# Legislative Update 2023 MASWA/SPSWA Thursday, June 22, 2023

# Agenda

#### I. Payment Issues

- a. Medicaid Renewals
- b. HCBS Waiver rate Increases
- c. EW Disproportionate Share Program
- d. Nursing Facility increases

### II. Employment issues

- a. Earned Sick and Safe
- b. Paid Family Leave
- c. Nursing Home Workforce Standards Board

#### III. Workforce Issues

- a. Grants
- b. Supported Decision-making
- c. Recreational Cannabis

#### V. <u>HCBS Opportunities</u>

- a. Recuperative Care Services
- b. Caregiver Respite Grants
- c. Age Friendly Minnesota
- d. Live Well at Home Grants

#### VI. Studies to Look Forward to

- a. Nursing Facility Rates
- b. Acute Care Transitions
- c. Long COVID Monitoring
- d. Small Assisted Living Providers
- e. Legislative Task Force on Aging

# **Payment Issues**

Medicaid Renewals

HCBS Waiver rate Increases

EW Disproportionate Share Program

Nursing Facility increase

# Medicaid Unwinding

### https://mn.gov/dhs/renewmycoverage/

Medical Assistance Monthly Renewal Cohort Paperwork	
Schedule	

Renewal month	Pre-renewal notice mailed by	Renewal form mailed by
July 2023	April 2023	May 2023
August 2023	May 2023	June 2023
September 2023	June 2023	July 2023
October 2023	July 2023	August 2023
November 2023	August 2023	September 2023
December 2023	September 2023	October 2023
January 2024	October 2023	November 2023
February 2024	November 2023	December 2023
March 2024	December 2023	January 2024
April 2024	January 2024	February 2024
May 2024	February 2024	March 2024

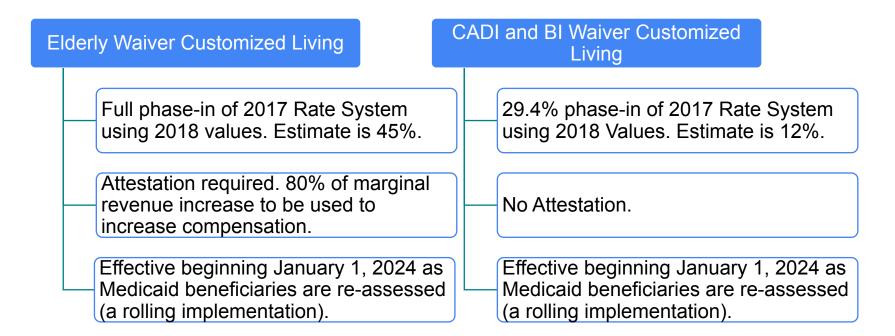
#### DHS

- LTC Training Webinar on June 27, 2023 from 1:00PM to 2:30PM
- Bulletins
  - o https://mn.gov/dhs/general-public/publications-forms-resources/bulletins/
- **Q:** What date do we use for the renewal dates for our Medicaid (MA) residents?
- A: Renewal months are based on the date the county received the Medicaid application, NOT the date they were approved, sent, or signed.

#### To find a resident's renewal date:

- <u>https://www.mnrenewallookup.com/</u>
- Resident Consent
- Enter the Case Number from notice or premium bill and Member Number from Minnesota Health Care Program card

### **HCBS** Waiver rate Increases



Future increases or updating of rates will require legislative appropriation.

# EW Disproportionate Share Program

- Program was established several years ago to provide minimum daily payment for settings serving a higher proportion of EW-CL beneficiaries.
- Program statute states:
  - The commissioner shall not implement the rate floor under this section if the customized living rates established under sections 256S.21 to 256S.215 will be implemented at 100 percent on January 1 of the year following an application year.
- Two issues:
  - While rates are being phased-in at 100%, 2018 values are being used, not 2023. This means disproportionate share settings will likely experience rate reductions.
  - If floor goes away on January 1 and new rates are implemented as assessments are performed during 2024, current disproportionate share settings will experience immediate decrease.
- Advocacy to date and next steps

### Nursing Facility increases

	-			
Description	Financially Distressed Nursing Facility Loan Program	Critical Access Nursing Facilities	Payments to Nursing Facilities Not to Exceed Forecast Spending	Nursing Facility Temporary Rate Add-On
What	\$100 million for interest free loans to eligible nursing facilities. Six-year term. Non-payment results in state deducting from remittance.	\$1 million per year appropriated for an estimated 10-12 nursing facilities. Time limited payment to fund operations.	\$225,000 plus and estimated \$3,900 per active bed on May 11, 2023. Amount then paid in two installments using state funding.	Temporary rate add-on for nursing facilities reimbursed under Minnesota Statutes, chapter 256R, in an amount equal to \$12.35 per resident day.
When	Effective July 1, 2023	Expect RFP to be published late June or early July.	August 2023 and August 2024	Effective July 1, 2023
Criteria or Uses	Facility must demonstrate financial hardship, risk of closure, and preservation of community access and/or support high acuity patients.	Maintain access in isolated areas, rebalance long-term care, improve quality, and when possible ensure an even distribution of designations across the state.	<ul> <li>Operating- or property-related long-term debt payments</li> <li>Closing lines of credit</li> <li>Debt restructuring, paying off covenants</li> <li>avoiding receivership</li> <li>Rent payments in arrears</li> <li>Physical plant improvements</li> </ul>	None
Offset from Rates	No	No (but waiting for DHS written explanation)	<ul> <li>No –</li> <li>Payments to related organizations prohibited</li> <li>Reporting requirements</li> <li>Audits and recoupment</li> </ul>	No (but waiting for DHS written explanation)
DHS Guidance or Bulletin <b>Presently</b> Available	No	No	No	No



### Nursing Facility Workforce Incentive Grant Program

- "Eligible worker" means a worker who earns \$30 per hour or less and is currently employed or recruited to be employed by an eligible employer.
- An eligible worker may receive payments of up to \$3,000 per year and all other state money intended for the same purpose.
- Attestation, distribution report requirements, audits and recoupment
- Grants are not considered income for recipient when determining benefit eligibility.
- Applicable credit for nursing facilities.

Nursing Facility Funding HF3342 (Dollars in		
Thousands)	FY 2024-25	FY 2026-27
Nursing Facility Workforce Incentive Grant Program	74,500	0

#### Uses

- Retention, recruitment, and incentive payments;
- Employee-owned benefits, such as health savings accounts, HRSA, and flexible spending accounts;
- Employee contributions to a 401k account;
- education, professional development, and financial counseling;
- Child care, meals, transportation, and housing;
- Health and wellness; and
- Other flexible needs related to workforce challenges as determined by the commissioner.

# **Employment Issues**

# When will new policies impact your business?

The Minnesota legislature passed many bills this legislative session. Here is a timeline of when those bills become a reality for your <u>business</u>.

#### **ALREADY IN EFFECT**

- Hair texture and styles added to the definition of race
- Ban on restrictive franchise agreements ("no-poach" or "non-solicitation" agreements)
- State Building Code process/rules change to require adult-size changing facilities
- Cumulative impact reporting on state air permits
- Odor management oversight
- Air toxics reporting criteria to obtain a permit
- Additional public meetings for nonexpiring air permits

#### July 1, 2023

- Noncompete agreements banned
- Lactating employees, pregnancy accommodations, unpaid leave updates and small business exemptions removed
- Human Rights Act updated with new definitions of sexual orientation and gender identity
- New and increased OSHA penalties, classification of citation data; authority to inspect employer exclusion
- Ergonomics Grant program;
- New ergonomics reporting requirements
- New agriculture and food processing worker standards
- Nursing Home Standards board established to set new employment standards
  - Motor vehicle sales tax increases

#### August 1, 2023

- Restrictions on employer-sponsored meetings and communications (captive audience)
- New protections in place for warehouse distribution centers
- Stricter construction worker wage protections
- Fees increase for groundwater appropriation permits
- Recreational marijuana legal

2025

#### October 1, 2023

- Sales tax increases for housing
- 1% metro area sales tax for transit and housing

#### https://www.mnchamber.com/

https://www.mnchamber.com/sites/default/files/Session %202023%20bill%20timeline%20-%20Minnesota%20C hamber.pdf

#### January 1, 2024

2023

- Sick and safe time mandated
- New ergonomics standards in effect for warehouse, meatpacking, health care workers
- New safety standards for meatpacking
- New worker standards for meat and poultry processing
- · Ban established on asking about pay history
- Tab fee increases
- Gas tax indexed to inflation

#### July 1, 2024

2024

 New 50 cent per-delivery on retail deliveries over \$100

#### October 1, 2024

 Minnesota OSHA fines/ penalties indexed to inflation

#### January 1, 2025 • Minnesota Secure Choice Plan - retirement savings program

2026

PFAS ban in 11 products

#### January 1, 2026

- New Paid Family and Medical Leave mandate
- New reporting requirements for all PFAS products

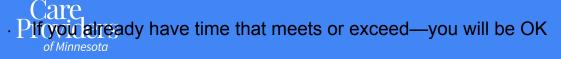


### Earned Sick and Safe Time

Beginning January 1, 2024, employees are entitled to accrue one hour of sick and safe leave for every 30 hours worked, up to a total of 48 hours per year, and employees will be able to carry accrued hours, subject to an 80-hour total cap on accrued hours. Alternatively, employers may opt to front-load 80 hours of sick and safe leave at the beginning of each applicable benefit plan year.

The statewide sick and safe time leave allows for absences due to an expansive list of reasons, including:

- To care for an employee's own or to care for a family member's mental or physical illness, injury, or other health condition, medical diagnosis, care, or treatment.
- Due to domestic abuse, sexual assault or stalking of the employee or the employee's family member.
- Closure of the employee's place of business due to weather or the need to care for a family member whose school or place of care has been closed due to weather or other public emergency.
  The employee's inability to work or telework because the employee is prohibited from working by the employer due to health concerns related to the potential transmission of a communicable illness.



### Paid Family Leave

Starting January 1, 2026, nearly all private and public sector employees will be eligible for a partial wage replacement to support up to 12 weeks of paid medical leave, including for pregnancy and childbirth and 12 weeks paid for other kinds of family leave, including parental leave, caregiving leave, safety leave and deployment related leave. Employees who need leave from both categories can take up to 20 weeks total in a benefit year. Family members include an employee's spouse or domestic partner, child, parent, sibling, grandchild or grandparent, along with individuals who have a relationship with the applicant that creates an expectation and reliance that the applicant care for the individual, whether or not the applicant and the individual reside together. Employees hired at least 90 days prior to their leave have the right to get their job back or an equivalent job.

Starting January 1, 2026



### Nursing Home Workforce Standards Board

This bill establishes the Minnesota Nursing Home Workforce Standards Board and requires the board to adopt rules establishing minimum nursing home employment standards for nursing home workers, certifying worker organizations to provide training to nursing home workers, and establishing curriculum requirements for training. It also requires nursing home employers to post notices informing nursing home workers of their rights and obligations under the minimum nursing home employment standards and prohibits nursing home employers from retaliating against nursing home workers for certain conduct. The bill authorizes the commissioner of labor and industry to investigate violations and enforce minimum nursing home employment standards and authorizes civil actions by nursing home workers. Initial appointments: August 1, 2023 First Set of Rules: August, 2024



### **Ban on Non-Competes**

Effective July 1, 2023, the new noncompete law prohibits any post-employment noncompete agreement with an employee or independent contractor *regardless* of a person's income, with only two very limited carveouts for certain noncompetes agreed upon (1) in connection with the sale of a business or (2) in anticipation of the dissolution of a business. Subject to those limited exceptions, the law provides that any "covenant not to compete," which is "an agreement between an employee and employer that restricts the employee, <u>after termination of employment</u>, from performing: (1) work for another employer for a specified period of time: (2) work in a specified geographic area; or (3) work for another employer in a capacity that is similar to the employee's work for the employer that is party to the agreement" is void and unenforceable.



### Workforce Programs



### **Provider Capacity Grants**

Establishes a grant program that provides awards to organizations that provide community-based services to rural or underserved communities, must be used to build organizational capacity to provide home and community-based services in the state and to build new or expanded infrastructure to access medical assistance reimbursement.

Grants must be used by recipients to (1) expand existing services; (2) increase access in rural or underserved areas; (3) create new home and community-based organizations;(4) connect underserved communities to benefits and available services; or (5) build new or expand infrastructure to access medical assistance reimbursement.



### Long-Term Services and Supports Workforce Incentive Grants

Establishes grants for long-term services and supports providers and facilities to assist with recruiting and retaining direct support professionals. Eligible employers include home and community-based services providers, facilities certified as an intermediate care for persons with developmental disabilities, nursing facilities, providers of personal care assistance services and providers of home care services.

Grantees must develop a distribution plan that outlines how money will be used. Funds may be used to provide payments to eligible workers (those making \$30 per hour or less and is currently employed) for the following purposes: (1) retention, recruitment, and incentive payments; (2) postsecondary loan and tuition payments; (3) child care costs; (4) transportation-related costs; (5) personal care assistant background study costs; and (6) other costs associated with retaining and recruiting workers, as approved by the commissioner.

Eligible workers may receive cumulative payments up to \$1,000 per year from the workforce incentive grant account and all other state money intended for the same purpose.

Grants received by workers will not be considered income for purposes of determining eligibility for state government programs and are excluded from income under Minnesota income tax laws.

Requires the commissioner to treat grant payments awarded under this section as an applicable credit where the analysing facility payments chapter of statute.

# DEED Drive for 5

#### **DEED Drive for Five**

To grow workforce and address tight labor market, skills mismatch, geographic mismatch and other barriers to employment, **the Drive for 5 Workforce Initiative** will prepare a workforce to enter five of the most critical occupational 4 categories in the state with high-growth jobs and family-sustaining wages: **Technology, Caring Professions, Education, Manufacturing, and Trades**. The Drive for 5 Workforce Fund will create a pipeline of workers who are skilled and prepared to enter high-growth and high-wage employment and begin to address Minnesota's high job vacancy rate. The Drive for 5 Fund invests in populations that face the biggest barriers to employment: people of color, people with disabilities, and those with other systemic barriers.

#### Funded at \$10M for each year, includes:

- \$7M for competitive job training grants in technology, labor, caring professions, manufacturing, and educational and professional services sectors
- \$2M for job placement grants for trade associations and chambers (this presents a great partnership opportunity for local boards)
- \$1M for business services reps across the state staffed by DEED—supposed to work with local areas on business services.

Plan is to use the Governor's Workforce Development Board to lead some of this work through its Caring Professions Sector Partnership



### **Supported Decision Making**

The Human Services Omnibus bill establishes a new grant program administered by the Department of Human Services (DHS) for organizations and counties to develop and enhance their supported decision-making services to persons with disabilities, older adults, and their support networks of family and friends. This grant funding program will increase access to the service and facilitate a culture shift toward supported decision-making service options as a first, more person-centered choice. In addition, DHS Commissioner must issue a report with recommendations for all medical assistance programs, including all home and community-based programs, to provide for reimbursement for supported-decision-making services. The report must develop detailed provider requirements for reimbursement, including the criteria necessary to provide high-quality services. In developing provider requirements, the commissioner shall consult with all relevant stakeholders, including organizations currently providing supported-decision-making services.



### **Recreational Cannabis**

- Minnesota is the 23<sup>rd</sup> state to legalize recreational marijuana
- Creates a new "Office of Cannabis Management"
- The Medical Cannabis program remains in place
- Beginning August 1, 2023, permitted for use by those ages 21 and older
- People age 21 and older can grow up to 8 plants, with no more than four mature at any one point in time.
- People age 21 and older can possess up to 2 pounds of cannabis flower in their home
- Edibles and beverages with THC from Hemp will still be available





# **Recreational Cannabis - Limitations**

NOW ENTERING Minnesota POPULATION 5,457,000

- Cannot be used when operating a motor vehicle
- Cannot be used or possessed in the following locations:
  - Public school or charter schools and school buses
  - State correctional facilities
  - In a location where the smoke, aerosol or vapor of a cannabis product could be inhaled by a minor
  - On federal property (such as courthouses, airports and national parks)
  - Smoking cannabis is prohibited anywhere tobacco smoking is prohibited
  - Cannot be smoked in a multifamily housing building, including balconies and patios
- Local governments can limit the number of cannabis retailers to 1 for every 12,500 residents



### **Recreational Cannabis - Limitations**



- The Long-Term Care Imperative has sent a list of 21 questions to MDH regarding the intersections of recreational cannabis use by residents and nursing facilities and assisted living facilities –
- As you develop policies and procedures think of recreational cannabis the same way you might consider policies and procedures regarding another 21+ legal substance – such as beer or wine.
- But can't we ban it because it is federally illegal?
- Not medical cannabis see the following language in the bill...



### **Recreational Cannabis - Limitations**



*No facility or provider* listed in this subdivision (which includes nursing homes and assisted living facilities) may prohibit a patient access to or use of medical cannabis flower or medical cannabinoid products due solely to the fact that cannabis is a Schedule I drug pursuant to the federal Uniform Controlled Substances Act. If a federal regulatory agency, the United States Department of Justice, or the federal Centers for Medicare and Medicaid Services takes one of the following actions, a facility or provider may suspend compliance with this paragraph until the regulatory agency, the United States Department of Justice, or the federal Centers for Medicare and Medicaid Services notifies the facility or provider that it may resume permitting the use of medical cannabis flower or medical

Careannabinoid products within the facility.

### Recreational and Medical Cannabis – Learn More



Care Providers of Minnesota Webinar

July 18, 2023 1:00 - 2:30 Date





# Home and Community Based Services Opportunities

### **Recuperative Care Services**

- Effective January 1, 2024, Medical assistance will cover recuperative care services, which is a new type of health program that offers healthcare providers a safe way to provide continued health and treatment services for up to 60 days to patients experiencing homelessness after they no longer need to be hospitalized.
- Settings approved as a Medicaid provider of recuperative care services are to meet the national standards recently developed by the National Institute for Medical Respite Care, found here:
- This new Medicaid benefit was established to help ease the backlogs in hospitals, especially those in the Twin Cities area with a large homeless population. There are no restrictions on the type of setting for recuperative care, however, there are national standards that must be met, and this population can be difficult to manage in terms of care plan compliance. For some assisted living and nursing facilities the daily rate may be a sufficient enough increase for them to consider establishing this service model.

#### https://nimrc.org/wp-content/uploads/2021/09/Standards-for-Medical-Respite-Programs\_2021\_fin al.pdf

### **Caregiver Respite Services Grants**

The Minnesota Board on Aging must establish a caregiver respite services grant program to increase the availability of respite services for family caregivers of people with dementia and older adults and to provide information, education, and training to respite caregivers and volunteers regarding caring for people with dementia. From the money made available for this purpose, the board must award grants on a competitive basis to respite service providers, giving priority to areas of the state where there is a high need of respite services.



https://mn.gov/board-on-aging/connect-to-services/family-caregiv ing/

# Age Friendly Minnesota

- https://mn.gov/dhs/age-friendly-mn/
- Contact:

MN.DHS.AgeFriendlyMN@state.mn.us for additional information or accommodations Extends the Governor's Council on an Age-Friendly Minnesota and their community and technical assistance grants from June 30, 2024, to June 30, 2027. The bill also provides \$3 million for Age-Friendly community grants and \$1.725 million for technical assistance grants for FY 2024-2025.

### age FRIENDLY minnesota

### Live Well at Home Grants

The Live Well at Home Program is a longstanding grant program DHS administers to support people over 65 remain in their home and community of choice. The program is available to nonprofit, for-profit, and tribal nations to strengthen a community's ability to provide affordable long-term services and support for older persons. Live Well at Home Grantees are very supportive of the program, but they face significant challenges due to short grant cycles that are often a year in length. The revised statutory language consolidates the Live Well at Home Grant in one section of statute, clarifies the purpose of the grant, and establishes a process for DHS to sustain grantees with longer term funding if they are meeting grant goals.

https://mn.gov/dhs/partners-and-providers/grants-rfps/live-well/

# Infirmity of Tenant

A tenant or the authorized representative of the tenant may terminate the lease prior to the expiration of the lease if the tenant has or, if there is more than one tenant, all the tenants have, been found by a medical professional to need to move into a medical care facility and:

- (1) require assistance with instrumental activities of daily living or personal activities of daily living due to medical reasons or a disability;
- (2) meet one of the nursing facility level of care criteria under section 144.0724, subdivision 11; or
- (3) have a disability or functional impairment in three or more of the areas listed in section 245.462, subdivision 11a, so that self-sufficiency is markedly reduced because of a mental illness.

When a tenant requires an accessible unit as defined in section 363A.40, subdivision 1, and the landlord can provide an accessible unit in the same complex where the tenant currently resides that is available within two months of the request, then the provisions of this section do not apply and the tenant may not terminate the lease.

When these conditions have been met, the tenant or tenants authorized representative may terminate the lease by providing at least two months' written notice to be effective the last day of a calendar month.



# Studies to Look Forward to....

# NURSING FACILITY RATE STUDY.

- (a) The commissioner of human services shall contract with an independent organization with subject matter expertise in nursing facility accounting to conduct a study of nursing facility rates that includes:
  - (1) a review of nursing facility rates of all states bordering Minnesota and the states included in the Centers for Medicare and Medicaid Services Region V;
  - (2) the data necessary to determine the total net income and the operating margin of a nursing facility;
  - (3) the data necessary to determine whether a nursing facility can generate sufficient revenue to cover the nursing facility's operating expenses;
  - (4) the average reimbursement rate per resident day in each state and the data used to compute that rate;
  - (5) facility-level data on all types of Medicaid payments to nursing facilities, including but not limited to:
    - (i) supplemental rate add-ons;
    - (ii) rate components;
    - (iii) data on the sources of the nonfederal share of spending necessary to determine the net Medicaid payment at the facility level; and
    - (iv) disclosure of transactions from a related party; and
  - (6) any other information determined necessary by the commissioner to complete the study.
- (b) Upon request, a nursing facility must provide information to the commissioner pertaining to the nursing facility's financial operations.
- (c) By January 1, 2025, the commissioner shall submit a report to the chairs and ranking minority members of the legislative committees and divisions with jurisdiction over human services policy and finance recommending adjustments to the nursing facility rate methodology under Minnesota Statutes, chapter 256R, based on the results of the study in paragraph (a). The commissioner shall consult with the Office of the Legislative Auditor Financial Audit Division and Program Evaluation Division on study design methods.

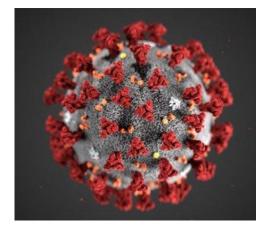
# Acute Care Transitions Advisory Council

- The commissioner of human services shall establish an Acute Care Transitions Advisory Council to advise and assist the commissioner in establishing and implementing a statewide vision and systemic approach to acute care transitions in Minnesota
- By October 1, 2024, the advisory council shall develop and present to the chairs and ranking minority members of the legislative committees and divisions with jurisdiction over health and human services finance and policy and the commissioner of human services an action plan for creating a systemic approach to acute care transitions for Minnesotans.
  - recommendations to improve regional capacity for acute care transitions, including examining the roles and experience of counties and Tribes in delivering services and identifying any conflicting and duplicative roles and responsibilities among health and human services agencies, counties, and Tribes;
  - (2) recommendations to create a measurement and evaluation system using implementation science to analyze regional and statewide data in transitions and make ongoing recommendations for policy and program improvement; and
  - (3) statewide strategies for improving access to transitioning from acute care settings with a focus on addressing geographic, racial, and ethnic disparities.

### Long COVID and Related Conditions Assessment and Monitoring

Minnesota Department of Health (MDH) is tasked with establishing a new program to conduct community assessments and epidemiologic investigations to monitor and address impacts of long COVID and related conditions.

- The commissioner of health shall, in consultation with health care professionals and others identify priority actions and activities to address the needs for communication, services, resources, tools, strategies, and policies to support survivors of long COVID or related conditions and their families.
- The commissioner shall award grants and award contracts to eligible organizations to plan, construct, and disseminate resources and information to support survivors of long COVID or related conditions, including caregivers, health care providers, ancillary health care workers, workplaces, schools, communities, and local and Tribal public health.



# **Small Assisted Living Providers**

Sec. 39. DIRECTION TO COMMISSIONERS; SMALL PROVIDER REGULATORY RELIEF.

The commissioners of human services and health must consult with assisted living facility license holders who provide customized living and whose facilities are smaller than 11 beds to compile a list of regulatory requirements, compliance with which is particularly difficult for small providers. The commissioners must provide the chairs and ranking minority members of the legislative committees with jurisdiction over assisted living licensure and customized living with recommendations, including draft legislation, to reduce the regulatory burden on small providers.



# Legislative Task Force on Aging

#### Legislative Task Force on Aging shall review:

- (1) all current aging-related governmental functions, programs, and services across all state departments;
- (2) the current plans to improve health and support services workforce demographics;
- (3) current public and private strategies to:
  - (i) support family caregivers for older adults;
  - (ii) define and support quality of care and life improvements in long-term care and home care; and
  - (iii) sustain neighborhoods and communities for an aging population;
- (4) the necessity for planning and investment in aging in Minnesota to address:
  - (i) the longevity economy and the impact it has on the workforce, advancing technology, and innovations;
  - (ii) housing options, land use, transportation, social services, and the health systems;
  - (iii) availability of safe, affordable rental housing for aging tenants; and
  - (iv) coordination between health services and housing supports;
- (5) coordination across all state agencies, Tribal Nations, cities, and counties to encourage resolution of aging related concerns; and
- (6) from this review, determine the governmental entity to plan, lead, and implement these recommended policies and funding for aging Minnesotans across the state.