

Minnesota Attorney General: Administrative Rules Proceedings

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Version 3
August 20, 2018

RULE REVIEW CHECKLIST
RESUBMITTED RULE

File No. 1866 Docket No. 05.0009.0874

RESUBMISSION DATE 3-5-92
DATE DUE 3-19-92

ADOPTED W/O HEARING
EMERGENCY RULE

APPROVED March 16, 1992 mjc
DISAPPROVED
WITHDRAWM

REVISOR APPROVED 3-10-92
REVISOR DISAPPROVED
FILED W/SEC. STATE 3-17-92
RETURNED TO AGENCY 3-17-92

____ **Does the revision raise significant new legal issues?**

____ Review date

✓ Rule as adopted (4 copies)

✓ Supplemental Findings of Fact, Conclusions & Order Adopting - march 4, 1991

NA Board's Supplemental Resolution Adopting NA

NA Notice of submission to Attorney General

____ Affidavit of Mailing Notice to Attorney General

Make approval memo to Laura Plummer

DEPARTMENT: Office of the Attorney General **STATE OF MINNESOTA**

OFFICE MEMORANDUM

DATE: March 17, 1992

TO: LAURA PLUMMER
Rules and Bulletins Division
Department of Human Services
444 Lafayette Road
St. Paul

FROM: MARTHA J. CASSERLY
Special Assistant
Attorney General

PHONE: 296-6839

SUBJECT: In the Matter of the Adopted Rule Relating to Home and Community Based Services

The above-referenced rule has been approved as to its legality by the Attorney General on March 16, 1992.

Enclosed is your 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 along with any extra copies of documents which you submitted to the Attorney General.

Your next step is to arrange for publication of the Notice of Adoption in the State Register. In a day or two, you should receive from the Revisor's Office three copies of the notice of adoption of your rule. You should submit two copies of the Notice of Adoption to the State Register for publication. A permanent rule without a hearing does not become effective until five days after a notice of adoption is published 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:jj

cc: David Iverson
William Brown, Chief Judge
MaryAnn Hruby

Department of Human Services

Adopted Permanent Rules Relating to Home and Community-Based Services

Rules as Adopted

9525.1800 DEFINITIONS.

[For text of subpart 1, see M.R.]

Subp. 1a. **Adaptive modifications and equipment.** "Adaptive modifications and equipment" means one or more of the structural changes to the person's residence or an eligible vehicle, or specialized equipment or devices. Adaptive modifications and equipment must be designed to enable the person to avoid placement in an ICF/MR by increasing the person's mobility or protecting the person or other individuals from injury. Adaptive modifications and equipment are only reimbursable for persons with physical disabilities, sensory deficits, or behavior problems. Adaptive modifications and equipment are limited to those that have been approved by the United States Department of Health and Human Services as part of Minnesota's alternative community services and MR/RC waiver plans.

Subp. 1b. **Alternative community services waiver plan or ACS waiver.** "Alternative community services waiver plan" or "ACS waiver" means a waiver of requirements under United States Code, title 42, sections 1396 et. seq., that allows the state to pay for home and community-based services for persons with mental retardation or related conditions who are determined by the Department of Human Services to be inappropriately placed in Medicaid-certified nursing facilities through the medical assistance program. This term includes all amendments to the waiver as approved by the United States Department of Health and Human Services.

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

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service.

Subp. 3. **Case manager.** "Case manager" means the person designated by the county board to provide case management services as defined in subpart 4a.

Subp. 4. [See repealer.]

Subp. 4a. **Case management.** "Case management" means identifying the need for, seeking out, acquiring, and coordinating services to persons with mental retardation or related conditions and monitoring the delivery of the services to persons with mental retardation or related conditions by an individual designated by the county board to provide case management services under parts 9525.0015 to 9525.0165.

[For text of subp 5, see M.R.]

Subp. 5a. **Community social services administration plan or CSSA plan.** "Community social services administration plan" or "CSSA plan" means the biennial community social services plan required of the county board by Minnesota Statutes, section 256E.09, subdivision 3.

Subp. 5b. **Conversion.** "Conversion" means the provision of home and community-based services to a person discharged from an ICF/MR directly into those services, resulting in decertification of an ICF/MR bed under Minnesota Statutes, section 252.28, subdivision 4.

[For text of subp 6, see M.R.]

Subp. 7. **County of financial responsibility.** "County of financial responsibility" has the meaning given it in Minnesota Statutes, section 256G.02, subdivision 4.

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

Subp. 8a. **Day training and habilitation.** "Day training and habilitation" has the meaning given to "training and

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habilitation services" in part 9525.1500, subpart 36.

[For text of subps 9 and 10, see M.R.]

Subp. 10a. **Eligible vehicle.** "Eligible vehicle" means a vehicle owned by the person, the person's family, or the person's primary caregiver with whom the person resides.

[For text of subps 11 and 12, see M.R.]

Subp. 13. **Geographic region.** "Geographic region" means one of the economic development regions established by executive order of the governor according to Minnesota Statutes, section 462.385.

Subp. 13a. **Habilitation services.** "Habilitation services" means health and social services directed toward increasing and maintaining the physical, intellectual, emotional, and social functioning of persons with mental retardation or related conditions. Habilitation services include therapeutic activities, assistance, training, supervision, and monitoring in the areas of self-care, sensory and motor development, interpersonal skills, communication, socialization, reduction or elimination of maladaptive behavior, community living and mobility, health care, leisure and recreation, money management, and household chores. Day training and habilitation services and residential-based habilitation services are types of habilitation services.

Subp. 14. **Home and community-based services.** "Home and community-based services" means services provided to persons with mental retardation or related conditions that are authorized under United States Code, title 42, section 1396 et. seq., and the MR/RC and ACS waivers granted by the United States Department of Health and Human Services.

Subp. 14a. **Homemaker services.** "Homemaker services" means general household activities and ongoing monitoring of the person's well-being provided by a homemaker who meets the standards in parts 9565.1000 to 9565.1300.

[For text of subp 15, see M.R.]

Subp. 16. [See repealer.]

Subp. 17. **Individual service plan.** "Individual service

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plan" has the meaning given it in Minnesota Statutes, section 256B.092, subdivision 1b.

Subp. 17a. **In-home family support services.** "In-home family support services" means residential-based habilitation services designed to enable the person to remain in the family home and may include training and counseling for the person and the person's family.

[For text of subp 18, see M.R.]

Subp. 19. [See repealer.]

Subp. 19a. **Leave days.** "Leave days" means days when a person is temporarily absent from services.

Subp. 19b. **Mental retardation or related condition or MR/RC.** "Mental retardation or related condition" or "MR/RC" has the meaning given to "mental retardation" in part 9525.0015, subpart 20, items A and B, and the meaning given to a "related condition" in Minnesota Statutes, section 252.27, subdivision 1a.

Subp. 19c. **Nursing facility.** "Nursing facility" means a facility licensed under Minnesota Statutes, chapter 144A, that is certified by the Minnesota Department of Health under title XVIII or XIX of the Social Security Act.

Subp. 19d. **Person.** "Person" means a person with mental retardation or a related condition, as defined in subpart 19b, who is receiving home and community-based services through either the MR/RC or ACS waiver plan.

Subp. 20. **Primary caregiver.** "Primary caregiver" means a person other than a member of the person's family who has primary responsibility for the assistance, supervision, or training of the person in the person's residence.

[For text of subp 21, see M.R.]

Subp. 21a. **Residential-based habilitation services.** "Residential-based habilitation services" means services provided in the person's residence and in the community, that are directed toward increasing and maintaining the person's physical, intellectual, emotional, and social functioning. Residential-based habilitation services include therapeutic activities, assistance, counseling, training, supervision, and

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monitoring in the areas of self-care, sensory and motor development, interpersonal skills, communication, socialization, working, reduction or elimination of maladaptive behavior, community participation and mobility, healthcare, leisure and recreation, money management, and household chores. Supported living services and in-home family support services are residential-based habilitation services.

Subp. 21b. **Respite care.** "Respite care" means short-term supervision, assistance, and care provided to a person due to the temporary absence or need for relief of the person's family, foster family, or primary caregiver. Respite care may include day, overnight, in-home, or out-of-home services, as needed.

Subp. 22. **Room and board costs.** "Room and board costs" means costs associated with providing food, shelter, and personal needs items for persons, including the directly identifiable costs of:

[For text of items A to E, see M.R.]

Subp. 23. **Screening team.** "Screening team" means the team established under Minnesota Statutes, section 256B.092, subdivision 7, to evaluate a person's need for home and community-based services.

[For text of subp 24, see M.R.]

Subp. 25. **Short term.** "Short term" means a cumulative total of less than 90 24-hour days or 2,160 hours in a fiscal year. Additional hours may be authorized by the commissioner as approved in the current waiver plans.

Subp. 26. **Statewide average reimbursement rate.** "Statewide average reimbursement rate" means the dollar amount arrived at by dividing the total amount of money available under the waiver for the fiscal year by 365 days and then dividing the quotient by the department's projection of the total number of persons to receive home and community-based services as stated in the waiver for that fiscal year.

Subp. 26a. **Supported living services for adults.** "Supported living services for adults" means residential-based habilitation services provided on a daily basis to adults living

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in a service site for up to six persons.

Subp. 26b. **Supported living services for children.** "Supported living services for children" means residential-based habilitation services provided on a daily basis to persons under 18 years of age living in a service site for up to four persons.

Subp. 27. **Title XIX home and community-based waivered services for persons with mental retardation or related conditions or the MR/RC waiver plan.** "Title XIX home and community-based waivered services for persons with mental retardation or related conditions" or the "MR/RC waiver plan" means the waiver of requirements under United States Code, title 42, sections 1396 et seq., which allows the state to pay for home and community-based services for persons with mental retardation or related conditions through the medical assistance program. The term includes all amendments to the waiver including any amendments made after the effective date of the last waiver plan, as approved by the United States Department of Health and Human Services under United States Code, title 42, section 1396 et. seq.

9525.1810 APPLICABILITY AND EFFECT.

[For text of subpart 1, see M.R.]

Subp. 2. **Effect.** The entire application of parts 9525.1800 to 9525.1930 shall continue in effect only as long as the MR/RC or ACS waiver from the United States Department of Health and Human Services is in effect in Minnesota.

9525.1820 ELIGIBILITY.

Subpart 1. **Eligibility criteria for MR/RC waiver.** A person is eligible to receive home and community-based services through the MR/RC waiver if the person meets all the criteria in items A to E and if home and community-based services are provided according to part 9525.1830:

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

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B. the person is determined to be a person with mental retardation according to the definitions and procedures in parts 9525.0015 to 9525.0165 or the person is determined to be a person with a related condition as defined in Minnesota Statutes, section 252.27, subdivision 1a;

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

D. the screening team has determined that the person needs daily intervention; and

E. the person's individual service plan documents the need for daily intervention and specifies the services needed daily.

Subp. 1a. **Eligibility criteria for the ACS waiver.** A person is eligible to receive home and community-based services through the ACS waiver if the person meets all requirements in subpart 1, items B to E, and:

A. was admitted to a Medicaid-certified nursing facility before January 1, 1990, or amended date as approved by the Health Care and Finance Administration; and

B. is currently residing in a Medicaid-certified nursing facility, but has been determined by the screening team as requiring ICF/MR level of care.

Subp. 2. **Medical assistance eligibility for children residing with their parents.** The county board shall determine eligibility for medical assistance for a person under age 18 who resides with a parent or parents without considering parental income and resources if:

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

B. the person will be provided home and community-based services according to part 9525.1830;

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

D. the commissioner has approved in writing a county board's request to suspend for the person the deeming requirements in Code of Federal Regulations, title 42, section

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436.821 according to the waiver.

Subp. 3. **Beginning date.** Eligibility for medical assistance begins on the first day of the month in which the person first receives home and community-based services.

9525.1830 PROVISION OF HOME AND COMMUNITY-BASED SERVICES.

Subpart 1. **Conditions.** The county board shall provide or arrange to provide home and community-based services to a person if the person is eligible for home and community-based services under part 9525.1820 and all the conditions in items A to F have been met:

A. the county board has determined that it can provide home and community-based services to the person within its allocation of home and community-based services money as determined under parts 9525.1890 and 9525.1910 ~~or as authorized by the commissioner based on the limits of the approved waiver plan;~~. If the county board has determined that it cannot provide home and community-based services to the person within its allocation of home and community-based services money, the county board may request additional money. The commissioner may authorize additional money only for persons:

(1) to be discharged from regional treatment centers and nursing facilities as referenced in Minnesota Statutes, section 256B.092, subdivision 4;

(2) participating in demonstration projects as referenced in Minnesota Statutes, section 256B.092, subdivision 4a;

(3) receiving home and community-based services under a license granted according to the emergency provisions of Minnesota Statutes, section 252.28, subdivision 3, paragraph (4);

(4) discharged from ICF/MR facilities which have been placed into voluntary or involuntary receiverships according to Minnesota Statutes, section 245A.12 or 245A.13; or

(5) needing home and community-based services on a temporary basis as the result of an emergency situation under

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Minnesota Statutes, section 252.293, subdivision 1.

The commissioner shall not authorize additional money to the county board if the authorization would exceed the limitations of the approved waiver plan or state appropriations.

B. the screening team has recommended home and community-based services instead of ICF/MR services for the person under parts 9525.0015 to 9525.0165;

[For text of items C to F, see M.R.]

[For text of subp 2, see M.R.]

9525.1840 PARENTAL CONTRIBUTION FEE.

Subpart 1. **Out-of-home placements.** The parent or parents of a person under age 18 shall be liable for a parental contribution fee determined according to Minnesota Statutes, sections 252.27, subdivision 2, and 256B.14, if the person resides outside the home of the parent or parents.

Subp. 2. **In-home services.** Parents of persons under age 18 may be liable for a parental contribution fee determined according to Minnesota Statutes, sections 252.27, subdivision 2, and 256B.14, if the person is residing with a parent and the person's medical assistance eligibility for home and community-based services was determined without considering parental income or resources under part 9525.1820, subpart 2.

9525.1850 PROVIDER REIMBURSEMENT.

A provider may receive medical assistance reimbursement for home and community-based services only if the provider meets the criteria in items A to K. The training, experience, and supervision required in items B to E only apply to persons who are employed by, or under contract with, the provider to provide services that can be billed under part 9525.1860, subpart 3, item A. Providers licensed under parts 9525.0215 to 9525.0355; 9525.1500 to 9525.1690; and 9525.2000 to 9525.2140 are exempt from items C, D, and E.

[For text of items A and B, see M.R.]

C. If no training standards have been established, the provider, employee, or subcontractor must have completed,

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within the last two years, at least 24 hours of documented training. The training must be in areas related to the care, supervision, or training of persons with mental retardation or related conditions including first aid, medication administration, behavior management, cardiopulmonary resuscitation, human development, and obligations under Minnesota Statutes, sections 626.556 and 626.557. The county board may grant a written variance to the training requirements in this item for:

(1) a respite care provider who provides the respite care in his or her residence or in the person's residence; or

(2) a provider who ensures that the training will be completed within six months of the date the contract is signed.

This item does not apply to providers of adaptive modifications and equipment.

D. The provider ensures that the provider and all employees or subcontractors have at least one year of experience within the last five years in the care, training, or supervision of persons with mental retardation or related conditions as defined in Minnesota Statutes, section 252.27. The county board may grant a written variance to the requirements in this item for:

(1) a respite care provider who provides the respite care in his or her residence or in the person's residence;

(2) a provider, employee, or subcontractor who is a qualified mental retardation professional who meets the requirements in Code of Federal Regulations, title 42, section 442.401 and has been approved by the case manager; or

(3) an employee of the provider if the employee will work under the direct on-site supervision of a qualified mental retardation professional who meets the requirements in Code of Federal Regulations, title 42, section 442.401, and who has been approved by the case manager.

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This item does not apply to providers of adaptive modifications and equipment or homemaker services.

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

F. The provider ensures that the provider and all employees or subcontractors will complete the amount of ongoing training required in any Minnesota rules applicable to the home and community-based services to be provided. If no ongoing training is required by the applicable Minnesota rules, the provider, except a provider of adaptive modifications and equipment, agrees that the provider and all employees or subcontractors will complete at least 18 hours of documented ongoing training each fiscal year. To meet the requirements of this item, the ongoing training must be in a field related to the care, training, and supervision of persons with mental retardation or related conditions, and must either be identified as needed in the person's individual service plans or be approved by the case manager based on the needs identified in the individual service plans of the persons served by the provider. The county board may grant a written variance to the requirements in this item for a respite care provider who provides the respite care in his or her residence or in the person's residence.

G. The provider ensures that the provider and all employees or subcontractors have never been convicted of a violation, or admitted violating Minnesota Statutes, section 626.556 or 626.557 and there is no substantial evidence that the provider, employees, or subcontractors have violated Minnesota Statutes, section 626.556 or 626.557.

H. The provider has a legally binding contract with the host county that complies with part 9525.1870.

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I. The provider has been authorized in writing to provide home and community-based services for the person by the county of financial responsibility.

J. The provider agrees in writing to comply with United States Code, title 42, sections 1396 et seq., and regulations implementing those sections and with applicable provisions in parts 9505.2160 to 9505.2245 and 9525.1800 to 9525.1930.

K. The provider is not the person's guardian or a member of the person's family. This item does not preclude the county board from providing services if the person is a ward of the commissioner.

9525.1860 REIMBURSABLE SERVICES.

Subpart 1. **General limits.** Only costs for services listed in the approved Minnesota MR/RC or ACS waiver plan shall be reimbursed under the medical assistance program.

A. Services reimbursable through the MR/RC waiver plan are:

(1) case management;

(2) residential habilitation services including in-home family support, supported living services for adults, and supported living services for children;

(3) day training and habilitation, including supported employment;

(4) homemaker services;

(5) respite care; and

(6) minor adaptations and equipment.

B. Services reimbursable through the ACS waiver plan are:

(1) residential habilitation services including in-home family support, supported living services for adults, and supported living services for children;

(2) day training and habilitation, including supported employment;

(3) homemaker services;

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(4) respite care; and

(5) adaptive modifications and equipment.

Subp. 2. [See repealer.]

Subp. 3. **Billing for services.** Billings submitted by the provider, except a provider of adaptive modifications and equipment, must be limited to time actually and reasonably spent:

A. In direct contact with the person to assist the person in attaining the goals and objectives specified in the person's individual service plan. Direct contact time includes time spent traveling to and from service sites.

B. In verbal or written contact with professionals or others regarding the person's progress in attaining the goals and objectives specified in the person's individual service plan.

C. In planning activities including attending the person's interdisciplinary team meetings, developing goals and objectives for the person's individual service plan, assessing and reviewing the person's specified goals and objectives, documenting the person's progress toward attaining the goals and objectives in the person's individual service plan and assessing the adequacy of the services related to the goals and objectives in the person's individual service plan.

Subp. 4. **Service limitations.** The provision of home and community-based services is limited as stated in items A to H.

A. Case management services may be provided as a single service for a period of no more than 90 days.

B. Day training and habilitation services must:

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

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

(3) be provided at a different service site than the person's place of residence unless medically contraindicated, as required in Minnesota Statutes, section 252.41, subdivision 3; and

(4) be provided by an organization that does not

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have a direct or indirect financial interest in the organization that provides the person's residential services unless the person is residing with:

(a) his or her family; or

(b) a foster family that does not have a direct or indirect financial interest in the organization that provides the person's residential services.

C. Homemaker services may be provided only if:

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

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

D. Leave days are reimbursable for supported living services for children or supported living services for adults. If the person is not receiving respite care or other supported living services, billings may be made for leave days when the person is:

(1) hospitalized;

(2) on an overnight trip or vacation; or

(3) home for a visit.

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

E. The average dollar amount available for reimbursement for adaptive modifications and equipment shall be determined annually ~~by the commissioner~~ based on the approved waiver plan.

Adaptive modifications and equipment must be constructed or installed to meet or exceed applicable federal, state, and local

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building codes.

F. Home and community-based services are not reimbursable if provided to a person while the person is a resident of or on leave from an ICF/MR, ~~skilled~~ nursing facility, ~~intermediate-care-facility,~~ or a hospital. This item shall not apply to leave days authorized according to item C for a person who is hospitalized.

G. Respite care must:

(1) be provided only for the relief of the person's family or foster family, or if the person is receiving a supported living service in the provider's residence, for the relief of the person's primary caregiver; and

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

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

H. Room and board costs are not allowable costs for home and community-based services except respite care provided out of the person's residence. All room and board costs must be directly identified on reports submitted by the provider to the county board.

Subp. 5. [See repealer.]

Subp. 5a. **Other medical or related costs.** The cost of other medical or related services reimbursable under the Minnesota State Medicaid Plan must not be included in the rate or rates billed by the provider or providers for reimbursement under parts 9525.1800 to 9525.1930.

Subp. 6. **Other applicable rules.** Home and community-based services must be provided as required under

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items A to H unless a variance has been approved by the commissioner.

[For text of item A, see M.R.]

B. Day training and habilitation services must be licensed by the department.

C. Supported living services for children must be provided by a service provider licensed under parts 9525.2000 to 9525.2140 and at a site licensed under parts 9545.0010 to 9545.0260.

D. Supported living services provided at a service site serving four or fewer adults must be provided by a service provider licensed under parts 9525.2000 to 9525.2140 and the residence must be licensed under parts 9555.5105 to 9555.6265. Supported living services provided at a single residence serving five or six adults must be licensed under parts 9525.0215 to 9525.0355.

E. Respite care provided at a service site serving more than four persons must be licensed under parts 9525.0215 to 9525.0355. Respite care provided at a service site serving four or fewer persons under 18 years of age must be licensed under parts 9545.0010 to 9545.0260, unless ~~otherwise authorized by~~ the commissioner waives this requirement according to Minnesota Statutes, section 256B.092, subdivision 4a. Respite care provided at a service site serving four or fewer adults must be licensed under parts 9555.5105 to 9555.6265, unless ~~otherwise authorized by~~ the commissioner waives this requirement according to Minnesota Statutes, section 256B.092, subdivision 4a. This item shall not apply to a person who provides respite care ~~for fewer than 30 days a year~~ and who is not required to be licensed under Minnesota Statutes, chapter 245A.

Subp. 7. **Licensing variances.** Requests for variances to the licensing requirements in subpart 6 must be handled according to items A to C.

A. The county board may request a variance from compliance with parts 9545.0010 to 9545.0260 as required in subpart 6, item C, D, or E, for a provider who provides services

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to persons under 18 years of age if the county board determines that no providers who meet the licensing requirements are available and that granting the variance will not endanger the health, safety, or development of the persons. The written variance request must be submitted to the commissioner and must contain:

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

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

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

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

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

B. The county board may grant a written variance from compliance with parts ~~9555.6105~~ 9555.5105 to 9555.6265 as required in subpart 6, items D and E, for a provider who provides services to adults if the county board determines that no providers who meet the licensing requirements are available and that granting the variance will not endanger the health, safety, or development of the persons.

C. Requests for a variance of the provisions in parts 9525.0215 to 9525.0355 must be submitted according to part 9525.0235, subpart 13.

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9525.1870 PROVIDER CONTRACTS AND SUBCONTRACTS.

Subpart 1. **Contracts.** To receive medical assistance reimbursement for home and community-based services, the provider must have a contract developed according to parts 9550.0010 to 9550.0092 with the host county. In addition, the contract must contain the information in items A to F and subpart 2:

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

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

[For text of items C to F, see M.R.]

[For text of subps 2 to 4, see M.R.]

9525.1880 COUNTY PROPOSAL AND APPROVAL OF COUNTY PROPOSAL.

Subpart 1. **Application forms and deadlines.** To be considered for reimbursement under parts 9525.1800 to 9525.1930, county boards, singly or jointly, must submit to the commissioner an annual proposal for the provision of home and community-based services to persons for which the county board or county boards are financially responsible. The commissioner shall notify the county boards of the deadlines and forms for the submission of proposals for home and community-based services.

Subp. 2. **Contents of county proposal.** The proposal must be based on the needs of individually identified persons in the county and must identify the number of persons to whom the county board expects to provide the home and community-based services and identify, by name, recipients authorized and receiving services, individuals screened and authorized but not yet receiving services, and individuals for whom the county has received a request to receive waivered services but has not yet screened. If county boards are applying jointly, each county board must identify the number of persons for which the county is financially responsible.

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The commissioner shall review the county community social services administration (CSSA) plan, the determination of need, and the redetermination of need for services for persons with developmental disabilities and may consider the county goals and objectives as part of the county proposal. The commissioner may also require the county boards to include the following information in the proposal:

A. current living arrangements;

B. current day programs;

C. level of supervision required;

D. the type of home and community-based services projected to be needed and the expected duration of the service or services;

E. the projected starting dates of the home and community-based services;

F. the proposed service provider or providers and billing rate or rates, if known;

G. a description of how the proposal limits the development of new community-based ICF/MR beds and reduces the county's use of existing ICF/MR beds in regional treatment centers and community ICFs/MR, including any steps the county board has taken to encourage voluntary decertification of community-based ICF/MR beds; and

H. a description of the steps the county board has taken to prepare to provide home and community-based services, including efforts to integrate home and community-based services into the county board's administrative services planning system.

Subp. 3. **Review and approval of proposal.** The commissioner shall review all proposals submitted according to subparts 1 and 2. The commissioner shall only approve the county proposals that meet the requirements of parts 9525.1800 to 9525.1880 and that demonstrate compliance with the goals of the department as stated in items A to D:

A. reduction of the number of children in regional treatment centers;

B. limitation of the development of new

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community-based ICF/MR beds and reduction of the use of existing ICF/MR beds located on regional treatment center campuses and in the community; and

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

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

9525.1890 ALLOCATION OF HOME AND COMMUNITY-BASED SERVICE MONEY.

Subpart 1. **Allocation of diversions.** To allocate home and community-based services money for diversions, the commissioner shall project the number of diversions for the county based on the average of the projected utilization of state regional treatment centers and community-based ICF/MR beds using historical utilization for the county; and the projected per capita utilization of state regional treatment centers and community-based ICF/MR beds for the county, both of which are adjusted to conform with the number of diversions projected in the waiver. The projection shall be adjusted based on the county board's actual use of allocated diversions during the previous fiscal year. If the county board uses less than the number of diversions allocated for the fiscal year, the commissioner may decrease the number of diversions projected by the commissioner for the county for the next fiscal year. The county board's allocation of money for diversions shall be based on the lesser of the number of diversions in the approved county proposal and the number of diversions projected for the county by the commissioner.

Subp. 2. **Allocation of conversions.** The county board's allocation of money for conversions shall be based on the number of conversions in the approved county proposal and the extent to which the conversions result in an overall reduction in the county board's historical utilization of state regional

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treatment centers and community-based ICF/MR beds.

[For text of subp 3, see M.R.]

Subp. 4. **Review of allocation; reallocation.** The commissioner shall review the projected and actual use of home and community-based services by all county boards participating in the program at least semiannually, and report the findings to all the county boards in the state. The commissioner may reduce the allocation to a county board if the commissioner determines, in consultation with the county board, that the initial allocation to the county board will not be used during the allocation period. The commissioner may reallocate the unused portion of the county board's initial allocation to another county board, or other county boards, in the same geographic region that plan to expand home and community-based services or provide home and community-based services for the first time. If there is not a sufficient number of projections to use the unused allocation from county boards within the geographic region, the commissioner may reallocate the remainder to another county board or other county boards in other geographic regions that plan to expand home and community-based services or provide home and community-based services for the first time.

Subp. 5. **Preference given.** The commissioner may give preference during the reallocation process and in the allocation of money for subsequent fiscal years to proposals submitted by county boards that have not previously provided home and community-based services. In allocating money for each fiscal year, the commissioner shall give priority to the continued funding of home and community-based services for persons who received home and community-based services in the previous fiscal year and continue to be eligible for home and community-based services.

Subp. 6. **Special projects.** The commissioner may reallocate or reserve available home and community-based service money to fund special projects designed to serve very dependent persons with special needs who meet the criteria in parts 9525.1820 and 9510.1050, subpart 2, items C and D. The

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reallocated or reserved money may be used to provide additional money to county boards that are unable to fund home and community-based services for very dependent persons with special needs within the statewide reimbursement rate as required in part 9525.1910, subpart 2. The commissioner shall develop procedures and criteria for allocating home and community-based program funds for each target group identified as a special project under this subpart.

9525.1900 AGREEMENT BETWEEN STATE AND COUNTY.

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

[For text of items A to C, see M.R.]

D. the total cost of providing home and community-based services to all persons will not exceed the limits in part 9525.1910 except as provided in part 9525.1890, subpart 6;

E. records will be kept according to part 9525.1920 and applicable provisions of parts 9505.2160 to 9505.2245;

F. the county board will comply with all applicable standards in parts 9525.0015 to 9525.0165;

[For text of items G to I, see M.R.]

[For text of subp 2, see M.R.]

9525.1910 COUNTY BOARD FUNDING OF HOME AND COMMUNITY-BASED SERVICES.

[For text of subpart 1, see M.R.]

Subp. 2. **Distribution of money.** The total amount of money allocated to a county board for home and community-based services in a fiscal year shall not exceed the statewide average daily reimbursement rate multiplied by the total number of days the home and community-based services will be provided to the persons.

[For text of subp 3, see M.R.]

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

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

B. The county's average cost per day for all MR/RC home and community-based services provided to all persons must not exceed the statewide average daily reimbursement rate, except as provided for in part 9525.1890, subpart 6. The county's average cost per day for a recipient of ACS waivered services may not exceed the amount allocated to the county by the commissioner for that person.

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

(1) the cost is ordinary, necessary, and related to the person's care;

(2) the cost is for activities which are generally accepted in the field of mental retardation or related conditions and are scientifically proven to promote achievement of the goals and objectives contained in the person's individual service plan;

[For text of subitems (3) and (4), see M.R.]

[For text of subp 5, see M.R.]

9525.1920 REQUIRED RECORDS AND REPORTS.

Subpart 1. **Provider records.** The provider and any

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subcontractor the provider contracts with shall maintain complete program and fiscal records and supporting documentation identifying the persons served and the services and costs provided under the provider's home and community-based services contract with the county board. These records must be maintained in well-organized files and identified in accounts separate from other facility or program costs. The provider's and subcontractor's records shall be subject to the maintenance schedule, audit availability requirements, and other provisions in parts 9505.2160 to 9505.2245.

Subp. 2. **County board records.** The county board shall maintain complete fiscal records and supporting documentation identifying the recipients served and the services and costs provided under the county board's agreement with the department. If the county board provides home and community-based services in addition to case management, the county board's records must include the information required in part 9525.1870. The county board records shall be subject to the maintenance schedule, audit availability requirements, and other provisions in parts 9505.2160 to 9505.2245.

Subp. 3. **Availability of records.** The county board's, the provider's, and the subcontractor's financial records described in subparts 1 and 2, must be available, on request, to the commissioner and the federal Department of Health and Human Services according to parts 9505.2160 to 9505.2245 and 9525.1800 to 9525.1930.

[For text of subp 4, see M.R.]

9525.2010 DEFINITIONS.

[For text of subps 1 to 33, see M.R.]

Subp. 34. **Supported living services for children.** "Supported living services for children" means residential-based habilitation services provided on a daily basis to a waivered services recipient under 18 years of age who resides in a service site licensed under parts 9545.0010 to 9545.0260 for up to four residents.

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by Revisor _____

[For text of subps 35 and 36, see M.R.]

REPEALER. Minnesota Rules, parts 9525.1800, subparts 4, 16, and 19; 9525.1860, subparts 2 and 5; and 9525.1930, subpart 2, are repealed.

Approved
by Revisor _____

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED

MAR 17 1992

Joan Anderson Growe
Secretary of State

10:15 AM
PRB

APPROVED AS TO FORM AND LEGALITY
March 16 1992
HUBERT H. HUMPHREY, III
ATTORNEY GENERAL
BY MJCassedy
SPECIAL ASSISTANT ATTORNEY GENERAL

State of Minnesota
Department of Human Services
Human Services Building
444 Lafayette Road
St. Paul, Minnesota 55155

TO: Patricia Nolte, Legal Assistant
Public Finance Division
525 Park Street, Suite 500

FROM: Laura Plummer, Rules and Bulletins Division

DATE: November 13, 1991

SUBJECT: Review of a Rule Adopted Without a Public Hearing; Funding and Administration of Home and Community-Based Services, Minnesota Rules, parts 9525.1800 to 9525.1930.

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. Any modification made to the proposed rule is reflected on the rule as adopted and is approved as to form by the revisor of statutes.

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.

If you have any questions on this submitted material, please call me at 297-1217.

STATE OF MINNESOTA

DEPARTMENT OF HUMAN SERVICES

In the Matter of the Proposed Adoption of the Rule of the State Department of Human Services Governing Funding and Administration of Home and Community-Based Services, parts 9525.1800 to 9525.1930 and part 9525.2010, subpart 34.	SUPPLEMENTAL FINDINGS OF FACT, CONCLUSIONS AND ORDER ADOPTING RULE WITHOUT PUBLIC HEARING

On November 13, 1991, the Commissioner of Human Services submitted the above-entitled rules to the Attorney General for review pursuant to Minnesota Statutes, section 14.26. After reviewing the rules, the Attorney General's Office advised that they could not approve the rules unless certain amendments were made. Accordingly, on November 27, 1991, the Commissioner withdrew the rule from consideration by the Attorney General in order to make the required amendments.

Based on the comments and evidence in the record before the agency, the findings of fact, conclusions, and order signed by the Commissioner of Human Services and dated November 5, 1991, is hereby supplemented as follows:

1. The Attorney General's Office, by its reviewer Martha Casserly, has advised that they cannot approve the language in part 9525.1830, subpart 1, item A, because it provides the Commissioner with unbridled discretion in allocating certain funds. The Department therefore amends this part to limit the Commissioner's authority to the extent authorized in statute.

Findings: The Department is modifying part 9525.1830, subpart 1, item A, to limit the Commissioner's authority to that which has been established in statute. Examples of such authority include:

1) Minnesota Statutes, section 256B.092, subdivision 4, provides that:

> "For specifically identified former residents of regional treatment centers and nursing facilities, the commissioner shall be responsible for authorizing payments and payment limits under the appropriate home and community-based service program."

2) Minnesota Statutes, section 256B.092, subdivision 4a, provides that:

> "The commissioner may waive state rules governing home and community-based services in order to demonstrate other methods of administering these services and to improve efficiency and responsiveness to individual needs of persons with mental retardation or related conditions, notwithstanding section 14.05, subdivision 4. All demonstration projects approved by the commissioner must comply with state laws and federal regulations, must remain within the fiscal limitations of the home and community-based services program for persons with mental

retardation or related conditions, and must assure the health and safety of the persons receiving services according to section 256E.08, subdivision 1."

3) Minnesota Statutes, section 252.28, subdivision 3, item (4), provides that:

"No new license shall be granted for a residential program that provides home and community-based waivered services to more than four individuals at a site, except as authorized by the commissioner for emergency situations that would result in the placement of individuals into regional treatment centers. Such licenses shall not exceed 24 months."

4) Minnesota Statutes, section 245A.12, which governs voluntary receiverships, subdivision 2 provides that:

"A majority of controlling individuals of a residential program may at any time ask the commissioner to assume operation of the residential program through appointment of a receiver. On receiving the request for a receiver, the commissioner may enter into an agreement with a majority of controlling individuals and become the receiver and operate the residential program under conditions acceptable to both the commissioner and the majority of controlling individuals."

Minnesota Statutes, section 245A.13, which governs involuntary receiverships, subdivision 2 provides that:

"If the court finds that involuntary receivership is necessary as a means of protecting the health, safety, or rights of persons being served by the residential program, the court shall appoint the commissioner as receiver to operate the residential program."

5) Minnesota Statutes, section 252.293, subdivision 1, grants the Commissioner authority in emergency situations. According to this provision, "An emergency situation exists when it appears to the commissioner of human services that the health, safety or welfare of residents may be in jeopardy due to imminent or actual loss of the use of the physical plant or damage to the physical plant making it temporarily or permanently uninhabitable."

Part 9525.1830, subpart 1, item A, is amended as follows:

"A. the county board has determined that it can provide home and community-based services to the person within its allocation of home and community-based services money as determined under parts 9525.1890 and 9525.1910. ~~or as authorized by the commissioner based on the limits of the approved waiver.~~ If the county board has determined that it cannot provide home and community-based services to the person within its allocation of home and community-based services money, the county board may request additional money. The commissioner may authorize additional money only for persons:

(1) to be discharged from regional treatment centers and nursing facilities as referenced in Minnesota Statutes, section 256B.092, subdivision 4;

(2) participating in demonstration projects as referenced in Minnesota Statutes, section 256B.092, subdivision 4a;

(3) receiving home and community-based services under a license granted according to the emergency provisions of Minnesota Statutes, section 252.28, subdivision 3, item (4);

(4) discharged from ICF/MR facilities which have been placed into voluntary or involuntary receiverships according to Minnesota Statutes, section 245A.12 or 245A.13; or

(5) needing home and community-based services on a temporary basis as the result of an emergency situation under Minnesota Statutes, section 252.293, subdivision 1.

The commissioner shall not authorize additional money to the county board if the authorization would exceed the limitations of the approved waiver plan or state appropriations.

The insertion of the foregoing statutory provisions into this subpart does not constitute a substantial change on the basis that it does not affect new classes of persons nor introduces a new subject matter, but rather merely expressly incorporates into the rule the statutory limits of the scope of the Commissioner's authority.

2. Martha Casserly of the Attorney General's Office recommended that the phrase "by the commissioner" be deleted from part 9525.1860, subpart 4, item E, on the basis that it grants to the Commissioner an excessive amount of discretionary power.

Findings: The Department is modifying the proposed rule at part 9525.1860, subpart 4, item E, by striking the phrase, "by the commissioner." This change is supported by the views submitted to the Department and does not constitute a substantial change because it removes the opportunity for the exercise of discretion on the part of the Commissioner, while retaining a clear statement of the criteria upon which reimbursement for adaptive modifications and equipment shall be based. Therefore, striking the above-reference phrase does not alter the meaning or intent of this provision.

3. In the course of preparing these supplemental findings of fact, the Department discovered current language in part 9525.1860, subpart 4, item F, which it had intended to delete in order to be consistent with other proposed amendments to parts 9525.1800 to 9525.1930. Specifically, part 9525.1860, subpart 4, item F, refers to ". . . skilled nursing facility, intermediate care facility. . ." However, parts 9525.1800 to 9525.1930 were otherwise amended to refer to the term "nursing facility" instead of skilled nursing facility and intermediate care facility. In particular, the term "nursing facility" is defined in part 9525.1800, subpart 19c, as proposed.

Findings: The Department is modifying part 9525.1860, subpart 4, item F, by deleting the references to "skilled nursing facility" and intermediate care facility" and referring instead to the general term "nursing facility." This modification is consistent with Minnesota Statutes, chapter 144A, as well as other parts of 9525.1800 to 9525.1930. The modification does not constitute a substantial change

because it corrects an inadvertent failure to delete language which would be inconsistent with other parts of 9525.1800 to 9525.1930 thereby avoiding possible confusion.

4. Martha Casserly of the Attorney General's Office recommended that the twice-stated phrase "unless otherwise authorized by the commissioner" be deleted in part 9525.1860, subpart 6, item E, on the basis that it grants the commissioner unbridled discretion contrary to the intent of the Administrative Procedures Act. Ms. Casserly recommended that the power of the commissioner be restricted by allowing the Commissioner to waive the requirements specified in this provision only to the extent specifically authorized by statute. In considering Ms. Casserly's recommendations, the Department also determined that lines two to three required clarification to assure consistency with the Human Services Licensing Act (Minnesota Statutes, chapter 245A).

Findings: The Department is modifying part 9525.1860, subpart 6, item E to provide that the Commissioner may waive the requirements under this provision according to Minnesota Statutes, section 256B.092, subdivision 4a. Section 256B.092, subdivision 4a, provides that:

> "The commissioner may waive state rules governing home and community-based services in order to demonstrate other methods of administering these services and to improve the efficiency and responsiveness to individual needs of persons with mental retardation or related conditions, notwithstanding section 14.05, subdivision 4. All demonstration projects approved by the commissioner must comply with state laws and federal regulations, must remain within the fiscal limitations of home and community-based services programs for persons with mental retardation or related conditions, and must assure the health and safety of the persons receiving services according to section 256E.08, subdivision 1."

This change is supported by views submitted to the Department and does not constitute a substantial change because it establishes parameters within which the Commissioner may waive rule requirements to those specifically authorized by Minnesota Statutes, section 256B.092, subdivision 4a, consequently eliminating the possibility of unbridled discretion by the Department. Section 256B.092, subdivision 4a clearly grants the commissioner the authority to waive rule requirements for specified purposes. This change is consistent with section 256B.092, subdivision 4a.

The Department is further modifying part 9525.1860, subpart 6, item E, at lines 2-3, to read as follows:

> This item shall not apply to a person who provides respite care ~~for fewer than 30 days a year~~ and who is not required to be licensed under Minnesota Statutes, chapter 245A.

This modification does not constitute a substantial change because it clarifies that the requirements specified in item E do not apply if a license is not required under the Human Services Licensing Act.

Further, the four above-referenced changes do not constitute a substantial change in the rule as adopted from the proposed rule as noticed because these modifications do not:

a) affect classes of persons who could not reasonably have been expected to comment on the proposed rule as originally noticed;

b) introduce significant new subject matter which a reasonable person on the basis of the proposed rule as originally noticed, would not have anticipated would occur during the rulemaking process; and

c) make a major substantive change that was not raised as originally noticed in such a way as to invite reaction.

CONCLUSIONS

I hereby conclude that:

1. None of the supplemental modifications made to the proposed rule constitute substantial changes.

2. The rules, as modified, are necessary and reasonable.

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

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

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

NOW, THEREFORE, IT IS ORDERED that the rule identified as parts 9525.1800 to 9525.1930 (as further modified) is adopted this 4th day of March, 1992, pursuant to authority vested in me by Minnesota Statutes, sections 256B.092, subdivision 6, and 256B.503.

for George J. Steiner

NATALIE HAAS STEFFEN
Commissioner

Department of HUMAN SERVICES **STATE OF MINNESOTA**

OFFICE MEMORANDUM

DATE: March 5, 1992

RECEIVED
MAR - 5 1992
Office of the Attorney General
Government Services Section
Capitol Office Bldg., Suite 500
525 Park Street
St. Paul, MN 55103

TO: Martha Casserly
Office of the Attorney General, Public Finance Div.

FROM: Laura Plummer, Rules Division Laura Plummer

PHONE: 7-1217

SUBJECT: Resubmission of a Rule Adopted Without a Public Hearing; Funding and Administration of Home and Community-Based Services, Minnesota Rules, parts 9525.1800 to 9525.1930 and part 9525.2010, subpart 34.

Enclosed for your review and approval please find the following:

1. Supplemental Findings of Fact, Conclusions and Order Adopting a Rule Without a Public Hearing; and

2. Four copies of the rules as adopted approved by the Revisor of Statutes.

As you will recall, we discussed these materials prior to submitting them to the Commissioner for signature. Also, you were previously sent the materials required for your review of the above-referenced rule. Therefore, I am not sending you duplicates of these materials. On November 13, 1991, you were sent the following documents:

1. A copy of the Notice of Solicitation of Outside Information of Opinions as published in the State Register.

2. A copy of the proposed rules 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.

6. A copy of the Notice of Intent to Adopt a 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 Without a Public Hearing.

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.

Thank you for your time and assistance on this rule. If you have any questions regarding the submitted material, please call me at 297-1217.

Enc.

DEPARTMENT: ATTORNEY GENERAL **STATE OF MINNESOTA**

OFFICE MEMORANDUM

DATE: February 4, 1992

TO: LAURA PLUMMER
Rules Division
Department of Human Services

FROM: MARTHA J. CASSERLY
Special Assistant
Attorney General

PHONE: 296-6839

SUBJECT: **Rules Governing Funding and Administration of Home and Community-Based Services**

Thank you for sending me a draft of the amendments to the above-captioned rules as well as the draft of the Supplemental Findings. The changes to the rules are fine, I have no corrections or suggestions on those amendments.

I do have the following suggestions on the Supplemental Findings:

1. Delete the first two paragraphs of the Supplemental Findings and replace with the following:

> On November 13, 1991, the Commissioner of Human Services submitted the above-entitled rules to the Attorney General for review pursuant to Minn. Stat. § 14.26. After reviewing the rules, the Attorney General's Office advised that they could not approve the rules unless certain amendments were made. Accordingly, on November 27, 1991, the Commissioner withdrew the rules from consideration by the Attorney General in order to make the required amendments.

2. For the third paragraph on page 1 of the Supplemental Findings, I've indicated my suggested amendments on the enclosed copy.

3. For the fourth paragraph on page 1 of the Supplemental Findings (marked as No. 1), I suggest you replace it with the following:

> 1. The Attorney General's Office, by its reviewer Martha Casserly, has advised that they cannot approve the language in part 9525.1830, subp. 1A because it provides the Commissioner with unbridled discretion in allocating certain funds. The

> Commissioner therefore amends this subpart to limit the Commissioner's authority to the extent authorized by statute.

3. I suggest you amend the first paragraph on page 3 of the Supplemental Findings as indicated on the enclosed fax and by adding the following where indicated:

> does not affect new classes of persons nor introduces a new subject matter, but rather merely expressly incorporates into the rule the statutory limits of the scope of the Commissioner's authority.

4. In the second paragraph on page 3 of the Supplemental Findings, I suggest you add "item E" after "subpart 4" as indicated on the enclosed.

5. Finally, on the enclosed copy, I marked my suggested changes on the bottom paragraph on page 3 and the last paragraph on page 5.

Other than these suggestions, the amendments and Supplemental Findings looks fine.

MJC.cv6
Enclosures

STATE OF MINNESOTA

DEPARTMENT OF HUMAN SERVICES

In the Matter of the Proposed Adoption of the Rule of the State Department of Human Services Governing Funding and Administration of Home and Community-Based Services, parts 9525.1800 to 9525.1930 and part 9525.2010, subpart 34.

SUPPLEMENTAL FINDINGS OF FACT, CONCLUSIONS AND ORDER ADOPTING RULE WITHOUT PUBLIC HEARING

Notice of the Commissioner's intent to adopt the above-entitled rule was published in the State Register on August 19, 1991 and was sent by United States mail to all persons on the list maintained by the agency pursuant to Minnesota Statutes, sections 14.14, subdivision 1a and 14.22, on August 14, 1991. 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 two requests for a public hearing, of which none were subsequently withdrawn. Therefore the agency did not receive requests for a public hearing from 25 or more persons which were not withdrawn.

Based on the comments and evidence in the record before the agency, ~~in supplement to~~ the findings of fact, conclusions, and order signed by the Commissioner of Human Services and dated November 5, 1991, ~~I find the following:~~ I hereby supplement the findings as follows:

1. Martha Casserly of the Attorney General's Office, Administration recommended that qualifying language be added to part 9525.1830, subpart 1, item A, which would limit the Commissioner's authority to the extent clearly defined by statute. Ms. Casserly specifically suggested that the phrase "based on the limits of the approved waiver plan" is too vague.

Findings: The Department is modifying part 9525.1830, subpart 1, item A to limit the Commissioner's authority to that which has been established in statute. Examples of such authority includes:

1) Minnesota Statutes, section 256B.092, subdivision 4, provides that:

"For specifically identified former residents of regional treatment centers and nursing facilities, the commissioner shall be responsible for authorizing payments and payment limits under the appropriate home and community-based service program."

2) Minnesota Statutes, section 256B.092, subdivision 4a, provides that:

> "The commissioner may waive state rules governing home and community-based services in order to demonstrate other methods of administering these services and to improve efficiency and responsiveness to individual needs of persons with mental retardation or related conditions, notwithstanding section 14.05, subdivision 4. All demonstration projects approved by the commissioner must comply with state laws and federal regulations, must remain within the fiscal limitations of the home and community-based services program for persons with mental retardation or related conditions, and must assure the health and safety of the persons receiving services according to section 256E.08, subdivision 1."

3) Minnesota Statutes, section 252.28, subdivision 3, item (4), provides that:

> "No new license shall be granted for a residential program that provides home and community-based waivered services to more than four individuals at a site, except as authorized by the commissioner for emergency situations that would result in the placement of individuals into regional treatment centers. Such licenses shall not exceed 24 months."

4) Minnesota Statutes, section 245A.12, which governs voluntary receiverships, subdivision 2 provides that:

> "A majority of controlling individuals of a residential program program may at any time ask the commissioner to assume operation of the residential program through appointment of a receiver. On receiving the request for a receiver, the commissioner may enter into an agreement with a majority of controlling individuals and become the receiver and operate the residential program under conditions acceptable to both the commissioner and the majority of controlling individuals."

Minnesota Statutes, section 245A.13, which governs involuntary receiverships, subdivision 2 provides that:

> "If the court finds that involuntary receivership is necessary as a means of protecting the health, safety, or rights of persons being served by the residential program, the court shall appoint the commissioner as receiver to operate the residential program."

5) Minnesota Statutes, section 252.293, subdivision 1, grants the Commissioner authority in emergency situations. According to this provision, "An emergency situation exists when it appears to the commissioner of human services that the health, safety or welfare of residents may be in jeopardy due to imminent or actual loss of the use of the physical plan or damage to the physical plant making it temporarily or permanently uninhabitable."

The ~~addition~~ insertion of the foregoing statutory provisions in to this subpart does not constitute a substantial change on the basis that it ~~implements and clarifies the extent of the commissioner's authority~~ insert enclosed.

2. Martha Casserly of the Attorney General's Office, ~~Administration~~ recommended that the phrase "by the commissioner", be deleted from part 9525.1860, subpart 4, on the basis that it grants to the Commissioner an excessive amount of discretionary power. item E

Findings: The Department is modifying the proposed rule at part 9525.1860, subpart 4, item E, by striking the phrase, "by the commissioner." This change is supported by the views submitted to the Department and does not constitute a substantial change because it removes the opportunity for the exercise of discretion on the part of the Commissioner, while retaining a clear statement of the criteria upon which reimbursement for adaptive modifications and equipment shall be based. Therefore, striking the above-reference phrase does not alter the meaning or intent of this provision.

3. In the course of preparing these supplemental findings of fact, the Department discovered current language in part 9525.1860, subpart 4, item F, which it had intended to delete in order to be consistent with other proposed amendments to parts 9525.1800 to 9525.1930. Specifically, part 9525.1860, subpart 4, item F refers to ". . . skilled nursing facility, intermediate care facility. . .". However, parts 9525.1800 to 9525.1930 were otherwise amended to refer to the term "nursing facility" instead of skilled nursing facility and intermediate care facility. In particular, the term "nursing facility" is defined in part 9525.1800, subpart 19c as proposed.

Findings: The Department is modifying part 9525.1860, subpart 4, item F by deleting the references to "skilled nursing facility" and intermediate care facility" and referring instead to the general term "nursing facility." This modification is consistent with Minnesota Statutes, chapter 144A as well as other parts of 9525.1800 to 9525.1930. The modification does not constitute a substantial change because it corrects an inadvertent failure to delete language which would be inconsistent with other parts of 9525.1800 to 9525.1930 thereby avoiding possible confusion.

4. Martha Casserly of the Attorney General's Office, ~~Administration~~ recommended that the twice-stated phrase "unless otherwise authorized by the commissioner", be deleted in part 9525.1860, subpart 6, item E on the basis that it grants the commissioner unbridled discretion contrary to the intent of the Administrative Procedures Act. Ms. Casserly recommended that the power of the commissioner be restricted by allowing the Commissioner to waive the requirements specified in this provision only to the extent specifically authorized by statute. In considering Ms. Casserly's recommendations, the Department also determined that lines two to three required clarification to assure consistency with the Human Services Licensing Act (Minnesota Statutes, chapter 245A).

Finding#: The Department is modifying part 9525.1860, subpart 6, item E to provide that the Commissioner may waive the requirements under this provision according to Minnesota Statutes, section 256B.092, subdivision 4a. Section 256B.092, subdivision 4a provides that:

> "The commissioner may waive state rules governing home and community-based services in order to demonstrate other methods of administering these services and to improve the efficiency and responsiveness to individual needs of persons with mental retardation or related conditions, notwithstanding section 14.05, subdivision 4. All demonstration projects approved by the commissioner must comply with state laws and federal regulations, must remain within the fiscal limitations of home and community-based services programs for persons with mental retardation or related conditions, and must assure the health and safety of the persons receiving services according to section 256E.08, subdivision 1."

This change is supported by views submitted to the Department and does not constitute a substantial change because it establishes parameters within which the Commissioner may waive rule requirements to those specifically authorized by Minnesota Statutes, section 256B.092, subdivision 4a, consequently eliminating the possibility of unbridled discretion by the Department. Section 256B.092, subdivision 4a clearly grants the commissioner the authority to waive rule requirements for specified purposes. This change is consistent with section 256B.092, subdivision 4a.

The Department is further modifying part 9525.1860, subpart 6, item, E, at lines 2-3 to read as follows:

This item shall not apply to a person who provides respite care ~~for fewer than 30 days a year~~ and who is not required to be licensed under Minnesota Statutes, chapter 245A.

This modification does not constitute a substantial change because it clarifies that the requirements specified in item E do not apply if a license is not required under the Human Services Licensing Act.

Further, the four above-referenced changes do not constitute a substantial change in the rule as adopted from the proposed rule as noticed because these modifications do not:

a) affect classes of persons who could not reasonable have been expected to comment on the proposed rule as originally noticed;

b) introduce significant new subject matter which a reasonable person on the basis of the proposed rule as originally noticed, would not have anticipated would occur during the rulemaking process; and

c) make a major substantive change that was not raised as originally noticed in such a way as to invite reaction.

CONCLUSIONS

I hereby conclude that:

1. None of the supplemental modifications made to the proposed rule constitute substantial changes.

2. The rules, as modified, are necessary and reasonable.

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

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

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

insert changes

identify rule

NOW, THEREFORE, IT IS ORDERED that the rule identified as ~~(as modified)~~ is adopted this day of , 1992, pursuant to authority vested in me by Minnesota Statutes, sections 256B.092, subdivision 6 and 256B.503.

further

NATALIE HAAS STEFFEN
Commissioner

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To Martha Casserly	From Laura Plummer
Co. AG/Administration	Co. Dept Human Services
Dept.	Phone # 7-1217
Fax # 9-297-2576	Fax # 296-6244

Department of HUMAN SERVICES

DATE: February 3, 1992

TO: Martha Casserly
Office of Attorney General/Administration

FROM: Laura Plummer, Rules Division

PHONE: 7-1217

SUBJECT: **Draft Supplemental Findings of Fact and Rule Modifications--Parts 9525.1800 to 9525.1930**

Enclosed for your review and approval, please find the Supplemental Findings of Fact and proposed modifications with regard to Minnesota Rules, parts 9525.1800 to 9525.1930. As you requested, these materials are being sent to you in draft form for your review prior to finalization. Please note that I have faxed you only the relevant portions of the rule which contain modifications; i.e. parts 9525.1830 and 9525.1860, subparts 4 and 6.

We believe we have addressed each of your concerns. If you have any questions, please call. Thank you for your assistance in this matter.

Enc.

cc: Alex Henry

Post-it brand fax transmittal memo 7671 | # of pages ▸ 5

To Martha Casserly	From Laura Plummer
Co. Administration	Co. DHS
Office of Attorney Gen	Phone # 7-1217
Fax # 2-297-2576	Fax # 6-6244

STATE OF MINNESOTA

OFFICE MEMORANDUM

DATE: February 3, 1992

TO: Martha Casserly
Office of Attorney General/Administration

FROM: Laura Plummer, Rules Division Laura

PHONE: 7-1217

SUBJECT: Re-Fax of Rule Materials

As we discussed, the following portions of parts 9525.1800 to 9525.1930 are re-faxed:

1. Page 8 written comments (Part 925.1830, subpart 1);
2. Page 9 (Part 9525.1850), there are no written changes on this page; and
3. Page 16 written comments (Part 9525.1860, subpart 6).

I have rewritten the notes in heavy black. I hope this comes through. If you have any further questions, please call. Thank you for your assistance.

Enc.

9525.1830. subpart 1, item A (continued)

(1) to be discharged from regional treatment centers and nursing facilities as referenced in Minnesota Statutes, section 256B.092, subdivision 4;

(2) participating in demonstration projects as referenced in Minnesota Statutes, section 256B.092, subdivision 4a;

(3) receiving home and community-based services under a license granted according to the emergency provisions of Minnesota Statutes, section 252.28, subdivision 3, item (4);

(4) discharged from ICF/MR facilities which have been placed into voluntary or involuntary receiverships according to Minnesota Statutes, sections 245A.12 or 245A.13; or

(5) needing home and community-based services on a temporary basis as the result of an emergency situation under Minnesota Statutes, section 252.293, subdivision 1.

The commissioner shall not authorize additional money to the county board if the authorization would exceed the limitations of the approved waiver plan or state appropriations.

436.821 according to the waiver.

Subp. 3. **Beginning date.** Eligibility for medical assistance begins on the first day of the month in which the person first receives home and community based services.

9525.1830 PROVISION OF HOME AND COMMUNITY-BASED SERVICES.

Subpart 1. **Conditions.** The county board may provide or arrange to provide home and community-based services to a person if the person is eligible for home and community based services under part 9525.1820 and all the conditions in items A to F have been met:

A. the county board has determined that it can provide home and community-based services to the person within its allocation of home and community-based services money as determined under parts 9525.1890 and 9525.1910. ~~or as authorized by the commissioner based on the limits of the approved waiver plan~~ If the county board has determined that it cannot provide home and community-based services to the person within its allocation of home and community-based services money, the county board may request additional money. The commissioner may authorize additional money only for persons: (see typed page)

B. the screening team has recommended home and community-based services instead of ICF MR services for the person under parts 9525.0015 to 9525.0165;

[For text of items C to F, see M.R.]

[For text of subp 2, see M.R.]

9525.1840 PARENTAL CONTRIBUTION FEE.

Subpart 1. **Out-of-home placements.** The parent or parents of a person under age 18 shall be liable for a parental contribution fee determined according to Minnesota Statutes, sections 252.27, subdivision 2, and 256B.14, if the person resides outside the home of the parent or parents.

Subp. 2. **In-home services.** Parents of persons under age 18 may be liable for a parental contribution fee determined according to Minnesota Statutes, sections 252.27, subdivision 2, and 256B.14, if the person is residing with a parent and the person's medical assistance eligibility for home and community-based services was determined without considering parental income or resources under part 9525.1820, subpart 2.

Approved by Revisor

9525.1850 PROVIDER REIMBURSEMENT.

A provider may receive medical assistance reimbursement for home and community-based services only if the provider meets the criteria in items A to K. The training, experience, and supervision required in items B to E only apply to persons who are employed by, or under contract with, the provider to provide services that can be billed under part 9525.1860, subpart 2, item A. Providers licensed under parts 9525.0215 to 9525.0355; 9525.1500 to 9525.1690; and 9525.2000 to 9525.2140 are exempt from items C, D, and E.

[For text of items A and B, see M.R.

C. If no training standards have been established, the provider, employee, or subcontractor must have completed, within the last two years, at least 24 hours of documented training. The training must be in areas related to the care, supervision, or training of persons with mental retardation or related conditions including first aid, medication administration, behavior management, cardiopulmonary resuscitation, human development, and obligations under Minnesota Statutes, sections 626.556 and 626.557. The county board may grant a written variance to the training requirements in this item for:

(1) a respite care provider who provides the respite care in his or her residence or in the person's residence; or

(2) a provider who ensures that the training will be completed within six months of the date the contract is signed.

This item does not apply to providers of adaptive modifications and equipment.

D. The provider ensures that the provider and all employees or subcontractors have at least one year of experience within the last five years in the care, training, or supervision of persons with mental retardation or related conditions as defined in Minnesota Statutes, section 252.27. The county board may grant a written variance to the requirements in this item

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To Martha Casserly | From Laura
Co. AG/Administration | Co. Dept. Human Servs
Dept. | Phone # 7-121
Fax # 9-297-2576 | Fax # 296-[illegible]74

d habilitation, including

- supported employment;

(4) homemaker services;

(5) respite care; and

(6) minor adaptations and equipment.

B. Services reimbursable through the ACS waiver plan are:

(1) residential habilitation services including in-home family support, supported living services for adults, and supported living services for children;

(2) day training and habilitation, including supported employment;

(3) homemaker services;

(4) respite care; and

(5) adaptive modifications and equipment.

Subp. 2. [See repealer.]

Subp. 3. **Billing for services.** Billings submitted by the provider, except a provider of adaptive modifications and equipment, must be limited to time actually and reasonably spent:

A. In direct contact with the person to assist the person in attaining the goals and objectives specified in the person's individual service plan. Direct contact time includes time spent traveling to and from service sites.

B. In verbal or written contact with professionals or others regarding the person's progress in attaining the goals and objectives specified in the person's individual service plan.

C. In planning activities including attending the person's interdisciplinary team meetings, developing goals and objectives for the person's individual service plan, assessing and reviewing the person's specified goals and objectives, documenting the person's progress toward attaining the goals and objectives in the person's individual service plan and assessing the adequacy of the services related to the goals and objectives in the person's individual service plan.

Subp. 4. **Service limitations.** The provision of home and community-based services is limited as stated in items A to H.

Approved
by Revisor

A. Case management services may be provided as a single service for a period of no more than 90 days.

B. Day training and habilitation services must:

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

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

(3) be provided at a different service site than the person's place of residence unless medically contraindicated, as required in Minnesota Statutes, section 252.41, subdivision 3; and

(4) be provided by an organization that does not have a direct or indirect financial interest in the organization that provides the person's residential services unless the person is residing with:

(a) his or her family; or

(b) a foster family that does not have a direct or indirect financial interest in the organization that provides the person's residential services.

C. Homemaker services may be provided only if:

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

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

D. Leave days are reimbursable for supported living services for children or supported living services for adults. If the person is not receiving respite care or other supported living services, billings may be made for leave days when the person is:

(1) hospitalized;

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by Revisor

H. Room and board costs are not allowable costs for home and community-based services except respite care provided out of the person's residence. All room and board costs must be directly identified on reports submitted by the provider to the county board.

Subp. 5. [See repealer.]

Subp. 5a. **Other medical or related costs.** The cost of other medical or related services reimbursable under the Minnesota State Medicaid Plan must not be included in the rate or rates billed by the provider or providers for reimbursement under parts 9525.1800 to 9525.1930.

Subp. 6. **Other applicable rules.** Home and community-based services must be provided as required under items A to H unless a variance has been approved by the commissioner.

[For text of item A, see M.R.]

B. Day training and habilitation services must be licensed by the department.

C. Supported living services for children must be provided by a service provider licensed under parts 9525.2000 to 9525.2140 and at a site licensed under parts 9545.0010 to 9545.0260.

D. Supported living services provided at a service site serving four or fewer adults must be provided by a service provider licensed under parts 9525.2000 to 9525.2140 and the residence must be licensed under parts 9555.5105 to 9555.6265. Supported living services provided at a single residence serving five or six adults must be licensed under parts 9525.0215 to 9525.0355.

E. Respite care provided at a service site serving more than four persons must be licensed under parts 9525.0215 to 9525.0355. Respite care provided at a service site serving four or fewer persons under 18 years of age must be licensed under parts 9545.0010 to 9545.0260, unless ~~otherwise authorized by~~ the commissioner waives this requirement according to Minnesota Statutes, section 256B.092 subdiv. 4a. Respite care provided at a service site serving four or fewer adults must be licensed under parts 9555.5105 to

Approved by Revisor

9555.6265, unless ~~otherwise authorized by~~ the commissioner ~~for fewer than 30 days a year~~. This item shall not apply to a person who provides respite care and who is not required to be licensed under Minnesota Statutes, chapter 245A.

requirement according to Minnesota Statutes, Section 256B.092, Subdivision 4a, waives this

Subp. 7. Licensing variances. Requests for variances to the licensing requirements in subpart 6 must be handled according to items A to C.

A. The county board may request a variance from compliance with parts 9545.0010 to 9545.0260 as required in subpart 6, item C, D, or E, for a provider who provides services to persons under 18 years of age if the county board determines that no providers who meet the licensing requirements are available and that granting the variance will not endanger the health, safety, or development of the persons. The written variance request must be submitted to the commissioner and must contain:

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

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

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

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

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

B. The county board may grant a written variance from compliance with parts 9555.6105 ~~9555.6105~~ to 9555.6265 as

Approved by Revisor

436.821 according to the waiver.

Subp. 3. **Beginning date.** Eligibility for medical assistance begins on the first day of the month in which the person first receives home and community-based services.

9525.1830 PROVISION OF HOME AND COMMUNITY-BASED SERVICES.

Subpart 1. **Conditions.** The county board shall provide or arrange to provide home and community-based services to a person if the person is eligible for home and community-based services under part 9525.1820 and all the conditions in items A to F have been met:

A. the county board has determined that it can provide home and community-based services to the person within its allocation of home and community-based services money as determined under parts 9525.1890 and 9525.1910 or ~~as authorized by the commissioner~~ based on the limits of the approved waiver plan;

B. the screening team has recommended home and community-based services instead of ICF/MR services for the person under parts 9525.0015 to 9525.0165;

[For text of items C to F, see M.R.]

[For text of subp 2, see M.R.]

9525.1840 PARENTAL CONTRIBUTION FEE.

Subpart 1. **Out-of-home placements.** The parent or parents of a person under age 18 shall be liable for a parental contribution fee determined according to Minnesota Statutes, sections 252.27, subdivision 2, and 256B.14, if the person resides outside the home of the parent or parents.

Subp. 2. **In-home services.** Parents of persons under age 18 may be liable for a parental contribution fee determined according to Minnesota Statutes, sections 252.27, subdivision 2, and 256B.14, if the person is residing with a parent and the person's medical assistance eligibility for home and community-based services was determined without considering parental income or resources under part 9525.1820, subpart 2.

Approved
by Revisor _____

(2) on an overnight trip or vacation; or

(3) home for a visit.

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

E. The average dollar amount available for reimbursement for adaptive modifications and equipment shall be determined annually ~~by the commissioner~~ based on the ~~approved waiver plan.~~

Adaptive modifications and equipment must be constructed or installed to meet or exceed applicable federal, state, and local building codes.

F. Home and community-based services are not reimbursable if provided to a person while the person is a resident of or on leave from an ICF/MR, skilled nursing facility, intermediate care facility, or a hospital. This item shall not apply to leave days authorized according to item C for a person who is hospitalized.

G. Respite care must:

(1) be provided only for the relief of the person's family or foster family, or if the person is receiving a supported living service in the provider's residence, for the relief of the person's primary caregiver; and

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

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

Approved by Revisor _____

H. Room and board costs are not allowable costs for home and community-based services except respite care provided out of the person's residence. All room and board costs must be directly identified on reports submitted by the provider to the county board.

Subp. 5. [See repealer.]

Subp. 5a. **Other medical or related costs.** The cost of other medical or related services reimbursable under the Minnesota State Medicaid Plan must not be included in the rate or rates billed by the provider or providers for reimbursement under parts 9525.1800 to 9525.1930.

Subp. 6. **Other applicable rules.** Home and community-based services must be provided as required under items A to H unless a variance has been approved by the commissioner.

[For text of item A, see M.R.]

B. Day training and habilitation services must be licensed by the department.

C. Supported living services for children must be provided by a service provider licensed under parts 9525.2000 to 9525.2140 and at a site licensed under parts 9545.0010 to 9545.0260.

D. Supported living services provided at a service site serving four or fewer adults must be provided by a service provider licensed under parts 9525.2000 to 9525.2140 and the residence must be licensed under parts 9555.5105 to 9555.6265. Supported living services provided at a single residence serving five or six adults must be licensed under parts 9525.0215 to 9525.0355.

E. Respite care provided at a service site serving more than four persons must be licensed under parts 9525.0215 to 9525.0355. Respite care provided at a service site serving four or fewer persons under 18 years of age must be licensed under parts 9545.0010 to 9545.0260, unless ~~otherwise authorized by the commissioner.~~ Respite care provided at a service site serving four or fewer adults must be licensed under parts 9555.5105 to

Approved by Revisor _____

9555.6265, ~~unless otherwise authorized by the commissioner.~~ This item shall not apply to a person who provides respite care for fewer than 30 days a year.

Subp. 7. **Licensing variances.** Requests for variances to the licensing requirements in subpart 6 must be handled according to items A to C.

A. The county board may request a variance from compliance with parts 9545.0010 to 9545.0260 as required in subpart 6, item C, D, or E, for a provider who provides services to persons under 18 years of age if the county board determines that no providers who meet the licensing requirements are available and that granting the variance will not endanger the health, safety, or development of the persons. The written variance request must be submitted to the commissioner and must contain:

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

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

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

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

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

B. The county board may grant a written variance from compliance with parts ~~9555.6105~~ 9555.5105 to 9555.6265 as

Approved by Revisor _____

MJC
11/13/91

RULE REVIEW CHECKLIST

File No. 1866
DATE RECEIVED 11/13/91
REVIEW DATE 11/22/91
DUE DATE 11/27/91
(DIS)APPROVED
WITHDRAWN 11.27.91

Docket No. 05,0009,0874
ADOPTED W/O HEARING
EMERGENCY RULE
TO REVISOR ON 11-13-91
REVISOR (DIS)APPROVED 11-14-91
FILED W/SEC. OF STATE
RETURNED TO AGENCY

✓ Rule as adopted (4 copies)

✓ Notice to Solicit Outside Information/Opinion (if applicable)
August 29, 1990 Date published in State Register
Comments

✓ Petition for Adoption of a Rule

✓ Board's Authorizing Resolution
Date adopted

✓ Proposed Rule
Revisor's Certificate

✓ Notice of Intent to Adopt Rule
256B.092 subd 6 Statutory Authority 256B.503
No Statement Small Business Statement
✓ Expenditure of public money
statement submitted fiscal note
8-2-91 Signature

✓ Statement of Need and Reasonableness (if applicable)
✓ Small Business Statement
NA Fees - § 16A.128

✓ Affidavit of Mailing Notice of Intent to Adopt Rule
Aug 14, 1991 Dated 30/25 days before adoption
✓ Notice attached indicates it is attached
Copy of rule or summary attached

✓ Publication in State Register
August 19, 1991 Date 30/25 days before adoption

✓ 180-day deadline from:
NA, ok Effective date of law requiring rule (14.12) (both rules) ~~amendments don't apply~~ amendment doesn't apply
ok end of comment period (§ 14.26) (rules without hearing)
ok effective date of statutory authority (§ 14.29) (emergency rules) ~~amendment doesn't apply~~ amendments don't apply

Resolution Adopting
Date adopted

✓ Findings of Fact, Conclusions & Order Adopting
November 5, 1991 Date

✓ Written Requests, Submissions or Comments

✓ Declaration of Attorney
Jack Name of SAAG representing agency

Notice of Submission to Attorney General (if applicable)

Affidavit of Mailing Notice to Attorney General (if applicable)

STATE OF MINNESOTA
DEPARTMENT OF HUMAN SERVICES

In the Matter of Proposed Amendment of the Department of Human Services Rule Governing Funding and Administration of Home and Community-Based Services (parts 9525.1800 to 9525.1930) and the Rule Part Governing the Definition of Supported Living Services For Children (part 9525.2010, subpart 34)

STATEMENT OF NEED AND REASONABLENESS

INTRODUCTION AND BACKGROUND

Adopted rule parts 9525.1800 to 9525.1930 (Rule 41) and proposed noncontroversial amendments to parts 9525.1800 to 9525.1930, establish procedures that govern the funding and administration of home and community-based services provided to persons with mental retardation and related conditions. Parts 9525.1800 to 9525.1930: (1)identify eligibility criteria for home and community-based services; and (2) establish procedures for the funding and administration of these services. The amendments to parts 9525.1800 to 9525.1930 are being proposed in order to conform to current federal and state regulations governing home and community-based services.

Adopted rule part 9525.2010, subpart 34 and the proposed noncontroversial amendment to part 9525.2010, subpart 34, defines the scope and capacity of supported living services for children.

Authority for the adopted rule parts and the proposed amendments is granted to the commissioner in Minnesota Statutes, sections 256B.092, subdivision 6, 256B.501, subdivision 2, and 256B.503. Minnesota Statutes, section 256B.092, subdivision 6, required the commissioner to adopt rules to establish required controls, documentation, and reporting of services provided in order to assure proper administration of the approved waiver plan.

The Health Care Financing Administration (HCFA), Department of Health and Human Services, published the revised Title 42, Code of Federal Regulations in October of 1990. Title 42 specifies requirements for home and community-based services. Chapter 4 outlines the purpose of the waiver, required contents of a waiver, Minnesota assurances, required documentation, duration of the waiver, termination, hearing for termination and limits on federal financial participation. Minnesota's waiver plan is written to comply with the regulations as set forth in the Code of Federal Regulations.

The Department's initial waiver application was approved by the United States Department of Health and Human Services in April 1984. The current waiver plan was submitted in March, 1987 as a waiver renewal request pursuant to section 1915(c) of the Social Security Act for a five year period from July 1, 1987 to June 30, 1992. It was approved in June 1987. In January, 1992, the Department will be submitting a new Minnesota waiver renewal plan for approval. The new waiver plan, once approved, is expected to be effective from July 1, 1992 to June 30, 1997.

RULE DEVELOPMENT HISTORY

In order to implement the first approved waiver plan, emergency rules were published in August 1984. These emergency rules were subsequently revised and became effective on October 22, 1984. Additional temporary amendments regarding provider qualifications and licensing standards were developed and became effective on April 23, 1985. Permanent rule parts 9525.1800 to 9525.1930 were subsequently developed and became effective on October 14, 1985.

The Department implemented rule making procedures to amend rule parts 9525.1800 to 9525.1930, after determining that a number of revisions were necessary. In view of the nature of the revisions needed, the Department decided to amend parts 9525.1800 to 9525.1930 through a two-phase process. These first set of technical and noncontroversial amendments are being proposed in order to make parts 9525.1800 to 9525.1930 consistent with current federal regulations, federally-approved amendments to the waiver, and Minnesota Rules, parts 9525.2000 to 9525.2140, which became effective October 10, 1989. The Department has recently begun work on a second set of proposed amendments to parts 9525.1800 to 9525.1930 which are of a controversial nature and will therefore require a public hearing. This was determined to be the most responsible approach in terms of time, efficiency, and cost-effectiveness.

A Notice of Solicitation of Outside Information or Opinions was published in the State Register on August 20, 1990. The Department reviewed the potential scope, content, and impact of the proposed rule amendments and developed an advisory committee to gather public input. The advisory committee was composed of parents, service providers, legal advocates, county representatives, and department representatives. (Advisory committee membership list attached as Exhibit 1). The Department plans to use this committee for purposes of both sets of rule amendments.

The committee met on November 19, 1990 for the purpose of discussing noncontroversial amendments only. The committee members were informed that a second set of proposed amendments to parts 9525.1800 to 9525.1930 of a more controversial nature would be addressed later in a series of three to four advisory committee meetings beginning in January 1991. In December 1990, committee members were sent a revised draft of proposed technical amendments to parts 9525.1800 to 9525.1930 and were requested to submit any additional written comments regarding the proposed technical amendments by January 1991. This approach was taken in order to expedite the process. All comments and recommendations received during the committee meeting as well as additional written comments were carefully reviewed and considered by the department.

As an additional means of obtaining public input, the department held regional meetings in four different locations during the month of March 1991. The purpose of these meetings was in part, to obtain information from parents, providers, advocates and counties regarding how waivered services were working for them and suggestions for how waivered services could be improved. These recommendations were considered in these amendments and will be further considered when drafting the second set of controversial amendments to parts 9525.1800 to 9525.1930.

NEED AND REASONABLENESS OF SPECIFIC PROVISIONS

The specific provisions of proposed amendments to parts 9525.1800 to 9525.1930 are affirmatively presented by the Department in the following narrative which constitutes the Statement of Need and Reasonableness, in accordance with the Minnesota Administrative Procedure Act, Minnesota Statutes, chapter 14 and the rules of the Office of Administrative Hearings.

PART 9525.1800 DEFINITIONS

Subpart 1a. **Adaptive modifications and equipment.** Amendment of this definition is necessary to reflect the current status of adaptations under waivered services. The change in terminology from "minor physical adaptations to the home" to "adaptive modifications and equipment" is necessary to reflect what is actually available to waivered services recipients; i.e modifications as well as equipment. As the advisory committee indicated, the amended definition is reasonable because it provides clarification by being more clearly descriptive of the forms of adaptations available while at the same time providing for flexibility. For example, since the waiver also provides for adaptations to vehicles, the amended terminology is more accurate because adaptations are not limited to the home by definition.

It is necessary and reasonable to limit adaptive modifications and equipment to those which are approved by the United States Department of Health and Human Services as a part of the ACS and MR/RC waiver plans because the department has no authority to exceed the scope of an approved waiver plan unless an amendment to the waiver plan is approved. For example, the Minnesota Title XX Home and Community-Based Services for Persons with Mental Retardation or Related Conditions waiver plan was amended in October 1988 to include accessible showers, adaptive switches, and other remote control devices to enable management of room lighting, temperature, sound levels and privacy. These adaptations are provided as a waivered service only when they are documented in the individual plan of care as necessary to avoid institutionalization. Accordingly, it is reasonable to define adaptive modifications and equipment by referring to those adaptations approved in the waiver plan itself.

Subpart 1b. **Alternative Community-Based Services waiver plan or ACS waiver.** This amendment is necessary to be consistent with the requirements under the ACS waiver. The ACS waiver offers alternative home and community-based services for persons determined to be inappropriately placed in nursing facilities. This waiver was first approved in April, 1990 to assist Minnesota in complying with the Omnibus Reconciliation Act (OBRA). OBRA requires that persons with mental retardation or related conditions who require ICF/MR level of care, are not receiving ICF/MR level of care and, thus, are inappropriately placed in Medicaid-certified nursing facilities be appropriately served in alternative settings. Minnesota developed an Alternative Disposition Plan (ADP) pursuant to Public Law 100-203 in December, 1988 which outlines how alternative services will be delivered. The ACS waiver is not a part of Minnesota's other existing Home and Community-Based waivers. The ACS waiver was approved and is administered distinctly from the federal waivers granted to Minnesota. The ACS waiver has been approved for the period from April 1, 1990 through March 31, 1993 with a renewal plan to be submitted to the federal Health Care Finance Administration (HCFA) in 1992 for continuation of the ACS waiver plan. This amendment is reasonable because it implements the OBRA requirements and brings the rule up-to-date with the current status of waivered services in Minnesota.

Subpart 2. **Billing rate.** It is necessary to amend this definition to be consistent with current billing practices for day training and habilitation services. These services can be billed on partial day rates. Six hours or more of service constitutes a full day. Any amount of time less than six hours is considered a partial day for billing purposes. It is reasonable to include a provision for a partial day billing rate to be consistent with regulations governing day training and habilitation services and to reflect current practice.

Subpart 3. **Case manager.** Amendment of this definition is necessary to be consistent with the reorganization of the rule parts. This definition is moved from part 9525.1860, "Reimbursable Services", to part 9525.1800 in this subpart. Reorganization of the rule is reasonable because providing definitions to all pertinent terms in one rule part provides clarification and is easier to read.

Subpart 4. **Client.** It is necessary to repeal this definition because the term "client" is replaced by "person" throughout parts 9525.1800 to 9525.1930. This change in terminology is reasonable because it affords more respect to the person receiving waivered services and is consistent with the use of "person" rather than client in other department rules governing services to persons with developmental disabilities.

Subpart 4a. **Case management services.** Addition of this term in the definitions part and its deletion from part 9525.1860, subpart 2 is necessary and reasonable for the reasons stated in subpart 3.

Subpart 5a. **Community Social Services Administration Plan or CSSA Plan.** It is necessary to add this definition to the rule in order to define a term that is pertinent to the understanding of part 9525.1880 regarding county proposals. Part 9525.1880 allows for the incorporation of the CSSA plan as a part of the county proposal rather than requiring a lengthy, detailed plan by the county boards. It is reasonable to define a term which has a meaning specific and integral to the rule parts. Addition of this definition is further reasonable because allowing the CSSA plan to be a part of the county proposal in lieu of identification of county goals and other information stated separately, avoids duplicative efforts by counties thereby facilitating cost-efficiency.

This definition is reasonable because it refers to the requirements set forth in Minnesota Statutes, §256E.09, subdivision 3 (the Community Social Services Act), which is the legal authority governing the county boards' provision of community social services.

Subpart 5b. **Conversion.** Addition of this term is necessary to replace the term "placement" which is repealed at subpart 19. It is reasonable to replace "placement" with "conversion" since the latter provides a better description of the action involved in converting the funding for ICF/MR services to waiver services funding. To meet federal requirements, there must be an ICF/MR bed decertification for every conversion allocation used.

Subpart 7. **County of financial responsibility.** The amendment of this definition is necessary to assure consistency with statute. The amended definition cites Minnesota Statutes, §256G.02, subdivision 4, which contains the full definition of "county of financial responsibility." Minnesota Statutes, chapter 256G, known as the Unitary Residence and Financial Responsibility Act, was passed in 1987 after the promulgation of parts 9525.1800 to 9525.1930. It is reasonable to update definitions and rule language as statutory changes occur in order to assure consistency with statute. Simply referring to the statutory cite in the definition is reasonable because it promotes brevity of the rule and avoids unnecessary duplication.

Subpart 8. **Daily intervention.** Amendment of this definition is necessary to provide clarification with respect to current waiver plan provisions. The current waiver plan was amended effective October, 1988 to clarify that in-home family support services, supported living services for children, and supported living services for adults may be provided in the community. Therefore, this amendment is reasonable because it incorporates this provision for delivery of services in the community. It is reasonable to update rule definitions in order to reflect changes in federal and state regulations.

Subpart 8a. **Day training and habilitation.** This amendment is necessary to assure consistency with current terminology and definitions used in statute and other department rules governing services to persons with mental retardation or related conditions. This amendment is reasonable because Minnesota Statutes, §252.40, which governs service principles and rate-setting procedures for day training and habilitation services for adults with mental retardation and related conditions, refers to the term "day training and habilitation services" rather than "day habilitation" which is the terminology used in the current rule parts. Parts 9525.1500 to 9525.1690 (Rule 38) governs the licensure of training and habilitation services for adults with mental retardation or related conditions. Rule 38 was written after the promulgation of Rule 41 and therefore, it is reasonable to amend the definition to assure consistency with current governing rules. It is reasonable to simply cite the definition of "training and habilitation services" in part 9525.1500, subpart 36, rather than restating it in entirety because this promotes brevity of the rule and provides for consistency among department rules governing services to similar populations.

It is necessary and reasonable to delete reference to day habilitation services for children because since the introduction of Minnesota Statutes, §120.17 (early intervention law), public school systems are the primary agency responsible for the delivery of educational intervention services to children. For children under five years of age, according to Minnesota Statutes, §120.17, subdivision 14, it is the joint responsibility

of school districts, county boards, and public health agencies to coordinate, provide, and pay for appropriate services not required under §120.17 and to facilitate payment for services from public and private sources. State plan medical assistance services may be utilized in the provision of appropriate services; however, day training and habilitation services available through the waiver are considered to be a duplicate of educational intervention service and should not be used for children. This is not intended to imply that residential habilitation services in the form of In-Home Family Support or Supported Living Services for children should not be provided to children receiving educational services.

Subpart 13. **Geographic region.** It is necessary to amend this definition in order to delete an unnecessary phrase. It is reasonable to delete the phrase "...in effect on July 1, 1984" because this phrase provides no additional meaning or clarification to the definition of "geographic region." It is sufficient to refer to the definition given in Minnesota Statutes, §462.385 since Chapter 462 governs regional planning activities.

Subpart 13a. **Habilitation services.** This amendment is necessary to be consistent with the reorganization of the rule parts. This definition is moved from part 9525.1860, "Reimbursable Services", to part 9525.1800, in this subpart. Relocation of this definition is necessary and reasonable for the reasons specified in part 9525.1800, subpart 3. The addition of the word "training" to the phrase "day training and habilitation services" is necessary and reasonable to ensure consistency with terminology currently used in other department rules.

Subpart 14. **Home and community-based services.** This amendment is necessary to make the rule consistent with the current status of waivered services in Minnesota. The phrase "related conditions" is added to be consistent with the provision for related conditions in several other department rules governing services to persons with developmental disabilities, i.e. parts 9525.0015 to 9525.0165 and parts 9525.0180 to 9525.0190. It is reasonable to amend rules as changes occur in other department rules governing services to similar populations. It is necessary to identify the two types of waivers, MR/RC and ACS waivers, because these waivers have been approved by the federal government as separate and distinct waiver plans with differing eligibility criteria. The ACS waiver plan was initially approved in April 1990, and therefore, two distinct waiver plans did not exist at the time parts 9525.1800 to 9525.1930 were originally promulgated in 1985. It is reasonable to amend these parts to incorporate changes in the waivered services system in Minnesota, since parts 9525.1800 to 9525.1930 implement these waiver plans. Home and Community-Based Services refers to services available through different waivers the federal government has approved.

Subpart 14a. **Homemaker services.** It is necessary to amend this definition to add the correct reference to parts 9565.1000 to 9565.1300, which are the department rules governing homemaker services. It is reasonable to correct and update references to other department rules to assure accuracy. This amendment is further necessary and reasonable for the reasons stated in subpart 3 regarding relocation of the term to the definitions section.

Subpart 16. **Individual habilitation plan.** It is necessary to repeal this subpart to be consistent with statutory changes. In the 1990 session, Minnesota Statutes, §256B.092 was amended to provide that a separate individual habilitation plan is no longer required; rather, the individual service plan must include an habilitation component. Therefore, it is reasonable to repeal this definition in order to be consistent with the current case management law requirements.

Subpart 17. **Individual service plan.** It is necessary to amend this subpart to be consistent with the current statutory definition of individual service plan. The definition of individual service plan contained in Minnesota Statutes, §256B.092, subdivision 1b was amended in both the 1990 and 1991 sessions. Further, the reference to parts 9525.0015 to 9525.0145 is no longer current since these parts are no longer an emergency rule. It is reasonable to amend rule definitions as needed in order to be consistent with statute.

Subpart 17a. **In-home family support services.** This amendment is necessary to clarify the intent of in-home family support services. The addition of the phrase "...to remain in the family home...", clarifies that these services may be provided in the person's home and are available to support the family as well as the person receiving services. It is reasonable to clarify the intent of this service, which is to encourage and enable parents to keep their children living at home. The relocation of this term to the definitions part of the rule is necessary and reasonable for the reasons stated in subpart 3.

Subpart 19. **Placement.** It is necessary and reasonable to repeal this definition for the reasons set forth in subpart 5b.

Subpart 19a. **Leave days.** It is necessary and reasonable to move this term to part 9525.1800 and delete it from part 9525.1860 for the reasons stated in subpart 3.

Subpart 19b. **Mental retardation or related conditions or MR/RC.** It is necessary to add this definition because the term mental retardation or a related condition as well as the abbreviation MR/RC is used throughout these rule parts. MR/RC refers to the Title XIX medical assistance waiver to provide home and community-based services for persons with mental retardation or

related conditions. As stated earlier, the ACS waiver was approved in Minnesota in April 1990. Therefore, the abbreviation MR/RC is used throughout parts 9525.1800 to 9525.1930 to distinguish the MR/RC waiver from the ACS waiver. It is reasonable to use an abbreviation to refer to a term that is used several times in the rule language in order to contribute to the brevity of the rule. It is reasonable to refer to the definition of "mental retardation" contained in part 9525.0015, subpart 20, items A and B because parts 9525.0015 to 9525.0165 govern the provision of case management services to persons with mental retardation or related conditions. This definition of mental retardation is used in other department rules as well. It is reasonable to refer to definitions used in other department rules governing services to the same population of consumers to facilitate consistency among rules and to promote brevity of the rule.

It is reasonable to refer to the definition of "related condition" given in Minnesota Statutes, section 252.27, subdivision 1a to assure consistency with statute. Section 252.27 was amended in the 1991 session revising the definition of "related condition". It is reasonable to simply cite to this section to assure consistency with the statutory language in the event the definition is amended in the future.

Subpart 19c. **Nursing facility.** It is necessary to add this definition due to the development and approval of the ACS waiver. When parts 9525.1800 to 9525.1930 were originally promulgated in 1985, the ACS waiver did not exist. However, following the approval of the ACS waiver in April 1990, the department determined that these parts required amending to incorporate specific provision for ACS waivered services. Since the ACS waiver services are available to persons who are determined to be inappropriately placed in a Medicaid-certified nursing facility, the meaning of "nursing facility" is central to the understanding of eligibility for services funded through the ACS waiver. It is reasonable to refer to Minnesota Statutes, chapter 144A because this chapter governs the Department of Health which certifies nursing facilities.

Subpart 19d. **Person.** This amendment is necessary because the term "person" has a meaning specific to parts 9525.1800 to 9525.1930. The term "person" is used in a number of other department rules. It is reasonable to be consistent with terminology used in other rules and regulations governing services to persons with developmental disabilities. This definition is further reasonable based on advisory committee input that the term "person" emphasizes the individual and afford more dignity to persons receiving services than the term "client." It is reasonable to refer to the definition of person with mental retardation or a related condition in part 9525.1800, subpart 19b to assure consistency in the two definitions. It is

reasonable to confine the definition to those persons who are receiving home and community-based services through the MR/RC or ACS waiver to clarify that these parts apply only to persons receiving home and community-based services under a Minnesota waiver plan. The need and reasonableness of this definition are specified further in subpart 19b above.

The term "person" is used throughout parts 9525.1800 to 9525.1900. In order to avoid redundancy, the need and reasonableness specified in this subpart applies to all other amendments throughout parts 9525.1800 to 9525.1930 which replace the term "client" with the term "person." Accordingly, such amendments will not be addressed separately hereafter in this Statement of Need and Reasonableness.

Subpart 21a. **Residential-based habilitation services.** This amendment is necessary to reflect the waiver plan amendment which was effective October, 1988. This amendment clarifies that in-home family support services, supported living services for children, and supported living services for adults may be provided in the community. The addition of the phrase "..and in the community", incorporates this waiver amendment into the rule. It is reasonable to amend rule definitions to be consistent with federal authority. This definition is further reasonable because it is consistent with part 9525.2010, subpart 30, which defines "residential-based habilitation services" for licensure purposes. It is necessary and reasonable to repeat this definition rather than to merely cite to part 9525.2010 because parts 9525.1800 to 9525.1930 actually implement Minnesota's waiver plans. Therefore, the specific meaning of the services authorized by the waiver are essential to the understanding of the rule. This amendment is further necessary and reasonable for the reasons specified in subpart 3 with respect to the addition of the term "residential-based habilitation services" to part 9525.1800 and its deletion from its current placement at part 9525.1860, subpart 2.

Subpart 21b. **Respite care.** This amendment is necessary and reasonable for the reasons specified in subpart 3 regarding moving the definition from part 9525.1860, "Reimbursable Services" to part 9525.1800.

Subpart 23. **Screening team.** Amendment of this term is necessary to provide clarification to those affected by these rule parts. The addition of subdivision 7 to the reference to Minnesota Statutes, §256B.092, identifies for the reader specifically where the statutory provision for screening teams is located. This subpart clearly defines the members of the screening team. It is reasonable to amend rule parts to provide additional clarification, since such clarification facilitates easier implementation of the rule parts.

Subpart 25. **Short-term.** Amendment of this definition is necessary to differentiate between respite care (a temporary service) and other services which are provided for longer periods of time. The term "short-term" is used in the definition of respite care. It is necessary to amend this definition to allow for use of respite hours that may exceed current limitations when federal approval is granted to do so. The current waiver plan was approved by the federal Health Care Finance Administration with the limitation of no more than 30 days of respite. Ten percent of those receiving respite may receive additional respite up to 90 days upon the commissioner's authorization with no more than 30 days in out-of-home respite. The Omnibus Reconciliation Bill, which was signed into law on November 5, 1990, contained language affecting respite care provided through home and community-based services. This language prohibits the Secretary of Health and Human Services from restricting the number of hours or days of respite care a participant in a home and community-based waiver program may receive. Minnesota must comply with the limitations stated in the current federally-approved waiver plan until a new waiver renewal plan is effective. It is reasonable to amend rule definitions to enable the commissioner to authorize additional hours of respite care at the time of federal approval of the waiver renewal plan which will modify current limitations on respite, in the event that the second stage of amendments to parts 9525.1800 to 9525.1930 have not been finalized.

Subpart 26a. **Supported Living Services for adults.** The need and reasonableness of this amendment is specified in subpart 3 with respect to moving the term "supported living services for adults" to part 9525.1800 and deleting it from its current location at part 9525.1860, subpart 2.

Subpart 26b. **Supported Living Services for children.** It is necessary to amend this definition to make it consistent with department rules governing the licensure of foster care service for children. Minnesota Rules, parts 9545.0010 to 9545.0260 governs the licensure of family foster care and group family foster care. Part 9545.0030, item D, limits the number of foster children in special services homes to no more than four children. Therefore, the amendment from three to four persons is necessary and reasonable in order to be consistent with the child foster care rule. It is reasonable to update rule definitions to make them consistent with current definitions used in other department rules governing services to similar populations.

The need and reasonableness of this amendment is further specified in subpart 3 with respect to moving the definition to part 9525.1800 and deleting it from its current location at part 9525.1860, subpart 2.

Subpart 27. **Title XIX Home and Community-based waivered services for persons with mental retardation or related conditions or the MR/RC waiver (plan).** This amendment is necessary to make the rule consistent with the current status of waivered services in Minnesota. When parts 9525.1800 to 9525.1930 were originally promulgated in 1985, the ACS waiver, as defined in subpart 1b, did not exist. Accordingly, use of the term "waiver" was ample. Given the approval of the ACS waiver in April 1990, the rule must now distinguish the two distinct waiver plans. It is reasonable to amend this definition by adding MR/RC to its name since doing so identifies the MR/RC as a waiver separate from the ACS waiver. It is reasonable to amend the definition to reflect changes in the delivery of waivered services as well as to provide clarification to those affected by the rule with regard to the distinction between the two waivers.

It is further necessary and reasonable to add the phrase "...the effective date of the last waiver plan...", to prevent undesirable restrictions and in recognition that there is expected to be a new waiver plan in effect beginning July 1, 1992.

PART 9525.1810 APPLICABILITY AND EFFECT.

Subpart 2. **Effect.**

This amendment is necessary to identify that parts 9525.1800 to 9525.1930 implement two types of waivers. It is necessary to inform counties, providers and other interested parties of the amendments to the rule parts which govern the provision of home and community-based services, and to whom the rule parts apply. The need and reasonableness for distinguishing the MR/RC waiver and the ACS waiver is stated further in part 9525.1800, subpart 27.

PART 9525.1820 ELIGIBILITY.

Subpart 1. **Eligibility criteria for MR/RC waiver.** This amendment is necessary to distinguish the eligibility requirements for the two waiver plans. It is necessary to clarify who is eligible to receive services funded and administered under this rule. When parts 9525.1800 to 9525.1930 were originally promulgated in 1985, only the Title XX Home and Community-Based Services for Persons with Mental Retardation or Related Conditions existed in Minnesota. Therefore, in the current rule, it was appropriate to refer to eligibility for the waiver generally. However, in April 1990, the ACS waiver was approved. The MR/RC and ACS waivers, as defined in part 9525.1800, are distinguishable in their purpose. The criteria for eligibility under each waiver plan is also different. Accordingly, it is necessary and reasonable to add to this

subpart, eligibility criteria specific to the MR/RC waiver in order to distinguish the two waiver plans.

The amendment of items A to E by reorganizing their order is necessary to enable these items to be applicable to and clearly read with subpart 2. It is reasonable to reorder items to avoid repetition and provide clarification.

The amendment of item B is necessary to be consistent with statute and other department rules. Parts 9525.0015 to 9525.0165 are now permanent rules. The definition of "related condition" contained in Minnesota Statutes, section 252.27, subdivision 1a was amended in the 1991 session. It is reasonable to update rule language in order to reflect changes that have occurred in statute and other department rules governing services to similar populations of consumers.

Subpart 1a. **Eligibility criteria for the ACS waiver.** This amendment is necessary to distinguish the eligibility requirements for the two waiver plans addressed in parts 9525.1800 to 9525.1930. The need and reasonableness for separating the eligibility criteria specific to the MR/RC waiver and the ACS waiver is specified further in subpart 1. It is necessary and reasonable to refer to the requirements in items B to E of subpart which are applicable to the ACS waiver as well as the MR/RC waiver in order to avoid unnecessary repetition, to promote brevity of the rule, and to clarify the similar requirements.

It is necessary to specify in detail those eligibility requirements which are specific to the ACS waiver in order to be consistent with the federal regulations governing the ACS waiver. The ACS waiver provides alternative community-based services, as part of Minnesota's federally-approved Alternative Disposition Plan, to persons who were determined to be inappropriately placed in nursing facilities per Public Law 100-203 (OBRA) at the time of submission of the ACS waiver plan to the federal Health Care Financing Administration. All eligibility criteria must be met to assure compliance. It is reasonable to specify the criteria which must be met under A and B in order to execute the intent of OBRA to discontinue inappropriate nursing home placements as well as to comply with the requirements under Public Law 100-203.

Subpart 2. **Medical assistance eligibility for children residing with their parents.** It is necessary to amend item A to be consistent with the item changes made in subpart 1. Subpart 2 references the eligibility criteria contained in subpart 1. Since an additional criteria was added at subpart 1, item E, it is necessary and reasonable to amend this subpart to include reference to item E to be consistent. This amendment is further reasonable because it facilitates the department's goal of having children with developmental disabilities remain in their family

home.

PART 9525.1830 PROVISION OF HOME AND COMMUNITY-BASED SERVICES.

Subpart 1. **Conditions.** It is necessary to amend item A to allow for increased flexibility in the department's management of ACS and enhanced waiver funds. It is necessary to inform persons affected by these rule parts of the conditions that must be met before home and community-based services are provided. The addition of the phrase "...or as authorized by the commissioner;", allows the department flexibility in the management of waiver funds thereby clarifying the authority to fund special projects such as through the enhanced waiver services fund. Such increased flexibility is reasonable because it allows special projects and rate enhancements that, in certain cases, better meet the unique needs of the individual receiving services.

It is necessary and reasonable to amend item B by replacing the reference to emergency parts 9525.0015 to 9525.0145 with reference to permanent parts 9525.0015 to 9525.0165, to be consistent with the current permanent status of Rule 185.

PART 9525.1840 PARENTAL CONTRIBUTION FEE.

Subpart 1. **Out-of-home placements.** This amendment is necessary to make the rule consistent with current statutory requirements. Minnesota Statutes, §256B.14 requires parental fees for children in out-of-home placements receiving medical assistance. Minnesota Statutes, §256B.14 requires the department to adopt rules that determine the ability of responsible relatives to contribute partial or complete payment or repayment of medical assistance furnished to recipients for whom they are responsible and that these rules shall be consistent with the requirements of Minnesota Statutes, §252.27 for parents of children whose eligibility for medical assistance was determined without deeming of the parent's resources and income. Minnesota Statutes, §252.27 was amended in the 1990 session to include a specific parental fee schedule based on adjusted gross income. This provision applies to parents of children receiving in-home services as well as those children in out-of-home placements. It is reasonable to amend this subpart to reflect changes which have occurred in statute in order to be consistent with statutory requirements.

Subpart 2. **In-home services.** This amendment is necessary and reasonable for the reasons specified in subpart 1.

PART 9525.1850 PROVIDER REIMBURSEMENT.

The amendment of the first paragraph of this part is necessary to be consistent with other department rules governing licensure of services. This amendment refers to parts 9525.0215 to 9525.0355 (Rule 34), parts 9525.1500 to 9525.1690 (Rule 38) and parts 9525.2000 to 9525.2140 (Rule 42). Rule 34 governs the licensure of residential programs for persons with mental retardation or related conditions and sets standards for staff qualifications, orientation and training in part 9525.0355. Rule 38 governs the licensure of training and habilitation services for adults with mental retardation or related conditions and sets standards for staff qualifications and staff training in parts 9525.1610 and 9525.1620. Rule 42 governs the licensure of residential-based habilitation services and contains standards for staff training and orientation in part 9525.2140. This amendment is necessary because it waives staff qualification and training requirements that are already addressed under these three licensing rules. It is reasonable to exempt these groups from the requirements under items C, D, and E of this part to avoid duplication and discrepant requirements. In particular, since the promulgation of parts 9525.2000 to 9525.2140, there have been a number of questions raised by providers with regard to whether the staff requirements of parts 9525.1800 to 9525.1930 or parts 9525.2140 apply. This amendment is necessary and reasonable to clarify when requirements are applicable as well as to eliminate any inconsistency between the two rules. It is necessary and reasonable to inform providers of the criteria they must meet to receive medical assistance reimbursement for providing home and community-based services. These amendments are reasonable because they promote consistent treatment of providers by assuring consistency with other department rules governing services to persons with mental retardation.

The amendments in this part replacing the term "minor physical adaptations" with "adaptive modifications and equipment" are necessary and reasonable for the reasons stated in 9525.1800, subpart 1a.

The amendment in this part replacing the term "individual habilitation plan" with "individual service plan" is necessary to be consistent with the current case management requirements under Minnesota Statutes, §256B.092. The need and reasonableness of this amendment is stated further in part 9525.1800, subpart 16.

Amendment of item J is necessary to be consistent with current rule references. Minnesota Rules, parts 9500.0750 to 9500.1080 have been repealed with the exception of part 9500.1070. Parts 9505.1750 to 9505.2150 have been repealed and replaced by parts 9505.2160 to 9505.2245, which governs the surveillance and utilization review systems. Proposed parts 9505.2160 to 9505.2245 were published in the State Register on January 14,

1991.

PART 9525.1860 REIMBURSABLE SERVICES.

The amendments in this part are necessary to inform interested persons of the services that can be reimbursed by medical assistance under parts 9525.1800 to 9525.1930 and of changes that have occurred in the status of these services. The amendments in this part replacing the term "minor physical adaptations" with the term "adaptive modifications and equipment" are necessary and reasonable for the reasons stated in part 9525.1800, subpart 1a.

Subpart 1. **General limits.** This amendment is necessary to clarify which services are reimbursable under the MR/RC waiver and which are reimbursable under the ACS waiver. As stated earlier, amendment of parts 9525.1800 to 9525.1930 are necessary to include provision for the ACS waiver, as well as to distinguish between the MR/RC and ACS waivers with respect to eligibility criteria and reimbursable services under this part. This amendment is reasonable because it clearly identifies and distinguishes those services which are reimbursable under the MR/RC waiver and the ACS waiver. It is reasonable to update this subpart in order to incorporate changes in federal approvals and regulations.

Subpart 2. **Definitions.** It is necessary to repeal this subpart to provide clearer organization of the rule. This subpart currently contains definitions of the following terms: "case management", "day habilitation", "habilitation services", "home-maker services", "in-home family support services", "leave days", "minor physical adaptations to the home", "residential-based habilitation services", "respite care", "supported living arrangements for adults", "supported living arrangements for children", and "other home and community-based services." These definitions were amended to reflect the current status of these services and to incorporate changes made in applicable state and federal regulations since the original promulgation of parts 9525.1800 to 9525.1930 in 1985.

It is reasonable to repeal this subpart and move the amended definitions to the definitions in part 9525.1800 because these terms are used throughout parts 9525.1800 to 9525.1930; their use is not limited solely to part 9525.1860. It is reasonable to reorganize rule parts when such reorganization provides clarification and facilitates easier reading of the rule as a whole.

Subpart 3. **Billing for services.**

The amendments in this subpart replacing the term "individual habilitation plan" with the term "individual service plan" are

necessary and reasonable for the reasons stated in part 9525.1800, subpart 16. The amendments in this subpart replacing the term "minor adaptations to the home" with "adaptive modifications" is necessary for the reasons specified in part 9525.1800, subpart 1a.

Subpart 4. **Service limitations.** Amendments in this part are necessary to clearly identify the limits that apply to home and community-based services under the MR/RC and ACS waivers. The amendments in this subpart adding the word "training" to the phrase "day training and habilitation services" are necessary for reasons specified in part 9525.1800, subpart 18a.

Amendment to item B (3) is necessary to be consistent with current statutory requirements. Minnesota Statutes, §256B.501, subdivision 1 (d), as cited in the current rule language is incorrect. Rather, Minnesota Statutes, §252.40, subdivision 3, which was passed in 1987, now governs the service principles and rate-setting procedures for day training and habilitation services for adults with mental retardation and related conditions. It is reasonable to update rule language as statutory changes occur in order to assure consistency with the governing statute.

Amendment to item D by replacing the term "supported living arrangements" with "supported living services" is necessary and reasonable for the reasons stated in part 9525.1800, subparts 26a and 26b. Amendment of item D by adding the phrase, "If the person is not receiving respite care or other supported living services,..." is necessary to clarify the intent of current language that leave days may not duplicate other services. The prevention of duplication of service payment is necessary and reasonable to comply with federal requirements and the approved waiver plan. Amendment of item D(2) is necessary for further clarification of the intent to avoid duplicate payment. It is reasonable to delete the qualifying terms "therapeutic" and "camping trip" based on input by advisory committee members that these qualifications are limiting and unnecessary since they do not contribute to the intent of this item. Rather, simply stating "an overnight trip or a vacation" clearly states what types of leave days are allowed while providing a higher degree of flexibility. This flexibility avoids situations where the county can not authorize reimbursement for a leave day in the form of an overnight trip because it may not be considered "therapeutic" or may not be a camping trip. This allowance for flexibility is reasonable because while the intent of the leave day provision is to prevent duplicate payment for services, it is not to prevent counties from authorizing leave day reimbursement to providers in individual service plans and service contracts with providers.

Amendment of item E is necessary to clarify that the dollar amount of funding available through the waiver for physical modifications and equipment increases on an annual basis. In addition, the ACS and MR/RC waivers have different levels of funding that may be used towards physical modifications and equipment. It is reasonable to address the fiscal year dollar limitations available for the MR/RC and ACS waivers on an annual basis through a bulletin.

It is necessary to specify that there are differences in the approved physical modifications and equipment between the MR/RC and ACS waiver plans. The MR/RC waiver plan limits the approved physical modifications and equipment that may be purchased with waiver dollars. The ACS waiver plan states, "The following are examples of home adaptations that will be offered", and lists items that are approved to indicate the intent of physical modifications and equipment but does not limit the purchase of modifications or equipment exclusively to that list. In addition, amendments to the waiver plans or waiver renewal plans may allow for different modifications and equipment to be purchased. Deleting the itemization of specific adaptations which are allowed under the waiver and replacing the itemization with the phrase "...shall be determined annually by the commissioner based upon the approved waiver plan.", is reasonable because it allows for accommodation of federally-approved waiver plan amendments which may change the list of reimbursable adaptations. It is reasonable to issue a bulletin to advise counties of approved physical modifications and equipment on an annual basis to ensure counties are aware of currently approved modifications and equipment because bulletins can be disseminated in a very timely manner.

Amendment of item E by a provision that adaptive modifications and equipment must meet or exceed applicable federal as well as state and local building codes is necessary to reflect new federal building regulations which are provided for under the American Disabilities Act, Public Law 101-336, enacted July 26, 1990, and subsequent regulations that will be promulgated thereunder.

Subpart 5. **Special services.** It is necessary to repeal this subpart to remedy confusion that exists in the interpretation of the current rule language. Subpart 5a is added to address and clarify the area of special services. Federal regulations do not allow waiver funds to be used to pay for those services that are available through other funding sources. State plan medical assistance programs must be used first for any services. It is reasonable to repeal rule language which is confusing and may lead to inaccurate interpretation and inappropriate use of federal funds.

Subpart 5a. **Other medical or related costs.** It is necessary to add this subpart to replace unclear language repealed at subpart 5. This amendment is reasonable because it clarifies that waivered services must not duplicate services which are available through other funding sources and that those resources must be used first when planning waivered services. State plan Medicaid services must be used to the extent allowable before a county may consent to pay for services that are different or beyond what is allowable through state plan medical assistance services. This includes physical modifications and equipment. It is reasonable to add language which clarifies the use of waivered services funding to ensure compliance with approved waiver plans and facilitate the most desirable and cost-efficient use of waivered services funding.

Subpart 6. **Other applicable rules.** It is necessary to amend this subpart to inform interested persons of the standards contained in other department rules which are applicable to home and community-based services. It is reasonable to amend this subpart to be consistent with current requirements in other department rules governing the licensure of services to persons with mental retardation or related conditions which have been adopted or amended subsequent to the original adoption of parts 9525.1800 to 9525.1930. It is reasonable to update rules as changes occur in other department rules in order to assure consistency.

It is necessary to amend item C to include provision for licensure of the provider under parts 9525.1000 to 9525.2140 (Rule 42). Rule 42 was promulgated in October 1989 and therefore was not in existence at the time the current parts 9525.1800 to 9525.1930 were promulgated in 1985. Due to the adoption of Rule 42, the provider must be licensed under parts 9525.2000 to 9525.2140, while the site serving children must be licensed separately under parts 9545.0010 to 9545.0260 which governs child foster care licensure.

It is necessary to amend item D to be consistent with changes that have occurred in other department rules governing services to persons with mental retardation or related conditions that are subject to the provisions of parts 9525.1800 to 9525.1930. Parts 9525.2000 to 9525.2140 were promulgated in 1989 and govern the licensure of residential-based habilitation service providers. It is necessary to incorporate these requirements into this rule to assure consistency and compliance with both rules. As discussed in item C above, due to the adoption of Rule 42, the provider must be licensed under parts 9525.2000 to 9525.2140 and the site serving four or fewer adults must be licensed under parts 9555.5105 to 9555.6265, which governs adult foster care licensure. The amendment relating to the requirements of parts 9525.0215 to 9525.0355 is necessary to be consistent with the correct current rule reference. The parts referenced in the

current rule were repealed subsequent to the promulgation of current parts 9525.1800 to 9525.1930. The addition of "five or six adults" is necessary because it provides clarification as to how many adults can live at a single residence while receiving waivered services. It is reasonable to revise rule language to provide additional clarification to those affected by the rule.

The amendments in item E updating references to other department rules are necessary and reasonable for the same reasons stated in item D above.

Subpart 7. **Licensing variances.** The amendment in item B revising the reference to other rule parts is necessary to assure consistency with other department rules governing services to persons with mental retardation and related conditions as related to waivered services. Parts 9555.5105 to 9555.6265 govern adult foster licensure. Parts 9555.6100, 9555.6200, 9555.6300 and 9555.6400 were repealed effective August 3, 1987 for specified foster homes and effective August 3, 1988 for the remaining foster home operators.

The amendment of C replacing the reference to parts 9525.0210 to 9525.0430 with 9525.0215 to 9525.0355 is necessary to be consistent with changes that have occurred in the department rule governing the licensure of residential programs for persons with mental retardation or related conditions. Parts 9525.0210, 9525.0220, 9525.0230, 9525.0240, 9525.0250, 9525.0260, 9525.0270, 9525.0280, 9525.0290, 9525.0300, 9525.0310, 9525.0320, 9525.0330, 9525.0340and 9525.0350 were repealed after the promulgation of current parts 9525.1800 to 9525.1930. It is reasonable to update rule language as other rule parts are amended or repealed.

PART 9525.1870 PROVIDER CONTRACTS AND SUBCONTRACTS.

Subpart 1. **Contracts.** It is necessary to amend this subpart to be consistent with current rule references. When parts 9525.1800 to 9525.1930 were originally promulgated in 1985, as indicated in the current language, parts 9550.0010 to 9550.0092 (Rule 160) were being proposed by the Department. Rule 160 was subsequently adopted in 1986 and now has a permanent rule status. Therefore, it is reasonable to amend this subpart to assure the correct reference to rule parts. Since parts 9550.0010 to 9550.0092 governs the general administration of public social services, it is necessary and reasonable to inform county boards and providers that contracts between providers and the host counties are required for services to be reimbursed under parts 9525.1800 to 9525.1930 and that such contracts must be developed according to parts 9550.0010 to 9550.0092.

PART 9525.1880 COUNTY PROPOSAL AND APPROVAL OF COUNTY PROPOSAL.

The amendments in this part are necessary to inform the county board of the current requirements for county proposals to provide home and community-based services. It is reasonable to advise county boards in the rule of changes that have occurred in the proposal process since the original promulgation of parts 9525.1800 to 9525.1930. The amendments in this part deleting references to the *Welsch v. Levine* consent decree are necessary because this decree has been settled. It is reasonable to delete references to decrees and other such matters that are no longer in effect.

The amendments in this part replacing the term "state-operated ICFs/MR" with "regional treatment centers" are necessary to be consistent with current terminology used in other department rules governing state facilities. ICF/MR is the certification required for federal participation in funding. Regional treatment centers have ICF/MR certifications for "beds" in their developmental disabilities units. There is currently a moratorium on the development of ICF/MR capacity. Waivered services provide a cost efficient alternative to ICF/MR services by converting medical assistance funding from ICF/MR to waivered services. This allows purchase of the types of services available in an ICF/MR facility and provide them to a person living in a variety of living situations. The use of waivered services conversion allocations requires a bed decertification for each allocation used. The decertification can be from any ICF/MR, whether it be a privately-owned community ICF/MR or state-operated regional treatment center. Allocations of waivered services are granted according to county proposals describing how this use is an alternative to ICF/MR development and assurances that waiver use will result in ICF/MR bed decertification according to federal requirements and the state waiver plan.

Subpart 2. **Contents of county proposal.** It is necessary to amend this subpart to be consistent with current practice. This amendment deletes the need for a separate statement of county goals and rather incorporates review of the CSSA plan in order to avoid duplication of effort. By amending this subpart to provide that the department may consider the county goals and objectives set forth in the CSSA plan, the determination of need, and the redetermination of need, duplication of information required is greatly diminished. It is reasonable to amend rule language to provide for a more time-efficient and cost-efficient methodology. This subpart is further reasonable because while avoiding unnecessary duplicative efforts by the county, it at the same time allows enough flexibility for the Department to request additional information where deemed necessary.

Subpart 3. **Review and approval of proposal.** It is necessary to amend item C by adding the qualifying statement "...located on regional treatment center campuses and in the community;", to provide clarification. With the onset of the department's development of state-operated community services (SOCS), it is necessary to specify that this requirement is applicable to private and state-operated ICF/MR beds in the community as well as those located on regional treatment centers. Since SOCS were not in existence at the time the current rule parts were promulgated, it is reasonable to amend this subpart to be consistent with the current state of services in Minnesota.

PART 9525.1890 ALLOCATION OF HOME AND COMMUNITY-BASED SERVICE MONEY.

Subpart 1. **Allocation of diversions.** Amendment of this subpart by replacing "state-operated" with "regional treatment centers" is necessary and reasonable for the reasons stated in part 9525.1880.

Subpart 2. **Allocation of conversions.** Amendment of this subpart by replacing the term "placements" with the term "conversions" is necessary and reasonable for the reasons specified in part 9525.1800, subpart 5b.

Subpart 4. **Review of allocation; reallocation.** Amendment of this subpart is necessary to incorporate a more effective and practical period of review. Since the promulgation of parts 9525.1800 to 9525.1930, the Department has been advised that from a county perspective, quarterly allocations are not practical. Replacing the quarterly review requirement with the phrase "... at least semi-annually...", provides the Department as well as counties with increased flexibility to reallocate while at the same time allowing the department to better respond to county need. Such ability to adjust the allocations as necessary serves to maximize the use of home and community-based services.

Subpart 6. **Special projects.** It is necessary to amend this subpart to incorporate provision for the ACS waiver, the Department's management of Enhanced Waivered Services Funding, and other projects that arise in the future. It is reasonable to require the Department to develop procedures and criteria for allocation of home and community-based program funds for each group identified as a special project where the Department manages the allocation process. It is necessary to develop special projects to assist counties in providing services to persons with complex needs for whom counties are unable to provide waivered services within the statewide average reimbursement rate. This subpart is reasonable as it provides the commissioner with the ability to establish projects to meet needs of persons with mental retardation or related conditions.

Examples of special projects are: (1) Commissioner's Special Projects, which provide a higher reimbursement rate for individuals who meet the criteria established in the rule. (2) Enhanced Waivered Services funding which provides enhanced rates for the purchase of services to meet the needs of persons moving from regional treatment centers to a community setting with waivered services. The Department manages the average level of reimbursement to facilitate use of the funds for differing levels of services without affecting county average reimbursement rates. (3) The ACS waiver's allowable average is managed by the Department for the same reasons as the Enhanced Waivered Services funding.

The purpose of special projects funds is to better serve very dependent persons with special needs. It is reasonable to establish special projects for this group since because it may be difficult for county boards to serve such persons within the statewide average reimbursement rate. This subpart is reasonable because it provides the commissioner with the ability to establish programs to meet these special needs.

PART 9525.1900 AGREEMENT BETWEEN STATE AND COUNTY.

Subpart 1. **Contents of agreement.** It is necessary to amend this subpart in order to include provision for written agreements specific to the ACS waiver plan as well as the MR/RC waiver plan. Since the ACS waiver did not exist when the current parts 9525.1800 to 9525.1930 were promulgated, it is necessary to update the rule to reflect the fact that two waiver plans now exist in Minnesota. It is necessary to notify the county board that it must have a legally binding written agreement with the state with respect to each of the waiver plans in order to receive home and community-based services monies. It is reasonable to update rule language as changes occur in federal regulations.

It is necessary to amend item E in order to assure the use of current references to other department rules. Minnesota Rules, parts 9505.1750 to 9505.2150 as referenced in the current language, were repealed and replaced by parts 9505.2160 to 9505.2245. It is reasonable to update rule language as other department rules are repealed or promulgated.

It is necessary to amend item F to update the reference to other department rules. Parts 9525.0015 to 9525.0165 (Rule 185) currently govern county case management services. At the time parts 9525.1800 to 9525.1930 were originally promulgated, Rule 185 was effective in emergency form only. It was later afforded permanent status as parts 9525.0015 to 9525.0165, which became effective in July of 1986. It is reasonable to update rule language to reflect the promulgation of other department rules.

PART 9525.1910 COUNTY BOARD FUNDING OF HOME AND COMMUNITY-BASED SERVICES.

Subpart 4. **Cost limitations.** It is necessary to amend this subpart by adding the language "...counties may authorize..." for clarification purposes. Counties authorize the level of funding for the MR/RC waiver, whereas the Department authorizes funds for the ACS waiver and special projects, including Enhanced Funding. This amendment is reasonable because it incorporates provision for the ACS waiver and reflects the current status of authorization for waivered services.

It is necessary to amend item B to clarify county responsibility to maintain average level of spending for persons receiving waivered services. Counties may not exceed the county allowable average reimbursement rate for all persons for whom they have financial responsibility receiving MR/RC waivered services, unless authorized to do so by the Department for a person funded through special project funding. This means that the Department may authorize specific levels of spending for specified individuals through certain projects that hold counties harmless for spending that causes them to exceed their average. Examples include Commissioner's Special Project phase-out plans and persons receiving Enhanced Waivered Services Funding. Counties may not exceed the level of spending authorized by the Department for any individual funded through a special project. In addition, counties may not exceed the level of spending that is authorized for each individual receiving ACS waivered services funding. This is necessary as the Department must manage the level of funding for special projects and the ACS waiver under certain federally-approved limits.

PART 9525.1920 REQUIRED RECORDS AND REPORTS.

Amendments in this part replacing rule parts 9505.1750 to 9505.2150 with proposed parts 9505.2160 to 9505.2245 are necessary and reasonable for the reasons stated in part 9525.1910, item E.

PART 9525.1930 PENALTIES AND APPEALS.

Subpart 2. **Exception.** It is necessary to repeal this subpart because the original provision for an exception of until January 1,1986 has expired. A provision for an exception is no longer required since counties and providers have been notified of the rule since 1985 and have had adequate time to comply with its requirements. It is reasonable to delete exceptions that are no longer necessary and are obsolete in order to make rule language consistent with current requirements.

PART 9525.2010 DEFINITIONS.

Subpart 34. **Supported Living Services for Children.** It is necessary to amend this definition to assure that parts 9525.1800 to 9525.1930 (Rule 41) and parts 9525.2000 to 9525.2140 (Rule 41) are consistent. This definition is amended by changing the capacity for supported living services for children from three to four children. As stated in part 9525.1800, subpart 26b, this amendment is reasonable because it is consistent with department rules which governs the licensure of family foster care and group family foster care. The need and reasonableness for this amendment is stated further in part 9525.1800, subpart 26b.

EXPERT WITNESSES/SMALL BUSINESS

If this rule is heard in a pubic hearing, the Department does not intend to have expert witnesses testify on its behalf. The proposed rule amendments do not affect small businesses as defined in Minnesota Statutes, section 14.115.

AGRICULTURAL LAND

The proposed rule amendments do not have a direct or substantial adverse effect on agricultural land as defined in Minnesota Statutes, section 17.81, subdivision 3 and referenced in Minnesota Statutes, section 14.11, subdivision 2.

CONCLUSIONS

The foregoing statements address the need and reasonableness of the proposed amendments to parts 9525.1800 to 9525.1930 and 9525.2010, subpart 34. To a great extent the need for amendment of these parts are prescribed by state statute, federal requirements under the MR/RC and ACS waivers, and the responsibility of the Minnesota Department of Human Services to exercise prudent management of waivered services funding.

DATE: 8-2-91, 1991

Natalie Haas Steffen, Commissioner
Department of Human Services

e fixed quickly ga OK AHHH THAT S FINE I LL HAVE TO CONTACT THE FOLKS AT THE DEPT TO SX X TRY TO SET UP SOMETHI-NG MONDAY I THINK THEV ARE AVBLE THEY WERE TRYOING TO SET SOMETH-ING UP ON MONDAY WAS THE DELEGARTION THE ONLY PROBLEM WAS THERE AREXX OTHER PROB-LEMS QQ GA no, but that same problem is repeated four times, what they ve done is say this is the standard or say these folks must be licensed, unless quote " unless otherwise authorized by the commissioner " so in other words, some folks are licensed, and if the commissioner quote auth-orizes it, other folks are not, that is delega-ted a standard to the commissioner, there eit-her has to be a standard , or that delegation is deleted, so thats the basic problem, rule gives the commissioner too much authority without guidlines or criteria, ga OK I UNDERSTADN AHHH FIRST I JSUT APO-LOGIZE TAHT IT GOT THRU EHRE WITHOUT CATCHING THAT I AM NOT SURE WHAT WE NEED TO DO THERE IF U SUGGEST AMRTY TAHT I WITHDRA AT THSI TIME THAT IS HOW WE WUIOXXX WILL PROCEED AHHH LET S DO IT THEN I WILL WITHDRAW THE RULE AT THIS TIME ON BEHLAF ODX-XOF THE APXX DEPARTMENT AND PERHAPS ON MONDAY WE CAN DISCUSS THE PROCEDURE WE CAN FOLL-OW TO GET THIS RULE MOVING FOR APPROAITE M APPROVAL GA sounds good, it may turn out at meeting you guys can show me you have author-ity or explain it to me, then theres no problem, i just think a meeting is the best way, ok dave , um, what i need , lik-ely monday, is a piece of paper, signed by the commissioner or whomever is authorized to sign these, liekly a deputy commissioner if commiss-ioner isnt available, is a document saying on november 27, the depart-ment withdrew this such and such rule , from consideration by the attorney general, period

consideration by the attorney general. period , then might say something like, the rule will be re submitted once the attorney general concerns are addressed, or like language, technically im supposed to have something in writing, but if i get it early next week, that should be fine, it can be dated next week, but say, on nov. 27th, the rule was withdrawn, , so that would take care of our immediate time line, this is done all the time by the way, so, no big deal , then on monday or whatever we can meet to go over the rule problems, how about this dave, i fax to you the four sections i have problems with that way you can see it, and it ll be easier for you to see them, rather than do on phone ok ? ga YEAH THAT IS FIEN AND I CAN HAVE I CAN ATTMEP TO TO GET AHOLD OF THE DEPT EPOPLE AND SET A UPA MEETING SOMETIME ON MONDAY HOW ABOUT I GET AHOLD OF U MONDAY MORNING AND LET U KNWO WHAT WE CANME UP OWHT AS FAR AS COMEING UP WITH AMEETING FOR MONDAY OO GA sounds good, im free all day so just name the time, ok dave, again i do apollgize for the 4 30 phone call here, i got screwed up on the deadline, and thought it was due next wed. not today, not a great excuse, but, anyhow, ill await your call monday morning, and in mean time fax you the four rule problems. ga THAT IS FINE AGIAN I AM SORRY THAT THE PROBLEMS WERE CAUGHT HERE IF THEY WERE WE WOULDNT HAVE TO WORRY ABOUT TODAY DEADLINE I WILL TRY TO GET AHOLD OF THE DPET PEOPLE TODAY BUT I ASSUEM THATV THEY ARE ALREADY GOEN I THINKPROB MONDAY BUT WILL ATTEMPT TO GET A HOLD OF THEM AND GET BACK TO U ON MONDAY MORMING THEN GA sounds good, ok thanks dave, and have a nice thanksgiving weekend and all ga to sk OK FINE HAVE A NICE THNKSGIVING TOO GA TO

STATE OF MINNESOTA

DEPARTMENT OF HUMAN SERVICES

In the Matter of the Proposed Adoption of the Rule of the State Department of Human Services Governing Funding and Administration of Home and Community-Based Services, parts 9525.1800 to 9525.1930 and part 9525.2010, subpart 34.	FINDINGS OF FACT, CONCLUSIONS, AND ORDER ADOPTING RULE WITHOUT PUBLIC HEARING

(1) Notice of the Commissioner's intent to adopt the above-entitled rule was published in the State Register on August 19, 1991 and was sent by United States mail to all persons on the list maintained by the agency pursuant to Minnesota Statutes, sections 14.14, subdivision 1a and 14.22, on August 14, 1991. (2) 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.

(4) All persons were given the opportunity to submit comment on the rule for 30 days after notice of proposed rulemaking. (5) The agency received two (2) requests for a public hearing, of which none were subsequently withdrawn. Therefore, the agency did not receive requests for a public hearing from 25 or more persons which were not withdrawn. No requests for notice of submission to the Attorney General were received by the agency. (7)

FINDINGS OF FACT

(6) Based on the comments and evidence in the record before the agency, I find the following:

1. Anne Henry, Legal Advocacy for Persons with Developmental Disabilities, commented by telephone that part 9525.1860, subpart 7, item B, contained a typographical error. Specifically, Ms. Henry requested that the reference to parts 9555.6105 to 9555.6265 be corrected to refer instead to parts 9555.5105 to 9555.6265 on the basis that this is the correct citation to the complete rule that governs adult foster care services and licensure of adult foster care services. Ms. Henry suggested that referencing only a portion of the rule may be confusing.

FINDINGS: The Department is modifying the proposed rule at part 9525.1860, subpart 7, item B, to reference parts 9555.5105 to 9555.6265, which is the correct and complete citation to the rule governing adult foster care services and licensure of adult foster care services. The reason for accepting the modification is that the rule as proposed contained a typographical error referring to part 9555.6105 rather than 9555.5105. It was the Department's intent to reference the entire adult foster care rule under parts 9555.5105 to 9555.6265.

Department of Human Services

Proposed Permanent Rules Relating to Home and Community-Based Services

Rules as Proposed

9525.1800 DEFINITIONS.

[For text of subpart 1, see M.R.]

Subp. 1a. **Adaptive modifications and equipment.** "Adaptive modifications and equipment" means one or more of the structural changes to the person's residence or an eligible vehicle, or specialized equipment or devices. Adaptive modifications and equipment must be designed to enable the person to avoid placement in an ICF/MR by increasing the person's mobility or protecting the person or other individuals from injury. Adaptive modifications and equipment are only reimbursable for persons with physical disabilities, sensory deficits, or behavior problems. Adaptive modifications and equipment are limited to those that have been approved by the United States Department of Health and Human Services as part of Minnesota's alternative community services and MR/RC waiver plans.

Subp. 1b. **Alternative community services waiver plan or ACS waiver.** "Alternative community services waiver plan" or "ACS waiver" means a waiver of requirements under United States Code, title 42, sections 1396 et. seq., that allows the state to pay for home and community-based services for persons with mental retardation or related conditions who are determined by the Department of Human Services to be inappropriately placed in Medicaid-certified nursing facilities through the medical assistance program. This term includes all amendments to the waiver as approved by the United States Department of Health and Human Services.

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

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service.

Subp. 3. **Case manager.** "Case manager" means the person designated by the county board to provide case management services as defined in ~~part 9525.1860~~ subpart 4a.

Subp. 4. [See repealer.]

Subp. 4a. **Case management.** "Case management" means identifying the need for, seeking out, acquiring, and coordinating services to persons with mental retardation or related conditions and monitoring the delivery of the services to persons with mental retardation or related conditions by an individual designated by the county board to provide case management services under parts 9525.0015 to 9525.0165.

[For text of subp 5, see M.R.]

Subp. 5a. **Community social services administration plan or CSSA plan.** "Community social services administration plan" or "CSSA plan" means the biennial community social services plan required of the county board by Minnesota Statutes, section 256E.09, subdivision 3.

Subp. 5b. **Conversion.** "Conversion" means the provision of home and community-based services to a person discharged from an ICF/MR directly into those services, resulting in decertification of an ICF/MR bed under Minnesota Statutes, section 252.28, subdivision 4.

[For text of subp 6, see M.R.]

Subp. 7. **County of financial responsibility.** "County of financial responsibility" has the meaning given it in Minnesota Statutes, section ~~256B.02~~ 256G.02, subdivision ~~3~~ 4.

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

Subp. 8a. **Day training and habilitation.** "Day training and habilitation" has the meaning given to "training and

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habilitation services" in part 9525.1500, subpart 36.

[For text of subps 9 and 10, see M.R.]

Subp. 10a. **Eligible vehicle.** "Eligible vehicle" means a vehicle owned by the person, the person's family, or the person's primary caregiver with whom the person resides.

[For text of subps 11 and 12, see M.R.]

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

Subp. 13a. **Habilitation services.** "Habilitation services" means health and social services directed toward increasing and maintaining the physical, intellectual, emotional, and social functioning of persons with mental retardation or related conditions. Habilitation services include therapeutic activities, assistance, training, supervision, and monitoring in the areas of self-care, sensory and motor development, interpersonal skills, communication, socialization, reduction or elimination of maladaptive behavior, community living and mobility, health care, leisure and recreation, money management, and household chores. Day training and habilitation services and residential-based habilitation services are types of habilitation services.

Subp. 14. **Home and community-based services.** "Home and community-based services" means ~~the following~~ services ~~which are~~ provided to persons with mental retardation ~~if the services~~, or related conditions that are authorized under United States Code, title 42, section 1396 et. seq., and ~~authorized under~~ the ~~waiver~~ MR/RC and ACS waivers granted by the United States Department of Health and Human Services~~: case management, respite care, homemaker, in-home family support services, supported living arrangements for children, supported living arrangements for adults, day habilitation, and minor physical adaptations to the home, as defined in part 9525.1860, and other home and community based services authorized under United States Code, title 42, section 1396 et seq., if approved for Minnesota by the~~

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by Revisor _____

~~United States Department of Health and Human Services.~~

Subp. 14a. **Homemaker services.** "Homemaker services" means general household activities and ongoing monitoring of the person's well-being provided by a homemaker who meets the standards in parts 9565.1000 to 9565.1300.

[For text of subp 15, see M.R.]

Subp. 16. [See repealer.]

Subp. 17. **Individual service plan.** "Individual service plan" has the meaning given it in ~~parts 9525.0015 to 9525.0145 [Emergency]~~ Minnesota Statutes, section 256B.092, subdivision 1b.

Subp. 17a. **In-home family support services.** "In-home family support services" means residential-based habilitation services designed to enable the person to remain in the family home and may include training and counseling for the person and the person's family.

[For text of subp 18, see M.R.]

Subp. 19. [See repealer.]

Subp. 19a. **Leave days.** "Leave days" means days when a person is temporarily absent from services.

Subp. 19b. **Mental retardation or related condition or MR/RC.** "Mental retardation or related condition" or "MR/RC" has the meaning given to "mental retardation" in part 9525.0015, subpart 20, items A and B, and the meaning given to a "related condition" in Minnesota Statutes, section 252.27, subdivision 1a.

Subp. 19c. **Nursing facility.** "Nursing facility" means a facility licensed under Minnesota Statutes, chapter 144A, that is certified by the Minnesota Department of Health under title XVIII or XIX of the Social Security Act.

Subp. 19d. **Person.** "Person" means a person with mental retardation or a related condition, as defined in subpart 19b, who is receiving home and community-based services through either the MR/RC or ACS waiver plan.

Subp. 20. **Primary caregiver.** "Primary caregiver" means a person other than a member of the ~~client's~~ person's family who has primary responsibility for the assistance, supervision, or training of the ~~client~~ person in the ~~client's~~ person's

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residence.

[For text of subp 21, see M.R.]

Subp. 21a. **Residential-based habilitation services.** "Residential-based habilitation services" means services provided in the person's residence and in the community, that are directed toward increasing and maintaining the person's physical, intellectual, emotional, and social functioning. Residential-based habilitation services include therapeutic activities, assistance, counseling, training, supervision, and monitoring in the areas of self-care, sensory and motor development, interpersonal skills, communication, socialization, working, reduction or elimination of maladaptive behavior, community participation and mobility, healthcare, leisure and recreation, money management, and household chores. Supported living services and in-home family support services are residential-based habilitation services.

Subp. 21b. **Respite care.** "Respite care" means short-term supervision, assistance, and care provided to a person due to the temporary absence or need for relief of the person's family, foster family, or primary caregiver. Respite care may include day, overnight, in-home, or out-of-home services, as needed.

Subp. 22. **Room and board costs.** "Room and board costs" means costs associated with providing food, shelter, and personal needs items for ~~clients~~ persons, including the directly identifiable costs of:

[For text of items A to E, see M.R.]

Subp. 23. **Screening team.** "Screening team" means the team established under Minnesota Statutes, section 256B.092, subdivision 7, to evaluate a person's need for home and community-based services.

[For text of subp 24, see M.R.]

Subp. 25. **Short term.** "Short term" means a cumulative total of less than 90 24-hour days or 2,160 hours in a fiscal year. Additional hours may be authorized by the commissioner as approved in the current waiver plans.

Subp. 26. **Statewide average reimbursement rate.**

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"Statewide average reimbursement rate" means the dollar amount arrived at by dividing the total amount of money available under the waiver for the fiscal year by 365 days and then dividing the quotient by the department's projection of the total number of ~~clients~~ persons to receive home and community-based services as stated in the waiver for that fiscal year.

Subp. 26a. **Supported living services for adults.** "Supported living services for adults" means residential-based habilitation services provided on a daily basis to adults living in a service site for up to six persons.

Subp. 26b. **Supported living services for children.** "Supported living services for children" means residential-based habilitation services provided on a daily basis to persons under 18 years of age living in a service site for up to four persons.

Subp. 27. **Title XIX home and community-based waivered services for persons with mental retardation or related conditions or the MR/RC waiver plan.** "Title XIX home and community-based waivered services for persons with mental retardation or related conditions" or the "MR/RC waiver plan" means the waiver of requirements under United States Code, title 42, sections 1396 et seq., which allows the state to pay for home and community-based services for persons with mental retardation or related conditions through the medical assistance program. The term includes all amendments to the waiver including any amendments made after ~~October 1, 1985~~ the effective date of the last waiver plan, as approved by the United States Department of Health and Human Services under United States Code, title 42, section 1396 et. seq.

9525.1810 APPLICABILITY AND EFFECT.

[For text of subpart 1, see M.R.]

Subp. 2. **Effect.** The entire application of parts 9525.1800 to 9525.1930 shall continue in effect only as long as the MR/RC or ACS waiver from the United States Department of Health and Human Services is in effect in Minnesota.

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9525.1820 ELIGIBILITY.

Subpart 1. **Eligibility criteria for MR/RC waiver.** A person is eligible to receive home and community-based services through the MR/RC waiver if the person meets all the criteria in items A to ~~D~~ E and if home and community-based services ~~may be~~ are provided ~~in accordance with~~ according to part 9525.1830:

A. the person is ~~eligible to receive medical assistance under Minnesota Statutes, chapter 256B or subpart 2~~ a resident of an ICF/MR or the screening team determines that the person would be placed in an ICF/MR within one year if home and community-based services were not provided;

B. the person is determined to be a person with mental retardation ~~or a related condition in accordance with~~ according to the definitions and procedures in parts 9525.0015 to ~~9525.0145 (Emergency)~~ 9525.0165 or the person is determined to be a person with a related condition as defined in Minnesota Statutes, section 252.27, subdivision 1a;

C. the person is ~~a resident of an ICF/MR or it is determined by the screening team that the person would be placed in an ICF/MR within one year if home and community-based services were not provided~~ eligible to receive medical assistance under Minnesota Statutes, chapter 256B, or subpart 2; ~~and~~

D. the screening team has determined that the person needs daily intervention; and

E. the person's individual service plan documents the need for daily intervention and specifies the services needed daily.

Subp. 1a. **Eligibility criteria for the ACS waiver.** A person is eligible to receive home and community-based services through the ACS waiver if the person meets all requirements in subpart 1, items B to E, and:

A. was admitted to a Medicaid-certified nursing facility before January 1, 1990, or amended date as approved by

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the Health Care and Finance Administration; and

B. is currently residing in a Medicaid-certified nursing facility, but has been determined by the screening team as requiring ICF/MR level of care.

Subp. 2. **Medical assistance eligibility for children residing with their parents.** The county board shall determine eligibility for medical assistance for a person under age 18 who resides with a parent or parents without considering parental income and resources if:

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

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

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

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

Subp. 3. **Beginning date.** Eligibility for medical assistance begins on the first day of the month in which the ~~client~~ person first receives home and community-based services.

9525.1830 PROVISION OF HOME AND COMMUNITY-BASED SERVICES.

Subpart 1. **Conditions.** The county board shall provide or arrange to provide home and community-based services to a person if the person is eligible for home and community-based services under part 9525.1820 and all the conditions in items A to F have been met:

A. the county board has determined that it can provide home and community-based services to the person within its allocation of home and community-based services money as determined under parts 9525.1890 and 9525.1910 or as authorized by the commissioner based on the limits of the approved waiver plan;

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B. the screening team has recommended home and community-based services instead of ICF/MR services for the person under parts 9525.0015 to ~~9525.0145 [Emergency]~~ 9525.0165;

[For text of items C to F, see M.R.]

[For text of subp 2, see M.R.]

9525.1840 PARENTAL CONTRIBUTION FEE.

Subpart 1. **Out-of-home placements.** The parent or parents of a ~~client~~ person under age 18 shall be liable for a parental contribution fee determined according to Minnesota Statutes, ~~section~~ sections 252.27, subdivision 2, and 256B.14, if the ~~client~~ person resides outside the home of the parent or parents.

Subp. 2. **In-home services.** Parents of ~~clients~~ persons under age 18 may be liable for a parental contribution fee determined according to Minnesota Statutes, ~~section~~ sections 252.27, subdivision 2, and 256B.14, if the ~~client~~ person is residing with a parent and the ~~client's~~ person's medical assistance eligibility for home and community-based services was determined without considering parental income or resources under part 9525.1820, subpart 2.

9525.1850 PROVIDER REIMBURSEMENT.

A provider may receive medical assistance reimbursement for home and community-based services only if the provider meets the criteria in items A to ~~J~~ K. The training, experience, and supervision required in items B to E only apply to persons who are employed by, or under contract with, the provider to provide services that can be billed under part 9525.1860, subpart 3, item A. Providers licensed under parts 9525.0215 to 9525.0355; 9525.1500 to 9525.1690; and 9525.2000 to 9525.2140 are exempt from items C, D, and E.

[For text of items A and B, see M.R.]

C. If no training standards have been established, the provider, employee, or subcontractor must have completed, within the last two years, at least 24 hours of documented training. The training must be in areas related to the care, supervision, or training of persons with mental retardation or

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related conditions including first aid, medication administration, behavior management, cardiopulmonary resuscitation, human development, and obligations under Minnesota Statutes, sections 626.556 and 626.557. The county board may grant a written variance to the training requirements in this item for:

(1) a respite care provider who provides the respite care in his or her residence or in the ~~client's~~ person's residence; or

(2) a provider who ensures that the training will be completed within six months of the date the contract is signed.

This item does not apply to providers of ~~minor physical adaptations~~ adaptive modifications and equipment.

~~C.~~ D. The provider ensures that the provider and all employees or subcontractors have at least one year of experience within the last five years in the care, training, or supervision of persons with mental retardation or related conditions as defined in Minnesota Statutes, section 252.27. The county board may grant a written variance to the requirements in this item for:

(1) a respite care provider who provides the respite care in his or her residence or in the ~~client's~~ person's residence;

(2) a provider, employee, or subcontractor who is a qualified mental retardation professional who meets the requirements in Code of Federal Regulations, title 42, section 442.401 and has been approved by the case manager; or

(3) an employee of the provider if the employee will work under the direct on-site supervision of a qualified mental retardation professional who meets the requirements in Code of Federal Regulations, title 42, section 442.401, and who has been approved by the case manager.

This item does not apply to providers of ~~minor physical adaptations~~ adaptive modifications and equipment or homemaker services.

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

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

~~F.~~ G. The provider ensures that the provider and all employees or subcontractors have never been convicted of a violation, or admitted violating Minnesota Statutes, section 626.556 or 626.557 and there is no substantial evidence that the provider, employees, or subcontractors have violated Minnesota Statutes, section 626.556 or 626.557.

~~G.~~ H. The provider has a legally binding contract with the host county that complies with part 9525.1870.

~~H.~~ I. The provider has been authorized in writing to provide home and community-based services for the ~~client~~ person

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by the county of financial responsibility.

~~I.~~ J. The provider agrees in writing to comply with United States Code, title 42, sections 1396 et seq., and regulations implementing those sections and with applicable provisions in parts ~~9500.0750 to 9500.1080, 9505.1750 to 9505.2150,~~ 9505.2160 to 9505.2245 and 9525.1800 to 9525.1930.

~~J.~~ K. The provider is not the ~~client's~~ person's guardian or a member of the ~~client's~~ person's family. This item does not preclude the county board from providing services if the ~~client~~ person is a ward of the commissioner.

9525.1860 REIMBURSABLE SERVICES.

Subpart 1. **General limits.** ~~The costs of providing the home and community based services defined in subpart 2, provided in accordance with subparts 3 to 7, are reimbursable under the medical assistance program for as long as the waiver from the United States Department of Health and Human Services is in effect in Minnesota.~~ Only costs for services listed in the approved Minnesota MR/RC or ACS waiver plan shall be reimbursed under the medical assistance program.

A. Services reimbursable through the MR/RC waiver plan are:

(1) case management;

(2) residential habilitation services including in-home family support, supported living services for adults, and supported living services for children;

(3) day training and habilitation, including supported employment;

(4) homemaker services;

(5) respite care; and

(6) minor adaptations and equipment.

B. Services reimbursable through the ACS waiver plan are:

(1) residential habilitation services including in-home family support, supported living services for adults, and supported living services for children;

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(2) day training and habilitation, including supported employment;

(3) homemaker services;

(4) respite care; and

(5) adaptive modifications and equipment.

Subp. 2. [See repealer.]

Subp. 3. **Billing for services.** Billings submitted by the provider, except a provider of ~~minor physical adaptations~~ adaptive modifications and equipment, must be limited to time actually and reasonably spent:

A. In direct contact with the ~~client~~ person to assist the ~~client~~ person in attaining the goals and objectives specified in the ~~client's~~ person's individual service plan. Direct contact time includes time spent traveling to and from service sites.

B. In verbal or written contact with professionals or others regarding the ~~client's~~ person's progress in attaining the goals and objectives specified in the ~~client's~~ person's individual service plan.

C. In planning activities including attending the ~~client's~~ person's interdisciplinary team meetings, developing goals and objectives for the ~~client's individual habilitation~~ person's individual service plan, assessing and reviewing the ~~client's~~ person's specified goals and objectives, documenting the ~~client's~~ person's progress toward attaining the goals and objectives in the ~~client's~~ person's individual service plan and assessing the adequacy of the services related to the goals and objectives in the ~~client's~~ person's individual service plan.

Subp. 4. **Service limitations.** The provision of home and community-based services is limited as stated in items A to H.

A. Case management services may be provided as a single service for a period of no more than 90 days.

B. Day training and habilitation services must:

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

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

(3) be provided at a different service site than the ~~client's~~ person's place of residence unless medically contraindicated, as required in Minnesota Statutes, section ~~256B.501~~ 252.41, subdivision ~~1, paragraph (d)~~ 3; and

(4) be provided by an organization that does not have a direct or indirect financial interest in the organization that provides the ~~client's~~ person's residential services unless the ~~client~~ person is residing with:

(a) his or her family; or

(b) a foster family that does not have a direct or indirect financial interest in the organization that provides the ~~client's~~ person's residential services.

C. Homemaker services may be provided only if:

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

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

D. Leave days are reimbursable for supported living ~~arrangements~~ services for children or supported living ~~arrangements~~ services for adults~~, if the client intends to return to the service~~. If the person is not receiving respite care or other supported living services, billings may be made for leave days ~~only~~ when the ~~client~~ person is:

(1) hospitalized;

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

(3) home for a visit.

Leave days that are not included in the individual service

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plan may not be billed for without the county board's written authorization. The county board and the provider must document all leave days for which billings are made and specify the reasons the county board authorized the leave days.

E. The average dollar amount available for reimbursement for ~~minor physical adaptations to the~~ home adaptive modifications and equipment shall be ~~limited to an average cost of $3,111 per client for all clients in the county in fiscal year 1986. The average cost will be increased each fiscal year based on the first quarter forecast of the projected percentage change in the annual value of the all urban consumer price index, (CPI-U) for Minneapolis Saint Paul as published by the Bureau of Labor Statistics new series index (1967=100), from the preceding fiscal year. The CPI-U is incorporated by reference and is available from the Minitex Interlibrary Loan System. The average cost limitation applies to the entire period of time for which the waiver has been approved. Minor physical adaptations to the home must be limited to the purchase and installation of one or more of the following:~~

~~(1) wheelchair ramps;~~

~~(2) handrails and grab bars;~~

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

~~(4) widened doorways;~~

~~(5) shatterproof windows;~~

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

~~(7) door handle replacements;~~

~~(8) lowered kitchen work surfaces;~~

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

~~(10) handles and hoses for showerheads;~~

~~(11) door hinge replacements;~~

~~(12) shower and bathtub seats; or~~

~~(13) other minor physical adaptations authorized under United States Code, title 42, section 1396 et seq., if approved for Minnesota by the United States Department of Health~~

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~~and-Human-Services~~ determined annually by the commissioner based on the approved waiver plan.

~~Minor-physical-adaptations~~ Adaptive modifications and equipment must be constructed ~~in-accordance-with~~ or installed to meet or exceed applicable federal, state, and local building codes.

F. Home and community-based services are not reimbursable if provided to a ~~client~~ person while the ~~client~~ person is a resident of or on leave from an ICF/MR, skilled nursing facility, intermediate care facility, or a hospital. This item shall not apply to leave days authorized ~~in-accordance with~~ according to item C for a ~~client~~ person who is hospitalized.

G. Respite care must:

(1) be provided only for the relief of the ~~client's~~ person's family or foster family, or if the ~~client~~ person is ~~in~~ receiving a supported living ~~arrangement~~ service in the provider's residence, for the relief of the ~~client's~~ person's primary caregiver; and

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

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

H. Room and board costs are not allowable costs for home and community-based services except respite care provided out of the ~~client's~~ person's residence. All room and board costs must be directly identified on reports submitted by the provider to the county board.

Subp. 5. [See repealer.]

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Subp. 5a. **Other medical or related costs.** The cost of other medical or related services reimbursable under the Minnesota State Medicaid Plan must not be included in the rate or rates billed by the provider or providers for reimbursement under parts 9525.1800 to 9525.1930.

Subp. 6. **Other applicable rules.** Home and community-based services must be provided as required under items A to ~~E~~ H unless a variance has been approved ~~in-accordance with-subpart-7~~ by the commissioner.

[For text of item A, see M.R.]

B. Day ~~habilitation-and~~ training and habilitation services must be licensed by the department.

C. Supported living ~~arrangements~~ services for children must be provided ~~at~~ by a service ~~site~~ provider licensed under parts ~~9545.0010~~ 9525.2000 to ~~9545.0260~~ 9525.2140 and at a site licensed under parts 9545.0010 to 9545.0260.

D. Supported living ~~arrangements-for-adults-which-are provided-in~~ services provided at a service site serving four or fewer adults must be provided by a service provider licensed under parts 9525.2000 to 9525.2140 and the residence must be licensed under parts 9555.5105 to 9555.6265. Supported living services provided at a single residence serving ~~more-than four~~ five or six adults must be licensed under parts ~~9525.0210~~ 9525.0215 to ~~9525.0430~~ 9525.0355. ~~Supported-living arrangements-provided-at-a-service-site-for-four-or-fewer-adults must-be-approved-under-parts-9555.6100-to-9555.6400,-9545.0090, item-A,-9545.0140,-9545.0100,-and-9545.0190,-subparts-3-and-5. In-approving-supported-living-arrangements-provided-at-a-service site-for-four-or-fewer-adults,-the-county-board-shall-apply-the criteria-in-parts-9545.0090,-item-A,-9545.0140,-9545.0100,-and 9545.0190,-subparts-3-and-5-as-though-the-criteria-had-been written-to-apply-to-services-for-adults.~~

E. Respite care provided at a service site serving more than four ~~clients~~ persons must be licensed under parts ~~9525.0210~~ 9525.0215 to ~~9525.0430~~ 9525.0355. Respite care provided at a service site serving four or fewer ~~clients~~ persons

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under 18 years of age must be licensed under parts 9545.0010 to 9545.0260, unless otherwise authorized by the commissioner. Respite care provided at a service site serving four or fewer adults must be ~~approved~~ licensed under parts ~~9545.0090, item A, 9545.0140, 9545.0180, 9545.0190, subparts 3 and 5, and 9555.6100 to 9555.6400. Respite care provided at a service site for four or fewer children and adults must be approved under parts 9545.0090, item A, 9545.0140, 9545.0180, 9545.0190, subparts 3 and 5, and 9555.6100 to 9555.6400 and licensed under parts 9545.0010~~ 9555.5105 to ~~9545.0260~~ 9555.6265, unless otherwise authorized by the commissioner. This item shall not apply to a person who provides respite care for fewer than 30 days a year.

Subp. 7. **Licensing variances.** Requests for variances to the licensing requirements in subpart 6 must be handled ~~in accordance with~~ according to items A to C.

A. The county board may request a variance from compliance with parts 9545.0010 to 9545.0260 as required in subpart 6, item C, D, or E, for a provider who provides services to ~~clients~~ persons under 18 years of age if the county board determines that no providers who meet the licensing requirements are available and that granting the variance will not endanger the health, safety, or development of the ~~clients~~ persons. The written variance request must be submitted to the commissioner and must contain:

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

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

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

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

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

B. The county board may grant a written variance from compliance with parts ~~9545.0090, item A, 9545.0140, 9545.0180, 9545.0190, subparts 3 and 5, and 9555.6100~~ 9555.6105 to ~~9555.6400~~ 9555.6265 as required in subpart 6, items D and E, for a provider who provides services to adults if the county board determines that no providers who meet the licensing requirements are available and that granting the variance will not endanger the health, safety, or development of the ~~clients~~ persons.

C. Requests for a variance of the provisions in parts ~~9525.0210~~ 9525.0215 to ~~9525.0430~~ 9525.0355 must be submitted ~~in accordance with~~ according to part ~~9525.0250~~ 9525.0235, subpart 13.

9525.1870 PROVIDER CONTRACTS AND SUBCONTRACTS.

Subpart 1. **Contracts.** To receive medical assistance reimbursement for home and community-based services, the provider must have a contract developed ~~in accordance with~~ according to parts 9550.0010 to 9550.0092 ~~as proposed at State Register, Volume 9, Number 48, pages 2566 to 2576 (May 27, 1985),~~ with the host county. In addition ~~to the requirements in parts 9550.0010 to 9550.0092 as proposed at State Register, Volume 9, Number 48, pages 2566 to 2576 (May 27, 1985)~~, the contract must contain the information in items A to F and subpart 2:

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

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

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[For text of items C to F, see M.R.]

[For text of subps 2 to 4, see M.R.]

9525.1880 COUNTY PROPOSAL AND APPROVAL OF COUNTY PROPOSAL.

Subpart 1. **Application forms and deadlines.** To be considered for reimbursement under parts 9525.1800 to 9525.1930, county boards, singly or jointly, must submit to the commissioner an annual proposal for the provision of home and community-based services to ~~clients~~ persons for which the county board or county boards are financially responsible. The commissioner shall notify the county boards of the deadlines and forms for the submission of proposals for home and community-based services.

Subp. 2. **Contents of county proposal.** The proposal must be based on the needs of individually identified persons in the county and must:

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

B. identify the number of persons to whom the county board expects to provide the home and community-based services and identify, by name, recipients authorized and receiving services, individuals screened and authorized but not yet receiving services, and individuals for whom the county has received a request to receive waivered services but has not yet screened. If county boards are applying jointly, each county board must identify the number of persons for which the county is financially responsible.

The ~~proposal-must-include-the-information-in-subitems-(i) to-(6)-with-separate-listings-in-each-category-for-children-and adults~~ commissioner shall review the county community social services administration (CSSA) plan, the determination of need, and the redetermination of need for services for persons with developmental disabilities and may consider the county goals and objectives as part of the county proposal. The commissioner may also require the county boards to include the following information in the proposal:

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~~(1)~~ A. current living arrangements;

~~(2)~~ B. current day programs;

~~(3)~~ C. level of supervision required;

~~(4)~~ D. the type of home and community-based services projected to be needed and the expected duration of the service or services;

~~(5)~~ E. the projected starting dates of the home and community-based services; ~~and~~

~~(6)~~ F. the proposed service provider or providers and billing rate or rates, if known~~.~~

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

~~D.--Describe-how-the-county-board-proposal-affects-the targets-developed-by-the-department-on-admission-of-children-to state-hospitals-and-discharge-of-children-from-state-hospitals as-required-in-the-*Welsch-v.-Levine*-consent-decree.~~

~~E.--Describe;~~

G. a description of how the proposal limits the development of new community-based ICF/MR beds and reduces the county's use of existing ICF/MR beds in ~~state-operated-ICFs/~~MR regional treatment centers and community ICFs/MR, including any steps the county board has taken to encourage voluntary decertification of community-based ICF/MR beds~~.~~

~~F.--Describe;~~ and

H. a description of the steps the county board has taken to prepare to provide home and community-based services, including efforts to integrate home and community-based services into the county board's administrative services planning system.

Subp. 3. **Review and approval of proposal.** The commissioner shall review all proposals submitted ~~in-accordance with~~ according to subparts 1 and 2. The commissioner shall only approve the county proposals that meet the requirements of parts 9525.1800 to 9525.1880 and that demonstrate compliance with the goals of the department as stated in items A to D:

A. ~~compliance-with-the-county-utilization-targets~~

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~~developed by the department in accordance with the *Welsch v. Levine* consent decree;~~

~~B.~~ reduction of the number of children in ~~state-operated ICFs/MR~~ regional treatment centers;

~~C.~~ B. limitation of the development of new community-based ICF/MR beds and reduction of the use of existing ICF/MR beds ~~in state-operated ICFs/MR and community-based ICFs/MR~~ located on regional treatment center campuses and in the community; and

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

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

9525.1890 ALLOCATION OF HOME AND COMMUNITY-BASED SERVICE MONEY.

Subpart 1. **Allocation of diversions.** To allocate home and community-based services money for diversions, the commissioner shall project the number of diversions for the county based on the average of the projected utilization of ~~state-operated~~ state regional treatment centers and community-based ICF/MR beds using historical utilization for the county; and the projected per capita utilization of ~~state-operated~~ state regional treatment centers and community-based ICF/MR beds for the county, both of which are adjusted to conform with the number of diversions projected in the waiver. The projection shall be adjusted based on the county board's actual use of allocated diversions during the previous fiscal year. If the county board uses less than the number of diversions allocated for the fiscal year, the commissioner may decrease the number of diversions projected by the commissioner for the county for the next fiscal year. The county board's allocation of money for diversions shall be based on the lesser of the number of diversions in the approved county

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proposal and the number of diversions projected for the county by the commissioner.

Subp. 2. **Allocation of ~~placements~~ conversions.** The county board's allocation of money for ~~placements~~ conversions shall be based on the number of ~~placements~~ conversions in the approved county proposal and the extent to which the ~~placements~~ conversions result in an overall reduction in the county board's historical utilization of ~~state-operated~~ state regional treatment centers and community-based ICF/MR beds.

[For text of subp 3, see M.R.]

Subp. 4. **Review of allocation; reallocation.** The commissioner shall review the projected and actual use of home and community-based services by all county boards participating in the program ~~on-a-quarterly-basis~~ at least semiannually, and report the findings to all the county boards in the state. The commissioner may reduce the allocation to a county board if the commissioner determines, in consultation with the county board, that the initial allocation to the county board will not be used during the allocation period. The commissioner may reallocate the unused portion of the county board's initial allocation to another county board, or other county boards, in the same geographic region that plan to expand home and community-based services or provide home and community-based services for the first time. If there is not a sufficient number of projections to use the unused allocation from county boards within the geographic region, the commissioner may reallocate the remainder to another county board or other county boards in other geographic regions that plan to expand home and community-based services or provide home and community-based services for the first time.

Subp. 5. **Preference given.** The commissioner may give preference during the reallocation process and in the allocation of money for subsequent fiscal years to proposals submitted by county boards that have not previously provided home and community-based services. In allocating money for each fiscal year, the commissioner shall give priority to the continued

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funding of home and community-based services for ~~clients~~ persons who received home and community-based services in the previous fiscal year and continue to be eligible for home and community-based services.

Subp. 6. **Special projects.** The commissioner may reallocate or reserve available home and community-based service money to fund special projects designed to serve very dependent persons with special needs who meet the criteria in parts 9525.1820 and 9510.1050, subpart 2, items C and D ~~as proposed at 10 State Register, Volume 10, Number 2, pages 57 to 65 (July 8, 1985)~~. The reallocated or reserved money may be used to provide additional money to county boards that are unable to fund home and community-based services for very dependent persons with special needs within the statewide reimbursement rate as required in part 9525.1910, subpart 2. The commissioner shall develop procedures and criteria for allocating home and community-based program funds for each group identified as a special project under this subpart.

9525.1900 AGREEMENT BETWEEN STATE AND COUNTY.

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

[For text of items A to C, see M.R.]

D. the total cost of providing home and community-based services to all ~~home and community based service clients~~ persons will not exceed the limits in part 9525.1910 except as provided in part 9525.1890, subpart 6;

E. records will be kept ~~in accordance with~~ according to part 9525.1920 and applicable provisions of parts ~~9505.1750~~ 9505.2160 to ~~9505.2150~~ 9505.2245;

F. the county board will comply with all applicable standards in parts 9525.0015 to ~~9525.0145 (Emergency)~~ 9525.0165;

[For text of items G to I, see M.R.]

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[For text of subp 2, see M.R.]

9525.1910 COUNTY BOARD FUNDING OF HOME AND COMMUNITY-BASED SERVICES.

[For text of subpart 1, see M.R.]

Subp. 2. **Distribution of money.** The total amount of money allocated to a county board for home and community-based services in a fiscal year shall not exceed the statewide average daily reimbursement rate multiplied by the total number of days the home and community-based services will be provided to the ~~clients~~ persons.

[For text of subp 3, see M.R.]

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

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

B. The county's average cost per day for all MR/RC home and community-based services provided to all ~~clients~~ persons must not exceed the statewide average daily reimbursement rate, except as provided for in part 9525.1890, subpart 6. The county's average cost per day for a recipient of ACS waivered services may not exceed the amount allocated to the county by the commissioner for that person.

C. The cost of each service must satisfy the

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following criteria:

(1) the cost is ordinary, necessary, and related to ~~client~~ the person's care;

(2) the cost is for activities which are generally accepted in the field of mental retardation or related conditions and are scientifically proven to promote achievement of the goals and objectives contained in the ~~client's~~ person's individual service plan;

[For text of subitems (3) and (4), see M.R.]

[For text of subp 5, see M.R.]

9525.1920 REQUIRED RECORDS AND REPORTS.

Subpart 1. **Provider records.** The provider and any subcontractor the provider contracts with shall maintain complete program and fiscal records and supporting documentation identifying the ~~clients~~ persons served and the services and costs provided under the provider's home and community-based services contract with the county board. These records must be maintained in well-organized files and identified in accounts separate from other facility or program costs. The provider's and subcontractor's records shall be subject to the maintenance schedule, audit availability requirements, and other provisions in parts ~~9505.1750~~ 9505.2160 to ~~9505.2150~~ 9505.2245.

Subp. 2. **County board records.** The county board shall maintain complete fiscal records and supporting documentation identifying the ~~clients~~ recipients served and the services and costs provided under the county board's agreement with the department. If the county board provides home and community-based services in addition to case management, the county board's records must include the information required in part 9525.1870. The county board records shall be subject to the maintenance schedule, audit availability requirements, and other provisions in parts ~~9505.1750~~ 9505.2160 to ~~9505.2150~~ 9505.2245.

Subp. 3. **Availability of records.** The county board's, the provider's, and the subcontractor's financial records described

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in subparts 1 and 2, must be available, on request, to the commissioner and the federal Department of Health and Human Services ~~in accordance with~~ according to parts ~~9500.0750 to 9500.1080, 9505.1750~~ 9505.2160 to ~~9505.2150,~~ 9505.2245 and 9525.1800 to 9525.1930.

[For text of subp 4, see M.R.]

9525.2010 DEFINITIONS.

[For text of subps 1 to 33, see M.R.]

Subp. 34. **Supported living services for children.** "Supported living services for children" means residential-based habilitation services provided on a daily basis to a waivered services recipient under 18 years of age who resides in a service site licensed under parts 9545.0010 to 9545.0260 for up to ~~three~~ four residents.

[For text of subps 35 and 36, see M.R.]

REPEALER. Minnesota Rules, parts 9525.1800, subparts 4, 16, and 19; 9525.1860, subparts 2 and 5; and 9525.1930, subpart 2, are repealed.

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Office of the Revisor of Statutes

Administrative Rules

TITLE: Proposed Permanent Rules Relating to Home and Community-Based Services

AGENCY: Department of Human Services

MINNESOTA RULES: Chapter 9525

The attached rules are approved for publication in the State Register

Craig E. Lindeke
Senior Assistant Revisor

unless the Cmy waives this rqmt in accordance w/ [redacted].

MS 95.B.092

Donor

author reallocate funds [redacted]

MRC/RC based on the ~~approved~~ waiver ~~&~~ plan ACS plan authorized on approved waiver plan

determined annually based upon [redacted] + [redacted] costs estimates contained

When [redacted] is authorized by the Cmy when necessary to provide more funds to effectively [redacted] under urgent care

Post-it™ brand fax transmittal memo 7671	# of pages ▸ 2
To Martha Casserly	From Wes Kwistra
Co. AG	Co DHS (Dev. Div.)
Dept Admin	Phone # 296-2160
Fax # 297-2576	Fax # (or 2-296-6284

Martha,

Here is letter you requested. Will mail original to you, also. If original is needed immediately please notify.

New language will be submitted within required documents next week. Will now the ~~two~~ one outstanding action by you before including in Sup. Funding of Facts.

Thanks,

Wes

State of Minnesota
Department of Human Services
Human Services Building
444 Lafayette Road
St. Paul, Minnesota 55155

December 3, 1991

Ms. Rita Desmond
Office of Attorney General
Public Finance Division
525 Park, Suite 404
St. Paul, Minnesota 55103

RE: Minnesota Rules, parts 9525.1800-9525.1930

Dear Ms. Desmond:

This is to confirm that on November 27, 1991, the Minnesota Department of Human Services withdrew the above-referenced proposed rule amendments from review by the Office of the Attorney General. The Department will resubmit the rule amendments for review once the issues your office has raised are addressed.

Thank you for your attention to this matter.

Sincerely,

NATALIE HAAS STEFFEN
Commissioner

AN EQUAL OPPORTUNITY EMPLOYER

Department of Human Services

In the Matter of the Proposed Adoption of the Rule of the State Department of Human Services Governing Funding and Administration of Home and Community-Based Services: Parts 9525.1800 to 9525.1930 and the Rule Part Governing the Definition of Supported Living Services for Children: Part 9525.2010, subpart 34.

NOTICE OF INTENT TO ADOPT A RULE WITHOUT A PUBLIC HEARING

(1) Notice is hereby given that the State Department of Human Services intends to adopt the above-entitled rule without a public hearing following the procedures set forth in the Administrative Procedure Act for adopting rules without a public hearing in Minnesota Statutes, sections 14.22 to 14.28. The statutory authority to adopt the rule is Minnesota Statutes, sections 256B.092, subdivision 6 and 256B.503.

(2) All persons have 30 days or until 4:30 p.m. on September 19, 1991 in which to submit comment in support of or in opposition to the proposed rule or any part or subpart of the rule. Comment is encouraged. (3) 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. (4) 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. (6) 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. (7) If a public hearing is required, the agency will proceed pursuant to Minnesota Statutes, sections 14.131 to 14.20.

(5) Comments or written requests for a public hearing must be submitted to: Laura Plummer, Rules and Bulletins Division, Department of Human Services, 444 Lafayette Road, St. Paul, MN 55155-3816, (612) 297-1217.

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

(11) Minnesota Rules, parts 9525.1800 to 9525.1930 govern the funding and administration of home and community-based services by specifying eligibility criteria for home and community-based services, and establishing procedures for the funding and administration of these services. Part 9525.2010, subpart 34 defines "supported living services for children."

The amendments will: update all references to related federal and state regulations; reorganize rule parts to provide clarification; change the terminology regarding adaptations from "minor adaptations to the home" to "adaptive modifications and equipment"; incorporate the Alternative Community-Based Services waiver by specifying criteria for eligibility and identifying services which are reimbursable under this waiver; distinguish the Mental Retardation/Related Conditions (MR/RC) and the Alternative Community-Based Services (ACS) waiver plans; replace the term "placement" with "conversion" which is a more accurate term; add a definition of "nursing facility" to clarify the ACS waiver; replace the term "client" with "person" throughout the rule parts; simplify county proposals by incorporating review of the Community Social Services Administration plan; change the limits on the number of children that may live in a foster home receiving waivered services from three to four children in parts 9525.1800 to 9525.1930 as well as part 9525.2010, subpart 34; and eliminate duplication and discrepancies with staff qualifications, training, and supervision requirements contained in parts 9525.2000 to 9525.2140.

A free copy of the rule is available upon request from Laura Plummer, Rules and Bulletins Division, Department of Human Services, 444 Lafayette Road, St. Paul, MN 55155-3816, (612) 297-1217. A copy of the rule may also be viewed at any of the 87 county welfare or human services agencies in the State of Minnesota.

(12) 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 from Laura Plummer, Department of Human Services upon request at the address above.

(13) Adoption of these rules 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. A fiscal note prepared according to the requirements of Minnesota Statutes, section 3.98, subdivision 2, estimating the fiscal impact of the rule is available from Laura Plummer, Department of Human Services upon request at the address above.

(9)

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 Laura Plummer, Rules and Bulletins Division, Department of Human Services, 444 Lafayette Road, St. Paul, MN 55155-3816.

(10)

DATE: 8-2-91

George J. Steenson

for NATALIE HAAS STEFFEN, COMMISSIONER
Department of Human Services

Stat Authority 256B.092

The commissioner shall adopt emergency and permanent rules to establish required controls, documentation, and reporting of services provided in order to assure proper administration of the approved waiver plan.

end of comment period Sept 19, 1991

Fiscal Note

~~14.29 applies to Emergency rules~~ - ~~amendments don't apply~~

Department of Human Services

Adopted Permanent Rules Relating to Home and Community-Based Services

Rules as Adopted

9525.1800 DEFINITIONS.

[For text of subpart 1, see M.R.]

Subp. 1a. **Adaptive modifications and equipment.** "Adaptive modifications and equipment" means one or more of the structural changes to the person's residence or an eligible vehicle, or specialized equipment or devices. Adaptive modifications and equipment must be designed to enable the person to avoid placement in an ICF/MR by increasing the person's mobility or protecting the person or other individuals from injury. Adaptive modifications and equipment are only reimbursable for persons with physical disabilities, sensory deficits, or behavior problems. Adaptive modifications and equipment are limited to those that have been approved by the United States Department of Health and Human Services as part of Minnesota's alternative community services and MR/RC waiver plans.

Subp. 1b. **Alternative community services waiver plan or ACS waiver.** "Alternative community services waiver plan" or "ACS waiver" means a waiver of requirements under United States Code, title 42, sections 1396 et. seq., that allows the state to pay for home and community-based services for persons with mental retardation or related conditions who are determined by the Department of Human Services to be inappropriately placed in Medicaid-certified nursing facilities through the medical assistance program. This term includes all amendments to the waiver as approved by the United States Department of Health and Human Services.

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

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service.

Subp. 3. **Case manager.** "Case manager" means the person designated by the county board to provide case management services as defined in subpart 4a.

Subp. 4. [See repealer.]

Subp. 4a. **Case management.** "Case management" means identifying the need for, seeking out, acquiring, and coordinating services to persons with mental retardation or related conditions and monitoring the delivery of the services to persons with mental retardation or related conditions by an individual designated by the county board to provide case management services under parts 9525.0015 to 9525.0165.

[For text of subp 5, see M.R.]

Subp. 5a. **Community social services administration plan or CSSA plan.** "Community social services administration plan" or "CSSA plan" means the biennial community social services plan required of the county board by Minnesota Statutes, section 256E.09, subdivision 3.

Subp. 5b. **Conversion.** "Conversion" means the provision of home and community-based services to a person discharged from an ICF/MR directly into those services, resulting in decertification of an ICF/MR bed under Minnesota Statutes, section 252.28, subdivision 4.

[For text of subp 6, see M.R.]

Subp. 7. **County of financial responsibility.** "County of financial responsibility" has the meaning given it in Minnesota Statutes, section 256G.02, subdivision 4.

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

Subp. 8a. **Day training and habilitation.** "Day training and habilitation" has the meaning given to "training and

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habilitation services" in part 9525.1500, subpart 36.

[For text of subps 9 and 10, see M.R.]

Subp. 10a. **Eligible vehicle.** "Eligible vehicle" means a vehicle owned by the person, the person's family, or the person's primary caregiver with whom the person resides.

[For text of subps 11 and 12, see M.R.]

Subp. 13. **Geographic region.** "Geographic region" means one of the economic development regions established by executive order of the governor according to Minnesota Statutes, section 462.385.

Subp. 13a. **Habilitation services.** "Habilitation services" means health and social services directed toward increasing and maintaining the physical, intellectual, emotional, and social functioning of persons with mental retardation or related conditions. Habilitation services include therapeutic activities, assistance, training, supervision, and monitoring in the areas of self-care, sensory and motor development, interpersonal skills, communication, socialization, reduction or elimination of maladaptive behavior, community living and mobility, health care, leisure and recreation, money management, and household chores. Day training and habilitation services and residential-based habilitation services are types of habilitation services.

Subp. 14. **Home and community-based services.** "Home and community-based services" means services provided to persons with mental retardation or related conditions that are authorized under United States Code, title 42, section 1396 et. seq., and the MR/RC and ACS waivers granted by the United States Department of Health and Human Services.

Subp. 14a. **Homemaker services.** "Homemaker services" means general household activities and ongoing monitoring of the person's well-being provided by a homemaker who meets the standards in parts 9565.1000 to 9565.1300.

[For text of subp 15, see M.R.]

Subp. 16. [See repealer.]

Subp. 17. **Individual service plan.** "Individual service

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plan" has the meaning given it in Minnesota Statutes, section 256B.092, subdivision 1b.

Subp. 17a. **In-home family support services.** "In-home family support services" means residential-based habilitation services designed to enable the person to remain in the family home and may include training and counseling for the person and the person's family.

[For text of subp 18, see M.R.]

Subp. 19. [See repealer.]

Subp. 19a. **Leave days.** "Leave days" means days when a person is temporarily absent from services.

Subp. 19b. **Mental retardation or related condition or MR/RC.** "Mental retardation or related condition" or "MR/RC" has the meaning given to "mental retardation" in part 9525.0015, subpart 20, items A and B, and the meaning given to a "related condition" in Minnesota Statutes, section 252.27, subdivision 1a.

Subp. 19c. **Nursing facility.** "Nursing facility" means a facility licensed under Minnesota Statutes, chapter 144A, that is certified by the Minnesota Department of Health under title XVIII or XIX of the Social Security Act.

Subp. 19d. **Person.** "Person" means a person with mental retardation or a related condition, as defined in subpart 19b, who is receiving home and community-based services through either the MR/RC or ACS waiver plan.

Subp. 20. **Primary caregiver.** "Primary caregiver" means a person other than a member of the person's family who has primary responsibility for the assistance, supervision, or training of the person in the person's residence.

[For text of subp 21, see M.R.]

Subp. 21a. **Residential-based habilitation services.** "Residential-based habilitation services" means services provided in the person's residence and in the community, that are directed toward increasing and maintaining the person's physical, intellectual, emotional, and social functioning. Residential-based habilitation services include therapeutic activities, assistance, counseling, training, supervision, and

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monitoring in the areas of self-care, sensory and motor development, interpersonal skills, communication, socialization, working, reduction or elimination of maladaptive behavior, community participation and mobility, healthcare, leisure and recreation, money management, and household chores. Supported living services and in-home family support services are residential-based habilitation services.

Subp. 21b. **Respite care.** "Respite care" means short-term supervision, assistance, and care provided to a person due to the temporary absence or need for relief of the person's family, foster family, or primary caregiver. Respite care may include day, overnight, in-home, or out-of-home services, as needed.

Subp. 22. **Room and board costs.** "Room and board costs" means costs associated with providing food, shelter, and personal needs items for persons, including the directly identifiable costs of:

[For text of items A to E, see M.R.]

Subp. 23. **Screening team.** "Screening team" means the team established under Minnesota Statutes, section 256B.092, subdivision 7, to evaluate a person's need for home and community-based services.

[For text of subp 24, see M.R.]

Subp. 25. **Short term.** "Short term" means a cumulative total of less than 90 24-hour days or 2,160 hours in a fiscal year. Additional hours may be authorized by the commissioner as approved in the current waiver plans.

Subp. 26. **Statewide average reimbursement rate.** "Statewide average reimbursement rate" means the dollar amount arrived at by dividing the total amount of money available under the waiver for the fiscal year by 365 days and then dividing the quotient by the department's projection of the total number of persons to receive home and community-based services as stated in the waiver for that fiscal year.

Subp. 26a. **Supported living services for adults.** "Supported living services for adults" means residential-based habilitation services provided on a daily basis to adults living

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in a service site for up to six persons.

Subp. 26b. **Supported living services for children.** "Supported living services for children" means residential-based habilitation services provided on a daily basis to persons under 18 years of age living in a service site for up to four persons.

Subp. 27. **Title XIX home and community-based waivered services for persons with mental retardation or related conditions or the MR/RC waiver plan.** "Title XIX home and community-based waivered services for persons with mental retardation or related conditions" or the "MR/RC waiver plan" means the waiver of requirements under United States Code, title 42, sections 1396 et seq., which allows the state to pay for home and community-based services for persons with mental retardation or related conditions through the medical assistance program. The term includes all amendments to the waiver including any amendments made after the effective date of the last waiver plan, as approved by the United States Department of Health and Human Services under United States Code, title 42, section 1396 et. seq.

9525.1810 APPLICABILITY AND EFFECT.

[For text of subpart 1, see M.R.]

Subp. 2. **Effect.** The entire application of parts 9525.1800 to 9525.1930 shall continue in effect only as long as the MR/RC or ACS waiver from the United States Department of Health and Human Services is in effect in Minnesota.

9525.1820 ELIGIBILITY.

Subpart 1. **Eligibility criteria for MR/RC waiver.** A person is eligible to receive home and community-based services through the MR/RC waiver if the person meets all the criteria in items A to E and if home and community-based services are provided according to part 9525.1830:

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

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B. the person is determined to be a person with mental retardation according to the definitions and procedures in parts 9525.0015 to 9525.0165 or the person is determined to be a person with a related condition as defined in Minnesota Statutes, section 252.27, subdivision 1a;

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

D. the screening team has determined that the person needs daily intervention; and

E. the person's individual service plan documents the need for daily intervention and specifies the services needed daily.

Subp. 1a. **Eligibility criteria for the ACS waiver.** A person is eligible to receive home and community-based services through the ACS waiver if the person meets all requirements in subpart 1, items B to E, and:

A. was admitted to a Medicaid-certified nursing facility before January 1, 1990, or amended date as approved by the Health Care and Finance Administration; and

B. is currently residing in a Medicaid-certified nursing facility, but has been determined by the screening team as requiring ICF/MR level of care.

Subp. 2. **Medical assistance eligibility for children residing with their parents.** The county board shall determine eligibility for medical assistance for a person under age 18 who resides with a parent or parents without considering parental income and resources if:

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

B. the person will be provided home and community-based services according to part 9525.1830;

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

D. the commissioner has approved in writing a county board's request to suspend for the person the deeming requirements in Code of Federal Regulations, title 42, section

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436.821 according to the waiver.

Subp. 3. **Beginning date.** Eligibility for medical assistance begins on the first day of the month in which the person first receives home and community-based services.

9525.1830 PROVISION OF HOME AND COMMUNITY-BASED SERVICES.

Subpart 1. **Conditions.** The county board shall provide or arrange to provide home and community-based services to a person if the person is eligible for home and community-based services under part 9525.1820 and all the conditions in items A to F have been met:

A. the county board has determined that it can provide home and community-based services to the person within its allocation of home and community-based services money as determined under parts 9525.1890 and 9525.1910 or as authorized by the commissioner based on the limits of the approved waiver plan;

B. the screening team has recommended home and community-based services instead of ICF/MR services for the person under parts 9525.0015 to 9525.0165;

[For text of items C to F, see M.R.]

[For text of subp 2, see M.R.]

9525.1840 PARENTAL CONTRIBUTION FEE.

Subpart 1. **Out-of-home placements.** The parent or parents of a person under age 18 shall be liable for a parental contribution fee determined according to Minnesota Statutes, sections 252.27, subdivision 2, and 256B.14, if the person resides outside the home of the parent or parents.

Subp. 2. **In-home services.** Parents of persons under age 18 may be liable for a parental contribution fee determined according to Minnesota Statutes, sections 252.27, subdivision 2, and 256B.14, if the person is residing with a parent and the person's medical assistance eligibility for home and community-based services was determined without considering parental income or resources under part 9525.1820, subpart 2.

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by Revisor _____

9525.1850 PROVIDER REIMBURSEMENT.

A provider may receive medical assistance reimbursement for home and community-based services only if the provider meets the criteria in items A to K. The training, experience, and supervision required in items B to E only apply to persons who are employed by, or under contract with, the provider to provide services that can be billed under part 9525.1860, subpart 3, item A. Providers licensed under parts 9525.0215 to 9525.0355; 9525.1500 to 9525.1690; and 9525.2000 to 9525.2140 are exempt from items C, D, and E.

[For text of items A and B, see M.R.]

C. If no training standards have been established, the provider, employee, or subcontractor must have completed, within the last two years, at least 24 hours of documented training. The training must be in areas related to the care, supervision, or training of persons with mental retardation or related conditions including first aid, medication administration, behavior management, cardiopulmonary resuscitation, human development, and obligations under Minnesota Statutes, sections 626.556 and 626.557. The county board may grant a written variance to the training requirements in this item for:

(1) a respite care provider who provides the respite care in his or her residence or in the person's residence; or

(2) a provider who ensures that the training will be completed within six months of the date the contract is signed.

This item does not apply to providers of adaptive modifications and equipment.

D. The provider ensures that the provider and all employees or subcontractors have at least one year of experience within the last five years in the care, training, or supervision of persons with mental retardation or related conditions as defined in Minnesota Statutes, section 252.27. The county board may grant a written variance to the requirements in this item

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for:

(1) a respite care provider who provides the respite care in his or her residence or in the person's residence;

(2) a provider, employee, or subcontractor who is a qualified mental retardation professional who meets the requirements in Code of Federal Regulations, title 42, section 442.401 and has been approved by the case manager; or

(3) an employee of the provider if the employee will work under the direct on-site supervision of a qualified mental retardation professional who meets the requirements in Code of Federal Regulations, title 42, section 442.401, and who has been approved by the case manager.

This item does not apply to providers of adaptive modifications and equipment or homemaker services.

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

F. The provider ensures that the provider and all employees or subcontractors will complete the amount of ongoing training required in any Minnesota rules applicable to the home and community-based services to be provided. If no ongoing training is required by the applicable Minnesota rules, the provider, except a provider of adaptive modifications and equipment, agrees that the provider and all employees or subcontractors will complete at least 18 hours of documented ongoing training each fiscal year. To meet the requirements of this item, the ongoing training must be in a field related to the care, training, and supervision of persons with mental retardation or related conditions, and must either be identified as needed in the person's individual service plans or be approved by the case manager based on the needs identified in

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the individual service plans of the persons served by the provider. The county board may grant a written variance to the requirements in this item for a respite care provider who provides the respite care in his or her residence or in the person's residence.

G. The provider ensures that the provider and all employees or subcontractors have never been convicted of a violation, or admitted violating Minnesota Statutes, section 626.556 or 626.557 and there is no substantial evidence that the provider, employees, or subcontractors have violated Minnesota Statutes, section 626.556 or 626.557.

H. The provider has a legally binding contract with the host county that complies with part 9525.1870.

I. The provider has been authorized in writing to provide home and community-based services for the person by the county of financial responsibility.

J. The provider agrees in writing to comply with United States Code, title 42, sections 1396 et seq., and regulations implementing those sections and with applicable provisions in parts 9505.2160 to 9505.2245 and 9525.1800 to 9525.1930.

K. The provider is not the person's guardian or a member of the person's family. This item does not preclude the county board from providing services if the person is a ward of the commissioner.

9525.1860 REIMBURSABLE SERVICES.

Subpart 1. **General limits.** Only costs for services listed in the approved Minnesota MR/RC or ACS waiver plan shall be reimbursed under the medical assistance program.

A. Services reimbursable through the MR/RC waiver plan are:

(1) case management;

(2) residential habilitation services including in-home family support, supported living services for adults, and supported living services for children;

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(3) day training and habilitation, including supported employment;

(4) homemaker services;

(5) respite care; and

(6) minor adaptations and equipment.

B. Services reimbursable through the ACS waiver plan are:

(1) residential habilitation services including in-home family support, supported living services for adults, and supported living services for children;

(2) day training and habilitation, including supported employment;

(3) homemaker services;

(4) respite care; and

(5) adaptive modifications and equipment.

Subp. 2. [See repealer.]

Subp. 3. **Billing for services.** Billings submitted by the provider, except a provider of adaptive modifications and equipment, must be limited to time actually and reasonably spent:

A. In direct contact with the person to assist the person in attaining the goals and objectives specified in the person's individual service plan. Direct contact time includes time spent traveling to and from service sites.

B. In verbal or written contact with professionals or others regarding the person's progress in attaining the goals and objectives specified in the person's individual service plan.

C. In planning activities including attending the person's interdisciplinary team meetings, developing goals and objectives for the person's individual service plan, assessing and reviewing the person's specified goals and objectives, documenting the person's progress toward attaining the goals and objectives in the person's individual service plan and assessing the adequacy of the services related to the goals and objectives in the person's individual service plan.

Subp. 4. **Service limitations.** The provision of home and community-based services is limited as stated in items A to H.

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A. Case management services may be provided as a single service for a period of no more than 90 days.

B. Day training and habilitation services must:

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

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

(3) be provided at a different service site than the person's place of residence unless medically contraindicated, as required in Minnesota Statutes, section 252.41, subdivision 3; and

(4) be provided by an organization that does not have a direct or indirect financial interest in the organization that provides the person's residential services unless the person is residing with:

(a) his or her family; or

(b) a foster family that does not have a direct or indirect financial interest in the organization that provides the person's residential services.

C. Homemaker services may be provided only if:

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

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

D. Leave days are reimbursable for supported living services for children or supported living services for adults. If the person is not receiving respite care or other supported living services, billings may be made for leave days when the person is:

(1) hospitalized;

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(2) on an overnight trip or vacation; or

(3) home for a visit.

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

E. The average dollar amount available for reimbursement for adaptive modifications and equipment shall be determined annually by the commissioner based on the approved waiver plan.

Adaptive modifications and equipment must be constructed or installed to meet or exceed applicable federal, state, and local building codes.

F. Home and community-based services are not reimbursable if provided to a person while the person is a resident of or on leave from an ICF/MR, skilled nursing facility, intermediate care facility, or a hospital. This item shall not apply to leave days authorized according to item C for a person who is hospitalized.

G. Respite care must:

(1) be provided only for the relief of the person's family or foster family, or if the person is receiving a supported living service in the provider's residence, for the relief of the person's primary caregiver; and

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

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

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H. Room and board costs are not allowable costs for home and community-based services except respite care provided out of the person's residence. All room and board costs must be directly identified on reports submitted by the provider to the county board.

Subp. 5. [See repealer.]

Subp. 5a. **Other medical or related costs.** The cost of other medical or related services reimbursable under the Minnesota State Medicaid Plan must not be included in the rate or rates billed by the provider or providers for reimbursement under parts 9525.1800 to 9525.1930.

Subp. 6. **Other applicable rules.** Home and community-based services must be provided as required under items A to H unless a variance has been approved by the commissioner.

[For text of item A, see M.R.]

B. Day training and habilitation services must be licensed by the department.

C. Supported living services for children must be provided by a service provider licensed under parts 9525.2000 to 9525.2140 and at a site licensed under parts 9545.0010 to 9545.0260.

D. Supported living services provided at a service site serving four or fewer adults must be provided by a service provider licensed under parts 9525.2000 to 9525.2140 and the residence must be licensed under parts 9555.5105 to 9555.6265. Supported living services provided at a single residence serving five or six adults must be licensed under parts 9525.0215 to 9525.0355.

E. Respite care provided at a service site serving more than four persons must be licensed under parts 9525.0215 to 9525.0355. Respite care provided at a service site serving four or fewer persons under 18 years of age must be licensed under parts 9545.0010 to 9545.0260, unless otherwise authorized by the commissioner. Respite care provided at a service site serving four or fewer adults must be licensed under parts 9555.5105 to

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9555.6265, unless otherwise authorized by the commissioner. This item shall not apply to a person who provides respite care for fewer than 30 days a year.

Subp. 7. **Licensing variances.** Requests for variances to the licensing requirements in subpart 6 must be handled according to items A to C.

A. The county board may request a variance from compliance with parts 9545.0010 to 9545.0260 as required in subpart 6, item C, D, or E, for a provider who provides services to persons under 18 years of age if the county board determines that no providers who meet the licensing requirements are available and that granting the variance will not endanger the health, safety, or development of the persons. The written variance request must be submitted to the commissioner and must contain:

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

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

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

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

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

B. The county board may grant a written variance from compliance with parts ~~9555.6105~~ 9555.5105 to 9555.6265 as

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required in subpart 6, items D and E, for a provider who provides services to adults if the county board determines that no providers who meet the licensing requirements are available and that granting the variance will not endanger the health, safety, or development of the persons.

C. Requests for a variance of the provisions in parts 9525.0215 to 9525.0355 must be submitted according to part 9525.0235, subpart 13.

9525.1870 PROVIDER CONTRACTS AND SUBCONTRACTS.

Subpart 1. **Contracts.** To receive medical assistance reimbursement for home and community-based services, the provider must have a contract developed according to parts 9550.0010 to 9550.0092 with the host county. In addition, the contract must contain the information in items A to F and subpart 2:

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

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

[For text of items C to F, see M.R.]

[For text of subps 2 to 4, see M.R.]

9525.1880 COUNTY PROPOSAL AND APPROVAL OF COUNTY PROPOSAL.

Subpart 1. **Application forms and deadlines.** To be considered for reimbursement under parts 9525.1800 to 9525.1930, county boards, singly or jointly, must submit to the commissioner an annual proposal for the provision of home and community-based services to persons for which the county board or county boards are financially responsible. The commissioner shall notify the county boards of the deadlines and forms for the submission of proposals for home and community-based services.

Subp. 2. **Contents of county proposal.** The proposal must be based on the needs of individually identified persons in the county and must identify the number of persons to whom the

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county board expects to provide the home and community-based services and identify, by name, recipients authorized and receiving services, individuals screened and authorized but not yet receiving services, and individuals for whom the county has received a request to receive waivered services but has not yet screened. If county boards are applying jointly, each county board must identify the number of persons for which the county is financially responsible.

The commissioner shall review the county community social services administration (CSSA) plan, the determination of need, and the redetermination of need for services for persons with developmental disabilities and may consider the county goals and objectives as part of the county proposal. The commissioner may also require the county boards to include the following information in the proposal:

A. current living arrangements;

B. current day programs;

C. level of supervision required;

D. the type of home and community-based services projected to be needed and the expected duration of the service or services;

E. the projected starting dates of the home and community-based services;

F. the proposed service provider or providers and billing rate or rates, if known;

G. a description of how the proposal limits the development of new community-based ICF/MR beds and reduces the county's use of existing ICF/MR beds in regional treatment centers and community ICFs/MR, including any steps the county board has taken to encourage voluntary decertification of community-based ICF/MR beds; and

H. a description of the steps the county board has taken to prepare to provide home and community-based services, including efforts to integrate home and community-based services into the county board's administrative services planning system.

Subp. 3. **Review and approval of proposal.** The

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commissioner shall review all proposals submitted according to subparts 1 and 2. The commissioner shall only approve the county proposals that meet the requirements of parts 9525.1800 to 9525.1880 and that demonstrate compliance with the goals of the department as stated in items A to D:

A. reduction of the number of children in regional treatment centers;

B. limitation of the development of new community-based ICF/MR beds and reduction of the use of existing ICF/MR beds located on regional treatment center campuses and in the community; and

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

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

9525.1890 ALLOCATION OF HOME AND COMMUNITY-BASED SERVICE MONEY.

Subpart 1. **Allocation of diversions.** To allocate home and community-based services money for diversions, the commissioner shall project the number of diversions for the county based on the average of the projected utilization of state regional treatment centers and community-based ICF/MR beds using historical utilization for the county; and the projected per capita utilization of state regional treatment centers and community-based ICF/MR beds for the county, both of which are adjusted to conform with the number of diversions projected in the waiver. The projection shall be adjusted based on the county board's actual use of allocated diversions during the previous fiscal year. If the county board uses less than the number of diversions allocated for the fiscal year, the commissioner may decrease the number of diversions projected by the commissioner for the county for the next fiscal year. The county board's allocation of money for diversions shall be based

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on the lesser of the number of diversions in the approved county proposal and the number of diversions projected for the county by the commissioner.

Subp. 2. **Allocation of conversions.** The county board's allocation of money for conversions shall be based on the number of conversions in the approved county proposal and the extent to which the conversions result in an overall reduction in the county board's historical utilization of state regional treatment centers and community-based ICF/MR beds.

[For text of subp 3, see M.R.]

Subp. 4. **Review of allocation; reallocation.** The commissioner shall review the projected and actual use of home and community-based services by all county boards participating in the program at least semiannually, and report the findings to all the county boards in the state. The commissioner may reduce the allocation to a county board if the commissioner determines, in consultation with the county board, that the initial allocation to the county board will not be used during the allocation period. The commissioner may reallocate the unused portion of the county board's initial allocation to another county board, or other county boards, in the same geographic region that plan to expand home and community-based services or provide home and community-based services for the first time. If there is not a sufficient number of projections to use the unused allocation from county boards within the geographic region, the commissioner may reallocate the remainder to another county board or other county boards in other geographic regions that plan to expand home and community-based services or provide home and community-based services for the first time.

Subp. 5. **Preference given.** The commissioner may give preference during the reallocation process and in the allocation of money for subsequent fiscal years to proposals submitted by county boards that have not previously provided home and community-based services. In allocating money for each fiscal year, the commissioner shall give priority to the continued funding of home and community-based services for persons who

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received home and community-based services in the previous fiscal year and continue to be eligible for home and community-based services.

Subp. 6. **Special projects.** The commissioner may reallocate or reserve available home and community-based service money to fund special projects designed to serve very dependent persons with special needs who meet the criteria in parts 9525.1820 and 9510.1050, subpart 2, items C and D. The reallocated or reserved money may be used to provide additional money to county boards that are unable to fund home and community-based services for very dependent persons with special needs within the statewide reimbursement rate as required in part 9525.1910, subpart 2. The commissioner shall develop procedures and criteria for allocating home and community-based program funds for each target group identified as a special project under this subpart.

9525.1900 AGREEMENT BETWEEN STATE AND COUNTY.

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

[For text of items A to C, see M.R.]

D. the total cost of providing home and community-based services to all persons will not exceed the limits in part 9525.1910 except as provided in part 9525.1890, subpart 6;

E. records will be kept according to part 9525.1920 and applicable provisions of parts 9505.2160 to 9505.2245;

F. the county board will comply with all applicable standards in parts 9525.0015 to 9525.0165;

[For text of items G to I, see M.R.]

[For text of subp 2, see M.R.]

9525.1910 COUNTY BOARD FUNDING OF HOME AND COMMUNITY-BASED SERVICES.

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[For text of subpart 1, see M.R.]

Subp. 2. **Distribution of money.** The total amount of money allocated to a county board for home and community-based services in a fiscal year shall not exceed the statewide average daily reimbursement rate multiplied by the total number of days the home and community-based services will be provided to the persons.

[For text of subp 3, see M.R.]

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

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

B. The county's average cost per day for all MR/RC home and community-based services provided to all persons must not exceed the statewide average daily reimbursement rate, except as provided for in part 9525.1890, subpart 6. The county's average cost per day for a recipient of ACS waivered services may not exceed the amount allocated to the county by the commissioner for that person.

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

(1) the cost is ordinary, necessary, and related to the person's care;

(2) the cost is for activities which are generally accepted in the field of mental retardation or related

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conditions and are scientifically proven to promote achievement of the goals and objectives contained in the person's individual service plan;

[For text of subitems (3) and (4), see M.R.]

[For text of subp 5, see M.R.]

9525.1920 REQUIRED RECORDS AND REPORTS.

Subpart 1. **Provider records.** The provider and any subcontractor the provider contracts with shall maintain complete program and fiscal records and supporting documentation identifying the persons served and the services and costs provided under the provider's home and community-based services contract with the county board. These records must be maintained in well-organized files and identified in accounts separate from other facility or program costs. The provider's and subcontractor's records shall be subject to the maintenance schedule, audit availability requirements, and other provisions in parts 9505.2160 to 9505.2245.

Subp. 2. **County board records.** The county board shall maintain complete fiscal records and supporting documentation identifying the recipients served and the services and costs provided under the county board's agreement with the department. If the county board provides home and community-based services in addition to case management, the county board's records must include the information required in part 9525.1870. The county board records shall be subject to the maintenance schedule, audit availability requirements, and other provisions in parts 9505.2160 to 9505.2245.

Subp. 3. **Availability of records.** The county board's, the provider's, and the subcontractor's financial records described in subparts 1 and 2, must be available, on request, to the commissioner and the federal Department of Health and Human Services according to parts 9505.2160 to 9505.2245 and 9525.1800 to 9525.1930.

[For text of subp 4, see M.R.]

9525.2010 DEFINITIONS.

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[For text of subps 1 to 33, see M.R.]

Subp. 34. **Supported living services for children.** "Supported living services for children" means residential-based habilitation services provided on a daily basis to a waivered services recipient under 18 years of age who resides in a service site licensed under parts 9545.0010 to 9545.0260 for up to four residents.

[For text of subps 35 and 36, see M.R.]

REPEALER. Minnesota Rules, parts 9525.1800, subparts 4, 16, and 19; 9525.1860, subparts 2 and 5; and 9525.1930, subpart 2, are repealed.

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Office of the Revisor of Statutes

Administrative Rules

TITLE: Adopted Permanent Rules Relating to Home and Community-Based Services

AGENCY: Department of Human Services

MINNESOTA RULES: Chapter 9525

The attached rules are approved for
filing with the Secretary of State

Craig E. Lindeke
Senior Assistant Revisor

STATE OF MINNESOTA

DEPARTMENT OF HUMAN SERVICES

In the Matter of Proposed Amendments to the Department of Human Services Rule Governing Funding and Administration of Home and Community-based Services: Parts 9525.1800 to 9525.1930 and the Rule Part Governing the Definition of Supported Living Services for Children: Part 9525.2010, Subpart 34.

FISCAL NOTE

I. SUMMARY OF FISCAL IMPACT OF PROPOSED RULE AMENDMENTS

The Department has carefully considered the potential cost implication of all proposed revisions to the rule governing the funding and administration of home and community-based services and the definition of supported living services for children. The Department believes that the proposed rule amendments are fiscally neutral and will not affect either local or state spending in each of the two fiscal years following their promulgation.

II. BACKGROUND INFORMATION ON RULE AMENDMENTS AND FUNDING SOURCES

A. Purpose of the Rule and Amendments.

Parts 9525.1800 to 9525.1930 (Rule 41) and proposed noncontroversial amendments to parts 9525.1800 to 9525.1930, establish procedures that govern the funding and administration of home and community-based services to persons with mental retardation and related conditions. The proposed amendment to part 9525.2010, subpart 34, changes the definition of "supported living services for children" by increasing the capacity of supported living services to children from three to four children.

B. Statutory Authority.

Authority for the adopted rule parts and the proposed amendments to parts 9525.1800 to 9525.1930 and 9525.2010, subpart 34 is granted to the commissioner in Minnesota Statutes, §256B.092, subdivision 6, §256B.501, subdivision 2, and §256B.503. Minnesota Statutes, §256B.092, subdivision 6, requires the commissioner to adopt rules to establish required controls, documentation, and reporting of services provided in order to assure proper administration of the approved waiver plan. Minnesota Statutes, §256B.503, requires the commissioner to adopt

permanent rules by July 1, 1986, to implement Laws of Minnesota 1983, chapter 312, article 9, section 5 and requires the commissioner to consider federal waiver plan criteria.

C. Reasons for Amendment of the Rule.

The purpose of these amendments is to: (1) conform to federal regulations governing Minnesota's waiver plans and amendments to the waiver plans; (2) conform to other department rules governing services to persons with mental retardation or related conditions; and (3) modify other administrative standards and procedures which are in the current rule.

D. Background and Funding Source.

Minnesota Rules, parts 9525.1800 to 9525.1930 were promulgated in emergency form in August 1984, in order to implement the first approved waiver plan. The department's initial waiver application was approved by the United States Department of Health and Human Services in April 1984. The emergency rule was subsequently revised and converted to a permanent rule which became effective on October, 1985. Parts 9525.1800 to 9525.1930 have not been amended since that time.

Home and community-based services are funded through medical assistance. The program offers a cost efficient alternative to ICF/MR services for persons with mental retardation or related conditions who would otherwise be at risk of placement in an ICF/MR. The Department awards waivered service allocations to counties based on a county proposal that includes historical use of ICF/MR services and waivered services, proposed use of waivered services, the number of persons requesting and authorized to receive waivered services and the counties plan to decrease use of ICFs/MR.

Waivered services require the decertification of an ICF/MR bed when a person who has been receiving ICF/MR services enters the waiver. The waiver allows eligible persons not currently residing in an ICF/MR setting to receive services through diversion allocations, which reflect historic growth patterns in ICF/MR use. Diversions are available to a limited number of persons currently not receiving ICF/MR services but are at risk of placement in an ICF/MR. Minnesota's federally-approved waiver plan states the number of persons who may receive waivered services and the funding available based on federal formula and approval by the Department and legislature.

Waivered services must not duplicate other funding sources. State plan Medicaid services, MSA, insurance and other funding sources are utilized first with the waiver paying for other

specified services.

III. METHODOLOGY AND SUMMARY OF COSTS

The Department projects that these technical amendments will have no fiscal impact on the state or the counties because the proposed amendments are not substantive in nature. The revisions merely amend outdated terminology and content and incorporate current standards as authorized in the federally-approved waiver plans.

Date: 8-2-11

NATALIE HAAS STEFFEN
Commissioner

STATE OF MINNESOTA

DEPARTMENT OF HUMAN SERVICES

In the Matter of the Proposed Adoption of the Rule of the State Department of Human Services Governing Funding and Administration of Home and Community-Based Services, Minnesota Rules, parts 9525.1800 to 9525.1930 and the rule part governing the definition of Supported Living Services for Children, Minnesota Rules, part 9525.2010, subpart 34

AFFIDAVIT OF MAILING THE NOTICE OF INTENT TO ADOPT A RULE WITHOUT A PUBLIC HEARING AND CERTIFICATE OF MAILING LIST

STATE OF MINNESOTA)
) ss.
COUNTY OF RAMSEY)

Nancy Bishop, being sworn says:

I hereby certify that the list of persons and associations who have requested, pursuant to Minnesota Statutes, sections 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 14th day of August, 1991.

That on the 14th day of August, 1991, at the City of St. Paul, County of Ramsey, State of Minnesota, I mailed the attached Notice of Intent to Adopt a Rule without a Public Hearing by depositing in the State of Minnesota Central Mail System for United States mailing, a copy thereof, with postage prepaid, to all persons and associations on the aforementioned mailing list.

Nancy L. Bishop

Subscribed and sworn to before me

this 14 day of August, 1991.

Claudia A. Eliason

CLAUDIA A. ELIASON
NOTARY PUBLIC-MINNESOTA
WASHINGTON COUNTY
MY COMMISSION EXPIRES NOVEMBER 14, 1996

STATE OF MINNESOTA

DEPARTMENT OF HUMAN SERVICES

In the Matter of the Proposed Adoption of the Rule of the State Department of Human Services Governing Funding and Administration of Home and Community-Based Services, Minnesota Rules, parts 9525.1800 to 9525.1930 and the rule part governing the definition of Supported Living Services for Children, Minnesota Rules, part 9525.2010, subpart 34

AFFIDAVIT OF ADDITIONAL MAILING

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

That on the 14th day of August, 1991, at the City of St. Paul, County of Ramsey, State of Minnesota, I mailed the attached Notice by depositing in the State of Minnesota Central Mail System for first class mailing, a copy thereof, properly enveloped, with postage prepaid to the following parties:

- The 87 Minnesota County Human Services Agencies

- Advisory Committee Members

Nancy L. Bishop

Subscribed and sworn to before me

this 14 day of August, 1991

Claudia A. Eliason

CLAUDIA A. ELIASON
NOTARY PUBLIC-MINNESOTA
WASHINGTON COUNTY
MY COMMISSION EXPIRES NOVEMBER 14, 1996

Resident Advocacy Services

3101 West 69th Street
Suite 121
Edina, MN 55435
(612) 926-9808

September 12, 1991

Laura Plummer
Rules and Bulletins Division
Department of Human Services
444 Lafayette Road
St. Paul, MN 55155-3816

SUBJECT: **Proposed Rules Governing Funding of Waivered Services 9525.1800 to 9525.1930**

Dear Laura:

I respectfully request that the Department conduct a public hearing on the abovereferenced Rules as Proposed.

Please notify me of the date and time of said hearing.

Thank you.

Sincerely,

Mary Rodenberg-Roberts

Mary Rodenberg-Roberts
Director of Advocacy Services

September 18, 1991

Laura Plummer
Minnesota Department of Human Services
Rules and Bulletins Division
444 Lafayette Rd.
St. Paul, MN 55155

TRANSMITTED VIA FACSIMILE

Dear Ms. Plummer:

I would like to request a public hearing on the proposed DHS Rule 41, which governs funding and administration of waivered services programs for persons with mental retardation and related conditions. The statute numbers of this proposed rule are 9525.1800 to 9525.1930.

Sincerely,

Joel N. Cary
15284 - 92nd Place North
Maple Grove, MN 55369

RECEIVED
INFORMATION DESK
'91 SEP 18 A11:00

September 18, 1991

Laura Plummer
Minnesota Department of Human Services
Rules and Bulletins Division
444 Lafayette Rd.
St. Paul, MN 55155

TRANSMITTED VIA FACSIMILE

Dear Ms. Plummer:

I would like to request a public hearing on the proposed DHS Rule 41, which governs funding and administration of waivered services programs for persons with mental retardation and related conditions. The statute numbers of this proposed rule are 9525.1800 to 9525.1930.

Sincerely,

Joel N. Cary
~~15284~~ - 92nd Place ~~North~~
Maple Grove, MN 55369

PLEASE DISCARD FIRST LETTER FROM MR. CARY, AS SIGNATURE WAS MISSING

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INFORMATION DESK
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Proposed Rules

Pursuant to Minn. Stat. §§ 14.22, an agency may propose to adopt, amend, suspend or repeal rules without first holding a public hearing, as long as the agency determines that the rules will be noncontroversial in nature. The agency must first publish a notice of intent to adopt rules without a public hearing, together with the proposed rules, in the *State Register*. The notice must advise the public:

1. that they have 30 days in which to submit comment on the proposed rules;
2. that no public hearing will be held unless 25 or more persons make a written request for a hearing within the 30-day comment period;
3. of the manner in which persons shall request a hearing on the proposed rules; and
4. that the rule may be modified if the modifications are supported by the data and views submitted.

If, during the 30-day comment period, 25 or more persons submit to the agency a written request for a hearing of the proposed rules, the agency must proceed under the provisions of §§ 14.14-14.20, which state that if an agency decides to hold a public hearing, it must publish a notice of intent in the *State Register*.

Pursuant to Minn. Stat. §§ 14.29 and 14.30, agencies may propose emergency rules under certain circumstances. Proposed emergency rules are published in the *State Register* and, for at least 25 days thereafter, interested persons may submit data and views in writing to the proposing agency.

Department of Human Services

Proposed Permanent Rules Relating to Home and Community-Based Services

Notice of Intent to Adopt a Rule Without a Public Hearing

NOTICE IS HEREBY GIVEN that the State Department of Human Services intends to adopt the above-entitled rule without a public hearing following the procedures set forth in the Administrative Procedure Act for adopting rules without a public hearing in *Minnesota Statutes*, sections 14.22 to 14.28. The statutory authority to adopt the rule is *Minnesota Statutes*, sections 256B.092, subdivision 6 and 256B.503.

All persons have 30 days or until 4:30 p.m. on September 19, 1991 in which to submit comment in support of or in opposition to the proposed rule or any part or subpart of the rule. 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*, sections 14.131 to 14.20.

Comments or written requests for a public hearing must be submitted to: Laura Plummer, Rules and Bulletins Division, Department of Human Services, 444 Lafayette Road, St. Paul, MN 55155-3816, (612) 297-1217.

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

Minnesota Rules, parts 9525.1800 to 9525.1930 govern the funding and administration of home and community-based services by specifying eligibility criteria for home and community-based services, and establishing procedures for the funding and administration of these services. Part 9525.2010, subpart 34 defines "supported living services for children."

The amendments will: update all references to related federal and state regulations; reorganize rule parts to provide clarification; change the terminology regarding adaptations from "minor adaptations to the home" to "adaptive modifications and equipment"; incorporate the Alternative Community-Based Services waiver by specifying criteria for eligibility and identifying services which are reimbursable under this waiver; distinguish the Mental Retardation/Related Conditions (MR/RC) and the Alternative Community-Based Services (ACS) waiver plans; replace the term "placement" with "conversion" which is a more accurate term; add a definition of "nursing facility" to clarify the ACS waiver; replace the term "client" with "person" throughout the rule parts; simplify county proposals by incorporating review of the Community Social Services Administration plan; change the limits on the number of children that may live in a foster home receiving waivered services from three to four children in parts 9525.1800 to 9525.1930 as well as part 9525.2010, subpart 34; and eliminate duplication and discrepancies with staff qualifications, training, and supervision requirements contained in parts 9525.2000 to 9525.2140.

A free copy of the rule is available upon request from Laura Plummer, Rules and Bulletins Division, Department of Human Services, 444 Lafayette Road, St. Paul, MN 55155-3816, (612) 297-1217. A copy of the rule may also be viewed at any of the 87 county welfare or human services agencies in the State of Minnesota.

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 from Laura Plummer, Department of Human Services upon request at the address above.

Adoption of these rules 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. A fiscal note prepared according to the requirements of *Minnesota Statutes*, section 3.98, subdivision 2, estimating the fiscal impact of the rule is available from Laura Plummer, Department of Human Services upon request at the address above.

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:

Laura Plummer
Rules and Bulletins Division
Department of Human Services
444 Lafayette Road
St. Paul, MN 55155-3816

Natalie Haas Steffen
Commissioner

Rules as Proposed

9525.1800 DEFINITIONS.

[For text of subpart 1, see M.R.]

Subp. 1a. **Adaptive modifications and equipment.** "Adaptive modifications and equipment" means one or more of the structural changes to the person's residence or an eligible vehicle, or specialized equipment or devices. Adaptive modifications and equipment must be designed to enable the person to avoid placement in an ICF/MR by increasing the person's mobility or protecting the person or other individuals from injury. Adaptive modifications and equipment are only reimbursable for persons with physical disabilities, sensory deficits, or behavior problems. Adaptive modifications and equipment are limited to those that have been approved by the United States Department of Health and Human Services as part of Minnesota's alternative community services and MR/RC waiver plans.

Subp. 1b. **Alternative community services waiver plan or ACS waiver.** "Alternative community services waiver plan" or "ACS waiver" means a waiver of requirements under United States Code, title 42, sections 1396 et. seq., that allows the state to pay for home and community-based services for persons with mental retardation or related conditions who are determined by the Department of Human Services to be inappropriately placed in Medicaid-certified nursing facilities through the medical assistance program. This term includes all amendments to the waiver as approved by the United States Department of Health and Human Services.

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

Subp. 3. **Case manager.** "Case manager" means the person designated by the county board to provide case management services as defined in ~~part 9525.1860~~ subpart 4a.

Subp. 4. **[See repealer.]**

Subp. 4a. **Case management.** "Case management" means identifying the need for, seeking out, acquiring, and coordinating services to persons with mental retardation or related conditions and monitoring the delivery of the services to persons with mental retardation or related conditions by an individual designated by the county board to provide case management services under parts 9525.0015 to 9525.0165.

[For text of subp 5, see M.R.]

Subp. 5a. **Community social services administration plan or CSSA plan.** "Community social services administration plan" or "CSSA plan" means the biennial community social services plan required of the county board by *Minnesota Statutes*, section 256E.09, subdivision 3.

Subp. 5b. **Conversion.** "Conversion" means the provision of home and community-based services to a person discharged from an ICF/MR directly into those services, resulting in decertification of an ICF/MR bed under *Minnesota Statutes*, section 252.28, subdivision 4.

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[For text of subp 6, see M.R.]

Subp. 7. **County of financial responsibility.** "County of financial responsibility" has the meaning given it in *Minnesota Statutes*, section ~~256B.02~~ 256G.02, subdivision ~~3~~ 4.

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

Subp. 8a. **Day training and habilitation.** "Day training and habilitation" has the meaning given to "training and habilitation services" in part 9525.1500, subpart 36.

[For text of subps 9 and 10, see M.R.]

Subp. 10a. **Eligible vehicle.** "Eligible vehicle" means a vehicle owned by the person, the person's family, or the person's primary caregiver with whom the person resides.

[For text of subps 11 and 12, see M.R.]

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

Subp. 13a. **Habilitation services.** "Habilitation services" means health and social services directed toward increasing and maintaining the physical, intellectual, emotional, and social functioning of persons with mental retardation or related conditions. Habilitation services include therapeutic activities, assistance, training, supervision, and monitoring in the areas of self-care, sensory and motor development, interpersonal skills, communication, socialization, reduction or elimination of maladaptive behavior, community living and mobility, health care, leisure and recreation, money management, and household chores. Day training and habilitation services and residential-based habilitation services are types of habilitation services.

Subp. 14. **Home and community-based services.** "Home and community-based services" means ~~the following~~ services ~~which are~~ provided to persons with mental retardation ~~if the services,~~ or related conditions that are authorized under United States Code, title 42, section 1396 et. seq., and ~~authorized under~~ the ~~waiver~~ MR/RC and ACS waivers granted by the United States Department of Health and Human Services: ~~case management, respite care, homemaker, in-home family support services, supported living arrangements for children, supported living arrangements for adults, day habilitation, and minor physical adaptations to the home, as defined in part 9525.1860); and other home and community based services authorized under United States Code, title 42, section 1396 et seq., if approved for Minnesota by the United States Department of Health and Human Services~~.

Subp. 14a. **Homemaker services.** "Homemaker services" means general household activities and ongoing monitoring of the person's well-being provided by a homemaker who meets the standards in parts 9565.1000 to 9565.1300.

[For text of subp 15, see M.R.]

Subp. 16. **[See repealer.]**

Subp. 17. **Individual service plan.** "Individual service plan" has the meaning given it in ~~parts 9525.0015 to 9525.0145 [Emergency]~~ *Minnesota Statutes*, section 256B.092, subdivision 1b.

Subp. 17a. **In-home family support services.** "In-home family support services" means residential-based habilitation services designed to enable the person to remain in the family home and may include training and counseling for the person and the person's family.

[For text of subp 18, see M.R.]

Subp. 19. **[See repealer.]**

Subp. 19a. **Leave days.** "Leave days" means days when a person is temporarily absent from services.

Subp. 19b. **Mental retardation or related condition or MR/RC.** "Mental retardation or related condition" or "MR/RC" has the meaning given to "mental retardation" in part 9525.0015, subpart 20, items A and B, and the meaning given to a "related condition" in *Minnesota Statutes*, section 252.27, subdivision 1a.

Subp. 19c. **Nursing facility.** "Nursing facility" means a facility licensed under *Minnesota Statutes*, chapter 144A, that is certified by the Minnesota Department of Health under title XVIII or XIX of the Social Security Act.

Subp. 19d. **Person.** "Person" means a person with mental retardation or a related condition, as defined in subpart 19b, who is receiving home and community-based services through either the MR/RC or ACS waiver plan.

Subp. 20. **Primary caregiver.** "Primary caregiver" means a person other than a member of the ~~client's~~ person's family who has primary responsibility for the assistance, supervision, or training of the ~~client~~ person in the ~~client's~~ person's residence.

[For text of subp 21, see M.R.]

Subp. 21a. **Residential-based habilitation services.** "Residential-based habilitation services" means services provided in the person's residence and in the community, that are directed toward increasing and maintaining the person's physical, intellectual, emotional, and social functioning. Residential-based habilitation services include therapeutic activities, assistance, counseling, training, supervision, and monitoring in the areas of self-care, sensory and motor development, interpersonal skills, communication, socialization, working, reduction or elimination of maladaptive behavior, community participation and mobility, healthcare, leisure and recreation, money management, and household chores. Supported living services and in-home family support services are residential-based habilitation services.

Subp. 21b. **Respite care.** "Respite care" means short-term supervision, assistance, and care provided to a person due to the temporary absence or need for relief of the person's family, foster family, or primary caregiver. Respite care may include day, overnight, in-home, or out-of-home services, as needed.

Subp. 22. **Room and board costs.** "Room and board costs" means costs associated with providing food, shelter, and personal needs items for ~~clients~~ persons, including the directly identifiable costs of:

[For text of items A to E, see M.R.]

Subp. 23. **Screening team.** "Screening team" means the team established under *Minnesota Statutes*, section 256B.092, subdivision 7, to evaluate a person's need for home and community-based services.

[For text of subp 24, see M.R.]

Subp. 25. **Short term.** "Short term" means a cumulative total of less than 90 24-hour days or 2,160 hours in a fiscal year. Additional hours may be authorized by the commissioner as approved in the current waiver plans.

Subp. 26. **Statewide average reimbursement rate.** "Statewide average reimbursement rate" means the dollar amount arrived at by dividing the total amount of money available under the waiver for the fiscal year by 365 days and then dividing the quotient by the department's projection of the total number of ~~clients~~ persons to receive home and community-based services as stated in the waiver for that fiscal year.

Subp. 26a. **Supported living services for adults.** "Supported living services for adults" means residential-based habilitation services provided on a daily basis to adults living in a service site for up to six persons.

Subp. 26b. **Supported living services for children.** "Supported living services for children" means residential-based habilitation services provided on a daily basis to persons under 18 years of age living in a service site for up to four persons.

Subp. 27. **Title XIX home and community-based waivered services for persons with mental retardation or related conditions or the MR/RC waiver plan.** "Title XIX home and community-based waivered services for persons with mental retardation or related conditions" or the "MR/RC waiver plan" means the waiver of requirements under United States Code, title 42, sections 1396 et seq., which allows the state to pay for home and community-based services for persons with mental retardation or related conditions through the medical assistance program. The term includes all amendments to the waiver including any amendments made after ~~October 14, 1985~~ the effective date of the last waiver plan, as approved by the United States Department of Health and Human Services under United States Code, title 42, section 1396 et. seq.

9525.1810 APPLICABILITY AND EFFECT.

[For text of subpart 1, see M.R.]

Subp. 2. **Effect.** The entire application of parts 9525.1800 to 9525.1930 shall continue in effect only as long as the MR/RC or ACS waiver from the United States Department of Health and Human Services is in effect in Minnesota.

9525.1820 ELIGIBILITY.

Subpart 1. **Eligibility criteria for MR/RC waiver.** A person is eligible to receive home and community-based services through the MR/RC waiver if the person meets all the criteria in items A to ~~D~~ E and if home and community-based services ~~may be~~ are provided ~~in accordance with~~ according to part 9525.1830:

A. the person is ~~eligible to receive medical assistance under *Minnesota Statutes*, chapter 256B or subpart 2~~ a resident of an ICF/MR or the screening team determines that the person would be placed in an ICF/MR within one year if home and community-based services were not provided;

B. the person is determined to be a person with mental retardation ~~or a related condition in accordance with~~ according to the

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definitions and procedures in parts 9525.0015 to ~~9525.0145 [Emergency]~~ 9525.0165 or the person is determined to be a person with a related condition as defined in *Minnesota Statutes*, section 252.27, subdivision 1a;

C. the person is ~~a resident of an ICF/MR or it is determined by the screening team that the person would be placed in an ICF/MR within one year if home and community-based services were not provided~~ eligible to receive medical assistance under *Minnesota Statutes*, chapter 256B, or subpart 2; ~~and~~

D. the screening team has determined that the person needs daily intervention; and

E. the person's individual service plan documents the need for daily intervention and specifies the services needed daily.

Subp. 1a. **Eligibility criteria for the ACS waiver.** A person is eligible to receive home and community-based services through the ACS waiver if the person meets all requirements in subpart 1, items B to E, and:

A. was admitted to a Medicaid-certified nursing facility before January 1, 1990, or amended date as approved by the Health Care and Finance Administration; and

B. is currently residing in a Medicaid-certified nursing facility, but has been determined by the screening team as requiring ICF/MR level of care.

Subp. 2. **Medical assistance eligibility for children residing with their parents.** The county board shall determine eligibility for medical assistance for a person under age 18 who resides with a parent or parents without considering parental income and resources if:

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

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

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

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

Subp. 3. **Beginning date.** Eligibility for medical assistance begins on the first day of the month in which the ~~client~~ person first receives home and community-based services.

9525.1830 PROVISION OF HOME AND COMMUNITY-BASED SERVICES.

Subpart 1. **Conditions.** The county board shall provide or arrange to provide home and community-based services to a person if the person is eligible for home and community-based services under part 9525.1820 and all the conditions in items A to F have been met:

A. the county board has determined that it can provide home and community-based services to the person within its allocation of home and community-based services money as determined under parts 9525.1890 and 9525.1910 or as authorized by the commissioner based on the limits of the approved waiver plan;

B. the screening team has recommended home and community-based services instead of ICF/MR services for the person under parts 9525.0015 to ~~9525.0145 [Emergency]~~ 9525.0165;

[For text of items C to F, see M.R.]

[For text of subp 2, see M.R.]

9525.1840 PARENTAL CONTRIBUTION FEE.

Subpart 1. **Out-of-home placements.** The parent or parents of a ~~client~~ person under age 18 shall be liable for a parental contribution fee determined according to *Minnesota Statutes*, ~~section~~ sections 252.27, subdivision 2, and 256B.14, if the ~~client~~ person resides outside the home of the parent or parents.

Subp. 2. **In-home services.** Parents of ~~clients~~ persons under age 18 may be liable for a parental contribution fee determined according to *Minnesota Statutes*, ~~section~~ sections 252.27, subdivision 2, and 256B.14, if the ~~client~~ person is residing with a parent and the ~~client's~~ person's medical assistance eligibility for home and community-based services was determined without considering parental income or resources under part 9525.1820, subpart 2.

9525.1850 PROVIDER REIMBURSEMENT.

A provider may receive medical assistance reimbursement for home and community-based services only if the provider meets the criteria in items A to ~~J~~ K. The training, experience, and supervision required in items B to E only apply to persons who are employed by, or under contract with, the provider to provide services that can be billed under part 9525.1860, subpart 3, item A. Providers licensed under parts 9525.0215 to 9525.0355; 9525.1500 to 9525.1690; and 9525.2000 to 9525.2140 are exempt from items C, D, and E.

[For text of items A and B, see M.R.]

C. If no training standards have been established, the provider, employee, or subcontractor must have completed, within the last two years, at least 24 hours of documented training. The training must be in areas related to the care, supervision, or training of persons with mental retardation or related conditions including first aid, medication administration, behavior management, cardiopulmonary resuscitation, human development, and obligations under *Minnesota Statutes*, sections 626.556 and 626.557. The county board may grant a written variance to the training requirements in this item for:

(1) a respite care provider who provides the respite care in his or her residence or in the ~~client's~~ person's residence; or

(2) a provider who ensures that the training will be completed within six months of the date the contract is signed.

This item does not apply to providers of ~~minor physical adaptations~~ adaptive modifications and equipment.

~~C.~~ D. The provider ensures that the provider and all employees or subcontractors have at least one year of experience within the last five years in the care, training, or supervision of persons with mental retardation or related conditions as defined in *Minnesota Statutes*, section 252.27. The county board may grant a written variance to the requirements in this item for:

(1) a respite care provider who provides the respite care in his or her residence or in the ~~client's~~ person's residence;

(2) a provider, employee, or subcontractor who is a qualified mental retardation professional who meets the requirements in Code of Federal Regulations, title 42, section 442.401 and has been approved by the case manager; or

(3) an employee of the provider if the employee will work under the direct on-site supervision of a qualified mental retardation professional who meets the requirements in Code of Federal Regulations, title 42, section 442.401, and who has been approved by the case manager.

This item does not apply to providers of ~~minor physical adaptations~~ adaptive modifications and equipment or homemaker services.

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

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

~~F.~~ G. The provider ensures that the provider and all employees or subcontractors have never been convicted of a violation, or admitted violating *Minnesota Statutes*, section 626.556 or 626.557 and there is no substantial evidence that the provider, employees, or subcontractors have violated *Minnesota Statutes*, section 626.556 or 626.557.

~~G.~~ H. The provider has a legally binding contract with the host county that complies with part 9525.1870.

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

~~I.~~ J. The provider agrees in writing to comply with United States Code, title 42, sections 1396 et seq., and regulations implementing those sections and with applicable provisions in parts ~~9500.0750 to 9500.1080, 9505.1750 to 9505.2150,~~ 9505.2160 to 9505.2245 and 9525.1800 to 9525.1930.

~~J.~~ K. The provider is not the ~~client's~~ person's guardian or a member of the ~~client's~~ person's family. This item does not preclude the county board from providing services if the ~~client~~ person is a ward of the commissioner.

9525.1860 REIMBURSABLE SERVICES.

Subpart 1. **General limits.** ~~The costs of providing the home and community-based services defined in subpart 2, provided in accordance with subparts 3 to 7, are reimbursable under the medical assistance program for as long as the waiver from the United~~

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~~States Department of Health and Human Services is in effect in Minnesota.~~ Only costs for services listed in the approved Minnesota MR/RC or ACS waiver plan shall be reimbursed under the medical assistance program.

A. Services reimbursable through the MR/RC waiver plan are:

(1) case management;

(2) residential habilitation services including in-home family support, supported living services for adults, and supported living services for children;

(3) day training and habilitation, including supported employment;

(4) homemaker services;

(5) respite care; and

(6) minor adaptations and equipment.

B. Services reimbursable through the ACS waiver plan are:

(1) residential habilitation services including in-home family support, supported living services for adults, and supported living services for children;

(2) day training and habilitation, including supported employment;

(3) homemaker services;

(4) respite care; and

(5) adaptive modifications and equipment.

Subp. 2. **[See repealer.]**

Subp. 3. **Billing for services.** Billings submitted by the provider, except a provider of ~~minor physical adaptations~~ adaptive modifications and equipment, must be limited to time actually and reasonably spent:

A. In direct contact with the ~~client~~ person to assist the ~~client~~ person in attaining the goals and objectives specified in the ~~client's~~ person's individual service plan. Direct contact time includes time spent traveling to and from service sites.

B. In verbal or written contact with professionals or others regarding the ~~client's~~ person's progress in attaining the goals and objectives specified in the ~~client's~~ person's individual service plan.

C. In planning activities including attending the ~~client's~~ person's interdisciplinary team meetings, developing goals and objectives for the ~~client's individual habilitation~~ person's individual service plan, assessing and reviewing the ~~client's~~ person's specified goals and objectives, documenting the ~~client's~~ person's progress toward attaining the goals and objectives in the ~~client's~~ person's individual service plan and assessing the adequacy of the services related to the goals and objectives in the ~~client's~~ person's individual service plan.

Subp. 4. **Service limitations.** The provision of home and community-based services is limited as stated in items A to H.

A. Case management services may be provided as a single service for a period of no more than 90 days.

B. Day training and habilitation services must:

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

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

(3) be provided at a different service site than the ~~client's~~ person's place of residence unless medically contraindicated, as required in *Minnesota Statutes*, section ~~256B.501~~ 252.41, subdivision ~~1, paragraph (d)~~ 3; and

(4) be provided by an organization that does not have a direct or indirect financial interest in the organization that provides the ~~client's~~ person's residential services unless the ~~client~~ person is residing with:

(a) his or her family; or

(b) a foster family that does not have a direct or indirect financial interest in the organization that provides the ~~client's~~ person's residential services.

C. Homemaker services may be provided only if:

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

(2) there is no person, other than the ~~client~~ person, regularly responsible for these activities and the ~~client~~ person is unable

to manage the home and his or her own care without ongoing monitoring or assistance. Homemaker services include meal preparation, cleaning, simple household repairs, laundry, shopping, and other routine household tasks.

D. Leave days are reimbursable for supported living ~~arrangements~~ services for children or supported living ~~arrangements~~ services for adults~~, if the client intends to return to the service~~. If the person is not receiving respite care or other supported living services, billings may be made for leave days ~~only~~ when the ~~client~~ person is:

(1) hospitalized;

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

(3) home for a visit.

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

E. The average dollar amount available for reimbursement for ~~minor physical adaptations to the home~~ adaptive modifications and equipment shall be ~~limited to an average cost of $3,111 per client for all clients in the county in fiscal year 1986. The average cost will be increased each fiscal year based on the first quarter forecast of the projected percentage change in the annual value of the all urban consumer price index, (CPI-U) for Minneapolis-Saint Paul as published by the Bureau of Labor Statistics new series index (1967 = 100), from the preceding fiscal year. The CPI-U is incorporated by reference and is available from the Minitex Interlibrary Loan System. The average cost limitation applies to the entire period of time for which the waiver has been approved. Minor physical adaptations to the home must be limited to the purchase and installation of one or more of the following:~~

~~(1) wheelchair ramps;~~

~~(2) handrails and grab bars;~~

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

~~(4) widened doorways;~~

~~(5) shatterproof windows;~~

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

~~(7) door handle replacements;~~

~~(8) lowered kitchen work surfaces;~~

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

~~(10) handles and hoses for showerheads;~~

~~(11) door hinge replacements;~~

~~(12) shower and bathtub seats; or~~

~~(13) other minor physical adaptations authorized under United States Code, title 42, section 1396 et seq., if approved for Minnesota by the United States Department of Health and Human Services~~ determined annually by the commissioner based on the approved waiver plan.

~~Minor physical adaptations~~ Adaptive modifications and equipment must be constructed ~~in accordance with~~ or installed to meet or exceed applicable federal, state, and local building codes.

F. Home and community-based services are not reimbursable if provided to a ~~client~~ person while the ~~client~~ person is a resident of or on leave from an ICF/MR, skilled nursing facility, intermediate care facility, or a hospital. This item shall not apply to leave days authorized ~~in accordance with~~ according to item C for a ~~client~~ person who is hospitalized.

G. Respite care must:

(1) be provided only for the relief of the ~~client's~~ person's family or foster family, or if the ~~client~~ person is ~~in~~ receiving a supported living ~~arrangement~~ service in the provider's residence, for the relief of the ~~client's~~ person's primary caregiver; and

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

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

H. Room and board costs are not allowable costs for home and community-based services except respite care provided out of the ~~client's~~ person's residence. All room and board costs must be directly identified on reports submitted by the provider to the county board.

Subp. 5. **[See repealer.]**

Subp. 5a. **Other medical or related costs.** The cost of other medical or related services reimbursable under the Minnesota State Medicaid Plan must not be included in the rate or rates billed by the provider or providers for reimbursement under parts 9525.1800 to 9525.1930.

Subp. 6. **Other applicable rules.** Home and community-based services must be provided as required under items A to ~~E~~ H unless a variance has been approved ~~in accordance with subpart 7~~ by the commissioner.

[For text of item A, see M.R.]

B. Day ~~habilitation and~~ training and habilitation services must be licensed by the department.

C. Supported living ~~arrangements~~ services for children must be provided ~~at~~ by a service ~~site~~ provider licensed under parts ~~9545.0010~~ 9525.2000 to ~~9545.0260~~ 9525.2140 and at a site licensed under parts 9545.0010 to 9545.0260.

D. Supported living ~~arrangements for adults which are provided in~~ services provided at a service site serving four or fewer adults must be provided by a service provider licensed under parts 9525.2000 to 9525.2140 and the residence must be licensed under parts 9555.5105 to 9555.6265. Supported living services provided at a single residence serving ~~more than four~~ five or six adults must be licensed under parts ~~9525.0210~~ 9525.0215 to ~~9525.0430~~ 9525.0355. ~~Supported living arrangements provided at a service site for four or fewer adults must be approved under parts 9555.6100 to 9555.6400; 9545.0090, item A; 9545.0140; 9545.0180; and 9545.0190, subparts 3 and 5. In approving supported living arrangements provided at a service site for four or fewer adults, the county board shall apply the criteria in parts 9545.0090, item A; 9545.0140; 9545.0180; and 9545.0190, subparts 3 and 5 as though the criteria had been written to apply to services for adults.~~

E. Respite care provided at a service site serving more than four ~~clients~~ persons must be licensed under parts ~~9525.0210~~ 9525.0215 to ~~9525.0430~~ 9525.0355. Respite care provided at a service site serving four or fewer ~~clients~~ persons under 18 years of age must be licensed under parts 9545.0010 to 9545.0260, unless otherwise authorized by the commissioner. Respite care provided at a service site serving four or fewer adults must be ~~approved~~ licensed under parts ~~9545.0090, item A; 9545.0140; 9545.0180; 9545.0190, subparts 3 and 5; and 9555.6100 to 9555.6400. Respite care provided at a service site for four or fewer children and adults must be approved under parts 9545.0090, item A; 9545.0140; 9545.0180; 9545.0190, subparts 3 and 5; and 9555.6100 to 9555.6400 and licensed under parts 9545.0010~~ 9555.5105 to ~~9545.0260~~ 9555.6265, unless otherwise authorized by the commissioner. This item shall not apply to a person who provides respite care for fewer than 30 days a year.

Subp. 7. **Licensing variances.** Requests for variances to the licensing requirements in subpart 6 must be handled ~~in accordance with~~ according to items A to C.

A. The county board may request a variance from compliance with parts 9545.0010 to 9545.0260 as required in subpart 6, item C, D, or E, for a provider who provides services to ~~clients~~ persons under 18 years of age if the county board determines that no providers who meet the licensing requirements are available and that granting the variance will not endanger the health, safety, or development of the ~~clients~~ persons. The written variance request must be submitted to the commissioner and must contain:

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

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

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

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

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

B. The county board may grant a written variance from compliance with parts ~~9545.0090, item A; 9545.0140; 9545.0180; 9545.0190, subparts 3 and 5; and 9555.6100~~ 9555.6105 to ~~9555.6400~~ 9555.6265 as required in subpart 6, items D and E, for a

provider who provides services to adults if the county board determines that no providers who meet the licensing requirements are available and that granting the variance will not endanger the health, safety, or development of the ~~clients~~ persons.

C. Requests for a variance of the provisions in parts ~~9525.0210~~ 9525.0215 to ~~9525.0430~~ 9525.0355 must be submitted ~~in accordance with~~ according to part ~~9525.0250~~ 9525.0235, subpart 13.

9525.1870 PROVIDER CONTRACTS AND SUBCONTRACTS.

Subpart 1. **Contracts.** To receive medical assistance reimbursement for home and community-based services, the provider must have a contract developed ~~in accordance with~~ according to parts 9550.0010 to 9550.0092 ~~as proposed at *State Register.* Volume 9, Number 48, pages 2566 to 2576 (May 27, 1985),~~ with the host county. In addition ~~to the requirements in parts 9550.0010 to 9550.0092 as proposed at *State Register.* Volume 9, Number 48, pages 2566 to 2576 (May 27, 1985)~~, the contract must contain the information in items A to F and subpart 2:

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

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

[For text of items C to F, see M.R.]

[For text of subps 2 to 4, see M.R.]

9525.1880 COUNTY PROPOSAL AND APPROVAL OF COUNTY PROPOSAL.

Subpart 1. **Application forms and deadlines.** To be considered for reimbursement under parts 9525.1800 to 9525.1930, county boards, singly or jointly, must submit to the commissioner an annual proposal for the provision of home and community-based services to ~~clients~~ persons for which the county board or county boards are financially responsible. The commissioner shall notify the county boards of the deadlines and forms for the submission of proposals for home and community-based services.

Subp. 2. **Contents of county proposal.** The proposal must be based on the needs of individually identified persons in the county and must~~:~~

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

~~B.~~ identify the number of persons to whom the county board expects to provide the home and community-based services and identify, by name, recipients authorized and receiving services, individuals screened and authorized but not yet receiving services, and individuals for whom the county has received a request to receive waivered services but has not yet screened. If county boards are applying jointly, each county board must identify the number of persons for which the county is financially responsible.

The ~~proposal must include the information in subitems (1) to (6) with separate listings in each category for children and adults~~ commissioner shall review the county community social services administration (CSSA) plan, the determination of need, and the redetermination of need for services for persons with developmental disabilities and may consider the county goals and objectives as part of the county proposal. The commissioner may also require the county boards to include the following information in the proposal:

~~(1)~~ A. current living arrangements;

~~(2)~~ B. current day programs;

~~(3)~~ C. level of supervision required;

~~(4)~~ D. the type of home and community-based services projected to be needed and the expected duration of the service or services;

~~(5)~~ E. the projected starting dates of the home and community-based services; ~~and~~

~~(6)~~ F. the proposed service provider or providers and billing rate or rates, if known~~.~~

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

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

~~E. Describe~~;

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G. a description of how the proposal limits the development of new community-based ICF/MR beds and reduces the county's use of existing ICF/MR beds in ~~state-operated ICFs/MR~~ regional treatment centers and community ICFs/MR, including any steps the county board has taken to encourage voluntary decertification of community-based ICF/MR beds~~.~~

~~F. Describe~~; and

H. a description of the steps the county board has taken to prepare to provide home and community-based services, including efforts to integrate home and community-based services into the county board's administrative services planning system.

Subp. 3. **Review and approval of proposal.** The commissioner shall review all proposals submitted ~~in accordance with~~ according to subparts 1 and 2. The commissioner shall only approve the county proposals that meet the requirements of parts 9525.1800 to 9525.1880 and that demonstrate compliance with the goals of the department as stated in items A to D:

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

~~B.~~ reduction of the number of children in ~~state-operated ICFs/MR~~ regional treatment centers;

~~C.~~ B. limitation of the development of new community-based ICF/MR beds and reduction of the use of existing ICF/MR beds ~~in state-operated ICFs/MR and community-based ICFs/MR~~ located on regional treatment center campuses and in the community; and

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

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

9525.1890 ALLOCATION OF HOME AND COMMUNITY-BASED SERVICE MONEY.

Subpart 1. **Allocation of diversions.** To allocate home and community-based services money for diversions, the commissioner shall project the number of diversions for the county based on the average of the projected utilization of ~~state-operated~~ state regional treatment centers and community-based ICF/MR beds using historical utilization for the county; and the projected per capita utilization of ~~state-operated~~ state regional treatment centers and community-based ICF/MR beds for the county, both of which are adjusted to conform with the number of diversions projected in the waiver. The projection shall be adjusted based on the county board's actual use of allocated diversions during the previous fiscal year. If the county board uses less than the number of diversions allocated for the fiscal year, the commissioner may decrease the number of diversions projected by the commissioner for the county for the next fiscal year. The county board's allocation of money for diversions shall be based on the lesser of the number of diversions in the approved county proposal and the number of diversions projected for the county by the commissioner.

Subp. 2. **Allocation of ~~placements~~ conversions.** The county board's allocation of money for ~~placements~~ conversions shall be based on the number of ~~placements~~ conversions in the approved county proposal and the extent to which the ~~placements~~ conversions result in an overall reduction in the county board's historical utilization of ~~state-operated~~ state regional treatment centers and community-based ICF/MR beds.

[For text of subp 3, see M.R.]

Subp. 4. **Review of allocation; reallocation.** The commissioner shall review the projected and actual use of home and community-based services by all county boards participating in the program ~~on a quarterly basis~~ at least semiannually, and report the findings to all the county boards in the state. The commissioner may reduce the allocation to a county board if the commissioner determines, in consultation with the county board, that the initial allocation to the county board will not be used during the allocation period. The commissioner may reallocate the unused portion of the county board's initial allocation to another county board, or other county boards, in the same geographic region that plan to expand home and community-based services or provide home and community-based services for the first time. If there is not a sufficient number of projections to use the unused allocation from county boards within the geographic region, the commissioner may reallocate the remainder to another county board or other county boards in other geographic regions that plan to expand home and community-based services or provide home and community-based services for the first time.

Subp. 5. **Preference given.** The commissioner may give preference during the reallocation process and in the allocation of money for subsequent fiscal years to proposals submitted by county boards that have not previously provided home and community-based services. In allocating money for each fiscal year, the commissioner shall give priority to the continued funding of home and community-based services for ~~clients~~ persons who received home and community-based services in the previous fiscal year and continue to be eligible for home and community-based services.

Subp. 6. **Special projects.** The commissioner may reallocate or reserve available home and community-based service money to fund special projects designed to serve very dependent persons with special needs who meet the criteria in parts 9525.1820 and 9510.1050, subpart 2, items C and D ~~as proposed at *State Register,* Volume 10, Number 2, pages 57 to 65 (July 8, 1985)~~. The

reallocated or reserved money may be used to provide additional money to county boards that are unable to fund home and community-based services for very dependent persons with special needs within the statewide reimbursement rate as required in part 9525.1910, subpart 2. The commissioner shall develop procedures and criteria for allocating home and community-based program funds for each group identified as a special project under this subpart.

9525.1900 AGREEMENT BETWEEN STATE AND COUNTY.

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

[For text of items A to C, see M.R.]

D. the total cost of providing home and community-based services to all ~~home and community-based service clients~~ persons will not exceed the limits in part 9525.1910 except as provided in part 9525.1890, subpart 6;

E. records will be kept ~~in accordance with~~ according to part 9525.1920 and applicable provisions of parts ~~9505.1750~~ 9505.2160 to ~~9505.2150~~ 9505.2245;

F. the county board will comply with all applicable standards in parts 9525.0015 to ~~9525.0145 [Emergency]~~ 9525.0165;

[For text of items G to I, see M.R.]

[For text of subp 2, see M.R.]

9525.1910 COUNTY BOARD FUNDING OF HOME AND COMMUNITY-BASED SERVICES.

[For text of subpart 1, see M.R.]

Subp. 2. **Distribution of money.** The total amount of money allocated to a county board for home and community-based services in a fiscal year shall not exceed the statewide average daily reimbursement rate multiplied by the total number of days the home and community-based services will be provided to the ~~clients~~ persons.

[For text of subp 3, see M.R.]

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

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

B. The county's average cost per day for all MR/RC home and community-based services provided to all ~~clients~~ persons must not exceed the statewide average daily reimbursement rate, except as provided for in part 9525.1890, subpart 6. The county's average cost per day for a recipient of ACS waivered services may not exceed the amount allocated to the county by the commissioner for that person.

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

(1) the cost is ordinary, necessary, and related to ~~client~~ the person's care;

(2) the cost is for activities which are generally accepted in the field of mental retardation or related conditions and are scientifically proven to promote achievement of the goals and objectives contained in the ~~client's~~ person's individual service plan;

[For text of subitems (3) and (4), see M.R.]

[For text of subp 5, see M.R.]

9525.1920 REQUIRED RECORDS AND REPORTS.

Subpart 1. **Provider records.** The provider and any subcontractor the provider contracts with shall maintain complete program and fiscal records and supporting documentation identifying the ~~clients~~ persons served and the services and costs provided under the provider's home and community-based services contract with the county board. These records must be maintained in well-organized

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files and identified in accounts separate from other facility or program costs. The provider's and subcontractor's records shall be subject to the maintenance schedule, audit availability requirements, and other provisions in parts ~~9505.1750~~ 9505.2160 to ~~9505.2150~~ 9505.2245.

Subp. 2. **County board records.** The county board shall maintain complete fiscal records and supporting documentation identifying the ~~clients~~ recipients served and the services and costs provided under the county board's agreement with the department. If the county board provides home and community-based services in addition to case management, the county board's records must include the information required in part 9525.1870. The county board records shall be subject to the maintenance schedule, audit availability requirements, and other provisions in parts ~~9505.1750~~ 9505.2160 to ~~9505.2150~~ 9505.2245.

Subp. 3. **Availability of records.** The county board's, the provider's, and the subcontractor's financial records described in subparts 1 and 2, must be available, on request, to the commissioner and the federal Department of Health and Human Services ~~in accordance with~~ according to parts ~~9500.0750 to 9500.1080, 9505.1750~~ 9505.2160 to ~~9505.2150,~~ 9505.2245 and 9525.1800 to 9525.1930.

[For text of subp 4, see M.R.]

9525.2010 DEFINITIONS.

[For text of subps 1 to 33, see M.R.]

Subp. 34. **Supported living services for children.** "Supported living services for children" means residential-based habilitation services provided on a daily basis to a waivered services recipient under 18 years of age who resides in a service site licensed under parts 9545.0010 to 9545.0260 for up to ~~three~~ four residents.

[For text of subps 35 and 36, see M.R.]

REPEALER. *Minnesota Rules*, parts 9525.1800, subparts 4, 16, and 19; 9525.1860, subparts 2 and 5; and 9525.1930, subpart 2, are repealed.

Department of Human Services

Proposed Permanent Rules Relating to Reimbursement for Cost of Care of Clients in State Facilities

Notice of Intent to Adopt a Rule Without a Public Hearing

NOTICE IS HEREBY GIVEN that the State Department of Human Services intends to adopt the above-entitled rule without a public hearing following the procedures set forth in the Administrative Procedure Act for adopting rules without a public hearing in *Minnesota Statutes*, sections 14.22 to 14.28. The statutory authority to adopt the rule is *Minnesota Statutes*, section 246.51, subdivision 2.

All persons have 30 days or until 4:30 p.m. on September 18, 1991 in which to submit comment in support of or in opposition to the proposed rule or any part or subpart of the rule. 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*, sections 14.131 to 14.20.

Comments or written requests for a public hearing must be submitted to:

Stephanie L. Schwartz
Department of Human Services
Rules & Bulletins Division
444 Lafayette Road
St. Paul, MN 55155-3816
(612) 297-4302

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

Minnesota Rules, parts 9515.1000 to 9515.2600 govern the reimbursement to state facilities for the cost of care of clients. This rule affects state facilities, clients of state facilities, and responsible relatives, guardians, trustees, conservators, case managers and representative payees of clients.

In the Matter of the Adoption of the Rule of the State Department of Human Services Governing Funding and Administration of Home and Community-Based Services, Minnesota Rules, parts 9525.1800 to 9525.1930 and part 9525.2010, subpart 34.

DECLARATION OF COUNSEL

I, David Iverson, 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 0874.

Special Assistant
Attorney General

Dated: 11/11/91

Anu Seam
Rules Division
Minnesota Department of Human Services
444 Lafayette Road
St. Paul, MN 55155-3816

Oral statements will be received during regular business hours over the telephone at (612) 297-1217 by Anu Seam 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

Developmental Disabilities Division

Notice of Solicitation of Outside Information or Opinions Regarding Proposed Amendments to Funding and Administration of Home and Community-Based Services, *Minnesota Rules*, Parts 9525.1800 to 9525.1930

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 *Minnesota Rules*, Parts 9525.1800 to 9525.1930, governing the funding and administration of home and community-based services. The proposed amendments include revisions in *Minnesota Rules*, parts 9525.1800 to 9525.1930, that are necessary to conform to federal regulations and other Minnesota rules and to modify other administrative standards and procedures which are in the current rule. The rule is authorized by *Minnesota Statutes*, section 256B.092, which governs the funding and administration of home and community-based services.

The State Department of Human Services requests information and opinions regarding 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: Laura Plummer, Rules and Bulletins Division, Department of Human Services, 444 Lafayette Road, St. Paul, MN 55155-3816. Oral statements will be received during regular business hours over the telephone at 612/297-4997 and in person at 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.

Dated: 13 August 1990

Laura Plummer
Rules and Bulletins Division
Department of Human Services

Metropolitan Council

Notice of Public Meeting of the Metropolitan Council's Metropolitan Agencies Appointments Committee

The Metropolitan Council's Metropolitan Agencies Appointments Committee will be conducting a public meeting on Sept. 20 to hear statements from candidates and on behalf of candidates for District G on the Metropolitan Parks and Open Space Commission. District G includes Carver and Scott Counties, western Hennepin County and the cities of Burnsville and Lakeville in Dakota County. The public is invited to attend and participate in making recommendations on this appointment. Following the meeting, the committee will submit its recommendation to the Council and the Council will appoint the agency member. More information on this appointment process and the meeting may be obtained from Rosemarie Coleman of the Council staff at 291-6630. The meeting will be at 7:30 p.m., in the Council Chambers of the Chaska City Hall, 1 City Plaza, Chaska.