

A bill for an act

relating to human services; making changes to continuing care policy and personal care assistance services; amending Minnesota Statutes 2008, sections 144A.071, subdivision 4b; 144A.161, subdivision 1a; 245A.03, by adding a subdivision; 256B.0911, subdivision 4d; 626.557, subdivision 9a; Minnesota Statutes 2009 Supplement, sections 144.0724, subdivision 11; 256B.0625, subdivision 19c; 256B.0651, by adding a subdivision; 256B.0652, subdivision 6; 256B.0653, subdivision 3; 256B.0659, subdivisions 1, 3, 4, 10, 11, 13, 14, 18, 19, 20, 21, 27, 30, by adding a subdivision; 256B.0911, subdivisions 1a, 2b, 3a, 3b.

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

ARTICLE 1

CONTINUING CARE POLICY

Section 1. Minnesota Statutes 2009 Supplement, section 144.0724, subdivision 11, is amended to read:

Subd. 11. **Nursing facility level of care.** (a) For purposes of medical assistance payment of long-term care services, a recipient must be determined, using assessments defined in subdivision 4, to meet one of the following nursing facility level of care criteria:

(1) the person requires formal clinical monitoring at least once per day;

~~(1)~~ (2) the person needs the assistance of another person or constant supervision to begin and complete at least four of the following activities of living: bathing, bed mobility, dressing, eating, grooming, toileting, transferring, and walking;

~~(2)~~ (3) the person needs the assistance of another person or constant supervision to begin and complete toileting, transferring, or positioning and the assistance cannot be scheduled;

~~(3)~~ (4) the person has significant difficulty with memory, using information, daily decision making, or behavioral needs that require intervention;

~~(4)~~ (5) the person has had a qualifying nursing facility stay of at least 90 days;
(6) the person meets the nursing facility level of care criteria determined 90 days after admission or on the first quarterly assessment after admission, whichever is later; or

~~(5)~~ (7) the person is determined to be at risk for nursing facility admission or readmission through a face-to-face long-term care consultation assessment as specified in section 256B.0911, subdivision 3a, 3b, or 4d, by a county, tribe, or managed care organization under contract with the Department of Human Services. The person is considered at risk under this clause if the person currently lives alone or will live alone upon discharge and also meets one of the following criteria:

(i) the person has experienced a fall resulting in a fracture;

(ii) the person has been determined to be at risk of maltreatment or neglect, including self-neglect; or

(iii) the person has a sensory impairment that substantially impacts functional ability and maintenance of a community residence.

(b) The assessment used to establish medical assistance payment for nursing facility services must be the most recent assessment performed under subdivision 4, paragraph (b), that occurred no more than 90 calendar days before the effective date of medical assistance eligibility for payment of long-term care services. In no case shall medical assistance payment for long-term care services occur prior to the date of the determination of nursing facility level of care.

(c) The assessment used to establish medical assistance payment for long-term care services provided under sections 256B.0915 and 256B.49 and alternative care payment for services provided under section 256B.0913 must be the most recent face-to-face assessment performed under section 256B.0911, subdivision 3a, 3b, or 4d, that occurred no more than 60 calendar days before the effective date of medical assistance eligibility for payment of long-term care services.

Sec. 2. Minnesota Statutes 2008, section 144A.071, subdivision 4b, is amended to read:

Subd. 4b. **Licensed beds on layaway status.** A licensed and certified nursing facility may lay away, upon prior written notice to the commissioner of health, ~~up to 50 percent of its~~ licensed and certified beds. A nursing facility may not discharge a resident in order to lay away a bed. Notice to the commissioner shall be given 60 days prior to the effective date of the layaway. Beds on layaway shall have the same status as voluntarily delicensed and decertified beds and shall not be subject to license fees and license surcharge fees. In addition, beds on layaway may be removed from layaway at any time on or after one year after the effective date of layaway in the facility of origin, with a

60-day notice to the commissioner. A nursing facility that removes beds from layaway may not place beds on layaway status for one year after the effective date of the removal from layaway. The commissioner may approve the immediate removal of beds from layaway if necessary to provide access to those nursing home beds to residents relocated from other nursing homes due to emergency situations or closure. In the event approval is granted, the one-year restriction on placing beds on layaway after a removal of beds from layaway shall not apply. Beds may remain on layaway for up to ~~five~~ ten years. The commissioner may approve placing and removing beds on layaway at any time during renovation or construction related to a moratorium project approved under this section or section 144A.073. Nursing facilities are not required to comply with any licensure or certification requirements for beds on layaway status.

Sec. 3. Minnesota Statutes 2008, section 144A.161, subdivision 1a, is amended to read:

Subd. 1a. **Scope.** Where a facility is undertaking closure, curtailment, reduction, or change in operations, or where a housing with services unit registered under chapter 144D is closed because the space that it occupies is being replaced by a nursing facility bed that is being reactivated from layaway status, the facility and the county social services agency must comply with the requirements of this section.

Sec. 4. Minnesota Statutes 2008, section 245A.03, is amended by adding a subdivision to read:

Subd. 9. **Permitted services by an individual who is related.** Notwithstanding subdivision 2, paragraph (a), clause (1), and subdivision 7, an individual who is related to a person receiving supported living services may provide licensed services to that person if:

(1) the person who receives supported living services received these services in a residential site on July 1, 2005;

(2) the services under clause (1) were provided in a corporate foster care setting for adults and were funded by the developmental disabilities home and community-based services waiver defined in section 256B.092;

(3) the individual who is related obtains and maintains both a license under chapter 245B and an adult foster care license under Minnesota Rules, parts 9555.5105 to 9555.6265; and

(4) the individual who is related is not the guardian of the person receiving supported living services.

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

Sec. 5. Minnesota Statutes 2009 Supplement, section 256B.0625, subdivision 19c, is amended to read:

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

"Qualified professional" means a mental health professional as defined in section 245.462, subdivision 18, or 245.4871, subdivision 27; or a registered nurse as defined in sections 148.171 to 148.285, a licensed social worker as defined in ~~section 148B.21~~ sections 148D.010 and 148D.055, or a qualified developmental disabilities specialist under section 245B.07, subdivision 4. The qualified professional shall perform the duties required in section 256B.0659.

Sec. 6. Minnesota Statutes 2009 Supplement, section 256B.0651, is amended by adding a subdivision to read:

Subd. 17. **Recipient protection.** (a) Providers of home care services must provide each recipient with a copy of the home care bill of rights under section 144A.44 at least 30 days prior to terminating services to a recipient, if the termination results from provider sanctions under section 256B.064, such as a payment withhold, a suspension of participation, or a termination of participation. If a home care provider determines it is unable to continue providing services to a recipient, the provider must notify the recipient, the recipient's responsible party, and the commissioner 30 days prior to terminating services to the recipient because of an action under section 256B.064, and must assist the commissioner and lead agency in supporting the recipient in transitioning to another home care provider of the recipient's choice.

(b) In the event of a payment withhold from a home care provider, a suspension of participation, or a termination of participation of a home care provider under section 256B.064, the commissioner may inform the Office of Ombudsman for Long-Term Care and the lead agencies for all recipients with active service agreements with the provider. At the commissioner's request, the lead agencies must contact recipients to ensure that the recipients are continuing to receive needed care, and that the recipients have been given free choice of provider if they transfer to another home care provider. In addition, the commissioner or the commissioner's delegate may directly notify recipients who receive care from the provider that payments have been withheld or that the provider's participation in medical assistance has been suspended or terminated, if the commissioner determines

that notification is necessary to protect the welfare of the recipients. For purposes of this subdivision, "lead agencies" means counties, tribes, and managed care organizations.

Sec. 7. Minnesota Statutes 2009 Supplement, 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:

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

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

(3) ~~number~~ presence of behavior ~~descriptions~~ as defined in section 256B.0659.

(c) 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:

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

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

(3) 30 additional minutes per day for each behavior issue as defined in section 256B.0659.

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

Sec. 8. Minnesota Statutes 2009 Supplement, section 256B.0659, subdivision 10, is amended to read:

Subd. 10. **Responsible party; duties; delegation.** (a) A responsible party shall enter into a written agreement with a personal care assistance provider agency, on a form determined by the commissioner, to perform the following duties:

(1) be available while care is provided in a method agreed upon by the individual or the individual's legal representative and documented in the recipient's personal care assistance care plan;

(2) monitor personal care assistance services to ensure the recipient's personal care assistance care plan is being followed; and

(3) review and sign personal care assistance time sheets after services are provided to provide verification of the personal care assistance services.

Failure to provide the support required by the recipient must result in a referral to the county common entry point.

(b) Responsible parties who are parents of minors or guardians of minors or incapacitated persons may delegate the responsibility to another adult who is not the personal care assistant during a temporary absence of at least 24 hours but not more than six months. The person delegated as a responsible party must be able to meet the definition of the responsible party. The responsible party must ensure that the delegate performs the functions of the responsible party, is identified at the time of the assessment, and is listed on the personal care assistance care plan. The responsible party must communicate to the personal care assistance provider agency about the need for a ~~delegate~~ delegated responsible party, including the name of the delegated responsible party, ~~dates~~ the delegated responsible party will be living with the recipient, and contact numbers.

Sec. 9. Minnesota Statutes 2009 Supplement, section 256B.0659, subdivision 11, is amended to read:

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

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

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

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

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

(3) enroll with the department as a personal care assistant after clearing a background study. Except as provided in subdivision 11a, before a personal care assistant provides services, the personal care assistance provider agency must initiate a background study on the personal care assistant under chapter 245C, and the personal care assistance provider agency must have received a notice from the commissioner that the personal care assistant 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. 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 within the first seven days after the services begin; and

(10) be limited to providing and being paid for up to 310 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.

(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) Effective January 1, 2010, persons who do not qualify as a personal care assistant include parents and stepparents of minors, spouses, paid legal guardians, family foster

care providers, except as otherwise allowed in section 256B.0625, subdivision 19a, or staff of a residential setting.

EFFECTIVE DATE. This section is effective retroactively from July 1, 2009.

Sec. 10. Minnesota Statutes 2009 Supplement, section 256B.0659, is amended by adding a subdivision to read:

Subd. 11a. Exception to personal care assistant; requirements. The personal care assistant for a recipient may be allowed to enroll with a different personal care assistant provider agency upon initiation of a new background study according to chapter 245C if all of the following are met:

(1) the commissioner determines that a change in enrollment or affiliation of the personal care assistant is needed in order to ensure continuity of services and protect the health and safety of the recipient;

(2) the chosen agency has been continuously enrolled as a personal care assistance provider agency for at least two years;

(3) the recipient chooses to transfer to the personal care assistance provider agency;

(4) the personal care assistant has been continuously enrolled with the former personal care assistance provider agency since the last background study was completed; and

(5) the personal care assistant continues to meet requirements of subdivision 11, excluding paragraph (a), clause (3).

EFFECTIVE DATE. This section is effective retroactively from July 1, 2009.

Sec. 11. Minnesota Statutes 2009 Supplement, section 256B.0659, subdivision 13, is amended to read:

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

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

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

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

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

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

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

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

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

(c) Effective January 1, 2010, the qualified professional shall complete the provider training with basic information about the personal care assistance program approved by the commissioner within six months of the date hired by a personal care assistance provider agency. Qualified professionals who have completed the required ~~trainings~~ training as ~~an employee with a worker from~~ a personal care assistance provider agency do not need to repeat the required ~~trainings~~ training if they are hired by another agency, if they have completed the training within the last three years.

Sec. 12. Minnesota Statutes 2009 Supplement, section 256B.0659, subdivision 21, is amended to read:

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

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

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

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

(4) proof of workers' compensation insurance coverage;

(5) proof of liability insurance;

~~(5)~~ (6) a description of the personal care assistance provider agency's organization identifying the names of all owners, managing employees, staff, board of directors, and the affiliations of the directors, owners, or staff to other service providers;

~~(6)~~ (7) a copy of the personal care assistance provider agency's written policies and procedures including: hiring of employees; training requirements; service delivery; and employee and consumer safety including process for notification and resolution of consumer grievances, identification and prevention of communicable diseases, and employee misconduct;

~~(7)~~ (8) copies of all other forms the personal care assistance provider agency uses in the course of daily business including, but not limited to:

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

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

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

~~(8)~~ (9) a list of all ~~trainings~~ training and classes that the personal care assistance provider agency requires of its staff providing personal care assistance services;

~~(9)~~ (10) documentation that the personal care assistance provider agency and staff have successfully completed all the training required by this section;

~~(10)~~ (11) documentation of the agency's marketing practices;

~~(11)~~ (12) disclosure of ownership, leasing, or management of all residential properties that is used or could be used for providing home care services; and

~~(12)~~ (13) documentation that the agency will use the following percentages of revenue generated from the medical assistance rate paid for personal care assistance services for employee personal care assistant wages and benefits: 72.5 percent of revenue in the personal care assistance choice option and 72.5 percent of revenue from other personal care assistance providers.

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

11.1 (c) All personal care assistance provider agencies shall complete mandatory training
11.2 as determined by the commissioner before enrollment as a provider. Personal care
11.3 assistance provider agencies are required to send all owners, qualified professionals
11.4 employed by the agency, and all other managing employees to the initial and subsequent
11.5 ~~trainings~~ training. Personal care assistance provider agency billing staff shall complete
11.6 training about personal care assistance program financial management. This training is
11.7 effective July 1, 2009. Any personal care assistance provider agency enrolled before that
11.8 date shall, if it has not already, complete the provider training within 18 months of July 1,
11.9 2009. Any new owners, new qualified professionals, and new managing employees are
11.10 required to complete mandatory training as a requisite of hiring.

11.11 Sec. 13. Minnesota Statutes 2009 Supplement, section 256B.0659, subdivision 30,
11.12 is amended to read:

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

11.14 (1) by October 31, 2009, information to recipients likely to be affected that (i)
11.15 describes the changes to the personal care assistance program that may result in the
11.16 loss of access to personal care assistance services, and (ii) includes resources to obtain
11.17 further information; and

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

11.20 The notice shall include how to get further information on the changes, how to get help to
11.21 obtain other services, a list of community resources, and appeal rights. Notwithstanding
11.22 section 256.045, a recipient may request continued services pending appeal within the
11.23 time period allowed to request an appeal.

11.24 Sec. 14. Minnesota Statutes 2009 Supplement, section 256B.0911, subdivision 1a,
11.25 is amended to read:

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

11.27 (a) "Long-term care consultation services" means:

11.28 (1) assistance in identifying services needed to maintain an individual in the most
11.29 inclusive environment;

11.30 (2) providing recommendations on cost-effective community services that are
11.31 available to the individual;

11.32 (3) development of an individual's person-centered community support plan;

11.33 (4) providing information regarding eligibility for Minnesota health care programs;

(5) face-to-face long-term care consultation assessments, which may be completed in a hospital, nursing facility, intermediate care facility for persons with developmental disabilities (ICF/DDs), regional treatment centers, or the person's current or planned residence;

(6) federally mandated screening to determine the need for a institutional level of care under section 256B.0911, subdivision 4, paragraph (a);

(7) determination of home and community-based waiver service eligibility including level of care determination for individuals who need an institutional level of care as defined under section 144.0724, subdivision 11, or 256B.092, service eligibility including state plan home care services identified in ~~section~~ sections 256B.0625, subdivisions 6, 7, and 19, paragraphs (a) and (c), and 256B.0657, based on assessment and support plan development with appropriate referrals, including the option for consumer-directed community supports;

(8) providing recommendations for nursing facility placement when there are no cost-effective community services available; and

(9) assistance to transition people back to community settings after facility admission.

(b) "Long-term care options counseling" means the services provided by the linkage lines as mandated by sections 256.01 and 256.975, subdivision 7, and also includes telephone assistance and follow up once a long-term care consultation assessment has been completed.

(c) "Minnesota health care programs" means the medical assistance program under chapter 256B and the alternative care program under section 256B.0913.

(d) "Lead agencies" means counties or a collaboration of counties, tribes, and health plans administering long-term care consultation assessment and support planning services.

Sec. 15. Minnesota Statutes 2009 Supplement, section 256B.0911, subdivision 2b, is amended to read:

Subd. 2b. **Certified assessors.** (a) Beginning January 1, 2011, each lead agency shall use certified assessors who have completed training and the certification processes determined by the commissioner in subdivision 2c. Certified assessors shall demonstrate best practices in assessment and support planning including person-centered planning principals and have a common set of skills that must ensure consistency and equitable access to services statewide. Assessors must be part of a multidisciplinary team of professionals that includes public health nurses, social workers, and other professionals as defined in paragraph (b). For persons with complex health care needs, a public health

13.1 nurse or registered nurse from a multidisciplinary team must be consulted. A lead agency
13.2 may choose, according to departmental policies, to contract with a qualified, certified
13.3 assessor to conduct assessments and reassessments on behalf of the lead agency.

13.4 (b) Certified assessors are persons with a minimum of a bachelor's degree in social
13.5 work, nursing with a public health nursing certificate, or other closely related field with at
13.6 least one year of home and community-based experience or a two-year registered nursing
13.7 degree with at least three years of home and community-based experience that have
13.8 received training and certification specific to assessment and consultation for long-term
13.9 care services in the state.

13.10 Sec. 16. Minnesota Statutes 2009 Supplement, section 256B.0911, subdivision 3a,
13.11 is amended to read:

13.12 Subd. 3a. **Assessment and support planning.** (a) Persons requesting assessment,
13.13 services planning, or other assistance intended to support community-based living,
13.14 including persons who need assessment in order to determine waiver or alternative care
13.15 program eligibility, must be visited by a long-term care consultation team within 15
13.16 calendar days after the date on which an assessment was requested or recommended. After
13.17 January 1, 2011, these requirements also apply to personal care assistance services, private
13.18 duty nursing, and home health agency services, on timelines established in subdivision 5.
13.19 Face-to-face assessments must be conducted according to paragraphs (b) to (i).

13.20 (b) The county may utilize a team of either the social worker or public health nurse,
13.21 or both. After January 1, 2011, lead agencies shall use certified assessors to conduct the
13.22 assessment in a face-to-face interview. The consultation team members must confer
13.23 regarding the most appropriate care for each individual screened or assessed.

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

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

13.34 (e) The person, or the person's legal representative, must be provided with written
13.35 recommendations for community-based services, including consumer-directed options,

14.1 or institutional care that include documentation that the most cost-effective alternatives
14.2 available were offered to the individual. For purposes of this requirement, "cost-effective
14.3 alternatives" means community services and living arrangements that cost the same as or
14.4 less than institutional care.

14.5 (f) If the person chooses to use community-based services, the person or the person's
14.6 legal representative must be provided with a written community support plan, regardless
14.7 of whether the individual is eligible for Minnesota health care programs. A person may
14.8 request assistance in identifying community supports without participating in a complete
14.9 assessment. Upon a request for assistance identifying community support, the person must
14.10 be transferred or referred to the services available under sections 256.975, subdivision 7,
14.11 and 256.01, subdivision 24, for telephone assistance and follow up.

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

14.15 (h) The team must give the person receiving assessment or support planning, or
14.16 the person's legal representative, materials, and forms supplied by the commissioner
14.17 containing the following information:

14.18 (1) the need for and purpose of preadmission screening if the person selects nursing
14.19 facility placement;

14.20 (2) the role of the long-term care consultation assessment and support planning in
14.21 waiver and alternative care program eligibility determination;

14.22 (3) information about Minnesota health care programs;

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

14.24 (5) the person's right to confidentiality under the Minnesota Government Data
14.25 Practices Act, chapter 13;

14.26 (6) the long-term care consultant's decision regarding the person's need for
14.27 institutional level of care as determined under criteria established in section 144.0724,
14.28 subdivision 11, or 256B.092; and

14.29 (7) the person's right to appeal the decision regarding the need for nursing facility
14.30 level of care or the county's final decisions regarding public programs eligibility according
14.31 to section 256.045, subdivision 3.

14.32 (i) Face-to-face assessment completed as part of eligibility determination for
14.33 the alternative care, elderly waiver, community alternatives for disabled individuals,
14.34 community alternative care, and traumatic brain injury waiver programs under sections
14.35 256B.0915, 256B.0917, and 256B.49 is valid to establish service eligibility for no more
14.36 than 60 calendar days after the date of assessment. The effective eligibility start date

15.1 for these programs can never be prior to the date of assessment. If an assessment was
15.2 completed more than 60 days before the effective waiver or alternative care program
15.3 eligibility start date, assessment and support plan information must be updated in a
15.4 face-to-face visit and documented in the department's Medicaid Management Information
15.5 System (MMIS). The effective date of program eligibility in this case cannot be prior to
15.6 the date the updated assessment is completed.

15.7 Sec. 17. Minnesota Statutes 2009 Supplement, section 256B.0911, subdivision 3b,
15.8 is amended to read:

15.9 Subd. 3b. **Transition assistance.** (a) A long-term care consultation team shall
15.10 provide assistance to persons residing in a nursing facility, hospital, regional treatment
15.11 center, or intermediate care facility for persons with developmental disabilities who
15.12 request or are referred for assistance. Transition assistance must include assessment,
15.13 community support plan development, referrals to long-term care options counseling
15.14 under section 256B.975, subdivision 10, for community support plan implementation
15.15 and to Minnesota health care programs, including home and community-based waiver
15.16 services and consumer-directed options through the waivers, and referrals to programs
15.17 that provide assistance with housing. Transition assistance must also include information
15.18 about the Centers for Independent Living and the Senior LinkAge Line, and about other
15.19 organizations that can provide assistance with relocation efforts, and information about
15.20 contacting these organizations to obtain their assistance and support.

15.21 (b) The county shall develop transition processes with institutional social workers
15.22 and discharge planners to ensure that:

15.23 (1) persons admitted to facilities receive information about transition assistance
15.24 that is available;

15.25 (2) the assessment is completed for persons within ten working days of the date of
15.26 request or recommendation for assessment; and

15.27 (3) there is a plan for transition and follow-up for the individual's return to the
15.28 community. The plan must require notification of other local agencies when a person
15.29 who may require assistance is screened by one county for admission to a facility located
15.30 in another county.

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

Sec. 18. Minnesota Statutes 2008, section 256B.0911, subdivision 4d, is amended to read:

Subd. 4d. Preadmission screening of individuals under 65 years of age. (a)

It is the policy of the state of Minnesota to ensure that individuals with disabilities or chronic illness are served in the most integrated setting appropriate to their needs and have the necessary information to make informed choices about home and community-based service options.

(b) Individuals under 65 years of age who are admitted to a nursing facility from a hospital must be screened prior to admission as outlined in subdivisions 4a through 4c.

(c) Individuals under 65 years of age who are admitted to nursing facilities with only a telephone screening must receive a face-to-face assessment from the long-term care consultation team member of the county in which the facility is located or from the recipient's county case manager within 40 calendar days of admission.

(d) Individuals under 65 years of age who are admitted to a nursing facility without preadmission screening according to the exemption described in subdivision 4b, paragraph (a), clause (3), and who remain in the facility longer than 30 days must receive a face-to-face assessment within 40 days of admission.

(e) At the face-to-face assessment, the long-term care consultation team member or county case manager must perform the activities required under subdivision 3b.

(f) For individuals under 21 years of age, a screening interview which recommends nursing facility admission must be face-to-face and approved by the commissioner before the individual is admitted to the nursing facility.

(g) In the event that an individual under 65 years of age is admitted to a nursing facility on an emergency basis, the county must be notified of the admission on the next working day, and a face-to-face assessment as described in paragraph (c) must be conducted within 40 calendar days of admission.

(h) At the face-to-face assessment, the long-term care consultation team member or the case manager must present information about home and community-based options, including consumer-directed options, so the individual can make informed choices. If the individual chooses home and community-based services, the long-term care consultation team member or case manager must complete a written relocation plan within 20 working days of the visit. The plan shall describe the services needed to move out of the facility and a time line for the move which is designed to ensure a smooth transition to the individual's home and community.

(i) An individual under 65 years of age residing in a nursing facility shall receive a face-to-face assessment at least every 12 months to review the person's service choices

and available alternatives unless the individual indicates, in writing, that annual visits are not desired. In this case, the individual must receive a face-to-face assessment at least once every 36 months for the same purposes.

(j) Notwithstanding the provisions of subdivision 6, the commissioner may pay county agencies directly for face-to-face assessments for individuals under 65 years of age who are being considered for placement or residing in a nursing facility.

Sec. 19. Minnesota Statutes 2008, section 626.557, subdivision 9a, is amended to read:

Subd. 9a. Evaluation and referral of reports made to common entry point unit.

The common entry point must screen the reports of alleged or suspected maltreatment for immediate risk and make all necessary referrals as follows:

(1) if the common entry point determines that there is an immediate need for adult protective services, the common entry point agency shall immediately notify the appropriate county agency;

(2) if the report contains suspected criminal activity against a vulnerable adult, the common entry point shall immediately notify the appropriate law enforcement agency;

~~(3) if the report references alleged or suspected maltreatment and there is no immediate need for adult protective services, the common entry point shall notify~~ refer all reports of alleged or suspected maltreatment to the appropriate lead agency as soon as possible, but in any event no longer than two working days; and

~~(4) if the report does not reference alleged or suspected maltreatment, the common entry point may determine whether the information will be referred; and~~

~~(5)~~ (4) if the report contains information about a suspicious death, the common entry point shall immediately notify the appropriate law enforcement agencies, the local medical examiner, and the ombudsman established under section 245.92. Law enforcement agencies shall coordinate with the local medical examiner and the ombudsman as provided by law.

Sec. 20. ELDERLY WAIVER CONVERSION.

Notwithstanding Minnesota Statutes, section 256B.0915, subdivision 3b, a person age 65 or older with an MT home care rating on January 1, 2010, is eligible for the elderly waiver program and shall be considered a conversion for purposes of accessing monthly budget caps equal to no more than the person's monthly spending under the personal care assistance program on January 1, 2010.

Sec. 21. **DIRECTION TO COMMISSIONER; CONSULTATION WITH STAKEHOLDERS.**

The commissioner shall consult with stakeholders experienced in using and providing services through the consumer-directed community supports option during the identification of data to be used in future development of an individualized budget methodology for the home and community-based waivers under the new comprehensive assessment.

ARTICLE 2

PERSONAL CARE ASSISTANT SERVICES

Section 1. Minnesota Statutes 2009 Supplement, section 256B.0653, subdivision 3, is amended to read:

Subd. 3. **Home health aide visits.** (a) Home health aide visits must be provided by a certified home health aide using a written plan of care that is updated in compliance with Medicare regulations. A home health aide shall provide hands-on personal care, perform simple procedures as an extension of therapy or nursing services, and assist in instrumental activities of daily living as defined in section 256B.0659, including ensuring that the person gets to medical appointments if identified in the written plan of care. Home health aide visits must be provided in the recipient's home.

(b) All home health aide visits must have authorization under section 256B.0652. The commissioner shall limit home health aide visits to no more than one visit per day per recipient.

(c) Home health aides must be supervised by a registered nurse or an appropriate therapist when providing services that are an extension of therapy.

Sec. 2. Minnesota Statutes 2009 Supplement, section 256B.0659, subdivision 1, is amended to read:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

20.1 ~~(h)~~ (m) "Personal care assistant" or "PCA" means an individual employed by a
20.2 personal care assistance agency who provides personal care assistance services.

20.3 ~~(m)~~ (n) "Personal care assistance care plan" means a written description of personal
20.4 care assistance services developed by the personal care assistance provider according
20.5 to the service plan.

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

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

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

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

20.17 Sec. 3. Minnesota Statutes 2009 Supplement, section 256B.0659, subdivision 3,
20.18 is amended to read:

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

20.22 (1) by the recipient's spouse, parent of a recipient under the age of 18, paid legal
20.23 guardian, licensed foster provider, except as allowed under section 256B.0651, subdivision
20.24 10, or responsible party;

20.25 (2) in lieu of other staffing options in a residential or child care setting;

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

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

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

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

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

- 21.1 (c) Other specific tasks not covered under paragraph (a) or (b) that are not eligible
21.2 for medical assistance reimbursement for personal care assistance services under this
21.3 section include:
- 21.4 (1) sterile procedures;
 - 21.5 (2) injections of fluids and medications into veins, muscles, or skin;
 - 21.6 (3) home maintenance or chore services;
 - 21.7 (4) homemaker services not an integral part of assessed personal care assistance
21.8 services needed by a recipient;
 - 21.9 (5) application of restraints or implementation of procedures under section 245.825;
 - 21.10 (6) instrumental activities of daily living for children under the age of 18, except
21.11 when immediate attention is needed for health or hygiene reasons integral to the personal
21.12 care services or traveling to medical appointments and the need is listed in the service
21.13 plan by the assessor; and
 - 21.14 (7) assessments for personal care assistance services by personal care assistance
21.15 provider agencies or by independently enrolled registered nurses.

21.16 Sec. 4. Minnesota Statutes 2009 Supplement, section 256B.0659, subdivision 4,
21.17 is amended to read:

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

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

21.22 (1) a person must be assessed as dependent in an activity of daily living based on the
21.23 person's ongoing need, ~~on a daily basis~~, for:

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

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

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

21.30 (c) Assessment for complex health-related needs must meet the criteria in this
21.31 paragraph. During the assessment process, a recipient qualifies as having complex
21.32 health-related needs if the recipient has one or more of the interventions that are ordered by
21.33 a physician, specified in a personal care assistance care plan, and found in the following:

21.34 (1) tube feedings requiring:

21.35 (i) a gastro/jejunostomy tube; or

- 22.1 (ii) continuous tube feeding lasting longer than 12 hours per day;
- 22.2 (2) wounds described as:
- 22.3 (i) stage III or stage IV;
- 22.4 (ii) multiple wounds;
- 22.5 (iii) requiring sterile or clean dressing changes or a wound vac; or
- 22.6 (iv) open lesions such as burns, fistulas, tube sites, or ostomy sites that require
- 22.7 specialized care;
- 22.8 (3) parenteral therapy described as:
- 22.9 (i) IV therapy more than two times per week lasting longer than four hours for
- 22.10 each treatment; or
- 22.11 (ii) total parenteral nutrition (TPN) daily;
- 22.12 (4) respiratory interventions including:
- 22.13 (i) oxygen required more than eight hours per day;
- 22.14 (ii) respiratory vest more than one time per day;
- 22.15 (iii) bronchial drainage treatments more than two times per day;
- 22.16 (iv) sterile or clean suctioning more than six times per day;
- 22.17 (v) dependence on another to apply respiratory ventilation augmentation devices
- 22.18 such as BiPAP and CPAP; and
- 22.19 (vi) ventilator dependence under section 256B.0652;
- 22.20 (5) insertion and maintenance of catheter including:
- 22.21 (i) sterile catheter changes more than one time per month;
- 22.22 (ii) clean self-catheterization more than six times per day; or
- 22.23 (iii) bladder irrigations;
- 22.24 (6) bowel program more than two times per week requiring more than 30 minutes to
- 22.25 perform each time;
- 22.26 (7) neurological intervention including:
- 22.27 (i) seizures more than two times per week and requiring significant physical
- 22.28 assistance to maintain safety; or
- 22.29 (ii) swallowing disorders diagnosed by a physician and requiring specialized
- 22.30 assistance from another on a daily basis; and
- 22.31 (8) other congenital or acquired diseases creating a need for significantly increased
- 22.32 direct hands-on assistance and interventions in six to eight activities of daily living.
- 22.33 (d) An assessment of behaviors must meet the criteria in this paragraph. A recipient
- 22.34 qualifies as having a need for assistance due to behaviors if the recipient's behavior requires
- 22.35 assistance at least four times per week and shows one or more of the following behaviors:

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

23.3 (2) increased vulnerability due to cognitive deficits or socially inappropriate
23.4 behavior; or

23.5 (3) verbally aggressive and resistive to care.

23.6 Sec. 5. Minnesota Statutes 2009 Supplement, section 256B.0659, subdivision 11,
23.7 is amended to read:

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

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

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

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

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

23.16 (3) enroll with the department as a personal care assistant after clearing a background
23.17 study. Before a personal care assistant provides services, the personal care assistance
23.18 provider agency must initiate a background study on the personal care assistant under
23.19 chapter 245C, and the personal care assistance provider agency must have received a
23.20 notice from the commissioner that the personal care assistant is:

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

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

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

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

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

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

23.33 (8) effective January 1, 2010, complete standardized training as determined
23.34 by the commissioner before completing enrollment. The training must be available
23.35 in languages other than English and to those who need accommodations due to

24.1 disabilities. Personal care assistant training must include successful completion of the
24.2 following training components: basic first aid, vulnerable adult, child maltreatment,
24.3 OSHA universal precautions, basic roles and responsibilities of personal care assistants
24.4 including information about assistance with lifting and transfers for recipients, emergency
24.5 preparedness, orientation to positive behavioral practices, fraud issues, and completion of
24.6 time sheets. Upon completion of the training components, the personal care assistant must
24.7 demonstrate the competency to provide assistance to recipients;

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

24.10 (10) be limited to providing and being paid for up to 310 hours per month of personal
24.11 care assistance services regardless of the number of recipients being served or the number
24.12 of personal care assistance provider agencies enrolled with. The number of hours worked
24.13 per day shall not be disallowed by the department unless in violation of the law.

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

24.16 (c) Effective January 1, 2010, persons who do not qualify as a personal care assistant
24.17 include parents and stepparents of minors, spouses, paid legal guardians, family foster
24.18 care providers, except as otherwise allowed in section 256B.0625, subdivision 19a, or
24.19 staff of a residential setting.

24.20 Sec. 6. Minnesota Statutes 2009 Supplement, section 256B.0659, subdivision 13,
24.21 is amended to read:

24.22 Subd. 13. **Qualified professional; qualifications.** (a) The qualified professional
24.23 must be employed by a personal care assistance provider agency and meet the definition
24.24 under section 256B.0625, subdivision 19c. Before a qualified professional provides
24.25 services, the personal care assistance provider agency must initiate a background study on
24.26 the qualified professional under chapter 245C, and the personal care assistance provider
24.27 agency must have received a notice from the commissioner that the qualified professional:

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

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

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

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

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

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

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

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

(c) Effective ~~January~~ July 1, 2010, the qualified professional shall complete the provider training with basic information about the personal care assistance program approved by the commissioner within six months of the date hired by a personal care assistance provider agency. Qualified professionals who have completed the required trainings as an employee with a personal care assistance provider agency do not need to repeat the required trainings if they are hired by another agency, if they have completed the training within the last three years. The required training shall be available in languages other than English and to those who need accommodations due to disabilities, online, or by electronic remote connection, and provide for competency testing to demonstrate an understanding of the content without attending in-person training. A qualified professional is allowed to be employed and is not subject to the training requirement until the training is offered online or through remote electronic connection. A qualified professional employed by a personal care assistance provider agency certified for participation in Medicare as a home health agency is exempt from the training required in this subdivision. The commissioner shall ensure there is a mechanism in place to verify the identity of persons completing the competency testing electronically.

Sec. 7. Minnesota Statutes 2009 Supplement, section 256B.0659, subdivision 14, is amended to read:

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

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

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

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

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

(c) The qualified professional shall evaluate the personal care assistant within the first 14 days of starting to provide regularly scheduled services for a recipient except for the personal care assistance choice option under subdivision 19, paragraph (a), clause (4). For the initial evaluation, the qualified professional shall evaluate the personal care assistance services for a recipient through direct observation of a personal care assistant's work. Subsequent visits to evaluate the personal care assistance services provided to a recipient do not require direct observation of each personal care assistant's work and shall occur:

- (1) at least every 90 days thereafter for the first year of a recipient's services; ~~and~~
- (2) every 120 days after the first year of a recipient's service or whenever needed for response to a recipient's request for increased supervision of the personal care assistance staff; and
- (3) after the first 180 days of a recipient's service, supervisory visits may alternate between unscheduled phone or Internet technology and in-person visits, unless the in-person visits are needed according to the care plan.

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

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

- (1) satisfaction level of the recipient with personal care assistance services;
- (2) review of the month-to-month plan for use of personal care assistance services;
- (3) review of documentation of personal care assistance services provided;
- (4) whether the personal care assistance services are meeting the goals of the service as stated in the personal care assistance care plan and service plan;
- (5) a written record of the results of the evaluation and actions taken to correct any deficiencies in the work of a personal care assistant; and

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

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

- (1) the personal care assistance care plan based on the service plan and individualized needs of the recipient;
- (2) a month-to-month plan for use of personal care assistance services;
- (3) changes in need of the recipient requiring a change to the level of service and the personal care assistance care plan;

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

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

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

27.5 (g) The documentation in paragraph (f) must be done on agency forms.

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

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

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

27.11 (3) agency administrative activities;

27.12 (4) training other than the individualized training required to provide care for a
27.13 recipient; and

27.14 (5) any other activity that is not described in this section.

27.15 Sec. 8. Minnesota Statutes 2009 Supplement, section 256B.0659, subdivision 18,
27.16 is amended to read:

27.17 Subd. 18. **Personal care assistance choice option; generally.** (a) The
27.18 commissioner may allow a recipient of personal care assistance services to use a fiscal
27.19 intermediary to assist the recipient in paying and accounting for medically necessary
27.20 covered personal care assistance services. Unless otherwise provided in this section, all
27.21 other statutory and regulatory provisions relating to personal care assistance services apply
27.22 to a recipient using the personal care assistance choice option.

27.23 (b) Personal care assistance choice is an option of the personal care assistance
27.24 program that allows the recipient who receives personal care assistance services to be
27.25 responsible for the hiring, training, scheduling, and firing of personal care assistants
27.26 according to the terms of the written agreement with the personal care assistance choice
27.27 agency required under subdivision 20, paragraph (a). This program offers greater control
27.28 and choice for the recipient in who provides the personal care assistance service and when
27.29 the service is scheduled. The recipient or the recipient's responsible party must choose a
27.30 personal care assistance choice provider agency as a fiscal intermediary. This personal
27.31 care assistance choice provider agency manages payroll, invoices the state, is responsible
27.32 for all payroll-related taxes and insurance, and is responsible for providing the consumer
27.33 training and support in managing the recipient's personal care assistance services.

28.1 Sec. 9. Minnesota Statutes 2009 Supplement, section 256B.0659, subdivision 19,
28.2 is amended to read:

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

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

28.5 (1) recruit, hire, schedule, and terminate personal care assistants ~~and a qualified~~
28.6 ~~professional~~ according to the terms of the written agreement required under subdivision
28.7 20, paragraph (a);

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

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

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

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

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

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

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

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

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

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

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

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

28.31 (1) be the employer of the personal care assistant and the qualified professional for
28.32 employment law and related regulations including, but not limited to, purchasing and
28.33 maintaining workers' compensation, unemployment insurance, surety and fidelity bonds,
28.34 and liability insurance, and submit any or all necessary documentation including, but not
28.35 limited to, workers' compensation and unemployment insurance;

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

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

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

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

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

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

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

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

29.16 Sec. 10. Minnesota Statutes 2009 Supplement, section 256B.0659, subdivision 20,
29.17 is amended to read:

29.18 Subd. 20. **Personal care assistance choice option; administration.** (a) Before
29.19 services commence under the personal care assistance choice option, and annually
29.20 thereafter, the personal care assistance choice provider agency, ~~recipient, or responsible~~
29.21 ~~party, each personal care assistant, and the qualified professional~~ and the recipient or
29.22 responsible party shall enter into a written agreement. The annual agreement must be
29.23 provided to the recipient or responsible party, each personal care assistant, and the
29.24 qualified professional when completed, and include at a minimum:

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

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

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

29.30 (4) grievance procedures to respond to complaints;

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

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

29.34 (b) Effective January 1, 2010, except for the administrative fee of the personal care
29.35 assistance choice provider agency as reported on the written agreement, the remainder

of the rates paid to the personal care assistance choice provider agency must be used to pay for the salary and benefits for the personal care assistant or the qualified professional. The provider agency must use a minimum of 72.5 percent of the revenue generated by the medical assistance rate for personal care assistance services for employee personal care assistant wages and benefits.

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

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

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

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

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

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

Sec. 11. Minnesota Statutes 2009 Supplement, section 256B.0659, subdivision 21, is amended to read:

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

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

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

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

(4) proof of workers' compensation insurance coverage;

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

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

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

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

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

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

(8) a list of all trainings and classes that the personal care assistance provider agency requires of its staff providing personal care assistance services;

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

(10) documentation of the agency's marketing practices;

(11) disclosure of ownership, leasing, or management of all residential properties that is used or could be used for providing home care services; ~~and~~

(12) documentation that the agency will use the following percentages of revenue generated from the medical assistance rate paid for personal care assistance services for employee personal care assistant wages and benefits: 72.5 percent of revenue in the personal care assistance choice option and 72.5 percent of revenue from other personal care assistance providers; and

(13) documentation that the agency does not burden recipients' free exercise of their right to choose service providers by requiring personal care assistants to sign an agreement not to work with any particular personal care assistance recipient or for another personal care assistance provider agency after leaving the agency.

(b) Personal care assistance provider agencies shall provide the information specified in paragraph (a) to the commissioner at the time the personal care assistance provider agency enrolls as a vendor or upon request from the commissioner. The commissioner

shall collect the information specified in paragraph (a) from all personal care assistance providers beginning July 1, 2009.

(c) All personal care assistance provider agencies shall require all employees in management and supervisory positions and owners of the agency who are active in the day-to-day management and operations of the agency to complete mandatory training as determined by the commissioner before enrollment of the agency as a provider. ~~Personal care assistance provider agencies are required to send all owners, qualified professionals employed by the agency, and all other managing employees to the initial and subsequent trainings.~~ Employees in management and supervisory positions and owners who are active in the day-to-day operations of an agency who have completed the required training as an employee with a personal care assistance provider agency do not need to repeat the required training if they are hired by another agency, if they have completed the training within the past three years. By September 1, 2010, the required training must be available in languages other than English and to those who need accommodations due to disabilities, online, or by electronic remote connection, and provide for competency testing. Personal care assistance provider agency billing staff shall complete training about personal care assistance program financial management. This training is effective July 1, 2009. Any personal care assistance provider agency enrolled before that date shall, if it has not already, complete the provider training within 18 months of July 1, 2009. ~~Any new owners, new qualified professionals, and new managing or employees in management and supervisory positions involved in the day-to-day operations~~ are required to complete mandatory training as a requisite of hiring working for the agency. Personal care assistance provider agencies certified for participation in Medicare as home health agencies are exempt from the training required in this subdivision.

Sec. 12. Minnesota Statutes 2009 Supplement, section 256B.0659, subdivision 27, is amended to read:

Subd. 27. **Personal care assistance provider agency; ~~ventilator training.~~** (a) The personal care assistance provider agency is required to provide training for the personal care assistant responsible for working with a recipient who is ventilator dependent. All training must be administered by a respiratory therapist, nurse, or physician. Qualified professional supervision by a nurse must be completed and documented on file in the personal care assistant's employment record and the recipient's health record. If offering personal care services to a ventilator-dependent recipient, the personal care assistance provider agency shall demonstrate and document the ability to:

(1) train the personal care assistant;

33.1 (2) supervise the personal care assistant in ~~ventilator operation and maintenance~~ the
33.2 care of a ventilator-dependent recipient; and

33.3 (3) supervise the recipient and responsible party in ~~ventilator operation and~~
33.4 ~~maintenance~~ the care of a ventilator-dependent recipient; and

33.5 (4) provide documentation of the training and supervision in clauses (1) to (3)
33.6 upon request.

33.7 (b) A personal care assistant shall not undertake any clinical services, patient
33.8 assessment, patient evaluation, or clinical education regarding the ventilator or the patient
33.9 on the ventilator. These services may only be provided by health care professionals
33.10 licensed or registered in this state.

33.11 (c) A personal care assistant may only perform tasks associated with ventilator
33.12 maintenance that are approved by the Board of Medical Practice in consultation with the
33.13 Respiratory Care Practitioner Advisory Council and the Department of Human Services.

33.14 (d) Personal care assistance provider agencies certified for participation in
33.15 Medicare as home health agencies are exempt from providing the training required
33.16 in this subdivision.

33.17 Sec. 13. Minnesota Statutes 2009 Supplement, section 256B.0659, subdivision 30,
33.18 is amended to read:

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

33.20 (1) by October 31, 2009, information to recipients likely to be affected that (i)
33.21 describes the changes to the personal care assistance program that may result in the
33.22 loss of access to personal care assistance services, and (ii) includes resources to obtain
33.23 further information; ~~and~~

33.24 (2) notice of changes in medical assistance home care services to each affected
33.25 recipient at least 30 days before the effective date of the change.

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

33.30 (3) a service agreement authorizing personal care assistance hours of service at
33.31 the previously authorized level, throughout the appeal process period, when a recipient
33.32 requests services pending an appeal.

APPENDIX
Article locations in H3234-1

ARTICLE 1 CONTINUING CARE POLICY Page.Ln 1.11

ARTICLE 2 PERSONAL CARE ASSISTANT SERVICES Page.Ln 18.8