

State of Minnesota
HOUSE OF REPRESENTATIVES

EIGHTY-EIGHTH SESSION

H. F. No. 2649

03/03/2014 Authored by Schoen

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

1.1 A bill for an act
1.2 relating to human services; modifying provisions relating to continuing care;
1.3 making changes to requirements for personal care assistants and designation of
1.4 a common entry point; modifying a provider rate increase; making technical
1.5 changes; amending Minnesota Statutes 2012, sections 256B.0659, subdivisions
1.6 11, 28; 256B.493, subdivision 1; 256D.01, subdivision 1e; 256G.02, subdivision
1.7 6; 256I.03, subdivision 3; 256I.04, subdivision 2a; Minnesota Statutes
1.8 2013 Supplement, sections 256B.4912, subdivision 10; 256B.492; 626.557,
1.9 subdivision 9; Laws 2011, First Special Session chapter 9, article 7, section 7;
1.10 Laws 2013, chapter 108, article 7, section 60.

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

1.12 Section 1. Minnesota Statutes 2012, section 256B.0659, subdivision 11, is amended to
1.13 read:

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

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

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

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

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

1.22 (3) enroll with the department as a personal care assistant after clearing a background
1.23 study. Except as provided in subdivision 11a, before a personal care assistant provides
1.24 services, the personal care assistance provider agency must initiate a background study on
1.25 the personal care assistant under chapter 245C, and the personal care assistance provider
1.26 agency must have received a notice from the commissioner that the personal care assistant
1.27 is:

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

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

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

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

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

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

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

(9) complete training and orientation on the needs of the recipient; and

(10) be limited to providing and being paid for up to 275 hours per month of personal care assistance services regardless of the number of recipients being served or the number of personal care assistance provider agencies enrolled with. The number of hours worked per day shall not be disallowed by the department unless in violation of the law.

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

(c) Persons who do not qualify as a personal care assistant include parents, stepparents, and legal guardians of minors; spouses; paid legal guardians of adults; family foster care providers, except as otherwise allowed in section 256B.0625, subdivision 19a; and staff of a residential setting. ~~When the personal care assistant is a relative of the recipient, the commissioner shall pay 80 percent of the provider rate. This rate reduction is effective July 1, 2013. For purposes of this section, relative means the parent or adoptive~~

3.1 ~~parent of an adult child, a sibling aged 16 years or older, an adult child, a grandparent, or~~
3.2 ~~a grandchild.~~

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

3.4 Sec. 2. Minnesota Statutes 2012, section 256B.0659, subdivision 28, is amended to read:

3.5 Subd. 28. **Personal care assistance provider agency; required documentation.**

3.6 (a) Required documentation must be completed and kept in the personal care assistance
3.7 provider agency file or the recipient's home residence. The required documentation
3.8 consists of:

3.9 (1) employee files, including:

3.10 (i) applications for employment;

3.11 (ii) background study requests and results;

3.12 (iii) orientation records about the agency policies;

3.13 (iv) trainings completed with demonstration of competence;

3.14 (v) supervisory visits;

3.15 (vi) evaluations of employment; and

3.16 (vii) signature on fraud statement;

3.17 (2) recipient files, including:

3.18 (i) demographics;

3.19 (ii) emergency contact information and emergency backup plan;

3.20 (iii) personal care assistance service plan;

3.21 (iv) personal care assistance care plan;

3.22 (v) month-to-month service use plan;

3.23 (vi) all communication records;

3.24 (vii) start of service information, including the written agreement with recipient; and

3.25 (viii) date the home care bill of rights was given to the recipient;

3.26 (3) agency policy manual, including:

3.27 (i) policies for employment and termination;

3.28 (ii) grievance policies with resolution of consumer grievances;

3.29 (iii) staff and consumer safety;

3.30 (iv) staff misconduct; and

3.31 (v) staff hiring, service delivery, staff and consumer safety, staff misconduct, and
3.32 resolution of consumer grievances;

3.33 (4) time sheets for each personal care assistant along with completed activity sheets
3.34 for each recipient served; and

(5) agency marketing and advertising materials and documentation of marketing activities and costs; ~~and.~~

~~(6) for each personal care assistant, whether or not the personal care assistant is providing care to a relative as defined in subdivision 11.~~

(b) The commissioner may assess a fine of up to \$500 on provider agencies that do not consistently comply with the requirements of this subdivision.

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

Sec. 3. Minnesota Statutes 2013 Supplement, section 256B.4912, subdivision 10, is amended to read:

Subd. 10. **Enrollment requirements.** ~~All~~ (a) Except as provided in paragraph (b), the following home and community-based waiver providers must provide, at the time of enrollment and within 30 days of a request, in a format determined by the commissioner, information and documentation that includes, ~~but is not limited to, the following:~~

~~(1) proof of surety bond coverage in the amount of \$50,000 or ten percent of the provider's payments from Medicaid in the previous calendar year, whichever is greater;~~

~~(2) proof of fidelity bond coverage in the amount of \$20,000; and~~

~~(3) proof of liability insurance;~~

(1) waiver services providers required to meet the provider standards in chapter 245D;

(2) foster care providers whose services are funded by the elderly waiver or alternative care program;

(3) fiscal support entities;

(4) adult day care providers;

(5) providers of customized living services; and

(6) residential care providers.

(b) Providers of foster care services covered by section 245.814 are exempt from this subdivision.

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

Sec. 4. Minnesota Statutes 2013 Supplement, section 256B.492, is amended to read:

256B.492 HOME AND COMMUNITY-BASED SETTINGS FOR PEOPLE WITH DISABILITIES.

(a) Individuals receiving services under a home and community-based waiver under section 256B.092 or 256B.49 may receive services in the following settings:

(1) an individual's own home or family home;

(2) a licensed adult foster care or child foster care setting of up to five people or
community residential setting of up to five people; and

(3) community living settings as defined in section 256B.49, subdivision 23, where individuals with disabilities may reside in all of the units in a building of four or fewer units, and no more than the greater of four or 25 percent of the units in a multifamily building of more than four units, unless required by the Housing Opportunities for Persons with AIDS Program.

(b) The settings in paragraph (a) must not:

(1) be located in a building that is a publicly or privately operated facility that provides institutional treatment or custodial care;

(2) be located in a building on the grounds of or adjacent to a public or private institution;

(3) be a housing complex designed expressly around an individual's diagnosis or disability, unless required by the Housing Opportunities for Persons with AIDS Program;

(4) be segregated based on a disability, either physically or because of setting characteristics, from the larger community; and

(5) have the qualities of an institution which include, but are not limited to: regimented meal and sleep times, limitations on visitors, and lack of privacy. Restrictions agreed to and documented in the person's individual service plan shall not result in a residence having the qualities of an institution as long as the restrictions for the person are not imposed upon others in the same residence and are the least restrictive alternative, imposed for the shortest possible time to meet the person's needs.

(c) The provisions of paragraphs (a) and (b) do not apply to any setting in which individuals receive services under a home and community-based waiver as of July 1, 2012, and the setting does not meet the criteria of this section.

(d) Notwithstanding paragraph (c), a program in Hennepin County established as part of a Hennepin County demonstration project is qualified for the exception allowed under paragraph (c).

(e) The commissioner shall submit an amendment to the waiver plan no later than December 31, 2012.

Sec. 5. Minnesota Statutes 2012, section 256B.493, subdivision 1, is amended to read:

Subdivision 1. **Commissioner's duties; report.** The commissioner of human services shall solicit proposals for the conversion of services provided for persons with disabilities in settings licensed under Minnesota Rules, parts 9555.5105 to 9555.6265, or

6.1 community residential settings licensed under chapter 245D, to other types of community
6.2 settings in conjunction with the closure of identified licensed adult foster care settings.

6.3 Sec. 6. Minnesota Statutes 2012, section 256D.01, subdivision 1e, is amended to read:

6.4 Subd. 1e. **Rules regarding emergency assistance.** The commissioner shall adopt
6.5 rules under the terms of sections 256D.01 to 256D.21 for general assistance, to require use
6.6 of the emergency program under MFIP as the primary financial resource when available.
6.7 The commissioner shall adopt rules for eligibility for general assistance of persons with
6.8 seasonal income and may attribute seasonal income to other periods not in excess of one
6.9 year from receipt by an applicant or recipient. General assistance payments may not be
6.10 made for foster care, community residential settings licensed under chapter 245D, child
6.11 welfare services, or other social services. Vendor payments and vouchers may be issued
6.12 only as authorized in sections 256D.05, subdivision 6, and 256D.09.

6.13 Sec. 7. Minnesota Statutes 2012, section 256G.02, subdivision 6, is amended to read:

6.14 Subd. 6. **Excluded time.** "Excluded time" means:

6.15 (1) any period an applicant spends in a hospital, sanitarium, nursing home, shelter
6.16 other than an emergency shelter, halfway house, foster home, community residential
6.17 setting licensed under chapter 245D, semi-independent living domicile or services
6.18 program, residential facility offering care, board and lodging facility or other institution
6.19 for the hospitalization or care of human beings, as defined in section 144.50, 144A.01,
6.20 or 245A.02, subdivision 14; maternity home, battered women's shelter, or correctional
6.21 facility; or any facility based on an emergency hold under sections 253B.05, subdivisions
6.22 1 and 2, and 253B.07, subdivision 6;

6.23 (2) any period an applicant spends on a placement basis in a training and habilitation
6.24 program, including: a rehabilitation facility or work or employment program as defined
6.25 in section 268A.01; semi-independent living services provided under section 252.275,
6.26 and Minnesota Rules, parts 9525.0500 to 9525.0660; or day training and habilitation
6.27 programs and assisted living services; and

6.28 (3) any placement for a person with an indeterminate commitment, including
6.29 independent living.

6.30 Sec. 8. Minnesota Statutes 2012, section 256I.03, subdivision 3, is amended to read:

6.31 Subd. 3. **Group residential housing.** "Group residential housing" means a group
6.32 living situation that provides at a minimum room and board to unrelated persons who
6.33 meet the eligibility requirements of section 256I.04. This definition includes foster care

7.1 settings or community residential settings for a single adult. To receive payment for a
7.2 group residence rate, the residence must meet the requirements under section 256I.04,
7.3 subdivision 2a.

7.4 Sec. 9. Minnesota Statutes 2012, section 256I.04, subdivision 2a, is amended to read:

7.5 Subd. 2a. **License required.** A county agency may not enter into an agreement with
7.6 an establishment to provide group residential housing unless:

7.7 (1) the establishment is licensed by the Department of Health as a hotel and
7.8 restaurant; a board and lodging establishment; a residential care home; a boarding care
7.9 home before March 1, 1985; or a supervised living facility, and the service provider
7.10 for residents of the facility is licensed under chapter 245A. However, an establishment
7.11 licensed by the Department of Health to provide lodging need not also be licensed to
7.12 provide board if meals are being supplied to residents under a contract with a food vendor
7.13 who is licensed by the Department of Health;

7.14 (2) the residence is: (i) licensed by the commissioner of human services under
7.15 Minnesota Rules, parts 9555.5050 to 9555.6265; (ii) certified by a county human services
7.16 agency prior to July 1, 1992, using the standards under Minnesota Rules, parts 9555.5050
7.17 to 9555.6265; ~~or~~ (iii) a residence licensed by the commissioner under Minnesota Rules,
7.18 parts 2960.0010 to 2960.0120, with a variance under section 245A.04, subdivision 9; or
7.19 (iv) licensed by the commissioner of human services under chapter 245D;

7.20 (3) the establishment is registered under chapter 144D and provides three meals a
7.21 day, or is an establishment voluntarily registered under section 144D.025 as a supportive
7.22 housing establishment; or

7.23 (4) an establishment voluntarily registered under section 144D.025, other than
7.24 a supportive housing establishment under clause (3), is not eligible to provide group
7.25 residential housing.

7.26 The requirements under clauses (1) to (4) do not apply to establishments exempt
7.27 from state licensure because they are located on Indian reservations and subject to tribal
7.28 health and safety requirements.

7.29 Sec. 10. Minnesota Statutes 2013 Supplement, section 626.557, subdivision 9, is
7.30 amended to read:

7.31 Subd. 9. **Common entry point designation.** (a) Each county board shall designate a
7.32 common entry point for reports of suspected maltreatment, for use until the commissioner
7.33 of human services establishes a common entry point. Two or more county boards may
7.34 jointly designate a single common entry point. The commissioner of human services shall

8.1 establish a common entry point effective ~~July 1, 2014~~ no sooner than January 1, 2015.

8.2 The common entry point is the unit responsible for receiving the report of suspected
8.3 maltreatment under this section.

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

- 8.7 (1) the time and date of the report;
- 8.8 (2) the name, address, and telephone number of the person reporting;
- 8.9 (3) the time, date, and location of the incident;
- 8.10 (4) the names of the persons involved, including but not limited to, perpetrators,
8.11 alleged victims, and witnesses;
- 8.12 (5) whether there was a risk of imminent danger to the alleged victim;
- 8.13 (6) a description of the suspected maltreatment;
- 8.14 (7) the disability, if any, of the alleged victim;
- 8.15 (8) the relationship of the alleged perpetrator to the alleged victim;
- 8.16 (9) whether a facility was involved and, if so, which agency licenses the facility;
- 8.17 (10) any action taken by the common entry point;
- 8.18 (11) whether law enforcement has been notified;
- 8.19 (12) whether the reporter wishes to receive notification of the initial and final
8.20 reports; and

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

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

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

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

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

8.32 (g) The commissioner of human services shall maintain a centralized database
8.33 for the collection of common entry point data, lead investigative agency data including
8.34 maltreatment report disposition, and appeals data. The common entry point shall
8.35 have access to the centralized database and must log the reports into the database and
8.36 immediately identify and locate prior reports of abuse, neglect, or exploitation.

(h) When appropriate, the common entry point staff must refer calls that do not allege the abuse, neglect, or exploitation of a vulnerable adult to other organizations that might resolve the reporter's concerns.

(i) A common entry point must be operated in a manner that enables the commissioner of human services to:

(1) track critical steps in the reporting, evaluation, referral, response, disposition, and investigative process to ensure compliance with all requirements for all reports;

(2) maintain data to facilitate the production of aggregate statistical reports for monitoring patterns of abuse, neglect, or exploitation;

(3) serve as a resource for the evaluation, management, and planning of preventative and remedial services for vulnerable adults who have been subject to abuse, neglect, or exploitation;

(4) set standards, priorities, and policies to maximize the efficiency and effectiveness of the common entry point; and

(5) track and manage consumer complaints related to the common entry point.

(j) The commissioners of human services and health shall collaborate on the creation of a system for referring reports to the lead investigative agencies. This system shall enable the commissioner of human services to track critical steps in the reporting, evaluation, referral, response, disposition, investigation, notification, determination, and appeal processes.

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

Sec. 11. Laws 2011, First Special Session chapter 9, article 7, section 7, the effective date, is amended to read:

EFFECTIVE DATE. This section is effective January 1, 2014, for adults age 21 or older, and October 1, 2019, for children ~~age 16 to~~ before the child's 21st birthday.

Sec. 12. Laws 2013, chapter 108, article 7, section 60, is amended to read:

Sec. 60. **PROVIDER RATE AND GRANT INCREASE EFFECTIVE APRIL 1, 2014.**

(a) The commissioner of human services shall increase reimbursement rates, grants, allocations, individual limits, and rate limits, as applicable, by one percent for the rate period beginning April 1, 2014, for services rendered on or after those dates. County or tribal contracts for services specified in this section must be amended to pass through these rate increases within 60 days of the effective date.

- 10.1 (b) The rate changes described in this section must be provided to:
- 10.2 (1) home and community-based waived services for persons with developmental
- 10.3 disabilities or related conditions, including consumer-directed community supports, under
- 10.4 Minnesota Statutes, section 256B.501;
- 10.5 (2) waived services under community alternatives for disabled individuals,
- 10.6 including consumer-directed community supports, under Minnesota Statutes, section
- 10.7 256B.49;
- 10.8 (3) community alternative care waived services, including consumer-directed
- 10.9 community supports, under Minnesota Statutes, section 256B.49;
- 10.10 (4) brain injury waived services, including consumer-directed community
- 10.11 supports, under Minnesota Statutes, section 256B.49;
- 10.12 (5) home and community-based waived services for the elderly under Minnesota
- 10.13 Statutes, section 256B.0915;
- 10.14 (6) nursing services and home health services under Minnesota Statutes, section
- 10.15 256B.0625, subdivision 6a;
- 10.16 (7) personal care services and qualified professional supervision of personal care
- 10.17 services under Minnesota Statutes, section 256B.0625, subdivisions 6a and 19a;
- 10.18 (8) private duty nursing services under Minnesota Statutes, section 256B.0625,
- 10.19 subdivision 7;
- 10.20 (9) day training and habilitation services for adults with developmental disabilities
- 10.21 or related conditions under Minnesota Statutes, sections 252.40 to 252.46, including the
- 10.22 additional cost of rate adjustments on day training and habilitation services, provided as a
- 10.23 social service, formerly funded under Minnesota Statutes 2010, chapter 256M;
- 10.24 (10) alternative care services under Minnesota Statutes, section 256B.0913, and
- 10.25 essential community supports under Minnesota Statutes, section 256B.0922;
- 10.26 (11) living skills training programs for persons with intractable epilepsy who need
- 10.27 assistance in the transition to independent living under Laws 1988, chapter 689;
- 10.28 (12) semi-independent living services (SILS) under Minnesota Statutes, section
- 10.29 252.275, including SILS funding under county social services grants formerly funded
- 10.30 under Minnesota Statutes, chapter 256M;
- 10.31 (13) consumer support grants under Minnesota Statutes, section 256.476;
- 10.32 (14) family support grants under Minnesota Statutes, section 252.32;
- 10.33 (15) housing access grants under Minnesota Statutes, sections 256B.0658 and
- 10.34 256B.0917, subdivision 14;
- 10.35 (16) self-advocacy grants under Laws 2009, chapter 101;
- 10.36 (17) technology grants under Laws 2009, chapter 79;

11.1 (18) aging grants under Minnesota Statutes, sections 256.975 to 256.977, 256B.0917,
11.2 and 256B.0928; and

11.3 (19) community support services for deaf and hard-of-hearing adults with mental
11.4 illness who use or wish to use sign language as their primary means of communication
11.5 under Minnesota Statutes, section 256.01, subdivision 2; and deaf and hard-of-hearing
11.6 grants under Minnesota Statutes, sections 256C.233 and 256C.25; Laws 1985, chapter 9;
11.7 and Laws 1997, First Special Session chapter 5, section 20.

11.8 (c) A managed care plan receiving state payments for the services in this section
11.9 must include these increases in their payments to providers. To implement the rate increase
11.10 in this section, capitation rates paid by the commissioner to managed care organizations
11.11 under Minnesota Statutes, section 256B.69, shall reflect a one percent increase for the
11.12 specified services for the period beginning April 1, 2014.

11.13 (d) Counties shall increase the budget for each recipient of consumer-directed
11.14 community supports by the amounts in paragraph (a) on the effective dates in paragraph (a).

11.15 **EFFECTIVE DATE.** This section is effective April 1, 2014.