1 Department of Human Services
2
3 Adopted Permanent Rules Relating to Deprivation Procedures in
4 Licensed Facilities
5
6 Rules as Adopted

7 9525.2700 PURPOSE AND APPLICABILITY.
8 Subpart 1. **Purpose.** Parts 9525.2700 to 9525.2810
9 implement Minnesota Statutes, section 245.825 by setting
10 standards that govern the use of aversive and deprivation
11 procedures with persons who have mental retardation or a related
12 condition and who are served by a license holder licensed by the
13 commissioner under Minnesota Statutes, chapter 245A and section
14 252.28, subdivision 2.
15 Parts 9525.2700 to 9525.2810 are not intended to encourage
16 or require the use of aversive and deprivation procedures.
17 Rather, parts 9525.2700 to 9525.2810 encourage the use of
18 positive approaches as an alternative to aversive or deprivation
19 procedures and require documentation that positive approaches
20 have been tried and have been unsuccessful as a condition of
21 implementing an aversive or deprivation procedure.
22 The standards and requirements set by parts 9525.2700 to
23 9525.2810:
24 A. exempt from the requirements of parts 9525.2700 to
25 9525.2810 any procedures that are positive in approach or are
26 minimally intrusive;
27 B. prohibit the use of certain actions and procedures
28 specified in part 9525.2730;
29 C. control the use of aversive and deprivation
30 procedures permitted under parts 9525.2700 to 9525.2810 by
31 requiring development of an individual service plan, development
32 of an individual program plan, informed consent from the person
33 or the person's legal representative, and review and approval by
34 the expanded interdisciplinary team and internal review
35 committee;

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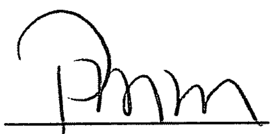
by Revisor 

1 D. establish criteria and procedures for emergency
2 use of controlled aversive and deprivation procedures; and
3 E. assign a monitoring and technical assistance role
4 to the regional review committees mandated by Minnesota
5 Statutes, section 245.825.
6 Subp. 2. **Applicability.** Parts 9525.2700 to 9525.2810
7 govern the use of aversive and deprivation procedures with
8 persons who have mental retardation or a related condition when
9 those persons are served by a license holder:
10 A. licensed under parts 9525.1500 to 9525.1690 to
11 provide training and habilitation services to adults with mental
12 retardation or a related condition;
13 B. licensed under parts 9525.0215 to 9525.0355 as a
14 residential program for persons with mental retardation or a
15 related condition. If a requirement of parts 9525.0215 to
16 9525.0355 differs from a requirement in Code of Federal
17 Regulations, title 42, sections 483.400 to 483.480, an
18 intermediate care facility for persons with mental retardation
19 or a related condition shall comply with the rule or regulation
20 that sets the more stringent standard;
21 C. licensed under parts 9525.2000 to 9525.2140 to
22 provide residential-based habilitation services;
23 D. licensed under parts 9503.0005 to 9503.0175 and
24 9545.0750 to 9545.0855 to provide services to children with
25 mental retardation or a related condition;
26 E. licensed under parts 9555.9600 to 9555.9730 as an
27 adult day care center;
28 F. licensed under parts 9555.5105 to 9555.6265 to
29 provide foster care for adults or under part 9545.0010 to
30 9545.0260 to provide foster care for children; or
31 G. licensed for any other service or program
32 requiring licensure by the commissioner as a residential or
33 nonresidential program serving persons with mental retardation
34 or a related condition, as specified in Minnesota Statutes,
35 section 245A.02.
36 Subp. 3. **Exclusion.** Parts 9525.2700 to 9525.2810 do not

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1 apply to:

2 A. treatments defined in parts 9515.0200 to 9515.0800
3 governing the administration of specified therapies to committed
4 patients residing at regional centers; or

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

8 9525.2710 DEFINITIONS.

9 [For text of subps 1 and 2, see M.R.]

10 Subp. 3. **Advocate.** "Advocate" means an individual who has
11 been authorized, in a written statement signed by the person
12 with mental retardation or a related condition or by that
13 person's legal representative, to speak on the person's behalf
14 and help the person understand and make informed choices
15 regarding identification of needs and choices of services and
16 supports. ~~An-advocate-for-a-person-with-mental-retardation-or-a~~
17 ~~related-condition-and-the-advocate's-employer-must-have-no~~
18 ~~direct-or-indirect-financial-interest-in-the-provision-of~~
19 ~~services-to-that-person.~~

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

25 [For text of subps 5 to 11, see M.R.]

26 Subp. 12. **Deprivation procedure.** "Deprivation procedure"
27 means the ~~planned-delay-or-withdrawal-of-goods,-services,-or~~
28 ~~activities-to-which-the-person-is-otherwise-entitled,-that-the~~
29 ~~person-or-the-person's-legal-representative-considers-intrusive,~~
30 ~~as-determined-and-documented-in-the-person's-individual-program~~
31 ~~plan.~~ removal of a positive reinforcer following a response
32 resulting in, or intended to result in, a decrease in the
33 frequency, duration, or intensity of that response. Often times
34 the positive reinforcer available is goods, services, or
35 activities to which the person is normally entitled. The

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1 removal is often in the form of a delay or postponement of the
2 positive reinforcer.
3 [For text of subp 13, see M.R.]
4 Subp. 14. [See repealer.]
5 Subp. 14a. **Expanded interdisciplinary team.** "Expanded
6 interdisciplinary team" means a team composed of the case
7 manager; the person with mental retardation or a related
8 condition; the person's legal representative and advocate, if
9 any; representatives of providers of residential, day training
10 and habilitation, and support services identified in the
11 person's individual service plan; a health professional, if the
12 person with mental retardation or a related condition has
13 overriding medical needs; and a qualified mental retardation
14 professional. The qualified mental retardation professional
15 must have at least one year of direct experience in assessing,
16 planning, implementing, and monitoring a plan that includes a
17 behavior-intervention program.
18 Subp. 15. **Faradic shock.** "Faradic shock" means the
19 application of electric current to a person's skin or body parts
20 as an aversive stimulus contingent upon the occurrence of a
21 behavior that has been identified in the person's individual
22 program plan for reduction or elimination.
23 Subp. 16. [See repealer.]
24 Subp. 16a. **Individual program plan.** "Individual program
25 plan" means the coordinated, integrated, and comprehensive
26 written plan for providing services to persons that is developed:
27 A. consistent with all aspects of the person's
28 individual service plan;
29 B. in compliance with applicable state and federal
30 laws and regulations governing services to persons with mental
31 retardation or a related condition; and
32 C. by the license holder in consultation with the
33 expanded interdisciplinary team.
34 Subp. 16b. **Individual service plan.** "Individual service
35 plan" means the written plan developed by the service planning
36 team containing the components required under Minnesota

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1 Statutes, section 256B.092.

2 [For text of subp 17, see M.R.]

3 Subp. 18. [See repealer.]

4 Subp. 19. **Intermediate care facility for persons with**
5 **mental retardation or a related condition or ICF/MR.**
6 "Intermediate care facility for persons with mental retardation
7 or a related condition" or "ICF/MR" means a program licensed
8 under Minnesota Statutes, sections 245A.01 to 245A.16 and
9 252.28, subdivision 2, to provide services to persons with
10 mental retardation or a related condition and a physical plant
11 licensed as a supervised living facility under Minnesota
12 Statutes, chapter 144, which together are certified by the
13 Minnesota Department of Health as an intermediate care facility
14 for persons with mental retardation or a related condition.

15 Subp. 19a. **Internal review committee.** "Internal review
16 committee" means the committee responsible under part 9525.2750,
17 subpart 2, for the review and approval of individual program
18 plans proposing the use of controlled procedures.

19 [For text of subp 20, see M.R.]

20 Subp. 21. [See repealer.]

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

24 [For text of subp 22, see M.R.]

25 Subp. 23. **Mechanical restraint.** "Mechanical restraint"
26 means the use of devices such as mittens, straps, restraint
27 chairs, or papoose boards to limit a person's movement or hold a
28 person immobile as an intervention precipitated by a person's
29 behavior. The term does not apply to mechanical restraint used
30 to treat a person's medical needs, to protect a person known to
31 be at risk of injury resulting from lack of coordination or
32 frequent loss of consciousness, or to position a person with
33 physical disabilities in a manner specified in the person's
34 individual program plan. The term does apply to, and parts
35 9525.2700 to 9525.2810 do govern, mechanical restraint when it
36 is used to prevent injury with persons who engage in behaviors,

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such as head-banging, gouging, or other actions resulting in tissue damage, that have caused or could cause medical problems resulting from the self-injury.

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

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

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

C. who has a related condition as defined in Minnesota Statutes, section 252.27, subdivision 1a.

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

[For text of subp 26, see M.R.]

Subp. 27. **Qualified mental retardation professional or QMRP.** "Qualified mental retardation professional" or "QMRP" means an individual who meets the qualifications specified in Code of Federal Regulations, title 42, section 483.430.

[For text of subps 28 and 29, see M.R.]

Subp. 30. [See repealer.]

[For text of subps 31 and 32, see M.R.]

Subp. 33. [See repealer.]

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1 Subp. 33a. **Substantial change.** "Substantial change" means
2 a change in the individual program plan that intensifies the
3 intrusiveness of the controlled procedure by:
4 A. expanding, adding, or replacing in any way:
5 (1) the target behaviors for which the controlled
6 procedure is to be implemented; or
7 (2) the type of controlled procedure;
8 B. the method of implementation;
9 C. the criteria for change or the criteria for
10 termination of implementation of the controlled procedure; or
11 D. deleting without replacing a target behavior.
12 Subp. 34. **Target behavior.** "Target behavior" means a
13 behavior identified in a person's individual program plan as the
14 object of efforts intended to ~~increase,~~ reduce~~,~~ or eliminate the
15 behavior.
16 Subp. 35. **Time out or time out from positive reinforcement.**
17 "Time out" or "time out from positive reinforcement" means
18 removing a person from the opportunity to gain positive
19 reinforcement and is employed when a person demonstrates a
20 behavior identified in the individual program plan for reduction
21 or elimination. Return of the person to normal activities from
22 the time out situation is contingent upon the person's
23 demonstrating more appropriate behavior. Time out periods are
24 usually brief, lasting only several minutes. Time out
25 procedures governed by parts 9525.2700 to 9525.2810 are:
26 A. "exclusionary time out," which means removing a
27 person from an ongoing activity to a location where the person
28 cannot observe the ongoing activity; and
29 B. "room time out," which means removing a person
30 from an ongoing activity to an unlocked room. The person may be
31 prevented from leaving a time out room by staff members but not
32 by mechanical restraint or by the use of devices or objects
33 positioned to hold the door closed. ~~Time out periods are~~
34 ~~usually brief, lasting only several minutes.~~

35 9525.2720 EXEMPTED ACTIONS AND PROCEDURES.

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Use of the instructional techniques and intervention procedures listed in items A to H is not subject to the restrictions established by parts 9525.2700 to 9525.2810. ~~Use of these techniques and interventions must be addressed in each person's individual program plan.~~ The person's individual program plan must address the use of the following exempted actions and procedures:

A. Corrective feedback or prompts to assist a person in performing a task or exhibiting a response.

B. Physical contact to facilitate a person's completion of a task or response and directed at increasing adaptive behavior when the person does not resist or the person's resistance is minimal in intensity and duration, as determined by the expanded interdisciplinary team.

C. Physical contact or a physical prompt to redirect a person's behavior when:

(1) the behavior does not pose a serious threat to the person or others;

(2) the physical contact is used to escort or carry a person to safety when the person is in danger;

(3) the behavior is effectively redirected with less than 60 seconds of physical contact by staff; or

(4) the physical contact is used to conduct a necessary medical examination or treatment.

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

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

E. Temporary interruptions in instruction or ongoing activity in which a person is removed from an activity to a location where the person can observe the ongoing activity and

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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~~, that the person or the person's legal representative does not consider intrusive~~ as a natural consequence of the person's inappropriate use of the goods, services, or activities. Examples of situations in which the exemption would apply are briefly delaying the return of a person's beverage at mealtime after the person has thrown the beverage across the kitchen or temporarily removing an object the person is using to hit another individual. Temporary withdrawal or withholding is meant to be a brief period lasting no more than several minutes until the person's behavior is redirected and normal activities can be resumed.

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

H. Manual or mechanical restraint to treat a person's medical needs, to protect a person known to be at risk of injury resulting from lack of coordination or frequent loss of consciousness, or to position a person with physical disabilities in a manner specified in the person's individual program plan.

9525.2730 PROCEDURES AND ACTIONS RESTRICTED OR PROHIBITED.

Subpart 1. **Restrictions.** An aversive or deprivation procedure must not:

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1 A. be implemented with a child in a manner that
2 constitutes sexual abuse, neglect, or physical abuse as defined
3 in Minnesota Statutes, section 626.556, which governs the
4 reporting of maltreatment of minors;
5 B. be implemented with an adult in a manner that
6 constitutes abuse or neglect as defined in Minnesota Statutes,
7 section 626.557, which governs the reporting of maltreatment of
8 vulnerable adults;
9 C. restrict a person's normal access to a nutritious
10 diet, drinking water, adequate ventilation, necessary medical
11 care, ordinary hygiene facilities, normal sleeping conditions,
12 or necessary clothing as mandated by Minnesota Statutes, section
13 245.825, or to any protection required by state licensing
14 standards and federal regulations governing the program; or
15 D. deny the person ordinary access to legal counsel
16 and next of kin as mandated by Minnesota Statutes, section
17 245.825.
18 Subp. 2. **Prohibitions.** The actions or procedures listed
19 in items A to I are prohibited:
20 A. using corporal punishment such as hitting,
21 pinching, or slapping;
22 B. speaking to a person in a manner that ridicules,
23 demeans, threatens, or is abusive;
24 C. requiring a person to assume and maintain a
25 specified physical position or posture as an aversive procedure,
26 for example, requiring a person to stand with the hands over the
27 person's head for long periods of time or to remain in a fixed
28 position;
29 D. placing a person in seclusion;
30 E. totally or partially restricting a person's
31 senses, except as expressly permitted in part 9525.2740, subpart
32 1;
33 F. presenting intense sounds, lights, or other
34 sensory stimuli as an aversive stimulus;
35 G. using a noxious smell, taste, substance, or spray,
36 including water mist, as an aversive stimulus;

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1 H. using room time out in emergency situations; and
2 I. denying or restricting a person's access to
3 equipment and devices such as walkers, wheelchairs, hearing
4 aids, and communication boards that facilitate the person's
5 functioning. When the temporary removal of the equipment or
6 device is necessary to prevent injury to the person or others or
7 serious damage to the equipment or device, the equipment or
8 device must be returned to the person as soon as possible.
9 Subp. 3. **Faradic shock.** Emergency use of faradic shock as
10 an aversive stimulus is prohibited. Use of faradic shock as an
11 aversive stimulus is permitted only when all of the following
12 conditions are met:
13 A. the target behavior is extreme self-injury that
14 threatens irreparable bodily harm;
15 B. it can be documented that other methods of
16 treatment have been tried and were unsuccessful in controlling
17 the behavior;
18 C. a state or federal court orders the use of faradic
19 shock;
20 D. use of faradic shock ordered by a court is
21 implemented in accordance with parts 9525.2750 and 9525.2760;
22 and
23 E. a plan is in effect to reduce and eliminate the
24 use of faradic shock with the person receiving it.

25 9525.2740 PROCEDURES PERMITTED AND CONTROLLED.
26 Subpart 1. **Controlled procedures.** The procedures listed
27 in items A to G are permitted when the procedures are
28 implemented in compliance with parts 9525.2700 to 9525.2810.
29 Permitted but controlled procedures, referred to as controlled
30 procedures, are:
31 A. exclusionary and room time out procedures;
32 B. positive practice overcorrection;
33 C. restitutional overcorrection;
34 D. partially restricting a person's senses at a level
35 of intrusiveness that does not exceed placing a hand in front of

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1 a person's eyes as a visual screen or playing music through
2 earphones worn by the person at a level of sound that does not
3 cause discomfort;
4 E. manual restraint;
5 F. mechanical restraint; and
6 G. deprivation as defined in part 9525.2710, subpart
7 12.
8 [For text of subp 2, see M.R.]

9 9525.2750 STANDARDS FOR CONTROLLED PROCEDURES.
10 Subpart 1. **Standards and conditions.** Except in an
11 emergency governed by part 9525.2770, use of a controlled
12 procedure may occur only when the controlled procedure is based
13 upon need identified in the individual service plan and is
14 proposed, approved, and implemented as part of an individual
15 program plan. Use of a controlled procedure within an
16 individual program plan must comply with items A to I.
17 A. The controlled procedure is proposed or
18 implemented only as a part of the total methodology specified in
19 the person's individual program plan. The individual program
20 plan has as its primary focus the development of adaptive
21 behaviors. The controlled procedure approved represents the
22 lowest level of intrusiveness required to influence the target
23 behavior and is not excessively intrusive in relation to the
24 behavior being addressed.
25 B. The proposed use of a controlled procedure is
26 supported by documentation describing how intervention
27 procedures incorporating positive approaches and less intrusive
28 procedures have been tried, how long they were tried in each
29 instance, and possible reasons why they were unsuccessful in
30 controlling the behavior of concern.
31 C. The case manager obtains informed consent for
32 implementing the procedure as specified in part 9525.2780 before
33 the procedure is implemented, except when faradic shock is
34 ordered by a court under part 9525.2730, subpart 3.
35 D. The proposed use of the procedure is reviewed and

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1 approved by the expanded interdisciplinary team as required by
2 subpart 1a.
3 E. If the license holder is licensed under parts
4 9525.0215 to 9525.0355; 9525.1500 to 9525.1690; or 9525.2000 to
5 9525.2140, the proposed use of the procedure is reviewed and
6 approved by an internal review committee that meets the
7 requirements in subpart 2.
8 F. The procedure is implemented and monitored by
9 staff members trained to implement the procedure. The license
10 holder is responsible for providing ongoing training to all
11 staff members responsible for implementing, supervising, and
12 monitoring controlled procedures, to ensure that all staff
13 responsible for implementing the program are competent to
14 implement the procedures. The license holder must provide
15 members of the expanded interdisciplinary team with
16 documentation that staff are competent to implement the
17 procedures. Controlled procedures must not be implemented as
18 part of the individual program plan until staff who are involved
19 in providing supervision or training of the person have been
20 trained to implement all programs contained in the individual
21 program plan.
22 G. Time out procedures must meet the following
23 conditions:
24 (1) When possible, time out procedures must be
25 implemented in the person's own room or other area commonly used
26 as living space rather than in a room used solely for time out.
27 (2) When possible, the person must be returned to
28 the activity from which the person was removed when the time out
29 procedure is completed.
30 (3) Persons in time out must be continuously
31 monitored by staff.
32 (4) Release from time out is contingent on the
33 person's stopping or bringing under control the behavior that
34 precipitated the time out and must occur as soon as the behavior
35 that precipitated the time out abates or stops. If the
36 precipitating behavior has not abated or stopped, staff members

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1 must attempt to return the person to an ongoing activity at
2 least every 30 minutes.
3 (5) If time out is implemented contingent on
4 repeated instances of the target behavior for longer than 30
5 consecutive minutes, the person must be offered access to a
6 bathroom and drinking water.
7 (6) Placement of a person in room time out must
8 not exceed 60 consecutive minutes from the initiation of the
9 procedure.
10 (7) Time out rooms must:
11 (a) provide a safe environment for the
12 person;
13 (b) have an observation window or other
14 device to permit continuous visual monitoring of the person;
15 (c) measure at least 36 square feet and be
16 large enough to allow the person to stand, to stretch the
17 person's arms, and to lie down; and
18 (d) be well lighted, well ventilated, and
19 clean.
20 H. Controlled procedures using manual restraint must
21 meet the following conditions:
22 (1) The person's primary care physician must be
23 consulted to determine whether implementing the procedure is
24 medically contraindicated.
25 (2) The person must be given an opportunity for
26 release from the manual restraint and for motion and exercise of
27 the restricted body parts for at least ten minutes out of every
28 60 minutes.
29 (3) Efforts to lessen or discontinue the manual
30 restraint must be made at least every 15 minutes, unless
31 contraindicated. The time each effort was made and the person's
32 response to the effort must be noted in the person's permanent
33 record.
34 (4) The procedures must comply with other
35 standards in parts 9525.2700 to 9525.2810.
36 I. Controlled procedures using mechanical restraint

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must meet the following conditions:

(1) The person's primary care physician must be consulted to determine whether implementing the procedure is medically contraindicated.

(2) Use of mechanical restraint that results in restriction of two or fewer limbs or that does not restrict the person's movement from one location to another requires the following procedures:

(a) Staff must check on the person every 30 minutes and document that each check was made.

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

(c) Efforts to lessen or discontinue the mechanical restraint must be made at least every 15 minutes. The time each effort was made and the person's response to the effort must be noted in the person's permanent record.

(3) Use of mechanical restraint that results in restriction of three or more of a person's limbs or that restricts the person's movement from one location to another must meet the conditions of subitems (1) and (2) and the following additional conditions:

(a) Efforts to lessen or discontinue the mechanical restraint must be made at least every 15 minutes. The time each effort was made and the person's response to the effort must be noted in the person's permanent record.

(b) A staff member shall remain with a person during the time the person is in mechanical restraint and shall take the action specified in unit (a).

(4) The procedures must comply with other standards in parts 9525.2700 to 9525.2810.

Subp. 1a. **Review and approval by expanded interdisciplinary team.** When an individual program plan proposes using a controlled procedure, or when a substantial change is ~~made~~ proposed, the plan must be reviewed and approved

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1 by the expanded interdisciplinary team.
2 Subp. 2. **Review and approval by internal review**
3 **committee.** A license holder licensed under parts 9525.0215 to
4 9525.0355, 9525.1500 to 9525.1690, or 9525.2000 to 9525.2140,
5 must have at least one committee that reviews all individual
6 program plans proposing the use of controlled procedures. The
7 administrator with overall responsibility for the license
8 holder's policy and program shall appoint the committee. Before
9 approving a plan, the committee shall determine if each plan as
10 submitted meets the requirements of parts 9525.2700 to 9525.2810
11 and all other applicable requirements governing behavior
12 management established by federal regulations or by order of a
13 court. The internal review committee membership must meet the
14 criteria in items A and B.
15 A. The internal review committee must include two
16 individuals employed by the license holder as staff members or
17 consultants. One of the two individuals must be a qualified
18 mental retardation professional with at least one year of direct
19 experience in assessing, planning, implementing, and monitoring
20 behavior intervention programs.
21 B. At least one-third of the committee members must
22 be individuals who have no ownership or controlling interest in
23 the facility and who are not employed by or under contract with
24 the facility in any other capacity besides serving on the
25 committee. This component of the committee membership must
26 include at least one parent or guardian of a person with mental
27 retardation or a related condition.
28 Subp. 2a. **Quarterly reporting.** The license holder must
29 submit data on the use and effectiveness of individual program
30 plans that incorporate the use of controlled procedures
31 identified in subpart 4 to the expanded interdisciplinary team
32 members, the internal review committee, and the regional review
33 committee. The data must be submitted quarterly on forms
34 prescribed by the commissioner. The case manager shall ensure
35 that this information is submitted as required under this
36 subpart.

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1 Subp. 3. [See repealer.]
2 Subp. 4. **Submission of individual program plan to regional**
3 **review committee.** Within ten calendar days of the date that a
4 controlled procedure in items A to D is approved under subpart
5 2, or a substantial change is made, the case manager shall
6 ensure the regional review committee receives a copy of the
7 individual program plan sent by the license holder, that
8 proposes the procedure or that portion of the individual program
9 plan that contains the substantial change, regarding
10 implementation of the following controlled procedures:
11 A. manual restraint;
12 B. mechanical restraint;
13 C. use of a time out procedure for 15 minutes or more
14 at one time or for a cumulative total of 30 minutes or more in
15 one day; or
16 D. faradic shock.

17 9525.2760 REQUIREMENTS FOR INDIVIDUAL PROGRAM PLANS PROPOSING
18 USE OF A CONTROLLED PROCEDURE.
19 Subpart 1. **Requirements.** An individual program plan that
20 includes the use of a controlled procedure must contain the
21 information specified in subparts 2 to 6.
22 Subp. 2. **Assessment information.** When an expanded
23 interdisciplinary team is developing an individual program plan
24 that includes the use of a controlled procedure, the case
25 manager must obtain assessment information that includes the
26 elements specified in items A to F:
27 A. a physical and psychological description of the
28 person;
29 B. a report completed by the person's primary care
30 physician within 90 days before the initial development of the
31 individual program plan that includes the use of a controlled
32 procedure and indicates that the physician has reviewed whether
33 there are existing medical conditions that:
34 (1) could result in the demonstration of behavior
35 for which a controlled procedure might be proposed; or

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by Revisor ____________

(2) should be considered in the development of a program for the person;

C. a baseline measurement of the ~~target~~ behavior ~~for increase and~~ to be increased and the target behavior for decrease or elimination that provides a clear description of the behavior and the degree to which it is being expressed, with enough detail to provide a basis for comparing the ~~target behavior~~ behaviors to be increased and decreased before and after use of the proposed controlled procedure;

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

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

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

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

Subp. 3. [See repealer.]

Subp. 4. **Review and content standards.** An individual program plan that proposes the use of controlled procedures must include the following elements:

A. objectives designed to develop or enhance the adaptive behavior of the person for whom the plan is made, including the change expected in the target behavior and the anticipated time frame for achieving the change;

Approved
by Revisor ________________

1 B. objectives designed to reduce or eliminate the
2 target behavior of the person for whom the plan is made,
3 including the change expected in the ~~target~~ adaptive behavior
4 and the anticipated time frame for achieving the change;
5 C. strategies to increase aspects of the person's
6 behavior that provide an alternative functional adaptive
7 replacement behavior to the behavior identified for reduction or
8 elimination, including when and under what circumstances the
9 procedure will be used;
10 D. strategies to decrease aspects of the person's
11 target behavior, including when and under what circumstances the
12 procedure will be used;
13 E. the projected starting date and completion date
14 for achievement of each objective;
15 F. a detailed description of the ways in which
16 implementation of the procedure will be monitored, by whom, and
17 how frequently, specifying how staff implementing the procedure
18 will be trained and supervised and ensuring that direct on-site
19 supervision of the procedure's implementation is provided by the
20 professional staff responsible for developing the procedure;
21 G. a description of any discomforts, risks, or side
22 effects that it is reasonable to expect;
23 H. a description of the data collection method used
24 to evaluate the effectiveness of the proposed procedures and to
25 monitor expected or unexpected side effects;
26 I. a description of the plan for maintaining and
27 generalizing the positive changes in the person's behavior that
28 may occur as a result of implementing the procedure;
29 J. a description of how implementation of the plan
30 will be coordinated with services provided by other agencies or
31 documentation of why the plan will not be implemented by a
32 particular service provider or in a particular setting;
33 K. a description of how implementation of the plan
34 involves families and friends; and
35 L. the date when use of the controlled procedure will
36 terminate unless, before that date, continued use of the

procedure is approved by the case manager and the member of the expanded interdisciplinary team who is a qualified mental retardation professional with at least one year of experience in assessing, planning, implementing, monitoring, and reviewing behavior management programs. The projected termination date must be no more than ~~365~~ 90 days after the date on which use of the procedure was approved. Reapproval for using the procedure must be obtained at ~~the~~ 90-day intervals ~~identified-in-the individual-program-plan~~, if evaluation data on the target behavior and effectiveness of the procedure support continuation.

Subp. 5. **Monitoring individual program plan.** Monitoring the proposed controlled procedure must be completed as adopted in the individual program plan and in accordance with Minnesota Statutes, section 256B.092, subdivision 1c.

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

9525.2770 EMERGENCY USE OF CONTROLLED PROCEDURES.

Subpart 1. **General requirement.** Implementing a controlled procedure without first meeting the requirements of parts 9525.2750, 9525.2760, and 9525.2780 is permitted only when the emergency use criteria and requirements in subparts 2 to 6 are met.

Subp. 2. **Criteria for emergency use.** Emergency use of controlled procedures must meet the conditions in items A to C.

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

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

Approved
by Revisor ________________

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

Subp. 3. [See repealer.]

Subp. 4. [See repealer.]

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

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

B. the internal procedures that must be followed for emergency use, including the procedure for complying with subpart 6;

C. how the license holder will monitor and control emergency use;

D. the training a staff member must have completed before being permitted by the license holder to implement a controlled procedure under emergency conditions; ~~and~~

E. that the standards in part 9525.2750, subpart 1, items F, G, subitems (1) to (5), H, and I, must be met when controlled procedures are used on an emergency basis; and

F. use of a controlled procedure initiated on an emergency basis according to subpart 4 must not continue for more than 15 days.

Subp. 6. **Reporting and reviewing emergency use.** Any emergency use of a controlled procedure by a license holder governed by parts 9525.2700 to 9525.2810 must be reported and reviewed as specified in items A to E. A license holder shall designate at least one staff member to be responsible for reviewing, documenting, and reporting use of emergency procedures. The designated staff member must be a QMRP.

A. Within three calendar days after an emergency use of a controlled procedure, the staff member who implemented the emergency use shall report in writing to the designated staff member the following information about the emergency use:

(1) a detailed description of the incident

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1 leading to the use of the procedure as an emergency
2 intervention;
3 (2) the controlled procedure that was used;
4 (3) the time implementation began and the time it
5 was completed;
6 (4) the behavioral outcome that resulted;
7 (5) why the procedure used was judged to be
8 necessary to prevent injury or severe property damage; and
9 (6) an assessment of the likelihood that the
10 behavior necessitating emergency use will recur.
11 B. Within seven calendar days after the date of the
12 emergency use of a controlled procedure, the designated staff
13 member shall review the report prepared by the staff member who
14 implemented the emergency procedure and ensure the report is
15 sent to the case manager and expanded interdisciplinary team for
16 review. If the emergency use involved manual restraint,
17 mechanical restraint, or use of exclusionary time out exceeding
18 15 minutes at one time or a cumulative total of 30 minutes or
19 more in a 24-hour period, the designated staff member must
20 ensure the report is sent to the internal review committee
21 within seven calendar days of the emergency use of the
22 controlled procedure.
23 C. Within seven calendar days after the date of
24 receipt of the emergency ~~reported~~ report in item A, the case
25 manager shall confer with members of the expanded
26 interdisciplinary team to:
27 (1) discuss the incident reported in item A to:
28 (a) define the target behavior for reduction
29 or elimination in observable and measurable terminology;
30 (b) identify the antecedent or event that
31 gave rise to the target behavior; and
32 (c) identify the perceived function the
33 target behavior served; and
34 (2) determine what modifications should be made
35 to the existing individual program plan so as to not require the
36 use of a controlled procedure.

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by Revisor ____________

D. An expanded interdisciplinary team meeting must be conducted within 30 calendar days after the emergency use if it is determined that a controlled procedure is necessary and that the target behavior should be identified in the individual program plan for reduction or elimination.

E. The emergency use of a controlled procedure as well as changes made to the adaptive skill acquisition portion of the plan must be incorporated in the individual program plan within 15 calendar days after the expanded interdisciplinary team meeting required under this part. During this time, the designated staff member shall document all attempts to use less restrictive alternatives including:

(1) adaptive skill acquisition procedures currently being used and why they were not successful;

(2) attempts made at less restrictive procedures that failed and why they failed; and

(3) rationale for not attempting the use of other less restrictive alternatives.

The designated staff member must ensure a copy of the report required under item A is sent to the internal review committee and the regional review committee within five working days after the expanded interdisciplinary team meeting.

F. A summary of the interdisciplinary team's decision under items C and E must be added to the person's permanent record.

9525.2780 REQUIREMENTS FOR OBTAINING INFORMED CONSENT.

Subpart 1. [See repealer.]

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

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

B. a controlled procedure for which informed consent has expired. Informed consent must be obtained every 90 days in

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by Revisor ________________

1 order to continue use of the controlled procedure~~;~~ or
2 C. a substantial change in the individual program
3 plan.
4 ~~Informed-consent-must-be-obtained-as-frequently-as-requested-by~~
5 ~~the-legal-representative,-but-must-never-exceed-one-year.--The~~
6 ~~frequency-for-obtaining-informed-consent-must-be-identified-in~~
7 ~~the-individual-program-plan-in-order-to-continue-use-of-the~~
8 ~~controlled-procedure.~~ If the case manager is unable to obtain
9 written informed consent, the procedure must not be implemented.
10 Subp. 3. **Authority to give consent.** Individuals
11 authorized to give informed consent are specified in items A to
12 E.
13 A. If the person has a legal guardian or conservator
14 authorized by a court to give consent for the person, consent is
15 required from the legal guardian or conservator.
16 B. If the person is a child, consent is required from
17 at least one of the child's parents, unless the child has a
18 legal guardian or conservator as specified in item A. If the
19 parents are divorced or legally separated, the consent of the
20 parent with legal custody is required, unless the separation or
21 marriage dissolution decree otherwise delegates authority to
22 give consent for the child.
23 C. If the commissioner is the legal guardian or
24 conservator, consent is required from the county representative
25 designated to act as guardian on the commissioner's behalf.
26 Failure to consent or refuse consent within 30 days of the date
27 on which the procedure requiring consent was approved by the
28 expanded interdisciplinary team is considered a refusal to
29 consent. The county representative designated to act as
30 guardian must not be the same individual who is serving as case
31 manager.
32 D. If the person is an adult who is capable of
33 understanding the information required in subpart 4 and of
34 giving informed consent, informed consent is required from the
35 person.
36 E. If the person is an adult who has no legal

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by Revisor ____________

1 guardian or conservator and who is not capable of giving
2 informed consent, the case manager shall petition a court of
3 competent jurisdiction to appoint a legal representative with
4 authority to give consent, and consent is required from the
5 legal representative.

6 Subp. 4. **Information required to obtain informed consent.**
7 The case manager shall provide the information specified in
8 items A to K to the legal representative as a condition of
9 obtaining informed consent. Consent obtained without providing
10 the information required in items A to K is not considered to be
11 informed consent. The case manager shall document that the
12 information in items A to K was provided orally and in writing
13 and that consent was given voluntarily. The information must be
14 provided in a nontechnical manner and in whatever form is
15 necessary to communicate the information effectively, such as in
16 the person's or the legal representative's native language if
17 the person or the legal representative does not understand
18 English or in sign language if that is the person's or the legal
19 representative's preferred mode of communication, and in a
20 manner that does not suggest coercion. The information must
21 consist of:

22 A. a baseline measurement of the target behavior;

23 B. a detailed description of the proposed procedures
24 and explanation of the procedures' function;

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

29 D. a description of any discomforts, risks, or other
30 side effects that it is reasonable to expect;

31 E. alternative procedures that have been attempted,
32 considered, and rejected as not being effective or feasible;

33 F. the expected effect on the person of not
34 implementing the procedures;

35 G. an offer to answer any questions about the
36 procedures, including the names, addresses, and phone numbers of

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by Revisor ________________

1 people to contact if questions or concerns arise;
2 H. an explanation that the person or the legal
3 representative has the right to refuse consent;
4 I. an explanation that consent may be withdrawn at
5 any time and the procedure will stop upon withdrawal of consent;
6 J. criteria for continuing, modifying, and
7 terminating a procedure; and
8 K. an explanation that:
9 (1) consent is time limited and automatically
10 expires ~~as-specified-in-the-individual-program-plan-and-as~~
11 ~~determined-by-the-person-or-the-person's-legal-representative,~~
12 ~~but-must-never-exceed-one-year~~ <u>90 days after the date on which</u>
13 <u>consent was given</u>;
14 (2) informed consent must again be obtained in
15 order for use of a procedure to continue <u>after the initial</u>
16 <u>90-day period ends</u>; and
17 (3) the legal representative may request
18 additional information related to parts 9525.2700 to 9525.2810
19 and must be provided a copy of the signed informed consent form
20 by the case manager ~~at-least-quarterly-or-more-frequently-as~~
21 ~~specified-in-the-individual-program-plan~~ <u>after it is received</u>.
22 Subp. 5. **Consent for substantial change.** If the expanded
23 interdisciplinary team has approved a substantial change in a
24 procedure for which informed consent is in effect, the change
25 may be implemented only when the case manager first obtains
26 written informed consent for the substantial change by meeting
27 the requirement in subpart 4.
28 Subp. 6. [See repealer.]
29 Subp. 7. **Appeals.** A person or the person's legal
30 representative may initiate an appeal under Minnesota Statutes,
31 section 256.045, subdivision ~~4~~ <u>4a</u>, for issues involving the use
32 of a controlled procedure and related compliance with parts
33 9525.0015 to 9525.0165 and 9525.2700 to 9525.2810. If a court
34 orders the use of faradic shock under part 9525.2730, subpart 3,
35 the action of the court is not appealable under parts 9525.2700
36 to 9525.2810.

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by Revisor ________________

1 9525.2790 REGIONAL REVIEW COMMITTEES.
2 [For text of subpart 1, see M.R.]
3 Subp. 2. **Membership.** Each regional review committee must
4 include:
5 A. at least one member who is licensed as a
6 psychologist by the state of Minnesota and whose areas of
7 training, competence, and experience include mental retardation
8 and behavior management; and
9 B. representation from each of the following
10 categories:
11 (1) license holders governed by parts 9525.2700
12 to 9525.2810;
13 (2) parents or guardians of persons with mental
14 retardation or a related condition;
15 (3) other concerned citizens, none of whom is
16 employed by or has a controlling interest in a program or
17 service governed by parts 9525.2700 to 9525.2810; and
18 (4) the department.
19 When a matter being reviewed by the committee requires the
20 expertise and professional judgment of a medical doctor, the
21 commissioner shall make the services of a licensed physician
22 available to the committee.
23 [For text of subp 3, see M.R.]

24 9525.2800 REPORTING NONCOMPLIANCE.
25 Subpart 1. **Required reporting.** Unauthorized use of
26 aversive and deprivation procedures is subject to the
27 requirements of Minnesota Statutes, sections 626.556 and
28 626.557, which govern reporting of maltreatment of minors and
29 vulnerable adults. For purposes of parts 9525.2700 to
30 9525.2810, "unauthorized use of an aversive or deprivation
31 procedure" means:
32 A. a procedure that is restricted or prohibited under
33 part 9525.2730, subparts 1 and 3; and
34 B. procedures that have not been authorized as
35 required under part 9525.2740, subpart 2.

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by Revisor ________________

1 Individuals are designated as mandated reporters according
2 to Minnesota Statutes, sections 626.556, subdivision 3, and
3 626.557 , subdivision 3.
4 Subp. 2. **Voluntary reporting.** If an individual who is not
5 mandated to report by Minnesota Statutes, section 626.556,
6 subdivision 3 or 626.557, subdivision 3, has reason to believe
7 that a license holder governed by parts 9525.2700 to 9525.2810
8 is not in compliance with parts 9525.2700 to 9525.2810, the
9 concern or complaint may be reported as described in items A and
10 B.
11 A. Compliance-related concerns or complaints about
12 any license holder governed by parts 9525.2700 to 9525.2810 can
13 be reported to: The Department of Human Services, Division of
14 Licensing, 444 Lafayette Road, Saint Paul, Minnesota 55155.
15 B. Compliance-related concerns or complaints about
16 nursing homes to which parts 9525.2700 to 9525.2810 apply or
17 about intermediate care facilities for persons with mental
18 retardation or a related condition may be reported both to the
19 commissioner under item A and to: The Minnesota Department of
20 Health, Office of Health Facility Complaints, 717 Delaware
21 Street S.E., Minneapolis, Minnesota 55440.

22 9525.2810 PENALTY FOR NONCOMPLIANCE.
23 If a license holder governed by parts 9525.2700 to
24 9525.2810 does not comply with parts 9525.2700 to 9525.2810, the
25 commissioner has the authority to take enforcement action
26 pursuant to Minnesota Statutes, chapter 245A and section 252.28,
27 subdivision 2.

28 REPEALER. Minnesota Rules, parts 9525.2710, subparts 14, 16,
29 18, 21, 30, and 33; 9525.2750, subpart 3; 9525.2760, subpart 3;
30 9525.2770, subparts 3 and 4; 9525.2780, subparts 1 and 6, are
31 repealed.

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