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State of Minnesota

HOUSE OF REPRESENTATIVES

NINETY-THIRD SESSION

H. F. No. 4218

02/22/2024 Authored by Noor and Klevorn The bill was read for the first time and referred to the Committee on Human Services Finance

1.1 A bill for an act
1.2 relating to human services; establishing professional competency and shift wage
1.3 differential enhanced payment rates for personal care assistant and community
1.4 first services and supports professionals; modifying use of enhanced rate revenue
1.5 for workers; establishing a temporary personal care assistance rate increase;
1.6 appropriating money; amending Minnesota Statutes 2022, sections 256B.0659,
1.7 subdivisions 11, 17a; 256B.85, subdivisions 7a, 16; Minnesota Statutes 2023
1.8 Supplement, section 256B.0659, subdivision 24.

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

1.10 Section 1. Minnesota Statutes 2022, section 256B.0659, subdivision 11, is amended to
1.11 read:

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

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

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

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

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

1.20 (3) enroll with the department as a personal care assistant after clearing a background
1.21 study. Except as provided in subdivision 11a, before a personal care assistant provides
1.22 services, the personal care assistance provider agency must initiate a background study on
1.23 the personal care assistant under chapter 245C, and the personal care assistance provider

2.1 agency must have received a notice from the commissioner that the personal care assistant
2.2 is:

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

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

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

2.8 (5) be able to provide covered personal care assistance services according to the recipient's
2.9 personal care assistance care plan, respond appropriately to recipient needs, and report
2.10 changes in the recipient's condition to the supervising qualified professional, physician,
2.11 advanced practice registered nurse, or physician assistant;

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

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

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

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

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

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

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

3.5 (d) Personal care assistance services qualify for the enhanced rate described in subdivision
 3.6 17a, paragraph (a), if the personal care assistant providing the services:

3.7 (1) provides covered services to a recipient who qualifies for ten or more hours per day
 3.8 of personal care assistance services; and

3.9 (2) satisfies the current requirements of Medicare for training and competency or
 3.10 competency evaluation of home health aides or nursing assistants, as provided in the Code
 3.11 of Federal Regulations, title 42, section 483.151 or 484.36, or alternative state-approved
 3.12 training or competency requirements.

3.13 Sec. 2. Minnesota Statutes 2022, section 256B.0659, subdivision 17a, is amended to read:

3.14 Subd. 17a. **Enhanced rate.** (a) An enhanced rate of 107.5 percent of the rate paid for
 3.15 personal care assistance services shall must be paid for services provided to persons who
 3.16 qualify for ten or more hours of personal care assistance services per day when provided
 3.17 by a personal care assistant who meets the requirements of subdivision 11, paragraph (d)-₂,
 3.18 as follows:

3.19 (1) 107.5 percent of the rate paid for personal care assistance services provided to persons
 3.20 who qualify for ten to 14.9 hours of personal care assistance services per day;

3.21 (2) 112.5 percent of the rate paid for personal care assistance services provided to persons
 3.22 who qualify for 15 to 19.9 hours of personal care assistance services per day; and

3.23 (3) 117.5 percent of the rate paid for personal care assistance services provided to persons
 3.24 who qualify for 20 or more hours of personal care assistance services per day.

3.25 (b) An enhanced rate of 25 percent must be paid, in addition to any other enhancements
 3.26 in this subdivision, for services provided to persons who qualify for any number of hours
 3.27 of personal care assistance services per day when provided by an individual who is a licensed
 3.28 registered nurse, a licensed practical nurse, a certified home health aide, or a certified nursing
 3.29 assistant.

3.30 (c) An enhanced rate of ten percent must be paid, in addition to any other enhancements
 3.31 in this subdivision, for services provided to persons who qualify for any number of hours

4.1 of personal care assistance services per day when provided between the hours of 9 p.m. on
 4.2 a Friday and 9 a.m. the following Monday.

4.3 (d) A personal care assistance provider must use all additional revenue attributable to
 4.4 the rate enhancements under this subdivision for the wages of the personal care assistants.
 4.5 The agency must not use the additional revenue attributable to any enhanced rate under this
 4.6 subdivision to pay for mileage reimbursement, health and dental insurance, life insurance,
 4.7 disability insurance, long-term care insurance, uniform allowance, contributions to employee
 4.8 retirement accounts, or any other employee benefits.

4.9 (e) Any change in the eligibility criteria for the enhanced rate for personal care assistance
 4.10 services as described in this subdivision and referenced in subdivision 11, paragraph (d),
 4.11 does not constitute a change in a term or condition for individual providers as defined in
 4.12 section 256B.0711, and is not subject to the state's obligation to meet and negotiate under
 4.13 chapter 179A.

4.14 **EFFECTIVE DATE.** This section is effective January 1, 2025, or upon federal approval,
 4.15 whichever is later. The commissioner of human services shall notify the revisor of statutes
 4.16 when federal approval is obtained.

4.17 Sec. 3. Minnesota Statutes 2023 Supplement, section 256B.0659, subdivision 24, is
 4.18 amended to read:

4.19 Subd. 24. **Personal care assistance provider agency; general duties.** A personal care
 4.20 assistance provider agency shall:

4.21 (1) enroll as a Medicaid provider meeting all provider standards, including completion
 4.22 of the required provider training;

4.23 (2) comply with general medical assistance coverage requirements;

4.24 (3) demonstrate compliance with law and policies of the personal care assistance program
 4.25 to be determined by the commissioner;

4.26 (4) comply with background study requirements;

4.27 (5) verify and keep records of hours worked by the personal care assistant and qualified
 4.28 professional;

4.29 (6) not engage in any agency-initiated direct contact or marketing in person, by phone,
 4.30 or other electronic means to potential recipients, guardians, or family members;

4.31 (7) pay the personal care assistant and qualified professional based on actual hours of
 4.32 services provided;

5.1 (8) withhold and pay all applicable federal and state taxes;

5.2 (9) document that the agency uses a minimum of 72.5 percent of the revenue generated
5.3 by the medical assistance rate for personal care assistance services for employee personal
5.4 care assistant wages and benefits. The revenue generated by the qualified professional and
5.5 the reasonable costs associated with the qualified professional shall not be used in making
5.6 this calculation;

5.7 (10) make the arrangements and pay unemployment insurance, taxes, workers'
5.8 compensation, liability insurance, and other benefits, if any;

5.9 (11) enter into a written agreement under subdivision 20 before services are provided;

5.10 (12) report suspected neglect and abuse to the common entry point according to section
5.11 256B.0651;

5.12 (13) provide the recipient with a copy of the home care bill of rights at start of service;

5.13 (14) request reassessments at least 60 days prior to the end of the current authorization
5.14 for personal care assistance services, on forms provided by the commissioner;

5.15 (15) comply with the labor market reporting requirements described in section 256B.4912,
5.16 subdivision 1a;

5.17 (16) document that the agency uses the additional revenue due to the enhanced rate under
5.18 subdivision 17a for the wages ~~and benefits~~ of the PCAs whose services meet the requirements
5.19 under subdivision 11, paragraph (d); and

5.20 (17) ensure that a personal care assistant driving a recipient under subdivision 1,
5.21 paragraph (i), has a valid driver's license and the vehicle used is registered and insured
5.22 according to Minnesota law.

5.23 **EFFECTIVE DATE.** This section is effective January 1, 2025, or upon federal approval,
5.24 whichever is later. The commissioner of human services shall notify the revisor of statutes
5.25 when federal approval is obtained.

5.26 Sec. 4. Minnesota Statutes 2022, section 256B.85, subdivision 7a, is amended to read:

5.27 Subd. 7a. **Enhanced rate.** (a) ~~An enhanced rate of 107.5 percent of the rate paid for~~
5.28 ~~CFSS~~ must be paid for CFSS services provided to persons who qualify for ten or more hours
5.29 of CFSS per day when provided by a support worker who meets the requirements of
5.30 subdivision 16, paragraph (e); as follows:

6.1 (1) 107.5 percent of the rate paid for CFSS services provided to persons who qualify for
6.2 ten to 14.9 hours of CFSS services per day;

6.3 (2) 112.5 percent of the rate paid for CFSS services provided to persons who qualify for
6.4 15 to 19.9 hours of CFSS services per day; and

6.5 (3) 117.5 percent of the rate paid for CFSS services provided to persons who qualify for
6.6 20 or more hours of CFSS services per day.

6.7 (b) An enhanced rate of 25 percent must be paid, in addition to any other enhancements
6.8 in this subdivision, for CFSS services provided to persons who qualify for any number of
6.9 hours of CFSS per day when provided by an individual who is a licensed registered nurse,
6.10 a licensed practical nurse, a certified home health aide, or a certified nursing assistant.

6.11 (c) An enhanced rate of ten percent must be paid, in addition to any other enhancements
6.12 in this subdivision, for CFSS services provided to persons who qualify for any number of
6.13 hours of CFSS per day when provided between the hours of 9 p.m. on a Friday and 9 a.m.
6.14 the following Monday.

6.15 (d) An agency-provider must use all additional revenue attributable to the rate
6.16 enhancements under this subdivision for the wages of the support workers. The
6.17 agency-provider must not use the additional revenue attributable to any enhanced rate under
6.18 this subdivision to pay for mileage reimbursement, health and dental insurance, life insurance,
6.19 disability insurance, long-term care insurance, uniform allowance, contributions to employee
6.20 retirement accounts, or any other employee benefits.

6.21 (e) Any change in the eligibility criteria for the enhanced rate for CFSS as described in
6.22 this subdivision and referenced in subdivision 16, paragraph (e), does not constitute a change
6.23 in a term or condition for individual providers as defined in section 256B.0711, and is not
6.24 subject to the state's obligation to meet and negotiate under chapter 179A.

6.25 **EFFECTIVE DATE.** This section is effective January 1, 2025, or upon federal approval,
6.26 whichever is later. The commissioner of human services shall notify the revisor of statutes
6.27 when federal approval is obtained.

6.28 Sec. 5. Minnesota Statutes 2022, section 256B.85, subdivision 16, is amended to read:

6.29 Subd. 16. **Support workers requirements.** (a) Support workers shall:

6.30 (1) enroll with the department as a support worker after a background study under chapter
6.31 245C has been completed and the support worker has received a notice from the
6.32 commissioner that the support worker:

- 7.1 (i) is not disqualified under section 245C.14; or
- 7.2 (ii) is disqualified, but has received a set-aside of the disqualification under section
7.3 245C.22;
- 7.4 (2) have the ability to effectively communicate with the participant or the participant's
7.5 representative;
- 7.6 (3) have the skills and ability to provide the services and supports according to the
7.7 participant's CFSS service delivery plan and respond appropriately to the participant's needs;
- 7.8 (4) complete the basic standardized CFSS training as determined by the commissioner
7.9 before completing enrollment. The training must be available in languages other than English
7.10 and to those who need accommodations due to disabilities. CFSS support worker training
7.11 must include successful completion of the following training components: basic first aid,
7.12 vulnerable adult, child maltreatment, OSHA universal precautions, basic roles and
7.13 responsibilities of support workers including information about basic body mechanics,
7.14 emergency preparedness, orientation to positive behavioral practices, orientation to
7.15 responding to a mental health crisis, fraud issues, time cards and documentation, and an
7.16 overview of person-centered planning and self-direction. Upon completion of the training
7.17 components, the support worker must pass the certification test to provide assistance to
7.18 participants;
- 7.19 (5) complete employer-directed training and orientation on the participant's individual
7.20 needs;
- 7.21 (6) maintain the privacy and confidentiality of the participant; and
- 7.22 (7) not independently determine the medication dose or time for medications for the
7.23 participant.
- 7.24 (b) The commissioner may deny or terminate a support worker's provider enrollment
7.25 and provider number if the support worker:
- 7.26 (1) does not meet the requirements in paragraph (a);
- 7.27 (2) fails to provide the authorized services required by the employer;
- 7.28 (3) has been intoxicated by alcohol or drugs while providing authorized services to the
7.29 participant or while in the participant's home;
- 7.30 (4) has manufactured or distributed drugs while providing authorized services to the
7.31 participant or while in the participant's home; or

8.1 (5) has been excluded as a provider by the commissioner of human services, or by the
 8.2 United States Department of Health and Human Services, Office of Inspector General, from
 8.3 participation in Medicaid, Medicare, or any other federal health care program.

8.4 (c) A support worker may appeal in writing to the commissioner to contest the decision
 8.5 to terminate the support worker's provider enrollment and provider number.

8.6 (d) A support worker must not provide or be paid for more than 310 hours of CFSS per
 8.7 month, regardless of the number of participants the support worker serves or the number
 8.8 of agency-providers or participant employers by which the support worker is employed.
 8.9 The department shall not disallow the number of hours per day a support worker works
 8.10 unless it violates other law.

8.11 (e) CFSS qualify for an enhanced rate described in subdivision 7a, paragraph (a), if the
 8.12 support worker providing the services:

8.13 (1) provides services, within the scope of CFSS described in subdivision 7, to a participant
 8.14 who qualifies for ten or more hours per day of CFSS; and

8.15 (2) satisfies the current requirements of Medicare for training and competency or
 8.16 competency evaluation of home health aides or nursing assistants, as provided in the Code
 8.17 of Federal Regulations, title 42, section 483.151 or 484.36, or alternative state-approved
 8.18 training or competency requirements.

8.19 **Sec. 6. APPROPRIATION; ENHANCED RATES FOR DIRECT SUPPORT**
 8.20 **PROFESSIONALS.**

8.21 \$..... in fiscal year 2025 is appropriated from the general fund to the commissioner of
 8.22 human services for enhanced payment rates for personal care assistants under Minnesota
 8.23 Statutes, section 256B.0659, subdivision 17a, and community first services and supports
 8.24 workers under Minnesota Statutes, section 256B.85, subdivision 7a.

8.25 **EFFECTIVE DATE.** This section is effective January 1, 2025, or upon federal approval,
 8.26 whichever is later. The commissioner of human services shall inform the revisor of statutes
 8.27 when federal approval is obtained.