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STATE OF MINNESOTA
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S.F. No. 983

(SENATE AUTHORS: ABELER)

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02/07/2019	299	Introduction and first reading Referred to Human Services Reform Finance and Policy

A bill for an act

relating to human services; modifying eligibility for personal care assistance services; modifying the intermediate care facility for persons with developmental disabilities level of care criteria; establishing allocation caps for the developmental disabilities and community access for daily inclusion waivers; amending Minnesota Statutes 2018, sections 256B.0625, subdivision 19a; 256B.0651, subdivision 1; 256B.0652, subdivision 6; 256B.0659, subdivision 1; 256B.0911, subdivision 4e; 256B.0915, subdivision 3a; 256B.092, by adding a subdivision; 256B.49, by adding a subdivision.

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

Section 1. Minnesota Statutes 2018, section 256B.0625, subdivision 19a, is amended to read:

Subd. 19a. **Personal care assistance services.** Medical assistance covers personal care assistance services in a recipient's home. ~~Effective January 1, 2010,~~ To qualify for personal care assistance services, a recipient must require assistance and be determined dependent in ~~one activity~~ two or more activities of daily living as defined in section 256B.0659, subdivision 1, paragraph (b), one critical activity of daily living as defined in section 256B.0659, subdivision 1, paragraph (e), or ~~in a~~ one Level I behavior as defined in section 256B.0659, subdivision 1, paragraph (c). Recipients or responsible parties must be able to identify the recipient's needs, direct and evaluate task accomplishment, and provide for health and safety. Approved hours may be used outside the home when normal life activities take them outside the home. To use personal care assistance services at school, the recipient or responsible party must provide written authorization in the care plan identifying the chosen provider and the daily amount of services to be used at school. Total hours for services, whether actually performed inside or outside the recipient's home, cannot exceed that which is otherwise allowed for personal care assistance services in an in-home setting

2.1 according to sections 256B.0651 to 256B.0654. Medical assistance does not cover personal
2.2 care assistance services for residents of a hospital, nursing facility, intermediate care facility,
2.3 health care facility licensed by the commissioner of health, or unless a resident who is
2.4 otherwise eligible is on leave from the facility and the facility either pays for the personal
2.5 care assistance services or forgoes the facility per diem for the leave days that personal care
2.6 assistance services are used. All personal care assistance services must be provided according
2.7 to sections 256B.0651 to 256B.0654. Personal care assistance services may not be reimbursed
2.8 if the personal care assistant is the spouse or paid guardian of the recipient or the parent of
2.9 a recipient under age 18, or the responsible party or the family foster care provider of a
2.10 recipient who cannot direct the recipient's own care unless, in the case of a foster care
2.11 provider, a county or state case manager visits the recipient as needed, but not less than
2.12 every six months, to monitor the health and safety of the recipient and to ensure the goals
2.13 of the care plan are met. Notwithstanding the provisions of section 256B.0659, the unpaid
2.14 guardian or conservator of an adult, who is not the responsible party and not the personal
2.15 care provider organization, may be reimbursed to provide personal care assistance services
2.16 to the recipient if the guardian or conservator meets all criteria for a personal care assistant
2.17 according to section 256B.0659, and shall not be considered to have a service provider
2.18 interest for purposes of participation on the screening team under section 256B.092,
2.19 subdivision 7.

2.20 Sec. 2. Minnesota Statutes 2018, section 256B.0651, subdivision 1, is amended to read:

2.21 Subdivision 1. **Definitions.** (a) For the purposes of sections 256B.0651 to 256B.0654
2.22 and 256B.0659, the terms in paragraphs (b) to (g) have the meanings given.

2.23 (b) "Activities of daily living" has the meaning given in section 256B.0659, subdivision
2.24 1, paragraph (b).

2.25 (c) "Assessment" means a review and evaluation of a recipient's need for home care
2.26 services conducted in person.

2.27 (d) "Critical activities of daily living" has the meaning given in section 256B.0659,
2.28 subdivision 1, paragraph (e).

2.29 (e) "Home care services" means medical assistance covered services that are home health
2.30 agency services, including skilled nurse visits; home health aide visits; physical therapy,
2.31 occupational therapy, respiratory therapy, and language-speech pathology therapy; home
2.32 care nursing; and personal care assistance.

~~(e)~~ (f) "Home residence," effective January 1, 2010, means a residence owned or rented by the recipient either alone, with roommates of the recipient's choosing, or with an unpaid responsible party or legal representative; or a family foster home where the license holder lives with the recipient and is not paid to provide home care services for the recipient except as allowed under sections 256B.0652, subdivision 10, and 256B.0654, subdivision 4.

~~(f)~~ (g) "Medically necessary" has the meaning given in Minnesota Rules, parts 9505.0170 to 9505.0475.

~~(g)~~ (h) "Ventilator-dependent" means an individual who receives mechanical ventilation for life support at least six hours per day and is expected to be or has been dependent on a ventilator for at least 30 consecutive days.

Sec. 3. Minnesota Statutes 2018, section 256B.0652, subdivision 6, is amended to read:

Subd. 6. **Authorization; personal care assistance and qualified professional.** (a) All personal care assistance services, supervision by a qualified professional, and additional services beyond the limits established in subdivision 11, must be authorized by the commissioner or the commissioner's designee before services begin except for the assessments established in ~~subdivision 11 and~~ section 256B.0911. The authorization for personal care assistance and qualified professional services under section 256B.0659 must be completed within 30 days after receiving a complete request.

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

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

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

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

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

4.1 (1) 30 additional minutes per day for a dependency in each critical activity of daily living
4.2 ~~as defined in section 256B.0659~~;

4.3 (2) 30 additional minutes per day for each complex health-related function as defined
4.4 in section 256B.0659; and

4.5 (3) 30 additional minutes per day for each behavior issue as defined in section 256B.0659,
4.6 subdivision 4, paragraph (d).

4.7 (d) ~~Effective July 1, 2011,~~ The home care rating for recipients who have a dependency
4.8 in two activities of daily living, one critical activity of daily living, or one Level I behavior
4.9 shall equal no more than two units per day. Recipients with this home care rating are not
4.10 subject to the methodology in paragraph (c) and are not eligible for more than two units per
4.11 day.

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

4.16 Sec. 4. Minnesota Statutes 2018, section 256B.0659, subdivision 1, is amended to read:

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

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

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

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

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

4.29 (f) "Dependency in activities of daily living" means a person requires assistance to begin
4.30 and complete ~~one~~ two or more of the activities of daily living or one or more critical activities
4.31 of daily living.

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

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

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

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

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

5.21 (j) "Managing employee" has the same definition as Code of Federal Regulations, title
5.22 42, section 455.

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

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

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

5.31 (n) "Personal care assistance care plan" means a written description of personal care
5.32 assistance services developed by the personal care assistance provider according to the
5.33 service plan.

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

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

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

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

Sec. 5. Minnesota Statutes 2018, section 256B.0911, subdivision 4e, is amended to read:

Subd. 4e. **Determination of institutional level of care.** <u>(a)</u> The determination of the need for ~~nursing facility,~~ hospital~~, and intermediate care facility levels~~ <u>level</u> of care must be made according to criteria developed by the commissioner, ~~and in section 256B.092,~~ using forms developed by the commissioner. ~~Effective January 1, 2014, for individuals age 21 and older,~~

<u>(b)</u> The determination of <u>the</u> need for nursing facility level of care shall be based on criteria in section 144.0724, subdivision 11. ~~For individuals under age 21, the determination of the need for nursing facility level of care must be made according to criteria developed by the commissioner until criteria in section 144.0724, subdivision 11, becomes effective on or after October 1, 2019.~~

<u>(c) The determination of the need for intermediate care facility level of care shall be based on the following criteria:</u>

<u>(1) the person has been determined according to the diagnostic requirements outlined in Minnesota Rules, part 9525.0016, subpart 3, to have a developmental disability as defined in Minnesota Rules, part 9525.0016, subpart 2, item B, or a related condition as defined in section 252.27, subdivision 1a; and</u>

<u>(2) the person has assessed needs that require systematic instruction available 24 hours a day by trained staff in order to acquire and maintain skills related to the following behaviors:</u>

<u>(i) toileting;</u>

<u>(ii) communicating basic wants and needs;</u>

7.1 (iii) comprehending spoken language; or

7.2 (iv) self-moderating challenging behavior that jeopardizes the person's own or other's
7.3 health and safety.

7.4 **EFFECTIVE DATE.** This section is effective October 1, 2019.

7.5 Sec. 6. Minnesota Statutes 2018, section 256B.0915, subdivision 3a, is amended to read:

7.6 Subd. 3a. **Elderly waiver cost limits.** (a) Effective on the first day of the state fiscal
7.7 year in which the resident assessment system as described in section 256R.17 for nursing
7.8 home rate determination is implemented and the first day of each subsequent state fiscal
7.9 year, the monthly limit for the cost of waivered services to an individual elderly waiver
7.10 client shall be the monthly limit of the case mix resident class to which the waiver client
7.11 would be assigned under Minnesota Rules, parts 9549.0051 to 9549.0059, in effect on the
7.12 last day of the previous state fiscal year, adjusted by any legislatively adopted home and
7.13 community-based services percentage rate adjustment. If a legislatively authorized increase
7.14 is service-specific, the monthly cost limit shall be adjusted based on the overall average
7.15 increase to the elderly waiver program.

7.16 (b) The monthly limit for the cost of waivered services under paragraph (a) to an
7.17 individual elderly waiver client assigned to a case mix classification A with:

7.18 (1) no dependencies in activities of daily living; or

7.19 (2) up to two dependencies in bathing, dressing, grooming, walking, and eating when
7.20 the dependency score in eating is three or greater as determined by an assessment performed
7.21 under section 256B.0911 shall be $1,750 per month effective on July 1, 2011, for all new
7.22 participants enrolled in the program on or after July 1, 2011. This monthly limit shall be
7.23 applied to all other participants who meet this criteria at reassessment. This monthly limit
7.24 shall be increased annually as described in paragraphs (a) and (e).

7.25 (c) If extended medical supplies and equipment or environmental modifications are or
7.26 will be purchased for an elderly waiver client, the costs may be prorated for up to 12
7.27 consecutive months beginning with the month of purchase. If the monthly cost of a recipient's
7.28 waivered services exceeds the monthly limit established in paragraph (a), (b), (d), or (e),
7.29 the annual cost of all waivered services shall be determined. In this event, the annual cost
7.30 of all waivered services shall not exceed 12 times the monthly limit of waivered services
7.31 as described in paragraph (a), (b), (d), or (e).

7.32 (d) ~~Effective July 1, 2013,~~ The monthly cost limit of waiver services, including any
7.33 necessary home care services described in section 256B.0651, subdivision 2, for individuals

8.1 who meet the criteria as ventilator-dependent given in section 256B.0651, subdivision 1,
8.2 paragraph ~~(g)~~ (h), shall be the average of the monthly medical assistance amount established
8.3 for home care services as described in section 256B.0652, subdivision 7, and the annual
8.4 average contracted amount established by the commissioner for nursing facility services
8.5 for ventilator-dependent individuals. This monthly limit shall be increased annually as
8.6 described in paragraphs (a) and (e).

8.7 (e) Effective January 1, 2018, and each January 1 thereafter, the monthly cost limits for
8.8 elderly waiver services in effect on the previous December 31 shall be increased by the
8.9 difference between any legislatively adopted home and community-based provider rate
8.10 increases effective on January 1 or since the previous January 1 and the average statewide
8.11 percentage increase in nursing facility operating payment rates under chapter 256R, effective
8.12 the previous January 1. This paragraph shall only apply if the average statewide percentage
8.13 increase in nursing facility operating payment rates is greater than any legislatively adopted
8.14 home and community-based provider rate increases effective on January 1, or occurring
8.15 since the previous January 1.

8.16 Sec. 7. Minnesota Statutes 2018, section 256B.092, is amended by adding a subdivision
8.17 to read:

8.18 Subd. 12a. **Developmental disabilities waiver growth limit.** The commissioner shall
8.19 limit growth in the developmental disabilities waiver to ... allocations per month. Waiver
8.20 allocations for the developmental disabilities waiver must be targeted to persons who meet
8.21 the priorities for accessing waiver services identified in subdivision 12. The allocation limits
8.22 do not include conversions from intermediate care facilities for persons with developmental
8.23 disabilities.

8.24 Sec. 8. Minnesota Statutes 2018, section 256B.49, is amended by adding a subdivision to
8.25 read:

8.26 Subd. 11b. **Community access for disability inclusion waiver growth limit.** The
8.27 commissioner shall limit the growth in the community access for disability inclusion waiver
8.28 to ... allocations per month. Waiver allocations for the community access for disability
8.29 inclusion must be targeted to individuals who meet the priorities for accessing waiver
8.30 services identified in subdivision 11a. The allocation limit includes conversions and
8.31 diversions, unless the commissioner approves a plan to convert funding due to the closure
8.32 or downsizing of a residential facility or nursing facility in order to use the converted funding

9.1 to serve individuals who were directly affected by the closure or downsizing with the
9.2 community access for disability inclusion waiver.