

Minnesota Attorney General: Administrative Rules Proceedings

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Version 3
August 20, 2018

Our File No. 1080

RULE REVIEW CHECKLIST

DATE RULE RECEIVED 10-1-84
DATE FOR REVIEW _____
DATE DUE 10-15-84

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

Approved 10/5/84 (CDS) Disapproved _____ Returned to Agency _____

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

Date filed w/Secretary of State 10-11-84 Revisor approved _____ disapproved _____

✓ Rule as Adopted

_____ Rule as Proposed

✓ Order Adopting 10.1.84 Date

✓ Notice of Intent to Solicit Outside Opinion SR. 1.30.84

✓ 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
8.8.84 At least ~~30~~ 25 days prior to ~~hearing~~/adoption

✓ Mailing list Certificate

✓ Publication in State Register
8.13.84 At least ~~30/20~~ 25 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

✓ Affidavit of Mailing Notice of Submission to Attorney General

✓ Notice of Submission to the Attorney General

SF-00006-02

STATE OF MINNESOTA

DEPARTMENT ATTORNEY GENERAL

Office Memorandum

TO : Leonard Levine
Commissioner, Department of Human Services
ATTN: Deborah Huskins
Special Assistant Attorney General

DATE: October 16, 1984

FROM : Larry D. Starns LDS
Special Assistant Attorney General

PHONE: 297-3493

SUBJECT: In the Matter of the Proposed Adoption of Emergency Rules Governing Medical Assistance Funding and Administration of Home and Community-Based Services for Persons Who Are Mentally Retarded, Minnesota Rules, Parts 9525.1800 - 9525.1930 (Emergency).

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.

LDS:slz

Encs.

cc: Ms. Kathy Burek
Mr. Duane Harves

Department of Human Services
Mental Health Bureau

Adopted Emergency Rules Relating to Medical Assistance Funding and Administration of Home and Community-Based Services for Persons Who Are Mentally Retarded

Emergency Rules as Adopted

9525.1800 [Emergency] DEFINITIONS.

Subpart 1. **Scope.** The terms used in parts 9525.1800 to 9525.1930 [Emergency] have the meanings given to them in this part.

Subp. 2. **Billing rate.** "Billing rate" means the rate charged for providing services. The rate may be based on a day, hour, or fraction of an hour, of service.

Subp. 3. **Case manager.** "Case manager" means the person designated by the county to provide case management services as defined in part 9525.1860 [Emergency].

Subp. 4. **Client.** "Client" means a person who is receiving home and community-based services.

Subp. 5. **Commissioner.** "Commissioner" means the commissioner of human services or the commissioner's designated representative.

Subp. 6. **County.** "County" means the county board of commissioners for the county of financial responsibility or the county board of commissioners' designated representative.

Subp. 7. **County of financial responsibility.** "County of financial responsibility" has the meaning given it in Minnesota Statutes, section 256B.02, subdivision 3.

Subp. 8. **Daily intervention.** "Daily intervention" means supervision, assistance, or training provided to a client in the client's residence by a provider or family member to help the client manage daily activities. To qualify as daily intervention the supervision, assistance, or training must be provided each day for more than 90 consecutive days.

Subp. 9. **Department.** "Department" means the Minnesota

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Department of Human Services.

Subp. 10. **Diversion.** "Diversion" means the act of ~~placing~~ providing a client with home and community-based services who would be placed in an intermediate care facility for the mentally retarded within one year if the home and community-based services were not provided.

Subp. 11. **Family.** "Family" means the client's biological parents, adoptive parents or stepparents, siblings, children, and or spouse.

Subp. 12. ~~**Federal waiver application.** "Federal waiver application" means the application, and all amendments to the application including any amendments made after the effective date of parts 9525.1800 to 9525.1930 [Emergency], submitted to the federal Department of Health and Human Services under United States Code, title 42, sections 1396 to 1396p, requesting a waiver of Title XIX of the Social Security Act requirements to allow the state to pay for home and community based services for persons who are mentally retarded.~~

~~Subp. 13.~~ **Fiscal year.** "Fiscal year" means the state's fiscal year from July 1 through the following June 30.

Subp. ~~14.~~ 13. **Geographic region.** "Geographic region" means the economic development regions established by executive order of the governor in accordance with Minnesota Statutes, section 462.385, in effect on July 1, 1984.

Subp. ~~15.~~ 14. **Home and community-based services.** "Home and community-based services" means the following services for persons who are mentally retarded that are authorized under United States Code, title 42, ~~sections~~ section 1396 ~~to 1396p~~ et. seq., and authorized in the waiver granted by the ~~federal~~ United States Department of Health and Human Services: case management, respite care, homemaker, in-home family support services, supported living arrangements for children, supported living arrangements for adults, day habilitation, and minor physical adaptations to the home, as defined in part 9525.1860 [Emergency].

Subp. ~~16.~~ 15. **Host county.** "Host county" means the county

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in which the home and community-based service is provided.

Subp. ~~17.~~ 16. **Individual program plan.** "Individual program plan" has the meaning given it in parts 9525.0010 to 9525.0100 or their successor parts.

Subp. ~~18.~~ 17. **Individual service plan.** "Individual service plan" has the meaning given it in parts 9525.0010 to 9525.0100 or their successor parts.

Subp. ~~19.~~ 18. **Intermediate care facility for the mentally retarded or (ICF/MR).** "Intermediate care facility for the mentally retarded" or "ICF/MR" means a program licensed to serve persons who are mentally retarded under Minnesota Statutes, section 252.28, and a physical plant licensed as a supervised living facility under Minnesota Statutes, chapter 144, which together are certified by the Minnesota Department of Health as an intermediate care facility for the mentally retarded. Unless otherwise stated, the term ICF/MR includes state-operated and community-based facilities.

Subp. ~~20.~~ 19. **Placement.** "Placement" means the act of ~~placing~~ providing a client who is discharged from an ICF/MR with home and community-based services.

Subp. ~~21.~~ 20. **Primary caregiver.** "Primary caregiver" means ~~the~~ a person other than a member of the client's family who is responsible for the ~~daily-care~~ assistance, supervision, or training of the client in the client's residence.

Subp. ~~22.~~ 21. **Provider.** "Provider" means a person or legal entity providing home and community-based services according to parts 9525.1800 to 9525.1930 [Emergency].

Subp. ~~23.~~ 22. **Room and board costs.** "Room and board costs" means costs associated with providing food, shelter, and personal needs items for clients.

Subp. ~~24.~~ 23. **Screening team.** "Screening team" ~~has the definition given it in~~ means the team established under Minnesota Statutes, section 256B.092 to evaluate a person's need for home and community-based services.

Subp. ~~25.~~ 24. **Service site.** "Service site" means the location at which home and community-based services are provided.

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Subp. ~~26.~~ 25. **Short term.** "Short term" means a ~~period~~ cumulative total of less than 90 24-hour days in a fiscal year.

Subp. 26. **Waiver.** "Waiver" means the application requesting a waiver of Title XIX of the Social Security Act requirements to allow the state to pay for home and community-based services for persons who are mentally retarded, and all amendments to the application including any amendments made after the effective date of parts 9525.1800 to 9525.1930 [Emergency], as approved by the United States Department of Health and Human Services under United States Code, title 42, section 1396 et. seq.

9525.1810 [Emergency] PURPOSE AND APPLICABILITY.

Subpart 1. **Purpose.** The purpose of parts 9525.1800 to 9525.1930 [Emergency] is to establish procedures ~~to fund~~ for providing and administering home and community-based services through the medical assistance program for eligible persons who are mentally retarded.

Subp. 2. **Applicability.** Parts 9525.1800 to 9525.1930 [Emergency] apply to ~~a county or~~ all counties administering medical assistance funds for home and community-based services for persons who are mentally retarded ~~and~~, to all providers that contract with a county to provide home and community-based services for persons who are mentally retarded, and to all subcontractors who contract with a provider to provide home and community-based services for persons who are mentally retarded.

Subp. 3. **Effect.** The entire application of parts 9525.1800 to 9525.1930 [Emergency] shall continue in effect only as long as the ~~federal~~ waiver from the ~~federal~~ United States Department of Health and Human Services is in effect in ~~the state of~~ Minnesota.

9525.1820 [Emergency] ELIGIBILITY.

Subpart 1. **Eligibility criteria.** A person is eligible to receive home and community-based services if the person meets all the criteria in items A to D and if home and community-based services may be provided in accordance with part 9525.1830

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[Emergency]:

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

B. the person is determined to be mentally retarded in accordance with the definitions and procedures in parts 9525.0010 to 9525.0100 and their successor parts;

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

D. the screening team has determined that the person needs daily intervention and the person's individual service plan documents the need for daily intervention and specifies the services needed daily.

Subp. 2. **Medical assistance eligibility for children residing with their parents.** The county shall determine eligibility for medical assistance for a person under age 21 who resides with a parent or parents without considering parental income and resources if:

A. the person meets the criteria in subpart 1, items B to D;

B. the person will be provided home and community-based services in accordance with part 9525.1830 [Emergency]; ~~and~~

C. the person would not be eligible for medical assistance if parental income and resources were considered; and

D. the commissioner has approved in writing a county request to suspend for the person the deeming requirements in Code of Federal Regulations, title 42, section 436.821 in accordance with the ~~approved federal~~ waiver ~~application~~.

9525.1830 [Emergency] PROVISION OF HOME AND COMMUNITY-BASED SERVICES.

Subpart 1. **Conditions.** The county shall provide or arrange to provide home and community-based services to a person if the person is eligible for home and community-based services under part 9525.1820 [Emergency] and all the conditions in items

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A to F have been met:

A. ~~the home and community based services money allocated to~~ the county ~~by the commissioner is sufficient to pay the costs of providing~~ has determined that it can provide home and community-based services to the person within its allocation of home and community-based services money as determined under parts 9525.1890 [Emergency] and 9525.1910 [Emergency];

B. the screening team has ~~determined that~~ recommended home and community-based services ~~are an appropriate alternative to~~ instead of ICF/MR services for the person under parts 9525.0010 to 9525.0100 or their successor parts;

C. the commissioner has authorized payment for home and community-based services for the person;

D. the person or the person's legal representative has agreed to the home and community-based services determined by the screening team to be appropriate for the person;

E. the county has authorized provision of home and community-based services to the person based on the goals and objectives specified in the person's individual service plan; and

F. the county has a signed agreement with the state that complies with part 9525.1900 [Emergency].

Subp. 2. **Written procedures and criteria.** The county shall establish written procedures and criteria for making determinations under subpart 1, item A. The procedures and criteria must be consistent with requirements in parts 9525.1800 to 9525.1930 [Emergency], the waiver, federal regulations governing home and community-based services, and any requirements established by the commissioner for making determinations under subpart 1, item A.

9525.1840 [Emergency] PARENTAL CONTRIBUTION FEE.

Subpart 1. **Out-of-home placements.** Parents of clients under age 18 shall be liable for a parental contribution fee determined according to Minnesota Statutes, section 256B.14, if the client resides outside the parent's home.

Subp. 2. **In-home placements services.** Parents of clients

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under age 18 may be liable for a parental contribution fee determined according to Minnesota Statutes, section 256B.14, if the client is residing with a parent and the client's medical assistance eligibility for home and community-based services was determined without considering parental income or resources under part 9525.1820 [Emergency], subpart 2.

9525.1850 [Emergency] PROVIDER REIMBURSEMENT.

A provider may receive medical assistance reimbursement for home and community-based services only if the provider meets the criteria in items A to ~~B~~ E:

A. the provider has a current license or licenses for the specific home and community-based services as required under Minnesota Statutes or Minnesota Rules or, if no license is required, has received approval from the county to provide home and community-based services ~~in accordance with Minnesota Statutes, sections 252.28 and 245.781 to 245.812~~;

B. the provider has a legally binding contract with the host county which complies with part 9525.1870 [Emergency];

C. the provider has been authorized to provide home and community-based services for the client by the county of financial responsibility;

D. the provider agrees to comply with the United States Code, title 42, sections 1396 et. seq. and regulations implementing those sections and with parts 9500.0750 to 9500.1080, 9505.1750 to 9505.2150, and 9525.1800 to 9525.1930 [Emergency]; and

~~B.~~ E. the provider is not the client's guardian or a member of the client's family. This item does not preclude the county from providing services if the client is a ward of the commissioner, ~~the county is not precluded from providing services~~.

9525.1860 [Emergency] REIMBURSABLE SERVICES.

Subpart 1. **General limits.** The costs of providing the home and community-based services defined in subpart 2, limited in accordance with subpart 3, are reimbursable under the medical

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assistance program for as long as the ~~federal~~ waiver from the ~~federal~~ United States Department of Health and Human Services is in effect in ~~the state of~~ Minnesota.

Subp. 2. **Definitions.** For the purposes of this part the following terms have the meanings given them.

A. "Case management" means services provided to and with the involvement of the client including: assessing client needs and strengths; client screening as described in Minnesota Statutes, section 256B.092; developing individual service plans; analyzing and coordinating services; monitoring and evaluating client progress and the outcome of services provided to the client; and assuring the protection of clients' rights under Minnesota Statutes, ~~sections 13.46~~ chapter 13 and sections 626.556 and 626.557; and parts 9555.8000 to 9555.8500.

B. "Day habilitation" means habilitation services provided away from the client's place of residence and focused on functioning in the community, using leisure and recreation time and developing task-oriented skills which will prepare the client to participate in a work environment. Day habilitation services for children are focused on stimulating the physical, intellectual, and emotional development of the child.

C. "Habilitation services" means health and social services directed toward increasing and maintaining the physical, intellectual, emotional, and social functioning of persons who are mentally retarded. Habilitation services include therapeutic activities, assistance, training, supervision, and monitoring in the areas of self-care, sensory and motor development, interpersonal skills, communication, socialization, reduction or elimination of maladaptive behavior, community living and mobility, health care, leisure and recreation, money management, and household chores. Day habilitation services and residential-based habilitation services are types of habilitation services.

D. "Homemaker services" means general household activities and ongoing monitoring of the client's well-being provided by a homemaker who meets the standards in part

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9565.1200.

E. "In-home family support services" means residential-based habilitation services designed to enable the family to care for and maintain the client in the home and may include training and counseling for the client and the client's family. In-home family support services are only reimbursable for clients under 21 years of age ~~and may include training of the client and the client's family and counseling for the client and the client's family~~.

F. "Leave days" means days when a client is temporarily absent from services.

G. "Minor physical adaptations to the home" means one or more of the structural changes to the client's residence set forth in subpart 3, item D. Minor physical adaptations to the home must be designed to enable the client to avoid institutionalization by increasing the client's mobility ~~and~~ or protecting the client against injury. Minor physical adaptations to the home are only reimbursable for clients with mobility problems, sensory deficits, or behavior problems. Minor physical adaptations are limited to those named in subpart 3, item ~~D~~ E.

~~G.~~ H. "Residential-based habilitation services" means habilitation services provided in the client's residence. In-home family support services, supported living arrangements for children, and supported living arrangements for adults are residential-based habilitation services.

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

~~I.~~ J. "Supported living arrangements for adults" means residential-based habilitation services provided on a daily basis to adults who require 24 hours or less of supervision, assistance, or training, in a residence for up to six clients.

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~~J.~~ K. "Supported living arrangements for children" means residential-based habilitation services provided on a daily basis to clients under ~~21~~ 18 years of age in a residence for up to three clients.

Subp. 3. **Limitations.** The provision of home and community-based services is limited as follows in items A to I.

A. ~~Staff-time-billed~~ Billings submitted by the provider shall be limited to time actually and reasonably spent:

(1) in direct contact with the client to assist the client in attaining the goals and objectives specified in the client's individual service plan;

(2) in verbal or written contact with professionals or others regarding the client's progress in attaining the goals and objectives specified in the client's individual service plan; or

(3) in planning activities including attending the client's interdisciplinary team meetings, developing goals and objectives for the client's individual program plan, assessing and reviewing client's goals and objectives, documenting the client's progress toward attaining the goals and objectives in the client's individual service plan and assessing the adequacy of the services related to the goals and objectives in the client's individual service plan.

B. Day habilitation services shall:

(1) only be provided to clients who receive a residential-based habilitation service;

(2) not include sheltered work or work activity services funded or certified by the Minnesota Division of Vocational Rehabilitation; and

(3) be provided at a different site than the client's place of residence unless medically contraindicated in accordance with Minnesota Statutes, section 256B.501, subdivision 1, paragraph (d).

C. Homemaker services may be provided only if:

(1) the person regularly responsible for these activities is temporarily absent or is ~~temporarily~~ unable to

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manage the home and care for the client; or

(2) there is no person, other than the client, regularly responsible for these activities and the client is unable to manage the home and his or her own care without ongoing monitoring or assistance. Homemaker services include meal preparation, cleaning, simple household repairs, laundry, shopping, and other routine household tasks.

D. Leave days are reimbursable for supported living arrangements for children or supported living arrangements for adults if the client intends to return to the service. Billings may be made for leave days only when the client is:

(1) hospitalized;

(2) on a therapeutic overnight trip, camping trip, or vacation;

(3) home for a visit; or

(4) in respite care.

Leave days which are not included in the individual service plan may not be billed for without county authorization. The county and the provider must document all leave days for which billings are made and specify the reasons the county authorized the leave days.

E. Reimbursement for minor physical adaptations to the home shall be limited to an average cost of $3,000 per client for all clients in the county. The average cost limitation applies to the entire period of time during which the clients receive home and community-based services. Minor physical adaptations to the home must be limited to the purchase and installation of one or more of the following ~~in subitems (1) to (12)~~:

(1) wheelchair ramps;

(2) handrails and grab bars;

(3) elevated ~~bathtub~~ bathtubs and toilets;

(4) widened doorways;

(5) shatterproof windows;

(6) blinking lights and tactile alarms as alternate warning systems;

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(7) door handle replacements;

(8) lowered kitchen work surfaces;

(9) modified cabinets and sinks ~~which~~ that provide wheelchair space;

(10) handles and hoses for showerheads;

(11) door hinge replacements; or

(12) shower and bathtub seats.

E~~.~~ F. Home and community-based services must not be provided to a client while the client is a resident of or on leave from an ICF/MR ~~or on leave from an ICF/MR~~, skilled nursing facility, intermediate care facility, or a hospital.

F~~.~~ G. Respite care must be provided only for the client's family~~,~~ or foster family, or if the client is in a supported living arrangement, ~~respite care may be provided~~ for the client's primary caregiver.

G~~.~~ H. Room and board costs are not allowable costs for ~~residential based habilitation services~~ home and community-based services except respite care provided out of the client's residence.

H~~.~~ I. For the purposes of this part, the services in subitems (1) to (9) have the meanings given them in parts 9500.0750 to 9500.1080. If any of the services named in subitems (1) to (9) are provided to a client, the cost of the services must be included in the rate billed by a the provider for reimbursement under parts 9525.1800 to 9525.1930 [Emergency]. These services are not reimbursable under any other rule or rules for clients in home and community-based services:

(1) psychological services;

(2) physical therapy;

(3) occupational therapy;

(4) services for individuals with speech, hearing, and language disorders;

(5) mental health center services;

(6) rehabilitative and therapeutic services;

(7) home health care services;

(8) private duty nursing services; and

(9) personal care attendant services.

~~I.~~ J. Control of the delivery of home and community-based services shall be limited as stated in Minnesota Statutes, section ~~256B.501~~ 256B.491.

9525.1870 [Emergency] PROVIDER CONTRACTS AND SUBCONTRACTS.

Subpart 1. **Contracts.** In order for a provider to receive medical assistance reimbursement for home and community-based services, the provider must have a contract with the host county. The contract must contain at least the information in items A to ~~M~~ L and subpart 2:

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

B. types of service sites where services are to be delivered;

C. qualifications of persons to provide services, including proof of licensing or certification if licensing or certification is required by state laws or federal regulations;

D. description of services to be delivered including type, amount, frequency, and duration;

E. ~~description of the purposes of the services to be delivered;~~

~~F.~~ description of how the services will benefit the clients in attaining the goals in the clients' individual service plans;

~~G.~~ F. description of how the benefits of the services will be measured;

~~H.~~ G. agreement to develop clients' individual program plans in accordance with the goals and objectives specified in the clients' individual service plans;

~~I.~~ H. billing rate and total budget for home and community-based services;

~~J.~~ I. description of county contract monitoring procedures agreed to by the provider, including frequency of monitoring;

~~K.~~ J. the starting and ending dates of the contract;

~~L.~~ K. description of program and financial records to

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be maintained by the provider in accordance with part 9525.1920 [Emergency]; and

M. L. name of the person responsible for ensuring that the provider is in compliance with the data practices in Minnesota Statutes, section 13.46, subdivision 10, paragraph (d).

Subp. 2. **Required provision.** The contract must contain the following language verbatim: "The county ~~shall~~ may withhold reimbursement to the provider if either the county or the Minnesota Department of Human Services has reasonable grounds to believe that the contract of the county with the provider or the subcontract of the provider with any subcontractor of services has been breached in any material manner or ~~is anticipated to be breached in any manner~~ that the provider or subcontractor is taking or failing to take any action that constitutes anticipatory breach. If the breach occurs, the county may recoup any payments made for the period during which the breach occurred. The provider acknowledges and agrees that the Minnesota Department of Human Services is a third-party beneficiary, and as such is an affected party under this contract and as such may recoup payments made by the county to the provider in event of breach of this contract if the county does not recoup the payments. The provider specifically acknowledges and agrees that the Minnesota Department of Human Services has standing to and may take any appropriate administrative action or sue the provider for any appropriate relief in law or equity, including, but not limited to rescission, damages, or specific performance of all or any part of the contract between the county and the provider. The provider specifically acknowledges that the county and the Minnesota Department of Human Services are entitled to and may recover from the provider reasonable attorney's fees and costs and disbursements associated with any action taken under this paragraph. This provision shall not be construed as a waiver of immunity under the Eleventh Amendment to the United States Constitution or any other waiver of immunity."

Subp. 3. **Subcontracts.** If the provider subcontracts with

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another contractor the provider must:

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

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

C. ensure that the subcontractor meets the requirements in part 9525.1850 [Emergency];

D. ensure that the subcontractor performs fully the terms of the subcontract; and

E. ensure that the subcontract contains the following language verbatim: "The provider ~~shall~~ may withhold reimbursement to the subcontractor if either the county or the Minnesota Department of Human Services has reasonable grounds to believe that the subcontract of the provider with the subcontractor has been breached in any material manner ~~or is anticipated to be breached in any manner~~ that the subcontractor is taking or failing to take any action that constitutes anticipatory breach. The subcontractor acknowledges and agrees that the county and the Minnesota Department of Human Services are third-party beneficiaries, and as such are affected parties under this subcontract and as such either or both may recoup payments made by the provider to the subcontractor in event of breach of this subcontract. The subcontractor specifically acknowledges and agrees that the county and the Minnesota Department of Human Services have standing to and may take any appropriate administrative action or sue the subcontractor for any appropriate relief in law or equity, including, but not limited to rescission, damages, or specific performance for all or any part of the subcontract between the subcontractor and the provider. The subcontractor specifically acknowledges that the county and the Minnesota Department of Human Services are entitled to and may recover from the subcontractor reasonable attorney's fees and costs and disbursements associated with any action taken under this paragraph. This provision shall not be construed as a waiver of immunity under the Eleventh Amendment to the United States Constitution or any other waiver of

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immunity."

Subp. 4. **Noncompliance.** If the provider or subcontractor fails to comply with the provisions of the contract, the county may seek any available legal remedy.

The county shall notify the commissioner in writing within 30 days when the county has reasonable grounds to believe that a contract required under this part has been breached in a material manner or that a provider or subcontractor has taken any action or failed to take any action that constitutes anticipatory breach of the contract. The county may allow the provider or subcontractor a reasonable amount of time to cure the breach or anticipatory breach. The county shall notify the commissioner in writing within ten working days if the provider or subcontractor takes any action or fails to take any action in response to the opportunity to cure. In the notice, the county shall inform the commissioner of the action the county intends to take.

9525.1880 [Emergency] COUNTY PROPOSAL AND APPROVAL OF COUNTY PROPOSAL.

Subpart 1. **Application forms and deadlines.** The commissioner shall notify the counties of the deadlines and forms for the submission of proposals for home and community-based services.

Subp. 2. **County proposal for fiscal year 1985.** In order to be considered for reimbursement under parts 9525.1800 to 9525.1930 [Emergency] during fiscal year 1985, counties must submit to the commissioner a proposal showing quarterly projections of the number of clients to be provided home and community-based services during the fiscal year. The county must include in the county projections:

A. the projected number of diversions;

B. the projected number of placements from state-operated ICFs/MR into home and community-based services;

C. the projected number of placements from community-based ICFs/MR into home and community-based services; and

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D. the information requested in subpart 3, item B, if known.

Subp. 3. **County proposal for fiscal year 1986.** In order to be considered for reimbursement under parts 9525.1800 to 9525.1930 [Emergency] during fiscal year 1986, counties, singly or jointly, ~~shall~~ must submit to the commissioner an annual proposal for the provision of home and community-based services to clients for which the county or counties are financially responsible. The proposal must:

A. State measurable program goals and objectives to be accomplished by the home and community-based services.

B. Identify the persons to whom the county expects to provide the home and community-based services. If counties are applying jointly, each county must identify the persons for which the county is financially responsible. For each person the county shall identify:

(1) date of birth and initials;

(2) current living arrangement;

(3) current day programs;

(4) the level of supervision required;

(5) the type of home and community-based services projected to be needed and the expected duration of the service or services;

(6) the projected starting date of the home and community-based services; and

(7) the proposed service provider or providers and billing rate, if known.

C. Describe how the county proposal complies with the county utilization targets developed by the department in accordance with the *Welsch v. Levine* consent decree.

D. Describe how the county proposal affects the admission of children to state hospitals and discharge of children ~~in~~ from state hospitals as required in the *Welsch v. Levine* consent decree.

E. Describe how the proposal limits the development of new community-based ICF/MR beds ~~or~~ and reduces the county's

APPROVED BY THE REVISOR OF STATUTES OFFICE BY:

use of existing ICF/MR beds in state-operated ICFs/MR and community ICFs/MR, including any steps the county has taken to encourage voluntary decertification of community-based ICF/MR beds.

F. Describe the steps the county has taken to prepare to provide home and community-based services.

Subp. 4. **Review and approval of proposal.** The commissioner shall review all proposals submitted in accordance with subparts 1 to 3. ~~In~~ For fiscal year 1985, all proposals that meet the requirements of parts 9525.1800 to 9525.1880 [Emergency] shall be approved. ~~In~~ For fiscal year 1986, the commissioner shall only approve the county applications that meet the requirements of parts 9525.1800 to 9525.1880 [Emergency] and that demonstrate compliance with the goals of the department as stated in items A to D:

A. compliance with the county utilization targets developed by the department in accordance with the *Welsch v. Levine* consent decree;

B. reduction of the number of children in state-operated ICFs/MR;

C. limitation of the development of new community-based ICF/MR beds ~~or~~ and reduction of the use of existing ICF/MR beds in state-operated ICFs/MR and community-based ICFs/MR; and

D. integration of home and community-based services into the county's administrative services planning system.

If the proposal is disapproved, the commissioner shall notify the county, in writing, of the reasons why the proposal was not approved. The county has seven days after receipt of the written notice in which to revise the proposal and resubmit it to the commissioner.

9525.1890 [Emergency] ALLOCATION OF HOME AND COMMUNITY-BASED SERVICE MONEY.

Subpart 1. **Allocation of diversions; fiscal year 1985.** To allocate home and community-based services money for diversions for fiscal year 1985, the commissioner shall compare the number

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of diversions projected in the approved county proposal and the number of diversions projected for the county by the commissioner. The commissioner's projections shall be the average of the projected utilization of state-operated and community-based ICF/MR beds using historical utilization ~~by~~ for the county; and the projected per capita utilization of state-operated and community-based ICF/MR beds ~~by~~ for the county, both of which are adjusted to conform with the number of diversions projected in the ~~federal~~ waiver ~~application~~. The county's allocation of money for diversions shall be based on the lesser of the number of diversions projected in the approved county proposal or the number of diversions projected for the county by the commissioner.

Subp. 2. **Allocation of diversions; fiscal year 1986.** To allocate home and community-based services money for diversions for fiscal year 1986, the commissioner shall project the number of diversions for the county ~~under~~ using the procedure in subpart 1 and adjust the projection based on the county's actual use of allocated diversions during fiscal year 1985. If the county uses less than the number of diversions allocated for fiscal year 1985, the commissioner may decrease the number of diversions projected for the county for fiscal year 1986 by the commissioner. The county's allocation of money for diversions shall be based on the lesser of the number of diversions in the approved county proposal and the number of diversions projected for the county by the commissioner.

Subp. 3. **Allocation of placements.** The county's allocation of money for placements shall be based on the number of placements in the approved county proposal.

Subp. 4. **Notification of allocation.** The commissioner shall notify all counties, in writing, of the amount of home and community-based services money allocated to each county or if the proposal was submitted jointly, to the group of counties ~~if the proposal was submitted jointly~~.

Subp. 5. **Review of allocation; reallocation.** The commissioner shall review the projected and actual use of home

and community-based services by all counties participating in the program on a quarterly basis, and report the findings to all the counties in the state. The commissioner may reduce the allocation to a county if the commissioner determines, in consultation with the county, that the initial allocation to the county will not be used during the allocation period. The commissioner may reallocate the unused portion of the county's initial allocation to another county or other counties in the same geographic region that plan to expand home and community-based services or provide home and community-based services for the first time. If there is not a sufficient number of projections to use the unused allocation from counties within the geographic region, the commissioner may reallocate the remainder to another county or other counties in other geographic regions that plan to expand home and community-based services or provide home and community-based services for the first time.

Subp. 6. **Preference during reallocation process and in fiscal year 1986.** The commissioner may give preference during the reallocation process and in the allocation of funds for fiscal year 1986 to proposals submitted by counties that have not previously provided home and community-based services. In allocating funds for fiscal year 1986, the commissioner shall give priority to the continued funding of home and community-based services for clients who received home and community-based services in fiscal year 1985 and continue to be eligible for home and community-based services in fiscal year 1986.

9525.1900 [Emergency] AGREEMENT BETWEEN STATE AND COUNTY.

Subpart 1. **Contents of agreement.** The county must have a legally binding written agreement with the state in order to receive home and community-based services money. The agreement must include provisions specifying that:

A. home and community-based services money will be used only for services to persons who are determined to be eligible under part 9525.1820 [Emergency] and meet the

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conditions in part 9525.1830 [Emergency];

B. home and community-based services money will be used only for the services in part 9525.1860 [Emergency];

C. home and community-based services money will be used only for services provided by providers who meet the requirements of part 9525.1850 [Emergency] and have a legally binding contract with the host county which meets the requirements of part 9525.1870 [Emergency];

D. the total cost of providing home and community-based services to all home and community-based service clients will not exceed the limits in part 9525.1910 [Emergency];

E. records will be kept in accordance with part 9525.1920 [Emergency] and applicable provisions of parts 9505.1750 to 9505.2150;

F. the county will comply with all applicable standards in parts 9525.0010 to 9525.0100 or their successor parts;

G. the county will comply with parts 9525.1800 to 9525.1930 [Emergency];

H. the county will comply with Minnesota Statutes, chapter 256B, and rules adopted thereunder; and

I. the county will comply with United States Code, title 19, sections 1396 et seq., and all regulations promulgated thereunder.

Subp. 2. **Additional requirements.** If the county provides home and community-based services in addition to case management, the agreement must specify the services to be provided by the county ~~and must meet all the requirements in part 9525.1870 [Emergency]~~.

If the agreement is signed on or after the effective date of parts 9525.1800 to 9525.1930 [Emergency], the agreement must include a provision specifying that the county agrees that the commissioner may reduce or discontinue reimbursement, or seek other legal remedies if the county fails to comply with the provisions of the agreement and parts 9525.1800 to 9525.1930 [Emergency].

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9525.1910 [Emergency] COUNTY FUNDING OF HOME AND COMMUNITY-BASED SERVICES.

Subpart 1. **County responsibility.** The county shall fund home and community-based services in accordance with subparts 2 to ~~5~~ 4.

Subp. 2. **Distribution of money.** The total amount of money allocated to a county for home and community-based services in a fiscal year shall ~~be~~ not exceed the statewide average daily reimbursement rate multiplied by the total number of days the home and community-based services will be provided to the clients. The statewide average daily reimbursement rate shall be calculated by dividing the total amount of money available under the ~~federal~~ waiver by 365 days and then dividing the quotient by the department's projection of the total number of clients to receive home and community-based services as stated in the ~~federal~~ waiver ~~application~~.

Subp. 3. **Rate setting.** The host county shall determine the rates to be paid to providers for home and community-based services and retain documentation of the process and data used to determine the rate. The commissioner shall review rates to ensure that the criteria in subpart 4, item C are met.

Subp. 4. **Cost limitations.** There is no dollar limitation on the amount of home and community-based services money that may be used per client. In authorizing and billing for home and community-based services for individual clients, the county must comply with items A ~~and~~ B to C. For counties applying jointly, the total cost and total allocation in item A shall be the total cost and total allocation for all of the counties represented on the application and the average cost in item B shall be the average cost for all clients included in the application.

A. The total cost of home and community-based services provided to all clients during the fiscal year must not exceed the total allocation approved for the county, or counties if applying jointly, for the fiscal year by the commissioner.

B. The county's average cost per day for all services provided to all clients must not exceed the statewide average

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daily reimbursement rate.

~~Subp. 5. Leave-days. Leave-days are days when a client is temporarily absent from services. Leave-days are reimbursable for supported living arrangements for children or supported living arrangements for adults if the client intends to return to the service. Normal billings may be made for leave-days only when the client is:~~

~~A. hospitalized;~~

~~B. on a therapeutic overnight trip, camping trip, or vacation;~~

~~C. home for a visit; or~~

~~D. in respite care.~~

~~Leave-days which are not included in the individual service plan may not be billed for without county authorization. The county and the provider must document all leave-days for which billings are made and specify the reasons the county authorized the leave-days.~~

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

(1) the cost is ordinary, necessary, and related to client care;

(2) the cost is what a prudent and cost conscious business person would pay for the specific good or service in the open market in an arm's length transaction; and

(3) the cost is for goods or services actually provided.

9525.1920 [Emergency] REQUIRED RECORDS AND REPORTS.

Subpart 1. **Provider records.** The provider and any subcontractor the provider contracts with shall maintain complete program and fiscal records and supporting documentation identifying the clients served and the services and costs provided under the provider's home and community-based services contract with the county. These records must be maintained in well-organized files and identified in accounts separate from other facility or program costs. The provider's and subcontractor's records shall be subject to the maintenance

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schedule, audit availability requirements, and other provisions in parts 9505.1750 to 9505.2150.

Subp. 2. **County records.** The county shall maintain complete fiscal records and supporting documentation identifying the clients served and the services and costs provided under the county's agreement with the department. If the county provides home and community-based services in addition to case management, the county's records must include the information required in part 9525.1870 [Emergency]. The county records shall be subject to the maintenance schedule, audit availability requirements, and other provisions in parts 9505.1750 to 9505.2150.

Subp. 3. **Availability of records.** The county's ~~and~~, the provider's, and the subcontractor's financial records described in subparts 1 and 2, shall be available, on request, to the commissioner and the federal Department of Health and Human Services in accordance with parts 9500.0750 to 9500.1080, 9505.1750 to 9505.2150, and 9525.1800 to 9525.1930 [Emergency].

Subp. 4. **Retention of records.** The county ~~and~~, the ~~county's home and community-based service~~ providers, and the subcontractors shall retain a copy of the records required in ~~subpart~~ subparts 1 and 2 for five years unless an audit in process requires a longer retention period.

9525.1930 [Emergency] PENALTIES AND APPEALS.

Subpart 1. **Noncompliance.** The commissioner may pursue contractual remedies in accordance with part 9525.1870 [Emergency], subparts 2 and 3, withhold or withdraw reimbursement, recoup money paid, and pursue any other available legal remedy for failure of a county, provider, or subcontractor to comply with parts 9525.1800 to 9525.1930 [Emergency]. The commissioner may also take action in accordance with Minnesota Statutes, section 256B.064.

The county shall pursue contractual remedies in accordance with part 9525.1870 [Emergency], subparts 2 and 3, withhold or withdraw reimbursement, recoup money paid, or pursue any other available legal remedy for failure of a provider or

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subcontractor to comply with parts 9525.1800 to 9525.1930 [Emergency]. A provider shall be held liable if a subcontractor fails to comply with parts 9525.1800 to 9525.1930 [Emergency].

Subp. 2. **Failure to enforce.** The county shall be held liable for any damages or costs to the department for failure of the county to enforce contracts entered into under parts 9525.1800 to 9525.1930 [Emergency] or for any action or inaction which impedes enforcement by the commissioner.

Subp. 3. **Appeals by counties.** Before the commissioner withholds, recoups, or withdraws the county's allocation under subpart 1, the commissioner shall give 30 days written notice to the county and send a copy of the written notice to the affected providers or subcontractors. The written notice shall inform the county, provider, or subcontractor of ~~its~~ the right to a hearing under the contested case procedures of Minnesota Statutes, chapter 14. If the commissioner receives a written appeal of the commissioner's action within 30 days of the date the written notice is sent, the commissioner shall initiate a contested case proceeding. The written appeal must state the reasons the county, provider, or subcontractor is appealing the commissioner's action. The commissioner shall not take the proposed action before the hearing unless, in the commissioner's opinion, the action is necessary to protect the public welfare and the interests of the home and community-based services program.

Subp. 4. **Appeals by individuals.** Notice, appeals, and hearing procedures shall be conducted as follows:

A. A person who is considered for, or receiving, home and community-based services has a right to a hearing under Minnesota Statutes, section 256.045 if:

(1) the county fails to follow the written procedures and criteria established under part 9525.1830 [Emergency] subpart 2; or

(2) the county fails to authorize services in accordance with part 9525.1830 [Emergency] subpart 1, item E; or

(3) the provisions of parts 9525.1820 [Emergency]

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and 9525.1830 [Emergency] are met and the person is:

(a) not informed of the home and community-based services that are feasible for the person; or

(b) denied the right to choose between the feasible home and community-based services and ICF/MR services; or

(c) denied the right to choose among the feasible home and community-based services.

B. It is an absolute defense to an appeal under item A, subitem (1), if the county proves that it followed the established written procedures and criteria and determined that home and community-based services could not be provided to the person within the county's allocation of home and community-based services money.

C. Notice, appeal, and hearing procedures shall be conducted in accordance with parts 9525.0010 to 9525.0100 or their successor parts.

APPROVED BY THE REVISOR OF STATUTES OFFICE BY:

OFFICE OF THE REVISOR OF STATUTES

Certificate of Approval of Adopted Rules

AR0557E

Agency: Department of Human Services

Division:

Agency Contact: Jane Delage 297-4302

Minnesota Rules: Parts 9525.1800 to 9525.1930 [Emergency]

Title: Adopted Emergency Rules Relating to Medical Assistance Funding and Administration of Home and Community-based Services for Persons Who are Mentally Retarded

Type of Rules: Emergency

Incorporations by Reference: None

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED
OCT 16 1984
Joan Anderson Growe
Secretary of State
10:30 AM

Steven C. Cross
Revisor of Statutes

Susan M. Lentsch
Assistant Revisor
Phone: 296-0956
Date: October 11, 1984

APPROVED AS TO LEGALITY
Oct. 15, 1984
HUBERT H. HUMPHREY, III
ATTORNEY GENERAL
BY
SPECIAL ASSISTANT ATTORNEY GENERAL

B

STATE OF MINNESOTA
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF THE PROPOSED ADOPTION OF EMERGENCY RULES GOVERNING MEDICAL ASSISTANCE FUNDING AND ADMINISTRATION OF HOME AND COMMUNITY-BASED SERVICES FOR PERSONS WHO ARE MENTALLY RETARDED, MINNESOTA RULES, PARTS 9525.1800-9525.1930 (EMERGENCY).

ORDER ADOPTING EMERGENCY RULES

The above-entitled matter was published in the State Register on August 13, 1984, as a proposed emergency rule pursuant to Minnesota Statutes, sections 14.29 - 14.36.

After affording interested and affected persons an opportunity to submit written data and views within 25 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 emergency rules Governing Medical Assistance Funding and Administration of Home and Community-Based Services for Persons who are Mentally Retarded, Minnesota Rules Parts 9525.1800-9525.1930 (Emergency) are adopted this 1st day of October, 1984, , pursuant to authority vested in me by Laws of Minnesota 1983, Chapter 312 Article 9.

STATE OF MINNESOTA



COMMISSIONER OF HUMAN SERVICES

Department of Public Welfare
Licensing Division

Outside Opinion Sought Concerning the Licensing of Family Day Care Homes and Group Family Day Care Homes

Notice is hereby given that the Minnesota Department of Public Welfare is considering amendments to 12 MCAR § 2.002, Standards for Family Day Care Homes and Group Family Day Care Homes.

The Commissioner is authorized to promulgate rules for the licensing of day care faciliites, specifically family day care and group family day care homes, under Minnesota Statutes, sections 245.781-245.812. Among the proposed amendments being considered are changes to the staff/child ratios, licensed capacity with respect to infants, usable space requirements, health and safety standards, training, and the child development program.

All interested or affected persons or groups are requested to participate. Statements of information and comment may be made orally or in writing. Written statements of information and comment may be addressed to:

Jane Nelson
Department of Public Welfare
Rulemaking Section, 4th Floor, Centennial Building
St. Paul, MN 55155

Oral statements of information and comment will be received over the telephone at (612) 297-1217 between 9:00 am and 4:00 pm Mondays through Fridays.

Statements of information and comment will be accepted until further notice. Any written material received by the Department shall become part of the hearing record. Oral statements will be considered but will not become part of the hearing record.

Department of Public Welfare
Mental Health Bureau

Outside Opinion Sought Concerning Proposed Temporary Rules on Funding Services to Mentally Retarded Persons Under the Home and Community-Based Waiver

Notice is hereby given that the Minnesota Department of Public Welfare is considering a temporary rule 12 MCAR § 2.04100 [Temporary], the administration and funding of services to mentally retarded persons under the Home and Community-Based Waiver for mentally retarded persons as approved under United States Code, Title 42, Sections 1396 to 1396p. These services will include case management, in-home family support, supportive living arrangements for children and adults, semi-independent living, day habilitation, respite, homemaker and minor physical adaptations.

Authority for this rule is contained in Laws of Minnesota 1983, Chapter 312, article 9.

All interested or affected persons or groups are requested to participate.

Statements of information and comment may be made orally or in writing. Written statements of information and comment may be addressed to:

Mental Retardation Program Division
Department of Public Welfare
4th Floor, Centennial Building
St. Paul MN 55155

Oral statements of information and comment will be received during regular business hours over the telephone at 612/296-2682.

Any written material received by the Department shall become part of the rule record submitted to the Attorney General for review.

Comments will be accepted until further notice.

STATE OF MINNESOTA
DEPARTMENT OF HUMAN SERVICES

Proposed Emergency Rules Governing
Medical Assistance Funding and
Administration of Home and Community-
Based Services for Persons Who Are
Mentally Retarded, Minnesota Rules,
parts 9525.1800 to 9525.1930 [Emergency]

ORDER FOR PUBLICATION
OF A EMERGENCY RULE

IT IS ORDERED this 26th day of July, 1984, that the proposed emergency rule in the above-entitled matter be published in the State Register.

LEONARD W. LEVINE
Commissioner of Human Services

BM/43

STATE OF MINNESOTA
DEPARTMENT OF HUMAN SERVICES

Proposed Emergency Rules Governing
Medical Assistance Funding and
Administration of Home and Community-
Based Services for Persons Who Are
Mentally Retarded, Minnesota Rules,
parts 9525.1800 to 9525.1930 [Emergency].

NOTICE OF INTENT TO
ADOPT EMERGENCY RULES

The State Department of Human Services proposes to adopt the above-entitled emergency rules to implement Laws of Minnesota 1983, Chapter 312, Article 9.

Persons interested in these rules have until 4:30 p.m., September 7, 1984 to submit written comments. The proposed emergency 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:

Grace Stroebel
Department of Human Services
4th Floor, Centennial Office Building
St. Paul, MN 55155

Upon adoption of these emergency rules, this notice, all written comments received, and the adopted emergency rules will be delivered to the Attorney General and to the Revisor of Statutes for review as to form and legality.

Notice of the date of submission of the proposed emergency rule to the attorney general will be mailed to any person requesting to receive this notice. The Attorney General shall approve or disapprove the proposed emergency rule and any modifications on the tenth working day following the date of receipt of the proposed emergency rule from the agency.

The adopted emergency rules will not become effective without the Attorney General's approval and the Revisor of Statutes' certification of the rules' form. Emergency rules take effect five working days after approval by the Attorney General.

As required by the Administrative Procedures Act, Minnesota Statutes, chapter 14, these emergency rules shall be in effect for up to 180 days following their adoption and may be continued in effect for an additional 180 days if the Commissioner gives notice of continuation 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 emergency rules shall not be effective 360 days after their effective date without following the procedures in Minnesota Statutes, sections 14.13 to 14.20.

The purpose of proposed Minnesota Rules, parts 9525.1800 to 9525.1930 [Emergency] is to establish procedures to fund home and community-based services through the medical assistance program for eligible persons who are mentally retarded.

Proposed Minnesota Rules, parts 9525.1800 to 9525.1930 [Emergency] apply to a county or counties administering medical assistance funds for home and community-based services for persons who are mentally retarded and to all providers that contract with a county to provide home and community-based services for persons who are mentally retarded. "Home and community-based services" means the following services for persons who are mentally retarded authorized under United States Code, title 42, sections 1396 to 1396p, and authorized in the waiver granted by the federal Department of Health and Human Services: case management, respite care, homemaker, in-home family support services, supported living arrangements for children, supported living arrangements for adults, day habilitation, and minor physical adaptations to the home.

Proposed Minnesota Rules, parts 9525.1800 to 9525.1930 [Emergency] include sections on client eligibility, provision of home and community-based services, parental contribution fee, provider reimbursement, reimbursable services, provider contracts, county funding of home and community-based services, required records and reports, and penalties for noncompliance.

These emergency rules will not result in any additional state or county spending beyond the amount of funds appropriated by the legislature.

A free copy of the proposed emergency rule may be obtained by contacting Grace Stroebel at 612/296-2682.

LEONARD W. LEVINE
Commissioner of Human Services

BM/41

E

STATE OF MINNESOTA
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF PROPOSED EMERGENCY RULES GOVERNING MEDICAL ASSISTANCE FUNDING AND ADMINISTRATION OF HOME AND COMMUNITY-BASED SERVICES FOR PERSONS WHO ARE MENTALLY RETARDED, MINNESOTA RULES, PARTS 9525.1800 - 9525.1930 (EMERGENCY).

AFFIDAVIT OF MAILING

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

That on the 8th day of August, 1984, at the City of St. Paul, County of Ramsey, State of Minnesota, she served the attached Notice of Intent to Adopt Emergency 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 Human Services for the purpose of receiving notice of the proposed adoption of rules by this Department.

Wendy Johnson

Subscribed and sworn to before me

this 9 day of August, 1984.

Margaret Holt

MARGARET HOLT
NOTARY PUBLIC-MINNESOTA
RAMSEY COUNTY
My Comm. Expires Sept. 22, 1989

E

STATE OF MINNESOTA
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF PROPOSED EMERGENCY RULES GOVERNING MEDICAL ASSISTANCE FUNDING AND ADMINISTRATION OF HOME AND COMMUNITY-BASED SERVICES FOR PERSONS WHO ARE MENTALLY RETARDED, MINNESOTA RULES, PARTS 9525.1800 - 9525.1930 (EMERGENCY).

AFFIDAVIT OF ADDITIONAL MAILING

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

That on the 8th day of August, 1984, at the City of St. Paul, County of Ramsey, State of Minnesota, in addition to serving the attached Notice of Intent to Adopt Emergency 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:

(see attached)

Wendy Johnson

Subscribed and sworn to before me

this 9 day of August, 1984.

Margaret Holt

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

Ms. Sue Abderholden
MN ARC
3225 Lyndale Avenue South
Minneapolis, MN 55408

Mr. G Mueller
MN DACA
1821 University Avenue #277
St. Paul, MN 55104

Mike Corman
357 9th Avenue North
South St. Paul, MN 55075

Mr. Milt Conrath
Nekton, Inc.
633 N. Snelling
St. Paul, MN 55104

Ms. Mary Martin
AARM
459 Rice Street #301
St. Paul, MN 55103

Ms. Bev. Driscoll
Association of
Minnesota Counties
555 Park Street #300
St. Paul, MN 55103

Mr. Harold Tapper
AARM
459 Rice Street #301
St. Paul, MN 55103

Bob Speltz
Ramsey County
5 NW

Ms. Jane Wells
Northeast Learning Center
2675 E. Highway 36
North St. Paul, MN 55109

Duwayne Shimpach
Martin County Human sErvices

Pat Serrano
Stearns County

Cindy Becker
MR Division
4th Floor Centennial

4

Ann Henry
Legal Advocacy for Developmentally
Disabled Persons in MN
222 Grain Exchange Building
323 Fourth Ave. South
Minneapolis, MN 55415

Ann Bruggemeyer
Income Maintenance
1st Floor, Space Center

Colleen Weick
DD Council
201 Capitol Square
ate Planning

Walter Baldus
356 Brutus Drive
Lakeville, MN 55044

Carol Janson
Social Services Bureau
4XX Centennial Building

Warren Bock
MR Division
4th Floor Centennial

Mr. David Medernach
Mi ough, Inc.
05 E. 7th Street
t. Paul. MN 55106

Ken Stinson
Willmar State Hospital
Box 1128
Willmar, MN 56201

Edward Van Allen
Ramsey County

4

STATE OF MINNESOTA
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF PROPOSED EMERGENCY RUELS GOVERNING MEDICAL ASSISTANCE FUNDING AND ADMINISTRATION OF HOME AND COMMUNITY-BASED SERVICES FOR PERSONS WHO ARE MENTALLY RETARDED, MINNESOTA RULES, PARTS 9525.1800 - 9525.1930 (EMERGENCY).

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 Human Services for the purpose of receiving notice of the proposed adoption of rules by this Department is accurate and complete as of 4:00, P.M., this 8th day of August, 1984.

Wendy Johnson

Mrs. Alice T. Dolezal Hennigan, Chief
Section of Radiation Control
Minnesota Department of Health
717 Delaware Street S.E.
P.O. Box 9441
Minneapolis, Minnesota 55440
612/623-5323

Authority for the adoption of these rules is contained in Minnesota Statutes §§ 144.12 (15). A statement of need and reasonableness that describes the need for and reasonableness of each provision of the proposed rules has been prepared and is available from Mrs. Alice T. Dolezal Hennigan upon request.

Any person who desires to be advised of the submission of this material to the Attorney General for approval may make this request in writing to Mrs. Alice T. Dolezal Hennigan.

July 12, 1984

Sister Mary Madonna Ashton,
Commissioner
Minnesota Department of Health

Rule as Proposed

4730.1700 HEALING ARTS.

Subpart 1. Fluoroscopic equipment. Fluoroscopic equipment:

A. to F. [Unchanged.]

G. Collimators shall be provided to restrict the size of the useful beam to less than the area of the primary barrier, irrespective of the panel-to-screen distance. During fluoroscopy with image intensifiers, the useful beam shall not exceed the ~~diameter of the input phosphor~~ size of the film receptor. Collimators, adjustable diaphragms, and shutters shall provide the same degree of protection as is required of the tube housing.

H. to L. [Unchanged.]

Subp. 2. to 4. [Unchanged.]

Department of Human Services Mental Health Bureau

Proposed Emergency Rules Relating to Medical Assistance Funding and Administration of Home and Community-Based Services for Persons Who Are Mentally Retarded

Notice of Intent to Adopt Emergency Rules without a Hearing

The State Department of Human Services proposes to adopt the above-entitled emergency rules to implement Laws of Minnesota 1983, Chapter 312, Article 9.

Persons interested in these rules have until 4:30 p.m., September 7, 1984 to submit written comments. The proposed emergency 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:

Grace Stroebel
Department of Human Services
4th Floor, Centennial Office Building
St. Paul, MN 55155

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.

Upon adoption of these emergency rules, this notice, all written comments received, and the adopted emergency rules will be delivered to the Attorney General and to the Revisor of Statutes for review as to form and legality.

Notice of the date of submission of the proposed emergency rule to the attorney general will be mailed to any person requesting to receive this notice. The Attorney General shall approve or disapprove the proposed emergency rule and any modifications on the tenth working day following the date of receipt of the proposed emergency rule from the agency.

The adopted emergency rules will not become effective without the Attorney General's approval and the Revisor of Statutes' certification of the rules' form. Emergency rules take effect five working days after approval by the Attorney General.

As required by the Administrative Procedures Act, Minnesota Statutes, chapter 14, these emergency rules shall be in effect for up to 180 days following their adoption and may be continued in effect for an additional 180 days if the Commissioner gives notice of continuation 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 emergency rules shall not be effective 360 days after their effective date without following the procedures in Minnesota Statutes, sections 14.13 to 14.20.

The purpose of proposed Minnesota Rules parts 9525.1800 to 9525.1930 [Emergency] is to establish procedures to fund home and community-based services through the medical assistance program for eligible persons who are mentally retarded.

Proposed Minnesota Rules, parts 9525.1800 to 9525.1930 [Emergency] apply to a county or counties administering medical assistance funds for home and community-based services for persons who are mentally retarded and to all providers that contract with a county to provide home and community-based services for persons who are mentally retarded. "Home and community-based services" means the following services for persons who are mentally retarded authorized under United States Code, title 42, sections 1396 to 1396p, and authorized in the waiver granted by the federal Department of Health and Human Services: case management, respite care, homemaker, in-home family support services, supported living arrangements for children, supported living arrangements for adults, day habilitation, and minor physical adaptations to the home.

Proposed Minnesota Rules, parts 9525.1800 to 9525.1930 [Emergency] include sections on client eligibility, provision of home and community-based services, parental contribution fee, provider reimbursement, reimbursable services, provider contracts, county funding of home and community-based services, required records and reports, and penalties for noncompliance.

These emergency rules will not result in any additional state or county spending beyond the amount of funds appropriated by the legislature.

A free copy of the proposed emergency rule may be obtained by contacting Grace Stroebel at 612/296-2682.

Leonard W. Levine
Commissioner of Human Services

Emergency Rules as Proposed (all new material)

9525.1800 [Emergency] DEFINITIONS.

Subpart 1. Scope. The terms used in parts 9525.1800 to 9525.1930 [Emergency] have the meanings given to them in this part.

Subp. 2. Billing rate. "Billing rate" means the rate charged for providing services. The rate may be based on a day, hour, or fraction of an hour, of service.

Subp. 3. Case manager. "Case manager" means the person designated by the county to provide case management services as defined in part 9525.1860 [Emergency].

Subp. 4. Client. "Client" means a person who is receiving home and community-based services.

Subp. 5. Commissioner. "Commissioner" means the commissioner of human services or the commissioner's designated representative.

Subp. 6. County. "County" means the county board of commissioners for the county of financial responsibility or the county board of commissioners' designated representative.

Subp. 7. County of financial responsibility. "County of financial responsibility" has the meaning given it in Minnesota Statutes, section 256B.02, subdivision 3.

Subp. 8. Daily intervention. "Daily intervention" means supervision, assistance, or training provided to a client in the client's residence by a provider or family member to help the client manage daily activities for more than 90 consecutive days.

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

Subp. 10. Diversion. "Diversion" means the act of placing a client who would be placed in an intermediate care facility for the mentally retarded within one year if the home and community-based services were not provided.

Subp. 11. Family. "Family" means the client's biological parents, adoptive parents or stepparents, siblings, children, and spouse.

Subp. 12. Federal waiver application. "Federal waiver application" means the application, and all amendments to the application including any amendments made after the effective date of parts 9525.1800 to 9525.1930 [Emergency], submitted to the federal Department of Health and Human Services under United States Code, title 42, sections 1396 to 1396p, requesting a waiver of Title XIX of the Social Security Act requirements to allow the state to pay for home and community-based services for persons who are mentally retarded.

Subp. 13. Fiscal year. "Fiscal year" means the state's fiscal year from July 1 through the following June 30.

Subp. 14. Geographic region. "Geographic region" means the economic development regions established by executive order of the governor in accordance with Minnesota Statutes, section 462.385, in effect on July 1, 1984.

Subp. 15. Home and community-based services. "Home and community-based services" means the following services for persons who are mentally retarded authorized under United States Code, title 42, sections 1396 to 1396p, and authorized in the waiver granted by the federal Department of Health and Human Services: case management, respite care, homemaker, in-home family supported services, supported living arrangements for children, supported living arrangements for adults, day habilitation, and minor physical adaptations to the home, as defined in part 9525.1860 [Emergency].

Subp. 16. Host county. "Host county" means the county in which the home and community-based service is provided.

Subp. 17. Individual program plan. "Individual program plan" has the meaning given it in parts 9525.0010 to 9525.0100.

Subp. 18. Individual service plan. "Individual service plan" has the meaning given it in parts 9525.0010 to 9525.0100.

Subp. 19. Intermediate care facility for the mentally retarded or (ICF/MR). "Intermediate care facility for the mentally retarded" or "ICF/MR" means a program licensed to serve persons who are mentally retarded under Minnesota Statutes, section 252.28, and a physical plant licensed as a supervised living facility under Minnesota Statutes, chapter 144, which together are certified by the Department of Health as an intermediate care facility for the mentally retarded. Unless otherwise stated, the term ICF/MR includes state-operated and community-based facilities.

Subp. 20. Placement. "Placement" means the act of placing a client who is discharged from an ICF/MR.

Subp. 21. Primary caregiver. "Primary caregiver" means the person responsible for the daily care, supervision, or training of the client in the client's residence.

Subp. 22. Provider. "Provider" means a person or legal entity providing home and community-based services according to parts 9525.1800 to 9525.1930 [Emergency].

Subp. 23. Room and board. "Room and board" means costs associated with providing food, shelter, and personal needs items for clients.

Subp. 24. Screening team. "Screening team" has the definition given it in Minnesota Statutes, section 256B.092.

Subp. 25. Service site. "Service site" means the location at which home and community-based services are provided.

Subp. 26. Short term. "Short term" means a period of less than 90 days in a year.

9525.1810 [Emergency] PURPOSE AND APPLICABILITY.

Subpart 1. Purpose. The purpose of parts 9525.1800 to 9525.1930 [Emergency] is to establish procedures to fund home and community-based services through the medical assistance program for eligible persons who are mentally retarded.

Subp. 2. Applicability. Parts 9525.1800 to 9525.1930 [Emergency] apply to a county or counties administering medical assistance funds for home and community-based services for persons who are mentally retarded and to all providers that contract with a county to provide home and community-based services for persons who are mentally retarded.

Subp. 3. Effect. The entire application of parts 9525.1800 to 9525.1930 [Emergency] shall continue in effect only as long as the federal waiver from the federal Department of Health and Human Services is in effect in the state of Minnesota.

9525.1820 [Emergency] ELIGIBILITY.

Subpart 1. Eligibility criteria. A person is eligible to receive home and community-based services if the person meets all the

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criteria in items A to D and if home and community-based services may be provided in accordance with part 9525.1830 [Emergency]:

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

B. the person is determined to be mentally retarded in accordance with the definitions in parts 9525.0010 to 9525.0100;

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

D. the screening team has determined that the person needs daily intervention and the person's individual service plan documents the need for daily intervention and specifies the services needed.

Subp. 2. Medical assistance eligibility for children residing with their parents. The county shall determine eligibility for medical assistance for a person under age 21 who resides with a parent or parents without considering parental income and resources if:

A. the person meets the criteria in subpart 1, items B to D;

B. the person will be provided home and community-based services in accordance with part 9525.1830 [Emergency]; and

C. the commissioner has approved in writing a county request to suspend for the person the deeming requirements in Code of Federal Regulations, title 42, section 436.821 in accordance with the approved federal waiver application.

9525.1830 [Emergency] PROVISION OF HOME AND COMMUNITY-BASED SERVICES.

The county shall provide or arrange to provide home and community-based services to a person if the person is eligible for home and community-based services under part 9525.1820 [Emergency] and all the conditions in items A to F have been met:

A. the home and community-based services money allocated to the county by the commissioner is sufficient to pay the costs of providing home and community-based services to the person;

B. the screening team has determined that home and community-based services are an appropriate alternative to ICF/MR services for the person under parts 9525.0010 to 9525.0100;

C. the commissioner has authorized payment for home and community-based services for the person;

D. the person or person's legal representative has agreed to the home and community-based services determined by the screening team to be appropriate for the person;

E. the county has authorized provision of home and community-based services to the person based on the goals and objectives in the person's individual service plan; and

F. the county has a signed agreement with the state that complies with part 9525.1900 [Emergency].

9525.1840 [Emergency] PARENTAL CONTRIBUTION FEE.

Subpart 1. Out-of-home placements. Parents of clients under age 18 shall be liable for a parental contribution fee determined according to Minnesota Statutes, section 256B.14, if the client resides outside the parent's home.

Subp. 2. In-home placements. Parents of clients under age 18 may be liable for a parental contribution fee determined according to Minnesota Statutes, section 256B.14, if the client is residing with a parent and the client's medical assistance eligibility for home and community-based services was determined without considering parental income or resources under part 9525.1820 [Emergency], subpart 2.

9525.1850 [Emergency] PROVIDER REIMBURSEMENT.

A provider may receive medical assistance reimbursement for home and community-based services only if the provider meets the criteria in items A to D:

A. the provider has a current license or licenses for the specific home and community-based services as required under Minnesota Statutes or Minnesota Rules or, if no license is required, has received approval from the county to provide home and community-based services in accordance with Minnesota Statutes, sections 252.28 and 245.781 to 245.812;

B. the provider has a legally binding contract with the county which complies with part 9525.1870 [Emergency];

C. the provider agrees to comply with parts 9500.0750 to 9500.1080, 9505.1750 to 9505.2150, and 9525.1800 to 9525.1930 [Emergency]; and

D. the provider is not the client's guardian or a member of the client's family. If the client is a ward of the commissioner, the county is not precluded from providing services.

9525.1860 [Emergency] REIMBURSABLE SERVICES.

Subpart 1. Generàl limits. The costs of providing the home and community-based services defined in subpart 2, limited in accordance with subpart 3, are reimbursable under the medical assistance program for as long as the federal waiver from the federal Department of Health and Human Services is in effect in the state of Minnesota.

Subp. 2. Definitions. For the purposes of this part the following terms have the meanings given them.

A. "Case management" means services provided to and with the involvement of the client including: assessing client needs and strengths; client screening as described in Minnesota Statutes, section 256B.092; developing individual service plans; analyzing and coordinating services; monitoring and evaluating client progress and the outcome of services provided to the client; and assuring the protection of clients' rights under Minnesota Statutes, sections 13.46 and 626.557; and parts 9555.8000 to 9555.8500.

B. "Day habilitation" means habilitation services provided away from the client's place of residence and focused on functioning in the community, using leisure and recreation time and developing task-oriented skills which will prepare the client to participate in a work environment. Day habilitation services for children are focused on stimulating the physical, intellectual, and emotional development of the child.

C. "Habilitation services" means health and social services directed toward increasing and maintaining the physical, intellectual, emotional, and social functioning of persons who are mentally retarded. Habilitation services include therapeutic activities, assistance, training, supervision, and monitoring in the areas of self-care, sensory and motor development, interpersonal skills, communication, socialization, reduction or elimination of maladaptive behavior, community living and mobility, health care, leisure and recreation, money management, and household chores. Day habilitation services and residential-based habilitation services are types of habilitation services.

D. "Homemaker services" means general household activities and ongoing monitoring of the client's well-being provided by a homemaker who meets the standards in part 9565.1200.

E. "In-home family support services" means residential-based habilitation services designed to enable the family to care for and maintain the client in the home. In-home family support services are only reimbursable for clients under 21 years of age and may include training of the client and the client's family and counseling for the client and the client's family.

F. "Minor physical adaptations to the home" means one or more of the structural changes to the client's residence set forth in subpart 3, item D. Minor physical adaptations to the home must be designed to enable the client to avoid institutionalization by increasing the client's mobility and protecting the client against injury. Minor physical adaptations to the home are only reimbursable for clients with mobility problems, sensory deficits, or behavior problems. Minor physical adaptations are limited to those in subpart 3, item D.

G. "Residential-based habilitation services" means habilitation services provided in the client's residence. In-home family support services, supported living arrangements for children, and supported living arrangements for adults are residential-based habilitation services.

H. "Respite care" means short-term supervision, assistance, and care provided to a client due to the temporary absence or need for relief of the client's family, foster family, or primary caregiver. Respite care includes day, overnight, in-home, and out-of-home services as needed.

I. "Supported living arrangements for adults" means residential-based habilitation services provided on a daily basis to adults who require 24 hours or less of supervision, assistance, or training, in a residence for up to six clients.

J. "Supported living arrangements for children" means residential-based habilitation services provided on a daily basis to clients under 21 years of age in a residence for up to three clients.

Subp. 3. Limitations. The provision of home and community-based services is limited as follows in items A to I.

A. Staff time billed by the provider shall be limited to time actually and reasonably spent:

(1) in direct contact with the client to assist the client in attaining the goals in the client's individual service plan;

(2) in verbal or written contact with professionals or others regarding the client's progress in attaining the goals in the client's individual service plan; or

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(3) in planning activities including attending the client's interdisciplinary team meetings, developing goals and objectives for the client's individual program plan, assessing and reviewing client's goals and objectives, documenting the client's progress toward attaining the goals and objectives in the client's individual service plan and assessing the adequacy of the services related to the goals and objectives in the client's individual service plan.

B. Day habilitation services shall:

(1) only be provided to clients who receive a residential-based habilitation service;

(2) not include sheltered work or work activity services funded or certified by the Minnesota Division of Vocational Rehabilitation; and

(3) be provided at a different site than the client's place of residence unless medically contraindicated in accordance with Minnesota Statutes, section 256B.501, subdivision 1, paragraph (d).

C. Homemaker services may be provided only if:

(1) the person regularly responsible for these activities is temporarily absent or is temporarily unable to manage the home and care for the client; or

(2) there is no person, other than the client, regularly responsible for these activities and the client is unable to manage the home and his or her own care without ongoing monitoring or assistance. Homemaker services include meal preparation, cleaning, simple household repairs, laundry, shopping, and other routine household tasks.

D. Reimbursement for minor physical adaptations to the home shall be limited to an average cost of $3,000 per client for all clients in the county. The average cost limitation applies to the entire period of time during which the clients receive home and community-based services. Minor physical adaptations to the home must be limited to the purchase and installation of one or more of the following in subitems (1) to (12):

(1) wheelchair ramps;

(2) handrails and grab bars;

(3) elevated bathtub and toilets;

(4) widened doorways;

(5) shatterproof windows;

(6) blinking lights and tactile alarms as alternate warning systems;

(7) door handle replacements;

(8) lowered kitchen work surfaces;

(9) modified cabinets and sinks which provide wheelchair space;

(10) handles and hoses for showerheads;

(11) door hinge replacements; or

(12) shower and bathtub seats.

E. Home and community-based services must not e provided to a client while the client is a resident of an ICF/MR or on leave from an ICF/MR.

F. Respite care must be provided only for the client's family, foster family, or if the client is in a supported living arrangement, respite care may be provided for the client's primary caregiver.

G. Room and board costs are not allowable costs for residential-based habilitation services.

H. For the purposes of this part, the services in subitems (1) to (9) have the meanings given them in parts 9500.0750 to 9500.1080. If the services in subitems (1) to (9) are provided to a client, the cost of the services must be included in the rate billed by a provider. These services are not reimbursable under any other rule or rules for clients in home and community-based services:

(1) psychological services;

(2) physical therapy;

(3) occupational therapy;

(4) services for individuals with speech, hearing, and language disorders;

(5) mental health center services;

(6) rehabilitative and therapeutic services;

(7) home health care services;

(8) private duty nursing services; and

(9) personal care attendant services.

I. Control of the delivery of home and community-based services shall be limited as stated in Minnesota Statutes, section 256B.501.

9525.1870 [Emergency] PROVIDER CONTRACTS AND SUBCONTRACTS.

Subpart 1. Contracts. In order for a provider to receive medical assistance reimbursement for home and community-based services, the provider must have a contract with the host county. The contract must contain at least the information in items A to M and subpart 2:

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

B. types of service sites where services are to be delivered;

C. qualifications of persons to provide services, including proof of licensing or certification if licensing or certification is required by state laws or federal regulations;

D. description of services to be delivered including type, amount, frequency, and duration;

E. description of the purposes of the services to be delivered;

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

G. description of how the benefits of the services will be measured;

H. agreement to develop clients' individual program plans in accordance with the goals in the clients' individual service plans;

I. billing rate and total budget;

J. description of county contract monitoring procedures agreed to by the provider, including frequency of monitoring;

K. the starting and ending dates of the contract;

L. description of program and financial records to be maintained by the provider in accordance with part 9525.1920 [Emergency]; and

M. name of the person responsible for ensuring that the provider is in compliance with the data practices in Minnesota Statutes, section 13.46, subdivision 10, paragraph (d).

Subp. 2. Required provision. The contract must contain the following language verbatim: "The county shall withhold reimbursement to the provider if either the county or the Minnesota Department of Human Services has reasonable grounds to believe that the contract of the county with the provider or the subcontract of the provider with any subcontractor of services has been breached in any manner or is anticipated to be breached in any manner. If the breach occurs, the county may recoup any payments made. The provider acknowledges and agrees that the Minnesota Department of Human Services is a third-party beneficiary, and as such is an affected party under this contract and as such may recoup payments made by the county to the provider in event of breach of this contract if the county does not recoup the payments. The provider specifically acknowledges and agrees that the Minnesota Department of Human Services has standing to and may take any appropriate administrative action or sue the provider for any appropriate relief in law or equity, including, but not limited to rescission, damages, or specific performance of all or any part of the contract between the county and the provider. The provider specifically acknowledges that the county and the Minnesota Department of Human Services are entitled to and may recover from the provider reasonable attorney's fees and costs and disbursements associated with any action taken under this paragraph. This provision shall not be construed as a waiver of immunity under the Eleventh Amendment to the United States Constitution or any other waiver of immunity."

Subp. 3. Subcontracts. If the provider subcontracts with another contractor the provider must:

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

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

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C. ensure that the subcontractor meets the requirements in part 9525.1850 [Emergency];

D. ensure that the subcontractor performs fully the terms of the subcontract; and

E. ensure that the subcontract contains the following language verbatim: "The provider shall withhold reimbursement to the subcontractor if either the county or the Minnesota Department of Human Services has reasonable grounds to believe that the subcontract of the provider with the subcontractor has been breached in any manner or is anticipated to be breached in any manner. The subcontractor acknowledges and agrees that the county and the Minnesota Department of Human Services are third-party beneficiaries, and as such are affected parties under this subcontract and as such either or both may recoup payments made by the provider to the subcontractor in event of breach of this subcontract. The subcontractor specifically acknowledges and agrees that the county and the Minnesota Department of Human Services have standing to and may take any appropriate administrative action or sue the subcontractor for any appropriate relief in law or equity, including, but not limited to rescission, damages, or specific performance for all or any part of the subcontract between the subcontractor and the provider. The subcontractor specifically acknowledges that the county and the Minnesota Department of Human Services are entitled to and may recover from the subcontractor reasonable attorney's fees and costs and disbursements associated with any action taken under this paragraph. This provision shall not be construed as a waiver of immunity under the Eleventh Amendment to the United States Constitution or any other waiver of immunity."

Subp. 4. Noncompliance. If the provider fails to comply with the provisions of the contract, the county may seek any available legal remedy.

9525.1880 [Emergency] COUNTY PROPOSAL AND APPROVAL OF COUNTY PROPOSAL.

Subpart 1. Application forms and deadlines. The commissioner shall notify the counties of the deadlines and forms for the submission of proposals for home and community-based services.

Subp. 2. County proposal for fiscal year 1985. In order to be considered for reimbursement under parts 9525.1800 to 9525.1930 [Emergency] during fiscal year 1985, counties must submit to the commissioner a proposal showing quarterly projections of the number of clients to be provided home and community-based services during the fiscal year. The county must include in the county projections:

A. the projected number of diversions;

B. the projected number of placements from state-operated ICFs/MR into home and community-based services;

C. the projected number of placements from community-based ICFs/MR into home and community-based services; and

D. the information requested in subpart 3, item B, if known.

Subp. 3. County proposal for fiscal year 1986. In order to be considered for reimbursement under parts 9525.1800 to 9525.1930 [Emergency] during fiscal year 1986, counties, singly or jointly, shall submit to the commissioner an annual proposal for the provision of home and community-based services to clients for which the county or counties are financially responsible. The proposal must:

A. State measurable program goals and objectives to be accomplished by the home and community-based services.

B. Identify the persons the county expects to provide the home and community-based services. If counties are applying jointly, each county must identify the persons for which the county is financially responsible. For each person the county shall identify:

(1) date of birth and initials;

(2) current living arrangement;

(3) current day programs;

(4) the level of supervision required;

(5) the type of home and community-based services projected to be needed and the expected duration of the service or services;

(6) the projected starting date of home and community-based services; and

(7) the proposed service provider or providers and billing rate, if known.

C. Describe how the county proposal complies with the county utilization targets developed by the department in accordance with the *Welsch v. Levine* consent decree.

D. Describe how the county proposal affects the admission and discharge of children in state hospitals as required in the *Welsch v. Levine* consent decree.

E. Describe how the proposal limits the development of new community-based ICF/MR beds or reduces the county's

use of existing ICF/MR beds in state-operated ICFs/MR and community ICFs/MR, including any steps the county has taken to encourage voluntary decertification of community-based ICF/MR beds.

F. Describe the steps the county has taken to prepare to provide home and community-based services.

Subp. 4. Review and approval of proposal. The commissioner shall review all proposals submitted in accordance with subparts 1 to 3. In fiscal year 1985, all proposals that meet the requirements of parts 9525.1800 to 9525.1880 [Emergency] shall be approved. In fiscal year 1986, the commissioner shall only approve the county applications that meet the requirements of parts 9525.1800 to 9525.1880 [Emergency] and that demonstrate compliance with the goals of the department as stated in items A to D:

A. compliance with the county utilization targets developed by the department in accordance with the *Welsch v. Levine* consent decree;

B. reduction of the number of children in state-operated ICFs/MR;

C. limitation of the development of new community-based ICF/MR beds or reduction of the use of existing ICF/MR beds in state-operated ICFs/MR and community-based ICFs/MR; and

D. integration of home and community-based services into the county's administrative services planning system.

If the proposal is disapproved, the commissioner shall notify the county, in writing, of the reasons the proposal was not approved. The county has seven days after receipt of the written notice in which to revise the proposal and resubmit it to the commissioner.

9525.1890 [Emergency] ALLOCATION OF HOME AND COMMUNITY-BASED SERVICE MONEY.

Subpart 1. Allocation of diversions; fiscal year 1985. To allocate home and community-based services money for diversions for fiscal year 1985, the commissioner shall compare the number of diversions projected in the approved county proposal and the number of diversions projected for the county by the commissioner. The commissioner's projections shall be the average of the projected utilization of state-operated and community-based ICF/MR beds using historical utilization by the county; and the projected per capita utilization of state-operated and community-based ICF/MR beds by the county, both of which are adjusted to conform with the number of diversions projected in the federal waiver application. The county's allocation of money for diversions shall be based on the lesser of the number of diversions projected in the approved county proposal or the number of diversions projected for the county by the commissioner.

Subp. 2. Allocation of diversions; fiscal year 1986. To allocate home and community-based services money for diversions for fiscal year 1986, the commissioner shall project the number of diversions for the county under subpart 1 and adjust the projection based on the county's actual use of allocated diversions during fiscal year 1985. If the county uses less than the number of diversions allocated, the commissioner may decrease the number of diversions projected for the county by the commissioner. The county's allocation of money for diversions shall be based on the lesser of the number of diversions in the approved county proposal and the number of diversions projected for the county by the commissioner.

Subp. 3. Allocation of placements. The county's allocation of money for placements shall be based on the number of placements in the approved county proposal.

Subp. 4. Notification of allocation. The commissioner shall notify all counties, in writing, of the amount of home and community-based services money allocated to each county or group of counties if the proposal was submitted jointly.

Subp. 5. Review of allocation; reallocation. The commissioner shall review the projected and actual use of home and community-based services by all counties participating in the program on a quarterly basis, and report the findings to all the counties in the state. The commissioner may reduce the allocation to a county if the commissioner determines, in consultation with the county, that the initial allocation to the county will not be used during the allocation period. The commissioner may reallocate the unused portion of the county's initial allocation to other counties in the same geographic region that plan to expand home and community-based services or provide home and community-based services for the first time. If there is not a sufficient number of projections to use the unused allocation from counties within the geographic region, the commissioner may reallocate the remainder to counties in other geographic regions that plan to expand home and community-based services or provide home and community-based services for the first time.

Subp. 6. Preference during reallocation process and in fiscal year 1986. The commissioner may give preference during the

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reallocation process and in the allocation of funds for fiscal year 1986 to proposals submitted by counties that have not previously provided home and community-based services. In allocating funds for fiscal year 1986, the commissioner shall give priority to the continued funding of home and community-based services for clients who received home and community-based services in fiscal year 1985 and continue to be eligible for home and community-based services in 1986.

9525.1900 [Emergency] AGREEMENT BETWEEN STATE AND COUNTY.

Subpart 1. Contents of agreement. The county must have a legally binding written agreement with the state in order to receive home and community-based services money. The agreement must include provisions specifying that:

A. home and community-based services money will be used only for services to persons who are determined to be eligible under part 9525.1820 [Emergency] and meet the conditions in part 9525.1830 [Emergency];

B. home and community-based services money will be used only for the services in part 9525.1860 [Emergency];

C. home and community-based services money will be used only for services provided by providers who meet the requirements of part 9525.1850 [Emergency] and have a legally binding contract with the host county which meets the requirements of part 9525.1870 [Emergency];

D. the total cost of providing home and community-based services to all home and community-based service clients will not exceed the limits in part 9525.1910 [Emergency];

E. records will be kept in accordance with part 9525.1920 [Emergency] and applicable provisions of parts 9505.1750 to 9505.2150;

F. the county will comply with all applicable standards in parts 9525.0010 to 9525.0100;

G. the county will comply with parts 9525.1800 to 9525.1930 [Emergency];

H. the county will comply with Minnesota Statutes, chapter 256B, and rules adopted thereunder; and

I. the county will comply with United States Code, title 19, sections 1396 et seq., and all regulations promulgated thereunder.

Subp. 2. Additional requirements. If the county provides home and community-based services in addition to case management, the agreement must specify the services to be provided by the county and must meet all the requirements in part 9525.1870 [Emergency].

If the agreement is signed on or after the effective date of parts 9525.1800 to 9525.1930 [Emergency], the agreement must include a provision specifying that the county agrees that the commissioner may reduce or discontinue reimbursement, or seek other legal remedies if the county fails to comply with the provisions of the agreement and parts 9525.1800 to 9525.1930 [Emergency].

9525.1910 [Emergency] COUNTY FUNDING OF HOME AND COMMUNITY-BASED SERVICES.

Subpart 1. County responsibility. The county shall fund home and community-based services in accordance with subparts 2 to 5.

Subp. 2. Distribution of money. The total amount of money allocated to a county for home and community-based services in a fiscal year shall be the statewide average daily reimbursement rate multiplied by the total number of days the home and community-based services will be provided to the clients. The statewide average daily reimbursement rate shall be calculated by dividing the total amount of money available under the federal waiver by 365 days and then dividing the quotient by the department's projection of the total number of clients to receive home and community-based services as stated in the federal waiver application.

Subp. 3. Rate setting. The host county shall determine the rates to be paid to providers for home and community-based services and retain documentation of the process and data used to determine the rate.

Subp. 4. Cost limitations. There is no dollar limitation on the amount of home and community-based services money that may be used per client. In authorizing and billing for home and community-based services for individual clients, the county must comply with items A and B. For counties applying jointly, the total cost and total allocation in item A shall be the total cost and total allocation for all of the counties represented on the application and the average cost in item B shall be the average cost for all clients included in the application.

A. The total cost of home and community-based services provided to all clients during the fiscal year must not exceed the total allocation approved for the county, or counties if applying jointly, for the fiscal year by the commissioner.

B. The county's average cost per day for all services provided to all clients must not exceed the statewide average daily reimbursement rate.

Subp. 5. Leave days. Leave days are days when a client is temporarily absent from services. Leave days are reimbursable for supported living arrangements for children or supported living arrangements for adults if the client intends to return to the service. Normal billings may be made for leave days only when the client is:

A. hospitalized;

B. on a therapeutic overnight trip, camping trip, or vacation;

C. home for a visit; or

D. in respite care.

Leave days which are not included in the individual service plan may not be billed for without county authorization. The county and the provider must document all leave days for which billings are made and specify the reasons the county authorized the leave days.

9525.1920 [Emergency] REQUIRED RECORDS AND REPORTS.

Subpart 1. Provider records. The provider and any subcontractor the provider contracts with shall maintain complete program and fiscal records and supporting documentation identifying the clients served and the services and costs provided under the provider's home and community-based services contract with the county. These records must be maintained in well-organized files and identified in accounts separate from other facility or program costs. The provider's records shall be subject to the maintenance schedule, audit availability requirements, and other provisions in parts 9505.1750 to 9505.2150.

Subp. 2. County records. The county shall maintain complete fiscal records and supporting documentation identifying the clients served and the services and costs provided under the county's agreement with the department. The county records shall be subject to the maintenance schedule, audit availability requirements, and other provisions in parts 9505.1750 to 9505.2150.

Subp. 3. Availability of records. The county's and the provider's financial records shall be available, on request, to the commissioner and the federal Department of Health and Human Services in accordance with parts 9500.0750 to 9500.1080, 9505.1750 to 9505.2150, and 9525.1800 to 9525.1930 [Emergency].

Subp. 4. Retention of records. The county and the county's home and community-based service providers shall retain a copy of the records required in subpart 1 for five years unless an audit in process requires a longer retention period.

9525.1930 [Emergency] PENALTIES.

Subpart 1. Noncompliance. The commissioner may pursue contractual remedies in accordance with part 9525.1870 [Emergency], subparts 2 and 3, withhold or withdraw reimbursement, recoup money paid, and pursue any other available legal remedy for failure of a county, provider, or subcontractor to comply with parts 9525.1800 to 9525.1930 [Emergency]. The commissioner may also take action in accordance with Minnesota Statutes, section 256B.064.

The county shall pursue contractual remedies in accordance with part 9525.1870 [Emergency], subparts 2 and 3, withhold or withdraw reimbursement, recoup money paid, or pursue any other available legal remedy for failure of a provider or subcontractor to comply with parts 9525.1800 to 9525.1930 [Emergency]. A provider shall be held liable if a subcontractor fails to comply with parts 9525.1800 to 9525.1930 [Emergency].

Subp. 2. Failure to enforce. The county shall be held liable for any damages or costs to the department for failure of the county to enforce contracts entered into under parts 9525.1800 to 9525.1930 [Emergency] or for any action or inaction which impedes enforcement by the commissioner.

Subp. 3. Appeals. Before the commissioner withholds, recoups, or withdraws the county's allocation under subpart 1, the commissioner shall give 30 days written notice to the county and send a copy of the written notice to the affected providers or subcontractors. The written notice shall inform the county, provider, or subcontractor of its right to a hearing under the contested case procedures of Minnesota Statutes, chapter 14. If the commissioner receives a written appeal of the commissioner's action within 30 days of the date the written notice is sent, the commissioner shall initiate a contested case proceeding. The written appeal must state the reasons the county, provider, or subcontractor is appealing the commissioner's action. The commissioner shall not take the proposed action before the hearing unless, in the commissioner's opinion, the action is necessary to protect the public welfare and the interests of the home and community-based services program.

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.

STATE OF MINNESOTA
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF THE PROPOSED ADOPTION OF EMERGENCY RULES RELATING TO MEDICAL ASSISTANCE FUNDING AND ADMINISTRATION OF HOME AND COMMUNITY-BASED SERVICES FOR PERSONS WHO ARE MENTALLY RETARDED (PARTS 9525.1800 to 9525.1930)

SUPPLEMENTAL FINDINGS OF FACT AND CONCLUSIONS

The Commissioner sent the findings of fact, conclusions and orders concerning the proposed emergency rules on the above-entitled matter to the Attorney General on October 1, 1984. Since that time the Department has discovered the following clerical errors in the proposed rule and therefore submits the following supplemental findings.

1. In part 9525.1910 (Emergency) subpart 4, item C of the proposed rule the Department lists cost criteria to be used by the Commissioner to review rates. The Commissioner finds that a clerical error was made in entering this material; the term "resident" should be changed to "client" to conform with the defined term used in this rule. This item is therefore amended accordingly.

2. In part 9525.1920 (Emergency) subpart 4 of the proposed rule the counties, providers and the subcontractors are required to retain the records required in subpart 1 for five years. However county records are specified in subpart 2. The Commissioner finds that a clerical error was made in this reference and therefore amends this subpart to include "subparts 1 and 2".

CONCLUSIONS

I hereby conclude that:

1. The modifications made to the proposed emergency rule are clerical only and do not constitute a substantial change.

2. The emergency rule, as modified, is necessary and reasonable.

ORDER

Based on the above findings and conclusions, proposed rule parts 9525.1910 and 9525.1920 (Emergency) as adopted by me on October 1, 1984, and transmitted to the Attorney General, are amended as described above.

Dated: October 11, 1984

STATE OF MINNESOTA

LEONARD W. LEVINE
Commissioner of Human Services

STATE OF MINNESOTA
DEPARTMENT OF HUMAN SERVICES

In the Matter of the Proposed Adoption of Emergency Rules Relating to Medical Assistance Funding and Administration of Home and Community-Based Services For Persons Who Are Mentally Retarded.

FINDINGS OF FACT AND CONCLUSIONS

The Commissioner published notice of proposed emergency rules on the above entitled matter in the State Register on August 13, 1984. Notice was also sent by United States mail to all persons on a list maintained by the Department pursuant to Minnesota Statutes, section 14.14, subdivision 1, on August 8, 1984. After affording all interested and affected persons an opportunity to submit comments for 25 days after the notice and reviewing and considering the comments, I find the following:

1. In part 9525.1800 [Emergency] subpart 8 of the proposed rule, the Department defined daily intervention. One commentator, Mary Martin of the Association of Residences for the Retarded in Minnesota (ARRM) commented that the definition was unclear. The Commissioner agrees that this definition is unclear and after careful consideration of Ms. Martin's comment and the part of the rule in which this term is used revises the section by adding a period and starting a new sentence using the following language: "To qualify as daily intervention the supervision, assistance, or training must be provided each day". The Commissioner finds that the revised definition as used in part 9525.1820 [Emergency] clarifies the issue raised by Ms. Martin. p.1

2. In part 9525.1800 [Emergency] subpart 10 of the proposed rule, the Department defines the term diversion. Several commentators, including Sue Abderholden of the Minnesota Association for Retarded Citizens, Roger Deneen of the Minnesota Governor's Planning Council on Developmental Disabilities, and Luther Granquist of Legal Advocacy for Developmentally Disabled Persons in Minnesota question the phrasing of this definition. Mr. Granquist suggests the Department replace the term "placing" with "providing" to more accurately describe the process used in-home and community-based services. The Commissioner agrees with Mr. Granquist and therefore replaces the term "placing" with the term "providing". To further clarify this definition the Commissioner adds the phrase "with home and community-based services" following the word "client". p.2

3. In part 9525.1800 [Emergency] subpart 12 of the proposed rule, the Department defines the term "federal waiver application". Commentator Donald Strei of Sherburne County Social Services asks if this definition should be changed since the waiver has been approved. The Commissioner agrees that this definition should be changed and modifies the language accordingly. In addition the Commissioner finds that it would be clearer to the readers if the term "federal waiver application" was changed to "waiver". Consequently, this definition as modified, has been changed to "waiver" and moved to subpart 26. p.2,4

4. In part 9525.1800 [Emergency] subpart 15 of the proposed rule, the Department defines home and community-based services. Commentator Donald Strei asks the Department to clarify this definition and the citation to the United States Code. The Commissioner agrees that the definition and citation need clarification and modifies the language accordingly.

5. In part 9525.1800 [Emergency] subparts 17 and 18 of the proposed rule, the Department references the definitions of individual program plan and individual service plan used in parts 9525.0010. Commentators Luther Granquist and Donald Strei commented on the fact that these rule parts are being revised and suggest that this rule reference the revised definitions. The Commissioner agrees that the most recent definitions should be used for clarity and consistency and adds the phrase "or their successor parts" to these definitions.

6. In part 9525.1800 [Emergency] subpart 20 of the proposed rule, the Department defines the term "placement". Commentators Mary Martin and Roger Deneen raise questions about this definition. Their questions and the preceding comments on the term "diversion" indicate that this term needs clarification and the Commissioner modifies the definition accordingly.

7. In part 9525.1800 [Emergency] subpart 21 of the proposed rule, the Department defines the term "primary caregiver". In response to a comment received from commentator Donald Strei and to clarify the use of the term in part 9525.1860 [Emergency] subpart 3, item F., of the proposed rule, the Commissioner modifies the definition by adding "other than a member of the client's family who is" between "person" and "responsible". The Commissioner also changes the term "daily care" to "assistance" to make this definition consistent with the definition of "daily intervention" in subpart 8.

8. In part 9525.1800 [Emergency] subpart 24 of the proposed rule, screening team is defined by referring to Minnesota Statutes, section 256B.092. The Commissioner finds this reference somewhat confusing since the term is not given a definition in the statute and therefore modifies the definition to clarify the reference.

9. In part 9525.1800 [Emergency] subpart 26 of the proposed rule, the Department defines "short-term" as "a period of less than 90 days in a year." Commentator Donald Strei asks if the Department means 90 consecutive days or 90 days total. The Commissioner agrees that it is unclear what is meant and modifies the definition to clarify that short-term means 90 days total.

10. In part 9525.1810 [Emergency] subpart 1 of the proposed rule, the Department explains the purpose of the rule. Commentator Sue Abderholden states that the rule also contains programmatic aspects and commentator Roger Deneen states that if the rule's purpose is also to provide a program rule it should state that purpose.

The Commissioner agrees that the rule does contain more than funding procedures and modifies the language to acknowledge the broader purpose of the rule. p.4

11. In part 9525.1810 [Emergency] subpart 2 of the proposed rule, the Department explains that the proposed rule applies to counties and providers. Commentator Donald Strei suggests that the Department include subcontractors in the applicability section. The Commissioner agrees that the proposed rule does apply to subcontractors and modifies the subpart accordingly. p.4

12. In part 9525.1820 [Emergency] subpart 2 of the proposed rule, the Department explains when medical assistance eligibility must be determined without considering parental income and resources. Commentator Donald Strei states that as written this subpart requires the county to waive income and resource limits for all children. Mr. Strei also points out that some families are eligible without a waiver. Since it was not the Department's intention to require waivers if the child would be eligible without a waiver, the Commissioner amends the language to clarify when a waiver is necessary. p.5

13. In part 9525.1830 [Emergency] item A of the proposed rule, the Department relates provision of services to availability of funds. Commentator Roger Deneen asks for clarification of this item. The Commissioner agrees that this item needs clarification and revises the language accordingly. p.6

14. In part 9525.1830 [Emergency] item B of the proposed rule, the Department references the role of the screening team. The Commissioner finds that the language used is not consistent with the language in the parts referenced and changes the language to be consistent with the referenced parts. The Commissioner also inserts the language "or their successor parts" to ensure that this item conforms with the most recent rules governing the functions of the screening team. This change is consistent with other changes suggested by commentators Strei and Granquist. p.6

15. In part 9525.1840 [Emergency] subpart 2 of the proposed rule, the headnote classifies services provided to a client who is residing with a parent as "in-home placements." Commentator Roger Deneen suggests that the Department change this headnote and the headnote in subpart 1. The Commissioner disagrees with the change suggested for subpart 1 since clients are placed outside the home but agrees that subpart 2 should be changed from "placements" to "services" and revises the headnote accordingly. p.6

16. In part 9525.1850 [Emergency] item A of the proposed rule, the Department references several sections of Minnesota Statutes. Commentator Donald Strei asks how these sections apply. The Commissioner finds that the sections do not apply in this case and deletes the language "in accordance with Minnesota Statutes, sections 252.28 and 245.781 to 245.812." p.7

17. In part 9525.1850 [Emergency] of the proposed rule, the criteria that must be met before a provider can receive medical assistance reimbursement for home and community-based services are listed. Commentator Donald Strei comments that no mention is made in the part of the role of the county of financial responsibility. The Commissioner agrees that the role of the county of financial responsibility should be stated here to make this part consistent with other parts of the rule and adds an item stating that the county of financial responsibility must authorize the provider to provide the services before the provider can receive medical assistance reimbursement. Mr. Strei also points out that no reference is made to compliance with the United States Code in this part. The Commissioner agrees that the providers must comply with the United States Code in order to receive medical assistance reimbursement and therefore adds a reference to the code to item C, to clarify this requirement. ✓p. 7

18. In part 9525.1860 [Emergency] subpart 2 of the proposed rule, the Department defines the home and community-based services that may be reimbursed under medical assistance. The definition of "leave days" was not included under this subpart. Leave days was instead defined in part 9525.1910 [Emergency] subpart 5. Commentator Donald Strei asks why leave days are in part 9525.1910 [Emergency]. The Commissioner finds that defining leave days in part 9525.1860 [Emergency] would be more appropriate and therefore inserts the definition of leave days between the definitions of "in-home family support services" and "minor physical adaptations." The limitations on leave days are inserted in subpart 3, between items C and D. ✓p. 9, 11, 23

19. In part 9525.1860 [Emergency] subpart 2, item F of the proposed rule, the Department limits physical adaptations to those which enable the client to avoid institutionalization by "increasing the clients mobility and protecting the client against injury". Commentator Luther Granquist, recommends changing the "and" to an "or." The Commissioner accepts the rationale presented by Mr. Granquist and amends the definition accordingly. ✓p. 9

20. In part 9525.1860 [Emergency] subpart 2, item J of the proposed rule, the Department sets the age limit for providing supported living arrangements for children at 21 years of age. Hennepin County submitted comment asking whether an "adult SLA" could serve adults between 18 and 21 years of age. The Commissioner finds that the distinction between these services is unclear as written and therefore changes the age limit in item J from "21" to "18". ✓p. 10

21. In part 9525.1860 [Emergency] subpart 3, item A of the proposed rule, the Department limits the staff time which can be billed by the provider. Commentator Tom Beer of the Minnesota State Employees Union asks for clarification of this limitation. The Commissioner agrees that clarification is needed and changes the language to make the billing procedure conform more closely to standard billing procedures for contracted services. ✓p. 10

22. In part 9525.1860 [Emergency] subpart 3, item C, unit (1) of the proposed rule, the Department states that homemaker services may be provided if the person regularly responsible for these activities is "temporarily absent or temporarily unable" to manage the home and care for the client. Commentator Sue Abderholden states that item is not consistent with the definition in the waiver. The Commissioner agrees that the description is not consistent with the description in the waiver and deletes the word "temporarily" before "unable" to make this limitation more consistent with the description in the waiver. p.10

23. In part 9525.1860 [Emergency] subpart 3, item E the Department states that home and community-based services must not be provided to a client while the client "is a resident of an ICF/MR or on leave from ICF/MR." Commentator Donald Strei asks if these services can be provided to a client while the client is in a hospital intermediate care facility or skilled nursing facility. The Commissioner agrees that this issue should be addressed specifically and modifies the section to clarify that home and community-based services must not be provided to a client in the facilities mentioned above. p.12

24. In part 9525.1860 [Emergency] supart 3, item F of the proposed rule, the Department states that room and board costs are not allowable costs for "residential-based habilitation services". Commentator Roger Deneen suggests that this limitation be rewritten to make it clear that room and board costs are allowable for respite care. The Commissioner agrees and modifies the language accordingly. p.12

25. In part 9523.1860 [Emergency] subpart 3, item H of the proposed rule, the Department lists a number of services which if provided must be included in the bill submitted by the provider. Commentator Roger Deneen states that this section needs clarification. The Commissioner agrees and modifies the language to provide clarification. p.12

26. In part 9525.1860 [Emergency] subpart 3, item I of the proposed rule, the Department states that control of delivery of home and community-based services shall be limited as stated in Statute. Commentator Mary Martin states that the intent of this section is unclear and should be clarified. The Commissioner finds that the intent is unclear because the citation is inaccurate and changes the citation from "256B.501" to "256B.491". p.13

27. In part 9525.1870 [Emergency] of the proposed rule, the Department lists the contents of the county/provider contract. Commentator Mary Martin states that two of the descriptors are synonymous and one should be deleted. The Commissioner agrees and deletes item E. p.13

28. In part 9252.1870 [Emergency] item I of the proposed rule, the Department states that the billing rate and the total budget shall be included in the contract. Commentator Mary Martin suggests that "for waivered services" be added to this item to make it clear which budget figures the provider should submit. The Commissioner agrees that this should be clarified and adds "for home and community-based services" to the item. p.13

29. In part 9525.1870 [Emergency] subpart 2 and subpart 3. E., the Department specifies the wording for a provision to be included in all contracts and subcontracts entered into under this rule. Commentator Mary Martin recommends that the Department change the wording of this provision. Based on the comments received from Ms. Martin the Commissioner finds that the language regarding anticipatory breach and recouping of payments needs to be clarified. The Commissioner therefore changes the provision to clarify that the contract must be breached in a material manner and that recouping of payments is limited to the period during which the breach occurred. In response to Ms. Martin's comments the Commissioner also adds provisions for "curing" the breach in part 9525.1870, subpart 4. ✓p. 14, 15, 16

30. In part 9525.1880 [Emergency] subpart 3, item B of the proposed rule, the Department asks the county to "identify the persons the county expects to provide the home and community-based services." Commentator Mary Martin stated that this item would be more clear if "to whom" was inserted after "persons". The Commissioner agrees and modifies the item as suggested. ✓p. 17

31. In part 9252.1880 [Emergency] subpart 3, item E of the proposed rule, the Department requires that the counties describe in their proposal how the proposal "limits the development of new community-based ICF/MR beds or reduces the county's use of existing ICF/MR beds". Commentator Donald Strei states that the proposal should address both issues. The Commissioner agrees and therefore changes the "or" to an "and". The same change is made in subpart 4, item C. ✓p. 17, 18

32. In part 9525.1880 [Emergency] subpart 4 of the proposed rule, the Department states the criteria for approval of proposals "in fiscal year 1985" and "in fiscal year 1986". Commentator Mary Martin points out that this wording is confusing since approval of proposals may not take place "in" the fiscal year. The Commissioner agrees that the wording is confusing and replaces "in" with "for" in both places. ✓p. 18

33. In part 9525.1890 [Emergency] subpart 2 of the proposed rule, the Department describes the allocation process for diversions in fiscal year 1986. Commentator Donald Strei requests that the Department clarify which fiscal year is referred to. The Commissioner agrees that the language is unclear and modifies the subpart accordingly. ✓p. 19

34. In part 9525.1890 [Emergency] subpart 5 of the proposed rule, the allocation and reallocation processes are established. Commentator Donald Strei recommends that the Department adjust the language in this subpart to allow reallocation to a single county within the same geographic region. The Commissioner agrees that reallocation to a single county might be desirable in some instances and modifies the language accordingly. ✓p. 19, 20

35. In part 9525.1900 [Emergency] subpart 2 of the proposed rule, the Department states that the county must meet the requirements in part 9525.1870 [Emergency] if the county provides home and community-based services in addition to case management. Commentator Donald Strei asks

how the requirements of this part apply to counties. The Commissioner finds that for counties the requirements are mainly record requirements and therefore deletes the language in this part and inserts language regarding recordkeeping in part 9525.1920 [Emergency] subpart 2. p.21

36. In part 9525.1910 [Emergency] subparts 3 and 4, the rate setting process is explained. Commentator Donald Strei asks if there are any federal regulations that would limit these rates. There are basic standards for Medical Assistance costs which must be applied by the Department. To clarify that the Department will be applying these standards, the Commissioner changes subparts 3 and 4. These changes also address the need for cost controls stressed by commentator Roger Deneen. p.22, 23

37. In part 9525.1920 [Emergency] subpart 1, 3 and 4 of the proposed rule, the Department refers to requirements for providers' records and counties' records. Commentator Donald Strei asks if these record requirements apply to subcontractors. The Commissioner finds that the record requirements do apply to subcontractors and modifies the language in subparts 1, 3 and 4 to so reflect. p.23, 24

38. In part 9525.1920 [Emergency] subpart 3 of the proposed rule, the Department states the requirement for availability of county, provider and subcontractor records. Commentator Mary Martin states that subpart 3 should be amended to further describe financial records as those "described in subparts 1 and 2". The Commissioner finds the proposed amendment to appropriately define the Department's intent and inserts the phrase as recommended. p.24

39. In part 9525.1930 [Emergency] subpart 3 of the proposed rule, the procedure for county appeals is established. Commentator Donald Strei requests that the Department include a section on appeals by individuals. The Commissioner agrees that this issue should be addressed and adds a subpart addressing the issue. To further clarify the appeals issue the Commissioner also requires the county to establish written procedures and criteria for determining which clients will receive home and community-based services. (Part 9525.1830 new subpart 2). p.25 p.6

40. As a result of the Department's review of the comments received and the proposed rules, the Department has made numerous minor changes to correct problems of grammar, spelling or lack of clarity in the proposed rules. Such changes did not affect the substance of the rules. These changes are as follows:

    Part 9525.1800 [Emergency] subpart 11. Change "and" to "or".

    Part 9525.1800 [Emergency] Renumber subparts 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, and 26 to accommodate a change in the definition in subpart 12.

    Part 9525.1800 [Emergency] subpart 19. Insert "Minnesota" before "Department of Health".

Part 9525.1800 [Emergency] subpart 23. Change defined term to room and board costs.

Part 9525.1810 [Emergency] subpart 2. Strike "a county or" insert "all".

Part 9525.1810 [Emergency] subpart 3. Strike "federal" before "waiver". Insert "federal" before "Department." Insert "United States".

Part 9525.1820 [Emergency] subpart 1, item B. Insert "and procedures" between "definitions" and "in". Add "and their successor parts" after 9525.0100 (follow-up to change made in part 9525.1800 subparts 17 and 18).

Part 9525.1820 [Emergency] subpart 1, item D. Insert "daily" after "needed".

Part 9525.1820 [Emergency] subpart 2. Change item "C" to item "D" and delete "approved federal". Delete "application".

Part 9525.1830 [Emergency] reformat into 2 subparts. Subpart 1 "conditions" and subpart 2 "written procedures and criteria".

Part 9525.1830 [Emergency] item D. Insert "the" between "or" and "persons".

Part 9525.1830 [Emergency] item E. Insert "specified" between "objectives" and "in".

Part 9525.1850 [Emergency] Introduction. Change "A to D" to "A to E".

Part 9525.1850 [Emergency] item B. Insert "host" between "the" and "county".

Part 9525.1850 [Emergency] items C and D. Change item "C" to item "D," change item "D" to "E".

Part 9525.1850 [Emergency] item D. Change "If the client is a ward of the commissioner, the county is not precluded from providing services." to "This item does not preclude the county from providing services if the client is a ward of the commissioner".

Part 9525.1860 [Emergency] subpart 1. Delete "federal" (line 29), delete "federal" (line 30) insert "United States".

Part 9525.1860 [Emergency] subpart 2. Change citation at end of subpart to "Minnesota Statutes, Chapter 13 and sections 626.556 and 626.557".

Part 9525.1860 [Emergency] subpart 2, item E. Insert "and may include training and counseling for the client and the client's family" after "home." Delete "and may include training of the client and the client's family and counseling for the client and the client's family" after "21 years of age".

Part 9525.1860 [Emergency] subpart 2. Change item letters F, G, H, I, J, to G, H, I, J, K to accommodate the addition of a definition of "leave days".

Part 9525.1860 [Emergency] subpart 2, item F last sentence. Insert "named" between "those" and "in", change "item D" to "item E".

Part 9525.1860 [Emergency] subpart 2, item H. Change last sentence to read "Respite care may include day, overnight, in-home, or out-of-home services, as needed".

Part 9525.1860 [Emergency] subpart 3, item A units (1) and (2). Insert "and objectives specified" after "goals".

Part 9525.1860 [Emergency] subpart 3. Change items D, E, F, G, H, I, to E, F, G, H, I, J.

Part 9525.1860 [Emergency] subpart 3, item D. Delete "in subitems (1) to (12)" in introductory sentence. Add an "s" to "bathtub" in unit (3). Change "which" to "that" in unit (9).

Part 9525.1860 [Emergency] subpart 3, item F. Delete "," after "client's family" insert "or". Delete "respite care may be provided".

Part 9525.1870 [Emergency]. Change lettering F-M, to E-L. Change lead sentence from "A to M" to "A to L".

Part 9525.1870 [Emergency] item H. Insert "and objectives specified".

Part 9525.1880 [Emergency] subpart 3. Change "shall" to "must".

Part 9525.1880 [Emergency] subpart 3, item B, unit 6. Insert "the" before "home".

Part 9525.1880 [Emergency] subpart 3, item D. Insert "of children to state hospitals" after "admission". Change "in state hospitals" to "from state hospitals".

Part 9525.1880 [Emergency] subpart 4, final paragraph. Insert "why" following "reasons".

Part 9525.1890 [Emergency] subpart 1. Change "by the county" to "for the county". Delete "federal" and "application" from "federal waiver application".

Part 9525.1890 [Emergency] subpart 2. Change "under" to "using the procedure in".

Part 9525.1890 [Emergency] subpart 4. Move clause.

Part 9525.1890 [Emergency] subpart 6. Insert "fiscal year" before "1986" at the end of the subpart.

Part 9525.1890 [Emergency] subpart 1, item F. Insert "or their successor parts".

Part 9525.1910 [Emergency] subpart 1. Change "subparts 2 to 5" to subparts 2 to 4".

Part 9525.1910 [Emergency] subpart 2. Change "be" to "not exceed". Change "federal waiver" and "federal waiver application" to "waiver".

Part 9525.1910 [Emergency] subpart 4. Change "items A and B" to items A to C".

Part 9525.1920 [Emergency] subpart 3. Insert "by counties" in headnote. Change "its" to "the".

Part 9525.1920 [Emergency] subpart 4. Delete "county's home and community-based service".

Part 9525.1930 [Emergency] title. Add "And Appeals".

41. All comments concerning the proposed temporary rules received within the period allowed by law were considered by the Department.

42. The changes made to the proposed temporary rule are not substantial changes.

CONCLUSIONS

I hereby conclude that:

1. The Commissioner has statutory authority to promulgate these rules.

2. Proper notice of the Department's intent to adopt the proposed above-captioned temporary rules was given as required by law, and all interested persons were afforded an opportunity to submit data and views on the proposed temporary rules.

3. All modifications made to the proposed temporary rule are supported by the data and views submitted to the Department, and are not substantial changes.

4. The temporary rules, as modified, are necessary and reasonable.

5. Any duplication in these rules of language contained in Minnesota Statutes is crucial to the ability of persons affected by the rules to comprehend their meaning and effect.

6. The Department has complied with all applicable provisions of law and rule in the promulgation of these rules.

7. If any finding or part of a finding, above, is properly characterized as a conclusion, it is adopted as a conclusion.

DATED: 10-1-84

STATE OF MINNESOTA

LEONARD W. LEVINE, COMMISSIONER
Department of Human Services

HTH01

J

IN THE MATTER OF THE PROPOSED ADOPTION OF RULES OF THE STATE OF MINNESOTA DEPARTMENT OF HUMAN SERVICES GOVERNING MEDICAL ASSISTANCE FUNDING AND ADMINISTRATION OF HOME AND COMMUNITY-BASED SERVICES FOR PERSONS WHO ARE MENTALLY RETARDED, MINNESOTA RULES, PARTS 9525.1800-9525.1930 (EMERGENCY).

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: 10/1/84

I

STATE OF MINNESOTA
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF PROPOSED EMERGENCY RULES GOVERNING MEDICAL ASSISTANCE FUNDING AND ADMINISTRATION OF HOME AND COMMUNITY-BASED SERVICES FOR PERSONS WHO ARE MENTALLY RETARDED, MINNESOTA RULES PARTS 9525.1800-9525.1930 (EMERGENCY).

AFFIDAVIT OF MAILING NOTICE OF SUBMISSION TO THE ATTORNEY GENERAL

STATE OF MINNESOTA)
) ss.
COUNTY OF RAMSEY)

Jane Delage, being first duly sworn, deposes and says:

That on the 1st day of October, 1984, in the City of St. Paul, County of Ramsey, State of Minnesota, she served the attached Notice of Submission to the Attorney General by depositing in the State of Minnesota Central Mail System for United States mailing, a copy thereof, properly enveloped, with postage prepaid, on all persons and associations who requested notice that the rules in the above-entitled matter have been submitted to the Attorney General.

Jane M Delage

Subscribed and sworn to before me

this 1 day of October, 1984.

Claudia A. Eliason

CLAUDIA A. ELIASON
NOTARY PUBLIC-MINNESOTA
WASHINGTON COUNTY
MY COMMISSION EXPIRES NOVEMBER 15, 1990

STATE OF MINNESOTA
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF THE PROPOSED ADOPTION OF THE DEPARTMENT OF HUMAN SERVICES EMERGENCY RULE GOVERNING MEDICAL ASSISTANCE FUNDING AND ADMINISTRATION OF HOME AND COMMUNITY-BASED SERVICES FOR PERSONS WHO ARE MENTALLY RETARDED, MINNESOTA RULES, PARTS 9525.1800-9525.1930 (EMERGENCY).

NOTICE OF SUBMISSION TO THE ATTORNEY GENERAL

Pursuant to your request and in accordance with Minnesota Statutes 1984, section 14.30 and 14.32:

PLEASE TAKE NOTICE that the above-captioned rules have been submitted to the Office of the Attorney General on this date, October 1, 1984 for review for form and legality.

The attorney general shall review the proposed emergency rule as to its legality, review its form to the extent the form relates to legality, and shall approve or disapprove the proposed emergency rule and any modifications on the tenth working day following the date of receipt of the proposed emergency rule from the agency.

If you desire to comment on the legality of the above-captioned rules, you should direct your comments to the Office of the Attorney General, Room 204 State Administration Building, 50 Sherburne Avenue, Saint Paul, Minnesota 55155, telephone (612)296-7030.

The proposed emergency rule has been modified. A free copy of the proposed emergency rule, as modified, is available upon request from:

Susan Canine
Department of Human Services
4th Floor, Centennial Office Building
St. Paul, MN 55155