Below is the current Minnesota rule known as "Rule 40" with revisions reflecting the proposed "Quality Outcome Standards and Safeguards for Behavior Supports" Deletions are lined out and new language is in italics. Draft 12-23-10

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 a ~~developmental~~ disability and who are served by a license holder licensed by the commissioner under Minnesota Statutes, chapter 245A and section 252.28, subdivision 2.

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

The standards and requirements set by parts 9525.2700 to 9525.2810:

A.

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

B.

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

C.

~~control the use of aversive and deprivation procedures permitted under parts 9525.2700 to 9525.2810 by requiring development of an individual service plan, development of an individual program plan, informed consent from the person or the person's legal representative, and review and approval by the expanded interdisciplinary team and internal review committee;~~

D.

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

E.

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

Subp. 2.

Applicability.

Parts 9525.2700 to 9525.2810 govern the use of aversive and deprivation procedures with persons who have a ~~developmental~~ disability when those persons are served by a license holder:

A.

licensed under parts 9525.1500 to 9525.1690 to provide training and habilitation services to adults with a developmental disability;

B.

licensed under parts 9525.0215 to 9525.0355 as a residential program for persons with a developmental disability. If a requirement of parts 9525.0215 to 9525.0355 differs from a requirement in Code of Federal Regulations, title 42, sections 483.400 to 483.480, an intermediate care facility for persons with a developmental disability shall comply with the rule or regulation that sets the more stringent standard;

C.

licensed under parts 9525.2000 to 9525.2140 to provide residential-based habilitation services;

D.

licensed under parts 9503.0005 to 9503.0175 and 9545.0750 to 9545.0855 to provide services to children with a developmental disability;

E.

licensed under parts 9555.9600 to 9555.9730 as an adult day care center;

F.

licensed under parts 9555.5105 to 9555.6265 to provide foster care for adults or under part 9545.0010 to 9545.0260 to provide foster care for children; or

G.

licensed for any other service or program requiring licensure by the commissioner as a residential or nonresidential program serving persons with a ~~developmental~~ disability, as specified in Minnesota Statutes, section 245A.02.

Subp. 3.

Exclusion.

Parts 9525.2700 to 9525.2810 do not apply to:

A.

treatments defined in parts 9515.0200 to 9515.0700 governing the administration of specified therapies to committed patients residing at regional centers; or

B.

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

Exemption

License holders serving individuals who have an approved controlled procedure program allowing the use of room time out are exempted from the prohibition on room time out for a period not to exceed two years from the implementation date of the revised standards. This exemption is intended only to minimize loss of community placement for an individual where the Team supports the continuation of room time out as a necessary procedure to maintain the least restrictive supports. Exempted license holders cannot propose new aversive or deprivation procedures and must follow the revised standards for all other clients. During the exemption period, license holders must continue to follow all standards from parts 9525.2700 to 9525.2810 *governing the use of room time out prior to its prohibition.*

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 a developmental disability or by that person's legal representative, to speak on the person's behalf and help the person understand and make informed choices regarding identification of needs and choices of services and supports.

Subp. 4.

Aversive procedure.

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

Subp. 5.

Aversive stimulus.

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

~~Subp. 6.~~

~~**Baseline measurement.**~~

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

Subp. 7.

Case manager.

"Case manager" means the individual designated by the county board under parts 9525.0004 to 9525.0036 to provide case management.

Subp. 8.

Commissioner.

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

Subp. 9.

~~**Controlled procedure.**~~

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

Subp. 10.

Nonresidential program.

"Nonresidential program" means a nonresidential program as defined in Minnesota Statutes, section 245A.02, subdivision 10.

Subp. 11.

Department.

"Department" means the Minnesota Department of Human Services.

Subp. 12.

Deprivation procedure.

"Deprivation procedure" ~~means the removal of a positive reinforcer following a response resulting in, or intended to result in, a decrease in the frequency, duration, or intensity of that response. Often times the positive reinforcer available is goods, services, or activities to which the person is normally entitled. The removal is often in the form of a delay or postponement of the positive reinforcer~~. *means the removal of goods, services, or activities to which the person is normally entitled following a behavior resulting in, or intended to result in, a decrease in the frequency, duration, or intensity of that behavior.*

Subp. 13.

Emergency use.

"Emergency use" means using ~~a controlled~~ *aversive* procedure ~~without first meeting the requirements in parts 9525.2750, 9525.2760, and 9525.2780~~ when it can be documented under part 9525.2770 that immediate intervention is necessary to protect a person or other individuals from physical injury or to prevent severe property damage which is an immediate threat to the physical safety of the person or others, *and that the action is not punitive in intent*.

~~Subp. 14a.~~

~~**Expanded interdisciplinary team.**~~

~~"Expanded interdisciplinary team" means a team composed of the case manager; the person with a developmental disability; the person's legal representative and advocate, if any; representatives of providers of residential, day training and habilitation, and support services identified in the person's individual service plan; a health professional, if the person with a developmental disability has overriding medical needs; and a qualified mental retardation professional. The qualified mental retardation professional must have at least one year of direct experience in assessing, planning, implementing, and monitoring a plan that includes a behavior-intervention program.~~

Subp. 15.

Faradic shock.

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

Subp. 16a.

Individual program plan.

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

Subp. 16b.

Individual service plan.

"Individual service plan" means the written plan developed by the service planning team containing the components required under Minnesota Statutes, section 256B.092.

Subp. 17.

~~**Informed consent.**~~

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

~~Subp. 18.~~

~~[Repealed, 18 SR 1141]~~

Subp. 19.

Intermediate care facility for persons with a developmental disability or ICF/DD.

"Intermediate care facility for persons with a developmental disability" or "ICF/DD" means a program licensed under Minnesota Statutes, sections 245A.01 to 245A.16 and 252.28, subdivision 2, to provide services to persons with a developmental disability 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 a developmental disability.

Subp. 19a.

Internal review committee.

"Internal review committee" means the committee responsible ~~under part 9525.2750, subpart 2~~, for the review and approval of ~~individual program plans proposing the use of controlled procedures~~ *emergency use procedures*.

Subp. 20.

Legal representative.

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

Subp. 21.

[Repealed, 18 SR 1141]

Subp. 21a.

License holder.

"License holder" has the meaning given in Minnesota Statutes, section 245A.02, subdivision 9.

Subp. 22.

Manual restraint.

"Manual restraint" means physical intervention intended to hold a person immobile or limit a person's movement by using body contact as the only source of physical restraint. The term does not mean physical contact used to: (1) facilitate a person's completion of a task or response when the person does not resist or the person's resistance is minimal in intensity and duration; (2) escort or carry a person to safety when the person is in danger; *(3) block and redirect aggressive blows,* or (4) conduct necessary medical examinations or treatments.

Subp. 23.

Mechanical restraint.

"Mechanical restraint" means the use of devices such as mittens, straps, restraint chairs, or papoose boards to limit a person's movement or hold a person immobile as an intervention precipitated by a person's behavior. The term does not apply to mechanical restraint used to treat a person's medical needs, to protect a person known to be at risk of injury resulting from lack of coordination or frequent loss of consciousness, or to position a person with physical disabilities in a manner specified in the person's individual program plan. The term does apply to, and parts 9525.2700 to 9525.2810 do govern, mechanical restraint when it is used to prevent injury with persons who engage in behaviors, such as head-banging, gouging, or other actions resulting in tissue damage, that have caused or could cause medical problems resulting from the self-injury.

Punishment Procedures

The application of aversive or deprivation procedures as a penalty for a person's perceived wrongdoing, with the intent of retribution and/or as part of training. The term applies to both formally defined actions in a behavior program and informally determined actions by the license holder.

Subp. 24.

~~Person with a developmental disability or person.~~

~~"Person with a developmental disability" or "person" means a person who has been determined to meet the diagnostic requirements under parts 9525.0004 to 9525.0036.~~

Subp. 25.

Positive practice overcorrection.

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

Subp. 26.

Positive reinforcement.

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

Subp. 27.

Qualified mental retardation professional or QMRP.

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

Subp. 28.

~~**Regional center.**~~

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

Subp. 29.

~~**Regional review committee.**~~

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

Subp. 30.

[Repealed, 18 SR 1141]

Subp. 31.

Restitutional overcorrection.

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

Subp. 32.

Seclusion.

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

A. noncontingent on the person's behavior; or

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

Subp. 33.

[Repealed, 18 SR 1141]

Subp. 33a.

~~**Substantial change.**~~

~~"Substantial change" means a change in the individual program plan that intensifies the intrusiveness of the controlled procedure by:~~

~~A. expanding, adding, or replacing in any way:~~

~~(1) the target behaviors for which the controlled procedure is to be implemented; or~~

~~(2) the type of controlled procedure;~~

~~B. the method of implementation;~~

~~C. the criteria for change or the criteria for termination of implementation of the controlled procedure; or~~

~~D. deleting without replacing a target behavior.~~

Subp. 34.

Target behavior.

"Target behavior" means a behavior identified in a person's individual program plan as the object of efforts intended to reduce or eliminate the behavior.

Subp. 35.

The Team: *means the person receiving service's designated support team consisting of the following; the person, case manager, legal representative (if any), involved family or friends chosen by the individual, service providers.*

Time out or time out from positive reinforcement.

"Time out" or "time out from positive reinforcement" means removing a person from the opportunity to gain positive reinforcement and is employed when a person demonstrates a behavior identified in the individual program plan for reduction or elimination. Return of the person to normal activities from the time out situation is contingent upon the person's demonstrating more appropriate behavior. Time out periods are usually brief, lasting only several minutes. *Time out does not include positive procedures where the person is directed away from an environment or activity that is*

creating an escalation of the behavior to another area where preferred activities and positive reinforcement are available, even when the person is prevented from returning to the environment that was creating an immediate threat of harm to the person or others. Time out procedures governed by parts 9525.2700 to 9525.2810 are:

A.

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

B.

"room time out," which means removing a person from an ongoing activity to an unlocked room. The person may be prevented from leaving a time out room by staff members but not by mechanical restraint or by the use of devices or objects positioned to hold the door closed.

9525.2715

Behavior Assessment And Plan	*As part of the planning process the license holder will assure that each person served has had an assessment of behaviors that may interfere with the person's quality of life.* *The Team will determine the level of risk and intervention for behaviors identified, and will document this in the service plan.* *Behaviors determined to put the person at risk for harm must be identified with interventions in the person's risk management plan.* *Behaviors determined to put the person, or others, at risk of injury or serious harm must be addressed in a written Behavior Support Plan.*

Behavior Support Plan	*Prior to the development of the BSP a functional analysis of the identified behaviors must be completed that identifies the variables that predict and maintain these behaviors.* *The BSP must include;* • *A description of the behavior in observable and measureable terms* • *A behavioral objective and data collection method to assess progress towards that objective* • *Proactive strategies that may include, modifications to physical and social environments, teaching of alternative skills and behavior, and positive reinforcement programs intended to reduce the occurrence of the targeted behavior* • *Reactive strategies that define a consistent response to behavior occurrences, both reducing reinforcing consequences and de-escalating the situation safely Defined reactive strategies must include alternatives to alternatives to calling 911* *The BSP must be person-centered, using only positive procedures and/or procedures exempted under "Exempted Actions and Procedures" below. The BSP must be approved by the person and/or legal representative, and case manager.*

9525.2720 EXEMPTED ACTIONS AND PROCEDURES.

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

A.

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

B.

Physical contact to facilitate a person's completion of a task or response and directed at increasing adaptive behavior when the person does not resist or the person's resistance is minimal in intensity and duration, ~~as determined by the expanded interdisciplinary team~~ *as determined by the 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. *Physical contact to redirect behavior must be defined in the Behavior Support Plan and be approved by the Team.*

D.

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

E.

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

F.

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

G.

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

H.

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

I.

Seat belt restraints used in moving vehicles in conditions where seat belt use is required by law

J.

The use of physical contact or barriers, such as a door, to block a person's attempt to harm someone or put themselves in danger when the block lasts less than 60 seconds. This exemption may not be used to circumvent the prohibition on the use of room time out.

9525.2730 PROCEDURES AND ACTIONS RESTRICTED OR PROHIBITED.

Subpart 1.

Restrictions.

An aversive or deprivation procedure must not:

A.

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

B.

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

C.

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

D.

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

Subp. 2.

Prohibitions.

~~The actions or procedures listed in items A to I are prohibited:~~ *The following procedures are prohibited as part of a formal program, a BSP, or any informal action by the license holder;*

- *All punishment procedures not exempted under "Exempted Actions and Procedures" below*

A.

using corporal punishment such as hitting, pinching, or slapping;

B.

speaking to a person in a manner that ridicules, demeans, threatens, or is abusive;

C.

requiring a person to assume and maintain a specified physical position or posture as an aversive procedure, for example, requiring a person to stand with the hands over the person's head for long periods of time or to remain in a fixed position;

D.

placing a person in seclusion, *or room time out,*

E.

totally or partially restricting a person's senses, except as expressly permitted in part 9525.2740, subpart 1;

F.

presenting intense sounds, lights, or other sensory stimuli as an aversive stimulus;

G.

using a noxious smell, taste, substance, or spray, including water mist, as an aversive stimulus;

~~H.~~

~~using room time out in emergency situations; and~~

I.

denying or restricting a person's access to equipment and devices such as walkers, wheelchairs, hearing aids, and communication boards that facilitate the person's functioning. When the temporary removal of the equipment or device is necessary to prevent injury to the person or others or serious damage to the equipment or device, the equipment or device must be returned to the person as soon as possible;

J.

Using manual restraint as punishment or in a non-emergency situation,

K.

Using prone hold manual restraint that puts weight or direct pressure on a person’s chest, diaphragm, neck, or head,

L.

Using mechanical restraint as punishment or as an emergency use procedure,

M.

Using overcorrection procedures,

N.

Using deprivation as an aversive or punishment procedure, unless ordered by a court of law,

O.

Using faradic.

Subp. 3.

Faradic shock.

Emergency use of faradic shock as an aversive stimulus is prohibited. Use of faradic shock as an aversive stimulus is permitted only when all of the following conditions are met:

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

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

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

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

E. a plan is in effect to reduce and eliminate the use of faradic shock with the person receiving it.

9525.2740 PROCEDURES PERMITTED AND CONTROLLED.

Subpart 1.

Controlled procedures.

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

~~A. exclusionary and room time out procedures;~~

~~B. positive practice overcorrection;~~

~~C. restitutional overcorrection;~~

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

~~E. manual restraint;~~

~~F. mechanical restraint; and~~

~~G. deprivation as defined in part 9525.2710, subpart 12.~~

~~Subp. 2.~~

~~**Authorization for procedures not specified as exempted, restricted, prohibited, or controlled.**~~

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

~~**9525.2750 STANDARDS FOR CONTROLLED PROCEDURES.**~~

~~Subpart 1.~~

~~**Standards and conditions.**~~

~~Except in an emergency governed by part 9525.2770, use of a controlled procedure may occur only when the controlled procedure is based upon need identified in the individual service plan and is proposed, approved, and implemented as part of an individual program plan. Use of a controlled procedure within an individual program plan must comply with items A to I.~~

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

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

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

D.The proposed use of the procedure is reviewed and approved by the expanded interdisciplinary team as required by subpart 1a.

E.if the license holder is licensed under parts 9525.0215 to 9525.0355; 9525.1500 to 9525.1690; or 9525.2000 to 9525.2140, the proposed use of the procedure is reviewed and approved by an internal review committee that meets the requirements in subpart 2.

F.The procedure is implemented and monitored by staff members trained to implement the procedure. The license holder is responsible for providing ongoing training to all staff members responsible for implementing, supervising, and monitoring controlled procedures, to ensure that all staff responsible for implementing the program are competent to implement the procedures. The license holder must provide members of the expanded interdisciplinary team with documentation that staff are competent to implement the procedures. Controlled procedures must not be implemented as part of the individual program plan until staff who are involved in providing supervision or training of the person have been trained to implement all programs contained in the individual program plan.

G.Time out procedures must meet the following conditions:

(1)When possible, time out procedures must be implemented in the person's own room or other area commonly used as living space rather than in a room used solely for time out.

(2)When possible, the person must be returned to the activity from which the person was removed when the time out procedure is completed.

(3)Persons in time out must be continuously monitored by staff.

(4)Release from time out is contingent on the person's stopping or bringing under control the behavior that precipitated the time out and must occur as soon as the behavior that precipitated the time out abates or stops. If the precipitating behavior has not abated or stopped, staff members must attempt to return the person to an ongoing activity at least every 30 minutes.

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

(6)Placement of a person in room time out must not exceed 60 consecutive minutes from the initiation of the procedure.

(7)Time out rooms must:

(a)provide a safe environment for the person;

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

(c)measure at least 36 square feet and be large enough to allow the person to stand, to stretch the person's arms, and to lie down; and

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

H.Controlled procedures using manual restraint must meet the following conditions:

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

(2)The person must be given an opportunity for release from the manual restraint and for motion and exercise of the restricted body parts for at least ten minutes out of every 60 minutes.

~~(3)Efforts to lessen or discontinue the manual restraint must be made at least every 15 minutes, unless contraindicated. The time each effort was made and the person's response to the effort must be noted in the person's permanent record.~~

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

~~I.Controlled procedures using mechanical restraint must meet the following conditions:~~

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

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

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

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

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

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

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

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

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

~~Subp. 1a.~~

~~**Review and approval by expanded interdisciplinary team.**~~

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

Subp. 2.

Review and approval by internal review committee.

A license holder licensed under parts 9525.0215 to 9525.0355, 9525.1500 to 9525.1690, or 9525.2000 to 9525.2140, must have at least one committee that reviews all individual program plans proposing the use of controlled procedures. The administrator with overall responsibility for the license holder's policy and program shall appoint the committee. Before approving a plan, the committee shall determine if each plan as submitted meets the requirements of parts 9525.2700 to 9525.2810 and all other applicable requirements governing behavior management established by federal regulations or by order of a court. The internal review committee membership must meet the criteria in items A and B.

A.The internal review committee must include two individuals employed by the license holder as staff members or consultants. One of the two individuals must be a qualified mental retardation professional with at least one year of direct experience in assessing, planning, implementing, and monitoring behavior intervention programs.

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

Subp. 2a.

Quarterly reporting.

The license holder must submit data on the use and effectiveness of individual program plans that incorporate the use of controlled procedures identified in subpart 4 to the expanded interdisciplinary team members, the internal review committee, and the regional review committee. The data must be submitted quarterly on forms prescribed by the commissioner. The case manager shall ensure that this information is submitted as required under this subpart.

Subp. 3.

[Repealed, 18 SR 1141]

~~Subp. 4.~~

~~**Submission of individual program plan to regional review committee.**~~

~~Within ten calendar days of the date that a controlled procedure in items A to D is approved under subpart 2, or a substantial change is made, the case manager shall ensure the regional review committee receives a copy of the individual program plan sent by the license holder, that proposes the procedure or that portion of the individual program plan that contains the substantial change, regarding implementation of the following controlled procedures:~~

~~A.manual restraint;~~

~~B.mechanical restraint;~~

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

~~D.faradic shock.~~

~~9525.2760 REQUIREMENTS FOR INDIVIDUAL PROGRAM PLANS PROPOSING USE OF A CONTROLLED PROCEDURE.~~

~~Subpart 1.~~

~~**Requirements.**~~

~~An individual program plan that includes the use of a controlled procedure must contain the information specified in subparts 2 to 6.~~

~~Subp. 2.~~

~~**Assessment information.**~~

~~When an expanded interdisciplinary team is developing an individual program plan that includes the use of a controlled procedure, the case manager must obtain assessment information that includes the elements specified in items A to F:~~

~~A.a physical and psychological description of the person;~~

~~B.a report completed by the person's primary care physician within 90 days before the initial development of the individual program plan that includes the use of a controlled procedure~~

~~and indicates that the physician has reviewed whether there are existing medical conditions that:~~

~~(1)could result in the demonstration of behavior for which a controlled procedure might be proposed; or~~

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

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

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

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

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

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

~~Subp. 3.~~

~~[Repealed, 18 SR 1141]~~

~~Subp. 4.~~

~~**Review and content standards.**~~

~~An individual program plan that proposes the use of controlled procedures must include the following elements:~~

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

~~B.objectives designed to reduce or eliminate the target behavior of the person for whom the plan is made, including the change expected in the adaptive behavior and the anticipated time frame for achieving the change;~~

~~C.strategies to increase aspects of the person's behavior that provide an alternative functional adaptive replacement behavior to the behavior identified for reduction or elimination, including when and under what circumstances the procedure will be used;~~

~~D.strategies to decrease aspects of the person's target behavior, including when and under what circumstances the procedure will be used;~~

~~E.the projected starting date and completion date for achievement of each objective;~~

~~F.a detailed description of the ways in which implementation of the procedure will be monitored, by whom, and how frequently, specifying how staff implementing the procedure will be trained and supervised and ensuring that direct on-site supervision of the procedure's implementation is provided by the professional staff responsible for developing the procedure;~~

~~G.a description of any discomforts, risks, or side effects that it is reasonable to expect;~~

~~H.a description of the data collection method used to evaluate the effectiveness of the proposed procedures and to monitor expected or unexpected side effects;~~

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

~~J.a description of how implementation of the plan will be coordinated with services provided by other agencies or documentation of why the plan will not be implemented by a particular service provider or in a particular setting;~~

~~K.a description of how implementation of the plan involves families and friends; and~~

~~L.the date when use of the controlled procedure will terminate unless, before that date, continued use of the procedure is approved by the case manager and the member of the expanded interdisciplinary team who is a qualified mental retardation professional with at least one year of experience in assessing, planning, implementing, monitoring, and reviewing behavior management programs. The projected termination date must be no more than 90~~

~~days after the date on which use of the procedure was approved. Reapproval for using the procedure must be obtained at 90-day intervals, if evaluation data on the target behavior and effectiveness of the procedure support continuation.~~

~~Subp. 5.~~

~~**Monitoring individual program plan.**~~

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

~~Subp. 6.~~

~~**Documenting informed consent.**~~

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

9525.2770 EMERGENCY USE OF ~~CONTROLLED~~ *AVERSIVE OR DEPRIVATION* 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.~~ **Procedures allowed for emergency use.**

A.Manual Restraint of no more than 15 minutes in duration before release, if not medically contraindicated. Manual restraint cannot include prone hold interventions where weight or direct pressure is placed on the person's chest, diaphragm, neck, or head.

B.Exclusionary time out not to exceed 15 minutes in duration.

Subp. 2.

Criteria for emergency use.

Emergency use of ~~controlled~~ *aversive* procedures must meet the conditions in items A to C.

A.

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

B.

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

C.

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

Subp. 3.

[Repealed, 18 SR 1141]

Subp. 4.

[Repealed, 18 SR 1141]

Subp. 5.

Written policy.

The license holder must have a written policy on emergency use of ~~controlled~~ *aversive* 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 an ~~controlled~~ *aversive* procedure under emergency conditions;

E.~~that the standards in part 9525.2750, subpart 1, items F, G, subitems (1) to (5), H, and I, must be met when controlled procedures are used on an emergency basis; and~~ That the procedure is implemented and monitored by staff members trained to implement the procedure. The license holder is responsible for providing ongoing training to all staff members responsible for implementing, supervising, and monitoring ~~aversive and deprivation~~ *emergency use of aversive* procedures, to ensure that all staff responsible for implementing the program are competent to implement the procedures.

~~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 an ~~controlled~~ *aversive* 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~~ *position* to be responsible for reviewing, documenting, and reporting use of emergency procedures. The designated staff member must be a QMRP.

A. *An incident of emergency use of aversive procedures must be reported to the individual's case manager, legal representative, and other licensed providers serving the person within 24 hours.* ~~Within three calendar days after an emergency use of a controlled procedure,~~ The staff member who implemented the emergency use shall report in writing to the designated staff member the following information about the emergency use:

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

(2)the ~~controlled~~ *aversive* procedure that was used;

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

(4)the behavioral outcome that resulted;

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

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

B. Within seven calendar days after the date of the emergency use of an ~~controlled~~ *aversive or deprivation* procedure, the designated staff member shall review the report prepared by the staff member who implemented the emergency procedure and ensure the report is sent to the case manager and ~~expanded interdisciplinary team~~ *legal representative* for review. ~~If the emergency use involved manual restraint, mechanical restraint, or use of exclusionary time out exceeding 15 minutes at one time or a cumulative total of 30 minutes or more in a 24-hour period, the designated staff member must ensure the report is sent to the internal review committee within seven calendar days of the emergency use of the controlled procedure.~~

C. ~~Within seven calendar days after the date of receipt of the emergency report in item A, the case manager shall confer with members of the expanded interdisciplinary team to:~~

~~(1) discuss the incident reported in item A to:~~

~~(a) define the target behavior for reduction or elimination in observable and measurable terminology;~~

~~(b) identify the antecedent or event that gave rise to the target behavior; and~~

~~(c) identify the perceived function the target behavior served; and~~

~~(2) determine what modifications should be made to the existing individual program plan so as to not require the use of a controlled procedure.~~

- ~~Within 30 calendar days after the date of the emergency use, the designated staff member will assure that a written and approved behavior support plan, has been implemented, or revised, to address the behavior of concern and reduce the likelihood of need for emergency use of aversive or deprivation procedures.~~ Within 30 calendar days after the date of the emergency use, the designated staff member will assure that the risk management plan has been revised and approved or that a written and approved behavior support plan, has been implemented, or revised, to address the behavior of concern and reduce the likelihood of need for emergency use of aversive procedures. Emergency use of aversive procedures may not continue without the addition or revision of positive procedures.

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.~~ The case manager and/or legal representative may restrict or prohibit the further implementation of emergency use of aversive and deprivation procedures at any time.

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.

[Repealed, 18 SR 1141]

Subp. 2.

When informed consent is required.

Except in situations governed by part 9525.2730, subpart 3 or 9525.2770, the case manager must obtain or reobtain written informed consent before implementing the following:

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

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

C.a substantial change in the individual program plan.

If the case manager is unable to obtain written informed consent, the procedure must not be implemented.

~~Subp. 3.~~

~~**Authority to give consent.**~~

~~Individuals authorized to give informed consent are specified in items A to E.~~

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

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

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

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

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

~~Subp. 4.~~

~~**Information required to obtain informed consent.**~~

~~The case manager shall provide the information specified in items A to K to the legal representative as a condition of obtaining informed consent. Consent obtained without providing the information required in items A to K is not considered to be informed consent. The case manager shall document that the information in items A to K was provided orally and in writing and that consent was given voluntarily. The information must be provided in a nontechnical manner and in whatever form is necessary to communicate the information effectively, such as in the person's or the legal representative's native language if the person or the legal representative does not~~

understand English or in sign language if that is the person's or the legal representative's preferred mode of communication, and in a manner that does not suggest coercion. The information must consist of:

A.a baseline measurement of the target behavior;

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

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

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

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

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

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

H.an explanation that the person or the legal representative has the right to refuse consent;

I.an explanation that consent may be withdrawn at any time and the procedure will stop upon withdrawal of consent;

J.criteria for continuing, modifying, and terminating a procedure; and

K.an explanation that:

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

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

(3)the legal representative may request additional information related to parts 9525.2700 to 9525.2810 and must be provided a copy of the signed informed consent form by the case manager after it is received.

~~Subp. 5.~~

~~Consent for substantial change.~~

~~If the expanded interdisciplinary team has approved a substantial change in a procedure for which informed consent is in effect, the change may be implemented only when the case manager first obtains written informed consent for the substantial change by meeting the requirement in subpart 4.~~

~~Subp. 6.~~

~~[Repealed, 18 SR 1141]~~

~~Subp. 7.~~

~~Appeals.~~

~~A person or the person's legal representative may initiate an appeal under Minnesota Statutes, section 256.045, subdivision 4a, for issues involving the use of a controlled procedure and related compliance with parts 9525.0015 to 9525.0165 and 9525.2700 to 9525.2810. If a court orders the use of faradic shock under part 9525.2730, subpart 3, the action of the court is not appealable under parts 9525.2700 to 9525.2810.~~

~~9525.2790 REGIONAL REVIEW COMMITTEES.~~

~~Subpart 1.~~

~~Appointment.~~

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

~~Subp. 2.~~

~~Membership.~~

~~Each regional review committee must include:~~

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

~~B. representation from each of the following categories:~~

(1)license holders governed by parts 9525.2700 to 9525.2810;

(2)parents or guardians of persons with a developmental disability;

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

(4)the department.

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

Subp. 3.

Duties and responsibilities.

Regional committees shall:

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

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

C.act as directed by the commissioner to:

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

(2)provide technical assistance in achieving compliance; and

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

Staff Training	The license holder will assure that all staff providing support to service participants are provided orientation training, and training as needed thereafter, in; • The license holder's policies on participant rights and emergency use procedures • The use of positive behavioral practices • All procedures which are prohibited from use • All individual Behavior Support Plans • Competency based training on any emergency use procedures allowed by the license holder for staff who are authorized to implement those procedures.