CHAPTER 9525
DEPARTMENT OF HUMAN SERVICES
PROGRAMS FOR MENTALLY RETARDED PERSONS

CASE MANAGEMENT SERVICES TO PERSONS WITH MENTAL RETARDATION

9525.0010 [Repealed, 11 SR 77]

9525.0015 DEFINITIONS.

Subpart 1. **Scope.** The terms used in parts 9525.0015 to 9525.0165 have the meanings given them in this part.

Subp. 2. **Assessment.** "Assessment" means the act of determining, under part 9525.0055, a person's need for services by identifying and describing the person's skills and behaviors, and the environmental, physical, medical, and health factors that affect development or remediation of the person's skills and behaviors.

Subp. 3. **Advocate.** "Advocate" means an individual who has been authorized, in a written statement by the person with or who might have mental retardation or a related condition or by the person's legal representative, to help the person with or who might have mental retardation or a related condition understand and make choices in matters related to identification of needs and choice of services in parts 9525.0015 to 9525.0165.

Subp. 4. **Case management services.** "Case management services" means identifying the need for, planning, seeking out, acquiring, authorizing, and coordinating services to persons with mental retardation or related conditions. Case management services include monitoring and evaluating the delivery of the services to, and protecting the rights of, the persons with mental retardation or related conditions. These services are provided by an individual designated by the county board under part 9525.0035.

Subp. 5. **Case manager.** "Case manager" means the person designated by the county board under part 9525.0035 to provide case management services. The case manager must meet the requirements in part 9525.0155.

Subp. 6. **Commissioner.** "Commissioner" means the commissioner of the Minnesota Department of Human Services or the commissioner's designated representative.

Subp. 7. **Contract.** "Contract" means a legally enforceable agreement entered into by a county board or its designated representative and a provider, or by a provider and a subcontractor, that sets forth the rights and responsibilities of the parties.

Subp. 8. **County board.** "County board" means the county board of commissioners for the county of financial responsibility or its designated representative.

Subp. 9. **County of financial responsibility.** "County of financial responsibility" has the meaning given it in Minnesota Statutes, sections 256B.02, subdivision 3 and 256E.08, subdivision 7.

Subp. 10. **Department.** "Department" means the Minnesota Department of Human Services.

Subp. 11. **Home and community-based services.** "Home and community-based services" means the following services as defined in part 9525.1860 which are provided to persons with mental retardation or related conditions if the services are authorized under United States Code, title 42, sections 1396, et seq. and authorized in the waiver granted by the United States Department of Health and Human Services:

A. case management;

B. respite care;

C. homemaker services;

D. in home family support services;

E. supported living arrangements for children;

F. supported living arrangements for adults;

G. day habilitation;

H. minor physical adaptations to the home; and

I. 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.

These services are reimbursable under the medical assistance program for as long as the waiver from the United States Department of Health and Human Services is in effect in Minnesota.

Subp. 12. **Host county.** "Host county" means the county in which the services set forth in a person's individual service plan are provided.

Subp. 13. **Individual habilitation plan.** "Individual habilitation plan" means the written plan developed under part 9525.0105.

Subp. 14. **Individual service plan.** "Individual service plan" means the written plan developed under part 9525.0075.

Subp. 15. **Interdisciplinary team.** "Interdisciplinary team" means a team composed of the case manager, the person with mental retardation or a related condition, the person's legal representative and advocate, if any, and representatives of all providers providing services set forth in the individual service plan.

Subp. 16. **Intermediate care facility for the mentally retarded or ICF/MR.** "Intermediate care facility for the mentally retarded" or "ICF/MR" means a program licensed to provide services to persons with mental retardation or related conditions under Minnesota Statutes, section 252.28, and a physical plant licensed as a supervised living facility under Minnesota Statutes, chapter 144, which together are certified by the Minnesota Department of Health as an

intermediate care facility for the mentally retarded. Unless otherwise stated, this definition includes state operated and community based facilities.

Subp. 17. **Least restrictive environment.** "Least restrictive environment" means an environment where:

A. The provider or employees or subcontractors of the provider are available to provide the type, quantity, and frequency of services necessary to achieve the results set forth in a person's individual service plan.

B. The physical plant and the scheduling of the provider and employees or subcontractors of the provider are designed or modified to promote the independence of the person with mental retardation or a related condition and to limit physical assistance by the provider or employees or subcontractors to the tasks or parts of tasks that the person with mental retardation or a related condition cannot accomplish without physical assistance or verbal instructions.

C. The amount of supervision, physical control, and limits on decision making imposed by the provider and employees or subcontractors of the provider is limited to the level required to ensure that persons with mental retardation or related conditions are not subject to unnecessary risks to their health or safety and do not subject others to unnecessary risks.

D. Services are designed to increase interactions between persons with mental retardation or related conditions and persons within the general public who do not have disabilities by using facilities, services, and conveyances used by the general public.

E. The daily, monthly, and annual schedule of the person receiving services closely approximates that of the general public.

F. The physical surroundings, methods of interaction between the person and the provider and employees or subcontractors of the provider, and the materials used in training are appropriate for the person's chronological age and adapted to individual need.

Subp. 18. **Legal representative.** "Legal representative" means the parent or parents of a person with, or who might have, mental retardation or a related condition and who is under 18 years of age; or a guardian or conservator who is authorized by the court to make decisions about services for a person with or who might have mental retardation or a related condition.

Subp. 19. **Need determination.** "Need determination" means the determination under part 9525.0145 of the need for and the program, type, location, and size of licensed services, except foster care, for persons with mental retardation or related conditions.

Subp. 20. **Person with mental retardation.** "Person with mental retardation" means:

A. a person who has been diagnosed under part 9525.0045 as having significantly subaverage intellectual functioning existing concurrently with demonstrated deficits in adaptive behavior and who manifests these conditions before the person's 22nd birthday;

B. a person under the age of five who demonstrates significantly subaverage intellectual functioning concurrently with severe deficits in adaptive behavior, but for whom a licensed psychologist or licensed consulting psychologist determines that a diagnosis may not be advisable because of the person's age; and

C. a person who has a related condition. A related condition is a severe chronic disability that:

(1) is attributable to cerebral palsy, epilepsy, autism, or any other condition, other than mental illness, found to be closely related to mental retardation because the condition results in impairment of general intellectual functioning or adaptive behavior similar to that of persons with mental retardation;

(2) is likely to continue indefinitely;

(3) results in substantial functional limitations in three or more of the following areas of major life activity:

(a) self care;

(b) understanding and use of language;

(c) learning;

(d) mobility;

(e) self direction; or

(f) capacity for independent living; and

(4) has been determined to be a related condition in accordance with rules adopted by the commissioner.

Subp. 21. **Person who might have mental retardation or a related condition.** "Person who might have mental retardation or a related condition" means a person who the case manager has reason to believe has mental retardation or a related condition and who is undergoing diagnosis to determine if he or she is a person with mental retardation or a related condition.

Subp. 22. **Physical plant.** "Physical plant" means the building or buildings where a service is provided to a person with mental retardation or a related condition and includes all equipment affixed to the building and not easily subject to transfer.

Subp. 23. **Provider.** "Provider" means a corporation, governmental unit, partnership, individual, or individuals licensed by the state, if a license is required, or approved by the county board, if a license is not required, to provide one or more services to persons with mental retardation or related conditions.

Subp. 24. **Provider implementation plan.** "Provider implementation plan" means a detailed internal plan developed by the provider in order to direct the daily activities of staff in carrying out the objectives established within the individual habilitation plan developed under part 9525.0105. The provider implementation plan is frequently referred to as an individual program plan and is usually supervised by an internal program coordinator, staff supervisor, unit director, or team leader.

Subp. 25. **Public agency.** "Public agency" means a public health nursing service established under Minnesota Statutes, section 145.12, a human services board established under Minnesota Statutes, section 402.04, a board of health as defined in Minnesota Statutes, section 145A.02, subdivision 2, or a county board.

Subp. 26. **Qualified mental retardation professional.** "Qualified mental retardation professional" means a person who meets the qualifications in Code of Federal Regulations, title 42, section 442.401.

Subp. 27. **Quarterly evaluation.** "Quarterly evaluation" means a written report prepared by the provider every three months containing a summary of data, an analysis of the data, and an evaluation of services actually provided, including the extent to which services have resulted in achieving the goals and objectives of a person's individual habilitation plan, and whether services are being provided in accordance with the individual habilitation plan. The report must also state whether any changes are needed in the person's individual service plan or individual habilitation plan.

Subp. 28. **Redetermination of need.** "Redetermination of need" means the biennial redetermination under part 9525.0145 of the need for and the program, type, location, and size of licensed services, except foster care, for persons with mental retardation or related conditions.

Subp. 29. **Regional service specialist.** "Regional service specialist" means an individual, designated by the commissioner, who at the direction of the commissioner:

A. authorizes medical assistance payments for ICF/MR and home and

community based services for eligible persons with mental retardation or related conditions;

B. serves on screening teams as a qualified mental retardation professional at the request of the county board;

C. provides training and assistance to county boards, case managers, and providers in technical matters related to the development and provision of services for persons with mental retardation or related conditions; and

D. assists case managers in developing and planning services for persons with mental retardation or related conditions.

Subp. 30. **Residential service.** "Residential service" means shelter, food, and training in one or more of the following: self care, communication, community living skills, social skills, leisure and recreation skills, and behavior management, which are provided by a provider licensed by the state, if a license is required, or approved by the county board if a license is not required, to provide these services.

Subp. 31. **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. The screening team shall consist of the case manager, the person with mental retardation or a related condition, a parent or guardian as appropriate to the person with mental retardation or a related condition's legal status, and a qualified mental retardation professional.

Subp. 32. **Service.** "Service" means a planned activity designed to achieve the results specified in an individual service plan.

Subp. 33. **Training and habilitation services.** "Training and habilitation services" means health and social services provided to a person with mental retardation by a licensed provider at a site other than the person's place of residence unless medically contraindicated and documented as such in the individual service plan. The services must be designed to result in the development and maintenance of life skills, including:

A. self care, communication, socialization, community orientation, emotional development, cognitive development, or motor development; and

B. therapeutic work or learning activities that are appropriate for the person's chronological age.

Training and habilitation services are provided on a scheduled basis for periods of less than 24 hours per day.

Statutory Authority: *MS s 256B.092; 256B.503*

History: *11 SR 77; 12 SR 1148; L 1987 c 309 s 24*

9525.0020 [Repealed, 11 SR 77]

9525.0025 APPLICABILITY AND PURPOSE.

Subpart 1. **Applicability.** Parts 9525.0015 to 9525.0165 set forth the standards to be met by county boards in providing case management services to persons with or who might have mental retardation or related conditions, and govern the planning, development, and provision of other services to persons with mental retardation or related conditions.

Subp. 2. **Purpose.** The purpose of parts 9525.0015 to 9525.0165 is to ensure that each person with mental retardation or a related condition who applies for services, whose legal representative applies for services or is determined by the county to be in need of services receives a diagnosis and assessment of current condition, and that, based on the information gathered, services are designed, arranged, provided, and monitored so that the services meet the level of the person's need in the least restrictive environment and in a cost-effective manner.

County boards are authorized and required to determine the adequacy and quality of services provided to meet the person's needs based on the cost and

effectiveness of the services. Only services identified as needed in the individual service plan should be provided or paid for.

Money expended for case management and other services for persons with or who might have mental retardation or related conditions must be expended in accordance with parts 9525.0015 to 9525.0165.

Statutory Authority: *MS s 256B.092; 256B.503*

History: *11 SR 77; 12 SR 1148*

9525.0030 [Repealed, 11 SR 77]

9525.0035 COUNTY BOARD RESPONSIBILITIES.

Subpart 1. **Provision of case management services.** The county board shall provide case management services in accordance with parts 9525.0015 to 9525.0165 to all persons with or who might have mental retardation or related conditions who reside in the county at the time they apply for services. Case management services may be provided directly by the county board or under a contract between the county board and another county board or between the county board and a provider of case management services.

Subp. 2. **Designation of case manager.** Within ten working days after receiving an application for services or a determination by the social service agency that a person needs services, the county board shall designate a case manager who meets the requirements in part 9525.0155. A written notice that includes the name, telephone number, and location of the designated case manager must be sent to the person requesting services, and to the person's legal representative and advocate, if any.

Subp. 3. **Purchase of case management services.** The county board shall not purchase case management services for a person with or who might have mental retardation or a related condition from a provider of other services for that person. This subpart does not apply when the county board provides the services or when the services are provided by another public agency, if the county board or other public agency providing case management and other services ensures that administration of the case management services is separate from the administration of any other service for the person with mental retardation or a related condition. The county board may apply to the commissioner in writing for a variance of this subpart. The commissioner shall grant the variance if the county board can demonstrate that:

A. separating the administration of case management and other services would result in an undue hardship for the county board;

B. an alternative method of preventing any conflict of interest has been established; and

C. the person providing case management services for the person with mental retardation or a related condition will not be involved in the provision of other services for the person with mental retardation or a related condition.

Subp. 4. **Provision of services.** The case manager, upon designation by the county board, shall immediately begin to provide case management services to the person who applied for services or for whom the legal representative applied for services, and shall continue to provide case management services until case management services are terminated under subpart 7. The county board shall not provide or arrange for services to be provided to a person with or who might have mental retardation or a related condition until a case manager has been designated, and services must not continue after case management services have been terminated under subpart 7.

Subp. 5. **Procedures governing minimum standards for case management services.** The county board shall establish written procedures to ensure that the delivery of case management services to persons who have been diagnosed as

having mental retardation or related conditions meets the standards established in items A to J.

A. Individual needs must be assessed in accordance with part 9525.0055, subpart 1.

B. Service needs must be reassessed in accordance with part 9525.0055, subparts 2 to 4.

C. A screening team meeting must be convened and held in accordance with part 9525.0065.

D. An individual service plan must be developed and reviewed in accordance with part 9525.0075.

E. An individual habilitation plan must be developed in accordance with part 9525.0105.

F. Services must be monitored in accordance with part 9525.0115.

G. Services must be authorized in accordance with subpart 6 and part 9525.0085, subpart 2.

H. Services must be terminated in accordance with subpart 7.

I. Requests for reconsideration of the contents of the individual service plan are handled in accordance with part 9525.0075.

J. Requests for reconsideration of the contents of the individual habilitation plan are handled in accordance with part 9525.0105.

Copies of these procedures must be maintained on file at the county offices and must be available to persons employed by the county who work with persons with mental retardation or related conditions, persons with mental retardation or related conditions who are receiving services from the county and their legal representatives or advocates, and providers.

Subp. 6. **Authorization of services.** Before a service may be provided under an individual service plan, the county board must authorize the service in accordance with part 9525.0085, subpart 2. Authorization of a service or services must be based on the recommendation of the case manager and the needs identified in the individual service plan. The county board must provide for authorization of services when an emergency occurs and for a review of the individual service plan within ten working days of the emergency to determine whether the individual service plan should be modified as a result of the emergency. Modifications to the individual service plan must be made in accordance with part 9525.0075, subpart 6.

Subp. 7. **Termination of case management duties.** A case manager retains responsibility for providing case management services to the person with mental retardation or a related condition until the responsibility of the county board is terminated in accordance with items A to E, or until the county board designates another case manager under subpart 2. When another case manager is designated, the person with mental retardation or a related condition, the legal representative, and the advocate, if any, and all providers providing services to the person must be notified, in writing, within five working days of the designation of the name, telephone number, and location of the new case manager.

The county board may terminate case management services when:

A. the person with mental retardation or a related condition or the person's legal representative makes a written request that case management and other services designed for the person with mental retardation or a related condition be terminated;

B. the person with mental retardation or a related condition dies;

C. a licensed psychiatrist, licensed psychologist, or licensed consulting psychologist determines that the person is not a person with mental retardation or a related condition in accordance with part 9525.0045;

D. the person or the person's legal representative refuses the services offered in the individual service plan developed under part 9525.0075; or

E. the case manager finds that case management services are no longer needed based on the review of the person's individual service plan.

Statutory Authority: *MS s 256B.092; 256B.503*

History: *11 SR 77; 12 SR 1148*

9525.0040 [Repealed, 11 SR 77]

9525.0045 DIAGNOSIS.

Subpart 1. **Initial diagnosis.** The case manager shall ensure that a diagnosis is completed and reviewed within 35 working days following receipt of the application for services. The case manager must refer applicants to professionals qualified under this subpart to complete a diagnosis. Items A to D are required to make a diagnosis of mental retardation.

A. A psychiatrist, licensed psychologist, or licensed consulting psychologist must determine that the person has significantly subaverage intellectual functioning. "Significantly subaverage" means performance which is two or more standard deviations from the mean or average on an individual standardized test that measures intellectual functioning.

B. A psychiatrist, licensed psychologist, or licensed consulting psychologist must determine that the person has deficits in adaptive behavior. Deficits in adaptive behavior must be determined through the use of scales of adaptive behavior or by a combination of test data, observations, and the use of all available sources of information regarding the person's behavior which indicate the effectiveness or degree with which the person meets the norm of personal independence and social responsibilities of the person's chronological age group and cultural peer group.

C. A social worker or a public health nurse as defined in Minnesota Statutes, section 145A.02, subdivision 18, who is experienced in working with persons with mental retardation must prepare a written report on any social, familial, physical, health, functional, adaptational, or environmental factors that might have contributed to the person's mental retardation.

D. A licensed physician must conduct a medical examination of the person including an examination of vision, hearing, seizure disorders, and physical disabilities.

The documentation for items A to C must be dated no more than 90 days before the date when the initial individual service plan is written. The documentation for item D must be dated no more than 12 months before the date when the individual service plan is written and must accurately reflect the current condition of the person.

Subp. 2. **Review of diagnosis.** Except as provided in subpart 3, the case manager shall conduct a review of the diagnosis at least every three years. The review must include a review of the documentation of the initial diagnosis required in subpart 1, and any components in subpart 1, items A to D, that the case manager determines need to be reevaluated. The case manager shall provide or obtain any assessments required to complete a review of the diagnosis.

Subp. 3. **Exception.** If a person with mental retardation has an initial diagnosis of mental retardation which has been confirmed twice in accordance with subparts 1 and 2 since the person's 18th birthday, the review of the diagnosis required in subpart 2 must be conducted at least once every six years.

Statutory Authority: *MS s 256B.092; 256B.503*

History: *11 SR 77; L 1987 c 309 s 24*

9525.0050 [Repealed, 11 SR 77]

9525.0055 STANDARDS FOR ASSESSMENT OF INDIVIDUAL SERVICE NEEDS.

Subpart 1. **Initial assessment of individual needs.** Each person determined by the diagnosis required in part 9525.0045 to be a person with mental retardation or a related condition must be assessed to determine the person's individual needs. The assessment must include an analysis of: the person's current condition; the person's established support systems; the extent to which the person's skills or lack of skills enables or prevents the person's full integration into community settings used by the general public; and the person's current status and need for assistance or supervision. The assessment must result in specific service recommendations. The county board shall ensure that each of the areas listed in items A to J are assessed and that the assessment is conducted under the supervision of a qualified mental retardation professional.

The assessment of individual service needs must address the following areas:

A. medical status and ongoing health needs;

B. physical development;

C. intellectual functioning;

D. social skills;

E. self-care skills;

F. communication skills;

G. community living skills;

H. vocational skills;

I. physical and social environments; and

J. legal representation.

Subp. 2. **Reassessment of medical status and ongoing health care needs.** The county board shall ensure that a reassessment of medical status and ongoing health care needs is conducted at least annually. This medical assessment must include an evaluation of the person's current condition and shall include recommendations for ongoing health care needs.

Subp. 3. **Reassessment of other individual needs.** An annual review of individual needs shall be conducted by the case manager in consultation with the person with mental retardation or a related condition and the person's legal representative and advocate, if any.

Subp. 4. **Time line for reassessment.** Reassessment of items A to J shall be conducted within 90 days prior to the review of the individual service plan. This subpart does not prohibit more frequent reassessments.

Statutory Authority: *MS s 256B.092; 256B.503*

History: *11 SR 77; 12 SR 1148*

9525.0060 [Repealed, 11 SR 77]

9525.0065 SCREENING TEAMS.

Subpart 1. **Convening screening team.** The case manager shall convene a screening team whenever the assessment or reassessment conducted under part 9525.0055 indicates that the person with mental retardation or a related condition might need the level of care provided by an ICF/MR within one year. The county board must ensure that:

A. The screening team is convened within 15 working days of the date that the assessment is completed under part 9525.0055 or within five working days of the date of an emergency admission to an ICF/MR.

B. The members of the screening team, the regional service specialist, and the person's advocate, if any, are notified of the meeting prior to the meeting. The regional service specialist and the person's advocate may attend any meeting of the screening team. At the request of or with consent, under Minnesota

Statutes, section 13.05, subdivision 4, of the person with mental retardation or a related condition or the person's legal representative, the case manager may invite other persons to attend the screening team meeting.

C. The screening team meeting is convened at a time and place that allows for the participation by all members of the screening team.

D. A written record of the meeting, including the names of the team members.

E. A registered nurse is required to attend the screening meeting as the qualified mental retardation professional or to act as the case manager whenever the assessment conducted under part 9525.0055 indicates that the person with mental retardation or a related condition has overriding health care needs. For the purposes of this item, "overriding health care needs" means a medical condition that limits the placement options available to the person with mental retardation or a related condition because the condition interferes with the person's adaptation or learning skills and is potentially life threatening.

Subp. 2. **Screening team review.** The screening team shall review:

A. the results of the diagnosis conducted under part 9525.0045;

B. the results of the assessment conducted under part 9525.0055;

C. the individual service plan, if any; and

D. other data related to the person's eligibility and need for services.

Subp. 3. **Screening team findings.** Upon review under subpart 2 of the diagnostic and assessment data, the screening team shall:

A. determine whether the person with mental retardation or a related condition is presently in need of the level of care provided by an ICF/MR, or whether the person will need the level of care provided by an ICF/MR within one year and can benefit from home and community-based services;

B. identify the other services required to prevent or delay the need for the level of care provided by an ICF/MR, skilled nursing facility, or intermediate care facility and the source of payments for the required assistance, health services, or social services; and

C. complete the waivered services screening document on the form provided by the commissioner.

Subp. 4. **Consumer choice.** The person with mental retardation or a related condition who is eligible for home and community-based services under parts 9525.1800 to 9525.1930 and the person's legal representative must be allowed to choose between the ICF/MR services and the home and community-based services recommended by the screening team.

Subp. 5. **Authorization of payment for ICF/MR and home and community-based services.** Upon completion of the waivered services screening document, the case manager shall forward the completed document to the regional service specialist. The regional service specialist shall review the rates and shall authorize the payments for home and community-based services funded under the medical assistance program only if consistent with the criteria in parts 9525.1800 to 9525.1930. Payment for ICF/MR services shall not be made unless:

A. the person for whom the payment is requested is determined to be a person with mental retardation or a related condition;

B. an assessment of the person's individual service needs, conducted in accordance with part 9525.0065, documents that the person requires 24-hour supervision and treatment for medical, behavioral, or habilitation needs;

C. all less restrictive and less costly alternative services have been considered and discussed with the person with mental retardation or a related condition and the person's legal representative and advocate, if any; and

D. payment for ICF/MR services has been approved by the commissioner through a regional service specialist.

Subp. 6. **Use of screening team recommendations in commitment proceedings.** When a person with mental retardation who has been referred to a screening team is the subject of commitment proceedings under Minnesota Statutes, chapter 253B, the screening team shall make its recommendations and report available to the pre-petition screening unit in accordance with the Data Practices Act, Minnesota Statutes, chapter 13.

Statutory Authority: *MS s 256B.092; 256B.503*

History: *11 SR 77; 12 SR 1148*

9525.0070 [Repealed, 11 SR 77]

9525.0075 STANDARDS FOR DEVELOPMENT OF INDIVIDUAL SERVICE PLAN.

Subpart 1. **Individual service plan development.** An individual service plan must be developed and implemented for each person with mental retardation or a related condition who applies for services or for whom the legal representative applies for services. The individual service plan must be developed by the case manager with the person with mental retardation or a related condition, the person's legal representative, and the person's advocate, if any. If the case manager is not a qualified mental retardation professional, the individual service plan must be reviewed by a qualified mental retardation professional.

Subp. 2. **Screening team involvement.** If the results of the assessment completed under part 9525.0055 indicate that the person with mental retardation or a related condition might need the level of care provided by an ICF/MR, the case manager shall convene and chair a meeting of the screening team in accordance with this part to assist the case manager in the development of the individual service plan.

Subp. 3. **Required review.** The development of an individual service plan must include a review of:

A. the results of the diagnosis under part 9525.0045 to verify that the person is a person with mental retardation or a related condition;

B. the results of the assessment conducted under part 9525.0055 to identify individual needs;

C. any past individual service plan to determine if changes are needed;

D. other data related to the person's need for services;

E. delivery of services to assure that the services are or will be delivered in the least restrictive environment;

F. provisions for providing food and shelter for the person with mental retardation or a related condition to assure the person's health and safety will be maintained;

G. vocational training and habilitation services to ensure that the services are, or will be, appropriate to the person's chronological age, employment, and increased financial independence;

H. the method of delivering services to ensure that the delivery of services will result in increased participation in the community and interactions with the general public through use of support services and existing agencies; and

I. involvement of family, neighbors, and friends in providing services to ensure that family, neighbors, and friends are involved to the extent possible.

Subp. 4. **Content standards for individual service plans.** The county board shall develop a format for completing an individual service plan that ensures compliance with items A to G. The individual service plan must:

A. Contain a written review of the results of the diagnosis conducted under part 9525.0045, including a summary of significant information and specific recommendations.

B. Contain a written summary of the assessment information and recommendations obtained under 9525.0055, subpart 1.

C. Contain a written summary of the needs identified in the information obtained from the diagnosis and assessment. The summary must result in the identification of all service needs, including the type, amount, and frequency of the services needed including services to be provided by the case manager.

D. State the actions that will be taken to develop or obtain the services identified in item C including those services not currently available. This item shall not be construed as requiring actions other than actions stated under this item.

E. State long-range goals for the person with mental retardation or a related condition and an anticipated date for attainment of the goals.

F. State annual goals for the person with mental retardation or a related condition related to the attainment of the long-range goals under item E.

G. Identify any information that providers or subcontractors must submit to the case manager and the frequency with which the information must be provided.

H. Contain the signature or signatures of the person with mental retardation or a related condition and the person's legal representative, if any, to document that the person with mental retardation or a related condition and the person's legal representative, if any, have reviewed the individual service plan and agree that the goals and services specified in the individual service plan meet the needs of the person with mental retardation or a related condition.

Subp. 5. **Request for reconsideration.** If the person with mental retardation or a related condition or the person's legal representative, if any, disagrees with the contents of the individual service plan, the person with mental retardation or a related condition or the person's legal representative, if any, may request a reconsideration of the contents of the plan by applying to the county board and requesting reconsideration. The county board shall establish written procedures for handling requests for reconsideration of the individual service plan contents. The procedure in this subpart does not replace the appeal of the case management and related services under part 9525.0135 and is not a prerequisite to filing an appeal.

Subp. 6. **Annual review of individual service plan.** The county board shall ensure that:

A. individual service plans are reviewed at least annually;

B. a written record of the meeting is maintained;

C. the case manager, the person with mental retardation or a related condition, the person's legal guardian, the person's advocate, and others who participated in the development of the individual service plans are involved in the annual review meeting;

D. the services provided since the initial service plan or last service plan review are summarized and reviewed;

E. the results of the reassessment, if any, are summarized and reviewed;

F. the quarterly evaluations and other provider reports as they relate to the attainment of annual and long-range goals are summarized and reviewed;

G. the annual and long-range goals are reviewed;

H. modifications to the individual service plans are based on the results of the reviews required under this subpart; and

I. a new screening document is completed and submitted if the person is receiving services provided under parts 9525.1800 to 9525.1930 or resides in an ICF/MR. This item is not to be construed as requiring a meeting of the screening team.

Subp. 7. **Standards for state hospital discharge planning.** When an individual

service plan calls for the discharge of a person with mental retardation or a related condition from a state hospital, the individual service plan must conform to the standards for state hospital discharge planning established by the commissioner in Instructional Bulletins #84-55 (August 6, 1984) and 84-55A (November 8, 1984), published by the department, which are incorporated by reference.

These documents are available for inspection at the Minnesota State Law Library, 117 University Avenue, Saint Paul, Minnesota 55155 and are available through the Minitex interlibrary loan system. The bulletins are not subject to frequent change. The documents have also been distributed to all county boards and human service boards.

Statutory Authority: *MS s 256B.092; 256B.503*

History: *11 SR 77; 12 SR 1148*

9525.0080 [Repealed, 11 SR 77]

9525.0085 PROVISION OF SERVICES.

Subpart 1. **Arrangement of services.** When residential, training and habilitation services, or home and community-based services are required by an individual service plan, the case manager shall arrange for the services by surveying existing providers to determine which providers, if any, are available to provide the services specified in the individual service plan, or the county board may develop a request for proposals for any or all of the specified services.

Subp. 2. **Authorization of services.** The case manager shall only authorize a service if:

A. the case manager has determined that the provider is able to provide the service or services in accordance with the individual service plan;

B. the provider agrees, as a condition of the contract, to participate in the interdisciplinary team;

C. the provider agrees, as a condition of the contract, to provide the service in accordance with the individual service plan;

D. the provider agrees, as a condition of the contract, to send quarterly evaluations to the case manager and the person with mental retardation or a related condition or the person's legal representative;

E. the person with mental retardation or a related condition to be provided a training and habilitation service or a residential service has met with the provider and visited the site where the services are to be provided or if a visit to the site is medically contraindicated for the person with mental retardation or a related condition, the person's legal representative, if any, has visited the site;

F. the case manager has informed the person's legal representative and advocate of the name of each proposed provider and has encouraged them to visit each site where the services will be provided;

G. there is a contract between each provider and the host county; and

H. if services are to be provided in a county other than the county of financial responsibility, the case manager has consulted with the host county and has received a letter demonstrating the concurrence from the host county regarding provision of services.

Statutory Authority: *MS s 256B.092; 256B.503*

History: *11 SR 77; 12 SR 1148*

9525.0090 [Repealed, 11 SR 77]

9525.0095 CONTRACTS AND PROVIDER AGREEMENTS.

Subpart 1. **Contracts for services.** A provider, including a social service, medical assistance, or other provider, must have a purchase of service contract developed in accordance with and meeting the requirements of part 9550.0040

and this part with the host county before the provider can receive payment for services. The county board of the county where the provider is located shall negotiate and administer host county purchase of service contracts on behalf of other county boards requesting to purchase services from the provider.

The department is a third party beneficiary of any contract entered into by a county board and a provider, or a provider and a subcontractor, to provide services under this part. Each contract and subcontract must contain the following provision. If any contract does not contain the following provision, the provision shall be considered an implied provision of the contract.

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

Subp. 2. **Provider agreements.** In addition to the requirements in subpart 1, a provider of services reimbursed under the medical assistance program must have an approved provider agreement with the department before the provider can receive payment for services from the department.

Subp. 3. **Subcontracts.** If the provider subcontracts with another contractor to provide services under parts 9525.0015 to 9525.0165, the provider shall:

A. have written permission from the host county to subcontract;

B. ensure that the subcontract meets all the requirements in subpart 1; and

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

Subp. 4. **Enforcement of contracts.** The county board is responsible for enforcing the contracts entered into under parts 9525.0015 to 9525.0165. The county board may delegate the responsibility for enforcement of contracts in accordance with established county board policies.

Statutory Authority: *MS s 256B.092; 256B.503*

History: *11 SR 77*

9525.0100 [Repealed, 11 SR 77]

9525.0105 STANDARDS FOR DEVELOPMENT OF INDIVIDUAL HABILITATION PLANS.

Subpart 1. **Development of individual habilitation plan.** The county board shall ensure the development of an individual habilitation plan within 30 calendar days after services have been authorized by the county board. The case manager shall convene and chair a meeting of the interdisciplinary team to develop the individual habilitation plan. With the consent, under Minnesota Statutes, section 13.05, subdivision 4, of the person with mental retardation or a related condition or the person's legal representative, the case manager may invite other persons to attend the interdisciplinary team meeting but these persons shall not be designated as members of the interdisciplinary team.

Subp. 2. **Interdisciplinary team review.** The interdisciplinary team shall review:

A. all information obtained in the diagnosis and assessment of the person with mental retardation or a related condition;

B. the individual service plan;

C. written documentation of the findings of the screening team, if any; and

D. any other information that would assist the interdisciplinary team in writing a plan that will meet the needs of the person with mental retardation or a related condition in the least restrictive manner, such as assessments completed by the provider or other consultants, recommendations from team members or others invited to attend the individual habilitation plan meeting, data collected by the provider, and program implementation plans.

Subp. 3. **Data privacy.** Private data, as defined in Minnesota Statutes, section 13.02, subdivision 12 regarding the person with or who might have mental retardation or a related condition must not be disseminated, used, or discussed at a meeting unless the person with or who might have mental retardation or a related condition or the legal representative has given consent for dissemination, use, or discussion in accordance with Minnesota Statutes, section 13.05, subdivision 4. Confidential data, as defined in Minnesota Statutes, section 13.02, subdivision 3 must not be disseminated, used, or discussed except as authorized by Minnesota statute or federal law.

Subp. 4. **Standards for contents of individual habilitation plan.** The interdisciplinary team shall develop a single individual habilitation plan. The individual habilitation plan must integrate the services provided by all providers and subcontractors to the person with mental retardation or a related condition to ensure that the services provided and the methods used by each provider and subcontractor are coordinated and compatible with those of every other provider and subcontractor. The individual habilitation plan must be designed to achieve the expected outcomes specified in the individual service plan. The plan must include for each service:

A. short-term objectives designed to result in the achievement of the annual goals of the individual service plan;

B. the specific method of providing the service that is expected to result in the achievement of the short-term objectives of the individual habilitation plan;

C. the name of the provider's employee responsible for ensuring that services are implemented as set forth in the individual habilitation plan and that the services result in achievement of the short-term objectives;

D. the measurable behavioral criteria that will be used to determine whether the service has resulted in achievement of the short-term objectives;

E. the frequency with which the service will be provided;

F. the projected starting and completion dates for each short-term objective;

G. the resources, such as special equipment, staff training, outside consultants, needed in order to implement the plan; and

H. the frequency with which providers will submit reports regarding the service and progress of the person and the minimum frequency at which the case manager will monitor the service being provided.

Subp. 5. **Required signatures.** The individual habilitation plan must contain the signature or signatures of the person with mental retardation or a related condition and the person's legal representative, if any, to document that the person with mental retardation or a related condition and the person's legal representative, if any, have reviewed the individual habilitation plan and agree that the goals and objectives specified in the individual habilitation plan meet the needs of the person with mental retardation or a related condition.

Subp. 6. **Request for reconsideration.** If the person with mental retardation or a related condition or the person's legal representative, if any, disagrees with the contents of the individual habilitation plan, the person with mental retardation or a related condition or the person's legal representative, if any, may request a reconsideration of the contents of the plan by applying to the county board and requesting reconsideration. The county board shall establish written procedures for handling requests for reconsideration of individual habilitation plan contents. The procedure in this subpart does not replace the appeal of the case management and related services under part 9525.0135 and is not a prerequisite to filing an appeal.

Subp. 7. **Provider implementation plan.** The provider may establish an internal provider implementation plan for accomplishing the objectives specified in the individual habilitation plan. The internal provider implementation plan must not result in a modification of the objectives or methodologies identified within the individual habilitation plan unless the modification is authorized by the case manager and is agreed to by the person with mental retardation or a related condition or the person's legal representative, if any.

Subp. 8. **Interim services.** A person with mental retardation or a related condition may receive the services set forth in the person's individual service plan for up to 30 days while an individual habilitation plan is being developed. The case manager shall terminate the services if an individual habilitation plan is not developed and implemented within 30 calendar days of the date that the person began receiving services specified the individual service plan.

Subp. 9. **Annual review of individual habilitation plan.** The case manager shall monitor implementation of the individual habilitation plan under the terms in part 9525.0115. At least annually, the interdisciplinary team must be convened and chaired by the case manager to review the data described in subpart 2, determine if the outcomes in the individual habilitation plan have been achieved, and to make any amendments or modifications of the individual habilitation plan based on the interdisciplinary team's review of the information.

Statutory Authority: *MS s 256B.092; 256B.503*

History: *11 SR 77; 12 SR 1148*

9525.0115 STANDARDS FOR MONITORING SERVICES.

Subpart 1. **Monitoring of individual service plan and individual habilitation plan.** The case manager shall ensure that services are being provided in accordance with the individual service plan and individual habilitation plan, and that the services provided continue to meet the needs of the individual in the least restrictive environment. Monitoring must include:

A. visiting the person with mental retardation or a related condition;

B. visiting the service site of the residential and training and habilitation service received by the person with mental retardation or a related condition while services are being provided;

C. reviewing the provider's records and reports;

D. observing the implementation of the person's individual service plan and individual habilitation plan;

E. compiling, reviewing, and analyzing quarterly evaluations and other reports submitted by the provider;

F. modifying the individual service plan under part 9525.0075 and the individual habilitation plan under part 9525.0105 as needed; and

G. reporting to the county board if a provider is not providing services as specified in the individual service plan and the individual habilitation plan.

Subp. 2. **Frequency of monitoring.** The case manager shall specify in the individual habilitation plan the frequency of monitoring to be done by the case

manager. The frequency of monitoring must be determined based on the level of need of the person with mental retardation or a related condition and other factors which might affect the type, amount, or frequency of service. Monitoring must occur at least on a semiannual basis for each person with mental retardation or a related condition who is receiving services.

Statutory Authority: *MS s 256B.092; 256B.503*

History: *11 SR 77; 12 SR 1148*

9525.0125 QUALITY ASSURANCE.

Subpart 1. **Monitoring by case manager.** The case manager is authorized and required to monitor the delivery of services by providers to determine if:

A. services are provided in accordance with the person's individual service plan and individual habilitation plan;

B. services are provided within the definition of least restrictive environment;

C. only necessary services are provided;

D. active treatment and habilitation services are provided;

E. services provided result in attainment of the person's goals and objectives;

F. the legal rights of the person with mental retardation or a related condition are protected; and

G. the person with mental retardation or a related condition and the person's legal representative, if any, are satisfied with the services provided.

Subp. 2. **County board procedures.** The county board shall establish written procedures for reviewing complaints reported by the case manager under subpart 1 and enforcing the provisions of parts 9525.0015 to 9525.0165.

Subp. 3. **Cooperation with commissioner.** The county board must cooperate with the commissioner in the commissioner's evaluation of case management services and other services provided to persons with mental retardation or related conditions by making available to the commissioner all information compiled under parts 9525.0015 to 9525.0165 requested by the commissioner.

Statutory Authority: *MS s 256B.092; 256B.503*

History: *11 SR 77; 12 SR 1148*

9525.0135 APPEALS OF CASE MANAGEMENT AND RELATED SERVICES.

Subpart 1. **Notification of right to appeal.** The case manager shall ensure that within 30 days of applying for services, the person with mental retardation or a related condition, the legal representative, and advocate, if any, is informed in writing of the right to appeal. This notification shall also include the name, address, and telephone number of the individual from the county board who is available to the person, the person's legal representative, and advocate, if any, to answer questions about the notification in this subpart.

Subp. 2. **Appealable issues.** A person with mental retardation or a related condition or the person's legal representative may appeal a county board action or inaction inconsistent with parts 9525.0015 to 9525.0115 and 9525.0165 or with the county board's approved variance request under part 9525.0145 [Emergency] which results in a denial of services, failure to act with reasonable promptness, a suspension, reduction, or termination of services.

Subp. 3. **Notice of action.** The county board shall notify the person and the person's legal representative, if any, of any denial, suspension, reduction, or termination of services. Except as provided in subpart 4, the county board shall mail the notice to the person and the person's legal representative at least 20 days before the effective date of the denial, suspension, reduction, or termination. The

notice shall clearly state the proposed action and the reason for the action. A notice of any denial, suspension, reduction, or termination of services under subpart 2, shall also state the person's right to appeal the proposed action.

Subp. 4. **Exceptions to period of notice.** The period of notice may be five days before the date of the proposed action if the county board has facts indicating probable fraud by the person or the person's legal representative in obtaining services and if the facts have been verified through secondary sources. The county board may mail a notice no later than the date of the action if:

A. the county board has factual information confirming the death of the person; or

B. the county board receives a written statement from the person or the person's legal representative indicating he or she no longer wishes to receive services through the county.

Subp. 5. **Submittal of appeals.** The person with mental retardation or a related condition or the person's legal representative may appeal under subpart 2 to the commissioner. All appeals must be submitted in writing within 30 days of the date the notice is received or within 90 days if the person with mental retardation or a related condition or the person's legal representative shows good cause why the appeal was not submitted within 30 days. The advocate for the person with mental retardation or a related condition or the parent of an adult with mental retardation or a related condition, if the adult does not have a legal representative, may assist the person with mental retardation or a related condition in bringing an appeal under this part.

Subp. 6. **Appeal of action.** All appeals of issues meeting the criteria under subpart 2 shall be heard and decided in accordance with Minnesota Statutes, section 256.045.

Statutory Authority: *MS s 256B.092; 256B.503*

History: *11 SR 77; 12 SR 1148*

9525.0145 SERVICE DEVELOPMENT AND NEED DETERMINATION.

Subpart 1. **Definition.** As used in this part, "county board" means the county board of commissioners, a human services board established under Minnesota Statutes, chapter 402, or the county welfare board as defined in Minnesota Statutes, chapter 393.

Subp. 2. **Information to be considered.** Development of a new service, or modification or expansion of an existing service, must be based on the county's community social services plan, community health plan, and the service needs identified in individual service plans of persons with mental retardation or related conditions for whom the county board is financially responsible. The county board shall also consider the service needs of persons from other counties for whom the county board has agreed to be the host county.

Subp. 3. **Need determination by county board.** Based on the data referred to in subpart 2, the county board shall identify the need for new services, modification, expansion, or reduction of existing services, or services for which a change of ownership or location is proposed. Facilities licensed under parts 9525.0230 to 9525.0430 but not certified as an ICF/MR facility must apply to the county board for a new need determination if the facility proposes to be certified as an ICF/MR. This subpart shall apply to any service licensed by the commissioner, except foster care.

If the county board identifies that a new service or a service for which a change in ownership or location is proposed, needed, or that the existing services need to be modified, expanded, or reduced, the county board shall submit an application for a need determination to the commissioner. Applications must include the following information:

A. the number, sex, and age of the persons to be served;

B. a description of the services needed by the persons to be served as identified in individual service plans;

C. a description of the proposed service;

D. if the proposal is for a residential service, a description of the day training and habilitation or educational services that are available outside of the residence for the persons to be served;

E. a description of the current residences of persons to be served and a statement of the number of persons to be served from each residential facility, foster home, or parental home;

F. the identity of other counties that will use the service;

G. a description of any financial limitations or funding restrictions that will affect the proposed service;

H. an explanation of how this application relates to service needs identified under subpart 2;

I. the date of the county board action on the application; and

J. the signature of the county board chairman.

Subp. 4. **Review of county need determination.** The county board shall establish written procedures for reviewing materials submitted by a provider under subpart 3.

Subp. 5. **Need determination by commissioner.** The commissioner shall make the determination of the need for and the location, program, type, and size of the service proposed in the county's application. The commissioner may determine need for the service on a local, regional, or statewide basis. In making a final need determination the commissioner shall consider the following factors:

A. the need to protect persons with mental retardation or related conditions from violations of their human and civil rights;

B. the need to assure that persons with mental retardation or related conditions receive the full range of social, financial, residential, and habilitative services specified as needed in their individual service plans;

C. whether services will be carried out in the least restrictive environment, and whether the size of the service relates to the needs of the persons to be served;

D. whether persons receiving the proposed service will use health, medical, psychological, therapeutic, and other support services that are used by the general public;

E. whether cost projections for the service are within the fiscal limitations of the state;

F. whether the application is consistent with the state's plans for service distribution and development; and

G. the distribution of and access to the services throughout the state.

Subp. 6. **Notice of decision and right to appeal.** Within 30 days of receipt of the application for need determination from the county board, the commissioner shall notify the county board of the commissioner's decision. The notice of the commissioner's decision must include notification of the county board's right to appeal the decision under subpart 9.

Subp. 7. **Biennial redetermination of need.** Every two years the county board shall submit to the commissioner a recommendation on the redetermination of need for each service located in the county which is licensed by the commissioner, except foster care.

The county board's recommendations must state whether the county board recommends continuation, continuation with modifications, discontinuation of the service, or, if the service is certified, decertification of the service. The recommendations of the county board must be based on the service needs of

persons with mental retardation or related conditions for whom the county is financially responsible, and for the service needs of persons with mental retardation or related conditions from other counties for whom the county board has agreed to serve as host county.

The commissioner shall make the redetermination of need for the service after considering the factors in subpart 3, and the recommendations of the county board. The decision of the commissioner is final and may be appealed in accordance with subparts 8 and 9. The commissioner shall notify the county board of the decision following receipt of the county board's recommendations.

Subp. 8. **Effect of need determination or redetermination.** If the commissioner determines that the service, modification, or expansion is not needed, the service, modification, or expansion shall not be paid for or reimbursed from federal or state money for services to persons with mental retardation or related conditions. An application for licensure submitted to the department or submitted for approval by the county will not be considered complete unless the commissioner determines that the service modification or expansion is needed. If the determination or redetermination is appealed, the effect of this subpart may be stayed pending the outcome of the appeal.

Subp. 9. **Appeal of commissioner's determination.** The provider making the application or the county board may appeal:

A. the commissioner's determination of the need for a modification, expansion, or reduction of existing services;

B. the commissioner's determination of the need for services for which a change of ownership or location is proposed; or

C. the commissioner's redetermination of need.

All appeals must be handled in accordance with Minnesota Statutes, chapter 14. Notice of appeal must be received by the commissioner within 30 days after the notification of the commissioner's decision was sent to the county.

Statutory Authority: *MS s 256B.092; 256B.503*

History: *11 SR 77; 12 SR 1148*

9525.0155 STANDARDS FOR QUALIFICATIONS AND TRAINING OF CASE MANAGERS.

Subpart 1. **Staff qualifications.** Except as provided in item C, staff providing case management services to persons with mental retardation or related conditions must meet the requirements in item A or B.

A. The designated case manager must have at least a bachelor's degree in social work, special education, psychology, nursing, human services, or other fields related to the education or treatment of persons with mental retardation or related conditions and one year of experience in the education or treatment of persons with mental retardation or a related condition as defined in Minnesota Statutes, section 252.27, subdivision 1.

B. The county board may establish procedures permitting persons who do not meet the requirements in item A to assist in providing case management services, except those services under parts 9525.0065, 9525.0075, and 9525.0095, under the supervision of a case manager who meets the qualifications in item A if the person assisting the case manager has completed 40 hours of training in case management and the education and treatment of persons with mental retardation or a related condition as defined in Minnesota Statutes, section 252.27, subdivision 1.

C. Between July 28, 1986, and January 1, 1987, the county board may request a variance to the requirements in item A to hire a case manager who meets the education requirement but does not meet the experience requirement. The variance request must be submitted in writing to the commissioner and must include a description of 20 or more hours of training in case management and

the education and treatment of persons with mental retardation or related conditions that will be completed by the case manager within 12 months of the date of hiring. The commissioner shall grant the variance if the person for whom the variance is requested meets the educational requirements in item A and the variance request meets the requirements in this item.

Subp. 2. **Case management training.** The county board shall establish a plan for the training of case managers. The plan must include at least 20 hours annually in the area of case management, mental retardation, or related conditions as defined in Minnesota Statutes, section 252.27, subdivision 1. Training and development activities attended by case managers must be documented and kept on file with the county.

Statutory Authority: *MS s 256B.092; 256B.503*

History: *11 SR 77; 12 SR 1148*

9525.0165 ENFORCEMENT.

A county board must fully comply with parts 9525.0015 to 9525.0165 unless the county board submitted a written variance request to the commissioner under parts 9525.0015 to 9525.0165 by February 1, 1985, and the variance request was subsequently approved in writing by the commissioner. If the commissioner has reasonable grounds to believe that a county board has not complied with or is failing to comply with parts 9525.0015 to 9525.0155, except as provided in the county's approved variance request, the commissioner may issue a written order requiring the county board to comply. The county board shall comply with the order.

If the county board disagrees with the commissioner's order, the county board may request a review of the decision to the commissioner and request reconsideration. To be reconsidered, the request for review must be filed in writing with the commissioner within 30 calendar days of the date that the county board received the order. The request for review must state the reasons why the county board is requesting a reconsideration of the commissioner's order and present evidence explaining why the county board disagrees with the commissioner's order. The commissioner shall review the evidence presented by the county board and send written notification to the county board of the decision on the reconsideration. The commissioner's decision on the reconsideration is final, unless a law suit is filed in district court.

Statutory Authority: *MS s 256B.092; 256B.503*

History: *11 SR 77*

SERVICES TO PERSONS WITH MENTAL RETARDATION OR RELATED CONDITIONS

9525.0180 PURPOSE.

The purpose of parts 9525.0180 to 9525.0190 is to further define "related condition" as found in Minnesota Statutes, section 252.27, subdivision 1, so that county boards can determine if a person is eligible for services established for persons with mental retardation.

Statutory Authority: *MS s 252.28 subd 2; 256B.092 subd 6; 256B.503*

History: *12 SR 1148*

9525.0185 DEFINITIONS.

Subpart 1. **Scope.** The terms used in parts 9525.0180 to 9525.0190 have the meanings given to them in this part.

Subp. 2. **Adaptive behavior similar to that of persons with mental retardation.** "Adaptive behavior similar to that of persons with mental retardation" means behavior that has been determined to demonstrate a severe deficit in skills related

to personal independence and social responsibility such as self care, mobility, communication, self preservation, and community integration, when compared to the norm for individuals of the same chronological age group and cultural peer group. The determination must be made by a psychiatrist, licensed psychologist, or licensed consulting psychologist, through the combination of test data, observation, and all other available information sources.

Subp. 3. **Autism.** "Autism" means a functional disorder occurring before 30 months of age that results in and causes a pervasive lack of responsiveness to other people, gross deficits in language and communication, and abnormal responses to the environment, all in the absence of delusions and hallucinations. Autism must be diagnosed by a team composed of a licensed physician, a speech pathologist, and a licensed psychologist, licensed psychiatrist, or licensed consulting psychologist.

Subp. 4. **Cerebral palsy.** "Cerebral palsy" means a clinical disorder that is diagnosed by a licensed physician as a result of medical examination and characterized by aberrations of motor function such as paralysis, weakness, or incoordination.

Subp. 5. **County board.** "County board" means the board of commissioners for the county of financial responsibility as specified in Minnesota Statutes, sections 256E.08, subdivision 7, and 256B.02 or its designated representative.

Subp. 6. **Epilepsy.** "Epilepsy" means a clinical disorder diagnosed by a licensed physician as a result of neurological examination that is characterized by a single attack or recurring attacks of loss of consciousness, convulsive movement, or disturbance of feeling or behavior.

Subp. 7. **Impairment of general intellectual functioning.** "Impairment of general intellectual functioning" means a score of a least two standard deviations below the mean on a standardized individual test of general intellectual functioning administered by a licensed psychologist, licensed consulting psychologist, or licensed psychiatrist.

Subp. 8. **Person with mental retardation.** "Person with mental retardation" means:

A. a person who has been diagnosed under part 9525.0045 as having significantly subaverage intellectual functioning existing concurrently with demonstrated deficits in adaptive behavior and who manifests these conditions before the person's 22nd birthday; or

B. a person under five years of age who demonstrates significantly subaverage intellectual functioning concurrently with severe deficits in adaptive behavior but for whom a licensed psychologist or licensed consulting psychologist determines that a diagnosis may not be advisable because of the person's age.

Subp. 9. **Related condition.** "Related condition" means a severe chronic disability in which onset occurs before the person's 22nd birthday and which:

A. is attributable to cerebral palsy, epilepsy, autism, or any other condition, excluding mental illness, chemical dependency, senility, and debilitating diseases such as muscular dystrophy and multiple sclerosis, considered closely related to mental retardation because the condition results in:

(1) impairment of general intellectual functioning; or

(2) adaptive behavior similar to that of persons with mental retardation; or

(3) requires treatment or services similar to those required for persons with mental retardation; and

B. is likely to continue indefinitely; and

C. results in substantial functional limitations in three or more of the following areas of major life activity:

(1) self care;

(2) understanding and use of language;

(3) learning;

(4) mobility;

(5) self direction; or

(6) capacity for independent living.

Statutory Authority: *MS s 252.28 subd 2; 256B.092 subd 6; 256B.503*

History: *12 SR 1148*

9525.0190 DETERMINATION OF SUBSTANTIAL FUNCTIONAL LIMITATION.

Subpart 1. **Professional involvement.** A determination of substantial functional limitation must be made by the case manager and at least one of the following professionals:

A. a physical therapist registered under Minnesota Statutes, sections 148.65 to 148.78;

B. an occupational therapist;

C. a licensed physician;

D. a speech and language pathologist or a speech and language therapist;

E. a licensed psychiatrist, licensed psychologist, or licensed consulting psychologist; or

F. a certified special education professional.

The selection of the professionals must be based on the suspected functional limitations of the client.

Subp. 2. **Criteria.** The determination of substantial functional limitation must be based on the criteria in items A to F:

A. A substantial functional limitation in self care is a long-term condition that results in the person with the condition needing physical, gestural, or verbal assistance at least four days per week to meet most or all personal care needs particularly in the areas of eating, grooming, caring for personal hygiene, and toileting.

B. A substantial functional limitation in language skills is a long-term condition that prevents a person from effectively communicating, either expressively or receptively, with other persons in a general setting without the aid of a third person, a person with special skill, or the aid of a mechanical device.

C. A substantial functional limitation in learning is a long-term condition that impairs the person's cognition, retention, and reasoning so that the person is unable, or is extremely limited in ability, even with specialized intervention, to acquire new knowledge or transfer knowledge and skills to new situations. This functional limitation is typically manifested by performance that makes it necessary for a person to have daily assistance from another person to perform at an age appropriate level in at least three of the following areas: functional reading skills, functional math skills, time skills, personal history information, and writing skills. For children under the age of six this must be determined by a performance of two standard deviations below the mean on a standardized developmental scale.

D. A substantial functional limitation in mobility is a long-term physical condition that impairs the person's ability to move from one place to another without the assistance of another person or mechanical aid or with such difficulty that an unusually protracted amount of time is required in a barrier free environment.

E. A substantial functional limitation in self direction is a long-term condition that results in a person's inability, at an age appropriate level, to exercise judgments basic to the protection of the person's own self-interest or rights, without supervision on a regular and continuing basis.

F. A substantial functional limitation in capacity for independent living is a long-term condition that prevents the person from performing at age appropriate levels in at least three areas of independent living skills including using a telephone, shopping for food and clothing, preparing simple meals, housekeeping, and self medication without the assistance of a second person.

Statutory Authority: *MS s 252.28 subd 2; 256B.092 subd 6; 256B.503*

History: *12 SR 1148*

RESIDENTIAL PROGRAMS AND SERVICES FOR MENTALLY RETARDED PERSONS

9525.0210 DEFINITIONS.

Subpart 1. **Ambulatory.** "Ambulatory" means the ability to walk independently and at least negotiate any barriers, such as ramps, stairs, corridors, doors, etc., without assistance as may be necessary to get in and out of the facility.

Subp. 2. **Executive officer.** "Executive officer" means the individual appointed by the governing body (see subpart 3) of a residential program to act in its behalf in the overall management of the facility. Job titles may include, but are not limited to, superintendent, director, and administrator.

Subp. 3. **Governing body.** "Governing body" means the policy-making authority, whether an individual or a group, that exercises general direction over the affairs of a residential program and establishes policies about its operation and the welfare of the individuals it serves. The governing body is responsible for the operation of the residential program and for compliance with parts 9525.0210 to 9525.0430.

Subp. 4. **Interdisciplinary team.** "Interdisciplinary team" means a team consisting, at a minimum, of the resident, the resident's legal guardian (if any), local social service agency representative, and the program director or program staff member. Other persons relevant to a particular resident's needs may be included. The interdisciplinary team is responsible for the development and evaluation of the resident's individual program plan and determination of need for the residential program.

Subp. 5. **Legal incompetence.** "Legal incompetence" means the legal determination that a resident is unable to exercise his full civil and legal rights and that a guardian (see parent, subpart 15) is required.

Subp. 6. **Living unit.** "Living unit" means a resident living unit that houses the primary living group (see subpart 16) and provides access to bedroom, living room, recreation/activity room, dining room, kitchen, and bathroom.

Subp. 7. **Living unit staff.** "Living unit staff" means individuals who conduct the resident living program; resident living staff.

Subp. 8. **May.** "May" indicates that the provisions or practices stated in these rules are permitted.

Subp. 9. **Mental retardation.** "Mental retardation" refers to persons who have been diagnosed as having significantly subaverage intellectual functioning existing concurrently with demonstrated deficits in adaptive behavior, and manifested during the developmental period.

Subp. 10. **Mobile.** "Mobile" means the ability to move independently from place to place with the use of devices such as walkers, crutches, wheelchairs, wheeled platforms, etc.

Subp. 11. **Multiple handicapped.** "Multiple handicapped" means in addition to mental retardation, an orthopedic, incoordinative, or sensory disability that culminates in significant reduction of mobility, flexibility, coordination, or perception and that interferes with an individual's ability to function independently.

Subp. 12. **Nonambulatory.** "Nonambulatory" means the inability to walk independently.

Subp. 13. **Nonmobile.** "Nonmobile" means the inability to move independently from place to place.

Subp. 14. **Normalization principle.** "Normalization principle" means the principle of letting persons who have mental retardation or related conditions obtain an existence as close to the normal as possible, making available to them patterns and conditions of everyday life that are as close as possible to the norms and patterns of the mainstream of society.

Subp. 15. **Parent.** "Parent" means the general term used in these rules to refer to the biological parent, or other person who fills the legal or social role of the biological parent, i.e., represents the rights and interests of persons with mental retardation or related conditions as if they were his own. May include an advocate as one who acts on behalf of a resident to obtain needed services and the exercise of his full human and legal rights; legal guardian as one appointed by a court; guardian of the person as one appointed to see that the resident has proper care and protective supervision in keeping with his needs; guardian of the property as one appointed to see that the financial affairs of the resident are handled in his best interests; guardian ad litem as one appointed to represent a resident in a particular legal proceeding; public guardian as a public official empowered to accept court appointment as a legal guardian (i.e., the commissioner of human services or his agent); or testamentary guardian as one designated by the last will and testament of a natural guardian.

Subp. 16. **Primary living group.** "Primary living group" means that group characterized by face to face relations that are personal, spontaneous, and typically, although not necessarily, long lasting. Members of a primary group are drawn together by the intrinsic value of the relations themselves rather than by a commitment to an explicit goal. The family is an example of a primary group.

Subp. 17. **Program.** "Program" means the general term used in these rules to refer to all people, events, and environments that lead to a purposeful outcome (goal or objective) for the individual resident. These programs include, but are not limited to, training and maintenance of the individual; the design, furnishing, and use of space; staff and staffing patterns; and professional and volunteer services.

Subp. 18. **Resident.** "Resident" means the general term used in these rules to refer to an individual who receives service in a residential program (see subpart 21), whether or not such individual is actually in residence in the facility. The term thus includes individuals who are being considered for residence in a facility and individuals who were formerly in residence in a facility. A residential program, on the other hand, may use the term "resident" to refer only to those individuals actually in residence.

Subp. 19. **Referring agency.** "Referring agency" means the general term used in these parts to refer to the local social service agency responsible for establishment and implementation of case management plans for individuals and particular families with mental retardation or related conditions problems and for the provision of specific financial or case work services to these individuals and families. In Minnesota, the county board is charged with administrative responsibility for these duties. Responsibility for these duties may be delegated to the local social service agency.

Subp. 20. **Resident living.** "Resident living" means pertaining to residential or domiciliary services.

Subp. 21. **Residential program.** "Residential program" means a general term used in this rule to refer to the program of services to residents of a supervised living facility or of a licensed or certified foster home approved by the commissioner as an extension of the residential program which has an administrative organization and/or structure for the purpose of providing care, food, lodging, training, supervision, habilitation, and treatment as needed for more than four

mentally retarded individuals on a 24 hour per day basis. Residential programs may also be known as, but are not limited to group homes, child caring institutions, boarding care homes, nursing homes, state hospitals, public institutions, and regional centers.

Subp. 22. **Restraint.** "Restraint" means any physical device that limits the free and normal movement of body or limbs. Chemical substances administered for the purpose of controlling maladaptive behavior are deemed restraints. Mechanical supports used in normative situations to achieve proper body position and balance shall not be considered restraints.

Subp. 23. **Rhythm of life.** "Rhythm of life" means relating to the normalization principle (see subpart 14), under which making available to mentally retarded persons patterns and conditions of everyday life that are as close as possible to the norms and patterns of the mainstream of society means providing a normal rhythm of the day (in relation to arising, getting dressed, participating in play and work activities, eating meals, retiring, etc.) normal rhythm of the week (differentiation of daily activities and schedules), and normal rhythm of the year (observing holidays, days with personal significance, vacations, etc.).

Subp. 24. **Seclusion.** "Seclusion" means involuntary removal from social contact with others, in a separate room.

Subp. 25. **Shall.** "Shall" indicates that the requirement, provision, or practice stated in this rule is mandatory.

Subp. 26. **Supervised living facility.** "Supervised living facility" means a general term used in these parts to refer to the facility licensed by Minnesota Department of Health, in accordance with Minnesota Statutes 1971, section 144.56.

Subp. 27. **Time out.** "Time out" means time out from positive reinforcement. A behavior modification procedure in which, contingent upon the emission of undesired behavior, the resident is removed from the situation in which positive reinforcement is available.

Statutory Authority: *MS s 245A.09; 252.28 subd 2*

History: *L 1984 c 654 art 5 s 58; 12 SR 1148; L 1987 c 403 art 3 s 96*

9525.0220 STATUTORY AUTHORITY.

Minnesota Statutes, section 256.01 charges the commissioner of human services with general responsibility for service to persons with mental retardation or related conditions.

Minnesota Statutes, section 245.072 creates a mental retardation division in the Department of Human Services to "coordinate those laws administered and enforced by the commissioner of public welfare relating to mental retardation and mental deficiency which the commissioner may assign to the division."

Minnesota Statutes, section 252.28 charges the commissioner of human services with the responsibility for licensing of residential facilities and services for persons with mental retardation or related conditions.

Statutory Authority: *MS s 245A.09; 252.28 subd 2*

History: *L 1984 c 654 art 5 s 58; 12 SR 1148*

9525.0230 SCOPE.

Parts 9525.0210 to 9525.0430 govern the operation of any residential program engaged in, or seeking to engage in, the provision of residential or domiciliary service for mentally retarded individuals, and set forth the requirements necessary for such a residence to be licensed.

Cost of boarding care outside of home or state institution is reimbursable by the state for care of children under 18 years of age in facilities licensed by the Department of Human Services. All participating facilities serving more than

four mentally retarded children must be licensed under these rules prior to participation.

Federal programs under the Social Security Act, as amended, require certification of participating facilities. All participating facilities serving more than four mentally retarded persons must be licensed under these rules prior to certification.

Statutory Authority: *MS s 245A.09; 252.28 subd 2*

History: *L 1984 c 654 art 5 s 58*

9525.0240 PURPOSE.

The purpose of parts 9525.0210 to 9525.0430 is to establish the minimum standards for the operation of residential programs and services for persons with mental retardation or related conditions residing in licensed supervised living facilities.

The purpose of Minnesota Statutes, section 252.28 and these parts is to establish and protect the human right of persons with mental retardation or related conditions to a normal living situation, through the development and enforcement of minimum requirements for the operation of residential programs. Moreover, these parts serve an educational purpose in providing guidelines for quality service.

Statutory Authority: *MS s 245A.09; 252.28 subd 2*

History: *12 SR 1148*

9525.0250 PROCEDURE FOR LICENSING.

Subpart 1. **Submission of application.** Application shall be made to the commissioner of human services, who may determine the need, location, and program of facilities and services seeking to be licensed or relicensed under these rules. In making this determination, the commissioner shall be guided by these parts and other state agency rules promulgated under Minnesota Statutes, section 252.28, subdivision 1, including parts 9525.0010 to 9525.0090.

Applicants shall submit such materials and information as may be required to make a proper determination of the nature and adequacy of the residential program to be provided.

Subp. 2. **Prerequisites.** Applicants must have, or have applied for, a supervised living facility license from the state Department of Health; and, in the case of a commissioner-approved extension of the residential program for family homes of four or fewer residents, a foster home license or certification from the Department of Human Services.

Subp. 3. **License renewal.** A residential program desiring to renew its license shall submit an application at least 45 days prior to expiration of the license. A renewal license may be issued for a period of up to two years at the discretion of the commissioner.

Subp. 4. **Provisional license.** Provisional license shall be granted by the commissioner under terms of Minnesota Statutes, section 245A.04, subdivision 7.

Subp. 5. **Variance.** A residential program may request in writing a variance of a specific provision of the rules. The request for a variance must cite the provision of the rules in question, reasons for requesting the variance, the period of time not to exceed one year the licensee wishes to have the provision varied and the equivalent measures planned for assuring that programmatic needs of residents are met. Variances granted by the commissioner shall specify in writing the time limitation and required equivalent measures to be taken to assure that programmatic needs are met. Variances denied by the commissioner shall specify in writing the reasons for the denial. No variance shall be granted that would threaten the health, safety, or rights of residents.

Subp. 6. **Refusal or revocation of license.** Failure to comply with these rules or applicable state laws shall be cause for refusal or revocation of license.

Failure to be licensed as a supervised living facility by the Minnesota Department of Health (or its successor) shall be cause for refusal or revocation of license.

Revocation, suspension, or denial of a license may be appealed pursuant to Minnesota Statutes, chapter 14.

Statutory Authority: *MS s 245A.09; 252.28 subd 2*

History: *L 1984 c 654 art 5 s 58; L 1987 c 333 s 22*

9525.0260 GROUPING AND ORGANIZATION OF LIVING UNITS.

Subpart 1. **Goal.** The resident-living unit, subsequently called living unit, shall be small enough to ensure the development of meaningful interpersonal relationships among residents and between residents and staff.

Subp. 2. **Living unit.** The living unit is that unit which houses the primary living group. It may be a group home, foster home, ward, wing, floor, etc.

The living unit shall contain bedroom, living room, bathroom, recreation room, and connecting areas. It may contain dining room and kitchen. Facilities with more than four persons with mental retardation or related conditions in residence on November 17, 1972, shall be deemed to be in substantial compliance with this provision, except that the living unit shall contain bedroom and living room areas.

The living unit shall be physically, socially, and functionally differentiated from areas for developmental and remedial services (see parts 9525.0320 to 9525.0350) and shall simulate the arrangements of a home in order to encourage a personalized atmosphere for residents.

The size of the living unit shall be based upon the needs of the residents, but the living unit shall provide for not more than 16 residents.

The living unit or complex of such units shall house both male and female residents to the extent that this conforms to the prevailing cultural norms and unless contraindicated by program plan. Such living arrangements shall include provision for privacy and for appropriate separation of male and female residents.

The living unit shall not be a self-contained program unit unless contraindicated by program plans of the particular residents being served, and living unit activities shall be coordinated with developmental and remedial services in which residents engage outside the living unit.

Residents shall be allowed free use of all space within the living unit, with due regard for privacy and personal possessions.

Each resident shall have access to a quiet, private area where he can withdraw from the group.

Outdoor active play or recreation areas shall be readily accessible to all living units.

Interior and exterior doors shall not be locked except to protect the resident from clear and present danger, or in conjunction with a behavior modification program (see part 9525.0280, subpart 9). In no case shall locked doors be a substitute for program or staff interaction with residents.

Statutory Authority: *MS s 245A.09; 252.28 subd 2*

History: *12 SR 1148*

9525.0270 PHYSICAL PLANT.

Subpart 1. **Design of living unit.** The living unit shall be physically self-contained. Walls defining the living unit shall extend from floor to ceiling.

The interior design of the living unit shall simulate the functional arrangements of a home to encourage a personalized atmosphere for a small group of residents unless it has been demonstrated that another arrangement is more effective in maximizing the development of specific residents being served.

Space shall be arranged to permit residents to participate in different kinds of activities, both in groups and singly.

Space shall be arranged to minimize noise and permit communication at normal conversation levels.

Walls defining each room in the living unit shall extend from floor to ceiling.

Subp. 2. **Design of bedroom.** Bedrooms shall accommodate from one to four residents.

Doors to bedrooms shall not have vision panels and shall not be capable of being locked, except where residents may lock their own bedroom doors, as consistent with their program.

There shall be provision for residents to mount pictures on bedroom walls.

Space outside the bedroom shall be provided for equipment for daily out-of-bed activity for all residents not yet mobile, except those who have a short-term illness or those for whom out-of-bed activity is a threat to life.

Subp. 3. **Design of toilet areas.** Toilet areas shall be located in such places as to facilitate training toward maximum self-help by residents.

Water closets, showers, bathtubs, and lavatories shall approximate normal patterns found in homes, unless specifically contraindicated by program needs.

Toilets, bathtubs, and showers shall provide for individual privacy unless specifically contraindicated by program needs.

Subp. 4. **Furnishings and equipment in general.** Furnishings shall be appropriate to the physiological, emotional, and developmental needs of each resident.

Subp. 5. **Furniture in dining areas.** Dining areas shall:

A. be furnished to stimulate maximum self-development, social interaction, comfort, and pleasure;

B. promote a pleasant and home-like environment and be attractively furnished and decorated and of good acoustical quality; and

C. be equipped with tables, chairs, eating utensils, and dishes designed to meet the developmental needs of each resident.

Subp. 6. **Drinking water.** Each resident shall have access to drinking water in the living units.

Subp. 7. **Toilet training equipment.** Equipment shall be provided for toilet training, as appropriate, including equipment for use by the multiple-handicapped.

Subp. 8. **Safety.** Residents shall receive appropriate instruction in safety precautions and procedures.

First-aid equipment, approved by a physician, shall be maintained on the premises in a readily available location, and staff shall be instructed in its use.

Applicable requirements of the state fire marshal or his agent shall be met.

Statutory Authority: *MS s 245A.09; 252.28 subd 2*

9525.0280 STAFF-RESIDENT RELATIONSHIPS AND ACTIVITIES.

Subpart 1. **Goal.** The objective in staffing each living unit shall be to maintain reasonable stability in the assignment of staff, thereby permitting the development of a consistent interpersonal relationship between each resident and one or two staff members. Provisions shall be made to ensure that the efforts of the staff are not diverted from these responsibilities by excessive housekeeping and clerical duties, or other nonresident-involved activities.

Subp. 2. **Staff responsibilities.** The primary responsibility of the living-unit

staff shall be to devote their attention to the care and development of the residents.

Living-unit staff shall be responsible for the development and maintenance of a warm, family, or homelike environment that is conducive to the achievement of optimal development by the resident.

Living-unit staff shall train residents in activities of daily living and in the development of self-help and social skills.

Subp. 3. **Program plans.** Living-unit staff shall participate in assessment, program planning, and evaluation activities relative to the development of the resident (see parts 9525.0320 to 9525.0350). A program plan for each resident shall be available to staff in each living unit.

Subp. 4. **Rhythm of life.** The rhythm of life in the living unit shall resemble the cultural norm for the residents' nonretarded age peers unless a departure from this rhythm is justified on the basis of maximizing the residents' human qualities. The rhythm of life includes the following:

A. Residents shall be assigned responsibilities in the living units commensurate with their interests, abilities, and program plans, in order to enhance feelings of self-respect and to develop skills of independent living.

B. Multiple-handicapped and nonambulatory residents shall:

(1) spend a major portion of their waking day out of bed;

(2) spend a major portion of their waking day out of their bedroom areas;

(3) have planned daily activity and exercise periods; and

(4) be rendered mobile by various methods and devices.

C. All residents shall have planned periods out-of-doors on a year-round basis.

D. Except as limited by program plan, residents shall be instructed in how to use, and shall be given opportunity for, freedom of movement.

E. Birthdays and special events should be individually observed.

Subp. 5. **Residents' opinions.** Residents' views and opinions on matters concerning them shall be elicited and given consideration in defining the processes and structures that affect them.

Subp. 6. **Communication processes.** Residents shall be instructed in the free and unsupervised use of communication processes. Except as denied individual residents by program plan, this may include:

A. having access to telephones for incoming and local outgoing calls;

B. having access to pay telephone, or the equivalent, for outgoing long distance calls;

C. opening their own mail and packages and generally doing so without direct surveillance; and

D. not having their mail read by staff, unless requested by the resident.

Subp. 7. **Personal possessions.** Residents shall be permitted personal possessions, such as toys, books, pictures, games, radios, arts and crafts materials, religious articles, toiletries, jewelry, and letters.

Subp. 8. **Money.** Regulations shall permit normal possession and use of money by residents.

Residents shall be trained in the use of money.

Allowance or opportunities to earn money shall be available to residents.

Subp. 9. **Behavior problems.** There shall be provisions for prompt recognition of behavior problems, as well as appropriate management of behavior in the living unit. These provisions shall be subject to review by a research, review, and/or human rights committee (see part 9525.0370, subpart 5).

There shall be a written statement of policies and procedures for the control and discipline of residents that:

A. is directed to the goal of maximizing the growth and development of the residents;

B. is available in each living unit;

C. is available to parents; and

D. provides for resident participation, as appropriate, in the formulation of such policies and procedures.

Corporal punishment shall not be permitted.

Residents shall not discipline other residents, except as part of an organized self-government program that is conducted in accordance with written policy.

Subp. 10. **Physical restraints.** Restraint shall be employed only when absolutely necessary to protect the resident from injury to himself or to others; and restraint and seclusion shall not be employed as punishment, for the convenience of staff, or as a substitute for program.

The facility shall have a written policy that defines the uses of restraint, the staff members who may authorize its use, and a mechanism for monitoring and controlling its use. This policy shall be available in each living unit.

Totally enclosed cribs and barred enclosures shall be considered restraints.

Subp. 11. **Record of restraint usage.** Each use of restraint and seclusion shall be recorded in the resident's record. This record shall include a description of the precipitating behavior; expected behavioral outcome; and actual behavioral outcome.

Subp. 12. **Seclusion rooms.** Rooms used for seclusion shall be furnished with a bed and bedding, a chair, a commode, and a lavatory; and shall afford proper access to drinking water.

Subp. 13. **Chemical restraint.** Chemical restraint shall not be used excessively, as punishment, for the convenience of staff, as a substitute for program, or in quantities that interfere with a resident's program. Each use of a behavior-controlling drug shall be recorded in the resident's record. This record shall include:

A. a description of the behavior to be modified;

B. expected behavioral outcome;

C. possible side or secondary effects;

D. date for review or termination; and

E. actual behavioral outcome.

Subp. 14. **Behavior modification.** Behavior modification programs involving the use of time-out devices or the use of noxious or aversive stimuli shall be conducted only with the consent of the affected resident's parent and shall be described in written plans that are kept on file in the facility.

Statutory Authority: *MS s 245A.09; 252.28 subd 2*

9525.0290 HEALTH, HYGIENE, AND GROOMING.

Subpart 1. **In general.** Procedures shall be established for:

A. monthly weighing of residents, with greater frequency for those with special needs;

B. quarterly measurement of height, until the age of maximum growth; and

C. maintenance of weight and height records. Every effort shall be made to ensure that residents maintain normal weights.

Provisions shall be made to furnish and maintain in good repair, and to train residents in the use of, dentures, eyeglasses, hearing aids, braces, etc., prescribed by appropriate specialists.

Subp. 2. **Independent grooming.** Residents shall be trained to exercise maximum independence in health, hygiene, and grooming practices, including bathing, brushing teeth, shampooing, combing and brushing hair, shaving, and caring for toenails and fingernails.

Each resident shall be assisted in learning normal grooming practices with individual toilet articles that are appropriately available to that resident.

Living unit staff shall be instructed in each resident's daily oral care program and shall be responsible to see that it is carried out. Whenever possible, the resident shall be instructed in, and learn to carry out, his own program of daily oral care. Dental care practices should include the use of newer equipment, such as electric toothbrushes and oral water irrigators or lavages as prescribed. Individual brushes shall be properly marked, used, and stored. Teeth shall be brushed daily with dentifrice.

Hair cutting and styling, in an individualized manner consistent with current style, shall be accessible to all residents.

For residents who require such assistance, cutting of toenails and fingernails by trained personnel shall be scheduled at regular intervals.

Each resident shall have a shower or tub bath as needed. Residents' bathing shall be conducted at the most independent level possible. Residents' bathing shall be conducted with due regard for privacy. Individual washcloths and towels shall be used.

Female residents shall be helped to attain maximum independence in caring for menstrual needs. Menstrual supplies shall be of the same quality and diversity available to all women.

Subp. 3. **Drinking units.** Residents shall be instructed in the use of drinking units. Those residents who cannot use the unit shall be given the proper daily amount of fluid at appropriate intervals adequate to prevent dehydration. A drinking unit shall be available to, and usable by, mobile nonambulatory residents, as needed. Special cups and noncollapsible straws shall be available when needed by the multiple-handicapped. If the drinking unit employs cups, only single-use, disposable types shall be used.

Subp. 4. **Toilet training.** Every resident who does not eliminate appropriately and independently shall be engaged in a toilet training program. Residents who are incontinent shall be immediately bathed or cleansed, upon voiding or soiling unless specifically contraindicated by a plan for toilet training; and all soiled clothing shall be changed.

Statutory Authority: *MS s 245A.09; 252.28 subd 2*

9525.0300 CLOTHING.

Subpart 1. **Supply.** Each resident shall have an adequate allowance of neat, clean, fashionable, and seasonable clothing. Each resident shall have his own clothing that is, when necessary, inconspicuously marked with his name, and he shall use this clothing. Such clothing shall make it possible for residents to go out of doors in inclement weather and to make a normal appearance in the community. Nonambulatory residents shall be dressed daily in their own clothing, including shoes, unless contraindicated by program plan. Washable clothing shall be designed for multiple-handicapped residents being trained in self-help skills. Clothing for incontinent residents shall be designed to foster comfortable sitting, crawling and/or walking, and toilet training.

Subp. 2. **Selection and care.** Residents shall be trained and encouraged to:

A. select and purchase their own clothing as independently as possible, preferably utilizing community stores;

B. select their daily clothing;

C. dress themselves;

D. change their clothes to suit the activities in which they engage; and

E. maintain (launder, clean, and mend) their clothing as independently as possible.

Statutory Authority: *MS s 245A.09; 252.28 subd 2*

9525.0310 FOOD SERVICE.

Subpart 1. **In general.** Food services shall recognize and provide for the physiological, emotional, cultural, and developmental needs of each resident. There shall be a written statement of goals, policies, and procedures that governs food service. The diet provided shall include foods that stimulate chewing, unless contraindicated by program plan.

Subp. 2. **Participation in food preparation.** Residents shall have opportunity to be trained and participate in food preparation and service.

Subp. 3. **Place of meals.** All residents, including the mobile nonambulatory, shall eat or be fed in dining rooms, except when contraindicated by program plan.

All residents, including the mobile nonambulatory, shall eat at a table.

Dining arrangements shall be based upon a plan to meet the needs of the residents and the requirements of their programs. Dining and serving arrangements shall provide for a variety of eating experiences (e.g., cafeteria and family style), and, when appropriate, for the opportunity to make food selections with guidance. Unless justified on the basis of meeting the program needs of the particular residents being served, dining tables shall seat small groups of residents (typically four to six at a table) and include both sexes.

Dining rooms shall be supervised and staffed for the direction of self-help eating procedures and to ensure that each resident receives an adequate amount and variety of food.

Staff members shall be encouraged to eat with those residents who have semi-independent or independent eating skills.

For residents not able to get to dining areas, food service practices shall permit and encourage maximum self-help and shall promote social interaction and a pleasant mealtime experience.

Subp. 4. **Training for residents.** Residents shall be provided with systematic training to develop eating skills, utilizing adaptive equipment when it serves the developmental process.

A plan for the remediation of eating problems shall be implemented for all residents with special disabilities. This plan shall be consistent with the individual's developmental needs.

Living-unit staff shall be trained in and shall utilize proper feeding techniques when a resident must be fed. Residents shall be fed in an upright position. Residents shall be fed in a manner consistent with their developmental needs (for example, infants shall be fed in arms). Residents shall be fed at normal consumption rates, and the time allowed for eating shall be such as to promote the development of self-feeding abilities, to encourage socialization, and to provide a pleasant mealtime experience.

Statutory Authority: *MS s 245A.09; 252.28 subd 2*

9525.0320 DEVELOPMENTAL AND REMEDIAL SERVICES.

In addition to resident-living services detailed in parts 9525.0260 to 9525.0310, residents shall be provided with developmental and remedial services called for by individual assessment and program plan. These services may be provided in two ways:

A. within the facility and by staff employed by the residential program, except that developmental services, as here defined, shall not be provided in the living unit unless contraindicated by the assessed needs of the particular residents being served; and

B. outside of the facility and by agreement between the facility and other agencies or persons.

All developmental and remedial services, as defined in parts 9525.0330 to 9525.0350, shall be rendered outside of the facility, whenever possible, and when rendered in the facility, such services must be at least comparable to those provided in the community.

Statutory Authority: *MS s 245A.09; 252.28 subd 2*

9525.0330 ASSESSMENT OF RESIDENT.

Subpart 1. **Annual assessment requirement.** Residential program staff shall participate in regular, at least annual, assessment of each resident. The assessment shall cover behavioral and physical status of the resident and shall be conducted by an interdisciplinary team.

Subp. 2. **Behavioral assessments.** Behavioral assessment:

A. shall utilize objective description to the greatest degree possible;

B. shall include the resident, when he is capable of participation, and data supplied by his parents, when appropriate, and by living unit staff; and

C. shall include, but not be limited to, the following areas:

(1) Educational assessment. All school-age children shall be assessed annually in accordance with guidelines of a properly designated school authority, in order to determine eligibility for public school class. School-age is defined as four years to 21 years for children with mental retardation or related conditions and shall not extend beyond secondary school.

(2) Self-care skills.

(3) Economic skills.

(4) Language development.

(5) Number and time concepts.

(6) Domestic occupation.

(7) Vocational skills.

(8) Maladaptive behavior and emotional disturbances. A residential program shall be in substantial compliance with these provisions when the American Association of Mental Deficiency Adaptive Behavior Scale, or the Minnesota Developmental Programming System (MDPS), is used for behavioral assessment.

Subp. 3. **Physical assessment.** Physical assessment for children shall be performed as recommended by the council on pediatrics.

Physical assessment for adults shall be performed at least annually and shall include, but not necessarily be limited to physical examination, blood count, and urinalysis.

Subp. 4. **Drug assessment.** A resident who receives daily medications for a chronic condition shall have a planned and recorded schedule for examination and review of his medication regimen. Use of prescribed medications shall not be continued past the scheduled time for examination. Persistent deviancy in use of a drug by a resident, or adverse reaction to a drug, shall be considered in adjustment of the resident's program plan.

Subp. 5. **Motor assessment.** Physical and motor assessment shall be performed at least annually for persons under 16 years of age, and as needed thereafter.

Subp. 6. **Speech and language assessment.** Speech and language assessment shall be performed annually for persons under 16 years of age, and as needed thereafter.

Subp. 7. **Vision assessment.** Vision assessment shall be performed annually.

Subp. 8. **Hearing assessment.** Hearing assessment shall be performed annual-

ly for persons under ten years of age, and thereafter when a hearing change is suspected.

Subp. 9. **Dietary assessment.** Dietary assessment shall be performed at least every 90 days for residents receiving a therapeutic diet.

Subp. 10. **Psychological assessment.** Psychological assessment shall be performed at least every three years for persons under 16 years of age, and as needed thereafter. Current psychological assessment data (less than one year old) available from the referring agency may be utilized to comply with this requirement.

Statutory Authority: *MS s 245A.09; 252.28 subd 2*

History: *12 SR 1148*

9525.0340 PROGRAM AND TREATMENT PLAN.

Subpart 1. **Formulation of individual plans.** Residential program staff shall participate with an interdisciplinary team including daytime developmental staff, in the formulation of an individualized program and treatment plan for each resident. Facility staff shall be responsible for implementation of the plan.

General provisions: The formulation of individualized program and treatment plans shall:

A. define specific and time limited objectives for behavioral and physical development;

B. consider the proper exercise of the residents' and parents' civil and legal rights, including the right to adequate service;

C. define needed services without consideration of the actual availability of desirable options;

D. investigate and weigh all available and applicable services;

E. determine the resident's need for remaining in the facility; and

F. consider the need for (continued) guardianship or conservatorship or restoration to capacity of the resident.

Subp. 2. **Developmental services.** All developmental services utilized by residents shall be provided by persons, facilities, or services licensed or certified to provide these services.

Developmental services shall be utilized to promote the intellectual, physical, affective, and social development of each individual, and may include:

A. developmental achievement services;

B. recreational services;

C. religious services;

D. rehabilitation facility services;

E. social work services;

F. vocational training and placement services; and

G. educational services.

All school age children shall attend public school class unless specifically excluded by the responsible school district. A school program operated by the facility shall meet the standards of the State Department of Education and the local school district.

Subp. 3. **Health services.** Health services shall be utilized to maintain an optimal general level of health for each resident, and to maximize function, prevent disability, and promote optimal development of each resident.

Residents who are members of an organized religious group opposed to any health practices may be excused from regulations applying to personal health upon written request by the resident or his parents; but they shall be subject to requirements for control of outbreaks of infectious disease.

Statutory Authority: *MS s 245A.09; 252.28 subd 2*

History: *L 1988 c 689 art 2 s 268*

9525.0350 EVALUATION OF SERVICES.

Residential program staff shall participate with an interdisciplinary team in the evaluation of all services utilized by residents as reflected by each resident's level of functioning. This evaluation shall include evaluation of resident movement toward objectives stated in the program plan. The evaluation shall include the views of the resident and his parents. The evaluation shall include the views of the program advisory committee (see part 9525.0370, subparts 2 to 5) and appropriate agencies.

Statutory Authority: *MS s 245A.09; 252.28 subd 2*

9525.0360 ADMISSION AND RELEASE PROCEDURES.

Subpart 1. **In general.** Admission and release procedures include the following:

A. No resident shall be admitted to a residential program prior to its being licensed.

B. The number of residents admitted to the program shall not exceed its licensed program capacity.

C. The residential program shall make descriptive information available to the public that includes, but is not limited to:

(1) preadmission and admission services and procedures;

(2) limitations of age, length or place of residence, and type or degree of handicap;

(3) developmental and remedial services provided by program staff;

(4) developmental and remedial services provided by agreement with other agencies or persons;

(5) means for individual programming for residents in accordance with need;

(6) the plan for grouping residents into living units; and

(7) release and follow-up services and procedures.

D. The residential program shall have an admission and release committee (see part 9525.0370, subpart 5) that shall:

(1) include consumers and their representatives, interested citizens, and relevantly qualified professions; and

(2) review all applications and advise the administration of the residential program on selection, admission, and release of residents.

E. The laws, regulations, and procedures on admission, readmission, and release shall be summarized and available for distribution.

F. Admission and release procedures shall:

(1) encourage voluntary admission upon application of the resident or his parent;

(2) give equal priority to persons of comparable need, whether application is voluntary or by a court;

(3) facilitate emergency, partial, and short-term care when feasible;

(4) ensure the rights and integrity of the resident and his parent;

(5) ensure the resident the maximum opportunity to participate in admission and release decisions;

(6) ensure the resident is informed of the right to appeal the suspension, reduction, termination, or denial of services to the commissioner of human services pursuant to Minnesota Statutes, section 256.045 as a social service appeal; and

(7) if respite care services are provided, there shall be a written policy defining respite care which includes:

(a) minimum and maximum time limit;

(b) conditions and procedures for admission (emergency; vacations; etc.);

(c) charges for respite care;

(d) description of services provided;

(e) type of services to be provided; and

(f) age and developmental level.

Respite care admissions must approximate the standard admission criteria.

G. Upon determination of the possible inadmissibility of a resident, the residential program shall consult with the referring agency and with his parents.

Subp. 2. **Selection and eligibility.** The residential program shall provide information on eligibility requirements and application materials upon all requests.

Residents and their parents shall be free to apply directly to the program for service. However, placement for service shall be made by the responsible local social service agency.

Residential programs shall admit residents without regard to race, creed, or national origin, and accord equal treatment to all persons.

When admission is not an optimal measure, but must, nevertheless, be implemented, its inappropriateness shall be clearly acknowledged; and plans shall be initiated for the continued and active exploration of alternatives.

The determination of legal incompetence shall be separate from the determination of the need for services, and admission to the program shall not automatically imply legal incompetence.

Subp. 3. **Admission.** For each resident admitted, there shall be a written program plan stating the services he needs or a written statement of the procedure and timetable for development of the program line.

Prior to admission, the resident and his parent shall be counseled on the relative advantages and disadvantages of admission to the program.

Prior to admission, the resident and his parent shall be encouraged to visit the program and the living unit in which the resident is likely to be placed.

Prior to admission of a school-age child, residential program staff shall notify the local school district.

Upon admission, each resident shall be placed in his living unit, and he shall be isolated only upon medical orders issued for specific medical reasons.

Subp. 4. **Release.** Planning for release, the residential program staff shall involve the referring agency, the resident, and his parent.

At the time of release, a summary of findings, progress, and plans shall be recorded and transmitted with the resident.

Procedures shall be established so that:

A. a parent who requests the release of a resident is counseled about the advantages and disadvantages of such release;

B. the court or other appropriate authorities are notified when a resident's release might endanger either the individual or society.

At the time of release, physical examination for signs of injury or disease shall be made in accordance with procedures established by the residential program.

Except in an emergency, release shall be made only with the prior knowledge, and ordinarily the consent, of the referring agency, the resident, and his parents.

Statutory Authority: *MS s 245A.09; 252.28 subd 2*

History: *L 1984 c 654 art 5 s 58*

9525.0370 ADMINISTRATIVE POLICIES AND PRACTICES.

Subpart 1. **Written statement of philosophy.** The residential program shall have a written statement clearly defining its philosophy, purpose, and function. This statement shall be consistent with the current status of knowledge and information available on residential services. This statement shall be consistent with the principle of normalization.

Subp. 2. **Written statement of organization.** The residential program shall have a written statement defining its administrative and organizational structure.

Subp. 3. **Governing body and executive program officer.** The governing body shall exercise general direction and establish policies on the operation of the program and the welfare of the residents.

The governing body shall appoint an executive officer of the program. The qualification of the executive officer shall be determined by the governing body and be consistent with the training and education needed to meet the stated goals of the program. The governing body shall delegate to the executive officer the authority and responsibility for management of the affairs of the program.

Subp. 4. **Sound management principles.** The residential program shall be administered and operated in accordance with sound management principles. The type of administrative organization of the program shall be appropriate to the program needs of the resident. The program shall have a table of organization that shows the governing and administrative responsibilities of the program.

Subp. 5. **Consumer representation and advisory body.** The residential program shall provide for meaningful and extensive consumer representation and public participation in its operation. If consumer representatives, interested citizens, and relevantly qualified professionals are not represented on the governing body, an advisory body composed of such representation shall be appointed by the governing body.

The advisory body shall sit ad hoc to the governing body and to the chief executive officer and provide consultation and assistance as appropriate. The advisory body may function as the program research review and human rights committee. The advisory body may function as the admission and release committee. See part 9525.0360, subpart 1, item D.

Statutory Authority: *MS s 245A.09; 252.28 subd 2*

9525.0380 PERSONNEL POLICIES.

There shall be written personnel policies, which shall be made available to each staff member.

The hiring, assignment, and promotion of employees shall be based on their qualifications and abilities, without regard to sex, race, creed, age, disability, marital status, and ethnic or national origin.

Personnel policies shall include but not be limited to:

A. qualifications, job description, salary schedule, and benefits for all positions;

B. a policy prohibiting mistreatment, neglect, or abuse of residents, and mandating the report of any mistreatment, neglect, or abuse to the executive officer; and

C. procedure for suspension and/or dismissal of an employee for cause.

There shall be a staff person responsible for implementation of these policies.

Statutory Authority: *MS s 245A.09; 252.28 subd 2*

9525.0390 STAFF ASSIGNMENTS.

Subpart 1. **Goal.** There shall be sufficient, appropriately qualified, and adequately trained personnel to provide program service in accordance with program's statement of services provided (see parts 9525.0320 to 9525.0350) and

with the standards specified in this document. There shall be staff on duty or call at night to ensure adequate care and supervision. There shall be staff on duty or call to assist all residents in an emergency.

There shall be staff on duty or call so that provision of residential service is not dependent upon the use of unpaid residents or volunteers. Residents shall not replace staff or be used in lieu of staff in any area of work unless they are reimbursed commensurate with ability and production. Residents shall not be involved in the care (feeding, clothing, and bathing), training, or supervision of other residents unless they are adequately supervised, have the requisite humane judgment, and have been specifically trained in necessary skills.

All staff shall be administratively responsible to a person whose training and experience is appropriate to the program.

The title applied to all staff shall be appropriate to the kind of residents with whom they work and the kind of interaction in which they engage.

Subp. 2. **Volunteers.** The use of volunteers shall be encouraged to strengthen services in a manner consistent with the purposes of the program.

Statutory Authority: *MS s 245A.09; 252.28 subd 2*

9525.0400 STAFF TRAINING.

There shall be a staff-training program that is appropriate to the size and nature of the program and that includes, but is not limited to:

A. orientation for all new employees, to acquaint them with the philosophy, organization, program, practices, and goals of the residential program;

B. induction training for each new employee, in order that his skills in working with the residents are increased; and

C. continuing in-service training to update and improve the skills and competencies.

There shall be a record of all staff training on file.

Statutory Authority: *MS s 245A.09; 252.28 subd 2*

9525.0410 STAFFING NEEDS.

The determination of staff needs shall include consideration of staff members' experience and training, as well as the overall ratio of staff to residents.

The number of available direct care resident living staff shall be related to each resident's degree of handicap and his training needs.

Staff to resident ratios during peak programming hours (evening and weekends) shall be optimized by appropriate scheduling around residents' day programs.

Statutory Authority: *MS s 245A.09; 252.28 subd 2*

9525.0420 FINANCES AND BUDGET.

The residential program shall have a written statement outlining a plan of financing that gives assurance of sufficient funds to enable it to carry out its defined purposes.

Budget management shall be in accordance with sound accounting principles.

A residential program charging for services shall have a written schedule of rates and charge policies, which shall be available to the resident, his parent, referring agencies, and the public.

Statutory Authority: *MS s 245A.09; 252.28 subd 2*

9525.0430 RESIDENT RECORDS.

An individual record shall be maintained in the facility for each resident.

All information contained in the resident's records shall be handled in a

manner consistent with the Government Data Practices Act. The resident shall have access to his record upon request. All entries in the resident's record shall be legible, dated, and authenticated by the signature and identification of the individual making the entry.

All records shall contain basic demographic information, to be entered at the time of admission, including reason for referral and individual program plan. Recorded information shall be in sufficient detail and adequate to:

A. plan and evaluate the resident's program;

B. provide a means of communication among all persons contributing to the resident's program;

C. furnish documentary evidence of the resident's progress or regression and of his general response to his program;

D. serve as a basis for study, evaluation, and development of services provided by the residential program;

E. protect the legal rights of the resident, his parent, the residential program, and staff; and

F. serve as a basis for evaluation of all services utilized by residents.

When it is necessary for residential program staff to supervise the use of personal funds, a record of these funds shall be maintained as a part of the resident's record.

Statutory Authority: *MS s 245A.09; 252.28 subd 2*

SEMI-INDEPENDENT LIVING SERVICE (SILS)

9525.0500 DEFINITIONS.

Subpart 1. **Applicant.** "Applicant" means any adult referred to the SILS provider for services. The term may also refer to an applicant for licensure under parts 9525.0500 to 9525.0660.

Subp. 2. **Client.** "Client" means an adult who needs more than food and lodging, but less than 24-hour per day program of service and supervision, receiving services as provided in this rule.

Subp. 3. **Commissioner.** "Commissioner" means the commissioner of human services or designee.

Subp. 4. **County board.** "County board" means that body of duly elected officials responsible for the governance of its county under the authority of Minnesota Statutes, sections 375.025 to 375.55. When a human service board has been established under Minnesota Statutes, sections 402.02 to 402.10, it shall be considered to be the county board, for purposes of this rule.

Subp. 5. **Individual program plan (IPP).** "Individual program plan (IPP)" means a detailed plan for each client which sets forth both short-term and long-term goals with detailed methods of achieving movement toward the individual service plan of the local social service agency.

Subp. 6. **Individual service plan.** "Individual service plan" means an analysis by the local social service agency of services needed by the client, including identification of the type of residential placement, if needed, and the general type of program required by the client to meet the assessed needs within a specified period of time.

Subp. 7. **Interdisciplinary team.** "Interdisciplinary team" means a team consisting, at a minimum, of the client, the client's legal guardian (if any), local social service agency representative, and the program director, or SILS staff member. Other persons relevant to a particular client's needs may be included. The interdisciplinary team is responsible for the development and evaluation of the client's individual program plan and determination of need for semi-independent living services.

Subp. 8. **Legal guardian.** "Legal guardian" means a person(s) appointed

under Minnesota Statutes, chapter 252A or 525 as guardian or conservator of the person or estate, or both, of anyone who has been legally judged to be incompetent to manage his or her person or estate. The commissioner of human services may be appointed as guardian or conservator.

Subp. 9. **Local social service agency (LSSA).** "Local social service agency (LSSA)" means a local agency designated and authorized by the county board or human service board, to be responsible for providing social services. Social services include the case management and referral of applicants for semi-independent living services.

Subp. 10. **May.** "May" indicates that the provisions or practices stated in these rules are permitted.

Subp. 11. **Mentally retarded person.** "Mentally retarded person" refers to any person who has been diagnosed as having significantly subaverage intellectual functioning existing concurrently with demonstrated deficits in adaptive behavior and manifested during the developmental period.

Subp. 12. **Normalization.** "Normalization" means to provide the client with a normal existence. If this is not possible, to provide the person with the alternative which is least restrictive. This includes making available to the client patterns and conditions of everyday life that are as close as possible to the norms and patterns of the mainstream of society.

Subp. 13. **Provider.** "Provider" means an individual, organization, or association which exercises general direction over the policies and provision of SILS, and is responsible for the welfare of individuals being served.

Subp. 14. **Semi-independent living services (SILS).** "Semi-independent living services (SILS)" means a system of services that includes training, counseling, instruction, supervision, and assistance provided in accordance with the client's individual program plan. Services may include assistance in budgeting, meal preparation, shopping, personal appearance, counseling, and related social support services needed to maintain and improve the client's functioning. Such services shall not extend to clients needing 24-hour per day supervision and services. Persons needing a 24-hour per day program of supervision and services shall not be accepted or retained in a semi-independent living service.

Subp. 15. **Shall.** "Shall" indicates that the requirement, provision, or practice stated in parts 9525.0500 to 9525.0660 is mandatory.

Statutory Authority: *MS s 245A.09; 252.28 subd 2*

History: *L 1984 c 654 art 5 s 58*

9525.0510 STATUTORY AUTHORITY.

Minnesota Statutes 1978, section 252.28, as amended, Laws of Minnesota 1980, chapter 612, provides for the determination of need, location, and program of public and private residential and day care facilities and services for children and adults with mental retardation or related conditions. This statute further provides that the commissioner shall establish uniform rules and program standards for each type of residential and day care facility or service for more than four persons with mental retardation or related conditions.

Minnesota Statutes, chapter 245A, Public Welfare Licensing Act, provide for the development and promulgation of rules for the operation and maintenance of residential and nonresidential programs and agencies, for granting, suspending, and revoking licenses and provisional licenses. It also provides that no individual, corporation, partnership, voluntary association, or other organization may operate a residential and nonresidential program or agency unless licensed to do so by the commissioner.

Statutory Authority: *MS s 245A.09; 252.28 subd 2*

History: *12 SR 1148; 13 SR 1448*

9525.0520 PURPOSE.

The purpose of these parts is:

A. to establish standards for the provision of services to persons with mental retardation or related conditions whose dependency requires services above the level of food and lodging, but who do not need 24-hour-per-day care or supervision, as provided in residences licensed under parts 9525.0210 to 9525.0430;

B. to assist clients in achieving their highest potential in self-sufficiency and independence in the least restrictive environment;

C. to ensure that an individual program plan is developed with each client, and each client receives those services he needs to achieve or maintain independence; and

D. to prescribe minimum program standards for semi-independent living services.

Statutory Authority: *MS s 245A.09; 252.28 subd 2*

History: *12 SR 1148*

9525.0530 SCOPE.

Parts 9525.0500 to 9525.0660 apply to any person, organization, or association engaged in the operation and provision of semi-independent living services (SILS) to adults who have or may have mental retardation or related conditions, as provided and defined in part 9525.0010, subparts 11 and 13. These parts set forth the requirements for any individual, organization, or association providing SILS to more than four adults with mental retardation or related conditions to be licensed pursuant to Minnesota Statutes, chapter 245A.

Licensure under these parts does not require concurrent compliance with other Department of Human Services licensing rules or with Minnesota Department of Health supervised living facility standards promulgated under Minnesota Statutes, section 144.56.

These parts do not govern the living arrangement of clients. Semi-independent living services licensed under these parts may be provided to persons living in a variety of ordinary community settings other than state hospitals and residential programs licensed under parts 9525.0210 to 9525.0430 and supervised living facility standards. Community living arrangements in which SILS are provided may include the following, but not be limited to: client's own home, foster home, apartment, or rooming house.

Statutory Authority: *MS s 245A.09; 252.28 subd 2*

History: *L 1984 c 654 art 5 s 58; 12 SR 1148; 13 SR 1448*

9525.0540 PROCEDURES FOR LICENSING.

Subpart 1. **Application to determine need.** Application for determination of need for SILS shall be made to the county board or its designee. Procedures for determination of need shall be as provided for in parts 9525.0070 and 9525.0080.

Subp. 2. **Application for license.** Upon notification that a need for the service has been found by the commissioner, application for license may be made to the commissioner.

Subp. 3. **Required information.** Applicants shall submit such materials and information as may be required by the commissioner to make proper determination of the nature and adequacy of the services to be provided. Application for license shall not be considered complete until all required documents have been received by the commissioner in accordance with this rule.

Subp. 4. **License renewal.** Any SILS provider desiring to renew a license shall submit an application at least 30 days prior to expiration of the license. A renewal license may be issued for a period up to two years at the discretion of the commissioner.

Subp. 5. **Issuance of license or letter of denial.** The license or a formal letter of denial, including reasons for denial, shall be issued within 90 days after receipt of the completed application. The initial license issued to any new SILS provider shall be provisional for a designated period of time not to exceed one year (Minnesota Statutes, section 245A.04, subdivision 7).

Subp. 6. **Provisional license.** Provisional license shall be granted by the commissioner under the terms of Minnesota Statutes, section 245A.04, subdivision 7.

Subp. 7. **Variance.** When a specific requirement cannot be met or an innovative alternative is desirable, a variance must be requested in writing. The variance request shall state the reason the current requirement cannot be met; the proposed alternative; and the date the alternative or requirement shall be met, not to exceed one year. No variance shall be granted that would threaten the health, safety, or rights of clients.

Statutory Authority: *MS s 245A.09; 252.28 subd 2*

History: *L 1987 c 333 s 22*

9525.0550 TECHNICAL PROVISIONS.

Subpart 1. **Grounds for denial, revocation, or suspension of license.** Failure to comply with these standards or applicable state law shall be cause for denial, revocation, or suspension of license.

Subp. 2. **Appeals.** Denial, revocation, or suspension of license may be appealed pursuant to Minnesota Statutes, chapter 14, the Minnesota Administrative Procedure Act.

Subp. 3. **Severability.** The provisions of parts 9525.0500 to 9525.0660 shall be severable. If any clause, sentence, or provision is declared illegal or of no effect, the validity of the remainder of parts 9525.0510 to 9525.0660 and its applicability shall not be affected.

Subp. 4. **Legal inconsistency.** Any provision of these parts which is inconsistent with any state or federal law is superseded by that law.

Statutory Authority: *MS s 245A.09; 252.28 subd 2*

9525.0560 PROGRAM AND SERVICE STANDARDS.

Subpart 1. **Admission.** The provider shall maintain written policies and procedures, which shall be available to the local social service agency and to the general public, covering the following:

A. preadmission and admission procedures;

B. prerequisite client skills for admission;

C. admission criteria including age, type, and degree of handicap;

D. nondiscriminatory practices with regard to race, creed, sex, or national origin;

E. description of services;

F. discharge procedures;

G. cost rates for services and arrangements available for payment;

H. the requirement that each client must have a current medical and dental examination; and

I. waiting lists and selection priorities.

Subp. 2. **Comprehensive assessments.** Comprehensive assessments:

A. Behavioral assessments. A behavioral assessment, conducted by SILS staff at least annually, shall objectively describe the behavioral status of the client. The assessment instrument must be acceptable to the LSSA.

Upon admission, the behavioral assessment shall be completed prior to the development of the individual program plan. This assessment may use data from any appropriate assessment conducted within the previous 12 months.

B. Physical assessment. Upon admission, there shall be a medical examination of the client conducted by a licensed physician within one year preceding admission, or one month following admission which includes reevaluation date or schedule recommended by the physician.

There shall be a record of dental examination in the client's record, and reexamination schedule recommended by the dentist.

C. Additional assessments determined to be needed by the interdisciplinary team shall be conducted or arranged by the provider.

Subp. 3. **Individual program plan (IPP).** The provider shall have a letter of referral from the responsible local social service agency, including a copy of the individual service plan, for each client. The interdisciplinary team shall evaluate each client's needs, and identify those needs having priority, within 30 days of admission. An annual individual program plan (IPP) for each client shall thereafter be established and evaluated to meet client needs.

The IPP shall be based on needs identified in the behavioral assessment, and on the individual service plan of the local social service agency, which shall include at least the following areas:

A. training in meal planning, meal preparation, and shopping;

B. training in first-aid skills, responding to emergencies, and symptoms of illness;

C. training in money management;

D. training in self-administration of prescription and nonprescription medication;

E. training in the use of the telephone and other public utilities;

F. development of the client's social, recreational, and transportation abilities.

G. specific training plan concerning the development of more appropriate behaviors for clients displaying inappropriate behaviors;

H. training in matters of personal appearance and hygiene;

I. training in apartment or living environment maintenance, when indicated;

J. training in use of community resources including but not limited to police, fire, hospital emergency resources; and

K. training in rights and responsibilities of community living.

The IPP shall establish program goals and behavioral objectives stated in measurable terms which specify the time limit for achieving each behavioral objective. The IPP shall also identify the person(s) responsible for implementation of the IPP.

The IPP shall describe the services to be provided, and how they will be obtained.

The annual IPP shall be reviewed at least quarterly by staff. The reviews shall include written report of: the client's progress toward goals and behavioral objectives; the need for continued services and any recommendation concerning alternative services and/or living arrangements; and recommended change in guardianship status, if any.

Statutory Authority: *MS s 245A.09; 252.28 subd 2*

9525.0570 ADMINISTRATIVE STANDARDS; PROVIDER RESPONSIBILITIES.

Subpart 1. **Written statement of philosophy.** The provider shall have a written statement of the SILS program philosophy, purpose, and goals which:

A. is consistent with the principles of normalization;

B. includes expected client outcomes;

C. is available to the public; and

D. is reviewed by the provider at least annually and revised as needed.

Subp. 2. **Client programs.** The SILS provider shall be responsible for program direction for all clients, which shall include the provision, continuation, and coordination of services in accordance with the client's IPP.

Subp. 3. **Program director.** The provider shall employ a program director, and may employ more than one to assist in program direction.

The provider may employ other staff to carry out the programs for clients, providing that such staff are under the supervision of a qualified program director.

The program director shall have at least a bachelor's degree in a field related to mental retardation services, and at least one year's experience in working with mentally retarded persons. Five years' experience in working full time with clients under professional supervision in a developmental program for mentally retarded persons may be substituted for a bachelor's degree if in the judgment of the commissioner such experiences result in ability to perform the duties of the program director.

The program director shall ensure that all clients have demonstrated the ability to contact a staff person for assistance in an emergency.

The program director shall ensure that the SILS program is in conformance with applicable civil rights and affirmative action laws.

Statutory Authority: *MS s 245A.09; 252.28 subd 2*

9525.0580 ADMINISTRATIVE STANDARDS FOR DISCHARGE.

Subpart 1. **Planning.** Except in an emergency, planning for discharge shall be made only with prior involvement of the client, LSSA representative, and guardian, if any.

Planning for termination of services by the provider shall include referral to any follow-up services the LSSA considers necessary.

Subp. 2. **Counseling.** The provider shall provide counseling about the advantages and disadvantages of termination of services to the client and/or legal guardian, if requested by the client or the LSSA.

Subp. 3. **Discharge summary.** The provider shall prepare a discharge summary which includes:

A. A summary of findings, events, and progress during the period of services to the client.

B. Written evidence of the reason for discharge.

C. If discharged to another service, specific recommendations for future programming shall be included in the discharge summary and transmitted to the LSSA of responsibility. A copy may be sent to the receiving service provider.

Subp. 4. **Death of client.** In the event of death of a client:

A. the provider shall notify the LSSA and guardian or responsible relative;

B. the date, time, and circumstances of the client's death shall be recorded in the client's record;

C. if the client dies unattended by a physician, the coroner or medical examiner shall be notified; and

D. a copy of the records of the deceased client shall be transmitted to the local social service agency.

Statutory Authority: *MS s 245A.09; 252.28 subd 2*

9525.0590 ADMINISTRATIVE STANDARD FOR CLIENT RECORDS.

Subpart 1. **Contents.** The SILS provider shall maintain a record for each client, which contains the following information:

A. client's name, address and telephone number, birth date, and date of admission to and discharge from SILS;

B. name, address, and phone number of legal guardian, if any, and person to contact in an emergency;

C. record of current medication prescription and adverse reactions to drugs, if any;

D. special diet needs and food allergies, if any;

E. name and address of the client's LSSA case manager;

F. name and address of the client's physician or clinic and dentist;

G. the results of behavioral and physical assessments conducted within the past 12 months and the LSSA's individual service plan;

H. the client's IPP and quarterly reviews;

I. any physician's and dentist's orders within the past two years, including special instructions for self-medication, care, and treatment;

J. summary of professional service delivery during the past year, including specialized therapy, and the client's progress in therapy;

K. summary of client's progress or lack of progress in previous programs, job skills, and employment history;

L. client's current place of employment or day program; and

M. a complete record of the client's funds if such funds are managed by the SILS provider.

Subp. 2. **Access to client records.** All information contained in the client's record shall be handled in a manner consistent with the Government Data Practices Act, Minnesota Statutes, sections 13.01 to 13.86. The client shall have access to his record upon request, with accommodations for interpretation that meets his needs.

The provider shall be responsible for the safekeeping of client records, and for securing them against loss or use by unauthorized persons.

The client's record shall be removed from the provider's jurisdiction and custody only in accordance with a court order, subpoena, or statute.

The provider shall have written policies governing access, duplication, and dissemination of information.

Written consent of the client or guardian, if any, shall be required for the release of information concerning the client to persons not otherwise authorized to receive it. The client's record shall specify the information requested to be released, purpose for which the information is released, and expiration date for release of information.

All client records shall be maintained by the provider following discharge of the client for at least two years.

Statutory Authority: *MS s 245A.09; 252.28 subd 2*

9525.0600 CLIENT RIGHTS.

Subpart 1. **Written policies and procedures for civil rights.** The provider shall have written policies and procedures concerning the exercise and protection of client human and civil rights, which shall be available to LSSA, clients, guardians.

Subp. 2. **Complaint procedures.** The provider shall have complaint procedures which shall include:

A. the name and telephone number of persons who may be contacted in order to register a complaint;

B. the time schedule established for registration of complaints; and

C. the time limits for decisions to be made by the provider.

Subp. 3. **Right to appeal.** The provider shall inform clients of their right to

appeal the suspension, reduction, or termination of services to the commissioner pursuant to Minnesota Statutes, section 256.045 as a social service appeal.

Subp. 4. **Legal assistance.** Upon request of the client, the provider shall instruct and assist clients in how to obtain legal assistance.

Subp. 5. **Policies on financial interests of clients.** The provider shall have a written statement of policies and procedures that protect the financial interests of the clients.

Subp. 6. **Money records.** If the provider manages the client's money, the following shall be recorded:

A. written permission from the client or his legal guardian;

B. reasons the provider is to manage the client's money; and

C. a complete record of the use of the client's money and reconciliation of the account.

Subp. 7. **Employee rights.** Clients who work for the SILS provider shall be considered employees of the provider with all the rights and privileges of an employee.

Statutory Authority: *MS s 245A.09; 252.28 subd 2*

9525.0610 WRITTEN DESCRIPTION OF ORGANIZATION.

The provider shall have a current written description of its organization, which includes the major operating services and person(s) having administrative responsibility, available to the local social service agency.

Statutory Authority: *MS s 245A.09; 252.28 subd 2*

9525.0620 PERSONNEL POLICIES.

The provider shall have written personnel policies available to staff. The policies shall include:

A. application and hiring procedures;

B. provisions for nondiscrimination;

C. description of probationary period, if any, and procedures for annual performance evaluation;

D. procedures for suspension and dismissal;

E. employee benefits;

F. grievances and appeal procedures;

G. prohibition of mistreatment, neglect, or abuse of clients, and mandatory reporting of any mistreatment, neglect, or abuse;

H. plans for staff orientation, training; and

I. prohibition of the use of any aversive or deprivation procedures.

Statutory Authority: *MS s 245A.09; 252.28 subd 2*

9525.0630 EMERGENCY PROCEDURES.

The provider shall have a written plan and procedure in case of fire, severe illness, accident, severe weather, and missing persons. Orientation in emergency procedures shall be recorded for each client and employee within one month of admission or employment. This plan shall be reviewed quarterly with clients.

Statutory Authority: *MS s 245A.09; 252.28 subd 2*

9525.0640 FINANCIAL RECORDS.

The provider shall maintain records of financial transactions and agreements with the referring LSSA.

Statutory Authority: *MS s 245A.09; 252.28 subd 2*

9525.0650 ESTABLISHMENT OF SERVICE RATES.

The provider shall have a written plan for establishing service rates, which shall include at least 30-day advanced notice of change in rates.

Statutory Authority: *MS s 245A.09; 252.28 subd 2*

9525.0660 LIVING ARRANGEMENTS.

Subpart 1. **Part of SILS program.** When living arrangements are provided by the SILS provider as a part of the SILS program, the living arrangements are not subject to parts 9525.0500 to 9525.0660, and therefore need not be licensed. Living arrangements are subject to applicable health, safety, sanitation, and zoning codes. When living arrangements are provided as a part of the SILS program plan, the provider shall assure the local social service agency that the living arrangements are in conformance with the client's individual program plan, and applicable health, safety, sanitation, and zoning codes. Living arrangements so provided shall include provisions for the preparation of meals, sleeping, bathing, mail, and access to telephone and transportation.

Subp. 2. **Not part of SILS program.** When living arrangements are not provided as a part of the SILS program, the provider may assist the local social service agency and client as agreed upon in:

A. choosing and arranging for an appropriate living environment;

B. developing client skills in choosing and making living arrangements; and

C. developing client skills in shopping, seeking employment, paying rent and other bills, and in the use of public transportation and other community services.

Statutory Authority: *MS s 245A.09; 252.28 subd 2*

DAYTIME ACTIVITY CENTERS FOR MENTALLY RETARDED PERSONS

9525.0750 STATUTORY AUTHORITY.

Minnesota Statutes, sections 252.21 to 252.261 establish the authority of the commissioner of human services to make grants to licensed daytime activity centers for persons with mental retardation or related conditions, supervise the operation thereof, and establish such rules as are necessary to carry out the purpose of these statutes. Parts 9525.0750 to 9525.0830, therefore, carry the force and effect of law.

Statutory Authority: *MS s 252.24 subd 2*

History: *L 1984 c 654 art 5 s 58; 12 SR 1148*

9525.0760 DEFINITIONS.

The terms used in parts 9525.0750 to 9525.0830 shall mean:

A. applicant for grant-in-aid: any city, village, town, county, or nonprofit corporation, or any combination thereof, may apply to the commissioner of human services for assistance in establishing and operating a licensed daytime activity center program for persons with mental retardation or related conditions;

B. board: the governing body of the daytime activity center;

C. center: daytime activity center for persons with mental retardation or related conditions;

D. commissioner: the commissioner of human services;

E. director: the staff member appointed by the board to direct the activity center; and

F. licensed daytime activity center: those programs duly licensed and meeting requirements of parts 9545.0510 to 9545.0670.

Statutory Authority: *MS s 252.24 subd 2*

History: *L 1984 c 654 art 5 s 58; 12 SR 1148*

9525.0770 BOARD.

Subpart 1. **Designation.** There shall be a designated board for the center.

Subp. 2. **Balanced representation.** Where a private nonprofit corporation is the applicant for a grant, there shall be a minimum of nine members on the board. Representation shall be balanced among:

A. parents of the retarded;

B. groups representing the community at large; and

C. professional persons interested in and having responsibility for services to persons with mental retardation or related conditions. These professional persons may be representative of local health, education, and welfare departments; medical societies; area mental health-mental retardation program offices; state hospitals serving persons with mental retardation or related conditions; and associations concerned with handicapping conditions.

Subp. 3. **Separate advisory board.** When the primary function of the applicant agency is to provide services other than a daytime activity center, the operation of the center shall be designated as a separate function, with a separate advisory board or committee, established for this purpose. This board shall conform with subpart 2. The operating rules of this board must be approved by the commissioner. Separate bookkeeping records shall be established for the sole purpose of administering daytime activity center funds.

Subp. 4. **Minutes.** Each board shall submit copies of the minutes of all board meetings to the commissioner. In addition, all centers shall submit such other reports as the commissioner may require.

Subp. 5. **Agency cooperation.** The daytime activity center board is responsible for cooperative planning with other agencies in the community, such as special education, sheltered workshops and vocational training, county welfare departments, and the area mental health-mental retardation program board.

Subp. 6. **Annual budget.** On or before April 1 of each year, the board and the director shall submit to the commissioner for approval an annual application and budget for the next fiscal year, using prescribed forms.

Subp. 7. **Statement of purpose and goals.** Each center board shall submit a statement of purposes and goals of the program to the commissioner.

Statutory Authority: *MS s 252.24 subd 2*

History: *12 SR 1148*

9525.0780 FINANCES.

New applications for state assistance and applications for renewal of support must contain the rationale for estimates of local income.

Any transfers by the boards that increase or decrease a major line item of the approved center budget by more than ten percent, or $1,000, whichever is greater, must have the advance approval of the commissioner.

Statutory Authority: *MS s 252.24 subd 2*

9525.0790 STAFF.

Subpart 1. **Appointments.** Every board shall appoint a director. Other personnel necessary to conduct the program shall be hired by the director with approval by the board. The director, or a staff member named by him, shall attend all regular meetings of the board of the center.

Subp. 2. **Director's qualifications.** Minimum qualifications for the director shall be a bachelor's degree, with an appropriate major; however, a combination of training and experience approved by the commissioner may be substituted for

this requirement. Other rules pertaining to subsequent required training are stated in parts 9545.0510 to 9545.0670.

Subp. 3. **Written personnel policies.** Written personnel practices, to include statements of duties, responsibilities, job specifications, and salary schedules for the director and other professional positions, shall be submitted to the commissioner for approval prior to application for funding of these positions.

Subp. 4. **Staff training.** Newly appointed center directors and staff shall take part in preservice or in-service training, as designated by the commissioner.

Statutory Authority: *MS s 252.24 subd 2*

9525.0800 ADMISSIONS.

Subpart 1. **Eligibility requirements.** The board and the director shall develop, and make available to the public, a statement of eligibility requirements for participants in the activities of the center. These requirements must be consistent with Minnesota Statutes, section 252.23. A copy shall be filed with the Department of Human Services.

Subp. 2. **Exclusions.** There shall be no categorical exclusions on the basis of orthopedic and neurological handicaps, sight or hearing deficits, lack of speech, and severity of retardation, toilet habits, behavior disorders, or failure of participant to make progress, except where appropriate services are available to persons with such problems from other community agencies. Individual exclusions can be made when participation in the activities of the center would be clearly detrimental to the participant, staff, or others. When such exclusions are made, the reasons shall be entered into the record.

Subp. 3. **Notice of refusal or exclusion and right to appeal.** When an individual is refused admission to or excluded from a center, the parents or guardians shall be notified in writing of their right to appeal to the board, with final recourse to the commissioner.

Subp. 4. **School-age children with mental retardation or related conditions.** School-age children with mental retardation or related conditions, as defined by Minnesota Statutes, section 120.03, and rules of the State Board of Education, may be served by the center when:

A. a child is excluded, excused, or expelled from attendance in public schools under provisions of Minnesota Statutes, section 120.101, subdivision 9, clause (1), and subdivision 10, and section 127.071, provided that the center board has verification of the fact that the proceedings called for in those sections have taken place and that approval of the commissioner of human services is obtained; or

B. when it is not in the best interests of the child to initiate proceedings referred to in item A, the child may be enrolled in the center; providing approval is obtained from the commissioners of education and public welfare.

Subp. 5. **Applications and reports.** Admissions procedures shall include a written application for services and reports of medical examinations, appropriate psychological examinations, and social evaluation.

All requests and applications for services shall be brought before the board or its admission committee. No applicant for service may be refused, nor may any participant currently receiving services from the center be excluded, without board approval and referral to the county welfare department.

A report shall be attached to the board minutes that shall include: names of applicants accepted; names of applicants refused services, or participants terminated, and reasons for such action; and efforts made to assist those applicants not accepted, or excluded, to find other services.

Statutory Authority: *MS s 252.24 subd 2*

History: *L 1984 c 654 art 5 s 58; L 1987 c 178 s 9; 12 SR 1148*

NOTE: Minnesota Statutes, section 127.071, was repealed by Laws of Minnesota 1974, chapter 572, section 16.

9525.0810 CASE RECORDS.

There shall be a record for each participant in the center, including:

A. admissions information and statement of goals to be accomplished at the center;

B. current medical and psychological information;

C. a plan for training, education, and treatment;

D. periodic individual progress evaluations;

E. a plan for family involvement and conference records; and

F. referral and termination information.

Statutory Authority: *MS s 252.24 subd 2*

9525.0820 FEES.

Subpart 1. **Policy.** No fees shall be charged until the board has established a fee policy for the center. This policy shall be submitted to the commissioner for approval at least one month prior to the effective date. In no case may a person with mental retardation or a related condition be excluded from enrollment or continued attendance because of inability to pay the approved fees.

Subp. 2. **Income resources.** The board shall take advantage of all income resources available to the center, including those to the person with mental retardation or a related condition, families, guardians, or referring agency. Such resources may include:

A. local tax funds authorized;

B. public welfare programs;

C. federal Social Security insurance benefits;

D. private insurance benefits;

E. gifts and contributions; and

F. other appropriate resources.

Subp. 3. **Maximum charge.** When none of the aforementioned are determined adequate or available, direct charges to parents shall not exceed the fee provisions of the center's approved policy.

Statutory Authority: *MS s 252.24 subd 2*

History: *12 SR 1148*

9525.0830 EXCEPTIONS.

If compliance with these rules is found to cause excessive hardship, to the extent that services will be curtailed or terminated, the board may apply to the commissioner for an exception. Such an exception may not exceed one year, and its granting will not be considered a precedent for other center boards.

Statutory Authority: *MS s 252.24 subd 2*

GRANTS FOR PROVIDING SEMI-INDEPENDENT LIVING SERVICES TO PERSONS WITH MENTAL RETARDATION

9525.0900 DEFINITIONS.

Subpart 1. **Scope.** The terms used in parts 9525.0900 to 9525.1020 have the meanings given to them in this part.

Subp. 2. **Administrative operating costs.** "Administrative operating costs" has the meaning given it in 12 MCAR S 2.05313 [Temporary] C.

Subp. 3. **Case management services.** "Case management services" means identifying the need for, seeking out, acquiring, authorizing, and coordinating services to persons with mental retardation or related conditions; and monitoring the delivery of the services to, and protecting the rights of, the persons with mental retardation or related conditions. These services are provided by an individual designated by the county board under part 9525.0035 [Emergency].

Subp. 4. **Case manager.** "Case manager" means the individual designated by the county board under part 9525.0035 [Emergency] to provide case management services.

Subp. 5. **Client.** "Client" means a person who is receiving semi-independent living services under parts 9525.0900 to 9525.1020.

Subp. 6. **Commissioner.** "Commissioner" means the commissioner of the Minnesota Department of Human Services or the commissioner's designated representative.

Subp. 7. **County board.** "County board" means the county board of commissioners for the county of financial responsibility or its designated representative.

Subp. 8. **County of financial responsibility.** "County of financial responsibility" has the meaning given it in Minnesota Statutes, section 256E.08, subdivision 7.

Subp. 9. **Department.** "Department" means the Minnesota Department of Human Services.

Subp. 10. **Host county.** "Host county" means the county in which the services in a person's individual service plan are provided.

Subp. 11. **Individual habilitation plan.** "Individual habilitation plan" means the written plan for providing services to a person under part 9525.0105 [Emergency].

Subp. 12. **Individual service plan.** "Individual service plan" means the written plan for a person under part 9525.0085 [Emergency].

Subp. 13. **Interdisciplinary team.** "Interdisciplinary team" means a team composed of the case manager, the person with mental retardation or a related condition, the person's legal representative and advocate, if any, and representatives of all providers providing services set forth in the individual service plan.

Subp. 14. **Intermediate care facility for the mentally retarded or ICF/MR.** "Intermediate care facility for the mentally retarded" or "ICF/MR" means a program licensed to provide services to persons with mental retardation or related conditions under Minnesota Statutes, section 252.28, and a physical plant licensed as a supervised living facility under Minnesota Statutes, chapter 144, which together are certified by the Minnesota Department of Health as an intermediate care facility for the mentally retarded. Unless otherwise stated, the term ICF/MR includes state-operated and community-based facilities.

Subp. 15. **Local matching money.** "Local matching money" means local money made available by a county board for the provision of semi-independent living services.

Subp. 16. **Person with mental retardation or a related condition.** "Person with mental retardation or a related condition" has the meaning given it in part 9525.0015 [Emergency], subpart 22.

Subp. 17. **Provider.** "Provider" means an individual, organization, or agency that provides semi-independent living services and that meets the requirements of parts 9525.0500 to 9525.0660 and 9525.0930. For the purpose of parts 9525.0900 to 9525.1020 a provider may be a county board that provides semi-independent living services directly or a contractor with a county board.

Subp. 18. **Request for proposal.** "Request for proposal" means a written statement disseminated by the county board to solicit proposals for the provision of semi-independent living services. The statement specifies the number and characteristics of clients to be served, the amount and type of services to be provided based upon the identified needs of the clients, the client outcomes to be expected, the criteria for provider selection, and the service cost or budget limitations.

Subp. 19. **Semi-independent living services or SILS.** "Semi-independent living services" or "SILS" means services that include training, counseling, instruc-

tion, supervision, and assistance provided in accordance with the client's individual habilitation plan for fewer than 24 hours per day. Services include assistance with budgeting, meal preparation, shopping, personal appearance, and related social support services needed to maintain and improve the client's level of functioning.

Subp. 20. **Service site.** "Service site" means the physical location or locations where a client or clients reside while receiving semi-independent living services.

Subp. 21. **Unit of service.** "Unit of service" means one hour of staff time spent on activities related to developing, implementing, coordinating, or evaluating a client's habilitation plan as limited in part 9525.0950, subpart 1.

Statutory Authority: *MS s 252.275*

History: *10 SR 994; 12 SR 1148*

9525.0910 PURPOSE AND APPLICABILITY.

Subpart 1. **Purpose.** The purpose of parts 9525.0900 to 9525.1020, as authorized by Minnesota Statutes, section 252.275, is to establish procedures for implementing a statewide program of semi-independent living services to assist county boards in reducing the utilization of intermediate care facilities for persons with mental retardation or related conditions.

Subp. 2. **Applicability.** Parts 9525.0900 to 9525.1020 govern the awarding and administration of grants by the commissioner to county boards under Minnesota Statutes, section 252.275 for the provision of semi-independent living services to persons with mental retardation or related conditions. Parts 9525.0900 to 9525.1020 do not govern semi-independent living services funded as a community social service under Minnesota Statutes, sections 256E.01 to 256E.12.

Statutory Authority: *MS s 252.275*

History: *10 SR 994; 12 SR 1148*

9525.0920 CLIENT ELIGIBILITY CRITERIA.

A county board may receive state reimbursement for providing semi-independent living services to a person with mental retardation or a related condition who is 18 years of age or older and who meets the requirements in item A or B.

A. the person and his or her case manager have determined that the person requires, and will continue to require for a period which exceeds 90 consecutive days, systematic supervision, assistance, or training in order to manage his or her activities but does not require that supervision, assistance, or training on a daily basis; or

B. the person resides in an ICF/MR or receives home and community-based services under parts 9525.1800 to 9525.1930 [Emergency] and a screening team established by Minnesota Statutes, section 256B.092 has determined that the person would remain in an ICF/MR or would continue receiving home and community-based services under parts 9525.1800 to 9525.1930 [Emergency] if SILS were not provided.

Statutory Authority: *MS s 252.275*

History: *10 SR 994; 12 SR 1148*

9525.0930 APPROVED PROVIDER.

Subpart 1. **Conditions of approval.** A provider is approved to receive reimbursement from a county board for SILS provided under parts 9525.0900 to 9525.1020 if the provider has the license required in item A and meets the requirements of item B or C:

A. the provider has a current license to provide SILS in accordance with Minnesota Statutes, sections 252.28 and 245A.01 to 245A.16, and parts 9525.0500 to 9525.0660; and

B. the provider is in compliance with the requirement in subpart 2; or

C. the provider will achieve full compliance with subpart 2 by January 1, 1987, and the provider's plan for achieving compliance:

(1) was submitted to the county board by January 1, 1985; and

(2) was approved by the commissioner for a period not to exceed two years.

Subp. 2. **Population and location of service sites.** Services provided by the provider must meet the requirements in items A and B or items A and C:

A. no service site shall be adjacent to or within a group residential program licensed under parts 9525.0210 to 9525.0430 and no service site where more than four clients are served shall be adjacent to another SILS service site where more than four clients are served; and

B. no more than eight clients may be served per service site; or

C. more than eight clients may be served per service site if fewer than 25 percent of the occupants of that service site building are receiving SILS.

Subp. 3. **Variance from service site limitations.** A county board may apply to the commissioner for a variance from compliance with subparts 1, item C, and 2 based upon the limited availability of rental housing. The written application for the variance must document the lack of available rental housing and must show that the county's proposal for an alternative to full compliance:

A. meets the individual needs of clients;

B. ensures that services are provided in the least restrictive environment defined in part 9525.0015 [Emergency], subpart 18; and

C. avoids the high concentration of persons with mental retardation or related conditions within any service site, town, municipality, or county of the state.

Subp. 4. **Granting a variance.** The commissioner shall grant the county board's variance request if the commissioner determines that:

A. the request was submitted in accordance with subpart 3;

B. the county board has provided reasonable evidence of the need for a variance based upon limited availability of rental housing; and

C. the request is in compliance with Minnesota statutes and rules governing services for persons with mental retardation or related conditions.

Subp. 5. **Denial of variance.** The commissioner shall deny the county board's variance request if the commissioner determines that the variance request does not meet the requirements in subpart 4.

Subp. 6. **Notice.** The commissioner shall review the county board's request for a variance and notify the county board, in writing, within 30 days whether the request for variance 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 a review of the commissioner's decision. The procedure for requesting a review of the denial of a request for variance must be the same as the procedure in part 9525.1010.

Subp. 7. **Continuation of variance.** A county that has been granted a variance from compliance with subparts 1, item C, and 2 shall apply to the commissioner for a continuation of variance every two years if compliance has not been achieved. A county may submit the request for continuation of variance with the county's recommendations that are submitted to the commissioner in accordance with the biennial redetermination of need required by part 9525.0135 [Emergency], subpart 7. The procedures for requesting, granting, or denying a continuation of variance must be the same as the procedures in subparts 3, 4, and 5. The procedure for notifying the county board whether the continuation has been granted or denied must be the same as the procedure in subpart 6.

Statutory Authority: *MS s 252.275*

History: *10 SR 994; L 1987 c 333 s 22; 12 SR 1148; 13 SR 1448*

9525.0940 COUNTY BOARD AND PROVIDER CONTRACT AND COUNTY BOARD EFFORTS TO HIRE DISPLACED STATE HOSPITAL STAFF.

Subpart 1. **Written contract.** In order to receive reimbursement for the cost of SILS provided under parts 9525.0900 to 9525.1020, an approved provider must have a written contract with the host county that meets the requirements in this part.

Subp. 2. **Contract requirements.** The written contract must include the provisions and assurances specified in items A to O:

A. the procedures the county board will follow to monitor the provider's compliance with part 9525.0930 governing licensure and service site requirements;

B. the beginning and ending dates of the contract;

C. the grounds for termination of the contract;

D. a statement indicating that the county is responsible for making a preliminary determination of client eligibility in accordance with the criteria in part 9525.0920;

E. the rate the provider will charge per unit of service and the number and types of units of service to be provided;

F. the provider's budget, including administrative operating costs and any allocated central office costs, for providing the services specified in the contract;

G. the site or sites where the services will be provided;

H. agreement to provide SILS in accordance with each client's individual service plan and, if applicable, with each client's individual habilitation plan;

I. the procedures the provider will follow to meet the reporting and record maintenance requirements of parts 9525.0900 to 9525.1020 and an itemized list and retention schedule of program and fiscal records to be maintained;

J. stipulation that the county board may request, copy, and review program and fiscal records which the provider is required to maintain under parts 9525.0900 to 9525.1020;

K. the procedures the county board will follow to monitor and evaluate the provider's performance under the contract;

L. the procedures the county board will follow to reimburse the provider;

M. agreement to comply with the Minnesota Government Data Practices Act, including identification of the person responsible for compliance in accordance with Minnesota Statutes, section 13.46, subdivision 10, clause (d);

N. agreements governing the provider's responsibilities related to bonding, indemnity, insurance, and audits; and

O. agreement that the provider shall:

(1) send all announcements or advertisements of employment opportunities offered by the provider to the personnel department of the host county's designated state hospital for persons with mental retardation; and

(2) make other reasonable efforts, as mandated by Minnesota Statutes, section 252.275, to hire qualified employees of state hospital mental retardation units who have been displaced by reorganization, closure, or consolidation of state hospital mental retardation units.

Subp. 3. **County board efforts to hire displaced state hospital staff.** The county board shall:

A. send requests for proposals for the provision of SILS to the county's

designated state hospital for persons with mental retardation at the same time the request is sent to other providers; and

B. make other reasonable efforts, as mandated by Minnesota Statutes, section 252.275, to hire qualified employees of state hospital mental retardation units who have been displaced by reorganization, closure, or consolidation of state hospital mental retardation units.

Statutory Authority: *MS s 252.275*

History: *10 SR 994*

9525.0950 REIMBURSEMENT STANDARDS.

Subpart 1. **Limits on unit of service activities.** Activities for which staff time may be charged in determining a unit of service as defined in part 9525.0900, subpart 21 are limited to:

A. Direct contact activities involving contact with the client, either face-to-face or over the phone, which facilitates the client's attainment of individual service plan goals and objectives. Direct contact activities include the staff member's transportation time to and from service sites.

B. Collateral activities involving direct verbal or written contact with professionals or others regarding the client which facilitates the client's attainment of individual service plan goals and objectives.

C. Individual habilitation planning activities, including attending the client's interdisciplinary team meetings, assessing the client's functioning levels, developing and reviewing the client's quarterly and annual habilitation plans, and charting and reporting the client's progress toward individual service plan goals and objectives.

Subp. 2. **Reimbursable costs.** Costs of providing semi-independent living services for which a county board may be reimbursed by the state under parts 9525.0900 to 9525.1020 are costs of those services directed at maintaining and improving a client's functioning level. Services for which costs are reimbursable include supervision, assistance, counseling, or training in the areas listed in items A to L:

A. meal planning and preparation;

B. shopping;

C. first-aid training;

D. money management and budgeting;

E. self administration of medications;

F. use of the telephone and other public utilities;

G. personal appearance and hygiene;

H. apartment or home maintenance and upkeep;

I. use of community emergency resources;

J. rights and responsibilities of community living;

K. social, recreational, and transportation usage skills; and

L. appropriate social behaviors.

Subp. 3. **Authorization for services.** Costs of providing semi-independent living services are reimbursable only when the services provided have been authorized by the county board. The authorization must indicate the amount, types and cost of SILS to be provided, and the expected client outcome or outcomes. The written authorization for services to a client must be added to the client case record.

Subp. 4. **Unapproved providers.** Costs of semi-independent living services delivered by a provider who does not meet the provisions of part 9525.0930 must not be reimbursed under parts 9525.0900 to 9525.1020.

Subp. 5. **Services to persons in an ICF/MR.** Costs of semi-independent living

services provided to a person with mental retardation or a related condition while he or she resides in an ICF/MR must be reimbursed only when the amount of service provided while the person resides in an ICF/MR does not exceed a total of 20 hours and when the services provided result in the person's moving directly from the ICF/MR into a semi-independent living arrangement.

Subp. 6. **Relationship of SILS to day programs and employment activities.** Costs of semi-independent living services provided on a schedule that precludes the client from participation in the day programs or employment activities specified in the client's individual service plan, or provided as a substitute for the specified day programs or employment activities, must not be reimbursed. This subpart does not prohibit reimbursement for SILS provided during the day to clients who are working on a part-time basis or seeking employment if SILS participation does not preclude the client's part-time work or employment seeking.

Subp. 7. **No reimbursement for case management services costs and county administrative costs.** Case management services costs and administrative costs incurred by counties or by SILS providers under contract with counties are not reimbursable as costs of semi-independent living services. When the county board provides SILS directly, the county must be reimbursed for costs of services provided according to the units of service defined in part 9525.0900 and must not be reimbursed for administrative costs. SILS provided by the county case manager assigned to the client must not be reimbursed under parts 9525.0900 to 9525.1020.

Subp. 8. **No reimbursement for room and board.** Expenditures for room and board are not reimbursable as costs of semi-independent living services. Room and board expenses are all directly identifiable costs of:

A. normal and special diet food preparation and service;

B. linen, bedding, laundering, and laundry supplies;

C. housekeeping, including cleaning and lavatory supplies;

D. maintenance and operation of the building and grounds, including fuel, electricity, water, and supplies, parts, and tools to repair and maintain equipment and facilities; and

E. allocation of salaries and other costs related to these areas.

Subp. 9. **SILS cost allocations.** Providers that provide both SILS and ICF/MR services must show SILS cost allocations according to the cost category allocation principles and procedures in 12 MCAR S 2.05312 [Temporary] A. and B. The costs in items A and B in this subpart are not reimbursable as costs of SILS:

A. costs specified as nonallowable costs in 12 MCAR SS 2.05301-2.05315 [Temporary]; and

B. costs not specifically identified as reimbursable costs of SILS in parts 9525.0900 to 9525.1020.

Statutory Authority: *MS s 252.275*

History: *10 SR 994; 12 SR 1148*

9525.0960 GRANT APPLICATION AND APPROVAL.

Subpart 1. **Application forms and deadlines.** The commissioner shall notify county boards of application deadlines and provide application forms for grants funded under Minnesota Statutes, section 252.275.

Subp. 2. **Grant proposals.** In order to qualify for a grant funded under Minnesota Statutes, section 252.275 a county board shall submit one completed copy of the county's annual SILS proposal to the commissioner with its grant application. A county board may submit its SILS proposal as part of its community social service plan. To be considered for funding, the SILS proposal submitted as part of the grant application must:

A. describe the proposed SILS to be provided or changes in the SILS proposal from the previous year to be made under the grant;

B. state measurable goals and objectives to be accomplished by providing the proposed SILS or by making the proposed changes in the SILS proposal from the previous year;

C. specify the projected annual service cost, the SILS provider, the living arrangement, day occupation, projected number of service hours, hourly rate, and public assistance eligibility for each client to be served;

D. specify clients who have, as a result of their participation in SILS for the previous grant year, acquired more independence which is reflected either by a decrease in number of SILS hours provided to the client or by the client's discharge from SILS because the client has acquired independent living skills; and

E. include a budget for the state's fiscal year showing projected county income from all sources and projected total expenditures for the proposed SILS and explain the methods used by the county board to project expenditures.

Subp. 3. **Review of proposals submitted with grant applications.** The commissioner shall evaluate the SILS proposals submitted with applications for grants awarded under parts 9525.0900 to 9525.1020 for approval. Priority for funding shall be given to current SILS clients who continue to need and to be eligible for SILS during the grant period for which application is made. The criteria in items A to D must be used in evaluating the proposals.

A. The extent to which the proposed SILS reduce or limit the county board's utilization of ICF/MRs as mandated by Minnesota Statutes, section 252.275.

B. The extent to which the proposal documents efforts the county is making and results the county is achieving that encourage a decreasing reliance on SILS as the client acquires independent living skills.

C. The extent to which the proposed SILS budget is based on reasonable cost projections. A reasonable cost increase is an increase which does not exceed the projected change in the average value of the consumer price index (all urban) for the grant period. The consumer price index is incorporated by reference. The consumer price index is available through the Bureau of Labor Statistics Hotline, and is subject to frequent change. The local hotline number is (612)725-7865; the regional number is (312)353-1880.

D. The extent to which the proposal assures full compliance with parts 9525.0900 to 9525.1020.

Subp. 4. **Approval of grant applications.** The commissioner shall approve a grant application if the SILS proposal adheres to the criteria in subpart 3 and the proposal complies with Minnesota Statutes, section 252.275, subdivision 4, and parts 9525.0900 to 9525.1020. The commissioner shall adjust a proposal as necessary to ensure that the proposal and the proposal budget as approved:

A. comply with Minnesota Statutes, section 252.275, subdivision 4 and parts 9525.0900 to 9525.1020; and

B. are within appropriations for the SILS grants program funded under Minnesota Statutes, section 252.275.

Subp. 5. **Notice.** On or before September 1 of the state fiscal year for which the grants are awarded, the commissioner shall give written notice of the results of the grant award determination to each county board that applied.

Statutory Authority: *MS s 252.275*

History: *10 SR 994*

9525.0970 STATE REIMBURSEMENT OF COUNTIES.

Subpart 1. **Reimbursement amounts.** State reimbursement payment to a

county board must be made according to the schedule in subpart 4 and must be based on actual expenditures for providing SILS to eligible clients and the rate of state reimbursement which the commissioner has determined to be in effect for the grant period during which reimbursement is made. The amount of state reimbursement to a county board may not exceed the amount of the state grant award made to the county board for the grant period.

Subp. 2. **Rate of state reimbursement.** State reimbursement must not be more than 95 percent or less than 80 percent of a county board's cost of providing SILS as mandated by Minnesota Statutes, section 252.275, subdivision 4 and parts 9525.0900 to 9525.1020. Within the range set by statute, the commissioner shall determine the actual rate of reimbursement in effect for a given grant period by prorating the total SILS expenditures projected by county boards in SILS proposals and budgets approved by the commissioner against the total amount of state funding appropriated for SILS during the grant period.

Subp. 3. **Application of other income.** If a county board or a provider receives any income other than county money as reimbursement for SILS costs that are also reimbursable through local matching money or state funds provided under Minnesota Statutes, section 252.275, the income must be applied first to the local share to reduce the local matching money provided that the costs are reimbursable under part 9525.0950. If the income exceeds the local share of the service costs approved in the county's SILS grant application, the commissioner shall reduce the state grant payment by the amount that the income exceeds the local share.

Subp. 4. **Payments to counties.** Payments made to county boards by the commissioner must be in the form of an advance payment, with subsequent quarterly payments to each county board contingent upon the board's submitting a completed quarterly financial report on forms provided by the commissioner.

Subp. 5. **Quarterly payment adjustments.** If actual expenditures by a county board and the providers under contract with the county board to provide SILS are less than projected in the county board's approved budget, the commissioner shall adjust the quarterly payments so that the percentage of cost paid by the state remains within the limits in subparts 1 and 2.

Statutory Authority: *MS s 252.275*

History: *10 SR 994*

9525.0980 FISCAL AND PROGRAM REPORTING.

Subpart 1. **Records documenting compliance.** The county board, and the providers under contract with the county board to provide SILS, shall maintain records to document compliance with parts 9525.0900 to 9525.1020, including compliance with the applicable laws and rules in part 9525.1020, and adherence to the goals and objectives in the SILS proposal approved with the grant application.

Subp. 2. **Reports.** The county board shall use forms provided by the commissioner to report the use of funds under Minnesota Statutes, section 252.275 for the previous grant period. The reports required are quarterly fiscal reports to ensure tracking of state expenditure for SILS and quarterly and annual program reports describing the types of clients served and the amount and types of services provided. County boards shall submit quarterly fiscal and program reports within 20 days of the end of the quarter and annual program reports within 20 days of the end of the grant year. A county board may include these reports in its annual reports for community social services.

Subp. 3. **Financial records.** The financial records maintained by the county board and by providers under contract with the county board to provide SILS must:

A. use generally accepted accounting principles;

B. identify all sources and amounts of income;

C. document all expenditures;

D. compare expenditures to the approved budget; and

E. allow the verification of indirect costs allocated to SILS by the provider.

Subp. 4. **Audits.** The county board and the providers under contract with the county board to provide SILS shall make available for audit inspection all records required by parts 9525.0900 to 9525.1020 upon request by the commissioner.

Subp. 5. **Retention of records.** Unless an audit in process requires a longer retention period, the county board and the providers under contract with the county board to provide SILS shall retain a copy of the following records for at least four years;

A. the annual program report and the quarterly fiscal reports required in part 9525.0980, subpart 2;

B. records of all payments made and all income received; and

C. all other records required in parts 9525.0900 to 9525.1020.

Statutory Authority: *MS s 252.275*

History: *10 SR 994*

9525.0990 GRANT INCREASES AND NEW AWARDS.

If unused funds become available under parts 9525.0970 and 9525.1000, the commissioner shall take the action in item A or B.

A. increase the amount of a grant awarded to a county board for SILS if

(1) the grant increase is within the limits established under Minnesota Statutes, section 252.275, subdivision 4;

(2) the county board's expenditures for SILS that qualify for reimbursement exceeded the county board's budget projections; and

(3) the county board's SILS expenditures demonstrate the county's compliance with part 9525.0960, subpart 2, item D and subpart 3, item B; or

B. make new grant awards for grant proposals approved for funding under Minnesota Statutes, section 252.275 and parts 9525.0900 to 9525.1020.

Statutory Authority: *MS s 252.275*

History: *10 SR 994*

9525.1000 REDUCTION, TERMINATION, AND REPAYMENT OF GRANTS.

Subpart 1. **Excess funds.** If the commissioner determines, in consultation with a county board, that the total grant awarded to that county will not be needed during the grant period, the commissioner shall reduce the grant award by the amount determined not to be needed.

Subp. 2. **Improper use of funds.** If the commissioner determines that funds allocated to a county board under a grant are not being used in accordance with the SILS proposal and SILS budget submitted with the grant application and approved by the commissioner or with parts 9525.0900 to 9525.1020, all or part of the grant must be terminated. The commissioner shall require repayment of any funds not used in accordance with the SILS proposal and SILS budget approved by the commissioner or with parts 9525.0900 to 9525.1020.

Subp. 3. **Notification.** Before the commissioner reduces, terminates, or requires repayment of grant funds under subpart 1 or 2, the commissioner shall give 30 days' written notice to the county board and send a copy of the written notice to affected providers. The written notice must inform the county board of its right to request a review of the commissioner's action under part 9525.1010.

Statutory Authority: *MS s 252.275*

History: *10 SR 994*

9525.1010 REVIEW OF COMMISSIONER'S ACTION.

A request for a review of the commissioner's proposed action under part 9525.1000 shall be submitted by the county board to the commissioner within 30 days of the date the county receives notification from the commissioner. The request must state the reasons why the county board disagrees with the commissioner's action and present evidence supporting the county board's case for reconsideration by the commissioner. The commissioner shall review the evidence presented in the county board's request and send written notification to the county board regarding the commissioner's decision. The commissioner's decision after a review shall be final. The commissioner shall not take the proposed action until a final review is completed and written notification issued by the commissioner.

Statutory Authority: *MS s 252.275*

History: *10 SR 994*

9525.1020 PENALTY FOR NONCOMPLIANCE WITH APPLICABLE LAWS AND RULES.

If a court or the agency responsible for assuring compliance determines that a county board or a provider under contract with a county board to provide SILS does not comply with parts 9525.0900 to 9525.1020 and with the laws and rules in items A to E, the commissioner shall suspend or withhold payments or require repayment under part 9525.1000. The procedure for requesting a review of the commissioner's action under this part must be the same as the procedure in part 9525.1010.

A. Minnesota Statutes, section 245.825 and rules adopted under that section that govern the use of aversive and deprivation procedures;

B. Minnesota Government Data Practices Act, Minnesota Statutes, sections 13.01 to 13.57;

C. Minnesota Statutes, sections 626.556 to 626.557 and rules adopted under those sections that govern reporting of maltreatment of minors and vulnerable adults;

D. Minnesota Statutes, chapter 363, Minnesota Human Rights Act; and

E. Minnesota Statutes, section 252.275 that mandates reasonable efforts to hire qualified employees displaced by reorganization, closure, or consolidation of state hospital mental retardation units.

Statutory Authority: *MS s 252.275*

History: *10 SR 994*

TRAINING AND HABILITATION REIMBURSEMENT PROCEDURES FOR ICF/MR'S

9525.1200 PURPOSE AND APPLICABILITY.

Subpart 1. **Purpose.** The purpose of parts 9525.1200 to 9525.1330 is to establish procedures to reimburse, through the medical assistance program, quality day training and habilitation services which are efficiently and economically provided to eligible persons who reside in intermediate care facilities for persons with mental retardation or related conditions.

Subp. 2. **Applicability.** Parts 9525.1200 to 9525.1330 apply to county boards which are required to administer day training and habilitation services; to county boards which are required to recommend medical assistance rates for day training and habilitation services; and to day service providers selected by the county board to provide day training and habilitation services for persons who have mental retardation or related conditions. Parts 9525.1200 to 9525.1330 do not apply to state hospitals' provision of day training and habilitation services.

Statutory Authority: *MS s 256B.501*

History: *10 SR 68; 12 SR 1148*

9525.1210 DEFINITIONS.

Subpart 1. **Scope.** The terms used in parts 9525.1200 to 9525.1330 have the meanings given to them in this part.

Subp. 2. **Client.** "Client" means a person who is receiving day training and habilitation services.

Subp. 3. **Commissioner.** "Commissioner" means the commissioner of human services or the commissioner's designated representative.

Subp. 4. **County board.** "County board" means the board of county commissioners of the county in which day training and habilitation services are provided or the county board's designated representative.

Subp. 5. **County of financial responsibility.** "County of financial responsibility" has the meaning given it in Minnesota Statutes, section 256B.02, subdivision 3.

Subp. 6. **Day service provider.** "Day service provider" means the corporation, governmental unit, or other legal entity that claims medical assistance reimbursement for providing day training and habilitation services.

Subp. 7. **Day training and habilitation services.** "Day training and habilitation services" means health and social services provided to a person with mental retardation or a related condition by a licensed provider at a site other than the person's place of residence unless medically contraindicated and documented as such in the individual service plan. The services must be designed to result in the development and maintenance of life skills, including: self-care, communication, socialization, community orientation, emotional development, cognitive development, motor development, and therapeutic work or learning activities that are appropriate for the person's chronological age. Day training and habilitation services are provided on a scheduled basis for periods of less than 24 hours each day.

Subp. 8. **Developmental achievement center.** "Developmental achievement center" means a provider of day training and habilitation services which complies with Minnesota Statutes, sections 252.21 to 252.261.

Subp. 9. **Individual service plan.** "Individual service plan" has the meaning given it in parts 9525.0015 to 9525.0145 [Emergency].

Subp. 10. **Intermediate care facility for the mentally retarded or ICF/MR.** "Intermediate care facility for the mentally retarded" or "ICF/MR" means the provider of a program licensed to serve persons who have mental retardation or related conditions under Minnesota Statutes, section 252.28, and a physical plant licensed as a supervised living facility under Minnesota Statutes, chapter 144, which together are certified by the Minnesota Department of Health as an intermediate care facility for the mentally retarded. Unless otherwise stated, the term ICF/MR includes state-operated and community-based facilities.

Subp. 11. [Repealed, L 1987 c 403 art 5 s 22 para (b)]

Subp. 12. [Repealed, L 1987 c 403 art 5 s 22 para (b)]

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

Subp. 13. **Resident.** "Resident" means a client who resides at the physical plant of an ICF/MR.

Subp. 14. **Service site.** "Service site" means the physical location or locations where day training and habilitation services are provided.

Subp. 15. [Repealed, 12 SR 2044]

Statutory Authority: *MS s 256B.501*

History: *10 SR 68; 12 SR 1148; 12 SR 2044*

9525.1220 CLIENT ELIGIBILITY.

The day service provider may receive medical assistance reimbursement for providing day training and habilitation services to an eligible person if the person meets the criteria in items A to G:

A. the person is eligible to receive medical assistance under Minnesota Statutes, chapter 256B;

B. the person is determined to have mental retardation or a related condition in accordance with the definitions in parts 9525.0015 to 9525.0145 [Emergency];

C. the person is a resident of an intermediate care facility for mentally retarded;

D. the person is not of school age as defined in Minnesota Statutes, section 120.17, subdivision 1;

E. the person is determined to be in need of day training and habilitation services as specified in the individual service plan under parts 9525.0015 to 9525.0145 [Emergency];

F. the person does not receive day training and habilitation services at the ICF/MR from an approved day service provider or as part of the medical assistance rate of the ICF/MR; and

G. the person is currently capable of only "inconsequential" work activity as defined in part 9525.1210, subpart 15 and the service provided is supervision, assistance, or training during habilitative work activities.

Statutory Authority: *MS s 256B.501*

History: *10 SR 68; 10 SR 2417; 12 SR 1148*

9525.1230 APPROVAL OF DAY SERVICE PROVIDER.

Subpart 1. **General requirements.** A day service provider is approved by the commissioner to receive medical assistance reimbursement for day training and habilitation services when the day service provider meets the requirements in items A to J and complies with parts 9525.1200 to 9525.1330.

A. The day service provider must have a current license to provide day training and habilitation services in accordance with Minnesota Statutes, sections 252.28 and 245A.01 to 245A.16 and rules adopted thereunder.

B. The day service provider must have a current need determination approved by the commissioner under Minnesota Statutes, section 252.28 and parts 9525.0015 to 9525.0145 [Emergency].

C. The day service provider and the ICF/MR must not be under the control of the same or related entities which provide residential services to the day service provider's clients. For this purpose, "control" means having power to direct or affect management, operations, policies, or implementation, whether through the ownership of voting securities, by contract or otherwise; "related legal entities" are entities that share a majority of governing board members or are owned by the same person or persons. If both the ICF/MR and the day service provider are wholly or partially owned by individuals, those individuals must not be related by marriage or adoption as spouses or as parents and children. Two exceptions to this requirement are:

(1) the county board's and commissioner's control which is required by parts 9525.1200 to 9525.1330; or

(2) the day service provider is a developmental achievement center which applied for licensure before April 15, 1983, as provided for under Minnesota Statutes, section 256B.501, subdivision 1, paragraph (d).

D. The day service provider must have a written agreement with the ICF/MR and the county in which the ICF/MR is located as required by Minnesota Statutes, section 256B.501, subdivision 5, paragraph (d) and part 9525.1240.

E. The day service provider must have a written day training and habilitation agreement with each ICF/MR whose residents are enrolled by the day service provider as provided by Code of Federal Regulations, title 42, section 442.417.

F. The day service provider must be authorized by each ICF/MR whose residents are enrolled by the day service provider to receive medical assistance payments from the Department of Human Services under Code of Federal Regulations, title 42, section 447.10, paragraph (e).

G. The day service provider must make available at least 195 full days of medical assistance reimbursable service in a calendar year.

H. The day service provider must be selected by the county board, as provided by Minnesota Statutes, section 252.24, because of its demonstrated ability to provide the day training and habilitation services required by the client's individual service plan as provided in parts 9525.0015 to 9525.0145 [Emergency].

I. The day service provider must have service and transportation rates recommended by the county board as provided by part 9525.1260 and approved by the commissioner as provided by part 9525.1270.

J. The day service provider must be in compliance with the standards in Code of Federal Regulations, title 42, sections 442.455 and 442.463.

Subp. 2. [Repealed, L 1987 c 403 art 5 s 22 para (b)]

Statutory Authority: *MS s 256B.501*

History: *10 SR 68; L 1987 c 333 s 22*

9525.1240 DAY TRAINING AND HABILITATION AGREEMENT.

Subpart 1. **Agreement contents.** An agreement must be entered into by the day service provider, the ICF/MR whose residents will receive day training and habilitation services under the agreement, and the county where the ICF/MR is located, as specified under Minnesota Statutes, section 256B.501, subdivision 5, paragraph (d). This agreement must be completed annually on forms provided by the commissioner and must include at least the information in items A to E:

A. the number of hours of day training and habilitation services provided per day, excluding transportation to and from the location of the ICF/MR, which will be considered as a full day;

B. the approved maximum number of days per year medical assistance reimbursable services will be available;

C. the day service provider's months of operation during which day training and habilitation services are provided;

D. a statement of payment rates which have been approved by the commissioner under part 9515.1270;

E. respective duties and responsibilities of the county board, the day service provider, and the ICF/MR which include:

(1) the provision of, or arrangement and payment for transportation by the day service provider for its clients to and from the day service provider's service site;

(2) participation of the day service provider and the ICF/MR in the development of each resident's individual habilitation plan in accordance with the goals in the resident's individual service plan;

(3) the ICF/MR's duty to notify the day service provider within 60 days of any change in a resident's status. A change in a resident's status includes eligibility for medical assistance, medical conditions, medications, special diets, and behavior;

(4) the day service provider's compliance with parts 9525.1200 to 9525.1330 to be eligible for medical assistance reimbursement;

(5) day service provider billings for services provided to clients receiving medical assistance which must not be greater than billings for the same service provided to any other client unless authorized through a special needs rate as provided by Minnesota Statutes, section 256B.501, subdivision 8; and rules adopted thereunder;

(6) provision of at least quarterly progress reports measured against the goals and objectives of the client's individual service plan and individual habilitation plan under parts 9525.0015 to 9525.0145 [Emergency] by the day service provider to the ICF/MR on residents served by the day service provider;

(7) compliance by the day service provider with the auditing and surveillance requirements under parts 9505.1750 to 9505.2150 and applicable to providers of medical assistance; and

(8) compliance by the day service provider with Minnesota Statutes, sections 245A.01 to 245A.16 and 252.28, parts 9525.0015 to 9525.0145 [Emergency], Code of Federal Regulations, title 42, sections 442.455 and 442.463;

(9) monitoring by the county board of service delivery to each client;

(10) the county board's assignment of accountability for expected outcomes of service delivery to the ICF/MR or the day service provider.

Subp. 2. **Agreement submission, termination, or new agreements.** The county board shall submit a copy of each completed agreement to the commissioner by January 1 of each year and within 60 days of the commissioner's approval of revised rates or rates for a new day service provider. The county board shall notify the commissioner within 60 days if the agreement in subpart 1 is suspended or terminated. The commissioner shall not pay for services provided during any period in which there is no agreement in effect or during which the agreement in effect does not comply with subpart 1.

Statutory Authority: *MS s 256B.501*

History: *10 SR 68; L 1987 c 333 s 22*

9525.1250 REIMBURSABLE SERVICES.

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

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

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

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

B. community orientation, including proper use of traffic signals, identification of police, firemen, and bus drivers, use of pedestrian pathways and public transportation to and from stores, restaurants, meeting places, and other familiar settings;

C. communication skills, including expressive and receptive language skill development;

D. self-care, including grooming, eating, toileting, dressing, medication monitoring, skin care, and oral hygiene;

E. cognitive skills, including functional reading, writing, and number skills;

F. motor development, including gross and fine motor activities, and range of motion exercises;

G. emotional development, including behavioral programming, to develop situationally acceptable affective expression; and

H. socialization, including social interaction skills, development of relationships, initiation or participation in leisure activities, and phone use.

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

A. Day training and habilitation services must be authorized in writing by the county of financial responsibility and must include subitems (1) to (3):

(1) the amount and type of day training and habilitation services to be provided;

(2) the service costs; and

(3) the expected client outcome or results of providing day training and habilitation services.

B. Day training and habilitation services must not be included in the approved rate of the ICF/MR.

C. Medical assistance money for day training and habilitation services must not replace the Minnesota Division of Vocational Rehabilitation money for sheltered work or work activity services.

D. Medical assistance reimbursable day training and habilitation services must not exceed the number of days per calendar year as provided by Minnesota Statutes, section 256B.501, subdivision 5, paragraph (e).

E. Day training and habilitation services needed by the person eligible under part 9525.1220 and identified in the client's individual service plan must be available to the client in amount, duration, and scope equal to day training and habilitation services made available to other persons served by the same day service provider.

F. Day training and habilitation services must not include:

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

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

Statutory Authority: *MS s 256B.501*

History: *10 SR 68; 12 SR 2044*

9525.1260 [Repealed, L 1987 c 403 art 5 s 22 para (b)]

9525.1270 [Repealed, L 1987 c 403 art 5 s 22 para (b)]

9525.1280 [Repealed, L 1987 c 403 art 5 s 22 para (b)]

9525.1290 DAY SERVICE PROVIDER BILLING.

Subpart 1. **Billing requirements.** The day service provider must comply with the requirements in items A to E when submitting bills to the commissioner for reimbursement for the provision of day training and habilitation services.

A. Bills must be submitted on forms supplied by the commissioner, which identify for each client:

(1) the full-day or partial-day service rate as provided by part 9525.1270, subpart 1, multiplied by the number of days the client actually received day training and habilitation services from the day service provider; and

(2) the transportation rate as approved under part 9525.1270, subpart 1, multiplied by the number of days the client was actually transported.

B. The day service provider must not bill for days in which the client does not receive day training and habilitation or transportation services.

C. The day service provider must not bill for more than one service rate and one transportation rate per client per day.

D. Day service providers whose rates have been recommended under part 9525.1260, subpart 2 and approved under part 9525.1270, subpart 1, must submit bills to the commissioner using a procedural code available from the Health Care Programs Division.

E. Each bill from the day service provider must be verified by the ICF/MR where the client resides before the bill is submitted to the commissioner. A signature by authorized ICF/MR personnel constitutes verification by the ICF/MR that the services were provided on the days and for the charges specified.

Subp. 2. **Payment.** The commissioner shall pay the day service provider for bills submitted under subpart 1 using the payment procedures in Minnesota Statutes, sections 256B.041 and 256B.501, subdivision 5, paragraph (f). No payment will be made by the commissioner for day training and habilitation services not authorized under subpart 1, item E.

Subp. 3. **Errors and duplicate payments.** If the day service provider becomes aware of a billing error that results in an overpayment or an underpayment to the day service provider or if the day service provider receives payment from another source for services which were also paid for by the medical assistance program, the day service provider shall promptly notify the commissioner and request an adjustment request form. Within one year of receipt of a completed adjustment request form, the commissioner shall:

A. in the case of an overpayment, require the day service provider to repay an amount equal to the overpayment or adjust future payments to correct the error or eliminate the overpayment; or

B. in the case of an underpayment, pay the day service provider an amount equal to the underpayment or adjust future payments to correct the error.

Statutory Authority: *MS s 256B.501*

History: *10 SR 68; 11 SR 1612*

9525.1300 REQUIRED RECORDS AND REPORTS.

Subpart 1. **Day service provider records.** The day service provider shall maintain program records, fiscal records, and supporting documentation identifying the items in items A to C:

A. authorization from the county of financial responsibility, as provided by part 9525.1250, subpart 2, for each client for whom service is billed;

B. attendance sheets and other records documenting that the clients received the billed services from the day service provider; and

C. records of all bills and, if applicable, all refunds to and from other sources for day training and habilitation services. The day service provider's records shall be subject to the maintenance schedule, audit availability requirements, and other provisions in parts 9505.1750 to 9505.2150.

Subp. 2. **Availability of records.** The day service provider's financial records must be available, on request, to the commissioner and the United States Department of Health and Human Services in accordance with parts 9500.0750 to 9500.1080, 9505.1750 to 9505.2150, and 9525.1200 to 9525.1330.

Subp. 3. **Retention of records.** The day service provider shall retain a copy of the records required in subpart 1 for five years from the date of the bill unless an audit in process requires a longer retention period.

Subp. 4. **Annual report.** The day service provider shall maintain such records as may be necessary to submit the annual report by March 1 as provided by Minnesota Statutes, section 256B.501, subdivision 9.

Statutory Authority: *MS s 256B.501*

History: *10 SR 68*

9525.1310 [Repealed, L 1987 c 403 art 5 s 22 para (b)]

9525.1320 PENALTIES FOR NONCOMPLIANCE.

If the day service provider does not comply with parts 9525.1200 to 9525.1330, with other applicable laws and rules, and with the terms of the agreement required by part 9525.1240, subpart 1, the commissioner will suspend or withhold payments under the procedures in parts 9505.1750 to 9505.2150. "Other applicable laws and rules" include items A to E:

A. Minnesota Statutes, section 245.825 and rules adopted thereunder governing use of aversive and deprivation procedures;

B. Minnesota Statutes, sections 626.556 to 626.557 and rules adopted thereunder governing reporting of maltreatment of minors and vulnerable adults;

C. Minnesota Government Data Practices Act, Minnesota Statutes, sections 13.01 to 13.57;

D. Minnesota Statutes, chapter 363, Minnesota Human Rights Act; and

E. Minnesota Statutes, section 256B.064.

Statutory Authority: *MS s 256B.501*

History: *10 SR 68*

9525.1330 APPEALS.

Subpart 1. **Day service provider appeals to county board.** If a day service provider disagrees with the rate recommendation of the county board, the day service provider may appeal to the county board. A rate appeal must be heard by the county board if the appeal is based on the contention that the rate recommended by the county board does not comply with Minnesota Statutes, section 256B.501, subdivisions 5 to 8, and parts 9525.1200 to 9525.1330.

Within ten days of the receipt of a request for an appeal, the county board shall notify the day service provider of a hearing to be held within 30 days of the request for an appeal. The county board shall preside at the hearing. The county board shall notify the day service provider of its decision within 30 days after the hearing. The decision must be in writing and state the evidence relied upon and reasons for the determination.

Subp. 2. **Day service provider appeals to commissioner.** If a day service provider has appealed to the county board and the day service provider disagrees with the county board's decision, the day service provider may appeal to the commissioner. The appeal must be submitted to the commissioner in writing within 30 days of the date the day service provider received notification of the county board's decision. The appeal must state the reasons the day service provider is appealing the county board's decision including the bases for the county board's decision which are disputed and an explanation of why the day service provider disagrees with the county board's decision.

The commissioner shall review the county board's rate recommendation and supporting documentation submitted by the day service provider to the county and any additional documents submitted to the commissioner with the appeal to determine if the day service provider can prove by a preponderance of evidence that the day service provider be granted a different payment rate than

recommended by the county board. The commissioner shall send written notification to the day service provider and the county board of the decision on the appeal and state the evidence relied upon and the reasons for the determination.

Subp. 3. **County board appeals to commissioner.** If the county board disagrees with the rate decision of the commissioner, the county board may appeal to the commissioner. The appeal must be submitted to the commissioner within 30 days of the date the county board received notification of the commissioner's decision. The appeal must state the reasons why the county board is appealing the commissioner's decision and present evidence explaining why the county board disagrees with the commissioner's decision. The commissioner shall review the evidence presented in the county board's appeal and send written notification to the county board of the decision on the appeal. The commissioner's decision on the appeal shall be final. Until a rate appeal is resolved and if the day service provider continues services, payments must continue at a rate which the commissioner determines to comply with parts 9525.1200 to 9525.1330. If a higher rate is approved, the commissioner shall order a retroactive payment as determined in the rate appeal decision.

Subp. 4. **Appeal of commissioner's action.** Before the commissioner suspends or withholds payments under part 9525.1320, the commissioner shall give 30 days' written notice to the day service provider and send a copy of the written notice to the affected day service provider. The written notice shall inform the day service provider of its right to appeal the commissioner's action. The appeal must be submitted to the commissioner within 30 days of the date the day service provider received notification of the commissioner's action. The appeal must state the reasons why the day service provider is appealing the commissioner's action and present evidence why the day service provider disagrees with the commissioner's decision. The commissioner shall review the evidence presented in the day service provider's appeal and send written notification to the day service provider of the decision on the appeal. The commissioner's decision on the appeal shall be final. The commissioner may not take the proposed action before the appeal is resolved.

Statutory Authority: *MS s 256B.501*

History: *10 SR 68*

LICENSURE OF TRAINING AND HABILITATION SERVICES FOR ADULTS WITH MENTAL RETARDATION OR RELATED CONDITIONS

9525.1500 DEFINITIONS.

Subpart 1. **Scope.** The terms used in parts 9525.1500 to 9525.1690 have the meanings given to them in this part.

Subp. 2. **Assessment.** "Assessment" means the process of identifying and describing under part 9525.1630 a person's skills or lack or skills and behaviors, the impact of these skills or lack of skills and behaviors on the person's daily activities, the environmental, physical, medical, and health factors that determine the services needed to increase the person's independence and productivity, and the types of supervision, assistance, and training that would best meet the person's needs.

Subp. 3. **Adult with mental retardation or a related condition.** "Adult with mental retardation or a related condition" means a person 18 years of age or older who has the characteristics described in subpart 27.

Subp. 4. **Applicant.** "Applicant" means an individual or the authorized representative of a partnership, corporation, or governmental unit seeking a license to provide training and habilitation services under parts 9525.1500 to 9525.1690.

Subp. 5. **Aversive or deprivation procedure.** "Aversive or deprivation procedure" means the planned application of an unpleasant stimulus or consequence

or the planned delay in the delivery of goods, services, or activities to which a person is otherwise entitled:

A. contingent on the occurrence of a behavior identified for reduction or elimination in a person's individual habilitation plan; or

B. in an emergency situation as defined in parts 9525.2700 to 9525.2810 governing use of aversive and deprivation procedures in licensed facilities and services serving persons with mental retardation and related conditions.

Subp. 6. **Caregiver.** "Caregiver" means the individual who cares for and supervises a person receiving services at the place where the person lives.

Subp. 7. **Case manager.** "Case manager" means the individual designated by the county board under part 9525.0035 to provide case management services. The case manager must meet the requirements in part 9525.0155.

Subp. 8. **Commissioner.** "Commissioner" means the commissioner of the Minnesota Department of Human Services or the commissioner's designated representative.

Subp. 9. **County board.** "County board" means the county board of commissioners for the county of financial responsibility as specified in Minnesota Statutes, section 256B.02, subdivision 3.

Subp. 10. **County of financial responsibility.** "County of financial responsibility" has the meaning given it in Minnesota Statutes, sections 256B.02, subdivision 3, and 256E.08, subdivision 7.

Subp. 11. **Department.** "Department" means the Minnesota Department of Human Services.

Subp. 12. **Direct service staff.** "Direct service staff" means employees of a training and habilitation service provider who train or directly supervise persons receiving services and who participate in the development or implementation of a person's individual habilitation plan. Professional support staff as defined in subpart 28 are considered to be direct service staff when they are working directly with persons receiving services and are involved in daily activities with those persons.

Subp. 13. **Direct supervision.** "Direct supervision" occurs when the staff member or volunteer who supervises a person receiving services is with that person at a service site and is providing training or assistance to the person individually or in a group.

Subp. 14. **Generic services.** "Generic services" means services offered or available to the general public that are common to all people and not restricted to a special category of people.

Subp. 15. **Goal.** "Goal" means the desired behavioral outcome of an activity that can be observed and reliably measured by two or more independent observers.

Subp. 16. **Governing body.** "Governing body" means the individual or group that establishes policies to direct the provider's provision of services.

Subp. 17. **Health consultant.** "Health consultant" means a licensed physician or a registered nurse.

Subp. 18. **Host county.** "Host county" means the county in which the services described in a person's individual service plan are provided.

Subp. 19. **Immediate danger.** "Immediate danger" results from severe assaultive or self injurious behavior that can be quantified according to intensity, rate, or duration and that has one or more of the following characteristics:

A. the behavior endangers a person's or another individual's life, sensory abilities, limb mobility, or other major physical functioning; or

B. the behavior threatens a person's or other individual's physical appearance; or

C. the behavior poses an immediate threat to the physical safety of a person or others in a way not specified in item A or B.

Subp. 20. **Individual habilitation plan.** "Individual habilitation plan" means the written plan required by and developed under parts 9525.0015 to 9525.0165.

Subp. 21. **Individual service plan.** "Individual service plan" means the written plan required by and developed under parts 9525.0015 to 9525.0165.

Subp. 22. **Interdisciplinary team.** "Interdisciplinary team" means a team composed of the case manager, the person with mental retardation or a related condition, the person's legal representative, the person's advocate as defined in part 9525.0015, subpart 3, if any, and representatives of providers of service under the individual service plan.

Subp. 23. **Intermediate care facility for persons with mental retardation and related conditions or ICF/MR.** "Intermediate care facility for persons with mental retardation and related conditions" or "ICF/MR" means a program licensed under Minnesota Statutes, sections 245A.01 to 245A.16 and 252.28, subdivision 2, to provide services to persons with mental retardation and related conditions and a physical plant licensed as a supervised living facility under Minnesota Statutes, chapter 144, which together are certified by the Minnesota Department of Health as an intermediate care facility for persons with mental retardation and related conditions.

Subp. 24. **Legal representative.** "Legal representative" means the parent or parents of a person who has or who might have mental retardation or a related condition when that person is under 18 years of age, or a court appointed guardian or conservator who is authorized by the court to make decisions about services for a person who has or who might have mental retardation or a related condition regardless of that person's age.

Subp. 25. **Objective.** "Objective" means a short-term expectation and its accompanying measurable behavioral criteria as specified in the individual habilitation plan. Objectives are set to facilitate achieving the annual goals in a person's individual service plan.

Subp. 26. **Outcome.** "Outcome" means the measure of change or the degree of attainment of specified goals and objectives that is achieved as a result of provision of service.

Subp. 27. **Person with mental retardation or a related condition or person.** "Person with mental retardation or a related condition" or "person" means:

A. a person who has been diagnosed under part 9525.0045 as having significantly subaverage intellectual functioning existing concurrently with demonstrated deficits in adaptive behavior and who manifests these conditions before the person's 22nd birthday; or

B. a person who has a related condition. A related condition is a severe chronic disability that:

(1) is attributable to cerebral palsy, epilepsy, autism, or any other condition other than mental illness that is found to be closely related to mental retardation because the condition results in impairment of general intellectual functioning or adaptive behavior similar to that of persons with mental retardation;

(2) is likely to continue indefinitely;

(3) results in substantial functional limitations in three or more of the following areas of major life activity: self care; understanding and use of language; learning; mobility; self direction; or capacity for independent living; and

(4) has been determined to be a related condition in accordance with rules adopted by the commissioner.

Subp. 28. **Professional support staff.** "Professional support staff" means

licensed professional staff such as rehabilitation counselors, physical therapists, occupational therapists, registered nurses, speech therapists, and consulting psychologists, who assist the direct service staff by:

A. providing specific services to the same persons who are served by the direct service staff; or

B. instructing the direct service staff in procedures, practices, or programs to follow with persons receiving services.

Subp. 29. **Provider.** "Provider" means a corporation, governmental unit, partnership, individual, or individuals licensed by the commissioner under parts 9525.1500 to 9525.1690 to provide training and habilitation services to adults with mental retardation and related conditions. The term provider includes a license holder as defined in Minnesota Statutes, section 245A.02, subdivision 9.

Subp. 30. **Provider implementation plan.** "Provider implementation plan" means a detailed internal plan developed by the provider and used within the service site to direct the daily activities of staff in carrying out the objectives established within the individual habilitation plan developed under parts 9525.0015 to 9525.0165 for a person receiving services.

Subp. 31. **Regional center.** "Regional center" means one of the seven state operated facilities that serve persons with mental retardation and related conditions and are under the direct administrative authority of the commissioner. The following facilities are regional centers: Brainerd Regional Human Services Center; Cambridge Regional Human Services Center; Faribault Regional Center; Fergus Falls Regional Treatment Center; Moose Lake Regional Treatment Center; Saint Peter Regional Treatment Center; and Willmar Regional Treatment Center.

Subp. 32. **Service or support service.** "Service or support service" means planned activities designed to achieve the outcomes assigned to the provider and specified in the individual service plan of a person receiving services.

Subp. 33. **Service site.** "Service site" means the physical location where training and habilitation services are provided. Service sites include commercial buildings, community locations or facilities, and buildings owned or leased by the provider.

Subp. 34. **Supported employment.** "Supported employment" means employment of a person with a disability or disabilities so severe that the person needs ongoing training and support to get and keep a job in which:

A. the person engages in paid work at a work site where individuals without disabilities who do not require public subsidies also may be employed;

B. public funds are necessary to provide ongoing training and support services throughout the period of employment; and

C. the person has the opportunity for social interaction with individuals who do not have disabilities and who are not paid caregivers.

Subp. 35. **Suspension.** "Suspension" means a temporary discontinuance of service to a person that includes temporary removal of the person from the service site.

Subp. 36. **Training and habilitation services.** "Training and habilitation services" means services that include training, supervision, assistance, and other support activities designed and implemented in accordance with a person's individual habilitation plan to help that person attain and maintain the highest possible level of independence, productivity, and integration into the community where the person lives and works. The term as used throughout parts 9525.1500 to 9525.1690 refers specifically to training and habilitation services with the characteristics in items A to D.

A. A need for the services offered by the provider has been determined under part 9525.0145.

B. The services are provided in accordance with a host county contract under part 9550.0040.

C. The services are regularly provided to one or more adults with mental retardation or a related condition for periods of less than 24 hours a day in a place other than the person's own home or residence.

D. The services offered by the provider include training, supervision, assistance, and supported employment, work related activities, or other community integrated activities related to a person's employment or work, self care, communication skills, socialization, community orientation, transportation needs, emotional development, development of adaptive behavior, cognitive development, and physical mobility.

Subp. 37. **Variance.** "Variance" means written permission given by the commissioner to an applicant or provider that allows the applicant or provider to depart from specified provisions in parts 9525.1500 to 9525.1690. Variances are time limited and may be granted by the commissioner under Minnesota Statutes, section 14.05. The commissioner's decision to grant a variance or to deny a variance is final.

Statutory Authority: *MS s 245A.09; 252.28 subd 2*

History: *12 SR 997*

9525.1510 PURPOSE AND APPLICABILITY.

Subpart 1. **Purpose.** Parts 9525.1500 to 9525.1690 establish the standards that an individual, organization, or association must meet to be licensed under Minnesota Statutes, sections 245A.01 to 245A.16 and 252.28, subdivision 2, as a provider of training and habilitation services for adults with mental retardation and related conditions. Parts 9525.1500 to 9525.1690 supersede parts 9525.0750 to 9525.0830 in governing the provision of training and habilitation services to adults.

Subp. 2. **Applicability.** Parts 9525.1500 to 9525.1690 apply to any individual, organization, or association that regularly provides training and habilitation services to one or more adults with mental retardation or a related condition. The training and habilitation services governed by parts 9525.1500 to 9525.1690 include services commonly referred to as developmental achievement services when those services are provided to adults, day programs offered or administered by regional centers, and day habilitation services as defined in parts 9525.1800 to 9525.1930 governing funding and administration of home and community based services. Nothing in parts 9525.1500 to 9525.1690 limits any individual, organization, or association providing training and habilitation services from contracting with the Division of Rehabilitation Services of the Minnesota Department of Jobs and Training or other entities for the provision of services for an adult with mental retardation or a related condition.

Subp. 3. **Exclusions.** Parts 9525.1500 to 9525.1690 do not apply to:

A. an intermediate care facility for persons with mental retardation and related conditions that is not a regional center and that provides training and habilitation services to facility residents as part of the facility's residential program licensed under parts 9525.0210 to 9525.0430;

B. providers that are licensed under parts 9545.0510 to 9545.0670 and that provide services only to persons under 18 years of age; or

C. services provided by extended employment programs governed by parts 3300.1950 to 3300.3050.

Subp. 4. **Exemptions for regional centers.** The following provisions of parts 9525.1500 to 9525.1690 do not apply to a regional center that can document compliance with corresponding standards in parts 9525.0210 to 9525.0430 and Code of Federal Regulations, title 42, sections 441.516 to 442.400, as amended through October 1, 1985:

A. part 9525.1540, subpart 1;

B. part 9525.1550, subparts 3, 4, 5, 9, 10, 11, and 12;

C. part 9525.1560; and

D. part 9525.1670.

Statutory Authority: *MS s 245A.09; 252.28 subd 2*

History: *12 SR 997*

9525.1520 LICENSING PROCESS.

Subpart 1. **License application.** A corporation, partnership, governmental unit, individual, or individuals that provide training and habilitation services to adults with mental retardation and related conditions must obtain a license from the department. Applications for a license must be made on the application form provided by the commissioner. The commissioner shall provide the applicant information on how to obtain:

A. the application form;

B. a copy of parts 9525.1500 to 9525.1690 and statutes and rules referenced in parts 9525.1500 to 9525.1690; and

C. the department documentation forms needed to verify compliance with parts 9525.1500 to 9525.1690.

Subp. 2. **Completed application.** An application for licensure or relicensure is complete when the applicant signs and submits to the department the completed application form accompanied by:

A. the licensing fee required by parts 9545.2000 to 9545.2040; and

B. documentation that:

(1) service sites owned or leased by the applicant comply with current state building, zoning, fire, and health regulations, with the codes listed in parts 9525.1670 to 9525.1690, and with other applicable local codes and ordinances;

(2) variances from compliance with the codes and ordinances in subitem (1) have been granted by the state or local unit of government with jurisdiction to enforce the code or ordinance;

(3) a current determination of need or a biennial redetermination of need for the service and service site has been approved by the commissioner as required by Minnesota Statutes, section 252.28 and part 9525.0145; and

(4) the applicant has provided the information required by the commissioner to complete the licensing study required by Minnesota Statutes, section 245A.04, subdivision 3.

Any deficiencies cited by a fire marshal, building official, or agent of a board of health as authorized under Minnesota Statutes, section 145A.04 as a threat to health and safety under item B, subitem (1) must be corrected and documented as having been corrected by the inspecting official before a license will be issued by the department unless the inspecting official has granted and documented a variance under item B, subitem (2).

Subp. 3. **Separate license required.** Providers are required to apply for a separate license for each service site owned or leased by the provider at which persons receiving services and the provider's employees who provide training and habilitation services are present for a cumulative total of more than 30 days within any 12 month period.

Subp. 4. **Access to service sites owned or leased by the provider or applicant.** The provider or applicant shall give the commissioner access to the service sites owned or leased by the provider or applicant, in accordance with Minnesota Statutes, section 245A.04, subdivision 5. Access includes the right to review and photocopy the records required by parts 9525.1500 to 9525.1690, and to take

photographs, make audio or video electronic tape recordings, and conduct interviews as a means of gathering the information required to evaluate compliance.

Subp. 5. **Licensing study of applicant and staff.** As specified in Minnesota Statutes, section 245A.04, subdivision 3, a study of the applicant and of all staff members who have direct contact with persons receiving services must be made before the commissioner issues a license. The commissioner may require, at any time during the term of a provider's licensure, a study of the provider or of an employee if the commissioner has reasonable cause to believe that the refusal, convictions, or acts specified in subpart 6, item A occurred.

Subp. 6. **License denial or suspension.** The commissioner shall not issue a license or shall immediately suspend a license when one or any combination of the conditions described in item A, B, or C occurs.

A. The applicant or provider or a present employee of the applicant or provider:

(1) Refuses to give written consent to disclosure of information required by the commissioner to conduct a licensing study as specified in subpart 5; or

(2) Has been convicted of a crime or has admitted to an act or there is a preponderance of evidence of an act that directly relates to the physical abuse, sexual abuse or neglect of children as defined in Minnesota Statutes, section 626.556, subdivision 2, or the abuse or neglect of vulnerable adults as defined in Minnesota Statutes, section 626.557, subdivision 2, clauses (d) and (e), and subdivision 3, and does not show evidence of sufficient rehabilitation and present fitness to care for vulnerable adults. The factors in Minnesota Statutes, section 364.03, subdivisions 2 and 3 must be considered in determining whether the act or conviction directly relates to the abuse or neglect of vulnerable adults and whether the individual has shown evidence of sufficient rehabilitation and fitness.

B. The service sites owned or leased by the applicant do not comply with the building, fire, and health codes under parts 9525.1500 to 9525.1690 and the deficiencies cited threaten the health, safety, or rights of clients.

C. The provider is cited for other deficiencies that immediately threaten the health, safety, or rights of clients.

Subp. 7. **License terms.** The license, whether regular or provisional, must show:

A. the name and address of the provider;

B. the rule or rules under which the provider is licensed;

C. the location of the service site if a site is owned or leased by the provider or the location of the administrative office if no site is owned or leased;

D. the number and age groupings of persons who may receive services at one time; and

E. the expiration date of the license.

Providers must assure continuing accuracy of any representation made in the application or in any licensing inspection.

Subp. 8. **Change in license terms.** The provider shall notify the commissioner and apply for a new license and the commissioner shall conduct a new or partial inspection and study of the provider and of the service site for which the license will be issued when the provider proposes to do any one or any combination of the following:

A. change the location of the service site;

B. change the licensed capacity or number of persons for whom services are available;

C. make structural changes to the service site that require a building permit from the municipality or local jurisdiction; or

D. make changes in program governance, program direction, or clients served based on a redetermination of need under part 9525.0145.

Subp. 9. **Posting the license.** The provider shall post the license in a prominent place at the licensed site or at the administrative office if the provider does not own or lease a service site.

Subp. 10. **Return of license to commissioner.** When a provider no longer offers training and habilitation services, or if a license is revoked, suspended, or not renewed, the provider must return the license to the commissioner.

Subp. 11. **Variance request.** An applicant or provider may request a variance from compliance with parts 9525.1500 to 9525.1690 from the commissioner at any time if the variance would not threaten the health, safety, or rights of the persons served. An applicant or provider who requests a variance must send a copy of the variance request to the board of county commissioners of the host county within seven days of making the request.

A request for a variance must be submitted to the commissioner in writing. The written request must include the following information:

A. the sections of parts 9525.1500 to 9525.1690 from which the applicant or provider requests a variance;

B. the reasons why the applicant or provider needs to depart from the specified sections;

C. the period for which the applicant or provider requests a variance, not to exceed one year or the expiration date of the license; and

D. the specific equivalent measures that the applicant or provider will take to ensure the health, safety, and rights of persons receiving services if the variance is granted.

Any request for a variance from rule provisions related to fire, safety, occupancy codes, or food handling, water, and nutrition must be accompanied by a written statement from the fire marshal, building official, or authorized agent with jurisdiction that granting the variance does not pose a threat to the health and safety of persons receiving services.

Subp. 12. **Granting a variance.** The commissioner shall grant the applicant's or provider's request for a variance if all the conditions in items A to F are met.

A. The variance request meets the specifications in subpart 11.

B. Granting the variance will not threaten the health, safety, and rights of persons receiving services.

C. Granting the variance would not put the provider in substantial noncompliance with parts 9525.1560, 9525.1570, or 9525.1590 to 9525.1640.

D. Granting the variance would not be contrary to a standard required by Minnesota statutes.

E. The host county concurs with the provider's request.

F. The provider is in compliance with all other provisions of parts 9525.1500 to 9525.1690.

Subp. 13. **Notice to provider.** Within 30 days after receiving a request for a variance and the documentation supporting it, the commissioner shall inform the applicant or provider in writing whether the request has been granted or denied and why the request has been granted or denied. The commissioner's decision to grant or deny the variance is final. If the commissioner determines that licensing standards are not met and initiates a negative licensing action, that action may be appealed under Minnesota Statutes, sections 245A.01 to 245A.16.

Subp. 14. **Notice by provider.** The provider shall send written notice to the legal representatives and the case managers of all persons receiving training and habilitation services from the provider, describing any variance granted by the commissioner under subpart 12 or any deficiency that exists if the provider has been issued a provisional or probationary license. The notice shall state that a

copy of the variance or statement of deficiency may be reviewed by any interested party at the provider's office. The provider shall provide the written notice within ten working days of the provider's receipt of written notice from the commissioner granting a variance or issuing a provisional or probationary license and keep records showing that the written notice was sent.

Statutory Authority: *MS s 245A.09; 252.28 subd 2*

History: *12 SR 997; L 1987 c 309 s 24*

9525.1530 NEGATIVE LICENSING ACTIONS.

A negative licensing action includes denial of application for licensure or revocation, probation, suspension, nonrenewal, or immediate suspension of an existing license.

Under Minnesota Statutes, sections 245A.01 to 245A.16, failure to comply with parts 9525.1500 to 9525.1690 or the terms of licensure constitutes cause for a negative licensing action.

Negative licensing actions shall be taken and appealed in accordance with Minnesota Statutes, sections 245A.01 to 245A.16.

Statutory Authority: *MS s 245A.09; 252.28 subd 2*

History: *12 SR 997*

9525.1540 ADMINISTRATION.

Subpart 1. **Governing body.** The provider shall have a governing body and shall make available in writing to the commissioner and host county the names, addresses, and phone numbers of its members. Membership and duration of service must be determined under the bylaws and organizational structure of the agency and in accordance with part 9525.1580, subpart 2.

Subp. 2. **Advisory committee.** The governing body shall meet at least twice annually with an advisory committee. The committee membership shall include at least one member who is a person with mental retardation or a related condition or a parent, guardian, family member, or friend of such a person and at least two members who are affiliated with one or more of the following agencies: local education agency, local human services agency, or local or regional vocational rehabilitation agency. In addition to the three members specified above, the committee shall also include at least three other members, all of whom represent the local business community. Nothing in this subpart prohibits providers in the same locale or area from sharing the same advisory committee. No more than half the members of the advisory committee may also serve on the governing board. The provider shall keep records of the minutes of the advisory committee meetings. The purpose of the advisory committee is to advise, consult with, and make recommendations to the governing body concerning community integration projects and employment, ways to meet overall service goals, and the provider's role in providing needed services to persons with mental retardation and related conditions who are currently of secondary school age when these persons become adults.

Subp. 3. **Administrative responsibility for compliance with other applicable laws and rules.** In addition to complying with parts 9525.1500 to 9525.1690, providers must comply with other applicable laws and rules, including those listed in items A to D:

A. the Minnesota Human Rights Act, Minnesota Statutes, chapter 363;

B. requirements for reporting maltreatment of vulnerable adults under Minnesota Statutes, section 626.557 and parts 9555.8000 to 9555.8500;

C. parts 9525.1200 to 9525.1330 when training and habilitation services are provided to persons who reside in intermediate care facilities for persons with mental retardation and related conditions that are not regional centers; and

D. parts 9525.2700 to 9525.2810 governing the use of aversive and deprivation procedures.

Statutory Authority: *MS s 245A.09; 252.28 subd 2*

History: *12 SR 997*

9525.1550 ADMINISTRATIVE POLICIES AND RECORDS.

Subpart 1. **Maintenance and availability of policies and records.** A provider shall follow the written policies and maintain the records required in this part. The written policies and records must be provided to the commissioner upon request and must be available for inspection as provided in part 9525.1520, subpart 5. The provider must make copies of all written policies available to counties, applicants for services, and to others as requested.

Subp. 2. **Provider's organization and policy manual.** The provider shall maintain an organization and policy manual. The manual must be made available on request to the commissioner, host county, and county boards that contract with the provider. The manual's contents must be reviewed annually by the governing body or a designated staff member or committee and must show a date indicating when it was most recently revised. The manual must contain up to date (current within the last calendar year) versions of the information in items A to H:

A. a mission statement including a brief summary or description of the services the provider makes available to meet the requirements of part 9525.1570, subparts 2, 3, and 6;

B. a copy of the most current determination of need completed by the host county under part 9525.0145;

C. a summary of cooperative arrangements the provider has with community businesses and organizations to facilitate provision of employment opportunities, opportunities for social interaction with nondisabled people, and opportunities for training at service sites not owned or leased by the provider;

D. an organization chart showing current positions funded by the provider;

E. written policies and criteria governing admission, exclusion, suspension, and discharge developed under part 9525.1560;

F. the provider's written behavior management policy developed under part 9525.1640;

G. policies on the collection and dissemination of data on persons receiving services from the provider; and

H. policies and procedures required by the Vulnerable Adults Act, Minnesota Statutes, section 626.557.

Subp. 3. **Personnel policies.** The provider must establish written personnel policies governing:

A. hiring, probation, evaluation, and termination of staff;

B. compliance with the Minnesota Human Rights Act, Minnesota Statutes, chapter 363;

C. staff training as required in part 9525.1620;

D. use of substitute staff and volunteers; and

E. staff benefits.

Subp. 4. **Personnel file.** The provider must have a personnel file for each employee that includes:

A. the employee's application or other written summary of the employee's qualifications;

B. the employee's health record, including verification that the employee has had a physical examination within 12 months before employment or two months after employment;

C. a signed statement from the employee stating that the employee

knows the job description, has received the required orientation training, and that all written policies and procedures have been explained and are understood;

D. documentation of the probationary evaluation and all regular evaluations including at least an annual written evaluation; and

E. documentation of all training completed under part 9525.1640, subpart 4.

Subp. 5. **Records of persons receiving services.** A provider shall keep a record for each person served that contains the person's admission file as required in part 9525.1560, subpart 3, including current assessments; the individual habilitation plan file described in part 9525.1630; and the progress reports and evaluations completed by the provider or received from other service providers as required in parts 9525.0015 to 9525.0165 and 9525.1630.

Subp. 6. **Contracts.** The provider must have copies of all contracts required under parts 9525.0015 to 9525.0165, 9525.1200 to 9525.1320, 9550.0010 to 9550.0092, and under federal law when services are provided to residents of an ICF/MR, and any subcontracts entered into with qualified consultants or commercial businesses to provide training and habiiitation for persons receiving services.

Subp. 7. **Certificate required for work activity or subminimum wage.** When the provider is paying persons receiving employment or employment related services less than the minimum wage, the provider must have the certificate from the Wage and Hour Division of the United States Department of Labor required by Code of Federal Regulations, title 29, parts 524 to 525 as amended through July 1, 1986.

Subp. 8. **Work performed for provider by persons receiving services.** A person receiving services from a provider shall work for the provider in place of an employee only when the conditions in items A to C are met:

A. the work training is specified in the person's individual habilitation plan;

B. the person is reimbursed an amount proportionate to the person's abilities and productivity except as regional centers are governed by Minnesota Statutes, section 246.151, subdivision 1; and

C. the person is supervised and has been specifically trained to perform the work.

Subp. 9. **Evidence of insurance.** Unless a provider has written proof of exemption from insurance, the provider must provide evidence of having insurance, including evidence of compliance with the workers' compensation insurance coverage requirement in Minnesota Statutes, section 176.81, subdivision 2.

Subp. 10. **Financial records.** A provider must keep financial records necessary to comply with parts 9550.0010 to 9550.0092. In addition, a provider who receives medical assistance funds must keep bills, financial records, statements, and audits necessary to comply with parts 9505.1750 to 9505.2150 and applicable federal regulations. The provider must keep the financial records for five years.

Subp. 11. **Record of applications for services.** The provider must have a record of each written application or referral for services received by the provider. The record must include the case manager's signature signifying approval of the application or referral and an explanation of actions taken on the application or referral. The provider must keep the record for four years.

Subp. 12. **Records of suspension and discharge.** The provider must keep records of persons receiving services who are suspended and discharged. The record must contain the reasons for the suspension or discharge, and all actions taken under part 9525.1560 before discharge or suspension. The provider must keep the suspension and discharge records for four years. This information must be summarized and made available to the host county and to the commissioner at the time of the biennial redetermination of need for the service.

Subp. 13. **Daily schedules and attendance.** The provider must keep documentation verifying service delivery and daily hours of attendance for each person receiving services. The provider must keep the documentation for five years.

Statutory Authority: *MS s 245A.09; 252.28 subd 2*

History: *12 SR 997*

9525.1560 ADMISSION, EXCLUSION, SUSPENSION, AND DISCHARGE.

Subpart 1. **Approval of policy, procedures, and criteria governing admission, exclusion, suspension, and discharge.** The provider must have a written policy that sets forth criteria for admission, exclusion, suspension, and discharge. The written policy and criteria must be approved annually by the governing body and must include procedures to be followed by the provider and host county before a suspension, exclusion, or discharge takes place. These procedures, policies, and criteria must be included as part of the host county contract under parts 9500.0010 to 9500.0092 and the three party agreements under part 9525.1240.

Subp. 2. **Admission policy and criteria.** A provider shall not refuse to admit a person solely on the basis of the type of residential services a person is receiving or solely on the basis of the person's severity of disability, orthopedic or neurological handicaps, sight or hearing impairments, lack of communication skills, physical disabilities, toilet habits, behavioral disorders, or past failure to make progress. The provider shall have an admission policy that specifies the criteria to be applied in determining whether the provider can develop services to meet the needs specified in the person's individual service plan. The provider's determination of capability to meet a person's needs must be consistent with the host county's determination of need for the provider's service under parts 9525.0015 to 9525.0165. The admission policy must provide for ensuring that the host county concurs before the provider admits a person from a county other than the host county. The procedures established by the admission policy must specify a timeline for notifying a person applying for services of the provider's decision. The timeline must allow for a person's receiving notification within 30 days after the written request for service is received.

Subp. 3. **Admission file.** When a person is admitted, the provider must have compiled a file of information that contains:

A. a copy of the person's current individual service plan that states the need for and the expected outcomes of the specific training and habilitation services to be provided, and includes a copy of a physical examination report on the person dated no more than 365 days before the date of admission;

B. a letter from the case manager stating that the training and habilitation services to be provided to the person are not replacing services that are the statutory responsibility of a local educational agency or that are otherwise available from a rehabilitation agency funded under section 110 of the Rehabilitation Act of 1973, United States Code, title 29, section 730 as amended through October 31, 1986;

C. a copy of the person's immunization record, if available; and

D. registration information that includes:

(1) the person's name, address, birthdate, and phone number;

(2) the name, address, and phone number of the person's legal representative, case manager, caregiver, physician, and hospital of preference;

(3) a signed statement authorizing the provider to act in a medical emergency when the person's legal representative cannot be reached or is delayed in arriving;

(4) the name of each medication currently prescribed for the person and statements signed by the person or person's legal representative authorizing the provider to administer or assist in administering the medication, if applicable;

(5) a list of the person's specific dietary needs and food related allergies, if applicable; and

(6) the date of the person's admission.

Subp. 4. **Suspension procedures.** A provider may suspend a person only when the provider has documented that the person's behavior prompting the suspension presented an immediate danger as defined in part 9525.1500, subpart 19. The provider must notify the person's case manager and legal representative of the suspension within 24 hours of the suspension's effective date. A person may be suspended for no more than three consecutive service days up to a maximum of six days per calendar year. Within 24 hours after the suspension the provider must:

A. document that the procedures agreed upon by the provider and the host county in the county contract under parts 9500.0010 to 9500.0092 and the three party agreements under part 9525.1240 have been followed before suspension;

B. document in the file the behavior prompting the suspension, including the frequency, intensity, and duration of the behavior, and the events leading up to the behavior;

C. document in the person's file the actions taken in response to the behavior including program changes and consultation with experts not employed by the provider; and

D. consult with the person's case manager and members of the interdisciplinary team to establish changes in the person's program under the terms of part 9525.0105 that will make suspension from service unnecessary in the future.

Subp. 5. **Discharge procedures.** A provider may discharge a person only when a condition or the conditions specified in item A, B, or C is met.

A. The person or the person's legal representative requests that the person be discharged.

B. The person's case manager has arranged the person's participation in a service that better meets the needs identified in the individual service plan or has determined through the procedures in part 9525.0075 that the service provided by the provider is no longer needed.

C. The provider has documented before the discharge that the person's behavior constituted an immediate danger, the provider has notified the person's case manager and legal representative of the provider's intent to discharge the person under subpart 6, and the provider documents in the person's file:

(1) that the procedures agreed upon by the provider and host county in the county contract under parts 9500.0010 to 9500.0092 and the three party agreements under part 9525.1240 have been followed before discharge;

(2) that the interdisciplinary team met to plan and develop services to attempt to meet the person's needs within the program and the provider attended the meeting or meetings;

(3) the programs and program modifications used to attempt to meet the person's needs, and the dates of implementation;

(4) the names of experts not employed by the provider who were consulted to determine alternatives not yet documented as attempted in subitem (3) and the other community resources used to develop a program to meet the person's needs;

(5) that additional funds and resources were unavailable under parts 9510.1020 to 9510.1140;

(6) the minutes from the interdisciplinary team meeting or meetings conducted when it was decided to discharge the person; and

(7) the time period during which the provider is willing to participate in delivery of services to the person until other services can be arranged or developed.

Subp. 6. **Reporting intended discharges.** If after following the procedures in subpart 5 the provider still intends to discharge a person, the provider must notify the person and the person's case manager and legal representative in writing. Notice of the proposed discharge must be given at least ten days before the proposed discharge. The written notice must include the information in items A to E:

A. reasons for and projected date of the intended discharge;

B. resources and services recommended to meet the person's needs;

C. notice of the person's right to appeal the actions under Minnesota Statutes, section 256.045;

D. notice of the person's right to be represented by an attorney or other interested party at an appeal hearing; and

E. notice that the services shall be continued if the appeal in item C is filed before the intended discharge, as specified in the notice.

Statutory Authority: *MS s 245A.09; 252.28 subd 2*

History: *12 SR 997*

9525.1570 SERVICES REQUIRED FOR LICENSURE.

Subpart 1. **Services that must be available.** Services must meet the specifications in subparts 2 to 6 and must be available for a minimum of 195 days in a calendar year.

Subp. 2. **Employment and employment related services.** Providers shall offer or provide employment and employment related services in accordance with the objectives specified in each person's individual habilitation plan when the services are reimbursable under state and federal regulations. Employment and employment related services shall be designed to increase integration into the community, increase productivity, increase income level, and improve the employment status or job advancement of the person served. Supported employment shall be offered as a choice to any person, regardless of the severity of that person's disability, who is currently not able to work competitively and is authorized to receive employment or employment related services that are reimbursable under state and federal regulations. Employment and employment related services offered or provided are required to have the components specified in items A to I:

A. individualized assessment in a manner consistent with part 9525.1630, subparts 4 and 5;

B. individualized job development and placement;

C. on the job training in work and work related skills required to perform the job;

D. ongoing supervision and monitoring of job performance;

E. ongoing support services when necessary and available within the provider's resources to assure job retention;

F. training in related skills essential to obtaining and retaining employment such as self care, communication, social appropriateness, problem solving, task completion, safety, use of community resources, use of break or lunch areas, and mobility training;

G. transportation to and from service sites when other forms of transportation are unavailable or inaccessible;

H. adaptive equipment necessary to obtain and retain employment when the equipment is not otherwise available through the Division of Rehabilitation Services of the Minnesota Department of Jobs and Training or the medical assistance program; and

I. training to improve related individual skill areas as identified in the individual habilitation plan.

Providers offering or providing employment and employment related services are not limited to offering or providing only the required services listed in items A to I.

Subp. 3. **Community integration services.** Providers shall offer or provide community integration services designed to increase and enhance each person's social and physical interaction with nondisabled individuals who are not paid caregivers or staff members. Community integration services offered or provided are required to have the components specified in items A to G:

A. assistance and training with mobility, including community orientation, use of specialized transportation, and use of public transportation;

B. assistance and training in communication and physical care to allow a person to participate in community activities and supported employment activities that would be considered appropriate for nondisabled individuals of or near the person's chronological age;

C. provision or development of opportunities for persons' access to and participation in the community through cooperative programming with community agencies such as senior citizen centers or senior citizen clubs, generic service organizations, adult education programs, or mental health agencies;

D. individual or small group activities that provide opportunities for persons receiving services to interact with nondisabled as well as other persons with disabilities who are not paid caregivers to encourage friendships;

E. specialized therapy and alternative communication devices designed to increase the person's communication skills and independent functioning or decrease the person's problem behaviors so that the person can participate to a greater degree in community activities and employment opportunities;

F. training to recognize and nurture each person's interests and capabilities; and

G. training to improve individual skill areas identified in the individual habilitation plan.

Providers offering or providing community integration services are not limited to offering or providing only the required services listed in items A to G.

Subp. 4. **Nonduplication of services.** If the services in item A or B are available to persons eligible for those services, then providers must not provide training and habilitation services as a substitute for item A or B:

A. "special education" and "related services" as defined in the Education of the Handicapped Act, United States Code, title 20, section 1401(6) and (17) as amended through December 31, 1985 which are otherwise available to an individual through a local educational agency; or

B. vocational services otherwise available to an individual through a program funded under section 110 of the Rehabilitation Act, United States Code, title 29, section 720, as amended through October 31, 1986.

Subp. 5. **Availability based on need.** Services shall be provided only on the days and during the hours needed by the persons served in accordance with each person's authorization to receive services. The provider shall reduce the level of supervision and assistance as the person's ability to exert control and choice over an activity increases as documented in quarterly progress reports.

Subp. 6. **Required training methods, materials, and content.** Training tasks and materials used with or by a person receiving services must meet the standard of being considered age appropriate for nondisabled individuals who are near or of the same chronological age as the person receiving services. Skills training, planned activities, and planned interactions must include the emphases in items A to C.

A. Skills being taught will enable the person to perform an activity of daily living that would have to be performed for the person if the person did not have the skill.

B. Planned interactions or activities are designed to provide opportunities for mutual participation by the person receiving services and a nondisabled individual who is not a paid staff member.

C. Skills are taught in a way that increases the person's ability to function in a variety of settings and reflects how the skill will be used in natural environments.

Statutory Authority: *MS s 245A.09; 252.28 subd 2*

History: *12 SR 997*

9525.1580 CONTROL AND LOCATION OF SERVICES.

Subpart 1. **Definitions.** The terms used in subparts 2 and 3 have the meanings given them in this subpart.

A. "Related legal entities" means entities that share any governing board members or an executive director or are owned or partially owned by the same individual or individuals, or by related individuals.

B. "Related individuals" means individuals whose relationship to each other by blood, marriage, or adoption is not more remote than first cousin.

Subp. 2. **Control of services.** Training and habilitation services licensed under parts 9525.1500 to 9525.1690 and licensed residential services must not be provided to the same person by related legal entities. This requirement does not apply:

A. to residential and day habilitation services directly administered by a county board or by the commissioner at a regional center;

B. to residential and day habilitation services offered by a training and habilitation services provider licensed before April 15, 1983; or

C. to services provided to a person who resides at home with the person's family or foster family and who is receiving a combination of day habilitation and residential based habilitation services under parts 9525.1800 to 9525.1930.

Subp. 3. **Location of services.** Training and habilitation services must be provided away from the residence of the person receiving services in communities where the person lives and works.

Statutory Authority: *MS s 245A.09; 252.28 subd 2*

History: *12 SR 997*

9525.1590 DOCUMENTING OUTCOMES OF SERVICES REQUIRED FOR LICENSURE.

Subpart 1. **Availability of data.** The documentation in subpart 2 must be provided to the commissioner on forms prescribed by the commissioner. The documentation in subpart 2 must be available to the host county and case manager upon request.

Subp. 2. **Outcomes of training and habilitation services.** Providers must collect data for each person receiving services on a quarterly basis throughout the calendar year. Data must be current as of the last day of the quarter being reported and must include:

A. the type of employment activity, location, and job title;

B. the number of hours the person worked per week;

C. the person's hourly wage and eligibility for fringe benefits;

D. the number of disabled coworkers receiving provider services at the same work site where the person for whom the data is reported is working; and

E. the number of nondisabled and nonsubsidized coworkers employed at the work site.

Statutory Authority: *MS s 245A.09; 252.28 subd 2*

History: *12 SR 997*

9525.1600 MINIMUM STAFFING REQUIREMENTS.

Subpart 1. **Minimum level of staffing required.** The number of direct service staff members that a provider must have on duty at a given time to meet the minimum staffing requirements established in this part varies according to:

A. the number of persons who are enrolled and receiving direct services at that given time;

B. the staff ratio requirement established under subpart 2 for each of the persons who is present; and

C. whether the conditions described in subpart 7 exist and warrant additional staffing beyond the number determined to be needed under subpart 6.

The commissioner shall consider the factors in items A, B, and C in determining a provider's compliance with the staffing requirements in this part and shall further consider whether the staff ratio requirement established under subpart 2 for each person receiving services accurately reflects the person's need for staff time.

Subp. 2. **Determining and documenting the staff ratio requirement for each person receiving services.** The case manager in consultation with the interdisciplinary team shall determine at least once each year which of the ratios in subparts 3, 4, and 5 is appropriate for each person receiving services on the basis of the characteristics described in subparts 3, 4, and 5. The ratio assigned each person and documentation of how the ratio was arrived at must be kept in each person's individual habilitation plan file. Documentation must include an assessment of the person with respect to the characteristics in subparts 3, 4, and 5 recorded on a standard assessment form required by the commissioner and the contents of the individual habilitation plan file.

Subp. 3. **Person requiring staff ratio of one to four.** A person who has one or more of the characteristics described in items A and B must be assigned a staff ratio requirement of one to four.

A. On a daily basis the person requires total care and monitoring or constant hand over hand physical guidance to successfully complete at least three of the following activities: toileting, communicating basic needs, eating, or ambulating.

B. The person assaults others, is self injurious, or manifests severe dysfunctional behaviors at a documented level of frequency, intensity, or duration requiring frequent daily ongoing intervention and monitoring as established in an approved behavior management program.

Subp. 4. **Person requiring staff ratio of one to eight.** A person who has all of the characteristics described in items A and B must be assigned a staff ratio requirement of one to eight.

A. The person does not meet the requirements in subpart 3.

B. On a daily basis the person requires verbal prompts or spot checks and minimal or no physical assistance to successfully complete at least three of the following activities: toileting, communicating basic needs, eating, or ambulating.

Subp. 5. **Person requiring staff ratio of one to six.** A person who does not have the characteristics described in subpart 3 or 4 must be assigned a staff ratio requirement of one to six.

Subp. 6. **Determining number of direct service staff required.** The minimum number of direct service staff members required at any one time to meet the combined staff ratio requirements of the persons present at that time can be determined by following the steps in items A to D.

A. Assign each person in attendance the three digit decimal below that corresponds to the staff ratio requirement assigned to that person. A staff ratio

requirement of one to four equals 0.250. A staff ratio requirement of one to eight equals 0.125. A staff ratio requirement of one to six equals 0.166.

B. Add all of the three digit decimals (one three digit decimal for every person in attendance) assigned in item A.

C. When the sum in item B falls between two whole numbers, round off the sum to the larger of the two whole numbers.

D. The larger of the two whole numbers in item C equals the number of direct service staff members needed to meet the staff ratio requirements of the persons in attendance.

Subp. 7. **Conditions requiring additional direct service staff.** The provider shall increase the number of direct service staff members present at any one time beyond the number arrived at in subpart 6 if necessary when any one or combination of the circumstances described in items A and B can be documented by the commissioner as existing.

A. The health and safety needs of the persons receiving services cannot be met by the number of staff members available under the staffing pattern in effect even though the number has been accurately calculated under subpart 6.

B. The behavior of a person presents an immediate danger and the person is not eligible for a special needs rate exception under parts 9510.1020 to 9510.1140.

Subp. 8. **Supervision requirements.** At no time shall one direct service staff member be assigned responsibility for supervision and training of more than ten persons receiving supervision and training.

Subp. 9. **Timeline to achieve compliance.** Providers that do not comply with this part on November 16, 1987, must achieve compliance within two years of receiving an initial license under parts 9525.1500 to 9525.1690.

Statutory Authority: *MS s 245A.09; 252.28 subd 2*

History: *12 SR 997*

9525.1610 STAFF QUALIFICATIONS.

Subpart 1. **Staff qualifications.** The staff employed by a provider must, at a minimum, meet the qualifications in items A to E.

A. One staff member employed by the provider must meet the qualifications in subitem (1), (2), or (3):

(1) a bachelor's degree in management or a human services field such as psychology, sociology, or child development and a minimum of three years of experience in the management of a human service delivery system; or

(2) five years' experience in a human services delivery system including at least two years in a management or supervisory position; or

(3) the qualifications outlined in item B plus three years of experience in the management of human services delivery.

B. There must be a sufficient number of staff members employed by or under contract to the provider with the qualifications listed below to equal 5.5 percent of a full-time equivalent employee for each person enrolled. The staff member's qualifications must include at least the equivalent of one year of full-time experience working directly with persons with mental retardation or related conditions in addition to:

(1) a bachelor's degree in a human services field such as psychology, sociology, or child development or in special education, education, social work, nursing, vocational rehabilitation, physical therapy, speech therapy, recreational therapy, or occupational therapy; or

(2) a master's degree in psychology from an accredited program.

If there are times when this staff member provides direct service, the staff

member shall, during those times, be counted in meeting the staff ratio requirements in part 9525.1600.

C. Additional staff must meet the qualifications required in their job descriptions. The qualifications required in the job descriptions must provide evidence of the individual's ability to perform the required job tasks and contain requirements for prior education, experience, and training.

D. Consultants hired by the provider must meet the Minnesota licensing requirements applicable to the disciplines in which they are providing consulting services. Additional qualifications may be required by the contracting provider where appropriate.

E. Staff members who provide training and habilitation services that are reimbursed under parts 9525.1800 to 9525.1930 must meet the requirements in those parts in addition to the requirements in these parts.

Subp. 2. **Timeline to achieve compliance.** Providers that do not comply with this part on November 16, 1987, must achieve compliance within two years of receiving an initial license under parts 9525.1500 to 9525.1690.

Statutory Authority: *MS s 245A.09; 252.28 subd 2*

History: *12 SR 997*

9525.1620 STAFF TRAINING.

Subpart 1. **Plan required.** A provider must have a staff training plan that meets the requirements in subparts 2 to 8.

Subp. 2. **Orientation for new employees.** Orientation for new employees must meet the requirements in items A to F.

A. The orientation must include:

(1) an introduction to characteristics of and services for adults with mental retardation and related conditions and to the provision of services in part 9525.1570;

(2) an explanation and discussion of the provider's written policies, procedures, and practices including the goals and philosophy of service delivery, and health, safety, and emergency information;

(3) an overview of the specific job the employee will perform including, for direct service staff, information that familiarizes them with the goals and objectives of persons with whom they will be required to work on a regular basis, the progress the person has made, and the relationship of the person's history to present and future training and habilitation programs; and

(4) an explanation of the relevance of Minnesota Statutes, section 626.557, Reporting of Maltreatment of Vulnerable Adults, and Minnesota Statutes, chapter 13, the Minnesota Government Data Practices Act, for service delivery.

B. The orientation must be completed within the first 30 days of employment.

C. The orientation must include both supervised on-the-job training and other types of training equal to at least 30 hours.

D. The orientation must be provided to all employees, members of the governing board, and supervised volunteers who regularly provide direct services. Volunteers who are directly supervised by employees and members of the governing board may receive a modified eight hour orientation instead of 30 hours.

E. The orientation must be counted toward the ongoing staff training requirements under subpart 2.

F. Documentation of having completed the required orientation must be included in each staff member's personnel file.

Subp. 3. **Scope and schedule of ongoing staff training.** A provider must ensure that a staff member who provides direct service annually completes a number of hours of training equal to at least two percent of the hours for which the staff member is annually paid. The training must:

A. be scheduled so that it does not interfere with providing the number of service days or hours the provider is under contract to provide. Substitute or backup staff may be provided to cover staff training time;

B. include in service training, new employee orientation, and training from educational coursework, conferences, seminars, videotapes, books, or other planned materials;

C. be documented as having been completed by each employee in each employee's personnel file; and

D. meet the requirements in parts 9525.1800 to 9525.1930 as applicable.

Subp. 4. **Content of ongoing training.** Providers must be able to document that the ongoing training required in subpart 3 includes content that addresses:

A. obtaining and maintaining employment for persons with severe disabilities;

B. development, implementation, and evaluation of individual habilitation plans including data collection and analysis;

C. community referenced training and assessment;

D. the analysis of challenging behavior and positive techniques for achieving behavioral change;

E. task analysis skills;

F. the legal rights of clients;

G. strategies for training and teaching communication and social skills; and

H. other areas appropriate to the needs of the persons served including using alternative communication devices and sign language, assessing equipment needs, lifting and positioning of persons, and the training required in subpart 2, item A, subitem (4), and in subparts 5, 6, and 7.

Subp. 5. **First aid training.** Within three years before or 90 days after beginning employment, direct service staff and drivers employed by the provider must have completed at least eight hours of first aid training that offers a first aid certificate issued by the American Heart Association or American Red Cross. First aid training must be repeated every three years.

Subp. 6. **Cardiopulmonary resuscitation (CPR).** An individual trained in CPR must be available at each service site where there is a person who requires availability of CPR capability as specified in the individual service plan. The trained individual must have a current CPR certificate issued by the American Heart Association or American Red Cross.

Subp. 7. **Medication assistance.** When an employee who is not licensed or registered as a physician, pharmacist, nurse, or practical nurse assists persons receiving services in taking medication, that employee must:

A. provide a certificate verifying successful completion of a trained medication aide program for unlicensed personnel approved by the Minnesota Department of Health; or

B. be trained by a registered nurse to provide medication assistance. The training must be documented in the employee's personnel file. Medication assistance by unlicensed personnel includes assisting persons receiving services to take medication but does not include giving injections. Medication includes a prescription substance ingested or applied externally to prevent or treat a condition or disease, heal, or relieve pain.

Subp. 8. **Training for emergencies.** A provider must train all staff to implement the written emergency procedures in part 9525.1660, subpart 14.

Statutory Authority: *MS s 245A.09; 252.28 subd 2*

History: *12 SR 997*

9525.1630 INDIVIDUAL HABILITATION PLAN REQUIREMENTS.

Subpart 1. **Establishing an individual habilitation plan.** A staff member with the qualifications in part 9525.1610, subpart 1, item B shall participate in the interdisciplinary team meeting required by parts 9525.0015 to 9525.0165 to develop an individual habilitation plan for each person receiving services and shall coordinate and monitor provision of services under the plan.

Subp. 2. **Plan file.** The provider must have an individual habilitation plan file for each person who is receiving services. The file must contain:

A. the individual service plan developed for the person under part 9525.0075;

B. the person's individual habilitation plan which contains the information required in part 9525.0105, subpart 4;

C. the progress reports described in subpart 3;

D. the provider's implementation plan, which must include the individualized application of information stated in the provider manual under part 9525.1550, subpart 2, item B;

E. the annual review required in part 9525.0105 that includes the assessment information described in subpart 6; and

F. the documentation required in part 9525.1600.

Subp. 3. **Review of progress toward individual habilitation plan goals.** The provider must quarterly review and summarize each person's progress or lack of progress in achieving the objectives of the training and habilitation services in the person's individual habilitation plan. The progress report shall include the provider's recommendation and rationale for changing or continuing those objectives. This progress report must become part of the person's plan file.

Subp. 4. **Initial assessment.** After a person begins receiving services, the provider must assess the person to further determine the person's training and habilitation needs related to the attainment of short-term and long-range goals identified in the person's individual service plan. The assessment must be completed prior to the meeting of the interdisciplinary team where the person's individual habilitation plan is determined as specified in part 9525.0105. In making this assessment, the provider may draw on and incorporate relevant information about the person obtained by the case manager in the process of completing the assessment required under part 9525.0055. The assessment completed by the provider must address at least items A to E.

A. Work skills including:

(1) work interests, history, and habits such as punctuality and attendance;

(2) general and specific work abilities, task performance, and proficiency levels; and

(3) support services necessary to obtain and maintain community based employment.

B. Independent living and working skills including:

(1) self care;

(2) community orientation;

(3) mobility;

(4) problem solving;

(5) social skills including interpersonal, emotional, and cognitive;

(6) communication skills; and

(7) transportation needs.

C. Medical, therapeutic, and rehabilitative needs in accordance with requests from the case manager.

D. Adaptations related to instruction, equipment, or environment that are needed to facilitate service delivery.

E. Situations and environments identified in part 9525.1550, subpart 2, item B, in which skills are needed and in which training and reassessment will occur.

Subp. 5. **Reassessment.** The provider must reassess each person receiving services, again addressing the skills and needs specified in subpart 4, items A to E, no more than 90 days before the annual review and at any other time when a reassessment is requested by the person's case manager or when a significant change is evidenced in the person.

Subp. 6. **Assessment summary.** The provider must annually prepare a written assessment summary for each person receiving services. The assessment must summarize the person's progress or lack of progress in attaining the goals and objectives assigned to the provider and must include observational data stated in behavioral terms. The written summary must also contain program recommendations made to the interdisciplinary team as identified through the assessment requested by the case manager and any other assessments conducted by the provider.

Statutory Authority: *MS s 245A.09; 252.28 subd 2*

History: *12 SR 997*

9525.1640 BEHAVIOR MANAGEMENT.

Subpart 1. **Behavior management policy.** The provider must have a written policy governing the use of behavior management techniques and must ensure that staff are familiar with and follow the policy. The written policy must:

A. be developed by the governing body in consultation with persons representative of the population served by the provider or by those persons' legal representatives;

B. be available to caregivers and other interested parties on request;

C. specify that behavior management procedures are to be used only as one element of an individual habilitation plan that focuses on developing adaptive behaviors to increase a person's ability to function independently in daily living;

D. specify that assessment of behavioral needs will include specific descriptors of a problem behavior, an assessment of environmental and communicative factors that might influence a person's behavior, and a thorough review of other factors that might be influencing the person's behavior;

E. require documentation that instructional techniques incorporating functional analysis of behavior and positive reinforcement have been tried and found to be unsuccessful before a more intrusive procedure is implemented; and

F. specify that the use of aversive or deprivation procedures must meet the standards in subpart 2.

Subp. 2. **Aversive or deprivation procedures.** A provider may use aversive or deprivation procedures only as specified in subpart 1, in Minnesota Statutes, section 245.825, and in parts 9525.2700 to 9525.2810. This subpart applies both to emergency and nonemergency use of aversive or deprivation procedures.

Statutory Authority: *MS s 245A.09; 252.28 subd 2*

History: *12 SR 997*

9525.1650 SERVICE SITES OWNED OR LEASED BY PROVIDER.

Subpart 1. **Compliance with other regulations.** To receive a license or renew an expired license the provider must document that service sites owned or leased by the provider are in compliance with the regulations listed in items A to D, as applicable:

A. all codes and regulations listed under part 9525.1520, subpart 2;

B. chapter 4715 and Minnesota Department of Health rules governing sewage and water systems, if a service site is located in a facility that is not part of a city water or sewage system;

C. Code of Federal Regulations, title 34, part 104, as amended through July 1, 1986, which mandates that:

(1) buildings owned or leased by the provider that were constructed, renovated, or newly constructed after 1981 must have entrances, hallways, bathrooms, and program areas that are accessible to persons with physical handicaps;

(2) all training and habilitation services provided to persons with physical handicaps must be accessible; and

(3) a person shall not be denied access to needed training and habilitation services in community based settings because of the person's physical disabilities; and

D. Code of Federal Regulations, title 29, part 1910, as amended through July 1, 1986, the Occupational Safety and Health Standards, if applicable.

Subp. 2. **Building space limitations.** The licensed capacity of a service site owned or leased by the provider must be determined by the amount of primary space available, the scheduling of activities at other service sites, and the space requirements of persons receiving services. In this subpart, "primary space" does not include hallways, stairways, closets, utility areas, bathrooms, kitchens, floor area beneath stationary equipment, and floor area beneath movable equipment or furniture not used by persons receiving services or staff members. Primary space may include up to 25 percent of the floor area occupied by movable equipment and furniture used by persons receiving services and staff. The following guidelines apply in determining the licensed capacity:

A. A minimum of at least 40 square feet of primary space must be available for each person who is engaged in a training and habilitation activity at the site for which the licensed capacity must be determined.

B. The commissioner may require more than 40 square feet of primary space for each person engaged in a training and habilitation activity at the site for which licensed capacity must be determined when a number of square feet greater than 40 square feet is specified in the individual habilitation plan.

Subp. 3. **Toilets.** Service sites owned or leased by the provider must have at least one toilet and one sink for every 15 or fewer persons receiving services at one time. Each bathroom must be equipped with hand drying devices, soap, a mirror, toilet paper, and a door. Service sites where training and habilitation services are provided for persons with physical disabilities must have for each 15 or fewer physically disabled persons served at least one toilet, one sink, and one hand drying device which are accessible.

Subp. 4. **Hazards.** The provider shall comply with items A to G to ensure that service sites owned or leased by the provider are free from hazards.

A. The provider shall store hazardous materials, chemicals, and equipment in places inaccessible to persons receiving services except when persons are engaged in activities requiring the use of such materials, chemicals, or equipment in accordance with their individual habilitation plans.

B. The provider shall install handrails and nonslip surfaces on interior and exterior runways, stairways, and ramps.

C. The provider shall have elevators inspected each year. The date of the

inspection, any repairs needed, and the date the necessary repairs were made must be documented.

D. The provider shall keep stairways, ramps, and corridors free of obstructions.

E. Outside property must be free from debris and safety hazards.

F. Radiators, fireplaces, hot pipes, steam radiators, and other hot surfaces and moving parts of machinery must be shielded or enclosed.

Statutory Authority: *MS s 245A.09; 252.28 subd 2*

History: *12 SR 997*

9525.1660 HEALTH AND SAFETY RELATED PROCEDURES.

Subpart 1. **Medical emergencies, accidents, illnesses.** The provider must have written procedures for responding to and reporting medical emergencies, accidents, and illnesses. These procedures must be reviewed and approved by a health consultant.

Subp. 2. **Ill clients.** There must be an area in which a person receiving services can rest if the person becomes ill while at a service site owned or leased by the provider.

Subp. 3. **Personal items.** Personal health and hygiene items shall be stored in a safe and sanitary manner.

Subp. 4. **Source of emergency medical care.** The provider must identify a source of emergency medical care and transportation. Staff members must be taught how to contact the provider's source of emergency medical care and transportation.

Subp. 5. **First aid kits.** The provider must have first aid kits and handbooks for first aid administration available at all service sites owned or leased by the provider.

Subp. 6. **Recording and reporting accidents or illnesses.** The provider must have a written procedure for recording accidents or illnesses that require first aid or medical attention and for reporting accidents or illnesses to a person's caregiver and legal representative. The provider must keep a file of reports on accidents or illnesses including a copy of the report sent to the caregiver and legal representative. Each report must indicate:

A. the person's name;

B. the date and time of the accident or illness;

C. a description of the accident or illness;

D. a description of the first aid or medical care administered; and

E. the name of the individual who administered the first aid or medical care.

Subp. 7. **Reporting of deaths and serious injury.** The provider must submit a report to the caregiver, the person's legal representative, the commissioner, the person's case manager, and the host county within 24 hours of an accident resulting in death or serious injury to a person receiving services. In this subpart, "serious injury" means an injury that requires hospitalization as an inpatient.

Subp. 8. **Reporting maltreatment of vulnerable adults.** The provider and the provider's employees are responsible for complying with the reporting requirements that apply under Minnesota Statutes, section 626.557 and parts 9555.8000 to 9555.8500.

Subp. 9. **Reporting of fires.** The provider shall report to the commissioner and the host county all fires that require the services of the fire department and interrupt service for more than 24 hours. The report must be submitted within five days of the date the fire occurred.

Subp. 10. **Exclusion of persons with communicable diseases and notification**

of exposure to communicable diseases. The provider shall exclude persons with communicable diseases only when it is the opinion of the health consultant that the person may present a health hazard to others. When a person is excluded on the basis of this opinion, the exclusion must continue until the program can comply with the consultant's recommendations and the consultant approves the person's return to the program. When a person has been exposed to a communicable disease, the provider shall inform the person's caregiver.

Subp. 11. **Reportable diseases and notification.** Caregivers and the local health authority must be notified within 24 hours when the diseases listed in parts 4605.7030 to 4605.7700 are reported or observed in persons receiving services, volunteers, or staff members.

Subp. 12. **Physical examinations.** The provider shall require a staff member, volunteer, or person receiving services to have a physical examination if the staff member, volunteer, or person receiving services shows evidence of or is suspected of having a serious illness or communicable disease. The provider may require a physician's statement before the staff member, volunteer, or person receiving services is allowed to return to the program.

Subp. 13. **Administering medication.** The provider must have a written procedure governing how the provider administers or assists in administering medication to persons when the provider is authorized under part 9525.1560, subpart 3, item D, subitem (4) to administer or assist in administering prescription medications. Medication includes a prescription substance ingested, injected, or applied externally to prevent or treat a condition or disease, heal, or relieve pain. If a staff member helps persons receiving services take their medications, the staff member must meet the qualifications in part 9525.1620, subpart 7. The medication administration procedures and the qualifications of staff members who administer medication or provide medication as described in part 9525.1620, subpart 7 must be approved and reviewed annually by the provider's health consultant. The health consultant's written review shall determine whether:

A. any staff member authorized to administer medications or assist persons in taking medications has the required qualifications or training;

B. the information required in part 9525.1560, subpart 3, item D, subitem (4) is current;

C. the methods of storing medications and disposing of unused medications are acceptable;

D. the method of recording medications dispensed by staff to persons receiving services is acceptable; and

E. the time lines for carrying out recommendations made by the health consultant as a result of the review have been met.

Subp. 14. **Emergencies.** At each service site owned or leased by the provider, written procedures, instructions, and information needed in case of emergencies caused by fire, blizzards, tornadoes, and other natural disasters must be available. The written procedures, instructions, and information must include:

A. identification of staff members' responsibilities;

B. identification and posting in each room of primary and secondary exits;

C. identification of evacuation routes, procedures for evacuating persons receiving services, and emergency shelter away from each service site;

D. posting of emergency telephone numbers;

E. instructions on activating and responding to audible or visual alarm systems;

F. procedures for conducting fire drills and logging the evacuation time, date, and time of drills;

G. identification of tornado shelter area;

H. instructions on how to close off a fire area;

I. the location of the fuse box and instructions on how to throw the main electrical switch; and

J. the location of the primary water shutoff and instructions for use.

Subp. 15. **Telephone.** A service site owned or leased by a provider must have a telephone that is not coin operated and that is not located in a room that is locked during service hours. Emergency numbers must be posted by the telephone.

Subp. 16. **Safety procedures.** The provider must establish general written safety procedures that include criteria for selecting, training, and supervising persons who work with hazardous machinery, tools, or substances. Safety procedures specific to each person's activities must be explained and be available in writing to all staff members and persons receiving services.

Statutory Authority: *MS s 245A.09; 252.28 subd 2*

History: *12 SR 997*

9525.1670 FOOD SERVICE.

Subpart 1. **General requirements.** The provider shall prepare and serve meals for a person receiving services only when meal service by the provider is specified in the person's individual habilitation plan.

Subp. 2. **Sanitation.** When food service is provided at a site owned or leased by the provider, the procedures for handling, preparing, serving, and storing food and for washing food utensils and equipment must comply with parts 4625.2400 to 4625.5000 or local ordinances.

Subp. 3. **Special diets.** If a person has special dietary needs prescribed by a physician or due to religious beliefs and the person eats food prepared by the provider, a written description of the specific dietary needs must be added to the person's individual habilitation plan file and must be available in the food preparation area.

Subp. 4. **Refrigeration.** The provider must provide refrigeration at service sites owned or leased by the provider for storing perishable foods and perishable portions of bag lunches, whether the foods are supplied by the provider or the persons receiving services. The refrigeration must have a temperature of 40 degrees Fahrenheit or less.

Subp. 5. **Time for meals.** The provider must allow time for persons in attendance for more than five consecutive hours to eat a meal. The meal time scheduled shall not exceed one hour unless a person requires additional time to eat a meal as specified in the person's individual habilitation plan.

Subp. 6. **Drinking water.** Drinking water must be available to all persons receiving services. If a person is unable to request or obtain drinking water, it shall be provided according to that person's individual needs but no less frequently than every four hours. Drinking water must be provided in single service containers or from drinking fountains accessible to all persons.

Statutory Authority: *MS s 245A.09; 252.28 subd 2*

History: *12 SR 997*

9525.1680 EQUIPMENT.

The provider must provide and maintain any equipment, supplies, and materials needed to carry out the objectives of all persons' individual habilitation plans or to ensure their health, safety, nutrition, training, and habilitation needs. General equipment and adaptive devices must be appropriate to the chronological age, cultural norms, and development of the persons using the equipment and devices and must be in good repair.

Statutory Authority: *MS s 245A.09; 252.28 subd 2*

History: *12 SR 997*

9525.1690 TRANSPORTATION.

Subpart 1. **Provision of transportation.** To the extent possible, a person receiving services shall use or be trained to use public transportation to and from service sites. If persons receiving services are transported in vehicles owned or leased by the provider, or contracted for by the provider, the provider must show evidence of compliance with or exemption from parts 8840.5100 to 8840.6300 governing special transportation operating standards. Providers must have a written transportation policy that meets the requirements in subparts 2 to 4.

Subp. 2. **Information on persons transported.** When a provider leases, owns, or contracts for a vehicle that is regularly used to transport persons receiving services, the provider must ensure that there is accessible to the driver information on each person transported in the vehicle. Transportation vehicles used "regularly" means vehicles used to transport persons receiving services at least 30 days in a 12 month period. The information provided must include:

A. the person's name, address, photograph, and phone number;

B. the person's emergency health care information, if applicable; and

C. the name and phone number of someone to call in case of emergency.

Nothing in this subpart prohibits the information required from being carried on or by the person being transported.

Subp. 3. **Supervision.** When the individual habilitation plan of a person being transported requires that person to have programming or supervision by the provider's staff while being transported, a staff member or adult volunteer must be present in the vehicle in addition to the driver.

Subp. 4. **Travel time to and from service site.** Except in unusual circumstances, the provider must not transport a person receiving services for longer than one hour per one way trip. In unusual circumstances, the provider may request a variance for up to one year. Variances to this subpart are renewable when the provider documents that alternative solutions have not been effective and when the health and safety of persons riding the vehicle in excess of one hour per one way trip are not jeopardized.

Statutory Authority: *MS s 245A.09; 252.28 subd 2*

History: *12 SR 997*

FUNDING AND ADMINISTRATION OF HOME AND COMMUNITY-BASED SERVICES

9525.1800 DEFINITIONS.

Subpart 1. **Scope.** The terms used in parts 9525.1800 to 9525.1930 have the meanings given to them in this part.

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, 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.

Subp. 4. **Client.** "Client" means a person with mental retardation who is receiving home and community-based services.

Subp. 5. **Commissioner.** "Commissioner" means the commissioner of the Minnesota Department of Human Services or the commissioner's designated representative.

Subp. 6. **County board.** "County board" means the county board of commissioners for the county of financial responsibility or the county board of commissioners' designated representative.

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

Subp. 8. **Daily intervention.** "Daily intervention" means supervision, assistance, or training provided to a person in the person's residence 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. 9. **Department.** "Department" means the Minnesota Department of Human Services.

Subp. 10. **Diversion.** "Diversion" means the act of providing home and community-based services to a person who would be placed in an intermediate care facility for the mentally retarded within one year if the home and community-based services were not provided.

Subp. 11. **Family.** "Family" means a person's biological parents, adoptive parents or stepparents, siblings, children, or spouse.

Subp. 12. **Fiscal year.** "Fiscal year" means the state's fiscal year from July 1 through the following June 30.

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

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 are authorized under United States Code, title 42, section 1396 et. seq., and authorized under the waiver 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. 15. **Host county.** "Host county" means the county in which the home and community-based service is provided.

Subp. 16. **Individual habilitation plan.** "Individual habilitation plan" has the meaning given it in parts 9525.0015 to 9525.0145 [Emergency].

Subp. 17. **Individual service plan.** "Individual service plan" has the meaning given it in parts 9525.0015 to 9525.0145 [Emergency].

Subp. 18. **Intermediate care facility for the mentally retarded or (ICF/MR).** "Intermediate care facility for the mentally retarded" or "ICF/MR" means a program licensed to serve persons with mental retardation under Minnesota Statutes, section 252.28, and a physical plant licensed as a supervised living facility under Minnesota Statutes, chapter 144, which together are certified by the Minnesota Department of Health as an intermediate care facility for the mentally retarded. Unless otherwise stated, the term ICF/MR includes state-operated and community-based facilities.

Subp. 19. **Placement.** "Placement" means the act of providing home and community-based services to a person who has been discharged from an ICF/MR.

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

Subp. 21. **Provider.** "Provider" means a person or legal entity providing home and community-based services for reimbursement under parts 9525.1800 to 9525.1930.

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

A. normal and special diet food preparation and service;

B. linen, bedding, laundering, and laundry supplies;

C. housekeeping, including cleaning and lavatory supplies;

D. maintenance and operation of the building and grounds, including fuel, electricity, water, supplies, and parts and tools to repair and maintain equipment and facilities; and

E. allocation of salaries and other costs related to these areas.

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

Subp. 24. **Service site.** "Service site" means the location at which home and community-based services are provided.

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.

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 to receive home and community-based services as stated in the waiver for that fiscal year.

Subp. 27. **Waiver.** "Waiver" 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 through the medical assistance program. The term includes all amendments to the waiver including any amendments made after October 14, 1985, as approved by the United States Department of Health and Human Services under United States Code, title 42, section 1396 et. seq.

Statutory Authority: *MS s 256B.092 subd 6; 256B.501; 256B.502; 256B.503*

History: *10 SR 838*

9525.1810 APPLICABILITY AND EFFECT.

Subpart 1. **Applicability.** Parts 9525.1800 to 9525.1930 apply to all county boards administering medical assistance funds for home and community-based services for persons with mental retardation or related conditions, to all providers that contract with a county board to provide home and community-based services for persons with mental retardation or related conditions, and to all subcontractors who contract with a provider to provide home and community-based services for persons with mental retardation or related conditions.

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

Statutory Authority: *MS s 256B.092 subd 6; 256B.501; 256B.502; 256B.503*

History: *10 SR 838; 12 SR 1148*

9525.1820 ELIGIBILITY.

Subpart 1. **Eligibility criteria.** A person is eligible to receive home and community-based services if the person meets all the criteria in items A to D and if home and community-based services may be provided in accordance with part 9525.1830:

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

B. the person is determined to be a person with mental retardation or a related condition in accordance with the definitions and procedures in parts 9525.0015 to 9525.0145 [Emergency];

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; and

D. the screening team has determined that the person needs daily intervention and the person's individual service plan documents the need for daily intervention and specifies the services needed daily.

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 to D;

B. the person will be provided home and community-based services in accordance with 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 the waiver.

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

Statutory Authority: *MS s 256B.092 subd 6; 256B.501; 256B.502; 256B.503*

History: *10 SR 838; 12 SR 1148*

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;

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];

C. the commissioner has authorized payment for home and community-based services for the person;

D. the person or the person's legal representative has agreed to the home and community-based services determined by the screening team to be appropriate for the person;

E. the county board has authorized provision of home and community-based services to the person based on the goals and objectives specified in the person's individual service plan; and

F. the county board has a signed agreement with the state that complies with part 9525.1900.

Subp. 2. **Written procedures and criteria.** The county board shall establish written procedures and criteria for making determinations under subpart 1, item A. The procedures and criteria must be consistent with requirements in parts 9525.1800 to 9525.1930, the waiver, federal regulations governing home and community-based services, and the goals established by the commissioner in part 9525.1880, subpart 3.

Statutory Authority: *MS s 256B.092 subd 6; 256B.501; 256B.502; 256B.503*

History: *10 SR 838*

9525.1840 PARENTAL CONTRIBUTION FEE.

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

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

Statutory Authority: *MS s 256B.092 subd 6; 256B.501; 256B.502; 256B.503*

History: *10 SR 838*

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. 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.

A. The provider has a current license or licenses for the specific home and community-based services as required under Minnesota Statutes or Minnesota Rules or, if no license is required, has received approval from the county board to provide home and community-based services.

B. The provider ensures that the provider and all employees or subcontractors meet all professional standards established in Minnesota Statutes, Minnesota Rules, and Code of Federal Regulations that apply to the services to be provided. If no training standards have been established, the provider, employee, or subcontractor must have completed, within the last two years, at least 24 hours of documented training. 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 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.

C. The provider ensures that the provider and all employees or subcontractors have at least one year of experience within the last five years in the care, training, 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 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 or homemaker services.

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

E. The provider ensures that the provider and all employees or subcontractors will 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, 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 individual habilitation plans or be approved by the case manager based on the needs identified in the individual service plans of the clients served by the provider. The county 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 residence.

F. The provider ensures that the provider and all employees or subcontractors have never been convicted of a violation, or admitted violating Minnesota Statutes, section 626.556 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. The provider has a legally binding contract with the host county that complies with part 9525.1870.

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

I. 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, and 9525.1800 to 9525.1930.

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

Statutory Authority: *MS s 256B.092 subd 6; 256B.501; 256B.502; 256B.503*

History: *10 SR 838; 12 SR 1148*

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.

Subp. 2. **Definitions.** For the purposes of this part the following terms have the meanings given them.

A. "Case management" means identifying the need for, seeking out, acquiring, authorizing, and coordinating services to persons with mental retardation or related conditions; and monitoring the delivery of the services to, and protecting the rights of, the 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 9525.0145 [Emergency].

B. "Day habilitation" means habilitation services provided away from the client's place of residence and focused on functioning in the community, using leisure and recreation time and developing task-oriented skills that will prepare the client to participate in a work environment. Day habilitation services for children are focused on stimulating the physical, intellectual, and emotional development of the child.

C. "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 habilitation services and residential-based habilitation services are types of habilitation services.

D. "Homemaker services" means general household activities and ongoing monitoring of the client's well-being provided by a homemaker who meets the standards in part 9565.1200.

E. "In-home family support services" means residential-based habilitation services designed to enable the family to care for and maintain the client in the home and may include training and counseling for the client and the client's family.

F. "Leave days" means days when a client is temporarily absent from services.

G. "Minor physical adaptations to the home" means one or more of the structural changes to the client's residence set forth in subpart 4, item E. Minor physical adaptations to the home must be designed to enable the client to avoid placement in an ICF/MR by increasing the client's mobility or protecting the client or other persons from injury. Minor physical adaptations to the home are only reimbursable for clients with mobility problems, sensory deficits, or behavior problems. Minor physical adaptations are limited to those named in subpart 4, item E.

H. "Residential-based habilitation services" means habilitation services provided in the client's residence. In-home family support services, supported living arrangements for children, and supported living arrangements for adults are residential-based habilitation services.

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

J. "Supported living arrangements for adults" means residential-based habilitation services provided on a daily basis to adults in a service site for up to six clients.

K. "Supported living arrangements for children" means residential-based habilitation services provided on a daily basis to clients under 18 years of age in a service site for up to three clients.

L. "Other home and community-based services" means any 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. 3. **Billing for services.** Billings submitted by the provider, except a provider of minor physical adaptations, must be limited to time actually and reasonably spent:

A. In direct contact with the client to assist the client in attaining the goals and objectives specified in the client'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 progress in attaining the goals and objectives specified in the client's individual service plan.

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

(1) only be provided to clients 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 place of residence unless medically contraindicated, as required in Minnesota Statutes, section 256B.501, subdivision 1, paragraph (d); 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 residential services unless the client 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 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; or

(2) there is no person, other than the client, regularly responsible for these activities and the client 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 for children or supported living arrangements for adults, if the client intends to return to the service. Billings may be made for leave days only when the client is:

(1) hospitalized;

(2) on a therapeutic 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. Reimbursement for minor physical adaptations to the home 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 preced-

ing 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.

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

F. Home and community-based services are not reimbursable if provided to a client while the client 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 item C for a client who is hospitalized.

G. Respite care must:

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

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

If there are no service sites that meet the requirements in subitem (2) available in the community to serve clients 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. 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 residence. All room and board costs must be directly identified on reports submitted by the provider to the county board.

Subp. 5. **Special services.** The services listed in item A must be provided in accordance with items B to D.

A. For the purposes of this subpart, the services in subitems (1) to (9) have the meanings given them in parts 9500.0750 to 9500.1080:

(1) psychological services;

(2) physical therapy;

(3) occupational therapy;

(4) speech, hearing, and language disorder services;

(5) mental health center services;

(6) rehabilitative and therapeutic services;

(7) home health care services;

(8) private duty nursing services; and

(9) personal care attendant services.

B. The services in item A, must be provided by a professional licensed or certified by the state to provide the services or by a person supervised by a licensed or certified professional.

C. If the services in item A, subitems (1) to (6) are provided to a client, the cost of the services must be included in the rate or rates billed by the provider or providers for reimbursement under parts 9525.1800 to 9525.1930. These services are not reimbursable under any other rule or rules for clients in home and community-based services.

D. The cost of the services listed in item A, subitems (7) to (9) 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 unless a variance has been approved in accordance with subpart 7.

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

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

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

D. Supported living arrangements for adults which are provided in a service site serving more than four adults must be licensed under parts 9525.0210 to 9525.0430. Supported living arrangements provided at a service site for four or fewer adults must be approved under parts 9555.6100 to 9555.6400; 9545.0090, item A; 9545.0140; 9545.0180; and 9545.0190, subparts 3 and 5. In approving supported living arrangements provided at a service site for four or fewer adults, the county 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 must be licensed under parts 9525.0210 to 9525.0430. Respite care provided at a service site serving four or fewer clients under 18 years of age must be licensed under parts 9545.0010 to 9545.0260. Respite care provided at a service site serving four or fewer adults must be approved under parts 9545.0090, item A; 9545.0140; 9545.0180; 9545.0190, subparts 3 and 5; and 9555.6100 to 9555.6400. Respite care provided at a service site for four or fewer children and adults must be approved under parts 9545.0090, item A; 9545.0140; 9545.0180; 9545.0190, subparts 3 and 5; and 9555.6100 to 9555.6400 and licensed under parts 9545.0010 to 9545.0260. This item shall not apply to a person who provides respite care for 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 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 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. 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.

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

The commissioner shall review the county 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 to 9555.6400 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.

C. Requests for a variance of the provisions in parts 9525.0210 to 9525.0430 must be submitted in accordance with part 9525.0250.

Statutory Authority: *MS s 256B.092 subd 6; 256B.501; 256B.502; 256B.503*

History: *10 SR 838; 12 SR 1148*

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 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 to be served;

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

C. description of how the benefits of the services will be measured;

D. an agreement to comply with parts 9525.1800 to 9525.1930;

E. description of ongoing training to be provided under part 9525.1850, item E; and

F. other provisions the county board determines are needed to ensure the county's ability to comply with part 9525.1900.

Subp. 2. **Required provision.** Each contract and subcontract must contain the following provision. If any contract does not contain the following provision, the provision shall be considered an implied provision of the contract.

"The provider acknowledges and agrees that the Minnesota Department of Human Services is a third-party beneficiary, and as a third-party beneficiary, is an affected party under this contract. The provider specifically acknowledges and agrees that the Minnesota Department of Human Services has standing to and may take any appropriate administrative action or sue the provider for any appropriate relief in law or equity, including, but not limited to, rescission, damages, or specific performance, of all or any part of the contract between the county board and the

provider. The provider specifically acknowledges that the county board and the Minnesota Department of Human Services are entitled to and may recover from the provider reasonable attorney's fees and costs and disbursements associated with any action taken under this paragraph that is successfully maintained. This provision shall not be construed to limit the rights of any party to the contract or any other third party beneficiary, nor shall it be construed as a waiver of immunity under the Eleventh Amendment to the United States Constitution or any other waiver of immunity."

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

A. have written permission from the host county to subcontract;

B. ensure that the subcontract meets all the requirements of subpart 1;

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

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

Subp. 4. **Noncompliance.** If the provider or subcontractor fails to comply with the contract, the county board may seek any available legal remedy.

The county board shall notify the commissioner in writing within 30 days when the county board has reasonable grounds to believe that a contract required under this part has been breached in a material manner or that a provider or subcontractor has taken any action or failed to take any action that constitutes anticipatory breach of the contract. The county board may allow the provider or subcontractor a reasonable amount of time to cure the breach or anticipatory breach. The county board shall notify the commissioner in writing within ten working days if the provider or subcontractor takes any action or fails to take any action in response to the opportunity to cure. In the notice, the county board shall inform the commissioner of the action the county board intends to take.

Statutory Authority: *MS s 256B.092 subd 6; 256B.501; 256B.502; 256B.503*

History: *10 SR 838*

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 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. 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:

(1) current living arrangements;

(2) current day programs;

(3) level of supervision required;

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

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

(6) 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 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 and community ICFs/MR, including any steps the county board has taken to encourage voluntary decertification of community-based ICF/MR beds.

F. Describe 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 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;

C. 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; and

D. 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.

Statutory Authority: *MS s 256B.092 subd 6; 256B.501; 256B.502; 256B.503*

History: *10 SR 838*

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 and community-based ICF/MR beds using historical utilization for the county; and the projected per capita utilization of state-operated 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.** The county board's allocation of money for placements shall be based on the number of placements in the approved county proposal and the extent to which the placements result in an overall reduction in the county board's historical utilization of state-operated and community-based ICF/MR beds.

Subp. 3. **Notification of allocation.** The commissioner shall notify all county boards, in writing, of the amount of home and community-based services money allocated to each county board or, if the proposal was submitted jointly, to the group of county boards.

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, 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 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.

Statutory Authority: *MS s 256B.092 subd 6; 256B.501; 256B.502; 256B.503*

History: *10 SR 838*

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 to receive home and community-based services money. The agreement must include provisions specifying that:

A. home and community-based services money will be used only for services to persons who are determined to be eligible under part 9525.1820 and meet the conditions in part 9525.1830;

B. home and community-based services money will be used only for the services in part 9525.1860;

C. home and community-based services money will be used only for services provided by providers who meet the requirements of part 9525.1850 and

have a legally binding contract with the host county which meets the requirements of part 9525.1870;

D. the total cost of providing home and community-based services to all home and community-based service clients 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 part 9525.1920 and applicable provisions of parts 9505.1750 to 9505.2150;

F. the county board will comply with all applicable standards in parts 9525.0015 to 9525.0145 [Emergency];

G. the county board will comply with parts 9525.1800 to 9525.1930;

H. the county board will comply with Minnesota Statutes, chapter 256B, and rules adopted thereunder; and

I. the county board will comply with United States Code, title 42, sections 1396 et seq., and all regulations promulgated thereunder.

Subp. 2. **Additional requirements.** If the county board provides home and community-based services in addition to case management, the agreement must specify the services to be provided by the county board.

The agreement must include a provision specifying that the county board agrees that the commissioner may reduce or discontinue reimbursement, or seek other legal remedies if the county board fails to comply with the provisions of the agreement and parts 9525.1800 to 9525.1930.

Statutory Authority: *MS s 256B.092 subd 6; 256B.501; 256B.502; 256B.503*

History: *10 SR 838*

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

Subpart 1. **County board responsibility.** The county board shall fund home and community-based services in accordance with subparts 2 to 5.

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.

Subp. 3. **Rate setting.** The host county shall determine the rates to be paid to providers for home and community-based services and retain documentation of the process and data used to determine the rate. The commissioner shall review rates to ensure that the criteria in subpart 4, item C are met.

Subp. 4. **Cost limitations.** There is no dollar limitation on the amount of home and community-based services money that may be used per client. In authorizing and billing for home and community-based services for individual clients, 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 included in the proposal.

A. The total cost of home and community-based services provided to all clients 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 home and community-based services provided to all clients must not exceed the statewide average daily reimbursement rate.

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

(1) the cost is ordinary, necessary, and related to client 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 individual service plan;

(3) the cost is what a prudent and cost conscious business person would pay for the specific good or service in the open market in an arm's length transaction; and

(4) the cost is for goods or services actually provided.

Subp. 5. **Assessment for costs which exceed allocation.** If the total expenditures by the state under parts 9525.1800 to 9525.1930 do not meet the federal requirements under the waiver and as a result federal financial participation is denied, disallowed, or required to be returned, the commissioner shall assess a portion of the cost to each county board that incurred costs which exceeded the total allocation for that county. The portion assessed must be based on the costs that exceed or exceeded the county board's allocation.

Statutory Authority: *MS s 256B.092 subd 6; 256B.501; 256B.502; 256B.503*

History: *10 SR 838; 12 SR 1148*

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 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 to 9505.2150.

Subp. 2. **County board records.** The county board shall maintain complete fiscal records and supporting documentation identifying the clients 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 to 9505.2150.

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 parts 9500.0750 to 9500.1080, 9505.1750 to 9505.2150, and 9525.1800 to 9525.1930.

Subp. 4. **Retention of records.** The county board, the providers, and the subcontractors shall retain a copy of the records required in subparts 1 and 2 for five years unless an audit in process requires a longer retention period.

Statutory Authority: *MS s 256B.092 subd 6; 256B.501; 256B.502; 256B.503*

History: *10 SR 838*

9525.1930 PENALTIES AND APPEALS.

Subpart 1. **Noncompliance.** The commissioner may pursue contractual remedies in accordance with part 9525.1870, subparts 2 and 3, withhold or withdraw reimbursement, recoup money paid, and pursue any other available legal remedy for failure of a county board, provider, or subcontractor to comply with parts 9525.1800 to 9525.1930. The commissioner may also take action in accordance with Minnesota Statutes, section 256B.064.

The county board shall pursue contractual remedies in accordance with part

9525.1870, subparts 2 and 3, withhold or withdraw reimbursement, recoup money paid, or pursue any other available legal remedy for failure of a provider or subcontractor to comply with parts 9525.1800 to 9525.1930. A provider shall be held liable if a subcontractor fails to comply with parts 9525.1800 to 9525.1930.

Subp. 2. **Exception.** Providers who contracted with the county board to provide home and community-based services before May 1, 1985, have until January 1, 1986, to comply with parts 9525.1850, items B to F; 9525.1860, subpart 4, item G, subitem (2); 9525.1860, subpart 6; and 9525.1870, subpart 1, item E.

Subp. 3. **Failure to enforce.** The county board shall be held liable for any damages or costs to the department for failure of the county board to enforce contracts entered into under parts 9525.1800 to 9525.1930 or for any action or inaction which impedes enforcement by the commissioner.

Subp. 4. **Appeals by county boards, providers, or subcontractors.** Before the commissioner withholds, recoups, or withdraws the county board's allocation under subpart 1, the commissioner shall give 30 days written notice to the county board and send a copy of the written notice to the affected providers or subcontractors. The written notice shall inform the county board, provider, or subcontractor of the right to a hearing under the contested case procedures of Minnesota Statutes, chapter 14. If the commissioner receives a written appeal of the commissioner's action within 30 days of the date the written notice is sent, the commissioner shall initiate a contested case proceeding. The written appeal must state the reasons the county board, provider, or subcontractor is appealing the commissioner's action. The commissioner shall not take the proposed action before the hearing unless, in the commissioner's opinion, the action is necessary to protect the public welfare and the interests of the home and community-based services program.

Subp. 5. **Appeals by individuals.** Notice, appeals, and hearing procedures shall be conducted as follows:

A. A person who is considered for, or receiving, home and community-based services has a right to a hearing under Minnesota Statutes, section 256.045 if:

(1) the county board fails to follow the written procedures and criteria established under part 9525.1830, subpart 2; or

(2) the county board fails to authorize services in accordance with part 9525.1830, subpart 1, item E; or

(3) the provisions of parts 9525.1820 and 9525.1830 are met and the person is:

(a) not informed of the home and community-based services that are feasible for the person; or

(b) denied the right to choose between the feasible home and community-based services and ICF/MR services.

B. It is an absolute defense to an appeal under item A, subitem (1), if the county board proves that it followed the established written procedures and criteria and determined that home and community-based services could not be provided to the person within the county board's allocation of home and community-based services money.

C. Notice, appeal, and hearing procedures shall be conducted in accordance with Minnesota Statutes, section 256.045.

Statutory Authority: *MS s 256B.092 subd 6; 256B.501; 256B.502; 256B.503*

History: *10 SR 838*

USE OF AVERSIVE AND DEPRIVATION PROCEDURES IN LICENSED FACILITIES SERVING PERSONS WITH MENTAL RETARDATION AND RELATED CONDITIONS

9525.2700 PURPOSE AND APPLICABILITY.

Subpart 1. **Purpose.** Parts 9525.2700 to 9525.2810 implement Minnesota Statutes, section 245.825 by setting standards that govern the use of aversive and deprivation procedures with persons who have mental retardation or related conditions and who are served in or by a program licensed by the commissioner under Minnesota Statutes, chapter 245A and section 252.28, subdivision 2.

Parts 9525.2700 to 9525.2810 are not intended to encourage or require the use of aversive and deprivation procedures. Rather, parts 9525.2700 to 9525.2810 encourage the use of positive approaches as an alternative to aversive or deprivation procedures and require documentation that positive approaches have been tried and have been unsuccessful as a condition of implementing an aversive or deprivation procedure.

The standards and requirements set by parts 9525.2700 to 9525.2810:

A. exempt from the requirements of parts 9525.2700 to 9525.2810 any procedures that are positive in approach or are minimally intrusive;

B. prohibit the use of certain actions and procedures specified in part 9525.2730;

C. control the use of aversive and deprivation procedures permitted under parts 9525.2700 to 9525.2810 by requiring review by a facility committee, authorization by an expanded interdisciplinary team, informed consent from the person or the person's legal representative, and development of a detailed individual habilitation plan as conditions of implementation;

D. specify the procedures to be followed in obtaining informed consent;

E. establish criteria and procedures for emergency use of controlled aversive and deprivation procedures; and

F. assign a monitoring and technical assistance role to the regional review committees mandated by Minnesota Statutes, section 245.825.

Subp. 2. **Applicability.** Parts 9525.2700 to 9525.2810 govern the use of aversive and deprivation procedures with persons who have mental retardation and related conditions when those persons are being served in or by:

A. a facility licensed by the commissioner as a day care facility as defined in part 9525.2710, subpart 10. This category of licensure includes developmental achievement services provided to children and day training and habilitation services provided to adults with mental retardation and related conditions.

B. a facility licensed by the commissioner as a residential facility as defined in part 9525.2710, subpart 30. This category of licensure includes intermediate care facilities for persons with mental retardation and other residential programs and services for persons with mental retardation and related conditions licensed under parts 9525.0210 to 9525.0430. If there is an instance where these rule parts differ in their requirements from requirements in Code of Federal Regulations, title 42, sections 442.400 to 442.515, an intermediate care facility for persons with mental retardation and related conditions shall comply with the regulation that sets the more stringent standard.

C. a supported living arrangement for children or for adults or respite care as defined in part 9525.1860 when the service or care is provided in a service site requiring licensure by the commissioner.

Subp. 3. **Exclusion.** Parts 9525.2700 to 9525.2810 do not apply to:

A. any of the treatments defined in parts 9515.0200 to 9515.0800 governing the administration of specified therapies to committed patients residing at state hospitals; or

B. residential care or program services licensed under parts 9520.0500 to 9520.0690 to serve persons with mental illness.

Statutory Authority: *MS s 245.825*

History: *11 SR 2408; 13 SR 1448*

9525.2710 DEFINITIONS.

Subpart 1. **Scope.** The terms used in parts 9525.2700 to 9525.2810 have the meanings given to them in this part.

Subp. 2. **Adaptive behavior.** "Adaptive behavior" means a behavior that increases a person's capability for functioning independently in activities of daily living.

Subp. 3. **Advocate.** "Advocate" means an individual who has been authorized, in a written statement signed by the person with mental retardation or a related condition or by that person's legal representative, to help the person understand and make choices regarding identification of needs and choices of services.

Subp. 4. **Aversive procedure.** "Aversive procedure" means the planned application of an aversive stimulus (1) contingent upon the occurrence of a behavior identified in the individual habilitation plan for reduction or elimination; or (2) in an emergency situation governed by part 9525.2770.

Subp. 5. **Aversive stimulus.** "Aversive stimulus" means an object, event, or situation that is presented immediately following a target behavior in an attempt to suppress that behavior. Typically, an aversive stimulus is unpleasant and penalizes or confines.

Subp. 6. **Baseline measurement.** "Baseline measurement" means the frequency, intensity, duration, or other quantification of a behavior. The baseline measurement is determined before initiating or changing an intervention procedure to modify that behavior.

Subp. 7. **Case manager.** "Case manager" means the individual designated by the county board under part 9525.0035 to provide case management services. The case manager must meet the requirements in part 9525.0155.

Subp. 8. **Commissioner.** "Commissioner" means the commissioner of the Minnesota Department of Human Services or the commissioner's designated representative.

Subp. 9. **Controlled procedure.** "Controlled procedure" means an aversive or deprivation procedure that is permitted by parts 9525.2700 to 9525.2810 and is implemented under the standards established by those parts. Controlled procedures are listed in part 9525.2740.

Subp. 10. **Nonresidential program.** "Nonresidential program" means a nonresidential program as defined in Minnesota Statutes, section 245A.02, subdivision 10.

Subp. 11. **Department.** "Department" means the Minnesota Department of Human Services.

Subp. 12. **Deprivation procedure.** "Deprivation procedure" means the planned delay or withdrawal of goods, services, or activities to which the person is otherwise entitled: (1) contingent upon the occurrence of a behavior that has been identified for reduction or elimination in the individual habilitation plan; or (2) in an emergency governed by part 9525.2770.

Subp. 13. **Emergency use.** "Emergency use" means using a controlled procedure without first meeting the requirements in parts 9525.2750, 9525.2760, and 9525.2780 when it can be documented under part 9525.2770 that immediate intervention is necessary to protect a person or other individuals from physical injury or to prevent severe property damage which is an immediate threat to the physical safety of the person or others.

Subp. 14. **Facility review committee.** "Facility review committee" means the committee required by and described in part 9525.2750, subparts 1 and 2.

Subp. 15. **Faradic shock.** "Faradic shock" means the application of electric current to a person's skin or body parts as an aversive stimulus contingent upon the occurrence of a behavior that has been identified in the person's individual habilitation plan for reduction or elimination.

Subp. 16. **Individual habilitation plan.** "Individual habilitation plan" means the written plan for providing service to persons required by and specified in part 9525.0105.

Subp. 17. **Informed consent.** "Informed consent" means consent to the use of an aversive or deprivation procedure that is given voluntarily by a person or the person's legal representative after disclosure of the information required in part 9525.2780, subpart 4, and that is obtained by the case manager under part 9525.2780.

Subp. 18. **Interdisciplinary team.** "Interdisciplinary team" means a team composed of the case manager, the person with mental retardation or a related condition, the person's legal representative and the person's advocate, if the person has a legal representative and an advocate, and representatives of all providers of services set forth in the person's individual service plan. When an individual habilitation plan proposing the use of a controlled procedure is reviewed by an interdisciplinary team, part 9525.2750 requires that one member of that interdisciplinary team be a qualified mental retardation professional with at least one year of experience in the development and implementation of behavior management programs.

Subp. 19. **Intermediate care facility for persons with mental retardation and related conditions or ICF/MR.** "Intermediate care facility for persons with mental retardation and related conditions" or "ICF/MR" means a program licensed under Minnesota Statutes, sections 245A.01 to 245A.16 and 252.28, subdivision 2, to provide services to persons with mental retardation and related conditions and a physical plant licensed as a supervised living facility under Minnesota Statutes, chapter 144, which together are certified by the Minnesota Department of Health as an intermediate care facility for persons with mental retardation and related conditions.

Subp. 20. **Legal representative.** "Legal representative" means the parent or parents of a person under 18 years old or a guardian or conservator authorized by the court to make decisions about services for a person of any age.

Subp. 21. **Licensed facility.** "Licensed facility" means a program licensed by the department as a nonresidential program under Minnesota Statutes, chapter 245A and section 252.28, subdivision 2.

Subp. 22. **Manual restraint.** "Manual restraint" means physical intervention intended to hold a person immobile or limit a person's movement by using body contact as the only source of physical restraint. The term does not mean physical contact used to: (1) facilitate a person's completion of a task or response when the person does not resist or the person's resistance is minimal in intensity and duration; (2) escort or carry a person to safety when the person is in danger; or (3) conduct necessary medical examinations or treatments.

Subp. 23. **Mechanical restraint.** "Mechanical restraint" means the use of devices such as mittens, straps, restraint chairs, or papoose boards to limit a person's movement or hold a person immobile as an intervention precipitated by a person's behavior. The term does not apply to mechanical restraint used to treat a person's medical needs, to protect a person known to be at risk of injury resulting from lack of coordination or frequent loss of consciousness, or to position a person with physical disabilities in a manner specified in the person's individual habilitation plan. The term does apply to, and the rule parts do govern, mechanical restraint when it is used to prevent injury with persons who engage

in behaviors such as head banging, gouging, or other actions resulting in tissue damage which have caused or could cause medical problems resulting from the self injury.

Subp. 24. **Person with mental retardation or a related condition or person.** "Person with mental retardation or a related condition" or "person" means:

A. a person who has been diagnosed under part 9525.0045 as having significantly subaverage intellectual functioning existing concurrently with demonstrated deficits in adaptive behavior and who manifests these conditions before the person's 22nd birthday;

B. a person under the age of five who demonstrates significantly subaverage intellectual functioning concurrently with severe deficits in adaptive behavior, but for whom a licensed psychologist or licensed consulting psychologist determines that a diagnosis may not be advisable because of the person's age; or

C. a person who has a related condition. A related condition is a severe chronic disability that:

(1) is attributable to cerebral palsy, epilepsy, autism, or any other condition other than mental illness that is found to be closely related to mental retardation because the condition results in impairment of general intellectual functioning or adaptive behavior similar to that of persons with mental retardation;

(2) is likely to continue indefinitely;

(3) results in substantial functional limitations in three or more of the following areas of major life activity: self care; understanding and use of language; learning; mobility; self direction; or capacity for independent living; and

(4) has been determined to be a related condition in accordance with rules adopted by the commissioner.

Subp. 25. **Positive practice overcorrection.** "Positive practice overcorrection" means a procedure that requires a person to demonstrate or practice a behavior at a rate or for a length of time that exceeds the typical frequency or duration of that behavior. The behaviors identified for positive practice are typically appropriate adaptive behaviors or are incompatible with a behavior identified for reduction or elimination in a person's individual habilitation plan.

Subp. 26. **Positive reinforcement.** "Positive reinforcement" means the presentation of an object, event, or situation following a behavior that increases the probability of the behavior recurring. Typically, the object, event, or situation presented is enjoyable, rewarding, or satisfying.

Subp. 27. **Qualified mental retardation professional or QMRP.** "Qualified mental retardation professional" or "QMRP" means an individual who meets the qualifications specified in Code of Federal Regulations, title 42, section 442.401, as amended through October 1, 1985.

Subp. 28. **Regional center.** "Regional center" has the meaning given it in Minnesota Statutes, section 253B.02, subdivision 18.

Subp. 29. **Regional review committee.** "Regional review committee" means a committee established by part 9525.2790 to monitor parts 9525.2700 to 9525.2810 as mandated by Minnesota Statutes, section 245.825. Review committee jurisdictions and responsibilities are defined in part 9525.2790.

Subp. 30. **Residential program.** "Residential program" means a residential program as defined in Minnesota Statutes, section 245A.02, subdivision 14.

Subp. 31. **Restitutional overcorrection.** "Restitutional overcorrection" means a procedure that requires a person to clean, repair, or correct an area or situation damaged or disrupted as a result of the person's behavior to a point where the area or situation is not only restored to but exceeds its original condition.

Subp. 32. **Seclusion.** "Seclusion" means the placement of a person alone in a room from which egress is:

A. noncontingent on the person's behavior; or

B. prohibited by a mechanism such as a lock or by a device or object positioned to hold the door closed or otherwise prevent the person from leaving the room.

Subp. 33. **Separation.** "Separation" has the same meaning given "room time out" in subpart 35.

Subp. 34. **Target behavior.** "Target behavior" means a behavior identified in a person's individual habilitation plan as the object of efforts intended to increase, reduce, or eliminate the behavior.

Subp. 35. **Time out.** "Time out" or "time out from positive reinforcement" means removing a person from the opportunity to gain positive reinforcement and is employed when a person demonstrates a behavior identified in the individual habilitation plan for reduction or elimination. Return of the person to normal activities from the time out situation is contingent upon the person's demonstrating more appropriate behavior. Time out procedures governed by parts 9525.2700 to 9525.2810 are:

A. exclusionary time out, which means removing a person from an ongoing activity to a location where the person cannot observe the ongoing activity; and

B. room time out or separation, which means removing a person from an ongoing activity to an unlocked room. The person may be prevented from leaving a time out room by staff members but not by mechanical restraint or by the use of devices or objects positioned to hold the door closed. Time out periods are usually brief, lasting only several minutes.

Statutory Authority: *MS s 245.825*

History: *11 SR 2408; L 1987 c 333 s 22; 13 SR 1448*

9525.2720 EXEMPTED ACTIONS AND PROCEDURES.

Use of the instructional techniques and intervention procedures listed in items A to G is not subject to the restrictions established by parts 9525.2700 to 9525.2810. Use of these techniques and interventions must be addressed in each person's individual habilitation plan as required by part 9525.0105.

A. The use of corrective feedback or prompts to assist a person in performing a task or exhibiting a response.

B. The use of physical assistance to facilitate a person's completion of a response in a situation where the person offers no physical resistance to the assistance.

C. The use of physical contact to redirect a person's behavior when the behavior:

(1) is infrequent, occurring no more than three times in a 30 day period;

(2) does not pose a serious threat to the person or others; and

(3) is effectively redirected with less than 60 seconds of physical contact by staff.

This exemption may not be used to circumvent the requirements for controlling use of manual restraint. It is included to allow caregivers to deal effectively and naturally with intermittent and infrequently occurring situations.

D. The use of positive reinforcement procedures alone or in combination with the procedures described in items A and B to develop new behaviors or increase the frequency of existing behaviors.

E. Temporary interruptions in instruction or ongoing activity in which a person is removed from an activity to a location where the person can observe the ongoing activity and see others receiving positive reinforcement for appropriate behavior. Return of the person to normal activities is contingent upon the

person's demonstrating more appropriate behavior. This procedure is often referred to as contingent observation.

F. Temporary withdrawal or withholding of goods, services, or activities to which a person would otherwise have access as a natural consequence of the person's inappropriate use of the good, service, or activity. Examples of situations in which the exemption would apply are briefly delaying the return of a person's beverage at mealtime after the person has thrown the beverage across the kitchen or temporarily removing an object the person is using to hit another individual. Temporary withdrawal or withholding is meant to be a brief time period lasting no more than several minutes until the person's behavior is redirected and normal activities can be resumed.

G. Use of token fines or response cost procedures such as removing objects or other rewards received by a person as part of a positive reinforcement program. Token fines or response cost procedures are typically implemented after the occurrence of a behavior identified in the individual habilitation plan for reduction or elimination. Removing the object or other reward shall not interfere with a person's access to the goods, services, and activities protected by part 9525.2730.

Statutory Authority: *MS s 245.825*

History: *11 SR 2408*

9525.2730 PROCEDURES AND ACTIONS RESTRICTED OR PROHIBITED.

Subpart 1. **Restrictions required by Minnesota Statutes.** An aversive or deprivation procedure shall not:

A. be implemented with a child in a manner that constitutes sexual abuse, neglect, or physical abuse as defined in Minnesota Statutes, section 626.556 governing the reporting of maltreatment of minors;

B. be implemented with an adult in a manner that constitutes abuse or neglect as defined in Minnesota Statutes, section 626.557 governing the reporting of maltreatment of vulnerable adults;

C. restrict a person's normal access to a nutritious diet, drinking water, adequate ventilation, necessary medical care, ordinary hygiene facilities, normal sleeping conditions, or necessary clothing as mandated by Minnesota Statutes, section 245.825, or to any protection required by state licensing standards and federal regulations governing the facility; or

D. deny the person ordinary access to legal counsel and next of kin as mandated by Minnesota Statutes, section 245.825.

Subp. 2. **Procedures and actions prohibited.** The actions or procedures listed in items A to H are prohibited.

A. Using corporal punishment such as hitting, pinching, or slapping.

B. Speaking to a person in a manner that ridicules, demeans, threatens, or is abusive.

C. Requiring a person to assume and maintain a specified physical position or posture as an aversive procedure. Examples include requiring persons to stand with their hands over their heads for long periods of time or to remain in a fixed position.

D. Placing a person in seclusion.

E. Totally or partially restricting a person's senses, except as expressly permitted in part 9525.2740, subpart 1.

F. Presentation of intense sounds, lights, or other sensory stimuli as an aversive stimulus.

G. Use of a noxious smell, taste, substance, or spray, including water mist, as an aversive stimulus.

H. Denying or restricting a person's access to equipment and devices such as hearing aids and communication boards that facilitate the person's functioning. If temporary removal of the equipment or device is necessary to prevent injury to the person or others, the equipment or device shall be returned to the person as soon as possible.

Subp. 3. **Restrictions on use of faradic shock.** Emergency use of faradic shock as an aversive stimulus is prohibited. Use of faradic shock as an aversive stimulus is permitted only when all the conditions in items A to D are met:

A. the target behavior is extreme self injury which threatens irreparable bodily harm;

B. it can be documented that other methods of treatment have been tried and were unsuccessful in controlling the behavior;

C. a state or federal court orders the use of faradic shock; and

D. use of faradic shock ordered by a court is implemented in accordance with parts 9525.2750 and 9525.2760.

Statutory Authority: *MS s 245.825*

History: *11 SR 2408*

9525.2740 PROCEDURES PERMITTED AND CONTROLLED.

Subpart 1. **Controlled procedures.** The procedures listed in items A to F are permitted when the procedures are implemented in compliance with parts 9525.2700 to 9525.2810. Permitted but controlled procedures, referred to as controlled procedures, are:

A. time out procedures;

B. positive practice overcorrection;

C. restitutional overcorrection;

D. partially restricting a person's senses at a level of intrusiveness that does not exceed placing a hand in front of a person's eyes as a visual screen or playing music through earphones worn by the person at a level of sound which does not cause the person discomfort;

E. manual restraint; or

F. mechanical restraint.

Subp. 2. **Authorization for procedures not specified as exempted, restricted, prohibited, or controlled.** If an expanded interdisciplinary team prepares a plan proposing the use of an aversive or deprivation procedure that is not specifically exempted by part 9525.2720, or specifically prohibited or restricted by part 9525.2730, or specifically permitted and controlled by subpart 1, the case manager shall request authorization for the use of that procedure from the regional review committee. If a procedure is authorized by a regional review committee, use of the procedure is subject to the controls established in parts 9525.2700 to 9525.2810.

Statutory Authority: *MS s 245.825*

History: *11 SR 2408*

9525.2750 STANDARDS GOVERNING USE OF CONTROLLED PROCEDURES IN AN INDIVIDUAL HABILITATION PLAN.

Subpart 1. **Standards and conditions.** Except in an emergency governed by part 9525.2770, use of a controlled procedure shall occur only when the controlled procedure is proposed, approved, and implemented as part of an individual habilitation plan. Use of a controlled procedure within an individual habilitation plan must comply with items A to L.

A. The controlled procedure is proposed or implemented only as a part of the total methodology specified in the person's individual habilitation plan.

The individual habilitation plan has as its primary focus the development of adaptive behaviors. The controlled procedure authorized represents the lowest level of intrusiveness required to influence the target behavior and is not excessively intrusive in relation to the behavior being addressed.

B. The proposed use of a controlled procedure is supported by documentation describing how intervention procedures incorporating positive approaches and less intrusive procedures have been tried, how long they were tried in each instance, and possible reasons why they were unsuccessful in controlling the behavior of concern.

C. The case manager obtains informed consent for the implementation of the procedure as specified in part 9525.2780 before the procedure is implemented except when faradic shock is ordered by a court under part 9525.2730, subpart 3.

D. The proposed use of the procedure is approved by a facility review committee that meets the requirements in subpart 2.

E. The proposed use of the procedure is authorized by the expanded interdisciplinary team required by subpart 3.

F. The procedure is implemented and monitored by staff members trained to implement the procedure. Facilities where staff members are employed are responsible for providing ongoing training to ensure that the competence necessary to implement the procedures is present within the staff currently employed and must demonstrate to members of the interdisciplinary team that staff are competent to implement the procedures. Controlled procedures shall not be implemented as part of the individual habilitation plan until staff who are involved in providing supervision or training of the person have been trained to implement all programs contained in the individual habilitation plan.

G. When a controlled procedure involves the use of mechanical or manual restraint, the person's primary care physician must be consulted to determine whether implementing the procedure is medically contraindicated.

H. When a controlled procedure involves removing a person from an ongoing activity, the person is returned to the activity when the procedure is completed.

I. Time out procedures are implemented in the person's own room or other area commonly used as living space whenever possible rather than in a room used specifically for time out. Persons in time out must be continuously monitored by staff. If a room is used specifically for time out, the room must:

(1) provide a safe environment for the person;

(2) have an observation window or other device to permit continuous monitoring of the person;

(3) measure at least six feet by six feet and be large enough to allow the person to stand, to stretch his or her arms, and to lie down; and

(4) be well lighted, well ventilated, and clean.

J. Time out procedures must meet the following standards:

(1) Release from time out is contingent on the person's stopping or bringing under control the behavior that precipitated the time out and shall occur as soon as the behavior that precipitated the time out abates or stops. If the precipitating behavior has not abated or stopped, staff members must attempt to return the person to an ongoing activity at least every 30 minutes.

(2) If time out is implemented contingent on repeated instances of the target behavior for longer than 30 minutes, the person must be offered access to a bathroom and drinking water.

K. Use of mechanical restraint which is so intrusive that it restricts three or more of a person's limbs or restricts the person's movement from one location to another must meet the standards in subitems (1) and (2) in addition to the other standards in parts 9525.2700 to 9525.2810.

(1) A person placed in mechanical restraint must be given an opportunity for motion and exercise for not less than ten minutes during each one hour of restraint. Efforts to lessen or discontinue the restraint must be made at least every 15 minutes. The time each effort was made and the person's response to the effort must be noted in the person's permanent record.

(2) A staff member must remain with a person placed in mechanical restraint during the time the person is in mechanical restraint and must take the action specified in subitem (1).

L. Use of manual restraint which is less intrusive than that described in item K must meet the requirements in subitems (1) and (2) in addition to the other standards in parts 9525.2700 to 9525.2810.

(1) Staff must check on the person every 30 minutes and document that such checks were made; and

(2) A person must be given an opportunity for release from the mechanical restraint and for motion and exercise of the restricted body parts for at least ten minutes out of every 60 minutes that the restraints are used.

Subp. 2. **Facility review committee.** Each facility except for a licensed foster care facility shall have at least one committee that reviews all individual habilitation plans proposing the use of controlled procedures. The committee shall be appointed by the administrator with overall responsibility for the facility's policy and program. The committee shall determine if each plan as submitted meets the requirements of parts 9525.2700 to 9525.2810 and all other applicable requirements governing behavior management established by federal regulations or by order of a court before approving the plan. The committee membership must meet the criteria in items A and B.

A. The committee must include two individuals employed by the facility as staff members or consultants. One of the two individuals must be a qualified mental retardation professional.

B. At least one third of the committee members shall be individuals who have no ownership or controlling interest in the facility and who are not employed by or under contract with the facility in any other capacity besides serving on the committee. This component of the committee membership must include at least one parent or guardian of a person with mental retardation or a related condition.

Subp. 3. **Review and authorization by the interdisciplinary team.** When an individual habilitation plan proposes the use of a controlled procedure, the plan must be reviewed by and use of the procedure must be authorized by an interdisciplinary team expanded beyond the membership specified in part 9525.2710, subpart 18, to include a qualified mental retardation professional with at least one year of experience in the development and implementation of behavior management programs.

Subp. 4. **Report to regional review committee.** When a controlled procedure in items A to D is authorized or reauthorized under subpart 3, the case manager shall send the regional review committee a copy of the individual habilitation plan that proposes the procedure and that includes the information required in part 9525.2760.

A. manual restraint;

B. mechanical restraint;

C. use of a time out procedure for 15 minutes or more at one time or for a cumulative total of 30 minutes or more in one day; or

D. faradic shock.

The case manager shall send the individual habilitation plan within ten calendar days after the controlled procedure is authorized by the interdisciplinary team. When use of a controlled procedure has been reauthorized, the case manager must also submit data on the use and effectiveness of the procedure to the regional review committee.

Statutory Authority: *MS s 245.825*

History: *11 SR 2408*

9525.2760 REQUIREMENTS GOVERNING INDIVIDUAL HABILITATION PLANS THAT PROPOSE THE USE OF A CONTROLLED PROCEDURE.

Subpart 1. **Requirements.** An individual habilitation plan that includes the use of a controlled procedure must contain the information specified in subparts 2 to 6.

Subp. 2. **Assessment information.** When an interdisciplinary team is developing an individual habilitation plan that includes the use of a controlled procedure, the case manager must obtain assessment information that includes the elements specified in items A to F.

A. A physical and psychological description of the person.

B. A report completed by the person's primary care physician within 90 days prior to the initial development of the individual habilitation plan that includes the use of a controlled procedure. The report must indicate that the physician has reviewed whether there are existing medical conditions that (1) could result in the demonstration of behavior for which a controlled procedure might be proposed; or (2) should be considered in the development of a program for the person.

C. A baseline measurement of the behavior of concern that provides a clear description of the behavior and the degree to which it is being expressed. The description must be detailed enough to provide a basis for comparing the behavior before use of a procedure to control it with the behavior after use of a procedure to control it so that the effectiveness of the procedure can be evaluated.

D. A summary of what has been considered or attempted to change elements in the person's environment, including the physical and social environment, that could be influencing the person's behavior. This summary must include an analysis of the person's current residence and day program and must specifically address the question of whether a change in these services appears to be warranted.

E. An analysis of to what extent the behavior identified for reduction or elimination represents an attempt by the person to communicate with others or serves as a means to control the person's environment and recommendations for changes in the person's training program or environment that are designed to enhance communication.

F. A summary of previous interventions used to modify the target behavior and of the factors believed to have interfered with the effectiveness of those interventions.

The information in items A to F must be retained in the person's permanent record for at least five years after implementation of a controlled procedure.

Subp. 3. **Review of service plan.** The case manager shall ensure that any service needs identified by the assessment information in subpart 2 are included in the individual service plan required by part 9525.0085.

Subp. 4. **Review and content standards.** An individual habilitation plan that proposes the use of controlled procedures shall include the elements in items A to I.

A. Objectives designed to develop the adaptive behavior of the person for whom the plan is made. These objectives must include positive programs designed to increase aspects of the person's behavior that are incompatible with or that provide an alternative to the behavior identified for reduction or elimination.

B. The objective to be accomplished by implementing the procedure, including the change expected in the target behavior and the anticipated time frame for achieving the change.

C. A detailed description of the procedure, including where and under what circumstances the procedure will be used.

D. A detailed description of the ways in which implementation of the procedure will be monitored, by whom, and how frequently. This description must specify how staff implementing the procedure will be trained and supervised. Direct on-site supervision of the procedure's implementation must be provided by the professional staff responsible for developing the procedure.

E. A description of any discomforts, risks, or side effects that it is reasonable to expect.

F. A description of the method to be used and data to be collected in evaluating the effectiveness of the proposed procedures and in monitoring any expected side effects.

G. A description of the plan for maintaining and generalizing the positive changes in the person's behavior that may occur as a result of implementing the procedure.

H. The date when use of the controlled procedure will terminate unless, before that date, continued use of the procedure is authorized by the case manager and the member of the interdisciplinary team who is a qualified mental retardation professional with at least one year of experience in the development and implementation of behavior management programs. The projected termination date shall be no more than 90 days after the date on which use of the procedure was authorized. Reauthorization for use of the procedure can be given at 90-day intervals if evaluation data on the effectiveness of the procedure support continuation. Informed consent must be obtained every 90 days under part 9525.2780.

I. Any other information needed to comply with the requirements for an individual habilitation plan as specified in part 9525.0105.

Subp. 5. **Monitoring the individual habilitation plan.** Monitoring the proposed controlled procedure shall be completed as adopted in the individual habilitation plan and in accordance with part 9525.0115.

Subp. 6. **Documentation of informed consent.** Except in situations governed by part 9525.2770, by part 9525.2730, subpart 3, or by part 9525.2780, subpart 6, evidence that informed consent has been obtained from a person or individual authorized to give consent must be added to the person's individual habilitation plan before a controlled procedure is implemented.

Statutory Authority: *MS s 245.825*

History: *11 SR 2408*

9525.2770 EMERGENCY USE OF CONTROLLED PROCEDURES.

Subpart 1. **Standards governing emergency use.** Implementing a controlled procedure without first meeting the requirements of parts 9525.2750, 9525.2760, and 9525.2780 is permitted only when the criteria and requirements in subparts 2 to 5 are met.

Subp. 2. **Criteria for emergency use.** Emergency use must meet the conditions in items A to D.

A. Immediate intervention is needed to protect the person or others from physical injury or to prevent severe property damage which is an immediate threat to the physical safety of the person or others.

B. The individual habilitation plan of the person demonstrating the behavior does not include provisions for the use of the controlled procedure.

C. The procedure used is the least intrusive intervention possible to react effectively to the emergency situation.

D. The onset of the behavior resulting in the need for intervention has not been demonstrated by the person within the previous 90 days or the behavior

has been dealt with as an exemption under part 9525.2720 up to the point when emergency use became necessary.

Subp. 3. **Time limits on emergency use.** Use of a controlled procedure initiated on an emergency basis in accordance with subpart 2 shall not continue for more than 15 days. Within 15 days of the emergency use, the interdisciplinary team must evaluate whether the individual habilitation plan requires modification to better meet the person's needs.

Subp. 4. **Authorization of emergency use.** The emergency use of a controlled procedure must be authorized by the individual identified in the facility's policy on emergency use in subpart 4. Emergency use of faradic shock is prohibited by part 9525.2730, subpart 3, and shall not be authorized by a facility.

Subp. 5. **Written policy on emergency use.** The facility must have a written policy on emergency use of controlled procedures that specifies:

A. any controlled procedures the facility does not allow to be used on an emergency basis;

B. the staff member or staff members who must authorize emergency use;

C. that the staff members responsible for authorizing emergency procedures must have at least one year of training and experience in the use of behavioral management, must be trained in the implementation of all controlled procedures allowed by the facility policy, and must be available on a 24 hour basis to give authorization;

D. the internal procedures that must be followed for emergency use;

E. how the facility will monitor and control emergency use;

F. the training a staff member must have completed before being assigned by the facility to implement a controlled procedure under emergency conditions; and

G. that the standards in part 9525.2750, subpart 1, items F, H, I, J, K, and L must be met when controlled procedures are used on an emergency basis.

Subp. 6. **Reporting and review of emergency use.** Any emergency use of a controlled procedure must be reported and reviewed as specified in items A to D.

A. Within three calendar days after an emergency use of a controlled procedure, the facility staff member in charge at the time of the emergency use shall report in writing to the person's interdisciplinary team the following information about the emergency use:

(1) a detailed description of the incident leading to the use of the procedure as an emergency intervention;

(2) the controlled procedure that was used;

(3) the time implementation began and the time it was completed;

(4) the behavioral outcome that resulted;

(5) why the procedure used was judged to be necessary to prevent injury or severe property damage;

(6) an assessment of the likelihood that the behavior necessitating emergency use will recur; and

(7) the names of the persons who authorized the procedure and approved the report.

B. Within seven calendar days after the date of the emergency use reported in item A, the case manager shall confer with members of the interdisciplinary team to:

(1) discuss the incident reported in item A and the person's subsequent behavior;

(2) determine whether the behavior necessitating emergency use of

a controlled procedure should be identified in the individual habilitation plan for reduction or elimination; and

(3) schedule an expanded interdisciplinary team meeting within 15 calendar days after the emergency use if it is determined that the behavior should be identified in the individual habilitation plan for reduction or elimination.

C. A copy of the report in item A and a summary of the interdisciplinary team's decision under item B must be added to the person's permanent record.

D. If the emergency use involved manual restraint, mechanical restraint, or use of time out exceeding 15 minutes at one time or a cumulative total of 30 minutes or more in one day, the case manager shall send a copy of the report in item A to the regional review committee within five calendar days after the case manager receives it.

Statutory Authority: *MS s 245.825*

History: *11 SR 2408*

9525.2780 REQUIREMENTS FOR OBTAINING INFORMED CONSENT.

Subpart 1. **Definition.** For purposes of this part, "a substantial change" in the use of a controlled procedure for which informed consent is in effect means a change in the use of that procedure which:

A. intensifies the level of intrusiveness of the procedure; or

B. expands the behaviors with which the procedure is to be used beyond the behavior or behaviors specified when consent was originally given.

Subp. 2. **When informed consent is required.** Except in situations governed by subpart 6, by part 9525.2770, or by part 9525.2730, subpart 3, the case manager shall obtain or reobtain written informed consent before implementation of:

A. a controlled procedure for which consent has never been given;

B. a controlled procedure for which informed consent has expired. Informed consent must be obtained every 90 days in order to continue use of the controlled procedure; or

C. a substantial change in a controlled procedure for which consent is presently in effect.

If the case manager is unable to obtain written informed consent, the procedure shall not be implemented except as provided in subpart 6.

Subp. 3. **Authority to give consent.** Individuals authorized to give informed consent are specified in items A to E.

A. If the person has a legal guardian or conservator authorized by a court to give consent for the person, consent is required from the legal guardian or conservator.

B. If the person is a child, consent is required from at least one of the child's parents, unless the child has a legal guardian or conservator as specified in item A. If the parents are divorced or legally separated, the consent of the parent with legal custody is required, unless the separation or marriage dissolution decree otherwise delegates authority to give consent for the child.

C. If the commissioner is the legal guardian or conservator, consent is required from the county representative designated to act as guardian on the commissioner's behalf. Failure to consent or refuse consent within 30 days of the date on which the procedure requiring consent was authorized by the expanded interdisciplinary team shall be considered a refusal to consent. The county representative designated to act as guardian must not be the same individual who is serving as case manager.

D. If the person is an adult who is capable of understanding the information required in subpart 4 and of giving informed consent, informed consent is required from the person.

E. If the person is an adult who has no legal guardian or conservator and who is not capable of giving informed consent, the case manager shall petition a court of competent jurisdiction to appoint a legal representative with authority to give consent, and consent is required from the legal representative.

Subp. 4. **Information required as a condition of obtaining informed consent.** The case manager shall provide the information specified in items A to J to the individual authorized to give informed consent. Consent obtained without provision of the information required in items A to J is not considered to be informed consent. The case manager shall document that the information in items A to J was provided orally and in writing and that consent was given voluntarily. The information shall be provided in a nontechnical manner and in whatever form is necessary to communicate the information effectively, such as in the person's or the authorized individual's native language if the person or the authorized individual does not understand English or in sign language if that is the person's or the authorized individual's preferred mode of communication, and in a manner that does not suggest coercion.

A. A baseline measurement of the target behavior.

B. A detailed description of the proposed procedures and explanation of the procedures' function.

C. A description of how the procedures are expected to benefit the person, including the extent to which the target behavior is expected to change as a result of implementing the procedures.

D. A description of any discomforts, risks, or other side effects that it is reasonable to expect.

E. Alternative procedures that have been attempted, considered, and rejected as not being effective or feasible.

F. The expected effect on the person of not implementing the procedures.

G. An offer to answer any questions about the procedures, including the names, addresses, and phone numbers of people to contact if questions or concerns arise.

H. An explanation that the person or the individual authorized to give consent has the right to refuse consent.

I. An explanation that consent may be withdrawn at any time and the procedure will stop upon withdrawal of consent, except as provided in subpart 6.

J. An explanation that:

(1) consent is time limited and automatically expires 90 days after the date on which consent was given; and

(2) informed consent must again be obtained in order for use of a procedure to continue after the initial 90-day period ends.

Subp. 5. **Consent for a substantial change in procedures.** If the expanded interdisciplinary team authorizes a substantial change in a procedure for which informed consent is in effect, the change shall not be implemented unless the case manager first obtains written informed consent for the substantial change by meeting the requirement in subpart 4.

Subp. 6. **Conditions governing implementation when consent is refused or withdrawn.** If consent is refused or withdrawn by the individual or person authorized to give consent, and the person is not committed under Minnesota Statutes, chapter 253B, the procedures for which consent is refused or withdrawn shall not be implemented. If consent is refused or withdrawn by the individual or person authorized to give consent and the person is committed under Minnesota Statutes, chapter 253B, to a treatment facility as defined in Minnesota Statutes, section 253B.02, subdivision 19, the procedure shall not be implemented unless the requirements in items A and B are met.

A. The case manager submits to the head of the treatment facility as defined in Minnesota Statutes, section 253B.02, subdivision 8:

(1) the individual habilitation plan containing the information required under part 9525.2760; and

(2) documentation that implementing the procedure for which consent is refused or withdrawn has been approved by the expanded interdisciplinary team and the facility review committee.

B. The head of the treatment facility determines that the procedure shall be implemented.

Subp. 7. **Appeals.** A decision made pursuant to subpart 6 to implement a controlled procedure in an individual habilitation plan for which consent has been refused or withdrawn may be appealed pursuant to part 9525.0135 by following the procedure in Minnesota Statutes, section 256.045. The scope of the appeal is to determine whether or not the provisions of parts 9525.0015 to 9525.0165 and parts 9525.2700 to 9525.2810 have been met. Implementation of the controlled procedure authorized under subpart 6 must be suspended while the appeal is pending. If a court orders the use of faradic shock under part 9525.2730, subpart 3, the action of the court is not appealable under parts 9525.2700 to 9525.2810.

Statutory Authority: *MS s 245.825*

History: *11 SR 2408*

9525.2790 REGIONAL REVIEW COMMITTEES.

Subpart 1. **Appointment.** As mandated by Minnesota Statutes, section 245.825, the commissioner shall initially appoint at least two regional review committees to monitor parts 9525.2700 to 9525.2810. The commissioner shall establish additional committees if required by the number of procedures received for review and the level of effort required to ensure timely and thorough review.

Subp. 2. **Membership.** Each regional review committee shall include:

A. at least one member who is licensed as a psychologist by the state of Minnesota and whose areas of training, competence, and experience include mental retardation and behavior management; and

B. representation from each of the following categories:

(1) facilities governed by parts 9525.2700 to 9525.2810;

(2) parents or guardians of persons with mental retardation and related conditions;

(3) other concerned citizens, none of whom is employed by or has a controlling interest in a facility governed by parts 9525.2700 to 9525.2810; and

(4) the department.

When a matter being reviewed by the committee requires the expertise and professional judgment of a medical doctor, the commissioner shall make the services of a licensed physician available to the committee.

Subp. 3. **Duties and responsibilities.** Regional committees shall:

A. meet at least quarterly to review the reports on use of time out, mechanical restraint, and manual restraint required by parts 9525.2750 and 9525.2770 and act on those reports according to procedures established by the commissioner;

B. meet or confer as necessary if a case manager requests the authorization required in part 9525.2740, subpart 2; and

C. act as directed by the commissioner to:

(1) monitor and facilitate compliance with parts 9525.2700 to 9525.2810 and make recommendations to the commissioner;

(2) provide technical assistance in achieving compliance; and

(3) review, monitor, and report to the commissioner on statewide use of aversive and deprivation procedures in relationship to the use of less intrusive alternatives and to the use of psychotropic medication.

Statutory Authority: *MS s 245.825*

History: *11 SR 2408*

9525.2800 REPORTING NONCOMPLIANCE.

If an individual has reason to believe that a facility governed by parts 9525.2700 to 9525.2810 is not in compliance with parts 9525.2700 to 9525.2810, the concern or complaint can be reported as described in items A and B. Reporting a concern or complaint under this part does not meet the requirements governing mandated reporting of maltreatment of minors under Minnesota Statutes, section 626.556, and rules adopted under that statute or mandated reporting of maltreatment of vulnerable adults under Minnesota Statutes, section 626.557 and parts 9555.8000 to 9555.8500.

A. Concerns or complaints about any facility governed by parts 9525.2700 to 9525.2810 can be reported to: The Commissioner, Department of Human Services, Centennial Office Building, 658 Cedar Street, Saint Paul, Minnesota 55155.

B. Concerns or complaints about intermediate care facilities for persons with mental retardation and related conditions in addition to being reported to the commissioner under item A can also be directed to: The Minnesota Department of Health, Office of Health Facility Complaints, 717 Delaware Street S.E., Minneapolis, Minnesota 55440.

Statutory Authority: *MS s 245.825*

History: *11 SR 2408*

9525.2810 PENALTY FOR NONCOMPLIANCE.

If a licensed facility governed by parts 9525.2700 to 9525.2810 does not comply with parts 9525.2700 to 9525.2810, the commissioner may take enforcement action pursuant to Minnesota Statutes, chapter 245A and section 252.28, subdivision 2.

Statutory Authority: *MS s 245.825*

History: *11 SR 2408; 13 SR 1448*