

Minnesota Attorney General: Administrative Rules Proceedings

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Version 3
August 20, 2018

Our File No. 1087

RULE REVIEW CHECKLIST

DATE RULE RECEIVED 10-5-84
DATE FOR REVIEW
DATE DUE 10-19-84

Adopted w/a hearing
Adopted w/o hearing
Temporary rule ✓

Approved approved 10-9-84 Disapproved Returned to Agency

Resubmitted Due
Approved Disapproved Returned to Agency

Date filed w/Secretary of State 10-19-84 Revisor approved 10/8/84 disapproved

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✓ Rule as Adopted

Rule as Proposed

✓ Order Adopting 10.5.84 Date

✓ Notice of Intent to Solicit Outside Opinion SR. 10.10.83

✓ Order for rulemaking
N/A date of Hearing

N/A Certificate of Board's Authorizing Resolution

✓ Notice of rulemaking
✓ Sufficiency

✓ Affidavit of Mailing Notice or rulemaking
8.15.84 At least ~~30~~ 25 days prior to ~~hearing~~/adoption

✓ Mailing list Certificate

✓ Publication in State Register
8.20.84 At least ~~30/20~~ 25 days prior to ~~hearing~~/adoption

N/A Hearing Examiner's Report

Chief Hearing Examiner's Report(s)
Approving H.E.'s Report
Approving agency action

✓ Agency's Findings of Fact

N/A LCRAR Report or agency Affidavit

Certificate of Board's Resolution Adopting Rules

Order Approving Incorporation by Reference

Statement of Need and Reasonableness

Petition for Adoption of a Rule

✓ Record (includes transcript or tape, exhibits, comments received by agency, requests for a hearing, and other relevant materials)

✓ Certificate of Compliance w/Rulemaking Procedures

✓ Affidavit of Mailing Notice of Submission to Attorney General

✓ Notice of Submission to the Attorney General

SF-00006-02

STATE OF MINNESOTA

DEPARTMENT ATTORNEY GENERAL

Office Memorandum

TO : Leonard Levine, Commissioner
Department of Human Services

DATE: October 19, 1984

ATTN: John Kirwin
Special Assistant Attorney General

FROM : Martha J. Casserly MJC
Special Assistant Attorney General

PHONE: 296-4692

SUBJECT: In the Matter of the Proposed Adoption of Emergency Rules Governing Authorization and Payment of a Special Needs Rate Exception for Very Dependent Persons with Special Needs, Minnesota Rules, Parts 9510.1020 - 9510.1140 (Emergency)

Enclosed herewith are the rules you have submitted for approval. These rules have been approved by this office and filed with the Secretary of State. Please note that they have not been filed with the State Register. This must be done promptly by your agency.

Upon receipt and before transmittal to your agency, however, it is important that you recheck these rules as to:

1. Affixation of stamps of the Attorney General and Secretary of State;

2. Coverage by these stamps of all rules submitted; and

3. Inclusion of all pages to the rules in the approved set.

If you have any questions in this regard, please contact me.

MJC:slz

Encs.

cc: Ms. Kathy Burek
Mr. Duane Harves

AG copy

Department of Human Services

Adopted Emergency Rules Related to Special Needs Rate Exception for Very Dependent Persons with Special Needs

Rules as Adopted

9510.1020 [Emergency] DEFINITIONS.

Subpart 1. **Scope.** The terms used in parts 9510.1020 to 9510.1140 [Emergency] have the meanings given them in this part.

Subp. 2. **Case manager.** "Case manager" ~~means the person designated by the county to provide direct services to the client, which involve client participation. The services include client assessment and screening, developing individual service plans, arranging and coordinating services, monitoring and evaluating client progress, and assuring that clients' rights are protected~~ has the meaning given it in parts 9525.0010 to 9525.0100 or their successor parts.

FF1

Subp. 3. **Client.** "Client" means a person who is receiving training and habilitation services or intermediate care facility for the mentally retarded services funded under the medical assistance program.

Subp. 4. **Commissioner.** "Commissioner" means the commissioner of the Department of Human Services or a designated representative.

Subp. 5. **County.** "County" means the county board of commissioners for the county which provides case management services to the client or the county board of commissioners' designated representative.

Subp. 6. **Employee benefits.** "Employee benefits" means compensation actually paid to or for the benefit of the employees other than salary. Employee benefits include group health or dental insurance, group life insurance, pensions or profit sharing plans, governmentally-required retirement plans, sick leave, vacations, and in-kind benefits. Employee benefits do not include payroll-related costs.

Subp. 7. **Equipment.** "Equipment" means ~~portable~~ aids

FF2

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designed to increase a client's independent functioning which are purchased for the client ~~and~~, remain the property of the client and can be moved with the client upon discharge. FF2

Subp. 8. **Intermediate care facility for the mentally retarded or ICF/MR.** "Intermediate care facility for the mentally retarded" or "ICF/MR" means a program licensed to serve mentally retarded residents under Minnesota Statutes, section 252.28, and a physical plant licensed as a supervised living facility under Minnesota Statutes, chapter 144, which together are certified by the Minnesota Department of Health as an intermediate care facility for the mentally retarded.

Subp. 9. **Provider.** "Provider" means the person or entity operating a licensed training and habilitation service or an ICF/MR.

Subp. 10. **Payroll-related costs.** "Payroll-related costs" means the employer's share of social security withholding taxes, workers' compensation insurance or actual cost if self insured, FF3 and state and federal unemployment compensation taxes or costs.

Subp. 11. **Special needs rate exception payment.** "Special needs rate exception payment" means a payment established under parts 9510.1020 to 9510.1140 [Emergency].

Subp. 12. **Staff intervention.** "Staff intervention" means the direct client care provided by program personnel or outside program consultants, or the training of direct care program personnel by outside program consultants for the purpose of addressing the client's needs as identified in the special needs rate exception application.

Subp. 13. **State hospital.** "State hospital" means an ICF/MR or nursing home owned and operated by the state of Minnesota.

Subp. 14. **Training and habilitation services.** "Training and habilitation services" means health and social services provided under Minnesota Statutes, sections 252.21 to 252.261 and 256B.501. "Training and habilitation services" does not include waivered services as defined in Minnesota Statutes, section 256B.501, subdivision 1.

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9510.1030 [Emergency] APPLICABILITY AND PURPOSE.

Subpart 1. **Applicability.** Parts 9510.1020 to 9510.1140 [Emergency] establish procedures for counties and providers to follow to seek authorization for a special needs rate exception for very dependent persons with special needs and establish procedures for determining the special needs rate exception payments for training and habilitation services and for intermediate care facilities for the mentally retarded. Parts 9510.1020 to 9510.1140 [Emergency] do not apply to persons with mental retardation who reside in a state ~~hospitals~~ hospital. FF4

Subp. 2. **Purpose.** The purpose of the special needs rate exception is to provide to a specific client those FF27 services whose costs are not included in the per diem rate of the intermediate care facility for the mentally retarded or the per diem rate of the training and habilitation service. The special needs rate exception payment is intended to fund short-term special needs for a specific client ~~and~~ in order to prevent the placement or retention of the client in a state hospital. The special needs rate exception is only to be allowed after all other funding sources or alternatives have been exhausted. FF5

9510.1040 [Emergency] APPLICATION TO BE COMPLETED BY PROVIDER.

Subpart 1. **Application.** The provider shall apply to the county for a special needs rate exception to cover the cost of additional equipment or services necessary to serve clients eligible under part 9510.1050 [Emergency], subpart 2. A separate application must be completed for each client unless the staff intervention or additional equipment is shared by the clients identified. If more than one client is included in the application, client information must be submitted for each client. The application must include the information in subparts 2 to 4.

Subp. 2. **Information about client's needs and methods used to address needs.** The provider must:

A. identify the client including:

(1) name;

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(2) name and address of the client's legal representative;

(3) medical assistance identification number;

(4) date of admission or anticipated admission to the provider's program;

(5) diagnosis;

(6) age;

(7) current residence; and

(8) current day program;

B. describe the client's special need or needs which put the client at risk of state hospital placement or continued state hospital placement;

C. describe the proposed staff intervention including:

(1) the amount of staff or consultant time required;

(2) qualifications of the program staff or outside consultants providing the intervention;

(3) type of intervention; FF 6

(4) frequency of intervention;

FF27 ~~(4)~~ (5) intensity of intervention; and

~~(5)~~ (6) duration of intervention;

D. describe the equipment needed and the plan for use of the equipment by the client;

E. identify the total cost and the unit cost of the equipment or the proposed staff intervention;

F. describe the modifications needed to integrate the equipment and staff intervention into the client's individual program plan;

G. describe the projected behavioral outcomes of the staff intervention or the use of the equipment and when the outcomes will be achieved;

H. describe how the client's progress toward the behavioral outcomes in item G will be measured and monitored by the provider; and

I. describe the degree of family involvement with the client.

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Subp. 3. **Information about provider.** The provider shall submit:

A. information identifying the provider including:

(1) name and address of the provider;

(2) name and address of the place where the services will be delivered, if different from subitem (1);

(3) name and telephone number of the person authorized to answer questions about the application; and

(4) medical assistance provider number; and

B. an explanation of the efforts used to meet the client's needs within the provider's current per diem rate, including modifications made to the individual program plan and other available resources used.

Subp. 4. **Supporting documentation.** The provider shall submit with the application the following:

A. A copy of the individual program plan including the measurable ~~program~~ behavioral outcomes which ~~will~~ are anticipated to be achieved by the client as a result of the proposed staff intervention or the equipment.

FF 7.

B. For an ICF/MR, a copy of the most recent facility profile as prepared by the quality assurance and review section of the Minnesota Department of Health. For a training and habilitation service program, a description of the physical condition, medical condition, and behavioral characteristics of the clients currently served by the program.

C. Documentation of the provider's historical costs on which the current per diem rate is based. An ICF/MR provider shall submit a copy of the cost report submitted under parts 9510.0500 to 9510.0890 or 12 MCAR SS 2.05301-2.05315 [Temporary] on which the current per diem rate is based and a copy of the most recent rate determination letter. A training and habilitation service program shall submit a copy of the translation worksheet required in 12 MCAR SS 2.0300-2.0304 [Temporary] and any adjustments made by the county or the commissioner.

D. Work papers showing the method used to determine

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the cost of the intervention identified in subpart 2, item E, including the hourly wage of ~~current~~ staff who will implement the intervention, the unit cost of consultation or training services, and the unit cost of equipment requested. FF8

E. Documentation that any equipment requested in the application is not available from the Department of Vocational Rehabilitation or covered under parts 9500.0750 to 9500.1080.

F. Documentation that any consultant services requested in the application are not services covered under parts 9500.0750 to 9500.1080.

G. The name and address of any vendor or contractor to be reimbursed by the special needs rate exception and the name of the person or persons who will actually provide the equipment or services if known.

9510.1050 [Emergency] COUNTY REVIEW OF PROVIDER'S APPLICATION.

Subpart 1. **Criteria.** The county shall determine if the provider submitting the application and the client or clients identified in the application meet the criteria in subparts 2 to 5. The county shall submit to the commissioner the applications which meet the criteria in subparts 2 to 5.

Subp. 2. **Client eligibility.** A client shall be eligible for a special needs rate exception if the client meets the criteria in items A to D:

A. the client is eligible for medical assistance under Minnesota Statutes, chapter 256B;

B. the client is a resident of an ICF/MR;

C. the client is mentally retarded according to the definitions in parts 9525.0010 to 9525.0100 or their successor parts or has related conditions defined in Code of Federal Regulations, title 42, section 435, and has at least one of the following characteristics: FF27

(1) severe maladaptive behavior as listed in unit (a), (b), or (c);

(a) self-injurious behavior which is a clear danger to the client; or

(b) aggressive behaviors which are a clear

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danger to others; or

(c) destructive behaviors which result in extensive property damage;

(2) severe physical disabilities such as deafness, blindness, or motor problems which require short-term environmental orientation training;

(3) medical conditions as listed in unit (a) or (b);

(a) degenerative diseases diagnosed by a physician such as Hurler's syndrome or tuberous sclerosis; or

(b) short-term medical disabilities that can be treated within the level of care the Minnesota Department of Health certifies the ICF/MR to provide, such as temporary immobility, intermittent catheterization, or post-operative recuperation;

D. the client is at risk of placement in a state hospital within 60 days or of remaining in a state hospital, unless additional resources are provided through parts 9510.1020 to 9510.1140 [Emergency] due to:

(1) conditions and characteristics described in item C; and

(2) the unavailability of other resources as determined under subpart 4.

Subp. 3. **General provider eligibility.** A provider shall be eligible for a special needs rate exception if the provider meets the following criteria:

A. the provider is willing to serve or continue to serve a client who is eligible for a special needs rate under subpart 2 if the special needs rate exception is approved;

B. the provider's historical cost per diem does not include the historical cost of serving clients with similar needs; and

C. the existing program or services offered by the provider cannot be modified to meet the client's needs within the provider's approved per diem rates, including any operating cost incentives or allowances. Amounts deposited in a funded

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depreciation account under 12 MCAR S 2.05304 [Temporary] C. shall not be affected by this item.

Subp. 4. **Availability of other resources.** The provider shall be eligible for a special needs rate exception only if the county determines that:

A. There are no other existing resources or services covered under parts 9500.0750 to 9500.1080 available to meet the client's needs.

B. There are no other appropriate ICFs/MR training and habilitation services or other services located within a reasonable distance available to meet the person's needs within their current rates. To determine if ~~a client should be placed~~ in another ICF/MR training and habilitation service or other service is appropriate for the client, the case manager shall:

(1) Consider the placement preferences of the client and family of the client. If the client cannot communicate a preference, the client's legal representative must be consulted.

(2) Consider whether the location of the alternative ICF/MR training and habilitation service or other service will impair the current level of family involvement.

(3) Consider the length of time that the client will need the additional services.

Subp. 5. **Evaluation of staff intervention and equipment purchases.** The county shall review the information submitted in accordance with part 9510.1040 [Emergency] to determine if:

A. the proposed staff intervention and equipment purchases meet the identified client needs and will result in continued placement in the ICF/MR or training and habilitation service after the special needs rate exception terminates; and

B. all proposed services and service providers comply with applicable professional and program licensure standards.

9510.1060 [Emergency] COUNTY APPROVAL PROCESS.

Subpart 1. **Time period.** The county shall approve or deny applications within 15 working days of the date the complete application was received from the provider. Approval or denial

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shall be made in accordance with subparts 2 to 4.

Subp. 2. **Consultation with county of financial responsibility.** If the county which receives the provider's application is not the county of financial responsibility, the county which receives the provider's application shall consult with the county of financial responsibility before approving the provider's application. The county of financial responsibility's statement of approval or objections must be forwarded to the commissioner with the provider's approved application or notice of denial. If the county of financial responsibility's statement of approval or objections are not forwarded to the commissioner, the county's application shall not be considered complete.

Subp. 3. **County approval or denial.** The county shall review the provider's application to determine if the application is complete and meets the criteria in 9510.1020 to 9510.1140 [Emergency]. The county shall approve the provider's application if the application is complete and meets the criteria. The county shall deny the provider's application if the application is incomplete or does not meet the criteria unless the provider's application can be adjusted to meet the criteria or the county submits a written request for a variance under part 9510.1100 [Emergency].

delgates

Subp. 4. **Notification.** The county shall send the provider and the client written notice of the county's decision on the provider's application as soon as a decision is made or within 15 working days after receipt of the application, whichever occurs first. If the county denies the provider's application, the county shall notify the commissioner, provider, and client, and the client's legal representative of the reasons for the denial in writing. The notice of the denial must state the specific provisions of the provider's application on which the county based the denial.

FF 12

9510.1070 [Emergency] COUNTY'S APPLICATION TO COMMISSIONER.

If the county approves the provider's application, the county shall apply to the commissioner for a special needs rate

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exception within 15 working days of the date of receipt by the county from the provider of a complete application and supporting documentation. To apply for a special needs rate exception, the county shall submit to the commissioner a copy of the provider's approved application and supporting documentation and the following documents:

A. documentation of the steps taken by the county to determine client and provider eligibility in accordance with parts 9510.1020 to 9510.1140 [Emergency], including documentation of the conditions which put the client at risk of state hospital placement or continued state hospital placement;

B. a copy of the client's most recent individual service plan;

C. a copy of the client's most recent annual individual program plan in the ICF/MR, individual program plan in the training and habilitation service, most recent medical evaluation, and most recent behavioral assessments, including any programs for aversive and deprivation procedures;

D. a copy of the client's state hospital discharge plan, if the special needs rate exception is requested to facilitate the client's discharge from a state hospital;

E. a copy of the county's plan to coordinate and monitor the implementation of the client's individual service plan;

F. documentation that the county of financial responsibility has approved the changes in the individual service plan if the county submitting the application is not the county of financial responsibility or if the county of financial responsibility does not approve the changes, a statement of the reasons the county of financial responsibility does not approve of the changes and a description of the actions, if any, to be taken by the county of financial responsibility; and

G. a description of the proposed services to be provided by the day training and habilitation service and the ICF/MR and how the services will be coordinated by the county and the providers. If the special ~~need allowance~~ <u>needs rate</u> FF13

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exception is not requested for both the day training and habilitation service and the ICF/MR, a written explanation must be provided by the county.

9510.1080 [Emergency] COMMISSIONER'S DETERMINATION.

The commissioner shall review the county application ~~for compliance with~~ to determine if the requirements in parts ~~9510.1050 [Emergency] and 9510.1070~~ 9510.1020 to 9510.1140 [Emergency] are satisfied in determining whether to approve or deny an application for a special needs rate exception. The commissioner shall notify the county, provider, ~~and~~ the client ~~or~~, and the client's legal representative of the decision within ten working days of the date the commissioner receives a completed application from the county. The special needs rate exception, if approved by the commissioner, shall be effective as of the date the county submits a completed application to the commissioner. If the commissioner denies the application, the commissioner shall notify the county, provider, and client or client's representative of the reasons for the denial.

9510.1090 [Emergency] ESTABLISHING SPECIAL NEEDS RATE EXCEPTION PAYMENT.

Subpart 1. **Established by commissioner.** The commissioner shall establish the special needs rate exception payment according to subparts 2 to 5.

Subp. 2. **Allowable costs.** Unless otherwise reimbursable by the Department of Vocational Rehabilitation or by direct payments under parts 9500.0750 to 9500.1080, the following costs, if approved by the commissioner in accordance with parts 9510.1020 to 9510.1140 [Emergency] and 12 MCAR S 2.05311 [Temporary] A., are allowable for purposes of establishing the special needs rate exception payment:

A. additional salary, employee benefits, ~~or~~ and payroll-related costs for direct care staff required to meet the client's needs as identified in the provider's application;

B. additional costs of services provided by a licensed medical, therapeutic, or rehabilitation practitioner; a

mental health practitioner supervised by a board-certified psychiatrist; or a licensed psychologist or licensed consulting psychologist;

C. the cost of additional equipment required to meet the client's needs as identified in the provider's application.

Subp. 3. **Nonallowable costs.** Only costs listed in subpart 2 are allowable for purposes of establishing the special needs rate exception. All other costs shall be disallowed.

Subp. 4. **Limitation.** The combined per diem costs of training and habilitation services, ICF/MR services, and the special needs rate exception payment and any other special needs rate exception payments in effect for the same client, shall not exceed the medical assistance per diem cost of providing services to mentally retarded persons in state hospitals. For the purpose of determining this limitation, items A to F apply.

A. The training and habilitation services per diem in effect on the date the provider's completed application is submitted to the county must be multiplied by the number of days the services are provided annually.

B. The ICF/MR's temporary or final payment rate in effect on the date the provider's completed application is submitted to the county must be multiplied by 365.

C. The special needs rate exception amount must not exceed the total allowable costs in subpart 2. If a special needs rate exception is necessary for a client in both the ICF/MR and the training and habilitation service program, ~~these~~ the amounts of both special needs rate exceptions must be combined. If the client is currently receiving a special needs rate exception, that amount must also be included. FF-17

D. The amounts determined in items A to C must be combined and divided by 365 to determine the combined per diem cost.

E. The state hospital medical assistance per diem rate must be the rate in effect on the date the provider's completed application is submitted to the county.

F. If the per diem cost in item D exceeds the per

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diem cost in item E, the commissioner shall deny the special needs rate exception application unless the per diem cost can be adjusted to meet the client's needs within the per diem cost in item E or the commissioner grants a variance under part 9510.1100 [Emergency].

Subp. 5. **Computation of special needs rate exception payment.** The special needs rate exception payment must be calculated as follows:

A. The cost of additional equipment allowed in accordance with subpart 2 shall be paid as a lump sum payment during the first billing period following approval of the special needs rate exception.

B. Except as provided in item C, in order to compute the special needs rate exception payment for personnel costs, the costs of additional personnel allowable according to subpart 2, items A and B, must be divided by the estimated number of days the staff intervention will be needed.

C. In order to compute the special needs rate exception per diem for personnel costs which vary during the estimated staff intervention period, the costs must be assigned on a monthly basis proportionate to the actual personnel costs incurred and then divided by the number of client days in the month.

D. Costs computed under items B and C shall be reimbursed as incurred and billed.

9510.1100 [Emergency] VARIANCE REQUEST.

Subpart 1. **Variance request.** The county may request a variance from the commissioner to approve a provider application which exceeds the limit in part 9510.1090 [Emergency], subpart 4 by up to ~~ten~~ 15 percent, if the provider meets the criteria in subpart 2.

Subp. 2. **Eligible provider.** A provider may apply for a variance if the provider provides or plans to provide training and habilitation services to a client who resides in an ICF/MR which has a per diem rate equal to or greater than 85 percent of the medical assistance per diem cost of providing services to

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mentally retarded persons in the state hospitals.

Subp. 3. **Submittal of request.** The county shall submit the written variance request, including documentation showing that the provider meets the criteria for a variance, with the county's application for the special needs rate exception payment.

Subp. 4. **Review of variance request; notification.** The commissioner shall review the variance request with the county's application for the special needs rate exception payment. If the county's application meets all of the requirements in parts 9510.1020 to 9510.1140 [Emergency] except the limitation in part 9510.1090 [Emergency] subpart 4 and the provider is eligible to apply for a variance under subpart 2, the commissioner shall approve the request. If the commissioner denies the variance request, the commissioner shall notify the county, provider, and client ~~or~~, and the client's legal representative of the reasons for the denial. FF19

9510.1110 [Emergency] EMERGENCY PROCEDURE.

Subpart 1. **Definition.** For the purposes of this part, an emergency is either a postoperative condition resulting from unplanned surgery, or the sudden onset of self-injurious or aggressive client behavior which results in an immediate danger to self or others; which would result in immediate admission to the state hospital in the absence of intervention.

Subp. 2. **Emergency approval.** In an emergency, the county may approve the addition of staff necessary to intervene in the emergency without obtaining prior approval of a special needs rate exception FF 20 from the commissioner, only staff costs shall be allowed under this part. In an emergency, the county shall:

A. notify the commissioner by telephone no later than the next working day and in writing within three working days of the client's situation, and state in the notice a description of the behaviors or medical condition FF 21 requiring emergency intervention and the actions taken by the provider to control the behaviors;

B. require the provider to submit an application

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completed in accordance with parts 9510.1020 to 9510.1140 [Emergency] within ten working days; and

C. submit to the commissioner an application for a special needs rate exception completed and submitted in accordance with parts 9510.1020 to 9510.1140 [Emergency].

Subp. 3. **Reimbursement for emergency services.** A special needs rate exception for the costs identified in part 9510.1090 [Emergency], subpart 2, item A, for staff approved in accordance with subpart 2 shall be reimbursable for a period not to exceed two weeks from the date ~~of the county's request~~ the county notifies the commissioner of the emergency. The provider shall submit ~~the~~ an application ~~required in subpart 2, item B~~ completed in accordance with parts 9510.1020 to 9510.1140 [Emergency], for continuation of the special needs rate exception for more than ~~ten working days~~ two weeks. The county shall notify the commissioner if the provider fails to submit the application required in subpart 2, item B, and the commissioner shall discontinue the emergency special needs rate exception payment.

FF22

FF23

9510.1120 [Emergency] DURATION OF SPECIAL NEEDS RATE EXCEPTION.

Subpart 1. **Maximum length of time for a special needs rate exception.** A special needs rate exception shall be established for a period not to exceed one year from the date of receipt of the county application by the commissioner except as provided in subpart 2.

Subp. 2. **Renewals.** If the county determines that a special needs rate exception should be continued after the period initially approved, the county shall submit a new application in accordance with parts 9510.1020 to 9510.1140 [Emergency] at least 30 days prior to the date the special needs rate exception is scheduled to terminate. The county application for a renewal must contain a program and fiscal evaluation demonstrating the effectiveness of the initial special needs rate exception. Special needs rate exceptions for staff intervention must be limited to a one-year renewal per identified special need.

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Subp. 3. **Terminations.** The commissioner may terminate the special needs rate exception prior to the date stated in the application upon recommendation by the county. The county may recommend termination if:

A. the rate is no longer necessary because other funds are available;

B. there is evidence that the funds have not been used for the purposes stated in the application;

C. the client's needs have changed and can be met without the special needs rate exception; or

D. no progress has been made in rectifying the identified problem area. This item shall not apply to services provided to clients with degenerative diseases if the criteria in subitems (1) to (4) are met:

(1) the service is required due to the degenerative disease;

(2) the client's physician has determined that no progress in the identified problem area can be expected;

(3) the county has submitted the determination by the client's physician to the commissioner and requested an exception to this item; and

(4) the request for an ~~application~~ exception to this item has been reviewed ~~and approved~~ by the state medical review team and the state medical review team has verified that no progress in the identified problem area can be expected. FF24

The commissioner shall notify the county and the provider 15 days before discontinuing payments due to termination.

9510.1130 [Emergency] RECORDS, REPORTS, AUDITS, AND REPAYMENT.

Subpart 1. **Records.** The provider shall maintain complete program and fiscal records and supporting documentation identifying the services and costs provided under the special needs rate exception. The costs must be maintained in well-organized files and identified in accounts separate from other facility or program costs. The provider's records shall be subject to the maintenance schedule, audit availability requirements, and other provisions of parts 9505.1750 to

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9505.2150.

Subp. 2. **Reports.** The county shall submit items A and B to the commissioner.

A. A quarterly program and fiscal review of the overall effectiveness of the services to be provided under the special needs allowance unless the commissioner determines that a different schedule of reviews is needed to evaluate the success of the program or redetermine the special needs rate exception payment. The review must be submitted ~~within~~ no more than 30 days ~~of~~ after the end of each quarter in which a special needs rate exception is in place and must include: FF25

(1) the provider's compliance with the application;

(2) the client's progress in attaining the measurable ~~program goals~~ behavioral outcomes FF26 in the individual program plan for which the special needs rate exception was requested; and

(3) the county and provider's plans to reduce reliance on the special needs rate exception.

B. A final report submitted within 90 days of termination of a special needs rate exception which documents the following:

(1) the extent to which the program goals identified in the special needs rate exception application were accomplished;

(2) the total amount of money paid to the provider through the special needs rate exception payment for equipment and actual costs and types of equipment purchased;

(3) the amount of expenditures incurred by the provider for costs allowable under part 9510.1090 [Emergency], subpart 2; and

(4) the total amount of unexpended funds determined by subtracting subitem (3) from subitem (2).

Subp. 3. **Audits.** The commissioner may conduct program and fiscal audits of any provider receiving a special needs rate exception to identify any overpayments made to the provider and

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ensure compliance with parts 9510.1020 to 9510.1140 [Emergency].

Subp. 4. **Repayment.** Any overpayments to the provider included in the special needs rate exception payment must be paid back to the medical assistance program within 60 days of the date the provider receives the notice of overpayment from the county or the commissioner. No retroactive payment must be made if the provider's costs exceed the special needs rate exception payment.

9510.1140 [Emergency] APPEALS.

Subpart 1. **By provider.** A provider whose application for a special needs rate exception is denied or not acted on within the deadlines in part 9510.1060 [Emergency], subpart 1, or whose special needs rate exception is suspended, reduced, or terminated by the county may appeal the action or decision to the commissioner. The appeal must be submitted to the commissioner in writing within 30 days of the date the provider received notification of the action or decision. The appeal must state the reasons the provider is appealing the county's action or decision including the bases for the county's action or decision which are disputed, the specific sections of the provider's application which the provider is relying on for the appeal, and an explanation of why the provider disagrees with the county's action or decision.

The commissioner shall review the application and supporting documentation submitted to the county and any additional documents submitted with the appeal to determine if the provider can prove by a preponderance of evidence that they are eligible for a special needs rate exception and in compliance with parts 9510.1020 to 9510.1140 [Emergency]. No special needs rate exception payment will be made pending the outcome of the appeal.

Subp. 2. **By county.** If the county disagrees with the commissioner's decision on the county application, the county may appeal the decision to the commissioner and request reconsideration. To be reconsidered, the appeal must be filed in writing, with the commissioner, within ten days of the date

APPROVED IN THE REVISOR OF STATUTES OFFICE BY:

the commissioner gave notice to the county of the decision on the county application. The appeal must state the reasons why the county is appealing the commissioner's decision and present evidence explaining why the county disagrees with the commissioner's decision. The commissioner shall review the evidence presented in the county's appeal and send written notification to the county of the decision on the appeal. No special needs rate exception payment shall be made pending the outcome of the appeal. The commissioner's decision on the appeal shall be final.

APPROVED IN THE
REVISOR OF STATUTES
OFFICE BY:

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED
OCT 19 1984
Joan Anderson Growe
Secretary of State
9:15 AM

APPROVED AS TO FORM AND LEGALITY
October 19 1984
HUBERT H. HUMPHREY, III
ATTORNEY GENERAL
BY Martha J Cassedy
SPECIAL ASSISTANT ATTORNEY GENERAL

STATE OF MINNESOTA
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF THE PROPOSED ADOPTION OF EMERGENCY RULES GOVERNING AUTHORIZATION AND PAYMENT OF A SPECIAL NEEDS RATE EXCEPTION FOR VERY DEPENDENT PERSONS WITH SPECIAL NEEDS, MINNESOTA RULES, PARTS 9510.1020 - 9510.1140 (EMERGENCY).

ORDER ADOPTING EMERGENCY RULES

The above-entitled matter was published in the State Register on August 20 , 1984, as a proposed emergency rule pursuant to Minnesota Statutes, sections 14.29 - 14.36.

After affording interested and affected persons an opportunity to submit written data and views within 25 days of the publication date, reviewing and considering the data and views, and determining that the above-captioned rules are needed and reasonable,

NOW, THEREFORE, IT IS ORDERED that these rules identified as emergency rules Governing Authorization and Payment of a Special Special Needs Rate Exception for Very Dependent Persons with Special Needs, Parts 9510.1020-9510.1140 (Emergency) are adopted this 5th day of October, 1984 pursuant to authority vested in me by Minnesota Statutes, section 256B.501 subd. 10.

STATE OF MINNESOTA

COMMISSIONER OF HUMAN SERVICES

Minnesota Pollution Control Agency
Solid and Hazardous Waste Division

Notice of Intent to Solicit Outside Opinion Regarding Rules Establishing Fee Systems for Hazardous Waste Generators and Hazardous Waste Facilities

Notice is hereby given that the Minnesota Pollution Control Agency (agency) is seeking information or opinions from sources outside the agency in preparing rules pursuant to Minnesota Laws 1983, chapter 121, section 25 which requires establishment of hazardous waste fee schedules by rule. The 1983 State Departments Appropriations Bill directs the agency to raise $794,400 in the biennium ending June 30, 1985 through the collection of fees.

The law requires establishment of fee schedules for hazardous waste facility permit application fees, annual facility operator's fees, permit reissuance fees, hazardous waste generator fees, and a generator surcharge. The facility fees should be representative of the work years of effort required by the agency to complete review of permit applications and to assure compliance of facility operations with permits and rules. The generator fees can be no higher than the fees imposed by the metropolitan counties (Anoka, Carver, Dakota, Hennepin, Ramsey, Scott and Washington).

The Minnesota Pollution Control Agency requests information and comment concerning the subject of these rules.

Written technical statements and comments concerning these matters will be accepted for consideration until October 21, 1983, and should be addressed to the following.

Steven A. Reed
Solid and Hazardous Waste Division
Minnesota Pollution Control Agency
1935 West County Road B-2
Roseville, Minnesota 55113

Oral statements of technical information and comments will be accepted during regular business hours over the telephone at 612/296-7786 or in person at the above address.

Any written material received by the Minnesota Pollution Control Agency shall become part of the background record regarding these rules.

Department of Public Welfare
Mental Health Bureau

Notice of Intent to Solicit Outside Opinion Concerning Proposed Temporary Rules on Medical Assistance Funding for Very Dependent Mentally Retarded Persons with Special Needs

Notice is hereby given that the Minnesota Department of Public Welfare is considering draft Temporary Rules 12 MCAR §§ 2.18601-2.18607, Medical Assistance Funding for Very Dependent Mentally Retarded Persons with Special Needs. These rules will apply to Developmental Achievement Centers and Other Training and Habilitation Services, Waivered Services, and Intermediate Care Facilities for the Mentally Retarded.

Authority for these rules is contained in Laws of 1983, chapter 312, article 9.

All interested or affected persons or groups are requested to participate.

Statements of information and comment may be made orally or in writing.

Written statements of information and comment may be addressed to:

Cindy Becker
Mental Health Bureau/Division of Mental Retardation
Department of Public Welfare
Centennial Office Building
St. Paul, MN 55155

Oral statements of information and comment will be received during regular business hours over the telephone at (612) 296-6916.

STATE OF MINNESOTA
DEPARTMENT OF HUMAN SERVICES

Proposed Emergency Rules Governing
Authorization and Payment of a
Special Needs Rate Exception for
Very Dependent Persons with Special
Needs, Minnesota Rules, parts 9510.1020
to 9510.1140 (Emergency).

ORDER FOR PUBLICATION
OF AN EMERGENCY RULE

IT IS ORDERED this 3rd day of August, 1984, that the proposed emergency rule in the above-entitled matter be published in the State Register.

LEONARD W. LEVINE
Commissioner of Human Services

BF/35

STATE OF MINNESOTA
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF PROPOSED EMERGENCY RULES GOVERNING AUTHORIZATION AND PAYMENT OF A SPECIAL NEEDS RATE EXCEPTION FOR VERY DEPENDENT PERSONS WITH SPECIAL NEEDS, MINNESOTA RULES, PARTS 9510.1020 to 9510.1140 (EMERGENCY)

AFFIDAVIT OF MAILING

Wendy Johnson, being first duly sworn, deposes and says:

That on the 15th day of August, 1984, at the City of St. Paul, County of Ramsey, State of Minnesota, she served the attached Notice of Intent to Adopt Emergency Rules by depositing in the State of Minnesota Central Mail System for first class mailing, a copy thereof, properly enveloped, with postage prepaid, on all persons and associations who have requested that their names be placed on file with the Department of Human Services for the purpose of receiving notice of the proposed adoption of rules by this Department.

Wendy Johnson

Subscribed and sworn to before me

this 15th day of August, 1984.

Jacqueline Sue Wierstad

JACQUELINE SUE WIERSTAD
NOTARY PUBLIC-MINNESOTA
RAMSEY COUNTY
MY COMMISSION EXPIRES OCTOBER 12, 1990

STATE OF MINNESOTA
DEPARTMENT OF HUMAN SERVICES

Proposed Emergency Rules Governing
Authorization and Payment of a
Special Needs Rate Exception for
Very Dependent Persons with Special
Needs, Minnesota Rules, parts 9510.1020
to 9510.1140 (Emergency).

NOTICE OF INTENT TO
ADOPT EMERGENCY RULES

The State Department of Human Services proposes to adopt the above-entitled emergency rules to implement Minnesota Statutes, Section 256B.501, Subd. 8.

Persons interested in these rules have until 4:30 p.m., September 14, 1984 to submit written comments. The proposed emergency rules may be modified if the modifications are supported by the data and views submitted to the agency and do not result in a substantial change in the proposed language. Written comments should be sent to:

Susan Canine
Department of Human Services
4th Floor, Centennial Office Building
St. Paul, MN 55155

Upon adoption of these emergency rules, this notice, all written comments received, and the adopted emergency rules will be delivered to the Attorney General and to the Revisor of Statutes for review as to form and legality.

Notice of the date of submission of the proposed emergency rule to the attorney general will be mailed to any person requesting to receive this notice. The Attorney General shall approve or disapprove the proposed emergency rule and any modifications on the tenth working day following the date of receipt of the proposed emergency rule from the agency.

The adopted emergency rules will not become effective without the Attorney General's approval and the Revisor of Statutes' certification of the rules' form. Emergency rules take effect five working days after approval by the Attorney General.

As required by the Administrative Procedures Act, Minnesota Statutes, chapter 14, these emergency rules shall be in effect for up to 180 days following their adoption and may be continued in effect for an additional 180 days if the Commissioner gives notice of continuation by publishing notice in the State Register and mailing the same notice to all persons registered with the Commissioner to receive notice of rulemaking proceedings. The emergency rules shall not be effective 360 days after their effective date without following the procedures in Minnesota Statutes, sections 14.13 to 14.20.

The purpose of proposed Minnesota Rules, parts 9510.1020 to 9510.1140 [Emergency] is to establish procedures for counties and providers to follow to seek authorization for a special needs rate exception for very dependent persons with special needs and establish procedures for determining the special needs rate exception payments for training and habilitation services and for intermediate care facilities for the mentally retarded.

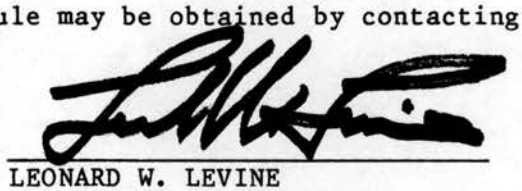
Proposed Minnesota Rules, parts 9510.1020 to 9510.1140 [Emergency] apply to providers operating licensed training and habilitation services or intermediate care facilities for the mentally retarded and counties who are seeking authorization of a special needs rate exception for very dependent persons with special needs.

Proposed Minnesota Rules, parts 9510.1020 to 9510.1140 [Emergency] include provider applications, county review of provider applications, client eligibility, provider eligibility, county approval process, county's application to the commissioner, commissioner's determination, establishing the special needs rate exception payment, variance requests, emergency procedures, duration of the special needs rate exception, records, reports, audits and repayment, and appeals.

These emergency rules will not result in any additional state or county spending beyond the amount of funds appropriated by the legislature.

A free copy of the proposed emergency rule may be obtained by contacting Susan Canine at 612/297-1241.

8-3-84



LEONARD W. LEVINE
Commissioner of Human Services

BF/33

STATE OF MINNESOTA
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF PROPOSED EMERGENCY RULES GOVERNING AUTHORIZATION AND PAYMENT OF A SPECIAL NEEDS RATE EXCEPTION FOR VERY DEPENDENT PERSONS WITH SPECIAL NEEDS, MINNESOTA RULES, PARTS 9510.1020 to 9510.1140 (EMERGENCY)

AFFIDAVIT OF ADDITIONAL MAILING

Wendy Johnson, being first duly sworn, deposes and says:

That on the 15th day of August, 1984, at the City of St. Paul, County of Ramsey, State of Minnesota, in addition to serving the attached Notice of Intent to Adopt Emergency Rules to all persons and associations who have requested that their names be placed on file for the purpose of receiving notice of the proposed adoption of rules by this Department, she also served the attached Notice by depositing in the State of Minnesota Central Mail System for first class mailing, a copy thereof, properly enveloped, with postage prepaid to the following agencies:

(see attached sheet)

Wendy Johnson

Subscribed and sworn to before me

this 15th day of August, 1984.

Jacqueline Sue Wierstad

JACQUELINE SUE WIERSTAD
NOTARY PUBLIC-MINNESOTA
RAMSEY COUNTY
MY COMMISSION EXPIRES OCTOBER 12, 1990

Ms. Jane Wells
ARRM
1885 Unviersity Avenue
St. Paul, MN 55104-3486

Duwayne Shimpach
Martion County Human Services
Courthouse
Fairmont, MN 56031

Mr. G. Mueller
MN DACA
1821 University Ave. #277
St. Paul, MN 55104

Pat Serrano
Stearns County Social Services

Mr. Milton Conrath
Mekton, Inc.
633 N. Snelling
St. Paul, MN 55104

Anne Henry
Legal Advocacy for Developmentally
Disabled Persons in MN
222 Grain Exchange Building
323 Fourth Ave. South
Minneapolis, MN 55415

Ms. Bev Driscoll
Association of Minnesota Counties
555 Park S-reet #300
St. Paul, MN 55103

Colleen Weick
DD Council
201 Capitol Square
State Planning
St. Paul, MN 55101

Bob Speltz
Ramsey County
5 NW

Carol Janson
Social Services Bureau
4th Floor Centennial Bldg.

Ms. Sue Abderholden
MN ARC
3225 Lyndale Avenue South
Minneapolis, MN 55408

Mr. David Medernach
Wicklough, Inc.
905 E. 7th Street
St. Paul, MN 55106

Mike Corman
357 9th Avenue North
South St. Paul, MN 55075

Walter Baldus
356 Brutus Drive
Lakeville, MN 55044

Ms. Mary Martin
AARM
1885 University Avenue
St. Paul, MN 55104-3486

Ken Stinson
Willmar State Hospital
Box 1128
Willmar, MN 56201

Mr. Harold Tapper
AARM
1885 University Avenue
St. Paul, MN 55104-3486

Edward Van Allen
Ramsey County Human Services Dept.

INTEROFFICE MAIL

Pat Sajevic
Norhaven
1394 Jackson Street
St. Paul, MN 55117

Sandra Schweich
Dungarvin Inc.
863 Front Ave.
St. Paul, MN 55103

Dianna Krogstad
DAC's of Minneapolis
2730 31st Street
Minneapolis, MN 55406

Michale Sarafloean
Norhaven, Inc.
1394 Jackson Street
St. Paul, MN 55117

Jim Abts
Dir. Social Services Division
Ramsey Co. Human Services Dept.

INTEROFFICE MAIL

Cindy Becker
MR Division
4th Floor Centennial Bldg.

nn Bruggemeyer
Income Maintenance Bureua
1st Floor
Space Center Bldg.

Warren Bock
MR Division
4th Floor Centennial Bdlg.

STATE OF MINNESOTA
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF PROPOSED EMERGENCY RULES GOVERNING AUTHORIZATION AND PAYMENT OF A SPECIAL NEEDS RATE EXCEPTION FOR VERY DEPENDENT PERSONS WITH SPECIAL NEEDS, MINNESOTA RULES, PARTS 9510.1020 to 9510.1140 (EMERGENCY)

CERTIFICATE

I hereby certify that the list of persons, associations, and other interested groups who have requested, pursuant ot Minn. Stat. 14.14, subd. 1, that their names be placed on file with and maintained by the Department of Human Services for the purpose of receiving notice of the proposed adoption of rules by this Department is accurate and complete as of 4:00, P.M., this 15th day of August, 1984.



spends more than five hours in any month or more than $250.00, not including his own travel expenses and membership dues, in any year, for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials; or

(b) Who spends more than $250.00, not including his own traveling expenses and membership dues, in any year for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials.

The statute provides certain exceptions. Questions should be directed to the Ethical Practices Board, 41 State Office Building, St. Paul, Minnesota 55155, (612) 296-5615.

August 17, 1984

James J. Solem
Executive Director

Rule as Proposed

4900.1630 ENERGY CONSERVATION DEFERRED LOAN AND GRANT PROGRAM.

Subpart 1. Additional recipient eligibility criteria. In addition to meeting the applicable eligibility criteria in Code of Federal Regulations, title 24, section 1800.63, a deferred loan or grant recipient:

A. shall own and occupy the one-to-four family residential building, as defined in Code of Federal Regulations, title 24, section 1800.3, to be improved with the proceeds of a deferred loan and bank assistance or a grant and bank assistance; and

B. shall not be seeking, have a current commitment for, or be able to obtain within a reasonable period of time, assistance for the same eligible energy conservation improvements under subpart 5 from any of the following programs: federal Weatherization Program under United States Code, title 42, section 6863; ~~agency home improvement loan program under parts 4900.0510 and 4900.0520;~~ and agency home improvement grant and rehabilitation loan programs under parts 4900.0610 to 4900.0700~~; and energy conservation assistance programs available from local entities~~.

Subp. 2. to 9. [Unchanged.]

Department of Human Services

Proposed Emergency Rules Relating to Special Needs Rate Exception for Very Dependent Persons with Special Needs

Notice of Intent to Adopt Emergency Rules

The State Department of Human Services proposes to adopt the above-entitled emergency rules to implement Minnesota Statutes, Section 256B.501, Subd. 8.

Persons interested in these rules have until 4:30 p.m., September 14, 1984 to submit written comments. The proposed emergency rules may be modified if the modifications are supported by the data and views submitted to the agency and do not result in a substantial change in the proposed language. Written comments should be sent to:

Susan Canine
Department of Human Services
4th Floor, Centennial Office Building
St. Paul, MN 55155

Upon adoption of these emergency rules, this notice, all written comments received, and the adopted emergency rules will be delivered to the Attorney General and to the Revisor of Statutes for review as to form and legality.

Notice of the date of submission of the proposed emergency rule to the attorney general will be mailed to any person requesting to receive this notice. The Attorney General shall approve or disapprove the proposed emergency rule and any modifications on the tenth working day following the date of receipt of the proposed emergency rule from the agency.

KEY: PROPOSED RULES SECTION — Underlining indicates additions to existing rule language. ~~Strike outs~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material." ADOPTED RULES SECTION — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language.

The adopted emergency rules will not become effective without the Attorney General's approval and the Revisor of Statutes' certification of the rules' form. Emergency rules take effect five working days after approval by the Attorney General.

As required by the Administrative Procedures Act, Minnesota Statutes, chapter 14, these emergency rules shall be in effect for up to 180 days following their adoption and may be continued in effect for an additional 180 days if the Commissioner gives notice of continuation by publishing notice in the *State Register* and mailing the same notice to all persons registered with the Commissioner to receive notice of rulemaking proceedings. The emergency rules shall not be effective 360 days after their effective date without following the procedures in Minnesota Statutes, sections 14.13 to 14.20.

The purpose of proposed Minnesota Rules, parts 9510.1020 to 9510.1140 [Emergency] is to establish procedures for counties and providers to follow to seek authorization for a special needs rate exception for very dependent persons with special needs and establish procedures for determining the special needs rate exception payments for training and habilitation services and for intermediate care facilities for the mentally retarded.

Proposed Minnesota Rules, parts 9510.1020 to 9510.1140 [Emergency] apply to providers operating licensed training and habilitation services or intermediate care facilities for the mentally retarded and counties who are seeking authorization of a special needs rate exception for very dependent persons with special needs.

Proposed Minnesota Rules, parts 9510.1020 to 9510.1140 [Emergency] include provider applications, county review of provider applications, client eligibility, provider eligibility, county approval process, county's application to the commissioner, commissioner's determination, establishing the special needs rate exception payment, variance requests, emergency procedures, duration of the special needs rate exception, records, reports, audits and repayment, and appeals.

These emergency rules will not result in any additional state or county spending beyond the amount of funds appropriated by the legislature.

A free copy of the proposed emergency rule may be obtained by contacting Susan Canine at 612/297-1241.

Leonard W. Levine
Commissioner of Human Services

Rules as Proposed (all new material)

9510.1020 [Emergency] DEFINITIONS.

Subpart 1. Scope. The terms used in parts 9510.1020 to 9510.1140 [Emergency] have the meanings given them in this part.

Subp. 2. Case manager. "Case manager" means the person designated by the county to provide direct services to the client, which involve client participation. The services include client assessment and screening, developing individual service plans, arranging and coordinating services, monitoring and evaluating client progress, and assuring that clients' rights are protected.

Subp. 3. Client. "Client" means a person who is receiving training and habilitation services or intermediate care facility for the mentally retarded services funded under the medical assistance program.

Subp. 4. Commissioner. "Commissioner" means the commissioner of the Department of Human Services or a designated representative.

Subp. 5. County. "County" means the county board of commissioners for the county which provides case management services to the client or the county board of commissioners' designated representative.

Subp. 6. Employee benefits. "Employee benefits" means compensation actually paid to or for the benefit of the employees other than salary. Employee benefits include group health or dental insurance, group life insurance, pensions or profit sharing plans, governmentally-required retirement plans, sick leave, vacations, and in-kind benefits. Employee benefits do not include payroll-related costs.

Subp. 7. Equipment. "Equipment" means portable aids designed to increase a client's independent functioning which are purchased for the client and remain the property of the client upon discharge.

Subp. 8. Intermediate care facility for the mentally retarded or ICF/MR. "Intermediate care facility for the mentally retarded" or "ICF/MR" means a program licensed to serve mentally retarded residents under Minnesota Statutes, section 252.28, and a physical plant licensed as a supervised living facility under Minnesota Statutes, chapter 144, which together are certified by the Minnesota Department of Health as an intermediate care facility for the mentally retarded.

Subp. 9. Provider. "Provider" means the person or entity operating a licensed training and habilitation service or an ICF/MR.

Subp. 10. Payroll-related costs. "Payroll-related costs" means the employer's share of social security withholding taxes, workers' compensation insurance, and state and federal unemployment compensation taxes or costs.

Subp. 11. Special needs rate exception payment. "Special needs rate exception payment" means a payment established under parts 9510.1020 to 9510.1140 [Emergency].

Subp. 12. Staff intervention. "Staff intervention" means the direct client care provided by program personnel or outside program consultants, or the training of direct care program personnel by outside program consultants for the purpose of addressing the client's needs as identified in the special needs rate exception application.

Subp. 13. State hospital. "State hospital" means an ICF/MR or nursing home owned and operated by the state of Minnesota.

Subp. 14. Training and habilitation services. "Training and habilitation services" means health and social services provided under Minnesota Statutes, sections 252.21 to 252.261 and 256B.501. "Training and habilitation services" does not include waivered services as defined in Minnesota Statutes, section 256B.501, subdivision 1.

9510.1030 [Emergency] APPLICABILITY AND PURPOSE.

Subpart 1. Applicability. Parts 9510.1020 to 9510.1140 [Emergency] establish procedures for counties and providers to follow to seek authorization for a special needs rate exception for very dependent persons with special needs and establish procedures for determining the special needs rate exception payments for training and habilitation services and for intermediate care facilities for the mentally retarded. Parts 9510.1020 to 9510.1140 [Emergency] do not apply to state hospitals.

Subp. 2. Purpose. The purpose of the special needs rate exception is to provide to a specific client services whose costs are not included in the per diem rate of the intermediate care facility for the mentally retarded or the per diem rate of the training and habilitation service. The special needs rate exception payment is intended to fund short-term special needs for a specific client and is only to be allowed after all other funding sources or alternatives have been exhausted.

9510.1040 [Emergency] APPLICATION TO BE COMPLETED BY PROVIDER.

Subpart 1. Application. The provider shall apply to the county for a special needs rate exception to cover the cost of additional equipment or services necessary to serve clients eligible under part 9510.1050 [Emergency], subpart 2. A separate application must be completed for each client unless the staff intervention or additional equipment is shared by the clients identified. If more than one client is included in the application, client information must be submitted for each client. The application must include the information in subparts 2 to 4.

Subp. 2. Information about client's needs and methods used to address needs. The provider must:

A. identify the client including:

(1) name;

(2) name and address of the client's legal representative;

(3) medical assistance identification number;

(4) date of admission or anticipated admission to the provider's program;

(5) diagnosis;

(6) age;

(7) current residence; and

(8) current day program;

B. describe the client's special need or needs which put the client at risk of state hospital placement or continued state hospital placement;

C. describe the proposed staff intervention including:

(1) the amount of staff or consultant time required;

(2) qualifications of the program staff or outside consultants providing the intervention;

(3) frequency of intervention;

(4) intensity of intervention; and

(5) duration of intervention;

D. describe the equipment needed and the plan for use of the equipment by the client;

KEY: PROPOSED RULES SECTION — Underlining indicates additions to existing rule language. ~~Strike outs~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material." ADOPTED RULES SECTION — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language.

E. identify the total cost and the unit cost of the equipment or the proposed staff intervention;

F. describe the modifications needed to integrate the equipment and staff intervention into the client's individual program plan;

G. describe the projected behavioral outcomes of the staff intervention or the use of the equipment and when the outcomes will be achieved;

H. describe how the client's progress toward the behavioral outcomes in item G will be measured and monitored by the provider; and

I. describe the degree of family involvement with the client.

Subp. 3. Information about provider. The provider shall submit:

A. information identifying the provider including:

(1) name and address of the provider;

(2) name and address of the place where the services will be delivered, if different from subitem (1);

(3) name and telephone number of the person authorized to answer questions about the application; and

(4) medical assistance provider number; and

B. an explanation of the efforts used to meed the client's needs within the provider's current per diem rate, including modifications made to the individual program plan and other available resources used.

Subp. 4. Supporting documentation. The provider shall submit with the application the following:

A. A copy of the individual program plan including the measurable program outcomes which will be achieved by the client as a result of the proposed staff intervention or the equipment.

B. For an ICF/MR, a copy of the most recent facility profile as prepared by the quality assurance and review section of the Minnesota Department of Health. For a training and habilitation service program, a description of the physical condition, medical condition, and behavioral characteristics of the clients currently served by the program.

C. Documentation of the provider's historical costs on which the current per diem rate is based. An ICF/MR provider shall submit a copy of the cost report submitted under parts 9510.0500 to 9510.0890 or 12 MCAR §§ 2.05301-2.05315 [Temporary] on which the current per diem rate is based and a copy of the most recent rate determination letter. A training and habilitation service program shall submit a copy of the translation worksheet required in 12 MCAR §§ 2.0300-2.0304 [Temporary] and any adjustments made by the county or the commissioner.

D. Work papers showing the method used to determine the cost of the intervention identified in subpart 2, item E, including the hourly wage of current staff who will implement the intervention, the unit cost of consultation or training services, and the unit cost of equipment requested.

E. Documentation that any equipment requested in the application is not available from the Department of Vocational Rehabilitation or covered under parts 9500.0750 to 9500.1080.

F. Documentation that any consultant services requested in the application are not services covered under parts 9500.0750 to 9500.1080.

G. The name and address of any vendor or contractor to be reimbursed by the special needs rate exception and the name of the person or persons who will actually provide the equipment or services if known.

9510.1050 [Emergency] COUNTY REVIEW OF PROVIDER'S APPLICATION.

Subpart 1. Criteria. The county shall determine if the provider submitting the application and the client or clients identified in the application meet the criteria in subparts 2 to 5. The county shall submit to the commissioner the applications which meet the criteria in subparts 2 to 5.

Subp. 2. Client eligibility. A client shall be eligible for a special needs rate exception if the client meets the criteria in items A to D:

A. the client is eligible for medical assistance under Minnesota Statutes, chapter 256B;

B. the client is a resident of an ICF/MR;

C. the client is mentally retarded according to the definitions in parts 9525.0010 to 9525.0100 or has related conditions defined in Code of Federal Regulations, title 42, section 435, and has at least one of the following characteristics:

(1) severe maladaptive behavior as listed in unit (a), (b), or (c);

(a) self-injurious behavior which is a clear danger to the client; or

(b) aggressive behaviors which are a clear danger to others; or

(c) destructive behaviors which result in extensive property damage;

(2) severe physical disabilities such as deafness, blindness, or motor problems which require short-term environmental orientation training;

(3) medical conditions as listed in unit (a) or (b);

(a) degenerative diseases diagnosed by a physician such as Hurler's syndrome or tuberous sclerosis; or

(b) short-term medical disabilities that can be treated within the level of care the Minnesota Department of Health certifies the ICF/MR to provide, such as temporary immobility, intermittent catheterization, or post-operative recuperation;

D. the client is at risk of placement in a state hospital within 60 days or of remaining in a state hospital, unless additional resources are provided through parts 9510.1020 to 9510.1140 [Emergency] due to:

(1) conditions and characteristics described in item C; and

(2) the unavailability of other resources as determined under subpart 4.

Subp. 3. General provider eligibility. A provider shall be eligible for a special needs rate exception if the provider meets the following criteria:

A. the provider is willing to serve or continue to serve a client who is eligible for a special needs rate under subpart 2 if the special needs rate exception is approved;

B. the provider's historical cost per diem does not include the historical cost of serving clients with similar needs; and

C. the existing program or services offered by the provider cannot be modified to meet the client's needs within the provider's approved per diem rates, including any operating cost incentives or allowances.

Subp. 4. Availability of other resources. The provider shall be eligible for a special needs rate exception only if the county determines that:

A. There are no other existing resources or services covered under parts 9500.0750 to 9500.1080 available to meet the client's needs.

B. There are no other appropriate ICFs/MR or services located within a reasonable distance available to meet the person's needs. To determine if a client should be placed in another ICF/MR or service, the case manager shall:

(1) Consider the placement preferences of the client and family of the client. If the client cannot communicate a preference, the client's legal representative must be consulted.

(2) Consider whether the location of the alternative ICF/MR or service will impair the current level of family involvement.

Subp. 5. Evaluation of staff intervention and equipment purchases. The county shall review the information submitted in accordance with part 9510.1040 [Emergency] to determine if:

A. the proposed staff intervention and equipment purchases meet the identified client needs and will result in continued placement in the ICF/MR or training and habilitation service after the special needs rate exception terminates; and

B. all proposed services and service providers comply with applicable professional and program licensure standards.

9510.1060 [Emergency] COUNTY APPROVAL PROCESS.

Subpart 1. Time period. The county shall approve or deny applications within 15 working days of the date the complete application was received from the provider. Approval or denial shall be made in accordance with subparts 2 to 4.

Subp. 2. Consultation with county of financial responsibility. If the county which receives the provider's application is not the county of financial responsibility, the county which receives the provider's application shall consult with the county of financial responsibility before approving the provider's application. The county of financial responsibility's statement of approval or

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objections must be forwarded to the commissioner with the provider's approved application or notice of denial. If the county of financial responsibility's statement of approval or objections are not forwarded to the commissioner, the county's application shall not be considered complete.

Subp. 3. County approval or denial. The county shall review the provider's application to determine if the application is complete and meets the criteria in 9510.1020 to 9510.1140 [Emergency]. The county shall approve the provider's application if the application is complete and meets the criteria. The county shall deny the provider's application if the application is incomplete or does not meet the criteria unless the provider's application can be adjusted to meet the criteria or the county submits a written request for a variance under part 9510.1100 [Emergency].

Subp. 4. Notification. The county shall send the provider and the client written notice of the county's decision on the provider's application. If the county denies the provider's application, the county shall notify the commissioner, provider, and client of the reasons for the denial in writing. The notice of the denial must state the specific provisions of the provider's application on which the county based the denial.

9510.1070 [Emergency] COUNTY'S APPLICATION TO COMMISSIONER.

If the county approves the provider's application, the county shall apply to the commissioner for a special needs rate exception within 15 working days of the date of receipt by the county from the provider of a complete application and supporting documentation. To apply for a special needs rate exception, the county shall submit to the commissioner a copy of the provider's approved application and supporting documentation and the following documents:

A. documentation of the steps taken by the county to determine client and provider eligibility in accordance with parts 9510.1020 to 9510.1140 [Emergency], including documentation of the conditions which put the client at risk of state hospital placement or continued state hospital placement;

B. a copy of the client's most recent individual service plan;

C. a copy of the client's most recent annual individual program plan in the ICF/MR, individual program plan in the training and habilitation service, most recent medical evaluation, and most recent behavioral assessments, including any programs for aversive and deprivation procedures;

D. a copy of the client's state hospital discharge plan, if the special needs rate exception is requested to facilitate the client's discharge from a state hospital;

E. a copy of the county's plan to coordinate and monitor the implementation of the client's individual service plan;

F. documentation that the county of financial responsibility has approved the changes in the individual service plan if the county submitting the application is not the county of financial responsibility or if the county of financial responsibility does not approve the changes, a statement of the reasons the county of financial responsibility does not approve of the changes and a description of the actions, if any, to be taken by the county of financial responsibility; and

G. a description of the proposed services to be provided by the day training and habilitation service and the ICF/MR and how the services will be coordinated by the county and the providers. If the special need allowance is not requested for both the day training and habilitation service and the ICF/MR, a written explanation must be provided by the county.

9510.1080 [Emergency] COMMISSIONER'S DETERMINATION.

The commissioner shall review the county application for compliance with parts 9510.1050 [Emergency] and 9510.1070 [Emergency] in determining whether to approve or deny an application for a special needs rate exception. The commissioner shall notify the county, provider, and the client or the client's legal representative of the decision within ten working days of the date the commissioner receives a completed application from the county. The special needs rate exception, if approved by the commissioner, shall be effective as of the date the county submits a completed application to the commissioner. If the commissioner denies the application, the commissioner shall notify the county, provider, and client or client's representative of the reasons for the denial.

9510.1090 [Emergency] ESTABLISHING SPECIAL NEEDS RATE EXCEPTION PAYMENT.

Subpart 1. Established by commissioner. The commissioner shall establish the special needs rate exception payment according to subparts 2 to 5.

Subp. 2. Allowable costs. Unless otherwise reimbursable by the Department of Vocational Rehabilitation or by direct payments under parts 9500.0750 to 9500.1080, the following costs, if approved by the commissioner, are allowable for purposes of establishing the special needs rate exception payment:

A. additional salary, employee benefits, or payroll-related costs for direct care staff required to meet the client's needs as identified in the provider's application;

B. additional costs of services provided by a licensed medical, therapeutic, or rehabilitation practitioner; a mental health practitioner supervised by a board-certified psychiatrist; or a licensed psychologist or licensed consulting psychologist;

C. the cost of additional equipment required to meet the client's needs as identified in the provider's application.

Subp. 3. Nonallowable costs. Only costs listed in subpart 2 are allowable for purposes of establishing the special needs rate exception. All other costs shall be disallowed.

Subp. 4. Limitation. The combined per diem costs of training and habilitation services, ICF/MR services, and the special needs rate exception payment and any other special needs rate exception payments in effect for the same client, shall not exceed the medical assistance per diem cost of providing services to mentally retarded persons in state hospitals. For the purpose of determining this limitation, items A to F apply.

A. The training and habilitation services per diem in effect on the date the provider's completed application is submitted to the county must be mutliplied by the number of days the services are provided annually.

B. The ICF/MR's temporary or final payment rate in effect on the date the provider's completed application is submitted to the county must be multiplied by 365.

C. The special needs rate exception amount must not exceed the total allowable costs in subpart 2. If a special needs rate exception is necessary for a client in both the ICF/MR and the training and habilitation service program, these amounts must be combined. If the client is currently receiving a special needs rate exception, that amount must also be included.

D. The amounts determined in items A to C must be combined and divided by 365 to determine the combined per diem cost.

E. The state hospital medical assistance per diem rate must be the rate in effect on the date the provider's completed application is submitted to the county.

F. If the per diem cost in item D exceeds the per diem cost in item E, the commissioner shall deny the special needs rate exception application unless the per diem cost can be adjusted to meet the client's needs within the per diem cost in item E or the commissioner grants a variance under part 9510.1100 [Emergency].

Subp. 5. Computation of special needs rate exception payment. The special needs rate exception payment must be calculated as follows:

A. The cost of additional equipment allowed in accordance with subpart 2 shall be paid as a lump sum payment during the first billing period following approval of the special needs rate exception.

B. Except as provided in item C, in order to compute the special needs rate exception payment for personnel costs, the costs of additional personnel allowable according to subpart 2, items A and B, must be divided by the estimated number of days the staff intervention will be needed.

C. In order to compute the special needs rate exception per diem for personnel costs which vary during the estimated staff intervention period, the costs must be assigned on a monthly basis proportionate to the actual personnel costs incurred and then divided by the number of client days in the month.

D. Costs computed under items B and C shall be reimbursed as incurred and billed.

9510.1100 [Emergency] VARIANCE REQUEST.

Subpart 1. Variance request. The county may request a variance from the commissioner to approve a provider application which exceeds the limit in part 9510.1090 [Emergency], subpart 4 by up to ten percent, if the provider meets the criteria in subpart 2.

Subp. 2. Eligible provider. A provider may apply for a variance if the provider provides or plans to provide training and habilitation services to a client who resides in an ICF/MR which has a per diem rate equal to or greater than 85 percent of the medical assistance per diem cost of providing services to mentally retarded persons in the state hospitals.

Subp. 3. Submittal of request. The county shall submit the written variance request, including documentation showing that the provider meets the criteria for a variance, with the county's application for the special needs rate exception payment.

Subp. 4. Review of variance request; notification. The commissioner shall review the variance request with the county's

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application for the special needs rate exception payment. If the commissioner denies the variance request, the commissioner shall notify the county, provider, and client or client's legal representative of the reasons for the denial.

9510.1110 [Emergency] EMERGENCY PROCEDURE

Subpart 1. Definition. For the purposes of this part, an emergency is either a postoperative condition resulting from unplanned surgery, or the sudden onset of self-injurious or aggressive client behavior which results in an immediate danger to self or others; which would result in immediate admission to the state hospital in the absence of intervention.

Subp. 2. Emergency approval. In an emergency, the county may approve the addition of staff necessary to intervene in the emergency without obtaining prior approval from the commissioner, only staff costs shall be allowed under this part. In an emergency, the county shall:

A. notify the commissioner by telephone no later than the next working day and in writing within three working days of the client's situation, and state in the notice a description of the behaviors requiring emergency intervention and the actions taken by the provider to control the behaviors;

B. require the provider to submit an application completed in accordance with parts 9510.1020 to 9510.1140 [Emergency] within ten working days; and

C. submit to the commissioner an application for a special needs rate exception completed and submitted in accordance with parts 9510.1020 to 9510.1140 [Emergency].

Subp. 3. Reimbursement for emergency services. A special needs rate exception for the costs identified in part 9510.1090 [Emergency], subpart 2, item A, for staff approved in accordance with subpart 2 shall be reimbursable for a period not to exceed two weeks from the date of the county's request. The provider shall submit the application required in subpart 2, item B, for continuation of the special needs rate exception for more than ten working days. The county shall notify the commissioner if the provider fails to submit the application required in subpart 2, item B, and the commissioner shall discontinue the emergency special needs rate exception payment.

9510.1120 [Emergency] DURATION OF SPECIAL NEEDS RATE EXCEPTION.

Subpart 1. Maximum length of time for a special needs rate exception. A special needs rate exception shall be established for a period not to exceed one year from the date of receipt of the county application by the commissioner except as provided in subpart 2.

Subp. 2. Renewals. If the county determines that a special needs rate exception should be continued after the period initially approved, the county shall submit a new application in accordance with parts 9510.1020 to 9510.1140 [Emergency] at least 30 days prior to the date the special needs rate exception is scheduled to terminate. The county application for a renewal must contain a program and fiscal evaluation demonstrating the effectiveness of the initial special needs rate exception. Special needs rate exceptions for staff intervention must be limited to a one-year renewal per identified special need.

Subp. 3. Terminations. The commissioner may terminate the special needs rate exception prior to the date stated in the application upon recommendation by the county. The county may recommend termination if:

A. the rate is no longer necessary because other funds are available;

B. there is evidence that the funds have not been used for the purposes stated in the application;

C. the client's needs have changed and can be met without the special needs rate exception; or

D. no progress has been made in rectifying the identified problem area. This item shall not apply to services provided to clients with degenerative diseases if the criteria in subitems (1) to (4) are met:

(1) the service is required due to the degenerative disease;

(2) the client's physician has determined that no progress in the identified problem area can be expected;

(3) the county has submitted the determination by the client's physician to the commissioner and requested an exception to this item; and

(4) the request for an application has been reviewed and approved by the state medical review team.

The commissioner shall notify the county and the provider 15 days before discontinuing payments due to termination.

9510.1130 [Emergency] RECORDS, REPORTS, AUDITS, AND REPAYMENT.

Subpart 1. Records. The provider shall maintain complete program and fiscal records and supporting documentation identifying the services and costs provided under the special needs rate exception. The costs must be maintained in well-organized files and identified in accounts separate from other facility or program costs. The provider's records shall be subject to the maintenance schedule, audit availability requirements, and other provisions of parts 9505.1750 to 9505.2150.

Subp. 2. Reports. The county shall submit items A and B to the commissioner.

A. A quarterly program and fiscal review of the overall effectiveness of the services to be provided under the special needs allowance unless the commissioner determines that a different schedule of reviews is needed to evaluate the success of the program or redetermine the special needs rate exception payment. The review must be submitted within 30 days of the end of each quarter in which a special needs rate exception is in place and must include:

(1) the provider's compliance with the application;

(2) the client's progress in attaining the measurable program goals in the individual program plan for which the special needs rate exception was requested; and

(3) the county and provider's plans to reduce reliance on the special needs rate exception.

B. A final report submitted within 90 days of termination of a special needs rate exception which documents the following:

(1) the extent to which the program goals identified in the special needs rate exception application were accomplished;

(2) the total amount of money paid to the provider through the special needs rate exception payment for equipment and actual costs and types of equipment purchased;

(3) the amount of expenditures incurred by the provider for costs allowable under part 9510.1090 [Emergency], subpart 2; and

(4) the total amount of unexpended funds determined by subtracting subitem (3) from subitem (2).

Subp. 3. Audits. The commissioner may conduct program and fiscal audits of any provider receiving a special needs rate exception to identify any overpayments made to the provider and ensure compliance with parts 9510.1020 to 9510.1140 [Emergency].

Subp. 4. Repayment. Any overpayments to the provider included in the special needs rate exception payment must be paid back to the medical assistance program within 60 days of the date the provider receives the notice of overpayment from the county or the commissioner. No retroactive payment must be made if the provider's costs exceed the special needs rate exception payment.

9510.1140 [Emergency] APPEALS.

Subpart 1. By provider. A provider whose application for a special needs rate exception is denied or not acted on within the deadlines in part 9510.1060 [Emergency], subpart 1, or whose special needs rate exception is suspended, reduced, or terminated by the county may appeal the action or decision to the commissioner. The appeal must be submitted to the commissioner in writing within 30 days of the date the provider received notification of the action or decision. The appeal must state the reasons the provider is appealing the county's action or decision including the bases for the county's action or decision which are disputed, the specific sections of the provider's application which the provider is relying on for the appeal, and an explanation of why the provider disagrees with the county's action or decision.

The commissioner shall review the application and supporting documentation submitted to the county and any additional documents submitted with the appeal to determine if the provider can prove by a preponderance of evidence that they are eligible for a special needs rate exception and in compliance with parts 9510.1020 to 9510.1140 [Emergency]. No special needs rate exception payment will be made pending the outcome of the appeal.

Subp. 2. By county. If the county disagrees with the commissioner's decision on the county application, the county may appeal the decision to the commissioner and request reconsideration. To be reconsidered, the appeal must be filed in writing, with the commissioner, within ten days of the date the commissioner gave notice to the county of the decision on the county application. The appeal must state the reasons why the county is appealing the commissioner's decision and present evidence explaining why the county disagrees with the commissioner's decision. The commissioner shall review the evidence presented in the county's appeal and send written notification to the county of the decision on the appeal. No special needs rate exception payment shall be made pending the outcome of the appeal. The commissioner's decision on the appeal must be final.

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STATE OF MINNESOTA
DEPARTMENT OF HUMAN SERVICES

In the Matter of the Proposed Adoption of Emergency Rules Related to Special Needs Rate Exception for Very Dependent Persons with Special Needs.

FINDINGS OF FACT AND CONCLUSIONS

The Commissioner published notice of proposed emergency rules on the above entitled matter in the State Register on August 20, 1984. Notice was also sent by United States mail to all persons on a list maintained by the Department pursuant to Minnesota Statutes, section 14.14, subdivision 1, in August 15, 1984. After affording all interested and affected persons an opportunity to submit comments for 25 days after the notice and reviewing and considering the comments, I find the following:

1. In part 9510.1020 (Emergency) subpart 2 of the proposed rule, the Department defines case manager. One commentator, Michael Corman of Dakota County Human Services Department, suggested that the definition be linked to the definition of case manager used in parts 9525.0010 to 9525.0100. The Commissioner agrees that the change will clarify the rule and therefore changes this subpart to read, "Case manager has the meaning given it in parts 9525.0010 to 9525.0100 or their successor parts". p.1

2. In part 9510.1020 (Emergency) subpart 7 of the proposed rule, the Department defines equipment. One commentator, Sue Abderholden of the Association for Retarded Citizens, proposed that the word "portable" be deleted from the definition and the phrase "and can be moved with the client" be added before the phrase "upon discharge". The Commissioner agrees that the change will more clearly define the term and has incorporated the change into this subpart. p.1,2

3. In part 9510.1020 (Emergency), subpart 10 of the proposed rule, the Department defines payroll-related costs. One commentator, Mary Martin of the Association of Residences for the Retarded in Minnesota (ARRM) suggested that the words "or costs" be inserted after "worker's compensation insurance" since it is possible for an employer to self-insure for worker's compensation costs. The Commissioner agrees with Ms. Martin's premise and inserts the phrase "or actual cost if self-insured" after the words "worker's compensation insurance" to clarify this subpart. p.2

4. In part 9510.1030 (Emergency) subpart 1 of the proposed rule, the Department describes the applicability of parts 9510.1020 to 9510.1140 (Emergency). A comment made by Tom Beer of the AFSCME Council suggested that a clarification of the sentence "Parts 9510.1020 to 9510.1140 (Emergency) do not apply to state hospitals" was necessary. The Commissioner agrees that clarification is needed and modifies the sentence by eliminating the last "s" from "hospitals" and inserting the words "persons with mental retardation who reside in a" before "state hospital". p.3

5. In part 9510.1030 (Emergency), subpart 2 of the proposed rule, the Department states the purpose of parts 9510.1020 to 9510.1140 (Emergency). One person, Sue Abderholden, commented that she thought the purpose of the rule was to prevent the placement or retention of persons in the state hospitals. The Commissioner agrees with Ms. Abderholden and inserts the phrase "in order to prevent the placement or retention of the client in a state hospital" after the words "intended to fund short-term special needs for a specific client". The last sentence in this subpart is also amended to read "The special needs rate exception is only to be allowed after all other funding sources or alternatives have been exhausted". ✓p.3

6. In part 9510.1040 (Emergency) subpart 2 item C of the proposed rule, the Department lists criteria to be used by applicants in their descriptions of proposed staff interventions. One commentator, Sue Abderholden, suggested that the criteria should also include a description of the content of the program. The Commissioner finds that this section does need another subitem to describe the program and adds "type of intervention" as a subitem. ✓p.4

7. In part 9510.1040 (Emergency) subpart 4 item A of the proposed rule, the Department states that the provider shall submit a copy of the individual program plan with the application. One commentator, Mary Martin, suggested that the use of the words "which will be achieved" in this item implies that the provider can and will guarantee that the client will achieve specified program outcomes. Ms. Martin further states that the appropriate measurement here is whether the provider plans to carry out an appropriate program and whether he or she actually does so. The Commissioner agrees with this commentator and replaces the word "will" with "are anticipated to". The Commissioner also changes the word "program" to "behavioral" to make this item consistent with item G subpart 2. ✓p.5

8. In part 9510.1040 (Emergency) subpart 4 item D of the proposed rule, the Department asks for the "hourly wage of the current staff who will implement the intervention". Commentator Mary Martin states that temporary staff may be an appropriate alternative to the use of current staff and suggests the addition of the words "or new" after "current". The Commissioner agrees with Ms. Martin regarding the use of temporary staff and deletes the word "current" to allow for the addition of new staff or the use of current staff. ✓p.6

9. In part 9510.1050 (Emergency) subpart 3 item C of the proposed rule, the Department states that in order to qualify for a special needs rate exception a provider must be unable to modify the existing program to meet the clients needs, within the providers approved per diem rates, including any operating cost incentives or allowances. ✓p.7,8

Commentator, Dianna Krogstad of the Day Activity Center of Minneapolis, Inc., asked if a provider's designated savings would be considered an alternative source of funds. Upon careful consideration of this comment the Commissioner decided that a similar situation exists with funds deposited in a funded depreciation account and that these funds should not be considered available for the purposes of this item. Therefore the item is changed to exempt funded depreciation accounts. p.7,8

10. In part 9510.1050 (Emergency) subpart 4 item B of the proposed rule, the Department discusses placement of the client in another appropriate ICF/MR or service. Commentator, Michael Corman, asks if the term "services" as used in this item refers to training and habilitation services or other services. The Commissioner finds that this item is unclear and modifies the first two sentences and subitem (2) to clarify that both training and habilitation services and other services must be considered. The Commissioner also modifies the rest of the language in the first two sentences of this item to further clarify the meaning. p.8

11. In part 9510.1040 (Emergency) subpart 4 of the proposed rule, the Department specifies that criteria to be considered in determining whether to place a client in another ICF/MR or service. Commentator Roger A. Beneen of the Minnesota Governor's Planning Council on Developmental Disabilities, states that the county needs more criteria. Commentator, Sue Abderholden suggests that the length of time the services will be needed should also be considered. The Commissioner agrees that more criteria are needed and that time should be a consideration and therefore adds a subitem (3). p.8

12. In part 9510.1060 (Emergency) subpart 4 of the proposed rule, the Department specifies the notice requirements for the county's decision on the provider's application. Commentator, Mary Martin states that the rule should specify when notification must be sent and commentator, Michael Corman states that notice should also be sent to the client's legal representative. The Commissioner agrees with both comments and modifies the subpart accordingly. p.9

13. In part 9510.1070 (Emergency) item G of the proposed rule, the Department uses the term "special needs allowance". Commentator, Michael Corman asks if the "special needs allowance" is the same as the "special needs rate exception". The Commissioner finds that the two terms are meant to mean the same thing and changes "special needs allowance" to "special needs rate exception" to make this item consistent with the rest of the rule. p.10,11

14. In part 9510.1080 (Emergency) of the proposed rule, the Commissioner's determination is described. Commentator, Michael Corman, asks what standard the Commissioner applies in making the determination. The Commissioner agrees that the standard should be clearly stated and modifies the language accordingly. p.11

Mr. Corman also states that the client's legal representative should be notified of the Commissioner's decision. The Commissioner agrees with Mr. Corman and modifies the language to include notice of the client's legal representative. p.11

15. In part 9510.1090 (Emergency) subpart 2 of the proposed rule, the Department specifies which costs are allowable for the purposes of establishing the special needs rate exception. Commentator, Michael Corman, states that the rule doesn't appear to contain any reasonable cost limitations and asks if there are any circumstances besides exceeding the limit in subpart 4 under which the cost could be disallowed. The Commissioner finds that reasonable cost principles should apply to these costs and incorporates the cost principles found in 12 MCAR S2.05311A (Temporary). p.11

16. In part 9510.1090 (Emergency) subpart 2 item A of the proposed rule, the Department states that "additional salary, employee benefits, or payroll-related costs required to meet the client's needs as identified in the provider's application" are allowable costs. Commentator, Sue Abderholden, suggests that "or payroll-related costs" should be "and payroll-related costs". The Commissioner agrees with Ms. Abderholden and changes the "or to an "and". p.11

17. In part 9510.1090 (Emergency) subpart 4 item C of the proposed rule, the Department states that "If a special needs rate exception is necessary for a client in both the ICF/MR and the training and habilitation service program, these amounts must be combined". Commentator, Michael Corman, states that it is unclear which costs are being totalled. The Commissioner agrees and modifies the language to clarify that the amounts of both special needs rate exceptions must be combined. p.12

18. In part 9510.1100 (Emergency) subpart 1 of the proposed rule, the Department allows a variance of up to ten percent on the limitation in part 9510.1090. Commentator, Mike McGraw of the Hennepin County Bureau of Social Services, states that the variance mechanism is "unreasonably restrictive and unnecessary". The Commissioner agrees that more flexibility may be desirable and therefore changes "ten percent" to "fifteen percent". p.13

19. In part 9510.1100 (Emergency) subpart 4 of the proposed rule, the Department states that "the Commissioner shall review the variance request". Commentator, Michael Corman, asks what standard the Commissioner will apply. The Commissioner finds that the subpart does not specify a standard and adds language to clarify what standard will be applied. Mr. Corman also states that the client's legal representative should be notified of the reasons for the denial. The Commissioner agrees that the client and the client's legal representative should be notified of the reasons for the denial and modifies the language accordingly. p.14

20. In part 9510.1110 (Emergency) subpart 2 of the proposed rule, the Department explains that in an emergency the county may approve the addition of staff without obtaining prior approval from the Comissioner. Commentator, Mary Martin, states that it is unclear whether one must have a special needs allowance to be eligible for the emergency procedure. The Commissioner agrees that this subpart is unclear and modifies the subpart to clarify that the emergency procedure applies to clients who do not already have a special needs rate exception. ✓p.14

21. In part 9510.1110 (Emergency) subpart 2 item A of the proposed rule, the Department states that in an emergency, the county shall "state in the notice a description of the behaviors requiring emergency intervention". Commentator, Michael Corman, states that "or medical condition" should be added to the notice provision. The Commissioner agrees and modifies the provision accordingly. ✓p.14

22. In part 9510.1110 (Emergency) subpart 3 of the proposed rule, the Department explains how emergency services will be reimbursed. Commentator, Mary Martin, comments on the use of the phrase the "date of the county's request". In reviewing the sentence Ms. Martin commented on, the Commissioner finds that the language is inconsistent with the requirement in subpart 2 item A. The Commissioner therefore modifies the sentence. ✓p.14

23. In part 9510.1110 (Emergency) subpart 3 of the proposed rule, the Department states that the provider "shall submit the application required in subpart 2, item B for continuation of the special needs rate exception for more than ten working days". Commentator, Michael Corman, states that the cross reference in this subpart is confusing. The Commissioner agrees with Mr. Corman and modifies the language to clarify. In reviewing this sentence, the Commissioner also finds that the ten working days is inconsistent with the two weeks in the preceding sentence and changes "ten working days" to "two weeks". ✓p.14

24. In part 9510.1120 (Emergency) subpart 3 of the proposed rule, the Department states when the county may recommend termination of the special needs rate exception. In item D, exceptions are provided. Commentator, Michael Corman, asks for clarification of item D, subitem 4. The Commissioner finds that the language of the item and the role of the state medical review team are unclear and modifies this subitem to clarify the intent. ✓p.15

25. In part 9510.1130 (Emergency) subpart 2 item A of the proposed rule, the Department requires the quarterly program and fiscal review to be submitted "within 30 days of the end of each quarter". Commentator, Mary Martin, states that this wording is confusing and suggests that the Department delete "within 30 days of" and insert "no more than 30 days after". The Commissioner agrees with Ms. Martin's comment and incorporates the suggested change. ✓p.17

26. In part 9510.1130 (Emergency) subpart 2, item A, subitem (2) of the proposed rule, the Department states that the quarterly review must include a review of the client's progress in attaining the "measurable program goals". Commentator, Michael Corman, asks if "measurable program goals" are the same as "projected behavioral outcomes". The Commissioner finds that the program goals and behavioral outcomes are used interchangeably in the rule and to increase consistency changes "measurable program goals" to "measurable behavioral outcomes".

27. As a result of the Department's review of the comments received and the proposed rules, the Department has made some minor changes to correct problems of grammar, spelling or lack of clarity in the proposed rules. Such changes did not affect the substance of the rules. These changes are as follows:

Part 9510.1030 (Emergency) subpart 2. Insert "those" between "client" and "services". ✓p.3

Part 9510.1040 (Emergency) subpart 2 item C. Renumber subitems (3), (4), and (5) to (4), (5), and (6). ✓p.4

Part 9510.1050 (Emergency) subpart 2 item C. Insert "or their successor parts" after "9525.0100". ✓p.6

28. All comments concerning the proposed temporary rules received within the period allowed by law were considered by the Department.

29. The changes made to the proposed temporary rule are not substantial changes.

CONCLUSIONS

I hereby conclude that:

1. The commissioner has statutory authority to promulgate these rules.

2. Proper notice of the Department's intent to adopt the proposed above-captioned temporary rules was given as required by law, and all interested persons were afforded an opportunity to submit data and views on the proposed temporary rules.

3. All modifications made to the proposed temporary rules are supported by the data and views submitted to the Department, and are not substantial changes.

4. The temporary rules, as modified, are necessary and reasonable.

5. Any duplication in these rules of language contained in Minnesota Statutes is crucial to the ability of persons affected by the rules to comprehend their meaning and effect.

6. The Department has complied with all applicable provisions of law and rule in the promulgation of these rules.

7. If any finding or part of a finding, above, is properly characterized as a conclusion, it is adopted as a conclusion.

DATED: October 5, 1984

STATE OF MINNESOTA

LEONARD W. LEVINE, COMMISSIONER
Department of Human Services

GT/10

IN THE MATTER OF THE PROPOSED ADOPTION OF RULES OF THE STATE OF MINNESOTA DEPARTMENT OF HUMAN SERVICES GOVERNING AUTHORIZATION AND PAYMENT OF A SPECIAL NEEDS RATE EXCEPTION FOR VERY DEPENDENT PERSONS WITH SPECIAL NEEDS, MINNESOTA RULES, PARTS 9510.1020 - 9510.1140 (EMERGENCY).

STATEMENT OF COMPLIANCE WITH RULEMAKING PROCEDURES

I, Special Assistant Attorney General, John Kirwin do hereby declare that I have examined the rules and all related documents and that, based on my examination and my personal familiarity with the applicable procedures, the Administrative Procedures Act, the rules of the Office of Administrative Hearings, and the rules of the Attorney General have been followed. Any exceptions are noted below.

John L. Kirwin

Special Assistant Attorney General

Dated: October 5, 1984

STATE OF MINNESOTA
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF PROPOSED EMERGENCY RULES GOVERNING AUTHORIZATION AND PAYMENT OF A SPECIAL NEEDS RATE EXCEPTION FOR VERY DEPENDENT PERSONS WITH SPECIAL NEEDS, MINNESOTA RULES, PARTS 9510.1020 - 9510.1140 (EMERGENCY).

AFFIDAVIT OF MAILING NOTICE OF SUBMISSION TO THE ATTORNEY GENERAL

STATE OF MINNESOTA)
) ss.
COUNTY OF RAMSEY)

Jane Delage, being first duly sworn, deposes and says:

That on the 5th day of October, 1984, in the City of St. Paul, County of Ramsey, State of Minnesota, served the attached Notice of Submission to the Attorney General by depositing in the State of Minnesota Central Mail System for United States mailing, a copy thereof, properly enveloped, with postage prepaid, on all persons and associations who requested notice that the rules in the above-entitled matter have been submitted to the Attorney General.

Jane M. Delage

Subscribed and sworn to before me

this 5th day of October, 1984.

Claudia A. Eliason

CLAUDIA A. ELIASON
NOTARY PUBLIC-MINNESOTA
WASHINGTON COUNTY
MY COMMISSION EXPIRES NOVEMBER 15, 1990

STATE OF MINNESOTA
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF THE PROPOSED ADOPTION OF THE DEPARTMENT OF HUMAN SERVICES EMERGENCY RULE GOVERNING AUTHORIZATION AND PAYMENT OF A SPECIAL NEEDS RATE EXCEPTION FOR VERY DEPENDENT PERSONS WITH SPECIAL NEEDS, MINNESOTA RULES, PARTS 9510.1020 - 9510.1140 (EMERGENCY).

NOTICE OF SUBMISSION TO THE ATTORNEY GENERAL

Pursuant to your request and in accordance with Minnesota Statutes 1984, section 14.30 and 14.32:

PLEASE TAKE NOTICE that the above-captioned rules have been submitted to the Office of the Attorney General on this date, October 5, 1984 for review for form and legality.

The attorney general shall review the proposed emergency rule as to its legality, review its form to the extent the form relates to legality, and shall approve or disapprove the proposed emergency rule and any modifications on the tenth working day following the date of receipt of the proposed emergency rule from the agency.

If you desire to comment on the legality of the above-captioned rules, you should direct your comments to the Office of the Attorney General, Room 204 State Administration Building, 50 Sherburne Avenue, Saint Paul, Minnesota 55155, telephone (612)296-7030.

The proposed emergency rule has been modified. A free copy of the proposed emergency rule, as modified, is available upon request from:

Susan Canine
Department of Human Services
4th Floor, Centennial Office Building
St. Paul, MN 55155