

CHAPTER 252

SERVICES FOR PERSON WITH MENTAL RETARDATION

252.28	Commissioner of human services; duties.	252.291	Limitation on determination of need.
252.282	ICF/MR local system needs planning.	252.32	Family support program.
		252.46	Payment rates.

252.28 COMMISSIONER OF HUMAN SERVICES; DUTIES.

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

[For text of subs 2 and 3, see M.S.1998]

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

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

[For text of subs 4 and 5, see M.S.1998]

History: 1999 c 159 s 31; 1999 c 245 art 3 s 9

252.282 ICF/MR LOCAL SYSTEM NEEDS PLANNING.

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

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

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

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

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

- (1) closure;
- (2) relocation of services;
- (3) downsizing;
- (4) rate adjustments exceeding 90 days duration to address access; or
- (5) modification of existing services for which a change in the framework of service delivery is advocated.

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

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

(b) Except as provided in section 252.292, subdivision 4, recommendations regarding closures, relocations, or downsizings that include a rate increase and recommendations regarding rate adjustments exceeding 90 days shall be submitted to the statewide advisory committee for review and determination, along with the assessment, plan, and corresponding budget.

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

Subd. 4. **Statewide advisory committee.** (a) The commissioner shall appoint a five-member statewide advisory committee. The advisory committee shall include representatives of providers and counties and the commissioner or the commissioner's designee.

(b) The criteria for ranking proposals, already developed in 1997 by a task force authorized by the legislature, shall be adopted and incorporated into the decision-making process. Specific guidelines, including time frame for submission of requests, shall be established and announced through the State Register, and all requests shall be considered in comparison to each other and the ranking criteria. The advisory committee shall review and recommend requests for facility rate adjustments to address closures, downsizing, relocation, or access needs within the county and shall forward recommendations and documentation to the commissioner. The committee shall ensure that:

(1) applications are in compliance with applicable state and federal law and with the state plan; and

(2) cost projections for the proposed service are within fiscal limitations.

(c) The advisory committee shall review proposals and submit recommendations to the commissioner within 60 days following the published deadline for submission under subdivision 5.

Subd. 5. **Responsibilities of commissioner.** (a) In collaboration with counties, providers, and the statewide advisory committee, the commissioner shall ensure that services recognize the preferences and needs of persons with developmental disabilities and related conditions through a recurring systemic review and assessment of ICF/MR facilities within the state.

(b) The commissioner shall publish a notice in the State Register twice each calendar year to announce the opportunity for counties or providers to submit requests for rate adjustments associated with plans for downsizing, relocation, and closure of ICF/MR facilities.

(c) The commissioner shall designate funding parameters to counties and to the statewide advisory committee for the overall implementation of system needs within the fiscal resources allocated by the legislature.

(d) The commissioner shall contract with ICF/MR providers. The initial contracts shall cover the period from October 1, 2000, to December 31, 2001. Subsequent contracts shall be for two-year periods beginning January 1, 2002.

History: 1999 c 245 art 3 s 10

252.291 LIMITATION ON DETERMINATION OF NEED.

[For text of subs 1 and 2, see M.S.1998]

Subd. 2a. **Exception for lake Owasso project.** (a) The commissioner shall authorize and grant a license under chapter 245A to a new intermediate care facility for persons with mental retardation effective January 1, 2000, under the following circumstances:

(1) the new facility replaces an existing 64-bed intermediate care facility for the mentally retarded located in Ramsey county;

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

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

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

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

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

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

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

[For text of subs 3 to 5, see M.S.1998]

History: 1999 c 245 art 3 s 11

252.32 FAMILY SUPPORT PROGRAM.

[For text of subs 1 to 3, see M.S.1998]

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

(b) The commissioner shall allocate state funds made available under this section to county social service agencies on a calendar year basis. The commissioner shall allocate to each county first in amounts equal to each county's guaranteed floor as described in clause (1), and second, any remaining funds will be allocated to county agencies to support children in their family homes.

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

(i) 95 percent of the county's allocation received in the preceding calendar year;

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

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

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

[For text of subds 3b to 5, see M.S.1998]

History: 1999 c 245 art 4 s 15

252.46 PAYMENT RATES.

[For text of subds 1 to 5, see M.S.1998]

Subd. 6. Variances. (a) A variance from the minimum or maximum payment rates in subdivisions 2 and 3 may be granted by the commissioner when the vendor requests and the county board submits to the commissioner a written variance request on forms supplied by the commissioner with the recommended payment rates.

(b) A variance to the rate maximum may be utilized for costs associated with compliance with state administrative rules, compliance with court orders, capital costs required for continued licensure, increased insurance costs, start-up and conversion costs for supported employment, direct service staff salaries and benefits, transportation, and other program related costs when one of the criterion in clauses (1) to (4) is also met:

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

(A) the client is a new client and:

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

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

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

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

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

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

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

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

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

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

(c) A variance to the rate minimum may be granted when:

(1) the county board contracts for increased services from a vendor and for some or all individuals receiving services from the vendor lower per unit fixed costs result; or

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

(d) The written variance request under this subdivision must include documentation that all the following criteria have been met:

(1) The commissioner and the county board have both conducted a review and have identified a need for a change in the payment rates and recommended an effective date for the change in the rate.

(2) The vendor documents efforts to reallocate current staff and any additional staffing needs cannot be met by using temporary special needs rate exceptions under Minnesota Rules, parts 9510.1020 to 9510.1140.

(3) The vendor documents that financial resources have been reallocated before applying for a variance. No variance may be granted for equipment, supplies, or other capital expenditures when depreciation expense for repair and replacement of such items is part of the current rate.

(4) For variances related to loss of clientele, the vendor documents the other program and administrative expenses, if any, that have been reduced.

(5) The county board submits verification of the conditions for which the variance is requested, a description of the nature and cost of the proposed changes, and how the county will monitor the use of money by the vendor to make necessary changes in services.

(6) The county board's recommended payment rates do not exceed 95 percent of the greater of 125 percent of the current statewide median or 125 percent of the regional average payment rates, whichever is higher, for each of the regional commission districts under sections 462.381 to 462.396 in which the vendor is located except for the following: when a variance is recommended to allow authorized service delivery to new clients with severe behaviors or with medical conditions requiring delivery of physician prescribed medical interventions, or to persons being directly discharged from a regional treatment center or Minnesota extended treatment options to the vendor's program, those persons must be assigned a payment rate of 200 percent of the current statewide average rates. All other clients receiving services from the vendor must be assigned a payment rate equal to the vendor's current rate unless the vendor's current rate exceeds 95 percent of 125 percent of the statewide median or 125 percent of the regional average payment rates, whichever is higher. When the vendor's rates exceed 95 percent of 125 percent of the statewide median or 125 percent of the regional average rates, the maximum rates assigned to all other clients must be equal to the greater of 95 percent of 125 percent of the statewide median or 125 percent of the regional average rates. The maximum payment rate that may be recommended for the vendor under these conditions is determined by multiplying the number of clients at each limit by the rate corresponding to that limit and then dividing the sum by the total number of clients.

(e) The commissioner shall have 60 calendar days from the date of the receipt of the complete request to accept or reject it, or the request shall be deemed to have been granted. If the commissioner rejects the request, the commissioner shall state in writing the specific objections to the request and the reasons for its rejection.

[For text of subs 7 to 20, see M.S.1998]

History: 1999 c 245 art 5 s 11