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2008 LEGISLATIVE ACTION AFFECTS PERSONS WITH DISABILITIES

**By Anne L. Henry
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Extended negotiations among legislative leaders from both parties and the governor brought the 2008 session of the Minnesota Legislature to a close on May 18. The \$935 million state budget deficit was closed by spending cuts, across-the-board state agency administrative reductions and use of substantial funds from the state's budget reserve. In addition, health care reform legislation and a number of other significant policy bills affecting persons with disabilities were adopted.

BUDGET CUTS WILL LIMIT WAIVER SERVICES

The biggest challenge for persons with disabilities during the session was the significant budget deficit of \$935 million, because health and human services spending areas were targeted for substantial cuts to help balance the overall state budget. Governor Tim Pawlenty proposed, and the House and Senate agreed, to limit home and community-based waiver services for persons with traumatic brain injury (TBI) to 200 persons per year. Services for those eligible for nursing facility care through the Community Alternatives for Disabled Individuals (CADI) waiver will be limited to 1,500 persons per year, beginning July 1, 2008 for three years. Included in these caseload caps are limits for persons participating in the integrated managed care program known as Minnesota Disability Health Option (MnDHO).

The total funding cut for these important services for the coming three years is nearly \$68 million which includes the dollar-for-dollar federal match available under Medicaid. Waiver service funding is used to pay staff, buy equipment or items and support people to live as independently as possible in the community and avoid institutional placement.

Previously, the CADI and Traumatic Brain Injury (TBI) waiver programs had caseload limits imposed, beginning in 2003 for four years. During that time, a waiting list developed for both programs. While persons eligible for CADI and TBI are likely eligible for Medical Assistance Home Care, such as personal care assistant (PCA) services, they will not be able to access the wider array of more flexible services which are crucial to maintaining independence and improving functioning in the community, such as home modifications, equipment, and supported employment services. Department of Human Services (DHS) projections indicate that more than 2,400 eligible persons will not be able to access home and community services due to these caseload limits over the next three years.

For those with Medical Assistance or General Assistance Medical Care, hospital payments will be cut approximately \$109 million dollars, most of which would have been matched with federal Medicaid funds over a three-year period. Mental health services are exempt from this hospital payment reduction.

ADDITIONAL CUTS AND CHANGES

The Omnibus Tax Bill provides that counties will be released from maintenance of effort and matching fund requirements while the taxing authority of the county is limited ("levy limit") through 2010. This problematic provision was part of a late-night, end of the session property tax negotiation between state lawmakers and the governor. Among programs which require county funding are case management services for children and adult

mental health, vulnerable adult and developmental disabilities, children's mental health residential treatment, chemical dependency services and numerous other corrections and public health programs. Key legislators have agreed with the governor to repeal this language at the beginning of the 2009 session retroactive its effective date in order to avoid any lapse in county funding and to correct what is now regarded as a mistake.

A 1.8 percent cut for all state-funded grant programs operated by the Department of Human Services and the Department of Health, except children and adult mental health services, was imposed for the next three years. Among the programs which will be cut are Semi-Independent Living Services (SILS), Disability Link Line, family support grant services, Region 10 Quality Assurance and various aging and chemical dependency services. These services are among those slated for a 2 percent cost of living increase on October 1, 2008. After the 1.8 percent cut, the Cost of Living Allowance (COLA) will be effectively reduced to .2 percent, leaving staff and programs without enough funding to cover increased costs.

Changes to targeted case management, including relocation services, children and adult mental health and child welfare case management became effective in March 2008 due to federal changes. Federal legislation to stop the federal agency limitations on case management services is pending in Congress now. Because of uncertainty over federal action, legislation which is contingent on federal action was adopted so that Minnesota would be in compliance with federal law. Relocation service coordination, mental health targeted case management and vulnerable adults/developmental disabilities targeted care management will be more limited when assisting persons to move out of institutions effective July 1, 2008, unless Congress delays the federal interim rules.

All state agencies are required to reduce administrative spending by 4 percent, which means vacant staff positions will not be filled. Other activities and services will be reduced.

The 2 percent COLA increase for community service providers, which the governor proposed to eliminate, was maintained. But its implementation will be delayed for three months, until October 2008.

CUTS PROPOSED BUT NOT ADOPTED

Cuts were proposed by the Senate to PCA providers which had high administrative costs. Because there is no way to determine administrative costs in the PCA program, this proposal could not be implemented and was not adopted. Also, a proposal to eliminate specific medical services for persons with particular diagnostic conditions was adopted in the conference committee, but later removed and not included in the supplemental budget bill. This proposal was based on a method used in Oregon. But it was very complex, had no hearings and was strongly opposed by disability advocacy groups, especially those concerned with mental health services.

Cuts to Self-Advocacy Minnesota funding (SAM) and a proposal to require a repayment by three counties for overspending of the developmental disabilities waiver were opposed by disability advocates and not included in the final budget agreement.

NEW PROGRAMS WITH FUNDING

As part of the significant cut to CADI and TBI services, the governor proposed two modest but positive additions to funding for housing for persons with disabilities. The Minnesota Supplemental Aid (MSA) Shelter Needy Program has been expanded to include people eligible for home and community waiver services. This change will also cover persons who will use the new self-directed personal supports option passed last session and not yet implemented. This new housing option will begin July 1, 2008, and is estimated to provide nearly \$2 million in housing subsidies over the next three years. Also, the new housing access grant program will be funded with \$1.25 million over three years, beginning July 1, 2008. This program will provide funding for public and private agencies to assist individuals eligible for home and community-based services, including home care services, to access and maintain appropriate homes

A scaled back Health Care Reform bill, Chapter 358, was adopted after the initial bill was vetoed by the governor in early May. Health coverage will be extended to 7,000 Minnesotans due to improvements in MN CARE

beginning in July of 2009. The MN CARE income limit for adults without children will be raised from 200 percent of the poverty level to 250 percent on July 1, 2009. Tax credits for private coverage for up to 5,000 persons was also included in the bill. The new legislation will establish health care homes for persons on public health care programs, including Medical Assistance. Beginning July 1, 2009, the Commissioner of Human Services shall encourage those with Medical Assistance, General Assistance Medical Care and MinnesotaCare to choose a health care home which has been certified by the commissioner. For persons with complex conditions, care coordination payments will be made beginning July 2010.

The Health Care Reform bill also requires the Commissioner of Health to convene a work group. This group will make recommendations on the design of an essential health care benefit set with a report due to the Legislature by January 15, 2010. Also of importance to persons with disabilities is the development of a health care affordability proposal for persons under 300 percent of the federal poverty guidelines (\$31,213 for one person in 2008) to assist with employer-subsidized coverage. Additionally, \$50 million from the Health Care Access Fund will be used to help cover the budget deficit. But it is to be repaid to the fund based on reductions in overall health care spending in the future.

POLICY CHANGES WHICH DID NOT REQUIRE FUNDING

Numerous policy changes were adopted which affect privacy, children's mental health and transportation. A bill which protects individuals' privacy in marketing of the new Special Needs Basic Care (SNBC) managed care plan for persons with disabilities on Medical Assistance was adopted. The bill prohibits DHS from providing the names and addresses of persons with disabilities to health plans for mailing of marketing materials. Instead DHS itself will mail health plan materials. Health plans will pay the cost of the mailings as they do now.

Two important bills affecting children's mental health treatment were adopted. Aversive practices such as seclusion and restraint have been limited in children's mental health treatment programs and facilities. Also, a bill which strengthens and clarifies the voluntary placement rights of parents and children was adopted. The new law allows parents to place children with mental health conditions or developmental disabilities in residential treatment settings without having to give up legal custody.

The statute governing the Office of the Ombudsman for Mental Health and Development Disabilities has been clarified to include a deceased person within the term "client" and to assure that the office can obtain copies of documents needed for investigations.

The Consortium for Citizens with Disabilities transportation planning bill was included in the omnibus transportation policy bill. For greater Minnesota, the bill requires the Department of Transportation (MnDOT) to plan to meet 80 percent of the unmet need for persons with disabilities for transportation by 2015 and 90 percent of unmet need by 2025.

A bill to improve election participation for persons with disabilities was adopted, Chapter 295. The new law requires candidates who receive public funding to use closed captioning for political TV advertisements and have transcripts available on websites for radio and web ads. The bill also, expands agent delivery of an absentee ballot to include those who have incapacitating health reasons and individuals with disabilities, increases to seven days the time before an election during which an agent can deliver an absentee ballot and requires an agent to have a pre-existing relationship with the voter, effective for elections held on or after June 1, 2008.

For information on changes to education and special education, see Kim Kang's article.

WHAT'S AHEAD

While the \$935 million budget deficit was resolved; the projections for next legislative session are dire. The state could well face a deficit of nearly \$2 billion, counting projected inflation due in part to the ever-increasing costs of fuel and health care.

Disability services have already been cut substantially in six of the past seven years. Because health care, including long-term and community support services, is a significant and growing portion of the state's budget, it is likely that even more painful cuts affecting disability services will be proposed next session.

Persons with disabilities, families and organizations have much at stake in the upcoming elections which will determine who makes the decisions about how to balance the state budget for the coming biennium. The Consortium for Citizens with Disabilities is working on candidate forums and other election-related activities. Information can be found at www.mnccd.org. Further information about legislation and your legislator, can be found at www.leg.state.mn.us.

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