

SENATE
STATE OF MINNESOTA
NINETIETH SESSION

S.F. No. 2539

(SENATE AUTHORS: ABELER, Hoffman and Clausen)

DATE	D-PG	OFFICIAL STATUS
02/22/2018	6154	Introduction and first reading
		Referred to Health and Human Services Finance and Policy
03/08/2018	6372	Withdrawn and re-referred to Human Services Reform Finance and Policy

1.1 A bill for an act

1.2 relating to human services; creating an exception to certain personal care assistant

1.3 requirements; establishing supplemental personal care assistance provider agencies;

1.4 amending Minnesota Statutes 2016, section 256B.0659, by adding a subdivision;

1.5 proposing coding for new law in Minnesota Statutes, chapter 256B.

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

1.7 Section 1. Minnesota Statutes 2016, section 256B.0659, is amended by adding a subdivision

1.8 to read:

1.9 Subd. 11b. Exception to personal care assistant requirements; recipient-initiated

1.10 visits. (a) Notwithstanding subdivision 25, clause (3), a personal care assistant may affiliate

1.11 with a recipient’s personal care assistance provider agency and immediately begin providing

1.12 services under this section if the following conditions are met:

1.13 (1) the recipient determines that the recipient’s personal care assistance provider agency

1.14 cannot meet its obligation to provide backup staffing according to the backup staffing plan

1.15 in the recipient’s personal care assistance care plan under subdivision 7;

1.16 (2) the recipient chooses a personal care assistant affiliated with another personal care

1.17 assistance provider agency;

1.18 (3) the recipient is not restricted by the Minnesota restricted recipients program;

1.19 (4) the recipient's chosen personal care assistant has been continuously enrolled since

1.20 the last clear and transferable Netstudy 2.0 background study was completed with a provider

1.21 agency that has been continuously enrolled as a personal care assistance provider agency

1.22 for at least two years;

2.1 (5) the recipient's chosen personal care assistant continues to meet requirements of
2.2 subdivision 11, excluding paragraph (a), clause (3);

2.3 (6) the recipient's chosen personal care assistant has completed temporary personal care
2.4 assistant training as determined by the commissioner;

2.5 (7) the recipient's chosen personal care assistant must not provide assistance with
2.6 health-related procedures and tasks under subdivision 2, paragraphs (c) to (e), or redirection
2.7 due to behaviors under subdivision 2, paragraph (f), without first receiving individualized
2.8 training;

2.9 (8) the recipient's chosen personal care assistant does not provide personal care assistance
2.10 to the recipient for more than six days without first being evaluated by a qualified professional
2.11 as required under subdivision 14, paragraph (c); and

2.12 (9) the recipient's employment status of the recipient's chosen personal care assistant
2.13 meets the requirements of paragraph (b).

2.14 (b) Before the recipient's chosen personal care assistant may provide services under this
2.15 subdivision, the recipient's chosen personal care assistant must be either:

2.16 (1) employed by the recipient or the recipient's personal care provider agency; or

2.17 (2) the subject of an executed secondment agreement or similar agreement between the
2.18 recipient's provider agency and the personal care assistant's employer that clearly specifies
2.19 which party is the employer of record; which party bears responsibility for any liabilities,
2.20 including any medical liability; which party has responsibility to maintain workers'
2.21 compensation coverage and other insurance; whether any party agrees to indemnify the
2.22 other, particularly with respect to any joint employer liability for wage and hour claims;
2.23 and whether and by what amount one party will reimburse the other. The secondment
2.24 agreement must also contain an addendum in which the personal care attendant's employer
2.25 stipulates that the requirements of paragraph (a), clauses (4) to (6), are satisfied.

2.26 (c) Nothing in this subdivision requires a recipient's personal care assistance provider
2.27 agency to hire the recipient's chosen personal care assistant or to enter into any secondment
2.28 agreement.

2.29 (d) The commissioner shall pay the personal care assistance rate for services provided
2.30 under this subdivision to the recipient's personal care assistance provider agency.

2.31 (e) A personal care assistance care plan under subdivision 7 must not rely solely on this
2.32 subdivision for the purposes of any required backup staffing plan. A personal care assistance
2.33 care plan must not include only use of the exception process under this subdivision as part

3.1 of a backup staffing plan under subdivision 7, paragraph (b), clause (3). Nothing in this
3.2 subdivision provides a defense against administrative action, including the assessment of
3.3 finances, against a qualified professional or a personal care assistance provider agency for
3.4 failing to meet its obligations under subdivision 7, paragraph (b), clause (3).

3.5 (f) Managed care organizations shall provide recipient-initiated visits that meet the
3.6 requirements of paragraph (a) in accordance with contract requirements established by the
3.7 commissioner.

3.8 **Sec. 2. [256B.067] SUPPLEMENTAL PERSONAL CARE ASSISTANCE SERVICES.**

3.9 Subdivision 1. Definitions. (a) For the purposes of this section, the terms in this
3.10 subdivision have the meanings given.

3.11 (b) "Host personal care assistance provider agency" or "host agency" means a personal
3.12 care assistance provider agency to which a supplemental personal care assistance provider
3.13 agency provides a temporary personal care assistant.

3.14 (c) "Personal care assistance care plan" has the meaning given in section 256B.0659,
3.15 subdivision 1, paragraph (n).

3.16 (d) "Personal care assistance provider agency" has the meaning given in section
3.17 256B.0659, subdivision 1, paragraph (l).

3.18 (e) "Personal care assistant" or "PCA" has the meaning given in section 256B.0659,
3.19 subdivision 1, paragraph (m).

3.20 (f) "Qualified professional" has the meaning given in section 256B.0659, subdivision
3.21 1, paragraph (k).

3.22 (g) "Responsible party" has the meaning given in section 256B.0659, subdivision 1,
3.23 paragraph (o).

3.24 (h) "Supplemental personal care assistance provider agency" or "supplemental agency"
3.25 means a personal care assistance provider agency engaged for hire in the business of
3.26 providing temporary personal care assistants to a host personal care assistance provider
3.27 agency. Supplemental personal care assistance provider agency does not include an individual
3.28 who only engages in providing the individual's services on a temporary basis to a personal
3.29 care assistance provider agency.

3.30 (i) "Temporary personal care assistant" or "temporary PCA" means a personal care
3.31 assistant who meets the requirements of subdivision 4, is an employee of a supplemental

4.1 personal care assistance provider agency, and who is provided by the supplemental personal
4.2 care assistance provider agency to a host personal care assistance provider agency.

4.3 **Subd. 2. Requirements for provider enrollment of supplemental personal care**
4.4 **assistance provider agencies.** (a) All supplemental personal care assistance provider
4.5 agencies must:

4.6 (1) be enrolled in the medical assistance program as a personal care assistance provider
4.7 agency;

4.8 (2) have been continuously enrolled in the medical assistance program as a personal
4.9 care assistance provider agency for at least two years; and

4.10 (3) in order to reenroll as a supplemental personal care assistance provider agency, have
4.11 provided a temporary personal care assistant to a host personal care assistance provider
4.12 agency during the year preceding the supplemental personal care assistance provider agency's
4.13 reenrollment date.

4.14 (b) All the requirements of section 256B.0659, subdivisions 21 to 23, that apply to
4.15 personal care assistance provider agencies also apply to supplemental personal care assistance
4.16 provider agencies.

4.17 (c) In addition to satisfying the requirements of section 256B.0659, subdivision 21, at
4.18 the time of enrollment, reenrollment, and revalidation as a supplemental personal care
4.19 assistance provider agency, all supplemental personal care assistance provider agencies
4.20 must provide in a format determined by the commissioner, information and documentation
4.21 that includes, but is not limited to, the following:

4.22 (1) proof that each temporary personal care assistant provided to a host personal care
4.23 assistance provider agency currently meets the requirements of subdivision 4;

4.24 (2) proof that the supplemental personal care assistance provider agency currently meets
4.25 all requirements of section 256B.0659, subdivision 21, including proof that surety bond
4.26 coverage, fidelity bond coverage, workers' compensation insurance coverage, and liability
4.27 coverage each include coverage of any temporary PCA while the temporary PCA is providing
4.28 services to a host personal care assistance provider agency; and

4.29 (3) documentation that each temporary personal care assistant provided to a host personal
4.30 care assistance provider agency is an employee of the supplemental personal care assistance
4.31 provider agency and is neither an independent contractor nor an employee of the host agency.

4.32 **Subd. 3. Duties of supplemental personal care assistance agencies.** (a) All the duties
4.33 of personal care assistance provider agencies under section 256B.0659, subdivision 24,

5.1 except clauses (11), (13), and (14); and subdivisions 25, 28, and 31, apply to supplemental
5.2 personal care assistance provider agencies.

5.3 (b) Upon agreement between the supplemental personal care assistance provider agency
5.4 and the host personal care assistance provider agency, the supplemental agency shall provide
5.5 a temporary PCA to the host agency so that the host agency can ensure a recipient of the
5.6 host agency's services receives adequate and timely services in the event that the host's
5.7 backup staffing plan is inadequate to meet the immediate needs of the recipient.

5.8 (c) The supplemental personal care assistance provider agency is the employer of the
5.9 temporary personal care assistant. The supplemental agency shall be responsible for
5.10 compensating a temporary PCA for services the temporary PCA provides.

5.11 Subd. 4. **Requirements for temporary personal care assistants.** (a) All requirements
5.12 for personal care assistants under section 256B.0659, subdivisions 11 and 12, apply to
5.13 temporary personal care assistants; except, notwithstanding section 256B.0659, subdivision
5.14 11, paragraph (a), clause (3), a temporary PCA who has been continuously enrolled with
5.15 the supplemental agency since the temporary PCA's last background study was completed
5.16 may provide PCA services to a host agency without the host agency initiating a new
5.17 background study.

5.18 (b) Only personal care assistants who have been continuously enrolled as a personal
5.19 care assistant for at least two years and who have been continuously employed by the same
5.20 personal care assistance provider agency for at least two years are eligible to provide
5.21 temporary personal care assistance services.

5.22 Subd. 5. **Duties of host personal care assistance provider agencies.** All the duties of
5.23 personal care assistance provider agencies under section 256B.0659 apply to host personal
5.24 care assistance provider agencies, except with respect to temporary personal care assistants,
5.25 the host agency is not responsible for the duties under:

- 5.26 (1) section 256B.0659, subdivision 19, paragraph (c), clauses (1), (3), (4), (5), and (7);
5.27 (2) section 256B.0659, subdivision 24, clauses (7), (8), and (10); and
5.28 (3) section 256B.0659, subdivision 25.

5.29 Subd. 6. **Availability of supplemental personal care assistance services not a**
5.30 **substitute for adequate backup staffing plan.** (a) A host personal care assistance provider
5.31 agency shall not rely on the services available under this section for the purposes of any
5.32 required backup staffing plan.

6.1 (b) A personal care assistance care plan must not include the use of supplemental personal
6.2 care assistance services available under this section as part of a backup staffing plan under
6.3 section 256B.0659, subdivision 7, paragraph (b), clause (3).

6.4 (c) Nothing in this section provides a defense against administrative action, including
6.5 the assessment of fines, against a qualified professional or personal care assistance provider
6.6 agency for failing to meet its obligations under section 256B.0659, subdivision 7, paragraph
6.7 (b), clause (3).

6.8 Subd. 7. **Administrative action.** When a host personal care assistance provider agency
6.9 contracts with a supplemental personal care assistance provider agency, the commissioner
6.10 shall treat temporary personal care assistants as if they are staff of the host agency.

6.11 Subd. 8. **Limitations on use of temporary personal care assistants.** (a) A host personal
6.12 care assistance provider agency may use a temporary personal care assistant only if:

6.13 (1) the recipient or responsible party gives informed consent to the use of temporary
6.14 personal care assistants and the recipient's or responsible party's informed consent is
6.15 documented in the recipient's personal care assistance care plan under section 256B.0659,
6.16 subdivision 7; or

6.17 (2) the written agreement under section 256B.0659, subdivision 20, paragraph (a),
6.18 includes procedures for using temporary personal care assistants.

6.19 (b) A recipient restricted by the Minnesota restricted recipients program shall not receive
6.20 services from a temporary personal care assistant.

6.21 (c) A temporary personal care assistant shall not provide assistance with health-related
6.22 procedures and tasks as described under section 256B.0659, subdivision 2, paragraphs (c)
6.23 to (e), or redirection due to behaviors as described under section 256B.0659, subdivision
6.24 2, paragraph (f), without first receiving individualized training from the host agency.

6.25 Subd. 9. **Maximum charges for supplemental personal care assistance services.** A
6.26 supplemental personal care assistance provider agency must not bill or receive payments
6.27 from a host personal care assistance provider agency under this section at a rate higher than
6.28 150 percent of the medical assistance rate for personal care assistance services in effect at
6.29 the time the temporary personal care assistant provided temporary personal care assistance
6.30 services.