

Minnesota Attorney General: Administrative Rules Proceedings

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Version 3
August 20, 2018

RULE REVIEW CHECKLIST

File No. 1448
DATE RECEIVED 2/03/88
REVIEW DATE 2/5/88 2-16-88
DUE DATE 2/17/88

APPROVED 2-16-88 mj
DISAPPROVED
WITHDRAWN

Docket No. 05.0009.0882
ADOPTED W/O HEARING
EMERGENCY RULE

REVISOR APPROVED
REVISOR DISAPPROVED
FIELD W/SEC.STATE
RETURNED TO AGENCY

✓ Rule as adopted (4 copies)
✓ Notice to Solicit Outside Information/Opinion
10-19-87 Date published in State Register
Comments
✓ Petition for Adoption of a Rule
N/A Board's Authorizing Resolution
✓ Proposed rule
✓ Revisor's Certificate
✓ Notice of Intent to Adopt Rule - deadline - 1-6-88
256B.501 Statutory Authority
no Small Business Statement
yes Expenditure of public money statement
yes Signature
✓ Statement of Need and Reasonableness
no Small Business Statement
no Fees - § 16A.128
✓ Affidavit of Mailing Notice of Intent to Adopt Rule
12-2-87 Date (30)/25 days before adoption
✓ Publication in State Register
12-7-87 Date 30/(25) days before adoption
✓ Resolution Adopting N/A
✓ Findings of Fact, Conclusions & Order Adopting
1-29-88 Date
✓ Written requests, submissions or comments
✓ Declaration of attorney
Maureen Bellis Name of SAAG representing agency
N/A Notice of Submission to Attorney General
N/A Affidavit of Mailing Notice to Attorney General

SF-00006-05 (4/86)

DEPARTMENT : ATTORNEY GENERAL

STATE OF MINNESOTA

Office Memorandum

DATE : February 16, 1988

TO : ROBERT HAMPER
Director
Bulletins and Rules Division

FROM : MARTHA J. CASSERLY
Special Assistant
Attorney General

PHONE : 296-6839

SUBJECT : In the Matter of the Adopted Permanent Rules Relating to Medical Assistance Reimbursement for Training and Habilitation Services

The above-referenced rule has been approved as to its legality by the Attorney General on February 16, 1988.

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

Also enclosed are any petitions, requests, submissions 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 establish 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:sc
Enclosures

cc: Maryanne Hruby
Duane Harves

Department of Human Services

Adopted Permanent Rules Relating to Medical Assistance Reimbursement for Training and Habilitation Services

Rules as Adopted

9525.1210 DEFINITIONS.

Subpart 1. to 10. [Unchanged.]

Subp. 12a. **Prevocational services.** "Prevocational services" means services directed toward developing and maintaining the skills and overall functioning of clients in areas such as compliance with task instructions, prompt attendance at scheduled activities, task completion, problem solving, social appropriateness, and safety. Training must be conducted using materials, tasks, situations, and settings that are age-appropriate and enhance the clients' self esteem. Adults will typically receive prevocational training on work and work-related tasks, tasks related to community participation such as travel and shopping, home care, and self care. Wages may be paid to clients.

Subp. 13. and 14. [Unchanged.]

Subp. 15. [See Repealer.]

9525.1250 REIMBURSABLE SERVICES.

Subpart 1. **Types of services.** Day training and habilitation services are reimbursable under the medical assistance program when the services are provided for the development and maintenance of life skills. Reimbursable services include transportation to and from the service site and supervision, assistance, and training in one or more of the following when they are provided to promote age-appropriate outcomes and community integration:

A. prevocational services, if the services meet all of the following requirements:

(1) the documented goals of the service do not include placement within one year in either a sheltered

workshop's transitional employment program or unsupervised competitive employment in the general work force. In this subitem, "unsupervised" means not directly supervised by a provider or a vocational service agency; and

(2) the client receives ongoing supervision from the provider while participating in the training activities.

B. to H. [Unchanged.]

Subp. 2. **Service requirements.** Day training and habilitation services are reimbursable under the medical assistance program if the services provided are in compliance with subpart 1 and the conditions listed in items A to F are met.

A. to E. [Unchanged.]

F. Day training and habilitation services must not include:

(1) special education and related services as defined in the Education of the Handicapped Act, United States Code, title 20, chapter 33, section 1401, clauses (6) and (17), as amended through October 8, 1986, which otherwise are available through a local educational agency; or

(2) vocational services funded under section 110 of the Rehabilitation Act of 1973, United States Code, title 29, section 720, as amended through October 21, 1986, which otherwise are available from a local vocational rehabilitation agency.

REPEALER. Minnesota Rules, part 9525.1210, subpart 15, is repealed.

APPROVED AS TO FORM AND LEGALITY

February 16 1988

HUBERT H. HUMPHREY, III
ATTORNEY GENERAL

BY M J Cassely
SPECIAL ASSISTANT ATTORNEY GENERAL

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED

FEB 17 1988

Joan Anderson Growe
Secretary of State

3:58 P.M.

M

Department of Human Services

Proposed Permanent Rules Relating to Medical Assistance Reimbursement for Training and Habilitation Services

Rules as Proposed

9525.1210 DEFINITIONS.

Subpart 1. to 10. [Unchanged.]

Subp. 12a. **Prevocational services.** "Prevocational services" means services directed toward developing and maintaining the skills and overall functioning of clients in areas such as compliance with task instructions, prompt attendance at scheduled activities, task completion, problem solving, social appropriateness, and safety. Training must be conducted using materials, tasks, situations, and settings that are age-appropriate and enhance the clients' self esteem. Adults will typically receive prevocational training on work and work-related tasks, tasks related to community participation such as travel and shopping, home care, and self care. Wages may be paid to clients.

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Subpart 1. **Types of services.** Day training and habilitation services are reimbursable under the medical assistance program when the services are provided for the development and maintenance of life skills. Reimbursable services include transportation to and from the service site and supervision, assistance, and training in one or more of the following when they are provided to promote age-appropriate outcomes and community integration:

A. ~~work-activity;~~ prevocational services, if the services meet all of the following requirements:

(1) the documented goals of the service do not include placement within one year in either a sheltered

Approved by Revisor PER

workshop's transitional employment program or unsupervised competitive employment in the general work force. In this subitem, "unsupervised" means not directly supervised by a provider or a vocational service agency; and

(2) the client receives ongoing supervision from the provider while participating in the training activities.

B. to H. [Unchanged.]

Subp. 2. **Service requirements.** Day training and habilitation services are reimbursable under the medical assistance program if the services provided are in compliance with subpart 1 and the conditions listed in items A to ~~E~~ F are met.

A. to E. [Unchanged.]

F. Day training and habilitation services must not include:

(1) special education and related services as defined in the Education of the Handicapped Act, United States Code, title 20, chapter 33, section 1401, clauses (6) and (17), as amended through October 8, 1986, which otherwise are available through a local educational agency; or

(2) vocational services funded under section 110 of the Rehabilitation Act of 1973, United States Code, title 29, section 720, as amended through October 21, 1986, which otherwise are available from a local vocational rehabilitation agency.

REPEALER. Minnesota Rules, part 9525.1210, subpart 15, is repealed.

Approved by Revisor PER

Office of the Revisor of Statutes

Administrative Rules

TITLE: Proposed Permanent Rules Relating to Medical Assistance Reimbursement for Training and Habilitation Services

AGENCY: Department of Human Services

MINNESOTA RULES: Chapter 9525

The attached rules are approved for publication
in the State Register

Paul E. Rohde

Paul E. Rohde
Senior Assistant Revisor

IN THE MATTER OF THE PROPOSED AMENDMENTS TO RULES OF THE DEPARTMENT OF HUMAN SERVICES GOVERNING REIMBURSABLE MEDICAL ASSISTANCE TRAINING AND HABILITATION SERVICES FOR ICF/MR CLIENTS, Minnesota Rules, parts 9525.1210 to 9525.1250

STATEMENT OF NEED AND REASONABLENESS

INTRODUCTION

This statement of need and reasonableness addresses proposed amendments to Minnesota Rules, parts 9525.1210 to 9525.1250, governing Medical Assistance reimbursement for training and habilitation services for clients of ICF/MRs (intermediate care facilities for the mentally retarded). These amendments distinguish such services from educational and vocational services funded by other programs.

BACKGROUND AND AUTHORITY

Under current statutes and rules, the Minnesota Medical Assistance program reimburses day service providers for day training and habilitation services, including "work activity". In September, 1985, the Health Care Finance Administration (HCFA) of the U.S. Department of Health and Human Services issued guidelines distinguishing between educational services and habilitation training. These guidelines resolved earlier problems concerning Medicaid reimbursements of educational or vocational training services. In September, 1986, HCFA issued clarifying guidelines defining the vocational services exclusion.

The proposed amendments to parts 9525.1210 to 9525.1250 addressed by this statement of need and reasonableness were developed after consultation with HCFA to conform to the Social Security Act, sections 1905(a)(6) and 1902(a)(25), and the guidelines of the HCFA State Medicaid Manual, part 4, section 4397 (Transmittal 21, dated September, 1986, copy attached as Appendix A). These amendments are necessary because the modifications were part of the corrective action plan approved by HCFA in response to that agency's recommendations regarding Minnesota's training and habilitation agencies, known as developmental achievement centers (DACs). In correspondence to HCFA dated November 27, 1985 (Appendix B), the Minnesota Department of Human Services stated:

> The state of Minnesota will modify its rules and regulations regarding the medical assistance funding of therapeutic work activity to fully comply with any forthcoming regulation changes or transmittals from the Department of Health and Human Services, as necessary. These regulation changes or transmittals clarifying Medicaid reimbursement for ICF/MR vocational services were promised in the letter from Richard P. Kusserow, Inspector General, to Senator Lowell P. Weicker on April 26, 1985.

The proposed amendments will provide for Medical Assistance reimbursement of prevocational services and exclude education or vocational training in accordance with the Medicaid Manual transmittal.

These amendments are made under authority of Minnesota Statutes, section 256B.501, subdivisions 5 to 10.

RULE PARTS

Part 9525.1210 DEFINITIONS.

Subpart 12a. **Prevocational services.** It is necessary to define "prevocational services" and replace the former term, "work activity", to make the distinction between prevocational training and education or vocational training. The definition of "prevocational services" is reasonable because it identifies skills, knowledge and activities which are important to functioning in a work environment, but do not constitute training or education for placement in any specific employment or sheltered workshop, and is consistent with the Federal guidelines in the State Medicaid Manual, part 4, section 4397 (Appendix A). The definition makes clear that wages may be paid to a client, although not required.

Subpart 15. **Work activity.** It is necessary to repeal the definition of "work activity" because the term has been made obsolete by the Federal clarifications and is replaced by "prevocational services", defined in subpart 12a.

Part 9525.1250 REIMBURSABLE SERVICES.

Subpart 1, item A. It is necessary to replace "work activity" as a reimbursable service with "prevocational services" to limit reimbursement to services which do not lead to specific employment, as required by the guidelines discussed above.

It is reasonable to require that prevocational services not be designed to place clients in competitive employment within one year because other programs are available for that purpose. It also is the nature of prevocational services that ongoing supervision is provided. These criteria are implied in the HCFA State Medicaid Manual, part 4, section 4397 (Appendix A) and were confirmed in discussion with HCFA and in the information memorandum dated June 16, 1987 from HCFA (Appendix C) regarding these proposed amendments.

Subpart 2, item F. Under this rule, day training and habilitation services are reimbursable by Medical Assistance. In order to clearly distinguish between prevocational and vocational training services, it is necessary to explicitly require that reimbursable day training and habilitation services not include educational or vocational services funded under other Federal programs, as required by Minnesota Statutes 1987, section 252.41, subdivision 3. The prohibition of Medical Assistance funding for vocational and educational services otherwise available to eligible

individuals through the Education of the Handicapped Act and section 110 of the Rehabilitation Act of 1973 is necessary to further comply with HCFA's requirements as stated in sections 4396 and 4397 of the Medicaid Manual. It is reasonable to require use of generic educational services or rehabilitation services when persons are eligible for those services to maximize expenditures under the Medical Assistance Program to persons otherwise unable to receive needed services.

The Department will not introduce any testimony of expert witnesses at the hearing.

11/13/87
Date

SANDRA S. GARDEBRING
Commissioner

state medicaid manual
Part 4 — Services

Department of Health and Human Services
Health Care Financing Administration

Transmittal No. 21 Date SEPTEMBER 1986

NEW MATERIAL	REVISED PAGES	REPLACED PAGES
Table of Contents	2 pp.	2 pp.
Sec. 4397	2 pp.	—

CLARIFICATION—EFFECTIVE DATE: Not Applicable

Section 4397, Application of the Vocational Services Exclusion in ICFs/MR.—Guidelines defining educational services were published in September 1985. This is a parallel instruction relating to vocational services.

4397. APPLICATION OF THE VOCATIONAL SERVICES EXCLUSION IN ICFs/MR

The vocational training exclusion flows from two basic interpretations of the Medicaid statute. First, that services paid for under the program must be "medical or remedial" within the meaning of the Act. Second, that Medicaid will not pay for services for which a different State or Federal program is obligated to pay. (See §§1905(a)(6) and 1902(a)(25) of the Act.)

The Vocational Rehabilitation Act (Public Law 93-112) does not mandate the provision of vocational services to all handicapped persons. It authorizes funds for the States to provide a broad spectrum of evaluation, training, job placement, and other work-related services to qualified persons. Historically, many persons with mental retardation living in residential facilities (including ICFs/MR) have been served by vocational rehabilitation programs, but these programs do not include all adult mentally retarded persons in ICFs/MR who are involved in vocational training and work-related programs. Clients living in ICFs/MR often work in off-site vocational rehabilitation programs or worksites. Some clients may work in programs at the ICF/MR that are provided by the facility. Other programs at the facility may be sponsored by the State's vocational rehabilitation unit. Thus, it may not be possible to use the funding source or the location of the services as the sole test of whether the services are vocational training services.

For persons under the age of 22, it will not generally be necessary to distinguish vocational training separately because the education services exclusion also applies to these services (see §4396). Department of Education regulations (34 CFR 300.14) implementing Public Law 94-142 specifically include "vocational education" in their definition of "Special Education." These regulations define vocational education as:

> ". . . organized educational programs which are directly related to the preparation of individuals for paid or unpaid employment, or for additional preparation for a career requiring other than a baccalaureate or advanced degree."

Thus, for many clients under age 22 the question of whether services may be separately characterized as "vocational training" is resolved when it is determined that the services are education services. If services are provided for under State or Federal education law or regulations or are reflected in the client's Individualized Education Plan, they are not eligible for Federal Financial Participation (FFP). Also, States may not receive FFP if services must be provided pursuant to another State or Federal program.

In the case of clients to whom Federal and State education requirements do not apply (generally those who are over age 21 or, if under 21, have entered the labor force) further distinctions are necessary. In such cases, to determine whether service costs should be excluded under the "vocational training" exclusion, the following principles must be applied:

- o No FFP is available if the services are required or funded under a State or Federal vocational training program, whether or not the clients are compensated for the work;

o If the services are provided by the ICF/MR, no FFP is available when the activity in which the client is engaged is also for the purpose of teaching the client the skills to perform tasks in an employment situation.

The test of whether the purpose would relate to an "employment" situation does not relate solely to a determination about the usefulness of the activity or to whether the client is paid for the work. The test is whether the services are provided with the reasonable expectation that the client would be able to participate in a sheltered workshop or in the general work force within one year. In reviewing the activity program, the compensation level of the client, the nature of the activity, and the level of supervision necessary for the client as well as the programmatic objectives in the plan of care should be considered in making a determination as to the purpose of the program for the particular client.

Determine whether the services being provided are directly related to preparing the client for paid or unpaid employment or are instead provided to increase the overall level of functioning of the individual. For example, a number of services which consist of skills training (sometimes called "prevocational" services) may be aimed at a more general result. These include teaching a client such concepts as compliance, attending, task completion, problem solving, and safety. These services are eligible for FFP for clients over age 21 when provided pursuant to the plan of care unless included under another program funded or required under State or Federal law.

APPENDIX B (5 pages)

STATE OF MINNESOTA
DEPARTMENT OF PUBLIC WELFARE
CENTENNIAL OFFICE BUILDING
ST. PAUL, MINNESOTA 55155

OFFICE OF THE
COMMISSIONER
612/296-2701

GENERAL
INFORMAT
612/296-61

November 27, 1985

Ms. Judith Stec
Associate Regional Administrator
Division of Program Operations
Health Care Financing Administrator
Region V
175 West Jackson Boulevard
Chicago, IL 60604

COPY

Re: Review of Developmental Achievement Centers (DACs)

Dear Ms. Stec:

This letter is to respond to your request of September 19, 1985, for Minnesota's corrective action plan to the findings and recommendations of your review of Minnesota Developmental Achievement Centers.

This response will follow the same format as your review.

Services and Providers

1. Recommendation: It is recommended that the state stop claiming FFP for the vocational component of DAC clients whose IPP shows vocational activity as the first priority.

   State Responses: Minnesota will do on-site program audits of selected day training and habilitation programs to insure that Title XIX reimbursement is not made for clients whose activities do not meet the requirements of the definition of work activity stated in Minnesota Rules, part 9525.1210, subdivision 15.

   The State of Minnesota will modify its rules and regulations regarding the Medical Assistance finding of therapeutic work activity to fully comply with any forthcoming regulation changes or transmittals from the Department of Health and Human Services, as necessary. These regulation changes or transmittals clarifying Medicaid reimbursement for ICF/MR vocational services were promised in the letter from Richard P. Kusserow, Inspector General, To Senator Lowell P. Weicker on April 26, 1985.

Some called

Corrective Action: The Department of Human Services will conduct on-site program audits of 10 to 15 training and habilitation agencies (10 percent sample) based on a current analysis of the 1984 DAC Survey (see enclosed pages) beginning March 15, 1985. These surveys constitute a mechanism by which the Department can annually determine program and administrative characteristics warranting further investigation. Further, a Commissioner's bulletin informing DACs of their approved 1986 MA rates will operationally define MA reimbursable "work activity" to be consistent with the applicable rule parts. Further, the bulletin will clarify that vocational services, defined as activities that result in productive or competitive work activity (in accordance with Minnesota Rules, parts 9525.1200 to 9525.1330) will not be reimbursed by Medical Assistance. A copy of this bulletin will be sent to you when it is issued (January 1, 1986). Done

Done

Minnesota continues to await further clarification of MA reimbursable vocational services as promised.

2. Recommendation: It is also recommended that the state encourage specialization among DACs where there are more than one in the area and expand availability of work slots of which there is a shortage. Additional efforts may be required to mobilize the community and employers to create work opportunities, including sheltered employment, for the handicapped who are ready for it.

In progress OSERS

State Response: The Department will review the interagency agreement with the Division of Vocational Rehabilitation to address the increased availability of work services and the mobilization of employers to create work opportunities and supported work programs.

Corrective Action: Commitments made in the existing interagency agreement have been reviewed and will be updated as part of the Supported Work Initiative entered into jointly by the Division for Vocational Rehabilitation, the Department of Human Services, and the Developmental Disabilities Council. See the enclosed OSERS grant award letter and proposal.

Neil is our rep.

The Department is also a member of the State Interagency Transition Committee authorized in the last legislative session whose purpose is to promote the availability of work and appropriate transitional services to post secondary aged disabled students through local cooperative planning and services. (Draft of cooperative agreement will be available in May - meetings are ongoing.)

Recommendation: The ICF/MRs and DACs should be reminded of the client evaluation requirements and their proper documentation.

State Response: The state agency will do program audits of ICF/MR and DAC programs which will evaluate these programs on the basis of the

requirements stated in the agreements required in Minnesota Rules, parts 9525.1200 to 9525.1330, parts 9525.0015 to 9525.0145 and proposed parts 9525.1500 to 9525.1650, as well as federal ICF/MR regulations.

Corrective Action: Audits which evaluate programs based on the required three-party agreements mentioned in the above rule parts and federal regulations will occur on a sample of programs beginning March 15, 1985, and on a statewide basis upon promulgation of Rule 38 governing licensure of training and habilitation services (see enclosed Rule 38 and time line).

4. Recommendation: The weaknesses and deficiencies in the rules and their implementation under Review Findings a) through g) above should be remedied and monitored.

State Response:

a. The state agency will conduct program audits of DACs to insure that the work activities provided can be funded under the Medical Assistance Program, and are in accord with the limitations established in current state rules.

b. The state agency definition of vocational services will be modified, if necessary, to be consistent with any forthcoming regulations or policy transmittals which clarify Title XIX reimbursement in the area of vocational services as promised to Senator Weicker by the Inspector General.

c. The state agency will do program audits to insure that each agency involved in provision of ICF/MR service is fulfilling its responsibilities to persons with mental retardation.

d. The state agency will promulgate new licensing regulations governing the provision of day training and habilitation services.

e. The state agency will amend its rule governing the funding of day training and habilitation to prohibit Title XIX reimbursement of persons determined by a qualified person to be capable of productive or competitive employment.

f. The state agency will include the requirements for active treatment and the involvement of qualified mental retardation professionals in the new licensing rule governing the provision of day training and habilitation services to persons with mental retardation.

g. The proposed licensing rule will require all day training and habilitation agencies to be in compliance with Section 504 of the 1973 Rehabilitation Act.

Corrective Action:

a. See "Corrective Action (1)."

b. See "Corrective Action (1)."

c. See "Corrective Action (3)."

d. See enclosed timetable and draft of Rule 38.

e. See enclosed draft amendment to Minnesota Rules, parts 9525.1200 to 9525.1330. It will take approximately three months to amend the rule parts.

f. See enclosed draft of Rule 38 (specifically page 20).

g. See enclosed draft of Rule 38 (specifically pages 20, 25, and 49). Also, all DAC programs must be in compliance with the rules governing administration of social service funds. These rules require compliance with federal accessibility standards as stated in the enclosed contract.

Billing and Reimbursement

1. Recommendations: It is recommended that the state establish a reimbursement methodology for DACs which is uniform, reasonable, and not based on historical randomness.

State Response: The state agency is committed to study other reimbursement methods for day training and habilitation services. The Department is currently discussing alternative rate methods which would be based on proposed program rules, and federal regulations and guidelines.

Corrective Action: See the enclosed letter awarding Lewin and Associates, Inc., a contract to study case-mix reimbursement of ICF/MRs, DACs, and waivered services.

2. Recommendation: The state should cease treating DACs as independent Title XIX providers and leave the billing responsibility to the ICFs/MR. (HCFA is presently evaluating the legitimacy of reassignment of payment to the single state agency.)

State Response: An ICF/MR provider may assign payments to a government agency according to 42 U.S.C.A. 1396 (a) (32) and 42 CFR 447.10 (e). The State of Minnesota is a government agency; therefore, it is clearly consistent with federal regulations to have ICF/MRs, which are providers, make such assignments. The state agency believes it is fully in

compliance with federal regulations regarding the assignment for payment methodology it now employs for day training and habilitation services.

12/85 corrected file

Corrective Action: We acknowledge receipt of your letter dated November 21, 1985 and will address this issue in a separate correspondence.

All documents referred to in this letter but not yet enclosed will be forwarded to you as they are written.

Please advise if further action or documentation is needed.

Sincerely,

Al Hanzal
Assistant Commissioner

SFM/68

Enclosures

APPENDIX C (2 pages)

DEPARTMENT OF HEALTH & HUMAN SERVICES

Health Care Financing Administration

Refer to: FQA-715

Memorandum

Date JUN 16 1987

From Director
Bureau of Eligibility, Reimbursement and Coverage

Subject Reimbursement of Prevocational Services in Minnesota—INFORMATION

To Regional Administrator
Chicago
Attn: Associate Regional Administrator
Division of Program Operations

This is in response to your memorandum of May 4, 1987, requesting our comments regarding Minnesota's proposed rule amendments governing Medicaid coverage of prevocational services for residents of ICFs/MR. Specifically, you are asking that we comment on the State's response of April 13, 1987 to suggestions you had made concerning the proposed amendments. We have the following comments.

1. Your first suggestion was that in defining prevocational services, the State should make a distinction between those under and over age 22, as the State Medicaid Manual does in describing how to determine the availability of FFP for vocational services. The State in its response indicated that only persons not of school age are eligible for these prevocational services. We believe the State means by this statement that FFP for these services would not be available for persons under age 22 because the Education of the Handicapped Act (EHA) requires that these services be provided by the State as part of a free and appropriate education. If this is the State's meaning, it is correct. Thus, this does not appear to be a comparability question, since the State seems to be merely indicating that for those under age 22 these types of services are provided as educational services rather than as Medicaid services.

2. Your second suggestion is that, since remunerative productive activity, in accordance with the State Medicaid manual, does not fit the definition of prevocational services, the State may not want to refer to the client being compensated for productivity. The State has responded that remunerative productive activity is allowed in accordance with Medicaid guidelines.

   We believe the State's response generally reflects the provisions of the guidelines at section 4397 of the State Medicaid manual pertaining to the vocational services exclusion in ICFs/MR. In accordance with the guidelines, the State is precluding FFP for activities that would result in or are in preparation for employment in the general workforce or sheltered employment

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within a year. Also, the State correctly indicates that in determining whether FFP is available for an activity, it is necessary to consider the nature of the activity, the level of supervision required, and the programmatic objectives in the person's plan of care as well as the compensation level.

If you have questions concerning our comments, please call Walter Rutemueller at FTS 934-9837.

Robert A. Streimer



STATE OF MINNESOTA
DEPARTMENT OF HUMAN SERVICES
444 LAFAYETTE ROAD
ST. PAUL, MINNESOTA 55155

Rec'd 2/3

February 2, 1988

TO: Rita Desmond
515 Transportation Building
St. Paul, MN 55155

FROM: Robert Hamper, Director RH
Bulletins and Rules Division

SUBJECT: Review of a Rule Adopted Without a Public Hearing; Specifically, Amendments to Rules Relating to Medical Assistance Reimbursement for Training and Habilitation Services (Parts 9525.1210 and 9525.1250);

Enclosed are the documents required to be submitted under Minnesota Rules, part 2010.0300 for your review of a rule adopted without a public hearing for the above entitled matter.

Official documents in this submitted material include:

1. A copy or photocopy of the notice of solicitation of outside information or opinions as published in the State Register.

2. A copy of the proposed rule with a certificate of approval as to form by the revisor of statutes attached.

3. The notice of intent to adopt a rule without a public hearing as mailed.

4. The statement of need and reasonableness in support of the proposed rule complying with part 2010.0700.

5. The affidavit of mailing the notice of intent to adopt a rule without a public hearing. The affidavits state that the mailing list maintained by the agency pursuant to Minnesota Statutes, sections 14.22 and 14.14, subdivision 1a is accurate, complete, and current and that the notice of intent to adopt the rule without a public hearing was mailed to all persons and groups whose names appear on the list.

6. A copy or photocopy of the notice of intent to adopt the rule without a public hearing as published in the State Register.

7. Four copies of the rule as adopted.

8. The findings of fact, conclusions, and order adopting the rule.

9. All written requests, submissions, or comments on the rule received by the agency except requests solely for copies of the rule or of the statement of need and reasonableness.

10. The declaration of the attorney in the attorney general's office who represents the agency.

The agency received no requests for notification of submittal of the rule to the Attorney General.

If you have any questions on this submitted material, please call me at 296-2794.

Official Notices

Pursuant to the provisions of Minnesota Statutes § 14.10, an agency, in preparing proposed rules, may seek information or opinion from sources outside the agency. Notices of intent to solicit outside opinion must be published in the *State Register* and all interested persons afforded the opportunity to submit data or views on the subject, either orally or in writing.

The *State Register* also publishes other official notices of state agencies, notices of meetings, and matters of public interest.

Department of Commerce

Bulletin of Pending Applications Subject to the Reciprocal Interstate Banking Act *Minnesota Statutes*, § 48.98, Subdivision 2,(2)

The following listing of applications are pending with the Commissioner of Commerce subject to criteria for approval as set out in *Minnesota Statutes*, § 48.93 and shall be disapproved if:

(1) The financial condition of any acquiring person is such as might jeopardize the financial stability of the bank or prejudice the interests of the depositors of the bank;

(2) The competence, experience, integrity of any acquiring person or if any of the proposed management personnel indicates that it would not be in the interest of the depositors of the bank, or in the interest of the public to permit the person to control the bank;

(3) The acquisition will result in undue concentration of resources or substantial lessening of competition in this area; or

(4) The application failed to adequately demonstrate that the acquisition proposal would bring net new funds into Minnesota.

In addition, the Commissioner has determined by rule that applicants must describe its plan of compliance in providing an acceptable level of development loans or developmental investments in the community affected.

Current list of Pending Applications:

- The Frandsen Financial Corporation, 200 Main Street South, Luck, Wisconsin 54853 (mailing address: 20 North Lake Street, Suite 210, Forest Lake, Minnesota 55025), proposes to acquire the Farmers and Merchants State Bank of Hinckley, 108 Main Street, Hinckley, Minnesota 55037.

NOTICE

The Commissioner shall accept public comment on an application for a period of not less than 30 days from the date of the final publication in a newspaper of general circulation within the county in which the bank to be acquired or a proposed new bank is located; or 30 days after the date of the availability of the bulletin of Pending Applications which includes the listing of the acquisition.

Public Information

Copies of bulletins of pending applications prepared and updated with each new application filed with the Commissioner is available without charge to any person upon request by writing to Department of Commerce, Bulletin of Pending Applications, Reciprocal Interstate Banking Act, 500 Metro Square Building, Seventh and Robert Streets, St. Paul, Minnesota 55101.

Michael A. Hatch
Commissioner of Commerce

Department of Human Services

Notice of Solicitation of Outside Information or Opinions Regarding Proposed Rules Governing Medical Assistance Reimbursement for Training and Habilitation Services for Persons with Mental Retardation or Related Conditions, under *Minnesota Rules*, Parts 9525.1210 to 9525.1250

Notice is hereby given that the State Department of Human Services is seeking information or opinions from sources outside the agency in preparing to propose the adoption of amendments to *Minnesota Rules*, parts 9525.1210 to 9525.1250, governing medical assistance reimbursement for training and habilitation services for persons with mental retardation or related conditions. The proposed amendments are intended to distinguish between reimbursable prevocational services and nonreimbursable education or vocational training services. The adoption of the rule is authorized by *Minnesota Statutes*, section 256B.501, in conjunction with the Social

Security Act, sections 1905(a)(6) and 1902(a)(25), which authorize the agency to establish procedures and rules for determining rates for care of residents of intermediate care facilities for persons with mental retardation or related conditions which qualify as vendors of medical assistance, waivered services, and for provision of training and habilitation services.

The State Department of Human Services requests information and opinions concerning the subject matter of the rule. Interested persons or groups may submit data or views on the subject matter of concern in writing or orally. Written statements should be addressed to:

Lisa Rotegard
Long-term Care Management
Minnesota Department of Human Services
444 Lafayette Road, 4th Floor
St. Paul, MN 55155

Oral statements will be received during regular business hours over the telephone at (612) 297-3829 and in person at the above address.

All statements of information and opinions shall be accepted until further notice is published in the *State Register* or the Notice of Hearing or Notice of Intent to Adopt Rules Without a Hearing is published in the *State Register*. Any written material received by the State Department of Human Services shall become part of the rulemaking record to be submitted to the attorney general or administrative law judge in the event that the rule is adopted.

Department of Human Services

Notice of Solicitation of Outside Information or Opinions Regarding Proposed Rules Governing Reimbursement for Cost of Care of Patients of State Regional Treatment Centers, under *Minnesota Rules*, Parts 9515.1000 to 9515.2600

Notice is hereby given that the State Department of Human Services is seeking information or opinions from sources outside the agency in preparing to propose the amendment of rules governing reimbursement for cost of care of patients of state regional treatment centers, under *Minnesota Rules*, Parts 9515.1000 to 9515.2600. The proposals would conform the rules to new statutory definitions, and to the requirement for full-pay by recipients of chemical dependency treatment, and would except Supplemental Security Income from net income in determining ability to pay costs. The amendments of the rules are authorized by *Minnesota Statutes*, section 246.01, section 246.23, and sections 246.50 to 246.55, in conjunction with section 1611(e)(1)(E) of the Social Security Act, which permit the agency to administer and manage state facilities and establish rules for the determination of the responsibility for a patient's or resident's care.

The State Department of Human Services requests information and opinions concerning the subject matter of the rule. Interested persons or groups may submit data or views on the subject matter of concern in writing or orally. Written statements should be addressed to:

Julie Elhard
Reimbursement Division
Minnesota Department of Human Services
444 Lafayette Road, 2nd Floor
St. Paul, MN 55155

Oral statements will be received during regular business hours over the telephone at (612) 296-3507 and in person at the above address.

All statements of information and opinions shall be accepted until further notice is published in the *State Register* or the Notice of Hearing or Notice of Intent to Adopt Rules Without a Hearing is published in the *State Register*. Any written material received by the State Department of Human Services shall become part of the rulemaking record to be submitted to the attorney general or administrative law judge in the event that the rule is adopted.

Metropolitan Council

Notice of Solicitation of Outside Information or Opinions Regarding Proposed Rules Governing Matters of Metropolitan Significance

Notice is hereby given that the Metropolitan Council is seeking information or opinions from sources outside the Metropolitan

STATE OF MINNESOTA
DEPARTMENT OF HUMAN SERVICES

In the Matter of the Proposed Amendment of Rules of the State Department of Human Services Governing Medical Assistance Reimbursement to ICFs/MR for Training And Habilitation Services For Persons with Mental Retardation or Related Conditions, Minnesota Rules, Parts 9525.1210 to 9525.1250

NOTICE OF INTENT TO ADOPT A RULE WITHOUT A PUBLIC HEARING AND NOTICE OF INTENT TO ADOPT A RULE WITH A PUBLIC HEARING IF TWENTY-FIVE OR MORE PERSONS REQUEST A HEARING

Notice is hereby given that the State Department of Human Services proposes to adopt the above-entitled rule without a public hearing following the procedures set forth in Minnesota Statutes, section 14.22 to 14.28. The specific statutory authority to adopt the rule is Minnesota Statutes, section 256B.501. This notice is also required by the Code of Federal Regulations, title 42, section 447.205.

Persons interested in this rule shall have 30 days in which to submit comments in support of or in opposition to the proposed rule or any part or subpart of the rule and comment is encouraged. Each comment should identify the portion of the proposed rule addressed, the reason for the comment, and any change proposed.

Any person may make a written request for a public hearing on the rule within the 30-day comment period. If 25 or more persons submit a written request for a public hearing within the 30-day comment period, a public hearing will be held unless a sufficient number withdraw their request in writing. Any person requesting a public hearing should state his or her name and address, and is encouraged to identify the portion of the proposed rule addressed, the reason for the request, and any change proposed. If a public hearing is required, the agency will proceed pursuant to Minnesota Statutes, section 14.131 to 14.20. PLEASE NOTE THAT IF TWENTY-FIVE OR MORE PERSONS SUBMIT WRITTEN REQUESTS FOR A PUBLIC HEARING WITHIN THE 30-DAY COMMENT PERIOD, A HEARING WILL BE HELD ON JANUARY 19, 1988, UNLESS A SUFFICIENT NUMBER WITHDRAW THEIR REQUEST, IN ACCORDANCE WITH THE NOTICE OF PUBLIC HEARING ON THESE SAME RULES PUBLISHED IN THIS STATE REGISTER AND MAILED TO PERSONS REGISTERED WITH THE DEPARTMENT OF HUMAN SERVICES. To verify whether a hearing will be held, please call the Department of Human Services between Thursday, January 7 and Monday, January 18, 1988 at (612)297-3829.

Persons who wish to submit comments or a written request for a public hearing must submit such comments or requests to:

Lisa Rotegard
Long Term Care Management
Minnesota Department of Human Services
444 Lafayette Road, 4th Floor
St. Paul, MN 55155
(612)297-3829

Comments or requests for a public hearing must be received by the Department by 4:30 p.m. on January 6, 1988.

The proposed rule may be modified if the modifications are supported by data and views and do not result in a substantial change in the proposed rule as noticed.

A free copy of this rule is available upon request for your review from the person and address noted above.

A copy of the proposed rule may be viewed at any of the county welfare or human service agencies in the State of Minnesota.

Under current rules, Minnesota Rules, parts 9525.1210 to 9525.1250, the Medical Assistance program reimburses intermediate care facilities for persons with mental retardation or related conditions (ICFs/MR) for training and habilitation services, including "work activity", for clients eligible for medical assistance. The proposed amendments distinguish reimbursable training and habilitation services from educational and vocational services that are funded by other programs. The proposed changes will affect ICFs/MR certified for medical assistance and clients of ICFs/MR who are eligible for medical assistance. These proposed amendments are necessary to conform with Minnesota Statutes 1987, section 252.41, subdivision 3, and the Social Security Act, sections 1905(a)(6) and 1902(a)(25), and guidelines of the Health Care Financing Administration, U.S. Department of Health and Human Services.

No changes in annual aggregate expenditures are anticipated.

A Statement of Need and Reasonableness that describes the need for and reasonableness of each provision of the proposed rule and identifies the data and information relied upon to support the proposed rule has been prepared and is available upon request from Lisa Rotegard at the address or telephone indicated above.

Adoption of these rules will not result in any additional spending by local public bodies for the first two years following adoption, under the requirements of Minnesota Statutes, section 14.11.

If no hearing is required upon adoption of the rule, the rule and the required supporting documents will be delivered to the Attorney General for review as to legality and form to the extent the form relates to legality. Any person may request notification of the date of submission to the Attorney General. Persons who wish to be advised of the submission of this material to the Attorney General, or who wish to receive a copy of the adopted rule, must submit the written request to Lisa Rotegard at the address indicated above.

Dated: 11/13/87

State of Minnesota

SANDRA S. GARDEBRING
Commissioner

STATE OF MINNESOTA
DEPARTMENT OF HUMAN SERVICES

In the Matter of the Proposed Amendment of Rules of the State Department of Human Services Governing Medical Assistance Reimbursement to ICFs/MR for Training and Habilitation Services for Persons with Mental Retardation or Related Conditions, Minnesota Rules, Parts 9525.1210 to 9525.1250

NOTICE OF HEARING AND NOTICE OF INTENT TO CANCEL HEARING IF FEWER THAN TWENTY-FIVE PERSONS REQUEST A HEARING IN RESPONSE TO NOTICE OF INTENT TO ADOPT RULES WITHOUT A PUBLIC HEARING

NOTICE IS HEREBY GIVEN that a public hearing on the above-entitled matter will be held in Room D, 5th Floor, Veteran's Service Building, 20 W. 12th Street, St. Paul, MN, on January 19, 1988 commencing at 9:00 a.m. and continuing until all interested or affected persons have an opportunity to participate. The proposed amendments may be modified as a result of the hearing process. Therefore, if you are affected in any manner by the proposed amendments, you are urged to participate in the rule hearing process.

PLEASE NOTE, HOWEVER, THAT THE HEARING WILL BE CANCELLED IF FEWER THAN TWENTY-FIVE PERSONS REQUEST A HEARING IN RESPONSE TO THE NOTICE OF INTENT TO ADOPT THESE SAME RULES WITHOUT A PUBLIC HEARING PUBLISHED IN THIS STATE REGISTER AND MAILED TO PERSONS REGISTERED WITH THE DEPARTMENT OF HUMAN SERVICES. To verify whether a hearing will be held, please call the Department of Human Services between Thursday, January 7 and Monday, January 18, 1988 at (612)297-3829.

Following the agency's presentation at the hearing, all interested or affected persons will have an opportunity to participate. Such persons may present their views either orally at the hearing or in writing at any time prior to the close of the hearing record. All evidence presented should be pertinent to the matter at hand. Written material not submitted at the time of the hearing which is to be included in the hearing record may be mailed to Howard Kaibel, Administrative Law Judge, Office of Administrative Hearings, 500 Flour Exchange Building, 310 Fourth Avenue South, Minneapolis, Minnesota 55415; telephone (612) 341-7608, either before the hearing or within five working days after the public hearing ends. The Administrative Law Judge may at the hearing, order the record be kept open for a longer period not to exceed 20 calendar days. The comments received during the comment period shall be available for review at the Office of Administrative Hearings. Following the close of the comment period the agency and all interested persons have three business days to respond in writing to any new information submitted during the comment period. During the three-day period, the agency may indicate in writing whether there are amendments suggested by other persons which the

agency is willing to adopt. No additional evidence may be submitted during the three-day period. The written responses shall be added to the rulemaking record. Upon the close of the record the Administrative Law Judge will write a report as provided for in Minnesota Statutes, sections 14.15 and 14.50. The rule hearing is governed by Minnesota Statutes, sections 14.14 to 14.20 and by Minnesota Rules, parts 1400.0200 to 1400.1200. Questions about procedure may be directed to the Administrative Law Judge.

Under current rules, Minnesota Rules, parts 9525.1210 to 9525.1250, the Medical Assistance program reimburses intermediate care facilities for persons with mental retardation or related conditions (ICFs/MR) for training and habilitation services, including "work activity", for clients eligible for medical assistance. The proposed amendments distinguish reimbursable training and habilitation services from educational and vocational services that are funded by other programs. The proposed changes will affect ICFs/MR certified for medical assistance and clients of ICFs/MR who are eligible for medical assistance. These proposed amendments are necessary to conform with Minnesota Statutes 1987, section 252.41, subdivision 3, and the Social Security Act, sections 1905(a)(6) and 1902(a)(25), and guidelines of the Health Care Financing Administration, U.S. Department of Health and Human Services.

The agency's authority to adopt the proposed rule amendments is contained in Minnesota Statutes, section 256B.501. Adoption of these amendments will not result in additional spending by local public bodies in excess of $100,000 per year for the first two years following adoption under the requirements of Minnesota Statutes, section 14.11. This notice is also required by the Code of Federal Regulations, title 42, section 447.205.

Copies of the proposed amendments are now available and at least one free copy may be obtained by writing to:

Lisa Rotegard
Long Term Care Management
Minnesota Department of Human Services
444 Lafayette Road, 4th Floor
St. Paul, MN 55155
(612)297-3829

This rule is also available for viewing at each of the county welfare or human service agencies in the State of Minnesota.

Additional copies will be available at the hearing. If you have any questions on the content of the rule contact Lisa Rotegard at the address and telephone number noted above.

NOTICE: Any person may request notification of the date on which the Administrative Law Judge's report will be available, after which date the agency may not take any final action on the amendments for a period of five working days. If you desire to be notified, you may so indicate at

NOTICE IS HEREBY GIVEN that a Statement of Need and Reasonableness is now available for review at the agency and at the Office of Administrative Hearings. The Statement of Need and Reasonableness includes a summary of all the evidence and argument which the agency anticipates presenting at the hearing justifying both the need for and reasonableness of the proposed amendments. Copies of the Statement of Need and Reasonableness may be reviewed at the agency or the Office of Administrative Hearings and copies may be obtained from the Office of Administrative Hearings at the cost of reproduction.

Minnesota Statutes, chapter 10A, requires each lobbyist to register with the State Ethical Practices Board within five days after he or she commences lobbying. A lobbyist is defined in Minnesota Statutes, section 10A.01, subdivision 11, as any individual:

(a) engaged for pay or other consideration, or authorized by another individual or association to spend money, who spends more than five hours in any month or more than $250, not including travel expenses and membership dues, in any year, for the purpose of attempting to influence legislative or administrative action by communication or urging others to communicate with public officials; or

(b) who spends more than $250, not including traveling expenses and membership dues, in any year, for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials.

The statute provides certain exceptions. Questions should be directed to the Ethical Practices Board, 625 North Robert Street, St. Paul, Minnesota 55101, telephone (612) 296-5148.

SANDRA S. GARDEBRING
Commissioner

Dated: 11/13/87

STATE OF MINNESOTA

DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF THE PROPOSED ADOPTION OF RULES GOVERNING MEDICAL ASSISTANCE REIMBURSEMENT TO ICFs/MR FOR TRAINING AND HABILITATION SERVICES FOR PERSONS WITH MENTAL RETARDATION OR RELATED CONDITIONS

AFFIDAVIT OF MAILING

Nancy Storelee, being first duly sworn, deposes and says:

That on the 2nd day of December, 1987, at the City of St. Paul, County of Ramsey, State of Minnesota, I mailed the attached Notices of Hearing by depositing in the State of Minnesota Central Mail System for first class mailing, a copy thereof, properly enveloped, with postage prepaid, to 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 hearing by this Department.

Nancy Storelee

Subscribed and sworn to before me

this 3rd day of December, 1987

Louise J. Breidel



STATE OF MINNESOTA
DEPARTMENT OF HUMAN SERVICES

In the Matter of the Proposed Amendment of Rules of the State Department of Human Services Governing Medical Assistance Reimbursement to ICFs/MR for Training and Habilitation Services for Persons with Mental Retardation or Related Conditions, Minnesota Rules, Parts 9525.1210 to 9525.1250

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The agency's authority to adopt the proposed rule amendments is contained in Minnesota Statutes, section 256B.501. Adoption of these amendments will not result in additional spending by local public bodies in excess of $100,000 per year for the first two years following adoption under the requirements of Minnesota Statutes, section 14.11. This notice is also required by the Code of Federal Regulations, title 42, section 447.205.

Copies of the proposed amendments are now available and at least one free copy may be obtained by writing to:

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Minnesota Department of Human Services
444 Lafayette Road, 4th Floor
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This rule is also available for viewing at each of the county welfare or human service agencies in the State of Minnesota.

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(a) engaged for pay or other consideration, or authorized by another individual or association to spend money, who spends more than five hours in any month or more than $250, not including travel expenses and membership dues, in any year, for the purpose of attempting to influence legislative or administrative action by communication or urging others to communicate with public officials; or

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The statute provides certain exceptions. Questions should be directed to the Ethical Practices Board, 625 North Robert Street, St. Paul, Minnesota 55101, telephone (612) 296-5148.

SANDRA S. GARDEBRING
Commissioner

Dated: 11/13/87

STATE OF MINNESOTA
DEPARTMENT OF HUMAN SERVICES

In the Matter of the Proposed Amendment of Rules of the State Department of Human Services Governing Medical Assistance Reimbursement to ICFs/MR for Training And Habilitation Services For Persons with Mental Retardation or Related Conditions, Minnesota Rules, Parts 9525.1210 to 9525.1250

NOTICE OF INTENT TO ADOPT A RULE WITHOUT A PUBLIC HEARING AND NOTICE OF INTENT TO ADOPT A RULE WITH A PUBLIC HEARING IF TWENTY-FIVE OR MORE PERSONS REQUEST A HEARING

Notice is hereby given that the State Department of Human Services proposes to adopt the above-entitled rule without a public hearing following the procedures set forth in Minnesota Statutes, section 14.22 to 14.28. The specific statutory authority to adopt the rule is Minnesota Statutes, section 256B.501. This notice is also required by the Code of Federal Regulations, title 42, section 447.205.

Persons interested in this rule shall have 30 days in which to submit comments in support of or in opposition to the proposed rule or any part or subpart of the rule and comment is encouraged. Each comment should identify the portion of the proposed rule addressed, the reason for the comment, and any change proposed.

Any person may make a written request for a public hearing on the rule within the 30-day comment period. If 25 or more persons submit a written request for a public hearing within the 30-day comment period, a public hearing will be held unless a sufficient number withdraw their request in writing. Any person requesting a public hearing should state his or her name and address, and is encouraged to identify the portion of the proposed rule addressed, the reason for the request, and any change proposed. If a public hearing is required, the agency will proceed pursuant to Minnesota Statutes, section 14.131 to 14.20. PLEASE NOTE THAT IF TWENTY-FIVE OR MORE PERSONS SUBMIT WRITTEN REQUESTS FOR A PUBLIC HEARING WITHIN THE 30-DAY COMMENT PERIOD, A HEARING WILL BE HELD ON JANUARY 19, 1988, UNLESS A SUFFICIENT NUMBER WITHDRAW THEIR REQUEST, IN ACCORDANCE WITH THE NOTICE OF PUBLIC HEARING ON THESE SAME RULES PUBLISHED IN THIS STATE REGISTER AND MAILED TO PERSONS REGISTERED WITH THE DEPARTMENT OF HUMAN SERVICES. To verify whether a hearing will be held, please call the Department of Human Services between Thursday, January 7 and Monday, January 18, 1988 at (612)297-3829.

Persons who wish to submit comments or a written request for a public hearing must submit such comments or requests to:

Lisa Rotegard
Long Term Care Management
Minnesota Department of Human Services
444 Lafayette Road, 4th Floor
St. Paul, MN 55155
(612)297-3829

Comments or requests for a public hearing must be received by the Department by 4:30 p.m. on January 6, 1988.

The proposed rule may be modified if the modifications are supported by data and views and do not result in a substantial change in the proposed rule as noticed.

A free copy of this rule is available upon request for your review from the person and address noted above.

A copy of the proposed rule may be viewed at any of the county welfare or human service agencies in the State of Minnesota.

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No changes in annual aggregate expenditures are anticipated.

A Statement of Need and Reasonableness that describes the need for and reasonableness of each provision of the proposed rule and identifies the data and information relied upon to support the proposed rule has been prepared and is available upon request from Lisa Rotegard at the address or telephone indicated above.

Adoption of these rules will not result in any additional spending by local public bodies for the first two years following adoption, under the requirements of Minnesota Statutes, section 14.11.

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Dated: 11/13/87

State of Minnesota

SANDRA S. GARDEBRING
Commissioner

STATE OF MINNESOTA

DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF THE PROPOSED ADOPTION OF RULES GOVERNING MEDICAL ASSISTANCE REIMBURSEMENT TO ICFs/MR FOR TRAINING AND HABILITATION SERVICES FOR PERSONS WITH MENTAL RETARDATION OR RELATED CONDITIONS

CERTIFICATE

I hereby certify that the list of persons, associations and other interested groups who have requested, pursuant to Minnesota Statutes, section 14.14, subdivision 1a, and 14.22 or 14.30, that their names be placed on the State Department of Human Services rulemaking mailing list is accurate, complete, and current as of this 2nd day of December, 1987.

Nancy Hoelee

STATE OF MINNESOTA

DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF THE PROPOSED ADOPTION OF RULES GOVERNING MEDICAL ASSISTANCE REIMBURSEMENT TO ICFs/MR FOR TRAINING AND HABILITATION SERVICES FOR PERSONS WITH MENTAL RETARDATION OR RELATED CONDITIONS

AFFIDAVIT OF ADDITIONAL MAILING

Nancy Storelee, being first duly sworn, deposes and says:

That on the 2nd day of December, 1987, at the City of St. Paul, County of Ramsey, State of Minnesota, I mailed the attached Notices of Hearing 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 parties:

.The 87 Minnesota County Human Services Agencies
.150 DACs
.350 ICFs/MR

Nancy Storelee

Subscribed and sworn to before me

this 3 day of December, 1987

Louise J. Brindel

LOUISE J. BRINDEL
NOTARY PUBLIC—MINNESOTA
DAKOTA COUNTY
MY COMM. EXP. SEPT. 22, 1990

STATE OF MINNESOTA
DEPARTMENT OF HUMAN SERVICES

In the Matter of the Proposed Amendment of Rules of the State Department of Human Services Governing Medical Assistance Reimbursement to ICFs/MR for Training and Habilitation Services for Persons with Mental Retardation or Related Conditions, Minnesota Rules, Parts 9525.1210 to 9525.1250

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PLEASE NOTE, HOWEVER, THAT THE HEARING WILL BE CANCELLED IF FEWER THAN TWENTY-FIVE PERSONS REQUEST A HEARING IN RESPONSE TO THE NOTICE OF INTENT TO ADOPT THESE SAME RULES WITHOUT A PUBLIC HEARING PUBLISHED IN THIS STATE REGISTER AND MAILED TO PERSONS REGISTERED WITH THE DEPARTMENT OF HUMAN SERVICES. To verify whether a hearing will be held, please call the Department of Human Services between Thursday, January 7 and Monday, January 18, 1988 at (612)297-3829.

Following the agency's presentation at the hearing, all interested or affected persons will have an opportunity to participate. Such persons may present their views either orally at the hearing or in writing at any time prior to the close of the hearing record. All evidence presented should be pertinent to the matter at hand. Written material not submitted at the time of the hearing which is to be included in the hearing record may be mailed to Howard Kaibel, Administrative Law Judge, Office of Administrative Hearings, 500 Flour Exchange Building, 310 Fourth Avenue South, Minneapolis, Minnesota 55415; telephone (612) 341-7608, either before the hearing or within five working days after the public hearing ends. The Administrative Law Judge may at the hearing, order the record be kept open for a longer period not to exceed 20 calendar days. The comments received during the comment period shall be available for review at the Office of Administrative Hearings. Following the close of the comment period the agency and all interested persons have three business days to respond in writing to any new information submitted during the comment period. During the three-day period, the agency may indicate in writing whether there are amendments suggested by other persons which the

agency is willing to adopt. No additional evidence may be submitted during the three-day period. The written responses shall be added to the rulemaking record. Upon the close of the record the Administrative Law Judge will write a report as provided for in Minnesota Statutes, sections 14.15 and 14.50. The rule hearing is governed by Minnesota Statutes, sections 14.14 to 14.20 and by Minnesota Rules, parts 1400.0200 to 1400.1200. Questions about procedure may be directed to the Administrative Law Judge.

Under current rules, Minnesota Rules, parts 9525.1210 to 9525.1250, the Medical Assistance program reimburses intermediate care facilities for persons with mental retardation or related conditions (ICFs/MR) for training and habilitation services, including "work activity", for clients eligible for medical assistance. The proposed amendments distinguish reimbursable training and habilitation services from educational and vocational services that are funded by other programs. The proposed changes will affect ICFs/MR certified for medical assistance and clients of ICFs/MR who are eligible for medical assistance. These proposed amendments are necessary to conform with Minnesota Statutes 1987, section 252.41, subdivision 3, and the Social Security Act, sections 1905(a)(6) and 1902(a)(25), and guidelines of the Health Care Financing Administration, U.S. Department of Health and Human Services.

The agency's authority to adopt the proposed rule amendments is contained in Minnesota Statutes, section 256B.501. Adoption of these amendments will not result in additional spending by local public bodies in excess of $100,000 per year for the first two years following adoption under the requirements of Minnesota Statutes, section 14.11. This notice is also required by the Code of Federal Regulations, title 42, section 447.205.

Copies of the proposed amendments are now available and at least one free copy may be obtained by writing to:

Lisa Rotegard
Long Term Care Management
Minnesota Department of Human Services
444 Lafayette Road, 4th Floor
St. Paul, MN 55155
(612)297-3829

This rule is also available for viewing at each of the county welfare or human service agencies in the State of Minnesota.

Additional copies will be available at the hearing. If you have any questions on the content of the rule contact Lisa Rotegard at the address and telephone number noted above.

NOTICE: Any person may request notification of the date on which the Administrative Law Judge's report will be available, after which date the agency may not take any final action on the amendments for a period of five working days. If you desire to be notified, you may so indicate at

NOTICE IS HEREBY GIVEN that a Statement of Need and Reasonableness is now available for review at the agency and at the Office of Administrative Hearings. The Statement of Need and Reasonableness includes a summary of all the evidence and argument which the agency anticipates presenting at the hearing justifying both the need for and reasonableness of the proposed amendments. Copies of the Statement of Need and Reasonableness may be reviewed at the agency or the Office of Administrative Hearings and copies may be obtained from the Office of Administrative Hearings at the cost of reproduction.

Minnesota Statutes, chapter 10A, requires each lobbyist to register with the State Ethical Practices Board within five days after he or she commences lobbying. A lobbyist is defined in Minnesota Statutes, section 10A.01, subdivision 11, as any individual:

(a) engaged for pay or other consideration, or authorized by another individual or association to spend money, who spends more than five hours in any month or more than $250, not including travel expenses and membership dues, in any year, for the purpose of attempting to influence legislative or administrative action by communication or urging others to communicate with public officials; or

(b) who spends more than $250, not including traveling expenses and membership dues, in any year, for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials.

The statute provides certain exceptions. Questions should be directed to the Ethical Practices Board, 625 North Robert Street, St. Paul, Minnesota 55101, telephone (612) 296-5148.

SANDRA S. GARDEBRING
Commissioner

Dated: 11/13/87

STATE OF MINNESOTA
DEPARTMENT OF HUMAN SERVICES

In the Matter of the Proposed Amendment of Rules of the State Department of Human Services Governing Medical Assistance Reimbursement to ICFs/MR for Training And Habilitation Services For Persons with Mental Retardation or Related Conditions, Minnesota Rules, Parts 9525.1210 to 9525.1250

NOTICE OF INTENT TO ADOPT A RULE WITHOUT A PUBLIC HEARING AND NOTICE OF INTENT TO ADOPT A RULE WITH A PUBLIC HEARING IF TWENTY-FIVE OR MORE PERSONS REQUEST A HEARING

Notice is hereby given that the State Department of Human Services proposes to adopt the above-entitled rule without a public hearing following the procedures set forth in Minnesota Statutes, section 14.22 to 14.28. The specific statutory authority to adopt the rule is Minnesota Statutes, section 256B.501. This notice is also required by the Code of Federal Regulations, title 42, section 447.205.

Persons interested in this rule shall have 30 days in which to submit comments in support of or in opposition to the proposed rule or any part or subpart of the rule and comment is encouraged. Each comment should identify the portion of the proposed rule addressed, the reason for the comment, and any change proposed.

Any person may make a written request for a public hearing on the rule within the 30-day comment period. If 25 or more persons submit a written request for a public hearing within the 30-day comment period, a public hearing will be held unless a sufficient number withdraw their request in writing. Any person requesting a public hearing should state his or her name and address, and is encouraged to identify the portion of the proposed rule addressed, the reason for the request, and any change proposed. If a public hearing is required, the agency will proceed pursuant to Minnesota Statutes, section 14.131 to 14.20. PLEASE NOTE THAT IF TWENTY-FIVE OR MORE PERSONS SUBMIT WRITTEN REQUESTS FOR A PUBLIC HEARING WITHIN THE 30-DAY COMMENT PERIOD, A HEARING WILL BE HELD ON JANUARY 19, 1988, UNLESS A SUFFICIENT NUMBER WITHDRAW THEIR REQUEST, IN ACCORDANCE WITH THE NOTICE OF PUBLIC HEARING ON THESE SAME RULES PUBLISHED IN THIS STATE REGISTER AND MAILED TO PERSONS REGISTERED WITH THE DEPARTMENT OF HUMAN SERVICES. To verify whether a hearing will be held, please call the Department of Human Services between Thursday, January 7 and Monday, January 18, 1988 at (612)297-3829.

Persons who wish to submit comments or a written request for a public hearing must submit such comments or requests to:

Lisa Rotegard
Long Term Care Management
Minnesota Department of Human Services
444 Lafayette Road, 4th Floor
St. Paul, MN 55155
(612)297-3829

Comments or requests for a public hearing must be received by the Department by 4:30 p.m. on January 6, 1988.

The proposed rule may be modified if the modifications are supported by data and views and do not result in a substantial change in the proposed rule as noticed.

A free copy of this rule is available upon request for your review from the person and address noted above.

A copy of the proposed rule may be viewed at any of the county welfare or human service agencies in the State of Minnesota.

Under current rules, Minnesota Rules, parts 9525.1210 to 9525.1250, the Medical Assistance program reimburses intermediate care facilities for persons with mental retardation or related conditions (ICFs/MR) for training and habilitation services, including "work activity", for clients eligible for medical assistance. The proposed amendments distinguish reimbursable training and habilitation services from educational and vocational services that are funded by other programs. The proposed changes will affect ICFs/MR certified for medical assistance and clients of ICFs/MR who are eligible for medical assistance. These proposed amendments are necessary to conform with Minnesota Statutes 1987, section 252.41, subdivision 3, and the Social Security Act, sections 1905(a)(6) and 1902(a)(25), and guidelines of the Health Care Financing Administration, U.S. Department of Health and Human Services.

No changes in annual aggregate expenditures are anticipated.

A Statement of Need and Reasonableness that describes the need for and reasonableness of each provision of the proposed rule and identifies the data and information relied upon to support the proposed rule has been prepared and is available upon request from Lisa Rotegard at the address or telephone indicated above.

Adoption of these rules will not result in any additional spending by local public bodies for the first two years following adoption, under the requirements of Minnesota Statutes, section 14.11.

If no hearing is required upon adoption of the rule, the rule and the required supporting documents will be delivered to the Attorney General for review as to legality and form to the extent the form relates to legality. Any person may request notification of the date of submission to the Attorney General. Persons who wish to be advised of the submission of this material to the Attorney General, or who wish to receive a copy of the adopted rule, must submit the written request to Lisa Rotegard at the address indicated above.

Dated: 11/13/87

State of Minnesota

SANDRA S. GARDEBRING
Commissioner

and identifies the data and information relied upon to support the proposed rule has been prepared and is available from Adam J. Mikrot, Executive Secretary, Board of Barber Examiners, at the above address and telephone number, upon request.

The proposed rule will have an impact on small business pursuant to MSA 14.155, subdivision 4 because it affects barber shops and barber schools by making it less burdensome for a barber school to transfer its location, change its ownership or be expanded.

If no hearing is required, upon adoption of the rule, the rule and the required supporting documents will be submitted to the Attorney General for review as to legality and form to the extent the form relates to legality. Any person may request notification of the date of submission to the Attorney General. Persons who wish to be advised of the submission of this material to the Attorney General, or who wish to receive a copy of the adopted rule, must submit the written request to Adam J. Mikrot, Executive Secretary at the above address.

Dated: 23 November 1987

Adam J. Mikrot, Executive Secretary
Board of Barber Examiners

Rules as Proposed

2100.5500 LOCATION OF LICENSE ~~AND~~, TRANSFER OF LOCATION, OR EXPANSION OF SCHOOL.

Subpart 1. [Unchanged.]

Subp. 2. **Transfer of ~~location~~ license, change of location, or expansion of school.** ~~The license may, by written application to the board, request a hearing for transfer of a license, change of location of the barber school facility, or expansion of the school.~~ Upon receipt of ~~such~~ an application~~,~~ to the board ~~shall conduct a public hearing in accordance with Minnesota Statutes, chapter 14, and rules promulgated thereunder. The criteria for determining the application for a transfer, change of location, or expansion shall be the same standards applicable to the issuance of an original license~~ for transfer of a license, change of location of the barber school facility, or expansion of the school, the board shall approve or deny the application in accordance with the standards of Minnesota Statutes, section 154.07, and parts 2100.5100 to 2100.5200. If the board denies the application, it shall notify the applicant of a right to a hearing under Minnesota Statutes, chapter 14.

Department of Human Services

Proposed Permanent Rules Relating to Medical Assistance Reimbursement for Training and Habilitation Services

Notice of Intent to Adopt a Rule Without a Public Hearing and Notice of Intent to Adopt a Rule With a Public Hearing if Twenty-Five or More Persons Request a Hearing

Notice is hereby given that the State Department of Human Services proposes to adopt the above-entitled rule without a public hearing following the procedures set forth in *Minnesota Statutes*, section 14.22 to 14.28. The specific statutory authority to adopt the rule is *Minnesota Statutes*, section 256B.501. This notice is also required by the *Code of Federal Regulations*, title 42, section 447.205.

Persons interested in this rule shall have 30 days in which to submit comments in support of or in opposition to the proposed rule or any part or subpart of the rule and comment is encouraged. Each comment should identify the portion of the proposed rule addressed, the reason for the comment, and any change proposed.

Any person may make a written request for a public hearing on the rule within the 30-day comment period. If 25 or more persons submit a written request for a public hearing within the 30-day comment period, a public hearing will be held unless a sufficient number withdraw their request in writing. Any person requesting a public hearing should state his or her name and address, and is encouraged to identify the portion of the proposed rule addressed, the reason for the request, and any change proposed. If a public hearing is required, the agency will proceed pursuant to *Minnesota Statutes*, section 14.131 to 14.20. PLEASE NOTE THAT IF TWENTY-FIVE OR MORE PERSONS SUBMIT WRITTEN REQUESTS FOR A PUBLIC HEARING WITHIN THE 30-DAY COMMENT PERIOD, A HEARING WILL BE HELD ON JANUARY 19, 1988, UNLESS A SUFFICIENT NUMBER WITHDRAW THEIR REQUEST, IN ACCORDANCE WITH THE NOTICE OF PUBLIC HEARING ON THESE SAME RULES PUBLISHED IN THIS *STATE REGISTER* AND MAILED TO PERSONS REGISTERED WITH THE DEPARTMENT OF HUMAN SERVICES. To verify whether a hearing will be held, please call the Department of Human Services between Thursday, January 7 and Monday, January 18, 1988 at (612) 297-3829.

Persons who wish to submit comments or a written request for a public hearing must submit such comments or requests to:

Lisa Rotegard
Long Term Care Management
Minnesota Department of Human Services
444 Lafayette Road, 4th Floor
St. Paul, MN 55155
(612) 297-3829

Comments or requests for a public hearing must be received by the Department by 4:30 p.m. on January 6, 1988.

The proposed rule may be modified if the modifications are supported by data and views and do not result in a substantial change in the proposed rule as noticed.

A free copy of this rule is available upon request for your review from the person and address noted above.

A copy of the proposed rule may be viewed at any of the county welfare or human service agencies in the State of Minnesota.

Under current rules, *Minnesota Rules*, parts 9525.1210 to 9525.1250, the Medical Assistance program reimburses intermediate care facilities for persons with mental retardation or related conditions (ICFs/MR) for training and habilitation services, including "work activity", for clients eligible for medical assistance. The proposed amendments distinguish reimbursable training and habilitation services from educational and vocational services that are funded by other programs. The proposed changes will affect ICFs/MR certified for medical assistance and clients of ICFs/MR who are eligible for medical assistance. These proposed amendments are necessary to conform with *Minnesota Statutes 1987*, section 252.41, subdivision 3, and the Social Security Act, sections 1905(a)(6) and 1902(a)(25), and guidelines of the Health Care Financing Administration, U.S. Department of Health and Human Services.

No changes in annual aggregate expenditures are anticipated.

A Statement of Need and Reasonableness that describes the need for and reasonableness of each provision of the proposed rule and identifies the data and information relied upon to support the proposed rule has been prepared and is available upon request from Lisa Rotegard at the address or telephone indicated above.

Adoption of these rules will not result in any additional spending by local public bodies for the first two years following adoption, under the requirements of *Minnesota Statutes*, section 14.11.

If no hearing is required upon adoption of the rule, the rule and the required supporting documents will be delivered to the Attorney General for review as to legality and form to the extent the form relates to legality. Any person may request notification of the date of submission to the Attorney General. Persons who wish to be advised of the submission of this material to the Attorney General, or who wish to receive a copy of the adopted rule, must submit the written request to Lisa Rotegard at the address indicated above.

Dated: 19 November 1987

Sandra S. Gardebring
Commissioner

Notice of Hearing and Notice of Intent to Cancel Hearing if Fewer Than Twenty-Five Persons Request a Hearing in Response to Notice of Intent to Adopt Rules Without a Public Hearing

NOTICE IS HEREBY GIVEN that a public hearing on the above-entitled matter will be held in Room D, 5th Floor, Veteran's Service Building, 20 W. 12th Street, St. Paul, MN, on January 19, 1988 commencing at 9:00 a.m. and continuing until all interested or affected persons have an opportunity to participate. The proposed amendments may be modified as a result of the hearing process. Therefore, if you are affected in any manner by the proposed amendments, you are urged to participate in the rule hearing process.

PLEASE NOTE, HOWEVER, THAT THE HEARING WILL BE CANCELLED IF FEWER THAN TWENTY-FIVE PERSONS REQUEST A HEARING IN RESPONSE TO THE NOTICE OF INTENT TO ADOPT THESE SAME RULES WITHOUT A PUBLIC HEARING PUBLISHED IN THIS *STATE REGISTER* AND MAILED TO PERSONS REGISTERED WITH THE DEPARTMENT OF HUMAN SERVICES. To verify whether a hearing will be held, please call the Department of Human Services between Thursday, January 7 and Monday, January 18, 1988 at (612) 297-3829.

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.

Following the agency's presentation at the hearing, all interested or affected persons will have an opportunity to participate. Such persons may present their views either orally at the hearing or in writing at any time prior to the close of the hearing record. All evidence presented should be pertinent to the matter at hand. Written material not submitted at the time of the hearing which is to be included in the hearing record may be mailed to Howard Kaibel, Administrative Law Judge, Office of Administrative Hearings, 500 Flour Exchange Building, 310 Fourth Avenue South, Minneapolis, Minnesota 55415; telephone (612) 341-7608, either before the hearing or within five working days after the public hearing ends. The Administrative Law Judge may at the hearing, order the record be kept open for a longer period not to exceed 20 calendar days. The comments received during the comment period shall be available for review at the Office of Administrative Hearings. Following the close of the comment period the agency and all interested persons have three business days to respond in writing to any new information submitted during the comment period. During the three-day period, the agency may indicate in writing whether there are amendments suggested by other persons which the agency is willing to adopt. No additional evidence may be submitted during the three-day period. The written responses shall be added to the rulemaking record. Upon the close of the record the Administrative Law Judge will write a report as provided for in *Minnesota Statutes*, sections 14.15 and 14.50. The rule hearing is governed by *Minnesota Statutes*, sections 14.14 to 14.20 and by *Minnesota Rules*, parts 1400.0200 to 1400.1200. Questions about procedure may be directed to the Administrative Law Judge.

Under current rules, *Minnesota Rules*, parts 9525.1210 to 9525.1250, the Medical Assistance program reimburses intermediate care facilities for persons with mental retardation or related conditions (ICFs/MR) for training and habilitation services, including "work activity", for clients eligible for medical assistance. The proposed amendments distinguish reimbursable training and habilitation services from educational and vocational services that are funded by other programs. The proposed changes will affect ICFs/MR certified for medical assistance and clients of ICFs/MR who are eligible for medical assistance. These proposed amendments are necessary to conform with *Minnesota Statutes 1987*, section 252.41, subdivision 3, and the Social Security Act, sections 1905(a)(6) and 1902(a)(25), and guidelines of the Health Care Financing Administration, U.S. Department of Health and Human Services.

The agency's authority to adopt the proposed rule amendments is contained in *Minnesota Statutes*, section 256B.501. Adoption of these amendments will not result in additional spending by local public bodies in excess of $100,000 per year for the first two years following adoption under the requirements of *Minnesota Statutes*, section 14.11. This notice is also required by the *Code of Federal Regulations*, title 42, section 447.205.

Copies of the proposed amendments are now available and at least one free copy may be obtained by writing to:

Lisa Rotegard
Long Term Care Management
Minnesota Department of Human Services
444 Lafayette Road, 4th Floor
St. Paul, MN 55155
(612) 297-3829

This rule is also available for viewing at each of the county welfare or human service agencies in the State of Minnesota.

Additional copies will be available at the hearing. If you have any questions on the content of the rule contact Lisa Rotegard at the address and telephone number noted above.

NOTICE: Any person may request notification of the date on which the Administrative Law Judge's report will be available, after which date the agency may not take any final action on the amendments for a period of five working days. If you desire to be notified, you may so indicate at the hearing. After the hearing, you may request notification by sending a written request to the Administrative Law Judge. Any person may request notification of the date on which the amendments were adopted and filed with the secretary of state. The notice must be mailed on the same day the amendments are filed. If you want to be so notified you may so indicate at the hearing or send a request in writing to the agency at any time prior to the filing of the amendments with the secretary of state.

NOTICE IS HEREBY GIVEN that a Statement of Need and Reasonableness is now available for review at the agency and at the Office of Administrative Hearings. The Statement of Need and Reasonableness includes a summary of all the evidence and argument which the agency anticipates presenting at the hearing justifying both the need for and reasonableness of the proposed amendments. Copies of the Statement of Need and Reasonableness may be reviewed at the agency or the Office of Administrative Hearings and copies may be obtained from the Office of Administrative Hearings at the cost of reproduction.

Minnesota Statutes, chapter 10A, requires each lobbyist to register with the State Ethical Practices Board within five days after he or she commences lobbying. A lobbyist is defined in *Minnesota Statutes*, section 10A.01, subdivision 11, as any individual:

(a) engaged for pay or other consideration, or authorized by another individual or association to spend money, who spends more than five hours in any month or more than $250, not including travel expenses and membership dues, in any year, for the purpose of attempting to influence legislative or administrative action by communication or urging others to communicate with public officials; or

(b) who spends more than $250, not including traveling expenses and membership dues, in any year, for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials.

The statute provides certain exceptions. Questions should be directed to the Ethical Practices Board, 625 North Robert Street, St. Paul, Minnesota 55101, telephone (612) 296-5148.

Dated: 19 November 1987

Sandra S. Gardebring
Commissioner

Rules as Proposed

9525.1210 DEFINITIONS.

Subpart 1. to 10. [Unchanged.]

Subp. 12a. **Prevocational services.** "Prevocational services" means services directed toward developing and maintaining the skills and overall functioning of clients in areas such as compliance with task instructions, prompt attendance at scheduled activities, task completion, problem solving, social appropriateness, and safety. Training must be conducted using materials, tasks, situations, and settings that are age-appropriate and enhance the clients' self esteem. Adults will typically receive prevocational training on work and work-related tasks, tasks related to community participation such as travel and shopping, home care, and self care. Wages may be paid to clients.

Subp. 13. and 14. [Unchanged.]

Subp. 15. [See Repealer.]

9525.1250 REIMBURSABLE SERVICES.

Subpart 1. **Types of services.** Day training and habilitation services are reimbursable under the medical assistance program when the services are provided for the development and maintenance of life skills. Reimbursable services include transportation to and from the service site and supervision, assistance, and training in one or more of the following when they are provided to promote age-appropriate outcomes and community integration:

A. ~~work activity~~, prevocational services, if the services meet all of the following requirements:

(1) the documented goals of the service do not include placement within one year in either a sheltered workshop's transitional employment program or unsupervised competitive employment in the general work force. In this subitem, "unsupervised" means not directly supervised by a provider or a vocational service agency; and

(2) the client receives ongoing supervision from the provider while participating in the training activities.

B. to H. [Unchanged.]

Subp. 2. **Service requirements.** Day training and habilitation services are reimbursable under the medical assistance program if the services provided are in compliance with subpart 1 and the conditions listed in items A to ~~E~~ F are met.

A. to E. [Unchanged.]

F. Day training and habilitation services must not include:

(1) special education and related services as defined in the Education of the Handicapped Act, United States Code, title 20, chapter 33, section 1401, clauses (6) and (17), as amended through October 8, 1986, which otherwise are available through a local educational agency; or

(2) vocational services funded under section 110 of the Rehabilitation Act of 1973, United States Code, title 29, section 720, as amended through October 21, 1986, which otherwise are available from a local vocational rehabilitation agency.

REPEALER. Minnesota Rules, part 9525.1210, subpart 15, is repealed.

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 Amendments to Rules of the State Department of Human Services Relating to Medical Assistance Reimbursement for Training and Habilitation Services (Parts 9525.1210 and 9525.1250)	FINDINGS OF FACT, CONCLUSIONS, AND ORDER ADOPTING RULE WITHOUT A PUBLIC HEARING

Notice of the Commissioner's intent to adopt the above-entitled rule was published in the State Register on December 7, 1987 and was sent by United States mail on December 2, 1987 to all persons on the list maintained by the agency pursuant to Minnesota Statutes, sections 14.14, subdivision 1a and 14.22. The statement of need and reasonableness was prepared before the notice of intent to adopt a rule without a public hearing was mailed to all persons on the rulemaking mailing list and published in the State Register and was available to the public.

All persons were given the opportunity to submit comment on the rule for 30 days after notice of proposed rulemaking. The agency received 10 requests for a public hearing, no suggestions for modifications to the amendment as proposed, and no requests for notice of submission to the attorney general. Seven of the ten requests were generated by the same agency and reflected a misinterpretation of the rule's applicability.

Based on the comments and evidence in the record before the agency, I find no cause to modify the amendments as they were originally proposed.

The above-captioned rule is needed and reasonable.

NOW, THEREFORE, IT IS ORDERED that the rule identified as relating to medical assistance reimbursement for training and habilitation services is adopted this 29th day of January, 1988 pursuant to authority vested in me by Minnesota Statutes, section 256B.501.

Sandra Gardebring

SANDRA S. GARDEBRING
Commissioner

OLMSTED

DEVELOPMENTAL ACHIEVEMENT CENTER, Inc.

1962-1987
25 years of service to the developmentally disabled
of Rochester and Olmsted County



December 8, 1987

Lisa Rotegard
Long Term Care Management
Minnesota Department of Human Services
444 Lafayette Road, 4th. Floor
St. Paul, MN 55155

RE: Proposed Amendment of Rules of the State Department of Human Services governing Medical Assistance Reimbursement to ICFs/MR for training and habilitation services for persons with mental retardation or related conditions, Minnesota Rules, Parts 9525.1210 to 9525.1250

So as to assure input form parties impacted or effected by the proposed changes in the above referenced Rules, I request that a public hearing be so held on January 19, 1988 commencing at 9:00 am.

Sincerely,

Mina J. Wilson
Executive Director

cc: Administrative Law Judge, Howard Kaibel

2118 Campus Drive S.E.
Rochester, MN 55904 • **(507) 281-6116**

A United Way Agency



Minnesota Occupational Therapy Association

7121 17th Avenue South
Richfield, MN 55423
January 6, 1988

Lisa Rotegard
Long Term Care Management
Minnesota Department of Human Services
444 Lafayette Road, 4th Floor
St. Paul, MN 55155

Dear Ms. Rotegard:

The Minnesota Occupational Therapy Association is requesting that you hold a public hearing regarding the proposed permanent rules relating to medical assistance reimbursement for training and habilitation services as was published in the December 7, 1987 State Register. The section of the proposed rules that concerns us is 9525.1250 Reimbursable Services subp. 2, F, 1. We are concerned about the Department of Education and the school systems developing such stringent criteria for when a person gets occupational therapy services that some persons who really need and can benefit from services cannot receive service from the school systems. Therefore we are requesting a public hearing to discuss this issue.

Thank you.

Sincerely,

Sheila B. Benson

Sheila B. Benson, M.S., O.T.R.
Governmental Affairs Coordinator

Achievement
rehab corporation



January 5, 1988

Ms. Lisa Rotegard
Long Term Care Management
Minnesota Department of Human Services
444 Lafayette Road 4th Floor
St. Paul, MN 55155

Dear Ms. Rotegard,

I would like to request a hearing on the proposed permanent rules relating to Medical Assistance Reimbursement for Training and Habilitation Services.

Specifically, I am concerned about 9525.1250 Reimbursable Services, Sub p2, Service Requirements which states that special education and related services as defined in the Education of the Handicapped Act will not be reimbursed.

This will limit the availability of physical and occupational therapy services to children who do not qualify for school system services. Does this mean that Medical Assistance will not pay for pediatric PT or OT when provided in other settings? This is not clear to me. I think a hearing is needed to discuss this further.

Sincerely,

Jeffrey K. Anlauf
President

JKA/so

14001 Ridgedale Drive, Suite 390 • Minnetonka, Minnesota 55343-5579 • (612) 546-5411

Achievement
rehab corporation



January 5, 1988

Ms. Lisa Rotegard
Long Term Care Management
Minnesota Department of Human Services
444 Lafayette Road 4th Floor
St. Paul, MN 55155

Dear Ms. Rotegard,

I would like to request a hearing on the proposed permanent rules relating to Medical Assistance Reimbursement for Training and Habilitation Services.

Specifically, I am concerned about 9525.1250 Reimbursable Services, Sub p2, Service Requirements which states that special education and related services as defined in the Education of the Handicapped Act will not be reimbursed.

This will limit the availability of physical and occupational therapy services to children who do not qualify for school system services. Does this mean that Medical Assistance will not pay for pediatric PT or OT when provided in other settings? This is not clear to me. I think a hearing is needed to discuss this further.

Sincerely,

Mark F. Thomas
Vice President Operations

MFT/so

14001 Ridgedale Drive, Suite 390 • Minnetonka, Minnesota 55343-5579 • (612) 546-5411

Achievement
rehab corporation



January 5, 1988

Ms. Lisa Rotegard
Long Term Care Management
Minnesota Department of Human Services
444 Lafayette Road 4th Floor
St. Paul, MN 55155

Dear Ms. Rotegard,

I would like to request a hearing on the proposed permanent rules relating to Medical Assistance Reimbursement for Training and Habilitation Services.

Specifically, I am concerned about 9525.1250 Reimbursable Services, Sub p2, Service Requirements which states that special education and related services as defined in the Education of the Handicapped Act will not be reimbursed.

This will limit the availability of physical and occupational therapy services to children who do not qualify for school system services. Does this mean that Medical Assistance will not pay for pediatric PT or OT when provided in other settings? This is not clear to me. I think a hearing is needed to discuss this further.

Sincerely,

Alice Doll OTR

Alice Doll
Occupational Therapist

AD/so

14001 Ridgedale Drive, Suite 390 • Minnetonka, Minnesota 55343-5579 • (612) 546-5411

Achievement
rehab corporation



January 5, 1988

Ms. Lisa Rotegard
Long Term Care Management
Minnesota Department of Human Services
444 Lafayette Road 4th Floor
St. Paul, MN 55155

Dear Ms. Rotegard,

I would like to request a hearing on the proposed permanent rules relating to Medical Assistance Reimbursement for Training and Habilitation Services.

Specifically, I am concerned about 9525.1250 Reimbursable Services, Sub p2, Service Requirements which states that special education and related services as defined in the Education of the Handicapped Act will not be reimbursed.

This will limit the availability of physical and occupational therapy services to children who do not qualify for school system services. Does this mean that Medical Assistance will not pay for pediatric PT or OT when provided in other settings? This is not clear to me. I think a hearing is needed to discuss this further.

Sincerely,

Mary Ann Empson

Mary Ann Empson
Regional Director

MAE/so

14001 Ridgedale Drive, Suite 390 • Minnetonka, Minnesota 55343-5579 • (612) 546-5411

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January 5, 1988

Ms. Lisa Rotegard
Long Term Care Management
Minnesota Department of Human Services
444 Lafayette Road 4th Floor
St. Paul, MN 55155

Dear Ms. Rotegard,

I would like to request a hearing on the proposed permanent rules relating to Medical Assistance Reimbursement for Training and Habilitation Services.

Specifically, I am concerned about 9525.1250 Reimbursable Services, Sub p2, Service Requirements which states that special education and related services as defined in the Education of the Handicapped Act will not be reimbursed.

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Sincerely,

James P. Viken, Ph.D,LCP
Director of Social Services

JPV/so

14001 Ridgedale Drive, Suite 390 • Minnetonka, Minnesota 55343-5579 • (612) 546-5411

Achievement
rehab corporation



January 5, 1988

Ms. Lisa Rotegard
Long Term Care Management
Minnesota Department of Human Services
444 Lafayette Road 4th Floor
St. Paul, MN 55155

Dear Ms. Rotegard,

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Sincerely,

Karen Sames OTR

Karen Sames
Director of Program Development

KS/so

14001 Ridgedale Drive, Suite 390 • Minnetonka, Minnesota 55343-5579 • (612) 546-5411

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December 10, 1987

Lisa Rotegard
Long Term Care Management
Minnesota Department of Human Services
444 Lafayette Road
4th Floor
St. Paul, MN 55155

Dear Ms. Rotegard,

This letter is to inform you of my request that there be a public hearing regarding your proposed amendments to Rule 53 (Minnesota Rules parts 9525.1210 to 9525.1250).

Sincerely yours,

G. F. Walsh
Executive Director

GFW/rm

7200 ROLLING ACRES ROAD • EXCELSIOR, MN 55331-9683 • (612) 474-5974

Mount Olivet
ROLLING ACRES



December 17, 1987

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EXECUTIVE DIRECTOR
Gerald F. Walsh, M.S.

Lisa Rotegard
Long Term Care Management
Minnesota Department of Human Services
Centennial Office Building
444 Lafayette Road
4th Floor
St. Paul, MN 55155

Dear Lisa,

I am interested in seeing that there is a public hearing on the re-imbursement for Developmental Achievement Centers. I inadvertently had given you the wrong number regarding DAC amendments.

Happy Holidays!

Cordially yours,

G. F. Walsh
Executive Director

GFW/rm

HIAWATHA HOMES, INC.

Children's 507/289-7222

1820 Valkyrie Drive N.W.
Rochester, Minnesota 55901
Adult's 507/289-4040

December 8, 1987

Lisa Rotegard
Long Term Care Management
Minnesota Department of Human Services
444 Lafayette Road, 4th Floor
St. Paul, MN 55155

Dear Ms. Rotegard,

I am interested in the proposed amendment to Minnesota rules, Parts 9525.1210 to 9525.1250 concerning Medical Assistance Reimbursement to ICF's/MR for Training and Habilitation Services for Persons with Mental Retardation.

Because I am uncertain of the implications of this proposal change, I request that the Public hearing scheduled for January 19, 1988, go forward as announced.

Sincerely,

Douglas H. Butler

Douglas H. Butler
Executive Director

CC: Howard Kaibel,
Administrative Law Judge

DHB:mjc



In the Matter of the Adoption
of Amendments to Rules of the
State Department of Human Services
Relating to Medical Assistance
Reimbursement for Training and
Habilitation Services (Parts 9525.1210
and 9525.1250)

DECLARATION OF
COUNSEL

I, Maureen Bellis, Special Assistant Attorney General, do hereby declare that I have examined the above-captioned rule and the supporting rulemaking record and that, based on my examination, the Administrative Procedure Act and Minnesota Rules, chapter 2010 have been followed. Any exceptions are listed below. For Attorney General billing purposes, the four-digit docket client code is _____.

Maureen Bellis

Maureen Bellis,
Special Assistant Attorney General

Dated: