

# 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.

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

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In 2009, OLA released an evaluation report in which it concluded that PCA was unacceptably vulnerable to fraud and abuse.<sup>1</sup> 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.<sup>2</sup> Assessors using this assessment are required to complete a mandatory training and certification program.<sup>3</sup> 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.<sup>4</sup>

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### 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.

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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

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

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

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

<sup>4</sup> 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.

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**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.**

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Statutes require certain PCA agency staff to complete training and background studies.<sup>5</sup> 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.

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**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.**

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

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.<sup>8</sup> Statutes also require DHS to establish a process to monitor program integrity, including random reviews of documentation.<sup>9</sup> 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.**

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

<sup>6</sup> *Minnesota Statutes* 2019, 256B.0659, subd. 28(a).

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

<sup>8</sup> *Minnesota Statutes* 2019, 256B.04, subd. 21.

<sup>9</sup> *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.

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

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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.

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

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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.<sup>11</sup> 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.<sup>12</sup>

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.

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

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

<sup>12</sup> *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.”*

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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](http://www.auditor.leg.state.mn.us/ped/2020/pcaoversight.htm)