

Minnesota Attorney General: Administrative Rules Proceedings

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Version 3
August 20, 2018

Our File No. 1095

RULE REVIEW CHECKLIST

DATE RULE RECEIVED 10-8-84
DATE FOR REVIEW
DATE DUE 10-22-84

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

Approved 10-22-84 (CDS) Disapproved Returned to Agency

Resubmitted Due
Approved Disapproved Returned to Agency

Date filed w/Secretary of State 10/29/84 Revisor approved / disapproved

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✓ Rule as Adopted

Rule as Proposed

✓ Order Adopting 10.8.84 Date new order Rec'd omission in statutory cite - no year given for "Laws of....."

✓ Notice of Intent to Solicit Outside Opinion SR. 5.7.84

✓ Order for rulemaking
N/A date of Hearing

N/A Certificate of Board's Authorizing Resolution

✓ Notice of rulemaking
? Sufficiency omission in statutory cite

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

✓ Mailing list Certificate

? Publication in State Register omission in statutory cite
9.3.84 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 + Supp. FofF

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

N/A Affidavit of Mailing Notice of Submission to Attorney General

✓ Notice of Submission to the Attorney General

#1095

Coz. w/ J. Delage.

p. 1/l. 34 add "protecting rights of" (?) — coordinated w/ other rules w/ sum. resp. — sum case mgrs.

p. 2/l. 25-6 "unless medically contraindicated" — ok not material coordinated — part of statute, etc.

p. 2 l. 30 "leaving activities" added — broader, disregard reality x

ok p. 5/l. 12 "conservator" added — what impact? ~~[illegible]~~ — w/o [illegible], will deny involvt.

p. 6/l. 36 — "state changes needed" — what impact? — req'd later in rules in quarterly eval.'s

p. 7/l. 15 "at request of Co. Bd" — limits — why? [part of quarterly eval.'s] — reflects process as exists x

p. 8/l. 21 — "only necessary services should be provided or paid for." — Fed. Reg.'s & Stat.'s req. this, o.k.

p. 8/l. 33 — 5→10 days — burdensome to patient? No. There are emergency prov.'s to cover patient x, Co. has auth. to expedite also x

p. 9/l. 26 — Weaken req. for Co. personnel — Why? What impact? Minimal — minimal service — already enforcement?

p. 10/l. 10 — Case mgr. given auth. — Contemplated elsewhere in the rules? — shift from other rule prov. ok

p. 11/l. 16 — Visits 90 days → 6 mo.'s — Why? What impact on patient — balanced by other rule? Minimal impact to clients; great benefit to Co. + Co. has emergency discretion + gives of case mgr. more control over time x

Otherwise, services will suffer.

p. 11/l. 24 Reporting req.? — Impact? Why?

p. 10 — changed order

formerly "B" on p. 10

~~p. 15/l. 7-36 etc. — Substitute for p. 19 btm — p. 22/l. 6?~~

~~p. 18/l. 17 — Why? What impact~~ OK shift.

pp 28 —

p. 32 written procedures req. — Benefits Co. by stat.'s? record for challenges, statute

6/10

p. 34 Variance Procedure added. — Comm'n may grant variance x

p. 29 right of appeal — expanded right — benefits ?

Ch. 312 Art. 9 — sh.

noted typing

Sale of WATS to other agencies — CAN'T RESELL WATS under TARIFF x

- Cost Allocation among state agencies — no auth. over those govt.

call ~~Attrit~~ Lundgren or K. Santori x

— formerly, sharing services a viol. of tariff x

— "reselling"

#1095

VARIANCE

E. — reasonableness
— reasonably related the requirements
— which furthers the purpose
— compelling need which if not met will

Shall

[due to no fault of its own

can ~~[illegible]~~ provide reasonable evidence that is

E. If Com. "det." Co. ~~[illegible]~~ not capable of complying w/ rules, spec. steps to be taken are measurable
3) report provides reasonable assurance of compliance no later than June 30, 1987.

SF-00006-02

STATE OF MINNESOTA

DEPARTMENT ATTORNEY GENERAL

Office Memorandum

TO : Leonard Levine, Commissioner
Department of Human Services

DATE: October 29, 1984

ATTN: Deborah Huskins
Special Assistant Attorney General

FROM : Larry D. Starns LDS
Special Assistant Attorney General

PHONE: 297-3493

SUBJECT: In the Matter of the Proposed Adoption of Emergency Rules Governing County Board Responsibilities to Persons With or Who Might Have Mental Retardation, Minnesota Rules, Parts 9525.0015-9525.0145 (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.

LDS:slz

Encs.

cc: Ms. Kathy Burek
Mr. Duane Harves

Department of Human Services

Adopted Emergency Rules Governing County Board Responsibility for Providing Case Management Services to Persons with Mental Retardation

Emergency Rules as Adopted

9525.0015 [Emergency] DEFINITIONS.

Subpart 1. **Scope.** The terms used in parts 9525.0015 to 9525.0145 [Emergency] have the meanings given them in this part.

Subp. 2. **Assessment.** "Assessment" means the act of determining a person's need for services ~~and~~ by identifying and describing the person's skills and behaviors, and the environmental, physical, ~~and~~ medical, and health factors which affect development or remediation of the person's skills and behaviors under part 9525.0065 [Emergency].

Subp. 3. **Advocate.** "Advocate" means an individual who has been authorized in a written, ~~notarized~~ statement by the person with or who might have mental retardation or by that person's ~~legally-responsible-person~~ legal representative to help the person with or who might have mental retardation understand and make choices in matters related to identification of needs and choice of services in parts 9525.0015 to 9525.0145 [Emergency].

~~Private-or-confidential-data-regarding-the-person-with-or-who-might-have-mental-retardation-must-not-be-disseminated-to-or-used-by-the-person's-advocate-unless-the-person-with-or-who-might-have-mental-retardation-or-the-legally-responsible-person-has-given-informed-consent-for-dissemination-to-or-use-by-the-advocate-in-accordance-with-Minnesota-Statutes,-section-13.05,-subdivision-4.~~

Subp. 4. **Case management services.** "Case management services" means identifying the need for, seeking out, acquiring, authorizing, ~~and~~ coordinating, and monitoring the delivery of services to, and protecting the rights of, persons with mental retardation by an individual designated by the county board to provide case management services under part

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9525.0045 [Emergency].

Subp. 5. **Case manager.** "Case manager" means the individual designated by the county board under part 9525.0035 [Emergency] to provide case management services.

Subp. 6. **Commissioner.** "Commissioner" means the commissioner of the Department of Human Services or the commissioner's designated representative.

Subp. 7. **Community social services plan.** "Community social services plan" means the plan required by Minnesota Statutes, section 256E.09.

Subp. 8. **Contract.** "Contract" means a legally enforceable agreement entered into by a county board and a provider, or a provider and a subcontractor, that sets forth the rights and responsibilities of the parties.

Subp. 9. **County board.** "County board" means the county board of commissioners for the county of financial responsibility or its designated representative.

Subp. 10. **County of financial responsibility.** "County of financial responsibility" has the meaning given it in Minnesota Statutes, section 256B.02, subdivision 3.

Subp. 11. **Day training and habilitation services.** "Day training and habilitation services" means health and social services provided to a person with mental retardation by a licensed provider at a site other than the person's place of residence ~~by a licensed provider~~ unless medically contraindicated and documented as such in the individual service plan. The services must be designed to result in the development and maintenance of life skills, including: self-care; communication; mobility; community living; behavior management; and therapeutic work or learning activities that are appropriate for the person's chronological age. Day training and habilitation services are provided on a scheduled basis for periods of less than 24 hours each day.

Subp. 12. **Department.** "Department" means the Minnesota Department of Human Services.

Subp. 13. **Home and community-based services.** "Home and

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community-based services" means the following services for persons with mental retardation that are authorized under United States Code, title 42, sections 1396 ~~to 1396p~~, et seq. and authorized in the waiver granted by the United States Department of Health and Human Services:

A. case management;

B. respite care;

C. homemaker services;

D. in-home family support services;

E. supported living arrangements for children;

F. supported living arrangements for adults;

G. day habilitation; and

H. minor physical adaptations to the home as defined in part 9525.1860 [Emergency]. These services are reimbursable under the medical assistance program for as long as the waiver from the United States Department of Health and Human Services is in effect in Minnesota.

Subp. 14. **Host county.** "Host county" means the county in which the services set forth in a person's individual service plan are provided.

Subp. 15. **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 provide services to persons with mental retardation 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. Unless otherwise stated, this definition includes state-operated and community-based facilities.

Subp. 16. **Individual habilitation plan.** "Individual habilitation plan" means the written plan for providing services to a person developed under part 9525.0095 [Emergency].

Subp. 17. **Individual service plan.** "Individual service plan" means the written plan developed under part ~~9525.0075~~

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9525.0085 [Emergency] ~~that specifies the services needed by a person.~~

Subp. 18. **Interdisciplinary team.** "Interdisciplinary team" means the case manager, the person with mental retardation, the ~~legally responsible person~~ legal representative and the person's advocate, if any, and representatives of all providers providing services set forth in the individual service plan ~~meeting together to develop and periodically review an individual habilitation plan under part 9525.0095 [Emergency]. The case manager may invite other persons to join the interdisciplinary team as the case manager determines necessary.~~

Subp. 19. **Least restrictive environment.** "Least restrictive environment" means an environment in which:

A. The provider or employees or subcontractors of the provider are available to provide the type, quantity, and frequency of services necessary to achieve the results set forth in a person's individual service plan.

B. The physical plant and the scheduling of the provider and employees or subcontractors of the provider are designed or modified to promote the independence of the person with mental retardation and to limit the physical assistance given by employees or subcontractors to the tasks or parts of tasks that the person with mental retardation could not accomplish without physical assistance.

C. The amount of supervision ~~and~~, physical control, and limits on decision making exercised by the provider and employees or subcontractors of the provider is limited to the level required to ensure that persons with mental retardation are not subject to unnecessary risks to their health or safety and do not subject others to unnecessary risks.

D. Services are designed to increase interactions between persons with mental retardation and persons who do not have disabilities by using facilities, services, and conveyances used by the general public.

E. The daily, monthly, and annnual schedule of the person receiving services closely approximates that of the

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general public.

F. The physical surroundings, methods of interaction between the ~~provider's~~ provider and employees and subcontractors of the provider, and the materials used in training are ~~the same as those that would be used with a person without mental retardation of the same~~ appropriate for the person's chronological age.

Subp. 20. ~~Legally responsible person~~ Legal representative. "~~Legally responsible person~~ Legal representative" means the parent or parents of a person, with or who might have mental retardation, who is under ~~21~~ 18 years of age, or a court-appointed guardian or conservator who is authorized by the court to make decisions about services for a person, with or who might have mental retardation, of any age.

Subp. 21. **Need determination.** "Need determination" means the commissioner's determination under part 9525.0135 [Emergency] of the need for and the program, type, location, and size of licensed ~~residential and day training and habilitation~~ services, except foster care, for persons with mental retardation.

Subp. 22. **Person with mental retardation.** "Person with mental retardation" means:

A. A person who has been diagnosed under part 9525.0055 [Emergency] as having significantly subaverage intellectual functioning existing concurrently with demonstrated deficits in adaptive behavior and ~~that are manifested~~ who manifests these conditions before the person's 22nd birthday.

B. A person under 18 years of age who demonstrates significantly subaverage intellectual functioning concurrently with deficits in adaptive behavior, but for whom a licensed psychologist or licensed consulting psychologist determines that a diagnosis may not be advisable because of the person's age.

C. A person 18 years of age or older who has not been diagnosed as a person with mental retardation before the person's 22nd birthday and who, as the result of accident or physical trauma (excluding mental illness, chemical dependency,

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senility, and debilitating conditions such as muscular dystrophy and multiple sclerosis), has been diagnosed as having significantly subaverage intellectual functioning existing concurrently with demonstrated deficits in adaptive behavior and, who requires services similar to those required by a person with mental retardation.

Subp. 23. **Person who might have mental retardation.** "Person who might have mental retardation" means a person undergoing diagnosis to determine if that person is a person with mental retardation.

Subp. 24. **Physical plant.** "Physical plant" means the building or buildings in which a service is provided to a person with mental retardation and all equipment affixed to the building and not easily subject to transfer.

Subp. 25. **Provider.** "Provider" means a corporation, governmental unit, partnership, individual, or individuals licensed by the state, if a license is required, or approved by the county board, if a license is not required, to provide one or more services to persons with mental retardation.

Subp. 26. **Public agency.** "Public agency" means a public health nursing service established under Minnesota Statutes, section 145.12, a human services board established under Minnesota Statutes, section 402.04, a local board of health established under Minnesota Statutes, section 145.01, or a county board.

Subp. 27. **Qualified mental retardation professional.** "Qualified mental retardation professional" means an individual who meets the qualifications in the Code of Federal Regulations, title 42, section 442.401.

Subp. 28. **Quarterly evaluation.** "Quarterly evaluation" means a ~~concise~~ written summary evaluating the services actually provided, the extent to which services have resulted in achieving the goals and objectives of a person's individual habilitation plan, and whether services are being provided in accordance with the individual habilitation plan. The summary must also state whether changes need to be made in the person's

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individual service plan or individual habilitation plan.

Subp. 29. **Redetermination of need.** "Redetermination of need" means the commissioner's biennial redetermination under part 9525.0135 [Emergency] of the need for and the program, type, location, and size of licensed ~~residential or day training and habilitation~~ services, except foster care, for persons with mental retardation.

Subp. 30. **Regional service specialist.** "Regional service specialist" means an individual designated by the commissioner to:

A. authorize medical assistance payments for ICF/MR and home and community-based services for persons with mental retardation;

B. serve on screening teams as a qualified mental retardation professional at the request of the county board;

C. provide training and assistance to county boards, case managers, and providers in technical matters related to the development and provision of services for persons with mental retardation; and

D. assist case managers in developing and planning services for persons with mental retardation.

Subp. 31. **Residential service.** "Residential service" means shelter, food, and training in self-care, communication, community living skills, social skills, leisure and recreation skills, and behavior management provided by a provider licensed by the state, if a license is required, or approved by the county board if a license is not required, to provide these services.

Subp. 32. **Screening team.** "Screening team" ~~has the definition given it in~~ means the team established under Minnesota Statutes, section 256B.092 to evaluate a person's need for home and community-based services.

Subp. 33. **Service.** "Service" means a planned activity designed to achieve the results specified in an individual service plan.

9525.0025 [Emergency] APPLICABILITY AND PURPOSE.

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Subpart 1. **Applicability.** Parts 9525.0015 to 9525.0145 [Emergency] set forth the responsibilities of county boards for providing case management services to persons with or who might have mental retardation, and governs the planning, development, and provision of other services to persons with mental retardation.

All federal and state money allocated to county boards for case management and other services for persons with or who might have mental retardation must be expended in accordance with parts 9525.0015 to 9525.0145 [Emergency].

Subp. 2. **Purpose.** The purpose of parts 9525.0015 to 9525.0145 [Emergency] is to ensure that persons with mental retardation receive services that are designed and arranged to meet their assessed individual service needs in the least restrictive environment and to ensure that services are developed and provided in a cost-effective manner. Services needed should be identified without regard to current market availability.

County boards are authorized and required to determine the adequacy of services provided in meeting the person's needs based on the cost and effectiveness of the services. Only necessary services should be provided or paid for.

9525.0035 [Emergency] COUNTY BOARD RESPONSIBILITIES.

Subpart 1. **Provision of case management services.** The county board shall provide case management services in accordance with parts 9525.0015 to 9525.0145 [Emergency] to all persons with or who might have mental retardation who ~~are residents of or~~ reside in the county at the time they request or are referred for services ~~and who are in need of services~~. Case management services may be provided directly by the county board or under a contract between the county board and another county board or a provider of case management services.

Subp. 2. **Designation of case manager.** Within ~~five~~ ten working days after receiving a request or referral for service, the county board shall designate a case manager for the person who requested or was referred for services. ~~Within five working~~

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~~days after designating a case manager, the county board shall~~ and send a written notification of the name, telephone number, and location of the designated case manager to the person who requested or was referred for services, ~~or~~ and the ~~legally responsible person~~ legal representative, and ~~the~~ advocate, if any.

Subp. 3. **Qualifications of case manager.** Each case manager must have at least the qualifications in items A and B.

A. Each case manager hired after December 31, 1984, shall meet the requirements for a qualified mental retardation professional or have a bachelor's degree in a field related to the education and treatment of persons with mental retardation and at least one year of experience in the education and treatment of persons with mental retardation.

B. In addition to the qualifications in item A, each case manager shall complete at least 20 hours of training and continuing education in case management and mental retardation services each calendar year. The county board shall maintain a written record of all training and continuing education completed by all case managers employed by the county board.

Subp. 4. **Purchase of case management services.** The county board shall not purchase case management services for a person with or who might have mental retardation from a provider of other services for that person. This provision does not apply when the county board provides the services or when the services are provided by another public agency ~~and the conditions in items A and B are satisfied:~~

~~A:~~, if the county board or other public agency providing case management and other services ensures that administration of the case management services is separate from the administration of any other service for persons with mental retardation.

~~B. The county board has notified the commissioner that the county board has entered into a contract with another public agency for case management services.~~

Subp. 5. Termination of case management services. The

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county board may terminate case management services when:

A. the person with mental retardation or the ~~legally responsible person~~ legal representative makes a written request that services be terminated;

B. the person with mental retardation dies; ~~or~~

C. a psychiatrist, licensed psychologist, or licensed consulting psychologist determines that the person is not a person with mental retardation;

D. the person refuses the services offered; or

E. based on the annual review of the person's individual service plan, the case manager finds that case management services are no longer needed.

9525.0045 [Emergency] CASE MANAGEMENT RESPONSIBILITIES.

Subpart 1. **Provision of services.** The case manager, upon designation by the county board, shall immediately begin to provide case management services to the person who requested or was referred for services, and shall continue to provide case management services until case management services are terminated under part 9525.0035 [Emergency], subpart 5. The county board shall not provide or arrange for services to be provided to a person with or who might have mental retardation until a case manager has been designated, and services must not continue after case management services have been terminated under part 9525.0035 [Emergency], subpart 5.

Subp. 2. **Minimum case management services.** The case manager shall:

A. ensure that a diagnosis is completed ~~in accordance with~~ and reviewed under part 9525.0055 [Emergency]. The diagnosis must be completed within 35 working days following the date that the person requested or was referred for services;

B. provide or obtain an assessment of individual service needs under part 9525.0065 [Emergency] if the person is diagnosed as a person with mental retardation and conduct the reassessment of service needs required in part 9525.0065 [Emergency], subpart 2;

C. develop an individual service plan under part

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9525.0075 9525.0085 [Emergency] based on the assessment completed in item B;

D. convene a screening team under part 9525.0085 9525.0075 [Emergency] if the case manager determines, based on the results of the assessment, that the person might be in need of the level of care provided by an ICF/MR, or that the person will require that level of care within one year;

E. ensure that the services described in the individual service plan are provided or developed in the type, quantity, and frequency specified in the individual service plan; and

F. monitor services provided to the person with mental retardation to ensure that they are provided in accordance with the person's individual service plan by:

(1) visiting the person at least once every 90 days six months;

(2) conducting on-site visits when the services are being provided, reviewing the provider's records and reports, and observing the implementation of the person's individual habilitation plan; and

(3) compiling quarterly semi-annual evaluations of the results of the services provided under the individual service plan;

G. at least every six months, review implementation of individual service plans and individual habilitation plans and report to the county board if the provider is not providing services as specified in the individual service plan and the individual habilitation plan;

H. terminate services if an annual review of the person's individual service plan indicates that the services are no longer needed;

I. serve as chairperson of the interdisciplinary and screening teams; and

J. authorize services under subpart 3.

Subp. 3. Duties of case manager Authorization of services. The case manager has the following duties which must

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~~not be delegated.~~

~~A.~~ Before a service may be provided under an individual service plan the case manager must authorize the service. The case manager shall not authorize services other than those set forth in a person's individual service plan, except in an emergency and then only for the duration of the emergency. If an emergency occurs, the case manager shall, within ten working days, review the individual service plan and the cause of the emergency to determine whether the individual service plan should be modified as a result of the emergency. Modifications to the individual service plan must be made in accordance with part ~~9525.0075~~ 9525.0085 [Emergency], subpart 5.

~~B.--The case manager shall periodically, but at least every 90 days, review implementation of contracts for services and report to the host county board if the provider is not in compliance with the terms of the contracts.~~

~~C.--The case manager shall terminate services if an annual review of the person's individual service plan indicates that the services are no longer needed.~~

~~D.--The case manager shall serve as chairperson of the interdisciplinary and screening teams.~~

Subp. 4. **Termination of case management duties.** A case manager retains the duties in ~~items A to D~~ subparts 2 and 3 until the responsibility of the county board is terminated under part 9525.0035 [Emergency], subpart 5, or until the county board designates another case manager under part 9525.0035 [Emergency], subpart 2. When another case manager is designated, the person with mental retardation, the ~~legally responsible person~~ legal representative and the advocate, if any, and all providers providing services to the person must be notified, in writing, of the name, telephone number, and location of the new case manager within five working days.

9525.0055 [Emergency] DIAGNOSIS.

Subpart 1. **Initial diagnosis.** The following is required to make a diagnosis of mental retardation:

A. A psychiatrist, licensed psychologist, or licensed

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consulting psychologist must determine that the person has significantly subaverage intellectual functioning. "Significantly subaverage" means performance which is two or more standard deviations from the mean or average of a standardized test that measures intellectual functioning.

B. A psychiatrist, licensed psychologist, or licensed consulting psychologist must determine that the person has deficits in adaptive behavior. Deficits in adaptive behavior must be determined through the use of scales of adaptive behavior, or by a combination of test data, observations, and the use of all available sources of information regarding the person's behavior which indicate the effectiveness or degree with which the person meets the norm of personal independence and social responsibilities of the person's chronological age group and cultural peer group.

C. A medical examination must be conducted by a licensed physician including examination of vision, hearing, seizure disorders, and physical disabilities.

D. A written report, must be prepared by a social worker or a public health nurse who is experienced in working with persons with mental retardation, on any social or, familial , physical, functional, adaptational, or environmental factors that might have contributed to the person's mental retardation.

The documentation for items A to D must be dated no more than 90 days before the date when the individual service plan is written.

Subp. 2. **Review of diagnosis.** Except as provided in subpart 3 the case manager shall conduct a review of the diagnosis at least every three years. This review must include a review of the documentation of the initial diagnosis in subpart 1, and any components in subpart 1, items A to D, that the case manager determines need to be reevaluated. The case manager shall provide or obtain any assessments required to complete review of the diagnosis.

Subp. 3. **Exception.** If a person with mental retardation has been receiving services specified in the person's individual

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service plan for a period of ten or more consecutive years since the person's 18th birthday, and has an initial diagnosis of mental retardation which has been confirmed twice, the review of the diagnosis required in this part shall be conducted at least every six years.

9525.0065 [Emergency] ASSESSMENT OF INDIVIDUAL SERVICE NEEDS.

Subpart 1. **Assessment.** Each person diagnosed as a person with mental retardation under part 9525.0055 [Emergency] shall receive an assessment to determine the person's need for service. The assessment must be conducted under the supervision of a qualified mental retardation professional.

The assessment of individual service needs must include the following areas:

A. medical status;

B. physical development;

C. intellectual functioning;

D. social skills;

E. self-care skills;

F. communication skills;

G. community living skills;

H. vocational skills; and

I. the person's physical and social environments.

Data collected by conducting assessments in items A to I may be supplemented by data from individuals who know the person with mental retardation and other sources.

Subp. 2. **Reassessment.** Annually, the case manager, the person with mental retardation, the ~~legally-responsible-person~~ person's legal representative, and the person's advocate, if any, shall determine which of the areas in subpart 1 should be reassessed. The case manager shall provide or obtain a reassessment of the person's need for services in those areas. The case manager shall also obtain an evaluation of the person's medical status by a licensed physician to be used in the annual reassessment. The medical evaluation must be conducted no more than 90 days before the date of the annual individual service plan review conducted under part ~~9525.0075~~ 9525.0085 [Emergency].

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The annual reassessment of the person's need for service must be completed at least ten days before the date of the annual individual service plan review under part ~~9525.0075~~ 9525.0085 [Emergency]. This subpart shall not prohibit more frequent reassessments.

9525.0075 [Emergency] SCREENING TEAMS.

Subpart 1. **Convening screening team.** The case manager shall convene a screening team if the assessment conducted under part 9525.0065 [Emergency] indicates that a person with mental retardation might need the level of services provided by an ICF/MR or if the assessment finds that the person might need an ICF/MR within one year. A screening team must be convened within 15 working days of the date that an assessment is completed under part 9525.0065 [Emergency].

The case manager shall convene a screening team within five working days of the date of an emergency admission to an ICF/MR.

The case manager may convene a screening team at the time that the individual service plan is developed.

The case manager shall make every effort to convene the screening team at a time and place which allows for participation by all members of the screening team. The case manager shall maintain a written record of the screening team meetings. The written record must list all persons in attendance. If a member of the screening team is unable to attend the screening team meeting, the written record must state the reasons for the member's absence from the meeting.

Subp. 2. **Notification of screening team meeting.** The case manager shall notify the regional service specialist and the advocate for the person with mental retardation before convening a screening team meeting. The regional service specialist and the advocate for the person with mental retardation may attend any meeting of the screening team. Other persons may attend the screening team meeting at the direction of the case manager.

Subp. 3. **Screening team review.** The screening team must review:

A. the results of the diagnosis conducted under part

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9525.0055 [Emergency];

B. the results of the assessment conducted under part 9525.0065 [Emergency];

C. the individual service plan; and

D. other data related to the person's eligibility and need for home and community-based services.

Subp. 4. **Screening team findings.** Upon review of the diagnostic and assessment data under subpart 3, the screening team shall:

A. determine whether the person with mental retardation is presently in need of an ICF/MR, or that the person will need an ICF/MR within one year and can benefit from home and community-based services;

B. identify the other services required to prevent or delay the need for ICF/MR, skilled nursing facility, or intermediate care facility services and the source of payments for the required assistance or social services; and

C. complete the waivered services screening document on the form provided by the commissioner.

Subp. 5. **Consumer choice.** The person with mental retardation who is eligible for home and community-based services under parts 9525.1800 to 9525.1930 [Emergency] and the person's legal representative must be allowed to choose between the ICF/MR services and the home and community-based services recommended by the screening team and among the home and community-based services recommended by the screening team.

Subp. 6. **Authorization of payment for ICF/MR and home and community-based services.** Upon completion of the waivered services screening document, the case manager must forward the completed document to the regional service specialist. Payment for ICF/MR services shall not be made unless the services have been approved in writing by the commissioner through the regional service specialist. The regional service specialist shall review the rates and authorize the payments for all home and community-based services funded under the medical assistance program using the criteria in parts 9525.1800 to 9525.1930

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[Emergency].

Subp. 7. **Use of screening team recommendations in commitment proceedings.** When a person with mental retardation who has been referred to a screening team is the subject of commitment proceedings pursuant to Minnesota Statutes, chapter 253B, the screening team must make its recommendations and report available to the pre-petition screening unit in accordance with the Data Practices Act, Minnesota Statutes, chapter 13.

~~9525.0075~~ 9525.0085 [Emergency] INDIVIDUAL SERVICE PLAN.

Subpart 1. **Standards for developing individual service plan.** An individual service plan must be developed and implemented for each person with mental retardation who requests or is referred for services. The ~~services specified in the~~ individual service plan must ~~be~~ identify services needed by the person based on an assessment of the individual's need for services under part 9525.0065 [Emergency]. The individual service plan must be developed in conformance with the following standards:

A. the plan must specify how food, shelter, and health care will be provided;

B. the plan must provide for delivery of services in the least restrictive environment;

C. the plan must be designed to result in vocational or pre-vocational training appropriate to the person's chronological age and, to the extent possible, employment and increased financial independence;

D. the plan must be designed to result in increased access to the community and interactions with the general public through use of community services; and

E. the plan must be designed to involve family, neighbors, and friends in providing services to the extent possible.

Subp. 2. **Development of individual service plan.** The case manager shall develop the individual service plan in consultation with the person with mental retardation and, the

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person's parent or guardian, and the person's advocate, if any. The case manager may invite other persons to provide information to be used in developing the individual service plan.

The documentation used in developing the individual service plan must include:

A. the results of the diagnosis conducted under part 9525.0055 [Emergency];

B. the results of the assessment conducted under part 9525.0065 [Emergency]; and

C. any other information compiled by the case manager that will assist in developing the individual service plan.

Subp. 3. **Content of individual service plan.** The individual service plan must:

A. Describe the results of all assessment information used to identify the person's ~~need~~ needs for services;

B. ~~state-the-long-range-goals-of-each-service-and-an anticipated-date-for-attainment-of-those-goals~~ Identify the type, amount, and frequency of services needed by the person with mental retardation. The services needed must be identified without regard to the current availability of the services;

C. State the ~~annual-goals-including-the-expected results-of-each-service-that-are-related-to-attainment-of-the long-range-goals-stated-under-item-B~~ methods that will be used to develop or obtain the services identified in item B that are not currently available;

D. ~~identify-the-type,-amount,-and-frequency-of services-needed-by-the-person-with-mental-retardation-to-achieve the-annual-goals-stated-under-item-C.--The-services-needed-must be-identified-without-regard-to-the-current-availability-of-the services~~ State the long-range goals of each service to be provided and an anticipated date for attainment of those goals;

E. State the ~~methods-that-will-be-used-to-develop-or obtain-the-services-identified-in-item-D;~~ annual goals and the expected results of each service to be provided that are related to the attainment of the long-range goals stated under item D; and

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F. Identify any information that providers or subcontractors must submit to the case manager and the frequency with which the information must be provided; ~~and~~

~~G. identify the payment sources for the services identified in item B.~~

Subp. 4. **Standards for state hospital discharge planning.** When an individual service plan calls for the discharge of a person with mental retardation from a state hospital, the individual service plan must conform to the standards for state hospital discharge planning established by the commissioner in Instructional Bulletin #84-55 or its successor which is incorporated by reference.

This document is available for inspection at the Minnesota Department of Human Services, Mental Health Bureau, Mental Retardation Division, 658 Cedar Street, Saint Paul, Minnesota 55101 and has been distributed to all county boards and human service boards.

Subp. 5. **Annual review of individual service plan.** At least annually, the case manager shall convene a meeting to review the individual service plan to determine whether the results called for in the individual service plan have been achieved and to determine if the plan requires modifications. The case manager shall make every effort to convene the meeting at a time and place which allows for participation by the person with mental retardation, the person's parent or guardian, the advocate, if any, and others who participated in the development of the individual service plan. Any modifications to the individual service plan must be based on the results of a review of quarterly evaluations; reassessment information compiled under part 9525.0065 [Emergency], subpart 2; and any other information compiled by the case manager for the annual individual service plan review. The ~~results~~ information must be completed and compiled no more than 90 days and no less than ten days before the date of the annual individual service plan review.

~~9525.0085 [Emergency] SCREENING TEAMS.~~

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Subpart 1. Convening screening team. The case manager shall convene a screening team if the assessment conducted under part 9525.0065 [Emergency] indicates that a person with mental retardation might need the level of services provided by an ICF/MR or if the assessment finds that the person might need an ICF/MR within one year. A screening team must be convened within 15 working days of the date that an individual service plan is developed under part 9525.0075 [Emergency].

The case manager shall convene a screening team within five working days of the date of an emergency admission to an ICF/MR.

The case manager may convene a screening team at the time that the individual service plan is developed.

The case manager shall make every effort to convene the screening team at a time and place which allows for participation by all members of the screening team. The case manager shall maintain a written record of the screening team meetings. The written record must list all persons in attendance. If a member of the screening team is unable to attend the screening team meeting, the written record must state the reasons for the member's absence from the meeting.

Subp. 2. Composition of screening team. The screening team shall be composed of:

A. the case manager;

B. the person with mental retardation;

C. the person's parent or guardian; and

D. a qualified mental retardation professional who has been designated by the commissioner and who is not a provider of services to the person with mental retardation.

The case manager shall notify the regional services specialist and the person with mental retardation's advocate of all screening team meetings. The regional services specialist and the advocate may attend any meeting of the screening team. Other persons may attend the screening team meeting at the discretion of the case manager.

Subp. 3. Screening team's review. The screening team must review:

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A.--the-results-of-the-diagnosis-conducted-under-part 9525.0055-[Emergency];

B.--the-results-of-the-assessment-conducted-under-part 9525.0065-[Emergency];

C.--the-individual-service-plan;-and

D.--other-data-related-to-the-person's-eligibility-and need-for-home-and-community-based-services.

Subp.-4.--Screening-team-findings.--Upon-review-of-the diagnostic-and-assessment-data-under-subpart-3,-the-screening team-shall:

A.--determine-whether-the-person-with-mental retardation-is-presently-in-need-of-an-ICF/MR,-or-that-the person-will-need-an-ICF/MR-within-one-year-and-can-benefit-from home-and-community-based-services;

B.--identify-the-other-services-required-to-prevent-or delay-the-need-for-ICF/MR,-skilled-nursing-facility,-or intermediate-care-facility-services-and-the-source-of-payments for-the-required-assistance-or-social-services;-and

C.--complete-the-waivered-services-screening-document on-the-form-provided-by-the-commissioner.

Subp.-5.--Consumer-choice.--The-person-with-mental retardation-who-is-eligible-for-home-and-community-based services-under-parts-9525.1800-to-9525.1930-[Emergency]-and-the person's-parent-or-guardian-must-be-allowed-to-choose-between the-ICF/MR-services-and-the-home-and-community-based-services recommended-by-the-screening-team.

Subp.-6.--Regional-service-specialist-authorization-of ICF/MR-and-home-and-community-based-services.--Upon-completion of-the-waivered-services-screening-document,-the-case-manager must-forward-the-completed-document-to-the-regional-service specialist.--ICF/MR-services-shall-not-be-provided-unless-the services-have-been-authorized-in-writing-by-the-commissioner through-the-regional-service-specialist.--Home-and community-based-services-must-be-authorized-under-parts 9525.1800-to-9525.1930-[Emergency].

Subp.-7.--Use-of-screening-team-recommendations-in

~~commitment-proceedings.--When-a-person-with-mental-retardation who-has-been-referred-to-a-screening-team-is-the-subject-of commitment-proceedings-pursuant-to-Minnesota-Statutes,-chapter 253B,-the-screening-team-must-make-its-recommendations-and report-available-to-the-prepetition-screening-unit,-if-the-court so-orders.~~

9525.0095 [Emergency] DEVELOPMENT OF INDIVIDUAL HABILITATION PLANS.

Subpart 1. **Arrangement of services.** When residential or day training and habilitation services or home and community-based services are required by an individual service plan, ~~the-case-manager-shall-seek-out,-acquire,-authorize,-and coordinate-the-services.--The-services-must-not-be-provided-to-a person-with-mental-retardation-unless-authorized-by-the-case manager.~~ the case manager may arrange for the services by surveying existing providers to determine which providers, if any, are available to provide the services specified in the individual service plan, or with approval of the county board, the case manager may develop and issue a request for proposals to provide any or all of the specified services.

Subp. 2. **Authorization of services.** The case manager may only authorize a service ~~only~~ if:

A. the case manager has determined that the provider is able to provide the service or services in accordance with the individual service plan;

B. the provider agrees in writing to participate in the interdisciplinary team;

C. the provider agrees in writing to provide the service in accordance with the individual service plan;

D. the person with mental retardation to be provided a day training and habilitation service or a residential service has met with the provider and visited the site where the services are to be provided or if a visit to the site is medically contraindicated for the person with mental retardation, the legal representative, if any, has visited the site;

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E. the case manager has informed the ~~legally responsible person~~ legal representative and the advocate of the person with mental retardation of the ~~names~~ name of ~~the~~ each proposed ~~providers~~ provider and has encouraged them to visit ~~the sites~~ each site where the services will be provided;

F. there is a contract between the provider and the host county; and

G. if services are to be provided in a county other than the county of financial responsibility, the case manager has consulted with the host county and has received concurrence from the host county regarding provision of services.

Subp. 3. **Contracts for services.** A provider must have a contract with the host county before the provider can receive payment for services. The department is a third party beneficiary of any contract entered into by a county board and a provider, or a provider and a subcontractor, to provide services under this part. The contract must contain at least items A to M.

A. the maximum and minimum number of persons to be served;

B. the types of sites where services are to be delivered;

C. the qualifications of persons who will provide the services, including proof of licensing or certification if licensing or certification is required by state laws or federal regulations;

D. a description of the services to be provided;

E. an agreement to provide services in accordance with each person's individual habilitation plan in order to achieve the goals specified in the person's individual service plan;

F. a statement incorporating in the contract the individual service plan for each person served;

G. the rate to be charged for providing services;

H. a description of the county board contract monitoring procedures agreed to by the provider, including the

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frequency of monitoring;

I. the starting and ending dates of the contract;

J. an itemized list of any program and financial records, other than the program and financial records required under Minnesota Statutes or Minnesota Rules, to be maintained by the provider;

K. the name of the person responsible for ensuring that the provider is in compliance with the Data Practices ~~in~~ Act, Minnesota Statutes, section 13.46, subdivision 10, paragraph (d);

L. a statement that the case manager is authorized to terminate the contract in accordance with parts 9525.0035, [Emergency], subpart 5 and 9525.0045 [Emergency], subpart 3; and

M. an agreement that the provider will allow the commissioner and the case manager access to the provider's physical plant and program and financial records on request by the commissioner or the case manager.

Each contract and subcontract must contain the following provision. If any contract does not contain the following provision, the provision shall be considered an implied provision of the contract.

"The provider acknowledges and agrees that the Minnesota Department of Human Services is a third-party beneficiary, and as such is an affected party under this contract. The provider specifically acknowledges and agrees that the Minnesota Department of Human Services has standing to and may take any appropriate administrative action or sue the provider for any appropriate relief in law or equity, including, but not limited to, rescission, damages, or specific performance, of all or any part of the contract between the county and the provider. The provider specifically acknowledges that the county and the Minnesota Department of Human Services are entitled to and may recover from the provider reasonable attorney's fees and costs and disbursements

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associated with any action taken under this paragraph that is successfully maintained. This provision shall not be construed to limit the rights of any party to the contract or any other third party beneficiary, nor shall it be construed as a waiver of immunity under the Eleventh Amendment to the United States Constitution or any other waiver of immunity."

Subp. 4. **Subcontracts.** If the provider subcontracts with another contractor to provide services under parts 9525.0015 to 9525.0145 [Emergency] the provider shall:

A. have written permission from the host county to subcontract;

B. ensure that the subcontract meets all the requirements in subpart 3; and

C. ensure that the subcontractor performs fully the terms of the subcontract.

Subp. 5. **Enforcement of contracts.** The county board shall enforce the contracts entered into under parts 9525.0015 to 9525.0145 [Emergency]. The county board may delegate the responsibility for enforcement of contracts ~~to the case manager~~.

Subp. 6. **Convening of interdisciplinary team.** Within 30 days after the case manager authorizes services under subpart 2, the case manager shall convene the interdisplinary team to design an individual habilitation plan. Other persons may attend the interdisciplinary team meeting at the discretion of the case manager but shall not be voting members of the interdisciplinary team.

Subp. 7. **Review of data.** The interdisciplinary team shall review:

A. the results of the diagnosis conducted under part 9525.0055 [Emergency];

B. the results of the assessment conducted under part 9525.0065 [Emergency];

C. the individual service plan developed under part 9525.0075 [Emergency];

D. the report and recommendations of the screening

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team; and

E. any other information related to the delivery of services in the individual service plan and the development of the individual habilitation plan.

Subp. 8. **Data privacy.** Private or confidential data regarding the person with or who might have mental retardation must not be disseminated or used unless the person with or who might have mental retardation or the legal representative has given consent for dissemination or use in accordance with Minnesota Statutes, section 13.05, subdivision 4.

Subp. 9. **Individual habilitation plan.** The interdisciplinary team shall develop an individual habilitation plan that integrates the services provided by all providers and subcontractors to the person with mental retardation and ensures that the services provided and the methods used by each provider and subcontractor are coordinated and compatible with those of every other provider and subcontractor to achieve the overall results of the individual service plan. The plan must include:

A. short-term objectives designed to result in the achievement of the annual goals of the individual service plan;

B. the specific method of providing the service that is expected to result in the achievement of the short-term objectives of the individual habilitation plan;

C. the name of the provider's employee responsible for ensuring that services are implemented as set forth in the individual habilitation plan and that the services result in achievement of the short-term objectives;

D. the measurable behavioral criteria that will be used to determine whether the services have resulted in achievement of the short-term objectives;

E. the frequency with which service will be provided; and

F. the starting date and completion date for each short-term objective.

Subp. 9~~.~~ 10. **Interim services.** A person with mental retardation may receive the services set forth in the person's

individual service plan for up to 22 working days while an individual habilitation plan is being developed. The case manager shall terminate the services if an individual habilitation plan is not developed and implemented within 22 working days of the date that the person began receiving services specified the individual service plan.

Subp. ~~10.~~ 11. **Review of individual habilitation plan.** No less than once every ~~90~~ 180 days the case manager shall participate with each provider in a ~~quarterly~~ semi-annual evaluation by visiting the person with mental retardation, observing both the day training and habilitation services and residential services at a time when they are being implemented, and reviewing reports and data gathered by each provider. At least annually, the interdisciplinary team must be convened by the case manager to review the data described in subpart 7, determine if the results set forth in the individual habilitation plan have been achieved, and to make any amendments or modifications of the plan based on the interdisciplinary team's review of the information.

9525.0105 [Emergency] APPEALS OF CASE MANAGEMENT AND RELATED SERVICES.

Subpart 1. **Notification of right to appeal.** The case manager must notify the person with mental retardation, ~~or~~ the ~~legally-responsible-person~~ legal representative, and the advocate, if any, in writing, of the person's right to appeal. The notice must be written in terms which can be understood by the person with mental retardation or the ~~legally-responsible person~~ legal representative and the advocate.

Subp. 2. **Appealable issues.** A person with mental retardation or the ~~legally-responsible-person~~ legal representative may appeal the issues in items A and B under Minnesota Statutes, section 256.045. The person with mental retardation or the ~~legally-responsible-person~~ legal representative may appeal items C ~~and~~ B to G under part 9500.0860. All appeals must be submitted in writing to the local welfare referee or, if the county does not have a local

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welfare referee, to the commissioner. The advocate for the person with mental retardation or the parent of an adult with mental retardation if the adult does not have a legal representative may assist the person with mental retardation in bringing an appeal under this part.

A. failure of the county board to provide case management services in accordance with part 9525.0035 [Emergency] or part 9525.0145 [Emergency], subpart 1 if a variance request has been granted;

B. failure of the county board or case manager to act within the time limitations in part 9525.0045 [Emergency]; ~~and~~

C. failure of the county board to conduct ~~of~~ the diagnosis ~~required~~ in accordance with part 9525.0055 [Emergency]; ~~and~~

D. failure of the county board to assess the person's needs in accordance with part 9525.0065 [Emergency];

E. determination by the screening team that the person ~~does-not-and-will-not-within-one-year-require-the-level-of-care-provided-in-an-ICF/MR~~ is not eligible for home and community-based services under part 9525.1820 [Emergency];

F. failure of the county board to develop an individual service plan in accordance with part 9525.0085 [Emergency]; or

G. a denial, reduction, or termination of services resulting from a determination by the screening team that does not comply with part 9525.0075 [Emergency] or resulting from a decision to authorize or not authorize services that does not comply with part 9525.0095 [Emergency].

Subp. 3. **Notice of denial, reduction, or termination.** The county board shall notify the person and the person's legal representative, if any, of any denial, reduction, or termination of services. Except as provided in subpart 4, the county board shall mail the notice to the person and the person's legal representative at least ten days before the effective date of the denial, reduction, or termination. The notice shall clearly state the proposed action and the reason for the action. If the

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denial, reduction, or termination is appealable under subpart 2, the notice shall also state the person's right to appeal the proposed action.

Subp. 4. **Exceptions to period of notice.** The period of notice may be five days before the date of the proposed action if the county board has facts indicating probable fraud by the person or the person's legal representative in obtaining services and if the facts have been verified through secondary sources. The county board may mail a notice no later than the date of the action if:

A. the county board has factual information confirming the death of the person; or

B. the county board receives a written statement from the person indicating he or she no longer wishes to be eligible for medical assistance.

Subp. 5. **Appeal of denial.** To appeal a proposed denial the person must file an appeal within 30 days of the action by the county board or within 90 days of the action by the county board if a justified reason for the delay can be shown and is approved by the appeals referee. The written appeal and request for hearing must be submitted to the local welfare referee or, if there is no local welfare referee, to the commissioner. A local welfare referee or state appeals referee, as appropriate, shall conduct the hearing and advise the commissioner on the case. The commissioner shall make a ruling affirming, reversing, or modifying the action or decision of the county board or the department. This ruling shall be binding on the county board and the person unless an appeal is filed with the district court.

9525.0115 [Emergency] QUALITY ASSURANCE.

The case manager is authorized and required to monitor services on a regular basis to ensure that quality services are provided in a cost-effective manner. The county board must cooperate with the commissioner in the commissioner's evaluation of case management services by making available to the commissioner all information compiled under parts 9525.0015 to

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9525.0145 [Emergency] requested by the commissioner.

9525.0125 [Emergency] COUNTY PLAN.

Subpart 1. **County plan.** The county board's plan for services for persons with mental retardation must be developed as a part of the county's community social services plan under Minnesota Statutes, section 256E.09.

Subp. 2. **Plan content and documentation.** In addition to the plan content required by Minnesota Statutes, section 256E.09, the county's community social services plan must:

A. identify all providers in the county that are used by the county board to provide services for persons with mental retardation;

B. identify services in other counties which are used by the county board to provide services to persons for whom the county board is financially responsible;

C. identify specific services which are needed by persons with mental retardation, for whom the county is financially responsible, but which are not available to those persons;

D. project an estimate of the services that will be needed by persons with mental retardation who are residing at state hospitals during the two-year period covered by the community social services plan; and

E. project an estimate of the county's use of state hospitals by persons with mental retardation for whom the county board is financially responsible during the two-year period covered by the community social services plan.

Items A to E must be based on needs assessment data and other information compiled from individual service plans and other needs assessment data.

9525.0135 [Emergency] SERVICE DEVELOPMENT AND NEED DETERMINATION.

Subpart 1. **Definition.** As used in this part, "county board" means the county board of commissioners or the county welfare board as defined in Minnesota Statutes, chapter 393.

Subp. 2. **Data base for service development.** Development

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of a new service or ~~modifications~~ modification or expansion of an existing service must be based on the county's community social services plan and additional needs assessment data, ~~including~~ and the needs for services identified in individual service plans of persons with mental retardation for whom the county board is financially responsible. The county board shall also consider the service needs of persons from other counties for whom the county board has agreed to be the host county.

Subp. 3. **Need determination by county board.** Based on the data in subpart 2, the county board shall ~~determine~~ identify the need for new services or modification or expansion of existing services for any service licensed by the commissioner, except foster care.

If the county board ~~determines~~ identifies that a new service is needed or that the existing services need to be modified or expanded, the county board shall submit an application for a need determination to the commissioner. The application must include the information required in items A to I:

A. the number, sex, and age of the persons to be served;

B. a description of the services needed by the persons to be served as identified in individual service plans;

C. a description of the proposed service;

D. if the proposal is for a residential service, a description of the day training and habilitation or educational services that are available outside of the residence for the persons to be served;

E. a description of the current residences of persons to be served and a statement of the number of persons to be served from each residential facility, foster home, or parental home;

F. the identity of other counties that will use the service;

G. a description of any financial limitations or funding restrictions that will affect the proposed service;

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H. an explanation of how this application relates to service needs identified under subpart 2; and

I. the date of the county board action on the application.

Subp. 4. **Appeal of county need determination.** The county shall establish written procedures for appealing its determination of need made under subpart 3.

Subp. 5. **Need determination by commissioner.** The commissioner shall make the determination of the need for and the location, program, type, and size of the proposed service in the county application. The commissioner may determine need for the service on a local, regional, or statewide basis. The commissioner shall consider the following factors in making a final need determination:

A. the need to protect persons with mental retardation from violations of their human and civil rights;

B. the need to assure that persons with mental retardation receive the full range of social, financial, and habilitative services specified as needed in their individual service plans;

C. whether services will be carried out in the least restrictive environment, and ~~that~~ whether the size of the service ~~must relate~~ relates to the needs of the persons to be served;

D. whether persons receiving the proposed service will use medical, psychological, therapeutic, and other support services that are used by the general public;

E. whether cost projections for the service are within the fiscal limitations of the state;

F. whether the application is consistent with the state's plans for service distribution and development; and

G. the distribution of and access to the services throughout the state.

Subp. ~~5.~~ 6. **Notice of decision and right to appeal.** Within 30 days of receipt of the application for need determination from the county board, the commissioner shall

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notify the county board of the commissioner's decision. The notice of the commissioner's decision must include notification of the county board's right to appeal the decision under subpart 8.

Subp. 6~~.~~ 7. **Biennial redetermination of need.** ~~Each provider of a~~ Every two years the county board shall submit to the commissioner a recommendation on the redetermination of need for each service located in the county which is licensed by the commissioner, except foster care~~, shall submit to the county board of the county where the service is located a request for a redetermination of need. The request must be submitted at the time specified by the county board, but at least every 24 months.~~

~~Within 30 days of receipt from a provider, the county board shall forward to the commissioner a letter with respect to the continued need for the service. The letter~~ The county's recommendations must state whether the county board recommends continuation, continuation with modifications, discontinuation of the service, or, if the service is an ICF/MR service, decertification of ~~ICF/MR services~~ the service. The recommendations of the county board must be based on the service needs of persons with mental retardation for whom the county is financially responsible, and for persons with mental retardation from other counties for whom the county board has agreed to serve as host county, which are documented in the county's community social services plan.

The commissioner shall make the final redetermination of need for the service after considering the factors in subpart 3, and the recommendations of the county board. The commissioner shall notify the county board of the decision within 30 days of receipt of the county board's ~~letter of recommendation~~ recommendations.

Subp. 7~~.~~ 8. **Effect of need determination or redetermination.** If the county board or the commissioner determines that the service, modification, or expansion is not needed, the service, modification, or expansion shall not be paid for or reimbursed from federal or state money ~~identified in~~

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~~part 9525.0025 [Emergency]~~ for services to persons with mental retardation. If the determination or redetermination is appealed, the effect of this provision may be stayed pending the outcome of the appeal.

Subp. ~~8.~~ 9. **Appeal of commissioner's need determination or redetermination.** Determination or redetermination of need may be appealed by the county board in accordance with Minnesota Statutes, chapter 14. Notice of appeal must be received by the commissioner within 30 days after the notification of the commissioner's decision was sent to the county.

9525.0145 [EMERGENCY] VARIANCE PROCEDURE AND ENFORCEMENT.

Subpart 1. **Request for variance.** A county board may request a variance from compliance with parts 9525.0015 to 9525.0145 [Emergency]. The written variance request must be submitted to the commissioner by February 1, 1985. The written variance request must be reviewed by the county board and signed by the chairperson of the county board and must include the information required in items A to G:

A. an assessment of the county board's current status with regard to each section of parts 9525.0015 to 9525.0145 [Emergency];

B. the sections of parts 9525.0015 to 9525.0145 [Emergency] with which the county board cannot comply;

C. the reasons why the county board cannot comply with the specified section or sections;

D. the period of time, not to exceed 28 months, for which the county board requests a variance;

E. the specific measures that will be taken by the county board to ensure the health, safety, and development in accordance with the individual service plan, of the persons with mental retardation served by the county board, if the variance is granted;

F. the specific steps that will be taken by the county board to achieve full compliance with the sections of parts 9525.0015 to 9525.0145 [Emergency] for which the variance is requested, including target dates for achieving each step;

APPROVED BY THE REVISOR OF STATUTES ON/NOT BY:

and

G. any technical assistance the county board needs from the department in order to achieve compliance.

Subp. 2. **Granting a variance.** The commissioner shall grant the county board's variance request if the commissioner determines that:

A. the variance request was submitted in accordance with subpart 1;

B. granting the variance will not endanger the health, safety, and development of the persons with mental retardation served by the county board;

C. the variance request is in compliance with Minnesota statutes and Minnesota rules governing services for persons with mental retardation;

D. the county board has demonstrated in its variance request that the county board will immediately begin to implement all provisions in parts 9525.0015 to 9525.0145 [Emergency] and has provided reasonable evidence that it will achieve full compliance no later than June 30, 1987;

E. the county board has provided reasonable evidence that it is not capable of fully complying with parts 9525.0015 to 9525.0145 [Emergency] at the time of the request and that its inability to comply is not due to failure to exercise its discretion;

F. the county board has provided reasonable evidence that it has a compelling need for a variance; and

G. the specific steps to be taken by the county under subpart 1, item F are measurable and implementation of these steps can be monitored by the department.

Subp. 3. **Notice.** The commissioner shall review the county board's variance request in accordance with subpart 2 and notify the county board, in writing, within 30 days if the variance request has been granted or denied. If the variance request is denied, the notice must state the reasons why the variance request was denied and inform the county board of its right to appeal.

Subp. 4. Enforcement. Except as provided in subparts 1 to 3, if the commissioner has reasonable grounds to believe that a county board has not complied with or is failing to comply with parts 9525.0015 to 9525.0135 [Emergency], the commissioner may issue a written order requiring the county board to comply. The county board shall comply with the order. If the county board disagrees with the commissioner's order, the county board 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 working days of the date that the commissioner issued the order. The appeal must state the reasons why the county board is appealing the commissioner's order and present evidence explaining why the county board disagrees with the commissioner's order. The commissioner shall review the evidence presented in the county board's appeal and send written notification to the county board of the decision on the appeal. The commissioner's decision on the appeal is final.

~~REPEALER.--Minnesota-Rules,-parts-9525.0010-to-9525.0100,-are repealed.~~

APPLICATION. ~~Notwithstanding-any-rule-or-law-to-the-contrary, upon-expiration-of~~ Parts 9525.0015 to 9525.0145 [Emergency], shall prevail over permanent parts 9525.0010 to 9525.0100~~,-are reinstated~~ for the duration of the emergency parts.

APPROVED BY THE
REVISOR OF STATUTES
OFFICE BY:

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED
OCT 29 1984
Joan Anderson Growe
Secretary of State
2:21 PM

APPROVED AS TO FORM AND LEGALITY
Oct. 22 1984
HUBERT H. HUMPHREY, III
ATTORNEY GENERAL
BY LARRY D. STARNS
SPECIAL ASSISTANT ATTORNEY GENERAL

Department of Human Services

Proposed Emergency Rules Governing County Board Responsibility for Providing Case Management Services to Persons with Mental Retardation

Notice of Intent to Adopt Emergency Rules

The State Department of Human Services proposes to adopt the above-entitled emergency rules to implement Laws of Minnesota, Chapter 312, Article 9.

Persons interested in these rules have until 4:30 p.m. on September 28, 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 9525.0015 to 9525.0145 [Emergency] is to set forth the responsibilities of county boards for providing case management services to persons with or who may have mental retardation, and governs the planning, development and provision of other services to persons with mental retardation.

Proposed Minnesota Rules, parts 9525.0015 to 9525.0145 [Emergency] apply to county boards expending federal or state funds for case management or other services for persons with or who might have mental retardation.

Proposed Minnesota Rules, parts 9525.0015 to 9525.0145 [Emergency] include sections on county board responsibilities, case management responsibilities, diagnosis of mental retardation, assessment of individual service needs, individual service plan, screening teams, development of individual habilitation plans, appeals of case management and related services, quality assurance, county plan, service development and need determination and enforcement.

The Department estimates that the cost of implementing these emergency rules will not exceed $100,000 per year for local public bodies for the two years immediately following their adoption within the meaning of Minnesota Statutes, section 14.11, subdivision 1.

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

Proposed Emergency Rules (all new material)

9525.0015 [Emergency] DEFINITIONS.

Subpart 1. Scope. The terms used in parts 9525.0015 to 9525.0145 [Emergency] have the meanings given them in this part.

Subp. 2. Assessment. "Assessment" means the act of determining a person's need for services and by identifying and describing the person's skills and behaviors, and the environmental, physical, and medical factors which affect development or remediation of the person's skills and behaviors under part 9525.0065 [Emergency].

Subp. 3. Advocate. "Advocate" means an individual who has been authorized in a written, notarized statement by the person with or who might have mental retardation or by that person's legally responsible person to help the person with or who might have mental retardation understand and make choices in matters related to identification of needs and choice of services in parts 9525.0015 to 9525.0145 [Emergency].

Private or confidential data regarding the person with or who might have mental retardation must not be disseminated to or used by the person's advocate unless the person with or who might have mental retardation or the legally responsible person has given informed consent for dissemination to or use by the advocate in accordance with Minnesota Statutes, section 13.05, subdivision 4.

Subp. 4. Case management services. "Case management services" means identifying the need for, seeking out, acquiring, authorizing, and coordinating the delivery of services by an individual designated by the county board to provide case management services under part 9525.0045 [Emergency].

Subp. 5. Case manager. "Case manager" means the individual designated by the county board under part 9525.0035 [Emergency] to provide case management services.

Subp. 6. Commissioner. "Commissioner" means the commissioner of the Department of Human Services or the commissioner's designated representative.

Subp. 7. Community social services plan. "Community social services plan" means the plan required by Minnesota Statutes, section 256E.09.

Subp. 8. Contract. "Contract" means a legally enforceable agreement entered into by a county board and a provider, or a provider and a subcontractor, that sets forth the rights and responsibilities of the parties.

Subp. 9. County board. "County board" means the county board of commissioners for the county of financial responsibility or its designated representative.

Subp. 10. County of financial responsibility. "County of financial responsibility" has the meaning given it in Minnesota Statutes, section 256B.02, subdivision 3.

Subp. 11. Day training and habilitation services. "Day training and habilitation services" means health and social services provided to a person with mental retardation at a site other than the person's place of residence by a licensed provider. The services must be designed to result in the development and maintenance of life skills, including: self-care; communication; mobility; community living; behavior management; and therapeutic work. Day training and habilitation services are provided on a scheduled basis for periods of less than 24 hours each day.

Subp. 12. Department. "Department" means the Minnesota Department of Human Services.

Subp. 13. Home and community-based services. "Home and community-based services" means the following services for persons with mental retardation authorized under United States Code, title 42, sections 1396 to 1396p, and authorized in the waiver granted by the Department of Health and Human Services:

A. case management;

B. respite care;

C. homemaker services;

D. in-home family support services;

E. supported living arrangements for children;

F. supported living arrangements for adults;

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G. day habilitation; and

H. minor physical adaptations to the home as defined in part 9525.1860 [Emergency].

Subp. 14. Host county. "Host county" means the county in which the services set forth in a person's individual service plan are provided.

Subp. 15. 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 provide services to persons with mental retardation 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. Unless otherwise stated, this definition includes state-operated and community-based facilities.

Subp. 16. Individual habilitation plan. "Individual habilitation plan" means the written plan for providing services to a person developed under part 9525.0095 [Emergency].

Subp. 17. Individual service plan. "Individual service plan" means the written plan developed under part 9525.0075 [Emergency] that specifies the services needed by a person.

Subp. 18. Interdisciplinary team. "Interdisciplinary team" means the case manager, the person with mental retardation, the legally responsible person and the person's advocate, if any, and representatives of all providers providing services set forth in the individual service plan meeting together to develop and periodically review an individual habilitation plan under part 9525.0095 [Emergency]. The case manager may invite other persons to join the interdisciplinary team as the case manager determines necessary.

Subp. 19. Least restrictive environment. "Least restrictive environment" means an environment in which:

A. Employees or subcontractors of the provider are available to provide the type, quantity, and frequency of services necessary to achieve the results set forth in a person's individual service plan.

B. The physical plant and the scheduling of employees or subcontractors of the provider are designed or modified to promote the independence of the person with mental retardation and to limit the physical assistance given by employees or subcontractors to the tasks or parts of tasks that the person with mental retardation could not accomplish without physical assistance.

C. The amount of supervision and physical control exercised by employees or subcontractors of the provider is limited to the level required to ensure that persons with mental retardation are not subject to unnecessary risks to their health or safety and do not subject others to unnecessary risks.

D. Services are designed to increase interactions between persons with mental retardation and persons who do not have disabilities by using facilities, services, and conveyances used by the general public.

E. The daily, monthly, and annual schedule of the person receiving services closely approximates that of the general public.

F. The physical surroundings, methods of interaction between the provider's employees and subcontractors, and the materials used in training are the same as those that would be used with a person without mental retardation of the same chronological age.

Subp. 20. Legally responsible person. "Legally responsible person" means the parent or parents of a person, with or who might have mental retardation, under 21 years of age or a court-appointed guardian for a person, with or who might have mental retardation, of any age.

Subp. 21. Need determination. "Need determination" means the commissioner's determination under part 9525.0135 [Emergency] of the need for and the program, type, location, and size of licensed residential and day training and habilitation services, except foster care, for persons with mental retardation.

Subp. 22. Person with mental retardation. "Person with mental retardation" means:

A. A person who has been diagnosed under part 9525.0055 [Emergency] as having significantly subaverage intellectual functioning existing concurrently with demonstrated deficits in adaptive behavior and that are manifested before the person's 22nd birthday.

B. A person under 18 years of age who demonstrates significantly subaverage intellectual functioning concurrently with deficits in adaptive behavior, but for whom a licensed psychologist or licensed consulting psychologist determines that a diagnosis may not be advisable because of the person's age.

C. A person 18 years of age or older who has not been diagnosed as a person with mental retardation before the person's 22nd birthday and who, as the result of accident or physical trauma (excluding mental illness, chemical dependency,

senility, and debilitating conditions such as muscular dystrophy and multiple sclerosis), has been diagnosed as having significantly subaverage intellectual functioning existing concurrently with deficits in adaptive behavior and, who requires services similar to those required by a person with mental retardation.

Subp. 23. Person who might have mental retardation. "Person who might have mental retardation" means a person undergoing diagnosis to determine if that person is a person with mental retardation.

Subp. 24. Physical plant. "Physical plant" means the building or buildings in which a service is provided to a person with mental retardation and all equipment affixed to the building and not easily subject to transfer.

Subp. 25. Provider. "Provider" means a corporation, governmental unit, partnership, individual, or individuals licensed by the state, if a license is required, or approved by the county board, if a license is not required, to provide one or more services to persons with mental retardation.

Subp. 26. Public agency. "Public agency" means a public health nursing service established under Minnesota Statutes, section 145.12, a human services board established under Minnesota Statutes, section 402.04, a local board of health established under Minnesota Statutes, section 145.01, or a county board.

Subp. 27. Qualified mental retardation professional. "Qualified mental retardation professional" means an individual who meets the qualifications in the Code of Federal Regulations, title 42, section 442.401.

Subp. 28. Quarterly evaluation. "Quarterly evaluation" means a concise written summary evaluating the services actually provided, the extent to which services have resulted in achieving the goals and objectives of a person's individual habilitation plan, and whether services are being provided in accordance with the individual habilitation plan.

Subp. 29. Redetermination of need. "Redetermination of need" means the commissioner's biennial redetermination under part 9525.0135 [Emergency] of the need for and the program, type, location, and size of licensed residential or day training and habilitation services, except foster care, for persons with mental retardation.

Subp. 30. Regional service specialist. "Regional service specialist" means an individual designated by the commissioner to:

A. authorize medical assistance payments for ICF/MR and home and community-based services for persons with mental retardation;

B. serve on screening teams as a qualified mental retardation professional;

C. provide training and assistance to county boards, case managers, and providers in technical matters related to the development and provision of services for persons with mental retardation; and

D. assist case managers in developing and planning services for persons with mental retardation.

Subp. 31. Residential service. "Residential service" means shelter, food, and training in self-care, communication, community living skills, social skills, leisure and recreation skills, and behavior management provided by a provider licensed by the state, if a license is required, or approved by the county board if a license is not required, to provide these services.

Subp. 32. Screening team. "Screening team" has the definition given it in Minnesota Statutes, section 256B.092.

Subp. 33. Service. "Service" means a planned activity designed to achieve the results specified in an individual service plan.

9525.0025 [Emergency] APPLICABILITY.

Parts 9525.0015 to 9525.0145 [Emergency] set forth the responsibilities of county boards for providing case management services to persons with or who might have mental retardation, and governs the planning, development, and provision of other services to persons with mental retardation.

All federal and state money allocated to county boards for case management and other services for persons with or who might have mental retardation must be expended in accordance with parts 9525.0015 to 9525.0145 [Emergency].

9525.0035 [Emergency] COUNTY BOARD RESPONSIBILITIES.

Subpart 1. Provision of case management services. The county board shall provide case management services in accordance with parts 9525.0015 to 9525.0145 [Emergency] to all persons with or who might have mental retardation who are residents of or reside in the county at the time they request or are referred for services and who are in need of services. Case management services may be provided directly by the county board or under a contract between the county board and another county board or a provider of case management services.

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Subp. 2. Designation of case manager. Within five working days after receiving a request or referral for service, the county board shall designate a case manager for the person who requested or was referred for services. Within five working days after designating a case manager, the county board shall send a written notification of the name, telephone number, and location of the designated case manager to the person who requested or was referred for services, or the legally responsible person, and the advocate, if any.

Subp. 3. Qualifications of case manager. Each case manager must have at least the qualifications in items A and B.

A. Each case manager hired after December 31, 1984, shall meet the requirements for a qualified mental retardation professional or have a bachelor's degree in a field related to the education and treatment of persons with mental retardation and at least one year of experience in the education and treatment of persons with mental retardation.

B. In addition to the qualifications in item A, each case manager shall complete at least 20 hours of training and continuing education in case management and mental retardation services each calendar year. The county board shall maintain a written record of all training and continuing education completed by all case managers employed by the county board.

Subp. 4. Purchase of case management services. The county board shall not purchase case management services for a person with or who might have mental retardation from a provider of other services for that person. This provision does not apply when the county board provides the services or when the services are provided by another public agency and the conditions in items A and B are satisfied.

A. The county board or other public agency providing case management and other services ensures that administration of the case management services is separate from the administration of any other service for persons with mental retardation.

B. The county board has notified the commissioner that the county board has entered into a contract with another public agency for case management services.

Subp. 5. Termination of case management services. The county board may terminate case management services when:

A. the person with mental retardation or the legally responsible person makes a written request that services be terminated;

B. the person with mental retardation dies; or

C. a licensed psychologist or licensed consulting psychologist determines that the person is not a person with mental retardation.

9525.0045 [Emergency] CASE MANAGEMENT RESPONSIBILITIES.

Subpart 1. Provision of services. The case manager, upon designation by the county board, shall immediately begin to provide case management services to the person who requested or was referred for services, and shall continue to provide case management services until case management services are terminated under part 9525.0035 [Emergency], subpart 5. The county board shall not provide or arrange for services to be provided to a person with or who might have mental retardation until a case manager has been designated, and services must not continue after case management services have been terminated under part 9525.0035 [Emergency], subpart 5.

Subp. 2. Minimum case management services. The case manager shall:

A. ensure that a diagnosis is completed in accordance with part 9525.0055 [Emergency]. The diagnosis must be completed within 35 working days following the date that the person requested or was referred for services;

B. provide or obtain an assessment of individual service needs under part 9525.0065 [Emergency] if the person is diagnosed as a person with mental retardation;

C. develop an individual service plan under part 9525.0075 [Emergency] based on the assessment completed in item B;

D. convene a screening team under part 9525.0085 [Emergency] if the case manager determines, based on the results of the assessment, that the person might be in need of the level of care provided by an ICF/MR, or that the person will require that level of care within one year;

E. ensure that the services described in the individual service plan are provided in the type, quantity, and frequency specified in the individual service plan; and

F. monitor services provided to the person with mental retardation by:

(1) visiting the person at least once every 90 days;

(2) conducting on-site visits when the services are being provided, reviewing the provider's records and reports, and observing the implementation of the person's individual habilitation plan; and

(3) compiling quarterly evaluations of the results of services provided under the individual service plan.

Subp. 3. Duties of case manager. The case manager has the following duties which must not be delegated:

A. Before a service may be provided under an individual service plan the case manager must authorize the service. The case manager shall not authorize services other than those set forth in a person's individual service plan, except in an emergency and then only for the duration of the emergency. If an emergency occurs, the case manager shall, within ten working days, review the individual service plan and the cause of the emergency to determine whether the individual service plan should be modified as a result of the emergency. Modifications to the individual service plan must be made in accordance with part 9525.0075 [Emergency], subpart 5.

B. The case manager shall periodically, but at least every 90 days, review implementation of contracts for services and report to the host county board if the provider is not in compliance with the terms of the contracts.

C. The case manager shall terminate services if an annual review of the person's individual service plan indicates that the services are no longer needed.

D. The case manager shall serve as chairperson of the interdisciplinary and screening teams.

A case manager retains the duties in items A to D until the responsibility of the county board is terminated under part 9525.0035 [Emergency], subpart 5, or until the county board designates another case manager under part 9525.0035 [Emergency], subpart 2. When another case manager is designated, the person with mental retardation, the legally responsible person and the advocate, if any, and all providers providing services to the person must be notified, in writing, of the name, telephone number, and location of the new case manager within five working days.

9525.0055 [Emergency] DIAGNOSIS.

Subpart 1. Initial diagnosis. The following is required to make a diagnosis of mental retardation:

A. A licensed psychologist or licensed consulting psychologist must determine that the person has significantly subaverage intellectual functioning. "Significantly subaverage" means performance which is two or more standard deviations from the mean or average of a standardized test that measures intellectual functioning.

B. A licensed psychologist or licensed consulting psychologist must determine that the person has deficits in adaptive behavior. Deficits in adaptive behavior must be determined through the use of scales of adaptive behavior, or by a combination of test data, observations, and the use of all available sources of information regarding the person's behavior which indicate the effectiveness or degree with which the person meets the norm of personal independence and social responsibilities of the person's chronological age group and cultural peer group.

C. A medical examination conducted by a licensed physician including examination of vision, hearing, seizure disorders, and physical disabilities.

D. A written report, by a social worker who is experienced in working with persons with mental retardation, on any social or familial factors that might have contributed to the person's mental retardation.

The documentation for items A to D must be dated no more than 90 days before the date when the individual service plan is written.

Subp. 2. Review of diagnosis. Except as provided in subpart 3 the case manager shall conduct a review of the diagnosis at least every three years. This review must include a review of the documentation of the initial diagnosis in subpart 1, and any components in subpart 1, items A to D, that the case manager determines need to be reevaluated. The case manager shall provide or obtain any assessments required to complete review of the diagnosis.

Subp. 3. Exception. If a person with mental retardation has been receiving services specified in the person's individual service plan for a period of ten or more consecutive years since the person's 18th birthday, and has an initial diagnosis of mental retardation which has been confirmed twice, the review of the diagnosis required in this part shall be conducted at least every six years.

9525.0065 [Emergency] ASSESSMENT OF INDIVIDUAL SERVICE NEEDS.

Subpart 1. Assessment. Each person diagnosed as a person with mental retardation under part 9525.0055 [Emergency] shall receive an assessment to determine the person's need for service. The assessment must be conducted under the supervision of a qualified mental retardation professional.

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The assessment of individual service needs must include the following areas:

A. medical status;

B. physical development;

C. intellectual functioning;

D. social skills;

E. self-care skills;

F. communication skills;

G. community living skills;

H. vocational skills; and

I. the person's physical and social environments.

Data collected by conducting assessments in items A to I may be supplemented by data from individuals who know the person with mental retardation and other sources.

Subp. 2. Reassessment. Annually, the case manager, the person with mental retardation, the legally responsible person, and the person's advocate, if any, shall determine which of the areas in subpart 1 should be reassessed. The case manager shall provide or obtain a reassessment of the person's need for services in those areas. The case manager shall also obtain an evaluation of the person's medical status by a licensed physician to be used in the annual reassessment. The medical evaluation must be conducted no more than 90 days before the date of the annual individual service plan review conducted under part 9525.0075 [Emergency].

The annual reassessment of the person's need for service must be completed at least ten days before the date of the annual individual service plan review under part 9525.0075 [Emergency].

9525.0075 [Emergency] INDIVIDUAL SERVICE PLAN.

Subpart 1. Standards for developing individual service plan. An individual service plan must be developed and implemented for each person with mental retardation who requests or is referred for services. The services specified in the individual service plan must be based on an assessment of the individual's need for services under part 9525.0065 [Emergency]. The individual service plan must be developed in conformance with the following standards:

A. the plan must specify how food, shelter, and health care will be provided;

B. the plan must provide for delivery of services in the least restrictive environment;

C. the plan must be designed to result in vocational training and, to the extent possible, employment and increased financial independence;

D. the plan must be designed to result in increased access to the community and interactions with the general public through use of community services; and

E. the plan must be designed to involve family, neighbors, and friends in providing services to the extent possible.

Subp. 2. Development of individual service plan. The case manager shall develop the individual service plan in consultation with the person with mental retardation and the person's parent or guardian, and the person's advocate, if any.

The documentation used in developing the individual service plan must include:

A. the results of the diagnosis conducted under part 9525.0055 [Emergency];

B. the results of the assessment conducted under part 9525.0065 [Emergency]; and

C. any other information compiled by the case manager that will assist in developing the individual service plan.

Subp. 3. Content of individual service plan. The individual service plan must:

A. describe the results of all assessment information used to identify the person's need for services;

B. state the long-range goals of each service and an anticipated date for attainment of those goals;

C. state the annual goals including the expected results of each service that are related to attainment of the long-range goals stated under item B;

D. identify the type, amount, and frequency of services needed by the person with mental retardation to achieve the annual goals stated under item C. The services needed must be identified without regard to the current availability of the services;

E. state the methods that will be used to develop or obtain the services identified in item D;

F. identify any information that providers must submit to the case manager and the frequency with which the information must be provided; and

G. identify the payment sources for the services identified in item D.

Subp. 4. Standards for state hospital discharge planning. When an individual service plan calls for the discharge of a person with mental retardation from a state hospital, the individual service plan must conform to the standards for state hospital discharge planning established by the commissioner.

Subp. 5. Annual review of individual service plan. At least annually, the case manager shall convene a meeting to review the individual service plan to determine whether the results called for in the plan have been achieved and to determine if the plan requires modifications. The case manager shall make every effort to convene the meeting at a time and place which allows for participation by the person with mental retardation, the person's parent or guardian, the advocate, if any, and others who participated in the development of the individual service plan. Any modifications to the individual service plan must be based on the results of a review of quarterly evaluations; reassessment information compiled under part 9525.0065 [Emergency], subpart 2; and any other information compiled by the case manager for the annual individual service plan review. The results must be completed and compiled no more than 90 days and no less than ten days before the date of the annual individual service plan review.

9525.0085 [Emergency] SCREENING TEAMS.

Subpart 1. Convening screening team. The case manager shall convene a screening team if the assessment conducted under part 9525.0065 [Emergency] indicates that a person with mental retardation might need the level of services provided by an ICF/MR or if the assessment finds that the person might need an ICF/MR within one year. A screening team must be convened within 15 working days of the date that an individual service plan is developed under part 9525.0075 [Emergency].

The case manager shall convene a screening team within five working days of the date of an emergency admission to an ICF/MR.

The case manager may convene a screening team at the time that the individual service plan is developed.

The case manager shall make every effort to convene the screening team at a time and place which allows for participation by all members of the screening team. The case manager shall maintain a written record of the screening team meetings. The written record must list all persons in attendance. If a member of the screening team is unable to attend the screening team meeting, the written record must state the reasons for the member's absence from the meeting.

Subp. 2. Composition of screening team. The screening team shall be composed of:

A. the case manager;

B. the person with mental retardation;

C. the person's parent or guardian; and

D. a qualified mental retardation professional who has been designated by the commissioner and who is not a provider of services to the person with mental retardation.

The case manager shall notify the regional services specialist and the person with mental retardation's advocate of all screening team meetings. The regional services specialist and the advocate may attend any meeting of the screening team. Other persons may attend the screening team meeting at the discretion of the case manager.

Subp. 3. Screening team's review. The screening team must review:

A. the results of the diagnosis conducted under part 9525.0055 [Emergency];

B. the results of the assessment conducted under part 9525.0065 [Emergency];

C. the individual service plan; and

D. other data related to the person's eligibility and need for home and community-based services.

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Subp. 4. Screening team findings. Upon review of the diagnostic and assessment data under subpart 3, the screening team shall:

A. determine whether the person with mental retardation is presently in need of an ICF/MR, or that the person will need an ICF/MR within one year and can benefit from home and community-based services;

B. identify the other services required to prevent or delay the need for ICF/MR, skilled nursing facility, or intermediate care facility services and the source of payments for the required assistance or social services; and

C. complete the waivered services screening document on the form provided by the commissioner.

Subp. 5. Consumer choice. The person with mental retardation who is eligible for home and community-based services under parts 9525.1800 to 9525.1930 [Emergency] and the person's parent or guardian must be allowed to choose between the ICF/MR services and the home and community-based services recommended by the screening team.

Subp. 6. Regional service specialist authorization of ICF/MR and home and community-based services. Upon completion of the waivered services screening document, the case manager must forward the completed document to the regional service specialist. ICF/MR services shall not be provided unless the services have been authorized in writing by the commissioner through the regional service specialist. Home and community-based services must be authorized under parts 9525.1800 to 9525.1930 [Emergency].

Subp. 7. Use of screening team recommendations in commitment proceedings. When a person with mental retardation who has been referred to a screening team is the subject of commitment proceedings pursuant to Minnesota Statutes, chapter 253B, the screening team must make its recommendations and report available to the prepetition screening unit, if the court so orders.

9525.0095 [Emergency] DEVELOPMENT OF INDIVIDUAL HABILITATION PLANS.

Subpart 1. Arrangement of services. When residential or day training and habilitation services or home and community-based services are required by an individual service plan, the case manager shall seek out, acquire, authorize, and coordinate the service. The services must not be provided to a person with mental retardation unless authorized by the case manager. The case manager may arrange for services by surveying existing providers to determine which providers, if any, are available to provide the services specified in the individual service plan, or with approval of the county board, the case manager may develop and issue a request for proposals to provide any or all of the specified services.

Subp. 2. Authorization of services. The case manager may authorize a service only if:

A. the case manager has determined that the provider is able to provide the service or services in accordance with the individual service plan;

B. the provider agrees in writing to participate in the interdisciplinary team;

C. the provider agrees in writing to provide the service in accordance with the individual service plan;

D. the person with mental retardation has met with the provider and visited the site where the services are to be provided;

E. the case manager has informed the legally responsible person and the advocate of the person with mental retardation of the names of the proposed providers and has encouraged them to visit the sites where the services will be provided;

F. there is a contract between the provider and the host county; and

G. if services are to be provided in a county other than the county of financial responsibility, the case manager has consulted with the host county and has received concurrence from the host county regarding provision of services.

Subp. 3. Contracts for services. A provider must have a contract with the host county before the provider can receive payment for services. The department is a third party beneficiary of any contract entered into by a county board and a provider, or a provider and a subcontractor, to provide services under this part. The contract must contain at least items A to M.

A. the maximum and minimum number of persons to be served;

B. the types of sites where services are to be delivered;

C. the qualifications of persons who will provide the services, including proof of licensing or certification if licensing or certification is required by state laws or federal regulations;

D. a description of the services to be provided;

E. an agreement to provide services in accordance with each person's individual habilitation plan in order to achieve the goals specified in the person's individual service plan;

F. a statement incorporating in the contract the individual service plan for each person served;

G. the rate to be charged for providing services;

H. a description of the county board contract monitoring procedures agreed to by the provider, including the frequency of monitoring;

I. the starting and ending dates of the contract;

J. an itemized list of any program and financial records, other than the program and financial records required under Minnesota Statutes or Minnesota Rules, to be maintained by the provider;

K. the name of the person responsible for ensuring that the provider is in compliance with the data practices in Minnesota Statutes, section 13.46, subdivision 10, paragraph (d);

L. a statement that the case manager is authorized to terminate the contract in accordance with parts 9525.0035, [Emergency], subpart 5 and 9525.0045 [Emergency], subpart 3; and

M. an agreement that the provider will allow the commissioner and the case manager access to the provider's physical plant and program and financial records on request by the commissioner or the case manager.

Each contract and subcontract must contain the following provision. If any contract does not contain the following provision, the provision shall be considered an implied provision of the contract.

"The provider acknowledges and agrees that the Minnesota Department of Human Services is a third-party beneficiary, and as such is an affected party under this contract. The provider specifically acknowledges and agrees that the Minnesota Department of Human Services has standing to and may take any appropriate administrative action or sue the provider for any appropriate relief in law or equity, including, but not limited to, rescission, damages, or specific performance of all or any part of the contract between the county and the provider. The provider specifically acknowledges that the county and the Minnesota Department of Human Services are entitled to and may recover from the provider reasonable attorney's fees and costs and disbursements associated with any action taken under this paragraph. This provision shall not be construed as a waiver of immunity under the Eleventh Amendment to the United States Constitution or any other waiver of immunity."

Subp. 4. Subcontracts. If the provider subcontracts with another contractor the provider shall:

A. have written permission from the host county to subcontract;

B. ensure that the subcontract meets all the requirements in subpart 3; and

C. ensure that the subcontractor performs fully the terms of the subcontract.

Subp. 5. Enforcement of contracts. The county board shall enforce the contracts entered into under parts 9525.0015 to 9525.0145 [Emergency]. The county board may delegate the responsibility for enforcement of contracts to the case manager.

Subp. 6. Convening of interdisciplinary team. Within 30 days after the case manager authorizes services under subpart 2, the case manager shall convene the interdisciplinary team to design an individual habilitation plan.

Subp. 7. Review of data. The interdisciplinary team shall review:

A. the results of the diagnosis conducted under part 9525.0055 [Emergency];

B. the results of the assessment conducted under part 9525.0065 [Emergency];

C. the individual service plan developed under part 9525.0075 [Emergency];

D. the report and recommendations of the screening team; and

E. any other information related to the delivery of services in the individual service plan and the development of the individual habilitation plan.

Subp. 8. Individual habilitation plan. The interdisciplinary team shall develop an individual habilitation plan that integrates the services provided by all providers and subcontractors to the person with mental retardation and ensures that the services provided and the methods used by each provider and subcontractor are coordinated and compatible with those of every other provider and subcontractor to achieve the overall results of the individual service plan. The plan must include:

A. short-term objectives designed to result in the achievement of the annual goals of the individual service plan;

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B. the specific method of providing the service that is expected to result in the achievement of the short-term objectives of the individual habilitation plan;

C. the name of the provider's employee responsible for ensuring that services are implemented as set forth in the individual habilitation plan and that the services result in achievement of the short-term objectives;

D. the measurable behavioral criteria that will be used to determine whether the services have resulted in achievement of the short-term objectives;

E. the frequency with which service will be provided; and

F. the starting date and completion date for each short-term objective.

Subp. 9. Interim services. A person with mental retardation may receive the services set forth in the person's individual service plan for up to 22 working days while an individual habilitation plan is being developed. The case manager shall terminate the services if an individual habilitation plan is not developed and implemented within 22 working days of the date that the person began receiving services specified the individual service plan.

Subp. 10. Review of individual habilitation plan. Every 90 days the case manager shall participate with each provider in a quarterly evaluation by visiting the person with mental retardation, observing the services at a time when they are being implemented, and reviewing reports and data gathered by each provider. At least annually, the interdisciplinary team must be convened by the case manager to review the data described in subpart 7, determine if the results set forth in the individual habilitation plan have been achieved, and to make any amendments or modifications of the plan based on the interdisciplinary team's review of the information.

9525.0105 [Emergency] APPEALS OF CASE MANAGEMENT AND RELATED SERVICES.

Subpart 1. Notification of right to appeal. The case manager must notify the person with mental retardation, or the legally responsible person, and the advocate, if any, in writing, of the person's right to appeal. The notice must be written in terms which can be understood by the person or the legally responsible person and the advocate.

Subp. 2. Appealable issues. A person with mental retardation or the legally responsible person may appeal the issues in items A and B under Minnesota Statutes, section 256.045. The person with mental retardation or the legally responsible person may appeal items C and D under part 9500.0860. All appeals must be submitted in writing to the local welfare referee or, if the county does not have a local welfare referee, to the commissioner.

A. failure of the county board to provide case management services in accordance with part 9525.0035 [Emergency];

B. failure of the county board or case manager to act within the time limitations in part 9525.0045 [Emergency]; and

C. conduct of the diagnosis required in part 9525.0055 [Emergency]; and

D. determination by the screening team that the person does not and will not within one year require the level of care provided in an ICF/MR.

9525.0115 [Emergency] QUALITY ASSURANCE.

The county board must cooperate with the commissioner in the commissioner's evaluation of case management services by making available to the commissioner all information compiled under parts 9525.0015 to 9525.0145 [Emergency] requested by the commissioner.

9525.0125 [Emergency] COUNTY PLAN.

Subpart 1. County plan. The county board's plan for services for persons with mental retardation must be developed as a part of the county's community social services plan under Minnesota Statutes, section 256E.09.

Subp. 2. Plan content and documentation. In addition to the plan content required by Minnesota Statutes, section 256E.09, the county's community social services plan must:

A. identify all providers in the county that are used by the county board to provide services for persons with mental retardation;

B. identify services in other counties which are used by the county board to provide services to persons for whom the county board is financially responsible;

C. identify specific services which are needed by persons with mental retardation, for whom the county is financially responsible, but which are not available to those persons;

D. project an estimate of the services that will be needed by persons with mental retardation who are residing at state hospitals during the two-year period covered by the community social services plan; and

E. project an estimate of the county's use of state hospitals by persons with mental retardation for whom the county board is financially responsible during the two-year period covered by the community social services plan.

Items A to E must be based on needs assessment data and other information compiled from individual service plans and other needs assessment data.

9525.0135 [Emergency] SERVICE DEVELOPMENT AND NEED DETERMINATION.

Subpart 1. Definition. As used in this part, "county board" means the county board of commissioners or the county welfare board as defined in Minnesota Statutes, chapter 393.

Subp. 2. Data base for service development. Development of a new service or modifications or expansion of an existing service must be based on the county's community social services plan and additional needs assessment data, including the needs for services identified in individual service plans of persons with mental retardation for whom the county board is financially responsible. The county board shall also consider the service needs of persons from other counties for whom the county board has agreed to be the host county.

Subp. 3. Need determination by county board. The county board shall determine the need for new services or modification or expansion of existing services for any service licensed by the commissioner, except foster care.

If the county board determines that a new service is needed or that the existing services need to be modified or expanded, the county board shall submit an application for a need determination to the commissioner. The application must include items A to I:

A. the number, sex, and age of the persons to be served;

B. a description of the services needed by the persons to be served as identified in individual service plans;

C. a description of the proposed service;

D. if the proposal is for a residential service, a description of the day training and habilitation or educational services that are available outside of the residence for the persons to be served;

E. a description of the current residences of persons to be served and a statement of the number of persons to be served from each residential facility, foster home, or parental home;

F. the identity of other counties that will use the service;

G. a description of any financial limitations or funding restrictions that will affect the proposed service;

H. an explanation of how this application relates to service needs identified under subpart 2; and

I. the date of the county board action on the application.

Subp. 4. Need determination. The commissioner shall make the determination of the need for and the location, program, type, and size of the proposed service in the county application. The commissioner may determine need for the service on a local, regional, or statewide basis. The commissioner shall consider the following factors in making a final need determination:

A. the need to protect persons with mental retardation from violations of their human and civil rights;

B. the need to assure that persons with mental retardation receive the full range of social, financial, and habilitative services specified as needed in their individual service plans;

C. whether services will be carried out in the least restrictive environment, and that the size of the service must relate to the needs of the persons to be served;

D. whether persons receiving the proposed service will use medical, psychological, therapeutic, and other support services that are used by the general public;

E. whether cost projections for the service are within the fiscal limitations of the state;

F. whether the application is consistent with the state's plans for service distribution and development; and

G. the distribution of and access to the services throughout the state.

Subp. 5. Notice of decision and right to appeal. Within 30 days of receipt of the application for need determination from the county board, the commissioner shall notify the county board of the commissioner's decision. The notice of the

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commissioner's decision must include notification of the county board's right to appeal the decision under subpart 8.

Subp. 6. Biennial redetermination of need. Each provider of a service licensed by the commissioner, except foster care, shall submit to the county board of the county where the service is located a request for a redetermination of need. The request must be submitted at the time specified by the county board, but at least every 24 months.

Within 30 days of receipt from a provider, the county board shall forward to the commissioner a letter with respect to the continued need for the service. The letter must state whether the county board recommends continuation, continuation with modifications, discontinuation of the service, or decertification of ICF/MR services. The recommendations of the county board must be based on the service needs of persons with mental retardation for whom the county is financially responsible, and for persons from other counties for whom the county board has agreed to serve as host county, which are documented in the county's community social services plan.

The commissioner shall make the final redetermination of need for the service after considering the factors in subpart 3, and the recommendations of the county board. The commissioner shall notify the county board of the decision within 30 days of receipt of the county board's letter of recommendation.

Subp. 7. Effect of need determination or redetermination. If the county board or the commissioner determines that the service, modification, or expansion is not needed, the service, modification, or expansion shall not be paid for or reimbursed from federal or state money identified in part 9525.0025 [Emergency]. If the determination or redetermination is appealed, the effect of this provision may be stayed pending the outcome of the appeal.

Subp. 8. Appeal of commissioner's need determination or redetermination. Determination or redetermination of need may be appealed by the county board in accordance with Minnesota Statutes, chapter 14. Notice of appeal must be received by the commissioner within 30 days after the notification of the commissioner's decision was sent to the county.

9525.0145 [Emergency] ENFORCEMENT.

If the commissioner has reasonable grounds to believe that a county board has not complied with or is failing to comply with parts 9525.0015 to 9525.0135 [Emergency], the commissioner may issue a written order requiring the county board to comply. The county board shall comply with the order. If the county board disagrees with the commissioner's order, the county board 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 working days of the date that the commissioner issued the order. The appeal must state the reasons why the county board is appealing the commissioner's order and present evidence explaining why the county board disagrees with the commissioner's order. The commissioner shall review the evidence presented in the county board's appeal and send written notification to the county board of the decision on the appeal. The commissioner's decision on the appeal is final.

REPEALER. Minnesota Rules, parts 9525.0010 to 9525.0100, are repealed.

APPLICATION. Notwithstanding any rule or law to the contrary, upon expiration of parts 9525.0015 to 9525.0145 [Emergency], permanent parts 9525.0010 to 9525.0100, are reinstated.

Department of Human Services

Proposed Emergency Rules Governing General Assistance

Notice of Intent to Adopt Emergency Rules

The State Department of Human Services proposes to adopt the above-entitled emergency rules to implement Minnesota Laws 1983, Chapter 312, Article 8, subdivision 7.

Persons interested in these rules have until 4:30 p.m. on September 28, 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:

Debra Flanagan
Rulemaking Unit
Department of Human Services
Fourth Floor
Space Center Building
444 Lafayette Road
St. Paul, MN 55101

STATE OF MINNESOTA
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF THE PROPOSED ADOPTION OF EMERGENCY RULES GOVERNING COUNTY BOARD RESPONSIBILITIES TO PERSONS WITH OR WHO MIGHT HAVE MENTAL RETARDATION, MINNESOTA RULES, PARTS 9525.0015 - 9525.0145 (EMERGENCY).

ORDER ADOPTING EMERGENCY RULES

The above-entitled matter was published in the State Register on Sept. 3 , 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 County Board Responsibilities to Persons With or Who Might Have Mental Retardation, Minnesota Rules, parts 9525.0015 - 9525.0145 (Emergency)

are adopted this 8th day of October , 1984, pursuant to authority vested in me by Laws of Minnesota 1983, Chapter 312, Article 9.

STATE OF MINNESOTA

COMMISSIONER OF HUMAN SERVICES

Department of Public Welfare
Mental Health Bureau

Outside Opinion Sought Concerning Temporary Revision of a Rule Governing County Welfare or Human Service Board Responsibilities to Individuals Who Are or May Be Mentally Retarded

Notice is hereby given that the Minnesota Department of Public Welfare is considering temporary amendments to Parts 9525.0010-9525.0100 (12 MCAR 2.185), commonly known as Rule 185. This rule governs the planning and provision of services to all individuals who are or may be mentally retarded. The purpose of this rule is to establish minimum service standards for county boards and human service boards in the provision of case management and the planning, coordination, and development of services for all individuals who are or may be mentally retarded.

Authority for this rule is contained in Minnesota Statutes, §§ 252.28, 252.291, 256B.092, 256B.501, and 256B.503.

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:

Mental Retardation Program Division
Department of Public Welfare
4th Floor, Centennial Office Building
St. Paul, MN 55155

Oral statements of information and comment will be received during regular business hours over the telephone at 612/296-2682.

Statements of information and comment will be accepted until further notice. All written statements received by the Department will become part of the rule record submitted to the Attorney General for review.

STATE CONTRACTS

Pursuant to the provisions of Minn. Stat. § 16.098, subd. 3, an agency must make reasonable effort to publicize the availability of any consultant services contract or professional and technical services contract which has an estimated cost of over $2,000.

Department of Administration procedures require that notice of any consultant services contract or professional and technical services contract which has an estimated cost of over $10,000 be printed in the *State Register*. These procedures also require that the following information be included in the notice: name of contact person, agency name and address, description of project and tasks, cost estimate, and final submission date of completed contract proposal.

Commodities contracts with an estimated value of $5,000 or more are listed under the Procurement Division, Department of Administration. All bids are open for 7-10 days before bidding deadline. For bid specifics, time lines, and other general information, contact the appropriate buyers by calling 296-2513. If the appropriate buyer is not available, contact Harvey Leach or Barbara Jolly at 296-3779.

Department of Administration
Information Services Bureau

Availability of Contract for Back-Up Systems Analysis

The Information Services Bureau (ISB), Department of Administration, for the State of Minnesota, is requesting a proposal from qualified firms to provide back-up systems analysis services to be used by the Bureau on an as-needed basis. This will involve basic systems analysis using the PRIDE systems development methodology. This may involve back up assistance to a staff analyst of the Bureau on a specific phase of a project, or taking responsibility for specific phases of a project—this work to

STATE OF MINNESOTA

DEPARTMENT OF HUMAN SERVICES

In the Matter of the Proposed Adoption of Emergency Rules of the State County Board Responsibilities to Persons With or Who Might Have Mental Retardation, Minnesota Rules, Governing parts 9525.0015 to 9525.0165 [Emergency]

ORDER FOR PUBLICATION OF EMERGENCY RULES

IT IS ORDERED this 17 day of August 1984 that the proposed emergency rules in the above-entitled matter be published in the State Register.

STATE OF MINNESOTA

LEONARD W. LEVINE
Commissioner of Human Services

EW-09

STATE OF MINNESOTA
DEPARTMENT OF HUMAN SERVICES

Proposed Emergency Rules Governing
County Board Responsibilities to
Persons With or Who Might Have Mental
Retardation, Minnesota Rules, parts
9525.0015 to 9525.0145 [Emergency]

NOTICE OF INTENT TO
ADOPT EMERGENCY RULES

The State Department of Human Services proposes to adopt the above-entitled emergency rules to implement Laws of Minnesota, Chapter 312, Article 9.

Persons interested in these rules have until 4:30 p.m. on September 28, 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 9525.0015 to 9525.0145 [Emergency] is to set forth the responsibilities of county boards for providing case management services to persons with or who may have mental retardation, and governs the planning, development and provision of other services to persons with mental retardation.

Proposed Minnesota Rules, parts 9525.0015 to 9525.0145 [Emergency] apply to county boards expending federal or state funds for case management or other services for persons with or who might have mental retardation.

Proposed Minnesota Rules, parts 9525.0015 to 9525.0145. [Emergency] include sections on county board responsibilities, case management responsibilities, diagnosis of mental retardation, assessment of individual service needs, individual service plan, screening teams, development of individual habilitation plans, appeals of case management and related services, quality assurance, county plan, service development and need determination, and enforcement.

The Department estimates that the cost of implementing these emergency rules will not exceed $100,000 per year for local public bodies for the two years immediately following their adoption within the meaning of Minnesota Statutes, section 14.11, subdivision 1.

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



LEONARD W. LEVINE
Commissioner of Human Services

EW-07

STATE OF MINNESOTA
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF PROPOSED EMERGENCY RULES GOVERNING COUNTY BOARD RESPONSIBILITIES TO PERSONS WITH OR WHO MIGHT HAVE MENTAL RETARDATION, MINNESOTA RULES, PARTS 9525.0015 to 9525.0145 (Emergency)

AFFIDAVIT OF MAILING

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

That on the 29 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 30 day of August, 1984.

Margaret Holt

MARGARET HOLT
NOTARY PUBLIC-MINNESOTA
RAMSEY COUNTY
My Comm. Expires Sept. 22, 1984

STATE OF MINNESOTA
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF PROPOSED EMERGENCY RULES GOVERNING COUNTY BOARD RESPONSIBILITIES TO PERSONS WITH OR WHO MIGHT HAVE MENTAL RETARDATION, MINNESOTA RULES, PARTS 9525.0015 to 9525.0145 (Emergency)

AFFIDAVIT OF ADDITIONAL MAILING

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

That on the 29 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 with 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 sheets)

Wendy Johnson

Subscribed and sworn to before me
this 30 day of August, 1984.

Margaret Holt

MARGARET HOLT
NOTARY PUBLIC-MINNESOTA
RAMSEY COUNTY
My Commn. Expires Sept. 22, 1984

Sue Abdernolden
ARC Minnesota
3225 Lyndale Ave. So.
Minneapolis, MN 55408

Bill Mouw, Commissioner
Lake of the Woods County
Rt 2
Baudeete, MN 56623

Jim Apts
Dir. Social Srvcs Division
Ramsey Co. Human Srvcs Dept.

Mary Barstad, Case Management
Mental Retardation Division
Hennepin County Bur Soc Serv
Minneapolis, MN 55487

Jerry Mueller, Director
MinnDACA
2277 Griggs-Midway Bldg
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St. Paul, MN 55104

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

Roylene Champeaux
Social Services Division
MN Dept Human Services
4th Floor Centennial
St. Paul, MN 55155

Kenneth Prax
MAPE
Faribault State Hospital
Faribault, MN 55201

Michale Sarafolean
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St. Paul, MN 55117

Louellen Essex, TF Facilitator
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Trudy Reese
Social Worker
Willmar State Hospital
Willmar, MN 56201

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

Sally Evert, Commissioner
Washington County
550 So Grove
Stillwater, MN 55082

Harold Tapper, Executive Dir
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459 Rice St
St. Paul, MN 55103

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

Luther Grandquist
Legal Advocacy for DD Persons
222 Grain Exchange
Minneapolis, MN 55415

Ed Van Allen
Ramsey County Human Svcs Dept
160 E Kellogg Blvd
St. Paul, MN 55101

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

Beverley Hanson
Social Services Supervisor
Charlton County Human Svcs Ctr
Cloquet, MN 55720

Collen Wieck, Ph D
Supervisor, DD Section
MN Dept Energy, Planning & Dev
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Walter Baldus
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Austin, MN 55912

Gary Haselhuhn, Director
Social Services Div
MN Dept Human Services
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Molly Woehrlin, Commissioner
Rice County
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Northfield, MN 55057

Ken Stinson
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Mr. Milton Conrath
Nekton, Inc.
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Mike Morrell
AFSCME
236 E Plato Blvd
St. Paul, mn 55107

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

Ms. Bev Driscoll
Association of Minnesota Co.
555 Park Street #300
St. Paul, MN 55103

Bob Speltz
Ramsey County
5 NW

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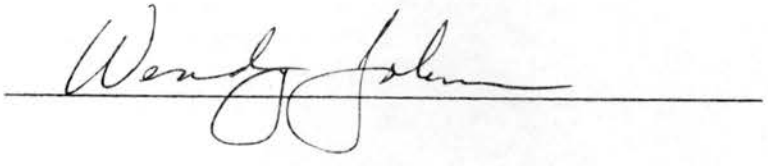
STATE OF MINNESOTA
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF PROPOSED EMERGENCY RULES GOVERNING COUNTY BOARD RESPONSIBILITIES TO PERSONS WITH OR WHO MIGHT HAVE MENTAL RETARDATION, MINNESOTA RULES, PARTS 9525.0015 to 9525.0145 (Emergency)

CERTIFICATE

I hereby certify that the list of persons, associations, and other interested groups who have requested, pursuant to Minn. Stat. S.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 6:00, P.M., this 29 day of August, 1984.



STATE OF MINNESOTA
DEPARTMENT OF PUBLIC WELFARE

IN THE MATTER OF THE PROPOSED
ADOPTION OF EMERGENCY RULES
GOVERNING COUNTY BOARD RESPONSIBILITY
FOR PROVIDING CASE MANAGEMENT SERVICES
TO PERSONS WITH MENTAL RETARDATION

FINDINGS OF FACT
AND CONCLUSIONS

The Commissioner published notice of proposed emergency rules on the above-entitled matter in the State Register on September 3, 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, on August 29. 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 9525.0015 [Emergency] subpart 2 of the proposed rule, the Department defines the term "assessment." Commentator Luther A. Granquist of Legal Advocacy for Developmentally Disabled Persons in Minnesota states that the definition would be more understandable if the "and" between "services" and "by" was deleted. The Commissioner agrees with the commentator and modifies the definition accordingly. The Commissioner also finds the definition of assessment would be more complete if health factors were added and modifies the definition accordingly.

2. In part 9525.0015 [Emergency] subpart 3 of the proposed rule, the Department defines the term "advocate." Commentators Donald Strei of Sherburne County Social Services, Roger Deneen of the Minnesota Governors' Planning Council on Developmental Disabilities and Sue Abderholden of the Minnesota Association for Retarded Citizens, question the requirement that the advocate be authorized in a "notarized statement." The Commissioner agrees that a notarized statement may be burdensome and therefore deletes the term notarized. The Commissioner also changes the term "legally responsible person" used in this definition to "legal representative" to reflect a similar change made in the definition of "legally responsible person."

3. In part 9525.0015 [Emergency] subpart 3 of the proposed rule, the Department discusses access to private or confidential data. Commentators Donald Strei and Michael E. Maus, Ph.D. of Woodvale Group state that this issue does not belong in the definition. The Commissioner agrees that this issue could be more appropriately dealt with in part 9525.0095 [Emergency] and amends the rule accordingly.

4. In part 9525.0015 [Emergency] subpart 4 of the proposed rule, the Department defines "case management services." Commentator Sue Abderholden suggests that the Department include the word "monitoring" in the definition. The Commissioner agrees that monitoring is an important part of case management services and amends the definition accordingly. Another commentator, Michael E. Maus, states that the

case management services definition differs from the definition in another Department rule. The Commissioner also agrees that the difference may be confusing and further amends the rule to make the two definitions more similar.

5. In part 9525.0015 [Emergency] subpart 11 of the proposed rule, the Department defines "day training and habilitation services." Commentator Sue Abderholden recommends that the definition include the condition "unless medically contraindicated" and that the Department make the definition in this rule and DHS Rule 30 identical. In addition, commentator, Dianna Krogstad of DACs of Minneapolis Inc., questions the use of the term "therapeutic work" stating that not all individuals enrolled in day training and habilitation service need "therapeutic work." The Commissioner agrees that the definition should be similar to the definition in DHS Rule 30 and also agrees that not all individuals need therapeutic work. The definitition is therefore amended to reflect the concerns expressed by these commentators.

6. In part 9525.0015 [Emergency] subpart 13 of the proposed rule, the Department defines "home and community-based services." Commentator Donald Strei states that the United Stated Code reference is too limited and asks what happens if the waiver is amended or terminated. The Commissioner agrees that the citation is too limited and modifies the definition to address this concern. The Commissioner also adds the words "that are" to clarify the language in this definition and adds a sentence at the end of the definition to explain that these services are only reimbursable as long as the waiver is in effect.

7. In part 9525.0015 [Emergency] subpart 17 of the proposed rule the Department defines the term "individual service plan." Commentator Robert J. Zeleznikar of the St. Louis County Social Service Department states that the individual service plan specifies more than just the services needed by the person. The Commissioner finds that the phrase "that specifies the services needed by a person" may be misleading and therefore deletes the phrase. The Commissioner also changes the part referenced in this definition to reflect a change made in the order of the parts.

8. In part 9525.0015 [Emergency] subpart 18 of the proposed rule the Department defines the term "interdisciplinary team." Commentator Donald Strei mentions that this definition also states duties and asks if this is necessary. The Commissioner finds that the duties of the interdisciplinary team should not be a part of the definition and modifies the definition accordingly. The Commissioner also changes the term "legally responsible person" to "legal representative" to reflect a change in the definition of legally responsible person.

9. In part 9525.0015 [Emergency] subpart 19 of the proposed rule, the Department defines the term "least restrictive environment." Commentator Donald Strei asks how this definition is applied if the provider is a sole practitioner. The Commissioner agrees that the definition does not clearly address this situation and therefore modifies the definition to cover "the provider" and /or employees or subcontractors of the provider. Mr. Strei also asks if item C is

supposed to relate to restrictiveness. The Commissioner finds that this item needs clarification and adds "and limits on decision making" to clarify the meaning of the item.

10. In part 9525.0015 [Emergency] subpart 19, item F of the proposed rule, the Department describes the type of materials to be used in training. Commentator Sue Abderholden states that this item is unclear and needs to be reworded. Commentator Robert J. Zeleznikar states that mentally retarded persons definitely require specially designed materials. The Commissioner agrees that the item is unclear and that the "same" materials may not be appropriate and therefore modifies the definition.

11. In part 9525.0015 [Emergency] subpart 20 of the proposed rule the Department defines "legally responsible person." Commentator Donald Strei asks if the "legally responsible person" is the same as a legal representative and suggests that using the term legal representative would make the rule easier to read. Commentator Luther A. Granquist states that the definition should include a court appointed conservator. The Commissioner agrees that "legal representative" is the same as "legally responsible person" and that the use of legal representative would improve the readability of the rule. Therefore this definition is changed from "legally responsible person" to "legal representative." The Commissioner also agrees that a conservator who is authorized by the court to make decisions about services should be included in the definition and modifies the definition to include a conservator under those conditions. Commentator Strei also asks if a person with mental retardation is considered an adult at 18. The Commissioner finds that age 18 is the age of adulthood and changes "21" to "18."

12. In part 9525.0035 [Emergency] subparts 21 and 29 of the proposed rule, the Department defines the terms "need determination" and "redetermination of need." Both of these definitions refer to "licensed residential and day training and habilitation services." The Commissioner finds that this wording is inconsistent with the language in the body of the rule and therefore strikes "residential and day training and habilitation" from both definitions.

13. In part 9525.0015 [Emergency] subpart 22 of the proposed rule the Department defines "person with mental retardation." Several commentators remark that this definition needs clarification and commentator Strei asks if both conditions in item A must be manifested before the person's 22nd birthday. The Commissioner agrees that the definition needs to be clarified to address the issue revised by Mr. Strei and to improve the consistency and therefore modifies items A. and C.

14. In part 9525.0015 [Emergency] subpart 28 of the proposed rule the Department defines "quarterly evaluation." Commentator Robert J. Zeleznikar suggests that the Department delete the word "concise" from this definition since it is a value word. Commentator Sue Abderholden suggests the addition of a phrase to the definition on whether "changes need to be made in the services being delivered." The Commissioner agrees with Mr. Zeleznikar and deletes the word "concise." The

Commissioner also finds that the definition would be enhanced by mention of the addition of the phrase suggested by Ms. Abderholden and modifies the definition accordingly. /p.6

15. In part 9525.0015 [Emergency] subpart 30 of the proposed rule, the Department defines "regional services specialist." Commentator Robert J. Zeleznikar points out that the regional services specialist would only serve on the screening team "when the county chooses not to appoint their own QMRP to do so." The Commissioner agrees that the regional services specialist will only serve on the screening team at the request of the county and modifies the definition accordingly. /p.6

16. In part 9525.0015 [Emergency] subpart 32 of the proposed rule, the Department defines screening team by referencing Minnesota Statutes. Commentator Donald Strei points out that "screening team" is not defined in the statutes. The Commissioner agrees that the term is not defined as such; actually the screening team is established in the statute. Therefore the definition is modified to more precisely reflect the statutory langauge. /p.7

17. In part 9525.0025 [Emergency] of the proposed rule the Department states how and to whom this rule applies. The Department received many general comments from the counties on this rule stating that the cost of implementing the rule would be exorbitant and stating that additional personnel and services will be required. The Commissioner finds that some of this concern may have resulted from a misinterpretation of the purpose of the rule. In order to clarify that the purpose of the rule is to fund appropriate, cost efficient services, not simply to expand case management services, the Commissioner adds a purpose section to the rule. /p.7

18. In part 9525.0035 [Emergency] subpart 1 of the proposed rule, the Department states that the county board is responsible for providing services to "all persons with or who might have mental retardation who are residents of or reside in the county at the time they request or are referred for services and who are in need of services." Commentator Marina Vork of Isanti County Family Services suggest that the Department delete the phrase "who are in need of services." The Commissioner agrees that this phrase is unnecessary and revises the sentence accordingly. The Commissioner also finds that "who are residents of or reside in" is redundant and deletes "are residents of." /p.7

19. In part 9525.0035 [Emergency] subpart 2 of the proposed rule the Department requires the county board to designate a case manager "within five working days after receiving a request or referral for service." Commentator Dennis McCoy suggests that a 30 day time frame would be more realistic. The Commissioner does not agree that the timeframe should be 30 days does find a five day timeframe too restrictive and therefore changes the requirement to "10 working days." In addition in response to comments from Sue Abderholden and Donald Strei the Commissioner changes the notice requirement so that the person, the person's legal representative and the advocate all receive notification. Other minor changes are made in this subpart to improve the readability. /p.8

20. In part 9525.0035 [Emergency] subpart 4 item B of the proposed rule, the Department requires the county to notify the Commissioner if the county board contracts with another public agency for case management services. Commentator Robert G. Goudge of Lake of the Woods County Social Service Department recommends deletion of this item since it does not make sense "except perhaps for reporting requirements." The Commissioner finds that this item is basically a reporting requirement and as such is not really necessary and therefore deletes the item and modifies the subpart accordingly.

21. In part 9525.0035 [Emergency] subpart 5, Item A of the proposed rule the Department states that the county board may terminate case management services when a "licensed psychologist or licensed consulting psychologist determines that the person is not a person with mental retardation." Commentator Donald Strei asks if a psychiatrist could make this determination. The Commissioner finds that a psychiatrist could make this determination and should be included in this item. The Commissioner therefore modifies the item to include a psychiatrist. This change is also made in part 9525.0055 items A and B. ✓p.9, 11

22. In part 9525.0035 [Emergency] subpart 5 of the proposed rule the Department states the conditions under which the county board may terminate case management services. Three conditions are listed. Commentator Marina Vork states that there are other appropriate reasons for closing a case. Commentator Gene Helfinstine of Mille Lacs County Family Service and Welfare Department suggests that one additional condition should be included to cover a situation in which "the person refuses to use the services offered." The Commissioner agrees that as written this subpart is too limited and adds items D. and E. ✓p.9

23. In part 9525.0045 [Emergency] subparts 2 and 3 of the proposed rule, the Department lists "minimum case management services" and "duties of case manager." The Commissioner finds that the content of these two subparts overlaps and to clarify the meaning of this part transfers the content in items B, C and D of subpart 3 to supbart 2 items G, H and I. The Commissioner also expands the content of items A and B to make these items consistent with the requirements in the parts referenced in them. To maintain the link between subparts 2 and 3 the Commissioner adds an item J and gives subpart 3 a new headnote. The Commissioner also finds it necessary to create a new supbart for the last paragraph in subpart 3 and gives this subpart the headnote "Termination of case case management duties" and changes the reference to "items A to D" to "subparts 2 and 3" and changes "legally responsible person" to "legal representative." ✓p10,11

    In addition to this reorganization and clarification the Commissioner makes the following changes in the content of subparts 2 and 3.

    a. In response to comments from commentators George Steiner of County of Anoka Community Health and Social Services Department, Dennis McCoy, and Gene Helfinstine regarding the provision of services not currently available the Department adds "or developed" to item E to clarify that the case manager need not ensure unavailable services are provided but must develop these services. ✓p.9

b. In response to a comment from commentator Donald Strei the Commissioner inserts "to ensure that they are provided in accordance with the person's individual service plan" in the lead sentence in item F to clarify which services are to be monitored. This language is deleted from item F subitem 3 since it would be redundant. p 10

c. In response to comments from commentators Robert J. Zeleznikar and Dennis McCoy the Commissioner changes the monitoring and evaluation requirements in item F from "90 days" and "quarterly" to every "six months" and "semi annual" to cut down on the cost and increase in workload. This change is also made in new item G. p.10

d. In response to comments from Beverly Hanson of Carlson County Human Services Center and Robert J. Zeleznikar regarding the appropriate role of case managers in contract monitoring, the Commissioner changes subpart 3 and item B (which is now subpart 2 item G) to more appropriately address the role of the case manager. p.10

24. In part 9525.0055 [Emergency] subpart 1, item D of the proposed rule, the Department requires "a written report, by a social worker who is experienced in working with persons with mental retardation." Commentator Susan D. Stout of the Minnesota Nursing Directors Association comments that a public health nurse should be able to write this report. Ms. Stout also suggests that the report include "physical, functional, adaptational and environmental factors." The Commissioner agrees with Ms. Stout that a public health nurse would be qualified to prepare this report and that the additional factors suggested should be included. Item D is therefore amended to incorporate Ms. Stout's comment. p.12

25. In part 9525.0065 [Emergency] subpart 2 of the proposed rule, the Department uses the term "legally responsible person." The Commissioner finds it necessary to change this term to "person's legal representative" to be consistent with the change made in part 9525.0015 [Emergency] subpart 20.

26. In part 9525.0075 [Emergency] of the proposed rule the standards for the individual service plan are established. In part 9525.0085 [Emergency] of the proposed rule the responsibilities of the screening team are described. The Commissioner finds that the rule requirements would be easier to understand if the order of these parts was reversed. Therefore the Commissioner renumbers part 9525.0075 [Emergency] as part 9525.0085 [Emergency] insert part 9525.0085 [Emergency] before part 9525.00075 [Emergency] and renumbers part 9525.0085 [Emergency] as part 9525.0075 [Emergency]. The Commissioner also changes all references to part 9525.0075 [Emergency] found in the rule to part 9525.0085 [Emergency] to part 9525.0075 [Emergency].

27. In part 9525.0085 [Emergency] (renumbered 9525.0075) subpart 2 of the proposed rule, the Department stated the composition of the screening team. The Commissioner finds that since screening team is defined this

language is unnecessary and deletes the first paragraph of subpart 2 and gives the subpart a new headnote. The Commissioner also rewords this paragraph to clarify who the advocate is as requested by commentator Luther A. Granquist and to clarify that the regional services specialist and the advocate should be notified before the meeting in answer to a question from commentator, Robert J. Zeleznikar.

29. In part 9525.0085 [Emergency] (renumbered 9525.0075) subpart 5 of the proposed rule, the Department explains the issue of consumer choice. Commentator Roger A. Deneen asks for clarification of final authority between consumer/advocate and parent/guardian and commentator Donald Strei asks if the consumer can choose between various home and community-based services. The Commissioner finds that the final authority rests with the person or the person's legal representative and that the consumer can choose among home and community-based services. This subpart is therefore amended to address these issues.

30. In part 9525.0085 [Emergency] (renumbered 9525.0075) subpart 6 of the proposed rule, the role of the regional service specialist in authorizing services is established. In commenting on the definition of the regional services specialist commentator Donald Strei asks how the role of the regional services specialist and the case manager mesh. The Commissioner finds that the case manager authorizes services but the regional services specialist authorizes the payment for those services funded under the Medical Assistance Program. This supbart is therefore amended to clarify the role of the regional services specialist. This change also addresses a concern about regional service specialists authorizing services funded by the county which was raised by Beverly Hanson.

31. In part 9525.0085 [Emergency] (renumbered as 9525.0075) subpart 7 of the proposed rule, the Department states that the screening team recommendations and report must be made available to the prepetition screening unit "if the court so orders." Commentator Beverly Hanson asks if this means that "the prepetition screening team may not use the MR screening team recommendations unless it is court ordered." The Commissioner finds that the primary concern here is that all uses of the screening team report conform with the Data Practices Act modifies the subpart to make this clear.

32. IN part 9525.0075 [Emergency] (renumbered 9525.0085) subpart 1, item C of the proposed rule the Department states that the individual service plan "must be designed to result in vocational training." Several commentators including Donald Strei, Robert J. Zeleznikar, Dianna Krogstad and Sue Abderholden state that vocational training may not always be appropriate. The Commissioner agrees that vocational training may not always be appropriate and therefore modifies this item.

33. In part 9525.0075 [Emergency] (renumbered 9525.0085) subpart 2 of the proposed rule the requirements for developing the individual service plan are established. Commentator Luther A. Granquist recommends that providers be involved in the development of the individual service

plan. The Commissioner agrees that this option should be open and therefore adds the sentence "The case manager may invite other persons to provide information to be used in developing the individual service plan."

34. In part 9525.0075 [Emergency] (renumbered 9525.0085) supbart 3 of the proposed rule the required content of the individual service plan is described. Several commentators including Dennis McCoy, Gene Helfinstine, and George Steiner comment on the requirement that the case manager identify services without regard to current availability. To clarify that services must be identified and developed but that only available services must be provided the Commissioner adds "to be provided" to items B and C and reorganizes these items so that needed services are identified before the services to be provided are identified. The Commissioner also deletes item G since this information is unnecessary as pointed out by commentator Robert J. Zeleznikar.

35. In part 9525.0075 [Emergency] (renumbered 9525.0085) subpart 4 of the proposed rule, the Department states that an individual service plan which calls for the discharge of a person with mental retardation from a state hospital must conform to the standards for state hospital discharge planning established by the Commissioner. Commentator Roger A. Deneen asks for a reference document. The Commissioner agrees that the document setting the standards for state hospital discharge planning should be referenced and therefore adds an incorporation by reference.

36. In part 9525.0095 [Emergency] subpart 1 of the proposed rule, the requirements for arrangement of services are set forth. The Commissioner finds that some of the language in this subpart is already stated in other parts of the rule and deletes the language to eliminate the redundancy.

37. In part 9525.0095 [Emergency] subpart 2 item D of the proposed rule, the Department states that the person with mental retardation visit the site where the services are to be provided before services are authorized. Commentator Luther A. Granquist recommends that the Department add an exception clause to this item and commentator Sue Abderholden recommends that the Department add the legally responsible person to this item. The Commissioner agrees that an exception clause is needed and that in the case of an exception the legal representative should visit instead. This item is therefore modified to provide a limited exception.

38. In part 9525.0095 [Emergency] subpart 3 final paragraph of the proposed rule, the Department requires that each contract and subcontract contain a specific provision. Commentator Mary Martin objects to the provision regarding attorney's fees. The Commissioner finds that this provision may be misleading as written and therefore modifies the provision to clarify that attorney's fees and costs are only recoverable if the action is successfully maintained and that the provision does not limit the rights of any party to the contract or any other third party beneficiary.

39. In part 9525.0095 [Emergency] subpart 5 of the proposed rule, the Department states that "the county board may delegate the responsibility for enforcement of contracts to the case manager." Commentator Robert G. Goudge states that in his agency contracts are enforced by the agency director. The Commissioner agrees that different county boards may delegate this responsibility to different people and therefore deletes "to the case manager."

40. In part 9525.0095 [Emergency] subpart 6 of the proposed rule, the timeline for convening an interdisciplinary team is established. Commentator Sue Abderholden asks for clarification of who is a voting member of the interdisciplinary team and who can be invited. The Commissioner agrees that clarification is needed and adds a sentence to this subpart to clarify.

41. In part 9525.0095 [Emergency] subpart 10 of the proposed rule, the timeline for reviewing the individual habilitation plan is established and the case manager is required to observe the services. Commentator Tim Jeffrey recommends that the review occur only once a year. Commentator Luther A. Granquist states that the on-site reviews should be limited to the residential and day program. The Commissioner does not agree that yearly reviews are sufficient but does find semi-annual reviews a more reasonable approach. The Commissioner does agree that it would be more reasonable to limit the requirement for on-site reviews to the day training and habilitation and residential service. Subpart 10 is amended to incorporate these changes.

42. In part 9525.0105 [Emergency] subpart 1 of the proposed rule, the notice of the right to appeal is required to be sent to "the person with mental retardation or the legally responsible person." In order to make this notice requirement consistent with other notification requirements throughout the rule and to respond to a comment from Sue Abderholden the Commissioner deletes the "or" and changes "legally responsible person" to "legal representative."

43. In part 9525.0105 [Emergency] of the proposed rule the appeals process is established. In their comments commentators Sue Abderholden and Luther Granquist recommend that the Department expand the Appeals Section. The Commissioner agrees that the appeals section should be expanded and therefore both expands subpart 2 of part 9525.0105 [Emergency] and adds subparts 3, 4 and 5 to further explain the appeals process.

44. In part 9525.0105 [Emergency] of the proposed rule, the Department sets forth requirements for quality assurance. Commentators Sue Abderholden and Luther Granquist recommend expansion of this section since quality assurance is extremely important. The Commissioner agrees that quality assurance is extremely important and finds that in order to clarify the case manager's role in quality assurance it is necessary to add a sentence to this part.

45. In part 9525.0135 [Emergency] of the proposed rule, the Department sets forth requirements for service development and need determination. Commentator Mary Martin points out that this process should include an appeal mechanism. The Commissioner agrees that an appeals mechanism is needed and therefore inserts a new subpart 4.

46. In part 9525.0135 [Emergency] subpart 6 of the proposed rule, the Department requires the county to redetermine the need for a service biennially. Based on comments received from commentators Donald Strei and Gene Helfinstine the Commissioner finds that the wording of subpart 6 is unclear and modifies the subpart to clarify the requirements and comply with statutory requirements.

47. In part 9525.0135 [Emergency] subpart 7 of the proposed rule, the Department states that if the county board or the Commissioner determines that a service is not needed it shall not be paid for or reimbursed from federal or state money "identified in part 9525.0025 [Emergency]." Commentator Donald Strei questions this reference. The Commissioner agrees that this reference is unclear and therefore changes "identified in part 9525.0025 [Emergency]" to "for services to persons with mental retardation."

48. In part 9525.0145 [Emergency] of the proposed rule, the Department established enforcement procedures. Many commentators including Michael E. Maus, Paul McCarron of the Anoka County Board of County Commissioners, Dennis McCoy and Beverly Hanson commented on the fiscal impact on the counties of implementing the standards in the proposed rule. The Commissioner recognizes that the current case management system varies greatly from county to county and that it may be quite costly for some counties to immediately implement this rule in its entirety. At the same time the Commissioner finds that in order to assure that persons with mental retardation in Minnesota are provided quality, cost effective services that meet their individual needs, it is essential that the Department set standards for services and require an active case management system to monitor those standards. Therefore the Commissioner amends part 9525.0145 [Emergency] to allow a variance for counties that cannot immediately meet the requirements in this rule while requiring all counties to make a good faith effort to comply with the standards set.

49. Repealer and Application section. In these sections the old case management parts are repealed for the period covered by the emergency parts and reinstated upon expiration of the emergency parts. Commentator Mary Martin states that the reinstatement clause cannot be adopted because it promulgates a rule without going through the Minnesota Administrative Procedures Act. The Commissioner finds that the intent of these sections is unclear and therefore deletes the repealer clause and rewords the application section.

50. 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 9525.0045 [Emergency] subpart 2 Item C change part 9525.0075 [Emergency] to part 9525.0085 [Emergency], Item D change part 9525.0085 [Emergency] to part 9525.0075 [Emergency].

Part 9525.0055 [Emergency] subpart 1 Item C. Insert "must be" between "examination" and "conducted."

Part 9525.0055 [Emergency] subpart 1 Item D. Delete "," Insert "must be prepared" between "report" and "by."

Part 9525.0065 [Emergency] subpart 2. Insert at end of paragraph "This subpart shall not prohibit more frequent reassessments."

Part 9525.0075 [Emergency] (renumbered 9525.0085) subpart 1. Delete "services specified in the." Insert "identify services needed by the person" between "must" and "based." Delete "be."

Part 9525.0075 [Emergency] (renumbered 9525.0085) subpart 2. Delete "and" Insert ",".

Part 9525.0075 [Emergency] (renumbered 9525.0085) subpart 3. Insert "s" after "need" Item F - Insert "or subcontractors" after "providers." Delete "; and.". Insert "."

Part 9525.0075 [Emergency] (renumbered as 9525.0085) subpart 5 Insert "individual service" before "plan." Change "results" to "information."

Part 9525.0095 [Emergency] subpart 2. Insert "only" after "may." Delete "only" after "service."

Part 9525.0095 [Emergency] subpart 2 E. Change "legally responsible person" to "legal representative." Make names sites and providers singular. Change "the" to "each."

Part 9525.0095 [Emergency] subpart 3, item K. Change "data practices in" to Data Practices Act." Item M - correct spelling of Commissioner.

Part 9525.0095 [Emergency] subpart 3 special provision. Insert "," after "specific performance."

Part 9525.0095 [Emergency] subpart 4 introductory phrase. Insert "to provide services under parts 9525.0015 to 9525.0145 [Emergency]."

Part 9525.0095 [Emergency] Insert subpart 8 "Data Privacy."

Part 9525.0095 [Emergency] Renumber subparts 8, 9 and 10 to 9, 10 and 11.

Part 9525.0105 [Emergency] subpart 1. Insert "with mental retardation" between "person" and "or." Delete "legally responsible person," insert "legal representative."

Part 9525.0135 [Emergency] subpart 2. Delete the "s" on "modifications." Delete ", including," insert "and."

Part 9525.0138 [Emergency] subpart 3. Insert "Based on the data in subpart 2,".

Part 9525.0135 [Emergency] Subpart 3. Delete "determine," insert "identify" in the first and second sentences. Insert "the information required in" between "include" and "items."

Part 9525.0135 [Emergency] Renumber subparts 4, 5, 6, 7 and 8 to 5, 6, 7, 8 and 9.

Part 9525.0135 [Emergency] subpart 4 Headote. Insert "by Commissioner."

Part 9525.0135 [Emergency] Subpart 4, Item c. Change "that" to "whether." Delete "must." Change "relate" to "relates."

General - Part references changed to conform with reordering of parts 9525.0075 and 9525.0085 [Emergency].

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 emergency rules was given as required by law, and all interested persons were afforded an opportunity to submit data and views on the proposed emergency rules.

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

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

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

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

DATED: 10/8/84

STATE OF MINNESOTA

LEONARD W. LEVINE, COMMISSIONER
Department of Human Services

LJ/2.1

STATE OF MINNESOTA
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF THE PROPOSED
ADOPTION OF EMERGENCY RULES GOVERNING
COUNTY BOARD RESPONSIBILITY FOR
PROVIDING CASE MANAGEMENT SERVICES
TO PERSONS WITH MENTAL RETARDATION
(PARTS 9525.0015 to 9525.0145).

SUPPLEMENTAL FINDINGS OF
FACT AND CONCLUSIONS

The Commissioner sent the findings of fact, conclusions and orders concerning the proposed emergency rules on the above-entitled matter to the Attorney General on October 8, 1984. Since that time the Department has discovered the following clerical errors in the proposed rule and therefore submits the following supplemental findings.

1. In part 9525.0075 (Emergency) (as renumbered) subpart 1 of the proposed rule the Department states when a screening team must be convened. The Commissioner finds that in reorganizing the rule to better reflect the order in which the various steps of the process occur the Department neglected to change an internal reference in this subpart. Therefore, to more accurately describe when the screening process should take place, the Commissioner modifies subpart 1. The last sentence in the first paragraph should read "A screening team must be convened within 15 working days of the date that an assessment is completed under part 9525.0065 (Emergency)."

2. In part 9525.0095 (Emergency) of the proposed rule the Department has inserted a new subpart 8 which deals with data privacy. This subpart was deleted from the definition of advocate and transferred to this part because the subject matter did not belong in the definition. In transferring this material the Department made a clerical error and failed to delete a reference to the advocate. The Commissioner therefore finds it necessary to clarify this subpart by deleting "to" and "by the advocate."

CONCLUSIONS

I herby conclude that

1. The modifications made to the proposed emergency rule do not constitute a substantial change.

2. The emergency rule, as modified, is necessary and reasonable.

ORDER

Based on the above findings and conclusions, proposed rule parts 9525.0075 and 9525.0095 (Emergency) as adopted by me on October 8, 1984, and transmitted to the Attorney General, are amended as described above.

Dated: October 22, 1984

STATE OF MINNESOTA

LEONARD W. LEVINE
Commissioner of Human Services

IN THE MATTER OF THE PROPOSED ADOPTION OF RULES OF THE STATE OF MINNESOTA DEPARTMENT OF HUMAN SERVICES GOVERNING COUNTY BOARD RESPONSIBILITIES TO PERSONS WITH OR WHO MIGHT HAVE MENTAL RETARDATION, MINNESOTA RULES, PARTS 9525.0015 - 9525.0145 (EMERGENCY).

STATEMENT OF COMPLIANCE WITH RULEMAKING PROCEDURES

I, Special Assistant Attorney General, Deborah Huskins 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.

Deborah K. Huskins
Special Assistant Attorney General

Dated: Oct. 8, 1984

STATE OF MINNESOTA)
) SS
COUNTY OF RAMSEY)

Jan Swenson, being first duly sworn,

hereby deposes and says:

That at the City of St. Paul, county and state aforesaid, on the 26 day of July, 19 84, (s)he served the attached Notice of Proposed Emergency Rules for Certificates of Compliance by depositing in the United States mail at said City of St. Paul a true and correct copy thereof, properly enveloped, with postage prepaid, by first class mail

and addressed to

Rule Making List

Jan Swenson

Subscribed and sworn to before me

this 26 day of July, 19 84.

Eleanor D. Morgan

ELEANOR D. MORGAN
NOTARY PUBLIC-MINNESOTA
RAMSEY COUNTY
My Comm. Expires Oct. 20, 1985

HR00016-01 (DHR-30)

DEPARTMENT OF HUMAN RIGHTS

Proposed Emergency Rules Governing Certificates of Compliance and Public Contracts

Request for Public Comment

Notice is hereby given that the Department of Human Rights has proposed emergency rules for the purpose of implementing the provisions of Laws of 1981, Ch. 326 Sec. 1. All interested persons are hereby afforded the opportunity to submit their comments on the proposed rules for 20 days immediately following publication of this material in the State Register. All submissions must be in writing and addressed to:

James Robinson, Supervisor
Compliance Unit
Department of Human Rights
500 Bremer Tower
St. Paul, Minnesota 55101

The emergency rules may be revised on the basis of comments received. Any written material received will become a part of the record and will be submitted to the Attorney General.

A copy of the proposed rules may be obtained by contacting James Robinson at 612/296-5683.

The above notice will appear in the State Register for July 30, 1984. Comments must be received by August 19.

July 26, 1984

Kathryn R. Roberts
Acting Commissioner of Human Rights

STATE OF MINNESOTA

COUNTY OF RAMSEY

CERTIFICATE

In the Matter of the Proposed Adoption of Emergency Rules Governing Certificates of Compliance Issued by the Department of Human Rights

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I, Mary Hartle, hereby certify that the attached notice was sent to all interested parties on the Department of Human Rights rulemaking list. I also certify that the mailing list was up to date on the date it was mailed to the rulemaking list.

Mary A Hartle

Subscribed and sworn to before me

this 23 day of October, 1984.

Karen L Ferguson

KAREN FERGUSON
NOTARY PUBLIC - MINNESOTA
RAMSEY COUNTY
My Commission Expires 11-20 84

DEPARTMENT OF HUMAN RIGHTS

Proposed Emergency Rules Governing Certificates of Compliance and Public Contracts

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July 26, 1984

Kathryn R. Roberts
Acting Commissioner of Human Rights

STATE OF MINNESOTA
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF THE PROPOSED ADOPTION OF THE DEPARTMENT OF HUMAN SERVICES EMERGENCY RULE GOVERNING COUNTY BOARD RESPONSIBILITIES TO PERSONS WITH OR WHO MIGHT HAVE MENTAL RETARDATION, MINNESOTA RULES, PARTS 9525.0015 - 9525.0145 (EMERGENCY).

NOTICE OF SUBMISSION TO THE ATTORNEY GENERAL

The Department did not receive any requests for notification.