, 2010~~. All existing lead agency staff designated to provide the services defined
57.14 in subdivision 1a must be certified ~~by December 30, 2010~~; within timelines specified by
57.15 the commissioner, but no sooner than six months after statewide availability of the training
57.16 and certification process. The commissioner must establish the timelines for training and
57.17 certification in a manner that allows lead agencies to most efficiently adopt the automated
57.18 process established in subdivision 5. Each lead agency is required to ensure that they have
57.19 sufficient numbers of certified assessors to provide long-term consultation assessment and
57.20 support planning within the timelines and parameters of the service ~~by January 1, 2011~~.
57.21 Certified assessors are required to be recertified every three years.

57.22 Sec. 10. Minnesota Statutes 2010, section 256B.0911, subdivision 3, is amended to
57.23 read:

57.24 Subd. 3. **Long-term care consultation team.** (a) ~~Until January 1, 2011~~, A long-term
57.25 care consultation team shall be established by the county board of commissioners. ~~Each~~
57.26 ~~local consultation team shall consist of at least one social worker and at least one public~~
57.27 ~~health nurse from their respective county agencies. The board may designate public~~
57.28 ~~health or social services as the lead agency for long-term care consultation services. If a~~
57.29 ~~county does not have a public health nurse available, it may request approval from the~~
57.30 ~~commissioner to assign a county registered nurse with at least one year experience in~~
57.31 ~~home care to participate on the team~~. Two or more counties may collaborate to establish
57.32 a joint local consultation team or teams.

57.33 (b) Certified assessors must be part of a multidisciplinary long-term care consultation
57.34 team of professionals that includes public health nurses, social workers, and other

58.1 professionals as defined in subdivision 2b, paragraph (b). The team is responsible for
58.2 providing long-term care consultation services to all persons located in the county who
58.3 request the services, regardless of eligibility for Minnesota health care programs.

58.4 (c) The commissioner shall allow arrangements and make recommendations that
58.5 encourage counties and tribes to collaborate to establish joint local long-term care
58.6 consultation teams to ensure that long-term care consultations are done within the
58.7 timelines and parameters of the service. This includes integrated service models as
58.8 required in subdivision 1, paragraph (b).

58.9 (d) Tribes and health plans under contract with the commissioner must provide
58.10 long-term care consultation services as specified in the contract.

58.11 (e) The lead agency must provide the commissioner with an administrative contact
58.12 for communication purposes.

58.13 Sec. 11. Minnesota Statutes 2011 Supplement, section 256B.0911, subdivision 3a,
58.14 is amended to read:

58.15 Subd. 3a. **Assessment and support planning.** (a) Persons requesting assessment,
58.16 services planning, or other assistance intended to support community-based living,
58.17 including persons who need assessment in order to determine waiver or alternative care
58.18 program eligibility, must be visited by a long-term care consultation team within ~~15~~ 20
58.19 calendar days after the date on which an assessment was requested or recommended.

58.20 ~~After January 1, 2011, these requirements also apply to~~ Upon statewide implementation
58.21 of subdivisions 2b, 2c, and 5, this requirement also applies to an assessment of a person
58.22 requesting personal care assistance services; and private duty nursing; and home health
58.23 agency services, on timelines established in subdivision 5. The commissioner shall provide
58.24 at least a 90-day notice to lead agencies prior to the effective date of this requirement.

58.25 Face-to-face assessments must be conducted according to paragraphs (b) to (i).

58.26 (b) The ~~county~~ lead agency may utilize a team of either the social worker or public
58.27 health nurse, or both. ~~After January 1, 2011~~ Upon implementation of subdivisions 2b, 2c,
58.28 and 5, lead agencies shall use certified assessors to conduct the assessment in a face-to-face
58.29 interview assessment. The consultation team members must confer regarding the most
58.30 appropriate care for each individual screened or assessed. For a person with complex
58.31 health care needs, a public health or registered nurse from the team must be consulted.

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

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

59.7 ~~(e) The person, or the person's legal representative, must be provided with written~~
59.8 ~~recommendations for community-based services, including consumer-directed options,~~
59.9 ~~or institutional care that include documentation that the most cost-effective alternatives~~
59.10 ~~available were offered to the individual, and alternatives to residential settings, including,~~
59.11 ~~but not limited to, foster care settings that are not the primary residence of the license~~
59.12 ~~holder. For purposes of this requirement, "cost-effective alternatives" means community~~
59.13 ~~services and living arrangements that cost the same as or less than institutional care.~~

59.14 ~~(f)~~ (e) If the person chooses to use community-based services, the person or the
59.15 person's legal representative must be provided with a written community support plan
59.16 within 40 calendar days of the assessment visit, regardless of whether the individual
59.17 is eligible for Minnesota health care programs. The written community support plan
59.18 must include:

59.19 (1) a summary of assessed needs as defined in paragraphs (c) and (d);

59.20 (2) the individual's options and choices to meet identified needs, including all
59.21 available options for case management services and providers;

59.22 (3) identification of health and safety risks and how those risks will be addressed,
59.23 including personal risk management strategies;

59.24 (4) referral information; and

59.25 (5) informal caregiver supports, if applicable.

59.26 For a person determined eligible for state plan home care under subdivision 1a,
59.27 paragraph (b), clause (1), the person or person's representative must also receive a copy of
59.28 the home care service plan developed by the certified assessor.

59.29 (f) A person may request assistance in identifying community supports without
59.30 participating in a complete assessment. Upon a request for assistance identifying
59.31 community support, the person must be transferred or referred to ~~the~~ long-term care
59.32 options counseling services available under sections 256.975, subdivision 7, and 256.01,
59.33 subdivision 24, for telephone assistance and follow up.

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

60.1 (h) The ~~team~~ lead agency must give the person receiving assessment or support
60.2 planning, or the person's legal representative, materials, and forms supplied by the
60.3 commissioner containing the following information:

60.4 (1) written recommendations for community-based services and consumer-directed
60.5 options;

60.6 (2) documentation that the most cost-effective alternatives available were offered to
60.7 the individual. For purposes of this clause, "cost-effective" means community services and
60.8 living arrangements that cost the same as or less than institutional care. For an individual
60.9 found to meet eligibility criteria for home and community-based service programs under
60.10 section 256B.0915 or 256B.49, "cost effectiveness" has the meaning found in the federally
60.11 approved waiver plan for each program;

60.12 (3) the need for and purpose of preadmission screening if the person selects nursing
60.13 facility placement;

60.14 ~~(2)~~ (4) the role of the long-term care consultation assessment and support planning
60.15 in ~~waiver and alternative care program~~ eligibility determination for waiver and alternative
60.16 care programs, and state plan home care, case management, and other services as defined
60.17 in subdivision 1a, paragraphs (a), clause (7), and (b);

60.18 ~~(3)~~ (5) information about Minnesota health care programs;

60.19 ~~(4)~~ (6) the person's freedom to accept or reject the recommendations of the team;

60.20 ~~(5)~~ (7) the person's right to confidentiality under the Minnesota Government Data
60.21 Practices Act, chapter 13;

60.22 ~~(6)~~ (8) the ~~long-term care consultant's~~ certified assessor's decision regarding the
60.23 person's need for institutional level of care as determined under criteria established in
60.24 section ~~144.0724, subdivision 11, or 256B.092~~ 256B.0911, subdivision 4a, paragraph (d),
60.25 and the certified assessor's decision regarding eligibility for all services and programs as
60.26 defined in subdivision 1a, paragraphs (a), clause (7), and (b); and

60.27 ~~(7)~~ (9) the person's right to appeal the certified assessor's decision regarding
60.28 eligibility for all services and programs as defined in subdivision 1a, paragraphs (a),
60.29 clause (7), and (b), and incorporating the decision regarding the need for ~~nursing facility~~
60.30 institutional level of care or the ~~county's~~ lead agency's final decisions regarding public
60.31 programs eligibility according to section 256.045, subdivision 3.

60.32 (i) Face-to-face assessment completed as part of eligibility determination for
60.33 the alternative care, elderly waiver, community alternatives for disabled individuals,
60.34 community alternative care, and ~~traumatic~~ brain injury waiver programs under sections
60.35 256B.0913, 256B.0915, ~~256B.0917,~~ and 256B.49 is valid to establish service eligibility
60.36 for no more than 60 calendar days after the date of assessment.

61.1 (j) ~~The effective eligibility start date for these programs in paragraph (i) can never~~
61.2 be prior to the date of assessment. If an assessment was completed more than 60 days
61.3 before the effective waiver or alternative care program eligibility start date, assessment
61.4 and support plan information must be updated in a face-to-face visit and documented in
61.5 the department's Medicaid Management Information System (MMIS). Notwithstanding
61.6 retroactive medical assistance coverage of state plan services, the effective date of
61.7 ~~program~~ eligibility in this case for programs included in paragraph (i) cannot be prior to
61.8 the date the most recent updated assessment is completed.

61.9 Sec. 12. Minnesota Statutes 2010, section 256B.0911, subdivision 3b, is amended to
61.10 read:

61.11 Subd. 3b. **Transition assistance.** (a) ~~A long-term care consultation team~~ Lead
61.12 agency certified assessors shall provide assistance to persons residing in a nursing
61.13 facility, hospital, regional treatment center, or intermediate care facility for persons with
61.14 developmental disabilities who request or are referred for assistance. Transition assistance
61.15 must include assessment, community support plan development, referrals to long-term
61.16 care options counseling under section ~~256B.975~~ 256.975, subdivision ~~10~~ 7, for community
61.17 support plan implementation and to Minnesota health care programs, including home and
61.18 community-based waiver services and consumer-directed options through the waivers,
61.19 and referrals to programs that provide assistance with housing. Transition assistance
61.20 must also include information about the Centers for Independent Living ~~and the Senior~~
61.21 ~~LinkAge Line~~, Disability Linkage Line, and about other organizations that can provide
61.22 assistance with relocation efforts, and information about contacting these organizations to
61.23 obtain their assistance and support.

61.24 (b) The county lead agency shall ~~develop transition processes with institutional~~
61.25 ~~social workers and discharge planners~~ to ensure that:

61.26 (1) referrals for in-person assessments are taken from long-term care options
61.27 counselors as provided for in section 256.975, subdivision 7, paragraph (b), clause (11);

61.28 (2) persons admitted to facilities assessed in institutions receive information about
61.29 transition assistance that is available;

61.30 ~~(2)~~ (3) the assessment is completed for persons within ten working 20 calendar days
61.31 of the date of request or recommendation for assessment; and

61.32 ~~(3)~~ (4) there is a plan for transition and follow-up for the individual's return to the
61.33 community. The plan must require, including notification of other local agencies when a
61.34 person who may require assistance is screened by one county for admission to a facility
61.35 from agencies located in another county; and

62.1 (5) relocation targeted case management as defined in section 256B.0621,
62.2 subdivision 2, clause (4), is authorized for an eligible medical assistance recipient.

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

62.6 Sec. 13. Minnesota Statutes 2011 Supplement, section 256B.0911, subdivision 4a,
62.7 is amended to read:

62.8 Subd. 4a. **Preadmission screening activities related to nursing facility**

62.9 **admissions.** (a) All applicants to Medicaid certified nursing facilities, including certified
62.10 boarding care facilities, must be screened prior to admission regardless of income, assets,
62.11 or funding sources for nursing facility care, except as described in subdivision 4b. The
62.12 purpose of the screening is to determine the need for nursing facility level of care as
62.13 described in paragraph (d) and to complete activities required under federal law related to
62.14 mental illness and developmental disability as outlined in paragraph (b).

62.15 (b) A person who has a diagnosis or possible diagnosis of mental illness or
62.16 developmental disability must receive a preadmission screening before admission
62.17 regardless of the exemptions outlined in subdivision 4b, paragraph (b), to identify the need
62.18 for further evaluation and specialized services, unless the admission prior to screening is
62.19 authorized by the local mental health authority or the local developmental disabilities case
62.20 manager, or unless authorized by the county agency according to Public Law 101-508.

62.21 The following criteria apply to the preadmission screening:

62.22 (1) the ~~county~~ lead agency must use forms and criteria developed by the
62.23 commissioner to identify persons who require referral for further evaluation and
62.24 determination of the need for specialized services; and

62.25 (2) the evaluation and determination of the need for specialized services must be
62.26 done by:

62.27 (i) a qualified independent mental health professional, for persons with a primary or
62.28 secondary diagnosis of a serious mental illness; or

62.29 (ii) a qualified developmental disability professional, for persons with a primary or
62.30 secondary diagnosis of developmental disability. For purposes of this requirement, a
62.31 qualified developmental disability professional must meet the standards for a qualified
62.32 developmental disability professional under Code of Federal Regulations, title 42, section
62.33 483.430.

62.34 (c) The local county mental health authority or the state developmental disability
62.35 authority under Public Law Numbers 100-203 and 101-508 may prohibit admission to a

63.1 nursing facility if the individual does not meet the nursing facility level of care criteria or
63.2 needs specialized services as defined in Public Law Numbers 100-203 and 101-508. For
63.3 purposes of this section, "specialized services" for a person with developmental disability
63.4 means active treatment as that term is defined under Code of Federal Regulations, title
63.5 42, section 483.440 (a)(1).

63.6 (d) The determination of the need for nursing facility level of care must be made
63.7 according to criteria developed by the commissioner, and in section 256B.092, using
63.8 forms developed by the commissioner. Effective no sooner than on or after July 1, 2012,
63.9 for individuals age 21 and older, and on or after October 1, 2019, for individuals under
63.10 age 21, the determination of need for nursing facility level of care shall be based on
63.11 criteria in section 144.0724, subdivision 11. In assessing a person's needs, consultation
63.12 team members shall have a physician available for consultation and shall consider the
63.13 assessment of the individual's attending physician, if any. The individual's physician must
63.14 be included if the physician chooses to participate. Other personnel may be included on
63.15 the team as deemed appropriate by the county lead agency.

63.16 Sec. 14. Minnesota Statutes 2010, section 256B.0911, subdivision 4c, is amended to
63.17 read:

63.18 Subd. 4c. **Screening requirements.** (a) A person may be screened for nursing
63.19 facility admission by telephone or in a face-to-face screening interview. ~~Consultation team~~
63.20 ~~members~~ Certified assessors shall identify each individual's needs using the following
63.21 categories:

63.22 (1) the person needs no face-to-face screening interview to determine the need
63.23 for nursing facility level of care based on information obtained from other health care
63.24 professionals;

63.25 (2) the person needs an immediate face-to-face screening interview to determine the
63.26 need for nursing facility level of care and complete activities required under subdivision
63.27 4a; or

63.28 (3) the person may be exempt from screening requirements as outlined in subdivision
63.29 4b, but will need transitional assistance after admission or in-person follow-along after
63.30 a return home.

63.31 (b) Persons admitted on a nonemergency basis to a Medicaid-certified nursing
63.32 facility must be screened prior to admission.

63.33 (c) The county lead agency screening or intake activity must include processes to
63.34 identify persons who may require transition assistance as described in subdivision 3b.

64.1 Sec. 15. Minnesota Statutes 2010, section 256B.0911, subdivision 6, is amended to
64.2 read:

64.3 Subd. 6. **Payment for long-term care consultation services.** (a) The total payment
64.4 for each county must be paid monthly by certified nursing facilities in the county. The
64.5 monthly amount to be paid by each nursing facility for each fiscal year must be determined
64.6 by dividing the county's annual allocation for long-term care consultation services by 12
64.7 to determine the monthly payment and allocating the monthly payment to each nursing
64.8 facility based on the number of licensed beds in the nursing facility. Payments to counties
64.9 in which there is no certified nursing facility must be made by increasing the payment
64.10 rate of the two facilities located nearest to the county seat.

64.11 (b) The commissioner shall include the total annual payment determined under
64.12 paragraph (a) for each nursing facility reimbursed under section 256B.431 ~~or~~ 256B.434
64.13 ~~according to section 256B.431, subdivision 2b, paragraph (g), or 256B.441.~~

64.14 (c) In the event of the layaway, delicensure and decertification, or removal from
64.15 layaway of 25 percent or more of the beds in a facility, the commissioner may adjust
64.16 the per diem payment amount in paragraph (b) and may adjust the monthly payment
64.17 amount in paragraph (a). The effective date of an adjustment made under this paragraph
64.18 shall be on or after the first day of the month following the effective date of the layaway,
64.19 delicensure and decertification, or removal from layaway.

64.20 (d) Payments for long-term care consultation services are available to the county
64.21 or counties to cover staff salaries and expenses to provide the services described in
64.22 subdivision 1a. The county shall employ, or contract with other agencies to employ, within
64.23 the limits of available funding, sufficient personnel to provide long-term care consultation
64.24 services while meeting the state's long-term care outcomes and objectives as defined in
64.25 ~~section 256B.0917~~, subdivision 1. The county shall be accountable for meeting local
64.26 objectives as approved by the commissioner in the biennial home and community-based
64.27 services quality assurance plan on a form provided by the commissioner.

64.28 (e) Notwithstanding section 256B.0641, overpayments attributable to payment of the
64.29 screening costs under the medical assistance program may not be recovered from a facility.

64.30 (f) The commissioner of human services shall amend the Minnesota medical
64.31 assistance plan to include reimbursement for the local consultation teams.

64.32 (g) Until the alternative payment methodology in paragraph (h) is implemented,
64.33 the county may bill, as case management services, assessments, support planning, and
64.34 follow-along provided to persons determined to be eligible for case management under
64.35 Minnesota health care programs. No individual or family member shall be charged for an
64.36 initial assessment or initial support plan development provided under subdivision 3a or 3b.

65.1 (h) The commissioner shall develop an alternative payment methodology for
65.2 long-term care consultation services that includes the funding available under this
65.3 subdivision, and sections 256B.092 and 256B.0659. In developing the new payment
65.4 methodology, the commissioner shall consider the maximization of other funding sources,
65.5 including federal funding, for ~~this~~ all long-term care consultation and preadmission
65.6 screening activity.

65.7 Sec. 16. Minnesota Statutes 2010, section 256B.0913, subdivision 7, is amended to
65.8 read:

65.9 Subd. 7. **Case management.** (a) The provision of case management under the
65.10 alternative care program is governed by requirements in section 256B.0915, subdivisions
65.11 1a and 1b.

65.12 (b) The case manager must not approve alternative care funding for a client in any
65.13 setting in which the case manager cannot reasonably ensure the client's health and safety.

65.14 (c) The case manager is responsible for the cost-effectiveness of the alternative care
65.15 individual ~~care~~ coordinated service and support plan and must not approve any ~~care~~ plan
65.16 in which the cost of services funded by alternative care and client contributions exceeds
65.17 the limit specified in section 256B.0915, subdivision ~~3~~ 3a , paragraph (b).

65.18 (d) Case manager responsibilities include those in section 256B.0915, subdivision
65.19 1a, paragraph (g).

65.20 Sec. 17. Minnesota Statutes 2010, section 256B.0913, subdivision 8, is amended to
65.21 read:

65.22 Subd. 8. **Requirements for individual ~~care~~ coordinated service and support**
65.23 **plan.** (a) The case manager shall implement the coordinated service and support plan ~~of~~
65.24 ~~care~~ for each alternative care client and ensure that a client's service needs and eligibility
65.25 are reassessed at least every 12 months. The coordinated service and support plan must
65.26 meet the requirements in section 256B.0915, subdivision 6. The plan shall include any
65.27 services prescribed by the individual's attending physician as necessary to allow the
65.28 individual to remain in a community setting. In developing the individual's care plan, the
65.29 case manager should include the use of volunteers from families and neighbors, religious
65.30 organizations, social clubs, and civic and service organizations to support the formal home
65.31 care services. The lead agency shall be held harmless for damages or injuries sustained
65.32 through the use of volunteers under this subdivision including workers' compensation
65.33 liability. The case manager shall provide documentation in each individual's plan ~~of care~~
65.34 and, if requested, to the commissioner that the most cost-effective alternatives available

66.1 have been offered to the individual and that the individual was free to choose among
66.2 available qualified providers, both public and private, including qualified case management
66.3 or service coordination providers other than those employed by any county; however, the
66.4 county or tribe maintains responsibility for prior authorizing services in accordance with
66.5 statutory and administrative requirements. The case manager must give the individual a
66.6 ten-day written notice of any denial, termination, or reduction of alternative care services.

66.7 (b) The county of service or tribe must provide access to and arrange for case
66.8 management services, including assuring implementation of the coordinated service
66.9 and support plan. "County of service" has the meaning given it in Minnesota Rules,
66.10 part 9505.0015, subpart 11. The county of service must notify the county of financial
66.11 responsibility of the approved care plan and the amount of encumbered funds.

66.12 Sec. 18. Minnesota Statutes 2010, section 256B.0915, subdivision 1a, is amended to
66.13 read:

66.14 Subd. 1a. **Elderly waiver case management services.** (a) Elderly Except
66.15 as provided to individuals under prepaid medical assistance programs as described
66.16 in paragraph (h), case management services under the home and community-based
66.17 services waiver for elderly individuals are available from providers meeting qualification
66.18 requirements and the standards specified in subdivision 1b. Eligible recipients may choose
66.19 any qualified provider of ~~elderly~~ case management services.

66.20 (b) Case management services assist individuals who receive waiver services in
66.21 gaining access to needed waiver and other state plan services; and assist individuals in
66.22 appeals under section 256.045, as well as needed medical, social, educational, and other
66.23 services regardless of the funding source for the services to which access is gained. Case
66.24 managers shall collaborate with consumers, families, legal representatives, and relevant
66.25 medical experts and service providers in the development and periodic review of the
66.26 coordinated service and support plan.

66.27 (c) A case aide shall provide assistance to the case manager in carrying out
66.28 administrative activities of the case management function. The case aide may not assume
66.29 responsibilities that require professional judgment including assessments, reassessments,
66.30 and care plan development. The case manager is responsible for providing oversight of
66.31 the case aide.

66.32 (d) Case managers shall be responsible for ongoing monitoring of the provision
66.33 of services included in the individual's plan of care. Case managers shall initiate ~~and~~
66.34 ~~oversee~~ the process of ~~assessment and~~ reassessment of the individual's ~~care~~ coordinated

67.1 service and support plan and review the plan of care at intervals specified in the federally
67.2 approved waiver plan.

67.3 (e) The county of service or tribe must provide access to and arrange for case
67.4 management services. County of service has the meaning given it in Minnesota Rules,
67.5 part 9505.0015, subpart 11.

67.6 (f) Except as described in paragraph (h), case management services must be provided
67.7 by a public or private agency that is enrolled as a medical assistance provider determined
67.8 by the commissioner to meet all of the requirements in subdivision 1b. Case management
67.9 services must not be provided to a recipient by a private agency that has a financial interest
67.10 in the provision of any other services included in the recipient's coordinated service and
67.11 support plan. For purposes of this section, "private agency" means any agency that is not
67.12 identified as a lead agency under section 256B.0911, subdivision 1a, paragraph (e).

67.13 (g) Case management service activities provided to or arranged for a person include:

67.14 (1) development of the coordinated service and support plan under subdivision 6;

67.15 (2) informing the individual or the individual's legal guardian or conservator of

67.16 service options, and options for case management services and providers;

67.17 (3) consulting with relevant medical experts or service providers;

67.18 (4) assisting the person in the identification of potential providers;

67.19 (5) assisting the person to access services;

67.20 (6) coordination of services; and

67.21 (7) evaluation and monitoring of the services identified in the plan, which must

67.22 incorporate at least one annual face-to-face visit by the case manager with each person.

67.23 (h) For individuals enrolled in prepaid medical assistance programs under section

67.24 256B.69, subdivisions 6b and 23, the health plan shall provide or arrange to provide

67.25 elderly waiver case management services in paragraph (g), as part of an integrated delivery

67.26 system in accordance with contract requirements established by the commissioner.

67.27 Sec. 19. Minnesota Statutes 2010, section 256B.0915, subdivision 1b, is amended to
67.28 read:

67.29 Subd. 1b. **Provider qualifications and standards.** (a) The commissioner must
67.30 enroll qualified providers of ~~elderly~~ case management services under the home and
67.31 community-based waiver for the elderly under section 1915(c) of the Social Security
67.32 Act. The enrollment process shall ensure the provider's ability to meet the qualification
67.33 requirements and standards in this subdivision and other federal and state requirements
67.34 of this service. ~~An elderly~~ A case management provider is an enrolled medical

68.1 assistance provider who is determined by the commissioner to have all of the following
68.2 characteristics:

68.3 (1) the demonstrated capacity and experience to provide the components of
68.4 case management to coordinate and link community resources needed by the eligible
68.5 population;

68.6 (2) administrative capacity and experience in serving the target population for
68.7 whom it will provide services and in ensuring quality of services under state and federal
68.8 requirements;

68.9 (3) a financial management system that provides accurate documentation of services
68.10 and costs under state and federal requirements;

68.11 (4) the capacity to document and maintain individual case records under state and
68.12 federal requirements; and

68.13 (5) the lead agency may allow a case manager employed by the lead agency to
68.14 delegate certain aspects of the case management activity to another individual employed
68.15 by the lead agency provided there is oversight of the individual by the case manager.
68.16 The case manager may not delegate those aspects which require professional judgment
68.17 including assessments, reassessments, and ~~care~~ coordinated service and support plan
68.18 development. Lead agencies include counties, health plans, and federally recognized
68.19 tribes who authorize services under this section.

68.20 (b) A health plan shall provide or arrange to provide elderly waiver case
68.21 management services in subdivision 1a, paragraph (g), as part of an integrated delivery
68.22 system in accordance with contract requirements established by the commissioner related
68.23 to provider standards and qualifications.

68.24 Sec. 20. Minnesota Statutes 2010, section 256B.0915, subdivision 3c, is amended to
68.25 read:

68.26 Subd. 3c. **Service approval and contracting provisions.** (a) Medical assistance
68.27 funding for skilled nursing services, private duty nursing, home health aide, and personal
68.28 care services for waiver recipients must be approved by the case manager and included in
68.29 the ~~individual care~~ coordinated service and support plan.

68.30 (b) A lead agency is not required to contract with a provider of supplies and
68.31 equipment if the monthly cost of the supplies and equipment is less than \$250.

68.32 Sec. 21. Minnesota Statutes 2010, section 256B.0915, subdivision 6, is amended to
68.33 read:

69.1 Subd. 6. **Implementation of ~~care~~ care coordinated service and support plan.** (a) Each
69.2 elderly waiver client shall be provided a copy of a written ~~care~~ care coordinated service and
69.3 support plan that meets the requirements outlined in section 256B.0913, subdivision 8.

69.4 ~~The care plan must be implemented by the county of service when it is different than the~~
69.5 ~~county of financial responsibility. The county of service administering waived services~~
69.6 ~~must notify the county of financial responsibility of the approved care plan. which:~~

69.7 (1) is developed and signed by the recipient within ten working days after the case
69.8 manager receives the assessment information and written community support plan as
69.9 described in section 256B.0911, subdivision 3a, from the certified assessor;

69.10 (2) includes the person's need for service and identification of service needs that will
69.11 be or that are met by the person's relatives, friends, and others, as well as community
69.12 services used by the general public;

69.13 (3) reasonably ensures the health and safety of the recipient;

69.14 (4) identifies the person's preferences for services as stated by the person or the
69.15 person's legal guardian or conservator;

69.16 (5) reflects the person's informed choice between institutional and community-based
69.17 services, as well as choice of services, supports, and providers, including available case
69.18 manager providers;

69.19 (6) identifies long and short-range goals for the person;

69.20 (7) identifies specific services and the amount, frequency, duration, and cost of the
69.21 services to be provided to the person based on assessed needs, preferences, and available
69.22 resources;

69.23 (8) includes information about the right to appeal decisions under section 256.045;

69.24 and

69.25 (9) includes the authorized annual and monthly amounts for the services.

69.26 (b) In developing the coordinated service and support plan, the case manager should
69.27 also include the use of volunteers, religious organizations, social clubs, and civic and
69.28 service organizations to support the individual in the community. The lead agency must be
69.29 held harmless for damages or injuries sustained through the use of volunteers and agencies
69.30 under this paragraph, including workers' compensation liability.

69.31 Sec. 22. Minnesota Statutes 2011 Supplement, section 256B.0915, subdivision 10,
69.32 is amended to read:

69.33 Subd. 10. **Waiver payment rates; managed care organizations.** The
69.34 commissioner shall adjust the elderly waiver capitation payment rates for managed
69.35 care organizations paid under section 256B.69, subdivisions ~~6a~~ 6b and 23, to reflect the

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70.1 maximum service rate limits for customized living services and 24-hour customized
70.2 living services under subdivisions 3e and 3h. Medical assistance rates paid to customized
70.3 living providers by managed care organizations under this section shall not exceed the
70.4 maximum service rate limits and component rates as determined by the commissioner
70.5 under subdivisions 3e and 3h.

70.6 Sec. 23. Minnesota Statutes 2010, section 256B.092, subdivision 1, is amended to read:

70.7 Subdivision 1. **County of financial responsibility; duties.** Before any services
70.8 shall be rendered to persons with developmental disabilities who are in need of social
70.9 service and medical assistance, the county of financial responsibility shall conduct or
70.10 arrange for a diagnostic evaluation in order to determine whether the person has or may
70.11 have a developmental disability or has or may have a related condition. If the county
70.12 of financial responsibility determines that the person has a developmental disability,
70.13 the county shall inform the person of case management services available under this
70.14 section. Except as provided in subdivision 1g or 4b, if a person is diagnosed as having a
70.15 developmental disability, the county of financial responsibility shall conduct or arrange for
70.16 a needs assessment by a certified assessor, ~~and develop or arrange for an individual service~~
70.17 ~~a community support plan according to section 256B.0911, provide or arrange for ongoing~~
70.18 ~~case management services at the level identified in the individual service plan, provide~~
70.19 ~~or arrange for case management administration~~, and authorize services identified in the
70.20 person's ~~individual service~~ coordinated service and support plan developed according to
70.21 subdivision 1b. Diagnostic information, obtained by other providers or agencies, may be
70.22 used by the county agency in determining eligibility for case management. Nothing in this
70.23 section shall be construed as requiring: (1) assessment in areas agreed to as unnecessary
70.24 by ~~the case manager~~ a certified assessor and the person, or the person's legal guardian or
70.25 conservator, or the parent if the person is a minor, or (2) assessments in areas where there
70.26 has been a functional assessment completed in the previous 12 months for which the
70.27 ~~case manager~~ certified assessor and the person or person's guardian or conservator, or the
70.28 parent if the person is a minor, agree that further assessment is not necessary. For persons
70.29 under state guardianship, the ~~case manager~~ certified assessor shall seek authorization from
70.30 the public guardianship office for waiving any assessment requirements. Assessments
70.31 related to health, safety, and protection of the person for the purpose of identifying service
70.32 type, amount, and frequency or assessments required to authorize services may not be
70.33 waived. To the extent possible, for wards of the commissioner the county shall consider
70.34 the opinions of the parent of the person with a developmental disability when developing

71.1 the person's ~~individual service~~ community support plan and coordinated service and
71.2 support plan.

71.3 Sec. 24. Minnesota Statutes 2010, section 256B.092, subdivision 1a, is amended to
71.4 read:

71.5 Subd. 1a. **Case management ~~administration and services.~~** (a) ~~The administrative~~
71.6 ~~functions of case management provided to or arranged for a person include:~~ Each recipient
71.7 of a home and community-based waiver shall be provided case management services by
71.8 qualified vendors as described in the federally approved waiver application.

71.9 ~~(1) review of eligibility for services;~~

71.10 ~~(2) screening;~~

71.11 ~~(3) intake;~~

71.12 ~~(4) diagnosis;~~

71.13 ~~(5) the review and authorization of services based upon an individualized service~~
71.14 ~~plan; and~~

71.15 ~~(6) responding to requests for conciliation conferences and appeals according to~~
71.16 ~~section 256.045 made by the person, the person's legal guardian or conservator, or the~~
71.17 ~~parent if the person is a minor.~~

71.18 (b) Case management service activities provided to or arranged for a person include:

71.19 (1) development of the ~~individual service~~ coordinated service and support plan
71.20 under subdivision 1b;

71.21 (2) informing the individual or the individual's legal guardian or conservator, or
71.22 parent if the person is a minor, of service options;

71.23 (3) consulting with relevant medical experts or service providers;

71.24 (4) assisting the person in the identification of potential providers;

71.25 (5) assisting the person to access services and assisting in appeals under section
71.26 256.045;

71.27 (6) coordination of services, if coordination is not provided by another service
71.28 provider;

71.29 (7) evaluation and monitoring of the services identified in the coordinated service
71.30 and support plan, which must incorporate at least one annual face-to-face visit by the case
71.31 manager with each person; and

71.32 (8) ~~annual reviews of service plans and services provided~~ reviewing coordinated
71.33 service and support plans and providing the lead agency with recommendations for service
71.34 authorization based upon the individual's needs identified in the coordinated service and
71.35 support plan.

72.1 (c) Case management ~~administration and~~ service activities that are provided to the
72.2 person with a developmental disability shall be provided directly by county agencies or
72.3 under contract. Case management services must be provided by a public or private agency
72.4 that is enrolled as a medical assistance provider determined by the commissioner to meet
72.5 all of the requirements in the approved federal waiver plans. Case management services
72.6 must not be provided to a recipient by a private agency that has a financial interest in the
72.7 provision of any other services included in the recipient's coordinated service and support
72.8 plan. For purposes of this section, "private agency" means any agency that is not identified
72.9 as a lead agency under section 256B.0911, subdivision 1a, paragraph (e).

72.10 (d) Case managers are responsible for ~~the administrative duties and~~ service
72.11 provisions listed in paragraphs (a) and (b). Case managers shall collaborate with
72.12 consumers, families, legal representatives, and relevant medical experts and service
72.13 providers in the development and annual review of the ~~individualized service~~ coordinated
72.14 service and support plan and habilitation ~~plans~~ plan.

72.15 (e) The Department of Human Services shall offer ongoing education in case
72.16 management to case managers. Case managers shall receive no less than ten hours of case
72.17 management education and disability-related training each year.

72.18 Sec. 25. Minnesota Statutes 2010, section 256B.092, subdivision 1b, is amended to
72.19 read:

72.20 Subd. 1b. **Individual Coordinated service and support plan.** ~~The individual~~
72.21 ~~service plan must~~ (a) Each recipient of home and community-based waived services
72.22 shall be provided a copy of the written coordinated service and support plan which:

72.23 (1) is developed and signed by the recipient within ten working days after the case
72.24 manager receives the assessment information and written community support plan as
72.25 described in section 256B.0911, subdivision 3a, from the certified assessor;

72.26 ~~(1) include the results of the assessment information on~~ (2) includes the person's
72.27 need for service, including identification of service needs that will be or that are met
72.28 by the person's relatives, friends, and others, as well as community services used by
72.29 the general public;

72.30 (3) reasonably ensures the health and safety of the recipient;

72.31 ~~(2) identify~~ (4) identifies the person's preferences for services as stated by the
72.32 person, the person's legal guardian or conservator, or the parent if the person is a minor,
72.33 including the person's choices made on self-directed options and on services and supports
72.34 to achieve employment goals;

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73.1 (5) provides for an informed choice, as defined in section 256B.77, subdivision 2,
73.2 paragraph (o), of service and support providers, and identifies all available options for
73.3 case management services and providers;

73.4 ~~(3) identify~~ (6) identifies long- and short-range goals for the person;

73.5 ~~(4) identify~~ (7) identifies specific services and the amount and frequency of the
73.6 services to be provided to the person based on assessed needs, preferences, and available
73.7 resources. The ~~individual service~~ coordinated service and support plan shall also specify
73.8 other services the person needs that are not available;

73.9 ~~(5) identify~~ (8) identifies the need for an individual program plan to be developed
73.10 by the provider according to the respective state and federal licensing and certification
73.11 standards, and additional assessments to be completed or arranged by the provider after
73.12 service initiation;

73.13 ~~(6) identify~~ (9) identifies provider responsibilities to implement and make
73.14 recommendations for modification to the ~~individual service~~ coordinated service and
73.15 support plan;

73.16 ~~(7) include~~ (10) includes notice of the right to request a conciliation conference or a
73.17 hearing under section 256.045;

73.18 ~~(8) be~~ (11) is agreed upon and signed by the person, the person's legal guardian
73.19 or conservator, or the parent if the person is a minor, and the authorized county
73.20 representative; ~~and~~

73.21 ~~(9) be~~ (12) is reviewed by a health professional if the person has overriding medical
73.22 needs that impact the delivery of services; and

73.23 (13) includes the authorized annual and monthly amounts for the services.

73.24 ~~Service planning formats developed for interagency planning such as transition,~~
73.25 ~~vocational, and individual family service plans may be substituted for service planning~~
73.26 ~~formats developed by county agencies.~~

73.27 (b) In developing the coordinated service and support plan, the case manager is
73.28 encouraged to include the use of volunteers, religious organizations, social clubs, and civic
73.29 and service organizations to support the individual in the community. The lead agency
73.30 must be held harmless for damages or injuries sustained through the use of volunteers and
73.31 agencies under this paragraph, including workers' compensation liability.

73.32 Sec. 26. Minnesota Statutes 2010, section 256B.092, subdivision 1e, is amended to
73.33 read:

73.34 Subd. 1e. **Coordination, evaluation, and monitoring of services.** (a) If the
73.35 ~~individual service~~ coordinated service and support plan identifies the need for individual

74.1 program plans for authorized services, the case manager shall assure that individual
74.2 program plans are developed by the providers according to clauses (2) to (5). The
74.3 providers shall assure that the individual program plans:

74.4 (1) are developed according to the respective state and federal licensing and
74.5 certification requirements;

74.6 (2) are designed to achieve the goals of the ~~individual service~~ coordinated service
74.7 and support plan;

74.8 (3) are consistent with other aspects of the ~~individual service~~ coordinated service
74.9 and support plan;

74.10 (4) assure the health and safety of the person; and

74.11 (5) are developed with consistent and coordinated approaches to services among the
74.12 various service providers.

74.13 (b) The case manager shall monitor the provision of services:

74.14 (1) to assure that the ~~individual service~~ coordinated service and support plan is
74.15 being followed according to paragraph (a);

74.16 (2) to identify any changes or modifications that might be needed in the ~~individual~~
74.17 ~~service~~ coordinated service and support plan, including changes resulting from
74.18 recommendations of current service providers;

74.19 (3) to determine if the person's legal rights are protected, and if not, notify the
74.20 person's legal guardian or conservator, or the parent if the person is a minor, protection
74.21 services, or licensing agencies as appropriate; and

74.22 (4) to determine if the person, the person's legal guardian or conservator, or the
74.23 parent if the person is a minor, is satisfied with the services provided.

74.24 (c) If the provider fails to develop or carry out the individual program plan according
74.25 to paragraph (a), the case manager shall notify the person's legal guardian or conservator,
74.26 or the parent if the person is a minor, the provider, the respective licensing and certification
74.27 agencies, and the county board where the services are being provided. In addition, the
74.28 case manager shall identify other steps needed to assure the person receives the services
74.29 identified in the ~~individual service~~ coordinated service and support plan.

74.30 Sec. 27. Minnesota Statutes 2010, section 256B.092, subdivision 1g, is amended to
74.31 read:

74.32 Subd. 1g. **Conditions not requiring development of ~~individual service~~**
74.33 **coordinated service and support plan**. Unless otherwise required by federal law, the
74.34 county agency is not required to complete ~~an individual service~~ a coordinated service and
74.35 support plan as defined in subdivision 1b for:

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75.1 (1) persons whose families are requesting respite care for their family member who
75.2 resides with them, or whose families are requesting a family support grant and are not
75.3 requesting purchase or arrangement of habilitative services; and

75.4 (2) persons with developmental disabilities, living independently without authorized
75.5 services or receiving funding for services at a rehabilitation facility as defined in section
75.6 268A.01, subdivision 6, and not in need of or requesting additional services.

75.7 Sec. 28. Minnesota Statutes 2010, section 256B.092, subdivision 2, is amended to read:

75.8 Subd. 2. **Medical assistance.** To assure quality case management to those persons
75.9 who are eligible for medical assistance, the commissioner shall, upon request:

75.10 (1) provide consultation on the case management process;

75.11 (2) assist county agencies in the ~~screening and~~ annual reviews of clients review
75.12 process to assure that appropriate levels of service are provided to persons;

75.13 (3) provide consultation on service planning and development of services with
75.14 appropriate options;

75.15 (4) provide training and technical assistance to county case managers; and

75.16 (5) authorize payment for medical assistance services according to this chapter
75.17 and rules implementing it.

75.18 Sec. 29. Minnesota Statutes 2010, section 256B.092, subdivision 3, is amended to read:

75.19 Subd. 3. **Authorization and termination of services.** County agency case
75.20 managers, under rules of the commissioner, shall authorize and terminate services of
75.21 community and regional treatment center providers according to ~~individual service~~
75.22 support plans. Services provided to persons with developmental disabilities may only be
75.23 authorized and terminated by case managers or certified assessors according to (1) rules of
75.24 the commissioner and (2) the ~~individual service~~ coordinated service and support plan as
75.25 defined in subdivision 1b. Medical assistance services not needed shall not be authorized
75.26 by county agencies or funded by the commissioner. When purchasing or arranging for
75.27 unlicensed respite care services for persons with overriding health needs, the county
75.28 agency shall seek the advice of a health care professional in assessing provider staff
75.29 training needs and skills necessary to meet the medical needs of the person.

75.30 Sec. 30. Minnesota Statutes 2010, section 256B.092, subdivision 5, is amended to read:

75.31 Subd. 5. **Federal waivers.** (a) The commissioner shall apply for any federal
75.32 waivers necessary to secure, to the extent allowed by law, federal financial participation
75.33 under United States Code, title 42, sections 1396 et seq., as amended, for the provision

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76.1 of services to persons who, in the absence of the services, would need the level of care
76.2 provided in a regional treatment center or a community intermediate care facility for
76.3 persons with developmental disabilities. The commissioner may seek amendments to the
76.4 waivers or apply for additional waivers under United States Code, title 42, sections 1396
76.5 et seq., as amended, to contain costs. The commissioner shall ensure that payment for
76.6 the cost of providing home and community-based alternative services under the federal
76.7 waiver plan shall not exceed the cost of intermediate care services including day training
76.8 and habilitation services that would have been provided without the waived services.

76.9 The commissioner shall seek an amendment to the 1915c home and
76.10 community-based waiver to allow properly licensed adult foster care homes to provide
76.11 residential services to up to five individuals with developmental disabilities. If the
76.12 amendment to the waiver is approved, adult foster care providers that can accommodate
76.13 five individuals shall increase their capacity to five beds, provided the providers continue
76.14 to meet all applicable licensing requirements.

76.15 (b) The commissioner, in administering home and community-based waivers for
76.16 persons with developmental disabilities, shall ensure that day services for eligible persons
76.17 are not provided by the person's residential service provider, unless the person or the
76.18 person's legal representative is offered a choice of providers and agrees in writing to
76.19 provision of day services by the residential service provider. The ~~individual service~~
76.20 coordinated service and support plan for individuals who choose to have their residential
76.21 service provider provide their day services must describe how health, safety, protection,
76.22 and habilitation needs will be met, including how frequent and regular contact with
76.23 persons other than the residential service provider will occur. The ~~individualized service~~
76.24 coordinated service and support plan must address the provision of services during the
76.25 day outside the residence on weekdays.

76.26 (c) When a ~~county~~ lead agency is evaluating denials, reductions, or terminations
76.27 of home and community-based services under section 256B.0916 for an individual, the
76.28 ~~case manager~~ lead agency shall offer to meet with the individual or the individual's
76.29 guardian in order to discuss the prioritization of service needs within the ~~individualized~~
76.30 service coordinated service and support plan. The reduction in the authorized services
76.31 for an individual due to changes in funding for waived services may not exceed the
76.32 amount needed to ensure medically necessary services to meet the individual's health,
76.33 safety, and welfare.

76.34 Sec. 31. Minnesota Statutes 2010, section 256B.092, subdivision 7, is amended to read:

77.1 Subd. 7. ~~Screening teams~~ Assessments. (a) Assessments and reassessments shall
77.2 be conducted by certified assessors according to section 256B.0911, and must incorporate
77.3 appropriate referrals to determine eligibility for case management under subdivision 1a.

77.4 (b) For persons with developmental disabilities, ~~screening teams shall be established~~
77.5 ~~which a certified assessor shall evaluate the need for the an institutional level of care,~~
77.6 ~~provided by residential-based habilitation services, residential services, training and~~
77.7 ~~habilitation services, and nursing facility services.~~ The evaluation assessment shall
77.8 address whether home and community-based services are appropriate for persons who
77.9 are at risk of placement in an intermediate care facility for persons with developmental
77.10 disabilities, or for whom there is reasonable indication that they might require this level of
77.11 care. The ~~screening team~~ certified assessor shall make an evaluation of need ~~within 60~~
77.12 ~~working days of a request for service by a person with a developmental disability, and~~
77.13 ~~within five working days of an emergency admission of a person to an intermediate care~~
77.14 ~~facility for persons with developmental disabilities. The screening team shall consist of~~
77.15 ~~the case manager for persons with developmental disabilities, the person, the person's~~
77.16 ~~legal guardian or conservator, or the parent if the person is a minor, and a qualified~~
77.17 ~~developmental disability professional, as defined in the Code of Federal Regulations,~~
77.18 ~~title 42, section 483.430, as amended through June 3, 1988. The case manager may also~~
77.19 ~~act as the qualified developmental disability professional if the case manager meets~~
77.20 ~~the federal definition. County social service agencies may contract with a public or~~
77.21 ~~private agency or individual who is not a service provider for the person for the public~~
77.22 ~~guardianship representation required by the screening or individual service planning~~
77.23 ~~process. The contract shall be limited to public guardianship representation for the~~
77.24 ~~screening and individual service planning activities. The contract shall require compliance~~
77.25 ~~with the commissioner's instructions and may be for paid or voluntary services. For~~
77.26 ~~persons determined to have overriding health care needs and are seeking admission to a~~
77.27 ~~nursing facility or an ICF/MR, or seeking access to home and community-based waived~~
77.28 ~~services, a registered nurse must be designated as either the case manager or the qualified~~
77.29 ~~developmental disability professional. For persons under the jurisdiction of a correctional~~
77.30 ~~agency, the case manager must consult with the corrections administrator regarding~~
77.31 ~~additional health, safety, and supervision needs. The case manager, with the concurrence~~
77.32 ~~of the person, the person's legal guardian or conservator, or the parent if the person is a~~
77.33 ~~minor, may invite other individuals to attend meetings of the screening team. No member~~
77.34 ~~of the screening team shall have any direct or indirect service provider interest in the case.~~
77.35 ~~Nothing in this section shall be construed as requiring the screening team meeting to be~~
77.36 ~~separate from the service planning meeting.~~

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78.1 Sec. 32. Minnesota Statutes 2010, section 256B.092, subdivision 8, is amended to read:

78.2 Subd. 8. ~~Screening team~~ **Additional certified assessor duties.** In addition to the
78.3 responsibilities of certified assessors described in section 256B.0911, for persons with
78.4 developmental disabilities, the ~~screening team~~ certified assessor shall:

78.5 ~~(1) review diagnostic data;~~

78.6 ~~(2) review health, social, and developmental assessment data using a uniform~~
78.7 ~~screening tool specified by the commissioner;~~

78.8 ~~(3) identify the level of services appropriate to maintain the person in the most~~
78.9 ~~normal and least restrictive setting that is consistent with the person's treatment needs;~~

78.10 ~~(4)~~ (1) identify other noninstitutional public assistance or social service that may
78.11 prevent or delay long-term residential placement;

78.12 ~~(5)~~ (2) assess whether a person is in need of long-term residential care;

78.13 ~~(6)~~ (3) make recommendations regarding placement and payment for:

78.14 (i) social service or public assistance support, or both, to maintain a person in the
78.15 person's own home or other place of residence;

78.16 (ii) training and habilitation service, vocational rehabilitation, and employment
78.17 training activities;

78.18 (iii) community residential service placement;

78.19 (iv) regional treatment center placement; or

78.20 (v) a home and community-based service alternative to community residential
78.21 placement service or regional treatment center placement including self-directed service
78.22 options;

78.23 ~~(7)~~ (4) evaluate the availability, location, and quality of the services listed in clause
78.24 ~~(6)~~ (3), including the impact of placement alternatives on the person's ability to maintain
78.25 or improve existing patterns of contact and involvement with parents and other family
78.26 members;

78.27 ~~(8)~~ (5) identify the cost implications of recommendations in clause ~~(6)~~ (3); and

78.28 ~~(9)~~ (6) make recommendations to a court as may be needed to assist the court in
78.29 making decisions regarding commitment of persons with developmental disabilities; ~~and~~

78.30 ~~(10) inform the person and the person's legal guardian or conservator, or the parent if~~
78.31 ~~the person is a minor, that appeal may be made to the commissioner pursuant to section~~
78.32 ~~256.045.~~

78.33 Sec. 33. Minnesota Statutes 2010, section 256B.092, subdivision 8a, is amended to
78.34 read:

79.1 Subd. 8a. **County ~~concurrence~~ notification.** (a) If the county of financial
79.2 responsibility wishes to place a person in another county for services, the county of
79.3 financial responsibility shall ~~seek concurrence from~~ notify the proposed county of service
79.4 and the placement shall be made cooperatively between the two counties. Arrangements
79.5 shall be made between the two counties for ongoing social service, including annual
79.6 reviews of the person's ~~individual service~~ coordinated service and support plan. The county
79.7 where services are provided may not make changes in the person's ~~service~~ coordinated
79.8 service and support plan without approval by the county of financial responsibility.

79.9 (b) ~~When a person has been screened and authorized for services in an intermediate~~
79.10 ~~care facility for persons with developmental disabilities or for home and community-based~~
79.11 ~~services for persons with developmental disabilities, the case manager shall assist that~~
79.12 ~~person in identifying a service provider who is able to meet the needs of the person~~
79.13 ~~according to the person's individual service plan. If the identified service is to be provided~~
79.14 ~~in a county other than the county of financial responsibility, the county of financial~~
79.15 ~~responsibility shall request concurrence of the county where the person is requesting to~~
79.16 ~~receive the identified services. The county of service may refuse to concur~~ shall notify
79.17 the county of financial responsibility if:

79.18 (1) ~~it can demonstrate that the provider is unable to provide the services identified in~~
79.19 ~~the person's individual service plan as services that are needed and are to be provided; or~~
79.20 (2) ~~in the case of an intermediate care facility for persons with developmental~~
79.21 ~~disabilities, there has been no authorization for admission by the admission review team~~
79.22 ~~as required in section 256B.0926.~~

79.23 (c) The county of service shall notify the county of financial responsibility of
79.24 ~~concurrence or refusal to concur~~ any concerns about the chosen provider's capacity to
79.25 meet the needs of the person seeking to move to residential services in another county no
79.26 later than 20 working days following receipt of the written request notification. Unless
79.27 other mutually acceptable arrangements are made by the involved county agencies, the
79.28 county of financial responsibility is responsible for costs of social services and the costs
79.29 associated with the development and maintenance of the placement. The county of
79.30 service may request that the county of financial responsibility purchase case management
79.31 services from the county of service or from a contracted provider of case management
79.32 when the county of financial responsibility is not providing case management as defined
79.33 in this section and rules adopted under this section, unless other mutually acceptable
79.34 arrangements are made by the involved county agencies. Standards for payment limits
79.35 under this section may be established by the commissioner. Financial disputes between

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80.1 counties shall be resolved as provided in section 256G.09. This subdivision also applies to
80.2 home and community-based waiver services provided under section 256B.49.

80.3 Sec. 34. Minnesota Statutes 2010, section 256B.092, subdivision 9, is amended to read:

80.4 Subd. 9. **Reimbursement.** Payment for services shall not be provided to a
80.5 service provider for any person placed in an intermediate care facility for persons with
80.6 developmental disabilities prior to the person ~~being screened by the screening team~~
80.7 receiving an assessment by a certified assessor. The commissioner shall not deny
80.8 reimbursement for: (1) a person admitted to an intermediate care facility for persons
80.9 with developmental disabilities who is assessed to need long-term supportive services,
80.10 if long-term supportive services other than intermediate care are not available in that
80.11 community; (2) any person admitted to an intermediate care facility for persons with
80.12 developmental disabilities under emergency circumstances; (3) any eligible person placed
80.13 in the intermediate care facility for persons with developmental disabilities pending an
80.14 appeal of the ~~screening team's~~ certified assessor's decision; or (4) any medical assistance
80.15 recipient when, after full discussion of all appropriate alternatives including those that
80.16 are expected to be less costly than intermediate care for persons with developmental
80.17 disabilities, the person or the person's legal guardian or conservator, or the parent if the
80.18 person is a minor, insists on intermediate care placement. The ~~screening team~~ certified
80.19 assessor shall provide documentation that the most cost-effective alternatives available
80.20 were offered to this individual or the individual's legal guardian or conservator.

80.21 Sec. 35. Minnesota Statutes 2010, section 256B.092, subdivision 11, is amended to
80.22 read:

80.23 Subd. 11. **Residential support services.** (a) Upon federal approval, there is
80.24 established a new service called residential support that is available on the community
80.25 alternative care, community alternatives for disabled individuals, developmental
80.26 disabilities, and traumatic brain injury waivers. Existing waiver service descriptions
80.27 must be modified to the extent necessary to ensure there is no duplication between
80.28 other services. Residential support services must be provided by vendors licensed as a
80.29 community residential setting as defined in section 245A.11, subdivision 8.

80.30 (b) Residential support services must meet the following criteria:

80.31 (1) providers of residential support services must own or control the residential site;

80.32 (2) the residential site must not be the primary residence of the license holder;

80.33 (3) the residential site must have a designated program supervisor responsible for
80.34 program oversight, development, and implementation of policies and procedures;

81.1 (4) the provider of residential support services must provide supervision, training,
81.2 and assistance as described in the person's ~~community~~ coordinated service and support
81.3 plan; and

81.4 (5) the provider of residential support services must meet the requirements of
81.5 licensure and additional requirements of the person's ~~community~~ coordinated service and
81.6 support plan.

81.7 (c) Providers of residential support services that meet the definition in paragraph
81.8 (a) must be registered using a process determined by the commissioner beginning July
81.9 1, 2009.

81.10 Sec. 36. Minnesota Statutes 2010, section 256B.15, subdivision 1c, is amended to read:

81.11 Subd. 1c. **Notice of potential claim.** (a) A state agency with a claim or potential
81.12 claim under this section may file a notice of potential claim under this subdivision anytime
81.13 before or within one year after a medical assistance recipient dies. The claimant shall be
81.14 the state agency. A notice filed prior to the recipient's death shall not take effect and shall
81.15 not be effective as notice until the recipient dies. A notice filed after a recipient dies
81.16 shall be effective from the time of filing.

81.17 (b) The notice of claim shall be filed or recorded in the real estate records in the
81.18 office of the county recorder or registrar of titles for each county in which any part of
81.19 the property is located. The recorder shall accept the notice for recording or filing. The
81.20 registrar of titles shall accept the notice for filing if the recipient has a recorded interest in
81.21 the property. The registrar of titles shall not carry forward to a new certificate of title any
81.22 notice filed more than one year from the date of the recipient's death.

81.23 (c) The notice must be dated, state the name of the claimant, the medical assistance
81.24 recipient's name and last four digits of the Social Security number if filed before their
81.25 death and their date of death if filed after they die, the name and date of death of any
81.26 predeceased spouse of the medical assistance recipient for whom a claim may exist, a
81.27 statement that the claimant may have a claim arising under this section, generally identify
81.28 the recipient's interest in the property, contain a legal description for the property and
81.29 whether it is abstract or registered property, a statement of when the notice becomes
81.30 effective and the effect of the notice, be signed by an authorized representative of the state
81.31 agency, and may include such other contents as the state agency may deem appropriate.

81.32 Sec. 37. Minnesota Statutes 2010, section 256B.15, subdivision 1f, is amended to read:

81.33 Subd. 1f. **Agency lien.** (a) The notice shall constitute a lien in favor of the
81.34 Department of Human Services against the recipient's interests in the real estate it

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82.1 describes for a period of 20 years from the date of filing or the date of the recipient's death,
82.2 whichever is later. Notwithstanding any law or rule to the contrary, a recipient's life estate
82.3 and joint tenancy interests shall not end upon the recipient's death but shall continue
82.4 according to subdivisions 1h, 1i, and 1j. The amount of the lien shall be equal to the total
82.5 amount of the claims that could be presented in the recipient's estate under this section.

82.6 (b) If no estate has been opened for the deceased recipient, any holder of an interest
82.7 in the property may apply to the lienholder for a statement of the amount of the lien or
82.8 for a full or partial release of the lien. The application shall include the applicant's name,
82.9 current mailing address, current home and work telephone numbers, and a description of
82.10 their interest in the property, a legal description of the recipient's interest in the property,
82.11 and the deceased recipient's name, date of birth, and last four digits of the Social Security
82.12 number. The lienholder shall send the applicant by certified mail, return receipt requested,
82.13 a written statement showing the amount of the lien, whether the lienholder is willing to
82.14 release the lien and under what conditions, and inform them of the right to a hearing under
82.15 section 256.045. The lienholder shall have the discretion to compromise and settle the lien
82.16 upon any terms and conditions the lienholder deems appropriate.

82.17 (c) Any holder of an interest in property subject to the lien has a right to request
82.18 a hearing under section 256.045 to determine the validity, extent, or amount of the lien.
82.19 The request must be in writing, and must include the names, current addresses, and home
82.20 and business telephone numbers for all other parties holding an interest in the property. A
82.21 request for a hearing by any holder of an interest in the property shall be deemed to be a
82.22 request for a hearing by all parties owning interests in the property. Notice of the hearing
82.23 shall be given to the lienholder, the party filing the appeal, and all of the other holders of
82.24 interests in the property at the addresses listed in the appeal by certified mail, return receipt
82.25 requested, or by ordinary mail. Any owner of an interest in the property to whom notice of
82.26 the hearing is mailed shall be deemed to have waived any and all claims or defenses in
82.27 respect to the lien unless they appear and assert any claims or defenses at the hearing.

82.28 (d) If the claim the lien secures could be filed under subdivision 1h, the lienholder
82.29 may collect, compromise, settle, or release the lien upon any terms and conditions it deems
82.30 appropriate. If the claim the lien secures could be filed under subdivision 1i or 1j, the lien
82.31 may be adjusted or enforced to the same extent had it been filed under subdivisions 1i
82.32 and 1j, and the provisions of subdivisions 1i, clause (f), and 1j, clause (d), shall apply to
82.33 voluntary payment, settlement, or satisfaction of the lien.

82.34 (e) If no probate proceedings have been commenced for the recipient as of the date
82.35 the lien holder executes a release of the lien on a recipient's life estate or joint tenancy
82.36 interest, created for purposes of this section, the release shall terminate the life estate or

83.1 joint tenancy interest created under this section as of the date it is recorded or filed to the
83.2 extent of the release. If the claimant executes a release for purposes of extinguishing a
83.3 life estate or a joint tenancy interest created under this section to remove a cloud on title
83.4 to real property, the release shall have the effect of extinguishing any life estate or joint
83.5 tenancy interests in the property it describes which may have been continued by reason
83.6 of this section retroactive to the date of death of the deceased life tenant or joint tenant
83.7 except as provided for in section 514.981, subdivision 6.

83.8 (f) If the deceased recipient's estate is probated, a claim shall be filed under this
83.9 section. The amount of the lien shall be limited to the amount of the claim as finally
83.10 allowed. If the claim the lien secures is filed under subdivision 1h, the lien may be released
83.11 in full after any allowance of the claim becomes final or according to any agreement to
83.12 settle and satisfy the claim. The release shall release the lien but shall not extinguish
83.13 or terminate the interest being released. If the claim the lien secures is filed under
83.14 subdivision 1i or 1j, the lien shall be released after the lien under subdivision 1i or 1j is
83.15 filed or recorded, or settled according to any agreement to settle and satisfy the claim. The
83.16 release shall not extinguish or terminate the interest being released. If the claim is finally
83.17 disallowed in full, the claimant shall release the claimant's lien at the claimant's expense.

83.18 Sec. 38. Minnesota Statutes 2010, section 256B.49, subdivision 13, is amended to read:

83.19 Subd. 13. **Case management.** (a) Each recipient of a home and community-based
83.20 waiver shall be provided case management services by qualified vendors as described
83.21 in the federally approved waiver application. The case management service activities
83.22 provided ~~will~~ must include:

83.23 ~~(1) assessing the needs of the individual within 20 working days of a recipient's~~
83.24 ~~request;~~

83.25 ~~(2) developing~~ (1) finalizing the written individual service coordinated service and
83.26 support plan within ten working days after the assessment is completed case manager
83.27 receives the plan from the certified assessor;

83.28 ~~(3)~~ (2) informing the recipient or the recipient's legal guardian or conservator
83.29 of service options;

83.30 ~~(4)~~ (3) assisting the recipient in the identification of potential service providers and
83.31 available options for case management service and providers;

83.32 ~~(5)~~ (4) assisting the recipient to access services and assisting with appeals under
83.33 section 256.045; and

83.34 ~~(6)~~ (5) coordinating, evaluating, and monitoring of the services identified in the
83.35 service plan;

84.1 ~~(7) completing the annual reviews of the service plan; and~~
84.2 ~~(8) informing the recipient or legal representative of the right to have assessments~~
84.3 ~~completed and service plans developed within specified time periods, and to appeal county~~
84.4 ~~action or inaction under section 256.045, subdivision 3, including the determination of~~
84.5 ~~nursing facility level of care.~~

84.6 (b) The case manager may delegate certain aspects of the case management service
84.7 activities to another individual provided there is oversight by the case manager. The case
84.8 manager may not delegate those aspects which require professional judgment including
84.9 ~~assessments, reassessments, and care plan development.;~~

84.10 (1) finalizing the coordinated service and support plan;

84.11 (2) ongoing assessment and monitoring of the person's needs and adequacy of the
84.12 approved coordinated service and support plan; and

84.13 (3) adjustments to the coordinated service and support plan.

84.14 (c) Case management services must be provided by a public or private agency that is
84.15 enrolled as a medical assistance provider determined by the commissioner to meet all of
84.16 the requirements in the approved federal waiver plans. Case management services must
84.17 not be provided to a recipient by a private agency that has any financial interest in the
84.18 provision of any other services included in the recipient's coordinated service and support
84.19 plan. For purposes of this section, "private agency" means any agency that is not identified
84.20 as a lead agency under section 256B.0911, subdivision 1a, paragraph (e).

84.21 Sec. 39. Minnesota Statutes 2011 Supplement, section 256B.49, subdivision 14,
84.22 is amended to read:

84.23 Subd. 14. **Assessment and reassessment.** ~~(a) Assessments of each recipient's~~
84.24 ~~strengths, informal support systems, and need for services shall be completed within 20~~
84.25 ~~working days of the recipient's request as provided in section 256B.0911. Reassessment~~
84.26 ~~of each recipient's strengths, support systems, and need for services shall be conducted~~
84.27 ~~at least every 12 months and at other times when there has been a significant change in~~
84.28 ~~the recipient's functioning and reassessments shall be conducted by certified assessors~~
84.29 according to section 256B.0911, subdivision 2b.

84.30 (b) There must be a determination that the client requires a hospital level of care or a
84.31 nursing facility level of care as defined in section 256B.0911, subdivision 4a, paragraph
84.32 (d), at initial and subsequent assessments to initiate and maintain participation in the
84.33 waiver program.

84.34 (c) Regardless of other assessments identified in section 144.0724, subdivision 4, as
84.35 appropriate to determine nursing facility level of care for purposes of medical assistance

85.1 payment for nursing facility services, only face-to-face assessments conducted according
85.2 to section 256B.0911, subdivisions 3a, 3b, and 4d, that result in a hospital level of care
85.3 determination or a nursing facility level of care determination must be accepted for
85.4 purposes of initial and ongoing access to waiver services payment.

85.5 ~~(d) Persons with developmental disabilities who apply for services under the nursing~~
85.6 ~~facility level waiver programs shall be screened for the appropriate level of care according~~
85.7 ~~to section 256B.092.~~

85.8 ~~(e)~~ (d) Recipients who are found eligible for home and community-based services
85.9 under this section before their 65th birthday may remain eligible for these services after
85.10 their 65th birthday if they continue to meet all other eligibility factors.

85.11 ~~(f)~~ (e) The commissioner shall develop criteria to identify recipients whose level of
85.12 functioning is reasonably expected to improve and reassess these recipients to establish
85.13 a baseline assessment. Recipients who meet these criteria must have a comprehensive
85.14 transitional service plan developed under subdivision 15, paragraphs (b) and (c), and be
85.15 reassessed every six months until there has been no significant change in the recipient's
85.16 functioning for at least 12 months. After there has been no significant change in the
85.17 recipient's functioning for at least 12 months, reassessments of the recipient's strengths,
85.18 informal support systems, and need for services shall be conducted at least every 12
85.19 months and at other times when there has been a significant change in the recipient's
85.20 functioning. Counties, case managers, and service providers are responsible for
85.21 conducting these reassessments and shall complete the reassessments out of existing funds.

85.22 Sec. 40. Minnesota Statutes 2011 Supplement, section 256B.49, subdivision 15,
85.23 is amended to read:

85.24 Subd. 15. ~~Individualized service~~ **Coordinated service and support plan;**
85.25 **comprehensive transitional service plan; maintenance service plan.** (a) Each recipient
85.26 of home and community-based waived services shall be provided a copy of the written
85.27 coordinated service and support plan which meets the requirements in section 256B.092,
85.28 subdivision 1b.

85.29 ~~(1) is developed and signed by the recipient within ten working days of the~~
85.30 ~~completion of the assessment;~~

85.31 ~~(2) meets the assessed needs of the recipient;~~

85.32 ~~(3) reasonably ensures the health and safety of the recipient;~~

85.33 ~~(4) promotes independence;~~

85.34 ~~(5) allows for services to be provided in the most integrated settings; and~~

86.1 ~~(6) provides for an informed choice, as defined in section 256B.77, subdivision 2,~~
86.2 ~~paragraph (p), of service and support providers.~~

86.3 (b) In developing the comprehensive transitional service plan, the individual
86.4 receiving services, the case manager, and the guardian, if applicable, will identify
86.5 the transitional service plan fundamental service outcome and anticipated timeline to
86.6 achieve this outcome. Within the first 20 days following a recipient's request for an
86.7 assessment or reassessment, the transitional service planning team must be identified. A
86.8 team leader must be identified who will be responsible for assigning responsibility and
86.9 communicating with team members to ensure implementation of the transition plan and
86.10 ongoing assessment and communication process. The team leader should be an individual,
86.11 such as the case manager or guardian, who has the opportunity to follow the recipient to
86.12 the next level of service.

86.13 Within ten days following an assessment, a comprehensive transitional service plan
86.14 must be developed incorporating elements of a comprehensive functional assessment and
86.15 including short-term measurable outcomes and timelines for achievement of and reporting
86.16 on these outcomes. Functional milestones must also be identified and reported according
86.17 to the timelines agreed upon by the transitional service planning team. In addition, the
86.18 comprehensive transitional service plan must identify additional supports that may assist
86.19 in the achievement of the fundamental service outcome such as the development of greater
86.20 natural community support, increased collaboration among agencies, and technological
86.21 supports.

86.22 The timelines for reporting on functional milestones will prompt a reassessment of
86.23 services provided, the units of services, rates, and appropriate service providers. It is
86.24 the responsibility of the transitional service planning team leader to review functional
86.25 milestone reporting to determine if the milestones are consistent with observable skills
86.26 and that milestone achievement prompts any needed changes to the comprehensive
86.27 transitional service plan.

86.28 For those whose fundamental transitional service outcome involves the need to
86.29 procure housing, a plan for the recipient to seek the resources necessary to secure the least
86.30 restrictive housing possible should be incorporated into the plan, including employment
86.31 and public supports such as housing access and shelter needy funding.

86.32 (c) Counties and other agencies responsible for funding community placement and
86.33 ongoing community supportive services are responsible for the implementation of the
86.34 comprehensive transitional service plans. Oversight responsibilities include both ensuring
86.35 effective transitional service delivery and efficient utilization of funding resources.

87.1 (d) Following one year of transitional services, the transitional services planning
87.2 team will make a determination as to whether or not the individual receiving services
87.3 requires the current level of continuous and consistent support in order to maintain the
87.4 recipient's current level of functioning. Recipients who are determined to have not had
87.5 a significant change in functioning for 12 months must move from a transitional to a
87.6 maintenance service plan. Recipients on a maintenance service plan must be reassessed
87.7 to determine if the recipient would benefit from a transitional service plan at least every
87.8 12 months and at other times when there has been a significant change in the recipient's
87.9 functioning. This assessment should consider any changes to technological or natural
87.10 community supports.

87.11 (e) When a county is evaluating denials, reductions, or terminations of home and
87.12 community-based services under section 256B.49 for an individual, the case manager
87.13 shall offer to meet with the individual or the individual's guardian in order to discuss the
87.14 prioritization of service needs within the ~~individualized~~ coordinated service and support
87.15 plan, comprehensive transitional service plan, or maintenance service plan. The reduction
87.16 in the authorized services for an individual due to changes in funding for waived
87.17 services may not exceed the amount needed to ensure medically necessary services to
87.18 meet the individual's health, safety, and welfare.

87.19 (f) At the time of reassessment, local agency case managers shall assess each
87.20 recipient of community alternatives for disabled individuals or traumatic brain injury
87.21 waived services currently residing in a licensed adult foster home that is not the primary
87.22 residence of the license holder, or in which the license holder is not the primary caregiver,
87.23 to determine if that recipient could appropriately be served in a community-living setting.
87.24 If appropriate for the recipient, the case manager shall offer the recipient, through a
87.25 person-centered planning process, the option to receive alternative housing and service
87.26 options. In the event that the recipient chooses to transfer from the adult foster home,
87.27 the vacated bed shall not be filled with another recipient of waiver services and group
87.28 residential housing, unless provided under section 245A.03, subdivision 7, paragraph (a),
87.29 clauses (3) and (4), and the licensed capacity shall be reduced accordingly. If the adult
87.30 foster home becomes no longer viable due to these transfers, the county agency, with the
87.31 assistance of the department, shall facilitate a consolidation of settings or closure. This
87.32 reassessment process shall be completed by June 30, 2012.

87.33 Sec. 41. Minnesota Statutes 2010, section 256G.02, subdivision 6, is amended to read:

87.34 Subd. 6. **Excluded time.** "Excluded time" means:

88.1 ~~(a)~~ (1) any period an applicant spends in a hospital, sanitarium, nursing home,
88.2 shelter other than an emergency shelter, halfway house, foster home, semi-independent
88.3 living domicile or services program, residential facility offering care, board and lodging
88.4 facility or other institution for the hospitalization or care of human beings, as defined in
88.5 section 144.50, 144A.01, or 245A.02, subdivision 14; maternity home, battered women's
88.6 shelter, or correctional facility; or any facility based on an emergency hold under sections
88.7 253B.05, subdivisions 1 and 2, and 253B.07, subdivision 6;

88.8 ~~(b)~~ (2) any period an applicant spends on a placement basis in a training and
88.9 habilitation program, including: a rehabilitation facility or work or employment program
88.10 as defined in section 268A.01; ~~or receiving personal care assistance services pursuant to~~
88.11 ~~section 256B.0659~~; semi-independent living services provided under section 252.275, and
88.12 Minnesota Rules, parts 9525.0500 to 9525.0660; or day training and habilitation programs
88.13 and assisted living services; and

88.14 ~~(c)~~ (3) any placement for a person with an indeterminate commitment, including
88.15 independent living.

88.16 Sec. 42. **RECOMMENDATIONS FOR FURTHER CASE MANAGEMENT**
88.17 **REDESIGN AND STUDY OF COUNTY AND TRIBAL ADMINISTRATIVE**
88.18 **FUNCTIONS.**

88.19 (a) By February 1, 2013, the commissioner of human services shall develop a
88.20 legislative report with specific recommendations and language for proposed legislation
88.21 for the following:

88.22 (1) definitions of service and consolidation of standards and rates to the extent
88.23 appropriate for all types of medical assistance case management service services, including
88.24 targeted case management under Minnesota Statutes, sections 256B.0621, 256B.0924, and
88.25 256B.094, and all types of home and community-based waiver case management and case
88.26 management under Minnesota Rules, parts 9525.0004 to 9525.0036. This work must be
88.27 completed in collaboration with efforts under Minnesota Statutes, section 256B.4912;

88.28 (2) recommendations on county of financial responsibility requirements and quality
88.29 assurance measures for case management; and

88.30 (3) identification of county administrative functions that may remain entwined in
88.31 case management service delivery models.

88.32 (b) The commissioner of human services shall evaluate county and tribal
88.33 administrative functions, processes, and reimbursement methodologies for the purposes
88.34 of administration of home and community-based services, and compliance and
88.35 oversight functions. The commissioner shall work with county, tribal, and stakeholder

89.1 representatives in the evaluation process and develop a plan for the delegation of
89.2 commissioner duties to county and tribal entities after the elimination of county contracts
89.3 under Minnesota Statutes, section 256B.4912, for waiver service provision and the
89.4 creation of quality outcome standards under Laws 2009, chapter 79, article 8, section
89.5 81, and residential support services under Minnesota Statutes, sections 256B.092,
89.6 subdivision 11, and 245A.11, subdivision 8. The commissioner shall present findings
89.7 and recommendations to the chairs and ranking minority members of the legislative
89.8 committees with jurisdiction over health and human services finance and policy by
89.9 February 1, 2013, with any specific recommendations and language for proposed
89.10 legislation to be effective July 1, 2013.

89.11 **ARTICLE 4**

89.12 **CHEMICAL AND MENTAL HEALTH**

89.13 Section 1. Minnesota Statutes 2010, section 245.461, is amended by adding a
89.14 subdivision to read:

89.15 Subd. 6. **Diagnostic codes list.** By July 1, 2013, the commissioner of human
89.16 services shall develop a list of diagnostic codes to define the range of child and adult
89.17 mental illnesses for the statewide mental health system. The commissioner may use the
89.18 International Classification of Diseases (ICD); the American Psychiatric Association's
89.19 Diagnostic and Statistical Manual (DSM); or a combination of both to develop the list.
89.20 The commissioner shall establish an advisory committee, comprising mental health
89.21 professional associations, counties, tribes, managed care organizations, state agencies,
89.22 and consumer organizations that shall advise the commissioner regarding development of
89.23 the diagnostic codes list. The commissioner shall annually notify providers of changes
89.24 to the list.

89.25 Sec. 2. Minnesota Statutes 2010, section 245.462, subdivision 20, is amended to read:

89.26 Subd. 20. **Mental illness.** (a) "Mental illness" means an organic disorder of the
89.27 brain or a clinically significant disorder of thought, mood, perception, orientation,
89.28 memory, or behavior that is ~~listed in the clinical manual of the International Classification~~
89.29 ~~of Diseases (ICD-9-CM), current edition, code range 290.0 to 302.99 or 306.0 to 316.0~~
89.30 ~~or the corresponding code in the American Psychiatric Association's Diagnostic and~~
89.31 ~~Statistical Manual of Mental Disorders (DSM-MD), current edition, Axes I, II, or III~~
89.32 detailed in a diagnostic codes list published by the commissioner, and that seriously limits
89.33 a person's capacity to function in primary aspects of daily living such as personal relations,
89.34 living arrangements, work, and recreation.

90.1 (b) An "adult with acute mental illness" means an adult who has a mental illness that
90.2 is serious enough to require prompt intervention.

90.3 (c) For purposes of case management and community support services, a "person
90.4 with serious and persistent mental illness" means an adult who has a mental illness and
90.5 meets at least one of the following criteria:

90.6 (1) the adult has undergone two or more episodes of inpatient care for a mental
90.7 illness within the preceding 24 months;

90.8 (2) the adult has experienced a continuous psychiatric hospitalization or residential
90.9 treatment exceeding six months' duration within the preceding 12 months;

90.10 (3) the adult has been treated by a crisis team two or more times within the preceding
90.11 24 months;

90.12 (4) the adult:

90.13 (i) has a diagnosis of schizophrenia, bipolar disorder, major depression, or borderline
90.14 personality disorder;

90.15 (ii) indicates a significant impairment in functioning; and

90.16 (iii) has a written opinion from a mental health professional, in the last three years,
90.17 stating that the adult is reasonably likely to have future episodes requiring inpatient or
90.18 residential treatment, of a frequency described in clause (1) or (2), unless ongoing case
90.19 management or community support services are provided;

90.20 (5) the adult has, in the last three years, been committed by a court as a person
90.21 who is mentally ill under chapter 253B, or the adult's commitment has been stayed or
90.22 continued; or

90.23 (6) the adult (i) was eligible under clauses (1) to (5), but the specified time period
90.24 has expired or the adult was eligible as a child under section 245.4871, subdivision 6; and

90.25 (ii) has a written opinion from a mental health professional, in the last three years, stating
90.26 that the adult is reasonably likely to have future episodes requiring inpatient or residential
90.27 treatment, of a frequency described in clause (1) or (2), unless ongoing case management
90.28 or community support services are provided.

90.29 Sec. 3. Minnesota Statutes 2010, section 245.487, is amended by adding a subdivision
90.30 to read:

90.31 Subd. 7. **Diagnostic codes list.** By July 1, 2013, the commissioner of human
90.32 services shall develop a list of diagnostic codes to define the range of child and adult
90.33 mental illnesses for the statewide mental health system. The commissioner may use the
90.34 International Classification of Diseases (ICD); the American Psychiatric Association's
90.35 Diagnostic and Statistical Manual (DSM); or a combination of both to develop the list.

S.F. No. 1804, 1st Engrossment - 87th Legislative Session (2011-2012) [S1804-1]

91.1 The commissioner shall establish a time-limited advisory committee, comprising mental
91.2 health professional associations, counties, tribes, managed care organizations, state
91.3 agencies, and consumer organizations that shall advise the commissioner regarding
91.4 development of the diagnostic codes list. The commissioner shall annually notify
91.5 providers of changes to the list.

91.6 Sec. 4. Minnesota Statutes 2010, section 245.4871, subdivision 15, is amended to read:

91.7 Subd. 15. **Emotional disturbance.** "Emotional disturbance" means an organic
91.8 disorder of the brain or a clinically significant disorder of thought, mood, perception,
91.9 orientation, memory, or behavior that:

91.10 (1) ~~is listed in the clinical manual of the International Classification of Diseases~~
91.11 ~~(ICD-9-CM), current edition, code range 290.0 to 302.99 or 306.0 to 316.0 or the~~
91.12 ~~corresponding code in the American Psychiatric Association's Diagnostic and Statistical~~
91.13 ~~Manual of Mental Disorders (DSM-MD), current edition, Axes I, II, or III~~ detailed in a
91.14 diagnostic codes list published by the commissioner; and

91.15 (2) seriously limits a child's capacity to function in primary aspects of daily living
91.16 such as personal relations, living arrangements, work, school, and recreation.

91.17 "Emotional disturbance" is a generic term and is intended to reflect all categories
91.18 of disorder described in ~~DSM-MD, current edition~~ the clinical code list published by the
91.19 commissioner as "usually first evident in childhood or adolescence."

91.20 Sec. 5. Minnesota Statutes 2010, section 245.4932, subdivision 1, is amended to read:

91.21 Subdivision 1. **Collaborative responsibilities.** The children's mental health
91.22 collaborative shall have the following authority and responsibilities regarding federal
91.23 revenue enhancement:

91.24 (1) the collaborative must establish an integrated fund;

91.25 (2) the collaborative shall designate a lead county or other qualified entity as the
91.26 fiscal agency for reporting, claiming, and receiving payments;

91.27 (3) the collaborative or lead county may enter into subcontracts with other counties,
91.28 school districts, special education cooperatives, municipalities, and other public and
91.29 nonprofit entities for purposes of identifying and claiming eligible expenditures to enhance
91.30 federal reimbursement;

91.31 (4) the collaborative shall use any enhanced revenue attributable to the activities of
91.32 the collaborative, including administrative and service revenue, solely to provide mental
91.33 health services or to expand the operational target population. The lead county or other
91.34 qualified entity may not use enhanced federal revenue for any other purpose;

S.F. No. 1804, 1st Engrossment - 87th Legislative Session (2011-2012) [S1804-1]

92.1 ~~(5) the members of the collaborative must continue the base level of expenditures,~~
92.2 ~~as defined in section 245.492, subdivision 2, for services for children with emotional or~~
92.3 ~~behavioral disturbances and their families from any state, county, federal, or other public~~
92.4 ~~or private funding source which, in the absence of the new federal reimbursement earned~~
92.5 ~~under sections 245.491 to 245.495, would have been available for those services. The~~
92.6 ~~base year for purposes of this subdivision shall be the accounting period closest to state~~
92.7 ~~fiscal year 1993;~~

92.8 ~~(6)~~ (5) the collaborative or lead county must develop and maintain an accounting and
92.9 financial management system adequate to support all claims for federal reimbursement,
92.10 including a clear audit trail and any provisions specified in the contract with the
92.11 commissioner of human services;

92.12 ~~(7)~~ (6) the collaborative or its members may elect to pay the nonfederal share of the
92.13 medical assistance costs for services designated by the collaborative; and

92.14 ~~(8)~~ (7) the lead county or other qualified entity may not use federal funds or local
92.15 funds designated as matching for other federal funds to provide the nonfederal share of
92.16 medical assistance.

92.17 Sec. 6. Minnesota Statutes 2010, section 246.53, is amended by adding a subdivision
92.18 to read:

92.19 Subd. 4. **Exception from statute of limitations.** Any statute of limitations that
92.20 limits the commissioner in recovering the cost of care obligation incurred by a client or
92.21 former client shall not apply to any claim against an estate made under this section to
92.22 recover the cost of care.

92.23 Sec. 7. Minnesota Statutes 2011 Supplement, section 254B.04, subdivision 2a, is
92.24 amended to read:

92.25 Subd. 2a. **Eligibility for treatment in residential settings.** Notwithstanding
92.26 provisions of Minnesota Rules, part 9530.6622, subparts 5 and 6, related to an assessor's
92.27 discretion in making placements to residential treatment settings, a person eligible for
92.28 services under this section must score at level 4 on assessment dimensions related to
92.29 relapse, continued use, ~~and~~ or recovery environment in order to be assigned to services
92.30 with a room and board component reimbursed under this section.

92.31 Sec. 8. Minnesota Statutes 2010, section 256B.0625, subdivision 42, is amended to
92.32 read:

93.1 Subd. 42. **Mental health professional.** Notwithstanding Minnesota Rules, part
93.2 9505.0175, subpart 28, the definition of a mental health professional shall include a person
93.3 who is qualified as specified in section 245.462, subdivision 18, clauses ~~(5) and~~ (1) to (6);
93.4 or 245.4871, subdivision 27, clauses ~~(5) and~~ (1) to (6), for the purpose of this section and
93.5 Minnesota Rules, parts 9505.0170 to 9505.0475.

93.6 Sec. 9. Minnesota Statutes 2010, section 256F.13, subdivision 1, is amended to read:

93.7 Subdivision 1. **Federal revenue enhancement.** (a) The commissioner of human
93.8 services may enter into an agreement with one or more family services collaboratives
93.9 to enhance federal reimbursement under title IV-E of the Social Security Act and
93.10 federal administrative reimbursement under title XIX of the Social Security Act. The
93.11 commissioner may contract with the Department of Education for purposes of transferring
93.12 the federal reimbursement to the commissioner of education to be distributed to the
93.13 collaboratives according to clause (2). The commissioner shall have the following
93.14 authority and responsibilities regarding family services collaboratives:

93.15 (1) the commissioner shall submit amendments to state plans and seek waivers as
93.16 necessary to implement the provisions of this section;

93.17 (2) the commissioner shall pay the federal reimbursement earned under this
93.18 subdivision to each collaborative based on their earnings. Payments to collaboratives for
93.19 expenditures under this subdivision will only be made of federal earnings from services
93.20 provided by the collaborative;

93.21 (3) the commissioner shall review expenditures of family services collaboratives
93.22 using reports specified in the agreement with the collaborative to ensure ~~that the base level~~
93.23 ~~of expenditures is continued and~~ new federal reimbursement is used to expand education,
93.24 social, health, or health-related services to young children and their families;

93.25 ~~(4) the commissioner may reduce, suspend, or eliminate a family services~~
93.26 ~~collaborative's obligations to continue the base level of expenditures or expansion of~~
93.27 ~~services if the commissioner determines that one or more of the following conditions~~
93.28 ~~apply:~~

93.29 ~~(i) imposition of levy limits that significantly reduce available funds for social,~~
93.30 ~~health, or health-related services to families and children;~~

93.31 ~~(ii) reduction in the net tax capacity of the taxable property eligible to be taxed by~~
93.32 ~~the lead county or subcontractor that significantly reduces available funds for education,~~
93.33 ~~social, health, or health-related services to families and children;~~

93.34 ~~(iii) reduction in the number of children under age 19 in the county, collaborative~~
93.35 ~~service delivery area, subcontractor's district, or catchment area when compared to the~~

94.1 ~~number in the base year using the most recent data provided by the State Demographer's~~
94.2 ~~Office; or~~

94.3 ~~(iv) termination of the federal revenue earned under the family services collaborative~~
94.4 ~~agreement;~~

94.5 ~~(5)~~ (4) the commissioner shall not use the federal reimbursement earned under this
94.6 subdivision in determining the allocation or distribution of other funds to counties or
94.7 collaboratives;

94.8 ~~(6)~~ (5) the commissioner may suspend, reduce, or terminate the federal
94.9 reimbursement to a provider that does not meet the reporting or other requirements
94.10 of this subdivision;

94.11 ~~(7)~~ (6) the commissioner shall recover from the family services collaborative any
94.12 federal fiscal disallowances or sanctions for audit exceptions directly attributable to the
94.13 family services collaborative's actions in the integrated fund, or the proportional share if
94.14 federal fiscal disallowances or sanctions are based on a statewide random sample; and

94.15 ~~(8)~~ (7) the commissioner shall establish criteria for the family services collaborative
94.16 for the accounting and financial management system that will support claims for federal
94.17 reimbursement.

94.18 (b) The family services collaborative shall have the following authority and
94.19 responsibilities regarding federal revenue enhancement:

94.20 (1) the family services collaborative shall be the party with which the commissioner
94.21 contracts. A lead county shall be designated as the fiscal agency for reporting, claiming,
94.22 and receiving payments;

94.23 (2) the family services collaboratives may enter into subcontracts with other
94.24 counties, school districts, special education cooperatives, municipalities, and other public
94.25 and nonprofit entities for purposes of identifying and claiming eligible expenditures to
94.26 enhance federal reimbursement, or to expand education, social, health, or health-related
94.27 services to families and children;

94.28 (3) the family services collaborative must use all new federal reimbursement
94.29 resulting from federal revenue enhancement to expand expenditures for education, social,
94.30 health, or health-related services to families and children beyond the base level, ~~except~~
94.31 ~~as provided in paragraph (a), clause (4);~~

94.32 (4) the family services collaborative must ensure that expenditures submitted for
94.33 federal reimbursement are not made from federal funds or funds used to match other
94.34 federal funds. Notwithstanding section 256B.19, subdivision 1, for the purposes of family
94.35 services collaborative expenditures under agreement with the department, the nonfederal

95.1 share of costs shall be provided by the family services collaborative from sources other
95.2 than federal funds or funds used to match other federal funds;

95.3 (5) the family services collaborative must develop and maintain an accounting and
95.4 financial management system adequate to support all claims for federal reimbursement,
95.5 including a clear audit trail and any provisions specified in the agreement; and

95.6 (6) the family services collaborative shall submit an annual report to the
95.7 commissioner as specified in the agreement.

95.8 Sec. 10. **TERMINOLOGY AUDIT.**

95.9 The commissioner of human services shall collaborate with individuals with
95.10 disabilities, families, advocates, and other governmental agencies to solicit feedback and
95.11 identify inappropriate and insensitive terminology relating to individuals with disabilities,
95.12 conduct a comprehensive audit of the placement of this terminology in Minnesota Statutes
95.13 and Minnesota Rules, and make recommendations for changes to the 2013 legislature
95.14 on the repeal and replacement of this terminology with more appropriate and sensitive
95.15 terminology.

95.16 **ARTICLE 5**

95.17 **HEALTH CARE**

95.18 Section 1. Minnesota Statutes 2011 Supplement, section 125A.21, subdivision 7,
95.19 is amended to read:

95.20 Subd. 7. **District disclosure of information.** A school district may disclose
95.21 information contained in a student's individualized education program, consistent with
95.22 section 13.32, subdivision 3, paragraph (a), and Code of Federal Regulations, title 34,
95.23 parts 99 and 300; including records of the student's diagnosis and treatment, to a health
95.24 plan company only with the signed and dated consent of the student's parent, or other
95.25 legally authorized individual, ~~including consent that the parent or legal representative gave~~
95.26 ~~as part of the application process for MinnesotaCare or medical assistance under section~~
95.27 ~~256B.08, subdivision 1.~~ The school district shall disclose only that information necessary
95.28 for the health plan company to decide matters of coverage and payment. A health plan
95.29 company may use the information only for making decisions regarding coverage and
95.30 payment, and for any other use permitted by law.

95.31 Sec. 2. Minnesota Statutes 2010, section 256B.04, subdivision 14, is amended to read:

95.32 Subd. 14. **Competitive bidding.** (a) When determined to be effective, economical,
95.33 and feasible, the commissioner may utilize volume purchase through competitive bidding

96.1 and negotiation under the provisions of chapter 16C, to provide items under the medical
96.2 assistance program including but not limited to the following:

96.3 (1) eyeglasses;

96.4 (2) oxygen. The commissioner shall provide for oxygen needed in an emergency
96.5 situation on a short-term basis, until the vendor can obtain the necessary supply from
96.6 the contract dealer;

96.7 (3) hearing aids and supplies; and

96.8 (4) durable medical equipment, including but not limited to:

96.9 (i) hospital beds;

96.10 (ii) commodes;

96.11 (iii) glide-about chairs;

96.12 (iv) patient lift apparatus;

96.13 (v) wheelchairs and accessories;

96.14 (vi) oxygen administration equipment;

96.15 (vii) respiratory therapy equipment;

96.16 (viii) electronic diagnostic, therapeutic and life-support systems;

96.17 (5) nonemergency medical transportation level of need determinations, disbursement
96.18 of public transportation passes and tokens, and volunteer and recipient mileage and
96.19 parking reimbursements; and

96.20 (6) drugs.

96.21 (b) Rate changes and recipient cost-sharing under this chapter and chapters 256D and
96.22 256L do not affect contract payments under this subdivision unless specifically identified.

96.23 (c) The commissioner may not utilize volume purchase through competitive bidding
96.24 and negotiation for special transportation services under the provisions of chapter 16C.

96.25 Sec. 3. Minnesota Statutes 2011 Supplement, section 256B.056, subdivision 3, is
96.26 amended to read:

96.27 Subd. 3. **Asset limitations for individuals and families.** (a) To be eligible for
96.28 medical assistance, a person must not individually own more than \$3,000 in assets, or if a
96.29 member of a household with two family members, husband and wife, or parent and child,
96.30 the household must not own more than \$6,000 in assets, plus \$200 for each additional
96.31 legal dependent. In addition to these maximum amounts, an eligible individual or family
96.32 may accrue interest on these amounts, but they must be reduced to the maximum at the
96.33 time of an eligibility redetermination. The accumulation of the clothing and personal
96.34 needs allowance according to section 256B.35 must also be reduced to the maximum at
96.35 the time of the eligibility redetermination. The value of assets that are not considered in

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97.1 determining eligibility for medical assistance is the value of those assets excluded under
97.2 the supplemental security income program for aged, blind, and disabled persons, with
97.3 the following exceptions:

97.4 (1) household goods and personal effects are not considered;

97.5 (2) capital and operating assets of a trade or business that the local agency determines
97.6 are necessary to the person's ability to earn an income are not considered;

97.7 (3) motor vehicles are excluded to the same extent excluded by the supplemental
97.8 security income program;

97.9 (4) assets designated as burial expenses are excluded to the same extent excluded by
97.10 the supplemental security income program. Burial expenses funded by annuity contracts
97.11 or life insurance policies must irrevocably designate the individual's estate as contingent
97.12 beneficiary to the extent proceeds are not used for payment of selected burial expenses; ~~and~~

97.13 (5) for a person who no longer qualifies as an employed person with a disability due
97.14 to loss of earnings, assets allowed while eligible for medical assistance under section
97.15 256B.057, subdivision 9, are not considered for 12 months, beginning with the first month
97.16 of ineligibility as an employed person with a disability, to the extent that the person's total
97.17 assets remain within the allowed limits of section 256B.057, subdivision 9, paragraph
97.18 (d); and

97.19 (6) effective July 1, 2009, certain assets owned by American Indians are excluded as
97.20 required by section 5006 of the American Recovery and Reinvestment Act of 2009, Public
97.21 Law 111-5. For purposes of this clause, an American Indian is any person who meets the
97.22 definition of Indian according to Code of Federal Regulations, title 42, section 447.50.

97.23 (b) No asset limit shall apply to persons eligible under section 256B.055, subdivision
97.24 15.

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

97.26 Sec. 4. Minnesota Statutes 2010, section 256B.056, subdivision 3c, is amended to read:

97.27 Subd. 3c. **Asset limitations for families and children.** A household of two or more
97.28 persons must not own more than \$20,000 in total net assets, and a household of one
97.29 person must not own more than \$10,000 in total net assets. In addition to these maximum
97.30 amounts, an eligible individual or family may accrue interest on these amounts, but they
97.31 must be reduced to the maximum at the time of an eligibility redetermination. The value of
97.32 assets that are not considered in determining eligibility for medical assistance for families
97.33 and children is the value of those assets excluded under the AFDC state plan as of July 16,
97.34 1996, as required by the Personal Responsibility and Work Opportunity Reconciliation
97.35 Act of 1996 (PRWORA), Public Law 104-193, with the following exceptions:

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- 98.1 (1) household goods and personal effects are not considered;
- 98.2 (2) capital and operating assets of a trade or business up to \$200,000 are not
98.3 considered, except that a bank account that contains personal income or assets, or is used to
98.4 pay personal expenses, is not considered a capital or operating asset of a trade or business;
- 98.5 (3) one motor vehicle is excluded for each person of legal driving age who is
98.6 employed or seeking employment;
- 98.7 (4) assets designated as burial expenses are excluded to the same extent they are
98.8 excluded by the Supplemental Security Income program;
- 98.9 (5) court-ordered settlements up to \$10,000 are not considered;
- 98.10 (6) individual retirement accounts and funds are not considered; ~~and~~
- 98.11 (7) assets owned by children are not considered; ~~and~~
- 98.12 (8) effective July 1, 2009, certain assets owned by American Indians are excluded, as
98.13 required by section 5006 of the American Recovery and Reinvestment Act of 2009, Public
98.14 Law 111-5. For purposes of this clause, an American Indian is any person who meets the
98.15 definition of Indian according to Code of Federal Regulations, title 42, section 447.50.
- 98.16 The assets specified in clause (2) must be disclosed to the local agency at the time of
98.17 application and at the time of an eligibility redetermination, and must be verified upon
98.18 request of the local agency.

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

98.20 Sec. 5. Minnesota Statutes 2011 Supplement, section 256B.057, subdivision 9, is
98.21 amended to read:

98.22 Subd. 9. **Employed persons with disabilities.** (a) Medical assistance may be paid
98.23 for a person who is employed and who:

98.24 (1) but for excess earnings or assets, meets the definition of disabled under the
98.25 Supplemental Security Income program;

98.26 (2) is at least 16 but less than 65 years of age;

98.27 (3) meets the asset limits in paragraph (d); and

98.28 (4) pays a premium and other obligations under paragraph (e).

98.29 (b) For purposes of eligibility, there is a \$65 earned income disregard. To be eligible
98.30 for medical assistance under this subdivision, a person must have more than \$65 of earned
98.31 income. Earned income must have Medicare, Social Security, and applicable state and
98.32 federal taxes withheld. The person must document earned income tax withholding. Any
98.33 spousal income or assets shall be disregarded for purposes of eligibility and premium
98.34 determinations.

99.1 (c) After the month of enrollment, a person enrolled in medical assistance under
99.2 this subdivision who:

99.3 (1) is temporarily unable to work and without receipt of earned income due to a
99.4 medical condition, as verified by a physician; or

99.5 (2) loses employment for reasons not attributable to the enrollee, and is without
99.6 receipt of earned income may retain eligibility for up to four consecutive months after the
99.7 month of job loss. To receive a four-month extension, enrollees must verify the medical
99.8 condition or provide notification of job loss. All other eligibility requirements must be met
99.9 and the enrollee must pay all calculated premium costs for continued eligibility.

99.10 (d) For purposes of determining eligibility under this subdivision, a person's assets
99.11 must not exceed \$20,000, excluding:

99.12 (1) all assets excluded under section 256B.056;

99.13 (2) retirement accounts, including individual accounts, 401(k) plans, 403(b) plans,
99.14 Keogh plans, and pension plans;

99.15 (3) medical expense accounts set up through the person's employer; and

99.16 (4) spousal assets, including spouse's share of jointly held assets.

99.17 (e) All enrollees must pay a premium to be eligible for medical assistance under this
99.18 subdivision, except as provided under ~~section 256.01, subdivision 18b~~ clause (5).

99.19 (1) An enrollee must pay the greater of a \$65 premium or the premium calculated
99.20 based on the person's gross earned and unearned income and the applicable family size
99.21 using a sliding fee scale established by the commissioner, which begins at one percent of
99.22 income at 100 percent of the federal poverty guidelines and increases to 7.5 percent of
99.23 income for those with incomes at or above 300 percent of the federal poverty guidelines.

99.24 (2) Annual adjustments in the premium schedule based upon changes in the federal
99.25 poverty guidelines shall be effective for premiums due in July of each year.

99.26 (3) All enrollees who receive unearned income must pay five percent of unearned
99.27 income in addition to the premium amount, except as provided under ~~section 256.01,~~
99.28 ~~subdivision 18b~~ clause (5).

99.29 (4) Increases in benefits under title II of the Social Security Act shall not be counted
99.30 as income for purposes of this subdivision until July 1 of each year.

99.31 (5) Effective July 1, 2009, American Indians are exempt from paying premiums as
99.32 required by section 5006 of the American Recovery and Reinvestment Act of 2009, Public
99.33 Law 111-5. For purposes of this clause, an American Indian is any person who meets the
99.34 definition of Indian according to Code of Federal Regulations, title 42, section 447.50.

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100.1 (f) A person's eligibility and premium shall be determined by the local county
100.2 agency. Premiums must be paid to the commissioner. All premiums are dedicated to
100.3 the commissioner.

100.4 (g) Any required premium shall be determined at application and redetermined at
100.5 the enrollee's six-month income review or when a change in income or household size is
100.6 reported. Enrollees must report any change in income or household size within ten days
100.7 of when the change occurs. A decreased premium resulting from a reported change in
100.8 income or household size shall be effective the first day of the next available billing month
100.9 after the change is reported. Except for changes occurring from annual cost-of-living
100.10 increases, a change resulting in an increased premium shall not affect the premium amount
100.11 until the next six-month review.

100.12 (h) Premium payment is due upon notification from the commissioner of the
100.13 premium amount required. Premiums may be paid in installments at the discretion of
100.14 the commissioner.

100.15 (i) Nonpayment of the premium shall result in denial or termination of medical
100.16 assistance unless the person demonstrates good cause for nonpayment. Good cause exists
100.17 if the requirements specified in Minnesota Rules, part 9506.0040, subpart 7, items B to
100.18 D, are met. Except when an installment agreement is accepted by the commissioner,
100.19 all persons disenrolled for nonpayment of a premium must pay any past due premiums
100.20 as well as current premiums due prior to being reenrolled. Nonpayment shall include
100.21 payment with a returned, refused, or dishonored instrument. The commissioner may
100.22 require a guaranteed form of payment as the only means to replace a returned, refused,
100.23 or dishonored instrument.

100.24 (j) The commissioner shall notify enrollees annually beginning at least 24 months
100.25 before the person's 65th birthday of the medical assistance eligibility rules affecting
100.26 income, assets, and treatment of a spouse's income and assets that will be applied upon
100.27 reaching age 65.

100.28 (k) For enrollees whose income does not exceed 200 percent of the federal poverty
100.29 guidelines and who are also enrolled in Medicare, the commissioner shall reimburse
100.30 the enrollee for Medicare part B premiums under section 256B.0625, subdivision 15,
100.31 paragraph (a).

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

100.33 Sec. 6. Minnesota Statutes 2010, section 256B.0595, subdivision 2, is amended to read:

100.34 Subd. 2. **Period of ineligibility for long-term care services.** (a) For any
100.35 uncompensated transfer occurring on or before August 10, 1993, the number of months

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101.1 of ineligibility for long-term care services shall be the lesser of 30 months, or the
101.2 uncompensated transfer amount divided by the average medical assistance rate for nursing
101.3 facility services in the state in effect on the date of application. The amount used to
101.4 calculate the average medical assistance payment rate shall be adjusted each July 1 to
101.5 reflect payment rates for the previous calendar year. The period of ineligibility begins
101.6 with the month in which the assets were transferred. If the transfer was not reported to
101.7 the local agency at the time of application, and the applicant received long-term care
101.8 services during what would have been the period of ineligibility if the transfer had been
101.9 reported, a cause of action exists against the transferee for the cost of long-term care
101.10 services provided during the period of ineligibility, or for the uncompensated amount of
101.11 the transfer, whichever is less. The uncompensated transfer amount is the fair market
101.12 value of the asset at the time it was given away, sold, or disposed of, less the amount of
101.13 compensation received.

101.14 (b) For uncompensated transfers made after August 10, 1993, the number of months
101.15 of ineligibility for long-term care services shall be the total uncompensated value of the
101.16 resources transferred divided by the average medical assistance rate for nursing facility
101.17 services in the state in effect on the date of application. The amount used to calculate
101.18 the average medical assistance payment rate shall be adjusted each July 1 to reflect
101.19 payment rates for the previous calendar year. The period of ineligibility begins with the
101.20 first day of the month after the month in which the assets were transferred except that
101.21 if one or more uncompensated transfers are made during a period of ineligibility, the
101.22 total assets transferred during the ineligibility period shall be combined and a penalty
101.23 period calculated to begin on the first day of the month after the month in which the first
101.24 uncompensated transfer was made. If the transfer was reported to the local agency after
101.25 the date that advance notice of a period of ineligibility that affects the next month could
101.26 be provided to the recipient and the recipient received medical assistance services or the
101.27 transfer was not reported to the local agency, and the applicant or recipient received
101.28 medical assistance services during what would have been the period of ineligibility if
101.29 the transfer had been reported, a cause of action exists against the transferee for that
101.30 portion of long-term care services provided during the period of ineligibility, or for the
101.31 uncompensated amount of the transfer, whichever is less. The uncompensated transfer
101.32 amount is the fair market value of the asset at the time it was given away, sold, or disposed
101.33 of, less the amount of compensation received. Effective for transfers made on or after
101.34 March 1, 1996, involving persons who apply for medical assistance on or after April 13,
101.35 1996, no cause of action exists for a transfer unless:

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102.1 (1) the transferee knew or should have known that the transfer was being made by a
102.2 person who was a resident of a long-term care facility or was receiving that level of care in
102.3 the community at the time of the transfer;

102.4 (2) the transferee knew or should have known that the transfer was being made to
102.5 assist the person to qualify for or retain medical assistance eligibility; or

102.6 (3) the transferee actively solicited the transfer with intent to assist the person to
102.7 qualify for or retain eligibility for medical assistance.

102.8 (c) For uncompensated transfers made on or after February 8, 2006, the period
102.9 of ineligibility:

102.10 (1) for uncompensated transfers by or on behalf of individuals receiving medical
102.11 assistance payment of long-term care services, begins the first day of the month following
102.12 advance notice of the period of ineligibility, but no later than the first day of the month
102.13 that follows three full calendar months from the date of the report or discovery of the
102.14 transfer; or

102.15 (2) for uncompensated transfers by individuals requesting medical assistance
102.16 payment of long-term care services, begins the date on which the individual is eligible
102.17 for medical assistance under the Medicaid state plan and would otherwise be receiving
102.18 long-term care services based on an approved application for such care but for the period
102.19 of ineligibility resulting from the uncompensated transfer; and

102.20 (3) cannot begin during any other period of ineligibility.

102.21 (d) If a calculation of a period of ineligibility results in a partial month, payments for
102.22 long-term care services shall be reduced in an amount equal to the fraction.

102.23 (e) In the case of multiple fractional transfers of assets in more than one month for
102.24 less than fair market value on or after February 8, 2006, the period of ineligibility is
102.25 calculated by treating the total, cumulative, uncompensated value of all assets transferred
102.26 during all months on or after February 8, 2006, as one transfer.

102.27 (f) A period of ineligibility established under paragraph (c) may be eliminated if
102.28 all of the assets transferred for less than fair market value used to calculate the period of
102.29 ineligibility, or cash equal to the value of the assets at the time of the transfer, are returned
102.30 ~~within 12 months after the date the period of ineligibility began.~~ A period of ineligibility
102.31 must not be adjusted if less than the full amount of the transferred assets or the full cash
102.32 value of the transferred assets are returned.

102.33 Sec. 7. Minnesota Statutes 2010, section 256B.0625, subdivision 13, is amended to
102.34 read:

103.1 Subd. 13. **Drugs.** (a) Medical assistance covers drugs, except for fertility drugs
103.2 when specifically used to enhance fertility, if prescribed by a licensed practitioner and
103.3 dispensed by a licensed pharmacist, by a physician enrolled in the medical assistance
103.4 program as a dispensing physician, or by a physician, physician assistant, or a nurse
103.5 practitioner employed by or under contract with a community health board as defined in
103.6 section 145A.02, subdivision 5, for the purposes of communicable disease control.

103.7 (b) The dispensed quantity of a prescription drug must not exceed a 34-day supply,
103.8 unless authorized by the commissioner.

103.9 (c) For the purpose of this subdivision and subdivision 13d, an "active
103.10 pharmaceutical ingredient" is defined as a substance that is represented for use in a drug
103.11 and when used in the manufacturing, processing, or packaging of a drug, becomes an
103.12 active ingredient of the drug product. An "excipient" is defined as an inert substance
103.13 used as a diluent or vehicle for a drug. The commissioner shall establish a list of active
103.14 pharmaceutical ingredients and excipients which are included in the medical assistance
103.15 formulary. Medical assistance covers selected active pharmaceutical ingredients and
103.16 excipients used in compounded prescriptions when the compounded combination is
103.17 specifically approved by the commissioner or when a commercially available product:

103.18 (1) is not a therapeutic option for the patient;

103.19 (2) does not exist in the same combination of active ingredients in the same strengths
103.20 as the compounded prescription; and

103.21 (3) cannot be used in place of the active pharmaceutical ingredient in the
103.22 compounded prescription.

103.23 ~~(e)~~ (d) Medical assistance covers the following over-the-counter drugs when
103.24 prescribed by a licensed practitioner or by a licensed pharmacist who meets standards
103.25 established by the commissioner, in consultation with the board of pharmacy: antacids,
103.26 acetaminophen, family planning products, aspirin, insulin, products for the treatment of
103.27 lice, vitamins for adults with documented vitamin deficiencies, vitamins for children
103.28 under the age of seven and pregnant or nursing women, and any other over-the-counter
103.29 drug identified by the commissioner, in consultation with the formulary committee, as
103.30 necessary, appropriate, and cost-effective for the treatment of certain specified chronic
103.31 diseases, conditions, or disorders, and this determination shall not be subject to the
103.32 requirements of chapter 14. A pharmacist may prescribe over-the-counter medications as
103.33 provided under this paragraph for purposes of receiving reimbursement under Medicaid.
103.34 When prescribing over-the-counter drugs under this paragraph, licensed pharmacists must
103.35 consult with the recipient to determine necessity, provide drug counseling, review drug
103.36 therapy for potential adverse interactions, and make referrals as needed to other health care

104.1 professionals. Over-the-counter medications must be dispensed in a quantity that is the
104.2 lower of: (1) the number of dosage units contained in the manufacturer's original package;
104.3 and (2) the number of dosage units required to complete the patient's course of therapy.

104.4 ~~(d)~~ (e) Effective January 1, 2006, medical assistance shall not cover drugs that
104.5 are coverable under Medicare Part D as defined in the Medicare Prescription Drug,
104.6 Improvement, and Modernization Act of 2003, Public Law 108-173, section 1860D-2(e),
104.7 for individuals eligible for drug coverage as defined in the Medicare Prescription
104.8 Drug, Improvement, and Modernization Act of 2003, Public Law 108-173, section
104.9 1860D-1(a)(3)(A). For these individuals, medical assistance may cover drugs from the
104.10 drug classes listed in United States Code, title 42, section 1396r-8(d)(2), subject to this
104.11 subdivision and subdivisions 13a to 13g, except that drugs listed in United States Code,
104.12 title 42, section 1396r-8(d)(2)(E), shall not be covered.

104.13 Sec. 8. Minnesota Statutes 2010, section 256B.0625, subdivision 13d, is amended to
104.14 read:

104.15 Subd. 13d. **Drug formulary.** (a) The commissioner shall establish a drug
104.16 formulary. Its establishment and publication shall not be subject to the requirements of the
104.17 Administrative Procedure Act, but the Formulary Committee shall review and comment
104.18 on the formulary contents.

104.19 (b) The formulary shall not include:

104.20 (1) drugs, active pharmaceutical ingredients, or products for which there is no
104.21 federal funding;

104.22 (2) over-the-counter drugs, except as provided in subdivision 13;

104.23 (3) drugs or active pharmaceutical ingredients used for weight loss, except that
104.24 medically necessary lipase inhibitors may be covered for a recipient with type II diabetes;

104.25 (4) drugs or active pharmaceutical ingredients when used for the treatment of
104.26 impotence or erectile dysfunction;

104.27 (5) drugs or active pharmaceutical ingredients for which medical value has not
104.28 been established; and

104.29 (6) drugs from manufacturers who have not signed a rebate agreement with the
104.30 Department of Health and Human Services pursuant to section 1927 of title XIX of the
104.31 Social Security Act.

104.32 (c) If a single-source drug used by at least two percent of the fee-for-service
104.33 medical assistance recipients is removed from the formulary due to the failure of the
104.34 manufacturer to sign a rebate agreement with the Department of Health and Human
104.35 Services, the commissioner shall notify prescribing practitioners within 30 days of

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105.1 receiving notification from the Centers for Medicare and Medicaid Services (CMS) that a
105.2 rebate agreement was not signed.

105.3 Sec. 9. Minnesota Statutes 2011 Supplement, section 256B.0625, subdivision 13e,
105.4 is amended to read:

105.5 Subd. 13e. **Payment rates.** (a) The basis for determining the amount of payment
105.6 shall be the lower of the actual acquisition costs of the drugs or the maximum allowable
105.7 cost by the commissioner plus the fixed dispensing fee; or the usual and customary price
105.8 charged to the public. The amount of payment basis must be reduced to reflect all discount
105.9 amounts applied to the charge by any provider/insurer agreement or contract for submitted
105.10 charges to medical assistance programs. The net submitted charge may not be greater
105.11 than the patient liability for the service. The pharmacy dispensing fee shall be \$3.65,
105.12 except that the dispensing fee for intravenous solutions which must be compounded by the
105.13 pharmacist shall be \$8 per bag, \$14 per bag for cancer chemotherapy products, and \$30
105.14 per bag for total parenteral nutritional products dispensed in one liter quantities, or \$44 per
105.15 bag for total parenteral nutritional products dispensed in quantities greater than one liter.
105.16 Actual acquisition cost includes quantity and other special discounts except time and cash
105.17 discounts. The actual acquisition cost of a drug shall be estimated by the commissioner at
105.18 wholesale acquisition cost plus four percent for independently owned pharmacies located
105.19 in a designated rural area within Minnesota, and at wholesale acquisition cost plus two
105.20 percent for all other pharmacies. A pharmacy is "independently owned" if it is one
105.21 of four or fewer pharmacies under the same ownership nationally. A "designated rural
105.22 area" means an area defined as a small rural area or isolated rural area according to the
105.23 four-category classification of the Rural Urban Commuting Area system developed for the
105.24 United States Health Resources and Services Administration. Wholesale acquisition cost
105.25 is defined as the manufacturer's list price for a drug or biological to wholesalers or direct
105.26 purchasers in the United States, not including prompt pay or other discounts, rebates, or
105.27 reductions in price, for the most recent month for which information is available, as
105.28 reported in wholesale price guides or other publications of drug or biological pricing data.
105.29 The maximum allowable cost of a multisource drug may be set by the commissioner and it
105.30 shall be comparable to, but no higher than, the maximum amount paid by other third-party
105.31 payors in this state who have maximum allowable cost programs. Establishment of the
105.32 amount of payment for drugs shall not be subject to the requirements of the Administrative
105.33 Procedure Act.

105.34 (b) An additional dispensing fee of \$.30 may be added to the dispensing fee paid
105.35 to pharmacists for legend drug prescriptions dispensed to residents of long-term care

106.1 facilities when a unit dose blister card system, approved by the department, is used. Under
106.2 this type of dispensing system, the pharmacist must dispense a 30-day supply of drug.
106.3 The National Drug Code (NDC) from the drug container used to fill the blister card must
106.4 be identified on the claim to the department. The unit dose blister card containing the
106.5 drug must meet the packaging standards set forth in Minnesota Rules, part 6800.2700,
106.6 that govern the return of unused drugs to the pharmacy for reuse. The pharmacy provider
106.7 will be required to credit the department for the actual acquisition cost of all unused
106.8 drugs that are eligible for reuse. ~~Over-the-counter medications must be dispensed in the~~
106.9 ~~manufacturer's unopened package.~~ The commissioner may permit the drug clozapine to be
106.10 dispensed in a quantity that is less than a 30-day supply.

106.11 (c) Whenever a maximum allowable cost has been set for a multisource drug,
106.12 payment shall be the lower of the usual and customary price charged to the public or the
106.13 maximum allowable cost established by the commissioner unless prior authorization
106.14 for the brand name product has been granted according to the criteria established by
106.15 the Drug Formulary Committee as required by subdivision 13f, paragraph (a), and the
106.16 prescriber has indicated "dispense as written" on the prescription in a manner consistent
106.17 with section 151.21, subdivision 2.

106.18 (d) The basis for determining the amount of payment for drugs administered in an
106.19 outpatient setting shall be the lower of the usual and customary cost submitted by the
106.20 provider or 106 percent of the average sales price as determined by the United States
106.21 Department of Health and Human Services pursuant to title XVIII, section 1847a of the
106.22 federal Social Security Act. If average sales price is unavailable, the amount of payment
106.23 must be lower of the usual and customary cost submitted by the provider or the wholesale
106.24 acquisition cost.

106.25 (e) The commissioner may negotiate lower reimbursement rates for specialty
106.26 pharmacy products than the rates specified in paragraph (a). The commissioner may
106.27 require individuals enrolled in the health care programs administered by the department
106.28 to obtain specialty pharmacy products from providers with whom the commissioner has
106.29 negotiated lower reimbursement rates. Specialty pharmacy products are defined as those
106.30 used by a small number of recipients or recipients with complex and chronic diseases
106.31 that require expensive and challenging drug regimens. Examples of these conditions
106.32 include, but are not limited to: multiple sclerosis, HIV/AIDS, transplantation, hepatitis
106.33 C, growth hormone deficiency, Crohn's Disease, rheumatoid arthritis, and certain forms
106.34 of cancer. Specialty pharmaceutical products include injectable and infusion therapies,
106.35 biotechnology drugs, antihemophilic factor products, high-cost therapies, and therapies
106.36 that require complex care. The commissioner shall consult with the formulary committee

107.1 to develop a list of specialty pharmacy products subject to this paragraph. In consulting
107.2 with the formulary committee in developing this list, the commissioner shall take into
107.3 consideration the population served by specialty pharmacy products, the current delivery
107.4 system and standard of care in the state, and access to care issues. The commissioner shall
107.5 have the discretion to adjust the reimbursement rate to prevent access to care issues.

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

107.8 Sec. 10. Minnesota Statutes 2011 Supplement, section 256B.0625, subdivision 13h,
107.9 is amended to read:

107.10 Subd. 13h. **Medication therapy management services.** (a) Medical assistance
107.11 and general assistance medical care cover medication therapy management services for
107.12 a recipient taking three or more prescriptions to treat or prevent one or more chronic
107.13 medical conditions; a recipient with a drug therapy problem that is identified by the
107.14 commissioner or identified by a pharmacist and approved by the commissioner; or prior
107.15 authorized by the commissioner that has resulted or is likely to result in significant
107.16 nondrug program costs. The commissioner may cover medical therapy management
107.17 services under MinnesotaCare if the commissioner determines this is cost-effective. For
107.18 purposes of this subdivision, "medication therapy management" means the provision
107.19 of the following pharmaceutical care services by a licensed pharmacist to optimize the
107.20 therapeutic outcomes of the patient's medications:

107.21 (1) performing or obtaining necessary assessments of the patient's health status;

107.22 (2) formulating a medication treatment plan;

107.23 (3) monitoring and evaluating the patient's response to therapy, including safety
107.24 and effectiveness;

107.25 (4) performing a comprehensive medication review to identify, resolve, and prevent
107.26 medication-related problems, including adverse drug events;

107.27 (5) documenting the care delivered and communicating essential information to
107.28 the patient's other primary care providers;

107.29 (6) providing verbal education and training designed to enhance patient
107.30 understanding and appropriate use of the patient's medications;

107.31 (7) providing information, support services, and resources designed to enhance
107.32 patient adherence with the patient's therapeutic regimens; and

107.33 (8) coordinating and integrating medication therapy management services within the
107.34 broader health care management services being provided to the patient.

108.1 Nothing in this subdivision shall be construed to expand or modify the scope of practice of
108.2 the pharmacist as defined in section 151.01, subdivision 27.

108.3 (b) To be eligible for reimbursement for services under this subdivision, a pharmacist
108.4 must meet the following requirements:

108.5 (1) have a valid license issued ~~under chapter 151~~ by the Board of Pharmacy of the
108.6 state in which the medication therapy management service is being performed;

108.7 (2) have graduated from an accredited college of pharmacy on or after May 1996, or
108.8 completed a structured and comprehensive education program approved by the Board of
108.9 Pharmacy and the American Council of Pharmaceutical Education for the provision and
108.10 documentation of pharmaceutical care management services that has both clinical and
108.11 didactic elements;

108.12 (3) be practicing in an ambulatory care setting as part of a multidisciplinary team or
108.13 have developed a structured patient care process that is offered in a private or semiprivate
108.14 patient care area that is separate from the commercial business that also occurs in the
108.15 setting, or in home settings, including long-term care settings, group homes, and facilities
108.16 providing assisted living services, but excluding skilled nursing facilities; and

108.17 (4) make use of an electronic patient record system that meets state standards.

108.18 (c) For purposes of reimbursement for medication therapy management services,
108.19 the commissioner may enroll individual pharmacists as medical assistance and general
108.20 assistance medical care providers. The commissioner may also establish contact
108.21 requirements between the pharmacist and recipient, including limiting the number of
108.22 reimbursable consultations per recipient.

108.23 (d) If there are no pharmacists who meet the requirements of paragraph (b) practicing
108.24 within a reasonable geographic distance of the patient, a pharmacist who meets the
108.25 requirements may provide the services via two-way interactive video. Reimbursement
108.26 shall be at the same rates and under the same conditions that would otherwise apply to
108.27 the services provided. To qualify for reimbursement under this paragraph, the pharmacist
108.28 providing the services must meet the requirements of paragraph (b), and must be located
108.29 within an ambulatory care setting approved by the commissioner. The patient must also
108.30 be located within an ambulatory care setting approved by the commissioner. Services
108.31 provided under this paragraph may not be transmitted into the patient's residence.

108.32 (e) The commissioner shall establish a pilot project for an intensive medication
108.33 therapy management program for patients identified by the commissioner with multiple
108.34 chronic conditions and a high number of medications who are at high risk of preventable
108.35 hospitalizations, emergency room use, medication complications, and suboptimal
108.36 treatment outcomes due to medication-related problems. For purposes of the pilot

109.1 project, medication therapy management services may be provided in a patient's home
109.2 or community setting, in addition to other authorized settings. The commissioner may
109.3 waive existing payment policies and establish special payment rates for the pilot project.
109.4 The pilot project must be designed to produce a net savings to the state compared to the
109.5 estimated costs that would otherwise be incurred for similar patients without the program.
109.6 The pilot project must begin by January 1, 2010, and end June 30, 2012.

109.7 Sec. 11. Minnesota Statutes 2011 Supplement, section 256B.0625, subdivision 14,
109.8 is amended to read:

109.9 Subd. 14. **Diagnostic, screening, and preventive services.** (a) Medical assistance
109.10 covers diagnostic, screening, and preventive services.

109.11 (b) "Preventive services" include services related to pregnancy, including:

109.12 (1) services for those conditions which may complicate a pregnancy and which may
109.13 be available to a pregnant woman determined to be at risk of poor pregnancy outcome;

109.14 (2) prenatal HIV risk assessment, education, counseling, and testing; and

109.15 (3) alcohol abuse assessment, education, and counseling on the effects of alcohol
109.16 usage while pregnant. Preventive services available to a woman at risk of poor pregnancy
109.17 outcome may differ in an amount, duration, or scope from those available to other
109.18 individuals eligible for medical assistance.

109.19 (c) "Screening services" include, but are not limited to, blood lead tests.

109.20 (d) The commissioner shall encourage, at the time of the child and teen checkup or
109.21 at an episodic care visit, the primary care health care provider to perform primary caries
109.22 preventive services. Primary caries preventive services include, at a minimum:

109.23 (1) a general visual examination of the child's mouth without using probes or other
109.24 dental equipment or taking radiographs;

109.25 (2) a risk assessment using the factors established by the American Academies
109.26 of Pediatrics and Pediatric Dentistry; and

109.27 (3) the application of a fluoride varnish beginning at age one to those children
109.28 assessed by the provider as being high risk in accordance with best practices as defined by
109.29 the Department of Human Services. The provider must obtain parental or legal guardian
109.30 consent before a fluoride ~~treatment~~ varnish is applied to a minor child's teeth.

109.31 At each checkup, if primary caries preventive services are provided, the provider must
109.32 provide to the child's parent or legal guardian: information on caries etiology and
109.33 prevention; and information on the importance of finding a dental home for their child
109.34 by the age of one. The provider must also advise the parent or legal guardian to contact
109.35 the child's managed care plan or the Department of Human Services in order to secure a

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110.1 dental appointment with a dentist. The provider must indicate in the child's medical record
110.2 that the parent or legal guardian was provided with this information and document any
110.3 primary caries prevention services provided to the child.

110.4 Sec. 12. Minnesota Statutes 2011 Supplement, section 256B.0631, subdivision 1,
110.5 is amended to read:

110.6 Subdivision 1. **Cost-sharing.** (a) Except as provided in subdivision 2, the medical
110.7 assistance benefit plan shall include the following cost-sharing for all recipients, effective
110.8 for services provided on or after September 1, 2011:

110.9 (1) \$3 per nonpreventive visit, except as provided in paragraph (b). For purposes
110.10 of this subdivision, a visit means an episode of service which is required because of
110.11 a recipient's symptoms, diagnosis, or established illness, and which is delivered in an
110.12 ambulatory setting by a physician or physician ancillary, chiropractor, podiatrist, nurse
110.13 midwife, advanced practice nurse, audiologist, optician, or optometrist;

110.14 ~~(2) \$3 for eyeglasses;~~

110.15 ~~(3)~~ (2) \$3.50 for nonemergency visits to a hospital-based emergency room, except
110.16 that this co-payment shall be increased to \$20 upon federal approval;

110.17 ~~(4)~~ (3) \$3 per brand-name drug prescription and \$1 per generic drug prescription,
110.18 subject to a \$12 per month maximum for prescription drug co-payments. No co-payments
110.19 shall apply to antipsychotic drugs when used for the treatment of mental illness;

110.20 ~~(5)~~ (4) effective January 1, 2012, a family deductible equal to the maximum amount
110.21 allowed under Code of Federal Regulations, title 42, part 447.54; and

110.22 ~~(6)~~ (5) for individuals identified by the commissioner with income at or below 100
110.23 percent of the federal poverty guidelines, total monthly cost-sharing must not exceed five
110.24 percent of family income. For purposes of this paragraph, family income is the total
110.25 earned and unearned income of the individual and the individual's spouse, if the spouse is
110.26 enrolled in medical assistance and also subject to the five percent limit on cost-sharing.

110.27 (b) Recipients of medical assistance are responsible for all co-payments and
110.28 deductibles in this subdivision.

110.29 Sec. 13. Minnesota Statutes 2011 Supplement, section 256B.0631, subdivision 2,
110.30 is amended to read:

110.31 Subd. 2. **Exceptions.** Co-payments and deductibles shall be subject to the following
110.32 exceptions:

110.33 (1) children under the age of 21;

- 111.1 (2) pregnant women for services that relate to the pregnancy or any other medical
111.2 condition that may complicate the pregnancy;
- 111.3 (3) recipients expected to reside for at least 30 days in a hospital, nursing home, or
111.4 intermediate care facility for the developmentally disabled;
- 111.5 (4) recipients receiving hospice care;
- 111.6 (5) 100 percent federally funded services provided by an Indian health service;
- 111.7 (6) emergency services;
- 111.8 (7) family planning services;
- 111.9 (8) services that are paid by Medicare, resulting in the medical assistance program
111.10 paying for the coinsurance and deductible; ~~and~~
- 111.11 (9) co-payments that exceed one per day per provider for nonpreventive visits,
111.12 eyeglasses, and nonemergency visits to a hospital-based emergency room; and
- 111.13 (10) services, fee-for-service payments subject to volume purchase through
111.14 competitive bidding.

111.15 Sec. 14. Minnesota Statutes 2010, section 256B.19, subdivision 1c, is amended to read:

111.16 Subd. 1c. **Additional portion of nonfederal share.** (a) Hennepin County shall
111.17 be responsible for a monthly transfer payment of \$1,500,000, due before noon on the
111.18 15th of each month and the University of Minnesota shall be responsible for a monthly
111.19 transfer payment of \$500,000 due before noon on the 15th of each month, beginning July
111.20 15, 1995. These sums shall be part of the designated governmental unit's portion of the
111.21 nonfederal share of medical assistance costs.

111.22 (b) Beginning July 1, 2001, Hennepin County's payment under paragraph (a) shall
111.23 be \$2,066,000 each month.

111.24 (c) Beginning July 1, 2001, the commissioner shall increase annual capitation
111.25 payments to ~~the metropolitan health plan~~ a demonstration provider serving eligible
111.26 individuals in Hennepin County under section 256B.69 for the prepaid medical assistance
111.27 program by approximately \$6,800,000 to recognize higher than average medical education
111.28 costs.

111.29 (d) Effective August 1, 2005, Hennepin County's payment under paragraphs (a)
111.30 and (b) shall be reduced to \$566,000, and the University of Minnesota's payment under
111.31 paragraph (a) shall be reduced to zero. Effective October 1, 2008, to December 31, 2010,
111.32 Hennepin County's payment under paragraphs (a) and (b) shall be \$434,688. Effective
111.33 January 1, 2011, Hennepin County's payment under paragraphs (a) and (b) shall be
111.34 \$566,000.

112.1 (e) Notwithstanding paragraph (d), upon federal enactment of an extension to June
112.2 30, 2011, of the enhanced federal medical assistance percentage (FMAP) originally
112.3 provided under Public Law 111-5, for the six-month period from January 1, 2011, to June
112.4 30, 2011, Hennepin County's payment under paragraphs (a) and (b) shall be \$434,688.

112.5 Sec. 15. Minnesota Statutes 2010, section 256B.69, subdivision 5, is amended to read:

112.6 Subd. 5. **Prospective per capita payment.** The commissioner shall establish the
112.7 method and amount of payments for services. The commissioner shall annually contract
112.8 with demonstration providers to provide services consistent with these established
112.9 methods and amounts for payment.

112.10 If allowed by the commissioner, a demonstration provider may contract with
112.11 an insurer, health care provider, nonprofit health service plan corporation, or the
112.12 commissioner, to provide insurance or similar protection against the cost of care provided
112.13 by the demonstration provider or to provide coverage against the risks incurred by
112.14 demonstration providers under this section. The recipients enrolled with a demonstration
112.15 provider are a permissible group under group insurance laws and chapter 62C, the
112.16 Nonprofit Health Service Plan Corporations Act. Under this type of contract, the insurer
112.17 or corporation may make benefit payments to a demonstration provider for services
112.18 rendered or to be rendered to a recipient. Any insurer or nonprofit health service plan
112.19 corporation licensed to do business in this state is authorized to provide this insurance or
112.20 similar protection.

112.21 Payments to providers participating in the project are exempt from the requirements
112.22 of sections 256.966 and 256B.03, subdivision 2. The commissioner shall complete
112.23 development of capitation rates for payments before delivery of services under this section
112.24 is begun. For payments made during calendar year 1990 and later years, the commissioner
112.25 shall contract with an independent actuary to establish prepayment rates.

112.26 By January 15, 1996, the commissioner shall report to the legislature on the
112.27 methodology used to allocate to participating counties available administrative
112.28 reimbursement for advocacy and enrollment costs. The report shall reflect the
112.29 commissioner's judgment as to the adequacy of the funds made available and of the
112.30 methodology for equitable distribution of the funds. The commissioner must involve
112.31 participating counties in the development of the report.

112.32 Beginning July 1, 2004, the commissioner may include payments for elderly waiver
112.33 services and 180 days of nursing home care in capitation payments for the prepaid medical
112.34 assistance program for recipients age 65 and older. ~~Payments for elderly waiver services~~

113.1 ~~shall be made no earlier than the month following the month in which services were~~
113.2 ~~received.~~

113.3 Sec. 16. Minnesota Statutes 2011 Supplement, section 256B.69, subdivision 5a,
113.4 is amended to read:

113.5 Subd. 5a. **Managed care contracts.** (a) Managed care contracts under this section
113.6 and section 256L.12 shall be entered into or renewed on a calendar year basis beginning
113.7 January 1, 1996. Managed care contracts which were in effect on June 30, 1995, and set to
113.8 renew on July 1, 1995, shall be renewed for the period July 1, 1995 through December
113.9 31, 1995 at the same terms that were in effect on June 30, 1995. The commissioner may
113.10 issue separate contracts with requirements specific to services to medical assistance
113.11 recipients age 65 and older.

113.12 (b) A prepaid health plan providing covered health services for eligible persons
113.13 pursuant to chapters 256B and 256L is responsible for complying with the terms of its
113.14 contract with the commissioner. Requirements applicable to managed care programs
113.15 under chapters 256B and 256L established after the effective date of a contract with the
113.16 commissioner take effect when the contract is next issued or renewed.

113.17 (c) Effective for services rendered on or after January 1, 2003, the commissioner
113.18 shall withhold five percent of managed care plan payments under this section and
113.19 county-based purchasing plan payments under section 256B.692 for the prepaid medical
113.20 assistance program pending completion of performance targets. Each performance target
113.21 must be quantifiable, objective, measurable, and reasonably attainable, except in the case
113.22 of a performance target based on a federal or state law or rule. Criteria for assessment
113.23 of each performance target must be outlined in writing prior to the contract effective
113.24 date. The managed care plan must demonstrate, to the commissioner's satisfaction,
113.25 that the data submitted regarding attainment of the performance target is accurate. The
113.26 commissioner shall periodically change the administrative measures used as performance
113.27 targets in order to improve plan performance across a broader range of administrative
113.28 services. The performance targets must include measurement of plan efforts to contain
113.29 spending on health care services and administrative activities. The commissioner may
113.30 adopt plan-specific performance targets that take into account factors affecting only one
113.31 plan, including characteristics of the plan's enrollee population. The withheld funds
113.32 must be returned no sooner than July of the following year if performance targets in the
113.33 contract are achieved. The commissioner may exclude special demonstration projects
113.34 under subdivision 23.

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114.1 (d) Effective for services rendered on or after January 1, 2009, through December
114.2 31, 2009, the commissioner shall withhold three percent of managed care plan payments
114.3 under this section and county-based purchasing plan payments under section 256B.692
114.4 for the prepaid medical assistance program. The withheld funds must be returned no
114.5 sooner than July 1 and no later than July 31 of the following year. The commissioner may
114.6 exclude special demonstration projects under subdivision 23.

114.7 (e) Effective for services provided on or after January 1, 2010, the commissioner
114.8 shall require that managed care plans use the assessment and authorization processes,
114.9 forms, timelines, standards, documentation, and data reporting requirements, protocols,
114.10 billing processes, and policies consistent with medical assistance fee-for-service or the
114.11 Department of Human Services contract requirements consistent with medical assistance
114.12 fee-for-service or the Department of Human Services contract requirements for all
114.13 personal care assistance services under section 256B.0659.

114.14 (f) Effective for services rendered on or after January 1, 2010, through December
114.15 31, 2010, the commissioner shall withhold 4.5 percent of managed care plan payments
114.16 under this section and county-based purchasing plan payments under section 256B.692
114.17 for the prepaid medical assistance program. The withheld funds must be returned no
114.18 sooner than July 1 and no later than July 31 of the following year. The commissioner may
114.19 exclude special demonstration projects under subdivision 23.

114.20 (g) Effective for services rendered on or after January 1, 2011, through December
114.21 31, 2011, the commissioner shall include as part of the performance targets described
114.22 in paragraph (c) a reduction in the health plan's emergency room utilization rate for
114.23 state health care program enrollees by a measurable rate of five percent from the plan's
114.24 utilization rate for state health care program enrollees for the previous calendar year.
114.25 Effective for services rendered on or after January 1, 2012, the commissioner shall include
114.26 as part of the performance targets described in paragraph (c) a reduction in the health
114.27 plan's emergency department utilization rate for medical assistance and MinnesotaCare
114.28 enrollees, as determined by the commissioner. To earn the return of the withhold each
114.29 year, the managed care plan or county-based purchasing plan must achieve a qualifying
114.30 reduction of no less than ten percent of the plan's emergency department utilization rate for
114.31 medical assistance and MinnesotaCare enrollees, excluding Medicare enrollees, compared
114.32 to the previous calendar year until the final performance target is reached.

114.33 The withheld funds must be returned no sooner than July 1 and no later than July
114.34 31 of the following calendar year if the managed care plan or county-based purchasing
114.35 plan demonstrates to the satisfaction of the commissioner that a reduction in the utilization
114.36 rate was achieved.

115.1 The withhold described in this paragraph shall continue for each consecutive
115.2 contract period until the plan's emergency room utilization rate for state health care
115.3 program enrollees is reduced by 25 percent of the plan's emergency room utilization
115.4 rate for medical assistance and MinnesotaCare enrollees for calendar year ~~2011~~ 2009.
115.5 Hospitals shall cooperate with the health plans in meeting this performance target and
115.6 shall accept payment withholds that may be returned to the hospitals if the performance
115.7 target is achieved.

115.8 (h) Effective for services rendered on or after January 1, 2012, the commissioner
115.9 shall include as part of the performance targets described in paragraph (c) a reduction
115.10 in the plan's hospitalization admission rate for medical assistance and MinnesotaCare
115.11 enrollees, as determined by the commissioner. To earn the return of the withhold each
115.12 year, the managed care plan or county-based purchasing plan must achieve a qualifying
115.13 reduction of no less than five percent of the plan's hospital admission rate for medical
115.14 assistance and MinnesotaCare enrollees, excluding Medicare enrollees, compared to the
115.15 previous calendar year until the final performance target is reached.

115.16 The withheld funds must be returned no sooner than July 1 and no later than July
115.17 31 of the following calendar year if the managed care plan or county-based purchasing
115.18 plan demonstrates to the satisfaction of the commissioner that this reduction in the
115.19 hospitalization rate was achieved.

115.20 The withhold described in this paragraph shall continue until there is a 25 percent
115.21 reduction in the hospital admission rate compared to the hospital admission rates in
115.22 calendar year 2011, as determined by the commissioner. The hospital admissions in this
115.23 performance target do not include the admissions applicable to the subsequent hospital
115.24 admission performance target under paragraph (i). Hospitals shall cooperate with the
115.25 plans in meeting this performance target and shall accept payment withholds that may be
115.26 returned to the hospitals if the performance target is achieved.

115.27 (i) Effective for services rendered on or after January 1, 2012, the commissioner
115.28 shall include as part of the performance targets described in paragraph (c) a reduction in
115.29 the plan's hospitalization admission rates for subsequent hospitalizations within 30 days
115.30 of a previous hospitalization of a patient regardless of the reason, for medical assistance
115.31 and MinnesotaCare enrollees, as determined by the commissioner. To earn the return of
115.32 the withhold each year, the managed care plan or county-based purchasing plan must
115.33 achieve a qualifying reduction of the subsequent hospitalization rate for medical assistance
115.34 and MinnesotaCare enrollees, excluding Medicare enrollees, of no less than five percent
115.35 compared to the previous calendar year until the final performance target is reached.

116.1 The withheld funds must be returned no sooner than July 1 and no later than July 31
116.2 of the following calendar year if the managed care plan or county-based purchasing plan
116.3 demonstrates to the satisfaction of the commissioner that a qualifying reduction in the
116.4 subsequent hospitalization rate was achieved.

116.5 The withhold described in this paragraph must continue for each consecutive
116.6 contract period until the plan's subsequent hospitalization rate for medical assistance and
116.7 MinnesotaCare enrollees, excluding Medicare enrollees, is reduced by 25 percent of the
116.8 plan's subsequent hospitalization rate for calendar year 2011. Hospitals shall cooperate
116.9 with the plans in meeting this performance target and shall accept payment withholds that
116.10 must be returned to the hospitals if the performance target is achieved.

116.11 (j) Effective for services rendered on or after January 1, 2011, through December 31,
116.12 2011, the commissioner shall withhold 4.5 percent of managed care plan payments under
116.13 this section and county-based purchasing plan payments under section 256B.692 for the
116.14 prepaid medical assistance program. The withheld funds must be returned no sooner than
116.15 July 1 and no later than July 31 of the following year. The commissioner may exclude
116.16 special demonstration projects under subdivision 23.

116.17 (k) Effective for services rendered on or after January 1, 2012, through December
116.18 31, 2012, the commissioner shall withhold 4.5 percent of managed care plan payments
116.19 under this section and county-based purchasing plan payments under section 256B.692
116.20 for the prepaid medical assistance program. The withheld funds must be returned no
116.21 sooner than July 1 and no later than July 31 of the following year. The commissioner may
116.22 exclude special demonstration projects under subdivision 23.

116.23 (l) Effective for services rendered on or after January 1, 2013, through December 31,
116.24 2013, the commissioner shall withhold 4.5 percent of managed care plan payments under
116.25 this section and county-based purchasing plan payments under section 256B.692 for the
116.26 prepaid medical assistance program. The withheld funds must be returned no sooner than
116.27 July 1 and no later than July 31 of the following year. The commissioner may exclude
116.28 special demonstration projects under subdivision 23.

116.29 (m) Effective for services rendered on or after January 1, 2014, the commissioner
116.30 shall withhold three percent of managed care plan payments under this section and
116.31 county-based purchasing plan payments under section 256B.692 for the prepaid medical
116.32 assistance program. The withheld funds must be returned no sooner than July 1 and
116.33 no later than July 31 of the following year. The commissioner may exclude special
116.34 demonstration projects under subdivision 23.

117.1 (n) A managed care plan or a county-based purchasing plan under section 256B.692
117.2 may include as admitted assets under section 62D.044 any amount withheld under this
117.3 section that is reasonably expected to be returned.

117.4 (o) Contracts between the commissioner and a prepaid health plan are exempt from
117.5 the set-aside and preference provisions of section 16C.16, subdivisions 6, paragraph
117.6 (a), and 7.

117.7 (p) The return of the withhold under paragraphs (d), (f), and (j) to (m) is not subject
117.8 to the requirements of paragraph (c).

117.9 Sec. 17. Minnesota Statutes 2011 Supplement, section 256B.69, subdivision 28,
117.10 is amended to read:

117.11 Subd. 28. **Medicare special needs plans; medical assistance basic health**
117.12 **care.** (a) The commissioner may contract with demonstration providers and current or
117.13 former sponsors of qualified Medicare-approved special needs plans₂ to provide medical
117.14 assistance basic health care services to persons with disabilities, including those with
117.15 developmental disabilities. Basic health care services include:

117.16 (1) those services covered by the medical assistance state plan except for ICF/MR
117.17 services, home and community-based waiver services, case management for persons with
117.18 developmental disabilities under section 256B.0625, subdivision 20a, and personal care
117.19 and certain home care services defined by the commissioner in consultation with the
117.20 stakeholder group established under paragraph (d); and

117.21 (2) basic health care services may also include risk for up to 100 days of nursing
117.22 facility services for persons who reside in a noninstitutional setting and home health
117.23 services related to rehabilitation as defined by the commissioner after consultation with
117.24 the stakeholder group.

117.25 The commissioner may exclude other medical assistance services from the basic
117.26 health care benefit set. Enrollees in these plans can access any excluded services on the
117.27 same basis as other medical assistance recipients who have not enrolled.

117.28 (b) Beginning January 1, 2007, the commissioner may contract with demonstration
117.29 providers and current and former sponsors of qualified Medicare special needs plans₂ to
117.30 provide basic health care services under medical assistance to persons who are dually
117.31 eligible for both Medicare and Medicaid and those Social Security beneficiaries eligible
117.32 for Medicaid but in the waiting period for Medicare. The commissioner shall consult with
117.33 the stakeholder group under paragraph (d) in developing program specifications for these
117.34 services. The commissioner shall report to the chairs of the house of representatives and
117.35 senate committees with jurisdiction over health and human services policy and finance by

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118.1 February 1, 2007, on implementation of these programs and the need for increased funding
118.2 for the ombudsman for managed care and other consumer assistance and protections
118.3 needed due to enrollment in managed care of persons with disabilities. Payment for
118.4 Medicaid services provided under this subdivision for the months of May and June will
118.5 be made no earlier than July 1 of the same calendar year.

118.6 (c) Notwithstanding subdivision 4, beginning January 1, 2012, the commissioner
118.7 shall enroll persons with disabilities in managed care under this section, unless the
118.8 individual chooses to opt out of enrollment. The commissioner shall establish enrollment
118.9 and opt out procedures consistent with applicable enrollment procedures under this
118.10 ~~subdivision~~ section.

118.11 (d) The commissioner shall establish a state-level stakeholder group to provide
118.12 advice on managed care programs for persons with disabilities, including both MnDHO
118.13 and contracts with special needs plans that provide basic health care services as described
118.14 in paragraphs (a) and (b). The stakeholder group shall provide advice on program
118.15 expansions under this subdivision and subdivision 23, including:

118.16 (1) implementation efforts;

118.17 (2) consumer protections; and

118.18 (3) program specifications such as quality assurance measures, data collection and
118.19 reporting, and evaluation of costs, quality, and results.

118.20 (e) Each plan under contract to provide medical assistance basic health care services
118.21 shall establish a local or regional stakeholder group, including representatives of the
118.22 counties covered by the plan, members, consumer advocates, and providers, for advice on
118.23 issues that arise in the local or regional area.

118.24 (f) The commissioner is prohibited from providing the names of potential enrollees
118.25 to health plans for marketing purposes. The commissioner shall mail no more than
118.26 two sets of marketing materials per contract year to potential enrollees on behalf of
118.27 health plans, at the health plan's request. The marketing materials shall be mailed by the
118.28 commissioner within 30 days of receipt of these materials from the health plan. The health
118.29 plans shall cover any costs incurred by the commissioner for mailing marketing materials.

118.30 Sec. 18. Minnesota Statutes 2010, section 256L.05, subdivision 3, is amended to read:

118.31 Subd. 3. **Effective date of coverage.** (a) The effective date of coverage is the
118.32 first day of the month following the month in which eligibility is approved and the first
118.33 premium payment has been received. As provided in section 256B.057, coverage for
118.34 newborns is automatic from the date of birth and must be coordinated with other health
118.35 coverage. The effective date of coverage for eligible newly adoptive children added to a

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119.1 family receiving covered health services is the month of placement. The effective date
119.2 of coverage for other new members added to the family is the first day of the month
119.3 following the month in which the change is reported. All eligibility criteria must be met
119.4 by the family at the time the new family member is added. The income of the new family
119.5 member is included with the family's gross income and the adjusted premium begins in
119.6 the month the new family member is added.

119.7 (b) The initial premium must be received by the last working day of the month for
119.8 coverage to begin the first day of the following month.

119.9 (c) Benefits are not available until the day following discharge if an enrollee is
119.10 hospitalized on the first day of coverage.

119.11 (d) Notwithstanding any other law to the contrary, benefits under sections 256L.01 to
119.12 256L.18 are secondary to a plan of insurance or benefit program under which an eligible
119.13 person may have coverage and the commissioner shall use cost avoidance techniques to
119.14 ensure coordination of any other health coverage for eligible persons. The commissioner
119.15 shall identify eligible persons who may have coverage or benefits under other plans of
119.16 insurance or who become eligible for medical assistance.

119.17 (e) The effective date of coverage for individuals or families who are exempt from
119.18 paying premiums under section 256L.15, subdivision 1, paragraph (d), is the first day of
119.19 the month following the month in which verification of American Indian status is received
119.20 or eligibility is approved, whichever is later.

119.21 Sec. 19. Minnesota Statutes 2011 Supplement, section 256L.15, subdivision 1, is
119.22 amended to read:

119.23 Subdivision 1. **Premium determination.** (a) Families with children and individuals
119.24 shall pay a premium determined according to subdivision 2.

119.25 (b) Pregnant women and children under age two are exempt from the provisions
119.26 of section 256L.06, subdivision 3, paragraph (b), clause (3), requiring disenrollment
119.27 for failure to pay premiums. For pregnant women, this exemption continues until the
119.28 first day of the month following the 60th day postpartum. Women who remain enrolled
119.29 during pregnancy or the postpartum period, despite nonpayment of premiums, shall be
119.30 disenrolled on the first of the month following the 60th day postpartum for the penalty
119.31 period that otherwise applies under section 256L.06, unless they begin paying premiums.

119.32 (c) Members of the military and their families who meet the eligibility criteria
119.33 for MinnesotaCare upon eligibility approval made within 24 months following the end
119.34 of the member's tour of active duty shall have their premiums paid by the commissioner.
119.35 The effective date of coverage for an individual or family who meets the criteria of this

120.1 paragraph shall be the first day of the month following the month in which eligibility is
120.2 approved. This exemption applies for 12 months.

120.3 (d) Beginning July 1, 2009, American Indians enrolled in MinnesotaCare and their
120.4 families shall have their premiums waived by the commissioner in accordance with
120.5 section 5006 of the American Recovery and Reinvestment Act of 2009, Public Law 111-5.
120.6 An individual must document status as an American Indian, as defined under Code of
120.7 Federal Regulations, title 42, section 447.50, to qualify for the waiver of premiums.

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

120.9 Sec. 20. Minnesota Statutes 2010, section 514.982, subdivision 1, is amended to read:

120.10 Subdivision 1. **Contents.** A medical assistance lien notice must be dated and
120.11 must contain:

120.12 (1) the full name, last known address, and last four digits of the Social Security
120.13 number of the medical assistance recipient;

120.14 (2) a statement that medical assistance payments have been made to or for the
120.15 benefit of the medical assistance recipient named in the notice, specifying the first date
120.16 of eligibility for benefits;

120.17 (3) a statement that all interests in real property owned by the persons named in the
120.18 notice may be subject to or affected by the rights of the agency to be reimbursed for
120.19 medical assistance benefits; and

120.20 (4) the legal description of the real property upon which the lien attaches, and
120.21 whether the property is registered property.

120.22 Sec. 21. **REPEALER.**

120.23 Minnesota Statutes 2010, section 256.01, subdivision 18b, is repealed.

120.24 **ARTICLE 6**

120.25 **TECHNICAL**

120.26 Section 1. Minnesota Statutes 2010, section 144A.071, subdivision 5a, is amended to
120.27 read:

120.28 Subd. 5a. **Cost estimate of a moratorium exception project.** (a) For the
120.29 purposes of this section and section 144A.073, the cost estimate of a moratorium
120.30 exception project shall include the effects of the proposed project on the costs of the state
120.31 subsidy for community-based services, nursing services, and housing in institutional
120.32 and noninstitutional settings. The commissioner of health, in cooperation with the

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121.1 commissioner of human services, shall define the method for estimating these costs in the
121.2 permanent rule implementing section 144A.073. The commissioner of human services
121.3 shall prepare an estimate of the total state annual long-term costs of each moratorium
121.4 exception proposal.

121.5 (b) The interest rate to be used for estimating the cost of each moratorium exception
121.6 project proposal shall be the lesser of either the prime rate plus two percentage points, or
121.7 the posted yield for standard conventional fixed rate mortgages of the Federal Home Loan
121.8 Mortgage Corporation plus two percentage points as published in the Wall Street Journal
121.9 and in effect 56 days prior to the application deadline. If the applicant's proposal uses this
121.10 interest rate, the commissioner of human services, in determining the facility's actual
121.11 property-related payment rate to be established upon completion of the project must use
121.12 the actual interest rate obtained by the facility for the project's permanent financing up to
121.13 the maximum permitted under ~~subdivision 6~~ Minnesota Rules, part 9549.0060, subpart 6.

121.14 The applicant may choose an alternate interest rate for estimating the project's cost.
121.15 If the applicant makes this election, the commissioner of human services, in determining
121.16 the facility's actual property-related payment rate to be established upon completion of the
121.17 project, must use the lesser of the actual interest rate obtained for the project's permanent
121.18 financing or the interest rate which was used to estimate the proposal's project cost. For
121.19 succeeding rate years, the applicant is at risk for financing costs in excess of the interest
121.20 rate selected.

121.21 **Sec. 2. REVISOR'S INSTRUCTION.**

121.22 (a) In Minnesota Statutes, sections 256B.038, 256B.0911, 256B.0918, 256B.092,
121.23 256B.097, 256B.49, and 256B.765, the revisor of statutes shall delete the word "traumatic"
121.24 when it comes before the word "brain."

121.25 (b) In Minnesota Statutes, section 256B.093, subdivision 1, clauses (4) and (5), and
121.26 subdivision 3, clause (2), the revisor of statutes shall delete the word "traumatic" when it
121.27 comes before the word "brain."

121.28 (c) In Minnesota Statutes, sections 144.0724 and 144G.05, the revisor of statutes
121.29 shall delete "TBI" and replace it with "BI."

APPENDIX
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