

## CHAPTER 252

### SERVICES FOR PERSONS WITH MENTAL RETARDATION

252.025	State hospitals for persons with mental retardation.	252.451	Agreements with businesses to provide support and supervision of persons with mental retardation or related conditions in community-based employment.
252.27	Parental contribution for the cost of children's services.	252.452	Vendor requirements.
252.275	Semi-independent living services for persons with mental retardation or related conditions.	252.46	Payment rates.
252.32	Family support program.	252.47	Rules.
252.41	Definitions.	252.478	Repealed.
		252.50	State-operated programs.

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

*[For text of subds 1 and 2, see M.S.1992]*

**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, 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 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 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.

The commissioner is subject to a mandamus action under chapter 586 for any failure to comply with the provisions of this subdivision.

**Subd. 5. Services for developmentally disabled persons: Moose Lake regional treatment center catchment area.** Notwithstanding subdivision 4, the commissioner shall develop in the Moose Lake regional treatment center catchment area for persons with developmental disabilities at least 12 beds in state-operated waived homes, eight state-operated crisis beds, one state-operated day training and habilitation facility, and 21 beds in other community settings. These services must be established by October 1, 1993, to serve persons relocated from the Moose Lake regional treatment center.

These services shall be in addition to any state-operated, community services and day treatment centers in operation in the Moose Lake catchment area during state fiscal year 1993.

**Subd. 6. Development of state-operated services.** Notwithstanding subdivision 4, during the biennium ending June 30, 1995, the commissioner shall establish the following services for persons with developmental disabilities:

(1) by June 30, 1994, eight state-operated, community-based waived homes located anywhere in the state for 32 persons and two state-operated day training and habilitation facilities for persons leaving regional treatment centers as a result of downsizing;

(2) by June 30, 1994, 16 state-operated, community-based waived homes at Faribault for 64 persons, four state-operated day training and habilitation facilities, and 38 beds in community settings for persons leaving the Faribault regional treatment center;

(3) by June 30, 1995, 78 beds in private community settings for persons leaving the Faribault regional treatment center;

(4) by June 30, 1995, eight state-operated crisis beds in the Faribault regional treatment center catchment area;

(5) by June 30, 1994, private community-based beds located anywhere in the state to achieve a net reduction of 93 persons leaving regional treatment centers as a result of downsizing; and

(6) by June 30, 1995, nine state-operated waived homes for 36 persons and two state-operated day training and habilitation facilities for persons leaving regional treatment centers as a result of downsizing, and sufficient beds in private community settings to achieve a net reduction of 84 beds in regional treatment centers.

**History:** *1Sp1993 c 1 art 7 s 31-33*

## **252.27 PARENTAL CONTRIBUTION FOR THE COST OF CHILDREN'S SERVICES.**

**Subdivision 1. County responsibility.** Whenever any child who has mental retardation or a related condition, or a physical disability or emotional disturbance is in 24-hour care outside the home including respite care, in a facility licensed by the commissioner of human services, the cost of services 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 meets all of the following conditions: (a) is attributable to cerebral palsy, epilepsy, autism, Prader-Willi syndrome, or any other condition, other than mental illness as defined under section 245.462, subdivision 20, or an emotional disturbance, as defined under section 245.4871, subdivision 15, 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 and requires treatment or services similar to those required for persons with mental retardation; (b) is manifested before the person reaches 22 years of age; (c) is likely to continue indefinitely; and (d) results in substantial functional limitations in three or more of the following areas of major life activity: (1) self-care, (2) understanding and use of language, (3) learning, (4) mobility, (5) self-direction, (6) capacity for independent living.

*[For text of subds 2 to 4, see M.S. 1992]*

**History:** *1993 c 339 s 6, 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 provide support for persons with mental retardation or related conditions to live as independently as possible in the community. An objective of the program is to reduce unnecessary use of intermediate care facilities for persons with mental retardation or related conditions and home and community-based services. The commissioner shall reimburse county boards for semi-independent living services provided by agencies or individuals that meet the applicable standards of sections 245A.01 to 245A.16 and 252.28, and for the provision of one-time living allowances to secure and furnish a home for a person who will receive semi-independent living services under this section, if other public funds are not available for the allowance.

For the purposes of this section, "semi-independent living services" means training and assistance in managing money, preparing meals, shopping, maintaining personal appearance and hygiene, and other activities which are needed to maintain and improve an adult with mental retardation or a related condition's capability to live in the community. Eligible persons:

- (1) must be age 18 or older;
- (2) must be unable to function independently without semi-independent living services; and
- (3) must not be at risk of placement in an intermediate care facility for persons with mental retardation in the absence of less restrictive services.

Semi-independent living services costs and one-time living allowance costs may be paid directly by the county, or may be paid by the recipient with a voucher or cash issued by the county.

*[For text of subds 1a to 7, see M.S.1992]*

Subd. 8. **Use of federal funds and transfer of funds to medical assistance.** (a) The commissioner shall make every reasonable effort to maximize the use of federal funds for semi-independent living services.

(b) The commissioner shall reduce the payments to be made under this section to each county from January 1, 1994 to June 30, 1996, by the amount of the state share of medical assistance reimbursement for services other than residential services provided under the home and community-based waiver program under section 256B.092 from January 1, 1994 to June 30, 1996, for clients for whom the county is financially responsible and who have been transferred by the county from the semi-independent living services program to the home and community-based waiver program. Unless otherwise specified, all reduced amounts shall be transferred to the medical assistance state account.

(c) For fiscal year 1997, the base appropriation available under this section shall be reduced by the amount of the state share of medical assistance reimbursement for services other than residential services provided under the home and community-based waiver program authorized in section 256B.092 from January 1, 1995 to December 31, 1995, for persons who have been transferred from the semi-independent living services program to the home and community-based waiver program. The base appropriation for the medical assistance state account shall be increased by the same amount.

(d) For purposes of calculating the guaranteed floor under subdivision 4b and to establish the calendar year 1996 allocations, each county's original allocation for calendar year 1995 shall be reduced by the amount transferred to the state medical assistance account under paragraph (b) during the six months ending on June 30, 1995. For purposes of calculating the guaranteed floor under subdivision 4b and to establish the calendar year 1997 allocations, each county's original allocation for calendar year 1996 shall be reduced by the amount transferred to the state medical assistance account under paragraph (b) during the six months ending on June 30, 1996.

*[For text of subds 9 and 10, see M.S.1992]*

**History:** *1Sp1993 c 1 art 4 s 1,2*

**252.32 FAMILY SUPPORT PROGRAM.***[For text of subd 1, see M.S.1992]*

Subd. 1a. **Support grants.** (a) Provision of support grants must be limited to families who require support and whose dependents are under the age of 22 and who have mental retardation or who have a related condition and who have been determined by a screening team established under section 256B.092 to be at risk of institutionalization. Families who are receiving home and community-based waived services for persons with mental retardation or related conditions are not eligible for support grants. Families whose annual adjusted gross income is \$60,000 or more are not eligible for support grants except in cases where extreme hardship is demonstrated. Beginning in state fiscal year 1994, the commissioner shall adjust the income ceiling annually to reflect the projected change in the average value in the United States Department of Labor Bureau of Labor Statistics consumer price index (all urban) for that year.

(b) Support grants may be made available as monthly subsidy grants and lump sum grants.

(c) Support grants may be issued in the form of cash, voucher, and direct county payment to a vendor.

(d) Applications for the support grant shall be made by the county social service agency to the department of human services. The application shall specify the needs of the families, the form of the grant requested by the families, and that the families have agreed to use the support grant for items and services within the designated reimbursable expense categories and recommendations of the county.

(e) Families who were receiving subsidies on the date of implementation of the \$60,000 income limit in paragraph (a) continue to be eligible for a family support grant until December 31, 1991, if all other eligibility criteria are met. After December 31, 1991, these families are eligible for a grant in the amount of one-half the grant they would otherwise receive, for as long as they remain eligible under other eligibility criteria.

*[For text of subds 2 to 5, see M.S.1992]***History:** 1993 c 339 s 8**252.41 DEFINITIONS.***[For text of subds 1 and 2, see M.S.1992]*

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 245A.01 to 245A.16 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 unless medically contraindicated.

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.

*[For text of subds 4 to 9, see M.S.1992]***History:** 1Sp1993 c 1 art 4 s 3

**252.451 AGREEMENTS WITH BUSINESSES TO PROVIDE SUPPORT AND SUPERVISION OF PERSONS WITH MENTAL RETARDATION OR RELATED CONDITIONS IN COMMUNITY-BASED EMPLOYMENT.**

**Subdivision 1. Definition.** For the purposes of this section, "qualified business" means a business that employs primarily nondisabled persons and will employ persons with mental retardation or related conditions. For purposes of this section, licensed providers of residential services for persons with mental retardation or related conditions are not a qualified business. A qualified business and its employees are exempt from Minnesota Rules, parts 9525.1500 to 9525.1690 and 9525.1800 to 9525.1930.

**Subd. 2. Vendor participation and reimbursement.** Notwithstanding requirements in chapter 245A, and sections 252.28, 252.40 to 252.46, and 256B.501, vendors of day training and habilitation services may enter into written agreements with qualified businesses to provide additional training and supervision needed by individuals to maintain their employment.

**Subd. 3. Agreement specifications.** Agreements must include the following:

(1) the type and amount of supervision and support to be provided by the business to the individual in accordance with their needs as identified in their individual service plan;

(2) the methods used to periodically assess the individual's satisfaction with their work, training, and support;

(3) the measures taken by the qualified business and the vendor to ensure the health, safety, and protection of the individual during working hours, including the reporting of abuse and neglect under state law and rules;

(4) the training and support services the vendor will provide to the qualified business, including the frequency of on-site supervision and support; and

(5) any payment to be made to the qualified business by the vendor. Payment to the business must be limited to:

(i) additional costs of training coworkers and managers that exceed ordinary and customary training costs and are a direct result of employing a person with mental retardation or a related condition; and

(ii) additional costs for training, supervising, and assisting the person with mental retardation or a related condition that exceed normal and customary costs required for performing similar tasks or duties.

Payments made to a qualified business under this section must not include incentive payments to the qualified business or salary supplementation for the person with mental retardation or a related condition.

**Subd. 4. Client protection.** Persons receiving training and support under this section may not be denied their rights or procedural protections under section 256.045, subdivision 4a, or 256B.092, including the county agency's responsibility to arrange for appropriate services, as necessary, in the event that persons lose their job or the contract with the qualified business is terminated.

**Subd. 5. Vendor payment.** (a) For purposes of this section, the vendor shall bill and the commissioner shall reimburse for full-day or partial-day services that would otherwise have been paid to the vendor for providing direct services provided that:

(1) the vendor provides services and payments to the business that enable the business to perform services for the client that the vendor would otherwise need to perform; and

(2) any client for whom a rate will be billed was receiving full-time services from the vendor on or before July 1, 1993, and the rate will allow the client to work with support in a community business instead of receiving any other service from the vendor.

(b) Medical assistance reimbursement of services provided to persons receiving day training and habilitation services under this section is subject to the limitations on reimbursement for vocational services under federal law and regulation.

**History:** 1Sp1993 c 1 art 4 s 4; 1Sp1993 c 6 s 41

**252.452 VENDOR REQUIREMENTS.**

The requirements of Minnesota Rules, parts 9525.1500 to 9525.1690 governing vendors of day training and habilitation services are amended as provided in paragraphs (a) to (f).

(a) Notwithstanding Minnesota Rules, part 9525.1620, subpart 2, item B, orientation must be completed within the first 60 days of employment.

(b) Employees of a business who are subsequently employed by the day training and habilitation program to provide job supports to a client at the business site are exempt from the requirements of Minnesota Rules, part 9525.1620 except for the explanation required in subpart 2, item A, subitem (4).

(c) Notwithstanding Minnesota Rules, part 9525.1590, subpart 2, vendors must annually collect data for each person receiving employment services that is current as of the last day of the calendar year and includes:

- (1) the type of employment activity, location, and job title;
- (2) the number of hours the person worked per week;
- (3) the number of disabled coworkers receiving vendor services at the same work site where the person for whom the data is reported is working; and
- (4) the number of nondisabled and nonsubsidized coworkers employed at the work site.

(d) Space owned or leased by a vendor that is used solely as office space for a community-integrated program is exempt from Minnesota Rules, parts 9525.1520, subpart 2, item B, subitems (1), (2), and (4); and 9525.1650.

(e) If any of the conditions in clauses (1) to (4) are met, the vendor may provide support at the office site for five or fewer persons at any time and be exempt from Minnesota Rules, parts 9525.1520, subpart 2, item B, subitems (1), (2), and (4); and 9525.1650, except that the vendor must document that the building satisfactorily meets local fire regulations. The documentation may be a copy of the routine fire inspection of the building. If a routine inspection has not been completed, a separate inspection must be completed. The conditions are:

- (1) the services are temporary, with an anticipated duration of not more than 60 calendar days, for example when a person begins services or is between community jobs and must spend some portion of each service day involved in the community;
- (2) at least 75 percent of the service week is provided outside the office site in the community;
- (3) the use of the space is for planning meetings or other individualized meetings with persons receiving support; or
- (4) the person is in transit to a job site or other community-based site.

(f) Notwithstanding Minnesota Rules, part 9525.1630, subparts 4 and 5, the vendor is required to assess and reassess persons in the areas specified in Minnesota Rules, part 9525.1630, subpart 4, items B to E, as authorized by the case manager. Items not specifically authorized are not required.

This section expires on the effective date of the consolidated licensing rules.

**History:** *1Sp1993 c 1 art 4 s 5*

**NOTE:** This section expires on the effective date of the consolidated licensing rules. See Laws 1993, First Special Session, chapter 1, article 4, section 5.

**252.46 PAYMENT RATES.**

**Subdivision 1. Rates.** 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 are governed by subdivisions 2 to 19. The commissioner shall approve the following three payment rates for services provided by a vendor:

- (1) 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;

(2) 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

(3) 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.

Medical assistance rates for home and community-based service provided under section 256B.501, subdivision 4, 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 very dependent persons with special needs the commissioner may approve an exception to the approved payment rate under section 256B.501, subdivision 4 or 8.

**Subd. 2. Rate minimum.** Unless a variance is granted under subdivision 6, the minimum payment rates set by a county board for each vendor must be equal to the payment rates approved by the commissioner for that vendor in effect January 1 of the previous calendar year.

**Subd. 3. Rate maximum.** Unless a variance is granted under subdivision 6, the maximum payment rates for each vendor for a calendar year must be equal to the payment rates approved by the commissioner for that vendor in effect December 1 of the previous calendar year. The commissioner of finance shall include as a budget change request in each biennial detailed expenditure budget submitted to the legislature under section 16A.11 annual inflation adjustments in reimbursement rates for each vendor, based upon 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. The commissioner shall not provide an annual inflation adjustment for the biennium ending June 30, 1993.

**Subd. 4. New vendors.** (a) Payment rates established by a county for a new vendor for which there were no previous rates must not exceed 95 percent of the greater of 125 percent of the statewide median rates or 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 unless the criteria in paragraph (b) are met.

(b) A payment rate equal to 200 percent of the statewide average rates shall be assigned to persons served by the new vendor when those persons are persons with very severe self-injurious or assaultive behaviors, persons with medical conditions requiring delivery of physician-prescribed medical interventions at one-to-one staffing for at least 15 minutes each time they are performed, or persons discharged from a regional treatment center after May 1, 1993, to the vendor's program. All other persons for whom the new service is needed must be assigned a rate equal to 95 percent of the greater of 125 percent of the statewide median rates or 125 percent of the regional average rates, whichever is higher, and the maximum payment rate that may be recommended is determined by multiplying the number of clients at each limit by the rate corresponding to that limit and dividing the sum by the total number of clients. When the recommended payment rates exceed 95 percent of 125 percent of the greater of the statewide median or regional average rates, whichever is higher, the county must include documentation verifying the medical or behavioral needs of clients. The approved payment rates must be based on 12 months budgeted expenses divided by at least 90 percent of authorized service units associated with the new vendor's licensed capacity. The county must include documentation verifying the person's discharge from a regional treatment center and that admission of new clients to existing services eligible for a rate variance under subdivision 6 was considered before recommending payment rates for a new vendor. Nothing in this subdivision permits development of a new program that primarily results in refinancing of services for individuals already receiving services in existing programs.

**Subd. 5. Submitting recommended rates.** The county board shall submit recommended payment rates to the commissioner on forms supplied by the commissioner at least 60 days before revised payment rates or payment rates for new vendors are to be effective. The forms must include the county board's written verification of the individual documentation required under section 252.44, clause (a). 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) 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 on forms supplied by the commissioner with the recommended payment rates. A variance to the rate maximum 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, transportation, and other program related costs when any of the criteria in clauses (1) to (3) is also met:

(1) change is necessary to comply with licensing citations;

(2) a significant change is approved by the commissioner under section 252.28 that is necessary to provide authorized services to new clients with very severe self-injurious or assaultive behavior, or medical conditions requiring delivery of physician-prescribed medical interventions requiring one-to-one staffing for at least 15 minutes each time they are performed, or to new clients directly discharged to the vendor's program from a regional treatment center; or

(3) a significant increase in the average level of staffing is needed to provide authorized services approved by the commissioner under section 252.28, that is necessitated by a decrease in licensed capacity or loss of clientele when counties choose alternative services under Laws 1992, chapter 513, article 9, section 41.

A variance under this paragraph may be approved only if the costs to the medical assistance program do not exceed the medical assistance costs for all clients served by the alternatives and all clients remaining in the existing services.

(b) A variance to the rate minimum may be granted when (1) the county board contracts for increased services from a vendor and for some or all individuals receiving services from the vendor lower per unit fixed costs result or (2) when the actual costs of delivering authorized service over a 12-month contract period have decreased.

(c) The written variance request under this subdivision 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 vendor documents efforts to reallocate current staff and any additional staffing needs cannot be met by using temporary special needs rate exceptions under Minnesota Rules, parts 9510.1020 to 9510.1140.

(3) The vendor documents that financial resources have been reallocated before applying for a variance. No variance may be granted for equipment, supplies, or other capital expenditures when depreciation expense for repair and replacement of such items is part of the current rate.

(4) For variances related to loss of clientele, the vendor documents the other program and administrative expenses, if any, that have been reduced.

(5) The county board submits verification of the conditions for which the variance is requested, 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.



(6) The county board's recommended payment rates do not exceed 95 percent of the greater of 125 percent of the current statewide median or 125 percent of the regional average payment rates, whichever is higher, for each of the regional commission districts under sections 462.381 to 462.396 in which the vendor is located except for the following: when a variance is recommended to allow authorized service delivery to new clients with severe self-injurious or assaultive behaviors or with medical conditions requiring delivery of physician prescribed medical interventions, or to persons being directly discharged from a regional treatment center to the vendor's program, those persons must be assigned a payment rate of 200 percent of the current statewide average rates. All other clients receiving services from the vendor must be assigned a payment rate equal to the vendor's current rate unless the vendor's current rate exceeds 95 percent of 125 percent of the statewide median or 125 percent of the regional average payment rates, whichever is higher. When the vendor's rates exceed 95 percent of 125 percent of the statewide median or 125 percent of the regional average rates, the maximum rates assigned to all other clients must be equal to the greater of 95 percent of 125 percent of the statewide median or 125 percent of the regional average rates. The maximum payment rate that may be recommended for the vendor under these conditions is determined by multiplying the number of clients at each limit by the rate corresponding to that limit and then dividing the sum by the total number of clients.

(7) The vendor has not received a variance under this subdivision in the past 12 months.

(d) 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.

**Subd. 7. Rate reconsiderations.** A host county that disagrees with a rate decision of the commissioner under subdivision 6 or 9 may request reconsideration by the commissioner within 45 days after the date the host county received notification of the commissioner's decision. The request must state the reasons why the host county is requesting reconsideration of the rate decision and present evidence explaining the host county's disagreement with the rate decision.

The commissioner shall review the host county's evidence and provide the host county with written notification of the decision on the request within 60 days. The commissioner's decision on the request is final.

Until a reconsideration request is decided, payments must continue at a rate the commissioner determines complies with this section. If a higher rate is approved, the commissioner shall order a retroactive payment as determined in the commissioner's decision.

**Subd. 8. Commissioner's notice to boards, vendors.** The commissioner shall notify the county boards and vendors of the average regional payment rates, 95 percent of 125 percent of the average regional payments rates for each of the regional development commission districts designated in sections 462.381 to 462.396, 95 percent of 125 percent of the statewide median rates, and 200 percent of the statewide average rates.

**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 18. 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. The audit must provide supplemental statements for each day training and habilitation program with an approved unique set of rates.

**Subd. 11. Improper transactions.** Transactions that have the effect of circumventing subdivisions 1 to 18 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.** [Repealed, 1Sp1993 c 1 art 4 s 14]

**Subd. 13.** [Repealed, 1Sp1993 c 1 art 4 s 14]

**Subd. 14.** [Repealed, 1Sp1993 c 1 art 4 s 14]

**Subd. 16. Payment rate criteria; allocation of expenditures.** Payment rates approved under subdivision 9 must reflect the payment rate criteria in paragraphs (a) and (b) and the allocation principles in paragraph (c).

(a) Payment rates must be based on reasonable costs that are ordinary, necessary, and related to delivery of authorized client services.

(b) The commissioner shall not pay for: (i) unauthorized service delivery; (ii) services provided in accordance with receipt of a special grant; (iii) services provided under contract to a local school district; (iv) extended employment services under Minnesota Rules, parts 3300.1950 to 3300.3050, or vocational rehabilitation services provided under Title I, section 110 or Title VI-C, Rehabilitation Act Amendments of 1992, as amended, and not through use of medical assistance or county social service funds; or (v) services provided to a client by a licensed medical, therapeutic, or rehabilitation practitioner or any other vendor of medical care which are billed separately on a fee for service basis.

(c) On an annual basis, actual and projected contract year expenses must be allocated to standard budget line items corresponding to direct and other program and administrative expenses as submitted to the commissioner with the host county's recommended payment rates. Central or corporate office costs must be allocated to licensed vendor sites within the group served by the central or corporate office according to the cost allocation principles under section 256B.432.

(d) The vendor must maintain records documenting that clients received the billed services.

**Subd. 17. Hourly rate structure.** Counties participating as host counties under the pilot study of hourly rates established under Laws 1988, chapter 689, article 2, section 117, may recommend continuation of the hourly rates for participating vendors. The recommendation must be made annually under subdivision 5 and according to the methods and standards provided by the commissioner. The commissioner shall approve the hourly rates when service authorization, billing, and payment for services is possible through the Medicaid management information system and the other criteria in this subdivision are met.

**Subd. 18. Pilot study rates.** By January 1, 1994, counties and vendors operating under the pilot study of hourly rates established under Laws 1988, chapter 689, article 2, section 117, shall work with the commissioner to translate the hourly rates and actual expenditures into rates meeting the criteria in subdivisions 1 to 16 unless hourly rates are approved under subdivision 17.

**History:** 1Sp1993 c 1 art 4 s 6; 1Sp1993 c 6 s 42

## 252.47 RULES.

To implement sections 252.40 to 252.47, the commissioner shall adopt permanent rules under sections 14.01 to 14.38, by July 1, 1995. 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:** *1Sp1993 c 1 art 4 s 7*

**252.478** [Repealed, 1Sp1993 c 1 art 5 s 134]

**252.50 STATE-OPERATED PROGRAMS.**

*[For text of subds 1 and 2, see M.S.1992]*

Subd. 2a. **Use of enhanced waived services funds.** The commissioner may, within the limits of appropriations made available for this purpose, use enhanced waived services funds under the home and community-based waiver for persons with mental retardation or related conditions to move to state-operated community programs and to private facilities.

*[For text of subds 3 to 11, see M.S.1992]*

**History:** *1Sp1993 c 1 art 7 s 34*