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State of Minnesota
HOUSE OF REPRESENTATIVES

EIGHTY-FIFTH
SESSION

HOUSE FILE No. 1998

March 12, 2007

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The bill was read for the first time and referred to the Committee on Health and Human Services

1.1 A bill for an act
1.2 relating to human services; making changes to continuing care provisions;
1.3 amending data practices; changing long-term care provisions; allowing electronic
1.4 meetings; altering service standards; amending Medicaid waivers for elderly
1.5 services; modifying personal care assistant services; providing penalties;
1.6 amending Minnesota Statutes 2006, sections 13.46, subdivision 2; 144A.071,
1.7 subdivision 3; 144A.351; 256.9741, subdivisions 1, 3; 256.9742, subdivisions 3,
1.8 4, 6; 256.975, by adding a subdivision; 256B.0655, subdivisions 1, 1c, 1f, 1g,
1.9 2, by adding subdivisions; 256B.0911, subdivisions 3a, 4b, 6, 7, by adding a
1.10 subdivision; 256B.0913, subdivisions 4, 5a; 256B.0915; 256B.27, subdivision
1.11 2a; 256B.49, subdivisions 13, 14; repealing Minnesota Statutes 2006, section
1.12 256.9743; Minnesota Rules, part 9505.0335.

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

1.14 Section 1. Minnesota Statutes 2006, section 13.46, subdivision 2, is amended to read:

1.15 Subd. 2. **General.** (a) Data may be obtained from another responsible authority by
1.16 a responsible authority in the welfare system, pursuant to subdivision 10, including for
1.17 the purposes specified in this subdivision. Unless the data is summary data or a statute
1.18 specifically provides a different classification, data on individuals collected, maintained,
1.19 used, or disseminated by the welfare system is private data on individuals, and shall
1.20 not be disclosed except:

- 1.21 (1) according to section 13.05;
- 1.22 (2) according to court order;
- 1.23 (3) according to a statute specifically authorizing access to the private data;
- 1.24 (4) to an agent of the welfare system, including a law enforcement person, attorney,
1.25 or investigator acting for it in the investigation or prosecution of a criminal or civil
1.26 proceeding relating to the administration of a program;

2.1 (5) to personnel of the welfare system who require the data to verify an individual's
 2.2 identity; determine eligibility, amount of assistance, and the need to provide services to
 2.3 an individual or family across programs; evaluate the effectiveness of programs; and
 2.4 investigate suspected fraud;

2.5 (6) to administer federal funds or programs;

2.6 (7) between personnel of the welfare system working in the same program;

2.7 (8) to the Department of Revenue to administer and evaluate tax refund or tax credit
 2.8 programs and to identify individuals who may benefit from these programs. The following
 2.9 information may be disclosed under this paragraph: an individual's and their dependent's
 2.10 names, dates of birth, Social Security numbers, income, addresses, and other data as
 2.11 required, upon request by the Department of Revenue. Disclosures by the commissioner
 2.12 of revenue to the commissioner of human services for the purposes described in this clause
 2.13 are governed by section 270B.14, subdivision 1. Tax refund or tax credit programs include,
 2.14 but are not limited to, the dependent care credit under section 290.067, the Minnesota
 2.15 working family credit under section 290.0671, the property tax refund and rental credit
 2.16 under section 290A.04, and the Minnesota education credit under section 290.0674;

2.17 (9) between the Department of Human Services, ~~the Department of Education,~~
 2.18 ~~and the Department of Employment and Economic Development for the purpose of~~
 2.19 ~~monitoring,~~ and, when applicable, the Department of Education, for the following
 2.20 purposes:

2.21 (i) to monitor the eligibility of the data subject for unemployment benefits, for any
 2.22 employment or training program administered, supervised, or certified by that agency;
 2.23 ~~for the purpose of administering;~~

2.24 (ii) to administer any rehabilitation program or child care assistance program,
 2.25 whether alone or in conjunction with the welfare system, ~~or;~~

2.26 (iii) to monitor and evaluate the Minnesota family investment program by
 2.27 exchanging data on recipients and former recipients of food support, cash assistance under
 2.28 chapter 256, 256D, 256J, or 256K, child care assistance under chapter 119B, or medical
 2.29 programs under chapter 256B, 256D, or 256L; and

2.30 (iv) to analyze current processes and outcomes relating to public assistance programs
 2.31 affecting employment, including eligibility determination, service utilization, program
 2.32 cost, and program effectiveness, as implemented under the authority established in Title
 2.33 II, Sections 201-204 of the Ticket to Work and Work Incentives Improvement Act of
 2.34 1999, Public Law 106-170;

3.1 (10) to appropriate parties in connection with an emergency if knowledge of
3.2 the information is necessary to protect the health or safety of the individual or other
3.3 individuals or persons;

3.4 (11) data maintained by residential programs as defined in section 245A.02 may
3.5 be disclosed to the protection and advocacy system established in this state according
3.6 to Part C of Public Law 98-527 to protect the legal and human rights of persons with
3.7 developmental disabilities or other related conditions who live in residential facilities for
3.8 these persons if the protection and advocacy system receives a complaint by or on behalf
3.9 of that person and the person does not have a legal guardian or the state or a designee of
3.10 the state is the legal guardian of the person;

3.11 (12) to the county medical examiner or the county coroner for identifying or locating
3.12 relatives or friends of a deceased person;

3.13 (13) data on a child support obligor who makes payments to the public agency
3.14 may be disclosed to the Minnesota Office of Higher Education to the extent necessary to
3.15 determine eligibility under section 136A.121, subdivision 2, clause (5);

3.16 (14) participant Social Security numbers and names collected by the telephone
3.17 assistance program may be disclosed to the Department of Revenue to conduct an
3.18 electronic data match with the property tax refund database to determine eligibility under
3.19 section 237.70, subdivision 4a;

3.20 (15) the current address of a Minnesota family investment program participant
3.21 may be disclosed to law enforcement officers who provide the name of the participant
3.22 and notify the agency that:

3.23 (i) the participant:

3.24 (A) is a fugitive felon fleeing to avoid prosecution, or custody or confinement after
3.25 conviction, for a crime or attempt to commit a crime that is a felony under the laws of the
3.26 jurisdiction from which the individual is fleeing; or

3.27 (B) is violating a condition of probation or parole imposed under state or federal law;

3.28 (ii) the location or apprehension of the felon is within the law enforcement officer's
3.29 official duties; and

3.30 (iii) the request is made in writing and in the proper exercise of those duties;

3.31 (16) the current address of a recipient of general assistance or general assistance
3.32 medical care may be disclosed to probation officers and corrections agents who are
3.33 supervising the recipient and to law enforcement officers who are investigating the
3.34 recipient in connection with a felony level offense;

3.35 (17) information obtained from food support applicant or recipient households may
3.36 be disclosed to local, state, or federal law enforcement officials, upon their written request,

4.1 for the purpose of investigating an alleged violation of the Food Stamp Act, according
4.2 to Code of Federal Regulations, title 7, section 272.1(c);

4.3 (18) the address, Social Security number, and, if available, photograph of any
4.4 member of a household receiving food support shall be made available, on request, to a
4.5 local, state, or federal law enforcement officer if the officer furnishes the agency with the
4.6 name of the member and notifies the agency that:

4.7 (i) the member:

4.8 (A) is fleeing to avoid prosecution, or custody or confinement after conviction, for a
4.9 crime or attempt to commit a crime that is a felony in the jurisdiction the member is fleeing;

4.10 (B) is violating a condition of probation or parole imposed under state or federal
4.11 law; or

4.12 (C) has information that is necessary for the officer to conduct an official duty related
4.13 to conduct described in subitem (A) or (B);

4.14 (ii) locating or apprehending the member is within the officer's official duties; and

4.15 (iii) the request is made in writing and in the proper exercise of the officer's official
4.16 duty;

4.17 (19) the current address of a recipient of Minnesota family investment program,
4.18 general assistance, general assistance medical care, or food support may be disclosed to
4.19 law enforcement officers who, in writing, provide the name of the recipient and notify the
4.20 agency that the recipient is a person required to register under section 243.166, but is not
4.21 residing at the address at which the recipient is registered under section 243.166;

4.22 (20) certain information regarding child support obligors who are in arrears may be
4.23 made public according to section 518A.74;

4.24 (21) data on child support payments made by a child support obligor and data on
4.25 the distribution of those payments excluding identifying information on obligees may be
4.26 disclosed to all obligees to whom the obligor owes support, and data on the enforcement
4.27 actions undertaken by the public authority, the status of those actions, and data on the
4.28 income of the obligor or obligee may be disclosed to the other party;

4.29 (22) data in the work reporting system may be disclosed under section 256.998,
4.30 subdivision 7;

4.31 (23) to the Department of Education for the purpose of matching Department of
4.32 Education student data with public assistance data to determine students eligible for free
4.33 and reduced price meals, meal supplements, and free milk according to United States
4.34 Code, title 42, sections 1758, 1761, 1766, 1766a, 1772, and 1773; to allocate federal and
4.35 state funds that are distributed based on income of the student's family; and to verify
4.36 receipt of energy assistance for the telephone assistance plan;

5.1 (24) the current address and telephone number of program recipients and emergency
5.2 contacts may be released to the commissioner of health or a local board of health as
5.3 defined in section 145A.02, subdivision 2, when the commissioner or local board of health
5.4 has reason to believe that a program recipient is a disease case, carrier, suspect case, or at
5.5 risk of illness, and the data are necessary to locate the person;

5.6 (25) to other state agencies, statewide systems, and political subdivisions of this
5.7 state, including the attorney general, and agencies of other states, interstate information
5.8 networks, federal agencies, and other entities as required by federal regulation or law for
5.9 the administration of the child support enforcement program;

5.10 (26) to personnel of public assistance programs as defined in section 256.741, for
5.11 access to the child support system database for the purpose of administration, including
5.12 monitoring and evaluation of those public assistance programs;

5.13 (27) to monitor and evaluate the Minnesota family investment program by
5.14 exchanging data between the Departments of Human Services and Education, on
5.15 recipients and former recipients of food support, cash assistance under chapter 256, 256D,
5.16 256J, or 256K, child care assistance under chapter 119B, or medical programs under
5.17 chapter 256B, 256D, or 256L;

5.18 (28) to evaluate child support program performance and to identify and prevent
5.19 fraud in the child support program by exchanging data between the Department of Human
5.20 Services, Department of Revenue under section 270B.14, subdivision 1, paragraphs (a)
5.21 and (b), without regard to the limitation of use in paragraph (c), Department of Health,
5.22 Department of Employment and Economic Development, and other state agencies as is
5.23 reasonably necessary to perform these functions; or

5.24 (29) counties operating child care assistance programs under chapter 119B may
5.25 disseminate data on program participants, applicants, and providers to the commissioner
5.26 of education.

5.27 (b) Information on persons who have been treated for drug or alcohol abuse may
5.28 only be disclosed according to the requirements of Code of Federal Regulations, title
5.29 42, sections 2.1 to 2.67.

5.30 (c) Data provided to law enforcement agencies under paragraph (a), clause (15),
5.31 (16), (17), or (18), or paragraph (b), are investigative data and are confidential or protected
5.32 nonpublic while the investigation is active. The data are private after the investigation
5.33 becomes inactive under section 13.82, subdivision 5, paragraph (a) or (b).

5.34 (d) Mental health data shall be treated as provided in subdivisions 7, 8, and 9, but is
5.35 not subject to the access provisions of subdivision 10, paragraph (b).

6.1 For the purposes of this subdivision, a request will be deemed to be made in writing
6.2 if made through a computer interface system.

6.3 Sec. 2. Minnesota Statutes 2006, section 144A.071, subdivision 3, is amended to read:

6.4 Subd. 3. **Exceptions authorizing an increase in beds.** The commissioner of health,
6.5 in coordination with the commissioner of human services, may approve the addition
6.6 of a new certified bed or the addition of a new licensed nursing home bed, under the
6.7 following conditions:

6.8 (a) to license or certify a new bed in place of one decertified after July 1, 1993, as
6.9 long as the number of certified plus newly certified or recertified beds does not exceed the
6.10 number of beds licensed or certified on July 1, 1993, or to address an extreme hardship
6.11 situation, in a particular county that; has fewer than 75 percent of the national average of
6.12 nursing home beds per 1,000 elderly individuals, or that has fewer than 85 percent of the
6.13 national average of nursing home beds per 1,000 elderly individuals and together with
6.14 all of that county's contiguous Minnesota counties, has fewer nursing home beds per 1,000
6.15 elderly than ~~the number that is ten percent higher than~~ 120 percent of the national average
6.16 of nursing home beds per 1,000 elderly individuals. For the purposes of this section, the
6.17 national average of nursing home beds shall be the most recent figure that can be supplied
6.18 by the federal Centers for Medicare and Medicaid Services and the number of elderly in
6.19 the county or the nation shall be determined by the most recent federal census or the
6.20 most recent estimate of the state demographer as of July 1, of each year of persons age
6.21 65 and older, whichever is the most recent at the time of the request for replacement. An
6.22 extreme hardship situation can only be found after the county documents the existence of
6.23 unmet ~~medical~~ needs for nursing home placement that cannot be addressed by any other
6.24 alternatives. The number of new beds that the commissioner may authorize in the event
6.25 of an extreme hardship situation shall not exceed: (1) the number necessary to increase
6.26 the county's number of beds per 1,000 elderly to 90 percent of the national average, and
6.27 (2) the number of beds that are delicensed while the planned closure program in section
6.28 256B.437 is suspended.

6.29 Operating payment rates of nursing facilities adding beds under this paragraph shall
6.30 not change when the new beds are licensed. Adjustments to the property payment rate
6.31 shall be determined according to section 256B.434, subdivision 4f;

6.32 (b) to certify or license new beds in a new facility that is to be operated by the
6.33 commissioner of veterans affairs or when the costs of constructing and operating the new
6.34 beds are to be reimbursed by the commissioner of veterans affairs or the United States
6.35 Veterans Administration;

7.1 (c) to license or certify beds in a facility that has been involuntarily delicensed
 7.2 or decertified for participation in the medical assistance program, provided that an
 7.3 application for relicensure or recertification is submitted to the commissioner within 120
 7.4 days after delicensure or decertification;

7.5 (d) to certify two existing beds in a facility with 66 licensed beds on January 1, 1994,
 7.6 that had an average occupancy rate of 98 percent or higher in both calendar years 1992 and
 7.7 1993, and which began construction of four attached assisted living units in April 1993; or

7.8 (e) to certify four existing beds in a facility in Winona with 139 beds, of which 129
 7.9 beds are certified.

7.10 Sec. 3. Minnesota Statutes 2006, section 144A.351, is amended to read:

7.11 **144A.351 BALANCING LONG-TERM CARE: REPORT REQUIRED.**

7.12 The commissioners of health and human services, with the cooperation of counties
 7.13 and regional entities, shall prepare a report to the legislature by ~~January~~ August 15, 2004,
 7.14 and biennially thereafter, regarding the status of the full range of long-term care services
 7.15 for the elderly in Minnesota. The report shall address:

7.16 (1) demographics and need for long-term care in Minnesota;

7.17 (2) summary of county and regional reports on long-term care gaps, surpluses,
 7.18 imbalances, and corrective action plans;

7.19 (3) status of long-term care services by county and region including:

7.20 (i) changes in availability of the range of long-term care services and housing
 7.21 options;

7.22 (ii) access problems regarding long-term care; and

7.23 (iii) comparative measures of long-term care availability and progress over time; and

7.24 (4) recommendations regarding goals for the future of long-term care services,
 7.25 policy changes, and resource needs.

7.26 Sec. 4. Minnesota Statutes 2006, section 256.9741, subdivision 1, is amended to read:

7.27 Subdivision 1. **Long-term care facility.** "Long-term care facility" means a nursing
 7.28 home licensed under sections 144A.02 to 144A.10 ~~or~~; a boarding care home licensed
 7.29 under sections 144.50 to 144.56; or a licensed or registered residential setting which
 7.30 provides or arranges for the provision of home care services.

7.31 Sec. 5. Minnesota Statutes 2006, section 256.9741, subdivision 3, is amended to read:

7.32 Subd. 3. **Client.** "Client" means an individual who requests, or on whose behalf a
 7.33 request is made for, ombudsman services and is (a) a resident of a long-term care facility

8.1 or (b) a Medicare beneficiary who requests assistance relating to access, discharge, or
 8.2 denial of inpatient or outpatient services, or (c) an individual reserving, receiving, or
 8.3 requesting a home care service.

8.4 Sec. 6. Minnesota Statutes 2006, section 256.9742, subdivision 3, is amended to read:

8.5 Subd. 3. **Posting.** Every long-term care facility and acute care facility shall post in a
 8.6 conspicuous place the address and telephone number of the office. A home care service
 8.7 provider shall provide all recipients, including those in ~~elderly~~ housing with services
 8.8 under chapter 144D, with the address and telephone number of the office. Counties shall
 8.9 provide clients receiving ~~a consumer support grant or a service allowance~~ long-term care
 8.10 consultation services under section 256B.0911 or home and community-based services
 8.11 through a state or federally funded program with the name, address, and telephone number
 8.12 of the office. The posting or notice is subject to approval by the ombudsman.

8.13 Sec. 7. Minnesota Statutes 2006, section 256.9742, subdivision 4, is amended to read:

8.14 Subd. 4. **Access to long-term care and acute care facilities and clients.** The
 8.15 ombudsman or designee may:

8.16 (1) enter any long-term care facility without notice at any time;

8.17 (2) enter any acute care facility without notice during normal business hours;

8.18 (3) enter any acute care facility without notice at any time to interview a patient or
 8.19 observe services being provided to the patient as part of an investigation of a matter that is
 8.20 within the scope of the ombudsman's authority, but only if the ombudsman's or designee's
 8.21 presence does not intrude upon the privacy of another patient or interfere with routine
 8.22 hospital services provided to any patient in the facility;

8.23 (4) communicate privately and without restriction with any client ~~in accordance~~
 8.24 ~~with section 144.651~~, as long as the ombudsman has the client's consent for such
 8.25 communication;

8.26 (5) inspect records of a long-term care facility, home care service provider, or acute
 8.27 care facility that pertain to the care of the client according to ~~sections~~ section 144.335 ~~and~~
 8.28 ~~144.651~~; and

8.29 (6) with the consent of a client or client's legal guardian, the ombudsman or
 8.30 designated staff shall have access to review records pertaining to the care of the client
 8.31 according to ~~sections~~ section 144.335 ~~and 144.651~~. If a client cannot consent and has no
 8.32 legal guardian, access to the records is authorized by this section.

9.1 A person who denies access to the ombudsman or designee in violation of this
 9.2 subdivision or aids, abets, invites, compels, or coerces another to do so is guilty of a
 9.3 misdemeanor.

9.4 Sec. 8. Minnesota Statutes 2006, section 256.9742, subdivision 6, is amended to read:

9.5 Subd. 6. **Prohibition against discrimination or retaliation.** (a) No entity shall take
 9.6 discriminatory, disciplinary, or retaliatory action against an employee or volunteer, or a
 9.7 patient, resident, or guardian or family member of a patient, resident, or guardian for filing
 9.8 in good faith a complaint with or providing information to the ombudsman or designee
 9.9 including volunteers. A person who violates this subdivision or who aids, abets, invites,
 9.10 compels, or coerces another to do so is guilty of a misdemeanor.

9.11 (b) There shall be a rebuttable presumption that any adverse action, as defined below,
 9.12 within 90 days of report, is discriminatory, disciplinary, or retaliatory. For the purpose
 9.13 of this clause, the term "adverse action" refers to action taken by the entity involved in a
 9.14 report against the person making the report or the person with respect to whom the report
 9.15 was made because of the report, and includes, but is not limited to:

- 9.16 (1) discharge or transfer from a facility;
- 9.17 (2) termination of service;
- 9.18 (3) restriction or prohibition of access to the facility or its residents;
- 9.19 (4) discharge from or termination of employment;
- 9.20 (5) demotion or reduction in remuneration for services; and
- 9.21 (6) any restriction of rights set forth in section 144.651 ~~or~~, 144A.44, or 144A.751.

9.22 Sec. 9. Minnesota Statutes 2006, section 256.975, is amended by adding a subdivision
 9.23 to read:

9.24 Subd. 2a. **Electronic meetings.** (a) Notwithstanding section 13D.01, the Minnesota
 9.25 Board on Aging may conduct a meeting of its members by telephone or other electronic
 9.26 means so long as the following conditions are met:

9.27 (1) all members of the board participating in the meeting, wherever their physical
 9.28 location, can hear one another and can hear all discussion and testimony;

9.29 (2) members of the public present at the regular meeting location of the board can
 9.30 hear all discussion and testimony and all votes of members of the board;

9.31 (3) at least one member of the board is physically present at the regular meeting
 9.32 location; and

9.33 (4) all votes are conducted by roll call, so that each member's vote on each issue
 9.34 can be identified and recorded.

10.1 (b) Each member of the board participating in a meeting by telephone or other
 10.2 electronic means is considered present at the meeting for purposes of determining a
 10.3 quorum and participating in all proceedings.

10.4 (c) If telephone or other electronic means is used to conduct a meeting, the board,
 10.5 to the extent practical, shall allow a person to monitor the meeting electronically from
 10.6 a remote location. The board may require the person making a connection to pay for
 10.7 documented marginal costs that the board incurs as a result of the additional connection.

10.8 (d) If telephone or other electronic means is used to conduct a regular, special, or
 10.9 emergency meeting, the board shall provide notice of the regular meeting location, of the
 10.10 fact that some members may participate by telephone or other electronic means, and of
 10.11 the provisions of paragraph (c). The timing and method of providing notice is governed
 10.12 by section 13D.04.

10.13 Sec. 10. Minnesota Statutes 2006, section 256B.0655, subdivision 1, is amended to
 10.14 read:

10.15 Subdivision 1. **Definitions.** For purposes of this section and sections 256B.0651,
 10.16 256B.0653, 256B.0654, and 256B.0656, the terms defined in subdivisions 1a to ~~11~~ 11 have
 10.17 the meanings given them unless otherwise provided or indicated by the context.

10.18 Sec. 11. Minnesota Statutes 2006, section 256B.0655, subdivision 1c, is amended to
 10.19 read:

10.20 Subd. 1c. **Care plan.** "Care plan" means a written description of personal care
 10.21 assistant services developed by the qualified professional or the recipient's physician with
 10.22 the recipient or responsible party to be used by the personal care assistant with a copy
 10.23 provided to the recipient or responsible party. "Care plan" includes a plan of personal
 10.24 care services.

10.25 Sec. 12. Minnesota Statutes 2006, section 256B.0655, subdivision 1f, is amended to
 10.26 read:

10.27 Subd. 1f. **Personal care assistant.** (a) "Personal care assistant" means a person who:

10.28 (1) is at least 18 years old, except for persons 16 to 18 years of age who participated
 10.29 in a related school-based job training program or have completed a certified home health
 10.30 aide competency evaluation;

10.31 (2) is able to effectively communicate with the recipient and personal care provider
 10.32 organization;

11.1 (3) effective July 1, 1996, has completed one of the training requirements as
 11.2 specified in ~~Minnesota Rules, part 9505.0335, subpart 3, items A to E~~ in paragraph (b);

11.3 (4) has the ability to, and provides covered personal care assistant services according
 11.4 to the recipient's care plan, responds appropriately to recipient needs, and reports changes
 11.5 in the recipient's condition to the supervising qualified professional or physician;

11.6 (5) is not a consumer of personal care assistant services;

11.7 (6) maintains daily written records detailing:

11.8 (i) the actual services provided to the recipient; and

11.9 (ii) the amount of time spent providing the services; and

11.10 (7) is subject to criminal background checks and procedures specified in chapter
 11.11 245C.

11.12 (b) Personal care assistant training must include successful completion of one or
 11.13 more training requirement in:

11.14 (1) a nursing assistant training program or its equivalent for which competency as a
 11.15 nursing assistant is determined according to a test administered by the Minnesota State
 11.16 Board of Technical Colleges;

11.17 (2) a homemaker home health aide preservice training program using a curriculum
 11.18 recommended by the Department of Health;

11.19 (3) an accredited educational program for registered nurses or licensed practical
 11.20 nurses;

11.21 (4) a training program that provides the assistant with skills required to perform
 11.22 personal care assistant services specified in subdivision 2, paragraph (d); or

11.23 (5) a determination by the personal care provider that the assistant has, through
 11.24 training or experience, the skills required to perform the personal care services specified in
 11.25 subdivision 2.

11.26 Sec. 13. Minnesota Statutes 2006, section 256B.0655, subdivision 1g, is amended to
 11.27 read:

11.28 Subd. 1g. **Personal care provider organization.** (a) "Personal care provider
 11.29 organization" or "personal care provider" means an organization enrolled to provide
 11.30 personal care assistant services under the medical assistance program that complies with
 11.31 the following:

11.32 (1) owners who have a five percent interest or more, and managerial officials are
 11.33 subject to a background study as provided in chapter 245C. This applies to currently
 11.34 enrolled personal care provider organizations and those agencies seeking enrollment as a
 11.35 personal care provider organization. An organization will be barred from enrollment if an

12.1 owner or managerial official of the organization has been convicted of a crime specified
 12.2 in chapter 245C, or a comparable crime in another jurisdiction, unless the owner or
 12.3 managerial official meets the reconsideration criteria specified in chapter 245C;

12.4 (2) the organization must maintain a surety bond and liability insurance throughout
 12.5 the duration of enrollment and provides proof thereof. The insurer must notify the
 12.6 Department of Human Services of the cancellation or lapse of policy and the organization
 12.7 must maintain documentation of services as specified in Minnesota Rules, part 9505.2175,
 12.8 subpart 7, as well as evidence of compliance with personal care assistant training
 12.9 requirements;

12.10 (3) the organization must maintain documentation and a recipient file and satisfy
 12.11 communication requirements in section 256B.0655, subdivision 2, paragraph (f); and

12.12 (4) the organization must comply with all laws and rules governing the provision of
 12.13 personal care assistant services.

12.14 (b) As required by subdivision 13, before employing a person as a personal care
 12.15 assistant of a qualified recipient, the personal care provider shall require from the applicant
 12.16 full disclosure of conviction and criminal history records pertaining to any crime related to
 12.17 the provision of health services or to the occupation of a personal care assistant.

12.18 Sec. 14. Minnesota Statutes 2006, section 256B.0655, is amended by adding a
 12.19 subdivision to read:

12.20 Subd. 1j. **Directing care.** "Capable of directing the recipient's own care" refers
 12.21 to a recipient's functional impairment status as determined by the recipient's ability to
 12.22 communicate:

12.23 (1) orientation to person, place, and time;

12.24 (2) an understanding of the recipient's plan of care, including medications and
 12.25 medication schedule;

12.26 (3) needs; and

12.27 (4) an understanding of safety issues, including how to access emergency assistance.

12.28 Sec. 15. Minnesota Statutes 2006, section 256B.0655, is amended by adding a
 12.29 subdivision to read:

12.30 Subd. 1k. **Independent living.** "Independent living" or "live independently"
 12.31 refers to the situation of a recipient living in the recipient's own residence and having
 12.32 the opportunity to control basic decisions about the recipient's life to the fullest extent
 12.33 possible. For purposes of this section, "residence" does not include a long-term care
 12.34 facility or an inpatient hospital.

13.1 Sec. 16. Minnesota Statutes 2006, section 256B.0655, is amended by adding a
13.2 subdivision to read:

13.3 Subd. 11. **Qualified recipient.** "Qualified recipient" means a recipient who needs
13.4 personal care services to live independently in the community, is in a stable medical
13.5 condition, and does not have acute care needs that require inpatient hospitalization or
13.6 cannot be met in the recipient's residence by a nursing service as defined by section
13.7 148.171, subdivision 15.

13.8 Sec. 17. Minnesota Statutes 2006, section 256B.0655, subdivision 2, is amended to
13.9 read:

13.10 Subd. 2. **Personal care assistant services.** (a) The personal care assistant services
13.11 that are eligible for payment are services and supports furnished to an individual, as
13.12 needed, to assist in accomplishing activities of daily living; instrumental activities of daily
13.13 living; health-related functions through hands-on assistance, supervision, and cuing; and
13.14 redirection and intervention for behavior including observation and monitoring. Personal
13.15 care assistant services include services to a recipient to maintain the recipient in the
13.16 recipient's residence. Personal care service includes either private personal care service or
13.17 shared personal care service. "Private personal care service" means personal care service
13.18 that is not a shared personal care service.

13.19 (b) To be eligible for medical assistance payment, a personal care service that begins
13.20 or is increased on or after January 1, 1988, must be given to a recipient who meets the
13.21 criteria in clauses (1) to (4), and according to a plan of personal care services. The criteria
13.22 are as follows:

13.23 (1) the recipient meets the criteria specified in Minnesota Rules, part 9505.0295,
13.24 subpart 3;

13.25 (2) the recipient is a qualified recipient;

13.26 (3) the recipient or the recipient's responsible party is capable of directing the
13.27 recipient's own care; and

13.28 (4) the recipient has a plan of personal care services developed:

13.29 (i) by the supervising qualified professional;

13.30 (ii) by the recipient and the qualified professional; or

13.31 (iii) together with the recipient and the physician that specifies the personal care
13.32 services required.

13.33 ~~(b)~~ (c) Payment for services will be made within the limits approved using the
13.34 prior authorized process established in subdivisions 3 and 4, and sections 256B.0651,
13.35 subdivisions 4 to 12, and 256B.0654, subdivision 2.

- 14.1 ~~(c)~~ (d) The amount and type of services authorized shall be based on an assessment
 14.2 of the recipient's needs in these areas:
- 14.3 (1) bowel and bladder care;
- 14.4 (2) skin care to maintain the health of the skin, including, but not limited to,
 14.5 prophylactic routine and palliative measures documented in the plan of care that are done
 14.6 to maintain the health of the skin, for example, exposure to air; use of nondurable medical
 14.7 equipment; application of lotions, powders, and ointments; and other similar treatments
 14.8 such as heat lamp and foot soaks;
- 14.9 (3) repetitive maintenance range of motion, muscle strengthening exercises, and
 14.10 other tasks specific to maintaining a recipient's optimal level of function;
- 14.11 (4) respiratory assistance;
- 14.12 (5) transfers and ambulation;
- 14.13 (6) bathing, grooming, and hairwashing necessary for personal hygiene;
- 14.14 (7) turning and positioning;
- 14.15 (8) assistance with furnishing medication that is self-administered;
- 14.16 (9) application and maintenance of prosthetics and orthotics;
- 14.17 (10) cleaning medical equipment;
- 14.18 (11) dressing or undressing;
- 14.19 (12) assistance with eating ~~and~~, meal preparation, and necessary grocery shopping,
 14.20 including assistance with food, nutrition, and diet activities;
- 14.21 (13)(i) accompanying a recipient to obtain medical diagnosis or treatment; and to
 14.22 attend other activities such as church and school if the personal care assistant is needed to
 14.23 provide personal care services while the recipient is absent from the recipient's residence;
 14.24 and
- 14.25 (ii) performing other services essential to the effective performance of the duties in
 14.26 clauses (1) to (13);
- 14.27 (14) assisting, monitoring, or prompting the recipient to complete the services in
 14.28 clauses (1) to (13);
- 14.29 (15) redirection, monitoring, and observation that are medically necessary and an
 14.30 integral part of completing the personal care assistant services described in clauses (1) to
 14.31 (14);
- 14.32 (16) redirection and intervention for behavior, including observation and monitoring;
- 14.33 (17) interventions for seizure disorders, including monitoring and observation if the
 14.34 recipient has had a seizure that requires intervention within the past three months;
- 14.35 (18) tracheostomy suctioning using a clean procedure if the procedure is properly
 14.36 delegated by a registered nurse. Before this procedure can be delegated to a personal

15.1 care assistant, a registered nurse must determine that the tracheostomy suctioning can be
15.2 accomplished utilizing a clean rather than a sterile procedure and must ensure that the
15.3 personal care assistant has been taught the proper procedure; and

15.4 (19) incidental household services that are an integral part of a personal care service
15.5 described in clauses (1) to (18).

15.6 For purposes of this subdivision, monitoring and observation means watching for outward
15.7 visible signs that are likely to occur and for which there is a covered personal care service
15.8 or an appropriate personal care intervention. For purposes of this subdivision, a clean
15.9 procedure refers to a procedure that reduces the numbers of microorganisms or prevents or
15.10 reduces the transmission of microorganisms from one person or place to another. A clean
15.11 procedure may be used beginning 14 days after insertion.

15.12 ~~(d)~~ (e) The personal care assistant services that are not eligible for payment are
15.13 the following:

15.14 (1) services provided without a physician's statement of need as required by section
15.15 256B.0625, subdivision 19c, and included in the personal care provider agency's file for
15.16 the recipient;

15.17 (2) assessments by personal care assistant provider organizations or by independently
15.18 enrolled registered nurses;

15.19 (3) services that are not in the service plan;

15.20 (4) services provided by the recipient's spouse, legal guardian for an adult or child
15.21 recipient, or parent of a recipient under age 18;

15.22 (5) services provided by a foster care provider of a recipient who cannot direct the
15.23 recipient's own care, unless monitored by a county or state case manager under section
15.24 256B.0625, subdivision 19a;

15.25 (6) services provided by the residential or program license holder in a residence for
15.26 more than four persons;

15.27 (7) services that are the responsibility of a residential or program license holder
15.28 under the terms of a service agreement and administrative rules;

15.29 (8) sterile procedures;

15.30 (9) injections of fluids into veins, muscles, or skin;

15.31 (10) homemaker services that are not an integral part of a personal care assistant
15.32 services;

15.33 (11) home maintenance or chore services;

15.34 (12) services not specified under paragraph (a); ~~and~~

15.35 (13) services not authorized by the commissioner or the commissioner's designee;.

16.1 (14) a health service provided by and billed by a provider who is not a personal
 16.2 care provider;

16.3 (15) a homemaking or social service except as provided in paragraph (d), clause
 16.4 (13), item (i), or subdivision 5; and

16.5 (16) personal care service that is provided by a person who is the recipient's paid
 16.6 legal guardian or related to the recipient as spouse, parent of a minor child, or child
 16.7 whether by blood, marriage, or adoption.

16.8 ~~(e)~~ (f) The recipient or responsible party may choose to supervise the personal care
 16.9 assistant or to have a qualified professional, as defined in section 256B.0625, subdivision
 16.10 19c, provide the supervision. As required under section 256B.0625, subdivision 19c,
 16.11 the county public health nurse, as a part of the assessment, will assist the recipient or
 16.12 responsible party to identify the most appropriate person to provide supervision of the
 16.13 personal care assistant. Health-related delegated tasks performed by the personal care
 16.14 assistant will be under the supervision of a qualified professional or the direction of the
 16.15 recipient's physician. If the recipient has a qualified professional, ~~Minnesota Rules, part~~
 16.16 ~~9505.0335, subpart 4,~~ then subdivision 14 applies.

16.17 ~~(f)~~ (g) In order to be paid for personal care assistant services, personal care provider
 16.18 organizations, and personal care assistant choice providers are required:

16.19 (1) to maintain a recipient file for each recipient for whom services are being billed
 16.20 that contains:

16.21 (i) the current physician's statement of need as required by section 256B.0625,
 16.22 subdivision 19c;

16.23 (ii) the service plan, including the monthly authorized hours, or flexible use plan;

16.24 (iii) the care plan, signed by the recipient and the qualified professional, if required
 16.25 or designated, detailing the personal care assistant services to be provided;

16.26 (iv) documentation, on a form approved by the commissioner and signed by the
 16.27 personal care assistant, specifying the day, month, year, arrival, and departure times, with
 16.28 AM and PM notation, for all services provided to the recipient. The form must include a
 16.29 notice that it is a federal crime to provide false information on personal care service
 16.30 billings for medical assistance payment; and

16.31 (v) all notices to the recipient regarding personal care service use exceeding
 16.32 authorized hours; and

16.33 (2) to communicate, by telephone if available, and in writing, with the recipient or
 16.34 the responsible party about the schedule for use of authorized hours and to notify the
 16.35 recipient and the county public health nurse in advance and as soon as possible, on a form

17.1 approved by the commissioner, if the monthly number of hours authorized is likely to be
17.2 exceeded for the month.

17.3 ~~(g)~~ (h) The commissioner shall establish an ongoing audit process for potential
17.4 fraud and abuse for personal care assistant services. The audit process must include, at
17.5 a minimum, a requirement that the documentation of hours of care provided be on a
17.6 form approved by the commissioner and include the personal care assistant's signature
17.7 attesting that the hours shown on each bill were provided by the personal care assistant on
17.8 the dates and the times specified.

17.9 Sec. 18. Minnesota Statutes 2006, section 256B.0655, is amended by adding a
17.10 subdivision to read:

17.11 Subd. 11. Personal care provider; eligibility. The department may contract
17.12 with an agency to provide personal care services to qualified recipients. To be eligible
17.13 to contract with the department as a personal care provider, an agency must meet the
17.14 criteria in clauses (1) to (7):

17.15 (1) possess the capacity to enter into a legally binding contract;

17.16 (2) possess demonstrated ability to fulfill the responsibilities in this subdivision
17.17 and subdivision 12;

17.18 (3) demonstrate the cost-effectiveness of its proposal for the provision of personal
17.19 care services;

17.20 (4) comply with Minnesota Rules, part 9505.0210;

17.21 (5) demonstrate a knowledge of, sensitivity to, and experience with the special
17.22 needs, including communication needs and independent living needs, of the condition of
17.23 the recipient;

17.24 (6) ensure that personal care services are provided in a manner consistent with the
17.25 recipient's ability to live independently;

17.26 (7) provide a quality assurance mechanism;

17.27 (8) demonstrate the financial ability to produce a cash flow sufficient to cover
17.28 operating expenses for 30 days;

17.29 (9) disclose fully the names of persons with an ownership or control interest of five
17.30 percent or more in the contracting agency;

17.31 (10) demonstrate an accounting or financial system that complies with generally
17.32 accepted accounting principles;

17.33 (11) demonstrate a system of personnel management; and

18.1 (12) if offering personal care services to a ventilator dependent recipient,
 18.2 demonstrate the ability to train and to supervise the personal care assistant and the
 18.3 recipient in ventilator operation and maintenance.

18.4 Sec. 19. Minnesota Statutes 2006, section 256B.0655, is amended by adding a
 18.5 subdivision to read:

18.6 Subd. 12. **Personal care provider responsibilities.** The personal care provider
 18.7 shall:

18.8 (1) employ or contract with services staff to provide personal care services and to
 18.9 train services staff as necessary;

18.10 (2) supervise the personal care services as provided in subdivision 2, paragraph (f);

18.11 (3) employ a personal care assistant that a qualified recipient brings to the personal
 18.12 care provider as the recipient's choice of assistant and who meets the employment
 18.13 qualifications of the provider, except that a personal care provider who must comply with
 18.14 the requirements of a governmental personnel administration system is exempt from
 18.15 this clause;

18.16 (4) bill the medical assistance program for a personal care service by the personal
 18.17 care assistant and a visit by the qualified professional supervising the personal care
 18.18 assistant;

18.19 (5) establish a grievance mechanism to resolve consumer complaints about personal
 18.20 care services, including the personal care provider's decision whether to employ the
 18.21 qualified recipient's choice of a personal care assistant;

18.22 (6) keep records as required in Minnesota Rules, parts 9505.2160 to 9505.2195;

18.23 (7) perform functions and provide services specified in the personal care provider's
 18.24 contract;

18.25 (8) comply with applicable rules and statutes; and

18.26 (9) perform other functions as necessary to carry out the responsibilities in clauses
 18.27 (1) to (9).

18.28 Sec. 20. Minnesota Statutes 2006, section 256B.0655, is amended by adding a
 18.29 subdivision to read:

18.30 Subd. 13. **Personal care provider; employment prohibition.** A personal care
 18.31 provider shall not employ a person to provide personal care service for a qualified
 18.32 recipient if the person:

18.33 (1) refuses to provide full disclosure of criminal history records as specified in
 18.34 subdivision 1g, paragraph (b);

19.1 (2) has been convicted of a crime that directly relates to the occupation of providing
 19.2 personal care services to a qualified recipient;

19.3 (3) has jeopardized the health or welfare of a vulnerable adult through physical
 19.4 abuse, sexual abuse, or neglect as defined in section 626.557; or

19.5 (4) is misusing or is dependent on mood-altering chemicals, including alcohol, to
 19.6 the extent that the personal care provider knows or has reason to believe that the use of
 19.7 chemicals has a negative effect on the person's ability to provide personal care services
 19.8 or the use of chemicals is apparent during the hours the person is providing personal
 19.9 care services.

19.10 Sec. 21. Minnesota Statutes 2006, section 256B.0655, is amended by adding a
 19.11 subdivision to read:

19.12 Subd. 14. **Supervision of personal care services.** A personal care service to a
 19.13 qualified recipient as described in subdivision 4 shall be under the supervision of a
 19.14 qualified professional who shall have the following duties:

19.15 (1) ensure that the personal care assistant is capable of providing the required
 19.16 personal care services through direct observation of the assistant's work or through
 19.17 consultation with the qualified recipient;

19.18 (2) ensure that the personal care assistant is knowledgeable about the plan of
 19.19 personal care services before the personal care assistant performs personal care services;

19.20 (3) ensure that the personal care assistant is knowledgeable about essential
 19.21 observations of the recipient's health, and about any conditions that should be immediately
 19.22 brought to the attention of either the qualified professional or the attending physician;

19.23 (4) evaluate the personal care services of a recipient through direct observation of
 19.24 the personal care assistant's work or through consultation with the qualified recipient.

19.25 Evaluation shall be made:

19.26 (i) within 14 days after the placement of a personal care assistant with the qualified
 19.27 recipient;

19.28 (ii) at least once every 30 days during the first 90 days after the qualified recipient
 19.29 first receives personal care services according to the plan of personal care service; and

19.30 (iii) at least once every 120 days following the period of evaluations in item (ii). The
 19.31 qualified professional shall record in writing the results of the evaluation and actions taken
 19.32 to correct any deficiencies in the work of the personal care assistant;

19.33 (5) review, together with the recipient, and revise, as necessary, the plan of
 19.34 personal care services at least once every 120 days after a plan of personal care services
 19.35 is developed;

20.1 (6) ensure that the personal care assistant and recipient are knowledgeable about a
 20.2 change in the plan of personal care services;

20.3 (7) ensure that records are kept, showing the services provided to the recipient
 20.4 by the personal care assistant as described in subdivision 2, paragraph (f), and the time
 20.5 spent providing the services;

20.6 (8) determine that a qualified recipient is still capable of directing the recipient's
 20.7 own care or has a responsible party; and

20.8 (9) determine with a physician that a recipient is a qualified recipient.

20.9 Sec. 22. Minnesota Statutes 2006, section 256B.0655, is amended by adding a
 20.10 subdivision to read:

20.11 Subd. 15. **Overutilization of personal care services.** A personal care provider who
 20.12 is found to be providing personal care services that are not medically necessary shall be
 20.13 prohibited from participating in the medical assistance program. The determination of
 20.14 whether excess services are provided shall be made by a screening team or according to
 20.15 Minnesota Rules, parts 9505.2160 to 9505.2245. The termination of the personal care
 20.16 provider shall be consistent with the contract between the provider and the department.

20.17 Sec. 23. Minnesota Statutes 2006, section 256B.0911, subdivision 3a, is amended to
 20.18 read:

20.19 Subd. 3a. **Assessment and support planning.** (a) Persons requesting assessment,
 20.20 services planning, or other assistance intended to support community-based living,
 20.21 including persons who need assessment in order to determine waiver or alternative care
 20.22 program eligibility, must be visited by a long-term care consultation team within ten
 20.23 working days after the date on which an assessment was requested or recommended.
 20.24 Assessments must be conducted according to paragraphs (b) to ~~(g)~~ (i).

20.25 (b) The county may utilize a team of either the social worker or public health nurse,
 20.26 or both, to conduct the assessment in a face-to-face interview. The consultation team
 20.27 members must confer regarding the most appropriate care for each individual screened or
 20.28 assessed.

20.29 (c) The long-term care consultation team must assess the health and social needs of
 20.30 the person, using an assessment form provided by the commissioner.

20.31 (d) The team must conduct the assessment in a face-to-face interview with the
 20.32 person being assessed and the person's legal representative, if applicable.

20.33 (e) The team must provide the person, or the person's legal representative, with
 20.34 written recommendations for facility- or community-based services. The team must

21.1 document that the most cost-effective alternatives available were offered to the individual.
 21.2 For purposes of this requirement, "cost-effective alternatives" means community services
 21.3 and living arrangements that cost the same as or less than nursing facility care.

21.4 (f) If the person chooses to use community-based services, the team must provide
 21.5 the person or the person's legal representative with a written community support plan,
 21.6 regardless of whether the individual is eligible for Minnesota health care programs.
 21.7 The person may request assistance in developing a community support plan without
 21.8 participating in a complete assessment.

21.9 (g) The person has the right to make the final decision between nursing facility
 21.10 placement and community placement after the screening team's recommendation, except
 21.11 as provided in subdivision 4a, paragraph (c).

21.12 (h) The team must give the person receiving assessment or support planning, or
 21.13 the person's legal representative, materials, and forms supplied by the commissioner
 21.14 containing the following information:

21.15 (1) the need for and purpose of preadmission screening and assessment if the person
 21.16 selects nursing facility placement;

21.17 (2) the role of the long term care consultation assessment and support planning in
 21.18 waiver and alternative care program eligibility determination;

21.19 ~~(2)~~ (3) information about Minnesota health care programs;

21.20 ~~(3)~~ (4) the person's freedom to accept or reject the recommendations of the team;

21.21 ~~(4)~~ (5) the person's right to confidentiality under the Minnesota Government Data
 21.22 Practices Act, chapter 13; and

21.23 (6) the long term care consultant's decision regarding the person's need for nursing
 21.24 facility level of care;

21.25 ~~(5)~~ (7) the person's right to appeal the decision regarding the need for nursing facility
 21.26 level of care or the county's final decisions regarding public programs eligibility according
 21.27 to section 256.045, subdivision 3.

21.28 (i) Face-to-face assessment completed as part of eligibility determination for
 21.29 the alternative care, elderly waiver, community alternatives for disabled individuals,
 21.30 community alternative care, and traumatic brain injury waiver programs under sections
 21.31 256B.0915, 256B.0917, and 256B.49 is valid to establish service eligibility for no more
 21.32 than 60 calendar days after the date of assessment. The effective eligibility start date
 21.33 for these programs can never be prior to the date of assessment. If an assessment was
 21.34 completed more than 60 days before the effective waiver or alternative care program
 21.35 eligibility start date, assessment and support plan information must be updated in a
 21.36 face-to-face visit and documented in the department's Medicaid Management Information

22.1 System (MMIS). The effective date of program eligibility in this case cannot be prior to
 22.2 the date the updated assessment is completed.

22.3 Sec. 24. Minnesota Statutes 2006, section 256B.0911, subdivision 4b, is amended to
 22.4 read:

22.5 Subd. 4b. **Exemptions and emergency admissions.** (a) Exemptions from the
 22.6 federal screening requirements outlined in subdivision 4a, paragraphs (b) and (c), are
 22.7 limited to:

22.8 (1) a person who, having entered an acute care facility from a certified nursing
 22.9 facility, is returning to a certified nursing facility;

22.10 (2) a person transferring from one certified nursing facility in Minnesota to another
 22.11 certified nursing facility in Minnesota; and

22.12 (3) a person, 21 years of age or older, who satisfies the following criteria, as specified
 22.13 in Code of Federal Regulations, title 42, section 483.106(b)(2):

22.14 (i) the person is admitted to a nursing facility directly from a hospital after receiving
 22.15 acute inpatient care at the hospital;

22.16 (ii) the person requires nursing facility services for the same condition for which
 22.17 care was provided in the hospital; and

22.18 (iii) the attending physician has certified before the nursing facility admission that
 22.19 the person is likely to receive less than 30 days of nursing facility services.

22.20 (b) Persons who are exempt from preadmission screening for purposes of level of
 22.21 care determination include:

22.22 (1) persons described in paragraph (a);

22.23 (2) an individual who has a contractual right to have nursing facility care paid for
 22.24 indefinitely by the veterans' administration;

22.25 (3) an individual enrolled in a demonstration project under section 256B.69,
 22.26 subdivision 8, at the time of application to a nursing facility; and

22.27 (4) an individual currently being served under the alternative care program or under
 22.28 a home and community-based services waiver authorized under section 1915(c) of the
 22.29 federal Social Security Act; and,

22.30 ~~(5) individuals admitted to a certified nursing facility for a short-term stay, which~~
 22.31 ~~is expected to be 14 days or less in duration based upon a physician's certification, and~~
 22.32 ~~who have been assessed and approved for nursing facility admission within the previous~~
 22.33 ~~six months. This exemption applies only if the consultation team member determines at~~
 22.34 ~~the time of the initial assessment of the six-month period that it is appropriate to use the~~
 22.35 ~~nursing facility for short-term stays and that there is an adequate plan of care for return to~~

23.1 ~~the home or community-based setting. If a stay exceeds 14 days, the individual must be~~
 23.2 ~~referred no later than the first county working day following the 14th resident day for a~~
 23.3 ~~screening, which must be completed within five working days of the referral. The payment~~
 23.4 ~~limitations in subdivision 7 apply to an individual found at screening to not meet the level~~
 23.5 ~~of care criteria for admission to a certified nursing facility.~~

23.6 (c) Persons admitted to a Medicaid-certified nursing facility from the community
 23.7 on an emergency basis as described in paragraph (d) or from an acute care facility on a
 23.8 nonworking day must be screened the first working day after admission.

23.9 (d) Emergency admission to a nursing facility prior to screening is permitted when
 23.10 all of the following conditions are met:

23.11 (1) a person is admitted from the community to a certified nursing or certified
 23.12 boarding care facility during county nonworking hours;

23.13 (2) a physician has determined that delaying admission until preadmission screening
 23.14 is completed would adversely affect the person's health and safety;

23.15 (3) there is a recent precipitating event that precludes the client from living safely in
 23.16 the community, such as sustaining an injury, sudden onset of acute illness, or a caregiver's
 23.17 inability to continue to provide care;

23.18 (4) the attending physician has authorized the emergency placement and has
 23.19 documented the reason that the emergency placement is recommended; and

23.20 (5) the county is contacted on the first working day following the emergency
 23.21 admission.

23.22 Transfer of a patient from an acute care hospital to a nursing facility is not considered
 23.23 an emergency except for a person who has received hospital services in the following
 23.24 situations: hospital admission for observation, care in an emergency room without hospital
 23.25 admission, or following hospital 24-hour bed care.

23.26 (e) A nursing facility must provide ~~a written notice to persons who satisfy the criteria~~
 23.27 ~~in paragraph (a), clause (3);~~ information to all persons admitted regarding the person's
 23.28 right to request and receive long-term care consultation services as defined in subdivision
 23.29 1a. The notice information must be provided prior to the person's discharge from the
 23.30 facility and in a format specified by the commissioner.

23.31 Sec. 25. Minnesota Statutes 2006, section 256B.0911, subdivision 6, is amended to
 23.32 read:

23.33 **Subd. 6. Payment for long-term care consultation services.** (a) The total payment
 23.34 for each county must be paid monthly by certified nursing facilities in the county. The
 23.35 monthly amount to be paid by each nursing facility for each fiscal year must be determined

24.1 by dividing the county's annual allocation for long-term care consultation services by 12
 24.2 to determine the monthly payment and allocating the monthly payment to each nursing
 24.3 facility based on the number of licensed beds in the nursing facility. Payments to counties
 24.4 in which there is no certified nursing facility must be made by increasing the payment
 24.5 rate of the two facilities located nearest to the county seat.

24.6 (b) The commissioner shall include the total annual payment determined under
 24.7 paragraph (a) for each nursing facility reimbursed under section 256B.431 or 256B.434
 24.8 according to section 256B.431, subdivision 2b, paragraph (g), ~~or 256B.435.~~

24.9 (c) In the event of the layaway, delicensure and decertification, or removal from
 24.10 layaway of 25 percent or more of the beds in a facility, the commissioner may adjust
 24.11 the per diem payment amount in paragraph (b) and may adjust the monthly payment
 24.12 amount in paragraph (a). The effective date of an adjustment made under this paragraph
 24.13 shall be on or after the first day of the month following the effective date of the layaway,
 24.14 delicensure and decertification, or removal from layaway.

24.15 (d) Payments for long-term care consultation services are available to the county
 24.16 or counties to cover staff salaries and expenses to provide the services described in
 24.17 subdivision 1a. The county shall employ, or contract with other agencies to employ, within
 24.18 the limits of available funding, sufficient personnel to provide long-term care consultation
 24.19 services while meeting the state's long-term care outcomes and objectives as defined in
 24.20 section 256B.0917, subdivision 1. The county shall be accountable for meeting local
 24.21 objectives as approved by the commissioner in the biennial home and community-based
 24.22 services quality assurance plan on a form provided by the commissioner.

24.23 (e) Notwithstanding section 256B.0641, overpayments attributable to payment of the
 24.24 screening costs under the medical assistance program may not be recovered from a facility.

24.25 (f) The commissioner of human services shall amend the Minnesota medical
 24.26 assistance plan to include reimbursement for the local consultation teams.

24.27 (g) The county may bill, as case management services, assessments, support
 24.28 planning, and follow-along provided to persons determined to be eligible for case
 24.29 management under Minnesota health care programs. No individual or family member
 24.30 shall be charged for an initial assessment or initial support plan development provided
 24.31 under subdivision 3a or 3b.

24.32 Sec. 26. Minnesota Statutes 2006, section 256B.0911, is amended by adding a
 24.33 subdivision to read:

24.34 Subd. 6a. **Withholding.** If any provider obligated to pay the long-term care
 24.35 consultation amount as described in subdivision 6 is more than two months delinquent in

25.1 the timely payment of the monthly installment, the commissioner may withhold payments,
 25.2 penalties, and interest in accordance with the methods outlined in section 256.9657,
 25.3 subdivision 7a. Any amount withheld under this provision must be returned to the county
 25.4 to whom the delinquent payments were due.

25.5 Sec. 27. Minnesota Statutes 2006, section 256B.0911, subdivision 7, is amended to
 25.6 read:

25.7 Subd. 7. **Reimbursement for certified nursing facilities.** (a) Medical assistance
 25.8 reimbursement for nursing facilities shall be authorized for a medical assistance recipient
 25.9 only if a preadmission screening has been conducted prior to admission or the county has
 25.10 authorized an exemption. Medical assistance reimbursement for nursing facilities shall
 25.11 not be provided for any recipient who the local screener has determined does not meet the
 25.12 level of care criteria for nursing facility placement or, if indicated, has not had a level II
 25.13 OBRA evaluation as required under the federal Omnibus Budget Reconciliation Act of
 25.14 1987 completed unless an admission for a recipient with mental illness is approved by the
 25.15 local mental health authority or an admission for a recipient with developmental disability
 25.16 is approved by the state developmental disability authority.

25.17 (b) The nursing facility must not bill a person who is not a medical assistance
 25.18 recipient for resident days that preceded the date of completion of screening activities as
 25.19 required under subdivisions 4a, 4b, and 4c. The nursing facility must include unreimbursed
 25.20 resident days in the nursing facility resident day totals reported to the commissioner.

25.21 ~~(c) The commissioner shall make a request to the Centers for Medicare and Medicaid~~
 25.22 ~~Services for a waiver allowing team approval of Medicaid payments for certified nursing~~
 25.23 ~~facility care. An individual has a choice and makes the final decision between nursing~~
 25.24 ~~facility placement and community placement after the screening team's recommendation;~~
 25.25 ~~except as provided in subdivision 4a, paragraph (c).~~

25.26 Sec. 28. Minnesota Statutes 2006, section 256B.0913, subdivision 4, is amended to
 25.27 read:

25.28 Subd. 4. **Eligibility for funding for services for nonmedical assistance recipients.**

25.29 (a) Funding for services under the alternative care program is available to persons who
 25.30 meet the following criteria:

25.31 (1) the person has been determined by a community assessment under section
 25.32 256B.0911 to be a person who would require the level of care provided in a nursing
 25.33 facility, but for the provision of services under the alternative care program;

25.34 (2) the person is age 65 or older;

26.1 (3) the person would be eligible for medical assistance within 135 days of admission
26.2 to a nursing facility;

26.3 (4) the person is not ineligible for the payment of long-term care services by the
26.4 medical assistance program due to an asset transfer penalty under section 256B.0595 or
26.5 equity interest in the home exceeding \$500,000 as stated in section 256B.056;

26.6 (5) the person needs services that are not funded through other state or federal
26.7 funding;

26.8 (6) the monthly cost of the alternative care services funded by the program for
26.9 this person does not exceed 75 percent of the monthly limit described under section
26.10 256B.0915, subdivision 3a. This monthly limit does not prohibit the alternative care client
26.11 from payment for additional services, but in no case may the cost of additional services
26.12 purchased under this section exceed the difference between the client's monthly service
26.13 limit defined under section 256B.0915, subdivision 3, and the alternative care program
26.14 monthly service limit defined in this paragraph. If medical supplies and equipment or
26.15 environmental modifications are or will be purchased for an alternative care services
26.16 recipient, the costs may be prorated on a monthly basis for up to 12 consecutive months
26.17 beginning with the month of purchase. If the monthly cost of a recipient's other alternative
26.18 care services exceeds the monthly limit established in this paragraph, the annual cost of the
26.19 alternative care services shall be determined. In this event, the annual cost of alternative
26.20 care services shall not exceed 12 times the monthly limit described in this paragraph; and

26.21 (7) the person is making timely payments of the assessed monthly fee.

26.22 A person is ineligible if payment of the fee is over 60 days past due, unless the person
26.23 agrees to:

26.24 (i) the appointment of a representative payee;

26.25 (ii) automatic payment from a financial account;

26.26 (iii) the establishment of greater family involvement in the financial management of
26.27 payments; or

26.28 (iv) another method acceptable to the county to ensure prompt fee payments.

26.29 The county shall extend the client's eligibility as necessary while making
26.30 arrangements to facilitate payment of past-due amounts and future premium payments.
26.31 Following disenrollment due to nonpayment of a monthly fee, eligibility shall not be
26.32 reinstated for a period of 30 days.

26.33 (b) Alternative care funding under this subdivision is not available for a person
26.34 who is a medical assistance recipient or who would be eligible for medical assistance
26.35 without a spenddown or waiver obligation. A person whose initial application for medical
26.36 assistance and the elderly waiver program is being processed may be served under the

27.1 alternative care program for a period up to 60 days. If the individual is found to be eligible
 27.2 for medical assistance, medical assistance must be billed for services payable under the
 27.3 federally approved elderly waiver plan and delivered from the date the individual was
 27.4 found eligible for the federally approved elderly waiver plan. Notwithstanding this
 27.5 provision, alternative care funds may not be used to pay for any service the cost of which:
 27.6 (i) is payable by medical assistance; (ii) is used by a recipient to meet a waiver obligation;
 27.7 or (iii) is used to pay a medical assistance income spenddown for a person who is eligible
 27.8 to participate in the federally approved elderly waiver program under the special income
 27.9 standard provision.

27.10 (c) Alternative care funding is not available for a person who resides in a licensed
 27.11 nursing home, certified boarding care home, hospital, or intermediate care facility, except
 27.12 for case management services which are provided in support of the discharge planning
 27.13 process for a nursing home resident or certified boarding care home resident to assist with
 27.14 a relocation process to a community-based setting.

27.15 (d) Alternative care funding is not available for a person whose income is greater
 27.16 than the maintenance needs allowance under section 256B.0915, subdivision 1d, but
 27.17 equal to or less than 120 percent of the federal poverty guideline effective July 1 in the
 27.18 year for which alternative care eligibility is determined, who would be eligible for the
 27.19 elderly waiver with a waiver obligation.

27.20 Sec. 29. Minnesota Statutes 2006, section 256B.0913, subdivision 5a, is amended to
 27.21 read:

27.22 Subd. 5a. **Services; service definitions; service standards.** (a) Unless specified in
 27.23 statute, the services, service definitions, and standards for alternative care services shall
 27.24 be the same as the services, service definitions, and standards specified in the federally
 27.25 approved elderly waiver plan, except for alternative care does not cover transitional
 27.26 support services, assisted living services, adult foster care services, and residential care
 27.27 services and benefits defined under section 256B.0625 that meet primary and acute
 27.28 health care needs.

27.29 (b) The county agency must ensure that the funds are not used to supplant or
 27.30 supplement services available through other public assistance or services programs,
 27.31 including supplementation of client co-pays, deductibles, premiums, or other cost-sharing
 27.32 arrangements for health-related benefits and services or entitlement programs and services
 27.33 that are available to the person, but in which they have elected not to enroll. For a provider
 27.34 of supplies and equipment when the monthly cost of the supplies and equipment is less
 27.35 than \$250, persons or agencies must be employed by or under a contract with the county

28.1 agency or the public health nursing agency of the local board of health in order to receive
 28.2 funding under the alternative care program. Supplies and equipment may be purchased
 28.3 from a vendor not certified to participate in the Medicaid program if the cost for the
 28.4 item is less than that of a Medicaid vendor.

28.5 (c) Personal care services must meet the service standards defined in the federally
 28.6 approved elderly waiver plan, except that a county agency may contract with a client's
 28.7 relative who meets the relative hardship waiver requirements or a relative who meets the
 28.8 criteria and is also the responsible party under an individual service plan that ensures the
 28.9 client's health and safety and supervision of the personal care services by a qualified
 28.10 professional as defined in section 256B.0625, subdivision 19c. Relative hardship is
 28.11 established by the county when the client's care causes a relative caregiver to do any of the
 28.12 following: resign from a paying job, reduce work hours resulting in lost wages, obtain a
 28.13 leave of absence resulting in lost wages, incur substantial client-related expenses, provide
 28.14 services to address authorized, unstaffed direct care time, or meet special needs of the
 28.15 client unmet in the formal service plan.

28.16 Sec. 30. Minnesota Statutes 2006, section 256B.0915, is amended to read:

28.17 **256B.0915 MEDICAID WAIVER FOR ELDERLY SERVICES.**

28.18 Subdivision 1. **Authority.** The commissioner is authorized to apply for a home
 28.19 and community-based services waiver for the elderly, authorized under section 1915(c)
 28.20 of the Social Security Act, in order to obtain federal financial participation to expand
 28.21 the availability of services for persons who are eligible for medical assistance. The
 28.22 commissioner may apply for additional waivers or pursue other federal financial
 28.23 participation which is advantageous to the state for funding home care services for the
 28.24 frail elderly who are eligible for medical assistance. The provision of waived services
 28.25 to elderly and disabled medical assistance recipients must comply with the criteria for
 28.26 service definitions and provider standards approved in the waiver.

28.27 Subd. 1a. **Elderly waiver case management services.** (a) Elderly case management
 28.28 services under the home and community-based services waiver for elderly individuals are
 28.29 available from providers meeting qualification requirements and the standards specified
 28.30 in subdivision 1b. Eligible recipients may choose any qualified provider of elderly case
 28.31 management services.

28.32 Case management services assist individuals who receive waiver services in gaining
 28.33 access to needed waiver and other state plan services, as well as needed medical, social,
 28.34 educational, and other services regardless of the funding source for the services to which
 28.35 access is gained.

29.1 A case aide shall provide assistance to the case manager in carrying out
 29.2 administrative activities of the case management function. The case aide may not assume
 29.3 responsibilities that require professional judgment including assessments, reassessments,
 29.4 and care plan development. The case manager is responsible for providing oversight of
 29.5 the case aide.

29.6 Case managers shall be responsible for ongoing monitoring of the provision of
 29.7 services included in the individual's plan of care. Case managers shall initiate and oversee
 29.8 the process of assessment and reassessment of the individual's care and review plan of
 29.9 care at intervals specified in the federally approved waiver plan.

29.10 (b) The county of service or tribe must provide access to and arrange for case
 29.11 management services. County of service has the meaning given it in Minnesota Rules,
 29.12 part 9505.0015, subpart 11.

29.13 Subd. 1b. **Provider qualifications and standards.** The commissioner must
 29.14 enroll qualified providers of elderly case management services under the home
 29.15 and community-based waiver for the elderly under section 1915(c) of the Social
 29.16 Security Act. The enrollment process shall ensure the provider's ability to meet the
 29.17 qualification requirements and standards in this subdivision and other federal and state
 29.18 requirements of this service. An elderly case management provider is an enrolled medical
 29.19 assistance provider who is determined by the commissioner to have all of the following
 29.20 characteristics:

29.21 (1) the demonstrated capacity and experience to provide the components of
 29.22 case management to coordinate and link community resources needed by the eligible
 29.23 population;

29.24 (2) administrative capacity and experience in serving the target population for
 29.25 whom it will provide services and in ensuring quality of services under state and federal
 29.26 requirements;

29.27 (3) a financial management system that provides accurate documentation of services
 29.28 and costs under state and federal requirements;

29.29 (4) the capacity to document and maintain individual case records under state and
 29.30 federal requirements; and

29.31 (5) the ~~county~~ lead agency may allow a case manager employed by the ~~county~~ lead
 29.32 agency to delegate certain aspects of the case management activity to another individual
 29.33 employed by the ~~county~~ lead agency provided there is oversight of the individual by
 29.34 the case manager. The case manager may not delegate those aspects which require
 29.35 professional judgment including assessments, reassessments, and care plan development.

30.1 Lead agencies include counties, health plans, and federally recognized tribes who
 30.2 authorize services under this section.

30.3 ~~Subd. 1c. **Case management activities under the state plan.** The commissioner~~
 30.4 ~~shall seek an amendment to the home and community-based services waiver for the~~
 30.5 ~~elderly to implement the provisions of subdivisions 1a and 1b. If the commissioner~~
 30.6 ~~is unable to secure the approval of the secretary of health and human services for the~~
 30.7 ~~requested waiver amendment by December 31, 1993, the commissioner shall amend~~
 30.8 ~~the medical assistance state plan to provide that case management provided under the~~
 30.9 ~~home and community-based services waiver for the elderly is performed by counties~~
 30.10 ~~as an administrative function for the proper and effective administration of the state~~
 30.11 ~~medical assistance plan. The state shall reimburse counties for the nonfederal share of~~
 30.12 ~~costs for case management performed as an administrative function under the home and~~
 30.13 ~~community-based services waiver for the elderly.~~

30.14 Subd. 1d. **Posteligibility treatment of income and resources for elderly waiver.**
 30.15 Notwithstanding the provisions of section 256B.056, the commissioner shall make the
 30.16 following amendment to the medical assistance elderly waiver program effective July 1,
 30.17 1999, or upon federal approval, whichever is later.

30.18 A recipient's maintenance needs will be an amount equal to the Minnesota
 30.19 supplemental aid equivalent rate as defined in section 256I.03, subdivision 5, plus the
 30.20 medical assistance personal needs allowance as defined in section 256B.35, subdivision
 30.21 1, paragraph (a), when applying posteligibility treatment of income rules to the gross
 30.22 income of elderly waiver recipients, except for individuals whose income is in excess of
 30.23 the special income standard according to Code of Federal Regulations, title 42, section
 30.24 435.236. Recipient maintenance needs shall be adjusted under this provision each July 1.

30.25 Subd. 2. **Spousal impoverishment policies.** The commissioner shall ~~seek to amend~~
 30.26 ~~the federal waiver and the medical assistance state plan to allow~~ apply:

30.27 (1) the spousal impoverishment criteria as authorized under United States Code, title
 30.28 42, section 1396r-5, and as implemented in sections 256B.0575, 256B.058, and 256B.059;
 30.29 ~~except that the amendment shall seek to add to;~~

30.30 (2) the personal needs allowance permitted in section 256B.0575;; and

30.31 (3) an amount equivalent to the group residential housing rate as set by section
 30.32 256I.03, subdivision 5, and according to the approved federal waiver and medical
 30.33 assistance state plan.

30.34 Subd. 3. **Limits of cases.** The number of medical assistance waiver recipients that
 30.35 a county lead agency may serve must be allocated according to the number of medical

31.1 assistance waiver cases open on July 1 of each fiscal year. Additional recipients may be
31.2 served with the approval of the commissioner.

31.3 Subd. 3a. **Elderly waiver cost limits.** (a) The monthly limit for the cost of waived
31.4 services to an individual elderly waiver client shall be the weighted average monthly
31.5 nursing facility rate of the case mix resident class to which the elderly waiver client would
31.6 be assigned under Minnesota Rules, parts 9549.0050 to 9549.0059, less the recipient's
31.7 maintenance needs allowance as described in subdivision 1d, paragraph (a), until the first
31.8 day of the state fiscal year in which the resident assessment system as described in section
31.9 256B.437 for nursing home rate determination is implemented. Effective on the first day
31.10 of the state fiscal year in which the resident assessment system as described in section
31.11 256B.437 for nursing home rate determination is implemented and the first day of each
31.12 subsequent state fiscal year, the monthly limit for the cost of waived services to an
31.13 individual elderly waiver client shall be the rate of the case mix resident class to which the
31.14 waiver client would be assigned under Minnesota Rules, parts 9549.0050 to 9549.0059,
31.15 in effect on the last day of the previous state fiscal year, adjusted by the greater of any
31.16 legislatively adopted home and community-based services percentage rate increase or the
31.17 average statewide percentage increase in nursing facility payment rates.

31.18 (b) If extended medical supplies and equipment or environmental modifications are
31.19 or will be purchased for an elderly waiver client, the costs may be prorated for up to
31.20 12 consecutive months beginning with the month of purchase. If the monthly cost of a
31.21 recipient's waived services exceeds the monthly limit established in paragraph (a), the
31.22 annual cost of all waived services shall be determined. In this event, the annual cost of
31.23 all waived services shall not exceed 12 times the monthly limit of waived services as
31.24 described in paragraph (a).

31.25 Subd. 3b. **Cost limits for elderly waiver applicants who reside in a nursing**
31.26 **facility.** (a) For a person who is a nursing facility resident at the time of requesting a
31.27 determination of eligibility for elderly waived services, a monthly conversion limit for
31.28 the cost of elderly waived services may be requested. The monthly conversion limit for
31.29 the cost of elderly waiver services shall be the resident class assigned under Minnesota
31.30 Rules, parts 9549.0050 to 9549.0059, for that resident in the nursing facility where
31.31 the resident currently resides until July 1 of the state fiscal year in which the resident
31.32 assessment system as described in section 256B.437 for nursing home rate determination
31.33 is implemented. Effective on July 1 of the state fiscal year in which the resident
31.34 assessment system as described in section 256B.437 for nursing home rate determination
31.35 is implemented, the monthly conversion limit for the cost of elderly waiver services
31.36 shall be the per diem nursing facility rate as determined by the resident assessment

32.1 system as described in section 256B.437 for that resident in the nursing facility where
 32.2 the resident currently resides multiplied by 365 and divided by 12, less the recipient's
 32.3 maintenance needs allowance as described in subdivision 1d. The initially approved
 32.4 conversion rate may be adjusted by the greater of any subsequent legislatively adopted
 32.5 home and community-based services percentage rate increase or the average statewide
 32.6 percentage increase in nursing facility payment rates. The limit under this subdivision
 32.7 only applies to persons discharged from a nursing facility after a minimum 30-day stay
 32.8 and found eligible for waived services on or after July 1, 1997. For conversions from the
 32.9 nursing home to the elderly waiver with consumer directed community support services,
 32.10 the conversion rate limit is equal to the nursing facility rate reduced by a percentage equal
 32.11 to the percentage difference between the consumer directed services budget limit that
 32.12 would be assigned according to the federally approved waiver plan and the corresponding
 32.13 community case mix cap, but not to exceed 50 percent.

32.14 (b) The following costs must be included in determining the total monthly costs
 32.15 for the waiver client:

32.16 (1) cost of all waived services, including extended medical supplies and equipment
 32.17 and environmental modifications and adaptations; and

32.18 (2) cost of skilled nursing, home health aide, and personal care services reimbursable
 32.19 by medical assistance.

32.20 Subd. 3c. **Service approval and contracting provisions.** (a) Medical assistance
 32.21 funding for skilled nursing services, private duty nursing, home health aide, and personal
 32.22 care services for waiver recipients must be approved by the case manager and included in
 32.23 the individual care plan.

32.24 (b) A ~~county~~ lead agency is not required to contract with a provider of supplies and
 32.25 equipment if the monthly cost of the supplies and equipment is less than \$250.

32.26 Subd. 3d. **Adult foster care rate.** The adult foster care rate shall be considered
 32.27 a difficulty of care payment and shall not include room and board. The adult foster
 32.28 care service rate shall be negotiated between the ~~county~~ lead agency and the foster care
 32.29 provider. The elderly waiver payment for the foster care service in combination with
 32.30 the payment for all other elderly waiver services, including case management, must not
 32.31 exceed the limit specified in subdivision 3a, paragraph (a).

32.32 Subd. 3e. ~~Assisted living~~ **Customized living service rate.** (a) Payment for ~~assisted~~
 32.33 ~~living service~~ customize living services shall be a monthly rate negotiated and authorized
 32.34 by the ~~county agency based on an individualized service plan for each resident and may~~
 32.35 ~~not cover direct rent or food costs.~~ lead agency within the parameters established by
 32.36 the commissioner. The payment agreement must delineate the services that have been

33.1 customized for each recipient and specify the amount of each service to be provided. The
 33.2 lead agency shall ensure that there is a documented need for all services authorized.
 33.3 Customized living services must not include rent or raw food costs. The negotiated
 33.4 payment rate must be based on services to be provided. Negotiated rates must not exceed
 33.5 payment rates for comparable elderly waiver or medical assistance services and must
 33.6 reflect economies of scale.

33.7 (b) The individualized monthly negotiated payment for ~~assisted living~~ customized
 33.8 living services as described in section 256B.0913, subdivisions 5d to 5f, and residential
 33.9 ~~care services as described in section 256B.0913, subdivision 5e,~~ shall not exceed the
 33.10 nonfederal share, in effect on July 1 of the state fiscal year for which the rate limit
 33.11 is being calculated, of the greater of either the statewide or any of the geographic
 33.12 groups' weighted average monthly nursing facility rate of the case mix resident class
 33.13 to which the elderly waiver eligible client would be assigned under Minnesota Rules,
 33.14 parts 9549.0050 to 9549.0059, less the maintenance needs allowance as described in
 33.15 subdivision 1d, paragraph (a), until the July 1 of the state fiscal year in which the resident
 33.16 assessment system as described in section 256B.437 for nursing home rate determination
 33.17 is implemented. Effective on July 1 of the state fiscal year in which the resident
 33.18 assessment system as described in section 256B.437 for nursing home rate determination
 33.19 is implemented and July 1 of each subsequent state fiscal year, the individualized monthly
 33.20 negotiated payment for the services described in this clause shall not exceed the limit
 33.21 described in this clause which was in effect on June 30 of the previous state fiscal year
 33.22 and which has been adjusted by the greater of any legislatively adopted home and
 33.23 community-based services cost-of-living percentage increase or any legislatively adopted
 33.24 statewide percent rate increase for nursing facilities.

33.25 (c) ~~The individualized monthly negotiated payment for assisted~~ Customized living
 33.26 ~~services described in section 144A.4605 and~~ are delivered by a provider licensed by the
 33.27 Department of Health as a class A or class F home care provider ~~or an assisted living~~
 33.28 ~~home care provider~~ and provided in a building that is registered as a housing with services
 33.29 establishment under chapter 144D ~~and that provides 24-hour supervision in combination~~
 33.30 ~~with the payment for other elderly waiver services, including case management, must not~~
 33.31 ~~exceed the limit specified in subdivision 3a.~~

33.32 Subd. 3f. **Individual service rates; expenditure forecasts.** (a) The ~~county~~ lead
 33.33 agency shall negotiate individual service rates with vendors and may authorize payment
 33.34 for actual costs up to the ~~county's~~ lead agency's current approved rate. Persons or agencies
 33.35 must be employed by or under a contract with the ~~county~~ lead agency or the public health
 33.36 nursing agency of the local board of health in order to receive funding under the elderly

34.1 waiver program, except as a provider of supplies and equipment when the monthly cost of
34.2 the supplies and equipment is less than \$250.

34.3 (b) Reimbursement for the medical assistance recipients under the approved waiver
34.4 shall be made from the medical assistance account through the invoice processing
34.5 procedures of the department's Medicaid Management Information System (MMIS),
34.6 only with the approval of the client's case manager. The budget for the state share of the
34.7 Medicaid expenditures shall be forecasted with the medical assistance budget, and shall
34.8 be consistent with the approved waiver.

34.9 Subd. 3g. **Service rate limits; state assumption of costs.** (a) To improve access
34.10 to community services and eliminate payment disparities between the alternative care
34.11 program and the elderly waiver, the commissioner shall establish statewide maximum
34.12 service rate limits and eliminate ~~county-specific~~ lead agency-specific service rate limits.

34.13 (b) Effective July 1, 2001, for service rate limits, except those described or defined in
34.14 subdivisions 3d and 3e, the rate limit for each service shall be the greater of the alternative
34.15 care statewide maximum rate or the elderly waiver statewide maximum rate.

34.16 (c) ~~Counties~~ Lead agencies may negotiate individual service rates with vendors for
34.17 actual costs up to the statewide maximum service rate limit.

34.18 Subd. 4. **Termination notice.** The case manager must give the individual a ten-day
34.19 written notice of any denial, reduction, or termination of waived services.

34.20 Subd. 5. **Assessments and reassessments for waiver clients.** Each client shall
34.21 receive an initial assessment of strengths, informal supports, and need for services in
34.22 accordance with section 256B.0911, subdivisions 3, 3a, and 3b. A reassessment of a
34.23 client served under the elderly waiver must be conducted at least every 12 months and
34.24 at other times when the case manager determines that there has been significant change
34.25 in the client's functioning. This may include instances where the client is discharged
34.26 from the hospital.

34.27 Subd. 6. **Implementation of care plan.** Each elderly waiver client shall be provided
34.28 a copy of a written care plan that meets the requirements outlined in section 256B.0913,
34.29 subdivision 8. The care plan must be implemented by the county ~~administering waived~~
34.30 ~~services~~ of service when it is different than the county of financial responsibility. The
34.31 county of service administering waived services must notify the county of financial
34.32 responsibility of the approved care plan.

34.33 Subd. 7. **Prepaid elderly waiver services.** An individual for whom a prepaid health
34.34 plan is liable for nursing home services or elderly waiver services according to section
34.35 256B.69, subdivision 6a, is not eligible to also receive county-administered elderly waiver
34.36 services ~~under this section~~.

35.1 Subd. 8. **Services and supports.** (a) Services and supports shall meet the
35.2 requirements set out in United States Code, title 42, section 1396n.

35.3 (b) Services and supports shall promote consumer choice and be arranged and
35.4 provided consistent with individualized, written care plans.

35.5 (c) The state of Minnesota, county, managed care organization, or tribal government
35.6 under contract to administer the elderly waiver shall not be liable for damages, injuries,
35.7 or liabilities sustained through the purchase of direct supports or goods by the person,
35.8 the person's family, or the authorized representatives with funds received through
35.9 consumer-directed community support services under the federally approved waiver plan.
35.10 Liabilities include, but are not limited to, workers' compensation liability, the Federal
35.11 Insurance Contributions Act (FICA), or the Federal Unemployment Tax Act (FUTA).

35.12 Subd. 9. **Tribal management of elderly waiver.** Notwithstanding contrary
35.13 provisions of this section, or those in other state laws or rules, the commissioner may
35.14 develop a model for tribal management of the elderly waiver program and implement this
35.15 model through a contract between the state and any of the state's federally recognized tribal
35.16 governments. The model shall include the provision of tribal waiver case management,
35.17 assessment for personal care assistance, and administrative requirements otherwise carried
35.18 out by ~~counties~~ lead agencies but shall not include tribal financial eligibility determination
35.19 for medical assistance.

35.20 Sec. 31. Minnesota Statutes 2006, section 256B.27, subdivision 2a, is amended to read:

35.21 Subd. 2a. **On-site audits.** ~~Each year~~ The commissioner shall provide for ~~the on-site~~
35.22 an audit of the cost reports and statistical data of nursing ~~homes~~ facilities participating
35.23 as vendors of medical assistance. The commissioner shall select for audit at least 15
35.24 percent of these nursing ~~homes~~ facilities at random or using factors including, but not
35.25 limited to: change in ownership; frequent changes in administration in excess of normal
35.26 turnover rates; complaints to the commissioner of health about care, safety, or rights;
35.27 where previous inspections or reinspections under section 144A.10 have resulted in
35.28 correction orders related to care, safety, or rights; or where persons involved in ownership
35.29 or administration of the facility have been indicted for alleged criminal activity.

35.30 The commissioner shall meet the 15 percent requirement by either conducting an
35.31 audit focused on an individual nursing facility, a group of facilities, or targeting specific
35.32 data categories in multiple nursing facilities. These audits may be conducted on-site
35.33 at the nursing facility, at office space used by a nursing facility or a nursing facility's
35.34 parent organization, or at the commissioner's office. Data being audited may be collected
35.35 electronically, in person, or by any other means the commissioner finds acceptable.

36.1 Sec. 32. Minnesota Statutes 2006, section 256B.49, subdivision 13, is amended to read:

36.2 Subd. 13. **Case management.** (a) Each recipient of a home and community-based
36.3 waiver shall be provided case management services by qualified vendors as described
36.4 in the federally approved waiver application. The case management service activities
36.5 provided will include:

36.6 (1) assessing the needs of the individual ~~within 20 working days of a recipient's~~
36.7 ~~request;~~

36.8 (2) developing the written individual service plan within ten working days after the
36.9 assessment is completed;

36.10 (3) informing the recipient or the recipient's legal guardian or conservator of service
36.11 options;

36.12 (4) assisting the recipient in the identification of potential service providers;

36.13 (5) assisting the recipient to access services;

36.14 (6) coordinating, evaluating, and monitoring of the services identified in the service
36.15 plan;

36.16 (7) completing the annual reviews of the service plan; and

36.17 (8) informing the recipient or legal representative of the right to have assessments
36.18 completed and service plans developed within specified time periods, and to appeal county
36.19 action or inaction under section 256.045, subdivision 3.

36.20 (b) The case manager may delegate certain aspects of the case management service
36.21 activities to another individual provided there is oversight by the case manager. The case
36.22 manager may not delegate those aspects which require professional judgment including
36.23 assessments, reassessments, and care plan development.

36.24 Sec. 33. Minnesota Statutes 2006, section 256B.49, subdivision 14, is amended to read:

36.25 Subd. 14. **Assessment and reassessment.** (a) Assessments of each recipient's
36.26 strengths, informal support systems, and need for services shall be completed ~~within~~
36.27 ~~20 working days of the recipient's request.~~ Reassessment of each recipient's strengths,
36.28 support systems, and need for services shall be conducted at least every 12 months and at
36.29 other times when there has been a significant change in the recipient's functioning.

36.30 (b) Persons with developmental disabilities who apply for services under the nursing
36.31 facility level waiver programs shall be screened for the appropriate level of care according
36.32 to section 256B.092.

36.33 (c) Recipients who are found eligible for home and community-based services under
36.34 this section before their 65th birthday may remain eligible for these services after their
36.35 65th birthday if they continue to meet all other eligibility factors.

37.1 Sec. 34. **REPEALER.**

37.2 (a) Minnesota Statutes 2006, section 256.9743, is repealed.

37.3 (b) Minnesota Rules, part 9505.0335, is repealed.