

2011 DISABILITY AND MENTAL HEALTH LAW

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I. COMMUNITY SERVICE CHANGES

A. PCA Alternate Funding

First Special Session, Chapter 9, Article 7, Section 9, subd. 6
Amends Minn. Stat. § 256B.0652, subd. 6
Effective July 1, 2011

Restricts PCA services for individuals with one dependency in an activity of daily living (ADL) and/or Level 1 behavior to no more than 30 minutes of services per day.

B. Family Member PCA 20% Rate Cut

First Special Session, Chapter 9, Article 7, Section 10 and 11
Amends Minn. Stat. § 256B.0659, subd. 11
Effective October 1, 2011

Cuts the PCA rate paid to providers for family members by 20%. Family members affected by the 20% rate cut are: 1) parent or adoptive parent of an adult; 2) sibling 16 or older; 3) adult child; 4) grandparent; and 5) grandchild. Provides for a fine of up to \$500 on provider agencies that do not consistently comply with the PCA provider agency documentation requirements in Minnesota Statutes 256B.0659, subdivision 28, including documenting those PCAs who are subject to the 20% rate cut.

C. Home and Community Waiver Services for Persons with Disabilities (CAC, CADI, DD, and TBI)

First Special Session, Chapter 9, Article 10, Section 3, subd. 2(c)
Effective July 1, 2011

Limits Home and Community Waiver Services caseload increases to:

- CADI: 60 per month until June 30, 2013, then 85 per month until June 30, 2015
- DD: 6 per month until June 30, 2013, then 15 per month until June 30, 2015.

- CAC and TBI: There are no caseload limits.

Limits do not include conversions from ICF/DD (for the DD Waiver) or conversions from the closure or downsizing of a nursing facility (for the CADI Waiver).

Cuts \$67 million in state funding from the forecasted need for home and community waivers for the next biennium and appropriates \$19 million to fund nursing homes and increased home care due to increasing waiting lists.

D. Suspend DD Waiver Acuity Payment Through 2011

First Special Session, Chapter 9, Article 10, Section 11, subd. 6(c)

Amends Laws 2010, First Special Session chapter 1, article 15, section 3, subd. 6 Effective retroactively to January 1, 2010

Eliminates the January 1, 2010, DD Waiver 1% acuity growth factor payments under Minnesota Statutes 256B.092 subdivision 4 and 5, to save \$8.9 million state funds and twice that amount in total funding for the DD waiver for the biennium, due to the loss of federal Medicaid matching funds.

E. Congregate Living Rate Reduction for Lower Need Residents

First Special Session, Chapter 9, Article 10, Section 3, subd. 3(g) and subd 4(k)

Amends Minn. Stat. § 256B.49 subd.15

Effective October 1, 2011

Reduces rates by 10% in 2012-13 and 15% in 2014-15 for about 3,600 DD and CADI waiver recipients living in staffed foster homes and customized living settings for CADI who have been determined by DHS to be “low need”. Requires the lead agencies to adjust the contracts with the foster home providers within 60 days of the effective date. Cuts \$12.3 million for coming biennium and \$23 million for 2014-2015 in state Medical Assistance funds. Appropriates \$250,000 per year for local planning grants to support alternative services, training and assistance for person-centered planning activity.

- a. First Special Session, Chapter 9, Article 7, Section 40, subd. 15*

Amends Minn. Stat. § 256B.49, subd. 15

Effective July 1, 2013

II. Reduction in certain license capacity for adult foster care that is not the primary

residence of the license holder [Corporate Foster Care] (\$1.3 million in savings, FY 12-13)

Reduces the license capacity for adult foster care homes that are not the primary residence of the license holder when a recipient of CADI or BI waiver services chooses to move from a licensed adult foster care home to a community-living setting. A definition of community-living setting is defined in Section 41. Housing access grants are available to assist individuals who relocate from an adult foster care home with completion of rental applications or lease agreements, development of household budget, assistance with publicly financed housing options and assistance with funding affordable household furnishing and related household matters. MN Laws 2011, 1st SS, Chapter 9, Article 7, Sections 1, 13, 40 [paragraph (f)], and 41; Article 10, Section 3 (housing access grants rider).

- A.
- B. Mental Health, Disability, Children’s Mental Health and Child Protection Grants

- C. Children and Community Services Act Grants (CCSA)
First Special Session, Chapter 9, Article 1, Section 20-30 and Article 10, Section 3 (HF 25)
Amends Minn. Stat. §256M.01; Minn. Stat. §256B.10, Subd. 2; Minn. Stat. §256M.20, subds. 1-3; Minn. Stat. §256M.30; Minn. Stat. §256M.40; Minn. Stat. §256M.50; Minn. Stat. §256M.60, Subd. 1; Minn. Stat. §256M.70, Subd. 2; and Minn. Stat. §256M.80
Repeals Minn. Stat. §256M.10, Subd. 5; Minn. Stat. §256M.60, Subd. 2; and Minn. Stat. §256M.70, Subd. 1
Effective July 1, 2011

- D. Name and Scope of Grants
 - Renames and limits the use of funds under the Children and Community Services Act – now called the Vulnerable Children and Adults Act.
 - Limits funded services to vulnerable children in child protection or the subject of maltreatment, and adults who are subjects of maltreatment who experience dependency, abuse or neglect. Supportive family services may also be funded, but services based upon poverty, chronic health conditions, ethnicity or race that can result in poor outcomes or disparities, are no longer eligible.

- Removes provisions that prioritize case management for persons with developmental disabilities, children with serious emotional disturbances, and adults with serious and persistent mental illnesses.

Amends Minn. Stat. § 256M.01

Amends Minn. Stat. § 256M.10, Subd. 2

Amends Minn. Stat. § 256M.20, Subds. 1 and 2

Amends Minn. Stat. § 256M.60

E. County Service Plan Changes

- Effective January 2, 2012, county service plans must be updated only as needed to reflect current policy and procedures regarding state law requirements and use of funds. Preliminary service plans must be submitted to DHS by October 15, 2011.
- Plans are no longer required to allocate certain grant percentages to children in low income families.
- Removes the 60-day notice requirement for DHS to notify the county that the plan is approved.
- Adds a requirement for DHS to monitor counties' compliance on federal performance measures.

Amends Minn. Stat. § 256M.20, Subd. 3

Amends Minn. Stat. § 256M.30

F. Grant Funding Formula Changes

Funding formulas were also amended as follows:

- 2011 and 2012, counties will receive available funds in proportion to that county's share of funds in calendar year 2010. For the following years the formula will be:
- 2013:
 - 75% based on the county share in calendar year 2012;
 - 5% based on the population of the county; and
 - 10% based on the number of vulnerable children subject to CHIPS or maltreatment reports; and

- 10% based on the number of vulnerable adults subject to maltreatment reports
- 2014:
 - 50% based on the county share in calendar year 2012;
 - 10% based on the population of the county;
 - 20% based on the number of vulnerable children subject to CHIPS or maltreatment reports; and
 - 20% based on the number of vulnerable adults subject to maltreatment reports.
- 2015:
 - 25% based on the county share in calendar year 2012;
 - 15% based upon the population of the county;
 - 30% based on the number of vulnerable children subject to CHIPS or maltreatment reports; and
 - 30% based on the number of vulnerable adults subject to maltreatment reports.
- 2016 and years after:
 - 20% based on the population of the county;
 - 40% based on the number of vulnerable children subject to CHIPS or maltreatment reports; and
 - 40% based on the number of vulnerable adults subject to maltreatment reports.

Amends Minn. Stat. § 256M.40

G. Grant Fund Appropriation Reduction and Restrictions

- Biennium grant funding appropriation was reduced \$22 million
- Beginning in 2012, federal reimbursement grants cannot be used for any purpose prohibited by section 2005 of the Social Security Act (Social Service Block Grant limitations)
- Beginning in 2012, counties must meet all federal certification requirements to receive grant funds.

Amends Minn. Stat. § 256M.40

- H. Long-Term and Community Support Provider Rates and Grants
First Special Session, Chapter 9, Article 7, Sections 44, 45 and 51.
Effective July 1, 2011, implemented September 1, 2011
Cuts rates 1.5% for 2012 and 1% for 2013 for all long term care providers except for nursing facilities, Elderly Waiver customized living, and congregate care rates for certain individuals on DD and CADI waivers. Includes aging and adult services grants, consumer and family support, and other disability grants. Day training and habilitation rates are reduced by 1% instead of 1.5% beginning FY 12. Implementation will begin on September 1, 2011 and will be prospective only.
- I. Nursing Facility Level of Care Maintenance of Effort Requirement Federal Compliance
First Special Session, Chapter 9, Article 7, Sections 12, 15, 16, 21, 38, 39, 46, 47, 48, 52, and 54; Article 10, Section 3, (Essential Community Support Grant delay rider).
Amends Laws 2009, chapter 79, article 8, section 4 as amended by Laws 2010, First Special Session chapter 1, article 24, section 12
Effective July 1, 2011
Requires DHS to apply for a federal waiver from the Center for Medicare and Medicaid Services (CMS) to implement the nursing facility level of care criteria on July 1, 2012, 18 months earlier than currently permitted under federal law. If this waiver is not granted, an additional rate cut of 1.67% will take effect for long term care providers, except nursing facilities. This contingent rate cut would be effective from July 1, 2012 to December 31, 2013
- J. Medical Assistance Reform Waiver
First Special Session, Chapter 7, Section 53
Uncodified language
Effective July 1, 2011
Requires the Commissioner of DHS to apply for numerous federal waivers affecting all Medicaid populations. Includes reform of home and community based services to realign funding and supports for persons with disabilities and older Minnesotans to assure community integration and sustainability of the service system. Seeks better outcomes including improved health, increased employment, reduced reliance on institutional care and community housing. Mandates a waiver request to implement the tightening of the nursing facility level of care criteria by July 1, 2012 or a contingent 1.67% service provider rate cut will be imposed.
- K. Family Adult Day Service Modification
MN Laws 2011, First Special Session, Chapter 9, Article 4, Sections 6, 7, and 9.
Expands those who can be served by Family Adult Day Services provided in an adult foster setting from those 55 or over excluding persons with serious and

persistent mental illnesses or developmental disabilities to working age adults 18 to 55, including adults with severe and persistent mental illness or developmental disabilities. Allows a licensed adult foster home to provide adult day services for up to eight persons to the expanded population under one license. Requires DHS to seek a waiver amendment for Medicaid reimbursement of FADS under all disability waivers. Also changes the FADS license to include the expanded definition of adult day care services and removes certain licensing requirements.

L. ICF/MR Rate Increase for Pine Ridge Facility in Clearwater County

M. Restructure Licensing Fees

a. *First Special Session, Chapter 9, Article 4, Section 3, subd. 4
Amends Minn. Stat. § 245A.10, subd. 4
Effective*

b. *First Special Session, Chapter 9, Article 4, Section 4, subd. 7
Amends Minn. Stat. § 245A.10
Effective*

c. *First Special Session, Chapter 9, Article 4, Section 5, subd. 8
Amends Minn. Stat. § 245A.10
Effective*

N. Licensing Fees Charge for Background Studies

*First Special Session, Chapter 9, Article 4, Section 8, subd. 9
Amends Minn. Stat. § 245C.10
Effective*

O. Adoption and Relative Custody Assistance Increase

*First Special Session, Chapter 9, Article 10, Section 3, subd. 4(e)
Effective*

P. Statewide Quality Assurance

*First Special Session, Chapter 9, Article 7, Section 23, subd. 3
Effective July 1, 2011*

Provides additional funding for the biennium for the statewide quality assistance for people with disabilities.

Requires the establishment of a State Quality Council with members appointed by the DHS commissioner. This system is a partnership between DHS and the State Quality Council. Requires the commissioner to delegate authority to perform certain licensing functions to a host county in Region 10. DHS is able to conduct random licensing inspections based on outcomes at facilities, programs and services eligible under this section. DHS must ensure that federal home- and community-based waiver requirements are met. DHS must seek a federal waiver by July 1, 2012, to allow ICFs/DD

to participate in this system. Requires the jurisdictions of the regional quality councils to be defined by July 1, 2012. The Quality Assurance Commission must continue to implement the alternative licensure system during the 2012-2013 biennium. There is \$330,000 in funding for this project. Continues funding for Region 10 quality assurance. MN Laws 2011, 1st SS, Chapter 9, Article 7, Section 23; Article 10, Section 3 (Region 10 rider).

- Q. Money Follows the Person
First Special Session, Chapter 9, Article 7, Section 4, subd. 20
Amends Minn. Stat. § 256B.04
Effective January 1, 2014
- R. State-Operated Mental Health Services
- S. State-Operated Mental Health Housing
- T. Minnesota Sex Offender Program (MSOP) increased County Share for New Admissions
- U. Minnesota Sex Offender Program Budget Increase

III. HEALTH CARE, INCLUDING MENTAL HEALTH, CHANGES

- A. Mandatory Managed Care for Persons with Disabilities Eligible for Medical Assistance, with Opt-Out
First Special Session, Chapter 9, Article 6, Section 64, subd. 28
Amends Minn. Stat. § 256B.69, subd. 28
Effective January 1, 2012
Enrolls all children and adults with disabilities in managed care plans unless the individual chooses to opt-out of managed care and remain in fee-for-service Medical Assistance. Saves \$27 million in state funds for SFY 2012-2013. Savings attributed to cost shifts of capitation payments for two months into the next biennium and rate reductions already in effect prior to 2011.
- B. MA and MinnesotaCare Cost Sharing is Increased
First Special Session, Chapter 9, Article 6, Section 49
Amends Minn. Stat. § 256B.0631, subd. 1
Effective for services provided on or after September 1, 2011
Increases in co-payments for recipients of the Medical Assistance by reinstating co-payments, establishing a family deductible and tiered co-pays for non-prevention visits.
- C. Adult Mental Health Grants
- D. Reduces rates for MA Non-Emergency Medical Transportation.

Reduces rates for Medical Assistance transportation services, including ambulance, special transportation (STS) and access to transportation services (ATS) by 4.5%, cutting \$4.160 million in state fund. Affects all populations using Medical Assistance or MinnesotaCare. Effective July 1, 2011 for fee-for-service and January 1, 2012 for managed care

- E. Modification of Communication Device Pricing
First Special Session, Chapter 9, Article 6, Section 43, subd. 31a
Amends Minn. Stat. § 256B.0625 subd. 31a
Effective September 1, 2011
Requires augmentative and alternate communication systems to be paid at the lower of: (1) the submitted charge; or (2) the manufacturer's suggested retail price minus 20 percent for providers that are manufacturers, or the manufacturer's invoice charge plus 20 percent for providers that are not manufacturers.
- F. Reduced Provider Payments for Persons Who are Eligible for Both MA and Medicare (cross-over claims)
- G. Fee-for-Service Basic Care Rates Reduction
First Special Session, Chapter 9, Article 6, Section 69
Amends Minn. Stat. § 256B.766
Effective September 1, 2011 through June 30, 2013
Reduces outpatient hospital facility fees by five percent. Reduces ambulatory surgery centers facility fees, medical supplies, and durable medical supplies, prosthetics and orthotics, renal dialysis services, laboratory services, public health nursing services, physical therapy services, occupational therapy services, speech therapy services, eyeglasses, hearing aids, anesthesia services, and hospital services by three percent.
- H. Care Coordination for Children with High Cost Mental Health Condition
First Special Session, Chapter 9, Article 6, Section 89
Effective ? Plan due to legislature by January 15, 2012
Appropriates funds to facilitate care to medical assistance and MinnesotaCare enrollees who are children with high-cost mental health conditions whose mental health expenses over the past year totaled \$100,000 or more.
- I. Change Physical Therapy (PT), Occupational Therapy (OT), Speech Therapy Services Coverage and Prior Authorization Process

- J. Medical Supplies and Equipment
First Special Session, Chapter 9, Article 6, Section 42, subd. 31
Amends Minn. Stat. § 256B.0625 subd. 31
Effective ?
Empowers the commissioner to set rates for specified categories of medical supplies at levels below the Medicare payment rate for vendors.
- K. Medication Therapy Management Services
First Special Session, Chapter 9, Article 6, Section 36, subd. 13h
Amends Minn. Stat. § 256B.0625 subd. 13h
Effective September 1, 2011 or upon federal approval, whichever is later
Allows people taking three or more prescriptions with one or more chronic conditions to be eligible for coverage as well as people with a drug therapy problem that is identified by a pharmacist and approved by the commissioner. Expands the definition of home setting to include long-term care settings, group homes, and assisted living facilities.
- L. Critical Access Dentistry
First Special Session, Chapter 9, Article 6, Section 68, subd. 4
Amends Minn. Stat. § 256B.76, subd. 4
Effective September 1, 2011.
Increases the payment rates to dental providers by 30% above the payment rate that would otherwise be paid to the provider.
- M. Dental Reimbursement
First Special Session, Chapter 9, Article 6, Section 68, subd. 2
Amends Minn. Stat. § 256B.76, subd. 4
Effective September 1, 2011 through June 30, 2013
Reduces payment rates for dental services by three percent.
- N. Specialized Maintenance Therapy Eliminated for Adults
First Special Session, Chapter 9, Article 6, Section 29, subd. 8 (physical therapy covered for recipients age 20 and under)
Amends Minn. Stat. § 256B.0625, subd. 8
Effective January 1, 2012
Eliminates physical therapy coverage for medical assistance recipients age 21 and older.
- First Special Session, Chapter 9, Article 6, Section 30, subd. 8a (occupational therapy covered for recipients age 20 and under)*
Amends Minn. Stat. § 256B.0625 subd. 8a
Effective January 1, 2012
Eliminates occupational therapy coverage for medical assistance recipients age 21 and older.

First Special Session, Chapter 9, Article 6, Section 31, subd. 8b (speech-language pathology and audiology services covered for recipients age 20 and under)
Amends Minn. Stat. § 256B.0625, subd. 8b
Effective January 1, 2012
Eliminates speech-language pathology and relates services for medical assistance recipients age 21 and older.

O. Reduce Special and Access Transportation Rates

First Special Session, Chapter 9, Article 6, Section 37, subd. 17
Amends Minn. Stat. § 256B.0625, subd. 17
Effective September 1, 2011

Reduces nonemergency transportation rates by 4.5 %.

P. Modify 3rd Party Liability Processes by Requiring Authorization

Q. MA-EPD Premium and Out-of-Pocket Increases for the Next Biennium

First Special Session, Chapter 9, Article 7, Section 7, subd. 9
Amends Minn. Stat. § 256B.057, subd. 9
Effective January 1, 2014 for adults age 21 or older and October 1, 2019 for children age 16 to 21

The fee increases for MA-EPD participants will total over \$8 million for the 2014-2015 biennium. Minimum premiums will increase from \$35 per month to \$65 and the unearned income cost share obligation is increased from ½% to 5%. The increased fees will average more than \$750 per year per person when fully implemented. The increases cannot be implemented until 2014 due to the Affordable Care Act maintenance of effort

R. Disability Linkage Line

First Special Session, Chapter 9, Article 7, Section 2, subd. 24.

IV. POLICY CHANGES/TASK FORCES

A. Community Living Settings Defined

B. Changes to Non-Emergency Medical Transportation to be Developed by Commissioner

C. Assessment, Reassessment, Individualized Service Plan (ISP), Comprehensive Transitional Service, and Plan Maintenance Service

a. *First Special Session, Chapter 9, Article 7, Section 39, subd. 14*
Amends Minn. Stat. § 256B.49, subd. 14
Effective July 1, 2013

Specifies new assessment and reassessment provisions for newly required transition and maintenance plans for those using the CADI and TBI Waivers.