Minnesota Department of **Human Services**

October 8, 2010

Legislative Reference Library
645 State Office Building
100 Constitution Avenue
St. Paul, Minnesota 55155

Re: In The Matter of the Proposed Rule Amendments and Repeals of the State Department of Human Services Governing Outpatient Mental Health Services, Minnesota Rules, Parts 9505.0370 to 9505.0372 which will replace repealed part 9505.0323; Governor's Tracking Number #AR 440

Dear Librarian:

The Minnesota Department of Human Services intends to adopt rules governing outpatient mental health services. We plan to publish a Notice of Hearing in the October 15, 2010 State Register.

The Department has prepared a Statement of Need and Reasonableness. As required by Minnesota Statutes, sections 14.131 and 14.23, the Department is sending the Library an electronic copy of the Statement of Need and Reasonableness at the same time we are mailing our Notice of Intent to Adopt Rules.

If you have questions, please contact me at (651) 431-3613.

Yours very truly,

Robert Klukas
Legal Analyst

Enclosure: Statement of Need and Reasonableness

Minnesota Department of Human Services

STATEMENT OF NEED AND REASONABLENESS

Proposed Amendments to and Repeal of Rules Governing Outpatient Mental Health Services Payment, Minnesota Rules, Chapter 9505.

INTRODUCTION

The Minnesota Department of Human Services (department) proposes to amend and repeal rules governing payment for outpatient mental health services that are paid for through the state's medical assistance program. The medical assistance program is the name given to Minnesota's joint federal-state Medicaid program. The amendments and repeals are intended to update the rule and bring it into compliance with federal regulations.

In January 2009 the department published adopted rule amendments in the State Register (see: 33 SR 1251) that modified part 9505.0323 to bring it into compliance with federal regulations. The 2009 rule amendments were adopted under the good cause exemption in Minnesota Statutes, section 14.388, subdivision 1 because the department needed to promptly comply with federal regulatory requirements and did not have enough time to comply with Minnesota Statutes, section 14.14 to 14.28. The amendments to part 9505.0323 will expire in January 2011, because rules adopted under the good cause exemption are in effect for a period of two years from the date of publication in the State Register. The proposed rule amendments and repeals will permanently enact the changes in the 2009 rulemaking and make other changes that are needed to update the rule and remove obsolete requirements.

The department provides payment for outpatient mental health services for eligible recipients through the medical assistance program. The rules include standards for services and payment requirements that a vendor must meet to qualify for payment through the medical assistance program. The standards in the rule are based upon federal requirements (see: 45 CFR 162.1000, 162.1002), state law, and the accepted standards within the mental health industry for providing outpatient mental health services. The proposed amendments bring the rule into compliance with federal regulations regarding uniform electronic transactions and the federally-adopted Current Procedural Technology, Fourth Edition (CPT). These establish uniformity requirements relating to coding and billing standards. The proposed rules will also bring the department into compliance with the related requirements of Minnesota Statutes, section 62J.536.

The rule standards are based upon statutory standards contained in Minnesota Statutes including: The Comprehensive Adult Mental Health Act, Minnesota Statutes, section 245.461 to 245.486 and the Comprehensive Children's Mental Health Act, Minnesota Statutes, sections 245.487 to 245.4889. These statutes define the service delivery standards applicable to a comprehensive mental health system. In contrast medical assistance focuses on provider payment and upon the nature, scope, and frequency of services that may be reimbursed from medical assistance funds. The differences between the requirements in proposed rules and the standards in mental health laws reflect the differences between state and federal laws and regulations.

The department developed the proposed rules with the assistance of an advisory committee. The advisory committee was composed of twenty-six people who represented various groups that might be impacted by the rule or who are interested in mental health treatment issues, including: consumers and providers of mental health services, professional associations that represent individuals and companies that provide mental health care, insurance companies that pay for treatment, and academic staff who train and educate persons who will work in mental health treatment. The advisory committee met 8 times over approximately a one-year period. The committee also used task forces and subcommittees from time-to-time to consider some topics more extensively and report back to the committee with ideas and policy suggestions. In addition the committee meetings always considered the input of any person who attended the meetings or sent written comments to staff or committee members about a related topic.

Following review and comment by the advisory committee, department staff worked to draft the proposed rule. During this part of the rulemaking process staff continued to contact advisory committee members and others who were interested in the rule to seek those person's input about the rule.

ALTERNATIVE FORMAT

Upon request, this Statement of Need and Reasonableness can be made available in an alternative format to individuals with disabilities by calling 1-800- 431-3600 (division's general information number) or toll free at 1-800-657-3510. To make a request, contact the contact person, Bob Klukas at Minnesota Department of Human Services, PO Box 64941, Saint Paul, MN 55164-0941 by mail, 651-431-3613 by phone, or 651-431-7523 by fax. TTY users may call through Minnesota Relay at 1-800-627-3529. For Speech-to-Speech call 1-877-627-3848. For additional assistance with legal rights and protections for equal access to human services programs contact your agency's ADA coordinator.

STATUTORY AUTHORITY

The Department's statutory authority to adopt the rules is set forth in Minnesota Statutes section 256B.04, subdivision 2, which requires in part the Minnesota Department of Human Services to make rules: "….not inconsistent with law, for carrying out and enforcing the provisions hereof in an efficient, economical and impartial manner….." Minnesota Statutes, Chapter 256B establishes the Medical Assistance program in Minnesota. In addition, Minnesota Statutes, section 245.484, requires the commissioner to make rules that will carry out state mental health laws as follows: "….adopt permanent rules necessary to carry out sections 245.461 to 245.486 and 245.487 to 245. 4889." The proposed rule amendments carry out state mental health laws in Minnesota Statutes, chapter 245.

The department is also required, under Minnesota Statutes, section 256B.04, subdivision 4, to cooperate with the federal government "in any reasonable manner as may be necessary to qualify for federal aid in connection with the medical assistance program…". In compliance with the requirements of the Code of Federal Regulations, title 42, section 431.10, (42 CFR 431.10), the

Department of Human Services has been designated as the state agency to supervise the administration of the state's medical assistance program and to adopt rules that must be followed in administering the State Plan. The State Plan is the department's comprehensive written plan to administer and supervise the medical assistance program according to the federal requirements.

This rulemaking is an amendment and repeal of rules and so Minnesota Statutes, section 14.125, does not apply.

Under these statutes, the Department has the necessary statutory authority to adopt the proposed rules.

REGULATORY ANALYSIS

Minnesota Statutes, section 14.131, sets out seven factors for a regulatory analysis that must be included in the SONAR. Paragraphs (1) through (7) below quote these factors and then give the agency's response.

"(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 rules would likely effect:

- persons who seek or receive mental health treatment and their families;
- counties, tribes, health plans, mental health clinics and others who provide mental health services to clients either directly or through a vendor and others who provide services to clients;
- insurance companies, health plans, self insured entities, and persons who pay for mental health services; and
- recipients who would be eligible for mental health treatment 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 department does not anticipate that the proposed rule amendments and repeals will have an effect upon state revenues.

The department has historically had costs associated with training its employees and employees of other entities about new or amended rules and costs related to answering questions from recipients and providers about existing rules. The department has also historically had costs associated with implementing and enforcing existing rules. The costs of rule training, rule implementation and rule enforcement are a regular part of the cost of doing business and do not constitute a separate

identifiable cost resulting from the rule. The department does not anticipate hiring new employees to implement or enforce the proposed rule amendments.

The department anticipates that the proposed rule amendments will not cause any other agency to experience added costs. The department intended that the rule would be cost neutral. The proposed rule amendments should result in the most appropriate outpatient mental health care being delivered to clients at the correct time by qualified providers. The efficient provision of mental health care should result in better outcomes for clients and cost containment for the state.

The department has determined that the proposed rule amendments will not have an effect on state revenues. Failure to adopt rule amendments to replace the rules, which will expire in January 2011, would cause department rules to be out of compliance with federal requirements and thus, may impair the state's eligibility for federal funding of medical assistance. The state must comply with federal law and regulations to qualify for federal funding of medical assistance.

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

The proposed rules are the least costly and intrusive methods for achieving the purpose of the proposed rule amendments. The rules are intended to meet statutory requirements for rulemaking to govern the medical assistance program and to carry out the purposes of state law governing mental health treatment. Federal regulations require that enforceable treatment and billing standards be included in the state's application to the federal government for federal funds to pay for medical assistance. This proposed rulemaking produces enforceable standards for outpatient mental health treatment and billing standards that will meet federal requirements.

The proposed amendments include requirements that are overall no more costly nor more intrusive than the standards which they replace. The flexibility and efficiency which the proposed rules embrace should result in mental health treatment practices which give providers greater freedom to use proven methods to treat patients. For example: Under Minnesota Rule 9505.0323, subpart 1, item F, subitem (1) the clinical supervisor must be present and available on the premises more than 50 percent of the time in a five working day period during which the supervisee is providing a mental health service. The department decided to repeal the requirement that the clinical supervisor be present more than 50 percent of the time and instead have the clinical supervisor and the supervisee complete a supervision plan which is individualized to each supervisee. This proposed rule change will allow agencies to render more mental health services outside of a clinic setting. The proposed rule amendment provides standards for clinical supervision, but allows the provider the flexibility to provide clinical supervision in a way that is most effective for an individual supervisee. The flexibility in the proposed rule amendment allows a provider to efficiently supervise supervisees and meet the needs of clients served by the supervisee.

"(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"

The legislature has determined that the department should adopt rules to govern the medical assistance program. The legislature has also determined that the department should comply with federal regulatory requirements in order to obtain federal financial payments to help pay for the medical assistance program. The federal regulatory requirements include requirements that state programs have enforceable standards for medical assistance programs. Rulemaking meets the state legislative and federal requirements for operating the medical assistance program under a set of enforceable standards.

The department has endeavored to include standards in the rule which allow providers the flexibility to use proven treatment methods to provide outpatient mental health treatment in the most efficient way to clients.

Voluntary compliance programs are not sufficient to meet state legislative and federal regulatory requirements.

"(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"

The proposed rule amendments include no new general responsibilities for counties, tribes and health plans. The department estimates that the proposed rules may slightly increase the total costs to an individual provider initially, but should create efficiency and improve quality of care as the changes become fully operational. The department intended that the proposed rules would be cost neutral for the medical assistance program. Some rule changes, such as requirements for additional documentation, were discussed, but not included in these proposed rule amendments because they might increase the cost of mental health treatment without adding value to outpatient mental health services. Identifiable categories of affected parties should not expect their respective overall costs to increase as a result of complying with the proposed rules. Individual clients will not experience a direct cost increase as a result of changes experienced by the client's mental health provider. Specific payment amounts given to providers are established by other rules.

"(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 would result in the reversion as of January 2011, to the rules that were in place in 2008, prior to the adoption of rules under the good cause exemption as discussed on page 1 of this statement of need and reasonableness. The rules adopted under the good cause exemption expire in January 2011. The amendments contained in the rules adopted under the good cause exemption must be adopted in order to be in compliance with federal regulations. The department must be in compliance with applicable federal regulation to qualify to receive federal funding for medical assistance. Therefore, failure to adopt the proposed rules would result in the likely loss of many millions of dollars of federal funds for the medical assistance program.

"(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"

The proposed rule amendments are intended to meet federal regulations and implement state statutes. The rule amendments are intended to bring state rules into compliance with federal regulations as discussed on page 1 of this statement of need and reasonableness. It is necessary to be in compliance with federal regulations in order to receive federal payments for the medical assistance program.

The applicable state statutes are also intended to be in compliance with federal regulation. In some instances, where federal regulation does not specify how to meet a federal regulatory requirement, state law requires the department to achieve the requirements of federal regulation as specified according to state law. The proposed amendments follow state law in instances where the state has flexibility regarding how to meet a federal regulatory requirement. The proposed rule does not deviate from federal regulation. It is necessary and reasonable to comply with federal regulation and state law.

PERFORMANCE-BASED RULES

The proposed rule amendments continue the department's 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 outpatient mental health care in Minnesota. The old rules emphasize to a greater extent aspects of mental health care that focus on units of time and generalized descriptions of procedures. The proposed rule amendments removed the references to "hours" and required that mental health treatment meets the patient's needs and be effective and efficient. The proposed rules allow the providers governed by these rules flexibility to help clients through a variety of proven treatments that are effective and efficient. The requirements in the proposed amendments should encourage improved performance by outpatient mental health service providers and result in better outcomes for clients at a cost that does not exceed the cost of complying with the requirements in the existing rule.

ADDITIONAL NOTICE

This Additional Notice Plan was reviewed by the Office of Administrative Hearings and approved in an August 30, 2010 letter by Administrative Law Judge Kathleen D. Sheehy.

Our Notice Plan also includes giving notice required by statute. We will mail the Notice of Intent to Adopt to everyone who has registered to be on the Department's rulemaking mailing list under Minnesota Statutes, section 14.14, subdivision 1a. We will also give notice to the Legislature per Minnesota Statutes, section 14.116. In addition to the persons that the department is required to notify by law, the department will notify:

- Minnesota Council of Child Caring Agencies;

- Minnesota Medical Association;
- Minnesota Psychological Association;
- Minnesota Association of County Social Service Administrators;
- County Board Chairs;
- Tribal Mental Health Directors and Supervisors;
- Minnesota Association of Community Mental Health Programs;
- Minnesota Association of Residential Treatment Facilities;
- National Alliance on Mental Illness, Minnesota (NAMI-MN);
- Pacer Center;
- Association for Children's Mental Health;
- Consumer/Survivor Network of Minnesota;
- Mental Health Association of Minnesota;
- Mental health centers and clinics approved under rule part 9520.0750, et. seq.; and
- Minnesota Joint Council of Health Plans.

CONSULTATION WITH MMB ON LOCAL GOVERNMENT IMPACT

As required by Minnesota Statutes, section 14.131, the Department will consult with the Minnesota Management and Budget (MMB). The department did this by sending the MMB copies of:

- A draft of the Governor's Office Proposed Rule and SONAR Form;
- Revisor's Draft of the proposed rule; and
- Draft of the SONAR.
- The Department will submit a copy of the cover correspondence and any response received from Minnesota Management and Budget to OAH at the hearing or with the documents it submits for ALJ review.

DETERMINATION ABOUT RULES REQUIRING LOCAL IMPLEMENTATION

As required by Minnesota Statutes, section 14.128, subdivision 1, the agency has considered whether these proposed rules will require a local government to adopt or amend any ordinance or other regulation in order to comply with these rules or help the department implement the rules. The agency has determined that the proposed rules do not necessitate local government implementation, because the rule contains no provision that would affect the laws and regulations of a town, home rule charter or statutory city. In addition, the proposed rule's impact upon a county would not require that a county adopt or amend an ordinance or other regulation to comply with the proposed rules.

COST OF COMPLYING FOR SMALL BUSINESS OR CITY

Agency Determination of Cost

The proposed rule is comprised of existing rule requirements taken from Part 9505.0323, and new rule requirements intended to update the rule in ways that benefit recipients and make outpatient mental health treatment more cost-effective, without increasing the over-all cost of mental health outpatient treatment. Most of the proposed rule amendments in parts 9505.0370 to 9505.0372, are either copied from or based upon requirements in the existing rule. The proposed rule requirements, which are substantially the same as the existing rule requirements, will not cause added costs for providers who comply with the proposed rules.

The proposed rule requirements that will update mental health treatment practice requirements have been reviewed by department staff to determine the probable costs of complying with the proposed rule rules. When the proposed rules are considered as a group and applied to outpatient mental health treatment practices as a whole, the rules should not cause overall treatment costs to increase. The improved assessment requirements combined with evidence-based and client-centered treatment affords an opportunity to give recipients the most appropriate and effective outpatient mental health treatment. Requiring that recipients be provided the most effective outpatient mental health treatment as determined through accurate assessment of the recipient's condition and needs will reduce the overall cost of treatment. The department believes that efficient and effective mental health treatment will reduce the overall cost of providing outpatient mental health treatment.

In developing the proposed rule, the department considered whether an additional requirement helped control mental health treatment costs and added value to services provided to recipients. The department added standards for mental health care that should result in more cost-effective outpatient mental health care for recipients. The proposed rules require providers to offer more evidence-based mental health treatment and sets better uniform standards for services provided to recipients.

The department does not foresee that the rule will have a direct fiscal impact on a statutory or home rule charter city. The proposed rules do not regulate the activities of statutory or home rule charter cities because these cities do not directly provide outpatient mental health services to recipients of Medical Assistance.

The department projects that the proposed rule will not increase the overall cost of providing outpatient mental health care to recipients. Outpatient mental health services are provided to recipients by public agencies and by for-profit and non-profit private agencies.

As required by Minnesota Statutes, section 14.127, the Department has 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 Department has determined that the cost of complying with the proposed rules in the first year after the rules take effect will not exceed $25,000 for any small business or small city.

The Department has made this determination based on the probable costs of complying with the proposed rule, as described in the Regulatory Analysis section of this SONAR on pages three to six.

LIST OF WITNESSES

At the public hearing, the Department anticipates that the following Department staff will testify in support of the need for and reasonableness of the rules:

1. Glenace Edwall, Ph.D., Psy. D., MPP, LP, Minnesota Department of Human Services, Director Children's Mental Health Division, will testify regarding children's mental health outpatient rule requirements.
2. Sharon Autio, Minnesota Department of Human Services, Director, Adult Mental Health Division, will testify regarding adult mental health outpatient rule requirements.
3. Linda Fuhrman, Mental Health Program Consultant, Minnesota Department of Human Services, Adult Mental Health Division, will testify regarding adult mental health outpatient rule requirements.
4. Karry Udvig, Mental Health Program Consultant, Minnesota Department of Human Services, Children's Mental Health Division, will testify regarding children's mental health outpatient rule requirements.
5. Robert Klukas, Legal Analyst, Minnesota Department of Human Services, Appeals and Regulations Division will testify about the rule making process for this rule.
6. Other Minnesota Department of Human Services managers and staff are available to answer questions. The department does not anticipate employing outside experts to testify at the public hearing.

RULE-BY-RULE ANALYSIS

9505.0370 DEFINITIONS.

Subpart 1.**Scope.** It is necessary and reasonable to state that the definitions of terms in this part apply only to the use of those terms in parts 9505.0370 to 9505.0372, to ensure that interested persons know that the terms defined in part 9505.0370 may not have the same meaning in other parts of Chapter 9505 or some other law or rule. It is necessary and reasonable to tell interested persons the precise meaning of a term as the term is used in the rule, so that the person will know what the rule means and can comply with the rule. It is also necessary and reasonable to use terms consistently throughout parts 9505.0370 to 9505.0372.

Subpart 2. **Adult day treatment.** The definition of the term "adult day treatment" is necessary because it distinguishes this mental health treatment service from other programs that provide some other type of care or services to adults. The definition is reasonable because it describes the key program elements broadly enough to include existing adult day treatment and allow programs to offer innovative effective mental health treatment to clients. The use of this term is also necessary because it describes adult day treatment services which are substantially different from

children's day treatment services.

Subpart 3. **Child.** The definition of the term "child" is necessary because the rule contains requirements for assessment and treatment that apply to children, but do not apply to non-children. It is reasonable to use this definition of the term "child" in the proposed rule amendments because it is the same as definition of "child" in the existing rule at part 9505.0323, subpart 1, item D. The definition of "child" in the existing rule has worked well and is in keeping with the definition of the term in mental health related statutes, such as Minnesota Statutes, section 245.4871, subdivision 5.

Subpart 4. **Client.** The definition of the term "client" is necessary because it is important to distinguish between a person who is an eligible recipient who may not need mental health services and a person who is a client and needs or is receiving mental health services. The rule describes eligibility and service requirements related to clients. Therefore, it is necessary to define the class of persons who are clients. The definition is reasonable because it is very similar to the definition of the term "client" in the existing rule at part 9505.0323, subpart 1, item E.

Subpart 5 **Clinical summary**. The definition of the term "clinical summary" is necessary because some providers currently submit clinical summaries that are not adequate to communicate necessary client information to other persons who treat the client. It is necessary to require that the document summarize the client's problems adequately and be shared with other persons who are involved with the client's treatment in order to provide compatibility and continuity of care. The definition is reasonable because it accurately describes what should be included in a clinical summary for a client. It is important to describe the contents of a clinical summary to ensure that the provider who prepares the clinical summary is appropriately compensated for a complete document. The definition was reviewed by the Minnesota Mental Health Action Group, a broad-based public-private stakeholder group, which was established by the Governor, and found to be generally reasonable.

Subpart 6. **Clinical supervision.** The definition of the term "clinical supervision" is necessary because clinical supervision activity is essential to ensure client safety and the effectiveness of treatment. Clinical supervision is important because it is typically a component of outpatient mental health services. The definition is reasonable because it includes the essential parts of the definition contained in the existing rule at part 9505.0323, subpart 1, item F, that are needed to accurately describe clinical supervision activity. Clinical supervision is reasonable because it is required in other mental health rules, including part 9520.0800, subpart 4. The proposed definition is also reasonable because it removes many of the substantive requirements from the existing definition. The substantive requirements in the existing definition are now located in part 9505.0371.

Subpart 7. **Clinical supervisor.** The definition of the term "clinical supervisor" is necessary because the term is intended to ensure that a person will understand that there is a difference between the person who provides general managerial supervision of employees and "clinical supervision" which is a mental health treatment related service. The definition is reasonable because it clearly establishes that a mental health professional is responsible for providing clinical supervision.

Furthermore, mental health professionals are eligible under part 9505.0195 to enroll as medical assistance providers and are thereby eligible to bill medical assistance for covered services to recipients. As providers, they have signed agreements with the department that require them to ensure that the medical assistance services they provide directly or under their supervision meet standards set in applicable laws and rules. Thus, they are accountable to the department for services they provide directly or under their supervision.

Subpart 8. **Cultural competence or culturally competent**. The definition of the term "cultural competence" is necessary because the term could have various meanings and it is necessary to use the term consistently. Different cultures have different traditions and understandings about mental health problems and the causes of mental health problems and which treatment methods should be used. The client may understand mental illness's causes and treatments in keeping with the client's culture. Mental health treatment is more effective if the provider understands the client more completely and uses that understanding to most effectively treat the client's mental illness. Therefore, the provider should understand the client's culture for the purpose of diagnosing and treating the client's mental illness. The definition of the term "cultural competence" or "culturally competent" is reasonable because the department consulted with local experts and the rule advisory committee to develop the proposed definition of the term. It is reasonable and necessary to have a definition because both the Adult and Children's Mental Health Acts require that mental health services must be based on the client's cultural and ethnic needs. See Minnesota Statutes, sections 245.467, subdivision 1(2); and 245.4876, subdivision 1(2).

Subpart 9. **Cultural influences**. The definition of the term "cultural influences" is necessary because the term could have various meanings and it is necessary to use the term consistently. It is necessary to use best practice protocols to ensure that the components of cultural influences are noted for the purpose of assessing and treating the client. The definition of the term "cultural influences" is reasonable because the department consulted with local experts and the rule advisory committee to develop the proposed definition of the term. Both the Adult and Children's Mental Health Acts require that mental health services must be based on the client's cultural and ethnic needs. See Minnesota Statutes, sections 245.467, subdivision 1(2); and 245.4876, subdivision 1(2).

Subpart 10. **Culture**. The definition of the term "culture" " is necessary because the term could have various meanings and the dictionary definition of "culture" was not suitable for the proposed rule. The use of the term "culture" focuses on an individual's thinking and understanding that is associated with an individual's culture. It is necessary to use the term consistently in the rule. The definition of the term "culture" is reasonable because the department consulted with local experts and the rule advisory committee to develop the proposed definition of the term. Both the Adult and Children's Mental Health Acts require that mental health services must be based on the client's cultural and ethnic needs. See Minnesota Statutes, sections 245.467, subdivision 1(2); and 245.4876, subdivision 1(2).

Subpart 11. **Diagnostic assessment.** The definition of the term "diagnostic assessment" is necessary because the diagnostic assessment process provides information about the client that

will be used to design and implement the client's treatment. It is important to list the essential elements of a diagnostic assessment to ensure that mental health treatment providers will have enough information about a client to provide effective mental health treatment. The definition of "diagnostic assessment" is reasonable because it generally reflects the comments of the rule advisory committee members and treatment industry standards. The definition of "diagnostic assessment" is also reasonable because it is consistent with the common use of the term within the outpatient mental health treatment practice.

Subpart 12. **Dialectical behavior therapy.** The definition of the term "dialectical behavior therapy" is necessary because this treatment approach is a recently developed and researched treatment approach and may be unfamiliar to clients or providers. It is necessary to list the services provided in a dialectical behavior therapy program to ensure that the provider understands what is required. It is necessary to identify the service components of dialectical behavior therapy because Minnesota Statutes, section256b.0625, subdivision 5l, requires the commissioner to establish treatment protocols including required service components. The definition is reasonable because it was reviewed by the advisory committee and is in keeping with treatment industry standards.

Subpart 13. **Explanation of findings.** The definition of the term "explanation of findings" is necessary because the explanation of findings sets a standard for information that should be communicated about the client's condition and explains who should have the information. These standards promote good communication and promote the client's mental health treatment. The definition is reasonable because it is based upon the definition in the existing rule part at 9505.0323, subpart 1, item J, and it is consistent with the use of the term in mental health practice. The definition was reviewed by the advisory committee and is in keeping with treatment industry standards for these findings.

Subpart 14. **Family.** The definition of the term "family" is necessary because the term is used in the rule to describe persons who participate in a client's mental health treatment. It is important to include the right people in the client's mental health treatment. The definition is reasonable because it was reviewed by the advisory committee and is sufficiently broad to include persons who may help the client recover from a mental health problem.

Subpart 15. **Individual treatment pla**n. The definition of the term "individual treatment plan" is necessary because it specifies the key components of individual treatment planning. It is necessary and reasonable to define "individual treatment plan" because the term was defined in part 9505.0323, item O. It is important that the individual treatment plan include the information listed because the information is necessary to provide appropriate mental health treatment to the client. The definition is reasonable because it was reviewed by the advisory committee and is in keeping with treatment industry standards for the contents of an individual treatment plan. It is reasonable to include mention of the use of the diagnostic assessment because some providers do not consistently include the diagnostic assessment information in treatment planning.

Subpart 16. **Medication management.** The definition of the term "medication management" is necessary because medication management is a common medical service and the term as it is used in this rule might be misunderstood. This subpart does focus on the client's mental health-related

medication and does not focus on a client's general health and medications that are not related to the client's mental health treatment. It is reasonable to focus on the client's mental health-related medications in this subpart, because there are other rule parts in chapter 9505 which focus on treatment for other medical conditions.

Subpart 17. **Mental health practitioner.** The definition of the term "mental health practitioner" is necessary to clarify who is a mental health practitioner for purposes of providing mental health care under medical assistance. It is reasonable to refer to rules in chapter 9505 that clearly state the qualifications of a mental health practitioner because chapter 9505 contains the rules for the medical assistance program.

Subpart 18. **Mental health professional.** The definition of the term "mental health professional" is necessary to clarify who is a mental health professional for purposes of providing mental health care that is reimbursed by the state. It is reasonable to refer to rules in chapter 9505 that clearly state the qualifications of a mental health professional because chapter 9505 contains the rules for the medical assistance program.

Subpart 19. **Mental health telemedicine.** The definition of the term "mental health telemedicine" is necessary and reasonable because the term has a specific meaning in this proposed rule and the definition of the term is directly linked to governing statute. The definition is necessary and reasonable because it includes specific technical standards and user protocols that ensure that telemedicine is therapeutically effective and that the recipient's privacy rights under state and federal law are protected. It is necessary and reasonable to propose rules that are consistent with applicable statute.

Subpart 20. **Mental illness.** The definition of the term "mental illness" is necessary and reasonable because the term has a specific meaning in this proposed rule and the definition of the term is linked to related statute. It is necessary and reasonable to propose rules that are consistent with applicable statute. The definition of the term also incorporates two definitions from the existing rule part 9505.0323, subpart 1, items I and Q.

It is necessary and reasonable to define the term because it describes a disorder that rises to the level of needing medically necessary mental health treatment and specifies the eligibility standard for a recipient. The term "mental illness" is used in this part to establish a standard under which a recipient is eligible to receive mental health services.

Subpart **21. Multidisciplinary staff.** The definition of the term "multidisciplinary staff" is necessary because it explains who is included in the client's treatment as a member of the multidisciplinary staff. This definition is reasonable because it identifies the people who are needed to provide treatment to the client.

Subpart 22. **Neuropsychological assessment.** The definition of the term "neuropsychological assessment" is necessary because it clearly states which criteria must be present to qualify as a "neuropsychological assessment" according to the rule. The definition is reasonable because it was reviewed by the rule advisory committee and it includes criteria for who may conduct the assessment. Neuropsychological assessment is based on the need to identify particular deficits in the client's cognitive ability related to the ability to think and reason.

Subpart 23. **Neuropsychological testing.** The definition of the term "neuropsychological testing" is necessary because it states the criteria that psychological testing must meet to be classified as "neuropsychological testing" rather than "psychological testing" as defined in subpart 26. It is important that the criteria for neuropsychological testing should be clear because the department reimburses neuropsychological testing of clients that meet rule criteria. The definition is reasonable because it was reviewed by the rule advisory committee and is generally consistent with the understood meaning of term as it is used in psychological practice.

Subpart 24. **Partial hospitalization program.** The definition of the term "partial hospitalization program" is necessary because the department requires clear criteria for partial hospitalization programs in order to reimburse those programs appropriately. The proposed definition is reasonable because it is generally consistent with existing definition of the term in part 9505.0323, subpart 1, item T. The definition in part 9505.0323, subpart 1, item T has worked well in the past to define the term "partial hospitalization program" as it is used to administer the medical assistance program.

Subpart 25. **Primary caregiver.** The definition of the term "primary caregiver" is necessary because the rule establishes requirements that the provider must meet regarding a person who is designated as the "primary caregiver." Therefore, it is necessary to define the person who is affected by these requirements. The rule anticipates that the client's parent may also act as a primary caregiver for the client. The proposed definition is reasonable because it is generally consistent with existing definition of the term in part 9505.0323, subpart 1, item U.

In the case of child, who is the client, the definition is necessary and reasonable because it differentiates between those who are and those who are not responsible for the child's care other than a child's parent or program staff.

Subpart 26. **Psychological testing.** The definition of the term "psychological testing" is necessary because it distinguishes psychological testing from other kinds of testing the client may receive. The proposed definition is reasonable because it is generally consistent with existing definition of the term in part 9505.0323, subpart 1, item V.

Subpart 27. **Psychotherapy.** The definition of the term "psychotherapy" is necessary because it is a mental health service that the department pays for under parts 9505.0370 to 9505.0372. It is necessary and reasonable to include a requirement that psychotherapy conform with prevailing community standards of professional practice because some treatments which are called therapeutic may be outside of normal standards of professional practice and are not scientifically shown to be therapeutic or effective. The definition is consistent with current practice standards in psychological practice. The definition is also consistent with Medicare standards. The department

will only pay providers for treatment that is needed and meets community standards for professional practice.

Subpart 28. **Supervisee.** The definition of the term "supervisee" is necessary because the rule creates conditions for clinical supervision of a supervisee, so it is important to clearly identify which staff are considered to be a "supervisee." The definition is needed to distinguish between general employment supervision of an employee and the use of the term in the rule to indicate a person who is subject to clinical supervision as the person provides mental health treatment and care to a client. The definition is reasonable because it was reviewed by the rule advisory committee and generally conforms with the understanding of what a supervisee is in the context of mental health treatment.

9505.0371. MEDICAL ASSISTANCE COVERAGE REQUIREMENTS FOR OUTPATIENT MENTAL HEALTH SERVICES

Subpart 1. **Purpose**. It is reasonable to explain in a general way the purpose of part 9505.0371, because explaining the rule is likely to improve the public's understanding of the rule and rule compliance. It is necessary and reasonable to establish the purpose of part 9505.0371 because the department should inform vendors and other interested persons that this part is about the requirements that outpatient mental health services must meet to receive payment from medical assistance.

Subpart 2. **Client eligibility for mental health services.** It is necessary and reasonable to explain the conditions that must be met by the provider to qualify for medical assistance reimbursement and the characteristics that the client must have to qualify for reimbursable outpatient mental health services. This subpart is necessary to set a standard of eligibility for mental health services because medical assistance pays for a health service only if the service is medically necessary and appropriate for the recipient. This subpart is necessary and reasonable because it is consistent with Minnesota Statutes, section 256B.04, subdivision 15 which requires the department to determine whether a health service is necessary to achieve or maintain good health and to safeguard against unnecessary or inappropriate use of medical assistance services. The requirements noted in this subpart are reasonable because they are generally consistent with existing requirements in part 9505.0323 and related state statutes.

It is reasonable and necessary to require that a provider use a diagnostic assessment to determine a client's eligibility for a mental health services because this requirement is similar to the requirement in part 9505.0323, subpart 4. The requirement in 9505.0323, subpart 4, has helped to ensure that clients get necessary mental health services. It is reasonable to require a diagnostic assessment because a diagnostic assessment is a comprehensive review of a client's condition which is used as a basis to determine which mental health services the client needs. However, because clients experience differing levels of need for mental health services, a full diagnostic assessment may not be needed in all cases. This rule part provides standards regarding the level of services that may be provided without a diagnostic assessment or with a limited assessment.

Item A. identifies instances when a diagnostic assessment is not required because it may not be an efficient or appropriate use of resources. The rule allows payment for preliminary testing,

consultation and psychotherapy before the completion of a diagnostic assessment. This is reasonable, because Department data indicates that a large percentage of clients receiving mental health services are dealing with temporary or situational concerns and do not have long term needs. For these clients, a limited number of therapy sessions or other services are sufficient to address their issues and may alleviate the need for more extensive mental health services. In such situations, the completion of a diagnostic assessment is unnecessary and would not promote the efficient delivery of appropriate services. Similarly, the delivery of services pursuant to a crisis assessment may be sufficient to address a client's needs.

Item B. establishes the parameters for using an abbreviated form of diagnostic assessment. This enables clients with less severe mental health issues to access necessary services without completing the costly standard diagnostic assessment. The department's data regarding the use of mental health services indicates that for a large percentage of clients, mental health issues were resolved with 10 or fewer therapy sessions. For many of these clients the use of a standard diagnostic assessment would not be an efficient or effective use of resources. It is reasonable to permit a provider to exercise professional judgment regarding the scope of the assessment based upon the anticipated extent of the client's need for services. It is also reasonable to recognize that when the client's need exceeds 10 sessions in a year or when the assessment process is complicated by the language and cultural barriers, that a standard assessment should be completed.

Item C. specifies the criteria for completing an assessment for children receiving services. It is necessary to address children separately, as their needs are often distinct from those of adults and may be subject to more rapid and constant change as they age. Minnesota Statutes, section 245.4871, subdivision 11 defines a diagnostic assessment to include a child's "current life situation" and "current functioning and symptoms". It is reasonable to require that children be assessed at least annually, in order to ensure that changes in the child's life and functioning are considered and addressed in treatment planning and services.

Items D and E specify the criteria for completing assessments for adults. It is reasonable to require a new assessment at least every three years and an update of the assessment at least annually to ensure that the client's treatment plan is based upon current information and an accurate diagnosis.

Subpart 3. **Authorization for mental health services.** It is necessary and reasonable to require that mental health services paid through medical assistance meet the statutory requirements in Minnesota Statutes, section 256B.0625, subdivision 25, because that is the subdivision that establishes the commissioner's duty to publish in the State Register a list of medical services that require prior authorization. The use of prior authorization is necessary and reasonable because it is consistent with 42 CFR 440.230, which authorizes the department to place limits on health care services based on medical necessity or utilization control procedures. The requirements of this subpart are also reasonable because they are similar to the requirements in part 9505.0323, subpart 10, which work well to ensure that medical assistance payments are made for medically necessary services.

Subpart 4. **Clinical supervision.** It is necessary and reasonable to establish standards related to the clinical supervision of employees who provide mental health services to clients because the success of the client's treatment relies, in part, on giving a client appropriate mental health treatment at the right time and in the right manner. Clinical supervision of employees who provide mental health treatment to clients differs from managerial supervision of other employees in mental health treatment services because it focuses on making decisions about client treatment and weighing the likelihood of the success of a particular treatment approach at the time treatment is provided. In a treatment setting, clients may be particularly vulnerable and it is reasonable to ensure that the treatment services they receive are therapeutically appropriate. Therefore, it is reasonable to require that mental health professionals, who are the most qualified employees, should provide clinical supervision to less qualified employees.

Individual practitioners, who are working towards their licensure as a Mental Health Professional, are able to provide services and complete assessments that would otherwise only be provided and completed and billed by Mental Health Professionals. Having clear standards in place for the supervision of individuals practicing under these circumstances is necessary in order to ensure that the services being provided are of the same quality and caliber as someone with the experience and professional licensure. Standards are consistent with requirements of the professional licensure boards who license individuals who are Mental Health Professionals in the state of Minnesota. It is a standard expectation of the licensing boards that individuals who provide services, who do not yet meet the criteria to be a Mental Health Professional, complete a supervision plan and receive supervision to help provide instructions and oversight that will improve the individual's practice. The standards established in this rule add to the licensing boards expectations in that clinical supervision hours and plans add a layer of assurance that the quality of services being provided by individuals who have yet to meet the criteria to be a Mental Health Professional are being delivered under the supervision of a Mental Health Professional and the quality of work is comparable to those provided by an individual with a Professional license.

It is necessary and reasonable to require uniform standards for clinical supervision in the rule so that clients get consistent, high quality mental health treatment services in all parts of Minnesota. The absence of uniform clinical supervision standards in the existing rule has been linked by many stakeholders to noticeable variations in mental health service delivery quality in some areas across the state.

It is necessary and reasonable to require a written supervision plan for each person who receives clinical supervision because each supervisor and supervisee must have a clear understanding about what will be required as they treat clients. Given the range of possible supervisees, with varying levels of training and experience, and the range of treatment services, it is reasonable to require the development of individual plans. Requiring the plan to be written ensures that both the supervisor and the supervisee can refer to it and that it may be examined to determine compliance with the requirement. The standards for the supervision plan are reasonable because they are consistent with industry standards and also reflect input from advisory committee members.

Subpart 5. **Qualified providers.** It is necessary and reasonable to establish standards that are consistent with federal regulations (See 42CFR 440.60) regarding who, in addition to a physician, is allowed to provide mental health treatment services because the services must be provided by qualified providers if the state intends to receive federal payments for the services. The

requirement to have either qualified mental health professionals or mental health practitioners providing mental health services is consistent with the standards in existing rule part 9505.0323, subpart 23. The qualifications listed in items A. and B. are reasonable because they are generally consistent with the statutory definitions of mental health professional and mental health practitioner found in sections 245.463, subdivision 17 and 18 and 245.4871, subdivision 26 and 27.

The addition of tribally-approved mental health professional is necessary as Tribal governments take on the responsibility for mental health services. This is reasonable as each Tribal government has the authority to administer and operate their own health care. 1

Because the rule permits practitioners to provide services that are typically performed only by those with professional status, it is necessary to define the standards under which practitioners are qualified to deliver these services. Item C ensures that a mental health practitioner working as a clinical supervisee functions within a framework established by either the applicable licensing board or an accredited educational institution. These organizations are uniquely qualified to oversee opportunities for the development of professional skills while also monitoring the quality of professional services. To ensure that medical assistance pays for services that meet community standards of quality, it is reasonable to require appropriate oversight by the organizations that establish, teach and monitor those standards.

Item D. establishes specific standards for mental health professionals who serve as clinical supervisors. The requirements and qualifications for this role have been expanded to recognize the diverse responsibilities. The clinical supervisor must oversee and direct all of the mental health services provided to each client served by the supervisee. By law, the supervising professional assumes direct responsibility for the quality and competency of the services. At the same time, the clinical supervisor is responsible for educating and supporting the supervisee in the acquisition of professional skills and values. The supervising professional must be competent in both areas of responsibility in order to ensure the ongoing delivery of appropriate and high quality mental health services. The department has found that the existing rule does not provide sufficient direction regarding the qualifications necessary for a mental health professional who provides clinical supervision.

The qualifications listed in this item are reasonable because they relate to the essential functions of a clinical supervisor and were reviewed by a subgroup of the advisory committee. In addition, these qualifications are also consistent with the recommendations made to the Minnesota Legislature in 2007, by the Mental Health Professional Licensing Standards Task Force. It is reasonable to use the work of the stakeholders and task force members identified in *Baseline of*

1 Tribal governments have a unique legal status. They are sovereign nations under the U.S. Constitution and under federal law. Tribes retain the powers of self-government over their lands and members and are responsible for administering funding, determining policy, and providing leadership for day-to-day administrative activities. Congress enacted the Indian Self-Determination and Education Assistance Act (P. L. 96-638) that gives tribes the authority to administer and operate their own health services and health programs within their communities. To provide the quantity and quality of health services necessary to elevate the health status of American Indians and Alaska Natives, Congress passed the Indian Health Care Improvement Act. P. L. 94-437. This health-specific law supports P. L. 93-638 and encourages tribes' fullest participation in planning and managing their health services.

Competency: Common Licensing Standards for Mental Health Professionals, A Report to the Minnesota Legislature dated January 15, 2007, as it "reflects a considerable level of accord across the diverse segments of Minnesota's mental health community." http://archive.leg.state.mn.us/docs/2007/mandated/070109.pdf This report was the result of a legislative directive. The 2006 Legislature ordered a study to evaluate the qualifications of licensed mental health professionals eligible for MA reimbursement. Since qualifications for MA payment requires mental health licensure, evaluating qualifications for MA reimbursement led to a study of licensing standards. The mental health community already had been engaged in evaluating licensing standards when the Legislature ordered the report. To build on the work already done, DHS formed a study group with a roster comprised largely of the diverse group of stakeholders who had been engaged in these discussions the previous year-and-a-half. This allowed the study group to utilize the Stakeholders' momentum and their familiarity with complex licensure issues from inter-disciplinary points of view.

The report identifies the need to develop and improve the standards related to supervised practice as well as the qualifications of a clinical supervisor. Persons who have completed or nearly completed their academic work possess the knowledge of the field of mental health but are not yet experienced. They gain the experience in a supervised placement or internship designed to complete the licensure requirements or in another type of clinically supervised experience. This subpart is needed and reasonable because it allows an expanded range of providers while guaranteeing stable or enhanced clinical quality through supervision requirements that are consistent with community standards of mental health practice, work force development needs, and statewide availability of uniform quality services.

It is necessary and reasonable to establish uniform qualifications for a clinical supervisor and set criteria for clinical supervision so that clients get consistently high quality mental health treatment services in all parts of Minnesota. The absence of clearly defined criteria on what a clinical supervisor must do has been linked by many stakeholders to noticeable variations in mental health service delivery quality in some areas across the state.

The requirement that a clinical supervisor be a mental health professional is consistent with the standards in existing rule part 9505.0323, subpart 1, item F. It is necessary and reasonable to establish a standard for a professional to be in good standing and not facing disciplinary action as the clinical supervisor promotes competent ethical services to clients through development of the supervisee's knowledge, skills and values. Most licensing boards have procedures in place to identify who is eligible to become a clinical supervisor so individuals seeking clinical supervision know who they can work with to gain the knowledge and experience of their particular professional discipline for board licensure. Since the licensing boards already have these standards and they were discussed as part of the Task Force it is reasonable to use them. It is necessary and reasonable for the professional to have more experience than the supervisee as the supervisor provides evaluation of and direction for services delivered by the supervisee.

Even though most professional disciplines have ethical principles and codes of conduct, there has been an increasing number of reports in the past few years by the media of violations of those principles with former clients. DHS determined it was necessary to illuminate situations where there was potential for conflicts of interest.

It is necessary and reasonable to require the clinical supervisor to accept full professional

liability for the work they are directing the supervisee to do. It is also reasonable for the clinical supervisor to oversee the quality and outcomes of that work. This is consistent with the standards in existing rule part 9505.0323, subpart 1, item F. By signing the diagnostic assessment, individual treatment plan and individual treatment plan review the clinical supervisor is indicating they have reviewed and approved the information contained in each of these items. These documents and progress notes create part of the client's medical record. The medical record is used by a payer to substantiate that the client needed the service, what the service was, who rendered the care, how long the service lasted. All of this information is used to create a claim for the service which must be compliant with federal and state regulations. The federal Health Insurance Portability and Accountability Act of 1996 (HIPAA) requires all health care providers and payers to use universal standards for electronic billing and administrative transactions (health care claims, remittance advice [RA], eligibility verification requests, referral authorizations and coordination of benefits). Minnesota's Uniform Electronic Transactions and Implementation Guide Standards in Minnesota Statutes, section 62J.536, require all Minnesota-based health care claims to be submitted electronically.

It is necessary and reasonable to require a clinical supervisor to be employed by or under contract with the agency employing the supervisee, as a protection for the clients being served. This requirement gives limited assurance to clients that the agency has followed general employer responsibility in confirming the mental health professional's educational credentials and work history, and completing necessary background checks. It also serves as a monitoring responsibility for the agency since the agency would accept liability for the actions of this professional.

The requirement in existing rule at part 9505.0323, subpart 24 that requires individuals to be employed by or placed in an outpatient hospital, a physician-directed clinic, community mental health center, or a facility approved for insurance reimbursement according to parts 9520.0750 to 9520.0870 (informally know as Rule 29 clinics) to receive medical assistance payment for diagnostic assessment and psychotherapy services, has been removed. This change will allow clinical trainees to seek clinical supervision from mental health professionals who are outside of these entities, thus expanding the pool of clinical supervisors.

Subpart 6. **Release of information**. It is necessary and reasonable to establish standards for the release of the client's medical information because the release of information is closely regulated by complex laws and it is important to tell interested persons about which laws are important to follow. Laws regarding the release of information have changed since part 9505.0323, subparts 19 and 20 were written. It is necessary and reasonable to refer interested persons to the governing law, rather than attempt to recapitulate or paraphrase the governing law because the law is clear.

Subpart 7. **Individual treatment plan.** It is necessary and reasonable to establish standards which are consistent with the standards in existing rule part 9505.0323, subpart 25, because the existing standards are generally consistent with applicable law and mental health treatment industry standards. It is reasonable and necessary to have standards because both the Adult and Children's Mental Health Acts require that mental health services must be based on the client's individual treatment plan. See Minnesota Statutes, sections 245.467, subdivision 3; and 245.4876, subdivision 3.

Subpart 8. **Documentation.** It is necessary and reasonable to establish documentation standards in this rule because Minnesota Statutes, section 256B.04, subdivision 15, requires the department to safeguard against unnecessary or inappropriate use of medical assistance services and to use both prepayment and post-payment review systems to determine if utilization is necessary and reasonable. The post-payment review system relies on the recordkeeping of providers. Minnesota Statutes, section 256B.04, subdivision 2, requires the department to uniformly administer the medical assistance system throughout the state. Therefore, this subpart is necessary and reasonable to specify the documentation and recordkeeping standards for records that providers are required to keep regarding mental health services to clients.

Information about the date, type, length, and scope of the services and the name of the service provider is reasonable because it provides an auditable record which the department may examine. Information about contacts with other persons interested in or responsible for the client is also a reasonable requirement because it enables the department to monitor and verify the accuracy of services that the provider bills to the department. Requiring the documentation to be completed promptly after the provision of the service is reasonable because the required information is most readily at hand promptly after service is provided, so that the requirement can be completed without unduly burdening the provider. Promptly recording information about the service after providing the service will also result in information that is more accurate.

Subpart 9. **Service coordination.** It is necessary and reasonable to establish mental health coordination standards that are generally consistent with the standards in existing rule at part 9505.0323, subpart 32, because the existing standards are generally consistent with applicable law and mental health treatment industry standards. It is necessary and reasonable to include standards in item B for coordination of medical health care and mental health care because a client's mental health and physical health act together to affect the client's sense of well being. It is also reasonable to require that a mental health provider coordinate client care with a medical health care provider because studies have shown that it is more efficient and effective to coordinate both aspects of the client's care. . The absence of this coordination is reflected in national studies (See Measurement of Health Status for People with Serious Mental Illnesses, Parks Radke and Mazade, editors, National Association of State Mental Health Program Directors Medical Directors Council, October 16, 2008.) which indicate that adults with a serious mental illness die 25 years earlier than the general public due to untreated or undertreated medical conditions.

Subpart 10. **Telemedicine services.** Minnesota Statutes, section 256B.0625, subdivision 3b, allows medical assistance payment for telemedicine consultations with a patient. It is necessary and reasonable to allow appropriate use of telemedicine because it eliminates the cost and inconvenience of transporting patients to the provider, or paying a provider to drive to meet the patient. It is also reasonable to allow the use of telemedicine because some parts of the state have few, if any, mental health providers available within a reasonable travel distance of clients and the use of telemedicine in the appropriate circumstance could make mental health treatment services available to clients who might otherwise not be served.

9505.0372 COVERED SERVICES

Subpart 1. **Diagnostic assessment.** It is necessary and reasonable to propose new and expanded standards for diagnostic assessments in the proposed rules because the standards for diagnostic

assessment in the existing rule at part 9505.0323, subpart 4, were not sufficient to ensure that clients received the most effective diagnostic assessment services. As explained below, many standards from part 9505.0323, subpart 4, are carried forward, but are reorganized or restated in the proposed rule to improve the understandability of the rule and promote rule compliance.

A subgroup of the rule advisory committee was specifically tasked with addressing at length the requirements for the diagnostic assessment. Much of the discussion regarding the diagnostic assessment centered on the frequency and length of time required to carry out a diagnostic assessment and the components of the diagnostic assessment. Members of the diagnostic assessment subgroup emphasized the diversity of the client population for whom the service is necessary. This diverse population includes:

- children and adults with a mental illness;
- those who meet the criteria as defined in the Comprehensive Adult Mental Health Act, Minnesota Statutes, sections 245.461 to 245.486 (Adult Mental Health Act), for serious and persistent mental illness;
- those who meet the criteria as defined in the Comprehensive Children's Mental Health Act (Children's Mental Health Act), Minnesota Statutes, sections 245.487 to 245.4889, for severe emotional disturbance;
- children whose ability or inability to communicate may be related not only to their illness but also to their developmental stage;
- persons of any age who are hearing impaired or who have speech language difficulties that affect their ability to communicate; and
- persons with a developmental disability or related condition who also have a mental illness.

As a result of the varying characteristics of these subgroups, flexibility was built into the rule to provide for different types of diagnostic assessments. Furthermore, as is also detailed below, new types of assessments based on the duration of the assessment meet a need for compliance with new federal regulations calling for uniformity in coding and billing standards.

The first sentence of Subpart 1 is reasonable to inform providers that medical assistance covers four types of diagnostic assessments. The statement also assists the rule reader to discern that the remaining information in the subpart sequentially addresses the requirements for each of type.

As reflected in Item A, Subitem (1), the diagnostic assessment provides the factual basis on which a client's treatment plan is developed. It is therefore necessary and reasonable to require that the diagnostic assessment either identify a mental health diagnosis and recommended treatment for that diagnosis, or indicate that the client has no mental health disorder. Requiring one or the other also serves the purpose stated in Part 9505.0371, subpart 2, item A, which is that the diagnostic assessment is used to determine a client's eligibility for mental health services. When the diagnostic assessment identifies both a diagnosis and recommended mental health services, the client is eligible for services. On the other hand, if the client has no mental health disorder, then the client is not eligible for services.

Item B requires that the diagnostic assessment be in writing, be performed by a mental health

professional (or practitioner as provided elsewhere in the rule), and include a face-to-face meeting. These three requirements are all contained in existing rule and are consistent with the department's statutory directives. (For corresponding existing rule requirements, see Minnesota Rules, part 9505.0323, subpart 4, first paragraph; and subpart 4, item H, subitems (2) and (8)). Specifically, the statutory definitions of "diagnostic assessment" contained in the Adult Mental Health Act and the Children's Mental Health Act state that the diagnostic assessment is performed by a mental health professional and is in writing. (See Minnesota Statutes, sections 245.462, subdivision 9; and 245.4871, subdivision 11.) As noted, item B also requires that the diagnostic assessment include a face-to-face interview. The Adult Mental Health Act defines the diagnostic assessment as being based on an interview. (See the above-noted statutory definition.) Accordingly, the rule requirement that the interview be face-to-face is a reasonable extension of the statutory definition. A face-to-face meeting conveys more information than a telephone interview, including important nonverbal communication cues and the client's self-presentation, which can be valuable aspects of the information being ascertained for treatment purposes. Even though the Children's Mental Health Act does not contain a corresponding requirement, for the reasons just noted, it is reasonable to require a face-to-face interview as a component of a diagnostic assessment for a child, as well.

Item B requires that the standard diagnostic assessment must be done within the cultural context of the client. Both the Adult Mental Health Act and Children's Mental Health Acts require that mental health services must be based on the client's cultural and ethnic needs. (See Minnesota Statutes, sections 245.467, subdivision 1(2); and 245.4876, subdivision 1(2).)

In addition, Item B identifies the areas of information that a standard diagnostic assessment must address. Each of these areas reflects a topic about which the information is so fundamental to a comprehensive and accurate understanding of the person, that it is necessary and reasonable to address these in the diagnostic assessment. Addressing these areas, which include background detail about the person and the person's life, including age, needs and economic status, significant personal relationships, beliefs, and strengths and resources, are likely to reveal problematic factors contributing to a mental health disorder, or reveal that a particular approach or emphasis may enhance treatment outcomes. This is consistent with statutory mandates that the department ensure that the mental health system provides effective and appropriate service quality. (See Minnesota Statutes, sections 245.461, subdivision 2(6), and 245.4876, subdivision 1(6) and (7).)

Item B, subitems (5) and (6) require that the diagnostic assessment address other standardized screening instruments determined by the commissioner, and assessment methods and standardized tools as determined and periodically updated by the commissioner. The commissioner has authority to determine and update diagnostic and treatment tools, methods, and standards under his mandate in Minnesota Statutes, section 245.461, subdivision 2, and section 245.487, subdivision 3, to create and ensure a unified, accountable, comprehensive mental health system for adults and children in Minnesota. Minnesota Statutes, section 245.461, subdivision 2 requires that such a system must provide a quality of service that is effective, efficient, appropriate, and—in particular—that is "consistent with contemporary professional standards in the field of mental health." Because best practices evolve at a rapid rate, it is necessary for the commissioner to determine contemporary standards and continuously update those standards as new scientific evidence emerges. It is reasonable to require the commissioner,

as the statutorily designated supervisor of the public mental health system under Minnesota Statutes, section 245.464, to keep pace with emerging science and to expedite new diagnostic and treatment technologies into the service delivery system.

Item C addresses a more extensive iteration of the diagnostic assessment that is designed for clients with more complex mental health situations. It is reasonable and necessary to provide for a diagnostic assessment that is conducted over three or more assessment appointments because some situations call for this additional time. This is true where the mental health disorder itself impairs the client's ability to convey pertinent information during the assessment, or to fully address complicating factors that have a bearing on the mental health status, including multiple diagnoses. To provide reasonable and necessary guidance to providers, the item defines the mental health needs that qualify for the additional time provided in an extended assessment. Accordingly, providers can document the specific basis on which they determined that an extended diagnosis was appropriate for the particular client.

Another reason the advisory committee recommended the inclusion of an extended diagnostic assessment is the new federal requirements pertaining to coding and billing standards. New federal requirements regarding payments for mental health services are implemented through the federally-adopted Current Procedural Technology, Fourth Edition (CPT). These requirements would preclude payment for the additional time component of a diagnostic assessment that extended beyond a standard, prescribed time period; indeed, the requirements preclude time as a measurement of services altogether. Instead, the federal requirements prescribe the use of a "session" as the basis for payment. To comply with these requirements, and also provide for an appropriate payment in the situation where a client's needs demand a more in-depth and time-consuming diagnostic assessment, the advisory committee created the extended diagnostic assessment. Extended diagnostic assessments were previously addressed in the existing rules at part 9505.0323, subpart 5, 6 and 7. These subparts, which addressed extended assessments on basis of hourly components were repealed in order to comply with federal requirements.

Item C provides for more flexibility with respect to extended diagnostic assessments for children. It is necessary and reasonable to provide for collecting information from third parties, other than the child, because children, in the vast majority of cases, have not yet developed the self-knowledge and communication skills needed to effectively portray information about their mental health status. For much the same reason, the item requires observation of the child in the child's natural settings as a potentially more accurate source of pertinent diagnostic information. These rule provisions are consistent with the statutory mandates that the commissioner develop effective and appropriate mental health services. See Minnesota Statutes, sections 245.461, subdivision 2(6), and 245.4876, subdivision 1(6) and (7).

Item C, subitem (1) lists the required components of an extended diagnostic assessment for a child. A subset of the advisory committee developed these standards largely from those identified by a reputable, non-profit organization known as, "Zero to Three." This entity is a national organization that informs, trains, and supports professionals, policymakers, and parents to promote the health and development of infants and toddlers, including their mental health. Information concerning these standards can be found on the organization's web site, as follows: www.zerotothree.org. Furthermore, the standards are consistent with knowledge derived by the

U.S. Department of Health and Human Services research staff from experiences with infants and toddlers in Head Start settings, including the prevention of problems in at-risk groups and intervention for families with identified needs in this population. See http://www.acf.hhs.gov/programs/opre/ehs/mental_health/.

Item C, subitems (2) and (3) provide for the diagnostic assessments for children aged 5 to 18, and for adults, to be supplemented with other assessment standards as determined and periodically updated by the commissioner. The legislature required the commissioner to ensure the quality of mental health services and to ensure that mental health service "be based, when feasible, on research findings," according to Minnesota Statutes, sections 245.467, and 245.4876. Further, the commissioner is mandated to provide ongoing technical assistance to local agencies to improve system capacity and quality. (See Minnesota Statutes, sections 245.463, subdivision 2, and 245.4872, subdivision 2.) As stated under item B, above, these requirements make it necessary for the commissioner to determine contemporary standards and continuously update those standards as new scientific evidence emerges. The commissioner is given authority to reform the service delivery of the public mental health system in section 245.4682. Thus, it is reasonable to require the commissioner to expedite evolving assessment standards into the service delivery system.

It is reasonable and necessary to provide for an abbreviated version of the diagnostic assessment, as set forth in item D. This approach enables mental health professionals to promptly address immediate needs or presenting problems in appropriate circumstances. It is reasonable and practical to provide the mental health professional the flexibility to gather initial background information and draw a provisional clinical hypothesis, while using subsequent treatment sessions to more fully develop either a standard or extended diagnostic assessment. This is a cost-effective alternative, which is consistent with the commissioner's statutory duty to provide for efficient use of public and private resources in achieving positive mental health outcomes for consumers. See Minnesota Statutes, sections 245.461, subdivision 2(6); and 245.4682, subdivision 2(5).

As with the existing rule, the proposed rule provides that medical assistance pays for diagnostic assessment updates that are prepared in accordance with the rule. (See existing rule at Part 9505.0323, item H, subitem (5).) Proposed Part 9505.0372, subpart 1, item E is reasonable and necessary because it places providers on notice of the requirements for a diagnostic assessment update. As previously addressed with respect to subpart 1, item B, the requirements that the diagnostic assessment include a face-to-face interview, contain a written evaluation, and be performed by a mental health professional or practitioner working as a clinical trainee and under supervision by a mental health professional are consistent with statutory directives, or represent a reasonable extension of a statutory directive. The required areas of information correspond to the areas of inquiry in a standard diagnostic assessment, except that some areas are tailored to address only new or changed information, with a notation to indicate there has been no change where appropriate. It is reasonable to require that an update focus only on changed information in some areas, while still requiring all current information in critical areas, or areas subject to change over time. The former includes the client's diagnosis and an assessment of the client's needs; the latter includes the client's mental health status information, a clinical summary, and prioritization of needed services.

The proposed rule is cleaner and simpler because it omits minor technical requirements that are present in the existing rule, but which the department does not necessarily need to regulate in the context of defining mental health services that are covered by medical assistance. For example; the proposed rule omits requirements pertaining to situations involving multiple providers, when authorization for release of information is required, and when referral to a psychiatrist, medical specialist, or other health professional is required. (See existing rule at 9505.0323, subpart 4, items C, D, and H, subitems (5) and (6).) It is reasonable and necessary to streamline the rule, so that proposed subpart 1 reflects a focused approach to the four types of diagnostic assessments and the related requirements.

Subpart 2. **Neuropsychological assessment.** Neuropsychological assessment is a specialized form of psychological assessment that requires specific educational and experiential training in the evaluation of particular cognitive functions, which may vary according to the client's level of development, age, general physical health, illness, or injury. Increasing numbers of clients want to determine the reason for failing memory or other cognitive problems. It is necessary and reasonable to establish criteria for neuropsychological assessment in the proposed rule because the use of neuropsychological assessments is increasing. It is necessary to control the utilization of neuropsychological assessment by establishing criteria in the rule. The rule criteria are reasonable because demand for a specialized service must be met with the development of standards that ensure the service is delivered by qualified providers with sufficient expertise, and ensure that the services are medically necessary.

Items A and B establish the criteria that must be met for a client to be eligible for services. The objective of neuropsychology is to evaluate and treat individuals who are known or suspected to have brain dysfunction. The particular dysfunction can take many forms. To identify the list of criteria to select persons for whom neuropsychological services are most likely to be medically necessary, the advisory committee consulted treatises that are the standard-bearers in the field, current articles from peer-reviewed medical journals, and experts in the field. (See, e.g., Neuropsychological Assessment (4th Ed. 2004), by Lezak, Muriel; Howieson, Diane; and Loring, David, Oxford University Press, New York. Knowledgeable professionals consulted include Dr. Debra Roman, University of Minnesota; and Drs. David Tupper and Paul Marshall, Hennepin County Medical Center.) Item C merely confirms that persons who do not meet either set of criteria in items A and B are not eligible for neuropsychological services. (For further information on the validity of these criteria, see the Statement of Need and Reasonableness corresponding to Part 9505.0372, Subpart 3, item A, below (governing neuropsychological testing for certain clients, which closely parallels the criteria in items A and B of this subpart.)

Item D sets out what is required of the mental health professional who conducts neuropsychological testing. It is necessary and reasonable to require professional credentialing to promote competency and high quality treatment, protect persons receiving neuropsychological services, and ensure appropriate use of public resources. In general, item D requires that a person state one's competency in neuropsychology to the Minnesota Board of Psychology, and receive a diploma from the American Board of Clinical Neuropsychology. The latter is the affiliated specialty board of the American Board of Professional Psychology. The diploma in Clinical Neuropsychology from the ABCN is the clearest, most widely-recognized credential for

competency to practice in this area. To obtain the diploma, an individual must be a licensed to practice as a psychologist in their state, and pass a rigorous peer review regarding both knowledge and skills. The certification process is intended to mirror that of a medical board. Using this well-accepted credential will prevent unproven representation of specialty competence by practitioners, which could otherwise do public harm and waste limited public resources. Item D also provides for some limited exceptions to the credentialing requirement, with a two-year window provided for persons who have completed all requirements to apply for board certification but are working through the certification process, and a 'grandfather clause,' of sorts, to encompass persons currently being reimbursed for the services who have proven experience in the field, if approved by the end of the current calendar year.

Subpart 3. **Neuropsychological testing.** It is necessary and reasonable to include requirements for neuropsychological testing in the proposed rules because the use of neuropsychological testing is increasing as a diagnostic tool to determine the reasons for a client's condition. It is necessary and reasonable for the proposed rule amendments to establish standards and guidelines to avoid the misuse or abuse of neuropsychological testing.

Item A sets forth client eligibility criteria for neuropsychological testing. The advisory committee reviewed the most current literature and consulted professional experts to identify these criteria. (See, e.g., Neuropsychological Assessment (4th Ed. 2004), by Lezak, Muriel; Howieson, Diane; and Loring, David, Oxford University Press, New York. Knowledgeable professionals who were consulted include Dr. Debra Roman of the University of Minnesota, and Drs. David Tupper and Paul Marshall, both of Hennepin County Medical Center.) Department staff have discovered that the rule criteria stating which conditions are eligible for services is a virtual copy of the same criteria as set forth in the insurance coverage policy of CIGNA Companies governing its payment for neuropsychological testing. The close resemblance was not discovered until after the committee had prepared the proposed rule criteria. Neuropsychological testing is "medically necessary when there has been either: (1) a significant mental status change not due to a metabolic disorder that has not responded to treatment; or (2) a significant behavioral change, memory loss, or organic brain injury." The only difference between the two is that the proposed rule is broader, because its list for the second category of conditions includes changes due to substance abuse or dependence.

It is reasonable to require that neuropsychological testing be validated in a face-to-face interview. This is the same standard that is used for a diagnostic assessment, and much the same rationale applies. Specifically, information about a client's health, self-presentation and non-verbal communication might be conveyed in a face-to-face interview that may be critical to an accurate understanding and evaluation of an individual's condition. It is also reasonable and necessary to require in item C that the same professional credentialing standards that apply to neuropsychological assessment apply to testing. Finally, in item D, it is reasonable and necessary to exclude from medical assistance coverage any test results obtained in a context in which evaluation and treatment are not the primary focus.

Subpart 4. **Psychological testing.** It is necessary and reasonable to include requirements for psychological testing because the department reimburses providers for psychological testing through medical assistance. Setting standards in this rule help ensure that psychological testing of

recipients will meet at least a minimum standard for quality. The proposed rule is reasonable because it is mostly based upon the requirements in the existing rule at part 9505.0323, subpart 21. The existing rule requirements have been updated and re-organized in the proposed rules to make them easier to understand. Making rules easier to understand is reasonable because it promotes compliance with the rules. It is necessary to update the standards for psychological testing to more closely match prevailing standards in psychological practice and include reference to newer testing procedures such as computer-assisted testing.

Subpart 5. **Explanation of findings.** It is necessary and reasonable to establish standards for payment to a mental health professional who provides an explanation of findings because the medical assistance program will not pay for an explanation of findings in every instance. A provider who is a mental health professional may bill medical assistance for delivering an explanation of findings related to a diagnostic assessment that was billable under the medical assistance program. However, a provider may not bill for receiving an explanation of findings for a client's diagnostic assessment. The proposed standards are consistent with certain requirements in part 9505.0323, subpart 18.

Subpart 6. **Psychotherapy**. It is necessary and reasonable to establish psychotherapy treatment standards that are generally consistent with the standards in existing rule at part 9505.0323, subparts 12, 13, and 28, because the existing standards are generally consistent with applicable law and mental health treatment industry standards.

Subpart 7. **Medication management**. It is necessary and reasonable to establish medication management service standards that are consistent with the critical standards in existing rule at part 9505.0323, subpart 17, because the existing rule is consistent with applicable law, mental health industry standards and has worked well. The proposed rule standard was revised to carry forward and update the essential elements of part 9505.0323, subpart 17.

Subpart 8. **Adult day treatment**. It is necessary and reasonable to establish adult day treatment standards that are generally consistent with the standards in existing rule at part 9505.0323, subparts 15 and 16, because the existing standards are generally consistent with applicable law and mental health treatment industry standards. The proposed rule standard was revised to carry forward and update the essential elements of part 9505.0323, subparts 15 and 16.

Subpart 9. **Partial hospitalization.** It is necessary and reasonable to establish partial hospitalization standards that are generally consistent with the standards in existing rule at part 9505.0323, subpart 1, item T, because the existing standards are generally consistent with applicable law and mental health treatment industry standards. It is reasonable and necessary to move the substantive requirements from the definition of "partial hospitalization" in part 9505.0323, subpart 1, item T, to subpart 9 because rule definitions should avoid including substantive requirements. The rule standards for partial hospitalization are necessary and reasonable because they work well and are important to the administration of the medical assistance program and Medicare requirements.

Subpart 10. **Dialectical behavior therapy.** It is necessary and reasonable to propose rule standards which are consistent with requirements in Minnesota Statutes, section 256B.0625, subdivision 51. The programmatic requirements of this subpart are consistent with nationally recognized, research-informed, practices and standards. The body of research literature regarding dialectical behavior therapy supports the need for a critical set of treatment components to ensure quality client outcome measures. The set of service requirements in this subpart are needed and reasonable because they were developed to comply with the national standards for dialectical behavior therapy treatment. 2

Subpart 11. **Non-covered services**. It is necessary and reasonable to indicate which mental health services are not eligible for medical assistance payment, so that vendors and other interested persons understand what service they can expect to be paid for under the medical assistance program. It is also necessary and reasonable that the non-covered services be generally consistent with the non-covered services in existing rule at part 9505.0323, subpart 27, because the existing standards are generally consistent with applicable state law and federal regulations and are needed for the administration of the medical assistance program.

REPEALER: The existing rule must be repealed upon the effective date of adopted rule to ensure that persons who are affected by the rule will understand which rule governs outpatient mental health payments. Reorganizing the rule's subject matter into three parts in the adopted rule and renumbering the rule parts should also help the public understand that there are new applicable rule standards for outpatient mental health treatment. It is necessary and reasonable to repeal the existing rule to promote public understanding of which rules apply to outpatient mental health treatment.

EFFECTIVE DATE: The effective date is needed and reasonable because it implements the rule prior to the expiration of the existing rule at part 9505.0323. The existing rule was adopted in January 2009 under the good cause exemption of Minnesota Statutes, section 14.388, subdivision 1. Rules adopted under the good cause exemption are in effect for only two years, according to Minnesota Statutes, section 14.388.

The department has many activities to accomplish to implement the proposed rule amendments. The department must provide information to the public, train state, county and provider staff about the rule and write forms and explanatory material related to the rule. The department needs the

2 In the development of the rule standards regarding this program the department relied upon the work of Dr. Marsha M. Linehan as described in her book "Cognitive Behavior Treatment of Borderline Personality Disorder" published by the Guilford Press in 1993. It also used "Skills Training Manual for Treating Borderline Personality Disorder" published by the Guilford Press in 1993 and information from The Behavioral Research and Therapy Clinic which is free-standing unit at the University of Washington http://depts.washington.edu/brtc/ . The SAMHSA National Registry of Evidence-based Programs and Practices (www.nrepp.samhsa.gov) is a searchable registry of interventions for mental health and substance abuse treatment. DBT is listed as an intervention. Additionally, the manual "Turning Knowledge into Practice 2nd Edition (revised) A Manual for Human Services Administrators and Practitioners about Understanding Evidence-Base Practices on page 48 identified DBT as and EBP.

period between the adoption of the rule and the effective date of the rule to prepare itself, the public and interested parties to implement the rule.

CONCLUSION

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

Date: September 27, 2010