

1 Department of Human Services

2

3 Adopted Permanent Rules Relating to Home and Community-Based
4 Services

5

6 Rules as Adopted

7 9525.1800 DEFINITIONS.

8 [For text of subpart 1, see M.R.]

9 Subp. 1a. **Adaptive modifications and equipment.** "Adaptive
10 modifications and equipment" means one or more of the structural
11 changes to the person's residence or an eligible vehicle, or
12 specialized equipment or devices. Adaptive modifications and
13 equipment must be designed to enable the person to avoid
14 placement in an ICF/MR by increasing the person's mobility or
15 protecting the person or other individuals from injury.

16 Adaptive modifications and equipment are only reimbursable for
17 persons with physical disabilities, sensory deficits, or
18 behavior problems. Adaptive modifications and equipment are
19 limited to those that have been approved by the United States
20 Department of Health and Human Services as part of Minnesota's
21 alternative community services and MR/RC waiver plans.

22 Subp. 1b. **Alternative community services waiver plan or
23 ACS waiver.** "Alternative community services waiver plan" or
24 "ACS waiver" means a waiver of requirements under United States
25 Code, title 42, sections 1396 et. seq., that allows the state to
26 pay for home and community-based services for persons with
27 mental retardation or related conditions who are determined by
28 the Department of Human Services to be inappropriately placed in
29 Medicaid-certified nursing facilities through the medical
30 assistance program. This term includes all amendments to the
31 waiver as approved by the United States Department of Health and
32 Human Services.

33 Subp. 2. **Billing rate.** "Billing rate" means the rate
34 billed by the provider for providing the services. The rate may
35 be based on a day, partial day, hour, or fraction of an hour of

1 service.

2 Subp. 3. **Case manager.** "Case manager" means the person
3 designated by the county board to provide case management
4 services as defined in subpart 4a.

5 Subp. 4. [See repealer.]

6 Subp. 4a. **Case management.** "Case management" means
7 identifying the need for, seeking out, acquiring, and
8 coordinating services to persons with mental retardation or
9 related conditions and monitoring the delivery of the services
10 to persons with mental retardation or related conditions by an
11 individual designated by the county board to provide case
12 management services under parts 9525.0015 to 9525.0165.

13 [For text of subp 5, see M.R.]

14 Subp. 5a. **Community social services administration plan or**
15 **CSSA plan.** "Community social services administration plan" or
16 "CSSA plan" means the biennial community social services plan
17 required of the county board by Minnesota Statutes, section
18 256E.09, subdivision 3.

19 Subp. 5b. **Conversion.** "Conversion" means the provision of
20 home and community-based services to a person discharged from an
21 ICF/MR directly into those services, resulting in
22 decertification of an ICF/MR bed under Minnesota Statutes,
23 section 252.28, subdivision 4.

24 [For text of subp 6, see M.R.]

25 Subp. 7. **County of financial responsibility.** "County of
26 financial responsibility" has the meaning given it in Minnesota
27 Statutes, section 256G.02, subdivision 4.

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

35 Subp. 8a. **Day training and habilitation.** "Day training
36 and habilitation" has the meaning given to "training and

1 habilitation services" in part 9525.1500, subpart 36.

2 [For text of subps 9 and 10, see M.R.]

3 Subp. 10a. **Eligible vehicle.** "Eligible vehicle" means a
4 vehicle owned by the person, the person's family, or the
5 person's primary caregiver with whom the person resides.

6 [For text of subps 11 and 12, see M.R.]

7 Subp. 13. **Geographic region.** "Geographic region" means
8 one of the economic development regions established by executive
9 order of the governor according to Minnesota Statutes, section
10 462.385.

11 Subp. 13a. **Habilitation services.** "Habilitation services"
12 means health and social services directed toward increasing and
13 maintaining the physical, intellectual, emotional, and social
14 functioning of persons with mental retardation or related
15 conditions. Habilitation services include therapeutic
16 activities, assistance, training, supervision, and monitoring in
17 the areas of self-care, sensory and motor development,
18 interpersonal skills, communication, socialization, reduction or
19 elimination of maladaptive behavior, community living and
20 mobility, health care, leisure and recreation, money management,
21 and household chores. Day training and habilitation services
22 and residential-based habilitation services are types of
23 habilitation services.

24 Subp. 14. **Home and community-based services.** "Home and
25 community-based services" means services provided to persons
26 with mental retardation or related conditions that are
27 authorized under United States Code, title 42, section 1396 et.
28 seq., and the MR/RC and ACS waivers granted by the United States
29 Department of Health and Human Services.

30 Subp. 14a. **Homemaker services.** "Homemaker services" means
31 general household activities and ongoing monitoring of the
32 person's well-being provided by a homemaker who meets the
33 standards in parts 9565.1000 to 9565.1300.

34 [For text of subp 15, see M.R.]

35 Subp. 16. [See repealer.]

36 Subp. 17. **Individual service plan.** "Individual service

1 plan" has the meaning given it in Minnesota Statutes, section
2 256B.092, subdivision 1b.

3 Subp. 17a. **In-home family support services.** "In-home
4 family support services" means residential-based habilitation
5 services designed to enable the person to remain in the family
6 home and may include training and counseling for the person and
7 the person's family.

8 [For text of subp 18, see M.R.]

9 Subp. 19. [See repealer.]

10 Subp. 19a. **Leave days.** "Leave days" means days when a
11 person is temporarily absent from services.

12 Subp. 19b. **Mental retardation or related condition or**
13 **MR/RC.** "Mental retardation or related condition" or "MR/RC" has
14 the meaning given to "mental retardation" in part 9525.0015,
15 subpart 20, items A and B, and the meaning given to a "related
16 condition" in Minnesota Statutes, section 252.27, subdivision 1a.

17 Subp. 19c. **Nursing facility.** "Nursing facility" means a
18 facility licensed under Minnesota Statutes, chapter 144A, that
19 is certified by the Minnesota Department of Health under title
20 XVIII or XIX of the Social Security Act.

21 Subp. 19d. **Person.** "Person" means a person with mental
22 retardation or a related condition, as defined in subpart 19b,
23 who is receiving home and community-based services through
24 either the MR/RC or ACS waiver plan.

25 Subp. 20. **Primary caregiver.** "Primary caregiver" means a
26 person other than a member of the person's family who has
27 primary responsibility for the assistance, supervision, or
28 training of the person in the person's residence.

29 [For text of subp 21, see M.R.]

30 Subp. 21a. **Residential-based habilitation services.**
31 "Residential-based habilitation services" means services
32 provided in the person's residence and in the community, that
33 are directed toward increasing and maintaining the person's
34 physical, intellectual, emotional, and social functioning.
35 Residential-based habilitation services include therapeutic
36 activities, assistance, counseling, training, supervision, and

1 monitoring in the areas of self-care, sensory and motor
2 development, interpersonal skills, communication, socialization,
3 working, reduction or elimination of maladaptive behavior,
4 community participation and mobility, healthcare, leisure and
5 recreation, money management, and household chores. Supported
6 living services and in-home family support services are
7 residential-based habilitation services.

8 **Subp. 21b. Respite care.** "Respite care" means short-term
9 supervision, assistance, and care provided to a person due to
10 the temporary absence or need for relief of the person's family,
11 foster family, or primary caregiver. Respite care may include
12 day, overnight, in-home, or out-of-home services, as needed.

13 **Subp. 22. Room and board costs.** "Room and board costs"
14 means costs associated with providing food, shelter, and
15 personal needs items for persons, including the directly
16 identifiable costs of:

17 [For text of items A to E, see M.R.]

18 **Subp. 23. Screening team.** "Screening team" means the team
19 established under Minnesota Statutes, section 256B.092,
20 subdivision 7, to evaluate a person's need for home and
21 community-based services.

22 [For text of subp 24, see M.R.]

23 **Subp. 25. Short term.** "Short term" means a cumulative
24 total of less than 90 24-hour days or 2,160 hours in a fiscal
25 year. Additional hours may be authorized by the commissioner as
26 approved in the current waiver plans.

27 **Subp. 26. Statewide average reimbursement rate.**
28 "Statewide average reimbursement rate" means the dollar amount
29 arrived at by dividing the total amount of money available under
30 the waiver for the fiscal year by 365 days and then dividing the
31 quotient by the department's projection of the total number of
32 persons to receive home and community-based services as stated
33 in the waiver for that fiscal year.

34 **Subp. 26a. Supported living services for adults.**
35 "Supported living services for adults" means residential-based
36 habilitation services provided on a daily basis to adults living

1 in a service site for up to six persons.

2 Subp. 26b. **Supported living services for children.**

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

6 Subp. 27. **Title XIX home and community-based waived**
7 **services for persons with mental retardation or related**
8 **conditions or the MR/RC waiver plan.** "Title XIX home and
9 community-based waived services for persons with mental
10 retardation or related conditions" or the "MR/RC waiver plan"
11 means the waiver of requirements under United States Code, title
12 42, sections 1396 et seq., which allows the state to pay for
13 home and community-based services for persons with mental
14 retardation or related conditions through the medical assistance
15 program. The term includes all amendments to the waiver
16 including any amendments made after the effective date of the
17 last waiver plan, as approved by the United States Department of
18 Health and Human Services under United States Code, title 42,
19 section 1396 et. seq.

20 9525.1810 APPLICABILITY AND EFFECT.

21 [For text of subpart 1, see M.R.]

22 Subp. 2. **Effect.** The entire application of parts
23 9525.1800 to 9525.1930 shall continue in effect only as long as
24 the MR/RC or ACS waiver from the United States Department of
25 Health and Human Services is in effect in Minnesota.

26 9525.1820 ELIGIBILITY.

27 Subpart 1. **Eligibility criteria for MR/RC waiver.** A
28 person is eligible to receive home and community-based services
29 through the MR/RC waiver if the person meets all the criteria in
30 items A to E and if home and community-based services are
31 provided according to part 9525.1830:

32 A. the person is a resident of an ICF/MR or the
33 screening team determines that the person would be placed in an
34 ICF/MR within one year if home and community-based services were
35 not provided;

1 B. the person is determined to be a person with
2 mental retardation according to the definitions and procedures
3 in parts 9525.0015 to 9525.0165 or the person is determined to
4 be a person with a related condition as defined in Minnesota
5 Statutes, section 252.27, subdivision 1a;

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

8 D. the screening team has determined that the person
9 needs daily intervention; and

10 E. the person's individual service plan documents the
11 need for daily intervention and specifies the services needed
12 daily.

13 Subp. 1a. **Eligibility criteria for the ACS waiver.** A
14 person is eligible to receive home and community-based services
15 through the ACS waiver if the person meets all requirements in
16 subpart 1, items B to E, and:

17 A. was admitted to a Medicaid-certified nursing
18 facility before January 1, 1990, or amended date as approved by
19 the Health Care and Finance Administration; and

20 B. is currently residing in a Medicaid-certified
21 nursing facility, but has been determined by the screening team
22 as requiring ICF/MR level of care.

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

28 A. the person meets the criteria in subpart 1, items
29 A to E;

30 B. the person will be provided home and
31 community-based services according to part 9525.1830;

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

34 D. the commissioner has approved in writing a county
35 board's request to suspend for the person the deeming
36 requirements in Code of Federal Regulations, title 42, section

1 436.821 according to the waiver.

2 Subp. 3. **Beginning date.** Eligibility for medical
3 assistance begins on the first day of the month in which the
4 person first receives home and community-based services.

5 9525.1830 PROVISION OF HOME AND COMMUNITY-BASED SERVICES.

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

11 A. the county board has determined that it can
12 provide home and community-based services to the person within
13 its allocation of home and community-based services money as
14 determined under parts 9525.1890 and 9525.1910 ~~or-as-authorized~~
15 ~~by-the-commissioner-based-on-the-limits-of-the-approved-waiver~~
16 ~~plan~~. If the county board has determined that it cannot
17 provide home and community-based services to the person within
18 its allocation of home and community-based services money, the
19 county board may request additional money. The commissioner may
20 authorize additional money only for persons:

21 (1) to be discharged from regional treatment
22 centers and nursing facilities as referenced in Minnesota
23 Statutes, section 256B.092, subdivision 4;

24 (2) participating in demonstration projects as
25 referenced in Minnesota Statutes, section 256B.092, subdivision
26 4a;

27 (3) receiving home and community-based services
28 under a license granted according to the emergency provisions of
29 Minnesota Statutes, section 252.28, subdivision 3, paragraph
30 (4);

31 (4) discharged from ICF/MR facilities which have
32 been placed into voluntary or involuntary receiverships
33 according to Minnesota Statutes, section 245A.12 or 245A.13; or

34 (5) needing home and community-based services on
35 a temporary basis as the result of an emergency situation under

1 Minnesota Statutes, section 252.293, subdivision 1.

2 The commissioner shall not authorize additional money to
3 the county board if the authorization would exceed the
4 limitations of the approved waiver plan or state appropriations.

5 B. the screening team has recommended home and
6 community-based services instead of ICF/MR services for the
7 person under parts 9525.0015 to 9525.0165;

8 [For text of items C to F, see M.R.]

9 [For text of subp 2, see M.R.]

10 9525.1840 PARENTAL CONTRIBUTION FEE.

11 Subpart 1. Out-of-home placements. The parent or parents
12 of a person under age 18 shall be liable for a parental
13 contribution fee determined according to Minnesota Statutes,
14 sections 252.27, subdivision 2, and 256B.14, if the person
15 resides outside the home of the parent or parents.

16 Subp. 2. In-home services. Parents of persons under age
17 18 may be liable for a parental contribution fee determined
18 according to Minnesota Statutes, sections 252.27, subdivision 2,
19 and 256B.14, if the person is residing with a parent and the
20 person's medical assistance eligibility for home and
21 community-based services was determined without considering
22 parental income or resources under part 9525.1820, subpart 2.

23 9525.1850 PROVIDER REIMBURSEMENT.

24 A provider may receive medical assistance reimbursement for
25 home and community-based services only if the provider meets the
26 criteria in items A to K. The training, experience, and
27 supervision required in items B to E only apply to persons who
28 are employed by, or under contract with, the provider to provide
29 services that can be billed under part 9525.1860, subpart 3,
30 item A. Providers licensed under parts 9525.0215 to 9525.0355;
31 9525.1500 to 9525.1690; and 9525.2000 to 9525.2140 are exempt
32 from items C, D, and E.

33 [For text of items A and B, see M.R.]

34 C. If no training standards have been established,
35 the provider, employee, or subcontractor must have completed,

1 within the last two years, at least 24 hours of documented
2 training. The training must be in areas related to the care,
3 supervision, or training of persons with mental retardation or
4 related conditions including first aid, medication
5 administration, behavior management, cardiopulmonary
6 resuscitation, human development, and obligations under
7 Minnesota Statutes, sections 626.556 and 626.557. The county
8 board may grant a written variance to the training requirements
9 in this item for:

10 (1) a respite care provider who provides the
11 respite care in his or her residence or in the person's
12 residence; or

13 (2) a provider who ensures that the training will
14 be completed within six months of the date the contract is
15 signed.

16 This item does not apply to providers of adaptive
17 modifications and equipment.

18 D. The provider ensures that the provider and all
19 employees or subcontractors have at least one year of experience
20 within the last five years in the care, training, or supervision
21 of persons with mental retardation or related conditions as
22 defined in Minnesota Statutes, section 252.27. The county board
23 may grant a written variance to the requirements in this item
24 for:

25 (1) a respite care provider who provides the
26 respite care in his or her residence or in the person's
27 residence;

28 (2) a provider, employee, or subcontractor who is
29 a qualified mental retardation professional who meets the
30 requirements in Code of Federal Regulations, title 42, section
31 442.401 and has been approved by the case manager; or

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

1 This item does not apply to providers of adaptive
2 modifications and equipment or homemaker services.

3 E. The provider ensures that all home and
4 community-based services, except homemaker services, respite
5 care services, and adaptive modifications and equipment, will be
6 provided by, or under the supervision of a qualified mental
7 retardation professional who meets the requirements in Code of
8 Federal Regulations, title 42, section 442.401, and has been
9 approved by the case manager.

10 F. The provider ensures that the provider and all
11 employees or subcontractors will complete the amount of ongoing
12 training required in any Minnesota rules applicable to the home
13 and community-based services to be provided. If no ongoing
14 training is required by the applicable Minnesota rules, the
15 provider, except a provider of adaptive modifications and
16 equipment, agrees that the provider and all employees or
17 subcontractors will complete at least 18 hours of documented
18 ongoing training each fiscal year. To meet the requirements of
19 this item, the ongoing training must be in a field related to
20 the care, training, and supervision of persons with mental
21 retardation or related conditions, and must either be identified
22 as needed in the person's individual service plans or be
23 approved by the case manager based on the needs identified in
24 the individual service plans of the persons served by the
25 provider. The county board may grant a written variance to the
26 requirements in this item for a respite care provider who
27 provides the respite care in his or her residence or in the
28 person's residence.

29 G. The provider ensures that the provider and all
30 employees or subcontractors have never been convicted of a
31 violation, or admitted violating Minnesota Statutes, section
32 626.556 or 626.557 and there is no substantial evidence that the
33 provider, employees, or subcontractors have violated Minnesota
34 Statutes, section 626.556 or 626.557.

35 H. The provider has a legally binding contract with
36 the host county that complies with part 9525.1870.

1 I. The provider has been authorized in writing to
2 provide home and community-based services for the person by the
3 county of financial responsibility.

4 J. The provider agrees in writing to comply with
5 United States Code, title 42, sections 1396 et seq., and
6 regulations implementing those sections and with applicable
7 provisions in parts 9505.2160 to 9505.2245 and 9525.1800 to
8 9525.1930.

9 K. The provider is not the person's guardian or a
10 member of the person's family. This item does not preclude the
11 county board from providing services if the person is a ward of
12 the commissioner.

13 9525.1860 REIMBURSABLE SERVICES.

14 Subpart 1. **General limits.** Only costs for services listed
15 in the approved Minnesota MR/RC or ACS waiver plan shall be
16 reimbursed under the medical assistance program.

17 A. Services reimbursable through the MR/RC waiver
18 plan are:

19 (1) case management;

20 (2) residential habilitation services including
21 in-home family support, supported living services for adults,
22 and supported living services for children;

23 (3) day training and habilitation, including
24 supported employment;

25 (4) homemaker services;

26 (5) respite care; and

27 (6) minor adaptations and equipment.

28 B. Services reimbursable through the ACS waiver plan
29 are:

30 (1) residential habilitation services including
31 in-home family support, supported living services for adults,
32 and supported living services for children;

33 (2) day training and habilitation, including
34 supported employment;

35 (3) homemaker services;

- 1 (4) respite care; and
2 (5) adaptive modifications and equipment.

3 Subp. 2. [See repealer.]

4 Subp. 3. **Billing for services.** Billings submitted by the
5 provider, except a provider of adaptive modifications and
6 equipment, must be limited to time actually and reasonably spent:

7 A. In direct contact with the person to assist the
8 person in attaining the goals and objectives specified in the
9 person's individual service plan. Direct contact time includes
10 time spent traveling to and from service sites.

11 B. In verbal or written contact with professionals or
12 others regarding the person's progress in attaining the goals
13 and objectives specified in the person's individual service plan.

14 C. In planning activities including attending the
15 person's interdisciplinary team meetings, developing goals and
16 objectives for the person's individual service plan, assessing
17 and reviewing the person's specified goals and objectives,
18 documenting the person's progress toward attaining the goals and
19 objectives in the person's individual service plan and assessing
20 the adequacy of the services related to the goals and objectives
21 in the person's individual service plan.

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

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

26 B. Day training and habilitation services must:

27 (1) only be provided to persons who receive a
28 residential-based habilitation service;

29 (2) not include sheltered work or work activity
30 services funded or certified by the Minnesota Division of
31 Vocational Rehabilitation;

32 (3) be provided at a different service site than
33 the person's place of residence unless medically
34 contraindicated, as required in Minnesota Statutes, section
35 252.41, subdivision 3; and

36 (4) be provided by an organization that does not

1 have a direct or indirect financial interest in the organization
2 that provides the person's residential services unless the
3 person is residing with:

4 (a) his or her family; or

5 (b) a foster family that does not have a
6 direct or indirect financial interest in the organization that
7 provides the person's residential services.

8 C. Homemaker services may be provided only if:

9 (1) the person regularly responsible for these
10 activities is temporarily absent or is unable to manage the home
11 and care for the person; or

12 (2) there is no person, other than the person,
13 regularly responsible for these activities and the person is
14 unable to manage the home and his or her own care without
15 ongoing monitoring or assistance. Homemaker services include
16 meal preparation, cleaning, simple household repairs, laundry,
17 shopping, and other routine household tasks.

18 D. Leave days are reimbursable for supported living
19 services for children or supported living services for adults.
20 If the person is not receiving respite care or other supported
21 living services, billings may be made for leave days when the
22 person is:

23 (1) hospitalized;

24 (2) on an overnight trip or vacation; or

25 (3) home for a visit.

26 Leave days that are not included in the individual service
27 plan may not be billed for without the county board's written
28 authorization. The county board and the provider must document
29 all leave days for which billings are made and specify the
30 reasons the county board authorized the leave days.

31 E. The average dollar amount available for
32 reimbursement for adaptive modifications and equipment shall be
33 determined annually ~~by the commissioner~~ based on the approved
34 waiver plan.

35 Adaptive modifications and equipment must be constructed or
36 installed to meet or exceed applicable federal, state, and local

1 building codes.

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

8 G. Respite care must:

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

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

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

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

29 Subp. 5. [See repealer.]

30 Subp. 5a. **Other medical or related costs.** The cost of
31 other medical or related services reimbursable under the
32 Minnesota State Medicaid Plan must not be included in the rate
33 or rates billed by the provider or providers for reimbursement
34 under parts 9525.1800 to 9525.1930.

35 Subp. 6. **Other applicable rules.** Home and
36 community-based services must be provided as required under

1 items A to H unless a variance has been approved by the
2 commissioner.

3 [For text of item A, see M.R.]

4 B. Day training and habilitation services must be
5 licensed by the department.

6 C. Supported living services for children must be
7 provided by a service provider licensed under parts 9525.2000 to
8 9525.2140 and at a site licensed under parts 9545.0010 to
9 9545.0260.

10 D. Supported living services provided at a service
11 site serving four or fewer adults must be provided by a service
12 provider licensed under parts 9525.2000 to 9525.2140 and the
13 residence must be licensed under parts 9555.5105 to 9555.6265.
14 Supported living services provided at a single residence serving
15 five or six adults must be licensed under parts 9525.0215 to
16 9525.0355.

17 E. Respite care provided at a service site serving
18 more than four persons must be licensed under parts 9525.0215 to
19 9525.0355. Respite care provided at a service site serving four
20 or fewer persons under 18 years of age must be licensed under
21 parts 9545.0010 to 9545.0260, ~~unless otherwise-authorized-by~~ the
22 commissioner waives this requirement according to Minnesota
23 Statutes, section 256B.092, subdivision 4a. Respite care
24 provided at a service site serving four or fewer adults must be
25 licensed under parts 9555.5105 to 9555.6265, unless ~~otherwise~~
26 ~~authorized-by~~ the commissioner waives this requirement according
27 to Minnesota Statutes, section 256B.092, subdivision 4a. This
28 item shall not apply to a person who provides respite care ~~for~~
29 ~~fewer-than-30-days-a-year~~ and who is not required to be licensed
30 under Minnesota Statutes, chapter 245A.

31 Subp. 7. **Licensing variances.** Requests for variances to
32 the licensing requirements in subpart 6 must be handled
33 according to items A to C.

34 A. The county board may request a variance from
35 compliance with parts 9545.0010 to 9545.0260 as required in
36 subpart 6, item C, D, or E, for a provider who provides services

1 to persons under 18 years of age if the county board determines
2 that no providers who meet the licensing requirements are
3 available and that granting the variance will not endanger the
4 health, safety, or development of the persons. The written
5 variance request must be submitted to the commissioner and must
6 contain:

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

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

11 (3) the specific measures that will be taken by
12 the provider to ensure the health, safety, or development of the
13 persons.

14 The commissioner shall grant the variance request if the
15 commissioner determines that the variance was submitted
16 according to this item and that granting the variance will not
17 endanger the health, safety, or development of the persons
18 receiving the services.

19 The commissioner shall review the county board's variance
20 request and notify the county board, in writing, within 30 days
21 if the variance request has been granted or denied. If the
22 variance request is denied, the notice must state the reasons
23 why the variance request was denied and inform the county board
24 of its right to request that the commissioner reconsider the
25 variance request.

26 B. The county board may grant a written variance from
27 compliance with parts 9555-6105 9555.5105 to 9555.6265 as
28 required in subpart 6, items D and E, for a provider who
29 provides services to adults if the county board determines that
30 no providers who meet the licensing requirements are available
31 and that granting the variance will not endanger the health,
32 safety, or development of the persons.

33 C. Requests for a variance of the provisions in parts
34 9525.0215 to 9525.0355 must be submitted according to part
35 9525.0235, subpart 13.

1 9525.1870 PROVIDER CONTRACTS AND SUBCONTRACTS.

2 Subpart 1. **Contracts.** To receive medical assistance
3 reimbursement for home and community-based services, the
4 provider must have a contract developed according to parts
5 9550.0010 to 9550.0092 with the host county. In addition, the
6 contract must contain the information in items A to F and
7 subpart 2:

8 A. maximum and minimum number of persons to be
9 served;

10 B. description of how the services will benefit the
11 persons in attaining the goals in the persons' individual
12 service plans;

13 [For text of items C to F, see M.R.]

14 [For text of subps 2 to 4, see M.R.]

15 9525.1880 COUNTY PROPOSAL AND APPROVAL OF COUNTY PROPOSAL.

16 Subpart 1. **Application forms and deadlines.** To be
17 considered for reimbursement under parts 9525.1800 to 9525.1930,
18 county boards, singly or jointly, must submit to the
19 commissioner an annual proposal for the provision of home and
20 community-based services to persons for which the county board
21 or county boards are financially responsible. The commissioner
22 shall notify the county boards of the deadlines and forms for
23 the submission of proposals for home and community-based
24 services.

25 Subp. 2. **Contents of county proposal.** The proposal must
26 be based on the needs of individually identified persons in the
27 county and must identify the number of persons to whom the
28 county board expects to provide the home and community-based
29 services and identify, by name, recipients authorized and
30 receiving services, individuals screened and authorized but not
31 yet receiving services, and individuals for whom the county has
32 received a request to receive waived services but has not yet
33 screened. If county boards are applying jointly, each county
34 board must identify the number of persons for which the county
35 is financially responsible.

1 The commissioner shall review the county community social
2 services administration (CSSA) plan, the determination of need,
3 and the redetermination of need for services for persons with
4 developmental disabilities and may consider the county goals and
5 objectives as part of the county proposal. The commissioner may
6 also require the county boards to include the following
7 information in the proposal:

8 A. current living arrangements;
9 B. current day programs;
10 C. level of supervision required;
11 D. the type of home and community-based services
12 projected to be needed and the expected duration of the service
13 or services;

14 E. the projected starting dates of the home and
15 community-based services;

16 F. the proposed service provider or providers and
17 billing rate or rates, if known;

18 G. a description of how the proposal limits the
19 development of new community-based ICF/MR beds and reduces the
20 county's use of existing ICF/MR beds in regional treatment
21 centers and community ICFs/MR, including any steps the county
22 board has taken to encourage voluntary decertification of
23 community-based ICF/MR beds; and

24 H. a description of the steps the county board has
25 taken to prepare to provide home and community-based services,
26 including efforts to integrate home and community-based services
27 into the county board's administrative services planning system.

28 Subp. 3. Review and approval of proposal. The
29 commissioner shall review all proposals submitted according to
30 subparts 1 and 2. The commissioner shall only approve the
31 county proposals that meet the requirements of parts 9525.1800
32 to 9525.1880 and that demonstrate compliance with the goals of
33 the department as stated in items A to D:

34 A. reduction of the number of children in regional
35 treatment centers;

36 B. limitation of the development of new

1 community-based ICF/MR beds and reduction of the use of existing
2 ICF/MR beds located on regional treatment center campuses and in
3 the community; and

4 C. integration of home and community-based services
5 into the county board's administrative services planning system.

6 If the proposal is disapproved, the commissioner shall
7 notify the county board, in writing, of the reasons why the
8 proposal was not approved. The county board has seven days
9 after receipt of the written notice in which to revise the
10 proposal and resubmit it to the commissioner.

11 9525.1890 ALLOCATION OF HOME AND COMMUNITY-BASED SERVICE MONEY.

12 Subpart 1. Allocation of diversions. To allocate home and
13 community-based services money for diversions, the commissioner
14 shall project the number of diversions for the county based on
15 the average of the projected utilization of state regional
16 treatment centers and community-based ICF/MR beds using
17 historical utilization for the county; and the projected per
18 capita utilization of state regional treatment centers and
19 community-based ICF/MR beds for the county, both of which are
20 adjusted to conform with the number of diversions projected in
21 the waiver. The projection shall be adjusted based on the
22 county board's actual use of allocated diversions during the
23 previous fiscal year. If the county board uses less than the
24 number of diversions allocated for the fiscal year, the
25 commissioner may decrease the number of diversions projected by
26 the commissioner for the county for the next fiscal year. The
27 county board's allocation of money for diversions shall be based
28 on the lesser of the number of diversions in the approved county
29 proposal and the number of diversions projected for the county
30 by the commissioner.

31 Subp. 2. Allocation of conversions. The county board's
32 allocation of money for conversions shall be based on the number
33 of conversions in the approved county proposal and the extent to
34 which the conversions result in an overall reduction in the
35 county board's historical utilization of state regional

1 treatment centers and community-based ICF/MR beds.

2 [For text of subp 3, see M.R.]

3 Subp. 4. **Review of allocation; reallocation.** The
4 commissioner shall review the projected and actual use of home
5 and community-based services by all county boards participating
6 in the program at least semiannually, and report the findings to
7 all the county boards in the state. The commissioner may reduce
8 the allocation to a county board if the commissioner determines,
9 in consultation with the county board, that the initial
10 allocation to the county board will not be used during the
11 allocation period. The commissioner may reallocate the unused
12 portion of the county board's initial allocation to another
13 county board, or other county boards, in the same geographic
14 region that plan to expand home and community-based services or
15 provide home and community-based services for the first time.
16 If there is not a sufficient number of projections to use the
17 unused allocation from county boards within the geographic
18 region, the commissioner may reallocate the remainder to another
19 county board or other county boards in other geographic regions
20 that plan to expand home and community-based services or provide
21 home and community-based services for the first time.

22 Subp. 5. **Preference given.** The commissioner may give
23 preference during the reallocation process and in the allocation
24 of money for subsequent fiscal years to proposals submitted by
25 county boards that have not previously provided home and
26 community-based services. In allocating money for each fiscal
27 year, the commissioner shall give priority to the continued
28 funding of home and community-based services for persons who
29 received home and community-based services in the previous
30 fiscal year and continue to be eligible for home and
31 community-based services.

32 Subp. 6. **Special projects.** The commissioner may
33 reallocate or reserve available home and community-based service
34 money to fund special projects designed to serve very dependent
35 persons with special needs who meet the criteria in parts
36 9525.1820 and 9510.1050, subpart 2, items C and D. The

1 reallocated or reserved money may be used to provide additional
2 money to county boards that are unable to fund home and
3 community-based services for very dependent persons with special
4 needs within the statewide reimbursement rate as required in
5 part 9525.1910, subpart 2. The commissioner shall develop
6 procedures and criteria for allocating home and community-based
7 program funds for each target group identified as a special
8 project under this subpart.

9 9525.1900 AGREEMENT BETWEEN STATE AND COUNTY.

10 Subpart 1. Contents of agreement. The county board must
11 have a legally binding written agreement with the state for each
12 approved waiver plan to receive home and community-based
13 services money. The agreement must include provisions
14 specifying that:

15 [For text of items A to C, see M.R.]

16 D. the total cost of providing home and
17 community-based services to all persons will not exceed the
18 limits in part 9525.1910 except as provided in part 9525.1890,
19 subpart 6;

20 E. records will be kept according to part 9525.1920
21 and applicable provisions of parts 9505.2160 to 9505.2245;

22 F. the county board will comply with all applicable
23 standards in parts 9525.0015 to 9525.0165;

24 [For text of items G to I, see M.R.]

25 [For text of subp 2, see M.R.]

26 9525.1910 COUNTY BOARD FUNDING OF HOME AND COMMUNITY-BASED
27 SERVICES.

28 [For text of subpart 1, see M.R.]

29 Subp. 2. Distribution of money. The total amount of money
30 allocated to a county board for home and community-based
31 services in a fiscal year shall not exceed the statewide average
32 daily reimbursement rate multiplied by the total number of days
33 the home and community-based services will be provided to the
34 persons.

35 [For text of subp 3, see M.R.]

1 Subp. 4. Cost limitations. There is no dollar limitation
2 on the amount of home and community-based services money that
3 counties may authorize to be used per person. In authorizing
4 and billing for home and community-based services for individual
5 persons, the county board must comply with items A to C. For
6 county boards applying jointly, the total cost and total
7 allocation in item A shall be the total cost and total
8 allocation for all of the county boards represented in the
9 proposal and the average cost in item B shall be the average
10 cost for all persons included in the proposal.

11 A. The total cost of home and community-based
12 services provided to all persons during the fiscal year must not
13 exceed the total allocation approved for the county board, or
14 county boards if applying jointly, for the fiscal year by the
15 commissioner.

16 B. The county's average cost per day for all MR/RC
17 home and community-based services provided to all persons must
18 not exceed the statewide average daily reimbursement rate,
19 except as provided for in part 9525.1890, subpart 6. The
20 county's average cost per day for a recipient of ACS waived
21 services may not exceed the amount allocated to the county by
22 the commissioner for that person.

23 C. The cost of each service must satisfy the
24 following criteria:

25 (1) the cost is ordinary, necessary, and related
26 to the person's care;

27 (2) the cost is for activities which are
28 generally accepted in the field of mental retardation or related
29 conditions and are scientifically proven to promote achievement
30 of the goals and objectives contained in the person's individual
31 service plan;

32 [For text of subitems (3) and (4), see M.R.]

33 [For text of subp 5, see M.R.]

34 9525.1920 REQUIRED RECORDS AND REPORTS.

35 Subpart 1. Provider records. The provider and any

1 subcontractor the provider contracts with shall maintain
2 complete program and fiscal records and supporting documentation
3 identifying the persons served and the services and costs
4 provided under the provider's home and community-based services
5 contract with the county board. These records must be
6 maintained in well-organized files and identified in accounts
7 separate from other facility or program costs. The provider's
8 and subcontractor's records shall be subject to the maintenance
9 schedule, audit availability requirements, and other provisions
10 in parts 9505.2160 to 9505.2245.

11 Subp. 2. **County board records.** The county board shall
12 maintain complete fiscal records and supporting documentation
13 identifying the recipients served and the services and costs
14 provided under the county board's agreement with the
15 department. If the county board provides home and
16 community-based services in addition to case management, the
17 county board's records must include the information required in
18 part 9525.1870. The county board records shall be subject to
19 the maintenance schedule, audit availability requirements, and
20 other provisions in parts 9505.2160 to 9505.2245.

21 Subp. 3. **Availability of records.** The county board's, the
22 provider's, and the subcontractor's financial records described
23 in subparts 1 and 2, must be available, on request, to the
24 commissioner and the federal Department of Health and Human
25 Services according to parts 9505.2160 to 9505.2245 and 9525.1800
26 to 9525.1930.

27 [For text of subp 4, see M.R.]

28 9525.2010 DEFINITIONS.

29 [For text of subps 1 to 33, see M.R.]

30 Subp. 34. **Supported living services for children.**

31 "Supported living services for children" means residential-based
32 habilitation services provided on a daily basis to a waived
33 services recipient under 18 years of age who resides in a
34 service site licensed under parts 9545.0010 to 9545.0260 for up
35 to four residents.

02/20/92

[REVISOR] CEL/JC AR1858

1 [For text of subps 35 and 36, see M.R.]

2 REPEALER. Minnesota Rules, parts 9525.1800, subparts 4, 16, and
3 19; 9525.1860, subparts 2 and 5; and 9525.1930, subpart 2, are
4 repealed.