

**2010 Legislative Changes for Minnesota's Medical Assistance Personal
Care Assistance Program**
Anne Henry, MN Disability Law Center
August 1, 2010

**V. PERSONAL CARE ASSISTANCE (PCA) SERVICES AND HOME CARE
POLICY CHANGES**

A. Personal Care Assistance

1. Background Study Requirements

Chapter 352, Article 1, Section 12 (SF 2933)

Amends Minn. Stat. § 256B.0659, subd. 11

Effective retroactively from July 1, 2009

Provides an exception to the requirement that a personal care assistant must initiate a new background study when: (1) the PCA changes employers under circumstances related to home care services provider termination; (2) there exists a need to protect a recipient's health and safety; and (3) other specific conditions are met.

2. Definitions

a. Wages and Benefits

Chapter 352, Article 2, Section 2 (SF 2933)

Adds Minn. Stat. § 256B.0659, subd. 1(r)

Effective August 1, 2010

Adds a definition of wages and benefits to clarify PCA agency responsibilities to provide 72.5% of Medicaid revenue in wages and benefits to PCA staff.

b. Extended Personal Care Services

Chapter 352, Article 2, Section 2 (SF 2933)

Adds Minn. Stat. § 256B.0659, subd. 1(g)

Effective August 1, 2010

Allows, under the disability and elderly home and community-based waivers, provision of PCA services beyond the amount, duration, and frequency of state plan PCA services for participants who need assistance periodically during the week but less than daily and those who need PCA hours beyond the amount authorized under the state plan assessment under certain circumstances.

c. Dependency

Chapter 352, Article 2, Section 4 (SF 2933)

Amends Minn. Stat. § 256B.0659, subd. 4

Effective August 1, 2010

Expands the definition of dependency for PCA assessment to include a person's need for assistance intermittently during the week on the days the activity is completed (rather than requiring a need for assistance daily).

3. Instrumental Activities of Daily Living for Children

Chapter 352, Article 2, Section 3 (SF 2933)

Amends Minn. Stat. § 256B.0659, subd. 3

Effective August 1, 2010

Provides an exception to the exclusion of payment for instrumental activities of daily living (IADLs) for children when immediate attention is needed for health or hygiene reasons integral to personal care services and the need is identified in the service plan.

4. PCA Choice Option Changes

Chapter 352, Article 2, Sections 8, 9 and 10 (SF 2933)

Amends Minn. Stat. §256B.0659, subds. 18, 19, and 20

Effective August 1, 2010

Requires that a recipient's responsibility to hire, train, schedule, and terminate a PCA be governed by the terms of the written agreement with the PCA choice agency. Removes the authority to recruit, hire, schedule, and terminate a qualified professional from the PCA Choice Option. Clarifies that: (1) the PCA Choice Option written agreement is between the provider agency and the recipient or the responsible party; and (2) the agreement must be: (i) completed annually; and (ii) provided to the recipient or responsible party, each personal care assistant, and the qualified professional.

5. PCA Supervision by Qualified Professionals

Chapter 352, Article 2, Section 7 (SF 2933)

Amends Minn. Stat. §256B.0659, subd. 14

Effective August 1, 2010

Clarifies that the initial evaluation of a PCA – but not subsequent evaluations – must be conducted by direct observation of each PCA. Allows supervision after the first 180 days of a recipient's PCA service to alternate between unscheduled phone or Internet technology and in-person visits, unless in-person visits are required in the care plan.

6. Provider Agencies Requirements

- a. Initial Enrollment
Chapter 352, Article 1, Section 15 (SF 2933)
Amends Minn. Stat. § 256B.0659, subd. 21
Effective August 1, 2010
Adds a new requirement of proof of liability insurance for initial enrollment in the Medical Assistance program as a PCA agency.
- b. Marketing
Chapter 352, Article 2, Section 12 (SF 2933)
Amends Minn. Stat. §256B.0659, subd. 24
August 1, 2010
Deletes language on marketing restrictions to clarify that agencies are not allowed to engage in agency-initiated direct contact or in-person marketing, either by phone or other electronic means, to potential recipients, guardians, or family members.
- c. No Limitation of Future Employment of PCA Staff
Chapter 352, Article 2, Section 11 (SF 2933)
Amends Minn. Stat. §256B.0659, subd. 21
Effective May 15, 2010
Adds a new condition of enrollment for PCA providers requiring agencies to assure that future employment of PCA employees with PCA recipient or other PCA agencies will not be impeded or restricted. Requires an agency not to take action on any existing agreements, regardless of the date signed, that restricts the right of an employee to obtain employment with other providers.
- d. Serving Persons Using Ventilators
Chapter 352, Article 2, Section 13 (SF 2933)
Amends Minn. Stat. §256B.0659, subd. 27
Effective August 1, 2010
Requires training and documentation demonstrating the agency's ability to supervise the PCA, the recipient, and the responsible party in the care of a person who is ventilator-dependent. Prohibits a PCA from providing, and requires licensed or registered health care professional to provide, the following services for a person who uses a ventilator: (1) clinical services; (2) assessment; (3) evaluation; or (4) clinical education. Limits a PCA to tasks associated with ventilator maintenance that are approved by the Board of Medical Practice, in consultation with respiratory care practitioner advisory counsel and the Department of Human Services.

7. Provision of Service During Pendency of Appeals

Chapter 352, Article 2, Section 14 (SF 2933)

Amends Minn. Stat. §256B.0659, subd. 30

Effective August 1, 2010

Requires the Department of Human Services, upon a recipient request, to provide a service agreement authorizing PCA hours of service at the previous level during the pendency of appeal.

8. Recipient Protection

Chapter 352, Article 1, Section 9 (SF 2933)

Amends Minn. Stat. § 256B.0651, subd. 17

Effective August 1, 2010

Requires home care services providers to take steps to assist recipients when services are terminated due to provider sanctions, suspension, or termination. Authorizes the Department of Human Services to assist affected and assure transition to other services.

9. Training Requirements

a. For Owners, Managers, and Supervisors

Chapter 352, Article 2, Section 11 (SF 2933)

Amends Minn. Stat. §256B.0659, subd. 21

Effective August 1, 2010

1) Mandatory Training

Requires new owners, managers, and supervisors involved in day-to-day operations of a PCA agency (except those in Medicare certified home health agencies) to complete mandatory Department of Human Services training before beginning work for the agency.

2) Exemption for Staff Transferring to Another

Agency

Clarifies that owners, managers, and supervisors who have completed the training and moved to another agency do not have to undergo the training for three years.

3) Training in Other Languages

Requires the Department of Human Services, by September 1, 2010, to provide the required training for owners, managers, and supervisors in languages other than English, with accommodations needed

for those with disabilities, to be provided online or by electronic remote connection and allow for competency testing.

- b. For PCA's
Chapter 352, Article 2, Section 5 (SF 2933)
Amends Minn. Stat. § 256B.0659, subd. 11
Effective August 1, 2010
Requires PCA training to be available in languages other than English and to those who need accommodations due to disability. Prohibits the Department of Human Services from disallowing the number of hours a PCA works unless the PCA violates the law.
- c. For Qualified Professional
Chapter 352, Article 2, Section 6 (SF 2933)
Amends Minn. Stat. §256B.0659, subd. 13
Effective August 1, 2010
Requires training for qualified professionals to be available: (1) in languages other than English; (2) for those who need accommodations due to disability; and (3) online or by electronic remote connection. Provides for competency testing to demonstrate an understanding of PCA training without in-person attendance. Allows a qualified professional to be employed without meeting the training requirements until the training is offered online or through a remote electronic connection. Exempts a qualified professional employed by a Medicare certified agency. Requires the Department of Human Services to verify the identity of persons who complete competency testing electronically.

10. Unemployment Exclusion for Family Member Employed as PCA

Chapter 347, Article 2, Sections 1 and 2 (SF 2933)
Amends Minn. Stat. § 268.035, subds. 19 and 20
Effective July 1, 2010

Adds family members employed as a PCA to the list of those excluded from unemployment insurance coverage. Defines immediate family member as an individual's spouse, parent, stepparent, son or daughter, stepson or stepdaughter, or grandson or granddaughter.

B. Home Care Policy

1. Home Health Aides

Chapter 352, Article 2, Section 1 (SF 2933)

Amends Minn. Stat. § 256B.0653, subd. 3

Effective August 1, 2010

Requires that Medical Assistance-covered home health aides assure that a recipient gets to medical appointments if the Care Plan so identifies.