

## 1.1 A bill for an act

relating to human services; modifying personal care assistant and support worker requirements; allowing compensation for personal care assistance services provided by a parent or spouse; establishing a 15 percent rate increase for personal care assistance services; appropriating money; amending Minnesota Statutes 2018, sections 256B.0625, subdivision 19a; 256B.0659, subdivision 3; Minnesota Statutes 2019 Supplement, sections 256B.0659, subdivisions 11, as amended, 19; 256B.85, subdivision 16.

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

1.10 Section 1. Minnesota Statutes 2018, section 256B.0625, subdivision 19a, is amended to  
1.11 read:

Subd. 19a. **Personal care assistance services.** (a) Medical assistance covers personal care assistance services in a recipient's home. ~~Effective January 1, 2010;~~ To qualify for personal care assistance services, a recipient must require assistance and be determined dependent in one activity of daily living as defined in section 256B.0659, subdivision 1, paragraph (b), or in a Level I behavior as defined in section 256B.0659, subdivision 1, paragraph (c).

1.18       (b) Recipients or responsible parties must be able to identify the recipient's needs, direct  
1.19       and evaluate task accomplishment, and provide for health and safety.

1.20       (c) Approved hours may be used outside the home when normal life activities take them  
1.21      outside the home. To use personal care assistance services at school, the recipient or  
1.22      responsible party must provide written authorization in the care plan identifying the chosen  
1.23      provider and the daily amount of services to be used at school. Total hours for services,  
1.24      whether actually performed inside or outside the recipient's home, cannot exceed that which

2.1       is otherwise allowed for personal care assistance services in an in-home setting according  
2.2       to sections 256B.0651 to 256B.0654.

2.3       (d) Medical assistance does not cover personal care assistance services for residents of  
2.4       a hospital, nursing facility, intermediate care facility, health care facility licensed by the  
2.5       commissioner of health, or unless a resident who is otherwise eligible is on leave from the  
2.6       facility and the facility either pays for the personal care assistance services or forgoes the  
2.7       facility per diem for the leave days that personal care assistance services are used.

2.8       (e) All personal care assistance services must be provided according to sections  
2.9       256B.0651 to 256B.0654.

2.10       (f) Personal care assistance services may not be reimbursed if the personal care assistant  
2.11       is the spouse or paid guardian of the recipient or the parent of a recipient under age 18, or  
2.12       the responsible party or the family foster care provider of a recipient who cannot direct the  
2.13       recipient's own care unless, in the case of a foster care provider, a county or state case  
2.14       manager visits the recipient as needed, but not less than every six months, to monitor the  
2.15       health and safety of the recipient and to ensure the goals of the care plan are met.

2.16       (g) Notwithstanding the provisions of section 256B.0659, the unpaid guardian or  
2.17       conservator of an adult, who is not the responsible party and not the personal care provider  
2.18       organization, may be reimbursed to provide personal care assistance services to the recipient  
2.19       if the guardian or conservator meets all criteria for a personal care assistant according to  
2.20       section 256B.0659, and shall not be considered to have a service provider interest for  
2.21       purposes of participation on the screening team under section 256B.092, subdivision 7.

2.22       (h) Medical assistance covers personal care assistance services provided by a personal  
2.23       care assistant who is a parent, stepparent, or legal guardian of a participant under age 18,  
2.24       or who is the participant's spouse. These personal care assistants shall not provide any  
2.25       medical assistance home and community-based services in excess of 40 hours per seven-day  
2.26       period regardless of the number of parents providing services, combination of parents and  
2.27       spouses providing services, or number of children who receive medical assistance services.

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

2.31       Sec. 2. Minnesota Statutes 2018, section 256B.0659, subdivision 3, is amended to read:

2.32       **Subd. 3. Noncovered personal care assistance services.** (a) Personal care assistance  
2.33       services are not eligible for medical assistance payment under this section when provided:

- 3.1       (1) by the recipient's spouse, parent of a recipient under the age of 18, paid legal guardian,  
3.2       licensed foster provider, except as allowed under section 256B.0652, subdivision 10, or  
3.3       responsible party;
- 3.4       (2) in order to meet staffing or license requirements in a residential or child care setting;
- 3.5       (3) solely as a child care or babysitting service; or
- 3.6       (4) without authorization by the commissioner or the commissioner's designee.
- 3.7       (b) The following personal care services are not eligible for medical assistance payment  
3.8       under this section when provided in residential settings:
- 3.9       (1) when the provider of home care services who is not related by blood, marriage, or  
3.10      adoption owns or otherwise controls the living arrangement, including licensed or unlicensed  
3.11      services; or
- 3.12      (2) when personal care assistance services are the responsibility of a residential or  
3.13      program license holder under the terms of a service agreement and administrative rules.
- 3.14      (c) Other specific tasks not covered under paragraph (a) or (b) that are not eligible for  
3.15      medical assistance reimbursement for personal care assistance services under this section  
3.16      include:
- 3.17      (1) sterile procedures;
- 3.18      (2) injections of fluids and medications into veins, muscles, or skin;
- 3.19      (3) home maintenance or chore services;
- 3.20      (4) homemaker services not an integral part of assessed personal care assistance services  
3.21      needed by a recipient;
- 3.22      (5) application of restraints or implementation of procedures under section 245.825;
- 3.23      (6) instrumental activities of daily living for children under the age of 18, except when  
3.24      immediate attention is needed for health or hygiene reasons integral to the personal care  
3.25      services and the need is listed in the service plan by the assessor; and
- 3.26      (7) assessments for personal care assistance services by personal care assistance provider  
3.27      agencies or by independently enrolled registered nurses.
- 3.28      **EFFECTIVE DATE.** This section is effective the day following final enactment or  
3.29      upon federal approval, whichever is later. The commissioner of human services shall notify  
3.30      the revisor of statutes when federal approval is obtained.

4.1        Sec. 3. Minnesota Statutes 2019 Supplement, section 256B.0659, subdivision 11, as  
4.2        amended by Laws 2020, chapter 115, article 4, section 128, is amended to read:

4.3            **Subd. 11. Personal care assistant; requirements.** (a) A personal care assistant must  
4.4        meet the following requirements:

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

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

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

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

4.11          (3) enroll with the department as a personal care assistant after clearing a background  
4.12        study. Except as provided in subdivision 11a, before a personal care assistant provides  
4.13        services, the personal care assistance provider agency must initiate a background study on  
4.14        the personal care assistant under chapter 245C, and the personal care assistance provider  
4.15        agency must have received a notice from the commissioner that the personal care assistant  
4.16        is:

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

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

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

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

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

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

4.29          (8) effective January 1, 2010, complete standardized training as determined by the  
4.30        commissioner before completing enrollment. The training must be available in languages  
4.31        other than English and to those who need accommodations due to disabilities. Personal care  
4.32        assistant training must include successful completion of the following training components:

5.1 basic first aid, vulnerable adult, child maltreatment, OSHA universal precautions, basic  
5.2 roles and responsibilities of personal care assistants including information about assistance  
5.3 with lifting and transfers for recipients, emergency preparedness, orientation to positive  
5.4 behavioral practices, fraud issues, and completion of time sheets. Upon completion of the  
5.5 training components, the personal care assistant must demonstrate the competency to provide  
5.6 assistance to recipients;

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

5.8 (10) be limited to providing and being paid for up to ~~275~~ 310 hours per month of personal  
5.9 care assistance services regardless of the number of recipients being served or the number  
5.10 of personal care assistance provider agencies enrolled with. The number of hours worked  
5.11 per day shall not be disallowed by the department unless in violation of the law.

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

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

5.18 (d) Personal care assistance services qualify for the enhanced rate described in subdivision  
5.19 17a if the personal care assistant providing the services:

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

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

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

5.29 Sec. 4. Minnesota Statutes 2019 Supplement, section 256B.0659, subdivision 19, is  
5.30 amended to read:

5.31 **Subd. 19. Personal care assistance choice option; qualifications; duties.** (a) Under  
5.32 personal care assistance choice, the recipient or responsible party shall:

6.1       (1) recruit, hire, schedule, and terminate personal care assistants according to the terms  
6.2       of the written agreement required under subdivision 20, paragraph (a);

6.3       (2) develop a personal care assistance care plan based on the assessed needs and  
6.4       addressing the health and safety of the recipient with the assistance of a qualified professional  
6.5       as needed;

6.6       (3) orient and train the personal care assistant with assistance as needed from the qualified  
6.7       professional;

6.8       (4) effective January 1, 2010, supervise and evaluate the personal care assistant with the  
6.9       qualified professional, who is required to visit the recipient at least every 180 days;

6.10      (5) monitor and verify in writing and report to the personal care assistance choice agency  
6.11      the number of hours worked by the personal care assistant and the qualified professional;

6.12      (6) engage in an annual face-to-face reassessment to determine continuing eligibility  
6.13      and service authorization; and

6.14      (7) use the same personal care assistance choice provider agency if shared personal  
6.15      assistance care is being used.

6.16      (b) The personal care assistance choice provider agency shall:

6.17      (1) meet all personal care assistance provider agency standards;

6.18      (2) enter into a written agreement with the recipient, responsible party, and personal  
6.19      care assistants;

6.20      (3) not be related as a ~~parent, child, or sibling, or spouse~~ to the recipient or the personal  
6.21      care assistant; and

6.22      (4) ensure arm's-length transactions without undue influence or coercion with the recipient  
6.23      and personal care assistant.

6.24      (c) The duties of the personal care assistance choice provider agency are to:

6.25      (1) be the employer of the personal care assistant and the qualified professional for  
6.26      employment law and related regulations including, but not limited to, purchasing and  
6.27      maintaining workers' compensation, unemployment insurance, surety and fidelity bonds,  
6.28      and liability insurance, and submit any or all necessary documentation including, but not  
6.29      limited to, workers' compensation, unemployment insurance, and labor market data required  
6.30      under section 256B.4912, subdivision 1a;

- 7.1       (2) bill the medical assistance program for personal care assistance services and qualified  
7.2       professional services;
- 7.3       (3) request and complete background studies that comply with the requirements for  
7.4       personal care assistants and qualified professionals;
- 7.5       (4) pay the personal care assistant and qualified professional based on actual hours of  
7.6       services provided;
- 7.7       (5) withhold and pay all applicable federal and state taxes;
- 7.8       (6) verify and keep records of hours worked by the personal care assistant and qualified  
7.9       professional;
- 7.10      (7) make the arrangements and pay taxes and other benefits, if any, and comply with  
7.11      any legal requirements for a Minnesota employer;
- 7.12      (8) enroll in the medical assistance program as a personal care assistance choice agency;  
7.13      and
- 7.14      (9) enter into a written agreement as specified in subdivision 20 before services are  
7.15      provided.

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

7.19      Sec. 5. Minnesota Statutes 2019 Supplement, section 256B.85, subdivision 16, is amended  
7.20      to read:

- 7.21      **Subd. 16. Support workers requirements.** (a) Support workers shall:
- 7.22      (1) enroll with the department as a support worker after a background study under chapter  
7.23      245C has been completed and the support worker has received a notice from the  
7.24      commissioner that the support worker:
- 7.25      (i) is not disqualified under section 245C.14; or
- 7.26      (ii) is disqualified, but has received a set-aside of the disqualification under section  
7.27      245C.22;
- 7.28      (2) have the ability to effectively communicate with the participant or the participant's  
7.29      representative;
- 7.30      (3) have the skills and ability to provide the services and supports according to the  
7.31      participant's CFSS service delivery plan and respond appropriately to the participant's needs;

8.1       (4) complete the basic standardized CFSS training as determined by the commissioner  
8.2 before completing enrollment. The training must be available in languages other than English  
8.3 and to those who need accommodations due to disabilities. CFSS support worker training  
8.4 must include successful completion of the following training components: basic first aid,  
8.5 vulnerable adult, child maltreatment, OSHA universal precautions, basic roles and  
8.6 responsibilities of support workers including information about basic body mechanics,  
8.7 emergency preparedness, orientation to positive behavioral practices, orientation to  
8.8 responding to a mental health crisis, fraud issues, time cards and documentation, and an  
8.9 overview of person-centered planning and self-direction. Upon completion of the training  
8.10 components, the support worker must pass the certification test to provide assistance to  
8.11 participants;

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

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

8.15       (7) not independently determine the medication dose or time for medications for the  
8.16 participant.

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

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

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

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

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

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

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

8.30       (d) A support worker must not provide or be paid for more than 275 310 hours of CFSS  
8.31 per month, regardless of the number of participants the support worker serves or the number  
8.32 of agency-providers or participant employers by which the support worker is employed.

9.1      The department shall not disallow the number of hours per day a support worker works  
9.2      unless it violates other law.

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

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

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

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

9.11        Sec. 6. **PERSONAL CARE ASSISTANCE RATE INCREASE.**

9.12        Subdivision 1. Definitions. (a) For the purposes of this section, the following terms have  
9.13        the meanings given.

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

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

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

9.23        (e) "Direct support services" has the meaning given in Minnesota Statutes, section  
9.24        256B.0711, subdivision 1, paragraph (c).

9.25        Subd. 2. Rate increase for direct support services. (a) The commissioner shall increase  
9.26        rates and enhanced rates by 15 percent for direct support services provided under a covered  
9.27        program or under Minnesota Statutes, section 256B.0659.

9.28        (b) Providers that receive a rate increase under this section must use at least 80 percent  
9.29        of the additional revenue to increase wages, salaries, and benefits for personal care assistants  
9.30        and any corresponding increase in the employer's share of FICA taxes, Medicare taxes, state  
9.31        and federal unemployment taxes, and workers' compensation premiums.

10.1       Subd. 3. Capitation rates and directed payments. (a) To implement the rate increase  
10.2       under this section, managed care plans and county-based purchasing plans shall increase  
10.3       rates and enhanced rates by 15 percent for direct support services.

10.4       (b) In combination with contract amendments instructing plans to increase reimbursement  
10.5       rates for direct support services, the commissioner shall adjust capitation rates paid to  
10.6       managed care plans and county-based purchasing plans as needed to maintain managed  
10.7       care plans' expected medical loss ratios.

10.8       (c) Contracts between managed care plans and providers and between county-based  
10.9       purchasing plans and providers must allow recovery of payments from providers if federal  
10.10       approval for the provisions of this subdivision is not received and the commissioner reduces  
10.11       capitation payments as a result. Payment recoveries must not exceed the amount equal to  
10.12       any decrease in rates that results from this paragraph.

10.13       Subd. 4. Consumer-directed community supports budgets. Lead agencies shall  
10.14       increase the budget for each recipient of consumer-directed community supports to reflect  
10.15       a 15 percent rate increase for direct support services.

10.16       Subd. 5. Consumer support grants; increased maximum allowable grant. The  
10.17       commissioner shall increase the maximum allowable monthly grant level for each recipient  
10.18       of consumer support grants to reflect a 15 percent rate increase for direct support services.

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

10.23       (b) By October 15, 2020, the provider must post the distribution plan for a period of at  
10.24       least six weeks in an area of the provider's operation to which all direct support professionals  
10.25       have access. The provider must post with the distribution plan instructions on how to contact  
10.26       the commissioner if direct support professionals do not believe they have received the wage  
10.27       increase or benefits specified in the distribution plan. The instructions must include a mailing  
10.28       address, e-mail address, and telephone number that the direct support professional may use  
10.29       to contact the commissioner or the commissioner's representative.

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

11.1 Sec. 7. **APPROPRIATION; PERSONAL CARE ASSISTANCE.**

11.2 \$..... in fiscal year 2021 is appropriated from the general fund to the commissioner of

11.3 human services to implement the personal care assistance provisions in this act.

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