

DECEMBER 18, 2007

## **Minnesota Departments of Human Services and Corrections**

### **STATEMENT OF NEED AND REASONABLENESS**

#### **Proposed Amendments to and Repeal of Rules Governing Chemical Dependency Treatment Licensing and Funding, *Minnesota Rules*, Chapters 2960 and 9530.**

### **INTRODUCTION**

The Departments of Human Services and Corrections propose to amend and repeal rules governing standards for chemical dependency treatment and funding and licensure of programs that provide chemical dependency treatment and detoxification services, *Minnesota Rules*, Chapters 2960 and 9530. The Departments are proposing to amend and repeal parts of the following rules:

- *Minnesota Rules*, Chapter 2960 [also known as the “Children’s Residential Facility Rule”], that govern licensure of residential programs that serve children and juveniles, specifically those rule parts that regulate chemical dependency assessment and treatment;
- *Minnesota Rules*, Parts 9530.6405 to 9530.6505 [also known as “Rule 31”], that govern licensure of chemical dependency treatment programs;
- *Minnesota Rules*, Parts 9530.6510 to 9530.6590 [also known as “Rule 32”], that govern licensure of detoxification programs;
- *Minnesota Rules*, Parts 9530.6600 to 9530.6660 [also known as “Rule 25”], governing chemical dependency care for public assistance recipients; and
- *Minnesota Rules*, Parts 9530.6800 to 9530.7031 [also known as “Rule 24”], that govern the Consolidated Chemical Dependency Treatment Fund (CCDTF).

The amendments are intended to update five chemical dependency funding and treatment rules. Three of the rules license programs that provide chemical dependency care and treatment or that provide detoxification services through a detoxification program. Two of the rules provide standards for either chemical dependency assessment or payment for chemical dependency care

DECEMBER 18, 2007

for clients whose treatment is paid for by the state. The five proposed rule amendments are promulgated simultaneously to ensure that the Departments' policies are consistent. The Departments also want to use similar terminology from rule to rule to refer to various aspects of the chemical dependency treatment process in order to promote better understanding of the rules and rule compliance.

The Department of Human Services has amended rules governing licensure of chemical dependency treatment in two separate rulemakings during the last ten years. The chemical dependency licensing standards that are part of Chapter 2960 are rules adopted jointly with the Department of Corrections to govern licensure of juvenile residential chemical dependency treatment programs. The licensing rules in Chapter 9530 were adopted in August 2004. The licensing rules in Chapter 9530 govern the licensure of treatment programs [*Minnesota Rules*, parts 9530.6405 to 9530.6505] and the licensure of detoxification programs [*Minnesota Rules*, parts 9530.6510 to 9530.6590 ].

On January 1, 2005, new treatment licensing rules in Chapter 9530 were implemented by the Department of Human Services that removed requirements for chemical dependency treatment facility licensure based on the intensity of services provided to the client by the license holder. Programs may now vary in intensity based on the client's need, including the severity of the client's problem. However, the placement criteria currently in parts 9530.6600 through 9530.6655, continued to restrict the license holder's ability to flexibly meet the client's changing needs. At the time parts 9530.6600 through 9530.6655 were written, client placement criteria were built around a licensing system that focused on levels of care, rather than on the client's needs. The proposed rule amendments are part of the Department of Human Services' efforts to shift chemical dependency treatment away from the acute care model of treatment that regarded chemical dependency as an acute illness.

Chemical dependency is a chronic relapsing condition. Information about a client's condition must be organized in a different way to match the recent gains in understanding of chemical dependency. The six dimensions for assessment developed by the American Society of Addiction Medicine

DECEMBER 18, 2007

(ASAM) provide a way of organizing assessment information, risk assessments and treatment planning decisions. Establishing categories for organizing information creates a common language for transmitting information about the client among professionals. The proposed rules implement the widely recognized information system designed by ASAM and make the chemical dependency rules more coherent. The six dimensions for assessment are discussed in more detail in the Introduction to part 9530.6620 in this Statement of Need and Reasonableness.

The Department of Human Services published a Request for Comments Notice on October 13, 2003 [Cite 28 SR 506] early in the rule drafting process. This notice stated that the Department intended to update *Minnesota Rules*, parts 9530.6600 to 9530.6655 to bring the assessment and treatment rules in line with the then recently proposed chemical dependency treatment and detoxification facility licensing rules. In the time since the publication of the Request for Comments Notice, the Department decided to amend all chemical dependency treatment related rules to promote consistency among these five related rules. A Revised Request for Comments was published in the State Register on June 18, 2007 [Cite 31 SR 1808], to advise the public of the larger scope of the rule amendment project.

In 2003 the Department of Human Services convened a series of meetings of people who are involved in chemical dependency assessment and treatment across the state in Saint Paul, Saint Peter, Brainerd and other places to discuss the draft assessment and treatment rules. In addition, the Department has met separately with representatives of Native American tribes, counties and others who are involved in chemical dependency care and assessment activities. Since the beginning of rule drafting in 2003, the Department has met more than 16 times with representatives of the groups mentioned above to review and discuss early drafts of these rule amendments.

## **ALTERNATIVE FORMAT**

Upon request, this Statement of Need and Reasonableness can be made available in an alternative format, such as large print, Braille, or cassette tape. To make a request, contact Robert Klukas by

DECEMBER 18, 2007

mail at the Minnesota Department of Human Services, 444 Lafayette Road, Saint Paul, MN 55155; by phone at (651) 431-3613; or by fax (651) 431-7523. TTY users may call the Minnesota Department of Human Services at (800) 627-3529.

## **STATUTORY AUTHORITY**

*Minnesota Statutes*, section 241.021, subdivision 2, requires that the Department of Corrections license residential programs that care for delinquent youth.

*Minnesota Statutes*, section 245A.03, subdivision 1, requires that persons who operate residential or nonresidential treatment programs be licensed by the Department of Human Services.

*Minnesota Statutes*, section 245A.09, requires the Commissioner of Human Services to adopt rules governing licensure of residential and nonresidential treatment programs.

*Minnesota Statutes*, section 254A.03, subdivision 3, requires the Department of Human Services to adopt rules which establish criteria used to determine appropriate chemical dependency treatment care for recipients of public assistance.

*Minnesota Statutes*, section 254B.03, subdivision 5 requires the Commissioner of Human Services to adopt rules governing the use of money for chemical dependency treatment and the appeals process used by recipients to appeal disputed services.

Laws of Minnesota, 1995, chapter 226, article 3, section 60, requires the Departments of Human Services and Corrections to jointly adopt rules for residential treatment programs that serve children and juveniles. *Minnesota Rules*, Chapter 2960 was adopted in response to this legislation.

Under these laws, the Departments have the necessary statutory authority to adopt the proposed rules.

## **REGULATORY ANALYSIS**

DECEMBER 18, 2007

**"(1) a description of the classes of persons who probably will be affected by the proposed rule, including classes that will bear the costs of the proposed rule and classes that will benefit from the proposed rule"**

The amendments to and repeal of the rules would likely affect:

- persons who seek chemical dependency assessment or treatment and their families;
- counties, tribes and health plans that have employees and designees who provide chemical dependency assessment and treatment;
- health plans and counties that pay for or provide chemical dependency assessment and treatment;
- persons who pay taxes to support public services including chemical dependency care, assessment and treatment;
- insurance companies and self-insured entities that pay for chemical dependency care and treatment; and
- licensed programs that provide treatment or detoxification services.

**"(2) the probable costs to the agency and to any other agency of the implementation and enforcement of the proposed rule and any anticipated effect on state revenues"**

The Departments do not anticipate that the proposed rule amendments will have an effect upon state revenues.

The Department of Human Services has historically had ongoing costs associated with training providers about rules, answering inquiries about the rules, and enforcing the requirements in existing rules. The Department does not anticipate that the proposed rule amendments will increase the Department's costs to implement and enforce the rules. The Department hopes that the proposed rule amendments to the five chemical dependency related rules will improve compliance and reduce administrative costs such as the cost of rule enforcement, including

DECEMBER 18, 2007

investigations. The Department's initial training costs associated with informing interested parties about the rule amendments should be off-set by cost savings associated with improved rule compliance.

The Departments do not anticipate that other agencies will experience substantial costs for implementation and enforcement efforts on behalf of these rules, beyond the training costs that typically accompany a new rule. Training about the new rule could be substituted for some ongoing training activity, including ongoing rule training for existing staff and newly hired staff.

The three licensing rules are implemented and enforced by the Departments of Human Services and Corrections. Department employees and employees of agencies that provide assessments and treatment will need some training about the new rules. The Department of Human Services will assist with training of employees involved in assessment and treatment programs at no cost to agencies.

Federal privacy and confidentiality training costs are associated with existing federal and state laws and regulations, rather than requirements associated entirely with this rule. Existing laws and rules require that agency and program staff understand privacy and confidentiality issues associated with chemical dependency assessment and treatment.

**"(3) a determination of whether there are less costly methods or less intrusive methods for achieving the purpose of the proposed rule"**

The Departments believe that the more client-focused chemical dependency treatment model, adopted as part of the 2004 chemical dependency treatment program licensing rules, will be a more cost-effective way of providing treatment, because it emphasizes meeting the needs of the client, rather than placing clients according to limited types of treatment licensure.

The Departments do not believe that there are viable alternative means to require providers to provide the most effective treatment other than through licensure standards, standards for

DECEMBER 18, 2007

assessment and treatment, and standards for using the Consolidated Chemical Dependency Treatment Fund.

**"(4) a description of any alternative methods for achieving the purpose of the proposed rule that were seriously considered by the agency and the reasons why they were rejected in favor of the proposed rule"**

As discussed in the Statutory Authority section of this Statement of Need and Reasonableness, the legislature has on numerous occasions determined that the Department of Human Services and the Department of Corrections should adopt rules to license residential programs. In addition, the legislature determined that the expenditure of public money for chemical dependency treatment must follow rules adopted according to Minnesota Statutes, section 254B.03, subdivision 5. The legislature also requires that recipients of public assistance who need chemical dependency treatment should get appropriate care as determined by the commissioner of Human Services through rulemaking.

It is not reasonable to attempt to provide licensure and program standards by alternative methods for chemical dependency funding, care and treatment when the legislature has directed that the Department use rulemaking procedures.

The Departments consider these rules to be the least costly and least intrusive methods of achieving the purpose of the proposed rule amendments.

**"(5) the probable costs of complying with the proposed rule, including the portion of the total costs that will be borne by identifiable categories of affected parties, such as separate classes of governmental units, businesses, or individuals"**

These amendments include no new general responsibilities for counties, tribes and health plans because providing assessment and treatment is already a responsibility of counties tribes and health plans. The amendments alter the way in which assessment and treatment responsibilities are met. The new way of providing assessment and treatment should not be more expensive than the existing methods.

DECEMBER 18, 2007

**"(6) the probable costs or consequences of not adopting the proposed rule, including those costs or consequences borne by identifiable categories of affected parties, such as separate classes of government units, businesses, or individuals"**

Failing to adopt the proposed rule changes does not have a specific cost to the state and other entities. On the other hand, the rules present an opportunity to realize potential savings. The rule changes provide the opportunity to reduce repeat placements in chemical dependency treatment. Repeat placements are expensive. The average per placement cost of all types of chemical dependency treatment is \$2,735 for treatment provided through public funds. The costs of treatment provided through other funding sources may be higher.

Based on the Drug and Alcohol Normative Evaluation System, a system to collect information from all licensed treatment programs regarding clients admitted to those programs, the following shows the percent of clients in State Fiscal Year [SFY] 2006 who had previous treatment admissions:

73.4% at least one previous admission  
46.6 % at least two previous admissions  
29% at least three previous admissions  
18.1% at least four previous admissions  
12.5% at least five previous admissions  
8.5% at least six previous admissions

These rates have been substantially the same over time.

In 2000, the Department of Human Services released "The Challenges and Benefits of Chemical Dependency Treatment," an outcome study that provided information about opportunities to improve treatment outcomes. The study used abstinence from alcohol and drug use at six months post-treatment as the indicator of success. In general, the study determined that 54% of individuals who participate in chemical dependency treatment are abstinent at six months. The



DECEMBER 18, 2007

following study findings represent opportunities to improve outcomes which are supported by the rule amendments:

- 52% of treatment completers who did not participate in aftercare were abstinent at six months, but 72% of completers who participated in aftercare were abstinent at six months. This finding underscores the need to continue services past the traditional fixed length of service.
- 59% of women inpatient clients who said they were extremely bothered by psychological problems received mental health services, while 46% who said they were not bothered also received the services. While the percentages varied, the same pattern held for men, for outpatient clients, and for all service areas. Some clients who identified a need received the service, while some who did not cite a need received the service anyway. This finding underscores the need for better matching clients to specific services.
- 73% of clients who cited no life area problems after treatment were abstinent, while 18% of those citing five or more problems after treatment were abstinent. This finding underscores the importance of addressing a broad spectrum of problems during treatment.
- 71% of people of color were abstinent at six months if they participated in a special populations program compared to 54% if they participated in a general population program. This finding underscores the need to use culturally specific programs.

The more successful the client is in the client's initial treatment, the less likely it is that the client will need repeated treatment. It is not possible to predict the actual number of clients whose outcomes will improve. However, it is reasonable to assume that taking advantage of the approaches suggested by these study findings will reduce repeat placements and will reduce the costs associated with repeated treatment.

The state pays for more than half of the cost of treatment provided to clients in Minnesota. Adoption of the proposed rule amendments is not expected to significantly change the overall proportion of assessment and treatment costs paid for by either the public or by private parties.

DECEMBER 18, 2007

A consequence of failing to adopt the proposed amendments is that the opportunity to bring all rules closely related to chemical dependency assessment and treatment into conformity will be missed. Another consequence of failing to adopt the proposed amendments is that the opportunity to use currently accepted best practices standards to reduce repeated treatment placements will be lost. The Departments hope that clear and consistent rules that promote the most effective treatment and minimize repeated chemical dependency treatment placement will reduce the costs of all parties that pay for treatment.

**"(7) an assessment of any differences between the proposed rule and existing federal regulations and a specific analysis of the need for and reasonableness of each difference"**

Three of the rules that the Departments propose to amend govern the licensure of treatment and detoxification programs. Chapter 2960 and Parts 9530.6405 to 9530.6505 govern treatment program licensure and parts 9530.6510 to 9530.6590 govern detoxification program licensure. Federal regulation does not govern chemical dependency treatment and detoxification program licensure. Therefore, there is no difference between the Department's rules governing licensure and the non-existent federal licensure rule. The proposed amendments to the licensing rules do not differ with federal regulations.

Federal regulations do not govern the operation of the Consolidated Chemical Dependency Treatment Fund [CCDTF]. The CCDTF was created by the legislature and is not a federal program. Rules governing the operation of the CCDTF at parts 9530.6800 to 9530.7031, do not conflict with federal regulations regarding the use of federal funds. The proposed amendments are in keeping with and support federal laws and regulations about funding chemical dependency assessment and treatment.

Federal laws and regulations do not differ with the proposed amendments to rules governing assessment and chemical dependency care for public assistance recipients, parts 9530.6600 to 9530.6660. Parts 9530.6600 to 9530.6660 incorporate and support federal laws and regulations and are intended to be in keeping with federal laws and regulations in areas where federal regulations and state laws and rules overlap.

DECEMBER 18, 2007

### **PERFORMANCE-BASED RULES**

The proposed rule amendments continue the Department of Human Services' attempt to eliminate old rule standards that were not focused on performance and to implement rules that are more oriented to improving the performance of chemical dependency assessment and treatment activities in this state. The old rules emphasized categories of licensure and were less focused on requiring the assessment and treatment services that the client needs to successfully complete treatment. The proposed rule amendments encourage license holders to identify the needs of individual clients and to design treatment programs to meet those needs.

The proposed rule amendments complete the transition from a system based upon facility licensure categories and payment based upon licensure categories to a system that focuses on providing appropriate services to the client to yield a better treatment outcome. The Departments believe that the proposed rule amendments encourage improved performance by the entities that provide assessment and treatment services and promote a better outcome for clients at an overall reduced cost.

### **ADDITIONAL NOTICE**

This Additional Notice Plan was reviewed by the Office of Administrative Hearings and approved in a November 28, 2007 letter by Administrative Law Judge Kathleen D. Sheehy. In addition to the persons that the Departments are required to notify by law, the Departments of Human Services and Corrections will notify the following persons and groups about their intent to adopt rules:

- All residential and non-residential chemical dependency treatment license holders;
- All detoxification program license holders;
- Minnesota Council of Child Caring Agencies;
- Association of Minnesota Counties;
- Minnesota Association of Resources for Recovery and Chemical Health;
- Minnesota Medical Association;

DECEMBER 18, 2007

- Managed care organizations under contract with the Departments to provide assessment and treatment services;
- Minnesota Association of County Social Services Administrators;
- Tribal and County CCDTF coordinators;
- Providers who are outside of Minnesota and are paid through CCDTF
- County Board Chairs; and
- Minnesota Association of Treatment Providers.

Our Notice Plan also includes giving notice required by statute. We will mail the proposed rules and Notice of Intent to Adopt to everyone who has registered to be on the Departments' rulemaking mailing lists under Minnesota Statutes, section 14.14, subdivision 1a. We will also give notice to the Legislature per Minnesota Statutes, section 14.116.

### **CONSULT WITH FINANCE ON LOCAL GOVERNMENT IMPACT**

As required by Minnesota Statutes, section 14.131, the Departments have consulted with the Commissioner of Finance. We did this by sending to the Commissioner of Finance copies of the documents sent to the Governor's Office for review and approval by the Governor's Office prior to publishing the Notice of Intent to Adopt. We sent the copies on Monday, November 5, 2007. The documents included: the Governor's Office Proposed Rule and SONAR Form; final rules; and SONAR. The Department of Finance indicated in their December 17, 2007 response that "the fiscal impact to local governments from the proposed rule change is minimal."

### **COST OF COMPLYING FOR SMALL BUSINESS OR CITY**

#### **Agency Determination of Cost**

As required by Minnesota Statutes, section 14.127, the Departments have considered whether the cost of complying with the proposed rules in the first year after the rules take effect will exceed \$25,000 for any small business or small city. The Departments have determined that the cost of complying with the proposed rules in the first year after the rules are implemented will not exceed \$25,000 for any small business or small city.

DECEMBER 18, 2007

The Departments have made this determination based on the probable costs of complying with the proposed rule amendments. To the best of the Departments' knowledge, no city operates a licensed treatment program, nor are cities directly affected in a tangible way by the proposed rule amendments. The Departments do not expect that licensing rule changes will require small businesses who provide assessment or treatment services to spend more than \$25,000 in the first year after the rules take effect. Two of the three affected licensing rules are only three years old. The proposed licensing rules amendments standardized the use of the certain terms such as "substance use disorder," and clarified the requirements established in the 2004 rulemaking that providers must meet. The licensing rule changes should require very little license holder training and no changes to the buildings where treatment occurs.

The amendments to *Minnesota Rules*, parts 9530.6600 to 9530.6660 and *Minnesota Rules*, Parts 9530.6800 to 9530.7031 will require training a program's director and billing person about billing practices. The costs of training should not exceed \$25,000 for any given program. The training will be needed by two people per program: the program director and the person who performs the billing function for the program. It is unlikely that a third person will need training about billing codes and practices caused by the proposed amendments. The training should not exceed one day in length. The Departments believe that the cost of providing training for two persons for one day for a program should not exceed \$25,000. The Departments believe that no new equipment or remodeling or other facility changes are required by the rule amendments.

#### **LIST OF WITNESSES**

The Departments anticipate that only Department employees will testify in support of the need for and reasonableness of the rules. An attorney from the Office of the Attorney General will appear on behalf of the Departments.

#### **RULE-BY-RULE ANALYSIS**

### **CHAPTER 2960 CHILDREN'S AND JUVENILE CHEMICAL DEPENDENCY TREATMENT LICENSING RULE AMENDMENTS**

DECEMBER 18, 2007

**2960.0020 DEFINITIONS.**

**Subparts 12 and 13. Chemical abuse and chemical dependency.** These are the definitions of “chemical abuse” and “chemical dependency.” It is necessary to repeal these definitions because the amended rule will not include these terms. It is reasonable to delete them because replacement terminology is proposed in subpart 70a.

**Subpart 16. Child in need of protection or services or CHIPS child.** This is a technical change to correct an incorrect statutory reference. It is necessary and reasonable to correct errors in the rule.

**Subpart 41. Inappropriate and harmful chemical use.** It is necessary to repeal the definition of inappropriate and harmful chemical use, because the amended rule will not include this term. It is reasonable to repeal it because it was used to exemplify chemical abuse, a term which is also repealed.

**Subpart 52. Pathological use.** It is necessary to repeal the definition of pathological use, because the amended rule will not include this term. It is reasonable to repeal it because it was used to describe the term “chemical dependency”, a term which is proposed to be repealed.

**Subpart 70a. Substance use disorder.** It is necessary to define "substance use disorder" because the presence or absence of a substance use disorder is essential to determining whether or not a client needs treatment services. It is reasonable to rely on the definition of this term in the most current edition of the Diagnostic and Statistical Manual of Mental Disorders (DSM), because the manual is the most widely recognized reference for standardizing the definitions of mental and behavioral disorders. The most current edition of the DSM is The Diagnostic and Statistical Manual, Fourth Edition, Text Revision, 2000. The Department’s adoption of the DSM definition will ensure that the Department will use the same definition used by many other states and by insurers and researchers.

The American Psychiatric Association (APA) has developed definitions that both serve the purpose of describing the conditions governed by the rules and are accepted internationally. The term used by the APA is “substance use disorder” and is published in the current edition of the Diagnostic and Statistical Manual of the American Psychiatric Association, which is a standard text used as a reference work by mental health and treatment professionals.

Because the concept of “chemical dependency” is central to the rules, the use of the newer APA

DECEMBER 18, 2007

terminology has led to many small changes throughout chapters 2960 and 9530. The amendments that update the rule by using the term “substance use disorder” do not change the substantial requirements of the provision, but serve to align the rule language with the new definition consistently throughout the rule.

The term “substance use disorder” has been substituted for the terms “chemical abuse” and “chemical dependency” throughout Chapters 2960 and 9530. The use of the term “substance use disorder” throughout the rule amendments is reasonable, because it is reasonable to use the same terms to describe a client’s condition in these assessment and treatment related rules.

#### **2960.0070 ADMISSION POLICY AND PROCESS.**

**Subpart 5. Resident screening.** The change to subpart 5 updates the language to conform with changes made to the use of the term “substance use disorder,” which has been substituted for the terms “chemical abuse” and “chemical dependency” throughout Chapters 2960 and 9530. The use of the term “substance use disorder” does not change license holder requirements.

#### **2960.0160 ADMISSION POLICIES AND PROCESS.**

**Subpart 2. Ability to meet resident needs.** Item E addresses the standards for a chemical use assessment for a resident, if the resident has been determined to need an assessment. The change in the introduction to item E updates the language to conform with changes in definitions as discussed in support of part 2960.0020, subpart 70a. It represents no substantive change in requirements.

The changes to subitems (1) through (6) are also made to update rule language. The required categories of information for an assessment were established by the American Society of Addiction Medicine (ASAM). The ASAM six dimensions are the most widely used method of sorting client information for chemical dependency treatment in the country and provide a comprehensive measurement tool. When the rules were adopted, the titles for the dimensions were paraphrased. This proposed change uses the accurate ASAM titles. It is necessary and reasonable to update the rule to conform to the national standard used in this rule and in Chapter

DECEMBER 18, 2007

9530. The ASAM six dimensions are discussed further in this Statement of Need and Reasonableness at the Introduction for part 9530.6620.

The repeal of assessment of vulnerability in subitem (7) is necessary because this assessment requirement is in part 2960.0700, subpart 5, item A, subitem (1). It is reasonable to remove duplicative requirements, because the rule is easier to use when duplicative requirements are removed.

The addition of a requirement that the assessment summary be written according to subitems (1) to (7) is necessary to ensure that the written assessment is directly linked with each of the categories of information for an assessment as reflected in the subitems. The new requirement is reasonable because references in the assessment to the updated language in the seven subitems will also ensure that the author of the assessment is focusing on and using the updated standards.

#### **2960.0430 PURPOSE.**

**Subpart 1. Purpose.** The only change to this subpart is proposed to update the terms used and is not a change to the requirements. It is reasonable to use language that conforms to changes in definitions as discussed in support of part 2960.0020, subpart 70a.

**2960.0440 APPLICABILITY.** The change to this part is a technical change that is necessary to correct an outdated rule reference. It is reasonable and necessary to correct outdated rule references because the rule should only contain references to pertinent rules so that interested parties will understand the true intent of the rule.

#### **2960.0450 CHEMICAL DEPENDENCY TREATMENT SERVICES.**

**Subpart 2. Required services.** Existing rules establish the necessity of requiring a license holder to provide specific treatment services. Proposed Item D moves therapeutic recreation from an additional or allowable service in subpart 3 to the required services in subpart 2. It is necessary to add therapeutic recreation to the required services, because some license holders have used denial of therapeutic recreation as a punishment for facility rule infractions. Therapeutic recreation shows clients how to enjoy leisure time activities without the use of chemicals. It is reasonable to



DECEMBER 18, 2007

require therapeutic recreation, because it is during leisure or free time that children and adolescents are most likely to return to using chemicals after they leave the program. It is essential that these young clients learn to spend recreation time in ways that are appropriate and safe. Further, experience with adolescents in residential programs has shown that when staff members participate in leisure activities with residents, they have an opportunity to build connections and trust that may enhance the clients' engagement in other treatment services.

In addition, therapeutic recreation is particularly important for children and adolescents in residential placements. In a facility placement, there are limited recreational options for clients, unless they are arranged or provided as part of the program. Without an appropriate outlet, "pent up" energy in children and adolescents can lead to behavior management problems.

**Subpart 3. Additional chemical dependency treatment services.** The only change in this subpart is the deletion of item B, therapeutic recreation, which has been moved to subpart 2, item D.

**Subpart 4. Counselors to provide chemical dependency treatment services.** There are two changes to this subpart. The first is the requirement that counselors or other qualified professionals provide the therapeutic recreation services. It is necessary to require professional therapeutic recreation facilitation, because the service has specific goals related to the resident's recovery. It is reasonable to require professional qualifications, because it separates therapeutic recreation from general leisure activities, such as a volunteer taking a bunch of kids out for volleyball.

The second change simply clarifies what is meant by a "qualified" alcohol and drug counselor. The reasonableness of the qualifications provision is provided at part 2960.0460, subparts 5, 6a, and 7.

**Subpart. 5. Volunteers.** The only change in this subpart is the deletion of "student interns." This change is reasonable because student intern qualifications are governed by part 2960.0460, subpart. 9.

## **2960.0460 STAFF QUALIFICATIONS.**

**Subpart 5. Alcohol and drug counselor qualifications.** The change in item A clarifies the need

DECEMBER 18, 2007

to comply with Minnesota Statutes, Chapter 148C, which governs licensure of alcohol and drug counselors. It is reasonable to require that individuals demonstrate their licensure or exemption from licensure, because it is illegal for them to be counselors in a treatment program unless one of the statutory conditions apply.

**Subpart 6. Counselor licensing.** It is reasonable to repeal this subpart because it was made redundant by the amendment to subpart 5.

**Subpart 6a. Individuals with temporary permit.** It is necessary to amend these rules to govern the conditions under which individuals with temporary permits may provide counseling, because temporary permits were not available when these rules were originally adopted. It is reasonable to require the individuals to meet certain conditions, because individuals with temporary permits have not passed the examination required for full licensure and have not demonstrated that they are as qualified as a licensed individual.

**Item A.** Weekly supervision documentation by someone who has met the requirements of full licensure is reasonable because it ensures the permit holder is providing the services in a responsible manner. It is reasonable to limit the number of permit holders supervised by an individual licensed counselor to ensure each permit holder gets the required supervision and sufficient attention.

**Item B.** It is reasonable to allow clinical supervisors who are approved by the Board of Behavioral Health and Therapy to supervise individuals with temporary permits, because supervisors have demonstrated specific related skills. Because a clinical supervisor has demonstrated supervisory skills, it is unnecessary to require the same supervisory ratio as in item A.

**Subpart 7. Individuals exempt from licensure.** These rules must continue to describe the qualifications for an alcohol and drug counselor who is exempt from licensure. It is not reasonable to treat exemption from licensure as equivalent to demonstrated competence to provide counseling services in a treatment program. The qualifications for an exempt person remain the same as those

DECEMBER 18, 2007

initially adopted. The only change is in item C. The Institute for Chemical Dependency Professionals of Minnesota, Inc. is defunct and should not be referenced. However, the test it administered is still available in Minnesota. Rather than name another organization, which could also go out of business, the proposed rule references the nationally recognized test.

**Subpart 8. Overnight staff.** The change in subpart 8 is a correction of an error in the adopted rules. It would be unreasonable to require overnight staff to have the qualifications of a counselor because they are not responsible for counseling clients. It is reasonable, however, that they be free from chemical use problems, because they supervise and ensure the safety of residents overnight.

**Subpart 9. Student interns.** It is necessary to govern the use of student interns in treatment programs, because they will have the responsibilities and perform the functions of qualified professionals, but they have not met the requirements of licensure. Therefore, it is reasonable to require a qualified staff person to be responsible for all of the tasks performed by the student. It is reasonable to require that the student be free from chemical use problems and meet the orientation requirements of other staff members, because they will have responsibility for residents.

**2960.0485 INITIAL SERVICES PLAN.** This part establishes a requirement for an initial services plan for each client. It is necessary to require an initial services plan because it provides direction to the staff who provide assistance to the client during the first days of the client's stay. It is reasonable to require a plan of care during the time period from admission until the individual treatment plan, which is required in part 2960.0490, is ready to address the resident's individual needs. The initial services plan ensures that the client's time in the facility, before a treatment plan is complete, is not wasted time. It is also reasonable to direct the license holder to address health, safety and vulnerability issues first because, if these issues are unaddressed, they may present the most danger to the client.

**2960.0490 INDIVIDUAL TREATMENT PLAN.**

**Subpart 1. Treatment plan required.** It is necessary to explain that the treatment plan can be a continuation of the initial services plan, so that license holders know that two plans are not

DECEMBER 18, 2007

required. It is reasonable to allow the license holder to build on the initial services plan, because this may reduce paperwork and it is consistent with the requirement that the treatment plan be a continuously evolving document that is based on the client's needs at a given time.

**Subpart 2a. Plan format.** It is necessary to specify a format for treatment plans to ensure that all areas of the client's life are addressed. It is reasonable to use the six dimensions as the format, because it is similar to the same requirement in subpart 3, item B.

**Subpart 3. Plan contents.** The necessity of governing treatment plan contents was established when the existing rules were initially adopted.

**Item B.** The existing rules refer to the evaluation areas in part 2960.0160, subpart 2, item E, which is being amended to list the six dimensions. The amendments to this item will match amended part 2960.0160. It is reasonable to refer to Subpart 2a here for a conveniently available list of the dimensions, rather than referring to Part 2960.0160, because it will be easier for the license holder to readily find the specifics of the requirements that have just been listed in the preceding Subpart. This is not a change in requirements.

**Item C.** Item C, concerning the objectives in the treatment plan, has two changes. The intention of the existing rule language is that the objectives in the client's treatment plan be understandable to the client. However, experience demonstrates that the existing rule language has been interpreted in other ways. It is reasonable to amend the rule to make the intent of the rule clear. Similarly, the function of objectives in treatment plans is to delineate specific actions or steps that help the client reach the client's goal. In reviewing license holder's documentation about treatment plans, the Departments have found, in some instances, that objectives are duplicated from one client to another without apparent consideration of what would be appropriate for each client and without documentation as to whether the client's treatment plan objective is being met. It is also reasonable to require that necessary parts of the client's plan be documented, so that the Departments can monitor the license holder's compliance with an individual client's plan. It is reasonable to require that resident's objectives be individualized, time-limited and measurable, so

DECEMBER 18, 2007

that it can be determined if the client has met established objectives in a reasonable amount of time.

Item E. The change to item E is intended to clarify the intent of the rule and does not change the requirement.

Item F. The risk descriptions are discussed in the statement of need and reasonableness for part 9530.6622. The risk descriptions are a numerical designation for the severity of a problem in each of the six dimensions. It is reasonable to require them in the treatment plan, because they serve as a method of establishing treatment priorities and monitoring improvement. The risk descriptions are also used in chemical dependency programs governed by other rules and in chemical use assessments. Using the same risk descriptions that are used by other programs facilitates communication between assessors and treatment providers and when transferring clients to other providers, such as outpatient treatment providers. Many of the license holder's clients will attend outpatient chemical dependency treatment. Use of the same risk description will efficiently help the receiving program know where to start treatment activity with a specific client.

**Subpart 5. Plan reviews.** The necessity and reasonableness of requirements that govern plan reviews was established when the existing rules were initially adopted. Changing the term "outcomes" to the term "goals" is an editorial change and does not change the requirement.

The requirement that plan reviews be recorded in the six dimensions is reasonable because it uses the six dimension format in the treatment plan. It is reasonable to require a risk description in each dimension, because the risk description offers a reference and method for monitoring progress. However, a generalized risk description without a narrative description does not provide enough detailed information about a specific client's treatment objectives, what is effective for the client, why a particular treatment is effective, and what changes must be made to the client's treatment to ensure that treatment is most effective for the client. Therefore, it is necessary to require both a narrative and risk description for each client.

DECEMBER 18, 2007

**Subpart 5a. Combined plan reviews and progress notes.** The necessity and reasonableness of requirements that govern plan reviews and progress notes was established for the current rules. It is reasonable for license holders to perform these tasks at the same time because they are similar.

#### **2960.0670 ADMISSION.**

**Subpart 2. Conditions governing admission.** The change in this subpart updates the language to conform with changes to the definitions in part 2960.0020. Substituting the term “substance abuse” for “chemical abuse” is reasonable, because “substance abuse” is the term proposed to be used throughout chapters 2960 and 9530. The term “primary chemical abuse treatment” refers to a level of care in the defunct system of treatment that included levels of care. The change in terms does not change the requirement.

### **CHEMICAL DEPENDENCY TREATMENT LICENSURE**

#### **9530.6405 DEFINITIONS.**

The need to define key terms in the rule was established when the existing rules were adopted.

**Subpart 7a. Chemical dependency treatment.** The proposed definition is reasonable because it is substantially the same as the definition of “treatment” that will be repealed in subpart 19. It is necessary to use the expanded term “chemical dependency treatment” rather than “treatment” because it distinguishes chemical dependency treatment from treatment for other ailments or conditions.

**Subparts 8, 10 and 18.** The changes to these definitions simply reflect the change throughout the rule amendments from the use of the terms “chemical abuse” and “chemical dependency” to the use of the term “substance use disorder” as it is defined in the Diagnostic and Statistical Manual [DSM]. It is reasonable to use terms in a way that is consistent with the use of those terms in the chemical dependency treatment field. It is reasonable to use language that conforms with changes in definitions as discussed in support of part 2960.0020, subpart 70a.

**Subpart 17a. Student intern.** It is reasonable to define “student intern” because these rules also govern the participation of student interns in licensed treatment programs. The use of

DECEMBER 18, 2007

student interns is authorized under Minnesota Statutes, section 148C.11, subdivision 2.

Experience has shown that some programs have designated persons as student interns even though the individuals were not enrolled in school. It is reasonable that “student intern” be defined as a person who is in school and studying alcohol and drug counseling; and that the definition establish thresholds so that the definition can be applied consistently to individuals who wish to be classified as a student intern. License holders need to know to whom the provisions governing interns apply.

**Subpart 17b. Substance use disorder.** Throughout the amendments to parts 9530.6405 to 9530.6505, the term “substance use disorder” is used to describe medical conditions that are referred to in the existing rule as “chemical abuse” and “chemical dependency” and the related definitions of “inappropriate and harmful use” and “pathological use.” These terms in the existing rule were used to describe the condition of clients in need of treatment and to describe the condition treatment services were meant to address. The American Psychiatric Association (APA) has developed definitions that both serve the purpose of describing the conditions governed by the rules and that are accepted internationally. The term used by the APA is “substance use disorder” and is published in the current edition of the DSM of the American Psychiatric Association, which is a standard text used as a reference work by mental health and treatment professionals. The use of the term “substance use disorder” throughout the rule amendments is reasonable, because it is reasonable to use the same terms to describe a client’s condition in these assessment and treatment related rules.

**Subpart 19. Treatment.** The definition of “treatment” is being repealed because it is replaced by subpart 7a which is more directly related to chemical dependency treatment. The rules are generally related to chemical dependency treatment rather than some other kind of treatment for some other kind of ailment or condition.

#### **9530.6410 APPLICABILITY.**

**Subpart 1. Applicability.** There are two changes to the Applicability subpart. The first updates the rule to match the Human Services Licensing Act, Minnesota Statutes, Chapter 245A, which

DECEMBER 18, 2007

does not provide an exception to programs with fewer than five clients. The second amends the description of the entities governed by licensure to conform to the changes in definitions in part 9530.6405, subpart 17b, regarding “substance use disorder.”

**Subpart 3. Certain hospitals excluded from license requirement.** See “substance use disorder,” discussion in this Statement of Need and Reasonableness at part 9530.6405, subpart 17b.

### **9530.6415 LICENSING REQUIREMENTS.**

#### **Subpart 3. Changes in license terms.**

Item A: Some changes to a license holder’s treatment program may require the license holder to meet additional applicable rule provisions. Therefore, certain changes must be brought to the attention of the Commissioner of Human Services, so that the Commissioner may determine whether the license holder must meet additional requirements. Item A is a list of the changes a program may experience that will result in the commissioner’s review and determination. The existing rules established the necessity of such a list.

Subitem (2) It is reasonable to include changes to the services specified in parts 9530.6485 to 9530.6505, because these parts govern specialized services and require specialized staffing ratios or capabilities. It is reasonable, for example, to expect that a license holder who claims to serve adolescents be reviewed by the Commissioner of Human Services to ensure that the license holder meets the special qualifications and staffing ratio requirements of part 9530.6485.

Subitem (4). It is reasonable to require a license holder to report a change in capacity for a program that provides room and board, because zoning and the licenses from the Minnesota Department of Health include capacity requirements related to the facility capacity. If the facility’s capacity changes, then the zoning designation and Health Department licenses may no longer be valid.

**9530.6420 INITIAL SERVICES PLAN.** The existing rules established the necessity for an initial services plan. Some license holders were confused by the existing rule language and the Department of Human Services found the language to be a source of license holder noncompliance with rule requirements. The proposed amendment does not change the substantive requirement,



DECEMBER 18, 2007

but rather attempts to make the rule requirements more explicit and easier to comply with. It is reasonable to clarify rules to promote compliance.

### **9530.6422 COMPREHENSIVE ASSESSMENT.**

**Subpart 1. Comprehensive assessment of client's substance use disorder problems.** The existing rules established the necessity for a comprehensive assessment of a client.

During its review of licensed programs, the Department of Human Services found that many programs were using county generated client assessments that were incomplete and out of date, rather than making new assessments or updating and expanding the county assessment. The result was that treatment plans were based on inadequate assessment.

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Two rule changes are proposed to address this problem. The first is a requirement that the assessment information be current. The standard for “current” is the same as the standard proposed for part 9530.6615, subpart 1, item D. The reasonableness of the Department of Human Service’s standard for a current diagnosis is discussed at part 9530.6615, subpart 1, item D.

The second change is reasonable, because it makes it clear that the license holder is responsible for obtaining all the information required for a comprehensive assessment and for a treatment plan.

**Items D, G, N and O.** The existing rules established the necessity of a list of information that must be gathered in a comprehensive assessment. The additions to the list are reasonable, because they are aspects of the client’s problem that the assessor must know in order to complete the assessment summary required in subpart 2 and the treatment plan required in part 9530.6425.

**Subpart 2. Assessment summary.** The existing rules established the necessity of rules governing the assessment summary. The changes proposed for subpart 2, item A, address two issues. The first corrects a problem with implementation of the existing rule. Some license holders use the numerical risk descriptors from part 9530.6622 as the entire assessment summary. The existing rule does not give more specific guidance.

The second issue is compatibility with parts 9530.6600 through 9530.6655, the assessment and

DECEMBER 18, 2007

placement rules. The Department of Human Services envisions a process that begins with a relatively cursory assessment by an assessor who is separate from the license holder, which is followed by a placement decision according to part 9530.6622. Next is a more in depth comprehensive assessment completed by the license holder in preparation for a treatment plan and service provision. For this series of actions to flow efficiently, each step should build on the previous step, and the expectations and language in each step should facilitate the next step. Therefore, changes are being proposed to the assessment summary to increase its compatibility with the previous step. The reasonableness of the specific changes follows:

Item A, Subitem (1): It is reasonable to require numerical risk descriptors, because it helps guide the treatment plan and provides a baseline for measuring client improvement. The numerical risk descriptors are discussed in this Statement of Need and Reasonableness at the Introduction for part 9530.6620.

Item A, Subitem (2): The license holder needs specific information about how a client's problem manifests itself in order to develop services to address the client's problem. It is reasonable to require a narrative to support the risk descriptors, because a narrative description provides a more complete picture of a client's situation.

For instance, a risk descriptor of 3 in dimension 6 means only that there are problems in the client's living environment to the extent that the client needs professional assistance to change or cope with the environment. Without narrative information, the person developing the treatment plan does not know, for example, whether the client is living in a crack house in a crime ridden neighborhood or is living alone in a reasonable apartment, but has no friends or family members who are sober and who support the changes the client is making. In the first situation, the plan might call for assistance in finding new housing, and in the second it might call for counseling for the client's friends and family members and for helping the client to locate a sober peer network where the client is comfortable.

Item A, Subitem (3) It is reasonable to include a determination that the client is a person with

DECEMBER 18, 2007

a substance use disorder, because this is the minimum criteria that a client must have to require substance abuse treatment.

Item B. The existing rules established the necessity of using the six dimensions as a method to organize assessment information. It is reasonable to require that the assessment summary further describe what should be in the narrative summary to ensure that the necessary information is available to develop the treatment plan. The specific items are reasonable, because they relate to the essential issues in each dimension.

### **9530.6425 INDIVIDUAL TREATMENT PLANS.**

Subpart 1. General. The existing rules established the necessity of individual treatment plans. It is reasonable to establish a timeline for the completion of the individual treatment plan so that the license holder can know what the expectation is. Seven calendar days after the completion of the assessment summary is a reasonable amount of time because by that time the counselor will know the client's needs. Furthermore, seven calendar days is a reasonable time frame within which to have the plan completed in light of industry practice to provide counselors with fifteen minutes for activities such as plan development for every hour spent in direct client contact, which should generally afford adequate administrative time for completion of this important task.

The next change concerns updating the client's plan based upon ongoing assessment of the client. The change will simplify the existing rule language, which has caused some confusion. The intent of the rule - that the treatment plan be a continuously evolving process - is more clearly expressed by the amended language. It is reasonable to clarify rule parts that have proved confusing, because the clarification promotes license holder understanding and compliance.

The last change to subpart 1 allows the license holder to use the initial services plan as the basis of the individual treatment plan. This is reasonable, because it can eliminate duplicative planning efforts on the part of the counselor, if the initial services plan already meets some of the requirements of the individual treatment plan.

Subparts 2 and 3. Changes to these subparts make clear the requirement to record the individual

DECEMBER 18, 2007

treatment plans, progress notes and plan reviews in the six dimensions. The amendments are intended to clarify the requirements in the existing rule. It was always the intent of the Department of Human Services that the six dimensions be used for the treatment plan. Because the treatment plan is built on the assessment summary and the assessment summary was recorded in the six dimensions, the treatment plan should be recorded in the six dimensions. It follows that progress notes and reviews of the treatment plan should be organized in the same way. Based on the Department of Human Services' experience, though, the requirement to use such an approach was not readily apparent in the existing rules, and the Department of Human Services therefore found uneven compliance with these subparts, making it necessary and reasonable to propose more explicit language that clarifies the Department's intent.

**Subpart 3, item B, subitem (4).** The existing rules established the need for treatment plan review standards. It is reasonable to include review of individual abuse prevention plans, because Minnesota Statutes, section 245A.65 provides that license holders have a responsibility to review the client's abuse prevention plans. However, experience indicates that license holders frequently overlook this responsibility. It is reasonable to improve compliance with the law by associating the abuse prevention plan review with other plan review requirements.

**Subpart 3a. Documentation.** This proposed subpart allows a plan review to serve as a progress note, and vice versa, if the documentation meets the requirements of all of subpart 3. It is reasonable to allow the license holder to combine these processes when appropriate because it reduces required paperwork without jeopardizing a client's treatment.

**Subpart 4. Summary at termination of services.** The new item A, subitem (4) requires license holders to include in the discharge summary the appropriate numeric risk descriptor for each dimension. The first change in Item A is necessary to ensure that the use of the six dimensions is consistent and describes the client at service termination. This is reasonable because it allows for consistently tracking client improvement during treatment participation, since the same information is required by part 9530.6422, subpart 2, item A, subitem (1), when service is initiated.

DECEMBER 18, 2007

**9530.6430 TREATMENT SERVICES.**

**Subpart 1. Treatment services provided by license holder.**

Item A lists the services every license holder must provide. The existing rules established the need to require the license holder to provide mandatory services. However, although all service providers must be prepared to offer the services listed in item A, this does not mean each service is appropriate for each client at any given time. For instance, a client whose chemical use relates to the client's experience as a victim of abuse, may not find group counseling to be useful when addressing that topic and for a time may not receive that service.

Item A, subitem (5) establishes service coordination as a mandatory service to clients. This requirement is reasonable, because people in need of chemical dependency treatment services frequently have problems in their lives that are not in the purview of chemical dependency treatment, but must be addressed.

For instance, a client may not have a safe place to live. Housing is not a chemical dependency treatment service. However, if the client does not find appropriate housing, the stress of living in unsafe housing may trigger the client's alcohol or drug use. Many of the client's problems are not appropriate to chemical dependency treatment, but if left unresolved, will be barriers to recovery and will render the client's chemical dependency treatment ineffective. Therefore, it is reasonable to require the license holder to coordinate the services the client needs outside of the treatment program.

**Subpart 2. Additional treatment services.** This subpart lists additional services that can be considered a part of a licensed chemical dependency treatment program. It is reasonable to add "as a part of the individual treatment plan" to clarify that all services must be provided according to the treatment plan, based on the client's needs that were identified in the client's comprehensive assessment.

Item A is deleted because it has been moved to subpart 1, item A, subitem (5). The reasonableness of this item being moved to a mandatory service is discussed in subpart 1.

DECEMBER 18, 2007

**Subpart 4. Location of service provision.** The existing rules established the necessity for governing the location where services are provided. The primary changes to this subpart are editorial and reflect changes to subparts 1 and 2. The only change to the substance of the rule is the addition of transition services (subpart 1, item A, subitem (3)) to the list of services that may be provided in “another suitable location.” It is reasonable to allow transition services to be provided outside the treatment setting, because most clients participating in transition services have completed most of their treatment objectives and only participate in treatment activities once a week. Transition services are frequently provided after a client has finished participating in a residential program and has returned home. By allowing transition services to be provided in a “suitable location,” they can be offered near the client’s home, rather than requiring the client to travel to the treatment center for the service.

#### **9530.6435 MEDICAL SERVICES.**

**Subparts 1a and 2.** The existing subpart addresses two issues: medical interventions for physical health emergencies and mental health services. The proposed changes separate these issues by deleting the medical intervention provision from subpart 2, and addressing that issue in a new subpart 1a.

The proposed language in subpart 1a differs from the deleted language in subpart 2 in that it provides for an exception. The existing language requires license holders to have a procedure approved by a physician. Since most providers do not have a physician available, this was a burdensome requirement.

The existing rules established the necessity for the written procedures. For most license holders, however, there is no more reason to expect a need for a medical intervention than at other places of business. It is reasonable to provide an exception to the requirement for those programs. It is reasonable to permit as an exception the planned referral to either 911 or to the client’s physician because both approaches are simple, readily available, and, in the case of 911, provides rapid access to appropriately trained professionals when needed.

DECEMBER 18, 2007

**Subpart 3. Administration of medications and assistance with self-medication.** The only change to item A is editorial in nature. Some license holders did not understand that subitems 1, 2, and 3 were alternatives. The lack of the word “or” at the end of subitem 1 was confusing. It is reasonable to change the language to reduce the confusion.

Subpart 3, item B governs issues that must be addressed in the license holder’s policies and procedures regarding medication administration. The existing rule established the necessity for the policies and procedures.

Subitem (6) addresses license holders that serve parents and children together. It allows parents who are supervised by staff to administer medication to their children when it is appropriate. It is reasonable to require staff supervision of a client during drug administration, because a client may need help with complicated drug administration and it is possible that a client’s child may be taking a drug that could be misused by a client.

#### **9530.6440 CLIENT RECORDS.**

**Subpart 1. Client records required.** This subpart is about the records of treatment for individual clients. Two changes are proposed. The first is a deletion of a sentence that does not belong in the individual client records rule. It pertains to the operation of the program and is being moved to part 9530.6445, subpart. 4. It is reasonable to move this requirement because limiting a subpart to a single topic makes the rules easier to follow.

The second change to this subpart alerts the license holder to the responsibility to meet the requirements of the regulations adopted under the Federal Health Insurance Portability and Accountability Act. The amendment does not add a requirement for license holders. The requirement that license holders comply with applicable federal law and regulations exists whether or not it is in the rule. This amendment is reasonable, because it notifies the license holder of the requirement and increases the likelihood of compliance.

**Subpart 3. Client records, contents.** This subpart lists the items that must be in the client’s

DECEMBER 18, 2007

record. The existing rules established the necessity for requiring specific items to be in the client record. The amendments to this subpart correct oversights in the existing rules. Both the initial services plan and the assessment summary were requirements of the existing rule, however there were no provisions for them to be kept in the client file. It is reasonable that the client record contain all documents relevant to the individual client's treatment. Therefore it is reasonable to amend subpart 3 to include items B and D.

#### **9530.6445 STAFFING REQUIREMENTS.**

**Subpart 3. Responsible staff person.** This subpart requires that the person placed in charge of the program know and understand certain laws pertaining to client rights and safety. The proposed amendment simply updates this language by deleting a reference to rules that have been repealed. It replaces the reference to the repealed rules with a reference to the law enacted to replace the repealed rule. It is reasonable to update rules by citing pertinent law and deleting defunct references.

**Subpart 4. Staffing requirements.** The amendment to this subpart is a requirement that was moved from 9530.6440, subpart 1, because it relates more closely to the provisions of this subpart as described in this Statement of Need and Reasonableness for part 9530.6440, subpart 1. The need for and reasonableness of limiting the group size to an average of 16 clients was established when the existing rules were adopted. The average size limit periodicity requirement is necessary because programs are unsure about how many days should be used to determine the average of 16 clients per counseling group. The use of a seven day period is reasonable because it gives a program some flexibility to determine the size of a given counseling group, but does not promote the frequent use of larger counseling groups which are considered less effective than the limit of 16 clients per group.

#### **9530.6450 STAFF QUALIFICATIONS.**

**Subpart 1. Qualifications of all staff members with direct client contact.** Subpart 1 requires that all staff with direct client contact be free from chemical use problems. The existing rules establish the need for this requirement. License holders have asked questions about what constitutes a chemical use problem under these rules. Part 9530.6460, subpart 1, item E requires



DECEMBER 18, 2007

that the license holder include in its personnel policy and procedures a description of a chemical use problem.

The amendment to this subpart provides that a chemical use problem for a license holder is that which the license holder described in its personnel policies according to part 9530.6460, subpart 1, item E.

**Subparts 3 and 4.** The change to this subpart updates references to laws and rules. The Statement of Need and Reasonableness for part 9530.6445, subpart 3, explains the rationale for this change.

**Subpart 8. Student interns.** The existing rules established the necessity of setting standards for the work of student interns. The amendment to this subpart requires that student interns be free from chemical use problems and that they participate in employee orientation. This amendment is reasonable because student interns will be responsible for clients and will take on some staff member responsibilities.

**Subpart 9. Individuals with temporary permit.** It is necessary to amend these rules to govern the conditions under which individuals with temporary permits may provide counseling, because temporary permits were not available when these rules were originally adopted. It is reasonable to require certain conditions, because individuals with temporary permits have not passed the examination required for full licensure.

**Item A.** Weekly supervision documentation by someone who has met the requirements of full licensure is reasonable, because it ensures the permit holder is providing the services in a responsible manner. It is reasonable to limit the number of temporary permit holders an alcohol and drug counselor may supervise to three. Based on professional judgment, it was determined that supervising a maximum of three would ensure that each temporary permit holder receives sufficient supervision and attention, whereas this outcome would seem unlikely if the number supervised was increased to four or more.

DECEMBER 18, 2007

Item B. It is reasonable to allow clinical supervisors approved by the Board of Behavioral Health and Therapy to provide the supervision of individuals with temporary permits, because they have demonstrated specific related skills. Because a client supervisor has demonstrated supervisory skill, it is unnecessary to impose the supervisory ratio limitation in item A.

**9530.6455 PROVIDER POLICIES AND PROCEDURES.** The existing rules establish the need for the requirement that the license holder have a written policy and procedures manual. It is reasonable to require that the manual have a table of contents and an index, because the table of contents and index will allow staff to use the manual more easily when staff seek to locate information in the manual for guidance as staff are confronted with unusual situations. The policy and procedures manual cannot serve this purpose if the organization of the manual is not obvious and conveniently presented. The requirement for a table of contents is reasonable because it is similar to the requirement in Minnesota Statutes, section 245A.04, subdivision 14, (c).

**9530.6460 PERSONNEL POLICIES AND PROCEDURES.**

**Subpart 1. Policy requirements.**

Item G governs staff orientation. It is reasonable to require that the orientation be provided within 72 hours of starting employment, because staff must know the topics in the orientation to provide safe and appropriate treatment services for clients. The number of hours established is reasonable, because it is patterned after Minnesota Statutes, section 245A.19. In that statute, license holders are required to provide new employees orientation to the HIV minimum standards. It is reasonable that all employee orientation meet the same standard.

The amendment requires that additional topics be included in the orientation. It is reasonable to include client confidentiality in the orientation, because experience has shown that abridging the client's right to confidential treatment is a common staff error that can harm the clients. It is reasonable to include the HIV minimum standards in the orientation, because it is required by Minnesota Statutes, section 245A.19 and including it with the other required topics of orientation helps the license holder meet all applicable standards.

DECEMBER 18, 2007

Item H. This amendment requires that the license holder's personnel policies address its response to employees whose mental health problems interfere with their job performance. It is necessary to address this issue in the policies, because it can affect the nature of the chemical dependency treatment provided to clients.

**Subpart. 2. Staff development.** The change to this subpart is an editorial change that is discussed in the Statement of Need and Reasonableness at part 9530.6405, subpart 17b.

**9530.6465. SERVICE INITIATION AND SERVICE TERMINATION POLICIES.**

**Subpart 2. Individuals not served by license holder.** Item B requires the license holder to inform local law enforcement when a client is denied admission or is discharged because the client has committed a crime on the premises or against a staff member. The change to this subpart alerts the license holder to the license holder's responsibility to meet the requirements of the Health Insurance Portability and Accountability Act in the process of contacting law enforcement. The amendment does not add a requirement for license holders. The reporting requirement is imposed by federal law, and it exists whether or not it is referenced in the rule. This amendment is reasonable, because it notifies the license holder of the requirement and increases the likelihood of compliance.

**9530.6470 POLICIES AND PROCEDURES THAT PROTECT CLIENT RIGHTS.**

**Subpart 1. Client rights; explanation.** This subpart governs the written statement about the client's rights that the license holder gives to clients.

The adoption of the existing rules removed the linkage between the provision of treatment services and the level of health facility license issued by the Minnesota Department of Health. Historically, the rights of clients stated in Minnesota Statutes, Chapter 144 have been tied to the residential facility licenses issued by the Minnesota Department of Health to the treatment program. Different classes of Minnesota Department of Health licensure corresponded to specific residential facility resident patient and client rights.

It is reasonable for the Department of Human Services to apply the rights in Minnesota Statutes,

DECEMBER 18, 2007

Chapter 144 to all clients, because it is the responsibility of the Department to ensure that the treatment activities it licenses are conducted in a respectful and safe manner.

**9530.6475 BEHAVIORAL EMERGENCY PROCEDURES.** The changes to this part are editorial and do not constitute changes in rule requirements. The addition of the term “behavioral” makes it clear that item B does not pertain to a medical crisis or other emergencies, such as a storm or a fire. It is reasonable to clarify the intent of the rule.

**9530.6480 EVALUATION.**

**Subpart 1. Participation in drug and alcohol abuse normative evaluation system.** The existing rules established the necessity of rules that govern data collection by a license holder. The change is intended to clarify that the Commissioner of Human Services may require a specific format for data collection, such as use of an internet secure web-based form. It is reasonable to require compliance with the data collection requirements established by the Commissioner according to Minnesota Statutes, section 254A.03.

**9530.6495 ADDITIONAL REQUIREMENTS FOR LICENSE HOLDERS WHO SPECIALIZE IN TREATMENT OF PERSONS WITH CHEMICAL ABUSE OR DEPENDENCY AND MENTAL HEALTH DISORDERS.**

The changes to this part are editorial changes that are similar to changes discussed in the Statement of Need and Reasonableness at part 9530.6405, subpart 17b.

**9530.6500 ADDITIONAL REQUIREMENTS FOR METHADONE PROGRAMS SERVING INTRAVENOUS DRUG ABUSERS.**

**Subparts 3 and 5.** These subparts require license holders providing methadone services to maintain a waiting list and to provide outreach services to high risk substance abusers. The license holders must carry out these requirements while complying with applicable confidentiality laws and regulations.

The changes to these subparts alert the license holder to the responsibility to meet the requirements of the Health Insurance Portability and Accountability Act in the process of providing the required

DECEMBER 18, 2007

services. The amendment does not add a requirement for license holders. The requirement to follow the law exists whether or not it is in the rule. This amendment is reasonable, because it notifies the license holder of the requirement and therefore increases the likelihood of compliance.

**9530.6505 ADDITIONAL REQUIREMENTS FOR LICENSE HOLDERS ALSO PROVIDING SUPERVISED ROOM AND BOARD.**

**Subpart 3. Client property management.** The existing rules established the need for requirements governing the management of client property. The existing rules also established the reasonableness of relying on Department policy as set forth in *Minnesota Rules*, chapter 9543. After the rules were adopted, the requirements of chapter 9543 were incorporated into Minnesota Statutes, Chapter 245A, the Human Services Licensing Act, and repealed from *Minnesota Rules*. Therefore, it is reasonable to update the reference in this subpart to comply with the law.

Item D, subitem (1). Item D governs the return or retention of client property when the client leaves. The existing rule allows license holders to confiscate a client's drugs or drug paraphernalia and to destroy the material or to turn it over to law enforcement. When it is turned over to law enforcement, certain confidentiality laws and rules must be followed.

The change to this item alerts the license holder of the responsibility to meet the requirements of the Federal Health Insurance Portability and Accountability Act when the license holder contacts law enforcement. The amendment does not add a requirement for license holders. The requirement exists whether or not it is in the rule. This amendment is reasonable, because it notifies the license holder of the requirement and therefore, increases the likelihood of compliance.

**Subpart 8. Administration of medications.** This subpart requires each license holder that provides room and board to have policies and procedures for the administration of medications. Many of the clients of these license holders need medications for various ailments and conditions. Because the clients are people with substance use disorders, they are at risk to misuse medications. The clients also present a risk to steal medications from each other. Therefore, it is necessary for the license holders to meet standards regarding

DECEMBER 18, 2007

medication administration. It is reasonable to require license holders to meet the standards in part 9530.6435, subpart 3, because the standards in part 9530.6435, subpart 3 were established to encourage the safe and effective administration of medication to clients.

## **DETOXIFICATION LICENSING RULES.**

### **9530.6510 DEFINITIONS**

**Subpart 12. Protective procedure.** The existing rules establish the necessity of rules governing a license holder's use of protective procedures. The clarification that physical holds are considered a protective procedure in paragraph B of this subpart is reasonable, because the use of equipment and physical holds to limit a client's body movement are both restrictive procedures and should both be considered "restraint" for the purposes of this rule. The clarification of what constitutes a "protective procedure" is reasonable, because it better informs the license holder about the use of a physical hold procedure, which is a procedure that has special conditions in part 9530.6535, subpart 5, that a license holder must meet.

**Subpart 13a. Substance use disorder.** It is reasonable and necessary to consistently define the condition that identifies the need for detoxification and chemical dependency care in rules that govern detoxification, chemical use assessment, and treatment. It is reasonable that this rule use the definition established by the American Psychiatric Association, because it is a national standard that is commonly accepted by chemical dependency care and treatment providers.

### **9530.6520 PROGRAM LICENSURE.**

The deletion of the reference to repealed rules is a technical change that removes a defunct reference. It is necessary to update citations to current rules so that interested persons know which rules to comply with.

### **9530.6525 ADMISSION AND DISCHARGE POLICIES.**

**Subpart 1. Admission policy.** The existing rules established the necessity of rules governing admission to the program.

DECEMBER 18, 2007

Many detoxification clients are in the physical custody of a peace or health officer at the time of admission. The client will be retained by the detoxification program regardless of the wishes of the client. It is necessary and reasonable to identify the specific point during the admission process at which the client becomes the responsibility of the program, so that clear lines of responsibility for the client's welfare are in place.

The use of the term "substance use disorder-related" in subpart 2, item F, is a technical change that makes the terms used in this part consistent with other parts of this rule and related rules that govern assessment and treatment. It is reasonable and necessary to use similar terms in related rules, because it makes the rule's meaning clearer and promotes compliance.

**Subpart 5. Establishing custody procedures.** This subpart clarifies that the licensed program has custody of the client and is responsible for the client when the client is admitted to the program according to subpart 2. Clarifying at which point the program has custody of the client is important, because many clients are in the custody of a peace or health officer when application for admission occurs, and will be held under the provisions of the Minnesota Statutes, Chapter 253B, the Minnesota Commitment and Treatment Act, by the facility. It is necessary and reasonable to state which entity has custody of and responsibility for the client during the admission process.

#### **9530.6530 CLIENT SERVICES.**

Substituting the term "substance use disorder" for another term in this part is reasonable as noted earlier in this Statement of Need and Reasonableness regarding part 9530.6510, subpart 13a. It is reasonable and necessary to define the condition that identifies the need for detoxification and chemical dependency care consistently in related rules that govern detoxification, chemical use assessment, and treatment.

#### **9530.6535 PROTECTIVE PROCEDURES.**

DECEMBER 18, 2007

**Subpart 2. Protective procedures plan.** The existing rules established the necessity of rules governing the use of protective procedures with clients in a licensed detoxification program. Many of the changes to this subpart separate the requirements into a list of requirements that will be easier to follow than the existing structure of the rule. The second sentence in subpart 2: “The plan must be appropriate to the type of facility and the level of staff training.” was moved from item E, because it is a general requirement of the plan, rather than a component of the plan listed in the subsequent items.

Item A. It is reasonable to require approval of the protective procedures plan by the program and medical directors because they are responsible for assuring that the procedures used with clients are safe and appropriate. It is therefore reasonable to require that the program and medical directors approve any changes to the plan prior to implementation, so that no alterations to the plan increase risk to clients.

Item B. Changes to Item B are made to make it clear which procedures must be addressed in the plan.

Item D. It is reasonable to require license holders to address client health conditions that may complicate the use of protective procedures because some clients have health concerns that may be exacerbated by specific procedures or increase the risk associated with specific procedures. Examples of medical conditions that could be exacerbated are: heart conditions, breathing related conditions, and wounds. Using protective procedures with clients who are overweight or have a breathing related condition, such as asthma, can lead to positional asphyxiation when the clients are restrained lying on their stomach.

Item F. It is reasonable to require license holders to specify the training staff must have before using protective procedures, because serious injury to clients can occur when physical holds or restraint equipment are used improperly or if procedures for obtaining authorization or monitoring client behavior are not followed.



DECEMBER 18, 2007

Item H. It is reasonable to require the license holder to address the use of law enforcement personnel in the facility, because different license holders have used law enforcement personnel to assist the facility in different ways. One of the ways that licensed facilities have used law enforcement personnel is to gain control over an agitated client. This has sometimes resulted in injury to the client. On two occasions, officers used a taser gun on a client and then left the client in a facility hallway, where the client remained until able to move. This would not be an acceptable action for a staff member. It cannot be considered acceptable on behalf of facility staff. By describing the role of law enforcement in the protective procedures plan, it will be clear when law enforcement will be called and what actions law enforcement may take on behalf of the license holder.

**Subpart 3. Records.** In the current rule, requirements in subparts 3 and 7 overlap, which has sometimes confused staff at licensed programs. By combining the requirements in subparts 3 and 7, license holders will know that they need only meet each requirement once, rather than attempting to meet similar or overlapping requirements in two subparts. It is necessary and reasonable to make the rule clearer by eliminating duplication.

Item G has been moved from subpart 7, Item D.

Item H has been moved from subpart 7, Item F.

Item I has been moved from subpart 7, item G.

**Subpart 4. Standards governing the emergency use of seclusion.**

Item C. It is reasonable to add a registered nurse as a professional who can authorize seclusion, because registered nurses are licensed health care professionals who can determine the appropriateness of seclusion and can assess the risk to the client. Registered nurses are more often in the facility and are easier to reach for consultation than the program directors or physicians. The 30 minute limit for obtaining an authorization is reasonable, because it allows staff to get the emergency situation under control in a timely manner, but also requires that the situation will soon be reviewed by authorized personnel. It is reasonable to delete the last sentence of item C, because it is covered by the proposed amendments to subpart 2, item F.

DECEMBER 18, 2007

**Subpart 5. Physical holds or restraint equipment.** The existing language was meant to govern any method of client restraint. However, some license holders have interpreted the requirement to only apply to the use of restraint equipment. It is reasonable and necessary to clarify the intent of these rules so that license holders and their staff may improve compliance with the rules.

Restraint equipment is designed by manufacturers to be safe. Physical holds, if improperly used by staff, are more likely to cause injury than the correct use of restraint equipment. It is reasonable to change the language in the rule to ensure that license holders understand that these requirements and standards also apply when they are restraining the client when no restraint equipment is used.

Item A. This item has been divided into a list for clarity. Item A, subitem (1), makes it clear when authorization must be obtained. It does not represent a policy change. This requirement is moved from subpart 6, item A to subpart 5, item A.

Item A, subitems (2), (3), and (5), are reasonable, because they support the protective procedures plan requirements in Subpart 2, and they protect the safety of the client when a physical hold or restraint equipment is used with a client. Specifically, subitem (2) reflects the implementation of the requirement that is found in Subpart 2, item D, requiring that the protective procedures plan include any client health conditions that would limit the procedures used and must include alternative means of ensuring safety. Subitem (3) reflects existing language that is moved from item A, except that it adds a registered nurse to the list of professionals that may authorize the use of physical holds or restraint. The need for and reasonableness of this addition is addressed at Subpart 4, item C. Subitem (5) reflects existing rule language that is moved from Subpart 6, item A.

Item C governs the use of restraint equipment. In the third sentence, the word “restraints” was changed to the words “restraint equipment.” The change clarifies that all of the sentences in item

DECEMBER 18, 2007

C pertain to restraint equipment. It is reasonable and necessary to use words that clarify the intent of the rule.

The repeal of subparts 6 and 7 is reasonable, because their requirements are contained in other amended rule parts. It is necessary and reasonable to delete duplicative or contradictory rule parts.

**Subpart 8. Use of law enforcement.** It is necessary to govern the use of law enforcement personnel in licensed facilities, because program experience demonstrates that the use of law enforcement personnel has sometimes resulted in injury to clients and abuse of power. This program experience is described in the description of need and reasonableness for Subpart 2, item H. Furthermore, the licensed facility's reliance on law enforcement to deal with clients whose behavior is very difficult has sometimes led license holders to accept clients whose behavior is beyond the capacity of the license holder to manage. In any human services facility, and certainly in a detoxification program facility in particular, it is inappropriate to routinely rely on law enforcement to perform essential staff functions, such as client behavior management. There may be times when a client's behavior deteriorates after admission and when law enforcement needs to be called to deal with a client's aggressive acts. It is reasonable and necessary to state the standard that the licensed facility should use when making the decision of whether to use law enforcement, and this standard is set forth in item A of this subpart. The intent of this subpart is to ensure that law enforcement personnel are used only in the role for which they are trained and authorized. It is not the intent of these rules to ban law enforcement from the facilities.

**Item A.** It is reasonable to limit the use of law enforcement to enforcing the law, because behavior control tasks and enforcement of facility rules are the responsibility of facility staff who must work with clients according to the protective procedures plan in subpart 2.

**Item B.** It is reasonable to discharge clients if law enforcement personnel use force or procedures beyond those the staff are prepared use, because this demonstrates that the client's behavior is

DECEMBER 18, 2007

dangerous beyond the capability of the license holder to manage and the client's continued stay poses a serious risk to the client or others.

**Subpart 9. Administrative Review.** It is necessary to require administrative review of the use of protective procedures because the review ensures that these procedures were used according to the program's policies and procedures as well as applicable rules and laws. The review also ensures that protective procedures are not over-used or used in a way that harms or injures clients.

Items A through H are reasonable, because they are similar to part 2960.0710, subparts 10 and 11, which govern the review of the use of restrictive procedures with clients.

**9530.6545 CLIENT PROPERTY MANAGEMENT.** The existing rules established the necessity of rules that govern client property management in a licensed detoxification program. The existing rules also established the reasonableness of relying on Department of Human Services policy, as set forth in *Minnesota Rules*, chapter 9543. After the rules were adopted, the requirements of chapter 9543 were incorporated into the Minnesota Statutes, Chapter 245A, the Human Services Licensing Act and repealed from *Minnesota Rules*. Therefore, it is reasonable to update the reference in this subpart to correlate with these changes in the law.

Item C, subitem (1) is changed to provide facilities with the option of either destroying or giving over to law enforcement any schedule 1 drugs or drug paraphernalia, and requires that the program comply with federal privacy regulations when implementing this procedure. This change is necessary to avoid situations where bringing the matter to the attention of law enforcement may compel a violation of federal privacy rules. Under the existing rules, the program's only option was to turn the material over to law enforcement. The provision has remained relatively unchanged through two major rule revisions that have occurred over roughly twenty-five years. Recently, however, programs have found that some law enforcement jurisdictions will not accept the material unless the program furnishes the name of the client from whom the material was confiscated. Providing the client's name violates federal privacy laws.

DECEMBER 18, 2007

### **9530.6560 STAFFING REQUIREMENTS.**

The existing rules established the necessity of rules that govern staffing requirements in a licensed detoxification program. It is reasonable to require that staff who assess client substance use disorders meet the qualifications established in rules governing assessment activity.

### **9530.6565 STAFF QUALIFICATIONS**

**Subpart 3. Program director qualifications.** The existing rules established the necessity of rules that govern staff qualifications in a licensed detoxification program. It is reasonable and necessary to use the term “substance use disorder” consistently throughout these rules. This section is modified to conform to the change from “chemical use problems” to “substance use disorders” throughout these rules. It is reasonable to delete references to defunct rules.

**Subpart 4. Responsible staff person qualifications.** *Minnesota Rules*, parts 9543.1000 to 9543.1060 have been repealed. It is reasonable and necessary to remove references to obsolete citations from these rules. The reference to Minnesota Statutes, section 626.5572, was added because this statutory provision replaces the repealed rules.

### **9530.6570 PERSONNEL POLICIES AND PROCEDURES.**

The existing rules established the necessity of rules that govern personnel policies and procedures in a licensed detoxification program.

**Subpart 1. Policy requirements.** It is reasonable and necessary to maintain consistent terminology throughout these rules. This section is modified to conform to the change from “chemical use problems” to “substance use disorders” throughout these rules.

**Subparts 2 and 3.** Clients are at risk of harm and client rights may be lost during the use of protective procedures. Therefore, it is reasonable that important requirements in part 9530.6535 be listed as mandatory topics for staff orientation.

DECEMBER 18, 2007

The use of specific therapeutic holds, if any, that the facility uses to protect clients must be explained to staff, because client rights and client safety are important concepts that all staff must know when they work with clients.

The modifications to these parts clarify that staff orientation for staff who have direct client contact must occur within 72 hours of employment and must include mandatory reporting and protective procedures, because new staff may have to deal with client emergencies soon after beginning work with clients. It is reasonable to require that the orientation provided for staff within 72 hours incorporates information on clients' rights because these rights include a documentation requirement related to the use of physical restraints. It is reasonable to require that the orientation address specific responsibilities for client confidentiality because the documentation requirements related to the use of physical holding should be viewed in conjunction with applicable client confidentiality requirements. The seventy-two hour period was chosen because it provides the program staff with some flexibility to arrange the training for new staff who have direct contact with clients. Seventy-two hours is reasonable because it provides some leeway in scheduling trainers, yet is prompt enough to substantially reduce any potential risk of harm to clients that could stem from a lack of information about the specified topics. New staff who have no direct contact with clients need not be trained as quickly because their activities within the program do not represent as great a risk to clients because they have no direct contact with clients.

### **9530.6580 POLICY AND PROCEDURES MANUAL.**

The existing rules establish the need for the requirement that the license holder must have a written policy and procedures manual. It is reasonable to require that the manual have a table of contents and an index, because the table of contents and index will allow staff to use the manual more easily and readily locate information in the manual for guidance as staff are confronted with unusual situations. The policy and procedures manual cannot serve this purpose if the organization of the manual is not obvious and conveniently presented. The requirement for a table of contents is reasonable because it is similar to the requirement in Minnesota Statutes, section 245A.04,

DECEMBER 18, 2007  
subdivision 14, (c).

### **9530.6585 CLIENT RECORDS.**

The existing rules established the necessity of rules that govern client records in a licensed detoxification program. This section is updated to include the requirement that disclosures conform to the requirements of the federal regulations implementing the Health Insurance Portability and Accountability Act, which were promulgated after these rules were initially adopted. It is reasonable to update rules to include references to relevant law and regulation, so that the license holder is aware of the requirements and is able to comply.

### **9530.6590 DATA COLLECTION REQUIRED.**

The existing rules established the necessity of rules that govern data collection by a licensed detoxification program. The rule change is intended to clarify that the Commissioner of Human Services may require a specific format for data collection, such as use of an internet secure web-based form. It is reasonable to comply with the data collection requirements established by the Commissioner according to Minnesota Statutes, section 254A.03.

### **9530.6600 to 9530.6660. CHEMICAL DEPENDENCY CARE FOR PUBLIC ASSISTANCE RECIPIENTS.**

#### **OVERVIEW.**

Parts 9530.6600 through 9530.6655, currently reflect the way that chemical dependency treatment services were provided in 1985 and are based on an acute care model. The chemical dependency treatment delivery system in the existing rule was developed to treat addiction as if it were an acute illness, although, addiction is now viewed by most treatment practitioners as a chronic, relapsing condition. When a change in treatment services is needed or when relapse occurs the client begins again with a new assessment, new payment authorization, new provider and new treatment plan.

DECEMBER 18, 2007

For many clients the only necessary change is in the treatment plan to alter the intensity or array of services. The other changes are dictated by the way the delivery system is structured.

On January 1, 2005, new treatment program licensing rules were implemented that removed requirements for separate program licensure based on the intensity of services provided to the client by the license holder. Treatment programs may now vary treatment intensity based on the client's need and problem severity. The placement criteria currently in 9530.6600 through 9530.6655 (Rule 25), however, continue to restrict the license holder's ability to flexibly meet the client's changing needs.

The proposed rule amendments also address other problems with the rule, including conformance with international definitions of substance abuse and dependency; lack of flexibility; minimal recognition of problem severity; and little regard to client problems other than chemical use which may have a profound impact on treatment outcome, such as the client's mental health issues.

In 1997 the Department of Human Services conducted workshops to seek input on the future of Rule 25. Participants said that new regulations should allow consideration of client strengths, be more comprehensive, and allow treatment programs greater flexibility to use innovative programs to address the client's needs.

The Department offered "Continuing Service and Discharge Criteria" to address a need for a common language when considering the appropriate length of treatment. This voluntary criteria set was developed by a group of professionals working with Dr. David Mee Lee, a nationally recognized expert on patient placement criteria. The service and discharge criteria developed by this group laid the foundation that supports the concepts in part 9530.6622. The concepts developed for the "Continuing Service and Discharge Criteria" are more fully explained in the Statement of Need and Reasonableness for part 9530.6622.

The Department trained 400 professionals in the use of the voluntary criteria and then surveyed the training participants. Survey respondents who actually implemented the criteria found it useful in



DECEMBER 18, 2007

many areas but also had some concerns. Survey respondents who had used the criteria were then invited to help revise them. Their major concern was that the language used in the “Continuing Service and Discharge Criteria” was stilted and not the language used by the treatment professionals who relied on the criteria. A workgroup of respondents was formed to provide input to the Department about revising the criteria’s language so that it used the lexicon of substance abuse treatment professionals.

### **9530.6600 SUBSTANCE USE DISORDER; USE OF PUBLIC FUNDS.**

**Subpart 1. Applicability.** This subpart explains who is governed by parts 9530.6600 to 9530.6655. Parts 9530.6600 to 9530.6655 establish criteria for determining the appropriate treatment for an client who applies for public funds to pay for chemical dependency treatment. Tribal governing boards and prepaid health plans gain their authority to commit public funds for treatment through contracts with the Department of Human Services. Those contracts include a requirement to comply with parts 9530.6600 to 9530.6660. It is reasonable to include tribal governing boards, and prepaid health plans or their designees because they are authorized to expend public funds for treatment. It is reasonable to make it clear that committing courts are exempt from the actual placement criteria in part 9530.6622, because the court has independent authority and responsibility to determine the appropriate placement for the client.

**Subpart 2. Programs governed.** This subpart does not correctly tell what the proposed rule will govern. It is reasonable to repeal it because it does not apply to the proposed rule.

### **9530.6605 DEFINITIONS.**

The necessity of defining terms in this rule was established when the existing rules were adopted. The reasonableness of each change or new definition is provided below.

Throughout these rules the term “substance use disorder” is substituted for the terms “chemical abuse” and “chemical dependency”. This change is proposed to modernize the language of the rule and to make the language consistent with the change in definitions used regarding the need for treatment. Please see the statement of need and reasonableness for part 9530.6605, subpart. 26.

DECEMBER 18, 2007

The definitions of “chemical abuse” and “chemical dependency” are repealed. The definitions of “inappropriate and harmful use” and pathological use” are also repealed because they are integrally linked to the chemical abuse and dependency definitions and have no independent use.

The subparts within this part that changed to accommodate the shift to the use of the term “substance use disorder” are: subpart 6, Chemical abuse; subpart 7, Chemical dependency; subpart 18, Inappropriate and harmful use; and, subpart. 20, Pathological use. These subparts are listed in the repealer.

One of the objectives of the changes to parts 9530.6600 to 9530.6655 is to change the focus of the placement criteria, from a focus on the types of programs traditionally offered to a focus on the attributes and needs of individual clients. In the program-focused rules the types of programs were distinguished by the level of care they provided. In client-focused rules those distinctions are not as important as the kinds of services and capabilities that make up the program. Therefore, the definitions of the levels of care are being repealed. The affected subparts are: Subpart 10a, Combination inpatient/outpatient treatment; subpart 15, Extended care; subpart 17, Halfway house; subpart 19, Outpatient treatment; subpart 22, Primary rehabilitation; and subpart 23, Primary rehabilitation in a hospital setting.

**Subpart 5. Chemical.** It is necessary and reasonable to change the citation in this definition to make it clear which chemicals are considered mood-altering by more precisely citing the statute.

**Subpart 6. Chemical abuse.** See repealer. See introductory material for part 9530.6605.

**Subpart 7. Chemical dependency.** See repealer. See introductory material for part 9530.6605.

**Subpart 8. Chemical use assessment.** It is reasonable and necessary to update the language defining a chemical use assessment so it is consistent with changes being made to the placement criteria in part 9530.6622.

**Subpart 9. Client.** It is reasonable and necessary to update the language defining a client so that it

DECEMBER 18, 2007

is consistent with changes being made to other rule parts.

**Subpart 10. Collateral contact.** It is normal for clients to minimize their chemical use and the consequences of that use. The role of the collateral contact in a chemical use assessment is to provide additional, credible information by which to evaluate information from the client. The current rule requires that the contact be initiated by the assessor so that the assessor can ensure that the contact person is credible. Allowing the client to initiate the contact could result in information provided by someone who does not have or would not provide accurate information. It is necessary to add the word “approved” to recognize that the contact is sometimes initiated by the credible person. This is frequently the case when probation officers or social workers contact an assessor to refer a client to an assessor.

**Subpart 10a. Combination inpatient/outpatient treatment.** See repealer. See introductory material for part 9530.6605.

**Subpart 15. Extended care.** See repealer. See introductory material for part 9530.6605.

**Subpart 15a. Facility that controls access to chemicals.** See repealer. It is reasonable and necessary to repeal the definition of “facility that controls access to chemicals” because it is not used in the proposed rules.

**Subpart 16. Family support.** See repealer. It is reasonable and necessary to repeal the definition of “family support” because it is not used in the proposed rules.

**Subpart 17. Halfway house.** See repealer. See introductory material for part 9530.6605.

**Subpart 18. Inappropriate and harmful use.** See repealer. See introductory material for part 9530.6605.

**Subpart 19. Outpatient treatment.** See repealer. See introductory material for part 9530.6605.

DECEMBER 18, 2007

**Subpart 20. Pathological use.** See repealer. See introductory material for part 9530.6605.

**Subpart 21. Physical deterioration.** See repealer. . It is reasonable and necessary to repeal the definition of “physical deterioration” because it is not used in the proposed rules.

**Subpart 21a. Placing authority.** It is necessary to define the term "placing authority", because it has a very specific meaning in these proposed rules. It is used to substitute for the words “county, tribal governing board or prepaid health plan“. It is necessary to refer to these entities often, because they are the ones listed in part 9530.6600. It is reasonable to find a shorter way to refer to them to improve the readability of the rules.

**Subpart 21b.** Prepaid health plan has been renumbered as subpart 21b.

**Subpart 22. Primary rehabilitation.** See repealer. See introductory material for part 9530.6605.

**Subpart 23. Primary rehabilitation in a hospital setting.** See repealer. See introductory material for part 9530.6605.

**Subpart 24. Rehabilitation program.** See repealer. It is reasonable to repeal the definition of "rehabilitation program" because it is not used in the proposed rules.

**Subpart 24a. Service coordination.** It is necessary to define “service coordination”, because reasonable individuals can assume different meanings for the term. It is reasonable to define it in terms of assistance to clients, because that is a treatment service that assessors will seek from treatment providers.

**Subpart 26. Substance use disorder.** It is necessary to define "substance use disorder", because the presence or absence of a substance use disorder is essential to determining whether or not a client is in need of treatment services. It is reasonable to rely on the definition in the most current edition

DECEMBER 18, 2007

of the Diagnostic and Statistical Manual of Mental Disorders (DSM), because it is the most widely recognized reference for standardizing the definitions of mental and behavioral disorders. By adopting the DSM definition, the Department of Human Services will be using the same definition as other states, insurers and researchers.

### **9530.6610 COMPLIANCE PROVISIONS.**

**Subpart 1. Assessment responsibility.** The introductory paragraph of this subpart sets forth a nondiscrimination requirement. The placing authorities are governed by Minnesota Statutes, Chapter 363A. However, it is necessary to remind placing authorities about the nondiscrimination requirement, because some groups have been discriminated against in the provision of chemical use assessments and placement, even though it is a public service and should be provided in a fair manner for all Minnesotans. It is reasonable to move the provision about the assessment being in a language that is understandable to the client from 9530.6615, subpart 1, because it makes clear that this can be a form of discrimination and must be avoided.

It is necessary to describe the responsibilities of each of the placing authorities because they vary and lack of understanding of differing responsibilities has resulted in the denial of service for clients who “fell through the cracks”. The most frequently occurring example is a person who lives on a reservation, but is not a member of the tribe. Sometimes the tribe will refer the person to the county because the person is not a tribal member. The county might send the person to the tribal assessor because the person lives on the reservation. The reasonableness of the responsibilities of each placing authority is provided below.

**Item A.** The reasonableness of relying on counties to do chemical use assessments was established in the existing rules. One effect of these changes is to limit the county’s responsibility to clients who do not have another source for assessment. Rule requirements concerning forms have been moved to part 9530.6615, subpart 3.

It is necessary to govern the circumstance where a county of financial responsibility does not provide the assessment. It is a regularly occurring problem that a resident of County A is arrested in County

DECEMBER 18, 2007

B and needs a chemical use assessment. Sometimes County A refuses to see the client or arrange for another county or qualified assessor to assess the client while in jail. Many sentences include an opportunity for the client to go to treatment in lieu of jail time. In this instance, the inaction of County A has unfairly denied the client treatment services and caused the client unfairly and perhaps inappropriately, to remain in jail. It is reasonable to require the county where the client requests the assessment (County B in this example) to provide the service, because it is consistent with Minnesota Statutes, Chapter 256G, which provides criteria for establishing the county of financial responsibility and a procedure for addressing disputes. It is also reasonable, because it ensures that disputes between counties do not result in the denial of services to clients.

Item B. It is necessary to establish for whom a tribal governing board must provide assessments because the counties' responsibility is based on who is not covered by a tribal governing board or prepaid health plan. It is not possible to know the county responsibility without knowing the responsibility of the tribal governing boards. It is reasonable that the tribal governing board be responsible for providing assessments to the clients described in the rule, because they are clearly identifiable through an established legal definition. The Department of Human Services' American Indian Advisory Council on Alcohol and Drugs asked that the Departments define the term "relative" in a way that is consistent with Minnesota Statutes, section 260C.007, subdivision 27, because this is a definition that has worked well to deliver other human services on a reservation. It is reasonable to use expert advice from relevant advisory groups.

Item C. As with tribal governing boards, it is not possible to determine the responsibilities of counties without knowing the responsibilities of organizations contracting with the Department to provide a prepaid health plan. It is reasonable to describe their responsibility in terms of the contract that is currently in force with the Department, because it is subject to change.

**Subpart 2. Placing authority records.** Deletions in the introductory paragraph and item A are editorial changes that are not intended to change the substantive requirement.

Item A. The necessity for and reasonableness of maintaining records was established when these

DECEMBER 18, 2007

rules were adopted. It is necessary to add record retention standards, because it has been the subject of confusion on the part of placing authorities. These standards are reasonable because they are the result of discussions with the Rules Committee of the Minnesota Association of County Social Services Administrators [MACSSA] and the Department of Human Services. The MACSSA Rules Committee represents county social services administrators in developing and communicating the position of counties related to administrative rules being developed by the Department. The proposed rule language is an effort to balance the Department's need to review records and assure appropriate use of public funds and a county's concern about the burden of storing and maintaining records.

Item C. This item is deleted because requiring documentation of staff's continuing education is redundant with item B. The requirement for continuing education is found in part 9530.6615, subpart. 2.

**Subpart 3. Placing authority designee.** Documentation requirements are moved from subpart. 4, except for some aspects of the records retention requirement. This differs from the record retention provisions in 9530.6610, subpart. 2, item A. The proposed "two year" record retention requirement is moved from the repealed subpart 4 regarding "exceptions." The proposed "two year" requirement is also the result of discussions between the MACSSA Rules Committee and the Department. It was reasonable to consult with MACSSA about this provision because it is counties that most frequently use designees to do assessment interviews and are therefore more likely to be affected by this provision.

It is reasonable to use a shorter retention period of two years for the exceptions records in subpart 3 than the record retention period in subpart 2 because the records in subpart 3 are not as relevant to the actual amount of expenditure as the records in subpart 2.

Items A and B are moved from subpart 4, without change.

The last paragraph of subpart 3 is moved from the current subpart 4. This requirement has been amended to emphasize that the placing authority can under no circumstances transfer the

DECEMBER 18, 2007

responsibility for final placement decisions. It is reasonable to add this emphasis because some placing authorities have contracted with other agencies to conduct assessments and have denied responsibility for decisions made by those contracted agencies. Other changes to this sentence update the provision to match changes being made to part 9530.6622.

**Subpart 4. Exception.** The provisions in subpart 4 have been combined with subpart 3.

**Subpart 5. Information release.** It is necessary to require placing authorities to provide information to treatment providers, because having the information allows the treatment provider to begin addressing the client's needs and concerns immediately upon admission. It also avoids having the client repeat the same information for the treatment provider that he or she has just provided to the assessor. It is reasonable to require a proper release of information, because the assessment will contain confidential information

#### **9530.6615 CHEMICAL USE ASSESSMENTS.**

**Subpart 1. Assessment mandate; timelines.** Changes to the introductory paragraph of this subpart are editorial and not intended to change the substance of the rule. The amendments to this subpart establish timelines by which the placing authority must provide services to clients. It is necessary to establish timelines to ensure that services are provided in a timely manner. In its 2006 evaluation report on substance abuse treatment, the Office of the Legislative Auditor (OLA) reported interviewing corrections professionals who rely on "rule 25" assessments for offenders. The OLA found that it sometimes takes up to three months to get a referral for an offender and up to three months to get an assessment interview. While, in the experience of the Department of Human Services such lengthy delays are unusual, they leave offenders without necessary services and can impede the judicial process.

For many clients, the point in time at which a client seeks a chemical dependency assessment is the point in time at which the client recognizes the need to make a change in his or hers life. It is important to provide the assessment as soon as possible, while the realization is still at hand. The timelines in items A, B, D and E are reasonable, because they were discussed with representatives of



DECEMBER 18, 2007

the placing authorities and adjusted to reflect the input of representatives regarding generally reasonable timelines. While some placing authorities may not now meet the proposed timelines, the imposition of a timeline does not create an additional workload because it does not result additional clients who must be placed. Some placing authorities may need to perform enough placements to catch up with the new requirement. Once the placing authority catches up their backlog of clients the placing authority should be able to remain current.

Additionally, item D allows updates to assessments in situations which in the past have required new assessments. The updated assessment provision of item D will decrease the total number of full assessments the placing authority must complete. The updates to assessments resulting in a reduced number of full assessments should reduce the overall costs of assessments.

Item A. It is also necessary to address the situation in which the assessment interview appointment has to be reset because the client missed an appointment, because clients do frequently miss their appointments. It is not reasonable to require that the placing authority rearrange the schedules of its assessors or displace another client in order to meet the initial timeline for a client that did not keep an appointment. Therefore, the timeline should begin over again.

Item B. It is necessary to limit the time allowed for the placing authority to make determinations following the interview, to ensure that services are provided in a timely manner. It is also necessary to ensure that assessments and placements are based upon current data. Ten days is a reasonable time period because it gives the placing authority enough time to complete collateral contacts; locate a treatment provider with the ability to address the client's needs; establish that the provider has available space and authorize the services.

Item C. Item C requires that placing authorities provide assessments to clients in jails or prisons. It is necessary to establish responsibility for assessment, because some placing authorities have refused to provide this service. It is reasonable to require assessments for clients in jails and prisons, because offenders who address their chemical use problems are less likely to reoffend. If required to get their assessment after their release, many clients do not follow through. Additionally, many judges would

DECEMBER 18, 2007

like the information and recommendation from the assessor to assist in determining an appropriate sentence for the client. When that is not available, judges sometimes include an early release from jail, if the client gets an assessment and follows the recommendations for treatment.

Frequently, counties do not have sufficient assessors to send one to different parts of the state to do an assessment when a county resident is arrested while traveling. It is not reasonable for the client to stay in jail awaiting an assessment from the county of residence that may never happen. The proposed language is a reasonable way to address this problem, because it relies on a process established in statute.

Item D. Item D requires that assessment information must be updated if the client does not begin treatment within 30 days of the assessment interview. It is necessary to require an update because the client's circumstances may have changed and the services authorized may no longer address the client's needs. Because it would be unreasonable to require an additional face to face contact or other extensive requirements, the expectations concerning the update are minimal.

Item E. Item E requires a new assessment six months after the most recent assessment or update. It is necessary to address this because it has caused confusion among placing authorities. Six months is a reasonable requirement because it is based on common current practice and is coordinated with reassessment of financial eligibility for the CCDTF.

Item F. It is necessary and reasonable to allow a placing authority to accept assessments from another placing authority because it is an important tool for placing authorities in meeting the requirements of this subpart. It is particularly helpful in meeting item C when the client is in jail in another county.

**Subpart 2. Staff performing assessment.** Changes in the introductory paragraph to subpart 2 are editorial and not meant to change the substance of the rule.

It is necessary to amend the items of subpart 2, because the laws governing qualified professionals in

DECEMBER 18, 2007

the field of chemical dependency have changed considerably after the existing rules were adopted. Minnesota Statutes, Chapter 148C now governs the practice of alcohol and drug counseling. According to Minnesota Statutes, section 148C.01, subdivision. 10, this includes “assessment of the level of alcohol or drug use.” Therefore, qualified professionals for the purposes of these rules must be licensed according to Chapter 148C or explicitly excepted from licensure.

Item A. Item A address the qualifications of individuals who are not licensed according to Chapter 148C. It is necessary to set specific qualifications for individuals who are excepted, because it cannot be assumed that they have any education or background regarding chemical use assessments. The requirements in subitems 1, 2, and 3 are reasonable because they are the same as the requirements in the current rule.

Item B. Item B lists the qualifications for individuals who are not excepted according to Minnesota Statutes, section 148C.11. It is reasonable to recognize licensure according to Chapter 148C, because it establishes the standard for alcohol and drug counselors. It is reasonable to recognize individuals certified by the Upper Midwest Indian Council on Addictive Disorders because it uses essentially the same standards as chapter 148C to credential American Indian counselors on behalf of the federally recognized tribes. It is also reasonable to recognize individuals designated by the tribes, because it acknowledges the rights of the tribes to govern services within their jurisdictions.

**Subpart 3. Method of assessment.** The new introductory paragraph to subpart 3 establishes the requirement to use forms prescribed by the Commissioner of Human Services. The first is a form for gathering all the required assessment information. It is necessary to gather the information in order to determine the client’s risk descriptions and apply the appropriate planning decisions.

It is not necessary to promulgate the form as part of the rule because the form simply gathers the information specified in part 9530.6620, subparts 1, 2, and 3, and guides the assessor through the application of the placement criteria in part 9530.6622. It would be unreasonable to promulgate a specific form because rulemaking should not be required to simply improve the phrasing of questions or otherwise clarify the form. It is, however, reasonable for the Commissioner to prescribe

DECEMBER 18, 2007

a form, because using a single form across the state will promote the consistency and quality of services.

Currently a form used to gather the assessment information is chosen by each placing authority. Some forms are not in compliance with the rules. The variability among forms has contributed to inconsistency in the application of the placement criteria. The use of a single form, determined to be compliant by the Commissioner will help ensure that each placing authority considers all the essential information when making determinations. Additionally, a single form will assist in communication between placing authorities if, for instance, one county does an assessment in a jail for a different county of financial responsibility. Consistent formatting for communication of assessment information will also help treatment providers respond to client needs at the start of treatment and will be helpful to courts that have to quickly find relevant information in the document.

The second provision in this paragraph is not new and was moved from part 9530.6610, subpart. 1. The provision that the information be submitted to the Department using procedures specified by the commissioner is reasonable because the commissioner has responsibility to “(d) gather facts and information about alcoholism and other drug dependency and abuse, and about the efficiency and effectiveness of prevention, treatment, and rehabilitation from all comprehensive programs,…” as stated in Minnesota Statutes, section 254A.03, Subdivision 1.

Items A and B are reformatted from the current rule part. Requirements in each item concerning collateral contacts are separated and moved to items C, D, and E to make the rule easier to follow.

Item A. It is necessary to specify that the personal interview be conducted face-to-face, because it is a frequently asked question and the cause of some confusion among placing authorities. It is reasonable to require a face-to-face interview, because that is the current practice and the usual interpretation of this item. It is also reasonable, because assessors are expected to determine whether the information they get from the client is truthful and complete. Not being able to see the client makes this determination considerably more difficult.

DECEMBER 18, 2007

Item B. A review of relevant records or reports regarding the client that is consistent with confidentiality and data privacy provisions in Minnesota Statutes, chapter 13; sections 144.343 and 254A.09; and Code of Federal Regulations, title 42, sections 2.1 to 2.67, and title 45, parts 160 and 164 is necessary to ensure accuracy while protecting the client's privacy.

Item C. The provisions in proposed item C are based in requirements originally in this subpart. The necessity for collateral contacts was established when these rules were adopted. Since then placing authorities have had questions about its implementation. It is reasonable to add specifics because it provides guidance for and promotes consistency among placing authorities when making collateral contacts. The proposed limits are reasonable because they are consistent with current practice and rule interpretation. It is reasonable to clarify that the contacts must be reliable in the judgment of the assessor because the standard has been a source of confusion. Some assessors thought that the client could choose the contacts. This has sometimes lead to a client choosing contacts who would minimize the client's substance use and the impact of the client's substance use.

Subitem (1). It is reasonable to make two attempts (one by mail) to contact a collateral source because many people are not available by telephone during the assessor's regular business hours.

Subitem (2). It is reasonable to require the assessor to contact the person or agency that referred the client because that person or agency knows the reason the client was referred for assessment. The behavior or incidents that led to the referral are valuable information that can be used to determine the need for treatment and the most appropriate type of treatment.

Subitem (3). This subitem reminds the assessor that it is necessary to meet the requirements of part 9530.6615, subpart 6 while gathering collateral information.

Subitem (4). It is not reasonable to authorize services for a client when the assessor does not have enough information. Similarly, it is not reasonable to penalize a client by denying placement if the assessor already has enough information to make the placement.

DECEMBER 18, 2007

**Subpart 4. Required documentation of assessment.** Changes to this subpart are mostly editorial and do not change the meaning of the rule. This subpart is primarily a list of items required by other rule parts, gathered together to be included in the client file. It is reasonable to require that these items be included because they are needed by providers and other agencies.

**Item A.** Item A requires documentation of the information gathered from the client. It is reasonable to add “as required by the commissioner” to remind assessors that they must use the form prescribed by the commissioner as mandated in Subpart 3.

**Item B.** The changes to item B update this item by changing the reference from a provision that is repealed to new proposed provisions. It is reasonable to use the risk description in part 9530.9522 because it is the common format that will be used by providers and other agencies.

**Item E.** Item E is being deleted, because it had no effect. The desired outcome of each placement was “completion of treatment”. It is unreasonable to require assessors to record something that has no use.

**Item G.** Item G is deleted because social service agencies have specific responsibilities according to Minnesota Statutes, sections 626.556 and 626.557 and have developed procedures for meeting those responsibilities. It is not reasonable to place additional requirements on its implementation in these rules.

**Subpart 5. Information provided.** It is necessary to require placing authorities to provide information to treatment providers, because having the information allows the treatment provider to begin addressing the client’s needs and concerns immediately upon admission. It also avoids having the client repeat the same information for the treatment provider that he or she just provided to the assessor.

**Subpart 6. Confidentiality requirements.** The confidentiality requirements in subpart 6 do not constitute new regulation, but are a consolidated list of the applicable confidentiality requirements.

DECEMBER 18, 2007

It is reasonable to remind the placing authority of the federal and state confidentiality requirements that the placing authority must comply with.

## **9530.6620 PLACEMENT INFORMATION.**

### **INTRODUCTION**

In the existing rules the placement criteria were arranged around the levels of care available at the time the rules were written. If the placement criteria are going to focus on the needs of the individual client, information must be organized in a different way. The six dimensions created by the American Society of Addiction Medicine (ASAM) are being proposed as a way of organizing assessment information, risk assessments and treatment planning decisions. Establishing categories for organizing information and criteria is necessary because it makes a large amount of information about an individual client manageable and because it creates a common language for transmitting information about the client among professionals. Using the six dimensions is also more efficient for summarizing essential data. The six dimensions are needed and reasonable because they provide the most efficient and effective means of assessing a client and planning services that will give the client needed treatment services.

It is reasonable to use the six dimensions developed by ASAM because they were developed specifically for the purpose of organizing and transmitting information about choosing treatment services. Using them ensures a comprehensive assessment of the client's life and requires consideration of a broad set of factors influencing treatment and recovery. The ASAM dimensions are used by most states, the United States military and many insurers. Having determined the need for a method of organizing information, it is reasonable to use the method most widely used by others for the same purpose.

The use of six dimensions, developed by ASAM accomplishes three things: First, the six dimensions provide a method of sorting information so that professionals that need specific information can locate it. Currently, many assessments are written as narratives making it difficult to find specific information about the client. Second, using the same categories to sort the

DECEMBER 18, 2007

information by all assessors and treatment professionals will facilitate communication between professionals who provide services to the same client. Third, using these six dimensions ensures that those aspects of the client's life that are most closely related to treatment planning will be examined and considered.

The six dimensions are:

Dimension 1: Acute intoxication and withdrawal potential. The purpose of this dimension is to determine whether the client is likely to have withdrawal symptoms that could be dangerous to the client's health. Similarly, the dimension includes whether the client will likely return to using his or her drug of choice without help to ease the discomfort of withdrawal.

Dimension 2: Biomedical conditions and complications: The purpose of this dimension is to determine the client's health issues that must be addressed before or during treatment, without regard to whether the medical problem is substance use related. Any medical problem will serve as a distraction during treatment services and a barrier to recovery.

Dimension 3: Emotional, behavioral, and cognitive conditions and complications. Problems in this dimension have serious ramifications for treating the client. Serious mental illness may prohibit the client from following group discussions or impact the client's ability to sit still, stay on topic or respond appropriately to peers. Cognitive impairments may impede the client's ability to read and understand written materials, process information or complete journal, questionnaire and other treatment assignments.



DECEMBER 18, 2007

Dimension 4: Readiness to change: This dimension addresses the client's understanding about the problems caused by substance use in the client's life. It also looks at whether or not the client perceives the client's need for help and how engaged the client is in the treatment process. It provides the starting point for treatment.

Dimension 5: Relapse, continued use, and continued problem potential: This dimension examines whether the client recognizes situations in which the client is prone to substance use and whether the client has ways of avoiding or coping with those situations. It is a determination of whether the client has the skills to begin a life of recovery.

Dimension 6: Recovery environment: This dimension covers the external factors related to recovery. It looks at whether the client is in an environment that is conducive to and supports recovery. To the degree that the environment is not ideal, the dimension also considers what can be changed and how well the client can cope with the recovery environment.

#### **9530.6620 PLACEMENT INFORMATION.**

##### **Subpart 1. Placing authority determination of appropriate services.**

The necessity for gathering client information was established when these rules were adopted.

The information in items A through I in the existing rule is replaced by the same or similar information sorted into the six dimensions which are lettered as items A to F in the proposed amendments. It is reasonable to present the information gathering requirements in this format, because assessors will have to sort it into these categories in order to apply the criteria in part 9530.6622 and to summarize and share the information with other professionals who have a need for the information.

Item A. It is reasonable to gather information about the client's current state of intoxication or

DECEMBER 18, 2007

withdrawal, because it has considerable influence on whether the client is in a condition to participate in treatment activities or whether the client will need specific treatment services to manage withdrawal symptoms. The required information in this dimension is a combination of data required in the current rule and data elements specific to assessing the potential for serious withdrawal problems. Assessors are also required to gather the information they might need to apply the DSM criteria for substance use disorder, because the rule requires them to apply the criteria.

Item B. It is reasonable to gather information about the client's current medical condition, because medical problems can interfere with participation in treatment activities, can cause stress that serves as a trigger for relapse, and can be used as a motivator for recovery, depending on the situation. Data required for this dimension includes some elements from the current rule, although the requirements in the proposed amendment are more thorough. The proposed amendments rely on the client's response to the medical problem as well as physician diagnosis.

Item C. It is reasonable to consider the client's mental health and behavioral issues, because people with substance use disorders frequently have mental health issues as well. Additionally, withdrawal from alcohol and other drugs can cause mental health symptoms and some clients have used alcohol or other drugs to mask mental health problems. Each of these situations requires a different treatment response. It is essential that the assessor gather information about mental health and behavioral problems if effective services are to be arranged.

Item D. It is reasonable to gather information about the client's readiness to make the changes necessary to participate in treatment and to change the way the client uses alcohol or other drugs in harmful ways. Clients who are required to participate in treatment and do not recognize a need for change are nonetheless candidates for treatment. However, their initial treatment service must be different than for clients who recognize their need to change and are seeking assistance. Gathering information about a client's readiness to change, or motivation has an important bearing on the appropriateness of the treatment service.

DECEMBER 18, 2007

Item E. It is reasonable to gather information about the client's understanding of relapse and how to avoid it, because this information will inform the focus of much of the treatment services. Some clients need help identifying relapse triggers. Other clients understand relapse triggers and how to avoid them, but need support while practicing new skills. Clients should receive very different services according to each client's needs.

Item F. It is reasonable to gather information about the client's environment, because problems in the client's home and work environment are frequent relapse triggers. On the other hand supportive family and friends are important to successful recovery. It is important to know whether decreasing the problems or increasing the support are considerations for treatment services for a client.

**Subpart 2. Immediate needs.** It is necessary to delete the rating of chemical involvement, because its function has been replaced by the Substance Use Disorder criteria in the Diagnostic and Statistical Manual.

It is necessary to cover what an assessor will do in an emergency situation because it was a topic of concern during input meetings while these proposed rules were being developed. It is reasonable to terminate the interview and help the client find appropriate assistance if the client is in a seriously distressed condition.

**Subpart 3. D S M criteria.** It is necessary to establish whether or not the client has a substance use related problem before determining whether the client requires treatment and what type of treatment the client might require. It is reasonable to use the criteria in the current DSM to determine the presence of a problem because it is the single most used set of criteria for describing and determining substance use disorders. The DSM criteria are relied on by most private health insurers, other states, the military and are the standard for researchers. When these rules were adopted the DSM criteria did not have sufficient specificity for use with the placement criteria in the rule, so the Department of Human Services wrote its own criteria. Subsequent revisions of the DSM have improved its usefulness, as demonstrated by its wide-spread acceptance.

DECEMBER 18, 2007

**Subpart 4. Risk description and treatment planning decision.** Historically, chemical dependency treatment was offered as one-size-fits-all, within the categories of treatment programs described in the existing rule. The greatest distinction has been between residential and non-residential services. Client focused treatment is not a bundle of services everyone gets regardless of their personal situation, but a package of services assembled for the client, based on the client's need. Another important consideration in authorizing a package of services is the severity of the client's need. There is a range of severity within a category of problems. The appropriate treatment response or service depends, in part, on that severity. An client who lives in substandard housing has a recovery environment problem that is different from the person who is homeless or is regularly physically abused by a person living in the same place. The appropriate service for the first person might be help in finding a new place to live or applying for rental assistance. The appropriate service for the second person might be immediate removal to a shelter.

The current placement criteria focus on the presence or absence of a problem rather than on its severity. For instance, in the current rule, if there is a mental health problem diagnosed by an appropriate professional, mental health is a placement consideration, however, a client who is hearing voices without a diagnosis has no place in the criteria.

To establish criteria that would both consider problem severity and customize packages of services the proposed rule provides a list of risk descriptions in each of the six dimensions discussed in the Statement of Need and Reasonableness for part 9530.6620, subpart. 1. These risk descriptions delineate levels of problem severity. The proposed rule also provides a list of services in each dimension that address the risk descriptions. When the client's risk descriptions have been determined and the corresponding services identified, the result is a package of services tailored to the client's individual needs.

It is necessary to require assessors to use the proposed risk descriptors and treatment planning decisions, because they establish a common set of criteria and their use ensures that clients who have the same circumstances will have the same opportunities to have their needs addressed, regardless of where they live in Minnesota,.

DECEMBER 18, 2007

The reasonableness of the risk descriptions and treatment planning decisions are addressed in the statement of need and reasonableness for part 9530.6622.

**Subpart 5. Treatment Service authorization.** It is necessary to establish treatment admission when public funding is involved to ensure that the public funds will be used for their intended purpose. It is reasonable to require that the client meet the DSM criteria for substance use disorder to establish that there is a substance use problem which is of sufficient duration and severity to be outside of normal behavior and likely to continue without intervention.

Dimension 4, Readiness to Change; Dimension 5, Relapse, continued use, continued problem potential; and Dimension 6, Recovery Environment, are the essential expertise of chemical dependency treatment programs. A risk description of 2 or higher in these dimensions is associated with problems that require professional intervention. It is reasonable to require that an client have a problem in an area that chemical dependency programs are prepared to treat, in order to have that treatment paid for with public chemical dependency treatment funds.

**Subpart 6. Other services.** It is necessary to require the placing authority to provide services in Dimensions 1, 2 and 3, because these problems serve as barriers to recovery, making the corresponding services appropriate parts of chemical dependency treatment. However, to deliver these services without the more specific chemical dependency services in dimensions 4, 5, and 6 is an inappropriate use of public treatment funds. Detoxification, health care, and mental health services each have separate funding sources when provided singly and not as a part of chemical dependency treatment. Treatment funds are intended to pay for treatment of clients with a current substance use disorder. Therefore, a need for services for an client must be established in dimension 4, 5, or 6.

**Subpart 7. Highest risk.** It is necessary to tell the assessor how to prioritize client' needs when arranging or authorizing services, because the Commissioner of Human Services has a responsibility to ensure that clients with the same problems get an opportunity for the same services in every area

DECEMBER 18, 2007

of the state. It is reasonable to require that the services be based on the client's highest risk to ensure that the problem area requiring the most intensive service is paramount to the decision making. It is possible that a client will have a high risk in one dimension and significantly lower risk descriptions in the other dimensions. It is unreasonable to arrange services at a low intensity, even if the majority of the risk descriptions are low, because lack of services would leave the client vulnerable in one dimension.

An example of this would be an adult female client who has no problems in dimensions 1, 2 or 3; has low risk descriptors in dimensions 4 and 5, but is still drinking and when she does she gets hit by her live-in boyfriend. In dimensions 1 through 5, her risk descriptions are relatively low, but in dimension 6 her risk descriptor is high. The preponderance of her risk descriptors suggests that she is suitable for rather low intensity outpatient treatment. Following that line of thinking however puts her in physical danger. The assessor must first arrange a service that will keep her safe and then add the services that will address her other issues.

It is reasonable to allow the assessor to have options in addition to authorizing chemical dependency services to address the client's highest risk factor, because sometimes the best service to address the client's problem will not be a chemical dependency service. In the example above, the best service might be a residential chemical dependency program, but it might also be a women's shelter. The decision should be made by the assessor's based on the assessor's knowledge of the available resources.

**Subpart 8. Service coordination.** It is necessary to require service coordination for clients with multiple or complex problems, because research shows that when clients address and make progress on the array of their problems, not just their chemical use, they are more likely to be alcohol and drug free six months after treatment than their counterparts who are left to address the other problems after treatment. It is reasonable to allow the placing authority to provide the coordination, because some placing authorities have staff with the necessary knowledge of community resources. In fact, some placing authorities will already be providing service coordination through another social service program, such as child protection, in which case it would be unreasonable to pay for the service

DECEMBER 18, 2007  
twice.

**Subpart 9. Client choice.** Research shows that clients are more likely to be alcohol and drug free six months after discharge if they receive their treatment in a culturally specific or special populations program. This is not true for all members of a specific population group. This provision allows client choice as the method for determining whether a special populations program is the right choice for the individual client. For most clients, effective chemical dependency treatment relies on group identification. Clients who identify with a group are more likely to benefit from participating in treatment groups where they feel the other members have similar experiences or problems and feel supported. This provision allows the client to be the expert on which program will be most comfortable for the client.

It is necessary to mandate the use of special population programs when chosen by the client because some placing authorities have categorically denied such requests, effectively denying some clients opportunities for success. It would be unreasonable to let the client choose the actual facility, because in some cases clients will choose programs that are far away and very expensive over programs in the area. It is also reasonable to deviate from the planning decisions because of the higher likelihood of success in a population specific program. For instance, if the treatment planning decisions do not include a supportive living situation, but the only appropriate special populations program is a residential program, the client is entitled to the advantages of the special population program and the residential component must be authorized.

**Subpart 10. Distance exceptions.** This exception allows a residential placement, even if it is not otherwise indicated, if the client lives too far from the outpatient service. It is moved from the current part 9530.6650, subpart 1, item A: “outpatient treatment is not available within a 50-mile radius of the client's home, and the assessor and the client agree on an alternative placement.” The necessity for and reasonableness of this concept was demonstrated when the current rule was adopted. It is reasonable to reduce the distance to 30 miles because experience has shown that a distance of 50 miles has been a barrier to treatment participation.

DECEMBER 18, 2007

**Subpart 11. Faith-based provider referral.** Federal Charitable Choice regulations promote the use of faith based organizations to provide services paid for with federal funds. Because governed federal funds are used to pay for chemical dependency treatment through the Consolidated Chemical Dependency Fund (Minnesota Statutes, Chapter 254B), it is necessary to convey applicable requirements in the rules governing placement of clients. The specific language in this subpart is reasonable, because it conveys the requirement in 42 CFR 54.8.

**Subpart 12. Adolescent exceptions.** Subpart 12 establishes appropriate times to place an adolescent in a program with room and board. It is reasonable to recognize that adolescents may have different needs than adults and may need age-appropriate services that provide more support and supervision. Therefore, it is reasonable to provide adolescent exceptions in this subpart that apply to adolescents who need appropriate services.

**Item A.** It is reasonable to provide treatment to an adolescent in a program with room and board because a program with room and board provides the client with more structure and a supportive environment.

**Item B.** This item allows a placement in a program with room and board based on an adolescent client's diagnosed mental health problems. In the proposed rules, mental health problems are addressed in dimension 3, which considers a wider range of mental health conditions and does not require a diagnosis.

**Subpart 13. Additional information.** This subpart requires that a treatment provider inform the placing authority of information that indicates the client needs more or different services than those initially authorized. This is not a new requirement. It is moved from subpart 1 and updated to conform to the language of the proposed rule amendments.

#### **9530.6622 PLACEMENT CRITERIA.**

The placement criteria in part 9530.6622 replace the criteria in repealed parts 9530.6625 through 9530.6645. The need for placement criteria was established when parts 9530.6625 to 9530.6645



DECEMBER 18, 2007

were adopted. It is reasonable to replace the existing placement criteria in parts 9530.6625 to 9530.6645 because the existing criteria is program based and does not consider a wide range of client problems that affect the client's ability to succeed. The existing rule criteria also pays little attention to problem severity and misses an opportunity for more precise matching of a client's needs to treatment services. Better matching of a client's needs to treatment services will increase the client's chances of success and make better use of limited public funds. This part is necessary, because it meets the requirements of Minnesota Statutes, section 254A.03, that the Commissioner establish criteria for the appropriate level of chemical dependency care.

The placement criteria are organized into six dimensions, as discussed in the statement of need and reasonableness for part 9530.6620. In each dimension, five severity levels or "risk descriptions" are delineated. They are designated by a numeral 0 through 4. The risk descriptions are reasonable because the numbers describe the same amount of risk in each dimension:

- 0 means the client has no problem.
- 1 means the client has a problem that is comfortably under control.
- 2 means the client has a moderate problem.
- 3 means the client has a serious problem, but the problem is not yet dangerous to the client.
- 4 means the client has a problem that is dangerous to the client, or presents a crisis for the client.

Each numerical risk description is explained to help assessors and other rule users apply the rule consistently to the clients they assess and treat.

The treatment planning decisions that correspond to the risk descriptions describe a related intensity of service for each level of risk:

- 0 requires no response or, in fact, can be seen as a client's asset that will bolster treatment efforts in other dimensions.
- 1 requires no client service, but may require that the client be given support to continue the client's efforts at problem management.
- 2 requires low intensity intervention be provided to the client.
- 3 requires intervention on behalf of the client that may include treatment from persons with

DECEMBER 18, 2007

special expertise in the subject area of the dimension to help the client.

- 4 requires a crisis response to the client's condition or concerted intervention efforts for the client.

The number assigned to the treatment planning decision corresponds to the number in the risk description.

The language of the risk descriptions and treatment planning decisions was developed in two phases. In 1998-1999 the Department of Human Services began the first phase of developing criteria when it convened a workgroup of chemical dependency professionals and engaged a nationally known consultant, Dr. David Mee Lee. The Department's goal was to work with the work group to develop continuing service and discharge criteria. The initial plan was to offer the continuing service and discharge criteria on a voluntary basis as an aid to communication and consistency within programs, between participating programs, and with funding sources. The product of that workgroup is the basis for the structure used in part 9530.6622. In 1999 approximately 400 treatment professionals were trained in the use of the new criteria. In 2002, all the training participants were surveyed to learn their experience in implementing the criteria. The respondents fell into three groups: Those using the criteria; those who had never attempted to implement the criteria and those who had implemented and then stopped using the criteria. Among the individuals who were not using the criteria in 2002, the most frequent reasons cited for not using the criteria had to do with the difficulty of implementation and lack of mandate, rather than the specific content of the criteria. From the survey results the Department determined ways to address problems with the criteria and expand their use through rule changes.

The second phase of the project to develop criteria involved all the training participants who returned a survey saying they still used the criteria. They were invited to participate in a workgroup late in 2002 and into 2003. This workgroup helped develop the specific language of the risk descriptions and treatment planning decisions. The workgroup simplified and clarified the continuing service and discharge criteria that were voluntarily used by programs in phase one, and changed requirements that they had found to be inaccurate or difficult to work with, based upon their experience using the criteria. They also examined each item to make sure it conformed to the criteria described above.

DECEMBER 18, 2007

The specific provisions of the criteria in part 9530.6622 are reasonable, because they are the product of national expertise, the thoughtful advice and concerted efforts of many experienced chemical dependency professionals to implement criteria; and the Department's evaluation of the results of the phase two use of the criteria in operating programs and placing authorities.

**9530.6650 EXCEPTIONS TO PLACEMENT CRITERIA.** It is necessary to repeal this part because its provisions have either moved to other parts or are no longer needed. The reasonableness of repealing specific provisions follows:

**Subpart 1. General exceptions.**

Item A. The exception concerning distance to outpatient treatment has been modified and moved to part 9530.6620, subpart 10. The reasonableness of the changes is provided in the statement of reasonableness for that subpart.

Items B and C. These items addressed the use of special populations programs and the substance, with modification, has been moved to part 9530.6620, subpart 9. The reasonableness of the changes is provided in the statement of reasonableness for that subpart.

Item D. A separate exception for committing courts is not necessary because it is covered by part 9530.6600, subpart 1.

Item E. Item E exempted placements using funding sources that did not cover the entire array of programs. This was important when the rule was initially adopted and the Department was still making changes to the funding streams to combine them into the Consolidated Chemical Dependency Fund. With the successful integration of the funding streams this provision is no longer necessary.

**Subpart 2.** Subpart 2 is not needed because its adolescent exception requirements are moved to part 9530.6620.

DECEMBER 18, 2007

**Subparts 3a and 4.** Subparts 3a and 4 are exceptions to criteria for extended care and halfway house placements. Because the levels of care have been repealed, these subparts are no longer necessary. To the degree that these exceptions address specific client attributes, the concepts have been incorporated in part 9530.6622.

**9530.6655 APPEALS.** It is necessary to amend the rule part that addresses client appeals because proposed provisions have created new rights for clients. Additionally changes in language and focus in other rule parts require that the appeals provisions be updated.

**Subpart 1. Client's right to a second assessment.** The client's right to a second assessment has not changed. The changes to this subpart simply align this subpart with language changes in other parts.

**Subpart 2. Client's right to appeal.** It is necessary to update this subpart, because proposed provisions create new rights for clients.

**Items A and C.** It is reasonable to permit clients to appeal when the timelines in part 9530.6615, subpart 1, are not met, because if there was no right of appeal, then the client would have no recourse and the timelines would have no useful meaning.

**Items D and E.** Changes in items D and E simply update the language in keeping with related changes to the use of the terms "placing authority" and "services" in this rule.

**Item F.** Item F provides an appeal right if the client is denied access to a special populations program. It is reasonable to permit the client to appeal this decision, because if the client cannot appeal, the provision in part 9630.6620, subp.9, is not enforceable.

**Item G.** It is reasonable to allow the client to appeal placement with a faith based provider, because a right to an alternative placement is established in part 9530.6620, subpart 11.

DECEMBER 18, 2007

The final paragraph in this subpart addresses notice of the right to appeal. The necessity of notice was established when these rules were adopted. It is reasonable to reference Minnesota Statutes, section 256.045, because it specifies the procedure governing the right to appeal and how the appeal will be conducted. It is reasonable to require the placing authority to give notice at the first in-person contact because it is the first practical opportunity.

**Subpart 3. Services during appeal of additional services.** Changes in subpart 3 do not change the requirements. All changes are made to update language.

**Subpart 4. Considerations in granting or denying additional services.** This subpart is used to determine whether an authorization for services is long enough to meet the client's needs. The changes delete item A of the current rule and replace it with proposed item D. These changes are reasonable because they exemplify the move from program focus to client focus. The item A which is proposed for deletion essentially says that programs usually last a specific length of time and the client should get that amount of time, while proposed item D addresses whether or not the client has a continuing need for the service.

### **9530.6800 to 9530.7031 RULES GOVERNING THE CONSOLIDATED CHEMICAL DEPENDENCY TREATMENT FUND.**

Many of the proposed amendments to parts 9530.6800 through 9530.7031 (also known as Rule 24) which governs the administration of the Consolidated Chemical Dependency Treatment Fund [CCDTF], are in response to amendments proposed in the chemical dependency treatment delivery system. Some rule changes are proposed to maintain consistency with other related chemical dependency rules. The significant amendments to parts 9530.6600 through 9530.6655 (also known as Rule 25) which govern public funding of assessment and treatment, necessitate corresponding changes to Rule 24. Similarly, the implementation of parts 9530.6405 through 9530.6505 (also known as Rule 31), which governs treatment licensure, in January, 2005, changed the way treatment services are conceptualized and made some provisions of Rule 24 obsolete.

The mechanics of procedures for the authorization, billing, payment and reporting about treatment

DECEMBER 18, 2007

services have changed. When Rule 24 was originally adopted, all the procedures mentioned above were handled on paper. Now authorizations and payments are made electronically through the Medicaid Management Information System [MMIS]. The system for recording treatment services is now entirely on-line. Reliance on the computer and electronic exchange of information has changed the procedures and some of the roles and responsibilities of local agencies and providers governed by Rule 24.

The statutory changes to client eligibility have made some rule provisions obsolete. It is necessary to amend Rule 24 to remove obsolete provisions and to adjust other provisions to accommodate other changes in the delivery system. The reasonableness of specific changes is provided below:

**9530.7000 DEFINITIONS.** The proposed rules would repeal the definitions in subparts 3, 4, 12 and 17 to maintain consistency with changes being made to part 9530.6605.

The existing rules established the necessity of defining specific terms. The reasonableness of changes to these definitions is provided below:

**Subpart 5. Chemical dependency treatment services.** It is necessary to change this definition, because it relies on outdated terms. The terms “outpatient” and “rehabilitation” are no longer used in the licensing rules to describe types of services. It is reasonable to use the licensing rule references to define chemical dependency treatment services, because they are clear and unambiguous.

**Subpart 9a. Custodial parent. See Repealer.** It is reasonable to repeal this definition, because it will not be used in the rule after the proposed rule changes are effective.

**Subpart 14. Local agency.** It is reasonable to remove “submit state invoices” from the definition of “local agency”, because the submission of invoices is now done on-line and is no longer a responsibility of local agencies.

**Subpart 16. Negotiated rate. See Repealer.** It is reasonable to repeal this definition, because it

DECEMBER 18, 2007

will no longer be used in these rules after the proposed rule changes are effective.

**Subpart 18. Rehabilitation program. See Repealer.** It is reasonable to repeal this definition, because it relies on references to program licensing rule parts that were repealed.

**9530.7010 COUNTY RESPONSIBILITY TO PROVIDE CHEMICAL DEPENDENCY TREATMENT SERVICES.** It is necessary to amend the rule regarding county responsibility, because it has caused some confusion among counties about their responsibility to provide treatment services. The result of the confusion is that clients do not get timely services, while counties try to determine responsibility for providing treatment services. It is reasonable to refer to Minnesota Statutes, Chapter 256G to determine the county of financial responsibility, because this law governs these kinds of disputes.

**9530.7012 VENDOR AGREEMENTS.** Changes to part 9530.7012, items A, B and C, are technical changes consistent with changes to the terms used in the licensing rules. The types of services addressed in the rule are described in the amendments using updated law and rule citations.

The proposed new paragraph in this part is necessary and reasonable because it ties together the law and the administrative rule requirements for vendors of room and board services.

**9530.7015 CLIENT ELIGIBILITY UNDER THE CONSOLIDATED CHEMICAL DEPENDENCY TREATMENT FUND.**

**Subpart 1. Client eligibility to have treatment totally paid under the Consolidated Chemical Dependency Treatment Fund.**

**Item A.** This item describes a group of individuals who are automatically eligible for the Consolidated Chemical Dependency Treatment Fund (CCDTF). At the time the rules were adopted that group was designated as individuals receiving Aid to Families with Dependent Children (AFDC), which was described using the administrative rule part numbers governing that program. Since then AFDC is no longer available and has been replaced by the Minnesota Family Investment Program (MFIP). It is necessary and reasonable to update the language in the rule.

**Item D.** This item refers to those clients who are eligible for the CCDTF because their income is

DECEMBER 18, 2007

lower than a specified level. When the rules were adopted the level was 60% of state median income.

Since then the legislature has changed the income level making it necessary to change this rule provision. Because the legislature may change that income level in the future, it is reasonable to link the rule provision to the governing statute.

The last paragraph in subpart 1 addressed the period after the rules were adopted and before federal waivers were obtained. Implementing certain aspects of the rules without the waivers would have jeopardized federal funding. These waivers are now in place and this rule provision is no longer necessary or reasonable.

**Subpart 2. Client eligibility to have treatment initially paid for from the Consolidated Chemical Dependency Treatment Fund. See Repealer.** This subpart addressed a group of clients, known as "Tier II", with slightly higher incomes. It is reasonable to repeal this part, because it is unnecessary. This eligibility group has not been funded by the legislature since 1990.

**Subpart 2a. Third party payment source and client eligibility for the CCDTF.** It is necessary to address eligibility of clients who have insurance coverage, because it has caused some confusion among local agencies. It is the policy of the Department of Human Services to ensure treatment for clients who cannot afford treatment as determined by the income eligibility standard. If the clients have insurance that only partially covers the cost or has deductibles or copays, the clients are still not in a position to pay for their treatment. This policy is reflected in subpart 4, item B. However, local agencies have misinterpreted the regulations to mean that any amount of insurance payment caused a client to be ineligible for payment from the CCDTF. Therefore, it is necessary and reasonable to state the Department's policy clearly and separately on this issue.

**Subpart 3.** This subpart also addressed Tier II and is no longer necessary for reasons discussed above in subpart 2.

**Subpart 4. Client ineligible to have treatment paid for from the CCDTF.** Like the change to Subpart 1, item D, the changes to this subpart remove outdated language and tie client eligibility to



DECEMBER 18, 2007

current statute. It is necessary to remove inaccurate information and reasonable to replace it with a reference to statute, because the legislature has changed the income limit for the CCDTF on several occasions and is likely to change it by amending the statute in the future.

**Subpart 5. Eligibility of clients disenrolled from prepaid health plans.** This subpart addresses the payment for treatment if the client was on a prepaid health plan at the beginning of treatment, but becomes disenrolled during the course of treatment. It is necessary to address this circumstance, because it is a source of confusion for the placing authorities and results in delay of payment to the treatment provider. It is reasonable for the CCDTF to pick up the cost of treatment for clients in this situation, because the prepaid health plan has no obligation to provide services after disenrollment. Payment to the plan for the client stops at the end of the last enrolled month. It is reasonable to limit the responsibility of the CCDTF to clients who have been determined to be eligible for the CCDTF.

**Subpart 6. County responsibility.** It is necessary to include requirements about clients who are ineligible for the CCDTF and have been committed to a regional treatment center, because county responsibility for these clients is a source of confusion for counties and they look to the rule for guidance. It is reasonable that the county be responsible for payment to the regional treatment center for these clients because Minnesota Statutes, section 254B.05, subdivision 4, assigns the counties this responsibility.

## **9530.7020 LOCAL AGENCY TO DETERMINE CLIENT ELIGIBILITY FOR CCDTF.**

**Subpart 1. Local agency duty to determine client eligibility.** Like the changes in part 9530.7015, subpart 1, item D and subpart 4, the changes here remove references to conditions of eligibility that are no longer funded. It is reasonable to remove references to the sliding fee scale program because it no longer exists.

**Item C.** At the time these rules were adopted, the use of prepaid health plans to deliver medical assistance covered services was still a pilot project. The impact of using this delivery method was

DECEMBER 18, 2007

not clear. The first change in this item, concerning prepaid health plan enrollment is necessary because the role of prepaid health plans has increased. It is reasonable to include them in this item because they pay for services in a way that is similar to other types of insurance.

At the time these rules were adopted, the Department was concerned about making sure all available insurance coverage was used before public funds were used to pay for treatment. The local agency was identified in rule as the entity responsible for making sure the insurance companies requirements were met, so that the insurers would pay. After the rule was implemented, it has become clear that insurers are accustomed to working with providers and that providers have the information the insurers require to substantiate a claim. Inserting the government in the communication between the insurer and the treatment provider resulted in delays and miscommunication. The deleted material is no longer necessary because treatment providers are more effective at addressing the special conditions of insurers, which should relieve the local agencies of this responsibility.

Item D. The new language in item D makes it clear that the local agencies must provide client eligibility information to the Department. It is necessary and reasonable that the Department receive the information because the Department operates the billing and payment system and is accountable for the funding. It is reasonable to require that the Department get the information it needs.

Item D, subitems 1 through 3. The repealed language in these subitems facilitated the Department of Human Services' efforts to collect insurance payments for services paid for by the CCDTF. Most of this language is no longer necessary because working with insurance companies is now the responsibility of the treatment provider.

Item E. This item is adjusted and retained to allow the Department to collect the insurance payment if necessary. While this is rarely the responsibility of the Department (see discussion of deleted language in item C), it is possible that the insurance information may not become available until after the client is discharged and the provider and client no longer have a relationship. In those cases it may be necessary for the Department to collect on the benefits.

DECEMBER 18, 2007

Additional language in items D and E is repealed because it pertained to the sliding fee scale, which is no longer funded.

**Subpart 1a. Redetermination of client eligibility.** Subpart 1a addressed the redetermination of client eligibility and the redetermination of the client's (or client's responsible relatives') fee assessment. Because the sliding fee scale is no longer funded, it is only necessary to govern redetermination of client eligibility in this subpart. It is reasonable to repeal the language related to the sliding fee scale because it is defunct. New language in subpart 1a is consolidation of issues specifically related to client eligibility taken from item A. The repealed language in item A required that eligibility be redetermined every six months.

**Subpart 2. Client, responsible relative, and policyholder obligation to cooperate.** The deletion in this subpart removes references to meeting the special conditions of insurers. It is unnecessary because this is no longer the responsibility of the local agency.

**9530.7021 PAYMENT AGREEMENTS.** The only change to this part is the removal of a reference to client fees. Because client fees no longer exist, it is not necessary to address them in payment agreements.

**9530.7022 CLIENT FEES.**

**Subpart 1. Income and household size criteria.** New language for subpart 1 replaces the language in item A with updated references, but does not represent a change in policy. The rest of subpart 1 and all of subpart 2 are not necessary because they address the implementation of the sliding fee scale which no longer exists.

**9530.7024 CLIENT FEES FOR CATEGORY III AND IV PROGRAMS.** This rule part governed client fees for category III (halfway houses) and category IV (extended care) programs. Special fees were associated with these programs because they were long term in nature and for the duration of participation, were the client's primary residence. It was the

DECEMBER 18, 2007

policy of the Department that clients with no dependents could pay a portion of their income for their room and board since they had no shelter costs in the community. This rule part governed which clients could be assumed to be responsible for their room and board, how the fee was to be determined and collected and reasonable deductions from the fee. Payment of the fee was thought to have therapeutic value. The thinking, when the rules were adopted, was that clients will value something they have to pay for and that having to pay for their own room and board would teach responsibility and prepare clients for community living.

Most of the clients responsible for a fee were clients living in halfway houses who got a job. Employment is an important treatment goal for most halfway house clients. The actual experience was that the fee was counter productive. Some clients were reluctant to get jobs because most of the income would just go to fees. Others thought that if they were going to pay significant amounts for room and board they would rather pay it to a landlord of their choosing, rather than a program with expectations and restrictive rules.

Many clients did not pay their fees while in the halfway house so that they could save money for a deposit and first month's rent and other necessities for community living. The Department was not very successful in collecting fees. It set up payment plans that allowed clients to pay their debts in small increments. It was the choice of the Department that the payment plans should not be detrimental to the efforts of a client to begin a new life. However, the Department found that the cost of collection exceeded the payments.

Between the unanticipated disincentives of the fees themselves and the cost of collection, the Department stopped enforcing this rule part in 2000. It is no longer needed or reasonable.

**9530.7030 VENDOR MUST PARTICIPATE IN DAANES SYSTEM.**

This part governs the responsibility of vendors to provide treatment information to the Commissioner of Human Services. The existing rules establish the necessity for the submission of information. At the time of adoption, the rules provided options for the method of submission because computers and access to the internet was not readily available. It is no longer reasonable to accept the information in various formats because DAANES information

DECEMBER 18, 2007

is now collected on-line. The Department is required to submit the information to the Substance Abuse and Mental Health Administration of the United States Department of Health and Human Services (DHHS). Minnesota's submission to the federal government must be in a specific electronic format. DAANES complies with that format. Accepting the information from providers in other formats would be unreasonable because the Department would have to have additional staff to convert from the providers' format to DHHS's format. Therefore the changes to part 9530.7030 clearly state the requirement to provide information in the format specified by the Department and repeal all provisions for alternative formats.

**REPEALER.** It is reasonable to repeal rules that are no longer in effect or that may conflict with the requirements in the proposed rule amendments.

**9530.6660 EFFECTIVE DATE.** It is reasonable to select a July 1, 2008, effective date because the parties governed by the rule will need time to prepare to implement the rule. In addition the Departments who administer the rule need time to work with the parties governed by the rule who may need guidance about the rule and to prepare the Departments' divisions to implement the rule. The July 1, 2008, date is also the beginning of a new state fiscal year. The July 1, 2008, date should provide enough time for the parties governed by the rule and the Departments who will administer the rule to get ready to implement the rule.

## **CONCLUSION.**

Based on the foregoing, the proposed rules are both needed and reasonable.

December 18, 2007