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State of Minnesota
HOUSE OF REPRESENTATIVES

EIGHTY-EIGHTH SESSION

H. F. No. 844

02/21/2013 Authored by Nelson, Liebling, Huntley, Abeler, Johnson, S., and others
The bill was read for the first time and referred to the Committee on Health and Human Services Policy
03/11/2013 Adoption of Report: Pass as Amended and re-referred to the Committee on Civil Law
03/13/2013 Adoption of Report: Pass and re-referred to the Committee on Labor, Workplace and Regulated Industries

1.1 A bill for an act
1.2 relating to home and community-based long-term care services; creating the
1.3 Quality Self-Directed Services Workforce Council; regulating individual
1.4 providers of direct support services; proposing coding for new law in Minnesota
1.5 Statutes, chapters 179A; 256B.

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

1.7 Section 1. **[179A.54] INDIVIDUAL PROVIDERS OF DIRECT SUPPORT**
1.8 **SERVICES.**

1.9 Subdivision 1. **Definitions.** (a) For the purposes of this section:

1.10 (b) "Direct support services" has the meaning given to it under section 256B.0711,
1.11 subdivision 2, paragraph (d).

1.12 (c) "Individual provider" has the meaning given to it under section 256B.0711,
1.13 subdivision 2, paragraph (e).

1.14 (d) "Participant" has the meaning given to it under section 256B.0711, subdivision 2,
1.15 paragraph (f).

1.16 (e) "Participant's representative" has the meaning given to it under section
1.17 256B.0711, subdivision 2, paragraph (g).

1.18 Subd. 2. **Rights of individual providers and participants.** (a) Only for the
1.19 purposes of meeting and negotiating on topics specified in paragraph (c) individual
1.20 providers shall be considered, by virtue of this section, executive branch state employees
1.21 employed by the commissioner of management and budget or the commissioner's
1.22 representative. This section does not require the treatment of individual providers
1.23 as public employees for any other purpose. Chapter 179A shall apply to individual
1.24 providers except as otherwise provided in this section. Notwithstanding section 179A.03,

2.1 subdivision 14, paragraph (a), clause (5), chapter 179A shall apply to individual providers
2.2 regardless of part-time or full-time employment status.

2.3 (b) With regard to the application of chapter 179A to individual providers:

2.4 (1) if an exclusive representative is certified pursuant to this subdivision, the mutual
2.5 rights and obligations of the state and an exclusive representative of individual providers
2.6 to meet and negotiate regarding terms and conditions shall extend only to the subjects
2.7 covered under paragraph (c);

2.8 (2) no provision of any agreement reached between the state and any exclusive
2.9 representative of individual providers, nor any arbitration award, shall interfere with the
2.10 rights of participants or participants' representatives to select, hire, direct, supervise, and
2.11 terminate the employment of their individual providers; to manage an individual service
2.12 budget regarding the amounts and types of authorized goods or services received; or to
2.13 receive direct support services from individual providers not referred to them through a
2.14 state registry;

2.15 (3) any interest arbitration award or agreement reached between the state and the
2.16 exclusive representative of individual providers under chapter 179A shall be submitted to
2.17 the legislature to be accepted or rejected in accordance with sections 3.855 and 179A.22,
2.18 and is subject to section 179A.20, subdivisions 2 and 5;

2.19 (4) individual providers shall be subject to the prohibition on strikes applied to
2.20 essential employees under section 179A.18, and to the interest arbitration procedures
2.21 applied to essential employees under section 179A.16;

2.22 (5) the only appropriate unit for individual providers shall be a statewide unit of all
2.23 individual providers. Individual providers who are related to their participant or their
2.24 participant's representative shall not for such reason be excluded from the appropriate unit;

2.25 (6) beginning July 1, 2013, upon a showing made to the commissioner of the
2.26 Bureau of Mediation Services by any employee organization wishing to represent the
2.27 appropriate unit of individual providers that at least 500 individual providers support such
2.28 representation, the commissioner of human services shall provide to such organization
2.29 within seven days the most recent list of individual providers compiled under section
2.30 256B.0711, subdivision 6, paragraph (g), and subsequent monthly lists upon request
2.31 for an additional three months;

2.32 (7) beginning August 1, 2013, any employee organization wishing to represent
2.33 the appropriate unit of individual providers may seek exclusive representative status
2.34 pursuant to section 179A.12. Representation elections for individual providers shall
2.35 be conducted by mail ballot, and such election shall be conducted upon an appropriate
2.36 petition stating that at least ten percent of the unit wishes to be represented by the

3.1 petitioner. The individual providers eligible to vote in any such election shall be those
3.2 individual providers on the monthly list of individual providers compiled under section
3.3 256B.0711, subdivision 6, paragraph (g), most recently preceding the filing of the election
3.4 petition. Except as otherwise provided, elections under this clause shall be conducted
3.5 in accordance with section 179A.12; and

3.6 (8) any fees otherwise required under section 179A.06, subdivision 3, shall not
3.7 commence prior to ratification of an agreement under section 179A.22. This clause does
3.8 not limit the availability of voluntary dues checkoff under section 179A.06, subdivision 6.

3.9 (c) The state shall meet and negotiate with the exclusive representative on the
3.10 following issues:

3.11 (1) compensation rates and payment terms and practices;

3.12 (2) fringe benefits, including severance payments, but not retirement contributions
3.13 or benefits and not other benefits to be paid by the state when a person no longer intends to
3.14 be an individual provider;

3.15 (3) grievance procedures regarding matters in clauses (1) and (2);

3.16 (4) establishing a system for funding training; and

3.17 (5) required orientation programs for all newly hired individual providers regarding
3.18 their employment within the covered programs through which they provide services.

3.19 **Sec. 2. [256B.0711] QUALITY SELF-DIRECTED SERVICES WORKFORCE.**

3.20 Subdivision 1. **Findings and purpose.** (a) The state of Minnesota has long been a
3.21 leader in providing cost-effective and participant-preferred home and community-based
3.22 services as an alternative to skilled nursing facility care for seniors and people with
3.23 disabilities, and has a history of making improvements to strengthen this system. The
3.24 state faces increasing demand for such services and a workforce able to provide them,
3.25 due to changing demographics.

3.26 (b) The state of Minnesota faces numerous obstacles to meeting this demand,
3.27 namely the staffing shortages and high turnover rates that characterize the workforce
3.28 available to provide such services, a growing issue throughout the country. For these
3.29 reasons, expanding access to such services, including opportunities for participants to
3.30 select and direct individual providers of such services, will require the state to develop
3.31 the infrastructure for recruiting and retaining a workforce of qualified individual service
3.32 providers sufficient to meet the growing demand for such participant-directed services.

3.33 (c) The legislature enacts this section to address these issues by ensuring the
3.34 development and maintenance of a stable, reliable, and experienced workforce of
3.35 sufficient size to provide high-quality services to all seniors and people with disabilities

4.1 who are authorized to receive such in-home services within state-financed programs, and
4.2 by ensuring that such persons have the opportunity to select and direct members of that
4.3 workforce as individual providers of such services.

4.4 Subd. 2. **Definitions.** (a) For purposes of this section:

4.5 (b) "Commissioner" means the commissioner of human services unless the context
4.6 indicates otherwise.

4.7 (c) "Covered program" means a program to provide direct support services funded in
4.8 whole or in part by the state of Minnesota, including the Community First Services and
4.9 Supports program; Consumer Directed Community Supports services and extended state
4.10 plan personal care assistance services available under programs established pursuant to
4.11 home and community-based service waivers authorized under section 1915(c) of the
4.12 Social Security Act, and under the alternative care program, as offered pursuant to section
4.13 256B.0913, as modified by subdivision 5; the personal care assistance choice program, as
4.14 established pursuant to section 256B.0659, subdivisions 18 to 20, and as modified by this
4.15 section; and any similar program that may provide such services.

4.16 (d) "Direct support services" means personal care assistance services covered by
4.17 medical assistance under section 256B.0625, subdivisions 19a and 19c; assistance with
4.18 activities of daily living as defined in section 256B.0659, subdivision 1, paragraph (b),
4.19 and instrumental activities of daily living as defined in section 256B.0659, subdivision 1,
4.20 paragraph (i); and other similar, in-home, nonprofessional long-term services and supports
4.21 provided to an elderly person or person with a disability to meet such person's daily
4.22 living needs and ensure that such person may adequately function in the person's home
4.23 and have safe access to the community.

4.24 (e) "Individual provider" means an individual selected by and working under the
4.25 direction of a participant in a covered program, or a participant's representative, to provide
4.26 direct support services to the participant, and does not include an individual from an
4.27 employee workforce assembled, directed, and controlled by a provider agency.

4.28 (f) "Participant" means a person who receives direct support services through
4.29 a covered program.

4.30 (g) "Participant's representative" means a participant's legal guardian or an individual
4.31 having the authority and responsibility to act on behalf of a participant with respect to the
4.32 provision of direct support services through a covered program.

4.33 Subd. 3. **Quality Self-Directed Services Workforce Council established.** (a)

4.34 There is established the Quality Self-Directed Services Workforce Council to ensure the
4.35 quality and availability of individual providers to be selected by and work under the
4.36 direction of participants to provide direct support services.

5.1 (b) The council shall be composed of the commissioner of human services or
5.2 designee, who shall serve as chair, and the following members, who shall be appointed by
5.3 the governor:

5.4 (1) six current or former recipients of direct support services;

5.5 (2) one legal guardian or legal representative of a current or former recipient of
5.6 direct support services; and

5.7 (3) one member of the State Council on Disability, under section 256.482, one
5.8 member of the Governor's Council on Developmental Disabilities, and one member of the
5.9 Minnesota Board on Aging, under section 256.975.

5.10 (c) All appointments to the council shall be made as provided in section 15.0597.
5.11 Membership terms, compensation and removal of members, and filling of vacancies are
5.12 as provided in section 15.0575. A majority of the members appointed and serving shall
5.13 constitute a quorum for the transaction of any business.

5.14 Subd. 4. **Duties of council.** The council, in consultation with the commissioner, has
5.15 the following ongoing advisory duties and responsibilities relating to ensuring the quality,
5.16 stability, and availability of the individual provider workforce:

5.17 (1) assess the size, quality, and stability of the individual provider workforce in
5.18 Minnesota and the ability of the existing workforce to meet the growing and changing
5.19 needs of both elderly participants and participants with disabilities;

5.20 (2) assess and propose strategies to identify, recruit, and retain prospective individual
5.21 providers to be available for employment by participants or participants' representatives;

5.22 (3) advise the commissioner regarding the development of orientation programs,
5.23 training and educational opportunities, and the maintenance of one or more public
5.24 registries as described in subdivision 6;

5.25 (4) advise the commissioner and other relevant state agencies in assessing existing
5.26 mechanisms for preventing abuse and neglect of participants and recommending
5.27 improvements to those protections;

5.28 (5) advise the commissioner in determining standards for compensation, including
5.29 benefits, and other conditions of employment for individual providers sufficient to attract
5.30 and maintain a qualified workforce; and

5.31 (6) otherwise advise and advocate regarding appropriate means of expanding access
5.32 to quality, self-directed direct support services.

5.33 Subd. 5. **Operation of covered programs.** (a) All covered programs shall operate
5.34 consistent with this section, including by providing such services through individual
5.35 providers as defined in subdivision 2, paragraph (e), notwithstanding any inconsistent
5.36 provisions of section 256B.0659 or section 256B.04, subdivision 16.

6.1 (b) This requirement shall not restrict the state's ability to offer to those participants
6.2 who choose not to self-direct a direct support worker or are unable to do so the alternative
6.3 of receiving similar services from the employee workforce assembled, directed, and
6.4 controlled by a provider agency.

6.5 Subd. 6. Duties of the Department of Human Services. (a) The commissioner
6.6 shall afford to all participants within a covered program the option of employing an
6.7 individual provider to provide direct support services.

6.8 (b) The commissioner shall ensure that all employment of individual providers is
6.9 in conformity with this section.

6.10 (c) The commissioner shall, in consultation with the council:

6.11 (1) establish compensation rates, payment terms and practices, and any benefit
6.12 terms, for all individual providers;

6.13 (2) provide for required orientation programs for all newly hired individual providers
6.14 regarding their employment within the covered programs through which they provide
6.15 services;

6.16 (3) provide for relevant training and educational opportunities for individual
6.17 providers, as well as for participants and participants' representatives who receive services
6.18 from individual providers, including opportunities for individual providers to obtain
6.19 certification documenting additional training and experience in areas of specialization;

6.20 (4) provide for the maintenance of one or more public registries to:

6.21 (i) provide routine, emergency, and respite referrals of qualified individual providers
6.22 to participants and participants' representatives;

6.23 (ii) enable participants and participants' representatives to gain improved access
6.24 to, and choice among, prospective individual providers, including by having access
6.25 to information about individual providers' training, educational background, work
6.26 experience, and availability for hire; and

6.27 (iii) provide for appropriate employment opportunities for individual providers and a
6.28 means by which they may more easily remain available to provide services to participants
6.29 within covered programs; and

6.30 (5) establish other appropriate terms and conditions of employment governing the
6.31 workforce of individual providers.

6.32 (d) The commissioner shall ensure that appropriate background checks are performed
6.33 on all individual providers included on any registry as described in paragraph (c), clause (4).

6.34 (e) The commissioner's authority regarding topics specified in section 179A.54,
6.35 subdivision 2, paragraph (c), is subject to the duty to meet and negotiate with an exclusive

7.1 representative over those topics, and is subject to any contracts entered into covering
7.2 topics specified in section 179A.54, subdivision 2, paragraph (c).

7.3 (f) The commissioner shall cooperate in the implementation of this act with the
7.4 commissioner of management and budget in the same manner as would be required of
7.5 an appointing authority under section 179A.22 with respect to any negotiations between
7.6 the executive branch of the state and the exclusive representative of individual providers,
7.7 as authorized under sections 179A.22 and 179A.54, regarding topics specified in section
7.8 179A.54, subdivision 2, paragraph (c). Any entity, including financial management
7.9 entities, contracting with the state to provide support to participants or participants'
7.10 representatives with regard to the employment of individual providers, shall assist and
7.11 cooperate with the council and commissioner of human services in the operations of this
7.12 section, including with respect to the commissioner's compiling and maintaining the list of
7.13 individual providers required under paragraph (g).

7.14 (g) The commissioner shall, not later than July 1, 2013, and then monthly thereafter,
7.15 compile and maintain a list of the names and addresses of all individual providers who
7.16 have been paid for providing direct support services to participants within the previous
7.17 six months. The list shall not include the name of any participant, or indicate that an
7.18 individual provider is a relative of a participant or has the same address as a participant.
7.19 The commissioner shall share the lists with the Quality Self-Directed Services Workforce
7.20 Council and with others as needed for the state to meet its obligations under chapter 179A
7.21 as modified and made applicable to individual providers under section 179A.54, and to
7.22 facilitate the representational processes under section 179A.54, subdivision 2, paragraph
7.23 (b), clauses (6) and (7).

7.24 (h) The commissioner shall immediately commence all necessary steps to ensure
7.25 that services offered under all covered programs are offered in conformity with this
7.26 section to complete any required modifications to currently operating covered programs
7.27 by September 1, 2013.

7.28 **Sec. 3. EFFECTIVE DATE.**

7.29 This act is effective the day following final enactment.