

2012 Health & Human Services Omnibus Budget Bill

Continuing Care Provisions

All statutory references are to Minnesota Laws 2012, [Chapter 247](#) (HF2294)

Administration-wide provisions

Contingent Delay of Rate Reduction for Providers and ICF/DDs (\$2.1 million spending FY12-13, \$20.7 million spending FY14-15)

The implementation of the 1.67% provider rate and grant reductions passed during the 2011 special session is delayed until July 1, 2013. If the NF Level of Care waiver is not approved by the last quarter of SFY 2013, DHS is directed to implement a one-time payment delay by shifting the last payments in SFY2013 to July 2013. This shift pays for the delay in implementing the 1.67% payment rate reduction if the waiver is not approved. After that, the rate reduction is prorated in the event that only portions of the long-term care realignment waiver are approved. *Article 4, section 39, 42; Article 6, section 2 (f); tracking lines 212, 221*

Provisions that impact older adults and persons with disabilities

Status of Long Term Care Report (Budget neutral)

Local planning grant funds are used for the expansion of the Status of Long Term Care Report (informed, in part, by the gaps analysis survey) to include analysis of services for people with disabilities and mental illnesses, in addition to aging. Amends the reporting cycle from 2004 and biennially thereafter, to 2013 and biennially thereafter. *Article 4, sections 3, 44; tracking line 344*

Housing with Services Disclosure to Consumers

Housing with services providers are required to disclose to consumers, in the contract, whether a consumer is required to move or share a room if the consumer can no longer pay the current rent. *Article 4, section 4*

Medical Assistance for Employed Persons with Disabilities (MA-EPD) Eligibility Modifications (\$437,000 spending FY12-13, \$679,000 spending FY14-15)

The age eligibility requirement for MA-EPD is eliminated, impacting approximately 80 individuals per month in the first fiscal year. Also allows certain MA-EPD enrollees to retain the higher MA-EPD asset limit for the purposes of meeting MA-Elderly eligibility criteria. This impacts approximately 33 recipients per year. Effective April 1, 2012. *Article 4, sections 15, 16, 17; tracking line 231*

Personal Care Assistance (PCA) Relative Rate Reduction Delay (\$5.9 million spending FY12-13, \$1.7 million FY14-15)

The rate reduction for PCAs that care for relatives is delayed until July 1, 2013. As of February 2012, approximately 6,500 PCAs were providing services to relatives, impacting 5,900 recipients. *Article 4, sections 18, 43; tracking line 151*

Prohibit PCA Relative Rate Payment Recovery

The commissioner cannot recover the difference between 100% of the PCA payment rate and 80% of PCA payment rate to PCAs caring for relatives from the period of October 26, 2011 to March 23, 2012. *Article 6, section 2; lines 147.5-148.20*

Nursing Facility Level of Care (NF LOC) Clarification

This section clarifies that the federal NF LOC waiver request is to implement the NF LOC criteria on or after July 1, 2012, for adults and children. *Article 4, section 41*

Ombudsman Study of Assisted Living

The ombudsman for long-term care is directed to work with stakeholders to research issues that may arise in assisted living settings when individuals transition from private to public pay. A report to the legislature is due by January 15, 2013. *Article 4, section 48*

Essential Community Support (ECS) Grants (\$999,000 spending FY12-13)

Essential Community Support (ECS) grants are to be made available for those on the CADI waiver as outlined in the Long Term Care Realignment waiver application. The commissioner is authorized to use increased federal matching funds as necessary to provide expanded ECS services. Upon federal approval to implement the nursing facility level of care, \$999,000 is appropriated for ECS grants in fiscal year 2013. *Article 6, section 2; lines 147.21-148.6; lines 149.30-150.2; tracking line 332*

Provisions that impact older adults

Modifications to the Consultation for Housing with Services

A prospective resident's representative can now more easily act on the resident's behalf to receive or decline the counseling. Two new exemptions are added to the requirement: individuals receiving hospice services, and individuals who have created a long term care plan in the past 12 months. *Article 4, sections 21, 22*

Long-Term Care Options Counseling (\$150,000 savings FY12-13, \$700,000 savings FY14-15)

The commissioner will develop referral protocols, for use by hospitals and certified health care homes, to identify at-risk older adults for referral for Long-Term Care Options Counseling (LTCOC) by the Senior LinkAge Line®. Hospitals are required to refer certain at-risk older adults for LTCOC, prior to a hospital discharge, effective October 1, 2012. *Article 4, section 14, 23; tracking line 180*

Elderly Waiver (EW) Customized Living Provider Recommendations

EW Customized Living providers are allowed to submit their recommendations regarding care needs to the long-term care consultation assessor, with client's permission. *Article 4, sections 20, 24, 25*

Eligible Borrowers for Electronic Health Records Loans

Nursing facilities and Elderly Waiver (EW) Customized Living providers are added to the list of eligible borrowers under the Electronic Health Record System Revolving Account and Loan Program. *Article 4, section 1*

Provisions that impact persons with disabilities

Corporate Foster Care Capacity Reduction (\$1.6 million spending FY12-13, \$1.3 million FY14-15)

The closing of any corporate foster care beds is delayed until fiscal year 2014. A needs-determination process is created to determine where corporate foster care capacity will be reduced. The commissioner can close up to 128 beds statewide, including unused licensed capacity. Corporate foster care homes that serve people with mental illness are exempted from closure. A report on the needs determination process is required by February 1 of each year. *Article 4, sections 6, 35; tracking line 337*

Corporate Foster Care 5th Bed Variance for Respite, 5th Bed Extension until 2016 (\$53,000 spending FY12-13, \$60,000 spending FY14-15)

This section allows the commissioner to grant a variance to allow corporate foster care providers a 5th bed for respite services. This section also extends the timeline for allowing a 5th bed license from 2011 to 2016. *Article 4, section 7; tracking line 189*

Corporate Foster Care Variance for Alternate Overnight Supervision Technology (see Corporate Foster Care 5th bed provision)

The number of conditions under which adult foster care license holders are eligible for a variance for alternate overnight supervision is modified, as are the application requirements for the alternate overnight supervision technology license. *Article 4, sections 8 and 9; tracking line 189*

Corporate Foster Care Mental Health Certification (\$102,000 spending FY12-13, \$399,000 spending FY14-15)

An optional mental health certification for corporate foster care providers that serve individuals with mental illness is created. Foster care providers with a mental health certification will be exempt from bed closures in Article 4, Section 6. *Article 4, section 5; tracking line 204*

Developmental Disabilities (DD) Waiver Service Plan Addendum

Approved, written and signed changes to a consumer's services are now an addendum to the consumer's individual service plan. *Article 4, section 26*

Disability Waiver Provider Recommendations

Providers of disability waiver services can give input to the assessment regarding the waiver recipient's care needs. *Article 4, sections 27, 34*

State Quality Council Duties

Two new responsibilities are added to the State Quality Council, including legislative recommendations for statutory and rule changes related to removing barriers to choice of community-based services. Those recommendations are due by January 15, 2013. *Article 4, section 28*

Community-Living Settings

The definition of "community-living settings" is changed to include transitional leases from service providers. The lease must be transferred to the individual within two years of the initial signing. *Article 4, section 36*

Definition of Home and Community-Based Settings for People with Disabilities

Individuals receiving services through the disability waivers may reside in their own home, licensed foster care, or a community living setting in up to all units if the building is 4 or smaller, and no more than the greater of 4 or 25% of a building with more than 4 units. The language includes criteria that the setting must meet, as well as language that allows current settings to continue to provide services. The commissioner must submit an amendment to the waiver plan by December 31, 2012. *Article 4, sections 37, 46*

Adult Foster Care Planned Closure (\$98,000 spending FY 12-13, \$976,000 savings FY 14-15)

An adult foster care planned closure program is created, requiring DHS to seek proposals for the conversion of corporate foster care settings for persons with disabilities to other community settings. This section outlines the process for planned closures and provides an enhanced rate for providers that close beds. *Article 4, section 38; tracking lines 192-194*

Congregate Living Rate Reduction Moderation (Budget neutral)

The lower need congregate rate reduction for individuals on the CADI and DD waivers is changed from 10% to 5% if DHS receives federal approval for federal financial participation on the Alternative Care waiver program. *Article 4, section 43; tracking line 411*

Independent Living Services Billing

The commissioner can allow for daily rate and 15-minute increment billing for independent living services under the BI and CADI waivers. *Article 4, section 45*

Consumer-Directed Community Supports (CDCS) Budget Methodology

By July 1, 2012, the commissioner must seek an amendment for an exception to the Consumer-Directed Community Supports budget methodology to allow 20% more in the CDCS budget for individuals who turn 21 and graduate from high school during 2013 and 2014. *Article 4, section 47*

Autism Housing with Supports Study (\$177,000 spending FY12-13)

The commissioner, in consultation with the Departments of Education, Health, and Employment and Economic Development, must complete a study on models of housing with supports for children with severe autism. A report is due to the legislature January 15, 2013. *Article 4, section 50; tracking line 105*

Foster Care for Individuals with Autism

The commissioner must identify and coordinate with counties to issue foster care licenses for people with autism being served under the HCBS waivers. The commissioner must also assist with obtaining necessary capacity and issuing a request for information to identify providers who have the training and skills to serve individuals with autism. *Article 5, section 7*

Intractable Epilepsy Grant to People, Inc. (\$65,000 spending FY13 & ongoing)

\$65,000 is appropriated each fiscal year for living skills training programs for persons with intractable epilepsy. *Article 6, section 2; lines 150.4-150.10; tracking line 403*

Self-Advocacy Grant to Advocating Change Together (\$50,000 spending FY13)

\$50,000 is appropriated in fiscal year 2013 for the development of a statewide self-advocacy network for persons with developmental and intellectual disabilities. *Article 6, section 2; lines 150.11-151.6; tracking line 407*

Provisions related to nursing facilities

Nursing Facility Moratorium Exception (\$600,000 in spending in FY14-15)

This section provides funds for moratorium exception projects, with up to \$1 million in additional state spending. This impacts approximately 8 nursing facilities and 600 residents, beginning in FY14. *Article 4, sections 2, 30, 51; tracking line 200*

Nursing Facility Property Payment Rate Adjustments

The change makes increases in the annual replacement costs per new bed limits possible beginning October 1, 2012. It does not allow decreases. This change is retroactive contingent upon federal approval. *Article 4, sections 29, 30*

Nursing Facility Medicare Certification (\$13,000 spending FY12-13, \$26,000 spending FY14-15)

The requirement for nursing facilities that participate in Medical Assistance to also participate in Medicare is eliminated. This impacts approximately 32 providers and 16 residents, beginning in FY 13. *Article 4, section 31, 33, 51; tracking line 146*

Critical Access Nursing Facilities (\$500,000 spending FY12-13)

A critical access nursing facilities designation is created. This impacts approximately 3 facilities and 150 residents, in FY13 only. Effective April 29, 2012. *Article 4, section 32; Article 6, section 2; tracking line 208*

Other Administrations and Departments

TEFRA Fees (\$1.2 million savings FY14-15)

The 2011 TEFRA fee increases are extended until June 30, 2015. *Article 4, section 13; tracking line 273*

PCA Investigations Notice

The commissioner is allowed immediate access, without prior notice, to documentation and records related to PCA services when investigating a possible overpayment of Medical Assistance funds. *Article 4, section 19*

Evaluation of Health and Human Services Regulatory Responsibilities

DHS must collaborate with Minnesota Management and Budget and the Department of Health to evaluate and recommend options for administering health and human services regulations. A report is due by August 1, 2013. *Article 2, section 9*

Providers Allowed to Pay Family Deductible

Managed care plans, county-based purchasing plans, long-term care providers, and Home and Community-Based Services (HCBS) waiver providers can assume responsibility for family deductible payments. This can only occur if the commissioner waives the requirement that the individual pay the deductible. *Article 1, section 10*

Oversight of Licensed Home Care Providers

The Minnesota Department of Health is required to provide recommendations to the legislature on the development of a comprehensive home care plan to increase inspection and oversight of home care providers licensed by MDH. *Article 2, section 12*

Licensing PCA Services

The commissioner must complete a feasibility study for licensing personal care assistance services. A report is due to the legislature by January 15, 2013. This study will be led by the DHS Office of Inspector General. *Article 4, section 49*

Consumer Data File

License holders are held harmless from licensing sanction or penalty if an individual service plan has been requested but has not been provided by the case manager. *Article 4, section 10*

Background Study Changes

An annual background study does not need to be completed on an individual who works for a provider with DHS licensed programs and unlicensed services if the provider complies with certain requirements

and the individual provides at least 40 hours of direct contact services in the provider's licensed program. *Article 4, section 11*

Background Study Convictions

Probation officers and corrections agents must notify the commissioner of an individual's conviction if the individual has been affiliated with a licensed program within the preceding year and has been convicted of a disqualifying crime. *Article 4, section 12*

Minnesota Supplemental Aid (MSA) Shelter Needy (\$57,000 savings FY 12-13, \$114,000 savings FY 14-15.

25% or 4 units in a building can be used for MSA shelter needy recipients, depending on the size of the building. If the housing is controlled by a service provider, the provider must transition the lease to the recipient's name within two years of the initial lease. *Article 4, section 40; tracking line 190-191*

Acronyms

AC – Alternative Care

BI – Brain Injury

CAC – Community Alternative Care

CADI – Community Alternative for Disabled Individuals

CDCS – Consumer Directed Community Supports

DD – Developmental Disabilities

DHS – Department of Human Services

ECS – Essential Community Support

EW – Elderly Waiver

HCBS – Home and Community-Based Services

ICF/DD – Intermediate Care Facility for Individuals with Developmental Disabilities

LTC – Long-term care

LTCOC – Long term care options counseling

MA-EPD – Medical Assistance for Employed Persons with Disabilities

MDH – Minnesota Department of Health

MSA – Minnesota Supplemental Aid

NF LOC – Nursing Facility Level of Care

PCA – Personal Care Assistance