

1 Department of Human Services

2  
3 Adopted Rules Governing the Funding and Administration of Home  
4 and Community-based Services for Persons with Mental Retardation

5  
6 Rules as Adopted

7 9525.1800 DEFINITIONS.

8 Subpart 1. Scope. The terms used in parts 9525.1800 to  
9 9525.1930 have the meanings given to them in this part.

10 Subp. 2. Billing rate. "Billing rate" means the rate  
11 charged billed by the provider for providing the services. The  
12 rate may be based on a day, hour, or fraction of an hour of  
13 service.

14 Subp. 3. Case manager. "Case manager" means the person  
15 designated by the county board to provide case management  
16 services as defined in part 9525.1860.

17 Subp. 4. Client. "Client" means a person with mental  
18 retardation who is receiving home and community-based services.


19 Subp. 5. Commissioner. "Commissioner" means the  
20 commissioner of the Minnesota Department of Human Services or  
21 the commissioner's designated representative.

22 Subp. 6. County board. "County board" means the county  
23 board of commissioners for the county of financial  
24 responsibility or the county board of commissioners' designated  
25 representative.

26 Subp. 7. County of financial responsibility. "County of  
27 financial responsibility" has the meaning given it in Minnesota  
28 Statutes, section 256B.02, subdivision 3.

29 Subp. 8. Daily intervention. "Daily intervention" means  
30 supervision, assistance, or training provided to a person in the  
31 person's residence by a provider, family member, or foster  
32 family member to help the client person manage daily  
33 activities. To qualify as daily intervention the supervision,  
34 assistance, or training must be provided each day for more than  
35 90 consecutive days.

36 Subp. 9. Department. "Department" means the Minnesota

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2 Subp. 10. Diversion. "Diversion" means the act of  
3 providing home and community-based services to a person who  
4 would be placed in an intermediate care facility for the  
5 mentally retarded within one year if the home and  
6 community-based services were not provided.

7 Subp. 11. Family. "Family" means a person's biological  
8 parents, adoptive parents or stepparents, siblings, children, or  
9 spouse.

10 Subp. 12. Fiscal year. "Fiscal year" means the state's  
11 fiscal year from July 1 through the following June 30.

12 Subp. 13. Geographic region. "Geographic region" means  
13 one of the economic development regions established by executive  
14 order of the governor in accordance with Minnesota Statutes,  
15 section 462.385, in effect on July 1, 1984.

16 Subp. 14. Home and community-based services. "Home and  
17 community-based services" means the following services for which  
18 are provided to persons with mental retardation, that if the  
19 services are authorized under United States Code, title 42,  
20 section 1396 et. seq., and authorized in under the waiver  
21 granted by the United States Department of Health and Human  
22 Services: case management, respite care, homemaker, in-home  
23 family support services, supported living arrangements for  
24 children, supported living arrangements for adults, day  
25 habilitation, and minor physical adaptations to the home, as  
26 defined in part 9525.1860; and other home and community-based  
27 services authorized under United States Code, title 42, section  
28 1396 et seq., if approved for Minnesota by the United States  
29 Department of Health and Human Services.

30 Subp. 15. Host county. "Host county" means the county in  
31 which the home and community-based service is provided.

32 Subp. 16. Individual habilitation plan. "Individual  
33 habilitation plan" has the meaning given it in parts 9525.0015  
34 to 9525.0145 [Emergency].

35 Subp. 17. Individual service plan. "Individual service  
36 plan" has the meaning given it in parts 9525.0015 to 9525.0145

1 [Emergency].

2 Subp. 18. Intermediate care facility for the mentally  
3 retarded or (ICF/MR). "Intermediate care facility for the  
4 mentally retarded" or "ICF/MR" means a program licensed to serve  
5 persons with mental retardation under Minnesota Statutes,  
6 section 252.28, and a physical plant licensed as a supervised  
7 living facility under Minnesota Statutes, chapter 144, which  
8 together are certified by the Minnesota Department of Health as  
9 an intermediate care facility for the mentally retarded. Unless  
10 otherwise stated, the term ICF/MR includes state-operated and  
11 community-based facilities.

12 Subp. 19. Placement. "Placement" means the act of  
13 providing home and community-based services to a person who has  
14 been discharged from an ICF/MR.

15 Subp. 20. Primary caregiver. "Primary caregiver" means a  
16 person other than a member of the client's family who has  
17 primary responsibility for the assistance, supervision, or  
18 training of the client in the client's residence.

19 Subp. 21. Provider. "Provider" means a person or legal  
20 entity providing home and community-based services for  
21 reimbursement under parts 9525.1800 to 9525.1930.

22 Subp. 22. Room and board costs. "Room and board costs"  
23 means costs associated with providing food, shelter, and  
24 personal needs items for clients, including the directly  
25 identifiable costs of:

26 A. normal and special diet food preparation and  
27 service;

28 B. linen, bedding, laundering, and laundry supplies;

29 C. housekeeping, including cleaning and lavatory  
30 supplies;

31 D. maintenance and operation of the building and  
32 grounds, including fuel, electricity, water, supplies, and parts  
33 and tools to repair and maintain equipment and facilities; and

34 E. allocation of salaries and other costs related to  
35 these areas.

36 Subp. 23. Screening team. "Screening team" means the team

1 established under Minnesota Statutes, section 256B.092 to  
2 evaluate a person's need for home and community-based services.

3 Subp. 24. Service site. "Service site" means the location  
4 at which home and community-based services are provided.

5 Subp. 25. Short term. "Short term" means a cumulative  
6 total of less than 90 24-hour days or 2,160 hours in a fiscal  
7 year.

8 Subp. 26. Statewide average reimbursement  
9 rate. "Statewide average reimbursement rate" means the dollar  
10 amount arrived at by dividing the total amount of money  
11 available under the waiver for the fiscal year by 365 days and  
12 then dividing the quotient by the department's projection of the  
13 total number of clients to receive home and community-based  
14 services as stated in the waiver for that fiscal year.

15 Subp. 27. Waiver. "Waiver" means the waiver  
16 of requirements under United States Code, title XIX-of-the  
17 Secial-Security-Act-requirements-to-allow 42, sections 1396 et  
18 seq., which allows the state to pay for home and community-based  
19 services for persons with mental retardation, and through the  
20 medical assistance program. The term includes all amendments to  
21 the waiver including any amendments made after the effective  
22 date of parts 9525.1800 to 9525.1930, as approved by the United  
23 States Department of Health and Human Services under United  
24 States Code, title 42, section 1396 et. seq.

25 9525.1810 APPLICABILITY AND EFFECT.

26 Subpart 1. Applicability. Parts 9525.1800 to 9525.1930  
27 apply to all county boards administering medical assistance  
28 funds for home and community-based services for persons with  
29 mental retardation, to all providers that contract with a county  
30 board to provide home and community-based services for persons  
31 with mental retardation, and to all subcontractors who contract  
32 with a provider to provide home and community-based services for  
33 persons with mental retardation.

34 Subp. 2. Effect. The entire application of parts  
35 9525.1800 to 9525.1930 shall continue in effect only as long as  
36 the waiver from the United States Department of Health and Human

1 Services is in effect in Minnesota.

2 9525.1820 ELIGIBILITY.

3 Subpart 1. Eligibility criteria. A person is eligible to  
4 receive home and community-based services if the person meets  
5 all the criteria in items A to D and if home and community-based  
6 services may be provided in accordance with part 9525.1830:

7 A. the person is eligible to receive medical  
8 assistance under Minnesota Statutes, chapter 256B or subpart 2;

9 B. the person is determined to be a person with  
10 mental retardation in accordance with the definitions and  
11 procedures in parts 9525.0015 to 9525.0145 [Emergency];

12 C. the person is a resident of an ICF/MR or it is  
13 determined by the screening team that the person would be placed  
14 in an ICF/MR within one year if home and community-based  
15 services are were not provided; and

16 D. the screening team has determined that the person  
17 needs daily intervention and the person's individual service  
18 plan documents the need for daily intervention and specifies the  
19 services needed daily.

20 Subp. 2. Medical assistance eligibility for children  
21 residing with their parents. The county board shall determine  
22 eligibility for medical assistance for a person under age ~~21~~ 18  
23 who resides with a parent or parents without considering  
24 parental income and resources if:

25 A. the person meets the criteria in subpart 1, items  
26 B to D;

27 B. the person will be provided home and  
28 community-based services in accordance with part 9525.1830;

29 C. the person would not be eligible for medical  
30 assistance if parental income and resources were considered; and

31 D. the commissioner has approved in writing a county  
32 board's request to suspend for the person the deeming  
33 requirements in Code of Federal Regulations, title 42, section  
34 436.821 in accordance with the waiver.

35 Subp. 3. Beginning date. Eligibility for medical  
36 assistance begins on the first day of the month in which the

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1 client first receives home and community-based services.

2 9525.1830 PROVISION OF HOME AND COMMUNITY-BASED SERVICES.

3 Subpart 1. Conditions. The county board shall provide or  
4 arrange to provide home and community-based services to a person  
5 if the person is eligible for home and community-based services  
6 under part 9525.1820 and all the conditions in items A to F have  
7 been met:

8 A. the county board has determined that it can  
9 provide home and community-based services to the person within  
10 its allocation of home and community-based services money as  
11 determined under parts 9525.1890 and 9525.1910;

12 B. the screening team has recommended home and  
13 community-based services instead of ICF/MR services for the  
14 person under parts 9525.0015 to 9525.0145 [Emergency];

15 C. the commissioner has authorized payment for home  
16 and community-based services for the person;

17 D. the person or the person's legal representative  
18 has agreed to the home and community-based services determined  
19 by the screening team to be appropriate for the person;

20 E. the county board has authorized provision of home  
21 and community-based services to the person based on the goals  
22 and objectives specified in the person's individual service plan;  
23 and

24 F. the county board has a signed agreement with the  
25 state that complies with part 9525.1900.

26 Subp. 2. Written procedures and criteria. The county  
27 board shall establish written procedures and criteria for making  
28 determinations under subpart 1, item A. The procedures and  
29 criteria must be consistent with requirements in parts 9525.1800  
30 to 9525.1930, the waiver, federal regulations governing home and  
31 community-based services, and the goals established by the  
32 commissioner in part 9525.1880, subpart 3.

33 9525.1840 PARENTAL CONTRIBUTION FEE.

34 Subpart 1. Out-of-home placements. The parent or parents  
35 of clients a client under age 18 shall be liable for a parental

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1 contribution fee determined according to Minnesota Statutes,  
2 section 256B.14, if the client resides outside the parent's home  
3 of the parent or parents.

4 Subp. 2. In-home services. Parents of clients under age  
5 18 may be liable for a parental contribution fee determined  
6 according to Minnesota Statutes, section 256B.14, if the client  
7 is residing with a parent and the client's medical assistance  
8 eligibility for home and community-based services was determined  
9 without considering parental income or resources under part  
10 9525.1820, subpart 2.

11 9525.1850 PROVIDER REIMBURSEMENT.

12 A provider may receive medical assistance reimbursement for  
13 home and community-based services only if the provider meets the  
14 criteria in items A to J. The training, experience, and  
15 supervision required in items B to E only apply to persons who  
16 are employed by, or under contract with, the provider to provide  
17 services that can be billed under part 9525.1860, subpart 3,  
18 item A.

19 A. The provider has a current license or licenses for  
20 the specific home and community-based services as required under  
21 Minnesota Statutes or Minnesota Rules or, if no license is  
22 required, has received approval from the county board to provide  
23 home and community-based services.

24 B. The provider ensures that the provider and all  
25 employees or subcontractors meet all professional standards  
26 established in Minnesota Statutes, Minnesota Rules, and Code of  
27 Federal Regulations that apply to the services to be provided.  
28 If no training standards have been established, the provider,  
29 employee, or subcontractor must have completed, within the last  
30 two years, at least 24 hours of documented training subject-to  
31 ~~approval-by-the-case-manager~~. The training must be in areas  
32 related to the care, supervision, or training of persons with  
33 mental retardation including first aid, medication  
34 administration, behavior management, cardiopulmonary  
35 resuscitation, human development, and obligations under  
36 Minnesota Statutes, sections 626.556 and 626.557. The county

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1 board may grant a written variance to the training requirements  
2 in this item for:

3 (1) a respite care provider who provides the  
4 respite care in his or her residence or in the client's  
5 residence; or

6 (2) a provider who ensures that the training will  
7 be completed within six months of the date the contract is  
8 signed.

9 This item does not apply to providers of minor physical  
10 adaptations.

11 C. The provider ensures that the provider and all  
12 employees or subcontractors have at least one year of experience  
13 within the last five years in the care, training, or supervision  
14 of persons with mental retardation or related conditions as  
15 defined in Minnesota Statutes, section 252.27. The county board  
16 may grant a written variance to the requirements in this item  
17 for:

18 (1) a respite care provider who provides the  
19 respite care in his or her residence or in the client's  
20 residence; or

21 (2) a provider, employee, or subcontractor who is  
22 a qualified mental retardation professional who meets the  
23 requirements in Code of Federal Regulations, title 42, section  
24 442.401 and has been approved by the case manager; or

25 (3) an employee of the provider if the employee  
26 will work under the direct on-site supervision of a qualified  
27 mental retardation professional who meets the requirements in  
28 Code of Federal Regulations, title 42, section 442.401, and who  
29 has been approved by the case manager.

30 This item does not apply to providers of minor physical  
31 adaptations or homemaker services.

32 D. The provider ensures that all home and  
33 community-based services, except homemaker services, respite  
34 care services, and minor physical adaptations, will be provided  
35 by, or under the supervision of a qualified mental retardation  
36 professional who meets the requirements in Code of Federal

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1 Regulations, title 42, section 442.401, and has been approved by  
2 the case manager.

3 E. The provider ensures that the provider and all  
4 employees or subcontractors will complete the amount of ongoing  
5 training required in any Minnesota rules applicable to the home  
6 and community-based services to be provided. If no ongoing  
7 training is required by the applicable Minnesota rules, the  
8 provider, except a provider of minor physical adaptations,  
9 agrees that the provider and all employees or subcontractors  
10 will complete at least 18 hours of documented ongoing training  
11 each fiscal year. To meet the requirements of this item, the  
12 ongoing training must be in a field related to the care,  
13 training, and supervision of persons with mental retardation,  
14 and must either be identified as needed in the client's  
15 individual habilitation plans or be approved by the case manager  
16 based on the needs identified in the individual service plans of  
17 the clients served by the provider. The county board may grant  
18 a written variance to the requirements in this item for a  
19 respite care provider who provides the respite care in his or  
20 her residence or in the client's residence.

21 F. The provider ensures that the provider and all  
22 employees or subcontractors have never been convicted of a  
23 violation, or admitted violating Minnesota Statutes, section  
24 626.556 or 626.557 and there is no substantial evidence that the  
25 provider, employees, or subcontractors have violated Minnesota  
26 Statutes, section 626.556 or 626.557.

27 G. The provider has a legally binding contract with  
28 the host county that complies with part 9525.1870.

29 H. The provider has been authorized in writing to  
30 provide home and community-based services for the client by the  
31 county of financial responsibility.

32 I. The provider agrees in writing to comply with  
33 United States Code, title 42, sections 1396 et seq. and  
34 regulations implementing those sections and with applicable  
35 provisions in parts 9500.0750 to 9500.1080, 9505.1750 to  
36 9505.2150, and 9525.1800 to 9525.1930.

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1 J. The provider is not the client's guardian or a  
2 member of the client's family. This item does not preclude the  
3 county board from providing services if the client is a ward of  
4 the commissioner.

5 9525.1860 REIMBURSABLE SERVICES.

6 Subpart 1. General limits. The costs of providing the  
7 home and community-based services defined in subpart 2, provided  
8 in accordance with subparts 3 to 5 7, are reimbursable under the  
9 medical assistance program for as long as the waiver from the  
10 United States Department of Health and Human Services is in  
11 effect in Minnesota.

12 Subp. 2. Definitions. For the purposes of this part the  
13 following terms have the meanings given them.

14 A. "Case management" means identifying the need for,  
15 seeking out, acquiring, authorizing, and coordinating services  
16 to persons with mental retardation; and monitoring the delivery  
17 of the services to, and protecting the rights of, the persons  
18 with mental retardation, by an individual designated by the  
19 county board to provide case management services under parts  
20 9525.0015 to 9525.0145 [Emergency].

21 B. "Day habilitation" means habilitation services  
22 provided away from the client's place of residence and focused  
23 on functioning in the community, using leisure and recreation  
24 time and developing task-oriented skills that will prepare the  
25 client to participate in a work environment. Day habilitation  
26 services for children are focused on stimulating the physical,  
27 intellectual, and emotional development of the child.

28 C. "Habilitation services" means health and social  
29 services directed toward increasing and maintaining the  
30 physical, intellectual, emotional, and social functioning of  
31 persons with mental retardation. Habilitation services include  
32 therapeutic activities, assistance, training, supervision, and  
33 monitoring in the areas of self-care, sensory and motor  
34 development, interpersonal skills, communication, socialization,  
35 reduction or elimination of maladaptive behavior, community  
36 living and mobility, health care, leisure and recreation, money

1 management, and household chores. Day habilitation services and  
2 residential-based habilitation services are types of  
3 habilitation services.

4 D. "Homemaker services" means general household  
5 activities and ongoing monitoring of the client's well-being  
6 provided by a homemaker who meets the standards in part  
7 9565.1200.

8 E. "In-home family support services" means  
9 residential-based habilitation services designed to enable the  
10 family to care for and maintain the client in the home and may  
11 include training and counseling for the client and the client's  
12 family.

13 F. "Leave days" means days when a client is  
14 temporarily absent from services.

15 G. "Minor physical adaptations to the home" means one  
16 or more of the structural changes to the client's residence set  
17 forth in subpart 3 4, item E. Minor physical adaptations to the  
18 home must be designed to enable the client to avoid placement in  
19 an ICF/MR by increasing the client's mobility or protecting the  
20 client or other persons from injury. Minor physical adaptations  
21 to the home are only reimbursable for clients with mobility  
22 problems, sensory deficits, or behavior problems. Minor  
23 physical adaptations are limited to those named in subpart 3 4,  
24 item E.

25 H. "Residential-based habilitation services" means  
26 habilitation services provided in the client's residence.  
27 In-home family support services, supported living arrangements  
28 for children, and supported living arrangements for adults are  
29 residential-based habilitation services.

30 I. "Respite care" means short-term supervision,  
31 assistance, and care provided to a client due to the temporary  
32 absence or need for relief of the client's family, foster  
33 family, or primary caregiver. Respite care may include day,  
34 overnight, in-home, or out-of-home services, as needed.

35 J. "Supported living arrangements for adults" means  
36 residential-based habilitation services provided on a daily

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1 basis to adults in a service site for up to six clients.

2 K. "Supported living arrangements for children" means  
3 residential-based habilitation services provided on a daily  
4 basis to clients under 18 years of age in a service site for up  
5 to three clients.

6 L. "Other home and community-based services" means  
7 any other home and community-based services authorized under  
8 United States Code, title 42, section 1396 et seq., if approved  
9 for Minnesota by the United States Department of Health and  
10 Human Services.

11 Subp. 3. **Billing for services.** Billings submitted by the  
12 provider, except a provider of minor physical adaptations, must  
13 be limited to time actually and reasonably spent:

14 A. In direct contact with the client to assist the  
15 client in attaining the goals and objectives specified in the  
16 client's individual service plan. Direct contact time includes  
17 time spent traveling to and from service sites.

18 B. In verbal or written contact with professionals or  
19 others regarding the client's progress in attaining the goals  
20 and objectives specified in the client's individual service plan.

21 C. In planning activities including attending the  
22 client's interdisciplinary team meetings, developing goals and  
23 objectives for the client's individual habilitation plan,  
24 assessing and reviewing the client's specified goals and  
25 objectives, documenting the client's progress toward attaining  
26 the goals and objectives in the client's individual service plan  
27 and assessing the adequacy of the services related to the goals  
28 and objectives in the client's individual service plan.

29 Subp. 4. **Service limitations.** The provision of home and  
30 community-based services is limited to as stated in items A to H.

31 A. Case management services may be provided as a  
32 single service for a period of no more than 90 days.

33 B. Day habilitation services must:

34 (1) only be provided to clients who receive a  
35 residential-based habilitation service;

36 (2) not include sheltered work or work activity

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1 services funded or certified by the Minnesota Division of  
2 Vocational Rehabilitation;

3 (3) be provided at a different service site than  
4 the client's place of residence unless medically  
5 contraindicated, as required in Minnesota Statutes, section  
6 256B.501, subdivision 1, paragraph (d); and

7 (4) be provided by an organization that does not  
8 have a direct or indirect financial interest in the organization  
9 that provides the client's residential services unless the  
10 client is residing with:

11 (a) his or her family; or

12 (b) a foster family that does not have a  
13 direct or indirect financial interest in the organization that  
14 provides the client's residential services.

15 B. C. Homemaker services may be provided only if:

16 (1) the person regularly responsible for these  
17 activities is temporarily absent or is unable to manage the home  
18 and care for the client; or

19 (2) there is no person, other than the client,  
20 regularly responsible for these activities and the client is  
21 unable to manage the home and his or her own care without  
22 ongoing monitoring or assistance. Homemaker services include  
23 meal preparation, cleaning, simple household repairs, laundry,  
24 shopping, and other routine household tasks.

25 E. D. Leave days are reimbursable for supported  
26 living arrangements for children or supported living  
27 arrangements for adults, if the client intends to return to the  
28 service. Billings may be made for leave days only when the  
29 client is:

30 (1) hospitalized;

31 (2) on a therapeutic overnight trip, camping  
32 trip, or vacation; or

33 (3) home for a visit.

34 Leave days that are not included in the individual service  
35 plan may not be billed for without the county board's written  
36 authorization. The county board and the provider must document


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1 all leave days for which billings are made and specify the  
2 reasons the county board authorized the leave days.

3         D. E. Reimbursement for minor physical adaptations to  
4 the home shall be limited to an average cost of ~~\$3,000~~ \$3,111  
5 per client for all clients in the county in fiscal year ~~1985~~  
6 1986. The average cost will be increased each fiscal year based  
7 on the first quarter forecast of the projected percentage change  
8 in the annual value of the all urban consumer price index,  
9 (CPI-U) for Minneapolis-Saint Paul as published by the Bureau of  
10 Labor Statistics new series index (1967=100), from the preceding  
11 fiscal year. The CPI-U is incorporated by reference and is  
12 available from the Minitex Interlibrary Loan System. The  
13 average cost limitation applies to the entire period of time for  
14 which the waiver has been approved. Minor physical adaptations  
15 to the home must be limited to the purchase and installation of  
16 one or more of the following:

- 17                   (1) wheelchair ramps;
- 18                   (2) handrails and grab bars;
- 19                   (3) elevated bathtubs and toilets;
- 20                   (4) widened doorways;
- 21                   (5) shatterproof windows;
- 22                   (6) blinking lights and tactile alarms as  
23 alternate warning systems;
- 24                   (7) door handle replacements;
- 25                   (8) lowered kitchen work surfaces;
- 26                   (9) modified cabinets and sinks that provide  
27 wheelchair space;
- 28                   (10) handles and hoses for showerheads;
- 29                   (11) door hinge replacements;
- 30                   (12) shower and bathtub seats; or
- 31                   (13) other minor physical adaptations authorized  
32 under United States Code, title 42, section 1396 et seq., if  
33 approved for Minnesota by the United States Department of Health  
34 and Human Services.

35         Minor physical adaptations must be constructed in  
36 accordance with applicable state and local building codes.

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1           E- F. Home and community-based services are not  
 2 reimbursable if provided to a client while the client is a  
 3 resident of or on leave from an ICF/MR, skilled nursing  
 4 facility, intermediate care facility, or a hospital. This item  
 5 shall not apply to leave days authorized in accordance with item  
 6 C for a client who is hospitalized.

7           F- G. Respite care must:

8                   (1) be provided only for the relief of the  
 9 client's family or foster family, or if the client is in a  
 10 supported living arrangement in the provider's residence, for  
 11 the relief of the client's primary caregiver; and

12                   (2) be provided in a service site serving no more  
 13 than six clients at one time.

14           If there are no service sites that meet the requirements in  
 15 subitem (2) available in the community to serve clients with  
 16 multiple handicaps, the county board may grant a variance to the  
 17 requirement for a period of no more than one year for each  
 18 client. When a variance is granted, the county board must  
 19 submit to the commissioner a written plan documenting the need  
 20 for the variance and stating the actions that will be taken to  
 21 develop services within one year that meet the requirements of  
 22 subitem (2).

23           G- H. Room and board costs are not allowable costs  
 24 for home and community-based services except respite care  
 25 provided out of the client's residence. All room and board  
 26 costs must be directly identified on reports submitted by the  
 27 provider to the county board.

28           Subp. 5. Special services. The services listed in item A  
 29 must be provided in accordance with items B to D.

30           H- A. For the purposes of this item subpart, the  
 31 services in subitems (1) to (9) have the meanings given them in  
 32 parts 9500.0750 to 9500.1080:

- 33                   (1) psychological services;  
 34                   (2) physical therapy;  
 35                   (3) occupational therapy;  
 36                   (4) speech, hearing, and language disorder

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1 services;

2 (5) mental health center services;

3 (6) rehabilitative and therapeutic services;

4 (7) home health care services;

5 (8) private duty nursing services; and

6 (9) personal care attendant services.

7 B. The services in subitems-~~(1)~~-~~to~~-~~(9)~~ item A, must  
8 be provided by a professional licensed or certified by the state  
9 to provide the services or by a person supervised by a licensed  
10 or certified professional.

11 C. If any-~~of~~-~~these~~ the services in item A, subitems  
12 (1) to (6) are provided to a client, the cost of the services  
13 must be included in the rate or rates billed by the provider or  
14 providers for reimbursement under parts 9525.1800 to 9525.1930.  
15 These services are not reimbursable under any other rule or  
16 rules for clients in home and community-based services.

17 D. The cost of the services listed in item A,  
18 subitems (7) to (9) must not be included in the rate or rates  
19 billed by the provider or providers for reimbursement under  
20 parts 9525.1800 to 9525.1930.

21 Subp. 5. 6. Other applicable rules. Home and  
22 community-based services must be provided as required under  
23 items A to G unless a variance has been approved in accordance  
24 with subpart 7.

25 A. Homemaker services must be provided in compliance  
26 with parts 9565.1000 to 9565.1300.

27 B. Day habilitation and training services must be  
28 licensed by the department.

29 C. Supported living arrangements for children must be  
30 provided at a service site licensed under parts 9545.0010 to  
31 9545.0260.

32 D. Supported living arrangements for adults which are  
33 provided in a service site serving more than four adults must be  
34 licensed under parts 9525.0210 to 9525.0430. Supported living  
35 arrangements provided at a service site for four or fewer adults  
36 must be approved under parts 9555.6100 to 9555.6400; 9545.0090,

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1 item A; 9545.0140; 9545.0180; and 9545.0190, subparts 3 and 5.  
 2 In approving supported living arrangements provided at a service  
 3 site for four or fewer adults, the county board shall apply the  
 4 criteria in parts 9545.0090, item A; 9545.0140; 9545.0180; and  
 5 9545.0190, subparts 3 and 5 as though the criteria had been  
 6 written to apply to services for adults.

7 E. Respite care provided at a service site serving  
 8 more than four clients must be licensed under parts 9525.0210 to  
 9 9525.0430. Respite care provided at a service site serving four  
 10 or fewer clients under 18 years of age must be licensed under  
 11 parts 9545.0010 to 9545.0260. Respite care provided at a  
 12 service site serving four or fewer adults must be approved under  
 13 parts 9545.0090, item A; 9545.0140; 9545.0180; 9545.0190,  
 14 subparts 3 and 5; and 9555.6100 to 9555.6400. Respite care  
 15 provided at a service site for four or fewer children and adults  
 16 must be approved under parts 9545.0090, item A; 9545.0140;  
 17 9545.0180; 9545.0190, subparts 3 and 5; and 9555.6100 to  
 18 9555.6400 and licensed under parts 9545.0010 to 9545.0260. This  
 19 item shall not apply to a person who provides respite care for  
 20 fewer than 30 days a year.

21 Subp. 7. Licensing variances. Requests for variances to  
 22 the licensing requirements in subpart 6 must be handled in  
 23 accordance with items A to C.

24 F. A. The county board may request a variance from  
 25 compliance with parts 9545.0010 to 9545.0260 as required  
 26 in subpart 6, item C, D, or E, for a provider who provides  
 27 services to clients under 18 years of age if the county board  
 28 determines that no providers who meet the licensing requirements  
 29 are available and that granting the variance will not endanger  
 30 the health, safety, or development of the persons-receiving-the  
 31 services clients. The written variance request must be  
 32 submitted to the commissioner and must contain:

33 (1) the sections of parts 9545.0010 to 9545.0260  
 34 with which the provider cannot comply;

35 (2) the reasons why the provider cannot comply  
 36 with the specified section or sections; and

1 (3) the specific measures that will be taken by  
2 the provider to ensure the health, safety, or development of the  
3 ~~persons-receiving-the-services~~ clients.

4 The commissioner shall grant the variance request if the  
5 commissioner determines that the variance was submitted in  
6 accordance with this item and that granting the variance will  
7 not endanger the health, safety, or development of the persons  
8 receiving the services.

9 The commissioner shall review the county board's variance  
10 request and notify the county board, in writing, within 30 days  
11 if the variance request has been granted or denied. If the  
12 variance request is denied, the notice must state the reasons  
13 why the variance request was denied and inform the county board  
14 of its right to request that the commissioner reconsider the  
15 variance request.

16 ~~G.~~ B. The county board may grant a written variance  
17 from compliance with parts 9545.0090, item A; 9545.0140;  
18 9545.0180; 9545.0190, subparts 3 and 5; and 9555.6100 to  
19 9555.6400 as required in subpart 6, items D and E, for a  
20 provider who provides services to adults if the county board  
21 determines that no providers who meet the licensing requirements  
22 are available and that granting the variance will not endanger  
23 the health, safety, or development of the ~~persons-with-mental~~  
24 retardation clients.

25 C. Requests for a variance of the provisions in parts  
26 9525.0210 to 9525.0430 must be submitted in accordance with part  
27 9525.0250.

28 9525.1870 PROVIDER CONTRACTS AND SUBCONTRACTS.

29 Subpart 1. **Contracts.** To receive medical assistance  
30 reimbursement for home and community-based services, the  
31 provider must have a contract developed in accordance with parts  
32 9550.0010 to 9550.0092 as proposed at State Register, Volume 9,  
33 Number 48, pages 2566 to 2576 (May 27, 1985), with the host  
34 county. In addition to the requirements in parts 9550.0010 to  
35 9550.0092 as proposed at State Register, Volume 9, Number 48,  
36 pages 2566 to 2576 (May 27, 1985), the contract must contain the

1 information in items A to F and subpart 2:

2 A. maximum and minimum number of clients to be served;

3 B. description of how the services will benefit the  
4 clients in attaining the goals in the clients' individual  
5 service plans;

6 C. description of how the benefits of the services  
7 will be measured;

8 D. an agreement to comply with parts 9525.1800 to  
9 9525.1930;

10 E. description of ongoing training to be provided  
11 under part 9525.1850, item E; and

12 F. other provisions the county board determines are  
13 needed to ensure the county's ability to comply with part  
14 9525.1900.

15 Subp. 2. Required provision. Each contract and  
16 subcontract must contain the following provision. If any  
17 contract does not contain the following provision, the provision  
18 shall be considered an implied provision of the contract.

19 "The provider acknowledges and agrees that the  
20 Minnesota Department of Human Services is a  
21 third-party beneficiary, and as a third-party  
22 beneficiary, is an affected party under this  
23 contract. The provider specifically acknowledges and  
24 agrees that the Minnesota Department of Human Services  
25 has standing to and may take any appropriate  
26 administrative action or sue the provider for any  
27 appropriate relief in law or equity, including, but  
28 not limited to, rescission, damages, or specific  
29 performance, of all or any part of the contract  
30 between the county board and the provider. The  
31 provider specifically acknowledges that the county  
32 board and the Minnesota Department of Human Services  
33 are entitled to and may recover from the provider  
34 reasonable attorney's fees and costs and disbursements  
35 associated with any action taken under this paragraph  
36 that is successfully maintained. This provision shall

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1 not be construed to limit the rights of any party to  
2 the contract or any other third party beneficiary, nor  
3 shall it be construed as a waiver of immunity under  
4 the Eleventh Amendment to the United States  
5 Constitution or any other waiver of immunity."

6 Subp. 3. Subcontracts. If the provider subcontracts with  
7 another contractor the provider shall:

8 A. have written permission from the host county to  
9 subcontract;

10 B. ensure that the subcontract meets all the  
11 requirements of subpart 1;

12 C. ensure that the subcontractor meets the  
13 requirements in part 9525.1850; and

14 D. ensure that the subcontractor performs fully the  
15 terms of the subcontract.

16 Subp. 4. Noncompliance. If the provider or subcontractor  
17 fails to comply with the contract, the county board may seek any  
18 available legal remedy.

19 The county board shall notify the commissioner in writing  
20 within 30 days when the county board has reasonable grounds to  
21 believe that a contract required under this part has been  
22 breached in a material manner or that a provider or  
23 subcontractor has taken any action or failed to take any action  
24 that constitutes anticipatory breach of the contract. The  
25 county board may allow the provider or subcontractor a  
26 reasonable amount of time to cure the breach or anticipatory  
27 breach. The county board shall notify the commissioner in  
28 writing within ten working days if the provider or subcontractor  
29 takes any action or fails to take any action in response to the  
30 opportunity to cure. In the notice, the county board shall  
31 inform the commissioner of the action the county board intends  
32 to take.

33 9525.1880 COUNTY PROPOSAL AND APPROVAL OF COUNTY PROPOSAL.

34 Subpart 1. Application forms and deadlines. To be  
35 considered for reimbursement under parts 9525.1800 to 9525.1930,  
36 county boards, singly or jointly, must submit to the

1 commissioner an annual proposal for the provision of home and  
2 community-based services to clients for which the county board  
3 or county boards are financially responsible. The commissioner  
4 shall notify the county boards of the deadlines and forms for  
5 the submission of proposals for home and community-based  
6 services.

7 Subp. 2. Contents of county proposal. The proposal must  
8 be based on the needs of individually identified persons in the  
9 county and must:

10 A. State measurable program goals and objectives to  
11 be accomplished by the home and community-based services.

12 B. Identify the number of persons to whom the county  
13 board expects to provide the home and community-based services.  
14 If county boards are applying jointly, each county board must  
15 identify the number of persons for which the county is  
16 financially responsible. The proposal must include the  
17 information in subitems (1) to (6) with separate listings in  
18 each category for children and adults:

19 (1) current living arrangements;

20 (2) current day programs;

21 (3) level of supervision required;

22 (4) the type of home and community-based services  
23 projected to be needed and the expected duration of the service  
24 or services;

25 (5) the projected starting dates of the home and  
26 community-based services; and

27 (6) the proposed service provider or providers  
28 and billing rate or rates, if known.

29 C. Describe how the county proposal complies with the  
30 county utilization targets developed by the department in  
31 accordance with the *Welsch v. Levine* consent decree.

32 D. Describe how the county board proposal affects the  
33 targets developed by the department on admission of children to  
34 state hospitals and discharge of children from state hospitals  
35 as required in the *Welsch v. Levine* consent decree.

36 E. Describe how the proposal limits the development

1 of new community-based ICF/MR beds and reduces the county's use  
2 of existing ICF/MR beds in state-operated ICFs/MR and community  
3 ICFs/MR, including any steps the county board has taken to  
4 encourage voluntary decertification of community-based ICF/MR  
5 beds.

6 F. Describe the steps the county board has taken to  
7 prepare to provide home and community-based services, including  
8 efforts to integrate home and community-based services into the  
9 county board's administrative services planning system.

10 Subp. 3. Review and approval of proposal. The  
11 commissioner shall review all proposals submitted in accordance  
12 with subparts 1 and 2. The commissioner shall only approve the  
13 county proposals that meet the requirements of parts 9525.1800  
14 to 9525.1880 and that demonstrate compliance with the goals of  
15 the department as stated in items A to D:

16 A. compliance with the county utilization targets  
17 developed by the department in accordance with the *Welsch v.*  
18 *Levine* consent decree;

19 B. reduction of the number of children in  
20 state-operated ICFs/MR;

21 C. limitation of the development of new  
22 community-based ICF/MR beds and reduction of the use of existing  
23 ICF/MR beds in state-operated ICFs/MR and community-based  
24 ICFs/MR; and

25 D. integration of home and community-based services  
26 into the county board's administrative services planning system.

27 If the proposal is disapproved, the commissioner shall  
28 notify the county board, in writing, of the reasons why the  
29 proposal was not approved. The county board has seven days  
30 after receipt of the written notice in which to revise the  
31 proposal and resubmit it to the commissioner.

32 9525.1890 ALLOCATION OF HOME AND COMMUNITY-BASED SERVICE MONEY.

33 Subpart 1. Allocation of diversions. To allocate home and  
34 community-based services money for diversions, the commissioner  
35 shall project the number of diversions for the county based on  
36 the average of the projected utilization of state-operated and

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1 community-based ICF/MR beds using historical utilization for the  
2 county; and the projected per capita utilization of  
3 state-operated and community-based ICF/MR beds for the county,  
4 both of which are adjusted to conform with the number of  
5 diversions projected in the waiver. The projection shall be  
6 adjusted based on the county board's actual use of allocated  
7 diversions during the previous fiscal year. If the county board  
8 uses less than the number of diversions allocated for the  
9 previous fiscal year, the commissioner may decrease the number  
10 of diversions projected by the commissioner for the county for  
11 the next fiscal year. The county board's allocation of money  
12 for diversions shall be based on the lesser of the number of  
13 diversions in the approved county proposal and the number of  
14 diversions projected for the county by the commissioner.

15 Subp. 2. Allocation of placements. The county board's  
16 allocation of money for placements shall be based on the number  
17 of placements in the approved county proposal and the extent to  
18 which the placements result in an overall reduction in the  
19 county board's historical utilization of state-operated and  
20 community-based ICF/MR beds.

21 Subp. 3. Notification of allocation. The commissioner  
22 shall notify all county boards, in writing, of the amount of  
23 home and community-based services money allocated to each county  
24 board or, if the proposal was submitted jointly, to the group of  
25 county boards.

26 Subp. 4. Review of allocation; reallocation. The  
27 commissioner shall review the projected and actual use of home  
28 and community-based services by all county boards participating  
29 in the program on a quarterly basis, and report the findings to  
30 all the county boards in the state. The commissioner may reduce  
31 the allocation to a county board if the commissioner determines,  
32 in consultation with the county board, that the initial  
33 allocation to the county board will not be used during the  
34 allocation period. The commissioner may reallocate the unused  
35 portion of the county board's initial allocation to another  
36 county board, or other county boards, in the same geographic

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1 region that plan to expand home and community-based services or  
 2 provide home and community-based services for the first time.  
 3 If there is not a sufficient number of projections to use the  
 4 unused allocation from county boards within the geographic  
 5 region, the commissioner may reallocate the remainder to another  
 6 county board or other county boards in other geographic regions  
 7 that plan to expand home and community-based services or provide  
 8 home and community-based services for the first time.

9 Subp. 5. Preference given. The commissioner may give  
 10 preference during the reallocation process and in the allocation  
 11 of money for subsequent fiscal years to proposals submitted by  
 12 county boards that have not previously provided home and  
 13 community-based services. In allocating money for each fiscal  
 14 year, the commissioner shall give priority to the continued  
 15 funding of home and community-based services for clients who  
 16 received home and community-based services in the previous  
 17 fiscal year and continue to be eligible for home and  
 18 community-based services.

19 Subp. 6. Special projects. The commissioner may  
 20 reallocate or reserve available home and community-based service  
 21 money to fund special projects designed to serve very dependent  
 22 persons with special needs who meet the criteria in parts  
 23 9525.1820 and 9510.1050, subpart 2, items C and D as proposed at  
 24 State Register, Volume 10, Number 2, pages 57  
 25 to 65 (July 8, 1985). The reallocated or reserved  
 26 money may be used to provide additional money to county boards  
 27 that are unable to fund home and community-based services for  
 28 very dependent persons with special needs within the statewide  
 29 reimbursement rate as required in part 9525.1910, subpart 2.

30 9525.1900 AGREEMENT BETWEEN STATE AND COUNTY.

31 Subpart 1. Contents of agreement. The county board must  
 32 have a legally binding written agreement with the state in order  
 33 to receive home and community-based services money. The  
 34 agreement must include provisions specifying that:

35 A. home and community-based services money will be  
 36 used only for services to persons who are determined to be

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1 eligible under part 9525.1820 and meet the conditions in part  
2 9525.1830;

3 B. home and community-based services money will be  
4 used only for the services in part 9525.1860;

5 C. home and community-based services money will be  
6 used only for services provided by providers who meet the  
7 requirements of part 9525.1850 and have a legally binding  
8 contract with the host county which meets the requirements of  
9 part 9525.1870;

10 D. the total cost of providing home and  
11 community-based services to all home and community-based service  
12 clients will not exceed the limits in part 9525.1910 except as  
13 provided in part 9525.1890, subpart 6;

14 E. records will be kept in accordance with part  
15 9525.1920 and applicable provisions of parts 9505.1750 to  
16 9505.2150;

17 F. the county board will comply with all applicable  
18 standards in parts 9525.0015 to 9525.0145 [Emergency];

19 G. the county board will comply with parts 9525.1800  
20 to 9525.1930;

21 H. the county board will comply with Minnesota  
22 Statutes, chapter 256B, and rules adopted thereunder; and

23 I. the county board will comply with United States  
24 Code, title 42, sections 1396 et seq., and all regulations  
25 promulgated thereunder.

26 Subp. 2. **Additional requirements.** If the county board  
27 provides home and community-based services in addition to case  
28 management, the agreement must specify the services to be  
29 provided by the county board.

30 The agreement must include a provision specifying that the  
31 county board agrees that the commissioner may reduce or  
32 discontinue reimbursement, or seek other legal remedies if the  
33 county board fails to comply with the provisions of the  
34 agreement and parts 9525.1800 to 9525.1930.

35 9525.1910 COUNTY BOARD FUNDING OF HOME AND COMMUNITY-BASED  
36 SERVICES.

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1 Subpart 1. County board responsibility. The county board  
2 shall fund home and community-based services in accordance with  
3 subparts 2 to 5.

4 Subp. 2. Distribution of money. The total amount of money  
5 allocated to a county board for home and community-based  
6 services in a fiscal year shall not exceed the statewide average  
7 daily reimbursement rate multiplied by the total number of days  
8 the home and community-based services will be provided to the  
9 clients.

10 Subp. 3. Rate setting. The host county shall determine  
11 the rates to be paid to providers for home and community-based  
12 services and retain documentation of the process and data used  
13 to determine the rate. The commissioner shall review rates to  
14 ensure that the criteria in subpart 4, item C are met.

15 Subp. 4. Cost limitations. There is no dollar limitation  
16 on the amount of home and community-based services money that  
17 may be used per client. In authorizing and billing for home and  
18 community-based services for individual clients, the county  
19 board must comply with items A to C. For county boards applying  
20 jointly, the total cost and total allocation in item A shall be  
21 the total cost and total allocation for all of the county boards  
22 represented in the proposal and the average cost in item B shall  
23 be the average cost for all clients included in the proposal.

24 A. The total cost of home and community-based  
25 services provided to all clients during the fiscal year must not  
26 exceed the total allocation approved for the county board, or  
27 county boards if applying jointly, for the fiscal year by the  
28 commissioner.

29 B. The county's average cost per day for all home and  
30 community-based services provided to all clients must not exceed  
31 the statewide average daily reimbursement rate.

32 C. The cost of each service must satisfy the  
33 following criteria:

34 (1) the cost is ordinary, necessary, and related  
35 to client care;

36 (2) the cost is for activities which are

1 generally accepted in the field of mental retardation and are  
2 scientifically proven to promote achievement of the goals and  
3 objectives contained in the client's individual service plan;

4 (3) the cost is what a prudent and cost conscious  
5 business person would pay for the specific good or service in  
6 the open market in an arm's length transaction; and

7 (4) the cost is for goods or services actually  
8 provided.

9 Subp. 5. Assessment for costs which exceed allocation. If  
10 the total expenditures by the state under parts 9525.1800 to  
11 9525.1930 do not meet the federal requirements under the waiver  
12 and as a result federal financial participation is denied,  
13 disallowed, or required to be returned, the commissioner shall  
14 assess a portion of the cost to each county board that incurred  
15 costs which exceeded the total allocation for that county. The  
16 portion assessed must be based on the costs that exceed or  
17 exceeded the county board's allocation.

18 9525.1920 REQUIRED RECORDS AND REPORTS.

19 Subpart 1. Provider records. The provider and any  
20 subcontractor the provider contracts with shall maintain  
21 complete program and fiscal records and supporting documentation  
22 identifying the clients served and the services and costs  
23 provided under the provider's home and community-based services  
24 contract with the county board. These records must be  
25 maintained in well-organized files and identified in accounts  
26 separate from other facility or program costs. The provider's  
27 and subcontractor's records shall be subject to the maintenance  
28 schedule, audit availability requirements, and other provisions  
29 in parts 9505.1750 to 9505.2150.

30 Subp. 2. County board records. The county board shall  
31 maintain complete fiscal records and supporting documentation  
32 identifying the clients served and the services and costs  
33 provided under the county board's agreement with the  
34 department. If the county board provides home and  
35 community-based services in addition to case management, the  
36 county board's records must include the information required in

1 part 9525.1870. The county board records shall be subject to  
 2 the maintenance schedule, audit availability requirements, and  
 3 other provisions in parts 9505.1750 to 9505.2150.

4 Subp. 3. Availability of records. The county board's, the  
 5 provider's, and the subcontractor's financial records described  
 6 in subparts 1 and 2, must be available, on request, to the  
 7 commissioner and the federal Department of Health and Human  
 8 Services in accordance with parts 9500.0750 to 9500.1080,  
 9 9505.1750 to 9505.2150, and 9525.1800 to 9525.1930.

10 Subp. 4. Retention of records. The county board, the  
 11 providers, and the subcontractors shall retain a copy of the  
 12 records required in subparts 1 and 2 for five years unless an  
 13 audit in process requires a longer retention period.

14 9525.1930 PENALTIES AND APPEALS.

15 Subpart 1. Noncompliance. The commissioner may pursue  
 16 contractual remedies in accordance with part 9525.1870, subparts  
 17 2 and 3, withhold or withdraw reimbursement, recoup money paid,  
 18 and pursue any other available legal remedy for failure of a  
 19 county board, provider, or subcontractor to comply with parts  
 20 9525.1800 to 9525.1930. The commissioner may also take action  
 21 in accordance with Minnesota Statutes, section 256B.064.

22 The county board shall pursue contractual remedies in  
 23 accordance with part 9525.1870, subparts 2 and 3, withhold or  
 24 withdraw reimbursement, recoup money paid, or pursue any other  
 25 available legal remedy for failure of a provider or  
 26 subcontractor to comply with parts 9525.1800 to 9525.1930. A  
 27 provider shall be held liable if a subcontractor fails to comply  
 28 with parts 9525.1800 to 9525.1930.

29 Subp. 2. Exception. Providers who contracted with the  
 30 county board to provide home and community-based services before  
 31 May 1, 1985, have until January 1, 1986, to comply with parts  
 32 9525.1850, items B to F; 9525.1860, subpart 3 4, item G, subitem  
 33 (2); 9525.1860, subpart 4 6; and 9525.1870, subpart 1, item E.

34 Subp. 3. Failure to enforce. The county board shall be  
 35 held liable for any damages or costs to the department for  
 36 failure of the county board to enforce contracts entered into

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1 under parts 9525.1800 to 9525.1930 or for any action or inaction  
2 which impedes enforcement by the commissioner.

3 Subp. 4. Appeals by county boards, providers, or  
4 subcontractors. Before the commissioner withholds, recoups, or  
5 withdraws the county board's allocation under subpart 1, the  
6 commissioner shall give 30 days written notice to the county  
7 board and send a copy of the written notice to the affected  
8 providers or subcontractors. The written notice shall inform  
9 the county board, provider, or subcontractor of the right to a  
10 hearing under the contested case procedures of Minnesota  
11 Statutes, chapter 14. If the commissioner receives a written  
12 appeal of the commissioner's action within 30 days of the date  
13 the written notice is sent, the commissioner shall initiate a  
14 contested case proceeding. The written appeal must state the  
15 reasons the county board, provider, or subcontractor is  
16 appealing the commissioner's action. The commissioner shall not  
17 take the proposed action before the hearing unless, in the  
18 commissioner's opinion, the action is necessary to protect the  
19 public welfare and the interests of the home and community-based  
20 services program.

21 Subp. 5. Appeals by individuals. Notice, appeals, and  
22 hearing procedures shall be conducted as follows:

23 A. A person who is considered for, or receiving, home  
24 and community-based services has a right to a hearing under  
25 Minnesota Statutes, section 256.045 if:

26 (1) the county board fails to follow the written  
27 procedures and criteria established under part 9525.1830,  
28 subpart 2; or

29 (2) the county board fails to authorize services  
30 in accordance with part 9525.1830, subpart 1, item E; or

31 (3) the provisions of parts 9525.1820 and  
32 9525.1830 are met and the person is:

33 (a) not informed of the home and  
34 community-based services that are feasible for the person; or

35 (b) denied the right to choose between the  
36 feasible home and community-based services and ICF/MR services.

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1           B. It is an absolute defense to an appeal under item  
2 A, subitem (1), if the county board proves that it followed the  
3 established written procedures and criteria and determined that  
4 home and community-based services could not be provided to the  
5 person within the county board's allocation of home and  
6 community-based services money.

7           C. Notice, appeal, and hearing procedures shall be  
8 conducted in accordance with Minnesota Statutes, section 256.045.

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