

Chapter 54

2019 Regular Session

Subject Elderly Waiver Program Recodification

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Overview

This act recodifies the elderly waiver program statutes (article 1) and makes conforming changes (article 2).

Laws 2017 First Special Session chapter 6, article 3, section 50, instructed the Revisor of Statutes, in consultation with the House Research Department; Office of Senate Counsel, Research, and Fiscal Analysis; and Department of Human Services (DHS) to recodify laws governing the elderly waiver program.

Given the complexity of the elderly waiver program language, staff decided to accomplish the recodification by moving the elderly waiver language out of Minnesota Statutes, chapter 256B, and into a new chapter 256S.

Nonpartisan staff have reorganized the elderly waiver program language for clarity and ease of use, removed obsolete language, used consistent terminology, defined previously undefined terms, and redrafted language for clarity and consistency.

The language in this bill is not intended to change existing policy or to have a fiscal impact.

Article 1: Elderly Waiver

Proposed section and headnote	Proposed subdivision coding and headnote	Current coding (256B.0915)
256S.01 Generally	Subd. 1. Authority	Subd. 1, para (a)
	Subd. 2. Transition plan compliance	Subd. 1, para (b)
	Subd. 3. Services and supports requirements	Subd. 8, para (a) and (b)
	Subd. 4. Payment for services	Subd. 3f, para (b), first sentence
	Subd. 5. Expenditure forecast	Subd. 3f, para (b), second sentence
	Subd. 6. Immunity; CDCS	Subd. 8, para (c)
256S.02 Definitions	Subd. 1. Application	New
	Subd. 2. Adjusted base wage	New
	Subd. 3. Annual average statewide percentage increase in nursing facility operating payment rates	Subd. 3a, para (e)
	Subd. 4. Case mix classification	Subd. 3a, para (a)
	Subd. 5. Commissioner	New
	Subd. 6. Component service	New
	Subd. 7. Component service rate	New
	Subd. 8. Consumer-directed community supports	New
	Subd. 9. Customized living monthly service rate limit	New
	Subd. 10. Customized living service plan	New
	Subd. 11. Customized living service rate	New
	Subd. 12. Customized living services	New
	Subd. 13. Department	New
	Subd. 14. Elderly waiver	New
	Subd. 15. Lead agency	Subd. 1b, para (a), last sentence of clause (5)
	Subd. 16. Maintenance needs allowance	New
	Subd. 17. Managed care organization	New
	Subd. 18. Monthly case mix budget cap	New
	19. Nursing facility case mix adjusted total payment rate	New
	Subd. 20. Nursing facility level of care determination	Subd. 5, para (a)
	Subd. 21. Private agency	Subd. 1a, last sentence of para (f)
	Subd. 22. Service rate	New

Proposed section and headnote	Proposed subdivision coding and headnote	Current coding (256B.0915)
	Subd. 23. Service rate limit	New
	Subd. 24. State plan home care services	New
	Subd. 25. 24-hour customized living monthly service rate limit	New
256S.03 Administration by tribes		Subd. 9
256S.04 Limits of elderly waiver cases		Subd. 3
256S.05 Eligibility	Subd. 1. Elderly waiver plan eligibility requirements	New
	Subd. 2. Nursing facility level of care determination required	Subd. 5, paras (a) and (b)
	Subd. 3. Maintenance needs allowance	Subd. 1d
	Subd. 4. Spousal impoverishment policies	Subd. 2
	Subd. 5. Managed care elderly waiver services	Subd. 7
256S.06 Assessments and reassessments	Subd. 1. Initial assessments	Subd. 5, para (a), first sentence
	Subd. 2. Annual reassessments	Subd. 5, para (a), second sentence
	Subd. 3. Change-in-condition reassessments	Subd. 5, para (c)
256S.07 Case management administration	Subd. 1. Elderly waiver case management provided by counties and tribes	Subd. 1a, para (e)
	Subd. 2. Elderly waiver case management provided by managed care organizations	Subd. 1a, para (h)
256S.08 Case management provider qualifications and standards	Subd. 1. Provider requirements	Subd. 1a, para (f)
	Subd. 2. Provider enrollment	Subd. 1b, para (a), first two sentences
	Subd. 3. Provider qualifications	Subd. 1b, paras (a), first four clauses of third sentence, and (b)
	Subd. 4. Delegation of certain case management activities	Subd. 1b, para (a), last clause of third sentence
	Subd. 5. Case aides	Subd. 1a, para (c)
256S.09 Case management activities	Subd. 1. Choice of case management provider	Subd. 1a, para (a), first sentence
	Subd. 2. Case management activities	Subd. 1a, paras (b), first sentence; and (g)
	Subd. 3. Coordinated service and support plan	Subd. 1a, para (b), second sentence, and para (d)

Proposed section and headnote	Proposed subdivision coding and headnote	Current coding (256B.0915)
	development, review, and monitoring	
256S.10 Coordinated service and support plans	Subd. 1. Written plan required	Subd. 6, para (a), portion
	Subd. 2. Plan development timeline	Subd. 6, para (a), clause (1)
	Subd. 3. Plan content	Subd. 6, para (a), clauses (2) to (9), and para (b), first sentence
	Subd. 4. Immunity	Subd. 6, para (b), second sentence
256S.11 Approval required for certain state plan home care services		Subd. 3c
256S.12 Adult day services	Subd. 1. Adult day services authorization limits	Subd. 16, para (o), second sentence
	Subd. 2. Adult day services bath authorization minimum	Subd. 16, para (o), first sentence
256S.13 Individual Community Living Supports	Subd. 1. Provider requirements	Subd. 3j, second sentence
	Subd. 2. Licensing standards	Subd. 3j, sixth sentence
	Subd. 3. Setting requirements	Subd. 3j, third sentence
	Subd. 4. Plan required	Subd. 3j, fourth sentence
	Subd. 5. ICLS rates	Subd. 3j, fifth sentence
256S.14 Termination of elderly waiver services		Subd. 4
256S.15 Establishment of elderly waiver service rates and service rate limits	Subd. 1. Statewide service rates and service rate limits	Subd. 3g, para (a)
	Subd. 2. Foster care limit	Subd. 3d
256S.16 Authorization of elderly waiver services and service rates		Subd. 3h, para (a)
256S.17 Costs excluded from elderly waiver service rates		Subds. 3d (without last sentence), 3e, para (c), and 3h, para (e)
256S.18 Monthly case mix budget caps; generally	Subd. 1. Case mix classifications	Subd. 3a, para (b)
	Subd. 2. Costs included under monthly case mix budget cap	New (based on language in subd. 3b, para (b), and subd. 3d)
	Subd. 3. Monthly case mix budget caps	Subd. 3a, para (a)
	Subd. 4. Monthly case mix budget cap prorating for specialized supplies, equipment, or environmental modifications	Subd. 3a, para (c)
	Subd. 5. Home and community-based rate	Subd. 3a, para (a)

Proposed section and headnote	Proposed subdivision coding and headnote	Current coding (256B.0915)
	adjustments; effect on monthly case mix budget caps	
	Subd. 6. Nursing facility average operating payment rate increases; effect on monthly case mix budget caps	Subd. 3a, para (e)
256S.19 Monthly case mix budget caps; nursing facility residents	Subd. 1. Requests for elderly waiver monthly conversion budget caps	Subd. 3b, para (a), first sentence
	Subd. 2. Eligibility for elderly waiver monthly conversion budget caps	Subd. 3b, para (a), sixth sentence
	Subd. 3. Calculation of monthly conversion budget cap without CDCS	Subd. 3b, para (a), second to fifth sentences
	Subd. 4. Calculation of monthly conversion budget cap with CDCS	Subd. 3b, para (a), seventh sentence
256S.20 Customized living services; policy	Subd. 1. Customized living services provider requirements	Subds. 3e, para (f), and 3h, para (h)
	Subd. 2. Customized living services requirements	Subds. 3e, para (f), and 3h, para (h)
	Subd. 3. Documented need required	Subds. 3e, para (a)
	Subd. 4. 24-hour customized living services eligibility	Subd. 3h, paras (a) and (b)
	Subd. 5. Billing for additional units of allowable services prohibited	Subds. 3e, para (g), and 3h, para (i)
256S.201 Customized living services; rates	Subd. 1. Authorized customized living service rates	Subds. 3e, para (a), and 3h, para (a)
	Subd. 2. Customized living service plan	Subds. 3e, para (a), and 3h, para (a)
	Subd. 3. Customized living service rates	Subds. 3e, para (b), and subd. 3h, para (c)
	Subd. 4. Component service rates	Subd. 3e, para (c), and 3h, para (d)
256S.202 Customized living services; rate limits	Subd. 1. Customized living monthly service rate limits	Subd. 3e, paras (d) and (h)
	Subd. 2. 24-hour customized living monthly service rate limits	Subd. 3h, paras (f), and (j)
256S.203 Customized living services; managed care rates	Subd. 1. Capitation payments	Subd. 10, first sentence
	Subd. 2. Reimbursement rates	Subd. 10, second sentence
256S.204 Alternative rate system for 24-hour customized living services		Subd. 3h, para (g)
256S.21 Rate setting; application		Subd. 11

Proposed section and headnote	Proposed subdivision coding and headnote	Current coding (256B.0915)
256S.2101 Rate setting; phase-in		Subd. 12
256S.211 Rate setting; rate establishment	Subd. 1. Establishing base wages	Subd. 13, para (a)
	Subd. 2. Establishing rates	Subd. 13, para (b)
256S.212 Rate setting; base wage index	Subd. 1. Updating SOC codes	Subd. 14, para (d)
	Subd. 2. Home management and support services base wage	Subd. 14, para (a), clause (1)
	Subd. 3. Home care aide base wage	Subd. 14, para (a), clause (2)
	Subd. 4. Home health aide base wage	Subd. 14, para (a), clause (3)
	Subd. 5. Medication setups by licensed nurse base wage	Subd. 14, para (a), clause (4)
	Subd. 6. Chore services base wage	Subd. 14, para (b), clause (1)
	Subd. 7. Companion services base wage	Subd. 14, para (b), clause (2)
	Subd. 8. Homemaker services and assistance with personal care base wage	Subd. 14, para (b), clause (3)
	Subd. 9. Homemaker services and cleaning base wage	Subd. 14, para (b), clause (4)
	Subd. 10. Homemaker services and home management base wage	Subd. 14, para (b), clause (5)
	Subd. 11. In-home respite care services base wage	Subd. 14, para (b), clause (6)
	Subd. 12. Out-of-home respite care services base wage	Subd. 14, para (b), clause (7)
	Subd. 13. Individual community living support base wage	Subd. 14, para (b), clause (8)
	Subd. 14. Registered nurse base wage	Subd. 14, para (c), clause (1)
	Subd. 15. Social worker base wage	Subd. 14, para (c), clause (2)
256S.213 Rate setting; factors	Subd. 1. Payroll taxes and benefits factor	Subd. 15, clause (1)
	Subd. 2. General and administrative factor	Subd. 15, clause (2)
	Subd. 3. Program plan support factor	Subd. 15, clause (3)
	Subd. 4. Registered nurse management and supervision factor	Subd. 15, clause (4)
	Subd. 5. Social worker supervision factor	Subd. 15, clause (5)

Proposed section and headnote	Proposed subdivision coding and headnote	Current coding (256B.0915)
256S.214 Rate setting; adjusted base wage		Subd. 16, para (a)
256S.215 Rate setting; component rates	Subd. 1. Medication setups by licensed nurse component rate	Subd. 16, para (b) (removed registered nurse and social worker services)
	Subd. 2. Home management and support services component rate	Subd. 16, para (c)
	Subd. 3. Home care aide services component rate	Subd. 16, para (c)
	Subd. 4. Home health aide services component rate	Subd. 16, para (c)
	Subd. 5. Socialization component rate	Subd. 16, para (d)
	Subd. 6. Transportation component rate	Subd. 16, para (d)
	Subd. 7. Chore services rate	Subd. 16, para (e)
	Subd. 8. Companion services rate	Subd. 16, para (e)
	Subd. 9. Homemaker services and assistance with personal care rate	Subd. 16, para (f)
	Subd. 10. Homemaker services and cleaning rate	Subd. 16, para (f)
	Subd. 11. Homemaker services and home management rate	Subd. 16, para (f)
	Subd. 12. In-home respite care services rates	Subd. 16, paras (g) and (h)
	Subd. 13. Out-of-home respite care services rates	Subd. 16, paras (i) and (j)
	Subd. 14. Individual community living support rate	Subd. 16, para (k)
	Subd. 15. Home-delivered meals rate	Subd. 16, para (l)
	Subd. 16. Adult day services rate	Subd. 16, para (m)
	Subd. 17. Adult day services bath rate	Subd. 16, para (n)
Repealed/removed – 256B.0915, subd. 3a, para (d); 3b, para (b); 3e, para (e); 3g, para (b); subd. 3i, para (b)		

Section	Description
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32	Direction to commissioner; transition process.
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Requires the commissioner of human services to update references to statutes recodified in this act when: (1) printed material is replaced; (2) online documents and Web sites are edited; and (3) the home and community-based service waiver plans are updated in the

Section	Description
	normal course of business. Specifies that the commissioner is not required to make these changes merely to comply with this act.
33	<p>Revisor instruction.</p> <p>Instructs the revisor of statutes, in consultation with others, to make necessary cross-reference changes and remove statutory cross-references in Minnesota Statutes to conform with the recodification and repealer in this act. Allows the revisor to make technical and other necessary changes to sentence structure to preserve the meaning of the text. Allows the revisor to alter the coding in this act to incorporate statutory changes made by other law in the 2019 regular legislative session. Requires the revisor to merge any amendments into the recodification if a provision repealed in this act is also amended in the 2019 regular legislative session by other law. Instructs the revisor to uncodify the elderly waiver rate setting evaluation to align the provision with established drafting standards. Makes this section effective August 1, 2019.</p>
34	<p>Repealer.</p> <p>Repeals Minnesota Statutes 2018, section 256B.0915, subds. 1 (authority), 1a (elderly waiver case management services), 1b (provider qualifications and standards), 1d (posteligibility treatment of income and resources for elderly waiver), 2 (spousal impoverishment policies), 3 (limits of cases), 3a (elderly waiver cost limits), 3b (cost limits for elderly waiver applicants who reside in a nursing facility), 3c (service approval provisions), 3d (adult foster care rate), 3e (customized living service rate), 3f (payments for services; expenditure forecast), 3g (service rate limits; state assumption of costs), 3h (service rate limits; 24-hour customized living services), 3i (rate reduction for customized living and 24-hour customized living services), 3j (individual community living support), 4 (termination notice), 5 (assessments and reassessments for waiver clients), 6 (implementation of coordinated service and support plan), 7 (prepaid elderly waiver services), 8 (services and supports), 9 (tribal management of elderly waiver), 10 (waiver payment rates; managed care organizations); 11 (payment rates; application), 12 (payment rates; phase-in), 13 (payment rates; establishment), 14 (payment rates; base wage index), 15 (payment rates; factors), 16 (payment rates; component rates), and 17 (evaluation of rate methodology).</p> <p>Makes this section effective August 1, 2019.</p>

Article 2 Elderly Waiver Technical Corrections

This article makes technical corrections to cross-references related to the elderly waiver recodification.

Section	Description
1	<p>Definitions.</p> <p>Amends § 144.0724, subd. 2. Makes a conforming cross-reference change. Provides an August 1, 2019 effective date.</p>
2	<p>Nursing facility level of care.</p> <p>Amends § 144.0724, subd. 11. Makes a conforming cross-reference change. Provides an August 1, 2019 effective date.</p>
3	<p>Additional contract requirements.</p> <p>Amends § 144D.04, subd. 2a. Makes conforming cross-reference changes. Provides an August 1, 2019 effective date.</p>
4	<p>Reimbursement under assisted living service packages.</p> <p>Amends § 144G.05. Makes conforming cross-reference changes. Provides an August 1, 2019 effective date.</p>
5	<p>Licensing moratorium.</p> <p>Amends § 245A.03, subd. 7. Makes conforming cross-reference changes. Provides an August 1, 2019 effective date.</p>
6	<p>Policies and procedures for program administration required and enforceable.</p> <p>Amends § 245A.04, subd. 14. Makes a conforming cross-reference change. Provides an August 1, 2019 effective date.</p>
7	<p>Alternate overnight supervision technology; adult foster care and community residential setting licenses.</p> <p>Amends § 245A.11, subd. 7a. Makes a conforming cross-reference change. Provides an August 1, 2019 effective date.</p>
8	<p>Adult foster care bedrooms.</p> <p>Amends § 245A.11, subd. 9. Makes a conforming cross-reference change. Provides an August 1, 2019 effective date.</p>
9	<p>Adult foster care resident nights.</p> <p>Amends § 245A.11, subd. 10. Makes a conforming cross-reference change. Provides an August 1, 2019 effective date.</p>

Section	Description
10	<p>Adult foster care service termination for elderly waiver participants. Amends § 245A.11, subd. 11. Makes a conforming cross-reference change. Provides an August 1, 2019 effective date.</p>
11	<p>Case manager. Amends § 245D.02, subd. 3. Makes a conforming cross-reference change. Provides an August 1, 2019 effective date.</p>
12	<p>Coordinated service and support plan. Amends § 245D.02, subd. 4b. Makes a conforming cross-reference change. Provides an August 1, 2019 effective date.</p>
13	<p>Home and community-based services. Amends § 245D.02, subd. 10. Makes a conforming cross-reference change. Provides an August 1, 2019 effective date.</p>
14	<p>Applicability. Amends § 245D.03, subd. 1. Makes a conforming cross-reference change. Provides an August 1, 2019 effective date.</p>
15	<p>Provider rate increases after June 30, 1999. Amends § 256B.038. Makes a conforming cross-reference change. Provides an August 1, 2019 effective date.</p>
16	<p>Eligibility. Amends § 256B.051, subd. 3. Makes a conforming cross-reference change. Provides an August 1, 2019 effective date.</p>
17	<p>Definitions. Amends § 256B.059, subd. 1. Makes conforming cross-reference changes. Provides an August 1, 2019 effective date.</p>
18	<p>Prohibited transfers. Amends § 256B.0595, subd. 1. Makes conforming cross-reference changes. Provides an August 1, 2019 effective date.</p>
19	<p>Citizenship requirements. Amends § 256B.06, subd. 4. Makes a conforming cross-reference change. Provides an August 1, 2019 effective date.</p>

Section	Description
20	<p>Definitions. Amends § 256B.0659, subd. 1. Makes a conforming cross-reference change. Provides an August 1, 2019 effective date.</p>
21	<p>Definitions. Amends § 256B.0711, subd. 1. Makes a conforming cross-reference change. Provides an August 1, 2019 effective date.</p>
22	<p>Definitions. Amends § 256B.0911, subd. 1a. Makes a conforming cross-reference change. Provides an August 1, 2019 effective date.</p>
23	<p>Assessment and support planning. Amends § 256B.0911, subd. 3a. Makes conforming cross-reference changes. Provides an August 1, 2019 effective date.</p>
24	<p>Eligibility for funding for services for nonmedical recipients. Amends § 256B.0913, subd. 4. Makes conforming cross-reference changes. Provides an August 1, 2019 effective date.</p>
25	<p>Case management. Amends § 256B.0913, subd. 7. Makes conforming cross-reference changes. Provides an August 1, 2019 effective date.</p>
26	<p>Requirements for individual coordinated service and support plan. Amends § 256B.0913, subd. 8. Makes a conforming cross-reference change. Provides an August 1, 2019 effective date.</p>
27	<p>Lead agency biennial plan. Amends § 256B.0913, subd. 13. Makes a conforming cross-reference change. Provides an August 1, 2019 effective date.</p>
28	<p>Provider requirements, payment, and rate adjustments. Amends § 256B.0913, subd. 14. Makes a conforming cross-reference change. Provides an August 1, 2019 effective date.</p>
29	<p>Home and community-based services for older adults. Amends § 256B.0917, subd. 1a. Makes a conforming cross-reference change. Provides an August 1, 2019 effective date.</p>

Section	Description
30	<p>Participating providers. Amends § 256B.0918, subd. 2. Makes a conforming cross-reference change. Provides an August 1, 2019 effective date.</p>
31	<p>County certification of persons providing adult foster care to related persons. Amends § 256B.0919, subd. 3. Makes a conforming cross-reference change. Provides an August 1, 2019 effective date.</p>
32	<p>Essential community supports for people in transition. Amends § 256B.0922, subd. 2. Makes conforming cross-reference changes. Provides an August 1, 2019 effective date.</p>
33	<p>Other survivors. Amends § 256B.15, subd. 4. Makes a conforming cross-reference change. Provides an August 1, 2019 effective date.</p>
34	<p>Development and implementation of quality profiles. Amends § 256B.439, subd. 1. Makes a conforming cross-reference change. Provides an August 1, 2019 effective date.</p>
35	<p>Provider qualifications. Amends § 256B.4912, subd. 1. Makes a conforming cross-reference change. Provides an August 1, 2019 effective date.</p>
36	<p>County and tribal provider contract elimination. Amends § 256B.4912, subd. 5. Makes a conforming cross-reference change. Provides an August 1, 2019 effective date.</p>
37	<p>Applicant and license holder training. Amends § 256B.4912, subd. 7. Makes a conforming cross-reference change. Provides an August 1, 2019 effective date.</p>
38	<p>Home and community-based waiver services. Amends § 256B.69, subd. 6b. Makes a conforming cross-reference change. Provides an August 1, 2019 effective date.</p>
39	<p>Provider rate increases. Amends § 256B.765. Makes a conforming cross-reference change. Provides an August 1, 2019 effective date.</p>

Section	Description
40	Definitions. Amends § 256B.85, subd. 2. Makes conforming cross-reference changes. Provides an August 1, 2019 effective date.
41	Eligibility. Amends § 256B.85, subd. 3. Makes a conforming cross-reference change. Provides an August 1, 2019 effective date.
42	Community first services and supports service delivery plan. Amends § 256B.85, subd. 6. Makes a conforming cross-reference change. Provides an August 1, 2019 effective date.
43	Patient services. Amends § 295.50, subd. 9b. Makes a conforming cross-reference change. Provides an August 1, 2019 effective date.