

CHAPTER 252

HOSPITALS AND COMMUNITY SERVICES FOR
PERSONS WITH MENTAL RETARDATION

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252.025 STATE HOSPITALS FOR PERSONS WITH MENTAL RETARDATION.

Subdivision 1. **Regional treatment centers.** State hospitals for persons with mental retardation shall be established and maintained at Faribault until June 30, 1998, 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.

[For text of subd 2, see M.S.1996]

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, 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 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 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.

[For text of subds 5 and 6, see M.S.1996]

Subd. 7. **Minnesota extended treatment options.** The commissioner shall develop by July 1, 1997, the Minnesota extended treatment options to serve Minnesotans who have mental retardation and exhibit severe behaviors which present a risk to public safety. This program must provide specialized residential services on the Cambridge campus and an array of community support services statewide.

History: 1997 c 203 art 7 s 7–9

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.

History: 1997 c 7 art 2 s 37

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

[For text of subs 1 to 5, see M.S.1996]

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

[For text of subs 7 to 9, see M.S.1996]

History: 1997 c 7 art 5 s 26

252.28 COMMISSIONER OF HUMAN SERVICES; DUTIES.

[For text of subs 1 to 3, see M.S.1996]

Subd. 3a. **Licensing exception.** Notwithstanding the provisions of subdivision 3, the commissioner may license service sites, each accommodating up to six residents moving from a 48-bed intermediate care facility for persons with mental retardation or related conditions located in Dakota county that is closing under section 252.292.

[For text of subs 4 and 5, see M.S.1996]

History: 1997 c 203 art 3 s 5

252.291 LIMITATION ON DETERMINATION OF NEED.

[For text of subs 1 and 2, see M.S.1996]

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. The biennial mental retardation plan shall include but not be limited to:

- (1) county by county maximum intermediate care bed utilization quotas;
- (2) plans for the development of the number and types of services alternative to intermediate care beds;
- (3) procedures for the administration and management of the plan;
- (4) procedures for the evaluation of the implementation of the plan; and
- (5) the number, type, and location of intermediate care beds targeted for decertification.

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

[For text of subd 4, see M.S.1996]

Subd. 5. Rulemaking. The commissioner of human services shall promulgate rules pursuant to chapter 14, the Administrative Procedure Act, to implement this section.

History: 1997 c 7 art 2 s 38; art 5 s 27

252.294 CRITERIA FOR DOWNSIZING OF FACILITIES.

The commissioner of human services shall develop a process to evaluate and rank proposals for the voluntary downsizing or closure of intermediate care facilities for persons with mental retardation or related conditions using the following guidelines:

- (1) the extent to which the option matches overall policy direction of the department;
- (2) the extent to which the option demonstrates respect for individual needs and allows implementation of individual choice;
- (3) the extent to which the option addresses safety, privacy, and other programmatic issues;
- (4) the extent to which the option appropriately redesigns the overall community capacity; and
- (5) the cost of each option.

The process shall, to the extent feasible, be modeled on the nursing home moratorium exception process, including procedures for administrative evaluation and approval of projects within the limit of appropriations made available by the legislature.

History: 1997 c 203 art 9 s 4

252.32 FAMILY SUPPORT PROGRAM.

[For text of subd 1, see M.S.1996]

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 legal guardian to the county social service agency. The application shall specify the needs of the families, the form of the

grant requested by the families, and that the families have agreed to use the support grant for items and services within the designated reimbursable expense categories and recommendations of the county.

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

[For text of subd 2, see M.S.1996]

Subd. 3. Amount of support grant; use. Support grant amounts shall be determined by the county social service agency. 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. The county social service agency may consider the dependent's supplemental security income in determining the amount of the support grant. The county social service agency may 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 county social service agency may set aside up to five percent of its allocation to fund emergency situations.

Effective July 1, 1997, county social service agencies shall continue to provide funds to families receiving state grants on June 30, 1997, if eligibility criteria continue to be met. Any adjustments to their monthly grant amount must be based on the needs of the family and funding availability.

Subd. 3a. Reports and allocations. (a) 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.

(b) Beginning January 1, 1998, the commissioner shall allocate state funds made available under this section to county social service agencies on a calendar year basis. The commissioner shall allocate to each county first in amounts equal to each county's guaranteed floor as described in clause (1), and second, any remaining funds, after the allocation of funds to the newly participating counties as provided for in clause (3), shall be allocated in proportion to each county's total number of families receiving a grant on July 1 of the most recent calendar year.

(1) Each county's guaranteed floor shall be calculated as follows:

(i) 95 percent of the county's allocation received in the preceding calendar year. For the calendar year 1998 allocation, the preceding calendar year shall be considered to be double the six-month allocation as provided in clause (2);

(ii) when the amount of funds available for allocation is less than the amount available in the preceding year, each county's previous year allocation shall be reduced in proportion to the reduction in statewide funding, for the purpose of establishing the guaranteed floor.

(2) For the period July 1, 1997, to December 31, 1997, the commissioner shall allocate to each county an amount equal to the actual, state approved grants issued to the families for

the month of January 1997, multiplied by six. This six-month allocation shall be combined with the calendar year 1998 allocation and be administered as an 18-month allocation.

(3) At the commissioner's discretion, funds may be allocated to any nonparticipating county that requests an allocation under this section. Allocations to newly participating counties are dependent upon the availability of funds, as determined by the actual expenditure amount of the participating counties for the most recently completed calendar year.

(4) The commissioner shall regularly review the use of family support fund allocations by county. The commissioner may reallocate unexpended or unencumbered money at any time to those counties that have a demonstrated need for additional funding.

(c) County allocations under this section will be adjusted for transfers that occur according to section 256.476 or when the county of financial responsibility changes according to chapter 256G for eligible recipients.

[For text of subd 3b, see M.S.1996]

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) approve a plan for items and services to be reimbursed and inform families of the county'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 indicate on the screening documents the annual grant level for each family, the families denied grants, and the families eligible but waiting for funding; and

(7) coordinate services with other programs offered by the county.

[For text of subd 3d, see M.S.1996]

Subd. 4. [Repealed, 1997 c 203 art 7 s 29]

Subd. 5. Compliance. If a county board or grantee does not comply with this section, the commissioner may recover, suspend, or withhold payments.

History: 1997 c 203 art 7 s 10-14

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 252.46 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 252.46 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: 1997 c 7 art 1 s 96

252.41 DEFINITIONS.

Subdivision 1. Scope. The definitions in this section apply to sections 252.40 to 252.46.

[For text of subs 2 to 9, see M.S.1996]

History: 1997 c 7 art 1 s 97

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 252.46 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: 1997 c 7 art 1 s 98

252.46 PAYMENT RATES.

Subdivision 1. **Rates.** (a) 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.

(b) The commissioner may also approve an hourly job-coach, follow-along rate for services provided by one employee at or en route to or from community locations to supervise, support, and assist one person receiving the vendor's services to learn job-related skills necessary to obtain or retain employment when and where no other persons receiving services are present and when all the following criteria are met:

- (1) the vendor requests and the county recommends the optional rate;
- (2) the service is prior authorized by the county on the Medicaid Management Information System for no more than 414 hours in a 12-month period and the daily per person charge to medical assistance does not exceed the vendor's approved full day plus transportation rates;
- (3) separate full day, partial day, and transportation rates are not billed for the same person on the same day;
- (4) the approved hourly rate does not exceed the sum of the vendor's current average hourly direct service wage, including fringe benefits and taxes, plus a component equal to the vendor's average hourly nondirect service wage expenses; and
- (5) the actual revenue received for provision of hourly job-coach, follow-along services is subtracted from the vendor's total expenses for the same time period and those adjusted expenses are used for determining recommended full day and transportation payment rates under subdivision 5 in accordance with the limitations in subdivision 3.

(c) 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 252.46. 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.

[For text of subs 2 to 9, see M.S.1996]

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 commis-

sioner. The reports shall include programmatic and fiscal information. Fiscal information shall be provided in an annual audit that complies with the requirements of Minnesota Rules, parts 9550.0010 to 9550.0092. The audit must be done according to 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 county's annual audit shall satisfy the audit required under this subdivision for any county-operated day training and habilitation program. Except for day training and habilitation programs operated by a county, the audit must provide supplemental statements for each day training and habilitation program with an approved unique set of rates.

[For text of subds 11 to 20, see M.S.1996]

History: 1997 c 7 art 1 s 99; 1997 c 36 s 1

252.50 STATE-OPERATED PROGRAMS.

[For text of subds 1 to 5, see M.S.1996]

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 252.46 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.

[For text of subds 7 to 11, see M.S.1996]

History: 1997 c 7 art 1 s 100

252.53 [Repealed, 1997 c 248 s 51]