CHAPTER 9525
DEPARTMENT OF HUMAN SERVICES
PROGRAMS FOR MENTALLY RETARDED PERSONS

RELATED CONDITION

9525.0180 PURPOSE.

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

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

History: *12 SR 1148*

9525.0185 DEFINITIONS.

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

Subp. 2. **Adaptive behavior similar to that of persons with mental retardation.** "Adaptive behavior similar to that of persons with mental retardation" means behavior that has been determined to demonstrate a severe deficit in skills related to personal independence and social responsibility such as self care, mobility, communication, self preservation, and community integration, when compared to the norm for individuals of the same chronological age group and cultural peer group. The determination must be made by a psychiatrist, licensed psychologist, or licensed consulting psychologist, through the combination of test data, observation, and all other available information sources.

Subp. 3. **Autism.** "Autism" means a functional disorder occurring before 30 months of age that results in and causes a pervasive lack of responsiveness to

other people, gross deficits in language and communication, and abnormal responses to the environment, all in the absence of delusions and hallucinations. Autism must be diagnosed by a team composed of a licensed physician, a speech pathologist, and a licensed psychologist, licensed psychiatrist, or licensed consulting psychologist.

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

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

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

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

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

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

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

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

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

(1) impairment of general intellectual functioning; or

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

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

B. is likely to continue indefinitely; and

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

(1) self care;

(2) understanding and use of language;

(3) learning;

(4) mobility;

(5) self direction; or

(6) capacity for independent living.

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

History: *12 SR 1148*

9525.0190 DETERMINATION OF SUBSTANTIAL FUNCTIONAL LIMITATION.

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

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

B. an occupational therapist;

C. a licensed physician;

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

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

F. a certified special education professional.

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

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

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

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

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

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

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

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

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

History: *12 SR 1148*

9525.1210 DEFINITIONS.

[For text of subps 1 to 10, see M.R. 1987]

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.

[For text of subps 13 and 14, see M.R. 1987]

Subp. 15. [Repealed, 12 SR 2044]

Statutory Authority: *MS s 256B.501*

History: *12 SR 2044*

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.

[For text of subpart 1, items B to H, see M.R. 1987]

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.

[For text of subp 2, items A to E, see M.R. 1987]

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: *12 SR 2044*

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

9525.1500 DEFINITIONS.

Subpart 1. **Scope.** The terms used in parts 9525.1500 to 9525.1690 have the meanings given to them in this part.

Subp. 2. **Assessment.** "Assessment" means the process of identifying and describing under part 9525.1630 a person's skills or lack or skills and behaviors, the impact of these skills or lack of skills and behaviors on the person's daily activities, the environmental, physical, medical, and health factors that determine the services needed to increase the person's independence and productivity, and the types of supervision, assistance, and training that would best meet the person's needs.

Subp. 3. **Adult with mental retardation or a related condition.** "Adult with mental retardation or a related condition" means a person 18 years of age or older who has the characteristics described in subpart 27.

Subp. 4. **Applicant.** "Applicant" means an individual or the authorized representative of a partnership, corporation, or governmental unit seeking a license to provide training and habilitation services under parts 9525.1500 to 9525.1690.

Subp. 5. **Aversive or deprivation procedure.** "Aversive or deprivation procedure" means the planned application of an unpleasant stimulus or consequence or the planned delay in the delivery of goods, services, or activities to which a person is otherwise entitled:

A. contingent on the occurrence of a behavior identified for reduction or elimination in a person's individual habilitation plan; or

B. in an emergency situation as defined in parts 9525.2700 to 9525.2810 governing use of aversive and deprivation procedures in licensed facilities and services serving persons with mental retardation and related conditions.

Subp. 6. **Caregiver.** "Caregiver" means the individual who cares for and supervises a person receiving services at the place where the person lives.

Subp. 7. **Case manager.** "Case manager" means the individual designated by the county board under part 9525.0035 to provide case management services. The case manager must meet the requirements in part 9525.0155.

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

Subp. 9. **County board.** "County board" means the county board of commissioners for the county of financial responsibility as specified in Minnesota Statutes, section 256B.02, subdivision 3.

Subp. 10. **County of financial responsibility.** "County of financial responsibility" has the meaning given it in Minnesota Statutes, sections 256B.02, subdivision 3, and 256E.08, subdivision 7.

Subp. 11. **Department.** "Department" means the Minnesota Department of Human Services.

Subp. 12. **Direct service staff.** "Direct service staff" means employees of a training and habilitation service provider who train or directly supervise persons receiving services and who participate in the development or implementation of a person's individual habilitation plan. Professional support staff as defined in subpart 28 are considered to be direct service staff when they are working directly with persons receiving services and are involved in daily activities with those persons.

Subp. 13. **Direct supervision.** "Direct supervision" occurs when the staff member or volunteer who supervises a person receiving services is with that person at a service site and is providing training or assistance to the person individually or in a group.

Subp. 14. **Generic services.** "Generic services" means services offered or available to the general public that are common to all people and not restricted to a special category of people.

Subp. 15. **Goal.** "Goal" means the desired behavioral outcome of an activity that can be observed and reliably measured by two or more independent observers.

Subp. 16. **Governing body.** "Governing body" means the individual or group that establishes policies to direct the provider's provision of services.

Subp. 17. **Health consultant.** "Health consultant" means a licensed physician or a registered nurse.

Subp. 18. **Host county.** "Host county" means the county in which the services described in a person's individual service plan are provided.

Subp. 19. **Immediate danger.** "Immediate danger" results from severe assaultive or self injurious behavior that can be quantified according to intensity, rate, or duration and that has one or more of the following characteristics:

A. the behavior endangers a person's or another individual's life, sensory abilities, limb mobility, or other major physical functioning; or

B. the behavior threatens a person's or other individual's physical appearance; or

C. the behavior poses an immediate threat to the physical safety of a person or others in a way not specified in item A or B.

Subp. 20. **Individual habilitation plan.** "Individual habilitation plan" means the written plan required by and developed under parts 9525.0015 to 9525.0165.

Subp. 21. **Individual service plan.** "Individual service plan" means the written plan required by and developed under parts 9525.0015 to 9525.0165.

Subp. 22. **Interdisciplinary team.** "Interdisciplinary team" means a team composed of the case manager, the person with mental retardation or a related condition, the person's legal representative, the person's advocate as defined in part 9525.0015, subpart 3, if any, and representatives of providers of service under the individual service plan.

Subp. 23. **Intermediate care facility for persons with mental retardation and related conditions or ICF/MR.** "Intermediate care facility for persons with mental retardation and related conditions" or "ICF/MR" means a program licensed under Minnesota Statutes, sections 245A.01 to 245A.16 and 252.28, subdivision 2, to provide services to persons with mental retardation and related conditions and a physical plant licensed as a supervised living facility under Minnesota Statutes, chapter 144, which together are certified by the Minnesota Department of Health as an intermediate care facility for persons with mental retardation and related conditions.

Subp. 24. **Legal representative.** "Legal representative" means the parent or parents of a person who has or who might have mental retardation or a related condition when that person is under 18 years of age, or a court appointed guardian or conservator who is authorized by the court to make decisions about services for a person who has or who might have mental retardation or a related condition regardless of that person's age.

Subp. 25. **Objective.** "Objective" means a short-term expectation and its accompanying measurable behavioral criteria as specified in the individual habilitation plan. Objectives are set to facilitate achieving the annual goals in a person's individual service plan.

Subp. 26. **Outcome.** "Outcome" means the measure of change or the degree of attainment of specified goals and objectives that is achieved as a result of provision of service.

Subp. 27. **Person with mental retardation or a related condition or person.** "Person with mental retardation or a related condition" or "person" means:

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

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

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

(2) is likely to continue indefinitely;

(3) results in substantial functional limitations in three or more of the following areas of major life activity: self care; understanding and use of language; learning; mobility; self direction; or capacity for independent living; and

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

Subp. 28. **Professional support staff.** "Professional support staff" means licensed professional staff such as rehabilitation counselors, physical therapists, occupational therapists, registered nurses, speech therapists, and consulting psychologists, who assist the direct service staff by:

A. providing specific services to the same persons who are served by the direct service staff; or

B. instructing the direct service staff in procedures, practices, or programs to follow with persons receiving services.

Subp. 29. **Provider.** "Provider" means a corporation, governmental unit, partnership, individual, or individuals licensed by the commissioner under parts 9525.1500 to 9525.1690 to provide training and habilitation services to adults with mental retardation and related conditions. The term provider includes a license holder as defined in Minnesota Statutes, section 245A.02, subdivision 9.

Subp. 30. **Provider implementation plan.** "Provider implementation plan" means a detailed internal plan developed by the provider and used within the service site to direct the daily activities of staff in carrying out the objectives established within the individual habilitation plan developed under parts 9525.0015 to 9525.0165 for a person receiving services.

Subp. 31. **Regional center.** "Regional center" means one of the seven state operated facilities that serve persons with mental retardation and related conditions and are under the direct administrative authority of the commissioner. The following facilities are regional centers: Brainerd Regional Human Services Center; Cambridge Regional Human Services Center; Faribault Regional Center; Fergus Falls Regional Treatment Center; Moose Lake Regional Treatment Center; Saint Peter Regional Treatment Center; and Willmar Regional Treatment Center.

Subp. 32. **Service or support service.** "Service or support service" means planned activities designed to achieve the outcomes assigned to the provider and specified in the individual service plan of a person receiving services.

Subp. 33. **Service site.** "Service site" means the physical location where training and habilitation services are provided. Service sites include commercial buildings, community locations or facilities, and buildings owned or leased by the provider.

Subp. 34. **Supported employment.** "Supported employment" means employment of a person with a disability or disabilities so severe that the person needs ongoing training and support to get and keep a job in which:

A. the person engages in paid work at a work site where individuals without disabilities who do not require public subsidies also may be employed;

B. public funds are necessary to provide ongoing training and support services throughout the period of employment; and

C. the person has the opportunity for social interaction with individuals who do not have disabilities and who are not paid caregivers.

Subp. 35. **Suspension.** "Suspension" means a temporary discontinuance of service to a person that includes temporary removal of the person from the service site.

Subp. 36. **Training and habilitation services.** "Training and habilitation services" means services that include training, supervision, assistance, and other support activities designed and implemented in accordance with a person's individual habilitation plan to help that person attain and maintain the highest possible level of independence, productivity, and integration into the community where the person lives and works. The term as used throughout parts 9525.1500 to 9525.1690 refers specifically to training and habilitation services with the characteristics in items A to D.

A. A need for the services offered by the provider has been determined under part 9525.0145.

B. The services are provided in accordance with a host county contract under part 9550.0040.

C. The services are regularly provided to one or more adults with mental retardation or a related condition for periods of less than 24 hours a day in a place other than the person's own home or residence.

D. The services offered by the provider include training, supervision, assistance, and supported employment, work related activities, or other community integrated activities related to a person's employment or work, self care, communication skills, socialization, community orientation, transportation needs, emotional development, development of adaptive behavior, cognitive development, and physical mobility.

Subp. 37. **Variance.** "Variance" means written permission given by the commissioner to an applicant or provider that allows the applicant or provider to depart from specified provisions in parts 9525.1500 to 9525.1690. Variances are time limited and may be granted by the commissioner under Minnesota Statutes, section 14.05. The commissioner's decision to grant a variance or to deny a variance is final.

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

History: *12 SR 997*

9525.1510 PURPOSE AND APPLICABILITY.

Subpart 1. **Purpose.** Parts 9525.1500 to 9525.1690 establish the standards that an individual, organization, or association must meet to be licensed under Minnesota Statutes, sections 245A.01 to 245A.16 and 252.28, subdivision 2, as a provider of training and habilitation services for adults with mental retardation and related conditions. Parts 9525.1500 to 9525.1690 supersede parts 9525.0750 to 9525.0830 in governing the provision of training and habilitation services to adults.

Subp. 2. **Applicability.** Parts 9525.1500 to 9525.1690 apply to any individual, organization, or association that regularly provides training and habilitation services to one or more adults with mental retardation or a related condition. The training and habilitation services governed by parts 9525.1500 to 9525.1690 include services commonly referred to as developmental achievement services when those services are provided to adults, day programs offered or administered by regional centers, and day habilitation services as defined in parts 9525.1800 to 9525.1930 governing funding and administration of home and community

based services. Nothing in parts 9525.1500 to 9525.1690 limits any individual, organization, or association providing training and habilitation services from contracting with the Division of Rehabilitation Services of the Minnesota Department of Jobs and Training or other entities for the provision of services for an adult with mental retardation or a related condition.

Subp. 3. **Exclusions.** Parts 9525.1500 to 9525.1690 do not apply to:

A. an intermediate care facility for persons with mental retardation and related conditions that is not a regional center and that provides training and habilitation services to facility residents as part of the facility's residential program licensed under parts 9525.0210 to 9525.0430;

B. providers that are licensed under parts 9545.0510 to 9545.0670 and that provide services only to persons under 18 years of age; or

C. services provided by extended employment programs governed by parts 3300.1950 to 3300.3050.

Subp. 4. **Exemptions for regional centers.** The following provisions of parts 9525.1500 to 9525.1690 do not apply to a regional center that can document compliance with corresponding standards in parts 9525.0210 to 9525.0430 and Code of Federal Regulations, title 42, sections 441.516 to 442.400, as amended through October 1, 1985:

A. part 9525.1540, subpart 1;

B. part 9525.1550, subparts 3, 4, 5, 9, 10, 11, and 12;

C. part 9525.1560; and

D. part 9525.1670.

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

History: *12 SR 997*

9525.1520 LICENSING PROCESS.

Subpart 1. **License application.** A corporation, partnership, governmental unit, individual, or individuals that provide training and habilitation services to adults with mental retardation and related conditions must obtain a license from the department. Applications for a license must be made on the application form provided by the commissioner. The commissioner shall provide the applicant information on how to obtain:

A. the application form;

B. a copy of parts 9525.1500 to 9525.1690 and statutes and rules referenced in parts 9525.1500 to 9525.1690; and

C. the department documentation forms needed to verify compliance with parts 9525.1500 to 9525.1690.

Subp. 2. **Completed application.** An application for licensure or relicensure is complete when the applicant signs and submits to the department the completed application form accompanied by:

A. the licensing fee required by parts 9545.2000 to 9545.2040; and

B. documentation that:

(1) service sites owned or leased by the applicant comply with current state building, zoning, fire, and health regulations, with the codes listed in parts 9525.1670 to 9525.1690, and with other applicable local codes and ordinances;

(2) variances from compliance with the codes and ordinances in subitem (1) have been granted by the state or local unit of government with jurisdiction to enforce the code or ordinance;

(3) a current determination of need or a biennial redetermination of need for the service and service site has been approved by the commissioner as required by Minnesota Statutes, section 252.28 and part 9525.0145; and

(4) the applicant has provided the information required by the commissioner to complete the licensing study required by Minnesota Statutes, section 245A.04, subdivision 3.

Any deficiencies cited by a fire marshal, building official, or agent of a board of health as authorized under Minnesota Statutes, section 145A.04 as a threat to health and safety under item B, subitem (1) must be corrected and documented as having been corrected by the inspecting official before a license will be issued by the department unless the inspecting official has granted and documented a variance under item B, subitem (2).

Subp. 3. **Separate license required.** Providers are required to apply for a separate license for each service site owned or leased by the provider at which persons receiving services and the provider's employees who provide training and habilitation services are present for a cumulative total of more than 30 days within any 12 month period.

Subp. 4. **Access to service sites owned or leased by the provider or applicant.** The provider or applicant shall give the commissioner access to the service sites owned or leased by the provider or applicant, in accordance with Minnesota Statutes, section 245A.04, subdivision 5. Access includes the right to review and photocopy the records required by parts 9525.1500 to 9525.1690, and to take photographs, make audio or video electronic tape recordings, and conduct interviews as a means of gathering the information required to evaluate compliance.

Subp. 5. **Licensing study of applicant and staff.** As specified in Minnesota Statutes, section 245A.04, subdivision 3, a study of the applicant and of all staff members who have direct contact with persons receiving services must be made before the commissioner issues a license. The commissioner may require, at any time during the term of a provider's licensure, a study of the provider or of an employee if the commissioner has reasonable cause to believe that the refusal, convictions, or acts specified in subpart 6, item A occurred.

Subp. 6. **License denial or suspension.** The commissioner shall not issue a license or shall immediately suspend a license when one or any combination of the conditions described in item A, B, or C occurs.

A. The applicant or provider or a present employee of the applicant or provider:

(1) Refuses to give written consent to disclosure of information required by the commissioner to conduct a licensing study as specified in subpart 5; or

(2) Has been convicted of a crime or has admitted to an act or there is a preponderance of evidence of an act that directly relates to the physical abuse, sexual abuse or neglect of children as defined in Minnesota Statutes, section 626.556, subdivision 2, or the abuse or neglect of vulnerable adults as defined in Minnesota Statutes, section 626.557, subdivision 2, clauses (d) and (e), and subdivision 3, and does not show evidence of sufficient rehabilitation and present fitness to care for vulnerable adults. The factors in Minnesota Statutes, section 364.03, subdivisions 2 and 3 must be considered in determining whether the act or conviction directly relates to the abuse or neglect of vulnerable adults and whether the individual has shown evidence of sufficient rehabilitation and fitness.

B. The service sites owned or leased by the applicant do not comply with the building, fire, and health codes under parts 9525.1500 to 9525.1690 and the deficiencies cited threaten the health, safety, or rights of clients.

C. The provider is cited for other deficiencies that immediately threaten the health, safety, or rights of clients.

Subp. 7. **License terms.** The license, whether regular or provisional, must show:

A. the name and address of the provider;

B. the rule or rules under which the provider is licensed;

C. the location of the service site if a site is owned or leased by the provider or the location of the administrative office if no site is owned or leased;

D. the number and age groupings of persons who may receive services at one time; and

E. the expiration date of the license.

Providers must assure continuing accuracy of any representation made in the application or in any licensing inspection.

Subp. 8. **Change in license terms.** The provider shall notify the commissioner and apply for a new license and the commissioner shall conduct a new or partial inspection and study of the provider and of the service site for which the license will be issued when the provider proposes to do any one or any combination of the following:

A. change the location of the service site;

B. change the licensed capacity or number of persons for whom services are available;

C. make structural changes to the service site that require a building permit from the municipality or local jurisdiction; or

D. make changes in program governance, program direction, or clients served based on a redetermination of need under part 9525.0145.

Subp. 9. **Posting the license.** The provider shall post the license in a prominent place at the licensed site or at the administrative office if the provider does not own or lease a service site.

Subp. 10. **Return of license to commissioner.** When a provider no longer offers training and habilitation services, or if a license is revoked, suspended, or not renewed, the provider must return the license to the commissioner.

Subp. 11. **Variance request.** An applicant or provider may request a variance from compliance with parts 9525.1500 to 9525.1690 from the commissioner at any time if the variance would not threaten the health, safety, or rights of the persons served. An applicant or provider who requests a variance must send a copy of the variance request to the board of county commissioners of the host county within seven days of making the request.

A request for a variance must be submitted to the commissioner in writing. The written request must include the following information:

A. the sections of parts 9525.1500 to 9525.1690 from which the applicant or provider requests a variance;

B. the reasons why the applicant or provider needs to depart from the specified sections;

C. the period for which the applicant or provider requests a variance, not to exceed one year or the expiration date of the license; and

D. the specific equivalent measures that the applicant or provider will take to ensure the health, safety, and rights of persons receiving services if the variance is granted.

Any request for a variance from rule provisions related to fire, safety, occupancy codes, or food handling, water, and nutrition must be accompanied by a written statement from the fire marshal, building official, or authorized agent with jurisdiction that granting the variance does not pose a threat to the health and safety of persons receiving services.

Subp. 12. **Granting a variance.** The commissioner shall grant the applicant's or provider's request for a variance if all the conditions in items A to F are met.

A. The variance request meets the specifications in subpart 11.

B. Granting the variance will not threaten the health, safety, and rights of persons receiving services.

C. Granting the variance would not put the provider in substantial noncompliance with parts 9525.1560, 9525.1570, or 9525.1590 to 9525.1640.

D. Granting the variance would not be contrary to a standard required by Minnesota statutes.

E. The host county concurs with the provider's request.

F. The provider is in compliance with all other provisions of parts 9525.1500 to 9525.1690.

Subp. 13. **Notice to provider.** Within 30 days after receiving a request for a variance and the documentation supporting it, the commissioner shall inform the applicant or provider in writing whether the request has been granted or denied and why the request has been granted or denied. The commissioner's decision to grant or deny the variance is final. If the commissioner determines that licensing standards are not met and initiates a negative licensing action, that action may be appealed under Minnesota Statutes, sections 245A.01 to 245A.16.

Subp. 14. **Notice by provider.** The provider shall send written notice to the legal representatives and the case managers of all persons receiving training and habilitation services from the provider, describing any variance granted by the commissioner under subpart 12 or any deficiency that exists if the provider has been issued a provisional or probationary license. The notice shall state that a copy of the variance or statement of deficiency may be reviewed by any interested party at the provider's office. The provider shall provide the written notice within ten working days of the provider's receipt of written notice from the commissioner granting a variance or issuing a provisional or probationary license and keep records showing that the written notice was sent.

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

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

9525.1530 NEGATIVE LICENSING ACTIONS.

A negative licensing action includes denial of application for licensure or revocation, probation, suspension, nonrenewal, or immediate suspension of an existing license.

Under Minnesota Statutes, sections 245A.01 to 245A.16, failure to comply with parts 9525.1500 to 9525.1690 or the terms of licensure constitutes cause for a negative licensing action.

Negative licensing actions shall be taken and appealed in accordance with Minnesota Statutes, sections 245A.01 to 245A.16.

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

History: *12 SR 997*

9525.1540 ADMINISTRATION.

Subpart 1. **Governing body.** The provider shall have a governing body and shall make available in writing to the commissioner and host county the names, addresses, and phone numbers of its members. Membership and duration of service must be determined under the bylaws and organizational structure of the agency and in accordance with part 9525.1580, subpart 2.

Subp. 2. **Advisory committee.** The governing body shall meet at least twice annually with an advisory committee. The committee membership shall include at least one member who is a person with mental retardation or a related condition or a parent, guardian, family member, or friend of such a person and at least two members who are affiliated with one or more of the following agencies: local education agency, local human services agency, or local or regional vocational rehabilitation agency. In addition to the three members specified above, the committee shall also include at least three other members, all of whom represent the local business community. Nothing in this subpart prohibits providers in the same locale or area from sharing the same advisory committee. No more than half the members of the advisory committee may also serve on the governing board. The provider shall keep records of the minutes of the advisory

committee meetings. The purpose of the advisory committee is to advise, consult with, and make recommendations to the governing body concerning community integration projects and employment, ways to meet overall service goals, and the provider's role in providing needed services to persons with mental retardation and related conditions who are currently of secondary school age when these persons become adults.

Subp. 3. **Administrative responsibility for compliance with other applicable laws and rules.** In addition to complying with parts 9525.1500 to 9525.1690, providers must comply with other applicable laws and rules, including those listed in items A to D:

A. the Minnesota Human Rights Act, Minnesota Statutes, chapter 363;

B. requirements for reporting maltreatment of vulnerable adults under Minnesota Statutes, section 626.557 and parts 9555.8000 to 9555.8500;

C. parts 9525.1200 to 9525.1330 when training and habilitation services are provided to persons who reside in intermediate care facilities for persons with mental retardation and related conditions that are not regional centers; and

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

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

History: *12 SR 997*

9525.1550 ADMINISTRATIVE POLICIES AND RECORDS.

Subpart 1. **Maintenance and availability of policies and records.** A provider shall follow the written policies and maintain the records required in this part. The written policies and records must be provided to the commissioner upon request and must be available for inspection as provided in part 9525.1520, subpart 5. The provider must make copies of all written policies available to counties, applicants for services, and to others as requested.

Subp. 2. **Provider's organization and policy manual.** The provider shall maintain an organization and policy manual. The manual must be made available on request to the commissioner, host county, and county boards that contract with the provider. The manual's contents must be reviewed annually by the governing body or a designated staff member or committee and must show a date indicating when it was most recently revised. The manual must contain up to date (current within the last calendar year) versions of the information in items A to H:

A. a mission statement including a brief summary or description of the services the provider makes available to meet the requirements of part 9525.1570, subparts 2, 3, and 6;

B. a copy of the most current determination of need completed by the host county under part 9525.0145;

C. a summary of cooperative arrangements the provider has with community businesses and organizations to facilitate provision of employment opportunities, opportunities for social interaction with nondisabled people, and opportunities for training at service sites not owned or leased by the provider;

D. an organization chart showing current positions funded by the provider;

E. written policies and criteria governing admission, exclusion, suspension, and discharge developed under part 9525.1560;

F. the provider's written behavior management policy developed under part 9525.1640;

G. policies on the collection and dissemination of data on persons receiving services from the provider; and

H. policies and procedures required by the Vulnerable Adults Act, Minnesota Statutes, section 626.557.

Subp. 3. **Personnel policies.** The provider must establish written personnel policies governing:

A. hiring, probation, evaluation, and termination of staff;

B. compliance with the Minnesota Human Rights Act, Minnesota Statutes, chapter 363;

C. staff training as required in part 9525.1620;

D. use of substitute staff and volunteers; and

E. staff benefits.

Subp. 4. **Personnel file.** The provider must have a personnel file for each employee that includes:

A. the employee's application or other written summary of the employee's qualifications;

B. the employee's health record, including verification that the employee has had a physical examination within 12 months before employment or two months after employment;

C. a signed statement from the employee stating that the employee knows the job description, has received the required orientation training, and that all written policies and procedures have been explained and are understood;

D. documentation of the probationary evaluation and all regular evaluations including at least an annual written evaluation; and

E. documentation of all training completed under part 9525.1640, subpart 4.

Subp. 5. **Records of persons receiving services.** A provider shall keep a record for each person served that contains the person's admission file as required in part 9525.1560, subpart 3, including current assessments; the individual habilitation plan file described in part 9525.1630; and the progress reports and evaluations completed by the provider or received from other service providers as required in parts 9525.0015 to 9525.0165 and 9525.1630.

Subp. 6. **Contracts.** The provider must have copies of all contracts required under parts 9525.0015 to 9525.0165, 9525.1200 to 9525.1320, 9550.0010 to 9550.0092, and under federal law when services are provided to residents of an ICF/MR, and any subcontracts entered into with qualified consultants or commercial businesses to provide training and habilitation for persons receiving services.

Subp. 7. **Certificate required for work activity or subminimum wage.** When the provider is paying persons receiving employment or employment related services less than the minimum wage, the provider must have the certificate from the Wage and Hour Division of the United States Department of Labor required by Code of Federal Regulations, title 29, parts 524 to 525 as amended through July 1, 1986.

Subp. 8. **Work performed for provider by persons receiving services.** A person receiving services from a provider shall work for the provider in place of an employee only when the conditions in items A to C are met:

A. the work training is specified in the person's individual habilitation plan;

B. the person is reimbursed an amount proportionate to the person's abilities and productivity except as regional centers are governed by Minnesota Statutes, section 246.151, subdivision 1; and

C. the person is supervised and has been specifically trained to perform the work.

Subp. 9. **Evidence of insurance.** Unless a provider has written proof of exemption from insurance, the provider must provide evidence of having insurance, including evidence of compliance with the workers' compensation insurance coverage requirement in Minnesota Statutes, section 176.81, subdivision 2.

Subp. 10. **Financial records.** A provider must keep financial records neces-

sary to comply with parts 9550.0010 to 9550.0092. In addition, a provider who receives medical assistance funds must keep bills, financial records, statements, and audits necessary to comply with parts 9505.1750 to 9505.2150 and applicable federal regulations. The provider must keep the financial records for five years.

Subp. 11. **Record of applications for services.** The provider must have a record of each written application or referral for services received by the provider. The record must include the case manager's signature signifying approval of the application or referral and an explanation of actions taken on the application or referral. The provider must keep the record for four years.

Subp. 12. **Records of suspension and discharge.** The provider must keep records of persons receiving services who are suspended and discharged. The record must contain the reasons for the suspension or discharge, and all actions taken under part 9525.1560 before discharge or suspension. The provider must keep the suspension and discharge records for four years. This information must be summarized and made available to the host county and to the commissioner at the time of the biennial redetermination of need for the service.

Subp. 13. **Daily schedules and attendance.** The provider must keep documentation verifying service delivery and daily hours of attendance for each person receiving services. The provider must keep the documentation for five years.

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

History: *12 SR 997*

9525.1560 ADMISSION, EXCLUSION, SUSPENSION, AND DISCHARGE.

Subpart 1. **Approval of policy, procedures, and criteria governing admission, exclusion, suspension, and discharge.** The provider must have a written policy that sets forth criteria for admission, exclusion, suspension, and discharge. The written policy and criteria must be approved annually by the governing body and must include procedures to be followed by the provider and host county before a suspension, exclusion, or discharge takes place. These procedures, policies, and criteria must be included as part of the host county contract under parts 9500.0010 to 9500.0092 and the three party agreements under part 9525.1240.

Subp. 2. **Admission policy and criteria.** A provider shall not refuse to admit a person solely on the basis of the type of residential services a person is receiving or solely on the basis of the person's severity of disability, orthopedic or neurological handicaps, sight or hearing impairments, lack of communication skills, physical disabilities, toilet habits, behavioral disorders, or past failure to make progress. The provider shall have an admission policy that specifies the criteria to be applied in determining whether the provider can develop services to meet the needs specified in the person's individual service plan. The provider's determination of capability to meet a person's needs must be consistent with the host county's determination of need for the provider's service under parts 9525.0015 to 9525.0165. The admission policy must provide for ensuring that the host county concurs before the provider admits a person from a county other than the host county. The procedures established by the admission policy must specify a timeline for notifying a person applying for services of the provider's decision. The timeline must allow for a person's receiving notification within 30 days after the written request for service is received.

Subp. 3. **Admission file.** When a person is admitted, the provider must have compiled a file of information that contains:

A. a copy of the person's current individual service plan that states the need for and the expected outcomes of the specific training and habilitation services to be provided, and includes a copy of a physical examination report on the person dated no more than 365 days before the date of admission;

B. a letter from the case manager stating that the training and habilita-

tion services to be provided to the person are not replacing services that are the statutory responsibility of a local educational agency or that are otherwise available from a rehabilitation agency funded under section 110 of the Rehabilitation Act of 1973, United States Code, title 29, section 730 as amended through October 31, 1986;

C. a copy of the person's immunization record, if available; and

D. registration information that includes:

(1) the person's name, address, birthdate, and phone number;

(2) the name, address, and phone number of the person's legal representative, case manager, caregiver, physician, and hospital of preference;

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

(4) the name of each medication currently prescribed for the person and statements signed by the person or person's legal representative authorizing the provider to administer or assist in administering the medication, if applicable;

(5) a list of the person's specific dietary needs and food related allergies, if applicable; and

(6) the date of the person's admission.

Subp. 4. **Suspension procedures.** A provider may suspend a person only when the provider has documented that the person's behavior prompting the suspension presented an immediate danger as defined in part 9525.1500, subpart 19. The provider must notify the person's case manager and legal representative of the suspension within 24 hours of the suspension's effective date. A person may be suspended for no more than three consecutive service days up to a maximum of six days per calendar year. Within 24 hours after the suspension the provider must:

A. document that the procedures agreed upon by the provider and the host county in the county contract under parts 9500.0010 to 9500.0092 and the three party agreements under part 9525.1240 have been followed before suspension;

B. document in the file the behavior prompting the suspension, including the frequency, intensity, and duration of the behavior, and the events leading up to the behavior;

C. document in the person's file the actions taken in response to the behavior including program changes and consultation with experts not employed by the provider; and

D. consult with the person's case manager and members of the interdisciplinary team to establish changes in the person's program under the terms of part 9525.0105 that will make suspension from service unnecessary in the future.

Subp. 5. **Discharge procedures.** A provider may discharge a person only when a condition or the conditions specified in item A, B, or C is met.

A. The person or the person's legal representative requests that the person be discharged.

B. The person's case manager has arranged the person's participation in a service that better meets the needs identified in the individual service plan or has determined through the procedures in part 9525.0075 that the service provided by the provider is no longer needed.

C. The provider has documented before the discharge that the person's behavior constituted an immediate danger, the provider has notified the person's case manager and legal representative of the provider's intent to discharge the person under subpart 6, and the provider documents in the person's file:

(1) that the procedures agreed upon by the provider and host county

in the county contract under parts 9500.0010 to 9500.0092 and the three party agreements under part 9525.1240 have been followed before discharge;

(2) that the interdisciplinary team met to plan and develop services to attempt to meet the person's needs within the program and the provider attended the meeting or meetings;

(3) the programs and program modifications used to attempt to meet the person's needs, and the dates of implementation;

(4) the names of experts not employed by the provider who were consulted to determine alternatives not yet documented as attempted in subitem (3) and the other community resources used to develop a program to meet the person's needs;

(5) that additional funds and resources were unavailable under parts 9510.1020 to 9510.1140;

(6) the minutes from the interdisciplinary team meeting or meetings conducted when it was decided to discharge the person; and

(7) the time period during which the provider is willing to participate in delivery of services to the person until other services can be arranged or developed.

Subp. 6. **Reporting intended discharges.** If after following the procedures in subpart 5 the provider still intends to discharge a person, the provider must notify the person and the person's case manager and legal representative in writing. Notice of the proposed discharge must be given at least ten days before the proposed discharge. The written notice must include the information in items A to E:

A. reasons for and projected date of the intended discharge;

B. resources and services recommended to meet the person's needs;

C. notice of the person's right to appeal the actions under Minnesota Statutes, section 256.045;

D. notice of the person's right to be represented by an attorney or other interested party at an appeal hearing; and

E. notice that the services shall be continued if the appeal in item C is filed before the intended discharge, as specified in the notice.

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

History: *12 SR 997*

9525.1570 SERVICES REQUIRED FOR LICENSURE.

Subpart 1. **Services that must be available.** Services must meet the specifications in subparts 2 to 6 and must be available for a minimum of 195 days in a calendar year.

Subp. 2. **Employment and employment related services.** Providers shall offer or provide employment and employment related services in accordance with the objectives specified in each person's individual habilitation plan when the services are reimbursable under state and federal regulations. Employment and employment related services shall be designed to increase integration into the community, increase productivity, increase income level, and improve the employment status or job advancement of the person served. Supported employment shall be offered as a choice to any person, regardless of the severity of that person's disability, who is currently not able to work competitively and is authorized to receive employment or employment related services that are reimbursable under state and federal regulations. Employment and employment related services offered or provided are required to have the components specified in items A to I:

A. individualized assessment in a manner consistent with part 9525.1630, subparts 4 and 5;

B. individualized job development and placement;

C. on the job training in work and work-related skills required to perform the job;

D. ongoing supervision and monitoring of job performance;

E. ongoing support services when necessary and available within the provider's resources to assure job retention;

F. training in related skills essential to obtaining and retaining employment such as self care, communication, social appropriateness, problem solving, task completion, safety, use of community resources, use of break or lunch areas, and mobility training;

G. transportation to and from service sites when other forms of transportation are unavailable or inaccessible;

H. adaptive equipment necessary to obtain and retain employment when the equipment is not otherwise available through the Division of Rehabilitation Services of the Minnesota Department of Jobs and Training or the medical assistance program; and

I. training to improve related individual skill areas as identified in the individual habilitation plan.

Providers offering or providing employment and employment related services are not limited to offering or providing only the required services listed in items A to I.

Subp. 3. **Community integration services.** Providers shall offer or provide community integration services designed to increase and enhance each person's social and physical interaction with nondisabled individuals who are not paid caregivers or staff members. Community integration services offered or provided are required to have the components specified in items A to G:

A. assistance and training with mobility, including community orientation, use of specialized transportation, and use of public transportation;

B. assistance and training in communication and physical care to allow a person to participate in community activities and supported employment activities that would be considered appropriate for nondisabled individuals of or near the person's chronological age;

C. provision or development of opportunities for persons' access to and participation in the community through cooperative programming with community agencies such as senior citizen centers or senior citizen clubs, generic service organizations, adult education programs, or mental health agencies;

D. individual or small group activities that provide opportunities for persons receiving services to interact with nondisabled as well as other persons with disabilities who are not paid caregivers to encourage friendships;

E. specialized therapy and alternative communication devices designed to increase the person's communication skills and independent functioning or decrease the person's problem behaviors so that the person can participate to a greater degree in community activities and employment opportunities;

F. training to recognize and nurture each person's interests and capabilities; and

G. training to improve individual skill areas identified in the individual habilitation plan.

Providers offering or providing community integration services are not limited to offering or providing only the required services listed in items A to G.

Subp. 4. **Nonduplication of services.** If the services in item A or B are available to persons eligible for those services, then providers must not provide training and habilitation services as a substitute for item A or B:

A. "special education" and "related services" as defined in the Educa-

tion of the Handicapped Act, United States Code, title 20, section 1401(6) and (17) as amended through December 31, 1985 which are otherwise available to an individual through a local educational agency; or

B. vocational services otherwise available to an individual through a program funded under section 110 of the Rehabilitation Act, United States Code, title 29, section 720, as amended through October 31, 1986.

Subp. 5. **Availability based on need.** Services shall be provided only on the days and during the hours needed by the persons served in accordance with each person's authorization to receive services. The provider shall reduce the level of supervision and assistance as the person's ability to exert control and choice over an activity increases as documented in quarterly progress reports.

Subp. 6. **Required training methods, materials, and content.** Training tasks and materials used with or by a person receiving services must meet the standard of being considered age appropriate for nondisabled individuals who are near or of the same chronological age as the person receiving services. Skills training, planned activities, and planned interactions must include the emphases in items A to C.

A. Skills being taught will enable the person to perform an activity of daily living that would have to be performed for the person if the person did not have the skill.

B. Planned interactions or activities are designed to provide opportunities for mutual participation by the person receiving services and a nondisabled individual who is not a paid staff member.

C. Skills are taught in a way that increases the person's ability to function in a variety of settings and reflects how the skill will be used in natural environments.

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

History: *12 SR 997*

9525.1580 CONTROL AND LOCATION OF SERVICES.

Subpart 1. **Definitions.** The terms used in subparts 2 and 3 have the meanings given them in this subpart.

A. "Related legal entities" means entities that share any governing board members or an executive director or are owned or partially owned by the same individual or individuals, or by related individuals.

B. "Related individuals" means individuals whose relationship to each other by blood, marriage, or adoption is not more remote than first cousin.

Subp. 2. **Control of services.** Training and habilitation services licensed under parts 9525.1500 to 9525.1690 and licensed residential services must not be provided to the same person by related legal entities. This requirement does not apply:

A. to residential and day habilitation services directly administered by a county board or by the commissioner at a regional center;

B. to residential and day habilitation services offered by a training and habilitation services provider licensed before April 15, 1983; or

C. to services provided to a person who resides at home with the person's family or foster family and who is receiving a combination of day habilitation and residential based habilitation services under parts 9525.1800 to 9525.1930.

Subp. 3. **Location of services.** Training and habilitation services must be provided away from the residence of the person receiving services in communities where the person lives and works.

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

History: *12 SR 997*

9525.1590 DOCUMENTING OUTCOMES OF SERVICES REQUIRED FOR LICENSURE.

Subpart 1. **Availability of data.** The documentation in subpart 2 must be provided to the commissioner on forms prescribed by the commissioner. The documentation in subpart 2 must be available to the host county and case manager upon request.

Subp. 2. **Outcomes of training and habilitation services.** Providers must collect data for each person receiving services on a quarterly basis throughout the calendar year. Data must be current as of the last day of the quarter being reported and must include:

A. the type of employment activity, location, and job title;

B. the number of hours the person worked per week;

C. the person's hourly wage and eligibility for fringe benefits;

D. the number of disabled coworkers receiving provider services at the same work site where the person for whom the data is reported is working; and

E. the number of nondisabled and nonsubsidized coworkers employed at the work site.

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

History: *12 SR 997*

9525.1600 MINIMUM STAFFING REQUIREMENTS.

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

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

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

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

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

Subp. 2. **Determining and documenting the staff ratio requirement for each person receiving services.** The case manager in consultation with the interdisciplinary team shall determine at least once each year which of the ratios in subparts 3, 4, and 5 is appropriate for each person receiving services on the basis of the characteristics described in subparts 3, 4, and 5. The ratio assigned each person and documentation of how the ratio was arrived at must be kept in each person's individual habilitation plan file. Documentation must include an assessment of the person with respect to the characteristics in subparts 3, 4, and 5 recorded on a standard assessment form required by the commissioner and the contents of the individual habilitation plan file.

Subp. 3. **Person requiring staff ratio of one to four.** A person who has one or more of the characteristics described in items A and B must be assigned a staff ratio requirement of one to four.

A. On a daily basis the person requires total care and monitoring or constant hand over hand physical guidance to successfully complete at least three of the following activities: toileting, communicating basic needs, eating, or ambulating.

B. The person assaults others, is self injurious, or manifests severe

dysfunctional behaviors at a documented level of frequency, intensity, or duration requiring frequent daily ongoing intervention and monitoring as established in an approved behavior management program.

Subp. 4. **Person requiring staff ratio of one to eight.** A person who has all of the characteristics described in items A and B must be assigned a staff ratio requirement of one to eight.

A. The person does not meet the requirements in subpart 3.

B. On a daily basis the person requires verbal prompts or spot checks and minimal or no physical assistance to successfully complete at least three of the following activities: toileting, communicating basic needs, eating, or ambulating.

Subp. 5. **Person requiring staff ratio of one to six.** A person who does not have the characteristics described in subpart 3 or 4 must be assigned a staff ratio requirement of one to six.

Subp. 6. **Determining number of direct service staff required.** The minimum number of direct service staff members required at any one time to meet the combined staff ratio requirements of the persons present at that time can be determined by following the steps in items A to D.

A. Assign each person in attendance the three digit decimal below that corresponds to the staff ratio requirement assigned to that person. A staff ratio requirement of one to four equals 0.250. A staff ratio requirement of one to eight equals 0.125. A staff ratio requirement of one to six equals 0.166.

B. Add all of the three digit decimals (one three digit decimal for every person in attendance) assigned in item A.

C. When the sum in item B falls between two whole numbers, round off the sum to the larger of the two whole numbers.

D. The larger of the two whole numbers in item C equals the number of direct service staff members needed to meet the staff ratio requirements of the persons in attendance.

Subp. 7. **Conditions requiring additional direct service staff.** The provider shall increase the number of direct service staff members present at any one time beyond the number arrived at in subpart 6 if necessary when any one or combination of the circumstances described in items A and B can be documented by the commissioner as existing.

A. The health and safety needs of the persons receiving services cannot be met by the number of staff members available under the staffing pattern in effect even though the number has been accurately calculated under subpart 6.

B. The behavior of a person presents an immediate danger and the person is not eligible for a special needs rate exception under parts 9510.1020 to 9510.1140.

Subp. 8. **Supervision requirements.** At no time shall one direct service staff member be assigned responsibility for supervision and training of more than ten persons receiving supervision and training.

Subp. 9. **Timeline to achieve compliance.** Providers that do not comply with this part on November 16, 1987, must achieve compliance within two years of receiving an initial license under parts 9525.1500 to 9525.1690.

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

History: *12 SR 997*

9525.1610 STAFF QUALIFICATIONS.

Subpart 1. **Staff qualifications.** The staff employed by a provider must, at a minimum, meet the qualifications in items A to E.

A. One staff member employed by the provider must meet the qualifications in subitem (1), (2), or (3):

(1) a bachelor's degree in management or a human services field such as psychology, sociology, or child development and a minimum of three years of experience in the management of a human service delivery system; or

(2) five years' experience in a human services delivery system including at least two years in a management or supervisory position; or

(3) the qualifications outlined in item B plus three years of experience in the management of human services delivery.

B. There must be a sufficient number of staff members employed by or under contract to the provider with the qualifications listed below to equal 5.5 percent of a full-time equivalent employee for each person enrolled. The staff member's qualifications must include at least the equivalent of one year of full-time experience working directly with persons with mental retardation or related conditions in addition to:

(1) a bachelor's degree in a human services field such as psychology, sociology, or child development or in special education, education, social work, nursing, vocational rehabilitation, physical therapy, speech therapy, recreational therapy, or occupational therapy; or

(2) a master's degree in psychology from an accredited program.

If there are times when this staff member provides direct service, the staff member shall, during those times, be counted in meeting the staff ratio requirements in part 9525.1600.

C. Additional staff must meet the qualifications required in their job descriptions. The qualifications required in the job descriptions must provide evidence of the individual's ability to perform the required job tasks and contain requirements for prior education, experience, and training.

D. Consultants hired by the provider must meet the Minnesota licensing requirements applicable to the disciplines in which they are providing consulting services. Additional qualifications may be required by the contracting provider where appropriate.

E. Staff members who provide training and habilitation services that are reimbursed under parts 9525.1800 to 9525.1930 must meet the requirements in those parts in addition to the requirements in these parts.

Subp. 2. **Timeline to achieve compliance.** Providers that do not comply with this part on November 16, 1987, must achieve compliance within two years of receiving an initial license under parts 9525.1500 to 9525.1690.

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

History: *12 SR 997*

9525.1620 STAFF TRAINING.

Subpart 1. **Plan required.** A provider must have a staff training plan that meets the requirements in subparts 2 to 8.

Subp. 2. **Orientation for new employees.** Orientation for new employees must meet the requirements in items A to F.

A. The orientation must include:

(1) an introduction to characteristics of and services for adults with mental retardation and related conditions and to the provision of services in part 9525.1570;

(2) an explanation and discussion of the provider's written policies, procedures, and practices including the goals and philosophy of service delivery, and health, safety, and emergency information;

(3) an overview of the specific job the employee will perform including, for direct service staff, information that familiarizes them with the goals and objectives of persons with whom they will be required to work on a regular basis, the progress the person has made, and the relationship of the person's history to present and future training and habilitation programs; and

(4) an explanation of the relevance of Minnesota Statutes, section 626.557, Reporting of Maltreatment of Vulnerable Adults, and Minnesota Statutes, chapter 13, the Minnesota Government Data Practices Act, for service delivery.

B. The orientation must be completed within the first 30 days of employment.

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

D. The orientation must be provided to all employees, members of the governing board, and supervised volunteers who regularly provide direct services. Volunteers who are directly supervised by employees and members of the governing board may receive a modified eight hour orientation instead of 30 hours.

E. The orientation must be counted toward the ongoing staff training requirements under subpart 2.

F. Documentation of having completed the required orientation must be included in each staff member's personnel file.

Subp. 3. **Scope and schedule of ongoing staff training.** A provider must ensure that a staff member who provides direct service annually completes a number of hours of training equal to at least two percent of the hours for which the staff member is annually paid. The training must:

A. be scheduled so that it does not interfere with providing the number of service days or hours the provider is under contract to provide. Substitute or backup staff may be provided to cover staff training time;

B. include in service training, new employee orientation, and training from educational coursework, conferences, seminars, videotapes, books, or other planned materials;

C. be documented as having been completed by each employee in each employee's personnel file; and

D. meet the requirements in parts 9525.1800 to 9525.1930 as applicable.

Subp. 4. **Content of ongoing training.** Providers must be able to document that the ongoing training required in subpart 3 includes content that addresses:

A. obtaining and maintaining employment for persons with severe disabilities;

B. development, implementation, and evaluation of individual habilitation plans including data collection and analysis;

C. community referenced training and assessment;

D. the analysis of challenging behavior and positive techniques for achieving behavioral change;

E. task analysis skills;

F. the legal rights of clients;

G. strategies for training and teaching communication and social skills; and

H. other areas appropriate to the needs of the persons served including using alternative communication devices and sign language, assessing equipment needs, lifting and positioning of persons, and the training required in subpart 2, item A, subitem (4), and in subparts 5, 6, and 7.

Subp. 5. **First aid training.** Within three years before or 90 days after beginning employment, direct service staff and drivers employed by the provider must have completed at least eight hours of first aid training that offers a first aid certificate issued by the American Heart Association or American Red Cross. First aid training must be repeated every three years.

Subp. 6. **Cardiopulmonary resuscitation (CPR).** An individual trained in CPR must be available at each service site where there is a person who requires availability of CPR capability as specified in the individual service plan. The trained individual must have a current CPR certificate issued by the American Heart Association or American Red Cross.

Subp. 7. **Medication assistance.** When an employee who is not licensed or registered as a physician, pharmacist, nurse, or practical nurse assists persons receiving services in taking medication, that employee must:

A. provide a certificate verifying successful completion of a trained medication aide program for unlicensed personnel approved by the Minnesota Department of Health; or

B. be trained by a registered nurse to provide medication assistance. The training must be documented in the employee's personnel file. Medication assistance by unlicensed personnel includes assisting persons receiving services to take medication but does not include giving injections. Medication includes a prescription substance ingested or applied externally to prevent or treat a condition or disease, heal, or relieve pain.

Subp. 8. **Training for emergencies.** A provider must train all staff to implement the written emergency procedures in part 9525.1660, subpart 14.

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

History: *12 SR 997*

9525.1630 INDIVIDUAL HABILITATION PLAN REQUIREMENTS.

Subpart 1. **Establishing an individual habilitation plan.** A staff member with the qualifications in part 9525.1610, subpart 1, item B shall participate in the interdisciplinary team meeting required by parts 9525.0015 to 9525.0165 to develop an individual habilitation plan for each person receiving services and shall coordinate and monitor provision of services under the plan.

Subp. 2. **Plan file.** The provider must have an individual habilitation plan file for each person who is receiving services. The file must contain:

A. the individual service plan developed for the person under part 9525.0075;

B. the person's individual habilitation plan which contains the information required in part 9525.0105, subpart 4;

C. the progress reports described in subpart 3;

D. the provider's implementation plan, which must include the individualized application of information stated in the provider manual under part 9525.1550, subpart 2, item B;

E. the annual review required in part 9525.0105 that includes the assessment information described in subpart 6; and

F. the documentation required in part 9525.1600.

Subp. 3. **Review of progress toward individual habilitation plan goals.** The provider must quarterly review and summarize each person's progress or lack of progress in achieving the objectives of the training and habilitation services in the person's individual habilitation plan. The progress report shall include the provider's recommendation and rationale for changing or continuing those objectives. This progress report must become part of the person's plan file.

Subp. 4. **Initial assessment.** After a person begins receiving services, the provider must assess the person to further determine the person's training and habilitation needs related to the attainment of short-term and long-range goals identified in the person's individual service plan. The assessment must be completed prior to the meeting of the interdisciplinary team where the person's individual habilitation plan is determined as specified in part 9525.0105. In making this assessment, the provider may draw on and incorporate relevant

information about the person obtained by the case manager in the process of completing the assessment required under part 9525.0055. The assessment completed by the provider must address at least items A to E.

A. Work skills including:

(1) work interests, history, and habits such as punctuality and attendance;

(2) general and specific work abilities, task performance, and proficiency levels; and

(3) support services necessary to obtain and maintain community based employment.

B. Independent living and working skills including:

(1) self care;

(2) community orientation;

(3) mobility;

(4) problem solving;

(5) social skills including interpersonal, emotional, and cognitive;

(6) communication skills; and

(7) transportation needs.

C. Medical, therapeutic, and rehabilitative needs in accordance with requests from the case manager.

D. Adaptations related to instruction, equipment, or environment that are needed to facilitate service delivery.

E. Situations and environments identified in part 9525.1550, subpart 2, item B, in which skills are needed and in which training and reassessment will occur.

Subp. 5. **Reassessment.** The provider must reassess each person receiving services, again addressing the skills and needs specified in subpart 4, items A to E, no more than 90 days before the annual review and at any other time when a reassessment is requested by the person's case manager or when a significant change is evidenced in the person.

Subp. 6. **Assessment summary.** The provider must annually prepare a written assessment summary for each person receiving services. The assessment must summarize the person's progress or lack of progress in attaining the goals and objectives assigned to the provider and must include observational data stated in behavioral terms. The written summary must also contain program recommendations made to the interdisciplinary team as identified through the assessment requested by the case manager and any other assessments conducted by the provider.

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

History: *12 SR 997*

9525.1640 BEHAVIOR MANAGEMENT.

Subpart 1. **Behavior management policy.** The provider must have a written policy governing the use of behavior management techniques and must ensure that staff are familiar with and follow the policy. The written policy must:

A. be developed by the governing body in consultation with persons representative of the population served by the provider or by those persons' legal representatives;

B. be available to caregivers and other interested parties on request;

C. specify that behavior management procedures are to be used only as one element of an individual habilitation plan that focuses on developing adaptive behaviors to increase a person's ability to function independently in daily living;

D. specify that assessment of behavioral needs will include specific descriptors of a problem behavior, an assessment of environmental and communicative factors that might influence a person's behavior, and a thorough review of other factors that might be influencing the person's behavior;

E. require documentation that instructional techniques incorporating functional analysis of behavior and positive reinforcement have been tried and found to be unsuccessful before a more intrusive procedure is implemented; and

F. specify that the use of aversive or deprivation procedures must meet the standards in subpart 2.

Subp. 2. **Aversive or deprivation procedures.** A provider may use aversive or deprivation procedures only as specified in subpart 1, in Minnesota Statutes, section 245.825, and in parts 9525.2700 to 9525.2810. This subpart applies both to emergency and nonemergency use of aversive or deprivation procedures.

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

History: *12 SR 997*

9525.1650 SERVICE SITES OWNED OR LEASED BY PROVIDER.

Subpart 1. **Compliance with other regulations.** To receive a license or renew an expired license the provider must document that service sites owned or leased by the provider are in compliance with the regulations listed in items A to D, as applicable:

A. all codes and regulations listed under part 9525.1520, subpart 2;

B. chapter 4715 and Minnesota Department of Health rules governing sewage and water systems, if a service site is located in a facility that is not part of a city water or sewage system;

C. Code of Federal Regulations, title 34, part 104, as amended through July 1, 1986, which mandates that:

(1) buildings owned or leased by the provider that were constructed, renovated, or newly constructed after 1981 must have entrances, hallways, bathrooms, and program areas that are accessible to persons with physical handicaps;

(2) all training and habilitation services provided to persons with physical handicaps must be accessible; and

(3) a person shall not be denied access to needed training and habilitation services in community based settings because of the person's physical disabilities; and

D. Code of Federal Regulations, title 29, part 1910, as amended through July 1, 1986, the Occupational Safety and Health Standards, if applicable.

Subp. 2. **Building space limitations.** The licensed capacity of a service site owned or leased by the provider must be determined by the amount of primary space available, the scheduling of activities at other service sites, and the space requirements of persons receiving services. In this subpart, "primary space" does not include hallways, stairways, closets, utility areas, bathrooms, kitchens, floor area beneath stationary equipment, and floor area beneath movable equipment or furniture not used by persons receiving services or staff members. Primary space may include up to 25 percent of the floor area occupied by movable equipment and furniture used by persons receiving services and staff. The following guidelines apply in determining the licensed capacity:

A. A minimum of at least 40 square feet of primary space must be available for each person who is engaged in a training and habilitation activity at the site for which the licensed capacity must be determined.

B. The commissioner may require more than 40 square feet of primary space for each person engaged in a training and habilitation activity at the site for which licensed capacity must be determined when a number of square feet greater than 40 square feet is specified in the individual habilitation plan.

Subp. 3. **Toilets.** Service sites owned or leased by the provider must have at least one toilet and one sink for every 15 or fewer persons receiving services at one time. Each bathroom must be equipped with hand drying devices, soap, a mirror, toilet paper, and a door. Service sites where training and habilitation services are provided for persons with physical disabilities must have for each 15 or fewer physically disabled persons served at least one toilet, one sink, and one hand drying device which are accessible.

Subp. 4. **Hazards.** The provider shall comply with items A to G to ensure that service sites owned or leased by the provider are free from hazards.

A. The provider shall store hazardous materials, chemicals, and equipment in places inaccessible to persons receiving services except when persons are engaged in activities requiring the use of such materials, chemicals, or equipment in accordance with their individual habilitation plans.

B. The provider shall install handrails and nonslip surfaces on interior and exterior runways, stairways, and ramps.

C. The provider shall have elevators inspected each year. The date of the inspection, any repairs needed, and the date the necessary repairs were made must be documented.

D. The provider shall keep stairways, ramps, and corridors free of obstructions.

E. Outside property must be free from debris and safety hazards.

F. Radiators, fireplaces, hot pipes, steam radiators, and other hot surfaces and moving parts of machinery must be shielded or enclosed.

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

History: *12 SR 997*

9525.1660 HEALTH AND SAFETY RELATED PROCEDURES.

Subpart 1. **Medical emergencies, accidents, illnesses.** The provider must have written procedures for responding to and reporting medical emergencies, accidents, and illnesses. These procedures must be reviewed and approved by a health consultant.

Subp. 2. **Ill clients.** There must be an area in which a person receiving services can rest if the person becomes ill while at a service site owned or leased by the provider.

Subp. 3. **Personal items.** Personal health and hygiene items shall be stored in a safe and sanitary manner.

Subp. 4. **Source of emergency medical care.** The provider must identify a source of emergency medical care and transportation. Staff members must be taught how to contact the provider's source of emergency medical care and transportation.

Subp. 5. **First aid kits.** The provider must have first aid kits and handbooks for first aid administration available at all service sites owned or leased by the provider.

Subp. 6. **Recording and reporting accidents or illnesses.** The provider must have a written procedure for recording accidents or illnesses that require first aid or medical attention and for reporting accidents or illnesses to a person's caregiver and legal representative. The provider must keep a file of reports on accidents or illnesses including a copy of the report sent to the caregiver and legal representative. Each report must indicate:

A. the person's name;

B. the date and time of the accident or illness;

C. a description of the accident or illness;

D. a description of the first aid or medical care administered; and

E. the name of the individual who administered the first aid or medical care.

Subp. 7. **Reporting of deaths and serious injury.** The provider must submit a report to the caregiver, the person's legal representative, the commissioner, the person's case manager, and the host county within 24 hours of an accident resulting in death or serious injury to a person receiving services. In this subpart, "serious injury" means an injury that requires hospitalization as an inpatient.

Subp. 8. **Reporting maltreatment of vulnerable adults.** The provider and the provider's employees are responsible for complying with the reporting requirements that apply under Minnesota Statutes, section 626.557 and parts 9555.8000 to 9555.8500.

Subp. 9. **Reporting of fires.** The provider shall report to the commissioner and the host county all fires that require the services of the fire department and interrupt service for more than 24 hours. The report must be submitted within five days of the date the fire occurred.

Subp. 10. **Exclusion of persons with communicable diseases and notification of exposure to communicable diseases.** The provider shall exclude persons with communicable diseases only when it is the opinion of the health consultant that the person may present a health hazard to others. When a person is excluded on the basis of this opinion, the exclusion must continue until the program can comply with the consultant's recommendations and the consultant approves the person's return to the program. When a person has been exposed to a communicable disease, the provider shall inform the person's caregiver.

Subp. 11. **Reportable diseases and notification.** Caregivers and the local health authority must be notified within 24 hours when the diseases listed in parts 4605.7030 to 4605.7700 are reported or observed in persons receiving services, volunteers, or staff members.

Subp. 12. **Physical examinations.** The provider shall require a staff member, volunteer, or person receiving services to have a physical examination if the staff member, volunteer, or person receiving services shows evidence of or is suspected of having a serious illness or communicable disease. The provider may require a physician's statement before the staff member, volunteer, or person receiving services is allowed to return to the program.

Subp. 13. **Administering medication.** The provider must have a written procedure governing how the provider administers or assists in administering medication to persons when the provider is authorized under part 9525.1560, subpart 3, item D, subitem (4) to administer or assist in administering prescription medications. Medication includes a prescription substance ingested, injected, or applied externally to prevent or treat a condition or disease, heal, or relieve pain. If a staff member helps persons receiving services take their medications, the staff member must meet the qualifications in part 9525.1620, subpart 7. The medication administration procedures and the qualifications of staff members who administer medication or provide medication as described in part 9525.1620, subpart 7 must be approved and reviewed annually by the provider's health consultant. The health consultant's written review shall determine whether:

A. any staff member authorized to administer medications or assist persons in taking medications has the required qualifications or training;

B. the information required in part 9525.1560, subpart 3, item D, subitem (4) is current;

C. the methods of storing medications and disposing of unused medications are acceptable;

D. the method of recording medications dispensed by staff to persons receiving services is acceptable; and

E. the time lines for carrying out recommendations made by the health consultant as a result of the review have been met.

Subp. 14. **Emergencies.** At each service site owned or leased by the provider, written procedures, instructions, and information needed in case of emergencies caused by fire, blizzards, tornadoes, and other natural disasters must be available. The written procedures, instructions, and information must include:

A. identification of staff members' responsibilities;

B. identification and posting in each room of primary and secondary exits;

C. identification of evacuation routes, procedures for evacuating persons receiving services, and emergency shelter away from each service site;

D. posting of emergency telephone numbers;

E. instructions on activating and responding to audible or visual alarm systems;

F. procedures for conducting fire drills and logging the evacuation time, date, and time of drills;

G. identification of tornado shelter area;

H. instructions on how to close off a fire area;

I. the location of the fuse box and instructions on how to throw the main electrical switch; and

J. the location of the primary water shutoff and instructions for use.

Subp. 15. **Telephone.** A service site owned or leased by a provider must have a telephone that is not coin operated and that is not located in a room that is locked during service hours. Emergency numbers must be posted by the telephone.

Subp. 16. **Safety procedures.** The provider must establish general written safety procedures that include criteria for selecting, training, and supervising persons who work with hazardous machinery, tools, or substances. Safety procedures specific to each person's activities must be explained and be available in writing to all staff members and persons receiving services.

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

History: *12 SR 997*

9525.1670 FOOD SERVICE.

Subpart 1. **General requirements.** The provider shall prepare and serve meals for a person receiving services only when meal service by the provider is specified in the person's individual habilitation plan.

Subp. 2. **Sanitation.** When food service is provided at a site owned or leased by the provider, the procedures for handling, preparing, serving, and storing food and for washing food utensils and equipment must comply with parts 4625.2400 to 4625.5000 or local ordinances.

Subp. 3. **Special diets.** If a person has special dietary needs prescribed by a physician or due to religious beliefs and the person eats food prepared by the provider, a written description of the specific dietary needs must be added to the person's individual habilitation plan file and must be available in the food preparation area.

Subp. 4. **Refrigeration.** The provider must provide refrigeration at service sites owned or leased by the provider for storing perishable foods and perishable portions of bag lunches, whether the foods are supplied by the provider or the persons receiving services. The refrigeration must have a temperature of 40 degrees Fahrenheit or less.

Subp. 5. **Time for meals.** The provider must allow time for persons in attendance for more than five consecutive hours to eat a meal. The meal time scheduled shall not exceed one hour unless a person requires additional time to eat a meal as specified in the person's individual habilitation plan.

Subp. 6. **Drinking water.** Drinking water must be available to all persons receiving services. If a person is unable to request or obtain drinking water, it shall be provided according to that person's individual needs but no less frequently than every four hours. Drinking water must be provided in single service containers or from drinking fountains accessible to all persons.

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

History: *12 SR 997*

9525.1680 EQUIPMENT.

The provider must provide and maintain any equipment, supplies, and materials needed to carry out the objectives of all persons' individual habilitation plans or to ensure their health, safety, nutrition, training, and habilitation needs. General equipment and adaptive devices must be appropriate to the chronological age, cultural norms, and development of the persons using the equipment and devices and must be in good repair.

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

History: *12 SR 997*

9525.1690 TRANSPORTATION.

Subpart 1. **Provision of transportation.** To the extent possible, a person receiving services shall use or be trained to use public transportation to and from service sites. If persons receiving services are transported in vehicles owned or leased by the provider, or contracted for by the provider, the provider must show evidence of compliance with or exemption from parts 8840.5100 to 8840.6300 governing special transportation operating standards. Providers must have a written transportation policy that meets the requirements in subparts 2 to 4.

Subp. 2. **Information on persons transported.** When a provider leases, owns, or contracts for a vehicle that is regularly used to transport persons receiving services, the provider must ensure that there is accessible to the driver information on each person transported in the vehicle. Transportation vehicles used "regularly" means vehicles used to transport persons receiving services at least 30 days in a 12 month period. The information provided must include:

A. the person's name, address, photograph, and phone number;

B. the person's emergency health care information, if applicable; and

C. the name and phone number of someone to call in case of emergency.

Nothing in this subpart prohibits the information required from being carried on or by the person being transported.

Subp. 3. **Supervision.** When the individual habilitation plan of a person being transported requires that person to have programming or supervision by the provider's staff while being transported, a staff member or adult volunteer must be present in the vehicle in addition to the driver.

Subp. 4. **Travel time to and from service site.** Except in unusual circumstances, the provider must not transport a person receiving services for longer than one hour per one way trip. In unusual circumstances, the provider may request a variance for up to one year. Variances to this subpart are renewable when the provider documents that alternative solutions have not been effective and when the health and safety of persons riding the vehicle in excess of one hour per one way trip are not jeopardized.

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

History: *12 SR 997*

USE OF AVERSIVE AND DEPRIVATION PROCEDURES IN LICENSED FACILITIES SERVING PERSONS WITH MENTAL RETARDATION AND RELATED CONDITIONS

NOTE: Parts 9525.2700 to 9525.2810 are effective October 1, 1987

9525.2700 PURPOSE AND APPLICABILITY.

Subpart 1. **Purpose.** Parts 9525.2700 to 9525.2810 implement Minnesota Statutes, section 245.825 by setting standards that govern the use of aversive and deprivation procedures with persons who have mental retardation or related conditions and who are served in or by a facility licensed by the commissioner under Minnesota Statutes, sections 245.781 to 245.812 and 252.28, subdivision 2.

Parts 9525.2700 to 9525.2810 are not intended to encourage or require the use of aversive and deprivation procedures. Rather, parts 9525.2700 to 9525.2810 encourage the use of positive approaches as an alternative to aversive or deprivation procedures and require documentation that positive approaches have been tried and have been unsuccessful as a condition of implementing an aversive or deprivation procedure.

The standards and requirements set by parts 9525.2700 to 9525.2810:

A. exempt from the requirements of parts 9525.2700 to 9525.2810 any procedures that are positive in approach or are minimally intrusive;

B. prohibit the use of certain actions and procedures specified in part 9525.2730;

C. control the use of aversive and deprivation procedures permitted under parts 9525.2700 to 9525.2810 by requiring review by a facility committee, authorization by an expanded interdisciplinary team, informed consent from the person or the person's legal representative, and development of a detailed individual habilitation plan as conditions of implementation;

D. specify the procedures to be followed in obtaining informed consent;

E. establish criteria and procedures for emergency use of controlled aversive and deprivation procedures; and

F. assign a monitoring and technical assistance role to the regional review committees mandated by Minnesota Statutes, section 245.825.

Subp. 2. **Applicability.** Parts 9525.2700 to 9525.2810 govern the use of aversive and deprivation procedures with persons who have mental retardation and related conditions when those persons are being served in or by:

A. a facility licensed by the commissioner as a day care facility as defined in part 9525.2710, subpart 10. This category of licensure includes developmental achievement services provided to children and day training and habilitation services provided to adults with mental retardation and related conditions.

B. a facility licensed by the commissioner as a residential facility as defined in part 9525.2710, subpart 30. This category of licensure includes intermediate care facilities for persons with mental retardation and other residential programs and services for persons with mental retardation and related conditions licensed under parts 9525.0210 to 9525.0430. If there is an instance where these rule parts differ in their requirements from requirements in Code of Federal Regulations, title 42, sections 442.400 to 442.515, an intermediate care facility for persons with mental retardation and related conditions shall comply with the regulation that sets the more stringent standard.

C. a supported living arrangement for children or for adults or respite care as defined in part 9525.1860 when the service or care is provided in a service site requiring licensure by the commissioner.

Subp. 3. **Exclusion.** Parts 9525.2700 to 9525.2810 do not apply to:

A. any of the treatments defined in parts 9515.0200 to 9515.0800

governing the administration of specified therapies to committed patients residing at state hospitals; or

B. residential care or program services licensed under parts 9520.0500 to 9520.0690 to serve persons with mental illness.

Statutory Authority: *MS s 245.825*

History: *11 SR 2408*

9525.2710 DEFINITIONS.

Subpart 1. **Scope.** The terms used in parts 9525.2700 to 9525.2810 have the meanings given to them in this part.

Subp. 2. **Adaptive behavior.** "Adaptive behavior" means a behavior that increases a person's capability for functioning independently in activities of daily living.

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

Subp. 4. **Aversive procedure.** "Aversive procedure" means the planned application of an aversive stimulus (1) contingent upon the occurrence of a behavior identified in the individual habilitation plan for reduction or elimination; or (2) in an emergency situation governed by part 9525.2770.

Subp. 5. **Aversive stimulus.** "Aversive stimulus" means an object, event, or situation that is presented immediately following a target behavior in an attempt to suppress that behavior. Typically, an aversive stimulus is unpleasant and penalizes or confines.

Subp. 6. **Baseline measurement.** "Baseline measurement" means the frequency, intensity, duration, or other quantification of a behavior. The baseline measurement is determined before initiating or changing an intervention procedure to modify that behavior.

Subp. 7. **Case manager.** "Case manager" means the individual designated by the county board under part 9525.0035 to provide case management services. The case manager must meet the requirements in part 9525.0155.

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

Subp. 9. **Controlled procedure.** "Controlled procedure" means an aversive or deprivation procedure that is permitted by parts 9525.2700 to 9525.2810 and is implemented under the standards established by those parts. Controlled procedures are listed in part 9525.2740.

Subp. 10. **Day care facility.** "Day care facility" means any public or private facility that for gain or otherwise regularly provides one or more persons with care, training, supervision, habilitation, rehabilitation, or developmental guidance on a regular basis for periods of less than 24 hours per day, in a place other than the person's own home, as specified in Minnesota Statutes, section 245.782, subdivision 5.

Subp. 11. **Department.** "Department" means the Minnesota Department of Human Services.

Subp. 12. **Deprivation procedure.** "Deprivation procedure" means the planned delay or withdrawal of goods, services, or activities to which the person is otherwise entitled: (1) contingent upon the occurrence of a behavior that has been identified for reduction or elimination in the individual habilitation plan; or (2) in an emergency governed by part 9525.2770.

Subp. 13. **Emergency use.** "Emergency use" means using a controlled proce-

dure without first meeting the requirements in parts 9525.2750, 9525.2760, and 9525.2780 when it can be documented under part 9525.2770 that immediate intervention is necessary to protect a person or other individuals from physical injury or to prevent severe property damage which is an immediate threat to the physical safety of the person or others.

Subp. 14. **Facility review committee.** "Facility review committee" means the committee required by and described in part 9525.2750, subparts 1 and 2.

Subp. 15. **Faradic shock.** "Faradic shock" means the application of electric current to a person's skin or body parts as an aversive stimulus contingent upon the occurrence of a behavior that has been identified in the person's individual habilitation plan for reduction or elimination.

Subp. 16. **Individual habilitation plan.** "Individual habilitation plan" means the written plan for providing service to persons required by and specified in part 9525.0105.

Subp. 17. **Informed consent.** "Informed consent" means consent to the use of an aversive or deprivation procedure that is given voluntarily by a person or the person's legal representative after disclosure of the information required in part 9525.2780, subpart 4, and that is obtained by the case manager under part 9525.2780.

Subp. 18. **Interdisciplinary team.** "Interdisciplinary team" means a team composed of the case manager, the person with mental retardation or a related condition, the person's legal representative and the person's advocate, if the person has a legal representative and an advocate, and representatives of all providers of services set forth in the person's individual service plan. When an individual habilitation plan proposing the use of a controlled procedure is reviewed by an interdisciplinary team, part 9525.2750 requires that one member of that interdisciplinary team be a qualified mental retardation professional with at least one year of experience in the development and implementation of behavior management programs.

Subp. 19. **Intermediate care facility for persons with mental retardation and related conditions or ICF/MR.** "Intermediate care facility for persons with mental retardation and related conditions" or "ICF/MR" means a program licensed under Minnesota Statutes, sections 245.781 to 245.812 and 252.28, subdivision 2, to provide services to persons with mental retardation and related conditions and a physical plant licensed as a supervised living facility under Minnesota Statutes, chapter 144, which together are certified by the Minnesota Department of Health as an intermediate care facility for persons with mental retardation and related conditions.

Subp. 20. **Legal representative.** "Legal representative" means the parent or parents of a person under 18 years old or a guardian or conservator authorized by the court to make decisions about services for a person of any age.

Subp. 21. **Licensed facility.** "Licensed facility" means a facility licensed by the department as a day care facility or a residential facility under Minnesota Statutes, sections 245.781 to 245.812 and 252.28, subdivision 2.

Subp. 22. **Manual restraint.** "Manual restraint" means physical intervention intended to hold a person immobile or limit a person's movement by using body contact as the only source of physical restraint. The term does not mean physical contact used to: (1) facilitate a person's completion of a task or response when the person does not resist or the person's resistance is minimal in intensity and duration; (2) escort or carry a person to safety when the person is in danger; or (3) conduct necessary medical examinations or treatments.

Subp. 23. **Mechanical restraint.** "Mechanical restraint" means the use of devices such as mittens, straps, restraint chairs, or papoose boards to limit a person's movement or hold a person immobile as an intervention precipitated by a person's behavior. The term does not apply to mechanical restraint used to

treat a person's medical needs, to protect a person known to be at risk of injury resulting from lack of coordination or frequent loss of consciousness, or to position a person with physical disabilities in a manner specified in the person's individual habilitation plan. The term does apply to, and the rule parts do govern, mechanical restraint when it is used to prevent injury with persons who engage in behaviors such as head banging, gouging, or other actions resulting in tissue damage which have caused or could cause medical problems resulting from the self injury.

Subp. 24. **Person with mental retardation or a related condition or person.** "Person with mental retardation or a related condition" or "person" means:

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

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

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

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

(2) is likely to continue indefinitely;

(3) results in substantial functional limitations in three or more of the following areas of major life activity: self care; understanding and use of language; learning; mobility; self direction; or capacity for independent living; and

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

Subp. 25. **Positive practice overcorrection.** "Positive practice overcorrection" means a procedure that requires a person to demonstrate or practice a behavior at a rate or for a length of time that exceeds the typical frequency or duration of that behavior. The behaviors identified for positive practice are typically appropriate adaptive behaviors or are incompatible with a behavior identified for reduction or elimination in a person's individual habilitation plan.

Subp. 26. **Positive reinforcement.** "Positive reinforcement" means the presentation of an object, event, or situation following a behavior that increases the probability of the behavior recurring. Typically, the object, event, or situation presented is enjoyable, rewarding, or satisfying.

Subp. 27. **Qualified mental retardation professional or QMRP.** "Qualified mental retardation professional" or "QMRP" means an individual who meets the qualifications specified in Code of Federal Regulations, title 42, section 442.401, as amended through October 1, 1985.

Subp. 28. **Regional center.** "Regional center" has the meaning given it in Minnesota Statutes, section 253B.02, subdivision 18.

Subp. 29. **Regional review committee.** "Regional review committee" means a committee established by part 9525.2790 to monitor parts 9525.2700 to 9525.2810 as mandated by Minnesota Statutes, section 245.825. Review committee jurisdictions and responsibilities are defined in part 9525.2790.

Subp. 30. **Residential facility.** "Residential facility" means a public or private facility that, for gain or otherwise, regularly provides one or more persons with

a 24 hour per day substitute for necessary care, food, lodging, training, rehabilitation, and treatment that cannot be furnished in the person's own home, as specified in Minnesota Statutes, section 245.782, subdivision 6.

Subp. 31. **Restitutional overcorrection.** "Restitutional overcorrection" means a procedure that requires a person to clean, repair, or correct an area or situation damaged or disrupted as a result of the person's behavior to a point where the area or situation is not only restored to but exceeds its original condition.

Subp. 32. **Seclusion.** "Seclusion" means the placement of a person alone in a room from which egress is:

A. noncontingent on the person's behavior; or

B. prohibited by a mechanism such as a lock or by a device or object positioned to hold the door closed or otherwise prevent the person from leaving the room.

Subp. 33. **Separation.** "Separation" has the same meaning given "room time out" in subpart 35.

Subp. 34. **Target behavior.** "Target behavior" means a behavior identified in a person's individual habilitation plan as the object of efforts intended to increase, reduce, or eliminate the behavior.

Subp. 35. **Time out.** "Time out" or "time out from positive reinforcement" means removing a person from the opportunity to gain positive reinforcement and is employed when a person demonstrates a behavior identified in the individual habilitation plan for reduction or elimination. Return of the person to normal activities from the time out situation is contingent upon the person's demonstrating more appropriate behavior. Time out procedures governed by parts 9525.2700 to 9525.2810 are:

A. exclusionary time out, which means removing a person from an ongoing activity to a location where the person cannot observe the ongoing activity; and

B. room time out or separation, which means removing a person from an ongoing activity to an unlocked room. The person may be prevented from leaving a time out room by staff members but not by mechanical restraint or by the use of devices or objects positioned to hold the door closed. Time out periods are usually brief, lasting only several minutes.

Statutory Authority: *MS s 245.825*

History: *11 SR 2408*

9525.2720 EXEMPTED ACTIONS AND PROCEDURES.

Use of the instructional techniques and intervention procedures listed in items A to G is not subject to the restrictions established by parts 9525.2700 to 9525.2810. Use of these techniques and interventions must be addressed in each person's individual habilitation plan as required by part 9525.0105.

A. The use of corrective feedback or prompts to assist a person in performing a task or exhibiting a response.

B. The use of physical assistance to facilitate a person's completion of a response in a situation where the person offers no physical resistance to the assistance.

C. The use of physical contact to redirect a person's behavior when the behavior:

(1) is infrequent, occurring no more than three times in a 30 day period;

(2) does not pose a serious threat to the person or others; and

(3) is effectively redirected with less than 60 seconds of physical contact by staff.

This exemption may not be used to circumvent the requirements for controlling use of manual restraint. It is included to allow caregivers to deal effectively and naturally with intermittent and infrequently occurring situations.

D. The use of positive reinforcement procedures alone or in combination with the procedures described in items A and B to develop new behaviors or increase the frequency of existing behaviors.

E. Temporary interruptions in instruction or ongoing activity in which a person is removed from an activity to a location where the person can observe the ongoing activity and see others receiving positive reinforcement for appropriate behavior. Return of the person to normal activities is contingent upon the person's demonstrating more appropriate behavior. This procedure is often referred to as contingent observation.

F. Temporary withdrawal or withholding of goods, services, or activities to which a person would otherwise have access as a natural consequence of the person's inappropriate use of the good, service, or activity. Examples of situations in which the exemption would apply are briefly delaying the return of a person's beverage at mealtime after the person has thrown the beverage across the kitchen or temporarily removing an object the person is using to hit another individual. Temporary withdrawal or withholding is meant to be a brief time period lasting no more than several minutes until the person's behavior is redirected and normal activities can be resumed.

G. Use of token fines or response cost procedures such as removing objects or other rewards received by a person as part of a positive reinforcement program. Token fines or response cost procedures are typically implemented after the occurrence of a behavior identified in the individual habilitation plan for reduction or elimination. Removing the object or other reward shall not interfere with a person's access to the goods, services, and activities protected by part 9525.2730.

Statutory Authority: *MS s 245.825*

History: *11 SR 2408*

9525.2730 PROCEDURES AND ACTIONS RESTRICTED OR PROHIBITED.

Subpart 1. **Restrictions required by Minnesota Statutes.** An aversive or deprivation procedure shall not:

A. be implemented with a child in a manner that constitutes sexual abuse, neglect, or physical abuse as defined in Minnesota Statutes, section 626.556 governing the reporting of maltreatment of minors;

B. be implemented with an adult in a manner that constitutes abuse or neglect as defined in Minnesota Statutes, section 626.557 governing the reporting of maltreatment of vulnerable adults;

C. restrict a person's normal access to a nutritious diet, drinking water, adequate ventilation, necessary medical care, ordinary hygiene facilities, normal sleeping conditions, or necessary clothing as mandated by Minnesota Statutes, section 245.825, or to any protection required by state licensing standards and federal regulations governing the facility; or

D. deny the person ordinary access to legal counsel and next of kin as mandated by Minnesota Statutes, section 245.825.

Subp. 2. **Procedures and actions prohibited.** The actions or procedures listed in items A to H are prohibited.

A. Using corporal punishment such as hitting, pinching, or slapping.

B. Speaking to a person in a manner that ridicules, demeans, threatens, or is abusive.

C. Requiring a person to assume and maintain a specified physical

position or posture as an aversive procedure. Examples include requiring persons to stand with their hands over their heads for long periods of time or to remain in a fixed position.

D. Placing a person in seclusion.

E. Totally or partially restricting a person's senses, except as expressly permitted in part 9525.2740, subpart 1.

F. Presentation of intense sounds, lights, or other sensory stimuli as an aversive stimulus.

G. Use of a noxious smell, taste, substance, or spray, including water mist, as an aversive stimulus.

H. Denying or restricting a person's access to equipment and devices such as hearing aids and communication boards that facilitate the person's functioning. If temporary removal of the equipment or device is necessary to prevent injury to the person or others, the equipment or device shall be returned to the person as soon as possible.

Subp. 3. **Restrictions on use of faradic shock.** Emergency use of faradic shock as an aversive stimulus is prohibited. Use of faradic shock as an aversive stimulus is permitted only when all the conditions in items A to D are met:

A. the target behavior is extreme self injury which threatens irreparable bodily harm;

B. it can be documented that other methods of treatment have been tried and were unsuccessful in controlling the behavior;

C. a state or federal court orders the use of faradic shock; and

D. use of faradic shock ordered by a court is implemented in accordance with parts 9525.2750 and 9525.2760.

Statutory Authority: *MS s 245.825*

History: *11 SR 2408*

9525.2740 PROCEDURES PERMITTED AND CONTROLLED.

Subpart 1. **Controlled procedures.** The procedures listed in items A to F are permitted when the procedures are implemented in compliance with parts 9525.2700 to 9525.2810. Permitted but controlled procedures, referred to as controlled procedures, are:

A. time out procedures;

B. positive practice overcorrection;

C. restitutional overcorrection;

D. partially restricting a person's senses at a level of intrusiveness that does not exceed placing a hand in front of a person's eyes as a visual screen or playing music through earphones worn by the person at a level of sound which does not cause the person discomfort;

E. manual restraint; or

F. mechanical restraint.

Subp. 2. **Authorization for procedures not specified as exempted, restricted, prohibited, or controlled.** If an expanded interdisciplinary team prepares a plan proposing the use of an aversive or deprivation procedure that is not specifically exempted by part 9525.2720, or specifically prohibited or restricted by part 9525.2730, or specifically permitted and controlled by subpart 1, the case manager shall request authorization for the use of that procedure from the regional review committee. If a procedure is authorized by a regional review committee, use of the procedure is subject to the controls established in parts 9525.2700 to 9525.2810.

Statutory Authority: *MS s 245.825*

History: *11 SR 2408*

9525.2750 STANDARDS GOVERNING USE OF CONTROLLED PROCEDURES IN AN INDIVIDUAL HABILITATION PLAN.

Subpart 1. **Standards and conditions.** Except in an emergency governed by part 9525.2770, use of a controlled procedure shall occur only when the controlled procedure is proposed, approved, and implemented as part of an individual habilitation plan. Use of a controlled procedure within an individual habilitation plan must comply with items A to L.

A. The controlled procedure is proposed or implemented only as a part of the total methodology specified in the person's individual habilitation plan. The individual habilitation plan has as its primary focus the development of adaptive behaviors. The controlled procedure authorized represents the lowest level of intrusiveness required to influence the target behavior and is not excessively intrusive in relation to the behavior being addressed.

B. The proposed use of a controlled procedure is supported by documentation describing how intervention procedures incorporating positive approaches and less intrusive procedures have been tried, how long they were tried in each instance, and possible reasons why they were unsuccessful in controlling the behavior of concern.

C. The case manager obtains informed consent for the implementation of the procedure as specified in part 9525.2780 before the procedure is implemented except when faradic shock is ordered by a court under part 9525.2730, subpart 3.

D. The proposed use of the procedure is approved by a facility review committee that meets the requirements in subpart 2.

E. The proposed use of the procedure is authorized by the expanded interdisciplinary team required by subpart 3.

F. The procedure is implemented and monitored by staff members trained to implement the procedure. Facilities where staff members are employed are responsible for providing ongoing training to ensure that the competence necessary to implement the procedures is present within the staff currently employed and must demonstrate to members of the interdisciplinary team that staff are competent to implement the procedures. Controlled procedures shall not be implemented as part of the individual habilitation plan until staff who are involved in providing supervision or training of the person have been trained to implement all programs contained in the individual habilitation plan.

G. When a controlled procedure involves the use of mechanical or manual restraint, the person's primary care physician must be consulted to determine whether implementing the procedure is medically contraindicated.

H. When a controlled procedure involves removing a person from an ongoing activity, the person is returned to the activity when the procedure is completed.

I. Time out procedures are implemented in the person's own room or other area commonly used as living space whenever possible rather than in a room used specifically for time out. Persons in time out must be continuously monitored by staff. If a room is used specifically for time out, the room must:

(1) provide a safe environment for the person;

(2) have an observation window or other device to permit continuous monitoring of the person;

(3) measure at least six feet by six feet and be large enough to allow the person to stand, to stretch his or her arms, and to lie down; and

(4) be well lighted, well ventilated, and clean.

J. Time out procedures must meet the following standards:

(1) Release from time out is contingent on the person's stopping or bringing under control the behavior that precipitated the time out and shall occur

as soon as the behavior that precipitated the time out abates or stops. If the precipitating behavior has not abated or stopped, staff members must attempt to return the person to an ongoing activity at least every 30 minutes.

(2) If time out is implemented contingent on repeated instances of the target behavior for longer than 30 minutes, the person must be offered access to a bathroom and drinking water.

K. Use of mechanical restraint which is so intrusive that it restricts three or more of a person's limbs or restricts the person's movement from one location to another must meet the standards in subitems (1) and (2) in addition to the other standards in parts 9525.2700 to 9525.2810.

(1) A person placed in mechanical restraint must be given an opportunity for motion and exercise for not less than ten minutes during each one hour of restraint. Efforts to lessen or discontinue the restraint must be made at least every 15 minutes. The time each effort was made and the person's response to the effort must be noted in the person's permanent record.

(2) A staff member must remain with a person placed in mechanical restraint during the time the person is in mechanical restraint and must take the action specified in subitem (1).

L. Use of manual restraint which is less intrusive than that described in item K must meet the requirements in subitems (1) and (2) in addition to the other standards in parts 9525.2700 to 9525.2810.

(1) Staff must check on the person every 30 minutes and document that such checks were made; and

(2) A person must be given an opportunity for release from the mechanical restraint and for motion and exercise of the restricted body parts for at least ten minutes out of every 60 minutes that the restraints are used.

Subp. 2. **Facility review committee.** Each facility except for a licensed foster care facility shall have at least one committee that reviews all individual habilitation plans proposing the use of controlled procedures. The committee shall be appointed by the administrator with overall responsibility for the facility's policy and program. The committee shall determine if each plan as submitted meets the requirements of parts 9525.2700 to 9525.2810 and all other applicable requirements governing behavior management established by federal regulations or by order of a court before approving the plan. The committee membership must meet the criteria in items A and B.

A. The committee must include two individuals employed by the facility as staff members or consultants. One of the two individuals must be a qualified mental retardation professional.

B. At least one third of the committee members shall be individuals who have no ownership or controlling interest in the facility and who are not employed by or under contract with the facility in any other capacity besides serving on the committee. This component of the committee membership must include at least one parent or guardian of a person with mental retardation or a related condition.

Subp. 3. **Review and authorization by the interdisciplinary team.** When an individual habilitation plan proposes the use of a controlled procedure, the plan must be reviewed by and use of the procedure must be authorized by an interdisciplinary team expanded beyond the membership specified in part 9525.2710, subpart 18, to include a qualified mental retardation professional with at least one year of experience in the development and implementation of behavior management programs.

Subp. 4. **Report to regional review committee.** When a controlled procedure in items A to D is authorized or reauthorized under subpart 3, the case manager shall send the regional review committee a copy of the individual habilitation plan that proposes the procedure and that includes the information required in part 9525.2760.

A. manual restraint;

B. mechanical restraint;

C. use of a time out procedure for 15 minutes or more at one time or for a cumulative total of 30 minutes or more in one day; or

D. faradic shock.

The case manager shall send the individual habilitation plan within ten calendar days after the controlled procedure is authorized by the interdisciplinary team. When use of a controlled procedure has been reauthorized, the case manager must also submit data on the use and effectiveness of the procedure to the regional review committee.

Statutory Authority: *MS s 245.825*

History: *11 SR 2408*

9525.2760 REQUIREMENTS GOVERNING INDIVIDUAL HABILITATION PLANS THAT PROPOSE THE USE OF A CONTROLLED PROCEDURE.

Subpart 1. **Requirements.** An individual habilitation plan that includes the use of a controlled procedure must contain the information specified in subparts 2 to 6.

Subp. 2. **Assessment information.** When an interdisciplinary team is developing an individual habilitation plan that includes the use of a controlled procedure, the case manager must obtain assessment information that includes the elements specified in items A to F.

A. A physical and psychological description of the person.

B. A report completed by the person's primary care physician within 90 days prior to the initial development of the individual habilitation plan that includes the use of a controlled procedure. The report must indicate that the physician has reviewed whether there are existing medical conditions that (1) could result in the demonstration of behavior for which a controlled procedure might be proposed; or (2) should be considered in the development of a program for the person.

C. A baseline measurement of the behavior of concern that provides a clear description of the behavior and the degree to which it is being expressed. The description must be detailed enough to provide a basis for comparing the behavior before use of a procedure to control it with the behavior after use of a procedure to control it so that the effectiveness of the procedure can be evaluated.

D. A summary of what has been considered or attempted to change elements in the person's environment, including the physical and social environment, that could be influencing the person's behavior. This summary must include an analysis of the person's current residence and day program and must specifically address the question of whether a change in these services appears to be warranted.

E. An analysis of to what extent the behavior identified for reduction or elimination represents an attempt by the person to communicate with others or serves as a means to control the person's environment and recommendations for changes in the person's training program or environment that are designed to enhance communication.

F. A summary of previous interventions used to modify the target behavior and of the factors believed to have interfered with the effectiveness of those interventions.

The information in items A to F must be retained in the person's permanent record for at least five years after implementation of a controlled procedure.

Subp. 3. **Review of service plan.** The case manager shall ensure that any service needs identified by the assessment information in subpart 2 are included in the individual service plan required by part 9525.0085.

Subp. 4. **Review and content standards.** An individual habilitation plan that proposes the use of controlled procedures shall include the elements in items A to I.

A. Objectives designed to develop the adaptive behavior of the person for whom the plan is made. These objectives must include positive programs designed to increase aspects of the person's behavior that are incompatible with or that provide an alternative to the behavior identified for reduction or elimination.

B. The objective to be accomplished by implementing the procedure, including the change expected in the target behavior and the anticipated time frame for achieving the change.

C. A detailed description of the procedure, including where and under what circumstances the procedure will be used.

D. A detailed description of the ways in which implementation of the procedure will be monitored, by whom, and how frequently. This description must specify how staff implementing the procedure will be trained and supervised. Direct on-site supervision of the procedure's implementation must be provided by the professional staff responsible for developing the procedure.

E. A description of any discomforts, risks, or side effects that it is reasonable to expect.

F. A description of the method to be used and data to be collected in evaluating the effectiveness of the proposed procedures and in monitoring any expected side effects.

G. A description of the plan for maintaining and generalizing the positive changes in the person's behavior that may occur as a result of implementing the procedure.

H. The date when use of the controlled procedure will terminate unless, before that date, continued use of the procedure is authorized by the case manager and the member of the interdisciplinary team who is a qualified mental retardation professional with at least one year of experience in the development and implementation of behavior management programs. The projected termination date shall be no more than 90 days after the date on which use of the procedure was authorized. Reauthorization for use of the procedure can be given at 90-day intervals if evaluation data on the effectiveness of the procedure support continuation. Informed consent must be obtained every 90 days under part 9525.2780.

I. Any other information needed to comply with the requirements for an individual habilitation plan as specified in part 9525.0105.

Subp. 5. **Monitoring the individual habilitation plan.** Monitoring the proposed controlled procedure shall be completed as adopted in the individual habilitation plan and in accordance with part 9525.0115.

Subp. 6. **Documentation of informed consent.** Except in situations governed by part 9525.2770, by part 9525.2730, subpart 3, or by part 9525.2780, subpart 6, evidence that informed consent has been obtained from a person or individual authorized to give consent must be added to the person's individual habilitation plan before a controlled procedure is implemented.

Statutory Authority: *MS s 245.825*

History: *11 SR 2408*

9525.2770 EMERGENCY USE OF CONTROLLED PROCEDURES.

Subpart 1. **Standards governing emergency use.** Implementing a controlled procedure without first meeting the requirements of parts 9525.2750, 9525.2760, and 9525.2780 is permitted only when the criteria and requirements in subparts 2 to 5 are met.

Subp. 2. **Criteria for emergency use.** Emergency use must meet the conditions in items A to D.

A. Immediate intervention is needed to protect the person or others from physical injury or to prevent severe property damage which is an immediate threat to the physical safety of the person or others.

B. The individual habilitation plan of the person demonstrating the behavior does not include provisions for the use of the controlled procedure.

C. The procedure used is the least intrusive intervention possible to react effectively to the emergency situation.

D. The onset of the behavior resulting in the need for intervention has not been demonstrated by the person within the previous 90 days or the behavior has been dealt with as an exemption under part 9525.2720 up to the point when emergency use became necessary.

Subp. 3. **Time limits on emergency use.** Use of a controlled procedure initiated on an emergency basis in accordance with subpart 2 shall not continue for more than 15 days. Within 15 days of the emergency use, the interdisciplinary team must evaluate whether the individual habilitation plan requires modification to better meet the person's needs.

Subp. 4. **Authorization of emergency use.** The emergency use of a controlled procedure must be authorized by the individual identified in the facility's policy on emergency use in subpart 4. Emergency use of faradic shock is prohibited by part 9525.2730, subpart 3, and shall not be authorized by a facility.

Subp. 5. **Written policy on emergency use.** The facility must have a written policy on emergency use of controlled procedures that specifies:

A. any controlled procedures the facility does not allow to be used on an emergency basis;

B. the staff member or staff members who must authorize emergency use;

C. that the staff members responsible for authorizing emergency procedures must have at least one year of training and experience in the use of behavioral management, must be trained in the implementation of all controlled procedures allowed by the facility policy, and must be available on a 24 hour basis to give authorization;

D. the internal procedures that must be followed for emergency use;

E. how the facility will monitor and control emergency use;

F. the training a staff member must have completed before being assigned by the facility to implement a controlled procedure under emergency conditions; and

G. that the standards in part 9525.2750, subpart 1, items F, H, I, J, K, and L must be met when controlled procedures are used on an emergency basis.

Subp. 6. **Reporting and review of emergency use.** Any emergency use of a controlled procedure must be reported and reviewed as specified in items A to D.

A. Within three calendar days after an emergency use of a controlled procedure, the facility staff member in charge at the time of the emergency use shall report in writing to the person's interdisciplinary team the following information about the emergency use:

(1) a detailed description of the incident leading to the use of the procedure as an emergency intervention;

(2) the controlled procedure that was used;

(3) the time implementation began and the time it was completed;

(4) the behavioral outcome that resulted;

(5) why the procedure used was judged to be necessary to prevent injury or severe property damage;

(6) an assessment of the likelihood that the behavior necessitating emergency use will recur; and

(7) the names of the persons who authorized the procedure and approved the report.

B. Within seven calendar days after the date of the emergency use reported in item A, the case manager shall confer with members of the interdisciplinary team to:

(1) discuss the incident reported in item A and the person's subsequent behavior;

(2) determine whether the behavior necessitating emergency use of a controlled procedure should be identified in the individual habilitation plan for reduction or elimination; and

(3) schedule an expanded interdisciplinary team meeting within 15 calendar days after the emergency use if it is determined that the behavior should be identified in the individual habilitation plan for reduction or elimination.

C. A copy of the report in item A and a summary of the interdisciplinary team's decision under item B must be added to the person's permanent record.

D. If the emergency use involved manual restraint, mechanical restraint, or use of time out exceeding 15 minutes at one time or a cumulative total of 30 minutes or more in one day, the case manager shall send a copy of the report in item A to the regional review committee within five calendar days after the case manager receives it.

Statutory Authority: *MS s 245.825*

History: *11 SR 2408*

9525.2780 REQUIREMENTS FOR OBTAINING INFORMED CONSENT.

Subpart 1. **Definition.** For purposes of this part, "a substantial change" in the use of a controlled procedure for which informed consent is in effect means a change in the use of that procedure which:

A. intensifies the level of intrusiveness of the procedure; or

B. expands the behaviors with which the procedure is to be used beyond the behavior or behaviors specified when consent was originally given.

Subp. 2. **When informed consent is required.** Except in situations governed by subpart 6, by part 9525.2770, or by part 9525.2730, subpart 3, the case manager shall obtain or reobtain written informed consent before implementation of:

A. a controlled procedure for which consent has never been given;

B. a controlled procedure for which informed consent has expired. Informed consent must be obtained every 90 days in order to continue use of the controlled procedure; or

C. a substantial change in a controlled procedure for which consent is presently in effect.

If the case manager is unable to obtain written informed consent, the procedure shall not be implemented except as provided in subpart 6.

Subp. 3. **Authority to give consent.** Individuals authorized to give informed consent are specified in items A to E.

A. If the person has a legal guardian or conservator authorized by a court to give consent for the person, consent is required from the legal guardian or conservator.

B. If the person is a child, consent is required from at least one of the child's parents, unless the child has a legal guardian or conservator as specified in item A. If the parents are divorced or legally separated, the consent of the parent with legal custody is required, unless the separation or marriage dissolution decree otherwise delegates authority to give consent for the child.

C. If the commissioner is the legal guardian or conservator, consent is required from the county representative designated to act as guardian on the commissioner's behalf. Failure to consent or refuse consent within 30 days of the date on which the procedure requiring consent was authorized by the expanded interdisciplinary team shall be considered a refusal to consent. The county representative designated to act as guardian must not be the same individual who is serving as case manager.

D. If the person is an adult who is capable of understanding the information required in subpart 4 and of giving informed consent, informed consent is required from the person.

E. If the person is an adult who has no legal guardian or conservator and who is not capable of giving informed consent, the case manager shall petition a court of competent jurisdiction to appoint a legal representative with authority to give consent, and consent is required from the legal representative.

Subp. 4. **Information required as a condition of obtaining informed consent.** The case manager shall provide the information specified in items A to J to the individual authorized to give informed consent. Consent obtained without provision of the information required in items A to J is not considered to be informed consent. The case manager shall document that the information in items A to J was provided orally and in writing and that consent was given voluntarily. The information shall be provided in a nontechnical manner and in whatever form is necessary to communicate the information effectively, such as in the person's or the authorized individual's native language if the person or the authorized individual does not understand English or in sign language if that is the person's or the authorized individual's preferred mode of communication, and in a manner that does not suggest coercion.

A. A baseline measurement of the target behavior.

B. A detailed description of the proposed procedures and explanation of the procedures' function.

C. A description of how the procedures are expected to benefit the person, including the extent to which the target behavior is expected to change as a result of implementing the procedures.

D. A description of any discomforts, risks, or other side effects that it is reasonable to expect.

E. Alternative procedures that have been attempted, considered, and rejected as not being effective or feasible.

F. The expected effect on the person of not implementing the procedures.

G. An offer to answer any questions about the procedures, including the names, addresses, and phone numbers of people to contact if questions or concerns arise.

H. An explanation that the person or the individual authorized to give consent has the right to refuse consent.

I. An explanation that consent may be withdrawn at any time and the procedure will stop upon withdrawal of consent, except as provided in subpart 6.

J. An explanation that:

(1) consent is time limited and automatically expires 90 days after the date on which consent was given; and

(2) informed consent must again be obtained in order for use of a procedure to continue after the initial 90-day period ends.

Subp. 5. **Consent for a substantial change in procedures.** If the expanded interdisciplinary team authorizes a substantial change in a procedure for which informed consent is in effect, the change shall not be implemented unless the case

manager first obtains written informed consent for the substantial change by meeting the requirement in subpart 4.

Subp. 6. **Conditions governing implementation when consent is refused or withdrawn.** If consent is refused or withdrawn by the individual or person authorized to give consent, and the person is not committed under Minnesota Statutes, chapter 253B, the procedures for which consent is refused or withdrawn shall not be implemented. If consent is refused or withdrawn by the individual or person authorized to give consent and the person is committed under Minnesota Statutes, chapter 253B, to a treatment facility as defined in Minnesota Statutes, section 253B.02, subdivision 19, the procedure shall not be implemented unless the requirements in items A and B are met.

A. The case manager submits to the head of the treatment facility as defined in Minnesota Statutes, section 253B.02, subdivision 8:

(1) the individual habilitation plan containing the information required under part 9525.2760; and

(2) documentation that implementing the procedure for which consent is refused or withdrawn has been approved by the expanded interdisciplinary team and the facility review committee.

B. The head of the treatment facility determines that the procedure shall be implemented.

Subp. 7. **Appeals.** A decision made pursuant to subpart 6 to implement a controlled procedure in an individual habilitation plan for which consent has been refused or withdrawn may be appealed pursuant to part 9525.0135 by following the procedure in Minnesota Statutes, section 256.045. The scope of the appeal is to determine whether or not the provisions of parts 9525.0015 to 9525.0165 and parts 9525.2700 to 9525.2810 have been met. Implementation of the controlled procedure authorized under subpart 6 must be suspended while the appeal is pending. If a court orders the use of faradic shock under part 9525.2730, subpart 3, the action of the court is not appealable under parts 9525.2700 to 9525.2810.

Statutory Authority: *MS s 245.825*

History: *11 SR 2408*

9525.2790 REGIONAL REVIEW COMMITTEES.

Subpart 1. **Appointment.** As mandated by Minnesota Statutes, section 245.825, the commissioner shall initially appoint at least two regional review committees to monitor parts 9525.2700 to 9525.2810. The commissioner shall establish additional committees if required by the number of procedures received for review and the level of effort required to ensure timely and thorough review.

Subp. 2. **Membership.** Each regional review committee shall include:

A. at least one member who is licensed as a psychologist by the state of Minnesota and whose areas of training, competence, and experience include mental retardation and behavior management; and

B. representation from each of the following categories:

(1) facilities governed by parts 9525.2700 to 9525.2810;

(2) parents or guardians of persons with mental retardation and related conditions;

(3) other concerned citizens, none of whom is employed by or has a controlling interest in a facility governed by parts 9525.2700 to 9525.2810; and

(4) the department.

When a matter being reviewed by the committee requires the expertise and professional judgment of a medical doctor, the commissioner shall make the services of a licensed physician available to the committee.

Subp. 3. **Duties and responsibilities.** Regional committees shall:

A. meet at least quarterly to review the reports on use of time out, mechanical restraint, and manual restraint required by parts 9525.2750 and 9525.2770 and act on those reports according to procedures established by the commissioner;

B. meet or confer as necessary if a case manager requests the authorization required in part 9525.2740, subpart 2; and

C. act as directed by the commissioner to:

(1) monitor and facilitate compliance with parts 9525.2700 to 9525.2810 and make recommendations to the commissioner;

(2) provide technical assistance in achieving compliance; and

(3) review, monitor, and report to the commissioner on statewide use of aversive and deprivation procedures in relationship to the use of less intrusive alternatives and to the use of psychotropic medication.

Statutory Authority: *MS s 245.825*

History: *11 SR 2408*

9525.2800 REPORTING NONCOMPLIANCE.

If an individual has reason to believe that a facility governed by parts 9525.2700 to 9525.2810 is not in compliance with parts 9525.2700 to 9525.2810, the concern or complaint can be reported as described in items A and B. Reporting a concern or complaint under this part does not meet the requirements governing mandated reporting of maltreatment of minors under Minnesota Statutes, section 626.556, and rules adopted under that statute or mandated reporting of maltreatment of vulnerable adults under Minnesota Statutes, section 626.557 and parts 9555.8000 to 9555.8500.

A. Concerns or complaints about any facility governed by parts 9525.2700 to 9525.2810 can be reported to: The Commissioner, Department of Human Services, Centennial Office Building, 658 Cedar Street, Saint Paul, Minnesota 55155.

B. Concerns or complaints about intermediate care facilities for persons with mental retardation and related conditions in addition to being reported to the commissioner under item A can also be directed to: The Minnesota Department of Health, Office of Health Facility Complaints, 717 Delaware Street S.E., Minneapolis, Minnesota 55440.

Statutory Authority: *MS s 245.825*

History: *11 SR 2408*

9525.2810 PENALTY FOR NONCOMPLIANCE.

If a licensed facility governed by parts 9525.2700 to 9525.2810 does not comply with parts 9525.2700 to 9525.2810, the commissioner may take enforcement action pursuant to Minnesota Statutes, sections 245.781 to 245.812 and 252.28, subdivision 2.

Statutory Authority: *MS s 245.825*

History: *11 SR 2408*