

STATE OF MINNESOTA  
DEPARTMENT OF HUMAN SERVICES

In the Matter of the Proposed Adoption of Amendments to Department of Human Services Rules Governing Standards for approval of Mental Health Centers and Mental Health Clinics for Purposes of Insurance and Subscriber Contract Reimbursements, Minnesota Rules, parts 9520.0750 to 9520.0870

STATEMENT OF NEED AND REASONABLENESS

INTRODUCTION

The proposed rule amendments govern Department of Human Services (DHS) standards for approval of mental health clinics and mental health centers for purposes of insurance and subscriber contract reimbursement. This rule is informally known as Rule 29.

The commissioner's authority to make rules which set standards for approval of mental health clinics and mental health centers is found in Minnesota Statutes, sections 245.69, subdivision 2.

On December 1, 1995, there were 87 programs governed by this rule. Some Rule 29 approved programs are provided by entities who offer other types of programs which are licensed separately by DHS or other government agencies. Some Rule 29 approved programs are accredited by private nationwide accreditation groups.

The amendments to proposed parts 9520.0750 to 9520.0870 will reduce the administrative burden of both the department's licensing division and the programs seeking approval of variances by reducing the number of variances which were routinely sought by programs and routinely granted by the Department. Approximately 45 variances are sought annually by mental health clinics and mental health centers and routinely granted by the Department because the requirements of the existing rule do not match the current underlying statutory requirements.

**The Rulemaking Process**

Following internal reviews of the pattern of Rule 29 variances, it was decided to amend the rule to minimize the administrative burden on both the providers governed by the rule and the Department. On October 16, 1995 the Department published the Notice of Solicitation of Outside Information or Opinions in the State Register. The Department did not appoint a public advisory committee (PAC). Copies of the rule were given to interested persons, including Rule 29 providers and a representative of the

health insurance industry. DHS has distributed copies of the draft rule amendments to interested members of the public and government groups prior to publishing the notice of intent to adopt a rule in the State Register.

The Minnesota Association of County Social Services Administrators [MACSSA], Rules Committee, declined an invitation to review and comment on the draft rule amendments. The MACSSA group indicated that it looked upon the proposed amendments as minor technical amendments which did not significantly impact county government spending and operations.

Current staff assigned to Rule 29 are: Lorraine Felland, Mental Health Division; and Robert Klukas, Rules Unit.

#### **SMALL BUSINESS CONSIDERATIONS**

Minnesota Statutes, section 14.115, subdivision 2, requires DHS to consider specific methods for reducing the impact of the proposed rules on small businesses. However, Minnesota Statutes, section 14.115, subdivision 7, paragraph (3), provides that this rulemaking procedure is excepted from this requirement because it covers, "service businesses regulated by government bodies, for standards and cost," which would include the regulation of mental health clinics and mental health centers seeking approval under this rule.

#### **FISCAL COSTS ASSOCIATED WITH PROPOSED LANGUAGE**

Even though the department is not required to prepare a fiscal note for this rule according to Minnesota Statutes, section 14.11, subdivision 1, the Department prepared a simplified fiscal note showing the cost savings associated with the proposed rule amendments. The Department sought the assistance of facilities governed by Rule 29 in determining the fiscal impact of the rule amendments. The facilities indicated that the elimination of the need to seek routine variance would reduce their administrative costs. The facilities were pleased that the proposed rule amendments would ease the administrative burden of facilities governed by the rule.

The Department's Fiscal Note estimates the adoption of the proposed rule amendments will decrease administrative costs for providers by over \$3000 per year. The proposed rule amendments will also reduce the Department's administrative costs by over \$1600 per year. A copy of the fiscal note is available from the Department upon request, by contacting Robert Klukas at the Minnesota Department of Human Services, 444 Lafayette Road, St. Paul, MN 55155-3816, phone (612) 296-2794.

## **AGRICULTURAL LANDS**

Because the proposed rule language does not have a direct and substantial adverse impact on agricultural land in Minnesota, Minnesota Statutes, section 14.11, subdivision 2, is not applicable.

## **NEED AND REASONABLENESS OF SPECIFIC PROVISIONS**

The specific provisions of proposed amendments to parts 9520.0750 to 9520.0870 are affirmatively presented by the department in the following statement of need and reasonableness as required by Minnesota Statutes, section 14.131.

### 9520.0760 DEFINITIONS.

Subpart 18. **Mental health professional.** The proposed amendment of the definition of "mental health professional" substitutes a statutory definition of the term for the lengthy description of qualifications proposed to be deleted from the rule. The amendment is necessary to bring the use of the term "mental health professional" into agreement with the Minnesota Comprehensive Adult Mental Health Act, Minnesota Statutes, sections 245.461 to 245.486, which was enacted in 1989. Use of the definition contained in Minnesota Statutes, section 245.462, subdivision 18, simplifies and shortens the rule. Incorporating the definition of a term by reference to its definition in this state's principal mental health statute insures that the term will continuously have a current meaning in common with the use of the term in mental health practice in this state.

### 9520.0790 MINIMUM TREATMENT STANDARDS.

Subpart 3. **Assessment and diagnostic process.** The proposed amendment to this subpart allows a "mental health professional" to perform and sign a diagnosis and assessment for a patient. The substitution of the term "mental health professional" for "psychiatrist", "licensed consulting psychologist", or "licensed psychologist" is consistent with the standards set for assessment and diagnosis in Minnesota Statutes, sections 245.462, subdivision 9, 245.467, subdivision 2, and 245.470. The proposed amendment allows a mental health professional to perform the functions allowed by law without seeking a variance from this rule part. It is reasonable and necessary to amend this rule part to bring it into conformance with the requirements for diagnostic assessments contained in Minnesota Statutes, section 245.462, subdivision 9.


9520.0800 MINIMUM QUALITY ASSURANCE STANDARDS.

Subpart 5. **Continuing education.** The proposed amendment to this subpart allows a mental health center to substitute continued licensure as a mental health professional for the continuing education requirements stated in the first two sentences of this subpart. It is reasonable to allow the substitution of continued licensure for continuing education requirements, because in almost all cases the continuing education requirements of licensure meet or exceed 36 hours. Continued licensure is deemed to meet or exceed an appropriate quality assurance standard.

9520.0810 MINIMUM STAFFING STANDARDS.

Subpart 1. **Required staff.** The proposed amendments simplify the staff requirements which a mental health center must meet to receive approval. The less complicated requirements for providing multidisciplinary staff contained in proposed amendments to subpart 1, when combined with other rule requirements, are sufficient to provide adequate services. The proposed amendments are necessary to reduce the need to seek variances for minor mental health center staff changes. The lack of availability of a variety of mental health professionals in some rural areas made it difficult for some mental health centers to always assure that they could meet the requirements of this part without seeking variances. The proposed amendments promotes compliance with rule because the amendments make it easier for a mental health center to make changes in staff which would comply with the rule.

Date 12/11/05

  
MARIA R. GOMEZ  
Commissioner of Human Services