STATE OF MINNESOTA

DEPARTMENT OF HUMAN SERVICES

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

STATEMENT OF NEED AND REASONABLENESS

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

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

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

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

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

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

Part 9510.1020. DEFINITIONS

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

Part 9510.1040. APPLICATION TO BE COMPLETED BY PROVIDER

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

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

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

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

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

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

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

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

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

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

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

Part 9510.1050. COUNTY REVIEW OF PROVIDER'S APPLICATION.

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

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

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

Part 9510.1070. COUNTY'S APPLICATION TO THE COMMISSIONER.

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

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

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

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

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

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

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

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

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

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

Part 9510.1110. EMERGENCY PROCEDURE

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SMALL BUSINESS CONSIDERATIONS.

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

EXPERT WITNESSES.

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

Date

Ann Wynia
Commissioner