

SENATE
STATE OF MINNESOTA
NINETIETH SESSION

S.F. No. 1423

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OFFICIAL STATUS
Introduction and first reading
Referred to Health and Human Services Finance and Policy

1.1 A bill for an act
 1.2 relating to human services; modifying home health services; amending Minnesota
 1.3 Statutes 2016, sections 256B.0625, subdivision 6a; 256B.0653, subdivisions 2, 3,
 1.4 4, 5, 6, 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.0625, subdivision 6a, is amended to
 1.7 read:

1.8 Subd. 6a. **Home health services.** Home health services are those services specified in
 1.9 Minnesota Rules, part 9505.0295 and sections 256B.0651 and 256B.0653. Medical assistance
 1.10 covers home health services at a recipient's home residence or in the community where
 1.11 normal life activities take the recipient. Medical assistance does not cover home health
 1.12 services for residents of a hospital, nursing facility, or intermediate care facility, unless the
 1.13 commissioner of human services has authorized skilled nurse visits for less than 90 days
 1.14 for a resident at an intermediate care facility for persons with developmental disabilities,
 1.15 to prevent an admission to a hospital or nursing facility or unless a resident who is otherwise
 1.16 eligible is on leave from the facility and the facility either pays for the home health services
 1.17 or forgoes the facility per diem for the leave days that home health services are used. Home
 1.18 health services must be provided by a Medicare certified home health agency. All nursing
 1.19 and home health aide services must be provided according to sections 256B.0651 to
 1.20 256B.0653.

1.21 Sec. 2. Minnesota Statutes 2016, section 256B.0653, subdivision 2, is amended to read:

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

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

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

2.7 (c) "Home health agency services" means services delivered ~~in the recipient's home~~
2.8 ~~residence, except as specified in section 256B.0625,~~ by a home health agency to a recipient
2.9 with medical needs due to illness, disability, or physical conditions in settings permitted
2.10 under section 256B.0625, subdivision 6a.

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

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

2.14 (f) "Occupational therapy services" mean the services defined in Minnesota Rules, part
2.15 9505.0390.

2.16 (g) "Physical therapy services" mean the services defined in Minnesota Rules, part
2.17 9505.0390.

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

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

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

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

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

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

3.1 Sec. 3. Minnesota Statutes 2016, section 256B.0653, subdivision 3, is amended to read:

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

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

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

3.15 Sec. 4. Minnesota Statutes 2016, section 256B.0653, subdivision 4, is amended to read:

3.16 Subd. 4. **Skilled nurse visit services.** (a) Skilled nurse visit services must be provided
3.17 by a registered nurse or a licensed practical nurse under the supervision of a registered nurse,
3.18 according to the written plan of care and accepted standards of medical and nursing practice
3.19 according to chapter 148. Skilled nurse visit services must be ordered by a physician and
3.20 documented in a plan of care that is reviewed and approved by the ordering physician at
3.21 least once every 60 days. All skilled nurse visits must be medically necessary and provided
3.22 in the recipient's home residence or in the community where normal life activities take the
3.23 recipient, except as allowed under section 256B.0625, subdivision 6a.

3.24 (b) Skilled nurse visits include face-to-face and telehomecare visits with a limit of up
3.25 to two visits per day per recipient. All visits must be based on assessed needs.

3.26 (c) Telehomecare skilled nurse visits are allowed when the recipient's health status can
3.27 be accurately measured and assessed without a need for a face-to-face, hands-on encounter.
3.28 All telehomecare skilled nurse visits must have authorization and are paid at the same
3.29 allowable rates as face-to-face skilled nurse visits.

3.30 (d) The provision of telehomecare must be made via live, two-way interactive audiovisual
3.31 technology and may be augmented by utilizing store-and-forward technologies. Individually
3.32 identifiable patient data obtained through real-time or store-and-forward technology must
3.33 be maintained as health records according to sections 144.291 to 144.298. If the video is

4.1 used for research, training, or other purposes unrelated to the care of the patient, the identity
4.2 of the patient must be concealed.

4.3 (e) Authorization for skilled nurse visits must be completed under section 256B.0652.
4.4 A total of nine face-to-face skilled nurse visits per calendar year do not require authorization.
4.5 All telehomecare skilled nurse visits require authorization.

4.6 Sec. 5. Minnesota Statutes 2016, section 256B.0653, subdivision 5, is amended to read:

4.7 Subd. 5. **Home care therapies.** (a) Home care therapies include the following: physical
4.8 therapy, occupational therapy, respiratory therapy, and speech and language pathology
4.9 therapy services.

4.10 (b) Home care therapies must be:

4.11 (1) provided in the recipient's residence or in the community where normal life activities
4.12 take the recipient after it has been determined the recipient is unable to access outpatient
4.13 therapy;

4.14 (2) prescribed, ordered, or referred by a physician and documented in a plan of care and
4.15 reviewed, according to Minnesota Rules, part 9505.0390;

4.16 (3) assessed by an appropriate therapist; and

4.17 (4) provided by a Medicare-certified home health agency enrolled as a Medicaid provider
4.18 agency.

4.19 (c) Restorative and specialized maintenance therapies must be provided according to
4.20 Minnesota Rules, part 9505.0390. Physical and occupational therapy assistants may be used
4.21 as allowed under Minnesota Rules, part 9505.0390, subpart 1, item B.

4.22 (d) For both physical and occupational therapies, the therapist and the therapist's assistant
4.23 may not both bill for services provided to a recipient on the same day.

4.24 Sec. 6. Minnesota Statutes 2016, section 256B.0653, subdivision 6, is amended to read:

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

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

4.30 (2) the following skilled nurse visits:

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

5.3 (ii) administering or assisting with medication administration, including injections,
5.4 prefilling syringes for injections, or oral medication setup of an adult recipient, when, as
5.5 determined and documented by the registered nurse, the need can be met by an available
5.6 pharmacy or the recipient or a family member is physically and mentally able to
5.7 self-administer or prefill a medication;

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

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

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

5.13 (vi) Medicare evaluation or administrative nursing visits required by Medicare;

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

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

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

5.21 Sec. 7. Minnesota Statutes 2016, section 256B.0653, is amended by adding a subdivision
5.22 to read:

5.23 Subd. 7. **Face-to-face encounter.** (a) A face-to-face encounter by a qualifying provider
5.24 must be completed for all home health services regardless of the need for prior authorization,
5.25 except when providing a one-time perinatal visit by skilled nursing. The face-to-face
5.26 encounter may occur through telemedicine as defined in section 256B.0625, subdivision
5.27 3b. The encounter must be related to the primary reason the recipient requires home health
5.28 services and must occur within the 90 days before or the 30 days after the start of services.
5.29 The face-to-face encounter may be conducted by one of the following practitioners, licensed
5.30 in Minnesota:

5.31 (1) a physician;

5.32 (2) a nurse practitioner or clinical nurse specialist;

6.1 (3) a certified nurse midwife; or

6.2 (4) a physician assistant.

6.3 (b) The allowed nonphysician practitioner, as described in this subdivision, performing
6.4 the face-to-face encounter must communicate the clinical findings of that face-to-face
6.5 encounter to the ordering physician. Those clinical findings must be incorporated into a
6.6 written or electronic document included in the recipient's medical record. To assure clinical
6.7 correlation between the face-to-face encounter and the associated home health services, the
6.8 physician responsible for ordering the services must:

6.9 (1) document that the face-to-face encounter, which is related to the primary reason the
6.10 recipient requires home health services, occurred within the required time period; and

6.11 (2) indicate the practitioner who conducted the encounter and the date of the encounter.

6.12 (c) For home health services requiring prior authorization, home health agencies need
6.13 not submit the qualifying documentation to the commissioner or the commissioner's designee
6.14 prior to the authorization of home health services.

6.15 (d) The requirements of this subdivision only apply to fee-for-service medical assistance.
6.16 Managed care plans and county-based purchasing plans must not require face-to-face
6.17 encounter requirements for home health services provided under medical assistance managed
6.18 care.