

SENATE
STATE OF MINNESOTA
NINETIETH SESSION

S.F. No. 562

(SENATE AUTHORS: ABELER, Hoffman and Clausen)

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1.1 A bill for an act

1.2 relating to human services; modifying certain provisions governing autism early

1.3 intensive intervention benefit; amending Minnesota Statutes 2016, section

1.4 256B.0949.

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

1.6 Section 1. Minnesota Statutes 2016, section 256B.0949, is amended to read:

1.7 **256B.0949 AUTISM EARLY INTENSIVE DEVELOPMENTAL AND**

1.8 **BEHAVIORAL INTERVENTION BENEFIT.**

1.9 Subdivision 1. **Purpose.** This section ~~creates a new benefit~~ authorizes the early intensive

1.10 developmental and behavioral intervention (EIDBI) benefit to provide early intensive

1.11 intervention to a ~~child~~ person with an autism spectrum disorder ~~diagnosis~~ or a related

1.12 condition. This benefit must provide coverage for ~~diagnosis~~ a comprehensive,

1.13 multidisciplinary ~~assessment~~ evaluation, ongoing progress ~~evaluation~~ monitoring, and

1.14 medically necessary early intensive treatment of autism spectrum disorder or a related

1.15 condition. Nothing in this section shall preclude coverage for other medical assistance

1.16 benefits based on a person's diagnosis of an autism spectrum disorder or a related condition,

1.17 including, but not limited to, coverage under section 256B.0943 of children's therapeutic

1.18 services and supports.

1.19 Subd. 2. **Definitions.** (a) ~~For the purposes of this section,~~ The terms ~~defined~~ used in this

1.20 ~~subdivision~~ section have the meanings given in this subdivision.

1.21 (b) ~~"Autism spectrum disorder diagnosis" is defined by diagnostic code 299 in the current~~

1.22 ~~version of the Diagnostic and Statistical Manual of Mental Disorders (DSM).~~

2.1 (b) "Agency" means the legal entity that is enrolled with Minnesota health care programs
2.2 as a medical assistance provider according to Minnesota Rules, part 9505.0195, to provide
2.3 EIDBI services and that has the legal responsibility to ensure that its employees or contractors
2.4 carry out the responsibilities defined in this section. Agency includes a licensed individual
2.5 professional who practices independently and acts as an agency.

2.6 (c) "Autism spectrum disorder or a related condition" or "ASD or a related condition"
2.7 means either autism spectrum disorder (ASD) as defined in the current version of the
2.8 Diagnostic and Statistical Manual of Mental Disorders (DSM) or a condition that is found
2.9 to be closely related to ASD, as identified under the current version of the DSM, and meets
2.10 all of the following criteria:

2.11 (1) is severe and chronic;

2.12 (2) results in impairment of adaptive behavior and function similar to that of a person
2.13 with ASD;

2.14 (3) requires treatment or services similar to those required for a person with ASD; and

2.15 (4) results in substantial functional limitations in three core developmental deficits of
2.16 ASD: social interaction; nonverbal or social communication; and restrictive, repetitive
2.17 behaviors or hyperreactivity or hyporeactivity to sensory input; and may include deficits or
2.18 a high level of support in one or more of the following domains:

2.19 (i) self-regulation;

2.20 (ii) self-care;

2.21 (iii) behavioral challenges;

2.22 (iv) expressive communication;

2.23 (v) receptive communication;

2.24 (vi) cognitive functioning; or

2.25 (vii) safety.

2.26 ~~(e)~~ (d) "Child Person" means a person under the age of 18 21 years of age.

2.27 (e) "Clinical supervision" means the overall responsibility for the control and direction
2.28 of EIDBI service delivery, including individual treatment planning, staff supervision,
2.29 individual treatment plan progress monitoring, and treatment review for each person. Clinical
2.30 supervision is provided by a qualified supervising professional (QSP) who takes full
2.31 professional responsibility for the service provided by each supervisee.

3.1 ~~(d)~~ (f) "Commissioner" means the commissioner of human services, unless otherwise
3.2 specified.

3.3 (g) "Comprehensive multidisciplinary evaluation" or "CMDE" means a comprehensive
3.4 evaluation of a person to determine medical necessity for EIDBI services based on the
3.5 requirements in subdivision 5.

3.6 (h) "Department" means the Department of Human Services, unless otherwise specified.

3.7 ~~(e)~~ (i) "Early intensive developmental and behavioral intervention benefit" or "EIDBI
3.8 benefit" means ~~autism treatment options~~ a variety of individualized, intensive treatment
3.9 modalities approved by the commissioner that are based in behavioral and developmental
3.10 science, which may include modalities such as applied behavior analysis, developmental
3.11 treatment approaches, and naturalistic and parent training models consistent with best
3.12 practices on effectiveness.

3.13 ~~(f)~~ (j) "Generalizable goals" means results or gains that are observed during a variety of
3.14 activities over time with different people, such as providers, family members, other adults,
3.15 and ~~children~~ people, and in different environments including, but not limited to, clinics,
3.16 homes, schools, and the community.

3.17 (k) "Incident" means when any of the following occur:

3.18 (1) an illness, accident, or injury that requires first aid treatment;

3.19 (2) a bump or blow to the head; or

3.20 (3) an unusual or unexpected event that jeopardizes the safety of a person or staff,
3.21 including a person leaving the agency unattended.

3.22 (l) "Individual treatment plan" or "ITP" means the person-centered, individualized written
3.23 plan of care that integrates and coordinates person and family information from the CMDE
3.24 for a person who meets medical necessity for the EIDBI benefit. An individual treatment
3.25 plan must meet the standards in subdivision 6.

3.26 (m) "Legal representative" means the parent of a child who is under 18 years of age, a
3.27 court-appointed guardian, or other representative with legal authority to make decisions
3.28 about service for a person. For the purpose of this subdivision, "other representative with
3.29 legal authority to make decisions" includes a health care agent or an attorney-in-fact
3.30 authorized through a health care directive or power of attorney.

3.31 ~~(g)~~ (n) "Mental health professional" has the meaning given in section 245.4871,
3.32 subdivision 27, clauses (1) to (6).

4.1 (o) "Person-centered" means a service that both responds to the identified needs, interests,
 4.2 values, preferences, and desired outcomes of the person or the person's legal representative
 4.3 and respects the person's history, dignity, and cultural background and allows inclusion and
 4.4 participation in the person's community.

4.5 (p) "Qualified EIDBI provider" means a person who is a QSP or a level I, level II, or
 4.6 level III treatment provider.

4.7 Subd. 3. ~~Initial EIDBI eligibility. This benefit~~ An EIDBI service is available to a ~~child~~
 4.8 person enrolled in medical assistance who:

4.9 (1) ~~has an autism spectrum disorder~~ a diagnosis of ASD or a related condition that meets
 4.10 the criteria of subdivision 4; and

4.11 ~~(2) has had a diagnostic assessment described in subdivision 5, which recommends early~~
 4.12 ~~intensive intervention services; and~~

4.13 ~~(3) (2) meets the criteria for medically necessary autism early intensive intervention~~
 4.14 ~~services~~ medical necessity for the EIDBI benefit.

4.15 Subd. 3a. **Culturally and linguistically appropriate requirement.** The person's and
 4.16 family's primary spoken language and culture, values, goals, and preferences must be
 4.17 reflected throughout the covered services. The CMDE provider and QSP must determine
 4.18 how to adapt the evaluation, treatment recommendations, and individual treatment plan to
 4.19 the person's and family's culture, values, and language preferences. A provider must have
 4.20 a limited English proficiency (LEP) plan in compliance with title VI of the Civil Rights Act
 4.21 of 1964, United States Code, title 42, section 2000d to 2000d-7.

4.22 Subd. 4. **Diagnosis.** (a) A diagnosis of ASD or a related condition must:

4.23 (1) be based upon current DSM criteria including direct observations of the ~~child~~ person
 4.24 ~~and reports~~ information from parents the person's legal representative or primary caregivers;
 4.25 ~~and~~

4.26 (2) be completed by either (i) a licensed physician or advanced practice registered nurse
 4.27 or (ii) a mental health professional; and

4.28 (3) meet the requirements of Minnesota Rules, part 9505.0372, subpart 1, items B and
 4.29 C.

4.30 (b) Additional ~~diagnostic~~ assessment information may be considered to complete a
 4.31 diagnostic assessment including from specialized tests administered through special education
 4.32 evaluations and licensed school personnel, and from professionals licensed in the fields of

5.1 medicine, speech and language, psychology, occupational therapy, and physical therapy.
 5.2 A diagnostic assessment may include treatment recommendations.

5.3 Subd. 5. ~~Diagnostic assessment~~ **Comprehensive multidisciplinary evaluation.** The
 5.4 ~~following~~ (a) A CMDE must be completed to determine medical necessity of EIDBI services.
 5.5 For the commissioner to authorize EIDBI services, the CMDE provider must submit the
 5.6 CMDE to the commissioner and the person or the person's legal representative as determined
 5.7 by the commissioner. Information and assessments must be performed, reviewed, and relied
 5.8 upon for the eligibility determination, treatment and services recommendations, and treatment
 5.9 plan development for the ~~child~~ person.

5.10 (b) The CMDE must:

5.11 (1) include an assessment of the ~~child's~~ person's developmental skills, functional behavior,
 5.12 needs, and capacities based on direct observation of the ~~child~~ person which must be
 5.13 administered by a ~~licensed mental health professional~~ CMDE provider, must include medical
 5.14 or assessment information from the ~~child's~~ person's physician or advanced practice registered
 5.15 nurse, and may also include ~~observations~~ input from family members, school personnel,
 5.16 child care providers, or other caregivers, as well as any medical or assessment information
 5.17 from other licensed professionals such as rehabilitation or habilitation therapists, licensed
 5.18 school personnel, or mental health professionals; and

5.19 ~~(2) an assessment of parental or caregiver capacity to participate in therapy including~~
 5.20 ~~the type and level of parental or caregiver involvement and training recommended.~~

5.21 (2) include and document the person's legal representative's or primary caregiver's
 5.22 preferences for involvement in the person's treatment; and

5.23 (3) provide information about the range of current EIDBI treatment modalities recognized
 5.24 by the commissioner.

5.25 Subd. 5a. **Comprehensive multidisciplinary evaluation provider qualification.** A
 5.26 CMDE provider must:

5.27 (1) be a licensed physician, advanced practice registered nurse, a mental health
 5.28 professional, or a mental health practitioner who meets the requirements of a clinical trainee
 5.29 as defined in Minnesota Rules, part 9505.0371, subpart 5, item C;

5.30 (2) have at least 2,000 hours of clinical experience in the evaluation and treatment of
 5.31 people with ASD or a related condition or equivalent documented coursework at the graduate
 5.32 level by an accredited university in the following content areas: ASD or a related condition
 5.33 diagnosis, ASD or a related condition treatment strategies, and child development; and

6.1 (3) be able to diagnose, evaluate, or provide treatment within the provider's scope of
 6.2 practice and professional license.

6.3 Subd. 6. **Individual treatment plan.** (a) The QSP, level I treatment provider, or level
 6.4 II treatment provider who integrates and coordinates person and family information from
 6.5 the CMDE and ITP progress monitoring process to develop the ITP must develop and
 6.6 monitor the ITP.

6.7 (b) Each child's treatment plan person's ITP must be:

6.8 (1) culturally and linguistically appropriate, as required under subdivision 3a,
 6.9 individualized, and person-centered; and

6.10 ~~(1) (2) based on the diagnostic assessment diagnosis and CMDE information specified~~
 6.11 ~~in subdivisions 4 and 5;~~

6.12 ~~(2) coordinated with medically necessary occupational, physical, and speech and language~~
 6.13 ~~therapies, special education, and other services the child and family are receiving;~~

6.14 ~~(3) family-centered;~~

6.15 ~~(4) culturally sensitive; and~~

6.16 ~~(5) individualized based on the child's developmental status and the child's and family's~~
 6.17 ~~identified needs.~~

6.18 ~~(b) (c) The treatment plan ITP must specify the:~~

6.19 ~~(1) child's goals which are developmentally appropriate, functional, and generalizable;~~

6.20 ~~(2) treatment modality;~~

6.21 ~~(3) treatment intensity;~~

6.22 ~~(4) setting; and~~

6.23 ~~(5) level and type of parental or caregiver involvement.~~

6.24 (1) the medically necessary treatment and service;

6.25 (2) the treatment modality that shall be used to meet the goals and objectives, including:

6.26 (i) baseline measures and projected dates of accomplishment;

6.27 (ii) the frequency, intensity, location, and duration of each service provided;

6.28 (iii) the level of legal representative or primary caregiver training and counseling;

7.1 (iv) any change or modification to the physical and social environments necessary to
 7.2 provide a service;

7.3 (v) significant changes in the person's condition or family circumstance;

7.4 (vi) any specialized equipment or material required;

7.5 (vii) techniques that support and are consistent with the person's communication mode
 7.6 and learning style;

7.7 (viii) the name of the QSP; and

7.8 (ix) progress monitoring results and goal mastery data; and

7.9 (3) the discharge criteria that shall be used and a defined transition plan that meets the
 7.10 requirement of paragraph (g).

7.11 ~~(e) (d) Implementation of the treatment ITP must be supervised by a professional with~~
 7.12 ~~expertise and training in autism and child development who is a licensed physician, advanced~~
 7.13 ~~practice registered nurse, or mental health professional QSP.~~

7.14 ~~(d) (e) The treatment plan ITP must be submitted to the commissioner and the person~~
 7.15 ~~or the person's legal representative for approval in a manner determined by the commissioner~~
 7.16 ~~for this purpose.~~

7.17 ~~(e) Services authorized must be consistent with the child's approved treatment plan.~~

7.18 ~~(f) Services~~ A service included in the ~~treatment plan ITP~~ must meet all applicable
 7.19 requirements for medical necessity and coverage.

7.20 (g) To terminate service, the provider must send notice of termination to the person or
 7.21 the person's legal representative. The transition period begins when the person or the person's
 7.22 legal representative receives notice of termination from the EIDBI service and ends when
 7.23 the EIDBI service is terminated. Up to 30 days of continued service is allowed during the
 7.24 transition period. Services during the transition period shall be consistent with the ITP. The
 7.25 transition plan shall include:

7.26 (1) protocols for changing service when medically necessary;

7.27 (2) how the transition will occur;

7.28 (3) the time allowed to make the transition; and

7.29 (4) a description of how the person or the person's legal representative will be informed
 7.30 of and involved in the transition.

8.1 Subd. 7. ~~Ongoing eligibility~~ Individual treatment plan progress monitoring. (a) An
 8.2 ~~independent ITP progress evaluation conducted by a licensed mental health professional~~
 8.3 ~~with expertise and training in autism spectrum disorder and child development~~ monitoring
 8.4 ~~must be completed~~ submitted after each six months of treatment, or more frequently as
 8.5 determined by the ~~commissioner~~ CMDE provider or QSP, to determine if progress is being
 8.6 made toward ~~achieving~~ targeted functional and generalizable goals and meeting functional
 8.7 ~~goals contained~~ specified in the ~~treatment plan~~ ITP. Based on the results of ITP progress
 8.8 monitoring, the ITP must be adjusted as needed and must document that the EIDBI service
 8.9 continues to be medically necessary for the person or the person is referred to other services.

8.10 (b) The ITP progress evaluation monitoring must include:

8.11 ~~(1) the treating provider's report;~~

8.12 ~~(2) parental or caregiver~~ (1) input from the person's legal representative or the person's
 8.13 primary caregiver;

8.14 ~~(3) (2) an independent observation of the child which can be~~ person that is performed
 8.15 by the child's the QSP, level I treatment provider, or level II treatment provider and may
 8.16 include input from licensed special education staff or other licensed health care provider;

8.17 (3) documentation of the person's current level of performance on primary treatment
 8.18 goal domains including when a goal or objective is achieved, changed, or discontinued;

8.19 (4) any significant change in the person's condition or family circumstances;

8.20 ~~(4) (5) any treatment plan modifications~~ modification and the rationale for any change
 8.21 made, including treatment modality, intensity, frequency, and duration; and

8.22 ~~(5) (6) recommendations for continued treatment services.~~

8.23 (c) The ITP progress evaluations monitoring must be submitted to the commissioner ~~in~~
 8.24 ~~a manner~~ and the person or the person's legal representative in a manner determined by the
 8.25 commissioner for ~~this purpose~~ the reauthorization of EIDBI services.

8.26 (d) A ~~child~~ person who continues to ~~achieve generalizable goals and~~ make reasonable
 8.27 progress toward treatment goals as specified in the ~~treatment plan~~ ITP is eligible to continue
 8.28 receiving ~~this benefit~~ EIDBI services.

8.29 (e) A ~~child's~~ person's treatment shall continue during the ITP progress evaluation
 8.30 monitoring using the process determined under ~~subdivision 8, clause (8)~~ this subdivision.

8.31 Treatment may continue during an appeal pursuant to section 256.045.

9.1 Subd. 8. **Refining the benefit with stakeholders.** The commissioner must ~~develop the~~
 9.2 ~~implementation~~ refine the details of the benefit in consultation with stakeholders and consider
 9.3 recommendations from the Health Services Advisory Council, the Department of Human
 9.4 Services Autism Spectrum Disorder Early Intensive Developmental and Behavioral
 9.5 Intervention Advisory Council, the Legislative Autism Spectrum Disorder Task Force early
 9.6 intensive developmental and behavioral intervention learning collaborative, and the
 9.7 Interagency Task Force of the Departments of Health, Education, Employment and Economic
 9.8 Development, and Human Services. ~~The commissioner must release these details for a~~
 9.9 ~~30-day public comment period prior to submission to the federal government for approval.~~
 9.10 The ~~implementation~~ details must include, but are not limited to, the following components:

9.11 (1) a definition of the qualifications, standards, and roles of the treatment team, including
 9.12 recommendations after stakeholder consultation on whether board-certified behavior analysts
 9.13 and other ~~types of professionals~~ certified in other treatment approaches recognized by the
 9.14 department or trained in ~~autism spectrum disorder~~ ASD or a related condition and child
 9.15 development should be added as ~~mental health or other professionals for treatment~~ qualified
 9.16 to provide EIDBI clinical supervision or other functions under medical assistance;

9.17 (2) ~~development of initial,~~ refinement of uniform parameters for ~~comprehensive~~
 9.18 ~~multidisciplinary diagnostic assessment information~~ CMDE and ~~progress evaluation~~ ongoing
 9.19 ITP progress monitoring standards;

9.20 (3) the design of an effective and consistent process for assessing ~~parent~~ the person's
 9.21 and the person's legal representative's and ~~caregiver capacity~~ the person's caregiver's
 9.22 preferences and options to participate in the ~~child's~~ person's early intervention treatment
 9.23 and efficacy of methods of involving the parents to involve and educate the person's legal
 9.24 representative and ~~caregivers~~ caregiver in the treatment of the ~~child~~ person;

9.25 (4) formulation of a collaborative process in which professionals have opportunities to
 9.26 collectively inform a ~~comprehensive, multidisciplinary diagnostic assessment~~ provider
 9.27 standards and qualifications; standards for CMDE; medical necessity determination; efficacy
 9.28 of treatment apparatus, including modality, intensity, frequency, and duration; and ~~progress~~
 9.29 ~~evaluation~~ ITP progress monitoring processes and standards to support quality improvement
 9.30 of ~~early intensive intervention~~ EIDBI services;

9.31 (5) coordination of this benefit and its interaction with other services provided by the
 9.32 Departments of Human Services, Health, Employment and Economic Development, and
 9.33 Education;

10.1 (6) evaluation, on an ongoing basis, of ~~research regarding the program~~ EIDBI services
 10.2 outcomes and efficacy of treatment modalities provided to children people under this benefit;
 10.3 and

10.4 (7) as provided under subdivision 17, determination of the availability of licensed
 10.5 physicians, nurse practitioners, and mental health professionals qualified EIDBI providers
 10.6 with necessary expertise and training in autism spectrum disorder ASD or a related condition
 10.7 throughout the state to assess whether there are sufficient professionals to require involvement
 10.8 of both a physician or nurse practitioner and a mental health professional to provide timely
 10.9 access and prevent delay in the diagnosis CMDE and treatment of young children, so as to
 10.10 implement subdivision 4, and to ensure treatment is effective, timely, and accessible; and
 10.11 a person with ASD or a related condition.

10.12 ~~(8) development of the process for the progress evaluation that will be used to determine~~
 10.13 ~~the ongoing eligibility, including necessary documentation, timelines, and responsibilities~~
 10.14 ~~of all parties.~~

10.15 Subd. 9. **Revision of treatment options.** (a) The commissioner may revise covered
 10.16 treatment options as needed based on outcome data and other evidence. EIDBI treatment
 10.17 modalities approved by the department must:

10.18 (1) cause no harm to the person or the person's family;

10.19 (2) be individualized and person-centered;

10.20 (3) be developmentally appropriate and highly structured, with well-defined goals and
 10.21 objectives that provide a strategic direction for treatment;

10.22 (4) be based in recognized principles of developmental and behavioral science;

10.23 (5) utilize sound practices that are replicable across providers and maintain the fidelity
 10.24 of the specific modality;

10.25 (6) demonstrate an evidentiary basis;

10.26 (7) have goals and objectives that are measurable, achievable, and be regularly evaluated
 10.27 and adjusted to ensure that adequate progress is being made;

10.28 (8) be provided intensively with a high staff-to-person ratio; and

10.29 (9) include participation by the person and the person's legal representative in decision
 10.30 making, knowledge building and capacity building, and developing and implementing the
 10.31 person's ITP.

11.1 (b) Before ~~the changes~~ revisions in department recognized treatment modalities become
11.2 effective, the commissioner must provide public notice of the changes, the reasons for the
11.3 change, and a 30-day public comment period to those who request notice through an
11.4 electronic list accessible to the public on the department's Web site.

11.5 Subd. 10. **Coordination between agencies and other benefits.** (a) The commissioners
11.6 of human services and education must develop the capacity to coordinate services and
11.7 information including diagnostic, functional, developmental, medical, and educational
11.8 assessments; service delivery; and progress evaluations across health and education sectors.

11.9 (b) An EIDBI service provided under this section is not intended to replace a service
11.10 provided in school or other settings. A person's ITP must document that EIDBI services
11.11 coordinate with, but do not include or replace, special education and related services defined
11.12 in the person's individualized education plan (IEP), or individualized family service plan
11.13 (IFSP), when the service is available under the Individuals with Disabilities Education
11.14 Improvement Act of 2004, United States Code, title 20, chapter 33, through a local education
11.15 agency. This provision does not preclude EIDBI treatment during school hours. A program
11.16 for birth to three years of age and additional resources must also coordinate with EIDBI
11.17 services. A resource for a person over 18 years of age must also be coordinated with EIDBI
11.18 services under this section.

11.19 (c) The commissioner shall integrate medical authorization procedures for an EIDBI
11.20 service with authorization procedures for other health and mental health services and home
11.21 and community-based services to ensure that the person receives services that are the most
11.22 appropriate and effective in meeting the person's needs.

11.23 Subd. 11. **Federal approval of the ~~autism~~ EIDBI benefit.** (a) This section shall apply
11.24 to state plan services under title XIX of the Social Security Act when federal approval is
11.25 granted under a 1915(i) waiver or other authority which allows children eligible for medical
11.26 assistance through the TEFRA option under section 256B.055, subdivision 12, to qualify
11.27 and includes children eligible for medical assistance in families over 150 percent of the
11.28 federal poverty guidelines.

11.29 (b) The commissioner may use the federal authority for a Medicaid state plan amendment
11.30 under Early and Periodic Screening Diagnosis and Treatment (EPSDT), United States Code,
11.31 title 42, section 1396D(R)(5), or other Medicaid provision for any aspect or type of treatment
11.32 covered in this section if new federal guidance is helpful in achieving one or more of the
11.33 purposes of this section in a cost-effective manner. Notwithstanding subdivisions 2 and 3,
11.34 any treatment services submitted for federal approval under EPSDT shall include appropriate

12.1 medical criteria to qualify for the service and shall cover children through age 20 years of
 12.2 age.

12.3 Subd. 12. ~~Autism~~ EIDBI benefit; training provided. After approval of the ~~autism-early~~
 12.4 ~~intensive intervention~~ EIDBI benefit under this section by the Centers for Medicare and
 12.5 Medicaid Services, the commissioner shall provide statewide training on the benefit for
 12.6 culturally and linguistically diverse communities. Training for ~~autism-service~~ EIDBI
 12.7 providers on culturally appropriate practices must be online, accessible, and available in
 12.8 multiple languages. The training for families, lead agencies, advocates, and other interested
 12.9 parties must provide information about the EIDBI benefit and how to access it.

12.10 Subd. 13. Covered services. (a) The services described in paragraphs (b) to (i) are
 12.11 eligible for reimbursement by medical assistance under this section. Services must be
 12.12 provided by a qualified EIDBI provider and supervised by a QSP. An EIDBI service must
 12.13 address the person's medically necessary treatment goals and must be targeted to develop,
 12.14 enhance, or maintain the individual developmental skills of a person with ASD or a related
 12.15 condition to improve functional communication, social or interpersonal interaction, behavioral
 12.16 challenges and self-regulation, cognition, learning and play, self-care and safety.

12.17 (b) EIDBI modalities include, but are not limited to:

12.18 (1) applied behavior analysis (ABA);

12.19 (2) developmental individual-difference relationship-based model (DIR/Floortime);

12.20 (3) early start Denver model (ESDM);

12.21 (4) PLAY project; or

12.22 (5) relationship development intervention (RDI).

12.23 (c) An EIDBI provider may use one or more of the EIDBI modalities in paragraph (b),
 12.24 clauses (1) to (5), as the primary modality for treatment as a covered service, or several
 12.25 EIDBI modalities in combination as the primary modality of treatment, as approved by the
 12.26 commissioner. An EIDBI provider that identifies and provides assurance of qualifications
 12.27 for a single specific treatment modality must document the required qualifications to meet
 12.28 fidelity to the specific model. Additional EIDBI modalities not listed in paragraph (b) may
 12.29 be covered upon approval by the commissioner.

12.30 (d) CMDE is a comprehensive evaluation of the person's developmental status to
 12.31 determine medical necessity for EIDBI services and meets the requirements of subdivision
 12.32 5. The services must be provided by a qualified CMDE provider.

13.1 (e) EIDBI intervention observation and direction is the clinical direction and oversight
 13.2 of EIDBI services by the QSP, level I treatment provider, or level II treatment provider,
 13.3 including developmental and behavioral techniques, progress measurement, data collection,
 13.4 function of behaviors, and generalization of acquired skills for the direct benefit of a person.
 13.5 EIDBI intervention observation and direction informs any modification of the methods to
 13.6 support the outcomes in the ITP. EIDBI intervention observation and direction provides a
 13.7 real-time response to EIDBI interventions to maximize the benefit to the person.

13.8 (f) ITP development and ITP progress monitoring is development of the initial, annual,
 13.9 and progress monitoring of an ITP. ITP development and ITP progress monitoring
 13.10 documents, provides oversight and ongoing evaluation of a person's treatment and progress
 13.11 on targeted goals and objectives, and integrates and coordinates the person's and the person's
 13.12 legal representative's information from the CMDE and ITP progress monitoring. This service
 13.13 must be reviewed and completed by the QSP, and may include input from a level I treatment
 13.14 provider or a level II treatment provider.

13.15 (g) Family caregiver training and counseling is specialized training and education for a
 13.16 family or primary caregiver to understand the person's developmental status and help with
 13.17 the person's needs and development. This service must be provided by the QSP, level I
 13.18 treatment provider, or level II treatment provider.

13.19 (h) A coordinated care conference is a voluntary face-to-face meeting with the person
 13.20 and the person's family to review the CMDE or ITP progress monitoring and to integrate
 13.21 and coordinate services across providers and service-delivery systems to develop the ITP.
 13.22 This service must be provided by the QSP and may include the CMDE provider or a level
 13.23 I treatment provider or a level II treatment provider.

13.24 (i) Travel time is allowable billing for traveling to and from the person's home, school,
 13.25 a community setting, or place of service outside of an EIDBI center, clinic, or office from
 13.26 a specified location to provide face-to-face EIDBI intervention, observation and direction,
 13.27 or family caregiver training and counseling. The person's ITP must specify the reasons the
 13.28 provider must travel to the person.

13.29 (j) Medical assistance covers medically necessary EIDBI services and consultations
 13.30 delivered by a licensed health care provider via telemedicine, as defined under section
 13.31 256B.0625, subdivision 3b, in the same manner as if the service or consultation was delivered
 13.32 in person. Medical assistance coverage is limited to three telemedicine services per person
 13.33 per calendar week.

13.34 Subd. 14. **Person's rights.** A person or the person's legal representative has the right to:

- 14.1 (1) protection as defined under the health care bill of rights under section 144.651;
- 14.2 (2) designate an advocate to be present in all aspects of the person's and person's family's
14.3 services at the request of the person or the person's legal representative;
- 14.4 (3) be informed of the agency policy on assigning staff to a person;
- 14.5 (4) be informed of the opportunity to observe the person while receiving services;
- 14.6 (5) be informed of services in a manner that respects and takes into consideration the
14.7 person's and the person's legal representative's culture, values, and preferences in accordance
14.8 with subdivision 3a;
- 14.9 (6) be free from seclusion and restraint, except for emergency use of manual restraint
14.10 in emergencies as defined in section 245D.02, subdivision 8a;
- 14.11 (7) be under the supervision of a responsible adult at all times;
- 14.12 (8) be notified by the agency within 24 hours if an incident occurs or the person is injured
14.13 while receiving services, including what occurred and how agency staff responded to the
14.14 incident;
- 14.15 (9) request a voluntary coordinated care conference; and
- 14.16 (10) request a CMDE provider of the person's or the person's legal representative's
14.17 choice.
- 14.18 Subd. 15. **EIDBI provider qualifications.** (a) A QSP must be employed by an agency
14.19 and be:
- 14.20 (1) a licensed mental health professional who has at least 2,000 hours of supervised
14.21 clinical experience or training in examining or treating people with ASD or a related condition
14.22 or equivalent documented coursework at the graduate level by an accredited university in
14.23 ASD diagnostics, ASD developmental and behavioral treatment strategies, and typical child
14.24 development; or
- 14.25 (2) a developmental or behavioral pediatrician who has at least 2,000 hours of supervised
14.26 clinical experience or training in examining or treating people with ASD or a related condition
14.27 or equivalent documented coursework at the graduate level by an accredited university in
14.28 the areas of ASD diagnostics, ASD developmental and behavioral treatment strategies, and
14.29 typical child development.
- 14.30 (b) A level I treatment provider must be employed by an agency and:

15.1 (1) have at least 2,000 hours of supervised clinical experience or training in examining
15.2 or treating people with ASD or a related condition or equivalent documented coursework
15.3 at the graduate level by an accredited university in ASD diagnostics, ASD developmental
15.4 and behavioral treatment strategies, and typical child development or an equivalent
15.5 combination of documented coursework or hours of experience; and

15.6 (2) have or be at least one of the following:

15.7 (i) a master's degree in behavioral health or child development or related fields including,
15.8 but not limited to, mental health, special education, social work, psychology, speech
15.9 pathology, or occupational therapy from an accredited college or university;

15.10 (ii) a bachelor's degree in a behavioral health, child development, or related field
15.11 including, but not limited to, mental health, special education, social work, psychology,
15.12 speech pathology, or occupational therapy, from an accredited college or university, and
15.13 advanced certification in a treatment modality recognized by the department;

15.14 (iii) a board certified behavior analyst; or

15.15 (iv) a board-certified assistant behavior analyst with 4,000 hours of supervised clinical
15.16 experience that meets all registration, supervision, and continuing education requirements
15.17 of the certification.

15.18 (c) A level II treatment provider must be employed by an agency and must be:

15.19 (1) a person who has a bachelor's degree from an accredited college or university in a
15.20 behavioral or child development science or related field including, but not limited to, mental
15.21 health, special education, social work, psychology, speech pathology, or occupational
15.22 therapy; and meet at least one of the following:

15.23 (i) has at least 1,000 hours of supervised clinical experience or training in examining or
15.24 treating people with ASD or a related condition or equivalent documented coursework at
15.25 the graduate level by an accredited university in ASD diagnostics, ASD developmental and
15.26 behavioral treatment strategies, and typical child development or a combination of
15.27 coursework or hours of experience;

15.28 (ii) certification as a board-certified assistant behavior analyst from the Behavior Analyst
15.29 Certification Board;

15.30 (iii) is a registered behavior technician as defined by the Behavior Analyst Certification
15.31 Board; or

- 16.1 (iv) is certified in one of the other treatment modalities recognized by the department;
16.2 or
- 16.3 (2) a person who has:
- 16.4 (i) an associate's degree in a behavioral or child development science or related field
16.5 including, but not limited to, mental health, special education, social work, psychology,
16.6 speech pathology, or occupational therapy from an accredited college or university; and
- 16.7 (ii) at least 2,000 hours of supervised clinical experience in delivering treatment to people
16.8 with ASD or a related condition. Hours worked as a mental health behavioral aide or level
16.9 III treatment provider may be included in the required hours of experience; or
- 16.10 (3) a person who has at least 4,000 hours of supervised clinical experience in delivering
16.11 treatment to people with ASD or a related condition. Hours worked as a mental health
16.12 behavioral aide or level III treatment provider may be included in the required hours of
16.13 experience; or
- 16.14 (4) a person who is a graduate student in a behavioral science, child development science,
16.15 or related field and is receiving clinical supervision by a QSP affiliated with an agency to
16.16 meet the clinical training requirements for experience and training with people with ASD
16.17 or a related condition; or
- 16.18 (5) a person who is at least 18 years of age and who:
- 16.19 (i) is fluent in a non-English language;
- 16.20 (ii) completed the level III EIDBI training requirements; and
- 16.21 (iii) receives observation and direction from a QSP or level I treatment provider at least
16.22 once a week until the person meets 1,000 hours of supervised clinical experience.
- 16.23 (d) A level III treatment provider must be employed by an agency, have completed the
16.24 level III training requirement, be at least 18 years of age, and have at least one of the
16.25 following:
- 16.26 (1) a high school diploma or general equivalency diploma (GED);
- 16.27 (2) fluency in a non-English language; or
- 16.28 (3) one year of experience as a primary personal care assistant, community health worker,
16.29 waiver service provider, or special education assistant to a person with ASD or a related
16.30 condition within the previous five years.

17.1 Subd. 16. Agency duties. (a) An agency delivering an EIDBI service under this section
17.2 must:

17.3 (1) enroll as a medical assistance Minnesota health care program provider according to
17.4 Minnesota Rules, part 9505.0195, and section 256B.04, subdivision 21, and meet all
17.5 applicable provider standards and requirements;

17.6 (2) demonstrate compliance with federal and state laws for EIDBI service;

17.7 (3) verify and maintain records of a service provided to the person or the person's legal
17.8 representative as required under Minnesota Rules, parts 9505.2175 and 9505.2197;

17.9 (4) demonstrate that while enrolled or seeking enrollment as a Minnesota health care
17.10 program provider the agency did not have a lead agency contract or provider agreement
17.11 discontinued because of a conviction of fraud; or did not have an owner, board member, or
17.12 manager fail a state or federal criminal background check or appear on the list of excluded
17.13 individuals or entities maintained by the federal Department of Human Services Office of
17.14 Inspector General;

17.15 (5) have established business practices including written policies and procedures, internal
17.16 controls, and a system that demonstrates the organization's ability to deliver quality EIDBI
17.17 services;

17.18 (6) have an office located in Minnesota;

17.19 (7) conduct a criminal background check on an individual who has direct contact with
17.20 the person or the person's legal representative;

17.21 (8) report maltreatment according to sections 626.556 and 626.557;

17.22 (9) comply with any data requests consistent with the Minnesota Government Data
17.23 Practices Act, sections 256B.064 and 256B.27;

17.24 (10) provide training for all agency staff on the requirements and responsibilities listed
17.25 in the Maltreatment of Minors Act, section 626.556, and the Vulnerable Adult Protection
17.26 Act, section 626.557, including mandated and voluntary reporting, nonretaliation, and the
17.27 agency's policy for all staff on how to report suspected abuse and neglect;

17.28 (11) have a written policy to resolve issues collaboratively with the person and the
17.29 person's legal representative when possible. The policy must include a timeline for when
17.30 the person and the person's legal representative will be notified about issues that arise in
17.31 the provision of services;

18.1 (12) provide the person's legal representative with prompt notification if the person is
18.2 injured while being served by the agency. An incident report must be completed by the
18.3 agency staff member in charge of the person. A copy of all incident and injury reports must
18.4 remain on file at the agency for at least five years from the report of the incident; and

18.5 (13) before starting a service, provide the person or the person's legal representative a
18.6 description of the treatment modality that the person shall receive, including the staffing
18.7 certification levels and training of the staff who shall provide a treatment.

18.8 (b) When delivering the ITP, and annually thereafter, an agency must provide the person
18.9 or the person's legal representative with:

18.10 (1) a written copy and a verbal explanation of the person's or person's legal
18.11 representative's rights and the agency's responsibilities;

18.12 (2) document in the person's file the date that the person or the person's legal
18.13 representative received a copy and explanation of the person's or person's legal
18.14 representative's rights and the agency's responsibilities; and

18.15 (3) reasonable accommodations to provide the information in another format or language
18.16 as needed to facilitate understanding of the person's or person's legal representative's rights
18.17 and the agency's responsibilities.

18.18 Subd. 17. **Provider shortage; authority for exceptions.** (a) In consultation with the
18.19 Early Intensive Developmental and Behavioral Intervention Advisory Council and
18.20 stakeholders, including agencies, professionals, parents of people with ASD or a related
18.21 condition, and advocacy organizations, the commissioner shall determine if a shortage of
18.22 EIDBI providers exists. For the purposes of this subdivision, "shortage of EIDBI providers"
18.23 means a lack of availability of providers who meet the EIDBI provider qualification
18.24 requirements under subdivision 15 that results in the delay of access to timely services under
18.25 this section, or that significantly impairs the ability of a provider agency to have sufficient
18.26 providers to meet the requirements of this section. The commissioner shall consider
18.27 geographic factors when determining the prevalence of a shortage. The commissioner may
18.28 determine that a shortage exists only in a specific region of the state, multiple regions of
18.29 the state, or statewide. The commissioner shall also consider the availability of various types
18.30 of treatment modalities covered under this section.

18.31 (b) The commissioner, in consultation with the Early Intensive Developmental and
18.32 Behavioral Intervention Advisory Council and stakeholders, must establish processes and
18.33 criteria for granting an exception under this paragraph. The commissioner may grant an
18.34 exception only if the exception would not compromise a person's safety and not diminish

19.1 the effectiveness of the treatment. The commissioner may establish an expiration date for
19.2 an exception granted under this paragraph. The commissioner may grant an exception for
19.3 the following:

19.4 (1) EIDBI provider qualifications under this section;

19.5 (2) medical assistance provider enrollment requirements under section 256B.04,
19.6 subdivision 21; or

19.7 (3) EIDBI provider or agency standards or requirements.

19.8 (c) If the commissioner, in consultation with the Early Intensive Developmental and
19.9 Behavioral Intervention Advisory Council and stakeholders, determines that a shortage no
19.10 longer exists, the commissioner must submit a notice that a shortage no longer exists to the
19.11 chairs and ranking minority members of the senate and the house of representatives
19.12 committees with jurisdiction over health and human services. The commissioner must post
19.13 the notice for public comment for 30 days. The commissioner shall consider public comments
19.14 before submitting to the legislature a request to end the shortage declaration. The
19.15 commissioner shall annually provide an update on the status of the provider shortage and
19.16 exceptions granted to the chairs and ranking minority members of the senate and house of
19.17 representatives committees with jurisdiction over health and human services. The
19.18 commissioner shall not declare the shortage of EIDBI providers ended without direction
19.19 from the legislature to declare it ended.

19.20 **EFFECTIVE DATE.** Subdivisions 15 and 17 are effective the day following final
19.21 enactment. Subdivisions 1 to 9, 13, 14, and 16 are effective July 1, 2017.