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SEP 22 1994

State of Minnesota
Department of Human Services

Human Services Building
444 Lafayette Road N
St. Paul, Minnesota 55155

Proposed Rules

- SONAR

- Rules

September 21, 1994

Ms. Maryanne Hruby
Executive Director, LCRAR
55 State Office Building
St. Paul, Minnesota 55155

Dear Ms. Hruby:

Pursuant to Minnesota Statutes, section 14.131, enclosed is a statement of need and reasonableness relating to Therapeutic Leave for Medical Assistance Recipients in Intermediate Care Facilities for the Mentally Retarded, Minnesota Rules, part 9505.0415, subpart 6, item C.

If you have any questions on the statement of need and reasonableness, please do not hesitate to contact me at 282-9850.

Sincerely,

Asha Sharma

Asha Sharma
Rules Division

Encl.

STATE OF MINNESOTA

DEPARTMENT OF HUMAN SERVICES

In the Matter of the Proposed
Amendment of the Rule of the
State Department of Human Services
Governing Therapeutic Leave for Medical
Assistance Recipients in Intermediate
Care Facilities for the Mentally Retarded,
Minnesota Rules, part 9505.0415,
subpart 6, item C.

**NOTICE OF INTENT TO
ADOPT A RULE WITHOUT
A PUBLIC HEARING**

The Department of Human Services intends to amend a permanent rule without a public hearing following the procedures set forth in the Administrative Procedure Act, Minnesota Statutes, sections 14.22 to 14.28. You have 30 days to submit written comments on the proposed rule amendment and may also submit a written request that a hearing be held on the amendment.

Agency Contact Person. Comments or questions on the rule amendment and written requests for a public hearing on the amendment must be submitted to:

Asha Sharma, Minnesota Department of Human Services, 444
Lafayette Rd., St. Paul, MN 55155-3816, telephone (612) 282-
9850, fax number (612) 297-3173.

Subject of Rule Amendment and Statutory Authority. The proposed rule amendment is about therapeutic leave for mentally retarded residents of intermediate care facilities. The statutory authority to adopt this amendment is Minnesota Statutes, section 256B.04, subdivisions 4 and 12, and from 42 Code of Federal Regulations §447.40(a)(1). A copy of the proposed rule amendment is published in the State Register and attached to this notice as mailed.

Comments. You have until 4:30 p.m., Wed. Oct. 26, 1994, to submit written comment in support of or in opposition to the proposed rule amendment. Your comment must be in writing and received by the agency contact person by the due date. Comment is encouraged. Your comment should identify the proposed rule amendment addressed, the reason for the comment, and any change proposed.

Request for a Hearing. In addition to submitting comments, you may also request that a hearing be held on the rule amendment. Your request for a public hearing must be in writing and must be received by the agency contact person by 4:30 p.m. on Wed. Oct. 26, 1994. Your written request for a public hearing must include your name and address. You are encouraged to identify the proposed rule amendment which caused your request, the reason for the request, and any changes you want made to the proposed rule amendment. If 25 or more persons submit a written request for a hearing, a public hearing will

be held unless a sufficient number withdraw their requests in writing. If a public hearing is required, the agency will follow the procedures in Minnesota Statutes, sections 14.131 to 14.20.

Modifications. The proposed rule amendment may be modified as a result of public comment. The modifications must be supported by data and views submitted to the agency and may not result in a substantial change in the proposed rule amendment as printed in the State Register. If the proposed rule amendment affects you in any way, you are encouraged to participate in the rulemaking process.


Statement of Need and Reasonableness. A statement of need and reasonableness is now available from the agency contact person. This statement describes the need for and reasonableness of each provision of the proposed rule amendment and identifies the data and information relied upon to support the proposed amendment.

Small Business Considerations. In preparing the amendment, the Department considered the requirements of Minnesota Statutes, section 14.115 but believes any impact on small business falls within the exemptions for medical care in section 14.115, subd. 7, clause (3).

Expenditure of Public Money by Local Public Bodies. The Department estimates that the rule amendment will require no more than \$50 in the expenditure of public money by local public bodies.

Impact on Agriculture Lands. Because the proposed rule amendment does not have a direct and substantial adverse impact on agricultural land in Minnesota, Minnesota Statutes, section 14.11, subd. 2, is not applicable.

Adoption and Review of Rule. If no hearing is required, after the end of the comment period the agency may amend the rule. The amended rule and supporting documents will then be submitted to the Attorney General for review as to legality and form to the extent form relates to legality. You may request to be notified of the date the rule amendment is submitted to the Attorney General or be notified of the Attorney General's decision on the rule. If you wish to be so notified, or wish to receive a copy of the adopted rule amendment, submit your request to the agency contact person listed above.


for MARIA R. GOMEZ
Commissioner of Human Services

Date: 9/12/94

1 that has a license to provide services for the physically
2 handicapped as provided in parts 9570.2000 to 9570.3600, 72
3 leave days per calendar year.

4 [For text of subp 7, see M.R.]

Office of the Revisor of Statutes

Administrative Rules



TITLE: Proposed Permanent Rules Relating to Permitting
Extended Therapeutic Leave Days

AGENCY: Department of Human Services

MINNESOTA RULES: Chapter 9505

The attached rules are approved for
publication in the State Register

A handwritten signature in cursive script that reads "Paul M. Marinac".

Paul M. Marinac
Deputy Revisor

STATE OF MINNESOTA

DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF THE PROPOSED AMENDMENT
OF DEPARTMENT OF HUMAN SERVICES RULE
GOVERNING THERAPEUTIC LEAVE FOR MEDICAL
ASSISTANCE RECIPIENTS IN INTERMEDIATE
CARE FACILITIES FOR THE MENTALLY RETARDED,
MINNESOTA RULES, PART 9505.0415, SUBPART 6,
ITEM C.

STATEMENT OF NEED
AND REASONABLENESS

The Department of Human Services proposes to amend Minnesota Rules part 9505.0415, subpart 6, item C to increase the maximum number of "therapeutic leave days" for recipients in intermediate care facilities for the mentally retarded ("ICFs/MR").

The authority for this rule comes from Minnesota Statutes, section 256B.04, subdivisions 4 and 12, and from 42 Code of Federal Regulations §447.40(a)(1) (hereafter "42 CFR etc."). The present rule has been in effect since November 1, 1987.

This rule applies to medical assistance recipients under Title XIX of the Social Security Act. The term "therapeutic leave" refers to the temporary absence of a "recipient," a resident of a long-term care facility, for activities such as vacations or visits home. Minnesota Rules, part 9505.0415, subpart 1, item F.

Federal law permits state medical assistance programs to pay facilities to keep beds reserved during recipients' temporary absences. 42 CFR §447.40(a). Payment for reserved beds ensures that a bed is available to the recipient returning from leave and also ensures that the facility does not incur a monetary loss from keeping beds unoccupied until the recipient returns. (See attached copy of original Statement of Need and Reasonableness).

Under federal law, a state may pay for therapeutic leave if its state plan provides for such payments and specifies any limits on them. The therapeutic leave must also be included in the recipient's plan of care. 42 CFR §447.40(a)(2). The Department has requested federal approval of the therapeutic leave amendment and expects to get the necessary approval.

Current Minnesota Rules limit the maximum number of therapeutic leave days for recipients in ICFs/MR to 72 days. Minnesota Rules, part 9505.0415, subpart 6, item C. The maximum leave days is the same for recipients in long-term care facilities licensed to provide services for the physically handicapped. Minnesota Rules, part 9505.0415, subpart 6, item D. Recipients in other

intermediate care facilities and in skilled nursing facilities are limited to 36 therapeutic leave days. Minnesota Rules, part 9505.0415, subp. 6, items A, B.

The more extensive therapeutic leave for recipients in ICFs/MR gives recipients greater opportunities to develop skills for living in the community. Thus, the therapeutic leave is a step away from institutional living and toward normalization and living in the community. This is consistent with the goal of assisting the recipient to live in the least restrictive setting. With therapeutic leave, a recipient may develop sufficient skills to be able some day to leave the ICF/MR and live in the community.

Also, the extensive leave permits recipients to maintain a strong connection to their families. Persons with developmental disabilities are frequently placed outside the home as children or young adults, but the families often remain actively involved in their lives. Maintaining a strong connection with family is essential to the well-being of the recipient.

In spring 1994, the need for an increase in therapeutic leave days was brought to the attention of the Department by parents of recipients in ICFs/MR and an attorney for persons with developmental disabilities. They commented that the 72-day period is not long enough to permit a recipient to spend weekends and vacations with family. (See attached copy of parent's comment and letter from Anne Henry).

The Department has moved quickly on this rule so that families can benefit from increased leave during the 1994 holiday season.

The Department proposes to increase the current 72-day limit to 120 days. This period would permit a recipient to spend weekends and two weeks' vacation with family. The 120-day figure is calculated as follows:

52 weekends x 2 = 104; + 14 days' vacation = 118; + 2 extra days = 120.

The increased maximum is necessary to satisfy parents' wish to spend more time with their children living in ICFs/MR and to afford the recipient greater opportunity to maintain family relationships, spend time in a less restrictive setting, and develop skills for living in the community.

The 120-day figure is reasonable because it provides for a maximum of 52 weekends per year plus two weeks' vacation. Potential for misuse of the increased therapeutic leave is minimal because any increased leave must be approved by the commissioner, using criteria proposed in the amendment.

The amendment vests some discretion in the commissioner by providing that the commissioner "may" give approval of additional leave. The commissioner's discretion is limited by the conditions that must be met before approval may be granted. The discretion is necessary to permit the commissioner to deny requests for additional leave when the commissioner believes the conditions have not been satisfied.

The commissioner's denials of requests for increased leave can be appealed pursuant to Minnesota Statutes, section 256.045.

Requiring the recipient or legal representative for the recipient to request the additional therapeutic days is reasonable because it ensures that the recipient desires the additional leave. The requirement that the leave be consistent with the recipient's service plan is reasonable because federal regulations require such consistency. 42 CFR §447.40(a)(2). Requiring evaluation of the feasibility of alternative services such as home and community based services is reasonable because a recipient who takes more than 72 days of therapeutic leave may be ready to leave the institution and to take advantage of the less restrictive alternative services.

The Department believes this rule to be noncontroversial because, as the attached fiscal note shows, this rule amendment has little or no fiscal impact on the state or counties. The increased number of leave days does not increase payments from state or county funds because an ICF/MR will continue to receive payment whether the recipient is in the facility or on therapeutic leave.

Because the Department believes this amendment to be noncontroversial, no advisory committee was convened. The Department published a notice in the August 15, 1994 issue of the State Register soliciting opinions on this amendment. 18 S.R. 348. As of Wednesday, September 7, 1994, the Department has received comments supporting the rule from five parents of recipients in ICFs/MR, eight developmental disability professionals, and from State Representative Wayne Simoneau. (see attached list). One parent telephoned to ask questions but said she is not sure if she does or does not support the rule. The Department has received no comments against the amendment.

In addition to publishing the notice of solicitation, the Department contacted the following to solicit opinions on the amendment: Anne Henry, attorney, Minnesota Disability Law Center; Robert Brick, ARC Minnesota; Dennis Herzog, Anoka County case manager; and the Minnesota Association of County Social Service Administrators (MACSSA) Rules Committee.

In preparing the amendment, the Department considered the requirements of Minnesota Statutes, section 14.115 but believes that any impact on small business falls within the exemptions in

Minnesota Statutes, section 14.115, subd. 7, clause (3) for medical care.

Because the proposed rule does not have a direct and substantial adverse impact on agricultural land in Minnesota, Minnesota Statutes, section 14.11, subd. 2, is not applicable.

Date: Sept 12, 1994

John Pelchat
for MARIA R. GOMEZ
Commissioner of Human Services