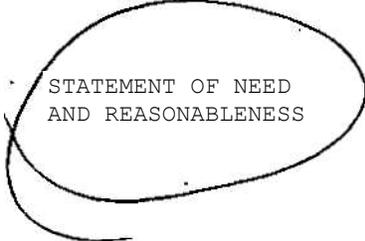


STATE OF MINNESOTA

DEPARTMENT OF HUMAN SERVICES

In the Matter of the Proposed Adoption of Rules of the Department of Human Services Governing County Board Responsibilities for Providing Case Management Services to Persons With Mental Retardation (9525.0015 to 9525.0165)



STATEMENT OF NEED
AND REASONABLENESS

INTRODUCTION

The proposed rule parts 9525,0015 to 9525.0165 establish procedures that govern case management services to persons with mental retardation. The authority for the establishment of the rule parts may be found in Minnesota Statutes) section 256B.503) which gives the commissioner authority to promulgate rules implementing Minnesota Statutes, section 256B.092 (Case Management of Mentally Retarded Persons) subdivisions 1, 1a, 1b, 3, 7, and 8. Additional authority for these rule parts is found in Minnesota Statutes, sections 245.69, subdivision 1; 252.28; 252A.21, subdivision I; and 393.07, subdivision 4. The provisions of rule parts 9525.0015 to 9525.0165 establish a reasonable framework for counties to: (1) determine service needs, (2) authorize services, and (3) reevaluate services currently being provided.

HISTORY OF CASE MANAGEMENT

The concept of case management in mental retardation emerged during the 1960s when a number of consumer and advocacy groups began to aggressively pursue services outside the traditional setting of large facilities and initiated looking toward community service settings to provide an alternative to institutionalization. In 1962 the President's Panel on Mental Retardation submitted the report, "A Proposed Program for National Action to Combat Mental Retardation." The report, in effect, established the basis or "blueprint" for a movement toward community action for persons with mental retardation and set forth concepts that would evolve into the case management model of coordinating services.

As the demand for alternatives continued through the 60s and 70s, federal support dollars, in conjunction with legislation, spurred the further development of services tailored to the needs of the individual in various areas of human services. For example, programs such as the War on Poverty and Medicaid, and legislation supporting the Civil Rights and Equal Opportunity movement established a trend toward federal interest in programs to support persons in need of assistance. During this same period, landmark legal decisions pertaining to the rights of the handicapped reinforced the need for service alternatives and identified the importance of a centrally responsible person to coordinate a complicated array of services to meet

individual needs. [For example: Halderman v. Pennhurst (PA 1977), MARC et. al v. Donald Smith et. al (MI 1978), NYARC v. Rockefeller (New York 1972) and Wyatt v. Hardin (CA 1971) cited in "The Community Imperative: A Refutation of All Arguments in Support of Institutionalizing Anybody Because of Mental Retardation" Center on Human Policy, Syracuse University, Syracuse, New York 1979)]

The first Developmental Disabilities Act was passed by Congress in 1974. In the legislation, case management was first identified as a "priority" service. In subsequent amendments, including the Developmental Disabilities Act of 1984, case management has continued to be identified as a priority service component. During this same period of time, Minnesota and many other states enacted policies and procedures that complemented federal developments. As many states began to take advantage of federal dollars available to support the development of community-based alternatives for persons with mental retardation, case management became a defined service and individualized planning became mandatory.

In 1981, the Minnesota Legislature passed amendments to Minnesota Statutes, section 256E.08, subdivision 1, which granted counties the authority and the responsibility for assessment, protection of safety, health, and well-being, and providing a means of facilitating access to services for the handicapped. Rules promulgated under this statute have provided a basic framework for building a case management system.

RULE HISTORY

The first case management rule for persons with mental retardation was promulgated by the Department of Human Services in 1977 and revised in 1981. This rule was known as Rule 185. The rule set some case management goals but county responsibilities were not clearly laid out. The rule was not strictly enforced and clearly was followed to varying degrees by the 87 counties who were responsible for administering it as was demonstrated in the requests for variances under parts 9525.0015 to 9525.0145 (Emergency).

In October of 1984, rule parts 9525.0015 to 9525.0145 (Emergency Rule 185) were promulgated to implement many of the provisions in chapter 312 of Laws of Minnesota, 1983 and to clarify the provisions of the former rule. The emergency rule basically required the county boards to analyze their current status with regard to the rule provisions, to identify sections with which they could not comply and to develop a plan for reaching compliance.

On June 10, 1985, the Department of Human Services published notice of a Public Hearing on proposed rules relating to case management services to persons with mental retardation to replace the emergency rules. However, in June of 1985, the 1985 Minnesota Legislature passed amendments to Minnesota Statutes, section 256B.092 governing case management of persons with mental retardation. Because these amendments affected the proposed rules and the effective dates of the emergency rules, the Department of Human Services withdrew the rules and cancelled the Public Hearing on the proposed rules.

Proposed permanent rule parts 9525.0015 to 9525.0165 replace the emergency rule and complete the process of developing the framework of case management for persons with mental retardation. The permanent rule parts are designed to be consistent with major funding source requirements and to update the standards by which persons with mental retardation receive services. In particular, the department seeks to update the Minnesota system in light of current standards and trends within the field of mental retardation. Department experts, who have had" experience both in providing case management and directing case managers and/or case management systems, feel the proposed permanent rule establishes minimum standards for the role and functions that counties should provide in their case management services. According to the department experts there are programs throughout the nation that maintain standards equal to or greater than the provisions of this rule, (see exhibit A).

PUBLIC INVOLVEMENT

In accordance with Laws of Minnesota 1983, chapter 312, article 9, section 8, the department initially promulgated parts 9525.0015 to 9525.0165 as an emergency rule. Although the Administrative Procedures Act does not require it, an advisory committee was formed in the spring of 1984 to assist the department in developing the emergency rule. Representatives from seven counties, including three county commissioners, were involved in the committee. The committee met several times and their comments were carefully considered by the department staff. The department and the committee found it necessary to both clarify provisions of the old Rule 185 and add some new provisions to meet the requirements of chapter 312 and ensure consistent implementation of the rule.

When this process was completed the proposed rule was published in the State Register and public comment was accepted for 25 days. Following the comment period the department carefully reviewed the comments received and as a result, made over 50 revisions in the proposed rule. The major effect of the revision process was to relax deadlines, cut paperwork, and establish an implementation process.

Immediately after the emergency rule took effect, the department formed an advisory committee to begin work on the permanent rule. Representatives from county governments, provider organizations, advocacy groups and health organizations were all included on the advisory committee (see exhibit B). The committee was charged with analyzing the provisions of parts 9525.0015 to 9525.0145 (Emergency) and making recommendations for the permanent rule parts based on that analysis.

The advisory committee met from December 13, 1984 to February 9, 1985. Based on comments received during the meetings and written comments submitted following the meetings, numerous revisions were made in the proposed permanent rule, including changes in staff qualifications, contract requirements, planning requirements (deleted), and language relating to the identification of unavailable services.

In September of 1985, the Department of Human Services formed a second advisory committee in order to address the amendments to Minnesota Statutes, section 256B.092 passed by the 1985 Minnesota Legislature. This advisory committee included representatives from county governments, provider organizations, advocacy groups, and health organizations (see Exhibit E). The committee was charged with analyzing Minnesota Statutes, section 256B.092 and the provisions of proposed permanent rules parts 9525.0015 to 9525.0145 that were withdrawn by the Department. From this analysis, the committee was to make recommendations with regard to a permanent rule.

The advisory committee met during the month of September, 1985. Based on the comments received during the meetings and written comments submitted following meetings, numerous revisions were made in the proposed permanent rules, including changes in definitions, county board responsibilities, diagnosis, assessment, screening teams, individual service plan and individual habilitation plan standards, service monitoring standards, quality assurance, and staff qualifications.

IMPLICATIONS OF CASE MANAGEMENT

Case management services and systems have developed over a relatively short period since the first model emerged in 1962. Services to persons with mental retardation have also changed resulting in services with a community orientation instead of the institutional or segregated model. According to Laski and Spitalnik in their study of the implementation of the Pennhurst decision in Pennsylvania a federal district court in 1977 in Halderman v. Pennhurst State School and Hospital 446 F. Supp. 1295 (D.Pa., 1977) stated that "lack of accountability in case management was the central reason for the lack of movement from institution to the community." (Laski & Spitalnik, "A Review of Pennhurst Implementation" Community Services Forum 1979 1 (1), 6, & 8.) This, along with other pieces of major litigation, have repeatedly pointed out the problems that occur when case management fails to function. Studies of community-based family support programs (Allin & Allin The Home Intervention Program: A Service Delivery Program Involving Intensive Home-Based Treatment Intervention With Mentally Retarded/Emotionally Disturbed Individuals and Their Families, Chesterfield VA: Chesterfield Mental Health and Mental Retardation Services, 1982), residential programs using existing housing (Michigan, Kentucky, Nebraska) and vocational programs (Kessler & Strotn, "Vocational Education Alternatives" Mental Retardation (Canada) 1983, 33(2). 22-27) also support case management as a vital ingredient to service programs for persons with mental retardation,

NEED FOR STANDARDS

The case manager has five fundamental roles: administrative, direct service, coordinating, monitoring, and advocacy (Skarnulis 1981 "Case Management Functions Within the Context of a Comprehensive Service System: Where Do They Fit", From: National Conference on Social Welfare, April 15, 1981). The question put forth by Minnesota counties most recently is why

the emergency rule and proposed permanent rule must place such specific terms of performance (prescriptiveness) upon the county case management system. Counties maintain that they are aware of the role case managers must provide, but that local constraints often supersede their ability to complete such tasks. The Department is sensitive to such constraints and limitations, but must also consider the impact case management has on the other services available to persons with mental retardation.

Currently in Minnesota, approximately 250 million dollars in federal, state, and local money is spent on a per annum basis to serve persons with mental retardation. Because the concept of identifying a centrally responsible person to coordinate services (and act as an agent for the county to authorize services) is the method by which the Minnesota Legislature chooses to operate service delivery systems, the case manager is in a position to have a direct impact on the amount of money spent for such services, fly actively and effectively providing case management services as defined in the rule parts, the case manager can reduce and prevent inappropriate use of resources and provide less expensive and more appropriate services for persons with mental retardation. The positive effects of active case management have been proven in other states. For example according to Edwin M. LaFramboise, director of Residential Services, Northeast Michigan Community Mental Health Services, intensive case management services in Michigan not only ensure service delivery but also prevent crises and placement into costly state institutions. For details on Mr. LaFramboise's qualifications see exhibit C.

One way to ensure appropriate delivery of services is to mandate certain standards by which counties must determine needs, provide services, and evaluate those services. The opinions of advocates, counties, consumers, and programmatic experts have supported the need for an accountable means of coordinating services free from the interests of those providing the services. One means of doing this is to strengthen the role of the county social service agency as the administrator of services through a central agent, the case manager. This has been done in Minnesota through parts 9525.0015 to 9525.0145 [Emergency] and continues with the promulgation of the permanent rule. Parts 9525.0015 to 9525.0165 do not constitute actual case management, but do establish a clear framework for case management which the counties must use to provide case management services within a community-based system.

COMPARISON WITH STANDARDS FROM OTHER STATES

One of the main objectives of the department has been to upgrade the delivery of case management services in light of current standards in the field of mental retardation. A survey of states was recently conducted by Shirley Patterson-Schue to compare administrative rules pertaining to case management. States were selected on the basis of the extent to which they are involved in the development of community-based service systems. This method of selection was necessary so that the department was not comparing its system (which is increasingly noninstitutional) to states that have not elected to mandate down sizing of the institutional model. The survey indicates the areas in which each of these states have administrative rules addressing the delivery of case management (see exhibit A).

A review of the survey data indicates that the requirements in the proposed permanent rule parts are reasonable. According to department expert, Shirley Schue, it is also interesting to note that states well-known and respected in the field for their service delivery systems also have the most specific administrative rules pertaining to case management. To illustrate this point the administrative rules from Michigan are attached (see exhibit D).

Michigan has been quite active during the past six or seven years in an effort to close its large facilities for developmentally disabled persons by establishing small group, family-style homes within its communities. During the last five years the state has succeeded in closing several large facilities. To facilitate its efforts Michigan has established a strong case management system with detailed rules. While the department is not suggesting the Michigan system as a model, it is useful to compare the specificity of that state's rules to the provisions in these rule parts. A review of sets of both rules reveals that not only are the Michigan rules more specific about the case management duties but the monitoring requirements are more extensive.

COMPARISON WITH EDUCATION STANDARDS

Throughout this statement a comparison to legislation and regulations pertaining to the education of handicapped children is made. The comparison is valid for several reasons. First, the mentally retarded population has unique needs that may be addressed similarly within both the educational and human service systems. Very often services from the two systems either overlap, are complimentary or require coordination between the school and county agency. (For example, residential placement significantly affects the ability of the school program to provide appropriate services.) Second, federal and state legislation which mandates what services each system must provide have components within, them that are very similar. (For example an examination of the Code of Federal regulations titles 34 and 42 shows that each system is required to provide assessment, individual planning, annual review, periodic monitoring, and consideration to least restrictive environment, and each system employs an interdisciplinary team process in the establishment of services.) Finally, the unique problems of the person with mental retardation extend beyond the usual scope of regular education and/or traditional social work. Frequently, workers in each system must address the issues of life planning and life consultation with the person or the person's family. Legal issues pertaining to least restrictive environment, guardianship, and rights to appropriate service are common ground for the educational and human service systems. Therefore, it is reasonable for this statement of need and reasonableness to include a comparison between the two systems and to try to establish in the rule parts some consistency between the two systems in the approach taken to the planning and delivery of services to persons with mental retardation.

NEED AND RESONABLENESS OF SPECIFIC PROVISIONS

The specific provisions of proposed rule parts 9525.0015 to 9525.0165 are affirmatively presented by the department in the following narrative, as required by Minnesota Statutes, section 256B.503, and in accordance with the provisions of the Minnesota Administrative Procedures Act, Minnesota Statutes, chapter 14 and the rules of the Office of Administrative Hearings.

9525.0015 DEFINITIONS

This rule part defines words and phrases that have a meaning specific to parts 9525.0015 to 9525.0165, that may have several possible interpretations, or that need exact definitions to be consistent with statute. Terms used in a manner consistent with common use in the mental health or human service fields are not defined unless a definition is necessary to clarify the rule,

Subpart 1. Scope. This provision is needed to clarify that the definitions apply to the entire sequence of parts 9525.00-15 to 9525.0165.

Subp. 2. Assessment. Each person determined to be a person with mental retardation is required to receive an "assessment" under Minnesota Statutes, section 256B.092, subdivisions 1 and 1a, to determine the person's service needs. This definition is necessary because "assessment" has a meaning specific to the rule parts. The definition is reasonable because it summarizes the nature and major areas of an assessment described in detail in part 9525.0055. Referencing part 9525.0055 in the definition is a reasonable way of shortening the definition and directing the public to part 9525.0055 for a more detailed description of the terra.

Subp. 3. Advocate. This term is used throughout the rule parts. This definition is necessary because "advocate" has a meaning specific to the rule parts. Persons with or who might have mental retardation often need help in understanding and making choices in matters related to identification of needs and choice of services. Advocates can be helpful in representing the person's interests and rights and assist the person in making important choices, especially if the person has no legal representative or if the person's representative lacks knowledge or expertise in these areas. This definition is reasonable-because it permits designation of an advocate by the person or the person's legal representative for help in understanding and making choices in matters related to needs and services. It is reasonable to require the designation to be in writing to provide evidence of who is authorized to act as an advocate and to avoid a potential conflict of interest between an (unauthorized) advocate and the person with or who might have mental retardation or the person's legal representative.

Subp, 4. Case management services. It is necessary to define the term "case management services" because it refers to a distinct set of functions to be performed in accordance with the rule parts. Minnesota Statutes, section 256B,092, establish requirements for case management services. Also, the term is defined in the Developmental Disabilities Act of 1984, public

Law 98-527, Statutes at Large Volume 98, page 2665, section 102 (11)(H), as "such services to persons with developmental disabilities as will assist them in gaining access to needed social, medical, educational, and other services. Such term includes:

(i) follow-along services which, ensure, through a continuing relationship...between an agency or provider and a person with a developmental disability and the person's immediate relatives or guardians, that the changing needs of the person and the family are recognized and appropriately met; and

(ii) coordination services which provide to persons with developmental disabilities support, access to (and coordination of) other services, information on programs and services, and monitoring of the persons' progress."

It is reasonable to define case management services as it is defined in this subpart because the definition is consistent with the state requirements in section 256B.092 and the federal definition in section 102 (11)(H). In addition, the definition is consistent with the way the term is used by national experts in the mental-retardation field, as indicated in the Final Report of the National Conference on Social Welfare, Grant No. 54-P-7-1542/3-01, submitted to the Administration on Developmental Disabilities, U.S. Department of Health and Human Services, April 15, 1981. This report, entitled Case Management: State of the Art, is an overview of current case management knowledge and experience in the developmental disabilities field, intended as a resource for those faced with decision making at a variety of levels. The report made no attempt to develop a specific, preferred definition of case management, but instead presented various views on the definition by experts, planners, providers, consumers, and agencies.

Subp. 5. Case manager. This definition is necessary to clarify who is responsible for providing the case management services required under Minnesota Statutes, section 256B.092 and sections 256E.03 and 256E.08 of the Community Social Services Act. It is reasonable to use this term since it is consistent with the way the term is used in other department rules, and the duties assigned to case managers in the rule parts are those duties commonly considered case management. It is reasonable to specify that the case manager is "the individual designated by the county board" because county boards are ultimately responsible for providing case management services under Minnesota Statutes, sections 256B.092 and 256E.08, and should therefore have the authority to designate the appropriate staff to provide these services.

Subp. 6. Commissioner. This definition is necessary to clarify the meaning of "commissioner" in the rule parts. The term "commissioner" is used throughout the rule parts as an abbreviation for the commissioner of the Minnesota Department of Human Services or the commissioner's designated representative. The abbreviation is used to shorten the length of the rule parts. It is reasonable to use an abbreviation to delete unnecessary words in a reference frequently repeated in the rule parts.

It is necessary to include within the definition persons to whom the commissioner has the authority to delegate the functions described in the rule parts because it would be physically impossible for the commissioner to perform all of the tasks assigned to the commissioner in the rule parts. It is reasonable to allow this delegation to enable the commissioner to delegate his or her responsibilities to qualified staff who can effectively, manage and control the implementation of the rule parts. Including this delegation of responsibility in the definition also serves to notify interested parties of the delegation.

Subp. 7. Contract. While the term "contract" is a general term of common usage, its definition is necessary because it has a meaning specific to the rule parts. Contracts are, by definition, "legal" instruments. The American Heritage Dictionary, Second College Edition, Houghton Mifflin Co., Boston, 1982, pp. 317-318, defines a contract as "an agreement between two or more parties, especially one that is written and enforceable by law." The term is defined in Black's Law Dictionary, Fifth Edition, West Publishing Co., St. Paul, 1979, pp. 291-2, as "an agreement between two or more persons which creates an obligation to do or not to do a particular thing. Its essentials are competent parties, subject matter, a legal consideration, mutuality of agreement, and mutuality of obligation." Defining a contract as a "legally enforceable agreement" is reasonable because it is consistent with the definitions in legal and nonlegal dictionaries and with the public's understanding of the legal nature of contracts. It is reasonable to define "contract" in terms of an agreement between a county board and provider, or provider and subcontractor, that sets forth the rights and responsibilities of the parties because the use of the term "contract" in these rule parts is limited specifically to contracts between those parties.

Subp. 8. County board. This definition is necessary to provide an abbreviated method of identifying the persons responsible for carrying out many of the duties outlined in the rule parts. It is reasonable to define the term as "the board of commissioners for the county of financial responsibility" to distinguish this county board from the county board of the host county. This distinction is necessary to avoid confusion about which duties are assigned to which county board, in the rule parts. It is reasonable to assign the majority of the duties to the county of financial responsibility, since they affect the finances of that county.

Subp. 9, County of financial responsibility. The definition of county of financial responsibility is necessary to clarify the meaning of subpart 8, and to clearly differentiate between the county where the services are provided (the host county) and the county that is responsible for arranging and billing for, or paying for, the services (the county of financial responsibility). It is also necessary to comply with Minnesota Statutes, section 256E.08, subdivision 7 and 256B.02, which assign responsibilities to counties for arranging and paying for services. This is also a reasonable way of shortening the definition and avoiding unnecessary duplication of statutory language since the statutory definition is quite detailed. This definition is also used in other department rules including the rule governing medical assistance payments for day training and habilitation services (parts 9525.1200 to 9525.1330) and the emergency rule governing county case

management services for persons with mental retardation (parts 9525.0015 to 9525.0145 [Emergency]). It is reasonable to use the same definition to promote consistency between department rules.

Basically the same definition is used in other department rules including as the emergency rule governing county case management services for persons with mental retardation (parts 9525.0015 to 9525.0145 [Emergency]) and the rule governing medical assistance payments for day training and habilitation services (parts 9525.1200 to 9525.1330). It is reasonable to use the same definition to maintain consistency between all mental retardation rules.

Subp. 10. Department. The definition of "department" is necessary to clarify that the specific department referred to in the rule parts is the Minnesota Department of Human Services. Substituting "department" for the full name of the department is a reasonable way of shortening the rule parts.

Subp. 11. Home and community-based services. This term is used throughout the rule parts and is necessary to identify a specific set of services provided to persons with mental retardation. It is reasonable to limit the defined services to services "authorized under United States Code title 42, section 1396 et seq., and authorized in the waiver granted by the United States Department of Health and Human Services," because only authorized services can be reimbursed using medical assistance money under the waiver. This set of service is only funded under medical assistance; therefore, it is necessary to precisely define the services. It is reasonable to reference the rule part in which the services are defined to avoid an unnecessary duplication of the specific definitions while providing a quick reference for anyone who wants to know more about a specific service.

Subp. 12. Host county. This term is necessary to distinguish between the county which is financially responsible for provision of home and community-based services to a client and the county in which the services are provided (see subpart 9). It is reasonable to use the term "host county" to designate the county in which the services are provided because it is consistent with the way the term is used in other department rules, is consistent with the common usage of the word "host," and is a term commonly used and understood by county boards and providers in Minnesota.

Subp. 13. Individual habilitation plan. This definition is necessary because the term has a meaning specific to the rule parts. It is reasonable to define the term by referencing part 9525.0105, because this rule part describes the development of individual habilitation plans in very specific terms. Defining the term by summarizing, instead of referencing part 9525.0105, would result in an oversimplification of its meaning and omit essential elements of an individual habilitation plan.

Subp. 14. Individual service plan. This definition is necessary because the term has a meaning specific to the rule parts. Individual service plans are required under Minnesota Statutes, section 256B.092. A definition is needed to clarify what is meant by this requirement. It is reasonable to define the term by referencing part 9525.0085, because this rule part describes the development of individual service plans in very specific

terms. Defining the term by summarizing, instead of referencing part 9525.0085, would result in an oversimplification of its meaning and omit essential elements of an individual service plan,

Subp. 15. Interdisciplinary team. This definition is necessary to clarify who is considered part of an interdisciplinary team. It is reasonable to define who is considered part of the team because the interdisciplinary team is assigned major responsibilities under the rule parts, including developing the individual habilitation plan, conducting periodic reviews and recommending changes in services. It is important to specify who is responsible for these duties. It is reasonable that the interdisciplinary team be composed of the case manager, the person with mental retardation, the person's legal representative and advocate, if any, and representatives of all providers providing services set forth in the individual service plan because these parties are either directly responsible for or directly affected by the integration and coordination of services provided. Because the team is composed of those most familiar with the person with mental retardation and mental retardation professionals, it is reasonable that they jointly perform the duties mentioned above to increase the likelihood that relevant issues will be discussed. This definition is consistent with the definition of interdisciplinary team found in parts 9525.0210 to 9525.0430. It is reasonable to use a similar definition to promote consistency between rules and to avoid unnecessary changes in the established service system.

Subp. 16. Intermediate care facility for the mentally retarded (IGF/MR). This term is used throughout the rule parts to describe a specific type of services provided to persons with mental retardation. It is necessary to define the term to clarify for all affected parties what type of facilities are included in the definition. It is reasonable to define the type of facility on the basis of licensing and certification because licensing and certification are required to operate an ICF/MR in Minnesota and it is easy to ascertain if a facility meets these criteria.

This is also a reasonable way of shortening the length of the definition and avoiding unnecessary duplication of statutory language.

The term "intermediate care facility for the mentally retarded" is a generally accepted term used by federal and state governments and providers. (For example, the term is used in United States Code, title 42, sections 1396, et seq., Code of Federal Regulations, title 42, section 442.400 et seq., Minnesota Statutes, section 256B.501 and other department rules including part 9525.1210 and 12 MCAR, section 2.05302 [Temporary]). Use of the acronym "ICF/MR" is a reasonable way to shorten the length of the rule parts.

Subp. 17. Least restrictive environment. It is necessary to define "least restrictive environment" because the term is used throughout the rule parts to refer to a specific characteristic of setting in which a person with mental retardation receives services. Minnesota Statutes, section 256B.092, subdivision 8, paragraph (c) mandates that the "most normal and least restrictive setting that is consistent with treatment needs" be identified by screening teams. In addition, Minnesota Statutes, section

256E.08, subdivision 1, requires the provision of services "directed at the goal of attaining the highest level of independent functioning appropriate to the individual." Section 504 of the Rehabilitation Act of 1973, Public Law 93-112, United States Code, title 29, section 794 prohibits segregation of persons from the rest of society unless the necessity for segregation can be proven.

The definition is reasonable because it is consistent with the federal and state requirements and interpretations stated above. Defining "least restrictive environment" in terms of physical surroundings, daily schedule, amount of supervision, frequency of intervention, degree of physical assistance, degree of decision-making power, freedom of movement, normal scheduling of time, and age appropriateness is necessary to clarify what criteria must be considered when authorizing and evaluating services.

These criteria were contained in the emergency rule parts and have been modified in response to comments received on the emergency rule and comments received from the permanent rule advisory committee.

Subp. 18. Legal representative. The term "legal representative" is used throughout the rule parts. All written notices and information provided to persons with or who might have mental retardation are also provided to the person's legal representative. The legal representative also participates with or represents the interests of the person in matters concerning the provision of services to the person. This definition is necessary to clarify who has these rights and responsibilities. It is reasonable that the legal representative of a person under 18 years of age with or who might have mental retardation be the parent or parents (if any) of the person, because parents are legally responsible for the welfare of their child, regardless of the child's mental condition, until the child reaches the age of 18. It is reasonable that the legal representative be a court-appointed guardian or conservator for a person over 18 years of age or person under 18 years of age whose parents cannot or will not act as a legal representative, because court-appointed guardians and conservators are, by definition, legally responsible for taking care of and managing the property and rights of another person. See Black's Law Dictionary, Fifth Edition, West Publishing Co., St. Paul, 1979, p. 277 (definition of "conservator") and p. 635 (definition of "guardian").

Subp. 19. Need determination. To comply with Minnesota Statutes, section 252.28, a need determination must be made. This definition is necessary because the term has a meaning specific to the rule parts and the statute. The definition is reasonable because it clarifies that the need determination is made under part 9525.0145, and provides a concise summary of the nature of the determination. The county board's and the commissioner's need determination is described in detail in part 9525.0145, subpart 5. Referencing part 9525.0145 in the definition is a reasonable way of shortening the definition and directing the public to part 9525.0145 for a more detailed description of the term.

Subp. 20. Person with mental retardation. This term is used throughout the rule parts to describe persons who have a particular condition that entitles them to receive case management services. It is necessary to

define this group of persons so that they can be distinguished from other persons who might apply for services from local social service agencies, and because parts 9525.0015 to 9525.0165 refer specifically to services for persons with mental retardation.

This definition is reasonable because the term is similarly defined in the Minnesota Mental Retardation Protection Act, Minnesota Statutes, section 252.02, subdivision 2, and in Classification In Mental Retardation, American Association on Mental Deficiency. Additionally, this definition is in line with criteria established by the Social Security Administration in the August 28, 1985, edition of the Federal Register, Part V, 20 CFR Part 404, (Vol. 50, No. 167) pages 35068-35069. It is reasonable to include a condition manifested prior to a persons 22nd birthday because this criteria is consistent with section 102(7)(B) of the Developmental Disabilities Act of 1984, Public Law Number 98-527, Volume 98, U. S. Statutes at Large, p. 2662, et seq.

Item B is needed in order to establish criteria for very young children with whom it may not be possible or advisable to diagnose as a person with mental retardation. This is reasonable so that young children with severe developmental delays may receive services (and) this is consistent with professional practices used by licensed psychologists and school systems providing programs to prekindergarten children.

The term has been changed from "mentally retarded person" to "person with mental retardation" to reflect changes in the terminology used in the field of mental retardation and to stress that mental retardation is a condition a person may have rather than a type of person.

Subp. 21. Person who might have mental retardation. This term is used throughout the rule parts to refer to persons who might be persons with mental retardation but have not been diagnosed. It is necessary to define the term because county boards are responsible for providing certain services to persons with or who might have mental retardation. Without a definition of the term, the rule parts would be overly vague, because one could argue that all persons "might" have mental retardation. Therefore, this definition is necessary to avoid vagueness and to clarify the specific meaning of the term as it applies to these rule parts. The rule parts set forth responsibilities of county boards for providing case management services to persons diagnosed as having mental retardation. Defining "person who might have mental retardation" as a person undergoing a diagnosis requires provision of this service only to persons who have requested or have been referred for case management services. This is reasonable because it would be an unreasonable burden on county boards, and probably impossible, to require identification of persons who "might" have mental retardation, but have not requested case management services.

Subp. 22. Physical plant. This definition is necessary to clarify the meaning of an essential part of the definition of an ICF/MR. Because the term ICF/MR is used throughout these rule parts, it is important that the definition of ICF/MR is clearly understood. Therefore, this definition is needed. In the definition of ICF/MR, physical plants are licensed as supervised living facilities under Minnesota Statutes, chapter 144, and programs

providing services to persons with mental retardation are licensed under Minnesota Statutes, section 252.28. Together, a physical plant and program are certified by the Minnesota Department of Health as an ICF/MR. The definition of physical plant given in this subpart fits with that definition. It is reasonable because it is consistent with standard definitions of "physical plant" in common use by the public, in other Minnesota Statutes, and in department rules such as 12 MCAR § 2.05302 [Temporary].

Subp. 23. Provider. The term "provider" is used throughout the rule parts. The term "provider" has many meanings. This definition is necessary to clarify that the rule parts apply only to providers of services to persons with mental retardation under the rule parts and not to providers of other services. It is reasonable to limit the term "provider" to those either licensed by the state or approved by the county board to stress that services must meet established standards. This requirement is consistent with the statutory responsibilities of the state and counties in providing case management services, and with Minnesota Statutes, chapter 256E (the Community Social Services Act), and Minnesota Statutes, section 256B.092 requirements concerning the provision of services and payments to service providers.

Subp. 24. Provider Implementation Plan. It is necessary to define provider implementation plan since this term is often confused with the Individual Habilitation Plan (IHP). It is reasonable to define it as such since licensing and certification standards require providers to maintain detailed plans. It is reasonable to base these provider plans on the IHP since the IHP represents the overall plan which specifies how services designated in the ISP will be provided and coordinated among all service providers, and because the providers of service must agree as a condition of their contract with the county to provide services in accordance with the ISP (part 9525.0085, subpart 2.C).

Subp. 25. Public agency. This definition is necessary because the term "public agency" has a meaning specific to these rule parts. Part 9525.0035 does not permit a county board to purchase case management services for a person with or who might have mental retardation from a provider of other services for that person unless the county board itself or another "public agency" provides the services. It is reasonable to include county boards within this definition because county boards are ultimately responsible for the provision of case management services to persons with mental retardation under Minnesota Statutes, sections 256B.092 and 256E.08. It is reasonable to include public health nursing services within this definition because under section 145.12, they act under the direction of county boards of health or public health nursing committees appointed by county boards. It is reasonable to include human service boards in this definition because, under section 402.04, they are delegated duties and act under the direction of the commissioners of health or human services. It is reasonable to include local boards of health in this definition because under section 145.01, they act under the direction of the commissioner of health. Permitting only those agencies acting under the direction of commissioners of health or human services or county boards to provide case management services to persons with or who might have mental retardation at the same time

they are providing other services to the person with mental retardation is reasonable because these agencies are under government control and conflicts of interest created in a profit situation are less likely to occur.

Subp. 26. Qualified mental retardation professional. This definition is necessary because the rule parts require that some actions be performed by a "qualified mental retardation professional." Screening teams established under Minnesota Statutes, section 256B.092, subdivision 7, evaluate a person's need for home and community-based services under part 9525.0075. Both the statute and rule part require that the screening team consist of the case manager, the client, a parent or guardian as legally appropriate, and a qualified mental retardation professional. Defining a qualified mental retardation professional as a person who meets the qualifications in Code of Federal Regulations, title 42, section 442.401, is both necessary and reasonable because this is the same definition of the term in Minnesota Statutes, section 256B.092, subdivision 7. It is reasonable to define "qualified mental retardation professional" by referencing the Code of Federal Regulations section so that the rule parts will be in conformance with the Code of Federal Regulations. This is also a reasonable way of shortening the definition and avoiding unnecessary duplication of regulation language since the regulation definition is quite detailed.

Subp. 27. Quarterly evaluation. This definition is necessary because providers are required to conduct quarterly evaluations under part 9525.0095, subpart 1, and this definition is needed to clarify what constitutes a quarterly evaluation. In addition, part 9525.0105, subpart 6, requires case managers to review quarterly evaluations, records, and reports gathered by each provider at least semiannually. A definition of "quarterly evaluation" is necessary to clarify what is reviewed under part 9525.0105, subpart 6, and to inform the public of the importance of quarterly evaluations. It is reasonable to require the quarterly evaluation to be in writing to provide evidence of the evaluation, to provide a history in the case record of programs and methodologies that have been used, and to maintain data on the progress or lack of progress with a particular person. Quarterly evaluations are used by the case manager as a monitoring tool to aid in evaluating whether the services are achieving results, whether significant progress is being made, and whether services in the person's individual service plan or individual habilitation plan are still needed or should be changed or discontinued. In addition, the evaluation process, of which the quarterly evaluation is a key component, promotes efficient management of public funds and services.

Subp. 28. Redetermination of need. To comply with Minnesota Statutes, section 252.23, the need for services for persons with mental retardation must be redetermined biennially. This definition is necessary because the term "redetermination of need" has a specific meaning in the rule parts and the statute. Under part 9525.0145, subpart 7, every two years the county board must submit to the commissioner a recommendation on the redetermination of need for each service located in the county which is licensed by the commissioner, except foster care. This definition is reasonable because it clarifies when the redetermination is made and summarizes the nature of the redetermination. Redetermination of need is described in detail in part

9525.0145. Therefore, referencing part 9525.0145 in the definition is a reasonable way of shortening the definition and directing the public to part 9525.0145 for a more detailed description of the term.

Subp. 29. Regional service specialist. This definition is necessary to clarify who the regional service specialist is, and what responsibilities he or she has under the rule parts. It is reasonable to have the regional service specialist designated by the commissioner and working under the direction of the commissioner because the regional service specialist is a department employee. It is reasonable for the commissioner to delegate the duties in items A to D to the regional services specialist to effectively carry out these duties in the various regions of the state. (There are eight regional service specialists employed by the department to work in specific regions.) It is reasonable to call this individual a regional service specialist because he or she is assigned to work in a specific region of the state and has specialized knowledge about mental retardation services.

Items A to D are necessary to comply with Minnesota Statutes, section 256B.092, subdivision 2. It is reasonable to delegate responsibility for these duties in this definition to notify all interested parties that the commissioner has assigned these duties to the regional services specialists.

Subp. 30. Residential service. This definition is necessary because residential service has a meaning specific to the rule parts. These services are subject to specific monitoring requirements under part 9525.0105, subpart 6, must be visited prior to authorization of these services under part 9525.0085, subpart 2, and the need for these services must be determined and redetermined under part 9525.0145. Because these services are subject to specific requirements under the rule parts, it is reasonable to define them in this part to inform providers and counties of the type of services that must meet these requirements. It is reasonable to define these services as "shelter, food and training..." because shelter, food and training are the major components of a residential service.

This definition is similar to the definition of residential facility used in the preceding case management rule for persons with mental retardation (parts 9525.0010 to 9525.0100) except that this definition specifies the type of services included in the training component and includes services approved by the county. It is reasonable to use similar definitions whenever possible to minimize confusion. It is also reasonable to make some adjustments to improve clarity and accommodate system changes. Inclusion of services "approved by the county" is necessary because under the approved federal waiver some new residential services have been started which are not currently licensed but must be approved by the county.

Subp. 31. Screening team. The establishment of a screening team is required by Minnesota Statutes, section 256B.092, subdivision 7. This definition is necessary to clarify who is considered part of the required screening team because the screening team is responsible for evaluating service needs under Minnesota Statutes, section 256B.092, subdivision 3 and the rule parts, and because this evaluation affects the person's eligibility for

services under the rule parts. It is reasonable to define the term by referencing Minnesota Statutes, section 256B.092, subdivision 7, because the members of the screening team are clearly defined in the statutes, and by referencing the statutes, there is no possibility of inconsistency between the rule parts and the statutes.

Subp. 32. Service. The term "service" is used repeatedly throughout the rule parts. This definition is necessary to clarify that the term applies only to services designed to achieve the results specified in the individual service plan and not to any other services. The definition is reasonable because it clarifies that all services provided must be planned and linked by the results they are designed to achieve. It is reasonable to limit the definition to services designed to achieve the results specified in an individual service plan because these are the services that have been identified as needed and are the only services that can be authorized by the case manager in accordance with part 9525.0085 and Minnesota Statutes, section 256B.092, subdivision 3.

Subp. 33. Training and habilitation services. The term "day training and habilitation services" is used throughout the rule parts to identify a specific type of services that may be provided to persons with mental retardation. This definition is necessary to clarify the service type as well as the activities which are included within the service. Minnesota Statutes, section 256B.501, subdivision 1, paragraph (d), and Minnesota Statutes, chapter 256E, (the Community Social Services Act) set requirements for the provision of day training and habilitation services and generally, the location where these services shall be provided. Moreover, Minnesota Statutes, section 2568.501, subdivision 5, specifically addresses to whom these services will be provided and the conditions under which services will be reimbursed.

9525.0025 APPLICABILITY AND PURPOSE

Subpart 1. Applicability. This section states the applicability of parts 9525.0015 to 9525.0165. Promulgation of the rule parts was mandated by Minnesota Statutes, section 252.28 and Laws of Minnesota 1983, Chapter 312, Article 9, Section 8 [Minnesota Statutes, Section 256B.503], which requires the commissioner to promulgate temporary and permanent rules to implement Sections 1 to 7. Moreover, Minnesota Statutes, Section 256B.092 requires counties to provide case management and other services to persons with or who might have mental retardation. County boards are also responsible for providing social services to persons with mental retardation under Minnesota Statutes, section 256E.08, subdivision 1. Because case managers are county employees and execute their duties under the authority of the county board, and because the county board is ultimately responsible for these functions, it is necessary to specify county board responsibilities for case management in order to implement Sections 1 to 7 and comply with Minnesota Statutes, section 256E.08.

It is necessary to state the applicability of parts 9525.0015 to 9525.0165 so that county boards can ascertain their role and responsibilities with regard to the rule parts, and so providers, clients, and

other interested parties can determine whether or not the rule parts apply to their situation. This section is reasonable because it assists the public in determining the relevance of, and interest in, the rule parts.

Subp. 2. Purpose. This section states the purpose of parts 9525.0015 to 9525.0165. It is necessary to inform the public of the purpose for promulgation of the rule parts and of the department's policies regarding implementation of the rule parts. It is reasonable because it is consistent with the intent and policy of the Minnesota Mental Retardation Protection Act, Minnesota Statutes, section 252A.01 to 252A.21. The policy of the act is stated in section 252A.01, which authorizes the commissioner of human services to "supervise those mentally retarded citizens who are unable to fully provide for their own needs and to protect such mentally retarded persons from violation of their human and civil rights by assuring that such individuals receive the full range of needed social, financial, residential and habilitative services to which they are lawfully entitled,"

This section is also consistent with the intent and policy of Minnesota Statutes, chapter 256E (the Community Social Services Act). Minnesota Statutes, section 256E.02, states the purpose of the Community Social Services Act: to establish a system of planning for and providing community social services administered by the boards of county commissioners of each county under the supervision of the commissioner of human services (emphasis added). Section 256E.08, subdivision 1 restates the responsibilities of county boards for the administration, planning, and funding of community social services, and authorizes county boards to contract for or directly provide "an assessment of the needs of each person applying for services which estimates the nature and extent of the problem to be addressed and identifies the means available to meet the person's need for services" and "protection for safety, health or well-being by providing services directed at the goal of attaining the highest level of independent functioning appropriate to the individual preferably without removing those persons from their homes."

It is reasonable to specify that county boards are authorized and required to determine the adequacy and quality of services and that only services identified as needed in the individual service plan should be provided or paid for to clarify the department's policy to county boards, providers, clients, and other interested parties in a manner consistent with the Minnesota Mental Retardation and Community Social Services Acts and Minnesota Statutes, section 256B. The requirement that only services identified as needed in the individual service plan may be provided or paid for is a reasonable method of promoting cost effectiveness and the efficient management of public funds. It is reasonable to require county boards to determine the adequacy and quality of services because county boards have more contact with clients and providers than the commissioner, and therefore have more opportunities to evaluate the adequacy and quality of services provided to clients as required under the provisions of these rule parts. Moreover, this provision is consistent with Minnesota Statutes, section 256B.092, subdivisions 1 and 3, which state that "before any services shall be rendered...the county...shall conduct a diagnostic evaluation...If the client is diagnosed mentally retarded, that county must conduct a needs assessment, develop an individual service plan..."and that "county case

managers...shall authorize and terminate services...in accordance with individual service plans." Because the county case manager is responsible for developing the individual service plan, he or she is also in the best position to evaluate whether the services are provided in accordance with the individual service plan.

It is necessary to state that the rule parts do not require expenditures of money not available to county boards for case management and other services for persons with or who might have mental retardation to clarify that the rule parts apply only to expenditures of money available for case management and other services for persons with or who might have mental retardation. This subpart is reasonable because it assists the public in determining the relevance of, and its interest in, the rule parts,

9525.0035 COUNTY BOARD RESPONSIBILITIES

This part is necessary to clarify the overall responsibilities of the county board. It is reasonable to lay out the overall responsibilities in the beginning of the rule parts so that the other provisions can be read in context of these responsibilities.

Subpart 1. Provision of case management services. This subpart is necessary to clarify when and for whom the county board must provide case management services. It is also necessary to clarify that, although the county board cannot delegate its responsibility for providing case management services, it may fulfill these requirements either directly, or under contract with another county board or a provider. It is reasonable to require the county board to provide case management in accordance with parts 9525.0015 to 9525.0165, because the county board is given responsibility for providing these services under Minnesota Statutes, sections 256B.092, 256B.503, and 256E.08. It is reasonable to limit county board responsibility to persons "who reside in the county at the time they apply for services" since this is consistent with the definition of county of financial responsibility in Minnesota Statutes, section 256B.02, subdivision 3 and section 256E.08, subdivision 7. It is reasonable to allow the county board to contract with another county board for case management services to more easily and efficiently serve persons placed in other counties. It is reasonable to allow the county board to contract with a provider of case management services because the county board might not have the resources to provide the services or might have a provider of case management services in the county who is able to provide a better service or the same service at a lower price. Allowing the county board to contract for these services is consistent with the policy established in Minnesota Statutes, section 256E.08, subdivision 4, which states that "the county board may contract... with a human services board, a multi-county board established by a joint powers agreement, other political subdivisions, or private organizations."

Subp. 2. Designation of case manager. This subpart is necessary in order to inform the county board that a case manager must be designated who meets the requirements of part 9525.0155 as well as to implement the case management services required in Minnesota Statutes, section 256B.092, and clarify the county board's delegation of some of the responsibilities

assigned to the county board in Minnesota Statutes, section 256E.08, subdivision 1. A specific time line for the designation of a case manager is necessary to inform interested persons that these services must be provided in an orderly and timely fashion and to define what is considered timely. It is reasonable to require the county board to designate a case manager so that one person may be held accountable for being aware of the client's needs and coordinating the provision of the needed services. Assigning specific responsibilities for a case to one individual is a common management practice which has been used successfully at the county level for child protection and other services for many years.

It is reasonable to require the county board to notify the person and the person's legal representative and advocate of the name, telephone number, and location of the designated case manager so that they will know who to contact with any questions regarding the services. A time line for the notice is needed to prevent unnecessary delays in the provision of case management services to the person with mental retardation.

It is reasonable to require that the county board designate the case manager within ten working days because until someone is assigned responsibility for the case, no other services can be provided. It is reasonable to allow ten working days to balance the person's need for services with the county workload. According to department staff who have had experience directing case management services, two weeks should be enough time for the county board to designate a case manager and for the clerical staff to send out the written notification. The conclusion is supported by the fact that in the county variance requests submitted to the department under 9525.0015 to 9525.0145 [Emergency], the majority of the counties indicated that they were currently complying with this requirement or would be able to comply within a short period of time.

Subp. 3. Purchase of case management services. This subpart is necessary to eliminate conflicts the case manager might otherwise experience between his or her interests as a provider of other services or as an employee of a person who provides other services and his or her responsibilities as a case manager, such as the authorization of services, monitoring of services, or termination of services. It is reasonable to require this separation of duties to enable the case manager to look out for the interests of the person with mental retardation without having his or her own interests enter into the decision-making process. It is reasonable to exempt the county board and other public agencies from the requirement as long as some safeguards are in place because the county board or public agency does not have the same level of economic interest in the specific services as a private provider does. It is reasonable to require the administration of case management and other services to be separate to avoid possible conflicts of interest due to employee evaluations, staffing changes, or funding changes.

The provision within this subpart that allows a county board to apply for a variance of separation of case management duties is reasonable because it recognizes the fact that separating the administration of case management may result in undue hardship for the county board and also recognizes that there may be other methods of preventing conflict of interest within a certain county. It is reasonable to define the criteria under which the com-

missioner will grant a variance because it informs the county board of the conditions under which the commissioner will approve or deny a variance request. If the county board's variance request demonstrates to the commissioner that the criteria in items A. to C. have been met, the commissioner shall grant the variance.

Item A is reasonable because it recognizes that in some counties the separation of case management duties may place an undue hardship on the county board. Therefore, if a county board can demonstrate evidence that this is indeed the case, this variance condition will be considered met.

Item B is reasonable because it recognizes that counties may have developed an alternative method of preventing conflict of interest. Therefore, if the county board can demonstrate evidence of this fact, this variance condition will be considered met.

Item C is reasonable because it recognizes that the person providing case management services may not be involved in the provision of other services to the client. Therefore, if the county board can demonstrate that no other services will be provided to the client by the case manager, this variance condition will be considered met,

Subp. 4. Provision of services by the case manager. This subpart is necessary to clarify that actions taken on behalf of the person with mental retardation must be timely and that ongoing coordination of the services must be provided. It is reasonable to begin provision of case management services immediately to eliminate unnecessary delays in the provision of services. It is reasonable to continue providing services until case management services are terminated under subpart 7, because that subpart specifies the conditions under which case management services may be discontinued and therefore decreases the likelihood that case management services will be arbitrarily terminated. It is reasonable to delay provision of services until a case manager is designated because only services the case manager identifies as needed can be provided under these rule parts and Minnesota Statutes, section 256B.092, subdivision 3. It is reasonable to discontinue other services after the case management services are terminated under subpart 7, because to prudently use available resources, services must only be provided to persons who need them,

Subp. 5. Procedures governing minimum standards for case management services. This subpart is necessary to identify the services that must be provided to implement Minnesota Statutes, section 256B.092 and to clarify the case manager's role in providing these services. It is reasonable to list the essential case management services in one subpart so that all affected parties can easily determine what case management services should be provided. This will make the rule parts easier to comply with, easier to enforce, and will aid in appeals. The actions required in this subpart are necessary to determine if the person requesting services is eligible for the services, to determine what services are needed, to plan and provide the needed services, to determine the continuing need for and appropriateness of the services and to terminate services which are determined to be no longer needed. It is necessary to require counties to establish written procedures in order to comply with the requirement established in Minnesota Statutes, section 256B.503(c).

It is necessary to complete the diagnosis to comply with the requirements in Minnesota Statutes, sections 256B.092, subdivision 1 and 256B.503 (c). It is reasonable to require completion and review of the diagnosis under part 9525.0055, because that is the part in which specific requirements for the diagnosis are set forth. It is also necessary to complete a diagnosis to determine if the person is a person with mental retardation and, therefore, eligible to receive the other, services governed by this rule part.

Items A and B are necessary to comply with the requirements in Minnesota Statutes, section 256B.092, which states that the "county must conduct a needs assessment." It is reasonable to require the assessment to be provided under part 9525.0055, because that part governs assessments. It is reasonable to require conformance with the standards in Part 9525.0055 to standardize the way that assessments are conducted throughout the state. In a state-supervised/county-administered system such as Minnesota's it is reasonable for the supervisor (the state) to set standards for the provision of services so that persons in different counties can expect the same standard of service for protecting the health, safety, and well-being of all of the state's mentally retarded citizens. The Legislature mandated this role by giving the commissioner rulemaking authority under Minnesota Statutes, section 256B.503 and standard setting authority under Minnesota Statutes, section 256E.05, Further justification of the assessment requirements follows in the rationale for part 9525.0055.

It is necessary to conduct a reassessment of service needs to determine if the services initially authorized are still needed or whether they should be changed or discontinued. It is reasonable to reference the rule part governing reassessment because more detail on the reassessment process is given in that rule part. Further justification of the reassessment requirements follows in the rationale for part 9525,0055, subpart 2.

Item C is necessary to comply with the requirements in Minnesota Statutes, section 256B.092, subdivisions 7, 8, and 9. It is reasonable to require a screening team meeting if the case manager determines that the person might need the level of care provided by an ICF/MR because under Minnesota Statutes, section 256B.092, subdivision 9, payment shall not be provided for a person placed in an ICF/MR or a similar level of service in the community prior to being screened by the screening team. It is reasonable to require the case manager to convene and chair the team because the case manager is responsible for coordinating services and is in a position to know whether a screening is needed. It is reasonable to reference part 9525.0065 because that is the part which governs screening team functions. Further justification of the screening team requirements follows in the rationale for part 9525.0065.

Item D is necessary to comply with the requirements in Minnesota Statutes, section 256B.092, subdivision 1, which states that "the county must...develop an individual service plan." It is reasonable to base the service plan on the results of the assessment and the screening team findings because services based on the assessed needs of the person with mental retardation and in agreement with the findings of the screening team are

most likely to best meet the needs of the person with mental retardation. It is reasonable to reference part 9525.0075 because that is the part which sets forth the requirements for an individual service plan.

Item E is necessary to comply with the requirements in Minnesota Statutes, section 256B.092, subdivision 1b which identify the specific criteria which must be included within ISP and IHP. It is reasonable to base the habilitation plan on the results of the diagnosis and assessment because it is a requirement of subdivision 1b and because it will most likely meet the needs of the person with mental retardation. It is reasonable to reference part 9525.0105, because that is the part which sets forth the requirements of the IHP.

Item F is necessary to comply with the requirements in Minnesota Statutes, section 256B.092, subdivision 1a which requires that methods for evaluating and monitoring services be identified in the individual service plan and the individual habilitation plan. It is reasonable to require that services be monitored in order to determine if the money spent on services for persons with mental retardation is being used properly and to evaluate whether the authorized services should be changed to more effectively use the money to achieve the goals in the ISP and the IHP of the person with mental retardation. It is reasonable to reference part 9525.0115 because that is the part which sets forth the standards for monitoring services.

Item G is necessary to comply with Minnesota Statutes, section 256B.092, which states that "if a client is diagnosed mentally retarded, that county must conduct a needs assessment, develop an individual service plan and authorize a placement for services," This requirement is reasonable because it is consistent with the way social services are authorized in the counties at present and places responsibility for authorizing placements at the local level which is consistent with the Community Social Services Act and Minnesota Statutes, section 256B.092, subdivision 3.

Item H is necessary to comply with Minnesota Statutes, section 256B.092, subdivision 3. It is reasonable to terminate services when they are no longer needed to contain program costs and foster independence. Unnecessary services can interfere with the person's progress in necessary services by taking away from the time and energy available to devote to these services.

Items I and J are necessary to provide a mechanism by which the person with mental retardation or the person's legal advocate can appeal the decision of the contents of the ISP and the IHP if the person or legal advocate disagree with the contents of the plan. It is reasonable to include this provision in order to afford the client with due process in an area of disagreement which governs the services and treatment a client will be receiving. It is also reasonable to reference parts 9525.0075 to 9525.0105 because these are the parts which set forth the standards for the development of the ISP and the IHP.

Subp. 6. Authorization of services. This subpart is necessary to so that only necessary services are provided as required in Minnesota Statutes, section 256B.092, subdivision 3, and so that services are provided

in a planned and documented way. It is reasonable to state that only services set forth in the individual service plan shall be authorized to clarify what services are considered necessary. It is reasonable to use the individual service plan to identify which services are necessary because the individual service plan is based on the assessment of the person with mental retardation's needs conducted under part 9525.0065 and is the document which determines the direction that services shall take in addressing the needs of the individual. It is reasonable to require provision of services in a planned and documented way to promote the proper management of limited state resources.

It is necessary to allow emergency authorization of services not in the individual service plan to enable the county board to respond quickly in an emergency. It is reasonable to limit the provision of services authorized in an emergency to the duration of the emergency so that services which were only needed during the emergency are not provided after the emergency. It is necessary to require the case manager to review the individual service plan and the cause of the emergency so that any modifications to the individual service plan needed to protect the health, safety, and development of the person with mental retardation may be made. It is reasonable to require the review to be conducted within 10 working days to verify that the emergency services are meeting the needs of the person with mental retardation and to ensure that ineffective or unnecessary services are not continued. Ten working days is a reasonable amount of time because it allows the case manager to work the review into his or her schedule without unduly delaying the review. This time line is also reasonable because within 10 working days the situation might have time to stabilize thereby making the situation easier to assess.

It is necessary to require that the modifications to the individual service plan be made in accordance with part 9525.0085 to improve consistency between the various parts of the individual service plan, to encourage thoughtful changes, and to increase the likelihood that the modifications will be compatible with other parts of the individual service plan.

It is reasonable to require the modifications to be made in accordance with part 9525.0075, subpart 6, because that subpart governs modifications to the individual service plan during an annual review. It is reasonable to require the case manager to make modifications to the individual service plan because of an emergency in the same way to improve the clarification of the individual service plan and to avoid developing duplicate procedures for two very similar processes. The method for modifying the individual service plan outlined in part 9525.0075, subpart 6, requires participation by the persons involved in developing the plan and a review of certain information. Using the same procedure in an emergency is important to encourage consideration of all available information and viewpoints.

Subp. 7. Termination of case management duties. This subpart is necessary to clearly state that the case manager's involvement is meant to be long-term, to facilitate an orderly transfer of case management duties to a new case manager and to clarify that the person with mental retardation, the legal representative, and the advocate must be informed when the case manager is changed. It is reasonable to state that case management duties

are retained until the county board designates another case manager so that there is continuity in the provision of case management services to the person with mental retardation.

It is reasonable to require that the person with mental retardation, the legal representative, and the advocate receive written notification of the name, telephone number, and location of the new case manager so that these persons have access to the new case manager as needed. It is reasonable to require a written notice to provide documentation that the notice was provided and to eliminate the need for numerous phone calls. It is reasonable to require the notice to be sent within five working days to limit the amount of time that the person with mental retardation, the legal representative and the advocate do not have ready access to the case manager. Five working days is a reasonable amount of time to allow for notification because it requires prompt action by the county board while allowing a reasonable amount of time for a mailing. A period of time significantly longer than five working days may, in some cases, result in a delay in the provision of case management services.

This subpart is also necessary in order to define the conditions under which case management services may be terminated. It is reasonable to define these conditions to prevent the arbitrary termination of case management services and to allow termination when appropriate, thereby encouraging the prudent use of available resources.

Item A is reasonable because it supports the person's right to choice. It is appropriate for the legal representative to make this choice for the person with mental retardation when necessary. This item is also a reasonable way to promote the proper use of limited state resources. It is necessary to require a written request so that there is documentation of the person's choice in case of an appeal. Requiring a written request increases the likelihood that the person thought out the decision and demonstrates that he or she felt serious enough about the decision to put it in writing.

Item B is reasonable because officially discontinuing case management services after the eligible person's death updates the county records and promotes accurate recordkeeping.

Item C is reasonable because the purpose of these rule parts is to provide services to persons with mental retardation and not to other persons.

Item D is reasonable because it supports the person's right to choice. For practical purposes, it is also reasonable not to attempt to serve people who don't want services.

Item E is reasonable because only necessary services may be provided under Minnesota Statutes, section 256B.092, subdivision 3.

This part is necessary to comply with Minnesota Statutes, section 256B.092, which states that "the county of financial responsibility shall conduct a diagnostic evaluation in order, to determine whether the person is or may be mentally retarded." It is also necessary because services funded for persons with mental retardation should only be provided to persons diagnosed as having mental retardation. It is reasonable to target services provided under the rule parts to persons diagnosed as having mental retardation because services are provided under other rule parts to persons with other conditions and other sources of funding are available for services to persons with other conditions. Also, because limited dollars are available for services to person with mental retardation it is reasonable to make sure that these dollars are spent appropriately. A 35 working day period is a reasonable time frame in which to determine whether or not the person might be a person with mental retardation. Thirty-five working days is approximately seven weeks in which to obtain diagnosis. A shorter time frame would severely affect the ability of the county to obtain information, since professional consultants outside the agency staff may have to be used, appointments will have to be established, and reports will need to be written. To extend beyond this seven-week period would create unnecessary delay for the individual requesting services, since after a diagnosis is established, there must be an assessment of need, screening, and ISP development before the services can even be initiated.

Subpart 1. Initial Diagnosis. This subpart is necessary to clarify that certain factors must be considered whenever a diagnosis of mental retardation is made. It is reasonable to require consideration of the same factors in each case to decrease discrepancies in the way that persons with mental retardation are diagnosed and create a more reliable information base. The factors included are necessary for a thorough review of the person's condition. It is reasonable to include the factors in items A and B because they are considered part of the definition of mental retardation by the American Association on Mental Deficiency. The other items are reasonable because they can be used to determine whether the person's test results accurately reflect his or her mental abilities. It is reasonable to conduct a thorough review to prevent situations in which a person is diagnosed as a person with mental retardation when the person has another condition which affects the results of a certain type of test. Labeling someone as a person with mental retardation is an action that has many consequences which will affect the person for the rest of his or her life. Therefore, it is reasonable to require that the determination be based on a thorough examination by a qualified professional of the person's condition and the physical and environmental factors which affect the person's condition.

Items A and B are necessary to clarify that the diagnosis must be conducted by a qualified person and to clarify at what point a person qualifies for services as a person with mental retardation. It is reasonable to require that a psychiatrist, licensed psychologist, or licensed consulting psychologist conduct the diagnosis because they are professionally trained in this area. This requirement is also consistent with the requirements in Minnesota Statutes, section 147.02 and 148.88 to 148.98, which require minimum qualifications and licensure of professionals responsible for making a diagnosis of mental retardation.

It is reasonable to require a determination of significantly subaverage intellectual functioning and deficits in adaptive behavior as part of the diagnosis of mental retardation because it is a standard part of the definition of mental retardation as defined in federal law. For example, Code of Federal Regulations, title 34, section 300.5 (4) states that "mentally retarded means significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the developmental period, which adversely affects a child's educational performance" and The Developmental Disabilities Act of 1984, Section 102 (7) states that "developmental disability (mental retardation is recognized as a developmental disability) means a severe chronic disability which:

A. is attributed to a mental or physical impairment(s)...

D. results in substantial functional limitations in three or more areas of major life activity."

According to the American Association on Mental Deficiency in the publication, Classification in Mental Retardation (1983 Revision) it is currently accepted practice to define a significantly subaverage score as an Intelligence Quotient of 70, which is basically equivalent to a score two or more standard deviations below the mean on a standardized intelligence test. Likewise, the Social Security Administration uses: (1) a valid verbal performance or full scale IQ of 59 or less; (2) a valid verbal, performance, or full scale IQ of 60 to 69 inclusive and a physical or other mental impairment imposing additional and significant work-related limitation of function; or (3) a valid verbal, performance, or full scale IQ of 60 to 69 inclusive...with two of the following; (a) marked restriction of activities of daily living; or (b) marked difficulties in maintaining social functioning; or (c) deficiencies of concentration, persistence, or pace resulting in frequent failure to complete tasks in a timely manner; or (d) repeated episodes of deterioration or decompensation in work or work-like settings which cause the individual to withdraw from that situation or to experience exacerbation of signs and symptoms (which may include deterioration of adaptive behaviors).

As stated in the federal legislation and regulations cited above, consideration of both adaptive skills and intellectual functioning is necessary to determine if a person has mental retardation. It is reasonable to require that the diagnosis include both elements to increase the accuracy of the determination.

Item C is necessary to determine to what extent the results of the tests in Items A and B are due to factors other than mental retardation. It is reasonable to include the factors listed in this item because they all can have a significant impact on the person's intellectual functioning and adaptive behavior. It is reasonable to include these factors to clarify what was required in the previous rule. The previous rule, part 9525.0060, required a report on the client's social history and adjustment. This rule part clarifies what should be included in a social history. This requirement is also similar to the standard for ICF/MRs in the Code of Federal

Regulations, title 42, sections 442.494 and 442.495, which requires provision of social services and participation by a social worker in the evaluation (initial and continuing) of the needs of the individual.

It is reasonable to require that a social worker or public health nurse experienced in working with persons with mental retardation prepare the written report because they are most likely to be familiar with the factors that may have contributed to the person's mental retardation and are trained to assess the impact of these factors and write reports.

It is necessary to complete a written report to document that all factors have been considered in a form that can be used in determining whether the person is eligible for services under these rule parts. It is also reasonable because the written report evaluating these factors can be used to develop the individual service plan and the individual habilitation plan, modify the plans and document why certain services were selected.

Item D is necessary to determine if there are any medical conditions that may result in poor performance on standardized tests of intellectual functioning and adaptive behavior which should be considered in the diagnosis. Identification of these conditions is reasonable because the services needed might be significantly different if the person's scores are reflective of medical conditions. Historically persons with associated conditions have been diagnosed as "mentally retarded" either because they manifested "clinical signs and symptoms" of these associated conditions or may have scored poorly on a standardized test due to a physical inability to complete test items (i.e., some seizures, such as absence seizures, are hardly noticeable; however the manifestation of these seizures during a test session may result in a score which is not reflective of the person's abilities. Also, most tests are not designed to accommodate the deficits in physical movement or speech of a person with cerebral palsy. Very often psychologists must extrapolate scores).

In completing or reviewing a diagnosis, one must also consider medical factors such as medication regimes associated with medical conditions which may have a significant effect on the diagnosis.

A medical examination was required by the preceding rule governing case management for persons with mental retardation in part 9525.0060. Participation by a physician is also required as appropriate by the standards established in the Code of Federal Regulations, title 42, section 442.475 for beginning, monitoring, and follow-up on individualized habilitation programs. It is reasonable to include this requirement to continue practices started under the preceding rule and to maintain consistency with the requirements in the Code of Federal Regulations.

This subpart also specifies time frames during which diagnostic information is considered current. It is necessary to specify time frames so that the information used in making a diagnosis is germane to the current status of the person and accurately reflects any significant changes in the person's life. It is reasonable to require that items A to C be completed within the preceding 90 days because these evaluations will most critically affect the diagnosis. It is reasonable to select 90 days as the time frame

because it is consistent with the time frame for the interdisciplinary professional evaluation required before admission to an ICF/MR established in title 42, section 435.1009(c) of the Code of Federal Regulations, fly using a time frame consistent with the time frame in the Code of Federal Regulations, the rule eliminates the need to update information if the person is diagnosed as having mental retardation, and is recommended for placement in an ICF/MR.

A time frame for a physical is necessary so that decisions are based on the person's current medical condition. It is reasonable to use 12 months as a time frame for a physical since persons without ongoing health problems do not generally obtain a "physical" more than one time per year. The department did receive some comments objecting to the required annual physical. However, annual physicals are required in the Code of Federal Regulations, title 42, section 442.477 because of the higher frequency of associated conditions requiring medical monitoring which occur among persons with mental retardation as compared to persons without mental retardation, annual physicals are both necessary and reasonable. The high frequency of associated conditions may be attributed in part to biomedical conditions relating to the etiology, i.e., Downs Syndrome, Phenylketonuria (PKU), or hypothyroidism, or to conditions relating to brain injury or trauma such as seizure disorders or cerebral palsy. Because of a higher frequency of associated conditions that require medical monitoring and the subsequent increase in the use of medications, it is reasonable to require an annual medical evaluation at which time the person's condition can be reassessed, medication levels can be assessed and adjusted as appropriate, and the effect of the medical conditions on the diagnosis can be evaluated.

The rule does not state that a case manager cannot require a more recent physical. It is reasonable to allow the case manager to determine if the person has specific health problems which warrant a more recent physicals, or if the person has experienced a significant change which might be attributable to a health problem.

Subp. 2. Review of diagnosis. This subpart is necessary to determine if the person receiving services is still functioning as a person with mental retardation and is therefore, entitled to services under these rule parts, and receiving services that are appropriate for the person's condition. It is reasonable to require that the case manager review the diagnosis once every three years because the person may have changed significantly in that amount of time. This time period is less restrictive than the requirement in the preceding rule, part 9525.0060 (which requires a review every two years). The three-year period is comparable to the requirement for an educational assessment (a process similar to diagnosis under these rule parts) stated in Minnesota Rules, part 3525.2600. This subpart does not preclude more frequent reviews, but does allow the case manager to exercise some discretion in determining when a review is necessary. It is reasonable to allow the case manager this discretion so that he or she can schedule review time based on the needs of the persons served. For example, young children's diagnoses need more frequent reviews, while adults' diagnoses may be relatively stable.

It is reasonable to assign the duty of reviewing the diagnosis to the case manager because the case manager has access to the data on the person's case which is needed to determine if the person needs to be reevaluated and because the case manager is responsible for placing the person in appropriate services.

Subp. 3. Exception. This subpart is necessary to eliminate unnecessary reviews of a diagnosis that is unlikely to change. It is reasonable to only require a review of the diagnosis once every six years for a person who meets the criteria in this subpart because the person has been receiving services for a long period of time and he or she is likely to have already experienced most of the significant changes that can be expected. It is reasonable to limit this exception to adults because children are still developing their mental capacities and their diagnoses are most likely to change. It is reasonable to require a review every six years because there may be changes in testing and training practices which would affect the diagnosis. Because this subpart requires a review at least once every six years but does not preclude more frequent reviews, the case manager is given the discretion to determine if an earlier review is needed.

9525.0055 ASSESSMENT OF INDIVIDUAL SERVICE NEEDS

This part is necessary to clarify the meaning of the requirement in Minnesota Statutes, section 256B.092, subdivision 1, which states that the "county must conduct a needs assessment." It is reasonable to clarify in rule what a needs assessment is to ensure that all persons with mental retardation in the state are assessed similarly.

Subpart 1. Initial Assessment of Individual Needs. This subpart is necessary to clarify who must receive an assessment, who must supervise the assessment, and what the assessment must contain.

It is reasonable to limit provision of the assessment to persons with mental retardation because it is consistent with the purpose section of the rule parts which states that the purpose is "to ensure that persons with mental retardation receive services that are designed and arranged to meet their assessed individual service needs." This requirement is also consistent with Minnesota Statutes, section 256B.092, subdivision 1, which states that "If a client is diagnosed mentally retarded, that county must conduct a needs assessment."

It is necessary to specify what the assessment must address so that all factors that affect the services to be provided are considered. It is reasonable to state what must be included in assessment information, since such information reflects the major life areas which would reflect the areas of functional needs that an individual might have. It is reasonable to address the areas in Items A to J because they are similar to the factors considered by programs in other states such as Michigan, Texas, Kentucky, and Nebraska. These areas are also consistent with the assessment areas required for an assessment under parts 9525.0210 to 9525.0430 (Residential Programs and Services for Mentally Retarded Persons). The preceding rule governing case management services for persons with mental retardation

(parts 9525.0010 to 9525.0100) also required that the assessment include specific areas similar to the requirements in this subpart. it is reasonable to continue to give guidance to the county board in a similar way through this subpart. These items were discussed by the advisory committee and modified to reflect the committee members concerns.

It is reasonable to require supervision of the assessment by a qualified mental retardation specialist because the assessment must be conducted in a manner which is appropriate for persons with mental retardation and which takes into consideration the unique characteristics of mental retardation and related disabilities to properly identify the person's needs. A qualified mental retardation specialist as defined in the Code of Federal Regulations, title 42, section 442.402 must have specialized training or one year of experience in treating or working with persons with mental retardation in addition to completion of specific post-high school programs and is therefore knowledgeable about these concerns and qualified to supervise the assessment.

Subp. 2. Reassessment of medical status and ongoing health care needs. It is necessary to obtain a medical assessment of the person's ongoing health needs for the reassessment because the person's health needs have an effect on the person's service needs and must be considered when determining what other areas to reassess. Health needs are a particularly important consideration given the requirement under the Welsch Consent Decree that the state move persons with mental retardation out of the state hospital and into the community. Many of these people have medical conditions which require careful monitoring and have a profound effect on the type of services needed. It is reasonable to require that the medical evaluation be completed annually because it is the standard established for ICF/MRs in the Code of Federal Regulations, title 42, section 435.1009. It is reasonable to adopt a standard that is familiar to the county boards and providers and treats all persons with mental retardation equally.

Subp. 3. Reassessment of other individual needs. This subpart is necessary to clarify when a reassessment is needed. The preceding rule parts 9525.0010 to 9525.0100 stated that the assessment was to be "followed at whatever intervals are needed by periodic reassessments." This subpart clarifies the requirement in the preceding rule by specifying that the case manager "shall annually determine which of the areas...should be reassessed." It is reasonable to assign this task to the case manager because the case manager has knowledge of the person's progress over the past year and access to his or her records. It is reasonable to require an annual determination because many of these areas could change over the course of a year and updated information is needed for the annual review of the individual service plan required in part 9525.0075, subpart 6. It is reasonable to only reassess areas the case manager determines should be reassessed to eliminate the cost of unnecessary reassessments where no change has occurred. It is reasonable to require that the determination be made "in consultation with the person with mental retardation and the person's legal representative and advocate if any" to clarify that their input must be considered in the determination. It is reasonable to require their input because they may have access to information about changes in the person's assessed needs which may not be apparent to the case manager.

Subp. 4. Time line for reassessment. It is reasonable to require that evaluations be completed no more than 90 days before the annual service plan since this evaluation would indicate any changes that may have occurred (since the last assessments were completed) in relation to the needs of the person. The reassessment of need must be considered whenever the annual review of the ISP is conducted, so that the person may continue to receive services that are appropriate to the existing needs.

It is necessary to state that "this subpart shall not prohibit more frequent reassessments" to clarify that the case manager may at his or her discretion choose to reassess the person's service needs more frequently. It is reasonable to allow this discretion because the case manager may have some cases where the person is undergoing more changes (for example, new cases or children) and more frequent reassessments may be needed to identify the services needed.

9525.0065 SCREENING TEAMS STANDARDS

Minnesota Statutes, section 256B.092, subdivision 7, requires counties to establish screening teams to make evaluations of the need for home and community-based services of persons who are entitled to care in an ICF/MR or for whom there is a reasonable indication that they might need the services in the near future. Subdivision 8 lists screening team duties, and subdivision 9 requires, with certain exceptions, that recipients of services in an ICF/MR be screened by the screening team prior to reimbursing providers. This part is included in the rule in order to provide continuity with the statute. It is necessary to include this part so that the public and counties can determine the requirements relating to screening teams and can determine how screening teams fit into the case management system without having to refer to both the statute and the rule.

Subpart 1. Convening screening team. This subpart is necessary to provide continuity with and clarify Minnesota Statutes, section 256B.092, subdivision 7. Subdivision 7 requires that screening teams be "under the direction of" the case manager. Therefore, it is reasonable that the screening team be convened by the person directing the screening team. Subdivision 7 requires counties to establish screening teams to make evaluations of the need for home and community-based services of persons who might need the level of care provided by an ICF/MR or who might need the level of care provided by an ICF/MR "in the future." It is necessary to clarify what "in the near future" means to avoid conflicting interpretations by state and county staff. This subpart clarifies the phrase "in the near future" by replacing it with "within one year."

Item A is reasonable because the time period is consistent with the time period used to determine eligibility for home and community-based services under parts 9525.1800 to 9525.1930. It is also reasonable because it is difficult to make reasonable predictions of service needs beyond a one-year period due to the multitude of factors relating to the status of the person which can change over the course of a year. This interpretation of "in the near future" is currently being used under the emergency rules and has been accepted by the screening teams and the counties. It is

reasonable to continue to use this time frame to avoid unnecessary changes in the system. The time frame also corresponds with the time frame used for reassessments and reviews of individual service plans. Using the same time frame promotes consistency within the rule parts.

Item B is necessary to clarify that the members of the screening team, the regional service specialist) and the advocate, if any, must be notified in advance of, and encouraged to attend, the screening team meetings. It is a reasonable way to facilitate informed involvement in the case management process, consistent with Minnesota Statutes, section 256B.092, subdivision 2. Subdivision 7 permits others to be invited to attend screening team meetings. It is reasonable to require that the consent of the person with mental retardation or the person's legal representative must be obtained before other persons may be allowed to attend the meeting, because the meetings involve reviews and discussions of the person's medical records and other confidential or private information subject to the Data Practices Act, Minnesota Statutes, chapter 13.

It is necessary to require item C. in order that efforts be made to convene the screening team at a time and place which allows for participation by all members of the screening team to comply with Minnesota Statutes, section 256B.092, subdivision 7. The subdivision specifically states who must be on the screening team.

It is reasonable to require written records of the meetings in order to provide documented evidence of the screening team's findings so they are available for use in developing the individual service plan as required under part 9525.0075, subpart 2.

Item E is necessary because Minnesota Statutes, section 256B.092, subdivision 7, requires that a registered nurse be designated as either the case manager or the qualified mental retardation professional for mentally retarded individuals who have overriding health care needs. Therefore, it is reasonable to include this rule provision in order to comply with subdivision 7 and to alert interested and affected parties of this statutory requirement. It is also reasonable to clarify what "overriding health care needs" means in order to avoid conflicting interpretations by state and county staff. By illustrating that "overriding health care needs" means a medical condition which limits the placement options available to the person with mental retardation because the condition interferes with the person's adaption of learning skills and is potentially life threatening, conflicting interpretations should be eliminated. The advisory committee on this rule discussed a variety of options in attempting to define overriding health concerns, including identification of specific medical conditions or treatments. Since the committee felt that such a list might tend to be too inflexible, it was decided that a functional definition would be more appropriate, and would better represent the intent of the legislation.

Subp. 2. Screening team review. This subpart is necessary to clarify the nature of the screening team's review and to comply with Minnesota Statutes, section 256B.092, subdivision 3. It is necessary to review the information required in items A to D to make an informed decision about the person's service needs. When determining service needs it is important to

consider objective data such as standardized tests, assessment results, and other collected data as well as subjective views of the person's needs. This combination of objective and subjective data is designed to provide the screening team with sufficient information to make an informed decision about the person's needs.

Item A is reasonable because a review of diagnostic data is required under subdivision 8(a). It is reasonable to reference the diagnosis conducted under part 9525.0045 because it provides a detailed description of the diagnosis, and the reference is a reasonable way of shortening this item and directing the public to part 9525.0045 for the more detailed description.

Item B is reasonable because a review of assessment data is required under subdivision 8(b). The reference to part 9525.0055 is a reasonable way of shortening this item and directing the public to part 9525.0055 for a more detailed description of the assessment.

Item C is reasonable because a review and identification of data comprising and used in developing the individual service plan is required under Minnesota Statutes, section 256B.092, subdivision 8(c). The individual service plan described in detail in part 9525.0075 identifies services needed by the person based on the assessment under part 9525.0055, and provides for the delivery of services in the least restrictive environment.

Item D is reasonable because a review and identification of noninstitutional data is required under Minnesota Statutes, section 256B.092, subdivision 8(d).

Subp. 3. Screening team findings. This subpart is necessary to clarify what determinations are required by the screening team.

Items A and B are reasonable because Minnesota Statutes, section 256B.092, subdivisions 8(d), (e), and (f) require the screening team, to identify other noninstitutional public assistance or social services that may prevent or delay long-term residential placement, determine whether a client is in serious need of long-term residential care, and make recommendations regarding placement and payment for various social service, public assistance, and community-based services and placements.

Item C is a reasonable way to alert screening team members to their responsibility to complete the waived services screening document and properly administer services provided under the federal waiver plan, as required by Minnesota Statutes, section 256B.092, subdivision 5.

Subp. 4. Consumer choice. This subpart is necessary to clarify who chooses the services provided to a person with mental retardation when the person is eligible for ICF/MR services and home and community-based services under parts 9525.1800 to 9525.1930. Allowing the person with mental retardation and the person's legal representative to choose between the ICF/MR services and the home and community-based services recommended by the screening team, is a reasonable way to comply with Code of Federal Regulations, title 42, section 431.51, which implements Section 1902 (a) (23) of the Social Security Act (United States Code, title 42).

Subp. 5. Authorization of payment for ICF/MR and home and community-based services. This subpart is necessary to promote the efficient expenditure of public funds for ICF/MR services and to comply with Minnesota Statutes, section 256B.092, subdivision 9. It is reasonable to have the regional service specialist review the rates and authorize the payment for all home and community-based and ICF/MR services, because the regional service specialist is designated by the commissioner to authorize medical assistance payment for these services.

Items A and B are reasonable because they are consistent with the requirements of subdivisions 9(a), (b), and (c), and because parts 9525.0015 to 9525.0165 authorize these services only to persons diagnosed as having mental retardation and requiring care in an ICF/MR.

Item C is reasonable because it is consistent with the requirements of subdivision 9(d).

Item D is reasonable because it requires authorization of payment by the commissioner through the regional service specialist. This delegation of responsibility is reasonable because to effectively manage and control the implementation of this subpart the commissioner must be able to delegate his or her responsibilities to qualified staff.

Subp. 6. Use of screening team recommendations in commitment proceedings. This subpart is necessary to inform the person with mental retardation, the person's legal representative, and other interested parties of the confidentiality and access to the screening team's recommendations and report. Screening teams are required to "make recommendations to a court as may be needed to assist the court in making commitments of mentally retarded persons" under Minnesota Statutes, section 256B.092, subdivision 8(g). Release of this information must be made in accordance with the Data Practices Act, Minnesota Statutes, chapter 13.

9525.0075 STANDARDS FOR DEVELOPMENT OF THE INDIVIDUAL SERVICE PLAN

This part is necessary to clarify the meaning of Minnesota Statutes, section 256B.092, subdivision 1, which states that the "county must...develop an individual service plan." It is reasonable to clarify in rule what must be in an individual service plan to provide a minimum standard for these plans. It is reasonable to establish a minimum standard for the individual service plan because the plan is used to determine what services shall be authorized and terminated. (See Minnesota Statutes, section 256B.092, subdivision 3).

The development of adequate individual service plans is the key to the provision of services to persons with mental retardation. Minnesota has required individual service plans for all social service clients since the mid-1970s and established the individual service plan as the vehicle for determining what services are needed and provided to persons with mental retardation. Use of the individual service plan for determining service needs was reinforced by the court in 1983 in *Swenson v. Minnesota* 329 N.W. 2d 320, (Minn. 1983). This emphasis on the individual service plan for persons with mental retardation has followed closely the development of annual

school plans for handicapped children. Many of the specifics of the individual service plan have developed as a direct result of federal guidelines established as the state accepted federal dollars to support programs.

Individualized planning has also been the subject of litigation. For example, in *Halderman v. Pennhurst*, 446 F. Supp, 1326 (D.pa. 1977) the court stated that "the commonwealth and county defendants...are permanently enjoined to develop and to provide a written individualized program plan." (Laski & Spitalnik "A Review of Pennhurst Implementation" Community Services Forum 1979 1 (1), 1, 6, & 8),

References to the individual service plan are made throughout these rule parts as well as in Minnesota Rules, parts 9525.0210 to 9525.0430, 9525.0900 to 9525.1020, 9525.1200 to 9525.1330, and 9525.1800 to 9525.1930 which govern the delivery of services to persons with mental retardation. It is reasonable for the rule to specify procedures for developing an individual service plan and the contents of the ISP so that further decisions made, i.e., selection of the providers, development of the IHP, are based on the ISP and on adequate and accurate information.

Subpart 1. Individual Service Plan Development. This subpart is necessary to clarify who shall participate in developing an individual service plan and what information must be considered; it also identifies for whom a plan must be developed and implemented; who shall be responsible for the development of the plan, and who shall participate in the development of the ISP. It is reasonable to develop and implement a plan for only those persons with mental retardation who have requested, or whose Legal representative has requested services. It is also reasonable for the case manager to be responsible for the development of the plan since this is one of the primary functions of case management services. Moreover, it is reasonable for the person with mental retardation, the legal representative and advocate, if any, to participate since they have specific reasons for requesting services and planned services directly affect the life of the individual. The legal representative is legally authorized to make decisions concerning the participation of the individual in the services; the advocate has been authorized in writing by the individual or the individual's legal representative to assist in making decisions. Also, it is reasonable to have the plan reviewed by a QMRP since this is consistent with the role established for the QMRP whenever an individual is screened for services under the criteria specified in 9525.0065.

It is reasonable to involve the same persons in the development of the individual service plan so that the screening and individual service plan development can occur concurrently whenever possible. Screening the person and developing the individual service plan concurrently would save time for the case manager and the members of the screening team.

It is reasonable to include the advocate in the development of the individual service plan and to allow the advocate to attend the screening team meeting because the advocate as defined in part 9525.0015 is authorized "to help the person with mental retardation...understand and make choices in matters related to the identification of needs and choice of services,"

It is reasonable to allow the case manager to invite other persons to provide information to be used in developing the ISP so that all available information may be considered in the development of the ISP. It is reasonable to reference Minnesota Statutes, section 13.05, subdivision 4, to inform the case manager that private and confidential data must be disseminated properly.

Subp. 2. Screening Team Involvement. This subpart is needed in order to identify the relationship between the recommendations and outcomes of a screening team meeting and the ISP. It is reasonable to create a specific subpart to address the screening team because screening teams are required under Minnesota Statutes, section 256B.092, subdivisions 7 and 8. This statutory requirement establishes a "process" for seeking authorization of funding under the Medical Assistance Program. This "process," however, is so similar to the process used to develop an ISP, that it is logical to tie the review done by a screening team with the outcomes developed in the ISP.

It is reasonable to require screening team involvement because the requirements for review by the screening team of diagnostic and assessment information, the identification of needs, and recommendations for services are the same activities required to complete an ISP. The participants with the exception of the QRMP are identical, therefore, time can be saved by using the screening team to assist in the development of an ISP.

Subp. 3. Required Review. It is necessary to require use of documentation specified in items A and B because this information is needed to determine what services are appropriate for the person with mental retardation. This requirement is reasonable because this documentation is readily available to the case manager if the case manager has complied with the provisions of parts 9525.0045 and 9525.0055.

Item C is reasonable since any past ISP would provide useful information in developing or updating a new ISP.

Item D is a reasonable way of encouraging the case manager to compile any information that can be used in making informed decisions about the ISP. This item is reasonable because it opens up the process so that other available information besides that required in items must be considered at the discretion of the case manager.

This review requirement in A, B, C, and D is also consistent with the requirement in Minnesota Statutes, section 256B.092, subdivision 8, which specifies what information the screening team must review. It is of reasonable to require a review of the same information for the development of an ISP because both processes influence determination of what shall be provided to the person with mental retardation.

Item E is necessary to meet "the goal of attaining the highest level of independent functioning" (Minnesota Statutes, section 256E.08, subdivision 1). It is reasonable to discuss this goal in terms of the "least restrictive environment" because this terra is defined in the rule parts and it is commonly used in the field of mental retardation. In addition, Section 110(2) of the Developmental Disabilities Act of 1984 states

that "Rights of persons with developmental disabilities [including mental retardation] include that treatment, services, and habilitation...should be provided in the setting that is least restrictive of the person's personal liberty." Requiring provision of services in the least restrictive environment is also consistent with the requirements for education program plans as stated in part 3525.2900, subpart 2. It is reasonable to require the same considerations in designing individual service plans because many of the same persons are served and using the same standards promotes consistency in services between the departments. In addition, item E is necessary to, comply with the requirement that services be provided "in the least restrictive environment" as stated in the rationale for item C, and with the requirement in Minnesota Statutes, section 256E.08, regarding independent functioning. The definition of least restrictive environment in part 9525.0015 requires that services be "designed to increase interactions between persons with mental retardation and persons who do not have disabilities."

Item F is necessary to comply with Minnesota Statutes, section 256E.08, subdivision 1, which requires the county board to protect the "safety, health, or well-being [of clients] by providing services directed at the goal of attaining the highest level of independent functioning appropriate to the individual..."

Item F is also necessary because food and shelter are essential to the person's health and safety and an important part of a complete individual service plan. It is reasonable to specify how these important needs will be met because some people with mental retardation will need special foods and special living arrangements and the individual service plan is the appropriate place to specify what is adequate for their needs.

Item G is necessary to clarify that the appropriate training and habilitation services for the person with mental retardation must be identified in the individual service plan. It is necessary to identify what services in the ISP so that only services that meet the needs of the individual in the least restrictive manner are provided. Providing such services is consistent with the "goal of attaining the highest level of independent functioning" as stated in Minnesota Statutes, section 256E.08, subdivision 1. It is reasonable to specify the appropriate training and habilitation services in the individual service plan in light of *Swenson v. Minnesota*, 329 NW 2d 320 (Minn. 1983), which establishes the ISP as the vehicle for determining the amount of developmental achievement center (DAC) services (a type of day training and habilitation service) that must be provided.

It is reasonable to require services "appropriate to the person's chronological age" to reinforce the principle of serving persons with mental retardation in the least restrictive environment and to preserve the dignity of the persons with mental retardation.

It is reasonable to require that the individual service plan be designed to result in "employment and increased financial independence" to assist the person with mental retardation to "attain the highest level of independent functioning appropriate to the individual" as required in Minnesota Statutes, section 256E.08, subdivision 1, decrease dependency on

the state, and, decrease the cost of providing services to the person with mental retardation. Requiring goals of employment and financial independence is consistent with other state efforts with persons who have developmental disabilities such as the grant program administered by the Council, on Developmental Disabilities. (Programs funded under these grants have been successful in training and finding employment for persons with varying levels of mental retardation.) These goals are also consistent with the movement in the nation to employ persons with mental retardation in regular work sites. An example of this trend might be best reflected in the awarding of ten federal grants to states intending to demonstrate training programs to develop supported employment opportunities to persons with severe impairments. The training and employment of persons with mental retardation in regular work sites is one of the best examples of use of normalization principles. Not only does it provide a meaningful way of teaching work skills, but it also promotes the perception that handicapped persons do not need to be in segregated programs.

Item H. The goal of serving persons with mental retardation in the least restrictive environment is reasonably achieved by using services used by the general public. Doing so also complies with Minnesota Statutes, section 363.03, subdivision 3, which makes it an unfair discriminatory practice to deny any person the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of a place of public accommodation because of disability and with Section 504 of the Federal Rehabilitation Act of 1973 (United States Code, title 29, section 794), which provides that no otherwise handicapped individual shall solely by reason of his handicap, be excluded from participation in, be denied benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance or under any program conducted by any executive agency or by the U.S. Postal Service (see United States Code, title 29, section 794 [Supplementary Pamphlet, 1979]). Designing the individual service plan to result in use of existing community agencies also prepares the person with mental retardation to function independently in the community. In addition, use of existing community agencies is a reasonable way to provide services in a cost-effective manner because it uses existing services and resources rather than creating new services and requiring additional resources.

Item I is necessary to comply with Minnesota Statutes, section 256E.08, subdivision 1, which requires that the county board protect the safety, health, or well-being of persons with mental retardation "by providing services...preferably without removing those persons from their homes." This statute acknowledges the importance of the home environment which includes the person's family, neighbors, and friends. It is, therefore, reasonable to involve the family, neighbors, and friends in providing services. Involving the family, neighbors, and friends in providing services is also a reasonable way of providing services that would not otherwise be available, controlling the costs of available services, and providing a more normal environment. Section 122(6)(A) of the Developmental Disabilities Act of 1984 also requires state plans to provide for the maximum use of all available community resources. Family, neighbors, and friends are important community resources. It is reasonable to encourage use of this resource by requiring the case manager to design the individual service plan to involve family, neighbors, and friends.

Subp. 4. Content Standards for the ISPs. This subpart is necessary to clarify what must be covered in the individual service plan. It is reasonable to specify in this subpart what must be covered in the individual service plan to improve consistency in the way that individual service plans are developed and to inform interested persons about the requirements for individual service plans. The required content is similar to the content of an individual education program plan as required in part 3525.2900. It is reasonable to require similar information because both plans are used to govern the provision and evaluation of services.

Items A and B are necessary to link services to areas of need or deficit required under Minnesota Statutes, section 256B.092, subdivision 1b(1). This requirement is also consistent with Minnesota Statutes, section 256B.092, subdivision 3, which states that "Medical assistance services not needed shall not be authorized by county agencies." It is reasonable to extend this requirement to all services by requiring the individual service plan to describe the assessment information used to identify the person's needs for services because providing services for which there is no assessed need is costly and does not promote independent functioning as required in Minnesota Statutes, section 256E.08, subdivision 1. Having a description of the assessment information included in the individual service plan provides access to this information for the person with mental retardation and his or her representative and provides a means of checking to see that the proposed services address all of the person's assessed needs. It is reasonable to make this information available to the person with mental retardation and his or her representatives because the information affects the services available to the person with mental retardation.

Item C is necessary to clearly establish what services are needed to meet the assessed needs. According to Minnesota Statutes, section 256B.092, services shall be authorized and terminated "in accordance with individual service plans." To fulfill this requirement, the case manager must have developed individual service plans which clearly specify the services needed. It is reasonable to include type, amount, and frequency because these variables affect who can provide the services, the effectiveness and the cost of the services, provided and should be given careful consideration when authorizing services. Specifying type, amount, and frequency in the individual service plan provides the case manager with criteria for determining whether the provider is providing services needed to meet the person's needs.

Item D is necessary to address the unmet needs of the persons with mental retardation in the county. This item is consistent with the requirements in parts 9525.0010 to 9525.0100 (the preceding rule governing case management services to persons with mental retardation) which stated that the county board "shall identify in priority of need order the social services that are not available to its mental retardation population" and that the county board "shall take the lead in planning and developing services not available." It is reasonable to link the planning and development process to the individual service plan to encourage development based on identified service needs. This requirement is also consistent with Section 110(1) of the Developmental Disabilities Act of 1984, which specifically states that persons with developmental disabilities (mental retardation is a

developmental disability) have a right to appropriate treatment, services, and habilitation for such disabilities. The act further states in Section 110(2) that the treatment, services, and habilitation should be designed to maximize the developmental potential of the persons and should be provided in the setting that is least restrictive of the person's personal liberty. It is reasonable to require the development of appropriate individual service plans and needed services to be consistent with the requirements in federal law.

To develop meaningful service plans for individuals it is important to look at all the person's needs, not just the needs for which services are currently available. It is consistent with Minnesota Statutes, section 256B.092, and the Developmental Disabilities Act of 1984, Section 122(5)(B) to require the individualization of services to persons with mental retardation. Since individuals needs vary greatly, in some cases it will not be possible to meet those needs without developing new services. This requirement provides a mechanism for identifying and developing these needed services.

This requirement is reasonable because it does not mandate that counties immediately provide services which, are not currently available, but requires a plan for addressing problems for which there is no immediate solution or service. By planning for services to be developed, the placement of persons into available programs which may not meet their needs and which may be costly to the taxpayer is discouraged as a long-term remedy to service systems gaps. Planning for and providing services based on the need of the individual also encourages a proactive approach to problem solving which can often prevent problems from reaching a crisis stage. According to department expert, Shirley Schue, if a person's needs are not appropriately addressed, problems very often become progressively worse and can result in interventions that are much more intrusive (and costly) than what may have been needed earlier.

Item E is necessary to clarify what the expected goals are for the individual. Requiring the identification of long-range goals and evaluating services based on those goals is an important component of a service system responsive to individual needs - the type of system the state is seeking. This state goal is also consistent with the Developmental Disabilities Act of 1984, Section 123(b)(3), which requires a statement of long-term habilitation goals in the habilitation plan (the habilitation plan corresponds to Minnesota's IHP and ISP).

Identifying long-range goals is a reasonable way to manage expectations and create a sense of purpose in the delivery of services. It is reasonable to state these goals in the individual service plan because the individual service plan is the key document used to establish the overall direction that services shall take, thus setting the course that the case manager and other service providers will take in establishing specific program plans.

It is reasonable to inform the person with mental retardation of the long-range goals of the services provided to allow the person to have input on the goals. If the person with mental retardation is aware of and

agrees with the long-range goals, he or she will be better able to work toward attaining them. It is reasonable to inform the person's parent or guardian and advocate of the long-range goals to allow for their input and to enable them to monitor the person's progress in attaining the identified long-range goals. Having long-range goals in the individual service plan is also reasonable because it informs the providers of the long-range goals of the services they are providing and enables them to tailor services to meet those goals. Having the long-range goals in the individual service plan is also of benefit to the case manager in evaluating whether the services are helping the person with mental retardation or if the services should be modified.

Item F is necessary to identify benchmarks to be used in evaluating whether the services are working to assist the person with mental retardation in achieving his or her long-range goals. It is reasonable to state the annual goals and the expected outcomes in the individual service plan for the reasons given in the rationale for item D. It is reasonable to have annual goals because the individual service plan is reviewed annually. The establishment of annual goals is also an accepted practice in educational systems for handicapped children (see Minnesota Rules, part 3525.2800, subpart 3). The annual goals provide a point of reference for evaluating whether the services provided are meeting the person's needs and are assisting the person in attaining his or her long-range goals. This information is needed to enable the case manager and others reviewing the individual service plan to determine whether modifications should be made in the individual service plan. Without specific goals to measure the person's progress against, the effectiveness of the services cannot be determined and therefore ineffective or unnecessary services may be continued which would result in a waste of limited funds for mental retardation services and conflict with Minnesota Statutes, section 256B.092, subdivision 3.

Item G is necessary to notify providers of the information that they are required to submit to the case manager. It is necessary to require that providers submit information to the case manager because the case manager needs the information to monitor the services provided as required in part 9525.0045, subpart 2, item E. It is reasonable to require the providers to submit certain information because the services they are providing are being purchased using public funds and the county is responsible for using these funds appropriately. Regular reporting enables the case manager to monitor the client's progress with regard to the goals identified in items D and E between annual reviews.

It is a standard practice for government contracts to include periodic status reports completed by the contractor or in this case, the provider. It is reasonable to specify in the individual service plan what specific information will be required so that all parties are aware of the requirements and can compile the information at appropriate times. It is also reasonable to establish what information is needed in the individual service plan because the information needed and the frequency of submittal would differ depending on the type of services provided and the individual needs of the person with mental retardation.

Item H is needed in order to clearly establish the involvement of the individual and the persons legal representative, if any, in the development of the ISP. This item directly relates to the reconsideration process in 9525.0075, subpart 5, which allows individuals or a legal representative of an individual with mental retardation to request a review of the content of the ISP.

Subp. 5. Request for Reconsideration. This subpart is needed in order to allow some form of review of the decisions on the contents of the ISP, so that persons with mental retardation, the legal representative, or advocate may request a review of the contents of the ISP with which they are not in agreement or are dissatisfied.

This subpart is reasonable because it provides a structure at a local level for reviews pertaining to quality of service plans and is similar to the review process used by special education programs.

It is also reasonable because it establishes procedures so that persons receiving case management services, legal representative or advocate and professionals providing case management services have and are aware of what system for review of quality issues is available to them.

Subp. 6. Annual review of individual service plan. This subpart is necessary to comply with Minnesota Statutes, section 256B.092, subdivision 1, which requires "annual reviews of the client's individual service plan." The annual review is also necessary to comply with the requirements of the Medical Assistance Program. This requirement is reasonable because it is consistent with the requirements in the Developmental Disabilities Act of 1984, Section 123 (a) (1) and (b) (2) and the requirements established in the Code of Federal Regulations, title 34, section 300.346. It is reasonable to review the individual service plan annually to evaluate whether the annual goals are being met and to determine whether the services are still needed. The annual review requirement is consistent with the requirements for reviews of social services plans under parts 9550.0010 to 9550.0092. It is reasonable to use the same standard in this subpart to increase consistency among department rules.

Item B. It is necessary to require a written record of the meeting to document how the decisions were arrived at. It is reasonable to record this information in case the decisions made at the meeting are appealed. The written record can be used as evidence when the decisions are challenged.

Items D, E, F, and G. It is necessary to specify what information must be considered when modifying the individual service plan so that informed decisions may be made. It is reasonable to base the modifications on the information specified because these documents should indicate whether or not the services are effective. It is reasonable to allow the use of "other information" compiled by the case manager because the case manager is in the position, and has the training, to know what other information might be important for the reviewers to consider.

Item H. It is reasonable to complete a new screening document since this is required for all persons in Home and Community-Based services Informational Bulletin #84-34, and will provide a means of data collection about persons with mental retardation who are receiving services under the Medical Program to the county and the department,

Item I. It is reasonable to complete a new screening document since this is required for all persons in Home and Community-Based services Informational Bulletin #84-34, and will provide a means of data collection about persons with mental retardation who are receiving services under the Medical Program to the county and the department,

Subp. 7. Standards for state hospital discharge planning. This subpart is necessary to clarify what standards must be used to develop an ISP for persons with mental retardation who are discharged from a state hospital. It is reasonable to apply specific standards to the ISP for persons discharged from state hospitals because the state has specific responsibility for persons discharged from state hospitals under the Welsch Consent Decree. It is also reasonable to apply specific standards to the ISP in these cases because the persons discharged from state hospitals tend to have severe disabilities and need specialized services. Careful planning is needed to protect their safety, health, or well-being as required in Minnesota Statutes, section 256E.03. It is reasonable to incorporate by reference the instructional bulletins which establish the standards for state hospital discharge planning to avoid unnecessary duplication of language in this subpart. It is reasonable to use the standards in the instructional bulletins because they are official department policy, have been in use since August 6, 1984 and November 8, 1984, respectively, and are readily available to interested parties. Using the standards established in the instructional bulletins promotes consistency and avoids unnecessary disruption of the current system.

9525.0085 PROVISION OF SERVICES

Subpart 1. Arrangement of services. This subpart is necessary to list procedures for case managers to use for arranging services required by an ISP and to inform the public of the available procedures. Surveying existing providers to determine which providers, if any, are available to provide the services specified in the individual service plan is a reasonable method of procuring the best possible provider because it increases a case manager's awareness of available resources. Developing a request for proposals for the specified services is a reasonable way to increase the pool of available providers and develop new services to meet identified needs. By publishing the request the county can inform all persons interested in providing the specified services of the county board's needs and provide an opportunity for these potential providers to propose a service to meet the needs. It is reasonable to allow use of a request for proposals at the county board's discretion because in some cases it may not be timely or cost effective to use the request for proposals process.

Subp. 2. Authorization of services. This subpart is necessary because Minnesota Statutes, section 256B.092, subdivision 3 requires rules governing authorization and termination of services. This subpart is reasonable because it provides the case manager with specific criteria for authorizing

services. It is reasonable to provide specific criteria to assist the case manager in selecting a provider that is responsive to the needs of the person with mental retardation. Putting the criteria in the rule parts is also a reasonable way to inform providers and persons with mental retardation of the criteria used by the case manager for authorizing services.

Item A is reasonable because the provider must be able to provide the service or services in accordance with the individual service plan to meet the person's needs and comply with Minnesota Statutes, section 256B.092, subdivision 3. The case manager must make the determination to fulfill his or her duties under the Mental Retardation Protection Act, the Community Social Services Act, and Minnesota Statutes, section 256B.092.

Item B is necessary because a representative of each provider providing services set forth in the individual service plan is required to participate in the interdisciplinary team by definition of "interdisciplinary team" in part 9525.0015, subpart 15. The provider's involvement is necessary to provide important information about the services provided to persons with mental retardation. These persons are directly involved in the delivery of services. Their opinions and the opinions of those most familiar with the needs of the persons are needed to make informed decisions about services. It is reasonable to require that the provider's participation in the interdisciplinary team as a condition of the contract to facilitate the enforcement and implementation of the rule parts.

Item C is reasonable for the reasons stated under Item A above, and to facilitate the enforcement and implementation of the rule parts.

Item D is necessary to obtain agreement from the provider to prepare and send quarterly evaluations. It is reasonable to require the provider to evaluate the services provided on a quarterly basis to monitor the person's progress. Requiring quarterly evaluations is reasonable because it is consistent with department policy as established in other department rules such as parts 9525.0500 to 9525.0660 and 9525.1200 to 9525.1330 and federal policy as established in the Code of Federal Regulations, title 42, section 456.380. It is reasonable to send the quarterly evaluations to the case manager to aid the case manager in evaluating the continued need for the authorized services. It is reasonable to send the evaluation to the person with mental retardation or his or her legal representative to inform the person of the progress he or she has made and to aid the legal representative in making informed decisions about the person's continued need for services. Including the agreement in the contract facilitates enforcement of the agreement.

Item E is reasonable because it recognizes the need for informed consent and participation by the person with mental retardation and the person's legal representative, if any, in choosing providers and authorizing services. This requirement is also reasonable because it complements the admission standards established in the rule parts governing residential programs and services for mentally retarded persons (parts 9525.0210 to 9525.0430) and is consistent with part 9525.0065, subpart 4, which allows the person with mental retardation to have free choice between the various services for which he or she is eligible. By facilitating informed decision

making, this requirement increases the likelihood of successful placement. Support for this requirement was voiced by Dianna Krogstad, a day training and habilitation services provider at the January 3, 1985, meeting of the advisory committee.

Item F is reasonable for the reasons stated in the latter part of item D, above. It is reasonable to require the case manager to inform the person's legal representative and advocate of the name of each proposed provider because the case manager is aware of available providers and has responsibility for proposing providers and arranging services under subpart 1. Encouraging the legal representative and advocate to visit each site where the services will be provided is a reasonable way to facilitate the informed consent process and representation of the person with mental retardation interests.

Item G is reasonable because it is consistent with the requirements of contracts for services in part 9525.0095 and facilitates the enforcement and implementation of the rule parts.

Item H is reasonable because it is consistent with the requirements in Minnesota Statutes, section 256B.092, subdivision 1. Subdivision 1 states, "If the county of financial responsibility places a client in another county for services, the placement shall be made in cooperation with the host county of service, and arrangements shall be made between the two counties for ongoing social service, including annual reviews of the client's individual service plan. The host county may not make changes in the service plan without approval by the county of financial responsibility." The requirement that the case manager consult with the host county and receive a letter of concurrence from the host county regarding the provision of services is a reasonable way to provide evidence of the host county's understanding of its responsibilities under section 256B.092, subdivision 1, parts 9550.0010 to 9550.0092 and these rule parts.

9525.0095 CONTRACTS AND PROVIDER AGREEMENTS.

Subp. 1. Contracts for services. This subpart is necessary to inform county boards and providers that all required contracts must be developed in accordance with parts 9550.0010 to 9550.0092 which govern the general administration of public social services. It is reasonable to require compliance with parts 9550.0010 to 9550.0092 where applicable because these rule parts govern other contracts entered into by the county boards and it is more convenient and efficient to use a familiar procedure.

The reasonableness of prescribing contracts for services is supported by past department practice. Minnesota Statutes, section 256E.08, subdivision 1, and parts 9550.0010 to 9550.0092, allow county boards to provide community social services directly or by contracting, and parts 9550.0010 to 9550.0092 require that county boards use written purchase of service contracts for purchasing services they do not provide directly.

It is reasonable to assign responsibility for negotiating and administering the host county purchase of service contract to the host county because this practice is consistent with the requirements in parts 9550.0010 to 9550.0092. This requirement also eliminates unnecessary duplication of efforts when more than one county board uses a single provider and standardizes the rates charged for a service. It is reasonable to require written contracts because unwritten agreements are more ambiguous and more difficult to enforce. The counties or the department might find it difficult to legally compel a provider to fulfill its responsibilities without a written contract. This subpart is, therefore, necessary to protect the health, rights, and safety of persons with mental retardation.

The requirement that the department be a third party beneficiary to the contract is necessary to enable the department to legally enforce the contract if the county lacks the necessary resources or ability to do so. The required contract provision is needed in order to legally enforce the agreements required above.

Subp. 2. Provider Agreements. This subpart is necessary to inform providers of medical assistance reimbursable services that a provider agreement must be executed with the department in order for the provider to comply with the requirements of Minnesota Rules, part 9500.0960, governing medical assistance agreement with eligible providers, it is reasonable to state in this subpart that a medical assistance provider must have an approved provider agreement in order to avoid any confusion about provider agreements with regard to the medical assistance reimbursement system. It is also reasonable to include the provision that medical assistance providers must have an agreement with the department in addition to a host county contract as provided for in subpart 1, in order to inform medical assistance providers that the provisions of subparts 1 and 2 must be complied with before the provider can receive payment for services.

Subp. 3. Subcontracts. The term "subcontractor" means one who has contracted with the original contractor (in this case, the provider) for the performance of all or a part of the work or services included in the original contract. See Black's Law Dictionary, Fifth Edition, West Publishing Company, St. Paul, 1979, at p. 294. Therefore, it is reasonable that the terms of the subcontract meet all the requirements of the original contract (in subpart 3) under the law of contracts, as provided in Items B and C. The requirement in Item A that the provider have written permission from the host county to subcontract is necessary to inform the host county that not all services are being provided directly by the contractor. The host county needs to know if a subcontractor has been used to be able to check to see if the subcontractor meets the rule requirements.

Subp. 4. Enforcement of contracts. This section states that the county board is responsible for enforcing the contracts entered into under parts 9525.0015 to 9525.0145. This section is necessary to clarify that the county board (not the department) is responsible for enforcing the contracts. County responsibility for enforcing the contracts and a county's authority to delegate responsibilities in accordance with established county board policies are consistent with a county board's responsibilities in providing

social services under Minnesota Statutes, sections 256E.08, subdivision 1, 256B.092, and parts 9550.0010 to 9550.0092. See also Minnesota Statutes, chapters 393 (County Welfare Board) and 402 (Human Services Act).

9525.0105 DEVELOPMENT OF INDIVIDUAL HABILITATION PLANS

Subpart 1. Development of the IHP. This subpart is necessary to clarify who is responsible for convening the interdisciplinary team to design the IHP, when the meeting must be held, who may attend the interdisciplinary team meeting, and who will be designated as a team member. It is reasonable to assign the case manager the responsibility for convening the interdisciplinary team because the case manager is responsible for authorizing and coordinating services and is in contact with all of the members of the interdisciplinary team. The case manager is also responsible for complying with the timelines established in these rule parts; to meet these timelines the case manager must have the ability to schedule meetings as needed. It is necessary to identify a time frame for developing the IHP so that only services designed to achieve the expected outcomes specified in the ISP are provided. Allowing 30 days is reasonable because it is consistent with the Code of Federal Regulations, title 42, section 442.421, and establishes a consistent standard for all persons with mental retardation.

It is reasonable to allow the case manager, with the appropriate consent, to invite other persons to attend the meeting because in some cases other persons may have access to information about the service needs of the person with mental retardation, or expertise in a particular area, that would be helpful in designing the individual habilitation plan. For example, it might be desirable to invite the public health nurse to attend the interdisciplinary team meeting if the person has ongoing health needs that must be addressed. It is reasonable to require the consent of the person with mental retardation or the person's legal representative to invite other persons to attend the meeting because some of the information to be discussed at the meeting is considered private data and must not be disseminated unless consent has been given. It is reasonable to reference Minnesota Statutes, section 13.05, subdivision 4 regarding the granting of consent because that is the section of the statutes which governs the dissemination of private data. It is reasonable to limit voting to the designated members of the interdisciplinary team members because they are knowledgeable about the person's needs and the services to be provided.

Subp. 2. Interdisciplinary team review. This subpart is necessary to identify the data that should be reviewed by the interdisciplinary team in the process of developing the individual habilitation plan. It is reasonable to specify what data must be reviewed in this subpart to inform the interdisciplinary team members of the information that should be available for their review. It is reasonable to review the information specified in items A to E so that all members of the interdisciplinary team complete the decision making process with a common bank of knowledge about the person with mental retardation and the person's needs.

It is reasonable to require a review of the information specified in items A to C because the information is readily available to the case

manager and is essential in determining what services are needed and how they should be delivered; which are issues that must be addressed by the interdisciplinary team.

Item D is reasonable because it allows the case manager and the members of the interdisciplinary team to use their expertise to determine if there is any other information pertinent to the process which should be reviewed.

Subp. 3. Data Privacy. This subpart is necessary to inform all interested persons that private or confidential information about the person with mental retardation which is to be shared with persons outside of the welfare system must be handled in accordance with Minnesota Statutes, section 13.05, subdivision 4. It is reasonable to reference the statute in this subpart to avoid unnecessary duplication of statutory language and to direct interested parties to the appropriate statute for details.

Subp. 4. Standards for contents of IHP. This subpart is necessary to clarify who is responsible for the development of the IHP and to describe the basic elements of the IHP. It is reasonable to assign the responsibility for development of the IHP to the interdisciplinary team because the interdisciplinary team members are either directly responsible for, or directly affected by, the integration and coordination of services provided under the IHP. This function is also consistent with the requirements for ICF/MRs in the Developmental Disabilities Act of 1984, section 123(b)2 which requires the plan to be "developed jointly by (A) a representative or representatives of the program primarily responsible for delivery or coordinating the delivery of services to the person for whom the plan is established, (B) such person, and (C) where appropriate, such person's parents or guardian or other representative."

It is reasonable to require that the IHP integrate all services provided because to achieve the best results, all services must be coordinated and compatible. If services are not coordinated and compatible, the efforts of one provider might undo the efforts of another provider which would negatively affect the progress made by the person with mental retardation. Currently underway are efforts to change national accreditation standards (ACMR/DD) to reflect the need for one, integrated plan which involves all providers of service according to Mary Cerrato, Executive Director of the Council on Accreditation, Washington, D.C.

It is reasonable to require that the IHP be designed to achieve the expected results specified in the ISP because services must be authorized in accordance with the ISP under Minnesota Statutes, section 246B.092 and the IHP is the document which would show whether the services planned are in accordance with the ISP. This requirement is also a reasonable way of increasing the likelihood that only services needed to achieve the expected results will be provided and paid for. The ISP is designed to address the person's overall service needs. It is reasonable to use the ISP (an overall plan) as the source of reference in designing the IHP to address the specific service needs of the person so that the interdisciplinary team members can determine if the specific pieces fit within the overall plan of service.

It is necessary to specify what must go into the IHP to inform the interdisciplinary team members of the service expectations and to provide some consistency in the way that IHPs are developed throughout the state. It is reasonable to address the specifics in the rule parts to provide notice to all interested persons of the requirements. It is reasonable to provide a minimum standard for the contents of the IHP to increase the accountability of providers of mental retardation services in the state and protect the safety, health, or well-being of persons with mental retardation as required by Minnesota Statutes, section 256E.08. Establishing a minimum standard for the IHP also makes it easier to evaluate the services provided.

Items A to F are necessary to clarify the areas the IHP must address. It is reasonable to include the areas in A to F because these areas are most pertinent to the expected outcomes specified in the ISP, and specify how the outcomes are to be achieved. The areas in Items A to F are consistent with those defined in Minnesota Statutes, section 256B.092, sub-division 1b, and the Developmental Disabilities Act of 1984, section 123(a), (b), (c) for habilitation plans. It is reasonable to use the same areas in this subpart to promote consistency between state and federal requirements.

Item A is necessary to establish points at which the effectiveness of the services can be evaluated. It is reasonable to require short-term objectives so that the person with mental retardation, the provider, and the case manager all know what progress can be expected over the course of time. In this way the services can be changed in a timely fashion if they are not working.

Item B is necessary to specify how these outcomes will be achieved. It is reasonable to specify methods to enable the case manager to determine if the methods to be used are the least restrictive methods for achieving the outcomes as required in part 9525.0085, subpart 1 and if the methods to be used for the various services are compatible with each other. Specifying methods to be used also facilitates discussion among the professionals regarding the best way to achieve the desired results.

Item C is necessary to inform the case manager, the person with mental retardation, the person's legal representative, the person's advocate and all providers of the proper person to contact if the services are not being implemented as specified in the individual habilitation plan or if the services are not resulting in achievement of the short-term objectives. It is reasonable to specify who is responsible to establish accountability on the part of the providers and to improve communication between members of the interdisciplinary team about the services. Improving communication is necessary to improve the coordination and compatibility of services.

Item D is necessary to provide a means of measuring the effectiveness of the services provided. It is reasonable to establish the criteria for measurement in the IHP so that the expertise of all the members of the interdisciplinary team can be used in the development of the criteria that will be used to measure the effectiveness of the services. Involving the members of the interdisciplinary team in the development of the criteria also helps to create common expectations regarding the services provided.

Item E is necessary to clarify how often the services must be provided. This is an important consideration because services must be provided frequently enough to be effective. Because the frequency needed may vary depending on the person's skills and condition it is necessary to specify the frequency in the individual habilitation plan. It would be a waste of money and a disservice to the person to provide services either more or less frequently than the person needs to achieve the expected outcome. Minnesota Statutes, section 256E.08, subdivision 1, mandates the provision of services "directed at the goal of attaining the highest level of independent functioning appropriate to the individual." To provide services less or more frequently than needed is counterproductive to that goal.

It is reasonable to specify the frequency in the IHP plan to allow all the members of the interdisciplinary team to assist in determining the appropriate frequency and to provide for coordination when a specific type of service is provided, or should be provided by more than one provider. Specifying frequency in the IHP also helps to create similar expectations among the team members regarding the services to be provided and provides the case manager with criteria for evaluating whether the services are being provided in accordance with the IHP.

Item F is necessary to clarify when each short-term objective is to begin and end. It is reasonable to specify starting and ending dates in the IHP so that the members of the interdisciplinary team have input into the decision on these dates. This discussion helps to create shared expectations, and improve accountability on the part of the providers. Having an ending date also provides a natural point at which to determine if a change in services is needed.

Item G is necessary to clarify any steps which must be taken or resources which must be obtained prior to the implementation of specific objectives and methodologies. It is reasonable to do this so that the team can ensure that the plan is implemented in the most effective manner, and so that specific parts of the plan that require the use of special resources are not unduly delayed due to lack of coordination of these resources.

Item H is necessary to inform all team members of the frequency at which progress of the individual will be assessed. It is reasonable to do this at the team meeting since all affected parties are involved in this meeting.

Subp. 5. Required signatures. This subpart is needed to clearly establish the involvement of the individual with mental retardation and the individual's legal representative (if any) and to establish their agreement with the IHP. This is a reasonable way of documenting this involvement and agreement and relates to the reconsideration process set forth under 9525.0105, subpart 6.

Subp. 6. Request for reconsideration. Subpart 6 is needed to allow some form of review, at the request of the person with mental retardation or that person's legal representative, of decisions regarding the contents of the IHP. It is reasonable to provide some process of review about contents

of the IHP which the person or person's legal representative are unsatisfied or not in agreement with. County representatives participating in the advisory committee indicated that county practices frequently utilized a similar process on an informal basis.

Subp. 7. Provider implementation plan. Subpart 7 is needed to clarify the purpose of the provider implementation plan. It is reasonable to include this since service providers may need to direct staff very specifically about how to carry out the methodologies identified in the IHP. Such detailed plans provide greater consistency when more than one person is directly involved in implementing plans. It is reasonable to include that the provider plan should not result in modification of the habilitation plan without authorization of the case manager, since the case manager remains responsible for maintaining coordination between services providers. It is reasonable to consult with the individual and the individual's legal representative) since both are directly involved and may not agree with the modification.

Subp. 8. Interim services. This subpart is necessary to clarify that, although a person with mental retardation may begin to receive services before the individual habilitation plan is completed, services must not be continued for more than 30 days unless an individual habilitation plan is developed. It is necessary to require development of an individual habilitation plan to make sure that all services delivered are compatible and coordinated as required in subpart 4 and to make sure that the services are provided in accordance with the individual service plan as required in Minnesota Statutes, section 256B.092, subdivision 3, and part 9525.0095, subpart 2. Failure to establish an individual habilitation plan may result in provision of services contrary to the needs of the person with mental retardation and inconsistent with the methods used by other providers which is likely to result in poor progress by the person with mental retardation and is a poor use of limited state and federal money for mental retardation services.

It is reasonable to require development of the individual habilitation plan within 30 days because the individual habilitation plan must be developed by the interdisciplinary team and, to comply with subpart 1, the interdisciplinary team must be convened within 30 days. It is reasonable to use the same time line here to provide consistency between the rule provisions. As stated in the rationale for subpart 1, the 30-day requirement is the same as the requirement for ICF/MRs under the Code of Federal Regulations, title 42, section 442.421. It is reasonable to apply the same standard in the rule parts to increase consistency between state and federal regulations and to apply the same standard to all persons with mental retardation in the state.

In the December 13, 1984, advisory committee meeting, Molly Woerhlen, a representative of the Association of Minnesota counties, stated that the association had gone on record as not wanting a two-tiered system for mental retardation case management services. Using the ICF/MR standard for all persons with mental retardation eliminates the need for special standards for persons receiving services from an ICF/MR. and is therefore consistent with the association's position.

Subp. 9. Annual Review of the IHP. It is necessary to convene the interdisciplinary team annually so that the team can review the information gathered by the case manager and make any necessary changes in the IHP. Because the interdisciplinary team is responsible for developing the IHP, it is reasonable to require its review of this information and to base any modifications of the IHP on its review. This requirement is consistent with the standard established in the Developmental Disabilities Act of 1984, section 123 (c) which requires an annual review of the habilitation plan by the agency or person responsible for case coordination (case manager) the person, and the parents/guardians, or other representative. This requirement is also consistent with the standards in the Code of Federal Regulations, title 42, section 442.422, and section 123 of the Developmental Disabilities Act of 1984.

9525.0115 STANDARDS FOR MONITORING SERVICES

This section is necessary to clarify what standards shall constitute monitoring functions, what must be reviewed and how often monitoring shall occur.

Periodic reviews by the case manager are standard procedures in many states. Michigan, for example, requires the case manager to visit residential and day program sites for all clients in specialized residential placements at least monthly. For persons in nonspecialized placements, at least quarterly visits and reviews are necessary. Various states replied to survey questions about monitoring, and such information may be found under Exhibit D. The need for periodic reviews are also standard in the field of education.

In the opinion of Department expert, Shirley Schue, the monitoring of services is vital in maintaining effective services. Monitoring by the case manager is different from other types of review processes (i.e., Department of Health, Licensing, etc.) in that the case manager will look at the total array of services being provided to ensure that the implementation of the treatment plans remains a coordinated and integrated effort.

This section is also consistent with Minnesota Statutes, section 256B.092, subdivision 1a, which requires methods for evaluating and monitoring services identified in the plan.

Subpart 1. Monitoring of the ISP and IHP. Subpart 1 is necessary to determine whether services authorized for the person with mental retardation are actually provided as specified in the individual service plan and whether the goals and objectives specified in the individual service plan and the individual habilitation plan are adequately meeting the needs of the person receiving the services. It is reasonable to require monitoring to determine if the money spent on services for persons with mental retardation is being used properly and to evaluate whether the authorized services should be changed to more effectively use the money to achieve the goals in the individual service plans of the persons with mental retardation. Over 250 million dollars in federal) state, and local money is spent each year to serve persons with mental retardation in this state. It is reasonable to expect some monitoring of expenditures of this magnitude. Monitoring on a

semiannual basis is a minimal requirement which represents a compromise between the 90-day reviews initially required in the emergency rule and the yearly reviews requested by commentators from the counties. Less frequent monitoring would result in less timely detection of ineffective services and a waste of limited resources.

Item A is necessary to inform the case manager that input from the person with mental retardation must be obtained for consideration in evaluating the service provided. It is reasonable to require that the case manager visit with the person with mental retardation to obtain this input because it may be difficult for a person with mental retardation to convey his or her feelings about the services other than by direct contact with the case manager. Direct contact is particularly important for persons with mental retardation who are unable to communicate verbally very well. In order to determine how a person such as this is doing, it is important for the case manager to observe his or her general condition and demeanor and pick up on the nonverbal cues used to communicate satisfaction or dissatisfaction - something that can only be done if the case manager visits the person with mental retardation. In addition, some things such as abuse or neglect may only be apparent through direct contact with the person.

Item B is necessary to verify that the person with mental retardation is actually receiving the day training and habilitation and residential services authorized by the case manager. It is reasonable to require that the visit occur when the service is being provided to avoid situations in which the case manager visits the residential service while the person with mental retardation is at the day training and habilitation service. It is reasonable to require that the case manager observe the services while the person is receiving them so that the case manager can see how the person is responding to the services and be better able to evaluate whether the methods used are effective for this person. This first hand knowledge gives the case manager a better basis for evaluating the reports received from the provider. The visit also gives the case manager a chance to interact with the provider and get a sense of how the services are conducted and why.

Visiting a service site when no services are being provided is like writing a review for a movie you haven't seen. Neither process is likely to result in an accurate evaluation. Therefore, to promote accurate evaluations, it is reasonable to require that the case manager observe these services when the services are being provided.

Item C is necessary to determine if services are provided on a consistent basis, not just when the case manager is visiting the service sites. It is also necessary to determine whether the person with mental retardation is benefiting from the services and to provide an ongoing evaluation of the individual service plan and the individual habilitation plan. It is reasonable to evaluate services by reviewing reports because it is impossible to observe everything first hand and because progress in some cases may only be apparent by reviewing small changes that take place over an extended period of time. A review of records also provides a data base which the case manager can use to determine the continuing appropriateness of the intervention. The report data, combined with input from the person with mental retardation and the provider, provides a solid base of information to be used in decision making.

Item D is necessary to verify that the services identified in the individual service plan are being implemented in accordance with the person's individual habilitation plan. It is reasonable to verify this by periodically observing the implementation to avoid possible confusion due to second hand information about what is actually being provided, and to see if the described methods are effective for the particular person.

Item E is necessary to determine if the services provided are still needed and if they are actually benefiting the person with mental retardation. This evaluation is a necessary to determine whether public funds are being spent properly and whether the persons with mental retardation are provided services in the least restrictive environment. It is reasonable to require the case manager to compile these evaluations because he or she has access to the necessary information and has been assigned monitoring responsibility. Further justification for the semiannual evaluation follows in the rationale for part 9525.0105, subpart 6.

Item F is needed to assure that the ISP and IHP are modified to reflect the changing needs of a person whenever a review indicates that a modification is warranted. It is reasonable to do this at this time since services should address the needs for an individual effectively. Frequently people do exhibit changes (i.e., medical, behavioral, emotional) which become more or less of a priority than at the time the team met to develop the plan, according to Shirley Patterson-Schue, Department expert. Plans which are used to address the needs of individuals must be capable of modification whenever the needs of a person who receives services change.

Item G is necessary so that the county board can take appropriate actions under part 9525.0095, subpart 5. It is reasonable to require the case manager to "report to the county board" when services are not being provided as specified in the ISP because the provider has agreed as a condition of the contract to provide services in accordance with the ISP and the county board is responsible for enforcement of the contract and must be informed of any breach of contract before it can take action and fulfill this responsibility. It is reasonable to assign the duty of reporting to the case manager because he or she has other duties which make it likely that he or she will become aware of any deviations from the established ISP or IHP and as a county employee he or she has access to the county board.

The monitoring required in these items is also a means of strengthening the case manager's role on the interdisciplinary team by increasing his or her knowledge of the person with mental retardation and the services being provided. Careful monitoring will also increase the ability of the county board to determine the adequacy and quality of services provided in meeting the person's needs, which is the purpose of these rule parts (see part 9525.0025, subpart 2).

Subp. 2. Frequency of monitoring. Subpart 2 is necessary to establish, on an individual basis, the frequency with which monitoring by the case manager will occur. It is reasonable to do so since many factors which may be unique to the individual receiving services should be considered. Factors such as the degree of risk in placement to a more restrictive

setting, the frequency of crisis intervention, the intensiveness of training programs, the experience of providers, the established or lack of established support systems, etc., should be weighed. The advisory committee supported, however, establishment of a minimum standard for monitoring.

The semiannual standard established in this subpart represents a compromise position. In the initial draft of the emergency rule parts which preceded this permanent rule, the department proposed quarterly reviews. Based on the comments received from the counties, the commissioner decided that semiannual reviews were a more reasonable requirement. This decision was made to strike a balance between the need for monitoring to protect the safety, health, or well-being of the persons with mental retardation as required in Minnesota Statutes, section 256E.08 and expressed by the advocates in their comments, and the cost considerations expressed by the county boards. It is reasonable, considering the dollars spent on mental retardation services, to require some monitoring to determine if the services are being provided in a cost effective fashion.

9525.0125 QUALITY ASSURANCE

This part is necessary to inform case managers, county boards, and other interested persons of the requirements for compliance with Laws of Minnesota 1983, chapter 312, article 9, section 3, subdivision 3 (Minnesota Statutes, section 252.291). Section 3, subdivision 3 requires quality assurance by requiring the commissioner to "establish a client tracking and evaluation system..." and to develop a biennial mental retardation plan for the delivery and funding of services to persons with mental retardation that includes "procedures for the evaluation of the implementation of the plan." It is reasonable to authorize and require case managers to monitor services on a regular basis because this authorization is consistent with the commissioner's authority to delegate duties to county boards and county boards' responsibilities of designating the appropriate staff to carry out the responsibilities under the Community Social Services Act and Minnesota Statutes, section 256B.092, Ensuring that quality services are provided in a cost effective manner in accordance with each person's individual service plan is consistent with the purpose of parts 9525.0015 to 9525.0145 (stated in part 9525.0025, subpart 2).

Subpart 1. Monitoring by case manager. This subpart is necessary to clarify those items which should be monitored by the case manager in assuring that quality services are provided to the individual. It is reasonable to include items A through E since these items are covered under sections within these rule parts 9525.0015 to 9525.0165. Item F is reasonable, as it relates to a variety of legislation including the 14th Amendment to the U. S, Constitution, the Minnesota Human Rights Act, Minnesota Statutes, chapter and the Vulnerable Adults Act, Minnesota Statutes, section 626.557, with which the case manager should be familiar. Item G is reasonable since consumer satisfaction with a product or service is a desired outcome. Services agencies and businesses routinely survey and design products around the need to satisfy the consumer.

Subp. 2. County board procedures. Subpart 2 is necessary in order to clarify what shall happen as a result of a report regarding failure of a provider to act in accordance with subpart 1. Written procedures for reporting, review of complaints and enforcement will provide case managers, individuals receiving services, the individual's legal representative, and service providers with a well-defined local process for dealing with quality assurance issues. It is reasonable to do this so that there is a common understanding about what is expected and what failure to provide services in accordance with items in subpart 1 may result in. Procedures, likewise, may assure that all involved parties will be allowed the opportunity to provide input into the concerns expressed, establish a mechanism by which county boards may keep informed about the quality of services within their area, and protects the right of persons receiving services to timely resolution to reported problems.

Subp. 3. Cooperation with the commissioner. Requiring the cooperation of county boards in making all relevant information available to the commissioner is a reasonable way of enabling the commissioner to fulfill his or her responsibilities of quality assurance required under Minnesota Statutes, section 252.291, Cooperation between counties and the department is an essential element in planning for and providing community social services in accordance with the Community Social Services Act, the Mental Retardation Protection Act, section 256B.092, and related statutes and rules.

9525.0135 APPEALS OF CASE MANAGEMENT AND RELATED SERVICES

Subpart 1. Notification of right to appeal. This provision is necessary to provide information to persons with mental retardation and to avoid confusion about the appeals procedures and requirements. It is necessary and reasonable to notify the legal representative and advocate (if any), as well as the person with mental retardation, so that they are aware of the person's rights and able to properly exercise those rights. It is necessary and reasonable to require notification in writing to avoid any unnecessary, confusion or assumptions regarding the appeals procedures and to provide evidence of the notification. It is reasonable to require the provision that whenever the case manager believes the person with mental retardation cannot read or understand a written notification since persons with mental retardation would frequently not be able to read a notification, and might have difficulties, due to their mental retardation, in understanding their rights to appeal. An opportunity to explain the right of appeal would better address the person's level of understanding of more abstract concepts such as a right to appeal.

Subp. 2. Appealable issues. This subpart is necessary to describe and explain the appeal rights guaranteed to persons with mental retardation under these rule parts and Minnesota Statutes, section 256.045. It is reasonable to describe these rights to provide for uniform statewide administration and inform the affected persons. Subdivisions 2 and 3 of section 256.045 permit persons with mental retardation "...whose application for assistance is denied, or not acted upon with reasonable promptness, or whose assistance is suspended, reduced, terminated, or claimed to have been incor-

mental retardation to assist the person with mental retardation in bringing an appeal to provide guidance to potential appellants, avoid confusion with the appeals procedures, and facilitate the appeals process.

Subp. 6. Appeal of action. This subpart is necessary to inform all interested persons that appeals of issues addressed in these rule parts must be handled in accordance with Minnesota Statutes, section 256.045. It is reasonable to reference the statute to avoid unnecessary duplication of statutory language and maintain consistency with the process described in statute. It is reasonable to use the process used in Minnesota Statutes, section 256.045 because this is the process used for appeals under parts 9550.0010 to 9550.0092 which govern the provision of social services. Using the same appeals process promotes consistency between department rules and makes it easier for the county boards to administer the rules.

9525.0145 SERVICE DEVELOPMENT AND NEED DETERMINATION

Minnesota Statutes, section 252,28, subdivision 1 states that the commissioner "shall determine and shall redetermine biennially, the need, location, size, and program of...services for mentally retarded children and adults." This part is necessary to clarify what constitutes a determination of need under the statute and what information the commissioner needs to make that determination. It is reasonable to include the details in this part to inform all interested persons of the process and criteria to be used in making a determination of need,

Subpart 1. Definition. This subpart is necessary because the term "county board" as used in this part is different than the term as used in other parts of these rules. Therefore, the term is defined to eliminate confusion. It is reasonable to define the term "county welfare board" by referencing Minnesota Statutes, chapter 393 because chapter 393 mandates the establishment of a welfare board and outlines the duties of the welfare board. It is reasonable to reference human services boards established under Minnesota Statutes, chapter 402 because under this chapter human services boards replace county welfare boards. It is reasonable in this case to define county board as the county board of commissioners the human services board or the county welfare board because the duties designated in this part are appropriately executed by the county welfare board under Minnesota Statutes, section 292.07, subdivision 2.

Subp. 2. Information to be considered. This subpart is necessary to establish the information base to be used in determining whether or not a service is needed. It is reasonable to use the Community Social Services Plan, the Community Health Plan, and individual service plans because the county board is already required to prepare the documents for other purposes and has ready access to information contained in them. It is also reasonable to use the information contained in these plans because it is based on the service needs of all persons in the county, including persons with mental retardation. Looking at all available services in the county in planning mental retardation services is consistent with the standards for individual service plans established in part 9525.0075 and facilitates the provision of services in the least restrictive environments. This is also consistent with Minnesota Statutes, section 256E.

It is reasonable to require the county to consider the needs of the persons with mental retardation for whom the county is financially responsible and the persons for whom the county board has agreed to be the host county because the availability of services is affected by and affects both groups. If the county only planned for persons for whom it is financially responsible, but agreed to be the host county for persons from other counties, the host county could find that it had underestimated the combined service needs and would have to limit placements from outside the county even if the placements fit with overall state plans and would provide the most appropriate" services for the persons with mental retardation.

Subp. 3. Need determination by county board. This subpart is necessary to define the county board's role in the need determination process and to specify what information must be included in an application for a need determination. It is reasonable to delegate to the county board the responsibility for the initial determination because the county board is more familiar with the needs of the clients in its county and with the services available to meet those needs than the commissioner. It is reasonable to base the identification on information specified in subpart 2 for the reasons given for subpart 2, above.

It is reasonable to require identification of the need for new services to control the growth of services in the county and to facilitate development in the areas in which needs have been identified. It is reasonable to require a need determination for a modification) expansion, or reduction of an existing service because these changes also have an impact on the overall service development in the county. If these changes were not part of the need determination process, they could drastically affect the overall service mix in the county and weaken county efforts to develop specific services in specific areas. Providers who were unable to receive a determination of need for a new service could simply modify their existing service to provide different services or could increase the number of persons to be served.

It is reasonable to require facilities licensed under parts 9525.0210 to 9525.0430, but not as an ICF/MR, to file a new need determination if they desire to be reclassified as an ICF/MR because Minnesota Statutes, section 252.291 establishes a moratorium on ICF/MR facilities. Under this statute the Commissioner must deny all requests for a determination of need for the establishment of an ICF/MR facility unless the county board documents that a facility is needed for individuals who are seriously behaviorally disordered or physically or sensorily impaired.

It is reasonable to require a determination of need for a service for which a change of ownership is proposed to determine if the new owner is planning to modify or expand the service or a change in location which might also likewise affect the service. Requiring completion of the need determination is also a reasonable way of informing the county board and the commissioner of the change in ownership and informing the new owner that services provided must be designed to meet the needs which were identified by the county board and approved by the commissioner.

It is reasonable to modify the application for a modification, expansion, or a change of ownership to eliminate unnecessary paperwork if there are no changes in the information already on file with the commissioner.

The information, required in item A is needed to determine if the type of program proposed is appropriate for the persons to be served. It is necessary to determine whether the program is needed to comply with Minnesota Statutes, section 252.28, subdivision 1, which states that the commissioner "shall determine and shall redetermine biennially the need, location, size, and program of... facilities and services for mentally retarded children and adults."

It is reasonable to require information on the number, sex, and age of the persons to be served so that this information can be compared to the service needs identified by the county board based on the information in subpart 2. It is reasonable to request information on the number and sex of the persons because these factors must be considered when determining if the proposed services are appropriate to the persons' needs and if the services are to be provided in the least restrictive environment as required in part 9525.0085, subpart 1.

It is reasonable to require information on the age of the persons to be served because services must be "appropriate for the chronological age" to meet the standards for the development of the individual service plan established in part 9525.0085, subpart 1. It is also consistent with the policy of providing services in the least restrictive environment to require that services provided be appropriate for the chronological age of the person.

The information required in items B and C is necessary to determine if the service proposed is needed by the persons identified. It is reasonable to request this information because it is already prepared for the individual service plans and need only be summarized for this item.

The information required in item D is necessary to determine whether the persons to be served by the residential service will be able to receive the other services they need. Under Minnesota Statutes, section 256B.501, subdivision 1, day training and habilitation services must be provided outside the persons residence unless medically contraindicated. Therefore the availability of day training and habilitation services is a critical factor in determining where residential services should be provided. This information can be used to determine if services are needed in the "location" proposed as required in Minnesota Statutes, section 252.28, subdivision 1. This information can also be used in evaluating the need for day training and habilitation services. It is reasonable to require the county board to submit this information because the county board contracts with the day training and habilitation services and should easily be able to identify what services are currently available in the area.

The information required in item E is necessary to determine if the proposed service is being offered in a location where the service is needed, whether locating the service where it is proposed will provide access to services used by the general public and whether the location of the service will promote involvement with the person's family, neighbors, and friends as required in part 9525.0075, subpart 1. This information is also useful in evaluating client movement to determine if the actions are consistent with the goal of providing services to help the person attain the highest level

of independent functioning (Minnesota Statutes, section 256E.08, subdivision 1). It is reasonable to require the county board to submit this information because it should be easily compiled from the case records of the persons to be served.

The information required in item F is needed to determine the extent to which the needs of other counties will affect the availability of services in the county filing the application. This information can also be used to identify regional needs and existing efforts of county boards to meet those needs cooperatively. It is reasonable to require the county board to submit this information because the other counties that provide services in the host county must notify the county board of the host county under part 9525.0085, therefore this information is readily available to each county board.

It is reasonable to require the county board to submit the information required in item G because this information is needed to determine the amount of financial support that will be needed to keep the service operating. This information is needed by the commissioner to determine whether the cost projections for the service are within the fiscal limitations of the state. It is reasonable to require this information because funding considerations are an accepted part of a standard planning process.

The information required in item H is necessary to determine if the application was based on the information that must be considered under subpart 2. It is reasonable to require an explanation in the application to provide the commissioner with a clear understanding of how the proposed service will meet the identified needs.

Item I is necessary to provide evidence of the county board's action on the application and to provide a date that can be used to measure the time taken in the need determination process. It is reasonable to require a date so that the persons involved are aware of when the county board action took place.

Subp. 4. Review of county need determination. This subpart is necessary to inform the county board and other interested parties that a written procedure for reviewing a determination of need must be established by the county board. It is reasonable to require the county board to establish a written procedure to provide persons interested in developing a service with a chance to review the county board's decision. It is reasonable to allow the county board to establish the procedure so that the procedure is consistent with other review processes developed by the county board.

Subp. 5. Need determination by commissioner. This subpart is necessary to define the commissioner's role in the need determination process and to notify all interested persons of the factors to be considered by the commissioner in making a determination. It is reasonable to allow the commissioner to determine the need for the services on a local, regional, or statewide basis because the considerations might vary based on the size and type of service. For example, a very specialized service for medically fragile children might be best developed on a regional basis while supported living arrangements might be best developed based on local needs. It is

reasonable for the commissioner to consider all of the factors listed in items A to G to ensure that the decision made fits with the overall policies of the department and the state Legislature. The factors listed in items A to G are similar to the factors which were considered under the preceding rule part governing the need determination process (part 9525.0080).

It is necessary to consider item A because under Minnesota Statutes, section 252A.01, subdivision 1, the commissioner is required to protect "mentally retarded persons from violation of their human and civil rights." It is reasonable to consider such rights in the need determination process so that only services which do not violate these rights are developed.

It is necessary to consider item B because under Minnesota Statutes, section 252A.01, subdivision 1, the commissioner is required to protect the human and civil rights of persons with mental retardation by "assuring that such individuals receive the full range of needed social, financial, residential, and habilitative services to which they are lawfully entitled." It is reasonable to include this as a factor in the need determination process to facilitate the development of the service system in a manner which fulfills the commissioner's responsibilities under the statute. It is reasonable to use the individual service plans as part of this criteria because the services in the individual service plan are the services to which the persons is "lawfully entitled" under these rule parts.

It is reasonable to consider item C when determining if services will be carried out in the least restrictive environment because it is consistent with overall department policy regarding services to persons with mental retardation and with the state policy delineated in Minnesota Statutes, section 256E.08, which states that services should be directed at "the goal of attaining the highest level of independent functioning appropriate to the individual."

It is necessary to consider the size of the proposed service to comply with Minnesota Statutes, section 252.28. Size is a reasonable consideration because it is an important factor in determining the most appropriate environment for the person as well as being a critical factor in determining whether the service is least restrictive and age-appropriate for an individual. The size of each facility is also an important consideration in developing a statewide plan for the delivery and funding of residential day and support services as required in Minnesota Statutes, section 252.28, subdivision 3.

It is necessary to consider item D to determine if the proposed services are to be provided in the least restrictive environment as stated above and to determine if the proposed services are really needed. It is reasonable to consider use of services used by the general public to determine if the proposed services would comply with the requirements in part 9525.0075, subpart 1.

It is necessary to consider item E to determine if the state can afford to develop the service. The commissioner is responsible for operating within the budget set by the Legislature. It is, therefore, reasonable for the commissioner to consider the costs of the proposed mental retardation services before approving the need determination.

It is reasonable for the commissioner to consider item F because the commissioner has the overall picture of what is needed in the state and to develop a cost-effective system which meets the needs of the persons for whom the commissioner is responsible, a statewide approach is needed.

It is reasonable to consider item G for the reasons stated under item F.

Subp. 6. Notice of decision and right to appeal. This subpart is necessary to notify interested persons of the timeline for the commissioner's decision on the county board's application. It is reasonable to require the commissioner to decide on the county board's application within 30 days to eliminate undue and burdensome delays in the development of services. It is reasonable to allow the commissioner up to 30 days so that he or she has sufficient time to consider all of the pertinent facts. Thirty days is also a standard timeframe which was used in the preceding rule governing the need determination process (part 9525.0080). It is reasonable to include notification of the right to appeal to inform the county board of its right to appeal.

Subp. 7. Biennial redetermination of need. This subpart is necessary to clarify what is required to complete a biennial redetermination of need. The biennial redetermination of need is necessary to comply with Minnesota Statutes, section 252.28, subdivision 1. It is reasonable to require a biennial redetermination of need to determine if existing services are still needed. It is reasonable to assign the initial redetermination to the county board for the reasons stated in the rationale for subpart 3. It is reasonable to require the county board to base its decision on the needs of both the persons for whom the county is financially responsible and the persons for whom the county board is the host county in order to maintain consistency between the initial need determination and the biennial redetermination.

It is reasonable to require that the final redetermination be made by the commissioner because the commissioner is ultimately responsible for the need determination process under Minnesota Statutes, section 252.28, subdivision 1. Assigning the final redetermination responsibility to the commissioner is consistent with the process used for the initial determination. It is reasonable to use the same factors for the redetermination to maintain consistency between the processes.

Subp. 8. Effect of need determination or redetermination. This subpart is necessary to inform interested persons of the effect of a need determination or redetermination. It is reasonable not to pay for (or reimburse) services which are not needed to comply with the state policy delineated in Minnesota Statutes, section 2568.092, subdivision 3, and to target state funds to needed services. It is necessary to state that an application for licensure will not be considered complete until the need for service is determined to avoid licensure of unneeded services. This requirement is consistent with past department policy regarding licensure of services requiring a need determination such as ICF/MRs. It is reasonable to stay the effect of the subpart pending the outcome of the appeal so that the provider will not be adversely affected by the appealed action.

Subp. 9. Appeal of commissioner's redetermination. This subpart is necessary to notify providers that they may appeal the commissioner's decision under Minnesota Statutes, chapter 14. It is reasonable to conduct appeals under chapter 14 because the chapter establishes a detailed procedure for contested cases. Using this procedure is a reasonable way to standardize the treatment of appeals. Chapter 14 is also used for appeals of licensure which is a process similar to the need determination process. It is reasonable to use the same appeals process for licensing appeals and need determination appeals to promote consistency between department rules.

9525.0155 STANDARDS FOR THE QUALIFICATIONS AND TRAINING OF CASE MANAGERS

Subpart 1. Staff Qualifications. This subpart is necessary to establish staff qualifications for the person coordinating the provision of services to the person with mental retardation. It is reasonable to require that staff meet these qualifications so that they have the knowledge to identify the needs of persons with mental retardation and the programs and services that might be used to meet those needs. This knowledge is necessary because the person providing case management services as required in part 9525.0045, subpart 2 must make professional decisions regarding the service needs of the person with mental retardation, develop individual service and individual habilitation plans for the person with mental retardation and monitor the services provided to the person with mental retardation (among other duties). To perform these duties competently, the case manager must know about mental retardation, the needs of persons with mental retardation, and mental retardation services. In addition, the case manager must be able to gather information from professionals and make independent judgments on behalf of his or her case load without being unduly influenced by the professional expertise of the provider or the other professionals. These duties must be performed competently so that only necessary services are provided as required by Minnesota Statutes, section 256B.092, sub-division 3.

Item A is reasonable because it is similar to the requirements for a qualified mental retardation professional (QMRP) established in the Code of Federal Regulations, title 42, section 442.401. It is advisable for a county board to have at least one QMRP on staff to assist other staff in identifying the needs of the persons with mental retardation and developing appropriate services to meet those needs. Intermediate Care Facilities for the Mentally Retarded (ICF/MRs) are required to have a QMRP on staff. It is reasonable to require that the case manager who must monitor the services provided by these facilities possess similar knowledge because he or she will be required to evaluate the decisions made by the staff of the facilities and in some cases may have to override their decisions.

Item B is necessary to provide the county board with a reasonable way of decreasing the burden on the case manager who meets the requirements in Item A. It is reasonable to establish at least minimum qualification standards for all staff persons providing case management services and to require that persons with less education and experience be supervised by someone with more extensive knowledge of mental retardation and services for persons with mental retardation so that persons with mental retardation will

be appropriately served. It is reasonable to require 40 hours of training because this is roughly equivalent to the amount of time spent in classroom training for one undergraduate course and is equivalent to one work week in most government offices. One week of training should not overly burden the county board but would provide a concentrated period of time in which to teach the staff needed skills. These skills could then be fostered by the supervisor and supplemented by continuing education in future years. The substitution of training for experience was suggested at the December 13, 1984, advisory committee meeting. This suggestion was incorporated into the proposed rule and reviewed by the committee members at the February 7, 1985, committee meeting. The requirement was acceptable to the majority of the committee members.

It is reasonable to exclude from case management duties assigned to persons qualified under this item, the case manager services described under 9525.0065 (Screening Team), 9525.0075 (ISP Development) and 9525.0095 (IHP Development) since these responsibilities require the person to make professional decisions, chair meetings with other professionals and make judgments on behalf of his or her case load without undue influence by providers or others who have professional training and experience.

Item C is necessary to allow the county boards time to adjust personnel policies to meet the requirements of this part. In some areas of the state it may not be possible to immediately locate case managers with the required education and experience. This item would allow case managers who meet the education requirements to gain the necessary experience on the job. Because these case managers do have the necessary education but lack experience, it is reasonable to decrease the amount of additional training required from the 40 hours required in Item B. to 20 hours. It is reasonable to require training for persons who meet the education requirement but not the experience requirement because most educational programs do not include specific courses in mental retardation- (The department contacted the colleges in this area and found that there were no mental retardation courses required for a bachelor's degree in social work. Even the masters degree and Ph.D. programs at the University of Minnesota only offer courses in mental retardation as elective courses.)

It is reasonable to require that the training be completed within 12 months of the date of hiring because their lack of experience will be most evident when they begin their jobs. It is reasonable to encourage completion of this training as soon as possible for the sake of the persons with mental retardation, but in recognition of the time needed to set up training sessions, the department decided to give the county boards one year to train these case managers. It is reasonable to allow the county boards 12 months to provide the training because they will need time to assess the areas in which the staff need training and will need additional time to arrange the training.

Subp. 2. Case manager training. This subpart is necessary to develop, enhance, and maintain the case manager's skills and knowledge of mental retardation. It is necessary to provide training each year to keep the case manager up to date on new developments in the field of mental retardation. It is reasonable to require the case managers to keep up with developments

in the field of mental retardation because they authorize and monitor services and must have up-to-date knowledge of service methods to make appropriate placements in the least restrictive environment and protect the health, safety, and welfare of the persons with mental retardation. Regular updating is necessary because there have been many new developments in the field of mental retardation and case management for persons with mental retardation during the past two decades and new developments continue to occur. This is particularly true in the area of case management. (The foundation for the establishment of case management as a formalized service was laid in 1962, and by 1974 the federal government had recognized case management as a priority service.)

Providing regular training also improves the accountability of the case manager which has been found to be an important factor in the movement of persons with mental retardation from institutions to the community. The importance of case manager accountability is reflected in the following statement made by the federal district court in 1977 in the Pennhurst case (Federal Supplement, Volume 446, pages 1295-1329). "Lack of accountability in case management was the central reason for the lack of movement from institutions to the community." (Laski & Spitalnik, "A Review of Pennhurst Implementation" Community Services Forum 1979 1, (1), 1, 6, & 8. The courts have repeatedly pointed out the problems that occur when case management fails to function. It is therefore reasonable to improve the functioning of the case management system by the provision of annual training for all case managers.

It is reasonable to require 20 hours of training each year since this is only about 1 percent of the case manager's work hours for the year and is comparable to the amount of inservice training required of many other professionals in the state. The department researched the continuing education requirements in Minnesota for other professionals (including dentists, pharmacists, attorneys, real estate brokers, chiropractors and nursing home administrators) and found that most professions require an average of 15 to 20 hours per year of continuing education.

9525.0165 ENFORCEMENT

This part is necessary to facilitate the orderly implementation of the rule parts. A mechanism for enforcing compliance with parts 9525.0015 to 9525.0155 is necessary to fairly and consistently apply the rule parts, and to protect the health, rights, and safety of persons with mental retardation. The provision regarding variances is necessary because the emergency rule contained a variance section allowing county boards time to reach compliance with the provisions of the emergency rule. If a variance has been granted, it is reasonable to enforce the rule as varied. Minnesota Statutes, section 14.05, subdivision 4, authorizes the commissioner to grant a variance to a rule. The requirement that the variance request be in writing is consistent with the requirements in the emergency rule. It is necessary to provide evidence of the request.

It is necessary to provide a procedure for a county board to request a review of the commissioner's decision to afford county boards the opportunity to contest the determination, to provide all facts and circumstances in a county board's favor to the commissioner for consideration, and to pre-vent arbitrary decision making.

The requirement that the request for reconsideration be filed in writing within 30 calendar days of the commissioner's order is necessary to facilitate the request process and to provide evidence of the formal request. It is reasonable for the commissioner's decision to be final once a review for reconsideration has been conducted in order to avoid needless expenditure of time and public funds in a matter where the commissioner has the authority to make the final decision. Written notification to a county board of the commissioner's decision on the request is necessary to inform the county board whether the decision is affirmed or reversed and to provide evidence of the commissioner's final decision.

DEPARTMENT PRESENTATION

The following persons will present a summary of the need and reasonableness of parts 9525.0015 to 9525.0165 for the Department of Human Services.

General Provisions - Shirley Schue, M.S., Case Management Supervisor,
Mental Retardation Division (see attached resume) Authority -
Deborah Huskins, Special Assistant Attorney General,
Attorney General's Office

OUTSIDE EXPERT WITNESSES

The Department of Human Services will not be using outside expert witnesses to testify in support of parts 9525.0015 to 9525.0165.

CONCLUSIONS

The foregoing statements address the need and reasonableness of the proposed rule parts 9525.0015 to 9525.0165. To a great extent the need for the rules are described by state statute, federal regulations, and the inherent responsibility of the Minnesota Department of Human Services to exercise prudent management of public funds.

STATE OF MINNESOTA

Date: February 13, 1986



LEONARD W. LEVINE, Commissioner
Department of Human Services