CHAPTER 252
SERVICES FOR PERSONS WITH DEVELOPMENTAL DISABILITIES

252.001 MS 2006 [Renumbered 15.001]

252.01 [Repealed, 1961 c 137 s 2]

252.011 [Repealed, 1961 c 137 s 2]

252.015 [Repealed, 1961 c 137 s 2]

252.02 [Repealed, 1961 c 137 s 2]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 DEVELOPMENTAL DISABILITIES.

Subdivision 1. [Repealed, 1Sp2003 c 14 art 6 s 68]

Subd. 2. [Repealed, 1Sp2003 c 14 art 6 s 68]

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 [Repealed, 1975 c 242 s 3]

Subd. 4. [Repealed, 1Sp2003 c 14 art 6 s 68]

Subd. 5. [Repealed, 1Sp2003 c 14 art 6 s 68]

Subd. 6. [Repealed, 1Sp2003 c 14 art 6 s 68]

Subd. 7. **Minnesota extended treatment options.** The commissioner shall develop by July 1, 1997, the Minnesota extended treatment options to serve Minnesotans who have developmental disabilities and exhibit severe behaviors which present a risk to public safety. This program is statewide and must provide specialized residential services in Cambridge and an array of community-based services with sufficient levels of care and a sufficient number of specialists to ensure that individuals referred to the program receive the appropriate care. The individuals working in the community-based services under this section are state employees supervised by the commissioner of human services. No layoffs shall occur as a result of restructuring under this section.

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; 1997 c 203 art 7 s 7-9; 1Sp2003 c 14 art 6 s 37; 2005 c 56 s 1; 2009 c 79 art 3 s 17*

252.03 [Repealed, 1977 c 415 s 5]

252.032 [Repealed, 1Sp2003 c 14 art 6 s 68]

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: *1989 c 282 art 6 s 16; 1997 c 7 art 2 s 37*

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]

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 developmental disabilities 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 developmentally disabled 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; 2005 c 56 s 1*

252.06 SHERIFF TO TRANSPORT PERSONS.

It shall be the duty of the sheriff of any county, upon the request of the commissioner of human services, to take charge of, transport, and deliver any person who has been committed by the district court of any county to the care and custody of the commissioner of human services to a state-operated services facility as may be designated by the commissioner of human services.

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; 1995 c 189 s 8; 1996 c 277 s 1; 1Sp2003 c 14 art 6 s 38*

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 developmental disability 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 developmental disability is not the same sex as the sheriff, the sheriff shall appoint some suitable person of the same sex as the person with developmental disability 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; 2005 c 56 s 1*

252.08 DISTRICT 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 a district court judge of the county and paid by the county auditor and county treasurer upon the written order of the judge without other or further allowance.

History: *(4505) 1921 c 76 s 3; 1995 c 189 s 8; 1996 c 277 s 1*

252.09 COURSES OF INSTRUCTION FOR TEACHERS.

The commissioner of human services may establish and maintain at the state hospital for persons with developmental disabilities at Faribault courses of instruction for teachers and

others interested in the care and training of persons with developmental disabilities 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; 2005 c 56 s 1*

252.10 [Repealed, 1Sp2003 c 14 art 6 s 68]

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 [Repealed, 2007 c 147 art 7 s 76]

252.22 [Repealed, 2007 c 147 art 7 s 76]

252.23 [Repealed, 2007 c 147 art 7 s 76]

252.24 [Repealed, 2007 c 147 art 7 s 76]

252.25 [Repealed, 2007 c 147 art 7 s 76]

252.26 [Repealed, 1981 c 355 s 34]

252.261 [Repealed, 2007 c 147 art 7 s 76]

252.27 CHILDREN'S SERVICES; PARENTAL CONTRIBUTION.

Subdivision 1. **County of financial responsibility.** Whenever any child who has a developmental disability, 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 "related condition" is a condition: (1) that is found to be closely related to a developmental disability, including, but not limited to, cerebral palsy, epilepsy, autism, fetal alcohol spectrum disorder, and Prader-Willi syndrome; and (2) that meets all of the following criteria:

(i) is severe and chronic;

(ii) results in impairment of general intellectual functioning or adaptive behavior similar to that of persons with developmental disabilities;

(iii) requires treatment or services similar to those required for persons with developmental disabilities;

(iv) is manifested before the person reaches 22 years of age;

(v) is likely to continue indefinitely;

(vi) results in substantial functional limitations in three or more of the following areas of major life activity: (A) self-care, (B) understanding and use of language, (C) learning, (D) mobility, (E) self-direction, or (F) capacity for independent living; and

(vii) is not attributable to mental illness as defined in section 245.462, subdivision 20, or an emotional disturbance as defined in section 245.4871, subdivision 15.

For purposes of item (vii), notwithstanding section 245.462, subdivision 20, or 245.4871, subdivision 15, "mental illness" does not include autism or other pervasive developmental disorders.

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:

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

(2) 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 to the cost of services used by making monthly payments on a sliding scale based on income, 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. The parental contribution is a partial or full payment for medical services provided for diagnostic, therapeutic, curing, treating, mitigating, rehabilitation, maintenance, and personal care services as defined in United States Code, title 26, section 213, needed by the child with a chronic illness or disability.

(b) For households with adjusted gross income equal to or greater than 100 percent of federal poverty guidelines, the parental contribution shall be computed by applying the following schedule of rates to the adjusted gross income of the natural or adoptive parents:

(1) if the adjusted gross income is equal to or greater than 100 percent of federal poverty guidelines and less than 175 percent of federal poverty guidelines, the parental contribution is $4 per month;

(2) if the adjusted gross income is equal to or greater than 175 percent of federal poverty guidelines and less than or equal to 545 percent of federal poverty guidelines, the parental contribution shall be determined using a sliding fee scale established by the commissioner of human services which begins at one percent of adjusted gross income at 175 percent of federal poverty guidelines and increases to 7.5 percent of adjusted gross income for those with adjusted gross income up to 545 percent of federal poverty guidelines;

(3) if the adjusted gross income is greater than 545 percent of federal poverty guidelines and less than 675 percent of federal poverty guidelines, the parental contribution shall be 7.5 percent of adjusted gross income;

(4) if the adjusted gross income is equal to or greater than 675 percent of federal poverty guidelines and less than 975 percent of federal poverty guidelines, the parental contribution shall be determined using a sliding fee scale established by the commissioner of human services which begins at 7.5 percent of adjusted gross income at 675 percent of federal poverty guidelines and increases to ten percent of adjusted gross income for those with adjusted gross income up to 975 percent of federal poverty guidelines; and

(5) if the adjusted gross income is equal to or greater than 975 percent of federal poverty guidelines, the parental contribution shall be 12.5 percent of adjusted gross income.

If the child lives with the parent, the annual adjusted gross income is reduced by $2,400 prior to calculating the parental contribution. 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, 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, except, effective retroactive to July 1, 2003, taxable capital gains to the extent the funds have been used to purchase a home shall not be counted as income.

(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 redetermination 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. All reimbursements must include a notice that the amount reimbursed may be taxable income if the parent paid for the parent's fees through an employer's health care flexible spending account under the Internal Revenue Code, section 125, and that the parent is responsible for paying the taxes owed on the amount reimbursed.

(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). An amount equal to the annual court-ordered child support payment actually paid on behalf of the child receiving services shall be deducted from the adjusted gross income of the parent making the payment prior to calculating the parental contribution under paragraph (b).

(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.

(i) The contribution under paragraph (b) shall be reduced by $300 per fiscal year if, in the 12 months prior to July 1:

(1) the parent applied for insurance for the child;

(2) the insurer denied insurance;

(3) the parents submitted a complaint or appeal, in writing to the insurer, submitted a complaint or appeal, in writing, to the commissioner of health or the commissioner of commerce, or litigated the complaint or appeal; and

(4) as a result of the dispute, the insurer reversed its decision and granted insurance.

For purposes of this section, "insurance" has the meaning given in paragraph (h).

A parent who has requested a reduction in the contribution amount under this paragraph shall submit proof in the form and manner prescribed by the commissioner or county agency, including, but not limited to, the insurer's denial of insurance, the written letter or complaint of the parents, court documents, and the written response of the insurer approving insurance. The determinations of the commissioner or county agency under this paragraph are not rules subject to chapter 14.

(j) Notwithstanding paragraph (b), for the period from July 1, 2010, to June 30, 2013, the parental contribution shall be computed by applying the following contribution schedule to the adjusted gross income of the natural or adoptive parents:

(1) if the adjusted gross income is equal to or greater than 100 percent of federal poverty guidelines and less than 175 percent of federal poverty guidelines, the parental contribution is $4 per month;

(2) if the adjusted gross income is equal to or greater than 175 percent of federal poverty guidelines and less than or equal to 525 percent of federal poverty guidelines, the parental contribution shall be determined using a sliding fee scale established by the commissioner of human services which begins at one percent of adjusted gross income at 175 percent of federal poverty guidelines and increases to eight percent of adjusted gross income for those with adjusted gross income up to 525 percent of federal poverty guidelines;

(3) if the adjusted gross income is greater than 525 percent of federal poverty guidelines and less than 675 percent of federal poverty guidelines, the parental contribution shall be 9.5 percent of adjusted gross income;

(4) if the adjusted gross income is equal to or greater than 675 percent of federal poverty guidelines and less than 900 percent of federal poverty guidelines, the parental contribution shall be determined using a sliding fee scale established by the commissioner of human services which begins at 9.5 percent of adjusted gross income at 675 percent of federal poverty guidelines and increases to 12 percent of adjusted gross income for those with adjusted gross income up to 900 percent of federal poverty guidelines; and

(5) if the adjusted gross income is equal to or greater than 900 percent of federal poverty guidelines, the parental contribution shall be 13.5 percent of adjusted gross income. If the child lives with the parent, the annual adjusted gross income is reduced by $2,400 prior to calculating the parental contribution. 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.

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. [Repealed, 1995 c 207 art 6 s 124]

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. 4a. **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.

Subd. 5. **Determination; redetermination; notice.** A determination order and notice of parental fee shall be mailed to the parent at least annually, or more frequently as provided in Minnesota Rules, parts 9550.6220 to 9550.6229. The determination order and notice shall contain the following information:

(1) the amount the parent is required to contribute;

(2) notice of the right to a redetermination and appeal; and

(3) the telephone number of the division at the Department of Human Services that is responsible for redeterminations.

Subd. 6. **Appeals.** A parent may appeal the determination or redetermination of an obligation to make a contribution under this section, according to section 256.045. The parent

must make a request for a hearing in writing within 30 days of the date the determination or redetermination order is mailed, or within 90 days of such written notice if the parent shows good cause why the request was not submitted within the 30-day time limit. The commissioner must provide the parent with a written notice that acknowledges receipt of the request and notifies the parent of the date of the hearing. While the appeal is pending, the parent has the rights regarding making payment that are provided in Minnesota Rules, part 9550.6235. If the commissioner's determination or redetermination is affirmed, the parent shall, within 90 calendar days after the date an order is issued under section 256.045, subdivision 5, pay the total amount due from the effective date of the notice of determination or redetermination that was appealed by the parent. If the commissioner's order under this subdivision results in a decrease in the parental fee amount, any payments made by the parent that result in an overpayment shall be credited to the parent as provided in Minnesota Rules, part 9550.6235, subpart 3.

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; 1995 c 207 art 6 s 4-8; 1996 c 451 art 2 s 3; 1Sp2003 c 14 art 6 s 39; 2004 c 288 art 3 s 13; 2005 c 56 s 1; 1Sp2005 c 4 art 3 s 5; 2007 c 147 art 7 s 2; 2009 c 145 s 1; 2009 c 147 s 1; 2009 c 159 s 84; 1Sp2010 c 1 art 17 s 6*

252.275 SEMI-INDEPENDENT LIVING SERVICES FOR PERSONS WITH DEVELOPMENTAL DISABILITIES.

Subdivision 1. **Program.** The commissioner of human services shall establish a statewide program to provide support for persons with developmental disabilities 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 developmental disabilities 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 onetime 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 developmental disability'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 developmental disabilities in the absence of less restrictive services.

Semi-independent living services costs and onetime 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 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 a developmental disability for the same fiscal year, and shall not reimburse costs of a onetime living allowance for any person if the costs exceed $1,500 in a state fiscal year. 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.** The commissioner shall allocate funds on a calendar year basis. Beginning with the calendar year in the 1996 grant period, funds shall be allocated first in amounts equal to each county's guaranteed floor according to subdivision 4b, with any remaining available funds 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. [Repealed, 1995 c 207 art 3 s 23]

Subd. 4b. **Guaranteed floor.** Each county 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.

Notwithstanding this subdivision, no county shall be allocated a guaranteed floor of less than $1,000.

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. [Repealed, 2007 c 147 art 7 s 76]

Subd. 6. **Rules.** The commissioner may adopt 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 December 31, 1995.

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. [Repealed, 1995 c 207 art 3 s 23]

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; 1995 c 207 art 3 s 2-4; 1997 c 7 art 5 s 26; 1Sp2001 c 9 art 3 s 3; 2002 c 379 art 1 s 113; 2005 c 56 s 1*

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, anticipated growth or decline in need until the next anticipated redetermination, location, size, and program of public and private day training and habilitation services for persons with developmental disabilities. 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. A determination of need shall not be required for a change in ownership.

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 developmental disabilities, including state hospitals under control of the commissioner and serving persons with developmental disabilities, and excluding persons with developmental disabilities residing with their families.

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

Subd. 3. **Licensing determinations.** (a) 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.

(b) 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.

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

(d) No new license shall be granted for a residential program that provides home and community-based waivered 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.

(e) 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. 3a. **Licensing exception.** (a) 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 developmental disabilities located in Dakota County that is closing under section 252.292.

(b) Notwithstanding the provisions of any other state law or administrative rule, the rate provisions of section 256I.05, subdivision 1, apply to the exception in this subdivision.

(c) If a service site is licensed for six persons according to this subdivision, the capacity of the license may remain at six persons.

Subd. 3b. **Olmsted County licensing exemption.** (a) Notwithstanding subdivision 3, the commissioner may license service sites each accommodating up to five residents moving from a 43-bed intermediate care facility for persons with developmental disabilities located in Olmsted County that is closing under section 252.292.

(b) Notwithstanding the provisions of any other state law or administrative rule, the rate provisions of section 256I.05, subdivision 1, apply to the exception in this subdivision.

(c) If a service site is licensed for five persons according to this subdivision, the capacity of the license may remain at five persons.

Subd. 4. **Rules; decertification of beds.** The commissioner shall promulgate in rule criteria for decertification of beds in intermediate care facilities for persons with developmental disabilities, 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 developmental disabilities 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.

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; 1997 c 203 art 3 s 5; 1999 c 159 s 31; 1999 c 245 art 3 s 9; 2000 c 474 s 5; 2000 c 488 art 9 s 5; 2001 c 203 s 3,4; 2004 c 288 art 1 s 75; 2005 c 56 s 1*

252.282 ICF/MR LOCAL SYSTEM NEEDS PLANNING.

Subdivision 1. **Host county responsibility.** (a) For purposes of this section, "local system needs planning" means the determination of need for ICF/MR services by program type, location, demographics, and size of licensed services for persons with developmental disabilities or related

conditions.

(b) This section does not apply to semi-independent living services and residential-based habilitation services funded as home and community-based services.

(c) In collaboration with the commissioner and ICF/MR providers, counties shall complete a local system needs planning process for each ICF/MR facility. Counties shall evaluate the preferences and needs of persons with developmental disabilities to determine resource demands through a systematic assessment and planning process by May 15, 2000, and by July 1 every two years thereafter beginning in 2001.

(d) A local system needs planning process shall be undertaken more frequently when the needs or preferences of consumers change significantly to require reformation of the resources available to persons with developmental disabilities.

(e) A local system needs plan shall be amended anytime recommendations for modifications to existing ICF/MR services are made to the host county, including recommendations for:

(1) closure;

(2) relocation of services;

(3) downsizing; or

(4) modification of existing services for which a change in the framework of service delivery is advocated.

Subd. 2. **Consumer needs and preferences.** In conducting the local system needs planning process, the host county must use information from the individual service plans of persons for whom the county is financially responsible and of persons from other counties for whom the county has agreed to be the host county. The determination of services and supports offered within the county shall be based on the preferences and needs of consumers. The host county shall also consider the community social services plan, waiting lists, and other sources that identify unmet needs for services. A review of ICF/MR facility licensing and certification surveys, substantiated maltreatment reports, and established service standards shall be employed to assess the performance of providers and shall be considered in the county's recommendations. Continuous quality improvement goals as well as consumer satisfaction surveys may also be considered in this process.

Subd. 3. **Recommendations.** (a) Upon completion of the local system needs planning assessment, the host county shall make recommendations by May 15, 2000, and by July 1 every two years thereafter beginning in 2001. If no change is recommended, a copy of the assessment along with corresponding documentation shall be provided to the commissioner by July 1 prior to the contract year.

(b) Recommendations for closures, relocations, and downsizings that do not include a rate increase and for modification of existing services for which a change in the framework of service delivery is necessary shall be provided to the commissioner by July 1 prior to the contract year or at least 90 days prior to the anticipated change, along with the assessment and corresponding documentation.

Subd. 4. [Repealed, 2007 c 133 art 2 s 13]

Subd. 5. **Responsibilities of commissioner.** (a) In collaboration with counties and providers, the commissioner shall ensure that services recognize the preferences and needs of persons with developmental disabilities and related conditions through a recurring systemic

review and assessment of ICF/MR facilities within the state.

(b) The commissioner shall contract with ICF/MR providers. Contracts shall be for two-year periods.

History: *1999 c 245 art 3 s 10; 2002 c 220 art 14 s 1-4; 1Sp2003 c 14 art 3 s 59; 2005 c 98 art 3 s 16; 2007 c 133 art 2 s 10; 2009 c 159 s 85,86*

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 developmental disabilities 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 developmental disabilities 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 developmental disabilities who would otherwise have been served under a proposed waiver. "Certified bed" means an intermediate care bed for persons with developmental disabilities 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 developmental disabilities 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 developmental disabilities 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. 2a. **Exception for Lake Owasso project.** (a) The commissioner shall authorize and grant a license under chapter 245A to a new intermediate care facility for persons with developmental disabilities effective January 1, 2000, under the following circumstances:

(1) the new facility replaces an existing 64-bed intermediate care facility for the developmentally disabled located in Ramsey County;

(2) the new facility is located upon a parcel of land contiguous to the parcel upon which the existing 64-bed facility is located;

(3) the new facility is comprised of no more than eight twin home style buildings and an administration building;

(4) the total licensed bed capacity of the facility does not exceed 64 beds; and

(5) the existing 64-bed facility is demolished.

(b) The medical assistance payment rate for the new facility shall be the higher of the rate specified in paragraph (c) or as otherwise provided by law.

(c) The new facility shall be considered a newly established facility for rate setting purposes and shall be eligible for the investment per bed limit specified in section 256B.501, subdivision 11, paragraph (c), and the interest expense limitation specified in section 256B.501, subdivision 11, paragraph (d). Notwithstanding section 256B.5011, the newly established facility's initial payment rate shall be set according to Minnesota Rules, part 9553.0075, and shall not be subject to the provisions of section 256B.501, subdivision 5b.

(d) During the construction of the new facility, Ramsey County shall work with residents, families, and service providers to explore all service options open to current residents of the facility.

Subd. 3. **Duties of commissioner of human services.** The commissioner shall:

(1) 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;

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

(3) 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 developmental disabilities;

(4) 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

(5) develop a state plan for the delivery and funding of residential day and support services to persons with developmental disabilities in Minnesota. The biennial developmental disability plan shall include but not be limited to:

(i) county by county maximum intermediate care bed utilization quotas;

(ii) plans for the development of the number and types of services alternative to intermediate care beds;

(iii) procedures for the administration and management of the plan;

(iv) procedures for the evaluation of the implementation of the plan; and

(v) 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 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; 1997 c 7 art 2 s 38; art 5 s 27; 1999 c 245 art 3 s 11; 2005 c 56 s 1*

252.292 COMMUNITY SERVICES CONVERSION PROJECT.

Subdivision 1. **Commissioner's duties; report.** For the purposes of section 252.291, subdivision 3, the commissioner of human services shall ask counties to present proposals for the voluntary conversion of services provided by community intermediate care facilities for persons with developmental disabilities 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 developmental disabilities.

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 developmental disabilities;

(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 developmental disabilities 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 developmental disabilities 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 developmental disabilities 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 developmental disabilities 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 developmental disabilities, 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 developmental disabilities 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 12 months. The commissioner may grant a variance to exceed the 12-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 24 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; 1995 c 207 art 3 s 5; 2005 c 56 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 developmental disabilities 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 developmental disabilities 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; 2005 c 56 s 1*

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 developmental disabilities 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; 2005 c 56 s 1*

252.295 LICENSING EXCEPTION.

(a) Notwithstanding section 252.294, the commissioner may license two six-bed, level B intermediate care facilities for persons with developmental disabilities (ICF's/MR) to replace a 15-bed level A facility in Minneapolis that is not accessible to persons with disabilities. The new facilities must be accessible to persons with disabilities and must be located on a different site or sites in Hennepin County. Notwithstanding section 256B.5012, the payment rate at the new facilities is $200.47 plus any rate adjustments for ICF's/MR effective on or after July 1, 2007.

(b) Notwithstanding section 252.294, the commissioner may license one six-bed level B intermediate care facility for persons with developmental disabilities to replace a downsized 21-bed facility attached to a day training and habilitation program in Chisholm. Notwithstanding section 256B.5012, the facility must serve persons who require substantial nursing care and are able to leave the facility to receive day training and habilitation services. The payment rate at this facility is $274.50.

(c) Notwithstanding section 256B.5012, the payment rate of a six-bed level B intermediate care facility for persons with developmental disabilities in Hibbing, with a per diem rate of $164.13 as of March 1, 2007, for persons who require substantial nursing care and are able to leave the facility to receive day training and habilitation services shall be increased to $250.84.

(d) The payment rates in paragraphs (b) and (c) are effective October 1, 2009.

History: *2007 c 147 art 7 s 3*

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 developmental disabilities 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; 2005 c 56 s 1*

252.31 ADVISORY TASK FORCE.

The commissioner of human services may appoint an advisory task force for services to persons with developmental disabilities or physical disabilities. The task force shall advise the commissioner relative to those laws which the commissioner is responsible to administer and enforce relating to developmental disabilities 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 developmental disabilities 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 developmental disabilities or physical disabilities, 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; 2005 c 56 s 1*

252.32 FAMILY SUPPORT PROGRAM.

Subdivision 1. **Program established.** In accordance with state policy 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 disabilities 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 dependent children with disabilities 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 21 and who have been certified disabled under section 256B.055, subdivision 12, paragraphs (a), (b), (c), (d), and (e). Families who are receiving home and community-based waivered services for persons with developmental disabilities 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 the items and services to be reimbursed.

Subd. 2. [Repealed, 1Sp2003 c 14 art 3 s 60]

Subd. 3. **Amount of support grant; use.** (a) Support grant amounts shall be determined by the county social service agency. Services and items 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.

(b) The design and delivery of services and items purchased under this section must be provided in the least restrictive environment possible, consistent with the needs identified in the individual service plan.

(c) 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.

(d) In approving or denying applications, the county shall consider the following factors:

(1) the extent and areas of the functional limitations of the disabled child;

(2) the degree of need in the home environment for additional support; and

(3) the potential effectiveness of the grant to maintain and support the person in the family environment.

(e) The maximum monthly grant amount shall be $250 per eligible dependent, or $3,000 per eligible dependent per state fiscal year, within the limits of available funds and as adjusted by any legislatively authorized cost of living adjustment. The county social service agency may consider the dependent's supplemental security income in determining the amount of the support grant.

(f) 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) 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 will be allocated to county agencies to support children in their family homes.

(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;

(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) 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.

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) submit a plan to the department for the management of the family support grant program. The plan must include the projected number of families the county will serve and policies and procedures for:

(i) identifying potential families for the program;

(ii) grant distribution;

(iii) waiting list procedures; and

(iv) prioritization of families to receive grants;

(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 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.

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. [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: *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; 1997 c 203 art 7 s 10-14; 1999 c 245 art 4 s 15; 2000 c 330 s 1,2; 1Sp2003 c 14 art 3 s 5-8; art 11 s 11; 2005 c 56 s 1; 2007 c 147 art 6 s 2*

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 employment and economic development, 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; 2004 c 206 s 52*

252.40 SERVICE PRINCIPLES AND RATE-SETTING PROCEDURES.

Sections 252.40 to 252.46 apply to day training and habilitation services for adults with developmental disabilities 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 developmental disabilities 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; 1997 c 7 art 1 s 96; 2005 c 56 s 1*

252.41 DEFINITIONS.

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

Subd. 2. **Commissioner.** "Commissioner" means the commissioner of the Department of Human Services.

Subd. 3. **Day training and habilitation services for adults with developmental**

disabilities. "Day training and habilitation services for adults with developmental disabilities" 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; and

(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.

Day training and habilitation services reimbursable under this section do not include special education and related services as defined in the Education of the Individuals with Disabilities 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 developmental disabilities exert control and choice over their own lives.

Subd. 5. **Integration.** "Integration" means that persons with developmental disabilities:

(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 developmental disabilities:

(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 developmental disabilities. 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 developmental disabilities; 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; 1997 c 7 art 1 s 97; 1Sp2003 c 14 art 3 s 9; 2005 c 56 s 1*

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 a developmental disability 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 a developmental disability 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 a developmental disability 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 a developmental disability 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; 2005 c 56 s 1*

252.43 COMMISSIONER'S DUTIES.

The commissioner shall supervise county boards' provision of day training and habilitation services to adults with developmental disabilities. 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: *1987 c 403 art 5 s 11; 1989 c 209 art 2 s 1; 1997 c 7 art 1 s 98; 2005 c 56 s 1*

252.431 SUPPORTED EMPLOYMENT SERVICES; DEPARTMENTAL DUTIES; COORDINATION.

The commissioners of employment and economic development, 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, Employment and Economic Development, 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 employment and economic development, 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; 1Sp1995 c 3 art 16 s 13; 2003 c 130 s 12; 2004 c 206 s 52*

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.12 and 256B.092 and rules adopted under those sections;

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

(4) set payment rates under section 252.46;

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

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

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

History: *1987 c 403 art 5 s 12; 1Sp2003 c 14 art 11 s 11*

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 developmental disabilities 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; 2005 c 56 s 1*

252.451 BUSINESS AGREEMENTS; SUPPORT AND SUPERVISION OF DISABLED PERSONS.

Subdivision 1. **Definition.** For the purposes of this section, "qualified business" means a business that employs primarily nondisabled persons and will employ persons with developmental disabilities. For purposes of this section, licensed providers of residential services for persons with developmental disabilities 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 a developmental disability; and

(ii) additional costs for training, supervising, and assisting the person with a developmental disability 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 a developmental disability.

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 the vendor for full-day or partial-day services to a client that would otherwise have been paid to the vendor for providing direct services, provided that both of the following criteria are met:

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

(2) the client for whom a rate will be billed will receive full-day or partial-day services from the vendor and the rate to be paid the vendor will allow the client to work with this support and supervision at the qualified business instead of receiving these services 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; 1998 c 284 s 1; 2005 c 56 s 1*

252.452 [Expired April 25 1994]

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) Notwithstanding any law or rule to the contrary, the commissioner may authorize county participation in a voluntary individualized payment rate structure for day training and habilitation services to allow a county the flexibility to change, after consulting with providers, from a site-based payment rate structure to an individual payment rate structure for the providers of day training and habilitation services in the county. The commissioner shall seek input from providers and consumers in establishing procedures for determining the structure of voluntary individualized payment rates to ensure that there is no additional cost to the state or counties and that the rate structure is cost-neutral to providers of day training and habilitation services, on July 1, 2004, or on day one of the individual rate structure, whichever is later.

(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.

Subd. 1a. **Day training and habilitation rates.** The commissioner shall establish a statewide rate-setting methodology for all day training and habilitation services. The rate-setting methodology must abide by the principles of transparency and equitability across the state. The methodology must involve a uniform process of structuring rates for each service and must promote quality and participant choice.

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 management and budget 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.

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.

(b) 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 one of the criterion in clauses (1) to (4) is also met:

(1) a determination of need under section 252.28 is approved for a significant program change that is necessary for a vendor to provide authorized services to one or more clients who meet one or more of the following criteria:

(i) the client is a new client and:

(A) exhibits severe behavior as indicated on the screening document;

(B) periodically requires one-to-one staff time for at least 15 minutes at a time to deliver physician prescribed medical interventions; or

(C) has been discharged directly to the vendor's program from a regional treatment center or the Minnesota extended treatment option.

(ii) the client is an existing client who has developed one of the following changed circumstances which increases costs that are not covered by the vendor's current rate, and for whom a significant program change is necessary to ensure the continued provision of authorized services to that client:

(A) severe behavior as indicated on the screening document;

(B) a medical condition periodically requiring one-to-one staff time for at least 15 minutes at a time to deliver physician prescribed medical interventions; or

(C) a permanent decrease in skill functioning, as verified by medical reports or assessments;

(2) a licensing determination requires a program change that the vendor cannot comply with due to funding restraints;

(3) a determination of need under section 252.28 is approved for a significant and permanent decrease in licensed capacity and the vendor demonstrates the need to retain certain staffing levels to serve the remaining clients; or

(4) in cases where conditions in clauses (1) to (3) do not apply, but a determination of need under section 252.28 is approved for an unusual circumstance which exists that significantly impacts the type or amount of services delivered, as evidenced by documentation presented by the vendor and with the concurrence of the commissioner.

(c) 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) the actual costs of delivering authorized service over a 12-month contract period have decreased.

(d) 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 behaviors or with medical conditions requiring delivery of physician prescribed medical interventions, or to persons being directly discharged from a regional treatment center or Minnesota extended treatment options to the vendor's program, those persons must be assigned a payment rate of 200 percent of the current statewide average rates. All other clients receiving services from the vendor must be assigned a payment rate equal to the vendor's current rate unless the vendor's current rate exceeds 95 percent of 125 percent of the statewide median or 125 percent of the regional average payment rates, whichever is higher. When the vendor's rates exceed 95 percent of 125 percent of the statewide median or 125 percent of the regional average rates, the maximum rates assigned to all other clients must be equal to the greater of 95 percent of 125 percent of the statewide median or 125 percent of the regional average rates. The maximum payment rate that may be recommended for the vendor under these conditions is determined by multiplying the number of clients at each limit by the rate corresponding to that limit and then dividing the sum by the total number of clients.

(e) 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. 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.

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:

(1) unauthorized service delivery;

(2) services provided in accordance with receipt of a special grant;

(3) services provided under contract to a local school district;

(4) 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

(5) 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. 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 this subdivision. If the rates meeting the criteria in subdivisions 1 to 16 are lower than the county's or vendor's current rate, the county or vendor must continue to receive the current rate.

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.

Subd. 19. **Vendor appeals.** With the concurrence of the county board, a vendor may appeal the commissioner's rejection of a variance request which has been submitted by the county under subdivision 6 and may appeal the commissioner's denial under subdivision 9 of a rate which has been recommended by the county. To appeal, the vendor and county board must file a written notice of appeal with the commissioner. The notice of appeal must be filed or received by the commissioner within 45 days of the postmark date on the commissioner's notification to the vendor and county agency that a variance request or county recommended rate has been denied. The notice of appeal must specify the reasons for the appeal, the dollar amount in dispute, and the basis in statute or rule for challenging the commissioner's decision.

Within 45 days of receipt of the notice of appeal, the commissioner must convene a reconciliation conference to attempt to resolve the rate dispute. If the dispute is not resolved to the satisfaction of the parties, the parties may initiate a contested case proceeding under sections 14.57 to 14.69. In a contested case hearing held under this section, the appealing party must demonstrate by a preponderance of the evidence that the commissioner incorrectly applied the governing law or regulations, or that the commissioner improperly exercised the commissioner's discretion, in refusing to grant a variance or in refusing to adopt a county recommended rate.

Until the appeal is fully resolved, payments must continue at the existing rate pending the appeal. Retroactive payments consistent with the final decision shall be made after the appeal is fully resolved.

Subd. 20. **Study of day training and habilitation vendors.** The commissioner shall study the feasibility of grouping vendors of similar size, location, direct service staffing needs or performance outcomes to establish payment rate limits that define cost-effective service. Based on the conclusions of the feasibility study the department shall consider developing a method to redistribute dollars from less cost-effective to more cost-effective services based on vendor achievement of performance outcomes. The department shall report to the legislature by January 15, 1996, with results of the study and recommendations for further action. The department shall consult with an advisory committee representing counties, service consumers, vendors, and the legislature.

Subd. 21. **Managed care pilot.** (a) The commissioner may initiate a capitated risk-based managed care option for persons with developmental disabilities, which includes capitated payments for day training and habilitation and alternative active treatment services. The commissioner may permit the health plan, care system, or other health plan network participating

in this managed care option to negotiate day training and habilitation rates. The commissioner may grant a variance to any of the provisions in sections 252.40 to 252.46 and Minnesota Rules, parts 9525.1200 to 9525.1580, necessary to implement the pilot.

(b) The commissioner shall report to the legislature financial and program results along with a recommendation as to whether the pilot should be expanded.

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; 1995 c 207 art 3 s 6-11; 1997 c 7 art 1 s 99; 1997 c 36 s 1; 1999 c 245 art 5 s 11; 2003 c 47 s 1; 1Sp2003 c 14 art 3 s 10; 2005 c 56 s 1; 2005 c 98 art 3 s 17; 2009 c 79 art 8 s 10; 2009 c 101 art 2 s 109*

252.47 [Repealed, 1995 c 207 art 7 s 43]

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 developmental disabilities. 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 developmental disabilities. Employees of the programs, except clients who work within and benefit from these treatment and habilitation programs, must be state employees under chapters 43A and 179A. Although any clients who work within and benefit from these treatment and habilitation programs are not employees under chapters 43A and 179A, the Department of Human Services may consider clients who work within and benefit from these programs employees for federal tax purposes. 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 developmental disabilities. 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 developmental disabilities. 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 developmental disabilities 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 of representatives 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 developmental disabilities and residential programs must be homelike.

Subd. 2a. **Use of enhanced waivered services funds.** The commissioner may, within the limits of appropriations made available for this purpose, use enhanced waivered services funds under the home and community-based waiver for persons with developmental disabilities 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 developmental disabilities. 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.** 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.

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; 1997 c 7 art 1 s 100; 2005 c 56 s 1; 2008 c 223 s 1; 2009 c 79 art 8 s 11*

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 developmental disabilities, 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; 2005 c 56 s 1*

252.53 [Repealed, 1997 c 248 s 51]