

SENATE
STATE OF MINNESOTA
NINETY-THIRD SESSION

S.F. No. 903

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DATE
01/27/2023

D-PG

Introduction and first reading
Referred to Human Services

OFFICIAL STATUS

1.1 A bill for an act

1.2 relating to human services; establishing care evaluation as a covered medical

1.3 assistance home care service; modifying medical assistance homemaker rates;

1.4 requiring a report; amending Minnesota Statutes 2022, sections 256B.0651,

1.5 subdivisions 1, 2; 256B.0652, subdivision 11; 256B.0653, subdivisions 1, 6, by

1.6 adding a subdivision; 256B.0654, by adding a subdivision; 256B.4912, by adding

1.7 a subdivision; 256B.85, subdivision 8; 256S.18, subdivision 1; 256S.2101,

1.8 subdivision 2, by adding subdivisions; 256S.212, by adding a subdivision.

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

1.10 Section 1. Minnesota Statutes 2022, section 256B.0651, subdivision 1, is amended to read:

1.11 Subdivision 1. **Definitions.** (a) For the purposes of sections 256B.0651 to 256B.0654

1.12 and 256B.0659, the terms in ~~paragraphs (b) to (g)~~ this subdivision have the meanings given.

1.13 (b) "Activities of daily living" has the meaning given in section 256B.0659, subdivision

1.14 1, paragraph (b).

1.15 (c) "Assessment" means a review and evaluation of a recipient's need for home care

1.16 services conducted in person.

1.17 (d) "Care evaluation" means a face-to-face evaluation of a person to develop, update,

1.18 or review a recipient's plan of care for home care services, except personal care assistance.

1.19 (e) "Home care services" means medical assistance covered services that are home health

1.20 agency services, including skilled nurse visits; home health aide visits; physical therapy,

1.21 occupational therapy, respiratory therapy, and language-speech pathology therapy; home

1.22 care nursing; and personal care assistance.

1.23 ~~(e)~~ (f) "Home residence," effective January 1, 2010, means a residence owned or rented

1.24 by the recipient either alone, with roommates of the recipient's choosing, or with an unpaid

2.1 responsible party or legal representative; or a family foster home where the license holder
 2.2 lives with the recipient and is not paid to provide home care services for the recipient except
 2.3 as allowed under sections 256B.0652, subdivision 10, and 256B.0654, subdivision 4.

2.4 ~~(f)~~ (g) "Medically necessary" has the meaning given in Minnesota Rules, parts 9505.0170
 2.5 to 9505.0475.

2.6 ~~(g)~~ (h) "Ventilator-dependent" means an individual who receives mechanical ventilation
 2.7 for life support at least six hours per day and is expected to be or has been dependent on a
 2.8 ventilator for at least 30 consecutive days.

2.9 Sec. 2. Minnesota Statutes 2022, section 256B.0651, subdivision 2, is amended to read:

2.10 Subd. 2. **Services covered.** Home care services covered under this section and sections
 2.11 256B.0652 to 256B.0654 and 256B.0659 include:

2.12 (1) nursing services under sections 256B.0625, subdivision 6a, and 256B.0653;

2.13 (2) home care nursing services under sections 256B.0625, subdivision 7, and 256B.0654;

2.14 (3) home health services under sections 256B.0625, subdivision 6a, and 256B.0653;

2.15 (4) personal care assistance services under sections 256B.0625, subdivision 19a, and
 2.16 256B.0659;

2.17 (5) supervision of personal care assistance services provided by a qualified professional
 2.18 under sections 256B.0625, subdivision 19a, and 256B.0659;

2.19 (6) face-to-face assessments by county public health nurses for personal care assistance
 2.20 services under sections 256B.0625, subdivision 19a, and 256B.0659; and

2.21 (7) service updates and review reviews by county public health nurses of temporary
 2.22 increases for personal care assistance services by the county public health nurse for services
 2.23 under sections 256B.0625, subdivision 19a, and 256B.0659; and

2.24 (8) care evaluations under sections 256B.0625, subdivisions 6a and 7; 256B.0653; and
 2.25 256B.0654.

2.26 Sec. 3. Minnesota Statutes 2022, section 256B.0652, subdivision 11, is amended to read:

2.27 Subd. 11. **Limits on services without authorization.** During a calendar year a recipient
 2.28 may receive the following home care services during a calendar year without authorization:

2.29 (1) up to two face-to-face assessments to determine a recipient's need for personal care
 2.30 assistance services;

3.1 (2) one service update done to determine a recipient's need for personal care assistance
3.2 services; and

3.3 (3) up to nine face-to-face visits that may include only skilled nurse visits or care
3.4 evaluations.

3.5 Sec. 4. Minnesota Statutes 2022, section 256B.0653, subdivision 1, is amended to read:

3.6 Subdivision 1. **Scope.** This section applies to home health agency services including
3.7 home health aide, skilled nursing visits, physical therapy, occupational therapy, respiratory
3.8 therapy, ~~and~~ speech-language pathology therapy, and care evaluations.

3.9 Sec. 5. Minnesota Statutes 2022, section 256B.0653, subdivision 6, is amended to read:

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

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

3.15 (2) the following skilled nurse visits:

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

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

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

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

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

3.28 (vi) Medicare evaluation or administrative nursing visits required by Medicare, except
3.29 as provided in subdivision 9, paragraph (a);

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

4.3 (4) home care therapies provided in other settings such as a clinic or as an inpatient or
4.4 when the recipient can access therapy outside of the recipient's residence; and

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

4.7 Sec. 6. Minnesota Statutes 2022, section 256B.0653, is amended by adding a subdivision
4.8 to read:

4.9 Subd. 9. Care evaluations. (a) Notwithstanding the coverage limitation in subdivision
4.10 6, clause (2), item (vi), medical assistance covers care evaluations as a home health service
4.11 under section 256B.0625, subdivision 6a, provided that the recipient's home health services
4.12 are not covered under the Medicare program or any other insurance held by the recipient.

4.13 (b) The reimbursement rate for care evaluations under this section must equal ... percent
4.14 of the medical assistance reimbursement rate for a skilled nursing visit.

4.15 (c) Care evaluations under this section must occur during a start-of-care visit, a
4.16 resumption-of-care visit, or a recertification visit. Care evaluations under this section must
4.17 be provided by a registered nurse whenever the recipient's plan of care involves nursing
4.18 tasks or medically oriented tasks requiring skilled nursing visits or home health aide visits.
4.19 If the service recipient's plan of care involves only home care therapy, an appropriate therapist
4.20 may conduct a care evaluation under this section.

4.21 Sec. 7. Minnesota Statutes 2022, section 256B.0654, is amended by adding a subdivision
4.22 to read:

4.23 Subd. 6. Care evaluations. (a) Medical assistance covers care evaluations as a home
4.24 care nursing service under section 256B.0625, subdivision 7, provided the recipient's home
4.25 care nursing services are not covered by the Medicare program or any other insurance held
4.26 by the recipient.

4.27 (b) The reimbursement rate for care evaluations under this section must equal ... percent
4.28 of the medical assistance reimbursement rate for a skilled nursing visit.

4.29 (c) Care evaluations under this section must occur during a start-of-care visit, a
4.30 resumption-of-care visit, or a recertification visit. Care evaluations under this section must
4.31 be provided by a registered nurse.

5.1 Sec. 8. Minnesota Statutes 2022, section 256B.4912, is amended by adding a subdivision
5.2 to read:

5.3 Subd. 16. Rates established by the commissioner. For homemaker services eligible
5.4 for reimbursement under the developmental disabilities waiver, the brain injury waiver, the
5.5 community alternative care waiver, and the community access for disability inclusion waiver,
5.6 the commissioner must establish rates equal to the rates established under sections 256S.21
5.7 to 256S.215 for the corresponding homemaker services.

5.8 **EFFECTIVE DATE.** This section is effective January 1, 2024.

5.9 Sec. 9. Minnesota Statutes 2022, section 256B.85, subdivision 8, is amended to read:

5.10 Subd. 8. **Determination of CFSS service authorization amount.** (a) All community
5.11 first services and supports must be authorized by the commissioner or the commissioner's
5.12 designee before services begin. The authorization for CFSS must be completed as soon as
5.13 possible following an assessment but no later than 40 calendar days from the date of the
5.14 assessment.

5.15 (b) The amount of CFSS authorized must be based on the participant's home care rating
5.16 described in paragraphs (d) and (e) and any additional service units for which the participant
5.17 qualifies as described in paragraph (f).

5.18 (c) The home care rating shall be determined by the commissioner or the commissioner's
5.19 designee based on information submitted to the commissioner identifying the following for
5.20 a participant:

5.21 (1) the total number of dependencies of activities of daily living;

5.22 (2) the presence of complex health-related needs; and

5.23 (3) the presence of Level I behavior.

5.24 (d) The methodology to determine the total service units for CFSS for each home care
5.25 rating is based on the median paid units per day for each home care rating from fiscal year
5.26 2007 data for the PCA program.

5.27 (e) Each home care rating is designated by the letters P through Z and EN and has the
5.28 following base number of service units assigned:

5.29 (1) P home care rating requires Level I behavior or one to three dependencies in ADLs
5.30 and qualifies the person for five service units;

6.1 (2) Q home care rating requires Level I behavior and one to three dependencies in ADLs
6.2 and qualifies the person for six service units;

6.3 (3) R home care rating requires a complex health-related need and one to three
6.4 dependencies in ADLs and qualifies the person for seven service units;

6.5 (4) S home care rating requires four to six dependencies in ADLs and qualifies the person
6.6 for ten service units;

6.7 (5) T home care rating requires four to six dependencies in ADLs and Level I behavior
6.8 and qualifies the person for 11 service units;

6.9 (6) U home care rating requires four to six dependencies in ADLs and a complex
6.10 health-related need and qualifies the person for 14 service units;

6.11 (7) V home care rating requires seven to eight dependencies in ADLs and qualifies the
6.12 person for 17 service units;

6.13 (8) W home care rating requires seven to eight dependencies in ADLs and Level I
6.14 behavior and qualifies the person for 20 service units;

6.15 (9) Z home care rating requires seven to eight dependencies in ADLs and a complex
6.16 health-related need and qualifies the person for 30 service units; and

6.17 (10) EN home care rating includes ventilator dependency as defined in section 256B.0651,
6.18 subdivision 1, ~~paragraph (g)~~. A person who meets the definition of ventilator-dependent
6.19 and the EN home care rating and utilize a combination of CFSS and home care nursing
6.20 services is limited to a total of 96 service units per day for those services in combination.
6.21 Additional units may be authorized when a person's assessment indicates a need for two
6.22 staff to perform activities. Additional time is limited to 16 service units per day.

6.23 (f) Additional service units are provided through the assessment and identification of
6.24 the following:

6.25 (1) 30 additional minutes per day for a dependency in each critical activity of daily
6.26 living;

6.27 (2) 30 additional minutes per day for each complex health-related need; and

6.28 (3) 30 additional minutes per day for each behavior under this clause that requires
6.29 assistance at least four times per week:

6.30 (i) level I behavior that requires the immediate response of another person;

7.1 (ii) increased vulnerability due to cognitive deficits or socially inappropriate behavior;
7.2 or

7.3 (iii) increased need for assistance for participants who are verbally aggressive or resistive
7.4 to care so that the time needed to perform activities of daily living is increased.

7.5 (g) The service budget for budget model participants shall be based on:

7.6 (1) assessed units as determined by the home care rating; and

7.7 (2) an adjustment needed for administrative expenses.

7.8 Sec. 10. Minnesota Statutes 2022, section 256S.18, subdivision 1, is amended to read:

7.9 Subdivision 1. **Case mix classifications.** (a) The elderly waiver case mix classifications
7.10 A to K shall be the resident classes A to K established under Minnesota Rules, parts
7.11 9549.0058 and 9549.0059.

7.12 (b) A participant assigned to elderly waiver case mix classification A must be reassigned
7.13 to elderly waiver case mix classification L if an assessment or reassessment performed
7.14 under section 256B.0911 determines that the participant has:

7.15 (1) no dependencies in activities of daily living; or

7.16 (2) up to two dependencies in bathing, dressing, grooming, walking, or eating when the
7.17 dependency score in eating is three or greater.

7.18 (c) A participant must be assigned to elderly waiver case mix classification V if the
7.19 participant meets the definition of ventilator-dependent in section 256B.0651, subdivision
7.20 1, ~~paragraph (g).~~

7.21 Sec. 11. Minnesota Statutes 2022, section 256S.2101, subdivision 2, is amended to read:

7.22 Subd. 2. **Phase-in for elderly waiver rates.** Except for ~~home-delivered meals as~~
7.23 ~~described in section 256S.215, subdivision 15~~ the services in subdivisions 3 and 4, all rates
7.24 and rate components for elderly waiver, elderly waiver customized living, and elderly waiver
7.25 foster care under this chapter; alternative care under section 256B.0913; and essential
7.26 community supports under section 256B.0922 shall be the sum of 18.8 percent of the rates
7.27 calculated under sections 256S.211 to 256S.215, and 81.2 percent of the rates calculated
7.28 using the rate methodology in effect as of June 30, 2017. ~~The rate for home-delivered meals~~
7.29 ~~shall be the sum of the service rate in effect as of January 1, 2019, and the increases described~~
7.30 ~~in section 256S.215, subdivision 15.~~

8.1 Sec. 12. Minnesota Statutes 2022, section 256S.2101, is amended by adding a subdivision
8.2 to read:

8.3 Subd. 3. **Phase-in for home-delivered meals rate.** The home-delivered meals rate for
8.4 elderly waiver under this chapter, alternative care under section 256B.0913, and essential
8.5 community supports under section 256B.0922 must be the sum of the service rate in effect
8.6 as of January 1, 2019, and the increases described in section 256S.215, subdivision 15.

8.7 Sec. 13. Minnesota Statutes 2022, section 256S.2101, is amended by adding a subdivision
8.8 to read:

8.9 Subd. 4. **Service rates exempt from phase-in.** Subdivision 2 does not apply to rates
8.10 for homemaker services described in section 256S.215, subdivisions 9 to 11.

8.11 **EFFECTIVE DATE.** This section is effective January 1, 2024.

8.12 Sec. 14. Minnesota Statutes 2022, section 256S.212, is amended by adding a subdivision
8.13 to read:

8.14 Subd. 1a. **Updating base wages.** (a) On January 1, 2024, and every two years thereafter,
8.15 the commissioner shall update the base wages for the services listed in paragraph (b) based
8.16 on the most recently available Bureau of Labor Statistics Minneapolis-St. Paul-Bloomington,
8.17 MN-WI MetroSA data.

8.18 (b) This subdivision applies to:

8.19 (1) the homemaker services and assistance with personal care base wage under subdivision
8.20 8;

8.21 (2) the homemaker services and cleaning base wage under subdivision 9;

8.22 (3) the homemaker services and home management base wage under subdivision 10;

8.23 and

8.24 (4) for the purposes of calculating the registered nurse management and supervision
8.25 factor used to calculate the homemaker services rates under section 256S.215, subdivisions
8.26 9 to 11, the registered nurse base wage under subdivision 14.

8.27 **EFFECTIVE DATE.** This section is effective January 1, 2024.

9.1 Sec. 15. **DIRECTION TO COMMISSIONER; CARE COORDINATION**
9.2 **EXPANSION.**

9.3 **Subdivision 1. Identifying billable care coordination activities.** The commissioner of
9.4 human services must collaborate with interested stakeholders to identify new or existing
9.5 billable medical assistance services for care coordination activities for medical assistance
9.6 home care services. Care coordination activities may include:

9.7 (1) managing documentation requirements;

9.8 (2) supporting transitions in care;

9.9 (3) managing medication;

9.10 (4) facilitating and sequencing referrals for behavioral and medical health needs;

9.11 (5) making community referrals for patient and family education and support; and

9.12 (6) other administrative activities required to effectively meet a person's individualized
9.13 support needs.

9.14 **Subd. 2. Providing guidance regarding existing billable care coordination**
9.15 **activities.** No later than January 1, 2024, the commissioner must issue guidance to home
9.16 care providers regarding existing billable medical assistance services for care coordination
9.17 activities for medical assistance home care services.

9.18 **Subd. 3. Reporting on potential billable care coordination activities.** No later than
9.19 February 1, 2024, the commissioner must provide to the chairs and ranking minority members
9.20 of the legislative committees and divisions with jurisdiction over medical assistance home
9.21 care services a report summarizing any potentially billable medical assistance services for
9.22 care coordination activities for medical assistance home care services identified by the
9.23 commissioner and interested stakeholders under subdivision 1.