

CHAPTER 9544
DEPARTMENT OF HUMAN SERVICES
POSITIVE SUPPORT STRATEGIES AND RESTRICTIVE INTERVENTIONS

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9544.0005 PURPOSE.

Chapter 9544 establishes methods, procedures, and standards to be used by providers governed by this chapter for the use of positive support strategies with persons receiving services. The purpose of these rules is to improve the quality of life of persons receiving home and community-based services or other licensed services by:

- A. promoting community participation, person-centeredness, and an approach that focuses on supporting persons receiving services in the most integrated setting;
- B. focusing on creating quality environments and lifestyles as primary responsibilities of license holders;
- C. ensuring collaborative, team-based development of positive support strategies;
- D. providing training to the person who receives services to improve the person's skills and facilitate the person's ability to meet self-identified goals;
- E. increasing the person's self-determination abilities so the person may engage in community activity to the greatest degree reasonably attainable;
- F. developing specific support programs that promote outcomes valued by the person, the person's family, and the community to help the person receiving services improve the person's quality of life;
- G. ensuring people are free from humiliating and demeaning procedures;
- H. eliminating all uses of aversive or deprivation procedures;
- I. creating a consistent set of standards for license holders to respond to behavior when serving people across licensed services and settings; and

J. building staff knowledge and competence throughout a license holder's organization about the development and implementation of positive behavioral supports, person-centered planning, and community integration.

Statutory Authority: *MS s 245.8251*

History: *40 SR 179*

Published Electronically: *August 31, 2015*

9544.0010 APPLICABILITY.

Subpart 1. **Applicability to providers licensed under Minnesota Statutes, chapter 245D.** This chapter applies to providers of home and community-based services to persons with a disability or persons age 65 and older governed by Minnesota Statutes, chapter 245D.

Subp. 2. **Applicability to other licensed services and settings.** This chapter applies to other licensed providers and in other settings licensed by the commissioner under Minnesota Statutes, chapter 245A, for services to persons with a developmental disability or related condition.

Subp. 3. **Related law.** This chapter must be read in conjunction with chapter 9525 and Minnesota Statutes, chapters 245, 245A, 245D, 252, 252A, and 256. License holders are subject to the requirements of this chapter and to all other applicable state and federal regulations governing the provision of services provided by the license holder.

Subp. 4. **Standards governing the use of restrictive interventions.** Parts 9544.0060 and 9544.0070 shall supersede any standards in other state rules that govern the use of restrictive interventions.

Statutory Authority: *MS s 245.8251*

History: *40 SR 179*

Published Electronically: *August 31, 2015*

9544.0020 DEFINITIONS.

Subpart 1. **Scope.** Except as provided in subpart 43, terms used in parts 9544.0005 to 9544.0140 have the meanings given in this part.

Subp. 2. **Aversive procedure.** "Aversive procedure" has the meaning given in Minnesota Statutes, section 245D.02, subdivision 2b.

Subp. 3. **Behavior intervention report form.** "Behavior intervention report form" means the form prescribed by the commissioner to collect data in accordance with the requirements in Minnesota Statutes, section 245.8251, subdivision 2.

Subp. 4. **Case manager.** "Case manager" has the meaning given in Minnesota Statutes, section 245D.02, subdivision 3.

Subp. 5. **Chemical restraint.** "Chemical restraint" has the meaning given in Minnesota Statutes, section 245D.02, subdivision 3b.

Subp. 6. **Child with severe emotional disturbance.** "Child with severe emotional disturbance" has the meaning given in Minnesota Statutes, section 245.4871, subdivision 6.

Subp. 7. **Commissioner.** "Commissioner" means the commissioner of the Department of Human Services.

Subp. 8. **Crisis respite services.** "Crisis respite services" means in-home or out-of-home short-term care and intervention strategies provided to a person to address the person's medical or behavioral needs so as to support the person's caregiver and protect the person or others living with that person.

Subp. 9. **Cultural competence.** "Cultural competence" has the meaning given in Minnesota Statutes, section 245D.02, subdivision 4e.

Subp. 10. **Deprivation procedure.** "Deprivation procedure" has the meaning given in Minnesota Statutes, section 245D.02, subdivision 5a.

Subp. 11. **Developmental disability or related condition.** "Developmental disability or related condition" has the meaning given in part 9525.0016, subpart 2, items A to E.

Subp. 12. **Direct support staff.** "Direct support staff" has the meaning given in Minnesota Statutes, section 245D.02, subdivision 6a.

Subp. 13. **Domains of a meaningful life.** "Domains of a meaningful life" means community membership; health, wellness, and safety; own place to live; important long-term relationships; control over supports; and employment earnings and stable income.

Subp. 14. **Emergency use of manual restraint.** "Emergency use of manual restraint" has the meaning given in Minnesota Statutes, section 245D.02, subdivision 8a.

Subp. 15. **Expanded support team.** "Expanded support team" has the meaning given in Minnesota Statutes, section 245D.02, subdivision 8b.

Subp. 16. **External program review committee.** "External program review committee" means a committee appointed by the commissioner to fulfill the functions described in Minnesota Statutes, section 245.8251, subdivisions 3 and 4.

Subp. 17. **External qualified professional.** "External qualified professional" means a qualified professional who is not under the direction and control of the license holder and is not an employee of or a subcontractor used by the license holder to perform services subject to the requirements of this chapter.

Subp. 18. **Family foster care.** "Family foster care" has the meaning given in Minnesota Statutes, section 245D.02, subdivision 8c.

Subp. 19. **Faradic shock.** "Faradic shock" means of or pertaining to a discontinuous, asymmetric, alternating or direct current from the second winding of an induction coil.

Subp. 20. **Forms and instructions.** "Forms and instructions" means the forms and instructions referenced in Minnesota Statutes, section 245D.06, subdivision 8, paragraph (a).

Subp. 21. **Functional behavior assessment.** "Functional behavior assessment" means an assessment that operationally defines the target behaviors, identifies the situations in which the target behaviors are likely to occur and not occur, and generates a hypothesis of why the behaviors occur. A functional behavior assessment must be conducted by a qualified professional and must consist of direct observation and one or more of the following elements:

- A. an assessment of biological factors, such as a medical assessment or a dental assessment;
- B. an assessment of psychological factors, such as a diagnostic assessment or a suicidality assessment;

C. an assessment of environmental factors, such as direct observation or interviewing a significant individual in the person's life; and

D. an assessment of quality of life indicators based on the person's goals and needs within each domain of a meaningful life.

Subp. 22. **Home and community-based services.** "Home and community-based services" has the meaning given in Minnesota Statutes, section 245D.02, subdivision 10.

Subp. 23. **Interfering behavior.** "Interfering behavior" means a behavior or psychiatric symptom that prevents a person from engaging in a more integrated setting or from participation in the most integrated setting.

Subp. 24. **Legal representative.** "Legal representative" has the meaning given in Minnesota Statutes, section 245D.02, subdivision 12.

Subp. 25. **Level program.** "Level program" means a type of program consisting of a hierarchy of levels contingent on meeting specific performance criteria with respect to behavior.

Subp. 26. **License.** "License" has the meaning given in Minnesota Statutes, section 245A.02, subdivision 8.

Subp. 27. **License holder.** "License holder" has the meaning given in Minnesota Statutes, section 245D.02, subdivision 15.

Subp. 28. **Manual restraint.** "Manual restraint" has the meaning given in Minnesota Statutes, section 245D.02, subdivision 15a.

Subp. 29. **Mechanical restraint.** "Mechanical restraint" has the meaning given in Minnesota Statutes, section 245D.02, subdivision 15b. Mechanical restraint includes use of an auxiliary device to ensure a person does not unfasten a seat belt in a vehicle. Mechanical restraint does not include:

- A. use of a seat belt as required under Minnesota Statutes, section 169.686; or
- B. use of a child passenger restraint system as required under Minnesota Statutes, section 245A.18, subdivision 1.

Subp. 30. **Medication.** "Medication" has the meaning given in Minnesota Statutes, section 245D.02, subdivision 16.

Subp. 31. **Mental health mobile crisis intervention services.** "Mental health mobile crisis intervention services" has the meaning given in Minnesota Statutes, section 256B.0624, subdivision 2, paragraph (d).

Subp. 32. **Mental illness.** For an adult, "mental illness" has the meaning given in Minnesota Statutes, section 245.462, subdivision 20.

Subp. 33. **Most integrated setting.** "Most integrated setting" has the meaning given in Minnesota Statutes, section 245D.02, subdivision 20a.

Subp. 34. **Normal goods and services.** "Normal goods and services" means 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, in accordance with Minnesota Statutes, section 245D.06, subdivision 6, paragraph (b), clause (4), or to any protection required by state licensing standards and federal regulations governing the program.

Subp. 35. **Outcome.** "Outcome" has the meaning given in Minnesota Statutes, section 245D.02, subdivision 21a.

Subp. 36. **Pain.** "Pain" means physical pain, mental pain, or emotional distress.

Subp. 37. **Person.** "Person" means a person as defined under Minnesota Statutes, section 245D.02, subdivision 22, receiving home and community-based services, a person age 65 or older receiving home and community-based services, or a person with a developmental disability or related condition receiving services licensed under Minnesota Statutes, chapter 245A.

Subp. 38. **Person-centered planning.** "Person-centered planning" means a strategy used to facilitate team-based plans for improving a person's quality of life as defined by the person, the person's family, and other members of the community, and that focuses on the person's preferences, talents, dreams, and goals. It is part of a family of approaches to organizing and guiding community change in alliance with people with disabilities and their families and friends.

Subp. 39. **Person with a disability.** "Person with a disability" has the meaning given in Minnesota Statutes, section 245D.02, subdivision 23.

Subp. 40. **Physician.** "Physician" has the meaning given in Minnesota Statutes, section 245D.02, subdivision 23a.

Subp. 41. **Positive support strategy.** "Positive support strategy" means a strengths-based strategy based on an individualized assessment that emphasizes teaching a person productive and self-determined skills or alternative strategies and behaviors without the use of restrictive interventions.

Subp. 42. **Positive support transition plan.** "Positive support transition plan" has the meaning given in Minnesota Statutes, section 245D.02, subdivision 23b.

Subp. 43. **Program.** "Program" has the meaning given in Minnesota Statutes, section 245D.02, subdivision 26. This subpart applies to parts 9544.0020, subparts 16, 34, and 47; 9544.0060, subpart 2, item U; 9544.0090, subpart 5; 9544.0110; 9544.0120; and 9544.0130.

Subp. 44. **Prone restraint.** "Prone restraint" has the meaning given in Minnesota Statutes, section 245D.061, subdivision 3, paragraph (a), clause (7).

Subp. 45. **Psychotropic medication.** "Psychotropic medication" has the meaning given in Minnesota Statutes, section 245D.02, subdivision 27.

Subp. 46. **Punishment.** "Punishment" means a Type I or Type II action as described in items A and B.

A. Type I action means the contingent application of an aversive stimulus. "Aversive stimulus" has the meaning given in Minnesota Statutes, section 245D.02, subdivision 2c.

B. Type II action means the contingent removal of a positive reinforcer. "Positive reinforcer" means a consequence or stimulus that is presented following a behavior and that causes the behavior to increase.

Subp. 47. **Qualified professional.** "Qualified professional" is defined separately for each type of service and license. Qualified professional means a professional described in items A to C; or a professional described in items D to J who has at least two years of work experience in writing or implementing positive support plans or treatment plans and has demonstrated in an assessment approved by the commissioner that the professional is competent to develop and implement positive support transition plans. For purposes of this subpart, treatment plan means a written document prepared by a licensed health professional that

includes a description of the precise treatment goals and the measures or services identified to accomplish them. The following occupations are qualified professionals for the specified services and settings:

A. for residential facilities for adults with mental illness governed under parts 9520.0500 to 9520.0670, a licensed mental health professional as identified in Minnesota Statutes, section 245.462, subdivision 18;

B. for residential mental health treatment for children with severe emotional disturbance governed under parts 2960.0010 to 2960.0120 and parts 2960.0580 to 2960.0700, a licensed mental health professional as identified in Minnesota Statutes, section 245.462, subdivision 18, clauses (1) to (6);

C. for sexual psychopathic personality and sexually dangerous person treatment programs governed under parts 9515.3000 to 9515.3110, a licensed mental health professional as defined in Minnesota Statutes, section 245.462, subdivision 18, or a licensed psychologist as defined in Minnesota Statutes, section 148.907;

D. for home and community-based services governed under Minnesota Statutes, chapter 245D, a designated coordinator as identified in Minnesota Statutes, section 245D.081, subdivision 2, paragraph (b); a behavior professional as identified in Minnesota Statutes, section 245D.091, subdivision 2; or a behavior analyst as identified in Minnesota Statutes, section 245D.091, subdivision 3;

E. for chemical dependency treatment programs governed under parts 9530.6405 to 9530.6505, a licensed alcohol and drug counselor as defined in part 9530.6450, subpart 5;

F. for detoxification programs governed under parts 9530.6510 to 9530.6590, a chemical dependency assessor as defined in part 9530.6510, subpart 3a;

G. for chemical dependency treatment programs for children governed under parts 2960.0010 to 2960.0120 and parts 2960.0430 to 2960.0500, an alcohol and drug counselor supervisor as identified in part 2960.0460, subpart 4; or an alcohol and drug counselor as identified in part 2960.0460, subpart 5;

H. for children's residential facilities governed under parts 2960.0010 to 2960.0120, including children's residential care, shelter care services, group residential settings, and transitional services programs, a program director as identified in part 2960.0020, subpart 57;

I. for child care centers governed under chapter 9503, a teacher as defined in part 9503.0032; a staff person who meets the qualification requirements in item A or D; or a person's case manager as required in Minnesota Statutes, section 256B.092, subdivision 1a, paragraph (e);

J. for foster family settings governed under parts 2960.3000 to 2960.3100, qualified staff from the county or private child placing agency; and

K. for the following settings and services, a person who meets the qualification requirements in item A or D; or a person's case manager as required in Minnesota Statutes, section 256B.092, subdivision 1a, paragraph (e):

- (1) family child care governed under chapter 9502;
- (2) family adult day services governed under Minnesota Statutes, section 245A.143;
- (3) adult day centers governed under parts 9555.9600 to 9555.9730;
- (4) adult foster care governed under parts 9555.5105 to 9555.6265;
- (5) child foster care governed under parts 2960.3000 to 2960.3340;

(6) independent living assistance for youth governed under Minnesota Statutes, section 245A.22;

(7) residential programs and services for persons with physical disabilities governed under chapter 9570; and

(8) any other residential or nonresidential program licensed under Minnesota Statutes, chapter 245A.

Subp. 48. **Quality of life indicator.** "Quality of life indicator" means a reportable or observable outcome that is measurable and important to the person. Quality of life indicators are used to assess beneficial changes desired by the person that enrich the person's life experiences.

Subp. 49. **Restraint.** "Restraint" has the meaning given in Minnesota Statutes, section 245D.02, subdivision 28.

Subp. 50. **Restrictive intervention.** "Restrictive intervention" means prohibited procedures identified in Minnesota Statutes, section 245D.06, subdivision 5; prohibited procedures identified in part 9544.0060; and the emergency use of manual restraint.

Subp. 51. **Seclusion.** "Seclusion" has the meaning given in Minnesota Statutes, section 245D.02, subdivision 29.

Subp. 52. **Self-injurious behavior.** "Self-injurious behavior" means behavior of a person which results in damage to the person's own body.

Subp. 53. **Service.** "Service" has the meaning given in Minnesota Statutes, section 245D.02, subdivision 30.

Subp. 54. **Target behavior.** "Target behavior" means an observable behavior identified in a person's individual plan as the object of efforts intended to reduce or eliminate the behavior.

Subp. 55. **Token reinforcement program.** "Token reinforcement program" means a program that requires a person to earn an outcome that is of value to the person. Tokens are earned in recognition of desired behavior. Tokens are traded in exchange for activities, events, goods, or services that may not otherwise be available to the person.

Subp. 56. **Treatment.** "Treatment" has the meaning given in Minnesota Statutes, section 245D.02, subdivision 35a.

Subp. 57. **Variance.** "Variance" means written approval by the commissioner for a license holder or applicant to depart from the requirements of parts 9544.0005 to 9544.0140.

Statutory Authority: *MS s 245.8251*

History: *40 SR 179*

Published Electronically: *August 31, 2015*

9544.0030 POSITIVE SUPPORT STRATEGIES AND PERSON-CENTERED PLANNING.

Subpart 1. **Positive support strategies required.** The license holder must use positive support strategies in providing services to a person. These positive support strategies must be incorporated in writing to an existing treatment, service, or other individual plan required of the license holder. At least every six months, the license holder must evaluate with the person whether the identified positive support strategies currently meet the standards in subpart 2. Based upon the results of the evaluation, the license

holder must determine whether changes are needed in the positive support strategies used, and, if so, make appropriate changes.

Subp. 2. **Positive support strategy standards.** To develop and implement positive support strategies, the license holder must:

A. assess the person's strengths, needs, and preferences to identify and create a positive support strategy;

B. select positive support strategies that:

- (1) are evidence-based;
- (2) are person-centered;
- (3) are ethical;
- (4) integrate the person in the community;
- (5) are the least restrictive to the person; and
- (6) are effective;

C. use person-centered planning in accordance with Minnesota Statutes, section 245D.07, subdivision 1a, paragraph (b), clause (1);

D. promote the person's self-determination in accordance with Minnesota Statutes, section 245D.07, subdivision 1a, paragraph (b), clause (2);

E. provide the most integrated setting and inclusive service delivery for the person in accordance with Minnesota Statutes, section 245D.07, subdivision 1a, paragraph (b), clause (3);

F. create a desirable quality of life for the person through inclusive, supportive, and therapeutic environments; and

G. use person-centered planning regarding the most integrated setting. The person-centered planning must:

(1) include life planning with the person placed at the center of the planning process and the person's preferences and choices reflected in the selection of services and supports;

(2) involve the person directly with the person's community, network of connections, and close personal relationships that build on the person's capacity to engage in activities and promote community life; and

(3) identify goals to support the person in the most integrated setting.

Subp. 3. **Person-centered principles.** The license holder must incorporate principles of person-centeredness in services it provides to a person. At least every six months, the license holder must evaluate with the person whether the services support the person's individual preferences, daily needs and activities, and the accomplishment of the person's goals in accordance with Minnesota Statutes, section 245D.07, subdivision 1a, paragraph (b), and whether the person-centered planning process complies with Code of Federal Regulations, title 42, section 441.725, paragraph (a)(1)-(4). Based upon the results of the evaluation, the license holder must determine whether changes are needed to enhance person-centeredness for the person, and, if so, make appropriate changes.

Subp. 4. **Professional standards for positive support strategies.** The license holder must use professional standards for positive support strategies that are fully consistent with this chapter. Examples of

professional standards that a license holder may use as a resource to develop positive support strategies are stated in items A to F. When relying on one of the following professional standards, the license holder must use the most recently updated version of those standards:

- A. the Association for Positive Behavior Support Standards of Practice;
- B. the United States Department of Health and Human Services, Substance Abuse and Mental Health Services Administration (SAMHSA) National Registry of Evidence-Based Programs and Practices;
- C. SAMHSA Roadmap to Seclusion and Restraint Free Mental Health Services;
- D. the Behavior Analyst Certification Board Guidelines for Responsible Conduct for Behavior Analysts;
- E. the NADD Competency-Based Clinical Certification Program Competency Standard 1: Positive Behavior Support and Effective Environments; or
- F. other standards approved by the commissioner that:
 - (1) have been peer-reviewed;
 - (2) are widely accepted as authoritative; and
 - (3) reflect current best practices.

Statutory Authority: *MS s 245.8251*

History: *40 SR 179*

Published Electronically: *August 31, 2015*

9544.0040 FUNCTIONAL BEHAVIOR ASSESSMENT.

Subpart 1. **Who must conduct.** The license holder's qualified professional or an external qualified professional must conduct the functional behavior assessment. The license holder must verify and document that the qualified professional or external qualified professional conducting the assessment meets the applicable qualification requirements in part 9544.0020, subpart 17 or 47.

Subp. 2. **When required.** A functional behavior assessment is required when a qualified professional or external qualified professional develops or modifies a written intervention to change a target behavior.

Subp. 3. **Required elements.** To perform a functional behavior assessment, the qualified professional or external qualified professional must directly observe the person. The professional must evaluate whether the following elements make the target behavior more or less likely to occur:

- A. biological factors, identified through a medical assessment or a dental assessment;
- B. psychological factors, identified through a diagnostic or suicidality assessment;
- C. environmental factors, identified through direct observation or interviewing a significant individual in the person's life; and
- D. quality of life indicators based on the person's goals and needs within the domains of a meaningful life.

The professional must use the evaluation to generate a hypothesis about why the behavior occurs.

Statutory Authority: *MS s 245.8251*

History: *40 SR 179*

Published Electronically: *August 31, 2015*

9544.0050 PERMITTED PROCEDURES.

Subpart 1. **Specific procedures permitted.** In addition to the procedures identified in Minnesota Statutes, section 245D.06, subdivision 7, that are permitted for use by license holders, the following procedures are permitted as approved by the expanded support team and, in the case of a child, the child's parent or parents:

- A. positive verbal correction that is specifically focused on the behavior being addressed; and
- B. temporary withholding or removal of objects being used to hurt self or others.

Subp. 2. **Documentation required.** The license holder must document in writing a procedure approved under subpart 1 to an existing treatment, service, or other individual plan required of the license holder.

Statutory Authority: *MS s 245.8251*

History: *40 SR 179*

Published Electronically: *August 31, 2015*

9544.0060 PROHIBITIONS AND RESTRICTIONS.

Subpart 1. **General prohibitions.** The procedures identified in Minnesota Statutes, section 245D.06, subdivision 5, are prohibited and are governed by the requirements of that section and this chapter.

Subp. 2. **Specific prohibitions.** The actions or procedures listed in items A to Y are prohibited from use as a substitute for adequate staffing, for a behavioral or therapeutic program to reduce or eliminate behavior, as punishment, or for staff convenience:

- A. using prone restraint, metal handcuffs, or leg hobbles;
- B. using faradic shock;
- C. speaking to a person in a manner that ridicules, demeans, threatens, or is abusive;
- D. using physical intimidation or a show of force;
- E. containing, restricting, isolating, secluding, or otherwise removing a person from normal activities when it is medically contraindicated or without monitoring the person;
- F. 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 imminent risk of injury or serious damage has passed;
- G. using painful techniques, including intentional infliction of pain or injury, intentional infliction of fear of pain or injury, dehumanization, and degradation;
- H. hyperextending or twisting a person's body parts;

- I. tripping or pushing a person;
- J. using punishment of any kind;
- K. requiring a person to assume and maintain a specified physical position or posture;
- L. using forced exercise;
- M. totally or partially restricting a person's senses;
- N. presenting intense sounds, lights, or other sensory stimuli;
- O. using a noxious smell, taste, substance, or spray, including water mist;
- P. depriving a person of or restricting access to normal goods and services, or requiring a person to earn normal goods and services;
- Q. using token reinforcement programs or level programs that include a response cost or negative punishment component;
- R. using a person receiving services to discipline another person receiving services;
- S. using an action or procedure which is medically or psychologically contraindicated;
- T. using an action or procedure that might restrict or obstruct a person's airway or impair breathing, including techniques whereby individuals use their hands or body to place pressure on a person's head, neck, back, chest, abdomen, or joints;
- U. interfering with a person's legal rights, except as allowed by Minnesota Statutes, section 245D.04, subdivision 3, paragraph (c). For purposes of this item, "legal rights" means rights afforded in federal regulation or state licensing standards governing the program;
- V. mechanical restraint, in accordance with Minnesota Statutes, section 245D.06, subdivision 5;
- W. chemical restraint, in accordance with Minnesota Statutes, section 245D.06, subdivision 5;
- X. manual restraint, except in an emergency in accordance with Minnesota Statutes, section 245D.061; and
- Y. using any other interventions or procedures that may constitute an aversive or deprivation procedure.

Subp. 3. **Restrictions.** Restrictions on the use of procedures as identified under Minnesota Statutes, section 245D.06, subdivision 6, are governed by the requirements of that section and this chapter.

Statutory Authority: *MS s 245.8251*

History: *40 SR 179*

Published Electronically: *August 31, 2015*

9544.0070 EMERGENCY USE OF MANUAL RESTRAINT.

Subpart 1. **Governing law and requirements.** Emergency use of manual restraint and the requirements for a positive support transition plan are governed by Minnesota Statutes, sections 245D.06, subdivision 8, and 245D.061, the requirements of this chapter, and the forms and instructions for the positive support transition plan.

Subp. 2. **Record keeping.** The license holder must retain documentation of emergency use of manual restraint or other documents required in this part in the person's permanent record for at least five years after creation of the documentation or other documents.

Subp. 3. **Positive support transition plan required.** The license holder must develop a positive support transition plan in accordance with Minnesota Statutes, section 245D.06, subdivision 8, for a person who has been subjected to three incidents of emergency use of manual restraint within 90 days or four incidents of emergency use of manual restraint within 180 days.

Statutory Authority: *MS s 245.8251*

History: *40 SR 179*

Published Electronically: *August 31, 2015*

9544.0080 NOTICE.

Subpart 1. **When notice is required.** At the time of service initiation, or when the license holder adopts or changes a policy about the emergency use of manual restraint, the license holder must provide notice to the person receiving services of the license holder policy on the emergency use of manual restraint. The notice must inform the person receiving services of the person's rights under this chapter and Minnesota Statutes, section 245D.04. The notice must be in writing, and the license holder must obtain a written acknowledgment from the person, or the person's legal representative acting within the scope of the legal representative's authority, that the person receiving services has been notified.

Subp. 2. **Notice to legal representative.** If the person receiving services has a legal representative, notice must also be given to the legal representative in accordance with subpart 1.

Statutory Authority: *MS s 245.8251*

History: *40 SR 179*

Published Electronically: *August 31, 2015*

9544.0090 STAFF QUALIFICATIONS AND TRAINING.

Subpart 1. **Core training for staff.** The license holder must ensure that staff responsible to develop, implement, monitor, supervise, or evaluate positive support strategies, a positive support transition plan, or the emergency use of manual restraint complete a minimum of eight hours of training from qualified individuals prior to assuming these responsibilities. Core training includes requiring staff to demonstrate knowledge of and competency in the following, in the setting in which services are provided:

- A. de-escalation techniques and their value;
- B. principles of person-centered service planning and delivery as identified in Minnesota Statutes, section 245D.07, subdivision 1a, and how they apply to direct support services provided by staff;
- C. principles of positive support strategies such as positive behavior supports, the relationship between staff interactions with the person and the person's behavior, and the relationship between the person's environment and the person's behavior;
- D. what constitutes the use of restraint, including chemical restraint, time out, and seclusion;
- E. the safe and correct use of manual restraint on an emergency basis according to Minnesota Statutes, section 245D.061;

F. staff responsibilities related to prohibited procedures under Minnesota Statutes, section 245D.06, subdivision 5; why the procedures are not effective for reducing or eliminating symptoms or interfering behavior; and why the procedures are not safe;

G. staff responsibilities related to restricted and permitted actions and procedures under Minnesota Statutes, section 245D.06, subdivisions 6 and 7;

H. the situations in which staff must contact 911 services in response to an imminent risk of harm to the person or others;

I. the procedures and forms staff must use to monitor and report use of restrictive interventions that are part of a positive support transition plan;

J. the procedures and requirements for notifying members of the person's expanded support team after the use of a restrictive intervention with the person;

K. understanding of the person as a unique individual and how to implement treatment plans and responsibilities assigned to the license holder;

L. cultural competence; and

M. personal staff accountability and staff self-care after emergencies.

Subp. 2. **Function-specific training.** In addition to the core training as required by subpart 1 and determining competency as required by subpart 4, the license holder must ensure that staff receive additional training based on their level of responsibility and qualifications, as set out in items A and B, prior to assuming these responsibilities. Equivalent training approved by the commissioner and completed within the previous 12 months fulfills these requirements.

A. Staff who develop positive support strategies and license holders, executives, managers, and owners in nonclinical roles must complete a minimum of four hours of additional training on the following:

(1) functional behavior assessments;

(2) how to apply person-centered planning;

(3) how to design and use data systems to measure effectiveness of care; and

(4) supervision, including how to train, coach, and evaluate staff and encourage effective communication with the person and the person's support team.

B. License holders, executives, managers, and owners in nonclinical roles must complete a minimum of two hours of additional training on the following:

(1) how to include staff in organizational decisions;

(2) management of the organization based upon person-centered thinking and practices and how to address person-centered thinking and practices in the organization; and

(3) evaluation of organizational training as it applies to the measurement of behavior change and improved outcomes for persons receiving services.

Subp. 3. **Annual refresher training.** The license holder must ensure that staff complete four hours of refresher training on an annual basis covering each of the training areas listed in subparts 1 and 2 that are applicable to the staff and their responsibilities.

Subp. 4. **Determining competency of the staff.** The license holder must ensure that staff demonstrate competency through knowledge testing or observed skill assessment conducted by a trainer or instructor as required in items A to C.

A. Before implementing positive support strategies, the staff must demonstrate competency to perform the positive support strategies relevant to the primary disability, diagnosis, or interfering behavior of the person in the manner described in the documentation required by part 9544.0030, subpart 1.

B. Before implementing restrictive procedures permitted in accordance with the requirements of this chapter, the staff must demonstrate competency to safely and correctly perform the specific restrictive interventions relevant to the person's primary disability, diagnosis, or interfering behavior included in the positive support transition plan in the manner described in the plan.

C. Any time a change is made to the relevant content in the positive support transition plan or the restrictive intervention identified in the plan, the staff must review, receive instruction, and demonstrate competency on the requirements in items A and B.

Subp. 5. **Documentation.** The license holder must document completion of core training, additional training, and competency testing or assessment for each staff in the personnel record. The license holder must document the date the training, testing, or assessment was completed; the number of training hours per subject area; and the name and qualifications of the trainer or instructor. The license holder must also verify and maintain evidence of staff qualifications in the personnel record, including documentation of the following:

A. education and experience qualifications relevant to the staff's scope of practice, responsibilities assigned to the staff, and the needs of the general population of persons served by the program; and

B. professional licensure, registration, or certification, when applicable.

Statutory Authority: *MS s 245.8251*

History: *40 SR 179*

Published Electronically: *August 31, 2015*

9544.0100 DOCUMENTATION AND RECORD KEEPING REQUIREMENTS.

Subpart 1. **Documentation of use of positive support strategies.** Except as provided in subpart 2, the license holder must document compliance with the requirements of this chapter. The license holder must comply with the positive support strategy documentation requirements in part 9544.0030, subpart 1. The license holder must maintain appropriate data that:

A. reveals the progress or lack of progress towards each outcome or goal for each person;

B. ensures that staff are accountable for the services provided to the person; and

C. ensures that services can be evaluated and monitored by the license holder and the commissioner.

Subp. 2. **Exemption.** A license holder providing family child care, family foster care, or family adult day services is exempt from the requirements to document general positive support strategy activities for children and adults for whom a positive support transition plan is not required, including the documentation requirements in part 9544.0030, subpart 1.

Subp. 3. **Documentation of outcomes.** The license holder must document the progress or lack of progress towards each outcome or goal for each person, including the progress or lack of progress on quality of life indicators.

Subp. 4. **Record keeping.** The information required in this part must be retained in the person's permanent record for at least five years from the creation or collection of the information.

Statutory Authority: *MS s 245.8251*

History: *40 SR 179*

Published Electronically: *August 31, 2015*

9544.0110 REPORTING USE OF RESTRICTIVE INTERVENTIONS AND INCIDENTS.

License holders must use the behavior intervention report form required by the commissioner to report the following to the commissioner:

- A. an emergency use of manual restraint;
 - B. a medical emergency occurring as a result of the use of a restrictive intervention with a person that leads to a call to 911 or seeking physician treatment or hospitalization for a person;
 - C. a behavioral incident that results in a call to 911;
 - D. a mental health crisis occurring as a result of the use of a restrictive intervention that leads to a call to 911 or a provider of mental health crisis services as defined in Minnesota Statutes, section 245.462, subdivision 14c;
 - E. an incident that requires a call to mental health mobile crisis intervention services;
 - F. a person's use of crisis respite services due to use of a restrictive intervention;
 - G. use of pro re nata (PRN) medication to intervene in a behavioral situation. This does not include the use of a psychotropic medication prescribed to treat a medical symptom or a symptom of a mental illness or to treat a child with severe emotional disturbance;
 - H. an incident that the person's positive support transition plan requires the program to report;
- or
- I. use of a restrictive intervention as part of a positive support transition plan as required in the plan.

Statutory Authority: *MS s 245.8251*

History: *40 SR 179*

Published Electronically: *August 31, 2015*

9544.0120 QUALITY ASSURANCE AND PROGRAM IMPROVEMENT.

A license holder must adopt a program improvement process to assess the ongoing implementation of positive support strategies and person-centered planning and to identify program strengths and opportunities for improvement. The license holder must perform these activities at least every six months. Upon review of the information, the license holder must take action to remedy problems or concerns identified in the positive support strategies and person-centered planning program. The license holder must document program improvement activities and submit process and outcome data as requested by the commissioner.

Statutory Authority: *MS s 245.8251*

History: *40 SR 179*

Published Electronically: *August 31, 2015*

9544.0130 EXTERNAL PROGRAM REVIEW COMMITTEE.

Subpart 1. **Appointment.** The commissioner shall appoint members to an external program review committee to monitor the implementation of this chapter.

Subp. 2. **Membership.** The commissioner must select committee members based on their expertise and knowledge on the use of positive support strategies as alternatives to the use of restrictive interventions. The committee shall include an expert in positive support strategies; a mental health professional as defined in Minnesota Statutes, section 245.462; a licensed health professional as defined in Minnesota Statutes, section 245D.02, subdivision 14; and a representative of the Department of Health.

Subp. 3. **Duties and responsibilities.** The external program review committee shall monitor implementation of this chapter, make recommendations to the commissioner about policy changes related to the requirements in this chapter, and make recommendations to the commissioner to approve or deny requests for emergency use of procedures in accordance with Minnesota Statutes, section 245.8251, subdivision 4. The committee shall:

A. review requests made in accordance with the requirements of Minnesota Statutes, section 245D.06, subdivision 8, paragraph (b), for emergency use of procedures that have been part of an approved positive support transition plan when necessary to protect a person from imminent risk of serious injury as defined in Minnesota Statutes, section 245.91, subdivision 6, due to self-injurious behavior, and make a recommendation to the commissioner to approve or deny these requests. The committee must base its recommendation upon the determination that the provider has made a good faith effort to reduce the need for the procedure and that the emergency use of procedures is necessary to protect the person from imminent risk of serious injury. The committee must base its determination upon the documentation provided in accordance with Minnesota Statutes, section 245D.06, subdivision 8, paragraph (c). The committee must include in an approval the additional terms or conditions that the license holder must meet specific to that approval, if any;

B. review requests for use of a prohibited procedure that is not specifically permitted by part 9544.0050, or specifically prohibited by part 9544.0060, and make a recommendation to the commissioner to approve or deny these requests. The committee must base its recommendation upon the determination that the provider has made a good faith effort to reduce the need for a restrictive intervention and that the prohibited procedure is necessary to protect the person's health and safety for a limited time while positive support strategies are developed and implemented. Requests for use of a prohibited procedure must include the following:

(1) a copy of the person's current positive support transition plan, copies of each positive support transition plan review, if any, and data on the interfering behavior;

(2) documentation of methods the provider has tried to reduce and eliminate the incidence of interfering behavior that have not been successful;

(3) documentation of the assessments performed to determine the function of the behavior for which the interventions have been developed;

- (4) documentation of a good faith effort to eliminate the use of restrictive interventions currently in use;
- (5) documentation that the interfering behavior is unlikely to be prevented in the immediate future by a reasonable increase in staffing or the provision of other positive supports;
- (6) justification for the use of the procedure that identifies the imminent risk of serious injury due to the person's interfering behavior if the procedure were not utilized;
- (7) documentation of the persons consulted in creating and maintaining the current positive support transition plan;
- (8) documentation of approval by the person's expanded support team of the submission to the committee of the request for use of a prohibited procedure; and
- (9) additional documentation as requested by the committee.

The committee must base its determination upon the documentation provided in accordance with this chapter. The committee must include in an approval the additional terms or conditions that the license holder must meet specific to that approval, if any;

C. evaluate the programs and systems of a license holder making a request under item A or B to ascertain the license holder's overall capacity to serve persons who are the subject of the request;

D. review each reported emergency use of manual restraint and the license holder's response to the emergency use for the person. The commissioner must identify criteria that the external program review committee will use to evaluate the license holder's response. If the committee determines that a change is needed to reduce the frequency or duration of future emergency uses by the license holder, the external program review committee must provide guidance to the license holder about its response; and

E. assess the competency of qualified professional applicants to develop and implement positive support transition plans.

Subp. 4. **Number of external program review committees.** The commissioner may designate more than one external program review committee based on the number of requests for emergency use of procedures reviewed by the interim review panel under Minnesota Statutes, section 245.8251, subdivision 4. The criteria used to review requests according to subpart 3, items A and B, must be uniform across committees.

Statutory Authority: *MS s 245.8251*

History: *40 SR 179*

Published Electronically: *August 31, 2015*

9544.0140 VARIANCES.

A license holder subject to Minnesota Statutes, chapter 245A, may request a variance to a requirement in this chapter from the commissioner according to Minnesota Statutes, section 245A.04, subdivision 9.

Statutory Authority: *MS s 245.8251*

History: *40 SR 179*

Published Electronically: *August 31, 2015*