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State of Minnesota

HOUSE OF REPRESENTATIVES

NINETIETH SESSION

H. F. No. **481**

01/23/2017 Authored by Kiel, Lohmer, Liebling, Theis, Loeffler and others
The bill was read for the first time and referred to the Committee on Health and Human Services Reform
03/15/2017 Adoption of Report: Amended and re-referred to the Committee on Health and Human Services Finance

1.1 A bill for an act
1.2 relating to human services; modifying the personal care assistance program;
1.3 amending Minnesota Statutes 2016, section 256B.0659, subdivisions 1, 2, 11, 21,
1.4 by adding a subdivision.

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

1.6 Section 1. Minnesota Statutes 2016, section 256B.0659, subdivision 1, is amended to read:

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

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

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

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

1.17 (e) "Complex personal care assistance services" means personal care assistance services:

1.18 (1) for a person who qualifies for ten hours or more of personal care assistance services
1.19 per day; and

1.20 (2) provided by a personal care assistant who is qualified to provide complex personal
1.21 care assistance services under subdivision 11, paragraph (d).

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

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

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

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

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

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

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

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

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

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

3.1 ~~(m)~~(n) "Personal care assistant" or "PCA" means an individual employed by a personal
3.2 care assistance agency who provides personal care assistance services.

3.3 ~~(n)~~(o) "Personal care assistance care plan" means a written description of personal care
3.4 assistance services developed by the personal care assistance provider according to the
3.5 service plan.

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

3.8 ~~(p)~~(q) "Self-administered medication" means medication taken orally, by injection,
3.9 nebulizer, or insertion, or applied topically without the need for assistance.

3.10 ~~(q)~~(r) "Service plan" means a written summary of the assessment and description of the
3.11 services needed by the recipient.

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

3.16 Sec. 2. Minnesota Statutes 2016, section 256B.0659, subdivision 2, is amended to read:

3.17 Subd. 2. **Personal care assistance services; covered services.** (a) The personal care
3.18 assistance services eligible for payment include services and supports furnished to an
3.19 individual, as needed, to assist in:

3.20 (1) activities of daily living;

3.21 (2) health-related procedures and tasks;

3.22 (3) observation and redirection of behaviors; and

3.23 (4) instrumental activities of daily living.

3.24 (b) Activities of daily living include the following covered services:

3.25 (1) dressing, including assistance with choosing, application, and changing of clothing
3.26 and application of special appliances, wraps, or clothing;

3.27 (2) grooming, including assistance with basic hair care, oral care, shaving, applying
3.28 cosmetics and deodorant, and care of eyeglasses and hearing aids. Nail care is included,
3.29 except for recipients who are diabetic or have poor circulation;

3.30 (3) bathing, including assistance with basic personal hygiene and skin care;

4.1 (4) eating, including assistance with hand washing and application of orthotics required
4.2 for eating, transfers, and feeding;

4.3 (5) transfers, including assistance with transferring the recipient from one seating or
4.4 reclining area to another;

4.5 (6) mobility, including assistance with ambulation, including use of a wheelchair.
4.6 Mobility does not include providing transportation for a recipient;

4.7 (7) positioning, including assistance with positioning or turning a recipient for necessary
4.8 care and comfort; and

4.9 (8) toileting, including assistance with helping recipient with bowel or bladder elimination
4.10 and care including transfers, mobility, positioning, feminine hygiene, use of toileting
4.11 equipment or supplies, cleansing the perineal area, inspection of the skin, and adjusting
4.12 clothing.

4.13 (c) Health-related procedures and tasks include the following covered services:

4.14 (1) range of motion and passive exercise to maintain a recipient's strength and muscle
4.15 functioning;

4.16 (2) assistance with self-administered medication as defined by this section, including
4.17 reminders to take medication, bringing medication to the recipient, and assistance with
4.18 opening medication under the direction of the recipient or responsible party, including
4.19 medications given through a nebulizer;

4.20 (3) interventions for seizure disorders, including monitoring and observation; and

4.21 (4) other activities considered within the scope of the personal care service and meeting
4.22 the definition of health-related procedures and tasks under this section.

4.23 (d) A personal care assistant may provide health-related procedures and tasks associated
4.24 with the complex health-related needs of a recipient if the procedures and tasks meet the
4.25 definition of health-related procedures and tasks under this section and the personal care
4.26 assistant is trained by a qualified professional and demonstrates competency to safely
4.27 complete the procedures and tasks. Delegation of health-related procedures and tasks and
4.28 all training must be documented in the personal care assistance care plan and the recipient's
4.29 and personal care assistant's files. A personal care assistant must not determine the medication
4.30 dose or time for medication.

5.1 (e) Effective January 1, 2010, for a personal care assistant to provide the health-related
5.2 procedures and tasks of tracheostomy suctioning and services to recipients on ventilator
5.3 support there must be:

5.4 (1) delegation and training by a registered nurse, certified or licensed respiratory therapist,
5.5 or a physician;

5.6 (2) utilization of clean rather than sterile procedure;

5.7 (3) specialized training about the health-related procedures and tasks and equipment,
5.8 including ventilator operation and maintenance;

5.9 (4) individualized training regarding the needs of the recipient; and

5.10 (5) supervision by a qualified professional who is a registered nurse.

5.11 (f) Effective January 1, 2010, a personal care assistant may observe and redirect the
5.12 recipient for episodes where there is a need for redirection due to behaviors. Training of
5.13 the personal care assistant must occur based on the needs of the recipient, the personal care
5.14 assistance care plan, and any other support services provided.

5.15 (g) Instrumental activities of daily living under subdivision 1, paragraph ~~(h)~~ (j).

5.16 Sec. 3. Minnesota Statutes 2016, section 256B.0659, subdivision 11, is amended to read:

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

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

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

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

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

5.25 (3) enroll with the department as a personal care assistant after clearing a background
5.26 study. Except as provided in subdivision 11a, before a personal care assistant provides
5.27 services, the personal care assistance provider agency must initiate a background study on
5.28 the personal care assistant under chapter 245C, and the personal care assistance provider
5.29 agency must have received a notice from the commissioner that the personal care assistant
5.30 is:

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

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

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

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

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

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

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

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

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

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

6.28 (c) Persons who do not qualify as a personal care assistant include parents, stepparents,
6.29 and legal guardians of minors; spouses; paid legal guardians of adults; family foster care
6.30 providers, except as otherwise allowed in section 256B.0625, subdivision 19a; and staff of
6.31 a residential setting.

6.32 (d) A personal care assistant is qualified to provide complex personal care assistance
6.33 services as defined in subdivision 1, paragraph (e), if the personal care assistant:

7.1 (1) provides services according to the care plan in subdivision 7 to an individual described
7.2 in subdivision 1, paragraph (e), clause (1); and

7.3 (2) beginning July 1, 2018, satisfies the current requirements of Medicare for training
7.4 and competency or competency evaluation of home health aides or nursing assistants, as
7.5 provided by Code of Federal Regulations, title 42, section 483.151 or 484.36, or alternative
7.6 comparable state approved training and competency requirements.

7.7 Sec. 4. Minnesota Statutes 2016, section 256B.0659, is amended by adding a subdivision
7.8 to read:

7.9 Subd. 17a. **Rate for complex personal care assistance services.** The rate paid to a
7.10 provider for complex personal care assistance services shall be 120 percent of the rate paid
7.11 for personal care assistance services.

7.12 Sec. 5. Minnesota Statutes 2016, section 256B.0659, subdivision 21, is amended to read:

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

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

7.20 (2) proof of surety bond coverage. Upon new enrollment, or if the provider's Medicaid
7.21 revenue in the previous calendar year is up to and including \$300,000, the provider agency
7.22 must purchase a surety bond of \$50,000. If the Medicaid revenue in the previous year is
7.23 over \$300,000, the provider agency must purchase a surety bond of \$100,000. The surety
7.24 bond must be in a form approved by the commissioner, must be renewed annually, and must
7.25 allow for recovery of costs and fees in pursuing a claim on the bond;

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

7.27 (4) proof of workers' compensation insurance coverage;

7.28 (5) proof of liability insurance;

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

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

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

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

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

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

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

8.18 (10) documentation that the personal care assistance provider agency and staff have
8.19 successfully completed all the training required by this section, including the requirements
8.20 under subdivision 11, paragraph (d), if complex personal care assistance services are provided
8.21 and submitted for payment;

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

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

8.25 (13) documentation that the agency will use the following percentages of revenue
8.26 generated from the medical assistance rate paid for personal care assistance services for
8.27 employee personal care assistant wages and benefits: 72.5 percent of revenue in the personal
8.28 care assistance choice option and 72.5 percent of revenue from other personal care assistance
8.29 providers. The revenue generated by the qualified professional and the reasonable costs
8.30 associated with the qualified professional shall not be used in making this calculation; and

8.31 (14) effective May 15, 2010, documentation that the agency does not burden recipients'
8.32 free exercise of their right to choose service providers by requiring personal care assistants
8.33 to sign an agreement not to work with any particular personal care assistance recipient or

9.1 for another personal care assistance provider agency after leaving the agency and that the
9.2 agency is not taking action on any such agreements or requirements regardless of the date
9.3 signed.

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

9.9 (c) All personal care assistance provider agencies shall require all employees in
9.10 management and supervisory positions and owners of the agency who are active in the
9.11 day-to-day management and operations of the agency to complete mandatory training as
9.12 determined by the commissioner before enrollment of the agency as a provider. Employees
9.13 in management and supervisory positions and owners who are active in the day-to-day
9.14 operations of an agency who have completed the required training as an employee with a
9.15 personal care assistance provider agency do not need to repeat the required training if they
9.16 are hired by another agency, if they have completed the training within the past three years.
9.17 By September 1, 2010, the required training must be available with meaningful access
9.18 according to title VI of the Civil Rights Act and federal regulations adopted under that law
9.19 or any guidance from the United States Health and Human Services Department. The
9.20 required training must be available online or by electronic remote connection. The required
9.21 training must provide for competency testing. Personal care assistance provider agency
9.22 billing staff shall complete training about personal care assistance program financial
9.23 management. This training is effective July 1, 2009. Any personal care assistance provider
9.24 agency enrolled before that date shall, if it has not already, complete the provider training
9.25 within 18 months of July 1, 2009. Any new owners or employees in management and
9.26 supervisory positions involved in the day-to-day operations are required to complete
9.27 mandatory training as a requisite of working for the agency. Personal care assistance provider
9.28 agencies certified for participation in Medicare as home health agencies are exempt from
9.29 the training required in this subdivision. When available, Medicare-certified home health
9.30 agency owners, supervisors, or managers must successfully complete the competency test.