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MEMO

TO: Persons Interested in 2011 Health and Human Services Disability-Related Legislation

FROM: Anne L. Henry

RE: 2011 Health and Human Services Legislation

DATE: July 26, 2011 –Version # 1

The 20-day state shutdown ended July 21, 2011, after an agreement between the governor and the legislature. A special legislative session was convened to consider and adopt nine budget bills. The following provisions are included in Chapter 9 of the First Special Session of the Health and Human Services Omnibus Budget Bill enacted July 20, 2011.

<https://www.revisor.mn.gov/laws/?id=9&doctype=Chapter&year=2011&type=1>. The “Line” numbers refer to the Health and Human Services Budget Tracking Spreadsheet available at http://www.senate.leg.state.mn.us/departments/fiscalpol/tracking/2011/HHS_SS%202011%20Tracking%20proposal%2014x.pdf.

It is important to keep in mind that all the cuts involving Medical Assistance funding for services, providers, fee increases will mean a loss of federal Medicaid matching funds which means that twice the amount is actually cut from providers, services or increased fees.

NOTE: This memo on the legislative changes and the impact will be updated as new information becomes available. Versions will be numbered and contain the date completed. New versions will be posted on the Disability Law Center website:

<http://www.mylegalaid.org/mdlc/public-policy->

The final report with citations is projected for the end of August.

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I. BUDGET-RELATED ITEMS AND CUTS

1. Personal Care Assistant Services Modifications

a. PCA Alternative Funding

Allows PCA funding appropriated in 2009 to be used to maintain eligibility for about 3,500 PCA recipients facing termination beginning July 1, 2011. Provides about \$8 million for the biennium in state dollars to be used to obtain 50% federal Medicaid match for those with Level 1 behavior or a dependency in 1 activity of daily living (ADL) or both. Limits PCA services for these recipients to 30 minutes per person per day. The PCA alternative funding results in a small savings of \$95,000 for the coming biennium. Effective July 1, 2011. **Line 880**

b. 20% Rate Cut for Family Member PCAs

Cuts the PCA rate paid to providers for family member PCAs by 20% to \$12.68 per hour, which is estimated to save \$24.361 million in state funds and spends \$900,000 in administrative costs to implement the cut. Family member PCAs affected by the 20% rate cut are: 1) Parent or adoptive parent of an adult 2) Sibling 16 or older 3) An adult child 4) A grandparent 5) A grandchild. Effective October 1, 2011. **Line 547**

2. Mandatory Managed Care for Persons with Disabilities with Opt-Out

Amends Minn. Stat. § 256B.69, subd. 28 Chapter 9, Article 6, Section 64. Requires children and adults with disabilities to be enrolled in managed care plans unless they affirmatively choose to opt-out of managed care, beginning **January 1, 2012**. The process for opting out will be determined by DHS. DHS estimates that at least one-half of those with disabilities will remain in managed care, 57,000 people in the second year of the biennium. The provision saves \$26.3 million in state funds for SFY 2012-2013 and about \$42 million SFY 2014-2015. The savings are due entirely to cost shifts of two months of payments into the next biennium and managed care rate reductions in effect prior to 2011. The provision also authorizes two DHS staff positions and \$425,000 for the Disability Link Line for increased volume related to managed care decisions. **Line 735**

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

For the next biennium for Home and Community Waiver Services, caseload increases are limited 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.

This provision 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.

Line 443

4. Suspend DD Waiver Acuity Payment Through 2015

The DD Waiver Acuity payment was cut 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. **Line 348.**

5. 10% Rate Reduction for CADI, DD & TBI Group Homes for Recipients with “lower needs”

Ch 9, Article 10, Sec 3, Subd. 4 (k)

Affects 3,600 HCBS waiver recipients living in corporate foster homes determined by DHS to be “low need” by reducing their funding 10% in 2012-13 and 15% in 2014-15. 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. **Line 373**

6. Corporate Foster Care Low Needs Reduction

Chapter 9, Article 7 Section 7 and Article 10, Section 3, Subd 4 (k)

Provisions not included in either the Governor’s budget proposals or the Legislative Conference Report regarding assessment and reassessment of persons on the CADI and TBI waivers require that when a person moves from a corporate foster home, the license capacity is required to be reduced and, if needed, the local agency is to consolidate people into a reduced number of group homes. This reduction of licensed corporate foster care capacity cuts \$1.5 million for 2012-2013 and \$4.3 million for 2014-2015 and spends \$161,000 for housing access grants and \$200,000 for administration for 2012-13. **Line 490**

7. **Assessment, Reassessment, Administrative Costs, Individualized Service Plan (ISP), Comprehensive Transitional Services, and Plan Maintenance Service Plan**

Chapter 9, Article 7, Sections 39, 40

\$330,000 is appropriated for the biennium to fund administrative costs related to implementing assessment and reassessment provisions for those on the CADI, DD and TBI waivers. **Line 536**

8. **Mental Health, Disability, Children's Mental Health and Child Protection Grants**

These grants were cut a total of \$3.36 million, down from the legislative cut of \$14.2 million. Subsidized adoption, relative custody assistance, family support grants, school-based mental health grants were not cut. The following grants were cut for the coming biennium:

- USPECIAL KIDS, \$410,000
- Technology grants for corporate foster care, \$500,000
- Adult mental health grants, \$400,000
- Children's mental health screening grants, \$200,000
- Children's mental health evidence-based practices, \$250,000.

Line 286

9. **County Children and Community Services Act Grants (CCSA)**

These grants are cut \$22 million for the coming biennium as proposed in the Governor's budget. Significant changes are made to the CSSA, including a change in name and focus to **Vulnerable Children and Adults Act**. Chapter 9, Article 1, Sections 20-30. **Effective July 1, 2011. Line 161**

10. **Adult Mental Health Grants**

Adult Mental Health Grants were cut \$13.5 million as adopted by the Legislature in their Conference Agreement. **Line 251**

11. **MA and MinnesotaCare Cost Sharing is Increased**

Article 6, Sections 49, 50, 51.

Increased cost sharing or co-payments for Medical Assistance and MinnesotaCare were adopted resulting in \$4 million savings in state funds. Chapter 9, Article 6. **Line 919**

12. Long-Term and Community Support Provider Rates and Grants Cuts

A 1.5% cut in rates for the 2012-13 biennium for long-term care waivers, home care, disability grants, and aging and adult services grants saves \$43.9 million for the biennium. **Line 501**

13. ICF/MR Rate Increase for Pineridge Facility in Clearwater County

The Pine Ridge Facility in Clearwater County for 15 people will receive a rate increase of \$115,000 paid for by all other ICF/MR facilities in the state. **Line 578**

14. Communication Device Pricing Modified

Changes to payment for communication devices will result in a reduction of \$315,000 in state funds. **Line 726**

15. Reduced Provider Payments for Persons who are eligible for both MA and Medicare (cross-over claims)

The provision, originally from the Governor's budget recommendations will result in reductions in MA payments for Medicare co-payments and deductibles, savings about \$40 million in state funds and \$80 million in provider payments when federal Medicaid match is added.

Requires that providers accept the Medical Assistance payment rate in full if it is less than the Medicare allowed amount plus deductibles and co-payments. This means that Medical Assistance will no longer pay co-payments and deductibles for dual-eligible recipients up to the Medicare allowed amount, but only up to the amount Medical Assistance would pay. Excludes dialysis and mental health services except those provided by physicians and advanced practice nurses. **Line 730**

16. Fee-for-Service Basic Care Rates Reduction

Article 6, Section 69

Fee-for-service basic care rates will be reduced 3% from the rate paid August 31, 2011 for a savings of \$18.7 million in state funds and twice that amount when considering federal Medicaid match. Most of this impact falls upon persons who are disabled because these individuals are not yet required to enroll in managed care. Basic care services include OT, PT speech, durable medical equipment, eyeglasses, prosthetics and orthotics, but not mental health or primary care physician payments. **Line 796**

17. Reduce Special and Access Transportation Rates

Chapter 9, Article 6

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. **Line 804**

18. Federal Compliance with Nursing Facility Level of Care Maintenance of Effort Requirement

Chapter 9, Article 7

Delays the nursing facility level of care changes enacted in 2009 due to the Affordable Care Act Maintenance of Effort Requirements and consequently puts off estimated savings resulting in a cost of \$29.2 million for the coming biennium. Implements these changes in January 2014. **Effective July 1, 2011. Line 1025**

19. Case Coordination for Children with High Cost Mental Health Conditions

Chapter 9, Article 6 or Article 8

Appropriates \$17,000 to provide care coordination to reduce health care costs for those with over XXX amount in annual mental health costs. **Effective July 1, 2011. Line 1106**

20. Change Physical Therapy (PT), Occupational Therapy (OT), Speech Therapy Services Coverage and Prior Authorization Process

Eliminates one-time service thresholds for PT, OT and speech therapy. Changes prior authorization system to increase DHS oversight and efficiency. Requires all providers must use electronic authorization system. Requires authorization for each episode of treatment but allows multiple modalities to be approved for one episode of treatment. Saves about \$1 million in state funds but cuts \$3.6 million in state and federal Medicaid funding for rehabilitation therapy and spends \$830,000 for administration. **Effective March 1, 2012. Line 706**

21. Medical Supplies and Equipment

Chapter 9, Article 6, Section 42

Gives Commissioner of DHS authority to set rates below Medicare rate for various medical equipment and supplies.

22. **Modify 3rd party liability processes by requiring authorization** – Page 71

Requires providers to seek authorization from 3rd party payers or Medicare when Medical Assistance will have to pay over 40% of the billed charges. Clarifies that personal funds may be used for non-covered services such as upgraded equipment. Prohibits enrollees from using personal funds to purchase non-covered prescription drugs subject to abuse or over-use. Saves \$140,000 for 2012-13. **Line 604**

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

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. Chapter 9, Article 7, Section . **Line 616**

24. **Restructure Licensing Fees**

Ch 9, Article 4, sections 3,4,5

Restructures licensing fees to cover more costs of licensing by increasing fees for 4,000 licensed programs, including Residential Mental Health Treatment, Adult Day Care, Child Care, Children's Residential Facilities for Persons with Developmental Disabilities, Day Training and Habilitation (DT&H) programs.

Extended fees to about 80 DHS programs currently exempt from licensure fees. Raises \$1.7 million in new revenue and costs licensed providers. **Line 140**

25. **Licensing Fees Charge for Background Studies**

Ch 9, Article 4, Section 8

Imposes background study charge of \$20 resulting in a \$1.3 million savings for state and cost fee licensed program for the biennium.

Affects 4,000 licensed programs also affected by restructured license fees in # 24 above. **Line 132**

26. Adoption and Relative Custody Assistance increase

Increases funding for adoption and Relative Custody Assistance by \$6.2 million for coming biennium to cover and expected caseload increase. **Effective July 1, 2011. Line 88**

27. Statewide Quality Assurance

Chapter 9, Article 7, Section 23

Continues \$100,000 per year funding for Region 10 Quality Assurance. Provides \$200,000 for the biennium for statewide quality assurance for persons with disabilities. **Effective July 1, 2011. Line 418**

28. Medical Assistance Reform Waiver

Requires the Commissioner of DHS to submit federal demonstration waiver and other federal requests for multiple projects, including reform of the home and community waiver programs. Provides for 1.67% service provider rate cut if waiver is not approved by July 1, 2012.

29. Medication Therapy Management Services

Chapter 9, Article 6, Section 36

30. Critical Access Dentistry

Changes criteria for critical access dental (CAD) payments by limiting CAD providers, which will result in \$6.1 million in state funds being cut with \$1.2 million coming from Medical Assistance for those eligible due to age or disability. Chapter 9, Article 6. **Line 767 Effective July 1, 2011.**

31. Specialized Maintenance Therapy Eliminated for Adults

Chapter 9, Article 6, Sections 29, 30, 31

Eliminates specialized maintenance therapy (PT, OT, speech) for adults. **Effective July 1, 2011 and January 1, 2012 for managed care.**

32. Money Follows the Person

Chapter 9, Article 7, Section 20

Authorizes DHS to deposit Money Follows the Person federal grant funds in a special revenue account to accomplish the rebalancing demonstration project to reduce institutional placement and improve community services.

33. State-Operated Services Mental Health Services

Article 8

\$3.262 million for the coming biennium and \$5.426 million for the next biennium are reduced from state-operated mental health services. **Line 1134**

34. State-Operated Services Mental Health Housing

Article 8

Transfers \$1 million from the state-operated services special revenue fund to state-operated services mental health housing. **Line 1152 Effective July 1, 2011.**

35. Minnesota Sex Offender Program (MSOP) Increased County Share for New Admissions

Imposes a higher charge on counties for admissions to the MSOP in the next biennium, totaling \$4 million more. **Line 1170 Effective July 1, 2011.**

36. Minnesota Sex Offender Program Budget Increase

Increases appropriation \$7.8 million for MSOP. **Line 1180 Effective July 1, 2011.**

II. PROVISIONS NOT INCLUDED IN THE FINAL BUDGET BILL

- 1. MA eligibility for adults without children was not eliminated** and Coordinated Care Delivery Systems (CCDS) were not reestablished.
- 2. Physical Therapy, Occupational Therapy, Speech and Language Therapy, Eyeglasses, Prosthetics and Orthotics were not eliminated for adults but prior authorization changes were made, see # 27.**
- 3. Changes in the case management appeal process by adding a mandatory conciliation conference prior to an administrative hearing was not adopted.**
- 4. Changes to Medical Assistance to a voucher program were not adopted; however, the Healthy Minnesota Defined Contribution Plan eliminates MinnesotaCare for about 8,000 adults without children and replaces it with a \$169.00 per month voucher to purchase health coverage.**

5. **TEFRA Fee Increase Adopted in 2010 was not extended to the 2014-15 biennium.**
6. **DHS PCA changes including changes to PCA recipients' appeal rights,** changes to ADL definitions to restrict eligibility for assistance in various categories and MNCHOICES related language.
7. **Case Management Reform** provisions were not adopted due to DHS administrative costs.
8. **Self-Directed Services Improvements** were not adopted due to DHS administrative costs.
9. **Community First Choice Option (1915k)** reform and modernization of the PCA program was not included, but the federal Medicaid reform waiver provisions (see #28) would likely allow DHS to proceed to plan and request a state Medicaid Plan amendment if the final federal regulations are consistent with Minnesota's fiscal and policy parameters.
10. **My Life My Choices Task Force was not included** because DHS thinks that the Medicaid reform waiver language in the bill (see #28) covers many of the same types of changes, according to Representative Abeler.
11. **Modification of Over age 65 Asset Limit for MA-EPD was not adopted.** This was a provision authored by Senator Sheran of Mankato to allow those who saved for retirement while under age 65 to use their savings during retirement rather than being required to spend it within one month of turning age 65. **Line 742.**

III. POLICY CHANGES

1. **Community Living Settings Defined p. 207**
Chapter 9, Article 7, Section 41
2. **Includes Specific New Assessment Reassessment Provisions for the CADI and TBI Waivers.**
Chapter 9, Article 7, Sections 39 and 40
3. **Changes to Non-Emergency Medical Transportation to be developed by Commissioner**
Chapter 9, Article 6, Section 6