

Minnesota Attorney General: Administrative Rules Proceedings

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SF-00006-05 (4/86)

DEPARTMENT : ATTORNEY GENERAL

STATE OF MINNESOTA

Office Memorandum

DATE : March 14, 1990

TO : ANU SEAM
Department of Human Services
444 Lafayette Road (55155)

FROM : MARTHA J. CASSERLY
Special Assistant Attorney General
525 Park Street, Suite 500 (55103)

PHONE : 296-6839

SUBJECT : In the Matter of the Adopted Permanent Rule Relating to Special Needs Rate Exception for Very Dependent Persons with Special Needs

The above-referenced Permanent rule has been approved as to its legality by the Attorney General on March 14, 1990.

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

Also enclosed are any petitions, requests, submissions or comments along with any extra copies of documents which you submitted to the Attorney General.

Your next step is to arrange for publication of the Notice of Adoption in the State Register. In a day or two, you should receive from the Revisor's Office three copies of the notice of adoption of your rule. You should submit two copies of the Notice of Adoption to the State Register for publication. A permanent rule without a hearing does not become effective until five days after a notice of adoption is published 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:bbl
Enclosures
cc: William Brown, Chief Judge (memo only)
MaryAnn Hruby " "
Beverly Jones Heydinger " "

Department of Human Services

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

Rules as Adopted

9510.1020 DEFINITIONS.

[For text of subps 1 to 15, see M.R. 1989]

Subp. 16. **Training and habilitation services.** "Training and habilitation services" means health and social services provided under Minnesota Statutes, sections 252.40 to 252.47. For purposes of parts 9510.1020 to 9510.1140, "training and habilitation services" do not include training and habilitation services provided as a waivered service as defined in Minnesota Statutes, section 256B.501, subdivision 1, and parts 9525.1800 to 9525.1930.

9510.1040 APPLICATION TO BE COMPLETED BY PROVIDER.

[For text of subps 1 and 2, see M.R. 1989]

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

[For text of item A, see M.R. 1989]

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) training and in-service provided to program personnel for the year immediately preceding the date of the provider's application to the county; and

(4) 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

Approved by Revisor KTH

achieved by the client as a result of the proposed staff intervention or the equipment.

B. 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 most recent rate determination letter. A training and habilitation service program shall submit a copy of its current budget, year-to-date expenses, and current assets.

C. 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.

D. 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.

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

F. 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.

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

9510.1050 COUNTY REVIEW OF PROVIDER'S APPLICATION.

[For text of subpart 1, see M.R. 1989]

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:

[For text of items A and B, see M.R. 1989]

C. the client is a person with mental retardation or a related condition according to the definition in part 9525.0015, subpart 20, and has at least one of the following characteristics:

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[For text of subitems (1) to (3), see M.R. 1989]

[For text of item D, see M.R. 1989]

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.

[For text of items B and C, see M.R. 1989]

[For text of subps 4 and 5, see M.R. 1989]

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:

[For text of item A, see M.R. 1989]

B. a copy of the client's current individual service plan which explains the need to place or retain the eligible client in a regional treatment center if the requested services cannot be provided and ~~includes~~ the sections of the individual habilitation plan which include the methodology and measurable outcomes of the proposed intervention;

C. a copy of the client's most recent medical evaluation signed by a physician;

[For text of item D, see M.R. 1989]

E. a copy of the county's plan to coordinate and monitor the implementation of the proposed staff intervention described in the application submitted according to part 9510.1040;

F. a letter from the county of financial responsibility stating approval of the changes in the individual

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by Revisor _____

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

G. 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.

9510.1110 EMERGENCY PROCEDURE.

[For text of subpart 1, see M.R. 1989]

Subp. 2. **Emergency approval.** In an emergency, the county may approve the addition of staff, consultation, or staff training 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 costs meeting the definitions under part 9510.1090, subpart 2, items A and B, 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, and expenditures authorized by the case manager; and

B. complete and submit, according to parts 9510.1020 to 9510.1140, an application for a special needs rate exception for the emergency period and for any additional period, within 30 days of the date the county notified the commissioner of the emergency.

Subp. 3. **Reimbursement for emergency services.** A special needs rate exception for the costs identified in part 9510.1090,

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by Revisor _____

subpart 2, item A or B, approved in accordance with subpart 2 shall be reimbursable for a period not to exceed 30 days from the date the county notifies the commissioner of the emergency. No payment shall be authorized by the commissioner for services provided during an emergency until an application is submitted to the commissioner by the county delineating actual costs of the intervention. The total amount authorized for payment by the commissioner is subject to the per diem limitations under part 9510.1090, subpart 4.

INSTRUCTION TO REVISOR

Subpart 1. **Cross references.** In each part of Minnesota Rules referred to in column A, the revisor of statutes shall delete the reference in column B and insert the reference in column C.

Column A	Column B	Column C
9510.1040, subpart 4, item D	9500.0750 to 9500.1080	9505.0170 to 9505.0475
9510.1050, subpart 4, item A	9500.0750 to 9500.1080	9505.0170 to 9505.0475
9510.1090, subpart 2	9500.0750 to 9500.1080	9505.0170 to 9505.0475
	12 MCAR S 2.05311 [Temporary] A	9553.0010 to 9553.0080
9510.1130, subpart 1	12 MCAR SS 2.05301 to 2.05315 [Temporary]	9553.0010 to 9553.0080
	9525.1200 to 9525.1330	Minnesota Statutes, section 252.46

Subp. 2. **Change of terms.** The revisor of statutes is directed to change the words "state hospital" and "state hospitals" where they appear in Minnesota Rules, parts 9510.1020 to 9510.1140 to "regional treatment center" or "regional treatment centers."

The revisor of statutes is directed to remove the word "[Emergency]" wherever it appears in brackets in Minnesota Rules, parts 9510.1020 to 9510.1140.

Approved by Revisor _____

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED

MAR 14 1990

Joan Anderson Growe

Secretary of State

3:12 PM

APPROVED AS TO FORM AND LEGALITY

March 14 1990

HUBERT H. HUMPHREY, III
ATTORNEY GENERAL

BY MJ Cassedy

SPECIAL ASSISTANT ATTORNEY GENERAL

MJC

RULE REVIEW CHECKLIST

File No. 1679 — Docket No. 05-0009-0882

DATE RECEIVED 3-2-90 — ADOPTED W/O HEARING X

REVIEW DATE ~~3-11-90~~ 3-12-90 — EMERGENCY RULE _____

DUE DATE 3-16-90 — To Revisor: 3-6-90

REVISOR APPROVED Rec 3-7-90

APPROVED March 14, 1990 — REVISOR DISAPPROVED _____

DISAPPROVED _____ — FILED W/SEC. OF STATE _____

WITHDRAWN _____ — RETURNED TO AGENCY _____

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4 Rule as adopted (4 copies)

✓ Notice to Solicit Outside Information/Opinion (if applicable)
- April 24 '89 Date published in State Register
- ✓ Comments

_____ Petition for Adoption of a Rule (if applicable)

_____ Board's Authorizing Resolution
- _____ Date adopted

✓ Proposed Rule
- ✓ Revisor's Certificate

✓ Notice of Intent to Adopt Rule
- 256B.501 subd 8+13 Statutory Authority 252.46 subd 13
- _____ Small Business Statement
- ✓ Expenditure of public money statement
- no date Signature

✓ Statement of Need and Reasonableness (if applicable)
- NA Small Business Statement
- NA Fees - § 16A.128

✓ Affidavit of Mailing Notice of Intent to Adopt Rule
- Nov 14, 1989 Date 30/25 days before adoption
- ✓ Notice attached
- _____ Copy of rule or summary attached

✓ Publication in State Register
- Nov 20, 1989 Date 30/25 days before adoption

_____ 180-day deadline from:
- NA Effective date of law requiring rule amendment (14.12) (both rules)
- ✓ end of comment period (§ 14.26) (rules without hearing)
- _____ effective date of statutory authority (§ 14.29) (emergency rules)

_____ Resolution Adopting
- _____ Date adopted

✓ Findings of Fact, Conclusions & Order Adopting
- Feb 28, 1990 Date

_____ Written requests, submissions or comments missing letter Call

_____ Declaration of attorney Rec 3-12-90
- Beverly Heydinger Name of SAAG representing agency

_____ Notice of Submission to Atty. Gen. (if applicable)

_____ Aff. of Mailing Notice to Atty. Gen. (if applicable)

STATE OF MINNESOTA
DEPARTMENT OF HUMAN SERVICES
Human Services Building
444 Lafayette Road
St. Paul, Minnesota 55155-38___

RECEIVED

MAR 02 1990

Office of the Attorney General
Government Services Section
Capitol Office Bldg., Suite 500
525 Park Street
St. Paul, MN 55103

TO: Patricia Nolte, Legal Assistant
Public Finance Division
525 Park Street, Suite 500

FROM: Anu Seam

SUBJECT: Review of a Rule Adopted Without a Public Hearing; Department of Human Services Rules Governing Special Needs Rate Exception for Very Dependent Persons with Special Needs, Minnesota Rules, parts 9510.1020 to 9510.1140

Enclosed are the documents required to be submitted under Minnesota Rules, part 2010.0300 for your review of a rule adopted without a public hearing for the above entitled matter.

Official documents in this submitted material include:

1. A copy or photocopy of the notice of solicitation of outside information or opinions as published in the State Register.

2. A copy of the proposed rule with a certificate of approval as to form by the revisor of statutes attached.

3. The notice of intent to adopt a rule without a public hearing as mailed.

4. The statement of need and reasonableness in support of the proposed rule complying with part 2010.0700.

5. The affidavit of mailing the notice of intent to adopt a rule without a public hearing. The affidavits state that the mailing list maintained by the agency pursuant to Minnesota Statutes, sections 14.22 and 14.14, subdivision 1a is accurate, complete, and current and that the notice of intent to adopt the rule without a public hearing was mailed to all persons and groups whose names appear on the list.

6. A copy or photocopy of the notice of intent to adopt the rule without a public hearing as published in the State Register.

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7. Four copies of the rule as adopted. Any modification made to the proposed rule is reflected on the rule as adopted and is approved as to form by the revisor of statutes.

8. The findings of fact, conclusions, and order adopting the rule.

9. All written requests, submissions, or comments on the rule received by the agency except requests solely for copies of the rule or of the statement of need and reasonableness.

10. The declaration of the attorney in the attorney general's office who represents the agency.

11. There were no requests to be notified of submittal of the rule to the Attorney General.

If you have any questions on this submitted material, please call me at 297-1217.

STATE OF MINNESOTA

DEPARTMENT OF HUMAN SERVICES

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

STATEMENT OF NEED
AND REASONABLENESS

Minnesota Rules, parts 9510.1020 to 9510.1140 establish procedures for counties and providers to follow when seeking authorization for a special needs rate exception payment for a very dependent person with special needs. These rules apply to counties, ICFs/MR and day training and habilitation providers who serve persons with mental retardation or related conditions. The authority for the establishment of these procedures is in Minnesota Statutes, section 256B.501, subdivisions 8 and 10.

The state is making efforts to deinstitutionalize residents of regional treatment centers and provide them with necessary services in less restrictive (more habilitative) settings in the community. As deinstitutionalization efforts progress, ICF/MR and day training and habilitation service providers have to provide services for a growing number of persons whose severe or extraordinary needs may exceed the resources historically available to the provider. The purpose of the special needs rate exception rules is to reimburse providers for the costs of equipment, temporary staff intervention, consultation, or training services that are not included in the per diem rate of the ICF/MR or the day training and habilitation service provider. These rules establish standards for the review, approval, and denial of provider applications for special needs rate exception payments; submission of approved provider applications to the commissioner; and monitoring of the delivery of service to persons receiving special needs rate exception payments.

After Minnesota Statutes, section 256B.501 was passed, the Department of Human Services promulgated emergency rules for special needs rate exception under Minnesota Statutes, sections 14.29 to 14.36. The emergency rules became effective on October 26, 1984. The Department of Human Services began permanent rulemaking procedures in 1984. The Department invited the Rule 186 Advisory Task Force, which had guided the Department in the development of the emergency rules, to advise the Department on the permanent rules. The advisory committee was composed of service providers, representatives of professional associations, legal advocates, county representatives, and Department of Human Service representatives. The permanent rules became effective in October 1985.

Minnesota Statutes, section 252.46, subdivision 13, (1988) mandates the commissioner to review the procedures that counties must follow to seek authorization for a medical assistance rate exception for services for very dependent persons with special needs. The Department has reviewed the procedures with the Rule 186 Advisory Committee which was reactivated to consider the proposed amendments. (See Appendix A for a list of committee members). The committee supports all the proposed amendments. The Department has also received two letters in reply to the Notice of Solicitation published on 4-24-89. Both letters are in favor of the amendments.

The main amendments being proposed are: deletion of references to the efficiency incentives received under parts 9553.0010 to 9553.0080; extension of the emergency period and the services available during an emergency; and deletion of some of the supporting documents required under the present rule.

The proposed amended rules, designated as Minnesota Rules, parts 9510.1020 to 9510.1140, are hereby affirmatively presented by the Department as required by Minnesota Statutes, section 256B.501, subdivision 10, and in accordance with the provisions of the Minnesota Administrative Procedures Act, Minnesota Statutes, chapter 14, and the rules of the Office of Administrative Hearings.

Part 9510.1020. DEFINITIONS

Subp.16. **Training and habilitation services.** This amendment clarifies that when these rule parts refer to training and habilitation services they do not include training and habilitation services provided as a waivered service. It also refers to the rule parts where waivered services are defined. This amendment is necessary to clarify the meaning of an important term used throughout the rule. It is reasonable because it does not change the substance of the rule; it merely explains a concept already stated in the rule.

Part 9510.1040. APPLICATION TO BE COMPLETED BY PROVIDER

Subp.3, item B, subitem 3. **Information about provider.** This amendment removes the requirement that providers explain the use of money received from operating cost incentives (also referred to as "efficiency" incentives in Minnesota Rules, parts, 9553.0010 to 9553.0080) or allowances when they apply for special needs rate exception.

The Department has had difficulty verifying that the the provider used the operating cost incentives in the manner stated by the provider. Furthermore, experience has shown that it is difficult to administer the system of using operating cost incentives to reduce the special needs rate money for providers.

At present, the Department calculates the amount of a special needs rate after subtracting the amount which the provider is earning from an operating cost incentive for the remaining portion of the rate year. However, this system has not worked well. Providers can request special needs rate exceptions at any time during the year, but the Department calculates rates determining operating cost incentives only once a year. The result has been that the amount of operating cost incentive used to reduce a request for

special needs varies, not by whether it is being earned during the same period as the request for special needs, but because of the timing of the request. Furthermore, since providers not earning the operating cost incentive do not have their requests for special needs adjusted for this factor, providers lose their incentive to manage costs efficiently.

Therefore it is necessary and reasonable to remove the requirement of an explanation of the use of operating cost incentives or allowances received by the provider in order to ensure a fair administration of the special needs rate. The deletion is also reasonable because it simplifies the rule and thereby lessens the burden placed on providers.

Subp.4, item B. Supporting documentation. The present rule requires the ICF/MR provider to submit a facility profile and the day training and habilitation center to submit a description of the clients' conditions to the Department. The Health Department prepares a facility profile for each ICF/MR, which states the medical condition of the ICF/MR's clients and the different services provided by the ICF/MR. Similarly, day training and habilitation providers describe their clients' characteristics in the special needs rate exception application. The Department of Human Services required these documents to verify that the client had an extraordinary need and that the provider did not, at present, have the financial resources to meet this need.

The proposed amendment removes the requirement that providers submit a copy of the facility profile and a description of the clients' conditions to the Department. This is necessary and reasonable because experience has shown that the information is not specific enough to help the Department determine the need for a special needs rate exception. The information gives an overview of the ICF/MR or the day training and habilitation services, but is not detailed enough for the Department to determine if the client for whom a special needs rate exception is requested is different from the rest of the clients served by the provider. The requested documents also give no evidence of whether the provider needs additional resources exceeding the current per diem payment. Moreover, if the Department does need these documents in any particular case, the Department can obtain the facility profile from the Health Department and information about clients' conditions from the Department of Human Services' annual survey of day training and habilitation providers.

subp.4, item C (new item B). Supporting documentation. The requirements for submitting a cost report (ICF/MR) and a translation worksheet (DAC) are proposed to be deleted. Since the Department receives an ICF/MR cost report and adjusts it to set the facility's rate each year, another copy of the cost report is not needed. The rate determination letter reflects the adjustments for allowable costs.

The translation worksheet was used by the Department in 1983 to translate state rates for the day training and habilitation center to Medicaid rates, for which the day training centers were now eligible. The Medicaid rate setting system has now been established and instead of using the translation worksheet the Department examines the current budgets, actual expenditures and financial statements of each provider before approving next year's rates. (See Minnesota Statutes, sections 252.40 to 252.46). Therefore, it is

necessary and reasonable to delete the requirement of the translation worksheet, and to require providers to submit updated fiscal information when they apply for a special needs rate exception.

The proposed amendments require that the provider who is a day training and habilitation provider must submit the current budget, year-to-date expenses and a list of current assets. The amendments are necessary and reasonable because these documents provide information about the provider's current budget and expense. Thus, the Department can use current information to determine if there are any financial resources available to the provider which may be used to provide services requested with a special needs rate exception.This will not create an extra burden for the providers because they already prepare the information for rate setting purposes (See Minnesota Statutes, section 252.46, subd.10).

Part 9510.1050. COUNTY REVIEW OF PROVIDER'S APPLICATION.

Subpart 2, item C. Client eligibility. The proposed amendment is necessary and reasonable because it updates the citations in the rule. This rule applies to persons with mental retardation or related conditions. When the present rule was adopted "persons with mental retardation" was defined in part 9525.0015, subpart 21 of an emergency rule (also known as the case management rule), and "related conditions" were defined in the Code of Federal Regulations. Later on the state incorporated the federal definition of "related conditions" into its own rules (Minnesota Rules, parts 9525.0180 to 9525.0190). When the case management rule was made permanent the state joined both definitions and defined persons with mental retardation or related conditions in part 9525.0015, subpart 20. This amendment does not change the content of the rule; it merely replaces old citations with new ones.

Subp.3, item A. General provider eligibility. This amendment is necessary to inform providers that monetary resources available from operating cost incentives or allowances do not have to be applied toward the client's direct program services before a provider applies for a special needs rate exception. It is reasonable for the reasons already stated in the explanation to Minnesota Rules, part 9510.1040, subp.3, item B, subitem 3.

It is also necessary and reasonable to delete the reference to the amounts deposited in the funded depreciation account under the temporary rules. The temporary rule referred to in this provision is no longer in force, and funded depreciation amounts are not related to the authorization of funds under this rule. This deletion does not change the existing policy of the Department; it merely deletes unnecessary references.

Part 9510.1070. COUNTY'S APPLICATION TO THE COMMISSIONER.

Item B The proposed amendment is necessary because it clarifies that the county has to submit a copy of the client's <u>current</u> individual service plan (ISP) along with the application for the special needs rate exception payment. This is reasonable because the client is eligible for a special needs rate exception only if the client's current medical condition meets the criteria specified in part 9510.1050, subp.2. The commissioner can make an informed decision about the client's eligibility if the county submits the current ISP.

It is necessary and reasonable to amend this provision to clarify that the individual service plan does not "state the decision" to place or retain the client in a regional treatment center, but simply "explains the need" to do so. The individual service plan records the determination of the interdisciplinary team that the client will have to be placed or retained in a state hospital if the special needs rate exception payment is not approved. This amendment does not change the existing procedure, it only clarifies it.

It is also necessary to inform counties that the ISP must include the methods and measurable outcomes of the proposed intervention. The commissioner has to decide whether the provider's request for extra payment is justified. To make this determination, the commissioner needs information about the current condition of the client, the methods of intervention, and the outcomes which the provider hopes to achieve with the intervention. This amendment is reasonable because Minnesota Statutes, section 256B.501, subd.8 states that the commissioner shall not authorize excess payment "unless the need for the service is documented in the ISP of the person or persons to be served, the type and duration of the services needed are stated, and there is a basis for the established cost of services". The proposed amendment does not add to the documentation requirements; it merely emphasizes the need to document the method and measurable outcomes of the proposed intervention.

Item C. The proposed amendment removes the requirement that counties submit a copy of the client's individual program plans and most recent behavioral assessment. The Department required a copy of these documents so that the commissioner could examine the client's need for special services, the quality of services offered by the provider and the anticipated outcome by providing the special services. The behavioral assessment of the client and the methodology and measurable outcomes of the proposed intervention are all included in the ISP, which the county has to submit under item A of this part. Thus, the amendment is necessary and reasonable because it removes a duplication in the rules, simplifies the rule, and reduces the paper work.

Item E. This provision currently requires the county to submit a copy of the screening document to the commissioner. The Department proposes to delete that requirement. The screening document records the condition of the client when the client is demitted from a regional treatment center (also called a state hospital) to an ICF/MR and when the client is readmitted to a regional treatment center. The Department previously thought that this document would help the commissioner verify whether failure to provide the services proposed in the special needs rate exception application would lead to the client's retention in or admission to a regional treatment center.

It is necessary to inform counties that they no longer have to submit a copy of the client's screening document to the commissioner. This will reduce the documentation required from counties. The proposed amendment is reasonable because this document does not have the detailed information the Department needs to fully understand the client's medical condition and thereby determine whether the client's condition requires extra services to avoid institutionalization. The amendment is also reasonable because the screening document has no information about any individual provider's financial resources and, therefore, does not help the commissoner in verifying the need for a special needs rate exception.

Item F (new item E). It is necessary to inform counties that they will be required to submit a copy of the plan to monitor the implementation of the proposed staff intervention described in the special needs rate application according to the requirements of part 9510.1040. Counties will no longer be required to submit the plan to monitor the client's individual service plan (ISP).

The county's plan to monitor the proposed staff intervention contains specific information about how the county will monitor the additional services proposed to be provided if the special needs rate exception is authorized. Since the commissioner authorizes the special needs rate exception payment, it is important for the commissioner to know how the money will be spent and how the county will monitor the special services. It is therefore reasonable to require the county to submit a copy of the plan to monitor the implementation of the proposed staff intervention. The county plan to monitor the ISP includes information on monitoring services for which counties are not seeking additional funds. The commissioner does not require this information to make a determination about her authorization of the special needs rate exception payment.

This amendment is also necessary and reasonable because it is consistent with Minnesota Rules, part 9510.1130, subpart 2, item A which requires counties to submit to the commissioner a quarterly program and fiscal review of the effectiveness of the services along with documentation of the county's plans to reduce reliance on the special needs rate exception.

Item H (new item G). It is necessary to inform counties that they do not have to submit an additional document describing the proposed services and how the services will be coordinated and monitored by counties. This is reasonable because providers are required to describe the proposed services when they apply for the special needs rate exception under part 9510.1040, subpart 2. The commissioner receives this description when the county submits the provider's application to the commissioner under part 9510.1070. County plans to coordinate and monitor services are also required under item F (new item E) of this part. This amendment does not change existing requirements, but merely eliminates duplication.

Part 9510.1110. EMERGENCY PROCEDURE

Subp.2 Emergency approval. This subpart specifies the parameters within which the county may approve intervention without prior approval of the commissioner. It is necessary to allow counties to approve expenses for services necessary during emergencies so that the client receives the services without undue delay.

The present rule only authorizes counties to approve additional staff for emergencies. However, experience has shown that in emergencies, specialized consultation and staff training help to: (1) identify the intervention needed for the client; (2) reduce long-term intensive staff intervention; and (3) reduce the number of clients who have to be placed in regional treatment centers because of emergencies. Providers and case managers believe that the need for consultation and staff training is greater than the need for additional staff. It is therefore reasonable to allow counties to authorize consultation and staff training in emergencies because these services assist the client.

It is also necessary and reasonable to amend this provision to allow counties to approve costs for direct care staff (part 9510.1090, subp.2, item A) as well as consultation and staff training (part 9510.1090, subp.2, item B). The present rule only permits additional staff during emergencies and therefore only requires counties to approve the expense of staffing. Since the proposed amendment permits counties to approve consultation and staff training as well, it is reasonable to require counties to approve the cost of these services.

Subp.2, item A. Emergency approval. This amendment informs counties that they have to notify the commissioner of the emergency expenses authorized by the case manager. It is necessary to clarify who is responsible for providing information required by the commissioner. This amendment is reasonable because under Minnesota Statutes, section 256B.501, subd.1, the commissioner has the ultimate responsibility to authorize payment for a special needs rate exception. However, in emergency situations as defined in part 9510.1090, subpart 2, items A and B, waiting for the commissioner's prior approval would put the client at risk. Therefore, counties may authorize expenditures of medical assistance funds, but they must report this authorization to the commissioner immediately.

Subp.2, item B. Emergency approval. This amendment deletes the provision that counties must require the provider to submit the special needs rate exception application within ten working days. Part 9510.1040, subp.1 makes it mandatory for the provider to apply to the county for a special needs rate exception. If the county approves the provider's application, then the county applies to the commissioner, under part 9510.1070, for authorization of the special needs rate exception payment. In emergencies, the county has to submit the application to the commissioner within thirty days of notification of the emergency (See SNR for amended subp.C of this part).
The deletion is reasonable because so long as the county submits the application within thirty days the commissioner is not concerned about the time frame within which the county obtained the application from the provider. It is also reasonable because counties and providers work closely together during emergencies and counties can obtain the application within a reasonable time frame even if the time limit is not prescribed in the rule.

Subp.2, item C (New item B). Emergency approval. It is necessary to delete the current language to restructure this provision and to clarify existing procedures. The deletion is not a substantial change - the sentence has been restructured.

It is necessary to inform counties of the time available for submitting the special needs rate exception application to the commissioner. It is also necessary to clarify that this application must include a request for special needs rate exception payment during the emergency period as well as any additional period for which the client needs special services.

The present rule requires the county to notify the commissioner by phone, within one working day of the emergency (See item A of this subpart). The commissioner authorizes special needs rate exception payment only if the county applies within the two week emergency period. (See present rule part 9510.1110, subp.3). The county has to apply for emergency as well as

continued special needs rate exception payment within the emergency period. The proposed amendment regarding the application requirements is reasonable because it merely clarifies the current procedure.

The proposed amendment to subpart 3 of this part extends the emergency period from two weeks to thirty days (See SNR for subp.3). Since emergency costs can now be approved for thirty days, it is reasonable to require the county to submit the application for continued special needs rate exception within the thirty day period following the first day of the emergency.

Subp.3. Reimbursement for emergency services. It is necessary to inform counties and providers that the reimbursement for emergency services will now cover reimbursement for consultation services and staff training. This is reasonable for the reasons stated in the explanation to part 9510.1110, subp.2.

The Department and the advisory task force members agree that the two week emergency period under the present rule is too short to handle an emergency situation effectively. Providers have barely enough time to control the crisis and cannot deal with the underlying behavioral problem to prevent the recurrence of the emergency or the placement of the client at a regional treatment center. The extension of the emergency period to thirty days will give the provider enough time to assess the client and the emergency situation, to develop a plan to meet the long term needs of the client, to train the staff to implement the plan and to submit a rational application for continued special needs rate exception payment. Therefore, it is necessary and reasonable to amend the emergency period from two weeks to thirty days.

It is necessary and reasonable to delete the provision regarding the provider's application for special needs rate exception because of the reasons stated in the Statement of Need and Reasonableness for the amendment to part 9510.1110, subp.2, item B of the present rule (proposed to be deleted). It is also necessary to inform counties that they do not have to notify the commissioner if the provider fails to submit the application. This is reasonable because the first step in the process, where the provider submits and the county approves the application, is between the county and the provider. If the county wants the emergency payment to be authorized by the commissioner, then it is the county's duty to ensure that an application is submitted on time. If it is not submitted the commissioner does not have the information she needs to review the request and to authorize emergency payments.

It is necessary to clarify that the commissioner will authorize emergency payments only after the county has stated the actual costs of the intervention. Normally the special needs rate exception application consists of a description of proposed services and projected costs. The provider does not incur any cost until the commissioner has authorized payment. However, during emergencies, the commissioner authorizes payment <u>after</u> the provider has incurred the cost. It is therefore reasonable to require counties to state the actual cost of intervention during an emergency. This is also reasonable because under Minnesota Statutes, section 256B.501, subd.1, the commissioner has the ultimate responsibility to authorize payment for a special needs rate exception. Therefore any authorization by the county must

be reviewed by the commissioner before the commissioner pays from medical assistance funds. This amendment does not change existing policy, it merely clarifies it.

It is also necessary and reasonable to clarify that all amounts authorized by the commissioner are subject to per diem limitations regardless of the county's authorization. This amendment is consistent with the requirements of Minnesota Statutes, section 256B.501, subdivision 8, and with part 9510.1090, subpart 4 of this rule.

SMALL BUSINESS CONSIDERATIONS.

This rule is exempt from small business considerations in rulemaking under Minnesota Statutes, section 14.115, subdivision 7, paragraphs (a) and (b).

EXPERT WITNESSES.

If the rule should go to public hearing, the Department does not plan to solicit outside expert witnesses to testify on its behalf.

Date

Ann Wynia
Commissioner

STATE OF MINNESOTA
DEPARTMENT OF HUMAN SERVICES

In the Matter of the Proposed Adoption of Amendments to the Rule of the State Department of Human Services Governing 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 WITHOUT PUBLIC HEARING

(1) Notice of the Commissioner's intent to adopt the above-entitled rule was published in the State Register on November 20, 1989 and was sent by United States mail to all persons on the list maintained by the agency pursuant to Minnesota Statutes, sections 14.14, subdivision 1a and 14.22, on November 14, 1989. (2) The statement of need and reasonableness was prepared before the notice of intent to adopt a rule without a public hearing was mailed to all persons on the rulemaking mailing list and published in the State Register and was available to the public.

(4) All persons were given the opportunity to submit comment on the rule for 30 days after notice of proposed rulemaking. (5) No requests for a public hearing on the rule were received within the time period stated in the notice published in the State Register. Therefore the agency did not receive requests for a public hearing from 25 or more persons which were not withdrawn. (7) No requests for notice of submission to the attorney general were received by the agency.

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

1. Part 9510.1070, item B

Part 9510.1070 lists the documents that the county has to submit to the commissioner for approval of a special needs rate exception. Item B of this part specifies that the county must submit a copy of the client's current individual service plan which includes the methodology and measurable outcomes of the proposed intervention.

Anne Henry, Legal Advocacy, suggested that this provision be modified to clarify that the methodology and measurable outcomes of the proposed intervention are found in the individual habilitation plan, and not in the individual service plan.

The Department accepts this suggestion. Although the purpose and use of the individual habilitation plan and the individual service plan are currently under consideration, as at present the methodology and measurable outcomes of the proposed intervention are required under the individual habilitation plan. This clarification is necessary and reasonable because it is consistent with the related case management rule (part 9525.0105, subpart 4, items B and D) which states that the method of providing service and the measurable behavior criteria that will be used to determine whether the service resulted in the achievment of the client's short term objectives will be specified in the individual habilitation plan.

Furthermore, the modification is not substantial because it only clarifies the source of the information. The modification follows:

B. a copy of the client's current individual service plan which explains the need to place or retain the eligible client in a regional treatment center if the requested services cannot be provided and the sections of the individual habilitation plan which includes the methodology and measurable outcomes of the proposed intervention;

2. Provider Reimbursement

David Peterson, REM Inc., commented that the rule should include a provision to assure that providers receive reimbursement in a timely manner. He suggested adding rule language authorizing payment effective on the date of approval for exception, and beginning the first day of the month following such approval, or, no later than 90 days following that date.

The department does not accept this suggestion. It is neither necessary nor reasonable to add the suggested language because:

A. Part 9510.1090 states that if the special needs rate exception is approved, then the approval is effective as of the date the county submits a completed special needs rate exception application to the commissioner. This means that payment is effective even before the date of approval for special needs rate exception, which is the effective date requested above. The date the payment is received by the provider depends as much on the provider's billing practices (eg., whether providers bill weekly or quarterly, whether the claims are filed correctly, etc.) as on the agency's reimbursement system.

B. The department is already required by federal regulations to reimburse providers in a timely manner. The Code of Federal Regulations, title 42, section 447.45, requires the department to pay 90% of statewide clean claims (i.e., claims filed correctly) within 30 days, and 99% of clean claims within 90 days of receipt of the claim. All other claims have to be reimbursed within 12 months of the date of receipt.

Payments were somewhat delayed in 1989 because the department introduced changes in the method of authorization of payments, completion of special needs rate exception forms and the payment system. These changes increased provider errors in filling out the forms and also increased the time taken by the department to finalize the new payment program. Most of the systems problems have been solved and providers are now completing the authorization forms correctly. The department therefore, does not expect any more delays in provider reimbursement.

C. The addition of this provision would make the rule unduly complex and would increase the administrative procedures for both the department and the providers. A provision which sets time limits for reimbursement would necessarily have exceptions (e.g., the number of days within which providers can correct their claims, the time for requesting additional information, etc.) and would require the completing and processing of new forms. The rule would also have to specify additional time and procedures for reconsiderations and appeals. At present, providers have recourse to legal remedies for nonpayment of claims (42 C.F.R. section 447.45) and this system is working well for providers and the state.

D. The department cannot make special rules for payment of medical assistance funds to certain providers only. Minnesota Statutes, section 256B.04, subdivision 2, mandates the department to make uniform rules to ensure that the medical assistance system is administered uniformly throughout the state. If the department specifies that special needs rate exception payments have to be made within a certain time frame, then the department will have to make all medical assistance payments (for e.g., ICFs/MR) within the same time frame. This provision would place an undue burden on the department.

CONCLUSIONS

(6) I hereby conclude that:

1. All modifications made to the proposed rule are not substantial changes.

2. The rules, as modified, are necessary and reasonable.

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

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

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

8 The above-captioned rule, as modified, is needed and reasonable.

NOW, THEREFORE, IT IS ORDERED that the rule identified as Special Needs Rate Exceptions For Very Dependent Persons With Special Needs (as modified) is adopted this 28 day of February, 1990, pursuant to authority vested in me by Minnesota Statutes, section 256B.501, subdivisions 8 and 10.

9

ANN WYNIA
Commissioner

Department of Human Services

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

Rules as Proposed

9510.1020 DEFINITIONS.

[For text of subps 1 to 15, see M.R. 1989]

Subp. 16. **Training and habilitation services.** "Training and habilitation services" means health and social services provided under Minnesota Statutes, sections ~~252.21~~ 252.40 to ~~252.261 and 256B.501~~ 252.47. For purposes of parts 9510.1020 to 9510.1140, "training and habilitation services" ~~does~~ do not include training and habilitation services provided as a waivered ~~services~~ service as defined in Minnesota Statutes, section 256B.501, subdivision 1, and parts 9525.1800 to 9525.1930.

9510.1040 APPLICATION TO BE COMPLETED BY PROVIDER.

[For text of subps 1 and 2, see M.R. 1989]

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

[For text of item A, see M.R. 1989]

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 in-service provided to program personnel for the year immediately preceding the date of the provider's application to the county; and

~~(5)~~ (4) other available resources used.

Approved by Revisor KTH

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~~ its current budget, year-to-date expenses, and current assets.

~~D.~~ C. 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.~~ D. 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.~~ E. Documentation that any consultant services requested in the application are not services covered under parts 9500.0750 to 9500.1080.

Approved by Revisor _____

~~G.~~ F. 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.~~ G. A plan to decrease the client's reliance on the proposed staff intervention.

9510.1050 COUNTY REVIEW OF PROVIDER'S APPLICATION.

[For text of subpart 1, see M.R. 1989]

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:

[For text of items A and B, see M.R. 1989]

C. the client is a person with mental retardation or a related condition 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 20, and has at least one of the following characteristics:

[For text of subitems (1) to (3), see M.R. 1989]

[For text of item D, see M.R. 1989]

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~~.

[For text of items B and C, see M.R. 1989]

[For text of subps 4 and 5, see M.R. 1989]

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

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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:

[For text of item A, see M.R. 1989]

B. a copy of the client's ~~most-recent~~ current individual service plan which ~~states-the-decision~~ explains the need to place or retain the eligible client in a ~~state-hospital~~ regional treatment center if the requested services cannot be provided and includes the methodology and measurable outcomes of the proposed intervention;

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~~;

[For text of item D, see M.R. 1989]

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~~ proposed staff intervention described in the application submitted according to part 9510.1040;

~~G.~~ F. 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.~~ G. ~~a-description-of-the-proposed-services-to-be-provided-by-the-day-training-and-habilitation-service-and-the~~

Approved by Revisor _____

~~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.

9510.1110 EMERGENCY PROCEDURE.

[For text of subpart 1, see M.R. 1989]

Subp. 2. **Emergency approval.** In an emergency, the county may approve the addition of staff, consultation, or staff training 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 meeting the definitions under part 9510.1090, subpart 2, items A and B, 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, and expenditures authorized by the case manager; and

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~~ complete and submit, according to parts 9510.1020 to 9510.1140, an application for a special needs rate exception for the emergency period and for any additional period, within 30 days of the date the county notified the commissioner of the emergency.

Subp. 3. **Reimbursement for emergency services.** A special

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needs rate exception for the costs identified in part 9510.1090, subpart 2, item A or B, ~~for staff~~ approved in accordance with subpart 2 shall be reimbursable for a period not to exceed ~~two~~ ~~weeks~~ 30 days 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.~~ No payment shall be authorized by the commissioner for services provided during an emergency until an application is submitted to the commissioner by the county delineating actual costs of the intervention. The total amount authorized for payment by the commissioner is subject to the per diem limitations under part 9510.1090, subpart 4.

INSTRUCTION TO REVISOR

Subpart 1. **Cross references.** In each part of Minnesota Rules referred to in column A, the revisor of statutes shall delete the reference in column B and insert the reference in column C.

Column A	Column B	Column C
9510.1040, subpart 4, item D	9500.0750 to 9500.1080	9505.0170 to 9505.0475
9510.1050, subpart 4, item A	9500.0750 to 9500.1080	9505.0170 to 9505.0475
9510.1090, subpart 2	9500.0750 to 9500.1080	9505.0170 to 9505.0475
	12 MCAR S 2.05311 [Temporary] A	9553.0010 to 9553.0080
9510.1130, subpart 1	12 MCAR SS 2.05301 to 2.05315 [Temporary]	9553.0010 to 9553.0080
	9525.1200 to 9525.1330	Minnesota Statutes, section 252.46

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Subp. 2. **Change of terms.** The revisor of statutes is directed to change the words "state hospital" and "state hospitals" where they appear in Minnesota Rules, parts 9510.1020 to 9510.1140 to "regional treatment center" or "regional treatment centers."

The revisor of statutes is directed to remove the word "[Emergency]" wherever it appears in brackets in Minnesota Rules, parts 9510.1020 to 9510.1140.

Approved
by Revisor _____

Office of the Revisor of Statutes

Administrative Rules

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

AGENCY: Department of Human Services

MINNESOTA RULES: Chapter 9510

The attached rules are approved for publication in the State Register

Kathleen T. Harrington
Assistant Revisor

Subd. 5. [Repealed, 1987 c 403 art 5 s 22]

Subd. 6. [Repealed, 1987 c 403 art 5 s 22]

Subd. 7. [Repealed, 1987 c 403 art 5 s 22]

Subd. 8. **Payment for persons with special needs.** The commissioner shall establish by December 31, 1983, procedures to be followed by the 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 and 4, including rates established under section 252.46 when they apply to services provided to residents of intermediate care facilities for persons with mental retardation or related conditions, and procedures to be followed for rate limitation exemptions for intermediate care facilities for persons with mental retardation or related conditions. 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 or persons to be served, the type and duration of the services needed are stated, and there is a basis for estimated cost of the services.

The commissioner shall evaluate the services provided pursuant to this subdivision through program and fiscal audits.

Subd. 9. [Repealed, 1987 c 403 art 5 s 22]

Subd. 10. **Rules.** To implement this section, the commissioner shall promulgate emergency and permanent rules in accordance with chapter 14. To implement subdivision 3, the commissioner shall promulgate emergency rules and permanent rules in accordance with sections 14.01 to 14.38. Notwithstanding the provisions of section 14.35, the emergency rule promulgated to implement subdivision 3 shall be effective for up to 720 days.

History: *1983 c 312 art 9 s 7; 1984 c 640 s 32; 1984 c 654 art 5 s 25,58; 1985 c 21 s 57; 1986 c 420 s 13; 1987 c 403 art 5 s 17-19; 1988 c 689 art 2 s 169-180*

256B.502 EMERGENCY AND PERMANENT RULES; REPORT.

The commissioners of health and human services shall promulgate emergency and permanent rules necessary to implement Laws 1983, chapter 199, except as otherwise indicated in accordance with sections 14.01 to 14.38. Emergency rules promulgated by August 15, 1983 to implement the rate determination provisions of section 256B.431 are retroactive to and effective as of July 1, 1983. Notwithstanding the provisions of section 14.35, emergency rules promulgated to implement Laws 1983, chapter 199, shall be effective for up to 360 days after July 1, 1983, and may be continued in effect for two additional periods of 180 days each if the commissioner gives notice of continuation of each additional period by publishing notice in the State Register and mailing the same notice to all persons registered with the commissioner to receive notice of rulemaking proceedings in connection with Laws 1983, chapter 199. The emergency rules promulgated in accordance with this section shall not be effective 720 days after their effective date without following the procedures in sections 14.13 to 14.20. The commissioner shall report to the legislature by January 1, 1985, on likely groups and shall establish groups of nursing homes based on the mix of resident care needs, and on geographic area, by July 1, 1985.

History: *1983 c 199 s 16; 1984 c 640 s 32; 1984 c 654 art 5 s 58*

256B.503 RULES.

To implement Laws 1983, chapter 312, article 9, sections 1 to 7, the commissioner shall promulgate emergency and permanent rules in accordance with sections 14.01 to

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History: *1983 c 312 art 9*

256B.504 LEGISLATIVE C

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History: *1983 c 199 s 17*

256B.51 NURSING HOM

Subdivision 1. To det

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256B.501 8 and 10

subd 8 The Commissioner shall establish by Dec 31, 1983 procedures to be followed by the counties to seek authorization from the for medical assistance reimbursement

subd 10 To implement this section, the commissioner shall promulgate emergency and permanent rules in accordance with chapter 14.

252.46 subd 13

missing Anne Henry letter submitted
any others - call

Notice of Intent

Fiscal Note - indicates will not cost public entities more than $100,000 per year

look up but prepared fiscal note 3.982

3-8-90 Called Anu Sram told

3-12-90 her we did not get the

Rec letter from Anne Henry and any other comments

Anu said that was the only other comment and she would send it

Minnesota Rules: Amendments and Additions

NOTICE: How to Follow State Agency Rulemaking in the *State Register*

The ***State Register*** is the official source, and only complete listing, for all state agency rulemaking in its various stages. State agencies are required to publish notice of their rulemaking action in the ***State Register***. Published every Monday, the ***State Register*** makes it easy to follow and participate in the important rulemaking process. Approximately 75 state agencies have the authority to issue rules. Each agency is assigned specific ***Minnesota Rule*** chapter numbers. Every odd-numbered year the ***Minnesota Rules*** are published. This is a ten-volume bound collection of all adopted rules in effect at the time. Supplements are published to update this set of rules. Proposed and adopted emergency rules do not appear in this set because of their short-term nature, but are published in the ***State Register***.

If an agency seeks outside opinion before issuing new rules or rule amendments, it must publish a NOTICE OF INTENT TO SOLICIT OUTSIDE OPINION in the ***Official Notices*** section of the ***State Register***. When rules are first drafted, state agencies publish them as **Proposed Rules**, along with a notice of hearing, or notice of intent to adopt rules without a hearing in the case of noncontroversial rules. This notice asks for comment on the rules as proposed. Proposed emergency rules and withdrawn proposed rules are also published in the ***State Register***. After proposed rules have gone through the comment period, and have been rewritten into their final form, they again appear in the ***State Register*** as **Adopted Rules**. These final adopted rules are not printed in their entirety in the ***State Register,*** only the changes made since their publication as Proposed Rules. To see the full rule, as adopted and in effect, a person simply needs two issues of the ***State Register***, the issue the rule appeared in as proposed, and later as adopted. For a more detailed description of the rulemaking process, see the ***Minnesota Guidebook to State Agency Services.***

The ***State Register*** features partial and cumulative listings of rules in this section on the following schedule: issues 1-13 inclusive; issues 14-25 inclusive; issue 26, cumulative for issues 1-26; issues 27-38 inclusive; issue 39, cumulative for 1-39; issues 40-51 inclusive; and issue 52, cumulative for 1-52. An annual subject matter index for rules appears in August. For copies of the ***State Register***, a subscription, the annual index, the ***Minnesota Rules*** or the ***Minnesota Guidebook to State Agency Services***, contact the Print Communications Division, 117 University Avenue, St. Paul, MN 55155 (612) 297-3000 or toll-free in Minnesota 1-800-9747.

Issues 14-21 (Issues 1-13 in #13)

Rural Finance Authority

1650.0010-.0070 (adopted) 906
1651.0010-.0100 (adopted) 906

Animal Health Board

1715.0385; .0550 (proposed) 1159

Commerce Department

2660.0010-.0110 (proposed) 1123
2751.0100-.1200 (proposed) 942
2751.1300 (proposed amendments) 947

Dentistry Board

3100.0100; .1400; .2000; .3300; .3400; .3500; .4100; .6200; .7000; .8700 (adopted) 1214

Vocational Technical Education Board

3700.1100; .1400; .1410; .1415; .1420; 3709.0355; .0360 (proposed) 1214

Trade & Economic Development Department

4300.0100; .0200; .1100; .1101; .1200; .1400 (adopted) 1098
4300.0100 s. 16, 24 (repealed) 1098

Health Department

4620.1900-.2500 (proposed emergency) 1133
4630.1900; .2000; .2210 (proposed) ..... 1091 and 1176
4630.2000 (withdrawn) 1091
4670.0100; .0600; .0610; .1600; .1980; .2300 (adopted) 1008
4670.0620 (repealed) 1008
4670.1320; .4200; .4210; .4220; .4230; .4240 (proposed) 1037
4670.3400; .3410; .3420; .3430; .3440; .3450; .3460 (proposed repealer) 1037
4685.0100; .0805; .0815; .0900; .0905; .0910; .0915; .0925; .0930; .0935; .0940; .0950; .1910; .1940; .1950; .1980; .2100; .2250; .3000 (adopted) 901
4685.3300 s.1, 2, 4, and 5 (repealed) 901
4685.0100; .1100; .1105; .1110; .1115; .1120; .1125; .1130; .1700; .1900; .2100 (adopted) 903
4685.1800 (repealed) 903
4692.0010-.0045 (adopted) 1132
4705.1600 (adopted) 1067
4745.0010-.0060 (proposed) 1160

Higher Education Coordinating Board

4830.7000-.7900 (adopted emergency) 1138

Housing Finance Agency

4900.2000; .2500 (adopted) 1214

Labor & Industry Department

5210.0010 (adopted) 1177

Pollution Control Agency

7001.0520; 7045.0020; .0075; .0120; .0121; .0255; .0290; .0292; .0454; .0526; .0558; .0574; .0626 (proposed) 1203
7001.0650; 7045.0065; .0125; .0371 (adopted) 976
7005.5010; .5015; .5020; .5025; .5030; .5035; .5040; .5045; .5050; .5055; .5060; .5065; .5070; .5075; .5080; .5085; .5090; .5095; .5100; .5105 (adopted) 905
7046.0020 (proposed) 1210

Public Safety Department

7513.0100; .0200 (adopted) 1132
7520.0100; .0200; .0350; .0680 (adopted) 1008
7520.0650; .1000; .1100 (proposed) 1053
7520.0680 (repealed) 1008

Public Utilities Commission

7825.2390; .2400; .2500; .2600; .2700; .2800; .2810; .2830; .2900; .2910; .2920 (adopted) 977
7825.2400 s.6, 14; .2900 s.2, 3, 4; .3000 (repealed) 977

Minnesota Racing Commission

7869.0100; .7873.0110; .0120; .0140; .0150; .0190; .0191; .0300; 7876.0110; 7877.0120; .0170; .0175; .0185; 7878.0120; 7883.0130; .0140; .0150; 7890.0140; 7892.0120; 7895.0100; .0125; .0250; .0275; .0300; .0350; 7897.0150; .0160; .0170 (proposed) 1057

Unlicensed Mental Health Service Providers Board

9000.0050-.0190 (proposed) 1170

Veterans Department

9050.0010-.0900 (proposed) ..... 948 and 1096
9050.0010-.0900 (adopted emergency) 1178

Human Services Department

9500.1100 (proposed) 1005
9500.1272 (proposed) 892
9500.2060; .2100; .2140; .2340; .2380; .2420; .2440; .2500; .2580; .2640; .2680; .2700; .2740; .2800; .2820; .2880 (withdrawn) 1066
9500.2060 s.118 (proposed repealer withdrawn) 1066
9510.1020; .1040; .1050; .1070; .1110 (proposed) 1199
9575.0010; .0020; .0090; .0380; .0530; .0620; .0720 (adopted) 1008
9575.0350; .1500 (proposed) 1042
9575.0090 s.2, 3 (repealed) 1008

Proposed Rules

Pursuant to Minn. Stat. §§ 14.22, an agency may propose to adopt, amend, suspend or repeal rules without first holding a public hearing, as long as the agency determines that the rules will be noncontroversial in nature. The agency must first publish a notice of intent to adopt rules without a public hearing, together with the proposed rules, in the *State Register*. The notice must advise the public:

1. that they have 30 days in which to submit comment on the proposed rules;
2. that no public hearing will be held unless 25 or more persons make a written request for a hearing within the 30-day comment period;
3. of the manner in which persons shall request a hearing on the proposed rules; and
4. that the rule may be modified if the modifications are supported by the data and views submitted.

If, during the 30-day comment period, 25 or more persons submit to the agency a written request for a hearing of the proposed rules, the agency must proceed under the provisions of §§ 14.14-14.20, which state that if an agency decides to hold a public hearing, it must publish a notice of intent in the *State Register*.

Pursuant to Minn. Stat. §§ 14.29 and 14.30, agencies may propose emergency rules under certain circumstances. Proposed emergency rules are published in the *State Register* and, for at least 25 days thereafter, interested persons may submit data and views in writing to the proposing agency.

Department of Human Services

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

Notice of Intent to Adopt a Rule Without a Public Hearing

NOTICE IS HEREBY GIVEN that the State Department of Human Services intends to adopt the above-entitled rule without a public hearing following the procedures set forth in the Administrative Procedure Act for adopting rules without a public hearing in *Minnesota Statutes*, sections 14.22 to 14.28. The statutory authority to adopt the rule is *Minnesota Statutes*, section 256B.501, subdivisions 8 and 10, and section 252.46, subdivision 13.

All persons have 30 days or until 4:30 p.m. on Wednesday 12-20-89 in which to submit comment in support of or in opposition to the proposed rule or any part or subpart of the rule. 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 in writing. 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.

Comments or written requests for a public hearing must be submitted to:

Anu Seam
Rules Unit
Minnesota Department of Human Services
444 Lafayette Road
St. Paul, MN 55155-3816

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

The proposed rule may be modified if the modifications are supported by data and views submitted to the agency 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 and providers to follow when seeking authorization for special needs rate exception payments to providers giving services to very dependent persons with mental retardation or related conditions.

These provisions affect providers of day training and habilitation services, intermediate care facilities for persons with mental retardation (ICF/MR), persons receiving those services, and counties authorizing special needs rate exception payments for the services. Providers and counties are responsible for following the procedures set out in the rule.

The proposed amendments update citations to Minnesota rules, statutes, and federal regulations and simplify the requirements of the rule.

The proposed amendments specify that the Department will no longer consider the use of the efficiency incentive while administering special needs rate funds.

The amendments reduce the number of documents which the provider has to submit with the special needs rate exception application. The documents no longer required are: a copy of the most recent facility profile of an ICF/MR; a description of the physical, medical and behavioral characteristics of clients receiving day training and habilitation services; and a copy of the cost report and translation worksheets. Instead of the cost report and the translation worksheet, the amendments require the day training and habilitation service provider to submit the current budget, year-to-date expenses, and current assets.

The amendments also eliminate some documents which the county has to submit to the commissioner. Counties are no longer required to submit a copy of: the most recent individual program plans in the ICF/MR or day training and habilitation services; most recent behavioral assessments; a copy of the client's screening document; a copy of the county's plan to monitor the implementation of the individual service plan; and, a description of the proposed services to be provided by the ICFs/MR and day training and habilitation vendors. However, the amendments add a new requirement for counties to submit a copy of the county plan to coordinate and monitor the implementation of the proposed staff intervention.

The proposed amendments extend the emergency period for special needs from two weeks to thirty days, and allow counties to approve client consultation and staff training during emergency periods. The amendments also remove the requirement that counties must require the providers to submit an emergency application within ten working days. Counties have to submit the special needs rate exception application to the commissioner within thirty days of notifying the commissioner of the emergency. The amendments clarify that the commissioner shall pay for services only after receiving the special needs application and that the payments will be subject to per diem limitations in the rule.

A free copy of the rule is available upon request from Sylvia Strobel, Department of Human Services, Rules Division, 444 Lafayette Road, St. Paul, MN 55155-3816, telephone (612) 296-2854. A copy of the rule may also be viewed at any of the 87 county welfare or human services agencies in the State of Minnesota.

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, upon request, from Sylvia Strobel, Department of Human Services, Rules Division, 444 Lafayette Road, St. Paul, MN 55155-3816, telephone (612) 296-2854.

Adoption of these rules will not result in additional spending by local public bodies in excess of $100,000 per year for the first two years following adoption under the requirements of *Minnesota Statutes*, section 14.11. A fiscal note prepared according to the requirements of *Minnesota Statutes*, section 3.98, subdivision 2, estimating the fiscal impact of the rule is available from Sylvia Strobel, Department of Human Services, Rules Division, 444 Lafayette Road, St. Paul, MN 55155-3816, telephone (612) 296-2854.

If no hearing is required, upon adoption of the rule, the rule and the required supporting documents will be submitted 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 Anu Seam, Department of Human Services, Rules Division, 444 Lafayette Road, St. Paul, MN 55155-3816, telephone (612) 297-4997.

Ann Wynia
Commissioner

Rules as Proposed

9510.1020 DEFINITIONS.

[For text of subps 1 to 15, see M.R. 1989]

Subp. 16. **Training and habilitation services.** "Training and habilitation services" means health and social services provided under

Minnesota Statutes, sections ~~252.21~~ 252.40 to ~~252.261~~ ~~and~~ ~~256B.501~~ 252.47. For purposes of parts 9510.1020 to 9510.1140, "training and habilitation services" ~~does~~ do not include training and habilitation services provided as a waivered ~~services~~ service as defined in *Minnesota Statutes*, section 256B.501, subdivision 1, and parts 9525.1800 to 9525.1930.

9510.1040 APPLICATION TO BE COMPLETED BY PROVIDER.

[For text of subps 1 and 2, see M.R. 1989]

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

[For text of item A, see M.R. 1989]

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 in-service provided to program personnel for the year immediately preceding the date of the provider's application to the county; and

~~(5)~~ (4) 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~~ its current budget, year-to-date expenses, and current assets.

~~D.~~ C. 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.~~ D. 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.~~ E. Documentation that any consultant services requested in the application are not services covered under parts 9500.0750 to 9500.1080.

~~G.~~ F. 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.~~ G. A plan to decrease the client's reliance on the proposed staff intervention.

9510.1050 COUNTY REVIEW OF PROVIDER'S APPLICATION.

[For text of subpart 1, see M.R. 1989]

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:

[For text of items A and B, see M.R. 1989]

C. the client is a person with mental retardation or a related condition 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~~ 20, and has at least one of the following characteristics:

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.

[For text of subitems (1) to (3), see M.R. 1989]

[For text of item D, see M.R. 1989]

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~~.

[For text of items B and C, see M.R. 1989]

[For text of subps 4 and 5, see M.R. 1989]

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:

[For text of item A, see M.R. 1989]

B. a copy of the client's ~~most recent~~ current individual service plan which ~~states the decision~~ explains the need to place or retain the eligible client in a ~~state hospital~~ regional treatment center if the requested services cannot be provided and includes the methodology and measurable outcomes of the proposed intervention;

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~~;

[For text of item D, see M.R. 1989]

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~~ proposed staff intervention described in the application submitted according to part 9510.1040;

~~G.~~ F. 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.~~ G. ~~a description of the proposed services to be provided by the day training and habilitation service and the ICF/MR and how the services will be coordinated 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.

9510.1110 EMERGENCY PROCEDURE.

[For text of subpart 1, see M.R. 1989]

Subp. 2. **Emergency approval.** In an emergency, the county may approve the addition of staff, consultation, or staff training 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 meeting the definitions under part 9510.1090, subpart 2, items A and B, 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, and expenditures authorized by the case manager; and

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~~ complete and submit, according to parts 9510.1020 to 9510.1140, an application for a special needs rate exception for the emergency period and for any additional period, within 30 days of the date the county notified the commissioner of the emergency.

Subp. 3. **Reimbursement for emergency services.** A special needs rate exception for the costs identified in part 9510.1090, subpart 2, item A or B, ~~for staff~~ approved in accordance with subpart 2 shall be reimbursable for a period not to exceed ~~two weeks~~ 30 days 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.~~ No payment shall be authorized by the commissioner for services provided during an emergency until an application is submitted to the commissioner by the county delineating actual costs of the intervention. The total amount authorized for payment by the commissioner is subject to the per diem limitations under part 9510.1090, subpart 4.

INSTRUCTION TO REVISOR

Subpart 1. **Cross references.** In each part of Minnesota Rules referred to in column A, the revisor of statutes shall delete the reference in column B and insert the reference in column C.

Column A	Column B	Column C
9510.1040, subpart 4, item D	9500.0750 to 9500.1080	9505.0170 to 9505.0475
9510.1050, subpart 4, item A	9500.0750 to 9500.1080	9505.0170 to 9505.0475
9510.1090, subpart 2	9500.0750 to 9500.1080	9505.0170 to 9505.0475
	12 MCAR S 2.05311 [Temporary] A	9553.0010 to 9553.0080
9510.1130, subpart 1	12 MCAR SS 2.05301 to 2.05315 [Temporary]	9553.0010 to 9553.0080
	9525.1200 to 9525.1330	*Minnesota Statutes*, section 252.46

Subp. 2. **Change of terms.** The revisor of statutes is directed to change the words "state hospital" and "state hospitals" where they appear in Minnesota Rules, parts 9510.1020 to 9510.1140 to "regional treatment center" or "regional treatment centers."

The revisor of statutes is directed to remove the word "[Emergency]" wherever it appears in brackets in Minnesota Rules, parts 9510.1020 to 9510.1140.

Pollution Control Agency

Solid and Hazardous Waste Division

Proposed Permanent Rules Relating to Hazardous Waste

Notice of Intent to Adopt Rules Without a Public Hearing

NOTICE IS HEREBY GIVEN that the Minnesota Pollution Control Agency (MPCA) intends to adopt the above-entitled rule amendments (rules) without a public hearing following the procedures set forth in the Administrative Procedure Act as it governs adopting rules without a public hearing as set forth in *Minnesota Statutes* §§ 14.22 to 14.28 (1988). The MPCA's authority to adopt the rules is set forth in *Minnesota Statutes* § 116.07, subd. 4 (1988).

All persons have until 4:30 p.m. on December 20, 1989, to submit comments in support of or in opposition to the proposed rules. 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 proposed rules within the comment period. If 25 or more such requests are so received, a public hearing will be held, unless a sufficient number withdraw their requests in writing. Any persons requesting a public hearing shall state his or her name and address, and is encouraged to identify the portion of the proposed rules addressed, the reason for the request, and any changes proposed. If a public hearing is required, the MPCA will proceed pursuant to *Minnesota Statutes* §§ 14.131 to 14.20 (1988).

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.

Department of Human Services

In the Matter of the Proposed Adoption of the Rule of the State Department of Human Services Governing Special Needs Rate Exception For Very Dependent Persons With Special Needs, Minnesota Rules, parts 9510.1020 to 9510.1140

NOTICE OF INTENT TO ADOPT A RULE WITHOUT A PUBLIC HEARING

(1) Notice is hereby given that the State Department of Human Services intends to adopt the above-entitled rule without a public hearing following the procedures set forth in the Administrative Procedure Act for adopting rules without a public hearing in Minnesota Statutes, sections 14.22 to 14.28. The statutory authority to adopt the rule is Minnesota Statutes, section 256B.501, subdivisions 8 and 10, and section 252.46, subdivision 13.

(2) All persons have 30 days or until 4:30 p.m. on Wednesday 12-20-89 in which to submit comment in support of or in opposition to the proposed rule or any part or subpart of the rule. Comment is encouraged.(3) 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.(4) 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 in writing.(6) 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.(7) If a public hearing is required, the agency will proceed pursuant to Minnesota Statutes, sections 14.131 to 14.20.

(5) Comments or written requests for a public hearing must be submitted to:

Anu Seam
Rules Unit
Minnesota Department of Human Services
444 Lafayette Road
St.Paul, MN 55155-3816

(8) The proposed rule may be modified if the modifications are supported by data and views submitted to the agency 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 and providers to follow when seeking authorization for special needs rate exception payments to providers giving services to very dependent persons with mental retardation or related conditions.

These provisions affect providers of day training and habilitation services, intermediate care facilities for persons with mental retardation (ICF/MR), persons receiving those services, and counties authorizing special needs rate exception payments for the services. Providers and counties are responsible for following the procedures set out in the rule.

The proposed amendments update citations to Minnesota rules, statutes, and federal regulations and simplify the requirements of the rule.

The proposed amendments specify that the Department will no longer consider the use of the efficiency incentive while administering special needs rate funds.

The amendments reduce the number of documents which the provider has to submit with the special needs rate exception application. The documents no longer required are: a copy of the most recent facility profile of an ICF/MR; a description of the physical, medical and behavioral characteristics of clients receiving day training and habilitation services; and a copy of the cost report and translation worksheets. Instead of the cost report and the translation worksheet, the amendments require the day training and habilitation service provider to submit the current budget, year-to-date expenses, and current assets.

The amendments also eliminate some documents which the county has to submit to the commissioner. Counties are no longer required to submit a copy of: the most recent individual program plans in the ICF/MR or day training and habilitation services; most recent behavioral assessments; a copy of the client's screening document; a copy of the county's plan to monitor the implementation of the individual service plan; and, a description of the proposed services to be provided by the ICFs/MR and day training and habilitation vendors. However, the amendments add a new requirement for counties to submit a copy of the county plan to coordinate and monitor the implementation of the proposed staff intervention.

The proposed amendments extend the emergency period for special needs from two weeks to thirty days, and allow counties to approve client consultation and staff training during emergency periods. The amendments also remove the requirement that counties must require the providers to submit an emergency application within ten working days. Counties have to submit the special needs rate exception application to the commissioner within thirty days of notifying the commissioner of the emergency. The amendments clarify that the commissioner shall pay for services only after receiving the special needs application and that the payments will be subject to per diem limitations in the rule.

(11) A free copy of the rule is available upon request from Sylvia Strobel, Department of Human Services, Rules Division, 444 Lafayette Road, St. Paul, MN 55155-3816, telephone (612) 296-2854. A copy of the rule may also be viewed at any of the 87 county welfare or human services agencies in the State of Minnesota.

(12) 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, upon request, from Sylvia Strobel, Department of Human Services, Rules Division, 444 Lafayette Road, St. Paul, MN 55155-3816, telephone (612) 296-2854.

(13) Adoption of these rules will not result in additional spending by local public bodies in excess of $100,000 per year for the first two years following adoption under the requirements of Minnesota Statutes, section 14.11. A fiscal note prepared according to the requirements of Minnesota Statutes, section 3.98, subdivision 2, estimating the fiscal impact of the rule is available from Sylvia Strobel, Department of Human Services, Rules Division, 444 Lafayette Road, St. Paul, MN 55155-3816, telephone (612) 296-2854.

(9) If no hearing is required, upon adoption of the rule, the rule and the required supporting documents will be submitted 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 Anu Seam, Department of Human Services, Rules Division, 444 Lafayette Road, St. Paul, MN 55155-3816, telephone (612) 297-4997.

Date:

ANN WYNIA
Commissioner

The Department of Commerce requests information and comments concerning the subject matter of these rules. Interested or affected persons or groups may submit statements of information or comment orally or in writing to:

Department of Commerce
500 Metro Square Building
St. Paul, MN 55101
(612) 296-2284

Oral statements will be received during regular business hours over the telephone at 296-2284.

All statements of information and comment shall be accepted until May 31, 1989. Any written material received by the Department of Commerce shall become part of the record in the event that the rules are promulgated.

Michael A. Hatch
Commissioner of Commerce

Department of Human Services

Long Term Care

Notice of Solicitation of Outside Information or Opinions Regarding Proposed Rules Governing Special Needs Rates Exception For Very Dependent Persons With Special Needs, *Minnesota Rules*, parts 9510.1020 to 9510.1140

NOTICE IS HEREBY GIVEN that the State Department of Human Services is seeking information or opinions from sources outside the agency in preparing to propose amendments of the rule governing special needs rate exception for very dependent persons with special needs. The adoption of the rule is authorized by *Minnesota Statutes*, section 256B.501, subdivisions 8 and 10, and section 252.46, subdivision 13, which permit the agency to promulgate rules to establish procedures to be followed by counties to seek authorization of medical assistance reimbursement for very dependent persons with special needs.

The proposed amendments eliminate the need for certain documentation that the providers and counties are currently required to provide with the special needs rate exception application. Documents which will no longer be needed include: explanation of the use of cost incentives; facility profile; description of client's condition; client's individual program plan; client's behavioral assessments; and the client's screening document. The proposed amendments also clarify that the Department will require documentation including: the client's current individual service plan; county plan to monitor the implementation of the proposed intervention plan; the current budget; and written financial statements.

The Department also proposes to amend the emergency procedures in the rule. Amendments include: county approval of expenses for providing consultation and staff training; notification of expenses to the commissioner; extension of the emergency period from two weeks to thirty days; and clarification of per diem limitations on all amounts authorized by the commissioner.

The State Department of Human Services requests information and opinions concerning the subject matter of the rule. Interested persons or groups may submit data or views on the subject matter of concern in writing or orally. Written statements should be addressed to:

Anu Seam
Rules Unit
Minnesota Department of Human Services
444 Lafayette Road
St. Paul, MN 55155-3816.

Oral statements will be received during regular business hours over the telephone at (612) 297-4997 by Anu Seam and in person at the above address.

All statements of information and opinions shall be accepted until further notice is published in the *State Register* or the Notice of Hearing or Notice of Intent to Adopt Rules Without a Hearing is published in the *State Register*. Any written material received by the State Department of Human Services shall become part of the rulemaking record to be submitted to the attorney general or administrative law judge in the event that the rule is adopted.

Dated: 13 April 1989

REM CONSULTING & SERVICES, INC.
6921 York Avenue South Edina, Minnesota 55435
612/925-5067

May 25, 1989

Anu Seam
Rules Unit
Minnesota Department of Human Services
444 Lafayette Road
St. Paul, MN 55155-3816

Dear Ms. Seam:

I am writing in regard to requests for comments on the proposal to change Minnesota Rules part 9510.1020 to 9510.1140 otherwise known as Rule 186 or Special Needs Funds. I am pleased to agree with all of the proposed changes as listed in the notice of solicitation in the State Register dated Monday, April 24, 1989. I was especially pleased to see that the county will be authorized to allow one month of special services including psychological or other consultative services as well as staff training. It has been my experience that this is one of the major need areas across the State of Minnesota with the various service agencies. I have one concern remaining and that is in regard to the reimbursement of travel expenses for consultants. I am often requested to travel outstate to consult for clients who have special needs funding. However, the division that authorizes funds has refused to pay for travel time and expenses. This greatly prohibits the access of consultative services in greater Minnesota. I would request that the Minnesota Rules that are currently being considered for amendment incorporate in them a means of funding for the travel expenses that are reasonable. I am also concerned that the use of special needs funding provides only a stop gap for solving behavioral problems. I believe in the long run it would be more worthwhile to assist services in increasing their per diem sufficiently on a permanent basis to allow for ongoing consultative and training needs that will be needed in order to adequately serve the difficult persons in the system today. Thank you for this opportunity to comment. If you have any questions or concerns I would be pleased to answer your questions.

Sincerely,

Paul J. Thinesen, MA
Licensed Psychologist

PJT:tc

cc: Douglas Miller, Administrator

STATE OF MINNESOTA
DEPARTMENT OF HUMAN SERVICES
Human Services Building
444 Lafayette Road
St. Paul, Minnesota 55155-38__

May 31, 1989

Mr. Paul J. Thinesen
Psychologist
REM Consulting & Services, Inc.,
6921 York Avenue South
Edina, MN 55435

RE: Special Needs Rates Exception

Dear Mr. Thinesen:

This is to acknowledge receipt of your comments on the special needs rate exception rule (Rule 186) dated May 25, 1989.

The Department is actively considering all comments on this rule, and appreciates the time taken by you to share your opinion on the proposed amendments to the special needs rate exception rule.

The amendment process is expected to be completed in fall this year. Please feel free to provide additional comments as the process continues.

Sincerely,

Anu Seam
Rulemaker
297-4997

Celebrate MINNESOTA 1990
AN EQUAL OPPORTUNITY EMPLOYER

STATE OF MINNESOTA

DEPARTMENT OF HUMAN SERVICES

In the Matter of the Proposed Adoption of the Rule of the State Department of Human Services Governing Special Needs Rate Exception for Very Dependent Persons with Special Needs, Minnesota Rules, parts 9510.1020 to 9510.1140

AFFIDAVIT OF MAILING THE NOTICE OF INTENT TO ADOPT A RULE WITHOUT A PUBLIC HEARING AND CERTIFICATE OF MAILING LIST

STATE OF MINNESOTA)
) ss.
COUNTY OF RAMSEY)

Joyce Pederson, being sworn says:

I hereby certify that the list of persons and associations who have requested, pursuant to Minnesota Statutes, sections 14.14, subdivision 1a and 14.22 or 14.30, that their names be placed on the State Department of Human Services rulemaking mailing list which is accurate, complete, and current as of this 14th day of November, 1989.

That on the 14th day of November, 1989, at the City of St. Paul, County of Ramsey, State of Minnesota, I mailed the attached Notice of Intent to Adopt a Rule without a Public Hearing by depositing in the State of Minnesota Central Mail System for United States mailing, a copy thereof, with postage prepaid, to all persons and associations on the aforementioned mailing list.

Joyce Pederson

Subscribed and sworn to before me this 15th day of November, 1989.

Heather E. Nugent



Department of Human Services

In the Matter of the Proposed Adoption of the Rule of the State Department of Human Services Governing Special Needs Rate Exception For Very Dependent Persons With Special Needs, Minnesota Rules, parts 9510.1020 to 9510.1140

NOTICE OF INTENT TO ADOPT A RULE WITHOUT A PUBLIC HEARING

Notice is hereby given that the State Department of Human Services intends to adopt the above-entitled rule without a public hearing following the procedures set forth in the Administrative Procedure Act for adopting rules without a public hearing in Minnesota Statutes, sections 14.22 to 14.28. The statutory authority to adopt the rule is Minnesota Statutes, section 256B.501, subdivisions 8 and 10, and section 252.46, subdivision 13.

All persons have 30 days or until 4:30 p.m. on Wednesday 12-20-89 in which to submit comment in support of or in opposition to the proposed rule or any part or subpart of the rule. 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 in writing. 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.

Comments or written requests for a public hearing must be submitted to:

Anu Seam
Rules Unit
Minnesota Department of Human Services
444 Lafayette Road
St.Paul, MN 55155-3816

The proposed rule may be modified if the modifications are supported by data and views submitted to the agency 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 and providers to follow when seeking authorization for special needs rate exception payments to providers giving services to very dependent persons with mental retardation or related conditions.

These provisions affect providers of day training and habilitation services, intermediate care facilities for persons with mental retardation (ICF/MR), persons receiving those services, and counties authorizing special needs rate exception payments for the services. Providers and counties are responsible for following the procedures set out in the rule.

The proposed amendments update citations to Minnesota rules, statutes, and federal regulations and simplify the requirements of the rule.

The proposed amendments specify that the Department will no longer consider the use of the efficiency incentive while administering special needs rate funds.

The amendments reduce the number of documents which the provider has to submit with the special needs rate exception application. The documents no longer required are: a copy of the most recent facility profile of an ICF/MR; a description of the physical, medical and behavioral characteristics of clients receiving day training and habilitation services; and a copy of the cost report and translation worksheets. Instead of the cost report and the translation worksheet, the amendments require the day training and habilitation service provider to submit the current budget, year-to-date expenses, and current assets.

The amendments also eliminate some documents which the county has to submit to the commissioner. Counties are no longer required to submit a copy of: the most recent individual program plans in the ICF/MR or day training and habilitation services; most recent behavioral assessments; a copy of the client's screening document; a copy of the county's plan to monitor the implementation of the individual service plan; and, a description of the proposed services to be provided by the ICFs/MR and day training and habilitation vendors. However, the amendments add a new requirement for counties to submit a copy of the county plan to coordinate and monitor the implementation of the proposed staff intervention.

The proposed amendments extend the emergency period for special needs from two weeks to thirty days, and allow counties to approve client consultation and staff training during emergency periods. The amendments also remove the requirement that counties must require the providers to submit an emergency application within ten working days. Counties have to submit the special needs rate exception application to the commissioner within thirty days of notifying the commissioner of the emergency. The amendments clarify that the commissioner shall pay for services only after receiving the special needs application and that the payments will be subject to per diem limitations in the rule.

A free copy of the rule is available upon request from Sylvia Strobel, Department of Human Services, Rules Division, 444 Lafayette Road, St. Paul, MN 55155-3816, telephone (612) 296-2854. A copy of the rule may also be viewed at any of the 87 county welfare or human services agencies in the State of Minnesota.

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, upon request, from Sylvia Strobel, Department of Human Services, Rules Division, 444 Lafayette Road, St. Paul, MN 55155-3816, telephone (612) 296-2854.

Adoption of these rules will not result in additional spending by local public bodies in excess of $100,000 per year for the first two years following adoption under the requirements of Minnesota Statutes, section 14.11. A fiscal note prepared according to the requirements of Minnesota Statutes, section 3.98, subdivision 2, estimating the fiscal impact of the rule is available from Sylvia Strobel, Department of Human Services, Rules Division, 444 Lafayette Road, St. Paul, MN 55155-3816, telephone (612) 296-2854.

If no hearing is required, upon adoption of the rule, the rule and the required supporting documents will be submitted 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 Anu Seam, Department of Human Services, Rules Division, 444 Lafayette Road, St. Paul, MN 55155-3816, telephone (612) 297-4997.

Date:

ANN WYNIA
Commissioner

In the Matter of the Adoption
of the Rule of the State Department
of Human Services Governing Special
Needs Rate Exception for Very Dependent
Persons with Special Needs, Minnesota Rules,
parts 9510.1020 to 9510.1140.

DECLARATION OF
COUNSEL

I, Beverly Jones Heydinger, Assistant Attorney General, do hereby declare that I have examined the above-captioned rule, and the supporting rulemaking record, and that, based on my examination, the Administrative Procedure Act and Minnesota Rules, chapter 2010 have been followed. Any exceptions are listed below. For Attorney General billing purposes, the four-digit docket client code is 0882.

Beverly Jones Heydinger
Assistant Attorney General

Dated: 2/1/90