



**MID-MINNESOTA LEGAL AID
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March 19, 2019

The Honorable John Lesch
Chair
Judiciary Finance and Civil Law Division
Minnesota Houser of Representatives
563 Rev. Dr. Martin Luther King Jr. Blvd
St. Paul, MN 55155

The Honorable Kelly Moller
Vice-Chair
Judiciary Finance and Civil Law Division
Minnesota Houser of Representatives
569 Rev. Dr. Martin Luther King Jr. Blvd
St. Paul, MN 55155

The Honorable Peggy Scott
Republican Lead
Judiciary Finance and Civil Law Division
Minnesota Houser of Representatives
335 Rev. Dr. Martin Luther King Jr. Blvd
St. Paul, MN 55155

RE: HF 2319 – Human Services Program Integrity

Dear Chair Lesch, Vice-Chair Moller, Republican Lead Scott, and Members of the Judiciary Finance and Civil Law Division:

We are writing to express our concerns with Section 18 of HF 2319 regarding the Minnesota Restricted Recipient Program and Personal Care Assistance (PCA) Services. We support the prevention of fraud and abuse in Minnesota's PCA program. We also believe any measures to preserve program integrity must be done in a manner that does not risk the health, safety, and welfare of people with disabilities who rely on PCA services for basic care and support that is critical to their ability to live in the community.

The Minnesota Disability Law Center (MDLC) is a statewide project of Mid-Minnesota Legal Aid and serves as Minnesota's federally-designated Protection and Advocacy (P&A) system for people with disabilities in Minnesota. The P&A system is a nationwide network of legally based advocacy services for people with disabilities that was established in 1975 by the Developmental Disabilities Assistance and Bill of Rights (DD) Act. MDLC has been providing free civil legal assistance to people with disabilities for over 44 years.

We are concerned the proposed legislation will have unintended consequences for people with disabilities who use the PCA Choice program or Consumer Directed Community Supports (CDCS) under the Home and Community-Based Waiver programs. PCA services are safety net services that provide basic, yet

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A United Way Agency

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critically necessary services to help people with disabilities get out of bed, get on and off the toilet, bathe, get dressed, and eat. Both PCA Choice and CDCS provide key flexibility to deal with the direct care staffing shortage. Both help many people meet their authorized staffing needs and prevent unnecessary placement in a nursing home or other institutional setting.

We are concerned that the proposed legislation could force recipients into the restricted recipient program even though the recipient did not knowingly commit fraud or was not aware a fraud was occurring. A recipient should not be placed in the restricted recipient program for an inadvertent mistake that could be corrected with proper instruction and training. Likewise, placing a recipient on the restricted recipient program for another person's wrongdoing is not fair or just. In order to be placed in the restricted recipient program, the recipient must have participated in the fraud.

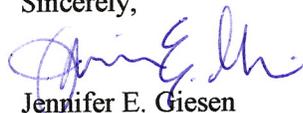
In addition, there should be a requirement that if the commissioner's determination of abusive or fraudulent billing is based on the actions of the person's responsible party or participant representative, the recipient must first be permitted to designate a new responsible party or participant representative before being placed in the Minnesota restrictive recipient program.

Finally, although the rules on the restricted recipient program prohibit the recipient from using PCA Choice or CDCS services for 24 months, *see* Minn. R. 9505.2238, the placement may be renewed. We are concerned some people remain in the program indefinitely. Some people are not able to meet their staffing needs using an agency-based model for service. As a result, people may go without necessary care, thereby putting their health and safety at risk or being forced into nursing homes to get the care they need. Ensuring that people can return to PCA Choice or CDCS (after a reasonable time period and with proper instruction, training, and oversight) will help keep people with disabilities living in the community.

Attached to this letter is proposed language we believe will help ensure that people with disabilities who do not knowingly commit fraud or knowingly allow fraud to occur will maintain access to flexible programs that support community integration.

We would welcome an opportunity to meet with you and discuss our concerns. Thank you for your consideration.

Sincerely,



Jennifer E. Giesen
Attorney at Law

Enc.

cc: Members of the Judiciary Finance and Civil Law Division
Rachel Ganani, Committee Administrator, Judiciary Finance and Civil Law Division
Ron Elwood, Supervising Attorney, Legal Services Advocacy Project

**[256B.0646] MINNESOTA RESTRICTED RECIPIENT PROGRAM;
PERSONAL CARE ASSISTANCE SERVICES.**

- (a) When a recipient's use of personal care assistance services or community first services and supports under section 256B.85 results **engages** in abusive or fraudulent billing, the commissioner may place a recipient in the Minnesota restricted recipient program under Minnesota Rules, part 9505.2165.
- (b) **When the commissioner's determination of abusive or fraudulent billing is based on the actions of the recipient's responsible party or participant representative, the recipient must first be permitted a thirty (30) day period to designate a new responsible party or participant representative before being placed in the Minnesota restricted recipient program.**
- (c) A recipient placed in the Minnesota restricted recipient program under this section must: (1) use a designated traditional personal care assistance provider agency; and (2) obtain a new assessment under section 256B.0911, including consultation with a registered or public health nurse on the long-term care consultation team pursuant to section 256B.0911, subdivision 3, paragraph (b), clause (2).
- (d) A recipient must comply with additional conditions for the use of personal care assistance services or community first services and supports if the commissioner determines it is necessary to prevent future misuse of personal care assistance services or abusive or fraudulent billing. Additional conditions may include but are not limited to restricting service authorizations to a duration of no more than one month, and requiring a qualified professional to monitor and report services on a monthly basis.
- (e) A recipient placed in the Minnesota restricted recipient program under this section may appeal the placement according to section 256B.045. **On appeal, the commissioner must demonstrate that the recipient knowingly committed the abusive or fraudulent billing or knowingly permitted it to occur and that the billing was not the result of mistake.**
- (f) **A recipient placed in the Minnesota restricted recipient program who successfully complies with all conditions imposed during the placement must be removed from the program after a period of no more than 24 months and allowed at that time to choose to participate in the PCA choice or CFSS program.**

EFFECTIVE DATE.

This section is effective the day following final enactment.