PCA Services: Assessment, Eligibility and Appeal

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What will we cover tonight?

- Overview of changes in the PCA law (MS. §256B.0659; handout has portions.)
- Preparing for a good PCA assessment: discussion of definitions/what the assessors are looking for.
- How to appeal, the fair hearing process and issues to raise on appeal.
- DHS changes in assessment/services
PCA eligibility prior to 2010

- Until December 31, 2009, Public Health Nurses (PHNs) used an assessment tool that evaluated:
  - Need for assistance with ADLs,
  - Need for behavioral assistance and supervision, including prompting,
  - Need for assistance with medications
  - Instrumental ADLs (IADLs), including cooking, cleaning, laundry, shopping

- Amount of PCA time **authorized** was based on all of these activity areas—not any more!
Eligibility as of July 2011 (after special session)

- Must have dependency in 2 ADLs to qualify for full authorization of hours.
- Those with only 1 ADL dependency, or Level I behavior will get only 30 minutes per day (3.5 hours per week)—no additional time for critical ADLs, behaviors or complex health needs.
- Need for assistance with IADLs does not count toward PCA eligibility or authorization of hours, although PCA can complete IADL activities as part of care plan.
Example 1

- Joe has serious behaviors--getting lost, banging his head, punching walls and hitting others when they help.
- Joe has a dependency in the ADL of dressing.
- Joe will get a **half hour per day total**—no extra time for behaviors.
- If Joe had 2 ADL needs, his time would be **3 hours per day**.
Example 2

- June has diabetes and requires wound care. She frequently gets confused if she does not eat properly and needs help preparing meals.
- She has 1 ADL dependency --bathing.
- June gets PCA of a half-hour per day.
- If June had 2 ADL needs, she would get 2.25 hours per day.
What is now considered a “dependency” in an ADL?

- Having a “dependency” in ADLs means that “a person requires assistance to begin and complete” one or more ADLs.

- By law, there are 8 ADLs:
  - grooming, dressing, bathing,
  - transferring, mobility, positioning,
  - eating and toileting.

- “Critical ADLs” of eating, toileting, transferring and mobility each get additional 30 minutes.

- IADL needs aren’t part of the formula!
Dependency refined...

- Dependency is further defined as having a need on a daily basis, or on the days that the task is performed, for
  - **Cuing and constant supervision** to complete the task OR
  - **Hands-on assistance** to complete the task

- Can include tasks that may not need to be done every day but need constant supervision or hands-on assistance to complete. (examples—shaving, bathing, nail or skin care)
2 ADLs...let me count the ways...

- If a person has an ADL dependency in bathing, s/he often will need help with grooming.
- Bathing includes skin care. Grooming includes shaving, hair and nail care.
- Dressing includes choosing, applying and changing clothing.
- Eating does NOT include meal preparation or bringing food to table. It MIGHT include cutting up food or assisting with the act of eating.
- Mobility MIGHT include constant supervision of child while out in public. (court case)
Kids: when is it a dependency?

- NOT dependent in ADL if because of the child’s age an adult would perform or assist with the activity (p. 5 handout)
  - If assistance needed is that which is appropriate for a typical child of the same age—no dependency.
  - Example—a 6 y.o. will need help with a nebulizer; a 14 y.o. should not.

- Testing results or other evaluations may help to establish deficits in ADL areas.
Communicating with the assessor—what to focus on with ADLs

- Think “constant supervision” or “hands on assistance”, not “prompting”
- Think assistance from beginning to end of task
- Does the supervision include a teaching component, for example how to wash one’s hair or brush teeth? Is this documented?
- Does a child’s school IEP include bathroom assistance, help with clothing, eating, etc.?
- Be able to explain what happens if the assistance/supervision is not provided; recent real life examples are very helpful
How is Level I Behavior defined for eligibility?

- “Level I Behavior” means “physical aggression towards self, others or destruction of property that requires the immediate response of another person.” M.S. §256B.0659, Subd. 1 (b)
  
  - “Immediate response” includes intervention that was required to prevent an injury or destruction
  
  - Must have occurred within last year

- If Level I behavior exists, the PCA base rate for authorization of time is higher
How are behaviors evaluated for additional PCA time?

☐ If one has 2 ADL needs (eligible for full authorization), behaviors may qualify for additional time **whether or not the person is determined to be Level I** if they demonstrate:

- Increased vulnerability due to cognitive deficits or socially inappropriate behavior
- Resistive to care, verbally aggressive—interferes with care
- Physical aggression to self or others or destruction of property
The behaviors must require assistance at least 4 times per week:

- In the past 7 days:
  - the behavior must have occurred at least 4 times or
  - been redirected and prevented through positive behavioral interventions
- Care or treatment plans, behavior intervention plans, IEPs are all useful in demonstrating this requirement
- If criteria are met, can qualify for additional 30 minutes per day for each of these areas (maximum of 90 minutes)
Examples of these behaviors:

- Vulnerability—wanders, cannot call 911, goes with strangers
- Socially inappropriate—thoughts, behavior or communication causes child to be a target, isolated, or to self isolate
- Resistive to care/verbal aggression—fights getting dressed, throws food
- Physical aggression—hits, bangs head, punches walls, breaks things on purpose
Gray area-constant supervision of ADLs...or behavior intervention?

- A boy, 9, with autism is nonverbal; must have constant attention, hand holding, supervision so he does not run away. His family argued that this is a mobility need that meets the statutory definition for hands-on assistance and constant supervision.

- DHS argued that dependency in mobility is limited to those physically incapable of walking without assistance– and that this is a behavioral intervention.
The district court agreed with the family—he cannot move from one spot to another safely w/o hands-on assistance/constant supervision.

MN Court of Appeals agreed with DHS—physically capable of movement from one spot to another, so not dependent in mobility; need is “behavioral” in nature.

On appeal – to Minnesota Supreme Court
Complex health related needs

- Defined as one or more interventions ordered by physician, specified in the PCA plan of care and one of several categories:
  - tube feeding, wound care, parental therapy, respiratory interventions, bowel programs, neurological interventions
- Each complex health need gets 30 additional minutes authorized per day
- Must first have 2 ADL needs to qualify for time for complex health needs.
DHS authorization chart

- Step 1: How many ADLs and/or Level I? If less than 2 and/or Level I, stop! 30 min per day
- Step 2: if 2 or more ADLs, determine base rate
- Step 3: determine additional time for critical ADLs, behaviors or complex health needs

Chart can be found at
http://www.dhs.state.mn.us/main/idcplg?IdcService=GET_FILE&RevisionSelectionMethod=LatestReleased&noSaveAs=1&Rendition=Primary&allowInterrupt=1&dDocName=dhs16_157228
Take the initiative to provide good information to the assessor

- Test results, medical evaluations, summaries of doctor or hospital visits and doctor orders, IEPs, behavior plans, PCA care plans, risk management plans
- Medication lists help document mental health, seizure or pain conditions
- Responsible party/ parent or other support person *should sit in* to ensure assessor has full information.
New assessment can occur:

- At least annually
- When there is a significant change in condition
- When there is a change in the need for PCA services
- Must occur within 30 days of request
- Denial of new assessment would be an appealable issue
Extended PCA services

- “Extended PCA” is a Home and Community Based waivered service.
- This can allow PCA hours beyond the amount allowed by the PCA assessment if needed to assure health, safety and welfare.
- Requires PCA eligibility, i.e. at least 2 ADL dependencies.
- May require waiver budget increase, also appealable issue if denied.
Possible issues related to appeal of PCA assessment:

- How long was the assessor there?
- Did the assessor observe the recipient; were his/her actions typical?
- Were there language or cultural barriers?
- Did the assessor put the questions in context and seek further details? (i.e. if you say “prompting needed” did s/he inquire further?)
Did the assessor review documentation provided or ask follow up questions?
Is the assessment different than last year even though needs are the same?
Do you disagree with the assessor on #ADLs/behaviors/complex needs?
Appeal Rights=“due process” rights

- Procedural due process rights ensure the protection of other fundamental or substantive rights.
- Notion of fair play and level playing field applies to county social services and state health care programs.
Who may have a fair hearing?

- “any person...receiving public assistance, medical care, or a program of social services...whose application for assistance is denied, not acted upon with reasonable promptness, or whose assistance is suspended, reduced, terminated...or any party aggrieved by a ruling of a prepaid health plan” (§256.045, Subd. 3)
How to ask for a fair hearing

- Written request to county or DHS within 30 days or 90 days if good cause. Can be done by fax or mail to county, or DHS (fax 651-431-7523; 444 Lafayette Rd. St Paul MN 55155).

- Only a 10 day max window if you want PCA services to continue pending appeal.

- Request does not have to be detailed: “I appeal the reduction/termination of PCA services. I want phone/in person appeal in my county, Anoka. I want PCA services to continue pending appeal.” Can also use DHS form.
Appeal rights include:

- Right to specific written rationale for denying/terminating service
- Notice of right to appeal and how to appeal
- Right to fair hearing in front of DHS Human Services Judge
- Right to continue existing service pending appeal under public health programs, including managed care.
Right to continued service or benefit pending appeal (PCA):

- Should include in appeal a request for continuing service pending appeal before reduction/within 10 days.
- This includes state managed care plans.
- State and health plan permitted to seek recoupment of cost of continuing service if you lose. DHS does not generally do.
- Health plans generally don’t seek to recoup from recipient but may try to adjust payment to vendor—status not clear
DHS Fair Hearing Process

- Hearing can be by phone or in person in the county where the person lives.
- In front of DHS Human Services Judge, less formal than district court.
- Hearing is tape-recorded.
- Witnesses can also be by phone.
- Right to have attorney or “other representative of [your] choice”.
Hearing Rights

☐ Other side must provide appeal summary with specific basis for the action. For PCA appeals, DHS/plan will provide copies of PCA assessment and a form memo about the new criteria.

☐ Right to notice of the hearing at least five days in advance. May ask for a continuance if not, or for other reason.

☐ HSJ may do preliminary hearing to address schedule, conflicts, subpoenas.
Additional rights

- Opportunity to examine contents of the file/documents to be used by other side at a reasonable time before hearing.
- May request additional information relevant to the appeal, including further assessment.
- Right to appear personally, testify, offer evidence, and examine and cross examine witnesses. DHS does not usually appear; health plans do.
Right to coverage of appeal related costs (§256.045, subd.4(b))

- The person appealing can claim copying, transportation, child care, medical assessment and witness costs and “other necessary and reasonable costs”. Keep receipts!
- County “shall provide reimbursement”.
- HSJ can order that costs be paid.
Evidence

- “all evidence commonly accepted by reasonable people in the conduct of their affairs as have probative value with respect to the issues.” §256.045, Subd. 4.
- Burden of proof on the party seeking to change the status quo.
- The agency must present its evidence before or at the hearing and the petitioner must have the opportunity to respond.
- HSJ may hold the record open for additional documentation.
What evidence might help my case?

- PCA care plans and prior assessments
- IEPs, assessments done in and for the school setting, or day care records
- Medical records, including day treatment, hospital, medications
- Letters from medical providers that are specific and address need for assistance to complete ADLs or need for supervision of specific behaviors
Effective Testimony

- Testimony of parent which details step by step needs for assistance with each ADL or behavior and gives specific examples
- Testimony of PCA or school aide which buttresses parent and shows need for assistance in other settings.
- Testimony of therapists or other involved providers – ILS, CTSS etc.
- Testimony can occur by phone
Decision-making process

- HSJ recommends order which commissioner accepts or rejects.
- Order must have findings of fact based on entire record, and
- Conclusions of law—legal authority for the decision.
- Right to have decision reconsidered by DHS within 30 days and/or district court review by filing within 30 days.
Managed care appeals

- 30 day notice usually called a “DTR”: denial, termination, reduction in service.
- Plans have *optional* 30 day complaint process with optional appeal to DHS; THIS IS ALSO 30 DAYS. We do not usually recommend!
- Can ask for second opinion outside plan.
- 30 day timelines for appeal, reconsideration and district court appeal are the same.
What does the future hold?

- DHS is rolling out a new assessment tool called MNChoices in 2013.
- DHS is redesigning PCA services under the “Community First” option.
- Many service modifications requested under DHS “Reform 2020”

https://edocs.dhs.state.mn.us/lfservr/Public/DHS-6535B-ENG
MNChoices Assessment—effective in 2013

- Automated application, assessment and service planning tool for waivers, PCA, LTCC and PDN; lengthy process
- Trained, certified assessors evaluate several “domains” including ADLs, IADLs, psychosocial, safety, etc.
- MNchoices does NOT change any current eligibility criteria
“Community First” Services & Supports (“1915 (k)” option)

- MA state plan service; requires at least 1 ADL need or Level 1 behavior; criteria still the same although federal law much broader-- allows cuing and prompting.
- Minimum amount of time- 75 minutes
- Services include current PCA plus skills acquisition, health related tasks, transition supports; self-directed option
- Awaiting federal approval; has +6% federal match.
Resources and links

☐ DHS: www.dhs.state.mn.us
  (home>disabilities>personal care assistance)
  ■ PCA assessment: eDocs # 3244-ENG 10-11
  ■ PCA instructions: eDocs #3244A-ENG 10-11

☐ Minnesota Disability Law Center:
  ■ Intake: 1-800-292-4150; 612-334-5970
  or online http://www.mylegalaid.org/mdlc/contact
  ■ FAQ: