

## CHAPTER 252

## STATE HOSPITALS FOR PERSONS WITH MENTAL RETARDATION

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**252.025 STATE HOSPITALS FOR PERSONS WITH MENTAL RETARDATION.**

*[For text of subds 1 and 2, see M.S.1988]*

Subd. 4. **State-provided services.** (a) It is the policy of the state to capitalize and recapitalize the regional treatment centers as necessary to prevent depreciation and obsolescence of physical facilities and to ensure they retain the physical capability to provide residential programs. Consistent with that policy and with section 252.50; and within the limits of appropriations made available for this purpose, the commissioner may establish, by June 30, 1991, the following state-operated, community-based programs for the least vulnerable regional treatment center residents: at Brainerd regional services center, two residential programs and two day programs; at Cambridge regional treatment center, four residential programs and two day programs; at Faribault regional treatment center, ten residential programs and six day programs; at Fergus Falls regional treatment center, two residential programs and one day program; at Moose Lake regional treatment center, four residential programs and two day programs; and at Willmar regional treatment center, two residential programs and one day program.

(b) By January 15, 1991, the commissioner shall report to the legislature a plan to provide continued regional treatment center capacity and state-operated, community-based residential and day programs for persons with developmental disabilities at Brainerd, Cambridge, Faribault, Fergus Falls, Moose Lake, St. Peter, and Willmar, as follows:

(1) by July 1, 1998, continued regional treatment center capacity to serve 350 persons with developmental disabilities as follows: at Brainerd, 80 persons; at Cambridge, 12 persons; at Faribault, 110 persons; at Fergus Falls, 60 persons; at Moose Lake, 12 persons; at St. Peter, 35 persons; at Willmar, 25 persons; and up to 16 crisis beds in the Twin Cities metropolitan area; and

(2) by July 1, 1999, continued regional treatment center capacity to serve 254 persons with developmental disabilities as follows: at Brainerd, 57 persons; at Cambridge, 12 persons; at Faribault, 80 persons; at Fergus Falls, 35 persons; at Moose Lake, 12 persons; at St. Peter, 30 persons; at Willmar, 12 persons, and up to 16 crisis beds in the Twin Cities metropolitan area. In addition, the plan shall provide for the capacity to provide residential services to 570 persons with developmental disabilities in 95 state-operated, community-based residential programs.

**History:** 1989 c 282 art 6 s 14

**252.032 ADMINISTRATIVE STRUCTURE.**

Subdivision 1. **Regional structure.** The administrative structure of the state-operated system must be regional in character.

Subd. 2. **Staff; location of facilities.** The administrative and professional staffs of

the regional treatment centers must be based on campus. Community-based facilities and services must be located and operated so they facilitate the delivery of professional and administrative staff services from the regional treatment center campus. The regional treatment center professional staff and all other staff may deliver services that they deliver on campus throughout the catchment area.

**History:** 1989 c 282 art 6 s 15

### **252.035 REGIONAL TREATMENT CENTER CATCHMENT AREAS.**

The commissioner may administratively designate catchment areas for regional treatment centers and state nursing homes. Catchment areas may vary by client group served. Catchment areas in effect on January 1, 1989, may not be modified until the commissioner has consulted with the regional planning committees of the affected regional treatment centers and with the chairs of the senate health and human services finance division and the house of representatives health and human services appropriation division.

**History:** 1989 c 282 art 6 s 16

### **252.038 PROVISION OF RESIDENTIAL SERVICES.**

Subdivision 1. **Residential care.** The commissioner of human services may continue to provide residential care in regional treatment centers.

Subd. 2. **Technical assistance.** To the extent of available money, the commissioner of human services may expand the capacity to provide technical assistance to community providers in handling the behavior problems of their patients. Technical assistance may include site visits, consultation with providers, or provider training.

Subd. 3. **Respite care.** Respite care may be provided in a regional treatment center when space is available if (1) payment for 20 percent of the prevailing facility per diem is guaranteed by the person, the person's family or legal representative, or a source other than a direct state appropriation to the regional treatment center and (2) provision of respite care to the individual meets the facility's admission criteria and licensing standards. The parent or guardian must consent to admission and sign a waiver of liability. Respite care is limited to 30 days within a calendar year. No preadmission screening process is required for a respite care stay under this subdivision.

**History:** 1989 c 282 art 6 s 17

### **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 chapter 256G. If the child's parents or guardians do not reside in this state, the cost shall be paid by the responsible governmental agency in the state from which the child came, by the parents or guardians of the child if they are financially able, or, if no other payment source is available, by the commissioner of human services.

Subd. 1a. **Definitions.** A person has a "related condition" if that person has a severe, chronic disability that is (a) attributable to cerebral palsy, epilepsy, autism, Prader-Willi syndrome, 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 the child's mental health and requires 24-hour treatment or supervision.

*[For text of subds 2 and 3, see M.S.1988]*

**History:** 1989 c 282 art 2 s 92

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

*[For text of subds 1 to 6, see M.S.1988]*

**Subd. 7. Reports.** The commissioner shall specify requirements for reports, including quarterly fiscal reports, according to section 256.01, subdivision 2, paragraph (17).

*[For text of subd 8, see M.S.1988]*

**History:** 1989 c 89 s 4

## **252.291 LIMITATION ON DETERMINATION OF NEED.**

*[For text of subd 1, see M.S.1988]*

**Subd. 2. Exceptions.** (a) The commissioner of human services in coordination with the commissioner of health may approve a newly constructed or newly established publicly or privately operated community intermediate care facility for six or fewer persons with mental retardation or related conditions only when:

(1) the facility is developed in accordance with a request for proposal approved by the commissioner of human services;

(2) the facility is necessary to serve the needs of identified persons with mental retardation or related conditions who are seriously behaviorally disordered or who are seriously physically or sensorily impaired. No more than 40 percent of the capacity specified in the proposal submitted to the commissioner must be used for persons being discharged from regional treatment centers; and

(3) the commissioner determines that the need for increased service capacity cannot be met by the use of alternative resources or the modification of existing facilities.

(b) The percentage limitation in paragraph (a), clause (2), does not apply to state-operated, community-based facilities.

*[For text of subds 3 to 5, see M.S.1988]*

**History:** 1989 c 282 art 6 s 18

## **252.31 ADVISORY TASK FORCE.**

The commissioner of human services may appoint an advisory task force for services to persons with mental retardation, related conditions, or physical handicaps. The task force shall advise the commissioner relative to those laws which the commissioner is responsible to administer and enforce relating to mental retardation or related conditions and physical disabilities. The commissioner also may request the task force for advice on implementing a comprehensive plan of services necessary to provide for the transition of persons with mental retardation or related conditions from regional treatment centers services to community-based programs. 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:** 1989 c 282 art 6 s 19

## **252.41 DEFINITIONS.**

*[For text of subds 1 to 8, see M.S.1988]*

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

(1) is licensed under sections 245A.01 to 245A.16 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 treatment centers, state-operated, community-based programs operating according to section 252.50 until July 1, 2000, or vendors licensed prior to April 15, 1983.

**History:** 1989 c 282 art 6 s 20

## 252.46 PAYMENT RATES.

Subdivision 1. **Rates for calendar years 1989 and 1990.** 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 for calendar years 1989 and 1990 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. **1989 and 1990 minimum.** Unless a variance is granted under subdivision 6, the minimum payment rates set by a county board for each vendor for calendar years 1989 and 1990 must be equal to the payment rates approved by the commissioner for that vendor in effect January 1, 1988, and January 1, 1989, respectively.

Subd. 3. **1989 and 1990 maximum.** Unless a variance is granted under subdivision 6, the maximum payment rates for each vendor for calendar years 1989 and 1990 must be equal to the payment rates approved by the commissioner for that vendor in effect December 1, 1988, and December 1, 1989, 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 for calendar years 1989 and 1990, 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.

*[For text of subd 5, see M.S.1988]*

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 commissioner shall develop by October 1, 1989, a uniform format for submission of documentation for the variance requests. This format shall be used by each vendor requesting a variance. The form shall be developed by the commissioner and shall be reviewed by representatives of advocacy and provider groups and counties. A variance may be utilized for costs associated with compliance with state administrative rules, compliance with court orders, capital costs required for continued licensure, increased insurance costs, start-up and conversion costs for supported employment, direct service staff salaries and benefits, and transportation. The county board shall review all vendors' payment rates that are ten or more than ten percent lower than the statewide median payment rates. 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. 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 and recommended an effective date for the change in the rate.

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

(3) The proposed changes are necessary to demonstrate compliance with minimum licensing standards, or to provide community-integrated and supported employment services after a change in the vendor's existing services has been approved as provided in section 252.28.

(4) The vendor documents that the changes cannot be achieved by reallocating current staff or by reallocating financial resources.

(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, and how the county will monitor the use of money by the vendor to make necessary changes in services.

(7) The county board's recommended payment rates do not exceed 125 percent of the current calendar year's statewide median payment rates.

The commissioner shall have 60 calendar days from the date of the receipt of the complete request to accept or reject it, or the request shall be deemed to have been granted. If the commissioner rejects the request, the commissioner shall state in writing the specific objections to the request and the reasons for its rejection.

*[For text of subds 7 to 11, see M.S.1988]*

**Subd. 12. Rates established after 1990.** Payment rates established by a county board to be paid to a vendor on or after January 1, 1991, 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.

*[For text of subds 13 and 14, see M.S.1988]*

**History:** 1989 c 282 art 2 s 93-98

## **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 rules may include a plan for phasing in implementation of the procedures and rates established by the rules. The phase-in may occur prior to calendar year 1991. 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:** 1989 c 282 art 2 s 99

## **252.50 STATE-OPERATED PROGRAMS.**

**Subdivision 1. Community-based programs established.** The commissioner shall establish a system of state-operated, community-based programs for persons with mental retardation or related conditions. For purposes of this section, "state-operated, community-based program" means a program administered by the state to provide treatment and habilitation in noninstitutional community settings to persons with mental retardation or related conditions. Employees of the programs must be state employees under chapters 43A and 179A. The establishment of state-operated, community-based programs must be within the context of a comprehensive definition of the role of state-operated services in the state. The role of state-operated services must be defined within the context of a comprehensive system of services for persons with mental retardation or related conditions. State-operated, community-based programs may include, but are not limited to, community group homes, foster care, supportive living services, day training and habilitation programs, and respite care arrangements. The commissioner may operate the pilot projects established under Laws 1985, First Special Session chapter 9, article 1, section 2, subdivision 6, and shall, within the limits of available appropriations, establish additional state-operated, community-based programs for persons with mental retardation or related conditions. State-operated, community-based programs may accept admissions from regional treatment centers, from the person's own home, or from community programs. State-operated, community-based programs offering day program services may be provided for persons with mental retardation or related conditions who are living in state-operated, community-based residential programs until July 1, 2000. No later than 1994, the commissioner, together with family members, counties, advocates, employee representatives, and other interested parties, shall begin planning so that by July 1, 2000, state-operated, community-based residential facilities will be in compliance with section 252.41, subdivision 9.

**Subd. 2. Authorization to build or purchase.** Within the limits of available appropriations, the commissioner may build, purchase, or lease suitable buildings for state-operated, community-based programs. Programs must be adaptable to the needs of persons with mental retardation or related conditions and residential programs must be homelike.

**Subd. 3. Alternative funding mechanisms.** To the extent possible, the commissioner may amend the medical assistance home and community-based waiver and, as

appropriate, develop special waiver procedures for targeting services to persons currently in state regional treatment centers.

**Subd. 4. Counties.** State-operated, community-based programs may be developed in conjunction with existing county responsibilities and authorities for persons with mental retardation or related conditions. Assessment, placement, screening, case management responsibilities, and determination of need procedures must be consistent with county responsibilities established under law and rule. Counties may enter into shared service agreements with state-operated programs.

**Subd. 5. Location of programs.** (a) In determining the location of state-operated, community-based programs, the needs of the individual client shall be paramount. The commissioner shall also take into account:

(1) the personal preferences of the persons being served and their families as determined by Minnesota Rules, parts 9525.0015 to 9525.0165;

(2) location of the support services established by the individual service plans of the persons being served;

(3) the appropriate grouping of the persons served;

(4) the availability of qualified staff;

(5) the need for state-operated, community-based programs in the geographical region of the state; and

(6) a reasonable commuting distance from a regional treatment center or the residences of the program staff.

(b) State-operated, community-based programs must be located according to section 252.28.

**Subd. 6. Rates for state-operated, community-based programs for persons with mental retardation.** State-operated, community-based programs that meet the definition of a facility in Minnesota Rules, part 9553.0020, subpart 19, must be reimbursed consistent with Minnesota Rules, parts 9553.0010 to 9553.0080. State-operated, community-based programs that meet the definition of vendor in section 252.41, subdivision 9, must be reimbursed consistent with the rate setting procedures in sections 252.41 to 252.47 and Minnesota Rules, parts 9525.1200 to 9525.1330. This subdivision does not operate to abridge the statutorily created pension rights of state employees or collective bargaining agreements reached pursuant to chapter 179A.

**Subd. 7. Crisis services.** Within the limits of appropriations, state-operated regional technical assistance must be available in each region to assist counties, residential and day programming staff, and families to prevent or resolve crises that could lead to a change in placement. Crisis capacity must be provided on all regional treatment center campuses serving persons with developmental disabilities. In addition, crisis capacity may be developed to serve 16 persons in the Twin Cities metropolitan area. Technical assistance and consultation must also be available in each region to providers and counties. Staff must be available to provide:

(1) individual assessments;

(2) program plan development and implementation assistance;

(3) analysis of service delivery problems; and

(4) assistance with transition planning, including technical assistance to counties and providers to develop new services, site the new services, and assist with community acceptance.

**Subd. 8. Spiritual care services.** An organized means for providing spiritual care services and follow-up may be established as part of the comprehensive health care, congruent with the operational philosophy of the department of human services, to residents of state-operated residential facilities and former residents discharged to private facilities, by persons certified for ministry in specialized settings.

**Subd. 9. Evaluation of community-based services development.** The commissioner shall develop an integrated approach to assessing and improving the quality of community-based services, including state-operated programs for persons with developmental disabilities.

The commissioner shall evaluate the progress of the development and quality of community-based services to determine if further development can proceed. The commissioner shall report results of the evaluation to the legislature by January 31, 1991, and January 31, 1993.

**Subd. 10. Rules and licensure.** Each state-operated residential and day habilitation service site shall be separately licensed and movement of residents between them shall be governed by applicable rules adopted by the commissioner.

**Subd. 11. Agreement authorized.** The agreement between the commissioner of human services, the state negotiator, and the bargaining representatives of state employees, dated March 10, 1989, concerning the department of human services plan to restructure the regional treatment centers, is ratified, subject to approval by the legislative commission on employee relations.

**History:** 1989 c 282 art 6 s 21

## **252.51 COMMUNITY PLANNING.**

Each community where there is a regional treatment center shall establish a group to work with and advise the commissioner and the counties to:

- (1) ensure community input in the development of community services for persons with developmental disabilities;
- (2) assure consideration of family concern about choice of service settings;
- (3) assist counties in recruiting new providers, capitalizing, and siting new day services and residential programs;
- (4) work with the surrounding counties to coordinate development of services for persons with developmental disabilities;
- (5) facilitate community education concerning services to persons with developmental disabilities;
- (6) assist in recruiting potential supported employment opportunities;
- (7) assist in developing shared services agreements among providers of service;
- (8) coordinate with the development of state-operated services; and
- (9) seek to resolve local transportation issues for people with developmental disabilities.

Funds appropriated to the department of human services for this purpose shall be transferred to the city in which the regional treatment center is located upon receipt of evidence from the city that such a group has been constituted and designated. The funds shall be used to defray the expenses of the group.

The membership of each community group must reflect a broad range of community interests, including, at a minimum, families of persons with developmental disabilities, state employee unions, providers, advocates, and counties.

**History:** 1989 c 282 art 6 s 22