

# MINNESOTA RULES 1987

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## PROGRAMS FOR MENTALLY RETARDED PERSONS

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**CASE MANAGEMENT SERVICES TO PERSONS WITH MENTAL RETARDATION**

**9525.0010** [Repealed, 11 SR 77]

**9525.0015 DEFINITIONS.**

Subpart 1. **Scope.** The terms used in parts 9525.0015 to 9525.0165 have the meanings given them in this part.

Subp. 2. **Assessment.** "Assessment" means the act of determining, under part 9525.0055, a person's need for services by identifying and describing the person's skills and behaviors, and the environmental, physical, medical, and health factors that affect development or remediation of the person's skills and behaviors.

Subp. 3. **Advocate.** "Advocate" means an individual who has been authorized, in a written statement by the person with or who might have mental retardation or by the person's legal representative, to help the person with or who might have mental retardation understand and make choices in matters related to identification of needs and choice of services in parts 9525.0015 to 9525.0165.

Subp. 4. **Case management services.** "Case management services" means identifying the need for, planning, seeking out, acquiring, authorizing, and coordinating services to persons with mental retardation. Case management services include monitoring and evaluating the delivery of the services to, and protecting the rights of, the persons with mental retardation. These services are provided by an individual designated by the county board under part 9525.0035.

Subp. 5. **Case manager.** "Case manager" means the person designated by the county board under part 9525.0035 to provide case management services. The case manager must meet the requirements in part 9525.0155.

Subp. 6. **Commissioner.** "Commissioner" means the commissioner of the Minnesota Department of Human Services or the commissioner's designated representative.

Subp. 7. **Contract.** "Contract" means a legally enforceable agreement entered into by a county board or its designated representative and a provider, or by a provider and a subcontractor, that sets forth the rights and responsibilities of the parties.

Subp. 8. **County board.** "County board" means the county board of commissioners for the county of financial responsibility or its designated representative.

Subp. 9. **County of financial responsibility.** "County of financial responsibility" has the meaning given it in Minnesota Statutes, sections 256B.02, subdivision 3 and 256E.08, subdivision 7.

Subp. 10. **Department.** "Department" means the Minnesota Department of Human Services.

Subp. 11. **Home and community-based services.** "Home and community-based services" means the following services as defined in part 9525.1860 which are provided to persons with mental retardation if the services are authorized under United States Code, title 42, sections 1396, et seq. and authorized in the waiver granted by the United States Department of Health and Human Services:

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- A. case management;
- B. respite care;
- C. homemaker services;
- D. in-home family support services;
- E. supported living arrangements for children;
- F. supported living arrangements for adults;
- G. day habilitation;
- H. minor physical adaptations to the home; and

I. other home and community-based services authorized under United States Code, title 42, section 1396 et seq. if approved for Minnesota by the United States Department of Health and Human Services.

These services are reimbursable under the medical assistance program for as long as the waiver from the United States Department of Health and Human Services is in effect in Minnesota.

Subp. 12. **Host county.** "Host county" means the county in which the services set forth in a person's individual service plan are provided.

Subp. 13. **Individual habilitation plan.** "Individual habilitation plan" means the written plan developed under part 9525.0105.

Subp. 14. **Individual service plan.** "Individual service plan" means the written plan developed under part 9525.0075.

Subp. 15. **Interdisciplinary team.** "Interdisciplinary team" means a team composed of the case manager, the person with mental retardation, the person's legal representative and advocate, if any, and representatives of all providers providing services set forth in the individual service plan.

Subp. 16. **Intermediate care facility for the mentally retarded or ICF/MR.** "Intermediate care facility for the mentally retarded" or "ICF/MR" means a program licensed to provide services to persons with mental retardation under Minnesota Statutes, section 252.28, and a physical plant licensed as a supervised living facility under Minnesota Statutes, chapter 144, which together are certified by the Minnesota Department of Health as an intermediate care facility for the mentally retarded. Unless otherwise stated, this definition includes state-operated and community-based facilities.

Subp. 17. **Least restrictive environment.** "Least restrictive environment" means an environment where:

A. The provider or employees or subcontractors of the provider are available to provide the type, quantity, and frequency of services necessary to achieve the results set forth in a person's individual service plan.

B. The physical plant and the scheduling of the provider and employees or subcontractors of the provider are designed or modified to promote the independence of the person with mental retardation and to limit physical assistance by the provider or employees or subcontractors to the tasks or parts of tasks that the person with mental retardation cannot accomplish without physical assistance or verbal instructions.

C. The amount of supervision, physical control, and limits on decision making imposed by the provider and employees or subcontractors of the provider is limited to the level required to ensure that persons with mental retardation are not subject to unnecessary risks to their health or safety and do not subject others to unnecessary risks.

D. Services are designed to increase interactions between persons with mental retardation and persons within the general public who do not have disabilities by using facilities, services, and conveyances used by the general public.

E. The daily, monthly, and annual schedule of the person receiving services closely approximates that of the general public.

F. The physical surroundings, methods of interaction between the person and the provider and employees or subcontractors of the provider, and the materials used in training are appropriate for the person's chronological age and adapted to individual need.

Subp. 18. **Legal representative.** "Legal representative" means the parent or parents of a person with, or who might have, mental retardation and who is under 18 years of age; or a guardian or conservator who is authorized by the court to make decisions about services for a person with or who might have mental retardation.

Subp. 19. **Need determination.** "Need determination" means the determination under part 9525.0145 of the need for and the program, type, location, and size of licensed services, except foster care, for persons with mental retardation.

Subp. 20. **Person with mental retardation.** "Person with mental retardation" means:

A. a person who has been diagnosed under part 9525.0045 as having significantly subaverage intellectual functioning existing concurrently with demonstrated deficits in adaptive behavior and who manifests these conditions before the person's 22nd birthday;

B. a person under the age of five who demonstrates significantly subaverage intellectual functioning concurrently with severe deficits in adaptive behavior, but for whom a licensed psychologist or licensed consulting psychologist determines that a diagnosis may not be advisable because of the person's age; and

C. a person who has a related condition. A related condition is a severe chronic disability that:

(1) is attributable to cerebral palsy, epilepsy, autism, or any other condition, other than mental illness, found to be closely related to mental retardation because the condition results in impairment of general intellectual functioning or adaptive behavior similar to that of persons with mental retardation;

(2) is likely to continue indefinitely;

(3) 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

(4) has been determined to be a related condition in accordance with rules adopted by the commissioner.

Subp. 21. **Person who might have mental retardation.** "Person who might have mental retardation" means a person who the case manager has reason to believe has mental retardation and who is undergoing diagnosis to determine if he or she is a person with mental retardation.

Subp. 22. **Physical plant.** "Physical plant" means the building or buildings where a service is provided to a person with mental retardation and includes all equipment affixed to the building and not easily subject to transfer.

Subp. 23. **Provider.** "Provider" means a corporation, governmental unit, partnership, individual, or individuals licensed by the state, if a license is required, or approved by the county board, if a license is not required, to provide one or more services to persons with mental retardation.

Subp. 24. **Provider implementation plan.** "Provider implementation plan" means a detailed internal plan developed by the provider in order to direct the

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daily activities of staff in carrying out the objectives established within the individual habilitation plan developed under part 9525.0105. The provider implementation plan is frequently referred to as an individual program plan and is usually supervised by an internal program coordinator, staff supervisor, unit director, or team leader.

**Subp. 25. Public agency.** "Public agency" means a public health nursing service established under Minnesota Statutes, section 145.12, a human services board established under Minnesota Statutes, section 402.04, a local board of health established under Minnesota Statutes, section 145.01, or a county board.

**Subp. 26. Qualified mental retardation professional.** "Qualified mental retardation professional" means a person who meets the qualifications in Code of Federal Regulations, title 42, section 442.401.

**Subp. 27. Quarterly evaluation.** "Quarterly evaluation" means a written report prepared by the provider every three months containing a summary of data, an analysis of the data, and an evaluation of services actually provided, including the extent to which services have resulted in achieving the goals and objectives of a person's individual habilitation plan, and whether services are being provided in accordance with the individual habilitation plan. The report must also state whether any changes are needed in the person's individual service plan or individual habilitation plan.

**Subp. 28. Redetermination of need.** "Redetermination of need" means the biennial redetermination under part 9525.0145 of the need for and the program, type, location, and size of licensed services, except foster care, for persons with mental retardation.

**Subp. 29. Regional service specialist.** "Regional service specialist" means an individual, designated by the commissioner, who at the direction of the commissioner:

A. authorizes medical assistance payments for ICF/MR and home and community-based services for eligible persons with mental retardation;

B. serves on screening teams as a qualified mental retardation professional at the request of the county board;

C. provides training and assistance to county boards, case managers, and providers in technical matters related to the development and provision of services for persons with mental retardation; and

D. assists case managers in developing and planning services for persons with mental retardation.

**Subp. 30. Residential service.** "Residential service" means shelter, food, and training in one or more of the following: self-care, communication, community living skills, social skills, leisure and recreation skills, and behavior management, which are provided by a provider licensed by the state, if a license is required, or approved by the county board if a license is not required, to provide these services.

**Subp. 31. Screening team.** "Screening team" means the team established under Minnesota Statutes, section 256B.092, subdivision 7 to evaluate a person's need for home and community-based services. The screening team shall consist of the case manager, the person with mental retardation, a parent or guardian as appropriate to the person with mental retardation's legal status, and a qualified mental retardation professional.

**Subp. 32. Service.** "Service" means a planned activity designed to achieve the results specified in an individual service plan.

**Subp. 33. Training and habilitation services.** "Training and habilitation services" means health and social services provided to a person with mental retardation by a licensed provider at a site other than the person's place of residence unless medically contraindicated and documented as such in the individual service plan. The services must be designed to result in the development and maintenance of life skills, including:

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A. self-care, communication, socialization, community orientation, emotional development, cognitive development, or motor development; and

B. therapeutic work or learning activities that are appropriate for the person's chronological age.

Training and habilitation services are provided on a scheduled basis for periods of less than 24 hours per day.

**Statutory Authority:** *MS s 256B.092; 256B.503*

**History:** *11 SR 77*

## 9525.0020 [Repealed, 11 SR 77]

### 9525.0025 APPLICABILITY AND PURPOSE.

Subpart 1. **Applicability.** Parts 9525.0015 to 9525.0165 set forth the standards to be met by county boards in providing case management services to persons with or who might have mental retardation, and govern the planning, development, and provision of other services to persons with mental retardation.

Subp. 2. **Purpose.** The purpose of parts 9525.0015 to 9525.0165 is to ensure that each person with mental retardation who applies for services, whose legal representative applies for services or is determined by the county to be in need of services receives a diagnosis and assessment of current condition, and that, based on the information gathered, services are designed, arranged, provided, and monitored so that the services meet the level of the person's need in the least restrictive environment and in a cost-effective manner.

County boards are authorized and required to determine the adequacy and quality of services provided to meet the person's needs based on the cost and effectiveness of the services. Only services identified as needed in the individual service plan should be provided or paid for.

Money expended for case management and other services for persons with or who might have mental retardation must be expended in accordance with parts 9525.0015 to 9525.0165.

**Statutory Authority:** *MS s 256B.092; 256B.503*

**History:** *11 SR 77*

## 9525.0030 [Repealed, 11 SR 77]

### 9525.0035 COUNTY BOARD RESPONSIBILITIES.

Subpart 1. **Provision of case management services.** The county board shall provide case management services in accordance with parts 9525.0015 to 9525.0165 to all persons with or who might have mental retardation who reside in the county at the time they apply for services. Case management services may be provided directly by the county board or under a contract between the county board and another county board or between the county board and a provider of case management services.

Subp. 2. **Designation of case manager.** Within ten working days after receiving an application for services or a determination by the social service agency that a person needs services, the county board shall designate a case manager who meets the requirements in part 9525.0155. A written notice that includes the name, telephone number, and location of the designated case manager must be sent to the person requesting services, and to the person's legal representative and advocate, if any.

Subp. 3. **Purchase of case management services.** The county board shall not purchase case management services for a person with or who might have mental retardation from a provider of other services for that person. This subpart does not apply when the county board provides the services or when the services are provided by another public agency, if the county board or other public agency

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providing case management and other services ensures that administration of the case management services is separate from the administration of any other service for the person with mental retardation. The county board may apply to the commissioner in writing for a variance of this subpart. The commissioner shall grant the variance if the county board can demonstrate that:

A. separating the administration of case management and other services would result in an undue hardship for the county board;

B. an alternative method of preventing any conflict of interest has been established; and

C. the person providing case management services for the person with mental retardation will not be involved in the provision of other services for the person with mental retardation.

**Subp. 4. Provision of services.** The case manager, upon designation by the county board, shall immediately begin to provide case management services to the person who applied for services or for whom the legal representative applied for services, and shall continue to provide case management services until case management services are terminated under subpart 7. The county board shall not provide or arrange for services to be provided to a person with or who might have mental retardation until a case manager has been designated, and services must not continue after case management services have been terminated under subpart 7.

**Subp. 5. Procedures governing minimum standards for case management services.** The county board shall establish written procedures to ensure that the delivery of case management services to persons who have been diagnosed as mentally retarded meets the standards established in items A to J.

A. Individual needs must be assessed in accordance with part 9525.0055, subpart 1.

B. Service needs must be reassessed in accordance with part 9525.0055, subparts 2 to 4.

C. A screening team meeting must be convened and held in accordance with part 9525.0065.

D. An individual service plan must be developed and reviewed in accordance with part 9525.0075.

E. An individual habilitation plan must be developed in accordance with part 9525.0105.

F. Services must be monitored in accordance with part 9525.0115.

G. Services must be authorized in accordance with subpart 6 and part 9525.0085, subpart 2.

H. Services must be terminated in accordance with subpart 7.

I. Requests for reconsideration of the contents of the individual service plan are handled in accordance with part 9525.0075.

J. Requests for reconsideration of the contents of the individual habilitation plan are handled in accordance with part 9525.0105.

Copies of these procedures must be maintained on file at the county offices and must be available to persons employed by the county who work with persons with mental retardation, persons with mental retardation who are receiving services from the county and their legal representatives or advocates, and providers.

**Subp. 6. Authorization of services.** Before a service may be provided under an individual service plan, the county board must authorize the service in accordance with part 9525.0085, subpart 2. Authorization of a service or services must be based on the recommendation of the case manager and the needs identified in the individual service plan. The county board must provide for authorization of services when an emergency occurs and for a review of the

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individual service plan within ten working days of the emergency to determine whether the individual service plan should be modified as a result of the emergency. Modifications to the individual service plan must be made in accordance with part 9525.0075, subpart 6.

**Subp. 7. Termination of case management duties.** A case manager retains responsibility for providing case management services to the person with mental retardation until the responsibility of the county board is terminated in accordance with items A to E, or until the county board designates another case manager under subpart 2. When another case manager is designated, the person with mental retardation, the legal representative, and the advocate, if any, and all providers providing services to the person must be notified, in writing, within five working days of the designation of the name, telephone number, and location of the new case manager.

The county board may terminate case management services when:

A. the person with mental retardation or the person's legal representative makes a written request that case management and other services designed for the person with mental retardation be terminated;

B. the person with mental retardation dies;

C. a licensed psychiatrist, licensed psychologist, or licensed consulting psychologist determines that the person is not a person with mental retardation in accordance with part 9525.0045;

D. the person or the person's legal representative refuses the services offered in the individual service plan developed under part 9525.0075; or

E. the case manager finds that case management services are no longer needed based on the review of the person's individual service plan.

**Statutory Authority:** *MS s 256B.092; 256B.503*

**History:** *11 SR 77*

**9525.0040** [Repealed, 11 SR 77]

**9525.0045 DIAGNOSIS.**

**Subpart 1. Initial diagnosis.** The case manager shall ensure that a diagnosis is completed and reviewed within 35 working days following receipt of the application for services. The case manager must refer applicants to professionals qualified under this subpart to complete a diagnosis. Items A to D are required to make a diagnosis of mental retardation.

A. A psychiatrist, licensed psychologist, or licensed consulting psychologist must determine that the person has significantly subaverage intellectual functioning. "Significantly subaverage" means performance which is two or more standard deviations from the mean or average on an individual standardized test that measures intellectual functioning.

B. A psychiatrist, licensed psychologist, or licensed consulting psychologist must determine that the person has deficits in adaptive behavior. Deficits in adaptive behavior must be determined through the use of scales of adaptive behavior or by a combination of test data, observations, and the use of all available sources of information regarding the person's behavior which indicate the effectiveness or degree with which the person meets the norm of personal independence and social responsibilities of the person's chronological age group and cultural peer group.

C. A social worker or a public health nurse who is experienced in working with persons with mental retardation must prepare a written report on any social, familial, physical, health, functional, adaptational, or environmental factors that might have contributed to the person's mental retardation.

D. A licensed physician must conduct a medical examination of the person including an examination of vision, hearing, seizure disorders, and physical disabilities.



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The documentation for items A to C must be dated no more than 90 days before the date when the initial individual service plan is written. The documentation for item D must be dated no more than 12 months before the date when the individual service plan is written and must accurately reflect the current condition of the person.

**Subp. 2. Review of diagnosis.** Except as provided in subpart 3, the case manager shall conduct a review of the diagnosis at least every three years. The review must include a review of the documentation of the initial diagnosis required in subpart 1, and any components in subpart 1, items A to D, that the case manager determines need to be reevaluated. The case manager shall provide or obtain any assessments required to complete a review of the diagnosis.

**Subp. 3. Exception.** If a person with mental retardation has an initial diagnosis of mental retardation which has been confirmed twice in accordance with subparts 1 and 2 since the person's 18th birthday, the review of the diagnosis required in subpart 2 must be conducted at least once every six years.

**Statutory Authority:** *MS s 256B.092; 256B.503*

**History:** *11 SR 77*

**9525.0050** [Repealed, 11 SR 77]

## **9525.0055 STANDARDS FOR ASSESSMENT OF INDIVIDUAL SERVICE NEEDS.**

**Subpart 1. Initial assessment of individual needs.** Each person determined by the diagnosis required in part 9525.0045 to be a person with mental retardation must be assessed to determine the person's individual needs. The assessment must include an analysis of: the person's current condition; the person's established support systems; the extent to which the person's skills or lack of skills enables or prevents the person's full integration into community settings used by the general public; and the person's current status and need for assistance or supervision. The assessment must result in specific service recommendations. The county board shall ensure that each of the areas listed in items A to J are assessed and that the assessment is conducted under the supervision of a qualified mental retardation professional.

The assessment of individual service needs must address the following areas:

- A. medical status and ongoing health needs;
- B. physical development;
- C. intellectual functioning;
- D. social skills;
- E. self-care skills;
- F. communication skills;
- G. community living skills;
- H. vocational skills;
- I. physical and social environments; and
- J. legal representation.

**Subp. 2. Reassessment of medical status and ongoing health care needs.** The county board shall ensure that a reassessment of medical status and ongoing health care needs is conducted at least annually. This medical assessment must include an evaluation of the person's current condition and shall include recommendations for ongoing health care needs.

**Subp. 3. Reassessment of other individual needs.** An annual review of individual needs shall be conducted by the case manager in consultation with the person with mental retardation and the person's legal representative and advocate, if any.

**Subp. 4. Time line for reassessment.** Reassessment of items A to J shall be

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conducted within 90 days prior to the review of the individual service plan. This subpart does not prohibit more frequent reassessments.

**Statutory Authority:** *MS s 256B.092; 256B.503*

**History:** *11 SR 77*

### 9525.0060 [Repealed, 11 SR 77]

### 9525.0065 SCREENING TEAMS.

**Subpart 1. Convening screening team.** The case manager shall convene a screening team whenever the assessment or reassessment conducted under part 9525.0055 indicates that the person with mental retardation might need the level of care provided by an ICF/MR within one year. The county board must ensure that:

A. The screening team is convened within 15 working days of the date that the assessment is completed under part 9525.0055 or within five working days of the date of an emergency admission to an ICF/MR.

B. The members of the screening team, the regional service specialist, and the person's advocate, if any, are notified of the meeting prior to the meeting. The regional service specialist and the person's advocate may attend any meeting of the screening team. At the request of or with consent, under Minnesota Statutes, section 13.05, subdivision 4, of the person with mental retardation or the person's legal representative, the case manager may invite other persons to attend the screening team meeting.

C. The screening team meeting is convened at a time and place that allows for the participation by all members of the screening team.

D. A written record of the meeting, including the names of the team members.

E. A registered nurse is required to attend the screening meeting as the qualified mental retardation professional or to act as the case manager whenever the assessment conducted under part 9525.0055 indicates that the person with mental retardation has overriding health care needs. For the purposes of this item, "overriding health care needs" means a medical condition that limits the placement options available to the person with mental retardation because the condition interferes with the person's adaptation or learning skills and is potentially life threatening.

**Subp. 2. Screening team review.** The screening team shall review:

A. the results of the diagnosis conducted under part 9525.0045;

B. the results of the assessment conducted under part 9525.0055;

C. the individual service plan, if any; and

D. other data related to the person's eligibility and need for services.

**Subp. 3. Screening team findings.** Upon review under subpart 2 of the diagnostic and assessment data, the screening team shall:

A. determine whether the person with mental retardation is presently in need of the level of care provided by an ICF/MR, or whether the person will need the level of care provided by an ICF/MR within one year and can benefit from home and community-based services;

B. identify the other services required to prevent or delay the need for the level of care provided by an ICF/MR, skilled nursing facility, or intermediate care facility and the source of payments for the required assistance, health services, or social services; and

C. complete the waived services screening document on the form provided by the commissioner.

**Subp. 4. Consumer choice.** The person with mental retardation who is eligible for home and community-based services under parts 9525.1800 to 9525.1930

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and the person's legal representative must be allowed to choose between the ICF/MR services and the home and community-based services recommended by the screening team.

**Subp. 5. Authorization of payment for ICF/MR and home and community-based services.** Upon completion of the waived services screening document, the case manager shall forward the completed document to the regional service specialist. The regional service specialist shall review the rates and shall authorize the payments for home and community-based services funded under the medical assistance program only if consistent with the criteria in parts 9525.1800 to 9525.1930. Payment for ICF/MR services shall not be made unless:

A. the person for whom the payment is requested is determined to be a person with mental retardation;

B. an assessment of the person's individual service needs, conducted in accordance with part 9525.0065, documents that the person requires 24-hour supervision and treatment for medical, behavioral, or habilitation needs;

C. all less restrictive and less costly alternative services have been considered and discussed with the person with mental retardation and the person's legal representative and advocate, if any; and

D. payment for ICF/MR services has been approved by the commissioner through a regional service specialist.

**Subp. 6. Use of screening team recommendations in commitment proceedings.** When a person with mental retardation who has been referred to a screening team is the subject of commitment proceedings under Minnesota Statutes, chapter 253B, the screening team shall make its recommendations and report available to the pre-petition screening unit in accordance with the Data Practices Act, Minnesota Statutes, chapter 13.

**Statutory Authority:** *MS s 256B.092; 256B.503*

**History:** *11 SR 77*

**9525.0070** [Repealed, 11 SR 77]

## **9525.0075 STANDARDS FOR DEVELOPMENT OF INDIVIDUAL SERVICE PLAN.**

**Subpart 1. Individual service plan development.** An individual service plan must be developed and implemented for each person with mental retardation who applies for services or for whom the legal representative applies for services. The individual service plan must be developed by the case manager with the person with mental retardation, the person's legal representative, and the person's advocate, if any. If the case manager is not a qualified mental retardation professional, the individual service plan must be reviewed by a qualified mental retardation professional.

**Subp. 2. Screening team involvement.** If the results of the assessment completed under part 9525.0055 indicate that the person with mental retardation might need the level of care provided by an ICF/MR, the case manager shall convene and chair a meeting of the screening team in accordance with this part to assist the case manager in the development of the individual service plan.

**Subp. 3. Required review.** The development of an individual service plan must include a review of:

A. the results of the diagnosis under part 9525.0045 to verify that the person is a person with mental retardation;

B. the results of the assessment conducted under part 9525.0055 to identify individual needs;

C. any past individual service plan to determine if changes are needed;

D. other data related to the person's need for services;

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E. delivery of services to assure that the services are or will be delivered in the least restrictive environment;

F. provisions for providing food and shelter for the person with mental retardation to assure the person's health and safety will be maintained;

G. vocational training and habilitation services to ensure that the services are, or will be, appropriate to the person's chronological age, employment, and increased financial independence;

H. the method of delivering services to ensure that the delivery of services will result in increased participation in the community and interactions with the general public through use of support services and existing agencies; and

I. involvement of family, neighbors, and friends in providing services to ensure that family, neighbors, and friends are involved to the extent possible.

Subp. 4. **Content standards for individual service plans.** The county board shall develop a format for completing an individual service plan that ensures compliance with items A to G. The individual service plan must:

A. Contain a written review of the results of the diagnosis conducted under part 9525.0045, including a summary of significant information and specific recommendations.

B. Contain a written summary of the assessment information and recommendations obtained under 9525.0055, subpart 1.

C. Contain a written summary of the needs identified in the information obtained from the diagnosis and assessment. The summary must result in the identification of all service needs, including the type, amount, and frequency of the services needed including services to be provided by the case manager.

D. State the actions that will be taken to develop or obtain the services identified in item C including those services not currently available. This item shall not be construed as requiring actions other than actions stated under this item.

E. State long-range goals for the person with mental retardation and an anticipated date for attainment of the goals.

F. State annual goals for the person with mental retardation related to the attainment of the long-range goals under item E.

G. Identify any information that providers or subcontractors must submit to the case manager and the frequency with which the information must be provided.

H. Contain the signature or signatures of the person with mental retardation and the person's legal representative, if any, to document that the person with mental retardation and the person's legal representative, if any, have reviewed the individual service plan and agree that the goals and services specified in the individual service plan meet the needs of the person with mental retardation.

Subp. 5. **Request for reconsideration.** If the person with mental retardation or the person's legal representative, if any, disagrees with the contents of the individual service plan, the person with mental retardation or the person's legal representative, if any, may request a reconsideration of the contents of the plan by applying to the county board and requesting reconsideration. The county board shall establish written procedures for handling requests for reconsideration of the individual service plan contents. The procedure in this subpart does not replace the appeal of the case management and related services under part 9525.0135 and is not a prerequisite to filing an appeal.

Subp. 6. **Annual review of individual service plan.** The county board shall ensure that:

A. individual service plans are reviewed at least annually;

B. a written record of the meeting is maintained;

C. the case manager, the person with mental retardation, the person's

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legal guardian, the person's advocate, and others who participated in the development of the individual service plans are involved in the annual review meeting;

D. the services provided since the initial service plan or last service plan review are summarized and reviewed;

E. the results of the reassessment, if any, are summarized and reviewed;

F. the quarterly evaluations and other provider reports as they relate to the attainment of annual and long-range goals are summarized and reviewed;

G. the annual and long-range goals are reviewed;

H. modifications to the individual service plans are based on the results of the reviews required under this subpart; and

I. a new screening document is completed and submitted if the person is receiving services provided under parts 9525.1800 to 9525.1930 or resides in an ICF/MR. This item is not to be construed as requiring a meeting of the screening team.

**Subp. 7. Standards for state hospital discharge planning.** When an individual service plan calls for the discharge of a person with mental retardation from a state hospital, the individual service plan must conform to the standards for state hospital discharge planning established by the commissioner in Instructional Bulletins #84-55 (August 6, 1984) and 84-55A (November 8, 1984), published by the department, which are incorporated by reference.

These documents are available for inspection at the Minnesota State Law Library, 117 University Avenue, Saint Paul, Minnesota 55155 and are available through the Minitex interlibrary loan system. The bulletins are not subject to frequent change. The documents have also been distributed to all county boards and human service boards.

**Statutory Authority:** *MS s 256B.092; 256B.503*

**History:** *11 SR 77*

**9525.0080** [Repealed, 11 SR 77]

### **9525.0085 PROVISION OF SERVICES.**

**Subpart 1. Arrangement of services.** When residential, training and habilitation services, or home and community-based services are required by an individual service plan, the case manager shall arrange for the services by surveying existing providers to determine which providers, if any, are available to provide the services specified in the individual service plan, or the county board may develop a request for proposals for any or all of the specified services.

**Subp. 2. Authorization of services.** The case manager shall only authorize a service if:

A. the case manager has determined that the provider is able to provide the service or services in accordance with the individual service plan;

B. the provider agrees, as a condition of the contract, to participate in the interdisciplinary team;

C. the provider agrees, as a condition of the contract, to provide the service in accordance with the individual service plan;

D. the provider agrees, as a condition of the contract, to send quarterly evaluations to the case manager and the person with mental retardation or the person's legal representative;

E. the person with mental retardation to be provided a training and habilitation service or a residential service has met with the provider and visited the site where the services are to be provided or if a visit to the site is medically contraindicated for the person with mental retardation, the person's legal representative, if any, has visited the site;

F. the case manager has informed the person's legal representative and

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advocate of the name of each proposed provider and has encouraged them to visit each site where the services will be provided;

G. there is a contract between each provider and the host county; and

H. if services are to be provided in a county other than the county of financial responsibility, the case manager has consulted with the host county and has received a letter demonstrating the concurrence from the host county regarding provision of services.

**Statutory Authority:** *MS s 256B.092; 256B.503*

**History:** *11 SR 77*

## 9525.0090 [Repealed, 11 SR 77]

## 9525.0095 CONTRACTS AND PROVIDER AGREEMENTS.

**Subpart 1. Contracts for services.** A provider, including a social service, medical assistance, or other provider, must have a purchase of service contract developed in accordance with and meeting the requirements of part 9550.0040 and this part with the host county before the provider can receive payment for services. The county board of the county where the provider is located shall negotiate and administer host county purchase of service contracts on behalf of other county boards requesting to purchase services from the provider.

The department is a third party beneficiary of any contract entered into by a county board and a provider, or a provider and a subcontractor, to provide services under this part. Each contract and subcontract must contain the following provision. If any contract does not contain the following provision, the provision shall be considered an implied provision of the contract.

“The provider acknowledges and agrees that the Minnesota Department of Human Services is a third-party beneficiary, and as such is an affected party under this contract. The provider specifically acknowledges and agrees that the Minnesota Department of Human Services has standing to and may take any appropriate administrative action or sue the provider for any appropriate relief in law or equity, including, but not limited to, rescission, damages, or specific performance, of all or any part of the contract between the county and the provider. The provider specifically acknowledges that the county and the Minnesota Department of Human Services are entitled to and may recover from the provider reasonable attorney’s fees and costs and disbursements associated with any action taken under this paragraph that is successfully maintained. This provision shall not be construed to limit the rights of any party to the contract or any other third party beneficiary, nor shall it be construed as a waiver of immunity under the Eleventh Amendment to the United States Constitution or any other waiver of immunity.”

**Subp. 2. Provider agreements.** In addition to the requirements in subpart 1, a provider of services reimbursed under the medical assistance program must have an approved provider agreement with the department before the provider can receive payment for services from the department.

**Subp. 3. Subcontracts.** If the provider subcontracts with another contractor to provide services under parts 9525.0015 to 9525.0165, the provider shall:

A. have written permission from the host county to subcontract;

B. ensure that the subcontract meets all the requirements in subpart 1;  
and

C. ensure that the subcontractor performs fully the terms of the subcontract.

**Subp. 4. Enforcement of contracts.** The county board is responsible for enforcing the contracts entered into under parts 9525.0015 to 9525.0165. The county board may delegate the responsibility for enforcement of contracts in accordance with established county board policies.

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**Statutory Authority:** *MS s 256B.092; 256B.503*

**History:** *11 SR 77*

**9525.0100** [Repealed, 11 SR 77]

## **9525.0105 STANDARDS FOR DEVELOPMENT OF INDIVIDUAL HABILITATION PLANS.**

**Subpart 1. Development of individual habilitation plan.** The county board shall ensure the development of an individual habilitation plan within 30 calendar days after services have been authorized by the county board. The case manager shall convene and chair a meeting of the interdisciplinary team to develop the individual habilitation plan. With the consent, under Minnesota Statutes, section 13.05, subdivision 4, of the person with mental retardation or the person's legal representative, the case manager may invite other persons to attend the interdisciplinary team meeting but these persons shall not be designated as members of the interdisciplinary team.

**Subp. 2. Interdisciplinary team review.** The interdisciplinary team shall review:

A. all information obtained in the diagnosis and assessment of the person with mental retardation;

B. the individual service plan;

C. written documentation of the findings of the screening team, if any;  
and

D. any other information that would assist the interdisciplinary team in writing a plan that will meet the needs of the person with mental retardation in the least restrictive manner, such as assessments completed by the provider or other consultants, recommendations from team members or others invited to attend the individual habilitation plan meeting, data collected by the provider, and program implementation plans.

**Subp. 3. Data privacy.** Private data, as defined in Minnesota Statutes, section 13.02, subdivision 12 regarding the person with or who might have mental retardation must not be disseminated, used, or discussed at a meeting unless the person with or who might have mental retardation or the legal representative has given consent for dissemination, use, or discussion in accordance with Minnesota Statutes, section 13.05, subdivision 4. Confidential data, as defined in Minnesota Statutes, section 13.02, subdivision 3 must not be disseminated, used, or discussed except as authorized by Minnesota statute or federal law.

**Subp. 4. Standards for contents of individual habilitation plan.** The interdisciplinary team shall develop a single individual habilitation plan. The individual habilitation plan must integrate the services provided by all providers and subcontractors to the person with mental retardation to ensure that the services provided and the methods used by each provider and subcontractor are coordinated and compatible with those of every other provider and subcontractor. The individual habilitation plan must be designed to achieve the expected outcomes specified in the individual service plan. The plan must include for each service:

A. short-term objectives designed to result in the achievement of the annual goals of the individual service plan;

B. the specific method of providing the service that is expected to result in the achievement of the short-term objectives of the individual habilitation plan;

C. the name of the provider's employee responsible for ensuring that services are implemented as set forth in the individual habilitation plan and that the services result in achievement of the short-term objectives;

D. the measurable behavioral criteria that will be used to determine whether the service has resulted in achievement of the short-term objectives;

E. the frequency with which the service will be provided;

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F. the projected starting and completion dates for each short-term objective;

G. the resources, such as special equipment, staff training, outside consultants, needed in order to implement the plan; and

H. the frequency with which providers will submit reports regarding the service and progress of the person and the minimum frequency at which the case manager will monitor the service being provided.

**Subp. 5. Required signatures.** The individual habilitation plan must contain the signature or signatures of the person with mental retardation and the person's legal representative, if any, to document that the person with mental retardation and the person's legal representative, if any, have reviewed the individual habilitation plan and agree that the goals and objectives specified in the individual habilitation plan meet the needs of the person with mental retardation.

**Subp. 6. Request for reconsideration.** If the person with mental retardation or the person's legal representative, if any, disagrees with the contents of the individual habilitation plan, the person with mental retardation or the person's legal representative, if any, may request a reconsideration of the contents of the plan by applying to the county board and requesting reconsideration. The county board shall establish written procedures for handling requests for reconsideration of individual habilitation plan contents. The procedure in this subpart does not replace the appeal of the case management and related services under part 9525.0135 and is not a prerequisite to filing an appeal.

**Subp. 7. Provider implementation plan.** The provider may establish an internal provider implementation plan for accomplishing the objectives specified in the individual habilitation plan. The internal provider implementation plan must not result in a modification of the objectives or methodologies identified within the individual habilitation plan unless the modification is authorized by the case manager and is agreed to by the person with mental retardation or the person's legal representative, if any.

**Subp. 8. Interim services.** A person with mental retardation may receive the services set forth in the person's individual service plan for up to 30 days while an individual habilitation plan is being developed. The case manager shall terminate the services if an individual habilitation plan is not developed and implemented within 30 calendar days of the date that the person began receiving services specified in the individual service plan.

**Subp. 9. Annual review of individual habilitation plan.** The case manager shall monitor implementation of the individual habilitation plan under the terms in part 9525.0115. At least annually, the interdisciplinary team must be convened and chaired by the case manager to review the data described in subpart 2, determine if the outcomes in the individual habilitation plan have been achieved, and to make any amendments or modifications of the individual habilitation plan based on the interdisciplinary team's review of the information.

**Statutory Authority:** *MS s 256B.092; 256B.503*

**History:** *11 SR 77*

## 9525.0115 STANDARDS FOR MONITORING SERVICES.

**Subpart 1. Monitoring of individual service plan and individual habilitation plan.** The case manager shall ensure that services are being provided in accordance with the individual service plan and individual habilitation plan, and that the services provided continue to meet the needs of the individual in the least restrictive environment. Monitoring must include:

A. visiting the person with mental retardation;

B. visiting the service site of the residential and training and habilitation service received by the person with mental retardation while services are being provided;



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C. reviewing the provider's records and reports;

D. observing the implementation of the person's individual service plan and individual habilitation plan;

E. compiling, reviewing, and analyzing quarterly evaluations and other reports submitted by the provider;

F. modifying the individual service plan under part 9525.0075 and the individual habilitation plan under part 9525.0105 as needed; and

G. reporting to the county board if a provider is not providing services as specified in the individual service plan and the individual habilitation plan.

**Subp. 2. Frequency of monitoring.** The case manager shall specify in the individual habilitation plan the frequency of monitoring to be done by the case manager. The frequency of monitoring must be determined based on the level of need of the person with mental retardation and other factors which might affect the type, amount, or frequency of service. Monitoring must occur at least on a semiannual basis for each person with mental retardation who is receiving services.

**Statutory Authority:** *MS s 256B.092; 256B.503*

**History:** *11 SR 77*

## 9525.0125 QUALITY ASSURANCE.

**Subpart 1. Monitoring by case manager.** The case manager is authorized and required to monitor the delivery of services by providers to determine if:

A. services are provided in accordance with the person's individual service plan and individual habilitation plan;

B. services are provided within the definition of least restrictive environment;

C. only necessary services are provided;

D. active treatment and habilitation services are provided;

E. services provided result in attainment of the person's goals and objectives;

F. the legal rights of the person with mental retardation are protected; and

G. the person with mental retardation and the person's legal representative, if any, are satisfied with the services provided.

**Subp. 2. County board procedures.** The county board shall establish written procedures for reviewing complaints reported by the case manager under subpart 1 and enforcing the provisions of parts 9525.0015 to 9525.0165.

**Subp. 3. Cooperation with commissioner.** The county board must cooperate with the commissioner in the commissioner's evaluation of case management services and other services provided to persons with mental retardation by making available to the commissioner all information compiled under parts 9525.0015 to 9525.0165 requested by the commissioner.

**Statutory Authority:** *MS s 256B.092; 256B.503*

**History:** *11 SR 77*

## 9525.0135 APPEALS OF CASE MANAGEMENT AND RELATED SERVICES.

**Subpart 1. Notification of right to appeal.** The case manager shall ensure that within 30 days of applying for services, the person with mental retardation, the legal representative, and advocate, if any, is informed in writing of the right to appeal. This notification shall also include the name, address, and telephone number of the individual from the county board who is available to the person, the person's legal representative, and advocate, if any, to answer questions about the notification in this subpart.

**Subp. 2. Appealable issues.** A person with mental retardation or the person's legal representative may appeal a county board action or inaction inconsistent with parts 9525.0015 to 9525.0115 and 9525.0165 or with the county board's approved variance request under part 9525.0145 [Emergency] which results in a denial of services, failure to act with reasonable promptness, a suspension, reduction, or termination of services.

**Subp. 3. Notice of action.** The county board shall notify the person and the person's legal representative, if any, of any denial, suspension, reduction, or termination of services. Except as provided in subpart 4, the county board shall mail the notice to the person and the person's legal representative at least 20 days before the effective date of the denial, suspension, reduction, or termination. The notice shall clearly state the proposed action and the reason for the action. A notice of any denial, suspension, reduction, or termination of services under subpart 2, shall also state the person's right to appeal the proposed action.

**Subp. 4. Exceptions to period of notice.** The period of notice may be five days before the date of the proposed action if the county board has facts indicating probable fraud by the person or the person's legal representative in obtaining services and if the facts have been verified through secondary sources. The county board may mail a notice no later than the date of the action if:

A. the county board has factual information confirming the death of the person; or

B. the county board receives a written statement from the person or the person's legal representative indicating he or she no longer wishes to receive services through the county.

**Subp. 5. Submittal of appeals.** The person with mental retardation or the person's legal representative may appeal under subpart 2 to the commissioner. All appeals must be submitted in writing within 30 days of the date the notice is received or within 90 days if the person with mental retardation or the person's legal representative shows good cause why the appeal was not submitted within 30 days. The advocate for the person with mental retardation or the parent of an adult with mental retardation, if the adult does not have a legal representative, may assist the person with mental retardation in bringing an appeal under this part.

**Subp. 6. Appeal of action.** All appeals of issues meeting the criteria under subpart 2 shall be heard and decided in accordance with Minnesota Statutes, section 256.045.

**Statutory Authority:** *MS s 256B.092; 256B.503*

**History:** *11 SR 77*

#### **9525.0145 SERVICE DEVELOPMENT AND NEED DETERMINATION.**

**Subpart 1. Definition.** As used in this part, "county board" means the county board of commissioners, a human services board established under Minnesota Statutes, chapter 402, or the county welfare board as defined in Minnesota Statutes, chapter 393.

**Subp. 2. Information to be considered.** Development of a new service, or modification or expansion of an existing service, must be based on the county's community social services plan, community health plan, and the service needs identified in individual service plans of persons with mental retardation for whom the county board is financially responsible. The county board shall also consider the service needs of persons from other counties for whom the county board has agreed to be the host county.

**Subp. 3. Need determination by county board.** Based on the data referred to in subpart 2, the county board shall identify the need for new services, modification, expansion, or reduction of existing services, or services for which a change of ownership or location is proposed. Facilities licensed under parts 9525.0230

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to 9525.0430 but not certified as an ICF/MR facility must apply to the county board for a new need determination if the facility proposes to be certified as an ICF/MR. This subpart shall apply to any service licensed by the commissioner, except foster care.

If the county board identifies that a new service or a service for which a change in ownership or location is proposed, needed, or that the existing services need to be modified, expanded, or reduced, the county board shall submit an application for a need determination to the commissioner. Applications must include the following information:

- A. the number, sex, and age of the persons to be served;
- B. a description of the services needed by the persons to be served as identified in individual service plans;
- C. a description of the proposed service;
- D. if the proposal is for a residential service, a description of the day training and habilitation or educational services that are available outside of the residence for the persons to be served;
- E. a description of the current residences of persons to be served and a statement of the number of persons to be served from each residential facility, foster home, or parental home;
- F. the identity of other counties that will use the service;
- G. a description of any financial limitations or funding restrictions that will affect the proposed service;
- H. an explanation of how this application relates to service needs identified under subpart 2;
- I. the date of the county board action on the application; and
- J. the signature of the county board chairman.

**Subp. 4. Review of county need determination.** The county board shall establish written procedures for reviewing materials submitted by a provider under subpart 3.

**Subp. 5. Need determination by commissioner.** The commissioner shall make the determination of the need for and the location, program, type, and size of the service proposed in the county's application. The commissioner may determine need for the service on a local, regional, or statewide basis. In making a final need determination the commissioner shall consider the following factors:

- A. the need to protect persons with mental retardation from violations of their human and civil rights;
- B. the need to assure that persons with mental retardation receive the full range of social, financial, residential, and habilitative services specified as needed in their individual service plans;
- C. whether services will be carried out in the least restrictive environment, and whether the size of the service relates to the needs of the persons to be served;
- D. whether persons receiving the proposed service will use health, medical, psychological, therapeutic, and other support services that are used by the general public;
- E. whether cost projections for the service are within the fiscal limitations of the state;
- F. whether the application is consistent with the state's plans for service distribution and development; and
- G. the distribution of and access to the services throughout the state.

**Subp. 6. Notice of decision and right to appeal.** Within 30 days of receipt of the application for need determination from the county board, the commissioner shall notify the county board of the commissioner's decision. The notice of the

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commissioner's decision must include notification of the county board's right to appeal the decision under subpart 9.

**Subp. 7. Biennial redetermination of need.** Every two years the county board shall submit to the commissioner a recommendation on the redetermination of need for each service located in the county which is licensed by the commissioner, except foster care.

The county board's recommendations must state whether the county board recommends continuation, continuation with modifications, discontinuation of the service, or, if the service is certified, decertification of the service. The recommendations of the county board must be based on the service needs of persons with mental retardation for whom the county is financially responsible, and for the service needs of persons with mental retardation from other counties for whom the county board has agreed to serve as host county.

The commissioner shall make the redetermination of need for the service after considering the factors in subpart 3, and the recommendations of the county board. The decision of the commissioner is final and may be appealed in accordance with subparts 8 and 9. The commissioner shall notify the county board of the decision following receipt of the county board's recommendations.

**Subp. 8. Effect of need determination or redetermination.** If the commissioner determines that the service, modification, or expansion is not needed, the service, modification, or expansion shall not be paid for or reimbursed from federal or state money for services to persons with mental retardation. An application for licensure submitted to the department or submitted for approval by the county will not be considered complete unless the commissioner determines that the service modification or expansion is needed. If the determination or redetermination is appealed, the effect of this subpart may be stayed pending the outcome of the appeal.

**Subp. 9. Appeal of commissioner's determination.** The provider making the application or the county board may appeal:

- A. the commissioner's determination of the need for a modification, expansion, or reduction of existing services;
- B. the commissioner's determination of the need for services for which a change of ownership or location is proposed; or
- C. the commissioner's redetermination of need.

All appeals must be handled in accordance with Minnesota Statutes, chapter 14. Notice of appeal must be received by the commissioner within 30 days after the notification of the commissioner's decision was sent to the county.

**Statutory Authority:** *MS s 256B.092; 256B.503*

**History:** *11 SR 77*

**9525.0155 STANDARDS FOR QUALIFICATIONS AND TRAINING OF CASE MANAGERS.**

**Subpart 1. Staff qualifications.** Except as provided in item C, staff providing case management services to persons with mental retardation must meet the requirements in item A or B.

A. The designated case manager must have at least a bachelor's degree in social work, special education, psychology, nursing, human services, or other fields related to the education or treatment of persons with mental retardation and one year of experience in the education or treatment of persons with mental retardation or a related condition as defined in Minnesota Statutes, section 252.27, subdivision 1.

B. The county board may establish procedures permitting persons who do not meet the requirements in item A to assist in providing case management services, except those services under parts 9525.0065, 9525.0075, and 9525.0095,

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under the supervision of a case manager who meets the qualifications in item A if the person assisting the case manager has completed 40 hours of training in case management and the education and treatment of persons with mental retardation or a related condition as defined in Minnesota Statutes, section 252.27, subdivision 1.

C. Between the effective date of parts 9525.0015 to 9525.0155 and January 1, 1987, the county board may request a variance to the requirements in item A to hire a case manager who meets the education requirement but does not meet the experience requirement. The variance request must be submitted in writing to the commissioner and must include a description of 20 or more hours of training in case management and the education and treatment of persons with mental retardation that will be completed by the case manager within 12 months of the date of hiring. The commissioner shall grant the variance if the person for whom the variance is requested meets the educational requirements in item A and the variance request meets the requirements in this item.

Subp. 2. **Case management training.** The county board shall establish a plan for the training of case managers. The plan must include at least 20 hours annually in the area of case management, mental retardation, or related conditions as defined in Minnesota Statutes, section 252.27, subdivision 1. Training and development activities attended by case managers must be documented and kept on file with the county.

**Statutory Authority:** *MS s 256B.092; 256B.503*

**History:** *11 SR 77*

### 9525.0165 ENFORCEMENT.

A county board must fully comply with parts 9525.0015 to 9525.0165 unless the county board submitted a written variance request to the commissioner under parts 9525.0015 to 9525.0165 by February 1, 1985, and the variance request was subsequently approved in writing by the commissioner. If the commissioner has reasonable grounds to believe that a county board has not complied with or is failing to comply with parts 9525.0015 to 9525.0155, except as provided in the county's approved variance request, the commissioner may issue a written order requiring the county board to comply. The county board shall comply with the order.

If the county board disagrees with the commissioner's order, the county board may request a review of the decision to the commissioner and request reconsideration. To be reconsidered, the request for review must be filed in writing with the commissioner within 30 calendar days of the date that the county board received the order. The request for review must state the reasons why the county board is requesting a reconsideration of the commissioner's order and present evidence explaining why the county board disagrees with the commissioner's order. The commissioner shall review the evidence presented by the county board and send written notification to the county board of the decision on the reconsideration. The commissioner's decision on the reconsideration is final, unless a law suit is filed in district court.

**Statutory Authority:** *MS s 256B.092; 256B.503*

**History:** *11 SR 77*

## RESIDENTIAL PROGRAMS AND SERVICES FOR MENTALLY RETARDED PERSONS

### 9525.0210 DEFINITIONS.

Subpart 1. **Ambulatory.** "Ambulatory" means the ability to walk independently and at least negotiate any barriers, such as ramps, stairs, corridors, doors, etc., without assistance as may be necessary to get in and out of the facility.

Subp. 2. **Executive officer.** "Executive officer" means the individual appoint-

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ed by the governing body (see subpart 3) of a residential program to act in its behalf in the overall management of the facility. Job titles may include, but are not limited to, superintendent, director, and administrator.

**Subp. 3. Governing body.** "Governing body" means the policy-making authority, whether an individual or a group, that exercises general direction over the affairs of a residential program and establishes policies about its operation and the welfare of the individuals it serves. The governing body is responsible for the operation of the residential program and for compliance with parts 9525.0210 to 9525.0430.

**Subp. 4. Interdisciplinary team.** "Interdisciplinary team" means a team consisting, at a minimum, of the resident, the resident's legal guardian (if any), local social service agency representative, and the program director or program staff member. Other persons relevant to a particular resident's needs may be included. The interdisciplinary team is responsible for the development and evaluation of the resident's individual program plan and determination of need for the residential program.

**Subp. 5. Legal incompetence.** "Legal incompetence" means the legal determination that a resident is unable to exercise his full civil and legal rights and that a guardian (see parent, subpart 15) is required.

**Subp. 6. Living unit.** "Living unit" means a resident-living unit that houses the primary living group (see subpart 16) and provides access to bedroom, living room, recreation/activity room, dining room, kitchen, and bathroom.

**Subp. 7. Living unit staff.** "Living unit staff" means individuals who conduct the resident-living program; resident-living staff.

**Subp. 8. May.** "May" indicates that the provisions or practices stated in these rules are permitted.

**Subp. 9. Mental retardation.** "Mental retardation" refers to persons who have been diagnosed as having significantly subaverage intellectual functioning existing concurrently with demonstrated deficits in adaptive behavior, and manifested during the developmental period.

**Subp. 10. Mobile.** "Mobile" means the ability to move independently from place to place with the use of devices such as walkers, crutches, wheelchairs, wheeled platforms, etc.

**Subp. 11. Multiple-handicapped.** "Multiple-handicapped" means in addition to mental retardation, an orthopedic, incoordinative, or sensory disability that culminates in significant reduction of mobility, flexibility, coordination, or perception and that interferes with an individual's ability to function independently.

**Subp. 12. Nonambulatory.** "Nonambulatory" means the inability to walk independently.

**Subp. 13. Nonmobile.** "Nonmobile" means the inability to move independently from place to place.

**Subp. 14. Normalization principle.** "Normalization principle" means the principle of letting persons who are mentally retarded obtain an existence as close to the normal as possible, making available to them patterns and conditions of everyday life that are as close as possible to the norms and patterns of the mainstream of society.

**Subp. 15. Parent.** "Parent" means the general term used in these rules to refer to the natural parent, or other person who fills the legal or social role of the natural parent, i.e., represents the rights and interests of the mentally retarded persons as if they were his own. May include an advocate as one who acts on behalf of a resident to obtain needed services and the exercise of his full human and legal rights; legal guardian as one appointed by a court; guardian of the person as one appointed to see that the resident has proper care and protective supervision in keeping with his needs; guardian of the property as one appointed to see that the financial affairs of the resident are handled in his best interests;

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guardian ad litem as one appointed to represent a resident in a particular legal proceeding; public guardian as a public official empowered to accept court appointment as a legal guardian (i.e., the commissioner of human services or his agent); or testamentary guardian as one designated by the last will and testament of a natural guardian.

**Subp. 16. Primary-living group.** "Primary-living group" means that group characterized by face-to-face relations that are personal, spontaneous, and typically, although not necessarily, long-lasting. Members of a primary group are drawn together by the intrinsic value of the relations themselves rather than by a commitment to an explicit goal. The family is an example of a primary group.

**Subp. 17. Program.** "Program" means the general term used in these rules to refer to all people, events, and environments that lead to a purposeful outcome (goal or objective) for the individual resident. These programs include, but are not limited to, training and maintenance of the individual; the design, furnishing, and use of space; staff and staffing patterns; and professional and volunteer services.

**Subp. 18. Resident.** "Resident" means the general term used in these rules to refer to an individual who receives service in a residential program (see subpart 21), whether or not such individual is actually in residence in the facility. The term thus includes individuals who are being considered for residence in a facility and individuals who were formerly in residence in a facility. A residential program, on the other hand, may use the term "resident" to refer only to those individuals actually in residence.

**Subp. 19. Referring agency.** "Referring agency" means the general term used in these parts to refer to the local social service agency responsible for establishment and implementation of case management plans for individuals and particular families with mental retardation problems and for the provision of specific financial or case-work services to these individuals and families. In Minnesota, the county board is charged with administrative responsibility for these duties. Responsibility for these duties may be delegated to the local social service agency.

**Subp. 20. Resident-living.** "Resident-living" means pertaining to residential or domiciliary services.

**Subp. 21. Residential program.** "Residential program" means a general term used in this rule to refer to the program of services to residents of a supervised living facility or of a licensed or certified foster home approved by the commissioner as an extension of the residential program which has an administrative organization and/or structure for the purpose of providing care, food, lodging, training, supervision, habilitation, and treatment as needed for more than four mentally retarded individuals on a 24-hour per day basis. Residential programs may also be known as, but are not limited to group homes, child-caring institutions, boarding-care homes, nursing homes, state hospitals, public institutions, and regional centers.

**Subp. 22. Restraint.** "Restraint" means any physical device that limits the free and normal movement of body or limbs. Chemical substances administered for the purpose of controlling maladaptive behavior are deemed restraints. Mechanical supports used in normative situations to achieve proper body position and balance shall not be considered restraints.

**Subp. 23. Rhythm of life.** "Rhythm of life" means relating to the normalization principle (see subpart 14), under which making available to mentally retarded persons patterns and conditions of everyday life that are as close as possible to the norms and patterns of the mainstream of society means providing a normal rhythm of the day (in relation to arising, getting dressed, participating in play and work activities, eating meals, retiring, etc.) normal rhythm of the week (differentiation of daily activities and schedules), and normal rhythm of the year (observing holidays, days with personal significance, vacations, etc.).

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Subp. 24. **Seclusion.** "Seclusion" means involuntary removal from social contact with others, in a separate room.

Subp. 25. **Shall.** "Shall" indicates that the requirement, provision, or practice stated in this rule is mandatory.

Subp. 26. **Supervised living facility.** "Supervised living facility" means a general term used in these parts to refer to the facility licensed by Minnesota Department of Health, in accordance with Minnesota Statutes 1971, section 144.56.

Subp. 27. **Time-out.** "Time-out" means time out from positive reinforcement. A behavior modification procedure in which, contingent upon the emission of undesired behavior, the resident is removed from the situation in which positive reinforcement is available.

**Statutory Authority:** *MS s 245.802; 252.28 subd 2*

**History:** *L 1984 c 654 art 5 s 58*

### 9525.0220 STATUTORY AUTHORITY.

Minnesota Statutes, section 256.01 charges the commissioner of human services with general responsibility for service to mentally retarded persons.

Minnesota Statutes, section 245.072 creates a mental retardation division in the Department of Human Services to "coordinate those laws administered and enforced by the commissioner of public welfare relating to mental retardation and mental deficiency which the commissioner may assign to the division."

Minnesota Statutes, section 252.28 charges the commissioner of human services with the responsibility for licensing of residential facilities and services for mentally retarded persons.

**Statutory Authority:** *MS s 245.802; 252.28 subd 2*

**History:** *L 1984 c 654 art 5 s 58*

### 9525.0230 SCOPE.

Parts 9525.0210 to 9525.0430 govern the operation of any residential program engaged in, or seeking to engage in, the provision of residential or domiciliary service for mentally retarded individuals, and set forth the requirements necessary for such a residence to be licensed.

Cost of boarding care outside of home or state institution is reimbursable by the state for care of children under 18 years of age in facilities licensed by the Department of Human Services. All participating facilities serving more than four mentally retarded children must be licensed under these rules prior to participation.

Federal programs under the Social Security Act, as amended, require certification of participating facilities. All participating facilities serving more than four mentally retarded persons must be licensed under these rules prior to certification.

**Statutory Authority:** *MS s 245.802; 252.28 subd 2*

**History:** *L 1984 c 654 art 5 s 58*

### 9525.0240 PURPOSE.

The purpose of parts 9525.0210 to 9525.0430 is to establish the minimum standards for the operation of residential programs and services for mentally retarded persons residing in licensed supervised living facilities.

The purpose of Minnesota Statutes, section 252.28 and these parts is to establish and protect the human right of mentally retarded persons to a normal living situation, through the development and enforcement of minimum requirements for the operation of residential programs. Moreover, these parts serve an educational purpose in providing guidelines for quality service.

**Statutory Authority:** *MS s 245.802; 252.28 subd 2*



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### 9525.0250 PROCEDURE FOR LICENSING.

Subpart 1. **Submission of application.** Application shall be made to the commissioner of human services, who may determine the need, location, and program of facilities and services seeking to be licensed or relicensed under these rules. In making this determination, the commissioner shall be guided by these parts and other state agency rules promulgated under Minnesota Statutes, section 252.28, subdivision 1, including parts 9525.0010 to 9525.0090.

Applicants shall submit such materials and information as may be required to make a proper determination of the nature and adequacy of the residential program to be provided.

Subp. 2. **Prerequisites.** Applicants must have, or have applied for, a supervised living facility license from the state Department of Health; and, in the case of a commissioner-approved extension of the residential program for family homes of four or fewer residents, a foster home license or certification from the Department of Human Services.

Subp. 3. **License renewal.** A residential program desiring to renew its license shall submit an application at least 45 days prior to expiration of the license. A renewal license may be issued for a period of up to two years at the discretion of the commissioner.

Subp. 4. **Provisional license.** Provisional license shall be granted by the commissioner under terms of Minnesota Statutes, section 245.783, subdivision 3.

Subp. 5. **Variance.** A residential program may request in writing a variance of a specific provision of the rules. The request for a variance must cite the provision of the rules in question, reasons for requesting the variance, the period of time not to exceed one year the licensee wishes to have the provision varied and the equivalent measures planned for assuring that programmatic needs of residents are met. Variances granted by the commissioner shall specify in writing the time limitation and required equivalent measures to be taken to assure that programmatic needs are met. Variances denied by the commissioner shall specify in writing the reasons for the denial. No variance shall be granted that would threaten the health, safety, or rights of residents.

Subp. 6. **Refusal or revocation of license.** Failure to comply with these rules or applicable state laws shall be cause for refusal or revocation of license.

Failure to be licensed as a supervised living facility by the Minnesota Department of Health (or its successor) shall be cause for refusal or revocation of license.

Revocation, suspension, or denial of a license may be appealed pursuant to Minnesota Statutes, chapter 14.

**Statutory Authority:** *MS s 245.802; 252.28 subd 2*

**History:** *L 1984 c 654 art 5 s 58*

### 9525.0260 GROUPING AND ORGANIZATION OF LIVING UNITS.

Subpart 1. **Goal.** The resident-living unit, subsequently called living unit, shall be small enough to ensure the development of meaningful interpersonal relationships among residents and between residents and staff.

Subp. 2. **Living unit.** The living unit is that unit which houses the primary living group. It may be a group home, foster home, ward, wing, floor, etc.

The living unit shall contain bedroom, living room, bathroom, recreation room, and connecting areas. It may contain dining room and kitchen. Facilities with more than four mentally retarded persons in residence on November 17, 1972, shall be deemed to be in substantial compliance with this provision, except that the living unit shall contain bedroom and living room areas.

The living unit shall be physically, socially, and functionally differentiated

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from areas for developmental and remedial services (see parts 9525.0320 to 9525.0350) and shall simulate the arrangements of a home in order to encourage a personalized atmosphere for residents.

The size of the living unit shall be based upon the needs of the residents, but the living unit shall provide for not more than 16 residents.

The living unit or complex of such units shall house both male and female residents to the extent that this conforms to the prevailing cultural norms and unless contraindicated by program plan. Such living arrangements shall include provision for privacy and for appropriate separation of male and female residents.

The living unit shall not be a self-contained program unit unless contraindicated by program plans of the particular residents being served, and living unit activities shall be coordinated with developmental and remedial services in which residents engage outside the living unit.

Residents shall be allowed free use of all space within the living unit, with due regard for privacy and personal possessions.

Each resident shall have access to a quiet, private area where he can withdraw from the group.

Outdoor active play or recreation areas shall be readily accessible to all living units.

Interior and exterior doors shall not be locked except to protect the resident from clear and present danger, or in conjunction with a behavior modification program (see part 9525.0280, subpart 9). In no case shall locked doors be a substitute for program or staff interaction with residents.

**Statutory Authority:** *MS s 245.802; 252.28 subd 2*

## 9525.0270 PHYSICAL PLANT.

**Subpart 1. Design of living unit.** The living unit shall be physically self-contained. Walls defining the living unit shall extend from floor to ceiling.

The interior design of the living unit shall simulate the functional arrangements of a home to encourage a personalized atmosphere for a small group of residents unless it has been demonstrated that another arrangement is more effective in maximizing the development of specific residents being served.

Space shall be arranged to permit residents to participate in different kinds of activities, both in groups and singly.

Space shall be arranged to minimize noise and permit communication at normal conversation levels.

Walls defining each room in the living unit shall extend from floor to ceiling.

**Subp. 2. Design of bedroom.** Bedrooms shall accommodate from one to four residents.

Doors to bedrooms shall not have vision panels and shall not be capable of being locked, except where residents may lock their own bedroom doors, as consistent with their program.

There shall be provision for residents to mount pictures on bedroom walls.

Space outside the bedroom shall be provided for equipment for daily out-of-bed activity for all residents not yet mobile, except those who have a short-term illness or those for whom out-of-bed activity is a threat to life.

**Subp. 3. Design of toilet areas.** Toilet areas shall be located in such places as to facilitate training toward maximum self-help by residents.

Water closets, showers, bathtubs, and lavatories shall approximate normal patterns found in homes, unless specifically contraindicated by program needs.

Toilets, bathtubs, and showers shall provide for individual privacy unless specifically contraindicated by program needs.

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Subp. 4. **Furnishings and equipment in general.** Furnishings shall be appropriate to the physiological, emotional, and developmental needs of each resident.

Subp. 5. **Furniture in dining areas.** Dining areas shall:

A. be furnished to stimulate maximum self-development, social interaction, comfort, and pleasure;

B. promote a pleasant and home-like environment and be attractively furnished and decorated and of good acoustical quality; and

C. be equipped with tables, chairs, eating utensils, and dishes designed to meet the developmental needs of each resident.

Subp. 6. **Drinking water.** Each resident shall have access to drinking water in the living units.

Subp. 7. **Toilet training equipment.** Equipment shall be provided for toilet training, as appropriate, including equipment for use by the multiple-handicapped.

Subp. 8. **Safety.** Residents shall receive appropriate instruction in safety precautions and procedures.

First-aid equipment, approved by a physician, shall be maintained on the premises in a readily available location, and staff shall be instructed in its use.

Applicable requirements of the state fire marshal or his agent shall be met.

**Statutory Authority:** *MS s 245.802; 252.28 subd 2*

### 9525.0280 STAFF-RESIDENT RELATIONSHIPS AND ACTIVITIES.

Subpart 1. **Goal.** The objective in staffing each living unit shall be to maintain reasonable stability in the assignment of staff, thereby permitting the development of a consistent interpersonal relationship between each resident and one or two staff members. Provisions shall be made to ensure that the efforts of the staff are not diverted from these responsibilities by excessive housekeeping and clerical duties, or other nonresident-involved activities.

Subp. 2. **Staff responsibilities.** The primary responsibility of the living-unit staff shall be to devote their attention to the care and development of the residents.

Living-unit staff shall be responsible for the development and maintenance of a warm, family, or homelike environment that is conducive to the achievement of optimal development by the resident.

Living-unit staff shall train residents in activities of daily living and in the development of self-help and social skills.

Subp. 3. **Program plans.** Living-unit staff shall participate in assessment, program planning, and evaluation activities relative to the development of the resident (see parts 9525.0320 to 9525.0350). A program plan for each resident shall be available to staff in each living unit.

Subp. 4. **Rhythm of life.** The rhythm of life in the living unit shall resemble the cultural norm for the residents' nonretarded age peers unless a departure from this rhythm is justified on the basis of maximizing the residents' human qualities. The rhythm of life includes the following:

A. Residents shall be assigned responsibilities in the living units commensurate with their interests, abilities, and program plans, in order to enhance feelings of self-respect and to develop skills of independent living.

B. Multiple-handicapped and nonambulatory residents shall:

(1) spend a major portion of their waking day out of bed;

(2) spend a major portion of their waking day out of their bedroom areas;

(3) have planned daily activity and exercise periods; and

(4) be rendered mobile by various methods and devices.

C. All residents shall have planned periods out-of-doors on a year-round basis.

D. Except as limited by program plan, residents shall be instructed in how to use, and shall be given opportunity for, freedom of movement.

E. Birthdays and special events should be individually observed.

**Subp. 5. Residents' opinions.** Residents' views and opinions on matters concerning them shall be elicited and given consideration in defining the processes and structures that affect them.

**Subp. 6. Communication processes.** Residents shall be instructed in the free and unsupervised use of communication processes. Except as denied individual residents by program plan, this may include:

A. having access to telephones for incoming and local outgoing calls;

B. having access to pay telephone, or the equivalent, for outgoing long distance calls;

C. opening their own mail and packages and generally doing so without direct surveillance; and

D. not having their mail read by staff, unless requested by the resident.

**Subp. 7. Personal possessions.** Residents shall be permitted personal possessions, such as toys, books, pictures, games, radios, arts and crafts materials, religious articles, toiletries, jewelry, and letters.

**Subp. 8. Money.** Regulations shall permit normal possession and use of money by residents.

Residents shall be trained in the use of money.

Allowance or opportunities to earn money shall be available to residents.

**Subp. 9. Behavior problems.** There shall be provisions for prompt recognition of behavior problems, as well as appropriate management of behavior in the living unit. These provisions shall be subject to review by a research, review, and/or human rights committee (see part 9525.0370, subpart 5).

There shall be a written statement of policies and procedures for the control and discipline of residents that:

A. is directed to the goal of maximizing the growth and development of the residents;

B. is available in each living unit;

C. is available to parents; and

D. provides for resident participation, as appropriate, in the formulation of such policies and procedures.

Corporal punishment shall not be permitted.

Residents shall not discipline other residents, except as part of an organized self-government program that is conducted in accordance with written policy.

**Subp. 10. Physical restraints.** Restraint shall be employed only when absolutely necessary to protect the resident from injury to himself or to others; and restraint and seclusion shall not be employed as punishment, for the convenience of staff, or as a substitute for program.

The facility shall have a written policy that defines the uses of restraint, the staff members who may authorize its use, and a mechanism for monitoring and controlling its use. This policy shall be available in each living unit.

Totally enclosed cribs and barred enclosures shall be considered restraints.

**Subp. 11. Record of restraint usage.** Each use of restraint and seclusion shall be recorded in the resident's record. This record shall include a description of the precipitating behavior; expected behavioral outcome; and actual behavioral outcome.

**Subp. 12. Seclusion rooms.** Rooms used for seclusion shall be furnished with

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a bed and bedding, a chair, a commode, and a lavatory; and shall afford proper access to drinking water.

Subp. 13. **Chemical restraint.** Chemical restraint shall not be used excessively, as punishment, for the convenience of staff, as a substitute for program, or in quantities that interfere with a resident's program. Each use of a behavior-controlling drug shall be recorded in the resident's record. This record shall include:

- A. a description of the behavior to be modified;
- B. expected behavioral outcome;
- C. possible side or secondary effects;
- D. date for review or termination; and
- E. actual behavioral outcome.

Subp. 14. **Behavior modification.** Behavior modification programs involving the use of time-out devices or the use of noxious or aversive stimuli shall be conducted only with the consent of the affected resident's parent and shall be described in written plans that are kept on file in the facility.

**Statutory Authority:** *MS s 245.802; 252.28 subd 2*

### 9525.0290 HEALTH, HYGIENE, AND GROOMING.

Subpart 1. **In general.** Procedures shall be established for:

- A. monthly weighing of residents, with greater frequency for those with special needs;
- B. quarterly measurement of height, until the age of maximum growth; and
- C. maintenance of weight and height records. Every effort shall be made to ensure that residents maintain normal weights.

Provisions shall be made to furnish and maintain in good repair, and to train residents in the use of, dentures, eyeglasses, hearing aids, braces, etc., prescribed by appropriate specialists.

Subp. 2. **Independent grooming.** Residents shall be trained to exercise maximum independence in health, hygiene, and grooming practices, including bathing, brushing teeth, shampooing, combing and brushing hair, shaving, and caring for toenails and fingernails.

Each resident shall be assisted in learning normal grooming practices with individual toilet articles that are appropriately available to that resident.

Living unit staff shall be instructed in each resident's daily oral care program and shall be responsible to see that it is carried out. Whenever possible, the resident shall be instructed in, and learn to carry out, his own program of daily oral care. Dental care practices should include the use of newer equipment, such as electric toothbrushes and oral water irrigators or lavages as prescribed. Individual brushes shall be properly marked, used, and stored. Teeth shall be brushed daily with dentifrice.

Hair cutting and styling, in an individualized manner consistent with current style, shall be accessible to all residents.

For residents who require such assistance, cutting of toenails and fingernails by trained personnel shall be scheduled at regular intervals.

Each resident shall have a shower or tub bath as needed. Residents' bathing shall be conducted at the most independent level possible. Residents' bathing shall be conducted with due regard for privacy. Individual washcloths and towels shall be used.

Female residents shall be helped to attain maximum independence in caring for menstrual needs. Menstrual supplies shall be of the same quality and diversity available to all women.

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Subp. 3. **Drinking units.** Residents shall be instructed in the use of drinking units. Those residents who cannot use the unit shall be given the proper daily amount of fluid at appropriate intervals adequate to prevent dehydration. A drinking unit shall be available to, and usable by, mobile nonambulatory residents, as needed. Special cups and noncollapsible straws shall be available when needed by the multiple-handicapped. If the drinking unit employs cups, only single-use, disposable types shall be used.

Subp. 4. **Toilet training.** Every resident who does not eliminate appropriately and independently shall be engaged in a toilet training program. Residents who are incontinent shall be immediately bathed or cleansed, upon voiding or soiling unless specifically contraindicated by a plan for toilet training; and all soiled clothing shall be changed.

**Statutory Authority:** *MS s 245.802; 252.28 subd 2*

## 9525.0300 CLOTHING.

Subpart 1. **Supply.** Each resident shall have an adequate allowance of neat, clean, fashionable, and seasonable clothing. Each resident shall have his own clothing that is, when necessary, inconspicuously marked with his name, and he shall use this clothing. Such clothing shall make it possible for residents to go out of doors in inclement weather and to make a normal appearance in the community. Nonambulatory residents shall be dressed daily in their own clothing, including shoes, unless contraindicated by program plan. Washable clothing shall be designed for multiple-handicapped residents being trained in self-help skills. Clothing for incontinent residents shall be designed to foster comfortable sitting, crawling and/or walking, and toilet training.

Subp. 2. **Selection and care.** Residents shall be trained and encouraged to:

- A. select and purchase their own clothing as independently as possible, preferably utilizing community stores;
- B. select their daily clothing;
- C. dress themselves;
- D. change their clothes to suit the activities in which they engage; and
- E. maintain (launder, clean, and mend) their clothing as independently as possible.

**Statutory Authority:** *MS s 245.802; 252.28 subd 2*

## 9525.0310 FOOD SERVICE.

Subpart 1. **In general.** Food services shall recognize and provide for the physiological, emotional, cultural, and developmental needs of each resident. There shall be a written statement of goals, policies, and procedures that governs food service. The diet provided shall include foods that stimulate chewing, unless contraindicated by program plan.

Subp. 2. **Participation in food preparation.** Residents shall have opportunity to be trained and participate in food preparation and service.

Subp. 3. **Place of meals.** All residents, including the mobile nonambulatory, shall eat or be fed in dining rooms, except when contraindicated by program plan.

All residents, including the mobile nonambulatory, shall eat at a table.

Dining arrangements shall be based upon a plan to meet the needs of the residents and the requirements of their programs. Dining and serving arrangements shall provide for a variety of eating experiences (e.g., cafeteria and family style), and, when appropriate, for the opportunity to make food selections with guidance. Unless justified on the basis of meeting the program needs of the particular residents being served, dining tables shall seat small groups of residents (typically four to six at a table) and include both sexes.

Dining rooms shall be supervised and staffed for the direction of self-help

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eating procedures and to ensure that each resident receives an adequate amount and variety of food.

Staff members shall be encouraged to eat with those residents who have semi-independent or independent eating skills.

For residents not able to get to dining areas, food service practices shall permit and encourage maximum self-help and shall promote social interaction and a pleasant mealtime experience.

**Subp. 4. Training for residents.** Residents shall be provided with systematic training to develop eating skills, utilizing adaptive equipment when it serves the developmental process.

A plan for the remediation of eating problems shall be implemented for all residents with special disabilities. This plan shall be consistent with the individual's developmental needs.

Living-unit staff shall be trained in and shall utilize proper feeding techniques when a resident must be fed. Residents shall be fed in an upright position. Residents shall be fed in a manner consistent with their developmental needs (for example, infants shall be fed in arms). Residents shall be fed at normal consumption rates, and the time allowed for eating shall be such as to promote the development of self-feeding abilities, to encourage socialization, and to provide a pleasant mealtime experience.

**Statutory Authority:** *MS s 245.802; 252.28 subd 2*

### 9525.0320 DEVELOPMENTAL AND REMEDIAL SERVICES.

In addition to resident-living services detailed in parts 9525.0260 to 9525.0310, residents shall be provided with developmental and remedial services called for by individual assessment and program plan. These services may be provided in two ways:

A. within the facility and by staff employed by the residential program, except that developmental services, as here defined, shall not be provided in the living unit unless contraindicated by the assessed needs of the particular residents being served; and

B. outside of the facility and by agreement between the facility and other agencies or persons.

All developmental and remedial services, as defined in parts 9525.0330 to 9525.0350, shall be rendered outside of the facility, whenever possible, and when rendered in the facility, such services must be at least comparable to those provided in the community.

**Statutory Authority:** *MS s 245.802; 252.28 subd 2*

### 9525.0330 ASSESSMENT OF RESIDENT.

**Subpart 1. Annual assessment requirement.** Residential program staff shall participate in regular, at least annual, assessment of each resident. The assessment shall cover behavioral and physical status of the resident and shall be conducted by an interdisciplinary team.

**Subp. 2. Behavioral assessments.** Behavioral assessment:

A. shall utilize objective description to the greatest degree possible;

B. shall include the resident, when he is capable of participation, and data supplied by his parents, when appropriate, and by living unit staff; and

C. shall include, but not be limited to, the following areas:

(1) Educational assessment. All school-age children shall be assessed annually in accordance with guidelines of a properly designated school authority, in order to determine eligibility for public school class. School-age is defined as four years to 21 years for mentally retarded children and shall not extend beyond secondary school.

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- (2) Self-care skills.
- (3) Economic skills.
- (4) Language development.
- (5) Number and time concepts.
- (6) Domestic occupation.
- (7) Vocational skills.

(8) Maladaptive behavior and emotional disturbances. A residential program shall be in substantial compliance with these provisions when the American Association of Mental Deficiency Adaptive Behavior Scale, or the Minnesota Developmental Programming System (MDPS), is used for behavioral assessment.

**Subp. 3. Physical assessment.** Physical assessment for children shall be performed as recommended by the council on pediatrics.

Physical assessment for adults shall be performed at least annually and shall include, but not necessarily be limited to physical examination, blood count, and urinalysis.

**Subp. 4. Drug assessment.** A resident who receives daily medications for a chronic condition shall have a planned and recorded schedule for examination and review of his medication regimen. Use of prescribed medications shall not be continued past the scheduled time for examination. Persistent deviancy in use of a drug by a resident, or adverse reaction to a drug, shall be considered in adjustment of the resident's program plan.

**Subp. 5. Motor assessment.** Physical and motor assessment shall be performed at least annually for persons under 16 years of age, and as needed thereafter.

**Subp. 6. Speech and language assessment.** Speech and language assessment shall be performed annually for persons under 16 years of age, and as needed thereafter.

**Subp. 7. Vision assessment.** Vision assessment shall be performed annually.

**Subp. 8. Hearing assessment.** Hearing assessment shall be performed annually for persons under ten years of age, and thereafter when a hearing change is suspected.

**Subp. 9. Dietary assessment.** Dietary assessment shall be performed at least every 90 days for residents receiving a therapeutic diet.

**Subp. 10. Psychological assessment.** Psychological assessment shall be performed at least every three years for persons under 16 years of age, and as needed thereafter. Current psychological assessment data (less than one year old) available from the referring agency may be utilized to comply with this requirement.

**Statutory Authority:** *MS s 245.802; 252.28 subd 2*

## 9525.0340 PROGRAM AND TREATMENT PLAN.

**Subpart 1. Formulation of individual plans.** Residential program staff shall participate with an interdisciplinary team including daytime developmental staff, in the formulation of an individualized program and treatment plan for each resident. Facility staff shall be responsible for implementation of the plan.

General provisions: The formulation of individualized program and treatment plans shall:

- A. define specific and time-limited objectives for behavioral and physical development;
- B. consider the proper exercise of the residents' and parents' civil and legal rights, including the right to adequate service;
- C. define needed services without consideration of the actual availability of desirable options;



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- D. investigate and weigh all available and applicable services;
- E. determine the resident's need for remaining in the facility; and
- F. consider the need for (continued) guardianship or conservatorship or restoration to capacity of the resident.

Subp. 2. **Developmental services.** All developmental services utilized by residents shall be provided by persons, facilities, or services licensed or certified to provide these services.

Developmental services shall be utilized to promote the intellectual, physical, affective, and social development of each individual, and may include:

- A. developmental achievement services;
- B. recreational services;
- C. religious services;
- D. sheltered-workshop services;
- E. social-work services;
- F. vocational-training and placement services; and
- G. educational services.

All school-age children shall attend public school class unless specifically excluded by the responsible school district. A school program operated by the facility shall meet the standards of the State Department of Education and the local school district.

Subp. 3. **Health services.** Health services shall be utilized to maintain an optimal general level of health for each resident, and to maximize function, prevent disability, and promote optimal development of each resident.

Residents who are members of an organized religious group opposed to any health practices may be excused from regulations applying to personal health upon written request by the resident or his parents; but they shall be subject to requirements for control of outbreaks of infectious disease.

**Statutory Authority:** *MS s 245.802; 252.28 subd 2*

### 9525.0350 EVALUATION OF SERVICES.

Residential program staff shall participate with an interdisciplinary team in the evaluation of all services utilized by residents as reflected by each resident's level of functioning. This evaluation shall include evaluation of resident movement toward objectives stated in the program plan. The evaluation shall include the views of the resident and his parents. The evaluation shall include the views of the program advisory committee (see part 9525.0370, subparts 2 to 5) and appropriate agencies.

**Statutory Authority:** *MS s 245.802; 252.28 subd 2*

### 9525.0360 ADMISSION AND RELEASE PROCEDURES.

Subpart 1. **In general.** Admission and release procedures include the following:

- A. No resident shall be admitted to a residential program prior to its being licensed.
- B. The number of residents admitted to the program shall not exceed its licensed program capacity.
- C. The residential program shall make descriptive information available to the public that includes, but is not limited to:
  - (1) preadmission and admission services and procedures;
  - (2) limitations of age, length or place of residence, and type or degree of handicap;
  - (3) developmental and remedial services provided by program staff;
  - (4) developmental and remedial services provided by agreement with other agencies or persons;

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(5) means for individual programming for residents in accordance with need;

- (6) the plan for grouping residents into living units; and
- (7) release and follow-up services and procedures.

D. The residential program shall have an admission and release committee (see part 9525.0370, subpart 5) that shall:

(1) include consumers and their representatives, interested citizens, and relevantly qualified professions; and

(2) review all applications and advise the administration of the residential program on selection, admission, and release of residents.

E. The laws, regulations, and procedures on admission, readmission, and release shall be summarized and available for distribution.

F. Admission and release procedures shall:

(1) encourage voluntary admission upon application of the resident or his parent;

(2) give equal priority to persons of comparable need, whether application is voluntary or by a court;

(3) facilitate emergency, partial, and short-term care when feasible;

(4) ensure the rights and integrity of the resident and his parent;

(5) ensure the resident the maximum opportunity to participate in admission and release decisions;

(6) ensure the resident is informed of the right to appeal the suspension, reduction, termination, or denial of services to the commissioner of human services pursuant to Minnesota Statutes, section 256.045 as a social service appeal; and

(7) if respite care services are provided, there shall be a written policy defining respite care which includes:

(a) minimum and maximum time limit;

(b) conditions and procedures for admission (emergency; vacations; etc.);

(c) charges for respite care;

(d) description of services provided;

(e) type of services to be provided; and

(f) age and developmental level.

Respite care admissions must approximate the standard admission criteria.

G. Upon determination of the possible inadmissibility of a resident, the residential program shall consult with the referring agency and with his parents.

Subp. 2. **Selection and eligibility.** The residential program shall provide information on eligibility requirements and application materials upon all requests.

Residents and their parents shall be free to apply directly to the program for service. However, placement for service shall be made by the responsible local social service agency.

Residential programs shall admit residents without regard to race, creed, or national origin, and accord equal treatment to all persons.

When admission is not an optimal measure, but must, nevertheless, be implemented, its inappropriateness shall be clearly acknowledged; and plans shall be initiated for the continued and active exploration of alternatives.

The determination of legal incompetence shall be separate from the determination of the need for services, and admission to the program shall not automatically imply legal incompetence.

Subp. 3. **Admission.** For each resident admitted, there shall be a written program plan stating the services he needs or a written statement of the procedure and timetable for development of the program line.

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Prior to admission, the resident and his parent shall be counseled on the relative advantages and disadvantages of admission to the program.

Prior to admission, the resident and his parent shall be encouraged to visit the program and the living unit in which the resident is likely to be placed.

Prior to admission of a school-age child, residential program staff shall notify the local school district.

Upon admission, each resident shall be placed in his living unit, and he shall be isolated only upon medical orders issued for specific medical reasons.

**Subp. 4. Release.** Planning for release, the residential program staff shall involve the referring agency, the resident, and his parent.

At the time of release, a summary of findings, progress, and plans shall be recorded and transmitted with the resident.

Procedures shall be established so that:

A. a parent who requests the release of a resident is counseled about the advantages and disadvantages of such release;

B. the court or other appropriate authorities are notified when a resident's release might endanger either the individual or society.

At the time of release, physical examination for signs of injury or disease shall be made in accordance with procedures established by the residential program.

Except in an emergency, release shall be made only with the prior knowledge, and ordinarily the consent, of the referring agency, the resident, and his parents.

**Statutory Authority:** *MS s 245.802; 252.28 subd 2*

**History:** *L 1984 c 654 art 5 s 58*

### 9525.0370 ADMINISTRATIVE POLICIES AND PRACTICES.

**Subpart 1. Written statement of philosophy.** The residential program shall have a written statement clearly defining its philosophy, purpose, and function. This statement shall be consistent with the current status of knowledge and information available on residential services. This statement shall be consistent with the principle of normalization.

**Subp. 2. Written statement of organization.** The residential program shall have a written statement defining its administrative and organizational structure.

**Subp. 3. Governing body and executive program officer.** The governing body shall exercise general direction and establish policies on the operation of the program and the welfare of the residents.

The governing body shall appoint an executive officer of the program. The qualification of the executive officer shall be determined by the governing body and be consistent with the training and education needed to meet the stated goals of the program. The governing body shall delegate to the executive officer the authority and responsibility for management of the affairs of the program.

**Subp. 4. Sound management principles.** The residential program shall be administered and operated in accordance with sound management principles. The type of administrative organization of the program shall be appropriate to the program needs of the resident. The program shall have a table of organization that shows the governing and administrative responsibilities of the program.

**Subp. 5. Consumer representation and advisory body.** The residential program shall provide for meaningful and extensive consumer representation and public participation in its operation. If consumer representatives, interested citizens, and relevantly qualified professionals are not represented on the governing body, an advisory body composed of such representation shall be appointed by the governing body.

The advisory body shall sit ad hoc to the governing body and to the chief

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executive officer and provide consultation and assistance as appropriate. The advisory body may function as the program research review and human rights committee. The advisory body may function as the admission and release committee. See part 9525.0360, subpart 1, item D.

**Statutory Authority:** *MS s 245.802; 252.28 subd 2*

## 9525.0380 PERSONNEL POLICIES.

There shall be written personnel policies, which shall be made available to each staff member.

The hiring, assignment, and promotion of employees shall be based on their qualifications and abilities, without regard to sex, race, creed, age, disability, marital status, and ethnic or national origin.

Personnel policies shall include but not be limited to:

A. qualifications, job description, salary schedule, and benefits for all positions;

B. a policy prohibiting mistreatment, neglect, or abuse of residents, and mandating the report of any mistreatment, neglect, or abuse to the executive officer; and

C. procedure for suspension and/or dismissal of an employee for cause.

There shall be a staff person responsible for implementation of these policies.

**Statutory Authority:** *MS s 245.802; 252.28 subd 2*

## 9525.0390 STAFF ASSIGNMENTS.

Subpart 1. **Goal.** There shall be sufficient, appropriately qualified, and adequately trained personnel to provide program service in accordance with program's statement of services provided (see parts 9525.0320 to 9525.0350) and with the standards specified in this document. There shall be staff on duty or call at night to ensure adequate care and supervision. There shall be staff on duty or call to assist all residents in an emergency.

There shall be staff on duty or call so that provision of residential service is not dependent upon the use of unpaid residents or volunteers. Residents shall not replace staff or be used in lieu of staff in any area of work unless they are reimbursed commensurate with ability and production. Residents shall not be involved in the care (feeding, clothing, and bathing), training, or supervision of other residents unless they are adequately supervised, have the requisite humane judgment, and have been specifically trained in necessary skills.

All staff shall be administratively responsible to a person whose training and experience is appropriate to the program.

The title applied to all staff shall be appropriate to the kind of residents with whom they work and the kind of interaction in which they engage.

Subp. 2. **Volunteers.** The use of volunteers shall be encouraged to strengthen services in a manner consistent with the purposes of the program.

**Statutory Authority:** *MS s 245.802; 252.28 subd 2*

## 9525.0400 STAFF TRAINING.

There shall be a staff-training program that is appropriate to the size and nature of the program and that includes, but is not limited to:

A. orientation for all new employees, to acquaint them with the philosophy, organization, program, practices, and goals of the residential program;

B. induction training for each new employee, in order that his skills in working with the residents are increased; and

C. continuing in-service training to update and improve the skills and competencies.

There shall be a record of all staff training on file.

**Statutory Authority:** *MS s 245.802; 252.28 subd 2*

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### 9525.0410 STAFFING NEEDS.

The determination of staff needs shall include consideration of staff members' experience and training, as well as the overall ratio of staff to residents.

The number of available direct care resident living staff shall be related to each resident's degree of handicap and his training needs.

Staff to resident ratios during peak programming hours (evening and weekends) shall be optimized by appropriate scheduling around residents' day programs.

**Statutory Authority:** *MS s 245.802; 252.28 subd 2*

### 9525.0420 FINANCES AND BUDGET.

The residential program shall have a written statement outlining a plan of financing that gives assurance of sufficient funds to enable it to carry out its defined purposes.

Budget management shall be in accordance with sound accounting principles.

A residential program charging for services shall have a written schedule of rates and charge policies, which shall be available to the resident, his parent, referring agencies, and the public.

**Statutory Authority:** *MS s 245.802; 252.28 subd 2*

### 9525.0430 RESIDENT RECORDS.

An individual record shall be maintained in the facility for each resident.

All information contained in the resident's records shall be handled in a manner consistent with the Government Data Practices Act. The resident shall have access to his record upon request. All entries in the resident's record shall be legible, dated, and authenticated by the signature and identification of the individual making the entry.

All records shall contain basic demographic information, to be entered at the time of admission, including reason for referral and individual program plan. Recorded information shall be in sufficient detail and adequate to:

- A. plan and evaluate the resident's program;
- B. provide a means of communication among all persons contributing to the resident's program;
- C. furnish documentary evidence of the resident's progress or regression and of his general response to his program;
- D. serve as a basis for study, evaluation, and development of services provided by the residential program;
- E. protect the legal rights of the resident, his parent, the residential program, and staff; and
- F. serve as a basis for evaluation of all services utilized by residents.

When it is necessary for residential program staff to supervise the use of personal funds, a record of these funds shall be maintained as a part of the resident's record.

**Statutory Authority:** *MS s 245.802; 252.28 subd 2*

## SEMI-INDEPENDENT LIVING SERVICE (SILS)

### 9525.0500 DEFINITIONS.

**Subpart 1. Applicant.** "Applicant" means any adult referred to the SILS provider for services. The term may also refer to an applicant for licensure under parts 9525.0500 to 9525.0660.

**Subp. 2. Client.** "Client" means an adult who needs more than food and lodging, but less than 24-hour per day program of service and supervision, receiving services as provided in this rule.

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Subp. 3. **Commissioner.** "Commissioner" means the commissioner of human services or designee.

Subp. 4. **County board.** "County board" means that body of duly elected officials responsible for the governance of its county under the authority of Minnesota Statutes, sections 375.02 to 375.55. When a human service board has been established under Minnesota Statutes, sections 402.02 to 402.10, it shall be considered to be the county board, for purposes of this rule.

Subp. 5. **Individual program plan (IPP).** "Individual program plan (IPP)" means a detailed plan for each client which sets forth both short-term and long-term goals with detailed methods of achieving movement toward the individual service plan of the local social service agency.

Subp. 6. **Individual service plan.** "Individual service plan" means an analysis by the local social service agency of services needed by the client, including identification of the type of residential placement, if needed, and the general type of program required by the client to meet the assessed needs within a specified period of time.

Subp. 7. **Interdisciplinary team.** "Interdisciplinary team" means a team consisting, at a minimum, of the client, the client's legal guardian (if any), local social service agency representative, and the program director, or SILS staff member. Other persons relevant to a particular client's needs may be included. The interdisciplinary team is responsible for the development and evaluation of the client's individual program plan and determination of need for semi-independent living services.

Subp. 8. **Legal guardian.** "Legal guardian" means a person(s) appointed under Minnesota Statutes, chapter 252A or 525 as guardian or conservator of the person or estate, or both, of anyone who has been legally judged to be incompetent to manage his or her person or estate. The commissioner of human services may be appointed as guardian or conservator.

Subp. 9. **Local social service agency (LSSA).** "Local social service agency (LSSA)" means a local agency designated and authorized by the county board or human service board, to be responsible for providing social services. Social services include the case management and referral of applicants for semi-independent living services.

Subp. 10. **May.** "May" indicates that the provisions or practices stated in these rules are permitted.

Subp. 11. **Mentally retarded person.** "Mentally retarded person" refers to any person who has been diagnosed as having significantly subaverage intellectual functioning existing concurrently with demonstrated deficits in adaptive behavior and manifested during the developmental period.

Subp. 12. **Normalization.** "Normalization" means to provide the client with a normal existence. If this is not possible, to provide the person with the alternative which is least restrictive. This includes making available to the client patterns and conditions of everyday life that are as close as possible to the norms and patterns of the mainstream of society.

Subp. 13. **Provider.** "Provider" means an individual, organization, or association which exercises general direction over the policies and provision of SILS, and is responsible for the welfare of individuals being served.

Subp. 14. **Semi-independent living services (SILS).** "Semi-independent living services (SILS)" means a system of services that includes training, counseling, instruction, supervision, and assistance provided in accordance with the client's individual program plan. Services may include assistance in budgeting, meal preparation, shopping, personal appearance, counseling, and related social support services needed to maintain and improve the client's functioning. Such services shall not extend to clients needing 24-hour per day supervision and services. Persons needing a 24-hour per day program of supervision and services shall not be accepted or retained in a semi-independent living service.

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Subp. 15. **Shall.** "Shall" indicates that the requirement, provision, or practice stated in parts 9525.0500 to 9525.0660 is mandatory.

**Statutory Authority:** *MS s 245.802; 252.28 subd 2*

**History:** *L 1984 c 654 art 5 s 58*

**NOTE:** Minnesota Statutes, section 375.02, was repealed by Laws of Minnesota 1974, chapter 240, section 2.

### 9525.0510 STATUTORY AUTHORITY.

Minnesota Statutes 1978, section 252.28, as amended, Laws of Minnesota 1980, chapter 612, provides for the determination of need, location, and program of public and private residential and day care facilities and services for mentally retarded children and adults. This statute further provides that the commissioner shall establish uniform rules and program standards for each type of residential and day facility or service for more than four retarded persons.

Minnesota Statutes, sections 245.781 to 245.812, Public Welfare Licensing Act, provide for the development and promulgation of rules for the operation and maintenance of day care and residential facilities and agencies, for granting, suspending, and revoking licenses and provisional licenses. It also provides that no individual, corporation, partnership, voluntary association, or other organization may operate a day care or residential facility or agency unless licensed to do so by the commissioner.

**Statutory Authority:** *MS s 245.802; 252.28 subd 2*

### 9525.0520 PURPOSE.

The purpose of these parts is:

A. to establish standards for the provision of services to mentally retarded persons whose dependency requires services above the level of food and lodging, but who do not need 24-hour-per-day care or supervision, as provided in residences licensed under parts 9525.0210 to 9525.0430;

B. to assist clients in achieving their highest potential in self-sufficiency and independence in the least restrictive environment;

C. to ensure that an individual program plan is developed with each client, and each client receives those services he needs to achieve or maintain independence; and

D. to prescribe minimum program standards for semi-independent living services.

**Statutory Authority:** *MS s 245.802; 252.28 subd 2*

### 9525.0530 SCOPE.

Parts 9525.0500 to 9525.0660 apply to any person, organization, or association engaged in the operation and provision of semi-independent living services (SILS) to adults who are or may be mentally retarded, as provided and defined in part 9525.0010, subparts 11 and 13. These parts set forth the requirements for any individual, organization, or association providing SILS to more than four mentally retarded adults to be licensed pursuant to Minnesota Statutes, sections 252.28, and 245.781 to 245.812, the Public Welfare Licensing Act.

Licensure under these parts does not require concurrent compliance with other Department of Human Services licensing rules or with Minnesota Department of Health supervised living facility standards promulgated under Minnesota Statutes, section 144.56.

These parts do not govern the living arrangement of clients. Semi-independent living services licensed under these parts may be provided to persons living in a variety of ordinary community settings other than state hospitals and community residential facilities licensed under parts 9525.0210 to 9525.0430 and supervised living facility standards. Community living arrangements in which SILS are provided may include the following, but not be limited to: client's own home, foster home, apartment, or rooming house.

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**Statutory Authority:** *MS s 245.802; 252.28 subd 2*

**History:** *L 1984 c 654 art 5 s 58*

### 9525.0540 PROCEDURES FOR LICENSING.

Subpart 1. **Application to determine need.** Application for determination of need for SILS shall be made to the county board or its designee. Procedures for determination of need shall be as provided for in parts 9525.0070 and 9525.0080.

Subp. 2. **Application for license.** Upon notification that a need for the service has been found by the commissioner, application for license may be made to the commissioner.

Subp. 3. **Required information.** Applicants shall submit such materials and information as may be required by the commissioner to make proper determination of the nature and adequacy of the services to be provided. Application for license shall not be considered complete until all required documents have been received by the commissioner in accordance with this rule.

Subp. 4. **License renewal.** Any SILS provider desiring to renew a license shall submit an application at least 30 days prior to expiration of the license. A renewal license may be issued for a period up to two years at the discretion of the commissioner.

Subp. 5. **Issuance of license or letter of denial.** The license or a formal letter of denial, including reasons for denial, shall be issued within 90 days after receipt of the completed application. The initial license issued to any new SILS provider shall be provisional for a designated period of time not to exceed one year (Minnesota Statutes, section 245.783, subdivision 3).

Subp. 6. **Provisional license.** Provisional license shall be granted by the commissioner under the terms of Minnesota Statutes, section 245.783, subdivision 3.

Subp. 7. **Variance.** When a specific requirement cannot be met or an innovative alternative is desirable, a variance must be requested in writing. The variance request shall state the reason the current requirement cannot be met; the proposed alternative; and the date the alternative or requirement shall be met, not to exceed one year. No variance shall be granted that would threaten the health, safety, or rights of clients.

**Statutory Authority:** *MS s 245.802; 252.28 subd 2*

### 9525.0550 TECHNICAL PROVISIONS.

Subpart 1. **Grounds for denial, revocation, or suspension of license.** Failure to comply with these standards or applicable state law shall be cause for denial, revocation, or suspension of license.

Subp. 2. **Appeals.** Denial, revocation, or suspension of license may be appealed pursuant to Minnesota Statutes, chapter 14, the Minnesota Administrative Procedure Act.

Subp. 3. **Severability.** The provisions of parts 9525.0500 to 9525.0660 shall be severable. If any clause, sentence, or provision is declared illegal or of no effect, the validity of the remainder of parts 9525.0510 to 9525.0660 and its applicability shall not be affected.

Subp. 4. **Legal inconsistency.** Any provision of these parts which is inconsistent with any state or federal law is superseded by that law.

**Statutory Authority:** *MS s 245.802; 252.28 subd 2*

### 9525.0560 PROGRAM AND SERVICE STANDARDS.

Subpart 1. **Admission.** The provider shall maintain written policies and procedures, which shall be available to the local social service agency and to the general public, covering the following:

- A. preadmission and admission procedures;



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- B. prerequisite client skills for admission;
- C. admission criteria including age, type, and degree of handicap;
- D. nondiscriminatory practices with regard to race, creed, sex, or national origin;
- E. description of services;
- F. discharge procedures;
- G. cost rates for services and arrangements available for payment;
- H. the requirement that each client must have a current medical and dental examination; and
- I. waiting lists and selection priorities.

### Subp. 2. **Comprehensive assessments.** Comprehensive assessments:

A. **Behavioral assessments.** A behavioral assessment, conducted by SILS staff at least annually, shall objectively describe the behavioral status of the client. The assessment instrument must be acceptable to the LSSA.

Upon admission, the behavioral assessment shall be completed prior to the development of the individual program plan. This assessment may use data from any appropriate assessment conducted within the previous 12 months.

B. **Physical assessment.** Upon admission, there shall be a medical examination of the client conducted by a licensed physician within one year preceding admission, or one month following admission which includes reevaluation date or schedule recommended by the physician.

There shall be a record of dental examination in the client's record, and reexamination schedule recommended by the dentist.

C. Additional assessments determined to be needed by the interdisciplinary team shall be conducted or arranged by the provider.

**Subp. 3. Individual program plan (IPP).** The provider shall have a letter of referral from the responsible local social service agency, including a copy of the individual service plan, for each client. The interdisciplinary team shall evaluate each client's needs, and identify those needs having priority, within 30 days of admission. An annual individual program plan (IPP) for each client shall thereafter be established and evaluated to meet client needs.

The IPP shall be based on needs identified in the behavioral assessment, and on the individual service plan of the local social service agency, which shall include at least the following areas:

- A. training in meal planning, meal preparation, and shopping;
- B. training in first-aid skills, responding to emergencies, and symptoms of illness;
- C. training in money management;
- D. training in self-administration of prescription and nonprescription medication;
- E. training in the use of the telephone and other public utilities;
- F. development of the client's social, recreational, and transportation abilities.
- G. specific training plan concerning the development of more appropriate behaviors for clients displaying inappropriate behaviors;
- H. training in matters of personal appearance and hygiene;
- I. training in apartment or living environment maintenance, when indicated;
- J. training in use of community resources including but not limited to police, fire, hospital emergency resources; and
- K. training in rights and responsibilities of community living.

The IPP shall establish program goals and behavioral objectives stated in

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measurable terms which specify the time limit for achieving each behavioral objective. The IPP shall also identify the person(s) responsible for implementation of the IPP.

The IPP shall describe the services to be provided, and how they will be obtained.

The annual IPP shall be reviewed at least quarterly by staff. The reviews shall include written report of: the client's progress toward goals and behavioral objectives; the need for continued services and any recommendation concerning alternative services and/or living arrangements; and recommended change in guardianship status, if any.

**Statutory Authority:** *MS s 245.802; 252.28 subd 2*

## 9525.0570 ADMINISTRATIVE STANDARDS; PROVIDER RESPONSIBILITIES.

**Subpart 1. Written statement of philosophy.** The provider shall have a written statement of the SILS program philosophy, purpose, and goals which:

- A. is consistent with the principles of normalization;
- B. includes expected client outcomes;
- C. is available to the public; and
- D. is reviewed by the provider at least annually and revised as needed.

**Subp. 2. Client programs.** The SILS provider shall be responsible for program direction for all clients, which shall include the provision, continuation, and coordination of services in accordance with the client's IPP.

**Subp. 3. Program director.** The provider shall employ a program director, and may employ more than one to assist in program direction.

The provider may employ other staff to carry out the programs for clients, providing that such staff are under the supervision of a qualified program director.

The program director shall have at least a bachelor's degree in a field related to mental retardation services, and at least one year's experience in working with mentally retarded persons. Five years' experience in working full time with clients under professional supervision in a developmental program for mentally retarded persons may be substituted for a bachelor's degree if in the judgment of the commissioner such experiences result in ability to perform the duties of the program director.

The program director shall ensure that all clients have demonstrated the ability to contact a staff person for assistance in an emergency.

The program director shall ensure that the SILS program is in conformance with applicable civil rights and affirmative action laws.

**Statutory Authority:** *MS s 245.802; 252.28 subd 2*

## 9525.0580 ADMINISTRATIVE STANDARDS FOR DISCHARGE.

**Subpart 1. Planning.** Except in an emergency, planning for discharge shall be made only with prior involvement of the client, LSSA representative, and guardian, if any.

Planning for termination of services by the provider shall include referral to any follow-up services the LSSA considers necessary.

**Subp. 2. Counseling.** The provider shall provide counseling about the advantages and disadvantages of termination of services to the client and/or legal guardian, if requested by the client or the LSSA.

**Subp. 3. Discharge summary.** The provider shall prepare a discharge summary which includes:

- A. A summary of findings, events, and progress during the period of services to the client.

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B. Written evidence of the reason for discharge.

C. If discharged to another service, specific recommendations for future programming shall be included in the discharge summary and transmitted to the LSSA of responsibility. A copy may be sent to the receiving service provider.

• Subp. 4. **Death of client.** In the event of death of a client:

A. the provider shall notify the LSSA and guardian or responsible relative;

B. the date, time, and circumstances of the client's death shall be recorded in the client's record;

C. if the client dies unattended by a physician, the coroner or medical examiner shall be notified; and

D. a copy of the records of the deceased client shall be transmitted to the local social service agency.

**Statutory Authority:** *MS s 245.802; 252.28 subd 2*

### **9525.0590 ADMINISTRATIVE STANDARD FOR CLIENT RECORDS.**

Subpart 1. **Contents.** The SILS provider shall maintain a record for each client, which contains the following information:

A. client's name, address and telephone number, birth date, and date of admission to and discharge from SILS;

B. name, address, and phone number of legal guardian, if any, and person to contact in an emergency;

C. record of current medication prescription and adverse reactions to drugs, if any;

D. special diet needs and food allergies, if any;

E. name and address of the client's LSSA case manager;

F. name and address of the client's physician or clinic and dentist;

G. the results of behavioral and physical assessments conducted within the past 12 months and the LSSA's individual service plan;

H. the client's IPP and quarterly reviews;

I. any physician's and dentist's orders within the past two years, including special instructions for self-medication, care, and treatment;

J. summary of professional service delivery during the past year, including specialized therapy, and the client's progress in therapy;

K. summary of client's progress or lack of progress in previous programs, job skills, and employment history;

L. client's current place of employment or day program; and

M. a complete record of the client's funds if such funds are managed by the SILS provider.

Subp. 2. **Access to client records.** All information contained in the client's record shall be handled in a manner consistent with the Government Data Practices Act, Minnesota Statutes, sections 13.01 to 13.86. The client shall have access to his record upon request, with accommodations for interpretation that meets his needs.

The provider shall be responsible for the safekeeping of client records, and for securing them against loss or use by unauthorized persons.

The client's record shall be removed from the provider's jurisdiction and custody only in accordance with a court order, subpoena, or statute.

The provider shall have written policies governing access, duplication, and dissemination of information.

Written consent of the client or guardian, if any, shall be required for the release of information concerning the client to persons not otherwise authorized

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to receive it. The client's record shall specify the information requested to be released, purpose for which the information is released, and expiration date for release of information.

All client records shall be maintained by the provider following discharge of the client for at least two years.

**Statutory Authority:** *MS s 245.802; 252.28 subd 2*

### 9525.0600 CLIENT RIGHTS.

**Subpart 1. Written policies and procedures for civil rights.** The provider shall have written policies and procedures concerning the exercise and protection of client human and civil rights, which shall be available to LSSA, clients, guardians.

**Subp. 2. Complaint procedures.** The provider shall have complaint procedures which shall include:

- A. the name and telephone number of persons who may be contacted in order to register a complaint;
- B. the time schedule established for registration of complaints; and
- C. the time limits for decisions to be made by the provider.

**Subp. 3. Right to appeal.** The provider shall inform clients of their right to appeal the suspension, reduction, or termination of services to the commissioner pursuant to Minnesota Statutes, section 256.045 as a social service appeal.

**Subp. 4. Legal assistance.** Upon request of the client, the provider shall instruct and assist clients in how to obtain legal assistance.

**Subp. 5. Policies on financial interests of clients.** The provider shall have a written statement of policies and procedures that protect the financial interests of the clients.

**Subp. 6. Money records.** If the provider manages the client's money, the following shall be recorded:

- A. written permission from the client or his legal guardian;
- B. reasons the provider is to manage the client's money; and
- C. a complete record of the use of the client's money and reconciliation of the account.

**Subp. 7. Employee rights.** Clients who work for the SILS provider shall be considered employees of the provider with all the rights and privileges of an employee.

**Statutory Authority:** *MS s 245.802; 252.28 subd 2*

### 9525.0610 WRITTEN DESCRIPTION OF ORGANIZATION.

The provider shall have a current written description of its organization, which includes the major operating services and person(s) having administrative responsibility, available to the local social service agency.

**Statutory Authority:** *MS s 245.802; 252.28 subd 2*

### 9525.0620 PERSONNEL POLICIES.

The provider shall have written personnel policies available to staff. The policies shall include:

- A. application and hiring procedures;
- B. provisions for nondiscrimination;
- C. description of probationary period, if any, and procedures for annual performance evaluation;
- D. procedures for suspension and dismissal;
- E. employee benefits;
- F. grievances and appeal procedures;
- G. prohibition of mistreatment, neglect, or abuse of clients, and mandatory reporting of any mistreatment, neglect, or abuse;

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H. plans for staff orientation, training; and

I. prohibition of the use of any aversive or deprivation procedures.

**Statutory Authority:** *MS s 245.802; 252.28 subd 2*

### 9525.0630 EMERGENCY PROCEDURES.

The provider shall have a written plan and procedure in case of fire, severe illness, accident, severe weather, and missing persons. Orientation in emergency procedures shall be recorded for each client and employee within one month of admission or employment. This plan shall be reviewed quarterly with clients.

**Statutory Authority:** *MS s 245.802; 252.28 subd 2*

### 9525.0640 FINANCIAL RECORDS.

The provider shall maintain records of financial transactions and agreements with the referring LSSA.

**Statutory Authority:** *MS s 245.802; 252.28 subd 2*

### 9525.0650 ESTABLISHMENT OF SERVICE RATES.

The provider shall have a written plan for establishing service rates, which shall include at least 30-day advanced notice of change in rates.

**Statutory Authority:** *MS s 245.802; 252.28 subd 2*

### 9525.0660 LIVING ARRANGEMENTS.

**Subpart 1. Part of SILS program.** When living arrangements are provided by the SILS provider as a part of the SILS program, the living arrangements are not subject to parts 9525.0500 to 9525.0660, and therefore need not be licensed. Living arrangements are subject to applicable health, safety, sanitation, and zoning codes. When living arrangements are provided as a part of the SILS program plan, the provider shall assure the local social service agency that the living arrangements are in conformance with the client's individual program plan, and applicable health, safety, sanitation, and zoning codes. Living arrangements so provided shall include provisions for the preparation of meals, sleeping, bathing, mail, and access to telephone and transportation.

**Subp. 2. Not part of SILS program.** When living arrangements are not provided as a part of the SILS program, the provider may assist the local social service agency and client as agreed upon in:

A. choosing and arranging for an appropriate living environment;

B. developing client skills in choosing and making living arrangements;

and

C. developing client skills in shopping, seeking employment, paying rent and other bills, and in the use of public transportation and other community services.

**Statutory Authority:** *MS s 245.802; 252.28 subd 2*

## DAYTIME ACTIVITY CENTERS FOR MENTALLY RETARDED PERSONS

### 9525.0750 STATUTORY AUTHORITY.

Minnesota Statutes, sections 252.21 to 252.261 establish the authority of the commissioner of human services to make grants to licensed daytime activity centers for the mentally retarded, supervise the operation thereof, and establish such rules as are necessary to carry out the purpose of these statutes. Parts 9525.0750 to 9525.0830, therefore, carry the force and effect of law.

**Statutory Authority:** *MS s 252.24 subd 2*

**History:** *L 1984 c 654 art 5 s 58*

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## 9525.0760 PROGRAMS FOR MENTALLY RETARDED PERSONS 8720

### 9525.0760 DEFINITIONS.

The terms used in parts 9525.0750 to 9525.0830 shall mean:

A. applicant for grant-in-aid: any city, village, town, county, or nonprofit corporation, or any combination thereof, may apply to the commissioner of human services for assistance in establishing and operating a licensed daytime activity center program for mentally retarded;

B. board: the governing body of the daytime activity center;

C. center: daytime activity center for the mentally retarded;

D. commissioner: the commissioner of human services;

E. director: the staff member appointed by the board to direct the activity center; and

F. licensed daytime activity center: those programs duly licensed and meeting requirements of parts 9545.0510 to 9545.0670.

**Statutory Authority:** *MS s 252.24 subd 2*

**History:** *L 1984 c 654 art 5 s 58*

### 9525.0770 BOARD.

Subpart 1. **Designation.** There shall be a designated board for the center.

Subp. 2. **Balanced representation.** Where a private nonprofit corporation is the applicant for a grant, there shall be a minimum of nine members on the board. Representation shall be balanced among:

A. parents of the retarded;

B. groups representing the community at large; and

C. professional persons interested in and having responsibility for services to the mentally retarded. These professional persons may be representative of local health, education, and welfare departments; medical societies; area mental health-mental retardation program offices; state hospitals serving the mentally retarded; and associations concerned with handicapping conditions.

Subp. 3. **Separate advisory board.** When the primary function of the applicant agency is to provide services other than a daytime activity center, the operation of the center shall be designated as a separate function, with a separate advisory board or committee, established for this purpose. This board shall conform with subpart 2. The operating rules of this board must be approved by the commissioner. Separate bookkeeping records shall be established for the sole purpose of administering daytime activity center funds.

Subp. 4. **Minutes.** Each board shall submit copies of the minutes of all board meetings to the commissioner. In addition, all centers shall submit such other reports as the commissioner may require.

Subp. 5. **Agency cooperation.** The daytime activity center board is responsible for cooperative planning with other agencies in the community, such as special education, sheltered workshops and vocational training, county welfare departments, and the area mental health-mental retardation program board.

Subp. 6. **Annual budget.** On or before April 1 of each year, the board and the director shall submit to the commissioner for approval an annual application and budget for the next fiscal year, using prescribed forms.

Subp. 7. **Statement of purpose and goals.** Each center board shall submit a statement of purposes and goals of the program to the commissioner.

**Statutory Authority:** *MS s 252.24 subd 2*

### 9525.0780 FINANCES.

New applications for state assistance and applications for renewal of support must contain the rationale for estimates of local income.

Any transfers by the boards that increase or decrease a major line item of the

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approved center budget by more than ten percent, or \$1,000, whichever is greater, must have the advance approval of the commissioner.

**Statutory Authority:** *MS s 252.24 subd 2*

### 9525.0790 STAFF.

**Subpart 1. Appointments.** Every board shall appoint a director. Other personnel necessary to conduct the program shall be hired by the director with approval by the board. The director, or a staff member named by him, shall attend all regular meetings of the board of the center.

**Subp. 2. Director's qualifications.** Minimum qualifications for the director shall be a bachelor's degree, with an appropriate major; however, a combination of training and experience approved by the commissioner may be substituted for this requirement. Other rules pertaining to subsequent required training are stated in parts 9545.0510 to 9545.0670.

**Subp. 3. Written personnel policies.** Written personnel practices, to include statements of duties, responsibilities, job specifications, and salary schedules for the director and other professional positions, shall be submitted to the commissioner for approval prior to application for funding of these positions.

**Subp. 4. Staff training.** Newly appointed center directors and staff shall take part in preservice or in-service training, as designated by the commissioner.

**Statutory Authority:** *MS s 252.24 subd 2*

### 9525.0800 ADMISSIONS.

**Subpart 1. Eligibility requirements.** The board and the director shall develop, and make available to the public, a statement of eligibility requirements for participants in the activities of the center. These requirements must be consistent with Minnesota Statutes, section 252.23. A copy shall be filed with the Department of Human Services.

**Subp. 2. Exclusions.** There shall be no categorical exclusions on the basis of orthopedic and neurological handicaps, sight or hearing deficits, lack of speech, and severity of retardation, toilet habits, behavior disorders, or failure of participant to make progress, except where appropriate services are available to persons with such problems from other community agencies. Individual exclusions can be made when participation in the activities of the center would be clearly detrimental to the participant, staff, or others. When such exclusions are made, the reasons shall be entered into the record.

**Subp. 3. Notice of refusal or exclusion and right to appeal.** When an individual is refused admission to or excluded from a center, the parents or guardians shall be notified in writing of their right to appeal to the board, with final recourse to the commissioner.

**Subp. 4. School-age mentally retarded children.** School-age mentally retarded children, as defined by Minnesota Statutes, section 120.03, and rules of the State Board of Education, may be served by the center when:

A. a child is excluded, excused, or expelled from attendance in public schools under provisions of Minnesota Statutes, section 120.10, subdivision 3, clause (1), and subdivision 4, and section 127.071, provided that the center board has verification of the fact that the proceedings called for in those sections have taken place and that approval of the commissioner of human services is obtained; or

B. when it is not in the best interests of the child to initiate proceedings referred to in item A, the child may be enrolled in the center; providing approval is obtained from the commissioners of education and public welfare.

**Subp. 5. Applications and reports.** Admissions procedures shall include a written application for services and reports of medical examinations, appropriate psychological examinations, and social evaluation.

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All requests and applications for services shall be brought before the board or its admission committee. No applicant for service may be refused, nor may any participant currently receiving services from the center be excluded, without board approval and referral to the county welfare department.

A report shall be attached to the board minutes that shall include: names of applicants accepted; names of applicants refused services, or participants terminated, and reasons for such action; and efforts made to assist those applicants not accepted, or excluded, to find other services.

**Statutory Authority:** *MS s 252.24 subd 2*

**History:** *L 1984 c 654 art 5 s 58*

NOTE: Minnesota Statutes, section 127.071, was repealed by Laws of Minnesota 1974, chapter 572, section 16.

### 9525.0810 CASE RECORDS.

There shall be a record for each participant in the center, including:

- A. admissions information and statement of goals to be accomplished at the center;
- B. current medical and psychological information;
- C. a plan for training, education, and treatment;
- D. periodic individual progress evaluations;
- E. a plan for family involvement and conference records; and
- F. referral and termination information.

**Statutory Authority:** *MS s 252.24 subd 2*

### 9525.0820 FEES.

**Subpart 1. Policy.** No fees shall be charged until the board has established a fee policy for the center. This policy shall be submitted to the commissioner for approval at least one month prior to the effective date. In no case may a retarded person be excluded from enrollment or continued attendance because of inability to pay the approved fees.

**Subp. 2. Income resources.** The board shall take advantage of all income resources available to the center, including those to the retarded person, families, guardians, or referring agency. Such resources may include:

- A. local tax funds authorized;
- B. public welfare programs;
- C. federal Social Security insurance benefits;
- D. private insurance benefits;
- E. gifts and contributions; and
- F. other appropriate resources.

**Subp. 3. Maximum charge.** When none of the aforementioned are determined adequate or available, direct charges to parents shall not exceed the fee provisions of the center's approved policy.

**Statutory Authority:** *MS s 252.24 subd 2*

### 9525.0830 EXCEPTIONS.

If compliance with these rules is found to cause excessive hardship, to the extent that services will be curtailed or terminated, the board may apply to the commissioner for an exception. Such an exception may not exceed one year, and its granting will not be considered a precedent for other center boards.

**Statutory Authority:** *MS s 252.24 subd 2*



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### GRANTS FOR PROVIDING SEMI-INDEPENDENT LIVING SERVICES TO PERSONS WITH MENTAL RETARDATION

#### 9525.0900 DEFINITIONS.

Subpart 1. **Scope.** The terms used in parts 9525.0900 to 9525.1020 have the meanings given to them in this part.

Subp. 2. **Administrative operating costs.** "Administrative operating costs" has the meaning given it in 12 MCAR S 2.05313 [Temporary] C.

Subp. 3. **Case management services.** "Case management services" means identifying the need for, seeking out, acquiring, authorizing, and coordinating services to persons with mental retardation; and monitoring the delivery of the services to, and protecting the rights of, the persons with mental retardation. These services are provided by an individual designated by the county board under part 9525.0035 [Emergency].

Subp. 4. **Case manager.** "Case manager" means the individual designated by the county board under part 9525.0035 [Emergency] to provide case management services.

Subp. 5. **Client.** "Client" means a person who is receiving semi-independent living services under parts 9525.0900 to 9525.1020.

Subp. 6. **Commissioner.** "Commissioner" means the commissioner of the Minnesota Department of Human Services or the commissioner's designated representative.

Subp. 7. **County board.** "County board" means the county board of commissioners for the county of financial responsibility or its designated representative.

Subp. 8. **County of financial responsibility.** "County of financial responsibility" has the meaning given it in Minnesota Statutes, section 256E.08, subdivision 7.

Subp. 9. **Department.** "Department" means the Minnesota Department of Human Services.

Subp. 10. **Host county.** "Host county" means the county in which the services in a person's individual service plan are provided.

Subp. 11. **Individual habilitation plan.** "Individual habilitation plan" means the written plan for providing services to a person under part 9525.0105 [Emergency].

Subp. 12. **Individual service plan.** "Individual service plan" means the written plan for a person under part 9525.0085 [Emergency].

Subp. 13. **Interdisciplinary team.** "Interdisciplinary team" means a team composed of the case manager, the person with mental retardation, the person's legal representative and advocate, if any, and representatives of all providers providing services set forth in the individual service plan.

Subp. 14. **Intermediate care facility for the mentally retarded or ICF/MR.** "Intermediate care facility for the mentally retarded" or "ICF/MR" means a program licensed to provide services to persons with mental retardation under Minnesota Statutes, section 252.28, and a physical plant licensed as a supervised living facility under Minnesota Statutes, chapter 144, which together are certified by the Minnesota Department of Health as an intermediate care facility for the mentally retarded. Unless otherwise stated, the term ICF/MR includes state-operated and community-based facilities.

Subp. 15. **Local matching money.** "Local matching money" means local money made available by a county board for the provision of semi-independent living services.

Subp. 16. **Person with mental retardation.** "Person with mental retardation" has the meaning given it in part 9525.0015 [Emergency], subpart 22.

Subp. 17. **Provider.** "Provider" means an individual, organization, or agency

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## 9525.0900 PROGRAMS FOR MENTALLY RETARDED PERSONS 8724

that provides semi-independent living services and that meets the requirements of parts 9525.0500 to 9525.0660 and 9525.0930. For the purpose of parts 9525.0900 to 9525.1020 a provider may be a county board that provides semi-independent living services directly or a contractor with a county board.

**Subp. 18. Request for proposal.** "Request for proposal" means a written statement disseminated by the county board to solicit proposals for the provision of semi-independent living services. The statement specifies the number and characteristics of clients to be served, the amount and type of services to be provided based upon the identified needs of the clients, the client outcomes to be expected, the criteria for provider selection, and the service cost or budget limitations.

**Subp. 19. Semi-independent living services or SILS.** "Semi-independent living services" or "SILS" means services that include training, counseling, instruction, supervision, and assistance provided in accordance with the client's individual habilitation plan for fewer than 24 hours per day. Services include assistance with budgeting, meal preparation, shopping, personal appearance, and related social support services needed to maintain and improve the client's level of functioning.

**Subp. 20. Service site.** "Service site" means the physical location or locations where a client or clients reside while receiving semi-independent living services.

**Subp. 21. Unit of service.** "Unit of service" means one hour of staff time spent on activities related to developing, implementing, coordinating, or evaluating a client's habilitation plan as limited in part 9525.0950, subpart 1.

**Statutory Authority:** *MS s 252.275*

**History:** *10 SR 994*

### 9525.0910 PURPOSE AND APPLICABILITY.

**Subpart 1. Purpose.** The purpose of parts 9525.0900 to 9525.1020, as authorized by Minnesota Statutes, section 252.275, is to establish procedures for implementing a statewide program of semi-independent living services to assist county boards in reducing the utilization of intermediate care facilities for persons with mental retardation.

**Subp. 2. Applicability.** Parts 9525.0900 to 9525.1020 govern the awarding and administration of grants by the commissioner to county boards under Minnesota Statutes, section 252.275 for the provision of semi-independent living services to persons with mental retardation. Parts 9525.0900 to 9525.1020 do not govern semi-independent living services funded as a community social service under Minnesota Statutes, sections 256E.01 to 256E.12.

**Statutory Authority:** *MS s 252.275*

**History:** *10 SR 994*

### 9525.0920 CLIENT ELIGIBILITY CRITERIA.

A county board may receive state reimbursement for providing semi-independent living services to a person with mental retardation who is 18 years of age or older and who meets the requirements in item A or B.

A. the person and his or her case manager have determined that the person requires, and will continue to require for a period which exceeds 90 consecutive days, systematic supervision, assistance, or training in order to manage his or her activities but does not require that supervision, assistance, or training on a daily basis; or

B. the person resides in an ICF/MR or receives home and community-based services under parts 9525.1800 to 9525.1930 [Emergency] and a screening team established by Minnesota Statutes, section 256B.092 has determined that the person would remain in an ICF/MR or would continue receiving home and community-based services under parts 9525.1800 to 9525.1930 [Emergency] if SILS were not provided.

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**Statutory Authority:** *MS s 252.275*

**History:** *10 SR 994*

### **9525.0930 APPROVED PROVIDER.**

Subpart 1. **Conditions of approval.** A provider is approved to receive reimbursement from a county board for SILS provided under parts 9525.0900 to 9525.1020 if the provider has the license required in item A and meets the requirements of item B or C:

A. the provider has a current license to provide SILS in accordance with Minnesota Statutes, sections 252.28 and 245.781 to 245.812, and parts 9525.0500 to 9525.0660; and

B. the provider is in compliance with the requirement in subpart 2; or

C. the provider will achieve full compliance with subpart 2 by January 1, 1987, and the provider's plan for achieving compliance:

(1) was submitted to the county board by January 1, 1985; and

(2) was approved by the commissioner for a period not to exceed two years.

Subp. 2. **Population and location of service sites.** Services provided by the provider must meet the requirements in items A and B or items A and C:

A. no service site shall be adjacent to or within a group residential facility licensed under parts 9525.0210 to 9525.0430 and no service site where more than four clients are served shall be adjacent to another SILS service site where more than four clients are served; and

B. no more than eight clients may be served per service site; or

C. more than eight clients may be served per service site if fewer than 25 percent of the occupants of that service site building are receiving SILS.

Subp. 3. **Variance from service site limitations.** A county board may apply to the commissioner for a variance from compliance with subparts 1, item C, and 2 based upon the limited availability of rental housing. The written application for the variance must document the lack of available rental housing and must show that the county's proposal for an alternative to full compliance:

A. meets the individual needs of clients;

B. ensures that services are provided in the least restrictive environment defined in part 9525.0015 [Emergency], subpart 18; and

C. avoids the high concentration of persons with mental retardation within any service site, town, municipality, or county of the state.

Subp. 4. **Granting a variance.** The commissioner shall grant the county board's variance request if the commissioner determines that:

A. the request was submitted in accordance with subpart 3;

B. the county board has provided reasonable evidence of the need for a variance based upon limited availability of rental housing; and

C. the request is in compliance with Minnesota statutes and rules governing services for persons with mental retardation.

Subp. 5. **Denial of variance.** The commissioner shall deny the county board's variance request if the commissioner determines that the variance request does not meet the requirements in subpart 4.

Subp. 6. **Notice.** The commissioner shall review the county board's request for a variance and notify the county board, in writing, within 30 days whether the request for variance has been granted or denied. If the variance request is denied, the notice must state the reasons why the variance request was denied and inform the county board of its right to request a review of the commissioner's decision. The procedure for requesting a review of the denial of a request for variance must be the same as the procedure in part 9525.1010.

**Subp. 7. Continuation of variance.** A county that has been granted a variance from compliance with subparts 1, item C, and 2 shall apply to the commissioner for a continuation of variance every two years if compliance has not been achieved. A county may submit the request for continuation of variance with the county's recommendations that are submitted to the commissioner in accordance with the biennial redetermination of need required by part 9525.0135 [Emergency], subpart 7. The procedures for requesting, granting, or denying a continuation of variance must be the same as the procedures in subparts 3, 4, and 5. The procedure for notifying the county board whether the continuation has been granted or denied must be the same as the procedure in subpart 6.

**Statutory Authority:** *MS s 252.275*

**History:** *10 SR 994*

**9525.0940 COUNTY BOARD AND PROVIDER CONTRACT AND COUNTY BOARD EFFORTS TO HIRE DISPLACED STATE HOSPITAL STAFF.**

**Subpart 1. Written contract.** In order to receive reimbursement for the cost of SILS provided under parts 9525.0900 to 9525.1020, an approved provider must have a written contract with the host county that meets the requirements in this part.

**Subp. 2. Contract requirements.** The written contract must include the provisions and assurances specified in items A to O:

A. the procedures the county board will follow to monitor the provider's compliance with part 9525.0930 governing licensure and service site requirements;

B. the beginning and ending dates of the contract;

C. the grounds for termination of the contract;

D. a statement indicating that the county is responsible for making a preliminary determination of client eligibility in accordance with the criteria in part 9525.0920;

E. the rate the provider will charge per unit of service and the number and types of units of service to be provided;

F. the provider's budget, including administrative operating costs and any allocated central office costs, for providing the services specified in the contract;

G. the site or sites where the services will be provided;

H. agreement to provide SILS in accordance with each client's individual service plan and, if applicable, with each client's individual habilitation plan;

I. the procedures the provider will follow to meet the reporting and record maintenance requirements of parts 9525.0900 to 9525.1020 and an itemized list and retention schedule of program and fiscal records to be maintained;

J. stipulation that the county board may request, copy, and review program and fiscal records which the provider is required to maintain under parts 9525.0900 to 9525.1020;

K. the procedures the county board will follow to monitor and evaluate the provider's performance under the contract;

L. the procedures the county board will follow to reimburse the provider;

M. agreement to comply with the Minnesota Government Data Practices Act, including identification of the person responsible for compliance in accordance with Minnesota Statutes, section 13.46, subdivision 10, clause (d);

N. agreements governing the provider's responsibilities related to bonding, indemnity, insurance, and audits; and

O. agreement that the provider shall:

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(1) send all announcements or advertisements of employment opportunities offered by the provider to the personnel department of the host county's designated state hospital for persons with mental retardation; and

(2) make other reasonable efforts, as mandated by Minnesota Statutes, section 252.275, to hire qualified employees of state hospital mental retardation units who have been displaced by reorganization, closure, or consolidation of state hospital mental retardation units.

**Subp. 3. County board efforts to hire displaced state hospital staff.** The county board shall:

A. send requests for proposals for the provision of SILS to the county's designated state hospital for persons with mental retardation at the same time the request is sent to other providers; and

B. make other reasonable efforts, as mandated by Minnesota Statutes, section 252.275, to hire qualified employees of state hospital mental retardation units who have been displaced by reorganization, closure, or consolidation of state hospital mental retardation units.

**Statutory Authority:** *MS s 252.275*

**History:** *10 SR 994*

### 9525.0950 REIMBURSEMENT STANDARDS.

**Subpart 1. Limits on unit of service activities.** Activities for which staff time may be charged in determining a unit of service as defined in part 9525.0900, subpart 21 are limited to:

A. Direct contact activities involving contact with the client, either face-to-face or over the phone, which facilitates the client's attainment of individual service plan goals and objectives. Direct contact activities include the staff member's transportation time to and from service sites.

B. Collateral activities involving direct verbal or written contact with professionals or others regarding the client which facilitates the client's attainment of individual service plan goals and objectives.

C. Individual habilitation planning activities, including attending the client's interdisciplinary team meetings, assessing the client's functioning levels, developing and reviewing the client's quarterly and annual habilitation plans, and charting and reporting the client's progress toward individual service plan goals and objectives.

**Subp. 2. Reimbursable costs.** Costs of providing semi-independent living services for which a county board may be reimbursed by the state under parts 9525.0900 to 9525.1020 are costs of those services directed at maintaining and improving a client's functioning level. Services for which costs are reimbursable include supervision, assistance, counseling, or training in the areas listed in items A to L:

- A. meal planning and preparation;
- B. shopping;
- C. first-aid training;
- D. money management and budgeting;
- E. self administration of medications;
- F. use of the telephone and other public utilities;
- G. personal appearance and hygiene;
- H. apartment or home maintenance and upkeep;
- I. use of community emergency resources;
- J. rights and responsibilities of community living;
- K. social, recreational, and transportation usage skills; and
- L. appropriate social behaviors.

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**Subp. 3. Authorization for services.** Costs of providing semi-independent living services are reimbursable only when the services provided have been authorized by the county board. The authorization must indicate the amount, types and cost of SILS to be provided, and the expected client outcome or outcomes. The written authorization for services to a client must be added to the client case record.

**Subp. 4. Unapproved providers.** Costs of semi-independent living services delivered by a provider who does not meet the provisions of part 9525.0930 must not be reimbursed under parts 9525.0900 to 9525.1020.

**Subp. 5. Services to persons in an ICF/MR.** Costs of semi-independent living services provided to a person with mental retardation while he or she resides in an ICF/MR must be reimbursed only when the amount of service provided while the person resides in an ICF/MR does not exceed a total of 20 hours and when the services provided result in the person's moving directly from the ICF/MR into a semi-independent living arrangement.

**Subp. 6. Relationship of SILS to day programs and employment activities.** Costs of semi-independent living services provided on a schedule that precludes the client from participation in the day programs or employment activities specified in the client's individual service plan, or provided as a substitute for the specified day programs or employment activities, must not be reimbursed. This subpart does not prohibit reimbursement for SILS provided during the day to clients who are working on a part-time basis or seeking employment if SILS participation does not preclude the client's part-time work or employment seeking.

**Subp. 7. No reimbursement for case management services costs and county administrative costs.** Case management services costs and administrative costs incurred by counties or by SILS providers under contract with counties are not reimbursable as costs of semi-independent living services. When the county board provides SILS directly, the county must be reimbursed for costs of services provided according to the units of service defined in part 9525.0900 and must not be reimbursed for administrative costs. SILS provided by the county case manager assigned to the client must not be reimbursed under parts 9525.0900 to 9525.1020.

**Subp. 8. No reimbursement for room and board.** Expenditures for room and board are not reimbursable as costs of semi-independent living services. Room and board expenses are all directly identifiable costs of:

- A. normal and special diet food preparation and service;
- B. linen, bedding, laundering, and laundry supplies;
- C. housekeeping, including cleaning and lavatory supplies;
- D. maintenance and operation of the building and grounds, including fuel, electricity, water, and supplies, parts, and tools to repair and maintain equipment and facilities; and
- E. allocation of salaries and other costs related to these areas.

**Subp. 9. SILS cost allocations.** Providers that provide both SILS and ICF/MR services must show SILS cost allocations according to the cost category allocation principles and procedures in 12 MCAR S 2.05312 [Temporary] A. and B. The costs in items A and B in this subpart are not reimbursable as costs of SILS:

- A. costs specified as nonallowable costs in 12 MCAR SS 2.05301-2.05315 [Temporary]; and
- B. costs not specifically identified as reimbursable costs of SILS in parts 9525.0900 to 9525.1020.

**Statutory Authority:** *MS s 252.275*

**History:** *10 SR 994*

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### 9525.0960 GRANT APPLICATION AND APPROVAL.

Subpart 1. **Application forms and deadlines.** The commissioner shall notify county boards of application deadlines and provide application forms for grants funded under Minnesota Statutes, section 252.275.

Subp. 2. **Grant proposals.** In order to qualify for a grant funded under Minnesota Statutes, section 252.275 a county board shall submit one completed copy of the county's annual SILS proposal to the commissioner with its grant application. A county board may submit its SILS proposal as part of its community social service plan. To be considered for funding, the SILS proposal submitted as part of the grant application must:

A. describe the proposed SILS to be provided or changes in the SILS proposal from the previous year to be made under the grant;

B. state measurable goals and objectives to be accomplished by providing the proposed SILS or by making the proposed changes in the SILS proposal from the previous year;

C. specify the projected annual service cost, the SILS provider, the living arrangement, day occupation, projected number of service hours, hourly rate, and public assistance eligibility for each client to be served;

D. specify clients who have, as a result of their participation in SILS for the previous grant year, acquired more independence which is reflected either by a decrease in number of SILS hours provided to the client or by the client's discharge from SILS because the client has acquired independent living skills; and

E. include a budget for the state's fiscal year showing projected county income from all sources and projected total expenditures for the proposed SILS and explain the methods used by the county board to project expenditures.

Subp. 3. **Review of proposals submitted with grant applications.** The commissioner shall evaluate the SILS proposals submitted with applications for grants awarded under parts 9525.0900 to 9525.1020 for approval. Priority for funding shall be given to current SILS clients who continue to need and to be eligible for SILS during the grant period for which application is made. The criteria in items A to D must be used in evaluating the proposals.

A. The extent to which the proposed SILS reduce or limit the county board's utilization of ICF/MRs as mandated by Minnesota Statutes, section 252.275.

B. The extent to which the proposal documents efforts the county is making and results the county is achieving that encourage a decreasing reliance on SILS as the client acquires independent living skills.

C. The extent to which the proposed SILS budget is based on reasonable cost projections. A reasonable cost increase is an increase which does not exceed the projected change in the average value of the consumer price index (all urban) for the grant period. The consumer price index is incorporated by reference. The consumer price index is available through the Bureau of Labor Statistics Hotline, and is subject to frequent change. The local hotline number is (612)725-7865; the regional number is (312)353-1880.

D. The extent to which the proposal assures full compliance with parts 9525.0900 to 9525.1020.

Subp. 4. **Approval of grant applications.** The commissioner shall approve a grant application if the SILS proposal adheres to the criteria in subpart 3 and the proposal complies with Minnesota Statutes, section 252.275, subdivision 4, and parts 9525.0900 to 9525.1020. The commissioner shall adjust a proposal as necessary to ensure that the proposal and the proposal budget as approved:

A. comply with Minnesota Statutes, section 252.275, subdivision 4 and parts 9525.0900 to 9525.1020; and

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B. are within appropriations for the SILS grants program funded under Minnesota Statutes, section 252.275.

Subp. 5. **Notice.** On or before September 1 of the state fiscal year for which the grants are awarded, the commissioner shall give written notice of the results of the grant award determination to each county board that applied.

**Statutory Authority:** *MS s 252.275*

**History:** *10 SR 994*

## 9525.0970 STATE REIMBURSEMENT OF COUNTIES.

Subpart 1. **Reimbursement amounts.** State reimbursement payment to a county board must be made according to the schedule in subpart 4 and must be based on actual expenditures for providing SILS to eligible clients and the rate of state reimbursement which the commissioner has determined to be in effect for the grant period during which reimbursement is made. The amount of state reimbursement to a county board may not exceed the amount of the state grant award made to the county board for the grant period.

Subp. 2. **Rate of state reimbursement.** State reimbursement must not be more than 95 percent or less than 80 percent of a county board's cost of providing SILS as mandated by Minnesota Statutes, section 252.275, subdivision 4 and parts 9525.0900 to 9525.1020. Within the range set by statute, the commissioner shall determine the actual rate of reimbursement in effect for a given grant period by prorating the total SILS expenditures projected by county boards in SILS proposals and budgets approved by the commissioner against the total amount of state funding appropriated for SILS during the grant period.

Subp. 3. **Application of other income.** If a county board or a provider receives any income other than county money as reimbursement for SILS costs that are also reimbursable through local matching money or state funds provided under Minnesota Statutes, section 252.275, the income must be applied first to the local share to reduce the local matching money provided that the costs are reimbursable under part 9525.0950. If the income exceeds the local share of the service costs approved in the county's SILS grant application, the commissioner shall reduce the state grant payment by the amount that the income exceeds the local share.

Subp. 4. **Payments to counties.** Payments made to county boards by the commissioner must be in the form of an advance payment, with subsequent quarterly payments to each county board contingent upon the board's submitting a completed quarterly financial report on forms provided by the commissioner.

Subp. 5. **Quarterly payment adjustments.** If actual expenditures by a county board and the providers under contract with the county board to provide SILS are less than projected in the county board's approved budget, the commissioner shall adjust the quarterly payments so that the percentage of cost paid by the state remains within the limits in subparts 1 and 2.

**Statutory Authority:** *MS s 252.275*

**History:** *10 SR 994*

## 9525.0980 FISCAL AND PROGRAM REPORTING.

Subpart 1. **Records documenting compliance.** The county board, and the providers under contract with the county board to provide SILS, shall maintain records to document compliance with parts 9525.0900 to 9525.1020, including compliance with the applicable laws and rules in part 9525.1020, and adherence to the goals and objectives in the SILS proposal approved with the grant application.

Subp. 2. **Reports.** The county board shall use forms provided by the commissioner to report the use of funds under Minnesota Statutes, section 252.275 for the previous grant period. The reports required are quarterly fiscal reports to



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ensure tracking of state expenditure for SILS and quarterly and annual program reports describing the types of clients served and the amount and types of services provided. County boards shall submit quarterly fiscal and program reports within 20 days of the end of the quarter and annual program reports within 20 days of the end of the grant year. A county board may include these reports in its annual reports for community social services.

**Subp. 3. Financial records.** The financial records maintained by the county board and by providers under contract with the county board to provide SILS must:

- A. use generally accepted accounting principles;
- B. identify all sources and amounts of income;
- C. document all expenditures;
- D. compare expenditures to the approved budget; and
- E. allow the verification of indirect costs allocated to SILS by the provider.

**Subp. 4. Audits.** The county board and the providers under contract with the county board to provide SILS shall make available for audit inspection all records required by parts 9525.0900 to 9525.1020 upon request by the commissioner.

**Subp. 5. Retention of records.** Unless an audit in process requires a longer retention period, the county board and the providers under contract with the county board to provide SILS shall retain a copy of the following records for at least four years;

- A. the annual program report and the quarterly fiscal reports required in part 9525.0980, subpart 2;
- B. records of all payments made and all income received; and
- C. all other records required in parts 9525.0900 to 9525.1020.

**Statutory Authority:** *MS s 252.275*

**History:** *10 SR 994*

### 9525.0990 GRANT INCREASES AND NEW AWARDS.

If unused funds become available under parts 9525.0970 and 9525.1000, the commissioner shall take the action in item A or B.

A. increase the amount of a grant awarded to a county board for SILS if

(1) the grant increase is within the limits established under Minnesota Statutes, section 252.275, subdivision 4;

(2) the county board's expenditures for SILS that qualify for reimbursement exceeded the county board's budget projections; and

(3) the county board's SILS expenditures demonstrate the county's compliance with part 9525.0960, subpart 2, item D and subpart 3, item B; or

B. make new grant awards for grant proposals approved for funding under Minnesota Statutes, section 252.275 and parts 9525.0900 to 9525.1020.

**Statutory Authority:** *MS s 252.275*

**History:** *10 SR 994*

### 9525.1000 REDUCTION, TERMINATION, AND REPAYMENT OF GRANTS.

**Subpart 1. Excess funds.** If the commissioner determines, in consultation with a county board, that the total grant awarded to that county will not be needed during the grant period, the commissioner shall reduce the grant award by the amount determined not to be needed.

**Subp. 2. Improper use of funds.** If the commissioner determines that funds allocated to a county board under a grant are not being used in accordance with the SILS proposal and SILS budget submitted with the grant application and

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approved by the commissioner or with parts 9525.0900 to 9525.1020, all or part of the grant must be terminated. The commissioner shall require repayment of any funds not used in accordance with the SILS proposal and SILS budget approved by the commissioner or with parts 9525.0900 to 9525.1020.

Subp. 3. **Notification.** Before the commissioner reduces, terminates, or requires repayment of grant funds under subpart 1 or 2, the commissioner shall give 30 days' written notice to the county board and send a copy of the written notice to affected providers. The written notice must inform the county board of its right to request a review of the commissioner's action under part 9525.1010.

**Statutory Authority:** *MS s 252.275*

**History:** *10 SR 994*

**9525.1010 REVIEW OF COMMISSIONER'S ACTION.**

A request for a review of the commissioner's proposed action under part 9525.1000 shall be submitted by the county board to the commissioner within 30 days of the date the county receives notification from the commissioner. The request must state the reasons why the county board disagrees with the commissioner's action and present evidence supporting the county board's case for reconsideration by the commissioner. The commissioner shall review the evidence presented in the county board's request and send written notification to the county board regarding the commissioner's decision. The commissioner's decision after a review shall be final. The commissioner shall not take the proposed action until a final review is completed and written notification issued by the commissioner.

**Statutory Authority:** *MS s 252.275*

**History:** *10 SR 994*

**9525.1020 PENALTY FOR NONCOMPLIANCE WITH APPLICABLE LAWS AND RULES.**

If a court or the agency responsible for assuring compliance determines that a county board or a provider under contract with a county board to provide SILS does not comply with parts 9525.0900 to 9525.1020 and with the laws and rules in items A to E, the commissioner shall suspend or withhold payments or require repayment under part 9525.1000. The procedure for requesting a review of the commissioner's action under this part must be the same as the procedure in part 9525.1010.

A. Minnesota Statutes, section 245.825 and rules adopted under that section that govern the use of aversive and deprivation procedures;

B. Minnesota Government Data Practices Act, Minnesota Statutes, sections 13.01 to 13.57;

C. Minnesota Statutes, sections 626.556 to 626.557 and rules adopted under those sections that govern reporting of maltreatment of minors and vulnerable adults;

D. Minnesota Statutes, chapter 363, Minnesota Human Rights Act; and

E. Minnesota Statutes, section 252.275 that mandates reasonable efforts to hire qualified employees displaced by reorganization, closure, or consolidation of state hospital mental retardation units.

**Statutory Authority:** *MS s 252.275*

**History:** *10 SR 994*

**TRAINING AND HABILITATION REIMBURSEMENT PROCEDURES FOR ICF/MR'S****9525.1200 PURPOSE AND APPLICABILITY.**

Subpart 1. **Purpose.** The purpose of parts 9525.1200 to 9525.1330 is to

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establish procedures to reimburse, through the medical assistance program, quality day training and habilitation services which are efficiently and economically provided to eligible persons who reside in intermediate care facilities for mentally retarded persons.

Subp. 2. **Applicability.** Parts 9525.1200 to 9525.1330 apply to county boards which are required to administer day training and habilitation services; to county boards which are required to recommend medical assistance rates for day training and habilitation services; and to day service providers selected by the county board to provide day training and habilitation services for persons who are mentally retarded. Parts 9525.1200 to 9525.1330 do not apply to state hospitals' provision of day training and habilitation services.

**Statutory Authority:** *MS s 256B.501 subds 5 to 10*

**History:** *10 SR 68*

### 9525.1210 DEFINITIONS.

Subpart 1. **Scope.** The terms used in parts 9525.1200 to 9525.1330 have the meanings given to them in this part.

Subp. 2. **Client.** "Client" means a person who is receiving day training and habilitation services.

Subp. 3. **Commissioner.** "Commissioner" means the commissioner of human services or the commissioner's designated representative.

Subp. 4. **County board.** "County board" means the board of county commissioners of the county in which day training and habilitation services are provided or the county board's designated representative.

Subp. 5. **County of financial responsibility.** "County of financial responsibility" has the meaning given it in Minnesota Statutes, section 256B.02, subdivision 3.

Subp. 6. **Day service provider.** "Day service provider" means the corporation, governmental unit, or other legal entity that claims medical assistance reimbursement for providing day training and habilitation services.

Subp. 7. **Day training and habilitation services.** "Day training and habilitation services" means health and social services provided to a person with mental retardation by a licensed provider at a site other than the person's place of residence unless medically contraindicated and documented as such in the individual service plan. The services must be designed to result in the development and maintenance of life skills, including: self-care, communication, socialization, community orientation, emotional development, cognitive development, motor development, and therapeutic work or learning activities that are appropriate for the person's chronological age. Day training and habilitation services are provided on a scheduled basis for periods of less than 24 hours each day.

Subp. 8. **Developmental achievement center.** "Developmental achievement center" means a provider of day training and habilitation services which complies with Minnesota Statutes, sections 252.21 to 252.261.

Subp. 9. **Individual service plan.** "Individual service plan" has the meaning given it in parts 9525.0015 to 9525.0145 [Emergency].

Subp. 10. **Intermediate care facility for the mentally retarded or ICF/MR.** "Intermediate care facility for the mentally retarded" or "ICF/MR" means the provider of a program licensed to serve persons who are mentally retarded under Minnesota Statutes, section 252.28, and a physical plant licensed as a supervised living facility under Minnesota Statutes, chapter 144, which together are certified by the Minnesota Department of Health as an intermediate care facility for the mentally retarded. Unless otherwise stated, the term ICF/MR includes state-operated and community-based facilities.

Subp. 11. **New day service provider.** "New day service provider" means a day

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service provider that did not have an established medical assistance rate on December 31, 1983, according to Minnesota Statutes, section 256B.501, and rules adopted thereunder.

Subp. 12. **Payment rates.** "Payment rates" mean the rates approved by the commissioner for reimbursement of day training and habilitation services received by and transportation of an eligible client within a 24-hour period. The three kinds of payment rates are:

A. A full-day service rate for clients whose individual service plans require a minimum of six service hours per day, including the time it takes to transport the client to and from the service site.

B. A partial-day service rate for clients whose individual service plans require less than a full day on a consistent basis. The partial-day service rate must not exceed 75 percent of the full-day service rate.

C. A transportation rate for the provision of, or arrangement and payment for, transportation received by an eligible client from the client's residence to the service site and back.

Subp. 13. **Resident.** "Resident" means a client who resides at the physical plant of an ICF/MR.

Subp. 14. **Service site.** "Service site" means the physical location or locations where day training and habilitation services are provided.

Subp. 15. **Work activity.** "Work activity" means activity which is designed exclusively to provide therapeutic activities for handicapped workers whose physical or mental impairment is so severe as to make their productive capacity inconsequential. For this purpose, "inconsequential" means that the average wage paid to clients is within the range specified for work activity centers as provided by Code of Federal Regulations, title 29, section 525.2.

**Statutory Authority:** *MS s 256B.501 subds 5 to 10*

**History:** *10 SR 68*

## 9525.1220 CLIENT ELIGIBILITY.

The day service provider may receive medical assistance reimbursement for providing day training and habilitation services to an eligible person if the person meets the criteria in items A to G:

A. the person is eligible to receive medical assistance under Minnesota Statutes, chapter 256B;

B. the person is determined to be mentally retarded in accordance with the definitions in parts 9525.0015 to 9525.0145 [Emergency];

C. the person is a resident of an intermediate care facility for mentally retarded;

D. the person is not of school age as defined in Minnesota Statutes, section 120.17, subdivision 1;

E. the person is determined to be in need of day training and habilitation services as specified in the individual service plan under parts 9525.0015 to 9525.0145 [Emergency];

F. the person does not receive day training and habilitation services at the ICF/MR from an approved day service provider or as part of the medical assistance rate of the ICF/MR; and

G. the person is currently capable of only "inconsequential" work activity as defined in part 9525.1210, subpart 15 and the service provided is supervision, assistance, or training during habilitative work activities.

**Statutory Authority:** *MS s 256B.501 subd 10*

**History:** *10 SR 68; 10 SR 2417*

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### 9525.1230 APPROVAL OF DAY SERVICE PROVIDER.

Subpart 1. **General requirements.** A day service provider is approved by the commissioner to receive medical assistance reimbursement for day training and habilitation services when the day service provider meets the requirements in items A to J and complies with parts 9525.1200 to 9525.1330.

A. The day service provider must have a current license to provide day training and habilitation services in accordance with Minnesota Statutes, sections 252.28 and 245.781 to 245.812 and rules adopted thereunder.

B. The day service provider must have a current need determination approved by the commissioner under Minnesota Statutes, section 252.28 and parts 9525.0015 to 9525.0145 [Emergency].

C. The day service provider and the ICF/MR must not be under the control of the same or related entities which provide residential services to the day service provider's clients. For this purpose, "control" means having power to direct or affect management, operations, policies, or implementation, whether through the ownership of voting securities, by contract or otherwise; "related legal entities" are entities that share a majority of governing board members or are owned by the same person or persons. If both the ICF/MR and the day service provider are wholly or partially owned by individuals, those individuals must not be related by marriage or adoption as spouses or as parents and children. Two exceptions to this requirement are:

(1) the county board's and commissioner's control which is required by parts 9525.1200 to 9525.1330; or

(2) the day service provider is a developmental achievement center which applied for licensure before April 15, 1983, as provided for under Minnesota Statutes, section 256B.501, subdivision 1, paragraph (d).

D. The day service provider must have a written agreement with the ICF/MR and the county in which the ICF/MR is located as required by Minnesota Statutes, section 256B.501, subdivision 5, paragraph (d) and part 9525.1240.

E. The day service provider must have a written day training and habilitation agreement with each ICF/MR whose residents are enrolled by the day service provider as provided by Code of Federal Regulations, title 42, section 442.417.

F. The day service provider must be authorized by each ICF/MR whose residents are enrolled by the day service provider to receive medical assistance payments from the Department of Human Services under Code of Federal Regulations, title 42, section 447.10, paragraph (e).

G. The day service provider must make available at least 195 full days of medical assistance reimbursable service in a calendar year.

H. The day service provider must be selected by the county board, as provided by Minnesota Statutes, section 252.24, because of its demonstrated ability to provide the day training and habilitation services required by the client's individual service plan as provided in parts 9525.0015 to 9525.0145 [Emergency].

I. The day service provider must have service and transportation rates recommended by the county board as provided by part 9525.1260 and approved by the commissioner as provided by part 9525.1270.

J. The day service provider must be in compliance with the standards in Code of Federal Regulations, title 42, sections 442.455 and 442.463.

Subp. 2. **New day service providers.** A new day service provider is approved by the commissioner to receive medical assistance reimbursement for day training and habilitation services when:

A. the new day service provider meets the requirements of subpart 1;

B. the new day service provider has been selected by the county board based upon:

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(1) the needs assessment required under Minnesota Statutes, section 256E.08, subdivision 1 and the assessment of individual service needs under parts 9525.0015 to 9525.0145 [Emergency] for the identification of day training and habilitation services needed in the county; and

(2) a request for proposals system implemented by the county board and based on the needs assessment described in subitem (1) which provides potential day service providers in the county and employees of regional state hospitals an opportunity to submit a proposal for the provision of day training and habilitation services in the county;

C. the new day service provider's rates have been approved by the commissioner as provided by part 9525.1270; and

D. the county board has certified, in writing, that the new day service provider is in compliance with parts 9525.1200 to 9525.1330.

**Statutory Authority:** *MS s 256B.501 subds 5 to 10*

**History:** *10 SR 68*

## 9525.1240 DAY TRAINING AND HABILITATION AGREEMENT.

Subpart 1. **Agreement contents.** An agreement must be entered into by the day service provider, the ICF/MR whose residents will receive day training and habilitation services under the agreement, and the county where the ICF/MR is located, as specified under Minnesota Statutes, section 256B.501, subdivision 5, paragraph (d). This agreement must be completed annually on forms provided by the commissioner and must include at least the information in items A to E:

A. the number of hours of day training and habilitation services provided per day, excluding transportation to and from the location of the ICF/MR, which will be considered as a full day;

B. the approved maximum number of days per year medical assistance reimbursable services will be available;

C. the day service provider's months of operation during which day training and habilitation services are provided;

D. a statement of payment rates which have been approved by the commissioner under part 9515.1270;

E. respective duties and responsibilities of the county board, the day service provider, and the ICF/MR which include:

(1) the provision of, or arrangement and payment for transportation by the day service provider for its clients to and from the day service provider's service site;

(2) participation of the day service provider and the ICF/MR in the development of each resident's individual habilitation plan in accordance with the goals in the resident's individual service plan;

(3) the ICF/MR's duty to notify the day service provider within 60 days of any change in a resident's status. A change in a resident's status includes eligibility for medical assistance, medical conditions, medications, special diets, and behavior;

(4) the day service provider's compliance with parts 9525.1200 to 9525.1330 to be eligible for medical assistance reimbursement;

(5) day service provider billings for services provided to clients receiving medical assistance which must not be greater than billings for the same service provided to any other client unless authorized through a special needs rate as provided by Minnesota Statutes, section 256B.501, subdivision 8; and rules adopted thereunder;

(6) provision of at least quarterly progress reports measured against the goals and objectives of the client's individual service plan and individual habilitation plan under parts 9525.0015 to 9525.0145 [Emergency] by the day service provider to the ICF/MR on residents served by the day service provider;

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(7) compliance by the day service provider with the auditing and surveillance requirements under parts 9505.1750 to 9505.2150 and applicable to providers of medical assistance; and

(8) compliance by the day service provider with Minnesota Statutes, sections 245.781 to 245.812 and 252.28, parts 9525.0015 to 9525.0145 [Emergency], Code of Federal Regulations, title 42, sections 442.455 and 442.463;

(9) monitoring by the county board of service delivery to each client;

(10) the county board's assignment of accountability for expected outcomes of service delivery to the ICF/MR or the day service provider.

**Subp. 2. Agreement submission, termination, or new agreements.** The county board shall submit a copy of each completed agreement to the commissioner by January 1 of each year and within 60 days of the commissioner's approval of revised rates or rates for a new day service provider. The county board shall notify the commissioner within 60 days if the agreement in subpart 1 is suspended or terminated. The commissioner shall not pay for services provided during any period in which there is no agreement in effect or during which the agreement in effect does not comply with subpart 1.

**Statutory Authority:** *MS s 256B.501 subds 5 to 10*

**History:** *10 SR 68*

### 9525.1250 REIMBURSABLE SERVICES.

**Subpart 1. Types of services.** Day training and habilitation services are reimbursable under the medical assistance program when the services are provided for the development and maintenance of life skills. Reimbursable services include transportation to and from the service site and supervision, assistance, and training in one or more of the following when they are provided to promote age-appropriate outcomes and community integration:

A. work activity;

B. community orientation, including proper use of traffic signals, identification of police, firemen, and bus drivers, use of pedestrian pathways and public transportation to and from stores, restaurants, meeting places, and other familiar settings;

C. communication skills, including expressive and receptive language skill development;

D. self-care, including grooming, eating, toileting, dressing, medication monitoring, skin care, and oral hygiene;

E. cognitive skills, including functional reading, writing, and number skills;

F. motor development, including gross and fine motor activities, and range of motion exercises;

G. emotional development, including behavioral programming, to develop situationally acceptable affective expression; and

H. socialization, including social interaction skills, development of relationships, initiation or participation in leisure activities, and phone use.

**Subp. 2. Service requirements.** Day training and habilitation services are reimbursable under the medical assistance program if the services provided are in compliance with subpart 1 and the conditions listed in items A to E are met.

A. Day training and habilitation services must be authorized in writing by the county of financial responsibility and must include subitems (1) to (3):

(1) the amount and type of day training and habilitation services to be provided;

(2) the service costs; and

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(3) the expected client outcome or results of providing day training and habilitation services.

B. Day training and habilitation services must not be included in the approved rate of the ICF/MR.

C. Medical assistance money for day training and habilitation services must not replace the Minnesota Division of Vocational Rehabilitation money for sheltered work or work activity services.

D. Medical assistance reimbursable day training and habilitation services must not exceed the number of days per calendar year as provided by Minnesota Statutes, section 256B.501, subdivision 5, paragraph (e).

E. Day training and habilitation services needed by the person eligible under part 9525.1220 and identified in the client's individual service plan must be available to the client in amount, duration, and scope equal to day training and habilitation services made available to other persons served by the same day service provider.

**Statutory Authority:** *MS s 256B.501 subds 5 to 10*

**History:** *10 SR 68*

## 9525.1260 COUNTY BOARD RATE RECOMMENDATION.

Subpart 1. **Recommendation requirements.** The county board shall recommend in writing to the commissioner payment rates for each approved day service provider which is identified by a county of financial responsibility to provide day training and habilitation services. For purposes of rate recommendations under this part, an entity which operates with more than one day training and habilitation services license, as provided by Minnesota Statutes, sections 245.781 to 245.812, is considered a separate day service provider for each license. When recommending payment rates for day service providers to the commissioner, the county board must meet the requirements in items A to F.

A. The rates must be based on the criteria in part 9525.1270.

B. The county board shall recommend three payment rates for each day service provider: a full-day service rate, a partial-day service rate, and a transportation rate as defined in part 9525.1210, subpart 12. If a day service provider serves both preschool children and adults, the county board shall recommend separate payment rates for the preschool clients and the adult clients. If a day service provider operates more than one licensed site, the county board shall recommend the same payment rates for clients at each site unless the county board recommends an alternative rate structure under subpart 2.

C. The county board's rate recommendation to the commissioner must include comments from the day service provider indicating the day service provider's agreement or disagreement with the county board's rate recommendations.

D. The recommended rates for medical assistance must not exceed the rates to be paid by the county board from nonmedical assistance sources for the same services from the same day service provider in the same contract period.

E. The county board shall submit rate recommendations to the commissioner by November 1 of each year and at least 60 days before a recommended rate revision or rate for a new day service provider is to be effective.

F. The county board may submit revised rate recommendations to the commissioner if the revised rates still comply with items A to E.

Subp. 2. **Alternative rate structure.** The county board may recommend to the commissioner in writing an alternative rate structure than that required in subpart 1, item B, in accordance with Minnesota Statutes, section 256B.501, subdivision 7. The commissioner shall approve such an alternative if the county board shows by a preponderance of evidence that it:



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A. complies with all requirements of parts 9525.1200 to 9525.1330 other than subpart 1, item B;

B. complies with Minnesota Statutes, section 256B.501, subdivision 7; and

C. results in total annual payments which are equal to or less than the payments which would be made if the rates complied with subpart 1, item B.

**Subp. 3. Payment rates for new day service providers.** At least 60 days before service begins, the county board shall recommend in writing to the commissioner a proposal for approval as provided by part 9525.1230, subpart 2. The county board's recommendation must also include a description of the specific methods used to choose a day service provider and to develop rates. The day service provider recommended by the county board must meet the criteria in items A to C.

A. The proposed day service provider must comply with parts 9525.1200 to 9525.1330.

B. The proposed day service provider must comply with the need determination and licensure requirements in Minnesota Statutes, sections 252.28 and 245.781 to 245.812 and rules adopted thereunder and client eligibility requirements in part 9525.1220.

C. The proposed day service provider rates must not exceed the limits in Minnesota Statutes, section 256B.501, subdivisions 6 and 7.

**Statutory Authority:** *MS s 256B.501 subds 5 to 10*

**History:** *10 SR 68*

### **9525.1270 PAYMENT RATE CRITERIA AND COMMISSIONER'S APPROVAL OF RATES.**

**Subpart 1. Payment rates for approved day service providers.** Payment rates established for approved day service providers under parts 9525.1230 and 9525.1260 must be in compliance with the criteria in items A to D.

A. The rates must be adequate reimbursement for the cost of the provision of day training and habilitation services which meet the eligibility requirements in part 9525.1220. Except as provided in items B and C, "adequate" means that the sum of the full-day service rate and the transportation rate, as defined in part 9525.1210, subpart 12, items A and C, equals the sum of the same rates approved by the commissioner on December 1 of the preceding year plus no more than the projected percentage change in the consumer price index as provided by part 9525.1310, subpart 1.

B. The rates for individual clients may be higher than allowed in item A if the county board recommends and the commissioner approves higher rates through the special needs procedures provided by Minnesota Statutes, section 256B.501, subdivision 8, and rules adopted thereunder.

C. The rates may be lower than allowed in item A when the county board documents to the commissioner that individual service plans can be satisfied at lower cost.

D. An approved rate remains effective until the commissioner approves a different rate in accordance with parts 9525.1200 to 9525.1330.

**Subp. 2. Program change.** Rates recommended under part 9525.1260 and approved under part 9525.1270 must not be affected by changes in ownership, bankruptcy and reincorporation, or location of the day service provider.

**Subp. 3. Commissioner's approval.** If the rates recommended by the county board for the provision of day training and habilitation services comply with parts 9525.1260 and 9525.1270, the commissioner shall approve the rates, in writing, within 60 days of the receipt of the recommendation from the county board. If recommended rates are not in compliance with parts 9525.1260 and

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9525.1270, the commissioner shall, within 60 days of the receipt of the recommendation from the county board, notify the county board, in writing, of the reasons approval was denied or different rates were approved.

Subp. 4. **Payment rate principle.** Transactions that have the effect of circumventing parts 9525.1200 to 9525.1330 to affect payment rates or provider eligibility to receive medical assistance payments for providing day training and habilitation services will not be considered by the commissioner for the purposes of payment rate approval under the principle that the substance of the transaction shall prevail over form.

**Statutory Authority:** *MS s 256B.501 subds 5 to 10*

**History:** *10 SR 68*

**9525.1280 VARIANCE REQUEST.**

Subpart 1. **Variance request.** The county board may request a one-time variance from the commissioner of the rate limits for an existing day service provider under part 9525.1270, subpart 1, item A. The variance in the rate limit shall not exceed the rate limit established for new day service providers under Minnesota Statutes, section 256B.501, subdivision 6. To be eligible for the variance, the existing day service provider must meet all the criteria in items A to F.

A. The commissioner and the county board have both conducted a review and have identified the need for additional direct care program staff to meet the needs of clients.

B. An increase in the client-to-staff ratio is necessary to provide clients with the required service as delineated in all clients' individual service plans and individual habilitation plans under parts 9525.0015 to 9525.0145 [Emergency] and Minnesota Statutes, sections 252.21 to 252.261, and rules adopted thereunder.

C. The day service provider shows that additional staffing needs cannot be met by reallocating current staff to provide the necessary services.

D. The county board submits evidence that additional clients' needs cannot be met using temporary special needs rate exception payments under parts 9510.1020 to 9510.1140 [Emergency].

E. The county board submits a description of the day service providers' plan to correct any staffing deficiency including the projected cost of the salary and related fringe benefits and payroll taxes for required additional program staff and the qualifications of required additional program staff.

F. The county board submits an explanation of the reasons the day service provider was unable to meet the required staff ratio under the current payment rates.

Subp. 2. **Submittal of request.** The county board shall submit the written variance request, including documentation showing that the day service provider meets the criteria for a variance, with the county board's rate recommendation.

Subp. 3. **Review of variance request; notification.** The commissioner shall review the variance request with the county board's rate recommendation. If the county board's variance request shows by a preponderance of the evidence that the provider meets all the criteria in subpart 1, the commissioner shall approve the request. If the commissioner denies the variance request, the commissioner shall notify the county board and the day service provider of the reasons for the denial. The commissioner's decision on the variance request shall be final.

**Statutory Authority:** *MS s 256B.501 subds 5 to 10*

**History:** *10 SR 68*

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### 9525.1290 DAY SERVICE PROVIDER BILLING.

Subpart 1. **Billing requirements.** The day service provider must comply with the requirements in items A to E when submitting bills to the commissioner for reimbursement for the provision of day training and habilitation services.

A. Bills must be submitted on forms supplied by the commissioner, which identify for each client:

(1) the full-day or partial-day service rate as provided by part 9525.1270, subpart 1, multiplied by the number of days the client actually received day training and habilitation services from the day service provider; and

(2) the transportation rate as approved under part 9525.1270, subpart 1, multiplied by the number of days the client was actually transported.

B. The day service provider must not bill for days in which the client does not receive day training and habilitation or transportation services.

C. The day service provider must not bill for more than one service rate and one transportation rate per client per day.

D. Day service providers whose rates have been recommended under part 9525.1260, subpart 2 and approved under part 9525.1270, subpart 1, must submit bills to the commissioner using a procedural code available from the Health Care Programs Division.

E. Each bill from the day service provider must be verified by the ICF/MR where the client resides before the bill is submitted to the commissioner. A signature by authorized ICF/MR personnel constitutes verification by the ICF/MR that the services were provided on the days and for the charges specified.

Subp. 2. **Payment.** The commissioner shall pay the day service provider for bills submitted under subpart 1 using the payment procedures in Minnesota Statutes, sections 256B.041 and 256B.501, subdivision 5, paragraph (f). No payment will be made by the commissioner for day training and habilitation services not authorized under subpart 1, item E.

Subp. 3. **Errors and duplicate payments.** If the day service provider becomes aware of a billing error that results in an overpayment or an underpayment to the day service provider or if the day service provider receives payment from another source for services which were also paid for by the medical assistance program, the day service provider shall promptly notify the commissioner and request an adjustment request form. Within one year of receipt of a completed adjustment request form, the commissioner shall:

A. in the case of an overpayment, require the day service provider to repay an amount equal to the overpayment or adjust future payments to correct the error or eliminate the overpayment; or

B. in the case of an underpayment, pay the day service provider an amount equal to the underpayment or adjust future payments to correct the error.

**Statutory Authority:** *MS s 256B.501 subds 5 to 10*

**History:** *10 SR 68; 11 SR 1612*

### 9525.1300 REQUIRED RECORDS AND REPORTS.

Subpart 1. **Day service provider records.** The day service provider shall maintain program records, fiscal records, and supporting documentation identifying the items in items A to C:

A. authorization from the county of financial responsibility, as provided by part 9525.1250, subpart 2, for each client for whom service is billed;

B. attendance sheets and other records documenting that the clients received the billed services from the day service provider; and

C. records of all bills and, if applicable, all refunds to and from other sources for day training and habilitation services. The day service provider's records shall be subject to the maintenance schedule, audit availability requirements, and other provisions in parts 9505.1750 to 9505.2150.

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Subp. 2. **Availability of records.** The day service provider's financial records must be available, on request, to the commissioner and the United States Department of Health and Human Services in accordance with parts 9500.0750 to 9500.1080, 9505.1750 to 9505.2150, and 9525.1200 to 9525.1330.

Subp. 3. **Retention of records.** The day service provider shall retain a copy of the records required in subpart 1 for five years from the date of the bill unless an audit in process requires a longer retention period.

Subp. 4. **Annual report.** The day service provider shall maintain such records as may be necessary to submit the annual report by March 1 as provided by Minnesota Statutes, section 256B.501, subdivision 9.

**Statutory Authority:** *MS s 256B.501 subds 5 to 10*

**History:** *10 SR 68*

## 9525.1310 NOTIFICATION.

Subpart 1. **Inflation.** By September 1 of each year, the commissioner shall notify the county board and the day service provider of the projected inflation rate for the following year, which must be the most recent projected percentage change in the consumer price index (all urban), for the upcoming calendar year over the current year, as provided by Minnesota Statutes, section 256B.501, subdivision 5, paragraph (c) and published in "Health Care Costs" issued by Data Resources, Inc., 1750 K. Street, Suite 300, Washington DC 20006, which is incorporated by reference. This document is published monthly (12 times a year) and is available through the Minitex Interlibrary Loan System; or can be purchased from Data Resources, Inc.

Subp. 2. **Average medical assistance payment rates.** In accordance with Minnesota Statutes, section 256B.501, subdivisions 6 and 7, the commissioner shall notify the county board annually of the average medical assistance payment rate limitations for day training and habilitation services in each county and in each of the regional development commission districts designated in Minnesota Statutes, sections 462.381 to 462.396.

Subp. 3. **Reporting requirements.** By December 1 of each year, the commissioner shall notify each day service provider of the reporting requirements for the annual report due March 1 of the following year. The annual report must include information on client and program characteristics and the actual program revenues and expenditures. The reporting requirements apply to all day training and habilitation services offered by the day service provider, regardless of funding source.

**Statutory Authority:** *MS s 256B.501 subds 5 to 10*

**History:** *10 SR 68*

## 9525.1320 PENALTIES FOR NONCOMPLIANCE.

If the day service provider does not comply with parts 9525.1200 to 9525.1330, with other applicable laws and rules, and with the terms of the agreement required by part 9525.1240, subpart 1, the commissioner will suspend or withhold payments under the procedures in parts 9505.1750 to 9505.2150. "Other applicable laws and rules" include items A to E:

A. Minnesota Statutes, section 245.825 and rules adopted thereunder governing use of aversive and deprivation procedures;

B. Minnesota Statutes, sections 626.556 to 626.557 and rules adopted thereunder governing reporting of maltreatment of minors and vulnerable adults;

C. Minnesota Government Data Practices Act, Minnesota Statutes, sections 13.01 to 13.57;

D. Minnesota Statutes, chapter 363, Minnesota Human Rights Act; and

E. Minnesota Statutes, section 256B.064.

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## 8743 PROGRAMS FOR MENTALLY RETARDED PERSONS 9525.1330

**Statutory Authority:** *MS s 256B.501 subds 5 to 10*

**History:** *10 SR 68*

### 9525.1330 APPEALS.

**Subpart 1. Day service provider appeals to county board.** If a day service provider disagrees with the rate recommendation of the county board, the day service provider may appeal to the county board. A rate appeal must be heard by the county board if the appeal is based on the contention that the rate recommended by the county board does not comply with Minnesota Statutes, section 256B.501, subdivisions 5 to 8, and parts 9525.1200 to 9525.1330.

Within ten days of the receipt of a request for an appeal, the county board shall notify the day service provider of a hearing to be held within 30 days of the request for an appeal. The county board shall preside at the hearing. The county board shall notify the day service provider of its decision within 30 days after the hearing. The decision must be in writing and state the evidence relied upon and reasons for the determination.

**Subp. 2. Day service provider appeals to commissioner.** If a day service provider has appealed to the county board and the day service provider disagrees with the county board's decision, the day service provider may appeal to the commissioner. The appeal must be submitted to the commissioner in writing within 30 days of the date the day service provider received notification of the county board's decision. The appeal must state the reasons the day service provider is appealing the county board's decision including the bases for the county board's decision which are disputed and an explanation of why the day service provider disagrees with the county board's decision.

The commissioner shall review the county board's rate recommendation and supporting documentation submitted by the day service provider to the county and any additional documents submitted to the commissioner with the appeal to determine if the day service provider can prove by a preponderance of evidence that the day service provider be granted a different payment rate than recommended by the county board. The commissioner shall send written notification to the day service provider and the county board of the decision on the appeal and state the evidence relied upon and the reasons for the determination.

**Subp. 3. County board appeals to commissioner.** If the county board disagrees with the rate decision of the commissioner, the county board may appeal to the commissioner. The appeal must be submitted to the commissioner within 30 days of the date the county board received notification of the commissioner's decision. The appeal must state the reasons why the county board is appealing the commissioner's decision and present evidence explaining why the county board disagrees with the commissioner's decision. The commissioner shall review the evidence presented in the county board's appeal and send written notification to the county board of the decision on the appeal. The commissioner's decision on the appeal shall be final. Until a rate appeal is resolved and if the day service provider continues services, payments must continue at a rate which the commissioner determines to comply with parts 9525.1200 to 9525.1330. If a higher rate is approved, the commissioner shall order a retroactive payment as determined in the rate appeal decision.

**Subp. 4. Appeal of commissioner's action.** Before the commissioner suspends or withholds payments under part 9525.1320, the commissioner shall give 30 days' written notice to the day service provider and send a copy of the written notice to the affected day service provider. The written notice shall inform the day service provider of its right to appeal the commissioner's action. The appeal must be submitted to the commissioner within 30 days of the date the day service provider received notification of the commissioner's action. The appeal must state the reasons why the day service provider is appealing the commissioner's action and present evidence why the day service provider disagrees with the

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commissioner's decision. The commissioner shall review the evidence presented in the day service provider's appeal and send written notification to the day service provider of the decision on the appeal. The commissioner's decision on the appeal shall be final. The commissioner may not take the proposed action before the appeal is resolved.

**Statutory Authority:** *MS s 256B.501 subds 5 to 10*

**History:** *10 SR 68*

### FUNDING AND ADMINISTRATION OF HOME AND COMMUNITY-BASED SERVICES

#### 9525.1800 DEFINITIONS.

**Subpart 1. Scope.** The terms used in parts 9525.1800 to 9525.1930 have the meanings given to them in this part.

**Subp. 2. Billing rate.** "Billing rate" means the rate billed by the provider for providing the services. The rate may be based on a day, hour, or fraction of an hour of service.

**Subp. 3. Case manager.** "Case manager" means the person designated by the county board to provide case management services as defined in part 9525.1860.

**Subp. 4. Client.** "Client" means a person with mental retardation who is receiving home and community-based services.

**Subp. 5. Commissioner.** "Commissioner" means the commissioner of the Minnesota Department of Human Services or the commissioner's designated representative.

**Subp. 6. County board.** "County board" means the county board of commissioners for the county of financial responsibility or the county board of commissioners' designated representative.

**Subp. 7. County of financial responsibility.** "County of financial responsibility" has the meaning given it in Minnesota Statutes, section 256B.02, subdivision 3.

**Subp. 8. Daily intervention.** "Daily intervention" means supervision, assistance, or training provided to a person in the person's residence by a provider, family member, or foster family member to help the person manage daily activities. To qualify as daily intervention the supervision, assistance, or training must be provided each day for more than 90 consecutive days.

**Subp. 9. Department.** "Department" means the Minnesota Department of Human Services.

**Subp. 10. Diversion.** "Diversion" means the act of providing home and community-based services to a person who would be placed in an intermediate care facility for the mentally retarded within one year if the home and community-based services were not provided.

**Subp. 11. Family.** "Family" means a person's biological parents, adoptive parents or stepparents, siblings, children, or spouse.

**Subp. 12. Fiscal year.** "Fiscal year" means the state's fiscal year from July 1 through the following June 30.

**Subp. 13. Geographic region.** "Geographic region" means one of the economic development regions established by executive order of the governor in accordance with Minnesota Statutes, section 462.385, in effect on July 1, 1984.

**Subp. 14. Home and community-based services.** "Home and community-based services" means the following services which are provided to persons with mental retardation, if the services are authorized under United States Code, title 42, section 1396 et. seq., and authorized under the waiver granted by the United States Department of Health and Human Services: case management, respite care, homemaker, in-home family support services, supported living arrangements for children, supported living arrangements for adults, day habilitation, and minor physical adaptations to the home, as defined in part 9525.1860; and

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other home and community-based services authorized under United States Code, title 42, section 1396 et seq., if approved for Minnesota by the United States Department of Health and Human Services.

Subp. 15. **Host county.** "Host county" means the county in which the home and community-based service is provided.

Subp. 16. **Individual habilitation plan.** "Individual habilitation plan" has the meaning given it in parts 9525.0015 to 9525.0145 [Emergency].

Subp. 17. **Individual service plan.** "Individual service plan" has the meaning given it in parts 9525.0015 to 9525.0145 [Emergency].

Subp. 18. **Intermediate care facility for the mentally retarded or (ICF/MR).** "Intermediate care facility for the mentally retarded" or "ICF/MR" means a program licensed to serve persons with mental retardation under Minnesota Statutes, section 252.28, and a physical plant licensed as a supervised living facility under Minnesota Statutes, chapter 144, which together are certified by the Minnesota Department of Health as an intermediate care facility for the mentally retarded. Unless otherwise stated, the term ICF/MR includes state-operated and community-based facilities.

Subp. 19. **Placement.** "Placement" means the act of providing home and community-based services to a person who has been discharged from an ICF/MR.

Subp. 20. **Primary caregiver.** "Primary caregiver" means a person other than a member of the client's family who has primary responsibility for the assistance, supervision, or training of the client in the client's residence.

Subp. 21. **Provider.** "Provider" means a person or legal entity providing home and community-based services for reimbursement under parts 9525.1800 to 9525.1930.

Subp. 22. **Room and board costs.** "Room and board costs" means costs associated with providing food, shelter, and personal needs items for clients, including the directly identifiable costs of:

- A. normal and special diet food preparation and service;
- B. linen, bedding, laundering, and laundry supplies;
- C. housekeeping, including cleaning and lavatory supplies;
- D. maintenance and operation of the building and grounds, including fuel, electricity, water, supplies, and parts and tools to repair and maintain equipment and facilities; and
- E. allocation of salaries and other costs related to these areas.

Subp. 23. **Screening team.** "Screening team" means the team established under Minnesota Statutes, section 256B.092 to evaluate a person's need for home and community-based services.

Subp. 24. **Service site.** "Service site" means the location at which home and community-based services are provided.

Subp. 25. **Short term.** "Short term" means a cumulative total of less than 90 24-hour days or 2,160 hours in a fiscal year.

Subp. 26. **Statewide average reimbursement rate.** "Statewide average reimbursement rate" means the dollar amount arrived at by dividing the total amount of money available under the waiver for the fiscal year by 365 days and then dividing the quotient by the department's projection of the total number of clients to receive home and community-based services as stated in the waiver for that fiscal year.

Subp. 27. **Waiver.** "Waiver" means the waiver of requirements under United States Code, title 42, sections 1396 et seq., which allows the state to pay for home and community-based services for persons with mental retardation through the medical assistance program. The term includes all amendments to the waiver including any amendments made after the effective date of parts 9525.1800 to

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## 9525.1800 PROGRAMS FOR MENTALLY RETARDED PERSONS 8746

9525.1930, as approved by the United States Department of Health and Human Services under United States Code, title 42, section 1396 et. seq.

**Statutory Authority:** *MS s 256B.092 subd 6; 256B.501 subd 2; 256B.502; 256B.503*

**History:** *10 SR 838*

### 9525.1810 APPLICABILITY AND EFFECT.

Subpart 1. **Applicability.** Parts 9525.1800 to 9525.1930 apply to all county boards administering medical assistance funds for home and community-based services for persons with mental retardation, to all providers that contract with a county board to provide home and community-based services for persons with mental retardation, and to all subcontractors who contract with a provider to provide home and community-based services for persons with mental retardation.

Subp. 2. **Effect.** The entire application of parts 9525.1800 to 9525.1930 shall continue in effect only as long as the waiver from the United States Department of Health and Human Services is in effect in Minnesota.

**Statutory Authority:** *MS s 256B.092 subd 6; 256B.501 subd 2; 256B.502; 256B.503*

**History:** *10 SR 838*

### 9525.1820 ELIGIBILITY.

Subpart 1. **Eligibility criteria.** A person is eligible to receive home and community-based services if the person meets all the criteria in items A to D and if home and community-based services may be provided in accordance with part 9525.1830:

A. the person is eligible to receive medical assistance under Minnesota Statutes, chapter 256B or subpart 2;

B. the person is determined to be a person with mental retardation in accordance with the definitions and procedures in parts 9525.0015 to 9525.0145 [Emergency];

C. the person is a resident of an ICF/MR or it is determined by the screening team that the person would be placed in an ICF/MR within one year if home and community-based services were not provided; and

D. the screening team has determined that the person needs daily intervention and the person's individual service plan documents the need for daily intervention and specifies the services needed daily.

Subp. 2. **Medical assistance eligibility for children residing with their parents.** The county board shall determine eligibility for medical assistance for a person under age 18 who resides with a parent or parents without considering parental income and resources if:

A. the person meets the criteria in subpart 1, items B to D;

B. the person will be provided home and community-based services in accordance with part 9525.1830;

C. the person would not be eligible for medical assistance if parental income and resources were considered; and

D. the commissioner has approved in writing a county board's request to suspend for the person the deeming requirements in Code of Federal Regulations, title 42, section 436.821 in accordance with the waiver.

Subp. 3. **Beginning date.** Eligibility for medical assistance begins on the first day of the month in which the client first receives home and community-based services.

**Statutory Authority:** *MS s 256B.092 subd 6; 256B.501 subd 2; 256B.502; 256B.503*

**History:** *10 SR 838*



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## 8747 PROGRAMS FOR MENTALLY RETARDED PERSONS 9525.1850

### 9525.1830 PROVISION OF HOME AND COMMUNITY-BASED SERVICES.

**Subpart 1. Conditions.** The county board shall provide or arrange to provide home and community-based services to a person if the person is eligible for home and community-based services under part 9525.1820 and all the conditions in items A to F have been met:

A. the county board has determined that it can provide home and community-based services to the person within its allocation of home and community-based services money as determined under parts 9525.1890 and 9525.1910;

B. the screening team has recommended home and community-based services instead of ICF/MR services for the person under parts 9525.0015 to 9525.0145 [Emergency];

C. the commissioner has authorized payment for home and community-based services for the person;

D. the person or the person's legal representative has agreed to the home and community-based services determined by the screening team to be appropriate for the person;

E. the county board has authorized provision of home and community-based services to the person based on the goals and objectives specified in the person's individual service plan; and

F. the county board has a signed agreement with the state that complies with part 9525.1900.

**Subp. 2. Written procedures and criteria.** The county board shall establish written procedures and criteria for making determinations under subpart 1, item A. The procedures and criteria must be consistent with requirements in parts 9525.1800 to 9525.1930, the waiver, federal regulations governing home and community-based services, and the goals established by the commissioner in part 9525.1880, subpart 3.

**Statutory Authority:** *MS s 256B.092 subd 6; 256B.501 subd 2; 256B.502; 256B.503*

**History:** *10 SR 838*

### 9525.1840 PARENTAL CONTRIBUTION FEE.

**Subpart 1. Out-of-home placements.** The parent or parents of a client under age 18 shall be liable for a parental contribution fee determined according to Minnesota Statutes, section 256B.14, if the client resides outside the home of the parent or parents.

**Subp. 2. In-home services.** Parents of clients under age 18 may be liable for a parental contribution fee determined according to Minnesota Statutes, section 256B.14, if the client is residing with a parent and the client's medical assistance eligibility for home and community-based services was determined without considering parental income or resources under part 9525.1820, subpart 2.

**Statutory Authority:** *MS s 256B.092 subd 6; 256B.501 subd 2; 256B.502; 256B.503*

**History:** *10 SR 838*

### 9525.1850 PROVIDER REIMBURSEMENT.

A provider may receive medical assistance reimbursement for home and community-based services only if the provider meets the criteria in items A to J. The training, experience, and supervision required in items B to E only apply to persons who are employed by, or under contract with, the provider to provide services that can be billed under part 9525.1860, subpart 3, item A.

A. The provider has a current license or licenses for the specific home

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and community-based services as required under Minnesota Statutes or Minnesota Rules or, if no license is required, has received approval from the county board to provide home and community-based services.

B. The provider ensures that the provider and all employees or subcontractors meet all professional standards established in Minnesota Statutes, Minnesota Rules, and Code of Federal Regulations that apply to the services to be provided. If no training standards have been established, the provider, employee, or subcontractor must have completed, within the last two years, at least 24 hours of documented training. The training must be in areas related to the care, supervision, or training of persons with mental retardation including first aid, medication administration, behavior management, cardiopulmonary resuscitation, human development, and obligations under Minnesota Statutes, sections 626.556 and 626.557. The county board may grant a written variance to the training requirements in this item for:

(1) a respite care provider who provides the respite care in his or her residence or in the client's residence; or

(2) a provider who ensures that the training will be completed within six months of the date the contract is signed.

This item does not apply to providers of minor physical adaptations.

C. The provider ensures that the provider and all employees or subcontractors have at least one year of experience within the last five years in the care, training, or supervision of persons with mental retardation or related conditions as defined in Minnesota Statutes, section 252.27. The county board may grant a written variance to the requirements in this item for:

(1) a respite care provider who provides the respite care in his or her residence or in the client's residence;

(2) a provider, employee, or subcontractor who is a qualified mental retardation professional who meets the requirements in Code of Federal Regulations, title 42, section 442.401 and has been approved by the case manager; or

(3) an employee of the provider if the employee will work under the direct on-site supervision of a qualified mental retardation professional who meets the requirements in Code of Federal Regulations, title 42, section 442.401, and who has been approved by the case manager.

This item does not apply to providers of minor physical adaptations or homemaker services.

D. The provider ensures that all home and community-based services, except homemaker services, respite care services, and minor physical adaptations, will be provided by, or under the supervision of a qualified mental retardation professional who meets the requirements in Code of Federal Regulations, title 42, section 442.401, and has been approved by the case manager:

E. The provider ensures that the provider and all employees or subcontractors will complete the amount of ongoing training required in any Minnesota rules applicable to the home and community-based services to be provided. If no ongoing training is required by the applicable Minnesota rules, the provider, except a provider of minor physical adaptations, agrees that the provider and all employees or subcontractors will complete at least 18 hours of documented ongoing training each fiscal year. To meet the requirements of this item, the ongoing training must be in a field related to the care, training, and supervision of persons with mental retardation, and must either be identified as needed in the client's individual habilitation plans or be approved by the case manager based on the needs identified in the individual service plans of the clients served by the provider. The county board may grant a written variance to the requirements in this item for a respite care provider who provides the respite care in his or her residence or in the client's residence.

F. The provider ensures that the provider and all employees or subcon-

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tractors have never been convicted of a violation, or admitted violating Minnesota Statutes, section 626.556 or 626.557 and there is no substantial evidence that the provider, employees, or subcontractors have violated Minnesota Statutes, section 626.556 or 626.557.

G. The provider has a legally binding contract with the host county that complies with part 9525.1870.

H. The provider has been authorized in writing to provide home and community-based services for the client by the county of financial responsibility.

I. The provider agrees in writing to comply with United States Code, title 42, sections 1396 et seq. and regulations implementing those sections and with applicable provisions in parts 9500.0750 to 9500.1080, 9505.1750 to 9505.2150, and 9525.1800 to 9525.1930.

J. The provider is not the client's guardian or a member of the client's family. This item does not preclude the county board from providing services if the client is a ward of the commissioner.

**Statutory Authority:** *MS s 256B.092 subd 6; 256B.501 subd 2; 256B.502; 256B.503*

**History:** *10 SR 838*

### 9525.1860 REIMBURSABLE SERVICES.

Subpart 1. **General limits.** The costs of providing the home and community-based services defined in subpart 2, provided in accordance with subparts 3 to 7, are reimbursable under the medical assistance program for as long as the waiver from the United States Department of Health and Human Services is in effect in Minnesota.

Subp. 2. **Definitions.** For the purposes of this part the following terms have the meanings given them.

A. "Case management" means identifying the need for, seeking out, acquiring, authorizing, and coordinating services to persons with mental retardation; and monitoring the delivery of the services to, and protecting the rights of, the persons with mental retardation, by an individual designated by the county board to provide case management services under parts 9525.0015 to 9525.0145 [Emergency].

B. "Day habilitation" means habilitation services provided away from the client's place of residence and focused on functioning in the community, using leisure and recreation time and developing task-oriented skills that will prepare the client to participate in a work environment. Day habilitation services for children are focused on stimulating the physical, intellectual, and emotional development of the child.

C. "Habilitation services" means health and social services directed toward increasing and maintaining the physical, intellectual, emotional, and social functioning of persons with mental retardation. Habilitation services include therapeutic activities, assistance, training, supervision, and monitoring in the areas of self-care, sensory and motor development, interpersonal skills, communication, socialization, reduction or elimination of maladaptive behavior, community living and mobility, health care, leisure and recreation, money management, and household chores. Day habilitation services and residential-based habilitation services are types of habilitation services.

D. "Homemaker services" means general household activities and ongoing monitoring of the client's well-being provided by a homemaker who meets the standards in part 9565.1200.

E. "In-home family support services" means residential-based habilitation services designed to enable the family to care for and maintain the client in the home and may include training and counseling for the client and the client's family.

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F. "Leave days" means days when a client is temporarily absent from services.

G. "Minor physical adaptations to the home" means one or more of the structural changes to the client's residence set forth in subpart 4, item E. Minor physical adaptations to the home must be designed to enable the client to avoid placement in an ICF/MR by increasing the client's mobility or protecting the client or other persons from injury. Minor physical adaptations to the home are only reimbursable for clients with mobility problems, sensory deficits, or behavior problems. Minor physical adaptations are limited to those named in subpart 4, item E.

H. "Residential-based habilitation services" means habilitation services provided in the client's residence. In-home family support services, supported living arrangements for children, and supported living arrangements for adults are residential-based habilitation services.

I. "Respite care" means short-term supervision, assistance, and care provided to a client due to the temporary absence or need for relief of the client's family, foster family, or primary caregiver. Respite care may include day, overnight, in-home, or out-of-home services, as needed.

J. "Supported living arrangements for adults" means residential-based habilitation services provided on a daily basis to adults in a service site for up to six clients.

K. "Supported living arrangements for children" means residential-based habilitation services provided on a daily basis to clients under 18 years of age in a service site for up to three clients.

L. "Other home and community-based services" means any other home and community-based services authorized under United States Code, title 42, section 1396 et seq., if approved for Minnesota by the United States Department of Health and Human Services.

Subp. 3. **Billing for services.** Billings submitted by the provider, except a provider of minor physical adaptations, must be limited to time actually and reasonably spent:

A. In direct contact with the client to assist the client in attaining the goals and objectives specified in the client's individual service plan. Direct contact time includes time spent traveling to and from service sites.

B. In verbal or written contact with professionals or others regarding the client's progress in attaining the goals and objectives specified in the client's individual service plan.

C. In planning activities including attending the client's interdisciplinary team meetings, developing goals and objectives for the client's individual habilitation plan, assessing and reviewing the client's specified goals and objectives, documenting the client's progress toward attaining the goals and objectives in the client's individual service plan and assessing the adequacy of the services related to the goals and objectives in the client's individual service plan.

Subp. 4. **Service limitations.** The provision of home and community-based services is limited as stated in items A to H.

A. Case management services may be provided as a single service for a period of no more than 90 days.

B. Day habilitation services must:

(1) only be provided to clients who receive a residential-based habilitation service;

(2) not include sheltered work or work activity services funded or certified by the Minnesota Division of Vocational Rehabilitation;

(3) be provided at a different service site than the client's place of residence unless medically contraindicated, as required in Minnesota Statutes, section 256B.501, subdivision 1, paragraph (d); and

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(4) be provided by an organization that does not have a direct or indirect financial interest in the organization that provides the client's residential services unless the client is residing with:

(a) his or her family; or

(b) a foster family that does not have a direct or indirect financial interest in the organization that provides the client's residential services.

C. Homemaker services may be provided only if:

(1) the person regularly responsible for these activities is temporarily absent or is unable to manage the home and care for the client; or

(2) there is no person, other than the client, regularly responsible for these activities and the client is unable to manage the home and his or her own care without ongoing monitoring or assistance. Homemaker services include meal preparation, cleaning, simple household repairs, laundry, shopping, and other routine household tasks.

D. Leave days are reimbursable for supported living arrangements for children or supported living arrangements for adults, if the client intends to return to the service. Billings may be made for leave days only when the client is:

(1) hospitalized;

(2) on a therapeutic overnight trip, camping trip, or vacation; or

(3) home for a visit.

Leave days that are not included in the individual service plan may not be billed for without the county board's written authorization. The county board and the provider must document all leave days for which billings are made and specify the reasons the county board authorized the leave days.

E. Reimbursement for minor physical adaptations to the home shall be limited to an average cost of \$3,111 per client for all clients in the county in fiscal year 1986. The average cost will be increased each fiscal year based on the first quarter forecast of the projected percentage change in the annual value of the all urban consumer price index, (CPI-U) for Minneapolis-Saint Paul as published by the Bureau of Labor Statistics new series index (1967=100), from the preceding fiscal year. The CPI-U is incorporated by reference and is available from the Minitex Interlibrary Loan System. The average cost limitation applies to the entire period of time for which the waiver has been approved. Minor physical adaptations to the home must be limited to the purchase and installation of one or more of the following:

(1) wheelchair ramps;

(2) handrails and grab bars;

(3) elevated bathtubs and toilets;

(4) widened doorways;

(5) shatterproof windows;

(6) blinking lights and tactile alarms as alternate warning systems;

(7) door handle replacements;

(8) lowered kitchen work surfaces;

(9) modified cabinets and sinks that provide wheelchair space;

(10) handles and hoses for showerheads;

(11) door hinge replacements;

(12) shower and bathtub seats; or

(13) other minor physical adaptations authorized under United States Code, title 42, section 1396 et seq., if approved for Minnesota by the United States Department of Health and Human Services.

Minor physical adaptations must be constructed in accordance with applicable state and local building codes.

F. Home and community-based services are not reimbursable if provided to a client while the client is a resident of or on leave from an ICF/MR, skilled nursing facility, intermediate care facility, or a hospital. This item shall not apply to leave days authorized in accordance with item C for a client who is hospitalized.

G. Respite care must:

(1) be provided only for the relief of the client's family or foster family, or if the client is in a supported living arrangement in the provider's residence, for the relief of the client's primary caregiver; and

(2) be provided in a service site serving no more than six clients at one time.

If there are no service sites that meet the requirements in subitem (2) available in the community to serve clients with multiple handicaps, the county board may grant a variance to the requirement for a period of no more than one year for each client. When a variance is granted, the county board must submit to the commissioner a written plan documenting the need for the variance and stating the actions that will be taken to develop services within one year that meet the requirements of subitem (2).

H. Room and board costs are not allowable costs for home and community-based services except respite care provided out of the client's residence. All room and board costs must be directly identified on reports submitted by the provider to the county board.

Subp. 5. **Special services.** The services listed in item A must be provided in accordance with items B to D.

A. For the purposes of this subpart, the services in subitems (1) to (9) have the meanings given them in parts 9500.0750 to 9500.1080:

- (1) psychological services;
- (2) physical therapy;
- (3) occupational therapy;
- (4) speech, hearing, and language disorder services;
- (5) mental health center services;
- (6) rehabilitative and therapeutic services;
- (7) home health care services;
- (8) private duty nursing services; and
- (9) personal care attendant services.

B. The services in item A, must be provided by a professional licensed or certified by the state to provide the services or by a person supervised by a licensed or certified professional.

C. If the services in item A, subitems (1) to (6) are provided to a client, the cost of the services must be included in the rate or rates billed by the provider or providers for reimbursement under parts 9525.1800 to 9525.1930. These services are not reimbursable under any other rule or rules for clients in home and community-based services.

D. The cost of the services listed in item A, subitems (7) to (9) must not be included in the rate or rates billed by the provider or providers for reimbursement under parts 9525.1800 to 9525.1930.

Subp. 6. **Other applicable rules.** Home and community-based services must be provided as required under items A to E unless a variance has been approved in accordance with subpart 7.

A. **Homemaker services** must be provided in compliance with parts 9565.1000 to 9565.1300.

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B. Day habilitation and training services must be licensed by the department.

C. Supported living arrangements for children must be provided at a service site licensed under parts 9545.0010 to 9545.0260.

D. Supported living arrangements for adults which are provided in a service site serving more than four adults must be licensed under parts 9525.0210 to 9525.0430. Supported living arrangements provided at a service site for four or fewer adults must be approved under parts 9555.6100 to 9555.6400; 9545.0090, item A; 9545.0140; 9545.0180; and 9545.0190, subparts 3 and 5. In approving supported living arrangements provided at a service site for four or fewer adults, the county board shall apply the criteria in parts 9545.0090, item A; 9545.0140; 9545.0180; and 9545.0190, subparts 3 and 5 as though the criteria had been written to apply to services for adults.

E. Respite care provided at a service site serving more than four clients must be licensed under parts 9525.0210 to 9525.0430. Respite care provided at a service site serving four or fewer clients under 18 years of age must be licensed under parts 9545.0010 to 9545.0260. Respite care provided at a service site serving four or fewer adults must be approved under parts 9545.0090, item A; 9545.0140; 9545.0180; 9545.0190, subparts 3 and 5; and 9555.6100 to 9555.6400. Respite care provided at a service site for four or fewer children and adults must be approved under parts 9545.0090, item A; 9545.0140; 9545.0180; 9545.0190, subparts 3 and 5; and 9555.6100 to 9555.6400 and licensed under parts 9545.0010 to 9545.0260. This item shall not apply to a person who provides respite care for fewer than 30 days a year.

**Subp. 7. Licensing variances.** Requests for variances to the licensing requirements in subpart 6 must be handled in accordance with items A to C.

A. The county board may request a variance from compliance with parts 9545.0010 to 9545.0260 as required in subpart 6, item C, D, or E, for a provider who provides services to clients under 18 years of age if the county board determines that no providers who meet the licensing requirements are available and that granting the variance will not endanger the health, safety, or development of the clients. The written variance request must be submitted to the commissioner and must contain:

(1) the sections of parts 9545.0010 to 9545.0260 with which the provider cannot comply;

(2) the reasons why the provider cannot comply with the specified section or sections; and

(3) the specific measures that will be taken by the provider to ensure the health, safety, or development of the clients.

The commissioner shall grant the variance request if the commissioner determines that the variance was submitted in accordance with this item and that granting the variance will not endanger the health, safety, or development of the persons receiving the services.

The commissioner shall review the county board's variance request and notify the county board, in writing, within 30 days if the variance request has been granted or denied. If the variance request is denied, the notice must state the reasons why the variance request was denied and inform the county board of its right to request that the commissioner reconsider the variance request.

B. The county board may grant a written variance from compliance with parts 9545.0090, item A; 9545.0140; 9545.0180; 9545.0190, subparts 3 and 5; and 9555.6100 to 9555.6400 as required in subpart 6, items D and E, for a provider who provides services to adults if the county board determines that no providers who meet the licensing requirements are available and that granting the variance will not endanger the health, safety, or development of the clients.

C. Requests for a variance of the provisions in parts 9525.0210 to 9525.0430 must be submitted in accordance with part 9525.0250.

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**Statutory Authority:** *MS s 256B.092 subd 6; 256B.501 subd 2; 256B.502; 256B.503*

**History:** *10 SR 838*

### 9525.1870 PROVIDER CONTRACTS AND SUBCONTRACTS.

**Subpart 1. Contracts.** To receive medical assistance reimbursement for home and community-based services, the provider must have a contract developed in accordance with parts 9550.0010 to 9550.0092 as proposed at State Register, Volume 9, Number 48, pages 2566 to 2576 (May 27, 1985), with the host county. In addition to the requirements in parts 9550.0010 to 9550.0092 as proposed at State Register, Volume 9, Number 48, pages 2566 to 2576 (May 27, 1985), the contract must contain the information in items A to F and subpart 2:

- A. maximum and minimum number of clients to be served;
- B. description of how the services will benefit the clients in attaining the goals in the clients' individual service plans;
- C. description of how the benefits of the services will be measured;
- D. an agreement to comply with parts 9525.1800 to 9525.1930;
- E. description of ongoing training to be provided under part 9525.1850, item E; and
- F. other provisions the county board determines are needed to ensure the county's ability to comply with part 9525.1900.

**Subp. 2. Required provision.** Each contract and subcontract must contain the following provision. If any contract does not contain the following provision, the provision shall be considered an implied provision of the contract.

"The provider acknowledges and agrees that the Minnesota Department of Human Services is a third-party beneficiary, and as a third-party beneficiary, is an affected party under this contract. The provider specifically acknowledges and agrees that the Minnesota Department of Human Services has standing to and may take any appropriate administrative action or sue the provider for any appropriate relief in law or equity, including, but not limited to, rescission, damages, or specific performance, of all or any part of the contract between the county board and the provider. The provider specifically acknowledges that the county board and the Minnesota Department of Human Services are entitled to and may recover from the provider reasonable attorney's fees and costs and disbursements associated with any action taken under this paragraph that is successfully maintained. This provision shall not be construed to limit the rights of any party to the contract or any other third party beneficiary, nor shall it be construed as a waiver of immunity under the Eleventh Amendment to the United States Constitution or any other waiver of immunity."

**Subp. 3. Subcontracts.** If the provider subcontracts with another contractor the provider shall:

- A. have written permission from the host county to subcontract;
  - B. ensure that the subcontract meets all the requirements of subpart 1;
  - C. ensure that the subcontractor meets the requirements in part 9525.1850;
- and
- D. ensure that the subcontractor performs fully the terms of the subcontract.

**Subp. 4. Noncompliance.** If the provider or subcontractor fails to comply with the contract, the county board may seek any available legal remedy.

The county board shall notify the commissioner in writing within 30 days when the county board has reasonable grounds to believe that a contract required under this part has been breached in a material manner or that a provider or



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subcontractor has taken any action or failed to take any action that constitutes anticipatory breach of the contract. The county board may allow the provider or subcontractor a reasonable amount of time to cure the breach or anticipatory breach. The county board shall notify the commissioner in writing within ten working days if the provider or subcontractor takes any action or fails to take any action in response to the opportunity to cure. In the notice, the county board shall inform the commissioner of the action the county board intends to take.

**Statutory Authority:** *MS s 256B.092 subd 6; 256B.501 subd 2; 256B.502; 256B.503*

**History:** *10 SR 838*

### 9525.1880 COUNTY PROPOSAL AND APPROVAL OF COUNTY PROPOSAL.

**Subpart 1. Application forms and deadlines.** To be considered for reimbursement under parts 9525.1800 to 9525.1930, county boards, singly or jointly, must submit to the commissioner an annual proposal for the provision of home and community-based services to clients for which the county board or county boards are financially responsible. The commissioner shall notify the county boards of the deadlines and forms for the submission of proposals for home and community-based services.

**Subp. 2. Contents of county proposal.** The proposal must be based on the needs of individually identified persons in the county and must:

A. State measurable program goals and objectives to be accomplished by the home and community-based services.

B. Identify the number of persons to whom the county board expects to provide the home and community-based services. If county boards are applying jointly, each county board must identify the number of persons for which the county is financially responsible. The proposal must include the information in subitems (1) to (6) with separate listings in each category for children and adults:

(1) current living arrangements;

(2) current day programs;

(3) level of supervision required;

(4) the type of home and community-based services projected to be needed and the expected duration of the service or services;

(5) the projected starting dates of the home and community-based services; and

(6) the proposed service provider or providers and billing rate or rates, if known.

C. Describe how the county proposal complies with the county utilization targets developed by the department in accordance with the *Welsch v. Levine* consent decree.

D. Describe how the county board proposal affects the targets developed by the department on admission of children to state hospitals and discharge of children from state hospitals as required in the *Welsch v. Levine* consent decree.

E. Describe how the proposal limits the development of new community-based ICF/MR beds and reduces the county's use of existing ICF/MR beds in state-operated ICFs/MR and community ICFs/MR, including any steps the county board has taken to encourage voluntary decertification of community-based ICF/MR beds.

F. Describe the steps the county board has taken to prepare to provide home and community-based services, including efforts to integrate home and community-based services into the county board's administrative services planning system.

**Subp. 3. Review and approval of proposal.** The commissioner shall review all

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proposals submitted in accordance with subparts 1 and 2. The commissioner shall only approve the county proposals that meet the requirements of parts 9525.1800 to 9525.1880 and that demonstrate compliance with the goals of the department as stated in items A to D:

A. compliance with the county utilization targets developed by the department in accordance with the *Welsch v. Levine* consent decree;

B. reduction of the number of children in state-operated ICFs/MR;

C. limitation of the development of new community-based ICF/MR beds and reduction of the use of existing ICF/MR beds in state-operated ICFs/MR and community-based ICFs/MR; and

D. integration of home and community-based services into the county board's administrative services planning system.

If the proposal is disapproved, the commissioner shall notify the county board, in writing, of the reasons why the proposal was not approved. The county board has seven days after receipt of the written notice in which to revise the proposal and resubmit it to the commissioner.

**Statutory Authority:** *MS s 256B.092 subd 6; 256B.501 subd 2; 256B.502; 256B.503*

**History:** *10 SR 838*

## 9525.1890 ALLOCATION OF HOME AND COMMUNITY-BASED SERVICE MONEY.

**Subpart 1. Allocation of diversions.** To allocate home and community-based services money for diversions, the commissioner shall project the number of diversions for the county based on the average of the projected utilization of state-operated and community-based ICF/MR beds using historical utilization for the county; and the projected per capita utilization of state-operated and community-based ICF/MR beds for the county, both of which are adjusted to conform with the number of diversions projected in the waiver. The projection shall be adjusted based on the county board's actual use of allocated diversions during the previous fiscal year. If the county board uses less than the number of diversions allocated for the fiscal year, the commissioner may decrease the number of diversions projected by the commissioner for the county for the next fiscal year. The county board's allocation of money for diversions shall be based on the lesser of the number of diversions in the approved county proposal and the number of diversions projected for the county by the commissioner.

**Subp. 2. Allocation of placements.** The county board's allocation of money for placements shall be based on the number of placements in the approved county proposal and the extent to which the placements result in an overall reduction in the county board's historical utilization of state-operated and community-based ICF/MR beds.

**Subp. 3. Notification of allocation.** The commissioner shall notify all county boards, in writing, of the amount of home and community-based services money allocated to each county board or, if the proposal was submitted jointly, to the group of county boards.

**Subp. 4. Review of allocation; reallocation.** The commissioner shall review the projected and actual use of home and community-based services by all county boards participating in the program on a quarterly basis, and report the findings to all the county boards in the state. The commissioner may reduce the allocation to a county board if the commissioner determines, in consultation with the county board, that the initial allocation to the county board will not be used during the allocation period. The commissioner may reallocate the unused portion of the county board's initial allocation to another county board, or other county boards, in the same geographic region that plan to expand home and community-based services or provide home and community-based services for

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the first time. If there is not a sufficient number of projections to use the unused allocation from county boards within the geographic region, the commissioner may reallocate the remainder to another county board or other county boards in other geographic regions that plan to expand home and community-based services or provide home and community-based services for the first time.

**Subp. 5. Preference given.** The commissioner may give preference during the reallocation process and in the allocation of money for subsequent fiscal years to proposals submitted by county boards that have not previously provided home and community-based services. In allocating money for each fiscal year, the commissioner shall give priority to the continued funding of home and community-based services for clients who received home and community-based services in the previous fiscal year and continue to be eligible for home and community-based services.

**Subp. 6. Special projects.** The commissioner may reallocate or reserve available home and community-based service money to fund special projects designed to serve very dependent persons with special needs who meet the criteria in parts 9525.1820 and 9510.1050, subpart 2, items C and D as proposed at State Register, Volume 10, Number 2, pages 57 to 65 (July 8, 1985). The reallocated or reserved money may be used to provide additional money to county boards that are unable to fund home and community-based services for very dependent persons with special needs within the statewide reimbursement rate as required in part 9525.1910, subpart 2.

**Statutory Authority:** *MS s 256B.092 subd 6; 256B.501 subd 2; 256B.502; 256B.503*

**History:** *10 SR 838*

### 9525.1900 AGREEMENT BETWEEN STATE AND COUNTY.

**Subpart 1. Contents of agreement.** The county board must have a legally binding written agreement with the state in order to receive home and community-based services money. The agreement must include provisions specifying that:

A. home and community-based services money will be used only for services to persons who are determined to be eligible under part 9525.1820 and meet the conditions in part 9525.1830;

B. home and community-based services money will be used only for the services in part 9525.1860;

C. home and community-based services money will be used only for services provided by providers who meet the requirements of part 9525.1850 and have a legally binding contract with the host county which meets the requirements of part 9525.1870;

D. the total cost of providing home and community-based services to all home and community-based service clients will not exceed the limits in part 9525.1910 except as provided in part 9525.1890, subpart 6;

E. records will be kept in accordance with part 9525.1920 and applicable provisions of parts 9505.1750 to 9505.2150;

F. the county board will comply with all applicable standards in parts 9525.0015 to 9525.0145 [Emergency];

G. the county board will comply with parts 9525.1800 to 9525.1930;

H. the county board will comply with Minnesota Statutes, chapter 256B, and rules adopted thereunder; and

I. the county board will comply with United States Code, title 42, sections 1396 et seq., and all regulations promulgated thereunder.

**Subp. 2. Additional requirements.** If the county board provides home and community-based services in addition to case management, the agreement must specify the services to be provided by the county board.

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The agreement must include a provision specifying that the county board agrees that the commissioner may reduce or discontinue reimbursement, or seek other legal remedies if the county board fails to comply with the provisions of the agreement and parts 9525.1800 to 9525.1930.

**Statutory Authority:** *MS s 256B.092 subd 6; 256B.501 subd 2; 256B.502; 256B.503*

**History:** *10 SR 838*

## 9525.1910 COUNTY BOARD FUNDING OF HOME AND COMMUNITY-BASED SERVICES.

**Subpart 1. County board responsibility.** The county board shall fund home and community-based services in accordance with subparts 2 to 5.

**Subp. 2. Distribution of money.** The total amount of money allocated to a county board for home and community-based services in a fiscal year shall not exceed the statewide average daily reimbursement rate multiplied by the total number of days the home and community-based services will be provided to the clients.

**Subp. 3. Rate setting.** The host county shall determine the rates to be paid to providers for home and community-based services and retain documentation of the process and data used to determine the rate. The commissioner shall review rates to ensure that the criteria in subpart 4, item C are met.

**Subp. 4. Cost limitations.** There is no dollar limitation on the amount of home and community-based services money that may be used per client. In authorizing and billing for home and community-based services for individual clients, the county board must comply with items A to C. For county boards applying jointly, the total cost and total allocation in item A shall be the total cost and total allocation for all of the county boards represented in the proposal and the average cost in item B shall be the average cost for all clients included in the proposal.

A. The total cost of home and community-based services provided to all clients during the fiscal year must not exceed the total allocation approved for the county board, or county boards if applying jointly, for the fiscal year by the commissioner.

B. The county's average cost per day for all home and community-based services provided to all clients must not exceed the statewide average daily reimbursement rate.

C. The cost of each service must satisfy the following criteria:

(1) the cost is ordinary, necessary, and related to client care;

(2) the cost is for activities which are generally accepted in the field of mental retardation and are scientifically proven to promote achievement of the goals and objectives contained in the client's individual service plan;

(3) the cost is what a prudent and cost conscious business person would pay for the specific good or service in the open market in an arm's length transaction; and

(4) the cost is for goods or services actually provided.

**Subp. 5. Assessment for costs which exceed allocation.** If the total expenditures by the state under parts 9525.1800 to 9525.1930 do not meet the federal requirements under the waiver and as a result federal financial participation is denied, disallowed, or required to be returned, the commissioner shall assess a portion of the cost to each county board that incurred costs which exceeded the total allocation for that county. The portion assessed must be based on the costs that exceed or exceeded the county board's allocation.

**Statutory Authority:** *MS s 256B.092 subd 6; 256B.501 subd 2; 256B.502; 256B.503*

**History:** *10 SR 838*

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### 9525.1920 REQUIRED RECORDS AND REPORTS.

Subpart 1. **Provider records.** The provider and any subcontractor the provider contracts with shall maintain complete program and fiscal records and supporting documentation identifying the clients served and the services and costs provided under the provider's home and community-based services contract with the county board. These records must be maintained in well-organized files and identified in accounts separate from other facility or program costs. The provider's and subcontractor's records shall be subject to the maintenance schedule, audit availability requirements, and other provisions in parts 9505.1750 to 9505.2150.

Subp. 2. **County board records.** The county board shall maintain complete fiscal records and supporting documentation identifying the clients served and the services and costs provided under the county board's agreement with the department. If the county board provides home and community-based services in addition to case management, the county board's records must include the information required in part 9525.1870. The county board records shall be subject to the maintenance schedule, audit availability requirements, and other provisions in parts 9505.1750 to 9505.2150.

Subp. 3. **Availability of records.** The county board's, the provider's, and the subcontractor's financial records described in subparts 1 and 2, must be available, on request, to the commissioner and the federal Department of Health and Human Services in accordance with parts 9500.0750 to 9500.1080, 9505.1750 to 9505.2150, and 9525.1800 to 9525.1930.

Subp. 4. **Retention of records.** The county board, the providers, and the subcontractors shall retain a copy of the records required in subparts 1 and 2 for five years unless an audit in process requires a longer retention period.

**Statutory Authority:** *MS s 256B.092 subd 6; 256B.501 subd 2; 256B.502; 256B.503*

**History:** *10 SR 838*

### 9525.1930 PENALTIES AND APPEALS.

Subpart 1. **Noncompliance.** The commissioner may pursue contractual remedies in accordance with part 9525.1870, subparts 2 and 3, withhold or withdraw reimbursement, recoup money paid, and pursue any other available legal remedy for failure of a county board, provider, or subcontractor to comply with parts 9525.1800 to 9525.1930. The commissioner may also take action in accordance with Minnesota Statutes, section 256B.064.

The county board shall pursue contractual remedies in accordance with part 9525.1870, subparts 2 and 3, withhold or withdraw reimbursement, recoup money paid, or pursue any other available legal remedy for failure of a provider or subcontractor to comply with parts 9525.1800 to 9525.1930. A provider shall be held liable if a subcontractor fails to comply with parts 9525.1800 to 9525.1930.

Subp. 2. **Exception.** Providers who contracted with the county board to provide home and community-based services before May 1, 1985, have until January 1, 1986, to comply with parts 9525.1850, items B to F; 9525.1860, subpart 4, item G, subitem (2); 9525.1860, subpart 6; and 9525.1870, subpart 1, item E.

Subp. 3. **Failure to enforce.** The county board shall be held liable for any damages or costs to the department for failure of the county board to enforce contracts entered into under parts 9525.1800 to 9525.1930 or for any action or inaction which impedes enforcement by the commissioner.

Subp. 4. **Appeals by county boards, providers, or subcontractors.** Before the commissioner withholds, recoups, or withdraws the county board's allocation under subpart 1, the commissioner shall give 30 days written notice to the county board and send a copy of the written notice to the affected providers or subcon-

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tractors. The written notice shall inform the county board, provider, or subcontractor of the right to a hearing under the contested case procedures of Minnesota Statutes, chapter 14. If the commissioner receives a written appeal of the commissioner's action within 30 days of the date the written notice is sent, the commissioner shall initiate a contested case proceeding. The written appeal must state the reasons the county board, provider, or subcontractor is appealing the commissioner's action. The commissioner shall not take the proposed action before the hearing unless, in the commissioner's opinion, the action is necessary to protect the public welfare and the interests of the home and community-based services program.

Subp. 5. **Appeals by individuals.** Notice, appeals, and hearing procedures shall be conducted as follows:

A. A person who is considered for, or receiving, home and community-based services has a right to a hearing under Minnesota Statutes, section 256.045 if:

(1) the county board fails to follow the written procedures and criteria established under part 9525.1830, subpart 2; or

(2) the county board fails to authorize services in accordance with part 9525.1830, subpart 1, item E; or

(3) the provisions of parts 9525.1820 and 9525.1830 are met and the person is:

(a) not informed of the home and community-based services that are feasible for the person; or

(b) denied the right to choose between the feasible home and community-based services and ICF/MR services.

B. It is an absolute defense to an appeal under item A, subitem (1), if the county board proves that it followed the established written procedures and criteria and determined that home and community-based services could not be provided to the person within the county board's allocation of home and community-based services money.

C. Notice, appeal, and hearing procedures shall be conducted in accordance with Minnesota Statutes, section 256.045.

**Statutory Authority:** *MS s 256B.092 subd 6; 256B.501 subd 2; 256B.502; 256B.503*

**History:** *10 SR 838*