

2008 DISABILITY AND MENTAL HEALTH LAW

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The 2008 Session of the Minnesota Legislature made a number of significant changes to funding, programs and services affecting persons with disabilities.

I. BUDGET CUTS FOR COMMUNITY SERVICES FOR PERSONS WITH DISABILITIES

A. Cost-Of-Living Adjustment (COLA) For Community Service Providers

Chapter 363, Article 15, Sections 7 and 17 (HF 1812)

Amends Laws 2007, Chapter 147, Article 7, Section 71

Effective July 1, 2008

The Legislature delayed the scheduled 2 percent COLA for community service providers and ICF/MR facilities from July 1, 2008 to October 1, 2008 as a budget-cutting measure.

B. Enrollment Limits For Community Waiver Services

Chapter 363, Article 18, Section 3 (HF 1812)

Rider Language

Effective July 1, 2008

Imposes caseload limits for enrollment in home and community-based waiver services for persons with traumatic brain injury (TBI) and services for those eligible for nursing facility care through the Community Alternatives for Disabled Individuals (CADI) waiver. Limits the TBI waiver to 200 new persons per year, and the CADI waiver to 1,500 new persons each year for the next three years. Includes in these caseload caps, limits for persons participating in the integrated managed care program known as Minnesota Disability Health Option (MnDHO). Cuts total funding for these important services for the coming three years by nearly \$60 million, which includes the dollar-for-dollar federal match available under Medicaid. Eliminates access for an estimated 2,400 eligible persons to funding for waiver services for staff, equipment, items and other supports which allow people to live as independently as possible in the community and avoid institutional placement.

C. Minnesota Disability Health Options (MNDHO)

Chapter 363, Article 18, Section 3

Rider Language

Effective January 1, 2009

Changes risk adjustment methodology for the Minnesota Disability Health Option (MNDHO) and limits growth of enrollees receiving CADI or TBI waiver services to 200 persons each calendar year for three years, beginning January 2009. Additional persons may enroll in MNDHO for basic health care services and be added to a waiting list for access to waiver services if the 200 person per year limit is reached in any of the three years.

- D. State-Funded Grant Programs Cut
Chapter 363, Article 18, Section 3 (HF 1812)
Rider Language
Effective July 1, 2008
Imposes a 1.8 percent cut for state-funded grant programs operated by the Department of Human Services and the Department of Health, except children and adult mental health services. Cuts Semi-Independent Living Services (SILS), Consumer Support Grants, Disability Linkage Line, Family Support Grant services, Region 10 Quality Assurance, Epilepsy Grants, various aging and chemical dependency services and community and family health grant programs.

II. COMMUNITY SERVICES CHANGES

- A. Home Modifications Under Home And Community-Based Waiver Services
Chapter 326 (HF 3222)
Uncodified Language
Effective May 16, 2008
Requires the Commissioner of Human Services to submit a waiver amendment to obtain federal approval to cover the costs of home modifications which add square footage to an unlicensed private residence if necessary to modify or add a bathroom to accommodate a wheelchair when the annual cost-of-care and modifications do not exceed the costs for the recipient if the modifications were not made and the modifications are the least costly, appropriate, reasonable alternative, given the size and value of the home.
- B. License For Day Training And Habilitation Satellite Program
Chapter 268 (SF 3256)
Amends Minn. Stat. § 245B.07, subd. 12
Effective August 1, 2008
Allows a day training and habilitation program's building license to also cover adjacent buildings and affiliated satellite programs.
- C. Long-Term Care Worker Health Coverage Recommendations
Chapter 358, Article 3, Section 15 (SF 15)
Uncodified Language
Effective July 1, 2008
Requires the Department of Human Services to study and report by January 15, 2009, on recommendations for a rate increase for long-term health care employers to purchase private health coverage for employees.
- D. Personal Care Assistant (PCA) Services Provider Standards
Chapter 230 (SF 3227)
Amends Minn. Stat. § 144A.46, subd. 1
Effective August 1, 2008
Requires the Commissioner of Health, in consultation with the Commissioner of Human Services, to provide recommendations to the Legislature by February 15, 2009 for provider standards for personal care assistant services.

- E. State Certification For Home And Community-Based Waiver Service Providers
Chapter 317, Section 2
Amends Minn. Stat. § 256B.49, subd. 16a
Effective August 1, 2008
 Requires the State Department of Human Services rather than county agencies to certify unlicensed disability waiver providers for health and safety standards, policies regarding aversive practices and medication management prior to authorizing payment for services.
- F. State-Operated Community Programs For Persons With Developmental Disabilities
Chapter 223 (SF 3571)
Amends Minn. Stat. § 252.50, subd. 1
Effective August 1, 2008
 Changes the language to allow these habilitation programs to employ clients with disabilities who are not state employees.
- G. Workers' Compensation Requirements For Personal Care Assistant (PCA) Services
Chapter 250, Section 1 (SF 3218)
Amends Minn. Stat. § 176.011, subd. 9(17)
Effective May 1, 2008
 Adds PCA statutory references, including PCA Choice to the definition of "employees" covered by workers' compensation.

III. DEAF AND HARD-OF-HEARING-RELATED CHANGES

- A. Commission On Deaf, Deaf-Blind And Hard-Of-Hearing Minnesotans
Chapter 280 (SF 3364)
Amends Minn. Stat. § 256C.28
Effective August 1, 2008
 Renames the Commission, expands advisory duties to include the judicial branch and all state agencies, and provides for electronic meetings of the Commission.
- B. Television Captioning In Greater Minnesota
Chapter 171 (SF 147)
Uncodified Repealer
Effective August 1, 2008
 Repeals a June 30, 2010 expiration date for grants to provide real-time captioning of local television news programs and grants for electronic information services for persons who are blind or disabled and unable to access daily print news.

IV. ELECTION IMPROVEMENT FOR PERSONS WITH DISABILITIES

- A. Absentee Ballot Changes
Chapter 295, Sections 9 and 10 (HF 3172)
Amends Minn. Stat. §§ 203B.06, subd. 3 and 203B.11, subd. 4
Effective for elections after June 1, 2008
 Expands the list of those who can use an agent to submit an absentee ballot, increases the time before an election during which an agent can deliver an

absentee ballot to someone who cannot get to the polls due to disability or incapacitating health reasons and clarifies agent requirements.

B. Captioning Of Campaign Advertisements

Chapter 295, Section 8 (HF 3172)

Adds Minn. Stat. § 10A.38

Effective August 1, 2008

Requires that political advertisements include closed captioning for television and websites and transcripts posted on websites for radio and web ads with some exceptions.

V. **HEALTH CARE REFORM**

A. Health Care Homes Established for State Health Program Enrollees

Chapter 358, Article 2 (SF 3780)

Adds Minn. Stat. § 256B.0751 - .0753

Various Effective Dates

Requires the Commissioners of Health and Human Services to develop and implement a health care home collaborative, standards for health care homes, a new payment system for care coordination, and quality incentive payments to reward high-quality, low-cost providers.

B. State Health Plan Enrollees Encouraged To Use Health Care Homes

Chapter 358, Article 2 (SF 3780)

Adds Minn. Stat. § 256B.0751, subd. 6

Effective July 1, 2009

Requires the Commissioner of Human Services to encourage Medical Assistance, MinnesotaCare, General Assistance Medical Care enrollees with a complex or chronic condition to select and use a primary care clinic which is certified as a health care home beginning July 1, 2009.

C. Essential Benefit Set

Chapter 358, Article 4, Section 11

Adds Minn. Stat. § 62U.08

Effective July 1, 2008

Provides that the Commissioner of Health convene a work group to make recommendations by October 15, 2009, on the design of a broad health benefit set that is clinically effective, cost effective and based on scientific evidence. Requires the Commissioner to report the recommendations to the Legislature by January 15, 2010.

D. Health Care Reform Review Council

Chapter 358, Article 4, Section 12 (SF 3780)

Adds Minn. Stat. § 62U.09

Effective July 1, 2008

Establishes a 14-member Health Care Reform Review Council to be appointed by the Commissioner of Health by January 15, 2009, with one consumer member to be appointed by AARP Minnesota and 13 members from health care professions, providers, employers, business groups and health plans, to review progress on the reforms contained in Chapter 358.

VI. HOUSING

A. Housing Access Grants

Chapter 363, Article 15, Section 5

Adds Minn. Stat. § 256B.0658

Effective July 1, 2008

Establishes a new Housing Access Grant Program, provides \$1.25 million in funding over three years for public and private agencies to support individuals with disabilities who are eligible for publicly-funded home and community-based services to locate and obtain appropriate independent housing.

B. Housing Subsidy For Persons With Disabilities

Chapter 363, Article 15, Section 16

Amends Minn. Stat. § 256D.44, subd. 5

Effective January 1, 2009

Expands the Minnesota Supplemental Aid (MSA) Shelter Needy Program to include people eligible for home and community waiver services and those who will use the new self-directed personal supports option passed last session and not yet implemented. Provides a new subsidy of up to \$162 per month per person, in addition to the person's SSI, MSA of \$81 per month and any food support payment for which the person is eligible. Appropriates nearly \$2 million in housing subsidies, over the next three years.

VII. MANAGED CARE FOR STATE HEALTH PROGRAMS

A. Administrative Expenses Limited

Chapter 364, Section 3 (SF 3322)

Adds Minn. Stat. § 256B.69, subd. 5

Effective August 1, 2008

Limits managed care health plans under contract for publicly-funded health care programs to administrative cost increases of no more than five percent over the previous contract.

B. County-Based Purchasing Excess Revenues

Chapter 364, Section 8 (SF 3322)

Adds Minn. Stat. § 256B.692, subd. 4a

Effective August 1, 2008

Requires counties to use any excess revenue over expenses for capital reserves, increased provider payments or to repay county costs for prevention, early intervention and other health care costs.

C. Health Plan Administrative Spending Data

Chapter 364, Section 5 (SF 3322)

Adds Minn. Stat. § 256B.69

Effective July 1, 2009

Provides that the Commissioner of Human Services shall collect administrative spending data which shall be classified as nonpublic data under Minn. Stat. § 13.02.

- D. Language Assistance For Enrollees With Limited English Proficiency
Chapter 326 (SF 3322)
Amends Minn. Stat. § 256B.69, subd. 27
Effective August 1, 2008
Requires managed care plans under contract to provide Medical Assistance, General Assistance Medical Care and MinnesotaCare to provide language assistance to enrollees to ensure meaningful access as required by Title VI of the Federal Civil Rights Act.
- E. Ombudsman For Managed Care Study
Chapter 364, Section 13 (SF 3322)
Uncodified Language
Effective August 1, 2008
Requires the Commissioner of Human Services, within available funding, to study and report to the Legislature on whether the Ombudsman's duties should be expanded to fee-for-service enrollees and the cost of such expansion.
- F. Performance Data Reporting By Health Plans
Chapter 364, Section 14 (SF 3322)
Uncodified Language
Effective August 1, 2008
Requires that the Commissioners of Human Services and Health make recommendations to the Legislature by January 1, 2009, for a single method to report on health plan performance using an industry data set, payment claims and random medical record reviews.
- G. Privacy In Marketing Special Needs Basic Care
Chapter 326, Article 1, Section 38 (HF 3222)
Amends Minn. Stat. § 256B.69, subd. 28
Effective August 1, 2008
Adopts protections regarding individuals' privacy in marketing of the new Special Needs Basic Care managed care plan for persons with disabilities with Medical Assistance. Requires health plans to pay any Department of Human Services' costs incurred in mailing plans' marketing materials to potential enrollees.

VIII. MEDICAL ASSISTANCE

- A. Co-Payments Under Medical Assistance Limited
Chapter 363, Article 17, Section 10
Amends Minn. Stat. §§ 256B.0631, subd. 1 and 256B.0631, subd. 3
Effective August 1, 2008
Limits monthly Medical Assistance co-payments on prescription drugs and nonemergency visits to the Emergency Room to 5 percent of family income for those at or below 100 percent of the Federal Poverty Guidelines. Provider reimbursement will not be reduced by the amount of the co-payment for recipients who have paid their 5 percent cost-sharing limit.

- B. Hospital Payment Rate Reductions
Chapter 363, Article 17, Section 6 (HF 1812)
Amends Minn. Stat. §§ 256.969, subd. 3a, 256B.32, subd. 1 and 256B.75
Effective beginning July 1, 2008 for three years
 Reduces hospital and inpatient and outpatient payment rates for General Assistance Medical Care (GAMC) and Medical Assistance (MA) hospital payments, most of which would have been matched with federal Medicaid funds over three years. Exempts mental health services and the Indian Health Services from these rate reductions.

- C. Notice Of Disability Review For TEFRA Medical Assistance
Chapter 220 (SF 2024)
Amends Minn. Stat. § 256B.055, subd. 12
Effective August 1, 2008
 Requires counties to notify parents of a child's disability review for Medical Assistance TEFRA eligibility six months prior to the recertification due date.

IX. MENTAL HEALTH

- A. Children's Mental Health Services Limits On Aversive Practices
Chapter 234 (SF 3049)
Adds Minn. Stat. § 245.8261
Effective August 1, 2008
 Enacts new limitations on the use of seclusion, restraint and other aversive practices in children's mental health services and facilities, requires ongoing training for staff and an annual report to the Commissioner of Human Services.

- B. Mental Health Services Report
Chapter 234, Section 5 (SF 3049)
Uncodified Language
Effective July 1, 2008
 Requires the Commissioner of Human Services to report to the Legislature by January 16, 2009, on the availability of community mental health services for children, adolescents and adults, including whether mental health facilities should be expanded.

- C. Voluntary Placement For Treatment
Chapter 361, Article 6, Sections 24-53 (HF 3376)
Adds Minn. Stat. §§ 260D.001 – 260D.301
Amends Minn. Stat. § 260C.205, .212
Effective August 1, 2008
 Adopts standards for the voluntary placement for treatment of children with mental health or developmental disabilities so that parental custody and responsibility for those children is not disrupted. Requires court oversight of independent living plans for juveniles over 15 years of age who are in foster care.

X. OMBUDSMAN FOR MENTAL HEALTH AND DEVELOPMENTAL DISABILITIES

Chapter 219 (SF 3225)

Amends Minn. Stat. § 245.92

Effective August 1, 2008

Allows the Ombudsman for Mental Health and Developmental Disabilities to obtain copies of records, including information about deceased persons and to qualify as a health oversight agency for purposes of federal privacy regulations.

XI. ORAL HEALTH PRACTITIONER

A. Oral Health Practitioner Work Group

Chapter 298, Section 29 (SF 2942)

Uncodified Language

Effective May 13, 2008

Establishes a work group, including the Commissioner of Health, Board of Dentistry, higher education representatives, safety net providers and a representative of the Commissioner of Human Services, to develop recommendations and propose legislation for the education and regulation of oral health practitioners. Requires the recommendations and draft legislation by January 15, 2009, to allow enrollment of students in oral health practitioner educational programs by the Fall of 2009.

B. Oral Health Practitioner Requirements

Chapter 298, Section 26 (SF 2942)

Adds Minn. Stat. § 150A.061

Effective July 1, 2009

Establishes requirements for oral health practitioner qualifications and provides for licensing and rules to be adopted by the Board of Dentistry. Requires oral health practitioners to practice in settings serving low-income, uninsured and underinsured patients or in areas with a shortage of dentists as determined by the Commissioner of Health.

XII. TARGETED CASE MANAGEMENT

A. Federal Conformity For Targeted Case Management And Relocation Service Coordination

Chapter 363, Article 15, Sections 1-4 and 7 (HF 1812)

Amends Minn. Stat. §§ 256B.0621, subd. 2, 6 and 10; 256B.0625, subd. 20; 256B.0924, subd. 4 and 6

Effective July 1, 2008, but time limit restrictions become effective April, 2009 due to Congressional action June 26, 2008.

Changes targeted case management service limits, contingent on Congressional action, for relocation service, children and adult mental health, vulnerable adult and child welfare case management, to comply with federal interim rule changes. Congressional action on June 26, 2008, means that the changes will not go into effect until April, 2009.

B. Targeted Case Management For Children With Developmental Disabilities

Chapter 361, Article 6, Section 57

Uncodified Language

Effective August 1, 2008

Requires the Commissioner of Human Services to seek an amendment to the State Plan for Medical Assistance to add children with developmental disabilities to those eligible for targeted case management services to help those children gain access to needed medical, social, educational and other services provided under Minn. Stat. § 256B.092.

XIII. TAX PROVISION, COUNTY LEVY LIMITS

Chapter 366 (HF 3149)

Amends Minn. Stat. § 275.76

Effective July 1, 2008

Suspends county maintenance of effort and matching fund requirements for various sections of law, including health and human services programs such as: medical assistance, mental health services, and child welfare while levy limits are in effect. **NOTE:** This provision will be repealed retroactive to effect date based on agreements between the Governor, commissioners of finance and human services, and legislative leaders in letters dated May 27 and May 30, 2008.

XIV. TRANSPORTATION

1. Disability Parking

Chapter 272 (SF 3372)

Amends Minn. Stat. § 169.346, subd. 5

Effective August 1, 2008

Establishes minimum requirements for long-term disability parking, including a maximum of four hours for a one-hour, 90 minutes or two-hour meter, a 50 percent fee reduction for contracted parking, and issuance of special all-day permits for employed persons with severe disabilities.

2. Transportation Plan To Meet Unmet Need

Chapter 350, Article 1, Section 67 (HF 3800)

Amends Minn. Stat. § 177.24

Effective May 24, 2008

Requires the Department of Transportation to plan to meet 80 percent of the unmet need for transit in Greater Minnesota by 2015 and 90 percent of unmet need by 2020. Provides that the plan must address special transportation ridership needs.

3. Special Transportation Complaints To Commissioner Of Transportation

Chapter 287, Article 1, Section 73 (HF 3486)

Amends Minn. Stat. § 174.3, subd. 9

Effective July 1, 2008

Requires that the Commissioner of Transportation investigate complaints regarding special transportation service providers under the Commissioner's jurisdiction and report

on the complaints and resolutions to legislators every two years, beginning January 15, 2009.

4. Special Transportation Regulated By The Metropolitan Council

Chapter 287, Article 1, Section 97 (HF 3486)

Amends Minn. Stat. § 473.386, subd. 2

Effective May 9, 2008

Requires the Metropolitan Council to report on special transportation, including complaints and service quality, as part of its annual report to the Legislature. Also requires the Council to annually provide an opportunity for special transportation users to testify about the service. Changes the membership of the Transportation Accessibility Advisory Committee by dropping providers of special transportation and adding that half of the membership be Americans With Disabilities Act (ADA) certified users of public transit in the metropolitan area.

XV. TRAUMATIC BRAIN INJURY (TBI) ADVISORY COUNCIL

Chapter 286 (SF 3213)

Amends Minn. Stat. § 254A.035, subd. 2

Effective July 1, 2008

Extends the TBI Advisory Council, which was to expire June 30, 2008, until June 30, 2012.