CHAPTER 9525
DEPARTMENT OF HUMAN SERVICES
PROGRAMS FOR MENTALLY RETARDED PERSONS

9525.0235 LICENSURE.

[For text of subps 1 to 5, see M.R.]

Subp. 6. **Disqualification standards.** In order to become licensed or to remain licensed under parts 9525.0215 to 9525.0355, an applicant or license holder must not be an individual, employ or contract with an individual, or use as a volunteer an individual who:

A. [Repealed, L 91 c 38 s 2]

B. abuses prescription drugs or uses alcohol or controlled substances as named in Minnesota Statutes, chapter 152, or alcohol to the extent that the use or abuse impairs the individual's ability to provide services to persons.

Subp. 7. **Reevaluation of disqualification.** An applicant or license holder who is disqualified from licensure, or an employee, volunteer, or contractor of an applicant or license holder who is not permitted to work based on the disqualification standards in subpart 6 may request that the commissioner reevaluate the disqualification decision and set aside the disqualification. The request for reevaluation must be in writing and sent to the commissioner by certified mail.

A. Within 30 days after the commissioner has received all information necessary to reevaluate a disqualification, the commissioner shall inform the applicant or license holder and the individual involved, in writing, whether the disqualification has been set aside or affirmed, and the reasons for this decision.

B. The commissioner's disposition of a request for reevaluation of a disqualification under this part is the final administrative agency action.

[For text of subps 8 to 15, see M.R.]

Statutory Authority: *MS s 245A.04; 245A.09*

History: *15 SR 2043; L 91 c 38 s 2*

9525.1520 LICENSING PROCESS.

[For text of subps 1 to 4, see M.R.]

Subp. 5. [Repealed, 15 SR 2043]

Subp. 6. **License denial or suspension.** The commissioner shall not issue a license or shall immediately suspend a license when:

A. The service sites owned or leased by the applicant do not comply with

the building, fire, and health codes under parts 9525.1500 to 9525.1690 and the deficiencies cited threaten the health, safety, or rights of clients.

B. The provider is cited for other deficiencies that immediately threaten the health, safety, or rights of clients.

[For text of subps 7 to 14, see M.R.]

Statutory Authority: *MS s 245A.04; 245A.09*

History: *15 SR 2043*

9525.1800 DEFINITIONS.

[For text of subpart 1, see M.R.]

Subp. 1a. **Adaptive modifications and equipment.** "Adaptive modifications and equipment" means one or more of the structural changes to the person's residence or an eligible vehicle, or specialized equipment or devices. Adaptive modifications and equipment must be designed to enable the person to avoid placement in an ICF/MR by increasing the person's mobility or protecting the person or other individuals from injury. Adaptive modifications and equipment are only reimbursable for persons with physical disabilities, sensory deficits, or behavior problems. Adaptive modifications and equipment are limited to those that have been approved by the United States Department of Health and Human Services as part of Minnesota's alternative community services and MR/RC waiver plans.

Subp. 1b. **Alternative community services waiver plan or ACS waiver.** "Alternative community services waiver plan" or "ACS waiver" means a waiver of requirements under United States Code, title 42, sections 1396 et. seq., that allows the state to pay for home and community-based services for persons with mental retardation or related conditions who are determined by the Department of Human Services to be inappropriately placed in Medicaid-certified nursing facilities through the medical assistance program. This term includes all amendments to the waiver as approved by the United States Department of Health and Human Services.

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, partial 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 subpart 4a.

Subp. 4. [Repealed, 16 SR 2238]

Subp. 4a. **Case management.** "Case management" means identifying the need for, seeking out, acquiring, and coordinating services to persons with mental retardation or related conditions and monitoring the delivery of the services to persons with mental retardation or related conditions by an individual designated by the county board to provide case management services under parts 9525.0015 to 9525.0165.

[For text of subp 5, see M.R.]

Subp. 5a. **Community social services administration plan or CSSA plan.** "Community social services administration plan" or "CSSA plan" means the biennial community social services plan required of the county board by Minnesota Statutes, section 256E.09, subdivision 3.

Subp. 5b. **Conversion.** "Conversion" means the provision of home and community-based services to a person discharged from an ICF/MR directly into those services, resulting in decertification of an ICF/MR bed under Minnesota Statutes, section 252.28, subdivision 4.

[For text of subp 6, see M.R.]

Subp. 7. **County of financial responsibility.** "County of financial responsibility" has the meaning given it in Minnesota Statutes, section 256G.02, subdivision 4.

Subp. 8. **Daily intervention.** "Daily intervention" means supervision, assistance, or training provided to a person in the person's residence or in the community 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. 8a. **Day training and habilitation.** "Day training and habilitation" has the meaning given to "training and habilitation services" in part 9525.1500, subpart 36.

[For text of subps 9 and 10, see M.R.]

Subp. 10a. **Eligible vehicle.** "Eligible vehicle" means a vehicle owned by the person, the person's family, or the person's primary caregiver with whom the person resides.

[For text of subps 11 and 12, see M.R.]

Subp. 13. **Geographic region.** "Geographic region" means one of the economic development regions established by executive order of the governor according to Minnesota Statutes, section 462.385.

Subp. 13a. **Habilitation services.** "Habilitation services" means health and social services directed toward increasing and maintaining the physical, intellectual, emotional, and social functioning of persons with mental retardation or related conditions. 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 training and habilitation services and residential-based habilitation services are types of habilitation services.

Subp. 14. **Home and community-based services.** "Home and community-based services" means services provided to persons with mental retardation or related conditions that are authorized under United States Code, title 42, section 1396 et. seq., and the MR/RC and ACS waivers granted by the United States Department of Health and Human Services.

Subp. 14a. **Homemaker services.** "Homemaker services" means general household activities and ongoing monitoring of the person's well-being provided by a homemaker who meets the standards in parts 9565.1000 to 9565.1300.

[For text of subp 15, see M.R.]

Subp. 16. [Repealed, 16 SR 2238]

Subp. 17. **Individual service plan.** "Individual service plan" has the meaning given it in Minnesota Statutes, section 256B.092, subdivision 1b.

Subp. 17a. **In-home family support services.** "In-home family support services" means residential-based habilitation services designed to enable the person to remain in the family home and may include training and counseling for the person and the person's family.

[For text of subp 18, see M.R.]

Subp. 19. [Repealed, 16 SR 2238]

Subp. 19a. **Leave days.** "Leave days" means days when a person is temporarily absent from services.

Subp. 19b. **Mental retardation or related condition or MR/RC.** "Mental retar-

dation or related condition" or "MR/RC" has the meaning given to "mental retardation" in part 9525.0015, subpart 20, items A and B, and the meaning given to a "related condition" in Minnesota Statutes, section 252.27, subdivision 1a.

Subp. 19c. **Nursing facility.** "Nursing facility" means a facility licensed under Minnesota Statutes, chapter 144A, that is certified by the Minnesota Department of Health under title XVIII or XIX of the Social Security Act.

Subp. 19d. **Person.** "Person" means a person with mental retardation or a related condition, as defined in subpart 19b, who is receiving home and community-based services through either the MR/RC or ACS waiver plan.

Subp. 20. **Primary caregiver.** "Primary caregiver" means a person other than a member of the person's family who has primary responsibility for the assistance, supervision, or training of the person in the person's residence.

[For text of subp 21, see M.R.]

Subp. 21a. **Residential-based habilitation services.** "Residential-based habilitation services" means services provided in the person's residence and in the community, that are directed toward increasing and maintaining the person's physical, intellectual, emotional, and social functioning. Residential-based habilitation services include therapeutic activities, assistance, counseling, training, supervision, and monitoring in the areas of self-care, sensory and motor development, interpersonal skills, communication, socialization, working, reduction or elimination of maladaptive behavior, community participation and mobility, health care, leisure and recreation, money management, and household chores. Supported living services and in-home family support services are residential-based habilitation services.

Subp. 21b. **Respite care.** "Respite care" means short-term supervision, assistance, and care provided to a person due to the temporary absence or need for relief of the person's family, foster family, or primary caregiver. Respite care may include day, overnight, in-home, or out-of-home services, as needed.

Subp. 22. **Room and board costs.** "Room and board costs" means costs associated with providing food, shelter, and personal needs items for persons, including the directly identifiable costs of:

[For text of items A to E, see M.R.]

Subp. 23. **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.

[For text of subp 24, see M.R.]

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. Additional hours may be authorized by the commissioner as approved in the current waiver plans.

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 persons to receive home and community-based services as stated in the waiver for that fiscal year.

Subp. 26a. **Supported living services for adults.** "Supported living services for adults" means residential-based habilitation services provided on a daily basis to adults living in a service site for up to six persons.

Subp. 26b. **Supported living services for children.** "Supported living services for children" means residential-based habilitation services provided on a daily basis to persons under 18 years of age living in a service site for up to four persons.

Subp. 27. **Title XIX home and community-based waivered services for persons with mental retardation or related conditions or the MR/RC waiver plan.** "Title XIX home and community-based waivered services for persons with mental retardation or related conditions" or the "MR/RC waiver plan" 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 or related conditions through the medical assistance program. The term includes all amendments to the waiver including any amendments made after the effective date of the last waiver plan, 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; 256B.503*

History: *16 SR 2238*

9525.1810 APPLICABILITY AND EFFECT.

[For text of subpart 1, see M.R.]

Subp. 2. **Effect.** The entire application of parts 9525.1800 to 9525.1930 shall continue in effect only as long as the MR/RC or ACS waiver from the United States Department of Health and Human Services is in effect in Minnesota.

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

History: *16 SR 2238*

9525.1820 ELIGIBILITY.

Subpart 1. **Eligibility criteria for MR/RC waiver.** A person is eligible to receive home and community-based services through the MR/RC waiver if the person meets all the criteria in items A to E and if home and community-based services are provided according to part 9525.1830:

A. the person is a resident of an ICF/MR or the screening team determines that the person would be placed in an ICF/MR within one year if home and community-based services were not provided;

B. the person is determined to be a person with mental retardation according to the definitions and procedures in parts 9525.0015 to 9525.0165 or the person is determined to be a person with a related condition as defined in Minnesota Statutes, section 252.27, subdivision 1a;

C. the person is eligible to receive medical assistance under Minnesota Statutes, chapter 256B, or subpart 2;

D. the screening team has determined that the person needs daily intervention; and

E. the person's individual service plan documents the need for daily intervention and specifies the services needed daily.

Subp. 1a. **Eligibility criteria for the ACS waiver.** A person is eligible to receive home and community-based services through the ACS waiver if the person meets all requirements in subpart 1, items B to E, and:

A. was admitted to a Medicaid-certified nursing facility before January 1, 1990, or amended date as approved by the Health Care and Finance Administration; and

B. is currently residing in a Medicaid-certified nursing facility, but has been determined by the screening team as requiring ICF/MR level of care.

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 A to E;

B. the person will be provided home and community-based services according to 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 according to the waiver.

Subp. 3. **Beginning date.** Eligibility for medical assistance begins on the first day of the month in which the person first receives home and community-based services.

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

History: *16 SR 2238*

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. If the county board has determined that it cannot provide home and community-based services to the person within its allocation of home and community-based services money, the county board may request additional money. The commissioner may authorize additional money only for persons:

(1) to be discharged from regional treatment centers and nursing facilities as referenced in Minnesota Statutes, section 256B.092, subdivision 4;

(2) participating in demonstration projects as referenced in Minnesota Statutes, section 256B.092, subdivision 4a;

(3) receiving home and community-based services under a license granted according to the emergency provisions of Minnesota Statutes, section 252.28, subdivision 3, paragraph (4);

(4) discharged from ICF/MR facilities which have been placed into voluntary or involuntary receiverships according to Minnesota Statutes, section 245A.12 or 245A.13; or

(5) needing home and community-based services on a temporary basis as the result of an emergency situation under Minnesota Statutes, section 252.293, subdivision 1.

The commissioner shall not authorize additional money to the county board if the authorization would exceed the limitations of the approved waiver plan or state appropriations.

B. the screening team has recommended home and community-based services instead of ICF/MR services for the person under parts 9525.0015 to 9525.0165;

[For text of items C to F, see M.R.]

[For text of subp 2, see M.R.]

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

History: *16 SR 2238*

9525.1840 PARENTAL CONTRIBUTION FEE.

Subpart 1. **Out-of-home placements.** The parent or parents of a person under

age 18 shall be liable for a parental contribution fee determined according to Minnesota Statutes, sections 252.27, subdivision 2, and 256B.14, if the person resides outside the home of the parent or parents.

Subp. 2. **In-home services.** Parents of persons under age 18 may be liable for a parental contribution fee determined according to Minnesota Statutes, sections 252.27, subdivision 2, and 256B.14, if the person is residing with a parent and the person'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; 256B.503*

History: *16 SR 2238*

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 K. 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. Providers licensed under parts 9525.0215 to 9525.0355; 9525.1500 to 9525.1690; and 9525.2000 to 9525.2140 are exempt from items C, D, and E.

[For text of items A and B, see M R.]

C. 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 or related conditions 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 person'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 adaptive modifications and equipment.

D. 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 person'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 adaptive modifications and equipment or homemaker services.

E. The provider ensures that all home and community-based services, except homemaker services, respite care services, and adaptive modifications and

equipment, 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.

F. 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 adaptive modifications and equipment, 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 or related conditions, and must either be identified as needed in the person's individual service plans or be approved by the case manager based on the needs identified in the individual service plans of the persons 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 person's residence.

G. The provider ensures that the provider and all employees or subcontractors 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.

H. The provider has a legally binding contract with the host county that complies with part 9525.1870.

I. The provider has been authorized in writing to provide home and community-based services for the person by the county of financial responsibility.

J. 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 9505.2160 to 9505.2245 and 9525.1800 to 9525.1930.

K. The provider is not the person's guardian or a member of the person's family. This item does not preclude the county board from providing services if the person is a ward of the commissioner.

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

History: *16 SR 2238*

9525.1860 REIMBURSABLE SERVICES.

Subpart 1. **General limits.** Only costs for services listed in the approved Minnesota MR/RC or ACS waiver plan shall be reimbursed under the medical assistance program.

A. Services reimbursable through the MR/RC waiver plan are:

(1) case management;

(2) residential habilitation services including in-home family support, supported living services for adults, and supported living services for children;

(3) day training and habilitation, including supported employment;

(4) homemaker services;

(5) respite care; and

(6) minor adaptations and equipment.

B. Services reimbursable through the ACS waiver plan are:

(1) residential habilitation services including in-home family support, supported living services for adults, and supported living services for children;

(2) day training and habilitation, including supported employment;

(3) homemaker services;

(4) respite care; and

(5) adaptive modifications and equipment.

Subp. 2. [Repealed, 16 SR 2238]

Subp. 3. **Billing for services.** Billings submitted by the provider, except a provider of adaptive modifications and equipment, must be limited to time actually and reasonably spent:

A. In direct contact with the person to assist the person in attaining the goals and objectives specified in the person'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 person's progress in attaining the goals and objectives specified in the person's individual service plan.

C. In planning activities including attending the person's interdisciplinary team meetings, developing goals and objectives for the person's individual service plan, assessing and reviewing the person's specified goals and objectives, documenting the person's progress toward attaining the goals and objectives in the person's individual service plan and assessing the adequacy of the services related to the goals and objectives in the person'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 training and habilitation services must:

(1) only be provided to persons 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 person's place of residence unless medically contraindicated, as required in Minnesota Statutes, section 252.41, subdivision 3; and

(4) be provided by an organization that does not have a direct or indirect financial interest in the organization that provides the person's residential services unless the person 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 person'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 person; or

(2) there is no person, other than the person, regularly responsible for these activities and the person 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 services for children or supported living services for adults. If the person is not receiving respite care or other supported living services, billings may be made for leave days when the person is:

(1) hospitalized;

(2) on an overnight 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. The average dollar amount available for reimbursement for adaptive modifications and equipment shall be determined annually based on the approved waiver plan.

Adaptive modifications and equipment must be constructed or installed to meet or exceed applicable federal, state, and local building codes.

F. Home and community-based services are not reimbursable if provided to a person while the person is a resident of or on leave from an ICF/MR, nursing facility, or a hospital. This item shall not apply to leave days authorized according to item C for a person who is hospitalized.

G. Respite care must:

(1) be provided only for the relief of the person's family or foster family, or if the person is receiving a supported living service in the provider's residence, for the relief of the person's primary caregiver; and

(2) be provided in a service site serving no more than six persons at one time.

If there are no service sites that meet the requirements in subitem (2) available in the community to serve persons with multiple handicaps, the county board may grant a variance to the requirement for a period of no more than one year for each person. 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 person's residence. All room and board costs must be directly identified on reports submitted by the provider to the county board.

Subp. 5. [Repealed, 16 SR 2238]

Subp. 5a. **Other medical or related costs.** The cost of other medical or related services reimbursable under the Minnesota State Medicaid Plan 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 H unless a variance has been approved by the commissioner.

[For text of item A, see M.R.]

B. Day training and habilitation services must be licensed by the department.

C. Supported living services for children must be provided by a service provider licensed under parts 9525.2000 to 9525.2140 and at a site licensed under parts 9545.0010 to 9545.0260.

D. Supported living services provided at a service site serving four or fewer adults must be provided by a service provider licensed under parts 9525.2000 to 9525.2140 and the residence must be licensed under parts 9555.5105 to 9555.6265. Supported living services provided at a single residence serving five or six adults must be licensed under parts 9525.0215 to 9525.0355.

E. Respite care provided at a service site serving more than four persons must be licensed under parts 9525.0215 to 9525.0355. Respite care provided at a service site serving four or fewer persons under 18 years of age must be licensed

under parts 9545.0010 to 9545.0260, unless the commissioner waives this requirement according to Minnesota Statutes, section 256B.092, subdivision 4a. Respite care provided at a service site serving four or fewer adults must be licensed under parts 9555.5105 to 9555.6265, unless the commissioner waives this requirement according to Minnesota Statutes, section 256B.092, subdivision 4a. This item shall not apply to a person who provides respite care and who is not required to be licensed under Minnesota Statutes, chapter 245A.

Subp. 7. **Licensing variances.** Requests for variances to the licensing requirements in subpart 6 must be handled according to 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 persons 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 persons. 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 persons.

The commissioner shall grant the variance request if the commissioner determines that the variance was submitted according to 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 9555.5105 to 9555.6265 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 persons.

C. Requests for a variance of the provisions in parts 9525.0215 to 9525.0355 must be submitted according to part 9525.0235, subpart 13.

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

History: *16 SR 2238*

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 according to parts 9550.0010 to 9550.0092 with the host county. In addition, the contract must contain the information in items A to F and subpart 2:

A. maximum and minimum number of persons to be served;

B. description of how the services will benefit the persons in attaining the goals in the persons' individual service plans;

[For text of items C to F, see M.R.]

[For text of subps 2 to 4, see M.R.]

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

History: *16 SR 2238*

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 persons 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 identify the number of persons to whom the county board expects to provide the home and community-based services and identify, by name, recipients authorized and receiving services, individuals screened and authorized but not yet receiving services, and individuals for whom the county has received a request to receive waivered services but has not yet screened. If county boards are applying jointly, each county board must identify the number of persons for which the county is financially responsible.

The commissioner shall review the county community social services administration (CSSA) plan, the determination of need, and the redetermination of need for services for persons with developmental disabilities and may consider the county goals and objectives as part of the county proposal. The commissioner may also require the county boards to include the following information in the proposal:

A. current living arrangements;

B. current day programs;

C. level of supervision required;

D. the type of home and community-based services projected to be needed and the expected duration of the service or services;

E. the projected starting dates of the home and community-based services;

F. the proposed service provider or providers and billing rate or rates, if known;

G. a description of 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 regional treatment centers and community ICFs/MR, including any steps the county board has taken to encourage voluntary decertification of community-based ICF/MR beds; and

H. a description of 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 proposals submitted according to 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. reduction of the number of children in regional treatment centers;

B. limitation of the development of new community-based ICF/MR beds and reduction of the use of existing ICF/MR beds located on regional treatment center campuses and in the community; and

C. 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; 256B.503*

History: *16 SR 2238*

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 regional treatment centers and community-based ICF/MR beds using historical utilization for the county; and the projected per capita utilization of state regional treatment centers 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 conversions.** The county board's allocation of money for conversions shall be based on the number of conversions in the approved county proposal and the extent to which the conversions result in an overall reduction in the county board's historical utilization of state regional treatment centers and community-based ICF/MR beds.

[For text of subp 3, see M.R.]

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 at least semiannually, 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 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 persons 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. 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. The commissioner shall develop procedures and criteria for allocating home and community-based program funds for each target group identified as a special project under this subpart.

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

History: *16 SR 2238*

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 for each approved waiver plan to receive home and community-based services money. The agreement must include provisions specifying that:

[For text of items A to C, see M.R.]

D. the total cost of providing home and community-based services to all persons will not exceed the limits in part 9525.1910 except as provided in part 9525.1890, subpart 6;

E. records will be kept according to part 9525.1920 and applicable provisions of parts 9505.2160 to 9505.2245;

F. the county board will comply with all applicable standards in parts 9525.0015 to 9525.0165;

[For text of items G to I, see M.R.]

[For text of subp 2, see M.R.]

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

History: *16 SR 2238*

9525.1910 COUNTY BOARD FUNDING OF HOME AND COMMUNITY-BASED SERVICES.

[For text of subpart 1, see M.R.]

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 persons.

[For text of subp 3, see M.R.]

Subp. 4. **Cost limitations.** There is no dollar limitation on the amount of home and community-based services money that counties may authorize to be used per person. In authorizing and billing for home and community-based services for individual persons, 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 persons included in the proposal.

A. The total cost of home and community-based services provided to all persons 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 MR/RC home and commu-

nity-based services provided to all persons must not exceed the statewide average daily reimbursement rate, except as provided for in part 9525.1890, subpart 6. The county's average cost per day for a recipient of ACS waivered services may not exceed the amount allocated to the county by the commissioner for that person.

C. The cost of each service must satisfy the following criteria:

(1) the cost is ordinary, necessary, and related to the person's care;

(2) the cost is for activities which are generally accepted in the field of mental retardation or related conditions and are scientifically proven to promote achievement of the goals and objectives contained in the person's individual service plan;

[For text of subitems (3) and (4), see M.R.]

[For text of subp 5, see M.R.]

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

History: *16 SR 2238*

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 persons 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 9505.2160 to 9505.2245.

Subp. 2. **County board records.** The county board shall maintain complete fiscal records and supporting documentation identifying the recipients 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 9505.2160 to 9505.2245.

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 according to parts 9505.2160 to 9505.2245 and 9525.1800 to 9525.1930.

[For text of subp 4, see M.R.]

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

History: *16 SR 2238*

9525.1930 PENALTIES AND APPEALS.

[For text of subpart 1, see M.R.]

Subp. 2. [Repealed, 16 SR 2238]

[For text of subps 3 to 5, see M.R.]

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

History: *16 SR 2238*

9525.2010 DEFINITIONS.

[For text of subps 1 to 33, see M.R.]

Subp. 34. **Supported living services for children.** "Supported living services for children" means residential-based habilitation services provided on a daily basis to a waivered services recipient under 18 years of age who resides in a service site licensed under parts 9545.0010 to 9545.0260 for up to four residents.

[For text of subps 35 and 36, see M.R.]

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

History: *16 SR 2238*

9525.2020 LICENSURE.

[For text of subps 1 and 2, see M.R.]

Subp. 3. **Disqualification standards.** In order to become licensed or to remain licensed under parts 9525.2000 to 9525.2140, an applicant or license holder must not be an individual, employ or subcontract with an individual, or use as a volunteer an individual who:

A. [Repealed, L 91 c 38 s 2]

B. abuses prescription drugs or uses alcohol or controlled substances as named in Minnesota Statutes, chapter 152, to the extent that the use or abuse impairs the individual's ability to provide services.

Subp. 4. **Reevaluation of disqualification.** An applicant or a license holder who is disqualified from licensure, or an employee, volunteer, or subcontractor of an applicant or license holder, who is not permitted to work based on the disqualification standards in subpart 3 may request that the commissioner reevaluate the disqualification decision and set aside the disqualification. The request for reevaluation must be made in writing and sent to the commissioner by certified mail.

A. Within 30 days after the commissioner has received all information necessary to reevaluate a disqualification, the commissioner shall inform the applicant or license holder and the individual involved, in writing, whether the disqualification has been set aside or affirmed, and the reasons for this decision.

B. The commissioner's disposition of a request for reevaluation of a disqualification under this part is the final administrative agency action.

[For text of subps 5 to 9, see M.R.]

Statutory Authority: *MS s 245A.04; 245A.09*

History: *15 SR 2043; L 91 c 38 s 2*