

## **DISABILITY LAW**

Prepared by:

Anne Henry, Staff Attorney

Minnesota Disability Law Center

612-746-3754 or 1-800-292-4150, ext. 254

[alhenry@midmnlegal.org](mailto:alhenry@midmnlegal.org)

### Acronyms used in this Section:

ADL	Activity of Daily living
BI	Brain Injury Waiver
CAC	Community Alternative Care Waiver
CADI	Community Alternatives for Disabled Individuals Waiver
CDCS	Consumer-Directed Community Supports option (under the HCBS waivers)
DD	Developmental Disabilities Waiver
DHS	Department of Human Services
HCBS	Home and Community Based Services Waivers
ICF/DD	Intermediate Care Facilities for Persons with Developmental
MA	Medical Assistance
MA-EPD	Medical Assistance for Employed Persons with Disabilities
NEMT	Non-Emergency Medical Transportation
PCA	Personal Care Assistance
TEFRA	Tax Equity and Fiscal Responsibility Act of 1982 (Used in Minnesota to refer to an eligibility option under Medical Assistance)

## **I. 2012 DISABILITY SERVICES FUNDING CHANGES**

### **A. 2011 Budget Cut Modifications**

#### **1. 2011 Licensed Bed Closure Budget Cut**

*Chapter 247, Article 4, Sections 6 and 35 (HF 2294)*

*Amends Minn. Stat. §§ 245A.03, subd. 7; and 256B.49, subd. 15(f)*

*Effective July 1, 2012*

Substitutes a process for voluntary reduction of licensed beds for the 2011 mandatory closure of licensed beds immediately when a person moves to a more independent setting. Allows the closure of unused licensed capacity to meet the budget savings associated with closing 128 licensed beds beginning July 1, 2013. Requires DHS to implement the 2011 immediate closure requirement beginning July 1, 2013 if voluntary action and unused capacity do not suffice to meet the budget target of closing 128 beds. Exempts some corporate foster care homes that meet criteria to serve persons with mental illnesses. Requires use of a statewide resource need determination process to annually determine where reduced capacity will be implemented, how to improve services, and better meet long-term care

needs. Appropriates \$1.6 million to fund the delay of the 2011 bed closure budget cut for the 2012 – 2013 biennium.

**2. Congregate Living Rate Cut**

*Chapter 247, Article 4, Section 43 (HF 2294)*

*Amends Laws 2011, First Special Session Chapter 9, Article 10, Section 3, subd. 3*

*Effective on or after July 1, 2012, or the first day of the month following federal approval, whichever is later*

Reduces the congregate care “lower need” 10% rate reduction for persons in the CADI and DD home and community-based services (HCBS) waiver programs to 5% if federal approval for federal match on the state-funded alternative care program is granted by the Centers for Medicare and Medicaid Services. This 2011 cut affects approximately 2,600 individuals living in congregate settings.

**3. Continuing Care Provider Rate Reduction**

*Chapter 247, Article 4, Sections 39 and 42, and Article 6, Section 2(f) (HF 2294)*

*Amends Minn. Stat. § 256B.5012, subd. 13, Laws 2011, First Special Session Chapter 9, Section 54 and Rider Language*

*Effective July 1, 2012*

Delays the 1.67% continuing care provider rate and grant reduction passed in 2011 until July 1, 2013. Provides that if the nursing facility level of care waiver is not approved by June 30, 2013, a one-time payment delay of one month into the next biennium will be imposed to pay for the delay. Prorates the rate reduction in the event that federal approval is obtained for only some portions of the Nursing Facility Level of Care waiver.

**4. Essential Community Support Grants**

*Chapter 247, Article 6, Section 2, Subdivision 4(f) (HF 2294)*

*Rider Language*

*Effective July 1, 2012*

Aligns essential community support grants with the DHS federal waiver request to allow those qualifying for CADI waiver who lose eligibility to qualify for an essential community support grant using increased federal matching funds if provided by federal approval of the 1115 waiver submitted February 13, 2012. Authorizes \$999,000 for essential community support grants for the current biennium.

**5. Family Deductible**

*Chapter 247, Article 1, Sections 10 and 18 (HF 2294)*

*Amends Minn. Stat. § 256B.0631, subd. and 256L.03, subd. 5*

*Effective for managed care plans January 1, 2012, and for long-term care and waiver service providers July 1, 2012*

Authorizes DHS to: (1) allow managed care plans to waive the family deductible, the value of which is not to be included in capitation payments to these plans; and (2) waive the collection of the family deductible for long-term care and waiver service providers who assume payment responsibility for the family deductible payment.

**6. Relative Personal Care Assistant (PCA) Rate Cut**

*Chapter 247, Article 4, Sections 18 and 43 (HF 2294)*

*Amends Minn. Stat. § 256B.059, subd. 11*

*Effective July 1, 2012*

Delays the 20% rate cut for PCAs who are related to the recipient for whom they provide care. Provides that the 20% rate cut will go into effect on July 1, 2013. Appropriates \$5.9 million for the delay from January 1, 2013, to July 1, 2013. Applies to both fee-for-service and managed care plans.

**7. PCA Relative Care Payment Recovery**

*Chapter 247, Article 6, Section 2, Subdivision 4, Paragraph F (HF 2294)*

*Rider Language*

*Effective July 1, 2012*

Prohibits recovery of payments to PCA service providers for the difference between the full rate and the 20% cut during the period of a temporary injunction from October 26, 2011 to March 23, 2012.

**B. 2012 Budget Items**

**1. Family Support Grants**

*Chapter 216, Article 9, Section 6 (SF 1675)*

*Amends Minn. Stat. § 252.32, subd. 1a*

*Effective August 1, 2012*

Limits eligibility for Family Support Grants so that families who receive HCBS Disability Waivers, PCA services or a Consumer Support Grant are not eligible for a Family Support Grant.

- 2. Funding for Epilepsy Skills Training Program**  
*Chapter 247, Article 6, Section 2, Subdivision 5(c) (HF 2294)*  
*Rider Language*  
*Effective July 1, 2012*

Appropriates \$65,000 for living skills training programs for persons with intractable epilepsy.

- 3. Medical Assistance for Employed Persons with Disabilities (MA-EPD)**  
*Chapter 247, Article 4, Sections 15, 16, and 17 (HF 2294)*  
*Amends Minn. Stat. §§ 256B.056, subds. 1a and 3 and 256B.057, subd. 9*  
*Effective April 1, 2012*

- a. *Age Limit*  
Removes the age limit for participating in MA-EPD so that persons who reach age 65 can continue to benefit financially from employment and still qualify for Medical Assistance services, such as PCA. Affects an estimated 80 persons per month during the first year.
- b. *Treatment of Assets*  
Provides that assets up to the MA-EPD limit earned before age 65 will be disregarded for purposes of determining eligibility for Medical Assistance (MA) after age 65 if the person was enrolled in MA-EPD for at least 20 months prior to reaching age 65 until after 2013 when 24 consecutive months' participation will be required. Asset disregard is estimated to affect about 33 persons per year.
- c. *Treatment of Spouse Income and Assets*  
Disregards a spouse's income and assets up to the MA-EPD limits after age 65 if the participant is enrolled in MA-EPD for 20 months prior to turning age 65 and 24 consecutive months after 2013.

- 4. Parental Fees for Minor Children Qualifying for Medical Assistance Through Home and Community Waiver or TEFRA Option**  
*Chapter 247, Article 4, Section 13 (HF 2294)*  
*Amends Minn. Stat. § 252.27, subd. 2a*  
*Effective July 1, 2012*

Extends the 2011 parental fee increases from June 30, 2013 to June 30, 2015. Collects \$1.2 million more from affected parents in fees for their children's disability-related services by extending increased fees for two more years, through the next biennium, 2014 – 2015.

**5. Self-Advocacy Network for Persons with Disabilities Funding**  
*Chapter 247, Article 6, Section 2, Subdivision 5(c) (HF 2294)*  
*Rider Language*  
*Effective July 1, 2012*

Provides \$50,000 for fiscal year 2013 to fund a statewide self-advocacy network for persons with intellectual and developmental disabilities on a one-time basis. Specifies that the network must educate about legal rights in education, employment, housing, transportation, and voting.

**II. ADULT AND CHILD FOSTER CARE CHANGES**

**A. Corporate Foster Care Mental Health Certification**  
*Chapter 247, Article 4, Sections 5 and 6 (HF 2294)*  
*Adds Minn. Stat. § 245A.03, subd. 6a*  
*Amends Minn. Stat. § 256A.03, subd. 7*  
*Effective July 1, 2012*

Establishes an optional certification for adult corporate foster care providers who meet specified requirements for experience and expertise in serving persons with mental health conditions. Exempts homes which meet certification standards from the 2011 bed de-licensure provision. Appropriates \$102,000 for 2012 – 2013 biennium and \$399,000 for 2014 – 2015.

**B. Corporate Foster Care Setting Licensure Requirements**  
*Chapter 216, Article 9, Sections 3, 5, and 24 (SF 1675)*  
*Amends Minn. Stat. §§ 245A.03, subd. 7 and 256B.92, subd. 11; Laws 2009,*  
*Chapter 79, Article 8, Section 81, as amended by Laws 2010, Chapter 352, Article*  
*1, Section 24*  
*Effective August 1, 2012*

Adds requirements for applicants and licensed holders for adult foster care to inform DHS on the physical location where services will be provided, when a license holder changes location and whether the license holder provides services funded under Home and Community-Based Waiver Services.

**C. Increased Capacity for Corporate Adult Foster Care**  
*Chapter 247, Article 4, Section 7 (HF 2294)*  
*Amends Minn. Stat. § 245A.11, subd. 2A*  
*Effective July 1, 2012*

Provides DHS with authority to grant a variance to corporate adult foster care providers to add a fifth bed for respite services. Establishes protections for residents in homes where a fifth bed for respite is added. Extends the current time period for allowing an increased capacity to five adults from 2011 to June 30, 2016.

- D. Planned Closure for Corporate Adult Foster Care Settings  
*Chapter 247, Article 4, Section 38 (HF 2294)*  
*Adds Minn. Stat. § 256B.493*  
*Effective July 1, 2012*

Creates a planned closure program for adult foster care settings which requires DHS to solicit proposals for conversion of licensed services to other types of community settings. Estimated to result in a closure of 33 CADI waiver-funded and 43 DD waiver-funded corporate foster beds, after which any additional closures can be attributed to meeting the 2011 licensed bed closure budget cut. Provides for application review approval, notification, and rate adjustment processing.

- E. Variance for Alternate Overnight Supervision in Corporate Adult Foster Care  
*Chapter 247, Article 4, Sections 8 and 9 (HF 2294)*  
*Amends Minn. Stat. § 245A.11, subds. 7 and 7A*  
*Effective July 1, 2012*

Modifies conditions under which alternative overnight supervision variance can be approved and establishes procedures and timelines for DHS to follow in evaluating provider variance applications. Defines supervision for purposes of the variance request.

### **III. ADULT PROTECTION**

- A. Background Study Changes for Licensed Providers  
*Chapter 247, Article 4, Section 11 (HF 2294)*  
*Amends Minn. Stat. § 245C.04, subd. 6*  
*Effective July 1, 2012*

Relieves providers of the annual background study requirement for employees who work with DHS licensed programs and unlicensed services if the provider complies with certain requirements and the individual provides at least 40 hours of direct services in the provider's licensed program.

- B. Background Study Notice of Conviction  
*Chapter 247, Article 4, Section 12 (HF 2294)*  
*Amends Minn. Stat. § 245C.05, subd. 7*  
*Effective July 1, 2012*

Requires probation officers and corrections agents to DHS of a disqualifying crime conviction by an individual who has been affiliated with a licensed program within the preceding year.

- C. Felony for Intentional Deprivation of Vulnerable Adults  
*Chapter 175 (SF 1586)*  
*Amends Minn. Stat. § 609.233 by adding subds. 1a, 2a, and 2b*  
*Effective August 1, 2012, and applies to crimes committed on or after that date*

1. **Felony Deprivation**

Makes it a felony for a caregiver or facilities operator to intentionally deprive a vulnerable adult of necessary food, clothing, shelter, health care, or supervision if the caregiver or operator is reasonably able to make the necessary provisions; and (1) the caregiver or operator knows or has reason to know the deprivation could likely result in substantial or great bodily harm to the vulnerable adult; or (2) the deprivation occurred over an extended period of time.

2. **Fine and Sentence**

Subjects a caregiver or facilities operator to: (1) a fine of \$5,000 or five years in prison, or both, if the action results in substantial bodily harm; or (2) a fine of \$10,000 or 10 years in prison, or both, if the action results in great bodily harm.

3. **Affirmative Defenses**

a. Burden

Provides that the defendant bears the burden of production only and the showing must be by a preponderance of the evidence.

b. Proofs

1) *For an Employee*

Requires a defendant employed by a facility or operator to show s/he did have managerial or supervisory authority, and was unable to reasonably make the necessary provisions because of inadequate staffing levels, inadequate supervision, or institutional policies.

2) *For a Facility, Operator, or Manager or Supervisor*

Requires the defendant to show the harm inflicted by an employee or agent was not permitted knowingly, intentionally, or recklessly

3) *For a Caregiver*

Requires the defendant to show that the failure to perform acts necessary to prevent the harm resulted because the caregiver was acting reasonably and

necessarily to provide care to another identified vulnerable adult.

**4. Vulnerable Adult Maltreatment Lead Investigative Agency Responsibility**

*Chapter 216, Article 9, Sections 31 and 32 (SF 1675)*

*Amends Minn. Stat. §§ 626.557, subd. 9a, and 626.5572, subd. 13*

*Effective August 1, 2012*

Designates the county social service agency as the lead investigative agency for reports of vulnerable adult maltreatment in licensed home and community-based services beginning in 2014. Requires the common entry point (county) to refer maltreatment reports involving licensed services to the county and notify the DHS.

**IV. ASSESSMENT, CASE MANAGEMENT, CARE COORDINATION**

**A. Case Management for DD, CAC, CADI, and BI Waivers**

*Chapter 216, Article 11, Sections 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 38, 39 and 40 (SF 1675)*

*Amends Minn. Stat. §§ 256B.092, subds. 1, 1a, 1b, 1e, 1g, 2, 3, 5, 7, 8, 9, and 11; and 256B.49, subds. 13, 14, and 15*

*Effective August 1, 2012*

Separates administrative functions from service functions for case management. Makes changes to terminology in advance of the new certified assessor requirements for MNCHOICES. Changes the “Individual Service Plan” to “Coordinated Service and Support Plan.” Establishes time lines and other criteria for the Coordinated Service and Support Plan. Encourages inclusion of volunteer, religious organizations and other community resources as part of the Coordinated Service and Support Plan. Prohibits a private agency from providing case management services to a recipient if the agency has a financial interest in the provision of other services to the same person.

**B. Case Management Individual Service Plan**

*Chapter 247, Article 4, Section 10 (HF 2294)*

*Amends Minn. Stat. § 245B.07, subd. 1*

*Effective July 1, 2012*

Prohibits a license holder from being penalized for not having a current Individual Service Plan in the consumer’s data file if the case manager fails to provide the plan after a written request from the license holder.



C. Long-Term Care Consultation and Changes Related to MNCHOICES Assessment  
*Chapter 216, Article 11, Sections 6 - 12 (SF 1675)*  
*Amends Minn. Stat. § 256B.0911, subds. 1, 1a, 2b, 2c, 3, 3a, and 3b*  
*Effective August 1, 2012*

- Defines and clarifies the administrative functions of assessment for long-term services and supports.
- Adds a requirement to provide information about competitive employment for youth and working-age adults with disabilities, and information about state plan home care services, case management, institutional level of care and diagnostic information for eligibility determination.
- Reduces experience requirements for certified assessors from three years to two.
- Requires that long-term care consultation team must include public health nurses, social workers and other professionals.
- Provides that long-term care consultation assessment can be used for PCA services and private duty nursing upon statewide implementation of MNCHOICES.
- Requires a lead agency certified assessor to provide assistance with transition services.
- Sets the requirements for an assessment and referral, time lines for the assessment and recommendations for community-based services and consumer-directed options, including a discussion of cost effective community service living arrangements.

D. Notice to County of Financial Responsibility of Client Move  
*Chapter 216, Article 11, Section 33 (SF 1675)*  
*Amends Minn. Stat. § 256B.092, subd. 8a*  
*Effective August 1, 2012*

Replaces the county concurrence requirement with a responsibility to notify the county to which a person is moving when the individual will require ongoing services under a Coordinated Service and Support Plan. Notification from the county of service to the county of financial responsibility is required if there has been no authorization for admission to an ICF/DD facility and if the proposed county of service has concerns about the identified provider's capacity to meet the needs of the person seeking to move to residential services in another county. Applies equally to HCBS waiver services recipients under BI, CADI and CAC programs.

- E. Pediatric Care Coordination  
*Chapter 247, Article 1, Section 11 (HF 2294)*  
*Adds Minn. Stat. § 256B.0751, subd. 9*  
*Effective July 1, 2012*

Requires DHS to implement a pediatric care coordination service for children with high cost medical or psychiatric conditions at risk of repeated hospitalizations or emergency room use. Targets the care coordination to children not already receiving such services and requires, to the extent possible, the use of existing home health certification and payment structures.

## V. AUTISM RELATED PROVISIONS

- A. Autism Housing with Supports Study  
*Chapter 247, Article 4, Section 50 (HF 2294)*  
*Uncodified Language*  
*Effective July 1, 2012*

Directs DHS to consult with the Departments of Education, Health, and Employment and Economic Development to complete a study on models of housing with supports to coordinate and integrate across DHS, education, and vocational service systems for children with a diagnosis of autistic disorder. Requires the study to examine other states' practices in housing and long-term supports for children with significant autism, including a campus model. Provides for an implementation plan on housing and service needs of persons with autism as well as a study due to the legislature by January 15, 2013. Appropriates \$177,000 for 2012-2013 biennium.

- B. Autism Prevalence Study for Somali Community  
*Chapter 247, Article 6, Section 3, Subdivision 2 (HF 2294)*  
*Rider Language*  
*Effective July 1, 2012*

Provides \$200,000 to study autism spectrum disorders that are unique in the Somali community and report to the legislature by February 15, 2014. The Department of Health must include recommendations for public health surveillance for autism spectrum disorders.

- C. Autism Treatments Review  
*Chapter 247, Article 1, Section 26 (HF 2294)*  
*Uncodified Language*  
*Effective July 1, 2012*

Requires DHS' Health Services Advisory Council to review various treatments for Autism Spectrum Disorder and recommend authorization criteria for coverage of services by December 31, 2012.

- D. Foster Care for Individuals with Autism  
*Chapter 247, Article 5, Section 7 (HF 2294)*  
*Uncodified Language*  
*Effective July 1, 2012*

Requires the DHS to coordinate with one or more counties to issue a foster care license and funding for children currently in out-of-home placement with services funded under one of the disability HCBS waiver programs. Includes coordination with interested counties to identify providers with expertise in serving individuals with autism.

## VI. HOME AND COMMUNITY-BASED SERVICES

- A. Home and Community-Based (HCBS) Settings

1. **Community Living Settings**

*Chapter 247, Article 4, Section 36 (HF 2294)*  
*Amends Minn. Stat. § 256B.49, subd. 23*  
*Effective July 1, 2012*

Adds conditions under which a lease agreement or a plan for transition of a lease from a service provider to an individual with a disability will qualify as a community living setting for purposes of HCBS waiver funding. Allows DHS to approve an exception under specified conditions.

2. **HCBS Disability Waiver Settings**

*Chapter 247, Article 4, Section 37 (HF 2294)*  
*Adds Minn. Stat. § 256B.492*  
*Effective July 1, 2012*

Defines various settings in which individuals may receive services under one of the disability HCBS services waivers for persons under age 65.

a. *Includes*

- An individual's own home or family home;
- A licensed adult foster care setting of up to five people;
- A community living setting (*see* Minn. Stat. § 256B.49, subd. 23) where individuals with disabilities may reside in all units in a building of four or fewer units; and
- No more than the greater of 4% or 25% 25 percent of the units in a multi-family building of more than four units.

b. *Excludes*

- A publicly or privately operated facility that provides institutional or custodial care;
- The grounds or property adjacent to a public or private institution;
- A housing complex designed expressly for individuals with a disability or diagnosis;
- A setting segregated, based on disability, from the larger community; and
- Any setting having the qualities of an institution in terms of regimentation and restriction on rights to come and go, have visitors, and maintain privacy.

c. *Exceptions*

- Settings which do not meet the criteria in which people are receiving disability HCBS waiver finding as of July 1, 2012;
- A program established as part of a Hennepin County demonstration project. Requires DHS to request an amendment to the HCBS Disability waiver plans no later than December 31, 2012.

**3. Home and Community-Based Waiver Settings Amendment**

*Chapter 247, Article 4, Section 46 (HF 2294)*

*Uncodified Language*

*Effective July 1, 2012*

Requires the DHS to submit amendments to the home and community-based services waiver plans to implement the new definition of disability HCBS waiver settings. Provides for an exception for settings serving persons with disabilities in buildings with more than 25% of the units as of January 1, 2012.

**4. Shelter Needy Payments Under Minnesota Supplemental Aid**

*Chapter 247, Article 4, Section 40 (HF 2294)*

*Amends Minn. Stat. § 256D.44, subd. 5*

*Effective July 1, 2012 and expires June 30, 2016*

Establishes the criteria for shelter payments in buildings of four or more units. Requires that when the service provider controls the housing, a plan for transition to a lease for the recipient must be implemented within two years unless DHS approves a longer time period.

B. Other HCBS Waiver Changes

**1. Changes for Existing License under 245B**

*Chapter 216, Article 18, Sections 6 - 15 (SF 1675)*

*Adds Minn. Stat. § 245B.02, subd. 8a;*

*Amends Minn. Stat. §§ 245B.02, subd. 10; 245B.04, subds. 1, 2, and 3; 245B.05, subd. 1; and 245B .07, subds. 5, 9, and 10*

*Effective August 1, 2012*

Conforms portions of current licensing statute (Minn. Stat., ch. 245B) to new requirements in Minn. Stat., ch. 245D, including adding a definition for emergency, amending the definition of incident, clarifying license holder responsibility for consumer and service-related rights and protections, limits restriction of a person's rights only if determined necessary to ensure health, safety and wellbeing of the person as documented in the Service Plan with time limits and signed approval requirements. Prohibits license holders and staff from accepting a power of attorney or appointment of guardianship or conservatorship of a person receiving licensed services except for county or other units of government staff.

**2. Consumer Directed Community Supports CDCS Budget Methodology**

*Chapter 247, Article 4, Section 47 (HF 2294)*

*Adds uncodified language*

*Effective July 1, 2012*

Directs DHS to request an amendment for an increase in consumer-directed community supports budget of 20 percent for individuals using CDCS who both turn 21 and graduate from high school during 2013 and 2014. Provides that the increased budget for CDCS is effective upon federal approval for persons eligible during 2013 and 2014.

**3. Home and Community-Based Services License Requirements**

*Chapter 216, Article 18, Section 4 (SF 1675)*

*Adds Minn. Stat. § 245A.042*

*Effective August 1, 2012 with licensing to be implemented by January 1, 2014*

Establishes new requirements for residential and non-residential programs for persons with disabilities and seniors funded through HCBS waivers for licensure under a new chapter, 245D. Requires stakeholder input on development of a fee schedule to pay for the new license process.

**4. Independent Living Services Billing Changes**

*Chapter 247, Article 4, Section 45*

*Uncodified language*

*Effective July 1, 2012*

Requires DHS to allow for both a daily billing rate and a 15 minute billing rate for independent living services under the Brain Injury (BI) and CADI waivers. Authorizes DHS to request a federal waiver amendment if necessary to comply by December 31, 2012.

**5. License Standards for HCBS Services**

*Chapter 216, Article 18, Sections 16 through 25 (SF 1675)*

*Adds Minn. Stat. §§ 245D.01 - 245D.10*

*Effective August 1, 2012*

By January 1, 2014, establishes new HCBS licensing standards for currently unlicensed HCBS programs, including housing, access coordination, respite services, behavior programming, specialists' services, certain companion services, personal support, 24-hour emergency assistance, night supervision, certain homemaker services, independent living skills training, prevocational services, structured day and supported employment services. Allows exemptions when license holders are governed by other licensing requirements. Creates service and protection-related rights for service recipients as well as standards for provision of health services, including medication administration. Requires incident response and reporting, environmental safety, and protection of client funds and property. Establishes record keeping requirements, staffing standards, policies and procedures for grievances, service suspension and termination.

**6. Payment Methodology for Home and Community Waiver Services**

*Chapter 216, Article 18, Section 26 (SF 1675)*

*Amends Minn. Stat. § 256B.4912*

*Adds Minn. Stat. §§ 256B.4912, subd. 3; and 256B.4913*

*Effective April 24, 2012*

Requires DHS to develop payment methodologies for home and community-based services under the disability waiver programs (BI, CAC, CADI, DD). Clarifies that counties are prohibited from implementing rate setting methodologies using the research rates under development. Eliminates county and tribal contracts for HCBS waivers after January 1, 2014. Requires that payment methodologies accommodate supervision costs, staffing patterns, program-related expenses, and general and administrative expenses, as well as consideration of service recipient intensity needs. Requires DHS to use research rates to develop an effective methodology and provide the results of the research to the existing stakeholder group by January 15, 2013. Requires ongoing

consultation with a stakeholder group. Directs implementation of rate changes to occur no sooner than January 1, 2014, after enactment of legislation to establish specific payment methodology framework, processes and values.

**7. Respite Care Licensure Required**

*Chapter 216, Article 18, Section 1 (SF 1675)*  
*Amends Minn. Stat. § 245A.03, subd. 2*  
*Effective August 1, 2012*

Removes the exclusion from licensing for in-home and out-of-home respite services for persons with developmental disabilities. Requires compliance with new law for HCBS waiver licensing under Chapter 245B, beginning in 2014.

**VII. HOME CARE CHANGES**

**A. Hourly Nursing Service Determination MATRIX**

*Chapter 216, Article 9, Section 37 (SF 1675)*  
*Uncodified Language*  
*Effective August 1, 2012*

Requires private duty nursing services under MA to complete an hourly determination MATRIX for each person served. (*Note: changes to private duty nursing service authorization based on data collected are likely for the 2013 legislative session.*)

**B. Licensed Home Care Providers Inspection and Oversight**

*Chapter 247, Article 2, Section 12 (HF 2294)*  
*Adds uncodified provision*  
*Effective July 1, 2012*

Requires the Department of Health to recommend to the Legislature a plan to increase inspection and oversight of licensed home care providers under Chapter 144A.

**C. Licensed Program Death Reporting**

*Chapter 216, Article 16, Section 5 (SF 1675)*  
*Adds Minn. Stat. § 245A.04, subd. 16*  
*Effective August 1, 2012*

Mandates licensed programs to report to DHS the death of a person served within 24 hours unless the license holder has reason to know the death has already been reported.

- D. PCA Assessment  
*Chapter 216, Article 11, Sections 4 and 5 (SF 1675)*  
*Amends Minn. Stat. § 256B.0659, subds. 3a and 4*  
*Effective August 1, 2012*

Clarifies that a PCA assessment conducted as part of the Long-term Care Consultation does not have to be conducted by a public health nurse but can be completed by the lead agency assessor. Adds a reference to the community support plan to be developed under the new assessment MNCHOICES, Minn. Stat. § 256B.0911. Clarifies that when determining PCA service needs related to verbal aggression or resistance, the need must occur during the performance of activities of daily living.

- E. PCA Services Licensing Study  
*Chapter 247, Article 4, Section 49 (HF 2294)*  
*Uncodified Language*  
*Effective July 1, 2012*

Directs DHS to study the feasibility of licensing PCA services. Requires a report to the legislature by January 15, 2013, which includes recommendations and proposed legislation for licensure and oversight of services.

- F. PCA Change Notice for Recipients  
*Chapter 216, Article 9, Section 22 (SF 1675)*  
*Amends Minn. Stat. § 256B.0659, subd. 30*  
*Effective August 1, 2012*

Eliminates the requirement of a longer notice period (30 days) for changes to PCA services adopted in 2009. Reverts to typical appeal notice periods of at least 10 days prior to any changes. To keep benefits pending appeal, a request must be made within 10 days of the notice of changes.

- G. PCA Excluded Time Provision  
*Chapter 216, Article 11, Section 41 (SF 1675)*  
*Amends Minn. Stat. § 256G.02, subd. 6*  
*Effective August 1, 2012*

Removes PCA services as an excluded time service for purposes of determining the county of financial responsibility, meaning that a person receiving PCA services is free to move to another county without involving the county where services were originally authorized.



H. PCA Investigation Access

*Chapter 247, Article 4, Section 19 (HF 2294)*

*Adds Minn. Stat. § 256B.0659, subd. 31*

*Effective July 1, 2012*

Requires PCA agencies to allow DHS immediate access without prior notice to service and claims records and documentation. Provides for immediate suspension of payment and termination of provider enrollment if the DHS access is denied.

I. PCA Services Medication Requirements

*Chapter 216, Article 11, Sections 2 and 3 (SF 1675)*

*Amends Minn. Stat. § 256B.0659, subds. 2 and 3a*

*Effective August 1, 2012*

Adds medication given through a nebulizer to the definition of self-administered medication and allows PCAs to assist with self-administered medication.

J. PCA Technical Changes

*Chapter 216, Article 9, Sections 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, and 21 (SF 1675)*

*Amends Minn. Stat. § 259B.0659, subds. 1, 3, 9, 11, 13, 14, 19, 20, 21, and 24*

*Effective August 1, 2012*

- Makes a variety of clarifications and technical changes to numerous sections of the PCA statute, including citation corrections and minor definition changes.
- Adds responsible party limitations, and clarification on training in other languages for PCAs and qualified professionals.
- Corrects prohibition for phone supervision of PCA services by qualified professionals.
- Removes prohibition that qualified professionals cannot be related to recipient under PCA Choice Option.
- Clarifies how 72.5% of revenue is calculated.

## VIII. MEDICAL ASSISTANCE SERVICES

A. Coverage of Out-of-State Residential Mental Health Treatment for Children who are Deaf or Hearing Impaired

*Chapter 148 (HF 2253)*

*Amends Minn. Stat. § 256B.0945, subd. 1*

*Effective August 1, 2012*

Adds coverage for out-of-state mental health residential treatment if the facility:

(1) specializes in providing mental health services to children who are deaf, deaf/blind or hard of hearing; (2) uses American Sign Language; (3) is licensed by the state in which it is located; and (4) is located in a state that is a member of the Interstate Compact on Mental Health.

B. Licensed Mental Health Physician Assistant

*Chapter 247, Article 1, Sections 8 and 9 (HF 2294)*

*Amends Minn. Stat. § 256B.0625, subds. 28a and 38*

*Effective July 1, 2012*

Authorizes licensed physicians assistants supervised as required to bill for medication management and evaluation in inpatient hospital settings under MA and establishes the payment at 80.4% of the base rate paid to psychiatrists.

Authorizes DHS to consult with a group of stakeholders to develop recommendations on how to improve access to and quality of mental health services through the use of physician assistants and report to the legislative committee by January 15, 2013.

C. Nonemergency Medical Transportation

*Chapter 247, Article 1, Sections 3, 4, 5, 6, 7, and 24 (HF 2294)*

*Amends Minn. Stat. § 256B.0625 by adding subd. 18c, 18d, 18e, 18f, 18g, and Uncodified Language*

*Effective July 1, 2012 and expires December 1, 2014*

1. **Advisory Committee**

Establishes a nonemergency medical transportation (NEMT) advisory committee to advise DHS and make recommendations on, among other things: (1) policies; (2) funding; (3) methods to prevent waste, fraud and abuse; and (4) improving efficiency.

2. **Assessment of Cost Effectiveness and Quality**

Directs DHS to use standardized performance measures to assess cost effectiveness and quality of NEMT services.

3. **Enrollee Assessment Process**

Directs DHS to: (1) develop and implement, by July 1, 2013, a comprehensive, statewide, standard assessment process for MA seeking nonemergency medical transportation services, which

must include mental health diagnoses; and (2) base decisions on clearly defined criteria that are available to clients, providers, and counties.

**4. Single Administrative Structure and Delivery System**

Directs DHS to implement a single administrative structure and delivery system for NEMT services, beginning July 1, 2013, which: (1) eliminates the distinction between access transportation services and special transportation services; (2) enables all MA to follow the same process to obtain NEMT services; (3) provides a single oversight framework for all providers; and (4F) provides flexibility in service delivery. Requires any draft legislation to implement the system to be presented to the Legislature January 15, 2013.

**5. Standardized Defined Criteria**

Requires decision-making based on standardized defined criteria which allow for extended periods of eligibility when the person's condition is unlikely to change and

**6. Vendor Information Requests**

Directs DHS to seek information from vendors – and present the information to the appropriate Legislative committees by November 15, 2012 – regarding: (1) the administration of NEMT services within a single administrative structure; (2) oversight of transportation services; (3) a process for assessing an individual's level of need; (4) methods that promote the appropriate use of public transportation; and (5) an electronic management system.

**IX. MISCELLANEOUS**

**A. Changes to Telecommunications Equipment Program**

*Chapter 216, Article 10, Sections 1 - 7 (SF 1675)*

*Amends Minn. Stat. §§ 237.50 - 237.56*

*Effective August 1, 2012*

Updates statutory language related to telecommunications and equipment for persons with disabilities. Removes requirement for telephone companies to install outside wiring in certain households. Requires DHS to establish policies and procedures for return of equipment and clarifies who may participate in consumer protection processes.

**B. Definition of Mental Illness and Diagnostic Code Lists**

*Chapter 216, Article 12, Sections 1, 2, 3, and 4 (SF 1675)*

*Amends Minn. Stat. §§ 245.462, subd. 20; and 245.4871, subd. 15*

*Adds Minn. Stat. §§ 245.461, subd. 6; and 245.487, subd. 7*

*Effective August 1, 2012*

Removes the reference to specific diagnostic code numbers from the definitions of mental illness and emotional disturbance and authorizes DHS to develop a list of diagnostic codes with consultation from an advisory committee.

## **X. REPORTS AND EVALUATIONS**

### **A. Case Management Redesign and Study**

*Chapter 216, Article 11, Section 42 (SF 1675)*

*Uncodified Language*

*Effective August 1, 2012*

Requires DHS to report to the relevant legislative committees recommendations and language for consolidation of standards and rates for MA covered case management services, including targeted case management for vulnerable adults, child and adult mental health services, all types of home and community waiver case management and case management for persons with developmental disabilities.

### **B. Consolidation of HBCS Reports**

*Chapter 216, Article 9, Sections 7, 23, 25, and 29 (SF 1675)*

*Amends Minn. Stat. §§ 256B.0916, subd. 7; 256B.96, subd. 5; and 256.49, subd. 21*

*Adds Minn. Stat. § 252.34*

*Various effective dates*

Directs DHS to provide a biennial report beginning January 1, 2013 to the relevant legislative committees regarding the goals, priorities, and status of HBCS and other disability-related programs. Eliminates three other reports on HBCS waiting lists.

### **C. Disability Terminology Audit**

*Chapter 216, Article 12, Section 10 (SF 1675)*

*Uncodified Language*

*Effective August 1, 2012*

Requires DHS to: (1) solicit feedback from interested persons to identify inappropriate or insensitive terminology referring to individuals with disabilities in Minnesota's statutes and rules; (2) make any recommendations for changes to repeal or replace such terminology for consideration in the 2013 legislative session.

- D. Evaluation of Departments of Health and Commerce Regulatory Responsibilities  
*Chapter 247, Article 2, Section 13 (HF 2294)*  
*Uncodified Language*  
*Effective July 1, 2012*

Requires the Departments of Health and Commerce make recommendations to the Legislature by February 15, 2013 about how to maximize efficiency in the regulation of health maintenance organizations, county-based purchasers, insurance carriers, and related entities, while maintaining quality.

- E. Evaluation of Departments of Health and Health and Human Services Regulatory Responsibilities  
*Chapter 247, Article 2, Section 9 (HF 2294)*  
*Uncodified Language*  
*Effective July 1, 2012*

**1. Administering Regulations**

Directs the Department of Management and Budget, in consultation with DHS and the Department of Health, to evaluate and recommend options for administering regulations. Requires a report to the legislature regarding: (1) whether to reorganize the two department's regulatory responsibilities or whether improvement would be possible without reorganization; (2) an evaluation of the multiple roles of the Department of Human Services as provider, regulator, and payor; and (3) recommendations regarding client risk, provider liability and responsibility for long-term care services.

**2. Website Content and Coordination**

Requires DHS and the Department of Health to update, revise, and link contents of their website related to the facilities and services both agencies license or certify in order to provide consumers and providers with clear, consistent information about regulation.

- F. Long-Term Care

**1. Need Determination Data Report**

*Chapter 247, Article 4, Sections 6 and 35 (HF2294)*  
*Amends Minn. Stat. §§ 245A.03, subd 7; and 256B.49, subd 15(f)*  
*Effective July 1, 2012*

Requires DHS to report data and information from the need determination process and the Status of Long-term Care Report by February 1 of each year to the legislative health and human services budget committees. Provides that stakeholder input, data on overall capacity and recommendations for changes must be included in report.

**2. Services and Support Needs**

*Chapter 247, Article 4, Section 3 and 44 (HF 2294) and Laws 2011, First Special Session, Chapter 9, Article 10, Subdivision 4  
Amends Minn. Stat. § 144A.351  
Effective July 1, 2012*

Adds children and adults with disabilities and mental illnesses to a required “Gaps and Analysis” report on statewide long-term support needs for seniors. Includes additional consideration for housing options, access to the least restrictive most integrated setting, and in-home services. Provides \$250,000 for state and local planning to assess the needs required to complete the report. Requires expanded report on August 15, 2013, and biennially thereafter.

**G. State Quality Council Duties**

*Chapter 247, Article 4, Section 28 (HF 2294)  
Amends Minn. Stat. § 256B.097, subd. 3  
Effective July 1, 2012*

Adds two duties for the state’s Quality Council: (1) identify financial and personal risk issues for persons with disabilities who want to make choices in community services; and (2) make recommendations to the Legislature by January 15, 2013 for changes to address the barriers identified.