

CHAPTER 252

HOSPITALS AND COMMUNITY SERVICES FOR PERSONS WITH MENTAL RETARDATION

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252.01 [Repealed, 1961 c 137 s 2]

252.011 [Repealed, 1961 c 137 s 2]

252.015 [Repealed, 1961 c 137 s 2]

252.02 [Repealed, 1961 c 137 s 2]

252.021 DEFINITION.

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

History: 1985 c 21 s 21; 1992 c 464 art 1 s 55

252.025 STATE HOSPITALS FOR PERSONS WITH MENTAL RETARDATION.

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

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

Subd. 3. [Repealed, 1975 c 242 s 3]

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

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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: 1961 c 137 s 1; 1967 c 6 s 1,2; 1976 c 289 s 1; 1983 c 10 s 1; 1984 c 654 art 5 s 58; 1985 c 21 s 22; 1Sp1985 c 9 art 2 s 27; 1987 c 384 art 1 s 49; 1989 c 282 art 6 s 14; 1992 c 513 art 9 s 20; 1Sp1993 c 1 art 7 s 31-33

252.03 [Repealed, 1977 c 415 s 5]

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

252.04 [Repealed, Ex1961 c 62 s 7]

252.041 [Repealed, 1971 c 637 s 7]

252.042 [Repealed, 1971 c 637 s 7]

252.043 [Repealed, 1971 c 637 s 7]

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252.044 [Repealed, 1971 c 637 s 7]

252.045 [Repealed, 1971 c 637 s 7]

252.046 [Repealed, 1971 c 637 s 7]

252.047 [Repealed, 1969 c 204 s 4]

252.05 ABDUCTION OR ENTICING AWAY PROHIBITED; PENALTY.

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

History: (4502) 1923 c 365 s 1; 1929 c 231 s 1; 1953 c 593 s 2; 1965 c 45 s 22; 1967 c 6 s 2; 1979 c 102 s 13; 1983 c 10 s 1; 1984 c 628 art 3 s 11; 1984 c 654 art 5 s 58; 1985 c 21 s 23; 1986 c 444

252.06 SHERIFF TO TRANSPORT PERSONS WITH MENTAL RETARDATION.

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

History: (4503) 1921 c 76 s 1; Ex1936 c 57 s 1; 1947 c 212 s 1; 1953 c 593 s 2; 1965 c 45 s 23; 1983 c 10 s 1; 1984 c 654 art 5 s 58; 1985 c 21 s 24

252.07 SHERIFF, EXPENSES.

In any county where the sheriff receives a salary in full compensation for official services performed for the county, 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: (4504) 1921 c 76 s 2; Ex1936 c 57 s 2; 1947 c 212 s 2; 1951 c 339 s 1; 1965 c 45 s 24; 1983 c 10 s 1; 1985 c 21 s 25; 1986 c 444; 1987 c 49 s 6

252.08 PROBATE COURT TO AUDIT EXPENSE ACCOUNTS.

The fees and expenses of any sheriff or other person performing the service under the provisions of sections 252.06 to 252.08 shall be audited by the probate judge of the county and paid by the county auditor and county treasurer upon the written order of the probate judge without other or further allowance.

History: (4505) 1921 c 76 s 3

252.09 COURSES OF INSTRUCTION FOR TEACHERS.

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

History: (4506) 1913 c 261 s 1; 1965 c 45 s 25; 1967 c 6 s 2; 1983 c 10 s 1; 1984 c 654 art 5 s 58; 1985 c 21 s 26; 1985 c 248 s 70

252.10 FEES AND EXPENSES.

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

History: (4507) 1913 c 261 s 2; 1965 c 45 s 26; 1967 c 6 s 2; 1983 c 10 s 1; 1984 c 654 art 5 s 58; 1985 c 21 s 27

252.11 [Repealed, 1961 c 26 s 1]

252.12 [Repealed, 1961 c 26 s 1]

252.13 [Repealed, 1961 c 26 s 1]

252.14 [Repealed, 1961 c 26 s 1]

252.15 [Repealed, 1963 c 830 s 9]

252.16 [Repealed, 1963 c 830 s 9]

252.17 [Repealed, 1963 c 830 s 9]

252.18 [Repealed, 1963 c 830 s 9]

252.19 [Repealed, 1963 c 830 s 9]

252.20 [Repealed, 1963 c 830 s 9]

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, 120.1701, and 256E.08, subdivision 1, a county board may, beginning January 1, 1983, contract with developmental achievement centers or other providers.

History: 1963 c 830 s 1; 1974 c 480 s 5; 1977 c 337 s 2; 1979 c 324 s 24; 1981 c 355 s 24; 1985 c 21 s 28; 1987 c 403 art 5 s 2; 1994 c 647 art 13 s 19

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: 1963 c 830 s 2; 1965 c 480 s 1; 1967 c 878 s 1; 1971 c 668 s 2; 1973 c 123 art 5 s 7; 1973 c 583 s 16; 1973 c 773 s 1; 1974 c 480 s 6; 1977 c 337 s 3; 1979 c 324 s 25; 1985 c 21 s 29; 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: 1963 c 830 s 3; 1971 c 584 s 1; 1974 c 480 s 7; 1977 c 337 s 4; 1984 c 654 art 5 s 58; 1985 c 21 s 30; 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 245A.01 to 245A.16, 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.

Subd. 2. Supervision of projects; promulgation of rules. The commissioner of human services shall closely supervise any developmental achievement center receiving a grant under sections 252.21 to 252.25. The commissioner shall promulgate rules in the manner provided by law as necessary to carry out the purposes of sections 252.21 to 252.25, including but not limited to rules pertaining to facilities for housing developmental achievement centers, administration of centers, and eligibility requirements for admission and participation in activities of the center.

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

90 days' notice whose program is not being administered in accordance with its approved plan and budget.

Subd. 4. **Fees.** The county board may, with the approval of the commissioner, establish a schedule of fees for daytime developmental achievement services as provided in section 256E.08, subdivision 6. No 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.

Subd. 5. **DAC's: salary adjustment per diem.** The commissioner shall approve a two percent increase in the payment rates for day training and habilitation services vendors effective July 1, 1991. All revenue generated shall be used by vendors to increase salaries, fringe benefits, and payroll taxes by at least three percent for personnel below top management. County boards shall amend contracts with vendors to require that all revenue generated by this provision is expended on salary increases to staff below top management. County boards shall verify in writing to the commissioner that each vendor has complied with this requirement. If a county board determines that a vendor has not complied with this requirement for a specific contract period, the county board shall reduce the vendor's payment rates for the next contract period to reflect the amount of money not spent appropriately. The commissioner shall modify reporting requirements for vendors and counties as necessary to monitor compliance with this provision.

Each county agency shall report to the commissioner by July 30, 1991, its actual social service day training and habilitation expenditures for calendar year 1990. The commissioner shall allocate the day habilitation service CSSA appropriation made available for this purpose to county agencies in proportion to these expenditures.

History: 1963 c 830 s 4; 1967 c 878 s 2,3; 1969 c 905 s 1; 1971 c 584 s 2; 1971 c 668 s 1; 1973 c 583 s 17; 1974 c 406 s 44; 1974 c 480 s 1,2; 1975 c 238 s 2; 1976 c 163 s 52; 1977 c 337 s 5; 1977 c 347 s 38; 1979 c 324 s 26-28; 1981 c 355 s 25-27; 1983 c 312 art 9 s 1; 1984 c 654 art 5 s 58; 1985 c 21 s 31; 1986 c 444; 1987 c 384 art 2 s 1; 1987 c 403 art 5 s 5,6; 1989 c 209 art 2 s 1; 1991 c 292 art 4 s 7

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 252.25, 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 departments, medical societies, mental health centers, associations concerned with mental retardation and related conditions, civic groups, and the general public. Nothing in sections 252.21 to 252.25 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: 1963 c 830 s 5; 1973 c 123 art 5 s 7; 1974 c 480 s 3; 1977 c 337 s 6; 1979 c 324 s 29; 1985 c 21 s 32; 1986 c 444; 1987 c 384 art 2 s 1; 1987 c 403 art 5 s 7

252.26 [Repealed, 1981 c 355 s 34]

252.261 EXISTENCE.

Any daytime activity center in existence on September 1, 1977, shall be deemed

to be a developmental achievement center for the purposes of sections 252.21 to 252.25.

History: 1977 c 337 s 8; 1979 c 324 s 31; 1991 c 199 art 2 s 1

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.

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

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

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

Subd. 2a. Contribution amount. (a) The natural or adoptive parents of a minor child, including a child determined eligible for medical assistance without consideration of parental income, must contribute monthly to the cost of services, unless the child is married or has been married, parental rights have been terminated, or the child's adoption is subsidized according to section 259.67 or through title IV-E of the Social Security Act.

(b) The parental contribution shall be computed by applying to the adjusted gross income of the natural or adoptive parents that exceeds 200 percent of the federal poverty guidelines for the applicable household size, the following schedule of rates:

(1) on the amount of adjusted gross income over 200 percent of poverty, but not over \$50,000, ten percent;

(2) on the amount of adjusted gross income over 200 percent of poverty and over \$50,000 but not over \$60,000, 12 percent;

(3) on the amount of adjusted gross income over 200 percent of poverty, and over \$60,000 but not over \$75,000, 14 percent; and

(4) on all adjusted gross income amounts over 200 percent of poverty, and over \$75,000, 15 percent.

If the child lives with the parent, the parental contribution is reduced by \$200. If the child resides in an institution specified in section 256B.35, the parent is responsible for the personal needs allowance specified under that section in addition to the parental

contribution determined under this section. The parental contribution is reduced by any amount required to be paid directly to the child pursuant to a court order, but only if actually paid.

(c) The household size to be used in determining the amount of contribution under paragraph (b) includes natural and adoptive parents and their dependents under age 21, including the child receiving services. Adjustments in the contribution amount due to annual changes in the federal poverty guidelines shall be implemented on the first day of July following publication of the changes.

(d) For purposes of paragraph (b), "income" means the adjusted gross income of the natural or adoptive parents determined according to the previous year's federal tax form.

(e) The contribution shall be explained in writing to the parents at the time eligibility for services is being determined. The contribution shall be made on a monthly basis effective with the first month in which the child receives services. Annually upon re-determination or at termination of eligibility, if the contribution exceeded the cost of services provided, the local agency or the state shall reimburse that excess amount to the parents, either by direct reimbursement if the parent is no longer required to pay a contribution, or by a reduction in or waiver of parental fees until the excess amount is exhausted.

(f) The monthly contribution amount must be reviewed at least every 12 months; when there is a change in household size; and when there is a loss of or gain in income from one month to another in excess of ten percent. The local agency shall mail a written notice 30 days in advance of the effective date of a change in the contribution amount. A decrease in the contribution amount is effective in the month that the parent verifies a reduction in income or change in household size.

(g) Parents of a minor child who do not live with each other shall each pay the contribution required under paragraph (a), except that a court-ordered child support payment actually paid on behalf of the child receiving services shall be deducted from the contribution of the parent making the payment.

(h) The contribution under paragraph (b) shall be increased by an additional five percent if the local agency determines that insurance coverage is available but not obtained for the child. For purposes of this section, "available" means the insurance is a benefit of employment for a family member at an annual cost of no more than five percent of the family's annual income. For purposes of this section, insurance means health and accident insurance coverage, enrollment in a nonprofit health service plan, health maintenance organization, self-insured plan, or preferred provider organization.

Parents who have more than one child receiving services shall not be required to pay more than the amount for the child with the highest expenditures. There shall be no resource contribution from the parents. The parent shall not be required to pay a contribution in excess of the cost of the services provided to the child, not counting payments made to school districts for education-related services. Notice of an increase in fee payment must be given at least 30 days before the increased fee is due.

Subd. 2b. Child's responsibility. Responsibility of the child for the cost of care shall be up to the maximum amount of the total income and resources attributed to the child except for the clothing and personal needs allowance as provided in section 256B.35, subdivision 1. Reimbursement by the parents and child shall be made to the county making any payments for services. The county board may require payment of the full cost of caring for children whose parents or guardians do not reside in this state.

To the extent that a child described in subdivision 1 is eligible for benefits under chapter 62A, 62C, 62D, 62E, or 64B, the county is not liable for the cost of services.

Subd. 2c. Appeals. A parent may appeal the determination of an obligation to make a contribution under this section, according to section 256.045.

Subd. 3. Civil actions. If the parent fails to make appropriate reimbursement as required in subdivision 2a and 2b, the attorney general, at the request of the commissioner, may institute or direct the appropriate county attorney to institute civil action to recover the required reimbursement.

Subd. 4. [Repealed, 1986 c 414 s 5]

Subd. 4. **Order of payment.** If the parental contribution is for reimbursement for the cost of services to both the local agency and the medical assistance program, the local agency shall be reimbursed for its expenses first and the remainder must be deposited in the medical assistance account.

History: 1969 c 582 s 1; 1971 c 648 s 1,2; 1973 c 696 s 1; 1974 c 406 s 45; 1975 c 293 s 1; 1976 c 163 s 53; 1977 c 331 s 2,3; 1978 c 560 s 3; 1981 c 355 s 28,29; 1982 c 607 s 12; 1984 c 530 s 2,3; 1984 c 654 art 5 s 58; 1985 c 21 s 33; 1985 c 49 s 41; 1986 c 444; 1989 c 282 art 2 s 92; 1990 c 568 art 2 s 56; 1990 c 612 s 11; 1991 c 292 art 6 s 32,33; 1993 c 339 s 6,7; 1994 c 631 s 31

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.

Subd. 1a. **Service requirements.** The methods, materials, and settings used to provide semi-independent living services to a person must be designed to:

- (1) increase the person's independence in performing tasks and activities by teaching skills that reduce dependence on caregivers;
- (2) provide training in an environment where the skill being taught is typically used;
- (3) increase the person's opportunities to interact with nondisabled individuals who are not paid caregivers;
- (4) increase the person's opportunities to use community resources and participate in community activities, including recreational, cultural, and educational resources, stores, restaurants, religious services, and public transportation;
- (5) increase the person's opportunities to develop decision-making skills and to make informed choices in all aspects of daily living, including:
 - (i) selection of service providers;
 - (ii) goals and methods;
 - (iii) location and decor of residence;
 - (iv) roommates;

- (v) daily routines;
 - (vi) leisure activities; and
 - (vii) personal possessions;
- (6) provide daily schedules, routines, environments and interactions similar to those of nondisabled individuals of the same chronological age; and
- (7) comply with section 245.825, subdivision 1.

Subd. 2. [Repealed, 1991 c 292 art 6 s 59]

Subd. 3. **Reimbursement.** Counties shall be reimbursed for all expenditures made pursuant to subdivision 1 at a rate of 70 percent, up to the allocation determined pursuant to subdivisions 4, 4a, and 4b. However, the commissioner shall not reimburse costs of services for any person if the costs 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, and shall not reimburse costs of a one-time living allowance for any person if the costs exceed \$1,500 in a state fiscal year. For the biennium ending June 30, 1993, the commissioner shall not reimburse costs in excess of the 85th percentile of hourly service costs based upon the cost information supplied to the legislature in the proposed budget for the biennium. The commissioner may make payments to each county in quarterly installments. The commissioner may certify an advance of up to 25 percent of the allocation. Subsequent payments shall be made on a reimbursement basis for reported expenditures and may be adjusted for anticipated spending patterns.

Subd. 4. **Formula.** Effective January 1, 1992, the commissioner shall allocate funds on a calendar year basis. For calendar year 1992, funds shall be allocated based on each county's portion of the statewide reimbursement received under this section for state fiscal year 1991. For subsequent calendar years, funds shall be allocated based on each county's portion of the statewide expenditures eligible for reimbursement under this section during the 12 months ending on June 30 of the preceding calendar year.

If the legislature appropriates funds for special purposes, the commissioner may allocate the funds based on proposals submitted by the counties to the commissioner in a format prescribed by the commissioner. Nothing in this section prevents a county from using other funds to pay for additional costs of semi-independent living services.

Subd. 4a. **Formula limitation.** For calendar year 1993 and all subsequent years, the amounts computed pursuant to subdivision 4 shall be subject to the following limitation: no county shall be allocated an amount less than its guaranteed floor as provided in subdivision 4b. If the amount allocated to any county pursuant to subdivision 4 would be less than its guaranteed floor, the shortage shall be recovered proportionally from all counties which would be allocated more than their guaranteed floor.

Subd. 4b. **Guaranteed floor.** Each county with an original allocation for the preceding year that is equal to or less than the guaranteed floor minimum index shall have a guaranteed floor equal to its original allocation for the preceding year. Each county with an original allocation for the preceding year that is greater than the guaranteed floor minimum index shall have a guaranteed floor equal to the lesser of clause (1) or (2):

- (1) the county's original allocation for the preceding year; or
- (2) 70 percent of the county's reported expenditures eligible for reimbursement during the 12 months ending on June 30 of the preceding calendar year.

For calendar year 1993, the guaranteed floor minimum index shall be \$20,000. For each subsequent year, the index shall be adjusted by 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.

When the amount of funds available for allocation is less than the amount available in the previous year, each county's previous year allocation shall be reduced in proportion to the reduction in the statewide funding, to establish each county's guaranteed floor.

Subd. 4c. **Review of funds; reallocation.** After each quarter, the commissioner shall review county program expenditures. The commissioner may reallocate unexpended money at any time among those counties which have earned their full allocation.

Subd. 5. **Displaced hospital workers.** Providers of semi-independent living services shall make reasonable efforts to hire qualified employees of regional treatment center mental retardation units who have been displaced by reorganization, closure, or consolidation of regional treatment center mental retardation units.

Subd. 6. **Rules.** The commissioner may adopt emergency and permanent rules in accordance with chapter 14 to govern allocation, reimbursement, and compliance.

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

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.

Subd. 9. **Compliance.** If a county board or provider under contract with a county board to provide semi-independent living services does not comply with this section and the rules adopted by the commissioner of human services under this section, including the reporting requirements, the commissioner may recover, suspend, or withhold payments.

Subd. 10. **SILS: salary adjustments; rates.** In establishing, operating, or contracting for the provision of semi-independent living services, for the fiscal year beginning July 1, 1991, a county board must contract at rates to pay for increased salaries by multiplying the total salaries, payroll taxes, and fringe benefits related to personnel below top management by three percent. Any maximum rate limit shall be adjusted to provide for this provision. The state shall provide counties with proper reimbursement to cover these increased costs. County boards shall verify in writing to the commissioner that each semi-independent living service provider has complied with this requirement. If a county board determines that a semi-independent living service provider has not complied with this requirement for a specific contract period, the county board shall reduce the provider's payment rates for the next contract period to reflect the amount

of money not spent appropriately. The commissioner shall modify reporting requirements for providers and counties as necessary to monitor compliance with this provision.

History: 1983 c 310 s 1; 1984 c 640 s 32; 1984 c 654 art 5 s 58; 1985 c 21 s 34,35; 1986 c 444; 1987 c 403 art 2 s 56-59; 1989 c 89 s 4; 1989 c 209 art 2 s 1; 1991 c 292 art 4 s 8; art 6 s 34; 1Sp1993 c 1 art 4 s 1,2

252.28 COMMISSIONER OF HUMAN SERVICES; DUTIES.

Subdivision 1. Determinations; redeterminations. In conjunction with the appropriate county boards, the commissioner of human services shall determine, and shall redetermine at least every four years, the need, location, size, and program of public and private residential services and day training and habilitation services for persons with mental retardation or related conditions. This subdivision does not apply to semi-independent living services and residential-based habilitation services provided to four or fewer persons at a single site funded as home and community-based services.

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

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

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

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

(2) In determining whether a license shall be issued pursuant to this subdivision, the commissioner of human services shall specifically consider the population, size, land use plan, availability of community services and the number and size of existing public and private community residential facilities in the town, municipality or county in which a licensee seeks to operate a residence. Under no circumstances may the commissioner newly license any facility pursuant to this section except as provided in section 245A.11. The commissioner of human services shall establish uniform rules to implement the provisions of this subdivision.

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

(4) No new license shall be granted for a residential program that provides home and community-based waived services to more than four individuals at a site, except as authorized by the commissioner for emergency situations that would result in the placement of individuals into regional treatment centers. Such licenses shall not exceed 24 months.

(5) The commissioner shall not approve a determination of need application that requests that an existing residential program license under Minnesota Rules, parts 9525.0215 to 9525.0355 be modified in a manner that would result in the issuance of two or more licenses for the same residential program at the same location.

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

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Subd. 5. **Appeals.** A county may appeal a determination of need, size, location, or program according to chapter 14. Notice of appeals must be provided to the commissioner within 30 days after the receipt of the commissioner's determination.

History: 1971 c 229 s 1; 1975 c 60 s 1; 1976 c 149 s 50; 1976 c 243 s 14; 1980 c 612 s 2; 1983 c 312 art 9 s 2; 1984 c 654 art 5 s 58; 1985 c 21 s 36; 1985 c 248 s 70; 1Sp1985 c 9 art 2 s 28; 1989 c 209 art 2 s 1; 1991 c 292 art 6 s 35-37; 1992 c 513 art 9 s 21

252.29 [Repealed, 1976 c 149 s 63]

252.291 LIMITATION ON DETERMINATION OF NEED.

Subdivision 1. **Moratorium.** Notwithstanding section 252.28, subdivision 1, or any other law or rule to the contrary, the commissioner of human services shall deny any request for a determination of need and refuse to grant a license pursuant to section 245A.02 for any new intermediate care facility for persons with mental retardation or related conditions or for an increase in the licensed capacity of an existing facility except as provided in this subdivision and subdivision 2. The total number of certified intermediate care beds for persons with mental retardation or related conditions in community facilities and state hospitals shall not exceed 7,000 beds except that, to the extent that federal authorities disapprove any applications of the commissioner for home and community-based waivers under United States Code, title 42, section 1396n, as amended through December 31, 1987, the commissioner may authorize new intermediate care beds, as necessary, to serve persons with mental retardation or related conditions who would otherwise have been served under a proposed waiver. "Certified bed" means an intermediate care bed for persons with mental retardation or related conditions certified by the commissioner of health for the purposes of the medical assistance program under United States Code, title 42, sections 1396 to 1396p, as amended through December 31, 1987.

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.

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, 1987, 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, 1987; 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.

Subd. 4. Monitoring. The commissioner of human services, in coordination with the commissioner of health, shall implement mechanisms to monitor and analyze the effect of the bed moratorium in the different geographic areas of the state. The commissioner of human services shall submit to the legislature annually beginning January 15, 1984, an assessment of the impact of the moratorium by geographic areas.

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

History: 1983 c 312 art 9 s 3; 1984 c 640 s 32; 1984 c 654 art 5 s 58; 1985 c 21 s 37; 1987 c 185 art 2 s 1; 1987 c 333 s 22; 1988 c 689 art 2 s 111-113; 1989 c 282 art 6 s 18

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

252.293 EMERGENCY RELOCATIONS.

Subdivision 1. Emergency transfers. In emergency situations, the commissioner of human services may order the relocation of existing intermediate care facility for persons with mental retardation or related conditions beds, transfer residents, and establish an interim payment rate under the procedures contained in Minnesota Rules, part 9553.0075, for up to two years, as necessary to ensure the replacement of the original services for the residents. The payment rate must be based on projected costs and is subject to settle up. An emergency situation exists when it appears to the commissioner of human services that the health, safety, or welfare of residents may be in jeopardy due to imminent or actual loss of use of the physical plant or damage to the physical plant making it temporarily or permanently uninhabitable. The subsequent rate for a facility providing services for the same resident following the temporary emergency situation must be based upon the costs incurred during the interim period if the residents are permanently placed in the same facility. If the residents need to be relocated for permanent placements, the temporary emergency location must close and the procedures for establishing rates for newly constructed or newly established facilities must be followed. This provision regarding emergency situations does not apply to facilities placed in receivership by the commissioner of human services under section 245A.12 or 245A.13, or facilities that have rates set under section 252.292, subdivision 4, or to relocations of residents to existing facilities.

Subd. 2. Approval of temporary locations. The commissioner of human services shall notify the commissioner of health of the existence of the emergency and the decision to order the relocation of residents. This notice shall also identify the temporary location or locations selected by the commissioner of human services for the relocation of the residents. Notwithstanding the provisions of section 252.291, the commissioner of health may license and certify the temporary location or locations as an intermediate care facility for persons with mental retardation or related conditions if the location complies with the applicable state rules and federal regulations. The facility from which the residents were relocated shall not be used to house residents until the commissioner of human services authorizes the return of residents to the facility and the commissioner of health verifies that the facility complies with the applicable state and federal regulations. If the temporary location closes under the provisions of subdivision 1, the license and certification of the temporary location is voided. The voiding of the license and certification shall not be considered as a suspension, revocation, or nonrenewal of the license or as an involuntary decertification of the facility.

History: 1991 c 292 art 6 s 38

252.30 AUTHORIZATION TO MAKE GRANTS FOR COMMUNITY RESIDENTIAL FACILITIES.

The commissioner of human services may make grants to nonprofit organizations,

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

History: 1973 c 673 s 2; 1980 c 367 s 1; 1984 c 654 art 5 s 58; 1985 c 21 s 38; 1985 c 248 s 70; 1986 c 444

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: 1976 c 149 s 51; 1983 c 260 s 54; 1984 c 654 art 5 s 58; 1985 c 21 s 39; 1989 c 282 art 6 s 19

252.32 FAMILY SUPPORT PROGRAM.

Subdivision 1. Program established. In accordance with state policy established in section 256F.01 that all children are entitled to live in families that offer safe, nurturing, permanent relationships, and that public services be directed toward preventing the unnecessary separation of children from their families, and because many families who have children with mental retardation or related conditions have special needs and expenses that other families do not have, the commissioner of human services shall establish a program to assist families who have dependents with mental retardation or related conditions living in their home. The program shall make support grants available to the families.

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.

Subd. 2. Individual service plan. Before a support grant is issued, an individual service plan for the dependent as required by section 256E.08 and the rules adopted thereunder, or an individual service plan as requested by the family and defined in 256B.092, shall be developed by the county social service agency and agreed upon by the parents. A transitional plan shall be developed for the dependent when the dependent turns age 17 in order to assure an orderly transition to other services when the family terminates services from this program and to assure that an application is made for supplemental security income and other benefits.

Subd. 3. Amount of support grant; use. Support grant amounts shall be determined by the commissioner of human services. Each service and item purchased with a support grant must:

- (1) be over and above the normal costs of caring for the dependent if the dependent did not have a disability;
- (2) be directly attributable to the dependent's disabling condition; and
- (3) enable the family to delay or prevent the out-of-home placement of the dependent.

The design and delivery of services and items purchased under this section must suit the dependent's chronological age and be provided in the least restrictive environment possible, consistent with the needs identified in the individual service plan.

Items and services purchased with support grants must be those for which there are no other public or private funds available to the family. Fees assessed to parents for health or human services that are funded by federal, state, or county dollars are not reimbursable through this program.

The maximum monthly amount shall be \$250 per eligible dependent, or \$3,000 per eligible dependent per state fiscal year, within the limits of available funds. During fiscal year 1992 and 1993, the maximum monthly grant awarded to families who are eligible for medical assistance shall be \$200, except in cases where extreme hardship is demonstrated. The commissioner may consider the dependent's supplemental security income in determining the amount of the support grant. A variance may be granted by the commissioner to exceed \$3,000 per state fiscal year per eligible dependent for emergency circumstances in cases where exceptional resources of the family are required to meet the health, welfare-safety needs of the child. The commissioner may set aside up to five percent of the appropriation to fund emergency situations.

Subd. 3a. Reports and reimbursement. The commissioner shall specify requirements for quarterly fiscal and annual program reports according to section 256.01, subdivision 2, paragraph (17). Program reports shall include data which will enable the commissioner to evaluate program effectiveness and to audit compliance. The commissioner shall reimburse county costs on a quarterly basis.

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Subd. 3b. **Federal funds.** The commissioner and the counties shall make every reasonable effort to maximize the use of federal funds for family supports.

Subd. 3c. **County board responsibilities.** County boards receiving funds under this section shall:

- (1) determine the needs of families for services in accordance with section 256B.092 or 256E.08 and any rules adopted under those sections;
- (2) determine the eligibility of all persons proposed for program participation;
- (3) recommend for approval all items and services to be reimbursed and inform families of the commissioner's approval decision;
- (4) issue support grants directly to, or on behalf of, eligible families;
- (5) inform recipients of their right to appeal under subdivision 3e;
- (6) submit quarterly financial reports under subdivision 3b; and
- (7) coordinate services with other programs offered by the county.

Subd. 3d. **Appeals.** The denial, suspension, or termination of services under this program may be appealed by a recipient or application under section 256.045, subdivision 3.

Subd. 4. **Rulemaking.** The commissioner shall amend permanent rules to govern grant applications under this section, criteria for approval, and other areas necessary to implement this program.

Subd. 5. **Compliance.** If a county board or grantee does not comply with this section and the rules adopted by the commissioner of human services, the commissioner may recover, suspend, or withhold payments.

History: 1983 c 312 art 1 s 22; 1984 c 654 art 5 s 58; 1985 c 21 s 40; 1986 c 414 s 4; 1987 c 333 s 22; 1991 c 292 art 6 s 39; 1993 c 339 s 8

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 economic security, 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 rehabilitation facilities as defined in section 268A.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; 1988 c 689 art 2 s 268; 1994 c 483 s 1

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 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.

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 seven 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: 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 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: 1987 c 403 art 5 s 9; 1988 c 532 s 2; 1989 c 209 art 2 s 1; 1989 c 282 art 6 s 20; 1Sp1993 c 1 art 4 s 3

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 245A.01 to 245A.16 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; 1989 c 209 art 2 s 1

252.431 SUPPORTED EMPLOYMENT SERVICES; DEPARTMENTAL DUTIES; COORDINATION.

The commissioners of economic security, human services, and education shall ensure that supported employment services provided as part of a comprehensive service system will:

(1) provide the necessary supports to assist persons with severe disabilities to obtain and maintain employment in normalized work settings available to the general work force that:

(i) maximize community and social integration; and

(ii) provide job opportunities that meet the individual's career potential and interests;

(2) allow persons with severe disabilities to actively participate in the planning and delivery of community-based employment services at the individual, local, and state level; and

(3) be coordinated among the departments of human services, economic security, and education to:

(i) promote the most efficient and effective funding;

(ii) avoid duplication of services; and

(iii) improve access and transition to employability services.

The commissioners of economic security, human services, and education shall report to the legislature by January 1993 on the steps taken to implement this section.

History: 1992 c 459 s 1; 1994 c 483 s 1

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;

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- (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 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;
- (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; 1991 c 292 art 6 s 58 subd 2

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 MS 1993 Supp [Expired April 25 1994]

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 maxi-

imum 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. 15. [Repealed, 1992 c 513 art 9 s 44]

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: 1987 c 403 art 5 s 14; 1988 c 532 s 3-8; 1988 c 689 art 2 s 114-117; 1989 c 282 art 2 s 93-98; 1990 c 568 art 3 s 8-12; 1991 c 292 art 4 s 9-11; art 6 s 40; 1992 c 513 art 7 s 12; 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: 1987 c 403 art 5 s 15; 1988 c 532 s 9; 1989 c 282 art 2 s 99; 1Sp1993 c 1 art 4 s 7

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

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. The commissioner must develop the state-operated community residential facilities authorized in the worksheets of the house appropriations and senate finance committees. If financing through state general obligation bonds is not available, the commissioner shall finance the purchase or construction of state-operated, community-based facilities with the Minnesota housing finance agency. The commissioner shall make payments through the department of administration to the Minnesota housing finance agency in repayment of mortgage loans granted for the purposes of this section. Programs must be adaptable to the needs of persons with mental retardation or related conditions and residential programs must be home-like.

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.

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: 1988 c 689 art 2 s 109; 1989 c 282 art 6 s 21; 1991 c 292 art 6 s 41; 1992 c 513 art 9 s 22; 1Sp1993 c 1 art 7 s 34

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

252.52 REGIONAL CENTER AND COMMUNITY-BASED FACILITY EMPLOYEES.

In accordance with section 43A.21, the commissioner shall develop procedures to assure that:

- (1) there are workers employed at state regional centers and nursing homes who are skilled in the treatment of persons with severe and profound mental retardation or related conditions, behavioral problems, and medical needs to facilitate adjustment to community living;
- (2) suitable training programs exist for regional treatment center and state-operated, community-based residential facility staff; and
- (3) state employees under the jurisdiction of the commissioner who are included in a position reduction plan have the option of transferring to a community-based program; to a similar, comparable classification in another regional center setting; or to a position in another state agency.

History: 1988 c 689 art 2 s 110