Notice of Action/Appeals Webinar
• Diane Benjamin, PHN, Home Care and Self-Directed Services Policy Staff
• Sarah Schultz, Home Care and Self-Directed Services Policy Staff
• Beth Siewert, MnCHOICES Policy Staff
• Cindee Calton, Home Care and Self-Directed Services Training Staff
Objectives of Today’s Webinar

1. Participants will understand why DHS is making these changes.
2. Participants will be able to determine when to use each form.
3. Participants will be able to complete form DHS-2828A.
4. Participants will be able to complete form DHS-2828B.
5. Participants will understand how the appeals process works.
Outline of Today’s Webinar

1. Background information
2. When to use each form
3. Notice of Action form DHS-2828A
4. Notice of Action form DHS-2828B
5. The appeals process
Background Information
What is and isn’t Being Changed?

**Unchanged**
- You are required to give proper notice
- The appeals process

**Changed**
- There are two separate notices for different situations
- Because the assessment process is more comprehensive, the notice of action must be broader
Why are the Forms Being Changed?

- To meet legal requirements
- Benefits to the person
- Benefits to you
What are the Benefits to the Person?

- Gives the person a clear understanding of any changes
- Gives the person a clear understanding of what program(s) they can access and why they may not be able to access other program(s)
- Gives the person proper notice
- Gives the person clear information about their right to appeal
- Gives the person clear information about the appeals process
What are the Benefits to Case Managers and Assessors?

- More efficient communication with the person
- Allows you to better represent your decision if there is an appeal
- Streamlined, easier to fill out forms
- Give you a better understanding of the appeals process
When to Use Each Form
Use form 2828A after every assessment and reassessment.

Use form 2828B after every denial, termination and reduction (DTR) of a service implemented by the case manager throughout the service plan.
Examples of When to Use 2828B

- Person requests a change
- Setting change, such as hospitalization
- Change in programs
- Reduction or termination of services
- Change in AC fees
Notice of Action
Form DHS-2828A
DHS-2828A: Benefits

- Starts with programs that are available to the person
- Is dynamic for easier use
- Drop-down menu of legal citations for easier use
- Appeals Division contact information and appellant rights included
DHS-2828A: Who?

County or tribe staff completes following assessment or reassessment

Sends to: person, authorized representative, case manager/care coordinator (if applicable)

Contact the dsd.rrs@state.mn.us via encrypted email for technical assistance on completing this form.
DHS 2828A: When?

Changes in NF level of care: at least 30 but no more than 60 days before the change takes effect.

All other changes or notifications: at least 10 days before the change takes effect.
Completing 2828A: Overview

Link to CBSM instructions

Person’s information

Your information

Dynamic check boxes

Date the form was sent

Representative’s information

Narrative description of available program

Note: the effective date(s) of the change(s) is at the end of each category (DTR).
Completing 2828A: Programs and Services Available to You

Programs and services available to you
After your assessment/reassessment for services, we determined the following programs and services are available to you.

Initial assessment: You completed a MnCHOICES assessment on 9/21/17. Your assessment showed eligibility for nursing facility level of care and you have needs that may be met by waiver services. You are under 65 years old, so you are eligible for supports and services available under the Community Access for Disability Inclusion (CADI) waiver for persons under the age of 65.

Programs and services available to you
After your assessment/reassessment for services, we determined the following programs and services are available to you.

Reassessment: You completed an assessment on 9/21/17. You continue to be eligible for nursing facility level of care and you continue to have needs that can be met with waiver services. The CADI waiver continues to be an option to access long term supports and services.
Completing 2828A: Dynamic Check Boxes

Notice of action about denial, termination or reduction of services
After your assessment/reassessment for services, we determined that following programs and services are either not available to you or will be changed. This is the action being taken.

- No change to your current programs or services
- Reduction in services or budget
- Termination
- Denial of services

Checking a box will create additional fields that correspond to that box.
Completing 2828A: Denial of Services

Notice of action about denial, termination or reduction of services

After your assessment/reassessment for services, we determined that following programs and services are either not available to you or will be changed. This is the action being taken.

☒ No change to your current programs or services
☐ Reduction in services or budget
☐ Termination
☒ Denial of services

Denial of services should always be checked on an form DHS-2828A. There will always be some programs a person is not eligible for.
Denial of services

Program/service
You have been denied for the following program(s) or services:

☐ Alternative Care (AC)
☐ Elderly Waiver (EW)
☐ Essential Community Supports (ECS)
☐ Personal care assistance (PCA)
☐ Developmental Disabilities (DD) Waiver
☐ Brain Injury (BI) Waiver
☐ Community Access for Disability Inclusion (CADI) Waiver
☐ Community Alternative Care (CAC) Waiver.
Completing 2828A: Denial of Services Dynamic Check Boxes

Denial of services

Program/service
You have been denied for the following program(s) or services:
- Alternative Care (AC)

Reason
You were denied because:
- You are not 65 years or older
- You do not meet financial eligibility criteria
- You do not meet other eligibility criteria
- You do not need the level of care that a nursing facility provides
- Your needs are met without an AC-paid service
- You chose not to use the AC program.

Legal citation
Minnesota Statute, Section 256B.0913 applies to this change (Alternative Care [AC] Program)

For each program, a list of possible reasons expands when the program is selected.
For your convenience, the legal citation is automatically added for you.
Completing 2828A: Denial Explanation Example

**Denial explanation**

This is the reason why this service or program was denied. It includes information about how your plan for supports or your access to resources is affected.

You do not meet either the level of care thresholds for the reasons indicated above for the following programs: CAC, DD, BI. You do not meet the age requirements to access the following programs: EW, AC, ECS. You plan to utilize the CADI waiver supports, informal caregiver supports, and personal care assistance services to meet your needs.

Be sure to enter an effective date.
Completing 2828A: Selecting Legal Citations

For reductions and termination: for your convenience, there is a drop down menu of applicable legal citations to select from.

Legal citation
The following Minnesota statute applies to this change:

- Alternative Care (AC) Program – Minn. Stat. §256B.0913
- Developmental Disabilities (DD) Waiver – Minn. Stat. §256B.092
- Disability waivers: Brain Injury (BI), Community Alternative Care (CAC) and Community Access for Disability Inclusion (CADI) – Minn. Stat. §256B.49
- Elderly Waiver (EW) Program – Minn. Stat. §256B.0915
- Federal waiver plan
- Personal care assistance (PCA) services – Minn. Stat. §256B.0659
**Explanation**

This is the reason why this service or program is ending. It includes information about how your plan for supports or your access to resources is affected.

| You were on the Consumer Support Grant (CSG). Your condition has changed and your needs can no longer be met by CSG. Your needs may be met by services and supports available through the CADI waiver. You can refer to your worksheet provided by your assessor (6791A) for any next steps that you need to take. |

Be sure to coordinate the effective date with the person’s transition to the waiver.
Completing 2828A: Reduction Explanation Example

**Explanation**
This is the reason why this reduction happened. It includes information about how your plan for supports or your access to resources is affected.

Your condition has improved over the past year. You have gained strength and you are now able to eat independently. Additionally, you purchased the recommended adapted equipment through the CADI waiver to increase your ability to feed yourself more independently. You no longer have a PCA dependency for eating.

You were previously eligible for 4 hours of PCA per day, your current assessment reduces PCA time to 3 hours per day.

Be sure to enter an effective date, if applicable
Send form DHS-2828A with assessment results and indicate that form DHS-2828B will include the effective date.
• Information for the person on filing an appeal
• No editing needs to be done by the county/tribe
Notice of Action
Form DHS-2828B
DHS-2828B: Benefits

- Starts with programs that are available to the person
- Is dynamic for easier use
- Drop-down menu of legal citations for easier use
- Appeals Division contact information and appellant rights included
Case Manager/planner completes following change in services

Sends to: person, authorized representative, care coordinator (if applicable)

Contact the dsd.rrs@state.mn.us via encrypted email for technical assistance on completing this form.
DHS 2828B: When?

- At least 10 days before a denial, termination or reduction of services the person is receiving throughout the service plan year.
- At least 10 days before a change in Alternative Care (AC) fees.
Completing 2828B: Overview

Link to CBSM instructions

Person’s information

Your information

Dynamic check boxes

Date the form was sent

Representative’s information

Narrative description of available program

Note: the effective date(s) of the change(s) is also required and is at the end of each category (DTR).
Completing 2828B: Programs and Services Available to You

<table>
<thead>
<tr>
<th>Programs and services available to you</th>
</tr>
</thead>
<tbody>
<tr>
<td>We determined that the following programs and services are available to you:</td>
</tr>
<tr>
<td>PCA services, homemaking, Lifeline, skilled nurse visit, Adult Day program</td>
</tr>
</tbody>
</table>
Completing 2828B: Dynamic Check Boxes

Notice of action about reduction or denial of services
We determined that following programs and services are either not available to you or will be changed. This is the action being taken:

☐ Reduction
☐ Termination
☐ Denial

Checking a box will create additional fields that correspond to that box
Completing 2828B: Reduction of Services Example

We reduced your level of participation in the following programs and/or services:

- PCA services were reduced from 4 hours per day to 3 hours per day.

Selected programs:
- Alternative Care (AC)
- Essential Community Supports (ECS)
- Elderly Waiver (EW)
- Developmental Disabilities (DD) Waiver
- Community Alternative Care (CAC) Waiver
- Community Access for Disability Inclusion (CADI) Waiver
- Consumer Support Grant (CSG)
- Brain Injury (BI) Waiver
- Personal care assistance (PCA)
- Semi-independent living services (SILS)
- Other.

Reason
The reason this service or program is ending is because:
- There was a change in your assessed needs
- You chose to change your amount of service
- You chose to use an alternative service.

Legal citation
The following Minnesota statute applies to this change:
- Personal care assistance (PCA) services – Minn. Stat. §256B.0659
- Disability waivers: Brain Injury (BI), Community Alternative Care (CAC) and Community Access for Disability Inclusion (CADI) – Minn. Stat. §256B.69

Explanation
This is the reason why this reduction happened. It includes information about how your plan for supports or your access to resources is affected.

Your upper body strength has improved and you purchased adaptive equipment to assist with eating; you no longer have a PCA dependency in eating. Last year, you used some of your PCA time for homemaking related to your activities of daily living. Homemaking services will be added to your plan (5 hours per week) to continue to support you with cleaning and shopping for food and your other household needs.
Completing 2828B: Reduction Explanation Example

We reduced your level of participation in the following programs and/or services:

PCA services were reduced from 4 hours per day to 3 hours per day.

**Explanation**
This is the reason why this reduction happened. It includes information about how your plan for supports or your access to resources is affected.

Your upper body strength has improved and you purchased adaptive equipment to assist with eating; you no longer have a PCA dependency in eating. Last year, you used some of your PCA time for homemaking related to your activities of daily living. Homemaking services will be added to your plan (5 hours per week) to continue to support you with cleaning and shopping for food and your other household needs.

Be sure to enter an effective date.
Completing 2828B: Termination Explanation Example

We are ending one or more programs and/or services:
You told your case manager that you would like to discontinue home delivered meals, 3 meals per week.

Explanation
This is the reason why this service or program is ending. It includes information about how your plan for supports or your access to resources is affected.
You said you didn't really like the home delivered meals. Your upper body strength has improved after your shoulder surgery and your physical therapy. As a result, you said that you would like to try cooking some simple meals yourself or with support from your informal caregiver, as needed. You also go to Adult Day 2 days per week and you said that you like the meals they serve.

Be sure to enter an effective date
Completing 2828B: Denial Explanation Example

We are denying one or more programs and/or services:
You requested a lightweight wheelchair.

Denial explanation
The reason why this service or program is denied. It includes information about how your plan for supports or your access to resources is affected.
You requested a lightweight wheelchair to use when you are having trouble walking long distances while getting out into the community. A wheelchair would also help your caregiver support you. You need to contact a medical supply company to see if your medical assistance will purchase the wheelchair prior to using CADI waiver funds.

Be sure to enter an effective date
2020B Appeal Notice and Instructions

- Information for the person on filing an appeal
- No editing needs to be done by the county/tribe
Appeals Process
Appeals Process Overview

1. Person files an appeal in response to NOA
2. DHS Appeals Division requests an appeal summary
3. County/tribe continues services at prior level pending the appeal’s outcome*
4. County/tribe may resolve appeal prior to fair hearing
5. DHS Appeals Division issues a decision
6. Hearing occurs
7. Responsible agency completes and submits the appeal summary
8. DHS Appeals Division schedules a hearing
9. Appellant or county/tribe may request reconsideration
10. County/tribe implements the decision*
11. Appellant may appeal decision in district court

*Disability Services Division implements continuation of benefits and decisions for PCA and home care services on type B service agreements.

Note that these steps are in a general chronological order, but some may occur concurrently.
Appeals Process Overview: Filing

Person files an appeal in response to NOA

DHS Appeals Division requests an appeal summary

County/tribe continues services at prior level pending the appeal’s outcome*

County/tribe may resolve appeal prior to fair hearing

*Disability Services Division implements continuation of benefits and decisions for PCA and home care services on type B service agreements

DHS Appeals Division issues a decision

Hearing occurs

Responsible agency completes and submits the appeal summary

DHS Appeals Division schedules a hearing

Appellant or county/tribe may request reconsideration

County/tribe implements the decision

Appellant may appeal decision in district court

Note that these steps are in a general chronological order, but some may occur concurrently.
Person Files an Appeal

Written Request → County, tribe or DHS Appeals Division

Within 30 calendar days of receiving the notice
Within 90 days with good reason for the delay
Appeals Process Overview: Summary Request

1. Person files an appeal in response to NOA
2. DHS Appeals Division requests an appeal summary
3. County/tribe continues services at prior level pending the appeal’s outcome*
4. County/tribe may resolve appeal prior to fair hearing
5. DHS Appeals Division issues a decision
6. Hearing occurs
7. Responsible agency completes and submits the appeal summary
8. DHS Appeals Division schedules a hearing
9. Appellant or county/tribe may request reconsideration
10. County/tribe implements the decision
11. Appellant may appeal decision in district court

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Note that these steps are in a general chronological order, but some may occur concurrently.
DHS Appeals Division

Requests summary from entity whose decision is being appealed
A Reminder About Encrypted Emails

When sending protected information via email, it is important to remember to encrypt it.
If the County/Tribe Receives the Request in Error

- Notify the Appeals Division using an encrypted email to the email below
  - DHS.Appeals.Modifications@state.mn.us

- Home Health Services or Home Care Nursing for appellant not on a waiver

- Service determinations made by a Managed Care Organization (MCO)
Appeals Process Overview: Continuation

Person files an appeal in response to NOA → DHS Appeals Division requests an appeal summary → County/tribe continues services at prior level pending the appeal’s outcome* → County/tribe may resolve appeal prior to fair hearing

DHS Appeals Division issues a decision → Hearing occurs → Responsible agency completes and submits the appeal summary → DHS Appeals Division schedules a hearing

Appellant or county/tribe may request reconsideration → County/tribe implements the decision → Appellant may appeal decision in district court

*Disability Services Division implements continuation of benefits and decisions for PCA and home care services on type B service agreements.

Note that these steps are in a general chronological order, but some may occur concurrently.
Continuation of Services

If a person is not on a waiver, PCA and Home Care services:
- DHS continues services
- No action needed from county/tribe

All other services:
- County/tribe continues services
Appeals Process Overview: Resolving

Person files an appeal in response to NOA → DHS Appeals Division requests an appeal summary → County/tribe continues services at prior level pending the appeal’s outcome* → County/tribe may resolve appeal prior to fair hearing

DHS Appeals Division issues a decision → Hearing occurs → Responsible agency completes and submits the appeal summary → DHS Appeals Division schedules a hearing

Appellant or county/tribe may request reconsideration → County/tribe implements the decision → Appellant may appeal decision in district court

*Disability Services Division implements continuation of benefits and decisions for PCA and home care services on type B service agreements

Note that these steps are in a general chronological order, but some may occur concurrently.
County/Tribe and Person Resolve on Their Own

The county/tribe and the person may resolve the dispute with additional communication.

The appellant contacts the DHS Appeals Division.

Unless otherwise directed by the judge, the county/tribe still completes an appeals summary notifying the judge of the resolution.
Appeals Process Overview: Scheduling

Person files an appeal in response to NOA → DHS Appeals Division requests an appeal summary → County/tribe continues services at prior level pending the appeal's outcome* → County/tribe may resolve appeal prior to fair hearing

DHS Appeals Division issues a decision → Hearing occurs → Responsible agency completes and submits the appeal summary → DHS Appeals Division schedules a hearing

Appellant or county/tribe may request reconsideration → County/tribe implements the decision → Appellant may appeal decision in district court

*Disability Services Division implements continuation of benefits and decisions for PCA and home care services on type B service agreements

Note that these steps are in a general chronological order, but some may occur concurrently.
Scheduling the Hearing

DHS Appeals Division will schedule a hearing that permits easy access for the person

DHS Appeals Division will notify the county/tribe and the appellant of the hearing date, time and location

Counties and tribes can expect the notice of hearing within 30 business days of receiving the request
Appeals Process Overview: Appeals Summary

1. Person files an appeal in response to NOA
2. DHS Appeals Division requests an appeal summary
3. County/tribe continues services at prior level pending the appeal’s outcome*
4. County/tribe may resolve appeal prior to fair hearing

DHS Appeals Division issues a decision

- Hearing occurs
- Responsible agency completes and submits the appeal summary
- DHS Appeals Division schedules a hearing

Appellant or county/tribe may request reconsideration

- County/tribe implements the decision
- Appellant may appeal decision in district court

*Disability Services Division implements continuation of benefits and decisions for PCA and home care services on type B service agreements

Note that these steps are in a general chronological order, but some may occur concurrently.
County/Tribe Completes Summary
County/Tribe Submits Summary

The appellant, Appeals Division and Aging and Disability Services

At least three days before the hearing

DHS Appeals Division via encrypted email:
DHS.appealssummary@state.mn.us

DHS Aging and Disability Services via encrypted email:
DHS.CCAappeals@state.mn.us
Appeals Process Overview: Hearing

1. Person files an appeal in response to NOA
2. DHS Appeals Division requests an appeal summary
3. County/tribe continues services at prior level pending the appeal’s outcome*
4. County/tribe may resolve appeal prior to fair hearing
5. DHS Appeals Division issues a decision
6. Hearing occurs
7. Responsible agency completes and submits the appeal summary
8. DHS Appeals Division schedules a hearing
9. Appellant or county/tribe may request reconsideration
10. County/tribe implements the decision
11. Appellant may appeal decision in district court

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Note that these steps are in a general chronological order, but some may occur concurrently.
The Hearing: What to Expect

- Semi-formal process
- All participants are sworn in
- The human services judge will direct the participants when to respond
The Hearing: The DHS Appeals Division Might . . .

- Record the hearing
- Keep the hearing record open
- Prepare a transcript (if the appellant appeals the decision in district court)
Appeals Process Overview: Decision

1. Person files an appeal in response to NOA
2. DHS Appeals Division requests an appeal summary
3. County/tribe continues services at prior level pending the appeal’s outcome*
4. County/tribe may resolve appeal prior to fair hearing
5. DHS Appeals Division issues a decision
6. Hearing occurs
7. Responsible agency completes and submits the appeal summary
8. DHS Appeals Division schedules a hearing
9. Appellant or county/tribe may request reconsideration
10. County/tribe implements the decision
11. Appellant may appeal decision in district court

*Disability Services Division implements continuation of benefits and decisions for PCA and home care services on type B service agreements

Note that these steps are in a general chronological order, but some may occur concurrently.
The Decision

Human services judge makes a recommended decision

- Affirms the county/tribe’s action
- Reverses the county/tribe’s action
- Dismisses the appeal request
- Remands the appeal

Chief human services judge

- Accepts the recommendation
- Rejects the recommendation and revises or remands
After the Decision, The Chief Human Services Judge Will . . .

1. Issue the decision within 90 days of the appeal request
2. Send the final decision to the appellant
3. Notify all other involved parties, such as Aging and Disability Services, the county/tribe, and/or the MCO
Appeals Process Overview: Reconsideration

1. Person files an appeal in response to NOA
2. DHS Appeals Division requests an appeal summary
3. County/tribe continues services at prior level pending the appeal’s outcome*
4. County/tribe may resolve appeal prior to fair hearing
5. DHS Appeals Division issues a decision
6. Hearing occurs
7. Responsible agency completes and submits the appeal summary
8. DHS Appeals Division schedules a hearing
9. Appellant or county/tribe may request reconsideration
10. County/tribe implements the decision
11. Appellant may appeal decision in district court

*Disability Services Division implements continuation of benefits and decisions for PCA and home care services on type B service agreements

Note that these steps are in a general chronological order, but some may occur concurrently.
Reconsideration: County or Tribe Request

County or tribe requests reconsideration within 30 days.*

DHS Appeals Division makes a determination to grant or deny reconsideration within 30 days

The county/tribe sends the request to the Appeals Division Director and the appellant explaining why you are requesting reconsideration. Consult DHS for technical assistance.

*For decisions changing the state-set CDCS budget, request reconsideration. DHS Technical Assistance via encrypted email: DHS.CCAappeals@state.mn.us
Reconsideration: Appellant Request

Appellant requests reconsideration within 30 days

DHS Appeals Division makes a determination to grant or deny reconsideration within 30 days

If the request is granted, the county/tribe has 10 days to respond to the materials submitted with the request

The appeals division has 30 days to make a decision regarding the reconsideration

The DHS Appeals Division will notify all parties if the request is granted

DHS Technical Assistance via encrypted email: DHS.CCAappeals@state.mn.us
Appeals Process Overview: Implementation

1. Person files an appeal in response to NOA
2. DHS Appeals Division requests an appeal summary
3. County/tribe continues services at prior level pending the appeal's outcome*
4. County/tribe may resolve appeal prior to fair hearing
5. DHS Appeals Division issues a decision
6. Hearing occurs
7. Responsible agency completes and submits the appeal summary
8. DHS Appeals Division schedules a hearing
9. Appellant or county/tribe may request reconsideration
10. County/tribe implements the decision
11. Appellant may appeal decision in district court

*Disability Services Division implements continuation of benefits and decisions for PCA and home care services on type B service agreements.

Note that these steps are in a general chronological order, but some may occur concurrently.
Implementing the Decision

*For decisions changing the state-set CDCS budget, contact DHS.CCAAppeals@state.mn.us via encrypted email for technical assistance.

** PCA and Homecare
Appeals Process Overview: District Court

1. Person files an appeal in response to NOA
2. DHS Appeals Division requests an appeal summary
3. County/tribe continues services at prior level pending the appeal’s outcome*
4. County/tribe may resolve appeal prior to fair hearing
5. DHS Appeals Division issues a decision
6. Hearing occurs
7. Responsible agency completes and submits the appeal summary
8. DHS Appeals Division schedules a hearing
9. Appellant or county/tribe may request reconsideration
10. County/tribe implements the decision
11. Appellant may appeal decision in district court

*Disability Services Division implements continuation of benefits and decisions for PCA and home care services on type B service agreements.

Note that these steps are in a general chronological order, but some may occur concurrently.
Thank you!