

STATE OF MINNESOTA

DEPARTMENT OF HUMAN SERVICES

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

STATEMENT OF NEED  
AND REASONABLENESS

I. INTRODUCTION

A. Purpose

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

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

B. Legislative Background

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

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

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

### C. Rulemaking History

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

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

## II. SNR FOR SPECIFIC RULE PROVISIONS

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

### 9510.1020 - DEFINITIONS

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

#### 9510.1030. Applicability and Purpose.

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

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



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

9510.1040 Application to be completed by provider.

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

#### 9510.1050. County Review of Providers' Application

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

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



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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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



9510.1060 County Approval Process

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

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

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

9510.1070 County's Application to Commissioner.

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

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

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

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

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

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

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

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

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

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

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

#### 9510.1080. Commissioner's Determination.

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



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

9510.1090. Establishing Special Needs Rate Exception Payment.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

9510.1110. Emergency Procedure.

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

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

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

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



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

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

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

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

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

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

9510.1120. Duration of Special Needs Rate Exception.

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

#### 9510.1130 Records, Reports, Audits and Repayment.

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

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

Subpart 2. Reports. This subpart is needed because Minnesota Statutes, section 256B.501, subdivision 8 requires the commissioner to evaluate the effectiveness of services provided as a result of a special needs rate exception. This section also states that special needs rate exceptions are to be used to provide outcome oriented services in accordance with the clients individual service plan. Items A and B require reports from counties which are a reasonable method of determining program effectiveness and use of revenues.

Item A. This item describes the contents of the quarterly reports necessary for the provider, county and commissioner to use to ascertain the effectiveness of the special needs rate exception the need to continue the special needs rate exception changes implemented in the delivery of service, and provider and county strategies to integrate the client into the program. Services provided as a result of a special needs rate exception become part of an individual's program plan and subject to all the requirements under Minnesota Rules, parts 9525.0015 and to 9525.0145 and 9525.1200 to 9525.1330. Because these rules require quarterly updates of individual program plans it is necessary to require this frequency of updates under this item as well. It is reasonable to require the review within 30 days of the end of each quarter because it allows counties some flexibility in meeting the requirement while clearly stating that the reviews must be submitted. It is also reasonable that a different schedule of reviews be established when that is necessary to more effectively administer and monitor service delivery to a particular client. This flexibility recognizes the fact that a special needs rate exception may be established for a very short period of time or that the success of the client specific services requires more frequent reviews by the county and commissioner. Subitems 1 through 4 state the issues to be addressed by counties in their quarterly reviews to the commissioner. It is necessary to state this criteria so that counties know what is expected in each report. It is reasonable to include these subitems as they provide the information counties and the commissioner must use to determine whether the expenditure of public funds in excess of established medical assistance rates is warranted.

Item B. This provision with subitems 1 through 4 describes the information in the final report necessary for the provider, county and commissioner to use to ascertain the effectiveness of the special needs rate exception, the need for its continuation, the actual costs of the

services provided and the actual amount billed to medical assistance for the services provided. This information is necessary to effectively administer, evaluate and monitor compliance with these rules as required under Minnesota Statutes, section 256B.501, subdivisions 8 and 10. It is reasonable to require submission of this report within 90 days of termination of a special needs rate exception because this extended length of time is more likely to result in the county submission of accurate up-to-date financial data due to the fact that payment for services provided under these parts can be received only after the expense is incurred and billed to medical assistance.

Subpart 3. Audits. This provision is necessary because the commissioner is directed by Minnesota Statutes, section 256B.501 to evaluate this program and use program and fiscal audits as a basis for this evaluation (1985 language change). Moreover, Minnesota Rules, parts 9505.1750 to 9505.2150 establish procedures used by the Surveillance and Utilization Review section of the Department of Human Services for the identification and investigation of suspected fraud or abuse with regard to services provided under the medical assistance program. These procedures include audit availability requirements. Therefore, it is reasonable to include this provision to ensure that providers have knowledge of and comply with Minnesota Rules, parts 9510.1020 to 9510.1140.

Subpart 4. Repayment. This provision is necessary to assure provider and county compliance with Minnesota Rules, parts 9505.1750 to 9505.2150 and it is reasonable for the commissioner to require that overpayments to the provider be paid back to the medical assistance program so that all public funds under this program are spent for client-specific services as required by Federal Regulations, and Minnesota Rules parts 9500.0750 to 9500.1080 governing medical assistance eligibility (new parts 9505.0010 to 9505.0480). When an application is reviewed and approved by the commissioner, the commissioner authorizes payment up to the amount stated in the application, which is the expected cost of the requested services and equipment. It is therefore also reasonable that retroactive payments in excess of the approved amount would not be allowable. This provision promotes planning of service delivery and the efficient, purposeful use of public dollars.

9510.1140 Appeals.

Subpart 1. By provider. This subpart is needed because it is necessary for the commissioner to delineate the procedures under which the provider can appeal the determination of the county if the provider disagrees with the county's recommendation to the commissioner. This procedure will ensure due process for the provider if the provider believes that an untimely or unfair determination was made by the county. The commissioner will hear the appeal if the appeal is based upon the criteria outlined in this subpart and submitted in writing to the commissioner within the specified timeline. It is reasonable that this procedure be clearly stated to inform the provider of its rights under the appeal process. It is also reasonable that the commissioner notify the provider of its decision, in writing, and, state the reasons for the decision and the evidence relied upon in order for the provider to be aware of the information on which the commissioner's decision was made. The 30-day period which the commissioner has to formulate a decision and notify the affected parties was determined by advisory task force



members to be adequate and not result in undue hardship to affected parties. It is necessary to suspend payment until an amount is authorized by the county and commissioner as required by Minnesota Statutes, section 256B.501.

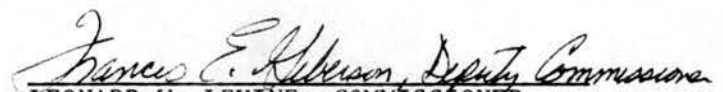
Subpart 2. By county. This subpart is needed because without it the county would essentially have no recourse if it disagreed with the commissioner's decision. It is reasonable to include this provision because it provides the county with due process and ensures the county's right to an appeal if it disagrees with the commissioner's decision. This provision thereby provides the county with the procedures to present its case to the commissioner. A ten day time period in which to file an appeal was determined to be adequate by advisory task force members in order to assure a speedy reconsideration of the application. It is reasonable for the county to expect a written decision from the commissioner because it is a proper form of communication during such a process. Also 30 days was perceived by the task force members and the department to be a relatively short period of time, and also adequate in this situation. It is also reasonable for the commissioner's decision on the appeal to be final because it is based on a review of all the evidence. By bringing the appeal process to a close, needless expenditure of time and public funds can be avoided in a matter where the commissioner has the authority to make the final decision according to Minnesota Statutes, section 256B.501. It is also reasonable that if the provider continues or begins services during this period and before the commissioner has given the required prior approval, no special needs rate exception payments will be made because prior approval is required for the medical assistance reimbursable services described in these rules.

#### Outside Expert Witnesses

The Department of Human Services will not be using outside expert witnesses to testify in support of parts 9510.1020 to 9510.1140.

#### Conclusion

The foregoing statements and information demonstrate the need for and reasonableness of proposed parts 9510.1020 to 9510.1140. To a great extent, the need for and reasonableness of the rules are prescribed expressly by state statute, and rules and the inherent responsibility of the Minnesota Department of Human Services to exercise prudent management of public funds.

  
LEONARD W. LEVINE, COMMISSIONER  
MINNESOTA DEPARTMENT OF HUMAN SERVICES

Dated: June 18, 1985