

STATE OF MINNESOTA

DEPARTMENT OF HUMAN SERVICES

In the Matter of Proposed Rules  
of the Department of Human Services  
Relating to Compulsive Gambling  
Assessments, Minnesota Rules,  
Parts 9585.0010 to 9585.0040

STATEMENT OF NEED  
AND REASONABLENESS

INTRODUCTION:

The proposed rules are necessary to comply with Minnesota Statutes, sections 245.98, subdivision 2a, and 609.115, subdivision 9. Minnesota Statutes, section 245.98, subdivision 2a states:

"The commissioner shall adopt by rule criteria to be used in conducting compulsive gambling assessments of offenders under section 609.115, subdivision 9. The commissioner shall also adopt by rule standards to qualify a person to: (1) assess offenders for compulsive gambling treatment; and (2) provide treatment indicated in a compulsive gambling assessment. The rules must specify the circumstances in which, in absence of an independent assessor, the assessment may be performed by a person with a direct or shared financial interest or referral relationship resulting in shared financial gain with a treatment provider."

Minnesota Statutes, section 609.115, subdivision 9 states:

"(a) If a person is convicted of a felony for theft under section 609.52, embezzlement of public funds under section 609.54, or forgery under section 609.625, 609.63, or 609.631, the probation officer shall determine in the report prepared under subdivision 1 whether or not compulsive gambling contributed to the commission of the offense. If so, the report shall contain the results of a compulsive gambling assessment conducted in accordance with this subdivision. The probation officer shall make an appointment for the defendant to undergo the assessment if so indicated.

(b) The compulsive gambling assessment report must include a recommended level of care for the defendant if the assessor concludes that the defendant is in need of compulsive gambling treatment. The assessment must be conducted by an assessor qualified under section 245.98, subdivision 2a, to perform these assessments or to provide compulsive gambling treatment. An assessor providing a compulsive gambling assessment may not have any direct or shared financial interest or referral relationship resulting in shared financial gain with a treatment provider. If an independent assessor is not available, the probation officer may use the services of an assessor with a financial interest or referral relationship as authorized under rules adopted by the commissioner of human services under section 245.98, subdivision 2a.

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(c) The commissioner of human services shall reimburse the county for the costs associated with a compulsive gambling assessment at a rate established by the commissioner up to a maximum of \$100 for each assessment."

OVERVIEW ON GAMBLING IN MINNESOTA

A March 1992 report prepared by Minnesota Planning entitled "High Stakes: Gambling in Minnesota" stated (page 1):

"Gambling in 1991 was a \$2.5 billion industry in Minnesota, nearly as great as that of all the state's eating and drinking establishments."

"Gross sales were \$558 per capita. This was 4th highest in the nation behind Nevada (\$58,670), New Jersey (\$3,429), and South Dakota (\$650), using 1990 figures. After prize payouts, actual gambling losses per capita in Minnesota were \$117."

"Only about 1.5 percent of Minnesotans are currently estimated to be addictive gamblers. However, addiction often takes five years to develop. The proliferation of gambling opportunities fuels the addiction rate. Experts believe that Minnesota's addiction rate could rise to 4 percent or higher, the rate in other intensive gambling states."

The popularity of gambling in Minnesota strongly suggests a need for gambling related programs that includes research, prevention, and treatment services.

Although the general public has not identified compulsive gambling as a significant issue, a 1990 research survey found 1.5 percent of Minnesota's adult population to be probable or potential compulsive gamblers, with an additional 7 percent classified as being problem gamblers. This means that over 8 percent of the adults in the survey sample were classified as having problems due to gambling activities.

Minnesota's youth are also at risk. A 1990 survey of adolescents age 15 to 18 identified 6.3 percent of the survey population as being problem gamblers. Over 19 percent of the youths surveyed were gambling to an extent that they were identified as an at-risk population.

There is also evidence from states with a longer history of legalized gambling than Minnesota that an addiction to gambling typically takes several years to fully develop.

The legislature, recognizing a need for gambling related services, provided funding to develop a number of gambling related service components. Gambling related services operational as of June 30, 1992, include:

- (1) a compulsive gambling hotline number;
- (2) training for community based mental health professionals and addiction counselors;
- (3) demonstration programs providing outpatient treatment;
- (4) a public awareness campaign; and

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(5) research activities.

These program and service components are carried out under contracts with qualified community-based vendors.

The preceding information illustrates state efforts to deal with the problem of compulsive gambling. The proposed rules are not directly related to any of the program components noted above. The proposed rules govern the assessment of felony offenders convicted of certain crimes. The legislature, recognizing a possible relationship between certain crimes and compulsive gambling, directed probation officers to determine in the presentence report whether compulsive gambling contributed to the commission of certain offenses listed under Minnesota Statutes, section 609.115, subdivision 9.

The Commissioner was directed under Minnesota Statutes, section 245.98, subdivision 2a to adopt by rule criteria to be used in conducting compulsive gambling assessment of offenders under section 609.115, subdivision 9. The Commissioner was also directed to adopt standards to qualify a person to: (1) assess offenders for compulsive gambling treatment; and (2) provide treatment indicated in a compulsive gambling assessment; and to specify the circumstances in which, in the absence of an independent assessor, gambling assessments may be performed by a person with a direct or shared financial interest or referral relationship resulting in shared financial gain with a treatment provider.

The proposed rules set forth the responsibilities of probation officers, the Department, and gambling assessors; establish gambling assessor qualifications; and establish requirements governing compulsive gambling assessments.

**SMALL BUSINESS CONSIDERATION IN RULEMAKING**

The vast majority of individuals performing gambling assessments under this rule will be employed by small businesses. Under Minnesota Statutes, section 14.115, when an agency proposes a new rule which may affect small businesses, the agency is directed to consider specific methods to reduce the impact of the rule on small businesses. Methods the agency must consider include:

- (a) the establishment of less stringent compliance or reporting requirements for small businesses;
- (b) the establishment of less stringent schedules or deadlines for compliance or reporting requirements for small businesses;
- (c) the consolidation or simplification of compliance or reporting requirements for small businesses;
- (d) the establishment of performance standards for small businesses to replace design or operational standards required in the rule; and
- (e) the exemption of small businesses from any or all requirements of the rule.

The proposed rules have been developed to minimize impact on small businesses. The rules do not impose mandatory requirements on small businesses and do not require licensing or certification. Although the rules establish minimum qualifications for certain gambling

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assessors (assessor performing assessment on certain offenders), participation is voluntary. The proposed rules do not apply to professionals providing services or treatment to the general public.

Under the proposed rules, qualified individuals may request that their names be placed on a Department list of qualified gambling assessors. Once placed on the list, the assessor may be selected to perform a gambling assessment on an offender. Although the gambling assessor may be placed on the Department's list, placement on the list does not assure the gambling assessor that his or her services will be needed or used. The Department anticipates that approximately 200 assessments will be performed each year at a cost not to exceed \$100 per assessment (the maximum reimbursement limit is set forth in Minnesota Statutes, section 609.115, subdivision 9, paragraph (c). Therefore, annual reimbursement for services will be approximately \$20,000.

The qualification standards for gambling assessors are the minimum standards necessary to ensure an adequate assessment. All gambling assessors must complete 60 hours of gambling specific training and meet minimum educational, training, or work experience. The general occupational categories include mental health professionals, mental health practitioners, chemical dependency assessors, and individuals who are certified by the National Gambling Counselor Certification Board. For most individuals, the only requirement that would prevent them from immediately performing gambling assessments is a lack of gambling specific training. Gambling specific training is essential for understanding and assessing the nature and extent of the gambling behavior. As such, it is a "minimum" requirement. The only reporting requirement in the rule is a requirement that the assessor send copies of the written assessment to the probation officer who requests the assessment. This is a reasonable requirement because the assessment is the service being purchased.

With respect to paragraph (d) "the establishment of performance standards for small businesses to replace design or operational standards required in the rule", the rule simply requires completion of a compulsive gambling report. Performance is determined by the quality of the compulsive gambling report. If the quality of the gambling assessment from a particular assessor is inferior and fails to meet the needs of the court system, future gambling assessments should be made with a different assessor.

Finally, with respect to paragraph (e), "the exemption of small businesses from any or all requirements of the rule", the vast majority of individuals who will perform the gambling assessments are employed by small businesses. Throughout the rule development process, every effort was made to establish "minimum" requirements. This efforts is evident in the identification of eligible gambling assessors (based on education, training, or work experience plus 60 hours of gambling specific training) and minimum reporting requirements (submission of a copy of the assessment). To reduce the proposed requirements further would compromise the quality and usefulness of the gambling assessments.

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AGRICULTURAL LAND

Minnesota Statutes, section 14.11, subdivision 2 requires agencies proposing rules that have a direct and substantial adverse impact on agricultural land in this state to comply with additional statutory requirements. The propose rule governing compulsive gambling assessments does not impact agricultural land and, therefore, the additional statutory requirements do not apply.

FISCAL NOTE

A fiscal note has been prepared according to the requirements of Minnesota Statutes, section 3.98, subdivision 2. The rule will not have a fiscal impact on state and local spending of more than \$100,000 in either of the first two years following its promulgation.

RULE DEVELOPMENT PROCEDURES

In the development of the proposed rule, the Department followed the procedures mandated by the Administrative Procedure Act and internal Department policies that ensure maximum public input. Public input was sought through a "Notice of Solicitation of Outside Information or Opinions" published February 24, 1992, in the State Register (16 S.R. 1948) and establishment of a rule advisory committee.

Prior to establishment of the rule advisory committee, the Department convened a Compulsive Gambling Assessment and Criminal Justice System Task Force to assist the Department in identifying rulemaking issues.

The Task Force met 3 times and included representatives from the Department of Human Services, Department of Corrections, county probation officers, providers of gambling treatment services, and individuals associated with Gamblers Anonymous. Discussions focused on the requirements of Minnesota Statutes, section 609.115, subdivision 9 which requires a probation officer to determine in the presentence report whether or not compulsive gambling contributed to the commission of a certain offense.

A rule advisory committee was established in February 1992 and included members of the Compulsive Gambling Assessment and Criminal Justice System Task Force, chemical dependency counselors, and representatives from county social service departments. The rule advisory committee met March 17, 1992, April 16, 1992, and June 18, 1992. A list of members of the rule advisory committee is attached to the Statement of Need and Reasonableness.

INDIVIDUAL RULE PROVISIONS

9585.0010 **DEFINITIONS.** This part is necessary to identify the specific meaning of terms used in the rule.

Subpart 1. **Scope.** This subpart is necessary to clarify that the definitions apply to the entire sequence of parts 9585.0010 to 9585.0040. This subpart and the definitions that follow are necessary to inform persons consulting the rule of the meaning of specific words used in this rule.

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Subp. 2. **Collateral contact.** This subpart is necessary to clarify a term used in the rule. Since the term "collateral contact" may be subject to numerous interpretations, it is necessary to define the term. A collateral contact is an oral or written communication to an individual, other than the offender, for the purpose of gather additional information related to the offender's gambling behavior. During a gambling assessment, an offender may claim that he or she rarely gambles or does not have a gambling problem. It is common for individuals with gambling problems to engage in denial of a gambling problem. To ensure a complete and accurate assessment, it is necessary to collaborate information provided by the offender with information provided by another individual or individuals who have knowledge of the offender's gambling behavior. Generally, an offender's gambling behavior can be collaborated by the offender's spouse, significant other, or family member. However, because the appropriate collateral contact or contacts will vary with each individual, the definition does not specify a specific individual or individuals who must be contacted. Collateral contacts may include the offender's spouse, significant other, family, friends, or employer. Since the legislature authorized a maximum of \$100 per assessment, it is reasonable to conclude that the legislature did not envision extensive collateral contacts. On the other hand, due to the strong likelihood of denial, it would be unreasonable to simply accept an offender's statement regarding his or her gambling behavior.

Subp. 3. **Commissioner.** This subpart is necessary to clarify a term used in the rule. The "Commissioner of Human Services" is directed under Minnesota Statutes, section 609.115, subdivision 9, paragraph (c) to reimburse counties for the costs associated with a compulsive gambling assessment. Under Minnesota Statutes, section 245.98, the commissioner is directed to establish a compulsive gambling treatment program, adopt rules, report to the legislature, etc. It is necessary to include the "commissioner's designated representative" within the definition since it is impossible for the Commissioner to personally perform all the responsibilities assigned to her in statute. Including this delegation of responsibility in the definition informs interested parties of the delegation.

Subp. 4. **Compulsive gambling.** This subpart is necessary to clarify a term used in the rule. The legislature directed the Commissioner to establish criteria for conducting compulsive gambling assessments of certain offenders and to establish standards to qualify a person to assess offenders for compulsive gambling treatment and to provide treatment indicated in the compulsive gambling assessment. In order to establish criteria governing compulsive gambling assessments, it is necessary to define the term "compulsive gambling." Minnesota Statutes, section 245.98 does not define compulsive gambling which is a behavior. It does, however, define "compulsive gambler". Minnesota Statutes, section 245.98, subdivision 1, defines a "compulsive gambler" as follows:

"Compulsive gambler" means a person who is chronically and progressively preoccupied with gambling and with the urge to gamble to the extent that the gambling behavior compromises, disrupts, or damages personal, family, or vocational pursuits."

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It is necessary to define compulsive gambling in a manner that is consistent with the statutory definition of "compulsive gambler" and is also consistent with prevailing mental health standards. The statutory description of the behavior of a compulsive gambler is most closely associated to the term "pathological gambling" as it is defined under the Diagnostic and Statistical Manual of Mental Disorders 1987 (Third Edition - Revised) code range 312.31. The diagnostic criteria for pathological gambling is maladaptive gambling behavior, as indicated by at least four of the following:

- (1) frequent preoccupation with gambling or with obtaining money to gamble
- (2) frequent gambling of larger amounts of money or over a longer period of time than intended
- (3) a need to increase the size or frequency of bets to achieve the desired excitement
- (4) restlessness or irritability if unable to gamble
- (5) repeated loss of money by gambling and returning another day to win back losses ("chasing")
- (6) repeated efforts to reduce or stop gambling
- (7) frequent gambling when expected to meet social or occupational obligations
- (8) sacrifice of some important social, occupational, or recreational activity in order to gamble
- (9) continuation of gambling despite inability to pay mounting debts, or despite other significant social, occupational, or legal problems that the person knows to be exacerbated by gambling

Since the behavior of a compulsive gambler is consistent with the mental health definition of "pathological gambling" and pathological gambling is a medically accepted term used by mental health professionals, it is reasonable to define compulsive gambling consistent with the meaning given "pathological gambling". For the purpose of this rule, the terms "compulsive gambling" and "pathological gambling" are synonymous.

**Subp. 5. Department.** This subpart is necessary to clarify a term used in the rule. The term "department" means the Department of Human Services. It is reasonable to use the term "department" in lieu of the phrase "Department of Human Services" to reduce the length of the rule. Since the rule requirements affect the Department of Corrections, the rule contains references to the Department of Corrections. Whenever there is a reference to the Department of Corrections in the rule, the full name of the Department of Corrections is used.

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**Subp. 6. Gambling assessment.** This subpart is necessary to clarify a term used in the rule. Minnesota Statutes, sections 245.98, subdivision 2a and 609.115, subdivision 9 establish requirements governing gambling assessments. Neither Minnesota Statutes, section 245.98, subdivision 2a nor section 609.115, subdivision 9 define the term "assessment." Therefore, it is necessary to define the term "assessment" in order to identify what is and what constitutes an assessment. An assessment is an evaluation that identifies the nature and extent of an offender's gambling behavior and the consequences gambling has had on his or her personal, family, and vocational pursuits. The definition is reasonable because it identifies essential information necessary for evaluating an individual's gambling behavior and the consequences of that behavior on the offender and the offender's family. The assessment provides the necessary information to determine whether an offender meets the diagnostic criteria for pathological gambling as defined under code range 312.31 of the Diagnostic and Statistical Manual of Mental Disorders 1987 (Third Edition - Revised).

**Subp. 7. Gambling assessor.** This subpart is necessary to clarify a term used in the rule. Minnesota Statutes, section 245.98, subdivision 2a requires the Commissioner to adopt standards to qualify a person to assess offenders for compulsive gambling treatment. The term "gambling assessor" is necessary to identify those individuals who are qualified to evaluate an individual's gambling behavior and the consequences that behavior has had on personal, family, and vocational pursuits. This definition is reasonable because it cross references the requirements set forth in part 9585.0040, subpart 1 that, when met, qualifies an individual to perform gambling assessments.

**Subp. 8. Independent gambling assessor.** This subpart is necessary to clarify a term used in the rule. Minnesota Statutes, section 245.98, subdivision 2a requires the commissioner to adopt rules and to specify the circumstances in which, in the absence of an independent assessor, the assessment may be performed by a person with a direct or shared financial interest or referral relationship resulting in shared financial gain with a treatment provider.

The definition of the term "independent assessor" i.e., a gambling assessor who does not have a direct or shared financial interest or referral relationship resulting in shared financial gain with a treatment provider, is inferred from the legislative requirement set forth under Minnesota Statutes, section 245.98, subdivision 2a. This definition is reasonable because it is consistent with Minnesota Statutes.

**Subp. 9. Offender.** This subpart is necessary to clarify a term used in the rule. The rule defines an offender as a person convicted of an offense identified in Minnesota Statutes, section 609.115, subdivision 9, paragraph (a). Minnesota Statutes, section 609.115, subdivision 9, paragraph (a) identifies the following felony convictions:

1. theft under section 609.52;
2. embezzlement of public funds under section 609.54; and
3. forgery under sections 609.625, 609.63, or 609.631.



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It is reasonable to cross-reference statute to: avoid repeating statute in rule; avoid the need to amend the rule should the legislature add or delete crimes listed under section 609.115, subdivision 9, paragraph (a); and to shorten the length of the rule.

This subpart is reasonable because it is consistent with Minnesota Statutes.

**Subp. 10. Pathological gambling.** This subpart is necessary to clarify a term used in the rule. This subpart cross-references the definition of pathological gambling found in code range 312.31 of the Diagnostic and Statistical Manual of Mental Disorders (Third Edition - Revised) 1987. As noted in subpart 4, the term "pathological gambling" is synonymous with the term "compulsive gambling". See the discussion under subpart 4.

**Subp. 11. Presentence report.** This subpart is necessary to clarify a term used in the rule. Under Minnesota Statutes, section 609.115, subdivision 9, paragraph (a) probation officers are directed to determine in the report prepared under subdivision 1 whether or not compulsive gambling contributed to the commission of an offense listed in paragraph (a). The reference to the report prepared under subdivision 1 is the presentence report required under Minnesota Statutes, section 609.115, subdivision 1. This subpart is reasonable because it defines "presentence report" by cross-referencing the statutory cite that sets forth the requirements for the presentence report.

**Subp. 12. Probation officer.** This subpart is necessary to clarify a term used in the rule. Minnesota Statutes, section 609.115, subdivision 9 sets forth duties for probation officers. The probation officers shall determine in the presentence report whether or not compulsive gambling contributed to the commission of a particular offense. If so, the report must contain the results of a compulsive gambling assessment. The probation officer is also directed to make an appointment for the defendant to undergo a gambling assessment if so indicated. This subpart is reasonable because it defines the term "probation officer" by cross-referencing the statutory cite that identifies a "probation officer".

**Subp. 13. South Oaks Gambling Screen.** This subpart is necessary to clarify a term used in the rule. The term is necessary to identify a specific screening instrument that must be used to screen individuals for pathological gambling. A screening instrument is used to identify individuals for whom a formal gambling assessment is appropriate. Minnesota Statutes, section 609.115, subdivision 9, paragraph (a) states, in part:

"... the probation officer shall determine in the report prepared under subdivision 1 whether or not compulsive gambling contributed to the offense. If so, the report shall contain the results of a compulsive gambling assessment conducted in accordance with this subdivision. The probation officer shall make an appointment for the defendant to undergo the assessment if so indicated." (Emphasis added)

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The Department has chosen to use the South Oaks Gambling Screen since it offers a simple, reliable, and validated process to screen individuals for pathological gambling and the screening instrument correlates well with the criteria under DSM-III-R.

The introduction to "The South Oaks Gambling Screen (SOGS): A New Instrument for the Identification of Pathological Gamblers" in the September 1987 American Journal of Psychiatry states:

"The South Oaks Gambling Screen is a 20-item questionnaire based on DSM-III criteria for pathological gambling. It may be self-administered or administered by nonprofessional or professional interviewers. A total of 1,616 subjects were involved in its development: 867 patients with diagnoses of substance abuse and pathological gambling, 213 members of Gamblers Anonymous, 384 university students, and 152 hospital employees. Independent validation by family members and counselors was obtained for the calibration sample, and internal consistency and test-retest reliability were established. The instrument correlates well with the criteria of the revised version of DSM-III (DSM-III-R). It offers a convenient means to screen clinical populations of alcoholics and drug abusers, as well as general populations, for pathological gambling."

This subpart is reasonable because it identifies the copyrighted screening instrument published by Doctors Henry Lesieur and Sheila Blume in the American Journal of Psychiatry.

9585.0020 **PROBATION OFFICER RESPONSIBILITIES.** This part is necessary to set forth the duties and responsibilities of probation officers.

**Subpart 1. Screening of certain offenders for compulsive gambling, appointment for gambling assessment based on score.** This subpart is necessary to comply with Minnesota Statutes, section 609.115, subdivision 9. Subdivision 9 requires probation officers to determine in the presentence report whether or not compulsive gambling contributed to the commission of the offense for persons convicted of a felony listed in Minnesota Statutes, section 609.115, subdivision 9, paragraph (a) [Felonies under Minnesota Statutes, sections 609.52, 609.54, 609.625, 609.63, or 609.631].

During discussions with the advisory committee, three options were discussed regarding this statutory requirement. One, a probation officer could use his or her subjective judgment on whether the offender is a compulsive gambler; two, a probation officer could screen offenders using an accepted screening instrument; or three, a probation officer could schedule a gambling assessment for every offender.

The option to allow probation officers to use subjective judgments on whether an offender is a compulsive gambler was not selected because such a standard would be arbitrary and would not provide uniform treatment of offenders.

The option that probation officer schedule an appointment for all offenders to receive a compulsive gambling assessment was not selected

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because of limited financial resources. The Department estimates that 10 percent of the offenders convicted of crimes listed under Minnesota Statutes, section 609.115, subdivision 9 will require a compulsive gambling assessment. In many instances, it may be obvious that compulsive gambling did not contribute to the commission of the offense. To require an assessment in all instances would be a waste of taxpayer dollars (approximately 2,000 offenders at \$100 each for a total of \$200,000 per year versus an estimated cost of \$20,000 per year when using a screening instrument).

The advisory committee considered the requirements placed on the probation officers and determined that the use of a simple screening instrument was the option of choice. A score above a certain point on a screening instrument would require a gambling assessment. This process ensures that those offenders who may be pathological (compulsive) gamblers will be properly assessed without performing unnecessary assessments. The screening instrument selected is the South Oaks Gambling Screen. The South Oaks Gambling Screen has been fully validated and is simple to administer.

**Subp. 2. Information indicating offender may be a compulsive gambler, appointment for gambling assessment required.** This subpart is necessary to authorize a probation officer to schedule a gambling assessment if, in the course of preparing the presentence report, the probation officer obtains information that indicates the offender may be a compulsive gambler regardless of the score on SOGS. Although the South Oaks Gambling Screen is a validated screening instrument, this subpart provides a mechanism that authorizes gambling assessments if information available to the probation officer indicates the offender may be a compulsive gambler. This subpart is not intended to require probation officers to perform supplementary investigations of offenders to determine whether they may or may not be compulsive gamblers. However, if information becomes available that seems to indicate an offender may be a compulsive gambler, it would be inappropriate not to schedule a gambling assessment. This subpart is reasonable because it ensures, notwithstanding the score on the screening mechanism, that a gambling assessment will be performed when available information indicates a gambling assessment may be appropriate.

**Subp. 3. Report when an appointment is not made.** This subpart is necessary to inform probation officers that when no appointment is made for a gambling assessment under subparts 1 or 2, the probation officer shall indicate in the presentence report that there is no evidence that compulsive gambling contributed to the commission of the offense. This subpart is reasonable because it provides closure for reporting the results of the screening process when the screening process indicates that an assessment is unnecessary.

**Subp. 4. Appointment with gambling assessor from department list, preference given to independent assessors.** This subpart is necessary to inform probation officers that an appointment for a gambling assessment under subparts 1 or 2 must be made with a qualified gambling assessor from a list prepared by the Department. When independent gambling assessors are available, the appointment must be made with an independent gambling assessor. If no independent

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gambling assessor is available (determined by distance and time), the probation officer may schedule an appointment with a gambling assessor who has a direct or shared financial interest or referral relationship resulting in shared financial gain with a treatment provider.

The distance standard was chosen because it is more reasonable than a standard based on county boundary. It is possible in many areas for an independent assessor to be available within 50 miles of the offender's home if release pending sentencing or within 50 miles of the correctional facility if held pending sentencing but not necessarily within a county. It is also possible for an assessor to be available within a county but the distance required to travel to perform the assessment and the limitation on the amount that can be reimbursed for the assessment would make traveling over 50 miles unreasonable.

The time limitation of 21 calendar days is necessary to ensure that the assessment will be completed in time for the courts to use the information during sentencing. If an assessor cannot complete an assessment within 21 calendar days, the assessor is not considered available for purposes of the rule.

This subpart is reasonable because it implements the requirements under Minnesota Statutes, section 609.115, subdivision 9, paragraph (b) which states, in part,

"An assessor providing a compulsive gambling assessment may not have any direct or shared financial interest or referral relationship resulting in shared financial gain with a treatment provider. If an independent assessor is not available, the probation officer may use the services of an assessor with a financial interest or referral relationship as authorized under rules adopted by the commissioner of human services under section 245.98, subdivision 2a."

This subpart is reasonable because it ensures preference is given to independent gambling assessors consistent with Minnesota Statutes. It also clarifies what is meant by "available" since the word was not defined by the legislature.

**Subp. 5. Gambling assessment report, recommended level of treatment.**

This subpart is necessary to inform probation officers that when an appointment is made for a gambling assessment under subparts 1 or 2, the presentence report must contain the results of the compulsive gambling assessment and, if treatment is recommended, the recommended level of treatment. This subpart is reasonable because it is consistent with Minnesota Statutes, section 609.115, subdivision 9, paragraphs (a) and (b). Paragraph (a) requires the probation officer to determine in the presentence report whether or not compulsive gambling contributed to the commission of certain offenses. If so, the report shall contain the results of a compulsive gambling assessment. Paragraph (b) requires that the compulsive gambling assessment report must include a recommended level of care for the defendant if the assessor concludes that the defendant is in need of compulsive gambling treatment.

Subp. 6. **South Oaks Gambling Screen training.** This subpart is necessary to inform probation officers that before they administer the South Oaks Gambling Screen to an offender, they must be trained in its use by the Department or the Department of Corrections. The Department discussed the importance of SOGS training with the author of SOGS, Dr. Henry Lesieur. Dr. Lesieur strongly recommended training to provide background information on compulsive gambling behavior and to alert individuals administering the screening instrument of potential scoring errors.

The SOGS training requirement was discussed with the Department of Corrections. Since the Department of Corrections currently provides training at regional sites, the Department can minimize costs by offering SOGS training at these sites. This subpart is reasonable because it ensure individuals administering the screening instrument are properly trained in the use of the screening instrument.

9585.0030 **DEPARTMENT RESPONSIBILITIES, REIMBURSEMENT.** This part is necessary to identify responsibilities of the Department to compile a list of qualified gambling assessors and to reimburse counties for the cost of the gambling assessment up to \$100.

Subpart 1. **Department list of qualified gambling assessors.** This subpart is necessary to identify the Department's responsibility to compile a list of qualified gambling assessors on a semi-annual basis and to make that list available to the Department of Corrections and Community Corrections Act counties. This subpart also requires the Department to separately identify independent gambling assessors and gambling assessors who have a direct or shared financial interest or referral relationship resulting in shared or financial gain with a treatment provider. Identifying independent gambling assessors separately from assessor with a financial interest in a treatment program is necessary because Minnesota Statutes, section 609.115, subdivision 9, paragraph (b) establishes a preference for using independent gambling assessors. This subpart is reasonable because it identifies individuals who are qualified to perform gambling assessments. Minnesota Statutes, section 245.98, subdivision 2a, requires the commissioner to adopt by rule standards to qualify a person to assess offenders for compulsive gambling treatment. Since gambling assessors are not licensed or certified, development of a department list is a reasonable mechanism to identify individuals qualified to perform gambling assessments.

Subp. 2. **Maximum reimbursement to county for assessment.** This subpart is necessary to establish the maximum amount the state will reimburse the county for the cost of the gambling assessment. The maximum rate is the cost of the gambling assessment or \$100, whichever is less. Minnesota Statutes, section 609.115, subdivision 9, paragraph (c) states:

"The commissioner of human services shall reimburse the county for the costs associated with a compulsive gambling assessment at a rate established by the commissioner up to a maximum of \$100 for each assessment."

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This subpart is reasonable because it is consistent with Minnesota Statutes.

9585.0040 **GAMBLING ASSESSORS, QUALIFICATIONS AND RESPONSIBILITIES.**  
This part is necessary to set forth qualifications and responsibilities of gambling assessors.

Subpart 1. **Gambling assessors, identified on department list.** This subpart is necessary to inform potential gambling assessors of the requirements for being placed on the Department's list of qualified gambling assessors. The potential gambling assessor must provide the Department the following information:

A. the individual's name, mailing address, telephone number and geographic area the individual serves;

B. a statement indicating whether the individual has a direct or shared financial interest or referral relationship resulting in shared financial gain with a treatment provider and, if so, the name of the treatment provider; and

C. documentation that the individual has successfully completed 60 hours of gambling specific training; and

D. documentation that the individual is qualified as a:  
(1) mental health professional under Minnesota Statutes, section 245.462, subdivision 18;  
(2) mental health practitioner under Minnesota Statutes, section 245.462, subdivision 17;  
(3) chemical dependency counselor under part 9530.4270, subpart 5;  
(4) chemical use assessor under part 9530.6615, subpart 2; or  
(5) gambling counselor certified by the National Gambling Counselor Certification Board.

Item A is necessary to provide general identifying information for the Department's list and to identify geographical areas the gambling assessor serves. The informational requirements under item A are reasonable because this information is basic and essential for the preparation of a list that will be used by probation officers to schedule gambling assessments.

Item B is necessary to require self-disclosure of a direct or shared financial interest or referral relationship with a treatment provider. Since Minnesota Statutes, section 609.115, subdivision 9 provides first preference for independent gambling assessors, it is necessary to be able to distinguish between independent gambling assessors and gambling assessors with a direct or share financial interest or referral relationship with a treatment provider. It is reasonable to require self-disclosure because the information is necessary to comply with statutes and self-disclosure is the simplest means for identifying independent gambling assessors and gambling assessors with a direct or share financial interest or referral relationship with a treatment provider. The small number of qualified gambling assessors, their familiarity with one another, and the wide distribution of the

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list of qualified gambling assessor should discourage the potential for a gambling assessor to fail to self-disclose a financial relationship with a treatment provider.

Item C is necessary to require gambling assessors to document completion of certain gambling related training. All assessors must successfully complete 60 hours of gambling specific training. The gambling specific training includes five major areas identified under subitems (1) to (5). The training is necessary to ensure a "minimum" level of competency and must be read in conjunctions with the minimum qualifications under item D.

The training requirement ensures gambling assessors possess a basic understanding of issues and problems associated with compulsive gambling. The five major areas of training are reasonable because they are consistent with current training provided under contract through the Department or meet "minimum" standards identified by the National Gambling Counselor Certification Board. The rule specifically accepts as meeting the requirements under item C, documentation that an individual has successfully completed a 60 hour training program provided by or under contract with the Department or recognized by the National Gambling Counselor Certification Board. Acceptance of Department sponsored training and training recognized by the National Gambling Counselor Certification Board is reasonable because it lessen documentation requirements. Other training programs are acceptable if they meet the requirements under this item. However, the individual completing the training must document that the training covered the five major areas listed in item C.

Item D is necessary to establish minimum qualification standards for gambling assessors. In addition to the training requirement under item C, an individual must meet the requirements of one of five broad occupational classifications that describe occupational or work experience and/or education relevant to performing gambling assessments. The establishment of the qualification standards for gambling assessors generated considerable discussion from rule advisory committee members. Standards set too high would limit the number of assessors who would be available to perform gambling assessments. Standards set too low would jeopardize the quality of the assessment. Additionally, since the compulsive gambling field is an evolving field and there are not "state of the art" practices, the Department is hesitant to unduly restrict who can and who can not perform a gambling assessment. Since the basis of determining whether an individual is a compulsive gambler is a standard under the American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders, DSM-III-R, is seemed reasonable to review that standard to determine which individuals could apply the standard as part of the assessment process. The DSM-III-R diagnostic criteria for pathological gambling is maladaptive gambling behavior, as indicated by at least four of the following:

- (1) frequent preoccupation with gambling or with obtaining money to gamble
- (2) frequent gambling of larger amounts of money or over a longer period of time than intended

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- (3) a need to increase the size or frequency of bets to achieve the desired excitement
- (4) restlessness or irritability if unable to gamble
- (5) repeated loss of money by gambling and returning another day to win back losses ("chasing")
- (6) repeated efforts to reduce or stop gambling
- (7) frequent gambling when expected to meet social or occupational obligations
- (8) sacrifice of some important social, occupational, or recreational activity in order to gamble
- (9) continuation of gambling despite inability to pay mounting debts, or despite other significant social, occupational, or legal problems that the person knows to be exacerbated by gambling

Although the standard is subjective and ambiguous, the Department believes the determination of compulsive gambling can be made by individuals other than mental health professionals.

The first major category of gambling assessors is the mental health professional. The mental health professionals have the highest qualifications of the five categories listed. By statutory definition, a mental health professional means a person providing clinical services in the treatment of mental illness who is qualified in at least one of the following ways:

- (1) in psychiatric nursing: a registered nurse who is licensed under sections 148.171 to 148.285, and who is certified as a clinical specialist in adult psychiatric and mental health nursing by the American nurses association or who has a master's degree in nursing or one of the behavioral sciences or related fields from an accredited college or university or its equivalent, with at least 4,000 hours of post-master's supervised experience in the delivery of clinical services in the treatment of mental illness;

- (2) in clinical social work: a person licensed as an independent clinical social worker under section 148B.21, subdivision 6, or a person with a master's degree in social work from an accredited college or university, with at least 4,000 hours of post-master's supervised experience in the delivery of clinical services in the treatment of mental illness;

- (3) in psychology: a psychologist licensed under sections 148.88 to 148.98 who has stated to the board of psychology competencies in the diagnosis and treatment of mental illness;

- (4) in psychiatry: a physician licensed under chapter 147 and certified by the American board of psychiatry and neurology or eligible for board certification in psychiatry;

- (5) in marriage and family therapy: the mental health professional must be a marriage and family therapist licensed under sections 148B.29 to 148B.39 with at least two years of post-master's supervised experience in the delivery of clinical services in the treatment of mental illness; or

- (6) in allied fields: a person with a master's degree from an accredited college or university in one of the behavioral sciences or related fields, with at least 4,000 hours of post-master's supervised experience in the delivery of clinical services in the treatment of mental illness.



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The second category of potential gambling assessors is the mental health practitioner. As indicated above, the Department believes the determination of compulsive gambling can be made by individuals other than mental health professionals if they have the necessary training under item C. By statutory definition, a mental health practitioner is a person providing services to persons with mental illness who is qualified in at least one of the following ways:

(1) holds a bachelor's degree in one of the behavioral sciences or related fields from an accredited college or university and has at least 2,000 hours of supervised experience in the delivery of services to persons with mental illness;

(2) has at least 6,000 hours of supervised experience in the delivery of services to persons with mental illness;

(3) is a graduate student in one of the behavioral sciences or related fields and is formally assigned by an accredited college or university to an agency or facility for clinical training; or

(4) holds a master's or other graduate degree in one of the behavioral sciences or related fields from an accredited college or university and has less than 4,000 hours post-master's experience in the treatment of mental illness.

The third category of potential gambling assessors are chemical dependency counselor under part 9530.4270, subpart 5. Under part 9530.4270, subpart 4 a chemical dependency counselor must be competent in the following areas:

A. knowledge of chemical abuse and dependency;

B. chemical use assessment, as defined in part 9530.6605, subpart 8, including client interviewing and screening;

C. case management, including treatment planning, general knowledge of social services and appropriate referrals, and record keeping, reporting requirements, and confidentiality rules and regulations that apply to chemical dependency clients;  
and

D. individual and group counseling, including crisis intervention.

The department accepts the following as adequate documentation that a chemical dependency counselor is competent in the areas required under subpart 4:

A. the individual has at least a baccalaureate degree with a major or concentration in social work, nursing, sociology, human services, or psychology, or is a licensed registered nurse; has successfully completed 30 hours of classroom instruction in each of the areas identified in subpart 4, items A and B; and has successfully completed 480 hours of supervised experience as a chemical dependency counselor, either as a student or as an employee; or

B. the individual has documented the successful completion of the following:

(1) 60 hours of classroom training in the subject area identified in subpart 4, item A;

(2) 30 hours of classroom training in the subject area identified in subpart 4, item B;

(3) 160 hours of classroom training in the subject areas identified in subpart 4, items C and D; and

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(4) completion of 480 hours of supervised experience as a chemical dependency counselor, either as a student or as an employee; or

C. the individual is certified by the Institute for Chemical Dependency Professionals of Minnesota, Inc., as a chemical dependency counselor or as a chemical dependency counselor reciprocal, through the evaluation process established by the Certification Reciprocity Consortium Alcohol and Other Drug Abuse, Inc., and published in the Case Presentation Method Trainer's Manual, copyright 1986. This manual is incorporated by reference. It is available at the State Law Library, Ford Building, 117 University Avenue, Saint Paul, MN 55155. It is not subject to frequent change; or

D. the individual successfully completed three years of supervised work experience as a chemical dependency counselor before January 1, 1988.

After January 1, 1993, chemical dependency counselors must document that they meet the requirements of item A, B, or C in order to comply with this subpart.

The standards for determining compulsive gambling are not unlike the standards used by chemical dependency counselors when performing a chemical dependency assessment. Since chemical dependency and compulsive gambling are similar in that they are both addictive behaviors, it is reasonable to allow chemical dependency counselors to perform gambling assessments.

The fourth category of potential gambling assessors is the chemical use assessor under part 9530.6615.

An individual is qualified to perform chemical use assessments if he or she annually completes a minimum of eight hours of in-service training or continuing education, documented under part 9530.6610, subpart 2, item C, and meets the criteria in one of the items listed below:

A. The individual has successfully completed 30 hours of classroom instruction on chemical dependency assessments, has successfully completed one year of work experience in chemical dependency assessments, either as an intern or as an employee, and has successfully completed two additional years of work experience in chemical dependency assessments or treatment before July 1, 1987.

B. The individual has successfully completed 270 hours of classroom instruction in the subject area of chemical dependency, including 30 hours on chemical dependency assessments, and has successfully completed a one year internship or one year of work experience in chemical dependency assessments.

C. The individual has at least a baccalaureate degree in social work, nursing, sociology, human services, or psychology, has successfully completed 30 hours of classroom instruction on chemical dependency assessments, and has successfully completed a one year internship or one year of work experience in chemical dependency assessments.

D. The individual has completed the classroom training requirements in item B or C, and is supervised by an individual who meets the criteria in item A, B, or C.

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As noted under the discussion of the chemical dependency counselor, standards for determining compulsive gambling are not unlike the standards used when performing a chemical use assessments. Since harmful chemical use and compulsive gambling are similar in that they are both addictive behaviors, it is reasonable to allow chemical use assessors to perform gambling assessments.

The fifth category of potential gambling assessors are individuals qualified as a gambling counselor and certified by the National Gambling Counselor Certification Board. The criteria established for certification includes:

1. A minimum of 2,000 hours (or one year full time equivalent) as a gambling counselor delivering direct treatment to problem/pathological gamblers and significant others, in a Board approved setting.
2. A minimum of 60 hours gambling specific training or education must be completed with appropriate supporting documentation. An additional 300 hours of related training or education (e.g., psychology, sociology, anthropology, counseling, social work, etc.) are required. Hours are defined as contact hours, gained from a formal educational setting and should not be confused with college credit. (The formula for converting college credits into contact hours is as follows: 1 credit = 15 contact hours).
3. Applicants must have completed a supervised counseling internship at an approved site. College credit internships can be used either as educational contact hours or supervised experience but not both.
4. All applicants will be expected to abide by the Certified Gambling Counselors code of ethics.
5. Counselors must be re-certified every two years through evidence of 60 hours of approved continuing education. Thirty of these hours must be gambling specific approved hours.
6. Applicants must have proof of a high school diploma or equivalency as well as their hours of experience as a gambling counselor.

This item is reasonable because it sets forth broad occupational categories that when combined with the training under item C identifies individuals who have the necessary expertise to perform gambling assessments.

**Subp. 2. Compulsive gambling assessment.** This subpart is necessary to identify information that must be obtained from the assessment. The gambling assessor must evaluate the offender's gambling behavior and the consequences that gambling has had on personal, family, and vocational pursuits. In the early rule drafts, the Department proposed a process for completing gambling assessments. The rule advisory committee recommended that process be replaced with outcomes. The advisory committee indicated that the Department should be more interested in the consistency between assessments and the quality of the assessment rather than the process of the assessment. The committee suggested that the method for obtaining information on gambling behavior should be left to the professional judgment of the individual performing the gambling assessment. Except for the requirement under subpart 3 dealing with collateral contacts, the Department agreed with the rule advisory committee. The consensus of

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the advisory committee was that a complete and accurate assessment should provide information on:

- A. the nature and history of the offender's gambling behavior;
- B. the impact that gambling has had on the offender's:
  - (1) family relationships;
  - (2) social relationships;
  - (3) employment; and
  - (4) educational pursuits, if appropriate;
  - (5) level of indebtedness; and
  - (6) the offender's ability to recognize and resolve

problems; and

- C. the use of drugs or alcohol; and

- D. the offender's emotional state relative to depression, suicide ideation, and suicide attempts.

It is reasonable to identify specific information that needs to be provided to ensure the court system of more consistent and uniform gambling assessments regardless of who completes the assessment. This information is also necessary to make a determination of compulsive gambling. As indicated earlier under the definition of compulsive gambling, the DSM-III diagnostic criteria for pathological gambling is maladaptive gambling behavior, as indicated by at least four of the following:

- (1) frequent preoccupation with gambling or with obtaining money to gamble
- (2) frequent gambling of larger amounts of money or over a longer period of time than intended
- (3) a need to increase the size or frequency of bets to achieve the desired excitement
- (4) restlessness or irritability if unable to gamble
- (5) repeated loss of money by gambling and returning another day to win back losses ("chasing")
- (6) repeated efforts to reduce or stop gambling
- (7) frequent gambling when expected to meet social or occupational obligations
- (8) sacrifice of some important social, occupational, or recreational activity in order to gamble
- (9) continuation of gambling despite inability to pay mounting debts, or despite other significant social, occupational, or legal problems that the person knows to be exacerbated by gambling

Item A is necessary to obtain an overall picture of the offender's gambling behavior. The assessment must provide information on the nature and history of the offender's gambling behavior for example, nature and history provide information governing numbers (1) to (9). Obviously, an individual who gambles infrequently and within his or her means is not a compulsive gambler.

Item B is necessary to provide more detailed information on the impact that gambling has had on certain facets of the offender's life, i.e., family relationships, social relationships, and vocation pursuits. Included in item B is the offender's ability to identify and resolve problems. For purposes of the gambling assessment and possible treatment, it is necessary to know whether the offender recognizes

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that he or she has a gambling problem and whether there are solutions for resolving the problem. Compulsive gamblers often engage in denial. Therefore, it is important for the offender to recognize and accept the need for help to address his or her gambling problem.

Item C is necessary to identify drug or alcohol usage by the offender. It is not uncommon for compulsive gamblers to experience patterns of harmful and inappropriate use of drugs or alcohol. Knowledge of the offender's use of drugs or alcohol is necessary to determine whether gambling or inappropriate alcohol or drug use is affecting the offender's family and social relationships, employment, or educational pursuits.

Item D is necessary to address the compulsive gambler's emotional state. It is not unusual for compulsive gamblers to emotionally hit bottom upon realizing the severity of his or her gambling problem and the impact that gambling has had on his or her family, social relationships, vocational pursuits, and financial resources. An offender's emotional state is an important variable to consider when determining possible treatment options.

This subpart is reasonable because it identifies information that must be identified as part of the assessment. Once this information is obtained, the gambling assessor can compare the information with criteria under the DSM-III to whether the offender is a compulsive gambler.

**Subp. 3. Method of assessment.** This subpart is necessary to require gambling assessors to conduct personal interviews and to make collateral contacts when making a gambling assessment or to indicate why collateral contacts were not made. It is reasonable to require a personal interview because most of the information required under subpart 2 can only be obtained through personal interview. It is reasonable to require collateral contacts because compulsive gamblers often engage in denial of a gambling problem. Relying solely on a personal interview may only provide partial or inaccurate information on the nature and history of the offender's gambling behavior. Who should be contacted and the number of collateral contacts is left to the discretion of the gambling assessor. There may be instances in which it is unreasonable or impossible for the gambling assessor to make collateral contacts. In that event, the gambling assessor must include an explanation of why collateral contacts were not made.

**Subp. 4. Compulsive gambling determination.** This subpart is necessary to inform the gambling assessor that the determination of compulsive gambling must meet the conditions of pathological gambling under code 312.31 in the American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders, DSM-III-R. It is reasonable to relate compulsive (pathological) gambling to DSM-III because DSM-III provides a generally recognized standard for identifying compulsive gambling behavior.

**Subp. 5. Treatment recommendation.** This subpart is necessary to establish a standard governing treatment recommendations. Minnesota Statutes, section 609.115, subdivision 9, paragraph (a) requires probation officers to determine in the presentence report whether or

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not compulsive gambling contributed to the commission of the offense. Under the rule, the probation officer screens offenders for compulsive gambling. When the screening instrument indicates an offender may be a compulsive gambler, the determination of compulsive gambling is left to the judgment of the gambling assessor. Paragraph (b) requires that the compulsive gambling assessment report include a recommended level of care for the defendant if the assessor concludes that the defendant is in need of compulsive gambling treatment. Under this subpart if compulsive gambling contributed to the commission of the offense and the gambling assessor concludes that the offender is in need of treatment, the gambling assessor must recommend treatment in the report required under subpart 7.

**Subp. 6. Additional requirements when treatment recommendation involves direct or shared financial gain.** This subpart is necessary to require additional information from gambling assessors who recommend treatment with a treatment provider with whom the gambling assessor has a direct or shared financial or referral relationship resulting in a share financial gain with the treatment provider.

Minnesota Statutes, sections 245.98, subdivision 2a requires the Department to specify the circumstances, in which, in the absence of an independent gambling assessor, the assessment may be performed by a person with a direct or shared financial interest or referral relationship resulting in shared financial gain with a treatment provider. Minnesota Statutes, section 609.115, subdivision 9, allows a probation officer to use the services of an assessor with a financial interest or referral relationship if an independent assessor is not available. Part 9585.0020, subpart 4 addresses the issue of scheduling a gambling assessment with an assessor who has a direct or shared financial interest or referral relationship resulting in shared financial gain with a treatment provider.

This subpart is necessary to address recommendations for treatment that may pose a conflict in interest. Item A requires the gambling assessor to self-disclosure whether he or she has a direct or shared financial relationship with a treatment provider. Item B requires the gambling assessor to indicate why the recommended treatment is the preferred option. Item C requires the gambling assessor to identify a treatment provider with whom he or she does not have a direct or shared financial interest.

This subpart is reasonable because it alerts probation officers and the court system of possible conflicts of interest, identifies alternative treatment, but does not prohibit treatment with any provider. Notwithstanding a potential financial conflict of interest, there may be valid reasons why treatment with a particular provider is the preferred option.

**Subp. 7. Written report, distribution.** This subpart is necessary to indicate that the gambling assessor must provide a written report on the assessment information required under subpart 2. The report must also indicate whether or not the offender is a compulsive gambler. If the offender is a compulsive gambler and the gambling assessor concludes that the offender is in need of treatment, the report must also include the recommended treatment and, if appropriate, the

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information required under subpart 6. A copy of the report must be sent to the probation officer. This subpart is necessary to inform the gambling assessor of requirements necessary to comply with Minnesota Statutes, sections 245.98, subdivision 2a and 609.115, subdivision 9.


This subpart is reasonable because the product being purchased by the state is the gambling assessment. Requiring a written report provides a means of scrutinizing expenditures and ensures program accountability.

**EFFECTIVE DATE:** The proposed rule has a delayed effective date of July 1, 1993. It is necessary to delay the effective date because Laws of Minnesota 1991, chapter 336, section 54, delays the effective date for Minnesota Statutes, section 245.98, subdivision 2a until July 1, 1993.

**EXPERT WITNESSES**

The Department does not plan to have outside expert witnesses testify on its behalf.

DATE: 1/22/93

  
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NATALIE HAAS STEFFEN  
Commissioner

