

1.1 **Department of Human Services**

1.2 **Proposed Permanent Rules Relating to Medical Assistance; Rehabilitative and**
1.3 **Therapeutic Services**

1.4 **9505.0390 REHABILITATIVE AND THERAPEUTIC SERVICES.**

1.5 Subpart 1. **Definitions.** For purposes of parts 9505.0390 to 9505.0392 and 9505.0410
1.6 to 9505.0412, the following terms have the meanings given them in this part.

1.7 A. "Audiologist" means a person who ~~has a current certificate of clinical~~
1.8 ~~competence in audiology from the American Speech and Hearing Association and, when it~~
1.9 ~~is applicable, who holds the specific~~ maintains state licensure and registration requirements
1.10 ~~for the services the person provides~~ and meets the requirements of Code of Federal
1.11 Regulations, title 42, chapter IV, subchapter C, part 440, subpart A, section 440.110.

1.12 B. ~~"Direction"~~ "Delegation of duties"
means, notwithstanding any other definition
1.13 of direction in parts 9505.0170 to 9505.0475, the actions of a physical or occupational
1.14 therapist who ~~instructs~~ delegates to the physical therapist assistant or the occupational
1.15 therapy assistant in specific duties to be performed, monitors the provision of services as
1.16 the therapy assistants provide the service, ~~provides on-site observation of the treatment~~
1.17 ~~and documentation of its appropriateness at least every sixth treatment session of each~~
1.18 ~~recipient~~ and meets the supervisory requirements of Minnesota Statutes, sections 148.706
1.19 and 148.6432, respectively when treatment is provided by a physical therapist assistant
1.20 or occupational therapy assistant, ~~and meets the other supervisory requirements of parts~~
1.21 ~~5601.1500 and 5601.1600 and Minnesota Statutes, section 148.6432.~~

1.22 C. "Functional status" means the ability of the person to carry out the tasks
1.23 associated with daily living.

1.24 D. "Occupational therapist" means a person who ~~is currently registered by the~~
1.25 ~~American Occupational Therapy Association as an occupational therapist~~ meets the

1.26 requirements of Code of Federal Regulations, title 42, chapter IV, subchapter C, part 440,
2.1 subpart A, section 440.110, and maintains applicable state licensure or is in compliance
2.2 with state regulatory requirements in states that do not license.

2.3 E. "Occupational therapy assistant" means a person who has ~~successfully~~
2.4 ~~completed all academic and field work requirements of an occupational therapy assistant~~
2.5 ~~program approved or accredited by the Accreditation Council for Occupational Therapy~~
2.6 ~~Education and is currently certified by the American Occupational Therapy Certification~~
2.7 ~~Board as~~ been certified by the National Board for Certification in Occupational Therapy
2.8 and maintains applicable state licensure or is in compliance with state regulatory
2.9 requirements in states that do not license an occupational therapy assistant.

2.10 F. "Physical therapist" means a person who is a graduate of a program of physical
2.11 ~~therapy approved by both the Committee on Allied Health Education and Accreditation~~
2.12 ~~of the American Medical Association and the American Physical Therapy Association~~
2.13 accredited by the Commission on Accreditation in Physical Therapy Education or its
2.14 equivalent and, when it is applicable, licensed by the state, meets the requirements of Code
2.15 of Federal Regulations, title 42, chapter IV, subchapter C, part 440, subpart A, section
2.16 440.110, and maintains applicable state licensure or is in compliance with state regulatory
2.17 requirements in states that do not license.

2.18 G. "Physical therapist assistant" means a person who is ~~qualified as specified~~
2.19 ~~in part 5601.0100, subpart 3.~~ has successfully completed all academic and field work
2.20 requirements of a physical therapist assistant program accredited by the Commission on
2.21 Accreditation in Physical Therapy Education, and maintains applicable state licensure or
2.22 is in compliance with state regulatory requirements in states that do not license.

2.23 H. "Rehabilitative and therapeutic
2.24 services" means restorative therapy, specialized
maintenance therapy, and rehabilitative nursing services.

2.25 I. "Rehabilitative nursing services" means rehabilitative nursing care as specified
2.26 in part 4658.0525.

3.1 J. "Restorative therapy" means a health service that is specified in the recipient's
3.2 plan of care and certified by a physician or other licensed practitioner of the healing arts
3.3 within the practitioner's scope of practice under state law ~~and that~~ the service is designed
3.4 to restore the recipient's functional status to a level consistent with the recipient's physical
3.5 or mental limitations.

3.6 K. "Specialized maintenance therapy" means a health service that is specified in
3.7 the recipient's plan of care and certified by a physician or other licensed practitioner of the
3.8 healing arts within the practitioner's scope of practice under state law that is necessary
3.9 for maintaining a recipient's functional status at a level consistent with the recipient's
3.10 physical or mental limitations, and that may include treatments in addition to rehabilitative
3.11 nursing services.

3.12 L. "Speech-language pathologist" means a person completing the clinical
3.13 fellowship year required for certification as a speech-language pathologist, or a person
3.14 who has a certificate of clinical competence in speech-language ~~pathologies~~ pathology
3.15 from the American ~~Speech and Hearing~~ Speech-Language-Hearing Association and, when
3.16 it is applicable, ~~meets the specific~~ maintains state licensure and registration requirements
3.17 for the services the person provides. ~~or is in compliance with state regulatory requirements~~
3.18 in states that do not license and meets the requirements of Code of Federal Regulations,
3.19 title 42, chapter IV, subchapter C, part 440, subpart A, section 440.110.

3.20 Subp. 2. **Covered service; occupational therapy and physical therapy.** To be
3.21 eligible for medical assistance payment as a rehabilitative and therapeutic service,
3.22 occupational therapy and physical therapy must be:

3.23 A. prescribed by a physician or other licensed practitioner of the healing arts
3.24 within the practitioner's scope of practice under state law;

3.25 B. provided by a physical or occupational therapist or by a physical therapist
3.26 assistant or occupational therapy assistant who, as appropriate, is under the ~~direction~~
4.1 supervision of a physical or occupational therapist as defined in part 9505.0390, subpart 1,
4.2 items D to G;

4.3 C. provided to a recipient whose functional status is expected by the physician or
4.4 other licensed practitioner of the healing arts within the practitioner's scope of practice
4.5 under state law to progress toward or achieve the objectives in the recipient's plan of
4.6 care within a ~~60-day~~ 90-day period; and

4.7 D. specified in a plan of care that is reviewed, and revised as medically necessary,
4.8 by the recipient's attending physician or other licensed practitioner of the healing arts
4.9 within the practitioner's scope of practice under state law at least once every ~~60 days~~
4.10 ~~unless the service is a Medicare covered service and is to a recipient who also is eligible~~
4.11 ~~for Medicare~~ 90 days. If the service is provided to a recipient who ~~also is also~~ eligible for
4.12 Medicare and the service is a Medicare covered service, the plan of care must be reviewed
4.13 ~~at the intervals required by Medicare and the recipient must be visited by the physician or~~
4.14 ~~by the physician delegate as required by Medicare.~~ in compliance with Code of Federal
4.15 Regulations, title 42, chapter IV, subchapter G, part 485, subpart H, section 485.711.

4.16 Subp. 3. **Covered service; speech-language service.** To be eligible for medical
4.17 assistance payment as a rehabilitative and therapeutic service, a speech-language service
4.18 must be:

4.19 A. provided upon written referral by a physician or other licensed practitioner of
4.20 the healing arts within the practitioner's scope of practice under state law or in the case
4.21 of a resident of a long-term care facility, on the written order of a physician as specified
4.22 in Code of Federal Regulations, title 42, section 483.45;

4.23 B. provided by a speech-language pathologist. ~~A person completing the clinical~~
4.24 ~~fellowship year required for certification as a speech-language pathologist may provide~~

4.25 ~~speech-language services under the supervision of a speech-language pathologist as~~
4.26 ~~specified in Minnesota Statutes, section 148.515, subdivision 4, but shall not be eligible~~
5.1 ~~to be enrolled as a provider under part 9505.0195; as defined in part 9505.0390, subpart~~
5.2 ~~1, item L;~~

5.3 C. provided to a recipient whose functional status is expected by the physician or
5.4 other licensed practitioner of the healing arts within the practitioner's scope of practice
5.5 under state law to progress toward or achieve the objectives in the recipient's plan of
5.6 care within a ~~60-day~~ 90-day period; and

5.7 D. specified in a plan of care that is reviewed, and revised as medically necessary,
5.8 by the recipient's attending physician or other licensed practitioner of the healing arts
5.9 within the practitioner's scope of practice under state law at least once every ~~60~~ 90 days
5.10 unless the service is a Medicare covered service and is to a recipient who also is eligible
5.11 for Medicare. If the service is to a recipient who also is eligible for Medicare and the
5.12 service is a Medicare covered service, the plan of care must be reviewed ~~at the intervals~~
5.13 ~~required by Medicare and the recipient must be visited by the physician or by the physician~~
5.14 ~~delegate as required by Medicare.~~ in compliance with Code of Federal Regulations, title
5.15 42, chapter IV, subchapter G, part 485, subpart H, section 485.711.

5.16 Subp. 4. **Covered service; audiology.** To be eligible for medical assistance payment
5.17 as a rehabilitative and therapeutic service, an audiology service must be:

5.18 A. provided upon written referral by a physician or other licensed practitioner of
5.19 the healing arts within the practitioner's scope of practice under state law;

5.20 B. provided by an audiologist. ~~A person completing the clinical fellowship year~~
5.21 ~~required for certification as an audiologist may provide audiological services under the~~
5.22 ~~supervision of an audiologist but shall not be enrolled as a provider under part 9505.0195;~~
5.23 ~~as defined in part 9505.0390, subpart 1, item A;~~

5.24 C. provided to a recipient whose functional status is expected by the physician or
5.25 other licensed practitioner of the healing arts within the practitioner's scope of practice
6.1 under state law to progress toward or achieve the objectives in the recipient's plan of
6.2 care within a ~~60-day~~ 90-day period; and

6.3 D. specified in a plan of care that is reviewed, and revised as medically necessary,
6.4 by the recipient's attending physician or other licensed practitioner of the healing arts
6.5 within the practitioner's scope of practice under state law at least once every ~~60~~ 90 days
6.6 unless the service is a Medicare covered service and is to a recipient who also is eligible
6.7 for Medicare. If the service is to a recipient who also is eligible for Medicare and the
6.8 service is a Medicare covered service, the plan of care must be reviewed ~~at the intervals~~
6.9 ~~required by Medicare and the recipient must be visited by the physician or by the physician~~
6.10 ~~delegate as required by Medicare.~~ in compliance with Code of Federal Regulations, title
6.11 42, chapter IV, subchapter G, part 485, subpart H, section 485.711.

6.12 Subp. 5. **Covered service; specialized maintenance therapy.** To be eligible for
6.13 medical assistance payment, specialized maintenance therapy must:

6.14 A. be provided by a physical therapist, physical therapy assistant, occupational
6.15 therapist, occupational therapy assistant, or speech-language pathologist;

6.16 B. be specified in a plan of care that is reviewed, and revised as medically
6.17 necessary, by the recipient's physician or other licensed practitioner of the healing arts
6.18 within the practitioner's scope of practice under state law at least once every ~~60~~ 90
6.19 days unless the service is a Medicare covered service and is to a recipient who also is
6.20 eligible for Medicare. If the service is to a recipient who also is eligible for Medicare
6.21 and the service is a Medicare covered service, the plan of care must be reviewed at the
6.22 intervals required by Medicare and the recipient must be visited by the physician or by the
6.23 physician delegate as required by Medicare;

6.24 C. be provided to a recipient whose condition cannot be maintained or treated
6.25 only through rehabilitative nursing services or services of other care providers, or by the
6.26 recipient because the recipient's physical, cognitive, or psychological deficits result in:

7.1 (1) spasticity or severe contracture
that interferes with the recipient's activities
7.2 of daily living or the completion of routine nursing care, or decreased functional ability
7.3 compared to the recipient's previous level of function;

7.4 (2) a chronic condition that results in physiological deterioration and that
7.5 requires specialized maintenance therapy services or equipment to maintain strength,
7.6 range of motion, endurance, movement patterns, activities of daily living, cardiovascular
7.7 function, integumentary status, or positioning necessary for completion of the recipient's
7.8 activities of daily living, or decreased abilities relevant to the recipient's current
7.9 environmental demands; or

7.10 (3) health and safety risks for the recipient;

7.11 D. have expected outcomes that are
functional, realistic, relevant, and transferable
7.12 to the recipient's current or anticipated environment, such as home, school, community,
7.13 and work, and be consistent with community standards; and

7.14 E. meet at least one of the criteria in subitems (1) to (3):

7.15 (1) prevent deterioration and sustain function;

7.16 (2) provide interventions, in the
case of a chronic or progressive disability, that
7.17 enable the recipient to live at the recipient's highest level of independence; or

7.18 (3) provide treatment interventions
for recipients who are progressing but not
7.19 at a rate comparable to the expectations of restorative care.

7.20 Subp. 6. **Payment for rehabilitative nursing service in long-term care facility.**
7.21 Medical assistance payment for a rehabilitative nursing service in a long-term care facility
7.22 is subject to the conditions in parts 9549.0010 to 9549.0080 and 9553.0010 to 9553.0080.

7.23 Subp. 7. **Payment limitation; therapy assistants and aides.** To be eligible for
7.24 medical assistance payment on a fee-for-service basis, delegated health services provided
7.25 by therapy assistants must be provided under the ~~direction~~ supervision of a physical or
8.1 occupational therapist. Services of a therapy aide in a long-term care facility are not
8.2 separately reimbursable on a fee for service basis. Services of a therapy aide in a setting
8.3 other than a long-term care facility are not reimbursable.

8.4 Subp. 8. **Excluded restorative and specialized maintenance therapy services.**
8.5 Restorative and specialized maintenance therapy services in items A to K are not eligible
8.6 for medical assistance payment:

8.7 A. physical or occupational therapy that is provided without a prescription of a
8.8 physician or other licensed practitioner of the healing arts within the practitioner's scope
8.9 of practice under state law;

8.10 B. speech-language or audiology
service that is provided without a written referral
8.11 from a physician or other licensed practitioner of the healing arts within the practitioner's
8.12 scope of practice under state law;

8.13 C. services provided by a long-term care facility that are included in the costs
8.14 covered by the per diem payment under parts 9549.0010 to 9549.0080 and 9553.0010 to
8.15 9553.0080 including:

8.16 (1) services for contractures that are not severe and do not interfere with the
8.17 recipient's functional status or the completion of nursing care as required for licensure of
8.18 the long-term care facility;

8.19 (2) ambulation of a recipient who has an established functional gait pattern;

8.20 (3) services for conditions of chronic pain that does not interfere with the
8.21 recipient's functional status and that can be managed by routine nursing measures;

8.22 (4) services for activities of daily living when performed by the therapist,
8.23 therapist assistant, or therapy aide; and

8.24 (5) bowel and bladder retraining programs;

8.25 D. arts and crafts activities for the purpose of recreation;

9.1 E. service that is not medically necessary;

9.2 F. service that is not documented in the recipient's health care record;

9.3 G. service specified in a plan of care that is not reviewed, and revised as medically
9.4 necessary, by the recipient's attending physician or other licensed practitioner of the healing
9.5 arts within the practitioner's scope of practice under state law as required in subparts 2 to 5;

9.6 H. service that is not designed to improve or maintain the functional status of a
9.7 recipient with a physical impairment or a cognitive or psychological deficit;

9.8 I. service that is not part of the recipient's plan of care;

9.9 J. service by more than one provider of the same type of rehabilitative and
9.10 therapeutic services, for the same diagnosis unless the service is provided by a school
9.11 district as specified in the recipient's individualized education program under Minnesota
9.12 Statutes, section 256B.0625, subdivision 26; and

9.13 K. service that is provided by a rehabilitation agency as defined in part 9505.0385,
9.14 subpart 1, item B, and that takes place in a sheltered workshop, in a developmental

9.15 achievement center as defined in part 9525.1210, subpart 8, or service at a residential or
9.16 group home which is an affiliate of the rehabilitation agency.

9.17 **9505.0391 THERAPISTS ELIGIBLE TO ENROLL AS PROVIDERS.**

9.18 A physical therapist, an occupational therapist, an audiologist, or a speech-language
9.19 pathologist is eligible to enroll as a provider if the therapist complies with the requirements
9.20 of part 9505.0195. Additionally, a physical therapist ~~or~~ occupational therapist,
9.21 audiologist, or speech-language pathologist must be enrolled by Medicare.

10.1 **9505.0412 REQUIRED DOCUMENTATION OF REHABILITATIVE AND**
10.2 **THERAPEUTIC SERVICES.**

10.3 A rehabilitative or therapeutic service provided under parts 9505.0385, 9505.0386,
10.4 9505.0390, 9505.0391, 9505.0395, 9505.0410, and 9505.0411 must be documented as
10.5 specified in items A to D.

10.6 A. The service must be specified in the recipient's plan of care that is reviewed and
10.7 revised as medically necessary by the recipient's physician at least once every ~~60~~ 90 days.
10.8 ~~However,~~ If the service is to a recipient who is also eligible for Medicare and the service is
10.9 a Medicare covered service, the plan of care must be reviewed ~~at the intervals required by~~
10.10 ~~Medicare and the recipient must be visited by a physician or by the physician delegate as~~
10.11 ~~required by Medicare.~~ in compliance with Code of Federal Regulations, title 42, chapter
10.12 IV, subchapter G, part 485, subpart H, section 485.711.

10.13 B. The recipient's plan of care must state:

10.14 (1) the recipient's medical and
10.15 treatment diagnosis and any contraindications to
10.16 treatment;

10.16 (2) a description of the recipient's functional status;

10.17 (3) the objectives of the rehabilitative and therapeutic service; and

10.18 (4) a description of the recipient's progress toward the objectives in
subitem (3).

10.19 C. The recipient's plan of care must be signed by the recipient's physician or other
10.20 licensed practitioner of the healing arts.

10.21 D. The record of the recipient's service must show:

10.22 (1) the date, type, length, and scope
of each rehabilitative and therapeutic service
10.23 provided to the recipient;

10.24 (2) the name or names and titles of the persons providing each rehabilitative
10.25 and therapeutic service;

11.1 (3) the name or names and titles of the persons supervising or directing the
11.2 provision of each rehabilitative and therapeutic service; and

11.3 (4) ~~a statement,~~ documented
evidence of progress at least every 30 days, by the
11.4 therapist providing or supervising the services, other than an initial evaluation, that the
11.5 therapy's nature, scope, duration, and intensity are appropriate to the medical condition of
11.6 the recipient in accordance with Minnesota Statutes, section 256B.433, subdivision 2.