CHAPTER 9525

DEPARTMENT OF HUMAN SERVICES

PROGRAMS FOR MENTALLY RETARDED PERSONS

CASE MANAGEMENT SERVICES TO PERSONS WITH MENTAL RETARDATION

9525.0004 DEFINITIONS.

Subpart 1. **Scope.** The terms used in parts 9525.0004 to 9525.0036 have the meanings given them in this part.

Subp. 2. **Advocate.** "Advocate" means an individual who has been authorized, in a written statement by the person or the person's legal representative, to speak on the person's behalf and help the person understand and make informed choices in matters related to identification of needs and choice of services and supports.

Subp. 3. **Case management.** "Case management" means the administrative activities under part 9525.0016 and the service activities under part 9525.0024 provided to or arranged for a person.

Subp. 4. **Case manager.** "Case manager" means the person designated by the county board under part 9525.0012 or by contract to work on behalf of the person needing case management.

Subp. 5. **Commissioner.** "Commissioner" means the commissioner of the Department of Human Services or the commissioner's designated representative.

Subp. 6. **County board.** "County board" means the county board of commissioners for the county of financial responsibility or its designated representative. When a human service board has been established under Minnesota Statutes, sections 402.01 to 402.10, it shall be considered the county board for purposes of parts 9525.0004 to 9525.0036.

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. **Department.** "Department" means the Department of Human Services.

Subp. 9. **Home and community-based waivered services.** "Home and community-based waivered services" means services authorized under Minnesota Statutes, section 256B.092, subdivision 4.

Subp. 10. **Host county.** "Host county" means the county in which the services described in a person's individual service plan are provided. If supported employment or community integration services are provided in a setting outside the county where the license holder is located, the county where supported employment services are provided is not considered the host county for purposes of parts 9525.0004 to 9525.0036.

Subp. 11. **Individual program plan or IPP.** "Individual program plan" or "IPP" means the integrated, coordinated, and comprehensive written plan to provide services to the person that is developed:

A. consistent with all aspects of the person's individual service plan;

B. in compliance with applicable state and federal law and regulations governing services to persons with mental retardation or a related condition; 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, designed to achieve specified outcomes for the person based on assessed needs and preferences.

Subp. 13. **Informed choice.** "Informed choice" means a voluntary decision made by the person or the person's legal representative, after becoming familiarized with the alternatives, to:

A. select a preferred alternative from a number of feasible alternatives;

B. select an alternative which may be developed in the future; and

C. refuse any or all alternatives.

Subp. 14. **Interdisciplinary team.** "Interdisciplinary team"means a team composed of the case manager, the person, the person's legal representative and advocate, if any, and representatives of providers of the service areas relevant to the needs of the persons as described in the individual service plan.

Subp. 15. **Intermediate care facility for persons with mental retardation or ICF/MR.** "Intermediate care facility for persons with mental retardation" or "ICF/MR" has the meaning given it in part 9525.0225, subpart 18.

Subp. 16. **Least restrictive environment.** "Least restrictive environment" means an environment where services:

A. are delivered with minimum limitation, intrusion, disruption, or departure from typical patterns of living available to persons without disabilities;

B. do not subject the person or others to unnecessary risks to health or safety; and

C. maximize the person's level of independence, productivity, and inclusion in the community.

Subp. 17. **Legal representative.** "Legal representative" means the parent or parents of a person who is under 18 years of age, or a guardian or conservator, or guardian ad litem who is authorized by the court to make decisions about services for a person. Parents or private guardians or conservators who are unable to make decisions about services due to temporary unavailability may delegate their powers according to Minnesota Statutes, section 524.5-505.

Subp. 18. **Overriding health care needs.** "Overriding health care needs" means a health care condition that affects the service options available to the person because the condition requires:

A. specialized or intensive medical or nursing supervision; and

B. nonmedical service providers to adapt their services to accommodate the health and safety needs of the person.

Subp. 19. **Person.** "Person" means a person with mental retardation or a related condition or a child under the age of five who has been determined to be eligible for case management under parts 9525.0004 to 9525.0036.

Subp. 20. **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. 21. **Public guardian.** "Public guardian" has the meaning given it in Minnesota Statutes, section 252A.02, subdivision 7.

Subp. 22. **Qualified mental retardation professional.** "Qualified mental retardation professional" means a person who meets the qualifications in Code of Federal Regulations, title 42, section 483.430.

Subp. 23. **Residential program.** "Residential program" has the meaning given it in Minnesota Statutes, section 245A.02, subdivision 14.

Subp. 24. **Screening team or service planning team.** "Screening team" or "service planning team" means the team established under Minnesota Statutes, section 256B.092, which must consist of the person, the person's case manager, the legal representative, if any, and a qualified mental retardation professional. The case manager may also act as the qualified mental retardation professional if the case manager meets the definition under subpart 22. The provisions of Minnesota Statutes, section 260C.201, shall also apply. Screening members must have no direct or indirect service provider interest with the person. For purposes of the screening team or service planning team, the case manager shall not be deemed to have a direct or indirect service provider interest.

Subp. 25. **Semi-independent living services.** "Semi-independent living services" has the meaning given it in Minnesota Statutes, section 252.275, subdivision 1.

Subp. 26. **Training and habilitation services.** "Training and habilitation services" has the meaning given it in part 9525.1500, subpart 36.

Statutory Authority: *MS s 256B.092*

History: *18 SR 2244; L 1999 c 139 art 4 s 2*

9525.0008 APPLICABILITY AND PURPOSE.

Subpart 1. **Applicability.** Parts 9525.0004 to 9525.0036 establish the standards to be met by county boards or others authorized by the commissioner to provide case management and govern the planning, development, and provision of services to persons with mental retardation or related conditions.

Subp. 2. **Purpose.** The purpose of parts 9525.0004 to 9525.0036 is to set standards for the provision of case management to persons with mental retardation or related conditions that are designed to result in the following outcomes:

A. access to needed services and supports;

B. coordinated and cost-effective services and supports;

C. continuity of services and supports; and

D. services delivered consistent with the goals under subpart 3.

Subp. 3. **Goals.** Services and supports for persons eligible for case management under parts 9525.0004 to 9525.0036 are to be designed and delivered consistent with the following goals:

A. the recognition of each person's history, dignity, and cultural background;

B. the affirmation and protection of each person's civil and legal rights;

C. the provision of services and supports for each person which:

(1) promote community inclusion and self-sufficiency;

(2) provide services in the least restrictive environment;

(3) promote social relationships, natural supports, and participation in community life;

(4) allow for a balance between safety and opportunities; and

(5) provide opportunities for development and exercise of age-appropriate skills, decision-making and choice, personal advocacy, and communication; and

D. the provision of services and supports for families which address the needs of the person in the context of the family and support family self-sufficiency.

Statutory Authority: *MS s 256B.092*

History: *18 SR 2244*

9525.0010 [Repealed, 11 SR 77]

9525.0012 COUNTY BOARD CASE MANAGEMENT RESPONSIBILITIES.

Subpart 1. **Provision of case management.** When the county of financial responsibility determines that a person is eligible for case management according to part 9525.0016, the county shall provide the person or the person's legal representative with a written description of available services and an explanation of these services to facilitate an informed choice. The county board shall arrange to provide case management administration and services according to parts 9525.0004 to 9525.0036 and 9550.0010 to 9550.0092 (Administration of Community Social Services).

Case management may be provided directly by the county board or by contract. The provision of case management must begin after designation of a case manager and must continue until services are terminated under subpart 7.

When emergency services are required, the county board shall purchase or arrange services for persons who might be eligible for case management under parts 9525.0004 to 9525.0036, but who have not yet received a diagnosis under part 9525.0016.

A. "Emergency services," for purposes of this subpart, means services provided to persons at imminent risk of physical, emotional, or psychological harm.

B. "Person who might be eligible for case management," for purposes of this subpart, means a person who the case manager has reason to believe has mental retardation or a related condition and who is undergoing diagnosis, or who is a child under the age of five undergoing diagnosis according to part 9525.0016, subpart 3.

Subp. 2. **Designation of case manager.** Within ten working days after receiving an application for services, the county board shall designate a case manager who meets the requirements in subpart 6. The case manager shall assure that a diagnostic assessment under part 9525.0016 is conducted within 35 working days of receipt of an application for services by the county board. The county board shall send a written notice that includes the name, telephone number, and location of the designated case manager or a change in case manager to the person, the person's legal representative and advocate, if any, and current service providers. Upon the county board's determination that a person is in need of case management and an application for services has not yet been filed, the county board must designate a case manager within ten working days.

Subp. 3. **Purchase of case management.** The county board must not purchase case management from a provider who has direct or indirect financial interest in the provision of other services for that person.

Subp. 4. **County request to provide case management and other services.** The county board must apply to the commissioner in writing to request authorization for the county to be both the provider of residential, training and habilitation, or semi-independent living services, and the provider of case management. The commissioner shall grant authorization if the county board can demonstrate that a method of preventing conflict of interest has been established that includes the following assurances:

A. that the designated case manager and the case manager's direct supervisor must not be involved in the provision of residential, training and habilitation, or semi-independent living services for the person; and

B. that the level of services provided to the person must be consistent with the assessed needs of the person as identified in the individual service plan.

Subp. 5. **Procedures governing minimum standards for case management.** The county board shall establish and monitor implementation of written policies and procedures to:

A. assure the provision of case management according to parts 9525.0004 to 9525.0036;

B. evaluate the delivery and outcomes of case management according to part 9525.0008; and

C. implement the determination of need process and program review under part 9525.0036.

The county agency must maintain copies of the policies and procedures on file at the county offices, provide copies to individuals providing case management, and make these policies and procedures available upon request.

Subp. 6. **Case manager qualifications and training.** Individuals providing case management 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.

B. Except for screening and service planning development services, the county board may establish procedures permitting others than those identified in item A to assist in providing case management services under the supervision of a case manager who meets the qualifications in item A. Before assisting the case manager, the person must complete 40 hours of training in case management and the education and treatment of persons with mental retardation or a related condition.

The county board shall establish a plan for the training of case managers and case aides. The plan must include at least 20 hours annually in the area of case management, mental retardation, or a related condition. Training and development activities attended by the case managers and case aides must be documented and kept on file with the county.

Subp. 7. **Service authorization.** The county board shall determine the adequacy and quality of services provided to meet the person's needs based on the cost and effectiveness of the services. The county board must not authorize, provide, or pay for services unless identified as needed in the individual service plan, except in the case of emergency services.

Subp. 8. **Termination of case management duties.** A case manager retains responsibility for providing case management services to the person until the responsibility of the county board is terminated according to items A to D or until the county board designates another case manager under subpart 2. The county board may terminate case management when:

A. the person or the person's legal representative makes a written request that case management and other services designed for the person be terminated, unless the case manager and the person's legal representative determine that case management must continue for the protection of the person;

B. the person changes state of residence;

C. the person dies; or

D. the diagnosis under part 9525.0016 has changed indicating that the person no longer has mental retardation or a related condition.

Statutory Authority: *MS s 256B.092*

History: *18 SR 2244*

9525.0015 [Repealed, 18 SR 2244]

9525.0016 CASE MANAGEMENT ADMINISTRATION.

Subpart 1. **Intake.** Intake for case management must be conducted according to established county procedures and part 9550.0070.

Subp. 2. **Diagnostic definitions.** For purposes of subpart 3, the terms in items A to E have the meanings given them.

A. "Person with a related condition" means a person who has been diagnosed under this part as having a severe, chronic disability that meets all of the following conditions:

(1) is attributable to cerebral palsy, epilepsy, autism, Prader-Willi syndrome, or any other condition, other than mental illness as defined under Minnesota Statutes, section 245.462, subdivision 20, or an emotional disturbance, as defined under Minnesota Statutes, section 245.4871, subdivision 15, 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 and requires treatment or services similar to those required for persons with mental retardation;

(2) is manifested before the person reaches 22 years of age;

(3) is likely to continue indefinitely; and

(4) 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.

B. "Person with mental retardation" means a person who has been diagnosed under this part as having substantial limitations in present functioning, manifested as significantly subaverage intellectual functioning, existing concurrently with demonstrated deficits in adaptive behavior and who manifests these conditions before the person's 22nd birthday.

C. "Deficits in adaptive behavior" means a significant limitation in an individual's effectiveness in meeting the standards of maturation, learning, personal independence, and social responsibility expected for the individual's age level and cultural group, as determined by clinical assessment and, generally, standardized scales.

D. "Significantly subaverage intellectual functioning" means a full scale IQ score of 70 or less based on assessment that includes one or more individually administered standardized intelligence tests developed for the purpose of assessing intellectual functioning. Errors of measurement must be considered according to subpart 5.

E. "Substantial functional limitations" means the long-term inability to significantly perform an activity or task.

Subp. 3. **Diagnostic requirements to determine eligibility for case management.** The county agency shall arrange for a comprehensive diagnostic evaluation to be completed within 35 working days following receipt of an application for case management. To be eligible for case management under parts 9525.0004 to 9525.0036, the case manager, based on all parts of the comprehensive diagnostic evaluation, must determine that the person has a diagnosis of mental retardation, a related condition, or is a child under the age of five who demonstrates significantly subaverage intellectual functioning concurrent with demonstrated deficits in adaptive behavior, but for whom, because of the child's age, a diagnosis may be inconclusive.

The comprehensive diagnostic evaluation must consist of:

A. a standardized test of intellectual functioning and an assessment of adaptive skills, or for children under the age of five, standardized assessments of developmental functioning;

B. a social history report prepared no more than 12 months before the date of application for case management that contains:

(1) the individual's social and developmental history, including information about the person's previous and current supports;

(2) identification of social, psychological, or environmental factors that may have contributed to the individual's current functioning level; and

(3) any information supporting or contradicting the assertion that the individual had mental retardation or a related condition before the age of 22; and

C. a medical evaluation prepared by a licensed physician no more than 12 months before the date of application for case management that evaluates the individual's general physical health, including vision, hearing, and any physical or neurological disorders. The case manager must request that the evaluation include the physician's comments on the individual's mental health and emotional well-being, if known.

Diagnostic information obtained by other providers according to law, including school information, may be used in whole or in part to meet the diagnostic requirements, when the final diagnosis contains all information required under this part.

Subp. 4. **Administration of tests of intellectual functioning and assessments of adaptive behavior.** Standardized tests of intellectual functioning and assessments of adaptive behavior, adaptive skills, and developmental functioning must be normed for individuals of similar chronological age and be administered by a person who is trained and experienced in administration of these tests and who is a licensed psychologist, certified school psychologist, or certified psychometrist working under technical supervision of a licensed psychologist. The written narrative report shall reflect any specific

behavioral, psychological, sensory, health, or motor deficits, as well as cultural, social, or physical environmental factors that may bias the results of the testing. Testing methods must be modified to accommodate individuals whose background, culture, or language differs from the general population from which specific tests were standardized.

Subp. 5. **Diagnostic conclusions and recommendations.** Diagnostic conclusions and recommendations must be based on the results of the comprehensive evaluation required under subpart 3. Narrative reports of intellectual functioning must include a discussion of whether obtained IQ scores are considered valid and consistent with developmental history and the degree of functional restriction. Errors of measurement and actual changes in performance outcome must be considered in the interpretation of test results.

Substantial limitation in current functioning, significantly subaverage intellectual functioning, and disabilities in adaptive skills must not be the result of a mental illness as defined in Minnesota Statutes, section 245.462, subdivision 20, or an emotional disturbance as defined in Minnesota Statutes, section 245.4871, subdivision 15, to conclude a diagnosis of a related condition. If standardized tests of intellectual functioning or assessments of adaptive skills are not available due to the individual's age, or cannot be administered for other reasons such as severe illness, diagnostic conclusions must be based on reasonable and available information or may be reconstructed from information about the individual before the age of 22 obtained from the individual, near relatives, providers, or the individual's social network.

Subp. 6. **Review of diagnosis of mental retardation or a related condition.** The case manager shall review the results of the diagnostic assessment at least once every three years and shall refer the person for reevaluation to determine current intellectual and adaptive functioning under circumstances where the diagnosis is no longer consistent with the person's current level of functioning.

Subp. 7. **Screening.** The case manager shall convene a screening team to evaluate the level of care needed by the person if the assessment indicates that the person is at risk of placement in an ICF/MR or nursing facility or is requesting services in the areas of residential, training and habilitation, nursing facility, or family support. The county board may contract with a public or private agency or individual for the public guardianship representation required for the screening or the individual service planning process. If the assessment indicates that the person has overriding health care needs, the county agency must comply with the additional requirements in Minnesota Statutes, section 256B.092, subdivision 7. The case manager shall:

A. convene the screening team within 60 working days of a request for service by a person and within five working days of the date of an emergency admission to an ICF/MR; and

B. notify the members of the screening team of the meeting date and convene the meeting at a time and place that ensures the participation of all screening team members.

Subp. 8. **Screening team duties.** The screening team shall review:

A. the results of the diagnostic evaluation and assessment of the person's needs for services and supports;

B. the current individual service plan, if any; and

C. other data related to the person's eligibility and need for services, as determined necessary by the screening team.

The screening team shall determine the level of care needed by the person and identify the least restrictive service types. If it is determined that the person is eligible for ICF/MR and home and community-based services, an informed choice between those services must be made by the person or the person's legal representative.

Subp. 9. **Screening document.** The screening team shall complete and sign the screening document prescribed by the commissioner and submit the document to the commissioner's designee for authorization of medical assistance payments and to

record compliance with the requirements of the federally approved waiver plan and the state Medicaid plan under title XIX of the Social Security Act.

If there is no formal annual meeting of the screening team, the case manager shall complete and submit the screening document to the commissioner to record the annual review of the person's eligibility for the level of care identified, informed choice among feasible alternatives, and review and revision of the service plan.

Subp. 10. **Use of screening team recommendations in commitment proceedings.** If 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 recommendations to the court as needed and make recommendations and a report available to the prepetition screening unit in compliance with the Data Practices Act, Minnesota Statutes, chapter 13.

Subp. 11. **Criteria for service authorization.** The case manager shall arrange for authorization of services consistent with:

A. the needs and preferences of the person as identified in the person's individual service plan;

B. established county procedures;

C. contracts and agreements between providers and the county agency as determined according to part 9550.0040;

D. the extent to which the provider can:

(1) provide services consistent with the individual service plan in a cost-effective manner;

(2) assure the health and safety of the person;

(3) coordinate services and consult with other providers of service to the person, including the case manager; and

(4) prepare reviews, incident reports, and other reports required by contract or other agreements, the individual service plan, or other applicable state and federal requirements; and

E. state and federal law governing authorization for services provided in ICFs/MR, nursing facilities, and for services provided under medical assistance waivers, state support services, and grants.

Subp. 12. **Authorization of medical assistance for ICF/MR, home and community-based services, and nursing facility services.** The authorization of medical assistance by the commissioner's designee is effective for one year from the date of the screening team meeting and must be reauthorized annually. Authorization for payment of ICF/MR, home and community-based, and nursing facility services must be made based on the following:

A. the person for whom the payment is requested has been determined eligible for case management according to part 9525.0016;

B. the assessment verifies that the person's need for services is consistent with the level of care and the risk status indicated on the screening document;

C. less restrictive and less costly alternative services have been considered and discussed with the person and the person's legal representative and advocate, if any; and

D. the person and the person's legal representative, if any, have made an informed choice among feasible service alternatives.

Subp. 13. **Review of eligibility.** The case manager shall make a determination annually, based on diagnostic and assessment information, of the person's eligibility to receive:

A. case management;

B. types of services currently authorized based on level of care, risk status, and need for services and supports; and

C. new or additional services.

The case manager shall place documentation of this determination in the person's county file. The screening form may serve as documentation of this subpart and be incorporated into the individual service plan.

Subp. 14. **Conciliation and appeals.** The county agency shall arrange a conciliation conference as required by Minnesota Statutes, section 256.045, subdivision 4a, upon request of the person or the person's legal representative if there is a dispute about the county's actions or failure to act under parts 9525.0004 to 9525.0036 and Minnesota Statutes, section 256B.092. The conference must be facilitated by a representative of the commissioner and must be conducted within 30 days of the request at a time and place that allows for participation of the person, the person's legal representative, if any, and the appropriate representative of the county agency. Other interested persons may participate in the conciliation conference if requested by the person or the person's legal representative. The county agency shall prepare a written summary report of the conference results and submit the report to the participants and the department within 30 days of the request for a conference. Case management appeals must be conducted according to Minnesota Statutes, section 256.045.

Statutory Authority: *MS s 256B.092*

History: *18 SR 2244*

9525.0020 [Repealed, 11 SR 77]

9525.0024 CASE MANAGEMENT SERVICE PRACTICE STANDARDS.

Subpart 1. **Assessment of individual needs.** The case manager shall assess or arrange for an assessment of the functional skills and needs of the person and the supports and services which meet the person's identified needs and preferences. Assessment information obtained by other providers, including schools and vocational rehabilitation agencies, may be used to meet the assessment requirements of this subpart. This subpart does not require assessment in areas agreed to as unnecessary by the case manager and the person, or the person's legal representative, or when there has been functional assessment completed in the previous 12 months, for which the case manager and the person or the person's legal representative agree that further assessment is not necessary. Where the county is acting as public guardian, the case manager shall seek authorization from the public guardianship office for waiving any assessment requirements. Assessments related to health, safety, and protection of the person for the purpose of identifying service type, amount, and frequency, or assessments required to authorize services, must not be waived.

The assessment of the person's preference, functional skills, and need for services and supports must address the following areas:

A. basic needs: income or support, money management, shelter, food, clothing, and assistive technology and adaptations;

B. health and safety: physical and dental health, vision, hearing, medication management, mental health and emotional well-being, and ability to keep oneself safe;

C. social skills and interpersonal relationships;

D. communication skills;

E. self-care: toileting, eating, dressing, hygiene, and grooming;

F. home living skills: clothing care, housekeeping, food preparation and cooking, shopping, daily schedule. and home maintenance;

G. community use: transportation and mobility, leisure and recreation, and other community resources;

H. employment/vocational skills;

I. educational skills/cognitive abilities; and

J. legal representation.

Subp. 2. **Review of person's needs for services and support.** The case manager shall review the assessment information as it becomes available through program

evaluation and monitoring, provider reports, team meetings, and other sources of formal or informal assessment. The service planning team shall also review the assessment information at least annually for purposes of making modifications to the person's individual service plan for needed services and supports. The case manager shall coordinate the performance of assessments. This subpart does not require duplication of assessment responsibilities fulfilled by providers. The case manager shall assure that the person's medical status and ongoing health care needs are assessed annually when not otherwise arranged by family or service providers.

Subp. 3. **Individual service plan development.** The designated case manager, who is familiar with the person and the person's need for services and supports, shall lead the individual service planning team activities. Annual service planning activities must result in the development or revision and implementation of the person's individual service plan. Individual service plans may be completed on forms developed for interagency planning, such as transition and individual family service plans, if they contain the components required under items A to K. Service plans containing the components in items A to K meet the service plan requirements under parts 9550.0010 to 9550.0092.

The written individual service plan must contain:

A. the person's preferences for services as stated by the person or the person's legal representative;

B. the person's service and support needs based on results of assessment information, including identification of needs that are currently met in whole or in part by the person's relatives, friends, and community services used by the general public;

C. the person's long- and short-range goals;

D. specific supports and services, including case management services, and the amount and frequency of the services to be provided to the person based on available resources, and the person's needs and preferences;

E. specification of services the person needs that are not available and actions to be taken to obtain or develop these services;

F. a determination of whether there is a need for an individual program plan developed by the provider according to applicable state and federal licensing and certification standards;

G. identification of additional assessments to be completed or arranged by the provider after service initiation;

H. specification of any information that providers or subcontractors must submit to the case manager, the frequency with which the information must be provided when not otherwise specified in contract, service agreement, or authorization form, and provider responsibilities to implement and make recommendations for modification to the individual service plan;

I. notice of the right to request a conciliation conference or a hearing under Minnesota Statutes, section 256.045;

J. signatures of the person, the person's legal representative, and the case manager at least annually and whenever changes are made; and

K. documentation that the plan was reviewed by a health professional if the person has overriding medical needs that impact the delivery of services.

Subp. 4. **Other service plans.** Unless otherwise required by federal law, a person or the person's legal representative may make an informed choice to request that a service plan be developed under parts 9550.0010 to 9550.0092 rather than parts 9525.0004 to 9525.0036 as provided for under Minnesota Statutes, section 256B.092, subdivision 1g.

Subp. 5. **Identification of service options and providers.** Case managers shall assist the service planning team members in making informed choices of service options and providers by identifying for the team:

A. service types that would meet the level and frequency of services needed by the person, the funding streams, the general comparative costs, and the location;

B. resources and providers within the county or other areas if requested by the person or the person's legal representative, including resources not currently available;

C. provider capacities to meet assessed needs and preferences of the person, or to develop services if not immediately available; and

D. other community resources or services necessary to meet the person's or the person's family's needs.

The case manager may survey providers or may develop a request for a proposal to locate services. When the case manager is unable to locate appropriate service providers, the case manager shall indicate this in the person's individual service plan. The case manager shall follow county procedures for:

(1) maintaining unmet need or waiting list information according to Minnesota Statutes, section 256B.092, subdivision 1f;

(2) community social service planning activities; and

(3) developing additional resources.

Subp. 6. **Assisting the person to access services.** The case manager shall assist the person in accessing selected housing, services, and supports through the following activities:

A. coordinating the application process and preplacement planning activities and visits;

B. assuring that financial arrangements, contracts, or provider agreements are in place;

C. promoting the person's access to services that fit the person's needs;

D. assisting the person in securing the services identified in the individual service plan, including services not currently available; and

E. participating with the interdisciplinary team in the development of individual program plans that are consistent with the person's individual service plan.

Subp. 7. **Coordination of service delivery.** The case manager shall assure coordinated approaches to services among providers that are consistent with all aspects of the person's individual service plan. Before the initiation of service, and at least annually thereafter, the case manager shall make available to and may review with the providers the person's individual service plan. The case manager shall participate in interdisciplinary team meetings and maintain contact with providers sufficient to facilitate coordination and cooperation necessary to meet the person's needs.

Subp. 8. **Monitoring and evaluation activities.** The case manager shall specify the frequency of monitoring and evaluation activities in the person's individual service plan based on the level of need of the person and other factors which might affect the type, amount, or frequency of service. The case manager shall conduct a monitoring visit with each person on at least a semiannual basis. Case manager monitoring and evaluation activities must result in a determination of:

A. whether services are implemented consistent with the person's service plan, and are directed at achieving the goals identified for the person, and are consistent with the goals specified under part 9525.0008, subpart 3;

B. changes needed in the individual service plan to achieve desired outcomes or meet newly identified needs, including changes resulting from the recommendations of providers;

C. the extent to which providers are fulfilling their responsibilities and coordinating approaches to services with other providers;

D. the assurance of the person's health and safety;

E. the protection of the person's civil and legal rights; and

F. whether the person and the person's legal representative are satisfied with the services received.

If the provider fails to carry out the provider's responsibilities consistent with the individual service plan or develop an individual program plan when needed, the case manager shall notify the provider and, as necessary, the interdisciplinary team. If the concerns are not resolved by the provider or interdisciplinary team, the case manager shall notify the person or the person's legal representative, the appropriate licensing and certification agencies, and the county board where services are being provided. The case manager shall identify other steps needed to assure that the person receives the needed services and protections.

Statutory Authority: *MS s 256B.092*
History: *18 SR 2244*

9525.0025 [Repealed, 18 SR 2244]

9525.0028 QUALITY ASSURANCE.

The commissioner shall supervise social services administered by county agencies as specified in Minnesota Statutes, section 256E.05. County boards must comply fully with parts 9525.0004 to 9525.0036. To facilitate the implementation of parts 9525.0004 to 9525.0036, the commissioner shall provide technical assistance to county agencies according to Minnesota Statutes, sections 256B.092 and 256E.05. The commissioner shall evaluate case management provided by county agencies to determine that services are consistent with part 9525.0008.

If the commissioner determines that a county board has not provided case management consistent with the outcomes under part 9525.0008 or has otherwise failed to comply with the standards of parts 9525.0004 to 9525.0036, the county board shall develop a corrective action plan as required by Minnesota Statutes, section 256E.05, subdivision 5. The commissioner may take action necessary to assure continuity of services for persons receiving case management under parts 9525.0004 to 9525.0036 as authorized by Minnesota Statutes, section 256E.05, subdivision 5, and other applicable state and federal law.

Statutory Authority: *MS s 256B.092*
History: *18 SR 2244*

9525.0030 [Repealed, 11 SR 77]

9525.0032 HOST COUNTY CONCURRENCE.

If services are to be provided in a county other than the county of financial responsibility, the county of financial responsibility must request county concurrence from the county where services are to be provided. Concurrence must be granted according to Minnesota Statutes, section 256B.092, subdivision 8a. If the county of service fails to notify the county of financial responsibility of concurrence or refusal to concur within 20 working days after receipt of the request, concurrence shall be deemed granted.

Statutory Authority: *MS s 256B.092*
History: *18 SR 2244*

9525.0035 [Repealed, 18 SR 2244]

9525.0036 DETERMINATION OF NEED.

Subpart 1. **County recommendation for determination of need for services.** For purposes of this part, "determination of need" means the commissioner's determination of need for services by program type, location, demographics, and size of licensed services for persons with mental retardation or related conditions according to Minnesota Statutes, section 252.28.

The host county shall apply for a determination of need by the commissioner upon identifying the need to:

A. develop new services;

B. terminate services; or

C. modify existing services in the form of expansion or reduction of services, or services for which a change of ownership, program, location, or licensure is proposed.

In applying for the determination of need, the host county must use information from the individual service plans of persons for whom the county board is financially responsible and for persons from other counties for whom the county board has agreed to be the host county. The host county shall also consider the community social services plan, waiting lists, screenings, and other sources which identify unmet needs for services. Application for determination of need must be submitted on forms prescribed by the commissioner.

Subp. 2. **Duties of commissioner for determination of need.** The commissioner shall make the determination of need for the program, location, type, size, frequency, ownership, and staffing needs of the service proposed in the county's application. In determining the need for services, the commissioner shall consider whether:

A. the proposed service, including size of the service, relates to the needs of the persons to be served;

B. cost projections for the proposed service are within the fiscal limitations of the state;

C. the distribution of and access to the services throughout the state is based on current or projected demographics, and does not contribute to excessive concentration of services;

D. the provider has the overall administrative, financial, and programmatic capability to develop, provide, and maintain the services that are proposed;

E. the application is in compliance with applicable state and federal law and with the state plan;

F. the proposed service is consistent with the goals under part 9525.0008, subpart 3; and

G. the proposed service furthers state policy of access to residences and employment services typical of the general population.

Within 30 days of receipt of the completed application for need determination from the county board, the commissioner shall notify the county board of the decision. The commissioner may request further information if the proposal is incomplete or waive any part of the application that would require the county to provide information that is already available to the commissioner. The commissioner's decision may include conditions of approval. If the commissioner determines that the service, modification, or expansion is not needed, or the proposal does not meet state fiscal projections or limitations, approval shall be denied and there must be no licensure of or reimbursement from federal or state funds for the proposed service, modification, or expansion.

Subp. 3. **County review of existing programs.** At least every four years, the host county board shall review each service and submit to the commissioner a request for approval of each licensed service located in the county. The county board's review must state whether the county board recommends continuation, modification, discontinuation, decertification, or delicensure of the service. The county board must base its recommendations on the criteria described in subpart 2.

The commissioner shall notify the county board of the decision to approve or deny the need determination, or request additional information within 30 days of receipt of a completed application. The commissioner shall notify the county and the provider of the right to appeal the commissioner's determination according to subpart 4.

If the commissioner accepts the county board's recommendations for program modifications, the host county board shall submit a need determination application according to subpart 1. The service may be modified only after the commissioner has determined the need for the modification according to subpart 2. Counties may review a service at more frequent intervals at their own discretion.

Subp. 4. **Appeal of commissioner's determination.** The county board or the provider making the application may appeal the commissioner's determination under this part.

Appeals are governed by Minnesota Statutes, chapter 14. Notice of appeal must be received by the commissioner within 30 days after notification of the commissioner's decision is sent to the county board.

Statutory Authority: *MS s 256B.092*

History: *18 SR 2244*

9525.0040 [Repealed, 11 SR 77]

9525.0045 [Repealed, 18 SR 2244]

9525.0050 [Repealed, 11 SR 77]

9525.0055 [Repealed, 18 SR 2244]

9525.0060 [Repealed, 11 SR 77]

9525.0065 [Repealed, 18 SR 2244]

9525.0070 [Repealed, 11 SR 77]

9525.0075 [Repealed, 18 SR 2244]

9525.0080 [Repealed, 11 SR 77]

9525.0085 [Repealed, 18 SR 2244]

9525.0090 [Repealed, 11 SR 77]

9525.0095 [Repealed, 18 SR 2244]

9525.0100 [Repealed, 11 SR 77]

9525.0105 [Repealed, 18 SR 2244]

9525.0115 [Repealed, 18 SR 2244]

9525.0125 [Repealed, 18 SR 2244]

9525.0135 [Repealed, 18 SR 2244]

9525.0145 [Repealed, 18 SR 2244]

9525.0155 [Repealed, 18 SR 2244]

9525.0165 [Repealed, 18 SR 2244]

9525.0180 [Repealed, 18 SR 2244]

9525.0185 [Repealed, 18 SR 2244]

9525.0190 [Repealed, 18 SR 2244]

9525.0210 [Repealed, 13 SR 2446]

9525.0215 [Repealed, L 1997 c 248 s 51]

9525.0220 [Repealed, 13 SR 2446]

9525.0225 Subpart 1. [Repealed, L 1997 c 248 s 51]

Subp. 2. [Repealed, L 1997 c 248 s 51]

Subp. 3. [Repealed, L 1997 c 248 s 51]
Subp. 4. [Repealed, L 1997 c 248 s 51]
Subp. 5. [Repealed, L 1997 c 248 s 51]
Subp. 6. [Repealed, L 1997 c 248 s 51]
Subp. 7. [Repealed, L 1997 c 248 s 51]
Subp. 8. [Repealed, L 1997 c 248 s 51]
Subp. 9. [Repealed, L 1997 c 248 s 51]
Subp. 10. [Repealed, L 1997 c 248 s 51]
Subp. 11. [Repealed, L 1997 c 248 s 51]
Subp. 12. [Repealed, L 1997 c 248 s 51]
Subp. 13. [Repealed, L 1997 c 248 s 51]
Subp. 14. [Repealed, L 1997 c 248 s 51]
Subp. 15. [Repealed, 18 SR 2244]
Subp. 15a. [Repealed, L 1997 c 248 s 51]
Subp. 16. [Repealed, L 1997 c 248 s 51]
Subp. 17. [Repealed, L 1997 c 248 s 51]
Subp. 18. [Repealed, L 1997 c 248 s 51]
Subp. 19. [Repealed, L 1997 c 248 s 51]
Subp. 20. [Repealed, L 1997 c 248 s 51]
Subp. 21. [Repealed, L 1997 c 248 s 51]
Subp. 22. [Repealed, L 1997 c 248 s 51]
Subp. 23. [Repealed, L 1997 c 248 s 51]
Subp. 24. [Repealed, L 1997 c 248 s 51]
Subp. 25. [Repealed, L 1997 c 248 s 51]
Subp. 26. [Repealed, L 1997 c 248 s 51]
Subp. 27. [Repealed, L 1997 c 248 s 51]
Subp. 28. [Repealed, L 1997 c 248 s 51]
Subp. 29. [Repealed, L 1997 c 248 s 51]
Subp. 30. [Repealed, L 1997 c 248 s 51]

9525.0230 [Repealed, 13 SR 2446]

9525.0235 Subpart 1. [Repealed, L 1997 c 248 s 51]
Subp. 2. [Repealed, L 1997 c 248 s 51]
Subp. 3. [Repealed, L 1997 c 248 s 51]
Subp. 4. [Repealed, 18 SR 2748]
Subp. 5. [Repealed, 18 SR 2748]
Subp. 6. [Repealed, 18 SR 2748]
Subp. 7. [Repealed, 18 SR 2748]
Subp. 8. [Repealed, 18 SR 2748]
Subp. 9. [Repealed, 18 SR 2748]
Subp. 10. [Repealed, 18 SR 2748]
Subp. 11. [Repealed, 18 SR 2748]
Subp. 12. [Repealed, 18 SR 2748]
Subp. 13. [Repealed, 18 SR 2748]
Subp. 14. [Repealed, 18 SR 2748]
Subp. 15. [Repealed, L 1997 c 248 s 51]

9525.0240 [Repealed, 13 SR 2446]

9525.0243 [Repealed, 18 SR 2748; L 1997 c 248 s 51]

9525.0245 [Repealed, L 1997 c 248 s 51]

9525.0250 [Repealed, 13 SR 2446]

9525.0255 [Repealed, L 1997 c 248 s 51]

9525.0260 [Repealed, 13 SR 2446]

9525.0265 [Repealed, L 1997 c 248 s 51]

9525.0270 [Repealed, 13 SR 2446]

9525.0275 [Repealed, L 1997 c 248 s 51]

9525.0280 [Repealed, 13 SR 2446]

9525.0285 [Repealed, L 1997 c 248 s 51]

9525.0290 [Repealed, 13 SR 2446]

9525.0295 [Repealed, L 1997 c 248 s 51]

9525.0300 [Repealed, 13 SR 2446]

9525.0305 [Repealed, L 1997 c 248 s 51]

9525.0310 [Repealed, 13 SR 2446]

9525.0315 Subpart 1. [Repealed, L 1997 c 248 s 51]

Subp. 2. [Repealed, 18 SR 2748]

Subp. 3. [Repealed, 18 SR 2748]

9525.0320 [Repealed, 13 SR 2446]

9525.0325 [Repealed, L 1997 c 248 s 51]

9525.0330 [Repealed, 13 SR 2446]

9525.0335 [Repealed, L 1997 c 248 s 51]

9525.0340 [Repealed, 13 SR 2446]

9525.0345 [Repealed, L 1997 c 248 s 51]

9525.0350 [Repealed, 13 SR 2446]

9525.0355 [Repealed, L 1997 c 248 s 51]

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]

9525.0500 [Repealed, L 1997 c 248 s 51]

9525.0510 [Repealed, L 1997 c 248 s 51]

9525.0520 [Repealed, L 1997 c 248 s 51]

9525.0530 [Repealed, L 1997 c 248 s 51]

9525.0540 Subpart 1. [Repealed, 18 SR 2748]
Subp. 2. [Repealed, L 1997 c 248 s 51]
Subp. 3. [Repealed, 18 SR 2748]
Subp. 4. [Repealed, 18 SR 2748]
Subp. 5. [Repealed, 18 SR 2748]
Subp. 6. [Repealed, 18 SR 2748]
Subp. 7. [Repealed, 18 SR 2748]

9525.0550 Subpart 1. [Repealed, 18 SR 2748]
Subp. 2. [Repealed, 18 SR 2748]
Subp. 3. [Repealed, L 1997 c 248 s 51]
Subp. 4. [Repealed, 18 SR 2748]

9525.0560 [Repealed, L 1997 c 248 s 51]

9525.0570 [Repealed, L 1997 c 248 s 51]

9525.0580 [Repealed, L 1997 c 248 s 51]

9525.0590 [Repealed, L 1997 c 248 s 51]

9525.0600 [Repealed, L 1997 c 248 s 51]

9525.0610 [Repealed, 18 SR 2748; L 1997 c 248 s 51]

9525.0620 [Repealed, L 1997 c 248 s 51]

9525.0630 [Repealed, L 1997 c 248 s 51]

9525.0640 [Repealed, 18 SR 2748; L 1997 c 248 s 51]

9525.0650 [Repealed, 18 SR 2748; L 1997 c 248 s 51]

9525.0660 [Repealed, L 1997 c 248 s 51]

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, local social services agencies, 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; L 1994 c 631 s 31*

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 125A.02, and rules of the Department of Children, Families, and Learning 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 120A.22, subdivision 12, clause (1), and subdivision 13, 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 Children, Families, and Learning and Public Welfare.

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

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

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; L 1994 c 631 s 31; L 1995 1Sp3 art 16 s 13; L 1998 c 397 art 11 s 3; L 1998 c 398 art 5 s 55*

9525.0810 CASE RECORDS.

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

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

B. current medical and psychological information;

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

D. periodic individual progress evaluations;

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

F. referral and termination information.

Statutory Authority: *MS s 252.24 subd 2*

9525.0820 FEES.

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

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

A. local tax funds authorized;

B. public welfare programs;

C. federal Social Security insurance benefits;

D. private insurance benefits;

E. gifts and contributions; and

F. other appropriate resources.

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

Statutory Authority: *MS s 252.24 subd 2*

History: *12 SR 1148*

9525.0830 EXCEPTIONS.

If compliance with these rules is found to cause excessive hardship, to the extent that services will be curtailed or terminated, the board may apply to the commissioner

for an exception. Such an exception may not exceed one year, and its granting will not be considered a precedent for other center boards.

Statutory Authority: *MS s 252.24 subd 2*

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

9525.0900 DEFINITIONS.

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

Subp. 2. **Administrative operating costs.** "Administrative operating costs" has the meaning given it in 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" has the meaning given it in part 9525.0004, subpart 3.

Subp. 4. **Case manager.** "Case manager" has the meaning given it in part 9525.0004, subpart 4.

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; 18 SR 2244]

Subp. 11a. **Individual program plan.** "Individual program plan" has the meaning given it in part 9525.0004, subpart 11.

Subp. 12. **Individual service plan.** "Individual service plan" has the meaning given it in part 9525.0004, subpart 12.

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 9525.0016, subpart 2.

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; 256B.092*

History: *10 SR 994; 12 SR 1148; 18 SR 506; 18 SR 2244*

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:

(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 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, section 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;

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 256G.02, subdivision 4.

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 part 9525.0004, subpart 12.

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.092; 256B.501*

History: *10 SR 68; 12 SR 1148; 12 SR 2044; 18 SR 2244*

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 9525.0004 to 9525.0036;

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 125A.03;

E. the person is determined to be in need of day training and habilitation services as specified in the individual service plan under parts 9525.0004 to 9525.0036; and

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.

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

History: *10 SR 68; 10 SR 2417; 12 SR 1148; 18 SR 2244; L 1998 c 397 art 11 s 3*

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 habili-

tation 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 part 9525.0036 and Minnesota Statutes, section 252.28.

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 252.41, subdivision 9, clause (2).

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 252.45, clause (4), 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 9525.0004 to 9525.0036.

I. The day service provider must have service and transportation rates recommended by the county board and approved by the commissioner as provided by Minnesota Statutes, section 252.46.

J. The day service provider must be in compliance with the standards in Code of Federal Regulations, title 42, sections 483.410(d) and 483.440.

Subp. 2. [Repealed, L 1987 c 403 art 5 s 22 para (b)]

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

History: *10 SR 68; L 1987 c 333 s 22; 18 SR 2244*

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 252.45, clause (4). This agreement must be completed annually on forms provided by the commissioner and must include at least the information in items A to E.

A. the number of hours of day training and habilitation services provided per day, excluding transportation to and from the location of the ICF/MR, which will be considered as a full day;

B. the approved maximum number of days per year medical assistance reimbursable services will be available;

C. the day service provider's months of operation during which day training and habilitation services are provided;

D. a statement of payment rates which have been approved by the commissioner under Minnesota Statutes, section 252.46;

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 program 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) [Repealed, L 1997 c 248 s 51]

(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 parts 9525.0004 to 9525.0036; Minnesota Statutes, sections 245A.01 to 245A.16 and 252.28; and Code of Federal Regulations, title 42, sections 483.410(d) and 483.440;

(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.092; 256B.501*

History: *10 SR 68; L 1987 c 333 s 22; 18 SR 2244; L 1997 c 248 s 51*

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.

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*

9525.1500 Subpart 1. [Repealed, L 1997 c 248 s 51]

Subp. 2. [Repealed, L 1997 c 248 s 51]

Subp. 3. [Repealed, L 1997 c 248 s 51]

Subp. 4. [Repealed, L 1997 c 248 s 51]

Subp. 5. [Repealed, L 1997 c 248 s 51]

Subp. 6. [Repealed, L 1997 c 248 s 51]

Subp. 7. [Repealed, L 1997 c 248 s 51]
Subp. 8. [Repealed, L 1997 c 248 s 51]
Subp. 9. [Repealed, L 1997 c 248 s 51]
Subp. 10. [Repealed, L 1997 c 248 s 51]
Subp. 11. [Repealed, L 1997 c 248 s 51]
Subp. 12. [Repealed, L 1997 c 248 s 51]
Subp. 13. [Repealed, L 1997 c 248 s 51]
Subp. 14. [Repealed, L 1997 c 248 s 51]
Subp. 15. [Repealed, L 1997 c 248 s 51]
Subp. 16. [Repealed, L 1997 c 248 s 51]
Subp. 17. [Repealed, L 1997 c 248 s 51]
Subp. 18. [Repealed, L 1997 c 248 s 51]
Subp. 19. [Repealed, L 1997 c 248 s 51]
Subp. 20. [Repealed, 18 SR 2244]
Subp. 20a. [Repealed, L 1997 c 248 s 51]
Subp. 21. [Repealed, L 1997 c 248 s 51]
Subp. 22. [Repealed, L 1997 c 248 s 51]
Subp. 23. [Repealed, L 1997 c 248 s 51]
Subp. 24. [Repealed, L 1997 c 248 s 51]
Subp. 25. [Repealed, L 1997 c 248 s 51]
Subp. 26. [Repealed, L 1997 c 248 s 51]
Subp. 27. [Repealed, L 1997 c 248 s 51]
Subp. 28. [Repealed, L 1997 c 248 s 51]
Subp. 29. [Repealed, L 1997 c 248 s 51]
Subp. 30. [Repealed, L 1997 c 248 s 51]
Subp. 31. [Repealed, L 1997 c 248 s 51]
Subp. 32. [Repealed, L 1997 c 248 s 51]
Subp. 33. [Repealed, L 1997 c 248 s 51]
Subp. 34. [Repealed, L 1997 c 248 s 51]
Subp. 35. [Repealed, L 1997 c 248 s 51]
Subp. 36. [Repealed, L 1997 c 248 s 51]
Subp. 37. [Repealed, L 1997 c 248 s 51]

9525.1510 [Repealed, L 1997 c 248 s 51]

9525.1520 Subpart 1. [Repealed, L 1997 c 248 s 51]
Subp. 2. [Repealed, 18 SR 2748]
Subp. 3. [Repealed, L 1997 c 248 s 51]
Subp. 4. [Repealed, 18 SR 2748]
Subp. 5. [Repealed, 15 SR 2043]
Subp. 6. [Repealed, 18 SR 2748]
Subp. 7. [Repealed, 18 SR 2748]
Subp. 8. [Repealed, 18 SR 2748]
Subp. 9. [Repealed, 18 SR 2748]
Subp. 10. [Repealed, 18 SR 2748]
Subp. 11. [Repealed, L 1997 c 248 s 51]
Subp. 12. [Repealed, 18 SR 2748]

Subp. 13. [Repealed, L 1997 c 248 s 51]

Subp. 14. [Repealed, L 1997 c 248 s 51]

9525.1530 [Repealed, 18 SR 2748; L 1997 c 248 s 51]

9525.1540 [Repealed, 18 SR 2748; L 1997 c 248 s 51]

9525.1550 Subpart 1. [Repealed, L 1997 c 248 s 51]

Subp. 2. [Repealed, L 1997 c 248 s 51]

Subp. 3. [Repealed, 18 SR 2748]

Subp. 4. [Repealed, L 1997 c 248 s 51]

Subp. 5. [Repealed, 18 SR 2748]

Subp. 6. [Repealed, 18 SR 2748]

Subp. 7. [Repealed, L 1997 c 248 s 51]

Subp. 8. [Repealed, L 1997 c 248 s 51]

Subp. 9. [Repealed, 18 SR 2748]

Subp. 10. [Repealed, 18 SR 2748]

Subp. 11. [Repealed, 18 SR 2748]

Subp. 12. [Repealed, L 1997 c 248 s 51]

Subp. 13. [Repealed, 18 SR 2748]

9525.1560 [Repealed, L 1997 c 248 s 51]

9525.1570 [Repealed, L 1997 c 248 s 51]

LICENSURE OF TRAINING AND HABILITATION SERVICES FOR ADULTS WITH MENTAL RETARDATION OR RELATED CONDITIONS

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 [Repealed, L 1997 c 248 s 51]

9525.1600 MINIMUM STAFFING REQUIREMENTS.

Subpart 1. **Minimum level of staffing required.** The number of direct service staff members that a provider must have on duty at a given time to meet the minimum staffing requirements established in this part varies according to:

A. the number of persons who are enrolled and receiving direct services at that given time;

B. the staff ratio requirement established under subpart 2 for each of the persons who is present; and

C. whether the conditions described in subpart 7 exist and warrant additional staffing beyond the number determined to be needed under subpart 6.

The commissioner shall consider the factors in items A, B, and C in determining a provider's compliance with the staffing requirements in this part and shall further consider whether the staff ratio requirement established under subpart 2 for each person receiving services accurately reflects the person's need for staff time.

Subp. 2. **Determining and documenting the staff ratio requirement for each person receiving services.** The case manager in consultation with the interdisciplinary team shall determine at least once each year which of the ratios in subparts 3, 4, and 5 is appropriate for each person receiving services on the basis of the characteristics described in subparts 3, 4, and 5. The ratio assigned each person and documentation of how the ratio was arrived at must be kept in each person's individual program 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 program 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. [Repealed, 18 SR 2748]

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

History: *12 SR 997; 18 SR 2244; 18 SR 2748*

9525.1610 Subpart 1. [Repealed, L 1997 c 248 s 51]

Subp. 2. [Repealed, 18 SR 2748]

9525.1620 [Repealed, L 1997 c 248 s 51]

9525.1630 [Repealed, L 1997 c 248 s 51]

9525.1640 Subpart 1. [Repealed, L 1997 c 248 s 51]

Subp. 2. [Repealed, 18 SR 2748]

9525.1650 Subpart 1. [Repealed, 18 SR 2748]

Subp. 2. [Repealed, L 1997 c 248 s 51]

Subp. 3. [Repealed, L 1997 c 248 s 51]

Subp. 4. [Repealed, L 1997 c 248 s 51]

9525.1660 Subpart 1. [Repealed, L 1997 c 248 s 51]

Subp. 2. [Repealed, L 1997 c 248 s 51]

Subp. 3. [Repealed, L 1997 c 248 s 51]

Subp. 4. [Repealed, L 1997 c 248 s 51]

Subp. 5. [Repealed, L 1997 c 248 s 51]

Subp. 6. [Repealed, L 1997 c 248 s 51]

Subp. 7. [Repealed, L 1997 c 248 s 51]

Subp. 8. [Repealed, 18 SR 2748]

Subp. 9. [Repealed, L 1997 c 248 s 51]

Subp. 10. [Repealed, L 1997 c 248 s 51]

Subp. 11. [Repealed, L 1997 c 248 s 51]

Subp. 12. [Repealed, 18 SR 2748]

Subp. 13. [Repealed, L 1997 c 248 s 51]

Subp. 14. [Repealed, L 1997 c 248 s 51]

Subp. 15. [Repealed, L 1997 c 248 s 51]

Subp. 16. [Repealed, L 1997 c 248 s 51]

9525.1670 Subpart 1. [Repealed, 18 SR 2748]

Subp. 2. [Repealed, 18 SR 2748]

Subp. 3. [Repealed, 18 SR 2748]

Subp. 4. [Repealed, L 1997 c 248 s 51]

Subp. 5. [Repealed, 18 SR 2748]

Subp. 6. [Repealed, L 1997 c 248 s 51]

9525.1680 [Repealed, L 1997 c 248 s 51]

9525.1690 [Repealed, L 1997 c 248 s 51]

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" has the meaning given it in part 9525.0004, subpart 3.

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, 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 birth 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 9525.0016, subpart 2, and the meaning given to "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 waivered services for persons with mental retardation or related conditions or the MR/RC waiver plan.** "Title XIX home and community-based waivered services for persons with mental retardation or related conditions" or the "MR/RC waiver plan" means the waiver of requirements under United States Code, title 42, sections 1396 et seq., which allows the state to pay for home and community-based services for persons with mental retardation or related conditions through the medical assistance program. The term includes all amendments to the waiver including any amendments made after the effective date of the last waiver plan, as approved by the United States Department of Health and Human Services under United States Code, title 42, section 1396 et. seq.

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

History: *10 SR 838; 16 SR 2238; 18 SR 2244; L 1994 c 465 art 1 s 62; L 1994 c 631 s 31*

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 has been determined to meet the diagnostic requirements under parts 9525.0004 to 9525.0036;

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; 18 SR 2244*

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 9525.0004 to 9525.0036;

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; 18 SR 2244*

9525.1840 PARENTAL CONTRIBUTION FEE.

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

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

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.

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.

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 waivered services but has not yet screened. If county boards are applying jointly, each county board must identify the number of persons for which the county is financially responsible.

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

A. current living arrangements;

B. current day programs;

C. level of supervision required;

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

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

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

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

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

Subp. 3. **Review and approval of proposal.** The 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 9525.0004 to 9525.0036;

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; 18 SR 2244*

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 waivered services may not exceed the amount allocated to the county by the commissioner for that person.

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

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

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

(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*

9525.2000 [Repealed, L 1997 c 248 s 51]

9525.2010 Subpart 1. [Repealed, L 1997 c 248 s 51]

Subp. 2. [Repealed, L 1997 c 248 s 51]

Subp. 3. [Repealed, L 1997 c 248 s 51]

Subp. 4. [Repealed, L 1997 c 248 s 51]

Subp. 5. [Repealed, L 1997 c 248 s 51]

Subp. 6. [Repealed, L 1997 c 248 s 51]

Subp. 7. [Repealed, L 1997 c 248 s 51]

Subp. 8. [Repealed, L 1997 c 248 s 51]

Subp. 9. [Repealed, L 1997 c 248 s 51]

Subp. 10. [Repealed, L 1997 c 248 s 51]

Subp. 11. [Repealed, L 1997 c 248 s 51]

Subp. 12. [Repealed, L 1997 c 248 s 51]

Subp. 13. [Repealed, L 1997 c 248 s 51]

Subp. 14. [Repealed, L 1997 c 248 s 51]

Subp. 15. [Repealed, L 1997 c 248 s 51]

Subp. 16. [Repealed, L 1997 c 248 s 51]

Subp. 17. [Repealed, L 1997 c 248 s 51]

Subp. 18. [Repealed, L 1997 c 248 s 51]
Subp. 19. [Repealed, L 1997 c 248 s 51]
Subp. 20. [Repealed, 18 SR 2244]
Subp. 20a. [Repealed, L 1997 c 248 s 51]
Subp. 21. [Repealed, L 1997 c 248 s 51]
Subp. 22. [Repealed, L 1997 c 248 s 51]
Subp. 23. [Repealed, L 1997 c 248 s 51]
Subp. 24. [Repealed, L 1997 c 248 s 51]
Subp. 25. [Repealed, L 1997 c 248 s 51]
Subp. 26. [Repealed, L 1997 c 248 s 51]
Subp. 27. [Repealed, L 1997 c 248 s 51]
Subp. 28. [Repealed, L 1997 c 248 s 51]
Subp. 29. [Repealed, L 1997 c 248 s 51]
Subp. 30. [Repealed, L 1997 c 248 s 51]
Subp. 31. [Repealed, L 1997 c 248 s 51]
Subp. 32. [Repealed, L 1997 c 248 s 51]
Subp. 33. [Repealed, L 1997 c 248 s 51]
Subp. 34. [Repealed, L 1997 c 248 s 51]
Subp. 35. [Repealed, L 1997 c 248 s 51]
Subp. 36. [Repealed, L 1997 c 248 s 51]

9525.2020 Subpart 1. [Repealed, L 1997 c 248 s 51]
Subp. 2. [Repealed, 18 SR 2748]
Subp. 3. [Repealed, 18 SR 2748]
Subp. 4. [Repealed, 18 SR 2748]
Subp. 5. [Repealed, 18 SR 2748]
Subp. 6. [Repealed, 18 SR 2748]
Subp. 7. [Repealed, 18 SR 2748]
Subp. 8. [Repealed, L 1997 c 248 s 51]
Subp. 9. [Repealed, L 1997 c 248 s 51]

9525.2025 [Repealed, 18 SR 2748; L 1997 c 248 s 51]

9525.2030 [Repealed, L 1997 c 248 s 51]

9525.2040 [Repealed, L 1997 c 248 s 51]

9525.2050 [Repealed, L 1997 c 248 s 51]

9525.2060 [Repealed, L 1997 c 248 s 51]

9525.2070 [Repealed, L 1997 c 248 s 51]

9525.2080 [Repealed, L 1997 c 248 s 51]

9525.2090 [Repealed, L 1997 c 248 s 51]

9525.2100 [Repealed, L 1997 c 248 s 51]

9525.2110 [Repealed, L 1997 c 248 s 51]

9525.2120 [Repealed, L 1997 c 248 s 51]

9525.2130 [Repealed, L 1997 c 248 s 51]

9525.2140 [Repealed, L 1997 c 248 s 51]

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 parts 9525.0004 to 9525.0036 to provide case management.

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; 18 SR 2244]

Subp. 16a. **Individual program plan.** "Individual program plan" has the meaning given it in part 9525.0004, subpart 11.

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 who has been determined to meet the diagnostic requirements under parts 9525.0004 to 9525.0036.

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; 256B.092*

History: *11 SR 2408; L 1987 c 333 s 22; 13 SR 1448; 18 SR 1141; 18 SR 2244*

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.

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 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 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;

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 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 9525.0004, subpart 4.

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. [Repealed, 18 SR 2244]

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 9525.0016, subpart 2.

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.

Subp. 29. **Residential program.** "Residential program" has the meaning given it in Minnesota Statutes, section 245A.02, subdivision 14.

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; 256B.092*

History: *17 SR 2276; 18 SR 2244*

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 court with probate jurisdiction 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; L 1995 c 189 s 8; L 1996 c 277 s 1*

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. 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 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

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;

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 9525.0004 to 9525.0036 may be used to fulfill the annual review requirement of this subpart only when that review contains all of the criteria 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; 256B.092*

History: *17 SR 2276; 18 SR 2244*

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*