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State of Minnesota
HOUSE OF REPRESENTATIVES
First Division Engrossment

NINETY-SECOND SESSION

H. F. No. **1532**

02/25/2021 Authored by Frederick
The bill was read for the first time and referred to the Committee on Human Services Finance and Policy

Division Action

02/26/2021 *Referred by Chair to the Behavioral Health Policy Division*
03/03/2021 *Returned to the Committee on Human Services Finance and Policy as Amended*

1.1 A bill for an act

1.2 relating to human services; modifying community supports provisions; amending

1.3 Minnesota Statutes 2020, sections 245.4874, subdivision 1; 245.697, subdivision

1.4 1; 252.43; 252A.01, subdivision 1; 252A.02, subdivisions 2, 9, 11, 12, by adding

1.5 subdivisions; 252A.03, subdivisions 3, 4; 252A.04, subdivisions 1, 2, 4; 252A.05;

1.6 252A.06, subdivisions 1, 2; 252A.07, subdivisions 1, 2, 3; 252A.081, subdivisions

1.7 2, 3, 5; 252A.09, subdivisions 1, 2; 252A.101, subdivisions 2, 3, 5, 6, 7, 8;

1.8 252A.111, subdivisions 2, 4, 6; 252A.12; 252A.16; 252A.17; 252A.19, subdivisions

1.9 2, 4, 5, 7, 8; 252A.20; 252A.21, subdivisions 2, 4; 254B.03, subdivision 2; 256.042,

1.10 subdivisions 2, 4; 256B.051, subdivisions 1, 3, 5, 6, 7, by adding a subdivision;

1.11 256B.0947, subdivision 6; 256B.4912, subdivision 13; 256B.69, subdivision 5a;

1.12 256B.85, subdivisions 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 11b, 12, 12b, 13, 13a, 15,

1.13 17a, 18a, 20b, 23, 23a, by adding subdivisions; repealing Minnesota Statutes 2020,

1.14 sections 252.28, subdivisions 1, 5; 252A.02, subdivisions 8, 10; 252A.21,

1.15 subdivision 3.

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

1.17 Section 1. Minnesota Statutes 2020, section 245.4874, subdivision 1, is amended to read:

1.18 Subdivision 1. **Duties of county board.** (a) The county board must:

1.19 (1) develop a system of affordable and locally available children's mental health services

1.20 according to sections 245.487 to 245.4889;

1.21 (2) consider the assessment of unmet needs in the county as reported by the local

1.22 children's mental health advisory council under section 245.4875, subdivision 5, paragraph

1.23 (b), clause (3). The county shall provide, upon request of the local children's mental health

1.24 advisory council, readily available data to assist in the determination of unmet needs;

1.25 (3) assure that parents and providers in the county receive information about how to

1.26 gain access to services provided according to sections 245.487 to 245.4889;

2.1 (4) coordinate the delivery of children's mental health services with services provided
2.2 by social services, education, corrections, health, and vocational agencies to improve the
2.3 availability of mental health services to children and the cost-effectiveness of their delivery;

2.4 (5) assure that mental health services delivered according to sections 245.487 to 245.4889
2.5 are delivered expeditiously and are appropriate to the child's diagnostic assessment and
2.6 individual treatment plan;

2.7 (6) provide for case management services to each child with severe emotional disturbance
2.8 according to sections 245.486; 245.4871, subdivisions 3 and 4; and 245.4881, subdivisions
2.9 1, 3, and 5;

2.10 (7) provide for screening of each child under section 245.4885 upon admission to a
2.11 residential treatment facility, acute care hospital inpatient treatment, or informal admission
2.12 to a regional treatment center;

2.13 (8) prudently administer grants and purchase-of-service contracts that the county board
2.14 determines are necessary to fulfill its responsibilities under sections 245.487 to 245.4889;

2.15 (9) assure that mental health professionals, mental health practitioners, and case managers
2.16 employed by or under contract to the county to provide mental health services are qualified
2.17 under section 245.4871;

2.18 (10) assure that children's mental health services are coordinated with adult mental health
2.19 services specified in sections 245.461 to 245.486 so that a continuum of mental health
2.20 services is available to serve persons with mental illness, regardless of the person's age;

2.21 (11) assure that culturally competent mental health consultants are used as necessary to
2.22 assist the county board in assessing and providing appropriate treatment for children of
2.23 cultural or racial minority heritage; and

2.24 (12) consistent with section 245.486, arrange for or provide a children's mental health
2.25 screening for:

2.26 (i) a child receiving child protective services;

2.27 (ii) a child in out-of-home placement;

2.28 (iii) a child for whom parental rights have been terminated;

2.29 (iv) a child found to be delinquent; or

2.30 (v) a child found to have committed a juvenile petty offense for the third or subsequent
2.31 time.

3.1 A children's mental health screening is not required when a screening or diagnostic
3.2 assessment has been performed within the previous 180 days, or the child is currently under
3.3 the care of a mental health professional.

3.4 (b) When a child is receiving protective services or is in out-of-home placement, the
3.5 court or county agency must notify a parent or guardian whose parental rights have not been
3.6 terminated of the potential mental health screening and the option to prevent the screening
3.7 by notifying the court or county agency in writing.

3.8 (c) When a child is found to be delinquent or a child is found to have committed a
3.9 juvenile petty offense for the third or subsequent time, the court or county agency must
3.10 obtain written informed consent from the parent or legal guardian before a screening is
3.11 conducted unless the court, notwithstanding the parent's failure to consent, determines that
3.12 the screening is in the child's best interest.

3.13 (d) The screening shall be conducted with a screening instrument approved by the
3.14 commissioner of human services according to criteria that are updated and issued annually
3.15 to ensure that approved screening instruments are valid and useful for child welfare and
3.16 juvenile justice populations. Screenings shall be conducted by a mental health practitioner
3.17 as defined in section 245.4871, subdivision 26, or a probation officer or local social services
3.18 agency staff person who is trained in the use of the screening instrument. Training in the
3.19 use of the instrument shall include:

3.20 (1) training in the administration of the instrument;

3.21 (2) the interpretation of its validity given the child's current circumstances;

3.22 (3) the state and federal data practices laws and confidentiality standards;

3.23 (4) the parental consent requirement; and

3.24 (5) providing respect for families and cultural values.

3.25 If the screen indicates a need for assessment, the child's family, or if the family lacks
3.26 mental health insurance, the local social services agency, in consultation with the child's
3.27 family, shall have conducted a diagnostic assessment, including a functional assessment.
3.28 The administration of the screening shall safeguard the privacy of children receiving the
3.29 screening and their families and shall comply with the Minnesota Government Data Practices
3.30 Act, chapter 13, and the federal Health Insurance Portability and Accountability Act of
3.31 1996, Public Law 104-191. Screening results shall be considered private data ~~and the~~
3.32 ~~commissioner shall not collect individual screening results.~~ The commissioner may collect
3.33 individual screening results for the purposes of program evaluation and improvement.

4.1 (e) When the county board refers clients to providers of children's therapeutic services
4.2 and supports under section 256B.0943, the county board must clearly identify the desired
4.3 services components not covered under section 256B.0943 and identify the reimbursement
4.4 source for those requested services, the method of payment, and the payment rate to the
4.5 provider.

4.6 Sec. 2. Minnesota Statutes 2020, section 245.697, subdivision 1, is amended to read:

4.7 Subdivision 1. **Creation.** (a) A State Advisory Council on Mental Health is created. The
4.8 council must have members appointed by the governor in accordance with federal
4.9 requirements. In making the appointments, the governor shall consider appropriate
4.10 representation of communities of color. The council must be composed of:

4.11 (1) the assistant commissioner of ~~mental health~~ for the Department of Human Services
4.12 who oversees behavioral health policy;

4.13 (2) a representative of the Department of Human Services responsible for the medical
4.14 assistance program;

4.15 (3) a representative of the Department of Health;

4.16 ~~(3)~~ (4) one member of each of the following professions:

4.17 (i) psychiatry;

4.18 (ii) psychology;

4.19 (iii) social work;

4.20 (iv) nursing;

4.21 (v) marriage and family therapy; and

4.22 (vi) professional clinical counseling;

4.23 ~~(4)~~ (5) one representative from each of the following advocacy groups: Mental Health
4.24 Association of Minnesota, NAMI-MN, ~~Mental Health Consumer/Survivor Network of~~
4.25 ~~Minnesota~~, and Minnesota Disability Law Center, American Indian Mental Health Advisory
4.26 Council, and a consumer-run mental health advocacy group;

4.27 ~~(5)~~ (6) providers of mental health services;

4.28 ~~(6)~~ (7) consumers of mental health services;

4.29 ~~(7)~~ (8) family members of persons with mental illnesses;

4.30 ~~(8)~~ (9) legislators;

5.1 ~~(9)~~ (10) social service agency directors;

5.2 ~~(10)~~ (11) county commissioners; and

5.3 ~~(11)~~ (12) other members reflecting a broad range of community interests, including
5.4 family physicians, or members as the United States Secretary of Health and Human Services
5.5 may prescribe by regulation or as may be selected by the governor.

5.6 (b) The council shall select a chair. Terms, compensation, and removal of members and
5.7 filling of vacancies are governed by section 15.059. Notwithstanding provisions of section
5.8 15.059, the council and its subcommittee on children's mental health do not expire. The
5.9 commissioner of human services shall provide staff support and supplies to the council.

5.10 Sec. 3. Minnesota Statutes 2020, section 252.43, is amended to read:

5.11 **252.43 COMMISSIONER'S DUTIES.**

5.12 (a) The commissioner shall supervise lead agencies' provision of day services to adults
5.13 with disabilities. The commissioner shall:

5.14 (1) determine the need for day ~~services~~ programs under ~~section~~ sections 256B.4914 and
5.15 252.41 to 252.46;

5.16 (2) establish payment rates as provided under section 256B.4914;

5.17 (3) adopt rules for the administration and provision of day services under sections
5.18 245A.01 to 245A.16₂; 252.28, subdivision 2₂; or 252.41 to 252.46₂; or Minnesota Rules,
5.19 parts 9525.1200 to 9525.1330;

5.20 (4) enter into interagency agreements necessary to ensure effective coordination and
5.21 provision of day services;

5.22 (5) monitor and evaluate the costs and effectiveness of day services; and

5.23 (6) provide information and technical help to lead agencies and vendors in their
5.24 administration and provision of day services.

5.25 (b) A determination of need in paragraph (a), clause (1), shall not be required for a
5.26 change in day service provider name or ownership.

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

5.28 Sec. 4. Minnesota Statutes 2020, section 252A.01, subdivision 1, is amended to read:

5.29 Subdivision 1. **Policy.** (a) It is the policy of the state of Minnesota to provide a
5.30 coordinated approach to the supervision, protection, and habilitation of its adult citizens

6.1 with a developmental disability. In furtherance of this policy, sections 252A.01 to 252A.21
6.2 are enacted to authorize the commissioner of human services to:

6.3 (1) supervise those adult citizens with a developmental disability who are unable to fully
6.4 provide for their own needs and for whom no qualified person is willing and able to seek
6.5 guardianship ~~or conservatorship~~ under sections 524.5-101 to 524.5-502; and

6.6 (2) protect adults with a developmental disability from violation of their human and civil
6.7 rights by ~~assuring~~ ensuring that they receive the full range of needed social, financial,
6.8 residential, and habilitative services to which they are lawfully entitled.

6.9 (b) Public guardianship ~~or conservatorship~~ is the most restrictive form of guardianship
6.10 ~~or conservatorship~~ and should be imposed only when ~~no other acceptable alternative is~~
6.11 ~~available~~ less restrictive alternatives have been attempted and determined to be insufficient
6.12 to meet the person's needs. Less restrictive alternatives include but are not limited to
6.13 supported decision making, community or residential services, or appointment of a health
6.14 care agent.

6.15 Sec. 5. Minnesota Statutes 2020, section 252A.02, subdivision 2, is amended to read:

6.16 Subd. 2. **Person with a developmental disability.** "Person with a developmental
6.17 disability" refers to any person age 18 or older who:

6.18 (1) has been diagnosed as having ~~significantly subaverage intellectual functioning existing~~
6.19 ~~concurrently with demonstrated deficits in adaptive behavior such as to require supervision~~
6.20 ~~and protection for the person's welfare or the public welfare.~~ a developmental disability or
6.21 related condition;

6.22 (2) is impaired to the extent of lacking sufficient understanding or capacity to make
6.23 personal decisions; and

6.24 (3) is unable to meet personal needs for medical care, nutrition, clothing, shelter, or
6.25 safety, even with appropriate technological and supported decision-making assistance.

6.26 Sec. 6. Minnesota Statutes 2020, section 252A.02, subdivision 9, is amended to read:

6.27 Subd. 9. **Ward Person subject to public guardianship.** ~~"Ward"~~ "Person subject to
6.28 public guardianship" means a person with a developmental disability for whom the court
6.29 has appointed a public guardian.

7.1 Sec. 7. Minnesota Statutes 2020, section 252A.02, subdivision 11, is amended to read:

7.2 Subd. 11. **Interested person.** "Interested person" means an interested responsible adult,
7.3 ~~including, but not limited to, a public official, guardian, spouse, parent, adult sibling, legal~~
7.4 ~~counsel, adult child, or next of kin of a person alleged to have a developmental disability.~~
7.5 including but not limited to:

7.6 (1) the person subject to guardianship, protected person, or respondent;

7.7 (2) a nominated guardian or conservator;

7.8 (3) a legal representative;

7.9 (4) the spouse; parent, including stepparent; adult children, including adult stepchildren
7.10 of a living spouse; and siblings. If no such persons are living or can be located, the next of
7.11 kin of the person subject to public guardianship or the respondent is an interested person;

7.12 (5) a representative of a state ombudsman's office or a federal protection and advocacy
7.13 program that has notified the commissioner or lead agency that it has a matter regarding
7.14 the protected person subject to guardianship, person subject to conservatorship, or respondent;
7.15 and

7.16 (6) a health care agent or proxy appointed pursuant to a health care directive as defined
7.17 in section 145C.01, subdivision 5a; a living will under chapter 145B; or other similar
7.18 documentation executed in another state and enforceable under the laws of this state.

7.19 Sec. 8. Minnesota Statutes 2020, section 252A.02, subdivision 12, is amended to read:

7.20 Subd. 12. **Comprehensive evaluation.** (a) "Comprehensive evaluation" shall consist
7.21 consists of:

7.22 (1) a medical report on the health status and physical condition of the proposed ward,
7.23 person subject to public guardianship prepared under the direction of a licensed physician
7.24 or advanced practice registered nurse;

7.25 (2) a report on the proposed ward's intellectual capacity and functional abilities, specifying
7.26 of the proposed person subject to public guardianship that specifies the tests and other data
7.27 used in reaching its conclusions; and is prepared by a psychologist who is qualified in the
7.28 diagnosis of developmental disability; and

7.29 (3) a report from the case manager that includes:

7.30 (i) the most current assessment of individual service needs as described in rules of the
7.31 commissioner;

8.1 (ii) the most current individual service plan under section 256B.092, subdivision 1b;
8.2 and

8.3 (iii) a description of contacts with and responses of near relatives of the proposed ~~ward~~
8.4 person subject to public guardianship notifying ~~them~~ the near relatives that a nomination
8.5 for public guardianship has been made and advising ~~them~~ the near relatives that they may
8.6 seek private guardianship.

8.7 (b) Each report under paragraph (a), clause (3), shall contain recommendations as to the
8.8 amount of assistance and supervision required by the proposed ~~ward~~ person subject to public
8.9 guardianship to function as independently as possible in society. To be considered part of
8.10 the comprehensive evaluation, the reports must be completed no more than one year before
8.11 filing the petition under section 252A.05.

8.12 Sec. 9. Minnesota Statutes 2020, section 252A.02, is amended by adding a subdivision to
8.13 read:

8.14 Subd. 16. **Protected person.** "Protected person" means a person for whom a guardian
8.15 or conservator has been appointed or other protective order has been sought. A protected
8.16 person may be a minor.

8.17 Sec. 10. Minnesota Statutes 2020, section 252A.02, is amended by adding a subdivision
8.18 to read:

8.19 Subd. 17. **Respondent.** "Respondent" means an individual for whom the appointment
8.20 of a guardian or conservator or other protective order is sought.

8.21 Sec. 11. Minnesota Statutes 2020, section 252A.02, is amended by adding a subdivision
8.22 to read:

8.23 Subd. 18. **Supported decision making.** "Supported decision making" means assistance
8.24 to understand the nature and consequences of personal and financial decisions from one or
8.25 more persons of the individual's choosing to enable the individual to make the personal and
8.26 financial decisions and, when consistent with the individual's wishes, to communicate a
8.27 decision once made.

8.28 Sec. 12. Minnesota Statutes 2020, section 252A.03, subdivision 3, is amended to read:

8.29 Subd. 3. **Standard for acceptance.** The commissioner shall accept the nomination if:
8.30 ~~the comprehensive evaluation concludes that:~~

9.1 ~~(1) the person alleged to have developmental disability is, in fact, developmentally~~
9.2 ~~disabled;~~ (1) the person's assessment confirms that they are a person with a developmental
9.3 disability under section 252A.02, subdivision 2;

9.4 (2) the person is in need of the supervision and protection of a ~~conservator or~~ guardian;
9.5 ~~and~~

9.6 (3) no qualified person is willing to assume guardianship ~~or conservatorship~~ under
9.7 sections 524.5-101 to 524.5-502.; and

9.8 (4) the person subject to public guardianship was included in the process prior to the
9.9 submission of the nomination.

9.10 Sec. 13. Minnesota Statutes 2020, section 252A.03, subdivision 4, is amended to read:

9.11 Subd. 4. **Alternatives.** (a) Public guardianship ~~or conservatorship~~ may be imposed only
9.12 when:

9.13 (1) the person subject to guardianship is impaired to the extent of lacking sufficient
9.14 understanding or capacity to make personal decisions;

9.15 (2) the person subject to guardianship is unable to meet personal needs for medical care,
9.16 nutrition, clothing, shelter, or safety, even with appropriate technological and supported
9.17 decision-making assistance; and

9.18 (3) no acceptable, less restrictive form of guardianship or conservatorship is available.

9.19 (b) The commissioner shall seek parents, near relatives, and other interested persons to
9.20 assume guardianship for persons with developmental disabilities who are currently under
9.21 public guardianship. If a person seeks to become a guardian ~~or conservator~~, costs to the
9.22 person may be reimbursed under section 524.5-502. The commissioner must provide technical
9.23 assistance to parents, near relatives, and interested persons seeking to become guardians ~~or~~
9.24 ~~conservators~~.

9.25 Sec. 14. Minnesota Statutes 2020, section 252A.04, subdivision 1, is amended to read:

9.26 Subdivision 1. **Local agency.** Upon receipt of a written nomination, the commissioner
9.27 shall promptly order the local agency of the county in which the proposed ~~ward~~ person
9.28 subject to public guardianship resides to coordinate or arrange for a comprehensive evaluation
9.29 of the proposed ~~ward~~ person subject to public guardianship.

10.1 Sec. 15. Minnesota Statutes 2020, section 252A.04, subdivision 2, is amended to read:

10.2 Subd. 2. **Medication; treatment.** A proposed ~~ward~~ person subject to public guardianship
10.3 who, at the time the comprehensive evaluation is to be performed, has been under medical
10.4 care shall not be so under the influence or so suffer the effects of drugs, medication, or other
10.5 treatment as to be hampered in the testing or evaluation process. When in the opinion of
10.6 the licensed physician or advanced practice registered nurse attending the proposed ~~ward~~
10.7 person subject to public guardianship, the discontinuance of medication or other treatment
10.8 is not in the ~~proposed ward's~~ best interest of the proposed person subject to public
10.9 guardianship, the physician or advanced practice registered nurse shall record a list of all
10.10 drugs, medication, or other treatment ~~which~~ that the proposed ~~ward~~ person subject to public
10.11 guardianship received 48 hours immediately prior to any examination, test, or interview
10.12 conducted in preparation for the comprehensive evaluation.

10.13 Sec. 16. Minnesota Statutes 2020, section 252A.04, subdivision 4, is amended to read:

10.14 Subd. 4. **File.** The comprehensive evaluation shall be kept on file at the Department of
10.15 Human Services and shall be open to the inspection of the proposed ~~ward~~ person subject to
10.16 public guardianship and ~~such~~ other persons ~~as may be given permission~~ permitted by the
10.17 commissioner.

10.18 Sec. 17. Minnesota Statutes 2020, section 252A.05, is amended to read:

10.19 **252A.05 COMMISSIONER'S PETITION FOR APPOINTMENT AS PUBLIC**
10.20 **~~GUARDIAN OR PUBLIC CONSERVATOR.~~**

10.21 In every case in which the commissioner agrees to accept a nomination, the local agency,
10.22 within 20 working days of receipt of the commissioner's acceptance, shall petition on behalf
10.23 of the commissioner in the county or court of the county of residence of the person with a
10.24 developmental disability for appointment to act as ~~public conservator or~~ public guardian of
10.25 the person with a developmental disability.

10.26 Sec. 18. Minnesota Statutes 2020, section 252A.06, subdivision 1, is amended to read:

10.27 Subdivision 1. **Who may file.** ~~The commissioner, the local agency, a person with a~~
10.28 ~~developmental disability or any parent, spouse or relative of a person with a developmental~~
10.29 ~~disability may file~~ A verified petition alleging that the appointment of a ~~public conservator~~
10.30 ~~or~~ public guardian is required may be filed by: the commissioner; the local agency; a person
10.31 with a developmental disability; or a parent, stepparent, spouse, or relative of a person with
10.32 a developmental disability.

11.1 Sec. 19. Minnesota Statutes 2020, section 252A.06, subdivision 2, is amended to read:

11.2 Subd. 2. **Contents.** The petition shall set forth:

11.3 (1) the name and address of the petitioner, and, in the case of a petition brought by a
11.4 person other than the commissioner, whether the petitioner is a parent, spouse, or relative
11.5 ~~of the proposed ward~~ of the proposed person subject to guardianship;

11.6 (2) whether the commissioner has accepted a nomination to act as ~~public conservator~~
11.7 ~~or~~ public guardian;

11.8 (3) the name, address, and date of birth of the proposed ~~ward~~ person subject to public
11.9 guardianship;

11.10 (4) the names and addresses of the nearest relatives and spouse, if any, of the proposed
11.11 ~~ward~~ person subject to public guardianship;

11.12 (5) the probable value and general character of the ~~proposed ward's~~ real and personal
11.13 property of the proposed person subject to public guardianship and the probable amount of
11.14 the ~~proposed ward's~~ debts of the proposed person subject to public guardianship; and

11.15 (6) the facts supporting the establishment of public ~~conservatorship or~~ guardianship,
11.16 including that no family member or other qualified individual is willing to assume
11.17 guardianship ~~or conservatorship~~ responsibilities under sections 524.5-101 to 524.5-502;
11.18 ~~and.~~

11.19 ~~(7) if conservatorship is requested, the powers the petitioner believes are necessary to~~
11.20 ~~protect and supervise the proposed conservatee.~~

11.21 Sec. 20. Minnesota Statutes 2020, section 252A.07, subdivision 1, is amended to read:

11.22 Subdivision 1. **With petition.** When a petition is brought by the commissioner or local
11.23 agency, a copy of the comprehensive evaluation shall be filed with the petition. If a petition
11.24 is brought by a person other than the commissioner or local agency and a comprehensive
11.25 evaluation has been prepared within a year of the filing of the petition, the local agency
11.26 shall ~~forward~~ send a copy of the comprehensive evaluation to the court upon notice of the
11.27 filing of the petition. If a comprehensive evaluation has not been prepared within a year of
11.28 the filing of the petition, the local agency, upon notice of the filing of the petition, shall
11.29 arrange for a comprehensive evaluation to be prepared and ~~forwarded~~ provided to the court
11.30 within 90 days.

12.1 Sec. 21. Minnesota Statutes 2020, section 252A.07, subdivision 2, is amended to read:

12.2 Subd. 2. **Copies.** A copy of the comprehensive evaluation shall be made available by
12.3 the court to the proposed ~~ward~~ person subject to public guardianship, the ~~proposed ward's~~
12.4 counsel of the proposed person subject to public guardianship, the county attorney, the
12.5 attorney general, and the petitioner.

12.6 Sec. 22. Minnesota Statutes 2020, section 252A.07, subdivision 3, is amended to read:

12.7 Subd. 3. **Evaluation required; exception.** (a) No action for the appointment of a public
12.8 guardian may proceed to hearing unless a comprehensive evaluation has been first filed
12.9 with the court; ~~provided, however, that an action may proceed and a guardian appointed.~~

12.10 (b) Paragraph (a) does not apply if the director of the local agency responsible for
12.11 conducting the comprehensive evaluation has filed an affidavit that the proposed ~~ward~~
12.12 person subject to public guardianship refused to participate in the comprehensive evaluation
12.13 and the court finds on the basis of clear and convincing evidence that the proposed ~~ward~~
12.14 person subject to public guardianship is developmentally disabled and in need of the
12.15 supervision and protection of a guardian.

12.16 Sec. 23. Minnesota Statutes 2020, section 252A.081, subdivision 2, is amended to read:

12.17 Subd. 2. **Service of notice.** Service of notice on the ~~ward~~ person subject to public
12.18 guardianship or proposed ~~ward~~ person subject to public guardianship must be made by a
12.19 nonuniformed person or nonuniformed visitor. To the extent possible, the ~~process server or~~
12.20 ~~visitor~~ person or visitor serving the notice shall explain the document's meaning to the
12.21 proposed ~~ward~~ person subject to public guardianship. In addition to the persons required to
12.22 be served under sections 524.5-113, 524.5-205, and 524.5-304, the mailed notice of the
12.23 hearing must be served on the commissioner, the local agency, and the county attorney.

12.24 Sec. 24. Minnesota Statutes 2020, section 252A.081, subdivision 3, is amended to read:

12.25 Subd. 3. **Attorney.** In place of the notice of attorney provisions in sections 524.5-205
12.26 and 524.5-304, the notice must state that the court will appoint an attorney for the proposed
12.27 ~~ward~~ person subject to public guardianship unless an attorney is provided by other persons.

12.28 Sec. 25. Minnesota Statutes 2020, section 252A.081, subdivision 5, is amended to read:

12.29 Subd. 5. **Defective notice of service.** A defect in the service of notice or process, other
12.30 than personal service upon the proposed ~~ward or conservatee~~ person subject to public
12.31 guardianship or service upon the commissioner and local agency within the time allowed

13.1 and the form prescribed in this section and sections 524.5-113, 524.5-205, and 524.5-304,
13.2 does not invalidate any public guardianship ~~or conservatorship~~ proceedings.

13.3 Sec. 26. Minnesota Statutes 2020, section 252A.09, subdivision 1, is amended to read:

13.4 Subdivision 1. **Attorney appointment.** Upon the filing of the petition, the court shall
13.5 appoint an attorney for the proposed ~~ward~~ person subject to public guardianship, unless
13.6 such counsel is provided by others.

13.7 Sec. 27. Minnesota Statutes 2020, section 252A.09, subdivision 2, is amended to read:

13.8 Subd. 2. **Representation.** Counsel shall visit with and, to the extent possible, consult
13.9 with the proposed ~~ward~~ person subject to public guardianship prior to the hearing and shall
13.10 be given adequate time to prepare ~~therefor~~ for the hearing. Counsel shall be given the full
13.11 right of subpoena and shall be supplied with a copy of all documents filed with or issued
13.12 by the court.

13.13 Sec. 28. Minnesota Statutes 2020, section 252A.101, subdivision 2, is amended to read:

13.14 Subd. 2. **Waiver of presence.** The proposed ~~ward~~ person subject to public guardianship
13.15 may waive the right to be present at the hearing only if the proposed ~~ward~~ person subject
13.16 to public guardianship has met with counsel and specifically waived the right to appear.

13.17 Sec. 29. Minnesota Statutes 2020, section 252A.101, subdivision 3, is amended to read:

13.18 Subd. 3. **Medical care.** If, at the time of the hearing, the proposed ~~ward~~ person subject
13.19 to public guardianship has been under medical care, the ~~ward~~ person subject to public
13.20 guardianship has the same rights regarding limitation on the use of drugs, medication, or
13.21 other treatment before the hearing that are available under section 252A.04, subdivision 2.

13.22 Sec. 30. Minnesota Statutes 2020, section 252A.101, subdivision 5, is amended to read:

13.23 Subd. 5. **Findings.** (a) In all cases the court shall make specific written findings of fact,
13.24 conclusions of law, and direct entry of an appropriate judgment or order. The court shall
13.25 order the appointment of the commissioner as guardian ~~or conservator~~ if it finds that:

13.26 (1) the proposed ~~ward or conservatee~~ person subject to public guardianship is a person
13.27 with a developmental disability as defined in section 252A.02, subdivision 2;

13.28 (2) the proposed ~~ward or conservatee~~ person subject to public guardianship is incapable
13.29 of exercising specific legal rights, which must be enumerated in ~~its~~ the court's findings;

14.1 (3) the proposed ~~ward or conservatee~~ person subject to public guardianship is in need
14.2 of the supervision and protection of a public guardian ~~or conservator~~; and

14.3 (4) no appropriate alternatives to public guardianship ~~or public conservatorship~~ exist
14.4 that are less restrictive of the person's civil rights and liberties, such as appointing a private
14.5 guardian, ~~or conservator~~ supported decision maker, or health care agent; or arranging
14.6 residential or community services under sections 524.5-101 to 524.5-502.

14.7 (b) The court shall grant the specific powers that are necessary for the commissioner to
14.8 act as public guardian ~~or conservator~~ on behalf of the ~~ward or conservatee~~ person subject
14.9 to public guardianship.

14.10 Sec. 31. Minnesota Statutes 2020, section 252A.101, subdivision 6, is amended to read:

14.11 Subd. 6. **Notice of order; appeal.** A copy of the order shall be served by mail upon the
14.12 ~~ward or conservatee~~ person subject to public guardianship and the ~~ward's~~ counsel of the
14.13 person subject to public guardianship. The order must be accompanied by a notice that
14.14 advises the ~~ward or conservatee~~ person subject to public guardianship of the right to appeal
14.15 the guardianship ~~or conservatorship~~ appointment within 30 days.

14.16 Sec. 32. Minnesota Statutes 2020, section 252A.101, subdivision 7, is amended to read:

14.17 Subd. 7. **Letters of guardianship.** (a) Letters of guardianship ~~or conservatorship~~ must
14.18 be issued by the court and contain:

14.19 (1) the name, address, and telephone number of the ~~ward or conservatee~~ person subject
14.20 to public guardianship; and

14.21 (2) the powers to be exercised on behalf of the ~~ward or conservatee~~ person subject to
14.22 public guardianship.

14.23 (b) The letters under paragraph (a) must be served by mail upon the ~~ward or conservatee~~
14.24 person subject to public guardianship, the ~~ward's~~ counsel of the person subject to public
14.25 guardianship, the commissioner, and the local agency.

14.26 Sec. 33. Minnesota Statutes 2020, section 252A.101, subdivision 8, is amended to read:

14.27 Subd. 8. **Dismissal.** If upon the completion of the hearing and consideration of the record,
14.28 the court finds that the proposed ~~ward~~ person subject to public guardianship is not
14.29 developmentally disabled or is developmentally disabled but not in need of the supervision
14.30 and protection of a ~~conservator or public guardian~~, if the court shall dismiss the application

15.1 and shall notify the proposed ward person subject to public guardianship, the ward's counsel
15.2 of the person subject to public guardianship, and the petitioner of the court's findings.

15.3 Sec. 34. Minnesota Statutes 2020, section 252A.111, subdivision 2, is amended to read:

15.4 Subd. 2. **Additional powers.** In addition to the powers contained in sections 524.5-207
15.5 and 524.5-313, the powers of a public guardian that the court may grant include:

15.6 (1) the power to permit or withhold permission for the ward person subject to public
15.7 guardianship to marry;

15.8 (2) the power to begin legal action or defend against legal action in the name of the ward
15.9 person subject to public guardianship; and

15.10 (3) the power to consent to the adoption of the ward person subject to public guardianship
15.11 as provided in section 259.24.

15.12 Sec. 35. Minnesota Statutes 2020, section 252A.111, subdivision 4, is amended to read:

15.13 Subd. 4. **Appointment of conservator.** If the ward person subject to public guardianship
15.14 has a personal estate beyond that which is necessary for the ward's personal and immediate
15.15 needs of the person subject to public guardianship, the commissioner shall determine whether
15.16 a conservator should be appointed. The commissioner shall consult with the parents, spouse,
15.17 or nearest relative of the ward person subject to public guardianship. The commissioner
15.18 may petition the court for the appointment of a private conservator of the ward person
15.19 subject to public guardianship. The commissioner cannot act as conservator for public wards
15.20 persons subject to public guardianship or public protected persons.

15.21 Sec. 36. Minnesota Statutes 2020, section 252A.111, subdivision 6, is amended to read:

15.22 Subd. 6. **Special duties.** In exercising powers and duties under this chapter, the
15.23 commissioner shall:

15.24 (1) maintain close contact with the ward person subject to public guardianship, visiting
15.25 at least twice a year;

15.26 (2) protect and exercise the legal rights of the ward person subject to public guardianship;

15.27 (3) take actions and make decisions on behalf of the ward person subject to public
15.28 guardianship that encourage and allow the maximum level of independent functioning in a
15.29 manner least restrictive of the ward's personal freedom of the person subject to public
15.30 guardianship consistent with the need for supervision and protection; and

16.1 (4) permit and encourage maximum self-reliance on the part of the ~~ward~~ person subject
16.2 to public guardianship and permit and encourage input by the nearest relative of the ~~ward~~
16.3 person subject to public guardianship in planning and decision making on behalf of the
16.4 ~~ward~~ person subject to public guardianship.

16.5 Sec. 37. Minnesota Statutes 2020, section 252A.12, is amended to read:

16.6 **252A.12 APPOINTMENT OF ~~CONSERVATOR~~ PUBLIC GUARDIAN NOT A**
16.7 **FINDING OF INCOMPETENCY.**

16.8 An appointment of the commissioner as ~~conservator~~ public guardian shall not constitute
16.9 a judicial finding that the person with a developmental disability is legally incompetent
16.10 except for the restrictions ~~which~~ that the conservatorship public guardianship places on the
16.11 ~~conservatee~~ person subject to public guardianship. The appointment of a ~~conservator~~ public
16.12 guardian shall not deprive the ~~conservatee~~ person subject to public guardianship of the right
16.13 to vote.

16.14 Sec. 38. Minnesota Statutes 2020, section 252A.16, is amended to read:

16.15 **252A.16 ANNUAL REVIEW.**

16.16 Subdivision 1. **Review required.** The commissioner shall require an annual review of
16.17 the physical, mental, and social adjustment and progress of every ~~ward and conservatee~~
16.18 person subject to public guardianship. A copy of this review shall be kept on file at the
16.19 Department of Human Services and may be inspected by the ~~ward or conservatee~~ person
16.20 subject to public guardianship, the ~~ward's or conservatee's~~ parents, spouse, or relatives of
16.21 the person subject to public guardianship, and other persons who receive the permission of
16.22 the commissioner. The review shall contain information required under Minnesota Rules,
16.23 part 9525.3065, subpart 1.

16.24 Subd. 2. **Assessment of need for continued guardianship.** The commissioner shall
16.25 annually review the legal status of each ~~ward~~ person subject to public guardianship in light
16.26 of the progress indicated in the annual review. If the commissioner determines the ~~ward~~
16.27 person subject to public guardianship is no longer in need of public guardianship ~~or~~
16.28 ~~conservatorship~~ or is capable of functioning under a less restrictive ~~conservatorship~~
16.29 guardianship, the commissioner or local agency shall petition the court pursuant to section
16.30 252A.19 to restore the ~~ward~~ person subject to public guardianship to capacity or for a
16.31 modification of the court's previous order.

17.1 Sec. 39. Minnesota Statutes 2020, section 252A.17, is amended to read:

17.2 **252A.17 EFFECT OF SUCCESSION IN OFFICE.**

17.3 The appointment by the court of the commissioner of human services as public
17.4 ~~conservator or~~ guardian shall be by the title of the commissioner's office. The authority of
17.5 the commissioner as public ~~conservator or~~ guardian shall cease upon the termination of the
17.6 commissioner's term of office and shall vest in a successor or successors in office without
17.7 further court proceedings.

17.8 Sec. 40. Minnesota Statutes 2020, section 252A.19, subdivision 2, is amended to read:

17.9 Subd. 2. **Petition.** The commissioner, ~~ward~~ person subject to public guardianship, or
17.10 any interested person may petition the appointing court or the court to which venue has
17.11 been transferred ~~for an order to~~:

17.12 (1) for an order to remove the guardianship ~~or to~~;

17.13 (2) for an order to limit or expand the powers of the guardianship ~~or to~~;

17.14 (3) for an order to appoint a guardian ~~or conservator~~ under sections 524.5-101 to
17.15 524.5-502 ~~or to~~;

17.16 (4) for an order to restore the ~~ward~~ person subject to public guardianship or protected
17.17 person to full legal capacity ~~or to~~;

17.18 (5) to review de novo any decision made by the public guardian ~~or public conservator~~
17.19 for or on behalf of a ~~ward~~ person subject to public guardianship or protected person; or

17.20 (6) for any other order as the court may deem just and equitable.

17.21 Sec. 41. Minnesota Statutes 2020, section 252A.19, subdivision 4, is amended to read:

17.22 Subd. 4. **Comprehensive evaluation.** The commissioner shall, at the court's request,
17.23 arrange for the preparation of a comprehensive evaluation of the ~~ward~~ person subject to
17.24 public guardianship or protected person.

17.25 Sec. 42. Minnesota Statutes 2020, section 252A.19, subdivision 5, is amended to read:

17.26 Subd. 5. **Court order.** Upon proof of the allegations of the petition the court shall enter
17.27 an order removing the guardianship or limiting or expanding the powers of the guardianship
17.28 or restoring the ~~ward~~ person subject to public guardianship or protected person to full legal
17.29 capacity or may enter such other order as the court may deem just and equitable.

18.1 Sec. 43. Minnesota Statutes 2020, section 252A.19, subdivision 7, is amended to read:

18.2 Subd. 7. **Attorney general's role; commissioner's role.** The attorney general may
18.3 appear and represent the commissioner in such proceedings. The commissioner shall support
18.4 or oppose the petition if the commissioner deems such action necessary for the protection
18.5 and supervision of the ~~ward~~ person subject to public guardianship or protected person.

18.6 Sec. 44. Minnesota Statutes 2020, section 252A.19, subdivision 8, is amended to read:

18.7 Subd. 8. ~~Court-appointed~~ **Court-appointed counsel.** In all such proceedings, the
18.8 protected person or ~~ward~~ person subject to public guardianship shall be afforded an
18.9 opportunity to be represented by counsel, and if neither the protected person or ~~ward~~ person
18.10 subject to public guardianship nor others provide counsel the court shall appoint counsel to
18.11 represent the protected person or ~~ward~~ person subject to public guardianship.

18.12 Sec. 45. Minnesota Statutes 2020, section 252A.20, is amended to read:

18.13 **252A.20 COSTS OF HEARINGS.**

18.14 Subdivision 1. **Witness and attorney fees.** In each proceeding under sections 252A.01
18.15 to 252A.21, the court shall allow and order paid to each witness subpoenaed the fees and
18.16 mileage prescribed by law; to each physician, advanced practice registered nurse,
18.17 psychologist, or social worker who assists in the preparation of the comprehensive evaluation
18.18 and who is not ~~in the employ of~~ employed by the local agency or the state Department of
18.19 Human Services, a reasonable sum for services and for travel; and to the ~~ward's~~ counsel of
18.20 the person subject to public guardianship, when appointed by the court, a reasonable sum
18.21 for travel and for each day or portion of a day actually employed in court or actually
18.22 consumed in preparing for the hearing. Upon order the county auditor shall issue a warrant
18.23 on the county treasurer for payment of the amount allowed.

18.24 Subd. 2. **Expenses.** When the settlement of the ~~ward~~ person subject to public guardianship
18.25 is found to be in another county, the court shall transmit to the county auditor a statement
18.26 of the expenses incurred pursuant to subdivision 1. The auditor shall transmit the statement
18.27 to the auditor of the county of the ~~ward's~~ settlement of the person subject to public
18.28 guardianship and this claim shall be paid as other claims against that county. If the auditor
18.29 to whom this claim is transmitted denies the claim, the auditor shall transmit it, together
18.30 with the objections thereto, to the commissioner, who shall determine the question of
18.31 settlement and certify findings to each auditor. If the claim is not paid within 30 days after
18.32 such certification, an action may be maintained thereon in the district court of the claimant
18.33 county.

19.1 Subd. 3. **Change of venue; cost of proceedings.** Whenever venue of a proceeding has
19.2 been transferred under sections 252A.01 to 252A.21, the costs of such proceedings shall be
19.3 reimbursed to the county of the ~~ward's settlement~~ of the person subject to public guardianship
19.4 by the state.

19.5 Sec. 46. Minnesota Statutes 2020, section 252A.21, subdivision 2, is amended to read:

19.6 Subd. 2. **Rules.** The commissioner shall adopt rules to implement this chapter. The rules
19.7 must include standards for performance of guardianship ~~or conservatorship~~ duties including,
19.8 but not limited to: twice a year visits with the ~~ward~~ person subject to public guardianship;
19.9 a requirement that the duties of guardianship ~~or conservatorship~~ and case management not
19.10 be performed by the same person; specific standards for action on "do not resuscitate" orders
19.11 as recommended by a physician, an advanced practice registered nurse, or a physician
19.12 assistant; sterilization requests; and the use of psychotropic medication and aversive
19.13 procedures.

19.14 Sec. 47. Minnesota Statutes 2020, section 252A.21, subdivision 4, is amended to read:

19.15 Subd. 4. **Private guardianships ~~and conservatorships~~.** Nothing in sections 252A.01
19.16 to 252A.21 shall impair the right of individuals to establish private guardianships ~~or~~
19.17 ~~conservatorships~~ in accordance with applicable law.

19.18 Sec. 48. Minnesota Statutes 2020, section 254B.03, subdivision 2, is amended to read:

19.19 Subd. 2. **Chemical dependency fund payment.** (a) Payment from the chemical
19.20 dependency fund is limited to payments for services other than detoxification licensed under
19.21 Minnesota Rules, parts 9530.6510 to 9530.6590, ~~that, if located outside of federally~~
19.22 ~~recognized tribal lands, would be required to be licensed by the commissioner as a chemical~~
19.23 ~~dependency treatment or rehabilitation program under sections 245A.01 to 245A.16, services~~
19.24 identified in section 254B.05, and services other than detoxification provided in another
19.25 state that would be required to be licensed as a chemical dependency program if the program
19.26 were in the state. Out of state vendors must also provide the commissioner with assurances
19.27 that the program complies substantially with state licensing requirements and possesses all
19.28 licenses and certifications required by the host state to provide chemical dependency
19.29 treatment. Vendors receiving payments from the chemical dependency fund must not require
19.30 co-payment from a recipient of benefits for services provided under this subdivision. The
19.31 vendor is prohibited from using the client's public benefits to offset the cost of services paid
19.32 under this section. The vendor shall not require the client to use public benefits for room
19.33 or board costs. This includes but is not limited to cash assistance benefits under chapters

20.1 119B, 256D, and 256J, or SNAP benefits. Retention of SNAP benefits is a right of a client
20.2 receiving services through the consolidated chemical dependency treatment fund or through
20.3 state contracted managed care entities. Payment from the chemical dependency fund shall
20.4 be made for necessary room and board costs provided by vendors meeting the criteria under
20.5 section 254B.05, subdivision 1a, or in a community hospital licensed by the commissioner
20.6 of health according to sections 144.50 to 144.56 to a client who is:

20.7 (1) determined to meet the criteria for placement in a residential chemical dependency
20.8 treatment program according to rules adopted under section 254A.03, subdivision 3; and

20.9 (2) concurrently receiving a chemical dependency treatment service in a program licensed
20.10 by the commissioner and reimbursed by the chemical dependency fund.

20.11 (b) A county may, from its own resources, provide chemical dependency services for
20.12 which state payments are not made. A county may elect to use the same invoice procedures
20.13 and obtain the same state payment services as are used for chemical dependency services
20.14 for which state payments are made under this section if county payments are made to the
20.15 state in advance of state payments to vendors. When a county uses the state system for
20.16 payment, the commissioner shall make monthly billings to the county using the most recent
20.17 available information to determine the anticipated services for which payments will be made
20.18 in the coming month. Adjustment of any overestimate or underestimate based on actual
20.19 expenditures shall be made by the state agency by adjusting the estimate for any succeeding
20.20 month.

20.21 (c) The commissioner shall coordinate chemical dependency services and determine
20.22 whether there is a need for any proposed expansion of chemical dependency treatment
20.23 services. The commissioner shall deny vendor certification to any provider that has not
20.24 received prior approval from the commissioner for the creation of new programs or the
20.25 expansion of existing program capacity. The commissioner shall consider the provider's
20.26 capacity to obtain clients from outside the state based on plans, agreements, and previous
20.27 utilization history, when determining the need for new treatment services.

20.28 Sec. 49. Minnesota Statutes 2020, section 256.042, subdivision 2, is amended to read:

20.29 Subd. 2. **Membership.** (a) The council shall consist of the following 19 voting members,
20.30 appointed by the commissioner of human services except as otherwise specified, and three
20.31 nonvoting members:

20.32 (1) two members of the house of representatives, appointed in the following sequence:
20.33 the first from the majority party appointed by the speaker of the house and the second from

21.1 the minority party appointed by the minority leader. Of these two members, one member
21.2 must represent a district outside of the seven-county metropolitan area, and one member
21.3 must represent a district that includes the seven-county metropolitan area. The appointment
21.4 by the minority leader must ensure that this requirement for geographic diversity in
21.5 appointments is met;

21.6 (2) two members of the senate, appointed in the following sequence: the first from the
21.7 majority party appointed by the senate majority leader and the second from the minority
21.8 party appointed by the senate minority leader. Of these two members, one member must
21.9 represent a district outside of the seven-county metropolitan area and one member must
21.10 represent a district that includes the seven-county metropolitan area. The appointment by
21.11 the minority leader must ensure that this requirement for geographic diversity in appointments
21.12 is met;

21.13 (3) one member appointed by the Board of Pharmacy;

21.14 (4) one member who is a physician appointed by the Minnesota Medical Association;

21.15 (5) one member representing opioid treatment programs, sober living programs, or
21.16 substance use disorder programs licensed under chapter 245G;

21.17 (6) one member appointed by the Minnesota Society of Addiction Medicine who is an
21.18 addiction psychiatrist;

21.19 (7) one member representing professionals providing alternative pain management
21.20 therapies, including, but not limited to, acupuncture, chiropractic, or massage therapy;

21.21 (8) one member representing nonprofit organizations conducting initiatives to address
21.22 the opioid epidemic, with the commissioner's initial appointment being a member
21.23 representing the Steve Rumlmer Hope Network, and subsequent appointments representing
21.24 this or other organizations;

21.25 (9) one member appointed by the Minnesota Ambulance Association who is serving
21.26 with an ambulance service as an emergency medical technician, advanced emergency
21.27 medical technician, or paramedic;

21.28 (10) one member representing the Minnesota courts who is a judge or law enforcement
21.29 officer;

21.30 (11) one public member who is a Minnesota resident and who is in opioid addiction
21.31 recovery;

22.1 (12) two members representing Indian tribes, one representing the Ojibwe tribes and
22.2 one representing the Dakota tribes;

22.3 (13) one public member who is a Minnesota resident and who is suffering from chronic
22.4 pain, intractable pain, or a rare disease or condition;

22.5 (14) one mental health advocate representing persons with mental illness;

22.6 (15) one member appointed by the Minnesota Hospital Association;

22.7 (16) one member representing a local health department; and

22.8 (17) the commissioners of human services, health, and corrections, or their designees,
22.9 who shall be ex officio nonvoting members of the council.

22.10 (b) The commissioner of human services shall coordinate the commissioner's
22.11 appointments to provide geographic, racial, and gender diversity, and shall ensure that at
22.12 least one-half of council members appointed by the commissioner reside outside of the
22.13 seven-county metropolitan area. Of the members appointed by the commissioner, to the
22.14 extent practicable, at least one member must represent a community of color
22.15 disproportionately affected by the opioid epidemic.

22.16 (c) The council is governed by section 15.059, except that members of the council shall
22.17 serve three-year terms and shall receive no compensation other than reimbursement for
22.18 expenses. Notwithstanding section 15.059, subdivision 6, the council shall not expire. The
22.19 three-year term for members in paragraph (a), clauses (1), (3), (5), (7), (9), (11), (13), (15),
22.20 and (17), ends on September 30, 2022. The three-year term for members in paragraph (a),
22.21 clauses (2), (4), (6), (8), (10), (12), (14), and (16), ends on September 30, 2023.

22.22 (d) The chair shall convene the council at least quarterly, and may convene other meetings
22.23 as necessary. The chair shall convene meetings at different locations in the state to provide
22.24 geographic access, and shall ensure that at least one-half of the meetings are held at locations
22.25 outside of the seven-county metropolitan area.

22.26 (e) The commissioner of human services shall provide staff and administrative services
22.27 for the advisory council.

22.28 (f) The council is subject to chapter 13D.

22.29 Sec. 50. Minnesota Statutes 2020, section 256.042, subdivision 4, is amended to read:

22.30 Subd. 4. **Grants.** (a) The commissioner of human services shall submit a report of the
22.31 grants proposed by the advisory council to be awarded ~~for the upcoming fiscal year~~ to the
22.32 chairs and ranking minority members of the legislative committees with jurisdiction over

23.1 health and human services policy and finance, by ~~March~~ December 1 of each year, beginning
23.2 ~~March 1, 2020~~ December 1, 2021, or as soon as the information becomes available thereafter.

23.3 (b) The commissioner of human services shall award grants from the opiate epidemic
23.4 response fund under section 256.043. The grants shall be awarded to proposals selected by
23.5 the advisory council that address the priorities in subdivision 1, paragraph (a), clauses (1)
23.6 to (4), unless otherwise appropriated by the legislature. The council shall determine grant
23.7 awards and funding amounts. The commissioner of human services shall administer grants
23.8 from the opiate epidemic response fund in compliance with section 16B.97. No more than
23.9 ~~three~~ ten percent of the grant amount may be used by a grantee for administration.

23.10 Sec. 51. Minnesota Statutes 2020, section 256B.051, subdivision 1, is amended to read:

23.11 Subdivision 1. **Purpose.** Housing ~~support~~ stabilization services are established to provide
23.12 housing ~~support~~ stabilization services to an individual with a disability that limits the
23.13 individual's ability to obtain or maintain stable housing. The services support an individual's
23.14 transition to housing in the community and increase long-term stability in housing, to avoid
23.15 future periods of being at risk of homelessness or institutionalization.

23.16 Sec. 52. Minnesota Statutes 2020, section 256B.051, subdivision 3, is amended to read:

23.17 Subd. 3. **Eligibility.** An individual with a disability is eligible for housing ~~support~~
23.18 stabilization services if the individual:

23.19 (1) is 18 years of age or older;

23.20 (2) is enrolled in medical assistance;

23.21 (3) has an assessment of functional need that determines a need for services due to
23.22 limitations caused by the individual's disability;

23.23 (4) resides in or plans to transition to a community-based setting as defined in Code of
23.24 Federal Regulations, title 42, section 441.301 (c); and

23.25 (5) has housing instability evidenced by:

23.26 (i) being homeless or at-risk of homelessness;

23.27 (ii) being in the process of transitioning from, or having transitioned in the past six
23.28 months from, an institution or licensed or registered setting;

23.29 (iii) being eligible for waiver services under chapter 256S or section 256B.092 or
23.30 256B.49; or

24.1 (iv) having been identified by a long-term care consultation under section 256B.0911
24.2 as at risk of institutionalization.

24.3 Sec. 53. Minnesota Statutes 2020, section 256B.051, subdivision 5, is amended to read:

24.4 Subd. 5. **Housing support stabilization services.** (a) Housing ~~support~~ stabilization
24.5 services include housing transition services and housing and tenancy sustaining services.

24.6 (b) Housing transition services are defined as:

24.7 (1) tenant screening and housing assessment;

24.8 (2) assistance with the housing search and application process;

24.9 (3) identifying resources to cover onetime moving expenses;

24.10 (4) ensuring a new living arrangement is safe and ready for move-in;

24.11 (5) assisting in arranging for and supporting details of a move; and

24.12 (6) developing a housing support crisis plan.

24.13 (c) Housing and tenancy sustaining services include:

24.14 (1) prevention and early identification of behaviors that may jeopardize continued stable
24.15 housing;

24.16 (2) education and training on roles, rights, and responsibilities of the tenant and the
24.17 property manager;

24.18 (3) coaching to develop and maintain key relationships with property managers and
24.19 neighbors;

24.20 (4) advocacy and referral to community resources to prevent eviction when housing is
24.21 at risk;

24.22 (5) assistance with housing recertification process;

24.23 (6) coordination with the tenant to regularly review, update, and modify the housing
24.24 support and crisis plan; and

24.25 (7) continuing training on being a good tenant, lease compliance, and household
24.26 management.

24.27 (d) A housing ~~support~~ stabilization service may include person-centered planning for
24.28 people who are not eligible to receive person-centered planning through any other service,
24.29 if the person-centered planning is provided by a consultation service provider that is under
24.30 contract with the department and enrolled as a Minnesota health care program.

25.1 Sec. 54. Minnesota Statutes 2020, section 256B.051, subdivision 6, is amended to read:

25.2 Subd. 6. **Provider qualifications and duties.** A provider eligible for reimbursement
25.3 under this section shall:

25.4 (1) enroll as a medical assistance Minnesota health care program provider and meet all
25.5 applicable provider standards and requirements;

25.6 (2) demonstrate compliance with federal and state laws and policies for housing ~~support~~
25.7 stabilization services as determined by the commissioner;

25.8 (3) comply with background study requirements under chapter 245C and maintain
25.9 documentation of background study requests and results; ~~and~~

25.10 (4) directly provide housing ~~support~~ stabilization services and not use a subcontractor
25.11 or reporting agent; and

25.12 (5) complete annual vulnerable adult training.

25.13 Sec. 55. Minnesota Statutes 2020, section 256B.051, subdivision 7, is amended to read:

25.14 Subd. 7. **Housing support supplemental service rates.** Supplemental service rates for
25.15 individuals in settings according to sections 144D.025, 256I.04, subdivision 3, paragraph
25.16 (a), clause (3), and 256I.05, subdivision 1g, shall be reduced by one-half over a two-year
25.17 period. This reduction only applies to supplemental service rates for individuals eligible for
25.18 housing ~~support~~ stabilization services under this section.

25.19 Sec. 56. Minnesota Statutes 2020, section 256B.051, is amended by adding a subdivision
25.20 to read:

25.21 Subd. 8. **Home and community-based service documentation requirements.** (a)
25.22 Documentation may be collected and maintained electronically or in paper form by providers
25.23 and must be produced upon request by the commissioner.

25.24 (b) Documentation of a delivered service must be in English and must be legible according
25.25 to the standard of a reasonable person.

25.26 (c) If the service is reimbursed at an hourly or specified minute-based rate, each
25.27 documentation of the provision of a service, unless otherwise specified, must include:

25.28 (1) the date the documentation occurred;

25.29 (2) the day, month, and year the service was provided;

26.1 (3) the start and stop times with a.m. and p.m. designations, except for person-centered
26.2 planning services described under subdivision 5, paragraph (d);

26.3 (4) the service name or description of the service provided; and

26.4 (5) the name, signature, and title, if any, of the provider of service. If the service is
26.5 provided by multiple staff members, the provider may designate a staff member responsible
26.6 for verifying services and completing the documentation required by this paragraph.

26.7 Sec. 57. Minnesota Statutes 2020, section 256B.0947, subdivision 6, is amended to read:

26.8 Subd. 6. **Service standards.** The standards in this subdivision apply to intensive
26.9 nonresidential rehabilitative mental health services.

26.10 (a) The treatment team must use team treatment, not an individual treatment model.

26.11 (b) Services must be available at times that meet client needs.

26.12 (c) Services must be age-appropriate and meet the specific needs of the client.

26.13 (d) The initial functional assessment must be completed within ten days of intake and
26.14 updated at least every six months or prior to discharge from the service, whichever comes
26.15 first.

26.16 (e) The treatment team must complete an individual treatment plan for each client and
26.17 the individual treatment plan must:

26.18 (1) be based on the information in the client's diagnostic assessment and baselines;

26.19 (2) identify goals and objectives of treatment, a treatment strategy, a schedule for
26.20 accomplishing treatment goals and objectives, and the individuals responsible for providing
26.21 treatment services and supports;

26.22 (3) be developed after completion of the client's diagnostic assessment by a mental health
26.23 professional or clinical trainee and before the provision of children's therapeutic services
26.24 and supports;

26.25 (4) be developed through a child-centered, family-driven, culturally appropriate planning
26.26 process, including allowing parents and guardians to observe or participate in individual
26.27 and family treatment services, assessments, and treatment planning;

26.28 (5) be reviewed at least once every six months and revised to document treatment progress
26.29 on each treatment objective and next goals or, if progress is not documented, to document
26.30 changes in treatment;

27.1 (6) be signed by the clinical supervisor and by the client or by the client's parent or other
27.2 person authorized by statute to consent to mental health services for the client. A client's
27.3 parent may approve the client's individual treatment plan by secure electronic signature or
27.4 by documented oral approval that is later verified by written signature;

27.5 (7) be completed in consultation with the client's current therapist and key providers and
27.6 provide for ongoing consultation with the client's current therapist to ensure therapeutic
27.7 continuity and to facilitate the client's return to the community. For clients under the age of
27.8 18, the treatment team must consult with parents and guardians in developing the treatment
27.9 plan;

27.10 (8) if a need for substance use disorder treatment is indicated by validated assessment:

27.11 (i) identify goals, objectives, and strategies of substance use disorder treatment; develop
27.12 a schedule for accomplishing treatment goals and objectives; and identify the individuals
27.13 responsible for providing treatment services and supports;

27.14 (ii) be reviewed at least once every 90 days and revised, if necessary;

27.15 (9) be signed by the clinical supervisor and by the client and, if the client is a minor, by
27.16 the client's parent or other person authorized by statute to consent to mental health treatment
27.17 and substance use disorder treatment for the client; and

27.18 (10) provide for the client's transition out of intensive nonresidential rehabilitative mental
27.19 health services by defining the team's actions to assist the client and subsequent providers
27.20 in the transition to less intensive or "stepped down" services.

27.21 (f) The treatment team shall actively and assertively engage the client's family members
27.22 and significant others by establishing communication and collaboration with the family and
27.23 significant others and educating the family and significant others about the client's mental
27.24 illness, symptom management, and the family's role in treatment, unless the team knows or
27.25 has reason to suspect that the client has suffered or faces a threat of suffering any physical
27.26 or mental injury, abuse, or neglect from a family member or significant other.

27.27 (g) For a client age 18 or older, the treatment team may disclose to a family member,
27.28 other relative, or a close personal friend of the client, or other person identified by the client,
27.29 the protected health information directly relevant to such person's involvement with the
27.30 client's care, as provided in Code of Federal Regulations, title 45, part 164.502(b). If the
27.31 client is present, the treatment team shall obtain the client's agreement, provide the client
27.32 with an opportunity to object, or reasonably infer from the circumstances, based on the
27.33 exercise of professional judgment, that the client does not object. If the client is not present

28.1 or is unable, by incapacity or emergency circumstances, to agree or object, the treatment
28.2 team may, in the exercise of professional judgment, determine whether the disclosure is in
28.3 the best interests of the client and, if so, disclose only the protected health information that
28.4 is directly relevant to the family member's, relative's, friend's, or client-identified person's
28.5 involvement with the client's health care. The client may orally agree or object to the
28.6 disclosure and may prohibit or restrict disclosure to specific individuals.

28.7 (h) The treatment team shall provide interventions to promote positive interpersonal
28.8 relationships.

28.9 Sec. 58. Minnesota Statutes 2020, section 256B.4912, subdivision 13, is amended to read:

28.10 Subd. 13. **Waiver transportation documentation and billing requirements.** (a) A
28.11 waiver transportation service must be a waiver transportation service that: (1) is not covered
28.12 by medical transportation under the Medicaid state plan; and (2) is not included as a
28.13 component of another waiver service.

28.14 (b) In addition to the documentation requirements in subdivision 12, a waiver
28.15 transportation service provider must maintain:

28.16 (1) odometer and other records pursuant to section 256B.0625, subdivision 17b, paragraph
28.17 (b), clause (3), sufficient to distinguish an individual trip with a specific vehicle and driver
28.18 for a waiver transportation service that is billed directly by the mile. A common carrier as
28.19 defined by Minnesota Rules, part 9505.0315, subpart 1, item B, or a publicly operated transit
28.20 system provider are exempt from this clause; and

28.21 (2) documentation demonstrating that a vehicle and a driver meet the ~~standards determined~~
28.22 ~~by the Department of Human Services on vehicle and driver qualifications in section~~
28.23 ~~256B.0625, subdivision 17, paragraph (e)~~ transportation waiver service provider standards
28.24 and qualifications according to the federally approved waiver plan.

28.25 Sec. 59. Minnesota Statutes 2020, section 256B.69, subdivision 5a, is amended to read:

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

28.30 (b) A prepaid health plan providing covered health services for eligible persons pursuant
28.31 to chapters 256B and 256L is responsible for complying with the terms of its contract with
28.32 the commissioner. Requirements applicable to managed care programs under chapters 256B

29.1 and 256L established after the effective date of a contract with the commissioner take effect
29.2 when the contract is next issued or renewed.

29.3 (c) The commissioner shall withhold five percent of managed care plan payments under
29.4 this section and county-based purchasing plan payments under section 256B.692 for the
29.5 prepaid medical assistance program pending completion of performance targets. Each
29.6 performance target must be quantifiable, objective, measurable, and reasonably attainable,
29.7 except in the case of a performance target based on a federal or state law or rule. Criteria
29.8 for assessment of each performance target must be outlined in writing prior to the contract
29.9 effective date. Clinical or utilization performance targets and their related criteria must
29.10 consider evidence-based research and reasonable interventions when available or applicable
29.11 to the populations served, and must be developed with input from external clinical experts
29.12 and stakeholders, including managed care plans, county-based purchasing plans, and
29.13 providers. The managed care or county-based purchasing plan must demonstrate, to the
29.14 commissioner's satisfaction, that the data submitted regarding attainment of the performance
29.15 target is accurate. The commissioner shall periodically change the administrative measures
29.16 used as performance targets in order to improve plan performance across a broader range
29.17 of administrative services. The performance targets must include measurement of plan
29.18 efforts to contain spending on health care services and administrative activities. The
29.19 commissioner may adopt plan-specific performance targets that take into account factors
29.20 affecting only one plan, including characteristics of the plan's enrollee population. The
29.21 withheld funds must be returned no sooner than July of the following year if performance
29.22 targets in the contract are achieved. The commissioner may exclude special demonstration
29.23 projects under subdivision 23.

29.24 (d) The commissioner shall require that managed care plans use the assessment and
29.25 authorization processes, forms, timelines, standards, documentation, and data reporting
29.26 requirements, protocols, billing processes, and policies consistent with medical assistance
29.27 fee-for-service or the Department of Human Services contract requirements for all personal
29.28 care assistance services under section 256B.0659 and community first services and supports
29.29 under section 256B.85.

29.30 (e) Effective for services rendered on or after January 1, 2012, the commissioner shall
29.31 include as part of the performance targets described in paragraph (c) a reduction in the health
29.32 plan's emergency department utilization rate for medical assistance and MinnesotaCare
29.33 enrollees, as determined by the commissioner. For 2012, the reduction shall be based on
29.34 the health plan's utilization in 2009. To earn the return of the withhold each subsequent
29.35 year, the managed care plan or county-based purchasing plan must achieve a qualifying

30.1 reduction of no less than ten percent of the plan's emergency department utilization rate for
30.2 medical assistance and MinnesotaCare enrollees, excluding enrollees in programs described
30.3 in subdivisions 23 and 28, compared to the previous measurement year until the final
30.4 performance target is reached. When measuring performance, the commissioner must
30.5 consider the difference in health risk in a managed care or county-based purchasing plan's
30.6 membership in the baseline year compared to the measurement year, and work with the
30.7 managed care or county-based purchasing plan to account for differences that they agree
30.8 are significant.

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

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

30.21 (f) Effective for services rendered on or after January 1, 2012, the commissioner shall
30.22 include as part of the performance targets described in paragraph (c) a reduction in the plan's
30.23 hospitalization admission rate for medical assistance and MinnesotaCare enrollees, as
30.24 determined by the commissioner. To earn the return of the withhold each year, the managed
30.25 care plan or county-based purchasing plan must achieve a qualifying reduction of no less
30.26 than five percent of the plan's hospital admission rate for medical assistance and
30.27 MinnesotaCare enrollees, excluding enrollees in programs described in subdivisions 23 and
30.28 28, compared to the previous calendar year until the final performance target is reached.
30.29 When measuring performance, the commissioner must consider the difference in health risk
30.30 in a managed care or county-based purchasing plan's membership in the baseline year
30.31 compared to the measurement year, and work with the managed care or county-based
30.32 purchasing plan to account for differences that they agree are significant.

30.33 The withheld funds must be returned no sooner than July 1 and no later than July 31 of
30.34 the following calendar year if the managed care plan or county-based purchasing plan
30.35 demonstrates to the satisfaction of the commissioner that this reduction in the hospitalization

31.1 rate was achieved. The commissioner shall structure the withhold so that the commissioner
31.2 returns a portion of the withheld funds in amounts commensurate with achieved reductions
31.3 in utilization less than the targeted amount.

31.4 The withhold described in this paragraph shall continue until there is a 25 percent
31.5 reduction in the hospital admission rate compared to the hospital admission rates in calendar
31.6 year 2011, as determined by the commissioner. The hospital admissions in this performance
31.7 target do not include the admissions applicable to the subsequent hospital admission
31.8 performance target under paragraph (g). Hospitals shall cooperate with the plans in meeting
31.9 this performance target and shall accept payment withholds that may be returned to the
31.10 hospitals if the performance target is achieved.

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

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

31.26 The withhold described in this paragraph must continue for each consecutive contract
31.27 period until the plan's subsequent hospitalization rate for medical assistance and
31.28 MinnesotaCare enrollees, excluding enrollees in programs described in subdivisions 23 and
31.29 28, is reduced by 25 percent of the plan's subsequent hospitalization rate for calendar year
31.30 2011. Hospitals shall cooperate with the plans in meeting this performance target and shall
31.31 accept payment withholds that must be returned to the hospitals if the performance target
31.32 is achieved.

31.33 (h) Effective for services rendered on or after January 1, 2013, through December 31,
31.34 2013, the commissioner shall withhold 4.5 percent of managed care plan payments under

32.1 this section and county-based purchasing plan payments under section 256B.692 for the
32.2 prepaid medical assistance program. The withheld funds must be returned no sooner than
32.3 July 1 and no later than July 31 of the following year. The commissioner may exclude
32.4 special demonstration projects under subdivision 23.

32.5 (i) Effective for services rendered on or after January 1, 2014, the commissioner shall
32.6 withhold three percent of managed care plan payments under this section and county-based
32.7 purchasing plan payments under section 256B.692 for the prepaid medical assistance
32.8 program. The withheld funds must be returned no sooner than July 1 and no later than July
32.9 31 of the following year. The commissioner may exclude special demonstration projects
32.10 under subdivision 23.

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

32.14 (k) Contracts between the commissioner and a prepaid health plan are exempt from the
32.15 set-aside and preference provisions of section 16C.16, subdivisions 6, paragraph (a), and
32.16 7.

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

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

32.30 Sec. 60. Minnesota Statutes 2020, section 256B.85, subdivision 1, is amended to read:

32.31 Subdivision 1. **Basis and scope.** (a) Upon federal approval, the commissioner shall
32.32 establish a state plan option for the provision of home and community-based personal
32.33 assistance service and supports called "community first services and supports (CFSS)."

33.1 (b) CFSS is a participant-controlled method of selecting and providing services and
33.2 supports that allows the participant maximum control of the services and supports.
33.3 Participants may choose the degree to which they direct and manage their supports by
33.4 choosing to have a significant and meaningful role in the management of services and
33.5 supports including by directly employing support workers with the necessary supports to
33.6 perform that function.

33.7 (c) CFSS is available statewide to eligible people to assist with accomplishing activities
33.8 of daily living (ADLs), instrumental activities of daily living (IADLs), and health-related
33.9 procedures and tasks through hands-on assistance to accomplish the task or constant
33.10 supervision and cueing to accomplish the task; and to assist with acquiring, maintaining,
33.11 and enhancing the skills necessary to accomplish ADLs, IADLs, and health-related
33.12 procedures and tasks. CFSS allows payment for the participant for certain supports and
33.13 goods such as environmental modifications and technology that are intended to replace or
33.14 decrease the need for human assistance.

33.15 (d) Upon federal approval, CFSS will replace the personal care assistance program under
33.16 sections 256.476, 256B.0625, subdivisions 19a and 19c, and 256B.0659.

33.17 (e) For the purposes of this section, notwithstanding the provisions of section 144A.43,
33.18 subdivision 3, supports purchased under CFSS are not considered home care services.

33.19 Sec. 61. Minnesota Statutes 2020, section 256B.85, subdivision 2, is amended to read:

33.20 Subd. 2. **Definitions.** (a) For the purposes of this section, the terms defined in this
33.21 subdivision have the meanings given.

33.22 (b) "Activities of daily living" or "ADLs" means ~~eating, toileting, grooming, dressing,~~
33.23 ~~bathing, mobility, positioning, and transferring.;~~

33.24 (1) dressing, including assistance with choosing, applying, and changing clothing and
33.25 applying special appliances, wraps, or clothing;

33.26 (2) grooming, including assistance with basic hair care, oral care, shaving, applying
33.27 cosmetics and deodorant, and care of eyeglasses and hearing aids. Grooming includes nail
33.28 care, except for recipients who are diabetic or have poor circulation;

33.29 (3) bathing, including assistance with basic personal hygiene and skin care;

33.30 (4) eating, including assistance with hand washing and applying orthotics required for
33.31 eating, transfers, or feeding;

34.1 (5) transfers, including assistance with transferring the participant from one seating or
34.2 reclining area to another;

34.3 (6) mobility, including assistance with ambulation and use of a wheelchair. Mobility
34.4 does not include providing transportation for a participant;

34.5 (7) positioning, including assistance with positioning or turning a participant for necessary
34.6 care and comfort; and

34.7 (8) toileting, including assistance with bowel or bladder elimination and care, transfers,
34.8 mobility, positioning, feminine hygiene, use of toileting equipment or supplies, cleansing
34.9 the perineal area, inspection of the skin, and adjusting clothing.

34.10 (c) "Agency-provider model" means a method of CFSS under which a qualified agency
34.11 provides services and supports through the agency's own employees and policies. The agency
34.12 must allow the participant to have a significant role in the selection and dismissal of support
34.13 workers of their choice for the delivery of their specific services and supports.

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

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

34.20 (f) "Complex health-related needs" means an intervention listed in clauses (1) to (8) that
34.21 has been ordered by a physician, advanced practice registered nurse, or physician's assistant
34.22 and is specified in a community support plan, including:

34.23 (1) tube feedings requiring:

34.24 (i) a gastrojejunostomy tube; or

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

34.26 (2) wounds described as:

34.27 (i) stage III or stage IV;

34.28 (ii) multiple wounds;

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

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

- 35.1 (3) parenteral therapy described as:
- 35.2 (i) IV therapy more than two times per week lasting longer than four hours for each
- 35.3 treatment; or
- 35.4 (ii) total parenteral nutrition (TPN) daily;
- 35.5 (4) respiratory interventions, including:
- 35.6 (i) oxygen required more than eight hours per day;
- 35.7 (ii) respiratory vest more than one time per day;
- 35.8 (iii) bronchial drainage treatments more than two times per day;
- 35.9 (iv) sterile or clean suctioning more than six times per day;
- 35.10 (v) dependence on another to apply respiratory ventilation augmentation devices such
- 35.11 as BiPAP and CPAP; and
- 35.12 (vi) ventilator dependence under section 256B.0651;
- 35.13 (5) insertion and maintenance of catheter, including:
- 35.14 (i) sterile catheter changes more than one time per month;
- 35.15 (ii) clean intermittent catheterization, and including self-catheterization more than six
- 35.16 times per day; or
- 35.17 (iii) bladder irrigations;
- 35.18 (6) bowel program more than two times per week requiring more than 30 minutes to
- 35.19 perform each time;
- 35.20 (7) neurological intervention, including:
- 35.21 (i) seizures more than two times per week and requiring significant physical assistance
- 35.22 to maintain safety; or
- 35.23 (ii) swallowing disorders diagnosed by a physician, advanced practice registered nurse,
- 35.24 or physician's assistant and requiring specialized assistance from another on a daily basis;
- 35.25 and
- 35.26 (8) other congenital or acquired diseases creating a need for significantly increased direct
- 35.27 hands-on assistance and interventions in six to eight activities of daily living.
- 35.28 (g) "Community first services and supports" or "CFSS" means the assistance and supports
- 35.29 program under this section needed for accomplishing activities of daily living, instrumental
- 35.30 activities of daily living, and health-related tasks through hands-on assistance to accomplish

36.1 the task or constant supervision and cueing to accomplish the task, or the purchase of goods
36.2 as defined in subdivision 7, clause (3), that replace the need for human assistance.

36.3 (h) "Community first services and supports service delivery plan" or "CFSS service
36.4 delivery plan" means a written document detailing the services and supports chosen by the
36.5 participant to meet assessed needs that are within the approved CFSS service authorization,
36.6 as determined in subdivision 8. Services and supports are based on the coordinated service
36.7 and support plan identified in ~~section~~ sections 256B.092, subdivision 1b, and 256S.10.

36.8 (i) "Consultation services" means a Minnesota health care program enrolled provider
36.9 organization that provides assistance to the participant in making informed choices about
36.10 CFSS services in general and self-directed tasks in particular, and in developing a
36.11 person-centered CFSS service delivery plan to achieve quality service outcomes.

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

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

36.20 (l) "Extended CFSS" means CFSS services and supports provided under CFSS that are
36.21 included in the CFSS service delivery plan through one of the home and community-based
36.22 services waivers and as approved and authorized under chapter 256S and sections 256B.092,
36.23 subdivision 5, and 256B.49, which exceed the amount, duration, and frequency of the state
36.24 plan CFSS services for participants. Extended CFSS excludes the purchase of goods.

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

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

36.32 (o) "Instrumental activities of daily living" means activities related to living independently
36.33 in the community, including but not limited to: meal planning, preparation, and cooking;

37.1 shopping for food, clothing, or other essential items; laundry; housecleaning; assistance
37.2 with medications; managing finances; communicating needs and preferences during activities;
37.3 arranging supports; and assistance with traveling around and participating in the community.

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

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

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

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

37.17 (1) under the direction of the participant or the participant's representative, bringing
37.18 medications to the participant including medications given through a nebulizer, opening a
37.19 container of previously set-up medications, emptying the container into the participant's
37.20 hand, opening and giving the medication in the original container to the participant, or
37.21 bringing to the participant liquids or food to accompany the medication;

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

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

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

37.26 (u) "Participant's representative" means a parent, family member, advocate, or other
37.27 adult authorized by the participant or participant's legal representative, if any, to serve as a
37.28 representative in connection with the provision of CFSS. ~~This authorization must be in
37.29 writing or by another method that clearly indicates the participant's free choice and may be
37.30 withdrawn at any time. The participant's representative must have no financial interest in
37.31 the provision of any services included in the participant's CFSS service delivery plan and
37.32 must be capable of providing the support necessary to assist the participant in the use of
37.33 CFSS. If through the assessment process described in subdivision 5 a participant is~~

38.1 ~~determined to be in need of a participant's representative, one must be selected.~~ If the
38.2 participant is unable to assist in the selection of a participant's representative, the legal
38.3 representative shall appoint one. ~~Two persons may be designated as a participant's~~
38.4 ~~representative for reasons such as divided households and court-ordered custodies. Duties~~
38.5 ~~of a participant's representatives may include:~~

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

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

38.11 ~~(3) reviewing and signing CFSS time sheets after services are provided to provide~~
38.12 ~~verification of the CFSS services.~~

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

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

38.17 (x) "Shared services" means the provision of CFSS services by the same CFSS support
38.18 worker to two or three participants who voluntarily enter into ~~an~~ a written agreement to
38.19 receive services at the same time ~~and~~₂ in the same setting ~~by, and through~~ the same ~~employer~~
38.20 agency-provider or FMS provider.

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

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

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

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

39.1 (cc) "Worker training and development" means services provided according to subdivision
39.2 18a for developing workers' skills as required by the participant's individual CFSS service
39.3 delivery plan that are arranged for or provided by the agency-provider or purchased by the
39.4 participant employer. These services include training, education, direct observation and
39.5 supervision, and evaluation and coaching of job skills and tasks, including supervision of
39.6 health-related tasks or behavioral supports.

39.7 Sec. 62. Minnesota Statutes 2020, section 256B.85, subdivision 3, is amended to read:

39.8 Subd. 3. **Eligibility.** (a) CFSS is available to a person who ~~meets one of the following:~~

39.9 ~~(1) is an enrollee of medical assistance as determined under section 256B.055, 256B.056,~~
39.10 ~~or 256B.057, subdivisions 5 and 9;~~

39.11 (1) is determined eligible for medical assistance under this chapter, excluding those
39.12 under section 256B.057, subdivisions 3, 3a, 3b, and 4;

39.13 (2) is a participant in the alternative care program under section 256B.0913;

39.14 (3) is a waiver participant as defined under chapter 256S or section 256B.092, 256B.093,
39.15 or 256B.49; or

39.16 (4) has medical services identified in a person's individualized education program and
39.17 is eligible for services as determined in section 256B.0625, subdivision 26.

39.18 (b) In addition to meeting the eligibility criteria in paragraph (a), a person must also
39.19 meet all of the following:

39.20 (1) require assistance and be determined dependent in one activity of daily living or
39.21 Level I behavior based on assessment under section 256B.0911; and

39.22 (2) is not a participant under a family support grant under section 252.32.

39.23 (c) A pregnant woman eligible for medical assistance under section 256B.055, subdivision
39.24 6, is eligible for CFSS without federal financial participation if the woman: (1) is eligible
39.25 for CFSS under paragraphs (a) and (b); and (2) does not meet institutional level of care, as
39.26 determined under section 256B.0911.

39.27 Sec. 63. Minnesota Statutes 2020, section 256B.85, subdivision 4, is amended to read:

39.28 Subd. 4. **Eligibility for other services.** Selection of CFSS by a participant must not
39.29 restrict access to other medically necessary care and services furnished under the state plan
39.30 benefit or other services available through the alternative care program.

40.1 Sec. 64. Minnesota Statutes 2020, section 256B.85, subdivision 5, is amended to read:

40.2 Subd. 5. **Assessment requirements.** (a) The assessment of functional need must:

40.3 (1) be conducted by a certified assessor according to the criteria established in section
40.4 256B.0911, subdivision 3a;

40.5 (2) be conducted face-to-face, initially and at least annually thereafter, or when there is
40.6 a significant change in the participant's condition or a change in the need for services and
40.7 supports, or at the request of the participant when the participant experiences a change in
40.8 condition or needs a change in the services or supports; and

40.9 (3) be completed using the format established by the commissioner.

40.10 (b) The results of the assessment and any recommendations and authorizations for CFSS
40.11 must be determined and communicated in writing by the lead agency's ~~certified~~ assessor as
40.12 defined in section 256B.0911 to the participant ~~and the agency-provider or FMS provider~~
40.13 ~~chosen by the participant~~ or the participant's representative and chosen CFSS providers
40.14 within 40 calendar ten business days and must include the participant's right to appeal the
40.15 assessment under section 256.045, subdivision 3.

40.16 (c) The lead agency assessor may authorize a temporary authorization for CFSS services
40.17 to be provided under the agency-provider model. The lead agency assessor may authorize
40.18 a temporary authorization for CFSS services to be provided under the agency-provider
40.19 model without using the assessment process described in this subdivision. Authorization
40.20 for a temporary level of CFSS services under the agency-provider model is limited to the
40.21 time specified by the commissioner, but shall not exceed 45 days. The level of services
40.22 authorized under this paragraph shall have no bearing on a future authorization. ~~Participants~~
40.23 ~~approved for a temporary authorization shall access the consultation service~~ For CFSS
40.24 services needed beyond the 45-day temporary authorization, the lead agency must conduct
40.25 an assessment as described in this subdivision and participants must use consultation services
40.26 to complete their orientation and selection of a service model.

40.27 Sec. 65. Minnesota Statutes 2020, section 256B.85, subdivision 6, is amended to read:

40.28 Subd. 6. **Community first services and supports service delivery plan.** (a) The CFSS
40.29 service delivery plan must be developed and evaluated through a person-centered planning
40.30 process by the participant, or the participant's representative or legal representative who
40.31 may be assisted by a consultation services provider. The CFSS service delivery plan must
40.32 reflect the services and supports that are important to the participant and for the participant
40.33 to meet the needs assessed by the certified assessor and identified in the coordinated service

41.1 and support plan identified in ~~section~~ sections 256B.092, subdivision 1b, and 256S.10. The
41.2 CFSS service delivery plan must be reviewed by the participant, the consultation services
41.3 provider, and the agency-provider or FMS provider prior to starting services and at least
41.4 annually upon reassessment, or when there is a significant change in the participant's
41.5 condition, or a change in the need for services and supports.

41.6 (b) The commissioner shall establish the format and criteria for the CFSS service delivery
41.7 plan.

41.8 (c) The CFSS service delivery plan must be person-centered and:

41.9 (1) specify the consultation services provider, agency-provider, or FMS provider selected
41.10 by the participant;

41.11 (2) reflect the setting in which the participant resides that is chosen by the participant;

41.12 (3) reflect the participant's strengths and preferences;

41.13 (4) include the methods and supports used to address the needs as identified through an
41.14 assessment of functional needs;

41.15 (5) include the participant's identified goals and desired outcomes;

41.16 (6) reflect the services and supports, paid and unpaid, that will assist the participant to
41.17 achieve identified goals, including the costs of the services and supports, and the providers
41.18 of those services and supports, including natural supports;

41.19 (7) identify the amount and frequency of face-to-face supports and amount and frequency
41.20 of remote supports and technology that will be used;

41.21 (8) identify risk factors and measures in place to minimize them, including individualized
41.22 backup plans;

41.23 (9) be understandable to the participant and the individuals providing support;

41.24 (10) identify the individual or entity responsible for monitoring the plan;

41.25 (11) be finalized and agreed to in writing by the participant and signed by ~~all~~ individuals
41.26 and providers responsible for its implementation;

41.27 (12) be distributed to the participant and other people involved in the plan;

41.28 (13) prevent the provision of unnecessary or inappropriate care;

41.29 (14) include a detailed budget for expenditures for budget model participants or
41.30 participants under the agency-provider model if purchasing goods; and

42.1 (15) include a plan for worker training and development provided according to
42.2 subdivision 18a detailing what service components will be used, when the service components
42.3 will be used, how they will be provided, and how these service components relate to the
42.4 participant's individual needs and CFSS support worker services.

42.5 (d) The CFSS service delivery plan must describe the units or dollar amount available
42.6 to the participant. The total units of agency-provider services or the service budget amount
42.7 for the budget model include both annual totals and a monthly average amount that cover
42.8 the number of months of the service agreement. The amount used each month may vary,
42.9 but additional funds must not be provided above the annual service authorization amount,
42.10 determined according to subdivision 8, unless a change in condition is assessed and
42.11 authorized by the certified assessor and documented in the coordinated service and support
42.12 plan and CFSS service delivery plan.

42.13 (e) In assisting with the development or modification of the CFSS service delivery plan
42.14 during the authorization time period, the consultation services provider shall:

42.15 (1) consult with the FMS provider on the spending budget when applicable; and

42.16 (2) consult with the participant or participant's representative, agency-provider, and case
42.17 manager/ or care coordinator.

42.18 (f) The CFSS service delivery plan must be approved by the consultation services provider
42.19 for participants without a case manager or care coordinator who is responsible for authorizing
42.20 services. A case manager or care coordinator must approve the plan for a waiver or alternative
42.21 care program participant.

42.22 Sec. 66. Minnesota Statutes 2020, section 256B.85, subdivision 7, is amended to read:

42.23 Subd. 7. **Community first services and supports; covered services.** Services and
42.24 supports covered under CFSS include:

42.25 (1) assistance to accomplish activities of daily living (ADLs), instrumental activities of
42.26 daily living (IADLs), and health-related procedures and tasks through hands-on assistance
42.27 to accomplish the task or constant supervision and cueing to accomplish the task;

42.28 (2) assistance to acquire, maintain, or enhance the skills necessary for the participant to
42.29 accomplish activities of daily living, instrumental activities of daily living, or health-related
42.30 tasks;

42.31 (3) expenditures for items, services, supports, environmental modifications, or goods,
42.32 including assistive technology. These expenditures must:

- 43.1 (i) relate to a need identified in a participant's CFSS service delivery plan; and
- 43.2 (ii) increase independence or substitute for human assistance, to the extent that
- 43.3 expenditures would otherwise be made for human assistance for the participant's assessed
- 43.4 needs;
- 43.5 (4) observation and redirection for behavior or symptoms where there is a need for
- 43.6 assistance;
- 43.7 (5) back-up systems or mechanisms, such as the use of pagers or other electronic devices,
- 43.8 to ensure continuity of the participant's services and supports;
- 43.9 (6) services provided by a consultation services provider as defined under subdivision
- 43.10 17, that is under contract with the department and enrolled as a Minnesota health care
- 43.11 program provider;
- 43.12 (7) services provided by an FMS provider as defined under subdivision 13a, that is an
- 43.13 enrolled provider with the department;
- 43.14 (8) CFSS services provided by a support worker who is a parent, stepparent, or legal
- 43.15 guardian of a participant under age 18, or who is the participant's spouse. These support
- 43.16 workers shall not:
- 43.17 (i) provide any medical assistance home and community-based services in excess of 40
- 43.18 hours per seven-day period regardless of the number of parents providing services,
- 43.19 combination of parents and spouses providing services, or number of children who receive
- 43.20 medical assistance services; and
- 43.21 (ii) have a wage that exceeds the current rate for a CFSS support worker including the
- 43.22 wage, benefits, and payroll taxes; and
- 43.23 (9) worker training and development services as described in subdivision 18a.

43.24 Sec. 67. Minnesota Statutes 2020, section 256B.85, subdivision 8, is amended to read:

43.25 Subd. 8. **Determination of CFSS service authorization amount.** (a) All community

43.26 first services and supports must be authorized by the commissioner or the commissioner's

43.27 designee before services begin. The authorization for CFSS must be completed as soon as

43.28 possible following an assessment but no later than 40 calendar days from the date of the

43.29 assessment.

43.30 (b) The amount of CFSS authorized must be based on the participant's home care rating

43.31 described in paragraphs (d) and (e) and any additional service units for which the participant

43.32 qualifies as described in paragraph (f).

44.1 (c) The home care rating shall be determined by the commissioner or the commissioner's
44.2 designee based on information submitted to the commissioner identifying the following for
44.3 a participant:

44.4 (1) the total number of dependencies of activities of daily living;

44.5 (2) the presence of complex health-related needs; and

44.6 (3) the presence of Level I behavior.

44.7 (d) The methodology to determine the total service units for CFSS for each home care
44.8 rating is based on the median paid units per day for each home care rating from fiscal year
44.9 2007 data for the PCA program.

44.10 (e) Each home care rating is designated by the letters P through Z and EN and has the
44.11 following base number of service units assigned:

44.12 (1) P home care rating requires Level I behavior or one to three dependencies in ADLs
44.13 and qualifies the person for five service units;

44.14 (2) Q home care rating requires Level I behavior and one to three dependencies in ADLs
44.15 and qualifies the person for six service units;

44.16 (3) R home care rating requires a complex health-related need and one to three
44.17 dependencies in ADLs and qualifies the person for seven service units;

44.18 (4) S home care rating requires four to six dependencies in ADLs and qualifies the person
44.19 for ten service units;

44.20 (5) T home care rating requires four to six dependencies in ADLs and Level I behavior
44.21 and qualifies the person for 11 service units;

44.22 (6) U home care rating requires four to six dependencies in ADLs and a complex
44.23 health-related need and qualifies the person for 14 service units;

44.24 (7) V home care rating requires seven to eight dependencies in ADLs and qualifies the
44.25 person for 17 service units;

44.26 (8) W home care rating requires seven to eight dependencies in ADLs and Level I
44.27 behavior and qualifies the person for 20 service units;

44.28 (9) Z home care rating requires seven to eight dependencies in ADLs and a complex
44.29 health-related need and qualifies the person for 30 service units; and

44.30 (10) EN home care rating includes ventilator dependency as defined in section 256B.0651,
44.31 subdivision 1, paragraph (g). A person who meets the definition of ventilator-dependent

45.1 and the EN home care rating and utilize a combination of CFSS and home care nursing
45.2 services is limited to a total of 96 service units per day for those services in combination.
45.3 Additional units may be authorized when a person's assessment indicates a need for two
45.4 staff to perform activities. Additional time is limited to 16 service units per day.

45.5 (f) Additional service units are provided through the assessment and identification of
45.6 the following:

45.7 (1) 30 additional minutes per day for a dependency in each critical activity of daily
45.8 living;

45.9 (2) 30 additional minutes per day for each complex health-related need; and

45.10 (3) 30 additional minutes per day ~~when the~~ for each behavior under this clause that
45.11 requires assistance at least four times per week for one or more of the following behaviors:

45.12 (i) level I behavior that requires the immediate response of another person;

45.13 (ii) increased vulnerability due to cognitive deficits or socially inappropriate behavior;
45.14 or

45.15 (iii) increased need for assistance for participants who are verbally aggressive or resistive
45.16 to care so that the time needed to perform activities of daily living is increased.

45.17 (g) The service budget for budget model participants shall be based on:

45.18 (1) assessed units as determined by the home care rating; and

45.19 (2) an adjustment needed for administrative expenses.

45.20 Sec. 68. Minnesota Statutes 2020, section 256B.85, is amended by adding a subdivision
45.21 to read:

45.22 Subd. 8a. **Authorization; exceptions.** All CFSS services must be authorized by the
45.23 commissioner or the commissioner's designee as described in subdivision 8 except when:

45.24 (1) the lead agency temporarily authorizes services in the agency-provider model as
45.25 described in subdivision 5, paragraph (c);

45.26 (2) CFSS services in the agency-provider model were required to treat an emergency
45.27 medical condition that if not immediately treated could cause a participant serious physical
45.28 or mental disability, continuation of severe pain, or death. The CFSS agency provider must
45.29 request retroactive authorization from the lead agency no later than five working days after
45.30 providing the initial emergency service. The CFSS agency provider must be able to
45.31 substantiate the emergency through documentation such as reports, notes, and admission

46.1 or discharge histories. A lead agency must follow the authorization process in subdivision
46.2 5 after the lead agency receives the request for authorization from the agency provider;

46.3 (3) the lead agency authorizes a temporary increase to the amount of services authorized
46.4 in the agency or budget model to accommodate the participant's temporary higher need for
46.5 services. Authorization for a temporary level of CFSS services is limited to the time specified
46.6 by the commissioner, but shall not exceed 45 days. The level of services authorized under
46.7 this clause shall have no bearing on a future authorization;

46.8 (4) a participant's medical assistance eligibility has lapsed, is then retroactively reinstated,
46.9 and an authorization for CFSS services is completed based on the date of a current
46.10 assessment, eligibility, and request for authorization;

46.11 (5) a third-party payer for CFSS services has denied or adjusted a payment. Authorization
46.12 requests must be submitted by the provider within 20 working days of the notice of denial
46.13 or adjustment. A copy of the notice must be included with the request;

46.14 (6) the commissioner has determined that a lead agency or state human services agency
46.15 has made an error; or

46.16 (7) a participant enrolled in managed care experiences a temporary disenrollment from
46.17 a health plan, in which case the commissioner shall accept the current health plan
46.18 authorization for CFSS services for up to 60 days. The request must be received within the
46.19 first 30 days of the disenrollment. If the recipient's reenrollment in managed care is after
46.20 the 60 days and before 90 days, the provider shall request an additional 30-day extension
46.21 of the current health plan authorization, for a total limit of 90 days from the time of
46.22 disenrollment.

46.23 Sec. 69. Minnesota Statutes 2020, section 256B.85, subdivision 9, is amended to read:

46.24 Subd. 9. **Noncovered services.** (a) Services or supports that are not eligible for payment
46.25 under this section include those that:

46.26 (1) are not authorized by the certified assessor or included in the CFSS service delivery
46.27 plan;

46.28 (2) are provided prior to the authorization of services and the approval of the CFSS
46.29 service delivery plan;

46.30 (3) are duplicative of other paid services in the CFSS service delivery plan;

47.1 (4) supplant natural unpaid supports that appropriately meet a need in the CFSS service
47.2 delivery plan, are provided voluntarily to the participant, and are selected by the participant
47.3 in lieu of other services and supports;

47.4 (5) are not effective means to meet the participant's needs; and

47.5 (6) are available through other funding sources, including, but not limited to, funding
47.6 through title IV-E of the Social Security Act.

47.7 (b) Additional services, goods, or supports that are not covered include:

47.8 (1) those that are not for the direct benefit of the participant, except that services for
47.9 caregivers such as training to improve the ability to provide CFSS are considered to directly
47.10 benefit the participant if chosen by the participant and approved in the support plan;

47.11 (2) any fees incurred by the participant, such as Minnesota health care programs fees
47.12 and co-pays, legal fees, or costs related to advocate agencies;

47.13 (3) insurance, except for insurance costs related to employee coverage;

47.14 (4) room and board costs for the participant;

47.15 (5) services, supports, or goods that are not related to the assessed needs;

47.16 (6) special education and related services provided under the Individuals with Disabilities
47.17 Education Act and vocational rehabilitation services provided under the Rehabilitation Act
47.18 of 1973;

47.19 (7) assistive technology devices and assistive technology services other than those for
47.20 back-up systems or mechanisms to ensure continuity of service and supports listed in
47.21 subdivision 7;

47.22 (8) medical supplies and equipment covered under medical assistance;

47.23 (9) environmental modifications, except as specified in subdivision 7;

47.24 (10) expenses for travel, lodging, or meals related to training the participant or the
47.25 participant's representative or legal representative;

47.26 (11) experimental treatments;

47.27 (12) any service or good covered by other state plan services, including prescription and
47.28 over-the-counter medications, compounds, and solutions and related fees, including premiums
47.29 and co-payments;

47.30 (13) membership dues or costs, except when the service is necessary and appropriate to
47.31 treat a health condition or to improve or maintain the adult participant's health condition.

- 48.1 The condition must be identified in the participant's CFSS service delivery plan and
48.2 monitored by a Minnesota health care program enrolled physician, advanced practice
48.3 registered nurse, or physician's assistant;
- 48.4 (14) vacation expenses other than the cost of direct services;
- 48.5 (15) vehicle maintenance or modifications not related to the disability, health condition,
48.6 or physical need;
- 48.7 (16) tickets and related costs to attend sporting or other recreational or entertainment
48.8 events;
- 48.9 (17) services provided and billed by a provider who is not an enrolled CFSS provider;
- 48.10 (18) CFSS provided by a participant's representative or paid legal guardian;
- 48.11 (19) services that are used solely as a child care or babysitting service;
- 48.12 (20) services that are the responsibility or in the daily rate of a residential or program
48.13 license holder under the terms of a service agreement and administrative rules;
- 48.14 (21) sterile procedures;
- 48.15 (22) giving of injections into veins, muscles, or skin;
- 48.16 (23) homemaker services that are not an integral part of the assessed CFSS service;
- 48.17 (24) home maintenance or chore services;
- 48.18 (25) home care services, including hospice services if elected by the participant, covered
48.19 by Medicare or any other insurance held by the participant;
- 48.20 (26) services to other members of the participant's household;
- 48.21 (27) services not specified as covered under medical assistance as CFSS;
- 48.22 (28) application of restraints or implementation of deprivation procedures;
- 48.23 (29) assessments by CFSS provider organizations or by independently enrolled registered
48.24 nurses;
- 48.25 (30) services provided in lieu of legally required staffing in a residential or child care
48.26 setting; ~~and~~
- 48.27 (31) services provided by ~~the residential or program~~ a foster care license holder ~~in a~~
48.28 ~~residence for more than four participants.~~ except when the home of the person receiving
48.29 services is the licensed foster care provider's primary residence;

49.1 (32) services that are the responsibility of the foster care provider under the terms of the
49.2 foster care placement agreement, assessment under sections 256N.24 and 260C.4411, and
49.3 administrative rules under sections 256N.24 and 260C.4411;

49.4 (33) services in a setting that has a licensed capacity greater than six, unless all conditions
49.5 for a variance under section 245A.04, subdivision 9a, are satisfied for a sibling, as defined
49.6 in section 260C.007, subdivision 32;

49.7 (34) services from a provider who owns or otherwise controls the living arrangement,
49.8 except when the provider of services is related by blood, marriage, or adoption or when the
49.9 provider is a licensed foster care provider who is not prohibited from providing services
49.10 under clauses (31) to (33);

49.11 (35) instrumental activities of daily living for children younger than 18 years of age,
49.12 except when immediate attention is needed for health or hygiene reasons integral to an
49.13 assessed need for assistance with activities of daily living, health-related procedures, and
49.14 tasks or behaviors; or

49.15 (36) services provided to a resident of a nursing facility, hospital, intermediate care
49.16 facility, or health care facility licensed by the commissioner of health.

49.17 Sec. 70. Minnesota Statutes 2020, section 256B.85, subdivision 10, is amended to read:

49.18 Subd. 10. **Agency-provider and FMS provider qualifications and duties.** (a)
49.19 Agency-providers identified in subdivision 11 and FMS providers identified in subdivision
49.20 13a shall:

49.21 (1) enroll as a medical assistance Minnesota health care programs provider and meet all
49.22 applicable provider standards and requirements including completion of required provider
49.23 training as determined by the commissioner;

49.24 (2) demonstrate compliance with federal and state laws and policies for CFSS as
49.25 determined by the commissioner;

49.26 (3) comply with background study requirements under chapter 245C and maintain
49.27 documentation of background study requests and results;

49.28 (4) verify and maintain records of all services and expenditures by the participant,
49.29 including hours worked by support workers;

49.30 (5) not engage in any agency-initiated direct contact or marketing in person, by telephone,
49.31 or other electronic means to potential participants, guardians, family members, or participants'
49.32 representatives;

- 50.1 (6) directly provide services and not use a subcontractor or reporting agent;
- 50.2 (7) meet the financial requirements established by the commissioner for financial
50.3 solvency;
- 50.4 (8) have never had a lead agency contract or provider agreement discontinued due to
50.5 fraud, or have never had an owner, board member, or manager fail a state or FBI-based
50.6 criminal background check while enrolled or seeking enrollment as a Minnesota health care
50.7 programs provider; and
- 50.8 (9) have an office located in Minnesota.
- 50.9 (b) In conducting general duties, agency-providers and FMS providers shall:
- 50.10 (1) pay support workers based upon actual hours of services provided;
- 50.11 (2) pay for worker training and development services based upon actual hours of services
50.12 provided or the unit cost of the training session purchased;
- 50.13 (3) withhold and pay all applicable federal and state payroll taxes;
- 50.14 (4) make arrangements and pay unemployment insurance, taxes, workers' compensation,
50.15 liability insurance, and other benefits, if any;
- 50.16 (5) enter into a written agreement with the participant, participant's representative, or
50.17 legal representative that assigns roles and responsibilities to be performed before services,
50.18 supports, or goods are provided and that meets the requirements of subdivisions 20a, 20b,
50.19 and 20c for agency-providers;
- 50.20 (6) report maltreatment as required under section 626.557 and chapter 260E;
- 50.21 (7) comply with the labor market reporting requirements described in section 256B.4912,
50.22 subdivision 1a;
- 50.23 (8) comply with any data requests from the department consistent with the Minnesota
50.24 Government Data Practices Act under chapter 13; ~~and~~
- 50.25 (9) maintain documentation for the requirements under subdivision 16, paragraph (e),
50.26 clause (2), to qualify for an enhanced rate under this section; and
- 50.27 (10) request reassessments 60 days before the end of the current authorization for CFSS
50.28 on forms provided by the commissioner.

51.1 Sec. 71. Minnesota Statutes 2020, section 256B.85, subdivision 11, is amended to read:

51.2 Subd. 11. **Agency-provider model.** (a) The agency-provider model includes services
51.3 provided by support workers and staff providing worker training and development services
51.4 who are employed by an agency-provider that meets the criteria established by the
51.5 commissioner, including required training.

51.6 (b) The agency-provider shall allow the participant to have a significant role in the
51.7 selection and dismissal of the support workers for the delivery of the services and supports
51.8 specified in the participant's CFSS service delivery plan. The agency must make a reasonable
51.9 effort to fulfill the participant's request for the participant's preferred worker.

51.10 (c) A participant may use authorized units of CFSS services as needed within a service
51.11 agreement that is not greater than 12 months. Using authorized units in a flexible manner
51.12 in either the agency-provider model or the budget model does not increase the total amount
51.13 of services and supports authorized for a participant or included in the participant's CFSS
51.14 service delivery plan.

51.15 (d) A participant may share CFSS services. Two or three CFSS participants may share
51.16 services at the same time provided by the same support worker.

51.17 (e) The agency-provider must use a minimum of 72.5 percent of the revenue generated
51.18 by the medical assistance payment for CFSS for support worker wages and benefits, except
51.19 all of the revenue generated by a medical assistance rate increase due to a collective
51.20 bargaining agreement under section 179A.54 must be used for support worker wages and
51.21 benefits. The agency-provider must document how this requirement is being met. The
51.22 revenue generated by the worker training and development services and the reasonable costs
51.23 associated with the worker training and development services must not be used in making
51.24 this calculation.

51.25 (f) The agency-provider model must be used by ~~individuals~~ participants who are restricted
51.26 by the Minnesota restricted recipient program under Minnesota Rules, parts 9505.2160 to
51.27 9505.2245.

51.28 (g) Participants purchasing goods under this model, along with support worker services,
51.29 must:

51.30 (1) specify the goods in the CFSS service delivery plan and detailed budget for
51.31 expenditures that must be approved by the consultation services provider, case manager, or
51.32 care coordinator; and

51.33 (2) use the FMS provider for the billing and payment of such goods.

52.1 Sec. 72. Minnesota Statutes 2020, section 256B.85, subdivision 11b, is amended to read:

52.2 Subd. 11b. **Agency-provider model; support worker competency.** (a) The
52.3 agency-provider must ensure that support workers are competent to meet the participant's
52.4 assessed needs, goals, and additional requirements as written in the CFSS service delivery
52.5 plan. ~~Within 30 days of any support worker beginning to provide services for a participant,~~
52.6 The agency-provider must evaluate the competency of the worker through direct observation
52.7 of the support worker's performance of the job functions in a setting where the participant
52.8 is using CFSS: within 30 days of:

52.9 (1) any support worker beginning to provide services for a participant; or

52.10 (2) any support worker beginning to provide shared services.

52.11 (b) The agency-provider must verify and maintain evidence of support worker
52.12 competency, including documentation of the support worker's:

52.13 (1) education and experience relevant to the job responsibilities assigned to the support
52.14 worker and the needs of the participant;

52.15 (2) relevant training received from sources other than the agency-provider;

52.16 (3) orientation and instruction to implement services and supports to participant needs
52.17 and preferences as identified in the CFSS service delivery plan; ~~and~~

52.18 (4) orientation and instruction delivered by an individual competent to perform, teach,
52.19 or assign the health-related tasks for tracheostomy suctioning and services to participants
52.20 on ventilator support, including equipment operation and maintenance; and

52.21 ~~(4)~~ (5) periodic performance reviews completed by the agency-provider at least annually,
52.22 including any evaluations required under subdivision 11a, paragraph (a). If a support worker
52.23 is a minor, all evaluations of worker competency must be completed in person and in a
52.24 setting where the participant is using CFSS.

52.25 (c) The agency-provider must develop a worker training and development plan with the
52.26 participant to ensure support worker competency. The worker training and development
52.27 plan must be updated when:

52.28 (1) the support worker begins providing services;

52.29 (2) the support worker begins providing shared services;

52.30 ~~(2)~~ (3) there is any change in condition or a modification to the CFSS service delivery
52.31 plan; or

53.1 ~~(3)~~ (4) a performance review indicates that additional training is needed.

53.2 Sec. 73. Minnesota Statutes 2020, section 256B.85, subdivision 12, is amended to read:

53.3 Subd. 12. **Requirements for enrollment of CFSS agency-providers.** (a) All CFSS
53.4 agency-providers must provide, at the time of enrollment, reenrollment, and revalidation
53.5 as a CFSS agency-provider in a format determined by the commissioner, information and
53.6 documentation that includes, but is not limited to, the following:

53.7 (1) the CFSS agency-provider's current contact information including address, telephone
53.8 number, and e-mail address;

53.9 (2) proof of surety bond coverage. Upon new enrollment, or if the agency-provider's
53.10 Medicaid revenue in the previous calendar year is less than or equal to \$300,000, the
53.11 agency-provider must purchase a surety bond of \$50,000. If the agency-provider's Medicaid
53.12 revenue in the previous calendar year is greater than \$300,000, the agency-provider must
53.13 purchase a surety bond of \$100,000. The surety bond must be in a form approved by the
53.14 commissioner, must be renewed annually, and must allow for recovery of costs and fees in
53.15 pursuing a claim on the bond;

53.16 (3) proof of fidelity bond coverage in the amount of \$20,000 per provider location;

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

53.18 (5) proof of liability insurance;

53.19 (6) a ~~description~~ copy of the CFSS agency-provider's ~~organization~~ organizational chart
53.20 identifying the names and roles of all owners, managing employees, staff, board of directors,
53.21 and ~~the~~ additional documentation reporting any affiliations of the directors and owners to
53.22 other service providers;

53.23 (7) ~~a copy of~~ proof that the CFSS ~~agency-provider's~~ agency-provider has written policies
53.24 and procedures including: hiring of employees; training requirements; service delivery; and
53.25 employee and consumer safety, including the process for notification and resolution of
53.26 participant grievances, incident response, identification and prevention of communicable
53.27 diseases, and employee misconduct;

53.28 (8) ~~copies of all other forms~~ proof that the CFSS agency-provider ~~uses in the course of~~
53.29 ~~daily business including, but not limited to~~ has all of the following forms and documents:

53.30 (i) a copy of the CFSS agency-provider's time sheet; and

53.31 (ii) a copy of the participant's individual CFSS service delivery plan;

54.1 (9) a list of all training and classes that the CFSS agency-provider requires of its staff
54.2 providing CFSS services;

54.3 (10) documentation that the CFSS agency-provider and staff have successfully completed
54.4 all the training required by this section;

54.5 (11) documentation of the agency-provider's marketing practices;

54.6 (12) disclosure of ownership, leasing, or management of all residential properties that
54.7 are used or could be used for providing home care services;

54.8 (13) documentation that the agency-provider will use at least the following percentages
54.9 of revenue generated from the medical assistance rate paid for CFSS services for CFSS
54.10 support worker wages and benefits: 72.5 percent of revenue from CFSS providers, except
54.11 100 percent of the revenue generated by a medical assistance rate increase due to a collective
54.12 bargaining agreement under section 179A.54 must be used for support worker wages and
54.13 benefits. The revenue generated by the worker training and development services and the
54.14 reasonable costs associated with the worker training and development services shall not be
54.15 used in making this calculation; and

54.16 (14) documentation that the agency-provider does not burden participants' free exercise
54.17 of their right to choose service providers by requiring CFSS support workers to sign an
54.18 agreement not to work with any particular CFSS participant or for another CFSS
54.19 agency-provider after leaving the agency and that the agency is not taking action on any
54.20 such agreements or requirements regardless of the date signed.

54.21 (b) CFSS agency-providers shall provide to the commissioner the information specified
54.22 in paragraph (a).

54.23 (c) All CFSS agency-providers shall require all employees in management and
54.24 supervisory positions and owners of the agency who are active in the day-to-day management
54.25 and operations of the agency to complete mandatory training as determined by the
54.26 commissioner. Employees in management and supervisory positions and owners who are
54.27 active in the day-to-day operations of an agency who have completed the required training
54.28 as an employee with a CFSS agency-provider do not need to repeat the required training if
54.29 they are hired by another agency, ~~if~~ and they have completed the training within the past
54.30 three years. CFSS agency-provider billing staff shall complete training about CFSS program
54.31 financial management. Any new owners or employees in management and supervisory
54.32 positions involved in the day-to-day operations are required to complete mandatory training
54.33 as a requisite of working for the agency.

55.1 ~~(d) The commissioner shall send annual review notifications to agency providers 30~~
55.2 ~~days prior to renewal. The notification must:~~

55.3 ~~(1) list the materials and information the agency provider is required to submit;~~

55.4 ~~(2) provide instructions on submitting information to the commissioner; and~~

55.5 ~~(3) provide a due date by which the commissioner must receive the requested information.~~

55.6 ~~Agency providers shall submit all required documentation for annual review within 30 days~~
55.7 ~~of notification from the commissioner. If an agency provider fails to submit all the required~~
55.8 ~~documentation, the commissioner may take action under subdivision 23a.~~

55.9 (d) Agency providers shall submit all required documentation in this section within 30
55.10 days of notification from the commissioner. If an agency provider fails to submit all the
55.11 required documentation, the commissioner may take action under subdivision 23a.

55.12 Sec. 74. Minnesota Statutes 2020, section 256B.85, subdivision 12b, is amended to read:

55.13 Subd. 12b. **CFSS agency-provider requirements; notice regarding termination of**
55.14 **services.** (a) An agency-provider must provide written notice when it intends to terminate
55.15 services with a participant at least ~~ten~~ 30 calendar days before the proposed service
55.16 termination is to become effective, except in cases where:

55.17 (1) the participant engages in conduct that significantly alters the terms of the CFSS
55.18 service delivery plan with the agency-provider;

55.19 (2) the participant or other persons at the setting where services are being provided
55.20 engage in conduct that creates an imminent risk of harm to the support worker or other
55.21 agency-provider staff; or

55.22 (3) an emergency or a significant change in the participant's condition occurs within a
55.23 24-hour period that results in the participant's service needs exceeding the participant's
55.24 identified needs in the current CFSS service delivery plan so that the agency-provider cannot
55.25 safely meet the participant's needs.

55.26 (b) When a participant initiates a request to terminate CFSS services with the
55.27 agency-provider, the agency-provider must give the participant a written ~~acknowledgement~~
55.28 acknowledgment of the participant's service termination request that includes the date the
55.29 request was received by the agency-provider and the requested date of termination.

55.30 (c) The agency-provider must participate in a coordinated transfer of the participant to
55.31 a new agency-provider to ensure continuity of care.

56.1 Sec. 75. Minnesota Statutes 2020, section 256B.85, subdivision 13, is amended to read:

56.2 Subd. 13. **Budget model.** (a) Under the budget model participants exercise responsibility
56.3 and control over the services and supports described and budgeted within the CFSS service
56.4 delivery plan. Participants must use services specified in subdivision 13a provided by an
56.5 FMS provider. Under this model, participants may use their approved service budget
56.6 allocation to:

56.7 (1) directly employ support workers, and pay wages, federal and state payroll taxes, and
56.8 premiums for workers' compensation, liability, and health insurance coverage; and

56.9 (2) obtain supports and goods as defined in subdivision 7.

56.10 (b) Participants who are unable to fulfill any of the functions listed in paragraph (a) may
56.11 authorize a legal representative or participant's representative to do so on their behalf.

56.12 (c) If two or more participants using the budget model live in the same household and
56.13 have the same worker, the participants must use the same FMS provider.

56.14 (d) If the FMS provider advises that there is a joint employer in the budget model, all
56.15 participants associated with that joint employer must use the same FMS provider.

56.16 ~~(e)~~ (e) The commissioner shall disenroll or exclude participants from the budget model
56.17 and transfer them to the agency-provider model under, but not limited to, the following
56.18 circumstances:

56.19 (1) when a participant has been restricted by the Minnesota restricted recipient program,
56.20 in which case the participant may be excluded for a specified time period under Minnesota
56.21 Rules, parts 9505.2160 to 9505.2245;

56.22 (2) when a participant exits the budget model during the participant's service plan year.
56.23 Upon transfer, the participant shall not access the budget model for the remainder of that
56.24 service plan year; or

56.25 (3) when the department determines that the participant or participant's representative
56.26 or legal representative is unable to fulfill the responsibilities under the budget model, as
56.27 specified in subdivision 14.

56.28 ~~(d)~~ (f) A participant may appeal in writing to the department under section 256.045,
56.29 subdivision 3, to contest the department's decision under paragraph ~~(e)~~ (e), clause (3), to
56.30 disenroll or exclude the participant from the budget model.

- 57.1 Sec. 76. Minnesota Statutes 2020, section 256B.85, subdivision 13a, is amended to read:
- 57.2 Subd. 13a. **Financial management services.** (a) Services provided by an FMS provider
57.3 include but are not limited to: filing and payment of federal and state payroll taxes on behalf
57.4 of the participant; initiating and complying with background study requirements under
57.5 chapter 245C and maintaining documentation of background study requests and results;
57.6 billing for approved CFSS services with authorized funds; monitoring expenditures;
57.7 accounting for and disbursing CFSS funds; providing assistance in obtaining and filing for
57.8 liability, workers' compensation, and unemployment coverage; and providing participant
57.9 instruction and technical assistance to the participant in fulfilling employer-related
57.10 requirements in accordance with section 3504 of the Internal Revenue Code and related
57.11 regulations and interpretations, including Code of Federal Regulations, title 26, section
57.12 31.3504-1.
- 57.13 (b) Agency-provider services shall not be provided by the FMS provider.
- 57.14 (c) The FMS provider shall provide service functions as determined by the commissioner
57.15 for budget model participants that include but are not limited to:
- 57.16 (1) assistance with the development of the detailed budget for expenditures portion of
57.17 the CFSS service delivery plan as requested by the consultation services provider or
57.18 participant;
- 57.19 (2) data recording and reporting of participant spending;
- 57.20 (3) other duties established by the department, including with respect to providing
57.21 assistance to the participant, participant's representative, or legal representative in performing
57.22 employer responsibilities regarding support workers. The support worker shall not be
57.23 considered the employee of the FMS provider; and
- 57.24 (4) billing, payment, and accounting of approved expenditures for goods.
- 57.25 (d) The FMS provider shall obtain an assurance statement from the participant employer
57.26 agreeing to follow state and federal regulations and CFSS policies regarding employment
57.27 of support workers.
- 57.28 (e) The FMS provider shall:
- 57.29 (1) not limit or restrict the participant's choice of service or support providers or service
57.30 delivery models consistent with any applicable state and federal requirements;

58.1 (2) provide the participant, consultation services provider, and case manager or care
58.2 coordinator, if applicable, with a monthly written summary of the spending for services and
58.3 supports that were billed against the spending budget;

58.4 (3) be knowledgeable of state and federal employment regulations, including those under
58.5 the Fair Labor Standards Act of 1938, and comply with the requirements under section 3504
58.6 of the Internal Revenue Code and related regulations and interpretations, including Code
58.7 of Federal Regulations, title 26, section 31.3504-1, regarding agency employer tax liability
58.8 for vendor fiscal/employer agent, and any requirements necessary to process employer and
58.9 employee deductions, provide appropriate and timely submission of employer tax liabilities,
58.10 and maintain documentation to support medical assistance claims;

58.11 (4) have current and adequate liability insurance and bonding and sufficient cash flow
58.12 as determined by the commissioner and have on staff or under contract a certified public
58.13 accountant or an individual with a baccalaureate degree in accounting;

58.14 (5) assume fiscal accountability for state funds designated for the program and be held
58.15 liable for any overpayments or violations of applicable statutes or rules, including but not
58.16 limited to the Minnesota False Claims Act, chapter 15C; ~~and~~

58.17 (6) maintain documentation of receipts, invoices, and bills to track all services and
58.18 supports expenditures for any goods purchased and maintain time records of support workers.
58.19 The documentation and time records must be maintained for a minimum of five years from
58.20 the claim date and be available for audit or review upon request by the commissioner. Claims
58.21 submitted by the FMS provider to the commissioner for payment must correspond with
58.22 services, amounts, and time periods as authorized in the participant's service budget and
58.23 service plan and must contain specific identifying information as determined by the
58.24 commissioner; and

58.25 (7) provide written notice to the participant or the participant's representative at least 30
58.26 calendar days before a proposed service termination becomes effective.

58.27 (f) The commissioner ~~of human services~~ shall:

58.28 (1) establish rates and payment methodology for the FMS provider;

58.29 (2) identify a process to ensure quality and performance standards for the FMS provider
58.30 and ensure statewide access to FMS providers; and

58.31 (3) establish a uniform protocol for delivering and administering CFSS services to be
58.32 used by eligible FMS providers.

59.1 Sec. 77. Minnesota Statutes 2020, section 256B.85, is amended by adding a subdivision
59.2 to read:

59.3 Subd. 14a. **Participant's representative responsibilities.** (a) If a participant is unable
59.4 to direct the participant's own care, the participant must use a participant's representative
59.5 to receive CFSS services. A participant's representative is required if:

59.6 (1) the person is under 18 years of age;

59.7 (2) the person has a court-appointed guardian; or

59.8 (3) an assessment according to section 256B.0659, subdivision 3a, determines that the
59.9 participant is in need of a participant's representative.

59.10 (b) A participant's representative must:

59.11 (1) be at least 18 years of age;

59.12 (2) actively participate in planning and directing CFSS services;

59.13 (3) have sufficient knowledge of the participant's circumstances to use CFSS services
59.14 consistent with the participant's health and safety needs identified in the participant's service
59.15 delivery plan;

59.16 (4) not have a financial interest in the provision of any services included in the
59.17 participant's CFSS service delivery plan; and

59.18 (5) be capable of providing the support necessary to assist the participant in the use of
59.19 CFSS services.

59.20 (c) A participant's representative must not be the:

59.21 (1) support worker;

59.22 (2) worker training and development service provider;

59.23 (3) agency-provider staff, unless related to the participant by blood, marriage, or adoption;

59.24 (4) consultation service provider, unless related to the participant by blood, marriage,
59.25 or adoption;

59.26 (5) FMS staff, unless related to the participant by blood, marriage, or adoption;

59.27 (6) FMS owner or manager; or

59.28 (7) lead agency staff acting as part of employment.

60.1 (d) A licensed family foster parent who lives with the participant may be the participant's
60.2 representative if the family foster parent meets the other participant's representative
60.3 requirements.

60.4 (e) There may be two persons designated as the participant's representative, including
60.5 instances of divided households and court-ordered custodies. Each person named as the
60.6 participant's representative must meet the program criteria and responsibilities.

60.7 (f) The participant or the participant's legal representative shall appoint a participant's
60.8 representative. The participant's representative must be identified at the time of assessment
60.9 and listed on the participant's service agreement and CFSS service delivery plan.

60.10 (g) A participant's representative must enter into a written agreement with an
60.11 agency-provider or FMS on a form determined by the commissioner and maintained in the
60.12 participant's file, to:

60.13 (1) be available while care is provided using a method agreed upon by the participant
60.14 or the participant's legal representative and documented in the participant's service delivery
60.15 plan;

60.16 (2) monitor CFSS services to ensure the participant's service delivery plan is followed;

60.17 (3) review and sign support worker time sheets after services are provided to verify the
60.18 provision of services;

60.19 (4) review and sign vendor paperwork to verify receipt of goods; and

60.20 (5) in the budget model, review and sign documentation to verify worker training and
60.21 development expenditures.

60.22 (h) A participant's representative may delegate responsibility to another adult who is not
60.23 the support worker during a temporary absence of at least 24 hours but not more than six
60.24 months. To delegate responsibility, the participant's representative must:

60.25 (1) ensure that the delegate serving as the participant's representative satisfies the
60.26 requirements of the participant's representative;

60.27 (2) ensure that the delegate performs the functions of the participant's representative;

60.28 (3) communicate to the CFSS agency-provider or FMS provider about the need for a
60.29 delegate by updating the written agreement to include the name of the delegate and the
60.30 delegate's contact information; and

60.31 (4) ensure that the delegate protects the participant's privacy according to federal and
60.32 state data privacy laws.

61.1 (i) The designation of a participant's representative remains in place until:

61.2 (1) the participant revokes the designation;

61.3 (2) the participant's representative withdraws the designation or becomes unable to fulfill
61.4 the duties;

61.5 (3) the legal authority to act as a participant's representative changes; or

61.6 (4) the participant's representative is disqualified.

61.7 (j) A lead agency may disqualify a participant's representative who engages in conduct
61.8 that creates an imminent risk of harm to the participant, the support workers, or other staff.

61.9 A participant's representative who fails to provide support required by the participant must
61.10 be referred to the common entry point.

61.11 Sec. 78. Minnesota Statutes 2020, section 256B.85, subdivision 15, is amended to read:

61.12 Subd. 15. **Documentation of support services provided; time sheets.** (a) CFSS services
61.13 provided to a participant by a support worker employed by either an agency-provider or the
61.14 participant employer must be documented daily by each support worker, on a time sheet.
61.15 Time sheets may be created, submitted, and maintained electronically. Time sheets must
61.16 be submitted by the support worker at least once per month to the:

61.17 (1) agency-provider when the participant is using the agency-provider model. The
61.18 agency-provider must maintain a record of the time sheet and provide a copy of the time
61.19 sheet to the participant; or

61.20 (2) participant and the participant's FMS provider when the participant is using the
61.21 budget model. The participant and the FMS provider must maintain a record of the time
61.22 sheet.

61.23 (b) The documentation on the time sheet must correspond to the participant's assessed
61.24 needs within the scope of CFSS covered services. The accuracy of the time sheets must be
61.25 verified by the:

61.26 (1) agency-provider when the participant is using the agency-provider model; or

61.27 (2) participant employer and the participant's FMS provider when the participant is using
61.28 the budget model.

61.29 (c) The time sheet must document the time the support worker provides services to the
61.30 participant. The following elements must be included in the time sheet:

61.31 (1) the support worker's full name and individual provider number;

- 62.1 (2) the agency-provider's name and telephone numbers, when responsible for the CFSS
62.2 service delivery plan;
- 62.3 (3) the participant's full name;
- 62.4 (4) the dates within the pay period established by the agency-provider or FMS provider,
62.5 including month, day, and year, and arrival and departure times with a.m. or p.m. notations
62.6 for days worked within the established pay period;
- 62.7 (5) the covered services provided to the participant on each date of service;
- 62.8 (6) a the signature line for of the participant or the participant's representative and a
62.9 statement that the participant's or participant's representative's signature is verification of
62.10 the time sheet's accuracy;
- 62.11 (7) the ~~personal~~ signature of the support worker;
- 62.12 (8) any shared care provided, if applicable;
- 62.13 (9) a statement that it is a federal crime to provide false information on CFSS billings
62.14 for medical assistance payments; and
- 62.15 (10) dates and location of participant stays in a hospital, care facility, or incarceration
62.16 occurring within the established pay period.

62.17 Sec. 79. Minnesota Statutes 2020, section 256B.85, subdivision 17a, is amended to read:

62.18 Subd. 17a. **Consultation services provider qualifications and**
62.19 **requirements.** Consultation services providers must meet the following qualifications and
62.20 requirements:

- 62.21 (1) meet the requirements under subdivision 10, paragraph (a), excluding clauses (4)
62.22 and (5);
- 62.23 (2) are under contract with the department;
- 62.24 (3) are not the FMS provider, the lead agency, or the CFSS or home and community-based
62.25 services waiver vendor or agency-provider to the participant;
- 62.26 (4) meet the service standards as established by the commissioner;
- 62.27 (5) have proof of surety bond coverage. Upon new enrollment, or if the consultation
62.28 service provider's Medicaid revenue in the previous calendar year is less than or equal to
62.29 \$300,000, the consultation service provider must purchase a surety bond of \$50,000. If the
62.30 agency-provider's Medicaid revenue in the previous calendar year is greater than \$300,000,
62.31 the consultation service provider must purchase a surety bond of \$100,000. The surety bond

63.1 must be in a form approved by the commissioner, must be renewed annually, and must
63.2 allow for recovery of costs and fees in pursuing a claim on the bond;

63.3 ~~(5)~~ (6) employ lead professional staff with a minimum of three years of experience in
63.4 providing services such as support planning, support broker, case management or care
63.5 coordination, or consultation services and consumer education to participants using a
63.6 self-directed program using FMS under medical assistance;

63.7 (7) report maltreatment as required under chapter 260E and section 626.557;

63.8 ~~(6)~~ (8) comply with medical assistance provider requirements;

63.9 ~~(7)~~ (9) understand the CFSS program and its policies;

63.10 ~~(8)~~ (10) are knowledgeable about self-directed principles and the application of the
63.11 person-centered planning process;

63.12 ~~(9)~~ (11) have general knowledge of the FMS provider duties and the vendor
63.13 fiscal/employer agent model, including all applicable federal, state, and local laws and
63.14 regulations regarding tax, labor, employment, and liability and workers' compensation
63.15 coverage for household workers; and

63.16 ~~(10)~~ (12) have all employees, including lead professional staff, staff in management and
63.17 supervisory positions, and owners of the agency who are active in the day-to-day management
63.18 and operations of the agency, complete training as specified in the contract with the
63.19 department.

63.20 Sec. 80. Minnesota Statutes 2020, section 256B.85, subdivision 18a, is amended to read:

63.21 Subd. 18a. **Worker training and development services.** (a) The commissioner shall
63.22 develop the scope of tasks and functions, service standards, and service limits for worker
63.23 training and development services.

63.24 (b) Worker training and development costs are in addition to the participant's assessed
63.25 service units or service budget. Services provided according to this subdivision must:

63.26 (1) help support workers obtain and expand the skills and knowledge necessary to ensure
63.27 competency in providing quality services as needed and defined in the participant's CFSS
63.28 service delivery plan and as required under subdivisions 11b and 14;

63.29 (2) be provided or arranged for by the agency-provider under subdivision 11, or purchased
63.30 by the participant employer under the budget model as identified in subdivision 13; ~~and~~

64.1 (3) be delivered by an individual competent to perform, teach, or assign the tasks,
64.2 including health-related tasks, identified in the plan through education, training, and work
64.3 experience relevant to the person's assessed needs; and

64.4 ~~(3)~~ (4) be described in the participant's CFSS service delivery plan and documented in
64.5 the participant's file.

64.6 (c) Services covered under worker training and development shall include:

64.7 (1) support worker training on the participant's individual assessed needs and condition,
64.8 provided individually or in a group setting by a skilled and knowledgeable trainer beyond
64.9 any training the participant or participant's representative provides;

64.10 (2) tuition for professional classes and workshops for the participant's support workers
64.11 that relate to the participant's assessed needs and condition;

64.12 (3) direct observation, monitoring, coaching, and documentation of support worker job
64.13 skills and tasks, beyond any training the participant or participant's representative provides,
64.14 including supervision of health-related tasks or behavioral supports that is conducted by an
64.15 appropriate professional based on the participant's assessed needs. These services must be
64.16 provided at the start of services or the start of a new support worker except as provided in
64.17 paragraph (d) and must be specified in the participant's CFSS service delivery plan; and

64.18 (4) the activities to evaluate CFSS services and ensure support worker competency
64.19 described in subdivisions 11a and 11b.

64.20 (d) The services in paragraph (c), clause (3), are not required to be provided for a new
64.21 support worker providing services for a participant due to staffing failures, unless the support
64.22 worker is expected to provide ongoing backup staffing coverage.

64.23 (e) Worker training and development services shall not include:

64.24 (1) general agency training, worker orientation, or training on CFSS self-directed models;

64.25 (2) payment for preparation or development time for the trainer or presenter;

64.26 (3) payment of the support worker's salary or compensation during the training;

64.27 (4) training or supervision provided by the participant, the participant's support worker,
64.28 or the participant's informal supports, including the participant's representative; or

64.29 (5) services in excess of ~~96 units~~ the rate set by the commissioner per annual service
64.30 agreement, unless approved by the department.

65.1 Sec. 81. Minnesota Statutes 2020, section 256B.85, subdivision 20b, is amended to read:

65.2 Subd. 20b. **Service-related rights under an agency-provider.** A participant receiving
65.3 CFSS from an agency-provider has service-related rights to:

65.4 (1) participate in and approve the initial development and ongoing modification and
65.5 evaluation of CFSS services provided to the participant;

65.6 (2) refuse or terminate services and be informed of the consequences of refusing or
65.7 terminating services;

65.8 (3) before services are initiated, be told the limits to the services available from the
65.9 agency-provider, including the agency-provider's knowledge, skill, and ability to meet the
65.10 participant's needs identified in the CFSS service delivery plan;

65.11 (4) a coordinated transfer of services when there will be a change in the agency-provider;

65.12 (5) before services are initiated, be told what the agency-provider charges for the services;

65.13 (6) before services are initiated, be told to what extent payment may be expected from
65.14 health insurance, public programs, or other sources, if known; and what charges the
65.15 participant may be responsible for paying;

65.16 (7) receive services from an individual who is competent and trained, who has
65.17 professional certification or licensure, as required, and who meets additional qualifications
65.18 identified in the participant's CFSS service delivery plan;

65.19 (8) have the participant's preferences for support workers identified and documented,
65.20 and have those preferences met when possible; and

65.21 (9) before services are initiated, be told the choices that are available from the
65.22 agency-provider for meeting the participant's assessed needs identified in the CFSS service
65.23 delivery plan, including but not limited to which support worker staff will be providing
65.24 services ~~and~~, the proposed frequency and schedule of visits, and any agreements for shared
65.25 services.

65.26 Sec. 82. Minnesota Statutes 2020, section 256B.85, subdivision 23, is amended to read:

65.27 Subd. 23. **Commissioner's access.** (a) When the commissioner is investigating a possible
65.28 overpayment of Medicaid funds, the commissioner must be given immediate access without
65.29 prior notice to the agency-provider, consultation services provider, or FMS provider's office
65.30 during regular business hours and to documentation and records related to services provided
65.31 and submission of claims for services provided. ~~Denying the commissioner access to records~~
65.32 ~~is cause for immediate suspension of payment and terminating~~ If the agency-provider's

66.1 ~~enrollment or agency-provider, FMS provider's enrollment provider, or consultation services~~
66.2 ~~provider denies the commissioner access to records, the provider's payment may be~~
66.3 ~~immediately suspended or the provider's enrollment may be terminated according to section~~
66.4 ~~256B.064 or terminating the consultation services provider contract.~~

66.5 (b) The commissioner has the authority to request proof of compliance with laws, rules,
66.6 and policies from agency-providers, consultation services providers, FMS providers, and
66.7 participants.

66.8 (c) When relevant to an investigation conducted by the commissioner, the commissioner
66.9 must be given access to the business office, documents, and records of the agency-provider,
66.10 consultation services provider, or FMS provider, including records maintained in electronic
66.11 format; participants served by the program; and staff during regular business hours. The
66.12 commissioner must be given access without prior notice and as often as the commissioner
66.13 considers necessary if the commissioner is investigating an alleged violation of applicable
66.14 laws or rules. The commissioner may request and shall receive assistance from lead agencies
66.15 and other state, county, and municipal agencies and departments. The commissioner's access
66.16 includes being allowed to photocopy, photograph, and make audio and video recordings at
66.17 the commissioner's expense.

66.18 Sec. 83. Minnesota Statutes 2020, section 256B.85, subdivision 23a, is amended to read:

66.19 Subd. 23a. **Sanctions; information for participants upon termination of services.** (a)
66.20 The commissioner may withhold payment from the provider or suspend or terminate the
66.21 provider enrollment number if the provider fails to comply fully with applicable laws or
66.22 rules. The provider has the right to appeal the decision of the commissioner under section
66.23 256B.064.

66.24 (b) Notwithstanding subdivision 13, paragraph (c), if a participant employer fails to
66.25 comply fully with applicable laws or rules, the commissioner may disenroll the participant
66.26 from the budget model. A participant may appeal in writing to the department under section
66.27 256.045, subdivision 3, to contest the department's decision to disenroll the participant from
66.28 the budget model.

66.29 (c) Agency-providers of CFSS services or FMS providers must provide each participant
66.30 with a copy of participant protections in subdivision 20c at least 30 days prior to terminating
66.31 services to a participant, if the termination results from sanctions under this subdivision or
66.32 section 256B.064, such as a payment withhold or a suspension or termination of the provider
66.33 enrollment number. If a CFSS agency-provider ~~or~~, FMS provider, or consultation services
66.34 provider determines it is unable to continue providing services to a participant because of

67.1 an action under this subdivision or section 256B.064, the agency-provider ~~or~~, FMS provider,
67.2 or consultation services provider must notify the participant, the participant's representative,
67.3 and the commissioner 30 days prior to terminating services to the participant, and must
67.4 assist the commissioner and lead agency in supporting the participant in transitioning to
67.5 another CFSS agency-provider ~~or~~, FMS provider, or consultation services provider of the
67.6 participant's choice.

67.7 (d) In the event the commissioner withholds payment from a CFSS agency-provider ~~or~~,
67.8 FMS provider, or consultation services provider, or suspends or terminates a provider
67.9 enrollment number of a CFSS agency-provider ~~or~~, FMS provider, or consultation services
67.10 provider under this subdivision or section 256B.064, the commissioner may inform the
67.11 Office of Ombudsman for Long-Term Care and the lead agencies for all participants with
67.12 active service agreements with the agency-provider ~~or~~, FMS provider, or consultation
67.13 services provider. At the commissioner's request, the lead agencies must contact participants
67.14 to ensure that the participants are continuing to receive needed care, and that the participants
67.15 have been given free choice of agency-provider ~~or~~, FMS provider, or consultation services
67.16 provider if they transfer to another CFSS agency-provider ~~or~~, FMS provider, or consultation
67.17 services provider. In addition, the commissioner or the commissioner's delegate may directly
67.18 notify participants who receive care from the agency-provider ~~or~~, FMS provider, or
67.19 consultation services provider that payments have been or will be withheld or that the
67.20 provider's participation in medical assistance has been or will be suspended or terminated,
67.21 if the commissioner determines that the notification is necessary to protect the welfare of
67.22 the participants.

67.23 Sec. 84. **REVISOR INSTRUCTION.**

67.24 In Minnesota Statutes, sections 245A.191, paragraph (a); 245G.02, subdivision 3; 246.18,
67.25 subdivision 2; 246.23, subdivision 2; 246.64, subdivision 3; 254A.03, subdivision 3; 254A.19,
67.26 subdivision 4; 254B.03, subdivision 2; 254B.04, subdivision 1; 254B.05, subdivisions 1a
67.27 and 4; 254B.051; 254B.06, subdivision 1; 254B.12, subdivisions 1 and 2; 254B.13,
67.28 subdivisions 2a and 5; 254B.14, subdivision 5; 256L.03, subdivision 2; and 295.53,
67.29 subdivision 1, the revisor of statutes must change the term "consolidated chemical
67.30 dependency treatment fund" or similar terms to "behavioral health fund." The revisor may
67.31 make grammatical changes related to the term change.

67.32 Sec. 85. **REPEALER.**

67.33 (a) Minnesota Statutes 2020, section 252.28, subdivisions 1 and 5, are repealed.

- 68.1 (b) Minnesota Statutes 2020, sections 252A.02, subdivisions 8 and 10; and 252A.21,
68.2 subdivision 3, are repealed.
- 68.3 **EFFECTIVE DATE.** Paragraph (a) is effective the day following final enactment.
68.4 Paragraph (b) is effective August 1, 2021.

252.28 COMMISSIONER OF HUMAN SERVICES; DUTIES.

Subdivision 1. **Determinations; redeterminations.** In conjunction with the appropriate county boards, the commissioner of human services shall determine, and shall redetermine at least every four years, the need, anticipated growth or decline in need until the next anticipated redetermination, location, size, and program of public and private day training and habilitation services for persons with developmental disabilities. This subdivision does not apply to semi-independent living services and residential-based habilitation services provided to four or fewer persons at a single site funded as home and community-based services. A determination of need shall not be required for a change in ownership.

Subd. 5. **Appeals.** A county may appeal a determination of need, size, location, or program according to chapter 14. Notice of appeals must be provided to the commissioner within 30 days after the receipt of the commissioner's determination.

252A.02 DEFINITIONS.

Subd. 8. **Public conservator.** "Public conservator" means the commissioner of human services when exercising some, but not all the powers designated in section 252A.111.

Subd. 10. **Conservatee.** "Conservatee" means a person with a developmental disability for whom the court has appointed a public conservator.

252A.21 GENERAL PROVISIONS.

Subd. 3. **Terminology.** Whenever the term "guardian" is used in sections 252A.01 to 252A.21, it shall include "conservator," and the term "ward" shall include "conservatee" unless another intention clearly appears from the context.