STATE OF MINNESOTA
DEPARTMENT OF HUMAN SERVICES

In the Matter of the Proposed Amendment of the Department of Human Services Rule Governing Parental Fees For Children Placed in 24-Hour Care Outside the Home or Whose Eligibility for Medical Assistance Was Determined Without Consideration of Parental Income or Assets, (parts 9550.6200 to 9550.6240) and the Rule Part Governing Relative Responsibility under Medical Assistance (part 9505.0075)

STATEMENT OF NEED AND REASONABLENESS

INTRODUCTION AND BACKGROUND

Adopted rule parts 9550.6200 to 9550.6240 (Rule 162) and proposed amendments to parts 9550.6200 to 9550.6240, establish standards for the assessment and collection of parental fees. Rule 162 applies to parents of children placed in 24-hour care outside the home in a facility licensed by the commissioner, who: (1) have mental retardation or a related condition; (2) have an emotional disturbance; (3) have a physical disability; or (4) are in a state facility. Parts 9550.6200 to 9550.6240 also specify parental responsibility for cost of services to children whose eligibility for medical assistance was determined without considering the parents' income or assets.

Adopted rule part 9505.0075 and proposed amendments to part 9505.0075, establish general requirements for the financial obligation of responsible relatives to contribute partial or complete repayment of medical assistance given to a recipient for whom the relative is responsible. Part 9505.0075 governs spousal as well as parental responsibility. For purposes of assuring part 9505.0075 is consistent with parts 9550.6200 to 9550.6240, only those sections of part 9505.0075 addressing parental responsibility will be revised.

Authority for the adopted rules as well as the proposed amendments is established twice in Minnesota Statutes. Minnesota Statutes, section 252.27 establishes the responsibility of parents for the cost of services based upon ability to pay. Effective, July 1, 1990, this section established a new procedure for the determination of parental responsibility under which the parental contribution equalled a specified percentage of that portion of the adjusted gross income of the natural or adoptive parents that exceeds 200% of the federal poverty guidelines for the applicable household size. Minnesota Statutes, §252.27, subdivision 2a(b) was subsequently amended in 1991 to provide that: "The parental contribution shall be computed by applying to the adjusted gross income of the natural or adoptive parents that exceeds 200

percent of the federal poverty guidelines for the applicable household size, the following schedules of rates:

(1) on the amount of adjusted gross income over 200 percent of poverty, but not over $50,000, ten percent;

(2) on the amount of adjusted gross income over 200 percent of poverty and over $50,000 but not over $60,000, 12 percent;

(3) on the amount of adjusted gross income over 200 percent of poverty, and over $60,000 but not over $75,000. 14 percent;

(4) on all adjusted gross income amounts over 200 percent of poverty, and over $75,000, 15 percent.

Minnesota Statutes, section 252.27 applies to parents of children with mental retardation or a related condition, a physical handicap, or an emotional handicap who are in 24-hour care outside the home, including respite care. It also applies to parents of children who were determined eligible for medical assistance without consideration of parental income or assets.

Minnesota Statutes, section 256B.14, requires the department to promulgate rules to determine the ability of responsible relatives to contribute partial or complete repayment of medical assistance furnished to recipients for whom they are responsible. The statute also provides that these rules shall not require repayment when it would cause undue hardship to the responsible relative or that relative's immediate family. Section 256B.14 further mandates that these rules shall be consistent with the requirements of Minnesota Statutes, section 252.27, subdivision 2, for parents of children whose eligibility for medical assistance was determined without deeming of the parent's resources and income.

With respect to the history of the parental fee itself, Minnesota Statutes, section 252.27 was originally enacted to govern the cost of board and care outside of the home or in an institution. Minnesota Statutes 1984, section 252.27, subdivision 2 limited the parental fee to no more than five percent of the parents' income as defined at that time. This legislation limited the scope of parts 9550.6200 to 9550.6240 to the out-of-home placement of children with mental retardation and related conditions, or a physical or emotional handicap. Prior to the passage of Minnesota Statutes, section 252.27, the method of assessing and collecting fees in facilities other than a state hospital was a matter of county discretion and administration, subject to department approval. County fee schedules and methods of administration and collection varied widely. Parents of children in state hospitals were subject to a specific fee established by the department.

Parts 9550.6200 to 9550.6240 were originally adopted on June 29, 1986 and subsequently amended in 1987. The 1987 amendments dealt solely with parental reimbursement for respite care. Parts 9505.0010 to 9505.0150 were promulgated in 1989.

Parts 9550.6200 to 9550.6240: (1) establish a procedure for determination of the monthly parental fee amount based upon the fee schedule set forth in Minnesota Statutes, section 252.27, subdivision 2a; (2) set forth the criteria for the review and redetermination of parental fees; (3) identify the process

used for notification of a change in the parental fee; (4) identify conditions which will be considered to constitute undue hardship for purposes of obtaining a variance from the parental fee and the procedure for requesting and obtaining such a variance; (5) identify the parents' statutory right to appeal, summarize the appeals process, and establish the parents' rights pending an appeal; and 6) identify the respective fee collection roles of the county boards and the Department of Human Services.

Parts 9505.0010 to 9505.0150 generally establishes eligibility criteria for medical assistance. Part 9505.0075 specifically sets forth the requirements for the financial obligation of responsible relatives. Proposed amendments to part 9505.0075 addresses the financial responsibility of parents only.

RULE DEVELOPMENT PROCEDURE

The department originally implemented rule making procedures after making a decision to amend rule parts 9505.0010 to 9505.0150 (Rule 47), by specifically amending part 9505.0075 to include a provision for variances from the parental fee based upon undue hardship. A Notice of Solicitation of Outside Information or Opinions was published in the State Register on June 25, 1990. The department reviewed the potential scope, content, and impact of the proposed rule amendments and developed an advisory committee to gather public input. This advisory committee was composed of parents, service providers, legal advocates, county representatives, representatives of professional associations, a representative from the Minnesota Taxpayer's Association, and department representatives. (Advisory committee membership list is attached as SNR attachment #2).

The committee met on July 30, 1990 and provided further written input and comments during August of 1990. Comments and recommendations received during the committee meeting and the written comments submitted at other times were carefully reviewed and considered for incorporation into the proposed amendments of Rule 47. During this initial process, some members of the advisory committee as well as members of the public (mainly parents) advised the department that there should be only one rule governing the parental fee. They felt that to proceed with the amendment of Rule 162 at a later date would be a waste of time and effort and would result in inconsistent application of the parental fee law. Based upon this advice as well as further careful evaluation by the department, the department decided to amend parts 9550.6200 to 9550.6240 (Rule 162) in as timely a fashion as possible given the controversial nature of the rule, and to incorporate these amendments into Rule 47 by cross reference. It was determined that Rule 162 needed revising in order to be consistent with Minnesota Statutes, section 252.27. The goal of this approach is to have one uniform rule which would facilitate consistent and fair application of the parental fee across all groups of affected children receiving services subject to Minnesota Statutes, section 252.27.

Accordingly, the department initiated rule making procedures to amend parts 9550.6200 to 9550.6240 by publishing a Notice of Solicitation in the State Register on September 4, 1990. Another advisory committee was formed to assist the department in this process. This advisory committee was comprised

of all members of the original Rule 47 committee with the addition of a number of parents and county representatives. Additional parents and county representatives were added to the committee in order to assure adequate representation of those most directly impacted by the rule amendments. (Rule 162 advisory committee member list attached as SNR attachment #3). The department also met with the Minnesota County Social Services Supervisor's Association as well as the Minnesota Association of Social Services Administrator's rules subcommittee to obtain county input and respond to issues and concerns raised by some counties during the process.

A third Notice of Solicitation specifically pertaining to proposed amendments to parts 9505.0075 was published in the State Register on May 5, 1991. This notice identified the specific amendments being proposed to part 9505.0075 with regard to parental responsibility for purposes of making parts 9550.6200 to 9550.6240 and part 9505.0075 consistent. This additional notice was necessary to assure adequate public notice because the initial notice had not specified that it applied to part 9505.0075. Instead, it had generally identified the medical assistance rules governing the parental fee because the department initially planned to create a new part number (i.e. part 9505.0076). Since the two rule amendments were combined for publication purposes, it was necessary to be certain that the public had been notified of each respective proposed amendment.

A draft of proposed amendments to parts 9550.6200 to 9550.6240 was sent to the advisory committee on October 15th with an accompanying explanation of the revised approach in the parental fee rule making efforts. The committee met on November 2, 1990 to provide input and were given the opportunity to provide additional written comments by December 1, 1990. These recommendations were duly considered by the department and incorporated into a revised draft in December 1990. The advisory committee was sent a copy of the revised draft on December 18, 1990 and requested to furnish any final written comments by January 1, 1991. This approach was taken in order to expedite the process. Further, committee members were in general agreement that additional committee meetings were not necessary.

NEED AND REASONABLENESS OF SPECIFIC PROVISIONS

The specific provisions of proposed amendments to parts 9550.6200 to 9550. 6240 and part 9505.0075 are affirmatively presented by the Department in the following narrative which constitutes the Statement of Need and Reasonableness, in accordance with the Minnesota Administrative Procedures Act, Minnesota Statutes, chapter 14 and the rules of the Office of Administrative Hearings. The need and reasonableness of the rule provisions begins with parts 9550.6200 to 9550.6240 rather than in numerical order with part 9505.0075. It is logical to address the need and reasonableness of part 9505.0075 at the end because part 9505.0075 incorporates by reference many of the provisions which are discussed in detail in parts 9550.6200 to 9550.6240.

Part 9550.6200 Scope.

Subpart 1. Applicability.

It is necessary to amend the applicability of the rule in order to assure that the rule is consistent with the language used in the authorizing statute, Minnesota Statutes, section 252.27. Section 252.27 now refers to "24-hour care outside the home, including respite care, in a facility licensed by the commissioner...," rather than "24-hour out-of-home care" as is used in the current rule. The rule language was revised to be consistent with the statutory language. The change from "24-hour out-of-home care" to "24-hour care outside the home" has been made throughout the rule parts. It is reasonable that the applicability of the rule be clearly stated to facilitate understanding of the scope of the rule and to avoid confusion by the use of different language in the rule.

Item B: This item was amended by substituting the term "severe emotional disturbance" for "emotional handicap." This change is necessary to assure the rule is consistent with and reflects changes in terminology which are commonly accepted and used in the field of mental health. Minnesota Statutes, section 252.27 does refer to this item as an "emotional handicap". However, Minnesota Statutes, section 245.487 to 245.4887, known as the Minnesota Comprehensive Children's Mental Health Act, uses the terms "emotional disturbance" and "severe emotional disturbance." It is reasonable to change the terminology in order to be consistent with the current law governing mental health services to children, particularly in view of the fact that the Minnesota Comprehensive Children's Mental Health Act was enacted after the promulgation of parts 9550.6200 to 9550.6240 in June 1986.

Item C: This item was amended by substituting the word "disability" for "handicap". This amendment is necessary and reasonable for the reasons stated in item B with respect to use of the state-of-the-art, commonly accepted terminology. Use of the word "disability" rather than "handicap" is reasonable because many in the field of services to persons with disabilities feel that the term "handicap" can be viewed as somewhat dehumanizing and as creating an image of a homogenous and peculiar group. (See, A Writer's Reference to Developmental Disabilities, Governor's Planning Council on Developmental Disabilities and Developmental Disabilities Planning Office). It is reasonable to amend rule language to assure use of terminology which is respectful of the integrity of persons who are consumers of the services governed by the rule.

Item D: It is necessary to amend this item to make the rule consistent with terminology that is currently used in statute and other department rules. Minnesota Statutes, section 246.50, subdivision 3 defines the term "state facility". It reasonable to use the term "state facility" because regional treatment centers or regional centers are licensed by the commissioner and are included in the definition of "state facility". The need and reasonableness of this amendment is stated further in part 9550.6210, subpart 14.

It is necessary to amend the last paragraph of this subpart to assure consistency with Minnesota Statutes, section 252.27, subdivision 2a(a). This amendment clarifies that parts 9550.6200 to 9550.6240 also apply to children whose eligibility for medical assistance was determined without consideration of parental income or assets. It is further reasonable to specify that the parental fee applies to parents of children living in or out of the home because of confusion in the past by parents as well as local agencies.

Subpart 2. **Exclusion.**

Amendment of this subpart by adding a statement regarding three specific cases where parents are <u>not</u> responsible for making a monthly contribution to the cost of their child's service is necessary to provide parameters and clear definition of those parents who are not responsible for parental contribution under Minnesota Statutes, section 252.27. Throughout the committee process, several committee members including county representatives and advocates, raised the issue of some current confusion in practice as to whether the parental fee is applicable to parents of children under a subsidized adoption. It is reasonable to amend this subpart to ensure that this group of children as well as the other two groups specifically excluded by Minnesota Statutes, section 252.27 are clearly identified in the rule. It is reasonable to restate the statutory exclusions since those affected by the rule will be referring to this provision and in order to assure the intent of section 252.27 is clearly implemented.

<u>Part 9550.6210 Definitions.</u>

Subpart 4. Cost of services. The amendment of this definition is necessary to make the rule consistent with Minnesota Statutes, section 252.27. In the 1990 session, section 252.27 was amended to refer to the cost of "services" rather than "care". It is reasonable to amend the definition to be consistent with statute because the term "cost of services" is used throughout parts 9550.6200 to 9550.6240 and is an integral part of the rule. It is also necessary and reasonable to add to the definition the cost of services to those children who are determined eligible for medical assistance without consideration of parental income or assets, because Minnesota Statutes, section 256B.14 requires that the determination of the parental fees for the cost of services to this group of children be determined consistent with the requirements of section 252.27.

Subpart 6. County of financial responsibility. The amendment of this definition is necessary to assure consistency with statute. The amended definition cites to Minnesota Statutes, section 256G.02, subdivision 4, which contains the full definition of "county of financial responsibility." Minnesota Statutes, chapter 256G, known as the Unitary Residence and Financial Responsibility Act, was passed in 1987 after the promulgation of parts 9550.6200 to 9550.6240. It is reasonable to update definitions and rule language as statutory changes occur in order to assure consistency with statute. Simply referring to the statutory cite of the definition is reasonable because it promotes brevity of the rule and avoids unnecessary

duplication. It is further reasonable because Minnesota Statutes, section 252.27, subdivision 1, was amended to state that the county of responsibility shall now be determined pursuant to Chapter 256G.

Subpart 8. Emotional handicap or emotional disturbance. Amendment of this definition by adding the term "emotional disturbance" is necessary to be consistent with statute and to reflect changes in the terminology commonly accepted and used in the field of mental health. It is reasonable to refer to the definition of "emotional disturbance" found in Minnesota Statutes, section 245.4871, subdivision 15, because sections 245.487 to 245.4887 (known as the Minnesota Comprehensive Children's Mental Health Act) govern services to children with emotional disturbances.

This amendment is reasonable because the term "emotional disturbance", rather than "emotional handicap", reflects the terminology currently used by professionals in the field of mental health. Further, the amended definition includes reference to a medically recognized psychiatric and mental disorder reference manual. Current literature in the field of children's mental health uses the term "emotional disturbance" and "severe emotional disturbance" as opposed to "emotional handicap." (See e.g., A System of Care for Severely Emotionally Disturbed Children & Youth, Beth A. Stroul, M.Ed. and Robert M. Friedman, Ph.D., Georgetown University Child Development Center, July 1986). Also, a number of advisory committee members recommended that the rule should use the term "emotional disturbance." County representatives suggested the use of the term "severe emotional disturbance" for definitional purposes. Both terms use the word "disturbance" rather than "handicap". Advisory committee members felt that the use of these terms was important to be consistent with current terminology used in the state law governing children's mental health services. There was a general consensus that the term "emotional disturbance" affords greater dignity to the affected children than does the term "emotional handicap".

Subpart 9. Income. Amendment of this definition is necessary to be consistent with statutory terminology. The definition of "income" found in Minnesota Statutes, section 252.27, was added in the 1990 session. Prior to 1990, section 252.27 did not define income. Therefore, it was necessary for the current rule to define it and the definition used was found in section 290A.03 (the Property Refund Tax Act). It is reasonable to restate the present definition found in section 252.27 in the rule because the term "income" is referred to throughout the rule parts and is the basis upon which the parental fee is calculated. It is reasonable to provide the full definition in the rule because the term "income" may have several meanings that are commonly used and the amended definition significantly changes the definition found in the current rule as well as fee calculation formula. It is further reasonable to provide that a verified statement of the adjusted gross income must be provided if no income tax form is available based on experience by counties as well as the department, that in some cases the tax forms are not available and another form of verification upon which to base the determination of the parental fee amount is needed.

Subpart 10. Medical Assistance. Amendment of the definition of medical assistance is necessary to update the definition to make it consistent with the current definition in part 9505.0015, subpart 24. Under the current definition, medical assistance is no longer county-funded. Accordingly, it is reasonable to delete the inconsistent provisions to assure the rule language is accurate.

Subpart 11. Mental retardation or related condition. Amendment of this definition is necessary to make it consistent with statute and other department rules. The definition references the definition of mental retardation according to part 9525.0015, items A and B (Rule 185). Rule 185 was in emergency form when parts 9550.6200 to 9550.6240 were drafted. Therefore, it is reasonable to change the cite so that it is consistent with the current permanent rule part numbers. It is reasonable to refer to the criteria that are used to define the condition of mental retardation under Rule 185 to avoid duplication, to promote brevity of the rule and to avoid the use of different definitions in rules governing services to the same population of consumers.

Since the definition of "related condition" contained in Minnesota Statutes, section 252.27, subdivision 1a was amended in the 1991 session, it is reasonable to simply reference this section to assure consistency with the current statutory definition. The definition is further reasonable because it is consistent with the commonly-accepted definition used in the field of mental retardation (See, Classification in Mental Retardation, American Association on Mental Deficiency), as well as the criteria set forth in Section 102 (7)(B) of the Developmental Disabilities Act of 1984, Public Law Number 98-527.

Subpart 12. Parents. Amendment of this definition is necessary to be consistent with statute. This term was clarified for the first time in Minnesota Statutes, section 252.27, subdivision 2a, in the 1990 session. It is reasonable to update definitions in rule as statutory changes occur to assure consistency with statute. It is reasonable to define "parent" since the term is used throughout the rule and is paramount to determination of the applicability of the parental fee.

Subpart 13. Physical handicap or physical disability. Amendment of this definition by adding the phrase "or physical disability" is necessary to reflect changes in the terminology commonly used in the field. It is reasonable to refer to the definition used in part 9570.2200, subpart 7 because parts 9570.2000 to 9570.3600 (Rule 80) govern residential services to persons with physical disabilities. While, Rule 80 currently uses the term "physically handicapped", it is important to note that parts 9570.2000 to 9570.3600 were promulgated in 1972. As in many other fields, the terminology has evolved. Therefore, it is reasonable to include the terminology which is currently used. It is reasonable to cite a definition found in another department rule governing services to a similar population in order to facilitate consistency in definitions used in rules and to contribute to the brevity of the rule. No other department rules contain a definition of "physical disability" or "physical handicap". The need and reasonableness of

this amendment are specified further in part 9550.6200, subpart 1 item C.

Subpart 13a. Respite care. Amendment of the definition of "respite care" is necessary to assure the definition is consistent with the current state of respite care services in Minnesota and the commonly-accepted approach to respite care services nationally. The current definition is obsolete in that it includes a provision that the respite care must be out-of-home and for a minimum of a continuous 24 hour period of time. It further limits respite care to less than 2,160 hours in a year. Current literature in the field defines "respite" as a blanket term used to describe a range of services for families who care for a child with a developmental disability or serious medical condition at home. Its origins are found in efforts to give parents some "relief," i.e. a respite, from the day-to-day demands of caring for a child with a disability. As it has evolved over the last decade respite has come to mean any service or program which provides care for a person with a disability while the primary caregiver is engaged in some other activity.(See, Becoming Informed Consumers: A National Survey of Parents' Experience with Respite Services, Human Services Research Institute, James A. Knoll, Ph.D., Principal Investigator, March 1989, page 1). The advisory committee and other county representatives, provided considerable input and comments urging that the definition of respite care be changed to reflect the actual, current state of respite care services. Specifically, today respite care is delivered in the home as well as out-of-home. When drafting proposed amendments, the department's Long-Term Care Management Division, which examines policy on respite care services, was consulted and concurred with the proposed amendment to this definition. The amendment is reasonable because it provides for in-home as well as out-of-home services. At the time the current rule was promulgated, respite care services were, for the most part, delivered in an out-of-home setting. However, with an increased emphasis over the past few years on maintaining as many children in their own home as possible, respite care services have evolved into a more flexible system in order to better address parent's need for relief by allowing for the provision of services in-home as well as out-of-home for shorter periods of time. It is reasonable to change the definition to reflect the current service system and current practice. The definition is further reasonable because it is consistent with the definition of "respite care" used in other department rules governing similar populations (See, Minnesota Rules, parts 9525.1800 to 9525.1930).

Subpart 14. State hospital. It is necessary to repeal the term "state hospital" and to add the definition of the term "state facility" at subpart 16, to assure consistency with current statutory and rule language. The term "state facility" is now being used in statute and rule rather than "state hospital". The need and reasonableness for repeal of this subpart is specified further in subpart 16.

Subpart 15. Severe emotional disturbance. It is necessary to add a definition of "severe emotional disturbance" to these rules to inform affected persons of the current terminology. The need and reasonableness of this amendment is stated further in part 9550.6200, subpart 1, item B, herein. The department's Mental Health Division was consulted and concurred in the

addition of the definition of "severe emotional disturbance" to this rule. This definition was also strongly supported by members of the Minnesota Social Supervisor's Association, as discussed in part 9550.6200, subpart 1, item B, herein. It is necessary and reasonable to restate the language found in Minnesota Statutes, section 245.4871, subdivision 6 because the meaning of "severe emotional disturbance" is integral to the understanding of parts 9550.6200 to 9550.6240. It is further reasonable to assure consistency with the definition used in the statutory authority governing services to children with emotional disturbances. The definition of "severe emotional disturbance" was added to the rule to address the concern strongly raised by a number of counties, that using the definition of "emotional disturbance" only is very broad and would create the need for a considerable amount of additional services resulting in a significant financial impact on counties.

Subpart 16. State facility. It is necessary to add this definition to replace the obsolete term "state hospital" repealed in subpart 14. The definition is reasonable because it is consistent with Minnesota Statutes, sections 246.50 to 246.55, which governs the care of clients in state facilities. The definition is reasonable because it reflects commonly used terminology. It is further reasonable because it is reflective of the current service delivery system in Minnesota, which includes facilities other than the regional treatment centers (previously referred to as state hospitals). The inclusion of other facilities is necessary due to the recent development of state-operated community services. This amendment is further reasonable for the reasons specified in the repeal of part 9550.6220, subpart 7.

Part 9550.6220 Determination of Parental Fee.

Subpart 1. Parental responsibility. The need and reasonableness of the change in language from "cost of care" to "cost of services" is stated in part 9550.6200, subpart 1, herein. This language change is applicable throughout parts 9550.6200 to 9550.6240.

It is necessary and reasonable to add the provision that parents have no obligation to contribute assets to assure consistency with Minnesota Statutes, §252.27, subdivision 2a(h) as well as part 9505.0075. The addition of the last two sentences to this subpart is necessary to clarify the effective date of parental responsibility and to ensure uniform application of the succeeding subparts. It is reasonable to require that the explanation of the parent's responsibility be in writing in order to reduce the possibility of misunderstanding. It is further reasonable as a means of providing parents with an explanation of their responsibility under parts 9550.6200 to 9550.6240. It is reasonable to clarify the process provide parents with information regarding the agency that will be responsible for the administration and collection of the parental fee. Further, it is reasonable to specify the time for which the parental fee is effective and payment is due in order to ensure that parents are given adequate notice before the imposition of the fee. The provision that the parental fee shall be retroactive to the first date services are received is reasonable because it is consistent with the authorizing statute. Minnesota Statutes, section

252.27, subdivision 2a(e) requires that contribution shall be made on a monthly basis effective the first month in which the child receives services.

Subpart 2. Determination of household size. It is necessary to amend this subpart in order to make rule language governing determination of household size consistent with statutory requirements. The meaning of household size was added to Minnesota Statutes, section 252.27 in the 1990 session. Before that time, the parental fee statute was silent as to the meaning of household size for purposes of calculating the parental fee. Therefore, the rule referenced the definition of household size contained in the Property Tax Refund Act, Minnesota Statutes, chapter 290A. This definition was commonly-used at that time and therefore, provided for general, consistent application.

Under Minnesota Statutes, section 252.27, subdivision 2a(c), the household size to be used in determining the amount of contribution under section 252.27 includes natural and adoptive parents and their dependents under age 21, including the child receiving services. Since household size may be defined in a variety of ways, it is reasonable to use the specific definition provided in the authorizing statute in order to assure clear and uniform application.

Subpart 3. Determination of income. Amendment of this subpart is necessary and reasonable for the same reasons stated in subpart 2 as applied to determination of household size.

Subpart 4. Percentage schedule. Amendment of this subpart dealing with the percentage schedule is necessary to be consistent with statute. Prior to July 1, 1990, part 9550.6220, subpart 4 required the department to provide counties with a revised schedule annually and to set forth the procedures the department had followed in determining the schedule. In 1990, a specific percentage schedule was added to the parental fee statute at section 252.27, subdivision 2a(b). This statutory percentage was subsequently amended in the 1991 session. It is reasonable to delete all obsolete rule language and replace it with the new percentage schedule found in Minnesota Statutes 1991, section 252.27, subdivision 2a(b). It is reasonable to duplicate the statutory percentage schedule in rule because the schedule is an integral part of the calculation of the monthly parental fee amount and should be readily available in the rule to those affected by it.

It is necessary and reasonable to include a provision which describes the relationship of items A through D to clarify that the amounts obtained from each item are added together. This clarification is reasonable to avoid any misinterpretation of the statutory fee schedule. This clarification is necessary and reasonable as evidenced by the following example: A family of four has an income of $100,000 per year. The child who receives services resides in 24-hour care outside the home. The parental fee would be calculated in the following way:

$100,0000 (income)
-$ 26,800 (parental income deduction of twice the federal poverty guideline)

=$ 73,200

Multiply the first $50,000 by 10%=$5,000
Multiply the next $10,000 by 12%=$1,200
Multiply the next $13,200 by 14%=$1,8484

Total	=$8,048	Annual parental fee
Divide $8.048 by 12	=$670.67	Monthly parental fee

It is reasonable to provide clarification in rule to assure that the legislative intent of the fee schedule is followed and consistently applied to all parents subject to a parental fee.

Subpart 5. Annual revision of Federal Poverty Guidelines. Amendment of this subpart is necessary to be consistent with statute and to ensure that the general income standard used in determining the parental fee is updated in a timely manner. In the 1990 session, Minnesota Statutes, section 252.27 was amended to provide that the parental contribution is equal to a percentage (based on the percentage schedule in subpart 4) of the income of the natural or adoptive parents that exceeds 200% of the federal poverty guidelines. Since the application of the percentage schedule as well as the actual calculation of the parental fee is tied to the federal poverty guidelines, it is necessary that the guidelines be addressed in the rule.

The Federal Poverty Guidelines are published in the Federal Register annually and are effective July 1 of each year (See, 200% of Federal Poverty Guidelines effective July 1, 1991). It is reasonable to advise those affected by the rule of the effective date of the revised guidelines as well as where the guidelines are published in order to afford them adequate notice of the revisions. Minnesota Statutes, section 252.27, subdivision 2a(e) provides that:

> Adjustments in the contribution amount due to annual changes in the federal poverty guidelines shall be implemented on the first day of July following publication of the changes.

It is reasonable for this subpart to provide that the parental fee shall be revised annually on July to reflect changes in the federal poverty guidelines and that the revised guidelines are effective on the first day of July following the publication of the changes in the Federal Register to be consistent with statute.

Subpart 5a. Parental income deduction. Addition of this subpart is necessary to incorporate an additional factor required to calculate the parental fee under section 252.27. The effect of this addition is analogous to a personal deduction which is taken on a tax form. It is reasonable to state how the parental income deduction is determined because it is a specific part of the calculation process set forth in subpart 6.

Subpart 6. Determination of monthly parental fee. The revisions in items C and D of this subpart are necessary to implement the revised formula factors already established in previous parts. The need and reasonableness of these items have been justified and it is reasonable to use standard mathematical methods to apply them.

The additional language in item E is necessary to delineate the specific steps to be followed in the calculation of the parental fee. This delineation is necessary because, effective July 1, 1990, calculation of the parental fee became subject to a different formula from the past. These steps represent a clear statement of the process. It is reasonable to go through the process step-by-step in order to facilitate the understanding of the calculation by parents responsible for paying a fee as well as for counties doing the actual calculation of the fee. This item is further reasonable because such a clear statement of the calculation process facilitates uniformity and fairness in the application of the fee, particularly in view of the fact that both the department and counties will be determining parental fees.

Subpart 7. State hospital placements. Repeal of this subpart is necessary because it is inconsistent with statute. Minnesota Statutes, section 252.27, subdivision 1 provides that the parental fee law is applicable to, among others, parents of children in a state facility licensed by the commissioner. The statute does not exempt these parents in any way from the parental contribution responsibility. Rather, Minnesota Statutes, section 246.511, which is cited in the repealed rule language, provides that parents of children in state facilities shall have their responsibility to pay determined according to section 252.27, subdivision 2. The term "state facility" was added to sections 246.50 to 246.55 to give the department the authority to charge for the cost of services provided by all state facilities by defining state facilities as "...any state facility owned or operated by the state of Minnesota and under the programmatic direction or fiscal control of the commissioner. State facility includes regional treatment centers; the state nursing homes; state-operated, community-based programs; and other facilities owned or operated by the state and under the commissioner's control. Since the parental fee statute specifically includes children in a facility licensed by the commissioner, it is reasonable to repeal the current rule language since it is obsolete.

In those cases where a parent of child receiving services in a state facility may not be subject to a parental fee under Minnesota Statutes, section 252.27 by virtue of the child not receiving services funded through any medical assistance or county funds, the requirements of Minnesota Statutes, section 246.50 to 246.55 would apply. Therefore, it is unnecessary to include a separate provision for state facility placements.

Subpart 10. Discharge. It is necessary to amend this subpart to provide clarification. Addition of the phrase "...services are terminated before the end of a calendar month", clarifies under what circumstances the full monthly amount will not be due. The need and reasonableness of this amendment with respect to the language changes of "care outside the home" and "cost of services" is stated in subpart 4 above.

Subpart 10a. Parental fee for respite care. Amendment of this subpart was needed in order to be consistent with the amended definition of "respite care" found at part 9550.6220, subpart 13. As in the definition, the requirement that the respite care be out-of-home was deleted to reflect the current state of respite care services, which are now delivered in in-home as well as out-

of-home settings.

The amendments are also necessary to avoid the imposition of duplicate fees and as clarification for those affected by the rules. A number of advisory committee members raised concern over the confusion that they believe existed among parents as well as some counties with respect to parental liability for respite care. Part 9550.6220, subpart 10a, was added to parts 9550.6200 to 9550.6240 in 1987. This amendment allowed for a determination of parental fee for respite care different from the fee determined for long-term 24-hour care outside the home. The amendment was supported on the basis that respite care is short-term. Accordingly, the fee calculation formula set forth in 9550.6200, subpart 6, would be inappropriate and unfair when applied to cases where services are received for only a small number of days per month. Further, it was determined that the assessment of a full monthly fee for respite care created a disincentive for parents who have made the decision to care for a child in their own home. The 1987 amendment then, had the effect of allowing fees for respite care to be determined on a per diem (daily) basis. The proposed amendments are reasonable because they further clarify how the parental fee will be calculated for respite care services.

It is necessary to delete the phrase, "...supplied by the department," because this procedure will no longer be followed for the parental fees governed by these rule parts. Prior to July 1, 1990, the department did provide counties annually with a revised percentage schedule. However, since section 252.27 now contains a specific fee schedule, it is no longer necessary for the department to issue a revised fee schedule annually with respect to parental fees for those children whose services are governed by parts 9550.6200 to 9550.6240.

Subpart 11. Number of fees. Amendment of this subpart is necessary and reasonable to ensure consistency and compliance with Minnesota Statutes, section 252.27, subdivision 2, which was amended in 1990. This subpart addresses the concern raised by a number of advisory committee members that the assessment of multiple fees would be unfair and clarifies that parents of children who meet the criteria specified in part 9550.6200, subpart 1 will not be subject to multiple fees for such children.

Subpart 12. Parents not living with each other. This subpart is amended to refer to "parents not living with each other" instead of "separate households". The provision for parents not living with each other was added to section 252.27, subdivision 2a(g) in the 1990 session. It is necessary and reasonable to ensure application of the statute in situations where the parents of the child are not living with each other for reasons such as divorce, separation, never having been married, and having established separate households for tax purposes.

Subpart 13. Child support payments. Amendment of this subpart is necessary to ensure consistency with statutory provisions. In 1990, section 252.27, was amended to include language in subdivision 2a(g), that "Parents of a minor child who do not live with each other shall each pay the contribution required under paragraph (a), except that a court-ordered child support payment

actually paid on behalf of the child receiving services shall be deducted from the contribution of the parent making the payment." Prior to 1990, no statutory direction existed in Minnesota Statutes, section 252.27 regarding child support payments. Therefore, it was necessary for parts 9550.6200 to 9550.6240 to specify how child support payments would be addressed. However, since the statute now specifically provides for child support payments, it is reasonable to delete the current rule language which is no longer needed and to simply refer to the statutory requirement regarding child support payments. This ensures consistency with the statute and promotes brevity of the rule.

Subpart 14. Fees in excess of cost. Amendment of this subpart is necessary and reasonable to reflect statutory changes and to ensure fair and consistent application of the rule. Minnesota Statutes, section 252.27 was amended in 1990 to include a provision in subdivision 2a(h) that, "The parent shall not be required to pay a contribution in excess of the cost of the services provided to the child, not counting payments made to school districts for education-related costs." Further, Minnesota Statutes, section 252.27, subdivision 2a(e), provides that, "...if the contribution exceeds the cost of services, the local agency or state shall reimburse that excess amount to the parents, either by direct reimbursement if the parent is no longer required to pay a contribution or by a reduction in or waiver of parental fees until the excess amount is exhausted". Prior to 1990, there was no statutory provision relating to excess fees. It is reasonable to delete the current rule language and to replace it with a restatement of the statutory requirement that a parent does not have to pay more than the cost of services. It is also reasonable to specify how the excess will be handled in those rare instances when the fee may exceed the cost of services.

Part 9550.6225 Health Insurance Benefits.

Amendment of this part is necessary and reasonable because the issue of health insurance is now specifically addressed in statute. Prior to 1990, Minnesota Statutes, section 252.27 was silent with respect to health insurance coverage requirements. Therefore, at the time the current rule was promulgated, it was appropriate to include a provision in the rule which specifically addressed health insurance coverage in detail. However, in the 1990 session, section 252.27 was amended to include a specific provision found at subdivision 2a(h) which provides: "The contribution under paragraph (b) shall be increased by five percent if the local agency determines that insurance coverage is available but not obtained for the child." The effect of this legislation was to create an incentive for parents to obtain health insurance coverage when it is "available" (as defined in Minnesota Statutes, section 252.27, subdivision 2a(h)). For those parents who do obtain health insurance where available, as well as for those parents who do not obtain health insurance because it is not available to them, there are no statutory penalties and both groups are treated consistently in determination of the parental fee under section 252.27 and parts 9550.6200 to 9550.6240. Accordingly, those parents to whom health insurance coverage is not available are in no way penalized with respect to the determination of their parental fee. However, those parents who have insurance available to them but who elect not to obtain such insurance are, in

essence, penalized by the statutory provision requiring that their parental fee be increased by an additional five percent. This treatment creates an incentive to obtain coverage, where available, as well as a corresponding disincentive to decline or drop such coverage.

Based on the incentive created by the legislature to promote the procurement of health insurance coverage where available, the language in current part 9550.6225 is rendered unnecessary. However, it is reasonable to briefly state the consequences to the parents of failing to obtain insurance coverage when

it is available, in order to give parents notice and clarification regarding the relationship of the statutory requirement to their parental fee responsibility.

It is necessary and reasonable to define the terms "available" and "insurance" because both terms may have multiple meanings and the specific meanings given are integral to the understanding of this part. These definitions are reasonable because they are consistent with the definitions of "available" and "insurance" contained in Minnesota Statutes, section 252.27, subdivision 2a(h).

Part 9550.6226 Responsibility of Parents to Cooperate.

The addition of this part to the rule is necessary and reasonable in order to provide parents with the necessary information and notice about required cooperation with the local agency and/or department and to provide notice of the consequences if they fail to cooperate. In order to avoid confusion, it is reasonable to specify in separate subparts, the information which is required and the applicable timeline with respect to: (1)initial determination of parental fees; (2)review and redetermination of parental fees; and (3)variance requests. It is further reasonable to establish consequences for failure to cooperate where parents have been given reasonable notice of the specific consequences if they choose not to cooperate. Subparts 1 through 5 are necessary and reasonable because they ensure consistency and fairness in the application of parts 9525.6200 to 9525.6240.

Subpart 1. Request for information. This subpart is necessary to inform parents of those circumstances under which financial information necessary to determine the parental fee may be requested from them. It is reasonable to request financial information from the parents in order to make an initial determination of the parental fee amount, since Minnesota Statutes, section 252.27 requires that the parental fee be based upon ability to pay. It is also reasonable to require financial information that is needed by the local agency or department to accurately review the parental fee according to the statutory requirements for such review. The parents failure to provide this information in each of these instances would prevent compliance with the statutory requirements that the parental fee be based upon ability to pay and that the parental fee be reviewed annually, due to a change in household size, or due to change in monthly income in excess of ten percent, since without complete information and verification, neither an accurate determination nor

review can be accomplished.

Subpart 2. Determination of parental fees. It is necessary and reasonable for notice and clarity to specify the information required for an initial determination of the parental fee. It is reasonable to give parents notice of the 30 calendar days timeline and of the consequences of their failure to comply with this requirement. The subpart also provides counties with parameters in which to act. Thirty days is a reasonable period of time because it assures protection of the parents' rights by affording them adequate notice and time to act, as well as providing for efficient administration of parental fees.

Subpart 3. Review and redetermination of parental fees. Amendment of this subpart is necessary and reasonable to give notice as well as to clarify the process which the parents are required to follow in furnishing information to the local agency or the department needed to review and redetermine the parental fee. It is reasonable to inform parents that the local agency or department is required to send parents a request for information within ten calendar days of receipt of the parent's request for a review based upon change in household size or change in income to assure that the requests are processed in a timely manner. It is necessary and reasonable to require parents to notify the department or local agency of a decrease in household size or increase in income in excess of ten percent to implement Minnesota Statutes, section 252.27, subdivision 2a(f), which requires review of the parental fee when there is a change in household size or a loss of or gain in income in excess of ten percent. Thirty days is a reasonable administrative standard which gives parents adequate time to compile and submit the necessary information. It is further reasonable to provide in this subpart that no action will be taken on a review or redetermination until the required information is received because since the parents are requesting the action, the burden be placed on them to supply the necessary information. This requirement is reasonable because a review and redetermination can not be properly completed without the necessary financial data and verification.

Subpart 4. Variance requests. It is necessary and reasonable to add this subpart to the rule in order to establish the parent's responsibility for supplying information when requesting a variance for undue hardship under part 9550.6230 and in order to distinguish the requirements for a variance request from those for an initial determination as well as a review and redetermination of the parental fee. The 30 day time period is reasonable for the reasons stated in subpart 2 with respect to adequate notice of the requirements and consequences for failure to comply. In the variance request situation, it is further reasonable to provide for a notice and an additional final ten days for the parents to supply the required information for the purpose of providing those parents claiming undue hardship with additional protections and notice. Ten days is a reasonable period because at the point that this notice is given, the parents will already have had the benefit of the 30 day period. A time limit is necessary in order to make administration of variance requests more efficient and to assure a uniform standard.

Subpart 5. Refusal or failure to pay. It is necessary and reasonable to add this subpart to the rule to provide parents with notice of the consequences of their refusal or failure to pay. This subpart is reasonable because it implements that statutory provision under Minnesota Statutes, §252.27, subdivision 3 for a cause of action against parents who refuse or fail to make the required payment.

Part 9550.6228 Review and Redetermination of Fees.

Subpart 1. Review. Amendment of this part is necessary to assure that parental fees are reviewed on a regular basis and as mandated by statute. Review is necessary to assure that the parental fees are based upon ability to pay, as required by statute. Minnesota Statutes, section 252.27 was amended in 1990 to add the provision found in subdivision 2a(f) for review under the three specific circumstances stated in items A to C of this subpart. Prior to 1990, no specific statutory provision for review of the parental fee existed. Therefore, the current rule specifies standards for review. It is reasonable to amend this subpart by deleting those standards in the current rule which are not contained in the new statutory provision and to instead incorporate the three criteria for review mandated by section Minnesota Statutes, section 252.27, subdivision 2a(f).

Subpart 2. Failure to cooperate. It is necessary and reasonable to repeal this subpart because the rule is being amended to include a provision for failure to cooperate in part 9505.6226. The provision addressing the parent's failure to cooperate has been stated more specifically and clearly with respect to initial determination of the parental fee, review and redetermination, and variance requests. Repealing and relocating this provision in the rule is reasonable because it facilitates the application of this provision to all aspects of the parental fee. The need and reasonableness of part 9505.6226 is stated above.

Subpart 3. Procedures for review. It is necessary to amend this part by adding specific procedures for review of the parental fee in order to implement the requirements of Minnesota Statutes, section 252.27, subdivision 2a(f) as well as to inform those affected by the rule about the specific process to be followed in conducting these reviews. Items A to C specifically address the three types of situations where state law specifically requires a review of parental fees. This subpart is reasonable because it informs the reader of the basis for the review according to subpart 1, and the specific information the parents are required to provide to the department or county in order for the review to be completed. The ten calendar day review requirement under items B and C is reasonable because it provides parents with prompt relief while allowing the Department or local agency adequate time in which to thoroughly review and process the parents' request.

Part 9550.6229 Notification of Change in Fee.

Subpart 1. Increase in the fee. Amendment of this subpart is necessary to assure compliance with Minnesota Statutes, section 252.27, subdivision 2a(f). It is reasonable to facilitate due process by stating in rule that parents must receive 30-days notice prior to an increase in the parental fee. In order to assure uniform treatment of parents, it is reasonable to provide that for those parents who fail to provide the information regarding a decrease in household size or increase in income in excess of ten percent, that the increase is effective in the month in which the decrease in household size or the increase in parental income occurs.

Subpart 2. Decrease in the fee. Amendment of this subpart is also necessary to assure compliance with Minnesota Statutes, section 252.27, subdivision 2a(f). Addition of this subpart is reasonable because it informs parents of the effective date of the decrease in the fee and reiterates the requirement that a decrease in the amount of the fee is not effective until the department or county receives verification from the parents of a decrease in income or change in household size. This again informs parents that they must follow through with appropriate verification in order to obtain the decrease.

Amendment of part 9550.6229 is further reasonable on the basis that the current rule addresses only an increase in the parental fee and that by stating the requirements for an increase as well as decrease, the rule is providing for greater consistency and clarity.

Part 9550.6230 Variance for Undue Hardship.

Subpart 1. Definition; limitation on variance. This amendment is necessary and reasonable to assure consistency with changes in statutory definitions and requirements. Subpart 1 is necessary to assist the public in determining the relevance and applicability of variances for undue hardship and to enable affected parties to determine whether the rule part applies to them. Minnesota Statutes, section 256B.14, provides that the state shall promulgate rules to determine the ability of responsible relatives to contribute partial or complete repayment of medical assistance furnished to recipients for whom they are responsible. This section further provides that these rules shall not require repayment when payment would cause undue hardship to the responsible relative or that relative's immediate family. Minnesota Statutes, section 252.27, subdivision 2, provides that the responsibility of parents for the cost of services shall be based upon ability to pay. Accordingly, subpart 1 is necessary and reasonable in order to implement these statutory provisions.

This part establishes criteria under which the department or county may consider a variance request. The introductory paragraph is reasonable because it informs affected persons of the variance and it also provides explains and clarifies the purpose of a variance, the period of time for which a variance is effective, and clarifies that the parent's responsibility to pay under statute will be modified only for those reasons which are specified in

subparts 1 and 2. It is necessary and reasonable to set a limit on the term for a variance so that parents know how long the variance is effective and that it is, in fact, time limited. It is reasonable for the Department to grant variances for a term not to exceed 12 months because Minnesota Statutes, section 252.27, subdivision 2(a), similarly provides for review of the monthly contribution amount at least once every 12 months. This amendment is further reasonable because it establishes criteria for which a variance may be granted and thereby promotes equitable treatment of all persons requesting a variance.

Subpart 1a. Variances for undue hardship. Subpart 1a is necessary because it establishes the circumstances under which a variance will be granted from parental contibution responsibility as determined under Minnesota Statutes, section 252.27. Therefore, language in this subpart must reflect statutory changes. Since there may be many views of what constitutes undue hardship, subpart 1a is necessary to set criteria for what the Department will consider to constitute undue hardship when making a determination on a variance request.

There was much discussion by the rule advisory committee regarding this provision. Some committee members, including parents and advocates, contended that broad, flexible language should be included to accommodate those parents and households with unforeseen and higher than normal expenditures. Other members countered that the criteria should be more specific. During the advisory committee process, advocates advised that the variance provision should accommodate hardship in the following areas: preexisting or high medical bills, transportation-related costs which are greater than normal, expenditures for a high mortgage due to the amount of space or adaptive type of residential-setting needed by the child receiving services, utility costs associated with the child receiving services, pediatric dentistry and therapy costs, and adaptive or specialized toys. The burden of stress on the family with a child with disabilities was also cited as a factor which should be considered. These factors were duly considered by the department in the drafting of amendments to items A to D in this part.

Representatives from the department as well as some county representatives contended that hardship should be reserved for those burdens that are greater than those parents raising a child would normally be expected to bear. The department contends that costs such as high mortgage costs, college education and toy purchases fall into the area of discretionary income, are not fixed costs, have a wide latitude for variability, are not sudden or unforeseen, and therefore, it is reasonable <u>not</u> to consider their occurrence as constituting undue hardship.

It is reasonable to add a provision that precludes parents from using the same expenses as a basis for more than one variance to assure equity among parents and consistent application of the variance criteria. The addition to the last sentence, "...shall be deducted from income as defined in part 9550.6210, subpart 19," is necessary to reiterate that the amounts in items A through D below, are deducted from the adjusted gross income and not from the parental fee itself. During the advisory committee process, advocates and parents urged that the rule be amended to provide that these amounts be deducted from

the parental fee as opposed to the adjusted gross income. It is the department's position that Minnesota Statutes, section 252.27, clearly provides for the deduction of only two specific costs from the parental fee.

(1) Minnesota Statutes, section 252.27, subdivision 2a(b) states that, "If the child lives with the parent, the parental contribution (emphasis added) is reduced by $200."; and

(2)Minnesota Statutes, section 252.27, subdivision 2a(b) further states that, "The parental contribution (emphasis added) is reduced by any amount required to be paid to the child pursuant to a court order, but only if actually paid."

No other provision for a reduction of the parental fee can be found in Minnesota Statutes, section 252.27. Rather, it is clearly established in Minnesota Statutes, section 252.27, subdivision 2a(b), that adjusted gross income is the basis for determination of the parental fee. It is the department's position that the Minnesota legislature carved out only two very specific costs that can reduce the parental fee and that, therefore, no other items are intended to be deducted from the fee.

It is a general principle of statutory construction that where a statute specifically enumerates exceptions, courts will infer that the legislature did not intend to include any other exceptions. (See, e.g., Board of Education v. Public School Employee Union, Local 63, 45 N.W.2d 797, 801 (1951)). Accordingly, it follows that the legislative intent is that all other deductions, such as those allowed in items A to D, are to be deducted from the adjusted gross income. This amendment is reasonable because it is consistent with the general principles of statutory construction discussed above.

The variance criteria contained within subpart 1a, items A through D are necessary and reasonable to ensure consistent and fair application of rule parts 9550.6200 to 9550.6240. Items A, B, C, and D recognize and are considerate of cash flow situations which may arise or exist unique to individual households.

Item A. Amendment of item A is necessary to establish the standard by which medical expenditures will be deemed to constitute an undue hardship. Medical costs are typically covered by insurance and enrollment benefits or medical assistance. Therefore, it is reasonable to limit the scope of consideration of medical expenditures for variance purposes, to those medical expenditures which are not covered by any type of health insurance or benefits, or medical assistance. However, at the same time, it is recognized that there may be medical expenditures incurred by the parent(s) that are not covered by health insurance or Medical Assistance and would not be tax deductible because they fall below the federal tax threshold for allowable medical expenditures. In such case, it is reasonable to grant a variance with respect to these specific medical expenditures only. It is necessary and reasonable to add provision for the consideration of medical expenditures for other immediate family members meeting the requirements of item A on the basis that the legislature intended undue hardship to extend to the immediate family under Minnesota Statutes, section 256B.14, subdivision 2. This provision states that: "These rules shall not require repayment when payment would

cause undue hardship to the responsible relative or that relative's immediate family." This item takes into account medical expenditures which could place a family in a position of financial hardship.

It is necessary to set a time limit for which medical expenditures will be considered for variance purposes for consistency and fairness in administration. It is reasonable to specify the time limit as 12 months or since the last review, since Minnesota Statutes, section 252.27, subdivision 2a(f) similarly sets a review of the monthly fee amount at least every 12 months. Addition of the phrases, "payments made" and "children receiving services", are both necessary and reasonable for clarification purposes.

Finally, it is both necessary and reasonable to deny a variance on the basis of claimed medical expenditures if it is determined that health insurance coverage is available, but not obtained, since Minnesota Statutes, section 252.27, subdivision 2a(h) makes a parallel provision for an increase in the monthly parental fee amount where it is determined that insurance coverage is available but not obtained. Such a provision in rule is consistent with the legislative intent of creating an incentive for parents to obtain health insurance and a corresponding disincentive for failure to procure such coverage where available.

Item B. It is necessary and reasonable to make provision in the rule amendment for adaptations to the parent's vehicle in recognition that such costs are not covered by medical assistance and that such expenditures could pose a hardship where the adaptation was necessary due to the child's medical needs and there was no other available source of payment for the necessary adaptation.

Some parent advisory committee members urged that this item include the total cost of a new car if the parents claim the new car is required due to the accessibility needs of the child receiving services. The department and a number of committee members felt that some uniform standard must be incorporated into the rule. It is necessary to set a standard by which adaptations to the vehicle will be considered in order to assure consistency and fairness in the application of a variance in the form of a deduction from income. It is reasonable to use the federal medical tax deduction amount as the standard since it is commonly-known and is available to parents. The Internal Revenue Code, United States Code, title 26, section 213, provides that deductible medical expenses include certain capital expenditures if they exceed any increase in property value, and certain expenses incurred by a physically handicapped individual for removing structural barriers to accommodate the disability. Research as to how section 213 is applied to vehicle adaptations revealed that the taxpayer may deduct that portion of the cost of a car or adaptation to the car that is attributable to the disability and that does not increase the value of the vehicle. An illustrative tax case held that a taxpayer who bought a car specially designed for use with a wheelchair was permitted to deduct the difference between the specially designed car and a comparable car of standard design as a medical expense. (See, Rev. Rul. 70-606, 1970-2 CB 66, which held specifically that since the automobile was specially designed for transporting individuals confined to

wheelchairs, the cost to the taxpayer of its special design is a "capital expenditure which is related only to the sick person" within the meaning of section 1.213-1(e)(1)(iii) of the Income Tax Regulations. Accordingly, the amount paid by the taxpayer attributable to the special design of the automobile (that is $1,500 ($6,000 minus $4,500) is a medical expense within the meaning of section 213 of the Internal Revenue Code of 1954 and is deductible in computing taxable income within the limitations of that section.). Use of the medical deduction standard in rule will provide for consistency in application of the variance to all parents. In the absence of such an objective standard, some committee members argued that allowing the total cost of a new vehicle would result in inconsistent and unfair application of the variance provision. It is reasonable to allow the parents the option of taking the allowance for these expenditures in the form of a variance under subpart 2 or as a medical deduction on their federal income tax return, since this allows some flexibility by taking into account individual cash flow situations. In fact, parents may be able to claim this as a tax deduction and use it to reduce income for undue hardship purposes. The need and reasonableness for specifying the time period during which expenditures will be considered is the same as specified in item A, above.

Item C. It is necessary and reasonable to make provision in the rule amendment for adaptations to the child's home in recognition that such costs may be necessary to accommodate the child's physical needs and to allow the child to remain living at home with his or her family. Such criteria is consistent with the public policy that all children should be entitled to live in families that offer a safe, permanent relationship with nurturing parents or caretakers and have the opportunity to establish lifetime relationships. (See, Minnesota Statutes, chapter 256F). During the committee process, some members urged that the rule be amended to allow that, for purposes of granting a variance from the parental fee, the total cost of a new home should be considered where building a new home would prove to be more cost effective than adapting the existing residence. It was determined that for purposes of granting a variance from the parental fee, the rule must provide for an objective, identifiable standard. In the absence of such a standard, the department and counties would lack guidance in the daily implementation of processing variance requests based upon home adaptations. Similarly, without such a standard, possibly inconsistency and consequent unfairness could result. Accordingly, it is both necessary and reasonable to set a standard by which these expenditures will be considered in order to assure consistency and fairness in the application of a variance in the form of a deduction from income to those parents requesting such a variance.

The specific standard that should be applied to adaptations to the home was the subject of much discussion. In considering possible applicable standards, the department consulted with the Minnesota Housing Finance Agency's accessibility expert regarding the standards that are used by their agency in granting loans for home accessibility adaptations. The department obtained from the Minnesota Housing Finance Agency a list of typical accessibility improvements and average costs. (See, Accessibility Improvement Program, 1980-81, Minnesota Housing Finance Agency). The most recent study data available from the MHFA was from 1981. The MHFA advised the

department that each case is viewed on an individual basis according to the unique needs of the person with accessibility needs and that therefore, types of adaptations as well as costs, vary greatly. The department's division administering the regional center transition and development of state-operated community services (SOCS) was also consulted. Specifically, the department discussed home accessibility adaptations with the project's contractor. The contractor advised that since the SOCS were residences which were newly-built, the costs for accessibility needs would not be an appropriate standard for use in the rule since these residences do not represent a single family dwelling. Therefore, after careful consideration, the department looked to the federal tax standards as an objective, uniform standard by which the department and counties would be able to consider variances for home adaptations. It is reasonable to refer in rule to the standard for adaptations to the home found in the Internal Revenue Code, United States Code, title 26, section 213 because it is available to all parents and its use in the rule facilitates uniform and consistent application of the variance provisions. Section 213 provides that certain capital expenditures are allowed if they exceed any increase in property value, and certain expenses incurred by a physically handicapped individual for removing structural barriers to accommodate the disability are allowable as a medical deduction. Therefore, ordinarily under the tax regulations, only that portion of a capital expenditure that does not increase the value of the home is allowable. See, e.g. Oliver v. Commissioner, 364 F.2d 575 (8th Cir. 1966), which held that home improvements which aid in medical care as defined in section 213 are deductible to the extent that they do not increase the value of the property; and Wallace v. U.S., 309 F.Supp. 748 (D.C. Iowa 1970), affirmed 439 F.2d 757, cert. den. 92 S.Ct. 71, which held that even a capital expenditure in nature of a permanent improvement to real estate can constitute a deductible medical expense if said expenditure is incurred primarily to alleviate an illness, but the deduction is limited to that portion of the expenditure which does not increase the fair market value of the property.

Use of this standard is further reasonable because it allows for necessary adaptations while providing for consistency and uniformity by assuring that all parents are given the same consideration. Further, use of a known standard serves to prevent the opening of the "floodgates" by not allowing any and all adaptations without regard to the personal choice involved in such features as architecture, detail, cost, and elaborate nature of the adaptation. See, Ferris v. Commissioner, 582 F.2d 1112 (7th Cir. 1978), which held that where a taxpayer makes a capital expenditure for medical care but does so in a way that adds cost attributable to such personal motivation as architectural or aesthetic compatibility with related property, additional costs incurred are not expenses for medical care; once the cost of a minimally adequate facility is determined, any increase in the value of property to which it is added must reduce the medical expense deduction.

Section 213 does, in fact, refer to specific adaptations to the home which are considered to be allowable as medical deductions, subject to the requirements of sections 213. Examples of these adaptations include elevators, kitchen facilities, heating and air conditioning. Finally, use of the tax code standard is reasonable because inherent in this standard is a recognition by

Congress that certain adaptations are medically necessary and should be allowed for as medical deductions. This rationale is equally applicable to parts 9550.6200 to 9550.6240.

Item D. Subpart 1a, item D is necessary to recognize that there may be situations where it is necessary for the parents to make expenditures of a sudden, unexpected, or unusual nature which are not covered by any type of insurance or deduction or have not yet been paid by applicable insurance coverage and which are not included within items A, B, or C for variance purposes. It is reasonable to provide for unexpected, sudden, and unusual expenditures made due to a threat to the health or safety of the parent(s) or immediate household in recognition that if such expenditures were incurred, the family may be faced with a significant cash flow problem. During the advisory committee process, the discussion related to this item focused on expenditures resulting from losses which could be characterized as casualty losses. Section 165 of the Internal Revenue Code, (United States Code, title 26, section 165), defines casualty as the damage, destruction, or loss of real or personal property resulting from an identifiable event that is sudden, unexpected, or unusual. Ernst & Young's Tax Saving Strategies 1990-1991, page 102, John Wiley & Sons, 1990, defines these three terms in the following manner:

> A sudden event is one that is swift, not gradual or progressive. An unexpected event is one that is ordinarily unanticipated and one that you do not intend. An unusual event is one that is not a day-to-day occurrence and one that is not typical of the activity in which you were engaged.

Examples of unexpected, sudden, and unusual expenditures which are considered casualty losses include, but are not limited to floods, tornadoes, storms, sonic booms, vandalism, fires and car accidents. Examples of nondeductible losses are accidental breakage of personal articles such as household goods, damage done by a family pet, and progressive deterioration to property. (See, Internal Revenue Service Publication 17, Your Federal Income Tax). Therefore, for example, a parent could be granted a variance under item D for expenditures made due to damage to a home from a flood, Since a flood may be deemed an "act of God" and not covered by the individual's insurance, the variance would apply.

Section 165 further provides that to be allowed a deduction for a casualty loss, one must be able to show: 1) the type of casualty and when it occurred; 2) that the loss was a direct result of the casualty; and 3) that you were the owner of the property or contractually liable. Incorporation of the tax code standard for casualty losses is reasonable because it provides a standard that is objective and which can be applied uniformly. Further, these requirements are reasonably and appropriately applied to parents requesting a variance on the basis of such a loss and expenditures, since they assure verification of the loss and related expenditures. It is both necessary and reasonable to limit the types of other expenditures which will be allowed in order to establish general criteria and to remain consistent with the legislative intent of Minnesota Statutes, section 252.27, that parents are responsible for paying for those costs associated with raising their children.

It is reasonable to delete the current rule language which allows a variance for expenditures necessary to meet the basic needs of the family because the new calculation of the parental fee added to Minnesota Statutes, section 252.27, subdivision 2a in 1990 and subsequently amended in the 1991 session, now provides for a family's basic needs in two ways: 1) the formula bases the parental fee on a specified amount of the adjusted gross income of the parents that exceeds 200% of federal poverty guidelines; and 2) section 252.27, subdivision 2a(b) provides for a $200 per month deduction if the child lives at home with the parents. Accordingly, because parts 9550.6200 to 9550.6240 already contain a significant mechanism for the allowance of basic needs, it is reasonable to delete this standard from the variance provision.

Subpart 2. Variance for tax status.

This subpart is substantively amended only in item E. The amendment of item E is necessary to make subpart 2 consistent with the requirements of subpart 5, which provides that the department grants variances in certain cases while the county performs this function in other cases. It is reasonable to amend this item because it clarifies the relationship of this subpart to parts 9550.6200 to 9550.6240 overall.

During the committee process, some parents expressed concern that this provision does not adequately address the needs of those parents who may have unique financial concerns by virtue of being self-employed or involved in a subchapter S corporation. These same issues were raised when the current rule was being written. It was the department's position then, as it is now, that Minnesota Statutes, section 252.27 is clear in its definition of what incomes must be counted when determining the parental fee. The department at that time contended, as today, that it is not possible within the scope of these rules, nor is it within the department's jurisdiction, to add to or subtract from the statutory definition of income. (See, Statement of Need and Reasonableness for proposed parts 9550.6200 to 9550.6240, dated July 18, 1985). Accordingly, it is the department's position that there is no statutory authority for the department to add to or subtract from the definition of income in section 252.27, subdivision 2a(d). Further, the department contends that the provision made for peculiar tax status in this subpart recognizes these extraordinary situations. In fact, some committee members raised the issue that the criteria may actually prove to be generous in those cases where the adjusted gross income actually understates the income available to those parents who own a business.

Subpart 3. Exceptions. To be consistent with the provision made for undue hardship in Minnesota Statutes, section 256B.14, it is necessary to limit the scope of variances and to specify those situations where the grant of a variance is not appropriate, in order to limit variances to those situations that truly constitute an undue hardship pursuant to the criteria set forth in subpart 2.

It is the Department's position that the exceptions cited in items A through D are reasonable on the basis that undue hardship should be reserved for those burdens that are greater than those parents raising a child would customarily

be expected to bear. The Department contends that expenditures such as new home purchases under item A, college expenses under item B, and clothing and personal needs under item C, fall into the area of discretionary income. Further, under item D, it is reasonable not to consider as undue hardship, the occurrence of foreseeable expenditures which can be met through a typical budget and which are not made on behalf of the child receiving services, since they are not sudden or unforeseen in nature. Rather, these expenditures are those which are normally associated with the raising of a family and the maintenance of a household.

Item A. It is necessary to amend item A in recognition of those situations where building a new home may be considerably more cost-effective than adapting the existing home extensively to meet the accessibility needs of the child. The amendment is reasonable because it is responsive to the concern expressed by parents and advocates that in order to keep children living in their own homes with their family, it may, in some cases, be a more sound economic decision to build a new home rather than to extensively adapt the existing home. This standard is reasonable because it can be applied consistently and fairly by allowing only for that portion of the cost of the new home that is directly attributable to the physical needs of the child. The federal tax standard of subpart 1, item C as well as the verification requirements under part 9550.6230, subpart 4 would apply. Therefore, given the standards upon which this exception is premised, the exception can be uniformly applied.

Item C. It is necessary to amend this item in recognition of those situations where the child requires specialized clothing which may not be provided by medical assistance or covered by any type of insurance. Parents and advocates raised the concern that in some cases, parents are purchasing specialized clothing to meet the needs of their child and that because such item can be quite costly, these costs should be allowed when granting a variance. The amendment is reasonable because it extends the exception to specifically address the need for specialized clothing. Therefore, this is a reasonable and objective exception which can be applied uniformly.

Item D. The addition of item D is necessary to state clearly in the rule that those costs which are typical and usual in the raising of any family and the maintenance of any household, do not constitute undue hardship. Therefore, a variance can not be granted on the basis of such expenditures. This exception is reasonable because it addresses usual and typical expenses which are a part of any family's budget. Throughout the advisory committee process, a "but for" analysis was considered; i.e. but for the disability, would the family incur the expenses? Applying this analysis, expenses encompassed in this exception would be incurred regardless of whether the family has a child with disabilities. Accordingly, this exception is reasonable because it applies to those usual and typical expenses that any family could incur.

Subpart 4. Procedures for requesting a variance.

Amendment of this subpart is necessary to clarify for parents requesting a variance and counties administering variances, those procedures which are to

be followed. It is further necessary to facilitate fair and consistent application of the provisions of part 9550.6230 as a whole. The procedures delineated are reasonable because they clearly outline the process as well as the required information. It is necessary and reasonable to require that parents furnish the requested financial information because such information provides the department and counties with an objective and uniform manner of evaluating the parent(s)' ability to pay and whether circumstances of undue hardship exist. Without such information, the department and counties would be unable to make a reasonable determination. Further, the parents are best able to obtain the necessary information. It is the department's position that the commissioner has the authority pursuant to Minnesota Statutes, section 252.27, to require that the necessary financial information be supplied in order to make a determination. Further, it is reasonable to refer to the provision under part 9550.6226, subpart 4, that failure of the parent(s) to provide the requested financial information will result in denial of the variance request since without this information the commissioner would be unable to make an informed determination regarding the variance request. It is reasonable to establish consequences for failure to cooperate where parent(s) have been afforded due process and have been given reasonable notice of the specific consequence of a denial which will result in the event they fail to cooperate. The need and reasonableness of part 9550.6226, subpart 4 is stated above.

Subpart 5. Department and county authority to grant variances.

It is necessary to amend subpart 5 in order to distinguish the respective role of the department and counties in granting variances. It is reasonable to provide parents with clarification regarding which agency their request for a variance should be directed to; particularly in view of the fact that the amendments represent a change from the current process. Under the current rule, the counties were responsible for a greater number of cases in the administration of the parental fee. During the process of amending this rule, the department made a determination that to promote uniformity in the administration of parental fees, the department will now be responsible for the administration of all parental fees where medical assistance funds are expended for the cost of services to the child. (See, Instructional Bulletin #90-68L, Parental Contribution for the Cost of Services for Certain Children in 24-Hour Care Outside the Home, December 31, 1990). Due to this change, it is both necessary and reasonable to specify the department's and the counties' responsibilities in processing variance requests in order to provide clarification to the counties regarding their responsibility and to advise parents of the agency that will be processing their request for a variance. It is reasonable to have counties process variances where their own county funds are being expended for the cost of services because they will have the necessary information. Further, under parts 9550.6200 to 9550.6240 as amended, the counties are responsible for the overall administration and collection of parental fees where only social services funds have been expended for the cost of services. This amendment is further necessary and reasonable for the reasons set forth in part 9550.6240 regarding the amendment of the collection responsibilities.

Subpart 6. Payment pending determination of variance request.

The addition of this subpart is necessary to inform parents how payments will be handled during that period of time in which a determination of the request for a variance is being made and to give them notice of their responsibility during this period. This provision is reasonable because it requires a continuation of payment only from those parents who have already been paying a parental fee. It requires a continuation of payment from these parents, but only at the current, not the increased rate. It is reasonable to require that these parents continue to make payment during this time, since they have been paying at the lower rate without a claim of hardship. This requirement constitutes the most efficient and cost-effective manner in which to administrate the payments and variances. In requiring continued payment at the current (lower) rate, the department recognizes that a parent(s) is requesting a variances based on an alleged inability to pay and, therefore, parents are not required to pay the increased fee during this time. It is the department's position that due to the short interim during which time a determination on the variance request must be made (a maximum of 30 days), the need for efficiency outweighs the disruption caused by ceasing payment for a single liability period. Further, it is reasonable to require continued payment by the parent because services are continuing during this time and consequently, liability is continuing. The possibility of discontinuation of services does not exist. In fact, the child will continue to be eligible for medical assistance, notwithstanding the parent(s)' failure to pay. Accordingly, such a requirement is clearly not violative of due process principles.

It is the department's position that requiring continued payment during this short interim period is the most responsible approach to take. In those cases where the variance request is denied, parents will be expected to pay the fee as determined under part 9550.6220; there will be no exemption. Were payment to be deferred for the 30-day period, payment for two full months at the increased amount would then be due. Therefore, it is much more efficient to require payment in an uninterrupted manner until the determination is made. Such a requirement should serve to avoid the state having to exercise its right to pursue civil remedies under Minnesota Statutes, section 252.27, subdivision 3, to compel payment by the parent(s) for liability which accrued during the determination period. It is the department's position that it is necessary to avoid litigation at the taxpayer's expense wherever possible.

It is reasonable not to require payment during this period from those parents who are requesting a variance from an initial determination of their parental fee. This group of parents is distinguishable in that until the time of their initial fee determination, they had not been responsible for paying a parental fee. Due to 1990 amendments of Minnesota Statutes, section 252.27, many parents that were previously not responsible for a parental fee now are. This provision addresses the due process of such parents and is consistent with the provision of Minnesota Statutes, section 256B.14 that parents should not have to pay a fee if to do so would result in hardship. By not requiring payment during the period the hardship determination is being made, these parents are given the opportunity to demonstrate that such hardship in fact exists. This

amendment is further necessary and reasonable to inform parents how payments made during this period which result in overpayment will be handled.

In order to provide parents with the flexibility necessary to accommodate their individual budget, it is reasonable to require that parents who are requesting a variance from an initial determination of the fee may make payment as desired during the determination of the variance. In some instances, parents may choose to make payments during the interim in order to avoid multiple payments in the event the variance is denied. Of course, these parents also have the flexibility to withhold payment during the interim, with the notice provided in this subpart that in the event the variance is denied the parents will be responsible for the full amount due from the effective date of the determination of the parental fee.

The last provision of this subpart is reasonable because it provides parents with notice of their payment obligation in the event their variance request is denied. It is reasonable to require payment in the amount that is due from the effective date of the determination order or the notice of increase, whichever the case may be, because the child has continued to receive services during this time.

Subpart 7. Insurance settlements; settlements in civil actions.

This subpart is necessary and reasonable in recognition of those situations where expenditures must be incurred by the parents as a result of a loss which is not compensated for immediately. During the advisory committee process, a number of committee members raised the concern that there may be many instances in which expenditures are made by parents to cover losses when insurers do not settle a claim in a timely manner. In recognition that such situations are beyond the parent(s)' control, the department has made provision for these parents by granting a variance under part 9550.6230, subpart 1a, item D.

It is reasonable to require that parents sign an agreement at the time the variance is granted on the basis of an outstanding insurance claim or settlement in a civil action, in order to assure fairness and consistency in the application of variances. Once such payment is received, the circumstances constituting undue hardship no longer exist and it is reasonable to expect the parents to resume payment.

Subpart 8. Grant or denial of variance.

This subpart is necessary in order to inform parents requesting a variance how their request will be answered. It is necessary to establish a specific time frame within which the variance decision must be made, in order to eliminate uncertainty and confusion. Thirty calendar days is a reasonable period of time, since it allows the department and counties adequate time to review the variance request and supporting information without causing undue hardship to the parent(s) awaiting a decision. It is necessary to require a written agreement to inform both parties of the requirements and their responsibilities under the agreement. It is reasonable to bind the parties in

each case in order to assure the fair and consistent grant and denial of variances.

Part 9550.6235 APPEALS.

Subpart 1. Right of appeal.

This amendment is necessary to implement the meaning and intent of Minnesota Statutes, section 252.27, subdivision 2c, which provides that the appeal process shall be carried out in accordance with Minnesota Statutes, section 256.045. Minnesota Statutes, section 256.045 governs the administrative and judicial review of human services matters. Specifically, section 256.045, subdivision 3 provides that: "...any patient or relative aggrieved by an order of the commissioner under section 252.27...may contest that action or decision before the state agency by submitting a written request for a hearing to the state agency within 30 days after receiving written notice of the action or decision....". Provision for appeal to the Department and in a timely fashion and subsequently to the district court is reasonable because it is consistent with the principle of due process by allowing parents the opportunity to be heard before subsequent action is taken regarding their parental fees.

Subpart 2. Appeal process.

It is necessary and reasonable to summarize the appeals process provided for in statute in order to inform parents of the procedure involved in filing the appeal and what they can expect to occur. Since the rule is applicable to parents, it is reasonable to specifically state the appeals provisions in rule to facilitate understanding of the process.

Subpart 3. Rights pending hearing.

This amendment is necessary to provide parents with information and notice of their responsibility pending the outcome of their appeal. This subpart is reasonable because it is parallel and is consistent with the requirements of part 9550.6230, subpart 6, with respect to a parent's responsibility pending a determination of a variance request. Both provisions require a continuation of payment only from those parents who already have been paying a parental fee. It is reasonable to require a continuation of payment from such parents since payment is required at the current (lower) rate, not the increased rate upon which the appeal may be based. It is important to note that in such cases, a variance request has already been denied after a determination has been made that conditions constituting undue hardship do not exist. In requiring continued payment at the lower rate, the department recognizes that the parent is appealing on the basis of their disagreement with the department's or county's denial of their request for a variance and therefore, parents are not required to pay the increased fee amount during this time. Further, it is again reasonable to require continued payment at the lower rate because services are being delivered during this time and consequently, the parent's liability continues to exist.

It is the department's position that requiring continued payment pending the outcome of appeals is reasonable because it is responsible as well as logical. As this subpart provides, in those cases where the department's or county's determination is affirmed, parents will be required to pay within 90 days, the total amount due from the effective date of the original notice of determination of the parental fee amount or increase. In these cases, the parents will owe the amount of the difference between the higher fee as affirmed and the lower fee. The 90 day provision is reasonable because it recognizes that some parents may need to pay the total amount due after the outcome of the appeal, in installments. If payment was to be suspended completely pending the outcome of the appeal, in a number of cases, parents would be responsible for a substantial payment along with their continuing monthly liability. This would not be a desirable result for either the payor or the payee.

In those cases where the department's or county's determination is overruled, this subpart provides the parents with the necessary protection by providing for reimbursement or credit in the event of overpayment. As stated in the need and reasonableness of part 9550.6230, subpart 6, such a requirement also serves to minimize the need for the department to pursue civil remedies under Minnesota Statutes, section 252.27, because if payment has continued, the need to compel payment by the parent for liability accrued during the appeals period should be substantially diminished. This provision is further reasonable because it will arguably, facilitate the filing of appeals of a meritorious nature.

It is reasonable not to require continued payment pending the outcome of an appeal, from those parents who are appealing the denial of their request for a variance from the initial determination of their parental fee. The need and reasonableness of distinguishing these two groups of parents is stated further in part 9550.6230, subpart 6, herein.

During the committee process, some members maintained that requiring payment pending outcome of the appeal could be viewed as unprecedented and violative of due process. First, with respect to precedence, a number of parallels to this provision can be found in other medical assistance and cash assistance programs. For example, in cash assistance programs such as General Assistance, recipients do not receive benefits pending the outcome of an appeal. Second, with regard to the argument by some that this provision is contrary to the principles of due process, as stated earlier, the possibility of termination of the services to the child does not exist and, therefore, due process is not violated. In fact, the child would continue to be eligible for medical assistance notwithstanding the parent(s)' failure to pay. It is the department's position that since services are being received by the child, the parent(s)' liability for these services as originally determined by the commissioner, continues to exist until such time as the appeal process determines otherwise.

Part 9550.6240 COLLECTIONS.

Amendment of this part is necessary to clarify the responsibility of the department and counties for the assessment and collection of parental fees.

Under the current rule, the administration of the parental fees governed by parts 9550.6200 to 9550.6240, has been administered in various and inconsistent ways across the state. In some situations, the role of the counties has been the subject of confusion. These amendments are necessary and reasonable because this subpart now more clearly defines the respective roles of the department and the counties.

In the process of amending parts 9550.6200 to 9550.6240, a determination was made that the department should be responsible for the assessment and collection of all parental fees governed by parts 9550.6200 to 9550.6240 where medical assistance funds are expended for the cost of services. The objective of this change in collection roles is to facilitate greater uniformity in the assessment and collection of parental fees across the state. It is the department's position that the department has the information systems best-suited to administer the parental fees involving medical assistance funds, in the most efficient and cost-effective manner. (See, Fiscal Note for parts 9550.6200 to 9550.6240). Further, through department administration of these fees, it is projected that duplicative and inconsistent efforts can be minimized.

A department bulletin was sent to all counties in December 1990 (Instructional Bulletin #90-68 L, dated December 31, 1990), advising the counties that the new assessment and collection system would be implemented effective February 1, 1991. Prior to the issuance of this bulletin, several Minnesota counties were consulted by the department's Reimbursements Division in order to gather county input on the impact and their feelings on the department assuming responsibility for the administration of the parental fee in those cases where medical assistance monies are expended for the cost of a child's services. The input received indicated that overall, the counties were receptive to the change. The Minnesota Association of County Social Services Administrators Director's Association and the Minnesota County Social Services Supervisors Association were each consulted with respect to the amendments of parts 9550.6200 to 9550.6240 and no strong opposition was voiced specifically with respect to the collection provision. A number of county representatives viewed the change as being a positive.

This subpart clarifies the respective authority of the department and the counties in the collection of parental fees. The starting point for determining whether the department or the county will the collect the fee is the condition of the child. The department will collect the parental fees only in those cases in which the child has a condition of mental retardation or a related condition, a severe emotional disturbance or a physical disability. In those instances in which the child is in 24-hour care outside the home, the department will collect the parental fees only if the cost of services are being paid by MA or a combination of MA and social services monies. However, if the cost of services are being paid for by solely social services money, the county will be responsible for collecting the parental fees. Further, if the cost of services are being paid by social services money and the child is using an MA card to pay for ancillary services (e.g. dentist visits, prescription drugs, medical and psychological visits), the counties actually have the option of either collecting the fees or referring

the case to the department for collection. Under Minnesota Statutes, section 252.27, subdivision 4, if the fee is for reimbursement for both the county and the MA program, in those cases where the department collects the fees, the county will still be reimbursed for its expenses first with the remainder to be applied as reimbursement to medical assistance.

It is reasonable to have counties continue to collect fees in those cases where their own county money has been expended for the cost of services since there would reasonably be a strong incentive for them to do so. Similarly, the department reasonably has a stronger incentive to collect fees where medical assistance funds are involved.

Finally, it is both necessary and reasonable to include the last provision in the rule regarding reimbursement to the counties in order to provide clarification to the counties. During the rule making process, a number of county representatives inquired and expressed concern regarding how counties will be reimbursed and what the priority for the funds collected is. This provision addresses these concerns and is reasonable because it implements that statutory requirements in section 252.27.

Part 9505.0075 RESPONSIBILITY OF RELATIVES.

This part has been amended throughout to refer to parents in the plural form consistently. This amendment is reasonable because it makes the references to "parents" in this part consistent with the references to "parents" in parts 9550.6200 to 9550.6240.

Subpart 1. General requirements; financial obligation of responsible relative. It is necessary to amend this subpart to make those requirements specific to the responsible parents consistent with the requirements applicable to parents responsible for a parental fee under parts 9550.6200 to 9550.6240. Minnesota Statutes, section 256B.14, required the Department to promulgate rules to determine the ability of responsible relatives to contribute partial or complete payment or repayment of medical assistance furnished to recipients for whom they are responsible. This section further provides that these 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 parents' resources and income. It is reasonable to delete all references to subpart 6 and to replace with a cross-reference to parts 9550.6200 to 9550.6240 to assure consistency in the application of the two rules. The need and reasonableness for deleting the requirements contained in subpart 6 is stated further under subpart 6 below.

It is necessary and reasonable to amend this part by distinguishing responsible spouses from responsible parents with respect to refusal to provide information because parts 9550.6200 to 9550.6240 are applicable to responsible parents only; not responsible spouses. Similarly, it is both necessary and reasonable to distinguish responsible spouses from responsible

parents with respect to undue hardship, since the provisions of 9550.6230 as amended, apply to parents.

Subpart 4. Financial obligation of responsible spouse or parent of state hospital resident. It is necessary to repeal this subpart for the same reasons specified in the repeal of part 9550.6220, subpart 7.

Subpart 5. Consideration of parental income. It is necessary to amend this subpart to assure that parental fees are determined according to parts 9550.6200 to 9550.6240. It is reasonable to delete the exclusions regarding when status as parent ends and to replace this provision with a cross-reference to the exclusions in part 9550.6200, subpart 2 because it assures consistency in the application of these exclusions which are required by Minnesota Statutes, §252.27. This amendment is further reasonable because cross-referencing these exclusions rather than repeating them in this subpart promotes brevity of the rule parts.

Item A. It is necessary to amend this item to distinguish children under age 18 living with their parents who are determined eligible for medical assistance with consideration of their parent's income and assets from those whose parental income and assets are not considered. It is reasonable to consolidate current item G into this item to provide clarification and to contribute to the brevity of the rule. Amendment is necessary to assure consistency with related statutory requirements. Minnesota Statutes, section 25B.14, subdivision 2, imposes a parental fee obligation on parents of children determined eligible for medical assistance under the home and community-based services waiver under Minnesota Statutes, sections 256B.49, 256B.491, and under the Children's Home Care Option (also referred to as "TEFRA") under Minnesota Statutes, section 256B.055, subdivision 12. It is reasonable to move references to children ages 18 to 21 to amended items E and F for consistency and efficiency.

Item B. It is necessary to amend this item to assure consistency with statutory requirements. Minnesota Statutes, section 252.27, subdivision 2, provides that parents of children under age 18 determined eligible for medical assistance without regard to parental income and assets have a parental fee obligation. This amendment is reasonable because it clarifies that "parents of children under age 18 determined eligible for medical assistance without regard to parental income" includes parents of children under 18 who are eligible recipients of SSI and who live with their parents. This amendment clarifies the responsibility of parents whose children live with them and receive SSI. Children ages 18 to 21 who are disabled, which includes anyone who would be SSI recipients, are covered in amended item F. It is reasonable to consolidate references to this age group for consistency and brevity in rulemaking. It is necessary and reasonable to delete the phrase "...and assets" to reflect the Department's actual practice in determining eligibility. Pursuant to the Code of Federal Regulations, title 42, section 435.823, Minnesota has opted to consider parental assets and not to consider parental income for purposes of eligibility.

Item C. It is necessary to amend item C to assure consistency with related statutory requirements. Minnesota Statutes, section 518.171 provides that unless the obligee has comparable or better group dependent health insurance coverage available at a more reasonable cost, the court shall order the obligor to name the minor child as a beneficiary in any health and dental insurance plan that is available to the obligor on a group basis or through an employer or union. If the court finds that dependent health or dental insurance is not available to the obligor or through an employer or union, or that the group insurer is not accessible to the obligee, the court may require the obligor to obtain dependent health or dental insurance or to be liable for reasonable and necessary medical or dental expenses of the child. It is reasonable to reference this statutory requirement to specify that it is applicable to parents under part 9505.0075.

Item D. The amendment of item D by deleting the language regarding children attending school is necessary and reasonable because this information has been moved to item E as amended.

Item E. It is necessary to amend item E to clarify that this item is applicable to parents of children ages 18 to 21 living with the parents or not living with the parents and attending school, when the children are dependents of the parents for tax purposes. In Minnesota, under medical assistance, if a child ages 18 to 21 is a student and is considered a dependent for tax purposes, the parents' income and assets are considered available for purposes of medical assistance eligibility. This is because Minnesota has opted to apply the same requirements to the medically needy that it applies to the categorically needy, for purposes of uniformity and consistency. Specifically, the following Code of Federal Regulations requirements apply:

1. Under Code of Federal Regulations, title 42, section 435.821, which governs the financial responsibilty of relatives for children under the age of 21 and caretaker relatives, the agency:

(a) must consider the parent's income and resources if they are actually contributed to the individual.

(b) <u>may</u> (emphasis added) consider the income and resources of the parents as available to the individual even if they are not actually contributed to the individual,

2. Under Code of Federal Regulations, title 42, section 435.823, which governs the financial responsibility of relatives of disabled individuals in states using more restrictive requirements than SSI (of which Minnesota is such a state), the agency must meet the requirements in determining eligibility under section 435.330 of medically needy disabled individuals. For disabled individuals under the age of 21, the agency:

(a) must consider the parent's income and resources as available if they are actually contributed to the individual; and

(b) <u>may</u> (emphasis added) consider the parent's income and resources as available even if they are not actually contributed.

This amendment is reasonable because it clarifies these requirements.

Item F. It is necessary to amend this item to assure consistency with related statutory requirements. Minnesota Statutes, section 256B.055, defines the eligibility categories for medical assistance. Minnesota Statutes, section 256B.055, subdivision 7 provides eligibility for aged, blind, or disabled persons and provides that medical assistance may be paid for a person who meets the categorical eligibility requirements of the supplemental security income program. It is reasonable to amend rules to incorporate relevant statutory requirements.

Item G. It is necessary to delete this item because it is now incorporated into item A and is no longer necessary as a separate item. It is reasonable to consolidate items to provide clarification and to contribute to the brevity of the rule.

Subpart 6. Parental financial obligation. It is necessary to amend this subpart to assure consistent application of the parental fee set forth in Minnesota Statutes, §252.27, subdivision 2a. Items A to F are deleted and replaced with a cross-reference to all of the requirements governing the parental fee under parts 9550.6200 to 9550.6240. This cross reference is reasonable because it facilitates consistent determination of parental financial responsibility, as well as the use of consistent procedures in granting variances, in the review and redetermination of parental fees, in the assessment and collection of parental fees and in the handling of parental fee appeals across all groups of parents subject to the provisions of Minnesota Statutes, §252.27. As discussed earlier, during the advisory committee process, a number of committee members were concerned about the possibility that two separate parental fee rules would exist which would result in non-uniform application Minnesota Statutes, §252.27. This amendment is reasonable because it, in effect provides for one uniform parental fee rule and diminishes the possibility of disparate treatment of parents.

Subpart 8. Notice to responsible spouse or parent. It is necessary to amend this subpart to distinguish the notice requirements applicable to responsible spouses from those of responsible parents. As discussed earlier, the purpose of these proposed amendments to part 9505.0075 are to make the parental responsibility under parts 9550.6200 to 9550.6240 and part 9505.0075 consistent. Spousal responsibility is not the subject of these amendments. Therefore, it is reasonable to retain the current requirements with respect to the responsible spouse and to cross-reference the following parts: 1) part 9550.6220, subpart 1 regarding notice when making an initial determination of eligibility; 2) part 9550.6228 regarding the review and redetermination of parental fees; and 3) part 9550.6229 governing notice of an increase or decrease in the amount of the parental fee. Cross-referencing these provisions is reasonable because it facilitates consistency in their application and promotes brevity of the rule parts.

Subpart 9. Appeals. Amendment of this subpart is necessary to facilitate consistency with part 9550.6235. As stated above, part 9550.6235 is amended to provide additional information and clarification to parents regarding their appeal rights and the appeals process. It is reasonable to incorporate this information into this subpart by reference for the reasons stated in subpart

8.

Subpart 10. Refusal or failure to pay. It is necessary to amend this subpart to implement the provision of Minnesota Statutes, §252.27, subdivision 3, which provides that a cause of action exists against parents who refuse or fail to pay as required. It is reasonable to cross-reference part 9550.6226, subpart 5 to facilitate consistent application of this consequence. This amendment is further reasonable for the reasons stated in subpart 8.

EXPERT WITNESSES/SMALL BUSINESS

The department does not plan to present expert witnesses to testify at the public hearing on behalf of the proposed rule amendments. The proposed rule amendments do not affect small businesses as defined in Minnesota Statutes, section 14.115.

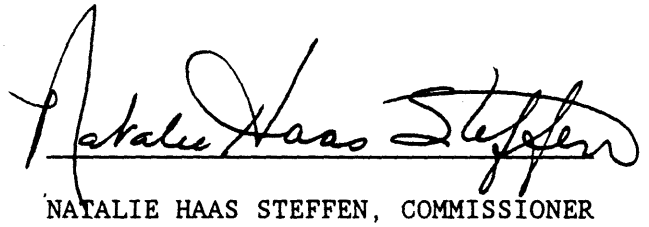
AGRICULTURAL LAND

The proposed rule amendments do not have a direct or substantial adverse effect on agricultural land as defined in Minnesota Statutes, section 17.81, subdivision 3 and referenced in Minnesota Statutes, section 14.11, subdivision 2.

CONCLUSION

The foregoing information demonstrates the need for and reasonableness of the provisions in the proposed amendments to parts 9550.6200 to 9550.6240 and part 9505.0075. The necessity and reasonableness of the proposed rule amendments are supported by requirements of Minnesota Statutes and rules, and by the commissioner's responsibilities under Minnesota Statutes, section 252.27 and 256B.14.

DATE: October 16, 1991



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