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TO: Persons Interested In Health And Human Services Disability-Related Legislation

FROM: Anne L. Henry

RE: 2002 Legislative Session

DATE: June 20, 2014

The following highlights are the results of the 2002 Legislative Session which affect persons with disabilities in the Health and Human Services area. The Legislature faced a \$2.4 billion budget deficit plus a divided government which produced a long and contentious session. Within the first month of the 2002 Session, the Legislature enacted Chapter 220 to deal with \$2 billion of the budget deficit. The Budget Agreement was vetoed by the Governor and the Legislature overrode the veto on February 28, 2002.

A. Budget Reductions In Chapter 220:

1. Changes have been to the **allocation process for the mental retardation/related conditions (MR/RC) waiver** to save \$5.2 million per year.
 - a. New MR/RC waiver funding slots will be given out each January, delaying new slots from July 1, 2002 to January 1, 2003. New slots in the future will be given out each January.
 - b. Reuse of turnover waiver funding slots will be delayed to save the equivalent of holding each slot open for six months.
2. **State-operated services will be reduced**, including the downsizing of Fergus Falls Regional Treatment Center. However, proposals to reduce Willmar and close Ah Gwah Ching were not adopted in Chapter 220.

3. **ICF/MR special rate exceptions were cut** by \$2.5 million per year. Chapter 220, Article 14, Sections 1-4 and 14-18. However, the portion of the ICF/MR reduction related to variable rate adjustments was delayed until July 1, 2003 by the Phase II Budget Bill, at a cost of \$175,000. Chapter *, Article 10, Section 7.
4. **The Day Training and Habilitation Task Force** to establish individualized rates was **eliminated** to save \$100,000 per year.
5. **Counties will be required to pay 10% of the cost for extended nursing facility stays for persons under 65 years of age.** The cost to counties will be approximately \$3.2 million for State Fiscal Year 2003 and \$11.9 million for the 2004/2005 biennium.
6. Department of Human Services (DHS) administrative cuts:
 - a. **State employee positions were significantly reduced.** DHS estimated up to a 20% reduction in Central Office staff. State-operated services cuts contained in Chapter 220 were partially restored in the Phase II budget bill, Chapter ?, so that the hiring freeze does not apply to employees of state-operated services. Unfortunately, the rest of the Department of Human Services and other state agencies have to make up for the reduced cuts to state-operated services. It is already apparent that many functions and services for persons with disabilities will be affected by the hiring freezes at various state agencies.
7. **Consultant contract moratorium.** Chapter 220 established a moratorium on all outside consulting contracts. The Phase II Budget Agreement, effective May 22, 2002, lifts the contract moratorium for any contracts whose cost is entirely paid by non-state sources, contracts necessary to avoid disruption of the central state functions, contracts which will reduce state costs and contracts necessary to avoid a legal liability. These changes mean that DHS federal consulting contracts, such as those under the Real Choice grants and Pathways to Employment will continue. It is also likely that contracts for prior authorization services to Care Delivery Management, Inc. (CDMI, a Blue Cross subsidiary), will be unaffected.

8. **Cuts proposed in the Governor's Budget which were not enacted by the 2002 Legislature:**
 - a. The Prescription Drug Program will open eligibility on July 1, 2002 for persons with disabilities under 65 on Medicare with income under 120% of the poverty level.
 - b. Medical Assistance for Employed Persons with Disabilities was not cut has had been proposed.
 - c. The Autism Early Intervention Behavioral Service for the Medical Assistance program will become effective January 1, 2003.
 - d. The Epilepsy Community Support program was not eliminated.
 - e. The Adult Foster Respite Care Pilot program was not eliminated.
 - f. State grants for Semi-Independent Living Services, Family Support Grants, public guardianship, Region 10 Quality Assurance, mental health programs were not cut.

B. Budget Agreement Phase II, Chapter 374.

The Phase II Budget Agreement to solve a \$439 million additional deficit for the current '02, '03 biennium includes transfers of payment obligations into the next biennium for schools and counties and use of a variety of small funds. The impact on disability-related health and human services' matters includes:

1. The Health and Human Services' budget spending level remains the same as in Phase I, Chapter 220.
2. The Senate position to require payment of taxes in order to qualify for MA-EPD was **NOT** enacted.
3. General Assistance and General Assistance Medical Care were untouched.
4. Persons with disabilities will become eligible for the state-funded Prescription Drug Program on July 1, 2002 at 120% of the Federal Poverty Level, which is \$887 per month for one person. There will be two shifts

from other funds to provide fuller coverage for the Prescription Drug Program for both the elderly and disabled eligible groups.

5. Chemical dependency treatment services were not cut, but a \$7 million reserve fund was used to cover restoration of some Phase I, Chapter 220 state-operated services cuts.
6. Some Phase I cuts for ICF/MR facilities were restored to allow one-time funds for 2003 to provide variable rates for ICF/MR facilities.
7. The University of Minnesota "Special Kids" Program was funded for \$350,000. This program provides state funds to match private funds for medical case management for up to 50 children eligible for Medical Assistance with intensive health care needs. Funds can be used until June 30, 2005.
8. Children's Mental Health Program funding was restored. \$1.8 million annually was provided for startup or wraparound costs for children's mental health services provided by local collaboratives.
9. DHS administrative funds are cut by \$15-\$20 million for Central Office, including a reduction of 113 positions, 26 by layoff.
 - a. State-operated services' staff cuts adopted in Chapter 220 were partially restored. However, 99 positions will be eliminated by layoffs in state-operated services.
 - b. The outside contracting moratorium was modified to allow contracts paid with non-state funds.
10. There will be a delay in quarterly payments of state social service funds to counties which will result in a savings of \$36.9 million. These shifts will be for a matter of weeks, not months or years and thus are not supposed to affect client services.
11. The federal CMS agency has approved Minnesota's MinnesotaCare waiver request to cover certain farm families with depreciation costs. This new eligibility group was funded from the Health Care Access Fund.

12. Four-thousand dollars was provided for 2003 to fund voluntary registration of housing with services.
13. Two of the shifts of state funding to solve the budget problem involve funds for services for persons with disabilities. The Budget Agreement allows up to 75% of Fiscal Year 2004 appropriations for semi-independent living services, family support grants, adult and children's mental health grants, and family preservation grants to be used in Calendar Year 2003 resulting in a shift of state payments into the next biennium.
14. Exempts DHS from the hiring freeze and contract moratorium, enacted in Chapter 220, for purposes of establishing a supplemental drug rebate program.
15. Changes to Minnesota Family Investment Program (MFIP) (Minnesota's welfare program for low-income families) which affect persons with disabilities.
 - a. An assistance unit maybe eligible for "an employed participant's extension" if the participant is unable to work the minimum hourly requirement due to health problems and provides a verification of the work limitation from a health care provider whose treatment recommendations the participant is following.
 - b. Allows a county to grant a hardship extension if documentation of illness, incapacity or "hard to employ" categories is not available in the 60th month. If the participant is not eligible for an extension after documentation has been obtained, the person is responsible for an overpayment.
 - c. An MFIP participant is allowed to receive an extension of benefits for the number of months they were home to care for an ill or capacitated household member (Section 256J.56, ¶ (a), clause (3)) as if they were eligible for the exemption under the special medical criteria category (Section 256J.56, ¶ (a), clause (7)). DHS has found that some participants who have been caring for a family member in the special medical criteria were not properly coded and thus may not be getting credit as the law requires.

C. Policy Changes Enacted.

1. **Notification of guardians about harm to persons with developmental disabilities in licensed programs**, Chapter 289, Minn. Stat. § 252B. Summary of Chapter 289 attached.
2. **Changes to criminal background study statute** for persons working with children and vulnerable adults, Chapter 292, Minn. Stat. § 245A.04. Summary of Chapter 292 attached.
3. **State-Operated Services Study.**

The Commissioner of Human Services, in consultation with community representatives, is required to evaluate strategies to consolidate the delivery of state-operated services and provide recommendations to the 2003 Legislature.

4. **Medical Assistance billing by schools, Chapter 294, effective March 27, 2002.**

Changes were made to make it easier for schools to obtain Medical Assistance reimbursement for health-related special education services. *See* summary attached.

5. **DHS Licensing Act changes, Chapter 375, effective August 1, 2002.**

Extensive technical changes were made to the Data Practices Act, the Human Services Licensing Act, the Department of Human Services Fair Hearing statute regarding hearings on maltreatment and disqualification, Maltreatment of Minors Act and the Vulnerable Adults Act. A detailed summary of the changes is available on the legislative website: <http://www.house.leg.state.mn.us/hrd/bs/82/sf3099.html>. The document refers to SF 3099 Conference Committee Report, May 13, 2002.

Some highlights included in these changes are:

- a. The Commissioner of Human Services is required to provide all active and inactive investigative data to the Ombudsman for Mental Health and Mental Retardation upon request of the

Ombudsman. DHS is allowed to exchange “not public data” regarding a report of substantiated maltreatment with the Department of Corrections for purposes of completing background studies.

- b. Clarifies that if a volunteer or student is not under “continuous and direct supervision of a license holder or employee, that person must undergo a background study.
 - c. For persons whose background study reveals a disqualifying characteristic, the license holder must assure the person is “under the continuous and direction supervision of the licensed holder or staff person instead of “within sight or hearing” of another staff person while a reconsideration process is conducted.
 - d. Allows hearings and reconsiderations under the Human Services Licensing Act, Fair Hearings, and hearings under the Maltreatment of Minors Act and the Vulnerable Adults Act to be consolidated, if feasible.
 - e. Allows counties to issue variances regarding disqualified individuals if the county is responsible for conducting the consolidated reconsideration of the county’s maltreatment determination and disqualifications. Counties must report to DHS at least monthly about disqualification reconsiderations and variances.
- 6. **Board and care facilities** that are MA certified are now eligible to receive transition planning grants because these facilities are included in the definition of “eligible nursing home.”
 - 7. **Case managers under the Adult and Children’s Mental Health Acts** now have two years within which to complete 30 hours of continuing education and training if they are not otherwise credentialed by a health-related licensing board.
 - 8. There are a number of provisions regarding **bordering states’ mental health treatment** and persons civilly committed in Minnesota. Section 245.50, Subd. 5a-e.

9. **Choice of case manager study.** The Commissioner of Human Services is required to examine case management services for persons with disabilities in consultation with specified groups and report to the Health and Human Services legislative committee chairs by January 15, 2003.
10. **Prior authorization report.** The Commissioner of Human Services is required to review prior authorization in terms of cost effectiveness and quality of patient care and report to the Legislature by January 15, 2004.
11. **Pilot program for deaf/blind services.** The Commissioners of Human Services, Children Families and Learning, and State Services for the Blind are required to meet with interested parties to determine which agency can most efficiently and effectively develop and administer a pilot program for consumer-directed services for deaf/blind individuals. The agency which develops the pilot program is required to submit a report to committee chairs by January 1, 2003.
12. **Feasibility of Medical Assistance expansion to cover deaf/blind services.** The Commissioner of Human Services is required to report to the Legislature by January 15, 2003 on the feasibility of expanding MA benefits to include specified services to deaf/blind persons. This provision is exempt from the consulting contract moratorium.
13. **Free medical records for the purpose of appealing a denial of Supplemental Security Income or Social Security Disability benefits.** Section 144.335, Subd. 5. A patient is now allowed to obtain free copies of medical records if the copies are needed for an appeal. A patient's representative does not include units of government engaged in the adjudication of Social Security disability claims.
14. **Poor relief.** Defines poor relief as the county's responsibility for burial costs for indigent persons, claims against a poor person's estate for care at the University of Minnesota or for burial costs and hospitalization for indigent persons. Further clarifies that county agencies are not required to provide income support or cash assistance to needy persons who are no longer eligible for General Assistance, Minnesota Family Investment Plan, or Minnesota Supplemental Aid. Section 261.063.

D. Child Care Programs Reporting Suspected Child Maltreatment, Chapter 248, effective August 1, 2002.

All licensed child care providers must develop policies for reporting suspected child maltreatment that meets the requirements of the Maltreatment of Minors Act. These policies must be provided to the parents of all children at the time of enrollment and upon request. By July 1, 2002, all parents who have concerns about their child's care must be informed that they may call a licensing agency whose telephone number is to be posted on the license at the facility.

E. Criminal Sexual Conduct By Special Transportation Provider, Chapter 381, effective August 1, 2002.

Adds special transportation to the list of providers who can be found liable for criminal sexual conduct of vulnerable adults. Effective August 1, 2002.

F. Reference Checks By Health Care Providers, Chapter 396; effective July 1, 2002.

A health care provider (including day and residential services, personal care assistance services providers) is protected from liability in responding to a written request for information about a current or former employee's illegal behavior which resulted in disciplinary action. Additional information can be provided with the written permission of the prospective employee. The health care provider is required to provide a copy of the disclosure to the employee upon request.