

Minnesota Attorney General: Administrative Rules Proceedings

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Version 3
August 20, 2018

Rule File No. 1042

05-0009-0850

RULE REVIEW CHECKLIST

DATE RULE RECEIVED 9-6
DATE FOR REVIEW 9-16
DATE DUE 9-20

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

Approved 9-18-85 mjc Disapproved _____ Returned to Agency _____

Resubmitted _____ Due _____
Approved _____ Disapproved _____ Returned to Agency _____

Date filed w/Secretary of State 9-19-85 Revisor approved 9/10/85
disapproved _____

___✓___ Rule as Adopted

___✓___ Rule as Proposed

___✓___ Order Adopting 9.6.85. Date combined w/ FF

___✓___ Notice of Intent to Solicit Outside Opinion SR. 11.26.84

___✓___ Order for rulemaking
_____ date of Hearing

___N/A___ Certificate of Board's Authorizing Resolution

___✓___ Notice of rulemaking
✓ Sufficiency

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

___✓___ Affidavit of Additional Mailing 7.8.85

___✓___ Mailing list Certificate

___✓___ Publication in State Register
7.8.85 At least 30/~~20~~ 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 combined w/ Order Adopting

___N/A___ LCRAR Report or agency Affidavit

___✓___ Certificate of Board's Resolution Adopting Rules

___✓___ Order Approving Incorporation by Reference

___✓___ Statement of Need and Reasonableness

___N/A___ 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

SF-00006-03

STATE OF MINNESOTA

DEPARTMENT ATTORNEY GENERAL

Office Memorandum

TO: LEONARD W. LEVINE, Commissioner
Department of Human Services

DATE: 9-19-85

ATTN: BEVERY JONES HEYDINGER
Assistant Attorney General

FROM: MARTHA J. CASSERLY
Special Assistant Attorney General

PHONE: 296-4692

SUBJECT: In the Matter of the Proposed Adoption of Department of Human Services Rules Governing Special Needs Rate Exceptions for Very Dependent Persons with Special Needs, Minnesota Rules, Parts 9510.1020 to 9510.1140

The above-referenced rule has been approved as to its legality by the Attorney General on September 18, 1985.

Enclosed is the agency's copy of the approved rule. This office has already filed two copies of the approved rule with the Secretary of State, who will forward one copy to the Revisor of Statutes. The fourth copy is being retained by this division of the Attorney General's Office for its records.

Also enclosed are any petitions, requests, submission or comments received by the agency and any extra copies of documents which the agency submitted to the Attorney General.

In order for a permanent rule without a hearing to become effective, your agency must publish a notice of adoption in the State Register in accordance with Minn. Stat. § 14.27. An emergency rule becomes effective five working days after approval by the Attorney General; however, the agency must publish a notice in the State Register in accordance with Minn. Stat. § 14.34.

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

MJC:pmf

Enclosures

cc: Maryanne Hruby
Executive Director
Legislative Commission to Review
Administrative Rules

Duane Harves
Chief Administrative Law Judge
Office of Administrative Hearings

To: Marty.

Date: 9/17/85

Re: DHS - Special Needs Rate Exception for Very Dependent Persons with Special Needs.

Rules as Adopted

p.5, line 24 .1040 Subp.3. B(3) , etc.

There are various sections in these rules which reference ~~existing~~ temporary or emergency Rules. DHS says all the temporary or emergency Rules referenced are not due to expire until July 1, '86 by which time DHS hopes to have permanent Rules in place to succeed the temp. or emergency Rules. That timing will permit these rules to be amended appropriately.

SF-00006-04

DEPARTMENT : Human Services

PHONE : 297-4302

DATE : SEptember 6, 1985

TO : Judith Wehrwein

FROM : Jane Belage

STATE OF MINNESOTA

Office Memorandum

SUBJECT : Submittal of the rule file for parts 9510.1020 to 9510.1140

The rule file for Minnesota Rules parts 9510.1020 to 9510.1140, Relating to Special Needs Rate Exception for Very Dependent Persons with Special Needs is attached for your review according to Minnesota Rules parts 2000. 0400.

Please note that both a notice of hearing and a notice of intent to adopt without a public hearing were published. However, fewer than 25 request for hearing were received, so the Department went ahead with the noncontroversial procedure. You will also notice that no notice of submittal to your office is included because the department did not receive any written request for notice.

JD:cr

 AG copy.

Department of Human Services

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

Rules as Adopted

9510.1020 DEFINITIONS.

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

Subp. 2. **Case manager.** "Case manager" has the meaning given it in part 9525.0015 [Emergency], subpart 5.

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

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

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

Subp. 6. **Degenerative disease.** "Degenerative disease" means a category of neurological impairment such as Hurler's syndrome, tuberous sclerosis, Alzheimer's disease, or Huntington's chorea with a disorganization of motor function or chronic brain syndrome.

Subp. 7. **Employee benefits.** "Employee benefits" means compensation actually paid to or for the benefit of the employees other than salary. Employee benefits include group health or dental insurance, group life insurance, pensions or profit sharing plans, governmentally-required retirement plans, sick leave, vacations, and in-kind benefits. Employee benefits do not include payroll-related costs.

Subp. 8. **Equipment.** "Equipment" means aids designed to increase a client's ability to live and function independently

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which are purchased for the client, remain the property of the client and can be moved with the client upon discharge.

Subp. 9. **Intermediate care facility for the mentally retarded or ICF/MR.** "Intermediate care facility for the mentally retarded" or "ICF/MR" means a program licensed to serve mentally retarded residents under Minnesota Statutes, section 252.28, and a physical plant licensed as a supervised living facility under Minnesota Statutes, chapter 144, which together are certified by the Minnesota Department of Health as an intermediate care facility for the mentally retarded.

Subp. 10. **Medical review team.** "Medical review team" means a group of physicians and social workers who are under contract with the Department of Human Services to review a medical and social history for the purpose of determining a person's disability within the scope of the regulations of the Social Security Administration.

Subp. 11. **Provider.** "Provider" means the person or entity operating a licensed training and habilitation service or an ICF/MR.

Subp. 12. **Payroll-related costs.** "Payroll-related costs" means the employer's share of social security withholding taxes, workers' compensation insurance or actual cost if self insured, and state and federal unemployment compensation taxes or costs.

Subp. 13. **Special needs rate exception payment.** "Special needs rate exception payment" means a payment established under parts 9510.1020 to 9510.1140.

Subp. 14. **Staff intervention.** "Staff intervention" means the direct client care provided by program personnel or outside program consultants, or the training of direct care program personnel by outside program consultants for the purpose of addressing the client's needs as identified in the special needs rate exception application.

Subp. 15. **State hospital.** "State hospital" means an ICF/MR or nursing home owned and operated by the state of Minnesota.

Subp. 16. **Training and habilitation services.** "Training

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

9510.1030 APPLICABILITY AND PURPOSE.

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

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

9510.1040 APPLICATION TO BE COMPLETED BY PROVIDER.

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

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must include the information in subparts 2 to 4.

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

A. identify the client including:

(1) name;

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

(3) medical assistance identification number;

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

(5) diagnosis;

(6) age;

(7) current residence; and

(8) current day program;

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

C. describe the proposed staff intervention including:

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

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

(3) type of intervention;

(4) frequency of intervention;

(5) intensity of intervention; and

(6) duration of intervention;

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

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

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

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

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

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

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

A. information identifying the provider including:

(1) name and address of the provider;

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

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

(4) medical assistance provider number; and

B. an explanation of the efforts used to meet the client's needs within the provider's current per diem rate, including:

(1) modifications made to the individual program plan;

(2) reallocation of current program personnel;

(3) use of any operating cost incentives or allowances received by the provider under parts 9510.0500 to 9510.0890 or 12 MCAR SS 2.05301 to 2.05315 [Temporary]; ? what happens when the Temp rules expire

(4) training and inservice provided to program personnel for the year immediately preceding the date of the provider's application to the county; and

(5) other available resources used.

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

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

B. For an ICF/MR, a copy of the most recent facility profile as prepared by the quality assurance and review section

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of the Minnesota Department of Health. For a training and habilitation service program, a description of the physical condition, medical condition, and behavioral characteristics of the clients currently served by the program.

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

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

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

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

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

H. A plan to decrease the client's reliance on the proposed staff intervention.

9510.1050 COUNTY REVIEW OF PROVIDER'S APPLICATION.

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

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which meet the criteria in subparts 2 to 5.

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

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

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

C. the client is a person with mental retardation according to the definition in part 9525.0015 [Emergency], subpart 21 or has related conditions defined in Code of Federal Regulations, title 42, section 435, and has at least one of the following characteristics:

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

(a) self-injurious behavior which is a clear danger to the client such as ingesting inedibles; removing major items of clothing; striking, biting, or scratching self; moving into dangerous situations which clearly threaten or endanger the client's life, sensory abilities, limb mobility, brain functioning, physical appearance, or other major physical functions; or

(b) aggressive behaviors which are a clear danger to others such as striking, scratching, or biting others; throwing heavy objects at others; attempting inappropriate sexual activity with others; or pushing or placing others into dangerous situations which clearly threaten or endanger their life, sensory abilities, limb mobility, brain functioning, sexual integrity, physical appearance, or other major physical functions; or

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

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

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

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(a) degenerative diseases diagnosed by a physician as terminal; or

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

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

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

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

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

A. The existing program or services offered by the provider cannot be modified to meet the client's needs within the provider's approved per diem rates, including any operating cost incentives or allowances as defined in 12 MCAR SS 2.05301 to 2.05315 [Temporary] or parts 9510.0500 to 9510.0890. Amounts deposited in a funded depreciation account under 12 MCAR S 2.05304 [Temporary] C. shall not be affected by this item.

B. The provider's historical cost per diem does not include the historical cost of providing the same or similar clients with the same or similar staff interventions.

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

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

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

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client's needs.

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

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

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

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

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

A. the proposed staff intervention and equipment are allowable for purposes of reimbursement under parts 9510.1020 to 9510.1140;

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

C. the proposed staff intervention and equipment purchases meet the identified client needs; and

D. the provider has included a plan to decrease the client's reliance on the proposed staff intervention which shall ensure integration of the client into the existing program when the special needs rate exception terminates.

9510.1060 COUNTY APPROVAL PROCESS.

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

Subp. 2. **Consultation with county of financial**

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

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

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

9510.1070 COUNTY'S APPLICATION TO COMMISSIONER.

If the county approves the provider's application, the county shall apply to the commissioner for a special needs rate exception within ten working days of the date of receipt by the county from the provider of a complete application and

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supporting documentation. To apply for a special needs rate exception, the county shall submit to the commissioner a copy of the provider's approved application and supporting documentation and the following documents:

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

B. a copy of the client's most recent individual service plan which states the decision to place or retain the eligible client in a state hospital if the requested services cannot be provided;

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

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

E. a copy of the client's screening document if one was completed within 60 days of the date the county received a complete application from the provider;

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

G. a letter from the county of financial responsibility stating approval of the changes in the individual service plan if the county submitting the application is not the county of financial responsibility; or if the county of financial responsibility does not approve the changes, a letter stating the reasons the county of financial responsibility does not approve the changes and describing the actions, if any, to be taken by the county of financial responsibility; and

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

9510.1080 COMMISSIONER'S DETERMINATION.

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

9510.1090 ESTABLISHING SPECIAL NEEDS RATE EXCEPTION PAYMENT.

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

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

bump expire

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

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

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

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

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

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

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

C. The special needs rate exception amount must not exceed the total ~~allowable~~ of the costs ~~in~~ allowable under subpart 2. If a special needs rate exception is necessary for a client in both the ICF/MR and the training and habilitation service program, the amounts of both special needs rate exceptions must be combined. If the client is currently receiving a special needs rate exception, that amount must also be included. FF1

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

E. The state hospital medical assistance per diem

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rate must be the rate in effect on the date the provider's completed application is submitted to the county.

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

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

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

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

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

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

9510.1100 VARIANCE REQUEST.

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

Subp. 2. **Eligible provider.** A licensed provider of training and habilitation services may apply for a variance if the provider is not an ICF/MR and provides or plans to provide

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training and habilitation services to a client who resides in an ICF/MR which has a per diem rate equal to or greater than 85 percent of the medical assistance per diem cost of providing services to mentally retarded persons in the state hospitals.

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

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

9510.1110 EMERGENCY PROCEDURE.

Subpart 1. **Definition.** For the purposes of this part, an emergency is either:

A. a postoperative condition resulting from unplanned surgery or unanticipated complications resulting from planned surgery which would result in continued placement in a hospital or skilled nursing facility, loss of placement in a community ICF/MR, and admission to a state hospital within 60 days; or

B. the sudden onset of self-injurious or aggressive client behavior which results in an immediate danger to self or others; which would result in immediate admission to the state hospital in the absence of intervention.

Subp. 2. **Emergency approval.** In an emergency, the county may approve the addition of staff necessary to intervene in the emergency without obtaining prior approval of a special needs rate exception from the commissioner if the county determines

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that all other client and provider eligibility is met. Only staff costs shall be allowed under this part. No funds spent will be reimbursed, even in an emergency, without the county's approval. In an emergency, the county shall:

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

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

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

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

9510.1120 DURATION OF SPECIAL NEEDS RATE EXCEPTION.

Subpart 1. **Maximum length of time for a special needs rate exception.** A special needs rate exception for a staff intervention must be limited to one approval per eligible client for a period of time not to exceed one year from the date of receipt of the county application by the commissioner except as provided in subpart 2.

Subp. 2. **Renewals.** If the county determines that a

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special needs rate exception should be continued after the period initially approved, the county shall submit a new application in accordance with parts 9510.1020 to 9510.1140 at least 30 days prior to the date the special needs rate exception is scheduled to terminate. The county application for a renewal must contain a program and fiscal evaluation demonstrating the effectiveness of the initial special needs rate exception. A special needs rate exception for a staff intervention must be limited to ~~one renewal~~ two renewals, each of one year or less, per identified special need.

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

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

B. the rate is no longer necessary because a more appropriate residential or day training and habilitation placement is available;

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

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

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

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

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

(3) the county submitted the determination by the client's physician to the commissioner with the first quarterly program and fiscal review under part 9510.1130, subpart 2 and requested an exception to this item; and

(4) the county's request for an exception to this

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item has been reviewed by the state medical review team of the Department of Human Services and the state medical review team has verified that no progress in the identified problem area can be expected.

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

9510.1130 RECORDS, REPORTS, AUDITS, AND REPAYMENT.

Subpart 1. **Records.** The provider shall maintain complete program and fiscal records and supporting documentation identifying the services and costs provided under the special needs rate exception. The costs must be maintained in well-organized files and identified in accounts separate from other facility or program costs. Costs authorized and approved under these parts do not become part of a provider's historic cost base for the purpose of setting rates under 12 MCAR SS 2.05301 to 2.05315 [Temporary] or parts 9525.1200 to 9525.1330. The provider's records shall be kept for five years and be subject to the maintenance schedule, audit availability requirements, and other provisions of parts 9505.1750 to 9505.2150.

Temporary expire

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

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

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

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

(3) the county and provider's plans to reduce

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reliance on the special needs rate exception; and

(4) changes implemented in the type, frequency, or intensity of the staff intervention approved under parts 9510.1080 and 9510.1090.

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

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

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

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

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

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

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

9510.1140 APPEALS.

Subpart 1. **By provider.** A provider whose application for a special needs rate exception is denied or not acted on within the deadlines in part 9510.1060, subpart 1, or whose special needs rate exception is suspended, reduced, or terminated by the county may appeal the action or decision to the commissioner. The appeal must be submitted to the commissioner in writing

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within 30 days of the date the provider received notification or should have received notification of the action or decision. The appeal must state the reasons the provider is appealing the county's action or decision including the bases for the county's action or decision which are disputed, the specific sections of the provider's application which the provider is relying on for the appeal, and an explanation of why the provider disagrees with the county's action or decision.

The commissioner shall review the application and supporting documentation submitted to the county and any additional documents submitted with the appeal to determine if the provider can prove by a preponderance of evidence that it is eligible for a special needs rate exception and in compliance with parts 9510.1020 to 9510.1140. Within 30 days of receipt of the provider's appeal, the commissioner shall notify the provider of the commissioner's decision. No special needs rate exception payment will be made pending the outcome of the appeal.

Subp. 2. **By county.** If the county disagrees with the commissioner's decision on the county application, the county may appeal the decision to the commissioner and request reconsideration. To be reconsidered, the appeal must be filed in writing, with the commissioner, within ten days of the date the commissioner gave notice to the county of the decision on the county application. The appeal must state the reasons why the county is appealing the commissioner's decision and present evidence explaining why the county disagrees with the commissioner's decision. Within 30 days of receipt of the county's appeal, the commissioner shall review the evidence presented in the county's appeal and send written notification to the county of the commissioner's decision on the appeal. No special needs rate exception payment shall be made pending the outcome of the appeal. The commissioner's decision on the appeal shall be final.

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STATE OF MINNESOTA
DEPARTMENT OF STATE
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SEP 19 1985
Joan Anderson Growe
Secretary of State
8:32 AM

APPROVED AS TO FORM AND LEGALITY
September 18 1985
HUBERT H. HUMPHREY, III
ATTORNEY GENERAL
BY M J Cassedy
SPECIAL ASSISTANT ATTORNEY GENERAL

Rules as Proposed (all new material)

9510.1020 DEFINITIONS.

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

Subp. 2. **Case manager.** "Case manager" has the meaning given it in part 9525.0015 [Emergency], subpart 5.

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

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

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

Subp. 6. **Degenerative disease.** "Degenerative disease" means a category of neurological impairment such as Hurler's syndrome, tuberous sclerosis, Alzheimer's disease, or Huntington's chorea with a disorganization of motor function or chronic brain syndrome.

Subp. 7. **Employee benefits.** "Employee benefits" means compensation actually paid to or for the benefit of the employees other than salary. Employee benefits include group health or dental insurance, group life insurance, pensions or profit sharing plans, governmentally-required retirement plans, sick leave, vacations, and in-kind benefits. Employee benefits do not include payroll-related costs.

Subp. 8. **Equipment.** "Equipment" means aids designed to increase a client's ability to live and function independently which are purchased for the client, remain the property of the client and can be moved with the client upon discharge.

Subp. 9. **Intermediate care facility for the mentally retarded or ICF/MR.** "Intermediate care facility for the mentally retarded" or "ICF/MR" means a program licensed to serve

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mentally retarded residents under Minnesota Statutes, section 252.28, and a physical plant licensed as a supervised living facility under Minnesota Statutes, chapter 144, which together are certified by the Minnesota Department of Health as an intermediate care facility for the mentally retarded.

Subp. 10. **Medical review team.** "Medical review team" means a group of physicians and social workers who are under contract with the Department of Human Services to review a medical and social history for the purpose of determining a person's disability within the scope of the regulations of the Social Security Administration.

Subp. 11. **Provider.** "Provider" means the person or entity operating a licensed training and habilitation service or an ICF/MR.

Subp. 12. **Payroll-related costs.** "Payroll-related costs" means the employer's share of social security withholding taxes, workers' compensation insurance or actual cost if self insured, and state and federal unemployment compensation taxes or costs.

Subp. 13. **Special needs rate exception payment.** "Special needs rate exception payment" means a payment established under parts 9510.1020 to 9510.1140.

Subp. 14. **Staff intervention.** "Staff intervention" means the direct client care provided by program personnel or outside program consultants, or the training of direct care program personnel by outside program consultants for the purpose of addressing the client's needs as identified in the special needs rate exception application.

Subp. 15. **State hospital.** "State hospital" means an ICF/MR or nursing home owned and operated by the state of Minnesota.

Subp. 16. **Training and habilitation services.** "Training and habilitation services" means health and social services provided under Minnesota Statutes, sections 252.21 to 252.261 and 256B.501. "Training and habilitation services" does not include waivered services as defined in Minnesota Statutes, section 256B.501, subdivision 1.

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9510.1030 APPLICABILITY AND PURPOSE.

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

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

9510.1040 APPLICATION TO BE COMPLETED BY PROVIDER.

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

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

A. identify the client including:

(1) name;

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

(3) medical assistance identification number;

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

(5) diagnosis;

(6) age;

(7) current residence; and

(8) current day program;

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

C. describe the proposed staff intervention including:

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

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

(3) type of intervention;

(4) frequency of intervention;

(5) intensity of intervention; and

(6) duration of intervention;

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

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

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

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

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

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

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

A. information identifying the provider including:

(1) name and address of the provider;

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

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

(4) medical assistance provider number; and

B. an explanation of the efforts used to meet the client's needs within the provider's current per diem rate, including:

(1) modifications made to the individual program plan;

(2) reallocation of current program personnel;

(3) use of any operating cost incentives or allowances received by the provider under parts 9510.0500 to 9510.0890 or 12 MCAR SS 2.05301 to 2.05315 [Temporary];

(4) training and inservice provided to program personnel for the year immediately preceding the date of the provider's application to the county; and

(5) other available resources used.

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

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

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

C. Documentation of the provider's historical costs

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

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

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

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

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

H. A plan to decrease the client's reliance on the proposed staff intervention.

9510.1050 COUNTY REVIEW OF PROVIDER'S APPLICATION.

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

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

A. the client is eligible for medical assistance

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under Minnesota Statutes, chapter 256B;

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

C. the client is a person with mental retardation according to the definition in part 9525.0015 [Emergency], subpart 21 or has related conditions defined in Code of Federal Regulations, title 42, section 435, and has at least one of the following characteristics:

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

(a) self-injurious behavior which is a clear danger to the client such as ingesting inedibles; removing major items of clothing; striking, biting, or scratching self; moving into dangerous situations which clearly threaten or endanger the client's life, sensory abilities, limb mobility, brain functioning, physical appearance, or other major physical functions; or

(b) aggressive behaviors which are a clear danger to others such as striking, scratching, or biting others; throwing heavy objects at others; attempting inappropriate sexual activity with others; or pushing or placing others into dangerous situations which clearly threaten or endanger their life, sensory abilities, limb mobility, brain functioning, sexual integrity, physical appearance, or other major physical functions; or

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

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

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

(a) degenerative diseases diagnosed by a physician as terminal; or

(b) short-term medical disabilities that can be treated within the level of care the Minnesota Department of Health certifies the ICF/MR to provide, such as temporary

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immobility, intermittent catheterization, or post-operative recuperation;

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

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

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

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

A. The existing program or services offered by the provider cannot be modified to meet the client's needs within the provider's approved per diem rates, including any operating cost incentives or allowances as defined in 12 MCAR SS 2.05301 to 2.05315 [Temporary] or parts 9510.0500 to 9510.0890. Amounts deposited in a funded depreciation account under 12 MCAR S 2.05304 [Temporary] C. shall not be affected by this item.

B. The provider's historical cost per diem does not include the historical cost of providing the same or similar clients with the same or similar staff interventions.

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

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

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

B. There are no other appropriate ICFs/MR, training and habilitation services, or other services located within a reasonable distance available to meet the person's needs within their current rates. To determine if another ICF/MR, training

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and habilitation service, or other service is appropriate for the client, the case manager shall:

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

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

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

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

A. the proposed staff intervention and equipment are allowable for purposes of reimbursement under parts 9510.1020 to 9510.1140;

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

C. the proposed staff intervention and equipment purchases meet the identified client needs; and

D. the provider has included a plan to decrease the client's reliance on the proposed staff intervention which shall ensure integration of the client into the existing program when the special needs rate exception terminates.

9510.1060 COUNTY APPROVAL PROCESS.

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

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

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

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

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

9510.1070 COUNTY'S APPLICATION TO COMMISSIONER.

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

A. documentation of the steps taken by the county to

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determine client and provider eligibility in accordance with parts 9510.1020 to 9510.1140, including documentation of the conditions which put the client at risk of state hospital placement or continued state hospital placement;

B. a copy of the client's most recent individual service plan which states the decision to place or retain the eligible client in a state hospital if the requested services cannot be provided;

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

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

E. a copy of the client's screening document if one was completed within 60 days of the date the county received a complete application from the provider;

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

G. a letter from the county of financial responsibility stating approval of the changes in the individual service plan if the county submitting the application is not the county of financial responsibility; or if the county of financial responsibility does not approve the changes, a letter stating the reasons the county of financial responsibility does not approve the changes and describing the actions, if any, to be taken by the county of financial responsibility; and

H. a description of the proposed services to be provided by the day training and habilitation service and the ICF/MR and how the services will be coordinated and monitored by the county and the providers. If the special needs rate exception is not requested for both the day training and

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habilitation service and the ICF/MR, a written explanation must be provided by the county.

9510.1080 COMMISSIONER'S DETERMINATION.

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

9510.1090 ESTABLISHING SPECIAL NEEDS RATE EXCEPTION PAYMENT.

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

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

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

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

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

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

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

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

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

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

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

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

F. If the per diem cost in item D exceeds the per diem cost in item E, the commissioner shall deny the special needs rate exception application unless the per diem cost can be adjusted to meet the client's needs within the per diem cost in

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item E or the commissioner grants a variance under part 9510.1100.

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

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

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

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

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

9510.1100 VARIANCE REQUEST.

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

Subp. 2. **Eligible provider.** A licensed provider of training and habilitation services may apply for a variance if the provider is not an ICF/MR and provides or plans to provide training and habilitation services to a client who resides in an ICF/MR which has a per diem rate equal to or greater than 85 percent of the medical assistance per diem cost of providing services to mentally retarded persons in the state hospitals.

Subp. 3. **Submittal of request.** The county shall submit the written variance request, including documentation showing

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that the provider meets the criteria for a variance, with the county's application for the special needs rate exception payment.

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

9510.1110 EMERGENCY PROCEDURE.

Subpart 1. **Definition.** For the purposes of this part, an emergency is either:

A. a postoperative condition resulting from unplanned surgery or unanticipated complications resulting from planned surgery which would result in continued placement in a hospital or skilled nursing facility, loss of placement in a community ICF/MR, and admission to a state hospital within 60 days; or

B. the sudden onset of self-injurious or aggressive client behavior which results in an immediate danger to self or others; which would result in immediate admission to the state hospital in the absence of intervention.

Subp. 2. **Emergency approval.** In an emergency, the county may approve the addition of staff necessary to intervene in the emergency without obtaining prior approval of a special needs rate exception from the commissioner if the county determines that all other client and provider eligibility is met. Only staff costs shall be allowed under this part. No funds spent will be reimbursed, even in an emergency, without the county's approval. In an emergency, the county shall:

A. notify the commissioner by telephone no later than the next working day and in writing within three working days of

the client's situation, and state in the notice a description of the behaviors or medical condition requiring emergency intervention and the actions taken by the provider to control the behaviors;

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

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

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

9510.1120 DURATION OF SPECIAL NEEDS RATE EXCEPTION.

Subpart 1. **Maximum length of time for a special needs rate exception.** A special needs rate exception for a staff intervention must be limited to one approval per eligible client for a period of time not to exceed one year from the date of receipt of the county application by the commissioner except as provided in subpart 2.

Subp. 2. **Renewals.** If the county determines that a special needs rate exception should be continued after the period initially approved, the county shall submit a new application in accordance with parts 9510.1020 to 9510.1140 at least 30 days prior to the date the special needs rate exception is scheduled to terminate. The county application for a renewal must contain a program and fiscal evaluation demonstrating the

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OFFICE BY:

effectiveness of the initial special needs rate exception. A special needs rate exception for a staff intervention must be limited to one renewal of one year or less per identified special need.

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

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

B. the rate is no longer necessary because a more appropriate residential or day training and habilitation placement is available;

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

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

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

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

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

(3) the county submitted the determination by the client's physician to the commissioner with the first quarterly program and fiscal review under part 9510.1130, subpart 2 and requested an exception to this item; and

(4) the county's request for an exception to this item has been reviewed by the state medical review team of the Department of Human Services and the state medical review team has verified that no progress in the identified problem area can be expected.

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

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9510.1130 RECORDS, REPORTS, AUDITS, AND REPAYMENT.

Subpart 1. **Records.** The provider shall maintain complete program and fiscal records and supporting documentation identifying the services and costs provided under the special needs rate exception. The costs must be maintained in well-organized files and identified in accounts separate from other facility or program costs. Costs authorized and approved under these parts do not become part of a provider's historic cost base for the purpose of setting rates under 12 MCAR SS 2.05301 to 2.05315 [Temporary] or parts 9525.1200 to 9525.1330. The provider's records shall be kept for five years and be subject to the maintenance schedule, audit availability requirements, and other provisions of parts 9505.1750 to 9505.2150.

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

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

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

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

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

(4) changes implemented in the type, frequency, or intensity of the staff intervention approved under parts 9510.1080 and 9510.1090.

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

the following:

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

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

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

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

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

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

9510.1140 APPEALS.

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

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the appeal, and an explanation of why the provider disagrees with the county's action or decision.

The commissioner shall review the application and supporting documentation submitted to the county and any additional documents submitted with the appeal to determine if the provider can prove by a preponderance of evidence that it is eligible for a special needs rate exception and in compliance with parts 9510.1020 to 9510.1140. Within 30 days of receipt of the provider's appeal, the commissioner shall notify the provider of the commissioner's decision. No special needs rate exception payment will be made pending the outcome of the appeal.

Subp. 2. **By county.** If the county disagrees with the commissioner's decision on the county application, the county may appeal the decision to the commissioner and request reconsideration. To be reconsidered, the appeal must be filed in writing, with the commissioner, within ten days of the date the commissioner gave notice to the county of the decision on the county application. The appeal must state the reasons why the county is appealing the commissioner's decision and present evidence explaining why the county disagrees with the commissioner's decision. Within 30 days of receipt of the county's appeal, the commissioner shall review the evidence presented in the county's appeal and send written notification to the county of the commissioner's decision on the appeal. No special needs rate exception payment shall be made pending the outcome of the appeal. The commissioner's decision on the appeal shall be final.

APPROVED IN THE
REVISOR OF STATUTES
OFFICE BY:

OFFICE OF THE REVISOR OF STATUTES

Proposed Rule

RD726

Agency: Department of Human Services

Division:

Agency Contact: Lisa Rotegard

Minnesota Rules: Parts 9510.1020 to 9510.1140

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

Type of Rules: Permanent

Incorporations by Reference: None

Steven C. Cross
Revisor of Statutes

Susan M. Lentsch
Assistant Revisor
Phone: 296-0956

Date: June 17, 1985

STATE OF MINNESOTA

DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF THE PROPOSED ADOPTION OF PERMANENT RULES OF THE STATE DEPARTMENT OF HUMAN SERVICES RELATING TO SPECIAL NEEDS RATE EXCEPTIONS FOR VERY DEPENDENT PERSONS WITH SPECIAL NEEDS, MINNESOTA RULES, PARTS 9510.1020 to 9510.1140.

FINDINGS OF FACT, CONCLUSIONS, AND ORDER ADOPTING RULE ADOPTED WITHOUT PUBLIC HEARING.

Notice of the Commissioner's proposed adoption of the above entitled matter was published in the State Register on July 8, 1985, and was sent by United States mail to all persons on the list maintained by the agency pursuant to Minnesota Statutes, section 14.14, subdivision 1, paragraph (a) and section 14.22 on July 5, 1985.

All persons were given the opportunity to submit comment on the rule for 30 days after notice of proposed rulemaking. Less than 25 written requests for hearing within the 30-day comment period were received.

No requests for notice of submission to the attorney general were received by the agency.

Based on the comments and evidence in the record before the agency, I find the following:

1. In part 9510.1090, subpart 4, item C of the proposed rule parts, the Department states that "The special needs rate exception amount must not exceed the total allowable costs in subpart 2." Commentator Anne Henry of Legal Advocacy for Developmentally Disabled Persons in Minnesota stated that the first sentence of this item is confusing because of its reference to total costs. The Commissioner agrees that the language needs clarification and, therefore, changes the wording of the first sentence. This change is merely a clarification which does not substantially alter the rule parts. ✓p.13

2. In part 9510.1120, subpart 2 of the proposed rule parts, the Department only allows for one renewal of a special needs rate exception. Commentator Anne Henry stated there is a need for additional renewals to accomodate clients with ongoing needs until a "case-mix" system is established. The Commissioner finds that an additional renewal period may be needed to allow for the establishment of a case-mix system and, therefore, amends subpart 2 to allow "two renewals of one year or less." This change is consistent with Department goals and does not substantially alter the rule parts. ✓p.17

3. In part 9510.1090, subpart 4 of the proposed rule parts, the Department establishes the state hospital medical assistance per diem rate as the upper limit for a special needs rate exception. Under certain circumstances, a variance of up to 15 percent more than the limitation is then allowed under part 9510.1100. Commentator Anne Henry objects to the limit stating that some clients are unable to be served under parts 9510.1020 to 9510.1140 because of the limitation. The Department is aware that some clients' needs cannot be served within the limitation and is looking for other means of meeting their needs. The Commissioner finds that some fiscal limitations are necessary within parts 9510.1020 to 9510.1140 and that other means should be used to address needs that cannot be met because of these fiscal limitations, therefore, no change is made in part 9510.1090.

4. In part 9510.1140 of the proposed rule parts, the Department establishes an appeals process. To avoid unnecessary expenditures of public funds, the Department does not allow any special needs rate exception payment to be made pending the outcome of the appeal. Commentator Anne Henry objects to this process stating that it may jeopardize services to clients. Because the principal reason that an application would be denied is that the provider can already provide the services within the established rate, the client should suffer no harm awaiting a decision on an appeal. This appeal process is similar to other rate appeals under parts 9549.0010 to 9549.0080 and parts 9553.0010 to 9553.0080, in which payment is limited to the rate determined by the Commissioner until the appeal is resolved. The Commissioner finds this a reasonable process for the appeal of a special needs rate exception and, therefore, no change is made in part 9510.1140.

5. In part 9510.1140 of the proposed rule parts, the Department describes the appeals process for provider and country appeals. No specific mention is made of client appeals. Commentator Anne Henry states in her comments that client appeals should be addressed in the rule to insure that clients and their legal representatives understand their rights. Client appeals are addressed in the Case Management Rule, parts 9525.0015 to 9525.0145 [Emergency]. Parts 9525.0015 to 9525.0145 [Emergency] apply to all mental retardation services. The Commissioner has considered Ms. Henry's suggestion, but finds that client appeals are not appropriate for rate decisions because the dispute is between the provider and the county, or the Commissioner, regarding payment for services. Appeals of rate decisions should be appealed by the provider or county board to avoid putting the client in the position of appealing on behalf of the provider. The Department is currently working on improving contract procedures and provider agreements to ensure clients are not adversely affected by rate decisions.

6. The comments received from Anne Henry of Legal Advocacy for Developmentally Disabled Persons in Minnesota (see page one of Ms. Henry's August 6 comments) raise two additional issues which the Department is in the process of addressing.

a) Related Conditions

A draft rule has been developed to address the issue of eligibility of persons with "related conditions." This rule clarifies the definition in statute, and lists the rules governing services to persons with mental retardation which persons with related conditions are eligible to apply for.

b) Rate Exceptions for Waivered Services

The issue of providing special needs rate exceptions for waivered services is addressed in parts 9525.1800 to 9525.1930, the rule parts governing the funding and administration of home and community-based services for persons with mental retardation. Part 9525.1890, subpart 6, allows the Commissioner to reallocate or reserve home and community-based services money to fund special projects to serve very dependent persons with special needs.

The Commissioner finds it unnecessary and potentially confusing to address these issues in these rule parts and, therefore, makes no further changes.

7. All comments concerning the proposed permanent rules received within the period allowed by law were considered by the Department. The Commissioner finds that the comments not specifically addressed in these findings are adequately addressed in the Statement of Need and Reasonableness.

8. The changes made to the proposed permanent rule parts are not substantial changes.

CONCLUSIONS

I hereby conclude that:

1. The Commissioner has statutory authority to promulgate these rule parts.

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

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

4. The permanent rule parts, as modified, are necessary and reasonable.

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

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

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

NOW, THEREFORE, IT IS ORDERED that the rules identified as parts 9510.1020 to 9510.1140 Relating to Special Needs Rate Exceptions for Very Dependent Persons with Special Needs are adopted as modified this 6th day of September, 1985, pursuant to the authority vested in me by Minnesota Statutes, section 256B.501, subdivisions 8 and 10.

STATE OF MINNESOTA



LEONARD W. LEVINE
Commissioner of Human Services

GR/30

outside the agency in preparing to promulgate permanent rules governing the General Assistance Program including assistance standards, certain exemptions from registration requirements, and interim assistance reimbursement. Once the permanent rules are promulgated, they will replace Parts 9555.3410 to 9555.3412 [Emergency], 9555.3415 [Emergency], and 9555.1317 [Emergency].

The promulgation of permanent rules is authorized by Minnesota Statutes, sections 256D.01, subdivision 1b. (1984), 256D.06, subdivision 5, and 256D.111, subdivision 5 (1984).

The Minnesota Department of Human Services requests information and comments concerning the subject of these rules. Interested or affected persons or groups may submit statements of information or comment orally or in writing.

Written statements should be addressed to:

John Anderson
Assistance Payments Division
Department of Human Services
444 Lafayette Road
St. Paul, MN 55101

Oral statements of information and comment will be received over the telephone at (612) 297-1489 between the hours of 9:00 a.m. and 4:00 p.m.

All statements of information and comment shall be accepted until further notice. Any written material received by the Minnesota Deaprtment of Human Services shall become a part of the rule file in the event that the rules are promulgated.

Department of Human Services Mental Health Bureau

Outside Opinion Sought Concerning Proposed Permanent Rules Governing the Licensing of Day Training and Habilitation Services for Persons with Mental Retardation

Notice is hereby given that the Minnesota Department of Human Services is considering permanent rules governing the licensing of day training and habilitation services for persons with mental retardation. These rules establish a licensing process and set minimal standards for day training and habilitation services and the facilities in which these services are provided.

Authority for these rules is contained in Minnesota Statutes, sections 245.781-245.812.

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:

Susan Canine
Department of Human Services
Rules Unit
Fourth Floor, Centennial Building
St. Paul, MN 55155

Oral statements of information and comment will be received over the telephone at 612/297-1241 between 9 a.m. and 4 p.m. Mondays through Fridays.

Statements of information and comment will be accepted until further notice. Any written material received by the Department shall become part of the rule record. Oral statements will be considered but will not become part of the rule record.

Department of Human Services Mental Health Bureau

Outside Opinion Sought Concerning Proposed Permanent Rules to Replace Parts 9510.1020-9510.1140 [Emergency]

Notice is heregy given that the Minnesota Department of Human Services is considering permanent rules relating to

medical assistance funding for very dependent persons with special needs. These rules will establish a special needs rate exception for very dependent persons with mental retardation who have special needs.

Authority for these rules is contained in Minnesota Statutes 256B.501, subdivision 8.

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:

Lisa Rotegard
Department of Human Services
Rules Unit
Fourth Floor, Centennial Building
St. Paul, MN 55155

Oral statements of information and comment will be received over the telephone at 612/296-5687 between 9 a.m. and 4 p.m. Mondays through Fridays.

Statements of information and comment will be accepted until further notice. Any written material received by the Department shall become part of the rule record. Oral statements will be considered but will not become part of the rule record.

Department of Human Services Mental Health Bureau

Outside Opinion Sought Concerning Proposed Permanent Rules to Replace Parts 9525.0015-9525.0145 [Emergency]

Notice is hereby given that the Minnesota Department of Human Services is considering permanent rules relating to county board responsibility for providing case management services. These rules govern the provision of case management services, diagnosis of mental retardation, assessment of individual service needs, screening of persons with mental retardation, development of individual service plans, development of individual habilitation plans, contracts, appeals, quality assurance, and development of services and determination of needs.

Authority for these rules is contained in Minnesota Statutes, sections 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:

Susan Canine
Department of Human Services
Rules Unit
Fourth Floor, Centennial Building
St. Paul, MN 55155

Oral statements of information and comment will be received over the telephone at 612/297-1241 between 9 a.m. and 4 p.m. Mondays through Fridays.

Statements of information and comment will be accepted until further notice. Any written material received by the Department shall become part of the rule record. Oral statements will be considered but will not become part of the rule record.

Department of Human Services Mental Health Bureau

Outside Opinion Sought Concerning Proposed Permanent Rules to Replace Parts 9525.1800-9525.1930 [Emergency]

Notice is hereby given that the Minnesota Department of Human Services is considering permanent rules relating to the medical assistance funding and administration of home and community-based services for persons who are mentally retarded. The rules will establish standards for the delivery of home and community-based services and govern the funding and administration of these services.

STATE OF MINNESOTA

DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF THE PROPOSED ADOPTION OF DEPARTMENT OF HUMAN SERVICES RULES GOVERNING SPECIAL NEEDS RATE EXCEPTIONS FOR VERY DEPENDENT PERSONS WITH SPECIAL NEEDS, MINNESOTA RULES, PARTS 9510.1020 TO 9510.1140

ORDER FOR NOTICE OF INTENT TO ADOPT RULES WITHOUT A PUBLIC HEARING

IT IS ORDERED this 18th day of June, 1985 that a Notice of Intent to Adopt Rules Without a Public Hearing in the above-entitled matter be given to all persons who have registered their names with the Department of Human Services for that purpose and be published in the State Register.

STATE OF MINNESOTA

Frances E. Gibson, Deputy Commissioner

LEONARD W. LEVINE, Commissioner
Department of Human Services

STATE OF MINNESOTA

DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF THE PROPOSED ADOPTION OF DEPARTMENT OF HUMAN SERVICES RULES GOVERNING SPECIAL NEEDS RATE EXCEPTIONS FOR VERY DEPENDENT PERSONS WITH SPECIAL NEEDS, MINNESOTA RULES, PARTS 9510.1020 TO 9510.1140

ORDER FOR HEARING

IT IS ORDERED this 18th day of June, 1985 that a public hearing on the proposed rules captioned above be held in the conference room, 500 Rice Street, St. Paul, Minnesota 55155 on August 13, 1985 commencing at 9:00 a.m. and continuing until all representatives of associations or other interested groups or persons have had an opportunity to be heard.

IT IS FURTHER ORDERED that notice of said hearing be given to all persons who have registered their names with the Department of Human Services for that purpose and be published in the State Register.

STATE OF MINNESOTA

James E. Ahrens, Deputy Commissioner

LEONARD W. LEVINE, Commissioner
Department of Human Services

STATE OF MINNESOTA

DEPARTMENT OF HUMAN SERVICES

In the Matter of the Proposed Adoption of Rules of the State Department of Human Services Relating to Special Needs Rate Exceptions for Very Dependent Persons with Special Needs, Minnesota Rules, parts 9510.1020 to 9510.1140.	NOTICE OF INTENT TO ADOPT RULES WITHOUT A PUBLIC HEARING AND NOTICE OF INTENT TO ADOPT A RULE WITH A PUBLIC HEARING IF TWENTY-FIVE OR MORE PERSONS REQUEST A HEARING.

Notice is hereby given that the State Department of Human Services proposes to adopt the above-mentioned rule without a public hearing following the procedures set forth in Minnesota Statutes, sections 14.22 to 14.28. The specific statutory authority to adopt the rule is Minnesota Statutes, section 256B.501, subdivisions 8 and 10.

Persons interested in this rule shall have 30 days in which to submit comment in support of or in opposition to the proposed rule or any part or subpart of the rule and comment is encouraged. Each comment should identify the portion of the proposed rule addressed, the reason for the comment, and any change proposed.

Any person may make a written request for a public hearing on the rule within the 30-day comment period. If 25 or more persons submit a written request for a public hearing within the 30-day comment period, a public hearing will be held unless a sufficient number withdraw their request. Any person requesting a public hearing should state his or her name and address, and is encouraged to identify the portion of the proposed rule addressed, the reason for the request, and any change proposed. If a public hearing is required, the agency will proceed pursuant to Minnesota Statutes, sections 14.131 to 14.20. PLEASE NOTE THAT IF TWENTY-FIVE OR MORE PERSONS SUBMIT WRITTEN REQUESTS FOR A PUBLIC HEARING WITHIN THE 30-DAY COMMENT PERIOD, A HEARING WILL BE HELD ON AUGUST 13, 1985 IN ACCORDANCE WITH THE NOTICE OF PUBLIC HEARING ON THESE SAME RULES PUBLISHED IN THIS STATE REGISTER AND MAILED TO PERSONS REGISTERED WITH THE DEPARTMENT OF HUMAN SERVICES. To verify whether a hearing will be held, please call the Department of Human Services before August 13, 1985 at (612) 297-4980.

Persons who wish to submit comments or a written request for a public hearing must submit such comments or requests to:

Lisa Rotegard
Department of Human Services
Mental Retardation Division
4th Floor Centennial Office Building
St. Paul, MN 55115
Telephone 612/297-4980

All comments or requests for hearing must be received by the Department by 4:30 p.m. on August 7, 1985.

The proposed rule may be modified if the modifications are supported by data and views and do not result in a substantial change in the proposed rule as noticed.

Minnesota Rules, parts 9510.1020 to 9510.1140 establish procedures for counties to follow to seek authorization from the commissioner for special needs rate exception payments for eligible clients who reside in Intermediate Care Facilities for the Mentally Retarded (ICF/MR). The purpose of the special needs rate exception is to reimburse the costs of equipment, temporary staff intervention, consultation, or training services that are not included in the per diem rate of the ICF/MR and/or training and habilitation service. The special needs rate exception is intended to facilitate a client's transition to community living in order to prevent the placement or retention of the client in a state hospital.

Parts included in the proposed rule parts are definitions; applicability and purpose; application to be completed by provider; county review of provider's application including client eligibility, general provider eligibility, availability of other resources and evaluation of staff intervention and equipment purchases; county approval process; county's application to commissioner; commissioner's determination; establishing special needs rate exception payment; variance request; emergency procedure; duration of special needs rate exception; records, reports, audits and repayment; and appeals.

Parts 9510.1020 to 9510.1140 are proposed as permanent rule to replace parts 9510.1020 to 9510.1140 [Emergency], commonly know as rule 186. The substance of the proposed permanent rule parts remains essentially the same as in the emergency rule parts.

A copy of the rule is available upon request for your review from:

Susan Canine
Department of Human Services
Mental Retardation Division
4th Floor Centennial Office Building
St. Paul, MN 55155
telephone 612/297-1241

A Statement of Need and Reasonableness that describes the need for and reasonableness of each provision of the proposed rule and identifies the data and information relied upon to support the proposed rule has been prepared and is available from Lisa Rotegard upon request.

The Department estimates that the cost to all local public bodies of implementing these rules will not exceed $100,000 in either of the first two years following the adoption of parts 9510.1020 to 9510.1140.

If no hearing is required upon adoption of the rule, the rule and the required supporting documents will be delivered to the Attorney General for review as to legality and form to the extent the form relates to legality. Any person may request notification of the date of submission to the Attorney General. Persons who wish to be advised of the submission of this material to the Attorney General, or who wish to receive a copy of the adopted rule, must submit the written request to Lisa Rotegard.

State of Minnesota

June 18, 1985
Date

Leonard W. Levine
Commissioner of Human Services

STATE OF MINNESOTA

DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF THE PROPOSED ADOPTION OF DEPARTMENT OF HUMAN SERVICES RULES GOVERNING SPECIAL NEEDS RATE EXCEPTIONS FOR VERY DEPENDENT PERSONS WITH SPECIAL NEEDS, MINNESOTA RULES, PARTS 9510.1020 TO 9510.1140

NOTICE OF HEARING AND NOTICE OF INTENT TO CANCEL HEARING IF FEWER THAN TWENTY-FIVE PERSONS REQUEST A HEARING IN RESPONSE TO NOTICE OF INTENT TO ADOPT RULES WITHOUT A PUBLIC HEARING

NOTICE IS HEREBY GIVEN that a public hearing on the above-entitled matter will be held in the Conference Room, 500 Rice Street, St. Paul, Minnesota 55155 on August 13, 1985 commencing at 9:00 a.m. and continuing until all interested or affected persons have an opportunity to participate. The proposed rules may be modified as a result of the hearing process. Therefore, if you are affected in any manner by the proposed rules, you are urged to participate in the rule hearing process.

PLEASE NOTE, HOWEVER, THAT THE HEARING WILL BE CANCELLED IF FEWER THAN TWENTY-FIVE PERSONS REQUEST A HEARING IN RESPONSE TO THE NOTICE OF INTENT TO ADOPT THESE SAME RULES WITHOUT A PUBLIC HEARING PUBLISHED IN THIS STATE REGISTER AND MAILED TO PERSONS REGISTERED WITH THE DEPARTMENT OF HUMAN SERVICES. To verify whether a hearing will be held, please call the Department of Human Services between August 8 and August 12, 1985 at 612/297-4980.

Following the agency's presentation at the hearing, all interested or affected persons will have an opportunity to participate. Such persons may present their views either orally at the hearing or in writing at any time prior to the close of the hearing record. All evidence presented should be pertinent to the matter at hand. Written material not submitted at the time of the hearing which is to be included in the hearing record may be mailed to Jon Lunde, Administrative Law Judge, Office of Administrative Hearings, 400 Summit Bank Building, 310 Fourth Avenue South, Minneapolis, Minnesota 55415; telephone 612/341-7645, either before the hearing or within five working days after the public hearing ends. The Administrative Law Judge may, at the hearing, order the record to be kept open for a longer period not to exceed 20 calendar days. The comments received during the comment period shall be available for review at the Office of Administrative Hearings. Following the close of the comment period the agency and all interested persons have three business days to respond in writing to any new information submitted during the comment period. During the three-day period, the agency may indicate in writing whether there are amendments suggested by other persons which the agency is willing to adopt. No additional evidence may be submitted during the three-day period. The written responses shall be added to the rulemaking record. Upon the close of the record the Administrative Law Judge will write a report as provided for in Minnesota Statutes, section 14.50. The rule hearing is governed by Minnesota Statutes, section 14.01 to 14.56 and by Minnesota Rules, parts 1400.0200 to 1400.1200. Questions about procedure may be directed to the Administrative Law Judge.

Minnesota Rules, parts 9510.1020 to 9510.1140 establish procedures for counties to follow to seek authorization from the commissioner for special needs rate exception payments for eligible clients who reside in Intermediate Care Facilities for the Mentally Retarded (ICFs/MR). The purpose of the special needs rate

exception is to reimburse the costs of equipment, temporary staff intervention, consultation, or training services that are not included in the per diem rate of the ICF/MR and/or training and habilitation service. The special needs rate exception is intended to facilitate a client's transition to community living in order to prevent the placement or retention of the client in a state hospital.

Parts included in the proposed rule parts are definitions; applicability and purpose; application to be completed by provider; county review of provider's application including client eligibility, general provider eligibility, availability of other resources and evaluation of staff intervention and equipment purchases; county approval process; county's application to commissioner; commissioner's determination; establishing special needs rate exception payment; variance request; emergency procedure; duration of special needs rate exception; records, reports, audits and repayment; and appeals.

Parts 9510.1020 to 9510.1140 are proposed as permanent rule parts to replace parts 9510.1020 to 9510.1140 [Emergency], commonly known as Rule 186. The substance of the proposed permanent rule parts remains essentially the same as in the emergency rule parts.

The agency's authority to adopt the proposed rules is contained in Minnesota Statutes, section 256B.501, subdivisions 8 and 10. The Department estimates that the cost to all local public bodies of implementing these rules will not exceed $100,000 in either of the first two years following the rules' adoption.

Copies of the proposed rules are now available and at least one free copy may be obtained by writing to Susan Canine, Department of Human Services, Mental Retardation Division, 4th Floor, Centennial Building, St. Paul, Minnesota 55155; telephone 612/297-1241.

Additional copies will be available at the hearing. If you have any questions on the content of the rule, contact Lisa Rotegard, Department of Human Services, Mental Retardation Division, 4th Floor, Centennial Building, St. Paul, Minnesota 55155; telephone 612/297-4980.

NOTICE: Any person may request notification of the date on which the Administrative Law Judge's report will be available, after which date the agency may not take any final action on the rules for a period of five working days. If you desire to be so notified, you may so indicate at the hearing. After the hearing, you may request notification by sending a written request to the Administrative Law Judge. Any person may request notification of the date on which the rules were adopted and filed with the secretary of state. The notice must be mailed on the same day the rules are filed. If you want to be so notified you may so indicate at the hearing or send a request in writing to the agency at any time prior to the filing of the rules with the secretary of state.

NOTICE IS HEREBY GIVEN that a Statement of Need and Reasonableness is now available for review at the agency and at the Office of Administrative Hearings. The Statement of Need and Reasonableness includes a summary of all the evidence and argument which the agency anticipates presenting at the hearing justifying both the need for and reasonableness of the proposed rules. Copies of the Statement of Need and Reasonableness may be reviewed at the agency or the Office of Administrative Hearings and copies may be obtained from the Office of Administrative Hearings at the cost of reproduction.

Minnesota Statutes, chapter 10A, requires each lobbyist to register with the State Ethical Practices Board within five days after he or she commences lobbying. A lobbyist is defined in Minnesota Statutes, section 10A.01, subdivision 11, as any individual:

(a) engaged for pay or other consideration, or authorized by another individual or association to spend money, who spends more than five hours in any month or more than $250, not including travel expenses and membership dues, in any year, for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials; or

(b) who spends more than $250, not including travel expenses and membership dues, in any year, for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials. The statute provides certain exceptions. Questions should be directed to the Ethical Practices Board, 41 State Office Building, St. Paul, Minnesota 55155, telephone: 612/296-5615.

Dated: 6-18-85

Albert Hauzal for

LEONARD W. LEVINE, Commissioner
Department of Human Services

STATE OF MINNESOTA

DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF THE PROPOSED ADOPTION OF DEPARTMENT OF HUMAN SERVICES RULES GOVERNING SPECIAL NEEDS RATE EXCEPTIONS FOR VERY DEPENDENT PERSONS WITH SPECIAL NEEDS, MINNESOTA RULES, PARTS 9510.1020 TO 9510.1140.

AFFIDAVIT OF MAILING

Ann M. Berg, being first duly sworn, deposes and says:

That on the 5th day of July, 1985, at the City of St. Paul, County of Ramsey, State of Minnesota, I served the attached:

.Notice of Hearing and Notice of Intent to Cancel Hearing if Fewer than Twenty-Five Persons Request a Hearing in Response to Notice of Intent to Adopt Rules Without a Public Hearing; and

.Notice of Intent to Adopt Rules Without a Public Hearing and Notice of Intent to Adopt a Rule with a Public Hearing if Twenty-Five or More Persons Request a Hearing

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.

Ann M. Berg

Subscribed and sworn to before me

this 8 day of July, 1985.

Margaret Holt

MARGARET HOLT
NOTARY PUBLIC-MINNESOTA
RAMSEY COUNTY
MY COMMISSION EXPIRES SEPTEMBER 26, 1990

STATE OF MINNESOTA

DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF THE PROPOSED ADOPTION OF RULES OF THE STATE DEPARTMENT OF HUMAN SERVICES RELATING TO SPECIAL NEEDS RATE EXCEPTIONS FOR VERY DEPENDENT PERSONS WITH SPECIAL NEEDS, MINNESOTA RULES, PARTS 9510.1020 TO 9510.1140

AFFIDAVIT OF ADDITIONAL MAILING

Ann M. Berg, being first duly sworn, deposes and says:

That on the 8th day of July, 1985, at the City of St. Paul, County of Ramsey, State of Minnesota, in addition to serving the attached:

- Notice of Intent to Adopt Rules without a Public Hearing and Notice of Intent to Adopt a Rule with a Public Hearing if Twenty-Five or More Persons Request a Hearing; and

- Notice of Hearing and Notice of Intent to Cancel Hearing if Fewer than Twenty-Five Persons Request a Hearing in Response to Notice of Intent to Adopt Rules without a Public Hearing

to all persons and associations who have requested that their names be placed on file for the purpose of receiving notice of the proposed adoption of rules by this Department, she also served the attached Notice by depositing in the State of Minnesota Central Mail System for first class mailing, a copy thereof, properly enveloped, with postage prepaid, to the following agencies:

- All Developmental Achievement Centers in Minnesota;
- All Intermediate Care Facilities for the Mentally Retarded in Minnesota;
- The 87 County Human Service Agencies in Minnesota; and
- The members of the Rule 186 Public Advisory Committee.

Ann M. Berg

Subscribed and sworn to before me

this 8 day of July, 1985.

Margaret Holt

MARGARET HOLT
NOTARY PUBLIC-MINNESOTA
RAMSEY COUNTY
MY COMMISSION EXPIRES SEPTEMBER 26, 1990

STATE OF MINNESOTA

DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF THE PROPOSED ADOPTION OF DEPARTMENT OF HUMAN SERVICES RULES GOVERNING SPECIAL NEEDS RATE EXCEPTIONS FOR VERY DEPENDENT PERSONS WITH SPECIAL NEEDS, MINNESOTA RULES, PARTS 9510.1020 TO 9510.1140

CERTIFICATE

I hereby certify that the list of persons, associations, and other interested groups who have requested, pursuant to Minn. Stat. §. 14.14, subd. 1, that their names be placed on file with and maintained by the Department of Human Services for the purpose of receiving notice of the proposed adoption of rules by this Department is accurate and complete as of 4:00 p.m., this 25th day of July, 1985.

Ann M. Sieg

Subp. 2. Improper use of funds. If the commissioner determines that funds allocated to a county board under a grant are not being used in accordance with the SILS proposal and SILS budget submitted with the grant application and approved by the commissioner or with parts 9525.0900 to 9525.1020, all or part of the grant must be terminated. The commissioner shall require repayment of any funds not used in accordance with the SILS proposal and SILS budget approved by the commissioner or with parts 9525.0900 to 9525.1020.

Subp. 3. Notification. Before the commissioner reduces, terminates, or requires repayment of grant funds under subpart 1 or 2, the commissioner shall give 30 days' written notice to the county board and send a copy of the written notice to affected providers. The written notice must inform the county board of its right to request a review of the commissioner's action under part 9525.1010.

9525.1010 REVIEW OF COMMISSIONER'S ACTION.

A request for a review of the commissioner's proposed action under part 9525.1000 shall be submitted by the county board to the commissioner within 30 days of the date the county receives notification from the commissioner. The request must state the reasons why the county board disagrees with the commissioner's action and present evidence supporting the county board's case for reconsideration by the commissioner. The commissioner shall review the evidence presented in the county board's request and send written notification to the county board regarding the commissioner's decision. The commissioner's decision after a review shall be final. The commissioner shall not take the proposed action until a final review is completed and written notification issued by the commissioner.

9525.1020 PENALTY FOR NONCOMPLIANCE WITH APPLICABLE LAWS AND RULES.

If a county board and a provider under contract with the county board to provide SILS do not comply with parts 9525.0900 to 9525.1020 and with other applicable laws and rules, the commissioner shall suspend or withhold payments or require repayment under part 9525.1000. The procedure for requesting a review of the commissioner's action under this part must be the same as the procedure in part 9525.1010. Other applicable laws and rules include items A to E:

A. Minnesota Statutes, section 245.825 and rules adopted under that section that govern the use of aversive and deprivation procedures;

B. Minnesota Government Data Practices Act, Minnesota Statutes, sections 13.01 to 13.57;

C. Minnesota Statutes, sections 626.556 to 626.557 and rules adopted under those sections that govern reporting of maltreatment of minors and vulnerable adults;

D. Minnesota Statutes, chapter 363, Minnesota Human Rights Act; and

E. Minnesota Statutes section 252.275 that mandates reasonable efforts to hire qualified employees displaced by reorganization, closure, or consolidation of state hospital mental retardation units.

Department of Human Services

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

Notice of Hearing and Notice of Intent to Cancel Hearing if Fewer than Twenty-Five Persons Request a Hearing in Response to Notice of Intent to Adopt Rules without a Public Hearing

NOTICE IS HEREBY GIVEN that a public hearing on the above-entitled matter will be held in the Conference Room, 500 Rice Street, St. Paul, Minnesota 55155 on August 13, 1985 commencing at 9:00 a.m. and continuing until all interested or affected persons have an opportunity to participate. The proposed rules may be modified as a result of the hearing process. Therefore, if you are affected in any manner by the proposed rules, you are urged to participate in the rule hearing process.

PLEASE NOTE, HOWEVER, THAT THE HEARING WILL BE CANCELLED IF FEWER THAN TWENTY-FIVE PERSONS REQUEST A HEARING IN RESPONSE TO THE NOTICE OF INTENT TO ADOPT THESE SAME RULES WITHOUT A PUBLIC HEARING PUBLISHED IN THIS *STATE REGISTER* AND MAILED TO PERSONS REGISTERED WITH THE DEPARTMENT OF HUMAN SERVICES. To verify whether a hearing will be held, please call the Department of Human Services between August 8 and August 12, 1985 at 612/297-4980.

Following the agency's presentation at the hearing, all interested or affected persons will have an opportunity to participate. Such persons may present their views either orally at the hearing or in writing at any time prior to the close of the hearing record. All evidence presented should be pertinent to the matter at hand. Written material not submitted at the time of the hearing which is to be included in the hearing record may be mailed to Jon Lunde, Administrative Law Judge, Office of Administrative Hearings,

400 Summit Bank Building, 310 Fourth Avenue South, Minneapolis, Minnesota 55415; telephone 612 341-7645, either before the hearing or within five working days after the public hearing ends. The Administrative Law Judge may, at the hearing, order the record to be kept open for a longer period not to exceed 20 calendar days. The comments received during the comment period shall be available for review at the Office of Administrative Hearings. Following the close of the comment period the agency and all interested persons have three business days to respond in writing to any new information submitted during the comment period. During the three-day period, the agency may indicate in writing whether there are amendments suggested by other persons which the agency is willing to adopt. No additional evidence may be submitted during the three-day period. The written responses shall be added to the rulemaking record. Upon the close of the record the Administrative Law Judge will write a report as provided for in Minnesota Statutes, section 14.50. The rule hearing is governed by Minnesota Statutes, section 14.01 to 14.56 and by Minnesota Rules, parts 1400.0200 to 1400.1200. Questions about procedure may be directed to the Administrative Law Judge.

Minnesota Rules, parts 9510.1020 to 9510.1140 establish procedures for counties to follow to seek authorization from the commissioner for special needs rate exception payments for eligible clients who reside in Intermediate Care Facilities for the Mentally Retarded (ICFs MR). The purpose of the special needs rate exception is to reimburse the costs of equipment, temporary staff intervention, consultation, or training services that are not included in the per diem rate of the ICF MR and/or training and habilitation service. The special needs rate exception is intended to facilitate a client's transition to community living in order to prevent the placement or retention of the client in a state hospital.

Parts included in the proposed rule parts are definitions; applicability and purpose; application to be completed by provider; county review of provider's application including client eligibility, general provider eligibility, availability of other resources and evaluation of staff intervention and equipment purchases; county approval process; county's application to commissioner; commissioner's determination; establishing special needs rate exception payment; variance request; emergency procedure; duration of special needs rate exception; records, reports, audits and repayment; and appeals.

Parts 9510.1020 to 9510.1140 are proposed as permanent rule parts to replace parts 9510.1020 to 9510.1140 [Emergency], commonly known as Rule 186. The substance of the proposed permanent rule parts remains essentially the same as in the emergency rule parts.

The agency's authority to adopt the proposed rules is contained in Minnesota Statutes, section 256B.501, subdivisions 8 and 10. The Department estimates that the cost to all local public bodies of implementing these rules will not exceed $100,000 in either of the first two years following the rules' adoption.

Copies of the proposed rules are now available and at least one free copy may be obtained by writing to Susan Canine, Department of Human Services, Mental Retardation Division, 4th Floor, Centennial Building, St. Paul, Minnesota 55155; telephone 612 297-1241.

Additional copies will be available at the hearing. If you have any questions on the content of the rule, contact Lisa Rotegard, Department of Human Services, Mental Retardation Division, 4th Floor, Centennial Building, St. Paul, Minnesota 55155; telephone 612 297-4980.

NOTICE: Any person may request notification of the date on which the Administrative Law Judge's report will be available, after which date the agency may not take any final action on the rules for a period of five working days. If you desire to be so notified, you may so indicate at the hearing. After the hearing, you may request notification by sending a written request to the Administrative Law Judge. Any person may request notification of the date on which the rules were adopted and filed with the secretary of state. The notice must be mailed on the same day the rules are filed. If you want to be so notified you may so indicate at the hearing or send a request in writing to the agency at any time prior to the filing of the rules with the secretary of state.

NOTICE IS HEREBY GIVEN that a Statement of Need and Reasonableness is now available for review at the agency and at the Office of Administrative Hearings. The Statement of Need and Reasonableness includes a summary of all the evidence and argument which the agency anticipates presenting at the hearing justifying both the need for and reasonableness of the proposed rules. Copies of the Statement of Need and Reasonableness may be reviewed at the agency or the Office of Administrative Hearings and copies may be obtained from the Office of Administrative Hearings at the cost of reproduction.

Minnesota Statutes, chapter 10A, requires each lobbyist to register with the State Ethical Practices Board within five days after he or she commences lobbying. A lobbyist is defined in Minnesota Statutes, section 10A.01, subdivision 11, as any individual:

(a) engaged for pay or other consideration, or authorized by another individual or association to spend money, who spends more

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

than five hours in any month or more than $250, not including travel expenses and membership dues, in any year, for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials; or

(b) who spends more than $250, not including travel expenses and membership dues, in any year, for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials. The statute provides certain exceptions. Questions should be directed to the Ethical Practices Board, 41 State Office Building, St. Paul, Minnesota 55155, telephone: 612-296-5615.

June 18, 1985

Leonard W. Levine, Commissioner
Department of Human Services

Notice of Intent to Adopt a Rule without a Public Hearing and Notice of Intent to Adopt a Rule with a Public Hearing if Twenty-Five or More Persons Request a Hearing

Notice is hereby given that the State Department of Human Services proposes to adopt the above-mentioned rule without a public hearing following the procedures set forth in Minnesota Statutes, sections 14.22 to 14.28. The specific statutory authority to adopt the rule is Minnesota Statutes, section 256B.501, subdivisions 8 and 10.

Persons interested in this rule shall have 30 days in which to submit comment in support of or in opposition to the proposed rule or any part or subpart of the rule and comment is encouraged. Each comment should identify the portion of the proposed rule addressed, the reason for the comment, and any change proposed.

Any person may make a written request for a public hearing on the rule within the 30-day comment period. If 25 or more persons submit a written request for a public hearing within the 30-day comment period, a public hearing will be held unless a sufficient number withdraw their request. Any person requesting a public hearing should state his or her name and address, and is encouraged to identify the portion of the proposed rule addressed, the reason for the request, and any change proposed. If a public hearing is required, the agency will proceed pursuant to Minnesota Statutes, sections 14.131 to 14.20. PLEASE NOTE THAT IF TWENTY-FIVE OR MORE PERSONS SUBMIT WRITTEN REQUESTS FOR A PUBLIC HEARING WITHIN THE 30-DAY COMMENT PERIOD, A HEARING WILL BE HELD ON AUGUST 13, 1985 IN ACCORDANCE WITH THE NOTICE OF PUBLIC HEARING ON THESE SAME RULES PUBLISHED IN THIS *STATE REGISTER* AND MAILED TO PERSONS REGISTERED WITH THE DEPARTMENT OF HUMAN SERVICES. To verify whether a hearing will be held, please call the Department of Human Services before August 13, 1985 at (612) 297-4980.

Persons who wish to submit comments or a written request for a public hearing must submit such comments or requests to:

Lisa Rotegard
Department of Human Services
Mental Retardation Division
4th Floor Centennial Office Building
St. Paul, MN 55115
Telephone 612 297-4980

All comments or requests for hearing must be received by the Department by 4:30 p.m. on August 7, 1985.

The proposed rule may be modified if the modifications are supported by data and views and do not result in a substantial change in the proposed rule as noticed.

Minnesota Rules, parts 9510.1020 to 9510.1140 establish procedures for counties to follow to seek authorization from the commissioner for special needs rate exception payments for eligible clients who reside in Intermediate Care Facilities for the Mentally Retarded (ICF/MR). The purpose of the special needs rate exception is to reimburse the costs of equipment, not included in the per diem rate of the ICF/MR and/or training and habilitation service. The special needs rate exception is intended to facilitate a client's transition to community living in order to prevent the placement or retention of the client in a state hospital.

Parts included in the proposd rule parts are definitions; applicability and purpose; application to be completed by provider; county review of provider's application including client eligibility, general provider eligibility, availability of other resources and evaluation of staff intervention and equipment purchases; county approval process; county's application to commissioner; commissioner's determination; establishing special needs rate exception payment; variance request; emergency procedure; duration of special needs rate exception; records, reports, audits and repayment; and appeals.

Parts 9510.1020 to 9510.1140 are proposed as permanent rule to replace parts 9510.1020 to 9510.1140 [Emergency], commonly

known as rule 186. The substance of the proposed permanent rule parts remains essentially the same as in the emergency rule parts.

A copy of the rule is available upon request for your review from:

Susan Canine
Department of Human Services
Mental Retardation Division
4th Floor Centennial Office Building
St. Paul, MN 55155
Telephone 612/297-1241

A Statement of Need and Reasonableness that describes the need for and reasonableness of each provision of the proposed rule and identifies the data and information relied upon to support the proposed rule has been prepared and is available from Lisa Rotegard upon request.

The Department estimates that the cost to all local public bodies of implementing these rules will not exceed $100,000 in either of the first two years following the adoption of parts 9510.1020 to 9510.1140.

If no hearing is required upon adoption of the rule, the rule and the required supporting documents will be delivered to the Attorney General for review as to legality and form to the extent the form relates to legality. Any person may request notification of the data of submission to the Attorney General. Persons who wish to be advised of the submission of this material to the Attorney General, or who wish to receive a copy of the adopted rule, must submit the written request to Lisa Rotegard.

June 18, 1985

Leonard W. Levine
Commissioner of Human Services

Rules as Proposed (all new material)

9510.1020 DEFINITIONS.

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

Subp. 2. Case manager. "Case manager" has the meaning given it in part 9525.0015 [Emergency], subpart 5.

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

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

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

Subp. 6. Degenerative disease. "Degenerative disease" means a category of neurological impairment such as Hurler's syndrome, tuberous sclerosis, Alzheimer's disease, or Huntington's chorea with a disorganization of motor function or chronic brain syndrome.

Subp. 7. Employee benefits. "Employee benefits" means compensation actually paid to or for the benefit of the employees other than salary. Employee benefits include group health or dental insurance, group life insurance, pensions or profit sharing plans, governmentally-required retirement plans, sick leave, vacations, and in-kind benefits. Employee benefits do not include payroll-related costs.

Subp. 8. Equipment. "Equipment" means aids designed to increase a client's ability to live and function independently which are purchased for the client, remain the property of the client and can be moved with the client upon discharge.

Subp. 9. Intermediate care facility for the mentally retarded or ICF/MR. "Intermediate care facility for the mentally retarded" or "ICF/MR" means a program licensed to serve mentally retarded residents under Minnesota Statutes, section 252.28, and a physical plant licensed as a supervised living facility under Minnesota Statutes, chapter 144, which together are certified by the Minnesota Department of Health as an intermediate care facility for the mentally retarded.

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Subp. 10. Medical review team. "Medical review team" means a group of physicians and social workers who are under contract with the Department of Human Services to review a medical and social history for the purpose of determining a person's disability within the scope of the regulations of the Social Security Administration.

Subp. 11. Provider. "Provider" means the person or entity operating a licensed training and habilitation service or an ICF MR.

Subp. 12. Payroll-related costs. "Payroll-related costs" means the employer's share of social security withholding taxes, workers' compensation insurance or actual cost if self insured, and state and federal unemployment compensation taxes or costs.

Subp. 13. Special needs rate exception payment. "Special needs rate exception payment" means a payment established under parts 9510.1020 to 9510.1140.

Subp. 14. Staff intervention. "Staff intervention" means the direct client care provided by program personnel or outside program consultants, or the training of direct care program personnel by outside program consultants for the purpose of addressing the client's needs as identified in the special needs rate exception application.

Subp. 15. State hospital. "State hospital" means an ICF MR or nursing home owned and operated by the state of Minnesota.

Subp. 16. Training and habilitation services. "Training and habilitation services" means health and social services provided under Minnesota Statutes, sections 252.21 to 252.261 and 256B.501. "Training and habilitation services" does not include waivered services as defined in Minnesota Statutes, section 256B.501, subdivision 1.

9510.1030 APPLICABILITY AND PURPOSE.

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

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

9510.1040 APPLICATION TO BE COMPLETED BY PROVIDER.

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

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

A. identify the client including:

(1) name;

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

(3) medical assistance identification number;

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

(5) diagnosis;

(6) age;

(7) current residence; and

(8) current day program;

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

C. describe the proposed staff intervention including:

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

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

(3) type of intervention;

(4) frequency of intervention;

(5) intensity of intervention; and

(6) duration of intervention;

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

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

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

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

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

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

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

A. information identifying the provider including:

(1) name and address of the provider;

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

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

(4) medical assistance provider number; and

B. an explanation of the efforts used to meet the client's needs within the provider's current per diem rate, including:

(1) modifications made to the individual program plan;

(2) reallocation of current program personnel;

(3) use of any operating cost incentives or allowances received by the provider under parts 9510.0500 to 9510.0890 or 12 MCAR SS 2.05301 to 2.05315 [Temporary];

(4) training and inservice provided to program personnel for the year immediately preceding the date of the provider's application to the county; and

(5) other available resources used.

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

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

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

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

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

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

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

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

H. A plan to decrease the client's reliance on the proposed staff intervention.

9510.1050 COUNTY REVIEW OF PROVIDER'S APPLICATION.

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

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

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

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

C. the client is a person with mental retardation according to the definition in part 9525.0015 [Emergency], subpart 21 or has related conditions defined in Code of Federal Regulations, title 42, section 435, and has at least one of the following characteristics:

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

(a) self-injurious behavior which is a clear danger to the client such as ingesting inedibles; removing major items of clothing; striking, biting, or scratching self; moving into dangerous situations which clearly threaten or endanger the client's life, sensory abilities, limb mobility, brain functioning, physical appearance, or other major physical functions; or

(b) aggressive behaviors which are a clear danger to others such as striking, scratching, or biting others; throwing heavy objects at others; attempting inappropriate sexual activity with others; or pushing or placing others into dangerous situations which clearly threaten or endanger their life, sensory abilities, limb mobility, brain functioning, sexual integrity, physical appearance, or other major physical functions; or

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

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

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

(a) degenerative diseases diagnosed by a physician as terminal; or

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

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

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

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

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

A. The existing program or services offered by the provider cannot be modified to meet the client's needs within the provider's approved per diem rates, including any operating cost incentives or allowances as defined in 12 MCAR SS 2.05301 to 2.05315 [Temporary] or parts 9510.0500 to 9510.0890. Amounts deposited in a funded depreciation account under 12 MCAR S 2.05304 [Temporary] C. shall not be affected by this item.

B. The provider's historical cost per diem does not include the historical cost of providing the same or similar clients with the same or similar staff interventions.

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

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

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

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

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

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

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

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

A. the proposed staff intervention and equipment are allowable for purposes of reimbursement under parts 9510.1020 to 9510.1140;

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

C. the proposed staff intervention and equipment purchases meet the identified client needs; and

D. the provider has included a plan to decrease the client's reliance on the proposed staff intervention which shall ensure integration of the client into the existing program when the special needs rate exception terminates.

9510.1060 COUNTY APPROVAL PROCESS.

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

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

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

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

9510.1070 COUNTY'S APPLICATION TO COMMISSIONER.

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

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

B. a copy of the client's most recent individual service plan which states the decision to place or retain the eligible client in a state hospital if the requested services cannot be provided;

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

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

E. a copy of the client's screening document if one was completed within 60 days of the date the county received a complete application from the provider;

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

G. a letter from the county of financial responsibility stating approval of the changes in the individual service plan if the county submitting the application is not the county of financial responsibility; or if the county of financial responsibility does not approve the changes, a letter stating the reasons the county of financial responsibility does not approve the changes and describing the actions, if any, to be taken by the county of financial responsibility; and

H. a description of the proposed services to be provided by the day training and habilitation service and the ICF MR and how the services will be coordinated and monitored by the county and the providers. If the special needs rate exception is not requested for both the day training and habilitation service and the ICF MR, a written explanation must be provided by the county.

9510.1080 COMMISSIONER'S DETERMINATION.

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

9510.1090 ESTABLISHING SPECIAL NEEDS RATE EXCEPTION PAYMENT.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

9510.1100 VARIANCE REQUEST.

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

Subp. 2. Eligible provider. A licensed provider of training and habilitation services may apply for a variance if the provider is not an ICF MR and provides or plans to provide training and habilitation services to a client who resides in an ICF MR which has a per diem rate equal to or greater than 85 percent of the medical assistance per diem cost of providing services to mentally retarded persons in the state hospitals.

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

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

9510.1110 EMERGENCY PROCEDURE.

Subpart 1. Definition. For the purposes of this part, an emergency is either:

A. a postoperative condition resulting from unplanned surgery or unanticipated complications resulting from planned surgery which would result in continued placement in a hospital or skilled nursing facility, loss of placement in a community ICF MR, and admission to a state hospital within 60 days; or

B. the sudden onset of self-injurious or aggressive client behavior which results in an immediate danger to self or others; which would result in immediate admission to the state hospital in the absence of intervention.

Subp. 2. Emergency approval. In an emergency, the county may approve the addition of staff necessary to intervene in the emergency without obtaining prior approval of a special needs rate exception from the commissioner if the county determines that all other client and provider eligibility is met. Only staff costs shall be allowed under this part. No funds spent will be reimbursed, even in an emergency, without the county's approval. In an emergency, the county shall:

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

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

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

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

9510.1120 DURATION OF SPECIAL NEEDS RATE EXCEPTION.

Subpart 1. Maximum length of time for a special needs rate exception. A special needs rate exception for a staff intervention must be limited to one approval per eligible client for a period of time not to exceed one year from the date of receipt of the county application by the commissioner except as provided in subpart 2.

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

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

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

B. the rate is no longer necessary because a more appropriate residential or day training and habilitation placement is available;

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

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

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

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

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

(3) the county submitted the determination by the client's physician to the commissioner with the first quarterly program and fiscal review under part 9510.1130, subpart 2 and requested an exception to this item; and

(4) the county's request for an exception to this item has been reviewed by the state medical review team of the Department of Human Services and the state medical review team has verified that no progress in the identified problem area can be expected.

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

9510.1130 RECORDS, REPORTS, AUDITS, AND REPAYMENT.

Subpart 1. Records. The provider shall maintain complete program and fiscal records and supporting documentation identifying the services and costs provided under the special needs rate exception. The costs must be maintained in well-organized files and identified in accounts separate from other facility or program costs. Costs authorized and approved under these parts do not become part of a provider's historic cost base for the purpose of setting rates under 12 MCAR SS 2.05301 to 2.05315 [Temporary] or parts 9525.1200 to 9525.1330. The provider's records shall be kept for five years and be subject to the maintenance schedule, audit availability requirements, and other provisions of parts 9505.1750 to 9505.2150.

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

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

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

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

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

(4) changes implemented in the type, frequency, or intensity of the staff intervention approved under parts 9510.1080 and 9510.1090.

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

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

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

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

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

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

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

9510.1140 APPEALS.

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

The commissioner shall review the application and supporting documentation submitted to the county and any additional documents submitted with the appeal to determine if the provider can prove by a preponderance of evidence that it is eligible for a special needs rate exception and in compliance with parts 9510.1020 to 9510.1140. Within 30 days of receipt of the provider's appeal, the commissioner shall notify the provider of the commissioner's decision. No special needs rate exception payment will be made pending the outcome of the appeal.

Subp. 2. By county. If the county disagrees with the commissioner's decision on the county application, the county may appeal the decision to the commissioner and request reconsideration. To be reconsidered, the appeal must be filed in writing, with the commissioner, within ten days of the date the commissioner gave notice to the county of the decision on the county application. The appeal must state the reasons why the county is appealing the commissioner's decision and present evidence explaining why the county disagrees with the commissioner's decision. Within 30 days of receipt of the county's appeal, the commissioner shall review the evidence presented in the county's appeal and send written notification to the county of the commissioner's decision on the appeal. No special needs rate exception payment shall be made pending the outcome of the appeal. The commissioner's decision on the appeal shall be final.

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STATE OF MINNESOTA

DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF THE PROPOSED ADOPTION OF RULES OF THE DEPARTMENT OF HUMAN SERVICES GOVERNING SPECIAL NEEDS RATE EXCEPTIONS FOR VERY DEPENDENT PERSONS WITH SPECIAL NEEDS (9510.1020 to 9510.1140)

STATEMENT OF NEED AND REASONABLENESS

I. INTRODUCTION

A. Purpose

Parts 9510.1020 to 9510.1140 establish procedures for counties to follow to seek authorization from the commissioner for special needs rate exception payments for eligible clients who reside in ICF/MR facilities (Minnesota Rules, parts 9510.1020 to 9510.1140 [Emergency] became effective October 26, 1984). The authority for the establishment of these procedures is found in Minnesota Statutes, section 256B.501, subdivisions 8 and 10 (1984). The purpose of the special needs rate exception is to reimburse the costs of equipment, temporary staff intervention, consultation, or training services that are not included in the per diem rate of the ICF/MR and/or day training and habilitation service. The special needs rate exception is intended to facilitate a client's transition to community living in order to prevent the placement or retention of the client in a state hospital.

In parts 9510.1020 to 9510.1140 the Department of Human Services establishes procedures for counties to follow to 1) review provider applications for special needs rate exceptions; 2) approve or deny provider applications for special needs rate exception payments; 3) submit approved provider applications for special needs rate exceptions to the commissioner; and 4) monitor service delivery to persons receiving special needs rate exception payments. These rule parts also delineate provider and client eligibility criteria and application procedures.

B. Legislative Background

The 1983 Minnesota Legislature under Minnesota Statutes, section 256B.501, expanded the Medical Assistance Program to include day training and habilitation services provided to clients residing in ICFs/MR, Section 256B.501 also limited annual Medical Assistance rate increases to 5 percent for ICFs/MR and an annual cost of living increase for day training and habilitation service providers. These actions came at a time of growing fiscal and budgetary constraints at both the federal and state levels. At the same time, however, the state moved to deinstitutionalize residents of state hospitals and provide them with community service in less restrictive (more habilitative) settings; a policy mandated by the Welsch vs. Levine Consent Decree (1980). As deinstitutionalization efforts progress, counties are being asked to locate or develop appropriate residential, habilitative and training services for a growing number of persons whose severe or extraordinary needs and concommitant high resource use, may far exceed the resources traditionally or currently available. This is particularly true for ICFs/MR and licensed day training and habilitation service providers whose

historic rates and structure generally reflect service provision to a less severely handicapped population than is currently being demitted from state hospitals. There is some evidence that certain individual characteristics associated with severe disability and maladaptive behaviors increase resource use and, therefore, costs (cite).

In recognition of the potential conflict, the 1983 Minnesota Legislature passed legislation making it possible to fund additional individualized services to persons with extraordinary needs in an amount in excess of those covered in the providers' established per diems and in accordance with the person's individual service plan. These rules will be viewed as a temporary measure designed to fund short term special needs until such a time as the Department of Human Services implements a reimbursement methodology for ICFs/MR and day training and habilitation services that is based on client resource use. Such a methodology may include a case-mix index to empirically target dollars to facilities; or it may simply use a grouping mechanism to determine differential rate ceilings based on client characteristics of facilities. In either case, the result would be a reimbursement structure that is sensitive to the needs of persons receiving services.

C. Rulemaking History

After Minnesota Statutes, section 256B.501 was passed, the Department of Human Services promulgated emergency rules under Minnesota Statutes, sections 14.29 to 14.36. These emergency rules became effective on October 26, 1984, and provide the Department of Human Services with temporary procedures over the administration of special needs rate exceptions under medical assistance.

As required in Minnesota Statutes, section 14.35, emergency rules may not be continued after 360 days without following the permanent rulemaking procedures required in Minnesota Statutes, sections 14.14 to 14.28. Therefore, in 1984 the Department of Human Services implemented permanent rulemaking procedures. Using the emergency rules as a base, Department of Human Services program and rulemaking staff proceeded with the process of promulgating permanent rules. The Rule 186 Advisory Task Force used for gathering public input for the emergency rules, was again activated to provide input on the permanent rules. The advisory committee was composed of service providers, professional associations, legal advocates, county representatives, and Department of Human Service representatives. The advisory committee's comments and recommendations for revision have been reviewed, and when possible, incorporated into the proposed permanent rules.

II. SNR FOR SPECIFIC RULE PROVISIONS

The following narrative serves as the Statement of Need and Reasonableness as required by Minnesota Statutes, section 14.31.

9510.1020 - DEFINITIONS

This rule part defines words and phrases that have a meaning specific to parts 9510.1020 to 9510.1140, that may have several possible interpretations, or that need exact definitions to be consistent with Minnesota Statutes, chapter 256B, section 501, subdivision 8.

Subpart 1. Scope. This provision is necessary to clarify that the definitions apply to the entire sequence of rule parts 9510.1020 to 9510.1140. It is reasonable to inform interested parties of that fact.

Subpart 2. Case manager. This definition is necessary to describe the person at the county who is responsible for the arrangement and monitoring of services under parts 9510.1020 to 9510.1140. It is reasonable to use the definition of case manager given in parts 9525.0015 to 9525.0145 because parts 9525.0015 to 9525.0145 govern the provision of case management services for all persons with mental retardation, including persons eligible for a special needs rate exception.

Subpart 3. Client. This definition is necessary to identify the person who is eligible for a special needs rate exception under parts 9510.1020 through 9510.1140. "Client" is a term which is used in both public and private human service agencies to refer to persons to whom a service is provided. It is reasonable to use this commonly used term to identify, in an abbreviated way, a person who may be eligible for a special needs rate exception.

Subpart 4. Commissioner. The term is necessary to clarify the persons responsible for promulgation and administration of these rule parts as specified in Minnesota Statutes, chapter 256B and chapter 252. It is reasonable to include within the definition persons to whom the commissioner has the authority to delegate the functions described in the rule parts. It is necessary to allow this delegation to enable the commissioner to effectively manage and control the implementation of the rule parts. Use of an abbreviation is a reasonable way to delete unnecessary words in a reference frequently repeated in the rule parts.

Subpart 5. County. This term is necessary to identify the persons who must comply with parts 9510.1020 to 9510.1140 as they seek approval from the commissioner for a special needs rate exception for eligible persons. This definition is reasonable as it is consistent with statutory language. It is also reasonable to use this abbreviated term so that unnecessary words may be deleted in a reference frequently repeated in the rule parts.

Subpart 6. Degenerative disease. This definition is necessary to clarify a term used in part 9510.1050 whose meaning may be construed differently by different persons. Because the term describes one characteristic of a person with mental retardation which may result in eligibility to receive a special needs rate exception, it is necessary to clearly state its meaning. This particular definition is reasonable because it is used consistent with the term used by the Professional Services Section of the department whose job it is to determine disability under social security. It is reasonable to use the same definition when verifying a physician's determination of "degenerative disease" under these rule parts to promote consistency within the state agencies.

Subpart 7. Employee benefits. Because employee benefits are reimbursable under medical assistance as part of a special needs rate exception it is necessary to clearly state what these benefits are. This definition also informs eligible providers and counties of reimbursable costs, thereby assisting them in determining the actual reimbursable costs of a requested special needs rate exception. This definition is reasonable because it is consistent with the definition of employee benefits under 12 MCAR 2.05302 [Emergency] governing cost reporting and reimbursement of ICFs/MR, and therefore promotes the standard usage of this term in department rules.

Subpart 8. Equipment. This definition is necessary to inform eligible providers and counties of the type of equipment which is reimbursable under parts 9510.1020 to 9510.1140. This knowledge assists them in planning services and determining the actual reimbursable costs of a requested special needs rate exception. It is necessary to define the term to differentiate it from equipment available from the Department of Vocational Rehabilitation which is specifically designed to enhance an individual's capacity to work productively, or equipment necessary or reasonable for the treatment or diagnosis of an illness or injury or to improve the functioning of a malformed body member which is available by directly billing medical assistance. It is reasonable to differentiate equipment available with a special needs rate exception from equipment available from the Division of Vocational Rehabilitation or by directly billing medical assistance because each program should be used according to its stated purpose and eligibility criteria.

Subpart 9. Intermediate care facility for the mentally retarded or ICF/MR. This term is necessary to describe one type of facility eligible to receive additional reimbursement for eligible persons under parts 9510.1020 to 9510.1140. The term is used throughout the rule parts and refers to the facility where persons who have mental retardation must reside in order to be eligible for a special needs rate exception. The term describes the organization licensed under Minnesota Statutes, chapter 252, section 28 and chapter 144, and certified by the Department of Health as an Intermediate Care Facility for persons with mental retardation. It is reasonable to use this definition because it is commonly accepted by both federal and state governments and precisely describes the service type (residential) service level (intermediate care), and for whom the service is available (mentally retarded persons). It is also reasonable to use the abbreviated term (ICF/MR) to shorten the length of the rule parts and to be consistent with other department rules, state law and federal regulations.

Subpart 10. Medical review team. This provision is necessary to precisely define the group of people responsible for verifying the degenerative nature of a disease as referred to in part 9510.1120, subpart 3, item E, subitem (4) of these rules. It is reasonable to use this definition because it is consistent with the definition used by other state agencies.

Subpart 11. Provider. This term is necessary to describe the types of agencies that may apply for a special needs rate exception for eligible persons according to Minnesota Statutes, section 256B.501, subdivision 8. The use of an abbrieviated term is reasonable to delete unnecessary words in a reference frequently repeated and to promote consistency with other rules governing medical assistance reimbursement.

Subpart 12. Payroll related costs. This provision is necessary to precisely describe one of the costs reimbursable by medical assistance as part of a special needs rate exception under Minnesota Rules, parts 9510.1020 to 9510.1140. The definition is reasonable because it is consistent with the definition of payroll related costs used under 12 MCAR § 20.05302 [Emergency] governing cost reporting and reimbursement of ICFs/MR, and therefore promotes the standard usage of the term in department rules.

Subpart 13. Special needs rate exception payment. It is necessary to define this phrase to inform providers and counties of the type of payment to be made under parts 9510.1020 to 9510.1140. It is a reasonable definition because it precisely and accurately describes the key purpose of the payment (special needs) and the type of provider payment (client exception to the established medical assistance rate) to which it refers.

Subpart 14. Staff intervention. This definition is necessary to describe and inform providers and counties of the type of staff time reimbursable under parts 9510.1020 to 9510.1140 and referred to throughout the rule parts. It is reasonable to use an abbreviated phrase which denotes the essence of those services included in the definition while eliminating unnecessary words in a reference frequently repeated in the rule parts.

Subpart 15. State hospital. Because the purpose of Minnesota Rules, parts 9510.1020 to 9510.1140 is to fund short term special needs for a specific client in order to prevent placement or retention of a client in a state hospital, it is necessary to precisely define the meaning of "state hospital" for providers and counties. It is reasonable to define the term to include both ICFs/MR and nursing homes because the state owns and operates both types of long-term care facilities and persons with mental retardation could be at risk of placement or retention in either type. It is also reasonable to use an abbreviated phrase to refer to all state hospitals referenced in the definition to eliminate unnecessary words in a reference frequently repeated in the rule parts.

Subpart 16. Training and habilitation services. This term is necessary to describe one of the services eligible for reimbursement under parts 9510.1020 to 9510.1140. The term is used throughout the rule parts and refers to the services provided by licensed day service providers to persons with mental retardation who reside in ICF/MR facilities. The definition is reasonable because it is consistent with Minnesota Statutes, chapter 256B, and Minnesota Rules parts 9525.0015 to 9525.0145. It is also reasonable to inform providers and counties that training and habilitation services do not include waivered services as defined in Minnesota Statutes, section 256B.501, subdivision 1 as addressed in this document under section 9510.1050, subpart 2.

9510.1030. Applicability and Purpose.

Subpart 1. Applicability. This subpart is necessary to inform counties, providers and other interested parties of the rule parts which govern special needs rate exception payments, and to whom the rule parts apply. This statement of applicability is reasonable because it is consistent with the purpose of the rule parts, the authorizing legislation (Minnesota Statutes, section 256B.501, subdivision 8) and rulemaking procedures and standards.

Subpart 2. Purpose. This section is necessary to inform providers, counties and other interested parties of the purpose of Minnesota Rules, parts 9510.1020 to 9510.1140. It is reasonable to state the purpose in this subpart so that interested parties may quickly ascertain their roles and responsibilities and the relevance of the rule parts to them. Promulgation of parts 9510.1020 to 9510.1140 is mandated by Minnesota Statutes, section

256B.501, subdivision 10 which states that "to implement this section, the commissioner shall promulgate temporary and permanent rules in accordance with chapter 14." The purpose, as stated, is reasonable because it briefly delineates the salient characteristics of Minnesota Rules parts 9510.1020 to 9510.1140 and is based on Minnesota Statutes, section 256B.501, subdivision 8, mandated department policies which incorporate the concepts embodied in deinstitutionalization, least restrictive environment and normalization as outlined in legislation and rule; and advisory task force input.

9510.1040 Application to be completed by provider.

Subpart 1. Application. Minnesota Statutes, section 256B.501, subdivision 8 establishes the necessity for a procedure for counties to follow to seek authorization from the commissioner for a special needs rate exception.

An application procedure was established in Minnesota Rules, parts 9510.1020 to 9510.1140 [Emergency] and has worked well for program administrators and persons requesting a special needs rate exception. Under this procedure information has been collected in a standard written format which is easily used by both administrators and providers. It is reasonable to make the procedure part of the permanent rules to maintain continuity between the emergency and permanent rules. Specifying specific items for the application establishes a standard for "completeness" and provides on an application all information needed for a county determination regarding a special needs rate exception. Under Minnesota Rules, parts 9525.0015 to 9525.0145 and Minnesota Statutes, chapters 252 and 256B, counties are given the responsibility for developing, authorizing and monitoring services for persons with mental retardation. It is, therefore, reasonable that the provider applications be submitted to the county.

Subpart 2. Information about client's needs and methods used to address needs. This information is necessary to allow counties to determine client eligibility under part 9510.1050, subpart 2 and to evaluate whether the services proposed are in compliance with a client's individual service plan as required by Minnesota Statutes, section 256B.501, subdivision 8. This information also allows counties to effectively monitor client outcomes and the costs of service provision as required by part 9510.1130, if a special needs rate exception, is approved. It is reasonable to require this information from all providers seeking a special needs rate exception and to delineate the specific required data items in A through I so that all interested parties may know them and because it thereby creates a shared expectation among persons requesting special needs rate exceptions and persons who review and make determinations regarding applications.

Item A. Subitems 1 through 8 are necessary to allow the county to both determine client eligibility under part 9510.1050, subpart 2 and to administer and monitor a special needs rate exception if it is approved. It is reasonable to include this item as part of the standard provider application procedure for all persons requesting a special needs rate exception because it systematically identifies the eligible person(s) for whom the application is made and the providers of service who are requesting a special needs rate exception for the eligible person(s).

Item B. The information requested in this item is necessary for counties to use in determining client eligibility under part 9510.1050, subpart 2. It is reasonable to include this item as part of the provider application procedure for all persons requesting a special needs rate exception because it is essential to the approval of the application.

Item C. The counties need this information to determine whether the proposed staff intervention meets the client's needs as delineated in the client's individual service plan as required by Minnesota Statutes, section 256B.501, subdivision 8 and Minnesota Rules, parts 9525.0015 to 9525.0145. The counties also need this information to determine whether the costs of additional program staff or consultants are allowable under part 9510.1090, subpart 2, and if the proposed staff intervention will be provided according to the time limits defined under part 9510.1120. It is therefore reasonable to include these subitems as part of a provider application procedure for all persons requesting a special needs rate exception to make sure that the application contains all the information needed to make a determination under these rule parts. It is also reasonable to require that special needs applications include a description of all proposed services because this is consistent with the description of services required under Minnesota Rules, parts 9525.0015 to 9525.0145.

Item D. The information required in this item is necessary to inform counties and the commissioner about what is being requested so they can determine whether the cost is allowable under part 9510.1090, subpart 2. It is reasonable to include this item as part of the provider application procedure for all persons requesting a special needs rate exception so that the application contains all the information needed to make a determination under these rule parts.

Item E. The information required in item E is necessary to inform counties and the commissioner of the basis for the costs identified so that they can judge the reasonableness of the costs as required under Minnesota Statutes, section 256B.501, subdivision 8 and part 9510.1090, subpart 4. It is also necessary to have information regarding costs of the equipment or staff intervention so that the commissioner may assign a special needs rate if the application is approved. It is reasonable to include this item as part of the provider application procedure for all persons requesting a special needs rate exception so that the application contains all the information needed to make a determination under these parts.

Item F. The information required in item F is necessary because it provides counties and the commissioner with documentation verifying that the provider has developed a strategy to implement a time-limited, outcome-oriented intervention based on an individual's service plan as required by Minnesota Statutes, section 256B.501, subdivision 8. It is reasonable to include this item as part of the provider application procedure for all persons requesting a special needs rate exception so that the application contains all the information needed to make a determination under these parts.

Item G. The information required in item G is necessary because it provides counties with information about the appropriateness of service delivery in terms of the client's individual service plan as required under Minnesota Rules, parts 9525.0015 to 9525.0145 and Minnesota Statutes, section 256B.501, subdivision 8. Information about outcomes of service delivery are also required in an individual's program plans under Minnesota Rules, parts 9525.1200 to 9525.1330 and 12 MCAR § 2.034. It is reasonable to include this item as part of the provider application procedure for all persons requesting a special needs rate exception to make sure that the application contains all the information needed to make a determination under these rule parts.

Item H. The information required in this item is needed by counties in their determinations of whether to continue or terminate a special needs rate under part 9510.1120 of these rules. In addition, this requirement is reasonable because it is consistent with those requirements governing a county's and provider's monitoring of progress toward individual goals as delineated in an individual's habilitation plan and the quarterly reviews required under Minnesota Rules, parts 9525.0015 to 9525.0145, Code of Federal Regulations, Title 42, part 456.380 and Minnesota Rules, parts 9525.1200 to 9525.1330. It is reasonable to include this item as part of the provider application procedure for all persons requesting a special needs rate exception to make sure that the application contains all the information needed to make a determination under these rule parts.

Item I. The information required in this item is needed by the county and the commissioner to determine the availability of other resources under part 9510.1050, subpart 4 and the appropriateness of the proposed services as required by Minnesota Statutes, section 256B.501, subdivision 8. It is reasonable to include this item because there is evidence that maintenance of family relationships are associated with successful community living and integration (Edgerton, 1975; Gollay, Freedman, and Wyngartden, 1978; Reagan, Murphy, Hill, Thomas, 1980; Shalock, Harper, and Genung, 1981). It is also reasonable to include this item as part of the provider application procedure for all persons requesting a special needs rate exception so that the application contains all the information needed to make a determination under these rule parts.

Subpart 3. Information about provider. This subpart is necessary to clarify what is needed by the county to determine if the provider is eligible under part 9510.1050, subpart 3. This information also allows counties and the commissioner to effectively monitor and administer a special needs rate exception if it is granted. It is reasonable to inform providers and other interested parties of the information required when seeking a special needs rate exception to enable them to make an informed decision about whether or not to apply.

Item A. Subitems 1 through 4 are necessary to allow the county to determine provider eligibility under part 9510.1050, subpart 3 and Minnesota Statutes, section 256B.501, subdivision 8 and to administer and monitor a special needs rate exception if it is approved.

It is reasonable to include this item as part of the standard provider application procedure for all persons requesting a special needs rate exception because it systematically identifies the eligible provider who submits an application for a special needs rate exception and makes providers aware of required information.

Item B. The information required in item B is necessary to inform the county and commissioner of efforts made by the provider to meet the clients needs within the providers current per diem rate including any operating cost allowance specifically available to meet client needs. The county needs this information to determine provider eligibility under part 9510.1050, subitem 3 and Minnesota Statutes, section 256B.501, subdivision 8 which states that special needs rate exception payments will only be made to pay for client services in excess of those covered under the rates allowed under subparts 2, 4, 5 and 6 of the Statute. Subitems 1 through 5 delineate some of the modifications determined by the department and task force members to be made by any provider before applying for a rate exception for an individual client.

Subpart 4. Supporting documentation. The information required in items A through H is needed by the county and the commissioner to verify the provider's and client's eligibility for a requested special needs rate exception as outlined under part 9510.1050, and to verify the additional costs of the requested services under part 9510.1090. This information is also necessary to administer and monitor the services provided under the special needs rate exception payment if it is approved. It is reasonable to require that documentation of facts in the application be available to the county and commissioner and that the documentation be included with every provider application to be sure that the application contains all the information needed to make a determination under these rule parts, and to create this shared expectation among persons requesting a special needs rate exception and persons reviewing the application.

Item A. It is necessary for the provider application to contain documentation of the client's individual habilitation plan which contains measurable behavioral outcomes which are anticipated to be achieved by the client as a result of the proposed staff intervention or equipment so that the county and commissioner may determine if the need for the services is documented in the individual's service plan as required under Minnesota Statutes, section 256B.501, subdivision 8. In addition, inclusion of this document helps to assure that all services provided by an eligible provider and paid for with a special needs rate exception are part of the individual's habilitation plan and in compliance with requirements for individual habilitation plans as outlined in Minnesota Rules, parts 9525.0015 to 9525.0145, parts 9525.1200 to 9525.1330 and 12 MCAR § 2.034. It is reasonable to require that the document be attached to all applications for special needs rate exceptions so that it will be easily accessible to all persons reviewing and monitoring the special needs rate exception.

Item B. It is necessary for the provider application to contain information for counties and the commissioner to use to verify that the individual for whom a special needs rate exception is requested has an

extraordinary need, not of the type or degree exhibited by other individuals served by the provider, and not able to be accommodated by the current medical assistance reimbursement rate as required by Minnesota Statutes, section 256B.501, subdivision 8. Documentation of client characteristics known to effect the use of staff and therefore, the costs of service is a reasonable way of determining the general similarity among residents or clients and the special needs and costs of one or more residents or clients in comparison to the others. When used in conjunction with other required documentation and the provider application, this information is additional proof that a special needs rate exception for one or more clients is warranted.

Item C. This documentation is necessary for use by the county and the commissioner in determining provider eligibility under part 9510.1050, subpart 3, item B and in verifying whether the the costs of requested services are not covered and could not be covered in the providers' current per diem by using any operating cost allowances, surplus funds or reallocation of dollars among certain operating cost centers. It is reasonable to require that this primary source document be provided in addition to the provider application as additional proof of the need for a special needs rate exception.

Item D. This information is necessary to determine the basis for estimated costs of a service as required under Minnesota Statutes, section 256B.501, subdivision 8, to assign a special needs rate, and to monitor the billing procedures used by the provider if the application is approved. It is reasonable to require submission of the written documentation of the method used with all provider applications because it is a systematic way of procuring necessary information and ensures that the document will be available for use in determining the need for a special needs rate exception.

Items E and F. These items are necessary to demonstrate to counties and the commissioner that the provider has explored other funding sources before applying for a special needs rate exception. It is reasonable to require the provider to demonstrate that he or she has explored all available resources within the facility's established rate because a special needs rate exception to a provider's current medical assistance rate is to be granted only after all other existing funding and resources have been exhausted. Its purpose is to fund short-term extraordinary needs and not to replace other funding mechanisms already in place, such as direct billing of medical assistance for certain client specific costs outlined in the Medical Assistance Manual, and Minnesota Rules, parts 9505.0010 to 9505.0480 or Department of Vocational Rehabilitation funding of certain costs of equipment. Requiring documentation of the facts in a standard written application is reasonable because it is a systematic way of procuring the information and promotes the expectation that the document will be used in determining the need for a special needs rate exception.

Item G. It is necessary to require that the provider document the name and address of persons to be reimbursed by the special needs rate exception and those persons who will actually provide the equipment and

services if known so that this information may be used by counties and the commissioner to monitor and administer the delivery of service as required by Minnesota Statutes, chapters 252 and 256B. It is reasonable to require this documentation as part of the standard written application because it is a systematic way of procuring the information and assuring that additional client services will be delivered by qualified personnel.

Item H. This provision is necessary to assure the county and commissioner that the provider is aware that the special needs rate is temporary reimbursement aimed at specific needs and outcomes and that the funds will eventually be terminated. The requirement that a written plan exist to decrease the client's reliance on the special needs funds is reasonable because it suggests careful planning, can be approved ahead of time based on its programmatic merit, and can be monitored and assessed in light of the clients' progress towards anticipated outcomes of the intervention or use of equipment as required under part 9510.1090.

9510.1050. County Review of Providers' Application

This part is necessary to clarify that the county is responsible for reviewing the provider's application and to specify the criteria used for the review. It is reasonable to assign this task to the county because Minnesota Statutes, chapters 256B and 252, Minnesota Rules, parts 9525.0015 to 9525.0145 and parts 9525.1200 to 9525.1330 together require that counties provide or arrange case management services for persons with mental retardation residing in the county, monitor service delivery, establish the need for services and, in the case of day training and habilitation services, recommend to the commissioner rates to be reimbursed by medical assistance. In addition, Minnesota Statutes, section 256B.501, subdivision 8 requires that the commissioner establish procedures to be followed by counties to seek authorization from the commissioner for medical assistance reimbursement for very dependent persons with special needs in an amount in excess of the rates allowed pursuant to subdivisions 2, 4, 5 and 6 of that chapter. It is therefore necessary that counties review any request for additional service provision. It is reasonable to include this provision as part of the commissioner's procedure for authorizing a special needs rate exception established by the commissioner given relevant statutory requirements. It is reasonable that the county review all applications and submit approved applications to the commissioner based on precise, clearly stated criteria delineated in this part so that counties have a standard and systematic method by which to judge the completeness and compliance of each application with the criteria. Setting forth criteria for counties' review also contributes to the uniformity of review throughout the state which is consistent with the Code of Federal Regulations, Title 42, part 431.50 which requires that medical assistance be administered uniformly statewide.

Subpart 1. Criteria. This subpart is necessary because it will increase consistency in the way applications are reviewed throughout the state. Minnesota Statutes, section 256B.501, subdivision 8 require that the county follow procedures established by the commissioner to seek authorization from the commissioner for a special needs rate exception for eligible persons.

It is also necessary for counties to establish the need for the service based on the individual's service plan as outlined in Minnesota Statutes, section 256B.501, subdivision 8. Therefore, a county review of each application for a special needs rate exception is part of the procedure established by the commissioner given relevant statutory requirements. It is reasonable that the county's review and submission of approved applications to the commissioner is based on precise, clearly stated criteria, delineated in this part so that counties have a standard and systematic method by which to judge the completeness and compliance of each application with the criteria and to assure that the special needs rate exception payment is used for the purposes stated in these rule parts.

Subpart 2. Client eligibility. This subpart is necessary to inform counties and potential providers of the criteria a person must meet in order to be eligible for a special needs rate exception. The established criteria delineated in items A through D are reasonable because they are based on Minnesota Statutes, administrative rules, department policy and federal regulations. The rationale for items A to D is given below.

Item A. Item A is necessary because these rule parts govern the use of medical assistance funds for a special needs rate exception and, therefore, it is necessary to require that the clients served are medical assistance eligible. It is reasonable to cite Minnesota Statutes, chapter 256B, because this chapter establishes the medical assistance policy for the State of Minnesota. The chapter specifically identifies who is eligible for medical assistance and the requirements for eligibility. It is reasonable to include this item to let interested parties know that this item is based upon Minnesota law and that an individual must comply with it to be eligible for a special needs rate exception.

Item B. This item is necessary because Minnesota Statutes, chapter 256B, states that medical assistance special needs rate exceptions are for very dependent persons with special needs whose medical assistance service costs in ICFs/MR and day training and habilitation service or waivered services are subject to the rate limits established in subitems 2, 4, 5, and 6. Because persons receiving waivered services are not subject to individual medical assistance reimbursement limits and special needs can be handled within the rate structure, it was necessary to exclude these services from receiving additional funds under Minnesota Rules, parts 9510.1020 to 9510.1140. All residents of ICFs/MR receive a medical assistance per diem which is subject to rate limits established in Minnesota Statutes, chapter 256B; however, only persons residing in ICFs/MR who receive day training and habilitation from a licensed provider are subject to medical assistance rate limits at the day placement. Therefore, it is reasonable to require that a person reside in an ICF/MR to receive a medical assistance special needs rate exception in either the ICF/MR or day training and habilitation agency.

Item C. This item is necessary because Minnesota Statutes, chapter 256B, section 501, subdivision 8 states that medical assistance special needs rates exceptions shall only be approved for mentally retarded

persons with special needs whose service costs in ICFs/MR and day training and habilitation services are subject to the rate limits established in that chapter. For a medical assistance recipient to become eligible for residency within an ICF/MR and receive day training and habilitation services under the medical assistance program, the person must be "mentally retarded." Minnesota Rules, parts 9525.0015 to 9525.0145 and the Code of Federal Regulations, Title 42, section 435 contain definitions used to determine mental retardation and medical assistance eligibility. It is reasonable to reference the rule parts and Code of Federal Regulations here to avoid unnecessary duplication of language and direct interested parties to the rule parts and Code of Federal Regulations for details. Subitems 1 to 3 are necessary to establish parameters by which counties, the commissioner and other interested parties can judge whether or not a person with mental retardation is "very dependent" and has "special needs" not covered in the medical assistance reimbursement rate of the ICF/MR and/or day training and habilitation service provider. Based on advisory task force input, and discharge data from community ICFs/MR, the department found it reasonable that a person demonstrate at least one of these characteristics in addition to mental retardation, to be considered a "very dependent" person with special needs.

Subitem 1. Severe maladaptive behavior is defined in units (a), (b) and (c) as self-injurious behavior or aggressive behavior which is judged to be a clear danger to the client or other persons, or destructive behavior which results in extensive property damage. Examples of the type of behavior that may be considered a "clear danger" are included in the definitions. These definitions are reasonable because they encompass the thought and suggestions of advisory task force members with expert qualifications and extensive experience in clinical psychology and the behavior management of severe maladaptive behaviors among persons with mental retardation. According to Minnesota Statutes, chapter 252.23, 12 MCAR 2.031 and provisions of the Welsh vs. Levine Consent Decree (1980), severe maladaptive behavior that is a clear danger to oneself or others or results in extensive property damage may be reason for demission from community programs while persons with severe behavior problems, categorically, are not at risk of demission from community programs. Further, the Developmental Disability Council's Policy Analysis Series, Nos. 5 and 10, conclude that 82 percent of first admissions and 88 percent of readmissions to state hospitals from community ICFs/MR are a result of behavior problems that could not be managed in the community. Given the stated purpose of the rule parts, it is reasonable to approve special needs rate exception payments for persons with these characteristics to prevent their placement or retention in a state hospital.

Subitem 2. It is reasonable to include severe physical disabilities such as deafness, blindness, or motor problems which require short-term environmental orientation training as one characteristic which may result in eligibility for a special needs rate exception because costs associated with this training is not reimbursable through any other funding source unless the person is demitted from the ICF/MR and/or day training and habilitation service or retained in a state hospital; the need is short-term as opposed to long term; and the result of a short-term special needs rate would be the

provision of services necessary to decrease the risk of placement or retention in a state hospital as is the stated purpose of these rules. In addition, task force members agreed that this type of individual should be eligible for special needs rate exceptions if all other provider and client eligibility criteria is met.

Subitem 3. This provision is included as one of the characteristics in addition to mental retardation or a related condition, which may result in eligibility for a special needs rate exception. It is necessary to include this provision to inform counties and other interested parties that persons with mental retardation who have certain medical conditions may be eligible for a special needs rate exception. It is reasonable to include medical conditions such as degenerative diseases or short-term medical disabilities that require temporary nursing care because the costs associated with these needs are not reimbursed through any other funding unless a person receives temporary services (until death or recovery) in a hospital or skilled nursing facility. This kind of temporary need could result in loss of placement in the ICF/MR and day training and habilitation service with a resultant readmission or admission to a state hospital. Therefore, task force members agreed that a temporary need for medical care should constitute eligibility for a special needs rate exception if all other client and provider eligibility criteria is met.

Item D. This item is necessary because the department and advisory task force members agreed that clients at imminent risk of state hospital placement were the persons most in need of a special needs rate exception payment. The department's deinstitutionalization policies mandated by the Welsch vs, Levine Consent Decree (1980) require the state to reduce the number of mentally retarded persons residing in state hospitals to no more than 1,850 by mid-1987. The conclusion of the Developmental Disabilities Councils Policy Analysis Paper #10 (1982) was that deinstitutionalization involves not only moving people out of institutions but also establishing community support programs in Minnesota which will reduce or eliminate initial admissions or readmissions. Special needs rate exception payments are viewed by the department as one way to promote continued success of Minnesota's deinstitutionalization efforts. This provision necessarily embodies this department mandate.

It is reasonable to state this eligibility factor to inform counties and other interested persons of the facts. It is also reasonable to limit "risk of placement" to state hospitals because this is the primary kind of placement the department is mandated to avoid and is the most commonly used placement for mentally retarded persons at risk of demission from a community ICF/MR. Because ICFs/MR cannot receive funding to provide skilled nursing care to persons over the long-term in accordance with Minnesota Department of Health Rules, parts 4665.0100 to 4665.9900, individuals at risk of long-term skilled nursing care are not included under this provision. Task force members and the department agreed that 60 days constituted imminent placement and was a reasonable length of time to describe "risk" for the purposes of these rules.

Subpart 3. General provider eligibility. This provision is necessary to delineate for counties, the commissioner and other interested parties, the criteria used to determine an ICF/MR or day training and habilitation service provider's eligibility to receive additional client specific funds under these parts. It is reasonable to include items A through C so that all interested parties are informed of each of the criteria.

Item A. This item is necessary to determine a potential provider's compliance with Minnesota Statutes, section 256B.501, subdivision 8 which states that payments for persons with special needs shall be in an amount in excess of the established medical assistance rate. This subdivision implies that monetary resources available within a provider's operating cost categories (includes salaries of direct care staff, staff training, consultation fees, etc.) must be applied toward necessary client programming before a provider applies for a special needs rate exception. It is reasonable to assure providers that amounts deposited in funded depreciation accounts for purposes other than client programming as specified and required by 12 MCAR §§ 2.05304 [Emergency], rules governing medical assistance reimbursement for ICFs/MR, will not be considered available to supplement the rate of persons with special needs because they can only be removed from the account for purposes stated in 12 MCAR § 2.05309 [Emergency]. It is reasonable to include this provision to inform interested parties of one of the standard criteria to be used by counties and the commissioner to determine provider eligibility.

Item B. This provision is necessary under Minnesota Statutes, section 256B.501, subdivision 8, to determine whether or not a provider has in the past provided staff interventions the same as or similar to those staff interventions proposed under a special needs rate exception. Individual services the same as or similar to those provided to clients in the past within the established per diem should not now require additional medical assistance funds simply because additional funds may be available because established per diems for ICFs/MR and day training and habilitation services reflect the actual historic costs of necessary service provision to a group of clients. Placement of those clients into that particular program is based on the provider's ability to provide each client with necessary and appropriate services as outlined in their individual service plans. It is reasonable to inform interested parties of the department's expectations for providers based on the provider's past experience and client-mix so that they can determine if they would be eligible for a special needs rate exception. It is also reasonable to inform providers and counties of one requirement for eligibility to receive a special needs rate exception under current statute.

Item C. This item is necessary to clarify that the expected outcome of additional client services or staff training, as a result of a special needs rate exception, is the increased ability of that client to remain in the program(s) and of program staff to more effectively deliver services to that client when the special needs rate is terminated. Minnesota Statutes, section 256B.501, subdivision 8 requires the services provided as a result of a special needs rate exception to be

outcome-oriented and based on an individual's service plan. At the time of a person's entry into a community program their individual service plan would not include the provision of services aimed at eventual demission to a more restrictive setting such as a state hospital. It is reasonable to specify this expectation within the provider eligibility section of these rules to discourage applications from providers not familiar with the rule's purpose and who are not interested in increasing and maintaining their ability to manage certain clients when a special needs rate is terminated.

Subpart 4. Availability of other resources. This provision is necessary to delineate those resources available to providers and "to be used" by providers before applying for a special needs rate exception. The need and reasonableness of each item is described below.

Item A. Minnesota Rules, parts 9500.0750 to 9500.1080 (new parts 9505.0010 to 9505.0480) delineate those services and equipment available to individual clients by directly billing medical assistance. It is necessary to include this provision to remind interested parties that established means of procuring particular kinds of necessary client services and equipment should be utilized when applicable. It is reasonable to allow special needs rate exception payments to pay for individual services "in excess of" or not covered under other medical assistance reimbursement mechanisms because without payment, a person may have to receive the services in a more restrictive setting.

Item B. This provision is necessary to remind counties that client placement should be based on the appropriateness of service as outlined under Minnesota Rules, parts 9525.0015 to 9525.0145. A client's needs are "special" only in relationship to other clients served by a particular provider given that provider's program focus and current medical assistance rate. In other words, a client's perceived "special" needs may not be special if the client can be placed in an ICF/MR and/or day training and habilitation service whose current medical assistance rate and staff expertise reflect the ability to provide the necessary service without receiving a special needs rate exception. Therefore, it is reasonable to expect counties to examine all available ICFs/MR and day training and habilitation placements before choosing a placement for a particular client who may require a special needs rate exception solely as a result of that placement decision. It is also reasonable that subitems (1) through (3) be included in this provision to inform interested parties that, in determining the "appropriateness of placement," provider location, required length-of-service, and family/client preference should be considered as suggested by provisions of the Welsch vs. Levine Consent Decree (1980) and the definition of least restrictive environment as outlined in Minnesota Rules, parts 9525.0015 to 9525.0145.

Subpart 5. Evaluation of staff intervention and equipment purchases. This subpart informs counties of information to use in determining a provider's compliance with procedures established by the commissioner. Items A through D establish the questions counties must reasonably address while evaluating a provider's proposed staff intervention or purchase of equipment.

Item A. As part of the procedure established by the commissioner under Minnesota Statutes, section 256B.501, subdivision 8, counties must approve or disapprove a provider application under part 9510.1060. It is, therefore, necessary for them to determine whether the proposed staff intervention or piece of equipment is allowable under Minnesota Rules, parts 9510.1020 to 9510.1140. It is reasonable for counties to base this determination on their review of the standard provider application because it should contain the necessary written information.

Item B. As part of the procedure established by the commissioner under Minnesota Statutes, section 256B.501, subdivision 8, counties must approve or disapprove a provider application under part 9510.1060. It is, therefore, necessary for them to determine whether the proposed services and service providers comply with applicable professional and program licensure standards as required by these rule parts. In addition, all services reimbursed by medical assistance to persons living in ICFs/MR and receiving day training and habilitation services must be provided by qualified persons and licensed programs as required under the Code of Federal Regulations, Title 42, and Minnesota Rules, parts 9500.0750 to 9500.1080 (new 9505.0010 to 9505.0480), parts 9525.1200 to 9525.1330 and 12 MCAR § 2.034. It is reasonable for counties to base this determination on their review of the standard provider application because it should contain the necessary written information.

Item C. Minnesota Statutes, section 256B.501, subdivision 8 requires that "no excess payment or limitation exemption shall be authorized unless the need for the service is documented in the individual service plan" of the person for whom the special needs rate exception is requested. Therefore, it is necessary to require counties to determine the provider's compliance with this statute before approving or disapproving the application under part 9510.1060. It is reasonable to require that counties base this determination on a review of the standard provider application because it should contain the necessary written information and documentation.

Item D. The purpose of special needs rate exception payments is to provide temporary client-specific payments to eligible providers to prevent a client's placement or retention in a state hospital. Also, Minnesota Statutes, section 256B.501, subdivision 8 requires that all proposed "special" services are described in terms of their estimated cost and duration according to the individual's service plan. To comply with both these requirements, it is necessary for providers to develop strategies of service delivery to obtain measurable outcomes according to certain timelines. These strategies and outcomes are reviewed semiannually by counties as outlined under Minnesota Rules, parts 9525.0015 to 9525.0145, and updated quarterly as outlined in parts 9525.1200 to 9525.1330 and 12 MCAR § 2.034. It is reasonable to include this item in the county's review and evaluation of a proposed staff intervention or purchase of equipment under these parts to determine whether the plan incorporates the requirements of the above mentioned rules and to facilitate the county's review and evaluation of the provider's compliance with these rule parts.

9510.1060 County Approval Process

This provision is necessary because it outlines the requirements and time lines the county must follow to approve or deny provider applications for special needs rate exceptions according to the procedures established by the commissioner in accordance with Minnesota Statutes, section 256B.501, subdivision 8. This provision is reasonable because interested parties should know these requirements and understand their roles and responsibilities with regard to the county approval process.

Subpart 1. Time period. It is necessary to limit the length of time that counties may have to take some action on a provider application to assure that eligible clients have an opportunity to receive requested services in a timely manner. A length of time equal to 10 days was determined to be adequate, prompt and, therefore, reasonable by advisory task force members.

Subpart 2. Consultation with county of financial responsibility. Because the county of case management is not always the county of financial responsibility for an individual client, it is necessary for the county of case management that receives a provider application to secure approval from the county of financial responsibility that is ultimately responsible for authorization of service according to Minnesota Rules, parts 9525.0015 to 9525.0145. It is reasonable to require the county of case management to document the county of financial responsibility's approval or objections and forward them to the commissioner with the complete application so that the commissioner is aware of the county of case management's compliance with Minnesota Rules and Statutes and can address any discrepancies in the two parties' perceived need for the requested services.

9510.1070 County's Application to Commissioner.

This part is necessary because Minnesota Statutes, section 256B.501, subdivision 8 specifies that the commissioner shall establish procedures for counties to follow to seek authorization from the commissioner for a special needs rate exception. Therefore, it is necessary that counties submit all approved applications to the commissioner for a final determination. Items A through H delineate documentation determined by the department to be necessary for counties to submit in support of any approved provider request for a special needs rate exception. This required documentation, in total, is reasonable because it provides evidence of provider eligibility, client eligibility, and the submitting county's compliance with procedures as outlined in these rule parts and in accordance with Minnesota Statutes, section 256B.501, subdivision 8. Because counties have case management responsibilities under Minnesota Rules, parts 9525.0015 to 9525.0145, it is also reasonable to expect that they would be familiar with the client, the provider and alternative placement, and therefore have the required documentation readily available.

Item A. As part of the commissioner's procedures for authorizing special needs rate exceptions in accordance with the mandate as set forth in Minnesota Statutes, section 256B.501, subdivision 8, and in accordance with Minnesota Rules, parts 9525.0015 to 9525.0145, counties are required to investigate the availability of other funds or placements

under parts 9510.1050, before applying for a special needs rate exception. It is necessary to require documentation of these county efforts so that the commissioner is assured of county compliance with this process before the commissioner authorizes the expenditure of public funds over and above the provider's current medical assistance rates. It is also reasonable to require that the documentation of this process be submitted to the commissioner for review as it then becomes part of the standard procedure and aids the commissioner in the efficient administration of these rules.

Item B. This provision is necessary because it requires the county to submit to the commissioner documentation of the need for requested services as required by Minnesota Rules, parts 9525.0015 to 9525.0145 and Minnesota Statutes, section 256B.501, subdivision 8, and the proof of the clients "at risk" status as stated in the individual's service plan. Additionally, this information is necessary for use by the commissioner in the quarterly program review process as stated in part 9510.1130 and required by Minnesota Statutes, section 256B.501, subdivision 8 and other department rules. This provision is reasonable because it requires only that a copy of an existing document be submitted to be used for verification of facts stated elsewhere and that the document be part of a standard application for a special needs rate exception.

Item C. The documentation required in this provision is necessary for the commissioner to use to verify the need for, quality of and consistency with which requested services are being, will be, or have been delivered in both the client's residential and day placements. These documents also supply proof of the client's medical condition when a special needs rate is requested for a short-term medical disability or degenerative disease. Additionally, these documents must be used by the commissioner in the quarterly review process outlined in part 9510.1130 and required by Minnesota Statutes, section 256B.501, subdivision 8 and other department rules. This provision is reasonable because it requires only that copies of existing documents be submitted to be used for verification of facts stated elsewhere in the application and that the documents become part of a standard application for a special needs rate exception.

Item D. This documentation is necessary for use by the commissioner in verifying that the requested services meet the needs of a client being discharged from a state hospital as outlined in the client's hospital discharge plan. It is reasonable to require a copy of this plan to be submitted to the commissioner as part of a standard application for a special needs rate exception so that it may be reviewed in light of all other required documentation and information.

Item E. According to department policy, a screening document must be completed whenever a client is demitted from a state hospital to a community ICF/MR and whenever a client is readmitted to a state hospital. This documentation is necessary for use by the commissioner in verifying that the client can most appropriately be served in the community or is at risk of state hospital placement. This provision is

reasonable because it requires only that copies of existing documents be submitted to be used for verification of facts stated elsewhere in the application and that the documents become part of a standard application for a special needs rate exception.

Item F. This provision is necessary because the county is responsible for authorization, coordination and monitoring of all services provided to clients in accordance with Minnesota Statutes, section 256B.092 and Minnesota Rules, parts 9525.0015 to 9525.0145. It is reasonable for the commissioner to require that a copy of the plan be submitted with the standard application for a special needs rate exception to assure the commissioner that counties will be monitoring any additional services requested in a special needs rate exception.

Item G. This provision is necessary because the county of case management is not always the county of financial responsibility. In these cases, the county submitting the application for additional service provision must receive authorization from the county of financial responsibility as required by Minnesota Statutes, section 256B.092 and Minnesota Rules, parts 9525.0015 to 9525.0145. This provision requires documentation that the required communication took place and further verification of the need for the proposed services and how they should be provided. Since the county of financial responsibility will pay a portion of the cost, it is reasonable that the special needs rate exception should not be implemented without that county's involvement. It is also reasonable for the commissioner to consider the view of the county of financial responsibility when reviewing the proposed rate exception and to require that written verification of this process be submitted with a standard application when additional public funds are being requested.

Item H. This provision is necessary because it requires the county to precisely describe how the requested services will be coordinated in both the residential and day placement regardless of whether both providers are requesting a special needs rate exception. This consistency of programming and interaction between all program personnel who deliver services to a client is required under Minnesota Rules, parts 9525.1200 to 9525.1330, parts 9525.0015 to 9525.0145 and 12 MCAR § 2.034. It is reasonable to include this provision to assure the integration of the new services into the individual's program plans and to assure the commissioner that the county rather than the provider has the real role in the decision as to whether a client needs a special needs rate in both the day placement and residential placement.

9510.1080. Commissioner's Determination.

This part is needed because Minnesota Statutes, section 256B.501 directs the commissioner to establish procedures to be followed by the counties to seek authorization from the commissioner for special needs rate exceptions for eligible providers. Therefore, it is reasonable that the commissioner should review all approved provider applications with the county's recommendation and documentation to determine whether to approve or deny an application for a special needs rate exception. It is also reasonable that the

commissioner base an approval or denial on the procedures established and outlined in these parts as that is the purpose of delineating the procedures here. Ten working days in which to notify affected persons was determined by the department and advisory task force members to be both administratively reasonable and necessary to most effectively and promptly implement needed services. The date on which the commissioner should authorize payment was determined by the department to be the day the commissioner receives a complete and approved application from the county. It is reasonable to choose this day to assure both the provider and the commissioner that the county has already determined the appropriateness of the service and will monitor and coordinate service delivery as required by Minnesota Statutes, chapter 256B and Minnesota Rules, parts 9525.0015 to 9525.0145. Members of the advisory task force decided that it was reasonable for payment to be retroactive to the day the commissioner received a completed application so that providers whose requests are finally approved would not have to pay for the costs of services provided to clients who required service provision before a formal approval, but in accordance with the county's recommendation.

9510.1090. Establishing Special Needs Rate Exception Payment.

Subpart 1. Established by commissioner. Minnesota Statutes, section 256B.501, subdivision 8 gives the commissioner authority to establish procedures to be followed by counties to seek authorization from the commissioner for special needs rate exceptions for eligible clients. Subdivision 10 of that section authorizes the commissioner to promulgate rules to implement those procedures. This provision is necessary to delineate the criteria to be used by the commissioner to implement Minnesota Rules, chapter 256.B.

Subpart 2. Allowable costs. This provision is necessary so that all interested parties know which costs will be reimbursed by medical assistance if a special needs rate exception is approved. In order to avoid possible double billing, it is also necessary to state that if costs are already reimbursable by the Department of Vocational Rehabilitation or under the rules governing medical assistance direct billing, they will not be reimbursed using a special needs rate exception. This provision also states that in order to be reimbursed under these parts, costs must be reasonably incurred for the efficient provision of services (12 MCAR § 2.05311 [Emergency]) and approved in accordance with Minnesota Rules parts 9510.1020 to 9510.1140. This stipulation is necessary given the commissioner's authority under Minnesota Statutes, section 256B,501, subdivision 8, and to ensure the proper use of state funds. The reasonableness of items A through C is discussed below.

The costs delineated in Items A through C are those costs determined by task force members to be extraordinary in the case of some clients and therefore reasonably reimbursed by additional dollars. These costs also can be accounted for in a client-specific manner as required by the medical assistance policy set forth by the Federal Government and the purpose of these rules.

> Item A. It is reasonable to allow these costs for purposes of reimbursement under these parts because they are related to the hiring of direct care program personnel to provide a staff intervention as defined in 9510.1020, subpart 14 for the benefit of a specific client.

It has been the experience of program staff in the department and other researchers that these costs are typically 50+ to 80 percent of all costs required for the provision of services to persons with mental retardation. (Wieck & Bruninks; 1980)

Item B. It is reasonable to include, as reimbursable, costs of services provided by persons with the qualifications listed in this item because these kinds of individuals typically provide ancillary services to persons with mental retardation and also provide consultation and training of direct care staff working with this population. In addition, Minnesota Rules, parts 9500.0750 to 9500.1080 (new parts 9505.0010 to 9505.0480) require that in order to be reimbursed by medical assistance services must be provided by persons with such qualifications. Because Minnesota Rules, parts 9500.0750 to 9500.1080 allow reimbursement of a limited number of "service units" to a specific client, special needs rate exceptions established under these parts are needed to reimburse services provided by qualified personnel in excess of those allowed.

Item C. It is reasonable to include this item as an allowable cost because not all equipment required by an individual to prevent that individual's placement or retention in a state hospital can be reimbursed by directly billing medical assistance or the Department of Vocational Rehabilitation. Prevention of placement or retention in a state hospital is the stated purpose of the rule parts governing special needs rate exceptions. It is therefore reasonable to reimburse for the costs of facilitating that purpose.

Subpart 3. Nonallowable costs. It is necessary to state which costs will not be allowed for reimbursement under these parts so that interested parties will know and can determine the estimated amount of a special needs rate exception payment as required under Minnesota Statutes, section 256B.501, subdivision 8. It is reasonable to allow, for purposes of reimbursement, only those costs delineated in subpart 2 so that interested parties are provided with accurate, complete and precise information.

Subpart 4. Limitation. It is necessary to include this provision so that the department can develop its budget based on an analysis of the probable expenditure of public dollars per eligible client as a result of the promulgation of these rules. In the absence of definitive and comparable cost data but in accordance with the department's mandate to contain medical assistance costs the state hospital per diem was chosen as the reasonable cost limit for providing residential services plus day training and habilitation services plus additional ancillary services to persons with mental retardation, behavioral problems and medical disabilities. Items A through F are necessary to delineate the formula used to determine this limitation. Components of the rate calculation were selected because of the direct relationship between them and the costs of providing care to the individual on whose behalf the rate exception is made. Those costs are spread over a long enough period of time to develop a reasonable "average" daily cost for the individual and allow a valid comparison with a period of hospitalization. In other words, costs for the special intervention or or equipment may be unreasonably high if just added to the one day the equipment was purchased,

or the short number of days additional staff may be required. These items are reasonably included so that all interested parties are aware of the formula and may apply it to determine the maximum amount available to them for a special needs rate exception.

Item A. It is necessary to include the per diem rate of the day training and habilitation service provider in determining the limitation under this part because these costs are reimbursable under medical assistance as delineated in Minnesota Statutes, section 256B.501, subdivisions 5 through 10 and rules promulgated thereunder. It is reasonable to use the per diem in effect on the date the county receives a complete application and multiply the per diem by the number of program days so that the county may use the current payment rate to determine an accurate total amount of medical assistance dollars currently being spent for day training and habilitation services.

Item B. It is necessary to include the ICF's/MR per diem rate in determining the limitation under this part because these costs are reimbursed under medical assistance as delineated in Minnesota Statutes, section 256B.501 and rules promulgated thereunder. It is reasonable to use the per diem in effect on the date the county receives a complete application and multiply the per diem by the number of days in the year (program days in an ICF/MR residential setting) so that the county may use the current payment rate to determine an accurate total amount of medical assistance dollars currently being spent for residential services.

Item C. It is necessary to include the total special needs rate exception amount to determine the limitation under the subpart because these costs are reimbursable under the medical assistance program as defined in Minnesota Statutes section 256B.501, subdivision 8. It is reasonable to specify that all medical assistance special needs rates in excess of the established per diems of the ICFs/MR and day training and habilitation service provider will be included in computing the limitation under these parts in order to determine an accurate total amount of medical assistance dollars spent.

Item D. This provision is needed for use by all interested parties in computing an accurate medical assistance per day cost based on the information in items A through C. This is a reasonable computational method because it is based on mathematical principles and easily understandable and replicable. The devisor of 365 is reasonable because of the rationale already stated above and because it is consistent with the procedures described in part 9510.1120 of these rules.

Item E. It is necessary to include the state hospital medical assistance per diem to determine the limitation under this part because it is the amount to which the amount under item D must be compared. It is reasonable to use the rate in effect on the date the provider submits a complete application to the county to be consistent with the rates used in items A through C.

Item F. This provision is necessary because it informs all interested parties of one criteria used by the commissioner to determine whether to deny or approve the recommended amount of a special needs rate exception. It is reasonable when possible, to allow counties and providers the flexibility to adjust a per diem cost which exceeds the state hospital per diem in order to avoid a client's placement or retention in a state hospital if the adjustment will result in services which meet the client's needs. It is also reasonable to inform interested parties that approval may also be granted for costs greater than the limit specified in item E if the commissioner grants a variance to the limit under part 9510.1100.

Subpart 5. Computation of special needs rate exception payment. It is necessary to include this item so that providers can calculate a special needs rate exception payment for purposes of billing the medical assistance program. It is reasonable to state the method to be used for calculating the special needs rate in items A through D so that all affected parties will know it and use it consistently.

Item A. This provision is necessary to inform all interested parties of the methodology to be used to compute the amount of a special needs rate exception payment to be billed for the cost of additional equipment. The stated methodology is reasonable because it is consistent with the payment methodology used when a medical assistance recipient directly bills the medical assistance program for the purchase of a necessary piece of equipment under Minnesota Rules, parts 9505.0750 to 9505.1080 (new parts 9505.0010 to 9505.0480).

Item B. This provision is necessary because it informs all interested parties of the methodology to be used to compute a special needs rate exception payment for personnel costs. Because the total costs of a staff intervention may be allowed over one year and service providers usually bill monthly, it is reasonable to let interested parties know the basis for the amount they should bill the medical assistance program as services are delivered. In addition, it is reasonable to compute the amount to be billed based on this method because it promotes accountability and can be used to monitor the costs of services and the delivery of and billing for services.

Item C. This provision is necessary to inform all interested parties of the methodology to be used to compute the amount of a special needs rate exception payment to be billed monthly when personnel costs vary on a daily basis. It is reasonable to assign costs on a monthly basis as described because this is the frequency with which most providers bill medical assistance.

Item D. This provision is necessary to inform all interested parties of the methodology to be used to bill medical assistance for services provided under these parts. This methodology conforms with federal regulations governing medical assistance, promotes accountability for service provision and can be used to effectively monitor the delivery, billing, and cost of services.

9510.1100 Variance Request.

Subpart 1. Variance request. Advisory task force members found it necessary to include a variance to the rate limits outlined in part 9510.1090, subpart 4, because in some cases the limits described in part 9510.1090 do not give day training and habilitation service providers leeway to meet some clients' needs given the high cost of ICF/MR services. In such cases, it was determined by the department to be reasonable to allow a variance to the established limits in accordance with the criteria specified in subpart 2. It is also necessary to clarify that the commissioner ultimately approves or denies a provider application which exceeds the limits in part 9510.1090, subpart 4, as required by Minnesota Statutes, section 256B.501, subdivision 8. A variance not to exceed 15 percent of the established limit was determined by the department to be reasonable because when used in conjunction with the criteria specified in subpart 2, it allows a client placed in intensly staffed ICFs/MR with rates equal to 85 percent or more of the state hospital per diem to receive a special needs rate exception for equally intense day training and habilitation services. This is necessary because most day training and habilitation service agencies have not, historically, been required to staff for "intensive need" clients or been reimbursed the actual costs of serving clients with extraordinary needs. Without a variance to the limit established in part 9510.1090, subpart 4, these clients could not receive the necessary day services and remain or be placed in the community which is the ultimate goal of providing clients with a special needs rate exception. It is also necessary to specify a limit to the variance, which when used in conjunction with the criteria specified in subpart 2, allows the department to analyze the rules' fiscal impact and prepare budgets as required by the legislature and provisions of the Administrative Procedures Act.

Subpart 2. Eligible provider. It is necessary to include the provision so that all interested parties know who is eligible to receive a variance to the limits established in part 9510.1090, subpart 4, and can plan services accordingly. Based on knowledge of the historic rate structures and current per diems of all ICFs/MR and day training and habilitation service providers in the state, the department determined that only providers of day training and habilitation services (that are not ICFs/MR) should be eligible for a variance and only if clients for whom a special needs rate is requested reside in ICFs/MR with a per diem equal to or greater than 85 percent of the current state hospital per diem. This percentage is reasonable because it allows clients placed in two percent of percent of ICFs/MR with the highest medical assistance rates to receive special needs rates in that day training and habilitation service placement. Without the provision, these clients may not be able to receive additional medical assistance services in their day placement if those services were deemed necessary as outlined in their individual service plan or state hospital discharge plan.

Subpart 3. Submittal of request. In order for the commissioner to approve or deny a request for a variance to the limits described in part 9510.1090, subpart 4, it is necessary for the county to submit the request to the commissioner. It is reasonable that the request accompany the application for a special needs rate exception so that the commissioner may consider the request in light of and in relationship to any determination made regarding the client's need and eligibility for, and the provider's eligibility for a special need rate exception.

Subpart 4. Review of variance request notification. This subpart is included because it is necessary for the commissioner to review a variance request before the request can be approved or denied. It is reasonable to state criteria which will be used by the commissioner in the review so that interested parties will know how the determination was made. It is also reasonable to notify all affected parties in writing of reasons for a denial so that they will know the basis of the denial. Because the request for a variance is reviewed with the application for a special needs rate, it is reasonable to approve or deny the variance request within ten days of receipt of the request and complete application as specified in part 9510.1080 of these rules.

9510.1110. Emergency Procedure.

This part was determined to be necessary by advisory task force members to assure that the immediate need for crisis intervention which required staff resources not covered in the provider's per diem, would not be delayed in order to secure prior approval from the commissioner. Under part 9510.1080 payment for a special needs staff intervention, if approved, is authorized to begin on the day the Commissioner receives a completed application from the county. It is reasonable to assume that emergencies occur and that they might result in admission to a state hospital without immediate staff intervention. This emergency procedure should exist to secure temporary additional funds to avoid such an admission. It is also reasonable to include the procedure within these rule parts so that it may be used by counties and providers when all criteria in subparts 1 through 3 are met.

Subpart 1. Definition. This provision is necessary to inform all interested parties of the meaning of "emergency" for purposes of this part. The advisory task force decided it was reasonable to limit "emergencies" to the situations described in items A and B because they are the most typical situations in which providers with counties find themselves unable to prevent a demission to a state hospital because of an immediate need for intensive staffing levels or temporary nursing skill not ordinarily available under the provider's current medical assistance per diem. The reasonableness of items A and B are discussed below.

Item A. This item describes a situation that might result in a short term need for nursing care not affordable by the provider or ordinarily allowable under Minnesota Rules, parts 9500.0750 to 9500.1080 (new parts 9505.0010 to 9505.0480), unless a special needs rate exception is approved immediately. It is reasonable to define this situation as an emergency to assure that the client receives required services and to prevent the client's demission to a state hospital. Several emergencies of this type arose during the administration of the temporary rules. State hospital placements were avoided as a result of quickly approved special needs rate exceptions for the affected clients.

Item B. This item describes a situation that might result in the need for a staff intervention not covered under Minnesota Rules, parts 9500.0750 to 9500.1080 (new parts 9505.0010 to 9505.0480) or affordable by the provider unless a special needs rate exception is approved immediately. It is reasonable to define the situation as an emergency to assure that the client receives required services and to prevent the client's demission to a state hospital.

Subpart 2. Emergency approval. This subpart is necessary to delineate the parameters of the emergency approval procedure so that all interested parties will know and follow them. Minnesota Statutes, section 256B.501, subdivision 8 gives the commissioner authority to establish procedures for counties to follow to seek authorization from the commissioner for medical assistance reimbursement for special needs rate exception payments. It was the experience of both the department and advisory task force members that additional staff costs are the greatest expense associated with emergency situations; equipment needs generally do not arise in emergency situations. Therefore, it is reasonable to state that emergency approval will only be granted for additional staff costs. It is also reasonable that counties be required to grant approval in the case of an emergency because of their responsibility for the authorization and monitoring of services under Minnesota Rules, parts 9525.0015 to 9525.0145.

Item A. This provision is necessary because the commissioner has the ultimate responsibility under Minnesota Statutes, section 256B.501, subdivision 1, to authorize payment for a special needs rate exception and to administer the rules promulgated under these parts. Therefore, any situation that will result in the expenditure of medical assistance funds under these rules must be reported to the commissioner. A 24-hour notification and follow-up letter within three days was determined to be timely and reasonable by the Department and has worked well during the administration of the emergency rules.

Item B. This item is necessary to inform counties and providers that though payment can be authorized by the county immediately in an emergency, an application must still be completed within 10 days in accordance with parts 9510.1020 to 9510.1140. It is reasonable to expect that all providers seeking a special needs rate exception will be in compliance with and meet the requirements of the rules governing special needs rate exceptions. Advisory task force members also determined it reasonable to limit emergency payments to only two weeks before requiring that a provider application be submitted to the county. This requirement worked well during the administration of the temporary rules.

Item C. This provision is necessary because the commissioner has the ultimate responsibility under Minnesota Statutes, section 256B.501, subdivision 8, to authorize payment for a special needs rate exception. It is reasonable to require that all providers, with counties, seeking a special needs rate exception will be in compliance with and meet the requirements of these rules.

Subpart 3. Reimbursement for emergency services. This provision is necessary because it informs all interested parties of the length of time an emergency approval is valid and what is required by the county and provider to continue payment for services of additional staff. It is reasonable to include the provision because it is consistent with the language and intent of Subpart 2 and requires that all providers and counties seeking continuation of a special needs rate exception past an initial emergency period, must meet the requirements of persons seeking a special needs rate exception as delineated in parts 9510.1020 to 9510.1140. It is also reasonable

that the county notify the commissioner if a provider does not submit an application within the required length of time because it is the county's job to monitor the delivery of service under part 9510.1130 and request approval from the commissioner to authorize or terminate payment as required under Minnesota Statutes, section 256B.501, subdivision 8 and these rules.

9510.1120. Duration of Special Needs Rate Exception.

Subpart 1. Maximum length of time for a special needs rate exception. Minnesota Statutes, section 256B.501, subdivision 8 states that special needs rate exception payments shall not be authorized unless the duration of the services needed are stated and there is a basis for the estimated cost of the services. This subpart is reasonable because it requires that all proposed staff interventions be designed to achieve measurable outcomes within one year. This length of time is also the one over which program goals are planned according to individual program plans under Minnesota Rules, parts 9525.0015 to 9525.0145 and 12 MCAR § 2.034, and the length of time over which the cost limitation in part 9510.1090, subpart H is calculated. It is a length of time determined by the department's program staff "to be long enough," in most cases, to expect an outcome from additional service delivery and begin the integration of the client into the existing program as required under these parts. If program staff working with a client determine that additional staff will be necessary for longer than a year's time, reimbursement under these parts is ordinarily not appropriate as is stated in the rules' purpose.

Subpart 2. Renewal. Advisory task force committee members recognized that there are some clients who will require a length of time in excess of that originally planned to achieve anticipated outcomes of additional staff interventions. Rather than having an absolute cut-off, a renewal will permit continued intervention in appropriate cases. For this reason, the Department thought it necessary to include this provision as part of the procedures delineated by the commissioner to authorize special needs rate exceptions under Minnesota Statutes, section 256B.501, subdivision 8. Because counties have responsibility for authorizing and monitoring appropriate service delivery under Minnesota Statutes, chapter 256B and Minnesota Rules, part 9525.0015 to 9525.0145, it was necessary for counties to be responsible for initiating renewals of special needs rate exceptions under these parts. It is reasonable for counties to use the application procedure already established in these parts whenever a special needs rate exception is sought because the process is standard and familiar to all applicants. It is also reasonable that the commissioner require annual program and fiscal reviews to demonstrate the past effectiveness of the services already paid for with special needs rate exception payments in order to justify the continued use of public dollars. This provision limits renewals to one renewal of one year or less per identified need to promote effective, outcome-oriented staff interventions designed to enhance a client's ability to live and function in the least restrictive environment and increase the ability of remaining staff to manage client specific behavior. The purpose of special needs rate exceptions is to provide temporary funds in excess of the established rates of ICFs/MR and day training and habilitation service providers only until such a time as the rate structures governing reimbursement to these providers can differentiate rates according

to client resource use, a task currently under study. Therefore, it is reasonable for the department to promote the time limited outcome orientation of these funds.

Subpart 3. Terminations. The department has the responsibility for administering the efficient and reasonable use of medical assistance dollars for special needs rates exceptions according to the procedures and for the reasons stated in these rules and Minnesota Statutes, section 256B.501, subdivision 8. It is therefore reasonable to include a provision which states that the funds will be terminated if they are no longer necessary, ineffective, or being spent in a manner contrary to their stated purpose. It is necessary to include this provision and items A through E as they inform all interested parties of the specific reasons for the recommended termination of funds. Because Minnesota Statutes, sections 256B.092, subdivision 3, makes counties responsible for terminating unnecessary medical assistance services for clients according to their individual service plans, it is necessary to specify that the commissioner's actions will be based on the county's recommendations. The advisory task force determined that a 15-day notice to affected parties before termination was adequate and therefore reasonable.

Item A. It is necessary to include this item because it reminds all interested parties that these rules outline procedures for providers to follow to receive funds: 1) in excess of their rate according to Minnesota Statutes, section 256B.501; and 2) when no other funds are available as outlined in part 9510.1065, subpart 5. It is, therefore, reasonable to state that excess dollars will be terminated when they are no longer necessary for this reason.

Item B. It is necessary to include this item because it reminds all interested parties that providers are not eligible for special needs rate exceptions if the county determines that a more appropriate placement is available according to criteria stated in part 9510.1050, subpart 4. It is, therefore, reasonable to state that a special needs rate exception will be terminated when no longer necessary for this reason and to promote appropriate placements.

Item C. Because a special needs rate exception is granted on the basis of the accuracy and completeness of the application submitted to the commissioner under part 9510.1080, it is reasonable to terminate the use of those funds when they have been used for purposes other than those stated and approved.

Item D. It is reasonable to state that a special needs rate exception will be terminated when no longer warranted by a client's needs to save the unnecessary expenditure of public dollars. Furthermore, because special needs rate exceptions make dollars available for outcome oriented staff services in excess of those covered in the medical assistance rate of the providers as stated in Minnesota Statutes, section 256B.501, subdivision 8, it is necessary to terminate funding when a provider's per diem is adequate to provide the necessary services.

Item E. This item is necessary because it specifies that funds will be terminated if the provision of those funds do not result in progress in

the identified problem area. Special needs rate exceptions are intended to result in outcome oriented services as stated in Minnesota Statutes section 256B.501, subdivision 8. If it is determined that a special needs rate exception is not paying for services that allow progress to be made according to stated client need, it is reasonable to terminate the payments so that public dollars are not spent unnecessarily.

Because providers of service to persons with degenerative diseases can receive special needs rate exceptions to allow such persons to remain in their communities, it is necessary to address the requirement that "progress" be made by such clients with the criteria in subitems (1) to (4). At the time a provider requests a special needs rate exception for a person with a degenerative disease, the time the person has left to live is judged to be less than one year. By nature of the individual's prognosis, the special needs rate exception application in such a case would not have stated that there would be progress in identified problem areas. It is therefore reasonable that this item not apply to these persons and necessary to address the reasonableness of the criteria in subitems 1 through 4.

Subitem (1). This subitem is reasonable because it requires that any service funded under these parts which results in "no progress" must be a service necessary because of the degenerative condition which is one medical condition covered in the client eligibility section of these rules.

Subitem (2). This subitem is reasonable because it requires that a person knowledgeable of the client and the client's medical condition determine the client's "no progress" status and therefore assures the commissioner that there is an expert basis for the determination and waiver of the requirement that special needs rate exception payments be outcome oriented.

Subitem (3). This subitem is reasonable because it provides the commissioner with a written verification of the determination in subitem (2) and requires that the written verification become part of the standard reporting requirements.

Subitem (4). Because the special needs rate exceptions are medical assistance payments to disabled persons as defined by Titles II and XVI, it is reasonable that the state personnel responsible for determining disability status review the case for verification purposes.

9510.1130 Records, Reports, Audits and Repayment.

Subpart 1. Records. Minnesota Statutes, section 256B.501, subdivision 8 states that the commissioner shall evaluate the services provided as a result of a special needs rate exception through program and fiscal reports. Therefore, it is necessary to include this provision so that providers have the required information in accurate, accessible form for the commissioner's required reviews. Also because it is necessary for ICFs/MR to keep special

needs revenues in separate accounts as required under proposed Minnesota Rules, parts 9553.0010 to 9553.0120 (12 MCAR §§ 2.05301 to 2.05315 [Emergency]) governing cost reporting and medical assistance reimbursement, it is reasonable to require day training and habilitation services to follow the same rules. Because special needs rate exceptions are funded by medical assistance it is also necessary that all records be subject to the requirements of parts 9505.1750 to 9505.2150 which establish procedures used by the Surveillance and Utilization Review section of the Department of Human Services for the identification of suspected fraud or abuse with regard to services provided under the medical assistance program. It is reasonable to state these requirements so that all affected parties know them.

Subpart 2. Reports. This subpart is needed because Minnesota Statutes, section 256B.501, subdivision 8 requires the commissioner to evaluate the effectiveness of services provided as a result of a special needs rate exception. This section also states that special needs rate exceptions are to be used to provide outcome oriented services in accordance with the clients individual service plan. Items A and B require reports from counties which are a reasonable method of determining program effectiveness and use of revenues.

Item A. This item describes the contents of the quarterly reports necessary for the provider, county and commissioner to use to ascertain the effectiveness of the special needs rate exception the need to continue the special needs rate exception changes implemented in the delivery of service, and provider and county strategies to integrate the client into the program. Services provided as a result of a special needs rate exception become part of an individual's program plan and subject to all the requirements under Minnesota Rules, parts 9525.0015 and to 9525.0145 and 9525.1200 to 9525.1330. Because these rules require quarterly updates of individual program plans it is necessary to require this frequency of updates under this item as well. It is reasonable to require the review within 30 days of the end of each quarter because it allows counties some flexibility in meeting the requirement while clearly stating that the reviews must be submitted. It is also reasonable that a different schedule of reviews be established when that is necessary to more effectively administer and monitor service delivery to a particular client. This flexibility recognizes the fact that a special needs rate exception may be established for a very short period of time or that the success of the client specific services requires more frequent reviews by the county and commissioner. Subitems 1 through 4 state the issues to be addressed by counties in their quarterly reviews to the commissioner. It is necessary to state this criteria so that counties know what is expected in each report. It is reasonable to include these subitems as they provide the information counties and the commissioner must use to determine whether the expenditure of public funds in excess of established medical assistance rates is warranted.

Item B. This provision with subitems 1 through 4 describes the information in the final report necessary for the provider, county and commissioner to use to ascertain the effectiveness of the special needs rate exception, the need for its continuation, the actual costs of the

services provided and the actual amount billed to medical assistance for the services provided. This information is necessary to effectively administer, evaluate and monitor compliance with these rules as required under Minnesota Statutes, section 256B.501, subdivisions 8 and 10. It is reasonable to require submission of this report within 90 days of termination of a special needs rate exception because this extended length of time is more likely to result in the county submission of accurate up-to-date financial data due to the fact that payment for services provided under these parts can be received only after the expense is incurred and billed to medical assistance.

Subpart 3. Audits. This provision is necessary because the commissioner is directed by Minnesota Statutes, section 256B.501 to evaluate this program and use program and fiscal audits as a basis for this evaluation (1985 language change). Moreover, Minnesota Rules, parts 9505.1750 to 9505.2150 establish procedures used by the Surveillance and Utilization Review section of the Department of Human Services for the identifcation and investigation of suspected fraud or abuse with regard to services provided under the medical assistance program. These procedures include audit availability requirements. Therefore, it is reasonable to include this provision to ensure that providers have knowledge of and comply with Minnesota Rules, parts 9510.1020 to 9510.1140.

Subpart 4. Repayment. This provision is necessary to assure provider and county compliance with Minnesota Rules, parts 9505.1750 to 9505.2150 and it is reasonable for the commissioner to require that overpayments to the provider be paid back to the medical assistance program so that all public funds under this program are spent for client-specific services as required by Federal Regulations, and Minnesota Rules parts 9500.0750 to 9500.1080 governing medical assistance eligibility (new parts 9505.0010 to 9505.0480). When an application is reviewed and approved by the commissioner, the commissioner authorizes payment up to the amount stated in the application, which is the expected cost of the requested services and equipment. It is therefore also reasonable that retroative payments in excess of the approved amount would not be allowable. This provision promotes planning of service delivery and the efficient, purposeful use of public dollars.

9510.1140 Appeals.

Subpart 1. By provider. This subpart is needed because it is necessary for the commissioner to delineate the procedures under which the provider can appeal the determination of the county if the provider disagrees with the county's recommendation to the commisioner. This procedure will ensure due process for the provider if the provider believes that an untimely or unfair determination was made by the county. The commissioner will hear the appeal if the appeal is based upon the criteria outlined in this subpart and submitted in writing to the commissioner within the specified timeline. It is reasonable that this procedure be clearly stated to inform the provider of its rights under the appeal process. It is also reasonable that the commissioner notify the provider of its decision, in writing, and, state the reasons for the decision and the evidence relied upon in order for the provider to be aware of the information on which the commissioner's decision was made. The 30-day period which the commissioner has to formulate a decision and notify the affected parties was determined by advisory task force

members to be adequate and not result in undue hardship to affected parties. It is necessary to suspend payment until an amount is authorized by the county and commissioner as required by Minnesota Statutes, section 256B.501.

Subpart 2. By county. This subpart is needed because without it the county would essentially have no recourse if it disagreed with the commissioner's decision. It is reasonable to include this provision because it provides the county with due process and ensures the county's right to an appeal if it disagrees with the commissioner's decision. This provision thereby provides the county with the procedures to present its case to the commissioner. A ten day time period in which to file an appeal was determined to be adequate by advisory task force members in order to assure a speedy reconsideration of the application. It is reasonable for the county to expect a written decision from the commissioner because it is a proper form of communication during such a process. Also 30 days was perceived by the task force members and the department to be a relatively short period of time, and also adequate in this situation. It is also reasonable for the commissioner's decision on the appeal to be final because it is based on a review of all the evidence. By bringing the appeal process to a close, needless expenditure of time and public funds can be avoided in a matter where the commissioner has the authority to make the final decision according to Minnesota Statutes, section 256B.501. It is also reasonable that if the provider continues or begins services during this period and before the commissioner has given the required prior approval, no special needs rate exception payments will be made because prior approval is required for the medical assistance reimbursable services described in these rules.

Outside Expert Witnesses

The Department of Human Services will not be using outside expert witnesses to testify in support of parts 9510.1020 to 9510.1140.

Conclusion

The foregoing statements and information demonstrate the need for and reasonableness of proposed parts 9510.1020 to 9510.1140. To a great extent, the need for and reasonableness of the rules are prescribed expressly by state statute, and rules and the inherent responsibility of the Minnesota Department of Human Services to exercise prudent management of public funds.

Frances E. Gibson, Deputy Commissioner

LEONARD W. LEVINE, COMMISSIONER
MINNESOTA DEPARTMENT OF HUMAN SERVICES

Dated: June 18, 1985

STATE OF MINNESOTA

OFFICE OF THE ATTORNEY GENERAL

IN THE MATTER OF THE PROPOSED ADOPTION OF DEPARTMENT OF HUMAN SERVICES RULES GOVERNING SPECIAL NEEDS RATE EXCEPTIONS FOR VERY DEPENDENT PERSONS WITH SPECIAL NEEDS, MINNESOTA RULES, PARTS 9510.1020 to 9510.1140

STATEMENT OF COMPLIANCE WITH RULEMAKING PROCEDURES

I, Assistant Attorney General, Beverly Jones Heydinger, 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.

Beverly Jones Heydinger
Assistant Attorney General

Dated: April 4, 1985