



*State of Minnesota*  
**Department of Human Services**

Human Services Building  
444 Lafayette Road N  
St. Paul, Minnesota 55155

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July 19, 1995

Ms. Maryanne Hruby  
Executive Director, LCRAR  
55 State Office Building  
St. Paul, Minnesota 55155

Dear Ms. Hruby:

Pursuant to Minnesota Statutes, section 14.131, enclosed is a statement of need and reasonableness relating to licensure of the Minnesota Sexual Psychopathic Personality Treatment Center, Minnesota Rules, parts 9515.3000 to 9515.3110.

If you have any questions about the statement of need and reasonableness, please do not hesitate to contact me at 297-4302.

Sincerely,

*Alice Weck*

Alice Weck  
Rules Division

Encl.

STATE OF MINNESOTA  
DEPARTMENT OF HUMAN SERVICES

In the Matter of the Proposed Adoption  
of Department of Human Services Rules  
Governing Licensure of the Minnesota  
Sexual Psychopathic Personality Treatment  
Center, Minnesota Rules, parts 9515.3000  
to 9515.3110

STATEMENT OF NEED  
AND REASONABLENESS

INTRODUCTION

Minnesota's statutory obligation to the treatment of sex offenders began in 1939 with the passage of the psychopathic personality commitment statute. The 1969 revision of the mental illness commitment law applied to persons committed under this statute the same rights and procedures as apply to individuals committed as mentally ill and dangerous. Persons committed under this law were and are now committed to the Minnesota Security Hospital. That facility is licensed under parts 9520.0500 to 9520.0690 (DHS Rule 36) and is certified by the Joint Commission on Accreditation of Health Care Organizations as part of the St. Peter Regional Treatment Center.

Up until 1990, there were relatively few commitments under the psychopathic personality commitment statute; persons who were committed were treated within existing programs at the Security Hospital. Since 1990, however, commitments have greatly increased. In part because of this increase, the Legislature in 1993 voted to build a 100-bed, secure facility in Moose Lake to serve as a treatment center for persons committed under the state's psychopathic personality statute.

Minnesota Statutes, section 246B.02, authorizes establishing the treatment center. Minnesota Statutes, section 246B.04 directs the commissioner of human services to adopt rules governing the operation, maintenance, and licensure of the treatment center program. Parts 9515.3000 to 9515.3110 are proposed to meet the directive.

*The proposed rule parts in context*

This new facility cannot be appropriately licensed under existing DHS program licensing rules for several reasons. While some of the treatment needs of this population are similar to those served in programs licensed by Rule 36, for instance, other treatment needs are specific to this population. Specific sex offender treatment issues are not explicitly addressed by existing licensing rules. Persons served by this program typically do not have the sort of mental illness, mental disturbance, or mental deficiency anticipated by the requirements of existing program licensing rules. Also, the vast majority of anticipated participants in this program have seriously antisocial personalities, extensive criminal backgrounds, and experience in prisons. The significant risk of

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deliberate antisocial behavior among them prompts a need for licensing provisions dealing with codes of conduct and rules for discipline that are not present or necessary in any existing licensing rule.

As of April 1, 1995, there were 69 men and one woman committed under the sexual psychopathic personality law in residence at the Minnesota Security Hospital. They are now housed in temporary quarters pending completion of the treatment center at Moose Lake which is intended as the permanent treatment center. They receive programming and treatment under the terms of the sex offender treatment program which was developed at the Security Hospital and which will be replicated at Moose Lake to serve as the program there. The current program at St. Peter is carried out under the terms of the Rule 36 license held by the Minnesota Security Hospital. Because the characteristics of committed psychopathic personalities are different from those with mental illness, it has been necessary to provide new interpretations of existing facility policies, statutory language, and practices in order to provide a safe environment and an active treatment program.

The proposed program licensing rule is intended to incorporate provisions needed to ensure a safe and effective treatment program for a clientele that is predominantly severely antisocial and free of psychosis, and to eliminate the need for unanticipated re-interpretations of existing rules and policies in order to deal effectively and fairly with this population.

The rule parts address issues of required program content, staffing levels, qualifications, training and supervision, protection of residents' rights, preservation of safety and management of dangerous behavior, and due process provisions for disciplinary and protective actions. Specific topics central to addressing the causes of sexual offending and the process of rehabilitation are identified and required.

### *The rulemaking process*

Notice of Solicitation of Outside Information or Opinions was published Monday 30 August 1993 in the *State Register*. An amended notice consistent with requirements of the Administrative Procedure Act (APA) as amended by Minnesota Laws 1995, chapter 233, article 2, section 11 was published Monday 21 July 1995.

In July, 1994 the department convened a public advisory committee with some 20 members representing advocacy groups, county attorneys and county social services programs, professional associations with an interest in the rules, employee unions, sex offender programs, and other state agencies. The committee met four times. After the

final meeting, a copy of the draft was circulated to all committee members for written comments.

In August, 1994 Governor Arne Carlson convened a special session of the legislature to change the psychopathic personality statute. One statutory change replaced the term "psychopathic personality" with the term "sexual psychopathic personality." The rule language accordingly reflects that change. Another statutory change of the special session established the term "sexually dangerous person" and a corresponding new category of civil commitment. It is anticipated that persons committed under the new category will also be treated at the Moose Lake facility and that this rule will apply to their treatment as well.

#### **SMALL BUSINESS CONSIDERATIONS**

The rulemaking considerations required by Minnesota Statutes, section 14.115, subdivision 2 do not apply because the regulated program--a state-operated treatment center--is not a business entity that is independently owned and operated.

#### **FISCAL IMPACT OF PROPOSED RULE PARTS**

The Department's fiscal impact statement projects a net fiscal impact of zero dollars because the proposed rules govern a program that the department has been offering in another site for many years. Although there are differences between the program governed by these rules (collectively and informally known as DHS Rule 26) and the program governed by Rule 36, the differences require no additional resources or expenditure of money. The cost of building the new facility at Moose Lake is not attributable to the rule.

#### **AGRICULTURAL LANDS**

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

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

The specific provisions of proposed parts 3515.3000 to 3515.3110 are affirmatively presented by the department in the following statement of need and reasonableness as required by Minnesota Statutes, section 14.131.

#### **9515.3000 DEFINITIONS.**

This rule part defines words and phrases that have a meaning specific to parts 9515.3000 to 9515.3110, that may have several possible interpretations, or that need precise definition to be consistent with statute.

Subpart 1. **Scope.** This provision is needed to clarify that the following definitions apply to the entire sequence of parts 9515.3000 to 9515.3110.

Subp. 2. **Commissioner.** This definition is needed to establish that the commissioner referenced throughout the rule parts is the commissioner of human services or that commissioner's designated representative. It is reasonable for the definition of commissioner to include "or the commissioner's designated representative" by way of giving notice that the commissioner may delegate the commissioner's authority.

Subp. 3. **Department.** This definition is necessary to specify that the term as used throughout the rule parts is a shortened version of the Minnesota Department of Human Services.

Subp. 4. **Minnesota Sexual Psychopathic Personality Treatment Center.** This term identifies the facility to which these rule parts apply, has a specific meaning in statute, and requires definition here to be consistent with statute. Referencing the applicable statute is a reasonable way to define the term.

Subp. 5. **Person or person in treatment.** This definition is necessary to clarify the specific meaning given in these rule parts to a term that could have several possible interpretations. A generic term that applies to any and all program participants is necessary as a practical matter of usage. Having that term be "person" or "person in treatment" is reasonable because it applies to and neutrally describes program participants without the connotations of other terms the rulewriting team considered. For instance, "resident," "patient," and "client" were all considered and rejected because the terms connoted a status or relationship to the facility that did not accurately apply.

Subp. 6. **Sexually dangerous person.** This term has a specific meaning in statute and requires definition here to be consistent with statute. Referencing the applicable statute is a reasonable way to define the term.

Subp. 7. **Sexual psychopathic personality.** Statement for subpart 6 applies.

Subp. 8. **Treatment staff.** This term requires definition because the rules state certain conditions that apply to treatment staff and not to other staff. Those administering and consulting the rules need to know the meaning of the term in order to know when and to whom the conditions apply. Defining the staff in terms of their responsibilities as described in a specific rule part is reasonable because the differing

requirements and conditions that apply to treatment staff as opposed to treatment support staff are based on the difference in responsibilities.

Subp. 9. **Treatment support staff.** Statement for subpart 8 applies.

**9515.3010 PURPOSE AND APPLICABILITY.**

Stating the purpose and applicability of the rule parts is necessary so that those consulting the rule parts can readily determine whether the rules have relevance or interest. Identifying agencies governed by the rule parts is also necessary to facilitate compliance; both those governed by and those administering compliance with the rule need to know which programs must be licensed. It is necessary to describe the governed programs as those "operated by the commissioner primarily for . . . consent." to differentiate the programs on the basis of operation from all other programs and to avoid having the rule apply in every commissioner-operated setting where a person who meets the admission criteria might be placed temporarily. For example, the lone woman committed as a sexual psychopathic personality will remain in St. Peter rather than move to Moose Lake. Her presence does not make the program in St. Peter "operated primarily by the commissioner for. . . consent." The statements of purpose and applicability given are reasonable because they identify the governed treatment program in ways (by statutorily-defined clientele, for example) that differentiate this program from any other.

**9515.3020 PROGRAM ADMISSION CRITERIA.**

Specific admission criteria are needed to ensure that only those individuals identified in statute as candidates for the treatment program are admitted. The criteria stated are reasonable because they are established in Minnesota Statutes, chapter 253B, the Minnesota commitment act of 1982, and section 246B.02, which allows the commissioner to consent to admissions.

**9515.3030 EVALUATION, ASSESSMENT, AND TREATMENT PLANNING.**

Subpart 1. **Multidisciplinary assessment.** Requiring initial and ongoing assessment is necessary to meet the requirements in Minnesota Statutes, section 253B.03, subdivisions 5 and 7. Minnesota Statutes, section 253B.03, subdivision 5 guarantees those receiving services under the commitment act the right to periodic medical assessment and requires the head of a treatment facility to have the physical and mental condition of every individual committed assessed as frequently as necessary but not less often than annually. The requirement that assessments be updated at least annually is reasonable because it is consistent with the statutory requirement.

It is reasonable to require the assessment to be multidisciplinary because individuals treated under these rule parts have complex, multifaceted problems, all of which must be identified and assessed in order to establish an optimal treatment plan.

The multidisciplinary assessment is also necessary to comply with Minnesota Statutes, section 253B.03, subdivision 7 which states the right of a person receiving services under the commitment act to receive proper care and treatment, best adapted, according to contemporary professional standards, to rendering further custody, institutionalization, or other services unnecessary. An assessment is therefore necessary to determine the care and treatment the person needs.

Establishing a timeline for completing the assessment is necessary to ensure that the assessment is conducted and completed on a standardized and timely basis. Using within ten days of admission as the deadline is reasonable because this amount of time is consistent with commonly used standards of practice.

**Subp. 2. Psychiatric evaluation.** Requiring that each person be evaluated by a psychiatrist on admission is necessary to lay the foundation required for proper care and treatment. According to Dr. William Erickson, medical director for the St. Peter Regional Treatment Center, where the treatment program governed by this rule has previously been administered, only some persons admitted to the program are psychotically mentally ill. A far greater number have anxiety disorders and depression. These problems must be identified promptly so they can be treated. Furthermore, staff should be immediately aware of conditions that would increase a person's vulnerability within the facility so staff can plan to minimize the vulnerability. The three-day timeline is reasonable because it enables staff to get necessary information quickly.

Requiring a re-evaluation at least annually is necessary to meet the requirement for periodic assessment in Minnesota Statutes, section 253B.03, subd. 5. Requiring more frequent evaluations is not necessary because the at-least-quarterly review required in part 9515.3040, subpart 4 includes mental health professionals who can alert the psychiatrist if more frequent evaluation seems warranted.

**Subp. 3. Follow-up to psychiatric evaluation.** This provision is necessary to clarify the treatment path to be followed for those persons found to have psychiatric disorders. Requiring a psychiatrist to prescribe and monitor such treatment is necessary because a psychiatrist is the only professional on staff within whose scope of expertise the treatment falls. Conversely, it is reasonable to require active psychiatric follow-up only of those residents identified as having psychiatric disorders. The overall sex offender treatment program is psycho-educational in orientation, not psychiatric; beyond the initial assessment and ongoing treatment of individual disorders, the psychiatrist's

role in the treatment program plan will vary from person to person. It is also reasonable to emphasize integrating psychiatric interventions into the general treatment plan because the goal of the intervention is to support the person's capability for participating in the treatment plan for sex offenders.

**Subp. 4. Individual treatment planning.** Requiring individual treatment planning is necessary to comply with Minnesota Statutes, section 253B.03, subdivision 7 which directs facilities treating persons receiving services under chapter 253B to devise a written plan for each person. Individual treatment planning is also consistent with the goal of helping persons in treatment to be rehabilitated and enabled to return to the community. While all persons admitted to the program have in common a history of sex offenses, there is wide individual variation in terms of their need for education, including vocational education, psychosocial rehabilitation, substance abuse and dependency treatment, and marital and financial counseling. It is reasonable to address these variations with individual treatment planning. It is also reasonable to base the plan on the assessments and evaluation in subparts 1 and 2 because they function as diagnostic tools for treatment planning.

The within-14-days-after-admission timeline is reasonable because it allows adequate time for completing the necessary detailed evaluations yet insists on closure as soon as possible so that participation in treatment can begin.

Requiring the person, a psychologist, a social worker, a nurse, a member of the treatment support staff, and, if required, a physician, to serve on the team is consistent with Minnesota Statutes, chapter 253B.03, subdivision 7 which requires proper care and treatment, "best adapted according to contemporary professional standards . . . ." Contemporary professional standards emphasize the required level of participation by the professionals involved in a person's treatment.

Requiring the facility to notify the person's treatment staff of team meetings is consistent with the principles above. Requiring notice to the person's case manager is reasonable not only because the county is financially responsible for the person's treatment but also because ongoing involvement by the county of commitment is critical to the person's successfully re-entering the community.

#### **9515.3040 TREATMENT PROGRAM SERVICES.**

**Subpart 1. Scope of treatment program services.** Establishing a range of resources and services that a license holder must be prepared to offer is necessary to encompass the range of treatment needs that must be met in order to have a reasonable expectation of successful treatment. Even though all persons will not have equal need



for all the services the license holder is required to provide, it is reasonable to expect the license holder to have sufficient resources to accommodate a variety of configurations of need.

A. It is necessary to require the license holder to offer the programs specified in item A because the topics, areas, and issues listed are central to the dynamics of sexual offenses. Resolving some of the issues covered is central to a person's potential for successful treatment.

B. Psychiatric, medical, dental, psychological, and social services are needed because persons in the program are confined involuntarily for long periods of time and cannot seek such services elsewhere. Advocacy services are necessary to ensure that concern for protecting and preserving individual rights is reflected in all facets and at all levels of the program.

C. Educational programming is necessary because significant numbers of the persons in the program lack adequate education or have learning disabilities. For example, remedial education that increases or develops reading skills will make some persons better able to participate in some aspects of the treatment program.

D. Assessment and treatment of chemical dependency are both necessary because roughly two-thirds of the individuals committed to this program have histories of significant substance abuse and dependency. Continued sobriety is absolutely essential to successful rehabilitation.

E. Vocational rehabilitation services are necessary because many program participants have little or no successful vocational experience and lack basic work habits or job-seeking skills. Developing habits and skills related to getting and maintaining employment is critical to living successfully in the community. It is reasonable to require the facility to offer these services because they support the overall goal of returning persons to their communities with skills and outlooks that support their living there successfully.

F. Leisure and recreational activities are necessary because the risk of relapse after discharge is, in part, a function of how successful the individual is in establishing appropriate relationships and in using time productively. These skills can be developed through guided leisure-time activities while in the program. Requiring these services is reasonable for the reason given in item E above.

Requiring treatment to be offered in a form and structure consistent with a person's capacity to participate productively is essential to implementing treatment based

on individual needs and differences. There is wide variation in the intelligence, social and learning skills, and accomplishments of persons in the program. Those with limited skills must receive an equal opportunity to benefit from the program.

**Subp. 2. Treatment-related policies and procedures.** Requiring the license holder to have policies and procedures addressing the areas specified in A to G is necessary to ensure the license holder has established operational guidelines for meeting the seven responsibilities in A to G. The need for policy and procedural guidelines is great because the majority of these responsibilities relate to maintaining a therapeutic environment protective of persons' rights, including the right to treatment, in an actual environment where there is a practical, safety-related need to be protective of staff, visitors, and vulnerable persons. The need for consistency of response on questions with legal implications also underscores the need for policy.

A. It is reasonable to require a policy governing disclosure of data obtained during treatment because persons in treatment need to know that some information they disclose during treatment may have to be disclosed to outside agencies under certain circumstances. Persons in treatment need to know the circumstances in which the data must be disclosed outside the program, when data may be voluntarily disclosed by program staff at staff discretion, and when data may not be disclosed voluntarily by staff members. The Minnesota Government Data Practices Act, Minnesota Statutes, chapter 13, requires that subjects of data be informed of the uses that may be made of the data. It is therefore reasonable and necessary for a license holder to comply with this law. Additionally, professional codes of ethics dictate that certain data not be disclosed to others voluntarily. Persons in treatment are more likely to participate in treatment more fully if they know how the data they disclose about themselves will be used.

It is particularly necessary for the license holder to articulate policies regarding disclosure of data which the license holder is neither required to disclose nor precluded from disclosing. Such a policy will help guide staff who must decide whether to disclose such data. It is not necessary for the rule to specify a particular policy because the policy needed might change with time and experience. It is sufficient to require the license holder to require a policy so persons in treatment know where they stand.

B. It is reasonable to identify evaluation of individual treatment outcomes and program outcomes as an area requiring policies and procedures because such evaluation is an important component of the treatment program. The efficacy of psycho-educational approaches to sex offender treatment is subject to continuing challenge, especially when applied to individuals whose inappropriate sexual behavior is recidivistic and violent. Ongoing outcome evaluation at both the individual and program levels is

critical to an adequate understanding of the impact of intervention and the development of effective approaches. Additionally, evaluation data are needed to meet the commissioner's duty in Minnesota Statutes, section 246B.04 to establish an evaluation process to measure outcomes and behavioral changes as a result of treatment compared with incarceration without treatment.

C. Program participants vary greatly in their vulnerability to predation by others and in their tendency to prey on vulnerable peers physically, sexually, and financially. It is reasonable to expect program managers to develop and follow program components and practices to prevent such predation.

D. While few females have been committed over the years--one woman is currently in the program at St. Peter, where she will remain when the men move to Moose Lake--providing for the treatment of women must be anticipated.

E. Requiring the license holder to be prepared to respond to allegations of criminal acts committed by a person while in the program is reasonable because there is a possibility of continued criminal activity on the part of some persons. Policies must be in place to assure consistent response, maintenance of safety, and appropriate referral for potential criminal prosecution.

F. Expecting facility staff to monitor for contraband is reasonable because many of the items on the facility's list of contraband materials are included because they represent a danger. Safety precautions must include surveillance for these dangerous materials.

G. Expecting a license holder to provide a safe environment for staff, program participants, and visitors is a reasonable requirement for any residential program. Meeting that expectation in this setting, however, requires more planning and attention than might be required in another setting so the need to develop and follow policies and procedures is particularly strong.

#### **9515.3050 STAFFING REQUIREMENTS.**

Subpart 1. **Program director.** Minnesota Statutes, section 253B.03, subdivision 7 states the right of a person committed under chapter 253B to receive proper care and treatment, requires a written program plan that outlines how the treatment is to be conducted, and directs the commissioner to monitor the program plan and review process for regional centers to insure compliance. Minnesota Statutes, section 246B.04 requires the commissioner to establish an evaluation process to measure outcomes and behavioral changes that result from treatment.

To meet these requirements, it is necessary for the commissioner to rely on treatment center staff. Because these and many of the commissioner's other responsibilities for the treatment center are program-focused, it is reasonable for the commissioner to require a position that combines responsibility for providing program leadership, clinical oversight, and management. It is reasonable for the position to be full-time to ensure that the program director's attention to the program is not diluted by such duties as having specific responsibilities for individual clients.

**Subp. 2. Number of staff; staffing patterns.** Provisions governing staffing requirements are necessary because the number and mix of staff members present at a given time are essential to program safety and program effectiveness. Advisory committee members agreed on the need for staffing requirements but differed on the most reasonable way to meet the need. Some committee members favored establishing a minimum staff-to-person ratio that would always be met and then adding staff as necessary to allow for flexibility.

DHS licensing staff were concerned that, absent a minimum standard, licensors would have to make subjective judgments about the adequacy of staffing patterns. Fran Bly, director of the DHS residential program management division, and Dr. Erickson both emphasized how difficult it would be to set an absolute minimum standard that would apply to all situations; client groupings make a difference in staffing needs, they said, and so do differences within security settings.

Furthermore, they noted, because the rule is being written before the new facility at Moose Lake opens, it is impossible to estimate with confidence the minimum staff that will be necessary at that new facility. As part of the planning process for the facility, the commissioner has estimated the ratio of staff to participants required but it would be unreasonable to establish those estimates in rule when, with experience, the estimated ratio might prove too high or too low.

Instead of mandating minimum standards in rule, they said, staffing requirements should allow the license holder sufficient flexibility to meet staffing needs yet require the license holder to document how the needs are assessed and how the adequacy of the staffing patterns determined necessary to meet the needs are monitored. This view eventually prevailed.

**Subp. 3. Ongoing assessment and determination of necessary staffing levels.** Leaving staffing patterns flexible while setting up guidelines to assure that treatment and safety needs are met as required in subpart 2 makes it necessary to develop a means of assessing and determining staffing levels.

A. Meeting the safety and treatment needs of program participants and the safety needs of staff is a reasonable criterion because of the license holder's obligation to participants and staff. It is reasonable to require addressing staffing levels for both treatment and treatment support staff as a way of considering the mix of skill, experience, and expertise present as well as the numbers.

B. Considering the factors in B is reasonable because these are the kinds of variables that cause staffing needs to differ; it therefore makes sense to assess staffing patterns in connection with these factors. The characteristics of persons in treatment, rather than the mere number of persons, will be the most important factor in assessing staffing needs.

C. Requiring a written plan that identifies specific participant characteristics related to resource utilization and includes other indicators for evaluating effectiveness and adequacy is a reasonable expectation. If the license holder has the flexibility to determine staffing needs, it is reasonable for the commissioner to know what characteristics and indicators influence the license holder's determination of "adequate staffing."

D. Requiring assessments as often as necessary but no less than quarterly is a reasonable way to allow flexibility while setting a minimum standard. Using every three months as the minimum standard is reasonable because assessing quarterly is frequent enough to reflect changes in admissions patterns but not so frequent as to risk responding immediately to a change that fails to turn into a trend.

E. It is reasonable to require broad representation of treatment and treatment support staff because the broader the range of experience and familiarity with the program represented in assessing staffing patterns, the broader the picture of staffing needs. Reporting data to the facility administration is reasonable because administrators need the data as a basis for decision-making about staffing patterns and allocating staffing resources.

F. It is reasonable to require the administration to review and act on the data in connection with establishing and re-establishing staffing levels because that is the point of making the assessment. It is also reasonable for the administration to document when staffing changes are made as a means of documenting compliance with the rule part and to provide a record of staffing patterns that may be useful over time.

G. Requiring the license holder to develop policies and procedures implementing the requirements in items A to F is reasonable because it allows the facility freedom to act without having prescriptive rules from the commissioner but at the

same time requires the facility to document its own processes so that licensors can compare what the facility is required to do with what it actually does.

**9515.3060 STAFF QUALIFICATIONS.**

Requiring staff to have sufficient qualifications is necessary to comply with Minnesota Statutes, section 253B.03, subdivision 7 which states the right of a person receiving services under chapter 253B to receive proper care and treatment, best adapted, according to contemporary professional standards, to rendering further custody, institutionalization, or other services necessary. Qualified staff is essential to proper care and treatment. The reasonableness of the qualifications is discussed below.

Subpart 1. **Program director.** The program director is responsible for administering the treatment program. It is therefore reasonable to require administrative or supervisory experience in addition to the treatment-focused training and experience required by A and B. The qualification options in A and B are consistent with community standards for programs with a primary focus on treatment. They are, for example, consistent with the requirements for a mental health practitioner in Minnesota Statutes, section 245.462 except that the standards proposed here count work experience in other areas besides mental illness to reflect the heterogeneity of persons in the program.

Subp. 2. **Treatment staff and treatment support staff qualifications.** Items A to D set qualifications that differ according to the degree to which the staff member's duties involve making clinical decisions and otherwise participating in direct treatment. This is a reasonable way to match need and qualifications in a treatment setting.

A. This category includes staff such as psychiatric nurses, clinical social workers, psychologists, and psychiatrists whose licensing, certifying, or registering boards set standards that reflect or exceed contemporary community standards. It is therefore reasonable to accept proof of licensure, certification, or registration as an indicator of qualification. It is also reasonable to require documentation that an individual's professional standing is current to avoid having a staff member practice illegally.

B. The qualifications here are consistent with those for the mental health practitioner in Minnesota Statutes, section 245.462 except that the standards set here accept experience in other areas in addition to mental illness consistent with the characteristics of treatment program participants. It is reasonable to require this level of experience and training for staff members involved with assessment and counseling because it is consistent with current community standards, according to members of the advisory committee.

C. Employees described here are also considered treatment staff (rather than treatment support staff) but the level of qualification required is not as high as for the staff members in B because the functions these staff members perform are less clinically focused and are not governed by licensure requirements of a certifying board or association. The requirements in (1) and (2) are reasonable because they are comparable to those for similar positions in other residential treatment facilities licensed by the commissioner.

D. Treatment support staff have no clinical responsibility; their primary responsibilities are to assist program participants with daily activities including accompanying them to classes or other activities required by the treatment plan. Accordingly, they are not required to have specialized knowledge or training. It is reasonable, however, to require that treatment support staff members be adults and that they have the knowledge and skills one would expect from a high school graduate or equivalent because their positions require good judgment and good communication skills.

#### **9515.3070 STAFF ORIENTATION AND DEVELOPMENT.**

Subpart 1. **Initial staff orientation and training.** New staff members need to know what the program is about, what is expected of them, and how to protect themselves and others before they begin interacting with program participants. It is reasonable to make the license holder responsible for the orientation because the license holder is responsible for program treatment, order, and safety--all of which could be disrupted and compromised without successful orientation.

The requirements in item A that must be met before staff members provide direct care or have any other direct contact with persons in treatment are reasonable because:

(1) completing an overview of treatment program philosophy and design will help newcomers understand the context in which their specific duties occur and how what they do affects the balance of safety, rights, and treatment;

(2) the techniques new staff members must demonstrate having mastered are essential to their ability to protect themselves and others. It would be irresponsible for the license holder to allow a staff member to begin direct care and contact without knowing whether the staff member could perform needed techniques.

(3) knowing the rights conferred on persons in treatment is necessary to comply with the laws and rules governing those rights.

(4) maintaining boundaries in this particular setting is essential because many program participants are exceptionally skilled at manipulation. Staff failure to maintain necessary boundaries can create serious problems. Examining and understanding the dynamics from the outset is a first step in avoiding problems.

(5) reviewing emergency provisions increases a new person's capability to act competently in an emergency.

Allowing 30 calendar days to complete the training required in item B is reasonable because staff members would not have to know all this information immediately to be effective, but would have to learn it soon. The 30-day timespan meets the need. The information required is reasonable because:

(1) knowing how and where program participants deviate from typical ranges of sexual behavior is essential to working in a context intended to treat participants by changing the degree of deviation.

(2) as in any other context focused on changing human behavior, it is important to understand how cultural norms identified with a person's racial or ethnic background or lifestyle have influenced the development of the focused-on behavior and how those same norms influence attempts to change the behavior.

(3) health education is an important part of each staff member's responsibility in a place where many program participants have infectious diseases which may spread easily when there are many people in a close setting.

(4) knowledge of assessment and individual treatment planning is necessary because staff members are expected to contribute to individual treatment program planning.

**Subp. 2. Ongoing individual staff development and evaluation plan.** Staff who provide, supervise, or administer direct services need to participate in an ongoing individual staff development and evaluation plan to expand their skills and knowledge base and strengthen their effectiveness as a treatment team. It is reasonable to hold the license holder responsible for developing and implementing the plan because it supports the facility program which is the license holder's responsibility.

It is reasonable for the plan to:

A. be developed within 90 days after employment because it will be clear in most cases from the employee's initial 90 days whether the employee will continue



with the facility. It would not be reasonable to develop a staff development and evaluation plan for an employee who might not be employed after the initial probation period of 90 days that many positions require.

B. meet the staff development needs specified in the staff member's annual employee evaluation because linking evaluation, performance, and training is the point of staff development and the point of requiring, as item A does, that the plan be reviewed and revised at least annually.

C. be directed toward program participants' needs because addressing those needs is central to the treatment program that the staff development is intended to support.

Subp. 3. **Amount of annual training.** It is necessary for the rule to specify amount of annual training so that the license holder knows when an acceptable level of training has been provided and the rule complied with. The provisions in items A, B, and C are reasonable because:

A. requiring at least 16 hours of training annually is consistent with other residential treatment settings governed by department rules such as facilities to treat persons with mental illness and chemical dependency (see, for example, parts 9520.0590, subpart 9 and 9530.4250, subpart 2, both of which require at least 15 hours of annual training);

B. requiring the extra eight hours of training for staff without roughly two years of full-time experience is reasonable because a person without experience has a greater need for training;

C. training requirements for keeping current a license, certificate, or registration are likely to be at least as stringent and probably more so than the requirements in A and B. It would be duplicative and wasteful to require both sets of training. At the same time, nothing in the rules precludes requiring additional training of staff to whom this item applies if deemed appropriate by the program director.

It is reasonable to count the orientation required in subpart 1 toward the annual training requirement in an employee's first year of service because the orientation has the same focus and covers some of the same ground as the training content of subpart 4. It would be wasteful and unduly burdensome to require the training in addition to the orientation.

Subp. 4. **Content of training.** Specifying that 75 percent of a staff member's required annual training hours must be directed at one or more of the six areas listed in items A to F is necessary to ensure that staff training over time consistently focuses on skills and knowledge that support working effectively in this type of treatment program. The areas or subjects specified are reasonable choices because:

A. effective use of de-escalation and intervention techniques is an important tool for protecting self and others.

B. knowledge of laws and rules related to treatment and services for sex offenders is necessary to protect persons' rights and to ensure that staff can effectively participate in judicial proceedings related to commitment and discharge.

C. many program participants have special needs related to the conditions listed so knowing how to assess and treat the conditions is important.

D. as noted earlier, health education is part of each staff person's job because the program serves many persons who have been at high risk of being infected or who are already infected with a variety of diseases, including HIV, in a setting conducive to the spread of infection.

E. knowing first aid and cardiopulmonary resuscitation is particularly valuable in this residential setting where injury-causing emergencies can occur and where other emergencies such as a person's choking need to be acted on immediately for reasons of health and safety.

F. familiarity with research, practice, or regulations that affect care and treatment programs for sex offenders is necessary to provide treatment that meets the criteria of Minnesota Statutes, chapter 253B.

**9515.3080 PROGRAM SAFETY AND RULES FOR BEHAVIOR.**

Subpart 1. **Program safety.** Maintaining a safe, secure, and orderly environment is crucial to providing effective treatment. Persons in the program have simultaneous rights to safety and to treatment. Staff cannot be expected to provide therapeutic services in an unsafe environment. The design of the program, the environment, and the license holder's rules about behavior must optimize the opportunity for therapeutic interactions. It is therefore necessary for the rule to require the license holder to develop policies and procedures in support of this outcome. It is reasonable not to prescribe by rule specific policies and procedures because the license holder needs flexibility to change specific policies to meet changing needs and circumstances. It is

sufficient to require that the effect of the policies be to ensure a secure, orderly, and safe treatment environment.

**Subp. 2. Written rules for behavior and consequences of violations.** Requiring written rules of behavior accompanied by a range of consequences for noncompliance with the rules is necessary because establishing predictable rules and procedures and enforcing them creates the most effective climate for dealing effectively with program participants.

According to Dr. Erickson, experience with the population to be treated at Moose Lake shows that the therapeutic approach to behavior management that is effective with psychotic patients tends to be frustrating and difficult for non-psychotic sex offenders and is subject to mistrust, misinterpretation, and manipulation. Clearly-defined rules and consequences are also more effective with this population because they are capable of understanding such rules and complying with them. In this population, behavioral infractions are typically volitional rather than due to mental illness. Expectable consequences reliably implemented and directed are effective, fair, and reasonable.

It is reasonable to put the rules and consequences in writing and distribute copies to both persons and staff so that all concerned are working from the same information and have that information in an easily-referenced form. It is reasonable as well to require the license holder to specify the range of consequences for a rule infraction and the method for choosing the consequence of a specific infraction because this contributes to an even-handed and consistent manner of administering the rules. It is reasonable to discuss the rules and consequences at staff orientation because staff need to know and because it contributes to consistency and even-handedness.

**Subp. 3. Criteria for written rules.** Establishing criteria for rules and consequences is necessary to keep the focus of the rules on maintaining personal safety and order. It is reasonable to require that rules and consequences be stated in terms of observable behavior as a way to ensure that the license holder regulates only behavior (and not intangibles such as "attitude") that affects the effectiveness of the treatment program and not behavior with which the license holder merely disagrees.

#### **9515.3090 BEHAVIOR MANAGEMENT AND PROGRAM SAFETY.**

**Subpart 1. Behavior management.** The rule necessarily establishes specific rules and procedures for imposing control and discipline in order to prevent either dangerous laxity or arbitrary, abusive, or disproportionately severe application. It is further necessary to establish a range of interventions to be applied in proportion to the degree of acuity and danger in the behavior and to define the interventions so that those

administering the rules and those complying with them have the same understanding of what constitutes disciplinary restrictions, emergency seclusion, and protective seclusion.

**Subpart 2. Disciplinary restrictions.** Withholding or limiting certain activities is reasonable as the least restrictive response to rule infractions. It is reasonable for the restrictions to reflect the points in items A and B because those points ensure fairness and incorporate behaviorist theory on relating consequences to behavior as closely as possible. It is reasonable to consider a person's past behavior in the program when imposing a disciplinary restriction because past behavior could be useful in determining appropriate level of restrictiveness. A first-time infraction, for example, could reasonably be treated with a short-term loss of access to an activity or area while a pattern of the same infraction occurring over time could reasonably result in a longer loss.

**Subp. 3. Emergency seclusion.** Experience with program participants supports the necessity of providing for emergency situations where seriously dangerous behavior must be controlled by physically separating a person from others. At the same time, it is necessary to specify the range of allowed interventions, their duration and oversight, and the circumstances under which they may be imposed to ensure that the seclusion is imposed on an emergency basis only. It is necessary to specify that routine locking of rooms at night as a security measure and restricting a person to a unit or other area of the facility are not "seclusion" for purposes of this subpart because it is plausible that these limited restrictions could otherwise be interpreted as "seclusion" under the definition.

A. It is reasonable to use as indicators of an emergency situation a person's or individual's being in imminent danger of serious physical harm or there being the possibility of serious property damage because these indicators are consistent with the indicators used in other department residential licensing rules. The requirement of "imminent" danger differentiates a genuine emergency which justifies physical intervention and separation from other forms of misbehavior which may be dealt with by therapeutic interventions or disciplinary restrictions. It is reasonable to limit emergency seclusion to situations where the threatened physical or property damage is serious in order to encourage less restrictive interventions when the need for emergency seclusion is not as great.

B. It is reasonable to allow the on-duty nurse to authorize emergency seclusion and then contact a physician because it results in a quicker response time in an emergency. There is always a licensed nurse on duty in accordance with community standards, as reflected in requirements of the Joint Commission on Accreditation of Health Care Organizations. It is also reasonable to require that the authorizing nurse

immediately contact a physician for an order because contemporary professional standards allow only a physician to order seclusion in a health care setting.

C. It is reasonable to allow emergency seclusion for only as long as the emergency exists because the sole basis for seclusion is to protect against serious injury and property damage. Once the person's behavior has stabilized, it is reasonable to terminate the emergency seclusion and proceed with other, less restrictive measures that can be implemented without compromising safety.

It is reasonable to require monitoring every 15 minutes to determine as quickly as possible when the precipitating behavior has abated or stopped so that the emergency seclusion can be ended. Monitoring is also necessary to ensure that the person does not hurt himself or herself while in seclusion. It is also reasonable to require a physician to review the situation at least every 24 hours to be sure that the need for seclusion is still present.

Subp. 4. **Protective isolation.** It is necessary for the rule to provide for isolating persons who present a continuing threat of imminent danger. Requiring written policies on protective isolation is necessary to guide the use of this method of isolating dangerous persons from others in order to maintain safety. Identifying specific points that must be addressed in the policies is necessary to ensure protection of persons' rights in general and their rights to treatment in particular. It is reasonable for the commissioner to establish these points in a rule because the commissioner is responsible for the rights of persons committed to the commissioner's care and the points provide a basis upon which the license holder may develop more specific individual policies.

A. It is reasonable to require the license holder not to use protective isolation for convenience of staff or as a substitute for programming because such a use of protective isolation would be contrary to the right to receive proper care and treatment established in Minnesota Statutes, section 253B.03, subdivision 7.

B. Requiring that treatment be available to persons in protective isolation to the extent possible is reasonable because the isolation is not intended to separate a person from the program. It is intended to separate the person from an environment where the person can harm others and interfere with the program. It is reasonable to require the treatment to address the behavior that caused the need for protective isolation in order to end the need for protective isolation as quickly as possible.

C. Requiring justification for continuing protective isolation after a specified point and using 48 continuous hours as that point are both reasonable because they are consistent with community standards in similar settings such as residential

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settings for persons with mental illness. The standards are also consistent with current practices at the Minnesota Security Hospital that are approved and governed by a consent decree. The requirements for the statement recommending continuation are reasonable because:

(1) explaining why continuation is necessary provides the medical director with a basis for evaluating the situation. It is also reasonable to expect persons recommending continuation to demonstrate why it is necessary in order to ensure that the isolation is not being imposed arbitrarily or for the convenience of staff.

(2) emphasizing that the description be objective (in behavioral terms, for example) will help the person to understand what specific behaviors caused the need for isolation. It also requires staff to articulate specific reasons that are observable and verifiable by the medical director who reviews the request for protective isolation.

(3) asking for a description of the frequency with which the behavior has occurred in the past can, if there is a pattern, provide some basis for predicting the future course of the behavior and identify modes of treatment most likely to extinguish the behavior.

(4) analyzing causes, precipitating conditions, or individual needs that may be causing the behavior provides both a look backward to see whether there were ways the isolation-causing behavior could have been avoided and a look forward to see what can be done next to ameliorate the situation.

(5) the least restrictive environment is always the preferred environment for treatment. It is therefore reasonable to require staff to demonstrate why less restrictive programming will not be sufficient to prevent harm.

(6) knowing whether treatment can be offered and, if so, what kind, is important information for the medical director to have in assessing the need to continue protective isolation. Considering treatment planning is a reminder for staff that continued treatment is the expectation.

(7) this requirement forces a cycle of review, directs future activity, and supports a proactive rather than reactive approach. These elements are consistent with promoting active treatment. It also focuses staff on the requirement that protective isolation is to continue only as long as necessary to prevent harm.

(8) placing the statement in the person's record safeguards documentation of the person's condition and ensures that the statement is there for future reference. It also helps hold staff accountable for following the requirements of this rule part.

Requiring written approval as a condition of continuing protective isolation is necessary to ensure that practices followed are consistent with appropriate standards and are subject to regular review. The medical director is typically not involved in providing direct care to the person and therefore is a reasonable choice to fill a role that requires objectively evaluating staff recommendations and ensuring that the appropriate documentation is in place.

**Subp. 6. Request for review of protective isolation.** This provision is necessary to provide a balance between safety and rights by allowing the license holder to act quickly to protect staff and residents and allowing program participants to seek an immediate remedy for what they believe to be unwarranted placement. The review request procedure requirements are reasonable because:

A. this requirement in effect subjects staff members' action to review by a panel of their professional peers. Such an arrangement, where professional standards are involved, helps ensure the review is not a rubber stamp. It is reasonable to require that people who assess the situation have the training and experience necessary to assess competently. It is necessary that the reviewers be other than the staff members whose decisions are being reviewed because that arrangement increases the likelihood that an objective and fair hearing will occur.

B. the timelines minimize the possibility of unwarranted isolation by establishing a deadline for conducting the review. The seven-working-day timeline is reasonable because it strikes a balance between length of the allegedly unwarranted isolation and time required to collect the material that is relevant to the review, getting the material to the reviewers, allowing them to review the material, and having them confer and reach a decision.

C. here, too, a balance is needed between the right of the person to present evidence and the responsibility of the license holder to protect review participants' safety. Limiting the form in which a person may present evidence and argument while still extending the right to present it is a reasonable accommodation.

D. allowing another level of appeal beyond the review panel both expands the person's right to be heard and encourages a review that is not merely pro forma because the panel's decision is subject to further evaluation. It is reasonable for the

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chief officer of the facility to review the panel's determination and for that officer's review to be final because it is the chief officer, as the commissioner's designee, who is ultimately responsible for treatment and safety in the facility.

#### **9515.3100 ADMINISTRATIVE RECORDS.**

Subpart 1. **Staff records.** The expectation that facilities operated by the commissioner keep personnel records on all staff members is reasonable because it is consistent with current standards of practice in health care and residential treatment facilities, where personnel records have been found to be necessary. It is necessary for the commissioner to require the documentation specified in items A to C because the background study, the training and experience requirements, and the completion of orientation and training are all related to the quality and safety of the treatment program being licensed. Without these records, it would be impossible to verify whether requirements related to the background study, to licenses, certificates, and registrations, or to training requirements have been met.

#### **Subp. 2. General administrative records.**

A. Requiring the license holder to maintain a directory of all persons in the treatment program is necessary to ensure compliance with Minnesota Statutes, section 246.13 which requires the commissioner to have a record of patients and residents under the commissioner's exclusive control.

B. It is reasonable to expect that an agency required by law to have licenses would have copies of the licenses available for inspection to demonstrate compliance with the law.

C. The documentation specified is necessary to show how (or whether) the license holder controls the quality of services provided by contractors and consultants as well as the quality of services provided by directly-employed staff. It is also reasonable to require keeping contracts and subcontracts because they are needed for audits and other facility reporting.

D. It is reasonable to expect the facility to have a quality improvement plan (and make it available to the commissioner) because community standards require facilities to keep working at improvement. Requiring reports that monitor and evaluate current activities is particularly reasonable for this facility because of the commissioner's responsibilities for evaluation under Minnesota Statutes, 246B.04.



**9515.3110 RECORDS OF PERSONS IN TREATMENT.**

Subpart 1. **Central record file on premises.** This provision addresses the need for staff to be able to access medical records and the need to keep the records safe from destruction by fire or weather or from having materials removed by program participants. Keeping the records in a central file on the program premises is reasonable way to meet both needs; records are accessible and they can be collectively secured.

Subp. 2. **Admission record.** The need for an admission record is well-established by community standards of practice. It is reasonable to require the items specified because:

- A. the facility needs basic identifying information on all persons in the program.
- B. photographs are used for identification purposes related to administration of medication and occasionally for purposes related to law enforcement such as determining whether a program participant might have committed or been involved with a crime under investigation that occurred before the person's commitment.
- C. date of admission is an essential part of the person's record and is also used in a variety of ways, including billing for the cost of the person's care.
- D. requiring a contact in case of emergency is necessary to ensure that close family and friends are promptly notified of emergencies.
- E. determining and documenting at the outset that a person meets admission criteria guards against people's being illegally detained or being admitted into a treatment program that doesn't meet their needs.
- F. knowing at the time a person is admitted that the facility has an obligation to notify a victim and who the victim is is necessary not only because of the information itself but also because having a notifiable victim on record requires the facility to follow specified procedures with the person's records.
- G. the facility needs to know how to reach people such as attorneys and case managers about legal and treatment program issues.

Subp. 3. **Treatment records.** Documenting the course of each person's evaluation and treatment is necessary to show how the license holder has met the license holder's responsibility to provide treatment, to meet statutory requirements related to treatment

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evaluation, and to provide a summary of the person's condition and response to treatment. Requiring the items specified is reasonable because:

A. keeping copies of a person's diagnostic assessment, treatment plan, progress notes, evaluations, and discharge plans provides a basis for reviewing and evaluating the efficacy of the person's treatment.

B. identifying the person's medical providers is relevant to the review and evaluation of treatment performed as part of the license holder's quality assurance planning.

C. documenting incidents or emergencies involving the person gives the staff an opportunity to evaluate how well staff responded to unanticipated events and provides a basis for determining whether changes should be or should have been made in the person's treatment plan.

D. special review board reports serve as a summary of the client's placement and status at a given time and as documentation of when the person most recently petitioned the review board.

E. transfer and discharge summaries need to be kept to show how a person left and provide useful information for evaluation of the treatment program.

Subp. 4. **Consent to release information in record.** Getting written consent to release private information in a person's record is necessary because of rights established by Minnesota Statutes, chapter 13, the Minnesota government data practices act, and in section 144.651, the patients' bill of rights. The requirements in items A to D are reasonable because they meet the usual and customary standards followed for obtaining and documenting consent. Requests for private information in a person's record are often generated on the person's behalf by an attorney or health care provider. Having a blanket consent form was considered as an alternative to the current provision, but was rejected as not giving the consenting person a sufficiently clear picture of how and where the information would be used.

Subp. 5. **Secure confidential file.** This provision is necessary to remind the license holder that information which a person has no legal right to see must be kept separate from the person's medical record, which the person does have the right to see. For example, if a victim of a crime or act committed by a person makes a written request for notification of a person's release or change of status, all identifying information about the victim, including the victim's request and the notice provided by the facility to the victim, must be kept in the secure confidential file.

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**CONCLUSION**

The foregoing information demonstrates the need for and reasonableness of proposed parts 9515.3000 to 9515.3110.

**WITNESSES**

If there is a public hearing on parts 9515.3000 to 9515.3110, no witnesses other than department personnel will present testimony on behalf of the department.

Dated: 7/3/95

*John Petrosky*  
for MARIA R. GOMEZ  
Commissioner

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