



DHS Oversight of Personal Care Assistance

2020
EVALUATION REPORT

Program Evaluation Division
OFFICE OF THE LEGISLATIVE AUDITOR
STATE OF MINNESOTA

Program Evaluation Division

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OFFICE OF THE LEGISLATIVE AUDITOR

STATE OF MINNESOTA • James Nobles, Legislative Auditor

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Members of the Legislative Audit Commission:

Personal care assistance (PCA) helps individuals with disabilities, chronic diseases, or mental illness live independently in their homes. PCA is available to eligible individuals enrolled in certain publicly funded health care programs, including Minnesota's Medicaid program. The Department of Human Services (DHS) is responsible for overseeing PCA in Minnesota.

Over the past eleven years, DHS and the Legislature have made changes to strengthen the oversight of PCA. However, opportunities for improvement remain. In this report, we make several recommendations to the department and the Legislature to improve DHS's oversight of PCA.

Our evaluation was conducted by Jodi Munson Rodríguez (project manager), Scott Fusco, and Katherine Theisen, with assistance from Mark Mathison and Joe Sass. DHS cooperated fully with our evaluation, and we thank them for their assistance.

Sincerely,

James Nobles
Legislative Auditor

Judy Randall
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Summary

DHS Oversight of Personal Care Assistance

Key Facts and Findings:

- Personal care assistance (PCA) helps individuals with disabilities, chronic diseases, or mental illness live independently in their homes. (p. 3)
- The number of individuals who received PCA increased by more than 10 percent between fiscal years 2015 and 2018, to a total of more than 43,700 in 2018. In Fiscal Year 2018, PCA cost about \$1.03 billion. (pp. 6, 9)
- To receive PCA, individuals must have an assessment. DHS allows the use of two different assessment tools to identify need and determine eligibility for PCA. (p. 14)
- DHS has not evaluated whether the use of the two tools has produced systematically different results, and some assessors expressed concern about differences. (p. 20)
- Through its initial provider enrollment process, DHS has generally ensured that PCA agencies meet state and federal requirements, but there is room for improvement. (p. 42)
- When enrolling personal care assistants, DHS does not verify that they meet all requirements in state law. (p. 60)
- PCA agencies are required to document services provided, but state law does not specify how—or even whether—DHS must regularly ensure that agencies comply with documentation requirements. (p. 55)
- DHS has improved its ability to prevent payments to PCA agencies for impossible or implausible hours. (p. 70)
- DHS did not take timely action to fully investigate some cases in which preliminary investigation identified issues with compliance. (p. 83)
- The 2013 Legislature established Community First Services and Supports, which will replace the PCA program. The Legislature did not require DHS to implement the change by a certain date, and DHS has not yet implemented the program. (pp. 89, 91)

Key Recommendations:

- DHS should develop a firm timeline for requiring the use of the MnCHOICES assessment tool for PCA. (p. 21)
- The Legislature should require DHS to regularly evaluate the consistency of assessment results across assessors. (p. 32)
- DHS should review all required documentation to ensure compliance with legal requirements during PCA agencies' initial enrollment. (p. 47)
- DHS should ensure that PCA agencies' staff complete training as required by law. (p. 44)
- The Legislature should clarify DHS's responsibilities for monitoring PCA documentation requirements. (p. 57)
- DHS should develop a plan for investigating suspected fraud and abuse cases in a more timely way. (p. 84)
- The Legislature should review the oversight requirements in Community First Services and Supports. (p. 91)

DHS and the Legislature have made changes to strengthen the oversight of PCA, and opportunities for improvement remain.

DHS has not evaluated whether the two assessment tools used for PCA produce systematically different results.

Report Summary

Personal care assistance (PCA) helps individuals with disabilities, chronic diseases, or mental illness live independently in their homes and communities. PCA is available to eligible individuals enrolled in certain publicly funded health care programs, including Minnesota's Medicaid program. Lead agencies—which include counties and tribal governments—are responsible for assessing individuals to determine the activities for which they need assistance and how much assistance with those activities they are eligible to receive.

Personal care assistants may help PCA recipients with activities of daily living (such as eating and dressing), observe and redirect behaviors, or perform health-related tasks. Personal care assistants must be affiliated with PCA agencies that maintain financial records and evaluate services, among other responsibilities. Personal care assistants and PCA agencies do not need licenses, but they must enroll with the Department of Human Services (DHS). DHS is responsible for overseeing the PCA program.

More than 43,700 individuals received PCA in Fiscal Year 2018 at a cost of about \$1.03 billion split nearly evenly between federal and state funding.

Since 2009, DHS and the Legislature have made changes to the PCA program in an effort to strengthen program integrity.

In 2009, OLA released an evaluation report in which it concluded that PCA was unacceptably vulnerable to fraud and abuse.¹ For example, OLA found that DHS had reimbursed PCA agencies for impossible or implausible hours, including hundreds of personal care assistants who were paid for

more than 24 hours of service provided in one day or consecutive 24-hour days.

Since then, DHS has implemented electronic controls in its claims payment system that improved its ability to prevent these types of improper payments. We analyzed data on PCA claims processed in fiscal years 2015 through 2019, and found that they were generally effective in preventing payments for claims that asserted personal care assistants worked more than 24 hours per day or consecutive 24-hour days.

In addition, OLA recommended that the Legislature require DHS to implement mandatory training requirements for PCA assessors. In 2009, the Legislature passed a law that required DHS to include PCA in a broader assessment of long-term needs.² Assessors using this assessment are required to complete a mandatory training and certification program.³ DHS developed the MnCHOICES tool to complete these assessments for long-term needs. It is a Web-based assessment tool and will replace the previous paper-based assessment tool, referred to as the “legacy” PCA assessment tool.⁴

More than six years have passed since DHS launched MnCHOICES, yet the department does not require lead agencies to use that assessment tool for all PCA assessments.

DHS launched MnCHOICES in November 2013 and made the tool available to most lead agencies across the state over the following 13 months. In early 2020, DHS still did not have a firm timeline for requiring lead agencies to use MnCHOICES for all PCA assessments. DHS is developing a revised version of MnCHOICES, and officials told us they plan to require lead agencies to use it for all PCA assessments after it is finished. DHS

¹ Office of the Legislative Auditor, Program Evaluation Division, *Personal Care Assistance* (St. Paul, 2009), 43.

² *Laws of Minnesota* 2009, chapter 79, art. 8, sec. 37, codified as *Minnesota Statutes* 2019, 256B.0911, subd. 3a(a).

³ *Minnesota Statutes* 2019, 256B.0911, subds. 2b(a) and 2c.

⁴ The legacy PCA assessment tool is called the Personal Care Assistance Assessment and Service Plan, form DHS-3244.

does not expect to roll out the new version until at least 2021.

DHS has not evaluated whether MnCHOICES and the legacy PCA assessment tool produce systematically different results; however, some assessors we surveyed and interviewed expressed concern about differences. One assessor stated, “I think the use of two different tools which create significantly different outcomes of the same person is just unfair to the people receiving the assessment.”

We recommend that DHS establish a firm timeline for requiring assessors to use MnCHOICES for all PCA assessments. Allowing assessors to use two different tools without studying potential systematic differences in the results may lead to unequal access to PCA for individuals assessed with one tool rather than the other.

Through its initial provider enrollment process, DHS has generally ensured that most PCA agencies meet requirements to provide services, but there is room for improvement.

Statutes require certain PCA agency staff to complete training and background studies.⁵ DHS ensured that most, but not all, PCA agencies it enrolled in Fiscal Year 2018 complied with these requirements. For example, DHS data indicate that the department did not ensure that all appropriate staff in 24 of the 93 agencies that enrolled that year completed required training according to timelines established in law.

In addition, DHS does not require PCA agencies to submit all documentation required by state law for initial enrollment. Instead, a DHS official told us that DHS requires providers to attest to meeting numerous requirements by signing a provider assurance statement. This approach does not comply with the law, and

it does not allow DHS to fully execute its responsibility to oversee the enrollment of PCA agencies.

We recommend DHS ensure PCA agency staff comply with training requirements before enrolling agencies. We also recommend DHS review all required documentation to ensure compliance with legal requirements during PCA agencies’ initial enrollment.

PCA agencies are required to document services provided, but state law does not specify how—or even whether—DHS must regularly ensure that all agencies comply with those requirements.

Statutes require PCA agencies to keep employee and recipient files that include specific documents, such as records of supervisory visits and PCA care plans.⁶ Rules contain additional requirements to document recipients’ health services and agencies’ financial records.⁷

Statutes do not specify how DHS should regularly monitor PCA agencies’ compliance with all requirements. Statutes require PCA agencies to revalidate their enrollment with DHS every three years but do not specify which documents DHS must review during that process.⁸ Statutes also require DHS to establish a process to monitor program integrity, including random reviews of documentation.⁹ However, statutes do not state how often or to what extent DHS should review service documentation.

A DHS official told us staff typically review recipient and employee files during certain site visits to PCA agencies. However, DHS policies and procedures do not clearly indicate which documents staff are expected to review.

We recommend the Legislature clarify DHS’s responsibilities for monitoring ongoing PCA documentation requirements. If the Legislature, in an effort to prevent fraud and abuse, wishes for DHS to be more

DHS should do more to ensure all PCA agencies meet requirements to provide PCA.

⁵ *Minnesota Statutes* 2019, 256B.0659, subds. 13(a), 13(c), 21(c), and 25.

⁶ *Minnesota Statutes* 2019, 256B.0659, subd. 28(a).

⁷ *Minnesota Rules*, 9505.2175, subps. 2 and 7; and 9505.2180, subp. 1, published electronically August 12, 2008.

⁸ *Minnesota Statutes* 2019, 256B.04, subd. 21.

⁹ *Minnesota Statutes* 2019, 256B.0651, subd. 15.

Community First Services and Supports, which will eventually replace the PCA program, has different oversight requirements than PCA.

comprehensive in its oversight activities, it should make that explicit in law.

DHS did not take timely action to fully investigate some cases in which a preliminary investigation identified issues with compliance.

DHS's Office of the Inspector General (OIG) conducts investigations into potential fraud, theft, abuse, or error in Medicaid programs, including PCA. Fraud complaints go through a triage process to determine whether a full investigation is warranted. We analyzed DHS data for all preliminary investigations that were open as of November 2019. There were 317 cases in which the preliminary investigation resulted in a recommendation to open a full investigation, but DHS had not yet assigned the case to an investigator. Those cases had been waiting for an investigator to be assigned an average of more than 270 days; two cases had been waiting more than two years for assignment.

We also reviewed reports for 80 site visits completed in fiscal years 2017 through 2019. We found ten cases that were passed back and forth between different units in OIG for more than two years without taking action on the compliance issues identified.

We recommend DHS create a plan for investigating suspected fraud and abuse cases in a more timely way to ensure providers cannot engage in fraudulent practices over long periods of time.

The 2013 Legislature established a new program to replace the PCA program, but DHS has not yet implemented the new program.¹⁰

While the new program—Community First Services and Supports (CFSS)—and PCA are similar in some respects, the type of oversight CFSS requires is different from PCA in several ways. For example, in PCA, qualified professionals must visit all recipients to oversee the delivery of PCA at specified intervals.¹¹ In CFSS, this type of direct oversight by a qualified professional is not required. However, in CFSS, consultation services providers must approve recipients' service delivery plans and provide recipients with other support.¹²

Nearly seven years have passed since the Legislature passed the law authorizing CFSS, and the Legislature has made changes to PCA that may reflect changing opinions about the level and type of oversight necessary for these services. As such, we recommend the Legislature review the oversight requirements in CFSS.

¹⁰ *Laws of Minnesota* 2013, chapter 108, art. 7, sec. 49, codified as *Minnesota Statutes* 2019, 256B.85.

¹¹ *Minnesota Statutes* 2019, 256B.0659, subds. 14 and 19(a)(4).

¹² *Minnesota Statutes* 2019, 256B.85, subd. 17. Consultation services providers must approve service delivery plans for CFSS recipients that do not have a case manager or care coordinator responsible for authorizing services.

Summary of Agency Response

In a letter dated March 11, 2020, Department of Human Services Commissioner Jodi Harpstead noted that DHS is “proud of the strides we have made in overseeing [PCA] services” and that many of the recommendations from OLA’s 2009 evaluation “have been operational for many years.” “And,” she stated, “there is always room for improvement.” The commissioner went on to say that it is the department’s policy “to follow up on all findings to evaluate the progress made to resolve them.” The commissioner included a department response and designated a responsible person for each OLA recommendation in the report. She stated, “If there is a theme to the areas where the Department objects to the recommendations, it is in expectations suggested in the report that seem more appropriate for fully licensed services than for these intentionally unlicensed services.”

The full evaluation report, *DHS Oversight of Personal Care Assistance*, is available at 651-296-4708 or:
www.auditor.leg.state.mn.us/ped/2020/pcaoversight.htm

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Introduction

Personal care assistance (PCA) helps eligible individuals with disabilities, chronic diseases, or mental illness complete tasks such as bathing, dressing, and remembering to take their medication. The Department of Human Services (DHS) is responsible for overseeing PCA in Minnesota. It is an important service that can enable recipients to live independently in their homes. It is also a service that is vulnerable to fraud and can create challenges in protecting recipients' safety, as it is often delivered in private homes without independent supervision.

The Office of the Legislative Auditor (OLA) completed an evaluation of PCA in 2009 in which we concluded that PCA lacked sufficient state oversight and accountability.¹ In that evaluation, OLA made numerous recommendations for the Legislature and DHS to improve oversight of PCA. In 2019, the Legislative Audit Commission directed the office to complete the current evaluation to determine how well DHS currently oversees the program. Our primary research questions were:

- **To what extent has DHS promoted consistency and provided effective guidance for completing assessments to determine an individual's need for PCA?**
- **To what extent has DHS complied with requirements related to PCA agency and personal care assistant enrollment?**
- **What procedures has DHS established for identifying fraud and abuse in PCA, and what were the results of those efforts?**

We used various research methods to answer these questions. We reviewed relevant state and federal laws, as well as DHS policies, procedures, manuals, guides, and forms. To learn about issues recipients raised about assessments, we reviewed a sample of judges' recommended orders issued in Fiscal Year 2019 related to appeals of PCA assessment results. We also reviewed a sample of reports from DHS site visits to PCA agencies from fiscal years 2017 through 2019 and shadowed a screening investigator during a site visit to learn more about DHS's PCA agency screening process.

We reviewed numerous types of data. We analyzed payment claims—and enrollment, recipient, appeals, and site visit data—from fiscal years 2015 through 2019 to learn about the scope of PCA and determine the extent to which DHS complied with state and federal requirements for administering the PCA program. We also analyzed investigations data from fiscal years 2016 through 2019.

Finally, we sought feedback from many individuals knowledgeable about PCA. We interviewed PCA recipients, parents of recipients, staff, and others with The Arc Minnesota and the Governor's Council on Developmental Disabilities. We also interviewed individuals at the Minnesota Disability Law Center, the Office of Ombudsman for Mental Health and Developmental Disabilities, SEIU Healthcare

¹ Office of the Legislative Auditor, Program Evaluation Division, *Personal Care Assistance* (St. Paul, 2009), ix.

Minnesota, Minnesota First Provider Alliance, the Minnesota Home Care Association, and the Medicaid Fraud Control Unit in the Minnesota Office of the Attorney General. We interviewed assessors in two counties and surveyed all certified assessors in the state. We also spoke with many DHS staff throughout the agency.

Our evaluation focused on DHS's oversight of the PCA program. As such, there were several issues that we determined were outside the scope of this review. For example, we did not evaluate the quality of the services provided to recipients, nor did we determine whether individual assessment results for PCA were accurate or appropriate. Additionally, we did not examine workforce issues, such as pay for personal care assistants or the availability of personal care assistants throughout the state.

Chapter 1: Background

Thousands of Minnesotans need assistance to complete essential tasks, such as eating, bathing, and dressing on their own each day. Some individuals depend on others for assistance with getting out of bed or moving around their home. Individuals may qualify for public programs that help them obtain the assistance they need to remain in their homes and communities. One such type of assistance is called personal care assistance (PCA).¹ In Minnesota, the Department of Human Services (DHS) oversees PCA.

In this chapter, we provide an overview of PCA in Minnesota. We explain the requirements for receiving and providing PCA. We also discuss funding and oversight of the program. Finally, we provide a brief update on program changes since the Office of the Legislative Auditor (OLA) completed its last evaluation of PCA in 2009.



Personal care assistance includes help with:

Activities of Daily Living: Grooming, dressing, bathing, transferring, mobility, positioning, eating, and toileting.

Instrumental Activities of Daily Living: Meal planning and preparation, basic assistance paying bills and shopping for essential items, performing certain household tasks, communication, and traveling.

Observation and Redirection of Behaviors: (1) Physical aggression towards self or others, or destruction of property that requires the immediate response of another person; (2) increased vulnerability due to cognitive deficits or socially inappropriate behavior; or (3) increased need for assistance due to verbal aggression or resistance to care.

Health-related Procedures and Tasks: Tasks—such as exercise to maintain a recipient's strength and assistance with self-administered medication—that can be delegated by a licensed health professional to a personal care assistant.

— *Minnesota Statutes 2019, 256B.0659, subds. 1, 2, and 4.*

Overview

PCA is regulated by both federal and state laws. These laws describe the services that constitute PCA, eligibility criteria to receive PCA, and requirements for providers of PCA, among other things.

Personal care assistance helps individuals with disabilities, chronic diseases, or mental illness live independently in their homes.

PCA is designed to help individuals in four main areas: activities of daily living, instrumental activities of daily living, observation and redirection of certain behaviors, and health-related procedures and tasks. Individuals may access PCA in their homes or in the community, including at work, when their normal activities take them outside their homes.² PCA cannot be provided to individuals living in hospitals or other health care facilities.

In the following section, we describe the requirements for receiving and providing PCA. We also provide information about PCA recipients and providers.

¹ Throughout the report, when we reference PCA, we are referring to publicly funded services.

² *Minnesota Statutes 2019, 256B.0625, subd. 19a.*

Eligibility

Individuals that wish to receive PCA must qualify for (1) health coverage through certain publicly funded health care programs, and (2) assistance with tasks specified in law.

Personal care assistance is available to eligible individuals enrolled in certain publicly funded health care programs.

Individuals can qualify to receive PCA through public health care programs with distinct eligibility criteria intended to serve different populations. Exhibit 1.1 briefly describes the eligibility criteria for relevant programs.

Exhibit 1.1: Eligible individuals may access personal care assistance through certain public health care programs.

Program	Eligibility Criteria
Medical Assistance State Plan (Minnesota's Medicaid Program)	<ul style="list-style-type: none"> • Be a U.S. citizen or qualifying noncitizen • Be a Minnesota resident • Meet income and asset limits
Medical Assistance (Medicaid) Home and Community-Based Services Waivers	
<i>Brain Injury Waiver</i>	<ul style="list-style-type: none"> • Be eligible for Medical Assistance • Have an assessed need for supports and services over and above those available through the Medical Assistance state plan • Be under age 65 • Be certified disabled • Determined to need a nursing facility or neurobehavioral hospital level of care • Be diagnosed with a brain injury or neurological condition that meets certain conditions • Meet criteria for having the potential to benefit from rehabilitative services • Have an assessed need for either a specialized provider to meet cognitive or behavior impairment needs and/or higher amount of PCA time or rate for services due to cognitive or behavior impairments
<i>Community Access for Disability Inclusion Waiver</i>	<ul style="list-style-type: none"> • Be eligible for Medical Assistance • Have an assessed need for supports and services over and above those available through the Medical Assistance state plan • Be under age 65 • Be certified disabled • Determined to need a nursing facility level of care
<i>Community Alternative Care Waiver</i>	<ul style="list-style-type: none"> • Be eligible for Medical Assistance • Have an assessed need for supports and services over and above those available through the Medical Assistance state plan • Be under age 65 • Be certified disabled • Determined to meet hospital level of care criteria and certified by primary physician to need the level of care provided in a hospital

Continued on next page.

Exhibit 1.1: Eligible individuals may access personal care assistance through certain public health care programs (continued).

Program	Eligibility Criteria
Medical Assistance (Medicaid) Home and Community-Based Services Waivers (continued)	
<i>Developmental Disabilities Waiver</i>	<ul style="list-style-type: none"> • Be eligible for Medical Assistance based on a disability diagnosis • Have an assessed need for supports and services over and above those available through the Medical Assistance state plan • Determined to meet the criteria for intermediate care facility for persons with developmental disabilities (ICF/DD) level of care criteria • Have a developmental disability or a related condition as defined in rules • Require daily interventions, daily service needs, and a 24-hour plan of care specified in the community support plan • Assessed to need a residential habilitation service included in the community support plan • Have made an informed choice of waiver services instead of alternative services
<i>Elderly Waiver</i>	<ul style="list-style-type: none"> • Be eligible for payment of long-term care under Medical Assistance • Be age 65 or older • Be assessed to need a nursing facility level of care • Have a community support plan that can reasonably assure health and safety within a specified budget • Pay waiver obligation (if applicable)
Alternative Care Medicaid Waiver Demonstration Program	<ul style="list-style-type: none"> • Not be eligible for Medical Assistance • Be a U.S. citizen or qualifying noncitizen • Be a Minnesota resident • Be age 65 or older • Be assessed to need a nursing facility level of care • Have income and assets to sustain no more than 135 days of nursing facility services • Have a community support plan that can reasonably assure health and safety within a specified budget • Have no other payer for needed community-based services • Be able to pay a fee (if applicable)
MinnesotaCare	<ul style="list-style-type: none"> • Be a U.S. citizen or qualifying noncitizen • Be a Minnesota resident • Not be enrolled in or have access to Medicare Part A • Not be enrolled in Medicare Part B • Not be incarcerated, unless awaiting disposition of charges • Meet income limits • Be a pregnant woman or a child under the age of 19 to receive PCA

NOTES: "PCA" refers to personal care assistance. Individuals must meet all eligibility criteria in order to qualify for the public health program listed. Individuals may also access personal care services through other public health care programs.

SOURCES: Office of the Legislative Auditor, review of the Department of Human Services Community-Based Services Manual and the Department of Human Services MinnesotaCare and Medical Assistance Web pages, <https://mn.gov/dhs/>.

Minnesota primarily provides PCA through Medical Assistance, the state's Medicaid program. Minnesota has two payment models for Medical Assistance: a fee-for-service model and a Medical Assistance managed care model. In the fee-for-service model, providers submit bills to DHS for reimbursement of actual services provided, and DHS pays

for covered services. In the managed care model, DHS makes fixed payments to managed care organizations (MCOs) based on the number of individuals enrolled with the MCO. The MCO is responsible for paying providers for covered services provided to its enrollees.

To qualify for PCA based on activities of daily living, an individual must:

- Need assistance with the activity every day or on each day the activity is completed.
- Need cuing and constant supervision or hands-on assistance to complete the task.

To qualify for PCA based on behavior, an individual must:

- Demonstrate physical aggression towards self, others, or destruction of property that requires the immediate response of another person.

— *Minnesota Statutes* 2019, 256B.0625, subd. 19a; and 256B.0659, subds. 1(c) and 4(b).

In addition to qualifying for one of the public health care programs described in Exhibit 1.1, individuals must separately qualify for PCA. Individuals must receive an assessment from their “lead agency”—counties, county alliances, tribal governments, or managed care organizations—to determine their need and eligibility for PCA. To receive PCA, the assessor must determine that the individual needs assistance with at least one activity of daily living or a qualifying behavior, as described in the box to the left.³ In addition, the assessor must find that the individual is able to direct their own care or has a responsible party that can help them direct their care.⁴ The assessor determines the amount of PCA individuals are qualified to receive based on their needs and statutory guidance.⁵ We describe the assessment process in more detail in Chapter 2.

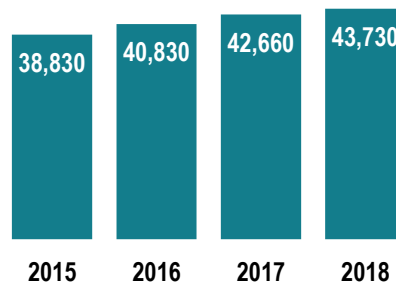
Recipients

PCA is an important service that has enabled thousands of Minnesotans to live in their homes and community. For example, a child with a behavior disorder may need help from a personal care assistant to redirect their behaviors to avoid harming themselves or others. As another example, an adult with a physical disability may need assistance with getting in and out of bed, bathing, combing their hair, and dressing.

The number of individuals who received personal care assistance increased by more than 10 percent from Fiscal Year 2015 through Fiscal Year 2018.

PCA has served an increasing number of individuals in recent years. About 38,830 individuals received PCA in Fiscal Year 2015. By Fiscal Year 2018, that number increased to about 43,730 people.⁶

The number of individuals receiving PCA increased between fiscal years 2015 and 2018.



³ *Minnesota Statutes* 2019, 256B.0625, subd. 19a.

⁴ Statutes define “responsible party” as “an individual who is capable of providing the support necessary to assist the recipient to live in the community.” *Minnesota Statutes* 2019, 256B.0659, subd. 1(o). Responsible parties have certain responsibilities listed in law; see *Minnesota Statutes* 2019, 256B.0659, subd. 10.

⁵ *Minnesota Statutes* 2019, 256B.0652, subd. 6; and 256B.0659, subd. 3a.

⁶ We do not present Fiscal Year 2019 data because they were not complete at the time of our analysis. DHS allows health care providers to submit fee-for-service claims up to one year from the date of the service. Fiscal Year 2019 ended on June 30, 2019, and we received data from DHS on August 16, 2019.

The growth of individuals receiving PCA in recent years has outpaced the growth of the state's population. According to data from the Minnesota State Demographic Center, the state's population increased by about 3 percent between 2015 and 2018.

In Fiscal Year 2018, nearly two-thirds of PCA recipients received services through the Medical Assistance fee-for-service model. We examined demographic data for these individuals and found that about 69 percent of the nearly 27,800 individuals who received PCA through the Medical Assistance fee-for-service model in Fiscal Year 2018 were adults between the ages of 19 and 64, as Exhibit 1.2 shows. Forty percent of the individuals who received PCA through the Medical Assistance fee-for-service model in Fiscal Year 2018 were White, and 39 percent were Black or African American.

Exhibit 1.2: Most Medical Assistance fee-for-service personal care assistance recipients in Fiscal Year 2018 were adults, and most were either White or Black or African American.

	Percentage of Medical Assistance Fee-for-Service PCA Recipients
Age	
0-18	24%
19-64	69
65+	6
Race	
White	40
Black or African American	39
Asian	10
American Indian or Alaskan Native	5
Not reported	3
Two or more races	2
Pacific Islander or Native Hawaiian	< 1
Ethnicity	
Non-Hispanic or Latino	96
Hispanic or Latino	3
Not reported	1

NOTES: In Fiscal Year 2018, about 27,800 individuals received PCA through the Medical Assistance fee-for-service model. "PCA" refers to personal care assistance. In some cases, the percentages in the table do not sum to 100 percent due to rounding.

SOURCE: Office of the Legislative Auditor, analysis of Department of Human Services data.

Over two-thirds (68 percent) of individuals who received PCA through the Medical Assistance fee-for-service model in Fiscal Year 2018 lived in the seven-county Twin Cities metropolitan area.⁷ Thirty-one percent who received PCA through that model were located in Greater Minnesota, and about 1 percent lived in both the Twin Cities metropolitan area and in Greater Minnesota at some point during Fiscal Year 2018.

⁷ The seven counties are Anoka, Carver, Dakota, Hennepin, Ramsey, Scott, and Washington.

Providers

PCA is provided by personal care assistants who typically perform their duties in recipients' homes or in the community. Personal care assistants must meet certain criteria in law, including minimum age and training requirements.⁸ Personal care assistants are not required to be licensed, but they must enroll with DHS.

Personal care assistants must be affiliated with personal care assistance agencies that maintain financial records and evaluate services, among other responsibilities.

Like personal care assistants, PCA agencies are not required to be licensed but must enroll with DHS.⁹ During the enrollment process, providers must submit documents and complete background studies and training. We describe the provider enrollment process in Chapter 3. PCA agencies have numerous administrative responsibilities.¹⁰ These include verifying hours worked by personal care assistants, billing for services provided and paying personal care assistants for hours worked, and maintaining appropriate insurance and bonds, among other duties.¹¹ In addition, PCA agencies must employ a “qualified professional”—a registered nurse, licensed social worker, or other qualified individual—to periodically evaluate services provided by personal care assistants.¹²

Between fiscal years 2015 and 2018, the number of PCA agencies and personal care assistants that were enrolled with DHS increased.

Fiscal Year	Number of Enrolled PCA Agencies	Number of Enrolled Personal Care Assistants
2015	510	61,030
2016	550	73,840
2017	600	85,990
2018	680	97,240

NOTE: The numbers of enrolled personal care assistants and PCA agencies reported in this table reflect enrolled assistants and agencies listed on at least one PCA claim paid by DHS in fiscal years 2015 through 2019.

At the end of Fiscal Year 2015, 61,030 personal care assistants and about 510 PCA agencies were enrolled with DHS to provide PCA.¹³ The number of personal care assistants increased to about 97,240 at the end of Fiscal Year 2018, and the number of agencies increased to about 680.

PCA agencies varied greatly in the total amount of time that they had been enrolled with DHS as of the end of Fiscal Year 2018. Some had been actively enrolled with DHS for less than 1 year, while others had been enrolled with the department for a total of more than 30 years, with a median enrollment of nearly 5 years. There was a median of 54 personal care assistants affiliated with each PCA agency that was enrolled at the end of Fiscal Year 2018.

About 84 percent of the roughly 680 PCA agencies enrolled with DHS at the end of Fiscal Year 2018 were located in the seven-county Twin Cities metropolitan area. The remaining

⁸ *Minnesota Statutes* 2019, 256B.0659, subd. 11.

⁹ *Minnesota Statutes* 2019, 256B.04, subd. 21(b); and 256B.0659, subds. 11(a)(3) and 24(1).

¹⁰ *Minnesota Statutes* 2019, 256B.0659, subds. 19(b) and (c); 21(b), (c), and (d); and 24.

¹¹ *Ibid.*

¹² *Minnesota Statutes* 2019, 256B.0659, subds. 13(a) and (b), 14, and 19(a)(4); and 256B.0625, subd. 19(c).

¹³ The numbers of enrolled personal care assistants and PCA agencies reported in this section reflect enrolled assistants and agencies listed on at least one PCA claim paid by DHS in fiscal years 2015 through 2019.

16 percent of PCA agencies were located in Greater Minnesota, except for three agencies that were located outside the state.

Personal care assistance agencies may offer two distinct service options: traditional or Choice.

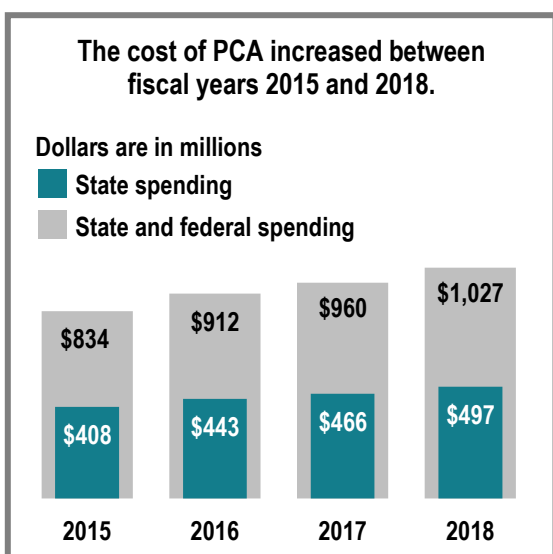
PCA recipients must choose a PCA agency and the service option through which they would prefer to receive their services. PCA agencies may offer traditional PCA, PCA Choice, or both types of services. In the traditional option, the agency is responsible for typical employer tasks, such as recruiting, hiring, training, scheduling, and firing personal care assistants. Under the PCA Choice option, recipients take on those and several of the other responsibilities assigned to PCA agencies in the traditional option.

There are some similarities between the two service options. Under both, personal care assistants must submit their time sheets to a PCA agency that is responsible for verifying and keeping records of hours personal care assistants work and paying the personal care assistant.¹⁴ PCA agencies are responsible for billing for services and keeping most required documentation in both service options, and DHS oversees traditional and Choice services much the same way.

Funding

The cost of providing PCA increased as the number of PCA recipients grew in recent years.

From Fiscal Year 2015 through Fiscal Year 2018, the total cost of personal care assistance in Minnesota increased from about \$830 million to over \$1 billion.



Total spending increased by more than 20 percent during the four-year period. Federal funds generally covered about 51 percent of PCA costs each year, while state funding covered about 49 percent.

In fiscal years 2015 through 2018, about 97 percent of PCA was paid for by the Medical Assistance state plan. As we noted in Exhibit 1.1, Minnesota covers PCA through its Medical Assistance state plan, as well as Medical Assistance Home and Community-Based Services waivers. The state plan covers a specified level of PCA services, while Medical Assistance Home and Community-Based waivers can pay for services that exceed the amount available through the Medical Assistance state plan. The Medical Assistance Home and

¹⁴ *Minnesota Statutes* 2019, 256B.0659, subds. 12(a), 19(c), and 24.

Community-Based waivers paid for only a small portion—2 percent—of PCA expenditures in fiscal years 2015 through 2018.¹⁵

Within the Medical Assistance state plan program, DHS paid for about two-thirds of PCA in fiscal years 2015 through 2018 through fee-for-service payments. In Fiscal Year 2018, \$628 million of the \$994 million Minnesota spent on Medical Assistance state plan PCA was paid for on a fee-for-service basis. This evaluation focused primarily on PCA provided through the fee-for-service Medical Assistance state plan, as this funding model served the largest number of recipients and received the highest level of funding.

Oversight

Program integrity is an important issue in PCA, both to ensure that PCA recipients are safe from harm and receiving appropriate services, and to protect state and federal resources. Because PCA is often provided in recipients' homes without direct supervision, it is a program that various government agencies have identified as having a high risk for fraud or abuse. To mitigate that risk, certain government agencies have responsibilities for overseeing PCA.

Both federal and state agencies have oversight responsibilities for the personal care assistance program.

As previously noted, most PCA is provided through Minnesota's Medicaid program, Medical Assistance. Medicaid benefits, including PCA, are administered by states through an approved Medicaid state plan and waivers. The U.S. Department of Health and Human Services' (HHS) Centers for Medicare and Medicaid Services (CMS) is the federal agency responsible for overseeing states' Medicaid plans. CMS approves changes to state plans and issues regulations and guidance to assist states in following federal law, among other responsibilities. In addition, the HHS Office of the Inspector General conducts audits, investigations, and inspections of health and human services programs, including PCA. That office also provides recommendations intended to strengthen program integrity and protect recipients.

DHS is designated as Minnesota's Medicaid administrator and has numerous oversight responsibilities articulated in state and federal law, briefly outlined below. Another entity, the Minnesota Office of the Attorney General's Medicaid Fraud Control Unit, prosecutes PCA agency owners and personal care assistants for fraudulent activity.

¹⁵ The remaining 1 percent of PCA was paid for by other publicly funded health care programs, including the Alternative Care Medicaid Waiver Demonstration Program and MinnesotaCare. While Medical Assistance Home and Community-Based Services waivers paid for a small percentage of PCA expenditures in Fiscal Year 2018, about 41 percent of the individuals who received PCA through the Medical Assistance state plan that year were waiver recipients. If these individuals were determined to need more PCA services than the Medical Assistance state plan covered, their services that exceeded the state plan limit were paid for by their Medical Assistance Home and Community-Based Services waiver.

DHS is required to oversee the personal care assistance program through several processes.

Federal and state laws establish oversight processes intended to prevent, deter, and detect fraud and abuse in PCA, and DHS is responsible for carrying out most of those processes. For example, DHS is responsible for developing standard assessment forms for determining individuals' need for PCA.¹⁶ The department also must enroll both PCA agencies and personal care assistants.¹⁷

DHS oversight responsibilities include:

- Developing PCA assessment tools
- Enrolling PCA providers
- Conducting quality assurance activities
- Paying claims
- Conducting investigations

DHS is a large agency, and its PCA oversight duties are spread across numerous divisions and work units. We describe DHS's oversight responsibilities related to PCA assessments, provider enrollment, and provider investigations in greater detail in the remainder of this report.

Legislative Changes

In response to legislative concerns, the Legislative Audit Commission directed OLA to evaluate PCA administration in 2008. In 2009, OLA released a report in which it concluded that PCA was unacceptably vulnerable to fraud and abuse.¹⁸

DHS and the Legislature made numerous changes in an effort to strengthen personal care assistance program integrity following a 2009 Office of the Legislative Auditor report.

The Legislature made several changes to the laws governing PCA that corresponded to recommendations in OLA's 2009 report. For example, OLA recommended the Legislature require that qualified professionals periodically supervise PCA provided through the Medical Assistance state plan.¹⁹ In addition, OLA recommended the Legislature require all agencies providing PCA to obtain background studies on their qualified professionals.²⁰ The 2009 Legislature enacted both of these requirements.²¹

DHS also made numerous changes, both in response to OLA recommendations and legislative changes. For example, OLA recommended that DHS define topics on which

¹⁶ *Minnesota Statutes* 2019, 256B.0659, subd. 3a(a).

¹⁷ *Minnesota Statutes* 2019, 256B.04, subd. 21(a); and 256B.0659, subds. 11(a)(3) and 24(1).

¹⁸ Office of the Legislative Auditor, Program Evaluation Division, *Personal Care Assistance* (St. Paul, 2009), 43.

¹⁹ *Ibid.*, 70.

²⁰ *Ibid.*, 79.

²¹ *Laws of Minnesota* 2009, chapter 79, art. 8, sec. 31, codified as *Minnesota Statutes* 2019, 256B.0659, subds. 13 and 25.

personal care assistants should receive training.²² The 2009 Legislature defined the topics for the personal care assistants' training in law, and DHS developed standard training all personal care assistants must complete.²³ We provide additional information about changes made in response to OLA's 2009 recommendations in Appendix A and throughout this report.

In 2013, the Legislature established a new program that will replace the PCA program.²⁴ Community First Services and Supports (CFSS) is intended to provide recipients with greater flexibility and choice in how they use personal care services. While PCA and CFSS share many characteristics, CFSS is different from PCA in numerous ways. We discuss CFSS in more detail in Chapter 5.

²² Office of the Legislative Auditor, Program Evaluation Division, *Personal Care Assistance* (St. Paul, 2009), 87.

²³ *Laws of Minnesota* 2009, chapter 79, art. 8, sec. 31, codified as *Minnesota Statutes* 2019, 256B.0659, subd. 11(a)(8).

²⁴ *Laws of Minnesota* 2013, chapter 108, art. 7, sec. 49, codified as *Minnesota Statutes* 2019, 256B.85.

Chapter 2: Assessments

Assessments determine an individual's need and eligibility for personal care assistance (PCA).¹ By law, they must include a review of an individual's health needs, a determination of need for PCA, and identification of appropriate services, among other things.² Assessments are also an important tool for protecting PCA program integrity. They are a mechanism through which individuals can advocate for the supports they need to live independently in their home and community. Assessments also provide an opportunity for medical or social work professionals to speak with recipients, observe their condition, and ensure they have access to needed support. Simultaneously, they provide assessors the opportunity to direct individuals that do not qualify for PCA to more appropriate services.

In this chapter, we describe the assessment process, the assessment tools currently used to identify individuals' need for PCA, and the guidance and training the Department of Human Services (DHS) has provided to assessors. We also discuss the consistency and accuracy of assessments and explain the process for appealing assessment results. Based on our review, we make recommendations for DHS to improve its oversight of the PCA assessment process.

Key Findings in This Chapter

- DHS allows the use of two different assessment tools to identify individuals' need and determine eligibility for personal care assistance.
- DHS has not evaluated whether the use of two tools produces systematically different results, and some assessors expressed concern about differences.
- MnCHOICES, one of the assessment tools, standardizes certain assessment processes but can still lead to inconsistent results.
- DHS has established guidance documents and standard training for MnCHOICES assessors, but many assessors indicated there is room for improvement.

Assessment Process

Individuals who believe they may benefit from PCA, or their responsible party, may request a PCA assessment from their lead agency. Lead agencies include counties, county alliances, or tribal governments that administer assessment and support planning services for PCA.³ Unlike PCA agencies, lead agencies are not involved in the provision of PCA.

¹ Throughout the report, when we reference PCA, we are referring to publicly funded services. In this chapter, we focused on PCA provided through the Medical Assistance fee-for-service state plan.

² *Minnesota Statutes* 2019, 256B.0659, subd. 3a(a); and 256B.9011, subds. 2b(a) and 3a(c).

³ The term "lead agency" can also refer to managed care organizations. However, this chapter focuses on the assessment process for PCA provided through the Medical Assistance fee-for-service state plan.



Assessor: An individual who arranges for and completes an assessment for PCA, authorizes assessment results, and provides required documentation to appropriate entities.

Lead agency: An entity that administers assessments for PCA, including a county, county alliance, or tribal government.

Responsible party: An individual who can provide the support necessary to assist a recipient to live in the community and direct a recipient's care when the recipient is unable to do so on their own. Their responsibilities include monitoring the PCA services provided and reviewing and signing time sheets.

By law, lead agencies must send an assessor to conduct an assessment within a specified timeframe.⁴ Assessors typically conduct the assessment in an individual's residence, the location where services will be provided, or a health care facility when the individual is planning to move from a facility to a home setting. During an assessment, an assessor asks the individual a series of questions. Based on the individual's responses, the assessor identifies (1) whether an individual is able to direct their own care, or needs a responsible party to do so on their behalf; and (2) whether the individual needs PCA. After completing the assessment, the lead agency assessor enters the results into the state's Medicaid data system and authorizes services when applicable.

DHS sends the individual a letter to notify them of any services authorized. The letter states how much PCA time an individual may receive based on the needs identified by the assessor during the assessment and statutory guidance. Lead agencies must reassess individuals' need and eligibility for PCA every 12 months.⁵

Assessors must also develop a service plan.⁶ The service plan summarizes the assessment results, describes the services needed by the individual, and identifies the expected goals of these services. For example, an assessor may record that the individual has a goal to live more independently or obtain employment. The lead agency assessor must provide a copy of the service plan to the individual or responsible party within a specified timeframe of the assessment.⁷

DHS allows lead agencies to use two different assessment tools to identify need and determine eligibility for personal care assistance.

Lead agencies may use a paper-based assessment tool commonly referred to as the "legacy" PCA assessment or the Web-based MnCHOICES assessment tool.⁸

State law contains different requirements for the two assessment tools, as shown in Exhibit 2.1. For example, while MnCHOICES assessors must complete DHS's training

⁴ The timeframe to complete an assessment is different for the different assessment tools (*Minnesota Statutes* 2019, 256B.0659, subd. 3a(a); and 256B.0911, subd. 3a(a)). We describe the two types of assessment tools later in the chapter.

⁵ *Minnesota Statutes* 2019, 256B.0659, subd. 3a(a); and 256B.0911, subd. 3f(a).

⁶ Assessors develop a service plan or a community support plan, depending on which assessment tool they use (*Minnesota Statutes* 2019, 256B.0659, subd. 6; and 256B.0911, subd. 2b(a)(4)). We explain the different assessment tools in the following section. The service plan must be developed in consultation with the individual or responsible party.

⁷ The timeframe to provide either the service plan or the community support plan is different for the different assessment tools (*Minnesota Statutes* 2019, 256B.0659, subd. 6; and 256B.0911, subd. 3a(e)).

⁸ When we refer to the "legacy" PCA assessment, we are referring to the Personal Care Assistance Assessment and Service Plan, form DHS-3244.

and become certified, legacy assessors are not required to complete DHS training.⁹ In addition, assessors who use the legacy PCA assessment tool must be a public health nurse or a MnCHOICES certified assessor; an assessor who uses MnCHOICES can have a degree in social work, nursing, or a closely related field with a specified level of relevant experience.¹⁰

Exhibit 2.1: State law contains different requirements for the two assessment tools used to determine eligibility for personal care assistance.

Legacy PCA assessments must be:	MnCHOICES assessments must be:
<ul style="list-style-type: none"> • Completed by a public health nurse or a certified MnCHOICES assessor. • Completed within 30 days of a request for services. • An assessment for only PCA. • Completed face-to-face for initial assessments, when there is a significant change in condition, when there is a change in need for PCA, or at least every three years. Service updates, which may be completed by telephone, may substitute for annual reassessments under specific circumstances. • Used to develop a service plan within ten working days from the time of the assessment. 	<ul style="list-style-type: none"> • Completed by an individual that completed the DHS training and certification process. • Completed by an individual who, at minimum, (1) has a bachelor's degree in social work, (2) has a bachelor's degree in nursing with a public health nursing certificate, (3) has a bachelor's degree in a closely related field with at least one year of home and community-based experience; or (4) is a registered nurse with at least two years of home and community-based experience. • Conducted within 20 calendar days of a request. • Used to assess a broad range of needs to support community-based living through several programs. • Completed face-to-face for all assessments and reassessments. • Used with best practices, including person-centered planning principles. • Completed by a member of a lead agency's team of certified assessors, which must include a social worker and either a public health nurse or a registered nurse. • Used to develop a community support plan that is provided to an individual within 60 calendar days of the assessment visit.

NOTES: "PCA" refers to personal care assistance. Requirements listed are only those that pertain to the assessment tools.

SOURCE: *Minnesota Statutes* 2019, 256B.0659, subds. 3a and 6; and 256B.0911, subds. 2b, 2c, 3, 3a, and 3f.

⁹ *Minnesota Statutes* 2019, 256B.0911, subd. 2c.

¹⁰ *Minnesota Statutes* 2019, 256B.0659, subd. 3a(a); and 256B.0911, subd. 2b(b). The 2019 Legislature passed a law allowing MnCHOICES certified assessors to conduct PCA assessments using the legacy PCA assessment tool (*Laws of Minnesota* 2019, First Special Session, chapter 9, art. 5, sec. 35, codified as *Minnesota Statutes* 2019, 256B.0659, subd. 3a(a)). Previously, legacy PCA assessments could only be conducted by public health nurses.

Legacy Personal Care Assistance Assessment

As noted in Chapter 1, the Office of the Legislative Auditor (OLA) completed an evaluation of PCA in 2009. In that evaluation, we found a lack of controls to ensure reasonably consistent assessments of individuals' needs for PCA.¹¹ The 2009 Legislature passed a law that modified aspects of the PCA assessment and service authorization processes.¹² As part of the reform, DHS developed the legacy PCA assessment tool.

The legacy PCA assessment tool was designed specifically to assess individuals' need for PCA. It includes questions with "Yes/No" answer options to record an individual's need for a specified level of assistance with an activity. The tool primarily uses open-ended comment sections to capture information about each individual's unique situation, as shown in Exhibit 2.2. For example, an assessor might ask an individual to describe their process for getting dressed and record the response in the blank space in the assessment tool. Based on the individual's response, the assessor determines if the individual has a dependency (needs a specified level of assistance) in the activity of dressing and chooses "Yes" or "No." The assessor also indicates whether the information recorded in the assessment is self-reported by the individual or observed by the assessor. The assessor calculates how much PCA time the individual is eligible to receive, based on the number and types of activities and behaviors for which they qualify to receive assistance and statutory guidance.¹³

MnCHOICES

In addition to modifying the PCA assessment and service authorization processes, the 2009 Legislature required DHS to include PCA in a broader assessment of individuals' needs for long-term supports and services.¹⁴ DHS developed the MnCHOICES tool to complete these assessments of long-term needs. MnCHOICES not only assesses an individual's eligibility for PCA services, it also assesses their eligibility for multiple programs, including PCA and Medical Assistance Home and Community-Based Services waivers. In the past, individuals received separate assessments for different types of services or waivers. Now, during the MnCHOICES assessment, individuals are assessed concurrently to determine eligibility and support planning across multiple programs. MnCHOICES is a Web-based assessment tool which will replace the legacy PCA assessment tool. MnCHOICES is intended to provide more consistency in eligibility determinations by using a computer program to determine (1) individuals' eligibility for PCA and (2) the amount of PCA individuals are eligible to receive. MnCHOICES is also intended to promote equal access to services, eliminating the need to request separate assessments for different programs.

¹¹ Office of the Legislative Auditor, Program Evaluation Division, *Personal Care Assistance* (St. Paul, 2009), 31.

¹² *Laws of Minnesota* 2009, chapter 79, art. 8, secs. 20, 21, 23, 24, 27, 28, and 31.

¹³ *Minnesota Statutes* 2019, 256B.0652, subd. 6.

¹⁴ *Laws of Minnesota* 2009, chapter 79, art. 8, sec. 37. The 2009 Legislature required PCA to be included in this broader assessment by January 1, 2011. Subsequent legislative action removed a specific implementation date. *Laws of Minnesota* 2012, chapter 216, art. 11, sec. 11, codified as *Minnesota Statutes* 2019, 256B.0911, subd. 3a(a).

Exhibit 2.2: The legacy personal care assistance assessment tool includes open-ended comment sections to describe an individual's need for personal care assistance.

7. Activities of Daily Living — Dependency in an ADL means a person requires assistance to begin and complete the activity and has a need on a daily basis or needs on the days during the week the activity is completed for:

1. Cuing **and** constant supervision to complete the task **or**
2. Hands-on assistance to complete the task.

NOTE: When typing text in the box, watch to keep the text within the size of the box. When additional text is needed, continue the text in the comment space at the end of this section. Be sure to identify the text with the ADLs.

O=Observed R=Reported

Activity	Y	N	Description of assistance needed	O	R
Dressing	<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>

General Comments

Please provide additional details, observations and explanations regarding any change since the previous assessment. Focus on health status, dependencies, denial, reduction or termination of services.

NOTE: The image contains all questions in the legacy personal care assistance assessment tool for determining a need for assistance with dressing.

SOURCE: Department of Human Services, form DHS-3244-ENG, *Personal Care Assistance Assessment and Service Plan*, February 2014.

MnCHOICES prompts assessors to ask individuals questions in more than a dozen different categories. Questions in MnCHOICES are generally close-ended, as shown in the example in Exhibit 2.3. Assessors select one of the answer options provided in MnCHOICES based on individuals' responses and their own professional judgment. As Exhibit 2.3 shows, there are more questions in MnCHOICES than in the legacy PCA assessment tool, with additional questions appearing if the assessor selects certain answers.

Exhibit 2.3: The MnCHOICES assessment tool contains mostly close-ended questions to determine a need for personal care assistance.**Assessment Domains****Dressing**

Does the person have any difficulties with dressing or require support or assistance during dressing?

- ☐ No
- ☐ Yes
- ☐ Sometimes
- ☐ Chose not to answer

If 'Yes' or 'Sometimes' was selected, the following questions will be displayed:

Cuing and Supervision

- ☐ None
- ☐ To initiate the task
- ☐ Intermittently during the task
- ☐ Constantly throughout the task

Physical Assistance

- ☐ None
- ☐ Setup/Prep
- ☐ Limited
- ☐ Extensive/Total Dependence

(Displays only if 'Extensive/Total Dependence' is checked above)

Does the physical assistance constitute significantly increased direct hands-on assistance and interventions?

- ☐ No
- ☐ Yes

Does the person need assistance on a daily basis or on days during the week when the activity is completed?

- ☐ No
- ☐ Yes

NOTE: The image contains only 5 of 12 potential questions in the MnCHOICES assessment tool for determining a need for support with dressing.

SOURCE: Department of Human Services, MnCHOICES Assessment, *Activities of Daily Living*, 12, updated June 12, 2017.

DHS launched MnCHOICES in November 2013. After testing the tool with select counties, the department made MnCHOICES available to all county, county alliance, and tribal government lead agencies over the next 13 months. Lead agencies that used MnCHOICES provided DHS with feedback, and DHS is currently in the process of incorporating lead agencies' feedback into a second version of MnCHOICES. The department has not established a firm launch date for the revised MnCHOICES tool.

More than six years have passed since DHS launched MnCHOICES, yet the department does not require lead agencies to use that assessment tool for all personal care assistance assessments.

While DHS officials told us that they generally require lead agencies to use MnCHOICES for *initial* PCA assessments, they also told us that DHS leadership determined that there are exceptions to this requirement. For example, department officials said they allowed lead agencies to use the legacy PCA assessment tool to assess individuals switching from receiving PCA through managed care organizations to fee-for-service in 2019 because some lead agencies were experiencing issues with staffing.

DHS allows lead agencies to determine whether they will conduct *reassessments* for PCA with MnCHOICES or the legacy PCA assessment tool. In addition, the PCA Program Manual states that assessors should use the legacy PCA assessment tool to document service updates.¹⁵ A DHS official told us that the department currently has no mechanisms in place to enforce the use of MnCHOICES for initial assessments or reassessments for PCA.

Additionally, DHS does not track whether PCA assessments are completed with MnCHOICES or the legacy PCA assessment tool. DHS officials told us they asked lead agencies to self-report progress toward full implementation of MnCHOICES at one point, but the department did not have current data on the number of PCA assessments completed with each type of assessment tool when we requested it.

A DHS official told us the department has postponed requiring all PCA assessments to be completed using MnCHOICES for several reasons. State law directs DHS to work with lead agencies to modify the MnCHOICES tool and assessment policies to create efficiencies.¹⁶ A DHS official told us DHS has extended the implementation timeline for MnCHOICES, in part, to meet this requirement to create efficiencies. In addition, the same DHS official noted that some lead agencies have struggled to secure an adequate number of certified assessors.

¹⁵ Minnesota Department of Human Services, Personal Care Assistance Manual, *Eligibility, Assessment: Assessment for PCA Services*, updated July 9, 2018, https://www.dhs.state.mn.us/main/idcplg?IdcService=GET_DYNAMIC_CONVERSION&RevisionSelectionMethod=LatestReleased&dDocName=PCA_01, accessed June 18, 2019. Service updates may be done in place of reassessments if (1) an individual's need for PCA has not changed, (2) an individual's condition has not significantly changed, and (3) the individual does not participate in the PCA Choice service option. Service updates may substitute for two consecutive reassessments if followed by a face-to-face reassessment. Unlike reassessments, which must occur in person, service updates may be completed by telephone. During a service update, assessors must review an individual's baseline data; evaluate the effectiveness of services; redetermine service need; provide consumer education; and modify the service authorization, service plan, appropriate referrals, and initial forms (*Minnesota Statutes* 2019, 256B.0659, subds. 3a(a) and 19(a)(6)).

¹⁶ *Minnesota Statutes* 2019, 256B.0911, subd. 5(b).

DHS officials also told us the department does not plan to require lead agencies to use MnCHOICES for all PCA assessments until the revised MnCHOICES tool rolls out; one official told us DHS expects lead agencies to complete all PCA assessments with MnCHOICES approximately six months after the launch of the revised MnCHOICES tool. Although DHS originally planned to roll out the revised MnCHOICES tool in the second half of 2019, DHS has pushed the launch date for the revised MnCHOICES tool back by at least two years.

DHS has not evaluated whether MnCHOICES and the legacy personal care assistance assessment tools produce systematically different results for personal care assistance; however, some assessors expressed concern about differences.

One DHS official told us that the legacy PCA assessment tool and the MnCHOICES tool use the same eligibility criteria, so it should not matter which assessment a recipient receives; the results should be the same. A DHS official also told us that they have not heard of systematic differences between the two types of assessments.

However, the two assessment tools are different, and they can be completed by individuals with different professional backgrounds and training. Numerous assessors, advocates, and others told us that they believe the two assessment tools produce different results. We surveyed all certified MnCHOICES assessors as of July 2019 and asked them about the MnCHOICES assessment tool and DHS's oversight of the PCA assessment process.¹⁷



I am more concerned about assessors using the legacy tool and the variation that creates than those only using MnCHOICES. I think the use of two different tools which create significantly different outcomes of the same person is just unfair to the people receiving the assessment. If you happen to get a legacy assessment you are likely to get more PCA. If you get a MnCHOICES you're likely to get less. In my experience it seems that the MnCHOICES assessment results in [a] more accurate assignment of hours while the legacy tends to be heavy on the hours approved.

— MnCHOICES assessor

In our survey, we asked certified MnCHOICES assessors what, in their experience, have generally been the results when they assessed individuals' eligibility for PCA with MnCHOICES after the individuals were assessed using the legacy PCA assessment tool. More than 40 percent of respondents indicated that individuals generally were eligible for *less* PCA time after being assessed with MnCHOICES. Less than one quarter of respondents indicated that individuals generally were eligible for the same amount of PCA time after being assessed with MnCHOICES; more than one-quarter of respondents indicated that they did not know.¹⁸ Among the reasons provided for differences in

¹⁷ We contacted lead agencies (counties, county alliances, and tribal governments) and asked them to provide a complete list of certified MnCHOICES assessors, as of July 2019, in their jurisdiction. We received responses from 1,047 of the 1,404 assessors (75 percent) we were able to contact. We received at least one response from a certified MnCHOICES assessor from 83 counties and all five county alliances, representing all 87 counties. We also received at least one response from three of four tribal governments that we surveyed.

¹⁸ The remaining respondents indicated that individuals generally were eligible for more PCA time after being assessed with MnCHOICES.

assessment results was that the legacy PCA assessment tool allows for more subjectivity than MnCHOICES. For example, as one assessor shared,

Having used the legacy PCA assessment in the past and now using the MnCHOICES assessment I have found that with the Legacy it was much easier to manipulate the total approved hours based on the assessor's opinion of what the person may need. While there is still room for interpretation in the MnCHOICES assessment it is a much more standard way to determine PCA hours....

We interviewed eight assessors from two counties and individuals from advocacy and provider organizations. Five of the assessors told us that the legacy PCA assessment tool is subjective and it is easy to increase PCA service time when using the tool. These five assessors also mentioned that the legacy PCA assessment tool often gives the individual being assessed more PCA time than MnCHOICES. Several individuals from different advocacy and provider organizations also told us that legacy PCA assessments typically provide recipients more hours than MnCHOICES.

RECOMMENDATION

DHS should establish a firm timeline for requiring assessors to use the MnCHOICES assessment tool for all personal care assistance assessments.

DHS has allowed the use of two separate assessment tools to determine PCA eligibility for more than six years without studying potential systematic differences in the results of these assessments. We understand that DHS has encountered difficulties in the implementation of MnCHOICES and that the transition has been difficult for lead agencies. But, the use of two tools may lead to unequal access to PCA for recipients who are assessed using one tool rather than the other. It is important to have reasonably consistent PCA assessment results throughout Minnesota so that individuals have equal access to PCA.

We acknowledge that some members of the public have concerns about MnCHOICES, and we express concerns as well in the following section of this report. The Legislature could determine that MnCHOICES is unworkable and direct DHS to develop a different system. However, no assessment process will be perfect. Each individual being assessed for PCA has unique needs and each individual conducting an assessment has a unique background that influences their professional judgment.

While not perfect, we believe DHS can mitigate many concerns about the MnCHOICES tool by continuing to engage in a process of ongoing improvement. DHS has already taken steps to improve MnCHOICES and continues to do so with the forthcoming revised MnCHOICES tool. For instance, DHS solicited feedback on the assessment process from hundreds of assessors during regional meetings in 2016. Through that process, the department identified changes necessary for the current version of MnCHOICES and changes to make in the revised MnCHOICES tool. As an example of those changes, DHS reported that it has reduced the number of required questions in MnCHOICES and reorganized the assessment to reduce the time required to complete assessment interviews. We believe that continuing to improve upon the MnCHOICES tool is a better use of resources than the alternatives.

MnCHOICES Assessment Integrity

In this section, we discuss the guidance DHS provides to lead agencies and MnCHOICES assessors, as well as the training the department provides to MnCHOICES assessors. We also discuss the consistency and accuracy of the MnCHOICES assessment tool. We focus on MnCHOICES because the Legislature mandated that MnCHOICES be used for all PCA assessments in the future, and DHS has committed significant resources to creating and revising the tool.¹⁹

DHS Guidance to Lead Agencies

DHS and lead agencies share legal responsibility for the assessment process. For example, DHS is responsible for creating the assessment form, and lead agencies are responsible for using the form to conduct an assessment to determine individuals' need and eligibility for PCA. Lead agencies must also develop a community support plan, as shown below.

Lead agencies must:	DHS must:
<ul style="list-style-type: none"> • Use certified assessors who completed DHS training to assess individuals for health concerns and support needs, among other things. Certified assessors must use person-centered planning principles to fulfill responsibilities listed in law. • Visit individuals within 20 calendar days after an assessment was requested. • Maintain sufficient numbers of certified assessors. • Use a team of certified assessors to provide input upon request when assessing individuals. • Develop a community support plan within 60 calendar days of the assessment. • Provide a copy of the community support plan to the individual or responsible party. • Provide materials and forms regarding the individual's service options and appeal rights, among other things, to the individual. • Determine level of care and eligibility for PCA. <p>— <i>Minnesota Statutes 2019, 256B.0911, subs. 2b(a), 2c, 3(b), and 3a(a), (e), and (j).</i></p>	<ul style="list-style-type: none"> • Provide training and a certification process for MnCHOICES assessors. • Establish timelines to provide an individual or individual's legal representative a written community support plan. • Allow arrangements and make recommendations that encourage counties and tribes to collaborate to establish joint teams of certified assessors. • Provide an assessment form. • Supply materials and forms regarding an individual's service options and appeal rights, among other things, to the lead agency. • Develop mechanisms for providers to share information with the assessor to facilitate reassessments and support planning tailored to a person's needs and preferences. • Streamline the assessment process and modify the MnCHOICES tool to create efficiencies. <p>— <i>Minnesota Statutes 2019, 256B.0911, subs. 2c, 3(c), 3a(c), (e), and (j), 3f(b), and 5.</i></p>

DHS provides direction to lead agencies about conducting assessments for personal care assistance.

One way in which DHS provides lead agencies with direction on their MnCHOICES assessment responsibilities is through an assurance agreement. Lead agencies must sign

¹⁹ *Minnesota Statutes 2019, 256B.0911, subd. 3a(a) and (c).*

the agreement, which outlines DHS's basic performance expectations for the implementation and administration of MnCHOICES. For example, the assurance agreement states that lead agencies must maintain an adequate number of certified assessors to complete assessments within required timelines. The assurance agreement does not specify administrative sanctions DHS could impose for lead agencies' noncompliance.

Additionally, DHS provides guidance to lead agencies through policy manuals. Lead agencies may access these manuals to review legal requirements and department policies and procedures. These manuals also provide a platform for DHS to communicate expectations and responsibilities. We reviewed these manuals and the MnCHOICES assurance agreement and determined that DHS's guidance generally included lead agencies' legal responsibilities.

Assessor Guidance and Training

As we noted previously, statutes require DHS to develop a training and certification process for MnCHOICES assessors.²⁰

DHS has established guidance documents and standard training for MnCHOICES assessors, but many assessors indicated there is room for improvement.

Guidance

In addition to formal training, DHS provides guidance to assessors through websites, policy manuals, and designated mentors in each lead agency, among other resources. For example, DHS operates a website through which lead agency staff can submit questions about assessments or PCA. DHS staff answer these questions and make the questions and answers available for others to reference. In addition, DHS encourages each lead agency to designate mentors to offer guidance to other certified assessors. Mentors also act as liaisons between the agency and DHS to raise concerns or questions. DHS staff said they use these resources to help ensure assessors are assessing individuals according to the same standards or rules.

UPDATE TO 2009 REPORT

In OLA's 2009 report, *Personal Care Assistance*, we reported that DHS had insufficient guidance and training for PCA assessors.

DHS has established guidance documents, and the Legislature mandated standard training for MnCHOICES assessors.

— *Minnesota Statutes 2019*,
256B.0911, subd. 2c.

²⁰ *Minnesota Statutes 2019*, 256B.0911, subd. 2c.

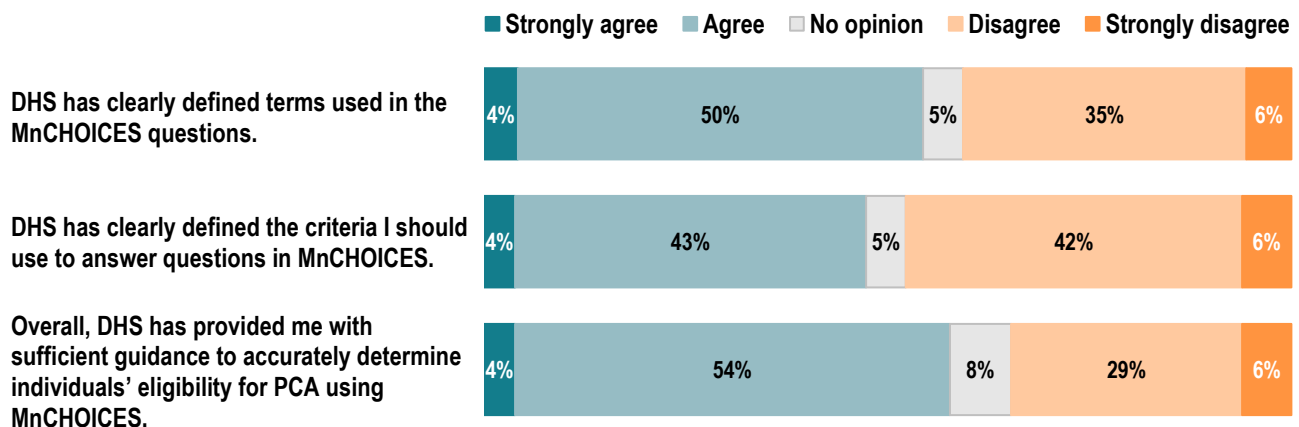
Although DHS has made efforts to provide assessors with guidance on how to use the MnCHOICES assessment tool to determine eligibility, a number of assessors we surveyed and spoke with indicated it was insufficient. For example, in our survey of MnCHOICES assessors, we asked if they received sufficient guidance from DHS to accurately determine individuals' eligibility for PCA. While 58 percent of assessors who responded to our survey indicated they agreed or strongly agreed that DHS provided sufficient guidance to accurately determine eligibility, 35 percent of respondents disagreed or strongly disagreed. In addition, as shown in Exhibit 2.4, only about half of assessors who responded to our survey indicated that DHS clearly defined other aspects of the MnCHOICES tool.



When assessing for PCA, using the [MnCHOICES] tool, we have received different instructions from DHS. Different supervisors instruct differently based on the incongruous answers they have each received from DHS at various times. We would benefit from some instructions in writing added to the tool....

— MnCHOICES assessor

Exhibit 2.4: About half of assessors who responded to our survey said that DHS has clearly defined certain aspects of the MnCHOICES tool.



NOTES: We contacted lead agencies (counties, county alliances, and tribal governments) and asked them to provide a complete list of certified MnCHOICES assessors in their jurisdiction as of July 2019. We received responses from 1,047 of the 1,404 assessors (75 percent) we were able to contact. We received at least one response from a certified MnCHOICES assessor from 83 counties and all five county alliances, representing all 87 counties. We also received at least one response from three of four tribal governments that we surveyed. For these survey questions, $N = 934$, 934 , and 936 , respectively. In some cases, the percentages in the charts do not sum to 100 percent due to rounding. "PCA" refers to personal care assistance.

SOURCE: Office of the Legislative Auditor, survey of certified MnCHOICES assessors.

One common theme we heard from assessors we interviewed and surveyed was that they need more guidance to better understand how they should answer the questions in the MnCHOICES tool. One assessor noted that without more guidance or standards, assessors may select different responses to MnCHOICES questions, which could result in a different outcome for the same PCA recipient. They said this is particularly true if different assessors reassess the PCA recipient each year. The assessor said that differences in assessment results year to year can be difficult for families because the amount of PCA time could vary.



Too much room for professional opinion - the answer options should be clearly defined.

— MnCHOICES assessor

It would be extremely helpful if MnCHOICES had definitions built into the assessment that the assessor could click on to read what is meant by terms such as “limited assistance,” “constant supervision” vs “intermittent supervision,” etc., and the whole behavior section could use some definitions and better explaining.

— MnCHOICES assessor

Six of the eight assessors we interviewed indicated that DHS does not provide sufficient guidance on how to interpret and answer questions in MnCHOICES. For example, the MnCHOICES assessment tool prompts assessors to answer questions about individuals’ need for assistance with certain activities as “limited,” “extensive,” “intermittently during the task” or “constantly throughout the task,” among other answer options. Two of the assessors we interviewed said that there were no clear definitions for these terms. Another assessor said these categories are problematic because some people fall in between them.

Training

State law requires assessors to complete a standard MnCHOICES training curriculum created by DHS.²¹ The training is not specific to PCA, but rather focuses on using person-centered approaches and interview techniques to allow an individual to explain their needs. DHS’s Disability Services Division developed training that includes interactive Web-based training sessions and learning modules to provide information needed to conduct assessments. Lead agencies are responsible for ensuring that assessors complete DHS’s training. At the end of the training, assessors must complete a practice assessment in MnCHOICES using a story about a fictitious person. In the final step for certification, assessors must pass a test with at least 80 percent proficiency.

Each certified assessor must complete continued learning units and become recertified every three years.²² State law requires lead agencies to ensure that certified assessors renew their certification and that agencies have sufficient numbers of certified assessors to provide assessments and support planning.²³

In our survey, we asked certified MnCHOICES assessors to describe the quality of the training they received from DHS to accurately complete assessments using MnCHOICES.

²¹ *Minnesota Statutes* 2019, 256B.0911, subds. 2b(a) and 2c.

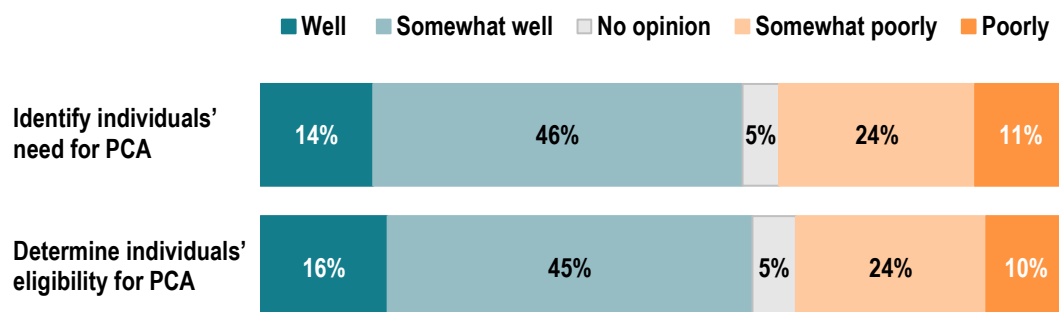
²² *Ibid.*

²³ *Ibid.*

Only about 40 percent of assessors responded that the training was “good” or “very good.” We also asked certified MnCHOICES assessors to rate how well the training they received from DHS prepared them to accurately identify individuals’ need for PCA and determine individuals’ eligibility. Most assessors who responded to our survey indicated that DHS’s training prepared them at least somewhat well to accurately identify need and determine eligibility for PCA, as shown in Exhibit 2.5.

Exhibit 2.5: Most assessors who responded to our survey indicated that DHS’s training prepared them at least somewhat well to accurately identify need and determine eligibility for personal care assistance.

Rate how well you were prepared from DHS's training to accurately:



NOTES: We contacted lead agencies (counties, county alliances, and tribal governments) and asked them to provide a complete list of currently certified MnCHOICES assessors in their jurisdiction as of July 2019. We received responses from 1,047 of the 1,404 assessors (75 percent) we were able to contact. We received at least one response from a certified MnCHOICES assessor from 83 counties and all five county alliances, representing all 87 counties. We also received at least one response from three of four tribal governments that we surveyed. For these survey questions, $N = 945$ and 944 , respectively. “PCA” refers to personal care assistance.

SOURCE: Office of the Legislative Auditor, survey of certified MnCHOICES assessors.



I am not a nurse. Nurses may have additional knowledge relating to medical conditions and understand terminology that I may not understand. I may not ask the same questions as someone with a medical background. I may miss medical complications that could affect a PCA determination.

— MnCHOICES assessor

MnCHOICES assessors we spoke with and surveyed offered a variety of suggestions on how DHS could improve its training. For example, a few assessors we surveyed shared a desire to receive some training on medical conditions prior to conducting assessments for PCA services. This type of training is not currently part of MnCHOICES training. Two assessors we interviewed said that without advanced medical knowledge, especially when assessing an individual with complex health needs, it is difficult to assess the individual. One assessor we surveyed said, “DHS provided little information about Complex Health needs. It would be beneficial for the medical terms to be defined and explained [in an] in person training and/or a guide....”

Some assessors we surveyed noted that the mandatory training does not cover eligibility criteria well for PCA services or the PCA program in general. One assessor wrote, “More training would be helpful, especially for new assessors, in what the different levels of assistance means for [activities of daily living] and what qualifies a person for additional time.”

RECOMMENDATION

DHS should regularly consult with assessors to improve its MnCHOICES training program, including guidance available to assessors, and make timely use of the feedback.

DHS reports that it has requested feedback from assessors and begun incorporating more guidance and definitions into the revised MnCHOICES tool. However, as we noted previously, a DHS official said the department has delayed the roll-out of the revised MnCHOICES tool for at least two years. Until that time, assessors may be left with unanswered questions and recipients may be receiving inconsistent assessment results based on assessors’ varying interpretations of questions and answers. DHS should improve efforts to provide increased guidance in a timely way.

DHS has developed a training and certification process for MnCHOICES assessors but does not require that all personal care assistance assessments be completed by certified assessors.

DHS’s training and certification process has the potential to help standardize assessors’ use of MnCHOICES and improve the consistency of assessment results.

However, DHS’s efforts to provide standardized training are weakened by its use of two assessments—one of which can be completed by assessors that may not have received standard training.

Assessors who use the legacy PCA assessment tool are not required to complete standard training or to become certified. MnCHOICES assessors can have different professional backgrounds than legacy assessors and are trained to use the MnCHOICES tool. However, the 2019 Legislature passed a law allowing certified MnCHOICES assessors to also complete PCA assessments using the legacy PCA assessment tool.²⁴ As we noted previously, there are differences between the two tools, and this change could create variation in results. As we recommended earlier, DHS should set a firm timeline for requiring the use of MnCHOICES for all PCA assessments to reduce the possibility for variation in eligibility determinations.

UPDATE TO 2009 REPORT

In OLA’s 2009 report, *Personal Care Assistance*, we recommended that the Legislature require DHS to implement mandatory training requirements for persons conducting assessments of individuals’ need for PCA.

Statutes require all MnCHOICES assessors to complete training.

—*Minnesota Statutes 2019, 256B.0911, subd. 2b(a).*

²⁴ *Laws of Minnesota 2019, First Special Session, chapter 9, art. 5, sec. 35, codified as Minnesota Statutes 2019, 256B.0659, subd. 3a(a).*

Consistency in MnCHOICES Assessments

As we noted previously, OLA's 2009 report, *Personal Care Assistance*, highlighted a number of issues with the PCA assessment process.²⁵ OLA found that Minnesota had “not established sufficient guidance and controls to ensure reasonably consistent, sound assessments” for personal care assistance.²⁶ OLA concluded that inconsistent

UPDATE TO 2009 REPORT

In OLA's 2009 report, *Personal Care Assistance*, we reported that there were insufficient guidance and controls to ensure reasonable levels of consistency in assessments.

The Legislature and DHS have introduced controls in the PCA assessment process to help standardize results.

assessment practices were a possible explanation for variation in the use of PCA across the state and differences in the extent to which counties assessed individuals for certain needs.²⁷ Consequently, the legislature and DHS made several changes to the PCA assessment process. Two of the Legislature's and DHS's efforts to address inconsistent assessment results included (1) standardizing the methodology for determining the amount of PCA time individuals may receive and (2) establishing electronic controls in the Medicaid data system.

The 2009 Legislature revised the home care rating system, which is the basis for determining how much PCA time an individual may receive.²⁸ The amount of PCA time an individual may receive varies based on the number and types of dependencies for which the assessor identified a need for assistance. For example, if an individual only needs assistance with one activity of daily living, such as dressing, they would qualify to receive 30 minutes of PCA each day. If an individual needs assistance with two activities of daily living, such as bathing and dressing, they would qualify for 75 minutes each day. If an individual needs assistance with two activities of daily living and one behavior, they could be eligible for 105 minutes of PCA each day.

In an effort to consistently authorize PCA time in accordance with individuals' home care ratings and prevent billing for unauthorized services, DHS incorporated electronic controls into its Medicaid data system. For example, some electronic controls are designed to prevent assessors from entering service authorizations with incorrect home care ratings based on assessment results. Another electronic control denies payment for claims that exceed authorized amounts of PCA.

As we previously noted, in an effort to produce more consistency in eligibility determinations, DHS also developed the MnCHOICES assessment tool.

MnCHOICES standardizes certain assessment processes but can still lead to inconsistent results.

DHS designed MnCHOICES to reduce inconsistency across assessors by automating the process of determining PCA eligibility. However, assessors still must use their

²⁵ Office of the Legislative Auditor, Program Evaluation Division, *Personal Care Assistance* (St. Paul, 2009).

²⁶ *Ibid.*, 31.

²⁷ *Ibid.*, 27-29 and 31-33.

²⁸ *Laws of Minnesota* 2009, chapter 79, art. 8, sec. 28, codified as *Minnesota Statutes* 2019, 256B.0652, subd. 6.

professional judgment when using MnCHOICES. Three key ways in which they use their judgment is by: (1) varying the order and phrasing of questions in the assessment tool, (2) asking follow-up questions to fully understand an individual's responses, and (3) interpreting an individual's responses and selecting appropriate answer options in MnCHOICES.

According to state law, certified assessors must conduct assessments as a conversation with the individual about their needs.²⁹ A DHS official told us the questions in the MnCHOICES tool are not meant to be asked exactly as they are written. This allows assessors to tailor the questions in MnCHOICES and ask follow-up questions so that individuals can fully understand what the assessor is asking and provide an accurate response. This type of flexibility can be important for assessors to accurately determine individuals' needs, but it can also introduce inconsistency due to different assessors asking questions in different ways. As a result, one individual could receive different amounts of PCA if they were assessed by two different assessors using the MnCHOICES tool.



I believe that when determining PCA it is all based [on] the assessor's perception. As a nurse, my perception of an individual's needs may differ from a social worker as we may view their level of assistance in different perspectives.

— MnCHOICES assessor

Inconsistency can also occur based on how individuals respond to questions and how assessors record those responses. DHS trains assessors to use their professional judgment when choosing among the set of answers in the MnCHOICES assessment tool. Additionally, assessors we interviewed told us that they are instructed to answer the questions in MnCHOICES based only on what individuals tell them rather than their own observations. For example, an assessor said they may observe an individual answer the door or move from the couch to a chair on their own. However, if the individual describes a need for help with moving around their home, the assessor told us DHS has instructed assessors to use the self-reported data rather than their own observations when answering questions in MnCHOICES. This can be important for individuals whose needs may change throughout the day; for example, an individual may have a medical condition that makes it impossible to get out of bed on their own in the morning, but can move independently during a window of time after taking pain medication. Therefore, the information provided by an individual during the assessment can also affect the assessment results.

In our survey of MnCHOICES assessors, we asked if the way in which assessors ask questions during an assessment can affect PCA assessment results. Most assessors who responded to our survey answered that it has at least a slight affect on the identification of individuals' need and determination of eligibility, as shown in Exhibit 2.6.

²⁹ *Minnesota Statutes* 2019, 256B.0911, subd. 3a(d).

Exhibit 2.6: Most assessors who responded to our survey indicated that the way in which assessors ask questions during a MnCHOICES assessment can affect assessment results.

To what extent do you think variation in the way in which assessors ask questions during a MnCHOICES assessment affects their:

■ Significantly affects ■ Moderately affects ■ Minimally affects ■ Does not affect ■ I do not know



NOTES: We contacted lead agencies (counties, county alliances, and tribal governments) and asked them to provide a complete list of currently certified MnCHOICES assessors in their jurisdiction as of July 2019. We received responses from 1,047 of the 1,404 assessors (75 percent) we were able to contact. We received at least one response from a certified MnCHOICES assessor from 83 counties and all five county alliances, representing all 87 counties. We also received at least one response from three of four tribal governments that we surveyed. For these survey questions, $N = 944$ and 935 , respectively. The percentages in the chart do not sum to 100 percent due to rounding.

SOURCE: Office of the Legislative Auditor, survey of certified MnCHOICES assessors.



The primary problem I see now is when a previous assessor answered questions in ways that utterly do not match my assessment, especially when the previous assessor did so in a way that gave a person more hours than I can justify. It is usually hard to tell if this is due to a change in the person's condition, or if the assessor interpreted the questions differently, or if the client gave different answers.

— MnCHOICES assessor

As stated previously, the MnCHOICES assessment tool is intended to produce consistent and equitable access for individuals who may need PCA. But, some of the assessors we interviewed and surveyed told us that there are differences across counties in how assessors determine assessment results. One assessor told us that when they have performed reassessments for individuals that were previously assessed in other counties, assessors from other counties completed the assessment “totally different” from how the assessor we spoke with completed the assessment.

We asked assessors how concerned they were about variation in eligibility determinations when using MnCHOICES. Nearly 70 percent of assessors who responded to our survey indicated that they were at least slightly concerned, as shown in Exhibit 2.7.

Exhibit 2.7: Most assessors who responded to our survey indicated they were concerned with variation in eligibility determinations using MnCHOICES.

How concerned are you about variation in assessors' eligibility determinations for publicly funded PCA when using the MnCHOICES assessment tool?

■ Extremely concerned ■ Moderately concerned ■ Slightly concerned ■ Not concerned



NOTES: We contacted lead agencies (counties, county alliances, and tribal governments) and asked them to provide a complete list of currently certified MnCHOICES assessors in their jurisdiction as of July 2019. We received responses from 1,047 of the 1,404 assessors (75 percent) we were able to contact. We received at least one response from a certified MnCHOICES assessor from 83 counties and all five county alliances, representing all 87 counties. We also received at least one response from three of four tribal governments that we surveyed. For this survey question, $N = 924$. The percentages in the chart do not sum to 100 percent due to rounding. "PCA" refers to personal care assistance.

SOURCE: Office of the Legislative Auditor, survey of certified MnCHOICES assessors.

Several advocates and provider representatives we spoke with also expressed concern about the consistency of assessment results. One provider representative told us that the amount of PCA time an individual receives depends upon the assessor who conducts the assessment.

DHS has not evaluated the consistency of MnCHOICES assessment results across assessors.

DHS does not have a mechanism in place to regularly review assessments for individuals that receive PCA through the fee-for-service Medical Assistance state plan. This is despite the fact that, as we stated in Chapter 1, that plan pays for the majority of PCA and the majority of individuals receive services through the Medical Assistance state plan. A DHS official told us that the department does conduct reviews for Medical Assistance Home and Community-Based Services waiver programs. This review process began in 2006 and involves case file reviews and interviews with lead agency staff.



There is a great amount of variance between assessors within our own unit; across multiple units within the same organization; and across lead agencies.

— MnCHOICES assessor

UPDATE TO 2009 REPORT

In OLA's 2009 report, *Personal Care Assistance*, we recommended that the Legislature require DHS to periodically review samples of PCA assessments to ensure reasonable levels of consistency.

The Legislature has not required DHS to review a sample of PCA assessments, and the department has not established a method for doing so.

In addition, DHS has not conducted a reliability study for the version of MnCHOICES currently in use. The department completed a reliability study of an early version of the revised MnCHOICES tool, but that study had numerous limitations that affected the usefulness of its results. For example, the study was conducted using an early draft of the revised MnCHOICES tool, before revisions were completed. In addition, the study was not

conducted with MnCHOICES assessors working in the field; instead, the evaluation firm hired interviewers and required them to complete MnCHOICES training. It is unclear whether those interviewers met the qualifications for MnCHOICES assessors.

RECOMMENDATION

The Legislature should require DHS to regularly evaluate the consistency of assessment results across assessors.

It would be impossible and undesirable to remove all use of professional judgment from the assessment process. Each individual that receives an assessment has unique needs that they may not be able to fully communicate if assessors were required to use overly rigid assessment methods. However, DHS should ensure that results are reasonably consistent among assessors to guarantee equal access to PCA across the state.

A DHS official told us that the department plans to evaluate the reliability and validity of data collected with MnCHOICES, including consistency across assessors. We recommend DHS and the Legislature work together to establish reasonable timelines and expectations for this work. As we explain further in Chapter 5, DHS has taken many years to implement several changes to the PCA program; the Legislature should hold the department accountable for completing evaluation work within set timelines.

Establishing, in law, an expectation for DHS to conduct regular, robust evaluations of MnCHOICES assessment results can help ensure that individuals across Minnesota have equal access to services. It can also ensure that these evaluations take place consistently.

Accuracy of the MnCHOICES Assessment

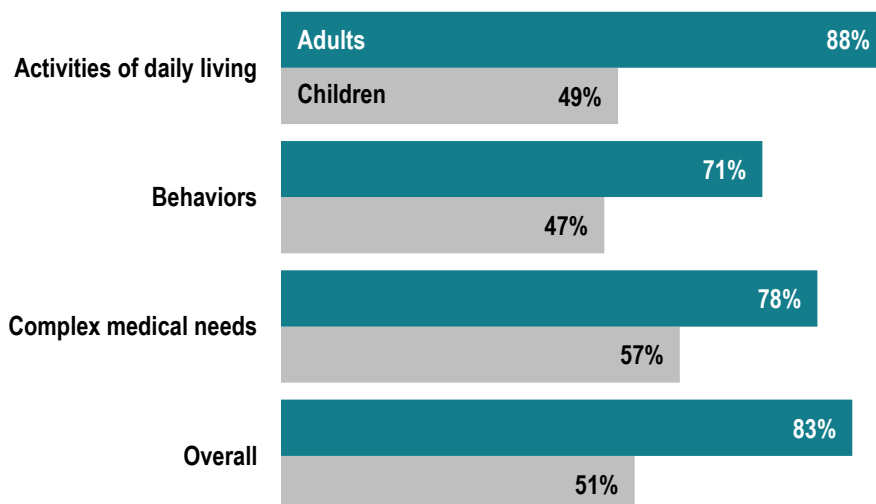
In addition to having reasonably consistent results, it is important that PCA assessments accurately capture individuals' need for PCA. An accurate assessment would correctly determine (1) the activities for which an individual is eligible to receive PCA and (2) the amount of PCA time that the individual is eligible to receive. We asked MnCHOICES assessors, separately, if MnCHOICES helps them accurately determine adults' and children's eligibility for PCA.

Most assessors we surveyed indicated that MnCHOICES was accurate when used to determine adults' eligibility for personal care assistance, but there was less agreement on its accuracy when used with children.

More than 80 percent of the assessors we surveyed responded that, overall, MnCHOICES helped them accurately determine an *adult's* eligibility for PCA. On the other hand, about half of respondents indicated that MnCHOICES helped them accurately determine *children's* eligibility for PCA, as shown in Exhibit 2.8.

Exhibit 2.8: Most assessors who responded to our survey indicated that MnCHOICES was accurate for determining an adult’s eligibility for personal care assistance; fewer assessors indicated it was accurate for children.

MnCHOICES helps me accurately determine eligibility for publicly funded assistance with:



NOTES: In the survey, we noted that the questions above referred to personal care assistance. We contacted lead agencies (counties, county alliances, and tribal governments) and asked them to provide a complete list of currently certified MnCHOICES assessors in their jurisdiction as of July 2019. We received responses from 1,047 of the 1,404 assessors (75 percent) we were able to contact. We received at least one response from a certified MnCHOICES assessor from 83 counties and all five county alliances, representing all 87 counties. We also received at least one response from three of four tribal governments that we surveyed. For these survey questions, responses shown are “strongly agree” and “agree.” For adults, $N = 943, 922, 942,$ and $904,$ respectively. For children, $N = 934, 927, 933,$ and $914,$ respectively.

SOURCE: Office of the Legislative Auditor, survey of certified MnCHOICES assessors.

A number of the assessors we surveyed noted in their open-ended comments that the MnCHOICES assessment tool does not capture children’s needs well. Some assessors wrote that MnCHOICES is not age-appropriate and that DHS does not offer sufficient guidance on what to consider as age-appropriate behaviors for children. For example, assessors we spoke with told us that throwing temper tantrums can be an age-appropriate behavior for toddlers because they are learning to control their emotions and reactions. One assessor noted that there are no clear age restrictions to receive PCA for behaviors, so a toddler could be eligible to receive PCA because they throw tantrums. A DHS official told us that assessors receive training on what constitutes typical behavior for children, and typical tantrums would not qualify a toddler for PCA. However, the official acknowledged that more training in this area may be necessary.

At the same time, some advocates we spoke with expressed concern about the overall accuracy of MnCHOICES. One advocate told us they do not think it identifies individuals’ needs well. Another advocate said that it is not culturally sensitive and can make it difficult for individuals who do not speak English to effectively communicate their needs. Additionally, a provider representative told us that participants may not

understand the questions, and then they end up with reduced PCA time. As we noted previously, we believe DHS can address many concerns about MnCHOICES by continuing to engage in a process of ongoing improvement. DHS should ensure it regularly incorporates feedback from assessors and recipients during this process.

Appeals of Assessment Results

In addition to the oversight activities described previously in this chapter, DHS can also oversee the assessment process through appeals of assessment results. Recipients may appeal the results of their assessments, and human services judges in DHS's Appeals Division conduct administrative fair hearings for these appeals.³⁰ During a hearing, a human services judge listens to the arguments and testimony from the lead agency and recipient and reviews the evidence presented to them. After the hearing, the human services judge writes a recommended order, generally affirming or modifying the results of the assessment. Chief human services judges review the recommended order and issue a final decision on behalf of the DHS commissioner.³¹

To learn more about recipients' use of the appeals process, we reviewed DHS data and a sample of recommended orders.³² We reviewed DHS data on recommended orders issued in fiscal years 2015 through 2019, and we found that the number of appeals related to PCA decreased during that time. In Fiscal Year 2015, DHS issued more than 780 recommended orders related to PCA, but in Fiscal Year 2019, it issued about 650. An average of about 41,900 individuals received PCA—and therefore PCA assessments—each year during that five-year period, so recipients appealed less than 2 percent of assessment decisions. This may indicate that few recipients disagreed with the results of the assessment; however, it could also indicate that few were able or willing to go through the appeal process. To gain a better understanding of the reasons recipients appealed their assessment results, we also reviewed 43 recommended orders issued in Fiscal Year 2019 from appeals related to PCA.

As we explained in Chapter 1, to qualify for PCA, an assessor must determine that an individual is dependent on assistance in an activity of daily living (ADL) or a qualifying behavior.³³ Assessors determine how many minutes of PCA a recipient is eligible to receive based on the number and types of ADLs, behaviors, and complex health-related needs the assessor identifies. Complex health-related needs are interventions—such as administering intravenous medication, dressing wounds, or inserting a catheter—that are ordered by a physician and meet other criteria in law. The amount of PCA time an individual is eligible to receive is based on their assessed dependencies and statutory guidance.³⁴

³⁰ *Minnesota Statutes* 2019, 256.045, subds. 1 and 3(a)(1).

³¹ If a PCA recipient disagrees with the DHS commissioner's final order, they may appeal the order to the district court of the county in which they receive services. *Minnesota Statutes* 2019, 256.045, subd. 7.

³² The data we reviewed pertained to fee-for-service PCA appeals.

³³ *Minnesota Statutes* 2019, 256B.0625, subd. 19a.

³⁴ *Minnesota Statutes* 2019, 256B.0652, subds. 6(b) and 6(c).

The appeals we reviewed most commonly involved disagreements over the appellants' needs regarding toileting, eating, mobility, and transferring.

Most of the appeals we reviewed resulted from an assessor determining a recipient was ineligible for assistance with an ADL, and the recipient disagreeing. Of the eight ADL categories, toileting was the area with the largest number of recipients disagreeing with their assessment results. Seventeen of the 43 cases we reviewed involved a disagreement about an appellant's toileting needs. Other common disagreements over ADL assessment results included eating, mobility, and transferring (moving from one seated or reclining area to another).

About one-third of the appeals we reviewed indicated that the recipient disagreed with assessment results related to behaviors or complex health-related needs. Minnesota law defines three types of behaviors for which individuals may be eligible to receive PCA, as listed in the box to the right.³⁵ We reviewed cases that involved each of the three areas; the most common disagreement (seven appeals) involved verbally aggressive behavior and resistance to care. There was one case in which the appellant disputed the assessment of their complex health-related need.

Nearly two-thirds of the appeals we reviewed involved a disagreement with an assessment that resulted in reduced time for PCA. In many of these cases, the assessor determined that the recipient was not eligible for assistance with a dependency in which they had previously been evaluated as eligible, so their allotted PCA time decreased. In several other cases, PCA time was not reduced, but appellants asserted that the assessment was inaccurate in determining their dependencies or that the amount of PCA time allotted for their dependencies was not sufficient to meet their needs.

Dependency	Number of Appeals
Activities of Daily Living	38
Toileting	17
Eating	14
Mobility	12
Transferring	12
Positioning	7
Grooming	4
Bathing	3
Dressing	3
Behaviors	15
Verbal aggression/resistance	7
Increased vulnerability	6
Physical aggression	3
Complex Health-Related Needs	1

NOTE: Appeals often related to more than one dependency, so the data in the table do not sum to 43, the number of recommended orders we reviewed.

³⁵ *Minnesota Statutes* 2019, 256B.0659, subd. 4(d).

Example: Assessment Result Affirmed

The responsible party for a PCA recipient with autism and a developmental delay appealed an assessment determination that the recipient was not dependent when toileting. The responsible party reported that the recipient was able to transfer on and off the toilet and clean themselves independently. But, the responsible party stated that the recipient needed reminders to use the toilet before bed and assistance to clean occasional accidents. The judge determined that the assessment was correct in the conclusion that the recipient did not meet the statutory criteria for a dependency in toileting because the recipient did not require (1) hands-on assistance throughout the activity or (2) step-by-step instructions to start and complete all steps of the task. The judge recommended affirming the assessment results.

Example: Assessment Result Reversed

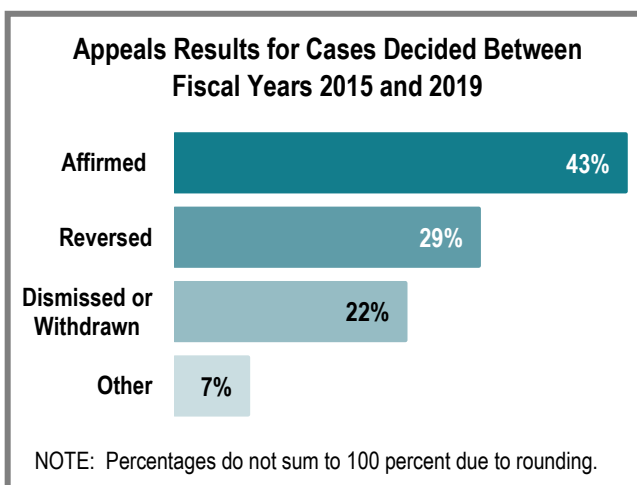
A PCA recipient received an assessment after a spinal fusion surgery and was found eligible for assistance with eating because they had difficulty feeding themselves. The recipient was reassessed several months later, and the assessor determined that the recipient was no longer eligible for assistance with eating because the recipient was able to feed themselves. The recipient contended that they were dependent on outside assistance because they needed someone to cut all but very soft foods for them. Meal preparation is not considered when assessors evaluate an individual's eligibility for assistance with eating, but the judge determined that cutting food is an activity that occurs after food preparation and throughout the meal, so the recipient was eligible for assistance with eating. The judge recommended reversing the assessor's determination.

We examined the extent to which human services judges concurred or disagreed with assessors' conclusions about individuals' eligibility.

DHS human services judges reversed less than one-third of the personal care assistance assessment results appealed in fiscal years 2015 through 2019.

According to DHS data, about 30 percent of the PCA appeals decided by DHS human services judges from Fiscal Year 2015 through Fiscal Year 2019 resulted in a reversal of the assessment results. More than 40 percent of appeals from fiscal years 2015 through 2019 were affirmed by a human services judge.³⁶

In our review of recommended orders, we oversampled appeals in which judges reversed the assessment results in order to better



³⁶ Appeals that were dismissed or withdrawn have not had a decision on the merits of the case. These appeals were dismissed due to a procedural issue, such as an untimely appeal, or because the appellant cancelled the appeal. The "other" category includes appeals where (1) the chief human services judge modified the human services judge's original decision; (2) a new docket was incorrectly opened on a case that already existed; (3) the appeal was dismissed without a decision on the merits of the appeal because the appellant failed to appear at the hearing; and (4) there was not enough information in the record to make a decision, so the case was sent back to the lead agency to take further action (such as to complete a new assessment).

understand issues that judges identified with the assessments they reviewed. Twenty-one of the 43 appeals we reviewed resulted in a reversal of the assessment results. Given our small sample, it was difficult to find commonalities among judges' determinations, but there were some. For example, in four cases, the judge reversed the assessor's determination that the appellant did not need assistance with eating; instead, the judge found that the appellant's food must be cut into pieces for them at each meal. In each of those cases, the judge determined that the appellant qualified for assistance with eating. As another example, in four other cases, the judge reversed the assessment result because they found that the appellant provided credible testimony about their need and the appellant had been previously determined eligible for the dependency in question.

Although judges reversed a relatively small percentage of assessment results, the number was not insignificant. We interviewed three human services judges and they told us they had not spoken with DHS officials about their observations on the assessment process. One judge said that this could compromise the independence and objectivity of the Appeals Division. A DHS official in another division told us that staff read decisions from the Appeals Division to implement the result of the appeal in the DHS's data system. It is unclear whether DHS uses the information learned during appeals to improve the consistency of the assessment process.

RECOMMENDATION

DHS should regularly review appeals and recommended orders to identify and respond to inconsistencies in personal care assistance assessments.

Appeals of assessment results can serve as an important check on the consistency of PCA assessments. Some of the appeals we reviewed indicated that judges and assessors sometimes reached very different conclusions when reviewing similar information about a recipient. Because human services judges' decisions provide an independent review of the recipient's assessment, cases that are reversed for similar reasons could indicate that assessors may need more guidance or training in certain areas. Or, as another example, patterns in appeals could indicate that questions and response options in the MnCHOICES assessment tool lead to incorrect or inconsistent assessment results. By regularly reviewing appeals and recommended orders, DHS could identify and respond to issues that come up in appeals.



Chapter 3: Provider Enrollment

As we stated in Chapter 1, personal care assistance (PCA) is provided by personal care assistants typically working without direct supervision in recipients' homes or in the community.¹ The lack of direct supervision can create risks to recipients' safety from neglect, abuse, or theft, and to public funds from improper or fraudulent billing.

One way to prevent and deter fraud and abuse in the PCA program is to ensure that only qualified PCA agencies and personal care assistants provide services to recipients. Because federal and state laws do not require PCA agencies or personal care assistants to be licensed, PCA agencies and personal care assistants receive less oversight of the services they provide when compared to licensed entities, such as licensed home care providers.² Instead, state law requires both PCA agencies and personal care assistants to enroll with the Department of Human Services (DHS) to provide publicly funded services.³ As a result, a robust enrollment process is critical for ensuring the integrity of the PCA program.

In this chapter, we explain DHS's responsibilities related to PCA agency and personal care assistant enrollment. We also describe DHS's oversight responsibilities after PCA agencies and personal care assistants have enrolled with the department. We recommend that DHS improve its enrollment policies and practices so that it ensures all PCA agencies and personal care assistants meet enrollment requirements upon initial enrollment and throughout their enrollment with DHS.

Key Findings in This Chapter

- DHS's initial provider enrollment process has generally ensured that personal care assistance agencies meet requirements to provide personal care assistance services, but there is room for improvement.
- Personal care assistance agencies are required to document services provided, but state law does not specify how—or even whether—DHS must regularly ensure that all agencies comply with those requirements.
- When enrolling personal care assistants, DHS does not verify that they meet all requirements in state law.
- Based on our review, some personal care assistance agencies have not billed for qualified professional services, which has affected DHS's ability to monitor whether personal care assistants are adequately supervised.

¹ Throughout the report, when we reference PCA, we are referring to publicly funded services.

² For example, unlike home care providers, PCA agencies do not have regular inspections, called "surveys." State law requires the Minnesota Department of Health to conduct surveys of licensed home care providers at least once every three years (*Minnesota Statutes* 2019, 144A.474, subd. 1). During these surveys, which may last several days, surveyors evaluate the care and services provided to determine whether they meet state standards. They also review the provider's staffing, policies, and procedures.

³ *Minnesota Statutes* 2019, 256B.04, subd. 21(a); and 256B.0659, subds. 11(a)(3) and 24(1). Federal regulations also require providers to enroll with the Medicaid program when providing services funded by that program. 42 *CFR*, sec. 455.410 (2019).

Agency Enrollment

DHS's Provider Eligibility and Compliance unit is primarily responsible for enrolling PCA agencies. After PCA agencies are enrolled, the unit is responsible for ensuring DHS's information about the agency is up to date. DHS's Office of the Inspector General (OIG) also plays a key role in ensuring that PCA agencies meet enrollment requirements during their initial enrollment, as well as determining whether PCA agencies meet ongoing requirements for providing PCA services.



Owner: A person or corporation with an ownership interest of 5 percent or more in the PCA agency, or who is an officer or director of an agency organized as a corporation or a partner in an agency organized as a partnership.

— 42 *CFR*, sec. 455.101 (2019).

Managing employee: A general manager, business manager, administrator, director, or other individual who exercises operational or managerial control over, or who directly or indirectly conducts the day-to-day operation of, a PCA agency.

— 42 *CFR*, sec. 455.101 (2019).

Qualified professional: A mental health professional, registered nurse, licensed social worker, or other professional that meets certain requirements. Qualified professionals provide supervision of PCA services and staff.

— *Minnesota Statutes* 2019, 256B.0625, subd. 19c; and 256B.0659, subd. (1)(k).

Initial Enrollment

When an agency wishes to provide PCA, it must apply for enrollment with DHS. As Exhibit 3.1 shows, the first step in the enrollment process is attending DHS training. State law requires (1) owners of the agency who are active in the day-to-day management and operations of the agency, (2) all employees in management and supervisory positions, and (3) qualified professionals to complete this training.⁴

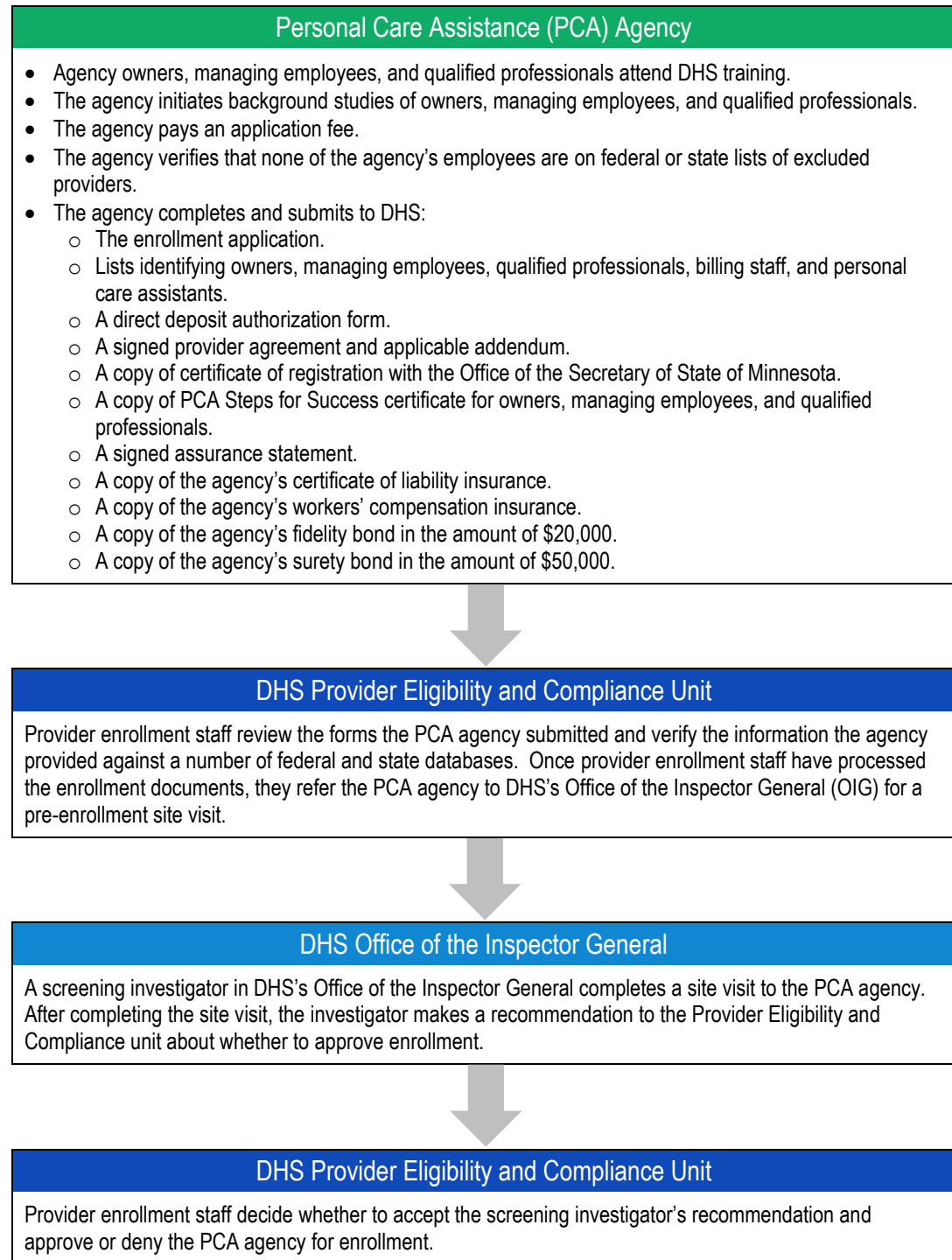
After owners, managing employees, and qualified professionals complete their training, the PCA agency pays an application fee, initiates background studies for its staff, and submits several documents to DHS's Provider Eligibility and Compliance unit. For example, PCA agencies must complete a form that collects basic information about the agency, such as the agency's address and its federal and state tax identification numbers. On other forms, PCA agencies are required to provide information on agency owners, managing employees, and qualified professionals.

After receiving the agency's enrollment application, provider enrollment staff review the forms and verify the information the agency provided against a number of federal and state databases. As an example, provider enrollment staff confirm the identity of PCA agency owners, managing employees, and qualified professionals and determine whether those individuals are excluded from providing federally funded health care services.⁵ Once provider enrollment staff process the enrollment documents, they refer the PCA agency to DHS's OIG for a pre-enrollment site visit.

⁴ *Minnesota Statutes* 2019, 256B.0659, subds. 13(c) and 21(c).

⁵ Individuals and entities may be excluded from participation in federally funded health care programs for several reasons, such as a conviction for Medicare or Medicaid fraud. Excluded individuals and entities cannot receive payment from federal health care programs, and anyone who hires an excluded individual or entity may be subject to a civil monetary penalty. Provider enrollment staff check a list of excluded individuals and entities maintained by the U.S. Department of Health and Human Services Office of the Inspector General.

Exhibit 3.1: Personal care assistance agencies complete an enrollment process involving two DHS divisions.



SOURCE: Office of the Legislative Auditor, analysis of Department of Human Services policies and procedures.

Screening investigators in DHS's OIG complete site visits to PCA agencies. During a site visit, the screening investigator is expected to interview owners or managing employees and review documents to verify that the information the PCA agency submitted to DHS is accurate and complies with federal and state enrollment requirements. After completing the site visit, the screening investigator makes a recommendation to the Provider Eligibility and Compliance unit about whether to approve enrollment. Finally, provider enrollment staff decide whether to accept the screening investigator's recommendation and approve or deny the PCA agency for enrollment.

DHS's initial provider enrollment process has generally ensured that personal care assistance agencies meet requirements to provide personal care assistance, but there is room for improvement.

To evaluate the extent to which DHS complied with requirements related to PCA agency enrollment, we reviewed DHS policy manuals, internal procedures, and enrollment forms. We also analyzed DHS data on PCA agency enrollment and site visits. While DHS's initial enrollment process has generally ensured compliance, we found some issues with its oversight at key points in the process. Below we discuss our findings related to PCA agency staff training and background studies, the documentation DHS requires for enrollment, the screening site visits DHS conducts, and the guidance DHS provides to PCA agencies.

**UPDATE
TO 2009
REPORT**

In OLA's 2009 report, *Personal Care Assistance*, we recommended that the Legislature require PCA agency staff to periodically complete comprehensive state training on PCA standards and practices.

Minnesota law now requires PCA agency staff to complete training. Certain staff must complete training before the agency enrolls with DHS. These staff must repeat training based on changes to their employment.

— *Minnesota Statutes 2019, 256B.0659, subds. 13(c) and 21(c).*

Training

As we stated earlier in this chapter, Minnesota law requires all (1) owners of the agency who are active in the day-to-day management and operations of the agency, (2) employees in management and supervisory positions, and (3) qualified professionals to complete training.⁶ This training, called "Steps for Success," is a three-day workshop that covers statutory requirements for providing PCA and PCA agencies' responsibilities, among other things. Agency staff may attend the workshop in person or participate in an online webinar, and they must complete the training before the agency submits its application for enrollment.⁷ DHS requires the agency's designated billing person to attend a separate one-day training on PCA billing within six

⁶ *Minnesota Statutes 2019, 256B.0659, subds. 13(c) and 21(c).*

⁷ *Minnesota Statutes 2019, 256B.0659, subd. 21(c).* The 2019 Legislature required PCA agencies to ensure qualified professionals complete training before the agency submits its application for enrollment (*Laws of Minnesota 2019, First Special Session, chapter 9, art. 7, sec. 33*). Prior to that, qualified professionals were required to complete training within six months of their hiring. Owners, managing employees, and qualified professionals that have completed the Steps for Success training as an employee of another PCA agency do not need to repeat the training when hired by another PCA agency, as long as they completed the training within the past three years (*Minnesota Statutes 2019, 256B.0659, subds. 13(c) and 21(c)*).

months after the agency successfully enrolls with DHS.⁸ Billing staff may attend DHS's training in person or through an online webinar.

DHS ensured that most, but not all, of the personal care assistance agencies it enrolled in Fiscal Year 2018 complied with training requirements.

To evaluate whether DHS ensured that PCA agency staff completed training according to state law, we reviewed DHS data on training for the owners, managing employees, qualified professionals, and billing staff employed by each of the 93 PCA agencies that enrolled with DHS in Fiscal Year 2018.

According to DHS's data, DHS did not ensure that all owners, managing employees, qualified professionals, and billing staff employed by 24 of the 93 agencies we reviewed completed training according to the timelines established in law. For example, at least one owner, managing employee, or qualified professional in 13 of the 93 agencies we reviewed completed Steps for Success training before the agency enrolled, but more than three years before they were hired by the agency. In these cases, the individuals should have repeated the training. As another example, DHS did not have a record that 11 of the 93 agencies ensured that any of their staff completed DHS's billing training as required.

We also found a few cases where owners or managing employees completed training *after* the agency enrolled with DHS, contrary to state law. Three individuals who were listed as owners or managing employees in five PCA agencies did not complete DHS's Steps for Success training before the agencies enrolled with DHS. These individuals were hired before the agencies enrolled, so in these cases, DHS should not have approved the PCA agencies' applications for enrollment.

An official in the state's Medicaid Fraud Control Unit (MFCU), housed in the Minnesota Office of the Attorney General, told us that the unit has concerns about training for PCA agency staff.⁹ The MFCU official said that DHS should better enforce training requirements for agency staff. They said staff can simply view training online or sign up, but not attend.

In a 2017 letter from an MFCU official to a DHS official, and a 2019 letter from the former attorney general to the former DHS commissioner, MFCU provided recommendations to deter and prevent fraud in PCA. Among other things, MFCU recommended that "PCA agency owners, managing employees, and [qualified professionals] be required to attend Steps for Success in person, check in using a government-issued identification card, and remain present during the entire Steps for

⁸ Statutes require PCA agency billing staff to complete training on PCA program financial management (*Minnesota Statutes* 2019, 256B.0659, subd. 21(c)).

⁹ Medicaid Fraud Control Units employ teams of investigators, attorneys, and auditors to investigate and prosecute Medicaid provider fraud. Federal law requires each state to have a Medicaid Fraud Control Unit, with exceptions. These units must be a separate and distinct entity from the state Medicaid agency (such as Minnesota's DHS). 42 *CFR*, sec. 1007 (2019).

Success training.”¹⁰ However, we note that statutes require the training to be “available online or by electronic remote connection.”¹¹

RECOMMENDATION

DHS should ensure that personal care assistance agency staff complete training as required by law.

PCA agencies have many administrative duties, and it is important for agency owners, managing employees, qualified professionals, and billing staff to understand those duties. We also think training is an important tool for preventing improper payments and fraud. Training is especially necessary because, as we explain in the following sections, DHS is not required to regularly review agencies’ compliance with all requirements. In addition, it is important that staff repeat training as required to ensure they have the most up-to-date information on program requirements.

DHS’s internal procedures for PCA agency enrollment direct staff to check that owners, managing employees, and qualified professionals completed the Steps for Success training as required. The procedures clearly state that staff should deny an agency’s application for enrollment if training is not completed within statutory guidelines. This indicates that DHS has appropriate guidance for staff, but management must ensure that staff follow that guidance. When DHS reviews PCA agencies’ applications for enrollment, DHS managers should ensure that all staff review whether the agencies’ owners, managing employees, and qualified professionals have completed DHS’s Steps for Success training in accordance to statutes. If agency staff have not completed the training, DHS should not approve the agency’s enrollment. In addition, DHS should ensure that staff hired by enrolled PCA agencies complete training within required timelines.

Background Studies

Minnesota law requires PCA agency owners who have a 5 percent interest or more in the agency, managing employees, and qualified professionals to undergo a background study.¹² In order to enroll with DHS, agencies must *initiate* a background study for owners and managing employees, and *initiate* and *complete* a background study for qualified professionals.¹³ Agencies initiate a background study by entering information about the individual into an online DHS system. Background studies are complete when DHS notifies the PCA agency of the results of the study.

DHS’s Background Studies Division, housed within DHS’s OIG, conducts background studies by reviewing various records to determine whether an individual is disqualified

¹⁰ Kirsi Poupore, Manager, Medicaid Fraud Control Unit, Minnesota Office of the Attorney General, memorandum to Jennifer Hasbargen, Manager, Office of the Inspector General, Department of Human Services, July 13, 2017; and Lori Swanson, Attorney General, Minnesota Office of the Attorney General, letter to Tony Lourey, Commissioner, Department of Human Services, January 3, 2019.

¹¹ *Minnesota Statutes* 2019, 256B.0659, subd. 21(c).

¹² *Minnesota Statutes* 2019, 256B.0659, subd. 25.

¹³ *Ibid.*



Background Studies

Background studies include reviews of:

- Information on criminal history kept by the Minnesota Bureau of Criminal Apprehension.
- Information on substantiated maltreatment of minors and vulnerable adults from investigations completed by DHS, the Minnesota Department of Health, and counties' child protection and adult protection units.
- Minnesota's Predatory Offender Registry.

In some cases, background studies may also include reviews of records from:

- Courts, law enforcement agencies, and other agencies in Minnesota and other states.
- The Federal Bureau of Investigation.

from direct contact with PCA recipients. Owners, managing employees, or qualified professionals may be disqualified for several reasons. For example, they may be disqualified if they were convicted of committing, admitted to committing, or filed an "Alford plea" for certain crimes, such as assault, fraud, or murder.¹⁴ Individuals who have been found to have committed serious and/or recurring maltreatment of a minor or vulnerable adult may also be disqualified.¹⁵

We examined DHS data on background studies for the owners, managing employees, and qualified professionals employed by each of the 93 PCA agencies that enrolled with DHS in Fiscal Year 2018. Because DHS collects data on when these agency staff *completed* background studies, we were unable to determine whether PCA agencies *initiated* background studies on owners and managing employees before being enrolled by DHS. However, because Minnesota law requires PCA agencies to

complete background studies on qualified professionals before enrolling with DHS, we were able to assess PCA agencies' compliance with background study requirements for qualified professionals.

In Fiscal Year 2018, DHS ensured that nearly all personal care assistance agencies complied with background study requirements for their qualified professionals before enrolling the agencies.

UPDATE TO 2009 REPORT

In OLA's 2009 report, *Personal Care Assistance*, we recommended that the Legislature amend Minnesota statutes to require all agencies providing PCA to obtain background checks on their qualified professionals.

Minnesota law now requires PCA agencies to complete background studies of qualified professionals.

— *Minnesota Statutes 2019, 256B.0659, subd. 25(2).*

Only 1 of the 93 PCA agencies that enrolled with DHS in Fiscal Year 2018 did not have all qualified professionals complete background studies before DHS approved their enrollment. In this case, the agency had one qualified professional that was hired by the agency *before* it enrolled, but passed their background study *after* the agency enrolled. Notably, the PCA agency had more than one qualified professional, and the other qualified professionals passed their background studies before the agency enrolled. Nevertheless, to enroll with DHS, statutes require PCA agencies to complete background studies on all qualified professionals.¹⁶

¹⁴ *Minnesota Statutes 2019, 245C.14 and 245C.15.* Under an Alford plea, a defendant maintains their innocence but pleads guilty because the defendant "reasonably believes, and the record establishes, the state has sufficient evidence to obtain a conviction" if the case were to go to trial. *State v. Ecker*, 524 N.W.2d 712, 716 (Minn. 1994) (citing *North Carolina v. Alford*, 400 U.S. 25, 37, 91 S. Ct. 160, 167 (1970)).

¹⁵ *Minnesota Statutes 2019, 245C.15, subd. 4(b)(2).*

¹⁶ *Minnesota Statutes 2019, 256B.0659, subd. 25(2).*

Documentation Required for Enrollment

State law requires PCA agencies to submit a number of documents in order to enroll with DHS as a PCA provider.¹⁷

DHS does not require personal care assistance agencies to submit all documentation required by state law for initial enrollment.

Despite the requirements in law, DHS mandates that PCA agencies submit only some of the required documentation. As Exhibit 3.2 shows, DHS does not require agencies to submit a copy of the agency's written policies and procedures or a list of all training and classes the PCA agency requires its personal care assistants to complete, among other things.

Exhibit 3.2: DHS does not require agencies to submit all documents required by statutes to enroll as a personal care assistance provider.

According to statutes, at the time of enrollment, all agencies must provide:	Does DHS require the document for enrollment?
• Agency's current contact information	✓
• Proof of surety bond coverage	✓
• Proof of fidelity bond coverage	✓
• Proof of workers' compensation insurance	✓
• Proof of liability insurance	✓
• Written policies and procedures	X
• All forms used in daily business, including: <ul style="list-style-type: none"> ○ Time sheet, if it varies from the standard, approved time sheet ○ Template for PCA care plan ○ Template for PCA Choice service option agreement 	X
• List of all training and classes the agency requires of personal care assistants	X
• Documentation of required training completion	✓
• Documentation of marketing practices	X
• Disclosure of ownership, leasing, or management of all residential properties that are used or could be used for home care services	✓
• Documentation that the agency will use 72.5 percent of revenue generated from Medical Assistance for PCA services for employee personal care assistant wages and benefits	X
• Documentation that the agency does not burden recipients' free exercise of their right to choose a provider	X

NOTES: A ✓ indicates that DHS requires PCA agency owners to submit the document during the enrollment process and an X indicates DHS does not require the document. "PCA" refers to personal care assistance.

SOURCE: Office of the Legislative Auditor, assessment of the Department of Human Services' compliance with *Minnesota Statutes* 2019, 256B.0659, subd. 21(a).

¹⁷ *Minnesota Statutes* 2019, 256B.0659, subd. 21(a).

Instead of requiring the aforementioned documentation, a DHS official told us that DHS requires providers to attest to meeting most of the requirements by signing a provider assurance statement. (We discuss the provider assurance statement and other provider agreements in more detail below.) However, this approach does not comply with the law, and it does not allow DHS to fully execute its responsibility to oversee the enrollment of PCA agencies.

RECOMMENDATION

DHS should review all required documentation to ensure compliance with legal requirements during personal care assistance agencies' initial enrollment.

As we previously noted, PCA agencies are already subject to less oversight than licensed entities, such as licensed home care providers. Some of the DHS officials and PCA agency representatives we spoke with indicated that DHS's PCA agency enrollment process might be too simple. For example, two DHS officials described the enrollment requirements as a low barrier to entry and the enrollment process as a simple paperwork process. One PCA agency representative stated that PCA agencies are often not set up well from the beginning, and they struggle to comply with legal requirements. Another noted that agencies do not need to show proof that they complied with all of DHS's enrollment requirements. A third representative said DHS should increase PCA agency enrollment standards to make it more difficult for "bad actors" to enroll.

The Legislature may determine that there should be more requirements to enroll as a PCA agency. At present, however, DHS must ensure that PCA agencies at least meet the current requirements in law. This includes exercising its responsibility to review all required documentation during PCA agencies' initial enrollment. If DHS determines that some of the enrollment requirements do not contribute to a safer, more effective provision of services, DHS should work with the Legislature and suggest statutory changes.

Screening Site Visits

During initial enrollment, federal regulations require state Medicaid agencies to screen Medicaid providers based on three categorical risk levels: limited, moderate, or high.¹⁸ Risk levels are based on the risk of fraud, waste, or abuse each type of provider presents. State Medicaid agencies are required to determine the risk level of certain provider types, including PCA agencies. DHS has designated PCA agencies as high risk for fraud, waste, or abuse of the Medicaid program. Federal regulations require states to perform more screening activities for provider types designated as medium and high risk than for low-risk provider types, including pre-enrollment site visits to the provider's practice location.¹⁹

¹⁸ 42 *CFR*, sec. 455.450 (2019).

¹⁹ *Ibid.*

DHS completed screening site visits to nearly all personal care assistance agencies that enrolled with the department in Fiscal Year 2018.

As we previously noted, DHS enrolled 93 PCA agencies in Fiscal Year 2018. Based on department data, screening investigators completed pre-enrollment site visits to 91 of the 93 agencies on or prior to their enrollment date. In one case, screening investigators completed a site visit the day after the PCA agency's enrollment date. In another case, screening investigators visited an agency's existing location in Greater Minnesota, but not its newly enrolled location in Minneapolis. Federal regulations state that all new practice locations must receive site visits.²⁰ The Provider Eligibility and Compliance unit approved that provider to enroll without a site visit to the Minneapolis location.

Screening investigators recommended approving most enrollment applications, and the Provider Eligibility and Compliance unit generally followed their recommendations. Screening investigators recommended approving 85 of the 92 agencies they visited after completing the first pre-enrollment site visit. Screening investigators recommended denying enrollment to seven agencies after the first visit. The Provider Eligibility and Compliance unit initially denied enrollment to six of those agencies and later approved the enrollment application following a subsequent site visit in which screening investigators recommended approval. The Provider Eligibility and Compliance unit approved enrollment for one of the agencies screening investigators recommended denying. DHS officials told us that screening investigators identified an issue with ownership documentation, which they were able to resolve without an additional site visit.

DHS policies do not specify which documents screening investigators must review for accuracy and compliance.

Federal regulations state that the purpose of site visits is to ensure that information submitted to the department is accurate and to determine whether the provider complies with federal and state enrollment requirements.²¹ These visits are particularly important since, as we noted previously, DHS does not require PCA agencies to submit all required paperwork to DHS's Provider Eligibility and Compliance unit.

DHS policies indicate that screening investigators are expected to verify that information submitted in the enrollment application is accurate. Policies direct screening investigators to verify that ownership information is correct, but they do not specifically direct screening investigators to review most other required documentation listed in Exhibit 3.2.

Screening investigators use a template to complete the site visit, but the template does not direct screening investigators to review supporting documentation. For example, the template only prompts them to ask whether the agency has up-to-date policies and procedures manuals. It does not direct the screener to review the policies and procedures manuals for required elements and record that information in their report. A

²⁰ *Ibid.* This requirement pertains to providers designated as moderate or high risk.

²¹ 42 *CFR*, sec. 455.432 (2019). Federal regulations refer to the state Medicaid administrator, which in Minnesota is DHS.

DHS official told us screening investigators are not expected to document all information they review in reports they write after site visits. This makes it difficult to determine whether site visits comply with their stated purpose: to ensure enrollment documentation is accurate. We make a recommendation for DHS to standardize its site visit protocols later in this chapter.

Guidance to Personal Care Assistance Agencies

In addition to state and federal laws, DHS has two online policy manuals PCA agencies can use to learn about their responsibilities as PCA agencies. DHS also requires that PCA agencies sign multiple provider agreements and an assurance statement prior to enrolling as a PCA provider. The box below provides more information about the policy manuals, provider agreements, and assurance statement.



Policy Manuals, Provider Agreements, and Assurance Statement for PCA Agencies

Minnesota Health Care Programs Provider Manual: Outlines policies for providers of services available through the Minnesota Health Care Programs (such as Medical Assistance) administered by DHS. The manual also includes general instructions regarding enrollment and billing, among other things.

PCA Program Manual: Outlines policies specific to the Medical Assistance PCA program, including covered services, recipient eligibility, PCA agency and personal care assistant requirements and responsibilities, and PCA service options.

Minnesota Health Care Programs Provider Agreement: Lists general requirements for participating in the Minnesota Health Care Programs (such as Medical Assistance) administered by DHS. PCA agencies must sign the agreement to certify they will comply with the agreement.

Provider Agreement Addendum – Traditional PCA Provider: Serves as an addendum to the Minnesota Health Care Programs Provider Agreement. This addendum lists requirements specific to PCA agencies that provide traditional PCA services.

Provider Agreement Addendum – PCA Choice Provider: Serves as an addendum to the Minnesota Health Care Programs Provider Agreement. This addendum lists requirements specific to PCA agencies that provide PCA Choice services.

PCA Agency Applicant Assurance Statement: Serves as an addendum to the Minnesota Health Care Programs Provider Agreement. PCA agencies attest that they will comply with certain requirements, such as maintaining required documentation at the PCA agency and/or at the recipient's home.

We reviewed DHS's policy manuals, provider agreements, and assurance statement to determine whether they contained state and federal requirements for providing PCA services.

DHS has provided inconsistent and incomplete guidance to personal care assistance agencies through its numerous policy manuals, provider agreements, and assurance statement.

DHS did not list certain legal requirements in its policy manuals, provider agreements, or assurance statement for PCA agencies. This could make it difficult for PCA agencies to have a complete understanding of the requirements for enrolling with DHS and providing PCA. For example, Minnesota law required PCA agencies to conduct at least one random, unscheduled telephone call to each recipient every 90 days to verify that PCA services were being provided as scheduled.²² During these telephone calls, agencies were required to speak with personal care assistants to verify they were present. DHS's policy manuals, provider agreements, and assurance statement did not mention requirements for telephone verification of services.

As another example of incomplete guidance, statutes outline a number of requirements for providing PCA to recipients that are dependent on ventilators to help them breathe.²³ Among other things, statutes prohibit personal care assistants from conducting any "clinical services, patient assessment, patient evaluation, or clinical education regarding the ventilator or the patient on the ventilator."²⁴ Instead, these services must only be provided by licensed or registered health care professionals. During our review of DHS's policy manuals, provider agreements, and assurance statement, we found that these documents did not specify these requirements. After receiving our draft report, DHS updated its PCA Program Manual to include the aforementioned prohibition.

Additionally, it could be difficult for agencies to understand requirements when they are listed differently across DHS's policy manuals and provider agreements. For example, Minnesota law requires PCA agencies that offer the PCA Choice service option to annually enter into a written agreement with the PCA Choice recipient.²⁵ Among other things, the PCA agency-PCA Choice recipient agreement must specify (1) the duties of the recipient, qualified professional, personal care assistant, and agency; and (2) documentation requirements including time sheets, activity records, and the PCA care plan.²⁶ While DHS's PCA Program Manual indicates that the PCA agency must have a written agreement in place before services are provided, it does not indicate what must be included in the agreement. On the other hand, DHS's assurance statement specifies the items for the PCA agency-PCA Choice recipient agreement, but not the required parties of the agreement or that it must be executed annually.

²² *Minnesota Statutes* 2018, 256B.0705, subds. 1(d) and 2. The 2019 Legislature repealed this requirement, effective January 1, 2020 (*Laws of Minnesota* 2019, First Special Session, chapter 9, art. 6, sec. 94).

²³ *Minnesota Statutes* 2019, 256B.0659, subd. 27.

²⁴ *Minnesota Statutes* 2019, 256B.0659, subd. 27(b).

²⁵ *Minnesota Statutes* 2019, 256B.0659, subd. 20. As we explained in Chapter 1, PCA agencies may offer two distinct service options: traditional PCA and PCA Choice. In the PCA Choice option, recipients take on many of the responsibilities assigned to PCA agencies in the traditional option.

²⁶ *Minnesota Statutes* 2019, 256B.0659, subd. 20(a)(1) and (6).

Another example of inconsistent guidance relates to when PCA agency owners, managing employees, and qualified professionals must complete required training. Although Minnesota law and DHS's internal procedures indicate the training must be completed *before* submitting an application for enrollment, DHS's PCA Program Manual states that providers must complete the training *after* submitting their application.²⁷

RECOMMENDATION

DHS should revise its policy manuals and provider agreements so that they reflect state law and provide comprehensive and consistent references to personal care assistance agencies' responsibilities.

DHS officials told us they support PCA agencies in meeting requirements by answering policy and process questions received through call centers and other sources. They said they are beginning to analyze the questions they receive with a goal of identifying policies that need clarification. These are important activities that may help improve available guidance, but DHS should also perform its own review of its documents. As we discuss in the following section, DHS provides limited direct oversight of PCA agencies. Because of this, it is important that agencies understand their responsibilities related to providing PCA. One way DHS can help agencies fulfill their responsibilities is by providing complete and consistent guidance in its policy manuals and provider agreements.

There are a number of requirements for personal care assistance in Minnesota rules that conflict with statutes and DHS's policy manuals.

Differences between rules and DHS policy manuals and Minnesota statutes could further complicate PCA agencies' understanding of their responsibilities for providing PCA. For example, Minnesota rules outline eligibility criteria for PCA agencies that are different from the enrollment requirements specified in statutes.²⁸ Among other things, rules state that PCA agencies must "demonstrate the financial ability to produce a cash flow sufficient to cover operating expenses for 30 days" and "demonstrate an accounting or financial system that complies with generally accepted accounting principles."²⁹ Neither statutes nor DHS's policy manuals include these or most of the other eligibility criteria outlined in rules.

As another example, rules state that PCA must be provided under the supervision of a registered nurse.³⁰ In contrast, statutes require that PCA services be supervised by a qualified professional, who does not have to be a registered nurse.³¹ There are also

²⁷ *Minnesota Statutes* 2019, 256B.0659, subd. 21(c).

²⁸ *Minnesota Statutes* 2019, 256B.0659, subd. 21; and *Minnesota Rules*, 9505.0335, subp. 5, published electronically October 16, 2013.

²⁹ *Minnesota Rules*, 9505.0335, subp. 5H and J, published electronically October 16, 2013.

³⁰ *Minnesota Rules*, 9505.0335, subp. 4, published electronically October 16, 2013.

³¹ *Minnesota Statutes* 2019, 256B.0625, subd. 19c.

differences between rules and statutes regarding the nature and frequency of supervision visits. For example, rules state that the registered nurse must evaluate PCA by directly observing the personal care assistant or consulting with the recipient (1) within 14 days after the personal care assistant is placed with the recipient, (2) at least once every 30 days during the first 90 days of services, and (3) at least once every 120 days thereafter.³² Statutes require direct observation of the personal care assistant within 14 days; the qualified professional then is required to visit the recipient to evaluate services at least every 90 days during the first year of services, and every 120 days thereafter.³³ DHS's PCA Program Manual lists only the requirements in statutes.

Rules also state that PCA agencies must document a physician's initial order for PCA services.³⁴ DHS's PCA Program Manual states that documentation of a physician's order is not required. Statutes are silent on whether a physician's order is required for PCA.

When we asked DHS about these inconsistencies, a DHS official told us that the rules are outdated or obsolete; they were promulgated prior to the Legislature passing current PCA statutes. However, DHS has not taken steps to repeal the outdated or obsolete rules specified above. Statutes require state agencies to submit a list each year of obsolete rules to policy committees, among others, along with a timetable for repealing the obsolete rules.³⁵ DHS indicated in a 2007 report that some of the rules pertaining to PCA were obsolete. But, a DHS official told us that the department has not had adequate resources to follow through with the repeal of obsolete rules.

RECOMMENDATION

DHS should repeal or revise outdated or obsolete administrative rules so that they align with statutes and DHS's current administration of the personal care assistance program.

One of DHS's statutory duties is to "make uniform rules, not inconsistent with law, for carrying out and enforcing" requirements related to the Medical Assistance program.³⁶ While statutes take precedence over rules when they conflict, one purpose of administrative rules is to make the law a state agency enforces or administers more specific.³⁷ When rules are inconsistent with statutes or contain requirements not included in statutes, PCA agencies may have difficulty determining which requirement to follow.

When we spoke with PCA agency representatives about DHS oversight of PCA, one representative referenced resource issues they had meeting supervision requirements outlined in *rules*. They said that it is difficult to recruit qualified professionals because

³² *Minnesota Rules*, 9505.0335, subp. 4D, published electronically October 16, 2013.

³³ *Minnesota Statutes* 2019, 256B.0659, subd. 14(c). These requirements pertain only to traditional PCA services. Qualified professionals are required to visit recipients participating in the PCA Choice option every 180 days; see *Minnesota Statutes* 2019, 256B.0659, subd. 19(a)(4).

³⁴ *Minnesota Rules*, 9505.2175, subp. 7A, published electronically February 18, 2013.

³⁵ *Minnesota Statutes* 2019, 14.05, subd. 5. In place of a timetable for repeal, agencies may submit a bill for the repeal of obsolete rules.

³⁶ *Minnesota Statutes* 2019, 256B.04, subd. 2.

³⁷ *Minnesota Statutes* 2019, 14.02, subd. 4.

they have to be registered nurses, and it is difficult to compete with other health care organizations on wages and benefits. As we explained previously, statutes and rules list different requirements for qualified professionals.

To avoid these issues, DHS should systematically review the rules that pertain to PCA and repeal or revise outdated or obsolete rules so that they accurately reflect statutes and the department's current administration of PCA.

Ongoing Requirements

Federal and state laws require DHS to perform specific, ongoing oversight activities after PCA agencies' initial enrollment. Certain activities are intended to ensure that agencies' enrollment documentation remains up-to-date and in compliance with applicable laws. Other activities are meant to confirm that agencies document financial transactions and the services they provided. These requirements can help to ensure recipients receive the services they need and prevent public resources from being used improperly.

Annual Reviews of Enrollment

Until repealed by the 2019 Legislature, statutes required PCA agencies to submit enrollment documentation detailed in Exhibit 3.2, as well as agencies' grievance policies and a written record of grievances submitted in the previous year and their resolutions, on an annual basis.³⁸

DHS did not comply with a statutory requirement for annual reviews.

DHS did not track in its Medicaid data system whether agencies completed the annual review process, and a DHS official told us the Provider Eligibility and Compliance unit could not enforce the requirement every year given its resources. DHS officials told us they most recently completed annual reviews for all PCA agencies in 2016.

Although the Legislature removed the annual review requirement from the PCA program, Community First Services and Supports (CFSS) will require PCA agencies to submit documents for annual review.³⁹ As we noted in Chapter 1, CFSS will replace PCA. Unlike PCA, CFSS statutes do not indicate which documents PCA agencies must submit as part of the annual review; however, given that the department did not complete annual reviews in the past, we question its ability to do so moving forward. In Chapter 5, we offer a recommendation for the Legislature to review oversight requirements in CFSS statutes.

Revalidation of Enrollment

Annual reviews were not DHS's only required, routine oversight mechanism. Both federal and state law require periodic revalidation of agencies' enrollment.⁴⁰ During

³⁸ *Minnesota Statutes* 2018, 256B.0659, subd. 22, repealed by *Laws of Minnesota* 2019, First Special Session, chapter 9, art. 7, sec. 47.

³⁹ *Minnesota Statutes* 2019, 256B.85, subd. 12(d).

⁴⁰ 42 *CFR*, sec. 455.414 (2019); and *Minnesota Statutes* 2019, 256B.04, subd. 21.

this process, DHS must review certain documentation and conduct a screening site visit.⁴¹ Since 2011, federal law has required DHS to revalidate agencies' enrollment at least every five years to remain eligible for Medicaid funding.⁴² More recently, the 2019 Legislature passed a law requiring DHS to revalidate PCA agencies' enrollment every three years.⁴³

DHS revalidated personal care assistant agencies' enrollment as required for most, but not all, agencies enrolled at the end of Fiscal Year 2019.

During revalidation, DHS must verify that PCA agencies meet federal and state requirements.⁴⁴ As noted in Exhibit 3.2, statutes require PCA agencies to submit numerous documents, including policies and procedures and proof of insurance. As is true for initial enrollment, the Provider Eligibility and Compliance unit is responsible for ensuring agencies meet revalidation requirements, whereas DHS's OIG conducts site visits.

We reviewed data on all PCA agencies enrolled at the end of Fiscal Year 2019 to determine whether they had complied with revalidation requirements. We found that 375 agencies had been enrolled continuously for at least five years, and therefore should have gone through revalidation between fiscal years 2015 and 2019. We found that DHS reviewed documentation, as required, for 358 (95 percent) of those agencies. DHS did not ensure the remaining 17 agencies submitted required documentation.

DHS data also indicated that screening investigators conducted site visits to the majority of the 375 PCA agencies that had been enrolled for at least five years as of the end of Fiscal Year 2019. DHS conducted site visits to 369 of those agencies in the five-year span of fiscal years 2015 through 2019. Although the remaining six agencies required a site visit at least once during that five-year period, DHS data show that screening investigators did not conduct visits to them.

RECOMMENDATION

DHS should ensure it revalidates enrollment of all personal care assistance agencies, as required by law.

Based on our review, DHS failed to revalidate the enrollment of only a small percentage of PCA agencies. But, a lack of supervision of even one agency could permit fraudulent or abusive practices to persist. MFCU has prosecuted single PCA agencies for over a million dollars in fraudulent claims. Revalidation is the principal

⁴¹ As we previously noted, federal regulations require enhanced screening—including site visits—for all providers designated as high risk of fraud, waste, or abuse of the Medicaid program. DHS designated PCA agencies as high risk.

⁴² 42 *CFR*, sec. 455.414 (2019).

⁴³ *Laws of Minnesota* 2019, First Special Session, chapter 9, art. 7, sec. 15, codified as *Minnesota Statutes* 2019, 256B.04, subd. 21(b).

⁴⁴ 42 *CFR*, sec. 455.450 (a)(1) and (c)(1) (2019).

routine mechanism DHS uses to ensure PCA agencies comply with legal requirements. It is important to ensure that every agency goes through the revalidation process.



Key Recipient Documentation

- Emergency back-up plan
- PCA care plan
- Month-to-month service use plan
- Supervision of PCA by qualified professional

Key Employee Documentation

- Background study results
- Training with demonstration of competence
- Supervisory visits
- Evaluations of employment

Review of Service Documentation

Statutes and rules outline numerous documentation requirements for PCA. Statutes require PCA agencies to keep employee and recipient files that include specific documents, such as records of supervisory visits and PCA care plans, among other requirements.⁴⁵ Rules contain additional requirements to document recipients' health services and agencies' financial records, including payroll ledgers and relevant contracts.⁴⁶ These documentation requirements can help ensure that personal care assistants provide the services for which PCA agencies bill DHS.

Personal care assistance agencies are required to document services provided, but state law does not specify how—or even whether—DHS must regularly ensure that all agencies comply with those requirements.

While statutes identify required documentation, they do not explicitly lay out a process through which DHS must regularly monitor agencies' compliance with all requirements. Prior to 2019, statutes required agencies to go through an annual review, but the review required agencies to submit initial enrollment documents, rather than PCA service documentation. Further, statutes requiring (1) annual reviews when PCA is changed to CFSS and (2) revalidation every three years do not specify which documents DHS must review during those processes. Federal regulations require state Medicaid agencies to “verify the provider meets any applicable...State requirements for the provider type...” but does not provide further direction.⁴⁷

Beyond the annual review and revalidation processes, statutes provide broad direction for DHS to monitor Medical Assistance services. For example, statutes require DHS to establish a process to monitor program integrity, including random reviews of documentation.⁴⁸ However, statutes do not state how often or to what extent DHS should review documentation.

Statutes also direct DHS to establish criteria and procedures for identifying and investigating suspected fraud, theft, and abuse of the Medical Assistance program.⁴⁹ But, these procedures pertain to certain claims only—those in which DHS has reason to suspect fraud, theft, or abuse occurred. They do not require routine investigations of all

⁴⁵ *Minnesota Statutes* 2019, 256B.0659, subd. 28(a).

⁴⁶ *Minnesota Rules*, 9505.2175, subps. 2 and 7; and 9505.2180, subp. 1, published electronically August 12, 2008.

⁴⁷ 42 *CFR*, sec. 455.450 (a)(1) and (c)(1) (2019).

⁴⁸ *Minnesota Statutes* 2019, 256B.0651, subd. 15.

⁴⁹ *Minnesota Statutes* 2019, 256B.04, subd. 10.

PCA agencies. We provide more information about DHS’s fraud investigations procedures in Chapter 4.

Based on a lack of detail in DHS policies and site visit reports, it was difficult to determine which documents screening investigators reviewed, and therefore, the extent to which DHS ensured personal care assistance agencies complied with documentation requirements.

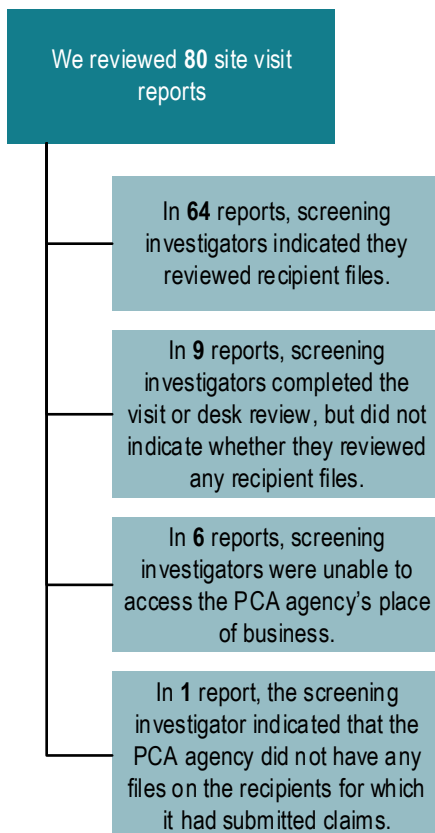
DHS officials told us the department monitors PCA program integrity through revalidation site visits. An official told us that screening investigators typically review a sample of claims, recipient files, and employee files during these visits.

However, revalidation site visits have limitations. For example, DHS policies do not explicitly direct investigators to determine whether PCA agencies comply with all documentation requirements. Policies state that screening investigators will review the “enrollment record” to ensure agencies reported any changes. They also state that screening investigators *may* review a sample of claims, recipient files, and employee files during routine revalidation site visits. Policies do not mention whether screening investigators should review required financial records at all. As mentioned previously,

DHS policies do not clearly indicate which documents screening investigators are expected to review during site visits. DHS officials told us that screening investigators use their training and experience, as well as DHS manuals, to decide what to review during site visits.

A DHS official told us screening investigators are not expected to list every document they review in their reports. Screening investigators are also not expected to indicate which elements of each document they reviewed in their site visit reports. The official told us screening investigators only make notes in their reports if a document they reviewed did not comply with requirements.

To better understand the depth and breadth of reviews screening investigators perform during site visits, we reviewed a sample of 80 site visit reports from fiscal years 2017 through 2019.⁵⁰ Based on our review, screening investigators indicated that they reviewed 243 recipient files during the 64 site visits in which they reportedly reviewed recipient files. This was typically a small percentage of all recipients served by the PCA agency. Screening investigators indicated they reviewed an average of 4 recipient files per visit, and each of the agencies reportedly served an average of nearly 60 recipients. A DHS official told us that



⁵⁰ We reviewed reports for all 12 routine revalidation site visits completed in fiscal years 2018 and 2019, as well as a random sample of reports for 27 revalidation site visits from Fiscal Year 2017. We also reviewed a random sample of reports for 41 discretionary site visits completed in Fiscal Year 2019. The department’s process for completing these types of visits is nearly identical to the process for revalidation visits. We provide more information about discretionary site visits in Chapter 4.

screening investigators typically review three recipient files per visit; if screening investigators find issues with those files, they may review additional files.

Screening investigators did not always specify which documents they reviewed in recipients' files. For example, screening investigators indicated they reviewed care plans for only 161 of the 243 files (66 percent). They did not indicate that they reviewed certain other required items, such as authorization for the recipient's PCA services, for any file.

Screening investigators noted that they reviewed employee files in site visit reports for only 9 of the 80 site visits we reviewed.⁵¹ None of the site visit reports indicated the screener reviewed certain required financial records, such as payroll ledgers or schedules for supervision.

RECOMMENDATION

DHS should develop standard protocols for personal care assistance agency pre-enrollment and revalidation site visits to ensure agencies comply with legal requirements.

A DHS official told us that screening investigators visit many types of providers, so creating a list of documents they must review for each type of provider would be a huge undertaking. However, nearly half of all site visits screening investigators performed in fiscal years 2015 through 2019 were to PCA agencies. Because PCA agencies constitute a large portion of screening investigators' work and PCA receives a high level of state and federal funding, we believe more detailed protocols are warranted.

Site visit protocols will help ensure that screening investigators hold all PCA agencies to the same standards and review all relevant legal requirements. They will also promote consistency in site visit procedures as staff change and demands on screeners' time change. As noted previously, the 2019 Legislature required PCA agencies to be revalidated every three years, rather than every five years as required by federal law. This change may strain DHS's resources and cause the department to scale back on the comprehensiveness of site visits if standards are not in place.

RECOMMENDATION

The Legislature should clarify DHS's responsibilities for monitoring personal care assistance documentation requirements.

We noted at the beginning of this chapter that, due to the nature of PCA, there are inherent risks to the safety of recipients and financial integrity of the program. With individual personal care assistants often providing services to recipients in their homes, there is little direct oversight of services. The Legislature has tried to mitigate this risk by requiring personal care assistants and PCA agencies to clearly document services

⁵¹ As noted in the figure on the previous page, in six of these site visit reports, screening investigators indicated that they were unable to access the PCA agency.

and financial transactions, but it has not specified in law an equally robust oversight program.

The Legislature gave PCA agencies many administrative duties, but has not clearly outlined expectations for how the department should ensure they meet these requirements. We noted that DHS has performed limited documentation reviews during site visits. If the Legislature, in an effort to prevent fraud and abuse, wishes for DHS to be more comprehensive in its oversight activities, it should make that explicit in law and ensure DHS has appropriate resources to carry out those activities. In fall 2019, DHS employed four screening investigators that had the responsibility to complete site visits to almost 30 types of providers.

Electronic Visit Verification

The U.S. Congress enacted the 21st Century Cures Act in 2016. Under this act, by January 1, 2020, state Medicaid agencies must require that providers use an electronic visit verification (EVV) system to document that individuals received PCA services billed to the state.⁵² EVV systems must electronically verify certain data on PCA services performed during an in-home visit. These data include the date and location of the service and the individuals providing and receiving the service.

Electronic verification of personal care assistance visits may improve service documentation, but DHS has not yet established an implementation date for this required technology.

EVV systems may eliminate the need for paper time sheets, help increase time sheet and billing accuracy, and facilitate fraud detection and audits. For example, PCA agencies are currently required to document services on a DHS-approved time sheet form that may be Web-based, electronic, or paper format.⁵³ PCA agencies do not submit these time sheets to DHS; they keep them in recipients' records. When DHS needs to review time sheets, it requests them from agencies or reviews them onsite at the agency. DHS intends for data captured by EVV to be aggregated in a central repository, which would facilitate reviews.

Electronic visit verification systems must capture the following information:

- Type of service performed
- Individual receiving service
- Date of service
- Location of service delivery
- Individual providing service
- Time service begins and ends

— Public Law 114-255, sec. 12006 (a)(5)(A).

States that fail to require EVV for PCA by the federal deadline will have federal Medicaid funding reduced. For the first year of noncompliance, federal funding is reduced by one-quarter of 1 percentage point; it will be reduced incrementally up to

⁵² 21st Century Cures Act, Public Law 114-255, sec. 12006, December 13, 2016; and Public Law 115-222, July 30, 2018. If a state Medicaid agency does not comply, the state will face a penalty, as described later in this section.

⁵³ *Minnesota Statutes* 2019, 256B.0659, subd. 12(a).

1 percentage point in 2023 and beyond.⁵⁴ States may request that the federal government delay reducing federal Medicaid funding until January 2021 if they show they have made a “good faith effort” to comply with EVV requirements but encountered unavoidable delays.⁵⁵

To date, Minnesota has not developed an EVV system. The 2017 Legislature directed DHS to consult with stakeholders, including PCA providers and recipients, to develop EVV requirements.⁵⁶ The Legislature also directed DHS to report back on its findings, which it did in January 2018. As of February 2020, DHS had not yet issued a request for proposal for its EVV system. DHS officials told us the implementation was delayed due to a lack of funding for new positions at the department. They said DHS staff were required to develop the EVV requirements on top of their regular duties, which prolonged the timeline.

DHS submitted a request for a delay in reduction of Minnesota’s federal Medicaid funding, and that request was approved in December 2019. This means that Minnesota’s federal Medicaid funding will not be reduced in calendar year 2020. At the time this report was published, the reduction was scheduled to take effect January 2021 if DHS is not in compliance. Given that DHS has not yet selected a vendor to develop its EVV system or established a timeline for implementation of the requirement, it is unclear how DHS could meet the federal deadline.

RECOMMENDATION

DHS should comply with federal requirements for electronic visit verification as soon as possible to avoid a reduction in federal funding.

The 2019 Legislature required PCA agencies to implement EVV by a date established by the commissioner and required that reimbursement rates to providers not be reduced as a result of the federal government reducing funding.⁵⁷ This means DHS would have to absorb any potential reduction in federal Medicaid funding due to delayed implementation of the EVV requirement. Minnesota receives billions of dollars in federal Medicaid funding each year; even a small reduction could have a significant impact on DHS’s resources and its ability to effectively administer and oversee Minnesota’s Medicaid program.

Personal Care Assistant Enrollment

Similar to PCA agency enrollment, DHS’s Provider Eligibility and Compliance unit is primarily responsible for enrolling personal care assistants. However, PCA agencies also play a large role in ensuring personal care assistants meet initial enrollment requirements.

⁵⁴ Federal law states that the federal medical assistance percentage will be reduced. This is the federal government’s share of most Medicaid expenditures.

⁵⁵ Public Law 114-255, sec. 12006, (a)(4)(B), December, 13, 2016; and Public Law 115-222, sec. 1, (a)(2), July 30, 2018.

⁵⁶ *Laws of Minnesota* 2017, First Special Session, chapter 6, art. 3, sec. 49.

⁵⁷ *Laws of Minnesota* 2019, First Special Session, chapter 9, art. 5, sec. 82.

Additionally, PCA agencies—rather than DHS—are primarily responsible for ongoing oversight of the services personal care assistants provide to their clients.

Initial Enrollment

DHS’s provider manual indicates that it only reimburses agencies for PCA if a personal care assistant enrolled with DHS provides those services. PCA agencies enroll personal care assistants with DHS by submitting an application to the department on behalf of the personal care assistants. Prior to sending personal care assistants’ enrollment applications to DHS, PCA agencies must ensure that each personal care assistant (1) meets statutory requirements for personal care assistants, (2) successfully completes an online training, (3) does not appear on state or federal exclusion lists, and (4) successfully completes a background study. We describe these requirements in more detail later in this chapter.

After receiving a personal care assistant’s enrollment application, staff in DHS’s Provider Eligibility and Compliance unit review the application and verify the information provided against a number of federal and state databases. Provider enrollment staff also check that the personal care assistant has completed their required training and a background study. After DHS enrolls a personal care assistant, the personal care assistant can begin providing care to recipients.

To evaluate the extent to which DHS complied with requirements related to personal care assistant enrollment, we reviewed DHS policy manuals, internal procedures, and enrollment forms. We also analyzed DHS data on personal care assistant enrollment.

When enrolling personal care assistants, DHS does not verify that personal care assistants meet all requirements in statutes.

Minnesota law requires personal care assistants to meet numerous requirements. For example, statutes dictate that personal care assistants may not themselves be consumers of PCA.⁵⁸ According to DHS, the Provider Eligibility and Compliance unit runs a daily report to ensure that recipients are also not personal care assistants.

However, based on our review of DHS’s enrollment policies and procedures, DHS does not ensure assistants meet all other requirements, as Exhibit 3.3 shows. For example, personal care assistants must not have certain relationships to the recipient, such as being a parent of a minor child receiving PCA.⁵⁹ A DHS official confirmed that DHS does not determine during the enrollment process the relationship between personal care assistants and recipients.

⁵⁸ *Minnesota Statutes* 2019, 256B.0659, subd. 11(a)(6).

⁵⁹ *Minnesota Statutes* 2019, 256B.0659, subd. 11(c).

Exhibit 3.3: DHS does not verify that personal care assistants meet all statutory requirements before enrolling them with the department.

According to statutes, a personal care assistant must:	According to DHS procedures, does DHS check?
<ul style="list-style-type: none"> Be at least 18 years of age with the exception of persons who are 16 or 17 years of age with these additional requirements: <ul style="list-style-type: none"> Supervision by a qualified professional every 60 days Employment by only one PCA agency responsible for compliance with current labor laws 	✓
<ul style="list-style-type: none"> Be employed by a PCA agency 	✓
<ul style="list-style-type: none"> Enroll with the department as a personal care assistant after clearing a background study 	✓
<ul style="list-style-type: none"> Be able to effectively communicate with the recipient and PCA agency 	X
<ul style="list-style-type: none"> Be able to provide covered PCA services according to the recipient's PCA care plan, respond appropriately to recipient needs, and report changes in the recipient's condition to the supervising qualified professional or physician 	X
<ul style="list-style-type: none"> Not be a consumer of PCA services 	✓
<ul style="list-style-type: none"> Maintain daily written records including, but not limited to, time sheets 	X
<ul style="list-style-type: none"> Complete DHS standardized training before completing enrollment 	✓
<ul style="list-style-type: none"> Complete training and orientation on the needs of the recipient 	X
<ul style="list-style-type: none"> Be limited to providing and being paid for up to 275 hours per month of PCA regardless of the number of recipients being served or the number of PCA agencies with which the personal care assistant is enrolled 	✓
<ul style="list-style-type: none"> Not be parents, stepparents, or legal guardians of minors; spouses; paid legal guardians of adults; family foster care providers (with an exception); or staff of a residential setting 	X

NOTES: A ✓ indicates that DHS policies and procedures direct staff, or there is an automated process, to check whether the personal care assistant meets the enrollment requirement. An X indicates that DHS policies and procedures do not direct staff to check the enrollment requirement. "PCA" refers to personal care assistance.

SOURCE: Office of the Legislative Auditor, assessment of the Department of Human Services' compliance with *Minnesota Statutes* 2019, 256B.0659, subd. 11(a) and (c).

We analyzed DHS data on personal care assistants' enrollment records to more closely examine whether DHS ensures personal care assistants meet enrollment requirements. Specifically, we determined whether personal care assistants (1) met requirements related to their age and (2) completed required background studies and training.

Personal Care Assistants' Age at Enrollment

Minnesota law allows individuals who are 16 or 17 years of age to enroll as personal care assistants, as long as they and the PCA agency they are affiliated with meet two requirements.⁶⁰ First, 16- and 17-year-old personal care assistants must be supervised by qualified professionals every 60 days. (In contrast, qualified professionals must evaluate services provided by personal care assistants who are 18 years of age or older

⁶⁰ *Minnesota Statutes* 2019, 256B.0659, subd. 11(a)(1).

at least every 120 days).⁶¹ Second, 16- and 17-year-old personal care assistants must be affiliated with only one PCA agency. We focused our analysis on the latter requirement, as DHS's data on qualified professional supervision are incomplete. We discuss qualified professional supervision later in this chapter.

We analyzed DHS's data on personal care assistants' enrollment records to determine individuals' age upon enrollment as a personal care assistant. Of the roughly 67,600 personal care assistants who enrolled with DHS in fiscal years 2015 through 2019, only about 5,000 (7 percent) were under 18 years of age when they were enrolled as personal care assistants.⁶²

While most of the personal care assistants under 18 years of age who enrolled with DHS in fiscal years 2015 through 2019 complied with requirements related to their age, some did not.

We found 48 personal care assistants who enrolled before their 16th birthday, which is not allowed under state law. We also found 178 personal care assistants under 18 years of age who, at some point before their 18th birthday, were affiliated with at least two PCA agencies at the same time. As stated above, Minnesota law requires 16- and 17-year-old personal care assistants to be affiliated with only one PCA agency.

RECOMMENDATION

DHS should ensure that the personal care assistants it enrolls who are under 18 years of age meet statutory requirements related to their age.

While the issues we identified pertained to only a small percentage of the personal care assistants who were under 18 years of age when they enrolled in fiscal years 2015 through 2019, it is important to note that a single unqualified personal care assistant can cause harm to the PCA recipient or abuse state and federal resources. As a result, it is important for DHS to ensure that *all* personal care assistants meet requirements related to their enrollment.

When DHS reviews personal care assistants' applications for enrollment, it should ensure that they are at least 16 years old. If they are not, DHS should not approve the personal care assistants' enrollment. Moreover, when DHS receives an application for a 16- and 17-year-old personal care assistant, DHS should ensure that the personal care

⁶¹ *Minnesota Statutes* 2019, 256B.0659, subd. 14(c). This requirement applies to recipients who participate in traditional PCA. If the recipient participates in the PCA Choice option, the qualified professional is responsible for supervising the personal care assistant with the recipient (or their responsible party), and the qualified professional must visit the recipient every 180 days (*Minnesota Statutes* 2019, 256B.0659, subd. 19(a)(4)).

⁶² The counts of personal care assistants in this sentence include individuals who provided PCA at some point in fiscal years 2015 through 2019. However, the data DHS provided to us also contained individuals who provided services through the Consumer Directed Community Supports and Consumer Support Grant programs, even though a DHS official told us those individuals have to meet different enrollment requirements than personal care assistants. As a result, the numbers of personal care assistants we report are likely an over count.

assistant is not currently affiliated with another agency. If they are, DHS should decline the personal care assistants' application.

DHS's internal procedures for personal care assistant enrollment clearly state these requirements. As a result, managers in DHS's Provider Eligibility and Compliance unit should ensure that their staff consistently follow internal procedures.

In addition, a DHS official told us that, until October 2018, DHS's Medicaid data system contained electronic controls to prevent its staff from (1) enrolling personal care assistants under 16 years of age, and (2) allowing personal care assistants under age 18 to be affiliated with multiple PCA agencies. The official said the electronic controls were turned off when DHS began implementing a new enrollment data system, and the department plans to restore the controls in June 2020. After restoring the electronic controls, DHS should conduct regular checks of the controls to determine whether they are functioning properly and address issues as they occur.

Background Studies and Training

State law requires personal care assistants to complete background studies before they begin providing services.⁶³ As we stated earlier in this chapter, background studies are record reviews conducted by DHS's Background Studies Division to determine whether an individual is disqualified from direct contact with PCA recipients.

UPDATE TO 2009 REPORT

In OLA's 2009 report, *Personal Care Assistance*, we recommended that DHS define a set of topics on which personal care assistants should receive training.

The 2009 Legislature passed a law that requires personal care assistants to complete standardized training. State law defines the topics to be covered during the training.

— *Laws of Minnesota 2009, chapter 79, art. 8, sec. 31, codified as Minnesota Statutes 2019, 256B.0659, subd. 11(a)(8).*

State law also requires personal care assistants to complete standardized training administered by DHS before completing enrollment.⁶⁴ According to DHS, the online-only training covers (1) basic first aid, (2) basic roles and responsibilities of a personal care assistant, (3) universal precautions from the Occupational Safety and Health Administration, and (4) how to report vulnerable adult and child maltreatment. At the end of the training, personal care assistants take a competency test, for which they need a score of 80 percent or more to pass.

We examined the enrollment records of the nearly 13,600 personal care assistants DHS enrolled in

Fiscal Year 2018 to determine whether DHS ensured that they (1) passed background studies before they began providing services, and (2) completed DHS training before completing enrollment.

⁶³ *Minnesota Statutes 2019, 256B.0659, subd. 11(a)(3).*

⁶⁴ *Minnesota Statutes 2019, 256B.0659, subd. 11(a)(8).*

DHS ensured that most, but not all, personal care assistants it enrolled in Fiscal Year 2018 complied with requirements related to background studies and training.

Of the nearly 13,600 personal care assistants DHS enrolled in Fiscal Year 2018, DHS paid claims for services provided by about 12,200 personal care assistants that year.⁶⁵ However, we found ten personal care assistants who provided PCA *before* they passed a background study for their Fiscal Year 2018 enrollment.⁶⁶ This is not allowed under state law.

Similarly, DHS ensured that the vast majority of personal care assistants it enrolled in Fiscal Year 2018 completed mandated state training. However, according to DHS's data, 33 of the nearly 13,600 personal care assistants enrolled that fiscal year did not complete mandated training. Another 149 personal care assistants completed training only after they enrolled with DHS.

RECOMMENDATION**DHS should ensure that all personal care assistants meet statutory requirements related to background studies and training.**

As we stated at the beginning of the chapter, personal care assistants provide services to PCA recipients in their homes or in the community with little direct supervision. If background studies are not completed in a timely manner, PCA services could be provided by an individual who has been convicted of a crime or has a history of abusing a vulnerable adult. Additionally, DHS training for personal care assistants contains information on their responsibilities as a personal care assistant.

When DHS reviews personal care assistants' applications for enrollment, it should ensure that they have passed a background study and completed required training. If they have not, DHS should not approve the personal care assistants' enrollment. DHS's internal procedures for personal care assistant enrollment clearly state these requirements. As a result, managers in DHS's Provider Eligibility and Compliance unit should ensure that their staff consistently follow internal procedures.

Ongoing Requirements

DHS and PCA agencies are responsible for performing specific oversight activities after personal care assistants' initial enrollment. Federal and state laws require DHS to revalidate personal care assistants' enrollment every five years.⁶⁷ Revalidation is

⁶⁵ The count of personal care assistants DHS enrolled in Fiscal Year 2018 includes individuals who provided PCA at some point in fiscal years 2015 through 2019. However, as stated earlier, the data DHS provided to us also contained individuals who provided services through the Consumer Directed Community Supports and Consumer Support Grant programs. As a result, the total number reported in this sentence is likely an over count.

⁶⁶ This is likely a conservative estimate. Due to the structure of DHS's data, we focused only on the personal care assistants that enrolled for the first time in Fiscal Year 2018.

⁶⁷ 42 *CFR*, sec. 455.414 (2019); and *Minnesota Statutes* 2019, 256B.04, subd. 21(b)(1).

intended to ensure that agencies' and assistants' enrollment documentation remains up-to-date and in compliance with applicable laws. PCA agencies are responsible for supervising personal care assistants' work.

We focused our analysis on the supervision of personal care assistants' work. The data we received from DHS did not allow us to examine the extent to which the department complied with federal and state requirements for revalidation.

Supervision of Personal Care Assistant Services

Supervision of personal care assistants is an important component to ensuring PCA recipients receive services and that the services they receive are appropriate for their needs. In Minnesota, all personal care assistants are required to be supervised by individuals called qualified professionals.⁶⁸ As we stated earlier in this chapter, qualified professionals must be mental health professionals, registered nurses, licensed social workers, or other specified professionals.⁶⁹

In addition to supervising and evaluating personal care assistants, qualified professionals may also develop care plans with recipients and train personal care assistants to provide the care specified in those plans.⁷⁰ State law also requires qualified professionals to evaluate PCA services at regular intervals.⁷¹ See Exhibit 3.4 for a list of qualified professionals' statutory duties and requirements.

PCA agencies may bill DHS for qualified professional services, and billing provides DHS with one mechanism to monitor whether PCA agencies are providing these services.⁷² We analyzed claims for payments for qualified professional services provided in Fiscal Year 2018 to determine whether (1) PCA agencies billed for qualified professional services and (2) qualified professional services occurred according to the timelines established in law.

UPDATE TO 2009 REPORT

In OLA's 2009 report, *Personal Care Assistance*, we recommended that the Legislature clarify statutes to ensure that all Medical Assistance state plan PCA recipients have their services periodically supervised by a qualified professional.

The 2009 Legislature passed a law that requires all personal care assistants to be supervised by qualified professionals.

— **Laws of Minnesota 2009, chapter 79, art. 8, sec. 31, codified as Minnesota Statutes 2019, 256B.0659, subd. 14(a).**

⁶⁸ *Minnesota Statutes* 2019, 256B.0659, subd. 14(a).

⁶⁹ *Minnesota Statutes* 2019, 256B.0625, subd. 19c; and 256B.0659, subd. 1(k).

⁷⁰ Qualified professionals are required to complete these tasks if the recipient participates in the traditional PCA service option. If the recipient participates in the PCA Choice option, the qualified professional is responsible for assisting the recipient or responsible party with completing these tasks only when requested by the recipient or responsible party.

⁷¹ *Minnesota Statutes* 2019, 256B.0659, subds. 14(c) and 19(a)(4).

⁷² Statutes allow PCA agencies to bill for up to 24 hours per year of qualified professional services for each recipient, with exceptions (*Minnesota Statutes* 2019, 256B.0652, subd. 6(e)). Statutes state that the duties of PCA agencies providing PCA Choice services include billing for qualified professional services (*Minnesota Statutes* 2019, 256B.0659, subd. 19(c)(2)).

Exhibit 3.4: Qualified professionals can play an important role in overseeing personal care assistance.

Qualified professionals must:

- Be a mental health professional, registered nurse, licensed social worker, or a qualified designated coordinator as defined in statutes.
- Work for a PCA agency.
- Enroll with DHS after clearing a background study.
- Complete DHS training either (1) before a new PCA agency submits an application for enrollment, or (2) within six months of the date hired by a PCA agency for newly hired qualified professionals, unless the qualified professional completed the required training within the last three years while employed by a different PCA agency.

Qualified professionals are responsible for:

- Developing with the recipient a PCA care plan based on the service plan and individualized needs of the recipient.^a
- Developing with the recipient a monthly plan for the use of PCA services.
- Training personal care assistants in providing services that meet the individual needs of the recipient.^a
- Ensuring through supervision and consultation with the recipient that the personal care assistant is:^a
 1. Capable of providing the required PCA services.
 2. Knowledgeable about the PCA care plan before performing services.
 3. Able to identify conditions that should be immediately brought to the attention of the qualified professional.

Qualified professionals must visit the recipient:

- For traditional PCA services:
 - Within the first 14 days of starting to provide regularly scheduled services to a recipient to directly observe and evaluate the personal care assistant's work.
 - At least every 90 days during the first year of a recipient's PCA services.
 - At least every 120 days after the first year of a recipient's PCA service or whenever requested by the PCA recipient.
- For PCA Choice services:
 - Every 180 days.
- For 16- and 17-year-old personal care assistants, traditional PCA and PCA Choice services:
 - Every 60 days.

At each visit, the qualified professional must:

- Evaluate the recipient's satisfaction with their PCA services.
- Review the month-to-month plan for use of PCA services.
- Review documentation of the services provided.
- Evaluate whether the PCA services are meeting the goals of the services as stated in the PCA care plan and service plan.
- Document evaluations and needed actions to improve performance of the personal care assistant.
- Revise the PCA care plan as necessary, in consultation with the recipient or responsible party, to meet the needs of the recipient.

NOTE: "PCA" refers to personal care assistance.

^a If the recipient participates in the PCA Choice option, the qualified professional is responsible for assisting the recipient or responsible party with completing this task only when requested by the recipient or responsible party.

SOURCE: *Minnesota Statutes* 2019, 256B.0625, subd. 19c; and 256B.0659, subds. 1(k), 11(a)(1)(i), 13, 14, 19, and 21(c).

Based on our review, some personal care assistance agencies have not billed for qualified professional services, which has affected DHS's ability to monitor whether personal care assistants are adequately supervised.

At the end of Fiscal Year 2018, 606 PCA agencies were enrolled with DHS that had submitted at least one payment claim for PCA services provided in that fiscal year. We found that 123 of the 606 PCA agencies (20 percent) did not bill DHS for *any* qualified professional services in Fiscal Year 2018.

When we looked at the frequency of qualified professional services among the 483 PCA agencies that *did* submit payment claims, we found that the agencies did not always bill for qualified professional services according to the timelines established in law. We estimate that between 9 and 13 percent of the qualified professional supervision visits for which PCA agencies submitted bills in Fiscal Year 2018 occurred at an interval greater than 120 days.⁷³

DHS officials told us that staff in DHS's OIG conducted a review of qualified professional service claims for calendar years 2012 through 2014, but it has not continued this work. As a result of that review, the Surveillance and Integrity Review Section (SIRS) in DHS's OIG opened investigations of some PCA agencies. DHS officials told us that qualified professional services were being provided in a majority of the cases they reviewed, but the PCA agencies chose not to bill for the services. One official said the agencies decided that billing for these services was not worth their time or effort.

RECOMMENDATION

DHS should regularly monitor whether personal care assistance agencies bill for qualified professional supervision as a way of determining whether agencies are providing services as required.

We believe that qualified professional supervision is important for ensuring that recipients receive needed services in a safe and appropriate manner. As part of our evaluation, we spoke with several representatives from PCA agencies and provider advocacy organizations. Most of the PCA agency representatives believed that qualified professional visits helped their agencies better serve their clients. For example, one agency representative said that qualified supervision visits helps their

⁷³ We focused on the 120-day interval—the largest interval between qualified professional supervision visits for PCA recipients participating in the traditional PCA service option—because it was difficult to identify PCA recipients that began receiving PCA services in Fiscal Year 2018. (These individuals would have required more frequent supervision, as outlined in Exhibit 3.4.) In addition, we present a range because it was difficult to identify PCA recipients that stopped receiving PCA services after only one qualified professional supervision visit in Fiscal Year 2018. We also examined the data based on the 180-day requirement specific to PCA Choice recipients. DHS does not track which payment claims were for traditional PCA or PCA Choice. As a result, we looked at claims that were associated with the PCA agencies DHS has enrolled as PCA Choice providers. We estimated that 4 to 7 percent of qualified professional supervisions claims that *could* have been PCA Choice claims occurred at an interval greater than 180 days.

agency understand the client's circumstances, such as where medicine is located and the cleanliness of their living space.

DHS does not regularly monitor whether PCA agencies bill for qualified professional supervision. As a result, it cannot ensure that qualified professional visits are occurring according to statutory requirements.

DHS should create a process in which staff regularly review data on qualified professional services claims to determine whether PCA agencies bill for the services. If staff find PCA agencies that do not bill for the services, DHS could send a letter to the agencies to remind them about their duty to provide qualified professional services. DHS could also open investigations into providers that consistently fail to bill for qualified professional services to determine whether they are providing the services as required.

Chapter 4: Program Integrity

In chapters 2 and 3 we described two processes that may help to prevent fraud and abuse in the personal care assistance (PCA) program: assessments and provider enrollment. The Department of Human Services (DHS) also engages in efforts specifically designed to detect fraud, waste, abuse, and error in the provision of PCA.

The program integrity efforts described in this chapter are meant to prevent, identify, and end practices ranging from unintentional error to outright fraud. In some cases, errors may occur due to PCA agency administrators' lack of attention to requirements or careless paperwork. In others, fraud may occur through individuals'—recipients', personal care assistants', or PCA agency staff's—intentional efforts to bill DHS for services that were unnecessary, or necessary but never provided.

In this chapter, we discuss two of the department's efforts to deter, detect, and halt improper PCA payments: electronic payment controls and investigations. We also discuss criminal prosecution of PCA fraud cases. Based on our review, we make several recommendations to strengthen DHS's investigations process.

Key Findings in This Chapter

- DHS has improved its ability to prevent payments to personal care assistance agencies for impossible or improbable hours.
- DHS reported taking administrative action on over three-quarters of the personal care assistance investigation cases it completed in fiscal years 2016 through 2019.
- DHS did not take timely action to fully investigate some cases in which preliminary or screening investigators identified issues with compliance.
- The Medicaid Fraud Control Unit provided numerous recommendations to DHS to improve fraud prevention and detection efforts, but the department has not acted on many of those recommendations.

Electronic Payment Controls

As noted in Chapter 1, the great majority of PCA in Minnesota is provided through Minnesota's Medicaid program, Medical Assistance. To receive federal Medicaid funding, states must implement an automated claims processing system. The Centers for Medicare and Medicaid Services (CMS) is responsible for overseeing states' implementation of Medicaid, and it has defined requirements for these claims processing systems, including electronic controls that compare claims data to Medicaid program requirements before issuing payments.

In addition, DHS has implemented several PCA-specific controls in its claims payment system. We noted in Chapter 1 that the Office of the Legislative Auditor (OLA) completed an evaluation of PCA in 2009. During that evaluation, we reviewed a sample of claims and found that DHS had reimbursed PCA agencies for impossible or implausible hours. For example, we found that hundreds of personal care assistants were paid for more than 24 hours of service provided in one day. We also identified personal care assistants who were paid for multiple consecutive 24-hour work days.

UPDATE TO 2009 REPORT

In OLA's 2009 report, *Personal Care Assistance*, we reported that DHS had not found effective ways to stop payments in cases in which personal care assistants claimed to work more than 24 hours per day or consecutive 24-hour days.

DHS has implemented electronic controls in its claims payment system that have effectively prevented these types of improper payments.

Since then, DHS has implemented controls in its electronic claims payment system that are intended to (1) deny payments for claims that asserted that a personal care assistant worked more than 24 hours in a day and (2) suspend payments for claims of 48 consecutive hours. Suspended payments should be individually reviewed by DHS staff.

DHS has improved its ability to prevent payments to personal care assistance agencies for impossible or implausible hours.

We analyzed data on the more than 39 million fee-for-service PCA claims DHS processed in fiscal years 2015 through 2019 to determine whether the PCA-specific electronic controls worked as intended. We determined that the control to limit payments to 24 hours per day functioned for nearly all paid claims. We found only 14 instances in which DHS paid claims in which a personal care assistant claimed to work more than 24 hours in one day. The highest claim was for 32 hours in one day. DHS's controls on claims for consecutive 24-hour work days also generally worked to prevent DHS from paying implausible claims. We found only two instances in which personal care assistants claimed to work consecutive 24-hour days.

DHS implemented additional electronic payment controls to comply with statutes, and these controls were also generally effective. Statutes limit the number of hours for which personal care assistants may be paid for providing care to 275 hours each month.¹ This averages to roughly nine hours each day of the month. DHS implemented a control to deny claims for more than 275 hours in a month for a single personal care assistant, and we found that the control is generally working. We found that only four paid claims in the five-year period exceeded 275 hours. These claims exceeded the limit by a maximum of two hours. A DHS official told us that they review all claims for personal care assistants that were paid for 275 hours or more on a monthly basis and recover excess payments if necessary.

Investigations

Investigations into potential fraud, theft, abuse, or error in PCA are carried out by DHS's Office of the Inspector General's (OIG) Financial Fraud and Abuse Investigation Division. Within that division, the Surveillance and Integrity Review Section (SIRS) Provider Investigations unit reviews cases, analyzes information, and determines whether DHS should take administrative action on a case.² That unit also determines whether to refer cases for criminal investigation and prosecution. The SIRS Screening unit performs more limited reviews of PCA agency documentation. While its primary function is to review PCA agency enrollment or revalidation documentation for accuracy and

¹ *Minnesota Statutes* 2019, 256B.0659, subd. 11(a)(10).

² Administrative actions include suspending or terminating a PCA agency or personal care assistant's participation in PCA. We provide more information about administrative actions later in the chapter.

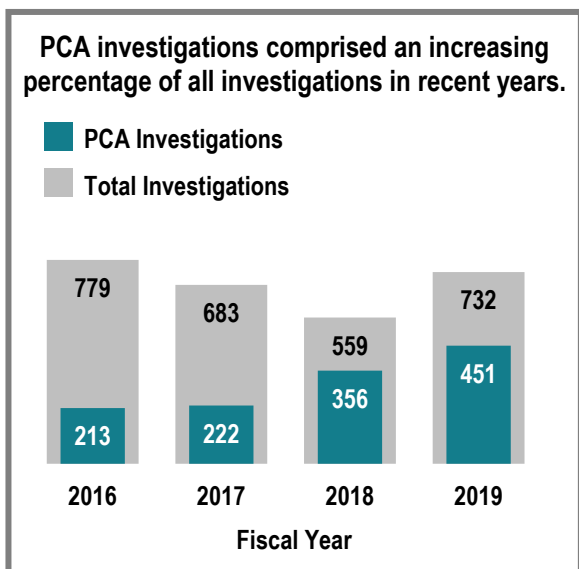
recommend whether to approve an agency's enrollment, the Screening unit may also refer cases to the Provider Investigations unit for more in-depth investigation.

In this section, we provide an overview of the provider investigations process, the results of investigations, and the timeliness in which investigations are completed. We also discuss appeals of administrative actions taken as a result of investigative findings.

Provider Investigations

Under federal regulations, states that receive Medicaid funds must establish “methods and criteria for identifying suspected fraud cases.”³ Minnesota rules established SIRS to identify and investigate fraud, theft, abuse, or error in publicly funded health care programs.⁴ Minnesota rules define which activities constitute fraud, theft, and abuse, and both state law and federal regulations outline DHS's responsibilities for fining, sanctioning, or otherwise acting when SIRS uncovers fraud or abuse in Medicaid services.

SIRS is responsible for investigating potential fraud and abuse by more than 100 different types of providers, including PCA agencies, hospitals, and medical transportation providers. We reviewed DHS's investigations data for fiscal years 2016 through 2019 and determined that the Provider Investigations unit completed investigations of nearly 50 different provider types during that time period.⁵



Investigations related to personal care assistance comprised nearly half of the total number of cases DHS completed in fiscal years 2016 through 2019.

PCA cases comprised 45 percent of the more than 2,700 investigations the Provider Investigations unit completed from fiscal years 2016 through 2019. The number of PCA cases increased each year, from roughly 200 in Fiscal Year 2016 to more than 450 in Fiscal Year 2019.

The second most prevalent provider type the unit investigated was hospitals, which comprised nearly 30 percent of the total. All other provider types, including home and community-based services providers, physicians, and pharmacies, each accounted for less than 5 percent of total cases.

³ 42 CFR, sec. 455.13(a) (2019).

⁴ *Minnesota Rules*, 9505.2160, published electronically August 12, 2008.

⁵ “Completed” cases include cases that the Provider Investigations unit independently investigated as well as cases on which the unit took action, such as suspending a provider, based on information received from other entities.

DHS relied primarily on external complaints to identify cases of potential personal care assistance fraud or abuse.

The majority (nearly 65 percent) of PCA investigations completed from fiscal years 2016 through 2019 originated from external sources, including PCA agencies, county agencies, citizens, managed care organizations, and the Minnesota Office of the Attorney General’s Medicaid Fraud Control Unit. About 10 percent came from DHS units other than the Provider Investigations unit, and about 25 percent were opened based on provider investigators’ findings in related cases. For example, if an investigator identified an overpayment to an individual personal care assistant, they opened a separate case for the PCA agency to recover the overpayment.⁶

DHS has performed limited proactive analysis to identify potential fraud and abuse in PCA. For example, a DHS official told us the OIG Financial Fraud and Abuse Investigation Division’s Data Analytics unit does not engage in data mining to detect possibly improper or fraudulent PCA activity. Officials told us a SIRS manager regularly reviews a report on providers whose claims have increased significantly in order to identify outliers and determine whether their claims were legitimate. However, one DHS official told us it is uncommon for PCA agencies to appear on the report, and another official said that SIRS had never opened an investigations case based on those reviews.

DHS officials indicated that limited resources prevent them from performing more proactive analysis. One official said SIRS already receives too many complaints for provider investigators to investigate them all in a timely way. Another official said that the Data Analytics unit is extremely busy providing data reports to DHS staff, the Medicaid Fraud Control Unit, and others, and data analysts must prioritize requests because there is already too much work for the unit to complete. We discuss the volume of complaints awaiting investigation later in this chapter.

SIRS Preliminary Investigator:

Conducts a limited review of fraud and abuse allegations by reviewing post-payment claims information, requesting documents, and conducting a desk review. Recommends whether to open a full investigation.

SIRS Provider Investigator:

Conducts a full investigation onsite or through a desk review of documents and post-payment claims information. Determines, with management, what action to take, if any.

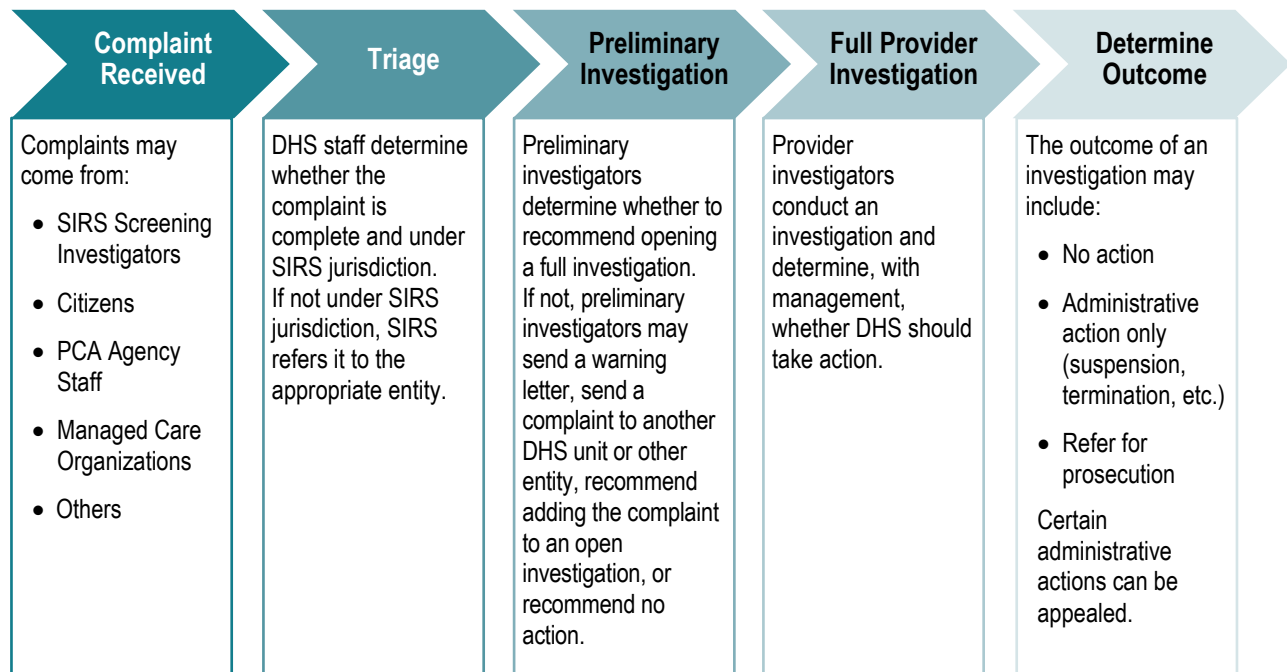
Provider Investigations Process

Federal regulations require DHS to perform preliminary investigations of reports of potential fraud or abuse and determine whether a full investigation is necessary.⁷ In the SIRS Provider Investigations unit, *preliminary investigators* perform this function. If, after reviewing a complaint, they recommend opening a full investigation and SIRS managers agree with the recommendation, SIRS managers assign the case to a *provider investigator*. As we noted previously, SIRS receives complaints from a variety of sources, and those complaints generally go through a process of review outlined in Exhibit 4.1.

⁶ In the PCA program, PCA agencies are the “pay-to” provider, meaning DHS pays agencies and agencies pay individual personal care assistants. If DHS determines that a personal care assistant fraudulently claimed to work hours they did not, DHS would not recover the overpayment directly from the personal care assistant. Rather, DHS would open a separate case for the PCA agency that billed for the personal care assistant’s services and recover the overpayment from the PCA agency.

⁷ 42 *CFR*, sec. 455.14 (2019).

Exhibit 4.1: Fraud and abuse complaints received by DHS may pass through several stages of review.



NOTES: "SIRS" refers to the Surveillance and Integrity Review Section within DHS's Office of the Inspector General. "PCA" refers to personal care assistance.

SOURCE: Office of the Legislative Auditor.

Statutes require DHS to establish, in rule, general criteria and procedures for identifying and investigating potential cases of fraud, theft, and abuse in Minnesota's Medicaid program.⁸ Rather than establish detailed procedures, DHS promulgated rules that provide broad authority for provider investigators to contact individuals and organizations and examine documents pertinent to an investigation.⁹

Clear policies and procedures are important for several reasons. They promote consistency in decision-making processes, they establish clear expectations for individuals' work, and they create standards to which work can be held accountable.

DHS has not developed written criteria for determining when to recommend opening a full investigation.

A DHS official told us that no fraud tip or complaint is the same, so SIRS has not developed "cut and dry" criteria for opening a full investigation. However, DHS receives enough of certain types of cases to develop informal guidelines. For example, a DHS

⁸ *Minnesota Statutes* 2019, 256B.04, subd. 10.

⁹ *Minnesota Rules*, 9505.2200, published electronically August 12, 2008.

official said a common complaint involves a personal care assistant claiming to have worked hours they did not. In these cases, preliminary investigators look for evidence that the hours the personal care assistant claimed to have worked overlapped with hours worked at another job. The official told us preliminary investigators typically recommend opening a full investigation if there are more than five instances of overlap.

A preliminary investigator told us their goal is to recommend opening cases on which provider investigators can take an action; based on preliminary investigators' experience, they may believe that DHS will not be able to take action on certain deficiencies. Investigators also said that some complaints simply do not have merit. For example, one investigator noted that a person may complain about personal care assistants' actions, but the complaint demonstrates that the person does not understand the PCA program. A DHS official told us SIRS supervisors review all recommendations made by preliminary investigators. However, without written criteria, different supervisors may not make consistent decisions, particularly as staff change.

The Provider Investigations unit completed more than 2,100 preliminary investigations related to PCA complaints in fiscal years 2016 through 2019. Preliminary investigators recommended taking no action in 40 percent of complaints, while they recommended opening new investigations in about 30 percent. In about 12 percent of cases, preliminary investigators recommended referring the case to other entities—including managed care organizations, counties, or other DHS units—for further review.

Preliminary investigators most often recommended taking no action on complaints in fiscal years 2016 through 2019.

Outcome	Percentage of Cases
No action taken	40%
Open new investigation	30
Include complaint in ongoing investigation	12
Refer to other entity	12
Warning letter	6

NOTE: These data reflect preliminary investigations closed in fiscal years 2016 through 2019.

DHS has adopted some formal policies to guide its investigations.

The Provider Investigations unit is in the process of creating a manual of processes and procedures preliminary and provider investigators can use for reference or guidance while conducting investigations. For example, the department has established procedures for conducting site visits to PCA agencies. It has also outlined procedures for implementing sanctions and developed templates for conducting interviews and certain types of analysis.

At the same time, DHS has not adopted policies for some other research tasks, such as determining who to interview and how to document those interviews. In addition, DHS has not established formal timelines for investigative activities, which means PCA agencies and personal care assistants may continue to engage in fraudulent or abusive behavior during prolonged investigations. For example, DHS does not have a policy that establishes a timeline within which preliminary investigators must make a recommendation on whether to open a full investigation into a complaint. DHS also does not have a policy that states how quickly after being assigned to a case provider investigators are expected to begin investigative activities. Due to how DHS tracks

case activity, it is difficult to determine how long provider investigations take, on average. However, we found cases in which provider investigators performed no investigative activity on cases for months or even years after they were assigned. A DHS official also told us that the department is in the process of formalizing additional policies. The official also told us DHS is working towards establishing timelines for some investigative activities but does not currently require investigators to meet timeliness standards.

DHS’s provider investigations procedures follow several—but not all—recommended practices compiled by the Centers for Medicare and Medicaid Services.

In 2018, CMS published a report with recommended practices for mitigating vulnerabilities in PCA.¹⁰ The report included recommended practices for PCA investigations. After reviewing DHS manuals and policies and speaking with SIRS staff, we determined that investigators follow some recommended practices, as shown in Exhibit 4.2. For example, one recommended practice is to check state employment records when a personal care assistant is suspected to be working elsewhere when services were billed. SIRS has broad authority to review documentation relevant to their investigations, and an investigator told us they check Minnesota Department of Employment and Economic Development reports when they suspect a personal care assistant may have worked elsewhere during hours they claimed to provide PCA.¹¹

On the other hand, the Provider Investigations unit does not consistently follow a number of other recommended practices. For example, as we noted previously, the unit does not regularly conduct data analytics to identify PCA agencies with suspicious billing practices. It also frequently conducts desk reviews, in which it requests documents from PCA agencies, rather than conducting recommended unannounced site visits to review documents.

RECOMMENDATION

DHS should further develop policies and procedures to formalize aspects of its investigations processes and incorporate best practices.

A DHS manager and investigators told us it would be difficult to create manuals or guidelines for every aspect of SIRS’s investigative work. We agree, but believe that by formalizing additional policies and procedures, DHS can ensure that investigators understand what is expected of them, promote consistency as staff changes occur, and provide greater guidance to new investigators. This is particularly important because SIRS has not typically provided formal training to new investigators; instead, it has assigned mentors to assist new investigators during their first few months in the position. Investigators we spoke with reported mixed experiences with mentors, with some mentors providing more guidance than others.

¹⁰ Centers for Medicare and Medicaid Services, *Vulnerabilities and Mitigation Strategies in Medicaid Personal Care Services* (Woodlawn, MD, 2018).

¹¹ *Minnesota Rules*, 9505.2200, subp. 3, published electronically August 12, 2008.

To the extent possible, DHS should align its formal policies and procedures with recommended practices. DHS's ability to implement some recommended practices may be limited by available resources, but some practices may require a smaller commitment of resources. For example, DHS and the Medicaid Fraud Control Unit could use their own staff to conduct interagency training on topics relevant to both entities.

Exhibit 4.2: DHS investigation practices are in line with some recommended practices.

Recommended Practices	Practices in Line	DHS Practices
Based on results of data analytics, audit cases of suspicious billing.	No	SIRS does not regularly perform data analytics on PCA data.
Work with the state's or Center for Medicare and Medicaid's audit contractors to audit PCA agencies.	No	DHS contracts with audit contractors for other types of work, but not to audit PCA.
Organize interagency training on policies, functions, and provider interactions related to fraud referral and investigations.	No	DHS reports it has not regularly organized joint training for SIRS and MFCU.
Conduct unannounced on-site inspections for providers under investigation.	Partial	As a condition of enrollment as a Medical Assistance provider, statutes require PCA agencies to allow DHS to conduct unannounced on-site inspections; most investigations do not involve site visits.
If a personal care assistant is suspected of working elsewhere, check state employment records.	Yes	SIRS has broad authority to review documentation necessary to complete its investigations.
Audit a small sample of claims and provide focused education to PCA agencies.	Yes	DHS policies state screening investigators may review a sample of claims during site visits; DHS management reports that investigators provide education to PCA agencies when needed.
Meet regularly with MFCU.	Yes	SIRS management reports that they hold regular meetings with MFCU management.

NOTES: "SIRS" refers to DHS's Surveillance and Integrity Review Section. "PCA" refers to personal care assistance. "MFCU" refers to the Medicaid Fraud Control Unit at the Minnesota Office of the Attorney General. This is not an exhaustive list of recommended practices related to investigations.

SOURCES: Office of the Legislative Auditor, review of Centers for Medicare and Medicaid Services, *Vulnerabilities and Mitigation Strategies in Medicaid Personal Care Services* (Woodlawn, MD, 2018); DHS policies and procedures; *Minnesota Statutes* 2019, 256B.04, subd. 21(j); and *Minnesota Rules*, 9505.2200, subp.3, published electronically August 12, 2008.

Screening

In Chapter 3, we described the two types of routine screening site visits that the SIRS Screening unit is required to perform for all PCA agencies: pre-enrollment and revalidation.¹² Screening investigators also perform discretionary screening site visits in response to issues identified by DHS.

The purpose of discretionary screening visits is similar to the purpose of routine visits: to verify the accuracy of information the PCA agencies provide to DHS and to determine whether PCA agencies are complying with legal requirements. Discretionary visits, however, may focus more specifically on reviewing issues identified in complaints or previous site visits. These issues may include an agency failing to properly document hours worked by qualified professionals or to maintain recipients' PCA care plans as required.

SIRS Screening Investigator:

Interviews PCA agency owner or managing employee and conducts a limited review of documentation on-site. Recommends whether the Provider Eligibility and Compliance unit should approve agency for enrollment. May refer case to the Provider Investigations unit for review.

Screening investigators provided increased support to the Provider Investigations unit in recent years by completing discretionary site visits.

In fiscal years 2018 and 2019, screening investigators began performing screening site visits at the request of the Provider Investigations unit. The Screening unit also increased the number of site visits it performed at its own discretion in recent years.¹³ A DHS official told us that screening investigators generally target PCA agencies for these discretionary site visits when they believe they could add value; for example, screening investigators may choose to visit agencies where they identified issues during pre-enrollment site visits.

In fiscal years 2018 and 2019, about 40 percent of the site visits the Screening unit performed were discretionary, rather than routine pre-enrollment or revalidation, site visits. This was an increase from less than 1 percent in Fiscal Year 2015.¹⁴

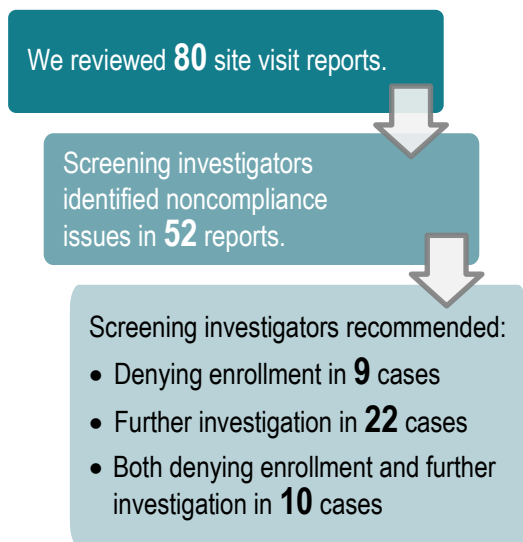
Screening site visits are generally limited in scope, and screening investigators do not implement administrative actions when they find issues of noncompliance during their investigations. Instead, they may (1) recommend that DHS's Provider Eligibility and Compliance unit deny a PCA agency's enrollment and/or (2) refer the case to the Provider Investigations unit for further investigation.

¹² The Screening unit completes site visits to many other types of providers in addition to PCA agencies. In fiscal years 2015 through 2019, it completed about 3,100 visits. During that five-year period, 46 percent of total site visits were completed at PCA agencies.

¹³ A DHS official told us that there are not many differences between the visits that provider investigators refer to the Screening unit and the ones the Screening unit chooses to make, although the Screening unit may not always target PCA agencies for a visit due to issues identified during previous visits. In some cases, they may choose to conduct a more routine follow-up visit with a provider because the unit has capacity to do so.

¹⁴ This change coincided with a sharp decrease in the number of revalidation site visits performed between fiscal years 2015 and 2019.

DHS has not established written criteria for screening investigators to recommend further review of problematic cases.



We reviewed site visit reports for 80 screening visits completed in fiscal years 2017 through 2019, and it was not always clear why screening investigators did not recommend DHS take action on the information they found.¹⁵ Although screening investigators noted at least one instance of noncompliance in most of the site visit reports we reviewed, they did not recommend further action for all of those visits. In addition, it was not always clear why screening investigators referred cases to the Provider Investigations unit for further review, but recommended approving the PCA agency to remain enrolled as a PCA provider.

DHS has not developed written criteria for when screening investigators should refer a case to Provider Investigations, and officials gave us differing opinions on when cases should be referred. One DHS official told us that screening investigators typically refer cases to the Provider

Investigations unit for further review when they believe that unit can pursue action against a provider. However, another DHS official told us they were not aware of any criteria cases must meet for screening investigators to send cases to the Provider Investigations unit. The second official said if screening investigators find the PCA agency is not following documentation requirements, they should refer the case to the Provider Investigations unit.

Criteria for recommending that a PCA agency's enrollment be terminated are clearer, but they also leave some room for interpretation. Federal and state law require DHS to terminate agencies' enrollment in certain cases, with exceptions. For example, in the site visit reports we reviewed, screening investigators recommended denying enrollment if (1) they were unable to access the PCA agency's place of business, or (2) the agency had not disclosed all owners or managing employees. Federal regulations require termination in both of these cases, unless the state Medicaid agency (DHS) finds that termination is not in the best interests of the Medicaid program.¹⁶

Other criteria are less clear. For example, statutes state that DHS has the authority to request proof of documentation of "meeting provider standards" and failure to comply with laws and rules may result in suspension, denial, or termination of an agency's enrollment.¹⁷ However, in cases where certain required documentation—such as PCA

¹⁵ About one-half of these site visit reports were for routine revalidation site visits and about one-half were for discretionary screening investigation site visits. We present results of both types of visits here because the site visit process is very similar for both. Screening investigators were able to complete the visit in 71 of the 80 cases; in 3 cases, screening investigators conducted a desk review; and in 6 cases, the PCA agency did not provide access to their site of business.

¹⁶ 42 *CFR*, sec. 455.416(d) and (f) (2019).

¹⁷ *Minnesota Statutes* 2019, 256B.0651, subd. 16.

care plans or qualified professional supervision notes—were deficient, screening investigators often recommended approving agencies' enrollment.

RECOMMENDATION

DHS should establish written guidelines for determining when screening investigators should (1) recommend that a personal care assistance agency's enrollment be approved or denied, and (2) refer a case to the Provider Investigations unit for further review.

The Screening unit should work with the Provider Eligibility and Compliance and Provider Investigations units to develop written criteria for the actions it recommends based on information investigators collect during site visits. In some cases, the law clearly requires that DHS terminate an agency's enrollment. In others, DHS has more discretion in the actions it takes. Given the number of DHS units that work to protect the integrity of the PCA program, it is important that they all agree on each unit's responsibilities. They should also understand the ramifications of those decisions.

Investigations Results

DHS has the authority—and the responsibility—to take administrative action against individual personal care assistants and PCA agencies under certain circumstances. Under federal law, DHS must terminate PCA agencies' enrollment if individuals with 5 percent or more ownership interest do not provide DHS with timely and accurate information.¹⁸ As another example, state law allows DHS to suspend PCA agencies' enrollment if they make a pattern of false claims.¹⁹

Statutes require DHS to consider “the nature, chronicity, or severity of the conduct and the effect of the conduct on the health and safety of persons served” by the provider when taking certain administrative actions.²⁰ DHS has established broad criteria investigators must consider when imposing certain administrative actions. For example, when determining the chronicity of an action, provider investigators should determine (1) the number of identified violations, (2) the length of time violations occurred, and (3) the length of the period of time reviewed.

A DHS official told us that SIRS management reviews all cases with provider investigators prior to closing them without action or imposing administrative actions. In these reviews, investigators are expected to present evidence related to the nature, chronicity, and severity of the conduct they investigated, and decisions are made on a case-by-case basis.

¹⁸ 42 *CFR*, sec. 455.416(a) (2019).

¹⁹ *Minnesota Statutes* 2019, 256B.064, subds. 1a(a)(2) and 1b.

²⁰ *Minnesota Statutes* 2019, 256B.064, subd. 1b.

DHS reported taking administrative action on over three-quarters of the personal care assistance investigations cases it completed in fiscal years 2016 through 2019.

As shown in Exhibit 4.3, DHS can implement a variety of administrative actions when it uncovers fraud, theft, abuse, or error in PCA. The Provider Investigations unit reported taking at least one administrative action against over 1,000 providers—both PCA agencies and individual personal care assistants—in fiscal years 2016 through 2019.²¹ According to DHS data, the unit took at least one administrative action in about 80 percent of the cases it completed during those four fiscal years.

Exhibit 4.3: State law gives DHS the authority to take several types of administrative action when providers commit fraud, theft, abuse, or errors in the provision of personal care assistance.

Administrative Action	Description	Number of Cases Fiscal Years 2016-2019
Payment Withhold	Stop claims for PCA from being processed and payments from being sent to the PCA agency	147
Suspend or Terminate Participation in Program	PCA agency or personal care assistant is prohibited from being paid as a PCA provider for a specified period of time, or in the case of termination, until the basis for termination no longer exists	463
Fine	Fines issued for failing to keep proper documentation, repeated violations, and employing an excluded provider	6
Identify Overpayment for Recovery	Issue “Notice of Agency Action” to the PCA agency to collect an identified overpayment	238
Provider Agreement	Require provider agreement that states specific conditions of participation	71
Warning	Letter is sent to provider warning them of conduct that had the potential to warrant an administrative action	281

NOTES: This table does not present all actions available in law; there were additional actions that DHS did not impose. “PCA” refers to personal care assistance.

SOURCES: Office of the Legislative Auditor, based on *Minnesota Statutes* 2019, 256B.064; *Minnesota Rules*, 9505.2210, subp. 2; and 9505.2215, subps. 1A and 2, published electronically August 12, 2008; and correspondence with and data provided by the Department of Human Services.

²¹ Until spring 2019, the Provider Investigations unit did not track whether cases pertained to a PCA agency or a personal care assistant within its case management system. The Provider Investigations unit determines the administrative action to take and communicates the action to the Provider Eligibility and Compliance unit. The Provider Eligibility and Compliance unit implements the action in applicable databases.

In fiscal years 2016 through 2019, DHS most commonly imposed suspensions and terminations on providers. Suspensions last for a specified period of time; terminations are effective until the basis for termination no longer exists. A DHS official told us that when a provider whose participation in the program was terminated seeks reinstatement, DHS considers many factors to determine whether the basis for termination still exists. For example, department officials determine whether the provider fully repaid overpayments and restitution ordered by the court. DHS is required to identify the length of time providers are excluded from participation in the PCA program when they are suspended or terminated.²² The average suspension length was 23 months, while the average termination length was 63 months.

DHS also commonly identified overpayments in fiscal years 2016 through 2019. DHS identified a total of nearly \$6.2 million in overpayments in the four-year period and reported recovering more than \$4.7 million. When the Provider Investigations unit identifies overpayments, it coordinates with other DHS units to recover those overpayments by accepting payments from PCA agencies, reducing future claims payments to PCA agencies, or recovering surety bonds, among other actions. As the “pay-to” provider—the entity that receives money from DHS for services provided—DHS only recovers overpayments from PCA agencies. It does not recover overpayments from personal care assistants. A DHS official told us that it may take several years to recover an overpayment, particularly if the PCA agency goes out of business. In some cases, after taking all actions available to the department, DHS must classify the overpayment as unrecoverable.

Appeals of Administrative Actions

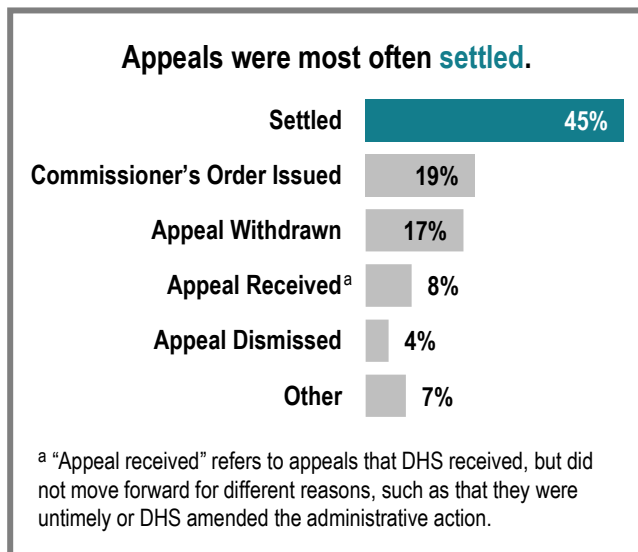
Personal care assistants and PCA agencies may appeal certain administrative actions, including certain suspensions, terminations, and identification of overpayments.²³ To do so, they must file the appeal with DHS within 30 days of the date that DHS mailed a notification of action. Administrative law judges in the Office of Administrative Hearings preside over these types of appeal cases. When the hearing concludes, the judge issues a report with conclusions about the facts of the case and recommendations as to whether DHS’s administrative action should be affirmed, modified, or reversed. The judge’s recommendation is not necessarily binding. The commissioner has 90 days from when the hearing record is closed to issue a final order; if they do not issue an order, the judge’s recommendation becomes the final order.²⁴

²² *Minnesota Rules*, 9505.2230, subp. 1B(1), published electronically August 12, 2008.

²³ *Minnesota Statutes* 2019, 256B.064, subd. 2(e). These appeals lead to “contested case hearings.”

²⁴ *Minnesota Statutes* 2019, 14.62, subds. 1 and 2a.

Personal care assistance providers appealed less than 20 percent of eligible administrative actions taken by DHS in fiscal years 2016 through 2019.



DHS received just under 140 appeals for the approximately 700 appealable administrative actions it took in fiscal years 2016 through 2019. Nearly half of these appeals were resolved when the appellant and DHS reached a settlement agreement.

When DHS and the appellant do not reach a settlement, there are several other possible outcomes. As previously noted, the appeal may go through a hearing in the Office of Administrative Hearings, and the commissioner may issue an order on the judge's recommendation. In some cases, the appellant withdraws the appeal. In others, the appeal is received, but it was not timely, and so it does not move forward.

Timeliness of Investigations

Statutes and rules do not require DHS to complete investigative activities within established timeframes. For example, there is no limit on the amount of time DHS can take to conduct a preliminary investigation or assign a provider investigator to a case once a preliminary investigator determines that the case has merit. In addition, as we noted previously, DHS has not established internal policies that specify timeframes for investigative activities. Timeliness is important in DHS's investigations because the longer DHS takes to investigate a provider and take administrative action, the longer the provider can potentially participate in abusive or fraudulent practices.

As noted previously, a DHS official told us DHS receives too many complaints to investigate them all in a timely way. To review the total number of complaints received by the department and its timeliness in reviewing them, we analyzed data, not only related to PCA, but on *all* preliminary investigations that were open at the beginning of November 2019.

DHS data showed that there were more than 620 preliminary investigations open at that time.²⁵ About half (310) of those cases were actively under review or waiting for review. In these cases, preliminary investigators had not yet determined the merit of the complaint and recommended how to proceed with the case, or their recommendation was waiting for management review. Preliminary investigators had finished reviewing the other 317 open cases and had recommended that provider investigators conduct a full investigation.

²⁵ Sixty-three percent of these cases were related to PCA.

DHS did not take timely action to fully investigate some cases in which preliminary or screening investigators identified issues with compliance.

The 317 cases for which preliminary investigators recommended a full investigation had been waiting for assignment to provider investigators for an average of more than 270 days, as of November 2019. Two cases had been waiting more than two years for assignment.

There were several reasons for the delay in assigning provider investigators. At the time of our review, the Provider Investigations unit had 18 provider investigators. A DHS official told us they have been working to reduce high caseloads for provider investigators, which they stated were at an average of 50 cases per investigator in January 2019. To reduce investigators' caseloads, management must assign fewer cases to each investigator, meaning cases may wait longer for assignment.

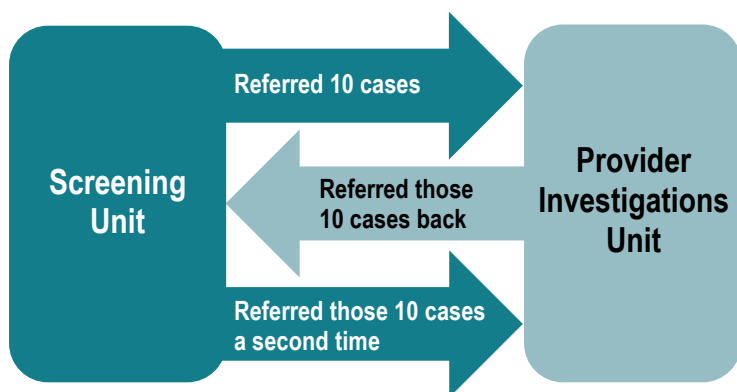
In addition, some cases are assigned to a provider investigator more quickly than others. DHS does not have a case prioritization policy, but a DHS official told us that the unit has developed unwritten priorities for assignment to provider investigators. For example, they said that SIRS' top priority is to investigate complaints in which there are concerns about an individual's health or well-being. Cases deemed a lower priority could wait for years to be assigned to an investigator. By the time a provider investigator finishes their investigation of these cases and DHS takes an action, several years may pass in which a PCA agency or personal care assistant continued to provide services after a preliminary investigator identified compliance issues.

Prioritization for Assignment of Provider Investigators

1. Cases in which there is concern for an individual's health or well-being.
2. Cases DHS sent to the Medicaid Fraud Control Unit that require the department to take administrative action.
3. Cases for which DHS received multiple complaints against a provider.
4. Cases from oldest to newest.

The Provider Investigations unit was also slow to act on many cases referred by screening investigators. In 32 of the 80 site visit reports we reviewed, screening investigators referred the case to the Provider Investigations unit for further investigation.²⁶ To better understand investigation timelines, we reviewed data on those 32 cases. As of September 2019, DHS had taken action against a provider in only 5 of the 32 cases we reviewed, 15 of which screening investigators had referred in fiscal years 2017 and 2018. In three additional cases, preliminary investigators recommended taking no further action after reviewing documentation and determining the PCA agency had taken steps to comply with requirements.

²⁶ As previously noted, we reviewed 80 site visit reports from visits completed in fiscal years 2017 through 2019.



We found that screening investigators conducted 10 of the 32 visits we reviewed at the request of the Provider Investigations unit *after* previously referring the case to that unit due to noncompliant documentation. The Screening unit received the follow-up request an average of two years and five months after that unit's original referral to the Provider Investigations unit. In all ten of these cases, screening investigators referred the case to the Provider Investigations unit a

second time for continued documentation deficiencies. This means that those ten cases were passed between SIRS units without action for more than two years.

RECOMMENDATION

DHS should create a plan for investigating suspected fraud and abuse cases in a more timely way.

Statutes state that DHS must establish general criteria and procedures for the “prompt investigation” of suspected fraud, theft, and abuse in the Medical Assistance program.²⁷ However, we found that DHS’s investigations are not always prompt. This is due, at least in part, to the high volume of complaints received by DHS compared to its limited workforce. The 2019 Legislature provided funding for an additional four investigators.²⁸ This may help address the Provider Investigation unit’s workload, but some of the delays may also be related to DHS’s practices—including passing cases back and forth between SIRS units without taking action to address issues identified.

As DHS further develops its investigative policies and procedures, it should devise a plan for addressing cases of suspected fraud and abuse in a timely manner. In particular, it should explore ways to act more quickly on issues of noncompliance that preliminary and screening investigators uncover. For example, it could increase preliminary investigators’ use of warning letters or expand the scope of preliminary investigators’ work to include recommending fines for incomplete documentation. As we showed in Exhibit 4.3, DHS rarely used its authority to fine providers. It should also formalize timeframes within which it expects key tasks, such as beginning investigative activity on a case after assignment, to be completed. DHS should present this plan to the Legislature for review.

²⁷ *Minnesota Statutes* 2019, 256B.04, subd. 10.

²⁸ *Laws of Minnesota* 2019, First Special Session, chapter 9, art. 14, sec. 2.

Criminal Prosecutions

Federal law generally requires states that participate in the Medicaid program to operate a Medicaid Fraud Control Unit (MFCU) to investigate and prosecute individuals that commit fraud in federal health care programs.²⁹ As we noted previously, in Minnesota, MFCU is part of the Minnesota Office of the Attorney General. If the SIRS Provider Investigations unit determines that a case involves a credible allegation of fraud, the Provider Investigations unit must refer the case to MFCU for further investigation and possible prosecution.³⁰

The Medicaid Fraud Control Unit and DHS’s Surveillance and Integrity Review Section have important, but distinct, roles in protecting the integrity of the personal care assistance program.

While MFCU’s responsibilities are focused on investigating and prosecuting fraud in court, SIRS is more broadly responsible for investigating fraud, abuse, or error and imposing appropriate administrative actions.³¹ As shown in the examples below, SIRS does not always determine that a case involves a credible allegation of fraud. In some cases, for example, investigators may determine that the case simply involves error on the part of the provider.

Example: SIRS Case Referred to MFCU

The owner of a PCA agency reported to SIRS that they believed a personal care assistant they employed had billed for time that overlapped with the assistant’s other job. A provider investigator found that the personal care assistant had submitted multiple time cards for PCA that overlapped with times that the assistant worked at a second job. SIRS referred the case to MFCU, which further investigated. MFCU filed a criminal complaint, and the personal care assistant was found guilty of theft by swindle and theft by false representation and ordered to pay restitution of \$20,000.

Example: Case Investigated by SIRS Only

The mother of a child receiving PCA reported to SIRS that her PCA agency had billed for services that her child did not receive. A provider investigator reviewed timecards and other documentation and identified an overpayment of approximately \$1,300. The provider investigator determined the claims were mistakenly submitted, and DHS recovered the overpayment by reducing payments to the PCA agency.

Along with different responsibilities, MFCU and SIRS have different investigative priorities. An MFCU official told us that unit is more inclined to investigate cases with large monetary implications, and the unit’s cases tend to encompass years-long timeframes. In contrast, they said that SIRS’ investigations tend to be for smaller dollar values, and the timeframe SIRS reviews is short. The MFCU official told us they would not characterize SIRS’ investigative work as thorough. A DHS official said that,

²⁹ 42 U.S. Code, sec. 1396b(q) (2018).

³⁰ 42 CFR, secs. 455.15(a)(1) and 1007.11(a) (2019).

³¹ *Minnesota Rules*, 9505.2160, subp. 1, published electronically August 12, 2008.

for practical reasons, SIRS investigates the tips it receives and does not generally expand the scope of a review once investigators find the evidence necessary to support an administrative action. A SIRS investigator told us DHS management focuses on overall program integrity and encourages investigators to ensure providers comply with requirements, not pursue only high-dollar cases.

From fiscal years 2016 through 2019, DHS reported referring more than 320 cases to MFCU for what the SIRS Provider Investigations unit concluded were credible cases of fraud. MFCU determined it would pursue a criminal investigation, or “accepted,” about three-quarters of those cases. An MFCU official told us that MFCU may not accept a case for numerous reasons, including that MFCU determined (1) the case did not meet the required standard for a credible allegation of fraud, (2) SIRS did not gather enough information for MFCU to pursue the case, or (3) the case warranted administrative action but not criminal action.



Stay of Imposition: The imposition of a prison sentence is delayed as long as the offender complies with conditions of the court. If conditions are met, the case is discharged and, for civil purposes, the offender receives a misdemeanor, rather than felony, conviction on their record.

Stay of Adjudication: The offender pleads guilty or nolo contendere (no contest), but the judge does not enter a judgment of guilt. If the offender complies with conditions of the court, charges are dismissed and the offender does not have a record of conviction.

According to DHS data, MFCU filed charges in court for just over half of the cases the unit accepted from SIRS.³² The court ordered action in over 90 percent of those cases. The most common actions were stay of imposition (35 percent) and stay of adjudication (27 percent). Courts ordered about \$5.7 million in restitution for cases SIRS referred to MFCU.

While DHS is the principal entity that refers allegations of fraud to MFCU, the unit opens cases based on referrals from other agencies and individuals and its own investigative work. According to MFCU data, the unit received more than 530 referrals related

to PCA from all sources in fiscal years 2016 through 2019, and it filed more than 200 criminal charges. The unit reported 178 convictions during the four-year period and \$14 million ordered in restitution.

The Medicaid Fraud Control Unit provided numerous recommendations to DHS to improve fraud prevention and detection efforts, but the department has not acted on many of those recommendations.

The former attorney general sent a letter to the former DHS commissioner in January 2019 providing recommendations for how DHS could deter and prevent fraud in PCA. The attorney general indicated that MFCU had sent similar recommendations to DHS in previous years. OLA requested information about DHS’s response to MFCU’s recommendations and found that the letter had not been shared with relevant officials in the department. The former interim manager of OIG stated that “the letter was sent during a period of transition, and this correspondence did not reach our current SIRS

³² An MFCU official told us that, in some cases in which MFCU did not file criminal charges, the unit entered into civil settlements which required repayment of Medicaid funds and suspension of a provider for a specified period of time.

management team.”³³ The former interim manager went on to say that MFCU and SIRS had discussed much of the content of the letter in the past.

In a 2017 letter to MFCU, the former Inspector General stated that “some of MFCU’s suggestions appear to arise out of a misunderstanding of the organization of DHS and administration of the Medical Assistance program in Minnesota.”³⁴ One recommendation MFCU provided was for DHS to identify which PCA agencies “always bill for recipients’ *maximum authorized*” amounts of PCA “instead of the *actual services* provided” and review those agencies’ claims to determine whether they are legitimate.³⁵ The former interim manager of OIG stated that individuals may need the amount of services authorized. In fact, that is what these service authorizations are designed to do. As we explained in Chapter 2, recipients must complete an annual assessment to determine their need and eligibility for PCA. Based on that assessment, assessors authorize the amount of PCA recipients may receive. One advocate we spoke with indicated that the number of individuals that do not access the amount of PCA they are authorized to receive is problematic and that some recipients cannot find personal care assistants to provide needed services.

At the same time, DHS did not adequately address some of MFCU’s other recommendations in its response. For example, MFCU provided a number of recommendations to review billing for qualified professionals’ visits. In OIG’s 2017 letter, the former Inspector General noted that the Legislature would need to pass legislation to enroll qualified professionals in order for DHS to perform the data analytics suggested. The 2019 Legislature *did* require qualified professionals to enroll with DHS.³⁶ However, in their October 2019 letter, the interim manager for OIG did not indicate how this change would affect OIG’s ability to implement MFCU’s recommendations; instead, they referred to the response provided in the office’s 2017 letter. A DHS official later told us that the department would need additional staff to complete enrollment for qualified professionals.

As another example, MFCU recommended that SIRS use the data DHS maintains to identify claims for services provided by individuals ineligible to bill for PCA, including parents of minors receiving PCA and recipients of PCA. In addition, MFCU recommended that DHS create controls within its billing system to prevent payment of claims for providers or recipients living outside Minnesota. DHS did not address these specific recommendations in communication with MFCU or OLA.

³³ Bob Jacobson, Interim Manager, Office of the Inspector General, Department of Human Services, letter to Jodi Rodríguez, Office of the Legislative Auditor, October 18, 2019.

³⁴ Carolyn Ham, Inspector General, Office of the Inspector General, Department of Human Services, letter to Kirsi Poupore, Director, Medicaid Fraud Control Unit, Minnesota Office of the Attorney General, July 24, 2017.

³⁵ Lori Swanson, Attorney General, Minnesota Office of the Attorney General, letter to Tony Lourey, Commissioner, Department of Human Services, January 3, 2019; referring to Melanie Leslie, Investigator Auditor, Medicaid Fraud Control Unit, Minnesota Office of the Attorney General, e-mail to Bob Cooke, Supervisor, Office of the Inspector General, Department of Human Services, January 27, 2015.

³⁶ *Laws of Minnesota* 2019, First Special Session, chapter 9, art. 5, sec. 37, codified as *Minnesota Statutes* 2019, 256B.0659, subd. 13(a).

RECOMMENDATION

DHS should work more closely with the Medicaid Fraud Control Unit to prevent, deter, and detect fraud in personal care assistance.

Transition occurs in all state agencies and is not an excuse for failing to provide important communication to relevant leaders. In the future, DHS should ensure that not only OIG, but other divisions that have relevant roles in overseeing the PCA program, receive communications from MFCU and take concrete action to respond to recommendations. It may not always be possible or appropriate for DHS to implement MFCU's recommendations, but department officials should consider each recommendation and communicate with MFCU about them.

DHS has recently taken steps toward building a closer working relationship with MFCU. For example, a DHS official reported that MFCU and SIRS recently held a joint meeting for MFCU and SIRS investigators to meet and share information. In addition, the OIG Financial Fraud and Abuse Investigation Data Analytics unit recently began working with MFCU to address that unit's requests for data analytics and plan to select one project each quarter to complete. A DHS official reported that the first project was focused on dental data. We recommend DHS continue to strengthen its working relationship with MFCU to find new and innovative ways to protect PCA recipients and tax dollars from abusive and fraudulent practices.

Chapter 5: Program Changes

Throughout this report, we highlighted changes that the Legislature and the Department of Human Services (DHS) have made to the personal care assistance (PCA) program since 2009. The largest modification came in the form of a legislative mandate in 2013 to replace the PCA program with a new program. In this chapter, we provide a brief overview of the new program and discuss our overarching observations of DHS's efforts to implement changes to the PCA program. We recommend that the Legislature review statutory oversight requirements for the new program.

Community First Services and Supports

As we noted in Chapter 1, Minnesotans who need assistance with dressing, bathing, certain health-related procedures, and other specified activities may qualify for public programs that provide assistance with those activities. Currently, Minnesotans can receive assistance with these types of activities through PCA.

The federal Patient Protection and Affordable Care Act, passed in 2010, created a new option for states to provide these types of services through Medicaid.¹ To participate in this option, states must amend their state Medicaid plans and meet numerous criteria, such as providing services through a person-centered plan and providing back-up support to ensure continuity of services for recipients. States must also establish a Development and Implementation Council that includes elderly members and members with disabilities, and must collaborate with the council. States that are approved to offer services through this option are eligible to receive increased federal funding. Minnesota decided to participate in this new Medicaid option by creating a new program.

The 2013 Legislature established the Community First Services and Supports program to replace the PCA program.²

Like PCA, Community First Services and Supports (CFSS) requires individuals to complete an assessment and be determined to need assistance with at least one activity of daily living or qualifying behavior in order to be eligible for the program.³ Also like PCA, the amount of services an individual receives is based on statutory guidance.⁴

While PCA and CFSS share many characteristics, CFSS is different from PCA in numerous ways. For example, “support workers,” rather than personal care assistants, will provide services to recipients of CFSS. CFSS can pay for support workers to help recipients learn, enhance, or maintain skills necessary to perform certain tasks, such as dressing or eating.⁵ It can pay for goods that may reduce a recipient’s need for human

¹ The Patient Protection and Affordable Care Act of 2010, Public Law 111-148, sec. 2401, March 23, 2010.

² *Laws of Minnesota* 2013, chapter 108, art. 7, sec. 49, codified as *Minnesota Statutes* 2019, 256B.85.

³ *Minnesota Statutes* 2019, 256B.0625, subd. 19a; 256B.0659, subd. 4; and 256B.85, subd. 3(b)(1).

⁴ *Minnesota Statutes* 2019, 256B.0652, subd. 6(b); and 256B.85, subd. 8(b).

⁵ *Minnesota Statutes* 2019, 256B.85, subd. 7(2).

assistance.⁶ For example, an individual could purchase a microwave to enable them to prepare their own meal, rather than relying on assistance from a support worker with that task. In addition, individuals who are unable to act as personal care assistants through PCA, including spouses and parents of minor children, may act as support workers in CFSS.⁷

Similar to the PCA program, CFSS provides recipients with two service options. Recipients may choose to use a provider agency that employs, trains, and supervises support workers.⁸ Or, recipients may instead choose to participate in the “budget model.” Under this model, recipients receive a budget and control their own services and supports within that budget according to their service delivery plan.⁹ They hire, train, and supervise their own support workers and work with a financial management service to ensure they pay applicable taxes, keep track of their spending, and perform other duties.

The type of oversight CFSS requires is different from PCA in several ways. While in CFSS, provider agencies must meet enrollment requirements that are very similar to the current requirements for PCA agencies, the enrollment requirements are different for financial management services. In addition, in PCA, qualified professionals must visit all recipients to oversee the delivery of PCA at regular intervals.¹⁰ In CFSS, this type of direct oversight by a qualified professional is not required. Instead, under the provider agency model, the agency must evaluate services at regular intervals, but statutes do not specify qualifications for individuals that conduct those evaluations.¹¹ The budget model does not have a similar provision for regular outside supervision visits.

All CFSS recipients must have a plan for support worker training, which must include direct observation and monitoring of the support worker’s skills.¹² However, statutes indicate that this type of monitoring must occur when services begin or when a new support worker starts working with a recipient, not on an ongoing basis. Statutes also do not specify who must conduct the monitoring activities or their qualifications; statutes only indicate that monitoring activities must be conducted by “an appropriate professional.”¹³ In CFSS, consultation service providers must also approve recipients’ service delivery plans and provide recipients with other support.¹⁴

⁶ *Minnesota Statutes* 2019, 256B.85, subd. 7(3).

⁷ *Minnesota Statutes* 2019, 256B.0659, subd. 3(a)(1); and 256B.85, subd. 7(8).

⁸ *Minnesota Statutes* 2019, 256B.85, subds. 11(a) and 11b.

⁹ *Minnesota Statutes* 2019, 256B.85, subd. 13(a).

¹⁰ *Minnesota Statutes* 2019, 256B.0659, subds. 14(a) and (c) and 19(a)(4). Qualified professionals must be mental health professionals, registered nurses, licensed social workers, or other qualified individuals (*Minnesota Statutes* 2019, 256B.0625, subd. 19c).

¹¹ *Minnesota Statutes* 2019, 256B.85, subds. 11a and 11b.

¹² *Minnesota Statutes* 2019, 256B.85, subds. 6(c)(15) and 18a(c)(3).

¹³ *Minnesota Statutes* 2019, 256B.85, subd. 18a(c)(3).

¹⁴ *Minnesota Statutes* 2019, 256B.85, subd. 17. This requirement does not apply to individuals enrolled in Medical Assistance Home and Community-Based Services waiver programs or Alternative Care, whose plans must be approved by their case manager or care coordinator. Consultation services providers are required to provide recipients with information about CFSS service options, service planning, and other things when they begin participating in CFSS and at least annually thereafter.

The Legislature did not require DHS to implement Community First Services and Supports by a certain date, and DHS has not yet implemented the program.

Nearly seven years have passed since the Legislature passed the law authorizing CFSS, and DHS only recently established a target implementation date of July 2021. DHS officials told us that several factors have contributed to the delay in implementing CFSS. For example, they told us that different divisions within DHS needed to review current eligibility for PCA under the various public health care programs to understand how individuals would access services under CFSS. They also said they must make changes to two data systems and had to adapt the program to changes in federal rules. Minnesota must receive approval from the Centers for Medicare and Medicaid Services (CMS) to implement CFSS, but DHS officials did not tell us this was a factor in the delayed implementation. They told us CMS was waiting for DHS to provide them with a proposed implementation date before they could approve the amendment to Minnesota's state plan.

RECOMMENDATION**The Legislature should review the oversight requirements in Community First Services and Supports.**

We believe that sufficient time has passed since the Legislature established CFSS that it should review the language in that section of law and determine whether it continues to reflect the Legislature's vision for the program. The Legislature significantly modified the program's statutes in 2015, but there have been changes to PCA since then. As we noted in Chapter 3, the 2019 Legislature removed the requirement for annual reviews in PCA, but that requirement continues to exist for agencies that provide services under CFSS. As another example, the 2019 Legislature required qualified professionals to enroll with DHS. However, CFSS does not require qualified professionals to evaluate services provided through that program. These changes may reflect changing opinions about the level and type of oversight the Legislature believes is necessary for the services offered through PCA and CFSS.

In addition, we found some issues in DHS's oversight of the current PCA program that the Legislature should consider as it reviews CFSS. For example, in Chapter 3, we noted that DHS had not ensured that all personal care assistants and relevant PCA agency staff had completed training as required. We also found that DHS had not reviewed all required documentation for PCA agency enrollment. In CFSS, the Legislature may want to consider requiring DHS to regularly report on its efforts to comply with statutory requirements.

As the Legislature reviews the oversight requirements in CFSS, it should ensure it takes into account feedback from recipients and advocates, including Minnesota's Development and Implementation Council. Some of the advocates we spoke with indicated stronger oversight of PCA is necessary. One advocate characterized the oversight of PCA as "terrible." During another interview, advocates told us that qualified professional services help protect the most vulnerable populations, but DHS needs to do a better job of ensuring PCA agencies provide these services. Additionally,

an advocate told us that when there is no mechanism for reviewing the quality of service, it leaves the door open for abuse.

At the same time, several advocates indicated that PCA oversight should be balanced. One advocate stated that oversight should not limit a person's choices about their care. Another said that compliance measures put in place do not always align with the intention to provide flexibility for recipients. A third said that increased focus on oversight or penalizing a few perpetrators could negatively affect individuals' ability to access services they need.

Discussion

PCA is a large, complex program that has provided billions of dollars in services to tens of thousands of Minnesotans in recent years. It must comply with numerous federal and state requirements, and its administration is complicated. In this report, we noted three DHS divisions with primary responsibilities for overseeing assessor training, enrolling PCA agencies and personal care assistants, and investigating fraud and abuse; many separate units within the three large divisions we discussed in this report have specific responsibilities. For example, in the Office of the Inspector General, three separate units complete screening site visits, provider investigations, and data analytics.

With such broad reach across the department, it was difficult and time consuming for us to understand how DHS carries out its administrative responsibilities for PCA. It was also difficult to determine who ultimately ensures that the PCA program complies with its many requirements. CMS completed a focused program integrity review of Minnesota's PCA program in January 2019 and, after noting the different divisions within DHS that provide oversight of PCA, recommended that DHS consider developing an internal memorandum of understanding or similar agreement to specify each unit's oversight responsibilities. DHS completed a memorandum of understanding in response to the recommendation. The memorandum provides important information about many units' roles, but it does not include information about all units involved in PCA oversight and contains limited information about certain processes, such as revalidation.

The complicated structure of PCA administration may have contributed to the prolonged timelines to enact changes to the program in the last decade. In Chapter 2, we explained that the 2009 Legislature required DHS to include PCA in a broader assessment process for long-term services and supports; DHS developed the MnCHOICES tool to complete these assessments. While DHS launched MnCHOICES in 2013, the department did not require the use of that assessment tool for all PCA assessments as of early 2020. In Chapter 3, we noted that, under federal law, states must require that PCA providers use an electronic visit verification system by January 2020 or receive a decrease in federal Medicaid funding. Minnesota received a one-year delay in the reduction of federal funding, but DHS has yet to implement such a system. In this chapter, we noted that the 2013 Legislature established CFSS to replace PCA, but nearly seven years after the legislation was enacted, the department has not yet implemented the program.

It is unclear why it has taken so long to implement these changes. It may be due to the structure of DHS's administration and oversight of the program, the size of the PCA

program, a lack of sufficient resources to dedicate to these efforts, or all of the above. We do not offer a recommendation to change the structure of PCA's administration, because we have no evidence that a particular change would improve its administration. At present, units and divisions specialize in specific policy areas or tasks; it may be sufficient for DHS to modify its internal memorandum of understanding to more clearly outline each unit's responsibilities for ensuring the PCA program complies with all legal requirements. However, recent events have caused the Governor and some legislators to contemplate changing DHS's administrative structure. As they discuss possible changes to the department, the breadth of PCA administration—and eventually CFSS administration—should be kept in mind.



List of Recommendations

- DHS should establish a firm timeline for requiring assessors to use the MnCHOICES assessment tool for all personal care assistance assessments. (p. 21)
- DHS should regularly consult with assessors to improve its MnCHOICES training program, including guidance available to assessors, and make timely use of the feedback. (p. 27)
- The Legislature should require DHS to regularly evaluate the consistency of assessment results across assessors. (p. 32)
- DHS should regularly review appeals and recommended orders to identify and respond to inconsistencies in personal care assistance assessments. (p. 37)
- DHS should ensure that personal care assistance agency staff complete training as required by law. (p. 44)
- DHS should review all required documentation to ensure compliance with legal requirements during personal care assistance agencies' initial enrollment. (p. 47)
- DHS should revise its policy manuals and provider agreements so that they reflect state law and provide comprehensive and consistent references to personal care assistance agencies' responsibilities. (p. 51)
- DHS should repeal or revise outdated or obsolete administrative rules so that they align with statutes and DHS's current administration of the personal care assistance program. (p. 52)
- DHS should ensure it revalidates enrollment of all personal care assistance agencies, as required by law. (p. 54)
- DHS should develop standard protocols for personal care assistance agency pre-enrollment and revalidation site visits to ensure agencies comply with legal requirements. (p. 57)
- The Legislature should clarify DHS's responsibilities for monitoring personal care assistance documentation requirements. (p. 57)
- DHS should comply with federal requirements for electronic visit verification as soon as possible to avoid a reduction in federal funding. (p. 59)
- DHS should ensure that the personal care assistants it enrolls who are under 18 years of age meet statutory requirements related to their age. (p. 62)
- DHS should ensure that all personal care assistants meet statutory requirements related to background studies and training. (p. 64)
- DHS should regularly monitor whether personal care assistance agencies bill for qualified professional supervision as a way of determining whether agencies are providing services as required. (p. 67)

- DHS should further develop policies and procedures to formalize aspects of its investigations processes and incorporate best practices. (p. 75)
- DHS should establish written guidelines for determining when screening investigators should (1) recommend that a personal care assistance agency's enrollment be approved or denied, and (2) refer a case to the Provider Investigations unit for further review. (p. 79)
- DHS should create a plan for investigating suspected fraud and abuse cases in a more timely way. (p. 84)
- DHS should work more closely with the Medicaid Fraud Control Unit to prevent, deter, and detect fraud in personal care assistance. (p. 88)
- The Legislature should review the oversight requirements in Community First Services and Supports. (p. 91)

DHS and Legislative Changes in Response to OLA Recommendations

APPENDIX A

In response to legislative concerns, the Legislative Audit Commission directed the Office of the Legislative Auditor (OLA) to evaluate PCA administration in 2008. In 2009, OLA released a report that included a number of recommendations directed to the Legislature and the Department of Human Services (DHS).¹

Since 2009, DHS and the Legislature have made numerous changes in an effort to strengthen PCA program integrity. In this appendix, we outline the recommendations relevant to the scope of our current evaluation, and describe the actions DHS and the Legislature have taken in response to those recommendations.

Exhibit A.1: Status of OLA's 2009 Recommendations

2009 OLA Recommendation	Implemented	Description
The Legislature should require DHS to develop a process for periodically reviewing samples of PCA assessments for the purpose of ensuring reasonable levels of consistency.	No	As of the end of the 2019 legislative session, the Legislature had not required DHS to review samples of PCA assessments.
The Legislature should amend state law to prohibit the same person from serving as both the qualified professional and personal care assistant for a recipient on an ongoing basis.	No	Statutes define qualified professionals as individuals who evaluate PCA services and supervise PCA staff. However, the law does not explicitly state that a person cannot serve as both the qualified professional and the personal care assistant for a recipient.
DHS should post relevant documents from its quality assurance reviews of PCA agencies on its public website.	No	A DHS official told us the department does not post information on quality assurance reviews of PCA agencies on its website.
DHS should ensure that its Medicaid Management Information System contains accurate reporting about which PCA recipients have elected to get services under Minnesota's PCA Choice option.	No	A DHS official told us that the data system does not capture which service model PCA recipients use.
To the extent possible, DHS should reallocate existing resources to conduct more PCA-related investigations.	Unclear	Close to half of DHS's investigations in fiscal years 2016 through 2019 involved PCA, but a DHS official told us that DHS prioritizes assigning cases to investigators based on factors other than provider type.

Continued on next page.

¹ Office of the Legislative Auditor, Program Evaluation Division, *Personal Care Assistance* (St. Paul, 2009), 97-99.

Exhibit A.1: Status of OLA's 2009 Recommendations (continued)

2009 OLA Recommendation	Implemented	Description
The Legislature should require DHS to implement mandatory training requirements for persons conducting assessments of individuals' need for PCA services.	Partially	The 2009 Legislature required assessors that conduct certain assessments for PCA (now called MnCHOICES) to be certified and complete required training. However, DHS has not required training for all assessors that complete PCA assessments.
The Legislature should require representatives of new and existing PCA agencies to periodically complete comprehensive state training on PCA standards and practices.	Partially	Statutes require certain PCA agency staff to attend DHS training before the agency enrolls with the department. However, staff must repeat training only if they are hired by another agency and have not completed training within the past three years.
DHS should strengthen its Quality Assurance Review program by: (1) increasing resources devoted to it; (2) expanding the number and types of reviews; and (3) improving documentation.	Partially	A DHS official told us DHS has conducted two reviews of PCA agencies, one to determine compliance with standards, and the other to review service delivery. DHS also offers guidance documents and technical assistance to promote program integrity. In addition, DHS is required to conduct site visits to PCA agencies at initial enrollment and revalidation.
The Legislature should direct DHS to propose more specific policies regarding which PCA activities are (and are not) reimbursable.	Yes	The Legislature has more explicitly defined covered and noncovered services.
The Legislature should require DHS to develop guidance to help assessors determine the PCA service needs of persons with behavior issues.	Yes	The 2009 Legislature redefined behaviors. DHS provides some guidance regarding behavior definitions in instructions for completing assessments with one assessment tool.
The Legislature should require counties and managed care agencies that arrange for PCA assessments to provide timely copies of the assessment reports to PCA agencies that will be providing services, if they request them.	Yes	The 2009 and 2012 Legislatures specified that copies of reports that summarize the assessments be provided to the recipient within a specified timeframe.
DHS should develop a stand-alone document for PCA assessors and PCA agencies to distribute that clearly and concisely states the duties of a responsible party.	Yes	Statutes and DHS's PCA Program Manual define the duties of responsible parties. A responsible party must sign an agreement with the PCA agency to indicate their understanding of their role.
The state's chief human services judge should periodically review summary data showing the outcomes of PCA appeals for individual judges. Where appropriate, the chief judge should take steps to reduce inconsistencies—for example, through the development of increased training or clearer guidelines for judges.	Yes	According to a DHS official, the Appeals Division does not currently review summary data. However, the division has taken a number of steps to reduce inconsistencies, including developing training for new human services judges and expanding the process for reviewing judges' decisions.
The Legislature should amend state law to explicitly authorize DHS to reject agency applications for PCA enrollment in cases where the agency's owners or administrators have previously documented violations of federal or state regulations.	Yes	Statutes prohibit PCA agencies and all owners and managing employees affiliated with the agency from enrolling with DHS for two years following termination after having been found in violation of regulations.

Continued on next page.

Exhibit A.1: Status of OLA's 2009 Recommendations (continued)

2009 OLA Recommendation	Implemented	Description
The Legislature should amend Minnesota statutes to require all agencies providing PCA to obtain background checks on their qualified professionals.	Yes	The 2009 Legislature amended state law so that all qualified professionals must complete a background study.
DHS should define a set of topics on which personal care assistants should receive training.	Yes	The 2009 Legislature specified training topics that personal care assistants must receive.
The Legislature should clarify state statutes to ensure that all Medical Assistance State Plan PCA recipients have their services periodically supervised by a qualified professional.	Yes	The 2009 Legislature required that all personal care assistants be supervised by qualified professionals, who must visit PCA recipients at specific intervals.
DHS should amend its provider manual to require PCA agencies providing traditional PCA services to periodically make visits or phone calls to recipients' residences to verify that scheduled services are actually being provided.	Yes	Statutes and DHS's PCA Program Manual list responsibilities for qualified professionals, which include visits or phone calls.
The Legislature should amend statutes to explicitly require unlicensed PCA agencies to provide Minnesota's Home Care Bill of Rights to the recipients they serve. DHS should incorporate discussion of the bill of rights into its training program for PCA agencies.	Yes	Statutes require PCA agencies to provide recipients a copy of the Home Care Bill of Rights. DHS reviews the requirement to provide the document during training.
DHS should develop a concise, useful document that indicates whom PCA recipients can contact with service-related concerns. The department should require all PCA agencies to distribute this to recipients.	Yes	The Home Care Bill of Rights lists contacts for recipients to call if they have a complaint about their services. PCA agencies are required to provide recipients with a copy of the Home Care Bill of Rights.
DHS should regularly and promptly analyze its data on paid claims for PCA services to identify and recoup payment of improper claims.	Yes	DHS has implemented electronic payment controls to prevent certain improper claims.

NOTES: This appendix includes only recommendations relevant to the scope of our current evaluation. OLA made an additional six recommendations in its 2009 report, *Personal Care Assistance*. "PCA" refers to personal care assistance. "DHS" refers to the Department of Human Services.

SOURCES: The Office of the Legislative Auditor, Program Evaluation Division, *Personal Care Assistance* (St. Paul, 2009), 97-99; Office of the Legislative Auditor review of the Department of Human Services Personal Care Assistance Manual, department forms and procedures, and communication with the Department of Human Services; *Laws of Minnesota* 2009, chapter 79, art. 8; *Laws of Minnesota* 2012, chapter 216, art. 11; *Laws of Minnesota* 2015, chapter 78, art. 6; *Minnesota Statutes* 2008, 256B.0655; and *Minnesota Statutes* 2019, 144A.471; 256B.04; 256B.0625; 256B.064; 256B.0652; 256B.0659; and 256B.0911.





Minnesota Department of Human Services
Elmer L. Andersen Building
Commissioner Jodi Harpstead
Post Office Box 64998
St. Paul, Minnesota 55164-0998

March 11, 2020

James Nobles, Legislative Auditor
Office of the Legislative Auditor
Centennial Office Building
658 Cedar Street
St. Paul, Minnesota 55155

Dear Legislative Auditor Nobles:

Thank you for the opportunity to review and comment on your office's report titled *DHS Oversight of Personal Care Assistance*. We appreciate the professionalism of your staff as they completed their work on this project.

We are proud of the strides we have made in overseeing Personal Care Assistance (PCA) services across Minnesota since the last audit of this program by your office in 2009. The PCA program has long been a flexible staple of the continuum of care serving people with disabilities, older adults, and mental illness to live independently in their communities. When Minnesota had moratoriums on growth in foster care, nursing home and waiver services, PCA was available and has since grown to serving over 43,000 people per year. Audits such as these are an important trail marker in our efforts to implement program integrity measures while also ensuring the service remains affordable and accessible.

As your report notes, many of the recommendations made by the legislature after the 2009 report have been operational for many years. In fact, just last year, at the request of CMS, the DHS provider enrollment team presented at the national Medicaid Provider Enrollment Seminar Conference on the procedures in place in Minnesota to enroll PCA providers. Further, in the area of investigations, we have more than doubled the number of PCA investigations between 2017 and 2019 with more than 60 percent of the investigations we completed in 2019 on PCA providers. We continue to strengthen program controls, including launching an Electronic Visit Verification system and additional reviews of our assessment tools in the coming year.

And, there is always room for improvement in our systems and processes.

PCA is a critically important part of the continuum of services that help people to live full lives in their communities. However as PCA has been growing, so too has the workforce shortage that poses many challenges for people using PCA and other services. While we support continuous improvement efforts, we

are concerned that additional requirements could make it more difficult for people to find assistance and for providers to stay in business. An addendum to this letter comments on every recommendation in the report.

If there is a theme to the areas where the Department objects to the recommendations, it is in expectations suggested in the report that seem more appropriate for fully licensed services than for these intentionally unlicensed services. Once again, these services were designed to be affordable and accessible while managing state spending. Some of your recommendations expand oversight in a way that could compromise the character that makes PCA so valuable to the people using services. We are ready to work with the legislature to find the right balance of regulatory oversight that allows PCA to remain a flexible option for Minnesotans across the state.

Thank you again for the professional and dedicated efforts of you and your staff during this audit. The Department's policy is to follow up on all findings to evaluate the progress made to resolve them. If you have any further questions, please contact Gary L. Johnson, Internal Audit Director, at (651) 431-3623.

Sincerely,

/s/
Jodi Harpstead
Commissioner

PCA Audit Recommendation 1

The Department of Human Services (DHS) should establish a firm timeline for requiring assessors to use the MnCHOICES assessment tool for all personal care assistance assessments.

Response to PCA Audit Recommendation 1

If a qualified vendor is selected through the MnCHOICES RFP process, the legacy tool will be discontinued six months after implementation of the revised MnCHOICES. This timeframe will allow lead agencies to end contracts with legacy PCA assessors and ensure appropriate lead agency assessor staff resources to conduct PCA assessments in MnCHOICES.

Responsible Person: Natasha Merz and Mary Lenertz

Estimated Completion Date: January 1, 2022 or six months post revised MnCHOICES implementation

PCA Audit Recommendation 2

DHS should regularly consult with assessors to improve its MnCHOICES training program, including guidance available to assessors, and make timely use of the feedback.

Response to PCA Audit Recommendation 2

By state law, certified assessors are required to be either a public health nurse, registered nurse, or social worker. In cases with complex medical needs, certified assessors are required to consult with a multidisciplinary team that includes at a minimum a social worker and a public health or registered nurse when a person has complex health care needs that impact service delivery. Training for specific medical conditions is outside the scope of DHS's role in training assessors.

The MnCHOICES team, in collaboration with the lead agency project team, is currently developing an on-demand guidance document to be incorporated into the revised MnCHOICES application. This document will be tested in paper form and included in the revised MnCHOICES application upon implementation. MnCHOICES RFP demonstrations from potential vendors for the revised MnCHOICES application were conducted in February and March 2020. The demonstrations included subject matter experts from lead agencies to ensure their insights into potential vendors were included in the selection process.

MnCHOICES facilitates several on-going lead agency and assessor groups to answer questions, gain feedback and enhance MnCHOICES.

The feedback gained from these groups informs training and application improvements by prioritizing the changes with greatest impact for lead agencies.

MnCHOICES currently uses an on-line training and certification process required for all assessors prior to conducting any assessments. In addition, they must be re-certified every three years. The MnCHOICES training team continues to update and enhance the certification training as needed.

Responsible Person: Natasha Merz and Mary Lenertz

Estimated Completion Date: July 30, 2021 or when revised MnCHOICES is implemented

PCA Audit Recommendation 3

DHS should regularly review appeals and recommended orders to identify and respond to inconsistencies in personal care assistance assessments.

Response to PCA Audit Recommendation 3

DHS will develop a process to use information from appeals to identify and respond to inconsistencies in the implementation of assessments for PCA services.

Responsible Person: Natasha Merz
Estimated Completion Date: December 31, 2020

PCA Audit Recommendation 4

DHS should ensure that personal care assistance agency staff complete training as required by law.

Response to PCA Audit Recommendation 4

DHS will reevaluate and make the necessary changes to the process used to track and maintain records of training completed by personal care assistants and verify that they comply with applicable laws.

Responsible Person: Lori Shimon
Estimated Completion Date: December 31, 2020

PCA Audit Recommendation 5

DHS should review all required documentation to ensure compliance with legal requirements during personal care assistance agencies' initial enrollment.

Response to PCA Audit Recommendation 5

DHS will coordinate responsibilities within the agency to ensure all personal care assistance agencies have the required documentation that complies with legal requirements during initial enrollment. Additional FTEs and legislative initiatives will be explored and may be necessary to ensure compliance.

Responsible Person: Lori Shimon and JJ Hasbargen
Estimated Completion Date: December 31, 2020

PCA Audit Recommendation 6

DHS should revise its policy manuals and provider agreements so that they reflect state law and provide comprehensive and consistent references to personal care assistance agencies responsibilities.

Response to PCA Audit Recommendation 6

DHS will revise its policy manuals and provider agreements to reflect state law and provide comprehensive and consistent reference to the responsibilities of PCA agencies.

Responsible Person: Lori Shimon and Natasha Merz
Estimated Completion Date: February 28, 2021

PCA Audit Recommendation 7

DHS should repeal or revise outdated or obsolete administrative rules so that they align with statutes and DHS' current administration of the personal care assistance program.

Response to PCA Audit Recommendation 7

DHS will identify and revise or repeal outdated or obsolete PCA administrative rules as part of the annual rule review process.

Responsible Person: Natasha Merz

Estimated Completion Date: July 1, 2021

PCA Audit Recommendation 8

DHS should ensure it revalidates enrollment of all personal assistance agencies, as required by law.

Response to PCA Audit Recommendation 8

PCA agencies are currently undergoing revalidation in phases. We continue to run reports to identify providers who need to be revalidated and then initiate those revalidation processes.

DHS plans to make enhancements to the revalidation process, including the automation of the revalidation management process, as part of the Minnesota Provider Screening and Enrollment portal (MPSE) project.

Responsible Person: Lori Shimon

Estimated Completion Date: Ongoing; MPSE enhancements for automating the revalidation process are scheduled for January of 2023.

PCA Audit Recommendation 9

DHS should develop standard protocols for personal care assistance agency pre-enrollment and revalidation site visits to ensure agencies comply with legal requirements.

Response to PCA Audit Recommendation 9

DHS will develop standard pre-enrollment and revalidation site visit protocols to assure compliance with legal requirements.

Responsible Person: Lori Shimon and JJ Hasbargen

Estimated Completion Date: December 31, 2020

PCA Audit Recommendation 10

DHS should comply with federal requirements for electronic visit verification (EVV) as soon as possible to avoid a reduction in federal funding.

Response to PCA Audit Recommendation 10

DHS will work to minimize the risk of federal financial penalties but in balance with the need to prioritize guidance from Centers for Medicare and Medicaid Services and other states about how to avoid the challenges other states have experienced as they attempt to implement EVV. Their guidance has emphasized the need to continue to gather stakeholder input, base our implementation on what we learn, work across the business areas in our agency impacted by EVV implementation, ensure that our requirements for the EVV system reflect the needs of these business areas and use pilots during implementation to achieve successful implementation.

Responsible Person: Natasha Mertz

Estimated Completion Date: July 1, 2021

PCA Audit Recommendation 11

DHS should ensure that the personal care assistants it enrolls who are under 18 years of age meet statutory requirements related to their age.

Response to PCA Audit Recommendation 11

DHS will ensure personal care assistants under age 18 meet the requirements prior to enrollment by adding additional information to the Minnesota Provider Screening and Enrollment portal (MPSE).

Responsible Person: Lori Shimon
Estimated Completion Date: June 1, 2020

PCA Audit Recommendation 12

DHS should ensure that all personal care assistants meet statutory requirements related to background studies and training.

Response to PCA Audit Recommendation 12

DHS will ensure all personal care assistants meet statutory requirements related to background studies and training. With the implementation of MPSE, requirements for background studies and trainings must be met prior to enrollment. DHS has also developed a quality metrics process. Our quality team will audit a sampling of work from each enrollment specialist for accuracy on an ongoing basis.

Responsible Person: Lori Shimon
Estimated Completion Date: June 1, 2020

PCA Audit Recommendation 13

DHS should regularly monitor whether personal care assistance agencies bill for qualified professional supervision as a way of determining whether agencies are providing services as required.

Response to PCA Audit Recommendation 13

With the assistance of data analytics, DHS will develop tools to help evaluate a PCA agency's billing for qualified professional supervision against billing for PCA services as a means of identifying inconsistencies that could indicate irregularities in providing services as required. DHS will use these results to assist in identifying providers at risk for failing to provide qualified professional services and initiate investigations as appropriate.

Responsible Person: Elizabeth Oji
Estimated Completion Date: August 1, 2020

PCA Audit Recommendation 14

DHS should further develop policies and procedures to formalize aspects of its investigation processes and incorporate best practices.

Response to PCA Audit Recommendation 14

In the past year, DHS has engaged in a continuous improvement (CI) process in the Child Care Assistance Program (CCAP) Investigations unit that includes many components that are transferable and/or able to be adapted for use in the PCA program. DHS will evaluate the applicability of these best practice process improvement workflows and, when appropriate, use them to develop and/or document, through policies and procedures, a formalized, consistent and well-defined investigation processes.

Responsible Person: Elizabeth Oji
Estimated Completion Date: December 31, 2020

PCA Audit Recommendation 15

DHS should establish written guidelines for determining when screening investigators should (1) recommend that a personal care assistance agency's enrollment be approved or denied, and (2) refer a case to the Provider Investigations unit for further review.

Response to PCA Audit Recommendation 15

DHS will create an inter-departmental working group to write guidelines.

Responsible Person: Lori Shimon and JJ Hasbargen

Estimated Completion Date: September 30, 2020

PCA Audit Recommendation 16

DHS should create a plan for investigating suspected fraud and abuse cases in a more timely way.

Response to PCA Audit Recommendation 16

DHS is committed to evaluating lessons learned in the continuous improvement process in its CCAP Investigations unit in order to identify opportunities for process and system improvement. The objective is to ensure processes and systems are designed to streamline investigations to make them as effective and efficient as possible. However, to fully address the issue of timely investigations, DHS may require additional resources dedicated to the investigation of fraud and abuse.

Responsible Person: Elizabeth Oji

Estimated Completion Date: December 31, 2020.

PCA Audit Recommendation 17

DHS should work more closely with the Medicaid Fraud Control Unit to prevent, deter, and detect fraud in personal care assistance.

Response to PCA Audit Recommendation 17

DHS and the Medicaid Fraud Control Unit are separate and distinct entities of state government with joint and complementary responsibility for the prevention, detection and investigation of fraud in the Medicaid program. We have a common interest and recognize that effective administration of the Medicaid program is a prerequisite to the effective delivery of health services and maintaining the fiscal integrity of the state. We further agree that Medicaid program integrity can be best accomplished by full, frequent, and complete communication and cooperation between the two entities.

Responsible Person: Elizabeth Oji

Estimated Completion Date: Ongoing



Forthcoming OLA Evaluations

*Pesticide Regulation
Public Utilities Commission's Public Engagement
Processes*

Recent OLA Evaluations

Agriculture

*Agricultural Utilization Research Institute (AURI),
May 2016
Agricultural Commodity Councils, March 2014
"Green Acres" and Agricultural Land Preservation
Programs, February 2008*

Criminal Justice

*Safety in State Correctional Facilities, February 2020
Guardian ad Litem Program, March 2018
Mental Health Services in County Jails, March 2016
Health Services in State Correctional Facilities,
February 2014
Law Enforcement's Use of State Databases, February
2013*

Economic Development

*Minnesota Investment Fund, February 2018
Minnesota Research Tax Credit, February 2017
Iron Range Resources and Rehabilitation Board (IRRRB),
March 2016*

Education, K-12 and Preschool

*Compensatory Education Revenue, March 2020
Debt Service Equalization for School Facilities,
March 2019
Early Childhood Programs, April 2018
Minnesota State High School League, April 2017
Standardized Student Testing, March 2017
Perpich Center for Arts Education, January 2017
Minnesota Teacher Licensure, March 2016*

Education, Postsecondary

*Preventive Maintenance for University of Minnesota
Buildings, June 2012
MnSCU System Office, February 2010
MnSCU Occupational Programs, March 2009*

Energy

*Renewable Energy Development Fund, October 2010
Biofuel Policies and Programs, April 2009
Energy Conservation Improvement Program,
January 2005*

Environment and Natural Resources

*Public Facilities Authority: Wastewater Infrastructure
Programs, January 2019
Clean Water Fund Outcomes, March 2017
Department of Natural Resources: Deer Population
Management, May 2016
Recycling and Waste Reduction, February 2015*

Government Operations

*Office of Minnesota Information Technology Services
(MNIT), February 2019*

Government Operations (continued)

*Mineral Taxation, April 2015
Councils on Asian-Pacific Minnesotans, Black
Minnesotans, Chicano/Latino People, and Indian
Affairs, March 2014
Helping Communities Recover from Natural Disasters,
March 2012*

Health

*Office of Health Facility Complaints, March 2018
Minnesota Department of Health Oversight of HMO
Complaint Resolution, February 2016
Minnesota Board of Nursing: Complaint Resolution
Process, March 2015
Minnesota Health Insurance Exchange (MNsure),
February 2015*

Human Services

*DHS Oversight of Personal Care Assistance, March 2020
Home- and Community-Based Services: Financial
Oversight, February 2017
Managed Care Organizations' Administrative Expenses,
March 2015
Medical Assistance Payment Rates for Dental Services,
March 2013
State-Operated Human Services, February 2013
Child Protection Screening, February 2012
Civil Commitment of Sex Offenders, March 2011*

Housing and Local Government

*Economic Development and Housing Challenge Program,
February 2019
Consolidation of Local Governments, April 2012*

Jobs, Training, and Labor

*State Protections for Meatpacking Workers, 2015
State Employee Union Fair Share Fee Calculations,
July 2013
Workforce Programs, February 2010*

Miscellaneous

*Minnesota Department of Human Rights: Complaint
Resolution Process, February 2020
Minnesota State Arts Board Grant Administration,
February 2019
Board of Animal Health's Oversight of Deer and
Elk Farms, April 2018
Voter Registration, March 2018
Minnesota Film and TV Board, April 2015
The Legacy Amendment, November 2011*

Transportation

*MnDOT Measures of Financial Effectiveness,
March 2019
MnDOT Highway Project Selection, March 2016
MnDOT Selection of Pavement Surface for Road
Preservation, March 2014
MnDOT Noise Barriers, October 2013
Governance of Transit in the Twin Cities Region,
January 2011*



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