

## CHAPTER 252

STATE HOSPITALS FOR PERSONS WITH MENTAL  
RETARDATION

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**252.07 SHERIFF, EXPENSES.**

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

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

When the person with mental retardation is not the same sex as the sheriff, the sheriff shall appoint some suitable person of the same sex as the person with mental retardation to act instead. The appointee 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 in taking charge of and transporting such person to such state hospital and the subsistence of both while enroute.

*History: 1987 c 49 s 6*

**252.21 COUNTY BOARDS MAY MAKE GRANTS FOR DEVELOPMENTAL ACHIEVEMENT CENTER SERVICES FOR CHILDREN 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 children, 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 children with mental retardation or related conditions. In order to fulfill its responsibilities to children with mental retardation or related conditions as required by sections 120.17 and 256E.08, subdivision 1, a county board may, beginning January 1, 1983, contract with developmental achievement centers or other providers.

*History: 1987 c 403 art 5 s 2*

**252.22 APPLICANTS FOR ASSISTANCE; TAX LEVY.**

Any city, town, governmental entity, 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 children 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 children 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:** 1987 c 403 art 5 s 3

### 252.23 ELIGIBILITY REQUIREMENTS.

A developmental achievement center shall:

- (1) provide developmental services to children with mental retardation or related conditions who can benefit from the program of services; and
- (2) comply with all rules duly adopted by the commissioner of human services.

**History:** 1987 c 403 art 5 s 4

### 252.24 DUTIES OF COUNTY BOARDS.

Subdivision 1. **Selection of developmental achievement centers.** The county board shall administer developmental achievement services. The county board shall ensure that transportation is provided for children 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 children with mental retardation or related conditions within the appropriation and 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.

*[For text of subs 2 and 3, see M.S.1986]*

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 child, or family of a child, with mental retardation or a related condition shall be denied daytime developmental achievement services because of an inability to pay such a fee.

**History:** 1987 c 403 art 5 s 5,6

### 252.25 BOARD OF DIRECTORS.

Every city, town, governmental entity, nonprofit corporation, or combination thereof, establishing a developmental achievement center for children 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 chair 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 chair 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 depart-

ments, 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, or public schools from administering programs under their present administrative structure.

**History:** 1987 c 403 art 5 s 7

### 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, including nursing homes, 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.

Subd. 2. **Application; criteria.** To apply for a grant, a county board shall submit an application and budget for use of grant money in the form specified by the commissioner. The commissioner shall make grants only to counties whose applications and budgets or portions thereof are approved by the commissioner.

*[For text of subd 3, see M.S.1986]*

Subd. 4. **Formula.** From the appropriations made available for this program, the commissioner shall allocate grants under this section to finance up to 95 percent of each county's approved budget for semi-independent living services for persons with mental retardation or related conditions. The commissioner shall not approve budgeted costs for services for any person which exceed the state share of the average medical assistance costs for services provided by intermediate care facilities for a person with mental retardation or a related condition for the same fiscal year. Nothing in this subdivision prevents a county from using other funds to pay for additional costs of semi-independent living services.

As of July 1, 1987, the commissioner shall allocate funds and reimburse county costs for persons approved for funding. The commissioner shall proportionally allocate funds to counties based on the approved budgeted costs for persons approved for funding. The commissioner shall adjust county grants based on actual approved expenditures and shall reallocate funds to the extent necessary. The commissioner may set aside up to two percent of the appropriations to fund county demonstration projects that improve the efficiency and effectiveness of semi-independent living services.

*[For text of subs 5 and 6, see M.S.1986]*

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.

*[For text of subd 8, see M.S.1986]*

**History:** 1987 c 403 art 2 s 56-59

### 252.291 LIMITATION ON DETERMINATION OF NEED.

*[For text of subs 1 and 2, see M.S.1986]*

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) define services, including respite care, that may be needed in meeting individual service plan objectives;

(c) 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;

(d) 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; and

(e) 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.

*[For text of subds 4 and 5, see M.S.1986]*

**History:** 1987 c 185 art 2 s 1

## **252.292 COMMUNITY SERVICES CONVERSION PROJECT.**

**Subdivision 1. Commissioner's duties; report.** For the purposes of section 252.291, subdivision 3, the commissioner of human services shall ask counties to present proposals for the voluntary conversion of services provided by community intermediate care facilities for persons with mental retardation or related conditions to services provided under home and community-based services.

The commissioner shall report to the legislature by March 1, 1988, on the status of the community services conversion project. The report must include the project's cost, the number of counties and facilities participating, the number and location of decertified community intermediate care beds, and the project's effect on residents, former residents, and employees of community intermediate care facilities for persons with mental retardation or related conditions.

**Subd. 2. County proposals.** (a) The commissioner may approve county proposals within the limitations of this section. To be considered for approval, county proposals must contain the following information:

- (1) specific plans for the development and provision of alternative services for residents moved from intermediate care facilities for persons with mental retardation or related conditions;
- (2) time lines and expected beginning dates for resident relocation and facility closure; and
- (3) projected caseloads and expenditures for intermediate care facilities for persons with mental retardation or related conditions and for home and community-based services.

(b) Counties must ensure that residents discharged from facilities participating in the project are moved to their home communities whenever possible. For the purposes of this section, "home community" means the county of financial responsibility or a county adjacent to the county of financial responsibility. The commissioner shall have the sole authority to waive this requirement based on the choice of the person or the person's legal representative, if any.

(c) County proposals must comply with the need determination procedures in sections 252.28 and 252.291, the responsibility for persons with mental retardation or related conditions specified in section 256B.092, the requirements under United States Code, title 42, sections 1396 et seq., and section 256B.501, and the rules adopted under these laws.

(d) The commissioner shall give first priority to proposals that:

- (1) respond to the emergency relocation of a facility's residents;
- (2) result in the closing of a facility;
- (3) demonstrate that alternative placements will be developed based on individual resident needs and applicable federal and state rules; and
- (4) demonstrate savings of medical assistance expenditures. The commissioner shall give second priority to proposals that meet all of the above criteria except clause (1).

(e) The commissioner shall select proposals that best meet the criteria established in this subdivision within the appropriations made available for home and community-based services. The commissioner shall notify counties and facilities of the selections made and approved by the commissioner.

(f) For each proposal approved by the commissioner, a contract must be established between the commissioner, the county where the facility is located, and the participating facility. The contract must address the items in this subdivision and must be consistent with the requirements of this section.

**Subd. 3. Home and community-based services.** Home and community-based services shall be allocated to participating counties to replace intermediate care facility services for persons with mental retardation or related conditions that are decertified through the project. One additional home and community-based services placement shall be provided for each current resident of an intermediate care facility for persons with mental retardation or related conditions who chooses and is eligible for home and community-based services. The placement must meet applicable federal and state laws and rules. Additional home and community-based services placements will not be authorized for persons transferred to other intermediate care facilities for persons with mental retardation or related conditions, including state hospitals, or to nursing homes licensed under chapter 144A, or for persons determined ineligible for home and community-based services.

The county must provide quarterly reports to the commissioner regarding the number of people moving out of participating facilities each month and their alternative placement. County actions that result in a denial of services, failure to act with reasonable promptness, suspension, reduction, or termination of services may be appealed by affected persons under section 256.045.

**Subd. 4. Facility rates.** For purposes of this section, the commissioner shall establish payment rates under section 256B.501 and Minnesota Rules, parts 9553.0010 to 9553.0080, except that, in order to facilitate an orderly transition of residents from community intermediate care facilities for persons with mental retardation or related conditions to services provided under the home and community-based services program, the commissioner may, in a contract with the provider, modify the effect of provisions in Minnesota Rules, parts 9553.0010 to 9553.0080, as stated in clauses (a) to (i):

- (a) extend the interim and settle-up rate provisions to include facilities covered by this section;
- (b) extend the length of the interim period but not to exceed 24 months. The

commissioner may grant a variance to exceed the 24-month interim period, as necessary, for facilities which are licensed and certified to serve more than 99 persons. In no case shall the commissioner approve an interim period which exceeds 36 months;

(c) waive the investment per bed limitations for the interim period and the settle-up rate;

(d) limit the amount of reimbursable expenses related to the acquisition of new capital assets;

(e) prohibit the acquisition of additional capital debt or refinancing of existing capital debt unless prior approval is obtained from the commissioner;

(f) establish an administrative operating cost limitation for the interim period and the settle-up rate;

(g) require the retention of financial and statistical records until the commissioner has audited the interim period and the settle-up rate;

(h) require that the interim period be audited by a certified or licensed public accounting firm; or

(i) change any other provision to which all parties to the contract agree.

**History:** 1987 c 305 s 1

### 252.33 CLIENT ADVISORY COMMITTEES.

Subdivision 1. **Definition.** For purposes of this section, the following terms have the meanings given:

(a) "Client advisory committee" means a group of clients who represent client interests to supervisors and employers in vocational programs.

(b) "Consumer-controlled organization" means a self-advocacy organization which is controlled by a board having a majority of people with developmental disabilities.

Subd. 2. **Committees developed.** The commissioner of jobs and training, through the division of rehabilitation resources, shall contract with a consumer-controlled organization to develop client advisory committees in vocational settings in developmental achievement centers, and state hospitals, and to allocate resources and technical assistance to client advisory committees in sheltered workshops as defined in section 129A.01.

Subd. 3. **Purposes.** A client advisory committee enables clients working in vocational settings to advocate for themselves with regard to matters of common interest. A client advisory committee may address any issue related to the vocational setting, including personnel policies, wages, hours of work, kinds of work, transportation to and from the workplace, and behavior problems. A client advisory committee may also meet to develop the skills and knowledge needed to represent fellow clients, such as decision-making skills, assertiveness, and awareness of public policies affecting people with developmental disabilities.

Subd. 4. **Membership.** Members of a client advisory committee must be elected by clients who work at the vocational setting.

**History:** 1987 c 370 art 1 s 2

### 252.40 SERVICE PRINCIPLES AND RATE-SETTING PROCEDURES FOR DAY TRAINING AND HABILITATION SERVICES FOR ADULTS WITH MENTAL RETARDATION AND RELATED CONDITIONS.

Sections 252.40 to 252.47 apply to day training and habilitation services for adults with mental retardation and related conditions when the services are authorized to be funded by a county and provided under a contract between a county board and a vendor as defined in section 252.41. Nothing in sections 252.40 to 252.47 absolves intermediate care facilities for persons with mental retardation or related conditions of the responsibility for providing active treatment and habilitation under federal regulations with which those facilities must comply to be certified by the Minnesota department of health.

**History:** 1987 c 403 art 5 s 8

**252.41 DEFINITIONS.**

Subdivision 1. **Scope.** The definitions in this section apply to sections 252.40 to 252.47.

Subd. 2. **Commissioner.** "Commissioner" means the commissioner of the department of human services.

Subd. 3. **Day training and habilitation services for adults with mental retardation, related conditions.** "Day training and habilitation services for adults with mental retardation and related conditions" means services that:

(1) include supervision, training, assistance, and supported employment, work-related activities, or other community-integrated activities designed and implemented in accordance with the individual service and individual habilitation plans required under Minnesota Rules, parts 9525.0015 to 9525.0165, to help an adult reach and maintain the highest possible level of independence, productivity, and integration into the community;

(2) are provided under contract with the county where the services are delivered by a vendor licensed under sections 245.781 to 245.812 and 252.28, subdivision 2, to provide day training and habilitation services; and

(3) are regularly provided to one or more adults with mental retardation or related conditions in a place other than the adult's own home or residence.

Day training and habilitation services reimbursable under this section do not include special education and related services as defined in the Education of the Handicapped Act, United States Code, title 20, chapter 33, section 1401, clauses (6) and (17), or vocational services funded under section 110 of the Rehabilitation Act of 1973, United States Code, title 29, section 720, as amended.

Subd. 4. **Independence.** "Independence" means the extent to which persons with mental retardation or related conditions exert control and choice over their own lives.

Subd. 5. **Integration.** "Integration" means that persons with mental retardation and related conditions:

(1) use the same community resources that are used by and available to individuals who are not disabled;

(2) participate in the same community activities in which nondisabled individuals participate; and

(3) regularly interact and have contact with nondisabled individuals.

Subd. 6. **Productivity.** "Productivity" means that persons with mental retardation or a related condition:

(1) engage in income-producing work designed to improve their income level, employment status, or job advancement; or

(2) engage in activities that contribute to a business, household, or community.

Subd. 7. **Regional center.** "Regional center" means any one of the eight state-operated facilities under the direct administrative authority of the commissioner that serve persons with mental retardation and related conditions. The following facilities are regional centers: Anoka-Metro Regional Treatment Center; Brainerd Regional Human Services Center; Cambridge Regional Treatment Center; Faribault Regional Center; Fergus Falls Regional Treatment Center; Moose Lake Regional Treatment Center; St. Peter Regional Treatment Center; and Willmar Regional Treatment Center.

Subd. 8. **Supported employment.** "Supported employment" means employment of a person with a disability so severe that the person needs ongoing training and support to get and keep a job in which:

(1) the person engages in paid work at a work site where individuals without disabilities who do not require public subsidies also may be employed;

(2) public funds are necessary to provide ongoing training and support services throughout the period of the person's employment; and

(3) the person has the opportunity for social interaction with individuals who do not have disabilities and who are not paid caregivers.

Subd. 9. **Vendor.** "Vendor" means a nonprofit legal entity that:

(1) is licensed under sections 245.781 to 245.812 and 252.28, subdivision 2, to provide day training and habilitation services to adults with mental retardation and related conditions; and

(2) does not have a financial interest in the legal entity that provides residential services to the same person or persons to whom it provides day training and habilitation services. This clause does not apply to regional centers or vendors licensed prior to April 15, 1983.

**History:** 1987 c 403 art 5 s 9

#### **252.42 SERVICE PRINCIPLES.**

The design and delivery of services eligible for reimbursement under the rates established in section 252.46 should reflect the following principles:

(1) Services must suit a person's chronological age and be provided in the least restrictive environment possible, consistent with the needs identified in the person's individual service and individual habilitation plans under Minnesota Rules, parts 9525.0015 to 9525.0165.

(2) A person with mental retardation or a related condition whose individual service and individual habilitation plans authorize employment or employment-related activities shall be given the opportunity to participate in employment and employment-related activities in which nondisabled persons participate.

(3) A person with mental retardation or a related condition participating in work shall be paid wages commensurate with the rate for comparable work and productivity except as regional centers are governed by section 246.151.

(4) A person with mental retardation or a related condition shall receive services which include services offered in settings used by the general public and designed to increase the person's active participation in ordinary community activities.

(5) A person with mental retardation or a related condition shall participate in the patterns, conditions, and rhythms of everyday living and working that are consistent with the norms of the mainstream of society.

**History:** 1987 c 403 art 5 s 10

#### **252.43 COMMISSIONER'S DUTIES.**

The commissioner shall supervise county boards' provision of day training and habilitation services to adults with mental retardation and related conditions. The commissioner shall:

(1) determine the need for day training and habilitation services under section 252.28;

(2) approve payment rates established by a county under section 252.46, subdivision 1;

(3) adopt rules for the administration and provision of day training and habilitation services under sections 252.40 to 252.47 and sections 245.781 to 245.812 and 252.28, subdivision 2;

(4) enter into interagency agreements necessary to ensure effective coordination and provision of day training and habilitation services;

(5) monitor and evaluate the costs and effectiveness of day training and habilitation services; and

(6) provide information and technical help to county boards and vendors in their administration and provision of day training and habilitation services.

**History:** 1987 c 403 art 5 s 11

#### **252.44 COUNTY BOARD RESPONSIBILITIES.**

(a) When the need for day training and habilitation services in a county has been determined under section 252.28, the board of commissioners for that county shall:



(1) authorize the delivery of services according to the individual service and habilitation plans required as part of the county's provision of case management services under Minnesota Rules, parts 9525.0015 to 9525.0165. For calendar years for which section 252.46, subdivisions 2 to 10, apply, the county board shall not authorize a change in service days from the number of days authorized for the previous calendar year unless there is documentation for the change in the individual service plan. An increase in service days must also be supported by documentation that the goals and objectives assigned to the vendor cannot be met more economically and effectively by other available community services and that without the additional days of service the individual service plan could not be implemented in a manner consistent with the service principles in section 252.42;

(2) contract with licensed vendors, as specified in paragraph (b), under sections 256E.01 to 256E.12 and 256B.092 and rules adopted under those sections;

(3) ensure that transportation is provided or arranged by the vendor in the most efficient and reasonable way possible;

(4) set payment rates under section 252.46;

(5) monitor and evaluate the cost and effectiveness of the services; and

(6) reimburse vendors for the provision of authorized services according to the rates, procedures, and regulations governing reimbursement.

(b) With all vendors except regional centers, the contract must include the approved payment rates, the projected budget for the contract period, and any actual expenditures of previous and current contract periods. With all vendors, including regional centers, the contract must also include the amount, availability, and components of day training and habilitation services to be provided, the performance standards governing service provision and evaluation, and the time period in which the contract is effective.

**History:** 1987 c 403 art 5 s 12

#### 252.45 VENDOR'S DUTIES.

A vendor's responsibility under clauses (1), (2), and (3) extends only to the provision of services that are reimbursable under state and federal law. A vendor under contract with a county board to provide day training and habilitation services shall:

(1) provide the amount and type of services authorized in the individual service plan and specified in the individual habilitation plan under Minnesota Rules, parts 9525.0015 to 9525.0165;

(2) design the services to achieve the outcomes assigned to the vendor in the individual service plan and specified in the individual habilitation plan;

(3) provide or arrange for transportation of persons receiving services to and from service sites;

(4) enter into agreements with community-based intermediate care facilities for persons with mental retardation and related conditions to ensure compliance with applicable federal regulations; and

(5) comply with state and federal law.

**History:** 1987 c 403 art 5 s 13

#### 252.46 PAYMENT RATES.

Subdivision 1. **Rates established through 1988.** Payment rates to vendors, except regional centers, for county-funded day training and habilitation services and transportation provided to persons receiving day training and habilitation services established by a county board before January 1, 1989, are governed by subdivisions 2 to 10.

"Payment rate" as used in subdivisions 2 to 10 refers to three kinds of payment rates: a full-day service rate for persons who receive at least six service hours a day, including the time it takes to transport the person to and from the service site; a partial-day service rate that must not exceed 75 percent of the full-day service rate for persons who receive less than a full day of service; and a transportation rate for

providing, or arranging and paying for, transportation of a person to and from the person's residence to the service site.

**Subd. 2. 1987 and 1988 minimum.** Unless a variance is granted under subdivision 6, the minimum payment rates set by a county board for each vendor for 1987 and 1988 must be equal to the payment rates approved by the commissioner for that vendor in effect January 1, 1986, and January 1, 1987, respectively.

**Subd. 3. 1987 and 1988 maximum.** Unless a variance is granted under subdivision 6, the maximum payment rates for each vendor for 1987 and 1988 must be equal to the payment rates approved by the commissioner for that vendor in effect December 1, 1986, and December 1, 1987, respectively, increased by no more than the projected percentage change in the urban consumer price index, all items, published by the United States Department of Labor, for the upcoming calendar year over the current calendar year.

**Subd. 4. New vendors.** Payment rates established by a county before January 1, 1989, for a new vendor for which there were no previous rates must not exceed 125 percent of the average payment rates in the regional development commission district under sections 462.381 to 462.396 in which the new vendor is located.

**Subd. 5. Submitting recommended rates.** The county board shall submit recommended payment rates to the commissioner on forms supplied by the commissioner by November 1, 1987, and at least 60 days before revised payment rates or payment rates for new vendors are to be effective. The forms must require the county board's written verification of the individual documentation required under section 252.44, clause (a). If the number of days of service provided by a licensed vendor are projected to increase, the county board must recommend payment rates based on the projected increased days of attendance and resulting lower per unit fixed costs. If a vendor provides services at more than one licensed site, the county board may recommend the same payment rates for each site based on the average rate for all sites. The county board may also recommend differing payment rates for each licensed site if it would result in a total annual payment to the vendor that is equal to or less than the total annual payment that would result if the average rates had been used for all sites. For purposes of this subdivision, the average payment rate for all service sites used by a vendor must be computed by adding the amounts that result when the payment rates for each licensed site are multiplied by the projected annual number of service units to be provided at that site and dividing the sum of those amounts by the total units of service to be provided by the vendor at all sites.

**Subd. 6. Variances.** A variance from the minimum or maximum payment rates in subdivisions 2 and 3 may be granted by the commissioner when the vendor requests and the county board submits to the commissioner a written variance request with the recommended payment rates. The county board shall review all vendors' payment rates that are 20 percent lower than the average rates for the regional development commission district to which the county belongs. If the county determines that the payment rates do not provide sufficient revenue to the vendor for authorized service delivery the county must recommend a variance under this section. This review must occur prior to November 1, 1987. When the county board contracts for increased services from any vendor for some or all individuals receiving services from the vendor, the county board shall review the vendor's payment rates to determine whether the increase requires that a variance to the minimum rates be recommended under this section to reflect the vendor's lower per unit fixed costs. The written variance request must include documentation that all the following criteria have been met:

(1) The commissioner and the county board have both conducted a review and have identified a need for a change in the payment rates to change the number of direct service staff or the level of qualifications of the staff.

(2) The proposed changes are required for the vendor to deliver authorized individual services in an effective and efficient manner.

(3) The proposed changes demonstrate compliance with minimum licensing standards governing minimum staffing ratios and staff qualifications.

(4) The vendor documents that the change in staff numbers or qualifications cannot be achieved by reallocating current staff or by reallocating financial resources to provide or purchase the necessary services.

(5) The county board submits evidence that the need for additional staff cannot be met by using temporary special needs rate exceptions under Minnesota Rules, parts 9510.1020 to 9510.1140.

(6) The county board submits a description of the nature and cost of the proposed changes. Allowable costs are limited to salaries, related fringe benefits, and payroll taxes.

(7) The county board's recommended payment rates do not exceed 125 percent of the average payment rates in the regional development commission district in which the vendor is located.

**Subd. 7. Time requirements and appeals process for variances.** The commissioner shall notify in writing county boards requesting variances within 60 days of receiving the variance request from the county board. The notification shall give reasons for denial of the variance, if it is denied.

**Subd. 8. Commissioner's notice to boards, vendors.** The commissioner shall notify the county boards and vendors of:

(1) the average regional payment rates and 125 percent of the average regional payments rates for each of the regional development commission districts designated in sections 462.381 to 462.396; and

(2) the projected inflation rate for the year in which the rates will be effective equal to the most recent projected change in the urban consumer price index, all items, published by the United States Department of Labor, for the upcoming calendar year over the current calendar year.

**Subd. 9. Approval or denial of rates.** The commissioner shall approve the county board's recommended payment rates when the rates and verification justifying the projected service units comply with subdivisions 2 to 10. The commissioner shall notify the county board in writing of the approved payment rates within 60 days of receipt of the rate recommendations. If the rates are not approved, or if rates different from those originally recommended are approved, the commissioner shall within 60 days of receiving the rate recommendation notify the county board in writing of the reasons for denying or substituting a different rate for the recommended rates. Approved payment rates remain effective until the commissioner approves different rates in accordance with subdivisions 2 and 3.

**Subd. 10. Vendor's report; audit.** The vendor shall report to the commissioner and the county board on forms prescribed by the commissioner at times specified by the commissioner. The reports shall include programmatic and fiscal information. Fiscal information shall be provided in accordance with an annual audit that complies with the requirements of Minnesota Rules, parts 9550.0010 to 9550.0092. The audit must be done in accordance with generally accepted auditing standards to result in statements that include a balance sheet, income statement, changes in financial position, and the certified public accountant's opinion.

**Subd. 11. Improper transactions.** Transactions that have the effect of circumventing subdivisions 1 to 10 must not be considered by the commissioner for the purpose of payment rate approval under the principle that the substance of the transaction prevails over the form.

**Subd. 12. Rates established after 1988.** Payment rates established by a county board on or after January 1, 1989, must be determined under permanent rules adopted by the commissioner. No county shall pay a rate that is less than the minimum rate determined by the commissioner.

In developing procedures for setting minimum payment rates and procedures for establishing payment rates, the commissioner shall consider the following factors:

(1) a vendor's payment rate and historical cost in the previous year;

- (2) current economic trends and conditions;
- (3) costs that a vendor must incur to operate efficiently, effectively and economically and still provide training and habilitation services that comply with quality standards required by state and federal regulations;
- (4) increased liability insurance costs;
- (5) costs incurred for the development and continuation of supported employment services;
- (6) cost variations in providing services to people with different needs;
- (7) the adequacy of reimbursement rates that are more than 15 percent below the statewide average; and
- (8) other appropriate factors.

The commissioner may develop procedures to establish differing hourly rates that take into account variations in the number of clients per staff hour, to assess the need for day training and habilitation services, and to control the utilization of services.

In developing procedures for setting transportation rates, the commissioner may consider allowing the county board to set those rates or may consider developing a uniform standard.

Medical assistance rates for home and community-based services provided under section 256B.501 by licensed vendors of day training and habilitation services must not be greater than the rates for the same services established by counties under sections 252.40 to 252.47.

**History:** 1987 c 403 art 5 s 14

**NOTE:** The rates established under subdivision 11, as added by Laws 1987, chapter 403, article 5, section 14, are effective January 1, 1989. See Laws 1987, chapter 403, article 5, section 23.

## 252.47 RULES.

To implement sections 252.40 to 252.47, the commissioner shall adopt permanent rules under sections 14.01 to 14.38. The commissioner shall establish an advisory task force to advise and make recommendations to the commissioner during the rulemaking process. The advisory task force must include legislators, vendors, residential service providers, counties, consumers, department personnel, and others as determined by the commissioner.

**History:** 1987 c 403 art 5 s 15