

STATE OF MINNESOTA
DEPARTMENT OF HUMAN SERVICES

In the Matter of the Proposed
Adoption of Minnesota Rules,
parts 9500.1650 Through
9500.1663 Governing the
Commissioner's Decision on
Whether to Consent to Lump
Sum Settlements or Compromise
Agreements Proposed in
Paternity Suits.

STATEMENT OF NEED AND
REASONABLENESS

PURPOSE OF AND PROCEDURES GOVERNED BY THE PROPOSED RULES

Minnesota Statutes, section 257.60, mandates the court to name the commissioner a party to a paternity suit in which a lump sum settlement or compromise agreement is proposed. Proposals for compromise agreements are authorized under Minnesota Statutes, section 257.64, subdivision 1, and proposals for lump sum settlements are authorized under Minnesota Statutes, section 257.66, subdivision 4.

As a party to the paternity suits, the commissioner must decide whether to consent to the proposed lump sum settlement or compromise agreement.

Authority for the commissioner to make decisions relating to lump sum settlements and compromise agreements is given under Minnesota Statutes, sections 256.72; 256.74; 256.87 and 393.07, subdivisions 2, 3, and 5.

The commissioner's decisions as a party to paternity suits under Minnesota Statutes, section 257.60, and the procedures used to arrive at those decisions are defined as rules according to the Minnesota Administrative Procedures Act. Under the Act, all parties affected by rules must be given a chance to see and comment on rules before they are promulgated as law.

The purpose of proposed rule parts 9500.1650 through 9500.1663, therefore, is twofold; the first purpose is to govern the

commissioner's decisions on whether to consent to a lump sum settlement or compromise agreement proposed as part of a paternity suit, and the second purpose is to allow affected persons to comment on the proposed rule parts.

LEGISLATIVE BACKGROUND OF CHILD SUPPORT ENFORCEMENT

Laws pertaining to child support enforcement are based on the assumption that the biological or adoptive parents of a child should be responsible for the financial support of that child. Congress and state legislatures have used this assumption to develop child support enforcement legislation for at least 35 years.

In 1950 Congress added section 402(a)(11) to the Social Security Act to require state welfare agencies to notify law enforcement officials when Aid to Families with Dependent Children (AFDC) was furnished to a child of an absent parent. In 1965 and 1967 Congress passed laws to allow states to request addresses of absent parents from the Department of Health, Education, and Welfare (now the Department of Health and Human Services) and from the Internal Revenue Service, and to require states to establish offices for child support enforcement.

In 1975, Public Law 93-647 established the child support enforcement program as part D of title IV of the Social Security Act. According to part D, states have primary responsibility to operate the child support enforcement program according to a state plan. A major component the state plan must contain is a plan for the state to establish paternity and secure support for individuals who receive AFDC and who apply directly for child support services.

Public law 94-88, also passed in 1975, and Code of Federal Regulations, Title 45, section 232.12 require as a condition of eligibility for assistance, that each applicant for or recipient of

AFDC be required to cooperate with the local IV-D agency in establishing the paternity of a child born out-of-wedlock for whom assistance is claimed. An applicant for or recipient of AFDC can be excused from cooperating in establishing paternity or securing support under circumstances such as rape or incest when cooperating would not be in the best interest of the child.

Code of Federal Regulations, title 45, sections 301 through 306 guide implementation of Title IV-D of the Social Security Act.

Code of Federal Regulations, title 45, section 303.5 requires the local IV-D agency to try to establish paternity and an order for support in the case of a child born out-of-wedlock:

1. in all cases covered by an assignment of support and maintenance rights under operation of law, and

2. in all cases where an individual not receiving public assistance requests child support collection and paternity determination services.

Congress enacted the Child Support Enforcement Amendments of 1984 (Public Law 98-378), to strengthen State laws and put strong enforcement techniques in place. Public Law 98-378 requires states to have laws and procedures that permit the establishment of paternity of any child at any time prior to that child's eighteenth birthday; to establish guidelines for setting child support award amounts within the state; to include medical support in new or modified support orders; and to require mandatory wage withholding for support. This federal law assures that support money goes to children for whom it is intended, regularly and reliably, and helps avoid expenditures of public support.

Prior to enactment of Public Law 98-378 Minnesota had already improved child support enforcement with Minnesota Statutes, Chapters

308 in 1983 and 547 in 1984.

The increasing numbers and strictness of laws and regulations pertaining to child support enforcement and paternity establishment corresponds to the apparent failure by absent parents to support their children. The failure of absent parents to support those children causes a corresponding increase in the dependence of children on the welfare system. To decrease the dependence of children on welfare, welfare agencies must establish who the biological parents of children are and then require those parents to support their children.

Minnesota's AFDC and child support enforcement program are supervised by the state Department of Human Services and administered by county human service or welfare agencies. Title IV-D services are provided to all families in need of support, including those receiving AFDC and those who do not receive AFDC but apply for help to establish paternity and obtain support from an absent parent. Child support collected by the county agencies is used to reimburse the state for AFDC paid to a family or is sent to the family if the family does not receive AFDC, has not received AFDC, or has already reimbursed the state for past AFDC support.

Although Minnesota Statutes, Chapter 518 requires both parents to support their children financially, a parent of an illegitimate child cannot be compelled to support the child until parentage is acknowledged or established or the parent offers financial support for the child in a legally binding document.

Many mothers of illegitimate children depend on public assistance until paternity is established and support is collected from the father. "Child Support Enforcement, 8th Annual Report to Congress for Period Ending September 30, 1983" (Appendix A) reports that the percentage of American children under 18 that live with only their

mothers has increased steadily since 1960 and that female-headed families with no husband because of divorce or because they have never been married are much more likely to be poor. Code of Federal Regulations, title 45, sections 302.31 and 303.5 require the state to establish paternity for children of applicants or recipients of AFDC except under good cause provisions and for persons not receiving AFDC who apply for paternity establishment and collection services. Because of these requirements, the establishment of paternity has a high priority for Minnesota's Title IV-D program.

GOVERNING PRINCIPLE AND PUBLIC INPUT

To prepare proposed parts 9500.1650 through 9500.1663, the commissioner used the procedures mandated by the Minnesota Administrative Procedures Act, the Office of Administrative Hearings, and a public advisory committee.

A notice to solicit outside opinion was published at Volume 9 State Register, page 849, number 17, dated October 22, 1984.

The public advisory committee was formed by the commissioner in January of 1985. The committee consisted of attorneys, a guardian ad litem, a child support officer, a judge, an accountant and financial specialist, a department rules development specialist, and State Office of Child Support Enforcement staff (see appendix B for a list of committee members). All committee members were familiar with, and most were experts on, paternity suits that propose lump sum settlements and compromise agreements. The committee met for a total of at least 10 hours.

To decide on rule provisions the committee had to identify the interests of the commissioner, child, alleged parent, and known parent that could influence the commissioner's decision to consent to a

proposed lump sum settlement or compromise agreement. Then the committee had to decide whether those interests should guide the commissioner's decision on whether or not to consent.

It became clear that in paternity suits that propose a lump sum settlement or compromise agreement, it is in the alleged parent's interest to minimize the amount of support ordered by the court, and that it is in the known parent's (plaintiff's) and child's interest to maximize the amount of support ordered by the court.

The commissioner's interests, however, were less clear at first. Under Minnesota Statutes, section 257.175 the commissioner must protect the interests of "defective, dependent, neglected and delinquent children, ..., and take initiative in all matters involving the interest of such children where adequate provision therefor has not been made". Yet, under Minnesota Statutes, section 256.462, subdivision 3, the commissioner is mandated to recover money expended for AFDC, and under Minnesota Statutes, section 256.87, Subdivision 1, the commissioner is authorized to bring action against a parent for the amount of AFDC that has been given a child. Therefore, the commissioner and the child could be perceived to be in an adversarial relationship in suits where the commissioner must try to recover from the alleged parent public assistance that was paid the child and where support for the child is being sought - in such suits the child and commissioner would be competing for money from the alleged parent.

The committee also realized, however, that unless the commissioner sought a lump sum settlement that was large enough to partially or fully reimburse the commissioner and provide support for the child until the child is 18 years of age the commissioner would probably have to provide support for the child later. It is in the commissioner's best interest then to try to obtain enough money to

repay the commissioner and support the child - and by trying to obtain that amount of money, the commissioner's legal responsibility to protect the child and the taxpayer is satisfied.

After identifying the interests of the parties involved in the paternity suits and after analyzing how those interests are protected in a paternity suit, it became apparent that the governing principle of proposed parts 9500.1650 through 9500.1663 should be the protection of the commissioner's interest to (1) recover past support provided by the commissioner and other costs related to the paternity suit, and (2) to consent only to those proposed lump sum settlements that provide all child support required under rules and laws, including medical insurance. In other words, proposed parts 9500.1650 through 9500.1663 are designed in part to try to obtain enough money and protections to prevent or reduce the need to provide the child with AFDC and medical assistance (medicaid) benefits.

Compromise agreements, which do not establish paternity, are not reasonable from the commissioner's point of view because they do not establish paternity. Paternity must be established to make the child eligible for certain financial benefits to which a child is entitled only through his or her biological or adoptive parent. Financial benefits that are contingent on establishing paternity and that are available to the child may prevent the commissioner from having to provide AFDC or medical assistance for the child. Such benefits include social security, veteran's benefits, workers compensation allowances, and health and life insurance benefits. Therefore, proposed part 9500.1658, subpart 2, protects the commissioner's and the child's interests in these benefits by requiring an admission of paternity coupled with a waiver of blood tests or indicating a "likelihood of more than 92% that the alleged father is the biological

father of the child".

Since compromise agreements are categorically rejected by the commissioner, proposed parts 9500.1650 through 9500.1663 govern how and under what conditions the commissioner will consent to proposed lump sum settlements. A proposed lump sum settlement must be large enough to at least partially or fully reimburse the commissioner for public assistance previously provided the child, blood test costs, medical expenses, filing fees, service fees, and attorney fees, and provide adequate ongoing support for the child until the child is age 18.

Proposed parts 9500.1650 through 9500.1663 are also reasonable because they set standards that enable the commissioner to make objective and consistent decisions concerning consent to proposed lump sum settlements and compromise agreements.

NEED FOR AND REASONABLENESS OF SPECIFIC RULE PROVISIONS

As required by the Administrative Procedures Act, and based on the principle that the commissioner must act in the commissioner's interest as a party under Minnesota Statutes, section 257.60, the commissioner hereby affirmatively presents the need for and reasonableness of proposed parts 9500.1650 through 9500.1663.

9500.1650 Definitions.

Subpart 1. Scope. This subpart is necessary and reasonable because it clarifies that the definitions apply to the entire sequence of rules.

Subp. 2. Admission of Paternity. This definition is necessary because an admission of paternity is one of the criteria under proposed part 9500.1658 that the commissioner will use to decide whether to consent to a lump sum settlement. It is also necessary

because it is one of the ways by which the commissioner is assured that paternity is established as required under the Code of Federal Regulations, title 45, sections 302.31 and 303.5. The definition is reasonable because it is the one agreed on by the public advisory committee and because it is consistent with the meaning given under Minnesota Statutes, section 257.55, subdivision 1, paragraph (C), clause (1).

Subp. 3. **Aid to Families with Dependent Children.** This definition is needed because proposed part 9500.1658, subparts 4 and 5 require AFDC to be partially or fully reimbursed to the commissioner for the commissioner to consent to a lump sum settlement. The definition is reasonable because it was reviewed by experts in the department who are writing proposed rules on AFDC. It is consistent with federal law, 42 USC section 601 and Minnesota Statutes, sections 256.72 - 256.87.

Subp. 4. **Alleged Father.** This definition is needed because the term is used throughout the rule. The alleged father is the person who is responsible for payment of the lump sum settlement if his paternity is determined or if he acknowledges it. The definition is reasonable because a paternity suit is brought against a person who is believed to be the father of a child, and once the suit is brought, the term "alleged father" is used to refer to that person.

Subp. 5. **Blood tests.** This definition is necessary because proposed part 9500.1658, Subpart 2 requires blood tests to determine probability of paternity if the alleged father has not admitted paternity. The definition is reasonable because it is used in accordance with Minnesota Statutes, section 257.62.

Subp. 6. **Child.** Subpart 6 is necessary because Minnesota Statutes, section 257.51-257.74 and proposed parts 9500.1650-9500.1663

directly affect a child's rights and the benefits available to that child through paternity establishment. This definition is reasonable because it helps to identify, objectively and consistently, when the child's rights and benefits are being affected.

Subp. 7. Commissioner. Subpart 7 is necessary because it is used to identify the person who, according to Minnesota Statutes, section 257.60 must be named as a party to paternity suits that propose a lump sum settlement or compromise agreement, and because Minnesota Statutes, section 257.60 and proposed parts 9500.1650 - 9500.1663 refer to the commissioner of human services.

Subp. 8. Compromise agreement. Subpart 8 is necessary because Minnesota Statutes, section 257.64, names the commissioner as a party to all paternity suits that propose a compromise agreement. The definition is reasonable because it is consistent with the explanation of compromise agreements given under Minnesota Statutes, section 257.64. It is also reasonable because part of the purpose of parts 9500.1650 through 9500.1663 is to indicate that the commissioner will not consent to a compromise agreement.

Subp. 9. Costs. Subpart 9 is necessary because the term is used in proposed part 9500.1658, which requires an alleged father to repay certain costs. The definition is reasonable because it is consistent with Minnesota Statutes, section 257.69, subdivision 2, which describes the costs an alleged father may be legally required to pay.

Subp. 10. Department. This definition is solely for the purpose of identification.

Subp. 11. Depository. Subpart 11 is necessary because it is used to help the commissioner decide whether to consent to a proposed lump sum settlement under proposed part 9500.1658. It is reasonable because Minnesota Statutes, section 257.67, subdivision 2 authorizes

the court to require that support payments be made to someone designated to administer them for the benefit of the child under supervision of the court. The definition is also reasonable because it functionally describes an element that the commissioner deems necessary to ensure that a lump sum settlement is used for support of the child and not for another person's use.

Subp. 12. **Guardian ad litem.** It is necessary to define this term because it is used in proposed part 9500.1660, item G. The definition is reasonable because it is consistent with Minnesota Statutes, section 257.60.

Subp. 13. **Income.** Subpart 13 is necessary because income is used to help determine how much support a parent can pay. This definition is reasonable because the same definition is used to help determine an established parent's ability to provide support for a child under Minnesota Statutes, section 518.54, subdivision 6.

Subp. 14. **Interest rate.** Subpart 14 is necessary because "interest rate" is used in proposed part 9500.1658, subpart 5, item A. Also, "interest rate" is used to calculate the present value of periodic payments a father would be required to pay and to compare that value to the value of a lump sum settlement proposed by that father. It is necessary to define interest in such a precise manner to make the comparisons consistent when used by the commissioner to compare the proposed lump sum settlement to present value to determine whether the proposed lump sum settlement is sufficient to keep the child off of AFDC or at least minimize the necessity for supporting the child with AFDC.

It is reasonable to use the current market rate of interest on a U.S. Treasury obligation for comparative purposes because the U.S. government guarantees full faith and credit of the obligation by the

U.S. government. The rate of interest is guaranteed and constant. The interest earned is exempt from state taxation for the dependent child. The definition is also reasonable because the rate of return on a sum invested as a U.S. treasury obligation is greater than if the sum had been deposited in a pass book savings account earning minimum interest allowable by law (now about 5 1/2%).

It is reasonable to limit the definition for comparative purposes. The definition does not require that the proposed lump sum settlement be invested in a U.S. Treasury obligation nor preclude investment of the proposed lump sum in an annuity or savings certificate which yields a higher rate of interest with limited risk to the investment.

Subp. 15. Liability for past support. Subpart 15 is necessary because in addition to periodic payments of support or a lump sum settlement in lieu of periodic payments, the alleged father may have a liability for past support that will have to be partially or fully reimbursed for the commissioner to consent to a proposed lump sum settlement as is proposed under part 9500.1650, subpart 4. If a public agency has provided AFDC or medical assistance, the court may direct that the alleged father reimburse the agency for all or a portion of past support in accordance with Minnesota Statutes, sections 257.66 and 257.67. The definition is reasonable because it is consistent with Minnesota Statutes, sections 257.66, subdivision 4 and 257.67.

Subp. 16. Local IV-D Agency. Subpart 16 is necessary to identify the agency responsible for child support enforcement and to which periodic payments of the lump sum settlement must be paid if public assistance is or was provided the child as is required by Minnesota Statutes, sections 256.74, subdivision 5 and 518.551,

subdivision 1 and Code of Federal Regulations, title 45, section 302.32. The definition is reasonable because it is consistent with the definition identifying the organization responsible for administering the Title IV-D program as given under Code of Federal Regulations, title 45, section 301.1, and as governed by Code of Federal Regulations, title 45, section 302.12.

Subp. 17. Lump sum settlement. Subpart 17 is necessary because the purpose of this rule is to establish standards to determine whether a lump sum settlement is in the best interests of the commissioner. The definition is reasonable because it is a form of payment suggested by Minnesota Statutes, section 257.66, subdivision 4. It is reasonable to define lump sum settlement as a "single payment" because a "single payment" is consistent with Minnesota Statutes, section 257.66, subdivision 4, which states: "In the best interest of the child, a lump sum payment may be ordered in lieu of periodic payments of support". It is clear that the law says "a lump sum payment", not two or more payments. The public advisory committee agreed that it would be confusing to compare lump sum settlements to the present value of periodic payments if "lump sum settlement" was defined as more than one payment.

Subp. 18. Medical support. It is necessary to define this term because Minnesota Statutes, section 518.171 (Session laws) and proposed part 9500.1658, subpart 6 require the maintenance of health and dental insurance be provided for the child by one of the parents. The definition is reasonable because it is consistent with the above cite and because it protects the commissioner's interest by preventing or minimizing the need for medical assistance (medicaid) benefits.

Subp. 19. Mother. It is necessary to define "mother" because though proposed parts 9500.1650 through 9500.1663 apply to either

parent it is simpler to use the term "mother" for grammatical ease, and because the vast majority of suits to determine parentage are paternity suits. The definition is reasonable because if the mother was married when the child was born or conceived, support for the child would be governed by laws pertaining to married, separated, or divorced parents.

Subp. 20. **Office of Child Support Enforcement.** It is necessary to define the term "Office of Child Support Enforcement" because this office has responsibility to administer the child support enforcement program on a statewide basis in accordance with the State Plan for Support Collection and Establishment of Paternity under Title IV-D of the Social Security Act. It is necessary because the office also has responsibilities under proposed Parts 9500.1650 through 9500.1663. The definition is reasonable because the Office of Child Support Enforcement has been delegated responsibility to act on behalf of the commissioner in consenting to or rejecting lump sum settlements or compromise agreements according to Minnesota Statutes, section 257.60.

Subp. 21. **Party.** Subpart 21 is necessary because Minnesota Statutes, section 257.60 requires the commissioner to be a party to paternity suits that propose a lump sum settlement or compromise agreement. This definition is reasonable because it is consistent with the statute cited and because, according to the public advisory committee, "Party" is the term commonly used by the legal community to identify persons or entities affected by a paternity suit or other law suits. The definition is also necessary because one of the purposes of parts 9500.1650 through 9500.1663 is to clarify the role of the commissioner as a party to, and to clarify the commissioner's interest in, paternity suits that propose a lump sum settlement or compromise agreement.

Subp. 22. Paternity Suit. Subpart 22 is necessary because the term is used in these rules to describe the action brought under Minnesota Statutes, section 257.57. The definition is reasonable because it is commonly accepted by the legal community. The definition was reviewed and approved by the public advisory committee whose members included attorneys.

Subp. 23. Periodic payments. Subpart 23 is necessary because it clarifies the meaning of the term that is used in these rules. Minnesota Statutes, section 257.66, subdivision 4, specifies that support judgments or orders "ordinarily shall be for periodic payments which may vary in amount". The definition is reasonable because it is consistent with Minnesota Statutes, section 257.66, subdivision 4 which refers to a lump sum as a single payment and periodic payments as multiple payments of support. Minnesota Statutes, section 518.551 establishes the maintenance and support obligations for persons whose paternity has been established. The definition is also reasonable because it is consistent with Minnesota Statutes, section 257.66, subdivision 3, which states that the remaining matters must be determined in accordance with Minnesota Statutes, Chapter 518.

Subp. 24. Present value. Subpart 24 is necessary because the commissioner determines whether to consent to a proposed lump sum settlement, in part, by comparing the present value of periodic payments to the monetary value of a proposed lump sum settlement. Minnesota Statutes, section 257.66, subdivision 4 provides that "a lump sum payment may be ordered in lieu of periodic payments of support". (See the SNR for the comparison of periodic payments to lump sum settlements, 9500.1658, subpart 3 on page 19; and the SNR for the requirement that the lump sum be paid the child according to a schedule of periodic payments, part 9500.1658, subpart 5, on page 21.)

The definition used is reasonable because, the formula proposed to be used to compute present value is the textbook formula commonly used by government and business to compute present value. The definition is also reasonable because, according to Peter Sausen, financial specialist on the public advisory committee, it is a conservative estimate of what the lump sum equivalent would be of periodic payments. For example, the formula for present value uses as its interest rate, the current market rate of interest on a United States Treasury Obligation (see Subpart 14, Interest Rate) and uses the child's 18th birthdate as the obligation's maturity date. Using the 18th birthday to calculate present value is reasonable because, according to Minnesota Statutes, section 518.54, subdivision 2, a father's responsibility for support usually ends on the child's 18th birthday.

Subp. 25. Reimbursement. Subpart 25 is necessary because it is the commissioner's responsibility to seek reimbursement for public funds paid on behalf of the child. The definition is reasonable because it is consistent with Minnesota Statutes, sections 393.07, subdivision 9 and 256.87, which provide for reimbursement of public funds paid on behalf of the child and with Minnesota Statutes, sections 257.66, subdivisions 3 and 4, and 257.69, which provide for reimbursement of costs.

Subp. 26. Support. Subpart 26 is necessary because a paternity suit is usually brought not only to establish paternity but to establish that a parent must pay support. A goal of parts 9500.1650 through 9500.1663 is to ensure that adequate support including medical support is provided by the terms of lump sum settlements. The definition is reasonable because Minnesota Statutes, section 518.54, subdivision 4, defines a term that is used in Minnesota Statutes,

section 518.551 to describe the amount of support that a parent must pay for a child after a divorce or legal separation. Proposed parts 9500.1650 through 9500.1663 presume that the amounts of support required under Minnesota Statutes, sections 518.551, subdivision 5 and 518.171, would also be sufficient for the support of an illegitimate child from the person whose paternity for that child has been established.

9500.1655 Applicability.

Proposed part 9500.1655 is necessary to clarify that the Commissioner of the Department of Human Services will use the standards and procedures provided under Parts 9500.1650 through 9500.1663 to decide whether to consent to a lump sum settlement or compromise agreement proposed in a paternity suit.

Proposed part 9500.1655 is reasonable because it helps ensure consistent application of standards and procedures by the commissioner and because it advises other parties to paternity actions and the courts of the standards and procedures used by the commissioner when acting as a party to paternity suits.

9500.1656 Consent By The Commissioner To A Compromise Agreement.

Proposed part 9500.1656 is necessary because the commissioner, as a party to a paternity suit involving a compromise agreement, must decide whether to consent to a compromise agreement. The commissioner's decision to not consent to compromise agreements is reasonable because one of the purposes of the Title IV-D program, which is administered by the commissioner, is to establish paternity. The Code of Federal Regulations, title 45, section 303.5 requires that the IV-D agency attempt to establish paternity in the case of a child born out of wedlock; in all cases covered by the assignment of support

and maintenance rights, and in all cases where an application is made for child support collection or paternity determination services. If the commissioner consented to a compromise agreement, it would be in violation of the cited regulation. It is also reasonable for the commissioner not to consent to compromise agreements because without paternity established, public assistance may need to be provided the child whereas had paternity been established, the child might be eligible for benefits under various entitlement programs, such as social security or workers' compensation, that base eligibility on parental lineage. Such benefits would minimize or prevent the need for AFDC and medical assistance benefits.

9500.1657 Commissioner's Consent To A Lump Sum Settlement.

Part 9500.1657 is necessary because as a party the commissioner must decide whether to consent to a lump sum settlement if proposed to settle a paternity suit. It is reasonable for the commissioner to not consent to lump sum settlements that do not comply with proposed parts 9500.1650 through 9500.1663 because these parts are designed to protect the commissioner's interest in paternity suits that involve compromise agreements and lump sum settlements. The position that parts 9500.1650 through 9500.1663 be written to protect the commissioner's interest was agreed upon by the public advisory committee. The reasonableness of the idea that parts 9500.1650 through 9500.1663 be written to represent the commissioner's interest is also discussed in the previous section titled "Governing Principle and Public Input".

9500.1658 Standards Used By The Commissioner To Determine Whether To Consent To A Proposed Lump Sum Settlement.

The conditions of subparts 1 through 6 below are necessary to help ensure that the child receives financial support from the parents

rather than through public assistance, thereby protecting the commissioner's interest in the paternity suit.

Subpart 1. Standards. Subpart 1 is necessary to clarify that all of the conditions of part 9500.1650 through 1663 must be met for the commissioner to consent to a proposed lump sum settlement, and for the commissioner to make impartial decisions regarding consent. The subpart is reasonable because it prevents the commissioner from making arbitrary or capricious decisions regarding consent to a proposed lump sum settlement. Without this subpart, there could be confusion about which of the criteria of Part 9500.1658, subparts two through six is most important. Department staff and the public advisory committee agreed that all the conditions of Part 9500.1658 are equally important and should be met for the commissioner to consent.

Subp. 2. Admission of paternity. Subpart 2, admission of paternity, is needed because an admission of paternity or a determination of paternity helps to ensure that the liability is identified so attempts to secure a maximum amount of support for that parent's child can be made, thereby satisfying the commissioner's interest in not having to provide total support to the child through AFDC.

Subpart 2 is also necessary because an admission of paternity settles the issue of paternity. It is reasonable because the paternity suit is brought to establish paternity for the child.

If the alleged father believes himself to be the father of the child and waives blood tests or the results of blood tests indicate a more than 92% likelihood that he is the father, it is reasonable to request that he admit to paternity as settlement of the issue.

Subp. 3. Comparison of proposed lump sum settlement to present value of periodic payments. This subpart is needed to protect the

commissioner's and child's best interest, which is to ensure payment from an alleged father that meets or exceeds the present value of periodic payments. It is consistent with Minnesota Statutes, section 518.551, subdivision 5, which reflects the legislature's determination of the amount needed to support a child. A payment from an alleged father that meets or exceeds the value of periodic payments reduces the child's need for AFDC. This subpart is reasonable because if a lump sum settlement was not proposed, the issue would be sued to judgment and child support would be determined according to Minnesota Statutes, Chapter 518 and section 257.66, subdivision 3. This subpart is reasonable because it mandates that a precise mathematical formula (present value) be used to compare the value of a lump sum settlement proposal to the value of periodic payments. Further, the subpart is consistent with Minnesota Statutes, section 257.66, which allows lump sums in lieu of periodic payments.

The criteria that a lump sum settlement be equal to or greater than the present value of periodic payments is reasonable because it follows the rationale contained in the introduction to this statement of need and reasonableness - that both parents are traditionally and morally required to economically support their children and that these morals and traditions have led to legal requirements for both parents to economically support their children. If parents are legally required to economically support their children, the commissioner's and thereby taxpayer's economic support for a child should be sought only as a last resort.

Subp. 4. **Liability for past support and costs.** Subpart 4 is necessary to protect the commissioner's interest in the reimbursement of public funds used to support the child and the costs of the paternity suit. This subpart is reasonable because it is consistent

with Minnesota Statutes which allow the court to provide for repayments of these expenses. These statutes include sections 256.74, subdivision 5, assignment of support and maintenance; 257.66, liability for past support; 257.67, enforcement of judgment or order, and 257.69, costs.

It is reasonable to request provisions for income withholding on payment agreements for past support and costs because it is consistent with Minnesota Statutes, section 518.611, subdivision 5.

This section is also reasonable because settlement of this issue will help reduce the necessity for further litigation between the parties, such as a suit brought later to obtain past support and costs under Minnesota Statutes, section 256.87.

Subp. 5. **Protection over lump sum settlement amount.** This subpart, including items A through F, is needed to ensure that money is available to meet at least the basic needs of the child throughout the period that the mother and father are required to support the child. It is possible, for example, for a parent to spend all of a lump sum settlement at once, and on things which the child does not need. If the lump sum settlement is spent during a short period, or if it is not invested wisely, there may not be enough money to meet fully or partly the child's basic food, clothing, and shelter needs throughout the entire period the parent is required to support the child. If the lump sum money is depleted too soon, public assistance may be needed to provide for the child's basic needs, thereby adversely affecting the commissioner's interest.

Item A is reasonable because according to the financial specialist from the Department of Finance who served on the public advisory committee, the interest rate on a U.S. Treasury Obligation will help the invested lump sum at least keep pace with inflation and

because investments at this interest rate are a guaranteed security and carry little or no risk of losing the principle. Using the child's 18th birthdate as the investment's maturity date is reasonable because according to department records and Minnesota Statutes, section 518.54, subdivision 2, the child's 18th birthdate is usually the date the parent is no longer legally required to support the child.

Item B is reasonable because the child will continue to have basic needs that will need to be met by the parent until the child reaches 18, when the parent is usually no longer legally required to economically support the person.

Item C is reasonable because it is consistent with Minnesota Statutes, section 256.74, subdivision 5, which requires that rights to support are assigned if the child becomes eligible for public assistance.

Item D is reasonable because the alleged father will need to know where to deposit the lump sum and because the person or agency to whom a payment from the lump sum will be made needs to know from whom the payments will come. The commissioner will want to know this information so that the commissioner can verify that the lump sum will be secure.

The alleged father may be required to send the settlement directly to the depository and the depository may be required to notify authorities if the lump sum is not deposited, depending on what is agreed to and what is ordered by the court according to Minnesota Statutes, section 257.67, subdivision 2.

The requirement is also reasonable because it legally binds the alleged father to an agreement of where to deposit the settlement.

Item E is reasonable because parties to the paternity suit may

want to verify the investment proposal or may need to exchange information from the person managing the account, such as improved investment terms or address change for transfer of payments. Also, the department and the local IV-D agency need to know whom to contact if there are problems, such as when payments are not being received.

Item F is reasonable because it helps avoid unexpected and unreasonable costs that could be subtracted from the amount of payments to the child and possibly jeopardize adequate support from the alleged father.

Subp. 6. Medical benefits. This subpart is necessary to ensure that the child is provided with insurance coverage to avoid undue expenses by the mother or the state, such as expenses that medical assistance would otherwise have to pay. It is reasonable because it is a requirement of Code of Federal Regulations, title 45, Parts 302, 304, 305, and 306 and Minnesota Statutes, section 518.171. By providing medical insurance benefits to the child in addition to provision of financial support for basic needs, the expenditure of public funds for the child are prevented or minimized.

9500.1659 Contents Of Proposed Lump Sum Settlement Agreement.

This part including items A through G is necessary to describe the contents of a lump sum settlement that are needed to determine whether the standards of part 9500.1658 have been met. It is reasonable because under Minnesota Statutes, section 257.66 certain provisions must be included in the court order. Information provided in the proposed agreement will help the court make the order for support. It is also reasonable because a proposed agreement offered as settlement of the paternity issues should resolve all issues involved.

Item A is reasonable because the parties need to be sent a copy of the commissioner's response to the proposed agreement.

Item B is reasonable because this is one of the conditions necessary for the commissioner to give approval to a lump sum settlement under proposed part 9500.1658, subpart 2.

Item C is necessary because it is the commissioner's responsibility to seek reimbursement for public assistance paid and because the commissioner needs to know how much will be reimbursed to evaluate whether the proposed lump sum settlement is in the best interest of the commissioner as explained in the "Governing Principle" section of this statement of need and reasonableness.

Item D is reasonable because the proposed amount is the basis for settling the child support issue. The commissioner needs to know the amount of the proposed settlement to evaluate whether the proposed amount is in the commissioner's interest.

Item E is reasonable because the periodic payments from the account will help meet the child's ongoing needs for support and prevent or minimize the need for public assistance. The commissioner needs the information required by item E to evaluate the proposed distribution to determine whether it will prevent or minimize the need for public assistance.

Item F is reasonable because the written statement can be used as evidence of the responsible parent's compliance with proposed part 9500.1658, subpart 5. It can then become the basis for a provision in the court's judgment order under Minnesota Statutes, sections 257.64 and 257.66.

Item G is reasonable to show the court that the parties have agreed to the terms of the proposed lump sum settlement. It is reasonable to request the guardian ad litem's signature prior to

submission of the proposed agreement to the commissioner to assure the commissioner that the child's interests have also been represented in negotiating the proposed settlement.

9500.1660 Documents That Must Accompany a Proposed Lump Sum Agreement.

The documentation listed in items A through G is needed to help the commissioner decide whether the proposed lump sum settlement protects the interests of the commissioner, and to help verify whether proposed lump sum settlements meet the requirements under Parts 9500.1658 and 9500.1659.

Item A is reasonable because it provides a means by which the commissioner can verify the statistical probability of the alleged father's paternity. If the blood test excludes the alleged father as a biological father the commissioner would reject the proposal because the commissioner will not consent to a compromise agreement.

Item B is needed because it is consistent with Minnesota Statutes, sections 257.60, 257.64, and 257.66, subdivision 4 to state why a proposed lump sum settlement would be better for the child than periodic payments. The requirement is reasonable because it is consistent with Minnesota Statutes, section 257.66, subdivision 4. Therefore, the parties must explain to the commissioner why they believe the proposed settlement is in the child's best interest.

Item C is reasonable because it helps the commissioner know how much financial support an alleged father can be expected to provide the child in accordance with the financial status of the alleged father and the guidelines under Minnesota Statutes, section 518.551, subdivision 5 and to determine compliance with Part 9500.1658, subpart 3.

Item D is reasonable because it provides the commissioner verification of the method used to determine the amount of the

proposed settlement and helps the commissioner determine if the amount offered is sufficient to provide for the child without public assistance.

Item E is reasonable because it accounts for public funds used to support the child and bring the paternity action and affirms the local IV-D agency's interest in reimbursement of public funds under Part 1658, subpart 4.

Item F is reasonable because it explains to the commissioner how the plan for pay back of public expenditures by the alleged father was developed. Because the total obligation, which includes past, present and future support, is proposed to be settled at one time by the alleged father the settlement amount must be sufficient to partially or fully reimburse the commissioner for public assistance already paid (as accounted for under item E) and still provide for the child's ongoing needs. It is not desirable for the commissioner to be awarded such shares of the sum proposed so that insufficient amounts are left for the child. It is also not desirable to award the child the total sum and disregard liability for public assistance already paid on behalf of the child to the detriment of the taxpayers. Therefore, it is reasonable to show how the plan for reimbursement was derived.

Item G is reasonable because it assures the commissioner that the child's interests have been represented. Although the commissioner's primary interest in lump sum settlements is economic, the commissioner also is responsible for protecting the welfare of the child and upholding state laws regarding child protection. Item G is further reasonable because it is consistent with Minnesota Statutes, section 257.66, which requires that a guardian ad litem be appointed to represent the interests of the child as a party.

9500.1661 Time Frames For Submissions Of Proposal.

This part is necessary because the commissioner must have time to review and respond to the proposed agreement prior to the court hearing on the proposed lump sum settlement. Thirty days is a reasonable time in which to respond because of staff availability for review, mail transit time and time for informational inquiry necessary to the process.

9500.1662 Reviewal Process.

This part is necessary to explain the procedure which will be used by the commissioner to review and consent or reject the proposed agreement. It is reasonable because it directs the commissioner on how to conduct an objective review of the proposal, and because it gives the other parties information needed to take further action.

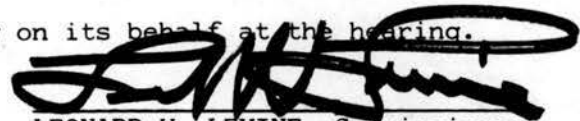
9500.1663 Notification Of Final Disposition.

This part is needed to inform the commissioner that the case has been finalized and that further correspondence or review on the commissioner's part is unnecessary. This method of notification is reasonable because the commissioner's file would otherwise remain open in anticipation of subsequent negotiations, and also because it helps protect the commissioner's interest because the commissioner can know whether further action must be taken as a party to the paternity suit.

Expert Witnesses at Hearing

If a public hearing is required, the Department does not plan to have expert witnesses from outside the Department testify on its behalf at the hearing.

7-7-86
Date


LEONARD W. LEVINE, Commissioner

FISCAL NOTE FOR DEPARTMENT OF HUMAN SERVICES

PERMANENT RULE

PARTS 9500.1650 THROUGH 9500.1663

The permanent rule parts are expected to produce no net change in total costs for state and local governments. A lump sum settlement or compromise agreement is settlement to a paternity suit which would be otherwise settled by trial and a court order or dismissal of the action.

A handwritten signature in black ink, appearing to read "Leonard W. Levine". The signature is written in a cursive style with a horizontal line underneath.

LEONARD W. LEVINE

Commissioner

Minnesota Department of Human Services

RULE COMMITTEE ON LUMP SUM SETTLEMENTS
and
COMPROMISE AGREEMENTS IN PATERNITY ACTIONS

Jean Gerval, Director 227-7493
Minnesota County Attorneys Association
40 North Milton Street
St. Paul, Minnesota 55104

Suzanne Smith 348-8475
Guardian ad litem
626 South Sixth Street
Minneapolis, Minnesota 55415-1582

Aviva Breen 296-8590
Commission for Economic Status of Women
Room 400 SW State Office Building
435 Park Street
St. Paul, Minnesota 55155

Becky Frederick Hanson 929-0041
Titus Building, Suite 300
6550 York Avenue South
Minneapolis, Minnesota 55430

Cathy Brasel, Child Support Officer 421-4760
Anoka County Social Services
Courthouse
Anoka, Minnesota 55303

Loretta M. Frederick (507) 454-6660
South Regional Legal Aide
400 Exchange Building
Fourth and Center Streets
Winona, Minnesota 55987

Peter Sausen, Debt Management Dir. 296-8372
Department of Finance
Room 309 - Administration Building
50 Sherburne Avenue
St. Paul, Minnesota 55155

Judge Stanley Thorup 421-4760
Anoka County Court
Courthouse
Anoka, Minnesota 55303

Michael Dean, Rulemaker 297-1469
Department of Human Services
Rule Making Division
444 Lafayette Road - 4th Floor
St. Paul, Minnesota 55101

Mary L. Anderson, Program Advisor 296-2555
Department of Human Services
Office of Child Support Enforcement
444 Lafayette Road - 2nd Floor
St. Paul, Minnesota 55101