

Minnesota Department of Human Services

Office of Inspector General, Mental Health / Chemical Dependency Licensing Unit

REQUEST FOR COMMENTS

Possible Amendments to the Rules Governing Residential Treatment Programs for Adults Who Are Mentally Ill, Minnesota Rules, parts 9520.0500 - .0670 (f/k/a DHS Rule 36); Revisor's ID Number: R-04884

Subject of Rules. The Minnesota Department of Human Services (Department) requests comments on its possible amendments to the rules governing the residential treatment programs for adults who are mentally ill, Minnesota Rules, parts 9520.0500 - .0670. As directed by the 2023 Minnesota Legislature, the overall objectives for the possible amendments (parts 9520.0500 to 9520.0670) will address the following: (1) updating requirements for Category I programs to align with current mental health practices, client rights for similar services, and health and safety needs of clients receiving services; (2) removing Category II classification and requirements; and (3) adding licensing requirements to the rule for the Forensic Mental Health Program. The possible amendments would remove Category II program language because the category is now obsolete. The possible amendments would also add specific language to Minnesota Rules, parts 9520.0500 - .0670 to categorize forensic and specialty services, such as different and unique settings and specialty programs in a way that accounts for forensic and specialty services co-existing with entities providing basic services and sometimes both existing within the same entity caring for adults who are mentally ill.

Persons Affected. The possible amendments would likely affect all persons and entities who provide services within Category I programs regulated by the Department, specifically program recipients and their families, counties, tribes, advocacy organizations, and the Office of Ombudsman for Mental Health and Developmental Disabilities (OMHDD).

Statutory Authority. The specific and appropriate statutory rulemaking authority for making changes to Minnesota Rules, parts 9520.0500 - .0670 comes from the following statutes. Minnesota Statutes, section 245.802, subd. 2a(2) and (6) (2024), which states: "The commissioner shall: . . . (2) review Category I and II programs established in Minnesota Rules, parts 9520.0500 to 9520.0670 to ensure that the categories of programs provide a continuum of residential service programs for persons with mental illness; . . . (6) review and make changes in rules relating to residential care and service programs for persons with mental illness as the commissioner may determine necessary." Minnesota Statutes, section 245A.09, subdivision 1 (2024), which states: "The commissioner shall adopt rules under Chapter 14 to govern the operation, maintenance, and licensure of programs subject to licensure under this Chapter. The commissioner shall not adopt any rules that are inconsistent with or duplicative of existing state or federal regulations." Minnesota Statutes, section 245A.095, subdivision 2(6) (2024), which states: "[R]eview and make changes in rules relating to residential care and service programs for persons with mental illness as the commissioner may determine necessary."

Finally, during the 2023 legislative session, the Minnesota Legislature directed the DHS commissioner in MN Laws, Chapter 70, Article 9, Section 38 (2023 Legislative Session) to do the following, after consultation with stakeholders: to determine changes in Minnesota Rules, parts 9520.0500 to 9520.0670, specifically necessary to: (1) update requirements for Category I programs to align with current mental health practices, client rights for similar services, and health and safety needs of clients receiving services; (2) remove Category II classification and requirements; and (3) add licensing requirements to the rule for the Forensic Mental Health Program. The Minnesota Legislature cited the commissioner's existing authority in Minnesota Statutes, Chapter 245A, to amend Minnesota Rules, parts 9520.0500 to 9520.0670. MN Laws, Chapter 70, Article 9, Section 38(b). For Minnesota Rules, parts 9520.0500 - .0670, the agency has permanent, general rulemaking authority, as well as a specific legislative directive for the commissioner to exercise the existing authority as outlined in Chapter 245A to amend parts 9520.0500 to 9520.0670.

Public Comment. Interested persons or groups may submit comments or information on these possible rules in writing or orally until further notice is published in the *State Register* that the Department intends to adopt or to withdraw the rules. The Department will not publish a notice of intent to adopt the rules until more than 60 days have elapsed from the date of this request for comments. The Department does not plan to appoint an advisory committee to comment on the possible rules.

Rules Drafts. The Department does not anticipate that a draft of the rules will be available before the publication of the proposed rules.

Agency Contact Person. Written or oral comments, questions, and requests for more information on the specific subject-matter of these possible rule amendments should be directed to Benjamin Ashley-Wurtmann. Questions about the rulemaking process should be directed to Dustin C. Jones, Associate General Counsel:

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TTY users may call the Department at (800) 627-3529. You can also submit written comments via the Office of Administrative Hearings Rulemaking e-comments website at <https://minnesotaoah.granicusideas.com/discussions>.

Alternative Format. Upon request, this information can be made available in an alternative format, such as large print, braille, or audio. To make such a request, please contact the agency contact person at the address or telephone number listed above.

NOTE: Comments received in response to this notice will not necessarily be included in the formal rulemaking record submitted to the administrative law judge if and when a proceeding to adopt rules is started. The agency is required to submit to the judge only those written comments received in response to the rules after they are proposed. If you submitted comments during the development of the rules and you want to ensure that the Administrative Law Judge reviews the comments, you should resubmit the comments after the rules are formally proposed.

Dated: November 18, 2024

Amy Akbay, Chief General Counsel
and Delegated Decision-Maker on
Rulemaking Projects
Minnesota Department of Human Services



Signature