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State of Minnesota

HOUSE OF REPRESENTATIVES

NINETY-SECOND SESSION

H. F. No. 663

02/04/2021 Authored by Lippert, Schultz, Moller, Klevorn, Boldon and others
The bill was read for the first time and referred to the Committee on Human Services Finance and Policy

1.1 A bill for an act
1.2 relating to human services; establishing enrollment requirements for personal care
1.3 assistance agencies; establishing additional duties for personal care assistants and
1.4 qualified professionals; establishing a payment rate methodology for personal care
1.5 assistance services; requiring commissioner of human services to study
1.6 methodology; requiring providers to submit workforce data; requiring reports;
1.7 amending Minnesota Statutes 2020, sections 256B.0659, subdivisions 14, 21, 24,
1.8 by adding subdivisions; 256B.69, subdivision 5a; 256B.85, subdivision 2; 256S.18,
1.9 subdivision 7; proposing coding for new law in Minnesota Statutes, chapter 256B.

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

1.11 ARTICLE 1
1.12 PERSONAL CARE ASSISTANCE SERVICES PROGRAM INTEGRITY

1.13 Section 1. Minnesota Statutes 2020, section 256B.0659, is amended by adding a subdivision
1.14 to read:

1.15 Subd. 11b. Personal care assistants; notice of change of employment required. Within
1.16 six months of ceasing employment as a personal care assistant with any personal care
1.17 assistance provider agency, the personal care assistant must notify the commissioner on a
1.18 form prescribed by the commissioner that the personal care assistant is no longer providing
1.19 personal care assistance services on behalf of a personal care assistance provider agency
1.20 with whom the personal care assistant was previously affiliated.

1.21 Sec. 2. Minnesota Statutes 2020, section 256B.0659, subdivision 14, is amended to read:

1.22 Subd. 14. Qualified professional; duties. (a) Effective January 1, 2010, All personal
1.23 care assistants must be supervised by a qualified professional who is enrolled as an individual
1.24 provider with the department as required under subdivision 13, paragraph (a).

2.1 (b) Through direct training, observation, return demonstrations, and consultation with
2.2 the staff and the recipient, the qualified professional must ensure and document that the
2.3 personal care assistant is:

2.4 (1) capable of providing the required personal care assistance services;

2.5 (2) knowledgeable about the plan of personal care assistance services before services
2.6 are performed; and

2.7 (3) able to identify conditions that should be immediately brought to the attention of the
2.8 qualified professional.

2.9 (c) The qualified professional shall evaluate the personal care assistant within the first
2.10 14 days of starting to provide regularly scheduled services for a recipient, or sooner as
2.11 determined by the qualified professional, except for the personal care assistance choice
2.12 option under subdivision 19, paragraph (a), clause (4). For the initial evaluation, the qualified
2.13 professional shall evaluate the personal care assistance services for a recipient through direct
2.14 observation of a personal care assistant's work. The qualified professional may conduct
2.15 additional training and evaluation visits, based upon the needs of the recipient and the
2.16 personal care assistant's ability to meet those needs. Subsequent visits to evaluate the personal
2.17 care assistance services provided to a recipient do not require direct observation of each
2.18 personal care assistant's work and shall occur:

2.19 (1) at least every 90 days thereafter for the first year of a recipient's services;

2.20 (2) every 120 days after the first year of a recipient's service or whenever needed for
2.21 response to a recipient's request for increased supervision of the personal care assistance
2.22 staff; and

2.23 (3) after the first 180 days of a recipient's service, supervisory visits may alternate
2.24 between unscheduled phone or Internet technology and in-person visits, unless the in-person
2.25 visits are needed according to the care plan.

2.26 (d) Communication with the recipient is a part of the evaluation process of the personal
2.27 care assistance staff.

2.28 (e) At each supervisory visit, the qualified professional shall evaluate personal care
2.29 assistance services including the following information:

2.30 (1) satisfaction level of the recipient with personal care assistance services;

2.31 (2) review of the month-to-month plan for use of personal care assistance services;

2.32 (3) review of documentation of personal care assistance services provided;

3.1 (4) whether the personal care assistance services are meeting the goals of the service as
3.2 stated in the personal care assistance care plan and service plan;

3.3 (5) a written record of the results of the evaluation and actions taken to correct any
3.4 deficiencies in the work of a personal care assistant; and

3.5 (6) revision of the personal care assistance care plan as necessary in consultation with
3.6 the recipient or responsible party, to meet the needs of the recipient.

3.7 (f) The qualified professional shall complete the required documentation in the agency
3.8 recipient and employee files and the recipient's home, including the following documentation:

3.9 (1) the personal care assistance care plan based on the service plan and individualized
3.10 needs of the recipient;

3.11 (2) a month-to-month plan for use of personal care assistance services;

3.12 (3) changes in need of the recipient requiring a change to the level of service and the
3.13 personal care assistance care plan;

3.14 (4) evaluation results of supervision visits and identified issues with personal care
3.15 assistance staff with actions taken;

3.16 (5) all communication with the recipient and personal care assistance staff; and

3.17 (6) hands-on training or individualized training for the care of the recipient.

3.18 (g) The documentation in paragraph (f) must be done on agency templates.

3.19 (h) The services that are not eligible for payment as qualified professional services
3.20 include:

3.21 (1) direct professional nursing tasks that could be assessed and authorized as skilled
3.22 nursing tasks;

3.23 (2) agency administrative activities;

3.24 (3) training other than the individualized training required to provide care for a recipient;
3.25 and

3.26 (4) any other activity that is not described in this section.

3.27 (i) Within 30 days of ceasing employment as a qualified professional with any personal
3.28 care assistance provider agency, the qualified professional must notify the commissioner
3.29 on a form prescribed by the commissioner that the qualified professional is no longer
3.30 providing qualified professional services on behalf of a personal care assistance provider
3.31 agency with whom the qualified professional was previously affiliated.

4.1 Sec. 3. Minnesota Statutes 2020, section 256B.0659, is amended by adding a subdivision
4.2 to read:

4.3 Subd. 14a. **Documentation of qualified professional services provided.** Qualified
4.4 professional services for a recipient must be documented in a manner determined by the
4.5 commissioner and must include the qualified professional's full name and individual provider
4.6 number.

4.7 Sec. 4. Minnesota Statutes 2020, section 256B.0659, subdivision 21, is amended to read:

4.8 **Subd. 21. Requirements for provider enrollment of personal care assistance provider**
4.9 **agencies.** (a) All personal care assistance provider agencies must provide, at the time of
4.10 enrollment, ~~reenrollment, and revalidation as a personal care assistance provider agency in~~
4.11 ~~a format determined by the commissioner~~ as a personal care assistance provider agency,
4.12 including at reenrollment or revalidation, information and documentation ~~that includes,~~
4.13 The information and documentation must be in a format determined by the commissioner
4.14 and include but is not be limited to, the following:

4.15 (1) the personal care assistance provider agency's current contact information including
4.16 address, telephone number, and e-mail address;

4.17 (2) proof of surety bond coverage for each business location providing services. Upon
4.18 new enrollment, or if the provider's Medicaid revenue in the previous calendar year is up
4.19 to and including \$300,000, the provider agency must purchase a surety bond of \$50,000. If
4.20 the Medicaid revenue in the previous year is over \$300,000, the provider agency must
4.21 purchase a surety bond of \$100,000. The surety bond must be in a form approved by the
4.22 commissioner, must be renewed annually, and must allow for recovery of costs and fees in
4.23 pursuing a claim on the bond;

4.24 (3) proof of fidelity bond coverage in the amount of \$20,000 for each business location
4.25 providing service;

4.26 (4) proof of workers' compensation insurance coverage identifying the business location
4.27 where personal care assistance services are provided;

4.28 (5) proof of liability insurance coverage identifying the business location where personal
4.29 care assistance services are provided and naming the department as a certificate holder;

4.30 (6) a copy of the personal care assistance provider agency's written policies and
4.31 procedures including: hiring of employees; training requirements; service delivery;
4.32 identification, prevention, detection, and reporting of fraud or any billing, record keeping,
4.33 or other administrative noncompliance; and employee and consumer safety including process

5.1 for notification and resolution of consumer grievances, identification and prevention of
5.2 communicable diseases, and employee misconduct;

5.3 (7) copies of all other forms the personal care assistance provider agency uses in the
5.4 course of daily business including, but not limited to:

5.5 (i) a copy of the personal care assistance provider agency's time sheet if the time sheet
5.6 varies from the standard time sheet for personal care assistance services approved by the
5.7 commissioner, and a letter requesting approval of the personal care assistance provider
5.8 agency's nonstandard time sheet;

5.9 (ii) the personal care assistance provider agency's template for the personal care assistance
5.10 care plan; and

5.11 (iii) the personal care assistance provider agency's template for the written agreement
5.12 in subdivision 20 for recipients using the personal care assistance choice option, if applicable;

5.13 (8) a list of all training and classes that the personal care assistance provider agency
5.14 requires of its staff providing personal care assistance services;

5.15 (9) documentation that the personal care assistance provider agency and staff have
5.16 successfully completed all the training required by this section, including the requirements
5.17 under subdivision 11, paragraph (d), if enhanced personal care assistance services are
5.18 provided and submitted for an enhanced rate under subdivision 17a;

5.19 (10) documentation of the agency's marketing practices;

5.20 (11) disclosure of ownership, leasing, or management of all residential properties that
5.21 is used or could be used for providing home care services;

5.22 (12) documentation that the agency will use the following percentages of revenue
5.23 generated from the medical assistance rate paid for personal care assistance services for
5.24 employee personal care assistant wages and benefits: 72.5 percent of revenue in the personal
5.25 care assistance choice option and 72.5 percent of revenue from other personal care assistance
5.26 providers. The revenue generated by the qualified professional and the reasonable costs
5.27 associated with the qualified professional shall not be used in making this calculation; ~~and~~

5.28 (13) ~~effective May 15, 2010,~~ documentation that the agency does not burden recipients'
5.29 free exercise of their right to choose service providers by requiring personal care assistants
5.30 to sign an agreement not to work with any particular personal care assistance recipient or
5.31 for another personal care assistance provider agency after leaving the agency and that the
5.32 agency is not taking action on any such agreements or requirements regardless of the date
5.33 signed;

6.1 (14) a copy of the personal care assistance provider agency's self-auditing policy and
6.2 other materials demonstrating the personal care assistance provider agency's internal program
6.3 integrity procedures;

6.4 (15) a copy of the personal care assistance provider agency's policy for notifying its
6.5 qualified professionals of the qualified professional's obligation to notify the commissioner
6.6 within 30 days that a qualified professional is no longer employed by the agency; and

6.7 (16) a copy of the personal care assistance provider agency's policy for notifying the
6.8 commissioner within six months that a personal care assistant is no longer employed by the
6.9 agency.

6.10 (b) All personal care assistance provider agencies must provide annually to the
6.11 commissioner the information described in paragraph (a), clauses (2) to (5).

6.12 ~~(b)~~ (c) Personal care assistance provider agencies shall provide the information specified
6.13 in paragraph (a) to the commissioner at the time the personal care assistance provider agency
6.14 enrolls as a vendor or upon request from the commissioner. ~~The commissioner shall collect~~
6.15 the information specified in paragraph (a) from all personal care assistance providers
6.16 beginning July 1, 2009.

6.17 ~~(c)~~ (d) All personal care assistance provider agencies shall require all employees in
6.18 management and supervisory positions and owners of the agency who are active in the
6.19 day-to-day management and operations of the agency to complete mandatory training as
6.20 determined by the commissioner before submitting an application for enrollment of the
6.21 agency as a provider. The mandatory training, or any substantially similar refresher training
6.22 developed by the commissioner, must be completed every two years thereafter. All personal
6.23 care assistance provider agencies shall also require qualified professionals to complete the
6.24 training required by subdivision 13 before submitting an application for enrollment of the
6.25 agency as a provider. Employees in management and supervisory positions and owners who
6.26 are active in the day-to-day operations of an agency who have completed the required
6.27 training as an employee with a personal care assistance provider agency do not need to
6.28 repeat the required training if they are hired by another agency, if they have completed the
6.29 training within the past ~~three~~ two years. ~~By September 1, 2010,~~ The required training must
6.30 be available with meaningful access according to title VI of the Civil Rights Act and federal
6.31 regulations adopted under that law or any guidance from the United States Health and
6.32 Human Services Department. The required training must be available online or by electronic
6.33 remote connection. The required training must provide for competency testing. Personal
6.34 care assistance provider agency billing staff shall complete training about personal care

7.1 assistance program financial management. ~~This training is effective July 1, 2009. Any~~
7.2 ~~personal care assistance provider agency enrolled before that date shall, if it has not already,~~
7.3 ~~complete the provider training within 18 months of July 1, 2009.~~ Any new owners or
7.4 employees in management and supervisory positions involved in the day-to-day operations
7.5 are required to complete mandatory training as a requisite of working for the agency. Personal
7.6 care assistance provider agencies certified for participation in Medicare as home health
7.7 agencies are exempt from the training required in this subdivision. When available,
7.8 Medicare-certified home health agency owners, supervisors, or managers must successfully
7.9 complete the competency test.

7.10 ~~(d)~~ (e) All surety bonds, fidelity bonds, workers' compensation insurance, and liability
7.11 insurance required by this subdivision must be maintained continuously. After initial
7.12 enrollment, a provider must submit proof of bonds and required coverages at any time at
7.13 the request of the commissioner. Services provided while there are lapses in coverage are
7.14 not eligible for payment. Lapses in coverage may result in sanctions, including termination.
7.15 The commissioner shall send instructions and a due date to submit the requested information
7.16 to the personal care assistance provider agency.

7.17 (f) Personal care assistance provider agencies enrolling for the first time must also
7.18 provide, at the time of enrollment as a personal care assistance provider agency in a format
7.19 determined by the commissioner, information and documentation. The information and
7.20 documentation must include proof of sufficient initial operating capital to support the
7.21 infrastructure necessary to allow for ongoing compliance with the requirements of this
7.22 section. Sufficient operating capital may be demonstrated as follows:

7.23 (1) copies of business bank account statements showing at least \$5,000 in cash reserves;

7.24 (2) proof of a cash reserve or business line of credit sufficient to equal two payrolls of
7.25 the agency's current or projected business; or

7.26 (3) any other manner prescribed by the commissioner.

7.27 (g) At the time of revalidation as a personal care assistance provider agency, all personal
7.28 care assistance provider agencies must provide information and documentation in a format
7.29 determined by the commissioner that includes but is not limited to the following:

7.30 (1) documentation of the payroll paid for the preceding 12 months or other time period
7.31 as prescribed by the commissioner; and

7.32 (2) financial statements demonstrating compliance with the use of revenue requirements
7.33 of paragraph (a), clause (12).

8.1 Sec. 5. Minnesota Statutes 2020, section 256B.0659, subdivision 24, is amended to read:

8.2 Subd. 24. **Personal care assistance provider agency; general duties.** A personal care
8.3 assistance provider agency shall:

8.4 (1) enroll as a Medicaid provider meeting all provider standards, including completion
8.5 of the required provider training;

8.6 (2) comply with general medical assistance coverage requirements;

8.7 (3) demonstrate compliance with law and policies of the personal care assistance program
8.8 to be determined by the commissioner;

8.9 (4) comply with background study requirements;

8.10 (5) verify and keep records of hours worked by the personal care assistant and qualified
8.11 professional;

8.12 (6) not engage in any agency-initiated direct contact or marketing in person, by phone,
8.13 or other electronic means to potential recipients, guardians, or family members;

8.14 (7) pay the personal care assistant and qualified professional based on actual hours of
8.15 services provided;

8.16 (8) withhold and pay all applicable federal and state taxes;

8.17 (9) document that the agency uses a minimum of 72.5 percent of the revenue generated
8.18 by the medical assistance rate for personal care assistance services for employee personal
8.19 care assistant wages and benefits. The revenue generated by the qualified professional and
8.20 the reasonable costs associated with the qualified professional shall not be used in making
8.21 this calculation;

8.22 (10) make the arrangements and pay unemployment insurance, taxes, workers'
8.23 compensation, liability insurance, and other benefits, if any;

8.24 (11) enter into a written agreement under subdivision 20 before services are provided;

8.25 (12) report suspected neglect and abuse to the common entry point according to section
8.26 256B.0651;

8.27 (13) provide the recipient with a copy of the home care bill of rights at start of service;

8.28 (14) request reassessments at least 60 days prior to the end of the current authorization
8.29 for personal care assistance services, on forms provided by the commissioner;

8.30 (15) comply with the labor market reporting requirements described in section 256B.4912,
8.31 subdivision 1a; ~~and~~

9.1 (16) document that the agency uses the additional revenue due to the enhanced rate under
 9.2 subdivision 17a for the wages and benefits of the PCAs personal care assistants whose
 9.3 services meet the requirements under subdivision 11, paragraph (d);

9.4 (17) notify the commissioner on a form prescribed by the commissioner within 30 days
 9.5 following the date upon which a qualified professional is no longer employed by or otherwise
 9.6 affiliated with the personal care assistance provider agency for whom the qualified
 9.7 professional previously provided qualified professional services; and

9.8 (18) notify the commissioner on a form prescribed by the commissioner within six
 9.9 months following the date upon which a personal care assistant is no longer employed by
 9.10 or otherwise affiliated with the personal care assistance provider agency for whom the
 9.11 personal care assistant previously provided personal care assistance services.

9.12 ARTICLE 2

9.13 PERSONAL CARE ASSISTANT RATE REFORM

9.14 Section 1. Minnesota Statutes 2020, section 256B.69, subdivision 5a, is amended to read:

9.15 Subd. 5a. **Managed care contracts.** (a) Managed care contracts under this section and
 9.16 section 256L.12 shall be entered into or renewed on a calendar year basis. The commissioner
 9.17 may issue separate contracts with requirements specific to services to medical assistance
 9.18 recipients age 65 and older.

9.19 (b) A prepaid health plan providing covered health services for eligible persons pursuant
 9.20 to chapters 256B and 256L is responsible for complying with the terms of its contract with
 9.21 the commissioner. Requirements applicable to managed care programs under chapters 256B
 9.22 and 256L established after the effective date of a contract with the commissioner take effect
 9.23 when the contract is next issued or renewed.

9.24 (c) The commissioner shall withhold five percent of managed care plan payments under
 9.25 this section and county-based purchasing plan payments under section 256B.692 for the
 9.26 prepaid medical assistance program pending completion of performance targets. Each
 9.27 performance target must be quantifiable, objective, measurable, and reasonably attainable,
 9.28 except in the case of a performance target based on a federal or state law or rule. Criteria
 9.29 for assessment of each performance target must be outlined in writing prior to the contract
 9.30 effective date. Clinical or utilization performance targets and their related criteria must
 9.31 consider evidence-based research and reasonable interventions when available or applicable
 9.32 to the populations served, and must be developed with input from external clinical experts
 9.33 and stakeholders, including managed care plans, county-based purchasing plans, and

10.1 providers. The managed care or county-based purchasing plan must demonstrate, to the
10.2 commissioner's satisfaction, that the data submitted regarding attainment of the performance
10.3 target is accurate. The commissioner shall periodically change the administrative measures
10.4 used as performance targets in order to improve plan performance across a broader range
10.5 of administrative services. The performance targets must include measurement of plan
10.6 efforts to contain spending on health care services and administrative activities. The
10.7 commissioner may adopt plan-specific performance targets that take into account factors
10.8 affecting only one plan, including characteristics of the plan's enrollee population. The
10.9 withheld funds must be returned no sooner than July of the following year if performance
10.10 targets in the contract are achieved. The commissioner may exclude special demonstration
10.11 projects under subdivision 23.

10.12 (d) The commissioner shall require that managed care plans:

10.13 (1) use the assessment and authorization processes, forms, timelines, standards,
10.14 documentation, and data reporting requirements, protocols, billing processes, and policies
10.15 consistent with medical assistance fee-for-service or the Department of Human Services
10.16 contract requirements for all personal care assistance services under section 256B.0659;
10.17 and

10.18 (2) by January 30 of each year that follows a rate increase for any aspect of services
10.19 under section 256B.0659 or 256B.85, inform the commissioner and the chairs and ranking
10.20 minority members of the legislative committees with jurisdiction over rates determined
10.21 under section 256B.851 of the amount of the rate increase that is paid to each personal care
10.22 assistance provider agency with which the plan has a contract.

10.23 (e) Effective for services rendered on or after January 1, 2012, the commissioner shall
10.24 include as part of the performance targets described in paragraph (c) a reduction in the health
10.25 plan's emergency department utilization rate for medical assistance and MinnesotaCare
10.26 enrollees, as determined by the commissioner. For 2012, the reduction shall be based on
10.27 the health plan's utilization in 2009. To earn the return of the withhold each subsequent
10.28 year, the managed care plan or county-based purchasing plan must achieve a qualifying
10.29 reduction of no less than ten percent of the plan's emergency department utilization rate for
10.30 medical assistance and MinnesotaCare enrollees, excluding enrollees in programs described
10.31 in subdivisions 23 and 28, compared to the previous measurement year until the final
10.32 performance target is reached. When measuring performance, the commissioner must
10.33 consider the difference in health risk in a managed care or county-based purchasing plan's
10.34 membership in the baseline year compared to the measurement year, and work with the

11.1 managed care or county-based purchasing plan to account for differences that they agree
11.2 are significant.

11.3 The withheld funds must be returned no sooner than July 1 and no later than July 31 of
11.4 the following calendar year if the managed care plan or county-based purchasing plan
11.5 demonstrates to the satisfaction of the commissioner that a reduction in the utilization rate
11.6 was achieved. The commissioner shall structure the withhold so that the commissioner
11.7 returns a portion of the withheld funds in amounts commensurate with achieved reductions
11.8 in utilization less than the targeted amount.

11.9 The withhold described in this paragraph shall continue for each consecutive contract
11.10 period until the plan's emergency room utilization rate for state health care program enrollees
11.11 is reduced by 25 percent of the plan's emergency room utilization rate for medical assistance
11.12 and MinnesotaCare enrollees for calendar year 2009. Hospitals shall cooperate with the
11.13 health plans in meeting this performance target and shall accept payment withholds that
11.14 may be returned to the hospitals if the performance target is achieved.

11.15 (f) Effective for services rendered on or after January 1, 2012, the commissioner shall
11.16 include as part of the performance targets described in paragraph (c) a reduction in the plan's
11.17 hospitalization admission rate for medical assistance and MinnesotaCare enrollees, as
11.18 determined by the commissioner. To earn the return of the withhold each year, the managed
11.19 care plan or county-based purchasing plan must achieve a qualifying reduction of no less
11.20 than five percent of the plan's hospital admission rate for medical assistance and
11.21 MinnesotaCare enrollees, excluding enrollees in programs described in subdivisions 23 and
11.22 28, compared to the previous calendar year until the final performance target is reached.
11.23 When measuring performance, the commissioner must consider the difference in health risk
11.24 in a managed care or county-based purchasing plan's membership in the baseline year
11.25 compared to the measurement year, and work with the managed care or county-based
11.26 purchasing plan to account for differences that they agree are significant.

11.27 The withheld funds must be returned no sooner than July 1 and no later than July 31 of
11.28 the following calendar year if the managed care plan or county-based purchasing plan
11.29 demonstrates to the satisfaction of the commissioner that this reduction in the hospitalization
11.30 rate was achieved. The commissioner shall structure the withhold so that the commissioner
11.31 returns a portion of the withheld funds in amounts commensurate with achieved reductions
11.32 in utilization less than the targeted amount.

11.33 The withhold described in this paragraph shall continue until there is a 25 percent
11.34 reduction in the hospital admission rate compared to the hospital admission rates in calendar

12.1 year 2011, as determined by the commissioner. The hospital admissions in this performance
12.2 target do not include the admissions applicable to the subsequent hospital admission
12.3 performance target under paragraph (g). Hospitals shall cooperate with the plans in meeting
12.4 this performance target and shall accept payment withholds that may be returned to the
12.5 hospitals if the performance target is achieved.

12.6 (g) Effective for services rendered on or after January 1, 2012, the commissioner shall
12.7 include as part of the performance targets described in paragraph (c) a reduction in the plan's
12.8 hospitalization admission rates for subsequent hospitalizations within 30 days of a previous
12.9 hospitalization of a patient regardless of the reason, for medical assistance and MinnesotaCare
12.10 enrollees, as determined by the commissioner. To earn the return of the withhold each year,
12.11 the managed care plan or county-based purchasing plan must achieve a qualifying reduction
12.12 of the subsequent hospitalization rate for medical assistance and MinnesotaCare enrollees,
12.13 excluding enrollees in programs described in subdivisions 23 and 28, of no less than five
12.14 percent compared to the previous calendar year until the final performance target is reached.

12.15 The withheld funds must be returned no sooner than July 1 and no later than July 31 of
12.16 the following calendar year if the managed care plan or county-based purchasing plan
12.17 demonstrates to the satisfaction of the commissioner that a qualifying reduction in the
12.18 subsequent hospitalization rate was achieved. The commissioner shall structure the withhold
12.19 so that the commissioner returns a portion of the withheld funds in amounts commensurate
12.20 with achieved reductions in utilization less than the targeted amount.

12.21 The withhold described in this paragraph must continue for each consecutive contract
12.22 period until the plan's subsequent hospitalization rate for medical assistance and
12.23 MinnesotaCare enrollees, excluding enrollees in programs described in subdivisions 23 and
12.24 28, is reduced by 25 percent of the plan's subsequent hospitalization rate for calendar year
12.25 2011. Hospitals shall cooperate with the plans in meeting this performance target and shall
12.26 accept payment withholds that must be returned to the hospitals if the performance target
12.27 is achieved.

12.28 (h) Effective for services rendered on or after January 1, 2013, through December 31,
12.29 2013, the commissioner shall withhold 4.5 percent of managed care plan payments under
12.30 this section and county-based purchasing plan payments under section 256B.692 for the
12.31 prepaid medical assistance program. The withheld funds must be returned no sooner than
12.32 July 1 and no later than July 31 of the following year. The commissioner may exclude
12.33 special demonstration projects under subdivision 23.

13.1 (i) Effective for services rendered on or after January 1, 2014, the commissioner shall
 13.2 withhold three percent of managed care plan payments under this section and county-based
 13.3 purchasing plan payments under section 256B.692 for the prepaid medical assistance
 13.4 program. The withheld funds must be returned no sooner than July 1 and no later than July
 13.5 31 of the following year. The commissioner may exclude special demonstration projects
 13.6 under subdivision 23.

13.7 (j) A managed care plan or a county-based purchasing plan under section 256B.692 may
 13.8 include as admitted assets under section 62D.044 any amount withheld under this section
 13.9 that is reasonably expected to be returned.

13.10 (k) Contracts between the commissioner and a prepaid health plan are exempt from the
 13.11 set-aside and preference provisions of section 16C.16, subdivisions 6, paragraph (a), and
 13.12 7.

13.13 (l) The return of the withhold under paragraphs (h) and (i) is not subject to the
 13.14 requirements of paragraph (c).

13.15 (m) Managed care plans and county-based purchasing plans shall maintain current and
 13.16 fully executed agreements for all subcontractors, including bargaining groups, for
 13.17 administrative services that are expensed to the state's public health care programs.
 13.18 Subcontractor agreements determined to be material, as defined by the commissioner after
 13.19 taking into account state contracting and relevant statutory requirements, must be in the
 13.20 form of a written instrument or electronic document containing the elements of offer,
 13.21 acceptance, consideration, payment terms, scope, duration of the contract, and how the
 13.22 subcontractor services relate to state public health care programs. Upon request, the
 13.23 commissioner shall have access to all subcontractor documentation under this paragraph.
 13.24 Nothing in this paragraph shall allow release of information that is nonpublic data pursuant
 13.25 to section 13.02.

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

13.27 Sec. 2. Minnesota Statutes 2020, section 256B.85, subdivision 2, is amended to read:

13.28 Subd. 2. **Definitions.** (a) For the purposes of this section and section 256B.851, the terms
 13.29 defined in this subdivision have the meanings given.

13.30 (b) "Activities of daily living" or "ADLs" means eating, toileting, grooming, dressing,
 13.31 bathing, mobility, positioning, and transferring.

13.32 (c) "Agency-provider model" means a method of CFSS under which a qualified agency
 13.33 provides services and supports through the agency's own employees and policies. The agency

14.1 must allow the participant to have a significant role in the selection and dismissal of support
14.2 workers of their choice for the delivery of their specific services and supports.

14.3 (d) "Behavior" means a description of a need for services and supports used to determine
14.4 the home care rating and additional service units. The presence of Level I behavior is used
14.5 to determine the home care rating.

14.6 (e) "Budget model" means a service delivery method of CFSS that allows the use of a
14.7 service budget and assistance from a financial management services (FMS) provider for a
14.8 participant to directly employ support workers and purchase supports and goods.

14.9 (f) "Complex health-related needs" means an intervention listed in clauses (1) to (8) that
14.10 has been ordered by a physician, and is specified in a community support plan, including:

14.11 (1) tube feedings requiring:

14.12 (i) a gastrojejunostomy tube; or

14.13 (ii) continuous tube feeding lasting longer than 12 hours per day;

14.14 (2) wounds described as:

14.15 (i) stage III or stage IV;

14.16 (ii) multiple wounds;

14.17 (iii) requiring sterile or clean dressing changes or a wound vac; or

14.18 (iv) open lesions such as burns, fistulas, tube sites, or ostomy sites that require specialized
14.19 care;

14.20 (3) parenteral therapy described as:

14.21 (i) IV therapy more than two times per week lasting longer than four hours for each
14.22 treatment; or

14.23 (ii) total parenteral nutrition (TPN) daily;

14.24 (4) respiratory interventions, including:

14.25 (i) oxygen required more than eight hours per day;

14.26 (ii) respiratory vest more than one time per day;

14.27 (iii) bronchial drainage treatments more than two times per day;

14.28 (iv) sterile or clean suctioning more than six times per day;

- 15.1 (v) dependence on another to apply respiratory ventilation augmentation devices such
15.2 as BiPAP and CPAP; and
- 15.3 (vi) ventilator dependence under section 256B.0651;
- 15.4 (5) insertion and maintenance of catheter, including:
- 15.5 (i) sterile catheter changes more than one time per month;
- 15.6 (ii) clean intermittent catheterization, and including self-catheterization more than six
15.7 times per day; or
- 15.8 (iii) bladder irrigations;
- 15.9 (6) bowel program more than two times per week requiring more than 30 minutes to
15.10 perform each time;
- 15.11 (7) neurological intervention, including:
- 15.12 (i) seizures more than two times per week and requiring significant physical assistance
15.13 to maintain safety; or
- 15.14 (ii) swallowing disorders diagnosed by a physician and requiring specialized assistance
15.15 from another on a daily basis; and
- 15.16 (8) other congenital or acquired diseases creating a need for significantly increased direct
15.17 hands-on assistance and interventions in six to eight activities of daily living.
- 15.18 (g) "Community first services and supports" or "CFSS" means the assistance and supports
15.19 program under this section needed for accomplishing activities of daily living, instrumental
15.20 activities of daily living, and health-related tasks through hands-on assistance to accomplish
15.21 the task or constant supervision and cueing to accomplish the task, or the purchase of goods
15.22 as defined in subdivision 7, clause (3), that replace the need for human assistance.
- 15.23 (h) "Community first services and supports service delivery plan" or "CFSS service
15.24 delivery plan" means a written document detailing the services and supports chosen by the
15.25 participant to meet assessed needs that are within the approved CFSS service authorization,
15.26 as determined in subdivision 8. Services and supports are based on the coordinated service
15.27 and support plan identified in section 256S.10.
- 15.28 (i) "Consultation services" means a Minnesota health care program enrolled provider
15.29 organization that provides assistance to the participant in making informed choices about
15.30 CFSS services in general and self-directed tasks in particular, and in developing a
15.31 person-centered CFSS service delivery plan to achieve quality service outcomes.

16.1 (j) "Critical activities of daily living" means transferring, mobility, eating, and toileting.

16.2 (k) "Dependency" in activities of daily living means a person requires hands-on assistance
16.3 or constant supervision and cueing to accomplish one or more of the activities of daily living
16.4 every day or on the days during the week that the activity is performed; however, a child
16.5 may not be found to be dependent in an activity of daily living if, because of the child's age,
16.6 an adult would either perform the activity for the child or assist the child with the activity
16.7 and the assistance needed is the assistance appropriate for a typical child of the same age.

16.8 (l) "Extended CFSS" means CFSS services and supports provided under CFSS that are
16.9 included in the CFSS service delivery plan through one of the home and community-based
16.10 services waivers and as approved and authorized under chapter 256S and sections 256B.092,
16.11 subdivision 5, and 256B.49, which exceed the amount, duration, and frequency of the state
16.12 plan CFSS services for participants.

16.13 (m) "Financial management services provider" or "FMS provider" means a qualified
16.14 organization required for participants using the budget model under subdivision 13 that is
16.15 an enrolled provider with the department to provide vendor fiscal/employer agent financial
16.16 management services (FMS).

16.17 (n) "Health-related procedures and tasks" means procedures and tasks related to the
16.18 specific assessed health needs of a participant that can be taught or assigned by a
16.19 state-licensed health care or mental health professional and performed by a support worker.

16.20 (o) "Instrumental activities of daily living" means activities related to living independently
16.21 in the community, including but not limited to: meal planning, preparation, and cooking;
16.22 shopping for food, clothing, or other essential items; laundry; housecleaning; assistance
16.23 with medications; managing finances; communicating needs and preferences during activities;
16.24 arranging supports; and assistance with traveling around and participating in the community.

16.25 (p) "Lead agency" has the meaning given in section 256B.0911, subdivision 1a, paragraph
16.26 (e).

16.27 (q) "Legal representative" means parent of a minor, a court-appointed guardian, or
16.28 another representative with legal authority to make decisions about services and supports
16.29 for the participant. Other representatives with legal authority to make decisions include but
16.30 are not limited to a health care agent or an attorney-in-fact authorized through a health care
16.31 directive or power of attorney.

16.32 (r) "Level I behavior" means physical aggression ~~towards~~ toward self or others or
16.33 destruction of property that requires the immediate response of another person.

17.1 (s) "Medication assistance" means providing verbal or visual reminders to take regularly
17.2 scheduled medication, and includes any of the following supports listed in clauses (1) to
17.3 (3) and other types of assistance, except that a support worker may not determine medication
17.4 dose or time for medication or inject medications into veins, muscles, or skin:

17.5 (1) under the direction of the participant or the participant's representative, bringing
17.6 medications to the participant including medications given through a nebulizer, opening a
17.7 container of previously set-up medications, emptying the container into the participant's
17.8 hand, opening and giving the medication in the original container to the participant, or
17.9 bringing to the participant liquids or food to accompany the medication;

17.10 (2) organizing medications as directed by the participant or the participant's representative;
17.11 and

17.12 (3) providing verbal or visual reminders to perform regularly scheduled medications.

17.13 (t) "Participant" means a person who is eligible for CFSS.

17.14 (u) "Participant's representative" means a parent, family member, advocate, or other
17.15 adult authorized by the participant or participant's legal representative, if any, to serve as a
17.16 representative in connection with the provision of CFSS. This authorization must be in
17.17 writing or by another method that clearly indicates the participant's free choice and may be
17.18 withdrawn at any time. The participant's representative must have no financial interest in
17.19 the provision of any services included in the participant's CFSS service delivery plan and
17.20 must be capable of providing the support necessary to assist the participant in the use of
17.21 CFSS. If through the assessment process described in subdivision 5 a participant is
17.22 determined to be in need of a participant's representative, one must be selected. If the
17.23 participant is unable to assist in the selection of a participant's representative, the legal
17.24 representative shall appoint one. Two persons may be designated as a participant's
17.25 representative for reasons such as divided households and court-ordered custodies. Duties
17.26 of a participant's representatives may include:

17.27 (1) being available while services are provided in a method agreed upon by the participant
17.28 or the participant's legal representative and documented in the participant's CFSS service
17.29 delivery plan;

17.30 (2) monitoring CFSS services to ensure the participant's CFSS service delivery plan is
17.31 being followed; and

17.32 (3) reviewing and signing CFSS time sheets after services are provided to provide
17.33 verification of the CFSS services.

18.1 (v) "Person-centered planning process" means a process that is directed by the participant
18.2 to plan for CFSS services and supports.

18.3 (w) "Service budget" means the authorized dollar amount used for the budget model or
18.4 for the purchase of goods.

18.5 (x) "Shared services" means the provision of CFSS services by the same CFSS support
18.6 worker to two or three participants who voluntarily enter into an agreement to receive
18.7 services at the same time and in the same setting by the same employer.

18.8 (y) "Support worker" means a qualified and trained employee of the agency-provider
18.9 as required by subdivision 11b or of the participant employer under the budget model as
18.10 required by subdivision 14 who has direct contact with the participant and provides services
18.11 as specified within the participant's CFSS service delivery plan.

18.12 (z) "Unit" means the increment of service based on hours or minutes identified in the
18.13 service agreement.

18.14 (aa) "Vendor fiscal employer agent" means an agency that provides financial management
18.15 services.

18.16 (bb) "Wages and benefits" means the hourly wages and salaries, the employer's share
18.17 of FICA taxes, Medicare taxes, state and federal unemployment taxes, workers' compensation,
18.18 mileage reimbursement, health and dental insurance, life insurance, disability insurance,
18.19 long-term care insurance, uniform allowance, contributions to employee retirement accounts,
18.20 or other forms of employee compensation and benefits.

18.21 (cc) "Worker training and development" means services provided according to subdivision
18.22 18a for developing workers' skills as required by the participant's individual CFSS service
18.23 delivery plan that are arranged for or provided by the agency-provider or purchased by the
18.24 participant employer. These services include training, education, direct observation and
18.25 supervision, and evaluation and coaching of job skills and tasks, including supervision of
18.26 health-related tasks or behavioral supports.

18.27 **EFFECTIVE DATE.** This section is effective July 1, 2021, or upon federal approval,
18.28 whichever is later. The commissioner of human services must notify the revisor of statutes
18.29 when federal approval is obtained.

18.30 **Sec. 3. [256B.851] COMMUNITY FIRST SERVICES AND SUPPORTS; PAYMENT**
18.31 **RATES.**

18.32 Subdivision 1. **Application.** (a) The payment methodologies in this section apply to:

19.1 (1) community first services and supports (CFSS), extended CFSS, and enhanced rate
19.2 CFSS under section 256B.85; and

19.3 (2) personal care assistance services under section 256B.0625, subdivisions 19a and
19.4 19c; extended personal care assistance service as defined in section 256B.0659, subdivision
19.5 1; and enhanced rate personal care assistance services under section 256B.0659, subdivision
19.6 17a.

19.7 (b) This section does not change existing personal care assistance program or community
19.8 first services and supports policies and procedures.

19.9 Subd. 2. **Definitions.** (a) For purposes of this section, the following terms have the
19.10 meanings given in section 256B.85, subdivision 2, and as follows.

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

19.12 (c) "Component value" means an underlying factor that is built into the rate methodology
19.13 to calculate service rates and is part of the cost of providing services.

19.14 (d) "Payment rate" or "rate" means reimbursement to an eligible provider for services
19.15 provided to a qualified individual based on an approved service authorization.

19.16 Subd. 3. **Payment rates; base wage index.** When initially establishing the base wage
19.17 component values, the commissioner must use the Minnesota-specific median wage for the
19.18 standard occupational classification (SOC) codes published by the Bureau of Labor Statistics
19.19 in the edition of the Occupational Handbook available January 1, 2021. The commissioner
19.20 must calculate the base wage component values for staff providing personal care assistance
19.21 services, CFSS, extended personal care assistance services, extended CFSS, enhanced rate
19.22 personal care assistance services, and enhanced rate CFSS. The base wage component value
19.23 must be the median wage for personal care aide (SOC code 39-9021).

19.24 Subd. 4. **Payment rates; base wage index adjustments.** (a) On August 1, 2021, and
19.25 July 1, 2023, and every two years thereafter, the commissioner must update the base wage
19.26 component values based on the wage data by SOC codes from the Bureau of Labor Statistics
19.27 available one year and a day prior to the scheduled update.

19.28 (b) The commissioner must publish the updated base wage component values.

19.29 Subd. 5. **Payment rates; total wage index.** (a) The commissioner must multiply the
19.30 base wage component values by one plus the appropriate competitive workforce factor. The
19.31 product is the total wage component value.

20.1 (b) For personal care assistance services, CFSS, extended personal care assistance
 20.2 services, extended CFSS, enhanced rate personal care assistance services, and enhanced
 20.3 rate CFSS, the initial competitive workforce factor is zero.

20.4 Subd. 6. **Payment rates; total wage index adjustments.** (a) On July 1, 2023, and every
 20.5 two years thereafter, the commissioner must adjust the competitive workforce factor in
 20.6 subdivision 5, paragraph (b), with an updated competitive workforce factor using the most
 20.7 recently available data. The commissioner must calculate the biennial adjustment to the
 20.8 competitive workforce factor as follows:

20.9 (1) subtract the weighted average for personal care aide (SOC code 39-9021) from the
 20.10 weighted average wage for all other SOC codes with the same Bureau of Labor Statistics
 20.11 classifications as personal care aide (SOC code 39-9021), for education, experience, and
 20.12 training for job competency;

20.13 (2) determine the average of (i) the weighted average for personal care aide (SOC code
 20.14 39-9021) and (ii) the weighted average wage for all other SOC codes with the same Bureau
 20.15 of Labor Statistics classifications for education, experience, and training for job competency
 20.16 as for personal care aide (SOC code 39-9021);

20.17 (3) divide the result of clause (1) by the result of clause (2);

20.18 (4) if the result of clause (3) is positive, increase the competitive workforce factor by
 20.19 the lesser of the result of clause (3) and 0.01; and

20.20 (5) if the result of clause (3) is zero or negative, set the competitive workforce factor
 20.21 equal to zero.

20.22 (b) The commissioner must publish the updated competitive workforce value.

20.23 Subd. 7. **Payment rates; standard component values.** The commissioner must use the
 20.24 following standard component values:

20.25 (1) for the employee vacation, sick, and training factor, ... percent;

20.26 (2) for the employer taxes and workers' compensation factor, ... percent;

20.27 (3) for the employee benefits factor, ... percent;

20.28 (4) for the client programming and supports factor, ... percent;

20.29 (5) for the program plan support factor, ... percent;

20.30 (6) for the general business and administrative expenses factor, ... percent;

20.31 (7) for the program administration expenses factor, ... percent; and

21.1 (8) for the absence and utilization factor, ... percent.

21.2 Subd. 8. **Payment rates; rate determination.** (a) The commissioner must determine
 21.3 the rate for each service under subdivision 1 as follows:

21.4 (1) multiply the appropriate total wage component value by one plus the employee
 21.5 vacation, sick, and training factor;

21.6 (2) for program plan support, multiply the result of clause (1) by one plus the program
 21.7 plan support factor;

21.8 (3) for employee-related expenses, add the employer taxes and workers' compensation
 21.9 factor and the employee benefits factor. The sum is employee-related expenses. Multiply
 21.10 the product of clause (2) by one plus the value for employee-related expenses;

21.11 (4) for client programming and supports, multiply the product of clause (3) by one plus
 21.12 the client programming and supports factor;

21.13 (5) for administrative expenses, add the general business and administrative expenses
 21.14 factor, the program administration expenses factor, and the absence and utilization factor;

21.15 (6) divide the result of clause (4) by one minus the result of clause (5). The quotient is
 21.16 the hourly rate;

21.17 (7) divide the hourly rate by four. The quotient is the total payment rate; and

21.18 (8) for enhanced rate personal care assistance services and enhanced rate CFSS, multiply
 21.19 the result of clause (7) by 1.075. The product is the enhanced total payment rate.

21.20 (b) The commissioner must publish the total payment rate and the enhanced total payment
 21.21 rate.

21.22 Subd. 9. **Payment rates; collective bargaining.** The commissioner's authority to set
 21.23 payment rates, including wages and benefits, for the services of individual providers as
 21.24 defined in section 256B.0711, subdivision 1, paragraph (d), is subject to the state's obligations
 21.25 to meet and negotiate under chapter 179A, as modified and made applicable to individual
 21.26 providers under section 179A.54, and to agreements with any exclusive representative of
 21.27 individual providers, as authorized by chapter 179A, as modified and made applicable to
 21.28 individual providers under section 179A.54.

21.29 Subd. 10. **Required reporting of cost data.** (a) As determined by the commissioner
 21.30 and in consultation with stakeholders, agencies enrolled to provide services with rates
 21.31 determined under this section must submit requested cost data to the commissioner. The
 21.32 commissioner may request cost data, including but not limited to:

- 22.1 (1) worker wage costs;
 22.2 (2) benefits paid;
 22.3 (3) supervisor wage costs;
 22.4 (4) executive wage costs;
 22.5 (5) vacation, sick, and training time paid;
 22.6 (6) taxes, workers' compensation, and unemployment insurance costs paid;
 22.7 (7) administrative costs paid;
 22.8 (8) program costs paid;
 22.9 (9) transportation costs paid;
 22.10 (10) staff vacancy rates; and
 22.11 (11) other data relating to costs required to provide services requested by the
 22.12 commissioner.

22.13 (b) At least once in any five-year period, a provider must submit the required cost data
 22.14 for a fiscal year that ended not more than 18 months prior to the submission date. The
 22.15 commissioner must provide each provider a 90-day notice prior to its submission due date.
 22.16 If a provider fails to submit required cost data, the commissioner must provide notice to
 22.17 providers that have not provided required cost data 30 days after the required submission
 22.18 date and a second notice for providers who have not provided required cost data 60 days
 22.19 after the required submission date. The commissioner must temporarily suspend payments
 22.20 to a provider if the commissioner has not received required cost data 90 days after the
 22.21 required submission date. The commissioner must make withheld payments when the
 22.22 required cost data is received by the commissioner.

22.23 (c) The commissioner must conduct a random validation of data submitted under this
 22.24 subdivision to ensure data accuracy.

22.25 (d) The commissioner, in consultation with stakeholders, must develop and implement
 22.26 a process for providing training and technical assistance necessary to support provider
 22.27 submission of cost data required under this subdivision.

22.28 Subd. 11. **Required analysis of cost data.** (a) The commissioner must evaluate on an
 22.29 ongoing basis whether the base wage component values and standard component values in
 22.30 this section appropriately address costs to provide the services covered under this section.
 22.31 The commissioner must analyze cost data submitted under this section and may submit

23.1 recommendations to the chairs and ranking minority members of the legislative committees
 23.2 with jurisdiction over human services on adjustments and updates to standard component
 23.3 values, base wage component values, and competitive workforce factors.

23.4 (b) The commissioner must release cost data in an aggregate form. Cost data from
 23.5 individual providers must not be released except as provided for in current law.

23.6 Subd. 12. **Payment rates; reports required.** (a) Notwithstanding subdivision 11,
 23.7 paragraph (a), the commissioner must assess the standard component values and publish
 23.8 evaluation findings and recommended changes to the rate methodology in a report to the
 23.9 legislature by August 1, 2024.

23.10 (b) The commissioner must assess the long-term impacts of the rate methodology
 23.11 implementation on staff providing services with rates determined under this section, including
 23.12 but not limited to measuring changes in wages, benefits provided, hours worked, and
 23.13 retention. Notwithstanding subdivision 11, paragraph (a), the commissioner must publish
 23.14 evaluation findings in a report to the legislature by August 1, 2027.

23.15 (c) This subdivision expires on August 1, 2027, or upon the date the commissioner
 23.16 submits to the legislature the report described in paragraph (b), whichever is later. The
 23.17 commissioner must inform the revisor of statutes when the report is submitted.

23.18 **EFFECTIVE DATE.** This section is effective July 1, 2021, or upon federal approval,
 23.19 whichever is later. The commissioner of human services must notify the revisor of statutes
 23.20 when federal approval is obtained.

23.21 Sec. 4. Minnesota Statutes 2020, section 256S.18, subdivision 7, is amended to read:

23.22 Subd. 7. **Monthly case mix budget cap exception.** The commissioner shall approve an
 23.23 exception to the monthly case mix budget cap in ~~paragraph (a)~~ subdivision 3 to account for
 23.24 the additional cost of providing enhanced rate personal care assistance services under section
 23.25 256B.0659 or enhanced rate community first services and supports under section 256B.85.
 23.26 ~~The exception shall not exceed 107.5 percent of the budget otherwise available to the~~
 23.27 ~~individual.~~ The commissioner must calculate the difference between the rate for personal
 23.28 care assistance services and enhanced rate personal care assistance services. The additional
 23.29 budget amount approved under an exception must not exceed this difference. The exception
 23.30 must be reapproved on an annual basis at the time of a participant's annual reassessment.

23.31 **EFFECTIVE DATE.** This section is effective July 1, 2021, or upon federal approval,
 23.32 whichever is later. The commissioner of human services must notify the revisor of statutes
 23.33 when federal approval is obtained.