State of Minnesota
Department of Human Services
Human Services Building
444 Lafayette Road N
St. Paul, Minnesota 55155

November 29, 1995

Ms. Maryanne Hruby
Executive Director, LCRAR
55 State Office Building
St. Paul, Minnesota 55155

Dear Ms. Hruby:

Pursuant to Minnesota Statutes, section 14.131, enclosed is a statement of need and reasonableness relating to Administration of Community Social Services, Minnesota Rules, parts 9550.0010 to 9550.0093.

If you have any questions about the statement of need and reasonableness, please do not hesitate to contact me at 297-4302.

Sincerely,

Alice Weck

Alice Weck
Rules Division

Encl.

STATE OF MINNESOTA
DEPARTMENT OF HUMAN SERVICES

In the Matter of the Proposed Amendments to Minnesota Department of Human Services Rules Governing the Administration of Community Social Services, Minnesota Rules, Parts 9550.0010 to 9550.0093.

STATEMENT OF NEED AND REASONABLENESS

Introduction and Background

The rules informally known as DHS Rule 160 were first adopted on July 27, 1976 in response to new federal requirements governing the provision of social services. The rules as originally promulgated were amended in 1977 and 1980.

In the 1980s, Rule 160 was significantly revised in response to major legislative actions, both federal and state. The federal Omnibus Reconciliation Act of 1981 (Public Law 97-35) amended Title XX of the Social Security Act to establish a social services block grant. Federal regulations for the grants provided that state laws and regulations would govern the expenditure of these funds. In 1979, the Minnesota legislature enacted the Community Social Services Act which established a system for planning and providing community social services in which boards of county commissioners administer community social services with oversight by the commissioner of human services.

The resulting Rule 160 amendments, promulgated in 1986, eliminated major sections of the original rules, restructured other sections, proposed new sections, and repealed in their entirety the rules then codified as Minnesota Rules, parts 9550.0100 to 9550.2900. The rule parts were renumbered as parts 9550.0010 to 9550.0092. The proposed amendments add a new part, part 9550.0093.

The Current Amendments in Context

The proposed amendments reflect executive and legislative direction first established in 1991 when the legislature amended Minnesota Statutes, section 256E.05, subdivision 1a, to allow counties more flexibility in administering social services by reducing procedural requirements in social services rules. Known as "mandates reform legislation," this legislation, along with Governor Arne Carlson's Executive Order No. 91-12, was intended to streamline administrative rules and reduce inadequately funded mandates.

Final draft
160 SNR
October 16, 1995

The legislation authorizes the commissioner to **"review social services administrative rule requirements and adopt amendments under chapter 14 to reduce administrative costs and complexity by eliminating unnecessary or excessive paperwork, simplifying or consolidating program requirements, or emphasizing outcomes rather than procedures."** (emphasis added)

In August of 1991 the department established a Mandates Reform Implementation Team (MRIT) of department staff, county representatives, and advocates to advise the commissioner on implementing the mandates reform legislation. The MRIT endorsed a plan to streamline social service rules by eliminating duplicative and unnecessary requirements in social services rules. The proposed amendments to Rule 160 are consistent with that plan.

Rule 160 is the umbrella rule that governs all county-administered social service programs by setting minimum standards. Individual social service program rules may specify more restrictive provisions as required by federal or state law. The department's goal in this streamlining effort is to strike a balance between providing quality services to clients and conserving limited social services funds.

There were extensive discussions with the MRIT work groups, at the Rule 160 regional meetings, and at the rule advisory committee meetings about how best to provide uniformity in social services rules. It was clear there are many unnecessary and confusing inconsistencies in how social services terms are defined.

Accordingly, one objective of this rulemaking effort is to establish consistency among social services rules if there is no legal or other compelling reason for them to differ. Therefore, certain definitions are amended. These amendments are consistent with Minnesota Statutes, § 256E.05, subdivisions 1 and 1a which require the commissioner to supervise community social services by simplifying and consolidating program requirements. It is reasonable to have uniform definitions in rules governing social service programs.

Throughout the proposed amendments, language is deleted to simplify and streamline the rule. These deletions do not change the substance of the rule. These amendments are consistent with Minnesota Statutes, 256E.05 subdivision 1a which provides that the commissioner may review social service rules and adopt amendments under chapter 14 to simplify program requirements. The proposed amendments also correct cross references and make other nonsubstantive editorial changes.

Final draft
160 SNR
October 16, 1995

Rule Development Procedures

The department complied with procedures required by the Administrative Procedure Act (APA) and with its own policies to ensure maximum public input in developing the proposed rule amendments. Public input was sought in a Notice of Solicitation of Outside Information or Opinions, published August 26, 1991, in the State Register at 16 S.R. 446. An amended notice was published October 2, 1995 at 20 S.R. 794.

The department also established a rule advisory committee to provide input into the scope, content, and potential impact of the proposed amendments. The advisory committee, whose membership included representatives from county agencies, providers, and client advocacy organizations, met five times between March 1992 and June 1993. Rule drafts and accompanying explanations were sent to advisory committee members prior to the meetings. Work groups on contract issues and on fees also met. A list of committee members and work group members is attached.

Additionally, in April and May of 1992, the department held regional meetings in six locations--Marshall, Rochester, Alexandria, Thief River Falls, Grand Rapids, and St. Paul--to gather information and comment. The department publicized the regional meetings in a Commissioner's Bulletin (Request Bulletin No. 92-69B dated March 13, 1992) which was sent to county boards, community mental health organizations, public health organizations, county attorney offices, and advocacy organizations throughout the state. Written and oral comments were invited at the regional meetings. The department also mailed rule drafts and invited input from all persons who expressed an interest in the rule. In 1994 and 1995, department staff frequently consulted the MACSSA rules committee about the rule.

The department has reviewed and considered all oral and written comments and recommendations received at meetings or otherwise communicated and has incorporated many of the comments into the proposed amendments.

FISCAL IMPACT OF PROPOSED RULE AMENDMENTS

The department's fiscal impact statement projects a net fiscal impact of zero. Because the proposed amendments require no additional administrative resources or expenditures of funds, there is no direct cost increase. When they affect costs at all, the proposed amendments are more likely to decrease than increase operating costs because they reduce administrative requirements, drop or reduce requirements related to process and procedure whenever possible, and enhance county flexibility.

Final draft
160 SNR
October 16, 1995

NEED AND REASONABLENESS OF SPECIFIC RULE PROVISIONS

The proposed amendments to parts 9550.0010 to 9550.0093 are affirmatively presented by the department in the following narrative which constitutes the Statement of Need and Reasonableness, in accordance with Minnesota Statutes, chapter 14 and rules of the Office of Administrative Hearings.

9550.0010 DEFINITIONS.

Subpart 1. **Scope.** Substituting 9950.0093 for 9950.0092 as the ending part number of the rule parts is necessary because a part was added.

Subpart 2a. **Authorized representative.** Since the rule amendments use the term "authorized representative," it is necessary to define the term so that counties know the criteria required for authorization. The rule as currently written assumes that clients might have representatives but does not require authorized representatives. Some committee members preferred the status quo; they were concerned that limiting who is authorized to act on an applicant's or client's behalf could work to the applicant's or client's disadvantage, particularly in an emergency if someone were excluded from helping for lack of authorization.

County representatives and advocates, agreed, however, on the necessity of requiring authorization to protect a client or applicant and prevent an unauthorized person from doing something that is not in the applicant's or client's best interest.

The definition is reasonable because the persons named are either consistent with persons presumed by law to act in another's best interest or they are appointed by the person in whose interest they are to act.

Subp. 3. **Commissioner.** This amendment is necessary to replace the current rule's reference to "his or her". The revisor of statutes requires gender-neutral language.

Subp. 4. **Community social services.** The change from target populations to groups or subgroups is necessary to be consistent with the change in terminology in Minnesota Statutes, section 256E.03, subdivision 2(a) which has been amended to reference "groups" rather than "target populations" who are to be provided with community social services. "Target populations" has accordingly been replaced with "groups or subgroups" throughout the rule.

Subp. 7. **County of financial responsibility.** This amendment is necessary to reflect statutory change. In 1987, the Minnesota Legislature passed the Unitary Residence and Financial Responsibility Act, Minnesota Statutes, Chapter 256G, which now governs all programs administered by the commissioner in which residence is the determining factor in establishing financial responsibility. The current statutory cite in subpart 7 is outdated because Minnesota Statutes, section 256E.08, subdivision 7, which previously governed county financial responsibility, was repealed in 1987.

Subp. 8. **County of service.** It is necessary to amend this subpart to add "authorized" to representative as discussed at subpart 2a above.

Subp.10. **Developmental achievement services. [See repealer.]** It is no longer necessary to define this term because it no longer appears in parts 9550.0010 to 9550.0093. It is reasonable to eliminate terms that are no longer used to shorten the rule and to avoid confusion.

Subp. 11. **Emergency social services. [See repealer.]** No longer defining this term is consistent with the emphasis on shortening and streamlining the original rule. The term "emergency social services" is defined in department rules governing child protection, adult and child mental health, and adult protection. All of these are contexts in which it would be necessary to define emergency social services to establish criteria specifying when such services are appropriate. In the context in which the term is used is used in this rule, the detail is not necessary. It is reasonable to remove unnecessary definitions.

Subp.12. **Goal.** Changing this definition is necessary to make the term consistent with the emphasis on outcomes and clients rather than process. The new language focuses on outcomes for clients rather than on outcomes of an activity which is reasonable within the context noted above. Substituting "intended" for "desired" is a reasonable change because it connotes what in fact occurs--a purposeful, directed attempt to influence results that clients experience. Substituting "as stated in clients' individual service plans" for "of an activity" is a reasonable way to continue the emphasis on the client.

Subp. 13. **Host county. [See repealer.]** It is necessary to repeal this subpart because the term "host county" has been replaced in parts 9550.0010 to 9550.0093 by the term "lead county." The need for and reasonableness of the lead county definition and concept are specified in subpart 14a below.

Subp.13a. **Indicator.** It is necessary to define this term because it has only fairly recently come into the vocabulary of social services delivery and because it has a meaning specific to these rule parts. The definition is reasonable because it establishes how the term applies to social services delivery and was developed by the department's quality services division specifically for use in the context of administering and monitoring community social services plans.

Subp.14. **Individual service plan.** This subpart is necessarily amended to add "authorized" to representative to meet the need stated in subpart 2a above.

Subp. 14a. **Lead county.** This definition is necessary to define a term that people must know in order to comply with the rule. The lead county provisions replace the host county provisions in the rule as currently written. The lead county concept was developed by county representatives in the contract work group convened as part of the rulemaking process. "Lead county" is similar to "host county" in having one county negotiate a contract with a vendor that another county purchasing services from that same vendor must use. The difference between the two concepts is that the county taking the lead in negotiating a contract ("lead county") need not always be the county where the vendor is located ("host county"). This provides some flexibility in the contracting process while still maintaining the advantages of uniform contracting. The definition is reasonable because it clearly describes the function the lead county fulfills.

Both county and provider representatives agreed it is most efficient to have one uniform contract for all services purchased from an approved vendor. Moreover, federal regulations for certain services such as Title IV-E foster care and chemical dependency treatment require uniform rates. Using one uniform contract for a provider is a reasonable way to assure that rates are uniform.

Subp.16. **Objectives. [See repealer.]** It is necessary to repeal this definition because the term as currently defined--"the specific steps to be taken in order to achieve a desired goal--" is inconsistent with focusing on results rather than on process and with increasing options available to counties.

Subp. 17. **Outcome.** Re-defining this term is necessary to give it a meaning consistent with attempts to simplify and eliminate prescriptive rule requirements and to improve service delivery by allowing counties more flexibility in serving their clients. The definition is reasonable because it, like the approach it defines, is client-focused.

Subp. 20. **State facility. [See repealer.]** It is necessary to repeal this subpart because the term is no longer used in parts 9550.0010 to 9550.0093.

Subp. 21. **Target populations. [See repealer.]** It is necessary to repeal this subpart because the term is no longer used in parts 9550.0010 to 9550.0093 and therefore does not require definition. "Target populations" has been replaced with language more consistent with language used in Minnesota Statutes, section 256E.03, subdivision 2(a) to refer to groups who are to be provided community social services.

9550.0020 COUNTY RESPONSIBILITY FOR COMMUNITY SOCIAL SERVICES.

Subp. 2. **Social services clients.** It is necessary to amend this subpart to clarify a term used in the rule. The term "recipient" is changed to "client" throughout the rule. The change in terminology is reasonable because "client" more accurately conveys the nature of the transaction between the county and the persons for whom services are provided than "recipient." "Shall" is also changed to "must" throughout the rule because current usage favors the less formal "must" over the more formal "shall."

Subp. 3. **Methods of providing services.** The editorial changes here are necessary to follow the change from "shall" to "must" throughout the rule, to add the gerund "making" as a parallel to "contracting with," and to add a comma to clarify that there are three ways a county board can provide community social services. It is reasonable to make changes that promote consistency and clarity.

Subp. 4. **Eligibility policy and criteria.** These editorial changes are necessary to promote clarity and brevity.

Subp. 5. **Annual effectiveness report.** Language changes are necessary here to reflect the fact that effectiveness is no longer reported in terms of measurable goals and objectives achieved for each service. Instead, consistent with the emphasis on client-focused outcomes and flexibility, effectiveness is evaluated by comparing outcomes achieved with outcomes stated in the current community social services plan. It is reasonable to report and describe the effectiveness of services in terms consistent with the approach to providing the services. The current requirement that the outcomes of each service be evaluated is repetitive and administratively burdensome.

9550.0030 COMMUNITY SOCIAL SERVICES PLAN.

Subpart 1. **County board responsibility.** Subpart 1 requires modification to be consistent with Minnesota Statutes, section 256E.09, which has changed since the rule as written was promulgated.

Adding a summary of the counties' and the commissioner's roles, responsibilities, and timelines in the plan approval and certification process is necessary to specify what happens if several variables addressed in the added material come into play. To make the rule provision comport with statute, it is also necessary to specify that there are both proposed and final plans. It is reasonable to elaborate in order to facilitate compliance.

Subp. 2. Notice of opportunity for **citizen participation.** The additions to subpart 2 are necessary to sharpen the focus on giving notice. The notice requirements themselves are reasonable because they are consistent with Minnesota Statutes, section 256E.09.

Subp. 3. ~~Notice of~~ **Plan availability.** The changes in the first sentence are editorial only for consistency or clarity. Adding the requirements stated in the second sentence is necessary to have the rule reflect the amendment to Minnesota Statutes, section 256E.09, subdivision 1, in Laws 1994, chapter 432, section 1. The requirements in the added subpart are consistent with the new requirements in the statute.

Subp. 4. ~~Minimum~~ Certification **standards.** Many of the amendments to this subpart are necessary because the requirements for community social services plans in Minnesota Statutes, section 256E.09, subdivision 3 were greatly reduced in 1991. The reduction in community social service plan requirements was part of the overall mandate reduction effort. Eliminating rule provisions no longer required by statute is reasonable because it is consistent with Minnesota Statutes, section 256E.05, subdivision 1a which allows the commissioner to simplify program requirements and emphasize outcomes rather than procedures.

In addition to deleting provisions no longer required by statute, amendments to this subpart edit the remaining provisions for syntactical consistency and readability.

Item A. Changes to item A are editorial only. It is reasonable to repeal subitem (4) because it can be combined with subitem (3) and necessary to amend former subitem (4) as it comes into (3) to clarify that public comments must have an effect on determining priorities in the plan.

Item B. It is necessary to amend this item because the rule as amended will no longer use "target population" as the term for the groups identified in Minnesota Statutes, section 256E.03, subdivision 2, paragraph(a) [see part 9550.0010, subpart 21 for rationale] and to indicate that paragraph (a) has been added to subdivision 2. The language in the second sentence is necessary to ensure that counties identify groups

shown in their plans as "other." It is reasonable for those reviewing the plans to know what clients counties are talking about when they reference "other" as provided by the cited statute.

Item D. Deleting the detailed requirements in subitems (1) to (8) is necessary to make the rule provisions consistent with the simplified requirements of the authorizing statute (Minnesota Statutes, section 256E.09, subdivision 3), which was amended in 1991. The rule as amended simply requires counties to show methods used to assess needs without prescribing what the plan must cover.

Item E. The amendments to item E, subitem (1) are necessary to be consistent with the amended rule's emphasis on outcomes. Adding the requirement in subitem (2) that the plan include a description of how the service system will be coordinated is necessary for consistency with the amendment to Minnesota Statutes, section 256E.09, subdivision 3(6). Overall, the amended item is reasonable because it allows counties more flexibility in planning for services and is consistent with the mandates reform effort.

Current Item F and current Item G. Items F and G as currently writen are deleted because the requirements in those items were deleted from Minnesota Statues, section 256E.09, subdivision 3 in 1991. It is reasonable to make the rule provisions consistent with statute, particularly to eliminate an administratively burdensome standard.

First sentence of former item H relettered as item F. Specifying that counties must use codes from the current statewide reporting system for social services is consistent with what has been practice for the last three years. It is reasonable to require use of the codes to encourage the practice. The approved list of social services establishes uniform statewide definitions and expectations for those providing and receiving or applying for services.

Other changes are reasonable because the item as currently written is administratively burdensome. For instance, requirements in this provision previously caused counties to include in their submitted plans pages of provider names. County representatives on the Advisory Committee indicated that the names are often out of date by the time the plan is published since providers are added and deleted throughout the development and life of the plan.

Second sentence of original item H now relettered as Item G. It is necessary to amend this item to make the language consistent with the Americans with Disabilities Act, 42 U.S.C. §§ 12101, et seq., which requires state agencies to operate programs that are accessible and usable by individuals with disabilities.

New Item H. It is necessary to add this item because it is required by Minnesota Statutes, section 256E.09, subdivision 3(5). This item is reasonable because the county must have adequate resources to provide services. It is also reasonable for purposes of planning to estimate what the unmet need is. This is consistent with Minnesota Statutes, section 256E.02, which states that the purpose of the Community Social Services Act is to establish a system to plan for community social services by counties.

Current Item I. This item is eliminated because Minnesota Statutes, section 256.09 no longer provides a basis for requiring plans to include the evidence of consideration or statement on board policies about contracts or criteria for approving vendors.

Proposed Item I, formerly Item J. It is necessary to reletter item J as item I because eliminating and changing preceding items requires re-alphabetizing. It is necessary to require estimates of the amount and source of anticipated revenues to clarify what is intended by the current language requiring only that revenues be "identified." The stricken material responds to the simplification requirements in the 1991 amendments to the Community Social Services Act by stating requirements about funding sources in a simpler manner which is consistent with statute.

Item K. It is necessary to eliminate this item to be consistent with statute. Minnesota Statutes, section 256E.09, subdivision 3 no longer requires that the CSSA plan include the county board's method for monitoring and evaluating social services. It is reasonable to delete item K because this information has not been useful to include in the plan. Further, the requirement is redundant since under part 9550.0020, subpart 5, the county must collaborate with the commissioner to report on the effectiveness of community social service programs.

Subp. 5. ~~**Publication**~~ Availability **of final plan.** It is necessary to amend this subpart to clarify that counties are not required to publish the final version of the plan although they are required to make copies of the final plan available on request. Publishing the final plan is not required because the county is already required (by subpart 3) to give notice of the availability of the proposed plan. It is reasonable to

amend this subpart to avoid unnecessary duplication of effort, particularly since the vast majority of proposed plans go unchanged to become final plans.

Subp. 6. **Duration of plan.** It is necessary to amend this subpart to be consistent with the requirements of Minnesota Statutes, section 256E.09, subdivision 1:

> Beginning in 1989, and every two years after that, the county board shall submit to the commissioner a proposed community social services plan for the next two calendar years. (emphasis added)

For purposes of clarification, it is reasonable to add new language showing what happens when a new final plan has not been certified.

Subp. 7. **Amendment to plan.** It is necessary to add item D to be consistent with Minnesota Statutes, section 256E.081. It is reasonable to refer to this statutory amendment so that counties are aware of the procedure for amending the plan when fiscal limitations exist. Editorial changes from "shall" to "must" are necessary to conform with the rest of the rule parts and current rule usage. The exceptions noted for fee schedules in paragraphs two and three are necessary because Laws 1995, chapter 207, article ll, section 7 amended Minnesota Statutes, section 256E.08, subdivision 6 so that the commissioner's approval is no longer required when county boards establish fee schedules. It is reasonable to make the exception explicit in the rule so that counties are aware when the commissioner's approval is not required.

9550.0040 GRANTS AND PURCHASE OF SERVICE CONTRACTS.

Subpart 1. **Authority.** This part is necessarily amended to make it comport with Minnesota Statutes, section 256E.09, which no longer requires that purchased services be identified in the biennial social services plan. We also edited the first sentence to simplify the reference to agencies. Minnesota Statutes, section 256E.08, subdivision 1, authorizes county boards to contract for social services that the county does not provide directly but does not elaborate on types of agencies. The rule as written does elaborate by mentioning "public, nonprofit, or proprietary agencies." The words are unnecessary and are therefore deleted.

Subp. 2. **Grant and contract requirements.** Establishing requirements for grants and contracts is necessary to meet federal and state regulations governing accountability of expenditures. Requirements are also necessary because the commissioner must set standards in order to supervise local agencies' expenditures of community social service funds as provided by Minnesota Statutes, section 256E.05, subdivision 1.

Although the grant and contract requirements in the current rule met the test of need and reasonableness when Rule 160 was substantially amended in 1986, experience with the provisions has shown that they need not be as explicit and prescriptive as currently written. This is the case in part because of changes in rules governing programs for persons with developmental disabilities. When current Rule 160 was promulgated in 1986, DHS developmental disabilities staff relied totally on contract and grant provisions in Rule 160 because DD program rules at that time were not as explicit regarding grants and contracts as program staff felt was necessary to ensure timely delivery of needed services. In the late 1980s and early 1990s, new and updated DD rules have met that need.

The amended rule provides more flexibility than the current rule to allow for varying contracting needs. Under the current language, the same contract requirements apply to an uncomplicated service such as chore service and a more complex service such as out-of-home placement. It is reasonable for the rule to require only the minimum specifications to make a contract enforceable. The proposed amendments allow counties the flexibility to negotiate contracts with providers that fulfill the unique needs in their county and the service contracted for. To support counties in tailoring contracts to needs, the department has agreed to provide technical assistance by preparing several model contracts for different types of social services.

"Purchase of service" is added to describe "contracts" throughout this subpart to indicate exactly what kind of contract is being referenced.

Item B. It is necessary to amend this item to clarify that all social services provided must be defined in the county's community social service plan to comply with Minnesota Statutes, section 256E.09, subdivision 3(4).

Item C. It is necessary to delete the word "contract" to correct erroneous rule language. Current language in item C requires agencies to specify a dollar amount for both grants and contracts. Specifying the dollar amounts is appropriate for grants, but purchase of service contracts are actually based on a unit cost for each service. The amendment is reasonable because it accurately states the requirements.

Current Item D. It is necessary to delete current item D because it has been incorporated into item C above.

Current Item E. Deleting this requirement is necessary to further the goal of having Rule 160 be a rule that sets forth minimum standards that apply to or are relevant for all social services. The issue it addresses--affixing responsibility for making a

preliminary determination of client eligibility--is not relevant to some social services contracts. Deleting the requirement is reasonable because it removes a requirement lacking universal application but does not interfere if a local agency wants to delegate this responsibility to a provider. The agency would have the option of putting this requirement in the contract.

Proposed Item D, Formerly Lettered as Item F. It is necessary to eliminate the reference to the individual habilitation plan because it is an obsolete term and is no longer required under Minnesota Statutes, section 256B.092. Further, the individual habilitation plan requirement previously governed only services to persons with mental retardation or related conditions. This change is reasonable because the purpose of parts 9550.0010 to 9550.0093 is to set minimum requirements for all social services. Requirements for persons with mental retardation and related conditions are specified in the rules which regulate those particular programs.

Requiring a statement that purchased services will be directed toward clients' achievement of goals and objectives is meaningless and unnecessary. The language is therefore dropped.

Proposed Item E, Formerly Lettered as Item G. The amendment is necessary to make contractually explicit the provider's obligation to notify the client and the local agency in writing prior to discharging a client or terminating services. While notification may have been one of the procedures covered in the requirement as written, the obligation is sufficiently important to warrant being stated explicitly stated to avoid confusion. This requirement is necessary to protect the health and safety of clients who could be harmed by the termination of essential services and to give the local agency information needed for planning. It is also necessary to notify the local agency of discharges and terminations because the agency has a duty to inform the client of the right to appeal the termination under Minnesota Statutes, section 256.045.

Current item H. It is necessary to eliminate the requirement to identify the "site" where the service will be provided because the provider does not always know what the "site" is ahead of time, as, for example, with homemaker services. This amendment is reasonable because social services are so diverse and the requirement is not applicable to all services.

Current items I and J. Eliminating these requirements is consistent with being less prescriptive. While spelling out the referenced procedures in a contract might avoid conflicts over requirements for certification or time and manner of reimbursement, it is not a minimum contracting standard.

Proposed item F. No amendment is proposed to the requirement itself but it is relettered as item F, having previously been item K. The need and reasonableness as previously demonstrated by the department remain applicable.

Proposed item G. No amendment is proposed to the requirements itself but it is relettered as item G, having previously been item L. The need and reasonableness previously demonstrated by the department remain applicable.

Current item M. This item is eliminated because it is inconsistent with evaluating outcomes rather than procedures and with evaluating client outcomes in ways other than tracking achievement of goals and objectives identified in service plans.

Proposed item H. This item has been relettered; it is item N in the current rule. Adding the requirement that the person responsible for compliance with data practices requirements be identified is reasonable to facilitate resolving any data practices issues that arise.

Proposed item I. This item has been relettered, having previously been item O. It is necessary to substitute the requirement that contracts include provisions that address liability for the current requirement that the provider bond, indemnify, audit, and insure all purchased services for at least two reasons. One is that the requirement as written goes beyond minimum contracting requirements. The other is that the state does not purchase insurance when the state is the provider of services such as state-operated community services. To require that all providers have insurance would be to establish a standard that the state could never meet and would be unreasonable. It is reasonable to eliminate the current level of specificity and substitute the more general requirement of addressing liability because the social services provided under this rule are so varied and many do not require such specifications. Counties still have the option to require these specifications in their contracts if they wish.

Proposed item J. This item has been relettered, having previously been item P. The change in language from "grounds" to "provisions" for terminating a grant or contract is made because of the connotation carried by "grounds," which suggests a negative outcome. "Provisions" better represents the reality that a contract or grant might be terminated for a variety of reasons, including the completion or delivery of the task or services addressed by the contract. This is not a substantive change and the need and reasonableness as originally established still apply.

Current item Q. The first sentence of this item is eliminated because it is no longer necessary to specify the particular facet of data practices addressed here since

proposed item H addresses compliance with data practices requirements. It is also necessary to eliminate the requirement in the item's second sentence that proof of licensure, exposition of staffing etc, be attached to the contract if they are not included within the contract. These are not minimum requirements and they are not necessary for all purchase of service contracts. Counties have the option to require these items as counties feel necessary.

Subp. 3. **Duties of local agency.** "Purchase of service" is added to modify "contract" throughout this subpart to indicate exactly what kind of contract is being referenced.

Item A. It is necessary to amend this item to eliminate the requirement that all grants and contracts exceeding $10,000 be signed by the county board. County representatives on the advisory committee stated that this requirement was unnecessarily restrictive. Some county boards may wish to delegate the authority to approve all contracts to the local agency. It is reasonable to afford the county board the flexibility to decide whether to designate the local agency to sign on their behalf for all grants and contracts. Each of the 87 counties has unique needs and it should be the decision of the local government how much authority it wants to grant to the agency. This amendment conforms with the legislative intent in "mandates reform" of allowing counties more flexibility and eliminating overly prescriptive rules.

Item C. It is necessary to amend this item to reflect the fact that local agencies won't always develop the social service plan as required by the current rule because a provider might develop the plan. It is, however, the local agency's responsibility by law and rule to ensure that an appropriate plan has been developed, consistent with local agencies' responsibilities for service delivery. The amendment is reasonable because it conveys the overall responsibility for oversight rather than the specific responsibility for developing the plan.

Current item D and proposed items D and E. Deleting current item D is necessary for clarification. In the context of grants and contracts, the duties of the local agency would not include actually providing the services required in individual service plans. Although the local agency's total responsibility includes being sure that needed services are provided, either directly by the agency or by purchase of service, stating it here is more confusing than relevant. Newly-lettered items D and E are changed to accommodate deleting item D; the need and reasonableness of these items demonstrated by the department in promulgating the current rule remain applicable.

Subp. 4. **Local agency criteria.** It is necessary to amend this subpart for clarification and to avoid redundant requirements. It is reasonable to eliminate the last sentence regarding the requirement that local agency criteria be included in the community social services plan because plan requirements are specified under part 9550.0030.

Subp. 6. **Files.** Item F is amended to eliminate the requirement that "social service" reports be maintained in an administrative file because the advisory committee and DHS staff were not aware of what reports these might be and agreed the requirement is unnecessary.

Subp. 7. **Host county contracts.** It is necessary to repeal this subpart because host county contracts are being replaced by lead county contracts.

Subp.7a. **Contracting within and across county lines; lead county contracts.** The rationale for the shift from host county contracts to lead county contracts is discussed at part 9550.0010, subpart 14a. The commissioner's authority to establish standards governing county contracting is in Minnesota Statutes, section 256E.05, subdivision 1, which directs the commissioner to supervise the community social services administered by the counties through standard setting. . ." Describing how lead county contracting works is necessary so that participants in the process all have the same knowledge since one of the goals of this approach is to promote uniformity and consistency in county contracting practices. The reasonableness of items A to F is presented below.

A. Once a local agency negotiates a contract with an approved vendor, it is reasonable for any other local agency that wants to contract with that same vendor to use the contract already in place. As noted in the discussion of the definition of lead county contract, part 9550.0010, subpart 14a, both county and provider representatives involved with the rule amendments agreed it is most efficient to have one uniform contract for all services purchased from an approved vendor, regardless of the county making the purchase. Also, federal regulations for certain services such as Title IV-E foster care and chemical dependency treatment require uniform contract rates. Using one uniform contract for a provider is a reasonable way to keep rates uniform.

Sub-items (1) and (2) are reasonable because they anticipate and answer questions related to expiration and renegotiation of contracts, consistent with the emphasis noted above on having all participants in the process have the same knowledge.

B. This requirement is reasonable because it supports and leads to the benefits noted above.

C. It is reasonable to refer a local agency that wants to purchase services from a vendor in another county to the local agency in that county because it supports and leads to the benefits of consistency and uniformity and exchange of same information. It is reasonable to set a 30-day limit for responding to facilitate the inquiring agency's getting the information it needs to move forward.

(1) It is reasonable for the notified agency to send the inquiring agency a copy of the contract, if it has one, so that the county interested in contracting knows the contract terms.

(2) It is reasonable for the notified agency to tell the inquiring agency who the lead county is so the inquiring agency can get the contract terms from the lead county and proceed.

(3) It is reasonable to have the process work as described in subitem 3 because it transmits the information needed to move the transaction forward: will the notified county contract with the vendor if it hasn't already and if not, what concerns does it have? It is reasonable to require the notified agency to tell the inquiring agency if its concerns are related to the health and safety of clients in order to alert the inquiring agency either to avoid contracting with the agency or to make further inquiries before contracting as a means of protecting clients.

D. Having allowed for the transmittal of information in C, it is reasonable here in the interest of flexibility to allow the inquiring county to negotiate its own contract if the other county declines or fails to respond or does not want to negotiate a contract.

E. These provisions are necessary to spell out for all affected parties how the ending and renewing of contracts works so that all participants in the process have the same information. Because contract lengths vary, it is reasonable to allow the county where the vendor is located to reconsider becoming the lead county when a contract for which it has not been the lead county expires. If the right of first refusal were not re-extended, the county where the vendor is located, having once refused to serve as lead county for the contract, could be prohibited from taking this role indefinitely. The right of first refusal is important to counties and the contract work group felt strongly that this option should be included in the amendments affecting contracts.

F. This item is necessary to comply with Minnesota Statutes, sections 245.4711, subdivision 3 and 256B.092, subdivision 1. There are certain statutory protections that must be complied with when social services are provided to persons with

mental retardation or related conditions or to adults with serious and persistent mental illness. In addition these persons may be eligible for medical assistance and statutory requirements for the program must be complied with. It is reasonable comply with state law to assure consistent treatment for persons who require extensive and costly services.

Subp. 8. ~~**Exceptions to host county contracts**~~ **Contracts with community mental health boards.** Items A and B are no longer necessary because of the new language added at subpart 7a and are therefore eliminated. The provision previously identified as item C is still applicable but is no longer classified as an item. Hence the strikeout on the letter "C." "Notwithstanding subpart 7a," is added to clarify that contracting with a community mental health board within the geographic area served by the board is treated differently from contracting across county lines.

Subp. 9. **Placement agreements.** The editorial changes to this subpart are necessary either to clarify meaning or to be consistent with other language changes (use of "lead county," for example) in the rule as amended. In the third sentence, "if requested" is added to give counties more flexibility in mailing copies of placement agreements to other counties. Discussion with counties indicated that some counties want the copies and some do not.

9550.0050 PROCEDURES WHEN THE COUNTY OF SERVICE AND THE COUNTY OF FINANCIAL RESPONSIBILITY ARE NOT THE SAME.

It is necessary to amend this part to make it consistent with statutory changes. Minnesota Statutes, section 256E.08, subdivision 7, which previously defined the county of financial responsibility for community social services, was repealed in 1987. The county of financial responsibility for community social services is currently determined pursuant to Minnesota Statutes, section 256G, the Unitary Residence and Financial Responsibility Act.

Subpart 1. **Establishing financial responsibility.** It is necessary to amend this subpart to be consistent with Minnesota Statutes, section 256G.09. It is reasonable to cross-reference section 256G.09 because it contains detailed requirements about establishing financial responsibility. Cross-referencing the relevant statutory authority is reasonable because it promotes brevity and avoids unnecessary duplication. Identifying the person as someone who the local agency <u>believes</u> is the financial responsibility of another county rather than as someone who <u>is</u> the financial responsibility of another county is more accurate because responsibility has yet to be determined.

Subp. 2. **Client information for county of financial responsibility.** The timeline change from "within five calendar days of the date the application process is completed"

to "within 60 calendar days after the approval date of an application" is necessary to be consistent with the 60-day reference in Minnesota Statutes, section 256G.09 subdivision 1. It should be noted that the timeline change does not affect how quickly services are provided to clients. Rule part 9550.0070, subparts 7 and 9, still require the county of service to authorize services within 60 days of receiving a completed application from an eligible applicant. Additionally, there is an incentive for the county of service to send the required documents as soon as possible because Minnesota Statutes, section 256G.09, subdivision 1 requires the county of service to provide assistance until financial responsibility is transferred. Itemizing documents is for clarity.

Subp. 3. **Disapproval of an individual service plan by county of financial responsibilty.** It is necessary to delete item A as written because Minnesota Statutes, section 256G.07, subdivision 4 specifies that the types and level of social services to be provided in any case governed by Chapter 256G are those otherwise provided in the county in which the person is physically residing at the time those services are provided.

It would therefore be contrary to statute for a county of financial responsibility to disapprove an individual service plan on the grounds stated in current item A. Changes to item B and to the final paragraph of the part are editorial and made either for clarity or for consistency with Minnesota Statutes, Chapter 256G.

Subp. 4. **Implied consent and agreement to pay. [See repealer.]** This provision is no longer necessary because the requirements governing implied consent and agreement to pay are addressed in Minnesota Statutes, section 256G.09 as referenced in subpart 1 as amended.

Subp. 5. **Notice to client.** This part is amended to cross reference the appeal requirements governed by Minnesota Statutes, section 256.045, subdivision 3. It is necessary to refer to these requirements to facilitate compliance with statute and safeguard the client's appeal rights. It is reasonable to cross reference the governing statute to promote brevity of the rule and to avoid unnecessary duplication of statutory language. Other changes to the part are editorial only.

Subpart 6. **Emergency social services.** It is necessary to amend this subpart to assure consistent use of language throughout the rule parts. There are no substantive amendments to this subpart.

Subpart 7. **Financial responsibility denied. [See repealer.]** This subpart is no longer necessary because the situation it governs is addressed by Minnesota Statutes, section 256G.09, as cross referenced in subpart 1.

Final draft
160 SNR
October 16, 1995

9550.0060 SOCIAL SERVICES FEES.

Subpart 1. **County's option to set fees.** Amending this subpart is necessary to clarify when a county can charge for services according to the county's own fee schedule. The rule as written does not specify that fees and schedules set forth in statute must be followed. The proposed amendment makes the clarification. Requiring counties to comply with statutorily-prescribed fee schedules is reasonable; stating the requirement is reasonable because it facilitates compliance.

The amendment is also necessary to remove the language specifying that a county's fee policy and fee schedule is subject to the commissioner's approval. That requirement is removed by Laws of 1995, chapter 207, article 11, section 7 which amended Minnesota Statutes, section 256E.08, subdivision 6. The two last sentences in the subpart are moved from Subpart 2, Ability to pay, because the requirements are not particularly related to ability to pay.

Subpart 2. ~~**Criteria for approval**~~ **Ability to pay.** Amending this subpart is necessary to clarify counties' obligation to emphasize ability to pay when determining fees for service. The obligation to base fees on ability to pay is established in Minnesota Statutes, sections 256E.08, subdivision 6 and 393.12. Given that statutory obligation, the rule as written is less than emphatic in saying that counties "may" consider factors affecting ability to pay. The proposed amendment is stronger in directing that the ability to pay emphasis be followed.

Adding the sentence "Fees and fee schedules must reflect a sliding scale in which the fee charged varies in accordance with factors that would affect the amount a client is able to pay," is reasonable because it emphasizes considering ability to pay.

Deleting the requirements that a copy of the fee schedule be made available to clients on request and that fees charged must not exceed actual costs is editorial only; the requirement was moved to Subpart 1 for reasons discussed above.

Subpart 3. **Exceptions.** This subpart is necessary to describe in one place those clients and classes of clients who by statutory mandate or department policy are exempt from paying fees to counties.

A. Item A is necessary because Laws 1995, chapter 207, article 11, section 7 specifies that no fee may be charged to persons or families whose adjusted gross household income is below the federal poverty level. The definitions given are necessary

to encourage consistent implementation of the requirement. They are reasonable because they are consistent with definitions given in Minnesota Statutes, section 252.57 and Minnesota Rules, parts 9550.6200 to 9550.6240.

B. The rule as written exempts recipients of public assistance maintenance grants. The proposed amendment specifying what is meant by "public assistance maintenance grants" is necessary to promote consistency within and across counties. Naming the programs and specifying which clients shall not be charged a fee supports consistency because these terms are less subject to differing interpretations by differing entities than is the term "public assistance maintenance grants." It is reasonable to specify AFDC, Minnesota Supplemental Assistance, General Assistance, or Minnesota Family Investment Program as exceptions because these programs, unlike programs such as Medical Assistance, have historically been considered as public assistance maintenance grants.

C. The rule as written also exempts "persons wishing to adopt a hard-to-place or special needs child as defined by Minnesota Statutes, section 259.40, subdivisions 1,2, and 4." The proposed amendment is necessary to update a change in statutory cite and reasonable because it indicates more clearly than the present rule the relationship of the "person wishing to adopt" to the county.

D. and E. The references to family preservation services and the interagency early childhood intervention system are reasonable additions since they, too, represent exceptions to the county's ability to charge a fee.

9550.0070 APPLICATION FOR SOCIAL SERVICES.

Subpart 1. **Right to apply.** The changes to this subpart are editorial and are made either for consistency (e.g., changing " must" to "shall") or for clarity (e.g., changing "application" to "application form," which is, strictly speaking, a more accurate description) or for reading ease (e.g., breaking the current single six-line sentence into two sentences).

Subp. 2. **Information about available services.** Adding a reference to authorized representatives is editorial only and is necessary to be consistent with all other parts where the same addition has been made.

Subp. 3. **Application requirement.** The changes to this subpart are editorial only (changing passive voice to active, adding "form" to "application"). As long as the rule parts are open, it is reasonable to make changes that make the rule easier to read.

Subp. 4. **Statement of applicant rights and responsibilities.** Changes to this subpart are editorial only. Some changes are necessary for consistency with references in other subparts to "authorized" representative, application "form," and to "must" rather than "shall." Other editorial changes delete unnecessary words.

The change from "agency representative" to "agency worker" is necessary to communicate that only an agency person involved in the delivery of social services should be responsible for answering questions related to rights, responsibilities, and data collection. The word "worker" is reasonable to use because language used in the field gives "worker," as in "intake worker," "financial worker," or "social worker," a specific connotation that accomplishes the intended communication.

Subp. 5. **Filling out application form.** Editorial changes are necessary to make the language consistent with other changes. For example, it is no longer necessary to specify the priority in which people may sign the application form because that priority is established by the new definition of authorized representative.

Subp. 6. **Eligibility.** It is necessary to require that copies of the application and eligibility forms be given to the applicant to provide the applicant with a record of information the applicant gave the agency in case a dispute about eligibility or other questions arise. It is reasonable to require counties to provide copies to applicants as a way of ensuring that both the agency and the applicant have the same information.

Subp. 7. **Local agency decision about eligibility and notification to applicant.** Adding language that ties agency timelines for determining eligibility to the date the application and eligibility forms are actually received by the agency is necessary to correct current language that ties the timeline to the point when the forms are signed and completed. Forms could be signed and completed without ever reaching the agency.

Adding that the agency timeline can be different from the requirement here "as otherwise required under applicable program rules" is necessary because some program rules such as parts 9525.0004 to 9525.0036 (Rule 185) governing case management services for persons with mental retardation specify different timelines for paperwork.

Adding a reference to whether applicants are placed on a waiting list is necessary to reduce confusion that occurs when applicants are not notified about being on the waiting list. Without this notice, applicants expect the service for which they applied and for which they have been approved to be provided sooner than the county plans to provide it.

Subp. 8. **Denial of application.** The procedural requirements a county must follow when denying an application are moved from this part on applications to part 9550.0092, Right to a Fair Hearing. This organizational change is reasonable because the provision is more closely related to the material in its new location than in its present location.

Subp. 9. **Approval of application.** Substituting "must authorize" for "shall provide" is necessary to clarify what the commissioner's expectation of local agencies is. The "shall provide" language suggests that counties must actually deliver services within 15 calendar days after notifying the client that the client is eligible for services. This is not a reasonable standard for the commissioner to set because there will be instances where eligible clients will have to be placed on waiting lists. The expectation is that counties must take the steps necessary to initiate service delivery--authorizing and contracting with a provider, for example--within the referenced 15 calendar days. The county is held to the standard of "assuring timely access to needed assistance" by Minnesota Statutes, section 256E.08, subdivision 1 (6).

9550.0080 INFORMATION ABOUT CLIENTS.

Subparts 1 and 2 contain minor editorial changes that do nothing to change the necessity and reasonableness originally established by the department. Dropping the reference in subpart 2 to access to medical data is reasonable because Minnesota Statutes, section 13.99 lists several pages of government data provisions codified outside Chapter 13, including medical and other health-related data. The reference to medical data is unnecessary because it singles out only one area of data--medical--that is subject to other statutory provisions when in fact there are many areas that could be mentioned. Moreover, the sentence as modified is correct; access to much of the data codified outside Chapter 13 is governed by chapter 13.

9550.0090 INDIVIDUAL SERVICE PLAN.

Subpart 1. **Agreement on plan.** Changes here are editorial only, necessary either for consistency (adding "authorized," changing "shall" to "must") or for brevity ("providing" for "the provision of") or to specify why services are provided ("to attain identified client-focused goals").

Subp. 2. **Plan Requirements.** It is necessary to state explicitly that the plan must be in writing because there has been confusion about the requirement in the past. It is reasonable to amend the rule to make this point clear; because of the confusion,

plans might not be put in writing, thus inviting misunderstanding about the specifications of the plan.

Item A. It is necessary to change the term "recipient" to "client" to assure the same term is used consistently throughout the rule and to add "authorized" for the same reason.

Item B. It is necessary to change "recipient" to "client" for consistency. Rewording item B to link goals to be achieved with an assessment of client needs is reasonable because both part of the requirement need to be stated and they may as well be stated together.

Item C. Deleting the current requirements (except for the one requirement left in item C and another moved to item E) is necessary to support the shift in emphasis from process orientation to client-outcome orientation and to do away with a potentially tedious exercise. It is reasonable to require that the plan contain an indication of why the agency is involved as a way of providing background on the case and documenting the law, rule, or reason that makes agency involvement necessary and appropriate.

Item D. The language change in item D is necessary because of the shift from a process-based system to a client-focused, outcome-based system. In this context, it is reasonable to replace requirements about describing purpose of contacts and frequency of contacts with language that requires a method for measuring attainment of goals.

Item E. As noted above, it is reasonable to keep language requiring specificity about the amount, frequency, duration, and provider of each service so that both the client and the county have a record of what services are to be provided.

Item F. It is necessary to specify that the plan be reviewed with the client to make clear the assumption that the client will be involved. It is reasonable to require agencies to encourage client input to increase the likelihood that the client will be invested in the plan and cooperative in carrying it out. Replacing "achieving goals and objectives" with "attainment of outcomes based on the selected indicators" is necessary to be consistent with changed terminology throughout the rule.

The last two sentences in the rule part are not lettered as an item because following the two final sentences in item F with another item makes the requirement less clear than showing it merely as two sentences. The requirement itself is necessary to

assure there is no misunderstanding about what was agreed upon in the plan. Requiring that both the client or client's authorized representative and the local agency's representative sign the plan is reasonable because the signatures serve as a sign of consent or agreement to the plan.

Giving the client or client's authorized representative a copy of the plan is necessary to support the client's or client's authorized representative's knowledge of and involvement with the plan.

9550.0091 CLIENT'S RIGHT TO ACCEPT OR REJECT SERVICES.

The need and reasonableness for the standards governing the client's right to accept or reject services as previously demonstrated by the department remain applicable. The changes are editorial and are made either to promote consistency, or to make explicit what has been implicit, or to add a point for clarification.

9550.0092 RIGHT TO A FAIR HEARING.

Subp. 1a. **Notice that application has been denied.** The material added here , with editorial changes to the first two sentences, was originally found at part 9550.0070 which governs applications. The material seemed more closely related to appeals than to applications and was accordingly moved to this part on appeal rights. The original need and reasonableness established by the department still apply.

Subp. 2. **Notice ~~of adverse action~~ that services will be reduced, suspended, or terminated.** Adding Subpart 1a regarding notice of denials of services created the need for some editorial changes to this subpart, which previously included denial of services as an adverse action and now includes only reduction, suspension, or termination of services. Other editorial changes were also necessary to make the subpart consistent with the rest of the rule by, for instance, referring to an authorized representative and changing "recipient" to "client." Changes to the language regarding notice are editorial only except that "person of the client's choice" is substituted for "interested party" in the interest of precision.

Subp 3. **Appealable actions.** It is necessary to amend this subpart to clarify that the authorized representative may file an appeal on an applicant's or client's behalf. It is reasonable to clarify who may file an appeal to facilitate appeal rights and the appeal process. Other changes in the subpart are editorial only and are made for consistency. The rewording at item F which references services identified in the service plan instead of referencing only the service plan was done to more clearly identify what is being

appealed. The service plan as a whole could be acceptable to the client with the exception of one particular service.

Subp. 5. **Notice in suspected fraud cases.** The two changes here are both editorial only. The need and reasonableness of the provision remain as originally established by the department.

9550.0093 COUNTY COMPLIANCE AND APPEAL RIGHTS.

Adding this provision is necessary to give counties notice of their compliance responsibilities and appeal rights in the context of the rule. It is reasonable to give this notice in the rule and to cite applicable statutes so that counties can follow up statutorily on both their rights and responsibilities.

CONCLUSION

The foregoing information demonstrates the need for and reasonableness of the proposed amendments to parts 9550.0010 to 9550.0093.

WITNESSES

If there is a public hearing on the proposed amendments to parts 9550.0010 to 9550.0093, no witnesses other than department staff will present testimony on behalf of the department.

Date: 11/16/95

for MARIA R. GOMEZ
Commissioner