

SENATE
STATE OF MINNESOTA
FIFTH SPECIAL SESSION

S.F. No. 38

(SENATE AUTHORS: MARTY, Franzen, Bigham and Kent)

DATE
10/15/2020

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Introduction and first reading
Referred to Rules and Administration

OFFICIAL STATUS

- 1.1 A bill for an act
- 1.2 relating to human services; modifying personal care assistant and support worker
- 1.3 requirements; allowing compensation for personal care assistance services provided
- 1.4 by a parent or spouse; establishing a temporary personal care assistance rate
- 1.5 increase; appropriating money; amending Minnesota Statutes 2019 Supplement,
- 1.6 sections 256B.0659, subdivision 11, as amended; 256B.85, subdivision 16.
- 1.7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:
- 1.8 Section 1. Minnesota Statutes 2019 Supplement, section 256B.0659, subdivision 11, as
- 1.9 amended by Laws 2020, chapter 115, article 4, section 128, is amended to read:
- 1.10 Subd. 11. **Personal care assistant; requirements.** (a) A personal care assistant must
- 1.11 meet the following requirements:
- 1.12 (1) be at least 18 years of age with the exception of persons who are 16 or 17 years of
- 1.13 age with these additional requirements:
- 1.14 (i) supervision by a qualified professional every 60 days; and
- 1.15 (ii) employment by only one personal care assistance provider agency responsible for
- 1.16 compliance with current labor laws;
- 1.17 (2) be employed by a personal care assistance provider agency;
- 1.18 (3) enroll with the department as a personal care assistant after clearing a background
- 1.19 study. Except as provided in subdivision 11a, before a personal care assistant provides
- 1.20 services, the personal care assistance provider agency must initiate a background study on
- 1.21 the personal care assistant under chapter 245C, and the personal care assistance provider
- 1.22 agency must have received a notice from the commissioner that the personal care assistant
- 1.23 is:

- 2.1 (i) not disqualified under section 245C.14; or
- 2.2 (ii) disqualified, but the personal care assistant has received a set aside of the
2.3 disqualification under section 245C.22;
- 2.4 (4) be able to effectively communicate with the recipient and personal care assistance
2.5 provider agency;
- 2.6 (5) be able to provide covered personal care assistance services according to the recipient's
2.7 personal care assistance care plan, respond appropriately to recipient needs, and report
2.8 changes in the recipient's condition to the supervising qualified professional, physician, or
2.9 advanced practice registered nurse;
- 2.10 (6) not be a consumer of personal care assistance services;
- 2.11 (7) maintain daily written records including, but not limited to, time sheets under
2.12 subdivision 12;
- 2.13 (8) effective January 1, 2010, complete standardized training as determined by the
2.14 commissioner before completing enrollment. The training must be available in languages
2.15 other than English and to those who need accommodations due to disabilities. Personal care
2.16 assistant training must include successful completion of the following training components:
2.17 basic first aid, vulnerable adult, child maltreatment, OSHA universal precautions, basic
2.18 roles and responsibilities of personal care assistants including information about assistance
2.19 with lifting and transfers for recipients, emergency preparedness, orientation to positive
2.20 behavioral practices, fraud issues, and completion of time sheets. Upon completion of the
2.21 training components, the personal care assistant must demonstrate the competency to provide
2.22 assistance to recipients;
- 2.23 (9) complete training and orientation on the needs of the recipient; and
- 2.24 (10) be limited to providing and being paid for up to ~~275~~ 310 hours per month of personal
2.25 care assistance services regardless of the number of recipients being served or the number
2.26 of personal care assistance provider agencies enrolled with. The number of hours worked
2.27 per day shall not be disallowed by the department unless in violation of the law.
- 2.28 (b) A legal guardian may be a personal care assistant if the guardian is not being paid
2.29 for the guardian services and meets the criteria for personal care assistants in paragraph (a).
- 2.30 (c) Persons who do not qualify as a personal care assistant include parents, stepparents,
2.31 and legal guardians of minors; spouses; paid legal guardians of adults; family foster care
2.32 providers, except as otherwise allowed in section 256B.0625, subdivision 19a; and staff of
2.33 a residential setting.

3.1 (d) Personal care assistance services qualify for the enhanced rate described in subdivision
3.2 17a if the personal care assistant providing the services:

3.3 (1) provides covered services to a recipient who qualifies for 12 or more hours per day
3.4 of personal care assistance services; and

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

3.9 **EFFECTIVE DATE.** This section is effective the day following final enactment.

3.10 Sec. 2. Minnesota Statutes 2019 Supplement, section 256B.85, subdivision 16, is amended
3.11 to read:

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

3.13 (1) enroll with the department as a support worker after a background study under chapter
3.14 245C has been completed and the support worker has received a notice from the
3.15 commissioner that the support worker:

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

3.17 (ii) is disqualified, but has received a set-aside of the disqualification under section
3.18 245C.22;

3.19 (2) have the ability to effectively communicate with the participant or the participant's
3.20 representative;

3.21 (3) have the skills and ability to provide the services and supports according to the
3.22 participant's CFSS service delivery plan and respond appropriately to the participant's needs;

3.23 (4) complete the basic standardized CFSS training as determined by the commissioner
3.24 before completing enrollment. The training must be available in languages other than English
3.25 and to those who need accommodations due to disabilities. CFSS support worker training
3.26 must include successful completion of the following training components: basic first aid,
3.27 vulnerable adult, child maltreatment, OSHA universal precautions, basic roles and
3.28 responsibilities of support workers including information about basic body mechanics,
3.29 emergency preparedness, orientation to positive behavioral practices, orientation to
3.30 responding to a mental health crisis, fraud issues, time cards and documentation, and an
3.31 overview of person-centered planning and self-direction. Upon completion of the training

4.1 components, the support worker must pass the certification test to provide assistance to
4.2 participants;

4.3 (5) complete employer-directed training and orientation on the participant's individual
4.4 needs;

4.5 (6) maintain the privacy and confidentiality of the participant; and

4.6 (7) not independently determine the medication dose or time for medications for the
4.7 participant.

4.8 (b) The commissioner may deny or terminate a support worker's provider enrollment
4.9 and provider number if the support worker:

4.10 (1) does not meet the requirements in paragraph (a);

4.11 (2) fails to provide the authorized services required by the employer;

4.12 (3) has been intoxicated by alcohol or drugs while providing authorized services to the
4.13 participant or while in the participant's home;

4.14 (4) has manufactured or distributed drugs while providing authorized services to the
4.15 participant or while in the participant's home; or

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

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

4.21 (d) A support worker must not provide or be paid for more than ~~275~~ 310 hours of CFSS
4.22 per month, regardless of the number of participants the support worker serves or the number
4.23 of agency-providers or participant employers by which the support worker is employed.
4.24 The department shall not disallow the number of hours per day a support worker works
4.25 unless it violates other law.

4.26 (e) CFSS qualify for an enhanced rate if the support worker providing the services:

4.27 (1) provides services, within the scope of CFSS described in subdivision 7, to a participant
4.28 who qualifies for 12 or more hours per day of CFSS; and

4.29 (2) satisfies the current requirements of Medicare for training and competency or
4.30 competency evaluation of home health aides or nursing assistants, as provided in the Code

5.1 of Federal Regulations, title 42, section 483.151 or 484.36, or alternative state-approved
5.2 training or competency requirements.

5.3 **EFFECTIVE DATE.** This section is effective the day following final enactment.

5.4 Sec. 3. **TEMPORARY PERSONAL CARE ASSISTANCE COMPENSATION FOR**
5.5 **SERVICES PROVIDED BY A PARENT OR SPOUSE.**

5.6 (a) Notwithstanding Minnesota Statutes, section 256B.0659, subdivisions 3, paragraph
5.7 (a), clause (1); 11, paragraph (c); and 19, paragraph (b), clause (3), during a peacetime
5.8 emergency declared by the governor under Minnesota Statutes, section 12.31, subdivision
5.9 2, for an outbreak of COVID-19, a parent, stepparent, or legal guardian of a minor who is
5.10 a personal care assistance recipient or a spouse of a personal care assistance recipient may
5.11 provide and be paid for providing personal care assistance services.

5.12 (b) This section expires January 31, 2021, or 60 days after the peacetime emergency
5.13 declared by the governor under Minnesota Statutes, section 12.31, subdivision 2, for an
5.14 outbreak of COVID-19, is terminated or rescinded by proper authority, whichever is earlier.

5.15 **EFFECTIVE DATE.** This section is effective the day following final enactment or
5.16 upon federal approval, whichever is later. The commissioner of human services shall notify
5.17 the revisor of statutes when federal approval is obtained.

5.18 Sec. 4. **DIRECT SUPPORT PROFESSIONALS TEMPORARY RATE INCREASE.**

5.19 Subdivision 1. **Definitions.** (a) For the purposes of this section, the following terms have
5.20 the meanings given.

5.21 (b) "Commissioner" means the commissioner of human services.

5.22 (c) "Covered program" has the meaning given in Minnesota Statutes, section 256B.0711,
5.23 subdivision 1, paragraph (b).

5.24 (d) "Direct support professional" means an individual employed to personally provide
5.25 personal care assistance services covered by medical assistance under Minnesota Statutes,
5.26 section 256B.0625, subdivisions 19a and 19c; or to personally provide medical assistance
5.27 services covered under Minnesota Statutes, section 256B.0913, 256B.092, or 256B.49, or
5.28 chapter 256S. Direct support professional does not include managerial or administrative
5.29 staff who do not personally provide the services described in this paragraph.

5.30 (e) "Direct support services" has the meaning given in Minnesota Statutes, section
5.31 256B.0711, subdivision 1, paragraph (c).

6.1 Subd. 2. Temporary rates for direct support services. (a) To respond to the infectious
6.2 disease known as COVID-19, the commissioner must temporarily increase rates and enhanced
6.3 rates by 13.75 percent for direct support services provided under a covered program or
6.4 under Minnesota Statutes, section 256B.0659, while this section is effective.

6.5 (b) Providers that receive a rate increase under this section must:

6.6 (1) use at least 80 percent of the additional revenue to increase wages, salaries, and
6.7 benefits for direct support professionals and any corresponding increase in the employer's
6.8 share of FICA taxes, Medicare taxes, state and federal unemployment taxes, and workers'
6.9 compensation premiums; and

6.10 (2) use any remainder of the additional revenue for activities and items necessary to
6.11 support compliance with Centers for Disease Control and Prevention guidance on sanitation
6.12 and personal protective equipment.

6.13 Subd. 3. Capitation rates and directed payments. (a) To implement the temporary
6.14 rate increase under this section, managed care plans and county-based purchasing plans
6.15 shall pay at least the fee-for-service rate inclusive of the 13.75 percent increase for the direct
6.16 support services.

6.17 (b) The commissioner shall adjust capitation rates paid to managed care plans and
6.18 county-based purchasing plans as needed to maintain managed care plans' required medical
6.19 loss ratios.

6.20 (c) If federal approval is not received due to the provisions of this subdivision, the
6.21 commissioner must adjust the capitation rates paid to managed care plans and county-based
6.22 purchasing plans for that contract year to reflect the removal of this provision. Contracts
6.23 between managed care plans and providers and between county-based purchasing plans and
6.24 providers must allow recovery of payments from providers if federal approval for the
6.25 provisions of this subdivision is not received and the commissioner reduces capitation
6.26 payments as a result. Payment recoveries must not exceed the amount equal to any decrease
6.27 in rates that results from this paragraph.

6.28 Subd. 4. Consumer-directed community supports budgets. The commissioner shall
6.29 temporarily adjust consumer-directed community supports budgets to account for the rate
6.30 increase required in subdivision 2.

6.31 Subd. 5. Consumer support grants; increased maximum allowable grant. The
6.32 commissioner shall temporarily increase the maximum allowable monthly grant level for

7.1 each recipient of consumer support grants to account for the rate increase required in
7.2 subdivision 2.

7.3 Subd. 6. **Distribution plans.** (a) A provider agency or individual provider that receives
7.4 a rate increase under subdivision 2 shall prepare and, upon request, submit to the
7.5 commissioner a distribution plan that specifies the anticipated amount and proposed uses
7.6 of the additional revenue the provider will receive under subdivision 2.

7.7 (b) Within 60 days of final enactment of this section, the provider must post the
7.8 distribution plan and leave it posted for a period of at least six weeks in an area of the
7.9 provider's operation to which all direct support professionals have access. The provider
7.10 must post with the distribution plan instructions on how to contact the commissioner if
7.11 direct support professionals do not believe they have received the wage increase or benefits
7.12 specified in the distribution plan. The instructions must include a mailing address, e-mail
7.13 address, and telephone number that the direct support professional may use to contact the
7.14 commissioner or the commissioner's representative.

7.15 Subd. 7. **Expiration.** This section expires January 31, 2021; 60 days after the peacetime
7.16 emergency declared by the governor under Minnesota Statutes, section 12.31, subdivision
7.17 2, for an outbreak of COVID-19, is terminated or rescinded by proper authority; or when
7.18 federal approval ends, whichever is earlier.

7.19 **EFFECTIVE DATE.** This section is effective the day following final enactment or
7.20 upon federal approval, whichever is later. The commissioner shall notify the revisor of
7.21 statutes when federal approval is obtained.

7.22 Sec. 5. **APPROPRIATION; HOME AND COMMUNITY-BASED DIRECT**
7.23 **SUPPORT PROFESSIONALS.**

7.24 \$13,390,000 in fiscal year 2021 is appropriated from the general fund to the commissioner
7.25 of human services to implement the direct support professional provisions in this act. The
7.26 general fund base for operations is increased by \$1,000 in fiscal year 2022 and by \$1,000
7.27 in fiscal year 2023.

7.28 **EFFECTIVE DATE.** This section is effective the day following final enactment.