

Minnesota Attorney General: Administrative Rules Proceedings

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Version 3
August 20, 2018

Our File No. 1146

RULE REVIEW CHECKLIST

DATE RULE RECEIVED 4-2-85
DATE FOR REVIEW
DATE DUE 4-16-85

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

Approved 4-16-85 mjc Disapproved Returned to Agency

Resubmitted Due
Approved Disapproved Returned to Agency

Date filed w/Secretary of State 4-16-85 Revisor approved 4/3/85 disapproved

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✓ Rule as Adopted

✓ Rule as Proposed see SR

? Order Adopting 4/2/85 Date citation to statutory authority omitted

✓ Notice of Intent to Solicit Outside Opinion SR 11.26.84

✓ Order for rulemaking
N/A date of Hearing

N/A Certificate of Board's Authorizing Resolution

✓ Notice of rulemaking
? Sufficiency See comment re period of effectiveness.

✓ Affidavit of Mailing Notice or rulemaking
2.6.85 At least ~~30~~ 25 days prior to ~~hearing~~/adoption

✓ Mailing list Certificate

✓ Publication in State Register
2.11.85 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-00006-03

DEPARTMENT REVISOR OF STATUTES

STATE OF MINNESOTA

Office Memorandum

TO: Judith Wehrwein

DATE: 3-28-85

FROM: Susan Lentsch

PHONE:

SUBJECT: Human service rule modifications

Enclosed please find the human service rules which were submitted to me for modifications. AR0707E notice of intent to adopt was published at State Register 1788, on February 11, 1985. AR0707E-ADD was adopted as modified on November 12, 1984, at 9 State Register 1066.

As we discussed, I would appreciate your opinion as to whether these can be modified together, because they were not proposed, nor adopted at the same time.

Any suggestions would be helpful. Thank you for your time.

/jc
enclosure

4/4 Sue Lentsch told me the above is now moot since DHS decided to utilize a different method of amending the amendment to emergency Rule

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 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].

Providers who contracted with the county to provide home and community-based services before April .., 1985, have until January 1, 1986, to comply with parts 9525.1850, items B to F; 9525.1860, subpart 3, item G, subitem (2); 9525.1860, subpart 4; and 9525.1870, subpart 1, item L.

Subp. 2. to 4. [Unchanged.]

Department of Human Services

Adopted Emergency Rules Relating to Medical Assistance for Home and Community-Based Services for the Mentally Retarded

Emergency Rules as Adopted

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 J~~.~~. Items B to E only apply to persons who provide services which can be billed for under part 9525.1860 [Emergency] subpart 3, item A.

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.

B. The provider ensures that the provider and all employees or subcontractors meet all professional standards established in Minnesota Statutes, Minnesota Rules, and Code of Federal Regulations which apply to the services to be provided. If no training standards have been established, the provider, employee, or subcontractor must have completed, within the last two years, at least 24 hours of documented training subject to approval by the case manager. The training must be in areas related to the care, supervision, ~~and~~ or training of persons with mental retardation including first aid, medication administration, behavior management, cardiopulmonary resuscitation, human development, and obligations under Minnesota Statutes, sections 626.556 and 626.557. The county may grant a variance to the training requirements in this item for a respite care provider who provides the respite care in his or her residence or in the client's residence or for a provider who ensures that the training will be completed within six months of the date the contract is signed. This item does not apply to providers of minor physical adaptations.

C. The provider ensures that the provider and all employees or subcontractors have at least one year of experience within the last five years in the care, training, ~~and~~ or supervision of persons with mental retardation, epilepsy, autism, or cerebral palsy. The county may grant a variance to the requirements in this item for a respite care provider who provides the respite care in his or her residence or in the client's residence. This item does not apply to providers of minor physical adaptations or homemaker services.

D. The provider ensures that all home and community-based services, except homemaker services, respite care services, and minor physical adaptations, will be provided by, or under the ~~general~~ supervision of a qualified mental retardation professional who meets the requirements in Code of Federal Regulations, title 42, section 442.401 and has been approved by the case manager.

E. The provider ensures that the provider and all employees or subcontractors will ~~meet~~ complete the amount of inservice training ~~requirements of~~ required in any Minnesota rules applicable to the home and community-based services to be provided. If no Minnesota rules apply, the provider, except a provider of minor physical adaptations, agrees that the provider and all employees or subcontractors will complete at least 18 hours of documented inservice training each fiscal year. To meet the requirements of this item the inservice training must be in a field related to the care, training, and supervision of persons with mental retardation ~~each fiscal year~~ and must be approved by the case manager based on the needs identified in the individual service plans of the clients served by the provider. The county may grant a variance to the requirements in this item for a respite care provider who provides the respite care in his or her residence or in the client's residence.

F. The provider ensures that the provider and all employees or subcontractors have never been convicted of a violation, or admitted violating Minnesota Statutes, section

626.557 and there is no substantial evidence that the provider, employees, or subcontractors have violated Minnesota Statutes, section 626.557.

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

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

I. 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].

J. 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.

9525.1860 [Emergency] REIMBURSABLE SERVICES.

Subpart 1. **General limits.** The costs of providing the home and community-based services defined in subpart 2, provided in accordance with subparts 3 and 4, are reimbursable under the medical assistance program for as long as the waiver from the United States Department of Health and Human Services is in effect in Minnesota.

Subp. 2. [Unchanged.]

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

A. to D. [Unchanged.]

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:

(1) wheelchair ramps;

(2) handrails and grab bars;

(3) elevated bathtubs and toilets;

(4) widened doorways;

(5) shatterproof windows;

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

(7) door handle replacements;

(8) lowered kitchen work surfaces;

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

(10) handles and hoses for showerheads;

(11) door hinge replacements; or

(12) shower and bathtub seats.

Minor physical adaptations must be constructed in accordance with applicable state and local building codes.

F. [Unchanged.]

G. Respite care must:

(1) be provided only for the client's family or foster family, or if the client is in a supported living arrangement, for the client's primary caregiver; and

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

If there are no service sites which meet the requirements in subitem (2) available in the community to serve clients with multiple handicaps, the county may grant a variance to the requirement for a period of no more than one year for each client. When a variance is granted, the county must submit to the commissioner a written plan documenting the need for the variance and stating the actions that will be taken to develop services which meet the requirements of subitem (2).

H. [Unchanged.]

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.

(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.

The services in subitems (1) to (9) must be provided by a professional licensed or certified by the state to provide the services or by a paraprofessional supervised by a licensed or certified professional. If any of these services are provided to a client, the cost of the services must be included in the rate billed by 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.

J. [Unchanged.]

Subp. 4. **Other applicable rules.** Home and community-based services must be provided as required under items A to G.

A. Homemaker services must be provided ~~under~~ in compliance with parts 9565.1000 to 9565.1300.

B. Day habilitation and training services must be licensed ~~under parts 9545.0510 to 9545.0670~~ by the department.

C. Supported living arrangements for children must be provided at a service site licensed under parts 9545.0010 to 9545.0260.

D. Supported living arrangements for adults which are provided in a service site serving more than four adults must be licensed under parts 9525.0210 to 9525.0430. Supported living arrangements provided at a service site for four or fewer adults must be approved under parts 9555.6100 to 9555.6400; 9545.0090, item A; 9545.0140; 9545.0180; and 9545.0190, subparts 3 and 5. In approving supported living arrangements provided at a service site for four or fewer adults, the county shall apply the criteria in parts 9545.0090, item A; 9545.0140; 9545.0180; and

9545.0190, subparts 3 and 5 as though the criteria had been written to apply to services for adults.

E. Respite care provided at a service site serving more than four clients must be licensed under parts 9525.0210 to 9525.0430. Respite care provided at a service site serving four or fewer clients under 18 years of age must be licensed under parts 9545.0010 to 9545.0260. Respite care provided at a service site serving four or fewer adults must be approved under parts 9545.0090, item A; 9545.0140; 9545.0180; 9545.0190, subparts 3 and 5; and 9555.6100 to 9555.6400. Respite care provided at a service site for four or fewer children and adults must be approved under parts 9545.0090, item A; 9545.0140; 9545.0180; 9545.0190, subparts 3 and 5; and 9555.6100 to 9555.6400 and licensed under parts 9545.0010 to 9545.0260. This item shall not apply to a person who provides respite care for less than 30 days a year.

F. The county may request a variance from compliance with parts 9545.0010 to 9545.0260 as required in item C, D, or E, for a provider who provides services to clients under 18 years of age if the county determines that granting the variance will not endanger the health, safety, or development of the persons receiving the services. The written variance request must be submitted to the commissioner and must contain:

(1) the sections of parts 9545.0010 to 9545.0260 with which the provider cannot comply;

(2) the reasons why the provider cannot comply with the specified section or sections; and

(3) the specific measures that will be taken by the provider to ensure the health, safety, or development of the persons receiving the services.

The commissioner shall grant the variance request if the commissioner determines that the variance was submitted in accordance with this item and that granting the variance will not endanger the health, safety, or development of the persons receiving the services.

The commissioner shall review the county's variance request

and notify the county, in writing, within 30 days if the variance request has been granted or denied. If the variance request is denied, the notice must state the reasons why the variance request was denied and inform the county of its right to appeal.

G. The county may grant a variance from compliance with parts 9545.0090, item A; 9545.0140; 9545.0180; 9545.0190, subparts 3 and 5; and 9555.6100 to 9555.6400 as required in items D and E, for a provider who provides services to adults if the county determines that granting the variance will not endanger the health, safety, or development of the persons receiving the services.

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. to J. [Unchanged.]

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

L. description of inservice training to be provided under part 9525.1850 [Emergency], item E; 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.** Each contract and subcontract must contain the following provision. If any contract does not contain the following provision, the provision shall be considered an implied provision of the contract.

"The provider acknowledges and agrees that the Minnesota Department of Human Services is a third-party beneficiary, and as such is an affected party under this contract. The provider specifically acknowledges and agrees that the Minnesota Department

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

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

A. to B. [Unchanged.]

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

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

Subp. 4. [Unchanged.]

SF-00006-02

STATE OF MINNESOTA

DEPARTMENT ATTORNEY GENERAL

Office Memorandum

TO : LEONARD W. LEVINE
Commissioner, Department of Human Services

DATE: 4-16-85

FROM : MARTHA J. CASSERLY MJC
Special Assistant Attorney General

PHONE: 296-4692

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

The above-referenced rule has been approved as to its legality by the Attorney General on April 16, 1985.

Enclosed is the agency's copy of the approved rule. This office has already filed two copies of the approved rule with the Secretary of State, who will forward one copy to the Revisor of Statutes. The fourth copy is being retained by this division of the Attorney General's Office for its records.

Also enclosed are any petitions, requests, submission or comments received by the agency and any extra copies of documents which the agency submitted to the Attorney General.

In order for a permanent rule without a hearing to become effective, your agency must publish a notice of adoption in the State Register in accordance with Minn. Stat. § 14.27. An emergency rule becomes effective five working days after approval by the Attorney General; however, the agency must publish a notice in the State Register in accordance with Minn. Stat. § 14.34.

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

MJC:sz

Enclosures

cc: Executive Director
Legislative Commission to Review
Administrative Rules

Chief Administrative Law Judge
Office of Administrative Hearings

AG copy.

Department of Human Services

Adopted Emergency Rules Relating to Medical Assistance for Home and Community-Based Services for the Mentally Retarded

Emergency Rules as Adopted

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 J. Items B to E only apply to persons who provide services which can be billed for under part 9525.1860 [Emergency] subpart 3, item A. FF1

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.

B. The provider ensures that the provider and all employees or subcontractors meet all professional standards established in Minnesota Statutes, Minnesota Rules, and Code of Federal Regulations which apply to the services to be provided. If no training standards have been established, the provider, employee, or subcontractor must have completed, within the last two years, at least 24 hours of documented training subject to approval by the case manager. The training must be in areas related to the care, supervision, and or training of persons with mental retardation including first aid, medication administration, behavior management, cardiopulmonary resuscitation, human development, and obligations under Minnesota Statutes, sections 626.556 and 626.557. The county may grant a variance to the training requirements in this item for a respite care provider who provides the respite care in his or her residence or in the client's residence or for a provider who ensures that the training will be completed within six months of the date the contract is signed. This item does not apply to providers of minor physical adaptations.

FF2

what does ensure mean

FF2

APPROVED IN THE REVISOR OF STATUTES OFFICE BY:

C. The provider ensures that the provider and all employees or subcontractors have at least one year of experience within the last five years in the care, training, ~~and~~ or supervision of persons with mental retardation, epilepsy, autism, or cerebral palsy. The county may grant a variance to the requirements in this item for a respite care provider who provides the respite care in his or her residence or in the client's residence. This item does not apply to providers of minor physical adaptations or homemaker services.

D. The provider ensures that all home and community-based services, except homemaker services, respite care services, and minor physical adaptations, will be provided by, or under the ~~general~~ supervision of a qualified mental retardation professional who meets the requirements in Code of Federal Regulations, title 42, section 442.401 and has been approved by the case manager.

E. The provider ensures that the provider and all employees or subcontractors will ~~meet~~ complete the amount of inservice training ~~requirements of~~ required in any Minnesota rules applicable to the home and community-based services to be provided. If no Minnesota rules apply, the provider, except a provider of minor physical adaptations, agrees that the provider and all employees or subcontractors will complete at least 18 hours of documented inservice training each fiscal year. To meet the requirements of this item the inservice training must be in a field related to the care, training, and supervision of persons with mental retardation ~~each fiscal year~~ and must be approved by the case manager based on the needs identified in the individual service plans of the clients served by the provider. The county may grant a variance to the requirements in this item for a respite care provider who provides the respite care in his or her residence or in the client's residence.

F. The provider ensures that the provider and all employees or subcontractors have never been convicted of a violation, or admitted violating Minnesota Statutes, section

APPROVED IN THE REVISOR OF STATUTES OFFICE BY:

626.557 and there is no substantial evidence that the provider, employees, or subcontractors have violated Minnesota Statutes, section 626.557.

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

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

I. 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].

J. 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.

9525.1860 [Emergency] REIMBURSABLE SERVICES.

Subpart 1. **General limits.** The costs of providing the home and community-based services defined in subpart 2, provided in accordance with subparts 3 and 4, are reimbursable under the medical assistance program for as long as the waiver from the United States Department of Health and Human Services is in effect in Minnesota.

Subp. 2. [Unchanged.]

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

A. to D. [Unchanged.]

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:

(1) wheelchair ramps;

APPROVED IN THE REVISOR OF STATUTES OFFICE BY:

(2) handrails and grab bars;

(3) elevated bathtubs and toilets;

(4) widened doorways;

(5) shatterproof windows;

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

(7) door handle replacements;

(8) lowered kitchen work surfaces;

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

(10) handles and hoses for showerheads;

(11) door hinge replacements; or

(12) shower and bathtub seats.

Minor physical adaptations must be constructed in accordance with applicable state and local building codes.

F. [Unchanged.]

G. Respite care must:

(1) be provided only for the client's family or foster family, or if the client is in a supported living arrangement, for the client's primary caregiver; and

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

If there are no service sites which meet the requirements in subitem (2) available in the community to serve clients with multiple handicaps, the county may grant a variance to the requirement for a period of no more than one year for each client. When a variance is granted, the county must submit to the commissioner a written plan documenting the need for the variance and stating the actions that will be taken to develop services which meet the requirements of subitem (2).

FF 7

H. [Unchanged.]

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.

(1) psychological services;

(2) physical therapy;

APPROVED IN THE REVISOR OF STATUTES OFFICE BY:

(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.

The services in subitems (1) to (9) must be provided by a professional licensed or certified by the state to provide the services or by a paraprofessional supervised by a licensed or certified professional. If any of these services are provided to a client, the cost of the services must be included in the rate billed by 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.

J. [Unchanged.]

Subp. 4. **Other applicable rules.** Home and community-based services must be provided as required under items A to G.

A. Homemaker services must be provided ~~under~~ in compliance with parts 9565.1000 to 9565.1300. FF8

B. Day habilitation and training services must be licensed ~~under parts 9545.0510 to 9545.0670~~ by the department. FF8

C. Supported living arrangements for children must be provided at a service site licensed under parts 9545.0010 to 9545.0260.

D. Supported living arrangements for adults which are provided in a service site serving more than four adults must be licensed under parts 9525.0210 to 9525.0430. Supported living arrangements provided at a service site for four or fewer adults must be approved under parts 9555.6100 to 9555.6400; 9545.0090, item A; 9545.0140; 9545.0180; and 9545.0190, subparts 3 and 5. In approving supported living arrangements provided at a service site for four or fewer adults, the county shall apply the criteria in parts 9545.0090, item A; 9545.0140; 9545.0180; and

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9545.0190, subparts 3 and 5 as though the criteria had been written to apply to services for adults.

E. Respite care provided at a service site serving more than four clients must be licensed under parts 9525.0210 to 9525.0430. Respite care provided at a service site serving four or fewer clients under 18 years of age must be licensed under parts 9545.0010 to 9545.0260. Respite care provided at a service site serving four or fewer adults must be approved under parts 9545.0090, item A; 9545.0140; 9545.0180; 9545.0190, subparts 3 and 5; and 9555.6100 to 9555.6400. Respite care provided at a service site for four or fewer children and adults must be approved under parts 9545.0090, item A; 9545.0140; 9545.0180; 9545.0190, subparts 3 and 5; and 9555.6100 to 9555.6400 and licensed under parts 9545.0010 to 9545.0260. This item shall not apply to a person who provides respite care for less than 30 days a year.

F. The county may request a variance from compliance with parts 9545.0010 to 9545.0260 as required in item C, D, or E, for a provider who provides services to clients under 18 years of age if the county determines that granting the variance will not endanger the health, safety, or development of the persons receiving the services. The written variance request must be submitted to the commissioner and must contain:

(1) the sections of parts 9545.0010 to 9545.0260 with which the provider cannot comply;

(2) the reasons why the provider cannot comply with the specified section or sections; and

(3) the specific measures that will be taken by the provider to ensure the health, safety, or development of the persons receiving the services.

The commissioner shall grant the variance request if the commissioner determines that the variance was submitted in accordance with this item and that granting the variance will not endanger the health, safety, or development of the persons receiving the services.

The commissioner shall review the county's variance request

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OFFICE BY:

and notify the county, in writing, within 30 days if the variance request has been granted or denied. If the variance request is denied, the notice must state the reasons why the variance request was denied and inform the county of its right to appeal.

G. The county may grant a variance from compliance with parts 9545.0090, item A; 9545.0140; 9545.0180; 9545.0190, subparts 3 and 5; and 9555.6100 to 9555.6400 as required in items D and E, for a provider who provides services to adults if the county determines that granting the variance will not endanger the health, safety, or development of the persons receiving the services.

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. to J. [Unchanged.]

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

L. description of inservice training to be provided under part 9525.1850 [Emergency], item E; 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.** Each contract and subcontract must contain the following provision. If any contract does not contain the following provision, the provision shall be considered an implied provision of the contract.

"The provider acknowledges and agrees that the Minnesota Department of Human Services is a third-party beneficiary, and as such is an affected party under this contract. The provider specifically acknowledges and agrees that the Minnesota Department

APPROVED IN THE REVISOR OF STATUTES OFFICE BY:

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

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

A. to B. [Unchanged.]

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

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

Subp. 4. [Unchanged.]

Subp. 5. **Exception to part 9525.1930 [Emergency] penalties and appeals.** The penalties and appeals provisions of part 9525.1930 [Emergency] apply to providers under parts 9525.1850 to 9525.1870 except that providers who contracted with the county to provide home and community-based services before May 1, 1985, have until January 1, 1986, to comply with parts 9525.1850, items B to F; 9525.1860, subpart 3, item G, subitem (2); 9525.1860, subpart 4; and 9525.1870, subpart 1, item L.

FF 10

APPROVED BY THE REVISOR OF STATUTES OFFICE BY:

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED
APR 16 1985
Joan Anderson Growe
Secretary of State
11:00 AM

APPROVED AS TO FORM AND LEGALITY
April 16 19 85
HUBERT H. HUMPHREY, III
ATTORNEY GENERAL
BY M J Cassedy
SPECIAL ASSISTANT ATTORNEY GENERAL

STATE OF MINNESOTA

DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF THE PROPOSED
TEMPORARY AMENDMENTS TO MINNESOTA
RULES GOVERNING MEDICAL ASSISTANCE
FUNDING AND ADMINISTRATION FOR HOME
AND COMMUNITY-BASED SERVICES FOR
PERSONS WHO ARE MENTALLY RETARDED,
PARTS 9525.1800 TO 9525.1930 [EMERGENCY]

ORDER ADOPTING TEMPORARY
AMENDMENTS TO EMERGENCY RULES

The above-entitled matter was published in the State Register on Feb. 11 , 1985 as proposed amendments to emergency rules 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 amendments are needed and reasonable,

NOW, THEREFORE, IT IS ORDERED that these rules identified as temporary amendments to emergency rules governing Medical Assistance Funding and Administration for Home and Community-Based Services for Persons who are Mentally Retarded, Parts 9525.1800 to 9525.1930 [Emergency] are adopted this 2nd day of April , 1985, pursuant to authority vested in me by

STATE OF MINNESOTA

James E. Peterson, Deputy Commissioner

LEONARD W. LEVINE, Commissioner
Department of Human Services

Authority for these rules 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:

Jane Delage
Department of Human Services
Rules Unit
Fourth Floor, Centennial Building
St. Paul, MN 55155

Oral statements of information and comment will be received over the telephone at 612/297-4302 between 9 a.m. and 4 p.m. 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 rule record. Oral statements will be considered but will not become part of the rule record.

Department of Human Services
Mental Health Bureau

Outside Opinion Sought Concerning Proposed Temporary Amendments to Parts 9525.1800-9525.1930 [Emergency]

Notice is hereby given that the Minnesota Department of Human Services is considering draft temporary amendments relating to the medical assistance funding and administration of home and community-based services for persons who are mentally retarded. The amendments will establish standards for the delivery of home and community-based services including in-home family support services, respite care, and supportive living arrangements for children and adults.

Authority for these rule amendments is contained in Laws of Minnesota 1983, Chapter 312, Article 9, and Laws of Minnesota 1984, Chapter 640, Section 28.

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 Delage
Department of Human Services
Rules Unit
Fourth Floor, Centennial Building
St. Paul, MN 55155

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Board of Investment
Investment Advisory Council

Notice of Regular Meeting

The State Board of Investment will meet on Wednesday, December 12, 1984, at 1:30 p.m. in Room 118, State Capitol.

The Investment Advisory Council will meet at 2:30 p.m. on Tuesday, December 11, 1984, in the MEA Building Conference Room.

4850.0017 [Emergency] REPAYMENT PROCEDURES.

Borrowers shall make payments of principal and interest according to the following schedule:

A. During the school period, the board or its agent shall bill borrowers for accrued interest once during each calendar quarter. Payments are due by the 15th day following the date of the billing.

B. During the transition period, the board or its agent shall bill borrowers for accrued interest once during each calendar month. Payments are due by the 15th day following the date of the billing.

C. During the payout period, the board or its agent shall provide borrowers with coupon books annually for the repayment of loan principal and interest. The fixed amount of the coupon shall reflect (a) the interest rate in effect on the date the coupons are prepared (assumed rate), and (b) the length of the payout period. The actual interest rate on the loan will continue to vary. Payments of interest at the assumed rate exceeding actual interest accrued must be applied to the outstanding loan principal. If interest payments at the assumed rates are less than interest accrued, the difference must be billed annually by the board. A minimum annual payment of $600 of loan principal and accrued interest must be required of all borrowers including SELF loans to spouses during the payout period.

D. Late charges must be billed to the borrower on the 30-day delinquent letter mailed by the board and are due and payable immediately.

E. Interest payments during the in-school period that are delinquent in excess of 120 days from the billing date must be capitalized. Capitalization of past due interest must be limited to two occasions before filing a claim.

F. A prepayment penalty must not be assessed against borrowers who elect to make unscheduled payments of loan principal.

G. The board may grant forbearances at its discretion when such action is considered by the board to be in the best interest of the program.

H. The board shall provide borrowers and cosigners with an annual statement of outstanding principal and interest paid during the previous calendar year.

4850.0018 [Emergency] CLAIMS.

Subpart 1. When filed. If after exercising due diligence, and after 120 days from the billing date the board fails to collect a payment from a borrower or the cosigner, a claim must be filed by the board with the program insurer for the outstanding principal of the loan plus accrued interest.

Subp. 2. When paid. Claims are paid in four categories:

A. A claim for death of the borrower must be filed by the board upon receipt of a death certificate. The cosigner's obligation to make any further payment of principal and interest or both on a SELF loan is canceled as of the date of death.

B. If the borrower becomes totally and permanently disabled, a claim must be filed by the board upon receipt of proper medical documentation. The cosigner's obligation to make any further payment of principal and interest on a SELF loan is canceled as of the date of medical documentation.

C. If a borrower or cosigner fails to perform any of the conditions of the promissory note, a claim must be filed by the board.

D. If a borrower is adjudicated bankrupt and has liability for the SELF loan discharged, the cosigner remains liable for unpaid principal and interest. If the cosigner fails to perform any of the conditions of the promissory note, the board shall file a claim.

Department of Human Services

Proposed Emergency Rules Relating to Medical Assistance for Home and Community-Based Services for the Mentally Retarded

Notice of Intent to Adopt Temporary Rules

The State Department of Human Services proposes to adopt the above-entitled temporary amendments to rules to amend in accordance with Laws of Minnesota 1984, Chapter 640, Section 28 the temporary rules authorized by Laws of Minnesota 1983, Chapter 312.

Persons interested in these temporary amendments have until 4:30 p.m., March 8, 1985, to submit written comments. The pro-

posed temporary amendments 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:

Jane Delage
Department of Human Services
4th Floor, Centennial Building
St. Paul, Minnesota 55155

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

Notice of the date of submission of the proposed temporary amendments to the attorney general will be mailed to any person requesting to receive this notice. This notice will state whether the proposed temporary amendments have been modified and will give instructions on how to obtain a free copy of the proposed temporary amendments as modified. The Attorney General shall approve or disapprove the proposed temporary amendments and any modifications on the tenth working day following the date of receipt of the proposed temporary amendments from the agency.

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

As required by the Administrative Procedures Act, Minnesota Statutes, chapter 14, these temporary amendments shall be in effect for up to 180 days following their adoption and may be continued in effect for up to 180 additional 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 temporary amendments 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 the proposed temporary amendments is to clarify the requirements for reimbursement under parts 9525.1800 to 9525.1930 [Emergency].

Parts 9525.1800 to 9525.1930 [Emergency] establish procedures to fund home and community-based services through the Medical Assistance Program for eligible persons with mental retardation. The temporary amendments govern provider requirements and licensing requirements for reimbursable services and clarify contract requirements.

The Department estimates that the cost of implementing these temporary amendments will not exceed $50,000 for local public bodies for the time period (until October 22, 1985) that the temporary amendments will be in effect.

A free copy of the proposed temporary amendments may be obtained by contacting Jane Delage at 612/297-4302.

Leonard W. Levin
Commissioner of Human Services

Emergency Rules as Proposed

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 ~~E~~ J:

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~~;~~.

B. The provider ensures that the provider and all employees or subcontractors meet all professional standards established in Minnesota Statutes, Minnesota Rules, and Code of Federal Regulations which apply to the services to be provided. If no standards have been established the provider, employee, or subcontractor must have completed, within the last two years, at least 24 hours of documented training subject to approval by the case manager. The training must be in areas related to the care, supervision, and training of persons with mental retardation including first aid, medication administration, behavior management, cardiopulmonary resuscitation, human development, and obligations under Minnesota Statutes, sections 626.556 and 626.557. The county may grant a variance to the training requirements in this item for a respite care provider who provides the respite care in his

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or her residence or in the client's residence or for a provider who ensures that the training will be completed within six months of the date the contract is signed. This item does not apply to providers of minor physical adaptations.

C. The provider ensures that the provider and all employees or subcontractors have at least one year of experience within the last five years in the care, training, and supervision of persons with mental retardation. The county may grant a variance to the requirements in this item for a respite care provider who provides the respite care in his or her residence or in the client's residence. This item does not apply to providers of minor physical adaptations.

D. The provider ensures that all home and community-based services, except homemaker services, respite care services, and minor physical adaptations, will be provided by, or under the general supervision of a qualified mental retardation professional who meets the requirements in Code of Federal Regulations, title 42, section 442.401 and has been approved by the case manager.

E. The provider ensures that the provider and all employees or subcontractors will meet the inservice training requirements of any Minnesota rules applicable to the home and community-based services to be provided. If no Minnesota rules apply, the provider, except a provider of minor physical adaptations, agrees that the provider and all employees or subcontractors will complete at least 18 hours of inservice training in a field related to the care, training, and supervision of persons with mental retardation each fiscal year. The county may grant a variance to the requirements in this item for a respite care provider who provides the respite care in his or her residence or in the client's residence.

F. The provider ensures that the provider and all employees or subcontractors have never been convicted of a violation, or admitted violating Minnesota Statutes, section 626.557 and there is no substantial evidence that the provider, employees, or subcontractors have violated Minnesota Statutes, section 626.557.

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

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

~~D.~~ I. 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~~.

~~E.~~ J. 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.

9525.1860 [Emergency] REIMBURSABLE SERVICES.

Subpart 1. General limits. The costs of providing the home and community-based services defined in subpart 2, ~~limited~~ provided in accordance with ~~subpart~~ subparts 3 and 4, are reimbursable under the medical assistance program for as long as the waiver from the United States Department of Health and Human Services is in effect in Minnesota.

Subp. 2. [Unchanged.]

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

A. to D. [Unchanged.]

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:

(1) wheelchair ramps;

(2) handrails and grab bars;

(3) elevated bathtubs and toilets;

(4) widened doorways;

(5) shatterproof windows;

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

(7) door handle replacements;

(8) lowered kitchen work surfaces;

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

(10) handles and hoses for showerheads;

(11) door hinge replacements; or

(12) shower and bathtub seats.

Minor physical adaptations must be constructed in accordance with applicable state and local building codes.

F. [Unchanged.]

G. Respite care must:

(1) be provided only for the client's family or foster family, or if the client is in a supported living arrangement, for the client's primary caregiver; and

(2) be provided in a facility serving no more than six clients at one time.

H. [Unchanged.]

I. For the purposes of this part, the services in subitems (1) and (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 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.

The services in subitems (1) to (9) must be provided by a professional licensed or certified by the state to provide the services or by a paraprofessional supervised by a licensed or certified professional. If any of these services are provided to a client, the cost of the services must be included in the rate billed by 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.

J. [Unchanged.]

Subp. 4. Other applicable rules. Home and community-based services must be provided as required under items A to G.

A. Homemaker services must be provided under parts 9565.1000 to 9565.1300.

B. Day habilitation and training services must be licensed under parts 9545.0510 to 9545.0670.

C. Supported living arrangements for children must be provided at a service site licensed under parts 9545.0010 to 9545.0260.

D. Supported living arrangements for adults which are provided in a service site serving more than four adults must be licensed under parts 9525.0210 to 9525.0430. Supported living arrangements provided at a service site for four or fewer adults must be approved under parts 9555.6100 to 9555.6400; 9545.0090, item A; 9545.0140; 9545.0180; and 9545.0190, subparts 3 and 5. In approving supported living arrangements provided at a service site for four or fewer adults, the county shall apply the criteria in parts 9545.0090, item A; 9545.0140; 9545.0180; and 9545.0190, subparts 3 and 5 as though the criteria has been written to apply to services for adults.

E. Respite care provided at a service site serving more than four clients must be licensed under parts 9525.0210 to 9525.0430. Respite care provided at a service site serving four or fewer clients under 18 years of age must be licensed under parts 9545.0010 to 9545.0260. Respite care provided at a service site serving four or fewer adults must be approved under parts 9545.0090, item A; 9545.0140; 9545.0180; 9545.0190, subparts 3 and 5; and 9555.6100 to 9555.6400. Respite care provided at a service site for four or fewer children and adults must be approved under parts 9545.0090, item A; 9545.0140; 9545.0180;

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9545.0190, subparts 3 and 5; and 9555.6100 to 9555.6400 and licensed under parts 9545.0010 to 9545.0260. This item shall not apply to a person who provides respite care for less than 30 days a year.

F. The county may request a variance from compliance with parts 9545.0010 to 9545.0260 as required in item C, D, or E, for a provider who provides services to clients under 18 years of age if the county determines that granting the variance will not endanger the health, safety, or development of the persons receiving the services. The written variance request must be submitted to the commissioner and must contain:

(1) the sections of parts 9545.0010 to 9545.0260 with which the provider cannot comply;

(2) the reasons why the provider cannot comply with the specified section or sections; and

(3) the specific measures that will be taken by the provider to ensure the health, safety, or development of the persons receiving the services.

The commissioner shall grant the variance request if the commissioner determines that the variance was submitted in accordance with this item and that granting this variance will not endanger the health, safety, or development of the persons receiving the services.

The commissioner shall review the county's variance request and notify the county, in writing, within 30 days if the variance request has been granted or denied. If the variance request is denied, the notice must state the reasons why the variance request was denied and inform the county of its right to appeal.

G. The county may grant a variance from compliance with parts 9545.0090, item A; 9545.0140; and 9545.0180; 9545.0190, subparts 3 and 5; and 9555.6100 to 9555.6400 as required in items D and E, for a provider who provides services to adults if the county determines that granting the variance will not endanger the health, safety, or development of the persons receiving the services.

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 ~~L~~ M and subpart 2:

A. to J. [Unchanged.]

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

L. description of inservice training to be provided under part 9525.1850 [Emergency], item E; 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~~ Each contract and subcontract must contain the following ~~language verbatim: "The county may withhold reimbursement to the provider if either the county of 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 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~~ provision. If any contract does not contain the following provision, the provision shall be considered an implied provision of the contract.

"The provider acknowledges and agrees that the Minnesota Department of Human Services is a third-party beneficiary, and as such is an affected party under this contract. The provider specifically acknowledges and agrees that the Minnesota Department of Human Services has standing to and may take any appropriate administrative action or sue the provider for any appropriate relief in law or equity, including, but not limited to, rescission, damages, or specific performance, of all or any part of the contract between the county and the provider. The provider specifically acknowledges that the county and the Minnesota Department of Human Services are entitled to and may recover from the provider reasonable attorney's fees and costs and disbursements associated with any action taken under this paragraph that is successfully maintained. This provision shall not be construed to limit

the rights of any party to the contract or any other third party beneficiary, nor shall it be construed as a waiver of immunity under the Eleventh Amendment to the United States Constitution or any other waiver of immunity."

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

A. to B. [Unchanged.]

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

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 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 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 immunity."~~

Subp. 4. [Unchanged.]

Pollution Control Agency

Proposed Rules Relating to Sewage Treatment Grants

Notice of Hearing

NOTICE IS HEREBY GIVEN that on March 18, 1985, a public hearing on proposed amendments to Minnesota Rules, Chapter 7075, will commence at 10:00 a.m. in the Board Room of the Minnesota Pollution Control Agency, 1935 W. County Road B-2, Roseville, Minnesota. The hearing will continue at the following times and locations:

1. Tuesday, March 19, 1985, 7:00 p.m.
   Mankato State University
   Room 121 Armstrong Hall
   Mankato, Minnesota
2. Monday, March 25, 1985, 7:00 p.m.
   Meeting Room 2
   County Services Building
   Laurel Street behind the Court House
   Brainerd, Minnesota

The hearing will continue on additional days, if necessary, at times and places determined during the hearing.

The hearing will be conducted by Administrative Law Judge Phyllis Reha, Office of Administrative Hearings, 400 Summit Bank Building, 310 S. 4th Avenue, Minneapolis, Minnesota 55415, telephone (612) 341-7611.

Minnesota Rules Chapter 7075 (formerly WPC 34) provides for the administration of federal grant funds and state grant and loan funds for the construction of municipal sewage treatment projects. Through these construction grant programs municipalities are able to construct wastewater treatment facilities through a combination of federal, state, and local funds.

In 1984, the Legislature created a new state independent grants program to provide financial assistance to some of the many cities in Minnesota that need to construct wastewater treatment facilities. On August 16, 1984, emergency rules for administration

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STATE OF MINNESOTA

DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF THE PROPOSED TEMPORARY AMENDMENTS TO MINNESOTA RULES GOVERNING MEDICAL ASSISTANCE FUNDING AND ADMINISTRATION FOR HOME AND COMMUNITY-BASED SERVICES FOR PERSONS WHO ARE MENTALLY RETARDED. PARTS 9525.1800 TO 9525.1930 [EMERGENCY].

NOTICE OF INTENT TO ADOPT TEMPORARY AMENDMENTS

The State Department of Human Services proposes to adopt the above-entitled temporary amendments to rules to amend in accordance with Laws of Minnesota 1984, Chapter 640, Section 28 the temporary rules authorized by Laws of Minnesota 1983, Chapter 312.

Persons interested in these temporary amendments have until 4:30 p.m., March 8, 1985, to submit written comments. The proposed temporary amendments 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:

Jane Delage
Department of Human Services
4th Floor, Centennial Building
St. Paul, Minnesota 55155

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

Notice of the date of submission of the proposed temporary amendments to the attorney general will be mailed to any person requesting to receive this notice. This notice will state whether the proposed temporary amendments have been modified and will give instructions on how to obtain a free copy of the proposed temporary amendments as modified. The Attorney General shall approve or disapprove the proposed temporary amendments and any modifications on the tenth working day following the date of receipt of the proposed temporary amendments from the agency.

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

As required by the Aministrative Procedures Act, Minnesota Statutes, chapter 14, these temporary amendments shall be in effect for up to 180 days following their adoption and may be continued in effect for up to 180 additional 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 temporary amendments 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 the proposed temporary amendments is to clarify the requirements for reimbursement under parts 9525.1800 to 9525.1930 [Emergency].

Parts 9525.1800 to 9525.1930 [Emergency] establish procedures to fund home and community-based services through the Medical Assistance Program for eligible persons with mental retardation. The temporary amendments govern provider requirements and licensing requirements for reimbursable services and clarify contract requirements.

The Department estimates that the cost of implementing these temporary amendments will not exceed $50,000 for local public bodies for the time period (until October 22, 1985) that the temporary amendments will be in effect.

A free copy of the proposed temporary amendments may be obtained by contacting Jane Delage at 612/297-4302.

LEONARD W. LEVINE
Commissioner of Human Services

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STATE OF MINNESOTA
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF THE PROPOSED TEMPORARY AMENDMENTS TO MINNESOTA RULES GOVERNING MEDICAL ASSISTANCE FUNDING AND ADMINISTRATION FOR HOME AND COMMUNITY-BASED SERVICES FOR PERSONS WHO ARE MENTALLY RETARDED. PARTS 9525.1800 TO 9525.1930 [EMERGENCY].

AFFIDAVIT OF MAILING

Ann M. Berg, being first duly sworn, deposes and says:

That on the 6th day of February, 1985, at the City of St. Paul, County of Ramsey, State of Minnesota, she served the attached Notice of Intent to Adopt Temporary Amendments 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.

Ann M Berg

Subscribed and sworn to before me

this 6 day of February 1985.

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 TEMPORARY AMENDMENTS
TO MINNESOTA RULES GOVERNING MEDICAL
ASSISTANCE FUNDING AND ADMINISTRATION
FOR HOME AND COMMUNITY-BASED SERVICES
FOR PERSONS WHO ARE MENTALLY RETARDED,
PARTS 9525.1800 TO 9525.1930 [Emergency].

ORDER FOR PUBLICATION
OF TEMPORARY AMENDMENTS

IT IS ORDERED this 28th day of January, 1985, that the proposed temporary amendments in the above-entitled matter be published in the State Register.

STATE OF MINNESOTA

LEONARD W. LEVINE, Commissioner
Deaprtment of Human Services

STATE OF MINNESOTA
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF THE PROPOSED TEMPORARY AMENDMENTS TO MINNESOTA RULES GOVERNING MEDICAL ASSISTANCE FUNDING AND ADMINISTRATION FOR HOME AND COMMUNITY-BASED SERVICES FOR PERSONS WHO ARE MENTALLY RETARDED. PARTS 9525.1800 TO 9525.1930 [EMERGENCY].

AFFIDAVIT OF ADDITIONAL MAILING

Ann M. Berg, being first duly sworn, deposes and says:

That on the 6th day of February , 1985, at the City of St. Paul, County of Ramsey, State of Minnesota, in addition to serving the attached Notice of Intent to Adopt Temporary Amendments 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:

Rules 41 (Parts 9525.1800 to 9525.1930) Advisory Committee Members and Supplemental Mailing List

Persons who requested copies of the emergency rule and persons who submitted comments on the emergency rule

Ann M. Berg

Subscribed and sworn to before me

this 6 day of February, 1985.

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 TEMPORARY AMENDMENTS TO MINNESOTA RULES GOVERNING MEDICAL ASSISTANCE FUNDING AND ADMINISTRATION FOR HOME AND COMMUNITY-BASED SERVICES FOR PERSONS WHO ARE MENTALLY RETARDED. PARTS 9525.1800 TO 9525.1930 [EMERGENCY].

NOTICE OF INTENT TO ADOPT TEMPORARY AMENDMENTS

The State Department of Human Services proposes to adopt the above-entitled temporary amendments to rules to amend in accordance with Laws of Minnesota 1984, Chapter 640, Section 28 the temporary rules authorized by Laws of Minnesota 1983, Chapter 312.

Persons interested in these temporary amendments have until 4:30 p.m., March 8, 1985, to submit written comments. The proposed temporary amendments 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:

Jane Delage
Department of Human Services
4th Floor, Centennial Building
St. Paul, Minnesota 55155

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

Notice of the date of submission of the proposed temporary amendments to the attorney general will be mailed to any person requesting to receive this notice. This notice will state whether the proposed temporary amendments have been modified and will give instructions on how to obtain a free copy of the proposed temporary amendments as modified. The Attorney General shall approve or disapprove the proposed temporary amendments and any modifications on the tenth working day following the date of receipt of the proposed temporary amendments from the agency.

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

As required by the Aministrative Procedures Act, Minnesota Statutes, chapter 14, these temporary amendments shall be in effect for up to 180 days following their adoption and may be continued in effect for up to 180 additional 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 temporary amendments 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 the proposed temporary amendments is to clarify the requirements for reimbursement under parts 9525.1800 to 9525.1930 [Emergency].

Parts 9525.1800 to 9525.1930 [Emergency] establish procedures to fund home and community-based services through the Medical Assistance Program for eligible persons with mental retardation. The temporary amendments govern provider requirements and licensing requirements for reimbursable services and clarify contract requirements.

The Department estimates that the cost of implementing these temporary amendments will not exceed $50,000 for local public bodies for the time period (until October 22, 1985) that the temporary amendments will be in effect.

A free copy of the proposed temporary amendments may be obtained by contacting Jane Delage at 612/297-4302.

LEONARD W. LEVINE
Commissioner of Human Services

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STATE OF MINNESOTA
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF THE PROPOSED TEMPORARY AMENDMENTS TO MINNESOTA RULES GOVERNING MEDICAL ASSISTANCE FUNDING AND ADMINISTRATION FOR HOME AND COMMUNITY-BASED SERVICES FOR PERSONS WHO ARE MENTALLY RETARDED. PARTS 9525.1800 TO 9525.1930 [EMERGENCY].

CERTIFICATE

I hereby certify that the list of persons, associations, and other interested groups who have requested, pursuant to Minn. Stat. S.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 1:00, p.m., this 6th day of February , 1985.

Ann M. Berg

State of Minnesota
Department of Human Services

In the Matter of the Proposed Adoption of Temporary Amendments to Emergency Rules Pertaining to Medical Assistance Finding and Administration of Home and Community-Based Services for Persons with Mental Retardation

FINDINGS OF FACT AND CONCLUSIONS

The Commissioner published notice of proposed emergency rules on the above entitled matter in the State Register on February 11, 1985. 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 February 6, 1985. 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 9525.1850 [Emergency] of the proposed amendments, the Department established training and experience requirements for providers of home and community-based services. Commentator, Jane Wells of the Association of Residences for the Retarded, pointed out that the education requirement was written very broadly. The Commissioner upon review of the comment finds that the training and education requirements in this section were written too broadly and therefore adds a sentence to the introduction to this part which clarifies that the requirements "only apply to persons who provide services which can be billed for under Part 9525.1860 [Emergency] Subpart 3, Item A."

2. In Part 9525.1850 [Emergency] Item B, the Commissioner finds that the addition of the word "training" and a comma are needed to clarify that this item deals with training standards. The Commissioner also finds that changing the word "and" to "or" gives the county case manager more discretion in determining the type of training needed, as requested by commentator, John W. Barker of Focus Homes, Inc.

3. In Part 9525.1850 [Emergency] Item C, the Department sets forth an experience requirement for providers, employees, and subcontractors. Commentator, Sue Abderholden of the Association for Retarded Citizens recommends that the Department change the requirement to include experience with "special needs." The Commissioner finds the term "special needs" too vague but agrees that experience with conditions related to mental retardation would be adequate to fulfill this requirement and therefore adds "epilepsy, autism, and cerebral palsy" to this item. The Commissioner also changes the "and" to "and/or" to increase the pool of eligible providers.

4. In Part 9525.1850 [Emergency] Item C, (last sentence) the Commissioner exempts providers of minor physical adaptions from the experience requirement. The Commissioner finds that to be consistent with other exemptions in this part and to respond to the concerns about limiting

the number of potential service providers expressed by commentators, John W. Barker, Jane Wells, and Edward Van Allen of Ramsey County Mental Retardation Services providers of homemaker services should also be exempted from this item.

5. In Part 9525.1850 [Emergency] Item D, the Department requires certain services to be provided under the "general supervision" of a QMRP. The Commissioner finds that the word "general" is unnecessary and therefore deletes the word.

6. In Part 9525.1850 [Emergency] Item D, the Department established inservice hearing requirements. Commentator, John W. Barker, recommends that the county determine what inservices are necessary. The Commissioner agrees that county should be involved in determining the type of inservice training needed and that the determination should be based on the needs identified in the individual service plans, The Commissioner therefore modifies this item accordingly. The Commissioner also changes the wording of the first sentence in this item for clarification purposes.

7. In Part 9525.1860 [Emergency] Subpart 3, Item G, the Department established a limit on the number of clients that may receive respite care at one service site. Commentators, Dennis McCoy of Blue Earth County Human Services, Elaine Saline of the Minnesota Governor's Planning Council on Developmental Disabilities, and Edward Van Allen, all question the limit, particularly for multiply handicapped clients. The Commissioner agrees that the limit may be too restrictive at this time and might limit the availability of respite care for multiply handicapped clients, therefore, the Commissioner adds a variance section allowing counties to use larger service sites for clients with multiple handicaps for a period of one year while other services are developed. The Commissioner also changes the term "facility" to "service site" to be consistent with the terminology used in other parts of the rule.

8. In Part 9525.1860 [Emergency] Subpart 4, Item B, the Department states that homemaker services must be provided "under" Parts 9565.1000 to 9565.1300. The Commissioner finds that this item would be more easily understood if the phrase "in compliance with" was substituted for "under" and therefore changes the item accordingly.

9. In Part 9525.1860 [Emergency] Subpart 4, Item B, the Department established licensing requirements for day training and habilitation services. The Commissioner finds that this citation is incorrect and therefore changes the citation to correspond with the licensing standards currently used to license these services.

10. In Part 9525.1870 [Emergency] the Commissioner adds an exception section to allow providers who entered into contracts with the counties before the effective date of these amendments time to reach compliance with the amendments. The Commissioner agrees with commentator John W. Barker that existing programs should not have to comply with the amendments immediately.

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

12. The changes made to the proposed temporary amendments are not substantial changes.

CONCLUSIONS

I hereby conclude that:

1. The Commissioner has statutory authority to promulgate these temporary amendments.

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

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

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

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

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

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

DATED: April 2, 1985

STATE OF MINNESOTA

Nancy E. Gibson, Deputy Commissioner, for

LEONARD W. LEVINE, Commissioner
Department of Human Services

FW-05

STATE OF MINNESOTA

DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF THE PROPOSED ADOPTION
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,
PARTS 9525.1800 to 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, April 2, 1985 for review and legality.

The attorney general shall review the proposed amendments as to their legality, review their form to the extent the form relates to legality, and shall approve or disapprove the proposed amendments to the 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, Saint Paul, Minnesota 55155, telephone (612) 296-7030.

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

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

STATE OF MINNESOTA

DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF THE PROPOSED TEMPORARY AMENDMENTS TO MINNESOTA RULES GOVERNING MEDICAL ASSISTANCE FUNDING AND ADMINISTRATION FOR HOME AND COMMUNITY-BASED SERVICES FOR PERSONS WHO ARE MENTALLY RETARDED, PARTS 9525.1800 TO 9525.1930 [EMERGENCY]

AFFIDAVIT OF MAILING NOTICE OF SUBMISSION TO THE ATTORNEY GENERAL

STATE OF MINNESOTA)
) ss.
COUNTY OF RAMSEY)

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

That on the 2nd day of April , 1985, in the City of St. Paul, County of Ramsey, State of Minnesota, 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 2 day of April , 1985.

Claudia A. Eliason

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