



Children and Family Services



Reimbursing Children's Residential Mental Health Services



**in Iowa,
North Dakota,
South Dakota and
Wisconsin**



February 2003

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EXECUTIVE SUMMARY

The 2002 legislature directed the Minnesota Department of Human Services to develop a plan to allow Medical Assistance to reimburse counties for children's mental health residential treatment services provided in the border states of Iowa, North Dakota, South Dakota and Wisconsin. The plan was to include a certification procedure in lieu of state licensing for these out-of-state facilities and a method to set rates for out-of-state care comparable to those paid for in-state facilities.

The department studied three options for certifying facilities in bordering states:

- **Equivalent Standards.** Assess program standards for residential mental health treatment programs in bordering states for comparability with Minnesota standards. If the neighboring state employed comparable standards, the department could certify the out-of-state facilities.
- **Self Assessment.** Develop a certification tool or checklist that facilities in bordering states could use as a self-assessment to document their compliance with Minnesota program standards.
- **On-site certification.** Use on-site program reviews to certify that the out-of-state facilities meet Minnesota standards.

After study, none of the alternatives were completely satisfactory. Given the current state budget deficit, and other more pressing issues facing the state, the Commissioner of Human Services does not recommend a plan of action to address the issue of Medical Assistance reimbursement for out-of-state mental health residential treatment services for children. This report will summarize relevant options for later discussion.

Background

In July of 2001, Minnesota's Medical Assistance and Minnesota Care (MA) programs began reimbursing counties for a portion of their residential mental health treatment costs for children with severe emotional disturbance. The county expenditure serves as the local match for the federal funds; there is no state share.

Currently, counties are able to gain this federal revenue only for programs licensed to provide children's residential mental health treatment under Minnesota Rules, Parts 9545.0905 to 9545.1125. These facilities are commonly called "Rule 5" programs. MA reimbursement is limited to programs under this license because the license standards clearly establish health care services as part of each facility's program. When facilities operate under a Rule 5 license, the children admitted to the program must have a mental health diagnosis and significantly impaired behavior or functioning. The program and treatment services at the facility must be developed by a mental health professional and delivered according to an individualized treatment plan. This is essential. Medical Assistance is a health care program and can only be used to reimburse health care and related expenses.

In the absence of licensure under Rule 5, the state has not established a way of assuring that facility residents are receiving MA eligible health care services. Thus, care in facilities without that particular license is not eligible for Medical Assistance reimbursement. This is true for programs within Minnesota operating under other licensing standards. It is also true for programs in other states, which cannot be licensed by the state of Minnesota.

Minnesota counties bordering other states raised the issue prompting this study because facilities in other states are often closer than facilities available within the state. Distance is an important variable because it affects the ability of children's parents to remain involved in their care, which in turn can affect children's successful return to their home and community. By limiting MA reimbursement to state licensed facilities a financial incentive, at odds with current practices of some counties was created.

The current problem arises from using a state program licensing standard as a proxy for standards directly related to reimbursement of health care services in residential settings. If independent standards for Medical Assistance reimbursement of residential treatment were developed, and gained federal approval, then the care in a broader range of facilities could be reimbursed both within and outside the state's borders.

Medical Assistance and out-of-state health services

Generally, federal laws and regulations limit using Medicaid funds to pay for services delivered outside of the state. However, 42 CFR 431.52(b)(4) does require states to pay for services out of state, if it is general practice for recipients in a particular locality to use medical resources in another state. This "local trade area" argument is consistent with the reasons the department was asked to investigate options for reimbursing children's residential mental health treatment provided in neighboring states.

Experience with out-of-state facilities

Under Minnesota Statutes, section 260B.198, subd. 11, the Minnesota Department of Corrections (DOC) must certify out-of-state facilities as meeting Minnesota licensing standards before a court may place the child for a delinquency matter. Only four of the out-of-state facilities certified through this process have been certified as meeting Minnesota's standards for children's mental health residential treatment. However, it is likely that some facilities currently certified as meeting requirements for Minnesota's correctional facilities could also meet residential mental health treatment requirements.

The Minnesota Department of Human Services (DHS) plays the central role in gaining federal Title IV-E funding for county expenditures on out-of-home care of eligible children. Under the Title IV-E reimbursement system, out-of-state facilities are categorized with, and reimbursed at rates similar to, corresponding types of facilities in Minnesota. The out-of-state facilities are assigned to different reimbursement categories based on the assessment of the county staff involved in the child's placement.

DOC and DHS use different bases for gauging similarity to Minnesota programs. DOC considers the goals of delinquency dispositions in choosing which standards to apply in certification. DHS relies on the judgment of county social service staff in categorizing out-of-state facilities for Title IV-E reimbursement. Given the differences in approach, the two systems frequently do not agree in their categorization of out-of-state facilities.

Options for certifying facilities

The department studied three options for certifying facilities in bordering states:

- **Equivalent Standards.** Assess program standards for residential mental health treatment programs in bordering states for comparability with Minnesota standards. If the neighboring state employed comparable standards, the department could certify the out-of-state facilities.
- **Self Assessment.** Develop a certification tool or checklist that facilities in bordering states could use as a self assessment to document their compliance with Minnesota program standards.
- **On-site certification.** Use on-site program reviews to certify that the out-of-state facilities meet Minnesota standards.

Equivalent Standards

This study assessed the feasibility of using equivalent standards for certifying facilities in bordering states. If the neighboring state has a licensing standard, or combination of licensing standards, equivalent to Minnesota, then their license could be deemed equivalent and reimbursement made on that basis. DHS discovered each of the border states approach program regulation differently.

Wisconsin: Wisconsin has a variety of laws and administrative rules governing children's residential care facilities. Statute and administrative rule combine to govern licensing standards for 24-hour residential programs for children with mental health needs. Another administrative rule governs mental health day treatment services. Wisconsin programs most similar to Minnesota's Rule 5 facilities are licensed as 24-hour

residential programs for children with mental health needs and provide on-site treatment programming under the additional day treatment standards.

While this particular combination is roughly equivalent to Minnesota's, Wisconsin standards fall short of Minnesota's. Under the Wisconsin standards, facilities do not appear to be required to provide education for the patient and family about psychotropic medicines administered to the child. Also, there are no standards requiring cultural competence of programming and staff.

Iowa: Iowa has the most complex and varied system of program regulation in the region. Four chapters of Iowa Statutes govern children's residential treatment programs. Administrative rules are also employed to provide additional licensing and reimbursement standards. To achieve a standard comparable to Minnesota's residential treatment standards, Iowa facilities must be licensed under three specific administrative rules, which in turn establish the facility as a group living program, a "Comprehensive Residential Facility" and a "Residential Services Program." These facilities must also possess a state Purchase of Rehabilitative Treatment and Support Services Contract, which further outlines standards for publicly funded programs. Iowa also licenses psychiatric medical institutions for children (PMIC) under Chapter 41. These facilities appear to provide a greater level of psychiatric and medical care than is typically found in Minnesota facilities.

Iowa standards differ from Minnesota's in some significant ways. Of primary concern is that Iowa standards allow the use of mechanical and chemical restraints, which are contrary to Minnesota policy for treatment programs. As with Wisconsin, Iowa standards also do not appear to have comparable standards regarding medication education and cultural competency. Also, ongoing staff development policy is set by individual facilities rather than by state guidelines.

South Dakota: Because of their broader approach to program licensing, there is no combination of standards in South Dakota that ensures rough comparability with Minnesota's Rule 5 facilities. State law governs children's residential care. Licensing rules for both group care centers and residential treatment centers also exist. The broad approach relies heavily on review and approval of policies developed by each facility. In South Dakota, it is possible for two facilities, one a correctional program and the other a mental health treatment program, to have identical licensing profiles. Due to the facility by facility approach in South Dakota, there are several standards applicable to Minnesota programs that South Dakota standards do not address.

North Dakota: North Dakota law sets licensing standards for residential mental health treatment programs that are comparable to Minnesota's Rule 5 standards. Like the other states, there is no specific resident rights or grievance procedure and little required attention to cultural needs of children placed in the facilities.

Summary: It is difficult to interpret the variety of approaches to setting program standards across the five-state region. The process of deeming other state licensing standards as equivalent cannot be applied uniformly across the region. South Dakota's standards are

too broad to ensure the programs would meet Minnesota standards for mental health treatment. The variability present in other state standards presents the risk that accepting those standards would result in reimbursement of out-of-state care that would not be reimbursed if provided within the Minnesota. Beyond that, some states allow the use of seclusion and restraints, including the use of chemical and mechanical restraints, in ways prohibited in Minnesota treatment programs. Finally, using other state licensing standards puts Minnesota in the position of relying on the other states' enforcement of their standards.

Self Assessment

Another approach explored to certify facilities included the use of a "desk review." Using a DHS developed guide or checklist, facilities in neighboring states could be required to complete a self assessment of their program's ability to meet Minnesota's licensing requirements. The completed self assessment would be reviewed as part of the process for enrolling the out-of-state facility as a provider for MA and MinnesotaCare.

Currently, as part of the certification process required for out-of-state facilities under Minnesota Statutes, section 260B.198, subd. 11, the Department of Corrections employs a self assessment approach alternating with biennial on-site reviews. DHS licensing staff familiar with the process have found that a self-report approach does not consistently provide a valid profile of a facility's policies and procedures. This is attributed to differences in interpreting Minnesota standards and obvious conflicts of interest.

On-site Certification

The Minnesota Department of Corrections currently certifies some out-of-state facilities (Minnesota Statutes, section 260B.198, subd.11). This process employs on-site inspections to ensure the out-of-state facilities meet Minnesota program and physical plant standards. On-site inspection of a facility allows a consistent and objective review of facility operations.

However, the practice of sending staff out of state to review and certify facilities for compliance with state licensing standards raises a number of issues. Further research is needed to define the state's authority, responsibility and liability across state lines. A few of the issues to clarify in statute, are:

- Whether out-of-state facilities would be required to comply with Minnesota child protection statutes for policies and for reporting of maltreatment.
- Whether the commissioner would be responsible for investigating complaints and alleged maltreatment in other states, and if so, whether the authorities granted in Minnesota statutes would generalize across state lines. These investigations are not limited to reviewing a "consenting" facility, but most often involve individuals who have specific rights and responsibilities based in Minnesota statutes.
- Which appeal process would be used for facilities and their employees: the Minnesota system and the Minnesota courts, or the neighboring states' courts.

- Whether Minnesota statutes or the neighboring state's laws would govern the data handling activities of the commissioner.
- Whether the Minnesota Tort Claims Act, with the immunities and award caps provided, would apply to damages sought in neighboring states, or whether the Attorney General's Office would represent the commissioner under neighboring states' laws.

All of these issues, and more, need careful research and statutory amendment prior to any change requiring the commissioner to enforce Minnesota licensing standards in other states. Given the additional research costs and the costs of monitoring activities relative to these issues, further work in this area was not completed for this report.

Comparable rates

Medical Assistance payment rates for in-state facilities are determined through a cost-based methodology, which allocates the portion of facility per diem charges eligible for federal Medicaid and Title IV-E reimbursement. The methodology uses a random moment time study to categorize and measure activity in the facility. This information is compared to facility annual operational costs to allocate the portion of per diem charges eligible for reimbursement through each of the two federal entitlement programs.

This methodology was an adaptation of Minnesota's long standing group facilities project for claiming Title IV-E reimbursement. It is not cost effective for either DHS or out-of-state facilities to conduct random moment time studies and annual cost reporting. The process to determine Title IV-E reimbursement for an out-of-state facility is to identify the facility as being similar to categories of in-state facilities participating in Minnesota's group facility time study. The statewide median for similar Minnesota facilities is then applied to the out-of-state facility's per diem rate to determine the costs eligible for Title IV-E reimbursement to the county. This process is easy to apply, and has federal approval as an acceptable methodology for cost allocation for reimbursement of out-of-state facilities.

Conclusion

Current Minnesota law ties eligibility for Medical Assistance reimbursement to care provided in state-licensed children's residential mental health treatment facilities. This prevents reimbursement for care in out-of-state facilities as well as facilities operating under other licenses within the state.

The department studied options ranging from accepting licensing standards of other states to the use of on-site inspections. None of the alternatives were completely satisfactory. All the options carry varying levels of state cost to implement. Because of this, the commissioner does not make any recommendations to the legislature regarding reimbursement of out-of-state care at this time.

Appendix A

Facilities in bordering states

The following table lists facilities operating in Wisconsin, Iowa, South Dakota or North Dakota that accept children from Minnesota and are potentially certifiable under Minnesota licensing standards for children’s residential mental health treatment programs.

Facility Name	Location	Certified under MS 260B.198 as meeting Rule 5 standards	Certified under MS 260B.198 as meeting correctional program standards though offers MH treatment services	Listed as similar to Rule 5 in Title IV-E Per Diem Bulletin
Abbott House	Mitchell, SD	X		
Children’s Home Society	Sioux Falls, SD	X		X
Chileda Institute, Inc.	La Crosse, WI			X
Clarinda Academy	Clarinda, IA			X
Eau Claire Academy	Eau Claire, WI	X		X
Family and Children’s Center	La Crosse, WI			X
Forest Ridge Youth Services	Estherville, IA			X
Gerard of Iowa	Mason City, IA	X		X
Grehill Academy	Sioux City, IA		X	X
Homme Programs – Journey	Wittenburg, WI		X	X
Oconomowoc Dev. Training Center	Oconomowoc, WI		X	X
St. Aemilian – Lakeside, Inc.	Milwaukee, WI			X
Summit Oaks	Sioux Falls, SD		X	X
Woodfield Center	Beresford, SD		X	X
Wyalusing Academy	Prairie du Chien, WI		X	X



Minnesota Department of **Human Services**

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