

**CHAPTER 9525**  
**DEPARTMENT OF HUMAN SERVICES**  
**PROGRAMS FOR MENTALLY RETARDED PERSONS**

- CASE MANAGEMENT SERVICES TO PERSONS WITH MENTAL RETARDATION**
- 9525.0015 DEFINITIONS.  
 9525.0025 APPLICABILITY AND PURPOSE.  
 9525.0035 COUNTY BOARD RESPONSIBILITIES.  
 9525.0045 DIAGNOSIS.  
 9525.0055 STANDARDS FOR ASSESSMENT OF INDIVIDUAL SERVICE NEEDS.  
 9525.0065 SCREENING TEAMS.  
 9525.0075 STANDARDS FOR DEVELOPMENT OF INDIVIDUAL SERVICE PLAN.  
 9525.0085 PROVISION OF SERVICES.  
 9525.0095 CONTRACTS AND PROVIDER AGREEMENTS.  
 9525.0105 STANDARDS FOR DEVELOPMENT OF INDIVIDUAL HABILITATION PLANS.  
 9525.0115 STANDARDS FOR MONITORING SERVICES.  
 9525.0125 QUALITY ASSURANCE.  
 9525.0135 APPEALS OF CASE MANAGEMENT AND RELATED SERVICES.  
 9525.0145 SERVICE DEVELOPMENT AND NEED DETERMINATION.  
 9525.0155 STANDARDS FOR QUALIFICATIONS AND TRAINING OF CASE MANAGERS.  
 9525.0165 ENFORCEMENT.
- SERVICES TO PERSONS WITH MENTAL RETARDATION OR RELATED CONDITIONS**
- 9525.0180 PURPOSE.  
 9525.0185 DEFINITIONS.  
 9525.0190 DETERMINATION OF SUBSTANTIAL FUNCTIONAL LIMITATION.
- LICENSURE OF RESIDENTIAL PROGRAMS FOR PERSONS WITH MENTAL RETARDATION OR RELATED CONDITIONS**
- 9525.0215 PURPOSE AND APPLICABILITY.  
 9525.0225 DEFINITIONS.  
 9525.0235 LICENSURE.  
 9525.0243 NEGATIVE LICENSING ACTIONS.  
 9525.0245 PROGRAM REQUIREMENTS FOR LICENSURE.  
 9525.0255 PHYSICAL ENVIRONMENT.  
 9525.0265 PROVIDER IMPLEMENTATION PLAN.  
 9525.0275 FAMILY INVOLVEMENT.  
 9525.0285 RESOURCES.  
 9525.0295 ADMISSION AND DISCHARGE.  
 9525.0305 RESIDENT RECORDS.  
 9525.0315 ADMINISTRATION.  
 9525.0325 WRITTEN POLICIES.  
 9525.0335 ADMINISTRATIVE RECORDS.  
 9525.0345 STAFFING REQUIREMENTS.  
 9525.0355 STAFF ORIENTATION AND TRAINING.
- SEMI-INDEPENDENT LIVING SERVICE (SILS)**
- 9525.0500 DEFINITIONS.  
 9525.0510 STATUTORY AUTHORITY.  
 9525.0520 PURPOSE.  
 9525.0530 SCOPE.  
 9525.0540 PROCEDURES FOR LICENSING.  
 9525.0550 TECHNICAL PROVISIONS.  
 9525.0560 PROGRAM AND SERVICE STANDARDS.  
 9525.0570 ADMINISTRATIVE STANDARDS; PROVIDER RESPONSIBILITIES.  
 9525.0580 ADMINISTRATIVE STANDARDS FOR DISCHARGE.  
 9525.0590 ADMINISTRATIVE STANDARD FOR CLIENT RECORDS.  
 9525.0600 CLIENT RIGHTS.  
 9525.0610 WRITTEN DESCRIPTION OF ORGANIZATION.  
 9525.0620 PERSONNEL POLICIES.  
 9525.0630 EMERGENCY PROCEDURES.  
 9525.0640 FINANCIAL RECORDS.  
 9525.0650 ESTABLISHMENT OF SERVICE RATES.  
 9525.0660 LIVING ARRANGEMENTS.
- DAYTIME ACTIVITY CENTERS FOR MENTALLY RETARDED PERSONS**
- 9525.0750 STATUTORY AUTHORITY.  
 9525.0760 DEFINITIONS.  
 9525.0770 BOARD.  
 9525.0780 FINANCES.  
 9525.0790 STAFF.  
 9525.0800 ADMISSIONS.  
 9525.0810 CASE RECORDS.  
 9525.0820 FEES.  
 9525.0830 EXCEPTIONS.
- GRANTS FOR PROVIDING SEMI-INDEPENDENT LIVING SERVICES TO PERSONS WITH MENTAL RETARDATION**
- 9525.0900 DEFINITIONS.  
 9525.0910 PURPOSE AND APPLICABILITY.  
 9525.0920 PARTICIPANT ELIGIBILITY CRITERIA.  
 9525.0930 APPROVED PROVIDER.  
 9525.0935 RESIDENTIAL LOCATION STANDARDS.  
 9525.0940 COUNTY BOARD AND PROVIDER CONTRACT.  
 9525.0950 REIMBURSEMENT STANDARDS.  
 9525.0965 ALLOCATIONS TO COUNTIES.  
 9525.0970 STATE REIMBURSEMENT AND PAYMENT.  
 9525.0980 FISCAL AND PROGRAM REPORTING.  
 9525.0995 COUNTY VARIANCES.  
 9525.0996 DEMONSTRATION PROJECTS.  
 9525.1000 REPAYMENT OF FUNDS.  
 9525.1010 REVIEW OF COMMISSIONER'S ACTION.  
 9525.1020 PENALTY FOR NONCOMPLIANCE WITH APPLICABLE LAWS AND RULES.
- TRAINING AND HABILITATION REIMBURSEMENT PROCEDURES FOR ICF/MR'S**
- 9525.1200 PURPOSE AND APPLICABILITY.  
 9525.1210 DEFINITIONS.  
 9525.1220 CLIENT ELIGIBILITY.  
 9525.1230 APPROVAL OF DAY SERVICE PROVIDER.  
 9525.1240 DAY TRAINING AND HABILITATION AGREEMENT.  
 9525.1250 REIMBURSABLE SERVICES.  
 9525.1290 DAY SERVICE PROVIDER BILLING.  
 9525.1300 REQUIRED RECORDS AND REPORTS.  
 9525.1320 PENALTIES FOR NONCOMPLIANCE.  
 9525.1330 APPEALS.
- LICENSURE OF TRAINING AND HABILITATION SERVICES FOR ADULTS WITH MENTAL RETARDATION OR RELATED CONDITIONS**
- 9525.1500 DEFINITIONS.  
 9525.1510 PURPOSE AND APPLICABILITY.  
 9525.1520 LICENSING PROCESS.  
 9525.1530 NEGATIVE LICENSING ACTIONS.  
 9525.1540 ADMINISTRATION.  
 9525.1550 ADMINISTRATIVE POLICIES AND RECORDS.  
 9525.1560 ADMISSION, EXCLUSION, SUSPENSION, AND DISCHARGE. SERVICES REQUIRED FOR LICENSURE.  
 9525.1580 CONTROL AND LOCATION OF SERVICES.  
 9525.1590 DOCUMENTING OUTCOMES OF SERVICES REQUIRED FOR LICENSURE.  
 9525.1600 MINIMUM STAFFING REQUIREMENTS.  
 9525.1610 STAFF QUALIFICATIONS.  
 9525.1620 STAFF TRAINING.  
 9525.1630 INDIVIDUAL HABILITATION PLAN REQUIREMENTS.  
 9525.1640 BEHAVIOR MANAGEMENT.

# MINNESOTA RULES 1993

571

## PROGRAMS FOR MENTALLY RETARDED PERSONS 9525.0015

9525.1650	SERVICE SITES OWNED OR LEASED BY PROVIDER.	9525.2710	DEFINITIONS.
9525.1660	HEALTH AND SAFETY RELATED PROCEDURES.	9525.2720	EXEMPTED ACTIONS AND PROCEDURES.
9525.1670	FOOD SERVICE.	9525.2730	PROCEDURES AND ACTIONS RESTRICTED OR PROHIBITED.
9525.1680	EQUIPMENT.	9525.2740	PROCEDURES PERMITTED AND CONTROLLED.
9525.1690	TRANSPORTATION.	9525.2750	STANDARDS FOR CONTROLLED PROCEDURES.
	<b>FUNDING AND ADMINISTRATION OF HOME AND COMMUNITY-BASED SERVICES</b>	9525.2760	REQUIREMENTS FOR INDIVIDUAL PROGRAM PLANS PROPOSING USE OF A CONTROLLED PROCEDURE.
9525.1800	DEFINITIONS.	9525.2770	EMERGENCY USE OF CONTROLLED PROCEDURES.
9525.1810	APPLICABILITY AND EFFECT.	9525.2780	REQUIREMENTS FOR OBTAINING INFORMED CONSENT.
9525.1820	ELIGIBILITY.	9525.2790	REGIONAL REVIEW COMMITTEES.
9525.1830	PROVISION OF HOME AND COMMUNITY-BASED SERVICES.	9525.2800	REPORTING NONCOMPLIANCE.
9525.1840	PARENTAL CONTRIBUTION FEE.	9525.2810	PENALTY FOR NONCOMPLIANCE.
9525.1850	PROVIDER REIMBURSEMENT.		<b>PUBLIC GUARDIANSHIP OF PERSONS WITH MENTAL RETARDATION</b>
9525.1860	REIMBURSABLE SERVICES.	9525.3010	SCOPE.
9525.1870	PROVIDER CONTRACTS AND SUBCONTRACTS.	9525.3015	DEFINITIONS.
9525.1880	COUNTY PROPOSAL AND APPROVAL OF COUNTY PROPOSAL.	9525.3020	PERSONS SUBJECT TO PUBLIC GUARDIANSHIP.
9525.1890	ALLOCATION OF HOME AND COMMUNITY-BASED SERVICE MONEY.	9525.3025	PROCESS OF APPOINTING A PUBLIC GUARDIAN.
9525.1900	AGREEMENT BETWEEN STATE AND COUNTY.	9525.3030	LIMITS OF GUARDIANSHIP POWERS AND DUTIES.
9525.1910	COUNTY BOARD FUNDING OF HOME AND COMMUNITY-BASED SERVICES.	9525.3035	GENERAL STANDARDS FOR PUBLIC GUARDIANSHIP.
9525.1920	REQUIRED RECORDS AND REPORTS.	9525.3040	POWERS AND DUTIES OF PUBLIC GUARDIAN.
9525.1930	PENALTIES AND APPEALS.	9525.3045	CONSENT TO USE OF AVERSIVE AND DEPRIVATION PROCEDURES.
	<b>LICENSES; RESIDENTIAL-BASED HABILITATION SERVICES</b>	9525.3050	CONSENT TO USE OF PSYCHOTROPIC MEDICATIONS.
9525.2000	PURPOSE AND APPLICABILITY.	9525.3055	NONDELEGATED CONSENT.
9525.2010	DEFINITIONS.	9525.3060	NONDELEGATED CONSENT REQUIRING A COURT ORDER.
9525.2020	LICENSURE.	9525.3065	MONITORING AND EVALUATION.
9525.2025	NEGATIVE LICENSING ACTIONS.	9525.3070	COUNTY OF GUARDIANSHIP RESPONSIBILITY.
9525.2030	SERVICE REQUIREMENTS.	9525.3075	SUPERVISING AGENCY.
9525.2040	SERVICE AUTHORIZATION.	9525.3080	COUNTY CONTRACTING FOR PUBLIC GUARDIANSHIP SERVICES.
9525.2050	SERVICE INITIATION.	9525.3085	MODIFICATION OR TERMINATION OF PUBLIC GUARDIANSHIP.
9525.2060	RIGHTS OF PERSONS RECEIVING SERVICES.	9525.3090	DEATH OF A WARD OR CONSERVATEE.
9525.2070	RESOURCES.	9525.3095	GUARDIANSHIP TRAINING.
9525.2080	SERVICE RECOMMENDATIONS.	9525.3100	REVIEW OF PUBLIC GUARDIANSHIP MATTERS.
9525.2090	ASSESSMENT.		
9525.2100	INDIVIDUAL HABILITATION PLAN DEVELOPMENT AND IMPLEMENTATION.		
9525.2110	EVALUATION.		
9525.2120	TERMINATING SERVICES.		
9525.2130	STAFFING.		
9525.2140	STAFF TRAINING AND ORIENTATION.		
	<b>USE OF AVERSIVE AND DEPRIVATION PROCEDURES IN LICENSED FACILITIES SERVING PERSONS WITH MENTAL RETARDATION AND RELATED CONDITIONS</b>		
9525.2700	PURPOSE AND APPLICABILITY.		

### 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 moni-

toring 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.

# MINNESOTA RULES 1993

573

## PROGRAMS FOR MENTALLY RETARDED PERSONS 9525.0015

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 per-

# MINNESOTA RULES 1993

575

## PROGRAMS FOR MENTALLY RETARDED PERSONS 9525.0035

son 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:

# MINNESOTA RULES 1993

579

## PROGRAMS FOR MENTALLY RETARDED PERSONS 9525.0065

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 waived 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 waived 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 prepetition 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, 25 Constitution 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 para-

graph 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 in 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 indi-

# MINNESOTA RULES 1993

585

## PROGRAMS FOR MENTALLY RETARDED PERSONS 9525.0135

vidual 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, ex-

# MINNESOTA RULES 1993

587

## PROGRAMS FOR MENTALLY RETARDED PERSONS 9525.0145

panded, 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 chair.

**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; 17 SR 1279*

### 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 1a.

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 1a.

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, sec-

# MINNESOTA RULES 1993

589

## PROGRAMS FOR MENTALLY RETARDED PERSONS 9525.0185

tion 252.27, subdivision 1a. 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; L 1992 c 464 art 1 s 55*

### 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 1a, 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; L 1992 c 464 art 1 s 55*

### 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*

## LICENSURE OF RESIDENTIAL PROGRAMS FOR PERSONS WITH MENTAL RETARDATION OR RELATED CONDITIONS

**9525.0210** [Repealed, 13 SR 2446]

### **9525.0215 PURPOSE AND APPLICABILITY.**

Subpart 1. **Purpose and applicability.** The purpose of parts 9525.0215 to 9525.0355 is to establish minimum standards governing the operation of residential programs for persons with mental retardation or related conditions.

Subp. 2. **Exclusions.** Parts 9525.0215 to 9525.0355 do not apply to any of the following residential programs for persons with mental retardation or related conditions:

A. residential programs serving four or fewer persons unless the residential program is certified as an intermediate care facility under Code of Federal Regulations, title 42, part 483;

B. home and community-based services licensed under parts 9525.2000 to 9525.2130 to provide residential-based habilitation services to four or fewer persons;

C. semi-independent living services licensed under parts 9525.0500 to 9525.0660; or

D. residential programs that are excluded from licensure under Minnesota Statutes, chapter 245A.

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

**History:** *13 SR 2446*

9525.0220 [Repealed, 13 SR 2446]

**9525.0225 DEFINITIONS.**

Subpart 1. **Scope.** The terms used in parts 9525.0215 to 9525.0355 have the meanings given to them in this part.

Subp. 2. **Adult.** "Adult" means a person 18 years of age or older.

Subp. 3. **Advocate.** "Advocate" has the meaning given it in part 9525.0015, subpart 3.

Subp. 4. **Applicant.** "Applicant" has the meaning given it in Minnesota Statutes, section 245A.02, subdivision 3.

Subp. 5. **Baseline measurement.** "Baseline measurement" means the frequency, intensity, duration, or other quantification of a behavior that has been observed and recorded before initiating or changing an intervention or procedure to modify the behavior.

Subp. 6. **Case manager.** "Case manager" means the individual designated by the county board to provide case management services as defined in parts 9525.0015 to 9525.0165.

Subp. 7. **Child.** "Child" means a person under 18 years of age.

Subp. 8. **Commissioner.** "Commissioner" means the commissioner of the Minnesota Department of Human Services or the commissioner's designated representative.

Subp. 9. **County of financial responsibility.** "County of financial responsibility" has the meaning given it in Minnesota Statutes, section 256G.02, subdivision 4.

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

Subp. 11. **Direct service staff.** "Direct service staff" means employees of a residential program who train or directly supervise persons receiving services in a residential program and who participate in the development or implementation of a person's provider implementation plan. Professional support staff, as defined in subpart 26, are direct service staff when they are working directly with persons and are involved in daily activities with persons.

Subp. 12. **Family.** "Family" means a person's biological or adoptive parents, stepparents, grandparents, siblings, children, grandchildren, or spouse.

Subp. 13. **Host county.** "Host county" has the meaning given in part 9525.0015, subpart 12.

Subp. 14. **Incident.** "Incident" means any injury or accident; a seizure requiring a physician's attention; an error in drug administration; a person's unauthorized absence from the residence; circumstances that involve a law enforcement agency; or a person's death.

Subp. 15. **Individual habilitation plan or IHP.** "Individual habilitation plan" or "IHP" means the written plan required by and developed under parts 9525.0015 to 9525.0165.

Subp. 16. **Individual service plan or ISP.** "Individual service plan" or "ISP" means the written plan required by and developed under parts 9525.0015 to 9525.0165.

Subp. 17. **Interdisciplinary team.** "Interdisciplinary team" has the meaning given in part 9525.0015, subpart 15.

Subp. 18. **Intermediate care facility for persons with mental retardation or related conditions or ICF/MR.** "Intermediate care facility for persons with mental retardation or related conditions" or "ICF/MR" means a residential program licensed to provide services to persons with mental retardation or related conditions under Minnesota Statutes, section 252.28 and chapter 245A and a physical facility licensed as a supervised living facility under Minnesota Statutes, chapter 144, which together are certified by the Minnesota Department of Health as meeting the standards in Code of Federal Regulations, title 42, part 483, for ICFs/MR.

Subp. 19. **Legal representative.** "Legal representative" means the parent or parents of a person 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 regardless of the person's age.

Subp. 20. **License.** "License" has the meaning given it in Minnesota Statutes, section 245A.02, subdivision 8.

Subp. 21. **License holder.** "License holder" has the meaning given it in Minnesota Statutes, section 245A.02, subdivision 9.

# MINNESOTA RULES 1993

593

## PROGRAMS FOR MENTALLY RETARDED PERSONS 9525.0235

Subp. 22. **Living unit.** "Living unit" means a physically self-contained area, including living room, bathroom, and bedroom or bedrooms, that houses 16 or fewer residents. The living unit must meet the requirements in part 9525.0255, subpart 1.

Subp. 23. **Objective.** "Objective" means a short-term expectation and its accompanying measurable behavioral criteria specified in the individual habilitation plan and provider implementation plan. Objectives are designed to result in achievement of the annual goals in a person's individual service plan.

Subp. 24. **Outcome.** "Outcome" means the measure of change from the baseline measurement or the degree of attainment of specified goals and objectives that is achieved as a result of provision of service.

Subp. 25. **Person.** "Person" means a person with mental retardation as defined in part 9525.0015, subpart 20, or a related condition as defined in parts 9525.0180 to 9525.0190 who is receiving services in a residential program licensed under parts 9525.0215 to 9525.0355.

Subp. 26. **Professional support staff.** "Professional support staff" means 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 in providing services to persons.

Subp. 27. **Provider implementation plan or PIP.** "Provider implementation plan" or "PIP" means a detailed internal plan developed by the license holder and used within the residential program to direct the daily activities of staff in carrying out the objectives established within a person's individual habilitation plan. The provider implementation plan is frequently referred to as an individual program plan.

Subp. 28. **Residential program.** "Residential program" means a program that provides 24-hour-a-day care, supervision, food, lodging, rehabilitation, training, education, habilitation, or treatment for four or more persons with mental retardation or related conditions outside their own homes. Residential program includes both the residential facility and the program of services provided persons.

Subp. 29. **Variance.** "Variance" means written permission from the commissioner that allows an applicant or license holder to depart from specified provisions in parts 9525.0215 to 9525.0355.

Subp. 30. **Volunteer.** "Volunteer" means an individual who, under the direction of the license holder, provides services without pay to persons or to the residential program.

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

**History:** *13 SR 2446*

**9525.0230** [Repealed, 13 SR 2446]

### **9525.0235 LICENSURE.**

Subpart 1. **License required.** An individual, corporation, partnership, voluntary association, or other organization must not operate a residential program unless licensed by the commissioner under parts 9525.0215 to 9525.0355.

Subp. 2. **Supervised living facility license.** The commissioner shall not issue a license to any applicant that does not have a valid supervised living facility license issued by the commissioner of health under Minnesota Statutes, section 144.56, and parts 4665.0100 to 4665.9900.

Subp. 3. **Approved need determination.** The commissioner shall not issue a license to any applicant that does not have an approved need determination under part 9525.0145. This subpart does not apply to regional treatment centers.

Subp. 4. **Background study.** Before a license is issued, a background study must be completed of the applicant and all employees, contractors, and unsupervised volunteers as mandated by Minnesota Statutes, section 245A.04, subdivision 3.



**Subp. 5. Information on organization.** If the applicant is an authorized representative of a partnership, corporation, voluntary association, or other organization legally responsible for the operation of the residential program, the applicant must have available in the residential program's administrative records specified in part 9525.0335 the names and addresses of the owners and board members, the articles of incorporation, and an organizational chart.

**Subp. 6. Disqualification standards.** In order to become licensed or to remain licensed under parts 9525.0215 to 9525.0355, an applicant or license holder must not be an individual, employer or contract with an individual, or use as a volunteer an individual who:

A. [Repealed, L 91 c 38 s 2]

B. abuses prescription drugs or uses alcohol or controlled substances as named in Minnesota Statutes, chapter 152, or alcohol to the extent that the use or abuse impairs the individual's ability to provide services to persons.

**Subp. 7. Reevaluation of disqualification.** An applicant or license holder who is disqualified from licensure, or an employee, volunteer, or contractor of an applicant or license holder who is not permitted to work based on the disqualification standards in subpart 6 may request that the commissioner reevaluate the disqualification decision and set aside the disqualification. The request for reevaluation must be in writing and sent to the commissioner by certified mail.

A. Within 30 days after the commissioner has received all information necessary to reevaluate a disqualification, the commissioner shall inform the applicant or license holder and the individual involved, in writing, whether the disqualification has been set aside or affirmed, and the reasons for this decision.

B. The commissioner's disposition of a request for reevaluation of a disqualification under this part is the final administrative agency action.

**Subp. 8. Evaluation for cause.** The commissioner may require, before licensure or at any time during the licensed term, a physical, mental health, chemical dependency, or criminal history evaluation of any individual who has direct contact with persons, if the commissioner has reasonable cause to believe any of the qualifications or requirements have not been met or that the individual cannot care for persons being served. Evaluations, if required, must be conducted by a professional qualified by license, certification, education, or training to perform the specific evaluation. Evaluation refusal shall result in employment disqualification.

**Subp. 9. Separate licenses.** Applicants and license holders must have a separate license for each location where a residential program is operated.

**Subp. 10. Documentation of regulatory compliance.** The applicant or license holder must provide documentation that:

A. the residential program is in compliance with current state building, zoning, fire, and health codes and regulations and with other applicable local codes and ordinances; or

B. variances from compliance with the codes and ordinances in item A have been granted by the state or local unit of government with jurisdiction to enforce the code or ordinance.

Any deficiencies cited by a fire marshal, building official, or health officer as a threat to health and safety must be corrected and documented as corrected by the inspecting official before a license will be issued unless the inspecting official has granted and documented a variance.

**Subp. 11. Change in license terms.** The license holder must apply to the commissioner and a new license must be issued before the license holder:

A. moves the residential program to another location;

B. changes or transfers ownership or responsibility for the operation of the residential program;

C. changes the licensed capacity of the program;

D. changes the range of ages of residents served; or

E. changes the services identified in the residential program's current need determination.

# MINNESOTA RULES 1993

595

## PROGRAMS FOR MENTALLY RETARDED PERSONS 9525.0245

Subp. 12. **Commissioner's rights of access.** The commissioner must be given access to the residential program, including grounds, residence, documents, residents, and staff in accordance with Minnesota Statutes, section 245A.04, subdivision 5.

Subp. 13. **Variances.** An applicant or license holder may request a variance to parts 9525.0215 to 9525.0355. A request for a variance must be in writing and sent to the commissioner. A copy must be provided to the board of county commissioners of the host county. The written request must specify:

A. the provision from which a variance is requested;

B. the reasons why the applicant or license holder cannot comply with the specified provision;

C. the period of time, not to exceed the greater of one year or the license term, for which the variance has been requested; and

D. the equivalent measures the applicant or license holder will take to ensure the health, safety, and rights of persons and to comply with the intent of parts 9525.0215 to 9525.0355 if the variance is granted.

Subp. 14. **Evaluation of a variance request.** A variance shall be granted only if the commissioner determines that the following conditions exist:

A. the applicant or license holder has made a written request for variance that meets the requirements in subpart 13;

B. granting the variance does not threaten the health, safety, or rights of persons receiving services;

C. granting the variance does not violate Minnesota Statutes; and

D. the applicant or license holder is in compliance with all other provisions of parts 9525.0215 to 9525.0355.

Subp. 15. **Notice by commissioner.** Within 30 days after receiving a request for a variance and the documentation supporting it, the commissioner shall inform the applicant or license holder in writing whether the request has been granted or denied and the reasons for this decision. The commissioner's decision to grant or deny a variance request is final and not subject to appeal under Minnesota Statutes, chapter 14.

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

**History:** *13 SR 2446; 15 SR 2043; L 91 c 38 s 2*

**9525.0240** [Repealed, 13 SR 2446]

### **9525.0243 NEGATIVE LICENSING ACTIONS.**

Under Minnesota Statutes, sections 245A.01 to 245A.16, failure to comply with parts 9525.0215 to 9525.0355 or the terms of licensure may be cause for a negative licensing action. Negative licensing actions shall be taken according to Minnesota Statutes, sections 245A.03 to 245A.09.

Within ten working days after the license holder receives notice that the license is made probationary, suspended, or revoked, the license holder shall send a copy of the commissioner's action to each person or their legal representative and each person's case manager.

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

**History:** *13 SR 2446*

### **9525.0245 PROGRAM REQUIREMENTS FOR LICENSURE.**

Subpart 1. **Individual service needs.** The license holder must ensure that services are provided or obtained for each person in accordance with the person's individual needs as specified in the ISP and IHP.

Subp. 2. **Service outcomes.** Methods, materials, and settings used to provide residential program services and to implement the provider implementation plan must be designed to:

A. increase each person's independence in performing tasks and activities by teaching skills that reduce dependence on caregivers;

B. provide training in the environment where the skill being taught is typically used, including community environments used by nondisabled individuals;

C. increase each person's opportunities to interact with nondisabled individuals who are not paid caregivers in settings used by nondisabled individuals;

D. increase each person's opportunities to use and participate in a variety of generic community resources and activities including but not limited to public transportation when available; recreational, cultural, and educational resources; stores; restaurants; and religious services when desired;

E. increase each person's opportunities to develop decision-making skills and to make informed choices in all aspects of daily living, including but not limited to choosing roommates and friends, purchasing personal possessions including clothing, and participating in program planning; and

F. use materials, activities, and interactions similar to those used by individuals of the same chronological age who are not disabled.

Subp. 3. **Least restrictive environment.** Each person's participation, movement, communication, and personal choices may be restricted only as necessary to protect the person and others, and as specified in the person's ISP and IHP. Supervision and assistance must be provided only when necessary for the person to complete a task, to participate in an activity, or to protect the person or others.

Subp. 4. **Level of participation.** The license holder must document measures, as required by each person's IHP, to increase the level of participation by the person in environments, activities, routines, and skills in which the person is unable to function independently. Measures include staff assistance or supervision, training methodologies, and adaptations to equipment or environments.

Subp. 5. **Staff conduct.** The license holder shall ensure that staff treat persons with respect, protect the personal privacy needs of persons, and do not use language that emphasizes a person's disability.

Subp. 6. **Rights of persons.** The license holder must ensure that the rights of persons are protected in accordance with Code of Federal Regulations, title 42, section 483.420, and Minnesota Statutes, section 144.651.

Subp. 7. **Ancillary services.** The license holder must document that resources outside the residential program are used in offering ancillary services to persons. Ancillary services include temporary or periodic nonemergency services such as physical, dental, hearing, or orthopedic examinations.

Subp. 8. **Leaving the residence.** As specified in each person's ISP or IHP, each person must leave the residence to participate in daily education, employment, or community activities. The license holder shall ensure that the residential program is prepared to care for persons who are at the residence during the day because of illness, work schedules, or other reasons.

Subp. 9. **Routine.** The daily routine, including mealtimes, leisure, holidays, and school and work hours, must be similar to that followed in the community by individuals of similar chronological age.

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

**History:** *13 SR 2446*

**9525.0250** [Repealed, 13 SR 2446]

**9525.0255 PHYSICAL ENVIRONMENT.**

Subpart 1. **Living unit.** A living unit must meet the requirements in items A to F.

A. Each living unit must be physically and functionally differentiated from areas for vocational services. Training in self-care and independent living skills may be carried out in a person's living unit.

B. Walls separating living units and separating bedrooms from other living areas must extend from floor to ceiling.

C. The number of persons residing in a living unit must not exceed 16.

D. The number of persons sleeping in a bedroom must not exceed four in a residential program initially licensed before October 10, 1989. The number of persons sleeping in a bedroom must not exceed two in residential programs initially licensed after October 10, 1989.

E. Furnishings must be similar in appearance to those in typical homes and must be clean and maintained in good repair.

F. Persons must be provided individual storage space for personal possessions that is similar in size and appearance to that of an individual of the same age and sex who is not disabled.

G. Residential programs initially licensed after October 10, 1989, must have a kitchen and dining area in each living unit.

Subp. 2. **Physical adaptations.** When a person has sensory, mobility, physical, or behavioral needs, the license holder shall ensure the residence and furnishings are physically adapted as needed to provide the services specified in the person's ISP or IHP.

Subp. 3. **Telephone.** The residential program must have a telephone available for personal use by persons in residence.

Subp. 4. **Locked doors.** The residential program must not use locked doors to restrict a person's movement or as a substitute for staff interaction with persons. Exterior doors may be locked to ensure the safety of persons.

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

**History:** *13 SR 2446*

**9525.0260** [Repealed, 13 SR 2446]

**9525.0265 PROVIDER IMPLEMENTATION PLAN.**

Subpart 1. **Plan development.** The license holder must develop a provider implementation plan for each person. A person's IHP or portions of the IHP that meet the requirements of this part may be substituted for all or portions of the provider implementation plan.

A. The plan must be developed by a team that includes the living unit supervisor, direct service staff designated by the license holder, and any other individuals designated by the person or the person's legal representative, the case manager, and the living unit supervisor.

B. The plan must be based on the residential service needs identified in the person's ISP and must conform to the residential service objectives in the IHP.

C. The plan must be initially developed within 30 days after admission to the residential program and must be revised annually or when requested by the case manager. The plan may be developed at an IHP meeting.

D. The plan must be in writing and signed by the person or the person's legal representative.

E. The license holder must provide the person or the person's legal representative and the case manager with a copy of the plan within five working days after the plan is developed or revised.

Subp. 2. **Evaluation.** Evaluations of skills the person needs to function more independently in the residential program and in the community must be conducted in the residential program and in community settings used by nondisabled individuals.

A. Within 30 days after a person's admission, the license holder shall conduct any additional evaluations needed to supplement the assessments completed before admission, including evaluation of:

(1) personal and environmental factors that may place a person at risk of abuse or neglect in accordance with part 9555.8300; and

(2) any additional areas requested by the person's case manager.

B. The license holder shall provide written summaries of all evaluations and specific service recommendations to the person's case manager and to the person and the person's legal representative.

C. The license holder shall advise the case manager when additional evaluations of the person are needed and shall conduct evaluations requested by the case manager.

Subp. 3. **Contents of provider implementation plan.** The provider implementation plan must include:

A. written, measurable, behavioral objectives, including measurable criteria for mastery, that are designed to result in achievement of the residential service outcomes specified in the person's current ISP and IHP and assigned to the license holder;

- B. a baseline measurement of the person's skill level in each behavioral objective;
- C. the specific methods that will be used for each objective including information about techniques, physical and social environments, equipment, and materials required to implement the objective;
- D. the projected starting date and completion date for achievement of each objective;
- E. a description of the types of data and the methods and schedule of data collection to measure outcomes;
- F. the names of the staff or contractors responsible for implementing each objective;
- G. a description of how implementation of the plan will be coordinated with services provided by other agencies; and
- H. a description of how implementation of the plan involves family and friends.

Subp. 4. **Implementation.** The plan must be implemented in accordance with part 9525.0245.

Subp. 5. **Monthly review.** The living unit supervisor shall monitor the person's performance in achieving the plan objectives monthly and shall:

- A. modify the methods used to implement the plan if indicated by objective measurements of performance;
- B. summarize in writing any modifications and directions to staff for implementing modifications;
- C. sign and date the monthly review; and
- D. comply with the requirements of part 9525.0105, subpart 7, if the monthly review results in a modification of the objectives or methodologies identified within the IHP.

Subp. 6. **Quarterly evaluations.** The license holder must provide the person or the person's legal representative and the person's case manager with a quarterly report containing a summary of data, an analysis of the data, and an evaluation of services actually provided, sufficient to determine the extent to which services have resulted in achievement of the goals and objectives of the person's ISP and IHP and whether services are being provided in accordance with the ISP and IHP. The report must also state whether any changes are needed in the ISP or IHP.

Subp. 7. **Annual review.** At least 30 days before the annual review of the person's ISP and IHP, the license holder shall provide the person's case manager with:

- A. a written evaluation of service outcomes, including the extent to which residential services have resulted in achievement of the person's IHP objectives;
- B. copies of evaluations conducted under subpart 2; and
- C. recommendations for changes in the person's ISP and IHP.

Subp. 8. **Coordination with case manager.** The license holder shall ensure coordination with each person's case manager in accordance with items A to C.

- A. Staff who have worked with the person shall participate in the interdisciplinary team meeting that develops an IHP for each person.
- B. Within 30 days after an interdisciplinary team meeting, the license holder shall revise the PIP in accordance with subpart 1 and implement changes according to the IHP.
- C. The license holder shall notify the case manager of:
  - (1) significant changes in the person's condition or circumstances that affect the person's ability to participate in accordance with the ISP or IHP;
  - (2) additional resources needed to implement the PIP; and
  - (3) changes in the residential program that affect the license holder's ability to implement the PIP.

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

**History:** *13 SR 2446*

**9525.0270** [Repealed, 13 SR 2446]

**9525.0275 FAMILY INVOLVEMENT.**

Subpart 1. **Family participation.** Unless restrictions are contained in a person's ISP or IHP, the license holder shall invite each person's family to participate in providing services to the person. Examples of family participation are transportation, leisure activities, religious observance, personal or professional services needed by the person, clothing, holidays and vacations, and adaptive devices or equipment.

Subp. 2. **Participation in planning.** If the person is a child or if a person who is an adult or that person's legal representative gives permission, the license holder shall invite members of the person's family to participate in the development and annual review of the PIP. A copy of the invitation must be placed in the person's file.

Subp. 3. **Visiting.** The license holder shall allow family members to visit at any time unless the person, if an adult, objects or the person's ISP contains restrictions.

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

**History:** *13 SR 2446*

**9525.0280** [Repealed, 13 SR 2446]

**9525.0285 RESOURCES.**

Subpart 1. **General.** The license holder shall ensure that each person retains and uses personal funds, unless restrictions are required in a person's ISP or IHP.

Subp. 2. **Separation of funds.** The license holder must ensure separation of each person's funds from funds of the license holder or residential program or staff.

Subp. 3. **Safekeeping.** If a person's ISP or IHP requires the residential program to assist the person with safekeeping of money or valuables, the license holder shall:

A. provide, if requested by the person or the person's case manager or legal representative, a statement itemizing the person's financial transactions;

B. limit the value of cash and valuables retained by the residential program to an amount designated by the person or the person's legal representative; and

C. return money and valuables in the license holder's keeping to the person or the person's legal representative, subject to restrictions in the IHP or ISP, within three working days after requested.

Subp. 4. **Prohibition.** License holders, staff, and contractors shall not:

A. borrow money from a person;

B. purchase personal items from a person;

C. sell merchandise or personal services to a person; or

D. require a person to purchase items for which the license holder is eligible for reimbursement.

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

**History:** *13 SR 2446*

**9525.0290** [Repealed, 13 SR 2446]

**9525.0295 ADMISSION AND DISCHARGE.**

Subpart 1. **County authorization.** The license holder shall admit only persons for whom residence in a residential program has been authorized by a county board under part 9525.0085, subpart 2, or persons committed to the residential program under Minnesota Statutes, chapter 253B.

Subp. 2. **Written discharge policies and procedures.** The license holder must have written policies and procedures governing the discharge of persons from the residential program that meet the criteria in subparts 3 to 6.

Subp. 3. **Self-initiated discharge.** Discharge may be initiated at any time by a person or the person's legal representative or by a person's case manager.

Subp. 4. **Discharge initiated by the license holder.** Discharge may be initiated by the license holder if:

A. the license holder determines the residential program is unable to meet the person's needs; and

B. at least 60 days before the planned date of discharge the license holder:

(1) notifies the person who is to be discharged, the person's case manager, and the person's legal representative of:

(a) the services needed by the person that the residential program is unable to provide and the reasons the residential program is unable to provide them;

(b) the proposed date of discharge; and

(c) recommendations for more appropriate services; and

(2) makes a written request to the case manager to convene a screening meeting in accordance with Minnesota Statutes, section 256B.092, to determine appropriate services.

**Subp. 5. Discharge planning and follow-up.** The license holder shall ensure that residential program staff are available to participate in discharge planning and follow-up according to items A and B.

A. At least one staff member familiar with the person shall attend the discharge planning meeting convened by the person's case manager.

B. Staff familiar with the person shall be available to:

(1) provide a summary of the person's current medical status and current progress in achieving goals and objectives;

(2) review the ISP developed for discharge and recommend additional services or service modifications to the person's case manager and the discharge screening team; and

(3) assist the person's case manager to develop an interim habilitation plan for the person's first 30 days after discharge.

C. The license holder shall ensure the person's case manager is provided copies of the following records:

(1) the person's medical records; and

(2) programs, plans, and consultant reports relating to the reduction of inappropriate behaviors.

**Subp. 6. Discharge summary.** Within 30 days after discharge, a discharge summary must be entered in the person's record that includes a review of the person's progress from the date of the person's last annual review to the discharge date, the program to which the person is discharged, and the date of discharge.

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

**History:** *13 SR 2446*

**9525.0300** [Repealed, 13 SR 2446]

**9525.0305 RESIDENT RECORDS.**

**Subpart 1. General requirements.** The license holder shall maintain records for each person according to subparts 2 to 5. Entries must be in ink, legible, and signed and dated by the individual making the entry. The license holder shall retain records three years after a person leaves the residential program.

**Subp. 2. Admission records.** The license holder shall develop a record for each person upon admission that contains the following information:

A. name, birth date, and social security number;

B. date of admission and previous residential history;

C. the name, address, and telephone number of the person's legal representative or family member designated to be contacted in case of emergency or discharge; case manager; physician and dentist; and advocate, if any;

D. whether the person is subject to guardianship or conservatorship and if under conservatorship, a copy of the order specifying the rights of the conservator and the rights retained by the person;

E. the language spoken or other means of communication understood by the person, interpreters, if any, and the primary language or other means of communication used by the person's family;

# MINNESOTA RULES 1993

601

## PROGRAMS FOR MENTALLY RETARDED PERSONS 9525.0315

F. religious affiliation;

G. copies of the person's ISP, IHP, if developed, and supplemental reports included in the IHP; and

H. a statement authorizing emergency medical treatment signed by the person or the person's legal representative.

**Subp. 3. Postadmission record keeping.** Each person's record must include up-to-date records of the following:

A. A plan file that includes:

(1) The person's individual service plan and individual habilitation plan. When a person's case manager does not provide either a current ISP or a current IHP, the license holder shall make a written request to the case manager to provide copies of the ISP and IHP. The license holder shall make a written request to the case manager to convene the interdisciplinary team when a current ISP or IHP has not been developed.

(2) The provider implementation plan developed and maintained in accordance with part 9525.0265.

(3) The evaluations and reviews required in part 9525.0265, subparts 2 and 5.

(4) The quarterly evaluations required in part 9525.0265, subpart 6.

(5) The annual review required in part 9525.0265, subpart 7.

B. Health records including, for persons with seizures, a plan developed in conjunction with the person's physician that specifies the information relating to the person's seizures that must be recorded.

C. Copies of invitations to the person's family or legal representatives to participate in provider implementation plan meetings.

D. Incident reports involving the person, on a form prescribed by the commissioner.

E. A quarterly summary of family involvement.

F. The discharge summary required under part 9525.0295, subpart 6, when the person is discharged from the residential program.

G. A record of other service providers that includes the name of the provider, the contact person, phone number, services being provided, services needing coordination with the residential program, and the residential program staff responsible for coordination.

**Subp. 4. Access to records.** The license holder must ensure that the following people have access to the person's record:

A. the person and the person's legal representative;

B. the commissioner;

C. the person's case manager; and

D. direct service staff on the person's living unit and professional service staff unless the information is not relevant to carrying out the ISP and IHP.

**Subp. 5. Confidentiality.** Except as provided in subpart 4, the license holder shall ensure the confidentiality of information in the person's record and shall not release information in the record without a written consent signed by the person or the person's legal representative that includes:

A. the date of authorization and length of time for which it is valid;

B. the purpose of releasing information;

C. the information to be released; and

D. the name of the individual or organization receiving the information.

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

**History:** *13 SR 2446*

**9525.0310** [Repealed, 13 SR 2446]

**9525.0315 ADMINISTRATION.**

**Subpart 1. Governing body.** The license holder shall ensure that the residential program has a governing body that:



A. exercises general direction over the affairs of the residential program and determines the qualifications of the chief executive officer; or

B. meets the requirements of a governing body under Code of Federal Regulations, title 42, section 483.410(a).

The governing body may be the license holder or an individual or group appointed by the license holder.

**Subp. 2. Chief executive officer.** The license holder shall ensure that the residential program has a chief executive officer who is responsible for managing the daily operation of the residential program, including staff management.

**Subp. 3. Compliance with applicable laws and rules.** The residential program must be in compliance with all applicable federal, state, and local laws, regulations, ordinances, and codes at all times, including:

A. Minnesota Statutes, sections 144.50 to 144.56, and chapter 4665 governing sanitation and safety of the physical plant; food and nutrition requirements; health services; and medication handling procedures;

B. fire and safety standards of the Minnesota Department of Public Safety;

C. Minnesota Statutes, section 144.651, the Residents' Bill of Rights;

D. Minnesota Statutes, chapter 13, the Government Data Practices Act;

E. Minnesota Statutes, sections 626.556 and 626.557, and parts 9560.0210 to 9560.0234 and 9555.8000 to 9555.8500 governing the reporting of maltreatment of children and vulnerable adults; and

F. parts 9525.2700 to 9525.2810 governing the use of aversive and deprivation procedures.

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

**History:** *13 SR 2446*

**9525.0320** [Repealed, 13 SR 2446]

**9525.0325 WRITTEN POLICIES.**

**Subpart 1. General policy requirement.** The license holder shall:

A. develop and implement written policies covering the areas in subpart 3; and

B. annually review and update as needed the written policies and inform all persons or their legal representative and case manager when a policy has been revised.

**Subp. 2. Availability of written policies.** The license holder shall make written policies available according to items A to C.

A. The license holder shall inform all persons or their legal representatives upon admission, in writing, that the residential program has written policies governing the areas listed in subpart 3 and that these policies will be provided upon request.

B. The license holder shall provide a copy of policies under subpart 3, item F.

C. The license holder shall provide copies of the written policies upon request to members of the governing body, the host county and counties of financial responsibility, employees, and others.

**Subp. 3. Required policies.** Policies must cover the following areas:

A. the philosophy and goals of the residential program;

B. a description of the services offered by the residential program consistent with the need determination made under part 9525.0145;

C. policies governing admission and discharge in accordance with part 9525.0295;

D. the residential program's fees, billing arrangements, and plans for payment;

E. personnel policies;

F. policies and procedures ensuring the exercise and protection of persons' rights in accordance with Minnesota Statutes, section 144.651, and Code of Federal Regulations, title 42, section 483.420(d);

G. policies for investigating incidents and taking corrective action;

H. policies for handling grievances of persons and their families that include providing the following information to persons and their families:

(1) name and phone number of an individual within the residential program to contact to register a complaint or dispute a decision;

(2) time schedules for registration of complaints and disputes; and

(3) time limits for decisions regarding complaints and disputes;

I. policies describing the methods used by the residential program to elicit the participation of persons and their families regarding the policies and procedures that affect them;

J. policies governing access to persons' records and the collection and dissemination of data on persons;

K. policies concerning the selection, training, assignment, and supervision of volunteers; and

L. policies for use of psychotropic medications that comply with the Psychotropic Medication Use Checklist which is incorporated by reference. This document is available for inspection at the Minnesota State Law Library, 25 Constitution Avenue, Saint Paul, Minnesota 55155. It is not subject to frequent change.

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

**History:** *13 SR 2446*

**9525.0330** [Repealed, 13 SR 2446]

**9525.0335 ADMINISTRATIVE RECORDS.**

The license holder shall maintain the following administrative records and shall make the records available for inspection by the commissioner:

A. a listing of persons in the residential program that includes name, age, and sex;

B. a copy of the current supervised living facility license issued by the commissioner of health under chapter 4665;

C. a copy of the current certificate of need determination required under part 9525.0145;

D. a copy, if applicable, of the residential program's certification as an ICF/MR;

E. copies of all contracts, including contracts required under parts 9525.0015 to 9525.0165, subcontracts with consultants, and purchase-of-service contracts with other providers of persons' services;

F. each person's records maintained in accordance with part 9525.0305;

G. records of incidents, including the license holder's investigation and corrective action;

H. records of fire drills and a copy of the emergency evacuation plan for each living unit;

I. an organization chart;

J. volunteer records, including qualifications and services being performed; and

K. a written personnel file for each employee and contract consultant that includes:

(1) the individual's application or other written summary of the individual's qualifications;

(2) written job description or consultant contract that specifies responsibilities, qualifications necessary to perform the job, degree of authority to execute job responsibilities, and standards of job performance;

(3) the employee's health record; and

(4) for each direct services staff member, a training file that includes:

(a) documentation of orientation completed in accordance with part 9525.0355;

(b) documentation of training and education activities completed during employment; and

(c) an annual training plan.

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

**History:** *13 SR 2446*

9525.0340 [Repealed, 13 SR 2446]

**9525.0345 STAFFING REQUIREMENTS.**

Subpart 1. **Direct service staff.** Direct service staff must:

A. be at least 16 years of age; and

B. upon completion of orientation:

(1) be able to communicate in the communication mode of the persons with whom the staff member is working; examples of communication modes are sign language and communication boards; and

(2) demonstrate knowledge of and competence to implement the PIP for each person with whom the staff member is working on a regular basis.

Subp. 2. **Living unit supervisor.** The living unit supervisor must have the qualifications in items A to C.

A. The living unit supervisor must either:

(1) meet the qualifications for a Qualified Mental Retardation Professional (QMRP) specified in Code of Federal Regulations, title 42, section 483.430(a); or

(2) have a bachelor's degree in education, human services, or related fields or three years' work experience with persons with mental retardation or related conditions.

B. The living unit supervisor must have documented training or experience participating on interdisciplinary teams and performing residential program planning and writing individual goals and objectives.

C. The living unit supervisor must have completed orientation under part 9525.0355, subpart 2.

Subp. 3. **Licensure and certification requirements.** Staff and contract consultants with qualifications that require licensure, certification, or registration by the state of Minnesota must have the current licensure, certification, or registration in their field in their personnel file.

Subp. 4. **Minimum staffing requirements.** The license holder must ensure that there are present the number of direct service staff necessary to:

A. implement each person's IHP and PIP; and

B. meet the staff ratio requirements in Code of Federal Regulations, title 42, section 483.430(d).

Subp. 5. **Special staffing needs.** The license holder must employ or contract with specially trained staff to meet special physical, communication, or behavior needs of each person in accordance with the person's ISP and IHP.

Subp. 6. **Living unit staffing.** The license holder shall ensure each living unit is staffed in accordance with items A to C.

A. At least one direct service staff member must be present and accessible whenever persons are present.

B. Each living unit must have a living unit supervisor to coordinate or supervise the coordination of services to persons.

C. A staff member trained in first aid and cardiopulmonary resuscitation; handling seizure disorders; and monitoring the side-effects of medication, including tardive dyskinesia, must be accessible when required in any person's ISP or health record.

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

**History:** *13 SR 2446*

9525.0350 [Repealed, 13 SR 2446]

**9525.0355 STAFF ORIENTATION AND TRAINING.**

Subpart 1. **Written plan.** The license holder must have a written plan for staff orientation and training that meets the requirements in subparts 2 to 7.

Subp. 2. **Orientation subjects.** Orientation must include the following subjects:

A. a review and explanation of the plan file under part 9525.0305, subpart 3, item A, of each person with whom the individual will be regularly providing services;

B. the rights of persons in Minnesota Statutes, section 144.651, and Code of Federal Regulations, title 42, section 483.420, and the methods used by the license holder to ensure rights are not violated;

C. the license holder's written policies under part 9525.0325;

D. the specific job the individual will perform and training in the methods to be used in achieving the goals and objectives of the persons with whom the individual will be regularly providing services. This training must specify how the methods used are directed toward achieving the service outcomes in part 9525.0245, subpart 2;

E. the requirements of Minnesota Statutes, sections 626.556 and 626.557, and parts 9560.0210 to 9560.0234 and 9555.8000 to 9555.8500 governing reporting of maltreatment of children and vulnerable adults; and Minnesota Statutes, chapter 13, the Minnesota Data Practices Act;

F. the requirements of parts 9525.2700 to 9525.2810 governing use of aversive and deprivation procedures, for all individuals who are directly involved in the use of such procedures;

G. an overview of the different types of developmental disabilities and their causes, a review of common terms and acronyms used in the field of developmental disabilities, and the principle of normalization and how the application of this principle has affected the services provided to persons with developmental disabilities; and

H. approved procedures used to administer medications and to monitor side effects, for all individuals who administer or monitor medication.

**Subp. 3. Orientation hours.** The license holder shall document that each new direct service staff member completes orientation in accordance with items A to C.

A. Staff who are employed over 20 hours a week must complete 30 hours of orientation within the individual's first 30 calendar days of employment.

B. Staff who are employed less than 20 hours a week must complete 30 hours of orientation within the individual's first 60 calendar days of employment.

C. The license holder may waive orientation in the subjects in subpart 2, items E to H, for staff who document completion within the previous two years of training in those subjects.

**Subp. 4. Volunteers.** The license holder must ensure that volunteers who provide direct services to persons receive the training and orientation necessary to accomplish the tasks assigned by the license holder.

**Subp. 5. Initial supervision.** During the first ten working days of employment or until orientation is completed, whichever occurs first, direct service staff who are working directly with persons must be supervised in person by staff who have completed orientation.

**Subp. 6. Training.** The license holder shall ensure and shall document that direct service staff annually complete the number of hours of training that equals at least two percent of the hours for which the individual is annually paid, up to 40 hours of training. Countable training hours include orientation, in-service training, or training from educational coursework, conferences, seminars, or video tapes.

**Subp. 7. Training subjects.** Annual training must include three or more of the following subjects:

A. additional training in the orientation subjects in subpart 2, items E to H;

B. conducting assessments of:

(1) skills and behaviors needed by persons in the environments where the skills and behaviors are typically used or displayed by nondisabled individuals;

(2) environmental, health, and communicative factors that influence a person's behavior; and

(3) the need for equipment or environments to assist persons in daily living, learning, and working;

C. developing and writing measurable objectives that focus on training persons in functional skill areas and are directed at achieving the service outcomes in part 9525.0245, subpart 2;

D. analyzing tasks and developing methods of instruction and intervention strategies to achieve objectives and behavioral changes;

E. using positive instructional procedures and adaptations of equipment or environments to enable persons to live or work more independently and to actively interact in community settings with nondisabled individuals who are not paid staff. These procedures include positive techniques to achieve behavior change, use of advanced technology, alternative communication systems, and techniques for lifting, turning, positioning, or transferring persons;

F. collecting information and data that measure changes in persons' behavior and the effectiveness of instructional procedures, including the establishment of baseline measurement and charting and graphing behavioral changes;

G. analyzing information to evaluate the effectiveness of instructional methods in achieving objectives of a person's PIP;

H. developing methods and strategies to recommend service changes or to modify services for persons to more effectively achieve the goals and objectives of the IHP and service outcomes in part 9525.0245, subpart 2, including Program Analysis of Service Systems (PASS);

I. assuring the health and safety of persons, including training in first aid and cardiopulmonary resuscitation; programs designed to promote a person's health and wellness; and monitoring the side-effects of medications, including tardive dyskinesia; and

J. other areas identified by the living unit supervisor or case manager to improve the implementation of the PIP.

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

**History:** *13 SR 2446*

**9525.0360** [Repealed, 13 SR 2446]

**9525.0370** [Repealed, 13 SR 2446]

**9525.0380** [Repealed, 13 SR 2452]

**9525.0390** [Repealed, 13 SR 2446]

**9525.0400** [Repealed, 13 SR 2446]

**9525.0410** [Repealed, 13 SR 2446]

**9525.0420** [Repealed, 13 SR 2446]

**9525.0430** [Repealed, 13 SR 2446]

### 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 de-

tailed 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 non-residential programs and agencies, for granting, suspending, and revoking licenses and pro-

visional 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 needed 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; 17 SR 1279*

#### **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 the record upon request, with accommodations for interpretation that meets the client's 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*

**History:** *17 SR 1279*

### **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 the client's 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*

**History:** *17 SR 1279*

### **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:

# MINNESOTA RULES 1993

613

## PROGRAMS FOR MENTALLY RETARDED PERSONS 9525.0750

- 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*

# MINNESOTA RULES 1993

615

## PROGRAMS FOR MENTALLY RETARDED PERSONS 9525.0800

### 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 the director, 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*

**History:** *17 SR 1279*

### 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.

# MINNESOTA RULES 1993

## 9525.0800 PROGRAMS FOR MENTALLY RETARDED PERSONS

616

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.

# MINNESOTA RULES 1993

617

## PROGRAMS FOR MENTALLY RETARDED PERSONS 9525.0900

Subp. 2. **Administrative operating costs.** “Administrative operating costs” has the meaning given it in part 9553.0040, subpart 3.

Subp. 2a. **Base allocation.** “Base allocation” means the funds allocated to counties for the provision of semi-independent living services according to the formula in Minnesota Statutes, section 252.275, subdivision 4.

Subp. 3. **Case management.** “Case management” means administration and services provided under Minnesota Statutes, section 256B.092.

Subp. 4. **Case manager.** “Case manager” has the meaning given it in part 9525.0015, subpart 5.

Subp. 5. [Repealed, 18 SR 506]

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 256G.02, subdivision 4.

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. [Repealed, 18 SR 506]

Subp. 11a. **Individual program plan.** “Individual program plan” means a coordinated, integrated, and comprehensive written plan to provide services to the participant that is developed:

A. consistent with all aspects of the participant’s individual service plan;

B. in compliance with other applicable state and federal laws and regulations governing services to persons with mental retardation or related conditions; and

C. by the provider in consultation with the interdisciplinary team.

Subp. 12. **Individual service plan.** “Individual service plan” means the written plan developed by the service planning team, containing the components required under Minnesota Statutes, section 256B.092, subdivision 1b.

Subp. 13. **Interdisciplinary team.** “Interdisciplinary team” has the meaning given it in part 9525.0015, subpart 15.

Subp. 14. **Intermediate care facility for persons with mental retardation or related conditions or ICF/MR.** “Intermediate care facility for persons with mental retardation or related conditions” 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 persons with mental retardation or related conditions. Unless otherwise stated, the term ICF/MR includes state-operated and community-based facilities.

Subp. 14a. **Legal representative.** “Legal representative” means the parent or parents of a person who is under 18 years of age, a guardian or conservator, or a guardian ad litem who is authorized by the court to make decisions about services for a person.

Subp. 14b. **Living allowance.** “Living allowance” means the provision of funds in the form of cash or a voucher according to part 9525.0950, where other public funds are unavailable, to enable a person eligible to receive semi-independent living services under part 9525.0920 to secure housing.

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. 15a. **Participant.** “Participant” means a person who is receiving semi-independent living services under parts 9525.0900 to 9525.1020.

Subp. 16. **Person with mental retardation.** “Person with mental retardation” has the meaning given it in part 9525.0015, subpart 20.



Subp. 16a. **Person with a related condition.** "Person with a related condition" has the meaning given it in Minnesota Statutes, section 252.27, subdivision 1a.

Subp. 17. **Provider.** "Provider" means an individual, organization, or agency, including a county board, that provides semi-independent living services and that meets the requirements of parts 9525.0500 to 9525.0660, Semi-independent Living Services Licensure, and 9525.0930.

Subp. 18. [Repealed, 18 SR 506]

Subp. 18a. **Residential location.** "Residential location" means the physical site, including the structure, where a participant resides.

Subp. 19. **Semi-independent living services or SILS.** "Semi-independent living services" or "SILS" means services that include training and assistance in:

A. managing money;

B. preparing meals;

C. shopping;

D. maintaining personal appearance and hygiene; and

E. other activities needed to maintain and improve an adult with mental retardation or related condition's capability to live in the community.

Subp. 20. [Repealed, 18 SR 506]

Subp. 20a. **Targeted allocation.** "Targeted allocation" means funds appropriated by the legislature for special purposes, to be allocated to counties by the commissioner based on proposals submitted by the counties.

Subp. 21. **Unit of service.** "Unit of service" means one hour of semi-independent living services delivered according to the participant's individual program plan as limited in part 9525.0950, subpart 1.

**Statutory Authority:** *MS s 252.275*

**History:** *10 SR 994; 12 SR 1148; 18 SR 506*

#### 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 provide support for persons with mental retardation or related conditions to live as independently as possible in the community. An objective of the program is to assist county boards in reducing unnecessary use of intermediate care facilities for persons with mental retardation or related conditions and home- and community-based services.

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 govern semi-independent living services funded in any part according to Minnesota Statutes, section 252.275, for persons meeting the eligibility criteria specified in part 9525.0920.

**Statutory Authority:** *MS s 252.275*

**History:** *10 SR 994; 12 SR 1148; 18 SR 506*

#### 9525.0920 PARTICIPANT 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 has been determined by the case manager to:

A. need less than a 24-hour plan of care; and

B. be unable to function independently without semi-independent living services.

For purposes of parts 9525.0900 to 9525.1020, a person receiving adult foster care services under parts 9545.0010 to 9545.0260 is not deemed to have a 24-hour plan of care. Adult foster care services and SILS may be delivered concurrently if:

# MINNESOTA RULES 1993

619

## PROGRAMS FOR MENTALLY RETARDED PERSONS 9525.0940

(1) the delivery of both services would not result in a duplication of services to the participant; and

(2) the goal of the SILS is to increase the participant's level of independence.

**Statutory Authority:** *MS s 252.275*

**History:** *10 SR 994; 12 SR 1148; 18 SR 506*

### 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 a current license to provide SILS according to Minnesota Statutes, sections 252.28 and 245A.01 to 245A.18, and parts 9525.0500 to 9525.0660 (Semi-independent Living Services Licensure), except for demonstration projects approved under part 9525.0996.

Subp. 2. [Repealed, 18 SR 506]

Subp. 3. [Repealed, 18 SR 506]

Subp. 4. [Repealed, 18 SR 506]

Subp. 5. [Repealed, 18 SR 506]

Subp. 6. [Repealed, 18 SR 506]

Subp. 7. [Repealed, 18 SR 506]

**Statutory Authority:** *MS s 252.275*

**History:** *10 SR 994; L 1987 c 333 s 22; 12 SR 1148; 13 SR 1448; 18 SR 506*

### 9525.0935 RESIDENTIAL LOCATION STANDARDS.

Subpart 1. **Choice, population, and location.** Services provided must meet the requirements in items A to C:

A. the participant or the participant's legal representative has made an informed choice of a residential location which meets the requirements of items B and C;

B. a residential location must not be adjacent to or within a group residential program licensed under parts 9525.0215 to 9525.0355 (Residential Programs and Services for Persons with Mental Retardation or Related Conditions), except as permitted under part 9525.0950, subpart 5, and a residential location where more than four participants reside must not be adjacent to another SILS residential location where more than four participants reside; and

C. no more than eight participants may be served per residential location, unless fewer than 25 percent of its residents are receiving SILS.

Subp. 2. **Effective date.** For participants who are determined eligible for SILS after August 16, 1993, counties will receive reimbursement only for the provision of SILS to participants who live in a residential location which meets the requirements of subpart 1.

For participants who were determined eligible for SILS before the effective date of parts 9525.0900 to 9525.1020, counties will receive reimbursement only for the provision of SILS to participants that live in a residential location which meets the requirements of subpart 1, by August 16, 1994.

Subp. 3. **Variance from residential location standards.** A county board may submit a written request to the commissioner for a variance from subpart 1, item C, according to the requirements of part 9525.0995. The commissioner's determination must be based on the following:

A. that there is no other housing available in the same community which complies with the standards under subpart 1 and which meets the needs of the participant; and

B. that granting the variance would not result in a high concentration of persons with mental retardation or related conditions at any residential location or within any town, municipality, or county of the state.

**Statutory Authority:** *MS s 252.275*

**History:** *18 SR 506*

### 9525.0940 COUNTY BOARD AND PROVIDER CONTRACT.

Subpart 1. **Written contract requirements.** In order for the host county to receive reimbursement for the cost of SILS provided under parts 9525.0900 to 9525.1020, an approved

provider, other than the host county itself, must have a written contract that meets the requirements in parts 9550.0010 to 9550.0092 (Administration of Community and Social Services).

The written contract must also contain:

- A. specification of activities under part 9525.0950, subpart 1, which are to be included in the unit of service for purposes of the contract;
- B. specification that the provider must report the number of units of activity agreed upon under item A, when submitting invoices to the county for payment of SILS provided; and
- C. the provider's budget for providing the services specified in the contract, including administrative operating costs. Allowable administrative operating costs must be limited to costs properly attributable to semi-independent living services.

Items A and B must be included in all contracts entered into or renewed after December 31, 1993.

**Subp. 1a. Exception.** A contract under subpart 1 is not required for demonstration projects authorized under part 9525.0996. When a contract is not entered into, an agreement between the participant, provider, and county board is required in lieu of a contract. This agreement must contain the following:

- A. a description of the services to be provided;
- B. assurances of health and safety for the participants;
- C. costs for providing services under the demonstration project;
- D. the time period of the agreement;
- E. conditions for termination of the agreement; and
- F. requirements for notice to the participant according to the agreement under part 9525.0996, subpart 3.

Subp. 2. [Repealed, 18 SR 506]

Subp. 3. [Repealed, 18 SR 506]

**Statutory Authority:** *MS s 252.275*

**History:** *10 SR 994; 18 SR 506*

### 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 participant, either face-to-face or over the phone, which facilitates the participant's attainment of individual service plan goals and objectives.
- B. Collateral activities involving direct verbal or written contact with professionals or others regarding the participant which facilitates the participant's attainment of individual service plan goals and objectives.
- C. Individual program planning activities, including attending the participant's interdisciplinary team meetings, assessing the participant's functioning levels, developing and reviewing the participant's quarterly and annual individual program plans, and charting and reporting the participant's progress toward individual service plan goals.

D. Staff member's transportation time to and from locations where SILS are provided. Costs of transportation time between a staff member's residence and the location of the first site visit of the service day may be charged only when the distance is less than the distance between the first site visit and the provider's central office.

**Subp. 2. Reimbursable costs.** County boards may be reimbursed for costs of providing semi-independent living services and living allowances under parts 9525.0900 to 9525.1020 directed at maintaining and improving a participant's functioning level. The cost of services for any person exceeding the state share of the average medical assistance costs for services provided by intermediate care facilities for persons with mental retardation or related conditions for the same fiscal year are not reimbursable to the county board under parts 9525.0900 to 9525.1020. The cost of semi-independent living services provided by a

# MINNESOTA RULES 1993

621

## PROGRAMS FOR MENTALLY RETARDED PERSONS 9525.0950

participant's family members or guardian are not reimbursable under parts 9525.0900 to 9525.1020.

**Subp. 2a. Semi-independent living services.** Services for which costs are reimbursable include training and assistance in the areas listed in items A to L:

- A. nutrition, meal planning, and preparation;
- B. shopping;
- C. first aid;
- 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. obtaining and maintaining housing;
- I. use of community emergency resources;
- J. rights and responsibilities of community living;
- K. social, recreational, and transportation skills; and
- L. appropriate social behaviors.

**Subp. 2b. Living allowances.** County-paid living allowances eligible for state reimbursement must not exceed \$1,500 per participant in each calendar year. Participants are eligible for a living allowance once per period of continuous participation in SILS. The provision of a living allowance must be used for the purpose of enabling the participant to receive semi-independent living services. The provision of a living allowance is limited to the following expenditures:

- A. damage or security deposits for housing rental;
- B. utility deposits and connection costs;
- C. household furnishings; and

D. other items necessary to enable the participant to secure a home in which to receive semi-independent living services.

**Subp. 3. Authorization for services.** Costs of providing semi-independent living services are reimbursable only when the services provided have been authorized by the case manager. The authorization must indicate the amount, types and cost of SILS to be provided, and the expected participant outcome or outcomes. The written authorization for services to a participant must be added to the participant's case record.

**Subp. 4.** [Repealed, 18 SR 506]

**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 the person 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 participant from participation in the day programs or employment activities specified in the participant'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 participants who are working on a part-time basis or seeking employment if SILS participation does not preclude the participant's part-time work or employment seeking.

**Subp. 7. No reimbursement for case management services costs and county administrative costs.** Any case management 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 participant must not be reimbursed under parts 9525.0900 to 9525.1020.

Subp. 8. **No reimbursement for room and board.** With the exception of living allowances provided for under subpart 2, expenditures for room and board are not reimbursable as costs of semi-independent living services. Room and board expenses are the 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 parts 9553.0010 to 9553.0080, Determination of Payment Rates for Intermediate Care Facilities for Persons with Mental Retardation or Related Conditions. The following costs are not reimbursable as costs of SILS:

- A. costs specified as nonallowable costs in parts 9553.0010 to 9553.0080; 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; 18 SR 506*

**9525.0960** [Repealed, 18 SR 506]

**9525.0965 ALLOCATIONS TO COUNTIES.**

Subpart 1. **Base allocations.** The commissioner shall allocate funds to county boards for the provision of semi-independent living services on a calendar year basis according to the allocation formula in Minnesota Statutes, section 252.275, subdivisions 4 and 4b. The commissioner shall notify county boards by December 1 of each calendar year of the allocation for the subsequent calendar year.

Subp. 2. **Formula limitation.** For calendar year 1993 and all subsequent years, the amounts allocated under subpart 1 are subject to the limitations required under Minnesota Statutes, section 252.275, subdivision 4a.

Subp. 3. **Targeted allocations.** To be considered for a targeted allocation under Minnesota Statutes, section 252.275, a county must submit an application on a form prescribed by the commissioner. The commissioner shall notify county boards of application deadlines.

Subp. 4. **Review and determination of targeted grant applications.** The commissioner shall review county applications for targeted allocations and make a determination based on the following:

- A. county compliance with the requirements of parts 9525.0900 to 9525.1020 and Minnesota Statutes, section 252.275; and

- B. the amount of funds appropriated by the legislature under Minnesota Statutes, section 252.275.

The commissioner shall give county boards written notice of approval or denial of the application for a targeted allocation within 30 calendar days of the department's receipt of the county's application.

**Statutory Authority:** *MS s 252.275*

**History:** *18 SR 506*

**9525.0970 STATE REIMBURSEMENT AND PAYMENT.**

Subpart 1. **Reimbursement.** State reimbursement payment to a county board for allowable costs under part 9525.0950 must be made according to subpart 4 and must be based on actual expenditures and the rate of state reimbursement specified in this subpart. The amount of state reimbursement to a county board must not exceed the limits established under Minnesota Statutes, section 252.275, subdivision 3.

State reimbursement must be at a minimum rate of 70 percent of a county board's cost of providing SILS as mandated by parts 9525.0900 to 9525.1020 and Minnesota Statutes, sec-

# MINNESOTA RULES 1993

623

## PROGRAMS FOR MENTALLY RETARDED PERSONS 9525.0980

tion 252.275, subdivision 4, up to the allocation determined by Minnesota Statutes, section 252.275, subdivision 4.

Subp. 2. [Repealed, 18 SR 506]

Subp. 3. [Repealed, 18 SR 506]

Subp. 4. **Payments to counties.** Payments made to county boards by the commissioner must be in the form of quarterly installments. The commissioner may certify an advance up to 25 percent of the allocation according to Minnesota Statutes, section 252.275, subdivision 3. Subsequent payments to each county board shall be made on a reimbursement basis for reported expenditures contingent upon the board's submitting a completed quarterly financial report on forms provided by the commissioner.

Subp. 5. **Quarterly payment adjustments.** The commissioner shall review county expenditures after each quarter. If actual expenditures by a county board to provide SILS are less than costs upon which the county board's base and targeted allocations are based, the commissioner shall adjust the quarterly payments so that the percentage of cost paid by the state remains within the limits in subpart 1. Under Minnesota Statutes, section 252.275, subdivision 4c, the commissioner may reallocate unexpended money at any time among those counties which have earned their full base allocation, and may reallocate targeted allocations at any time that it is determined, after consultation with the affected county, that the allocated funds will not be used as projected.

**Statutory Authority:** *MS s 252.275*

**History:** *10 SR 994; 18 SR 506*

### 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 referenced in part 9525.1020.

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 allocation period. The reports required are quarterly fiscal reports to ensure tracking of state expenditure for SILS and annual program reports describing the participants served, the amount and types of services provided, and summary data of participant outcomes. County boards shall submit quarterly fiscal reports to the commissioner according to Minnesota Statutes, section 256.01, subdivision 2, paragraph (17). County boards shall submit annual program reports to the commissioner by January 31 following the end of each calendar year.

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 revenue;
- C. document all expenditures; and
- D. 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; 18 SR 506*

**9525.0990** [Repealed, 18 SR 506]

**9525.0995 COUNTY VARIANCES.**

Subpart 1. **Generally.** A county board may apply to the commissioner for a variance from parts 9525.0920, 9525.0930, 9525.0935, 9525.0940, 9525.0950, and 9525.0970 according to subparts 2 to 6.

Subp. 2. **County request for variance.** A county board may apply for a variance by submitting a written application to the commissioner documenting the reason the county is unable to comply with the identified requirement. The application for the variance must show the county's proposal for an alternative to full compliance:

- A. meets the individual needs of participants; and
- B. ensures services are provided in the least restrictive environment.

Subp. 3. **Granting a variance.** The commissioner's grant of a county board's variance request must be based on the following:

- A. the request was submitted according to subpart 2;
- B. the county board has provided reasonable evidence of the need for a variance;

and

C. the request is in compliance with state and federal laws governing services for persons with mental retardation or related conditions.

Subp. 4. **Notice to county boards.** The commissioner shall review the county board's request for a variance and notify the county board, in writing, within 30 calendar days whether the request for a variance has been granted or denied. If the variance request is approved, the notice must state the specific conditions of approval. If the variance request is denied, the notice must state the reasons why the variance request was denied and inform the county board of the right to request a review of the commissioner's decision. A request for a review of the commissioner's denial of a variance request is governed by part 9525.1010.

Subp. 5. **Continuation of variance.** The procedures for requesting, granting, or denying a continuation of variance must be the same as the procedures in subparts 2, 3, and 4. The procedure for notifying the county board whether the continuation has been granted or denied must be the same as the procedure in subpart 4. Failure of a county board to comply with any condition of approval of a variance granted under subpart 3 may result in revocation of the variance.

Subp. 6. **Notice to affected participants and providers.** A county board applying for or granted a variance under this part must give written notice to each provider and participant whose services will be modified by the variance. Such notice must also be given to the participant's legal representative. The notice must state the terms of the requested or granted variance and, if the variance has not yet been approved, inform the participants that the request has been submitted to the commissioner. The notice provided to each participant and the participant's legal representative must inform them of any known alternative SILS services or providers which may be available in the same community. If the variance has already been approved, the notice must be given to the provider, each participant, and the participant's legal representative before services are provided under the variance.

**Statutory Authority:** *MS s 252.275*

**History:** *18 SR 506*

**9525.0996 DEMONSTRATION PROJECTS.**

Subpart 1. **Request for demonstration projects.** A county board may submit a written request to the commissioner to demonstrate alternative methods of providing semi-independent living services. Counties may request a variance from the licensing and contract requirements under parts 9525.0900 to 9525.1000 as a part of the proposed demonstration project. Requests for a demonstration project must contain documentation of the following information:

- A. a description of the services to be provided;
- B. eligibility criteria for participation in the demonstration project;
- C. the portion of the county's SILS allocation to be attributed to the demonstration project;
- D. assurances of health and safety for the participants;

# MINNESOTA RULES 1993

625

## PROGRAMS FOR MENTALLY RETARDED PERSONS 9525.1020

E. assurances that the services will result in the participants' increased independence;

F. assurances that the services will be provided in compliance with applicable state and federal law; and

G. methods for evaluating the effectiveness of the services.

**Subp. 2. Approval of demonstration projects.** The commissioner's approval of a request for a demonstration project must be based on the following conditions:

A. services provided under the demonstration project must meet the individual needs and preferences of participants;

B. the demonstration project must ensure that services will be delivered in the least restrictive environment;

C. the request must be submitted according to subpart 1; and

D. the demonstration project must comply with state and federal laws governing services to persons with mental retardation or related conditions.

**Subp. 3. Agreement to participate in a demonstration project.** A county board approved to participate in a demonstration project under this part must obtain the agreement of each participant that will receive services under the approved demonstration project. The agreement must specify the terms of the demonstration project, the portions of parts 9525.0900 to 9525.1020 to be varied, and the manner in which services will be delivered. The agreement must be in writing and must be signed by the affected participant and the participant's legal representative before services are provided under the demonstration project.

**Statutory Authority:** *MS s 252.275*

**History:** *18 SR 506*

### 9525.1000 REPAYMENT OF FUNDS.

**Subpart 1. Excess funds.** The commissioner shall require repayment of any funds paid in advance to a county that would exceed the reimbursement rate under part 9525.0970, subpart 1.

**Subp. 2. Improper use of funds.** Under Minnesota Statutes, section 252.275, subdivision 9, the commissioner may require repayment of any funds not used according to the requirements of parts 9525.0900 to 9525.1020.

**Subp. 3. Notification.** Before the commissioner requires repayment of funds under subpart 1 or 2, the commissioner shall give 30 days' written notice to the county board. 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; 18 SR 506*

### 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 county board or a provider under contract with a county board to provide SILS does not comply with Minnesota Statutes, section 252.275, parts 9525.0900 to 9525.1020, and



with other applicable laws and rules governing services to persons with mental retardation or related conditions, the commissioner has the authority to suspend or withhold payments or require repayment. A county board notified by the commissioner of noncompliance with requirements in this part, shall demonstrate compliance or develop a corrective action plan as required under Minnesota Statutes, section 256E.05, subdivision 5. Appeals by a county board of action taken by the commissioner under Minnesota Statutes, section 256E.05, are governed by Minnesota Statutes, section 256E.06, subdivision 10.

**Statutory Authority:** *MS s 252.275*

**History:** *10 SR 994; 18 SR 506*

### 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;

# MINNESOTA RULES 1993

629

## PROGRAMS FOR MENTALLY RETARDED PERSONS 9525.1250

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 9505.2160 to 9505.2245 and applicable to providers of medical assistance;

(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; and

(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, firefighters, 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; 17 SR 1279*

**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.

# MINNESOTA RULES 1993

631

## PROGRAMS FOR MENTALLY RETARDED PERSONS 9525.1300

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 9505.2160 to 9505.2245.

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, 9505.2160 to 9505.2245, 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 9505.2160 to 9505.2245. "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 of 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.

# MINNESOTA RULES 1993

637

## PROGRAMS FOR MENTALLY RETARDED PERSONS 9525.1520

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 ser-

vices 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.** [Repealed, 15 SR 2043]

**Subp. 6. License denial or suspension.** The commissioner shall not issue a license or shall immediately suspend a license when:

A. 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.

B. 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;

# MINNESOTA RULES 1993

639

## PROGRAMS FOR MENTALLY RETARDED PERSONS 9525.1540

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.04; 245A.09; 252.28*

**History:** *12 SR 997; L 1987 c 309 s 24; 15 SR 2043*

### 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;

# MINNESOTA RULES 1993

641

## PROGRAMS FOR MENTALLY RETARDED PERSONS 9525.1550

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 habilitation 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 assis-



tance funds must keep bills, financial records, statements, and audits necessary to comply with parts 9505.2160 to 9505.2245 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:

# MINNESOTA RULES 1993

643

## PROGRAMS FOR MENTALLY RETARDED PERSONS 9525.1560

- (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

# MINNESOTA RULES 1993

## 9525.1560 PROGRAMS FOR MENTALLY RETARDED PERSONS

644

(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. Com-

# MINNESOTA RULES 1993

645

## PROGRAMS FOR MENTALLY RETARDED PERSONS 9525.1580

munity 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

# MINNESOTA RULES 1993

647

## PROGRAMS FOR MENTALLY RETARDED PERSONS 9525.1600

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;

# MINNESOTA RULES 1993

649

## PROGRAMS FOR MENTALLY RETARDED PERSONS 9525.1620

(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

# MINNESOTA RULES 1993

651

## PROGRAMS FOR MENTALLY RETARDED PERSONS 9525.1640

(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.

# MINNESOTA RULES 1993

655

## PROGRAMS FOR MENTALLY RETARDED PERSONS 9525.1690

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

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

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

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

Subp. 4. [Repealed, 16 SR 2238]

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

Subp. 5. **Commissioner.** “Commissioner” means the commissioner of the Minnesota Department of Human Services or the commissioner’s designated representative.

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

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

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 256G.02, subdivision 4.

Subp. 8. **Daily intervention.** “Daily intervention” means supervision, assistance, or training provided to a person in the person’s residence or in the community by a provider,

# MINNESOTA RULES 1993

657

## PROGRAMS FOR MENTALLY RETARDED PERSONS 9525.1800

family member, or foster family member to help the person manage daily activities. To qualify as daily intervention the supervision, assistance, or training must be provided each day for more than 90 consecutive days.

Subp. 8a. **Day training and habilitation.** "Day training and habilitation" has the meaning given to "training and habilitation services" in part 9525.1500, subpart 36.

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

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 according to Minnesota Statutes, section 462.385.

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

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

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

Subp. 15. **Host county.** "Host county" means the county in which the home and community-based service is provided.

Subp. 16. [Repealed, 16 SR 2238]

Subp. 17. **Individual service plan.** "Individual service plan" has the meaning given it in Minnesota Statutes, section 256B.092, subdivision 1b.

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

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. [Repealed, 16 SR 2238]

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

Subp. 19b. **Mental retardation or related condition or MR/RC.** "Mental retardation or related condition" or "MR/RC" has the meaning given to "mental retardation" in part



9525.0015, subpart 20, items A and B, and the meaning given to a "related condition" in Minnesota Statutes, section 252.27, subdivision 1a.

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

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

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

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

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

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

- 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, subdivision 7, 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. Additional hours may be authorized by the commissioner as approved in the current waiver plans.

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

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

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

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

**Statutory Authority:** *MS s 256B.092; 256B.501; 256B.502; 256B.503*

**History:** *10 SR 838; 16 SR 2238*

#### **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 MR/RC or ACS waiver from the United States Department of Health and Human Services is in effect in Minnesota.

**Statutory Authority:** *MS s 256B.092; 256B.501; 256B.502; 256B.503*

**History:** *10 SR 838; 12 SR 1148; 16 SR 2238*

#### **9525.1820 ELIGIBILITY.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**Statutory Authority:** *MS s 256B.092; 256B.501; 256B.502; 256B.503*

**History:** *10 SR 838; 12 SR 1148; 16 SR 2238*

### 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. If the county board has determined that it cannot provide home and community-based services to the person within its allocation of home and community-based services money, the county board may request additional money. The commissioner may authorize additional money only for persons:

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

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

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

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

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

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

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

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; 256B.501; 256B.502; 256B.503*

**History:** *10 SR 838; 16 SR 2238*

### 9525.1840 PARENTAL CONTRIBUTION FEE.

Subpart 1. **Out-of-home placements.** The parent or parents of a person under age 18 shall be liable for a parental contribution fee determined according to Minnesota Statutes,

# MINNESOTA RULES 1993

661

## PROGRAMS FOR MENTALLY RETARDED PERSONS 9525.1850

sections 252.27, subdivision 2, and 256B.14, if the person resides outside the home of the parent or parents.

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

**Statutory Authority:** *MS s 256B.092; 256B.501; 256B.502; 256B.503*

**History:** *10 SR 838; 16 SR 2238*

### 9525.1850 PROVIDER REIMBURSEMENT.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**Statutory Authority:** *MS s 256B.092; 256B.501; 256B.502; 256B.503*

**History:** *10 SR 838; 12 SR 1148; 16 SR 2238*

### **9525.1860 REIMBURSABLE SERVICES.**

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

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

- (1) case management;
- (2) residential habilitation services including in-home family support, supported living services for adults, and supported living services for children;
- (3) day training and habilitation, including supported employment;
- (4) homemaker services;
- (5) respite care; and
- (6) minor adaptations and equipment.

# MINNESOTA RULES 1993

663

## PROGRAMS FOR MENTALLY RETARDED PERSONS 9525.1860

B. Services reimbursable through the ACS waiver plan are:

- (1) residential habilitation services including in-home family support, supported living services for adults, and supported living services for children;
- (2) day training and habilitation, including supported employment;
- (3) homemaker services;
- (4) respite care; and
- (5) adaptive modifications and equipment.

Subp. 2. [Repealed, 16 SR 2238]

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

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

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

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

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

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

B. Day training and habilitation services must:

- (1) only be provided to persons who receive a residential-based habilitation service;
- (2) not include sheltered work or work activity services funded or certified by the Minnesota Division of Vocational Rehabilitation;
- (3) be provided at a different service site than the person's place of residence unless medically contraindicated, as required in Minnesota Statutes, section 252.41, subdivision 3; and
- (4) be provided by an organization that does not have a direct or indirect financial interest in the organization that provides the person's residential services unless the person is residing with:

(a) his or her family; or

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

C. Homemaker services may be provided only if:

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

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

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

- (1) hospitalized;
- (2) on an overnight trip or vacation; or
- (3) home for a visit.

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

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

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

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

G. Respite care must:

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

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

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

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

Subp. 5. [Repealed, 16 SR 2238]

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

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

A. Homemaker services must be provided in compliance with parts 9565.1000 to 9565.1300.

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

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

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

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

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

# MINNESOTA RULES 1993

665

## PROGRAMS FOR MENTALLY RETARDED PERSONS 9525.1870

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

- (1) the sections of parts 9545.0010 to 9545.0260 with which the provider cannot comply;
- (2) the reasons why the provider cannot comply with the specified section or sections; and
- (3) the specific measures that will be taken by the provider to ensure the health, safety, or development of the persons.

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

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

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

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

**Statutory Authority:** *MS s 256B.092; 256B.501; 256B.502; 256B.503*

**History:** *10 SR 838; 12 SR 1148; 16 SR 2238*

### 9525.1870 PROVIDER CONTRACTS AND SUBCONTRACTS.

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

- A. maximum and minimum number of persons to be served;
  - B. description of how the services will benefit the persons in attaining the goals in the persons' individual service plans;
  - 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; 256B.501; 256B.502; 256B.503*

**History:** *10 SR 838; 16 SR 2238*

#### **9525.1880 COUNTY PROPOSAL AND APPROVAL OF COUNTY PROPOSAL.**

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

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

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

- A. current living arrangements;
- B. current day programs;
- C. level of supervision required;
- D. the type of home and community-based services projected to be needed and the expected duration of the service or services;
- E. the projected starting dates of the home and community-based services;
- F. the proposed service provider or providers and billing rate or rates, if known;
- G. a description of how the proposal limits the development of new community-based ICF/MR beds and reduces the county's use of existing ICF/MR beds in regional treat-

ment centers and community ICFs/MR, including any steps the county board has taken to encourage voluntary decertification of community-based ICF/MR beds; and

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

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

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

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

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

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

**Statutory Authority:** *MS s 256B.092; 256B.501; 256B.502; 256B.503*

**History:** *10 SR 838; 16 SR 2238*

#### **9525.1890 ALLOCATION OF HOME AND COMMUNITY-BASED SERVICE MONEY.**

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

**Subp. 2. Allocation of conversions.** The county board's allocation of money for conversions shall be based on the number of conversions in the approved county proposal and the extent to which the conversions result in an overall reduction in the county board's historical utilization of state regional treatment centers 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 at least semiannually, and report the findings to all the county boards in the state. The commissioner may reduce the allocation to a county board if the commissioner determines, in consultation with the county board, that the initial allocation to the county board will not be used during the allocation period. The commissioner may reallocate the unused portion of the county board's initial allocation to another county board, or other county boards, in the same geographic region that plan to expand home and community-based services or provide home and community-based services for the first time. If there is not a sufficient number of projections to use the unused allocation from county boards within the geographic region, the commissioner may reallocate the remainder to another county board or other county boards in other geographic regions that plan to expand home and community-based services or provide home and community-based services for the first time.

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

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

**Statutory Authority:** *MS s 256B.092; 256B.501; 256B.502; 256B.503*

**History:** *10 SR 838; 16 SR 2238*

### 9525.1900 AGREEMENT BETWEEN STATE AND COUNTY.

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

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 persons will not exceed the limits in part 9525.1910 except as provided in part 9525.1890, subpart 6;

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

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

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; 256B.501; 256B.502; 256B.503*

**History:** *10 SR 838; 16 SR 2238*

### 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 persons.

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 counties may authorize to be used per person. In authorizing and billing for home and community-based services for individual persons, the county board must comply with items A to C. For county boards applying jointly, the total cost and total allocation in item A shall be the total cost and total allocation for all of the county boards represented in the proposal and the average cost in item B shall be the average cost for all persons included in the proposal.

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

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

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

- (1) the cost is ordinary, necessary, and related to the person's care;
- (2) the cost is for activities which are generally accepted in the field of mental retardation or related conditions and are scientifically proven to promote achievement of the goals and objectives contained in the person's individual service plan;
- (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; 256B.501; 256B.502; 256B.503*

**History:** *10 SR 838; 12 SR 1148; 16 SR 2238*

## 9525.1920 REQUIRED RECORDS AND REPORTS.

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

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

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

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; 256B.501; 256B.502; 256B.503*

**History:** *10 SR 838; 16 SR 2238*

### 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. [Repealed, 16 SR 2238]

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; 256B.501; 256B.502; 256B.503*

**History:** *10 SR 838; 16 SR 2238*

### LICENSES; RESIDENTIAL-BASED HABILITATION SERVICES

#### 9525.2000 PURPOSE AND APPLICABILITY.

Subpart 1. **Purpose.** The purpose of parts 9525.2000 to 9525.2140 is to establish minimum standards that an applicant or license holder must meet to be licensed to provide residential-based habilitation services for persons with mental retardation or related conditions.

Subp. 2. **Applicability.** Parts 9525.2000 to 9525.2140 apply to any applicant or license holder, including a licensed provider of foster care, that provides residential-based habilitation services, including supported living services to children or adults, and in-home family support services to four or fewer persons under contract with a county under parts 9525.1800 to 9525.1930. Parts 9525.2000 to 9525.2140 apply only to residential-based habilitation services that are provided and funded in accordance with the waiver of requirements under United States Code, title 42, section 1396 et. seq.

Subp. 3. **Exclusions.** Parts 9525.2000 to 9525.2140 do not govern the provision of respite care and do not apply to residential programs serving more than four persons that are licensed under parts 9525.0210 to 9525.0430.

**Statutory Authority:** *MS s 252.28 subd 2; 252A.03 subd 1; 256B.092*

**History:** *13 SR 2439*

#### 9525.2010 DEFINITIONS.

Subpart 1. **Scope.** The terms used in parts 9525.2000 to 9525.2140 have the meanings given them in this part.

Subp. 2. **Adult.** "Adult" means a person 18 years of age or older.

Subp. 3. **Advocate.** "Advocate" has the meaning given in part 9525.0013.

Subp. 4. **Applicant.** "Applicant" means an individual, corporation, partnership, voluntary association, or other organization that has applied for licensure under Minnesota Statutes, sections 245A.01 to 245A.16 and parts 9525.2000 to 9525.2140.

Subp. 5. **Baseline measurement.** "Baseline measurement" means the frequency, intensity, duration, or other quantification of a behavior that has been observed and recorded before initiating or changing an intervention or procedure to modify behavior.

Subp. 6. **Caregiver.** "Caregiver" means the individual who cares for and supervises a person receiving services at the person's residence.

Subp. 7. **Case manager.** "Case manager" means the individual designated by the county board to provide case management services as defined in parts 9525.0015 to 9525.0165.

Subp. 8. **Child.** "Child" means a person under 18 years of age.

Subp. 9. **Commissioner.** "Commissioner" means the commissioner of the Minnesota Department of Human Services or the commissioner's designated representative.

Subp. 10. **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. 11. **County of financial responsibility.** "County of financial responsibility" has the meaning given it in Minnesota Statutes, section 256G.02, subdivision 4.

Subp. 12. **County of service.** "County of service" means the county arranging for or providing community social services to persons at the request of the person, the person's legal representative, or the county of financial responsibility.

Subp. 13. **Department.** "Department" means the Minnesota Department of Human Services.

Subp. 14. **Direct service.** "Direct service" means training or supervision and assistance of a person receiving residential-based habilitation services and participation in the development or implementation of a person's individual habilitation plan.

Subp. 15. **Family.** “Family” means a person’s biological or adoptive parents, stepparents, grandparents, siblings, children, grandchildren, or spouse.

Subp. 16. **Goal.** “Goal” means the desired behavioral outcome of an activity that can be observed and reliably measured by two or more independent observers.

Subp. 17. **Home and community–based services.** “Home and community–based services” means the following services that are provided to persons with mental retardation and related conditions 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 services for children, supported living services for adults, day training and habilitation, and adaptive aids 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. 18. **Host county.** “Host county” means a county contracting for the provision of social services with an approved vendor within its county boundaries at the request of another county.

Subp. 19. **Incident.** “Incident” means any injury or accident; a seizure requiring a physician’s attention; an error in drug administration; circumstances that involve a law enforcement agency; or a person’s death.

Subp. 20. **Individual habilitation plan (IHP).** “Individual habilitation plan (IHP)” 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. **In–home family support services.** “In–home family support services” means residential–based habilitation services provided to persons with mental retardation or related conditions, and their adoptive or biological family, in the family’s residence and in the community. Services are designed to enable the person to remain with, or return to, the family.

Subp. 23. **Interdisciplinary team.** “Interdisciplinary team” has the meaning given it in part 9525.0015, subpart 15.

Subp. 24. **Legal representative.** “Legal representative” means the parent or parents of a person with 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 with mental retardation or a related condition regardless of the person’s age.

Subp. 25. **License holder.** “License holder” means an individual, corporation, partnership, voluntary association, or other organization that is legally responsible for, and has been granted a license by the commissioner under Minnesota Statutes, sections 245A.01 to 245A.16 to provide, residential–based habilitation services under parts 9525.2000 to 9525.2140.

Subp. 26. **Objective.** “Objective” means a short–term expectation, accompanied by measurable behavioral criteria, that is written in the individual habilitation plan. Objectives are designed to result in achievement of the annual goals in a person’s individual service plan.

Subp. 27. **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 residential–based habilitation service.

Subp. 28. **Person with mental retardation or a related condition or person.** “Person with mental retardation or a related condition” or “person” means:

A. a child or adult who meets the definition of a “person with mental retardation” in part 9525.0015, item A or B; or

B. a child or adult who has a related condition as defined in parts 9525.0180 to 9525.0190.

Subp. 29. **Qualified mental retardation professional (QMRP).** "Qualified mental retardation professional (QMRP)" means an individual who meets the qualifications specified in Code of Federal Regulations, title 42, section 442.401, as amended.

Subp. 30. **Residential-based habilitation services.** "Residential-based habilitation services" means services provided in a person's residence and in the community, that are directed toward increasing and maintaining the person's physical, intellectual, emotional, and social functioning. Residential-based habilitation services include therapeutic activities, assistance, counseling, training, supervision, and monitoring in the areas of self-care, sensory and motor development, interpersonal skills, communication, socialization, working, reduction or elimination of maladaptive behavior, community participation and mobility, health care, leisure and recreation, money management, and household chores. Supported living services and in-home family support services are the two categories of residential-based habilitation services governed by parts 9525.2000 to 9525.2140.

Subp. 31. **Respite care.** "Respite care" means short-term supervision, assistance, and care provided to a person receiving waived services due to the temporary absence of or need for relief of the person's family, foster family, or primary caregiver. For the purposes of these rule parts, respite care is not a residential-based habilitation service.

Subp. 32. **Service.** "Service" means planned activities designed to achieve the outcomes assigned to the license holder by the interdisciplinary team and specified in the individual service plans of persons served by the license holder.

Subp. 33. **Supported living services for adults.** "Supported living services for adults" means residential-based habilitation services provided on a daily basis to an adult waived services recipient who resides in a service site licensed under parts 9555.5105 to 9555.6105 and 9555.6265 or in a service site that is defined as a person's own home in parts 9525.1800 to 9525.1930.

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

Subp. 35. **Variance.** "Variance" means written permission given by the commissioner that allows the applicant or license holder to depart from specified provisions in parts 9525.2000 to 9525.2140.

Subp. 36. **Volunteer.** "Volunteer" means an individual who, under the direction of the license holder, provides direct services without pay to persons served by the license holder.

**Statutory Authority:** *MS s 252.28; 252A.03; 256B.092; 256B.503*

**History:** *13 SR 2439; 16 SR 2238*

### 9525.2020 LICENSURE.

Subpart 1. **License required.** An individual, corporation, partnership, voluntary association, or other organization must be licensed by the commissioner to provide home and community-based residential habilitation services.

Subp. 2. **Study of the applicant.** Before a license is issued, a background study must be completed of the applicant and all employees, subcontractors, and unsupervised volunteers as mandated by Minnesota Statutes, section 245A.04, subdivision 3.

Subp. 3. **Disqualification standards.** In order to become licensed or to remain licensed under parts 9525.2000 to 9525.2140, an applicant or license holder must not be an individual, employ or subcontract with an individual, or use as a volunteer an individual who:

A. [Repealed, L 91 c 38 s 2]

B. abuses prescription drugs or uses alcohol or controlled substances as named in Minnesota Statutes, chapter 152, to the extent that the use or abuse impairs the individual's ability to provide services.

Subp. 4. **Reevaluation of disqualification.** An applicant or a license holder who is disqualified from licensure, or an employee, volunteer, or subcontractor of an applicant or license holder, who is not permitted to work based on the disqualification standards in subpart 3 may request that the commissioner reevaluate the disqualification decision and set aside



the disqualification. The request for reevaluation must be made in writing and sent to the commissioner by certified mail.

A. Within 30 days after the commissioner has received all information necessary to reevaluate a disqualification, the commissioner shall inform the applicant or license holder and the individual involved, in writing, whether the disqualification has been set aside or affirmed, and the reasons for this decision.

B. The commissioner's disposition of a request for reevaluation of a disqualification under this part is the final administrative agency action.

**Subp. 5. Evaluation for cause.** The commissioner may require, before licensure or at any time during the licensed term, a physical, mental health, chemical dependency, or criminal history evaluation of any individual performing direct service staff duties if the commissioner has reasonable cause to believe any of the qualifications or requirements have not been met or that the individual cannot care for persons being served. Evaluations must be conducted by a professional qualified by license, certification, education, or training to perform the specific evaluation. Evaluation refusal shall result in employment disqualification.

**Subp. 6. Variances.** An applicant or license holder may request a variance to parts 9525.2000 to 9525.2140. A request for a variance must be in writing and sent to the commissioner. A copy must be provided to the board of county commissioners of the county of service and, if applicable, the host county. The written request must specify:

A. the provision from which a variance is requested;

B. the reasons why the applicant or license holder cannot comply with the specified provision;

C. the period of time, not to exceed the greater of one year or the license term, for which the variance has been requested; and

D. the equivalent measures the applicant or license holder will take to ensure the health, safety, and rights of persons and to comply with the intent of parts 9525.2000 to 9525.2140, if the variance is granted.

**Subp. 7. Evaluation of a variance request.** A variance may be granted only if the commissioner determines that the conditions in items A to E exist:

A. the applicant or license holder has made a written request for variance that meets the requirements in subpart 6;

B. granting the variance does not threaten the health, safety, or rights of persons receiving services;

C. granting the variance does not violate Minnesota Statutes;

D. the county of service and the host county concur with the applicant's or license holder's request; and

E. the applicant or license holder is in compliance with all other provisions of parts 9525.2000 to 9525.2140.

**Subp. 8. Notice by commissioner.** Within 30 days after receiving a request for a variance and the documentation supporting it, the commissioner shall inform the applicant or license holder in writing whether the request has been granted or denied and the reasons for this decision. The commissioner's decision to grant or deny a variance request is final and not subject to appeal under Minnesota Statutes, chapter 14.

**Subp. 9. Notice by license holder.** Within ten working days after the date that the license holder receives the commissioner's decision to grant a variance request or to issue a probationary license, suspension, or revocation, the license holder shall send a copy of the commissioner's decision to the legal representatives and county case managers of all persons receiving services.

**Statutory Authority:** *MS s 245A.04; 245A.09; 252.28; 252A.03; 256B.092*

**History:** *13 SR 2439; 15 SR 2043; L 91 c 38 s 2*

### 9525.2025 NEGATIVE LICENSING ACTIONS.

Under Minnesota Statutes, sections 245A.01 to 245A.16, failure to comply with parts 9525.2000 to 9525.2140 or the terms of licensure may be cause for a negative licensing action. Negative licensing actions shall be taken according to Minnesota Statutes, sections 245A.03 to 245A.09.

Within ten working days after the license holder receives notice that the license is made probationary, suspended, or revoked, the license holder shall send a copy of the commissioner's action to each person receiving services or the person's legal representative and each person's case manager.

**Statutory Authority:** *MS's 252.28 subd 2; 252A.03 subd 1; 256B.092*

**History:** *13 SR 2439*

### 9525.2030 SERVICE REQUIREMENTS.

**Subpart 1. Individual service needs.** The license holder must provide or obtain residential-based habilitation services for each person in accordance with the person's individual needs as specified in the individual service plan and the IHP, and as authorized by the case manager.

**Subp. 2. Methods, materials, and settings.** Methods, materials, and settings used to provide residential habilitation services and to implement the IHP must be designed to:

A. increase each person's independence in performing tasks and activities by teaching skills that reduce dependence on caregivers;

B. provide training in the environment where the skill being taught is typically used;

C. increase each person's opportunities to interact with nondisabled individuals who are not paid caregivers;

D. increase each person's opportunities to use and participate in a variety of community resources and activities, including, but not limited to, public transportation when available; recreational, cultural, and educational resources; stores; restaurants; and religious services when desired;

E. increase each person's opportunities to develop decision-making skills and to make informed choices in all aspects of daily living, including, but not limited to, selection of service providers, goals, and methods; location and decor of residence; roommates; daily routines; leisure activities; and personal possessions; and

F. provide daily schedules, routines, environments, and interactions similar to those of nondisabled individuals of the same chronological age.

**Subp. 3. Least restrictive environment.** Each person's participation, movement, communication, and personal choice may be restricted only as necessary to protect the person and others and as specified in the person's individual service plan or IHP. Supervision and assistance may be provided only when necessary for the person to complete a task or participate in an activity, or to protect the person or others.

**Subp. 4. Respectful treatment of persons.** The license holder must ensure that staff treat persons with respect, protect the personal privacy needs of persons, and do not use language that emphasizes a person's disability.

**Subp. 5. Level of participation.** The license holder must document measures, as required by each person's individual service plan, to increase the level of participation by the person in environments, activities, routines, and skills in which the person is unable to function independently. Such measures shall include staff assistance or supervision, training methodologies, and adaptations to equipment or environments.

**Subp. 6. Family relationships.** If desired by a person, services shall be designed to encourage the development of family relationships and regular interaction by the person with family and extended family members unless limited by the person's individual service plan. When a person is residing in a family home, services shall be designed to meet the person's needs while accommodating the family's existing routines and values.

**Statutory Authority:** *MS s 252.28 subd 2; 252A.03 subd 1; 256B.092*

**History:** *13 SR 2439*

### 9525.2040 SERVICE AUTHORIZATION.

Before a license holder provides a residential-based habilitative service identified in a person's individual service plan, the conditions in items A and B must be met:

A. the license holder has a copy of the signed service contract between the license holder and the county; and

B. the license holder has been authorized by the county of financial responsibility pursuant to parts 9525.0085, subpart 2; 9525.1830, subpart 1, item E; and 9525.1850, item H, to provide the type, amount, and frequency of services specified in the person's individual service plan.

**Statutory Authority:** *MS s 252.28 subd 2; 252A.03 subd 1; 256B.092*

**History:** *13 SR 2439*

### 9525.2050 SERVICE INITIATION.

Subpart 1. **Written policy required.** The license holder must have a written policy that sets forth procedures for initiating services to persons. This policy must be consistent with the county's determination or redetermination of need for the license holder's service under parts 9525.0015 to 9525.0165, if applicable; the county contract required by parts 9525.1870; and 9525.2000 to 9525.2140.

Subp. 2. **Information on persons receiving services.** When a license holder begins providing services to a person, the license holder must have written information about the person that contains:

A. A copy of the person's current individual service plan. When a person's case manager does not provide an individual service plan, the license holder shall make a written request to the case manager to provide a copy of the individual service plan.

B. A copy of a physical examination report on the person that is dated no more than 365 days before the date on which service was initiated and that includes information about seizures, allergies, and other health problems that may affect the provision of services. For persons with seizures, the written information must include a plan developed in conjunction with the person's physician that specifies the information relating to the person's seizures which must be recorded.

C. Information that must be kept current and contain:

(1) the person's name, address, birth date, telephone number, and religious affiliation;

(2) the names, addresses, and telephone numbers of the person's legal representative, including whether the person is under guardianship or conservatorship, and if under conservatorship, a copy of the order specifying the rights retained by the person; family and friends; advocate; case manager; caregiver; physician or source of medical care; hospital of preference; and other professionals involved in the care and treatment of the person;

(3) a statement signed by the person or the person's legal representative authorizing the license holder to act in a medical emergency if the person's legal representative cannot be reached or is delayed in arriving;

(4) the name of each medication currently prescribed for the person, a schedule for administration, the proper dosage and possible side effects of the medication, and statements signed by the person or the person's legal representative authorizing the license holder 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;

(6) the date the person began receiving residential-based habilitation services from the license holder and the reasons for service initiation; and

(7) the person's learning styles, methods of communication, adaptive equipment used by the person, and the person's interests and preferences.

Subp. 3. **Review of plan file.** Before service initiation, each employee or subcontractor who is responsible for providing residential-based habilitation services to a person reviews the plan file as described in part 9525.2100, subpart 2, for that person. The license holder shall provide training to each employee or subcontractor in the methods to be used to achieve the goals and objectives for that person.

**Statutory Authority:** *MS s 252.28 subd 2; 252A.03 subd 1; 256B.092*

**History:** *13 SR 2439*

**9525.2060 RIGHTS OF PERSONS RECEIVING SERVICES.**

Subpart 1. **Statement of rights.** The rights of persons receiving home care services listed in Minnesota Statutes, section 144A.44, apply to the provision of residential-based habilitation services licensed under parts 9525.2000 to 9525.2140.

Subp. 2. **Interpretation and enforcement of rights.** A license holder under parts 9525.2000 to 9525.2140 is bound by the requirements of Minnesota Statutes, section 144A.44, subdivision 2, relating to the interpretation and enforcement of these rights. In addition, the license holder must inform each person, or the legal representative, of these rights in a form of communication that the person can understand. The license holder must document that the person or the person's legal representative received a copy and an explanation of the rights as listed in this part.

**Statutory Authority:** *MS s 252.28 subd 2; 252A.03 subd 1; 256B.092*

**History:** *13 SR 2439*

**9525.2070 RESOURCES.**

Subpart 1. **General.** The license holder shall not have any contact with, or responsibility for, a person's funds, unless authorized to do so by the person's case manager and the person or the person's legal representative. When a license holder handles a person's funds, the license holder must meet all of the requirements of this part.

Subp. 2. **Separation of funds.** The license holder must ensure separation of each person's funds from funds of the license holder or staff.

Subp. 3. **Safekeeping.** If a person's IHP requires the license holder to assist the person with safekeeping of money or valuables, the license holder shall:

A. provide, if requested by the person or the person's case manager or legal representative, a statement itemizing the person's financial transactions;

B. limit the value of cash and valuables retained by the license holder to an amount designated by the person or the person's legal representative; and

C. return money and valuables in the license holder's keeping to the person or the person's legal representative, subject to restrictions in the person's individual service plan or IHP, within three working days after a request.

Subp. 4. **Prohibition.** The license holder shall ensure that the license holder, staff, and subcontractors do not:

A. borrow money from a person;

B. purchase personal items from a person;

C. sell merchandise or personal services to a person; or

D. require a person to purchase items for which the license holder is eligible to be reimbursed.

**Statutory Authority:** *MS s 252.28 subd 2; 252A.03 subd 1; 256B.092*

**History:** *13 SR 2439*

**9525.2080 SERVICE RECOMMENDATIONS.**

The license holder shall provide written service recommendations to the county case manager and the person or the person's legal representative. Written service recommendations must be directed toward achieving the outcomes stated in part 9525.2030 and shall be prepared:

A. before the interdisciplinary team meeting, held during the first 30 days of service provision, where the individual habilitation plan is developed;

B. as part of the quarterly reports, the annual evaluation of service outcomes and additional reports prepared according to part 9525.2110;

C. upon completion of an assessment authorized by the county case manager as required in part 9525.2090;

D. following an incident requiring emergency intervention as described in part 9525.2100, subpart 3; and

E. when the license holder identifies a reason for the case manager to consider changing services, service methods, or service outcomes.

**Statutory Authority:** *MS s 252.28 subd 2; 252A.03 subd 1; 256B.092*

**History:** *13 SR 2439*

#### 9525.2090 ASSESSMENT.

An initial assessment, as required in part 9525.0055, subpart 1, is the responsibility of the person's case manager. The license holder shall assess the person in any areas authorized by the case manager. When conducting an assessment, the license holder shall compare the person's performance, behavior, activity, and participation to that of nondisabled individuals in general. The license holder must provide the case manager and the person or the legal representative with a written summary of the completed assessment before the development of the IHP or when requested by the case manager. For each authorized area of assessment, the written summary must include an analysis of:

A. the person's current condition including a description of the person's behavior, skills, and lack of skills;

B. the person's established support systems, including a description of the current level of supervision, training, and assistance received by the person;

C. a description of the person's status and need for assistance, supervision, and training;

D. how the person's behavior, skills, or lack of skills enables or prevents full integration into community settings used by the general public;

E. an evaluation of the personal and environmental factors that may place the person at risk of abuse or neglect, as required in part 9555.8300; and

F. service recommendations in accordance with part 9525.2080.

**Statutory Authority:** *MS s 252.28 subd 2; 252A.03 subd 1; 256B.092*

**History:** *13 SR 2439*

#### 9525.2100 INDIVIDUAL HABILITATION PLAN DEVELOPMENT AND IMPLEMENTATION.

**Subpart 1. Participation in development of the IHP.** The IHP is developed at an interdisciplinary team meeting convened and chaired by the person's case manager within 30 days of service initiation. The license holder must participate in interdisciplinary team meetings and be involved in the development of the person's IHP.

**Subp. 2. Implementation of the IHP.** The license holder must provide the residential-based habilitation services specified in the IHP and authorized by the case manager. The license holder shall document the procedures and methods used to implement these services and describe how these procedures and methods are directed toward achieving the requirements listed in part 9525.2030. This documentation must be initially developed within ten calendar days of development of the IHP, must be reviewed at least annually, and revised as necessary. The procedures and methods must be consistent with the requirements of the IHP unless a modification of the IHP is agreed to by the person or the legal representative and is authorized by the case manager or unless modifications are required by emergency intervention described in subpart 3. The license holder's documentation of the procedures and methods used must be made available to the person or the person's legal representative and must include:

A. written, measurable behavioral objectives including measurable criteria for mastery that are designed to result in achievement of the residential service outcomes specified in the person's current individual service plan and IHP and assigned to the license holder;

B. a baseline measurement of the person's skill level in each behavioral objective;

C. the specific methods that will be used for each objective, including information about techniques, physical and social environments, and equipment and materials required to implement the objective;

D. the projected starting date and completion date for achievement of each objective;

# MINNESOTA RULES 1993

679

## PROGRAMS FOR MENTALLY RETARDED PERSONS 9525.2100

E. a description of the types of data and the methods and schedule of data collection to measure outcomes;

F. the names of the staff or contractors responsible for implementing each objective;

G. a description of how the services provided by the license holder are coordinated with the services provided by other agencies and individuals listed in the plan file according to subpart 4, item L;

H. a description of how implementation of the IHP involves family and friends; and

I. medication administration procedures, if applicable, with written approval by a licensed physician or registered nurse.

**Subp. 3. Emergency intervention.** When the health or safety of the person is in imminent danger and the license holder is responsible for the care and supervision of the person, the license holder must secure or provide necessary emergency intervention. Emergency intervention secured or provided by the license holder does not require prior county approval or prior referencing in the individual service plan or IHP. Within 24 hours of the incident, the license holder must notify the county, the person's family, and the person's legal representative of the emergency and the intervention provided. Within five working days of the incident, the license holder shall provide the case manager and the person or the person's legal representative a written summary of the incident. The summary must include a description of the presenting circumstances, the manner and results of the emergency intervention, a description and cost of the intervention, and written recommendations in accordance with part 9525.2080.

**Subp. 4. Plan file.** The license holder must have an individual plan file for each person receiving services. This file must be immediately available to the staff responsible for service implementation. The file must contain:

A. The information listed in part 9525.2050, subpart 2.

B. The assessments, data, and summaries described in part 9525.2090.

C. The current IHP for the person.

D. Documentation of the license holder's implementation of the IHP, as required by subpart 2, including the data collected to measure the person's progress.

E. The quarterly reports described in part 9525.2110.

F. The annual evaluation of the service outcomes described in part 9525.2110 that includes the assessment information described in part 9525.2090.

G. The license holder's written recommendations to the case manager as required by part 9525.2080.

H. Documentation of QMRP coordination and supervision of service delivery required in part 9525.2130, subpart 2.

I. Reports written on a form prescribed by the commissioner describing the occurrence of and response by the license holder to any incident as defined in part 9525.2010, subpart 19. All incident reports must be in the plan file within 24 hours of the incident.

J. A record of all medications administered by the license holder and documentation of the monitoring of side effects. If a license holder administers psychotropic medication, the license holder must have a policy for use of psychotropic medications that complies with the Psychotropic Medication Use Checklist, and must fill out the checklist at least annually and maintain a copy in the person's plan file. The Psychotropic Medication Use Checklist is incorporated by reference and is available for inspection at the Minnesota State Law Library, 25 Constitution Avenue, Saint Paul, Minnesota 55155. It is not subject to frequent change.

K. A statement of the financial transactions for each person to whom the license holder has been authorized by the county case manager to provide assistance with money management.

L. A listing of other agencies or individuals providing services to the person. The listing must identify the name of the agency, the phone number of the contact person for the

agency, the services provided to the person by the agency, and areas needing service coordination.

**Statutory Authority:** *MS s 252.28 subd 2; 252A.03 subd 1; 256B.092*

**History:** *13 SR 2439*

#### 9525.2110 EVALUATION.

**Subpart 1. Quarterly reports.** The license holder must provide the case manager and the person, or the person's legal representative, a quarterly report containing a summary of data, an analysis of the data, and an evaluation of services actually provided. The information in the report must be sufficient to determine the extent to which services have resulted in achievement of the goals and objectives of the person's habilitation plan, and whether services, including methods used, are being provided in accordance with the individual service plan and the IHP. The quarterly reports must also include the license holder's recommendations and rationale for changing or continuing the objectives or methods.

**Subp. 2. Annual evaluation of service outcomes.** During the last quarter of the person's service year, the license holder shall provide the case manager and the person or person's legal representative with a written, annual evaluation of the service outcomes. The annual evaluation must be completed before the annual review of the individual service plan or within 30 days of a written request by the case manager. The annual evaluation of service outcomes must include:

A. a summary of data indicating changes in behavior as they relate to the achievement of the outcomes in the IHP and the outcomes listed in part 9525.2030;

B. a summary of the results of any assessment authorized by the case manager and required in part 9525.2090; and

C. the license holder's recommendations and rationale for changing or continuing services, service methods, or service outcomes. Recommendations must be directed towards achieving the outcomes listed in part 9525.2030.

**Subp. 3. Additional reports.** The license holder shall provide additional reports as requested by the case manager and incorporated in the signed service contract or IHP.

**Statutory Authority:** *MS s 252.28 subd 2; 252A.03 subd 1; 256B.092*

**History:** *13 SR 2439*

#### 9525.2120 TERMINATING SERVICES.

**Subpart 1. Written policy required.** The license holder must have a written policy that sets forth criteria for terminating services and specifies the procedures to be followed as services are terminated, including procedures for emergency termination.

**Subp. 2. Reporting intended terminations.** The license holder must notify the person and the person's case manager and legal representative in writing of the intended termination. Notice of the proposed termination of services must be given at least 60 days before the proposed termination is to become effective, unless termination is made according to emergency termination procedures required in subpart 1. The written notice must include the reasons for, and projected date of, the intended termination and the resources and services recommended to meet the person's needs. Before termination, the license holder shall provide the case manager with a summary of the person's current medical status and copies of any medical records that the case manager does not have.

**Subp. 3. Record retention.** A license holder must maintain the records kept on a person for three years after services are terminated.

**Statutory Authority:** *MS s 252.28 subd 2; 252A.03 subd 1; 256B.092*

**History:** *13 SR 2439*

#### 9525.2130 STAFFING.

**Subpart 1. General staff qualifications.** License holders must ensure that each employee or subcontractor who will have direct contact with persons receiving services is at least 18 years of age, is not disqualified to provide services according to part 9525.2020, subpart 3, is physically able to care for persons receiving services. Before allowing an individual

to provide direct services to persons, the license holder shall have a copy of a physician's statement, that is dated no more than one year before the initiation of services by that individual, indicating that the individual does not present a risk of transmission of reportable communicable diseases as named in parts 4605.7000 to 4605.7800.

Subp. 2. **QMRP coordination and supervision of service delivery.** The ongoing delivery and evaluation of services provided by the license holder must be coordinated by a QMRP. The license holder shall maintain documentation showing that the individual meets the definition of QMRP contained in part 9525.2010, subpart 29. The QMRP must provide coordination, support, and evaluation of services that must include:

A. Regular visits to observe and evaluate the implementation of programs and services identified in the IHP. Regular visits must occur at a minimum of two times each month when services are provided four or more days per week, and one time per month when services are provided three days per week or less. Regular visits must be made more frequently if specified in the IHP.

B. Documentation of the QMRP's evaluations and observations of visits. This documentation must be placed in the person's plan file and discussed with the staff members responsible for implementing the programs and services observed.

C. Visits at a minimum of once every seven calendar days when the QMRP finds unsatisfactory conditions while making a visit or when the case manager determines that there are unsatisfactory conditions, until the QMRP or case manager, if problems were raised by the case manager, determines that the unsatisfactory conditions have been corrected.

D. Regular instructions and assistance to the staff in implementing the IHP at a frequency consistent with the need to assure that the individual service plan and the IHP are implemented in an appropriate and effective manner.

E. Identification and documentation of staff training needed to assure that the individual service plan and the IHP are implemented in an appropriate and effective manner.

F. A review, completed at least once each month, of all program data and information regarding implementation of the IHP, including written recommendations for continuation or modification of the programs, objectives, and methods.

G. A review of incidents that require inpatient or outpatient medical treatment or law enforcement assistance. The QMRP must take appropriate action within 24 hours of the occurrence of the incident.

H. A review of all incident reports about the person receiving services. The reviews must be completed at least once each month and include identification of incident patterns and corrective action as necessary.

I. The completion or approval of the quarterly and annual reports required in part 9525.2110, subpart 1.

**Statutory Authority:** *MS s 252.28 subd 2; 252A.03 subd 1; 256B.092*

**History:** *13 SR 2439*

### 9525.2140 STAFF TRAINING AND ORIENTATION.

Subpart 1. **Orientation.** When a license holder employs or contracts with individuals to provide residential-based habilitation services, the license holder must provide orientation that meets the requirements in items A to F. The license holder shall maintain documentation showing that each individual has satisfactorily completed the required orientation.

A. The orientation must include:

(1) a review and explanation of the plan file described in part 9525.2100, subpart 4, for each person to whom the individual will be providing services;

(2) an explanation of the rights of persons as listed in part 9525.2060 and the methods used by the license holder to assure that rights are not violated;

(3) an explanation and discussion of the license holder's written policies, procedures, and practices, including those governing initiation, provision, and termination of services;

(4) an explanation of the specific job the employee will perform and training in the methods to be used in achieving the goals and objectives of the persons to whom the



# MINNESOTA RULES 1993

## 9525.2140 PROGRAMS FOR MENTALLY RETARDED PERSONS

682

employee will be providing services. This training must specify how the methods used are directed toward achieving the service outcomes listed in part 9525.2030;

(5) an explanation of the requirements of Minnesota Statutes, sections 626.556 and 626.557, governing reporting of maltreatment of children and vulnerable adults, Minnesota Statutes, chapter 13, which is the Minnesota Government Data Practices Act, and parts 9555.8000 to 9555.8500 governing reporting of maltreatment of vulnerable adults;

(6) an explanation of the requirements of parts 9525.2700 to 9525.2810 governing use of aversive and deprivation procedures, for all individuals who are directly involved in the use of such procedures;

(7) an overview of the different types of developmental disabilities and their causes, a review of common terms and acronyms used in the field of developmental disabilities, and the principle of normalization and how the application of this principle has affected the services provided to persons with developmental disabilities; and

(8) an explanation of the approved procedures used to administer medications and to monitor side effects for all individuals who are responsible to administer or monitor medication.

B. The orientation must include both supervised on-the-job training and other types of training in an amount equal to at least 30 hours.

C. The orientation must be provided to all staff and supervised volunteers who provide direct service.

D. The 30-hour orientation must be completed within the first 30 calendar days of employment or contracted service for employees or subcontractors working more than 20 hours per week. For employees or subcontractors working 20 or less hours per week, the 30-hour orientation must be completed within the first 60 calendar days. Each employee or subcontractor must complete eight hours of orientation before providing direct services to persons.

E. The license holder shall identify in writing the training and supervision necessary for each volunteer to accomplish assigned tasks. The license holder must then ensure that volunteers who provide direct services to persons receive the training and supervision necessary to accomplish the tasks assigned by the license holder.

F. Direct services provided by an employee shall be provided under the continuous and direct supervision of a QMRP, or other employee who has completed the required orientation for each person to whom services will be provided by the untrained employee, until the employee has completed:

(1) 20 hours of orientation; or

(2) ten hours of orientation if the employee:

(a) has at least the equivalent of one year of experience within the past five years in the care, training, or supervision of persons with mental retardation or related conditions; or

(b) can document having completed, within the past two years, at least 24 hours of training related to the care, supervision, or training of persons with mental retardation or related conditions. If the training was received before employment, at least 12 of these hours of training must have been received within the 12-month period before employment.

G. Until the entire orientation has been satisfactorily completed, services provided by an employee or subcontractor not receiving continuous, direct supervision of a QMRP or other employee who has completed the required orientation shall be limited to those service areas in which the employee or subcontractor has successfully completed orientation.

**Subp. 2. Scope and schedule of ongoing training.** When the license holder provides direct service, the license holder must annually complete a number of hours of training that equal two percent of the number of hours billed annually, up to 40 hours of training, as the license holder's time. If a license holder employs or contracts with an individual who provides direct service, the license holder must ensure that the individual annually completes a number of hours of training equal to at least two percent of the hours for which the individual

# MINNESOTA RULES 1993

683

## PROGRAMS FOR MENTALLY RETARDED PERSONS 9525.2140

is annually paid, up to 40 hours of training. In an employee's first year of employment, the ongoing training requirement for an employee not meeting the qualifications in subpart 1, item F, must be completed within the first 120 calendar days of the employment. The hours counted as training may include in-service training, new employee orientation, and training from educational coursework, conferences, seminars, videotapes, books, or other materials. The training must:

A. be scheduled so that it does not interfere with provision of the number of service days or hours the license holder is under contract to provide;

B. be documented as having been completed by each individual providing direct services;

C. address all areas identified by the QMRP or case manager as areas needing additional training to implement the requirements of the individual service plans and IHP's of persons receiving services; and

D. respond to the behavior, habilitative, health, and developmental needs of the persons receiving services.

**Subp. 3. Content of ongoing training.** When designing ongoing training, the license holder must choose from the following areas of instruction, and training in one subject area shall not be provided to the exclusion of training in other areas:

A. additional training in the area specified in subpart 1;

B. conducting assessments of:

(1) skills and behaviors needed by persons in the environments where the skills and behaviors are typically used or displayed by nondisabled individuals;

(2) environmental, health, and communicative factors that influence a person's behavior; and

(3) the need for equipment or environments to assist persons in daily living, learning, and working;

C. developing and writing measurable objectives that focus on training persons in functional skill areas and are directed at achieving outcomes specified in part 9525.2030;

D. analyzing tasks and developing steps to achieve objectives and behavioral changes;

E. using positive instructional procedures and adaptations of equipment or environments to enable persons to live or work more independently and to actively interact in community settings with nondisabled individuals who are not paid staff. These procedures include positive techniques to achieve behavior change, use of advanced technology, alternative communication systems, and techniques for lifting, turning, positioning, or transferring persons;

F. collecting information and data that measure changes in person's behavior and the effectiveness of instructional procedures including the establishment of baseline measurement, and charting and graphing behavioral changes;

G. analyzing information to evaluate the effectiveness of instructional procedures in achieving goals and objectives of a person's IHP and outcomes specified in part 9525.2030;

H. developing methods and strategies to recommend service changes or to modify services for persons to more effectively achieve the goals and objectives of the IHP and outcomes specified in part 9525.2030, including Program Analysis of Service Systems (PASS);

I. protecting and assuring the health, safety, and well-being of persons, including first aid and cardiopulmonary resuscitation training and programs designed to promote a person's health and wellness; and

J. other areas identified by the QMRP or case manager as needed to improve the implementation of the IHP.

**Statutory Authority:** *MS s 252.28 subd 2; 252A.03 subd 1; 256B.092*

**History:** *13 SR 2439*

**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 a related condition and who are served by a license holder 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 development of an individual service plan, development of an individual program plan, informed consent from the person or the person's legal representative, and review and approval by the expanded interdisciplinary team and internal review committee;

D. establish criteria and procedures for emergency use of controlled aversive and deprivation procedures; and

E. 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 or a related condition when those persons are served by a license holder:

A. licensed under parts 9525.1500 to 9525.1690 to provide training and habilitation services to adults with mental retardation or a related condition;

B. licensed under parts 9525.0215 to 9525.0355 as a residential program for persons with mental retardation or a related condition. If a requirement of parts 9525.0215 to 9525.0355 differs from a requirement in Code of Federal Regulations, title 42, sections 483.400 to 483.480, an intermediate care facility for persons with mental retardation or a related condition shall comply with the rule or regulation that sets the more stringent standard;

C. licensed under parts 9525.2000 to 9525.2140 to provide residential-based habilitation services;

D. licensed under parts 9503.0005 to 9503.0175 and 9545.0750 to 9545.0855 to provide services to children with mental retardation or a related condition;

E. licensed under parts 9555.9600 to 9555.9730 as an adult day care center;

F. licensed under parts 9555.5105 to 9555.6265 to provide foster care for adults or under part 9545.0010 to 9545.0260 to provide foster care for children; or

G. licensed for any other service or program requiring licensure by the commissioner as a residential or nonresidential program serving persons with mental retardation or a related condition, as specified in Minnesota Statutes, section 245A.02.

Subp. 3. **Exclusion.** Parts 9525.2700 to 9525.2810 do not apply to:

A. treatments defined in parts 9515.0200 to 9515.0800 governing the administration of specified therapies to committed patients residing at regional centers; 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; 18 SR 1141*

**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 speak on the person's behalf and help the person understand and make informed choices regarding identification of needs and choices of services and supports.

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 program 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 removal of a positive reinforcer following a response resulting in, or intended to result in, a decrease in the frequency, duration, or intensity of that response. Often times the positive reinforcer available is goods, services, or activities to which the person is normally entitled. The removal is often in the form of a delay or postponement of the positive reinforcer.

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. [Repealed, 18 SR 1141]

Subp. 14a. **Expanded interdisciplinary team.** "Expanded 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; representatives of providers of residential, day training and habilitation, and support services identified in the person's individual service plan; a health professional, if the person with mental retardation or a related condition has overriding medical needs; and a qualified mental retardation professional. The qualified mental retardation professional must have at least one year of direct experience in assessing, planning, implementing, and monitoring a plan that includes a behavior-intervention program.

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 program plan for reduction or elimination.

Subp. 16. [Repealed, 18 SR 1141]

Subp. 16a. **Individual program plan.** "Individual program plan" means the coordinated, integrated, and comprehensive written plan for providing services to persons that is developed:

A. consistent with all aspects of the person's individual service plan;

B. in compliance with applicable state and federal laws and regulations governing services to persons with mental retardation or a related condition; and

C. by the license holder in consultation with the expanded interdisciplinary team.

Subp. 16b. **Individual service plan.** "Individual service plan" means the written plan developed by the service planning team containing the components required under Minnesota Statutes, section 256B.092.

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. [Repealed, 18 SR 1141]

Subp. 19. **Intermediate care facility for persons with mental retardation or a related condition or ICF/MR.** "Intermediate care facility for persons with mental retardation or a related condition" 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 or a related condition 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 or a related condition.

Subp. 19a. **Internal review committee.** "Internal review committee" means the committee responsible under part 9525.2750, subpart 2, for the review and approval of individual program plans proposing the use of controlled procedures.

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. [Repealed, 18 SR 1141]

Subp. 21a. **License holder.** "License holder" has the meaning given in Minnesota Statutes, section 245A.02, subdivision 9.

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 program plan. The term does apply to, and parts 9525.2700 to 9525.2810 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, that 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 person:

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

C. who has a related condition as defined in Minnesota Statutes, section 252.27, subdivision 1a.

**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 program 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 483.430.

**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.** [Repealed, 18 SR 1141]

**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.** [Repealed, 18 SR 1141]

**Subp. 33a. Substantial change.** "Substantial change" means a change in the individual program plan that intensifies the intrusiveness of the controlled procedure by:

A. expanding, adding, or replacing in any way:

(1) the target behaviors for which the controlled procedure is to be implemented; or

(2) the type of controlled procedure;

B. the method of implementation;

C. the criteria for change or the criteria for termination of implementation of the controlled procedure; or

D. deleting without replacing a target behavior.

**Subp. 34. Target behavior.** "Target behavior" means a behavior identified in a person's individual program plan as the object of efforts intended to reduce or eliminate the behavior.

**Subp. 35. Time out or time out from positive reinforcement.** "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 program 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 periods are usually brief, lasting only several minutes. 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," 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.

**Statutory Authority:** *MS s 245.825*

**History:** *11 SR 2408; L 1987 c 333 s 22; 13 SR 1448; 18 SR 1141*

#### 9525.2720 EXEMPTED ACTIONS AND PROCEDURES.

Use of the instructional techniques and intervention procedures listed in items A to H is not subject to the restrictions established by parts 9525.2700 to 9525.2810. The person's individual program plan must address the use of the following exempted actions and procedures:

A. Corrective feedback or prompts to assist a person in performing a task or exhibiting a response.

B. Physical contact to facilitate a person's completion of a task or response and directed at increasing adaptive behavior when the person does not resist or the person's resistance is minimal in intensity and duration, as determined by the expanded interdisciplinary team.

C. Physical contact or a physical prompt to redirect a person's behavior when:

- (1) the behavior does not pose a serious threat to the person or others;
- (2) the physical contact is used to escort or carry a person to safety when the person is in danger;

(3) the behavior is effectively redirected with less than 60 seconds of physical contact by staff; or

(4) the physical contact is used to conduct a necessary medical examination or treatment.

This exemption may not be used to circumvent the requirements for controlling the use of manual restraint. It is included to allow caregivers the opportunity to deal effectively and naturally with intermittent and infrequently occurring situations by using physical contact.

D. 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 goods, services, or activities. 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 period lasting no more than several minutes until the person's behavior is redirected and normal activities can be resumed.

G. 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 program plan for reduction or elimination. Removing the object or other reward must not interfere with a person's access to the goods, services, and activities protected by part 9525.2730.

H. Manual or mechanical restraint 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 program plan.

**Statutory Authority:** *MS s 245.825*

**History:** *11 SR 2408; 18 SR 1141*

### 9525.2730 PROCEDURES AND ACTIONS RESTRICTED OR PROHIBITED.

Subpart 1. **Restrictions.** An aversive or deprivation procedure must 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, which governs 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, which governs 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 program; or

D. deny the person ordinary access to legal counsel and next of kin as mandated by Minnesota Statutes, section 245.825.

Subp. 2. **Prohibitions.** The actions or procedures listed in items A to I 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, for example, requiring a person to stand with the hands over the person's head 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. presenting intense sounds, lights, or other sensory stimuli as an aversive stimulus;

G. using a noxious smell, taste, substance, or spray, including water mist, as an aversive stimulus;

H. using room time out in emergency situations; and

I. denying or restricting a person's access to equipment and devices such as walkers, wheelchairs, hearing aids, and communication boards that facilitate the person's functioning. When the temporary removal of the equipment or device is necessary to prevent injury to the person or others or serious damage to the equipment or device, the equipment or device must be returned to the person as soon as possible.

Subp. 3. **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 of the following conditions are met:

A. the target behavior is extreme self-injury that 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;

D. use of faradic shock ordered by a court is implemented in accordance with parts 9525.2750 and 9525.2760; and

E. a plan is in effect to reduce and eliminate the use of faradic shock with the person receiving it.

**Statutory Authority:** *MS s 245.825*

**History:** *11 SR 2408; 18 SR 1141*



**9525.2740 PROCEDURES PERMITTED AND CONTROLLED.**

Subpart 1. **Controlled procedures.** The procedures listed in items A to G 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. exclusionary and room 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 that does not cause discomfort;
- E. manual restraint;
- F. mechanical restraint; and
- G. deprivation as defined in part 9525.2710, subpart 12.

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; 18 SR 1141*

**9525.2750 STANDARDS FOR CONTROLLED PROCEDURES.**

Subpart 1. **Standards and conditions.** Except in an emergency governed by part 9525.2770, use of a controlled procedure may occur only when the controlled procedure is based upon need identified in the individual service plan and is proposed, approved, and implemented as part of an individual program plan. Use of a controlled procedure within an individual program plan must comply with items A to I.

A. The controlled procedure is proposed or implemented only as a part of the total methodology specified in the person's individual program plan. The individual program plan has as its primary focus the development of adaptive behaviors. The controlled procedure approved 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 implementing 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 reviewed and approved by the expanded interdisciplinary team as required by subpart 1a.

E. If the license holder is licensed under parts 9525.0215 to 9525.0355; 9525.1500 to 9525.1690; or 9525.2000 to 9525.2140, the proposed use of the procedure is reviewed and approved by an internal review committee that meets the requirements in subpart 2.

F. The procedure is implemented and monitored by staff members trained to implement the procedure. The license holder is responsible for providing ongoing training to all staff members responsible for implementing, supervising, and monitoring controlled procedures, to ensure that all staff responsible for implementing the program are competent to implement the procedures. The license holder must provide members of the expanded interdisciplinary team with documentation that staff are competent to implement the procedures. Controlled procedures must not be implemented as part of the individual program 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 program plan.

# MINNESOTA RULES 1993

691

## PROGRAMS FOR MENTALLY RETARDED PERSONS 9525.2750

### G. Time out procedures must meet the following conditions:

(1) When possible, time out procedures must be implemented in the person's own room or other area commonly used as living space rather than in a room used solely for time out.

(2) When possible, the person must be returned to the activity from which the person was removed when the time out procedure is completed.

(3) Persons in time out must be continuously monitored by staff.

(4) Release from time out is contingent on the person's stopping or bringing under control the behavior that precipitated the time out and must 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.

(5) If time out is implemented contingent on repeated instances of the target behavior for longer than 30 consecutive minutes, the person must be offered access to a bathroom and drinking water.

(6) Placement of a person in room time out must not exceed 60 consecutive minutes from the initiation of the procedure.

(7) Time out rooms must:

(a) provide a safe environment for the person;

(b) have an observation window or other device to permit continuous visual monitoring of the person;

(c) measure at least 36 square feet and be large enough to allow the person to stand, to stretch the person's arms, and to lie down; and

(d) be well lighted, well ventilated, and clean.

### H. Controlled procedures using manual restraint must meet the following conditions:

(1) The person's primary care physician must be consulted to determine whether implementing the procedure is medically contraindicated.

(2) The person must be given an opportunity for release from the manual restraint and for motion and exercise of the restricted body parts for at least ten minutes out of every 60 minutes.

(3) Efforts to lessen or discontinue the manual restraint must be made at least every 15 minutes, unless contraindicated. The time each effort was made and the person's response to the effort must be noted in the person's permanent record.

(4) The procedures must comply with other standards in parts 9525.2700 to 9525.2810.

### I. Controlled procedures using mechanical restraint must meet the following conditions:

(1) The person's primary care physician must be consulted to determine whether implementing the procedure is medically contraindicated.

(2) Use of mechanical restraint that results in restriction of two or fewer limbs or that does not restrict the person's movement from one location to another requires the following procedures:

(a) Staff must check on the person every 30 minutes and document that each check was made.

(b) The 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 mechanical restraints are used.

(c) Efforts to lessen or discontinue the mechanical 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.

(3) Use of mechanical restraint that results in restriction of three or more of a person's limbs or that restricts the person's movement from one location to another must meet the conditions of subitems (1) and (2) and the following additional conditions:

(a) Efforts to lessen or discontinue the mechanical 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.

(b) A staff member shall remain with a person during the time the person is in mechanical restraint and shall take the action specified in unit (a).

(4) The procedures must comply with other standards in parts 9525.2700 to 9525.2810.

**Subp. 1a. Review and approval by expanded interdisciplinary team.** When an individual program plan proposes using a controlled procedure, or when a substantial change is proposed, the plan must be reviewed and approved by the expanded interdisciplinary team.

**Subp. 2. Review and approval by internal review committee.** A license holder licensed under parts 9525.0215 to 9525.0355, 9525.1500 to 9525.1690, or 9525.2000 to 9525.2140, must have at least one committee that reviews all individual program plans proposing the use of controlled procedures. The administrator with overall responsibility for the license holder's policy and program shall appoint the committee. Before approving a plan, 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. The internal review committee membership must meet the criteria in items A and B.

A. The internal review committee must include two individuals employed by the license holder as staff members or consultants. One of the two individuals must be a qualified mental retardation professional with at least one year of direct experience in assessing, planning, implementing, and monitoring behavior intervention programs.

B. At least one-third of the committee members must 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. 2a. Quarterly reporting.** The license holder must submit data on the use and effectiveness of individual program plans that incorporate the use of controlled procedures identified in subpart 4 to the expanded interdisciplinary team members, the internal review committee, and the regional review committee. The data must be submitted quarterly on forms prescribed by the commissioner. The case manager shall ensure that this information is submitted as required under this subpart.

**Subp. 3. [Repealed, 18 SR 1141]**

**Subp. 4. Submission of individual program plan to regional review committee.** Within ten calendar days of the date that a controlled procedure in items A to D is approved under subpart 2, or a substantial change is made, the case manager shall ensure the regional review committee receives a copy of the individual program plan sent by the license holder, that proposes the procedure or that portion of the individual program plan that contains the substantial change, regarding implementation of the following controlled procedures:

- 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.

**Statutory Authority:** *MS s 245.825*

**History:** *11 SR 2408; 18 SR 1141*

### **9525.2760 REQUIREMENTS FOR INDIVIDUAL PROGRAM PLANS PROPOSING USE OF A CONTROLLED PROCEDURE.**

**Subpart 1. Requirements.** An individual program 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 expanded interdisciplinary team is developing an individual program plan that includes the use of a controlled procedure, the case

# MINNESOTA RULES 1993

693

## PROGRAMS FOR MENTALLY RETARDED PERSONS 9525.2760

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 before the initial development of the individual program plan that includes the use of a controlled procedure and indicates 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 to be increased and the target behavior for decrease or elimination that provides a clear description of the behavior and the degree to which it is being expressed, with enough detail to provide a basis for comparing the behaviors to be increased and decreased before and after use of the proposed controlled procedure;
- 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, including an analysis of the person's current residence and day program and specifically addressing 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; and
- 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 implementing a controlled procedure.

Subp. 3. [Repealed, 18 SR 1141]

Subp. 4. **Review and content standards.** An individual program plan that proposes the use of controlled procedures must include the following elements:

- A. objectives designed to develop or enhance the adaptive behavior of the person for whom the plan is made, including the change expected in the target behavior and the anticipated time frame for achieving the change;
- B. objectives designed to reduce or eliminate the target behavior of the person for whom the plan is made, including the change expected in the adaptive behavior and the anticipated time frame for achieving the change;
- C. strategies to increase aspects of the person's behavior that provide an alternative functional adaptive replacement behavior to the behavior identified for reduction or elimination, including when and under what circumstances the procedure will be used;
- D. strategies to decrease aspects of the person's target behavior, including when and under what circumstances the procedure will be used;
- E. the projected starting date and completion date for achievement of each objective;
- F. a detailed description of the ways in which implementation of the procedure will be monitored, by whom, and how frequently, specifying how staff implementing the procedure will be trained and supervised and ensuring that direct on-site supervision of the procedure's implementation is provided by the professional staff responsible for developing the procedure;
- G. a description of any discomforts, risks, or side effects that it is reasonable to expect;
- H. a description of the data collection method used to evaluate the effectiveness of the proposed procedures and to monitor expected or unexpected side effects;
- I. 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;

J. a description of how implementation of the plan will be coordinated with services provided by other agencies or documentation of why the plan will not be implemented by a particular service provider or in a particular setting;

K. a description of how implementation of the plan involves families and friends; and

L. the date when use of the controlled procedure will terminate unless, before that date, continued use of the procedure is approved by the case manager and the member of the expanded interdisciplinary team who is a qualified mental retardation professional with at least one year of experience in assessing, planning, implementing, monitoring, and reviewing behavior management programs. The projected termination date must be no more than 90 days after the date on which use of the procedure was approved. Reapproval for using the procedure must be obtained at 90-day intervals, if evaluation data on the target behavior and effectiveness of the procedure support continuation.

**Subp. 5. Monitoring individual program plan.** Monitoring the proposed controlled procedure must be completed as adopted in the individual program plan and in accordance with Minnesota Statutes, section 256B.092, subdivision 1c.

**Subp. 6. Documenting informed consent.** Except in situations governed by part 9525.2730, subpart 3 or 9525.2770, evidence that informed consent has been obtained from a person or individual authorized to give consent must be added to the person's individual program plan before a controlled procedure is implemented.

**Statutory Authority:** *MS s 245.825*

**History:** *11 SR 2408; 18 SR 1141*

### 9525.2770 EMERGENCY USE OF CONTROLLED PROCEDURES.

**Subpart 1. General requirement.** Implementing a controlled procedure without first meeting the requirements of parts 9525.2750, 9525.2760, and 9525.2780 is permitted only when the emergency use criteria and requirements in subparts 2 to 6 are met.

**Subp. 2. Criteria for emergency use.** Emergency use of controlled procedures must meet the conditions in items A to C.

A. Immediate intervention is needed to protect the person or others from physical injury or to prevent severe property damage that is an immediate threat to the physical safety of the person or others.

B. The individual program 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.

**Subp. 3.** [Repealed, 18 SR 1141]

**Subp. 4.** [Repealed, 18 SR 1141]

**Subp. 5. Written policy.** The license holder must have a written policy on emergency use of controlled procedures that specifies:

A. any controlled procedures that the license holder does not allow to be used on an emergency basis;

B. the internal procedures that must be followed for emergency use, including the procedure for complying with subpart 6;

C. how the license holder will monitor and control emergency use;

D. the training a staff member must have completed before being permitted by the license holder to implement a controlled procedure under emergency conditions;

E. that the standards in part 9525.2750, subpart 1, items F, G, subitems (1) to (5), H, and I, must be met when controlled procedures are used on an emergency basis; and

F. use of a controlled procedure initiated on an emergency basis according to subpart 4 must not continue for more than 15 days.

**Subp. 6. Reporting and reviewing emergency use.** Any emergency use of a controlled procedure by a license holder governed by parts 9525.2700 to 9525.2810 must be reported and reviewed as specified in items A to E. A license holder shall designate at least one staff

# MINNESOTA RULES 1993

695

## PROGRAMS FOR MENTALLY RETARDED PERSONS 9525.2770

member to be responsible for reviewing, documenting, and reporting use of emergency procedures. The designated staff member must be a QMRP.

A. Within three calendar days after an emergency use of a controlled procedure, the staff member who implemented the emergency use shall report in writing to the designated staff member 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; and
- (6) an assessment of the likelihood that the behavior necessitating emergency use will recur.

B. Within seven calendar days after the date of the emergency use of a controlled procedure, the designated staff member shall review the report prepared by the staff member who implemented the emergency procedure and ensure the report is sent to the case manager and expanded interdisciplinary team for review. If the emergency use involved manual restraint, mechanical restraint, or use of exclusionary time out exceeding 15 minutes at one time or a cumulative total of 30 minutes or more in a 24-hour period, the designated staff member must ensure the report is sent to the internal review committee within seven calendar days of the emergency use of the controlled procedure.

C. Within seven calendar days after the date of receipt of the emergency report in item A, the case manager shall confer with members of the expanded interdisciplinary team to:

- (1) discuss the incident reported in item A to:
  - (a) define the target behavior for reduction or elimination in observable and measurable terminology;
  - (b) identify the antecedent or event that gave rise to the target behavior; and
  - (c) identify the perceived function the target behavior served; and
- (2) determine what modifications should be made to the existing individual program plan so as to not require the use of a controlled procedure.

D. An expanded interdisciplinary team meeting must be conducted within 30 calendar days after the emergency use if it is determined that a controlled procedure is necessary and that the target behavior should be identified in the individual program plan for reduction or elimination.

E. The emergency use of a controlled procedure as well as changes made to the adaptive skill acquisition portion of the plan must be incorporated in the individual program plan within 15 calendar days after the expanded interdisciplinary team meeting required under this part. During this time, the designated staff member shall document all attempts to use less restrictive alternatives including:

- (1) adaptive skill acquisition procedures currently being used and why they were not successful;
- (2) attempts made at less restrictive procedures that failed and why they failed; and
- (3) rationale for not attempting the use of other less restrictive alternatives.

The designated staff member must ensure a copy of the report required under item A is sent to the internal review committee and the regional review committee within five working days after the expanded interdisciplinary team meeting.

F. A summary of the interdisciplinary team's decision under items C and E must be added to the person's permanent record.

**Statutory Authority:** *MS s 245.825*

**History:** *11 SR 2408; 18 SR 1141*

**9525.2780 REQUIREMENTS FOR OBTAINING INFORMED CONSENT.**

Subpart 1. [Repealed, 18 SR 1141]

Subp. 2. **When informed consent is required.** Except in situations governed by part 9525.2730, subpart 3 or 9525.2770, the case manager must obtain or reobtain written informed consent before implementing the following:

- 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 the individual program plan.

If the case manager is unable to obtain written informed consent, the procedure must not be implemented.

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 approved by the expanded interdisciplinary team is 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 to obtain informed consent.** The case manager shall provide the information specified in items A to K to the legal representative as a condition of obtaining informed consent. Consent obtained without providing the information required in items A to K is not considered to be informed consent. The case manager shall document that the information in items A to K was provided orally and in writing and that consent was given voluntarily. The information must 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 legal representative's native language if the person or the legal representative does not understand English or in sign language if that is the person's or the legal representative's preferred mode of communication, and in a manner that does not suggest coercion. The information must consist of:

- 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;

# MINNESOTA RULES 1993

697

## PROGRAMS FOR MENTALLY RETARDED PERSONS 9525.2790

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 legal representative 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;

J. criteria for continuing, modifying, and terminating a procedure; and

K. an explanation that:

(1) consent is time limited and automatically expires 90 days after the date on which consent was given;

(2) informed consent must again be obtained in order for use of a procedure to continue after the initial 90-day period ends; and

(3) the legal representative may request additional information related to parts 9525.2700 to 9525.2810 and must be provided a copy of the signed informed consent form by the case manager after it is received.

**Subp. 5. Consent for substantial change.** If the expanded interdisciplinary team has approved a substantial change in a procedure for which informed consent is in effect, the change may be implemented only when the case manager first obtains written informed consent for the substantial change by meeting the requirement in subpart 4.

**Subp. 6.** [Repealed, 18 SR 1141]

**Subp. 7. Appeals.** A person or the person's legal representative may initiate an appeal under Minnesota Statutes, section 256.045, subdivision 4a, for issues involving the use of a controlled procedure and related compliance with parts 9525.0015 to 9525.0165 and 9525.2700 to 9525.2810. 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; 18 SR 1141*

### 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 must 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) license holders governed by parts 9525.2700 to 9525.2810;

(2) parents or guardians of persons with mental retardation or a related condition;

(3) other concerned citizens, none of whom is employed by or has a controlling interest in a program or service 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; 18 SR 1141*

### 9525.2800 REPORTING NONCOMPLIANCE.

Subpart 1. **Required reporting.** Unauthorized use of aversive and deprivation procedures is subject to the requirements of Minnesota Statutes, sections 626.556 and 626.557, which govern reporting of maltreatment of minors and vulnerable adults. For purposes of parts 9525.2700 to 9525.2810, "unauthorized use of an aversive or deprivation procedure" means:

A. a procedure that is restricted or prohibited under part 9525.2730, subparts 1 and 3; and

B. procedures that have not been authorized as required under part 9525.2740, subpart 2.

Individuals are designated as mandated reporters according to Minnesota Statutes, sections 626.556, subdivision 3, and 626.557, subdivision 3.

Subp. 2. **Voluntary reporting.** If an individual who is not mandated to report by Minnesota Statutes, section 626.556, subdivision 3 or 626.557, subdivision 3, has reason to believe that a license holder governed by parts 9525.2700 to 9525.2810 is not in compliance with parts 9525.2700 to 9525.2810, the concern or complaint may be reported as described in items A and B.

A. Compliance-related concerns or complaints about any license holder governed by parts 9525.2700 to 9525.2810 can be reported to: The Department of Human Services, Division of Licensing, 444 Lafayette Road, Saint Paul, Minnesota 55155.

B. Compliance-related concerns or complaints about nursing homes to which parts 9525.2700 to 9525.2810 apply or about intermediate care facilities for persons with mental retardation or a related condition may be reported both to the commissioner under item A and 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; 18 SR 1141*

### 9525.2810 PENALTY FOR NONCOMPLIANCE.

If a license holder governed by parts 9525.2700 to 9525.2810 does not comply with parts 9525.2700 to 9525.2810, the commissioner has the authority to 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; 18 SR 1141*

## PUBLIC GUARDIANSHIP OF PERSONS WITH MENTAL RETARDATION

### 9525.3010 SCOPE.

Subpart 1. **Applicability.** Parts 9525.3010 to 9525.3100 implement Minnesota Statutes, chapter 252A, by setting standards that govern the responsibility of county boards in providing public guardianship services to persons with mental retardation. Parts 9525.3010 to 9525.3100 do not apply to persons with related conditions as defined in Minnesota Statutes, section 252.27, subdivision 1a. All guardianship responsibilities in parts 9525.3010 to 9525.3100 are delegated by the commissioner to the county of guardianship responsibility, unless otherwise stated. The commissioner may modify or rescind the delegation of these

# MINNESOTA RULES 1993

699

## PROGRAMS FOR MENTALLY RETARDED PERSONS 9525.3015

guardianship responsibilities in whole or in part if a county fails to comply with parts 9525.3010 to 9525.3100 or when the action is found to be in the best interest of the ward. For purposes of parts 9525.3010 to 9525.3100, the term "ward" includes "conservatee," the term "guardianship" includes "conservatorship," and the term "public guardian" or "guardian" includes "public conservator" or "conservator," unless otherwise stated.

Subp. 2. **Purpose.** The purpose of parts 9525.3010 to 9525.3100 is to:

A. provide supervision and protection to persons with mental retardation who are unable to fully provide for their own needs and for whom no qualified person is willing and able to act as private guardian;

B. set standards that the department and local agencies are to follow in the provision of public guardianship services;

C. safeguard the decision making powers of persons with mental retardation so that they are not restricted beyond the clearly established need; and

D. assist persons with mental retardation in receiving those services to which they are entitled under state and federal law.

**Statutory Authority:** *MS s 252A.21*

**History:** *17 SR 2276*

### 9525.3015 DEFINITIONS.

Subpart 1. **Scope.** For the purposes of parts 9525.3010 to 9525.3100, the following terms have the meanings given to them in this part.

Subp. 2. **Aversive procedure.** "Aversive procedure" has the meaning given it in part 9525.2710, subpart 4.

Subp. 3. **Best interest.** "Best interest" means the principle of decision making that weighs the desires and objectives of the ward and the benefits and harms to the ward of a particular act or course of action, based on reasonable alternatives, and selects the alternative that provides the most benefit and least harm.

Subp. 4. **Biomedical ethics committee.** "Biomedical ethics committee" means a multidisciplinary group established by a health care institution to address ethical dilemmas which arise within the institution.

Subp. 5. **Case management.** "Case management" means the administration and services provided under Minnesota Statutes, section 256B.092.

Subp. 6. **Case manager.** "Case manager" has the meaning given it in part 9525.0015, subpart 5.

Subp. 7. **Commissioner.** "Commissioner" means the commissioner of the Minnesota Department of Human Services or the commissioner's designated representative.

Subp. 8. **Conservatee.** "Conservatee" means a person with mental retardation for whom the court has appointed a public conservator.

Subp. 9. **Contract.** "Contract" has the meaning given it in part 9525.0015, subpart 7.

Subp. 10. **County of guardianship responsibility.** "County of guardianship responsibility" means the county social services agency in the county in which guardianship has been established by the court.

Subp. 11. **County staff acting as public guardian.** "County staff acting as public guardian" means the person designated by the county board to exercise public guardianship responsibilities delegated to the local agency.

Subp. 12. **Department.** "Department" means the Minnesota Department of Human Services.

Subp. 13. **Deprivation procedure.** "Deprivation procedure" has the meaning given it in part 9525.2710, subpart 12.

Subp. 14. **Do not resuscitate.** "Do not resuscitate" means a physician's order placed in the ward's medical chart to withhold cardiopulmonary resuscitation (CPR) in the event of cardiopulmonary arrest.

Subp. 15. **Electroconvulsive therapy or electroshock therapy.** "Electroconvulsive therapy" or "electroshock therapy" means a treatment by which a medically controlled seizure is produced by passing an electric current across part of the brain.

Subp. 16. **Experimental treatment.** "Experimental treatment" means drugs, therapies, or treatments that are unproven, have been confined largely to laboratory use, or have progressed to limited human application and trials, and lack wide recognition from the scientific community as a proven and effective measure of treatment.

Subp. 17. **Individual service plan.** "Individual service plan" means the written plan, developed by the service planning team, containing the components listed in Minnesota Statutes, section 256B.092.

Subp. 18. **Informed consent.** "Informed consent" means the principle that the consent is valid only if the person giving consent understands the nature of the treatment, the benefits, the risk of harm to the ward, the alternatives, and can give a reason for selecting a particular alternative. Informed consent requires that the person giving consent:

- A. is able to receive and assimilate relevant information;
- B. has the capacity to make reasoned decisions based upon relevant information;
- C. is giving consent voluntarily and without coercion;
- D. understands the nature of the diagnosis, the prognosis, and the current clinical condition; and
- E. understands the risk of harm to the ward and the benefits of all treatment alternatives, including risks and benefits of no treatment.

Subp. 19. **Least restrictive alternative.** "Least restrictive alternative" means the alternative that is the least intrusive and most normalized given the level of supervision and protection required for each individual ward. This level of supervision and protection allows risk taking to the extent that there is no reasonable likelihood that serious harm will happen to the ward or others.

Subp. 20. **Licensed physician.** "Licensed physician" means a person defined in Minnesota Statutes, section 252A.02, subdivision 5.

Subp. 21. **Local agency.** "Local agency" means the county of guardianship responsibility or the supervising agency.

Subp. 22. **Near relative.** "Near relative" means a spouse, parent, adult sibling, or adult child as defined in Minnesota Statutes, section 252A.02, subdivision 6.

Subp. 23. **Person with mental retardation.** "Person with mental retardation" has the meaning given it in part 9525.0015, subpart 20.

Subp. 24. **Psychotropic medication.** "Psychotropic medication" means a medication prescribed to treat mental illness and associated behaviors or to control or alter behavior. The major classes of psychotropic medications include:

- A. antipsychotic (neuroleptic);
- B. antidepressant;
- C. antianxiety;
- D. antimania;
- E. stimulant;
- F. sedative-hypnotic; and
- G. other medications prescribed for the purpose of controlling mood, mental status, or behavior.

Subp. 25. **Public conservator.** "Public conservator" means the department staff acting as public conservator or the county staff acting as public conservator when exercising some, but not all the powers designated in Minnesota Statutes, section 252A.111.

Subp. 26. **Public guardian.** "Public guardian" means the department staff acting as public guardian or the county staff acting as public guardian when exercising all of the powers designated in Minnesota Statutes, section 252A.111.

Subp. 27. **Regional center or regional treatment center.** "Regional center" or "regional treatment center" means a state-operated facility for persons with mental illness, mental retardation, or chemical dependency that is under direct administrative authority of the commissioner.

Subp. 28. **Research.** "Research," as defined in Code of Federal Regulations, title 45, section 46.102(d), means a systematic investigation designed to develop or contribute to generalized knowledge.

# MINNESOTA RULES 1993

701

## PROGRAMS FOR MENTALLY RETARDED PERSONS 9525.3025

Subp. 29. **Residential service.** "Residential service" has the meaning given it in part 9525.0015, subpart 30.

Subp. 30. **State facility.** "State facility" has the meaning given it in Minnesota Statutes, section 246.50, subdivision 3. State facility includes state-operated community-based services.

Subp. 31. **Sterilization.** "Sterilization" means any medical procedure, treatment, or operation performed for the purpose of rendering a person permanently incapable of reproducing.

Subp. 32. **Supervising agency.** "Supervising agency" means the local agency that, upon agreement with the county of guardianship responsibility, fulfills designated guardianship responsibilities.

Subp. 33. **Terminal condition.** "Terminal condition" means an incurable or irreversible condition that is expected to result in death and for which the administration of medical treatment will serve only to prolong the dying process.

Subp. 34. **Ward.** "Ward" means a person with mental retardation for whom the court has appointed a public guardian.

**Statutory Authority:** *MS s 252A.21*

**History:** *17 SR 2276*

### 9525.3020 PERSONS SUBJECT TO PUBLIC GUARDIANSHIP.

Subpart 1. **Private guardianship preferred.** The commissioner, acting through the local agency, shall seek parents, near relatives, and other interested persons to assume a private guardianship appointment as a preferred alternative over public guardianship.

Subp. 2. **Commissioner as adviser.** The commissioner, acting through the local agency, shall seek out persons with mental retardation who are not under public guardianship but are in need of guardianship services and advise them of the availability of services and assistance.

Subp. 3. **Guardian of the estate.** When a ward has a personal estate beyond that which is necessary for the ward's personal and immediate needs, the county staff acting as public guardian shall:

A. determine whether a guardian of the estate has been appointed;

B. determine whether a guardian of the estate is necessary under the criteria in Minnesota Statutes, section 525.54, subdivision 3, if no guardian of the estate has been appointed; and

C. petition the probate court in the county of guardianship responsibility for the appointment of a private guardian of the estate, if a guardianship of the estate is determined to be necessary.

**Statutory Authority:** *MS s 252A.21*

**History:** *17 SR 2276*

### 9525.3025 PROCESS OF APPOINTING A PUBLIC GUARDIAN.

Subpart 1. **Nomination of commissioner.** Under Minnesota Statutes, section 252A.03, subdivision 1, nomination of the commissioner to act as public guardian is made by submitting a notarized sworn request directly to the commissioner. The commissioner may be nominated by any of the following:

A. the person with mental retardation;

B. an interested person, including a public official, spouse, parent, adult sibling, legal counsel, adult child, or next of kin; and

C. the current private guardian of the person who is unable or unwilling to continue to act as guardian and who requests the commissioner to act as public guardian.

Subp. 2. **Comprehensive evaluation.** Upon receipt of the written nomination, the commissioner shall order the local agency of the county in which the proposed ward resides, to arrange for the comprehensive evaluation of the proposed ward. The local agency shall complete and file the comprehensive evaluation according to Minnesota Statutes, section 252A.04. The local agency shall prepare and forward the comprehensive evaluation to the

commissioner within 90 days of the date the commissioner orders the evaluation. When the proposed ward is under medical care, the requirements regarding drugs, medications, and other treatments under Minnesota Statutes, section 252A.04, subdivision 2, apply. The comprehensive evaluation must consist of the following reports required under Minnesota Statutes, section 252A.02, subdivision 12:

A. a medical report on the health status and physical condition of the proposed ward;

B. a report on the proposed ward's intellectual capacity and functional abilities; and

C. a report from the case manager that includes the most current assessment of individual service needs, the most current individual service plan, if applicable, and a description of contacts with and responses of near relatives of the proposed ward about the notification to them that a nomination for public guardianship has been made and that they may seek private guardianship.

**Subp. 3. Commissioner's acceptance or rejection of nomination.** Under Minnesota Statutes, section 252A.03, the commissioner shall accept or reject the nomination in writing to the nominating person within 20 working days of receipt of the comprehensive evaluation. If the commissioner rejects the nomination, the person, parents, spouse, or near relatives may file a petition to appoint the commissioner as public guardian under Minnesota Statutes, section 252A.06. The commissioner shall accept the nomination if the following criteria are met:

A. the person was diagnosed as being a person with mental retardation;

B. the person is in need of the supervision and protection of a guardian; and

C. no qualified person is willing to become a private guardian.

**Subp. 4. Petition.** When the commissioner agrees to accept a nomination for appointment as public guardian, the local agency shall petition on behalf of the commissioner within 20 working days of receipt of the commissioner's acceptance, under Minnesota Statutes, section 252A.05. The petition must include the items specified in Minnesota Statutes, section 252A.06, subdivision 2.

**Subp. 5. Filing the comprehensive evaluation.** Under Minnesota Statutes, section 252A.07, subdivision 1, when a petition is brought by the commissioner or local agency after the acceptance of the nomination, a copy of the comprehensive evaluation must be filed with the petition. If the petition is brought by a person other than the commissioner or local agency and a comprehensive evaluation has been prepared within a year of the filing of the petition, the commissioner shall forward a copy of the comprehensive evaluation to the court upon notice of filing of the petition. If a comprehensive evaluation has not been prepared within a year of the filing of the petition, the local agency or the commissioner, upon notice of filing of a petition, shall arrange for a comprehensive evaluation to be prepared and forwarded to the court within 90 days. A copy of the comprehensive evaluation must be made available according to Minnesota Statutes, section 252A.07, subdivision 2.

**Subp. 6. Exception.** A comprehensive evaluation must be filed with the court before a court hearing. However, the action may proceed pursuant to the exception under Minnesota Statutes, section 252A.07, subdivision 3.

**Subp. 7. Notice of hearing.** The notice of hearing of the petition for appointment of public guardian is governed by Minnesota Statutes, sections 252A.081 and 525.55, which require that notice be personally served upon the proposed ward by a nonuniformed officer.

**Subp. 8. Hearing.** The public guardianship hearing is governed by Minnesota Statutes, section 252A.101.

**Statutory Authority:** *MS s 252A.21*

**History:** *17 SR 2276*

### **9525.3030 LIMITS OF GUARDIANSHIP POWERS AND DUTIES.**

Under Minnesota Statutes, section 525.56, a guardian has only those powers necessary to provide for the demonstrated needs of the ward. The guardian is granted the duty and power to exercise supervisory authority over the ward in a manner that limits civil rights and restricts personal freedoms only to the extent necessary to provide needed care and services.

# MINNESOTA RULES 1993

703

## PROGRAMS FOR MENTALLY RETARDED PERSONS 9525.3035

The department staff acting as public guardian or county staff acting as public guardian shall intervene under parts 9525.3010 to 9525.3100, only if the court has determined that the ward is incapable of exercising certain rights.

**Statutory Authority:** *MS s 252A.21*

**History:** *17 SR 2276*

### 9525.3035 GENERAL STANDARDS FOR PUBLIC GUARDIANSHIP.

Subpart 1. **Generally.** For purposes of parts 9525.3010 to 9525.3100, public guardianship responsibilities are divided into the following four general functions:

- A. planning;
- B. protection of rights;
- C. consent determination; and
- D. monitoring and evaluation of services.

Subp. 2. **Planning.** The county staff acting as public guardian shall participate in planning on behalf of the ward. In planning for the ward, the county staff acting as public guardian shall:

- A. obtain knowledge of the ward in order to make decisions on the ward's behalf that are in the best interest of the ward;
- B. consider availability of services and service entitlements under applicable state and federal law in order to plan for the individual needs of the ward and assist and represent the ward;
- C. determine that services are being provided in a manner consistent with the least restrictive alternative and the ward's best interest; and
- D. pursue steps toward the development of community-based services for the ward.

Subp. 3. **Protection of rights.** The county staff acting as public guardian and the department staff acting as public guardian shall protect the legal rights and interests of the ward. The public guardian shall take appropriate action if the ward's legal rights are abridged. If actions by providers of public and private services do not meet the individual needs and best interest of the ward, the county staff acting as public guardian and the department staff acting as public guardian shall pursue appropriate action on behalf of the ward according to applicable state law.

Subp. 4. **General standards for consent determination.** The county staff acting as public guardian and the department staff acting as public guardian shall determine whether activities are in the ward's best interest. Specific public guardianship consent authority is described in parts 9525.3040 to 9525.3060. The following standards apply to all consents regarding the ward. Unless otherwise specified, when determining whether to consent to any activity which affects the ward, the public guardian must not consent to the activity, unless:

- A. the activity is in the ward's best interest;
- B. no less restrictive alternatives exist;
- C. the activity is not in violation of the religious, moral, or cultural beliefs of the ward; and
- D. reasonable efforts have been made to obtain the opinion of the nearest relative.

Subp. 5. **Monitoring and evaluation.** The county staff acting as public guardian shall monitor and evaluate services provided to the ward according to part 9525.3065.

Subp. 6. **Release of information.** The county staff acting as public guardian or the department staff acting as public guardian must not consent to the release of any information about the ward, unless the release is:

- A. in compliance with all applicable data practice laws including Minnesota Statutes, chapter 13; and
- B. in the ward's best interest.

**Statutory Authority:** *MS s 252A.21*

**History:** *17 SR 2276*

**9525.3040 POWERS AND DUTIES OF PUBLIC GUARDIAN.**

Subpart 1. **General powers.** The powers and duties of the public guardian are governed by Minnesota Statutes, sections 252A.111 and 525.56, subdivisions 1 to 3. The general powers and duties of the county staff acting as public guardian are:

A. The power to determine the ward's place of residence consistent with state and federal law, and the least restrictive environment consistent with the ward's best interest.

B. The duty to determine that provision has been made for the ward's care, comfort, maintenance needs, including food, shelter, health care, social and recreational requirements, and whenever appropriate, training, education, and habilitation or rehabilitation.

C. The duty to take reasonable care of the ward's clothing, furniture, vehicles, and other personal effects, and, if other property requires protection, the power to seek appointment of a guardian of the estate.

D. The power to give necessary consent to enable the ward to receive necessary medical or other professional care. Exceptions to consent to medical care under parts 9525.3055 to 9525.3060 apply. This power includes consent to aversive and deprivation procedures under part 9525.3045 and psychotropic medications under part 9525.3050.

E. The power to approve or withhold approval of any contract the ward makes, except for necessities.

F. The duty and power to exercise supervisory authority over the ward in a manner that limits civil rights and restricts personal freedom only to the extent necessary to provide needed care and services.

Subp. 2. **Additional powers.** The county staff acting as public guardian may have the additional powers granted under Minnesota Statutes, section 252A.111, subdivision 2, if the power is granted by the court. These additional powers are:

A. the power to permit or withhold permission for the ward to marry;

B. the power to begin legal action or defend against legal action in the name of the ward; and

C. the power to consent to the adoption of the ward as provided in Minnesota Statutes, section 259.24.

Subp. 3. **Special duties.** Under Minnesota Statutes, section 252A.111, subdivision 6, the county staff acting as public guardian shall:

A. maintain close contact with the ward, visiting at least twice a year;

B. determine whether written consent should be given before filming of the ward for public dissemination, after permitting and encouraging input by near relatives of the ward. All filming must depict the ward with dignity and must not be contrary to the best interest of the ward. Consent for filming must include a consideration of the purpose and intended use of the film;

C. take actions and make decisions on behalf of the ward that encourage and allow the maximum level of independent functioning in a manner least restrictive of the ward's personal freedom consistent with the need for supervision and protection; and

D. permit and encourage maximum self-reliance on the part of the ward and permit and encourage input by the nearest relative of the ward in planning and decision making on behalf of the ward.

**Statutory Authority:** *MS s 252A.21*

**History:** *17 SR 2276*

**9525.3045 CONSENT TO USE OF AVERSIVE AND DEPRIVATION PROCEDURES.**

Subpart 1. **Generally.** The county staff acting as public guardian has the authority to give informed consent for the use of aversive and deprivation procedures. Technical assistance from the department about the use of aversive and deprivation procedures is available to the local agency upon request. The county staff acting as public guardian must withdraw consent at any time that the use of aversive and deprivation procedures do not appear to be in the best interest of the ward.

Subp. 2. **Informed consent.** The county staff acting as public guardian must not consent to the use of aversive and deprivation procedures unless all requirements in parts

# MINNESOTA RULES 1993

705

## PROGRAMS FOR MENTALLY RETARDED PERSONS 9525.3050

9525.2700 to 9525.2810, Code of Federal Regulations, title 42, section 483.13, and other requirements existing in state and federal law governing the use of such procedures are met.

Subp. 3. **Monitoring data.** The county staff acting as public guardian shall monitor the use of aversive and deprivation procedures by reviewing data required under parts 9525.2700 to 9525.2810 and Code of Federal Regulations, title 42, section 483.13, to determine whether continued use of aversive or deprivation procedures is consistent with these requirements and is in the best interest of the ward. Documentation of this review must be included in the quarterly review required under part 9525.3065, subpart 2.

**Statutory Authority:** *MS s 252A.21*

**History:** *17 SR 2276*

### 9525.3050 CONSENT TO USE OF PSYCHOTROPIC MEDICATIONS.

Subpart 1. **Generally.** The county staff acting as public guardian has the authority to give informed consent for the use of psychotropic medications for the ward. The informed consent must be in writing. Technical assistance from the department about the use of psychotropic medications is available to the local agency upon request. The county staff acting as public guardian must withdraw consent at any time that the use of psychotropic medication does not appear to be in the best interest of the ward.

Subp. 2. **Informed consent.** The county staff acting as public guardian must not consent to the use of psychotropic medications, unless the following information is documented and reviewed by the local agency:

A. the target behavior or condition for which the psychotropic medication is to be used;

B. a description of the target behavior or condition in specific observable and measurable terms;

C. the current rate, intensity, and quantification of the target behavior or condition;

D. the expected benefits including the level to which the psychotropic medication is to change the target behavior or condition;

E. the other therapies and programs available and which have been considered, or tried and rejected, and the rationale for selecting psychotropic medications as opposed to alternative therapies or programs; and

F. specific information about the psychotropic medication to be used including:

(1) the generic and commonly known brand name;

(2) the proposed dose;

(3) the possible dosage range or maximum dosage;

(4) the route of administration;

(5) the estimated duration of therapy; and

(6) the risks and possible side effects of the psychotropic medication, including the manner in which the side effects may be managed.

Consent for psychotropic medication may be withdrawn at any time and automatically expires one year from the date of consent unless consent is renewed or a shorter time is agreed upon by the county staff acting as public guardian.

Subp. 3. **Monitoring side effects.** The county staff acting as public guardian must not consent to the use of a psychotropic medication, unless standardized methods for assessing and monitoring side effects are in place. This must include a standardized side effects scale. In addition, when antipsychotic medication or amoxapine is used, the Dyskinesia Identification System: Condensed User Scale (DISCUS) must be used to monitor for tardive dyskinesia (TD) and a method must be in place to monitor for other extrapyramidal system side effects, including akathisia, dystonia, and pseudoparkinsonism. For purposes of this subpart, the following terms have the meaning given them.

A. "Tardive dyskinesia" means a variable combination of abnormal involuntary movements associated with the use, usually one to two years or more, of antipsychotic medication.

B. "Extrapyramidal system side effects" means signs and symptoms associated with antipsychotic medication, including:



(1) akathisia: the inability to sit still, restlessness, pacing, walking in place, or complaints of jitteriness, jumpiness, or feeling like jumping out of one's skin;

(2) pseudoparkinsonism: tremors, drooling, lack of movement, or shuffling gait; and

(3) dystonia: rigidity, eyes rolled up, or arched back.

C. "Dyskinesia Identification System: Condensed User Scale" or "DISCUS" means a 15-item assessment scale which monitors tardive dyskinesia by measuring the presence of involuntary movements in the body. The DISCUS is incorporated by reference. The DISCUS was published in the Psychopharmacology Bulletin, volume 27 (1991), pages 51 to 58, and is not subject to frequent change. DISCUS forms are available from the State Law Library, or from the department upon request.

D. "Standardized side effects assessment scale" means a published or professionally developed assessment scale which monitors side effects.

Subp. 4. **Monitoring schedules.** In addition to the requirements of subpart 3, the county staff acting as public guardian must not consent to the use of psychotropic medications, unless there is documentation that the following monitoring criteria are in place:

A. the monitoring of side effects is documented at least once, seven to 14 days after the initiation or dosage increase of any psychotropic medication, with the exception of the following documented and justified clinical situations:

(1) the medication is prescribed for use in emergency situations (stat.);

(2) the medication is prescribed on an as-needed basis (p.r.n.) for five days or less;

(3) acute use or increase of a medication to control a problem for up to 14 days, at which time the dosage is decreased to the prior level;

(4) an increase to a prior dosage following a failure at a lower dosage as a part of a minimal effective dosage attempt; and

(5) a gradual upward titration.

In cases of upward titration, an initial seven- to 14-day assessment and monthly assessments are required until the dosage is stabilized;

B. the monitoring of side effects is documented at least once every six months if any psychotropic medication continues to be prescribed; and

C. the monitoring of tardive dyskinesia, akathisia, and other extrapyramidal system side effects is documented as occurring at least once every six months if antipsychotic medication or amoxapine is prescribed. Monitoring must also occur at least once per year if antipsychotic medication or amoxapine is no longer prescribed but tardive dyskinesia, tardive akathisia, or tardive dystonia is diagnosed. The county staff acting as public guardian must withdraw consent to the use of psychotropic medications at any time the conditions under this subpart are not met.

Subp. 5. **Data review of target behavior.** The county staff acting as public guardian must not consent to the use of psychotropic medications, unless there is in place a method to collect and review data on the incidence of the behavior that the psychotropic medication is to increase, decrease, or eliminate and which provides a basis to determine the effectiveness of the psychotropic medication. This data collection method must include:

A. an objective description of the target behaviors to be increased and decreased or eliminated;

B. the methodology of collecting data on target behaviors;

C. the target behavior criterion level which represents treatment effectiveness;

D. quantification of the target behaviors to be increased and decreased or eliminated based upon data collected since the last review;

E. any current behavioral or therapeutic programs assigned to the target behaviors and the effectiveness of those programs;

F. the psychotropic medication, dose, and route of administration before and after the review;

G. the date for the next review; and

# MINNESOTA RULES 1993

707

## PROGRAMS FOR MENTALLY RETARDED PERSONS 9525.3055

H. the data review must occur:

- (1) at least once per month for at least one month after any psychotropic medication initiation;
- (2) at least once per month for at least one month after any psychotropic medication dosage adjustment; and
- (3) at least once every three months if the psychotropic medication and dose are stabilized.

At least once per year, the data review must include a gradual minimal effective dosage attempt or must justify why the reduction is not possible.

**Statutory Authority:** *MS s 252A.21*

**History:** *17 SR 2276*

### 9525.3055 NONDELEGATED CONSENT.

Subpart 1. **Generally.** The department retains the authority to provide consent in the areas described in this part. County staff acting as public guardians do not have authority to grant consent under subparts 2 to 4.

Subp. 2. **Do not resuscitate orders.** The county staff acting as public guardian shall submit an application for a "do not resuscitate" order to the department for written approval. Consent for a "do not resuscitate" order must not be given in the absence of a terminal condition, unless the physician states that initiating cardiopulmonary resuscitation would be medically futile or would harm the ward. The application must contain documentation of the following:

- A. that the county staff acting as public guardian has visited the ward;
- B. that the ward has been informed of the reasons and consequences of the order, and to the extent the ward is able to comprehend, the ward agrees to the order;
- C. that the county staff acting as public guardian has made reasonable efforts to obtain the opinion of the nearest relative;
- D. that the physician's written recommendation includes:
  - (1) a statement indicating whether the "do not resuscitate" order is appropriate;
  - (2) a statement of the ward's physical condition including current physical and adaptive skills, the terminal condition, and deterioration that has occurred since the onset of the terminal condition;
  - (3) a statement that death is imminent or that initiating cardiopulmonary resuscitation would be medically futile or would harm the ward. For purposes of this part, death occurring within one year is considered imminent; and
  - (4) a statement of the ward's prognosis given the terminal condition or medically futile condition;
- E. a statement that the request for the order is not based on discrimination because of the ward's mental retardation;
- F. upon request by the department, a report from a biomedical ethics committee, if one exists within the health care institution, that affirms that the proper procedures have been followed by the health care providers on behalf of the ward; and
- G. a recommendation by the county staff acting as public guardian for or against the request.

Subp. 3. **Limited medical treatment.** The county staff acting as public guardian shall submit an application to the department for written approval. The standards in subpart 2 govern the application for limited medical treatment. For purposes of this part, limited medical treatment means a life-sustaining treatment that has been deemed through ethical decision making, to be useless or gravely burdensome to the ward.

Subp. 4. **Research.** The county staff acting as public guardian shall submit an application to the department for written approval for the ward's participation in research, except for research such as educational tests, survey procedures, and interviews as exempted under Code of Federal Regulations, title 45, section 46.101(b). The application must contain the

following information required for informed consent under Code of Federal Regulations, title 45, section 46.116:

- A. an explanation of the purposes of the research;
- B. the expected duration of the ward's participation;
- C. a description of the procedures to be followed;
- D. identification of any procedures which are experimental;
- E. a description of any reasonably foreseeable risks or discomforts to the ward;
- F. a description of any benefits to the ward or to others which may reasonably be expected from the research;
- G. a description of appropriate alternative procedures or course of treatment, if any, that might be advantageous to the ward;
- H. a statement that describes the extent, if any, to which the confidentiality of records that identify the ward will be maintained;
- I. for research involving more than minimal risk, an explanation about whether any compensation is available, and an explanation about whether medical treatments are available if injury occurs and, if so, what they consist of or where further information may be obtained;
- J. an explanation of whom to contact for answers to questions about the research and the ward's rights, and whom to contact in the event of a research-related injury to the ward;
- K. a statement that participation is voluntary, that refusal to participate will involve no penalty or loss of benefits to which the ward is otherwise entitled, and that the ward may discontinue participation at any time without penalty or loss of benefits; and
- L. the additional elements of informed consent as required under Code of Federal Regulations, title 45, section 46.116(b), must also be included in the application for informed consent, when relevant.

**Subp. 5. Temporary care placement.** The county staff acting as public guardian shall request the department's written approval for a ward's temporary placement at a regional center. A ward's admission to a regional center for the purpose of receiving temporary care must not exceed 90 calendar days in any calendar year. The number of days of temporary care needed must be specified at the time of the ward's admission. The request must include a plan for establishment of a community placement for the ward within 90 calendar days of the date of temporary placement.

**Statutory Authority:** *MS s 252A.21*

**History:** *17 SR 2276*

### 9525.3060 NONDELEGATED CONSENT REQUIRING A COURT ORDER.

**Subpart 1. Generally.** No guardian may give consent for psychosurgery, electroconvulsive therapy, sterilization, or experimental treatment of any kind, unless the procedure is first approved by order of the court. Under Minnesota Statutes, section 525.56, subdivision 3, the court determines if the procedure is in the best interest of the ward. A petition for a court order for nondelegated consent is governed by Minnesota Statutes, section 525.56, subdivision 3, paragraph (4), clause (b). Before the court hearing, the county staff acting as public guardian shall obtain the written recommendation of the department pursuant to Minnesota Statutes, chapter 252A.

**Subp. 2. Sterilization.** The county staff acting as public guardian shall make application to the department for a written recommendation regarding sterilization of a ward. The application must include those reports prepared by a licensed physician, a psychologist who is qualified in the diagnosis and treatment of mental retardation, and a social worker who is familiar with the ward's social history and adjustment or the case manager for the ward, as required by Minnesota Statutes, section 525.56, subdivision 3, paragraph (4), clause (c). These reports must include the following:

- A. why sterilization is being proposed;
- B. whether sterilization is necessary and is the least intrusive method for alleviating the problem presented;

# MINNESOTA RULES 1993

709

## PROGRAMS FOR MENTALLY RETARDED PERSONS 9525.3065

C. whether sterilization is in the best interest of the ward; and

D. medical reports specifically considering the medical risks of sterilization, the consequences of not performing the sterilization, and whether alternative methods of contraception could be used to protect the best interest of the ward.

**Subp. 3. Department recommendation.** The department must not recommend sterilization of a ward, unless the following conditions have been met:

A. the ward has engaged in sexual intercourse or it is reasonably likely that the ward will engage in sexual intercourse;

B. all alternative methods of contraception, medical intervention, and behavior modification have been considered or have been tried unsuccessfully, including the use of contraceptives by the partner;

C. the physician has submitted a written statement that the proposed surgical procedure presents no undue risk for the ward; and

D. the ward has been fully informed and has agreed to the procedure, to the extent that the ward can comprehend the procedure and the reasons for it.

**Subp. 4. Electroconvulsive therapy, psychosurgery, and experimental treatment.** Under Minnesota Statutes, section 525.56, subdivision 3, paragraph (4), clause (a), no ward may receive electroconvulsive therapy, psychosurgery, or experimental treatment of any kind, unless the court orders the treatment. The county staff acting as public guardian shall make application to the department for a written recommendation before petitioning the court. The application must contain documentation that the following conditions have been met:

A. the drug, therapy, or treatment is intended to treat a serious or life-threatening disease, pathological condition, or behavioral pattern;

B. more accepted methods have been tried and found to be ineffective;

C. there is not a comparable or satisfactory alternative drug, therapy, or treatment available that is approved or generally recognized in the treatment of the disease, pathological condition, or behavior; and

D. that the county staff acting as public guardian has:

(1) visited the ward to observe the condition;

(2) informed the ward of the procedure, the potential risks, and the reasons for the procedure in a manner the ward can comprehend;

(3) obtained the opinion of the nearest relative, to the extent possible;

(4) described the ward's current physical condition in the application;

(5) described the effect of previous medical interventions in the application;

(6) obtained a physician's recommendation; and

(7) made a recommendation for or against the procedure.

**Statutory Authority:** *MS s 252A.21*

**History:** *17 SR 2276*

### 9525.3065 MONITORING AND EVALUATION.

**Subpart 1. Annual review.** Under Minnesota Statutes, section 252A.16, the county staff acting as public guardian shall conduct an annual review of the status of each ward. The county staff acting as public guardian shall submit to the department by the annual birthday of each ward, a copy of the annual review for each ward receiving public guardianship services during the past calendar year. The annual review must be in writing in the form determined by the local agency and must minimally include a description of the ward's:

A. physical adjustment and progress;

B. mental adjustment and progress;

C. social adjustment and progress; and

D. legal status based on items A to C.

The annual review required under parts 9525.0015 to 9525.0165 may be used to fulfill the annual review requirement of this subpart only when that review contains all of the crite-

ria required under items A to D. The county staff acting as public guardian must review and sign all annual reviews.

If the county staff acting as public guardian determines that the ward is no longer in need of guardianship or is capable of functioning under a less restrictive conservatorship, the local agency shall petition the court for a termination or modification of public guardianship as specified in part 9525.3085.

Subp. 2. **Quarterly review of records.** Under Minnesota Statutes, section 252A.21, subdivision 2, the county staff acting as public guardian shall review the records from the day, residential, and any support services on a quarterly basis. The quarterly review of records must be in writing in the form determined by the local agency. The quarterly review must contain any data about the use of aversive and deprivation procedures under part 9525.3045 and psychotropic medications under part 9525.3050. In conducting the quarterly review, the county staff acting as public guardian shall indicate in writing whether:

A. the ward is satisfied with the services;

B. the services are in the best interest of the ward;

C. the services are being provided according to the ward's individual service plan;

and

D. the services continue to meet the needs of the ward in the least restrictive environment.

The local agency shall maintain a record of all quarterly reviews according to the local agency's record maintenance schedule and submit copies to the department upon request.

Subp. 3. **Additional reports.** The county staff acting as public guardian shall provide additional reports as requested by the department.

**Statutory Authority:** *MS s 252A.21*

**History:** *17 SR 2276*

### 9525.3070 COUNTY OF GUARDIANSHIP RESPONSIBILITY.

Subpart 1. **Responsibilities delegated to county of guardianship responsibility.** All guardianship responsibilities in parts 9525.3010 to 9525.3100, are delegated by the commissioner to the county of guardianship responsibility except for those responsibilities retained by the commissioner under parts 9525.3055 to 9525.3060. The county of guardianship responsibility retains general supervisory responsibility for the ward throughout the duration of the public guardianship.

Subp. 2. **Maintenance of records.** The county of guardianship responsibility shall maintain a record for each ward. A separate guardianship record is not required. The guardianship record may be part of the existing client record. The county of guardianship responsibility, and any designated supervising agency, shall retain records on a ward until a court order terminates the guardianship or until the death of the ward. Records of a person previously under public guardianship may be destroyed four years from the date the file is closed.

Subp. 3. **Ward relocation.** The county staff acting as public guardian shall notify the department when a ward permanently relocates or temporarily leaves Minnesota for an extended stay. Notification is required for the following:

A. Leaving the state for more than 90 days. The county staff acting as public guardian shall determine whether leaving the state more than 90 days is in the best interest of the ward. If necessary, the county staff acting as public guardian shall refer the ward to the appropriate local agency in the other state for ongoing supervision.

B. *Moving permanently from Minnesota.* The county staff acting as public guardian shall determine whether moving permanently from the state is in the best interest of the ward. When a determination is made that the ward will move, the local agency shall seek termination of the public guardianship according to part 9525.3085.

**Statutory Authority:** *MS s 252A.21*

**History:** *17 SR 2276*

### 9525.3075 SUPERVISING AGENCY.

Subpart 1. **Referral.** When a ward moves or plans to move to another county, the county of guardianship responsibility may refer the ward to the county where the person is living, or plans to live, with a request for fulfilling the powers and duties of guardianship.

Subp. 2. **Transfer of responsibility.** All or any portion of the powers and duties that have been delegated by the department to the county of guardianship responsibility may be transferred to the county of supervisory responsibility by written agreement between the two local agencies. Upon entering into a written agreement with the county of guardianship responsibility, the supervising agency is responsible for the ward. The county of guardianship responsibility shall notify the department of all transfers of responsibilities by submitting a copy of the written agreement to the department within 30 calendar days of the effective date of the agreement.

Subp. 3. **Transfer of venue.** The county of guardianship responsibility may be changed by the court through a transfer of venue according to Minnesota Statutes, section 525.57.

**Statutory Authority:** *MS s 252A.21*

**History:** *17 SR 2276*

#### **9525.3080 COUNTY CONTRACTING FOR PUBLIC GUARDIANSHIP SERVICES.**

Local agencies may contract only for the public guardianship representation required by the screening and the individual service planning process. Local agencies may contract for these services with a public or private agency or individual who is not a service provider for the person. Local agencies must not contract with any party for the provision of other public guardianship duties required under parts 9525.3010 to 9525.3100.

**Statutory Authority:** *MS s 252A.21*

**History:** *17 SR 2276*

#### **9525.3085 MODIFICATION OR TERMINATION OF PUBLIC GUARDIANSHIP.**

Subpart 1. **Generally.** A hearing for the modification or termination of a public guardianship is governed by Minnesota Statutes, section 252A.19. The commissioner serves as public guardian with all the powers awarded pursuant to the guardianship until termination or modification by the court.

Subp. 2. **Petition.** The commissioner, ward, county staff acting as public guardian, or any interested person may petition the appointing court or the court to which venue has been transferred, for an order to terminate or modify the public guardianship under Minnesota Statutes, section 252A.19, subdivision 2. If the local agency determines that the ward no longer needs public guardianship, the local agency shall petition the court for a termination or modification of the public guardianship under Minnesota Statutes, section 252A.19.

Subp. 3. **Specific modifications.** The specific forms of modification available are set forth in Minnesota Statutes, section 252A.19, subdivision 2. Each of these alternatives is a change in legal status of the ward and requires a court hearing.

Subp. 4. **Comprehensive evaluation.** The county staff acting as public guardian shall arrange for a comprehensive evaluation of the ward at the court's request, under Minnesota Statutes, section 252A.19, subdivision 4.

**Statutory Authority:** *MS s 252A.21*

**History:** *17 SR 2276*

#### **9525.3090 DEATH OF A WARD OR CONSERVATEE.**

Subpart 1. **Report.** The county staff acting as public guardian shall report the death of a ward to the department and to the court that appointed the guardian, within 14 calendar days of the date of death. The written report must state the date, time, place, and cause of death. If a vulnerable adult investigation is conducted under Minnesota Statutes, section 626.557, a final report must be submitted to the department when the investigation is completed.

Subp. 2. **Closing of local agency record.** Upon the death of a ward and notification of the department, the guardianship record may be closed.

Subp. 3. **Termination of guardianship.** Under Minnesota Statutes, section 525.60, the guardianship of an adult ward terminates upon death.

**Statutory Authority:** *MS s 252A.21*

**History:** *17 SR 2276*

**9525.3095 GUARDIANSHIP TRAINING.**

The local agency shall establish a plan for the training of all county staff acting as public guardians. The plan must include at least ten hours of training annually in the areas of guardianship or mental retardation. Training and development sessions attended by county staff acting as public guardians must be documented and kept on file at the local agency.

**Statutory Authority:** *MS s 252A.21*

**History:** *17 SR 2276*

**9525.3100 REVIEW OF PUBLIC GUARDIANSHIP MATTERS.**

Subpart 1. **Informal review.** Informal review by the department of matters pertaining to public guardianship services is available upon request. Interested persons may request a review by submitting a written request directly to the department. A review by the department is not considered an appeal under Minnesota Statutes, section 256.045. An informal review does not preclude any appeal rights available under Minnesota Statutes, sections 525.71 to 525.731.

Subp. 2. **De novo review.** The commissioner, ward, or any interested person may petition the appointing court or the court to which venue has been transferred to review de novo any decision made by the county staff acting as public guardian or the department staff acting as public guardian, on behalf of a ward according to Minnesota Statutes, section 252A.19, subdivision 2.

Subp. 3. **Appeals.** Appeals from an order of public guardianship are governed by Minnesota Statutes, section 252A.21, subdivision 1.

**Statutory Authority:** *MS s 252A.21*

**History:** *17 SR 2276*