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State of Minnesota
HOUSE OF REPRESENTATIVES

EIGHTY-SIXTH
SESSION

HOUSE FILE No. **3264**

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

A bill for an act

relating to human services; modifying personal care assistant services; amending
Minnesota Statutes 2009 Supplement, sections 256B.0625, subdivision 6a;
256B.0653, subdivision 3; 256B.0659, subdivisions 1, 3, 4, 11, 13, 14, 18, 19,
20, 21, 27, 29, 30.

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

Section 1. Minnesota Statutes 2009 Supplement, section 256B.0625, subdivision 6a,
is amended to read:

Subd. 6a. **Home health services.** Home health services are those services specified
in Minnesota Rules, part 9505.0295 and sections 256B.0651 and 256B.0653. Medical
assistance covers home health services ~~at a recipient's home residence~~ for a recipient
who lives at the recipient's home. Medical assistance does not cover home health
services for residents of a hospital, nursing facility, or intermediate care facility, unless
the commissioner of human services has authorized skilled nurse visits for less than
90 days for a resident at an intermediate care facility for persons with developmental
disabilities, to prevent an admission to a hospital or nursing facility or unless a resident
who is otherwise eligible is on leave from the facility and the facility either pays for the
home health services or forgoes the facility per diem for the leave days that home health
services are used. Home health services must be provided by a Medicare certified home
health agency. All nursing and home health aide services must be provided according to
sections 256B.0651 to 256B.0653.

Sec. 2. Minnesota Statutes 2009 Supplement, section 256B.0653, subdivision 3,
is amended to read:

Subd. 3. **Home health aide visits.** (a) Home health aide visits must be provided by a certified home health aide using a written plan of care that is updated in compliance with Medicare regulations. A home health aide shall provide hands-on personal care, perform simple procedures as an extension of therapy or nursing services, and assist in instrumental activities of daily living as defined in section 256B.0659. Home health aide visits ~~must be~~ are provided in the recipient's to a recipient living at the recipient's home.

(b) All home health aide visits must have authorization under section 256B.0652. The commissioner shall limit home health aide visits to no more than one visit per day per recipient.

(c) Home health aides must be supervised by a registered nurse or an appropriate therapist when providing services that are an extension of therapy.

Sec. 3. Minnesota Statutes 2009 Supplement, section 256B.0659, subdivision 1, is amended to read:

Subdivision 1. **Definitions.** (a) For the purposes of this section, the terms defined in paragraphs (b) to ~~(p)~~ (s) have the meanings given unless otherwise provided in text.

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

(c) "Behavior," effective January 1, 2010, means a category to determine the home care rating and is based on the criteria found in this section. "Level I behavior" means physical aggression towards self, others, or destruction of property that requires the immediate response of another person.

(d) "Complex health-related needs," effective January 1, 2010, means a category to determine the home care rating and is based on the criteria found in this section.

(e) "Critical activities of daily living," effective January 1, 2010, means transferring, mobility, eating, and toileting.

(f) "Dependency in activities of daily living" means a person requires assistance to begin and complete one or more of the activities of daily living.

(g) "Extended personal care assistance service" means personal care assistance services included in a service plan under one of the home and community-based services waivers authorized under sections 256B.049, 256B.0915, and 256B.092, subdivision 5, which exceed the amount, duration, and frequency of the state plan personal care assistance services for participants who:

(1) need assistance provided periodically during a week, but less than daily, will not be able to remain in their home without such assistance, and other replacement

3.1 services are more expensive or are not available when personal care assistance services
3.2 are to be terminated;

3.3 (2) need additional personal care assistance services beyond the amount authorized
3.4 by the state plan personal care assistance assessment in order to assure that their safety,
3.5 health, and welfare are provided for in their homes; or

3.6 (3) need a personal care assistance staff to exceed the 310-hour monthly work limit
3.7 because of the need for intermittent care over a 24-hour period up to an amount designated
3.8 in the individual service plan, as long as there is a dependable staffing backup plan as
3.9 part of the individual service plan.

3.10 (h) "Health-related procedures and tasks" means procedures and tasks that can
3.11 be delegated or assigned by a licensed health care professional under state law to be
3.12 performed by a personal care assistant.

3.13 ~~(h)~~ (i) "Instrumental activities of daily living" means activities to include meal
3.14 planning and preparation; basic assistance with paying bills; shopping for food, clothing,
3.15 and other essential items; performing household tasks integral to the personal care
3.16 assistance services; communication by telephone and other media; and traveling, including
3.17 to medical appointments and to participate in the community.

3.18 ~~(i)~~ (j) "Managing employee" has the same definition as Code of Federal Regulations,
3.19 title 42, section 455.

3.20 ~~(j)~~ (k) "Qualified professional" means a professional providing supervision of
3.21 personal care assistance services and staff as defined in section 256B.0625, subdivision
3.22 19c.

3.23 ~~(k)~~ (l) "Personal care assistance provider agency" means a medical assistance
3.24 enrolled provider that provides or assists with providing personal care assistance services
3.25 and includes a personal care assistance provider organization, personal care assistance
3.26 choice agency, class A licensed nursing agency, and Medicare-certified home health
3.27 agency.

3.28 ~~(l)~~ (m) "Personal care assistant" or "PCA" means an individual employed by a
3.29 personal care assistance agency who provides personal care assistance services.

3.30 ~~(m)~~ (n) "Personal care assistance care plan" means a written description of personal
3.31 care assistance services developed by the personal care assistance provider according
3.32 to the service plan.

3.33 (o) "Personal care support service" means a service that meets the requirements of
3.34 this section but is available only to participants in a home and community-based services
3.35 waiver who no longer qualify for personal care assistance services because they do not
3.36 meet the requirements of subdivision 4, paragraph (b), but do need prompting and cuing

in order to accomplish activities of daily living necessary to maintain their health and welfare and remain safely in their home or apartment and any recommended replacement services will either cost more than personal care assistance services or are not available when the personal care assistance services are to be terminated.

~~(n)~~ (p) "Responsible party" means an individual who is capable of providing the support necessary to assist the recipient to live in the community.

~~(o)~~ (q) "Self-administered medication" means medication taken orally, by injection or insertion, or applied topically without the need for assistance.

~~(p)~~ (r) "Service plan" means a written summary of the assessment and description of the services needed by the recipient.

(s) "Wages and benefits" means wages and salaries, the employer's share of FICA taxes, Medicare taxes, state and federal unemployment taxes, workers' compensation, mileage reimbursement, health and dental insurance, life insurance, disability insurance, long-term care insurance, uniform allowance, contributions to employee retirement accounts, and other payments made by the employer for the benefit of its employees.

Sec. 4. Minnesota Statutes 2009 Supplement, section 256B.0659, subdivision 3, is amended to read:

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

(1) by the recipient's spouse, parent of a recipient under the age of 18, paid legal guardian, licensed foster provider, except as allowed under section 256B.0651, subdivision 10, or responsible party;

(2) in lieu of other staffing options in a residential or child care setting;

(3) solely as a child care or babysitting service; or

(4) without authorization by the commissioner or the commissioner's designee.

(b) The following personal care services are not eligible for medical assistance payment under this section when provided in residential settings:

(1) effective January 1, 2010, when the provider of home care services who is not related by blood, marriage, or adoption owns or otherwise controls the living arrangement, including licensed or unlicensed services; or

(2) when personal care assistance services are the responsibility of a residential or program license holder under the terms of a service agreement and administrative rules.

(c) Other specific tasks not covered under paragraph (a) or (b) that are not eligible for medical assistance reimbursement for personal care assistance services under this section include:

- (1) sterile procedures;
- (2) injections of fluids and medications into veins, muscles, or skin;
- (3) home maintenance or chore services;
- (4) homemaker services not an integral part of assessed personal care assistance services needed by a recipient;
- (5) application of restraints or implementation of procedures under section 245.825;
- (6) instrumental activities of daily living for children under the age of 18, unless listed in the service plan by the assessor; and
- (7) assessments for personal care assistance services by personal care assistance provider agencies or by independently enrolled registered nurses.

Sec. 5. Minnesota Statutes 2009 Supplement, section 256B.0659, subdivision 4, is amended to read:

Subd. 4. **Assessment for personal care assistance services; limitations.** (a) An assessment as defined in subdivision 3a must be completed for personal care assistance services.

(b) The following limitations apply to the assessment:

(1) a person must be assessed as dependent in an activity of daily living based on the person's ongoing need, ~~on a daily basis~~, for:

(i) cuing and constant supervision to complete the task; ~~or~~

(ii) hands-on assistance to complete the task; ~~and~~ or

(iii) prompting and cuing essential to ensure accomplishment of the task; and

(2) a child may not be found to be dependent in an activity of daily living if because of the child's age an adult would either perform the activity for the child or assist the child with the activity. Assistance needed is the assistance appropriate for a typical child of the same age.

(c) Assessment for complex health-related needs must meet the criteria in this paragraph. During the assessment process, a recipient qualifies as having complex health-related needs if the recipient has one or more of the interventions that are ordered by a physician, specified in a personal care assistance care plan, and found in the following:

(1) tube feedings requiring:

(i) a gastro/jejunostomy tube; or

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

6.1 (2) wounds described as:

6.2 (i) stage III or stage IV;

6.3 (ii) multiple wounds;

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

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

6.7 (3) parenteral therapy described as:

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

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

6.11 (4) respiratory interventions including:

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

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

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

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

6.16 (v) dependence on another to apply respiratory ventilation augmentation devices
6.17 such as BiPAP and CPAP; and

6.18 (vi) ventilator dependence under section 256B.0652;

6.19 (5) insertion and maintenance of catheter including:

6.20 (i) sterile catheter changes more than one time per month;

6.21 (ii) clean self-catheterization more than six times per day; or

6.22 (iii) bladder irrigations;

6.23 (6) bowel program more than two times per week requiring more than 30 minutes to
6.24 perform each time;

6.25 (7) neurological intervention including:

6.26 (i) seizures more than two times per week and requiring significant physical
6.27 assistance to maintain safety; or

6.28 (ii) swallowing disorders diagnosed by a physician and requiring specialized
6.29 assistance from another on a daily basis; and

6.30 (8) other congenital or acquired diseases creating a need for significantly increased
6.31 direct hands-on assistance and interventions in six to eight activities of daily living.

6.32 (d) An assessment of behaviors must meet the criteria in this paragraph. A recipient
6.33 qualifies as having a need for assistance due to behaviors if the recipient's behavior requires
6.34 assistance at least four times per week and shows one or more of the following behaviors:

6.35 (1) physical aggression towards self or others, or destruction of property that requires
6.36 the immediate response of another person;

- 7.1 (2) increased vulnerability due to cognitive deficits or socially inappropriate
7.2 behavior; or
7.3 (3) verbally aggressive and resistive to care.

7.4 Sec. 6. Minnesota Statutes 2009 Supplement, section 256B.0659, subdivision 11,
7.5 is amended to read:

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

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

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

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

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

7.14 (3) enroll with the department as a personal care assistant after clearing a background
7.15 study. Before a personal care assistant provides services, the personal care assistance
7.16 provider agency must initiate a background study on the personal care assistant under
7.17 chapter 245C, and the personal care assistance provider agency must have received a
7.18 notice from the commissioner that the personal care assistant is:

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

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

7.22 For individuals who are not disqualified or who have received a set-aside, the
7.23 commissioner shall issue a unique medical provider identification number within five
7.24 working days of the personal care assistance agency's request. After five days, the personal
7.25 care assistant may begin to provide personal care assistance services, and the agency
7.26 may bill using the agency's unique medical provider identification number. The claims
7.27 submitted under the agency's number that include more than 24 hours of personal care
7.28 assistance services per day shall not be rejected if more than one personal care assistant is
7.29 using the agency billing number under this subdivision, until the commissioner issues the
7.30 individual personal care assistant a unique medical provider identification number;

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

7.33 (5) be able to provide covered personal care assistance services according to the
7.34 recipient's personal care assistance care plan, respond appropriately to recipient needs,

8.1 and report changes in the recipient's condition to the supervising qualified professional
8.2 or physician;

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

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

8.6 (8) effective January 1, 2010, complete standardized training as determined by the
8.7 commissioner before completing enrollment. Personal care assistant training must include
8.8 successful completion of the following training components: basic first aid, vulnerable
8.9 adult, child maltreatment, OSHA universal precautions, basic roles and responsibilities of
8.10 personal care assistants including information about assistance with lifting and transfers
8.11 for recipients, emergency preparedness, orientation to positive behavioral practices, fraud
8.12 issues, and completion of time sheets. Upon completion of the training components,
8.13 the personal care assistant must demonstrate the competency to provide assistance to
8.14 recipients;

8.15 (9) complete training and orientation on the needs of the recipient within the first
8.16 seven days after the services begin; and

8.17 (10) be limited to providing and being paid for up to 310 hours per month of
8.18 personal care assistance services regardless of the number of recipients being served or the
8.19 number of personal care assistance provider agencies enrolled with. The number of hours
8.20 worked per day shall be set by the personal care assistance agency and not disallowed by
8.21 the department unless in violation of the law.

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

8.24 (c) Effective January 1, 2010, persons who do not qualify as a personal care assistant
8.25 include parents and stepparents of minors, spouses, paid legal guardians, family foster
8.26 care providers, except as otherwise allowed in section 256B.0625, subdivision 19a, or
8.27 staff of a residential setting.

8.28 Sec. 7. Minnesota Statutes 2009 Supplement, section 256B.0659, subdivision 13,
8.29 is amended to read:

8.30 Subd. 13. **Qualified professional; qualifications.** (a) The qualified professional
8.31 must be employed by a personal care assistance provider agency and meet the definition
8.32 under section 256B.0625, subdivision 19c. Before a qualified professional provides
8.33 services, the personal care assistance provider agency must initiate a background study on
8.34 the qualified professional under chapter 245C, and the personal care assistance provider
8.35 agency must have received a notice from the commissioner that the qualified professional:

9.1 (1) is not disqualified under section 245C.14; or

9.2 (2) is disqualified, but the qualified professional has received a set aside of the
9.3 disqualification under section 245C.22.

9.4 (b) The qualified professional shall perform the duties of training, supervision, and
9.5 evaluation of the personal care assistance staff and evaluation of the effectiveness of
9.6 personal care assistance services. The qualified professional shall:

9.7 (1) develop and monitor with the recipient a personal care assistance care plan based
9.8 on the service plan and individualized needs of the recipient;

9.9 (2) develop and monitor with the recipient a monthly plan for the use of personal
9.10 care assistance services;

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

9.12 (4) provide training and ensure competency for the personal care assistant in the
9.13 individual needs of the recipient; and

9.14 (5) document all training, communication, evaluations, and needed actions to
9.15 improve performance of the personal care assistants.

9.16 (c) Effective ~~January~~ July 1, 2010, the qualified professional shall complete the
9.17 provider training with basic information about the personal care assistance program
9.18 approved by the commissioner within six months of the date hired by a personal care
9.19 assistance provider agency. Qualified professionals who have completed the required
9.20 trainings as an employee with a personal care assistance provider agency do not need to
9.21 repeat the required trainings if they are hired by another agency, if they have completed
9.22 the training within the last three years. The required training shall be available online or
9.23 by electronic remote connection and provide for competency testing to demonstrate an
9.24 understanding of the content without attending in-person training. A qualified professional
9.25 is allowed to be employed and is not subject to the training requirement until the training is
9.26 offered online or through remote electronic connection. A qualified professional employed
9.27 by a personal care assistance provider agency certified for participation in Medicare as a
9.28 home health agency is exempt from the training required in this subdivision.

9.29 Sec. 8. Minnesota Statutes 2009 Supplement, section 256B.0659, subdivision 14,
9.30 is amended to read:

9.31 Subd. 14. **Qualified professional; duties.** (a) Effective January 1, 2010, all personal
9.32 care assistants must be supervised by a qualified professional.

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

- 10.1 (1) capable of providing the required personal care assistance services;
- 10.2 (2) knowledgeable about the plan of personal care assistance services before services
- 10.3 are performed; and
- 10.4 (3) able to identify conditions that should be immediately brought to the attention of
- 10.5 the qualified professional.
- 10.6 (c) The qualified professional shall evaluate the personal care assistant within the first
- 10.7 14 days of starting to provide regularly scheduled services for a recipient except for the
- 10.8 personal care assistance choice option under subdivision 19, paragraph (a), clause (4). For
- 10.9 this initial evaluation, the qualified professional shall evaluate the personal care assistance
- 10.10 services for a recipient through direct observation of a personal care assistant's work.
- 10.11 Subsequent visits to evaluate the personal care assistance services provided to a recipient
- 10.12 do not require direct observation of each personal care assistant's work and shall occur:
- 10.13 (1) at least every 90 days thereafter for the first year of a recipient's services; ~~and~~
- 10.14 (2) every 120 days after the first year of a recipient's service or whenever needed for
- 10.15 response to a recipient's request for increased supervision of the personal care assistance
- 10.16 staff; and
- 10.17 (3) after the first 180 days of a recipient's service, supervisory visits may alternate
- 10.18 between unscheduled phone or Internet technology and in-person visits, unless the
- 10.19 in-person visits are needed according to the care plan.
- 10.20 (d) Communication with the recipient is a part of the evaluation process of the
- 10.21 personal care assistance staff.
- 10.22 (e) At each supervisory visit, the qualified professional shall evaluate personal care
- 10.23 assistance services including the following information:
- 10.24 (1) satisfaction level of the recipient with personal care assistance services;
- 10.25 (2) review of the month-to-month plan for use of personal care assistance services;
- 10.26 (3) review of documentation of personal care assistance services provided;
- 10.27 (4) whether the personal care assistance services are meeting the goals of the service
- 10.28 as stated in the personal care assistance care plan and service plan;
- 10.29 (5) a written record of the results of the evaluation and actions taken to correct any
- 10.30 deficiencies in the work of a personal care assistant; and
- 10.31 (6) revision of the personal care assistance care plan as necessary in consultation
- 10.32 with the recipient or responsible party, to meet the needs of the recipient.
- 10.33 (f) The qualified professional shall complete the required documentation in the
- 10.34 agency recipient and employee files and the recipient's home, including the following
- 10.35 documentation:

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

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

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

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

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

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

11.10 (g) The documentation in paragraph (f) must be done on agency forms.

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

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

11.15 (2) supervision of personal care assistance completed by telephone;

11.16 (3) agency administrative activities;

11.17 (4) training other than the individualized training required to provide care for a
11.18 recipient; and

11.19 (5) any other activity that is not described in this section.

11.20 Sec. 9. Minnesota Statutes 2009 Supplement, section 256B.0659, subdivision 18,
11.21 is amended to read:

11.22 Subd. 18. **Personal care assistance choice option; generally.** (a) The
11.23 commissioner may allow a recipient of personal care assistance services to use a fiscal
11.24 intermediary to assist the recipient in paying and accounting for medically necessary
11.25 covered personal care assistance services. Unless otherwise provided in this section, all
11.26 other statutory and regulatory provisions relating to personal care assistance services apply
11.27 to a recipient using the personal care assistance choice option.

11.28 (b) Personal care assistance choice is an option of the personal care assistance
11.29 program that allows the recipient who receives personal care assistance services to be
11.30 responsible for the hiring, training, scheduling, and firing of personal care assistants
11.31 according to the terms of the written agreement with the personal care assistance choice
11.32 agency required under subdivision 20, paragraph (a). This program offers greater control
11.33 and choice for the recipient in who provides the personal care assistance service and when
11.34 the service is scheduled. The recipient or the recipient's responsible party must choose a
11.35 personal care assistance choice provider agency as a fiscal intermediary. This personal

12.1 care assistance choice provider agency manages payroll, invoices the state, is responsible
12.2 for all payroll-related taxes and insurance, and is responsible for providing the consumer
12.3 training and support in managing the recipient's personal care assistance services.

12.4 Sec. 10. Minnesota Statutes 2009 Supplement, section 256B.0659, subdivision 19,
12.5 is amended to read:

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

12.8 (1) recruit, hire, schedule, and terminate personal care assistants ~~and a qualified~~
12.9 ~~professional~~ according to the terms of the written agreement required under subdivision
12.10 20, paragraph (a);

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

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

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

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

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

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

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

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

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

12.29 (3) not be related as a parent, child, sibling, or spouse to the recipient, qualified
12.30 professional, or the personal care assistant; and

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

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

12.34 (1) be the employer of the personal care assistant and the qualified professional for
12.35 employment law and related regulations including, but not limited to, purchasing and

13.1 maintaining workers' compensation, unemployment insurance, surety and fidelity bonds,
13.2 and liability insurance, and submit any or all necessary documentation including, but not
13.3 limited to, workers' compensation and unemployment insurance;

13.4 (2) bill the medical assistance program for personal care assistance services and
13.5 qualified professional services;

13.6 (3) request and complete background studies that comply with the requirements for
13.7 personal care assistants and qualified professionals;

13.8 (4) pay the personal care assistant and qualified professional based on actual hours
13.9 of services provided;

13.10 (5) withhold and pay all applicable federal and state taxes;

13.11 (6) verify and keep records of hours worked by the personal care assistant and
13.12 qualified professional;

13.13 (7) make the arrangements and pay taxes and other benefits, if any, and comply with
13.14 any legal requirements for a Minnesota employer;

13.15 (8) enroll in the medical assistance program as a personal care assistance choice
13.16 agency; and

13.17 (9) enter into a written agreement as specified in subdivision 20 before services
13.18 are provided.

13.19 Sec. 11. Minnesota Statutes 2009 Supplement, section 256B.0659, subdivision 20,
13.20 is amended to read:

13.21 Subd. 20. **Personal care assistance choice option; administration.** (a) Before
13.22 services commence under the personal care assistance choice option, and annually
13.23 thereafter, the personal care assistance choice provider agency, ~~recipient, or responsible~~
13.24 ~~party, each personal care assistant, and the qualified professional~~ and the recipient or
13.25 responsible party shall enter into a written agreement. The annual agreement must be
13.26 provided to the recipient or responsible party, each personal care assistant, and the
13.27 qualified professional when completed, and include at a minimum:

13.28 (1) duties of the recipient, qualified professional, personal care assistant, and
13.29 personal care assistance choice provider agency;

13.30 (2) salary and benefits for the personal care assistant and the qualified professional;

13.31 (3) administrative fee of the personal care assistance choice provider agency and
13.32 services paid for with that fee, including background study fees;

13.33 (4) grievance procedures to respond to complaints;

13.34 (5) procedures for hiring and terminating the personal care assistant; and

14.1 (6) documentation requirements including, but not limited to, time sheets, activity
14.2 records, and the personal care assistance care plan.

14.3 (b) Effective January 1, 2010, except for the administrative fee of the personal care
14.4 assistance choice provider agency as reported on the written agreement, the remainder
14.5 of the rates paid to the personal care assistance choice provider agency must be used to
14.6 pay for the salary and benefits for the personal care assistant or the qualified professional.
14.7 The provider agency must use a minimum of 72.5 percent of the revenue generated by
14.8 the medical assistance rate for personal care assistance services for employee personal
14.9 care assistant wages and benefits.

14.10 (c) The commissioner shall deny, revoke, or suspend the authorization to use the
14.11 personal care assistance choice option if:

14.12 (1) it has been determined by the qualified professional or public health nurse that
14.13 the use of this option jeopardizes the recipient's health and safety;

14.14 (2) the parties have failed to comply with the written agreement specified in this
14.15 subdivision;

14.16 (3) the use of the option has led to abusive or fraudulent billing for personal care
14.17 assistance services; or

14.18 (4) the department terminates the personal care assistance choice option.

14.19 (d) The recipient or responsible party may appeal the commissioner's decision in
14.20 paragraph (c) according to section 256.045. The denial, revocation, or suspension to
14.21 use the personal care assistance choice option must not affect the recipient's authorized
14.22 level of personal care assistance services.

14.23 Sec. 12. Minnesota Statutes 2009 Supplement, section 256B.0659, subdivision 21,
14.24 is amended to read:

14.25 Subd. 21. **Requirements for initial enrollment of personal care assistance**
14.26 **provider agencies.** (a) All personal care assistance provider agencies must provide, at the
14.27 time of enrollment as a personal care assistance provider agency in a format determined
14.28 by the commissioner, information and documentation that includes, but is not limited to,
14.29 the following:

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

14.32 (2) proof of surety bond coverage in the amount of \$50,000 or ten percent of the
14.33 provider's payments from Medicaid in the previous year, whichever is less;

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

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

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

15.4 (6) a copy of the personal care assistance provider agency's written policies and
15.5 procedures including: hiring of employees; training requirements; service delivery;
15.6 and employee and consumer safety including process for notification and resolution
15.7 of consumer grievances, identification and prevention of communicable diseases, and
15.8 employee misconduct;

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

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

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

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

15.20 (8) a list of all trainings and classes that the personal care assistance provider agency
15.21 requires of its staff providing personal care assistance services;

15.22 (9) documentation that the personal care assistance provider agency and staff have
15.23 successfully completed all the training required by this section;

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

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

15.27 (12) documentation that the agency will use the following percentages of revenue
15.28 generated from the medical assistance rate paid for personal care assistance services
15.29 for employee personal care assistant wages and benefits: 72.5 percent of revenue in the
15.30 personal care assistance choice option and 72.5 percent of revenue from other personal
15.31 care assistance providers; and

15.32 (13) documentation that the agency does not require personal care assistants to sign
15.33 an employment contract agreeing not to work for another personal care assistance agency
15.34 in the future when no longer an employee of that agency.

15.35 (b) Personal care assistance provider agencies shall provide the information specified
15.36 in paragraph (a) to the commissioner at the time the personal care assistance provider

16.1 agency enrolls as a vendor or upon request from the commissioner. The commissioner
16.2 shall collect the information specified in paragraph (a) from all personal care assistance
16.3 providers beginning July 1, 2009.

16.4 (c) All personal care assistance provider agencies shall require all employees in
16.5 management and supervisory positions and owners of the agency who are active in the
16.6 day-to-day management and operations of the agency to complete mandatory training as
16.7 determined by the commissioner before enrollment of the agency as a provider. ~~Personal~~
16.8 ~~care assistance provider agencies are required to send all owners, qualified professionals~~
16.9 ~~employed by the agency, and all other managing employees to the initial and subsequent~~
16.10 ~~trainings.~~ Employees in management and supervisory positions and owners who are active
16.11 in the day-to-day operations of an agency who have completed the required training as
16.12 an employee with a personal care assistance provider agency do not need to repeat the
16.13 required training if they are hired by another agency, if they have completed the training
16.14 within the past three years. By September 1, 2010, the required training must be available
16.15 online or by electronic remote connection, and provide for competency testing, including
16.16 the opportunity to pass the test without attending the in-person training. Upon completion
16.17 of the training, the person subject to the training must demonstrate competency in the
16.18 subjects trained. Personal care assistance provider agency billing staff shall complete
16.19 training about personal care assistance program financial management. This training is
16.20 effective July 1, 2009. Any personal care assistance provider agency enrolled before
16.21 that date shall, if it has not already, complete the provider training within 18 months
16.22 of July 1, 2009. Any new ~~owners, new qualified professionals, and new managing~~
16.23 ~~employees~~ in management and supervisory positions, including owners involved in the
16.24 day-to-day operations, are required to complete mandatory training as a requisite of
16.25 ~~hiring~~ working for the agency. Personal care assistance provider agencies certified for
16.26 participation in Medicare as home health agencies are exempt from the training required
16.27 in this subdivision.

16.28 Sec. 13. Minnesota Statutes 2009 Supplement, section 256B.0659, subdivision 27,
16.29 is amended to read:

16.30 Subd. 27. **Personal care assistance provider agency; ventilator training.** The
16.31 personal care assistance provider agency is required to provide training for the personal
16.32 care assistant responsible for working with a recipient who is ventilator dependent. All
16.33 training must be administered by a respiratory therapist, nurse, or physician. Qualified
16.34 professional supervision by a nurse must be completed and documented on file in the
16.35 personal care assistant's employment record and the recipient's health record. If offering

17.1 personal care services to a ventilator-dependent recipient, the personal care assistance
17.2 provider agency shall demonstrate the ability to:

17.3 (1) train the personal care assistant;

17.4 (2) supervise the personal care assistant in ventilator operation and maintenance; and

17.5 (3) supervise the recipient and responsible party in ventilator operation and
17.6 maintenance.

17.7 Personal care assistance provider agencies certified for participation in Medicare as
17.8 home health agencies are exempt from providing the training required in this subdivision.

17.9 Sec. 14. Minnesota Statutes 2009 Supplement, section 256B.0659, subdivision 29,
17.10 is amended to read:

17.11 Subd. 29. **Transitional assistance.** Transitional assistance includes:

17.12 (1) assistance and services provided through the commissioner, counties, health
17.13 plans, tribes, and personal care assistance providers ~~shall work together to provide~~
17.14 ~~transitional assistance~~ for recipients and families to come into compliance with the new
17.15 requirements of this section that may require a change in living arrangement no later
17.16 than August 10, 2010; and

17.17 (2) continued personal care assistance services at the previously assessed level for
17.18 those who are referred to other services to be provided in their home for which they
17.19 qualify but cannot receive because the type of service is unavailable to come into their
17.20 home, not offered in their county, or would cost more on an annual basis than the personal
17.21 care assistance services being reduced or terminated.

17.22 Sec. 15. Minnesota Statutes 2009 Supplement, section 256B.0659, subdivision 30,
17.23 is amended to read:

17.24 Subd. 30. **Notice of service changes to recipients.** The commissioner must provide:

17.25 (1) by October 31, 2009, information to recipients likely to be affected that (i)
17.26 describes the changes to the personal care assistance program that may result in the
17.27 loss of access to personal care assistance services, and (ii) includes resources to obtain
17.28 further information; ~~and~~

17.29 (2) notice of changes in medical assistance home care services to each affected
17.30 recipient at least 30 days before the effective date of the change.

17.31 The notice shall include how to get further information on the changes, how to get help to
17.32 obtain other services, a list of community resources, and appeal rights. Notwithstanding
17.33 section 256.045, a recipient may request continued services pending appeal within the
17.34 time period allowed to request an appeal; and

18.1 (3) a service agreement authorizing personal care assistance hours of service at the
18.2 previously authorized level when a recipient requests services pending an appeal.

18.3 Sec. 16. **PERSONAL CARE SUPPORT SERVICES FOR THOSE ON HOME**
18.4 **AND COMMUNITY-BASED SERVICES WAIVERS PROGRAMS.**

18.5 The commissioner shall add personal care support to each home and
18.6 community-based services waiver for persons who no longer qualify for state plan
18.7 personal care assistance services because they need prompting and cuing to accomplish
18.8 activities of daily living, and the tasks are necessary to provide for the person's health,
18.9 safety, and welfare in order to remain in their home. Personal care support services must
18.10 meet the requirements of Minnesota Statutes, section 256B.0659, except that the amount,
18.11 duration, and frequency of the service can exceed the limits established for personal
18.12 care assistance services.

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