8/20/90

STATE OF MINNESOTA
DEPARTMENT OF HUMAN SERVICES

In the Matter of Proposed Rules of
the Department of Human Services
Governing Community Alternative Care
for Chronically Ill Individuals
Who Are Eligible for Medical
Assistance and at Risk of
Hospitalization, Minnesota Rules,
Parts 9505.3500 to 9505.3700

STATEMENT OF NEED
AND REASONABLENESS

Introduction

The proposed rules, parts 9505.3500 to 9505.3700 govern the community alternative care (CAC) program for chronically ill individuals who are hospitalized or who require frequent hospitalization. The authority for this rule is derived from Minnesota Statutes, section 256B.49, subdivision 2.

Parts 9505.3500 to 9505.3700 enable the Department of Human Services to establish a framework for counties to: 1) instruct interdisciplinary teams and case managers how to process an application for home and community-based services for chronically ill individuals eligible to receive medical assistance as hospital inpatients; 2) develop care plans to enable eligible individuals to remain in the community; 3) select providers of home and community-based services; 4) set standards for home and community-based service providers; 5) authorize reimbursement for services; and, 6) bill the Department for reimbursement of services.

History of the Community Alternative Care Program (CAC)

CAC is a home and community-based services program authorized for medical assistance recipients under a waiver from the Health Care Financing Administration (HCFA) of the United States Department of Health and Human Services. The waiver which has been in effect in Minnesota since 1985 permits the state to provide health services specified in the State Medicaid Plan without regard to the "amount, duration, and scope of the services" specified in the Plan. Additionally, the waiver permits the state to extend the home and community-based services under CAC to persons who would otherwise be ineligible for medical assistance provided under Title XIX of the Social Security Act, 42 U.S.C. 1392a, et seq., while living at home because of the Supplemental Security Income (SSI) deeming rules but who would be eligible for medical assistance if they were institutionalized. See Attachment A, State Medicaid Manual, section 4440 B. Initially, only chronically ill children were served under CAC, but the 1987 amendment to the waiver extended eligibility to any individual under age 65 at risk of hospitalization.

Minnesota Statutes, section 256B.49, authorizes the Department of Human Services to apply for the waiver. The statute states that the waivers are requested "to furnish necessary services in the home and community setting to childen or disabled adults under age 65 who are medicaid eligible when

institutionalized in an acute care or nursing home setting." Under the statute, the "commissioner shall assure that the medical assistance cost of home and community-based care will not be more than the medical assistance cost of care if the eligible child or disabled adult under age 65 were to remain institutionalized."

The purpose of the program is to save medical assistance program costs by making health care services outside of a hospital available to the target population, chronically ill individuals under 65 years of age. (See Attachment A.,Sec. 4440, State Medicaid Manual, Part 4, Services.) Some savings have been substantial. For example, in September of 1989, the average medical assistance cost of CAC services for the 39 persons on the program was 53 percent of comparable hospitalization costs paid by medical assistance.

The waiver approved by HCFA for Minnesota specifies the home and community-based services that are available, in addition to medically necessary medical assistance services, to individuals under age 65 who reside in a hospital or are at risk of hospitalization. These services include case management services, which the waiver, and these rules, require for CAC recipients. The waiver also contains the specific service standards and eligibility criteria which must be met as a condition of receiving federal financial participation in the costs of the home and community-based services. A copy of the waiver is in Attachment A.

CAC is a cooperative effort between the Department of Human Services and county agencies. The department has the obligation of assuring HCFA that, in implementing the program, the state has met all the requirements and limits specified in the waiver. The Department is also responsible for determining eligibility to participate in the program, approving care plan funding, and complying with the conditions specified in the waiver. For their part, the counties have the responsibility of implementing the program. Counties are responsible for organizing interdisciplinary teams, conducting assessments, developing home care plans, case management, contracting for or directly providing services, reporting CAC-related activities to the commissioner, and submitting service invoices.

At present, only 17 Minnesota counties are providing services to CAC recipients. These counties are listed in Attachment B.

Rule Development Procedure

Proposed parts 9505.3500 to 9505.3700 have been developed according to the requirements of Minnesota Statutes, Chapter 14, The Administrative

Procedure Act. The department established a public advisory committee whose membership included persons representing county agencies, service providers, client advocates, and other state agencies concerned with health care issues. The committee provided guidance to the department about the proposed rules through a process of review and comment of early rules drafts prepared by the department. The department considered the committee's guidance in completing the proposed rules as published.

The committee met on May 25, 1988 and July 28, 1988. Committee membership is in attachment C.

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 provider standards 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 CAC services include home health services, part 9505.3570;

home health aide services, part 9505.3590; medical equipment, part 9505.3620; prescribed drugs, part 9505.3624; and other professional services, part 9505.3626.
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 homemaker services, part 9505.3575; respite care services, part 9505.3580; family counseling and training services, part 9505.3600; environmental modifications in the home, part 9505.3610; medical transportation, part 9505.3622; foster care, part 9505.3630; and

case management services, part 9505.3570. 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 CAC services will qualify for federal financial participation as required under Minnesota Statutes, section 256B.04, subdivision 4.

It also should be noted that CAC service providers must have a contract, purchase agreement, or service agreement with the lead agency (part 9505.3645) and that the lead agency which is required to publicize the opportunity to be a CAC service provider has been approved by the county board to administer the county's CAC program.

These rules will not affect the present reimbursement of inpatient hospitals as hospitals receive medical assistance payment for acute care services that may become necessary for CAC recipients. Such payment will be based on the recipient's diagnosis at the time of admission and in accordance with parts 9500.1090 to 9500.1155. It should be noted that hospitals may provide respite care to CAC recipients as a contracted service under CAC.

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. 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. These 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. Thus, it is necessary and reasonable to set uniform administrative standards for the medical assistance program and reporting requirements.

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 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 the Department in its Notice of Intent to Adopt a Rule Without 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.

9505.3500APPLICABILITY AND EFFECT

Part 9505.3500 sets forth the applicability and effect of the proposed rules.
Subpart 1. **Applicability.** This subpart 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 also states that these rules must be read in conjunction with Minnesota Statutes, section 256B.49, Minnesota Rules, Ch. 9505, and the waiver. This part is necessary and reasonable to inform persons affected by the program of the basis of these rules and other rules that affect CAC recipients and providers.
Subp. 2. **Effect.** The waiver is approved by the United States Department of Health and Human Services, Health Care Financing Administration (HCFA). The present waiver which became effective April 1, 1988, is a five year extension of the initial waiver which was approved for a three-year period beginning April 1, 1985. To retain the waiver, the department must apply for its renewal. However, HCFA may deny renewal of the waiver and Minnesota would no longer receive federal funds for CAC services. It is necessary and reasonable to specify the effective period of these rule parts related to the waiver in order to inform persons

affected by these rules.

9505.3510 DEFINITIONS.

Subpart 1. **Applicability.** This subpart defines words and phrases that have a meaning specific to parts 9505.3500 to 9505.3700 that otherwise may have several possible interpretations or that must be consistent with statutes and related rules of the department.

Subpart 2. **Acting case manager.** This is a term used in these rules. The definition is needed to set a standard for who qualifies as an acting case manager. The standard chosen is consistent with that set for a case manager in subpart 7 except in regard to how an acting case manager and a case manager are assigned. CAC recipients are chronically ill individuals whose illnesses place them at risk of hospitalization. The medical services they need include those that are the same or similar to medical services provided in a hospital, such as nursing care, rehabilitative therapies, prescribed drugs. Health professionals such as registered nurses and public health nurses are knowledgable about services that may be needed by chronically ill persons. Because they are receiving the health services they need at home, they have some special needs related to their general welfare and care that may have social implications. These needs include being able to communicate effectively about their care, interpersonal needs, dependency on informal caregivers who are properly trained, and being assured that their homes provide a safe environment. Social workers have knowledge and training related to these recipient needs. Thus, it is reasonable to specify that the acting case manager must have the qualifications of a registered nurse, public health nurse, medical social worker, or social worker because these persons are knowledgeable about the health and social needs of chronically ill individuals.

Subpart 3. **Applicant.** The definition is necessary to clarify a term used as an abbreviation in these rules. It identifies persons who have applied for but whose eligibility for CAC services under the waiver has not been determined. The definition is consistent with the waiver.

Subpart 4. **Application.** This is a term used in these rules as an abbreviation for the request to determine an individual's eligibility for home and community-based services as a CAC recipient. A definition is necessary to clarify its meaning. Using an abbreviation is reasonable because it shortens the length of the rules.

Subpart 5. **Assessment.** "Assessment" is a term used in these rules. A definition is necessary to clarify its meaning. The definition is consistent with the waiver which requires an evaluation of the need for home and community based services for medical assistance recipients as part of determining the individual's eligibility for CAC. The definition is also consistent with the waiver requirement that the assessment be carried out by an interdisciplinary team or hospital discharge planning team. (See subpart 27 for the definition of "interdisciplinary team.")

Subpart 6. **Case management services.** "Case management services" is a term used in these rules. A definition is necessary to clarify its meaning. The definition is consistent with the waiver. See Waiver Attachment I, page 1. Consistency with the waiver is reasonable so that the service qualifies for federal financial participation as required by

Minnesota Statutes, section 256B.04, subdivision 4.

Subpart 7. **Case manager.** A definition of "case manager" is necessary to set a standard for this term as used in these rules. The waiver requires case management services to be provided by a "trained professional". See Waiver Attachment I, page 1. Under the waiver, the case manager has responsibilities related to a recipient's care plan. The care plan specifies the recipient's needed health services including home and community-based services. Thus, a case manager needs to have knowledge and skills related to health care and social services. The definition is reasonable because the persons listed within it are expected to have such knowledge and skills as a result of their professional training.

In Minnesota, registered nurses and public health nurses may choose to be independent practitioners of their profession. However, it is necessary and reasonable to require them as case managers to be employed or under contract with the lead agency as this agency is held accountable under the CAC rules for services being provided to the CAC recipient. This accountability has been delegated by the department in order to safeguard the health and welfare of the CAC recipients as required by the waiver. Finally, the definition is consistent with other department rules related to case management for persons receiving home and community services. See part 9505.2395, subpart 10.

Subpart 8. **Chronically-ill individual or individual.** "Chronically ill individual" or "individual" are terms used in these rules. The definition is necessary to clarify their meaning. Chronic illness is characterized by symptoms of long duration or frequent repeated occurrences. The waiver limits eligibility to individuals whose chronic illness is of such severity that the individual would reside in an inpatient hospital or require frequent hospitalization. Examples of such chronic illnesses are certain neurological disorders, spinal cord injuries, birth defects, and certain conditions requiring parenteral feeding or the use of life sustaining equipment such as ventilators. These illnesses require monitoring and treatment by health care professionals that is very costly and often difficult for a medical assistance recipient to obtain any where except in certain hospitals. Thus, the definition is reasonable because it is consistent with the purpose of the waiver, cost containment by enabling necessary services to be provided to the eligible recipient at home. The use of the term "individual" is reasonable as an abbreviation to shorten the rules.

Subp. 9. **Commissioner.** The term "commissioner" is used throughout these rules as an abbreviation for the person responsible under Minnesota Statutes, section 256.01, subdivisions 1 and 2(1), for the administration of the medical assistance program. A definition is necessary to clarify its meaning. 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. Including within the definition the commissioner's designated representative is consistent with the statutory authorization to delegate.

Subpart 10. **Community alternative care program or CAC.** This subpart is necessary to define a term used in these rules. The definition identifies the Community Alternative Care program as the waiver for services to chronically ill individuals that has been approved by the

United States Department of Health and Human Services. The term, community alternative care program, is in common usage and emphasizes that the program is an alternative to institutionalization and is provided in the community. In the program governed by these rules, the program is an alternative to hospitalization. Using the abbreviation CAC is reasonable to shorten the length of the rule. The abbreviation is commonly used by county staff and other affected persons.

Subpart 10a. **Counseling and training services.** This term is used in these rules. A definition is necessary to clarify its meaning and ensure consistency with the waiver. Primary caregivers provide essential services to CAC recipients and are indispensable to the CAC program. However, many primary caregivers, including family members filling this role, have not had previous training and experience in using medical equipment and medical procedures and in coping with stressful situations that arise from the CAC recipient's chronic illness. This definition is consistent with the waiver. Consistency with the waiver is reasonable so as to obtain federal financial participation as required under Minnesota Statutes, section 256B.04, subdivision 4.

Subpart 11. **County of financial responsibility.** "County of financial responsibility" is a term used in these rules which must be defined to clarify its meaning. The definition is consistent with Minnesota Statutes, chapter 256G, which is cited within it.

Subpart 12. **County of service.** This definition is needed to distinguish between counties of financial responsibility and counties of service. A recipient's county of service may differ from the recipient's county of financial responsibility. When a person lives outside of the county of financial responsibility, the county of financial responsibility may provide service through an agreement with the county in which the recipient resides. For example, a county of service performs case management functions for a CAC recipient who lives outside of his or her 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 lead agency's office. To require county workers or persons to travel that distance for services would be unreasonable.

Subpart 13. **Department.** This definition is necessary to identify the state agency which is responsible under Minnesota Statutes, section 256B.49, for administration of the waiver. It is reasonable to shorten "Department of Human Services" to "department" to reduce unnecessary words in these rules.

Subpart 14. **Durable medical equipment.** Durable medical equipment refers to certain equipment used by CAC recipients in their homes. The definition is necessary to clarify the term's meaning. The definition is consistent with part 9505.0175, subpart 10, which defines the term for purposes of eligibility for medical assistance reimbursement. Such consistency is required by the waiver which imposes certain medical assistance standards about durable medical equipment on CAC.

Subpart 15. **Environmental modifications in the home.** This definition is necessary to clarify a term used in these rules. Environmental modifications are limited in the waiver to minor physical adaptations to the home which are necessary to allow the recipient to remain at home. See Waiver Attachment I, page 1. The definition is consistent with the

waiver requirements. Consistency with the waiver is reasonable so as to obtain federal financial participation as required by Minnesota Statutes, section 256B.04, subdivision 4.

Subpart 16. **Foster care services.** Foster care services are services available under the waiver. A definition is necessary to clarify the term's meaning. The definition is consistent with the waiver which requires all services or individuals providing services to CAC recipients to meet applicable state licensure requirements. Consistency with the waiver is reasonable so as to obtain federal financial participation as required under Minnesota Statutes, section 256B.04, subdivision 4. Parts 9545.0010 to 9545.0260 license foster care homes for children; parts 9555.5105 to 9555.6265 license foster homes for adults.

Subpart 17. **Health care professional.** "Health care professional" is a term used in these rules as an abbreviation for several categories of medical personnel who provide health services to medical assistance recipients, including CAC recipients. A definition is necessary to clarify its meaning. The personnel included within the definition are consistent with those specified in the waiver as qualified to provide services to CAC recipients. Parts 9505.0170 to 9505.0475 and part 9500.1070 also authorize medical assistance payment for certain services provided by the personnel within this definition.

Subpart 18. **Health service.** The definition is necessary to clarify a term used in these rules and set a standard. A CAC recipient may receive those health services specified in parts 9505.0170 to 9505.0475 as well as CAC services. Parts 9505.0170 to 9505.0475 set standards governing eligibility for medical assistance reimbursement. The standards in this definition are consistent with the waiver and with parts 9505.0170 to 9505.0475. The standards are: the service is medically necessary, ordered by a physician, documented in an approved care plan, and provided as ordered in the recipient's care plan. It is reasonable to be consistent with other rules of the department affecting the same program in order to avoid confusion and to carry out the requirements of Minnesota Statutes, section 256B.04, subdivision 2 in regard to uniform statewide administration of the medical assistance program.

Subpart 19. **Home.** "Home" is a term used in these rules. A definition is necessary to clarify its meaning. It is reasonable to define the term according to the definition in the rule governing provider services under the medical assistance program because it ensures uniformity in administration of the program as required by Minnesota Statutes, section 256B.04, subdivision 2 and avoids confusion. Clarifying that the term does not include a hospital or long-term care facility is reasonable to insure consistency with the waiver so as to obtain federal financial participation as required by Minnesota Statutes, section 256B.04, subdivision 4.

Subpart 20. **Home and community-based services.** This term is used in the rule and in the waiver as an abbreviation encompassing all services available to a CAC recipient as waivered services. A definition is necessary to clarify its meaning. The definition is consistent with the waiver. The definition is reasonable as it informs affected persons of the services that are available to CAC recipients through CAC funding.

Subpart 21. **Home care plan or care plan.** This definition is necessary to clarify a term used in these rules. The waiver requires a written

plan of care to be developed for each CAC recipient that describes the services to be furnished by the providers. The definition is consistent with the waiver. It is reasonable to use an abbreviation, "home care plan" or "care plan" in place of "individual plan of care" to shorten these rules and to remove possible confusion resulting from the use of similar terms, "individual service plan" and "individual treatment plan", that are used in other medical assistance programs which do not include the home and community-based services specified in the waiver. A written care plan is a reasonable requirement as it is evidence of the CAC recipient's service needs and reduces the possibility of confusion and misunderstanding about these needs.

Subpart 22. **Homemaker.** This definition is necessary to clarify a term used in these rules and to set a standard. The definition is reasonable because it is consistent with the cited rule. See also subpart 24 and its SNR.

Subpart 23. **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 CAC under the waiver. The definition is reasonable because it differentiates homemaker services from other forms of care that may be funded with CAC, ensures consistency with the cited department rule establishing standards for homemaker services, and is consistent with common understanding.

Subpart 24. **Home health aide.** This definition is necessary to clarify a term used in these rules and set a standard. Home health aides provide specific paraprofessional or non-professional home health services. The definition is reasonable because it is consistent with part 9505.0290, subpart 3, item B which defines "home health aide" for medical assistance payment purposes and thereby avoids confusion between similar services provided by similarly qualified persons.

Subpart 25. **Hospital.** "Hospital" is a term used in the rule that refers only to facilities licensed under Minnesota Statutes, section 144.696. The definition is also consistent with the explanation of methodologies applicable to the program. See Explanation of Methodologies, section 1, which is attached to the December 30, 1987 letter of Assistant Commissioner Gomez. The explanation refers to persons "who reside in, or be at risk of, an acute care hospital."

Subpart 26. **Interdisciplinary team or team.** "Interdisciplinary team" is used in these rules to identify a group of persons who is assigned certain functions under the waiver and these rules. A definition is necessary to clarify its meaning. The waiver specifies two such teams: the hospital discharge planning team and the community interdisciplianry team. The teams are similar in membership and roles but differ depending on whether the person who is an applicant is receiving services in the community or in the hospital and on the person's status in regard to CAC eligibility and need for reassessment. The membership and functions of the teams are specified in part 9505.3535. The definition is consistent with the waiver requirements. Using the term "team" as an abbreviation is reasonable because it shortens these rules.

Subpart 27. **Lead agency.** This definition is necessary to clarify a term used in these rules. The local agency often names one of its own departments to serve as lead agency for CAC administrative purposes if the local agency's department has personnel with expertise in the needs

of persons served by a program or the local agency may name another agency as the lead agency. A local public health agency employs persons who are public health nurses. See the definition of public health nurse in subpart 44 and its SNR. The scope of practice of a public health nurse as set forth in Minnesota Statutes, section 148.171, includes providing a nursing assessment of the actual or potential health needs of individuals and providing referral to other health sources. Thus, a public health agency employing public health nurses has persons who are qualified to assess the service needs of CAC applicants and recipients. Therefore, it is reasonable to include a public health agency within the definition of lead agency because this is a means of assuring that the lead agency has staff qualified to administer CAC.

Subpart 28. **Licensed practical nurse.** "Licensed practical nurse" is a term used in these rules. A definition is necessary to set a standard. The definition chosen is reasonable because it is consistent with Minnesota Statutes, section 148.29 which defines the term "Licensed Practical Nurse" and the scope of practice of the licensed practical nurse. The scope of practice includes services in observing and caring for the ill and in applying counsel and procedure to safeguard life and health and in administering treatment prescribed by physician. The definition also is consistent with the waiver requirement placed on CAC providers to meet applicable state licensing standards.

Subpart 29. **Local agency.** "Local agency" is a term used in these rules. It is defined solely for identification purposes. It is the county or multicounty agency that administers the medical assistance program on a day to day basis subject to the supervision of the Department of Human Services. Subpart 30. **Medical assistance.** It is necessary to identify the particular program governed by these rules that establish conditions of payment of the costs of health services to persons determined eligible for medical assistance. The definition is solely for purposes of identification. Subpart 31. **Medically necessary.** Medical assistance payment for health services is based on the requirement that the service is a health service that is required for the recipient's well-being. Under Minnesota Statutes, section 256B.04, subdivision 15, the department must determine whether a medical assistance service is necessary. It is necessary to define the standard of necessity that determines whether a particular health service is eligible for medical assistance payments. It is reasonable to use the standard of the medical assistance program because the CAC program is funded by medical assistance and the same utilization standards apply. This standard is defined in part 9505.0175, subpart 25.

Subpart 32. **Medical social worker.** "Medical social worker" is a term used in these rules and the waiver. The definition is necessary to clarify its meaning. The definition is consistent with the waiver. Consistency with the waiver is reasonable as a means of obtaining federal financial participation as required under Minnesota Statutes, section 256B.04, subdivision 4.

Subpart 33. **Nondurable medical equipment.** The definition is necessary to clarify a phrase used in these rules. The American Heritage Dictionary of the English Language defines durable as "able to withstand wear and tear or decay; lasting." "Nondurable" is the opposite of "durable." Therefore, the

definition is reasonable because it is consistent with common usage and clearly distinguishes "durable" from "nondurable."

Subpart 34. **Nursing services.** The definition is necessary to set a standard for a term used in these rules. The definition is consistent with the requirement of the waiver that providers of services to CAC recipients must hold applicable licensures or certifications. Consistency with the waiver is reasonable as a means of obtaining federal financial participation as required under Minnesota Statutes, section 256B.04, subdivision 4.

Subpart 35. **Nutritionist.** "Nutritionist" is a term used in these rules. A definition is necessary to set a standard. The definition is consistent with the waiver. Consistency with the waiver is reasonable as a means of obtaining federal financial participation as required under Minnesota Statutes, section 256B.04, subdivision 4.

Subpart 36. **Occupational therapist.** "Occupational therapist" is a term used in these rules. A definition is necessary to set a standard for who is qualified to provide occupational therapy services to recipients. The standard chosen is consistent with the definition specified in the waiver.

Subpart 38. Physician. The definition is necessary to clarify the term used in these rules and note that it is consistent with the statute. Consistency with the statute is reasonable as a means of obtaining federal financial participation as required under Minnesota Statutes, section 256B.04, subdivision 4.

Subpart 37. **Physical therapist.** Physical therapist is a term used in these rules. It must be defined to set a standard for a person qualified to provide physical therapy services to recipients. It is reasonable to use the state standard for registration as a person qualified to practice physical therapy as this standard meets the waiver provision that CAC providers meet state registration and certification requirements. See Minnesota Statutes, section 148.65 to 148.78.

Subpart 39. **Prescribed drug.** "Prescribed drug" is a term used in these rules. A definition is necessary to clarify its meaning. Minnesota Statutes, section 151.01, subdivision 5 defines the term in the context of pharmacy practice. The definition is reasonable as it is consistent with the statutes regulating pharmacy practice in Minnesota.

Subpart 40. **Primary caregiver.** This definition is necessary to clarify a term used in these rules. The term is one that human service agencies and professionals working in those agencies commonly use to describe a person, usually a family member, who provides without payment informal and volunteer services that the recipient requires for activities of daily living. The definition is reasonable because it is consistent with common practice.

Subpart 41. **Provider.** This definition is necessary to clarify a term used in these rules. It is reasonable to limit the use of the term to those specified in Minnesota Statutes, section 256B.02, subdivision 7 so that this rule establishing standards for a medical assistance program is consistent with the statutory limitation applicable to medical assistance standards. The definition is also consistent with the waiver requirement that "all state licensure and certification requirements for services or individuals providing services will be met." Finally, the definition cites subpart 20 which lists covered provider services. It is necessary

and reasonable to list covered provider services to more accurately identify which providers may be included in the program.

Subpart 42. **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 Minnesota Department of Health.

Subpart 43. **Reassessment.** The definition is necessary to clarify a term used in these rules. Before providing CAC services to a recipient, an initial assessment of his or her health service needs and functional abilities is performed. A recipient's needs or resources may change over time and a recipient may require another assessment or redetermination of eligibility for CAC services. The provision is consistent with the waiver. Consistency with the waiver is reasonable as a means of obtaining federal financial participation required under Minnesota Statutes, section 256B.04, subdivision 4. See also part 9505.3545.

Subpart 44. **Recipient.** This is a term used in these rules. A definition is necessary to clarify its meaning. The definition is reasonable because it ensures consistency in use of the term in the CAC program. Using an abbreviation is reasonable to shorten these rules.

Subpart 45. **Registered nurse.** The definition is necessary to clarify a term used in these rules and set a standard. The definition is reasonable because it is consistent with the cited statute.

Subpart 46. **Representative.** The definition is necessary to clarify a term used in these rules. It is reasonable because it is consistent with the cited statutes and with the medical assistance rule that provides for naming of representatives.

Subpart 47. **Respiratory therapist.** This definition is necessary to set a standard for providing respiratory therapy to a CAC recipient. Minnesota does not now provide for registration or licensure of respiratory therapists. Therefore, the standard set in this provision is the one specified in the waiver. It is reasonable to comply with the waiver in order to obtain federal financial participation for the service.

Subpart 48. **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 CAC. The definition is reasonable because it differentiates respite care from other forms of care that may be funded by CAC. The informal care of a recipient may depend on many persons who work together to assure the recipient receives the needed daily services. It might be almost impossible to care for the recipient if any one of the informal caregivers including the primary caregiver is not available. Thus, it is reasonable to include not only the primary caregiver but also the family and other informal caregivers within the definition because respite care during the unavailability of one of these persons may be necessary to provide the CAC recipient's needed services.

Subpart 49. **Social worker.** "Social worker" is a term used in these rules. A definition is needed to clarify the term and to set a standard. The waiver specifies that a social worker of the local agency must be a member of the interdisciplinary team. It is reasonable that a social worker must meet the employment qualifications of the local agency as these standards are adopted pursuant to Minnesota Statutes, section 256.012, and Minnesota Rules, Chapter 9575.

Subpart 50. **Speech therapist or speech-language pathologist.** The definition is necessary to set a standard for a term used in these rules. Minnesota does not now have standards for licensing or registering speech therapists. However, the American Speech-Language-Hearing Association is the national organization that sets professional standards for persons practicing these therapies. Thus a person holding a current certificate from the American Speech/ Language/Hearing Association in evaluation and treatment of speech/language pathologies or who has completed the academic requirements
and is acquiring the supervised work experience holds professional qualifications that are accepted by a national professional organization. The definition is reasonable because this association is the recognized accrediting entity for this profession.
Subpart 51. **Transportation.** The definition is necessary to set a standard. The standard is consistent with the requirements of the waiver in regard to the need for the service, specification in the care plan, and approval by the case manager. It should be noted that part 9505.0140 requires counties to have transportation plans to ensure recipients access to services and that part 9505.0315 specifies certain services as medical transportation services eligible for medical assistance reimbursement. Thus, it is reasonable to limit the definition to services ineligible for medical assistance payment under parts 9505.0010 to 9505.0475 to ensure consistency with the waiver and maximize the availability of CAC funds for non-covered services. Consistency with the waiver is reasonable as a means of obtaining federal financial participation as required under Minnesota Statutes, section 256B.04, subdivision 4.
Subpart 52. **Waiver.** The definition is necessary to clarify a term used in these rules. The term is consistent with title 42, Code of Federal Regulations, Part 441, Subpart G.
Subpart 53. **Waiver year.** The definition is necessary to clarify a term used in these rules. The waiver is approved for five years. It has differing requirements for specific 12 month periods beginning with its effective date. The effective date is not the same as a federal or state fiscal year, so the term waiver year is needed to distinguish the periods at which new requirements become effective. The definition is consistent with title 42, Code of Federal Regulations, section 405.304 and, therefore, is reasonable.
Subpart 54. **Working day.** The definition is necessary to clarify a term used in these rules. Since the local agency is responsible for implementing the CAC program, either directly or indirectly by designating a lead agency, it is reasonable that the term be limited to the hours when the local agency is open.

9505.3520 ELIGIBILITY FOR COMMUNITY ALTERNATIVE CARE SERVICES.
This part is necessary and reasonable because it clarifies who is eligible for the CAC program and thereby informs affected persons.
Item A requires that the individual be eligible for medical assistance. The waiver requires that participation in the program be limited to individuals who are eligible for medical assistance. This is consistent with the purpose of the waiver which is to save medical assistance funds that would be required to pay for the individual's hospitalization if

home and community services were not available.
Item B requires that an individual meet the age criteria for the program. This is necessary and reasonable because Minnesota Statutes, section; 256B.49, subdivision 1 authorizes providing waivered services to chronically ill or disabled individuals under age 65.
Item C is necessary to inform affected persons of the waiver requirement that all other resources must be used before the CAC program applies. This is reasonable because the CAC funds are then used to supplement other funding sources. Therefore, item C is required by the waiver. The item is consistent with the requirements of part 9505.0070, subpart 2 which requires use of a third party payer to the "fullest extent available before a medical assistance payment is made on the recipient's behalf." See also 42 CFR
435.603 and 435.604 in regard to applications for benefits from and assignment of rights to benefits from third party payers.
Item D is necessary to put parties on notice that the primary care providers, usually family members, must be capable of learning how to deliver the services designated in the care plan as their responsibility and that they must be willing to provide the services. This is reasonable because it is impossible for individuals eligible for CAC to live outside of a hospital unless they receive significant assistance from others. It should be noted that CAC is a family-centered program of coordinated care in the recipient's home. The home and community-based services available through CAC include those designed to assist the family to care for its chronically ill member. The team must determine how best to support the family through CAC services rather than to supplant the family as primary caregiver. In providing this support, the team must consider and balance what the family wants and what the family needs.
Item E is necessary because CAC services are limited to persons who reside in a hospital or are at risk of frequent hospitalization. A physician determines whether it is necessary to admit a person to a hospital. Thus it is reasonable to require that a physician must certify that the person would be hospitalized or frequently admitted to a hospital without CAC services. This item is required by the waiver.
Items F, G, and H are basic eligibility criteria for CAC services under the waiver. Their inclusion in the rule is necessary and reasonable to inform affected persons and to ensure consistency with the waiver requirements. In item H, a definition of the term "third party payer" is necessary to set a standard and avoid confusion. The definition is reasonable because it coordinates this definition with that in the rule generally applicable to determining an individual's medical assistance eligibility. However, modifying the definition in part 9505.0015, subpart 46 for purposes of CAC is reasonable to ensure consistency with the waiver which includes Medicare as a potential third party payer of the costs of CAC services.
Item I is necessary and reasonable to inform affected persons of a limitation specified in the waiver. See letter from William L. Roper, HCFA, and the Waiver Recipient Summary Table, page C of the Worksheet for Equations Submitted with Waivered Services Proposals.

9505.3530 **REQUEST FOR CAC SERVICES.**

Subpart 1. **Who may request service.** This subpart is necessary to inform interested parties that an individual may apply for CAC services on the basis of a belief that he or she meets the criteria. It is reasonable to require the request to be made to the department so that the department can carry out its duties of appointing an acting case manager and providing the necessary forms in a prompt and efficient manner. (See subpart 2.) The department has the responsibility to determine who is eligible for CAC. Therefore, it is reasonable to require the request to be made to the department so that the department has a record of potential applications and can control the use of CAC funds as required under part 9505.3680, subpart 4.

Subpart 2. **Response of department to request for CAC.** This subpart specifies the actions the department must take when it receives a request for determination of eligibility for CAC. Specifying the required actions is necessary because it assures a uniform statewide administration of this medical assistance program as required under Minnesota Statutes, section 256B.04, subdivision 2. It is reasonable to require the department to determine the individual's county of service because the determination will facilitate the appointment of an acting case manager and a case manager who are located in the individual's service area. It also is reasonable to require the department to determine when services are expected to begin because the department must determine the availability of CAC funds within the limitations of the waiver at the expected time of service. (See parts 9505.3520, item G and 9505.3680.) The waiver requires the team planning for the health service needs of an applicant for CAC to include an acting case manager who may be the applicant's primary nurse, medical social worker, county social worker, or county public health nurse. It is reasonable to require the department to designate an acting case manager because the department has the ability to consider the availability of persons with the required qualifications and thereby enable a prompt response to the applicant's request for participation in CAC. Many applicants for CAC services are hospital patients who will require CAC services in order to be discharged from the hospital and reside in the community. Thus, requiring forms to be sent within five working days is reasonable because it enables a prompt response to the applicant's request, benefits the applicant, and is consistent with the waiver's purpose of enabling the individual to live in the community. Requiring the department to notify the local agency if an acting case manager who is not an employee of the local agency is designated is reasonable as the local agency will be responsible for designating the individual's ongoing case manager and the lead agency. See subpart 3 and part 9505.3640, subpart 2.

Subpart 3. **Local agency designation of team members.** This subpart is necessary to specify the responsibility of the local agency when it receives the department's notice about the request for a determination of eligibility for CAC. It is reasonable to require the local agency's designation of team members to be no later than five working days after receiving the notice as a prompt designation benefits the applicant and assures that a qualified person will be available to provide ongoing case management under CAC.

9505.3535 INTERDISCIPLINARY TEAMS; ESTABLISHMENT AND MEMBERSHIP

Subpart 1. **Applicant's interdisciplinary team.** This subpart sets the standard for membership on the interdisciplinary team. A standard is necessary to comply with the requirement of uniform statewide administration of the medical assistance program as specified in Minnesota Statutes, section 256B.04, subdivision 2. Requiring the acting case manager to form the interdisciplinary team is consistent with the case manager's responsibilities, under the waiver, to coordinate services and to provide the individual with information about care choices, available services, and rights. The persons specified in items A to K are consistent with the requirements of the waiver. See Waiver Attachment V, in regard to "obligatory discharge planning team members". It should be noted that the membership in items A to J is obligatory but that the team may have representatives from other services that are required by the applicant's medical condition. Such representation is consistent with the waiver which states that "...membership will depend on the individual's specific service needs...." It is reasonable to include the applicant as a team member to ensure consistency with the waiver, and to assure that the applicant is present to provide the information needed by the team and to obtain information about the applicant's rights and responsibilities. It assures that the applicant has information from the beginning that he or she needs to make an informed choice to complete the process of applying for CAC. Because of the nature of their disabilities, some applicants may not be able fully to participate in the team's discussion. Some applicants are minors. These applicants need to be represented on the team by a person who can act for them. It is therefore reasonable to provide that the applicant's representative be a member of the interdisciplinary team because the representative who has the responsibility or legal authority to act for the applicant. See the definition of representative in part 9505.3510, subpart 46.

Subpart 2. **Interdisciplinary team; reconvened.** This subpart specifies who will serve on the interdisciplinary team of a person who is living in the community. The subpart is necessary to ensure consistency with the waiver which names a membership for this purpose which is different from the membership in subpart 1 and which will develop and implement a community service program based on the individual plan of care developed by the team specified in subpart 1. Items A to H are consistent with the requirements of the waiver. (See Waiver Attachment V, page 3.) It is reasonable to require the case manager to assure continuity of service of team members because their continued participation ensures the availability of persons knowledgable about the recipient's condition and needs and avoids burdening the CAC recipient with the need to adjust to new team members. Permitting the team to include other health care professionals who provide services required by the recipient's medical condition (Item I) is consistent with the waiver. It is reasonable to include the recipient as a team member because his or her participation assures that the recipient has information needed to make choices about service providers and continued participation in CAC. Because of the nature of their disabilities, some recipients may not be able fully to participate in the team's discussion. Some recipients are minors. These recipients need to be represented on the team by a person who can act for

them. It is therefore reasonable to provide that the recipient's representative be a member of the interdisciplinary team because the representative who has the responsibility or legal authority to act for the recipient. See provisions concerning free choice, at part 9505.0190 and 42 CFR 431.51.

9505.3540 INTERDISCIPLINARY TEAM RESPONSIBILITIES; ASSESSMENT.
Subpart 1. **Assessment of applicant's service needs.** This subpart specifies one of the assessments that an interdisciplinary team must perform. A standard is necessary to comply with the requirement of Minnesota Statutes, section 256B.04, subdivision 2 to administer the medical assistance program in a uniform statewide manner. The assessment of the applicant's need for home and community-based services is required by the waiver. It is reasonable that the assessment be on forms provided by the commissioner because use of these forms ensures that data will be collected uniformly throughout the state and thus the department's determination of eligibility for CAC is made on a uniform and equitable basis. See Minnesota Statutes, section 256B.04, subdivision 2.
Subpart 2. Assessment of financial resources. Assessment of the applicant's financial resources is consistent with the requirement that participation in CAC is limited to individuals who are eligible for medical assistance. See Model Waiver Request, page 3, paragraph 3 and Minnesota Statutes, section 256B.49. Requiring the team to assess the applicant's financial resources is reasonable because the team has direct access to the applicant or the applicant's representative and thus is in the best position to collect the required data. Requiring the team to use forms supplied by the commissioner is consistent with the requirement of Minnesota Statues,
section 256B.04, subdivision 2, that the department administer the medical assistance program statewide in a uniform manner.
Subpart 3. Assessment of the applicant's home. This subpart is necessary to specify a uniform standard of assessment of an applicant's home. Applicants for CAC services because of the severity of their chronic illnesses or disabilities have many health and health related needs. Under the waiver the department is required to take necessary safeguards to protect the health and welfare of the CAC recipients. See Model Waiver Request, paragraph 10 (a). The condition of an applicant's home directly affects an applicant's health and welfare. One part of the assessment will identify environmental modifications in the home that are needed to operate medical equipment required by the applicant or to assure the applicant's mobility within the home. Other parts of the assessment review safety factors such as electrical equipment and proper storage of medical supplies and adequacy of heating, cooling, and bathroom facilities. See Waiver Appendix C. Thus this subpart is necessary and reasonable because it assists the department to collect data related to safeguarding the health and welfare of CAC recipients. It is reasonable to require the team to complete the assessment as the team has direct access to the applicant and the applicant's representative and is responsible under subpart 8 to recommend the services the applicant needs. Requiring the team to use forms supplied by the commissioner is consistent with the requirement of administering the medical assistance program statewide in a uniform manner according to

Minnesota Statutes, section 256B.04, subdivision 2.

Subpart 4. **Assessment of person to be primary caregiver.** CAC is designed to provide home and community based services to individuals who are chronically ill and at risk of hospitalization. This population has multiple health service needs. Many individuals require complex services such as suctioning, gastric feedings, assistance with bowel and bladder functions, ventilation, and intravenous therapy. The primary caregiver may be unable to provide actual hands on care in regard to these services but nevertheless the primary caregiver is responsible to make sure the recipient receives the services. The primary caregiver also provides parenting and back-up services and advocates on behalf of the recipient. Thus the primary caregiver is essential to the CAC program and a recipient's CAC eligibility. Additionally, some CAC applicants may fall within the definition of vulnerable adults under Minnesota Statutes, section 626.557 subdivision 2, paragraph (b). Others are children who may be subject to physical or sexual abuse or neglect as defined in Minnesota Statutes, section 626.556, subdivision 2, paragraphs (a), (c), and (d). The waiver requires the department to take necessary safeguards to protect the health and welfare of CAC recipients. An assessment of the ability and the willingness of a person to serve as a primary caregiver provides the department information related to maintaining the applicant in a safe environment and helps the department in determining that services essential to the CAC applicant's eligibility are available. Thus, this subpart is necessary to comply with the waiver. It is reasonable to require the team to make the assessment as the team has direct access to the applicant, has expertise about services needed by chronically ill individuals, and is responsible under subpart 8 for recommending the applicant's needed services. It also is reasonable to require the team to use forms supplied by the commissioner as this requirement assures administration of the medical assistance program statewide in a uniform manner. See Minnesota Statutes, section 256B.04, subdivision 2.

Subpart 5. **Authorization to release information.** It is necessary for members of the team to have access to information about an applicant. The information makes the team fully aware of factors affecting the applicant. Thus, when the team makes its recommendations about the applicant's appropriate services, the recommendations will assure that applicant receives or has access to services that are necessary and appropriate, that the applicant's services are coordinated, and that duplication of services is avoided. At the same time, the applicant's right to privacy is protected as required by the Minnesota Data Practices Act, Minnesota Statutes, Chapter 13. Obtaining authorization is required by the Minnesota Government Data Practices Act, Minnesota Statutes, Chapter 13. It is necessary to specify who is to obtain an authorization to release information in order to have a clear procedure and avoid confusion. Requiring the team to obtain the authorization is reasonable as the team has direct access to the applicant or the applicant's representative and can obtain the authorization in an administratively efficient manner. Under Minnesota Statutes, section 13.42, some medical information is medical data (medical records) and is private and may be released only to the subject of the data unless the subject has given an "informed consent" to authorize disclosure as required under Minnesota

Statutes, section 13.05, subdivision 4 (d). Release of other types of medical and financial information and welfare data is not covered by Minnesota Statutes, section 13.05, subdivision 4 (d) but it is reasonable to request the applicant or the applicant's representative to authorize access to this information because such a request protects the right of the applicant or the applicant's representative to make an informed choice whether to authorize access. This subpart therefore specifies the items of information that must be on the form an applicant or, when it is appropriate, the applicant's representative signs to authorize release of information. Minnesota Statutes, section 256B.04, subdivision 3 requires the department to prescribe the form of, print, and supply to county agencies such forms as it may deem necessary for the administration of medical assistance. Minnesota Statutes, section 256B.04, subdivision 2 requires the administration of the medical assistance program in a unifrom statewide manner. Therefore, it is consistent with statute and reasonable to require the team, acting on the designation of the local agency to obtain the authorization on a form supplied by the commissioner. Requiring a separate form to be completed and signed for each authorization is necessary and reasonable to avoid confusion and inform the applicant or the applicant's representative authorizing the release and the person or persons who provide the information. Limiting the authorization to one year is consistent with Minnesota Statutes, section 13.05, subdivision 4 (d) (7) which requires a specific statement as to the expiration date of the authorization "which should be within a reasonable period of time, not to exceed one year...."
Items A to E are necessary and reasonable because they specify the information being requested. Item F is necessary and reasonable because it states how the information will be used and enables the applicant or the applicant's representative to make an informed decision. Item G is necessary and reasonable because it safeguards the recipient's privacy by limiting access to a definite period of time.
Subpart 6. **Rights, appeals and freedom to choose.** This subpart requires the teams to give the applicant or the applicant's representative written information concerning certain rights. This subpart is necessary to set a standard to protect the rights of the applicants and avoid misunderstanding. The subpart is consistent with Minnesota Statutes, section 256.045 in regard
to the applicant's or recipient's right to appeal. It also is consistent with 42 CFR 431.200 to 431.246. It is reasonable to require the team to give the information as the team has direct access to the applicant or the applicant's representative and thus can carry out the task in an administratively efficient manner. It is reasonable to require the team to document compliance with this subpart by signing and submitting forms to the department as the signed forms are evidence and provide an audit trail.
Subpart 7. **Development of a care** plan. This subpart specifies who is to develop the applicant's care plan and when it must be submitted to the department. **The** subpart is necessary to set a standard, assure administration of CAC statewide in a uniform manner, inform affected persons, and avoid confusion. It is reasonable to require the team to develop the care plan as the team has the information and expertise necessary to determine the services that are necessary and appropriate

for the applicant, the appropriate service environment, and the availability of a qualified primary caregiver. Placing the responsibility on the team is also consistent with the waiver. See page 2 of Waiver Attachment V. It is also reasonable to require the development of the care plan according to the information obtained in subparts 1 to 5 as this information is directly related to the applicant's health status, necessary and appropriate services for the applicant, and the applicant's safety and welfare.
Obtaining all the required information may take longer than customary for reasons beyond the team's control. On the other hand, the commissioner who reviews the application for approval and who has to determine whether the applicant's services fall within the waiver's fiscal constraints needs to receive the completed application in a timely manner in order to set priorities within fiscal constraints. Therefore it is necessary and reasonable to require notice to the commissioner if completing the care plan and required assessments will require more than the customary time. Requiring notice if the time extends the requirements of part 9505.0090, subpart 2, or with other rules of the department regarding eligibility for medical assistance program. Requiring the care plan to be signed by the applicant or, if appropriate, the applicant's representative, the applicant's physician, and the acting case manager is reasonable because it provides evidence that these persons have had an opportunity to review and approve the plan.

Subp. 8. **Contents.** The care plan has to contain the services needed by the recipient to remain in his or her home. See part 9505.3510, subpart 21 for a definition of "care plan". Subpart 8 is necessary to establish a standard and to comply with the requirement of uniform statewide administration of the medical assistance program established in Minnesota Statutes, section 256B.04, subdivision 2. The waiver prescribes the development of a care plan that includes the medical and all other services to be provided to the recipient, their frequency and duration, and the type of providers who may furnish these services. See Waiver Attachment V, page 2. Also see Waiver Appendix A which is the form listing the services neccessary to care for the individual in the community. Items A to D of subpart 8 specify the types of information that the team must include. These items are necessary so that the department will be able to determine whether all necessary home and community services are available to the person, whether the person can be maintained in his or her home, whether the person is eligible for CAC and whether the person or the preson's representative, physician, and case manager have approved the plan. Additonally the information is necessary and reasonable because it enables the department to carry out its obligation under the waiver to assure that the services necessary for the person can be provided within the cost limitations of the waiver. See part 9505.3520, items F to H and their SNRs. It is reasonable to require that the plan be on forms provided by the commissioner so that the commissioner receives the information necessary to determine the applicant's eligibility for CAC and also complies with the uniform administration requirement of Minnesota Statutes, section 256B.04, subdivision 2.
Item A is necessary to specify a responsibility of the team. The item is reasonable because it uses as the basis for obtaining the team's

recommendation to approve the eligibility criteria set forth in the cited rule part. This item is reasonable because it informs affected persons of a waiver requirement.

Item B specifies information which the commissioner needs to determine whether to approve CAC services for the applicant. This information includes the portion of the cost of the applicant's health services that will be paid by medical assistance and third party payers to enable a comparison with the limitations on the use of CAC funds (subitems 7, 8, and 9), the parameters for the provision of necessary and appropriate services (subitems 1,2, and 4), and the safeguards of the health and welfare of the applicant (subitems 2 and 3). Subitem 5 assists the commissioner in setting priorities for the use of available funds. Subitem 5 requiring the plan to contain information about emergency backup services is reasonable because it provides the department a further opportunity to evaluate whether the recipient's health and safety will be protected under community-based services. The item is consistent with the waiver requirements.

Item C provides evidence that the team has met the medical assistance requirement of allowing the individual or the individual's representative the freedom to choose from among qualified providers. This item is consistent with the waiver, part 9505.0190, and with 42 CFR 431.51 which provides the recipient's free choice of any qualified medical assistance provider.

Item D is required by the waiver. Its inclusion in the rule is reasonable because it informs affected persons.

Subpart 9. **Team recommendation.** This subpart specifies a responsibility of the team when it has completed the required assessments and care plan. The subpart is necessary to set a standard and avoid confusion about what is expected of the team following completion of an assessment and the care plan. The subpart is consistent with the waiver which specifies the choices as those listed in this subpart. See Waiver Attachment V in regard to the assessment process of the hospital discharge planning team and Waiver Appendices A and B. It is reasonable that the recommendation be supported by the assessments because the assessments contain information needed to determine whether an applicant can safely be maintained outside a hospital setting. Implementation of a recommendation inconsistent with the assessment data might endanger the health or safety of an applicant. It is reasonable that the applicant's physician, the acting case manager, and the applicant or the applicant's representative sign the application as their signatures provide evidence that they had an opportunity to review and approve the care plan.

Subpart 10. **Transmittal of plan, assessments, and recommendations to the commissioner.** This subpart specifies the documents that must be submitted to the commissioner for a determination of the applicant's eligibility for CAC. The subpart is necessary to set a standard, avoid confusion, and assure compliance with Minnesota Statutes, section 256B.04, subdivision 2 in regard to administering the medical assistance program statewide in a uniform manner. The documents required to be submitted provide information about the applicant's health status, need for services, availability of a primary caregiver, and the suitability of the applicant's home as a service site. They also provide evidence that the applicant or the applicant's representative had an opportunity to

review and approve the recommendations and the care plan. Thus, items A to E are reasonable because they are consistent with the waiver requirements. See Waiver, section 4440, items 6 to 10.

9505.3545 REASSESSMENT BY INTERDISCIPLINAARY TEAM.

Subpart 1. **Reassessment required.** This subpart specifies when a redetermination must be made of whether a CAC recipient continues to qualify for home and community-based services under CAC. Several factors may affect the CAC recipient's continued CAC eligibility. They include a termination of medical assistance eligibility, a change in the recipient's health status such that home and community-based services are no longer appropriate and the recipient requires hospitalization, the inability of the primary caregiver to continue to give the necessary care, and an improvement in the recipient's health status to the extent the recipient is no longer at risk of hospitalization. Thus, this part is necessary to set a standard for the time and procedure of reassessing the CAC recipient's continued need and eligibility for home and community-based services. Conducting the reassessment at least once every six months is consistent with the waiver requirement. See Waiver Attachment I, page 1, Case management and also Waiver Attachment V, page 3. Requiring the reassessment to be carried out by the interdisciplinary team convened by the recipient's case manager is consistent with the waiver. See Waiver Attachment V, page 3. The items specified in part 9505.3540, subparts 1 to 9 relate to the recipient's medical assistance eligibility status, continued need for and appropriateness of home and community-based services, the suitability of the recipient's home as a service site, and the willingness and ability of a family member to serve as a primary caregiver, and finally the team's recommendations. It is reasonable to require these assessments and recommendations as part of the reassessment process because they provide the information necessary to determine eligibility for CAC. Requiring the team to review and, if necessary, modify the CAC recipient's care plan is reasonable because it assures that the recipient's health and welfare will be safeguarded as required by the waiver.

Subp. 2. **Responsibility to assure reassessment.** This subpart clarifies that the local agency is responsible to assure the completion of the recipient's required reasssessment. It is necessary to clarify the responsibility in order to set a standard and avoid confusion. Placing the responsibility on the local agency is reasonable as it is the local agency to whom the department has delegated the responsibility for providing CAC services to recipients. As stated in the SNR of subpart 1, the waiver requires a reassessment to be carried out at least every 6 months while a recipient is receiving home and community-based services as part of the redetermination of the recipient's continued eligibility for CAC. CAC funds may only be used to pay for services to persons who are eligible for CAC. Thus, it is necessary to assure completion of the reassessment in a timely manner so that necessary services are provided to the recipient. It is also necessary to assure continuation of the recipient's services will not be affected by a local agency's failure to comply with the required reassessment. Therefore, it is reasonable to hold the local agency
responsible for paying for the services in the recipient's care plan, if

the reassessment is not completed, as the payment assures continuation of the services needed by the recipient and encourages the local agency to comply with the requirement.

9505.3550 **RECIPIENT'S TERMINATION FROM CAC.**
This part is necessary to clarify the circumstances in which a recipient will be terminated from CAC. Item A is reasonable because it is consistent with the recipient's right to choose. See part 9505.0190 and 42 CFR 431.51. Item B is reasonable because it avoids an unnecessary use of CAC funds and a CAC slot which are limited by the waiver and may be needed by another person. A recipient's condition may change to the extent that home and community-based services are insufficient to meet his or her health needs. As a result, the recipient may have to be admitted to a hospital. It may be uncertain how long the recipient will have to be in the hospital or whether home and community-based services will be sufficient to enable the recipient to return home and receive home and community-based services. Item C is reasonable because the recipient's condition requires an uncertain length of continued hospitalization. It is reasonable to require the recipient's physician to certify the recipient's continued need for hospitalization as the physician is responsible for the recipient's hospital services and has firsthand knowledge of the recipient's condition, treatment needs, and response to treatment. Item D is reasonable because if the hospitalized recipient needs services that are not available in the community the department cannot carry out its required obligation to safeguard the recipient's health unless the recipient stays in the hospital. Item E is reasonable as CAC services are only available to a person who is eligible for medical assistance. Items F and G are reasonable because they are consistent with the waiver requirement that home and community-based services provide a cost effective alternative to hospitalization.

9505.3560 **CASE MANAGEMENT SERVICES.**
Subpart 1. **Required service.** This subpart specifies that case management is a required service to a CAC recipient. This subpart is necessary to inform affected persons of waiver requirements related to the case manager's responsibilities. See Waiver Attachment V, page 2.
Subpart 2. **Designation of case manager.** Under part 9505.3530, subpart 2, an acting case manager is designated by the department when the department receives a request for participation in CAC. The acting case manager carries out responsibilities related to completing the assessments and documents required for a determination of the applicant's eligibility for CAC services. If the applicant is determined eligible for CAC, it is necessary and reasonable to designate a more permanent case manager to assure continuity of the case management services required under the waiver and these rules. This subpart requires the lead agency to appoint a case manager. This subpart, therefore, is necessary to clarify which agency is responsible to designate the CAC recipient's case manager. It is reasonable to require the lead agency to designate a recipient's case manager because the lead agency is responsible for the CAC recipient's CAC services. It also is reasonable to require the lead agency to consult with the CAC applicant or the applicant' representative in designating the case manager because the

consultation is consistent with the applicant's freedom of choice. See part 9505.0190 and 42 CFR 431.51. Specifying the time within which the lead agency must designate a case manager is necessary because a timely decision based on information gathered by the case manager must be made about the applicant's request and need for CAC services. Five working days is reasonable because it balances the applicant's need and the workload of the lead agency. The waiver requires that the case manager must not have a financial interest, other than employment by the county responsible for the applicant's CAC services, in the services provided to the applicant. Including this requirement in the rule is reasonable because it informs affected persons. See Waiver Attachment I, Case Management.

Subpart 3. **Case manager responsibilities.** Items A to Q are needed to clarify the responsibilities of a case manager in securing cost effective services appropriate to the recipient's needs and assuring coordination of the services. The responsibilities are consistent with waiver requirements. See Waiver Attachments I and V. Item Q is necessary to clarify that the care plan requires approval by the person who needs the services specified in the care plan (the applicant or CAC recipient) and by the person responsible for ordering health care services for the applicant or CAC recipient (the physician). The item is consistent with the waiver which states that the "patient care plan must be approved in writing by the case manager, individual's parent/spouse or local guardian and attending physician." See Waiver Attachment V. Consistency with the waiver is reasonable because it is required to obtain federal financial pariticpation as specified under Minnesota Statutes, section 256B.04, subdivision 4. The item also is reasonable because the signature is evidence that the person has had an opportunity to review the material above the person's signature. It is necessary to clarify the consequences of failing to sign the care plan in order to set a uniform statewide standard as required by Minnesota Statutes, section 256B.04, subdivision 2 and to inform affected persons. An opportunity to review the care plan offers a CAC recipient or applicant, or the representative of the CAC recipient or applicant, a chance to discuss the contents of the care plan with the case manager or acting case manager. The person may be apprehensive about or need reassurance about the nature of the services or about the service providers. The person may request that the care plan specify a different provider or may provide information about past experiences with the service providers. Providing ineligibility for CAC services as a consequence of failure to sign the care plan is reasonable because it ensures that the CAC recipient or applicant agrees with the plan and can reasonably be expected to assist its implementation. It also is reasonable to require the acting case manager or case manager, as appropriate, to request the signature and explain the consequences of failing to sign as this person has direct contact with the applicant or recipient and thus the procedure is administratively efficient.

Subpart 4. **Case manager reports about suspected abuse of a vulnerable adult.** CAC services are provided to recipients who live in the community alone or with their family members. These settings and the provision of services to CAC recipients may not be supervised on a daily basis by qualified professionals. CAC recipients may be vulnerable because of

their own physical or mental health status or because they depend on

others for services. Circumstances may occur under which these recipients may be abused, neglected, or otherwise at risk. Recipients must receive services under safe, healthful conditions. The waiver requires the department to safeguard the health and welfare of CAC recipients. See Waiver Section 4440, item 10 (a). Therefore, it is necessary and reasonable to require the case manager to act to protect the recipient and arrange the necessary services. This part 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, or that the health or saftey of a recipient is otherwise at risk. Minnesota Statutes, section 626.557, governs the reporting of maltreatment of vulnerable adults. Some CAC recipients are vulnerable adults as set forth in subdivision 2, clause (c) of this statute. Subdivision 2, clauses (d) and (e) of the cited statute define abuse and neglect as related to a vulnerable adult. Minnesota Statutes, section 626.577 also specifies the requirements for reporting and investigating suspected abuse of vulnerable adults. This part is consistent with the statute cited. It is also necessary and reasonable that the case manager request a report from the protection agency in order to take appropriate actions to ensure the health and welfare of the recipient because the report describes the nature and extent of the problem faced by the recipient in the setting.

Subpart 5. **Case manager reports about suspected abuse of a child.** Some CAC recipients are children. They are unusually vulnerable to neglect or abuse because of their disabling conditions. Minnesota Statutes, section 626.556, subdivision 3, requires professionals of the healing arts, social services, hospital administration, or law enforcement to immediately report information concerning abuse or neglect to the local welfare agency, police department or the county sheriff. This subpart informs case managers about the actions they must take if they suspect abuse of a CAC recipient who is a child. This subpart is consistent with the waiver requirement that the department assure the health and welfare of CAC recipients. It is reasonable to require the case manager to make such reports and to cooperate with the responsible county authority as the case manager must coordinate and arrange the services specified in the recipient's care plan and also meet with the recipient or the recipient's representative in the recipient's residence as necessary to assure the recipient's safety and welfare. See subpart 2, items E and H. The subpart is consistent with Minnesota Statutes, section 626.556, subdivision 3 which sets forth the procedure for reports of suspected child abuse. It is also necessary and reasonable that the case manager request a report from the protection agency in order to take appropriate actions to ensure the health and welfare of the recipient.

Subpart 6. **Other actions required** of case **manager.** This subpart specifies the action the case manager must take when he or she received the findings of the investigation of a case of suspected abuse. The subpart is necessary to clarify appropriate actions and inform affected persons of their responsibilities. Safeguarding the health and welfare of the CAC recipient is a responsibility of the recipient's case manager.

Therefore, it is necessary and reasonable to require the case manager to determine if a reassessment of the recipient and a revision of the recipient's care plan is required to carry out this responsibility. The examples are actions that may be necessary to protect the recipient's health and welfare. If the provider has harmed the recipient, arranging for another CAC provider is necessary and reasonable because the service is still required but a new qualified provider is needed. Working out another living arrangement for the recipient is a reasonable choice if the harm has occurred in the current residence but the recipient is still able to live in the community. Amending the care plan is reasonable because the amendment process involves a determination of the services required by the CAC recipient and, thus, benefits the recipient by safeguarding the recipient's health and welfare. These actions are consistent with the waiver. Finally it is reasonable to require the case manager to forward the care plan to the commissioner for approval because the waiver gives the commissioner the ultimate responsibility for safeguarding the recipient's health and welfare and for determining the eligibility of the recipient to participate in CAC.

9505.3570 HOME HEALTH SERVICES

This part clarifies the recipient's eligibility to receive the home health services available to all medical assistance recipients. It also clarifies the limits on amount, duration, and scope applicable to these services when they are provided to a CAC recipient. The part is necessary to inform affected persons of the appropriate standard. The limits specified in this part are consistent with the terms of the waiver. See Waiver Attachment I, Home health services, in regard to exemption from the limits on amount, duration, and scope of all medical assistance services.

9505.3575 HOMEMAKER SERVICES

Subpart 1. **Eligibility for service.** This part defines who is eligible for homemaker service. The part is necessary to set a standard. The waiver in Waiver Attachment I requires that homemaker services be provided only when "the individual regularly responsible for these activities is temporarily absent or unable to manage them for himself or others." This subpart is consistent with the waiver.

Subp. 2. **Homemaker services provider; lead agency or contractor.** This subpart informs affected parties that the lead agency, as one of its duties in the CAC program, has the responsibility to provide or contract for homemaker services for CAC recipients. Part 9565.1300 sets out the responsibilities of the local agency for purchasing and supervising homemaker services. Under CAC the local agency has designated the lead agency as the entity to adminster the program. It is reasonable to require the lead agency to adhere to the same standards as the cited rule to ensure uniformity in provision of services. However, a lead agency may contract for homemaker services rather than provide them directly. In this case, the provision of Minnesota Statutes, sections 144A.43 to 144A.46 set the requirements that the provider must meet. This subpart is consistent with the applicable rule and statute.

Subp. 3. **Homemaker service standards.** This subpart sets the

standard applicable to homemaker services. A standard is necessary to comply with Minnesota Statutes, section 256B.04, subdivision 2 which requires uniform, statewide administration of the medical assistance program. Parts 9565.1000 to 9565.1300 define homemaking service and establish the service standards. Requiring homemaker services under CAC to comply with existing state service standards is consistent with the waiver and is reasonable because it ensures coordination of department rules affecting the same service and avoids confusion.

9505.3580. **RESPITE CARE SERVICES.**
Subpart 1. Eligibility for service. This subpart sets the standard of eligibility to receive respite care services. A standard is necessary to comply with the requirement of uniform statewide administration of the medical assistance program set forth in Minnesota Statutes, section 256B.04,
subpart 2. The waiver in Waiver Attachment I specifies the purpose of respite care as relieving "the family of the care of a dependent person for short, specified periods of time" during the absence of the primary caregiver or during an emergency. The subpart is consistent with the waiver. Waiver Attachment VI, Home Care Costs, specifies 30 days as the maximum number of units of respite care a recipient may receive per waiver year. Respite care may be given on a round-the-clock basis or may be given for shorter periods according to the needs of the primary caregiver. Thus, the limitation may be stated as 720 hours per waiver year as a way to assure that all CAC recipients are treated equitably. The subpart is consistent with the waiver.
Subpart 2. **Provider standards.** The waiver in Waiver Attachment I specifies who is qualified to provide respite care and the setting in which it may be given. The waiver states that it "may be provided in the home by a registered professional nurse, or public health nurse, in the hospital or SNF facility..." The waiver also states that a provider must meet applicable state licensure and certification requirements. A facility giving respite care is an example of such a provider. This subpart is necessary to set standards for respite care and to inform affected persons of the standards. Item A requires a facility providing respite care to be one that meets state licensure standards. The requirement is consistent with the waiver. State licensure standards set the minimum requirements necessary to assure the safety and well being of persons residing in the licensed facility. Thus, item A is reasonable because it assures the safety and well being of CAC recipients and the provision of their necessary services while they are receiving respite care. Requiring such a facility to be one approved by the lead agency is reasonable because the lead agency has been delegated the responsibilities of contracting for and monitoring the recipient's CAC services and of safeguarding the recipient's health and welfare. Item B is consistent the waiver. Requiring the person providing respite care services to act in the place of the primary caregiver and to be available throughout the primary caregiver's absence is reasonable because it assures the recipient will receive the needed services customarily provided by the primary caregiver and thereby protects the recipient's health and welfare.
Subpart 3. **Contract required.** The waiver requires that a facility,

agency or individual provider of respite care services have contracts with the lead agency, and that the lead agency monitor contract performance. This subpart is necessary to inform affected persons of a waiver requirement. The lead agency has been delegated the responsibility of contracting for and monitoring the recipient's CAC services. As part of the contracting procedure, the lead agency sets the standards for performance in the contract and, thus, is in a position to evaluate whether the standards are met. The subpart is consistent with the waiver.

9505.3585PHYSICIAN SERVICES.

This part is needed to set a standard and to inform interested persons of the standard applicable to physician services to a recipient. Part 9505.0345 sets the standard for eligibility for medical assistance payment of physician services. It is reasonable to have one standard applicable to the medical assistance program in order to avoid confusion and to maintain a consistent level of services. The waiver requires services covered by CAC to be provided as necessary to ensure the recipient's health and safety and to be specified in the recipient's care plan. The part is consistent with the waiver. See Waiver Attachment I.

9505.3600 COUNSELING AND TRAINING SERVICES.

Subpart 1. **Eligibility to receive counseling and training services.** Counseling and training for primary caregivers are CAC services available to CAC recipients under the waiver. They include counseling for primary caregivers about "issues pertaining to maintenance of the individual in the home setting and training in the use of equipment and treatment regime as indicated in the plan of care..." This subpart is necessary to inform affected persons of a service available under CAC. It is consistent with the waiver. See Waiver Attachment I. A definition of the terms "member of the recipient's family" or "family member" is necessary to clarify the terms' meaning and establish who is eligible to receive the training and counseling. The persons included in the definition are those who may reside in the same setting as the recipient and serve as the recipient's primary caregiver. Thus the definition is reasonable because it is consistent with the purpose of the service which is to assist "family functioning to maintain the individual at home."

Subpart 2. **Purpose of training.** The waiver specifies that training is related to "the use of equipment and treatment regime as indicated in the plan of care.....; with updates as necessary to maintain safe care of the individual in the home setting." This subpart is necessary to inform affected persons of the waiver provisions applicable to training services. The subpart is consistent with the waiver. It is necessary and reasonable to exclude persons who are employed to care for the recipient from those who will receive CAC funded training and counseling because the agency that employs these persons to care for a CAC recipient is responsible for training or counseling its employees and the cost of the training is included in the provider's contract.

Subpart 3. **Purpose of counseling.** The waiver states that counseling for family members is for issues pertaining to the maintenance of the individual in the home setting and may include "crisis, family and individual counseling and would be assessed as required for family

functioning to maintain the individual at home." This subpart is necessary to inform affected persons of the waiver standard which must be followed to receive payment as a CAC service. It is consisent with the waiver. See Waiver Attachment I.

Subpart 4. **Case manager approval required.** The waiver in Waiver Attachment I requires that "counseling for family members" be approved by the recipient's case manager as a condition of eligibility for CAC reimbursement. This subpart is necessary to inform affected persons of the waiver requirement. Requiring documentation of the service is necessary and reasonable because it provides evidence the case manager has had an opportunity to review the need for and the scope, duration, and amount of the service and it is consistent with the waiver. It also is reasonable because the case manager's review for purposes of determining whether to approve the family counseling affords an opportunity to prevent possible overutilization or inappropriate use of the service as required under Minnesota Statutes, section 256B.04, subdivision 15.

Subpart 5. **Eligibility to provide counseling and training.** The waiver states that counseling and training "will be provided by a county social worker, a medical social worker, the individual's physician, a registered professional nurse, or a public health nurse." This subpart is necessary to inform affected persons of the standard which must be met to receive payment as a CAC service. The subpart is consistent with the waiver. Family members and primary caregivers may have little or no training and
experience in the use of equipment and treatment regimens required by a recipient. Under the waiver, family members usually are CAC recipients' primary caregivers. A determination of their competency to use equipment and treatment regimens is necessary and reasonable to assure the health and safety of recipients. Requiring the person providing the training service to determine whether the person being trained is competent to provide the service required tp maintain the recipient at home is reasonable because the trainer is qualified by experience and training to know what is necessary, has observed the ability of the family member to use the equipment and treatment, and is in the best position to judge the family member's competence to give the service. See Waiver Attachment I.

9505.3610 ENVIRONMENTAL MODIFICATIONS IN THE HOME.

Subpart 1. **Eligibility for service.** The purpose of CAC services is to maintain the CAC recipient in a home setting and avoid hospitalization. The recipient's home may not be constructed, designed, engineered, or arranged to permit the recipient's use of the equipment the recipient needs to live in a home setting. Therefore, the waiver permits physical adaptations to the recipient's home when these adaptations or environmental modifications are indicated in the recipient's plan of care. This subpart is necessary to inform affected persons of the standards applicable to environmental modifications in the home as a condition of eligibility for payment as a CAC service. Items A to D are consistent with the waiver. See Waiver Attachment I.

Subpart 2. **Provider standards.** This subpart specifies that environmental modifications in the home must meet standards of the applicable state and city building codes. The subpart is necessary to

inform affected persons of a waiver requirement that must be met to receive CAC payments. See Waiver Attachment I. Compliance with state and city building codes is reasonable as these codes set standards necessary to protect the safety and well being of persons who use the structures and their appurtenances. Because the case manager is responsible to the lead agency for assuring the safety and health of the CAC recipient, it is reasonable to require the case manager to approve the provider performing the work. The case manager's approval is required by the waiver. Contracts or service agreements between the person performing the work and the entity authorizing the work establish the terms and conditions of what each party is responsible to do. Contracts and service agreements are tools for determining if the required work has been done in the requested manner. Requiring the terms of the service to be established in a contract or service agreement is reasonable because the contract or agreement helps to prevent misunderstanding, furnishes an objective measure of whether the required work was done, and provides an audit trail. It is reasonable to require the lead agency to be a party to the contract or service agreement and to assure that work is completed according to the contract or agreement as the lead agency is the local agency's designee for the administration of the recipient's CAC services.

9505.3620 MEDICAL EQUIPMENT

Subpart 1. **Eligibility for medical equipment and supplies.** The waiver authorizes the use of CAC funds to pay for medical equipment and supplies that are generally available to the individual in a hospital. See Waiver Attachment I, page 3. This subpart is necessary to inform affected persons of the availability of medical equipment and supplies through CAC. The waiver sets certain conditions for the use of CAC funds to purchase the
medical equipment and supplies. These conditions are that the equipment and supplies are specified in the recipient's plan of care, CAC is the only source available to fund the medical equipment and supplies, and the medical equipment and supplies meet the requirement of the State Plan for the "rental, purchase, and safeguarding of patient care....," as specified in part 9505.0310. This subpart is consistent with the waiver.

Subpart 2. **Prior approval required.** The waiver states that medical supplies and equipment having a value in excess of $25.00 requires "prior authorization in the patient care plan." See page 3 of Waiver Attachment I. It should be noted that prior authorization in the patient care plan is not the same as the procedure to obtain prior authorization of certain health services under parts 9505.5010 to 9505.5030 as a condition of the services' eligibility for medical assistance payment. The intent of each procedure is the same: a review to determine whether the requested service is medically necessary and appropriate. The approval also is the same, being given by the commissioner or the commissioner's designated representative. However, the procedures followed to obtain approval are not identical. One criterion of eligibility to receive CAC services is a care plan approved by the commissioner. See parts 9505.3520 and 9505.3550. This subpart is necessary to inform affected persons of a condition affecting eligibility for payment. Authorization of services specified in a CAC recipient's care plan involves as a first step the

approval of the case manager and, if appropriate, the recipient's physician and as a final step submission of the recipient's care plan to the commissioner for review as part of the commissioner's determination of the applicant's eligibility for CAC services. Criteria for obtaining the commissioner's determination that a CAC applicant is eligible for CAC services are: (1) that the cost of CAC services does not exceed the cost to medical assistance of providing inpatient hospital services for the applicant; and (2) the cost falls within the limit specified in the waiver for the aggregate annual cost of waivered services provided for all CAC recipients. See part 9505.3520, items F, G, and H. Thus it is reasonable that an item with a value greater than a minimum cost receive the commissioner's approval because submitting the information to the commissioner provides the commissioner an opportunity to determine whether the services needed by the CAC recipient meet the criteria for eligibility for payment under CAC. This subpart is consistent with the waiver requirements set forth in Waiver Attachment I, page 3.

Subpart 3. **Exemption from limitation on type of equipment and supplies available.** The waiver states that the limitations on the types or equipment or supplies available under the State Plan do not apply in the case of CAC recipients. See Waiver Attachment I, page 3. This subpart is necessary to inform affected persons. Part 9505.0310, subpart 1, item A and subpart 4, item A set the limits on the types of equipment or supplies that may be paid for using medical assistance funds. The subpart is consistent with the waiver.

9505.3622 MEDICAL TRANSPORTATION

The waiver authorizes the use of CAC funds to pay for transportation for medical purposes if the transportation exceeds the scope of or has a higher cost than set forth in the county's policy for transportation eligible for medical assistance reimbursement and is indicated in the CAC recipient's care plan or approved by the recipient's case manager. See part 9505.0140, subpart 2, which sets forth the requirement that a county must have a plan of
transportation services that assist recipients to access medical assistance services. This part is necessary to inform affected persons. It is consistent with the waiver. See Waiver Attachment I, page 3.

9505.3624 PRESCRIBED DRUGS

Subpart 1. **Eligibility for service.** The waiver authorizes the purchase of prescribed drugs as a CAC service if the prescribed drugs would be available to the recipient if the recipient were an inpatient and if the drug is authorized by the recipient's physician in the recipient's care plan. This subpart is necessary to inform affected persons of a waivered service. The subpart is consistent with the waiver. See Waiver Attachment I, page 3.

Subpart 2. **Number of prescribed drugs available to recipient.** The waiver states that recipients are eligible for prescribed drugs according to current State Plan requirements except that limtations on the number of prescriptions which may be filled or refilled shall not apply. This subpart is necessary to inform affected persons. Recipients are chronically ill individuals. By definition, they are persons whose medical condition and service needs are known and are expected to

continue over a long time. Their needs may include prescribed drugs necessary on a long term basis for maintaining them in a stable condition. Limiting the number of prescriptions which may be filled or refilled poses an additional burden on the primary caregiver or other person who is responsible for the recipient's care including obtaining and sometimes administering the prescribed drugs. Thus it is reasonable to exempt recipients from the limitations applicable to prescribed drugs under the State Medicaid Plan because removal of the limitation facilitates the recipient's care at home. State Plan requirements and limitations on medical assistance payment for prescribed drugs are found in part 9505.0340. See Waiver Attachment I, page 3in regard to Prescribed Drugs.

9505.3626. OTHER PROFESSIONAL SERVICES; THERAPY.

Subpart 1. **Eligibility for other professional services; therapies available as medical assistance services.** Health services needed by a CAC recipient to remain at home may include certain therapies that are available as medical assistance services. This subpart is necessary to clarify that a CAC recipient is eligible to receive these services while living at home. The subparts cited within subpart 1 set the medical assistance standards for the therapies provided by a physical therapist, occupational therapist, speech-language pathologist, and respiratory therapist. These services are consistent with the therapies set forth in the waiver, on page 3 of Waiver Attachment I. The waiver in Waiver Attachment I, page 3, requires that "[c]urrent safeguards and provider standards will continue to apply for all therapies covered under [CAC]....." The standards applicable to the therapies available under this subpart are set forth in parts 9500.1070 and 9505.3500 to 9505.3700. The subpart is reasonable because it informs affected persons.

Subp. 2. **Eligibility for other professional services; nutritionaltherapy.** This subpart is necessary to set inform affected persons about the availability of nutritional therapy to a CAC recipient. A CAC recipient may have specific nutritional needs that require the advice of a qualified person. A nutritionist is so qualified by experience and training. The subpart is consistent with the waiver. It is reasonable to be consistent with the waiver because the consistency is a condition to obtain federal financial participation as required under Minnesota Statutes, section 256B.04, subdivision 4. See Waiver Attachment I, page 3 about nutritional therapy and Waiver Attachment II and part 9505.3510, subpart 35 about nutritionist.

Subp. 3. **Service limitations.** This subpart is necessary to set a standard of the amount, duration, and scope of therapy that may be provided to a CAC recipient. The waiver states on page 3 of Waiver Attachment I, "Limitations on the amount, duration and scope of therapies for waiver recipients will be specified in the patient care plan." This subpart is consistent with the waiver. Consistency with the waiver is reasonable because it is a condition to obtain federal financial participation as required under Minnesota Statutes, section 256B.04, subdivision 4. See part 9505.3550 in regard to the CAC recipient's care plan and its approval by the recipient's physician.

9505.3630 FOSTER CARE.

Subpart 1. **Eligibility for payment.** The waiver authorizes foster care as a CAC service. It defines the service "as the provision of ongoing residential care and supportive services to enable the individual to be discharged from the hospital into other than his/her [sic] natural family unit." It specifies that "[f]oster care does not include the cost of room and board" and that funds from the Title IV-E Program and Minnesota Supplemental Aid Program are to be used to pay for room and board. See Waiver Attachment I, page 1. This subpart is necessary to inform affected persons. The definition of Title IV-E is necessary to clarify its meaning. The definition is reasonable because using the exact citation of the public law establishing the foster care program provides a reference that can easily be reviewed and removes possible misunderstandings. It also is necessary to define the term "Minnesota Supplemental Aid Program" to clarify its meaning. The definition is reasonable because using the exact citation of the state law establishing the program provides a reference that can easily be reviewed and removes possible misunderstandings.

Subpart 2. **Provider standards.** This subpart is necessary to inform affected persons of the standard required to provide foster care as a CAC service. The waiver requires that CAC service providers must meet the applicable state licensure or certification requirements. See State Medicaid Manual, section 4440, item 10 (a). Minnesota Statutes, section 245A.03 requires foster care providers to be licensed. State licensing standards of foster care of children are established in parts 9545.0010 to 9545.0260. State licensing standards of foster care of adults are established in parts 9555.5105 to 9555.6265.

9505.3635 EXCLUDED SERVICES

This part sets forth services which are not eligible to be paid as CAC services. This part is necessary to inform affected persons and avoid possible misunderstandings.

Item A is consistent with parts 9505.3580 and 9505.3630 and with the waiver. The item is necessary and reasonable because it clarifies the availability of CAC funds to pay for room and board during respite care away from the recipient's home and thus avoids possible misunderstanding in relation to the prohibition of using CAC funds to pay for room and board.

Item B is reasonable because it is consistent with Minnesota Statutes, section 256B.04, subdivision 15 which prohibits duplicate payments for the same service.

Item C. Minnesota Statutes, section 256B.04, subdivision 4 requires the state to cooperate with the federal government in any reasonable manner as may be necessary to qualify for federal financial aid in connection with the
medical assistance program. 42 CFR 433.138 and 42 CFR 433.139 require the department to use all possible sources of third party payers before using medical assistance funds to pay for a service otherwise eligible for medical assistance payment. (Also see part 9505.0015, subpart 46 which defines "third party" for purposes of the medical assistance program and part 9505.0070 in regard to third party liability under the medical assistance program.) 42 CFR 433.140 states that federal

financial participation in medical assistance payments is not available if the department has failed to fulfill requirements related to obtaining payment from third party payers. Finally, Minnesota Statutes, section 256B.37 requires a person who is otherwise eligible for medical assistance and who has private health care benefits available to use the private benefits first and to the fullest extent before supplemental payment may be made by medical assistance. Thus, this item prohibiting the use of CAC funds to pay for health services for which other funding sources are available is consistent with federal and state requirements related to obtaining third party payments.
Item D is reasonable because it clarifies that only CAC services to persons determined eligible for CAC are eligible for payment with CAC funds. This is consistent with the waiver requirements.
Item E is consistent with the waiver. See parts 9505.3550 and 9505.3622 and their SNRs.

Item F is consistent with the waiver. See Waiver Attachment I, page 2 and Model Waiver Request, Exhibit A, items 7 and 8.

9505.3640 LOCAL AGENCY RESPONSIBILITIES.
Subpart 1. **Determination of applicant's eligibility for medical assistance.** Under Minnesota Statutes, section 256B.05, the local agency (county agency) is responsible to administer medical assistance in its county. Administration of medical assistance includes the determination of eligibility to receive medical assistance under Minnesota Statutes, Chapter 256B. This subpart is necessary to clarify that the local agency is responsible for the medical assistance eligibility determination of a CAC applicant and the medical assistance eligibility redetermination of a CAC recipient. The waiver specifies that "waiver eligible clients must meet the financial and non-financial Medicaid eligibility criteria in the approved Minnesota State Plan." These criteria are found in parts 9505.0010 to 9505.0150. The waiver also states that "[u]nder that authority of section 1902(a)(10)(A)(ii)(V1), such individuals [medically needy individuals] would be eligible for Medicaid services even if they would otherwise be ineligible for Medicaid while living at home because of the SSI deeming rules." See State Medicaid Manual, section 4440, item 3, dated 04/01/87. The result is that the income of a spouse or the income of a parent that usually is deemed available to the chronically ill individual and causes the applicant to be determined ineligible for medical assistance would not be deemed available. This subpart is consistent with the waiver. The eligibility exception that permits separation of assets of the client and a responsible parent or spouse is also reasonable because it enables the client to live in the community at less public expense than would be required in the client were ineligible for CAC and were required to be institutionalized under the medical assistance program. It is reasonable to require the eligibility determination to be made by the local agency that is or would be financially responsible for the applicant or recipient as that agency may have to use its public tax dollars to pay for the individual's services. However, it is also reasonable to
permit the local agency of the county where the applicant, recipient, or the individual, recipient resides to collect the necessary information as it is administratively efficient and, in most cases, requires the least

travel by the individual.

Subpart 2. **Designation of lead agency.** Although the local agency has the responsibility to administer medical assistance, it may choose whether to administer CAC directly or to delegate the administration to another entity. This subpart clarifies that the local agency must decide who will administer the CAC portion of the medical assistance program within its county. Clarification is necessary to avoid misunderstanding and confusion. Permitting the local agency to designate a lead agency is reasonable because it provides the local agency the administrative flexibility that may be necessary to act in the client's best interests and furnish the client's services in a timely manner.

Subpart 3. **Calculation of parental or spousal contribution.** Minnesota Statutes, section 256B.14 specifies the responsibility of the spouse of an adult and the parent of a child to contribute partial or complete repayment of medical assistance furnished to recipients for whom they are responsible. Minnesota Statutes, section 256B.14 specifies that the department must promulgate rules to "determine the ability of responsible relatives to contribute partial or complete payment or repayment of medical assistance...." and that "the rules shall be consistent with the requirements of Minnesota Statutes, section 252.27 for parents of children whose eligibility for medical assistance was determined without deeming of the parents' resources or income." Minnesota Statutes, section 256B.14 also specifies that if, the relative failed or refused to pay, a cause of action exists against the relative for that portion of medical assistance granted after notice was given to the relative about the amount the relative was determined able to pay. This subpart is necessary to clarify the standard that is to be applied in determining the financial contribution of a CAC recipient's responsible relative. Calculating the financial contribution in the same manner as required for other the parents and spouses of other persons whose services are paid for by medical assistance is reasonable because it is consistent with the requirement that the medical assistance program be administered uniformly throughout the state.

9505.3645 LEAD AGENCY RESPONSIBILITIES

Subpart 1. **Enrollment as a CAC provider.** The lead agency may provide direct CAC services such as case management or may contract for or have a purchase agreement for such services. Thus, a lead agency is a service provider in the medical assistance program. Part 9505.0195 requires vendors who want to participate in the medical assistance program to enroll with the department as providers and specifies the standards for enrollment. This subpart clarifies the status of the lead agency. It is reasonable to require a lead agency to enroll as a provider as enrollment gives the department an opportunity to review the credentials of the lead agency and the provider agreement furnishes a means to hold the lead agency accountable for its performance. The lead agency's accountability to the department for the services it provides or for which it contracts is consistent with the waiver requirements placed on the department about safeguarding the health and welfare of the CAC recipients and assuring financial accountability for the funds expended for home and community-based services.

Subpart 2. **Compliance with rules and local agency requirements.** This subpart is necessary to clarify the lead agency's obligation to adhere to these rules, parts 9505.3500 to 9505.3700 and to the rules of the agency which made the designation. It is reasonable because adherence to parts 9505.3500 to 9505.3700 is consistent with the requirement of Minnesota Statutes, section 256B.04, subdivision 2 of implementing the medical assistance program in a uniform manner throughout the state.

Subpart 3. **Administrative functions.** This subpart specifies the administrative functions that a lead agency must perform. It identifies functions that are required either by statutes or by the waiver. The subpart is necessary and reasonable because it assures implementation in a uniform manner throughout the state, reduces the possibility of misunderstanding, and assists the department to comply with the requirements of the waiver.

Item A is reasonable because it informs lead agencies of what is required under these rules to arrange for providers of CAC services.

Item B is reasonable because it provides an opportunity to determine whether the billings are according to the CAC providers' contract, assists timely payment for CAC services through a first level review, and offers an opportunity to monitor compliance with the recipient's care plan.

Item C is reasonable because it is consistent with the requirement of Minnesota Statutes, section 256B.04, subdivision 2 that the medical assistance program be administered statewide in a uniform manner. CAC is a medical assistance program established in a waiver granted by HCFA. As a component of the medical assistance program it must comply with the requirements of the rules that are applicable to the program unless otherwise authorized under the waiver. Minnesota Statutes, section 256B.041, subdivision 1 requires the department to establish on a statewide basis a system of centralized disbursement of medical assistance payments to vendors. Part 9505.0450 establishes the standards and procedures for medical assistance provider billings to receive payment for medical assistance services. The lead agency is the enrolled provider of CAC services. Therefore, it is reasonable that the billing procedures applicable to medical assistance providers also apply to the lead agency because the requirement assures uniformity of billing procedures and is consistent with the requirement of Minnesota Statutes, section 256B.04, subdivision 2. The requirement also is consistent with the waiver provision that payments to providers of CAC services be made through the states' approved Medicaid Management Information System. See Attachment IV of Waiver.

Item D is consistent with the waiver. Consistency with the waiver is reasonable because it is a condition to obtain federal financial participation as required under Minnesota Statutes, section 256B.04, subdivision 4. See Requirements and Limits Applicable to Specific Services, item 9, in Waiver Exhibit A.

Items E and F are reasonable because they provide the evidence needed by the commissioner to comply with item 10 (b) of Requirements and Limits Applicable to Specific Services, Waiver Exhibit A. Compliance with the waiver is reasonable because it is a condition to obtain federal financial participation as required under Minnesota Statutes, section 256B.04, subdivision 4. They also are consistent with Minnesota

Statutes, section 256B.27.
Subpart 4. **Services to recipient.** The waiver requires the department to provide assurances that "necessary safeguards have been taken to protect the health and welfare of recipients." These safeguards include adequate standards for provider participation and compliance with all applicable state licensure and certification requirements. See Waiver Attachment, Exhibit A, Requirements and Limits Applicable to Specific Services, item 10 (a). Because the lead agency has accepted the responsibility of implementing the CAC program as the local agency's designee, it is reasonable to require the lead agency to carry out these safeguards. This subpart is necessary to inform the lead agency of actions it must take to be in compliance with the waiver.
Item A specifies a standard for the provision of CAC services. The standards are found in parts 9505.3500 to 9505.3700. The item is reasonable because it informs affected persons.
Item B limits the provision of CAC services other than respite care to times when the CAC recipient is not an inpatient. The limitation is consistent with the requirements of items 7 and 8 of Waiver Attachment, Exhibit A. Consistency with the waiver is reasonable because it is a condition to obtain federal financial participation as required by Minnesota Statutes, section 256B.04, subdivision 4.
Item C is reasonable as it provides the commissioner the evidence needed to comply with items 6 and 10 of Waiver Attachment, Exhibit A. Compliance with the waiver is a condition to obtain federal financial participation as required by Minnesota Statutes, section 256B.04, subdivision 4.

9505.3650 **PROVIDERS OF CAC SERVICES.**
Subpart 1. **Criteria for selecting a CAC provider.** This subpart specifies the criteria for selecting a CAC provider of home and community-based services. Criteria are necessary in order to establish a standard and assure that selection is objective.

Item A requires a CAC provider to be an employee of the county or have a contract or purchase or service agreement with the lead agency. As stated in the SNR of part 9505.3645, subpart 3, item A, the lead agency is an enrolled provider in the medical assistance program. As such, the lead agency is responsible for arranging for the services. A contract or agreement is a reasonable way to arrange for a service because a contract or agreement specifies the terms applicable to the seller and the purchaser, reduces the possibility of misunderstanding, and provides an audit trail. See subpart 2 which sets forth the terms and conditions applicable to contracts and agreements between the lead agency and the CAC service provider. Although the lead agency has been designated by the county (local agency) to implement the county's CAC program, the county itself is directly responsible to the department for the CAC program. A county may choose to provide some CAC services through members of its own staff. An example is case management services provided by a county-employed social worker. A person employed by a county must meet qualifications established by the county board for the position and is supervised to ensure the person's work meets the requirements of the position. Thus it is reasonable to provide as an alternative to a contract or agreement for services that a person

employed by the county may be a CAC provider because county employment assures the person meets at least a minimum standard of qualification for and performance in the assigned service.

Item B is consistent with the waiver which requires that individuals furnishing services provided under the waiver must take necessary safeguards to protect the health and welfare of recipients, including meeting all state licensure or certification requirements for the recipients' services they provide. Consistency with the waiver is reasonable because it is a condition to obtain federal financial participation as required under Minnesota Statutes, section 256B.04, subdivision 4. See item 10 (a) of Waiver Attachment, Exhibit A.
Item C is necessary to ensure that primary caregivers who have agreed to perform for the recipient essential services without reimbursement do not in fact receive payment from the program. The item is reasonable because it enables relatives to comply with statutory requirements for responsibility and ensures the integrity of the CAC program which is centered around the informal and non-reimbursed services of a primary caregiver.
Subpart 2. **Agreement to provide CAC services.** A purchase agreement, service agreement, and contract are customary business instruments drawn up between a purchaser and a service provider. This subpart specifies the contents of such instruments entered into by the lead agency and a CAC service provider. This subpart is necessary to establish a standard.

Items A, B, C, E, and I are customary terms of business agreements and contracts. Item D is reasonable as it is consistent with the waiver requirement that the amount, frequency, and scope of a CAC service is to be specified in the recipient's care plan. Item F is consistent with the waiver requirement that the state must assure an audit trail of funds expended under the waiver and include a description of the records and information that will be maintained to assure financial accountability and must make these records available to the federal government. Items G and H are reasonable because they inform CAC service providers of state requirements and mandate compliance.

9505.3660 CAC PROVIDER RECORDS
The waiver requires the department to maintain and make available to the federal government appropriate financial records documenting the cost of services provided under the waiver. See Model Waiver Request Attachment A, item 10 (b). The waiver also requires the department annually to provide HCFA with information on the impact of the waiver on the type, amount, and cost of services provided under the State plan and on the health and welfare of the recipients. See Model Waiver Request Attachment A, item 10 (g). This part specifies the records CAC providers must keep about the services provided, the clients served, and the cost of the services. This part is necessary to establish a uniform standard through-out the state as required by Minnesota Statutes, section 256B.04, subdivision 2. Parts 9505.1750 to 9505.2150 set the standards for recordkeeping in regard to surveillance and utilization review in the medical assistance program as required under Minnesota Statutes, section 256B.04, subdivision 15. CAC is a medical assistance program. It is reasonable to use these standards to meet the recordkeeping requirements

of the waiver because their use coordinates recordkeeping under medical assistance and thereby avoids possible confusion about which standards apply to which part of the medical assistance program. See Waiver Exhibit A, item 10 (b) and (g).

9505.3670 RATES FOR CAC SERVICES

Subpart 1. **Maximum CAC service rate.** This subpart is necessary to set maximum service rates under CAC. CAC is one of several medical assistance programs offering alternative care to Minnesota residents who are medical assistance recipients and at risk of institutionalization. These programs have been authorized under waivers from the federal government. The authorizing waivers do not set the rates for the waivered services. However, the department submitted cost data in its request to renew the CAC waiver which were the bases for the estimated total annual program expenditure and the average annual expenditure per individual. In renewing the waiver in 1988, HCFA approved these estimates of the total annual program expenditure and the average annual expenditure per individual and thereby imposed them as the limit required under the terms of the waiver. See letter dated March 22, 1988 from William Roper and the average cost worksheet attached to letter dated February 25, 1988 from Catherine Griffin.

The cost data discussed above were derived from the average cost per unit of service to the Minnesota medical assistance population and the total number of units of each service. Home and community-based services under a waiver are similar in nature regardless of the population being served. For example, services include homemaker, respite care, case management, nursing, and home health aide services. Thus 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, persons who are instituionalized or at risk of institutionalization. It also 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 requires the department to control the expenditures for home and community-based services provided to individuals under the waiver. The authority to set maximum CAC service rates is necessary to comply with the requirement of Minnesota Statutes, section 256.01, subdivision 2(11), which directs the commissioner to set statewide maximum charges to be paid. Minnesota Statutes, section 256B.4, subd. 2, directs the commissioner to uniformly administer the welfare programs in an efficient and economical manner. The commissioner's responsibility to control the service expenditures and to maximize the use of available funds.

It should be noted that the medical assistance payment rates are set pursuant to part 9505.0445 and that payment rates for waiver services for persons who are at least 65 years old and nursing home residents or at risk of nursing home admission are set by the commissioner pursuant to part 9505.2490 and Minnesota Statutes, section 256B.091, subdivision 8. Thus, the commissioner's ability to set CAC rates is consistent with other rate setting authority exercised by the commissioner. Basing rates on comparable services offered through other assistance programs is

reasonable because it complies with Minnesota Statutes, 256B.04, subdivision 2, which requires the department to make consistent rules for the uniform administration of medical assistance. 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 CAC 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 CAC program in an economical and equitable manner. The index used to update the rates is the change in the Home Health Agency Market Basket between the two most recent Aprils before the rate year. Using the Home Health Agency Market Basket is reasonable because it reflects cost changes in the market basket of goods and services of health care agencies. The Home Health Agency Market Basket is in common usage to adjust prices to be congruent with cost changes. The Home Health Agency Market Basket is used in determining other rates set by the Department. It is published quarterly. Using the Home Health Agency Market Basket is reasonable because this index reflects the market basket item costs in Minnesota and provides the commissioner the opportunity to adjust the rate in a manner that will recognize the changing costs inherent in services in Minnesota. Specifying the date on which a rate increase is authorized is necessary to set a standard and ensure uniform administration of the CAC program as required under Minnesota Statutes, section 256B.04, subdivision 2. July 1 is the beginning of a state fiscal year. Adjusting rates to coincide with the beginning of the state's fiscal year is reasonable because fiscal resources for the coming year are made available at that time. Finally it is necessary and reasonable to state that the commissioner's ability to set and adjust maximum rates under this subpart may be limited by
legislative action because the information is necessary to inform affected persons.

Subpart 2. **Notice to counties.** Under subpart 1, the commissioner annually sets maximum rates for CAC services on a statewide basis. Lead agencies need to know these rates to prepare their county plans and budgets. This part is necessary to establish who shall notify the lead agencies and when the notice is to be made. 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 subparts 1 and 3. Finally the date of June 1 is reasonable because it is consistent with the time when the April data become available.

Subp. 3. **County CAC service rate.** Services reimbursed through the medical assistance program are subject to review under Minnesota Statutes, section 256B.04, subdivision 15 which requires the state agency to safeguard against excess payments. Payments must be necessary and reasonable, based on sound business practices that are reasonably related to the cost of delivering the service which is billed. Requiring an audit for a lead agency CAC 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 is also necessary and reasonable that the commissioner is able to recover any money paid by the department that is in excess of the established rates or that is excess of the actual cost of delivering the billed service.

9505.3680 **DEPARTMENT RESPONSIBILITIES**

Subpart 1. **Review and approval of CAC applications.** This subpart establishes the department's responsibility of determining an applicant's eligibility for home and community-based services under CAC and giving notice of the decision. The subpart is necessary to clarify the responsibilities. The waiver requires the commissioner to determine an applicant's eligibility for CAC. See Model Waiver Request Attachment A, items 6, 9, and 10 (c) and (d). It is reasonable to require the commissioner to notify the applicant's acting case manager and the lead agency of the decision because the acting case manager and the lead agency are responsible for case management services for the applicant and need to know the applicant's status in order to carry out their responsibilities. The department's experience in processing applications indicates that 15 working days is sufficient time in which to review the application from a chronically ill individual who has a complexity of service needs, make a decision about approving the application or needing additional information, and send a notice to the applicant's case manager. Chronically ill persons at risk of or requiring frequent hospitalization may have extensive and critical needs for health services. It may be difficult to determine if the documents fully and correctly describe the applicant's condition so that the CAC provider can meet the applicant's needs. It may be difficult to locate and contract for properly qualified providers. Therefore, the department believes it would be unreasonable to require the review to be completed and notices to be sent in less than 15 working days as such a time limit might work against the best interests of the applicant and the department's responsibility to protect the health and welfare of the recipients. The 15 working day requirement is also reasonable in that it balances the department's need to verify application information with the applicants need for services.

Subpart 2. **Review of care plan and eligibility reassessments.** Part 9505.3545 requires periodic review and revision of a recipient's care plan. It also requires the revised plan and other reassessment documents to be submitted to the commissioner for a determination of whether the recipient continues to be eligible for CAC. This subpart specifies the commissioner's responsibility for determining whether a CAC recipient continues to be eligible for CAC. The subpart is necessary to clarify the commissioner's responsibility. It is consistent with the waiver. See Model Waiver Request Attachment A, items 6 and 10 (c). The rule is reasonable because it is based on criteria specified in part 9505.3520, which is consistent with the waiver. The rule sets a time limit for the commissioner's decision to approve or deny the recipient's continued eligibility and revised care plan. It is therefore reasonable for the department to maintain its flexibility by performing reviews when time and personnel permit, while at the same time maintaining the status quo for a recipient who is already receiving CAC services. Under the proposed rule, the recipient will not be prejudiced by any delay in the

department's review process, but rather would continue to receive necessary services, pending the outcome a redetermination of eligibililty.

Subpart 3. **Records.** This subpart specifies the department's responsibility to maintain records related to the community alternative care program. It is necessary to set a standard. The waiver requires the department to keep records but does not specify the length of time to retain the records. See Model Waiver Request Attachment A, items 10 (b), (c), and (g). The requirement of five years is consistent with the record retention provision in part 9505.1850 which sets a medical assistance standard for the surveillance and utilization review program pursuant to Minnesota Statutes, section 256B.04, subdivision 15. Using the same standard applied to other medical assistance programs is reasonable because it avoids confusion on the part of administering agencies and is administratively efficient.

Subpart 4. **Monitor program expenses.** This subpart is necessary to inform all affected persons of a waiver requirement that expenditures for CAC services remain within certain limits. These limits which specify both the number of individuals to be served and the costs of services are conditions that the department must meet to receive federal financial participation in paying the costs of CAC services. See letter of William L. Roper, HCFA, to Maria R. Gomez, Assistant Commissioner, Department of Human Services, date-stamped as received by the Department March 25, 1988 in which Dr. Roper notifed the Department that HCFA approved the renewal of the waiver; see February 25, 1988 letter and attachments from Maria Gomez to Verna Tyler, HCFA. See also Model Waiver Request Attachment A, items 8, 9, and 10 (e). Consistency with the waiver is reasonable because it is a condition to obtain federal financial participation as required under Minnesota Statutes, section 256B.04, subdivision 4.

9505.3690 BILLING FOR CAC SERVICES

This part clarifies the procedure that affected persons must follow in order to receive payment for CAC services. It is reasonable to require CAC providers to submit claims as directed by the commissioner as the commissioner, as specified in the waiver, must assure HCFA that the cost of services specified in the care plan does not exceed the approved estimated cost of the plan. Carrying out this responsibility reasonably requires the commissioner to establish, and to modify when necessary, a systematic approach to billing for and tabulating the costs of CAC services. The proposed rule provides the commissioner the means to implement the
methodology most likely to enable her compliance with the waiver obligation. 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 CAC, and is administratively efficient

9505.3700 APPEALS.

This part covers the general provisions for appeals by CAC recipients.

Federal regulations, 42 CFR 431.200 to 431.250, require an appeal process for recipients. CAC services are funded by medical assistance 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. **Appealable actions.** Items A, B, and C permit a medical assistance recipient and applicant to appeal from a local agency's medical assistance eligibility decision or the department's decision about the person's eligibility for home and community-based services. It is necessary to notify parties of appealable actions. Minnesota Statutes, section 256.045 specifies that a person may appeal actions affecting the person's request for or continuation of medical assistance services. It is reasonable to permit a similar appeal of actions affecting waivered services to medical assistance recipients who are also CAC applicants or recipients in order to assure consistency in administration of the medical assistance programs as required by Minnesota Statutes, section 256B.04, subdivision 2.

Subpart 2. **Actions that are not appealable.** There is no entitlement to CAC services. Eligibility for CAC services is limited by the waiver. The waiver specifies that medical assistance cost of home care cannot exceed the medical assistance cost of hospital care. See Model Waiver Request Attachment A, item 9. It also specifies the number of openings available for each year of the program. See letter from William L. Roper, HCFA, to Maria Gomez received in the department March 25, 1988. Because these conditions must be followed to receive federal financial participation in the costs of the services, it is reasonable to list them as unappealable issues. The case manager may determine that it is necessary to withdraw services to protect the health and safety of a recipient. It is necessary and reasonable to deny the right to appeal a withdrawal resulting from an action necessary to assure the health or safety of the CAC recipient because this denial is consistent with the need to safeguard the recipient's health and safety and is based on recommendations of qualified professionals. See Model Waiver Request, Exhibit A, item 10 (a).

Subpart 3. **Notice of right to appeal.** Informing an applicant about appeal rights is necessary to assure that he or she is aware of rights available under Minnesota Statutes, section 256.045. It is reasonable to require the case manager to inform an applicant or recipient whoseeligibility or continuing eligibility is being assessed of appeal rights because the case manager has direct contact with him or her during the process. Requiring written material including a Notice of Action to be given is reasonable because it is evidence that the information was given and minimizes misunderstanding about the action and the CAC recipient's right to appeal. It should be noted that a denial of CAC service may originate from anyone of three sources: the department, the case manager, or the lead agency. The CAC recipient has the right to

appeal regardless of the source of the denial.
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. **Appeal of action.** 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 medical assistance programs.
Subpart 6. **Continuation of services pending an appeal.** This subpart clarifies that a CAC recipient who appeals a termination, suspension, or reduction of CAC services will continue to receive the CAC services pending the decision on the appeal. This requirement is reasonable because the CAC recipient will continue to receive health care services and will be able to continue to live at home. The requirement also is reasonable as it benefits the chronically ill recipient.

Expert Witnesses

If this rule should be heard in public hearing, the Department does not plan to have outside expert witnesses testify in its behalf.

Date: 7-31-90 1990

ANN WYNIA
COMMISSIONER OF HUMAN SERVICES