

1/2/90

STATE OF MINNESOTA
DEPARTMENT OF HUMAN SERVICES

In the Matter of Proposed Rules
of the Department of Human Services
Governing Community Alternatives for
Disabled Individuals (CADI) Under
Age 65, Parts 9505.3010 to 9505.3140

STATEMENT OF NEED
AND REASONABLENESS

Introduction

The proposed permanent rules, parts 9505.3010 to 9505.3140 establish procedures that govern the determination of eligibility for and the scope and nature of home and community-based services to disabled persons under age 65 who (1) apply for admission to or (2) reside in a nursing home and request a determination of eligibility for home and community-based services. The proposed rule permits local agencies to offer eligible persons the choice of home and community-based services to enable them to remain in or return to their homes. Persons eligible for this choice are persons eligible for medical assistance or medical assistance recipients who, without home and community-based services, would either have to enter or continue to live in a nursing home.

The authority for these rules is derived from Minnesota Statutes, sections 256B.04, 256B.091, subdivision 9, and section 256B.49, subdivision 2.

Parts 9505.3010 to 9505.3140 establish the procedures that counties must use to: 1) instruct preadmission screening teams concerning community alternatives for disabled individuals; 2) screen nursing home applicants and residents under age 65 who request screening; 3) develop individual care plans under which services will be provided to enable persons to remain in or return to the community; 4) select providers for home and community-based services; 5) set standards for home and community-based service providers; 6) authorize services for reimbursement; 7) bill the Department for reimbursement of eligible services; and 8) establish limits on payment rates for services and screenings.

History of the Community Alternatives for Disabled Individuals Program

The state of Minnesota became concerned about the rising costs of the Medical Assistance Program in the late 1970s. In 1976, the Minnesota Department of Administration (DOA) studied Minnesota's long-term care system and published Medicaid Cost Containment and Long-Term Care in Minnesota. The report found that:

The growth of the elderly population combined with an increasing life expectancy indicates that the need for and use of long-term care services in Minnesota will continue for some time into the future. Control of costs will not be possible through reducing their [long-term care services] need and use. The issue then is not how to reduce the use of long-term care services but how to ensure that institutional care is reserved for those who really need it and that those who need a lower level of care have options other than institutionalization.

The DOA report was followed by two reports by the Minnesota Department of Public Welfare (now the Department of Human Services): The Containment of Medical Assistance in 1977 and Cost Containment Report: Home Care in 1978.

All three reports documented the increasing use and cost of nursing home care and recommended that alternatives to nursing home care be tried. The Cost Containment Report: Home Care specifically recommended the development of a preadmission screening (PAS) program for Minnesota. The intended goals of the program were to reduce the costs of long-term care in Minnesota, to reduce inappropriate nursing home and boarding care home placement, and to provide alternative care in the community.

Since 1980, Minnesota has moved decisively in the direction of providing long-term care services in the community as an alternative to nursing home care. The shift to home and community-based services began with the Legislature's authorization in 1980 of a pilot preadmission screening project. This project applied only to persons over age 65. Subsequently, preadmission screening of persons over age 65 was fully implemented under Minnesota Statutes, section 256B.091 to assess the needs of and identify home and community-based service alternatives for applicants seeking admission to a licensed nursing home or boarding care home participating in the Medical Assistance program. A preadmission screening team assessed the applicant's health and social needs and informed the applicant of available alternatives to nursing home care. The commissioner provided grants to counties to pay the costs of providing alternative care to applicants 65 years of age or older and seeking admission to a nursing home or boarding care home and to residents of nursing homes or boarding care homes who were 65 years of age or older and requested a screening. The program depended on a combination of state and local funds and thus was available to medical assistance recipients whose medical assistance services were limited to those specified in the State Medicaid Plan and to persons who would be eligible for medical assistance within 180 days after admission to a nursing home. As required by subdivision 8 of Minnesota Statutes, section 256B.091, the commissioner applied to the Health Care Financing Administration (HCFA) of the United States Department of Health and Human Services for a waiver that would authorize medical assistance reimbursement for certain home and community-based services that were not included in the State Medicaid Plan approved by HCFA but would assist applicants and residents age 65 or older to remain in the community. HCFA approved the waiver and federal funds, as well as state and local funds, became available to pay for the costs of alternative care for persons age 65 or older.

However, individuals under age 65 who were medical assistance recipients had no alternative to nursing or boarding care home placement if these individuals required a level of service provided in a nursing home or boarding care home. Before the approval of the CADI waiver, the only services available to nursing home applicants under age 65 were those services in the approved Medicaid State Plan (home health aide, nursing, and personal care services) and other community-based or social services. Often these services were not sufficient to maintain the disabled persons in the community. Thus, these disabled persons had a choice of entering a nursing home or remaining in the community with limited services, a situation which may have jeopardized their health and safety.

In 1984, the Legislature enacted Minnesota Statutes, section 256B.49 which required the department to conduct a study to assess the need for a home and community-based waiver for disabled persons under the age of 65 who without the waiver were likely to reside in a nursing home facility. If the need for

the waiver was shown, the commissioner was to apply for the federal waiver necessary to receive medical assistance reimbursement for the provision of home and community-based services to disabled persons under the age of 65 who, in absence of a waiver, would reside in a nursing home facility. This study, The Needs of the Adult Physically Disabled in Minnesota, was completed in 1985. A survey of clients, advocacy groups, and department staff identified service needs that were unmet either because the service was not a covered service under medical assistance or the disabled person did not have access to medical assistance, often because of the spouse's excess income or assets. The study identified and examined five policy options which would meet the goals of feasibility and cost containment. The study recommended the Home and Community-Based Waiver for the adult, physically disabled population as the most feasible option and that the waiver request should include a "deeming" waiver in regard to the consideration of assets in the determination of the person's medical assistance eligibility, adaptive home modifications or equipment, adult day care, adult foster care, case management, independent living skills training, respite care, and transportation.

In 1986 in response to Legislative authorization, the department requested HCFA to approve a waiver for disabled persons under the age of 65 who are at risk of a placement in a skilled nursing or intermediate care facility. A complete request for waived services for disabled persons under age 65 was submitted to HCFA in January 1987. HCFA approved the waiver for the period October 1, 1987 to September 30, 1990. At that time, the department is able to request a renewal of the waiver. (A copy of the approved waiver and an application to receive services authorized by the waiver are attached in Appendix A.)

The CADI waiver limits the number of persons who can be served and the average per capita annual expenditure. In federal fiscal year (FFY) 1988, the waiver allowed Minnesota to serve up to 200 recipients at an average per capita annual expenditure of \$14,119. In FFY 1989, the program can serve up to 450 recipients at an annual average per capita cost of \$14,825. In FFY 1990, services can be provided to 650 persons at an annual average per capita cost of \$15,566. The federal waiver granted under section 2176 of the Social Security Act allows Minnesota to provide the approved home and community-based services otherwise not allowed under the Medicaid program. The CADI program for persons under age 65 is funded by medical assistance dollars comprised in FFY 90 of a federal share of 52.74 percent, a state share of 42.54 percent, and a county share of 4.72 percent. (Laws of Minnesota 1989 Special Session, Chapter 1, Article 16 requires the state to reimburse counties for the county share of local agency expenditures for medical assistance services that are provided beginning January 1, 1991.)

In summary, there are three waived service programs related to medical assistance: Alternative Care Grants (ACG) authorized under Minnesota Statutes, section 256B.091, subdivision 8; and home and community-based waivers authorized under Minnesota Statutes, section 256B.49 for chronically ill individuals under age 65 who have been and will continue to be hospitalized without a waiver (CAC) and for disabled individuals under age 65 who are likely to reside in a nursing home setting in the absence of a waiver (CADI). Each serves a particular population, has its own eligibility criteria, and has a set of waiver services identified as necessary to assist members of the particular population to remain in the community. HCFA's

approval of a program was granted in a waiver specific to the program. Two of the waiver programs, ACG and CADI, require that an applicant for the program receive preadmission screening to assess the applicant's health and social needs, determine the applicant's level of care, and identify the services needed to maintain the applicant in the least restrictive environment. The preadmission screening is conducted as specified in Minnesota Statutes, section 256B.091, subdivisions 1 to 4. See parts 9505.2390 to 9505.2450. The other waiver program, CAC, does not require preadmission screening as the waiver limits CAC eligibility to persons needing an acute care level. The CADI waiver limits the modifications the state may make to the CADI program. The waiver stipulates most of the program requirements and was granted by the federal government based in part on those stipulations. Although the Legislature could enact changes in the program, the changes may not be implemented without risking the loss of federal financial participation. (See Minnesota Statutes, section 256B.04, subdivision 4 which requires the department to cooperate with the federal government "in any reasonable manner as may be necessary to qualify for federal aid in connection with the medical assistance program...") It is possible to request changes in the waiver. However because the program was only recently approved, it seems inadvisable to request changes at this time. Therefore, to obtain federal financial participation, the department must comply with the parameters set in the approved waiver. Also see Code of Federal Regulations, title 42, section 440.180 (42 CFR 440.180) which defines home or community based services and 42 CFR 441, Subpart G which specifies waiver requirements including the assurances the state must give to HCFA and the limits on federal financial participation.

Consistent with Public Law Number 100-203, the Omnibus Budget Reduction Act or "OBRA", the CADI waiver requires preadmission screening for applicants to nursing homes. If the screening shows that a nursing home admission would be appropriate and that the needs of the applicant can be met through home care within the cost limits set in the waiver, the team recommends that the applicant remain at home using CADI services. The person's right to choose is protected because, regardless of the team's recommendation, a person may choose to live in the community or to enter a nursing home. However, if the cost of home and community-based services exceeds a specified limit (see part 9505.3040) CADI will not pay for services. (It should be noted that a person whose continued medical assistance eligibility and thus CADI eligibility depends on a spend-down could meet the spend-down requirement by incurring health care costs in excess of the CADI cost limit. See part 9505.0065, subpart 11, item E, subitem (2), which specifies that such incurred costs included in a required spend-down must be for health services that are allowed under state law but are not reimbursable under the medical assistance program. See also part 9505.3035 which specifies the criteria to determine eligibility for CADI services.) As required under 42 U.S.C.1396 n(c)(4)(B), plans of care of an applicant for and recipient of CADI services must be written and are subject to the approval of the state. See parts 9505.3030 and 9505.3055.

The CADI program is a cooperative effort between the state and counties. Counties are responsible for implementing the program, developing screening teams, assuring that MA recipients who apply for nursing home care are screened before admission to a nursing home, developing individual care plans for eligible persons, contracting for or directly providing services,

reporting on activities to the state, and submitting an annual plan. The program requires cooperation among social services agencies, public health agencies and the Department of Human Services, Long Term Care Management Division.

Small business requirements

In preparing these rules, the Department considered the requirements of Minnesota Statutes, section 14.115 in regard to small businesses but believed that these rules come within the exemption given in section 14.115, subdivision 7 (c) because either the providers affected by this rule are providers of medical care or compliance with the waiver specified providerstandards is required under Minnesota Statutes, section 256B.04, subdivision 4.

Minnesota Statutes, section 146.01 states:

The term "practicing healing" or "practice of healing" shall mean and include any person who shall in any manner for any fee, gift, compensation, or reward, or in expectation thereof, engage in, or hold out to the public as being engaged in, the practice of medicine or surgery, the practice of osteopathy, the practice of chiropractic, the practice of any legalized method of healing, or the diagnosis, analysis, treatment, correction, or cure of any disease, injury, defect, deformity, infirmity, ailment, or affliction of human beings, or any condition, or conditions incident to pregnancy or childbirth, or examination into the fact, condition, or cause of human health or disease, or who shall, for any fee, gift, compensation, or reward, or in expectation thereof, suggest, recommend, or prescribe any medicine or any form of treatment, correction, or cure thereof; also any person, or persons, individually or collectively, who maintains an office for the reception, examination, diagnosis, or treatment of any person for any disease, injury, defect, deformity, or infirmity of body or mind, or who attached the title of doctor, physician, surgeon, specialist, M.D., M.B., D.O., D.C., or any other word, abbreviation, or title to the person's name indicating, or designed to indicate, that the person is engaged in the practice of healing.

Thus a person "practicing healing" as defined above is considered to be involved in the practice of a health service that constitutes medical care.

Certain services covered under these rules are furnished by or under the supervision of providers of medical care or practicing healing as defined above. Such CADI services include extended home health services, part 9505.3085; extended personal care services, part 9505.3090; family support services, part 9505.3095; and independent living skills services, part 9505.3105.

Other services covered under these rules cannot be categorized as health care or medical care but are health care related and are included in the waiver because they enable the recipient to live in the community. The waiver authorizes the use of medical assistance funds to pay the cost of these services for eligible persons and specifies the services limits and the criteria to be service providers. The waiver authorization to pay for these services under medical assistance has led to increased business for agencies

providing these community-based services as a result of the larger population which needs the services within the community. These services include adaptations, part 9505.3075; adult day care, part 9505.3080; homemaker services, part 9505.3100; respite care services, part 9505.3110; and case management services, part 9505.3070. The cited rule parts reflect the criteria established in the waiver. Furthermore, it should be noted that the waiver requires the standards to be the same for all providers of the same service. Compliance with waiver requirements ensures that these CADI services will qualify for federal financial participation as required under Minnesota Statutes, section 256B.04, subdivision 4.

It also should be noted that CADI service providers must have a contract with the lead agency (part 9505.3125) and that the lead agency which is required to publicize the opportunity to be a CADI service provider has been approved by the county board to administer the county's CADI program. These rules will not affect the present responsibility of or reimbursement of nursing homes in regard to preadmission screenings as nursing homes now receive, and will continue to receive, payment for required preadmission screenings. The nursing home is charged the screening cost which then is included in the nursing home's cost reports and reimbursed in the per diem payment.

In the event that these rules are not exempt under subdivision 7, the department has considered the methods listed in subdivision 2 of section 14.115 for reducing the impact of the rule on small businesses. In considering these methods, the department was mindful of the need to comply with extensive federal and state requirements applicable to the medical assistance program. Medical assistance is a federal program established under Title XIX of the Social Security Act, 42 U.S.C 1396a, et seq.. Title XIX and its implementing regulations specify the program standards and limitations and reporting requirements with which a state must comply to obtain federal financial participation in paying the cost of the program. As stated above, Minnesota Statutes, section 256B.04, subdivision 4 requires the department to cooperate with the federal government "in any reasonable manner as may be necessary to qualify for federal aid in connection with the medical assistance program, including the making of such reports in such form and containing such information as the department of health, education, and welfare may, from time to time, require, and comply with such provisions as such department may, from time to time, find necessary to assure the correctness and verifications of such reports." Minnesota Statutes, section 256B.04, subdivision 2 requires the department to "make uniform rules, not inconsistent with law,....to the end that the medical assistance system may be uniformly administered throughout the state...." 42 CFR 431.50 (b)(1) requires a state medical assistance plan to provide that "the plan will be in operation statewide...under equitable standards for...administration that are mandatory throughout the State." Similarly, 42 CFR 433.33 requires the state medical assistance plan to assure that "individuals in similar circumstances will be equitably treated throughout the State." Thus, in addressing the concerns of Minnesota Statutes, section 14.115, subdivision 2, it is necessary and reasonable to review the requirements of federal law and regulations about program standards and reporting requirements. Clause (a) of subdivision 2 requires consideration "of the establishment of less stringent compliance or reporting requirements for small businesses."

42 U.S.C. 1396 (a)(10)(B) requires the amount, duration, and scope of medical assistance to be the same for all persons receiving services under (10)(A).

42 U.S.C. 1396 (a)(19) requires medical assistance to provide services "in a manner consistent with simplicity of administration and the best interests of the recipients."

Clause (b) requires consideration of the "establishment of less stringent schedules or deadlines for compliance or reporting requirements for small business."

Clause (c) requires consideration of "the consolidation or simplification of compliance or reporting requirements for small businesses." Because of their similarity the provisions of these clauses were considered together.

42 U.S.C. 1396 (a)(27) requires every person or institution providing medical assistance services to "keep such records as are necessary to fully disclose the extent of the services provided to" recipients and "to furnish the state or the federal government any information required about payments for services. The federal statutory reporting requirements are minimum standards applicable to all providers of the same services and are not based on how much medical assistance business the provider does. These requirements are the minimum that department believes reasonably necessary to administer the medical assistance program in compliance with federal law.

Clause (d) requires consideration of "the establishment of performance standards for small businesses to replace design or operational standards required in the rule."

42 U.S.C. 1396 (a)(30) requires the state to assure that medical assistance payments are consistent with quality of care and to provide methods and procedures related to utilization review of the service toward this end. This requirement ties the medical assistance program to stringent compliance in regard to quality of care and does not permit the state to establish different levels of quality of care according to the size of the provider's business. Additionally the licensure standards with which the providers must comply to obtain and retain their licenses set uniform standards applicable to all license holders without regard to the size of the license holder's business. Clause (e) requires consideration of "the exemption of small businesses from any or all requirements of the rule."

42 U.S.C. 1396 (a)(10)(B) requires the amount, duration, and scope of medical assistance to be the same for all persons receiving services under (10)(A). Minnesota Statutes, section 256B.04, subdivision 2 requires the department to "make uniform rules...to the end that the medical assistance system may be uniformly administered throughout the state,..." The program and reporting standards in these rules have been accepted by the advisory committee as consistent with the prevailing standard among providers and representatives of users of home and community-based services. No members of the advisory committee suggested having more than a single set of program and reporting standards.

Thus, the Department believes it would be unreasonable and contrary to federal and state laws and regulations to modify the proposed rule to establish less stringent compliance or reporting standards, deadlines, simplified requirements, or exemptions in response to clauses (a) to (c) and (e) of Minnesota Statutes, section 14.115, subdivision 2. The Department also believes that the proposed rules, parts 9505.3010 to 9505.3140, do not contain design or operational standards as referenced in clause (d) of Minnesota Statutes, section 14.115, subdivision 2.

It should be noted that in its Notices of Intent to Adopt a Rule Without a Public Hearing and to Adopt a Rule With a Public Hearing the Department has invited anyone who may be affected as a small business to address their concerns in writing to the Department. Such letters will be part of the official public rule record submitted to the Attorney General for consideration.

Rule Development Procedure

To develop the proposed rules, the Department followed the procedures mandated by the Administrative Procedures Act, the Office of Administrative Hearings, and internal department policies that ensure maximum opportunity for public input. Public input was sought through a Notice to Solicit Outside Opinion published in the State Register and a public advisory committee. The public advisory committee consisted of persons representing county agencies, public health nursing services, consumers, community service agencies, and consumer advocate and nursing associations. See Appendix B for membership on the advisory committee.

9505.3010 SCOPE AND EFFECT

Part 9505.3010 sets forth the scope and effect of the proposed rule and lists the federal and state laws and federal regulations which authorize the Department to adopt these rules and which state the requirements for the content of these rules. This part states that these rules must be read inconjunction with Minnesota Statutes, section 256B.091 and the approved CADI waiver. Minnesota Statutes, section 256B.49 authorizes application for the waiver. The waiver authorizes the CADI program and establishes the eligible services. This part is necessary and reasonable to inform persons affected by preadmission screening and the CADI program of the scope and basis of these rules.

The waiver is approved by the United States Department of Human Services, Health Care Finance Administration (HCFA) for three years beginning October 1, 1987. The Department must apply if it wants to renew the waiver. However, if HCFA denies the renewal application or revokes its approval of the waiver, Minnesota will no longer receive federal funds for CADI services and the CADI program will end. Therefore, it is necessary and reasonable to specify the effective period of rule parts related to the waiver in order to inform persons affected by these rules.

9505.3015 DEFINITIONS.

This part defines words and phrases that have a meaning specific to parts 9505.3010 to 9505.3140, that otherwise may have several possible interpretations, or that need exact definition to be consistent with statutes and other Department rules.

Subpart 1. Applicability. This provision is necessary to clarify that the definitions apply to the entire sequence of parts 9505.3010 to 9505.3140.

Subpart 2. Adaptations. This definition is necessary to clarify a term used in these rules and to set a standard. The definition is reasonable because it informs affected persons of where the conditions related to this service are specified.

Subpart 3. Adult day care services. This definition is necessary to clarify a term used in these rules and set a standard. Adult day care is a covered service under the CADI waiver when it is provided as a health service needed by the recipient. These services are designed to protect the health and safety of individuals receiving home and community-based services. The definition identifies the services by reference to the rule governing licensure of those services. Licensure of these services is consistent with the requirements of title 42, Code of Federal Regulations, section 440.180 (42 CFR 440.180) and of 42 CFR 441.302 (a) for obtaining and retaining a waiver to provide home and community-based services in lieu of nursing home admission.

Subpart 4. Applicant. The definition is necessary to clarify a term used as an abbreviation in these rules. It identifies persons who are applying to participate in the community alternatives for disabled persons program. Such persons are either residents of nursing homes or are at risk of admission to a nursing home because of the medically necessary health services they require. The definition is reasonable because it is consistent with the waiver. An applicant who himself or herself is unable to apply may have a representative who applies for the applicant. Therefore, it is reasonable to include the applicant's representative within the definition as an abbreviation to shorten these rules.

Subpart 5. Assessment form. "Assessment form" is a term used in these rules. The definition is necessary to set a standard. It is reasonable that the commissioner supply a standardized assessment form in order to ensure completion of a standardized, objective assessment which incorporates statutory requirements and current assessment methods. The waiver requires use of a statewide form. Statewide uniformity in the administration of the medical assistance program also is required under Minnesota Statutes, section 256B.04, subdivision 2. It is reasonable to specify the information the form is to document in relation to the rule because this specification avoids confusion and the arbitrary collection of data, is consistent with waiver requirements for federal payments, and informs persons affected by these rules.

Subpart 6. Care plan or individual plan of care. This definition is necessary to clarify a term used in these rules and set a standard. The term "plan of care" is a term generally accepted by providers of medical assistance services to refer to a medical management plan for an individual. However, Minnesota Statutes, section 256B.091, subdivision 8, uses the term "plan of care" to refer to a community service plan which specifies the services to meet the health and social needs and thus to maintain the CADI recipient in his or her community. The definition is consistent with the statutory use. It is reasonable to use the abbreviated term, "care plan" in place of "individual plan of care" to shorten these rules.

Subpart 7. Case management services. "Case management services" is a term used in these rules. A definition is necessary to set a standard. The waiver requires case management of services for CADI participants to ensure that the participants obtain the services identified in their individual plans of care. Case management is a primary component of the participant's plan of care and is designed to assist a person to live in the community. The services listed in the definition are those specified in the waiver. It is reasonable to be consistent with the terms of the waiver in order to ensure case management services will be eligible for federal financial participation.

Subpart 8. Case manager. "Case manager" is a term used in these rules. The definition is necessary to set a standard of who is qualified to provide case management services under the CADI program. The CADI program uses a combination of community services to meet the health and social needs of recipients. Case managers must have the education and skills needed to incorporate provider and recipient input during the assessment process, to assess a recipient's needs, and to manage a recipient's case by arranging, adjusting, and monitoring the delivery of the recipient's services. It is reasonable to specify that the case manager must be a registered nurse or social worker because the standard is specified in the waiver and compliance with the waiver requirement is necessary to obtain federal financial participation as required under Minnesota Statutes, section 256B.04, subdivision 4. (See Waiver section IV A.) It also is reasonable because, according to the advisory committee, registered nurses and social workers are trained and knowledgeable about the health and social needs of disabled persons and the waiver requires the persons to be knowledgeable about these needs.

It is necessary to fix responsibility for employing or contracting for the case manager to clarify the accountability for the actions of the case manager. Under the waiver, the local agency together with its designated agent, the lead agency, is responsible for implementing the community alternatives for disabled individuals program, conducting assessments, developing care plans, and contracting for or providing the home and community-based services and will be the enrolled medical assistance provider for the CADI program. The underlying assumption in the definition of case management is that the case manager performs objective assessments and makes objective recommendations. Consequently, it is important that the case manager be employed by or under contract to an agency that specifies the conditions of employment or the contract and monitors the case manager's performance. As part of its delegated responsibility as stated in the waiver, the local agency is responsible for assuring the health and safety of recipients, controlling costs, evaluating services, and authorizing expenditures. Employment of or contracting with the case manager is reasonable because it assists the local agency to meet these responsibilities.

Subpart 9. Commissioner. This definition is necessary to identify the official responsible under Minnesota Statutes, section 256.01, subdivisions 1 and 2(1), for the administration of the Medical Assistance Program. Using this term in lieu of "Commissioner of Human Services" is reasonable to delete unnecessary words in a term frequently repeated in the rule. Minnesota Statutes, section 15.06, subdivision 6(1) allows the commissioner to delegate specified duties and powers. The commissioner is ultimately responsible for the actions of the Department. The definition is reasonable because it is consistent with the statutes cited in this paragraph.

Subpart 10. Community alternatives for disabled individuals or CADI. This definition is necessary to identify the CADI program. The definition is reasonable because it is consistent with 42 CFR 440.180 and 441, subpart G. It also is reasonable because it is consistent with the usage of the term by social work and health care professionals to refer to a broad spectrum of services that are offered through the program by community health care or community social service agencies to persons who live in the community. These

services may be given in the home or community of the person requiring them. See subpart 20 which defines "home". Use of the anagram CADI is reasonable to shorten these rules.

Subpart 11. County of financial responsibility. "County of financial responsibility" is a term used in these rules. The definition is necessary to clarify its meaning. The definition is consistent with Minnesota Statutes, chapter 256G, which applies to the medical assistance program. As stated in the introduction, beginning with medical assistance services provided January 1, 1991 and thereafter, the state will reimburse counties for the county share of medical assistance payments. The term "county of financial responsibility" however will continue to be necessary at least until that time. See Laws of Minnesota 1989 Special Session, Chapter 1, Article 16.

Subpart 12. County of service. A county of service may differ from the county of financial responsibility. For example, when the person resides in the county of financial responsibility, this county is also the county of service. However, when a person resides in a county other than the county of financial responsibility, Minnesota Statutes, Chapter 256G states that the county of residence is responsible for providing services. This definition is needed to distinguish between counties of financial responsibility and those of service. Counties of service perform screening and case management functions if a person lives outside of the county of financial responsibility. This is reasonable because it is administratively efficient; counties may be financially responsible for persons who reside hundreds of miles from the local agency's office. To require county workers or persons to travel that distance for required services would be inefficient and burdensome. Other activities such as verification and telephone calls are also done more efficiently by the local agency of the county where a person lives. See also the SNR of subpart 11 about the effect of state assumption of counties' share of state costs of medical assistance.

Subpart 13. Department. This definition is necessary to identify the state agency which, under the direction of the Commissioner, supervises the medical assistance program under the authority of Minnesota Statutes, section 256B.04, subdivision 1 and is responsible under Minnesota Statutes, section 256B.091, for preadmission screening and under Minnesota Statutes, section 256B.49 for the CADI waiver. It is reasonable to shorten "Department of Human Services" to "department" to remove unnecessary words from these rules.

Subpart 14. Directory of services. This definition is necessary to clarify a term used in these rules and to set a standard. The definition is reasonable because it is an abbreviation used to shorten the rules.

Subpart 15. Extended home health services is a term used in these rules. A definition is required to set a standard. The actual services are identical to the services defined in part 9505.0295, subparts 1 and 2 but the "extended" nature of services under the waiver means that limitations on amount, scope, and duration of service specified in Minnesota Medicaid State Plan do not apply. (State Plan requirements such as criteria to be a provider do apply.) It is reasonable to define the term by referring to the rule part that contains the waiver criteria with which the CADI provider must comply to receive medical assistance payment because having the criteria in one place assists the reader and other parties affected by the rule. (It should be

noted that the State Plan is available for inspection by contacting Jane Wilcox, by phone at (612) 296-7429 or in writing at the Department of Human Services, Health Care Management Division, Sixth Floor, 444 Lafayette, Road, St. Paul, Minnesota 55155-3848. Copies also are available from Ms. Wilcox upon payment of a fee.)

Subpart 16. Extended personal care services is a term used in these rules. A definition is necessary to clarify its meaning. The actual services are identical to the services in part 9505.0335, subpart 8 but the "extended" nature of the waiver services means that certain limitations about the amount, scope, and duration of the services eligible for medical assistance payment do not apply. (State Plan requirements about providers' responsibilities, training requirements, and supervision do apply.) It is reasonable to define the term by referring to the rule part which specifies the criteria for receiving medical assistance payment for an extended personal care service because having the criteria in one place assists persons affected by the rule to be informed.

Subpart 17. Family is a term used in the rule. A definition is necessary to clarify its meaning. The definition is consistent with the meaning required by the waiver. It does not include persons who are employed to care for the disabled person. (See Waiver Section IV F.) A disabled person living in the community may live with persons other than a spouse, a child, or other blood-relative and may receive care on an ongoing basis from the persons with whom he or she lives. The disabled person may have chosen this living arrangement because these persons will provide the care that is often provided within a family by a spouse, child, or other blood-relative. These persons may be the disabled person's friends, foster family members, or relatives-in-law. It is therefore reasonable to extend the definition of family to include such persons because they have a living arrangement in relation to the recipient that is analogous to that of a spouse, child, or other relative.

Subpart 18. Family support services: counseling and training is a term used in the rule with a meaning limited by the waiver. Part 9505.3095 specifies the requirements to obtain medical assistance reimbursement under CADI for family support services. It is reasonable to define the term by citing the part which has the requirements because the citation informs providers, counties, and other affected persons where to find the information related to providing a service eligible for CADI reimbursement.

Subpart 19. Formal caregivers. This definition is necessary to clarify a term used in these rules and distinguish "formal caregivers" from "informal caregivers." Public health and county social workers report that "formal caregiver" is in common usage to refer to skilled providers of care who are employed by or under contract with local agencies. The definition is reasonable because it is consistent with this community practice.

Subpart 20. Home. "Home" is a term used in these rules. A definition is necessary to clarify its meaning and set a standard. The definition is consistent with its definition in the waiver which defines home "as an individual's place of residence whether it be in his/her own home, his/her family's, [sic] home, or a foster home." (Waiver section IV B.) It is

reasonable to be consistent with the waiver as compliance is required to obtain federal financial participation in paying the cost of the waiver services.

Subpart 21. Home and community-based services is a term used in the rule. A definition is necessary to set a standard. Home and community-based services are services that are not ordinarily reimbursable under medical assistance but are reimbursable under the waiver. The waiver permits medical assistance reimbursement of only the services specified in the definition. It is reasonable to be consistent with the limits of the waiver in order to obtain federal financial participation as required under Minnesota Statutes, section 256B.04, subdivision 4. The provision of medical supplies and equipment is one of the extended home health services under the waiver. It has been specifically identified in order to inform affected persons and reduce confusion about its availability.

Subpart 22. Homemaker services. This definition is necessary to clarify a term used in these rule parts and set a standard. Homemaker services can be funded by CADI under the waiver. It is reasonable to define the term by reference to the rule part which specifies the criteria applicable to the service as this reference informs affected person where to obtain the necessary information.

Subpart 23. Independent living skills services. A definition is necessary to clarify a term used in these rules and set a limit on the types of services reimbursed under this category. Independent living skills services have the goal of assisting the recipient under age 65 to reach his or her maximum level of independence in the community. It is reasonable to list the services reimbursed under this category to assure that affected parties are informed. The definition is consistent with the waiver.

Subpart 24. Informal caregivers. This definition is necessary to clarify a term used in these rules and set a standard. Social work and health care professionals report that the term is commonly used to refer to persons who assist recipients without reimbursement for the services. The definition is reasonable because it is consistent with the common usage of health care and social work professionals.

Subpart 25. Lead agency. This definition is necessary to clarify a term used in these rules. The waiver in section I requires the local county agency to administer the waiver including program development, monitoring, and contracting for services but the waiver does not define the term "local county agency." Successful administration of the CADI program requires knowledge of the service needs of CADI recipients. Thus, the agency that administers the program must employ or contract with persons who have such knowledge. Under Minnesota Statutes, section 393.07, subdivision 2, the county board "administers all forms of public welfare, responsibility for which now or hereafter may be imposed on the commissioner of human services by law...." Medical assistance is a public welfare or public assistance program. Therefore, it is reasonable to permit the county board to designate a "lead agency" to administer the CADI program because the designation provides the county board the opportunity to name an agency in its area that has the knowledgeable staff necessary to effectively carry out the CADI program as required by the waiver and these rules. It also is an efficient means of

carrying out its responsibility to serve a group with special needs, disabled persons under age 65 who are at risk of nursing home admission. The designated agency may be either the local (social service) agency or a public health agency. Local public health and social service agencies are two types of agencies that employ qualified professionals who are responsible for social service and public health functions. The definition informs interested persons that the lead agency has day-to-day administrative responsibility for the CADI program.

Subpart 26. Local agency. "Local agency" is a term used in these rules. It is defined solely for identification purposes. It is the agency that administers the Medical Assistance and other public assistance programs subject to the supervision of the Department of Human Services.

Subpart 27. Medical assistance. It is necessary to identify the particular program governed by these and related rules that establish the conditions of payment of the costs of health services to persons who are determined eligible for medical assistance. The definition is solely for purposes of identification.

Subpart 28. Mental illness. A definition is necessary to clarify the meaning of this term used in these rules. The definition is consistent with the statute cited within it.

Subpart 29. Nursing home. This definition is necessary to clarify a term used in these rules and to set a standard. It is reasonable to include skilled nursing facilities, intermediate care facilities, and boarding care facilities in the definition of nursing home because this inclusion is consistent with the waiver and with Minnesota Statutes, section 256B.091, subdivision 8 and 256B.421, subdivision 7 which governs nursing home reimbursement under the medical assistance program. It is reasonable to use "nursing home" as an abbreviation to shorten these rules.

Subpart 30. Nursing home resident. The definition is necessary to clarify a term used in these rules and to set a standard. Under Minnesota Statutes, section 256B.49, 42 CFR 441, subpart G, and the waiver, CADI can pay for home and community-based services only to persons who would otherwise require admission to a nursing home. CADI funds cannot be used to reimburse nursing home resident days unless the nursing home care is provided as respite for a primary caregiver. The definition is reasonable because it clarifies the distinction between the nursing home resident who is ineligible for funding of his or her nursing home care under CADI and the person who is in the nursing home only for respite care and remains eligible for CADI.

Subpart 31. Person with mental retardation or a related condition. A definition is necessary to clarify a term used in these rules. The definition is consistent with the cited rule part which governs services for a person with mental retardation or a related condition.

Subpart 32. Personal care assistant. This definition is necessary to clarify a term used in these rules and set a standard. Personal care assistants provide medical assistance reimbursable services under part 9505.0335. The definition is reasonable because it differentiates a personal care assistant from other persons who provide other types of CADI services.

Part 9505.3090 specifies standards for CADI providers and personal care assistants that are consistent with part 9505.0335 in regard to provider, responsibilities, training requirements, and supervision but that differ in regard to amount, scope, and duration of services. See Subpart 16 and its SNR. The consistency is reasonable because it enables the use of non-waiver medical assistance funds to pay for certain recipients' services and thereby maximizes the availability of CADI funds for other recipients who need services of an amount, scope, or duration greater than available under medical assistance. The provision also is reasonable because it enables statewide uniform administration of the medical assistance program as required by Minnesota Statutes, section 256B.04, subdivision 2.

Subpart 33. Physician. Physician is a term used in these rules. A definition is necessary to clarify its meaning as consistent with statute.

Subpart 34. Preadmission screening or screening. This definition is necessary to clarify a term used in these rules and to set a standard. Preadmission screening is a procedure required by Minnesota Statutes, section 256B.091 to "prevent inappropriate nursing home or boarding care home placement" for all applicants prior to admission to a nursing home or boarding care home. The definition is reasonable because it is consistent with the statute cited within it. It also is reasonable because it informs affected persons where to find the information about the procedure.

Subpart 35. Preadmission screening team or team. A definition is necessary to set a standard for a term used in these rules. The definition is consistent with Minnesota Statutes, section 256B.091. Preadmission screening teams are defined in part 9505.2395, subpart 39. It is reasonable to use the same definition in parts 9505.3010 to 9505.3140 which also require preadmission screening of certain persons by a similarly constituted team because using the same definition is administratively efficient and avoids confusion. It is reasonable to use the abbreviation "team" in these rule parts to shorten these rules.

Subpart 36. Primary caregiver. This definition is necessary to clarify a term used in these rules and to set a standard. The definition is reasonable because it is in common use among providers, clients, and department staff who are involved in providing or administering programs of home and community-based services in a client's home. It also is reasonable because it is consistent with part 9505.2395, subpart 40, the Department's rule establishing preadmission screening procedures and the alternative care grants program of home and community-based services which provides similar services to a similar although older population in their homes. A primary caregiver performs many tasks on a recipient's behalf and therefore is usually in daily contact with the recipient. These tasks are related to services the recipient needs to maintain the health and safety of the recipient in the community. Therefore, the recipient's designation of the primary caregiver is reasonable because the recipient is in the best position to evaluate the caregiver's work and the recipient's designation is consistent with the recipient's freedom to choose.

Subpart 37. Public health nurse. The definition is necessary to clarify a term used in these rules and to set a standard. The definition is consistent with the cited statutes and certification procedures of the Department of Health.

Subpart 38. Public health nursing service. This definition is necessary to clarify a term used in these rules and set a standard. The definition is consistent with the cited statute.

Subpart 39. Reassessment. The definition is necessary to clarify a term used in these rules and set a standard. Before providing services to an individual, local agencies must assess his or her health and social needs. A recipient's needs may change over time and therefore a recipient may require another assessment. The definition is consistent with the waiver. It is reasonable to define the term by referring to the rule part which specifies the procedure as this reference informs affected persons where to obtain the necessary information.

Subpart 40. Recipient. The definition is necessary to clarify a term used as an abbreviation in these rules. As a way to shorten the rule, it is reasonable to use the term "recipient" to stand for the entire seven paragraphs that the federal waiver uses to identify a person who meets the criteria for receiving community services under the waiver. The definition is also reasonable because it clearly distinguishes a recipient of CADI services from the more commonly encountered usage of the term "recipient" in the medical assistance program.

Subpart 41. Registered nurse. The definition is necessary to clarify a term used in these rules and set a standard. The definition is consistent with the cited statute.

Subpart 42. Representative. The definition is necessary to clarify a term used in these rules. It is consistent with the cited statutes.

Subpart 43. Resident class. The definition is necessary to clarify a term that is used in these rules. It is consistent with the rule parts cited within it. Consistency with another rule of the Department affecting the same population is reasonable because it avoids confusion and is administratively efficient.

Subpart 44. Respite care services. This definition is necessary to clarify a term used in these rules and set a standard. Respite care services can be funded by the waiver. The definition is reasonable because it differentiates respite care from other forms of care that may be funded under the CADI waiver. It is consistent with title 42 CFR 440.180, which lists home and community-based services. See part 9505.3110 for scope, duration, and frequency of respite care services eligible for CADI reimbursement.

Subpart 45. Room and board costs. It is necessary to define "room and board costs" to inform affected persons which costs are allowable so that they can estimate and bill only for allowable costs. The definition is reasonable because it is consistent with the provisions defining room and board costs found in other department rules such as part 9535.2400, subpart 3 and 9525.0950, subpart 8 which regulate room and board costs for persons receiving services in a community setting.

Subpart 46. Skilled nursing service. This is a term used in these rules. A definition is necessary to set a standard. 42 CFR 405.1224 sets the standards for participation of a home health agency that provides skilled

nursing services. The definition is the same as that in part 9505.2395, subpart 52, which applies to the alternative care grants program. It is reasonable to be consistent with the federal regulations which apply to other programs available to similar populations receiving home and community-based services under a waiver because the consistency avoids confusion and assures uniform administration of two similar programs serving persons who need the same or similar services.

Subpart 47. Slot. This is a term used in these rules as an abbreviation. A definition is necessary to clarify its meaning. The term is used in conjunction with waiver programs of the United States Department of Health and Human Services to refer to an available service opening for an eligible recipient. Because the waiver limits the number of recipients that may be served in a given year, there are only a certain number of openings for people to be served through the CADI program. It is reasonable to use an abbreviation to shorten the rules.

Subpart 48. Social worker. The definition is necessary to clarify a term used in these rules and set a standard. Minnesota Statutes, section 256B.091, subdivision 2, specifies that a social worker from the local agency must be a member of the screening team. Therefore, the definition is consistent with statute. It is reasonable that a social worker must meet the employment qualifications of the local agency.

Subpart 49. State medical review team. The definition is necessary to clarify a term used in these rules. It is consistent with the definition in part 9505.0015, subpart 45 which sets a standard for determining MA eligibility. It is reasonable to be consistent with the requirements of the MA program as a person must be MA eligible to receive services under the CADI waiver.

Subpart 50. Vehicle. "Vehicle" is a term used in these rules. A definition is necessary to set a standard. The definition is consistent with the definition in the waiver. See Waiver Section IV, B, page 4. It is reasonable to require the vehicle to be used to transport the recipient with sensory and mobility defects as the CADI program is established to provide services needed to maintain a recipient in the home. See part 9505.3075 which sets the conditions under which CADI funds may be used to modify the vehicle in the manner needed to transport the recipient.

Subpart 51. Waiver. The definition is necessary to clarify a term used in these rules. The term is consistent with 42 CFR 441, Subpart G.

Subpart 52. Waiver year. The definition is necessary to clarify a term used in these rules. The waiver is approved for a specific period of time with requirements differing in specific 12 month periods beginning with the effective date of the waiver. The effective date is not the same as a calendar year or the state fiscal year, so the term "waiver year" is needed to distinguish the time when specific requirements are or become effective. The definition is consistent with 42 CFR 405.304.

Subpart 53. Working day. The definition is necessary to clarify a term used in these rules and to set a standard. Since the local agency is responsible for implementing the CADI program, it is reasonable that the term be limited to the hours when the local agency is open.

9505.3020

PREADMISSION SCREENING OF CADI APPLICANTS.

This part is needed to clarify that CADI applicants must be screened to determine their eligibility for services under the waiver. Minnesota Statutes, section 256B.091, subdivision 2 requires each local agency to determine the health and social needs of nursing home applicants who are eligible for medical assistance. CADI applicants are persons under age 65 who, without home and community-based services, would have to continue to live in or enter a nursing home. Therefore, this part is reasonable because it informs affected persons of a requirement. The 1987 Omnibus Budget Reconciliation Act (OBRA) specifies certain placement requirements that must be met as a condition of federal financial participation in the cost of services to persons with mental retardation or related conditions and to persons with mental illness. For example, OBRA prohibits a facility certified by medical assistance from admitting any new resident on or after January 1, 1989 who has a diagnosis of mental illness or mental retardation or a related condition unless the person has been screened and it has been determined that the individual requires the level of care provided by a nursing facility. OBRA requires the person with mental retardation to have a screening performed according to screening standards developed by the United States Secretary of Health and Human Services that must be used to determine the mental retardation services needed by the person being screened. Minnesota Statutes, section 256B.092 specifies the conduct of the screening for purposes of services needed because of the mental retardation or related conditions. It also is consistent with the rule provision applicable to screening applicants who have or may have a diagnosis of mental illness as set forth in part 9505.2400, subpart 1. Thus, it is necessary and reasonable to specify that the screening must meet the requirements of the 1987 Omnibus Budget Reconciliation Act because compliance is required under Minnesota Statutes, section 256B.04, subd. 4 which states the department must "cooperate with the federal department of health, education, and welfare in any reasonable manner as may be necessary to qualify for federal aid in connection with the medical assistance program...". The provision also is reasonable as it informs affected persons of the required standards and ensures coordination of the required procedures, thereby reducing the possibility of duplicating services.

9505.3025

DUTIES OF PREADMISSION SCREENING TEAM

Subpart 1. General procedure for preadmission screening. This subpart is necessary to specify the general procedure applicable to the required preadmission screening of a CADI applicant. As stated above, Minnesota Statutes, section 256B.091, subdivision 2 mandates that the preadmission screening team must assess the health and social needs of all applicants for admission to a nursing home except in the case of certain persons specified in Minnesota Statutes, section 256B.091, subdivision 4. Certain subparts of part 9505.2425, adopted pursuant to Minnesota Statutes, section 256B.091, specify the procedures required during a preadmission screening. Subpart 1 of part 9505.2425 states the general requirements for a preadmission screening. Subpart 2 of part 9505.2425 specifies that the preadmission screening must be conducted in a face to face interview with the person being screened and the person's representative, if any. Subpart 3 of part 9505.2425 specifies the information that must be given to the person being screened during the preadmission screening. Subpart 4 of part 9505.2425 requires the preadmission

screening team to obtain the authorization of the person or the person's representative in order to access the person's medical records. Subpart 14 of part 9505.2425 specifies the information that the team must give the person in requesting the authorization required in subpart 4. Requiring the use of the procedures of these subparts to screen CADI applicants is reasonable because it ensures uniformity of medical assistance service to similar populations as required under Minnesota Statutes, section 256B.04, subdivision 2, reduces confusion, and is administratively efficient.

After the adoption of subpart 3 of part 9505.2425, federal and state laws were amended in regard to consideration of spousal assets if one of the spouses was institutionalized and the other remained in the community. Because CADI applicants are persons under age 65 who, without home and community-based services, would have to continue to live in or enter a nursing home, their assets must be considered according to the amended federal and state laws. State law was amended in 1988 and again in 1989. Thus, item E of part 9505.2425, subpart 3 no longer provides the CADI applicant full information about asset retention and it is not necessary to require its information to be provided during the preadmission screening procedure. Part 9505.3025, subpart 1, item C is necessary to correctly inform applicants and other affected persons about the consideration of spousal assets when one of the spouses would be institutionalized unless receiving home and community-based services and the other spouse remains in the community. Minnesota Statutes, section 256B.059 is the state law enacted in 1989 pursuant to the requirements of the Medicare Catastrophic Act, Public Law No. 100-360, section 303, Protection of Income and Resources of Couple for Maintenance of Community Spouse, encoded as 42 U.S.C. 1924. Its provisions apply to CADI applicants who apply on or after October 1, 1989 and were not nursing home residents on October 1, 1989. Consideration of the assets of applicants who applied before October 1, 1989 or who were nursing home residents on October 1, 1989 must be conducted according to the laws that were in effect before October 1, 1989. Thus, subpart 1, item C is reasonable because it ensures that the applicant will receive the appropriate information about consideration or retention of spousal assets. Item A is necessary and reasonable to inform applicants. Medical assistance eligibility is required for CADI eligibility and is determined by the local agency as provided in parts 9505.0010 to 9505.0150. A CADI applicant may not be a medical assistance recipient or may be unaware of how to apply for determination of medical assistance eligibility. Because the applicant is the person who must provide the information required for a medical assistance eligibility determination and because the applicant is meeting face to face with the preadmission screening team, item B is reasonable to require the preadmission screening team to assist the applicant to complete an application because the assistance reduces the burden on the applicant and is administratively efficient.

Subpart 2. Local agency data sharing with lead agency. This subpart specifies that information concerning the eligibility for MA or the social service needs of an applicant for home and community-based services shall be shared with the lead agency. It is necessary to ensure that the lead agency will receive information it requires to carry out its responsibilities for the CADI program. A lead agency needs to know about the applicant's MA eligibility because eligibility for CADI services is contingent on MA eligibility. If a local agency has information about the applicant's social service needs, it is reasonable to require the local agency to share the information with the lead agency because sharing the information will be

administratively efficient and cost effective and may be helpful in assessing the person's need for nursing home care or CADI services. Furthermore, failure to share the information may delay the provision of necessary services for which the applicant is eligible. See part 9505.2425, subparts 4 and 14 about the authorization to release information.

Subpart 3. Team recommendations for CADI applicants. This subpart specifies the service choices available to a screening team as it makes recommendations based on the applicant's assessment. The subpart is necessary to comply with federal requirements and guide the screening team.

Item A. Subitem (1) requires the preadmission screening team to recommend nursing home admission when the home and community-based services needed by the applicant in lieu of nursing home care are not currently available. This requirement is reasonable as it is the responsibility of the team to assess the applicant's health and social needs and to make recommendations that will meet those needs. If the services needed by the applicant are only available in the nursing home, then it is reasonable to require the team to recommend nursing home admission because the recommendation is consistent with the applicant's need for service. Subitem (2) requires the team to recommend nursing home admission if the anticipated cost of the services exceed the limit set in part 9505.3040. See part 9505.3040 and its SNR for a discussion of the limitation and its relation to the applicant's resident class under parts 9549.0050 to 9549.0059. Parts 9549.0050 to 9549.0059 require, among other things, assignment of a nursing home resident to one of eleven classifications depending upon the resident's care needs. 42 CFR 441.302(e) requires the state to assure the Health Care Financing Administration (HCFA) that "average per capita fiscal year (medical assistance) expenditures under the waiver will not exceed the average per capita (medical assistance) expenditures for the level of care provided in a SNF." If the cost to medical assistance exceeds that limit, it is necessary to recommend nursing home care because the recommendation is consistent with the federal regulation quoted above, the waiver, Minnesota Statutes, section 256B.091, and with Minnesota Statutes, section 256B.04, subdivisions 2 and 15 which require the medical assistance program to be operated in a cost-effective manner. In estimating the anticipated cost to medical assistance of providing the services needed in lieu of nursing home care, it is reasonable to include the cost of medical assistance home care services because these services are included within the nursing home per diem payment rate and their cost is related to the level of care needed by the applicant.

Item B. Requiring the recommendation to remain in the nursing home if necessary services are not currently available in the community is reasonable because it ensures the applicant will be in a setting that can provide the needed services. It is necessary to recommend that an individual remain in a nursing home if the CADI services needed would exceed the cost for the same level of services that would be provided in a nursing home because the federal regulations quoted above and the waiver permit use of CADI funds only if the cost does not exceed the costs for nursing home care. (see also the SNR of item A, subitem (2) above. and the SNR of part 9505.3040, subpart 5.) As stated in the SNR of item A it is reasonable to include the cost to medical assistance of providing medical assistance home care services as these are services included within the nursing home per diem payment rate and their cost is related to the level of care needed by the applicant.

Item C. According to the waiver, a purpose of the screening program is to prevent inappropriate nursing home placement. MA funds including CADI can be used to pay for cost-effective alternatives to nursing home care. It is reasonable to recommend CADI services when needed services are available in the community and their cost to medical assistance is less than the cost to medical assistance of the level of nursing home care needed by the applicant. This item is consistent with the waiver. It is also reasonable as it ensures the services needed by the applicant to be at home are available or can be developed. See also part 9505.3040 and its SNR.

Item D. This item is necessary because, according to Minnesota Statutes, section 256B.091, one purpose of the screening program is to prevent inappropriate nursing home placement. It is reasonable to recommend health and social services including CADI services when the needed services are available and the cost to medical assistance including CADI falls within the limitation in part 9505.3040 because this recommendation is consistent with the cited statute, the federal regulations, and the waiver.

Item E. Minnesota Statutes, section 256B.04, subdivision 15 authorizes the Department to "safeguard against unnecessary or inappropriate use of medical assistance services." Furthermore, under part 9505.0210, item A, a service is only eligible for medical assistance payment including CADI when it is needed by the recipient. It is reasonable that the team recommend that the person live in the community without services if the person does not need either nursing home care or CADI services because the care would be neither cost-effective nor needed.

Subpart 4. Application for CADI; request for case manager. This subpart is necessary to clarify the process for choosing to use home and community-based services. If the person chooses home and community-based services, it is reasonable to require the applicant or the applicant's representative to sign an application for the home and community-based services because the signed application provides evidence that the person made the choice. The waiver assumes that "all persons, receiving home and community-based waived services, will require case management." See Waiver Section IV, A, page 3. It is necessary to clarify who is responsible for requesting a case manager who will provide the needed case management services. Because the waiver requires the case manager to develop the applicant's care plan with the screening team, it is reasonable to require the team to notify the lead agency and request a case manager when the applicant signs an application so that, if the person under age 65 is eligible for CADI services, the case manager can be involved in developing the care plan as required by the waiver.

Subpart 5. Notice of preadmission screening team recommendation. This subpart is necessary to establish requirements for notifying the affected parties of the team's recommendation. Subpart 3 requires the screening team to recommend a service choice to CADI applicants. Part 9505.2425, subpart 8 places the same notice requirement on a preadmission screening team in regard to the choice of ACG services. It is reasonable to place the same notice requirements on the preadmission screening team that screened the CADI applicant, to the extent the notice requirements are appropriate to the applicant's circumstances, to avoid confusion and encourage administrative efficiency. The requirement of obtaining the consent of the applicant or the applicant's representative is reasonable because it is consistent with the Minnesota Government Data Practices Act, Minnesota Statutes, Chapter 13, and protects the privacy of the recipient.

Subpart 6. Information to county of financial responsibility. This subpart is necessary to specify a responsibility of the preadmission screening team. Under Minnesota Statutes, section 256B.19, the county of financial responsibility is responsible for paying the county share of the cost of CADI services. Sometimes the county of service is different from the county of financial responsibility. It is reasonable that the county of service give the county of financial responsibility the information underlying the services that the county of financial responsibility will be paying for. Items A to D are documents that the team must complete or explain during the screening. Item E documents whether the client meets the CADI criteria of eligibility for medical assistance. Requiring the submission of items A to E to the county of financial responsibility is reasonable because they are evidence of the team's work, the applicant's need for the identified services, and the applicant's eligibility for CADI services. See the Introduction and the SNR of part 9505.3015, subpart 11, for a discussion of the effect of Laws of Minnesota 1989 Special Session, Chapter 1, Article 16 in requiring the state to reimburse counties for the counties' share of payments for medical assistance services provided January 1, 1991 and thereafter.

Subpart 7. County of financial responsibility action. This subpart specifies what the county of financial responsibility must do with the information it receives about the CADI applicant. It is necessary and reasonable to require the county of financial responsibility to review the information as this county must make sure that the plan services are within the cost limitations of the waiver and Minnesota Statutes, section 256B.091. However, if the care plan is within these cost limitations and the applicant is medical assistance eligible and has been assigned a slot by the department, the county of financial responsibility cannot reject the application and is not required to take any action other than entering the information in the person's file. Requiring the county of financial responsibility to keep a file is necessary and reasonable to provide an audit trail. Because from time to time disputes arise about which county is financially responsible, it is necessary to inform county agencies how such disputes are to be resolved. The statute cited within the subpart governs disputes between counties over financial responsibility for medical assistance recipients.

9505.3030

DEVELOPMENT OF INDIVIDUAL CARE PLAN

Subpart 1. Care plan development. The subpart is necessary to specify who is responsible for developing an applicant's care plan. The waiver in Section IV A, page 4, specifies that the case manager has the specific responsibility of "developing the plan of care with the screening team, the individual, the individual's family members, and other appropriate persons." This subpart is consistent with the waiver. It is reasonable to require the case manager to work with the listed persons who would include the preadmission screening team, subitem (4), as these are the persons who have knowledge of the applicant and the home and community-based services needed by the applicant to remain in the community. Because family members are often the primary informal caregivers, it is reasonable that they participate in the development of the care plan. However, sometimes a family member's participation may not be desired by the person being screened. It is reasonable to require the team to ask the applicant who may participate in order to protect the rights of the applicant. Finally it is reasonable to require the care plan to be on a form

provided by the commissioner because the use of a standard form is consistent with the requirement of Minnesota Statutes, section 256B.04, subdivision 2 to administer the medical assistance program statewide in a uniform manner.

Subpart 2. Care plan contents. This subpart is necessary to set a standard for the components of a CADI recipient's care plan. Under the waiver, Medicaid funds cover the costs of home and community-based services that are provided in accordance with a care plan for an eligible person.

Item A is required by the waiver.

Items B, C, D, and E are necessary to have a complete picture of the person's needs and how CADI services fit into that picture; they are reasonable ways to comply with Minnesota Statutes, section 256B.091, subdivision 3, paragraphs (c), (d), (e)(2), and (f) because they provide evidence that the services needed by the individual have been identified and can be implemented as needed and approved. Furthermore, the information provides an audit trail needed to monitor the provider's services to the person under the contract with the lead agency. See part 9505.3125 and its SNR.

Item F is necessary and reasonable because it facilitates a timely review of the recipient's service needs. The item is consistent with Minnesota Statutes, section 256B.091, subdivision 3.

Item G is necessary as the total medical assistance cost of the CADI services is used as a service eligibility criterion. See part 9505.3040 and its SNR. It is reasonable to require the estimate of the total monthly medical assistance cost for CADI and medical assistance services to be included in the care plan as the case manager who is responsible for monitoring expenditures for services specified in the plan needs this information.

Item H is necessary and reasonable because CADI is not supposed to supplant other payment sources available to pay for the services needed by the person and because the case manager needs the information to carry out the responsibilities specified in item G.

Subpart 3. Directory of services. The waiver requires that recipients have a free choice among available qualified vendors who offer the needed service or services and are under contract with the lead agency to provide CADI services. This subpart is necessary to specify how to identify qualified providers of CADI services. Requiring a case manager to use a directory is reasonable because the directory enables the case manager and the applicant to review services available in the community and facilitates the applicant's informed choice. As stated in the introduction of the SNR, CADI is one of three department programs that provide eligible recipients home and community-based services in lieu of institutionalization. Part 9505.2425, subpart 7 establishes the use of a directory of service by a preadmission screening team that is conducting a screening for an applicant for one of these programs, the alternative care grant program, and how the directory is to be developed. It is reasonable to require the use of the same directory of services for the CADI program as the directory includes services that are needed by the CADI applicant and its use avoids confusion and duplication of effort and is administratively efficient.

Subpart 4. Signatures on care plan. This subpart is necessary to specify a standard applicable to the care plan. Medical assistance provides a recipient freedom of choice of service providers. (See part 9505.0190) A recipient also has certain rights related to appeals if medical assistance services are reduced, suspended or terminated. (See part 9505.3140 and its

SNR.) It is reasonable to require an applicant to sign the care plan as the applicant's signature is evidence that the applicant has had an opportunity to review the plan and to agree or disagree. The applicant's signature also is evidence that the applicant has authorized distribution of the plan to the providers of the services specified in the plan. The recipient's physician is qualified by licensure to prescribe health services needed by an applicant and is responsible for prescribing for the applicant under her or his care. Thus it is reasonable to require the applicant's physician to sign the applicant's care plan as it is evidence that the physician has had an opportunity to review and approve the services specified in the plan. Obtaining the applicant's consent is reasonable because it is consistent with the Minnesota Government Data Practices Act, Minnesota Statutes, Chapter 13, and protects the applicant's privacy.

Subpart 5. Distribution of the care plan. As stated above, the care plan specifies the care objectives, the frequency, scope, and duration of health and social services needed by the person, and the appropriate providers as determined by the team. This subpart is necessary to specify to whom the care plan must be distributed because the care plan can be used by many different providers of the recipient's care. It is reasonable to require the distribution of the care plan to them to assure that they are informed about what is to be provided for the recipient's needs and thus may be eligible for MA reimbursement.

Items A and B are reasonable because the county of service and county of financial responsibility, if different, need copies in order to monitor payments, coordinate services, and maintain records. The waiver requires this distribution and audits of the CADI program require records of authorized services.

Item C is reasonable because the schedule of services is needed by the applicant or recipient to enable him or her to be aware of the needed services and to direct the care as needed.

Item D is reasonable because the primary physician needs a copy in order to maintain a record for the recipient and to document participation in the care plan development process. Authorizing medical services may depend upon the documentation available in the care plan. It also is reasonable because the person's service provider needs the care plan to deliver the needed care as specified, supervise the persons giving the recipient's direct care, assign tasks, and monitor delivery of the recipient's health care services. Requiring consent to give the care plan to the physician and providers is reasonable to protect the person's privacy. The requirement is consistent with other provisions of parts 9505.3010 to 9505.3140. Also see part 9505.3025, subpart 1 and its SNR.

9505.3035. ELIGIBILITY FOR CADI SERVICES

Subpart 1. Eligibility criteria. This subpart is necessary to clarify who is eligible for the CADI program. Section III of the Waiver specifies the eligibility criteria. The criteria in items A to G, and J to K are consistent with those in section III. Section IV of the Waiver specifies that "services provided in the community through existing funding sources such as Title XX, private health insurance, or Medicare, will not be supplanted by waiver funding...." Item I is consistent with this requirement in Section IV.

Item H. Minnesota Statutes, section 256B.04, subdivision 15 requires the department to safeguard against unnecessary services. A residential placement agreement may specify home and community-based services to be provided as part of the agreement. For example, part 9550.0040, subpart 9 sets standards for placement agreements between the local agency and an approved vendor of community social services. The agreement must specify that the service is be provided in accordance with the client's individual service plan as specified in part 9505.0090. See also 9550.0010, subparts 2, 4, and 18. The definition in item H is also consistent with part 9555.5105, subpart 19, which defines "individual resident placement agreement" in regard to adult foster care services and licensure of adult foster homes. A duplication of services in the person's care plan may result in the person receiving a service that has already been provided and therefore is not needed by the person. Requiring a residential services provider to seek prior authorization before providing a CADI or medical assistance service provides a reasonable and administratively efficient way to determine whether the needed service is one already being provided through the residential placement agreement or may be provided under CADI. Safeguarding against a duplicate service is necessary and reasonable to comply with Minnesota Statutes, section 256B.04, subdivision 15. It also is reasonable to require the case manager to record in the care plan all services specified in the residential placement agreement as the case manager needs the record to carry out the responsibilities of monitoring and coordinating the person's needed services so the cost does not exceed cost limits. The record also provides an audit trail for the department's review of whether the care is being provided as authorized. See part 9505.3070, subpart 3.

Item L. This item specifies that one criterion of an applicant's eligibility for CADI is a care plan approved by the commissioner. Waiver Section V requires each individual "who is determined to be eligible for waived services (to) have an individual care plan." The waiver also specifies that the department must monitor certain CADI services through audits or checks of the individual's care plan. It requires counties to provide proof to the state agency that each individual's care plan is carried out in compliance with the provider contract between the lead agency and the provider. See Waiver Section VII A. Thus item L is consistent with the waiver. The item is reasonable as it provides the audit trail needed to safeguard against unnecessary use of medical assistance services and excess payments as required by Minnesota Statutes, section 256B.04, subdivision 15. It should be noted that the county through the lead agency contracts with a vendor for certain CADI services. The lead agency then establishes a service agreement with the contracted vendor for service or services to a specific client. See also part 9505.3115, item C and its SNR about contracts and part 9505.3055, subpart 1 about the commissioner's review of the care plan.

Subpart 2. Determination of CADI applicant's medical assistance eligibility. This subpart is necessary to specify how to determine a CADI applicant's medical assistance eligibility. Parts 9505.0010 to 9505.0150 set forth the criteria for determining medical assistance eligibility. Waiver Section III requires an applicant's medical assistance eligibility to be determined using these criteria. However, Waiver Section III also allows the state to "use institutional deeming rules for the deeming of income and resources so that parental and spousal income and resources will not be deemed beginning the first full calendar month of entrance into the waiver program." (Deeming is a requirement of the medical assistance program that, when parent and child or two spouses live together, the income of the parent or the income and

resources of the spouse must be considered available to the child or spouse applying for medical assistance in determining the child's or spouse's medical assistance eligibility. However, if the child or spouse is institutionalized, the parental income or spousal income and resources are no longer considered available in determining a child's or spouse's medical assistance eligibility. See Minnesota Statutes 1989, sections 256B.0575, 256B.058, and 256B.059 and part 9505.0075 in regard to consideration of the income and assets of parents and spouses in determining medical assistance eligibility.) Item A is reasonable because it implements this provision of the waiver. Item B clarifies that a person who is eligible for medical assistance on the basis of a spend-down is also eligible for CADI services. Part 9505.0065, subpart 11 requires the recipient who is determined eligible on the basis of a spend-down to apply his or her excess income to bills incurred for health services. Placing this requirement on a CADI recipient is reasonable because it ensures uniform administration of medical assistance as required under Minnesota Statutes, section 256B.04, subdivision 2, is consistent with the requirement in Waiver Section IV that existing funding resources will not be supplanted by CADI funding, and conserves the expenditure of public funds for health services as required by Minnesota Statutes, section 256B.04, subdivision 15. It is necessary to clarify the time at which the cost of a CADI service is incurred to have a uniform method applicable to determining when the CADI recipient meets a required spend-down. The time chosen, the first day of the month in which the service is provided, is the same one applicable to long-term care (LTC) or nursing home costs. LTC costs are assumed to be ongoing; so are the costs of CADI services needed to maintain a person under age 65 in the community in lieu of nursing home admission. If in fact the recipient did not receive a whole month of CADI or LTC services, medical assistance would pay only the actual cost over and above the spend-down amount. Thus, the time chosen is reasonable as it is the comparable one for LTC residents and permits adjustment of payments according to spend-down requirements and the services actually received by the recipient. It also is necessary to clarify the time at which a cost of the health service other than a CADI service is considered to be incurred in order to have a uniform method applicable to spend-down determinations. The time chosen, the day on which the service is given, is the same one applicable to spend-downs in deducting bills for other health services that are reimbursable under the medical assistance program. Requiring the same date applicable to other health services under medical assistance is reasonable because it is administratively efficient and reduces the possibility of confusion. See part 9505.0065, subpart 11, item E. Finally, the subpart specifies that the applicant is responsible for paying bills used to meet the spend-down. The requirements related to spend-down including the definition of the term "spend-down" are consistent with part 9505.0065, subpart 11. Such consistency reasonably fulfills the requirement to administer the medical assistance program statewide in a uniform manner as specified in Minnesota Statutes, section 256B.04, subdivision 2.

9505.3040 LIMIT ON COSTS OF RECIPIENT'S CADI SERVICES

Subpart 1. Costs to be applied toward the cost limit of a recipient's CADI services. This subpart is necessary to clarify which service costs are to be applied toward the cost limit of a recipient's CADI services. The waiver makes it possible to use medical assistance funds to pay for certain services

not otherwise eligible for medical assistance reimbursement. The medical assistance funds used to reimburse the cost of the waiver services are CADI funds.

Item A is reasonable as these services are the ones eligible for CADI funds. Item B. Health services provided to a CADI recipient may include certain home care services that are eligible for medical assistance reimbursement under parts 9505.0170 to 9505.0475. An example of such a service is skilled nursing care. However if the person were admitted to a nursing home, reimbursement for the skilled nursing care would be included in the nursing home's payment rate and paid by medical assistance. Thus it is reasonable to include the costs of home care services reimbursed by medical assistance in determining the total cost because their inclusion enables a fair comparison of the cost of services needed to remain in the community with the cost of nursing home care. Item B is consistent with the waiver requirement of section VII E.

Subp. 2. Service costs to be excluded. This subpart is necessary to clarify which service costs lie outside of the cost limit applicable to a recipient's CADI services. The services identified in items A to D are eligible for medical assistance reimbursement if the services meet certain standards. These standards are in parts 9505.0170 to 9505.0475 and in part 9505.0290, subpart 2 for respiratory therapy, and in part 9500.1070, subparts 12 to 15 for audiology, occupational and physical therapy and speech-language-pathology. These services are all reimbursed on a fee for service basis. They are not routine nursing home services and their costs are not included in a nursing home's payment rate. Thus it is reasonable to exclude these costs from the determination of the limit under subpart 1 because their exclusion enables a fair comparison of the cost of services needed to remain in the community and the cost of nursing home care. The subpart is consistent with the waiver requirement of section VII E.

Subpart 3. Monthly limit on costs of recipient's CADI services. This subpart is necessary to inform affected persons of the limit specified in the waiver and to specify the method of calculating the costs. The limit is based on the statewide monthly average nursing home rate for a person assigned the same resident class as the CADI recipient under parts 9549.0050 to 9549.0059. The payment rate is calculated according to parts 9549.0010 to 9549.0080. The calculation also requires the deduction of the statewide average monthly income of nursing home residents under age 65 who are medical assistance recipients. As stated above, a recipient's obligation to spend down depends on whether a recipient has excess monthly income and, if so, the amount of the excess. Medical assistance pays that portion of the nursing home payment rate applicable to the medical assistance recipient's care that remains after the deduction of the recipient's required spend-down. Thus, the deduction of the statewide average monthly income of nursing home residents who are medical assistance recipients from the statewide monthly average nursing home rate yields the average medical assistance payment for a nursing home resident who is less than 65 years of age and of the same resident class as a CADI applicant or recipient. This calculation is consistent with the waiver which specifies that costs reimbursed under the waiver cannot exceed what medical assistance would otherwise spend for institutional costs for a person. It is reasonable to use this comparison as it ensures coordination between rules applying to the medical assistance program and, thus, reduces the likelihood of confusion about the basis for comparison. Specifying the costs to be included in the limit is reasonable because it assures compliance with

Minnesota Statutes, section 256B.04, subdivision 2 which requires the medical assistance program to be implemented statewide in a uniform manner. Using the statewide monthly average nursing home rate effective July 1 of the fiscal year in which the cost is incurred is reasonable because the bases for the cost and the rate are similar. Determining the statewide average monthly income of nursing home residents who are recipients must be done in sufficient time to permit the determination of the adjusted limit and to notify counties and other affected parties before the beginning of a new CADI waiver year. It is necessary to specify the time of year to use in calculating the statewide average monthly income of nursing home residents in order to have a uniform method as required under Minnesota Statutes, section 256B.04, subdivision 2. Many nursing home residents receive monthly Retirement, Survivors, and Disability Insurance benefits. These benefits annually are adjusted in January as necessary to reflect inflation. Using the March income of nursing home residents to calculate the average permits the state to base its calculation on recent data. Therefore, March is a reasonable time because the data used in the calculation are up-to-date.

Subpart 4. Exception to monthly limit on costs of recipient's CADI services. The cost of a recipient's needed services may vary on a monthly basis because of the one time purchase of a costly piece of medical equipment such as a lifting device (an adaptation needed to maintain the recipient in the community) or because of a 3-month supply of certain supplies such as adult diapers. It is reasonable to prorate these costs over the waiver year because the proration more accurately reflects the monthly picture and thereby assures the CADI recipient will receive CADI services without suffering an interruption resulting from an out-of-the-ordinary purchase or several months' purchase at one time. This subpart is necessary to clarify the standard annual limit that applies under the exceptional circumstances. It is reasonable to set the annual cost limit of CADI services at 12 times the monthly limit calculated under subpart 3 as such an annual limit is consistent with the waiver and with the concept of proration. It also is reasonable because it provides equitable treatment of all recipients and ensures administration of CADI, a medical assistance program, in a statewide, uniform manner as required under Minnesota Statutes, section 256B.04, subdivision 2. Finally, prorating the cost of purchases of equipment and adaptations over the waiver year is necessary and reasonable because a major expense for equipment or adaptations may give a misleading monthly cost for CADI services that might result in making an applicant ineligible to participate in CADI. The proration gives a monthly average to compare to the monthly average under parts 9549.0050 to 9549.0059 for the resident class category for the applicant as the waiver requires.

Subp. 5. Monthly limit on costs of CADI services of applicant who is a nursing home resident. This subpart specifies that the monthly cost of CADI services of a person who is a nursing home resident at the time of requesting a determination of eligibility for CADI services shall not exceed the actual monthly payment for the resident class assigned under parts 9549.0050 to 9549.0059 for that resident in the nursing home where the resident currently resides. This subpart is necessary to set a standard of cost limitations and to specify the method of determining the limit. Waiver Section III G specifies that home and community-based care under CADI is available to a person only if the cost of the person's services to medical assistance does not exceed the cost to medical assistance to maintain the

person in a nursing home. It is reasonable to be consistent with the waiver in order to qualify for federal financial participation as required under Minnesota Statutes, section 256B.04, subdivision 4. The provision also is reasonable because it meets the requirement of Minnesota Statutes, section 256B.04, subdivision 15 to safeguard against excess payments. Also see part 9505.3025, subpart 3 and its SNR about team recommendations in relation to costs.

9505.3045 REQUEST FOR PROVISIONAL SLOT ASSIGNMENT.

Under the waiver, the Long Term Care Management Division of the Department is responsible for assigning CADI slots. Requiring the case manager to furnish the information the department needs to determine whether to assign a slot to the person is necessary and reasonable because the case manager is in the best position to furnish it. The waiver limits the number of slots. A provisional slot assignment is advantageous to the applicant as it assigns one of the limited number to that particular applicant. It is reasonable to require the case manager to request a provisional CADI slot assignment when the case manager has the required information at hand because this request is administratively efficient, is to the benefit of eligible applicants who, because of a possible delay in mail service, might otherwise have to wait for a slot to become available. It is also reasonable to specify that before requesting a provisional slot assignment the case manager must have completed the applicant's care plan and determined that the applicant meets the eligibility requirements because to do otherwise would be administratively inefficient and might result in the denial of a provisional slot to another applicant who does meet all the eligibility criteria.

Items A and B are reasonable as they identify the applicant. Item C is reasonable because it also identifies the applicant as being medical assistance eligible and medical assistance eligibility is required to be a CADI recipient. Items D, E, and F are reasonable because they provide information the department needs to make a preliminary determination of whether the applicant qualifies for CADI and whether a slot is available.

9505.3050 WRITTEN REQUEST FOR CADI SLOT ASSIGNMENT.

This part is necessary to inform affected parties about how to complete the request for a CADI slot assignment. As stated above in the SNR of part 9505.3045, it is reasonable to require the lead agency to send the information to the commissioner because, under the waiver, the commissioner is responsible for assigning CADI slots and for determining that the eligibility criteria are met and because the lead agency, which has been designated by the local agency to administer the CADI program, has the information needed by the commissioner to make the determination. The waiver requires the department to assure HCFA that the recipient is eligible, that costs of services do not exceed the waiver cost limitations, and that the number of persons assigned slots is consistent with the number specified in the waiver. A time limit for forwarding the information needed for the department's determination is necessary because the provisional assignment of a CADI slot to the applicant reduces the limited number available for other possible applicants for whom complete information has been submitted and who are otherwise eligible for needed CADI services if a slot were available. Requiring the documentation to be forwarded within fifteen working days is reasonable as it balances the applicant's need for timely services and the workload of the lead agency.

Furthermore, a fifteen day period to complete this task is consistent with the time allowed for similar screening related tasks in other medical assistance rules, such as parts 9505.2390 to 9505.2500 which apply to preadmission screening and alternative care grants for persons aged 65 or older who are nursing home applicants or residents. It is reasonable to require the department to notify the lead agency of the termination of a provisional slot assignment so that the lead agency is informed and may take the action necessary to provide the applicant's needed services.

9505.3055 COMMISSIONER'S DETERMINATION.

Subpart 1. Review and notice of decision. As noted in the SNR for part 9505.3050, the commissioner is responsible for determining whether an applicant meets the CADI eligibility criteria specified in part 9505.3035 and, based on this determination and the availability of a CADI slot, for assigning a CADI slot. This subpart is necessary to set a standard for this review and the notice of the commissioner's decision.

Subpart 2. Criteria for commissioner's approval and assignment of CADI slot. This subpart is necessary to set a uniform standard for approving a request for CADI services and assigning a CADI slot. Two conditions must be met to receive services funded by CADI: the applicant must meet the eligibility criteria in part 9505.3035 and a CADI slot must be available. This subpart is reasonable because it informs affected persons of the two conditions that must be met to receive services funded by CADI. A systematic approach to ordering applications for CADI services is necessary as the number of slots is limited and Minnesota Statutes, section 256B.04, subdivision 2 requires the program to be administered statewide in a uniform manner. The Department customarily dates applications and other documents when they are received by the Department. Thus, the Department has a record of the order in which it has received CADI applications. Requiring the assignment of CADI slots according to the order in which the required application is received is reasonable as it avoids arbitrary ordering of applications, is consistent with the Department's recording procedures, and is administratively efficient.

Subpart 3. Disapproval of request for CADI services. This subpart is necessary to set a uniform standard for disapproving a request for CADI services. Subpart 2 sets forth the criteria for approval: the applicant must meet the eligibility criteria in part 9505.3035 and a CADI slot must be available. Thus, it is reasonable that, if these two conditions are not satisfied, the commissioner must disapprove the request. The commissioner needs the information and documents specified in part 9505.3050 in order to determine whether the applicant is eligible for CADI services. Thus, the commissioner cannot make the determination if the lead agency has not supplied all the required information and documents and it is reasonable to disapprove the request. Conversely, it would be unreasonable to keep the application open while waiting to obtain the missing information or documents because doing so might hold up slots for other applicants with completed applications while the lead agency dawdles in completing its submission. However, it is also reasonable to notify the lead agency of what is necessary to complete the application as the lead agency which has the responsibility to assist the applicant to obtain the services needed to implement the preadmission screening team's recommendation for home and community-based services can carry out this responsibility by submitting the required information or documents.

9505.3060 REASSESSMENT OF CADI RECIPIENTS.

Subpart 1. Reassessment required. This subpart is necessary to specify when a reassessment must be done. The CADI waiver requires that a lead agency ensure that a CADI recipient's service needs and eligibility are reassessed at least every six months. See Section VII C of the waiver. A reassessment also is required under 42 CFR 441.303 (c). If a care plan no longer meets the recipient's needs, due to changes in the recipient's health or social status or in the informal support necessary to remain at home, it is reasonable to revise the plan. To revise the care plan to meet the CADI recipient's needs, a reassessment must be performed. Thus, item A is reasonable because it is consistent with the waiver and will assure that the determination of the recipient's health and social needs and the support to meet those needs is kept up to date. Item B is reasonable as the information obtained through the assessment or reassessment is needed by the persons who are going to care for the recipient in a new setting or, if the person is going back to the same home, the person may have different or new service needs.

Subpart 2. Reassessment procedure. This subpart sets a uniform standard for the reassessment procedure. A uniform standard is necessary to meet the requirement of Minnesota Statutes, section 256B.04, subdivision 2 to administer the medical assistance program statewide in a uniform manner. A reassessment is conducted by the case manager. The case manager must assess the health and community living needs of the person and must recommend either a continuation of the person's present health services or a revision of the services according to the needs of the person. The case manager's duties in conducting the reassessment are the same as those in part 9505.3025. Thus using the preadmission screening procedure specified in part 9505.3025 is reasonable as it ensures a uniform standard of determining the services needed by the recipient, avoids possible confusion, and promotes administrative efficiency.

Subpart 3. Record of reassessment. This subpart sets a uniform standard of information related to the reassessment that the case manager must place in the recipient's record. Subpart 1 defines when reassessments are required. It is reasonable that the case manager document the reason or the reasons for the reassessment, the revisions of the care plan, and the reason or reasons for each revision or a statement that revisions were not needed in the recipient's records at the lead agency, because this information is evidence of compliance with subpart 1. Recording the names of the persons consulted and their relationship to the recipient is necessary and reasonable because it establishes a record of compliance with the waiver provision that primary caregivers, physicians, and other appropriate persons be consulted.

Subpart 4. Distribution of revised care plan. As stated in the SNR of part 9505.3030, subpart 2, a care plan specifies the care objectives, the frequency, scope, and duration of necessary health and social services, and the appropriate providers as determined by the team. This subpart is necessary to specify who is to receive the revised care plan because the care plan is used by many different entities that are responsible for the recipient's care. Part 9505.3030, subpart 5 specifies the entities to be given a copy of the applicant's care plan. It is reasonable to require the

distribution of a recipient's care plan in the same manner as these are the entities who need the information to provide the services needed by the recipient.

9505.3065 REIMBURSEMENT FOR CADI SERVICES.

This part is necessary to specify the reimbursement basis for services funded by CADI. The part is consistent with 42 CFR 440.180 and with the waiver.

9505.3068 COSTS NOT ELIGIBLE FOR REIMBURSEMENT UNDER CADI.

This part is necessary to inform case managers that the items specified in A to H are not eligible for reimbursement from waiver funds.

Item A. Medicare and third party payers pay for the cost of some services that may be needed to remain in the community. The waiver requires that CADI funds be used only when needed to supplement other funding sources or when other funding is not available. The item is thus consistent with the waiver. See Waiver Section IV. It also is consistent with Minnesota Statutes, section 256B.04, subdivision 15 which requires the department to safeguard against unnecessary expenditures and with part 9505.0070 which requires the billing of third party payers as a first source of payment for services to recipients. Item B is necessary to clarify that room and board costs are not eligible for CADI reimbursement under the waiver. CADI is an MA program to provide health care services. Because room and board are not health care services, they are specifically excluded under the waiver. See Waiver Section IV. However, the waiver allows payment for room and board "as part of out of home respite care". The item is consistent with the waiver.

Item C is necessary to assure that program complies with the waiver provision that prohibits such payments. It is reasonable to inform persons about a waiver prohibition to avoid misunderstanding.

Item D is necessary to inform the reader that there is a limit on payment for respite care as CADI services and where to find the limit.

Item E is necessary and reasonable because the waiver sets this cost limit on adaptations.

Item F is consistent with the duties of the case manager under the waiver. These duties include developing the care plan and coordinating and authorizing the services specified in the care plan.

Items G and H are consistent with Minnesota Statutes, section 256B.04, subdivision 15 which prohibits duplicate payment and requires safeguards against excess expenditure of medical assistance funds. The costs of recipients' hospice care and nursing home care are eligible for medical assistance reimbursement. (See part 9505.0297 governing hospice care and part 9505.0420 governing long-term care facility services.)

9505.3070 CASE MANAGEMENT SERVICES

Subpart 1. Case management services required. This subpart is necessary to set a case management service standard for the counties. The waiver in Section IV A states, "It is assumed that all persons, receiving home and community-based waived services, will require case management.....The case manager must assure continuity of care, coordinate the case plan, and monitor the service delivery, so that the health and safety of the individual is protected." The service is eligible for payment under CADI. Therefore, the subpart is consistent with the waiver. Each recipient needs a case manager to perform functions related to the CADI program including gathering the

information needed to determine the person's eligibility for CADI, estimating the cost of the needed services, assisting the person to choose service providers, and facilitating service in compliance with the provider's service contract. The case manager has skills and knowledge about accessing services and matching the services to the person's needs. The lead agency is responsible for implementing the CADI program including the designation of a case manager. Thus, it is reasonable to require the lead agency to provide case management services to the recipient as this agency is responsible for developing, coordinating, and revising the recipient's care plan.

Subpart 2. Case manager qualifications. This subpart sets a standard for who is qualified to be a case manager. A standard is necessary to insure compliance with the requirement of Minnesota Statutes, section 256B.04, subdivision 2 about conducting the medical assistance program statewide in a uniform manner. Waiver Section IV A requires the case manager to meet the qualifications of a social worker or registered nurse. The subpart is consistent with the waiver requirement which must be met in order for the service to be eligible for medical assistance reimbursement. It is reasonable to provide that the lead agency employ or contract with the person who provides the case management services as this choice gives the lead agency flexibility needed to respond its particular client and agency circumstances while at the same time maintaining the lead agency's responsibility to provide case management services.

Subpart 3. Responsibilities of case manager. This subpart in items A to K sets standards for the responsibilities of case managers. The responsibilities in items A to H and J to L are required by the waiver. Compliance with the waiver is a condition of obtaining federal financial participation for waiver services under CADI. See Waiver Section IV A. It is reasonable to conform to the waiver standards in order to obtain federal financial participation as required by Minnesota Statutes, section 256B.04, subdivision 4. Item H requires the case manager to send a notice of action to a recipient if the recipient's CADI services are going to be reduced, suspended, or terminated based on the preadmission screening team's recommendations after the recipient's reassessment. This requirement is reasonable because it provides the recipient due process and informs the recipient of the right to appeal the proposed action. See part 9505.3140. It is reasonable to require the case manager to use a form provided by the commissioner as the form is designed to contain all the required information and the use of a standard form is consistent with the requirement of Minnesota Statutes, section 256B.04, subdivision 2 to administer the medical assistance program statewide in a uniform manner. Notices of service reductions, suspensions, or terminations in regard to other medical assistance program services call for a ten day notice. Requiring a notice at least ten days before a reduction, suspension, or termination of a recipient's CADI service is reasonable as it provides uniformity in implementing the medical assistance program as required by Minnesota Statutes, section 256B.04, subdivision 2.

Subpart 4. Reporting suspected abuse or neglect of a vulnerable adult or suspected maltreatment of a child. CADI services are provided to recipients who live in the community, usually with their family members or alone in their residences. These settings and the provision of services to CADI recipients are not supervised on a daily basis by qualified professionals. Some CADI recipients may be vulnerable adults because of their own physical or mental

health status or because they depend on others for services. Other CADI recipients are children and these children are unusually vulnerable to maltreatment because of their disabling conditions. Circumstances may occur under which these adult recipients may be abused or neglected or child recipients maltreated. CADI recipients should be able to live and receive necessary services in safe and healthful conditions. If such conditions can not be met under existing circumstances, it is necessary and reasonable to require the case manager to act in a manner that will protect the recipient and provide the necessary services. This subpart is necessary to specify the procedure the case manager must follow if he or she has reason to believe a recipient is subject to abuse or neglect. Minnesota Statutes, section 626.557, governs the reporting of the abuse or neglect of vulnerable adults. Some CADI recipients fall within the definition of vulnerable adult set forth in subdivision 2, clause (c) of this statute. Subd. 2, clauses (d) and (e) of this statute define abuse and neglect as related to a vulnerable adult. Minnesota Statutes, section 626.577 specifies the requirements for reporting and investigating suspected abuse of vulnerable adults. This subpart is consistent with the statute cited within it. It is also necessary to specify what the case manager must do to protect the recipient during the lead agency's investigation. The actions specified in items A to C of subpart 5 are reasonable because they provide choices to enable the case manager to act in the recipient's best interests.

Minnesota Statutes 626.556, subdivision 3, governs the reporting of maltreatment of children. It requires practitioners of the healing arts, social services, hospital administration or law enforcement to immediately report information concerning alleged or suspected child maltreatment to the local welfare agency, police department, or the county sheriff. The subpart is consistent with the statutory requirement. It is reasonable because it informs affected persons of required actions. Requiring the case manager to take steps to assure the child's health and safety while the investigation is under way is necessary and reasonable as a major responsibility of the case manager is to see that services are provided in a way that protects the child's health and safety. See section IV A of the waiver. It is also necessary to specify what the case manager must do to protect the child during the investigation. The actions specified in subpart 5 are reasonable because they are provide choices that enable the case manager to act in the recipient's best interests.

Subpart 5. Case manager decisions. This subpart is necessary to inform the case manager of the required action when the protection agency's investigation is completed. As stated for subpart 4, the case manager has major responsibility for protecting the health and safety of the CADI recipient. It is therefore necessary and reasonable to require the case manager to amend the recipient's care plan if necessary to assure the health and safety of the recipient as conditions change because the amendment is consistent with the case manager's responsibility. If the provider has harmed the recipient, arranging for another CADI provider is necessary and reasonable because the service is still required but a new provider will be necessary to assure the recipient's services are given in a healthy and safe manner. Suspending CADI services is necessary and reasonable if the health and safety of the recipient cannot be safeguarded because either no other provider of the service is available or the recipient's behavior in a provider setting is potentially harmful to the recipient. Prompt suspension of services may be necessary fully to safeguard the recipient's health and safety. Other

department rules related to different circumstances such as determination of medical assistance eligibility under parts 9505.0010 to 9505.0150 may require suspension to be delayed for ten days after the notice date as a way to provide time for the recipient to request a hearing about the suspension. Such a circumstance is quite different from one that is potentially harmful to the recipient. Therefore, it is reasonable to require the suspension to be effective with the date of the notice to enable the protection of the recipient's health and safety.

9505.3075. ADAPTATIONS.

A recipient may have mobility problems, sensory deficits, or behavior problems that interfere with the recipient's ability to live at home. Some adaptations to a person's home or living arrangement may be needed to enable the person to continue to live there or to receive the services necessary to remain there. This subpart is necessary to set the standard of eligibility for CADI payment of the cost of such adaptations. The waiver defines adaptations as "minor physical adaptations to the home, adaptive equipment and minor adaptations to vehicles" with the purpose of assisting individuals with mobility impairments, sensory deficits or behavior problems to remain at home. Examples of the adaptations include wheelchair ramps, widened doors, handrails, communication devices, lowered kitchen work surfaces, shatterproof windows, and other devices that enable a recipient to live safely in a home setting. See waiver section IV B. Furthermore, the waiver defines "home" as "an individual's place of residence whether it be in his/her own home, his/her family's home or a foster home." (See also part 9505.3015, subpart 20 and its SNR for a definition of "home".) Finally the waiver defines "vehicle" as one "owned by the individual, the individual's family, or the individual's foster family." (See also part 9505.3015, subpart 50 and its SNR for the definition of "vehicle".) The proposed rule is consistent with these waiver provisions. Consistency with the waiver is reasonable because it ensures federal financial participation in the costs of the program as required by Minnesota Statutes, section 256B.04, subdivision 4. The examples given in the rule are commonly used vehicle adaptations that facilitate safe transportation of a disabled person who is confined to a wheelchair (lifting devices and wheel chair securing devices) or for whom a standard car seat is not appropriate. Item A is reasonable because it maximizes the availability of CADI slots and CADI funds by limiting the use of CADI dollars to those circumstances when other funding sources are not available and when the items cost meets the requirement of part 9505.3010 to 9505.3140. This is consistent with the requirement of Waiver Section IV that services available through existing funding sources "will not be supplanted by waiver funding" and that the cost of a CADI recipient's care does not exceed the costs limits determined by comparable institutional care. Item B. The waiver specifies that the adaptation must be necessary to avoid institutionalization and also specifies the cost limitation of an adaptation. Item B is reasonable as it provides the department an opportunity for the request to be reviewed to determine whether it meets the criteria for CADI funding. It is reasonable to require the case manager to provide the documentation of prior authorization as the case manager is responsible for developing the recipient's care plan and coordinating the services specified in the plan is listed in the waiver as a specific responsibility of the case manager.

9505.3080 ADULT DAY CARE SERVICES.

Section IV E of the waiver states, "Adult day care services are to be offered through the home and community-based waived service program when they are required as an alternative to nursing home placement." This subpart is necessary to specify the limit. It is consistent with the quoted waiver provision. It is reasonable to be consistent with the waiver in order to obtain federal financial participation as required by Minnesota Statutes, section 256B.04, subdivision 4. Items A and B are required by the waiver.

9505.3085 EXTENDED HOME HEALTH SERVICES

This part is necessary to set a standard for extended home health services under CADI.

Item A. Part 9505.0295 sets the standards for extended home health services under medical assistance. It is reasonable to use this standard as it is consistent with the waiver requirement.

Item B. Section IV H of the waiver specifies that the limits placed on the amount, duration, and scope of home health services are those set in the individual plan of care but that the other standards of the state medicaid plan are applicable to CADI services. It is reasonable to meet the waiver requirement in order to obtain federal financial participation as required by Minnesota Statutes, section 256B.04, subdivision 4.

Item C. This item requires the provider of extended home health services to meet the requirements applicable to CADI services under parts 9505.0170 to 9505.0475. The item is reasonable as it informs providers of what is expected of them and it complies with the requirement of Minnesota Statutes, 256B.04, subdivision 2 to administer the medical assistance program statewide in a uniform manner.

9505.3090 EXTENDED PERSONAL CARE SERVICES.

Subpart 1. Availability under CADI. This subpart is necessary to inform affected persons about the standards for receiving CADI reimbursement for providing extended personal care services. Section IV H of the waiver states, "Limitations on the amount, duration, and scope of personal care attendant services will be specified in the individual care plan." (As used in parts 9505.0335 and 9505.3010 to 9505.3140, "personal care assistant" means the same as "personal care attendant.") It is reasonable to comply with the waiver limitation because compliance enables the state to obtain the federal financial participation as required under Minnesota Statutes, section 256B.04, subdivision 4.

A recipient may have a condition such as a communication impairment that prevents the recipient from directing his or her own care. In this event, permitting the primary caregiver or family member to give care direction is reasonable because these persons are likely both to know the recipient's needs and to be able to communicate with the service provider and thus are able to direct the care on the recipient's behalf. The waiver states, "Care direction may be provided by a family member, significant caregiver...." The persons listed usually are aware of the recipient's needs and therefore are able to inform the personal care assistant of those needs. Permitting care direction to be provided by a family member or primary caregiver if the recipient is unable to direct the care is consistent with the waiver. Although the waiver permits a case manager to direct the care if the recipient

is not able to direct his or her care, the department believes it is in the recipient's best interest to limit the case manager's role to one of monitoring the services as the case manager can more objectively monitor the services and the communication between the provider and the person directing the care if the case manager is not directly involved in day-to-day direction. Finally, it is reasonable to specify that the safeguards and care standards established for personal care services under the medical assistance program (part 9505.0335) apply to the CADI program because their usage is consistent with the requirement of Minnesota Statutes, section 256B.04, subdivision 2, that the medical assistance program be administered throughout the state in a uniform manner.

Subpart 2. Qualification as personal care assistant. This subpart is necessary to set a standard of who is qualified to be a personal care assistant. The CADI program which authorizes medical assistance payment for services that differ from those in the State Medicaid Plan has the goal of maintaining disabled individuals under age 65 who are at risk of nursing home admission or who are nursing home residents in their own homes. The program is intended to promote community living and independence by providing appropriate health care and supports services based on individual needs. To accomplish this purpose, the waiver permits care direction to be provided by a family member, when necessary. Family members are expected to assist in caring for the CADI recipient. In some communities, a family member may be the only person available to carry out personal care services that are needed by the recipient. Under part 9505.0335, subpart 10, item E, personal care service provided by "a person who is the recipient's legal guardian or related to the recipient as spouse, parent, or child whether by blood, marriage, or adoption" is not eligible for medical assistance payment. Including such a restriction in the CADI rules would be contrary to the intent of the CADI program and might have a chilling effect on the willingness of a family member to perform needed services customarily carried out by a personal care assistant. For example, the needed services being performed by the family member might prevent the person from earning money needed to support the family. Prohibiting payment of the family member who performed the needed services might force the family member to choose between needed income and placing the CADI applicant or recipient in a nursing home. Thus, it is reasonable to allow a family member to be employed as a personal care assistant of a CADI recipient as this employment is consistent with the CADI program's intent of maintaining the CADI recipient at home. Requiring the person providing personal care services to meet the training standards is necessary and reasonable because it assures the safety of the recipient. These training standards are set forth in part 9505.0335, subpart 3, which is cited within subpart 2. Thus this subpart is consistent with the intent of the waiver to provide the services necessary for assuring the recipient's health and safety while maintaining the recipient in the community. Requiring the personal care assistant to be employed by or under contract with a lead agency offers assurance of supervision by a responsible party and is consistent with the requirements of Minnesota Statutes, section 144A.46, subdivisions 1 and 2. See also subpart 3 and its SNR.

Subpart 3. Relative as personal care assistant. Sometimes personal care service is given to a recipient by a relative. The relative may be the only person available in the community who can carry out the required services. A relative providing this service may incur considerable financial

hardship. For example, the time required to give the care may make it impossible for the relative to continue compensated employment outside the home or the relative may incur substantial expenses in making arrangements necessary to enable the relative to care for the client. When relatives have been unable or unwilling to incur such economic hardship, the necessary personal care services have been provided by compensated personal care assistants or the person may have had to leave the community and be admitted to a nursing home. Recognizing such financial hardship by paying for the relative-provided personal care services offers an incentive to relatives to give personal care, enabling the client to remain in the community. Enabling the recipient to remain in the community through community-based services is a primary purpose of the CADI program. However, CADI funds are limited and not all relatives want payment or have suffered an economic hardship because of caring for a CADI recipient. Thus limiting payment to situations involving financial hardship is reasonable because it balances the need to provide an incentive to relatives to care for the recipient, thereby enabling the recipients to remain in the community, and the need to maximize the use of available CADI slots and funds.

This subpart is necessary to clarify the eligibility of a recipient's relative to be employed and receive payment for providing the recipient's personal care services. The waiver states in section IV I that "(a)ll other safeguards [of the medical assistance program] and provider standards continue to apply. Therefore, it is necessary to prohibit a recipient's responsible relative from receiving payment for giving the recipient personal care services. See part 9505.0335, subpart 10, item E and also part 9505.2465, subpart 11. The criteria specified in items A to D are similar to and consistent with the criteria in part 9505.2465, subpart 11 which governs personal care assistant standards for alternative care services in the community to persons who are 65 years of age or older and eligible for nursing home admission. It is reasonable for the criteria about employment of relatives to be the same or similar to other department rules affecting similar populations in order to avoid confusion in administering community-based alternative care programs and to encourage administrative efficiency. Requiring the relative's employment by a personal care provider offers assurance of service supervision by a qualified party.

Subpart 4. Commissioner's approval of extended personal care. Requiring that the lead agency obtain the commissioner's approval of extended personal care is necessary and reasonable because it gives the Department an opportunity to determine whether the cost of the needed personal care services can be reimbursed under the medical assistance program or whether CADI funds are the only payment source available. It also gives the Department the opportunity to determine whether the personal care assistant, especially in the case of relatives serving as personal care assistants, meets the requirements of this part. The waiver limits the use of CADI funds to paying the cost of services for which no other funding source is available.

9505.3095

FAMILY SUPPORT SERVICES

Subpart 1. Availability as CADI service. This subpart is necessary to clarify the standard and inform affected persons. Section IV F of the waiver states, "Family Support Services will be provided under this waiver only if they are necessary to avoid institutionalization." It is reasonable to be consistent with the waiver provisions in order to obtain federal financial

participation as required by Minnesota Statutes, section 256B.04, subdivision 4. It is reasonable to specify that training must be designed to increase the recipient's or family member's ability to care for the recipient at home as the recipient needs this care in order to avoid institutionalization. Thus the training is consistent with the waiver. Similarly, requiring counseling to be related to assisting the recipient and the recipient's family members to function in a manner that is needed to maintain the recipient in the community is consistent with the waiver.

Subpart 2. Standards to be a provider of training services. The waiver in section F of Attachment 4 specifies the qualifications necessary to provide two categories of family support service: training and counseling. This subpart clarifies the standards applicable to providers of training services. It is necessary to inform affected persons of the standard. Items A to H are consistent with the requirements of the waiver. It is reasonable to be consistent with the waiver requirements in order to obtain federal financial participation as required by Minnesota Statutes, section 256B.04, subdivision 4. The standards specified were chosen because they are state requirements to obtain a license to practice in a particular health care profession, (items A, B, and C) or ensure consistency with standards of the medical assistance programs as in the case of Item E (part 9505.0295, subpart 2, item E), and Items D, F, G, and H which relate to rehabilitative services under part 9500.1070, subparts 13 to 15. (It should be noted that part 9500.1070, subparts 13 to 15 are currently being amended and that the proposed amendment will use the same language as set forth here in subpart 2 and it's important that the Department's rules be consistent across programs.)

Subpart 3. Standards for providers of family support counseling services. As stated above in the SNR of subpart 2, the waiver specifies qualifications to be a provider of family support services in the areas of training and counseling. Section F of the waiver (Attachment 4) specifies who is qualified to provide counseling services under the CADI program. This subpart is necessary to inform affected providers of the standard. The standards in items A to E were chosen because they are state requirements to obtain a license to practice in a particular health care or health-related profession which has a scope of practice that includes counseling, (Items A, B, C, and D), are consistent with other medical assistance program rules, (the supervisory requirements of Items A and B as specified in part 9505.0323), or, as in the case of Item E includes professions such as a member of the clergy or pastoral counselor who is experienced and skilled in counseling persons in coping with crises and maintaining family functioning. Item E requires a person providing a counseling service as an independent practitioner to have knowledge of and be skilled in areas related to the health and social conditions of a recipient. An independent practitioner may not hold a license or certificate related to the scope of the practitioner's practice but may nevertheless be a qualified counselor as in the case of a pastoral counselor. Thus it is reasonable to specify the requirements an independent practitioner must meet because these standards take the place of licensure or certification, set a uniform statewide standard as required under Minnesota Statutes, section 256B.04, subdivision 2, and ensure that recipients and their families are counseled by qualified persons. The standards chosen in subitems (1) to (4) of Item E are related to the health and social conditions of the recipients and to the services they and their families need in order to maintain the recipients in their residences. Subitem (5) requires proof that

a provider of family counseling services has been trained in areas related to counseling and specifies the types of training that will satisfy the requirement. It should be noted that at the time the waiver was submitted and approved the Legislature had not yet established the requirement of licensure for independent practitioners of social work. The requirements of (5) (a) to (5) (c) are reasonable because they are similar to the requirements established by counties for entry level social workers who work with disabled individuals. Counties in Greater Minnesota report that they sometimes have difficulty in finding licensed persons who are available to provide services needed by their residents. Thus, subitem (5) also is reasonable as it provides these counties flexibility in serving recipients and at the same time sets a minimum standard necessary to protect the recipient's health and safety. Requiring the lead agency to determine that the independent practitioner meets the requirements is reasonable as the lead agency has the duty of contracting with service providers and is responsible for administering the CADI program in compliance with parts 9505.3010 to 9505.3140 and for assuring the health and safety of the persons receiving the services. It should be noted that all CADI services including family support counseling services are subject to the approval of the case manager as part of the CADI recipient's care plan. Thus there is an opportunity for the case manager, and the lead agency employing or contracting the case manager, to review the qualifications of the person providing family support services. The requirements in Items A to E are consistent with the waiver. It is reasonable to be consistent with the waiver in order to obtain federal financial participation as required under Minnesota Statutes, section 256B.04, subdivision 4.

9505.3100

HOMEMAKER SERVICES

Subpart 1. Availability as CADI service. This subpart is necessary to set a standard applicable to homemaker services for payment eligibility under the CADI program. The waiver in section IV C states, "Homemaker services will be directed toward enabling the individual to remain in his or her own home and thus avoid institutionalization." The subpart is reasonable because it informs affected persons of a requirement of the waiver.

Subpart 2. Tasks of homemaker. Citing the tasks of a homemaker that are reimbursable under CADI is necessary to set a standard. This standard is consistent with part 9505.2395, subpart 22, which defines "homemaker services" and applies to alternative care services available to eligible persons age 65 and over who have applied for nursing home admission which is a similar population requiring similar services. The tasks specified in the standard also are similar to those specified in part 9565.1200, subpart 4 which includes within the role of homemaker the tasks of personal care, home management, food planning and preparation, laundering, and general household duties. This subpart is reasonable because it informs affected persons of the possible services available, is consistent with other rules of the department, which are also administered by the local agency.

Subpart 3. Qualified homemakers. A homemaker service is one service that may be provided by the CADI program. This subpart is necessary to set a standard of persons qualified to provide homemaker services. Part 9565.1200 sets standards related to the duties and training of homemakers who provide homemaker services purchased by a local agency. It is reasonable to require the same standards to avoid confusion and to ensure consistency between rules of the department.

Subpart 4. Contracting for homemaker services and supervision. The lead agency has been designated by the local agency to administer and monitor the CADI program and its services. In so designating a lead agency, the local agency has placed on the lead agency its duties of providing or contracting for homemaker services. Thus, the lead agency acts for the local agency. Part 9565.1300 states responsibilities of the local agency for purchasing and supervising homemaker services. It is reasonable to require the lead agency to use the same standards as the local agency under the cited statutes as the lead agency is designated by the local agency to act on its behalf and a single standard ensures uniformity of the local agency's provision homemaker services.

9505.3105

INDEPENDENT LIVING SKILLS SERVICES

Subpart 1. Availability as CADI service. The waiver states in section IV that independent living skills "will only be provided under this waiver if necessary to avoid institutionalization. This subpart is necessary to clarify the standard and inform affected persons. The goal of the CADI program is to maintain persons under age 65 who are residents of or at risk of admission to nursing homes by providing their needed services in the community. Independent living skills services that help achieve this goal should be paid for. Therefore, it is reasonable to require that CADI payments for independent living skills services be limited to services that assist the goal. The waiver also states that independent living skills may be provided "in the disabled individual's home or at a site away from the usual place of residence." It is reasonable to be consistent with waiver limits because payment for services under the waiver is contingent upon compliance with the waiver provisions. Furthermore, Minnesota Statutes, section 256B.04, subdivision 4 requires the department to comply in any reasonable manner necessary to obtain federal financial participation. Requiring the case manager to approve a service site other than the recipient's home is reasonable because the requirement provides an opportunity to determine whether the site meets the standards necessary to protect the health and safety of the recipient, a determination that is a responsibility of the case manager. State and local building and fire codes and health regulations are standards available for this determination. Personnel enforcing the regulations may be called on as necessary to assist the case manager in determining whether the site meets the standards.

Subpart 2. Standards for providers of independent living skills services. Section G of the Waiver specifies who may provide independent living skills services. This subpart is necessary to inform affected persons of the standard. The subpart is consistent with the waiver requirements. It is reasonable to be consistent with the waiver in order to obtain federal financial participation as required by Minnesota Statutes, section 256B.04, subdivision 4. Providers enrolled as medical assistance providers have shown evidence of compliance with certain standards. See part 9505.0195 for the standards applicable to medical assistance provider enrollment. Home health agencies and rehabilitation agencies may provide independent living skills services and are eligible to enroll as medical assistance providers if they meet the required standards. See part 9505.0290 in regard to standards for home health agencies and part 9505.1070, subpart 15 in regard to standards for rehabilitation agencies. Thus items A and B are reasonable because the

providers have shown evidence of compliance with the required medical assistance standards. Independent living centers or centers for independent living also provide independent living skills services through services related to client attainment of the daily living skills needed by a person with disabilities to live independently, have more control over his or her life, and participate more productively in society. They also offer information and referral, peer counseling, and advocacy in support of their clients. Standards for the evaluation of such services are required under the Rehabilitation Amendments of 1984, Public Law No. 98-221, section 711 (c)(3). Minnesota has adopted evaluation standards for purposes of certifying centers for independent living for state funds. See Minnesota Statutes, section 129A.01, subdivision 9 for a definition of center for independent living and section 129A.10 for the services a center may offer and the certification from the Department of Jobs and Training, Division of Vocational Rehabilitation. Also see part 3300.3200 about certification requirements. Item C reasonably permits a person who is employed by an independent living center to be a provider of independent living skills services as such an agency is recognized by federal authorities as a provider of these skills. As stated above, some independent living skills services of an independent living center are provided by peers of the disabled individuals needing the services. State laws and regulations are silent on the qualifications required to be a peer providing independent living skills services. Therefore, it is necessary to establish qualification standards. The standards in subitems (1) to (4) are reasonable as they are related to the person's knowledge of and ability to provide needed services. The standards in subitem (5) are reasonable because they are related to the CADI recipient's disabilities and needed services, set objective criteria that can be documented, and provide an opportunity for the lead agency to monitor the provider's delivery of needed services. Independent living skills services were used by 10 percent of Minnesota's CADI recipients in federal fiscal year 1988 (FFY 88) and 15 percent of CADI recipients in FFY 89. See Appendix C, Annual Report on Home and Community-Based Services Waivers and Waiver Cumulative Service Units and Cost. Finally it is reasonable to require the supervising registered nurse to determine whether the person has the skills to provide the needed services as the supervising registered nurse is qualified in providing such skills and has the opportunity directly to instruct and work with the person.

9505.3107 MEDICAL SUPPLIES AND EQUIPMENT

Subpart 1. Medical supplies and equipment. This subpart is necessary to inform the affected persons that medical supplies and equipment which are not covered services under medical assistance are available under CADI as an extended home health service if they are medically necessary to maintain the recipient at home. The CADI waiver states that "grants may be used for payment of costs of providing care-related supplies, equipment and services." Thus, the provision is consistent with the waiver. Part 9505.0310, subpart 3 requires prior authorization to obtain medical assistance payment for certain medical supplies and equipment such as prostheses and orthoses if the cost of their purchase exceeds the performance agreement limit. Prior authorization is an opportunity for the department to review the necessity and cost effectiveness of the medical supply or the equipment, as required by Minnesota Statutes, section 256B.04, subdivision 15. Requiring the case manager to obtain prior authorization for medical supplies and equipment paid through CADI funds is reasonable as the prior authorization procedure provides the

commissioner an opportunity to make certain that the equipment or supply is medically necessary and is not a covered service under medical assistance or a third party payer. Medical supplies and equipment that are beyond the amount, scope, and duration specified in part 9505.0310 are not eligible for medical assistance payment but such supplies and equipment may be necessary to enable the CADI applicant or recipient to remain at home. Thus, it is reasonable to require prior authorization of medical supplies and equipment to be purchased through CADI funds as prior authorization is consistent with the CADI waiver which states that "the county agency shall provide documentation to the commissioner verifying that the individual's alternative care is not available at the time through any other public assistance or service program." Therefore it is reasonable that medical supplies and equipment that are not funded under the MA program, Medicare, or a third party payer may be funded under CADI because this conforms to the waiver. Requiring the case manager to document the cost of the medical supply or equipment is a reasonable way to provide the information needed in determining whether the medical assistance costs of the CADI services fall within the cost limitations specified in part 9505.3040.

Subpart 2. Criteria to obtain commissioner's prior authorization. This subpart specifies the criteria that must be met to obtain prior authorization for the purchase of medical supplies or equipment and thereby assure the item's eligibility for payment through CADI funds. It is necessary and reasonable to specify the criteria because it informs affected persons and minimizes the possibility of arbitrary or capricious decisionmaking. The purpose of the waiver is to enable recipients to obtain through CADI certain services, which are not eligible for medical assistance reimbursement, that they need to remain in the community. The CADI waiver specifies the dollar amount of funds that are available to pay for these non-covered services in a waiver year. The CADI program may not exceed this amount. However, because the waiver limit is subject to adjustment that reflects inflation and is subject to HCFA's approval, it would be unduly restrictive and might result in denial of medical supplies or equipment needed by a CADI recipient to write the present limit in these rules. Using a standard of the item being a non-covered service under medical assistance is consistent with the Department's responsibility to ensure that limited CADI funds are used in a manner consistent with the program's purpose of providing the services needed to maintain a recipient in the community as an alternative to institutionalization.

9505.3110. **RESPITE CARE SERVICES.**

Subpart 1. Availability as CADI service. Respite care is a short-term service that is available to persons who are eligible for CADI services under the waiver. See waiver section IV D. In a letter dated May 29, 1986, HCFA required the department to address a limit on the hours of respite care per year. The letter said:

The home and community-based services waiver is viewed as an alternative to institutional care. Since respite care includes room and board, we believe the amount provided should be subject to reasonable limits. The State should therefore consider reducing the amount of respite care which it will be providing for each client to approximately 30 days or less per year unless it can provide evidence that such a reduction would compromise the effectiveness of its program.

Therefore, from the initiation of the CADI program, the State has accepted HCFA's suggestion and limited respite care services to 720 hours (24 hours x 30 days) per person per year. The original approved waiver specified this limit. Compliance with the waiver is reasonable to obtain federal financial participation as required by Minnesota Statutes, section 256B.04, subdivision 4. The department continues the limit even though the present approved waiver does not specify a limit because the department believes it balances the needs of the CADI recipient and his or her family and the requirement of Minnesota Statutes, section 256B.04, subdivision 15 to safeguard against unnecessary services.

Subpart 2. Provider standards. Section IV A of the waiver specifies where respite care may be provided. The waiver also requires that the department and the local agency to assure the recipient's health and safety. This subpart sets standards for respite care.

Item A. It is reasonable to require the facility providing respite care out of the recipient's home to have received county approval as the county has a responsibility under the waiver and these rules to assure the health and safety of the recipient. Furthermore it is reasonable to require the facility to meet either Medicaid certification standards or appropriate state licensure standards because such standards are required by the waiver and have been adopted to protect the person's health and safety. It should be noted that respite care may be provided in the home of the CADI recipient's neighbor if the neighbor's home meets the criteria applicable to foster homes and is approved by the county.

Item B. The persons listed in this item are trained in providing health and health-related services. It is necessary and reasonable to require the person giving in-home respite care to be trained in giving such services to assure that the services will meet the needs and protect the health and safety of the recipient. It is reasonable to require in-home respite care workers to be trained in first aid and cardiopulmonary resuscitation as these workers are usually alone with the recipient, may experience a delay in obtaining immediate help in case of an emergency, and are giving care to persons whose health condition may require immediate response. Finally it is reasonable to require respite care workers to be able to read and follow instructions, write clear messages, and have a level of skill consistent with the recipient's needs because these skills are necessary for the protection of the recipient's health and safety. See part 9505.0290, subpart 1, in regard to supervision of home health aides and part 9505.0335, subpart 4 in regard to supervision of personal care assistants. Requiring supervision of these services when funded through CADI to be the same as when funded as medical assistance services is reasonable as it is consistent with the waiver.

9505.3115

STANDARDS FOR PROVIDER REIMBURSEMENT

This part is necessary to clarify the criteria for receiving reimbursement under the CADI program so affected persons are informed of their responsibilities to verify that the providers possess the required licensure, certification, authorization, or contract. 42 CFR 441.302 (a) requires the Department to assure the federal agency that:

"necessary safeguards have been taken to protect the health and welfare of the recipients of the services. Those safeguards must include:
(1)adequate standards for all types of providers who provide services under the waiver."

The regulation further specifies that a provider of services under the waiver must meet all applicable state licensure and certification requirements. Therefore, items A and B are required by the federal regulation as required under Minnesota Statutes, section 256B.04, subdivision 4 to obtain federal financial participation. Item C is necessary and reasonable because it informs affected persons of the need for a contract or employment relationship with the lead agency as required by the waiver. It should be noted that the lead agency has a contract with a vendor for the types of services the vendor will provide and also has a service agreement with the contracted vendor for the specific service or services for a particular CADI recipient. Under these rules, all providers who meet the standards of part 9505.3120, subpart 2 would be eligible for a contract. The lead agency would execute service agreements with the contracted vendors for specific services to a CADI recipient. It is reasonable to hold the lead agency responsible for assuring that CADI providers are qualified because under the terms of its contract with the local agency, the lead agency has been delegated the responsibility of assuring the health and safety of recipients. The waiver specifies that services must be part of the recipient's care plan. The development of the care plan and the coordination of services specified in the care plan are responsibilities of the case manager. Therefore, Item D which limits a provider's reimbursement for service to those authorized by the case manager is reasonable because it's a way to make sure that only necessary services are paid for.

9505.3120

LEAD AGENCY SELECTION OF CADI PROVIDERS

Subpart 1. Solicitation of providers. This subpart clarifies how potential providers of CADI services are to be informed of the opportunity and the criteria to be selected to provide CADI services. The lead agency may use one of three methods in soliciting providers of CADI services. It is reasonable to provide lead agencies a choice of a method of soliciting providers because choice provides the lead agency the flexibility to respond to the recipients' needs, to local situations, and to unforeseen circumstances. One choice is the method in current use to solicit providers of alternative care grant services. This choice is established under part 9505.2460, subpart 1 which relates to the provision of alternative care (ACG) for persons who are aged 65 or older and eligible for nursing home admission. It requires a local agency to hold an annual public meeting to inform possible providers of the criteria to be selected and the date to apply. See Minnesota Statutes, section 256B.091, subdivision 8 which requires this for the alternative care grants program. Many CADI providers are also ACG providers as these providers furnish home and community-based services similar to CADI services. It is reasonable to allow counties to use the same standards in so far as appropriate because a single set of standards is administratively efficient and avoids confusion about programs requiring service providers. It also maximizes the information made available to potential providers at one time so that they have an opportunity to plan their businesses to their advantage. It is reasonable to use the same procedure as in part 9505.2460, subpart 1 in order to insure consistency between rules of the department that affect similar providers. Finally the choices of a written notice and a request for a proposal are reasonable because they are consistent with open bidding practices and provide an opportunity for all interested persons to participate. The requirements specified for the contents of the written notice are similar to those specified in part 9505.2460, subpart 2 for published notices of solicitation of possible ACG providers at an annual

meeting. It is reasonable to use similar requirements about the contents of a notice to possible providers of similar services because a single set of standards is administratively efficient, avoids confusion about programs requiring service providers, maximizes the information available to potential providers, and insures consistency between rules of the department that affect similar providers.

Subpart 2. Selection factors. This subpart in items A, C, D, F, and G sets standards that are the same as those of part 9505.2460, which the local agency must use as criteria in selecting providers of alternative care grant contracts. The standards are also consistent with Minnesota Statutes, section 256B.091, subdivision 8 which governs alternative care grants to provide home and community based services to persons aged 65 or older as an alternative to nursing home admission. Standards are necessary in order to carry out the requirement of Minnesota Statutes, section 256B.04, subdivision 2 that the medical assistance program be carried out statewide in a uniform manner. It is reasonable to set one set of selection standards for providers of similar home and community-based services to a similar population that needs similar alternative care to avoid institutionalization because similar standards avoid confusion and are administratively efficient. A similar standard is also reasonable to ensure consistency between the rules governing medical assistance programs. Item B is similar to item B in part 9505.2460, subpart 3. It is reasonable to require the provider to be selected on the basis of the provider's ability to meet the needs of CADI recipient's in the county as the intent of the CADI program is to provide CADI recipients the services they need to reside at home. Item E is reasonable because it is consistent with the requirement of Minnesota Statutes, section 256B.04, subdivision 15 that the medical assistance program be administered in a cost effective manner and safeguarded against unnecessary expenditure. It also is reasonable because it facilitates compliance with the waiver requirement that the cost of CADI services be less than the cost of the level of care the person would require in a nursing home and with the waiver's annual spending limit.

Subpart 3. Written record of reason for not selecting a provider. A written record of the reason for not selecting a provider is required under Minnesota Statutes, section 256B.091, subdivision 8 in regard to the alternative care grant program providing alternative services to persons aged 65 or older who are eligible for nursing home admission. As stated above for subparts 1 and 2, it is reasonable to use the same standard for a similar program affecting a clientele with similar health and social needs who receive services from the same or similar home and community-based services providers in order to avoid confusion, be administratively efficient, and assure consistency between department rules related to the medical assistance program. Requiring this record to be created is reasonable and necessary because it informs the affected person, the provider-applicant, and provides an audit trail for the department's review of whether all qualified potential service providers had an equal opportunity to provide the needed services and the recipients' right to freedom of choice of a contracted provider was protected.

9505.3125

CONTRACTS FOR CADI SERVICES.

Subpart 1. Contract required. This subpart is necessary to inform affected persons of the waiver requirement that local agencies contract for services to be provided under the waiver. (Section I of the waiver specifies that the

local county agency will be the enrolled provider Medicaid provider for purposes of the waiver program.) This subpart specifies that the agency designated by the county board to administer the CADI program, the lead agency, must have a contract with or employ each CADI service provider. This subpart is reasonable because it is consistent with the waiver and assures the services have meet a requirement to obtain federal financial participations required under Minnesota Statutes, section 256B.04, subdivision 4.

Subpart 2. Compliance with applicable laws and regulations required. This subpart is necessary and reasonable to inform affected persons such as enrolled medicaid providers that they must comply with the cited statutes, federal regulations, and department rules that apply to the services they are contracted to provide.

Subpart 3. Information required in contracts. This subpart sets a standard for the terms of the contract between lead agencies and providers. A standard is necessary in order to comply with the requirement of Minnesota Statutes, section 256B.04, subdivision 2 in regard to administering the medical assistance program in a uniform manner statewide and to assure that the department has sufficient information to carry out its county monitoring responsibility as specified in Section I of the waiver.

Arthur L. Corbin, in his treatise, Corbin on Contracts, One Volume Edition, 1952 (hereafter Corbin) page 143, states, "A court cannot enforce a contract unless it can determine what it is.... Vagueness of expression, indefiniteness and uncertainty as to any of the essential terms to an agreement, may prevent the creation of an enforceable contract." Items A, D, F, G, I, J, and K are all "essential terms" of the contract according to Corbin. It is necessary to require these terms to ensure that the contract is enforceable.

Item B is necessary because these rules are binding and required under Minnesota Statutes, sections 256B.04, 256B.091, subdivision 9 and section 256B.49, subdivision 2. It is reasonable as it informs affected parties of requirements applicable to the CADI program.

Item C requires compliance with the Minnesota Government Data Practices Act, Minnesota Statutes, chapter 13. All data collected, stored, used and disseminated on an applicant for or recipient of medical assistance services including waiver services are subject to the Act. Requiring a statement of compliance with this Act in the contract ensures that the provider has knowledge of this requirement and has agreed to comply.

Item E requires the provider to agree to provide services as specified in the recipient's care plan. Under part 9505.3030, a recipient's case manager is required to develop an individual care plan for each recipient which identifies the needed services, the care objectives, the service provider, and the frequency, scope, and duration of each of the services. It is reasonable to require a statement in the contract which requires services to be provided according to the recipient's care plan because the inclusion of this provision ensures that the provider is aware of the requirement and will direct the services toward achievement of the recipient's care objectives.

Item H requires the provider to document the presence of an individual abuse prevention plan. As required in part 9505.3070, subpart 4, a case manager has a responsibility to comply with Minnesota Statutes, sections 626.556 and 626.557. As discussed in the SNR of part 9505.3070, subpart 4, some recipients are vulnerable adults who may be subject to abuse or neglect of children who may be subject to maltreatment. The lead agency acting through

its employee, the case manager, is responsible for reporting abuse, neglect, or maltreatment and taking steps to assure the health and safety of the recipients. Thus the requirement is reasonable as it provides the lead agency an opportunity to inform the provider about acts prohibited under Minnesota Statutes, sections 626.556 and 626.557 and also gives the lead agency a means to monitor the provider's compliance.

Subpart 4. Subcontracts. This subpart sets standards for subcontracts between providers and other contractors. Standards are necessary in order to comply with Minnesota Statutes, section 256B.04, subdivision 2 which requires the medical assistance program to be carried out statewide in a uniform manner. Item A is reasonable because the lead agency is responsible for monitoring the terms of the contract with the provider and permission to subcontract must be given in order for the lead agency to meet this responsibility. Items B and C are necessary and reasonable because they assure that subcontractors meet the same contract standards as required of the contractor in subparts 2 and 3. Furthermore it is reasonable to hold subcontractors to the same standard as the contractors because this standard has been the basis for the contract the contractor received from the lead agency and is one way to assure a basic level of quality.

Subpart 5. Noncompliance. This subpart clarifies the action required of the entities that are responsible for the recipient's health and safety if a contractor or subcontractor fails to perform the terms of the contract. Waivered services provided in the community under the CADI program are planned to protect the health and safety of disabled persons who otherwise would be forced into institutional settings. County boards and the department are responsible for assuring the health and safety of recipients. Two entities have a delegated responsibility for a recipient's health and safety: the local agency which reports to a county board; the lead agency designated by the local agency that implements, contracts for, and monitors the CADI services and also employs the recipient's case manager. Thus it is necessary to clarify what each entity must do in the event a provider or subcontractor fails to comply with the contract so that the entity can act to protect the health and safety of the recipient or recipients and to assure that the recipient or recipient will receive the needed services. Therefore it is necessary to specify the actions to be taken if a provider or the provider's subcontractor fails to comply with the contract. It is reasonable to require the county board to notify the commissioner because the information in the notice is necessary to the commissioner's program monitoring function. The 30day notice period is reasonable because it is a commonly used notice time and is consistent with permitting the county board an opportunity to work with the provider or subcontractor to cure the breach or anticipatory breach of contract. Permitting the county board to allow the provider or subcontractor time to cure the breach or anticipatory breach of the contract is reasonable because it balances the contractor's right to due process and the county board's responsibility for assuring the health and safety of recipients through home and community-based services.

It is also reasonable to require the county board to notify the commissioner of the outcome of the contractor's or subcontractor's attempt or failure to cure the breach and of any planned county board action toward the provider or subcontractor as the commissioner needs up-to-date information about CADI service providers and is responsible for monitoring the provision of CADI services. Ten days is a notice standard that is consistent with other

department rules such as the notices of the preadmission screening team's recommendations required under part 9505.2425, subpart 8. See also subpart 5 of part 9505.3025 which incorporates the 10-day notice requirement of part 9505.2425, subpart 8 and part 9505.0125, subpart 1 concerning a notice to a medical assistance applicant or recipient if the department denies prior authorization, restricts free choice of provider, reduces services, or denies, or terminates a person's medical assistance eligibility. Consistency between department rules is reasonable because it promotes administrative efficiency and avoids confusion.

9505.3130.

AGENCY REPORTS AND RECORDS

Subpart 1. County plans. This subpart is necessary to specify the contents and time of submission of a local agency's annual plan. The CADI waiver requires the commissioner to establish rules governing submittal and approval of the local agency's annual plan. This subpart, therefore, is necessary to comply with the waiver. It is reasonable that the annual plans be submitted by August 1 so the Department has time to review and approve the plan prior to the start of a waiver year which begins annually on October 1. The lead agency is authorized by the local agency to implement the CADI program. Thus, the lead agency has the information necessary to prepare and to revise an annual county plan for CADI services. Requiring the lead agency to do this is reasonable because it is administratively cost effective and efficient. The county board has the final responsibility for reports and plans submitted to the commissioner and for designating persons authorized to act on its behalf. Therefore, it is reasonable to require the submitted plan or revision to be signed by the person authorized by the board to act on its behalf.

Items A and B are reasonable because they provide a way for the Department to identify the county and the persons in the county who are responsible for the CADI program.

Item C. The waiver requires the department to assure that the cost of the applicant's or recipient's CADI services is not expected to exceed the cost of the appropriate level of care that would be provided to the applicant or recipient in a nursing home. The waiver further states, "In no case can the county spend more for waived services on a client than the cost of nursing home care." See page 13 of the Waiver and 42 CFR 441.301 (3) and 42 CFR 441.302 (e). Item C is reasonable because the department needs to know how the county will monitor the actual service costs in order to comply with the waiver and obtain federal financial participation as required in Minnesota Statutes, section 256B.04, subdivision 4 and to monitor the expenditure of funds as required in Waiver Section VII B.

Item D. Waiver Section VII A requires the department to assure HCFA that services are delivered by providers who meet certain standards such as current eligibility for medical assistance reimbursement, state standards applicable to board and care facilities, state licensure or certification requirements. Item D is reasonable because it enables the Department to monitor the selection of providers and thus to carry out its waiver specified responsibility.

Item E. The Waiver states on page 13, "Individuals who meet the eligibility requirements of the program have a right to the covered services as an alternative to nursing home placement as long as the waiver is in an approved status by HCFA and there are waiver slots available.... the state agency will enforce the individual's right to choose between nursing home care and

community-based services where the cost of the alternative care option is not expected to be greater than the cost of the appropriate level of institutional care." This item is reasonable because the department needs this information to carry out its responsibility under the waiver. It also is reasonable as the information provides a clear record of the local agency's acceptance of a condition of participation and thus avoids misunderstandings.

Item F is reasonable because eligibility for nursing home admission is a requirement to be eligible for CADI services.

Item G is reasonable because the department needs the information as waiver requires the department to protect the medical assistance recipient's freedom to choose. See part 9505.0190, Minnesota Statutes, section 256B.01, Waiver Section VII D, and 42 CFR 431.51.

Item H is reasonable because the department needs the information as the waiver requires the department to protect the safety and health of CADI recipients.

Item I is consistent with the Act cited within it (Minnesota Statutes, Chapter 13) and assists the protection of a person's right to privacy.

Item J is reasonable because it informs affected persons of a requirement that must be followed to receive reimbursement for the services provided under CADI and provides an audit trail. See Waiver Section VII B and F. It is similar to other rules of the department which set standards for receiving medical assistance reimbursement, including parts 9505.0170 to 9505.0475 and 9505.1750 to 9505.2150. The department needs the information because the department is required by the waiver to make an annual report to HCFA about the type, amount, and cost of services provided and of the health and welfare of the CADI recipients. To make this report the department needs the records required under subpart 4. See Waiver Sections VII B and F.

Subpart 2. Resubmission of conditional approvals or rejections. This subpart is necessary because the county plan must be approved before slots can be assigned or reimbursement can be provided. In the years since counties began to submit their plans for the department's review and approval, the department has found that some plans were incomplete or needed clarification. Such counties may have applicants and may want to participate in providing home and community-based services under CADI. Thus, it is reasonable to permit the county to have an opportunity to correct the defect and submit a corrected plan in order to obtain the commissioner's approval and enable the county to provide a recipient's needed services. In rejecting a submitted plan, the commissioner identifies the plan's deficiencies and the steps to correct them. Such steps require county action and may take time. However, it is reasonable to set a time limit to encourage the county's prompt response. Therefore, the limit of 30 days is reasonable because it allows time for sending and receiving the documents required under these rules and for reviewing and acting upon the commissioner's comments.

A recipient who is receiving needed services that are paid for through CADI may receive those services as long as he or she remains eligible as specified in part 9505.3035. Furthermore, the provider of those needed services is entitled to payment according to the contract with the lead agency if the provider remains in compliance with the contract. Neither a recipient nor a provider complying with his service contract should suffer a burden if a county's plan is denied approval and the county may no longer receive CADI funds to pay for CADI services. Thus, it is reasonable to require the county to continue to pay for CADI services using county funds until a county plan has been approved because it is the county which has failed to comply and this penalty encourages county compliance with the requirements.

Subpart 3. Provider agreements. A county is responsible to the department for the manner in which it administers the medical assistance program including CADI. See Minnesota Statutes, section 256B.04, subdivision 1. Minnesota Statutes, section 256B.04, subdivision 2 requires the department to carry out the medical assistance program statewide in a uniform manner. Necessary to uniform implementation of CADI is a clear understanding of and agreement to the responsibilities related to CADI and the assurances required by HCFA under the waiver. See Waiver Section VII. A county, through its local agency, must designate a lead agency to administer the CADI program. This subpart specifies that a county that has designated a lead agency must submit a medical assistance provider form on behalf of the lead agency that is signed by the lead agency. A lead agency does provide case management services and may directly provide other services such as extended personal care services, extended home health services, or skilled nursing services. However, a lead agency designated by the county to administer the CADI program is responsible to the department through the local agency. Thus, it is reasonable to require the lead agency to enroll as a medical assistance provider because the signed agreement is evidence the lead agency has had an opportunity to review and accept medical assistance provider standards. See part 9505.0195 in regard to provider agreements. The requirement is consistent with the Waiver which states on page 10:

"When services are delivered by providers who are currently eligible for reimbursement through Title XVIII and XIX, the standards currently in place for these providers will be used. These providers are home care agencies, public health nursing services, and personal care attendants."

Use of a form provided by the commissioner reasonably provides a uniform statewide standard as required by Minnesota Statutes, section 256B.04, subdivision 2.

Subpart 4. CADI provider records. This subpart is necessary to specify the standard of maintaining program and fiscal records. The CADI waiver grants the commissioner authority to audit local agencies for fiscal and utilization control. Separate files are necessary and reasonable because they aid the commissioner's audit of the program as required under the cited rules, parts 9505.1750 to 9505.2150. These rules set standards for record maintenance and audit availability that are applicable to all medical assistance programs including CADI. It is reasonable to use these standards in order to assure administrative uniformity and efficiency and thereby reduce possible confusion. It is also reasonable because it ensures consistency and coordination of rules affecting medical assistance programs.

9505.3135 RATES FOR CADI SERVICES

Subpart 1. Notice to lead agencies. Under subpart 2, the commissioner annually sets maximum rates for CADI services on a statewide basis. Lead agencies need to know these rates to include correct information in the proposed county plans and budgets. This part is necessary to establish who shall notify the lead agencies and the time of the notice. It is reasonable to require the commissioner to notify the lead agencies because the rates are established by the commissioner. Annual notice is a reasonable requirement because the rates are adjusted annually according to subpart 2. The time of May 15 is reasonable because it allows the local agencies to receive the

information in time to use it in the fiscal year beginning July 1 and to include it in preparing the annual plans which 9505.3130, subpart 1 requires local agencies to submit by August 1.

Subpart 2. Maximum CADI service rate. This subpart is necessary to set the maximum service rates under CADI. Minnesota Statutes, section 256B.091, subdivision 8 authorizes the commissioner to set maximum payment rates for alternative care services to persons aged 65 or older who are eligible for nursing home admission. Although the requirements placed on the CADI program are found in the waiver rather than in statute, it is reasonable to permit the commissioner to set maximum payment rates for the same or similar services provided by the same or similar providers to a similar population, disabled persons under age 65 who require nursing home admission. Thus it is reasonable to require the commissioner to set maximum payment rates in order to assure that comparable services are available at comparable rates and thereby provide equity for providers of comparable services. Furthermore, the waiver in section VII E requires the department to control the expenditures for home and community-based services provided to individuals under the waiver. The ability to set maximum CADI service rates is important to the commissioner's responsibility to control the service expenditures and to maximize the use of available funds. Economic circumstances beyond the control of the state, county, or provider may vary from year to year in ways that affect the costs of providing services. It is reasonable to require the commissioner to make an annual adjustment of the maximum CADI service rate in order to reflect the effect of cost increases beyond the provider's control. Basing the increase on the cost changes occurring from one year to the following year is reasonable because it ensures implementation of the CADI program in an economical and equitable manner. The index used to update the rates is the change forecast in the Home Health Agency Market Basket of Operating Costs in the first quarter of the calendar year. Using the Home Health Agency Market Basket of Operating Costs, a table in Health Care Costs, is reasonable because it estimates the cost changes expected to occur in the next quarter in the market basket of goods and services of home health care agencies which provide the same or similar services as are available under CADI. The Home Health Agency Market Basket of Operating Costs is in common usage to adjust prices to be congruent with cost changes. The Health Care Costs is a copyrighted quarterly publication which is available through the Minitex interlibrary loan system.

It should be noted that the department is conducting a study at the present time of the rates used to reimburse case management services provided to several populations receiving needed services under federally approved waiver programs of home and community-based services. In addition to CADI, these programs include alternative care grants for persons aged 65 or older, community alternatives for chronically ill persons who are in hospitals or at risk of institutionalization, and waived services for persons with mental retardation or related conditions. The study is designed to identify differences and similarities of case management services to the different populations and to recommend a uniform approach to reimbursing the cost of the service. The rates will remain the same until the department completes the study. When the study is complete, an amendment of this part will be proposed to provide for adjustment of the rate for case management services under CADI.

Subpart 3. County CADI service rate. Services reimbursed through the MA program are subject to review under Minnesota Statutes, section 256B.04, subdivision 15 which requires the state agency to safeguard against excess payments. Requiring an audit for a lead agency CADI service rate is necessary because the commissioner has the responsibility to ensure that the rates are not exceeded. Thus, this subpart is consistent with the cited statute and is reasonable. It should be noted that the administrative costs included in the case management rate are different from the supervision costs in subpart 4.

Subpart 4. Supervision costs. This subpart is necessary to clarify how the costs of supervising some of the CADI services are to be paid. This subpart is consistent with other rules of the department. It is also consistent with Minnesota Statutes, section 256B.15 which requires the department to safeguard against duplicate payments. Supervision of extended personal care services must be provided by a registered nurse. The payment for the registered nurse's supervision is made according to a separate fee schedule applicable to supervisory services of a registered nurse employed by or under contract to a home health agency. See part 9505.0445, item K. (Personal care services in the medical assistance program are provided through a personal care provider and are under the supervision of a registered nurse. See part 9505.0335; a home health agency is one category of personal care service provider.) Therefore, the use of a separate rate for personal care supervision is consistent with and ensures coordination with other department rules related to the medical assistance program.

Subpart 5. Recovery of costs. This subpart is necessary to inform counties of the action the commissioner must take to carry out the responsibilities set forth in the waiver. The waiver requires the commissioner to be financially accountable for the expenditure of waiver authorized funds. The waiver also requires the commissioner to monitor the use of the services. See waiver section VII B. The obligation of the county of service is to adhere to the service and cost limits specified in these rules and the waiver and to award contracts consistent with these limits. Therefore, it is reasonable to permit the commissioner to recover from the county of service costs that exceed the limits specified in these rules. It also is reasonable and necessary that the county monitor the use and costs of services because this monitoring aids the county in its obligation to be financially accountable. Holding the county responsible to pay the commissioner for excess costs will enable the commissioner to keep statewide expenditures within the limit and encourage counties to carry out this obligation.

9505.3138 CRITERION FOR DELAY IN SENDING REQUIRED NOTICES.

Under part 9505.3135, subpart 1, the commissioner must send notices about the statewide maximum rate allowed for reimbursement of a CADI service and also about the percentage increase allowed in the rate under subpart 2 of part 9505.3135. The commissioner receives the information needed to set the rate and the percentage increase allowed from sources beyond her control. If these sources do not provide the information in a timely manner, the commissioner may be unable to set the rate and the allowable increase or to send timely notice. This part establishes the criterion that permits the commissioner to delay sending the required notices. A criterion is necessary to set a uniform standard. The criterion, untimely provision of the necessary information, is

reasonable as the rule requires the rate and its annual adjustment to be based on certain information. It also is reasonable to require the commissioner to send the notices as soon as possible after the needed information is received as the counties need the rate and the allowable percentage increase in order to complete their county plans, annual budgets, and monitor the costs of CADI services as required by these rules.

9505.3139 BILLING FOR CADI SERVICES.

This part is necessary to clarify the procedure for submitting bills to obtain payment for CADI services to a CADI recipient. It is reasonable to require CADI billings to go through the case manager because one duty of the case manager is to monitor the service costs to assure that the cost of services specified in the CADI recipient's care plan does not exceed the approved estimated cost of the plan. It is also reasonable to require submission to the lead agency because the lead agency is the other party to the contract or agreement with the service provider and has the responsibility of paying for the services as required by the agreement or contract or of denying payment if the services do not comply with the contract or agreement. Part 9505.0450 establishes billing procedures applicable to medical assistance services provided under parts 9505.0170 to 9505.0475. It is reasonable to require the same standard because a single standard avoids confusion, provides comparable records about medical assistance services that are available to the department in evaluating the costs of medical assistance programs including CADI, and is administratively efficient.

9505.3210 APPEALS.

This part covers the general provisions for appeals by CADI recipients. Federal regulations, 42 CFR 431.200 to 431.250, require an appeal process for recipients. CADI services are funded by MA under the waiver and are considered public assistance services under Minnesota Statutes, section 256.045, subdivision 3. Minnesota Statutes, section 256.045 establishes the right of a person whose application for services [under Minnesota Statutes, Chapter 256B] is denied or whose assistance is suspended, reduced, or terminated to contest that decision. Minnesota Statutes, section 256.045 also establishes the time limitations for submitting a written request for a hearing, the conduct of the hearing, who shall hear the appeal and who shall issue an order on the matter, and the right of a party aggrieved by the order to seek judicial review.

Subpart 1. Notice of right to appeal. Informing a person applying for CADI services about appeal rights is necessary and reasonable to inform the person of rights available under Minnesota Statutes, section 256.045. It is reasonable to require the case manager to inform the person being assessed or reassessed as the case manager has direct contact with the person during the assessment or reassessment. Requiring written material to be given to the person is reasonable because it is evidence that the information was given and minimizes misunderstanding about the person's right to appeal.

Subpart 2. Appealable actions. See the introductory discussion about appeals under Minnesota Statutes, section 256.045 in the SNR for subpart 1. This subpart is necessary to clarify the type of actions that may be appealed.

Minnesota Statutes, section 256.045 permits any person applying for or receiving public assistance under Minnesota Statutes, chapter 256B to contest the decision or action of a local agency that denies the application for assistance or does not act upon it with reasonable promptness or that suspends, reduces, or terminates the person's services. CADI is a program of medical assistance services authorized in Minnesota Statutes, section 256B.49, subdivision 2 and approved under a waiver from HCFA. Items A to C are consistent with the statute and their inclusion in the rule informs affected persons. Additionally, item A is consistent with Waiver Section VII D which states that a person who is not given the choice of home and community-based services who is denied the waived services of choice as an alternative to nursing home services has the right to a fair hearing under 42 CFR part 431, subpart E and state law if the person is qualified under the program. (See page 13 of the Waiver.) It should be noted that a denial of nursing home admission resulting from a preadmission screening is not an appealable issue. The purpose of preadmission screening is to determine whether the applicant requires a level of care provided by a nursing home. If the team determines the applicant does not need a level of care provided by a nursing home but can receive the needed services at home under the CADI waiver, then denial of nursing home admission is consistent with the purpose of the waiver and the requirement of Minnesota Statutes section 256B.04, subdivision 15 to safeguard against excess payments and unnecessary or inappropriate use of medical assistance services. It also should be noted that an error in computing the estimated or actual cost of a CADI applicant's or recipient's CADI services may result in a denial or reduction of the person's CADI services. Such a computational error may be appealed under items A or C of this subpart.

Subpart 3. Actions that are not appealable. There is no entitlement to CADI services. Eligibility for CADI services is limited by the waiver. The cost of home care cannot exceed the cost of nursing home care, there are a limited number of slots available for each year of the program, and the waiver is time-limited even if the United States Department of Health and Human Services approves renewal of the waiver. Because these are conditions specified in the waiver, it is reasonable to list them as unappealable issues.

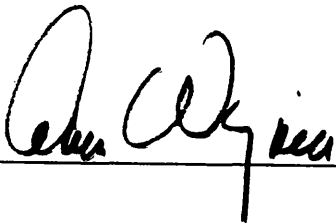
Subpart 4. Submission of appeals. Minnesota Statutes, section 256.045, subdivision 3, establishes the procedure for making an appeal concerning public assistance programs. This subpart is consistent with the cited statute. Including this information in the rule is necessary and reasonable because it informs affected persons.

Subpart 5. Hearing of appeal. This subpart is necessary to put parties on notice that an appeal under this part will be heard as required by the cited statute. It is reasonable because the statute governs all appeals of MA programs.

EXPERT WITNESSES

If this rule goes to public hearing, the Department does not plan to have outside expert witnesses testify on its behalf.

November 27, 1989



ANN WYNIA, Commissioner

Department of Human Services