

Minnesota Attorney General: Administrative Rules Proceedings

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Version 3
August 20, 2018

Our File No. 443

TEMPORARY

RULE REVIEW CHECKLIST

DATE RULE RECEIVED 12-23-83
DATE FOR REVIEW _____
DATE DUE 1-3-84

Adopted w/a hearing _____
Adopted w/o hearing _____
Temporary rule ✓

Approved _____ Disapproved _____ Returned to Agency _____

Resubmitted _____ Due _____
Approved _____ Disapproved _____ Returned to Agency _____

Date filed w/Secretary of State _____ Revisor approved _____ disapproved _____

✓ Rule as Adopted

✓ Rule as Proposed see SR 1

✓ Order Adopting 12.22.83 Date

✓ Notice of Intent to Solicit Outside Opinion SR: 8.1.83 + comments

✓ Order for rulemaking
N/A date of Hearing

N/A Certificate of Board's Authorizing Resolution

✓ Notice of rulemaking
_____ Sufficiency

✓ Affidavit of Mailing Notice or rulemaking, additional mailing
11.9.83 At least ~~30~~ 20 days prior to ~~hearing~~/adoption

✓ Mailing list Certificate

✓ Publication in State Register
11.14.83 At least ~~30~~/20 days prior to ~~hearing~~/adoption

N/A Hearing Examiner's Report

Chief Hearing Examiner's Report(s)
_____ Approving H.E.'s Report
_____ Approving agency action

✓ Agency's Findings of Fact

N/A LCRAR Report or agency Affidavit

Certificate of Board's Resolution Adopting Rules

Order Approving Incorporation by Reference

Statement of Need and Reasonableness

Petition for Adoption of a Rule

✓ Record (includes transcript or tape, exhibits, comments received by agency, requests for a hearing, and other relevant materials)

Certificate of Compliance w/Rulemaking Procedures

N/A Affidavit of Mailing Notice of Submission to Attorney General

✓ Notice of Submission to the Attorney General

SF-00006-02

STATE OF MINNESOTA

Office Memorandum

DEPARTMENT Public Welfare

TO : Judith Wehrwein
Attorney General's Office

DATE: 12/23/83

FROM : John Zakelj

PHONE: 6-4426

SUBJECT: Temporary Rule 30

Attached, for your approval, are the adoption papers for temporary rules 12MCARSS 2.0300-2.0304.

Today, we are also delivering a copy of the adopted temporary rules to the Revisor's Office.

I will be in my office today (6-4426), out next week, and back on Jan. 3. If you have questions next week, please call Bob Hamper (6-2794)

If necessary, I can be reached next week in Cleveland at 216-881-7931.

SF-00006-02

DEPARTMENT ATTORNEY GENERAL

STATE OF MINNESOTA

Office Memorandum

TO : Leonard Levine, Commissioner of Public Welfare

DATE: 1/1/84

Attn: DEBORAH HUSKINS, Special Assistant Attorney General

FROM : J. MICHAEL MILES JMM
Assistant Attorney General

PHONE: 296-6555

SUBJECT: In the Matter of the Proposed Adoption of State Department of Public Welfare Temporary Rule 30 Governing Medical Assistance Funding For Day Training and Habilitation (12 MCAR §§ 2.0300-2.0304 Temporary)

Enclosed herewith are the rules you have submitted for approval. These rules have been approved by this office and filed with the Secretary of State. Please note that they have not been filed with the State Register. This must be done promptly by your agency.

Upon receipt and before transmittal to your agency, however, it is important that you recheck these rules as to:

1. Affixation of stamps of the Attorney General and Secretary of State;

2. Coverage by these stamps of all rules submitted; and

3. Inclusion of all pages to the rules in the approved set.

If you have any questions in this regard, please contact me.

Encs.
JMM/ls
cc: Ms. Kathy Burek
Mr. Duane Harves

Department of Public Welfare

Adopted Temporary Rules Governing Medical Assistance Funding for Day Training and Habilitation

Temporary Rules as Adopted

12 MCAR S 2.0300 [Temporary] Purpose and applicability.

A. Purpose. Rules 12 MCAR SS 2.0300-2.0304 [Temporary] establish procedures to ensure adequate reimbursement to approved providers for the efficient and economical provision of quality licensed ~~quality~~ day training and habilitation for eligible persons who reside in intermediate care facilities for mentally retarded persons.

B. Applicability. Rules 12 MCAR SS 2.0300-2.0304 [Temporary] apply to providers which claim medical assistance funding for day training and habilitation authorized under Laws of Minnesota 1983, chapter 312, article 9, and to county boards which are required by that law to participate in this program and to administer day training and habilitation. Rules 12 MCAR SS 2.0300-2.0304 [Temporary] do not apply to state hospitals.

12 MCAR S 2.0301 [Temporary] Definitions.

A. Scope. As used in 12 MCAR SS 2.0300-2.0304 [Temporary] the following terms have the meanings given them.

B. Client. "Client" means a person receiving day training and habilitation.

C. Commissioner. "Commissioner" means the commissioner of public welfare or a designated representative.

D. County board. "County board" means the board of county commissioners where the provider is located, or that board's designated representative.

E. County of financial responsibility. "County of financial responsibility" means the county specified in Laws of Minnesota 1983, chapter 151, section 2.

F. Day training and habilitation. "Day training and habilitation" means those health and social services which meet

the criteria in 12 MCAR S 2.0302 [Temporary] A.

G. Developmental achievement center. "Developmental achievement center" means a provider of day training and habilitation which complies with the requirements in Minnesota Statutes, sections 252.21 to 252.261.

H. Eligible person. "Eligible person" means a person who is eligible to receive medical assistance, resides in an intermediate care facility for mentally retarded persons, and is authorized by the county of financial responsibility under 12 MCAR S 2.0302 [Temporary] C. to receive day training and habilitation.

I. Facility. "Facility" means the program and the building which are certified as an intermediate care facility for mentally retarded persons under the Code of Federal Regulations, title 42, section 442, as amended through December 31, 1982.

J. Individual service plan. "Individual service plan" means the individual service plan specified in 12 MCAR S 2.0185.

K. New provider. "New provider" means a provider that did not have a county board approved developmental achievement center per diem rate for the period July 1, 1983, to December 31, 1983.

L. Provider. "Provider" means the corporation, governmental unit, or other legal entity that claims medical assistance reimbursement for provision of day training and habilitation. For purposes of rate determination under 12 MCAR SS 2.0300-2.0304 [Temporary], an entity which operates under more than one day training and habilitation license is considered as a separate provider for each license.

M. 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 wage paid to the client is within the range specified for work activity centers by Code of Federal Regulations, title 29, section 525.2 as amended through December 1982.

12 MCAR S 2.0302 [Temporary] Basic provisions.

A. Eligible services. Medical assistance funds may be used for day training and habilitation which complies with 12 MCAR SS 2.0300-2.0304 [Temporary] and:

1. is directed at the development and maintenance of life skills;

2. enables the individual to function to the best of his or her capacity;

3. includes:

a. work activity as defined in 12 MCAR S 2.0301 [Temporary] M.;

b. transportation to and from service sites; and

c. supervision, training and assistance in grooming, ~~training,~~ eating, toileting, communicating, socializing, and other activities of daily living;

4. is authorized by the county of financial responsibility;

5. is provided under a current license for day training and habilitation pursuant to Minnesota Statutes, sections 245.781 to 245.812;

6. is not included in the approved rate for the facility in which the client resides;

7. does not replace sheltered work or work activity services which are funded by the Minnesota Division of Vocational Rehabilitation;

8. is provided during daytime hours, except as specified under 9.;

9. is provided during evening hours if required by the client's individual service plan and if the residential facility serves the client during daytime hours; and

10. does not exceed the number of days per year specified in Laws of Minnesota 1983, chapter 312, article 9, section 7, subdivision 5, paragraph (e).

B. Eligible providers. To be eligible for medical assistance reimbursement, providers must comply with 12 MCAR SS 2.0300-2.0304 [Temporary]. In addition:

1. The provider must provide at least 185 days of service in calendar year 1984 and 195 days of service in calendar year 1985; a new provider must provide at least 185 days of service in the first full calendar year of operation and 195 days per year after the first year;

2. The provider must comply with the standards in the Code of Federal Regulations, title 42, sections 442.445 and 442.463, as amended through December 1982; and

3. The provider and the facility where the provider's clients reside must not be under the control of the same or related legal entities. 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 which share a majority of governing board members or are owned by the same person or persons. If both the provider and the facility 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:

a. the county board's and commissioner's control which is required by 12 MCAR SS 2.0300-2.0304 [Temporary]; or

b. the provider is a developmental achievement center which applied for licensure before April 15, 1983.

C. Duties of county of financial responsibility. For eligible persons, the county of financial responsibility shall:

1. authorize in the individual service plan the amount, type, and duration of day training and habilitation determined to be needed in the annual client review required by Laws of Minnesota 1983, chapter 312, article 9, section 5, subdivision 1; and

2. choose providers that have demonstrated ability to provide the amount, type, and duration of day training and habilitation required in individual service plans and that meet the eligibility requirements in B. New providers must also meet the additional requirements in 12 MCAR S 2.0304 [Temporary].

D. Nondiscrimination. Within the requirements of individual service plans, the county of financial responsibility shall authorize and the provider shall provide, for eligible persons under 12 MCAR SS 2.0300-2.0304 [Temporary], services which are equal in amount, duration, and scope to services provided to other persons who are served by the same provider.

E. Process for county rate recommendations. The county board shall recommend payment rates to the commissioner for each eligible provider which is identified by a county of financial responsibility to provide day training and habilitation to residents of intermediate care facilities for mentally retarded persons. The following requirements apply to the county board's recommendation:

1. The rates must be based on the criteria in F.

2. The county board shall recommend three rates for each provider: a full-day service rate, a partial-day service rate, and a transportation rate, as defined in F.4.-6. If a provider serves both preschool children and adults, the county board shall recommend separate rates for the preschool and adult services.

3. The county board's rate recommendation to the commissioner shall include comments from the provider indicating the provider's agreement or disagreement with the county board's rate recommendations.

4. The rates for medical assistance must not exceed the rates to be paid by the county board from nonmedical assistance sources for equivalent services from the same provider in the same contract period. If the county board's rate structure and billing methods differ from those required for the medical assistance program under Laws of Minnesota 1983, chapter 312, article 9, section 7, subdivision 5, paragraph (b), and 12 MCAR SS 2.0300-2.0304 [Temporary], the county board shall complete a translation worksheet provided by the commissioner. Except for the necessary change in dates, this worksheet is the same worksheet used for translation of 1983 rates under 12 MCAR S 2.0303 [Temporary].

5. The county board shall submit rate recommendations to the commissioner by ~~December~~ January 1, ~~1983~~ 1984, for services to begin in January 1984. For services starting after ~~January~~ March 1984 and for revised rates, the county board shall submit rate recommendations to the commissioner at least 60 days before the recommended rates are to be effective.

6. The county board may submit revised rate recommendations to the commissioner if the revised rates still comply with 1.-5.

F. Rate criteria. Payment rates established under 12 MCAR SS 2.0300-2.0304 [Temporary] must comply with the following criteria:

1. The rates shall be adequate reimbursement for the cost of efficient and economical provision of quality services which meet the eligibility requirements in A. Except as provided in 2. and 3., "adequate" means that the sum of the full-day service rate and the transportation rate as defined in 4.-6. equals the sum of the same rates approved by the commissioner for the preceding year plus the projected percentage change in the consumer price index as defined in G.

2. The rates for individual clients may be higher than allowed in 1. if the county board recommends and the commissioner approves higher rates through the special needs procedures provided by Laws of Minnesota 1983, chapter 312, article 9, section 7, subdivision 8, and applicable rules.

3. The rates may be lower than allowed in 1. only if the county board documents to the commissioner's satisfaction that individual service plans can be satisfied at less cost.

4. The service rates are reimbursement for day training and habilitation, excluding transportation to and from the client's residence, received by an eligible client within a 24-hour period. The full-day service rate applies to clients whose individual service plan requires the number of service hours per day which is defined in the agreement under I. as a full day. The partial-day service rate applies to clients whose individual service plan requires less than a full day on a

consistent basis.

5. The partial-day service rate must not exceed 75 percent of the full-day service rate.

6. The transportation rate is reimbursement for the provision of, or arrangement for, transportation received by an eligible client from the client's residence to the service site and back.

7. Rates for new providers must comply with the additional requirements in 12 MCAR S 2.0304 [Temporary].

G. Inflation. By July 1 of each year, the commissioner shall notify county boards and providers of the projected inflation rate for the following year, which shall be the most recent projected percentage change in the consumer price index (all urban), for the upcoming calendar year over the current year, as authorized by Laws of Minnesota 1983, chapter 312, article 9, section 7, subdivision 5, paragraph (c), and published in Health Care Costs by Data Resources, Inc., 1750 K Street, Suite 300, Washington D.C. 20006.

H. Rate approval. If the rates recommended by the county board comply with E. and F., the commissioner shall approve the rates within 60 days of receipt of the recommendation from the county board; if the recommendation is received by December 1, 1983, the commissioner shall approve by January 1, 1984. The commissioner shall deny approval, or approve different rates, if necessary to ensure compliance with 12 MCAR SS 2.0300-2.0304 [Temporary].

I. Agreement. Before medical assistance reimbursable service begins, the county board where the <u>residential</u> facility is located shall, for each provider and for each facility whose residents will receive day training and habilitation under 12 MCAR SS 2.0300-2.0304 [Temporary], submit to the commissioner a day training and habilitation agreement signed by the county board, the provider, and by an authorized representative of the facility whose residents will receive services under the agreement. This agreement must be completed on forms provided by the commissioner, with the exception that the county board

may attach an addendum which does not conflict with 12 MCAR SS 2.0300-2.0304 [Temporary]. The agreement must include:

1. the number of hours of day training and habilitation per day, excluding transportation to and from the facility, which will be considered as a full day;

2. the number of days per year services will be available;

3. the respective duties and responsibilities of the county board, the provider, and the facility;

4. a statement that the provider must comply with 12 MCAR SS 2.0300-2.0304 [Temporary] to be eligible for medical assistance reimbursement; and

5. the rates approved by the commissioner.

J. Agreement approval. If the commissioner does not respond in any way within 60 days of receipt of the signed agreement in I., the agreement is deemed to be approved. If the agreement does not comply with I., the commissioner shall, within 60 days of receipt of the signed agreement:

1. deny approval; or

2. grant provisional approval if the parties to the agreement, due to circumstances beyond their control, do not meet all of the requirements in I., but will meet those requirements within ~~30~~ 60 days of the provisional approval.

K. Agreement revision or termination. The county board shall promptly notify the commissioner if the agreement in I. is suspended, terminated, or changed. Approval for revised agreements is subject to the provisions in J. Unless an agreement has received provisional approval under J., 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 I.

L. Provider billing. The provider shall comply with the requirements of 1.-3. when submitting bills to the commissioner for services rendered.

1. Bills must be submitted on appropriately completed forms supplied by the commissioner, identifying for each client:

a. the full-day or partial-day service rate as

approved under H. multiplied by the number of days the client received day training and habilitation from the provider; and

b. the transportation rate as approved under H. multiplied by the number of days the client received transportation provided or arranged for by the provider.

2. The provider shall not bill for days in which the client does not receive day training and habilitation.

3. The provider shall not bill for more than one service rate and one transportation rate per person per day.

M. Payment. For bills that comply with 12 MCAR SS 2.0300-2.0304 [Temporary], the commissioner shall pay the provider under the payment procedures in Laws of Minnesota 1983, chapter 312, article 9, section 7, subdivision 5, paragraph (f) and Minnesota Statutes, section 256B.041. The state and county shares of payments shall be as provided in Laws of Minnesota 1983, chapter 312, article 9, section 9 and Minnesota Statutes, section 256B.041.

N. Errors and duplicate payments. If the provider becomes aware of an error in the billings or if the provider receives payment from another source for services which were also paid for by the medical assistance program, the provider shall promptly notify the commissioner. The commissioner shall require a repayment or adjust future payments to correct the error or eliminate the double payment.

O. Rate appeal. If a provider disagrees with the rate recommendation of the county board, the provider may appeal to the county board. If a provider has appealed to the county board and the provider disagrees with the county board's appeal decision, the provider may appeal to the commissioner. If the county board disagrees with a rate decision of the commissioner, the county board may appeal to the commissioner ~~under Minnesota Statutes, chapter 14~~. Until a rate appeal is resolved and if the provider continues services, payments shall continue at a rate which the commissioner determines to comply with 12 MCAR SS 2.0300-2.0304 [Temporary]. If a higher rate is approved, the commissioner shall make a retroactive payment as determined in

the rate appeal decision.

P. Penalties for noncompliance. If the provider does not comply with 12 MCAR SS 2.0300-2.0304 [Temporary], with other applicable laws and rules, and with the terms of the agreement required by I., the commissioner shall suspend or withhold payments under the procedures in 12 MCAR S 2.064, surveillance and utilization review program. "Other applicable laws and rules" includes laws and rules in 12 MCAR SS 2.0300-2.0304 [Temporary] and:

1. Minnesota Statutes, section 245.825 and applicable rules governing use of aversive and deprivation procedures;

2. Minnesota Statutes, sections 626.556 to 626.557 and applicable rules governing reporting of maltreatment of minors and vulnerable adults;

3. Minnesota Government Data Practices Act, Minnesota Statutes, sections 13.01 to 13.57;

4. Minnesota Human Rights Act of 1982, chapter 363.

Q. Reporting and recordkeeping requirements.

1. The provider shall have on file, for five years from the date of the bill, the following records to support the bills submitted:

a. authorization from the county of financial responsibility pursuant to C. for each client for whom service is billed and for the amount, type, and duration of service billed;

b. attendance sheets and other records documenting that the clients received the billed services from the provider; and

c. complete records of bills and, if applicable, refunds to and from other payers for services equivalent to those billed to the medical assistance program.

2. The provider shall maintain such records as may be necessary to submit the annual report by March 1 as required by Laws of Minnesota 1983, chapter 312, article 9, section 7, subdivision 9. By October 1 of each year, the commissioner shall determine the reporting requirements for the coming year

and so notify each provider. These reporting requirements shall apply to all day training and habilitation offered by the provider, regardless of funding source. These reporting requirements do not affect the county board's authority under other laws and rules to require additional reports from the provider.

R. County advances. County boards may make ~~loans or~~ grants to ~~providers~~ developmental achievement centers for use as operating capital to serve clients.

S. Program change or reorganization. Rates established under 12 MCAR SS 2.0300-2.0304 [Temporary] shall not be affected by changes in ownership or reorganization of the provider. However, if a provider changes more than ~~50~~ 33-1/3 percent of its clientele within one year, the county board may recommend rates for that provider under the rules for new providers, 12 MCAR S 2.0304 [Temporary].

T. Alternative rate structures. The county board may recommend to the commissioner an alternative to the rates required in E.2. and F.4.-6. The commissioner shall approve such an alternative if it:

1. complies with all requirements of 12 MCAR SS 2.0300-2.0304 [Temporary] other than 12 MCAR S 2.0302 [Temporary] E.2. and F.4.-6.;

2. complies with Laws of Minnesota 1983, chapter 312;

3. results in total annual payments which are equal to or less than the payments which would be made if the rates complied with E. and F.

12 MCAR S 2.0303 [Temporary] Determination of 1983 rates for developmental achievement centers.

A. Duties of county board. The following requirements apply to the county board for developmental achievement centers with contracts in effect during July 1, 1983, to December 31, 1983.

1. The county board shall, by ~~December~~ January 1, ~~1983~~ 1984, notify the commissioner of the contractual rates in effect on December 1, 1983, for each program.

2. If the county board's rate structure and billing

methods differ from those required for the medical assistance program by Laws of Minnesota 1983, chapter 312, article 9, section 7, subdivision 5, paragraph (b), and 12 MCAR S 2.0302 [Temporary], the county board shall, with the assistance of the provider, complete and submit to the commissioner by December 1, 1983, the translation worksheet in B.

B. Translation worksheet. The commissioner shall provide a translation worksheet which will accurately translate the county board payment rate as of December 1, 1983, into rates which the county board would be paying if the county board used the same rate structure and billing methods described in Laws of Minnesota 1983, chapter 312, section 7, subdivision 5, paragraph (b), and 12 MCAR S 2.0302 [Temporary]. This worksheet must include the provisions in B.1.-5. For purposes of 12 MCAR S 2.0303 [Temporary], "contract" means the contract in effect between the county board and the provider as of December 1, 1983, and "most recent representative period" must be determined by the county board and must be at least six consecutive months.

1. If the contract includes payment for days when service was not received, the worksheet must require records indicating the number of such days billed as a percentage of the total days billed during the most recent representative period and must adjust the rates upward by an equal percentage.

2. If the contract bases rates on average daily attendance which is less than 93 percent of the provider's average daily enrollment for the period from July 1, 1983, to December 31, 1983, the worksheet must adjust the rates downward based on 93 percent average daily attendance.

3. If the contract includes an annual limitation or a refund provision which effectively lowers the stated daily rates, the worksheet must adjust the rates downward accordingly.

4. If the contract does not provide for separation of the daily rate into a full-day service rate, a partial-day service rate, and a transportation rate as defined in 12 MCAR S 2.0302 [Temporary] F., the worksheet must provide a method to separate the daily rate.

5. If the contract provides for payments based on expenditures or if the county board provides the services directly without a contract, the worksheet must develop rates by dividing the county board's actual expenditures for the most recent representative period by 93 percent of the average enrollment for that period.

C. Commissioner's approval. If the information submitted by the county board complies with A. and B., the commissioner shall approve 1983 rates by January 1, 1984. The commissioner shall deny approval, or approve different rates to ensure compliance with A. and B.

D. Use of 1983 rates. For 1984 rates, the rates approved under C. are the rates approved by the commissioner for the preceding year in 12 MCAR S 2.0302 [Temporary] F. These rates are approved solely for future rate determination purposes and do not require adjustment of 1983 county board payments.

12 MCAR S 2.0304 [Temporary] Additional requirements for new providers.

A. Request for proposals. Before a new provider can be considered for medical assistance reimbursement for day training and habilitation, the county board shall establish and implement a system for request of proposals. The county board shall use the needs assessment required under Minnesota Statutes, section 256E.08, subdivision 1 and 12 MCAR S 2.0185 to identify particular types of day training and habilitation needed. The request for proposals shall be based on that needs assessment. The county board shall request proposals in a manner which gives potential providers in the county and employees of the regional state hospital reasonable opportunity to submit an appropriate proposal.

B. County recommendation. At least 60 days before service begins, the county board shall choose and recommend to the commissioner proposals for approval as to need, location, size, and program under Minnesota Statutes, section 252.28 and rates for each proposal. The county board's recommendation must include a description of the specific methods used to choose a

provider and to develop rates. The county board's recommendation must be based on the following criteria:

1. the proposed provider rates must comply with 12 MCAR SS 2.0300-2.0304 [Temporary];

2. the proposed provider must comply with the need determination and licensure requirements in Minnesota Statutes, sections 252.28 and 245.781 to 245.812 and funding eligibility requirements in 12 MCAR S 2.0302 [Temporary];

3. the proposed provider rates must not exceed the limits in Laws of Minnesota 1983, chapter 312, article 9, section 7, subdivisions 6 and 7;

4. the proposed provider rates must incorporate the most efficient and effective use of existing resources to meet the needs identified by the county board within the constraints of client choice of vendor policies in 12 MCAR S 2.047; and

5. the proposed provider services must not duplicate services available through other funding sources.

C. County and regional limits. To implement Laws of Minnesota 1983, chapter 312, article 9, section 7, subdivisions 6 and 7, the commissioner shall determine the average medical assistance payment rates for day training and habilitation in each county and in each of the regional development commission districts designated in Minnesota Statutes, sections 462.381 to 462.396. ~~To be eligible for the special limit applicable only to new developmental achievement centers under Laws of Minnesota 1983, chapter 312, article 9, section 7, subdivision 6, the developmental achievement center must not subcontract services, except for transportation, to a provider that is not a developmental achievement center.~~

D. Commissioner's approval. If the recommendation submitted by the county board complies with A.-C., the commissioner shall approve the rates for the new provider within 60 days of receipt of the county board recommendation. The commissioner shall deny approval, or approve different rates if necessary to ensure compliance with A.-C.

OFFICE OF THE REVISOR OF STATUTES

Certificate of Approval of Adopted Rules

AR0438T

Agency: Department of Public Welfare

Division:

Agency Contact: John Zakelj

Rule Numbers: 12 MCAR SS 2.0300-2.0304 [Temporary]

Title: Adopted Temporary Rules Governing Medical Assistance Funding for Day Training and Habilitation

Type of Rules: Temporary

Incorporations by Reference:

Rule Number:	Material Incorporated:
12 MCAR S 2.0302	Health Care Costs, published by Data Resources, Inc. 1750 K Street Suite 300 Washington D.C. 20006

APPROVED AS TO FORM AND LEGALITY
January 1 1984
HUBERT H. HUMPHREY, III
ATTORNEY GENERAL
BY
SPECIAL ASSISTANT ATTORNEY GENERAL

Duplication of Statutory Language: None

The attached rules are approved as to form.

Steven C. Cross
Revisor of Statutes

Susan M. Voigt
Assistant Revisor
Phone: 296-0956
Date: December 23, 1983

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED
JAN - 5 1984
1:15 p.m.
Joan Anderson
Secretary of State

STATE OF MINNESOTA
DEPARTMENT OF PUBLIC WELFARE

IN THE MATTER OF THE PROPOSED ADOPTION OF STATE DEPARTMENT OF PUBLIC WELFARE TEMPORARY RULE 30 GOVERNING MEDICAL ASSISTANCE FUNDING FOR DAY TRAINING AND HABILITATION (12 MCAR §§ 2.0300-2.0304 TEMPORARY)

ORDER ADOPTING TEMPORARY RULES

The above-entitled matter was published in the State Register on November 14, 1983, as proposed temporary rules pursuant to Minnesota Statutes, section 14.29-14.36 (1982). After affording interested and affected persons an opportunity to submit written data and views within 20 days of the publication date, reviewing and considering the data and views, and determining that the above captioned rules are needed and reasonable,

NOW THEREFORE, IT IS ORDERED that these rules identified as DPW Temporary Rule 30 (12 MCAR § 2.0300 - 2.0304 Temporary) are adopted this 22nd day of December, 1983, pursuant to authority vested in me by Minnesota Statutes section 14.29-14.36 (1982) and Laws of Minnesota 1983, Chapter 312, Article 9.

STATE OF MINNESOTA



LEONARD W. LEVINE
Commissioner of Public Welfare

IJZ1

STATE OF MINNESOTA

DEPARTMENT OF PUBLIC WELFARE

IN THE MATTER OF THE PROPOSED ADOPTION OF TEMPORARY RULES OF THE STATE DEPARTMENT PUBLIC WELFARE GOVERNING MEDICAL ASSISTANCE FUNDING FOR DAY TRAINING AND HABILITATION (12 MCAR §§ 2.0300 - 2.0304 TEMPORARY)

ORDER FOR PUBLICATION OF A TEMPORARY RULE

IT IS ORDERED this 31st day of Oct., 1983, that the proposed temporary rule in the above-entitled matter be published in the State Register.

STATE OF MINNESOTA

Commissioner of Public Welfare

DT-07

STATE OF MINNESOTA
DEPARTMENT OF PUBLIC WELFARE

In the Matter of the Proposed Adoption of Temporary Rules Governing Medical Assistance Funding for Day Training and Habilitation (12 MCAR§§ 2.0300 - 2.0304 Temporary)

Notice of Intent to Adopt Temporary Rules

The State Department of Public Welfare proposes to adopt the above-entitled temporary rules to implement Laws of Minnesota 1983, chapter 312, article 9.

Persons interested in these rules have until December 5, 1983 to submit written comments. The proposed temporary rules may be modified if the modifications are supported by the data and views submitted to the agency and do not result in a substantial change in the proposed language.

Written comments should be sent to:

John Zakelj
Mental Health Bureau
Department of Public Welfare
Centennial Building
St. Paul, MN 55155
612/296-4426

Upon adoption of the temporary rules, this notice, all written comments received, and the adopted temporary rules will be delivered to the Attorney General and to the Revisor of Statutes for review as to form and legality. The adopted temporary rules will not become effective without the Attorney General's approval and the Revisor of Statutes certification of the rule's form.

As provided by Laws of Minnesota 1983, chapter 312, these temporary rules are to be promulgated by January 1, 1984, and will be effective as of January 1, 1984. These temporary rules shall be effective for 180 days and may be continued in effect for an additional period of 180 days if the commissioner gives notice of continuation of the additional period by publishing notice in the State Register and mailing the same notice to all persons registered with the commisioner to receive notice of rulemaking proceedings. The temporary rules shall not be effective 361 days after their effective date without following the procedures in Minnesota Statutes, section 14.13 to 14.20.

Rules 12 MCAR §§2.0300 - 2.0304 (Temporary) govern use of Medical Assistance funding for developmental achievement services (DAC) and other day training and habilitation for residents of intermediate care facilities for mentally retarded (ICF-MR) persons. These rules set criteria for eligible services and providers. For developmental achievement centers with county contracts in effect during 1983, these rules provide the procedures to implement the statutory requirement that future Medical Assistance rates be based on 1983 county rates. In addition, these rules provide criteria and procedures for approval of new day training and habilitation programs. These rules also establish billing and recordkeeping requirements.

FISCAL IMPACT

A fiscal note was prepared in May, 1983 for the legislation which authorized these temporary rules. That fiscal note indicated that implementation of Medical Assistance funding for day training and habilitation would save Minnesota counties $7,525,000 for calendar 1984 and $9,032,000 for calendar 1985. The reduced costs to the counties will be paid through the federal share of Medical Assistance. The following fiscal note addresses only those areas in which the proposed temporary rules may change the projections calculated earlier for the legislation.

Although these rules impose new administrative duties on county boards, it is expected that the cost of these duties will be fully offset by the reduction in county board administrative duties resulting from the fact that county boards will no longer have to make Community Social Services Act payments for day training and habilitation for ICF-MR residents. Increased administrative costs at the state level will not exceed the amount appropriated for this purpose under Laws of Minnesota, chapter 312, article 9.

The only requirement in 12 MCAR§§ 2.0300 - 2.0304 (Temporary) which will increase the costs to local public bodies is 12MCAR§ 2.0302.B.1, which requires that all programs which receive funds under these rules have available at least 185 days of service in calendar year 1984 and 195 days of service in calendar year 1985. Based on a survey of all counties in August, 1983, 18 DACs (out of a total of 99 DACs with adult programs) are providing less than 195 days of service in calendar year 1983, with 13 of these DACs providing less than 185 days. Laws of Minnesota 1983, chapter 312, article 9 provides, on a permissive basis, for Medical Assistance funding for 1984 and beyond for up to 210 days per year. Although a number of counties will probably voluntarily increase their number of days, this fiscal impact analysis includes the full cost to bring all existing day training and habilitation programs up to 185 days in calendar year 1984 and 195 days in 1985. The total cost is estimated at $97,774 for calendar 1984 and $229,241 for calendar 1985.

It is estimated that, for the 55 percent of clients who will be ICF-MR residents and eligible for Medical Assistance, the federal share will be 50.89 percent in 1984 and 52.67 percent in 1985, or $24,452 in 1984 and $61,958 in 1985. These federal funds were already included in budget projections when the legislation was passed.

The state share of the cost for eligible clients will be $21,237 in 1984 and $50,112 in 1985. As required by statute, these amounts will be deducted from the state Community Social Services Act (CSSA) grant for the counties of financial responsibility for the particular clients involved. Since the CSSA grant is a fixed annual allocation, this cost is a county cost in the sense that it reduces the amount available to counties for other social services.

The counties will be charged directly for a share of the Medical Assistance billings for the additional costs required by the proposed temporary rules,

namely $2,359 in 1984 and $5,564 in 1985. In addition, it is anticipated that a similar expansion of services will be made available for other clients who will not be eligible for Medical Assistance reimbursement. The costs to the counties for the ineligible clients will be $49,726 in 1984 and $111,607 in 1985. All of these costs to counties will reduce the savings projected earlier for the legislation.

Summary of fiscal note:

	Calendar 1984	Calendar 1985
County share for eligible clients	$ 2,359	$ 5,564
County share for ineligible clients	49,726	111,607
Subtotal	$52,085	$117,171
CSSA deduction for eligible clients	21,237	50,112
Subtotal	$73,322	$167,283
Federal share for eligible clients	24,452	61,958
Total costs to implement these rules	$97,774	$229,241
Savings projected for legislation	$7,525,000	$9,032,000
less costs above	97,774	229,241
Net savings to counties to implement Medical Assistance for DACs	$7,427,226	$8,802,759

Details by county of financial responsibility, copies of this notice and the proposed temporary rules may be obtained by contacting John Zakelj at 612/296-4426.

LEONARD W. LEVINE, COMMISSIONER
Department of Public Welfare

HD/29

STATE OF MINNESOTA
DEPARTMENT OF PUBLIC WELFARE

IN THE MATTER OF THE PROPOSED ADOPTION OF TEMPORARY RULES GOVERNING MEDICAL ASSISTANCE FUNDING FOR DAY TRAINING AND HABILITATION (12 MCAR §§2.0300 - 2.0304 Temporary)

AFFIDAVIT OF MAILING

Wendy Johnson, being first duly sworn, deposes and says:

That on the 9th day of November, 1983, at the City of St. Paul, County of Ramsey, State of Minnesota, she served the attached Notice of Intent to Adopt Temporary Rules by depositing in the State of Minnesota Central Mail System for first class mailing, a copy thereof, properly enveloped, with postage prepaid, on all persons and associations who have requested that their names be placed on file with the Department of Public Welfare for the purpose of receiving notice of the proposed adoption of rules by this Department.

Wendy Johnson

Subscribed and sworn to before me

this 10 day of November, 1983.

Margaret Holt

MARGARET HOLT
NOTARY PUBLIC-MINNESOTA
RAMSEY COUNTY
My Comm. Expires Sept. 22, 1984

STATE OF MINNESOTA
DEPARTMENT OF PUBLIC WELFARE

IN THE MATTER OF THE PROPOSED ADOPTION OF TEMPORARY RULES GOVERNING MEDICAL ASSISTANCE FUNDING FOR DAY TRAINING AND HABILITATION (12 MCAR §§2.0300 - 2.0304 Temporary)

AFFIDAVIT OF ADDITIONAL MAILING

Wendy Johnson, being first duly sworn, deposes and says:

That on the 10th day of November, 1983, at the City of St. Paul, County of Ramsey, State of Minnesota, in addition to serving the attached Notice of Intent to Adopt Temporary Rules to all persons and associations who have requested that their names be placed on file for the purpose of receiving notice of the proposed adoption of rules by this Department, she also served the attached Notice by depositing in the State of Minnesota, Central Mail System for first class mailing, a copy thereof, properly enveloped, with postage prepaid to the following agencies:

Day Activity Centers	- 100
DAC Taskforce	- 40
ICF-MR's	- 330

Wendy Johnson

Subscribed and sworn to before me

this 10 day of November, 1983.

Margaret Holt

MARGARET HOLT
NOTARY PUBLIC-MINNESOTA
RAMSEY COUNTY
My Comm. Expires Sept. 22, 1984

STATE OF MINNESOTA
DEPARTMENT OF PUBLIC WELFARE

IN THE MATTER OF THE PROPOSED ADOPTION OF TEMPORARY RULES GOVERNING MEDICAL ASSISTANCE FUNDING FOR DAY TRAINING AND HABILITATION (12 MCAR §§2.0300 - 2.0304 Temporary)

CERTIFICATE

I hereby certify that the list of persons, associations, and other interested groups who have requested, pursuant to Minn. Stat. §14.14 subd. 1, that their names be placed on file with and maintained by the Department of Public Welfare for the purpose of receiving notice of the proposed adoption of rules by this Department is accurate and complete as of 12:00, P.M., this 10th day of November, 1983.

Wendy Johnson

5. If a provider knowingly supplies inaccurate or false information in a required report that results in an overpayment, the commissioner shall do one or more of the following:

a. immediately adjust the facility's payment rate to recover the entire overpayment;

b. terminate the commissioner's agreement with the provider; or

c. prosecute under applicable state or federal law.

12 MCAR § 2.05315 [Temporary] Appeal procedures.

A. Scope of appeals. A decision by the commissioner may be appealed by the provider or a county welfare or human services board if the following conditions are met:

1. the appeal, if successful, would result in a change to the facility's payment rate;

2. the appeal arises from application of the provisions of 12 MCAR §§ 2.05301-2.05315 [Temporary]; and

3. the dispute over the decision cannot be resolved informally between the commissioner and the appealing party.

B. Filing of appeals. To be effective, an appeal must meet the following criteria:

1. The provider must notify the commissioner of its intent to appeal within 30 days of receiving the payment rate determination or decision which is being appealed. The appeal must be filed with the commissioner, in writing, within 60 days after receiving the payment rate determination or decision which is being appealed.

2. The appeal shall specify:

a. each disputed item and the reason for the dispute;

b. the computation and the amount that the provider believes to be correct;

c. an estimate of the dollar amount involved in each disputed item;

d. the authority in statute or rule upon which the provider is relying in each dispute; and

e. the name and address of the person or firm with whom contacts may be made regarding the appeal.

C. Resolution of appeal. The appeal shall be heard under the contested case provisions set forth in Minnesota Statutes, chapter 14, and rules of the Office of Administrative Hearings. Upon agreement of both parties, the dispute may be resolved informally through settlement or through modified appeal procedures established by agreement between the commissioner and the chief hearing examiner.

D. Payment rate during appeal period. Notwithstanding any appeal filed under 12 MCAR §§ 2.05301-2.05315 [Temporary], the payment rate established by the commissioner shall be the payment rate paid to the provider while the appeal is pending.

E. Payments after resolution of appeal. Upon resolution of the appeal any overpayments or underpayments shall be paid under 12 MCAR § 2.05314 [Temporary] I. and J.

F. Expenses incurred in the appeal or for individual items under appeal will be reimbursed to the provider the extent that:

1. the appeal or the individual item was resolved on behalf of the provider; and

2. this amount is not in excess of the maximum payment rate as determined under 12 MCAR § 2.05305 [Temporary].

Department of Public Welfare

Proposed Temporary Rules Governing Medical Assistance Funding for Day Training and Habilitation (12 MCAR §§ 2.0300-2.0304 Temporary)

Notice of Intent to Adopt Temporary Rules

The State Department of Public Welfare proposes to adopt the above-entitled temporary rules to implement Laws of Minnesota 1983, chapter 312, article 9. Persons interested in these rules have until December 5, 1983 to submit written comments. The proposed temporary rules may be modified if the modifications are supported by the data and views submitted to the agency and do not result in a substantial change in the proposed language.

Written comments should be sent to:

John Zakelj
Mental Health Bureau
Department of Public Welfare
Centennial Building
St. Paul, MN 55155
612/296-4426

Upon adoption of the temporary rules, this notice, all written comments received, and the adopted temporary rules will be delivered to the Attorney General and to the Revisor of Statutes for review as to form and legality. The adopted temporary rules will not become effective without the Attorney General's approval and the Revisor of Statutes certification of the rule's form.

As provided by Laws of Minnesota 1983, chapter 312, these temporary rules are to be promulgated by January 1, 1984, and will be effective as of January 1, 1984. These temporary rules shall be effective for 180 days and may be continued in effect for an additional period of 180 days if the Commissioner gives notice of continuation of the additional period by publishing notice in the *State Register* and mailing the same notice to all persons registered with the Commissioner to receive notice of rulemaking proceedings. The temporary rules shall not be effective 361 days after their effective date without following the procedures in Minnesota Statutes, section 14.13 to 14.20.

Rules 12 MCAR §§ 2.0300-2.0304 (Temporary) govern use of Medical Assistance funding for developmental achievement services (DAC) and other day training and habilitation for residents of intermediate care facilities for mentally retarded (ICF-MR) persons. These rules set criteria for eligible services and providers. For developmental achievement centers with county contracts in effect during 1983, these rules provide the procedures to implement the statutory requirement that future Medical Assistance rates be based on 1983 county rates. In addition, these rules provide criteria and procedures for approval of new day training and habilitation programs. These rules also establish billing and recordkeeping requirements.

Fiscal Impact

A fiscal note was prepared in May, 1983 for the legislation which authorized these temporary rules. That fiscal note indicated that implementation of Medical Assistance funding for day training and habilitation would save Minnesota counties $7,525,000 for calendar 1984 and $9,032,000 for calendar 1985. The reduced costs to the counties will be paid through the federal share of Medical Assistance. The following fiscal note addresses only those areas in which the proposed temporary rules may change the projections calculated earlier for the legislation.

Although these rules impose new administrative duties on county boards, it is expected that the cost of these duties will be fully offset by the reduction in county board administrative duties resulting from the fact that county boards will no longer have to make Community Social Services Act payments for day training and habilitation for ICF-MR residents. Increased administrative costs at the state level will not exceed the amount appropriated for this purpose under Laws of Minnesota 1983, chapter 312, article 9.

The only requirement in 12 MCAR §§ 2.0300-2.0304 (Temporary) which will increase the costs to local public bodies is 12 MCAR § 2.0302.B.1, which requires that all programs which receive funds under these rules have available at least 185 days of service in calendar year 1984 and 195 days of service in calendar year 1985. Based on a survey of all counties in August, 1983, 18 DACs (out of a total of 99 DACs with adult programs) are providing less than 195 days of service in calendar year 1983, with 13 of these DACs providing less than 185 days. Laws of Minnesota 1983, chapter 312, article 9 provides, on a permissive basis, for Medical Assistance funding for 1984 and beyond for up to 210 days per year. Although a number of counties will probably voluntarily increase their number of days, this fiscal impact analysis includes the full cost to bring all existing day training and habilitation programs up to 185 days in calendar years 1984 and 195 days in 1985. The total cost is estimated at $97,774 for calendar 1984 and $229,241 for calendar 1985.

It is estimated that, for the 55 percent of clients who will be ICF-MR residents and eligible for Medical Assistance, the federal share will be 50.89 percent in 1984 and 52.67 percent in 1985, or $24,452 in 1984 and $61,958 in 1985. These federal funds were already included in budget projections when the legislation was passed.

The state share of the cost for eligible clients will be $21,237 in 1984 and $50,112 in 1985. As required by statute, these amounts will be deducted from the state Community Social Services Act (CSSA) grant for the counties of financial responsibility for the particular clients involved. Since the CSSA grant is a fixed annual allocation, this cost is a county cost in the sense that it reduces the amount available to counties for other social services.

KEY: PROPOSED RULES SECTION — Underlining indicates additions to existing rule language. ~~Strike outs~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material." **ADOPTED RULES SECTION** — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language.

The counties will be charged directly for a share of the Medical Assistance billings for the additional costs required by the proposed temporary rules, namely $2,359 in 1984 and $5,564 in 1985. In addition, it is anticipated that a similar expansion of services will be made available for other clients who will not be eligible for Medical Assistance reimbursement. The costs to the counties for the ineligible clients will be $49,726 in 1984 and $111,607 in 1985. All of these costs to counties will reduce the savings projected earlier for the legislation.

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Details by county of financial responsibility are available from John Zakelj at 612/296-4426.

Copies of this notice and the proposed temporary rules may be obtained by contacting John Zakelj.

Leonard W. Levine, commissioner
Department of Public Welfare

Temporary Rules as Proposed (all new material)

12 MCAR § 2.0300 [Temporary] Purpose and applicability.

A. Purpose. Rules 12 MCAR §§ 2.0300-2.0304 [Temporary] establish procedures to ensure adequate reimbursement to approved providers for the efficient and economical provision of licensed quality day training and habilitation for eligible persons who reside in intermediate care facilities for mentally retarded persons.

B. Applicability. Rules 12 MCAR §§ 2.0300-2.0304 [Temporary] apply to providers which claim medical assistance funding for day training and habilitation authorized under Laws of Minnesota 1983, chapter 312, article 9, and to county boards which are required by that law to participate in this program and to administer day training and habilitation. Rules 12 MCAR §§ 2.0300-2.0304 [Temporary] do not apply to state hospitals.

12 MCAR § 2.0301 [Temporary] Definitions.

A. Scope. As used in 12 MCAR §§ 2.0300-2.0304 [Temporary] the following terms have the meanings given them.

B. Client. "Client" means a person receiving day training and habilitation.

C. Commissioner. "Commissioner" means the commissioner of public welfare or a designated representative.

D. County board. "County board" means the board of county commissioners where the provider is located, or that board's designated representative.

E. County of financial responsibility. "County of financial responsibility" means the county specified in Laws of Minnesota 1983, chapter 151, section 2.

F. Day training and habilitation. "Day training and habilitation" means those health and social services which meet the criteria in 12 MCAR § 2.0302 [Temporary] A.

G. Developmental achievement center. "Developmental achievement center" means a provider of day training and habilitation which complies with the requirements in Minnesota Statutes, sections 252.21 to 252.261.

H. Eligible person. "Eligible person" means a person who is eligible to receive medical assistance, resides in an intermediate care facility for mentally retarded persons, and is authorized by the county of financial responsibility under 12 MCAR § 2.0302 [Temporary] C. to receive day training and habilitation.

I. Facility. "Facility" means the program and the building which are certified as an intermediate care facility for mentally retarded persons under the Code of Federal Regulations, title 42, section 442, as amended through December 31, 1982.

J. Individual service plan. "Individual service plan" means the individual service plan specified in 12 MCAR § 2.0185.

K. New provider. "New provider" means a provider that did not have a county board approved developmental achievement center per diem rate for the period July 1, 1983, to December 31, 1983.

L. Provider. "Provider" means the corporation, governmental unit, or other legal entity that claims medical assistance reimbursement for provision of day training and habilitation. For purposes of rate determination under 12 MCAR §§ 2.0300-2.0304 [Temporary], an entity which operates under more than one day training and habilitation license is considered as a separate provider for each license.

M. 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 wage paid to the client is within the range specified for work activity centers by Code of Federal Regulations, title 29, section 525.2 as amended through December 1982.

12 MCAR § 2.0302 [Temporary] Basic provisions.

A. Eligible services. Medical assistance funds may be used for day training and habilitation which complies with 12 MCAR §§ 2.0300-2.0304 [Temporary] and:

1. is directed at the development and maintenance of life skills;

2. enables the individual to function to the best of his or her capacity;

3. includes:

a. work activity as defined in 12 MCAR § 2.0301 [Temporary] M.;

b. transportation to and from service sites; and

c. supervision and assistance in grooming, training, eating, toileting, communicating, socializing, and other activities of daily living;

4. is authorized by the county of financial responsibility;

5. is provided under a current license for day training and habilitation pursuant to Minnesota Statutes, sections 245.781 to 245.812;

6. is not included in the approved rate for the facility in which the client resides;

7. does not replace sheltered work or work activity services which are funded by the Minnesota Division of Vocational Rehabilitation;

8. is provided during daytime hours, except as specified under 9.;

9. is provided during evening hours if required by the client's individual service plan and if the residential facility serves the client during the daytime hours; and

10. does not exceed the number of days per year specified in Laws of Minnesota 1983, chapter 312, article 9, section 7, subdivision 5, paragraph (e).

B. Eligible providers. To be eligible for medical assistance reimbursement, providers must comply with 12 MCAR §§ 2.0300-2.0304 [Temporary]. In addition:

1. The provider must provide at least 185 days of service in calendar year 1984 and 195 days of service in calendar year 1985; a new provider must provide at least 185 days of service in the first full calendar year of operation and 195 days per year after the first year;

2. The provider must comply with the standards in the Code of Federal Regulations, title 42, sections 442.445 and 442.463, as amended through December 1982; and

3. The provider and the facility where the provider's clients reside must not be under the control of the same or related legal entities. 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 which share a majority of governing board members or are owned by the same person or persons. If both the provider

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and the facility 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:

a. the county board's and commissioner's control which is required by 12 MCAR §§ 2.0300-2.0304 [Temporary]; or

b. the provider is a developmental achievement center which applied for licensure before April 15, 1983.

C. Duties of county of financial responsibility. For eligible persons, the county of financial responsibility shall:

1. authorize in the individual service plan the amount, type, and duration of day training and habilitation determined to be needed in the annual client review required by Laws of Minnesota 1983, chapter 312, article 9, section 5, subdivision 1; and

2. choose providers that have demonstrated ability to provide the amount, type, and duration of day training and habilitation required in individual service plans and that meet the eligibility requirements in B. New providers must also meet the additional requirements in 12 MCAR § 2.0304 [Temporary].

D. Nondiscrimination. Within the requirements of individual service plans, the county of financial responsibility shall authorize and the provider shall provide, for eligible persons under 12 MCAR §§ 2.0300-2.0304 [Temporary], services which are equal in amount, duration, and scope to services provided to other persons who are served by the same provider.

E. Process for county rate recommendations. The county board shall recommend payment rates to the commissioner for each eligible provider which is identified by a county of financial responsibility to provide day training and habilitation to residents of intermediate care facilities for mentally retarded persons. The following requirements apply to the county board's recommendation:

1. The rates must be based on the criteria in F.

2. The county board shall recommend three rates for each provider: a full-day service rate, a partial-day service rate, and a transportation rate, as defined in F.4.-6. If a provider serves both preschool children and adults, the county board shall recommend separate rates for the preschool and adult services.

3. The county board's rate recommendation to the commissioner shall include comments from the provider indicating the provider's agreement or disagreement with the county board's rate recommendations.

4. The rates for medical assistance must not exceed the rates to be paid by the county board from nonmedical assistance sources for equivalent services from the same provider in the same contract period. If the county board's rate structure and billing methods differ from those required for the medical assistance program under Laws of Minnesota 1983, chapter 312, article 9, section 7, subdivision 5, paragraph (b), and 12 MCAR §§ 2.0300-2.0304 [Temporary], the county board shall complete a translation worksheet provided by the commissioner. Except for the necessary change in dates, this worksheet is the same worksheet used for translation of 1983 rates under 12 MCAR § 2.0303 [Temporary].

5. The county board shall submit rate recommendations to the commissioner by December 1, 1983, for services to begin in January 1984. For services starting after January 1984 and for revised rates, the county board shall submit rate recommendations to the commissioner at least 60 days before the recommended rates are to be effective.

6. The county board may submit revised rate recommendations to the commissioner if the revised rates still comply with 1.-5.

F. Rate criteria. Payment rates established under 12 MCAR §§ 2.0300-2.0304 [Temporary] must comply with the following criteria:

1. The rates shall be adequate reimbursement for the cost of efficient and economical provision of quality services which meet the eligibility requirements in A. Except as provided in 2. and 3., "adequate" means that the sum of the full-day service rate and the transportation rate as defined in 4.-6. equals the sum of the same rates approved by the commissioner for the preceding year plus the projected percentage change in the consumer price index as defined in G.

2. The rates for individual clients may be higher than allowed in 1. if the county board recommends and the commissioner approves higher rates through the special needs procedures provided by Laws of Minnesota 1983, chapter 312, article 9, section 7, subdivision 8, and applicable rules.

3. The rates may be lower than allowed in 1. only if the county board documents to the commissioner's satisfaction that individual service plans can be satisfied at less cost.

4. The service rates are reimbursement for day training and habilitation, excluding transportation to and from the client's residence, received by an eligible client within a 24-hour period. The full-day service rate applies to clients whose individual service plan requires the number of service hours per day which is defined in the agreement under I. as a full day. The partial-day service rate applies to clients whose individual service plan requires less than a full day on a consistent basis.

5. The partial-day service rate must not exceed 75 percent of the full-day service rate.

6. The transportation rate is reimbursement for the provision of, or arrangement for, transportation received by an eligible client from the client's residence to the service site and back.

7. Rates for new providers must comply with the additional requirements in 12 MCAR § 2.0304 [Temporary].

G. Inflation. By July 1 of each year, the commissioner shall notify county boards and providers of the projected inflation rate for the following year, which shall be the most recent projected percentage change in the consumer price index (all urban), for the upcoming calendar year over the current year, as authorized by Laws of Minnesota 1983, chapter 312, article 9, section 7, subdivision 5, paragraph (c), and published in Health Care Costs by Data Resources, Inc., 1750 K Street, Suite 300, Washington D.C. 20006.

H. Rate approval. If the rates recommended by the county board comply with E. and F., the commissioner shall approve the rates within 60 days of receipt of the recommendation from the county board; if the recommendation is received by December 1, 1983, the commissioner shall approve by January 1, 1984. The commissioner shall deny approval, or approve different rates, if necessary to ensure compliance with 12 MCAR §§ 2.0300-2.0304 [Temporary].

I. Agreement. Before medical assistance reimbursable service begins, the county board where the facility is located shall, for each provider and for each facility whose residents will receive day training and habilitation under 12 MCAR §§ 2.0300-2.0304 [Temporary], submit to the commissioner a day training and habilitation agreement signed by the county board, the provider, and by an authorized representative of the facility whose residents will receive services under the agreement. This agreement must be completed on forms provided by the commissioner, with the exception that the county board may attach an addendum which does not conflict with 12 MCAR §§ 2.0300-2.0304 [Temporary]. The agreement must include:

1. the number of hours of day training and habilitation per day, excluding transportation to and from the facility, which will be considered as a full day;

2. the number of days per year services will be available;

3. the respective duties and responsibilities of the county board, the provider, and the facility;

4. a statement that the provider must comply with 12 MCAR §§ 2.0300-2.0304 [Temporary] to be eligible for medical assistance reimbursement; and

5. the rates approved by the commissioner.

J. Agreement approval. If the commissioner does not respond in any way within 60 days of receipt of the signed agreement in I., the agreement is deemed to be approved. If the agreement does not comply with I., the commissioner shall, within 60 days of receipt of the signed agreement:

1. deny approval; or

2. grant provisional approval if the parties to the agreement, due to circumstances beyond their control, do not meet all of the requirements in I., but will meet those requirements within 30 days of the provisional approval.

K. Agreement revision or termination. The county board shall promptly notify the commissioner if the agreement in I. is suspended, terminated, or changed. Approval for revised agreements is subject to the provisions in J. Unless an agreement has received provisional approval under J., 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 I.

L. Provider billing. The provider shall comply with the requirements of 1.-3. when submitting bills to the commissioner for services rendered.

1. Bills must be submitted on appropriately completed forms supplied by the commissioner, identifying for each client:

a. the full-day or partial-day service rate as approved under H. multiplied by the number of days the client received day training and habilitation from the provider; and

b. the transportation rate as approved under H. multiplied by the number of days the client received transportation provided or arranged for by the provider.

2. The provider shall not bill for days in which the client does not receive day training and habilitation.

3. The provider shall not bill for more than one service rate and one transportation rate per person per day.

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M. Payment. For bills that comply with 12 MCAR §§ 2.0300-2.0304 [Temporary], the commissioner shall pay the provider under the payment procedures in Laws of Minnesota 1983, chapter 312, article 9, section 7, subdivision 5, paragraph (f) and Minnesota Statutes, section 256B.041. The state and county shares of payments shall be as provided in Laws of Minnesota 1983, chapter 312, article 9, section 9 and Minnesota Statutes, section 256B.041.

N. Errors and duplicate payments. If the provider becomes aware of an error in the billings or if the provider receives payment from another source for services which were also paid for by the medical assistance program, the provider shall promptly notify the commissioner. The commissioner shall require a repayment or adjust future payments to correct the error or eliminate the double payment.

O. Rate appeal. If a provider disagrees with the rate recommendation of the county board, the provider may appeal to the county board. If the county board disagrees with a rate decision of the commissioner, the county board may appeal to the commissioner under Minnesota Statutes, chapter 14. Until a rate appeal is resolved and if the provider continues services, payments shall continue at a rate which the commissioner determines to comply with 12 MCAR §§ 2.0300-2.0304 [Temporary]. If a higher rate is approved, the commissioner shall make a retroactive payment as determined in the rate appeal decision.

P. Penalties for noncompliance. If the provider does not comply with 12 MCAR §§ 2.0300-2.0304 [Temporary], with other applicable laws and rules, and with the terms of the agreement required by I., the commissioner shall suspend or withhold payments under the procedures in 12 MCAR § 2.064, surveillance and utilization review program. "Other applicable laws and rules" includes laws and rules in 12 MCAR §§ 2.0300-2.0304 [Temporary] and:

1. Minnesota Statutes, section 245.825 and applicable rules governing use of aversive and deprivation procedures;

2. Minnesota Statutes, sections 626.556 to 626.557 and applicable rules governing reporting of maltreatment of minors and vulnerable adults;

3. Minnesota Government Data Practices Act, Minnesota Statutes, sections 13.01 to 13.57;

4. Minnesota Human Rights Act of 1982, chapter 363.

Q. Reporting and recordkeeping requirements.

1. The provider shall have on file, for five years from the date of the bill, the following records to support the bills submitted:

a. authorization from the county of financial responsibility pursuant to C. for each client for whom service is billed and for the amount, type, and duration of service billed;

b. attendance sheets and other records documenting that the clients received the billed services from the provider; and

c. complete records of bills and, if applicable, refunds to and from other payers for services equivalent to those billed to the medical assistance program.

2. The provider shall maintain such records as may be necessary to submit the annual report by March 1 as required by Laws of Minnesota 1983, chapter 312, article 9, section 7, subdivision 9. By October 1 of each year, the commissioner shall determine the reporting requirements for the coming year and so notify each provider. These reporting requirements shall apply to all day training and habilitation offered by the provider, regardless of funding source. These reporting requirements do not affect the county board's authority under other laws and rules to require additional reports from the provider.

R. County advances. County boards may make loans or grants to providers for use as operating capital to serve clients.

S. Program change or reorganization. Rates established under 12 MCAR §§ 2.0300-2.0304 [Temporary] shall not be affected by changes in ownership or reorganization of the provider. However, if a provider changes more than 50 percent of its clientele within one year, the county board may recommend rates for that provider under the rules for new providers, 12 MCAR § 2.0304 [Temporary].

12 MCAR § 2.0303 [Temporary] Determination of 1983 rates for developmental achievement centers.

A. Duties of county board. The following requirements apply to the county board for developmental achievement centers with contracts in effect during July 1, 1983, to December 31, 1983.

1. The county board shall, by December 1, 1983, notify the commissioner of the contractual rates in effect on December 1, 1983, for each program.

2. If the county board's rate structure and billing methods differ from those required for the medical assistance program by Laws of Minnesota 1983, chapter 312, article 9, section 7, subdivision 5, paragraph (b), and 12 MCAR § 2.0302 [Temporary], the county board shall, with the assistance of the provider, complete and submit to the commissioner by December 1, 1983, the translation worksheet in B.

B. Translation worksheet. The commissioner shall provide a translation worksheet which will accurately translate the county board payment rate as of December 1, 1983, into rates which the county board would be paying if the county board used the same rate structure and billing methods described in Laws of Minnesota 1983, chapter 312, section 7, subdivision 5, paragraph (b), and 12 MCAR § 2.0302 [Temporary]. This worksheet must include the provisions in B.1.-5. For purposes of 12 MCAR § 2.0303 [Temporary], "contract" means the contract in effect between the county board and the provider as of December 1, 1983, and "most recent representative period" must be determined by the county board and must be at least six consecutive months.

1. If the contract includes payment for days when service was not received, the worksheet must require records indicating the number of such days billed as a percentage of the total days billed during the most recent representative period and must adjust the rates upward by an equal percentage.

2. If the contract bases rates on average daily attendance which is less than 93 percent of the provider's average daily enrollment for the period from July 1, 1983, to December 31, 1983, the worksheet must adjust the rates downward based on 93 percent average daily attendance.

3. If the contract includes an annual limitation or a refund provision which effectively lowers the stated daily rates, the worksheet must adjust the rates downward accordingly.

4. If the contract does not provide for separation of the daily rate into a full-day service rate, a partial-day service rate, and a transportation rate as defined in 12 MCAR § 2.0302 [Temporary] F., the worksheet must provide a method to separate the daily rate.

5. If the contract provides for payments based on expenditures or if the county board provides the services directly without a contract, the worksheet must develop rates by dividing the county board's actual expenditures for the most recent representative period by 93 percent of the average enrollment for that period.

C. Commissioner's approval. If the information submitted by the county board complies with A. and B., the commissioner shall approve 1983 rates by January 1, 1984. The commissioner shall deny approval, or approve different rates to ensure compliance with A. and B.

D. Use of 1983 rates. For 1984 rates, the rates approved under C. are the rates approved by the commissioner for the preceding year in 12 MCAR § 2.0302 [Temporary] F. These rates are approved solely for future rate determination purposes and do not require adjustment of 1983 county board payments.

12 MCAR § 2.0304 [Temporary] Additional requirements for new providers.

A. Request for proposals. Before a new provider can be considered for medical assistance reimbursement for day training and habilitation, the county board shall establish and implement a system for request of proposals. The county board shall use the needs assessment required under Minnesota Statutes, section 256E.08, subdivision 1 and 12 MCAR § 2.0185 to identify particular types of day training and habilitation needed. The request for proposals shall be based on that needs assessment. The county board shall request proposals in a manner which gives potential providers in the county and employees of the regional state hospital reasonable opportunity to submit an appropriate proposal.

B. County recommendation. At least 60 days before service begins, the county board shall choose and recommend to the commissioner proposals for approval as to need, location, size, and program under Minnesota Statutes, section 252.28 and rates for each proposal. The county board's recommendation must include a description of the specific methods used to choose a provider and to develop rates. The county board's recommendation must be based on the following criteria:

1. the proposed provider rates must comply with 12 MCAR §§ 2.0300-2.0304 [Temporary];

2. the proposed provider must comply with the need determination and licensure requirements in Minnesota Statutes, sections 252.28 and 245.781 to 245.812 and funding eligibility requirements in 12 MCAR § 2.0302 [Temporary];

3. the proposed provider rates must not exceed the limits in Laws of Minnesota 1983, chapter 312, article 9, section 7, subdivisions 6 and 7;

4. the proposed provider rates must incorporate the most efficient and effective use of existing resources to meet the needs identified by the county board within the constraints of client choice of vendor policies in 12 MCAR § 2.047; and

5. the proposed provider services must not duplicate services available through other funding sources.

KEY: PROPOSED RULES SECTION — Underlining indicates additions to existing rule language. ~~Strike outs~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material." ADOPTED RULES SECTION — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language.

C. County and regional limits. To implement Laws of Minnesota 1983, chapter 312, article 9, section 7, subdivisions 6 and 7, the commissioner shall determine the average medical assistance payment rates for day training and habilitation in each county and in each of the regional development commission districts designated in Minnesota Statutes, sections 462.381 to 462.396. To be eligible for the special limit applicable only to new developmental achievement centers under Laws of Minnesota 1983, chapter 312, article 9, section 7, subdivision 6, the developmental achievement center must not subcontract services, except for transportation, to a provider that is not a developmental achievement center.

D. Commissioner's approval. If the recommendation submitted by the county board complies with A.-C., the commissioner shall approve the rates for the new provider within 60 days of receipt of the county board recommendation. The commissioner shall deny approval, or approve different rates if necessary to ensure compliance with A.-C.

Minnesota Racing Commission

In the Matter of the Proposed Adoption of Rules of the Minnesota Racing Commission Governing Class A License Application, Class A License Criteria, Class B License Application, Class B License Criteria, Class A and Class B License Procedures, Revocation and Suspension of Licenses, Assessment of Penalties, Facilities and Security Modifications, Medical Services, Care of Horses, Approval of Contracts

Notice of Hearing and Notice of Intent to Cancel Hearing if Fewer than Seven Persons Request a Hearing in Response to Notice of Intent to Adopt Rules Without a Hearing

A public hearing concerning the above-entitled matter will be held in Room 83, State Office Building, 435 Park Street, St. Paul, Minnesota, on December 15 and 16, 1983, commencing each day at 9:00 a.m. PLEASE NOTE, HOWEVER, THAT THIS HEARING WILL BE CANCELLED IF FEWER THAN SEVEN PERSONS REQUEST A HEARING IN RESPONSE TO THE NOTICE OF INTENT TO ADOPT THESE SAME RULES WITHOUT A HEARING PUBLISHED IN THE STATE REGISTER OF EVEN DATE AND MAILED THE SAME DATE AS THIS NOTICE.

Following the agency's presentation at the hearing, all interested or affected persons will have an opportunity to ask questions and make comments. Statements may be made orally and written material may be submitted. In addition, whether or not an appearance is made at the hearing, written statements or materials may be submitted to George A. Beck, Office of Administrative Hearings, Fourth Floor, Summit Bank Building, 310 Fourth Avenue South, Minneapolis, Minnesota 55415, (612) 341-7601, either before the hearing or within five working days after the public hearing ends. The Hearing Examiner may, at the hearing, order that the record be kept open for a longer period not to exceed 20 calendar days. The rule hearing procedure is governed by Minn. Stat. §§ 14.01-14.56, and by 9 MCAR §§ 2.101-2.112 (Minnesota Code of Agency Rules). If you have any questions about the procedure, call or write the Hearing Examiner.

The proposed rules may be modified as a result of the hearing process. Therefore, if you are affected in any manner by the above-entitled matter, you are urged to participate in the rule hearing process.

Authority for the adoption of these rules is contained in Laws 1983, Ch. 214.

Notice is hereby given that 25 days prior to the hearing, a Statement of Need and Reasonableness will be available for review at the agency and at the Office of Administrative Hearings. The Statement of Need and Reasonableness will include a summary of all the evidence and argument which the agency anticipates presenting at the hearing justifying both the need for and the reasonableness of the proposed rule or rules. Copies of the Statement of Need and Reasonableness may be obtained from the Office of Administrative Hearings at a minimal charge.

Although the Commission does not believe that the proposed rules will have a direct and substantial adverse impact on agricultural land as set forth in Minn. Stat. § 17.81, please note that it is possible that the Commission's granting of Class A licenses could result in the utilization of agricultural land for the sites of Class A racetracks.

A copy of the proposed rules is attached to this Notice. Additional copies of the proposed rules are now available and at least one free copy may be obtained by writing to James Weiler, Project Administrator, Suite 400, United Labor Centre, 312 Central Avenue, Minneapolis, Minnesota 55414, telephone (612) 341-7555. Additional copies will be available at the hearing. If you have any questions on the content of the rules, contact James Weiler.

NOTICE: Any person may request notification of the date on which the Hearing Examiner's Report will be available, after which date the agency may not take any final action on the rules for a period of five working days. Any person may request notification of the date on which the hearing record has been submitted (or resubmitted) to the Attorney General by the agency.

STATE OF MINNESOTA
DEPARTMENT OF PUBLIC WELFARE

IN THE MATTER OF THE PROPOSED ADOPTION OF STATE DEPARTMENT OF PUBLIC WELFARE TEMPORARY RULE 30 GOVERNING MEDICAL ASSISTANCE FUNDING FOR DAY TRAINING AND HABILITATION (12 MCAR § 2.0300 - 2.0304 Temporary)

SUPPLEMENTAL FINDINGS OF FACT AND CONSLUSIONS

The provisions originally contained in 12 MCAR S 2.0302 E.5. (Temporary) and 12 MCAR S 2.0303 A.1. (Temporary) would have created retroactive requirements for rate recommendation provisions and duties of the county board. Since rules cannot contain retroactive requirements without special approval of the Attorney General's Office the following changes are made to remove the retroactive requirements.

12 MCAR S 2.0302 E.5. (Temporary)

5. The county board shall submit rate recommendations to the commissioner by ~~December 1, 1983~~, January 1, 1984 for services to begin in January 1984. For services starting after ~~January~~ March 1984 and for revised rates, the county board shall submit rate recommendations to the commissioner at least 60 days before the recommended rates are to be effective.

12 MCAR S 2.0303 A.1. (Temporary)

1. The county board shall, by ~~December 1, 1983,~~ January 1, 1984, notify the commissioner of the contractual rates in effect on December 1, 1983, for each program.

Now, therefore, it is ordered that, in light of the fact that the need for and reasonableness of these rule amendments have been demonstrated, the temporary rules, as amended, identified in 12 MCAR S 2.0300-2.0304 (Temporary) governing Medical Assistance funding for day training and habilitation, are hereby adopted and shall become effective on January 1, 1984.

Dated: 12-30-83

State of Minnesota
Department of Public Welfare

Leonard W. Levine

Leonard W. Levine, Commissioner

STATE OF MINNESOTA
DEPARTMENT OF PUBLIC WELFARE

IN THE MATTER OF THE PROPOSED ADOPTION OF STATE DEPARTMENT OF PUBLIC WELFARE TEMPORARY RULE 30 GOVERNING MEDICAL ASSISTANCE FUNDING FOR DAY TRAINING AND HABILITATION (12 MCAR § 2.0300 - 2.0304 TEMPORARY)

FINDINGS OF FACT AND CONCLUSIONS

Introduction

The above-entitled matter was published in the State Register on November 14, 1983 as proposed temporary rules pursuant to Minnesota Statutes, sections 14.29-14.36 (1982). After proper notice required by Minnesota Statutes, sections 14.29-14.36 (1982) was served upon all persons, associations, and other interested groups registered with the State Department of Public Welfare for that purpose, and after affording interested and affected persons an opportunity to submit written data and views within 20 days of the publication date, reviewing and considering the data and views, and determining that the above captioned rules are needed and reasonable, I find the following:

Before the official publication of the rule, the Department published a notice of intent to solicit outside opinion (State Register, August 1, 1983). Subsequently, the Department relied heavily on an advisory task force composed of representatives of the various groups to be affected by the rules. The task force and the Department were able to develop a concensus regarding most aspects of the rules.

Summary of Letters and Department Response

Twenty-nine letters of comment have been received regarding the published rules. In addition, five letters were received earlier in response to the solicitation for outside opinion. These thirty-four letters are hereafter referred to as "the letters". Listed below is the Department's response to each of the comments and suggestions made. All amendments being adopted by the Department are based on the letters received. As is required by the procedures in Minnesota Statutes, sections 14.29-14.36 (1982) for the promulgation of temporary rules, none of the amendments adopted below constitute a substantial change from the published rules.

Nine of the letters received expressed "general support" for the rules as proposed. One letter expressed general opposition, on the grounds that the rules were too restrictive and would cause undue hardship. The latter did not provide any additional details.

One letter questioned the fiscal note which accompanied the published rules. The letter indicated that the dollar figures did not match the overall percentage of clients who are residents of intermediate care facilities for the mentally retarded (ICF/MR) as opposed to nonresidents. The reason for the discrepancy is that the fiscal note was not based on a statewide average, but rather on a detailed study of each program affected. The programs with particularly high costs had client characteristics which were different from the statewide averages. The Department stands by the published fiscal note.

One letter was specifically in support of the "efficient and economical" standard in the purpose statement (12 MCAR § 2.0300A Temporary).

One letter suggested changing "licensed quality day training" in 12 MCAR § 2.0300A (Temporary) to "quality licensed day training". The suggestion is adopted because it would result in clearer wording without changing the effect of the rules. Therefore, 12 MCAR § 2.0300A (Temporary) is amended to read:

> A. **Purpose. Rules 12 MCAR §§2.0300-2.0304 (Temporary) establish procedures to ensure adequate reimbursement to approved providers for the efficient and economical provision of quality licensed ~~quality~~ day training and habilitation for eligible persons who reside in intermediate care facilities for mentally retarded persons.**

One letter suggested including ICF/MR facilities in the "applicability" section (12 MCAR § 2.0300B Temporary). Although these rules may have some impact on ICF/MR's, they do not contain any specific directives to ICF/MR's. Therefore, it would not be appropriate to state that these rules apply to ICF/MR's.

One letter disagreed with the statement in 12 MCAR § 2.0300B (Temporary) that these rules "do not apply to state hospitals". The Department's response is that it would be contrary to legislative intent to make these rules applicable to state hospitals. The Legislature sets the budgets of the state hospitals directly. When these rules were authorized by the Legislature, legislative discussion and related fiscal notes referred to community facilities, not state hospitals. The legislative intent therefore clearly excludes state hospitals from the scope of these rules.

One letter suggested that the definition of "new provider" (12 MCAR § 2.0301K Temporary) should differentiate between new programs, new satellites and new providers. The letter did not explain why this was necessary. The Department does not find sufficient need for this change.

One letter criticized the definition of "provider" (12 MCAR § 2.0301L Temporary) on the grounds that the definition would require each licensed site to separately meet all laws and rules applicable to providers. The Department contends that the definition is clear in that the "one license - one provider" rule only applies for rate determination purposes; further clarification is not necessary.

Six letters requested that different rates be allowed for different service levels provided by a single provider. The Department agrees that, in certain aspects, this could be a more accountable system because, theoretically, the provider would bill only for the specific service provided. The differentiation which the proposed temporary rules already provide regarding a full-day service, a partial-day service and transportation is a step in that direction. However, the Department finds that further differentiation of service levels is not feasible to define and enforce at this time; therefore, the Department makes no amendments to the temporary rule for this purpose. The Department is considering the inclusion of special service

standards for special client groups in the new licensing rules; these special service standards could be a mechanism to define different service levels in the permanent successor to Temporary Rule 30. The Department is also exploring the possibility of granting a separate license under the current licensing rules in situations where clearly separate day training and habilitation programs are provided within one building. The latter action would allow those separate programs to be considered as separate providers for rate determination and thus address some of the concerns raised without the need for any amendments to proposed Temporary Rule 30.

Two letters requested clarification of the allowable wage range referred to in the definition of "work activity" (12 MCAR § 2.0301M Temporary). The Department has provided the authors of those letters with copies of the federal regulations referred to in that definition. At this time, the Department does not find a need for additional clarification; however, this will be considered as the permanent successor to Temporary Rule 30 is being drafted.

One letter requested clarification regarding the "training" in 12 MCAR § 2.0302A.1. (Temporary) The Department finds that this word was unintentionally misplaced and adopts the following amendment:

c. Supervision, training and assistance in grooming, ~~training,~~ eating, toileting, communicating, socializing, and other activities of daily living;

One letter suggested that the section just quoted should refer to "self-care" instead of "grooming, eating, toileting" and that terms such as "functional living skills and community integration" be included. The Department does not find sufficient need to make this amendment in the temporary rules but will consider these changes for the permanent rules.

Three letters requested that promulgation of these temporary rules be delayed until the promulgation of new licensure rules for day training and habilitation. The Department is proceeding with development of new licensure rules as quickly as possible. However, it is not feasible to promulgate the new licensing rules before the legislatively mandated date for these temporary rules, i.e., January 1, 1984. A license granted under the current licensing rules will meet the requirements of these temporary rules.

One letter requested clarification of the requirement in 12 MCAR § 2.0302A.7. that services to be funded under the temporary rules "not replace sheltered work or work activity services funded by the Minnesota Division of Vocational Rehabilitation." At this time, the Department does not find a need for further clarification of this section, but will consider this for the permanent rule.

One letter suggested deleting 12 MCAR § 2.0302A.8-9 (Temporary), on the grounds that time of day is not relevant to provision of day training and habilitation services. The Department finds that this suggestion conflicts with 12 MCAR § 2.185 and stands by the proposed language. 12 MCAR § 2.185 B.1. requires "client patterns and conditions of everyday life that are as close as possible to the norms and patterns of the mainstream of society."

Most persons leave their homes for work or training during the daytime; therefore, as the proposed temporary rules indicate, mentally retarded persons should also receive their training during the day unless the client's individual service plan specifically requires a different time.

Seven letters indicated specific support for the minimum number of days per year required in 12 MCAR § 2.0302B.1.

One letter suggested that the temporary rules should also include a maximum number of days or a flat number which would be the same for all providers. The Department finds that it would be contrary to statute to set a maximum or flat number of days by rule, since Laws of 1983, chapter 312, article 9, section 7 is already very specific as to the maximum number of reimburseable days.

One letter specifically supported 12 MCAR § 2.0302B.3., which prohibits the day and residential programs from being controlled by the same legal entity. The same letter suggested that this section should be expanded to explain what should happen if individuals who owned a day program and a residential program get married. Since the authorizing legislation exempts all current day programs from the prohibition against joint control, the Department finds that the situation described in the letter is extremely unlikely, especially during the effective period of these temporary rules. The Department does not find sufficient need to clarify this section further, but will consider this for the permanent rules.

One letter requested clarification regarding the service authorization required by 12 MCAR § 2.0302C.1., specifically, a deadline date and a frequency. The Department finds that the rules state that the authorization must occur in conjunction with the annual client review. The deadline and the frequency, therefore, relate to whatever is required by other laws and rules for the annual client review. The Department does not find a need to clarify this in these temporary rules.

One letter suggested that the reference to "F" in 12 MCAR § 2.0302E.1 be more specific. The reference is made according to the rules of the Revisor of Statutes, i.e., a reference within a rule to another section of the same rule should not repeat the rule number. The Department does not find a need for additional clarification.

One letter requested a better term than "translation worksheet" in 12 MCAR § 2.0302E.4 (Temporary). Through informal contacts, the Department has found that most agencies understand this term well and that there is not sufficient need for a different term.

One letter suggested that the translation worksheet referred to in 12 MCAR § 2.0302E.4. (Temporary) be promulgated by rule. The Department finds that the basic principles of that worksheet are being promulgated by rule in 12 MCAR § 2.0303 (Temporary) and that the worksheet does not include any additional statement of policy or effect which would require promulgation in a rule.

Three letters commented that the proposed rules made no allowance for cost changes. The Department finds that 12 MCAR § 2.0302E.6 (Temporary) does allow the county board to recommend rate revisions at any time. The real concern behind these letters may be cost changes which would exceed the projected inflation rate. The authorizing legislation for these temporary rules (Laws of 1983, Chapter 312, Article 9, Section 7, Subdivision 5) limits rate increases to the projected inflation rate; therefore, it is illegal to allow rate revisions in excess of the projected inflation rates.

Two letters commented that 12 MCAR § 2.0302F.1. (Temporary) should not base future rate increases only on the preceding year's rate. The authorizing legislation clearly requires 1984 rates to be based on 1983. For 1985 and future years, the legislation is not clear as to whether the rate increase could be based on a cumulative increase since 1984, or strictly one year's increase over the preceding year. However, Medical Assistance rates for other providers are based on the rates for those providers for the preceding year. Therefore, amending the rules to allow 1984 rates to be based on anything other than 1983 rates would be contrary to law; amending the rules to allow 1985 rates to be based on a cumulative increase over 1983 might be legal, but not consistent with other Medical Assistance rates. The Department does not find sufficient need to include this amendment in the temporary rules, but will consider this for the permanent rules.

One letter suggested that these temporary rules should specify a percentage of excess income that a provider can carry over from one year to the next. The task force which worked on these temporary rules considered the inclusion of such a percentage as part of 12 MCAR § 2.0302F.3., relating to rate increases lower than the maximum inflation rate. That task force recommended that such a percentage not be specified in these rules. The Department concludes that such a percentage can best be monitored and determined by the local county board and should not be fixed at the state level.

One letter requested clarification of the word "facility" in the second line of 12 MCAR § 2.0302.I. The Department agrees that this word could be misinterpreted as refering to the day provider, and therefore amends this section to insert the word **residential** before "facility." p.7

One letter suggested that the agreement form required by 12 MCAR § 2.0302I be promulgated as a rule. The agreement form repeats and summarizes requirements in these temporary rules and in other applicable state laws, rules and federal regulations. The agreement form does not add new statements of general policy or effect and therefore does not require the rule promulgation process.

One letter suggested that the effective period for provisional approval be changed from 30 days to 60 days. The Department agrees that this would be more consistent with the approval time periods elsewhere in these rules and amends 12 MCAR § 2.0302J.2 to read **60 days** instead of **30 days**. p.8

One letter requested that the 60 day period for rate approval and agreement approval in 12 MCAR § 2.0302H and 12 MCAR § 2.0302J be shortened to 30 days. Based on current staffing plans, the Department is not able to guarantee

approvals within less than 60 days. However, the Department does intend to process approvals as quickly as possible and will consider setting a shorter time period in the permanent rules.

One letter suggested that, in 12 MCAR § 2.0302L.1.a., providers should be able to bill for enrollment, not only for actual services provided. The Department finds that the section as it is now proposed is clearer and allows for greater accountability than the suggested change.

Six letters requested that providers be allowed to appeal rate decisions to the Commissioner. The Department agrees that such a change is needed if the provider has appealed to the county board and the provider disagrees with the county board's appeal decision. However, the Department is concerned that the addition of such a large number of potential sources for formal appeal action could be unworkable. Therefore, the Department finds it necessary to establish the appeal process under this rule as an informal process, and not as a chapter 14 contested case procedure. As indicated in a legal brief submitted by the DAC Association, a formal appeal will probably still be possible under the authority of other laws and rules. The informal appeal process provided for both counties and providers below should be a more practical alternative. The Department amends 12 MCAR § 2.0302.0. (Temporary) as follows:

O. Rate Appeal. If a provider disagrees with the rate recommendation of the county board, the provider may appeal to the county board. <u>If a provider has appealed to the county board and the provider disagrees with the county board's appeal decision, the provider may appeal to the commissioner.</u> If the county board disagrees with a rate decision of the commissioner, the county board may appeal to the commissioner ~~under Minnesota Statutes, Chapter 14~~. p.9

One letter requested that an appeal hearing be provided before a rate is approved. Since even an informal appeal hearing could require a considerable length of time and cost, the Department finds that this suggestion could be harmful to clients and providers by unnecessarily delaying all payments for services. 12 MCAR § 2.0302E.3. does require the county board to include comments from the provider with its recommendation to the Commissioner. The Department does not find a need for an appeal hearing before the Commissioner approves the rate.

One letter questioned the legality of 12 MCAR § 2.0302R. The Department has reviewed the statutes and finds that the following amendment is necessary to ensure compatibility with Minnesota Statutes, sections 252.21-252.26:

R. County advances. County boards may make ~~loans or~~ grants to ~~providers~~ <u>developmental achievement centers</u> for use as operating capital to serve clients. p.11

Ten letters suggested that a provider be allowed to be considered for higher rates as a new provider if more than 25 percent of the clients changed, rather than the 50 percent proposed in 12 MCAR § 2.0302S. The Department agrees with this concern and amends the 50 percent in this section to read

p.11

33 1/3 percent. This percentage is based on a requirement being considered for the new licensing rules which would require additional staffing if more than 1/3 of the clients are severely handicapped.

One letter suggested that allowance be made for an alternative rate structure which would result in lower overall costs and could be viewed as a pilot project for the permanent rules. The Department agrees with this suggestion and amends the rule by adding a section, 12 MCAR § 2.0302T, as follows:

T. Alternative rate structures. The county board may recommend to the commissioner an alternative to the rates required in E.2. and F.4.-6. The commissioner shall approve such an alternative if it:

1. complies with all requirements of 12 MCAR § 2.0300-2.0304 (Temporary) other than 12 MCAR § 2.0302E.2 and F.4.-6 (Temporary);

2. complies with Laws of Minnesota 1983, Chapter 312;

3. results in total annual payments which are equal to or less than the payments which would be made if the rates complied with E. and F.

p.11

One letter requested assurance that, although the Department would pay for only actual days of service, the provider's rate should reflect average daily attendance. Based on conversations with the letter writer, the concern appears to be the need for continued compensation for those providers which now receive payment for more than the actual days of service. The Department finds that 12 MCAR § 2.0303B.1. already includes this assurance.

One letter criticized the 93 percent rate in 12 MCAR § 2.0303B.2 (Temporary) as being too restrictive. This rate is specified in Laws of 1983, chapter 312, article 9, section 7, subdivision 5, and therefore cannot be changed by rule.

One letter requested clarification as to whether "provider" in 12 MCAR § 2.0304 (Temporary) means new ICF/MR facilities. The Department finds that the definition of provider in 12 MCAR § 2.0301L (Temporary) clearly refers to the day program, not the ICF/MR facilities.

One letter questioned the statutory authority for 12 MCAR § 2.0304 (Temporary). The statutory authority is in Laws of 1983, chapter 312, article 9, section 7, subdivisions 6, 7, and 10.

Thirteen letters recommended the deletion of the requirement that new developmental achievement centers must not subcontract services to a provider that is not a developmental achievement center. The Department agrees that this requirement would unnecessarily restrict new developmental achievement centers and therefore amends 12 MCAR § 2.0304C by deleting

To be eligible for the special limit applicable only to new developmental achievement centers under Laws of Minnesota 1983, Chapter 312, Article 9, Section 7, Subdivision 6, the developmental achievement center must not subcontract services, except for transportation, to a provider that is not a developmental achievement center.

Other than the amendments presented above, the rules as adopted are identical to the rules as they were proposed in the November 14, 1983 State Register. The rules shall be submitted to the Attorney General and to the Revisor of Statutes for review as required by Minnesota Statutes, sections 14.29-14.36 (1982).

Now, therefore, it is ordered that, in light of the fact that the need for and reasonableness of these rule amendments have been demonstrated, the temporary rules, as amended, identified as 12 MCAR § 2.0300-2.0304 (Temporary) (DPW Temporary Rule 30), governing Medical Assistance funding for day training and habilitation, are hereby adopted and shall become effective on January 3, 1984.

Dated: Dec 22, 1983

State of Minnesota
Department of Public Welfare

Leonard W. Levine, Commissioner

DT-01

In the Matter of the Proposed Adoption of State Department of Public Welfare Temporary Rule 30 Governing Medical Assistance Funding for Day Training and Habilitation (12 MCAR §§ 2.0300 - 2.0304 Temporary)

STATEMENT OF COMPLIANCE WITH RULEMAKING PROCEDURES

I, Special Assistant Attorney General, Deborah Huskins, do hereby declare that I have examined the rules and all related documents and that, based on my examination and my personal familiarity with the applicable procedures, the Administrative Procedures Act, the rules of the Office of Administrative Hearings, and the rules of the Attorney General have been followed. Any exceptions are noted below.

Deborah K. Huskins

Special Assistant
Attorney General

Dated: December 23, 1983

CM-06