State of Minnesota

HOUSE OF REPRESENTATIVES

NINETY-SECOND SESSION

H. F. No. 3524

02/17/2022 Authored by Klevorn, Kiel, Noor and Moller
The bill was read for the first time and referred to the Committee on Human Services Finance and Policy

A bill for an act

relating to human services; modifying home care services by adding care coordination and care evaluation; establishing home and community-based services homemaker rates; amending Minnesota Statutes 2020, sections 256B.0651, subdivisions 1, 2; 256B.0652, subdivision 11; 256B.0653, subdivisions 2, 6; 256S.18, subdivision 1; Minnesota Statutes 2021 Supplement, section 256B.85, subdivision 8; proposing coding for new law in Minnesota Statutes, chapter 256B.

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

Section 1. Minnesota Statutes 2020, section 256B.0651, subdivision 1, is amended to read:

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

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

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

(d) "Care coordination" means a service performed by a licensed professional employed by a home health agency to coordinate both skilled and unskilled home care services, except personal care assistance, for a recipient.

(e) "Care evaluation" means a start-of-care visit, a resumption-of-care visit, or a recertification visit that is a face-to-face assessment of a person by a licensed professional employed by a home health agency to develop, update, or review the service plan for both skilled and unskilled home care services, except personal care assistance.

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

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

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

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

Sec. 2. Minnesota Statutes 2020, section 256B.0651, subdivision 2, is amended to read:

Subd. 2. **Services covered.** Home care services covered under this section and sections 256B.0652 to 256B.0654 and 256B.0659 include:

(1) care coordination services under subdivision 1, paragraph (d);

(2) care evaluation services under subdivision 1, paragraph (e);

~~(1)~~ (3) nursing services under sections 256B.0625, subdivision 6a, and 256B.0653;

~~(2)~~ (4) home care nursing services under sections 256B.0625, subdivision 7, and 256B.0654;

~~(3)~~ (5) home health services under sections 256B.0625, subdivision 6a, and 256B.0653;

~~(4)~~ (6) personal care assistance services under sections 256B.0625, subdivision 19a, and 256B.0659;

~~(5)~~ (7) supervision of personal care assistance services provided by a qualified professional under sections 256B.0625, subdivision 19a, and 256B.0659;

~~(6)~~ (8) face-to-face assessments by county public health nurses for services under sections 256B.0625, subdivision 19a, and 256B.0659; and

~~(7)~~ (9) service updates and review of temporary increases for personal care assistance services by the county public health nurse for services under sections 256B.0625, subdivision 19a, and 256B.0659.

Sec. 3. Minnesota Statutes 2020, section 256B.0652, subdivision 11, is amended to read:

Subd. 11. **Limits on services without authorization.** A recipient may receive the following home care services during a calendar year:

(1) up to two face-to-face assessments to determine a recipient's need for personal care assistance services;

(2) one service update done to determine a recipient's need for personal care assistance services; ~~and~~

(3) up to nine face-to-face visits that may include both skilled nurse visits~~.~~ and care evaluations; and

(4) up to four 15-minute units of care coordination per episode of care to coordinate home health services for a recipient.

Sec. 4. Minnesota Statutes 2020, section 256B.0653, subdivision 2, is amended to read:

Subd. 2. **Definitions.** For the purposes of this section, the following terms have the meanings given.

(a) "Assessment" means an evaluation of the recipient's medical need for home health agency services by a registered nurse or appropriate therapist that is conducted within 30 days of a request.

(b) "Home care therapies" means occupational, physical, and respiratory therapy and speech-language pathology services provided in the home by a Medicare certified home health agency.

(c) "Home health agency services" means services delivered by a home health agency to a recipient with medical needs due to illness, disability, or physical conditions in settings permitted under section 256B.0625, subdivision 6a; care coordination as defined in section 256B.0651, subdivision 1, paragraph (d); and care evaluation as defined in section 256B.0651, subdivision 1, paragraph (e).

(d) "Home health aide" means an employee of a home health agency who completes medically oriented tasks written in the plan of care for a recipient.

(e) "Home health agency" means a home care provider agency that is Medicare-certified.

(f) "Occupational therapy services" mean the services defined in Minnesota Rules, part 9505.0390.

(g) "Physical therapy services" mean the services defined in Minnesota Rules, part 9505.0390.

(h) "Respiratory therapy services" mean the services defined in chapter 147C.

(i) "Speech-language pathology services" mean the services defined in Minnesota Rules, part 9505.0390.

(j) "Skilled nurse visit" means a professional nursing visit to complete nursing tasks required due to a recipient's medical condition that can only be safely provided by a professional nurse to restore and maintain optimal health.

(k) "Store-and-forward technology" means telehomecare services that do not occur in real time via synchronous transmissions such as diabetic and vital sign monitoring.

(l) "Telehomecare" means the use of telecommunications technology via live, two-way interactive audiovisual technology which may be augmented by store-and-forward technology.

(m) "Telehomecare skilled nurse visit" means a visit by a professional nurse to deliver a skilled nurse visit to a recipient located at a site other than the site where the nurse is located and is used in combination with face-to-face skilled nurse visits to adequately meet the recipient's needs.

Sec. 5. Minnesota Statutes 2020, section 256B.0653, subdivision 6, is amended to read:

Subd. 6. **Noncovered home health agency services.** The following are not eligible for payment under medical assistance as a home health agency service:

(1) telehomecare skilled nurses services that is communication between the home care nurse and recipient that consists solely of a telephone conversation, facsimile, electronic mail, or a consultation between two health care practitioners;

(2) the following skilled nurse visits:

(i) for the purpose of monitoring medication compliance with an established medication program for a recipient;

(ii) administering or assisting with medication administration, including injections, prefilling syringes for injections, or oral medication setup of an adult recipient, when, as determined and documented by the registered nurse, the need can be met by an available

pharmacy or the recipient or a family member is physically and mentally able to self-administer or prefill a medication;

(iii) services done for the sole purpose of supervision of the home health aide or personal care assistant;

(iv) services done for the sole purpose to train other home health agency workers;

(v) services done for the sole purpose of blood samples or lab draw when the recipient is able to access these services outside the home; and

(vi) Medicare evaluation or administrative nursing visits required by Medicare, with the exception of care evaluation as defined in section 256B.0651, subdivision 1, paragraph (e);

(3) home health aide visits when the following activities are the sole purpose for the visit: companionship, socialization, household tasks, transportation, and education;

(4) home care therapies provided in other settings such as a clinic or as an inpatient or when the recipient can access therapy outside of the recipient's residence; and

(5) home health agency services without qualifying documentation of a face-to-face encounter as specified in subdivision 7.

Sec. 6. **[256B.4909] HOME AND COMMUNITY-BASED SERVICES; HOMEMAKER RATES.**

Subdivision 1. **Application.** (a) Notwithstanding any law to the contrary, the payment methodologies for homemaker services defined in this section apply to those homemaker services offered under:

(1) home and community-based services waivers under sections 256B.092 and 256B.49;

(2) alternative care under section 256B.0913;

(3) essential community supports under section 256B.0922; and

(4) elderly waiver, elderly waiver customized living, and elderly waiver foster care under chapter 256S.

(b) This section does not change existing waiver policies and procedures.

Subd. 2. **Definition.** For purposes of this section, "homemaker services" means homemaker services and assistance with personal care, homemaker services and cleaning, and homemaker services and home management under chapter 256S and similar services offered under home and community-based services waivers under sections 256B.092 and

256B.49, alternative care under section 256B.0913, and essential community supports under section 256B.0922.

Subd. 3. **Rate methodology.** (a) Beginning January 1, 2023, the rate methodology for each homemaker service must be determined under sections 256S.211, subdivision 1, and 256S.212 to 256S.215, as adjusted by paragraph (b).

(b) As applicable to this section, the commissioner shall update for each homemaker service the base wage index in section 256S.212, publish these updated values, and load them into the appropriate rate system as follows:

(1) on November 1, 2024, based on the most recently available wage data by standard occupational classification (SOC) from the Bureau of Labor Statistics; and

(2) on July 1, 2026, and every two years thereafter, based on the most recently available wage data by SOC from the Bureau of Labor Statistics.

Sec. 7. Minnesota Statutes 2021 Supplement, section 256B.85, subdivision 8, is amended to read:

Subd. 8. **Determination of CFSS service authorization amount.** (a) All community first services and supports must be authorized by the commissioner or the commissioner's designee before services begin. The authorization for CFSS must be completed as soon as possible following an assessment but no later than 40 calendar days from the date of the assessment.

(b) The amount of CFSS authorized must be based on the participant's home care rating described in paragraphs (d) and (e) and any additional service units for which the participant qualifies as described in paragraph (f).

(c) The home care rating shall be determined by the commissioner or the commissioner's designee based on information submitted to the commissioner identifying the following for a participant:

(1) the total number of dependencies of activities of daily living;

(2) the presence of complex health-related needs; and

(3) the presence of Level I behavior.

(d) The methodology to determine the total service units for CFSS 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 PCA program.

(e) Each home care rating is designated by the letters P through Z and EN and has the following base number of service units assigned:

(1) P home care rating requires Level I behavior or one to three dependencies in ADLs and qualifies the person for five service units;

(2) Q home care rating requires Level I behavior and one to three dependencies in ADLs and qualifies the person for six service units;

(3) R home care rating requires a complex health-related need and one to three dependencies in ADLs and qualifies the person for seven service units;

(4) S home care rating requires four to six dependencies in ADLs and qualifies the person for ten service units;

(5) T home care rating requires four to six dependencies in ADLs and Level I behavior and qualifies the person for 11 service units;

(6) U home care rating requires four to six dependencies in ADLs and a complex health-related need and qualifies the person for 14 service units;

(7) V home care rating requires seven to eight dependencies in ADLs and qualifies the person for 17 service units;

(8) W home care rating requires seven to eight dependencies in ADLs and Level I behavior and qualifies the person for 20 service units;

(9) Z home care rating requires seven to eight dependencies in ADLs and a complex health-related need and qualifies the person for 30 service units; and

(10) EN home care rating includes ventilator dependency as defined in section 256B.0651, subdivision 1, paragraph ~~(g)~~ (i). A person who meets the definition of ventilator-dependent and the EN home care rating and utilize a combination of CFSS and home care nursing services is limited to a total of 96 service units per day for those services in combination. Additional units may be authorized when a person's assessment indicates a need for two staff to perform activities. Additional time is limited to 16 service units per day.

(f) Additional service units are provided through the assessment and identification of the following:

(1) 30 additional minutes per day for a dependency in each critical activity of daily living;

(2) 30 additional minutes per day for each complex health-related need; and

(3) 30 additional minutes per day for each behavior under this clause that requires assistance at least four times per week:

(i) level I behavior that requires the immediate response of another person;

(ii) increased vulnerability due to cognitive deficits or socially inappropriate behavior; or

(iii) increased need for assistance for participants who are verbally aggressive or resistive to care so that the time needed to perform activities of daily living is increased.

(g) The service budget for budget model participants shall be based on:

(1) assessed units as determined by the home care rating; and

(2) an adjustment needed for administrative expenses.

Sec. 8. Minnesota Statutes 2020, section 256S.18, subdivision 1, is amended to read:

Subdivision 1. **Case mix classifications.** (a) The elderly waiver case mix classifications A to K shall be the resident classes A to K established under Minnesota Rules, parts 9549.0058 and 9549.0059.

(b) A participant assigned to elderly waiver case mix classification A must be reassigned to elderly waiver case mix classification L if an assessment or reassessment performed under section 256B.0911 determines that the participant has:

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

(2) up to two dependencies in bathing, dressing, grooming, walking, or eating when the dependency score in eating is three or greater.

(c) A participant must be assigned to elderly waiver case mix classification V if the participant meets the definition of ventilator-dependent in section 256B.0651, subdivision 1, paragraph ~~(g)~~ (i).