

**SENATE
STATE OF MINNESOTA
NINETY-FIRST SESSION**

S.F. No. 1893

(SENATE AUTHORS: RELPH, Hoffman, Abeler, Frentz and Eken)

DATE
02/28/2019

D-PG

OFFICIAL STATUS
Introduction and first reading
Referred to Human Services Reform Finance and Policy

1.1 A bill for an act
1.2 relating to human services; establishing an enhanced rate for personal care
1.3 assistance services provided to individuals requiring more than ten hours of service
1.4 per day; amending Minnesota Statutes 2018, section 256B.0659, subdivisions 11,
1.5 21, 24, 28, by adding a subdivision.

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

1.7 Section 1. Minnesota Statutes 2018, section 256B.0659, subdivision 11, is amended to
1.8 read:

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

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

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

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

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

1.17 (3) enroll with the department as a personal care assistant after clearing a background
1.18 study. Except as provided in subdivision 11a, before a personal care assistant provides
1.19 services, the personal care assistance provider agency must initiate a background study on
1.20 the personal care assistant under chapter 245C, and the personal care assistance provider
1.21 agency must have received a notice from the commissioner that the personal care assistant
1.22 is:

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

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

3.3 (1) provides services, according to the care plan in subdivision 7, to a recipient who
3.4 qualifies for ten or more hours per day of personal care assistance services; and

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

3.9 **EFFECTIVE DATE.** This section is effective July 1, 2019.

3.10 Sec. 2. Minnesota Statutes 2018, section 256B.0659, is amended by adding a subdivision
3.11 to read:

3.12 Subd. 17a. **Enhanced rate.** An enhanced rate of 110 percent of the rate paid for personal
3.13 care assistance services shall be paid for services provided to persons who qualify for ten
3.14 or more hours of personal care assistance service per day when provided by a personal care
3.15 assistant who meets the requirements of subdivision 11, paragraph (d). The enhanced rate
3.16 for personal care assistance services includes, and is not in addition to, any rate adjustments
3.17 implemented by the commissioner to comply with the terms of a collective bargaining
3.18 agreement between the state of Minnesota and an exclusive representative of individual
3.19 providers under section 179A.54 for increased financial incentives for providing services
3.20 to people with complex needs.

3.21 **EFFECTIVE DATE.** This section is effective July 1, 2019.

3.22 Sec. 3. Minnesota Statutes 2018, section 256B.0659, subdivision 21, is amended to read:

3.23 **Subd. 21. Requirements for provider enrollment of personal care assistance provider**
3.24 **agencies.** (a) All personal care assistance provider agencies must provide, at the time of
3.25 enrollment, reenrollment, and revalidation as a personal care assistance provider agency in
3.26 a format determined by the commissioner, information and documentation that includes,
3.27 but is not limited to, the following:

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

3.30 (2) proof of surety bond coverage. Upon new enrollment, or if the provider's Medicaid
3.31 revenue in the previous calendar year is up to and including \$300,000, the provider agency
3.32 must purchase a surety bond of \$50,000. If the Medicaid revenue in the previous year is

4.1 over \$300,000, the provider agency must purchase a surety bond of \$100,000. The surety
4.2 bond must be in a form approved by the commissioner, must be renewed annually, and must
4.3 allow for recovery of costs and fees in pursuing a claim on the bond;

4.4 (3) proof of fidelity bond coverage in the amount of \$20,000;

4.5 (4) proof of workers' compensation insurance coverage;

4.6 (5) proof of liability insurance;

4.7 (6) a description of the personal care assistance provider agency's organization identifying
4.8 the names of all owners, managing employees, staff, board of directors, and the affiliations
4.9 of the directors, owners, or staff to other service providers;

4.10 (7) a copy of the personal care assistance provider agency's written policies and
4.11 procedures including: hiring of employees; training requirements; service delivery; and
4.12 employee and consumer safety including process for notification and resolution of consumer
4.13 grievances, identification and prevention of communicable diseases, and employee
4.14 misconduct;

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

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

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

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

4.25 (9) a list of all training and classes that the personal care assistance provider agency
4.26 requires of its staff providing personal care assistance services;

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

4.31 (11) documentation of the agency's marketing practices;

5.1 (12) disclosure of ownership, leasing, or management of all residential properties that
5.2 is used or could be used for providing home care services;

5.3 (13) documentation that the agency will use the following percentages of revenue
5.4 generated from the medical assistance rate paid for personal care assistance services for
5.5 employee personal care assistant wages and benefits: 72.5 percent of revenue in the personal
5.6 care assistance choice option and 72.5 percent of revenue from other personal care assistance
5.7 providers. The revenue generated by the qualified professional and the reasonable costs
5.8 associated with the qualified professional shall not be used in making this calculation; and

5.9 (14) effective May 15, 2010, documentation that the agency does not burden recipients'
5.10 free exercise of their right to choose service providers by requiring personal care assistants
5.11 to sign an agreement not to work with any particular personal care assistance recipient or
5.12 for another personal care assistance provider agency after leaving the agency and that the
5.13 agency is not taking action on any such agreements or requirements regardless of the date
5.14 signed.

5.15 (b) Personal care assistance provider agencies shall provide the information specified
5.16 in paragraph (a) to the commissioner at the time the personal care assistance provider agency
5.17 enrolls as a vendor or upon request from the commissioner. The commissioner shall collect
5.18 the information specified in paragraph (a) from all personal care assistance providers
5.19 beginning July 1, 2009.

5.20 (c) All personal care assistance provider agencies shall require all employees in
5.21 management and supervisory positions and owners of the agency who are active in the
5.22 day-to-day management and operations of the agency to complete mandatory training as
5.23 determined by the commissioner before enrollment of the agency as a provider. Employees
5.24 in management and supervisory positions and owners who are active in the day-to-day
5.25 operations of an agency who have completed the required training as an employee with a
5.26 personal care assistance provider agency do not need to repeat the required training if they
5.27 are hired by another agency, if they have completed the training within the past three years.
5.28 By September 1, 2010, the required training must be available with meaningful access
5.29 according to title VI of the Civil Rights Act and federal regulations adopted under that law
5.30 or any guidance from the United States Health and Human Services Department. The
5.31 required training must be available online or by electronic remote connection. The required
5.32 training must provide for competency testing. Personal care assistance provider agency
5.33 billing staff shall complete training about personal care assistance program financial
5.34 management. This training is effective July 1, 2009. Any personal care assistance provider
5.35 agency enrolled before that date shall, if it has not already, complete the provider training

6.1 within 18 months of July 1, 2009. Any new owners or employees in management and
6.2 supervisory positions involved in the day-to-day operations are required to complete
6.3 mandatory training as a requisite of working for the agency. Personal care assistance provider
6.4 agencies certified for participation in Medicare as home health agencies are exempt from
6.5 the training required in this subdivision. When available, Medicare-certified home health
6.6 agency owners, supervisors, or managers must successfully complete the competency test.

6.7 **EFFECTIVE DATE.** This section is effective July 1, 2019.

6.8 Sec. 4. Minnesota Statutes 2018, section 256B.0659, subdivision 24, is amended to read:

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

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

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

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

6.16 (4) comply with background study requirements;

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

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

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

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

6.24 (9) ~~effective January 1, 2010,~~ document that the agency uses a minimum of 72.5 percent
6.25 of the revenue generated by the medical assistance rate for personal care assistance services
6.26 for employee personal care assistant wages and benefits. The revenue generated by the
6.27 qualified professional and the reasonable costs associated with the qualified professional
6.28 shall not be used in making this calculation;

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

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

7.1 (12) report suspected neglect and abuse to the common entry point according to section
7.2 256B.0651;

7.3 (13) provide the recipient with a copy of the home care bill of rights at start of service;
7.4 ~~and~~

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

7.7 (15) document that the agency uses the additional revenue due to the enhanced rate under
7.8 subdivision 17a for the wages and benefits of the PCAs whose services meet the requirements
7.9 under subdivision 11, paragraph (d).

7.10 **EFFECTIVE DATE.** This section is effective July 1, 2019.

7.11 Sec. 5. Minnesota Statutes 2018, section 256B.0659, subdivision 28, is amended to read:

7.12 Subd. 28. **Personal care assistance provider agency; required documentation.** (a)

7.13 Required documentation must be completed and kept in the personal care assistance provider
7.14 agency file or the recipient's home residence. The required documentation consists of:

7.15 (1) employee files, including:

7.16 (i) applications for employment;

7.17 (ii) background study requests and results;

7.18 (iii) orientation records about the agency policies;

7.19 (iv) trainings completed with demonstration of competence, including verification of
7.20 the completion of training required under subdivision 11, paragraph (d), for any services
7.21 billed at the enhanced rate under subdivision 17a;

7.22 (v) supervisory visits;

7.23 (vi) evaluations of employment; and

7.24 (vii) signature on fraud statement;

7.25 (2) recipient files, including:

7.26 (i) demographics;

7.27 (ii) emergency contact information and emergency backup plan;

7.28 (iii) personal care assistance service plan;

7.29 (iv) personal care assistance care plan;

- 8.1 (v) month-to-month service use plan;
- 8.2 (vi) all communication records;
- 8.3 (vii) start of service information, including the written agreement with recipient; and
- 8.4 (viii) date the home care bill of rights was given to the recipient;
- 8.5 (3) agency policy manual, including:
- 8.6 (i) policies for employment and termination;
- 8.7 (ii) grievance policies with resolution of consumer grievances;
- 8.8 (iii) staff and consumer safety;
- 8.9 (iv) staff misconduct; and
- 8.10 (v) staff hiring, service delivery, staff and consumer safety, staff misconduct, and
- 8.11 resolution of consumer grievances;
- 8.12 (4) time sheets for each personal care assistant along with completed activity sheets for
- 8.13 each recipient served; and
- 8.14 (5) agency marketing and advertising materials and documentation of marketing activities
- 8.15 and costs.
- 8.16 (b) The commissioner may assess a fine of up to \$500 on provider agencies that do not
- 8.17 consistently comply with the requirements of this subdivision.
- 8.18 **EFFECTIVE DATE.** This section is effective July 1, 2019.