

CHAPTER 252

STATE HOSPITALS FOR PERSONS WITH
MENTAL RETARDATION

252.021	Definition.	252.23	Eligibility requirements.
252.025	State hospitals for persons with mental retardation.	252.24	Duties of county boards.
252.05	Abduction or enticing away prohibited; penalty.	252.25	Board of directors.
252.06	Sheriff to transport persons with mental retardation.	252.27	Cost of boarding care outside of home or institution.
252.07	Sheriff, expenses.	252.275	Semi-independent living services for persons with mental retardation or related conditions.
252.09	Courses of instruction for teachers.	252.28	Commissioner of human services; duties.
252.10	Fees and expenses.	252.291	Limitation on determination of need.
252.21	County boards may make grants for developmental achievement center services for persons with mental retardation or related conditions.	252.30	Authorization to make grants for community residential facilities.
252.22	Applicants for assistance; tax levy.	252.31	Advisory task force.
		252.32	Family subsidy program.

252.021 DEFINITION.

For the purposes of this chapter, the words "related condition" have the meaning given them in section 252.27, subdivision 1.

History: 1985 c 21 s 21

252.025 STATE HOSPITALS FOR PERSONS WITH MENTAL RETARDATION.

Subdivision 1. State hospitals for persons with mental retardation shall be established and maintained at Faribault, Cambridge and Brainerd, and notwithstanding any provision to the contrary they shall be respectively known as the Faribault state hospital, the Cambridge state hospital, and the Brainerd state hospital. Each of the foregoing state hospitals shall also be known by the name of regional center at the discretion of the commissioner of human services. The terms "human services" or "treatment" may be included in the designation.

Subd. 2. They shall be under the general management and control of the commissioner of human services.

History: 1985 c 21 s 22; 1Sp1985 c 9 art 2 s 27

252.05 ABDUCTION OR ENTICING AWAY PROHIBITED; PENALTY.

Every person who shall abduct, entice, or carry away from a state hospital for persons with mental retardation any resident thereof, who has not been legally discharged therefrom, shall be guilty of a felony and punished by a fine of not to exceed \$3,000 or imprisonment in the Minnesota correctional facility-Stillwater or the Minnesota correctional facility-St. Cloud not to exceed three years, or both, in the discretion of the court; any and every person who shall abduct, entice, or carry away from any place other than a state hospital, a person duly committed as mentally retarded to the guardianship of the commissioner of human services with the intention of wrongfully removing such person from the direct custody of the commissioner of human services, such person known by him to be under the supervision of the commissioner of human services or his agents, shall be guilty of a gross misdemeanor.

History: 1985 c 21 s 23

252.06 SHERIFF TO TRANSPORT PERSONS WITH MENTAL RETARDATION.

It shall be the duty of the sheriff of any county, upon the request of the commissioner of human services, to take charge of and transport any person with mental retardation who has been committed by the probate court of any county to the care and custody of the commissioner of human services to such state hospital as may be designated by the commissioner of human services and there deliver such person to the chief executive officer of the state hospital.

History: 1985 c 21 s 24

252.07 SHERIFF, EXPENSES.

In any county where the sheriff receives a salary in full compensation for official services performed for the county, he shall receive no additional compensation for services performed under the provisions of sections 252.06 to 252.08, but he shall be reimbursed by the county wherein such person with mental retardation was committed for the necessary expenses incurred by him in taking charge of and transporting such person to a state hospital and the subsistence of himself and such person while enroute.

In any county where the sheriff does not receive a salary he shall be paid \$5 a day for the time necessarily employed in performance of the service, together with expenses incurred by him in taking charge of and transporting such person to such state hospital and the subsistence of himself and such person while enroute.

When the person with mental retardation is a female, the sheriff shall appoint some suitable woman to act in his stead. Such woman shall exercise all the powers vested in the sheriff and shall be paid \$5 per day for the time necessarily employed in the performance of such service, together with expenses incurred by her in taking charge of and transporting such person to such state hospital and the subsistence of herself and such person while enroute.

History: 1985 c 21 s 25

252.09 COURSES OF INSTRUCTION FOR TEACHERS.

The commissioner of human services may establish and maintain at the state hospital for persons with mental retardation at Faribault courses of instruction for teachers and others interested in the care and training of persons with mental retardation and make all necessary rules and regulations for the organization and conduct of such courses.

History: 1985 c 21 s 26

252.10 FEES AND EXPENSES.

The commissioner of human services shall charge and collect from each person taking any such courses of instruction an amount for board and tuition not exceeding \$10 per week and the money so collected shall be turned into the state treasury as are other miscellaneous receipts from the state hospital. The expenses incident to the conduct of such courses of instruction and for the board of those taking the same shall be paid as are the other expenses for maintaining the state hospital for persons with mental retardation. The courses of instruction herein referred to shall, within the limitation of charges as stated, be made as near self-sustaining as possible.

History: 1985 c 21 s 27

252.21 COUNTY BOARDS MAY MAKE GRANTS FOR DEVELOPMENTAL ACHIEVEMENT CENTER SERVICES FOR PERSONS WITH MENTAL RETARDATION OR RELATED CONDITIONS.

In order to assist county boards in carrying out responsibilities for the provision of daytime developmental achievement center services for eligible persons, the county board or boards are hereby authorized to make grants, within the limits of the money appropriated, to developmental achievement centers for services to persons with mental retardation or related conditions. In order to fulfill its responsibilities to persons with mental retardation or related conditions as required by section 256E.08, subdivision 1, a county board may, beginning January 1, 1983, contract with developmental achievement centers or other providers.

History: 1985 c 21 s 28

252.22 APPLICANTS FOR ASSISTANCE; TAX LEVY.

Any city, town, or nonprofit corporation or any combination thereof, may apply to the county board for assistance in establishing and operating a developmental achievement center and program for persons with mental retardation or related conditions. Application for such assistance shall be on forms supplied by the board. Each applicant shall annually submit to the board its plan and budget for the next fiscal year. No applicant shall be eligible for a grant hereunder unless its plan and budget have been approved by the board.

Any city, town, or county is authorized, at the discretion of its governing body, to make grants from special tax revenues or from its general revenue fund to any nonprofit organization, governmental or corporate, within or outside its jurisdiction, that has established a developmental achievement center for persons with mental retardation or related conditions. Nothing contained herein shall in any way preclude the use of funds available for this purpose under any existing statute or charter provision relating to cities, towns and counties.

History: 1985 c 21 s 29

252.23 ELIGIBILITY REQUIREMENTS.

A developmental achievement center shall satisfy all of the following requirements to be eligible for assistance under sections 252.21 to 252.26:

(1) Provide daytime activities for any or all of the following classes of persons:

Children with mental retardation or related conditions who can benefit from the program of services, including those school age children who have been excused or excluded from school;

Children and adults with mental retardation or related conditions who are unable to attend school because of their chronological age and are unable to independently engage in ordinary community activities;

(2) Provide counseling services to parents or guardians of persons with mental retardation or related conditions who may register at the center;

(3) Comply with all rules duly promulgated by the commissioner of human services.

History: 1985 c 21 s 30

252.24 DUTIES OF COUNTY BOARDS.

Subdivision 1. **Selection of developmental achievement centers.** The county board shall administer developmental achievement services, including training and

habilitation services provided by licensed developmental achievement centers to residents of intermediate care facilities for the mentally retarded. The county board shall ensure that transportation is provided for persons who fulfill the eligibility requirements of section 252.23, clause (1), utilizing the most efficient and reasonable means available. The county board may contract for developmental achievement services and transportation from a center which is licensed under the provisions of sections 245.781 to 245.813, 252.28, and 257.175, and in the board's opinion, best provides daytime developmental achievement services for persons with mental retardation or related conditions within the appropriation and medical assistance resources made available for this purpose. Daytime developmental achievement services administered by the county board shall comply with standards established by the commissioner pursuant to subdivision 2 and applicable federal regulations.

Subd. 2. Supervision of projects; promulgation of rules. The commissioner of human services shall closely supervise any developmental achievement center receiving a grant under sections 252.21 to 252.26. He shall promulgate rules in the manner provided by law as necessary to carry out the purposes of sections 252.21 to 252.26, including but not limited to rules pertaining to facilities for housing developmental achievement centers, administration of centers, and eligibility requirements for admission and participation in activities of the center.

Subd. 3. Payment procedure. The board at the beginning of each year, shall allocate available money for developmental achievement services for disbursement during the year to those centers that have been selected to receive grants and whose plans and budgets have been approved. The board shall, from time to time during the fiscal year, review the budgets, expenditures and programs of the various centers and if it determines that any amount of funds are not needed for any particular center to which they were allocated, it may, after 30 days' notice, withdraw such funds as are unencumbered and reallocate them to other centers. It may withdraw all funds from any center upon 90 days' notice whose program is not being administered in accordance with its approved plan and budget.

Subd. 4. Fees. The county board may, with the approval of the commissioner, establish a schedule of fees for daytime developmental achievement services as provided in section 256E.08, subdivision 6. No person with mental retardation or related condition shall be denied daytime developmental achievement services because of an inability to pay such a fee.

History: 1985 c 21 s 31

252.25 BOARD OF DIRECTORS.

Every city, town, or nonprofit corporation, or combination thereof, establishing a developmental achievement center for persons with mental retardation or related conditions shall, before it comes under the terms of sections 252.21 to 252.26, appoint a board of directors for the center program. When any city or town singly establishes such a center, such board shall be appointed by the chief executive officer of the city or the chairman of the governing board of the town. When any combination of cities, towns, or nonprofit corporations, establishes such a center, the chief executive officers of the cities or nonprofit corporations and the chairman of the governing bodies of the towns shall appoint the board of directors. If a nonprofit corporation singly establishes such a center, its chief executive officer shall appoint the board of directors of the center. Membership on a board of directors while not mandatory, should be representative of local health, education and welfare departments, medical societies, mental health centers, associations concerned with mental retardation and related conditions, civic groups and the general public.

Nothing in sections 252.21 to 252.26 shall be construed to preclude the appointment of elected or appointed public officials or members of the board of directors of the sponsoring nonprofit corporation to such board of directors.

History: 1985 c 21 s 32

252.27 COST OF BOARDING CARE OUTSIDE OF HOME OR INSTITUTION.

Subdivision 1. Whenever any child who has mental retardation or a related condition, or a physical or emotional handicap is in 24 hour care outside the home including respite care, in a facility licensed by the commissioner of human services, the cost of care shall be paid by the county of financial responsibility determined pursuant to section 256E.08, subdivision 7. If the child's parents or guardians do not reside in this state, the cost shall be paid by the county in which the child is found. A person has a "related condition" if that person has a severe, chronic disability that is (a) attributable to cerebral palsy, epilepsy, autism, or any other condition, other than mental illness, found to be closely related to mental retardation because the condition results in impairment of general intellectual functioning or adaptive behavior similar to that of persons with mental retardation or requires treatment or services similar to those required for persons with mental retardation; (b) is likely to continue indefinitely; and (c) results in substantial functional limitations in three or more of the following areas of major life activity: self-care, understanding and use of language, learning, mobility, self-direction, or capacity for independent living. For the purposes of this section, a child has an "emotional handicap" if the child has a psychiatric or other emotional disorder which substantially impairs his mental health and requires 24 hour treatment or supervision.

Subd. 2. Responsibility of the parents for the cost of care shall be based upon ability to pay. The state agency shall adopt rules to determine responsibility of the parents for the cost of care when:

(a) Insurance or other health care benefits pay some but not all of the cost of care; and

(b) No insurance or other health care benefits are available.

Parents who have more than one child in out-of-home care shall not be required to pay more than the amount for one child in out-of-home care. In no event shall the parents be required to pay more than five percent of their income as defined in section 290A.03, subdivision 3. There shall be no resource contribution from the parents.

Responsibility of the child for the cost of care shall be up to the maximum amount of the total income and resources attributed to the child except for the clothing and personal needs allowance as provided in section 256B.35, subdivision 1. Reimbursement by the parents and child shall be made to the county making any payments for care and treatment. The county board may require payment of the full cost of caring for children whose parents or guardians do not reside in this state.

To the extent that a child described in subdivision 1 is eligible for benefits under chapter 62A, 62C, 62D, 62E, or 64A, the county is not liable for the cost of care. A parent or legal guardian who discontinues payment of health insurance premiums, subscriber fees or enrollment fees for a child who is otherwise eligible for those benefits is ineligible for payment of the cost of care of that child under this section.

The commissioner's determination shall be conclusive in any action to enforce payment of the cost of care. Any appeals from the commissioner's determination shall be made pursuant to section 256.045, subdivisions 2 and 3.

Subd. 3. If the parent fails to make appropriate reimbursement as required in subdivision 2, the county attorney may initiate a civil action to collect any unpaid reimbursement.

Subd. 4. In order to determine the effectiveness of the family unit in providing alternate living arrangements and providing or arranging for the training and developmental opportunities provided in a state hospital or a licensed community residential facility, the commissioner of human services may establish an experimental program to subsidize selected families who agree to carry out a planned program of home care and training for their minor dependents with mental retardation or related conditions.

This program shall be limited to children who otherwise would require and be eligible for placement in state hospitals or licensed community residential facilities.

Grants to families shall be determined by the commissioner of human services. In determining the grants, the commissioner shall consider the cost of diagnostic assessments, homemaker services, training expenses including specialized equipment, visiting nurses' or other pertinent therapists' costs, preschool program costs, related transportation expenses, and parental relief or child care costs not to exceed \$250 per month per family.

An individual care and training plan for the child shall be established and agreed upon by the parents receiving the subsidy and the appropriate local welfare agency. Periods of parental relief, including vacations, may be included in the plan and do not require the approval of the local welfare agency. The plan shall be periodically evaluated to determine the progress of the child.

History: 1985 c 21 s 33

252.275 SEMI-INDEPENDENT LIVING SERVICES FOR PERSONS WITH MENTAL RETARDATION OR RELATED CONDITIONS.

Subdivision 1. **Program.** The commissioner of human services shall establish a statewide program to assist counties in reducing the utilization of intermediate care services in state hospitals and in community residential facilities for persons with mental retardation or related conditions. The commissioner shall make grants to county boards to establish, operate, or contract for the provision of semi-independent living services licensed by the commissioner pursuant to sections 245.781 to 245.812 and 252.28.

[For text of subds 2 to 6, see M.S.1984]

Subd. 7. **Reports.** The commissioner shall require collection of data and periodic reports necessary to demonstrate the effectiveness of semi-independent living services in helping persons with mental retardation or related conditions achieve self-sufficiency and independence. The commissioner shall report to the legislature no later than January 15, 1984, on the effectiveness of the program, its effect on reducing the number of persons with mental retardation or related conditions in state hospitals and in intermediate care facilities, and his recommendations regarding making this program an integral part of the social services programs administered by the counties.

[For text of subd 8, see M.S.1984]

History: 1985 c 21 s 34,35

252.28 COMMISSIONER OF HUMAN SERVICES; DUTIES.

Subdivision 1. **Determinations; biennial redeterminations.** In conjunction with the appropriate county boards, the commissioner of human services shall determine, and shall redetermine biennially, the need, location, size, and program of public and private residential and day care facilities and services for children and adults with mental retardation or related conditions.

Subd. 2. **Rules; program standards; licenses.** The commissioner of human services shall:

(1) Establish uniform rules, regulations and program standards for each type of residential and day facility or service for persons with mental retardation or related conditions, including state hospitals under control of the commissioner and serving persons with mental retardation or related conditions, and excluding persons with mental retardation or related conditions residing with their families.

(2) Grant licenses according to the provisions of Laws 1976, chapter 243, sections 2 to 13.

Subd. 3. **Licensing determinations.** (1) No new license shall be granted pursuant to this section when the issuance of the license would substantially contribute to an excessive concentration of community residential facilities within any town, municipality or county of the state.

(2) In determining whether a license shall be issued pursuant to this subdivision, the commissioner of human services shall specifically consider the population, size, land use plan, availability of community services and the number and size of existing public and private community residential facilities in the town, municipality or county in which a licensee seeks to operate a residence. Under no circumstances may the commissioner newly license any facility pursuant to this section except as provided in section 245.812. The commissioner of human services shall establish uniform rules and regulations to implement the provisions of this subdivision.

(3) Licenses for community facilities and services shall be issued pursuant to section 245.821.

Subd. 4. **Rules; decertification of beds.** The commissioner shall promulgate in rule criteria for decertification of beds in intermediate care facilities for persons with mental retardation or related conditions, and shall encourage providers in voluntary decertification efforts. The commissioner shall not recommend to the commissioner of health the involuntary decertification of an intermediate care facility for beds for persons with mental retardation or related conditions prior to the availability of appropriate services for those residents affected by the decertification. The commissioner of health shall decertify those intermediate care beds determined to be not needed by the commissioner of human services.

History: 1985 c 21 s 36; 1Sp1985 c 9 art 2 s 28

252.291 LIMITATION ON DETERMINATION OF NEED.

Subdivision 1. **Moratorium.** Notwithstanding section 252.28, subdivision 1, or any other law or rule to the contrary, the commissioner of human services shall deny any request for a determination of need and refuse to grant a license pursuant to section 245.782 for any new intermediate care facility for persons with mental retardation or related conditions or for an increase in the licensed capacity of an existing facility except as provided in subdivision 2. In no event shall the total of certified intermediate care beds for persons with mental retardation or related conditions in community facilities and state hospitals exceed 7,500 beds as of July 1, 1983, and 7,000 beds as of July 1, 1986. "Certified bed" means an intermediate care

bed for persons with mental retardation or related conditions certified by the commissioner of health for the purposes of the medical assistance program under United States Code, title 42, sections 1396 to 1396p, as amended through December 31, 1982.

Subd. 2. Exceptions. The commissioner of human services in coordination with the commissioner of health may approve a new intermediate care facility for persons with mental retardation or related conditions only in the following circumstances:

(a) when the facility is developed in accordance with a request for proposal system established pursuant to subdivision 3, clause (b);

(b) when the facility is necessary to serve the needs of identifiable persons with mental retardation or related conditions who are seriously behaviorally disordered or who are physically or sensorily impaired; or

(c) to license beds in new facilities where need was determined by the commissioner prior to June 10, 1983.

Subd. 3. Duties of commissioner of human services. The commissioner shall:

(a) establish standard admission criteria for state hospitals and county utilization targets to limit and reduce the number of intermediate care beds in state hospitals and community facilities in accordance with approved waivers under United States Code, title 42, sections 1396 to 1396p, as amended through December 31, 1982, to assure that appropriate services are provided in the least restrictive setting;

(b) provide technical assistance so that county boards may establish a request for proposal system for meeting individual service plan objectives through home and community-based services; alternative community services; or, if no other alternative will meet the needs of identifiable individuals for whom the county is financially responsible, a new intermediate care facility for persons with mental retardation or related conditions; and

(c) establish a client tracking and evaluation system as required under applicable federal waiver regulations, Code of Federal Regulations, title 42, sections 431, 435, 440, and 441, as amended through December 31, 1982.

(d) develop a state plan for the delivery and funding of residential day and support services to persons with mental retardation or related conditions in Minnesota and submit that plan to the clerk of each house of the Minnesota legislature on or before the 15th of January of each biennium beginning January 15, 1985. The biennial mental retardation plan shall include but not be limited to:

(1) county by county maximum intermediate care bed utilization quotas;

(2) plans for the development of the number and types of services alternative to intermediate care beds;

(3) procedures for the administration and management of the plan;

(4) procedures for the evaluation of the implementation of the plan; and

(5) the number, type, and location of intermediate care beds targeted for decertification.

The commissioner shall modify the plan to ensure conformance with the medical assistance home and community-based services waiver.

Subd. 4. Monitoring. The commissioner of human services, in coordination with the commissioner of health, shall implement mechanisms to monitor and analyze the effect of the bed moratorium in the different geographic areas of the state. The commissioner of human services shall submit to the legislature annually

beginning January 15, 1984, an assessment of the impact of the moratorium by geographic areas.

Subd. 5. **Rulemaking.** The commissioner of human services shall promulgate emergency and permanent rules pursuant to chapter 14, the administrative procedure act, to implement this section.

History: 1985 c 21 s 37

252.30 AUTHORIZATION TO MAKE GRANTS FOR COMMUNITY RESIDENTIAL FACILITIES.

The commissioner of human services may make grants to nonprofit organizations, municipalities or local units of government to provide up to 25 percent of the cost of constructing, purchasing or remodeling small community residential facilities for persons with mental retardation or related conditions allowing such persons to live in a homelike atmosphere near their families. Operating capital grants may also be made for up to three months of reimbursable operating costs after the facility begins processing applications for admission and prior to reimbursement for services. Repayment of the operating grants shall be made to the commissioner of human services at the end of the provider's first fiscal year, or at the conclusion of the interim rate period, whichever occurs first. No aid under this section shall be granted to a facility providing for more than 16 residents in a living unit and with more than two living units. The advisory council established by section 252.31 shall recommend to the commissioner appropriate disbursement of the funds appropriated by Laws 1973, chapter 673, section 3. Prior to any disbursement of funds the commissioner shall review the plans and location of any proposed facility to determine whether such a facility is needed. The commissioner shall promulgate such rules and regulations for the making of grants and for the administration of this section as he deems proper. The remaining portion of the cost of constructing, purchasing, remodeling facilities, or of operating capital shall be borne by nonstate sources including federal grants, local government funds, funds from charitable sources, gifts and mortgages.

History: 1985 c 21 s 38

252.31 ADVISORY TASK FORCE.

The commissioner of human services may appoint an advisory task force for persons with mental retardation, related conditions, or physical handicaps. The task force shall advise the commissioner relative to those laws for which the commissioner is responsible to administer and enforce relating to mental retardation or related conditions and physical disabilities. The task force shall consist of persons who are providers or consumers of service for persons with mental retardation, related conditions, or physical handicaps, or who are interested citizens. The task force shall expire and the terms, compensation and removal of members shall be as provided in section 15.059.

History: 1985 c 21 s 39

252.32 FAMILY SUBSIDY PROGRAM.

Within the limits of appropriations, the commissioner of human services may provide subsidies to families with children with mental retardation or related conditions in order to enable those families to continue caring for the children in their own homes. The commissioner may establish criteria for determining eligibility for a subsidy and subsidy amounts and conditions for use of subsidies.

History: 1985 c 21 s 40