IN THE MATTER OF THE PROPOSED RULE OF THE DEPARTMENT OF HUMAN SERVICES GOVERNING ELIGIBILITY TO RECEIVE PAYMENT AS A PROVIDER OF MENTAL HEALTH SERVICES IN THE MEDICAL ASSISTANCE PROGRAM, MINNESOTA RULES, PARTS 9505.0260 AND 9505.0323

STATEMENT OF NEED AND REASONABLENESS

INTRODUCTION

Minnesota Rules, parts 9505.0260 and 9505.0323 are proposed by the Department of Human Services to establish the standards to receive payment as a provider of mental health services including community mental health center services in the medical assistance program.

The Minnesota medical assistance program is the joint federal-state program that implements the provisions of Title XIX of the Social Security Act by providing for the medical needs of low income or disabled persons and families with dependent children. (See United States Code, title 42, section 1396a, et. seq.)

In compliance with the requirements of the Code of Federal Regulations, title 42, section 431.10, (42 CFR 431.10), the Department of Human Services has been designated as the state agency to supervise the administration of the state's medical assistance program and to adopt rules that must be followed in administering the State Plan. The State Plan is the department's comprehensive written plan to administer and supervise the medical assistance

program according to the federal requirements.

Correspondingly, Minnesota Statutes, section 256B.04, subdivision 2 requires the Commissioner of the Department of Human Services to establish "uniform rules and regulations, not inconsistent with law" to ensure that the medical assistance program is carried out in an efficient, economic, and impartial manner. The Department is further required, under Minnesota Statutes, section 256B.04, subdivision 4, to cooperate with the federal government "in any reasonable manner as may be necessary to qualify for federal aid in connection with the medical assistance program...".
Further authority for part 9505.0323 is found in Minnesota Statutes, section 256B.02, subdivision 8c in regard to physician's services and in subdivision 8x in regard to "any other medical or remedial care licensed and recognized under state law unless otherwise prohibited....".

Minnesota Statutes, sections 245.462 to 245.486 comprise the Minnesota Comprehensive Mental Health Act and focus on standards applicable to a comprehensive mental health service system. The focus of a medical assistance rule such as parts 9505.0260 and 9505.0323 is somewhat different as medical assistance focuses on provider payment and the nature, scope, and freuqency of service that may be reimbursed from medical assistance funds. It should be noted that this difference means that parts 9505.0260 and 9505.0323 do not automatically incorporate the Act's definitions and other regulations.

In preparing these rules, the Department considered the requirements of Minnesota Statutes, section 256B.02 which requires the Department to operate the medical assistance program in an efficient, economical, and impartial manner and section 256B.04, subdivision 15 which requires the Department to

safeguard against unnecessary or inappropriate use of medical assistance services, including guarding against duplication of a service.

In preparing these rules, the Department also considered the requirements of Minnesota Statutes, section 14.115 but believed that these rules come within the exemption given in section 14.115, subdivision 7 (c) because the providers affected by this rule are providers of medical care. This belief is based on Minnesota Statutes, section 146.01 which states:

> The term "practicing healing" or "practice of healing" shall mean and include any person who shall in any manner for any fee, gift, compensation, or reward, or in expectation thereof, engage in, or hold out to the public as being engaged in, the practice of medicine or surgery, the practice of osteopathy, the practice of chiropractic, the practice of any legalized method of healing, or the diagnosis, analysis, treatment, correction, or cure of any disease, injury, defect, deformity, infirmity, ailment, or affliction of human beings, or any condition or conditions incident to pregnancy or childbirth, or examination into the fact, condition, or cause of human health or disease, or who shall, for any fee, gift, compensation, or reward, or in expectation thereof, suggest, recommend, or prescribe any medicine or any form of treatment, correction, or cure thereof; also any person, or persons, individually or collectively, who maintains an office for the reception, examination, diagnosis, or treatment of any person for any disease, injury, defect, deformity, or infirmity of body or mind, or who attaches the title of doctor, physician, surgeon, specialist, M.D., M.B., D.O., D.C., or any other word, abbreviation, or title to the person's name indicating, or designed to indicate, that the person is engaged in the practice of healing.

Thus a person "practicing healing" as defined above is considered to be involved in the practice of a health service that constitutes medical care.

Additional support for the department's belief that the providers affected by this rule are medical providers is drawn from the licensing requirements set for persons who, under proposed parts 9505.0260 and 9505.0323, are defined as mental health professionals qualified to provide mental health services.

(See part 9505.0175, subpart 28 and its SNR concerning the definition of mental health professional.) The rule requires the mental health professionals to meet the professional standards set by their respective licensing boards. These professional standards are regulated for physicians by the Board of Medical Examiners under Minnesota Statutes, section 147.01; for nurses by the Board of Nursing under Minnesota Statutes, section 148.181; for psychologists by the Board of Psychology under Minnesota Statutes, section 148.90; and for licensed independent clinical social workers by the Social Work Licensing Board under Minnesota Statutes, section 148B.19.

Proposed parts 9505.0260 and 9505.0323 govern standards for reimbursement for the services provided by these providers of medical care. Medical assistance payments to these providers are regulated under part 9505.0445, item E which establishes the rates for mental health center, physician, and psychological services as "the lowest of the provider's submitted charge, the provider's individual customary charge submitted during the calendar year specified in the legislation governing maximum payment rates, or the 50th percentile of the usual and customary fees based upon billings submitted by all providers of the service in the calendar year specified in legislation governing maximum payment rates. Additionally, Minnesota Statutes, sections 256B.03, subdivision 1, 256B.04, subdivision 12, and 256B.05, subdivision 3 specify that medical assistance providers of covered services are subject to limits on the amount paid for the covered services."

However, in the event that these rules are not exempt under subdivision 7(c), the department has considered the methods listed in subdivision 2 of section 14.115 for reducing the impact of the rule on small businesses. In considering those methods, the department was mindful of the need to comply with extensive federal and state requirements applicable to the medical

assistance program. Medical assistance is a federal program established under Title XIX of the Social Security Act, 42 U.S.C. 1396a, et seq.. Title XIX and its implementing regulations specify the program standards and limitations and the reporting requirements with which a state must comply to obtain federal financial participation in paying the costs of the program. Minnesota Statutes, section 256B.04, subdivision 4 requires the department to cooperate with the federal government "in any reasonable manner as may be necessary to qualify for federal aid in connection with the medical assistance program, including the making of such reports in such form and containing such information as the department of health, education, and welfare may, from time to time, require, and comply with such provisions as such department may, from time to time, find necessary to assure the correctness and verifications of such reports." Minnesota Statutes, section 256B.04, subdivison 2 requires the department to "make uniform rules, not inconsistent with law,.....to the end that the medical assistance system may be uniformly administered throughout the state..." 42 CFR 431.50 (b)(1) requires a state medical assistance plan to provide that "the plan will be in operation statewide ....under equitable standards for...administration that are mandatory throughout the State." Similarly, 42 CFR 433.33 requires the state medical assistance plan to assure that "individuals in similar circumstances will be equitably treated throughout the State." Thus, in addressing the concerns of Minnesota Statutes, section 14.115, subdivision 2, it is necessary and reasonable to review the requirements of federal law and regulations about program standards and reporting requirements.

Clause (a) of subdivision 2 requires consideration of "the establishment of less stringent compliance or reporting requirements for small businesses." 42 U.S.C. 1396 (a)(10)(B) requires the amount, duration, and scope of medical assistance to be the same for all persons receiving services under (10)(A).

42 U.S.C. 1396 (a)(19) requires medical assistance to provide services "in a manner consistent with simplicity of administration and the best interests of the recipients."

Clause (b) requires consideration of "the establishment of less stringent schedules or deadlines for compliance or reporting requirements for small businesses." Clause (c) requires consideration of "the consolidation or simplification of compliance or reporting requirements for small businesses." Because of their similarity the provisions of these clauses were considered together.

42 U.S.C. 1396 (a)(27) requires every person or institution providing medical assistance services to "keep such records as are necessary to fully disclose the extent of the services provided to" recipients and to furnish the state or the federal government any information required about payments for services. These reporting requirements are minimum standards applicable to all providers of the same services and are not based on how much medical assistance business the provider does. Thus, it is necessary and reasonable to set uniform administrative standards for the medical assistance program and reporting requirements.

Clause (d) requires consideration of "the establishment of performance standards for small businesses to replace design or operational standards required in the rule."

42 U.S.C.1396 (a)(30) requires the state to assure that medical assistance payments are consistent with quality of care and to provide methods and procedures related to utilization review of the services toward this end. This requirement ties the medical assistance program to stringent compliance in regard to quality of care and does not permit the state to establish different levels of quality of care according to the size of the provider's business. Additionally the licensure standards with which the providers must

comply to obtain and retain their licenses set uniform standards applicable to all license holders without regard to the size of the license holder's business.

Clause (e) requires consideration of "the exemption of small businesses from any or all requirements of the rule."

42 U.S.C. 1396 (a)(10)B requires the amount, duration, and scope of medical assistance to be the same for all persons receiving services under (10) A. Minnesota Statutes, section 256B.04, subdivison 2 requires the department to "make unifrom rules....to the end that the medical assistance system may be administered uniformly throughout the state,...." The program and reporting standards in these rules have been accepted by the advisory committee as consistent with the prevailing standard among mental health professionals. No member of the advisory committee suggested having more than a single set of mental health service and reporting standards.

Thus, the department believes it would be unreasonable and contrary to federal and state laws and regulations to modify the proposed rule to establish less stringent compliance or reporting standards, deadlines, simplified requirements, or exemptions in response to clauses (a) to (c) and (e) of Minnesota Statutes, section 14.115, subdivision 2. The department also believes that the proposed rule does not contain design or operational standards as referenced in clause (d) of Minnesota Statutes, section 14.115, subdivision 2.

It should be noted that the Department in its Notice of Public Hearing has invited anyone who may be affected as a small business to speak to their concerns at the public hearing.

Finally, in regard to the requirement of Minnesota Statutes, section 14.115, subdivision 4, the department has notified the following professional organizations of a possible effect of these rules on their members and requested them to inform their members about the opportunity to address the concerns of small businesses at the public hearing. The organizations so notifed are: Minnesota Medical Association; Minnesota Hospital Association; Minnesota Psychiatry Society; Minnesota Psychological Association; Minnesota Psychologists in Private Practice; Minnesota Nurses Association; Minnesota Chapter of the National Association of Social Workers; Minnesota Social Service Association, and the Minnesota Licensed Psychologists Association.

The Department's preparation of these rules was assisted by a public advisory committee consisting of 20 persons familiar with and knowledgeable about mental health services. The committee met five times between March and August, 1988 for a total of approximately 20 hours. A list showing the names of members of the committee is attached in Appendix A. All comments received were reviewed and considered by the Department as the proposed rules were drafted.

The department staff members and department consultants who will testify as expert witnesses at the hearing are Dr. Thomas Malueg, Dr. David Paulson, Dr. Sarah Hunter, and Robert F. Meyer. Their resumes are provided in Appendix B.

PART 9505.0175 DEFINITIONS

Subpart 27. Mental health practitioner.

Subpart 28. Mental health professional.

The definitions in part 9505.0175 apply to all rule parts encompassed within 9505.0170 to 9505.0475. Thus, the definitions apply to parts 9505.0260 and 9505.0323. Two of the defined terms are used throughout part 9505.0323. They are "mental health practitioner" which is defined in subpart 27 and "mental health professional" which is defined in subpart 28. Since these definitions were first proposed by the department in part 9505.0175, the Minnesota Comprehensive Mental Health Act, Minnesota Statutes, sections 245.461 to 245.486 became effective and requires the commissioner to create a "unified, accountable, comprehensive mental health system." Minnesota Statutes, section 245.462, subdivision 17 defines "mental health practitioner". It is therefore necessary to amend the rule definition found in subpart 27 to ensure consistency with the statute. The amendment is reasonable because it relies on the statute and facilitates implementation of mental health services in the medical assistance program in a manner uniform with other department programs providing mental health services. Similarly it is necessary to amend the definition of "mental health professional" found in subpart 28 to ensure consistency with the definition found in Minnesota Statutes, section 245.462, subdivision 18. Additionally the definition of who is qualified to be a mental health professional and a provider in the medical assistance program must comply with Minnesota Statutes, section 256B.02, subdivision 7 which sets the minimum professional standards applicable to medical assistance vendors and requires that a vendor be licensed. Thus the definition of "mental health professional is reasonable because it is consistent with statute in specifing that the mental

health professional must be licensed. It is also reasonable to require the persons holding licenses as registered nurses, physicians, and psychologists to provide evidence of competency or certification by the appropriate professional peer review board because such evidence assures that the person has training consistent with the prevailing standard of community practice related to mental health services.

PART 9505.0260 COMMUNITY MENTAL HEALTH CENTER SERVICES.

Subpart 1. Definitions.

This subpart is necessary to clarify the meaning of certain terms that are used in this part and thus establish a standard.

Item A. "Community mental health center service" is a term used in this part. A definition is necessary to clarify the meaning and set a uniform standard. The definition is reasonable because it relates the service to the environment in which the service must be provided, the community mental health center, or, in the case of the determination of the need for and evaluation of the effectiveness of prescribed drugs, to the provider who is qualified to provide the service, a physician.

Item B. "Supervision" is a term defined in part 9505.0175, subpart 46. The definition applies to its use throughout the provisions of parts 9505.0170 to 9505.0475 which are now in effect. A similar phrase, "clinical supervision" is used in conjunction with mental health services in part 9505.0323, item D. The definition in part 9505.0323, subpart 1, item D specifies the person who must supervise a mental health service when supervision is required. Community mental health centers provide mental health services. Therefore,

it is reasonable to specify that the definition of supervision of community mental health center services is the one that applies to all mental health services because such a definition insures consistency between the two medical assistance rules establishing the standards for mental health services and assures uniform administration of mental health services in the medical assistance program as required by Minnesota Statutes, section 256B.04, subdivision 2.

Subp. 2. Eligible providers of community mental health center services.

Minnesota Statutes, section 256B.04, subdivision 2 requires the department to administer the medical assistance program uniformly throughout the state. This subpart is necessary to set the standard to receive medical assistance payment as a provider of community mental health services.

Item A. Minnesota Statutes, section 245.62 authorizes the establishment of community mental health centers and specifies certain standards that centers must meet. This item is consistent with the statutes cited within it.

Item B. Minnesota Statutes, section 245.69, subdivision 2 authorizes the commissioner to approve or disapprove public and private mental health centers and sets certain standards that centers must meet. This item requires a community mental health center to obtain the commissioner's approval as a condition of receiving medical assistance payment for community mental health center services. This item is consistent with the statute cited within it.

Item C. This item is consistent with the definition in Minnesota Statutes, section 245.62, subdivision 2 that a "community mental health center is a

private nonprofit corporation or a public agency..."

Item D. Minnesota Statutes, section 245.66 requires a community mental health center to have a community mental health center board and specifies the composition and responsibility of the board. This item is consistent with the statute cited within it.

Item E. Minnesota Statutes, section 245.62, subdivision 1 authorizes a city, county, town, or combination thereof to establish a community mental health center but does not specify whether the center is to be operated directly or indirectly by the governmental agency. A governmental agency such as a small county may not need for its clients or be able to afford to offer the muultitude of services that a community mental health center is required to provide. Allowing the local agency to chose whether to operate or to contract for community mental health services offers a local agency a cost effective approach to providing necessary services. Thus, this item is reasonable because it is consistent with the statutory requirement of Minnesota Statutes, section 256B.04, subdivision 2, of carrying out the medical assistance program in and efficient and economical manner. This item is also consistent with Minnesota Statutes, section 245.61, which authorizes county boards to make grants to public or private agencies to establish and operate local mental health programs and with Minnesota Statutes, section 245.470 which authorizes a county to provide or contract for enough outpatient services within the county to meet the needs of persons with mental illness residing in the county.

Item F. Minnesota Statutes, sections 245.62, subdivision 4 and 245.69, subdivision 2 authorize the commissioner to promulgate rules to set the standards to obtain the commissioner's approval as a community mental health

center. These standards are found in parts 9520.0750 to 9520.0870 and certain other parts of chapter 9520 applicable to community mental health centers. The standards apply to staffing, supervision, services to be provided, quality of service, documentation and recordkeeping related to the services provided. This item is consistent with the statutory requirement and is reasonable to inform affected persons of the applicable standards.

Item G. Minnesota Statutes, section 245.62, subdivision 4 specifies the mental health services that a community mental health center must provide. These mental health services include the prevention, identification, treatment and aftercare of emotional disorders and chronic and acute metanl illness. This item is reasonable because it is consistent with the statute and informs affected persons of applicable standards.

Item H. Minnesota Statutes, sections 245.461 to 245.486, (the Minnesota Comprehensive Mental Health Act), establish the mental health services that are to be provided as part of a unified, acceptable, and comprehensive statewide mental health system. Minnesota Statutes, section 245.466 requires a county board to develop and coordinate a system of locally available mental health services. This item is reasonable because it is consistent with statutes and because it provides a way for a county, either directly or under contract, to meet its obligation of providing locally available mental health services.

Item I. Minnesota Statutes, section 245.69, subdivision 1 specifies that the rules established by the commissioner for the purpose of approving or disapproving public and private mental health centers must provide for the "establishment, subject to approval by the commissioner, of fee schedules which shall be based upon ability to pay" so that no person will be denied

service on the basis of inability to pay. This item is consistent with this statutory requirement and is reasonable because it informs affected persons.

Item J. Minnesota Statutes, section 245.62, subdivision 4 includes services related to alcohol and drug abuse and dependency among services that a community mental health center may provide. Parts 9530.5000 to 9530.6500 set the standards for licensing outpatient treatment programs for people with alcohol and other drug problems. This item is reasonable because it informs affected persons of required standards and assures consistency between rules affecting the same program, outpatient programs for persons with alcohol and other drug abuse problems.

Item K. Minnesota Statutes, section 245.62, subdivision 4 includes services related to mental retardation and developmental disabilities among the services that a community mental health center may provide. These services may be provided in a day activity center operated by a community mental health center. Parts 9525.0750 to 9525.0830 set the standards for licensing the day activity centers. This item is reasonable because it informs affected persons of required standards and assures consistency between rules affecting the programs for persons with mental reardation or related conditions such as a developmental disability.

Subp. 3. Payment limitation; community mental health center services.

This subpart is necessary to establish medical assistance payment limitations applicable to mental health services provided by a community mental health center. Minnesota Statutes, section 256B.04, subdivision 2 requires the department to carry out the medical assistance program in an impartial manner, uniformly throughout the state. Proposed part 9505.0323 establishes

standards applicable to mental health services provided under the medical assistance program in regard to the types of services covered by medical assistance, the frequency with which the same or similar services may be covered by medical assistance for an individual recipient, and the amount paid for each covered service. (See Minnesota Statutes, section 256B.04, subdivision 12.) Thus it is reasonable to apply the medical assistance payment limitations of part 9505.0323 to mental health services provided by a community mental health center under part 9505.0260 because use of these limitations on the types and frequency of services and the amount paid for each service is consistent with the requirement of carrying out the medical assistance program in an impartial manner, uniformly throughout the state.

Subp. 4. Payment limitation supervision of service before Septmebr 1, 1990. Minnesota Statutes, section 256B.04, subdivision 2 requires the department to carry out the medical assistance program in an impartial manner, uniformly throughout the state. Proposed part 9505.0323 establishes in subpart 22 the supervision standards for medical assistance payment for mental health services when the services are provided by a person who is not a provider. (See the definition of "provider" in part 9505.0175, subpart 38 and the SNR for part 9505.0323.) Thus, it is reasonable to require the supervision standard of part 9505.0323, subpart 22 if the mental health service is provided by a community mental health.center as the requirement is consistent with administering the medical assistance program in an impartial manner, uniformly throughout the state.

Subp. 5. Excluded services.

This subpart is necessary to specify services that may be provided by a community mental health center but that are not covered services for which

medical assistance payment is made. The services specified here are identical to those in part 9505.0323, subpart 27. For justifications of these exclusions see the SNR of part 9505.0323, subpart 27. Prohibiting medical assistance payment of these services when they are provided by a community mental health center is reasonable because it is consistent with the requirement of Minnesota Statutes, section 256B.04, subdivision 2 of carrying out the medical assistance program in an impartial manner, uniformly throughout the state.

PART 9505.0323 MENTAL HEALTH SERVICES

Subpart 1. Definitions

This subpart states that the terms defined have meanings specific to this part. This subpart and the definitions that follow in items A to U are necessary to inform persons affected by this part, to provide consistent terminology in the rule, and to identify and clarify terms used in this part. It should be noted that, unless otherwise specified within part 9505.0323, the definitions of part 9505.0175 which apply to parts 9505.00170 to 9505.0475 also apply to part 9505.0323.

Item A. This definition has been reviewed and accepted by the advisory committee.

It is adapted from the definition of "biofeedback" in The American Heritage Dictionary of the English Language, Houghton Mifflin Company, 1978, page 133. This definition is reasonable because it is consistent with the one used in a standard reference work.

Item B. This term, "child", provides an abbreviation to describe a category

of persons who receive mental health services. The definition is consistent with Minnesota Statutes, sections 645.45 (14) and 645.451, subdivision 2. The definition adds a common understanding to the age group involved.

Item C. The term "client" is an abbreviation for the recipient who is determined to be mentally ill and who, therefore, is eligible for the mental health services governed by this part. The abbreviation is necessary and reasonable to clarify who is eligible for the services and to shorten the rule.

Item D. This term describes a necessary component of mental health services provided under this part. It is consistent with Minnesota Statutes, section 245.462, subdivision 25 which requires a mental health professional to take oversight responsibility for individual treatment plans and (mental health) service delivery and also requires documentation by requiring the supervisor to cosign the individual treatment plans and by entries in the client's record. Psychiatrists, licensed consulting psychologists, and licensed psychologists are mental health professionals who have received specialized training in mental health services and have been determined to have met licensing and competency standards. (See part 9505.0175, subpart 28.) Furthermore, these categories of mental health professionals are eligible under part 9505.0195 to enroll as medical assistance providers and thereby be eligible to bill medical assistance for covered services to medical assistance recipients. As providers, they have signed agreements with the department that require them to ensure that medical assistance services they provide directly or under their supervision meet standards set in applicable laws and rules. Thus, they are accountable to the department for services they provide directly or under their supervision. A supervisee usually has

less experience and training than the provider supervisor and therefore may require guidance in furnishing mental health services. Thus, it is reasonable to require a supervising provider's direct involvement in the direction and instruction of the supervisee because such direction and instruction will aid in ensuring mental health services are properly provided to a client. Conferences and calls away from the office sometimes require a provider to leave the office. It is not reasonable to assume that the supervisees must stop work while the supervisor is gone because the supervisor presumably has the ability to judge what the supervisee is qualified to do and can assign tasks that the supervisee is able to perform during the provider's absence. However a standard of time the provider must be present is necessary so the department can uniformly administer the clinical supervision requirement. The requirement of at least 50 percent on-site supervision is the same as the policy established by Blue Cross and Blue Shield of Minnesota. Thus the 50 percent standard proposed in this item is reasonable because it is the standard now used by a major Minnesota carrier of health insurance in determining services eligible for payment under its health plans. Requiring the provider's signature is reasonable because a person's signature is customarily accepted as evidence that the person had an opportunity to review and approve the document's contents before signing it. Requiring the review of the recipient's record every 30 days is reasonable as it balances the need for supervisory review on a frequent, ongoing basis and the possible workload of the supervisor.

Item E. "Day treatment" or "day treatment program" is among the services defined as mental health services in the Minnesota Comprehensive Mental Health Act, Minnesota Statutes, sections 245.461 to 245.486. The definition is necessary to clarify a term used in this part. The definition is consistent with the limitation of Minnesota Statutes, section 245.462,

subdivision 8 that day treatment services are not part of inpatient or residential treatment services. The Joint Commission on the Accreditation of Hospitals (JCAH) and Minnesota Statutes, sections 144.50 to 144.55 set health, safety, and medical care standards applicable to outpatient hospitals. Requiring a day treatment program operating in an outpatient hospital to be accredited by the JCAH and licensed under Minnesota Statutes, section 144.50 to 144.55 is necessary and reasonable bacause the accreditation and licensure assure that the services are provided in a setting that has met standards related to health, safety, and medical care. Some day treatment services are provided by community mental health centers as specified in part 9505.0260. Other day treatment services are provided as part of the community support program of a county as required under Minnesota Statutes, section 245.471, subdivision 3. Thus including subitems (2) and (3) within the definition is necessary and reasonable to inform affected persons and encompass the complete scope of how the programs may be offered. Minnesota Statutes, section 245.462, subdivision 8 requires the services to be a structured program of "intensive therapeutic and rehabilitative services..."The definition is consistent with this statutory requirement. The definition is also consistent with 42 CFR 440.130 (d) which defines as a covered service "any medical or remedial service recommended by a physician or licensed practitioner of the healing arts...for maximum reduction of...mental diability and restoration of a recipient to his best possible functional level."

Item F. A diagnostic assessment is used to determine if a recipient is mentally ill and therefore is eligible for the mental health services specified in this part. It is also used to determine the nature of the mental illness and to identify the needs that must be addressed in planning the client's treatment. A definition is necessary to clarify its meaning

within this subpart. It is reasonable to define the term by citing an existing rule, part 9505.0477, subpart 10 because the citation ensures consistency between rules affecting the same population, memntally ill persons who are medical assistance recipients. The definition in part 9505.0477, subpart 10 is consistent with Minnesota Statutes, section 245.462, subdivision 9.

Item G. "Explanation of findings" is a term used in this rule as an abbreviation for the procedure used by mental health professionals to analyze and explain their findings and the recommendations based on those findings. The definition is necessary to clarify the term's meaning. The definition is reasonable because members of the advisory committee agreed it is the current standard of professional practice. The examples of persons to whom a mental health professional may give an explanation of findings are not intended to be an all inclusive listing of such persons but merely a guide.

Item H. "Family psychotherapy" is a mental health service provided to certain mentally ill persons and their families. It is one type of psychotherapy. It is a term used in this rule. A definition is necessary to clarify its meaning. The persons specified in the definition, (parents, foster parents, primary caregivers, significant others whose participation is necessary to accomplish treatment goals) are the ones who have responsibilities toward the client, or with whom the client lives, or who affect the client's well being in a significant way. These persons usually have regular or frequent contact with the client and therefore an opportunity to greatly affect the client's mental health. Including these persons within the definition of family psychotherapy is reasonable because it is consistent with the purpose of family psychotherapy and was accepted by the advisory

committee as consistent with the prevailing standard among mental health professionals who practice family psychotherapy.

Item I. "Group psychotherapy" is a mental health service that is appropriately provided to certain mentally ill persons. It is one type of psychotherapy and is a term used in this rule. A definition is necessary to clarify its meaning. The term was extensively discussed by members of the advisory committee. The definition proposed in this item was accepted by the advisory committee as consistent with the prevailing standard among mental health professionals who practice group psychotherapy. The definition is reasonable because it is an accepted standard and limits the use of group psychotherapy to those who benefit from group interaction. (For a comparison, see item L, individual psychotherapy.)

Item J. "Hour" is a term used in this part to specify the time limit placed on certain mental health services eligible for medical assistance payment and to calculate the payment rate for certain mental health services. A definition is necessary to clarify its meaning and avoid confusion. Mental health services such as psychotherapy often use interpersonal methods. See item T and its SNR. They require face to face sessions and interaction between the psychotherapist and the client or clients and, in the case of family psychotherapy, between the psychotherapist, the client, and the client's family. The psychotherapist must keep records about the client which include the client's progress, information and actions resulting from the session, plans for further treatment, modifications of the client's treatment plan, and so on. It is necessary to strike a balance between time spent keeping the records required to maintain accurate client information

and update the client's treatment plans and the time available for face-to face sessions which provide the client the required service. Therefore, it is reasonable that the time spent on indirect client-related activities be limited in order to maximize the amount of time available for direct service to the client. Placing a limit of 10 minutes of an hour on activities not directly related to the client is reasonable because it encourages the mental health professional providing the mental health service to carry out these activities in an administratively efficent way and is also consistent with Minnesota Statutes, section 256B.04, subdivison 15 which requires the department to guard against excess payments and inappropriate use of medical assistance services.

Item K. "Hypnotherapy" is a term used in this part. A definition is necessary to clarify its meaning. The definition was reviewed by the advisory committee and found to be consistent with prevailing community standards of practice. Requiring the hypnosis to be induced by a mental health professional trained in hypnotherapy is reasonable because the requirement sets a quality standard that is to the recipient's benefit.

Item L. "Individual psychotherapy" is a term used in this part. A definition is necessary to clarify its meaning. Including hypnotherapy and biofeedback within individual psychotherapy is reasonable as these are psychotherapeutic treatments carried out on an individual basis.

Item M. "Individual treatment plan" is a term used in this part. A mental health professional must prepare an individual treatment plan for a mentally ill recipient before initiating the recipient's mental health services. A definition is necesary to clarify its meaning. The term is derfined in part 9505.0477, subpart 14. It is reasonable to define the term by citing another

rule as the citation ensures consistency between the two rules which affect the same population, mentally ill persons, and the same set of services, mental health services. The definition in the citation is consistent with Minnesota Statutes, section 245.462, subdivision 14.

Item N. This part sets the requirements for eligibility to receive medical assistance payment for a recipient's mental health services. A definition of "mental health service" is necessary to clarify its meaning and set a standard. Items A, K, and L refer to individual psychotherapy including biofeedback and hypnotherapy. Item E refers to day treatment; item F to diagnostic assessment; item G to explanation of findings; item H to family psychotherapy; item I to group psychotherapy; item Q to partial hospitalization; item S to psychological testing; and items T and U to the general terms psychotherapy and psychotherapy session. All these services are health-related services that may be medically necessary to meet the mental health needs of a mentally ill person. The definition was reviewed by the advisory committee and accepted as consistent with the prevailing standard among mental health professionals. The definition is also consistent with the standards of part 9505.0210 which specifies general standards for eligibility as a covered service in the medical assistance program.

Item O. "Mental illness" is a term used in this part to establish a recipient's eligibility to receive mental health services. A definition is necessary to specify the eligibility standard. It is reasonable to use the definition found in another rule affecting mental health services to a similar population, that is, mentally ill medical assistance recipients, in order to ensure consistency between the two rules. The definition in part

9505.0477, subpart 20 is consistent with that given in the Minnesota Comprehensive Mental Health Act in Minnesota Statutes, section 245.462, subdivision 20, paragraph (a).

Item P. The term "neurological assessment" is used in the rule to refer to a service that may be medically necessary to complete a diagnostic assessment and establish an individual treatment plan. (See subpart 4, items E and F.) A definition is necessary to clarify its meaning. The definition is reasonable because it is consistent with customary usage as reflected in the definitions of "neurologist" and "neurology" in the American Heritage Dictionary of the English Language, Houghton Mifflin Company, 1978, p. 883.

Item Q. "Partial hospitalization" or "partial hospitalization program", terms used in this part, is a treatment program appropriate for some persons with mental illness. A definition is necessary to clarify the meaning and set a standard. The definition was reviewed by the advisory committee and found acceptable as consistent with the prevailing standard in Minnesota.

Item R. The term "primary care giver" is used in this part to refer to certain persons who are affected by a recipient's mental illness because of their responsibility to the recipient and who in turn affect the mentally ill recipient. Some mentally ill persons require ongoing day-to-day assistance in obtaining the necessities of daily living such as food, clothing, shelter, and nurturance. The mentally ill person requiring the assistance may be a child or an adult. If the recipient's parent is unable to provide the assistance, the primary responsibility may be assumed by a relative or another person. The relative or other person assuming the primary responsibility acts as a parent would and, in carrying out the

responsibility, establishes a personal relationship with the person. The definition is necessary to clarify the meaning of the term. The definition was reviewed by the advisory committee and accepted as consistent with general usage of the term among persons providing mental health services. The definition is reasonable because it clearly differentiates between those who are and those who are not primary caregivers in terms of the responsibilities toward the person being given the care and the personal relationship that arises between the caregiver and the person being cared for. Excluding from the term "primary caregiver" shift or facility staff members in a facility or institution where the recipient resides or receives a health servce is reasonable because there is not, nor is there expected to be, a personal relationship between such a staff member and the person being cared for. Furthermore, these staff persons do not have primary responsibility for all aspects of the recipient's care and well-being. This all encompassing responsibility generally lies with the recipient's parent, foster parent, or court-appointed guardian. Finally it is necessary and reasonable to clarify that the definition given in this item differs from the similar term defined in part 9505.0477, subpart 23, which applies to its use in parts 9505.0477 to 9505.0491, governing case management services to persons with serious and persistent mental illness because the clarification avoids possible confusion and misunderstanding.

Item S. "Psychological testing" is a term used in this part to refer to a service that may be necessary to complete a recipient's diagnostic assessment and individual treatment plan. A definition is necessary to clarify its meaning. The definition is consistent with the meaning given to "psychological" in the American Heritage Dictionary of the English Language (Houghton Mifflin Company, 1978, page 1055). The definition also is consistent with the definition of "psychometry" in Stedman's Medical

Dictionary, (24th edition, Williams and Wilkins, Baltimore, Maryland, 1982, page 1165).

Item T. "Psychotherapy" is a term used in this part to refer to a group of mental health services which involve the client directly with the therapist. A definition is necessary to clarify its meaning. The definition results from the advisory committee's discussion of how to define the term. The definition was accepted by the committee as consistent with the prevailing standard among mental health professionals who practice psychotherapy.

Item U. "Psychotherapy session" is an abbreviation used in this part to refer to an administrative device used to calculate a unit of service for payment to a provider of psychotherapy. A definition is necessary to clarify its meaning. Using an abbreviation is reasonable because the abbreviation shortens the length of the rule.

Subpart 2. Determination of mental illness.

The basic principle underlying the medical assistance program is the medical necessity of the health service for the recipient to whom the service is provided. See United States Code, title 42, section 1396, the federal legislation establishing the medical assistance program and Minnesota Statutes, section 256B.04, subdivision 15. This subpart establishes the criterion for determining whether a recipient needs mental health services. A standard is necessary to establish a uniform method that can be carried out in an impartial manner and uniformly implemented throughout the state as required in Minnesota Statutes, section 256B.04, subdivision 2. A diagnostic assessment is the procedure used by mental health professionals to diagnose a person's mental health status. See subpart 1, item F, which defines

"diagnostic assessment", and subpart 4, item I which specifies tasks that must be completed in conducting a diagnostic assessment. Requiring a person's need for mental health services to be determined by a diagnostic assessment is reasonable because it is consistent with the medical assistance program requirement of services based on medical necessity.

Subpart 3. Payment limitation; recipient who is mentally ill.

This subpart which is related to subpart 2 clarifies that a recipient is eligible for mental health services only if a diagnostic assessment has resulted in a determination that the recipient is mentally ill. See also the SNR for subpart 2. This subpart is necessary to set a standard of eligibility for mental health services. Medical assistance pays for a health service only if the service is health related (medical) and medically necessary and appropriate for the recipient. Thus it is reasonable to require that the recipient's eligibility for mental health services provided by MA depend on a determination that the recipient is mentally ill because mental health services are medically necessary for persons with mental illness. The subpart also is consistent with Minnesota Statutes, section 256B.04, subdivision 15 which requires the department to determine whether a health service is necessary to achieve or maintain good health and to safeguard against unnecessary or inappropriate use of medical assistance services. However, a recipient may need certain mental health services before a diagnostic assessment is completed. These services are an initial session of psychotherapy and psychological testing to obtain information about the recipient's mental, intellectual, and emotional functioning that the mental health professional conducting the diagnostic assessment needs to complete the assessment. (See subpart 1, item S and subpart 4, item E and its SNR.) Members of the advisory committee agreed that it is a prevailing

community standard to provide these services before determining that a person is mentally ill and, if so, the nature of the mental illness. Thus permitting these services to be eligible for payment before completing the assessment of the recipient is necessary and reasonable because it ensures that information necessary to completing the assessment is available and that the recipient will receive services that are determined to be medically necessary by prevailing community standards.

After a diagnostic assessment is complete, an explanation of findings may be given to the recipient's family, primary caregiver, or other persons responsible for the the recipient. The possible outcomes of the assessment are a determination that the recipient is mentally ill or that the recipient is not mentally ill. Persons who are responsible for the recipient need to know the determination, the findings supporting it, and what, if any, recommendations are being made for services to the recipient. Therefore, it is also necessary and reasonable to permit payment for an explanation of findings in such a circumstance so that persons responsible for the recipient are informed.

Subpart 4. Eligibility for payment; diagnostic assessment.

This subpart defines the standards for medical assistance payment eligibility of a diagnostic assessment. Payment eligibility standards are necessary to meet the requirements of Minnesota Statutes, section 256B.04, subdivision 2 that the medical assistance program be uniformly administered throughout the state and of Minnesota Statutes, section 256B.04, subdivision 12 that the department place limits on services covered by medical assistance for an individual recipient.

Much of the discussion occurring among members of the advisory committee

during the committee's five meetings centered on the frequency and length of time required to carry out a diagnostic assessment and the components of a diagnostic assessment. Members of the committee emphasized the diversity of the population for whom the service is necessary. This population includes adults who are mentally ill and those who are seriously and persistently mentally ill; mentally ill children whose ability or inability to communicate may be related not only to their illness but also to their developmental stage; persons of any age who are hearing-impaired or who have speech-language difficulties that affect their ability to communicate; and persons with mental retardation or a related condition who also have a mental illness. Committee members agreed that some payment eligibility standards had general application to all diagnostic assessments but that exceptions to the standards were required to conduct valid diagnostic assessments of certain categories of persons referred for diagnosis. This subpart sets general standards for diagnostic assessment. Subparts 5, 6, and 7 provide exceptions from these standards to meet the needs of special populations of recipients.

The standard of who must conduct a diagnostic assessment is consistent with part 9505.0483, subpart 3.

It is reasonable to be consistent with part 9505.0483, subpart 3 which sets payment eligibility standards for this service when it is provided to persons some of whom are part of the population that receive mental health services under part 9505.0323. This standard also is reasonable because it is consistent with the comparability of services for groups required under 42 CFR 440.240 (b) (2).

Item A. This item is necessary to set a payment eligibility standard applicable to a provider of a diagnostic assessment. According to the department's expert witness (see page 3), a person's mental health status

usually changes slowly and therefore a complete reevaluation might be necessary only at infrequent intervals. However, if a marked change in mental health status does occur, a reevaluation is necessary. It is also reasonable to provide an exception to the one diagnostic assessment per year payment limit if the mental health professional refers the recipient to a psychiatrist for a medical service that falls within the scope of practice of a psychiatrist because, after receiving the findings of the psychiatrist, the mental health professional may need to revise the recipient's diagnostic assessment in accord with the psychiatrist's findings. It is necessary and reasonable to require the mental health professional making the referral to a psychiatrist to document the referral in the recipient's record as the documentation provides evidence of compliance with this subpart and explains why such a referral was necessary.

Item B. This item limits the number of diagnostic assessments that may be reimbursed for one recipient to four per year. A diagnostic assessment is used to perform a complete evaluation of a person's mental status. As discussed in item A, a person's mental status usually changes slowly and therefore a complete reevaluation is necessary only at infrequent intervals. Thus limiting diagnostic assessment eligibility for medical assistance payment to four per year is reasonable because it allows for reassessing the person's mental status as it changes while at the same time meeting the requirement of Minnesota Statutes, section 256B.04, subdivision 2 of implementing the medical assistance program in an effective and efficient manner and the requirement of safeguarding against unnecessary or inappropriate use of medical assistance services as specified in Minesota Statutes, section 256B.04, subdivision 15. Furthermore the limitation is necessary and reasonable because the mental health status of some recipients

does change more rapidly and because, if the recipient exercises his or her freedom of choice to choose another provider, the new provider in assuming responsibility for the recipient might need to make his or her own assessment of the recipient's mental health status.

Item C. Limiting the length of time to carry out a diagnostic assessment to two hours for a person who does not have special needs is reasonable because the necessary information can readily be obtained from most persons within that time according to the advisory committee and an exception is provided in subparts 5 and 6 for persons with special needs because of their difficulty in communicating.

Item D. This item is necessary to clarify both the right of the recipient to choose another provider of a diagnostic assessment and the applicability of the limitation of medical assistance payment to four diagnostic assessments per recipient per calendar year. The item is reasonable because it informs affected persons of the standards and thereby avoids possible misunderstandings.

Item E. A recipient's diagnostic assessment may be carried out by more than one mental health professional or it may be carried out in a multiple provider setting so that each mental health professional carries out one or more components of the complete evaluation or repeats some of the same components to obtain additional information. Under these circumstances, it would be difficult if not impossible to tell whether some components of the assessments were being duplicated or to determine the appropriate pro rata payment for the mental health professionals. Therefore, it is reasonable to apply the limits of this subpart regardless of the number of professionals

carrying out the assessment. In addition, this limit is consistent with Minnesota Statutes, section 256B.04, subdivision 15 which requires the department to safeguard against unnecessary or duplicate payments.

Item F. For circumstances beyond the control of the mental health professional or in the best interest of the client or the mental health professional, it may be impossible to complete a diagnostic assessment on the same day on which it began. An example of such a circumstance might occur if an extended period was required and received prior authorization under subpart 5, 6, or 7. This item is necessary and reasonable because it acknowledges the possibility of such a need. Clarification of the billing date is necessary to set a uniform standard. The standard chosen, the completion date, is reasonable because, when the assessment is completed, the exact number of hours used to complete the assessment can be accurately billed.

Item G. It is reasonable to require a diagnostic assessment performed in a multiple provider setting to be available to other mental health professionals or practitioners serving the recipient in the same setting as this requirement prevents duplication of diagnostic assessments. It is consistent with Minnesota Statutes, section 256B.04, subdivision 15 which requires the department to safeguard against excess payment and with the administration of the medical assistance program in an economical and efficient manner as required under Minnesota Statutes, section 256B.04, subdivision 2.

Item H. It is necessary and reasonable to clarify that medical assistance does not pay for a diagnostic assessment performed in the same day as a psychotherapy session because the clarification avoids possible

misunderstanding. Minnesota Statutes, section 256B.04, subdivision 15 prohibits duplicate medical assistance payments for the same mental health services. A psychotherapy session provided on the same day as a diagnostic assessment may duplicate some of the services of the diagnostic assessment. Thus this item is consistent with the statutory prohibition. Furthermore the need for ongoing psychotherapy is customarily and routinely demonstrable as a result of a diagnostic assessment. The purpose of a diagnostic assessment is to obtain information required to diagnose the recipient's mental health and to use in planning mental health services medically necessary for the recipient. Thus, providing psychotherapy services without having the thorough assessment that substantiates the need is not an efficient and economical use of medical assistance funds. However, providing an exception in the case of an emergency is necessary and reasonable as emergencies can not be predicted and by their very nature require immediate treatment.

Item I. The requirements of this item are consistent with the requirements of proposed part 9505.0483, subpart 4, items A, B, and C. Subitem (1) is consistent with Minnesota Statutes, section 245.462, subdivision 11. Subitems (2) and (3) are consistent with the prevailing standard of community practice according to the Department's experts (who are listed on page 3.) Subitem (4) is reasonable because reviewing the recipient's records informs the mental health professional or practitioner about the recipient's past and present medical and mental health conditions and diagnoses.
Subitem (5) relates to the possibility that completing a recipient's diagnostic assessment may require certain services calling for specialized skills and knowledge that the mental health professional conducting the assessment may not have. Psychological testing, a neurological examination, and a chemical dependency assessment are services that provide information related to a recipient's mental health status and that require specialized

skills and knowledge. When such a service is required and the mental health health professional is not skilled or knowledgeable about the service, referring the recipient is necessary and reasonable because it affords the recipient the opportunity to receive the service from a qualified person. Additionally the determination of the need for prescribed drugs and the evaluation of the effectiveness of prescribed drugs fall within the scope of practice of a physician as specified in Minnesota Statutes, section 152.12. Thus, a mental health professional who is not a physician is prohibited by law from providing such services and must refer a client who requires the services to a physician. Subitem (6) is reasonable because the required referral ensures that the client's medically necessary services will be provided by a qualified person. Subitem (7) requires the mental health professional to contact a recipient's family or primary caregiver, if the contact is clinically appropriate and authorized by the recipient. A recipient's family or primary caregiver has information about the recipient's current life situation, functioning within the family, and other factors related to the recipient's mental health from the viewpoint of persons who interact with or have responsibility for the recipient. The mental health professional may need this information to complete an accurate diagnostic assessment. On the other hand, contacting the recipient's family or primary difficult may be difficult or impossible, the relationship between the recipient and his or her family or primary caregiver may be so antagonistic that information given by these persons would be prejudiced, or the recipient may object to such a contact. Under one of these circumstances, contacting the recipient's family or primary caregiver may be clinically inappropriate. Therefore, it is necessary and reasonable to limit contact to circumstances in which the contact would be clinically appropriate to the recipient's diagnostic assessment. Additionally it is necessary and reasonable to

require the mental health professional to document the reason contact was not made as the documentation is evidence that the mental health professional either was not authorized by the recipient to make the contact or made the professional judgment that the contact was not clinically appropriate for the recipient.

Subitem (8) is necessary and reasonable because recording the results of the diagnostic assessment in the recipient's record provides evidence of the findings of the assessment.

Item J. As discussed in item H(5) above, several health services may be necessary to complete a diagnostic assessment and when they are necessary, the mental health professional may need to refer the recipient to another provider for those services. This item is necessary to clarify the payment eligibility of these services. Because they are distinct procedures separate from the diagnostic assessment and performed by providers other than the mental health professional conducting the diagnostic assessment, it is reasonable to permit their separate billing to medical assistance. The separate billing of a distinct procedure is consistent with the requirement to safeguard against duplicate payments as specified in Minnesota Statutes, section 256B.04, subdivision 15.

Item K. In some cases, the mental health professional conducting a diagnostic assessment may be different from the mental health professional providing the recipient psychotherapy. The mental health professional who provides the recipient's metnal health services or who referred the recipient for a diagnostic assessment needs information similar to that obtained by the mental health professional conducting the assessment. Such information about the recipient's past history, present physical and mental status, and

diagnosis is necessary to appropriately treat the recipient. It facilitates the treatment if the two mental health professionals share the information because the sharing is a cost effective and efficient way to obtain the necessary information and gives the therapist a chance to review and determine whether the information given by the recipient is complete and accurate. On the other hand, the recipient has the right to control the release of information about himself or herself. This item is necessary and reasonable because it balances the need of the psychotherapist for information necessary to the recipient's appropriate treatment and it protects the recipient's right to privacy. It is also consistent with the requirements of 42 CFR 431.300 to 431.307 on safeguarding information on MA applicants and recipients. See subparts 19 and 20 and their SNRs for a discussion of authorization to release information.

Item L. The purpose of a diagnostic assessment is to obtain information required to diagnose the recipient's mental health and to use in planning the mental health services medically necessary for the recipient. It is necessary therefore that the diagnostic assessment be completed in a timely manner to facilitate prompt preparation of the recipient's individual treatment plan. Requiring the diagnostic assessment to be completed no later than the second meeting between the mental health professional and the recipient is reasonable because it balances the need of a mentally ill recipient for prompt treatment and the need of the psychotherapist for an assessment on which to base the plan of treatment. See subpart 25 and its SNR.

Subpart 5. Extension of time available to complete a recipient's diagnostic assessment.

As stated in the SNR above for subpart 4, Minnesota Statutes, section 256B.04, subdivision 2 requires the medical assistance program to be carried out in an effective and efficient manner. This goal is accomplished by limiting the availability of an extension of the length of a diagnostic assessment to those persons for whom the longer time is medically necessary and appropriate. Members of the advisory committee called the department's attention to circumstances which would make it difficult or impossible to obtain all the information necessary to complete a diagnostic assessment within the time limit specified in subpart 4, item C. The committee members were particularly concerned that sufficient time be allowed for a recipient's initial diagnosis because the mental health professional would not previously have known any of the information nor have had earlier contact with the recipient. The committee also discussed how much time a mental health professional might need to complete a diagnostic assessment under circumstances listed in this subpart. The department's consultant, Dr. Paulson, discussed with the committee that, in his experience, an additional period of 8 hours is sufficient to complete a diagnostic assessment in almost all exceptional circumstances. The advisory committee agreed that eight hours is a reasonable time in most exceptional circumstances because it allows the mental health professional not only to talk to the recipient but also to establish a rapport with the recipient, contact the recipient's family and primary caregiver to obtain information, and observe the recipient in the recipient's usual daily life setting. Dr. Travis Thompson, Professor of Psychology and Director, Institute for Disabilities Studies, University of Minnesota recommended to the Department that the rule permit an initial

diagnostic assessment of 8 hours but that recommendation was rejected for non-exceptional cases. (See also the SNR for subpart 6 concerning Dr. Thompson's comment about additional time for an assessment.) This subpart is necessary to provide for exceptions other than the most unusual circumstances and to specify the criteria for using the exceptions. See also subpart 6 and its SNR. It is necessary and reasonable to require the circumstances to be documented in the recipient's record because the documentation is evidence the circumstances meet at least one of the criteria. It also is reasonable to require the mental health professional completing the extended diagnostic assessment to develop the recipient's individual treatment plan as this mental health professional has the most complete picture of the recipient's mental health status and service needs.

Item A. The primary source of information about the recipient is usually the recipient. Communication of this information partly depends on the ability of the recipient to understand and respond to the mental health professional's questions and comments and partly on the ability of the mental health professional to understand the recipient. Circumstances which interfere with, delay, or impair communication between the recipient and the mental health professional can reasonably be expected to hinder or obstruct completion of the diagnostic assesssment. Subitems (1) to (5) describe circumstances where the recipient's ability to communicate or to understand the communications of other persons may be impaired. Therefore, these circumstances are reasonable exceptions as they interfere with communication between the mental health professional and the recipient. The definitions in subitems (1) and (2) are reasonable because they are consistent with the statutes cited within them.

Subitem (3) is reasonable because it is adapted from and consistent with a definition given in a standard textbook, Handbook of Speech Pathology and Audiology, Lee Edward Travis, page 621.

Subitem (4). The American Heritage Dictionary of the English Language, Houghton Mifflin Company, 1978, page 922, defines opposition as "the act or condition of opposing or of being in conflict; resistance or antagonism;.....that which is or serves as an obstacle." A child displaying severe oppositional behavior does not cooperate in the diagnostic assessment process and the mental health provider either has to "wait-out" and observe this child's severe oppositional behavior or determine that the assesssment will not go forward at that time. Thus, subitem (4) is reasonable because a child displaying severe oppositional behavior toward a mental health professional obstructs the type of communication necessary to conduct a diagnostic assessment and the mental health professional needs additional time to accommodate the period of "waiting out" and observation. It is also reasonable as it offers the mental health professional additional time to obtain from the child's school, caregivers, and other community resources the information the mental health professional may need to rely on to complete the child's diagnostic assessment. Limiting the exception to a child who has not had a previous diagnostic assessment is reasonable because access to a previous diagnostic assessment would provide the mental health professional conducting the assessment information such as the history of the child and the child's family and thus make it possible to revise the previous diagnostic assessment. Except under the circumstances specified in item B, revising a diagnostic assessment is expected to require less time than developing the initial assessment.

Subitem (5) is similar to subitem (4) except that the interfering behavior is associated with the child's mental illness and there is no restriction of the

extension to an initial diagnostic assessment. It is reasonable because it permits the mental health professional to use his or her professional judgment about the effect of the child's mental illness on the conduct of the diagnostic assessment and to determine whether more time is needed to obtain a full picture of the child's mental illness and factors related to it. Subitem (6) describes circumstances where the recipient is a danger to himself or herself or to the mental health professional or to the property of the mental health professional conducting the diagnostic assessment. This is an emergency requiring the immediate attention and time of the mental health professional. During the emergency the recipient is generally not able to convey the information needed for the diagnostic assessment, according to the Department's experts. Therefore, more time will be needed to complete the diagnostic assessment itself. Thus, it is reasonable to provide an exception when the recipient's behavior endangers self or others or property as the mental health professional's attention first must directed to establishing a safe environment.

Item B. The criterion established in this item is necessary and reasonable because it is directly related to ensuring that the recipient's individual treatment plan will accurately specify the medically necessary service appropriate to the recipient's current condition. Purposes of the initial assessment include gathering sufficient information about the recipient's previous history, diagnosis or diagnoses, and treatment and observing the recipient at sufficient length to assess the recipient's present status. A complete history and assessment are necessary to prepare an appropriate individual treatment plan of medically necessary services for the client. At the time of the initial diagnostic assessment, this information may not be available from another source. It is reasonable to provide an extension of

time for the initial diagnostic assessment because the extension may be necessary to obtain the information from which the client's individual treatment plan will be developed. (See also item D which authorizes an extension of time for follow-up diagnostic assessments.)

Item C. Certain clients have case managers who are responsible for their client's access to services. One example is a person with mental retardation or a related condition who is required to have a case manager under parts 9525.0015 to 9525.0165 in order to receive services. Such a case manager has access to records about the client's medical status, social and communication skills, and ongoing health needs, is aware of the client's service needs, and authorizes services needed by the client. Thus providing an extension of time when it is authorized by the case manager under parts 9525.0015 to 9525.0165 is reasonable as the case manager is the person named to authorize services for a person with mental retardation or a related condition. (See parts 9525.0075 and 9525.0085.)

Item D. A client's mental health needs identifed through an initial diagnostic assessment and used to develop an individual treatment plan are considered in relation to all circumstances affecting the client. A significant change in a client's living arrangements may affect a client's mental status and consequently change the client's need for mental health services. The change may so significantly affect the person's behavior that identifying the client's problems and needs is difficult or a substantial revision of the client's individual treatment plan is necessary. In the case of a person with mental retardation or a related condition, the mental health professional may need to contact the person's family members or to observe

the person in the new living arrangement. Thus it is reasonable and necessary to allow an extended period of time for the diagnostic assessment required to identify the needs and revise the plan in this event.

It is necessary to define the phrase "initial diagnostic assessment" to set a standard and avoid confusion and misunderstanding. The definition is reasonable because it ties together the purpose of a diagnostic assessment and a set of symptoms indicating possible mental illness.

Subpart 6. Prior authorization of additional time to complete a diagnostic assessment.

As discussed in the SNR for subpart 5, additional time to complete a diagnostic assessment is necessary and reasonable under certain circumstances related to the recipient's health condition. It is difficult if not impossible to foresee all circumstances that might adversely affect the completion of a diagnostic assessment within the time limits of subparts 4 and 5 or exactly how much additional time might be required. Members of the advisory committee meeting with department staff discussed at length the fact that a diagnostic assessment of certain recipients may take longer than 8 hours. The members advised that in the case of persons with severe mental retardation who were also mentally ill it is often necessary to rely on observing the recipient in his daily living environment over an extended period rather than on oral communication because of the recipient's limited ability to communicate orally. In such a case the mental health professional may also rely more heavily on in-depth interviews with persons having knowledge of the recipient's behavior, degree of mental retardation, and

mental status. In-person observation of the recipient and the conduct of in-depth interviews may require more time than available under subparts 4 and 5 combined. Dr. Travis Thompson wrote the Department that "an additional 6 hours of follow-up assessment is necessary to provide minimal psychological service to clients with significant mental health problems and developmental disabilities." Thus it is necessary to provide the possibility of additional time to complete a diagnostic assessment in cases where direct observation of a person's behavior is required.

Minnesota Statutes, section 256B.04, subdivision 2 requires the department to conduct the medical assistance program in an efficient and economical manner and section 256B.04, subdivision 15 requires the department to safeguard against unnecessary or inappropriate use of medical assistance services. Prior authorization, required by Minnesota Statutes, section 256B.02, subdivision 8y, is a mechanism which permits the department to authorize services beyond the service limits before a service is provided if the recipient's condition justifies the need. (See parts 9505.5000 to 5030.) The use of prior authorization also is consistent with 42 CFR 440.230 which authorizes the department to place limits on services based on medical necessity or utilization control procedures. Thus it is reasonable to require prior authorization of a further extension of time because the prior authorization enables the department both to determine whether the service is necessary before the service is provided and to comply with Minnesota Statutes, section 256B.04, subdivisions 2 and 15. This subpart permits authorization of an additional 8 hours, which is two hours more than the additional time recommended by Dr. Thompson. The advisory committee accepted the added amount of time specified in this subpart as consistent with the prevailing standard among mental health professionals who conduct diagnostic

assessments. Thus, medical assistance will pay for a diagnostic assessment lasting up to 16 hours if the recipient's circumstances are those specified in subparts 5 and 6.

Items A to C are necessary and reasonable because they inform the mental health professional of the purposes for which the additional time approved through prior authorization must be used and because these purposes are related to methods needed to assess and diagnose the recipient's mental status according to the advisory committee.

Subpart 7. Criteria for prior authorization of additional time to complete a diagnostic assessment.

This subpart specifies the criteria that will be used in reviewing a prior authorization request under subpart 6 for additional time in which to perform a diagnostic assessment. The subpart is necessary to set a uniform standard, to ensure equal access to services, and to inform affected persons of the standard. This subpart also is necessary to distinguish those persons for whom an extended diagnostic assessment may be necessary from those for whom the benefit levels under subparts 4 and 5 are adequate. The criteria in this subpart were reviewed and accepted by the advisory committee. The criteria are taken from part 9510.1050 which specifies their use as a means to identify clients with mental retardation who can be eligible for special needs payments as very dependent persons due to the scope and gravity of their medical conditions. It is should be noted that the Department believes most persons who will require the maximum additional time will be persons who are both mentally ill and mentally retarded. Members of the advisory

committee reviewed these criteria and found them to be consistent with the standard of practice of mental health professionals who conduct diagnostic assessments of persons who are both mentally ill and mentally retarded. Thus using these criteria is reasonable.

Subpart 8. Payment rate; diagnostic assessment.

This subpart is necessary to establish the payment rate for a diagnostic assessment. Using the same hourly payment rate applicable to other mental health services is reasonable because this consistency ensures equity in paying for mental health services provided by mental health professionals.

Subpart 9. Payment limitation; length of psychotherapy session.

This subpart sets a limit on the length of a psychotherapy session in regard to eligibility for medical assistance reimbursement. 42 CFR 440.230 requires the department to "specify the amount, duration, and scope of each service it provides...." Minnesota Statutes, section 256B.04, subdivision 12 also requires the department to place limits on the services covered by medical assistance. Minnesota Statutes, section 256B.04, subdivision 2 requires the department to operate the medical assistance program in an economical and efficient manner. This subpart is necessary to specify the limits applicable to the length of a psychotherapy session. The use of half hour and hour increments for individual psychotherapy, item A, is consistent with the prevailing practice of mental health professionals according to members of the advisory committee. Family psychotherapy limits (item B) of one hour and one and a half hours also are consistent with the prevailing practice of

mental health professionals conducting family psychotherapy according to members of the advisory committee. According to members of the advisory committee, the limits specified for group therapy in item C allow payment for the range of prevailing practices in group psychotherapy, which are sessions lasting one hour, one and a half hours, or two hours depending on the type and size of the group. Proration of the hour time as set forth in item D is reasonable as it ensures payment for the time in which service actually was provided to the recipient and is consistent with the requirement of safeguarding against excess payments as required by Minnesota Statutes, section 256B.04, subdivision 15.

Subpart 10. Limitations on medical assistance payment for psychotherapy sessions.

This subpart is necessary to clarify that certain limits on medical assistance payment for psychotherapy are specified in a place other than this part. Minnesota Statutes, section 256B.02, subdivision 8y requires the commissioner to publish a list of health services that require prior authorization and states that the list is not subject to the requirements of Minnesota Statutes, sections 14.01 to 14.69. This subpart refers to that list. The subpart is reasonable because it is consistent with the statutory requirement and because it informs persons affected by this rule.

Subpart 11. Prior authorization of psychotherapy sessions beyond the limitations.

Prior authorization is the medical assistance utilization control mechanism

established under Minnesota Statutes, sections 256B.02, subdivision 8y and 256B.04, subdivision 15 in response to 42 CFR 440.230. Under this mechanism, a provider must obtain the department's approval of the service before providing the service in order for the service to be eligible for medical assistance payment. Although Minnesota Statutes, section 256B.02, subdivision 8y permits the department to specify services subject to the prior authorization requirement by publication in the State Register, the department believes this subpart is necessary to inform affected persons, who are the clients and mental health professionals, about special procedures applicable to emergencies and where the procedures are explained. An emergency requires an immediate response. (See part 9505.0175, subpart 11 which defines "emergency" and part 9505.5015, subpart 2, which provides an exception to the regular prior authorization procedure in the event of an emergency.) The inherent delay in the regular prior authorization procedure is inconsistent with providing an immediate response to the client's emergency. Thus it is reasonable to permit the mental health professional to provide an emergency service before requesting the department's approval of the service.

Subpart 12. Payment limitation; total payment for group psychotherapy.

This subpart establishes the the maximum size of a group for the group psychotherapy provided to the group to be eligible for medical assistance payment. The subpart is necessary to set a standard and to ensure consistency with Minnesota Statutes, section 256B.04, subdivision 12 and with Minnesota Statutes, section 256B.04, subdivision 15 which requires the department to safeguard against the inappropriate use of medical assistance services. The

advisory committee discussed at length the appropriate size of a group involved in group psychotherapy and recommended that the group have no more than 8 persons. It was the group's opinion that such a maximum size is the prevailing community standard of practice among mental health professionals who provide group psychotherapy. Therefore, this subpart is reasonable as it is consistent with the prevailing community standard.

This subpart is also necessary to establish the medical assistance payment for group psychotherapy. Setting the payment for each individual in the group at one quarter of the hourly payment rate for an hour of individual psychotherapy is reasonable because it ensures that the payment for a group of the maximum size will be sufficient to encourage the use of group psychotherapy where such treatment is appropriate for the client's needs and is consistent with the requirement of operating the medical assistance program in an economical manner as set forth in Minnesota Statutes, section 256B.04, subdivision 2.

Subpart 13. Payment limitation; family psychotherapy.

This subpart is necessary to set a standard for medical assistance payment for family psychotherapy. Family psychotherapy brings together family members with whom the mentally ill person interacts. Its purposes include identifying with family members how they can assist the recipient and assisting the family members to understand, cope with, and perhaps alleviate the symptons of the client's mental illness. Thus the involvement of the entire family may be essential to the treatment of the mentally ill recipient. This subpart is reasonable because it permits payment to be made on the basis of a session of family psychotherapy regardless of the medical

assistance status of the participating members (other than the recipient) or the number of participating family members. Such a basis for payment encourages the mental health professional to involve all family members who interact with or have a responsibility toward the client. Requiring the client's presence in the family psychotherapy session is reasonable because it is consistent with the concept of bringing together persons who interact with each other in an effort to understand and solve problems that may affect the client's mental health status. However under some circumstances, the client's presence during family psychotherapy may be inappropriate or may be detrimental to the client's overall treatment. An example of this is a child in treatment who has experienced child abuse by a family member. Therefore providing an exception to allow for the temporary absence of the client is necessary and reasonable because it permits the mental health professional the flexibility necessary to carry out the client's individual treatment in a manner consistent with the client's best interests. Finally it is reasonable to require the mental health professional to document the reason or reasons why the client or a member of the client's family is excluded and the length of the exclusion because the documentation is evidence of the mental health professional's determination.

Subpart 14. Payment limitation; partial hospitalization.

This subpart is necessary to set a standard for a partial hospitalization program to be eligible for medical assistance payment. Partial hospitalization is a costly program because the service is provided daily and is of an intense nature. The department has an obligation to ensure that the program meets the standards specified in the definition of the term given in

subpart 1, item Q. See Minnesota Statutes, section 256B.04, subdivision 15 which requires the department to safeguard against inappropriate use of medical assistance services and excess payments and part 9505.0210 about criteria applicable to covered services under medical assistance. Therefore, it is reasonable to require a partial hospitalization program to obtain the department's approval to provide services because a request for the approval gives the department an opportunity to determine whether the program meets the definition found in subpart 1, item Q and, if approval is given, assures at least a mimimum quality of service. It is reasonable to require the approval to be in a letter from the department as the letter provides evidence and avoids possible misunderstanding.

Items A to F establish the standards that the partial hospitalization of a client must meet for medical assistance payment. It is necessary to have standards in order to ensure statewide uniformity in carrying out the medical assistance program as required under Minnesota Statutes, section 256B.04, subdivision 2.

Item A. Prior authorization is a utilization control procedure established under Minnesota Statutes, sections 256B.02, subdivision 8y and 256B.04, subdivision 15. It is reasonable to require prior authorization of partial hospitalization services to a client because this procedure affords the department an opportunity to determine the appropriateness and medical necessity of the service for the client. A person experiencing an emergency for which partial hospitalization is a medically necessary and appropriate treatment is not jeopardized by the prior authorization requirement as retroactive approval of the service is available under part 9505.5015 for emergencies.

Item B. Partial hospitalization is provided only on an outpatient basis as a reasonable mechanism to provide necessary services in the least restrictive setting to persons for whom a mental health service more intensive than individual, group, or family psychotherapy but less restrictive than inpatient care is medically necessary and appropriate. A client receiving such services is not ill enough to require inpatient hospitalization nor well enough only to require less intensive mental health services. Requiring 14 days to elapse between a client's discharge from a hospital and the beginning of the client's partial hospitalization is a reasonable means of not removing a possible incentive for a hospital to prematurely discharge a patient from inpatient hospitalization. The 14 day requirement is consistent with parts 9505.0500 to 9505.0540, related to inpatient hospital admissions in the medical assistance program which, in most cases, requires 14 days to elapse between discharge and readmission.

Items C and D. Minnesota Statutes, section 256B.02, subdivision 12 requires the department to place limits on the frequency of medical assistance services. These items specify the frequency of partial hospitalization for two client groups: clients under 18 years of age and those over 18. It is necessary and reasonable to distinguish between two groups of clients according to age as persons under age 18 require a different set of services, including educational services and need more intense services than required by persons aged 18 or older. A person under 18 years of age has not yet matured and is undergoing developmental changes which may affect the person's mental health statuts. For example, a person under 18 can be expected to have less control of his or her behavior. Thus, it is reasonable to provide a younger person more intense service and a longer period of service because

this approach is consistent with the different needs of the younger persons. The advisory committee reviewed these items and supported the difference between them as consistent with the prevailing standard of partial hospitalization programs. In addition services of lengths longer than those specified in this item and item F tend to create a situation where the cost of treatment approaches or exceeds the cost of comparable service in an inpatient setting. Because a purpose of partial hospitalization is to provide a cost effective alternative to inpatient treatment, these limits were established to safeguard against such a situation.

Item E. A partial hospitalization program provides services to the clients and also must keep records that include information about the client's services, condition, goals, and progress. The definition of "hour" means that medical assistance will pay for a unit of time that includes a reasonable amount of time for record-keeping and other administrative activities related to the individual client's services. Because partial hospitalization is a mental health service, it is reasonable to apply the hour requirements applicable to other mental services services in order to have a uniform standard and ensure equity to service providers.

Item F. In setting a limit on the length of partial hospitalization eligible for medical assistance payment, it is difficult if not impossible to foresee all circumstances that might make a longer period of partial hospitalization medically necessary and appropriate for a client. For example, a family crisis involving the client may occur during a partial hospitalization and affect the client's progress during the partial hospitalization. It is also possible that a client may identify a new problem during the original partial

hospitalization and experience an insight that necessitates the client's further treatment. As stated above, prior authorization is a mechanism to authorize payment of services in excess of a limit if the client's need for the service is demonstrated to the department. Thus this item is necessary to allow medical assistance payment for those situations in which a longer partial hospitalization is medically necessary and is reasonable because it uses the mechanism established under part 9505.5010 to 9505.5030. This item permits prior authorization to be requested for up to the same number of days available under items C and D. This limit is reasonable because it does provide equal time to deal with new situations that were not foreseen when the partial hospitalization began. The advisory committee reviewed and accepted this item as consistent with the prevailing standard among mental health professionals who provide partial hospitalization.

Subpart 15. Payment limitations; general provisions about day treatment services.

Day treatment is a program in the continuum of services available to a person with mental illness that is less intensive than partial hospitalization but is appropriate for a mentally ill person who requires a structured program of mental health therapy and rehabilitative services aimed at reducing or relieving the client's mental health problems and enabling the client to live in the community. (See the definition of day treatment services in subpart 1, item E and its SNR.) This subpart is necessary to set the standard for covered day treatment services in the medical assistance program. Day treatment service is a costly program because the service may be provided over a six month period without prior authorization. Thus, the department has an obligation to ensure that the program meets the standards specified in subpart 1, item E. See Minnesota Statutes, section 256B.04, subdivision 15 in regard to the requirement to safeguard against inappropriate use of medical assistance services and excess payments. Therefore, it is reasonable to require a day treatment program to obtain the department's approval to provide services within the medical assistance program because a request for approval gives the department an opportunity to determine whether the program meets the standards in the definition in subpart 1, item E and the criteria in part 9505.0210 and, if approval is given, assures at least a minimum quality of service. A day treatment program is a group-oriented program that is provided by a multidisciplinary staff. Several types of mental health services are available within the program, including individual and group psychotherapy, recreation therapy, and training in socialization and independent living skills. It is reasonable to set an hourly limit that

affords the staff sufficient time to provide the services needed by the clients. Because, according to members of the advisory committee who are familiar with day treatment programs, psychotherapy is the basic mental health service offered by day treatment, it is reasonable to require it to be a component of the daily program. A client may need either individual or group psychotherapy. Requiring at least one hour but no more than two hours of psychotherapy is reasonable because one hour is the maximum length of a session individual psychotherapy reimbursable under medical assistance and two is the maximum for group psychotherapy. See subpart 9 and its SNR for a discusssion of the length of a psychotherapy session. Thus, a 3-hour block of time is necessary and reasonable to ensure that a day treatment program complies with standards applicable to the length of psychotherapy sessions set in subpart 9 and also has time to provide the other services such as recreation therapy that are needed by the client and included in the client's individual treatment plan. The three-hour time block also is consistent with the definition of "day treatment" in Minnesota Statutes, section 245.462, subdivision 8. According to the Department's experts, day treatment programs are used by mentally ill persons with ongoing needs that can only be met over an extended period of treatment. Requiring the service to be provided at least one day a week is reasonable because it is consistent with the clients' needs for ongoing treatment over an extended period and with Minnesota Statutes, section 245.462, subdivision 8. The limit of 390 hours, which provides a 6-month period of service, 5 days per week, in blocks of 3 hours per day, also is reasonable because it permits the day treatment program to adjust the intensity of the program to the needs of clients it serves.

Although all the services are related to the client's mental health, the services relate to several disciplines. For example, recreation therapy in a day treatment program setting requires not only knowledge and skill in using recreation therapy but also an understanding of mental illness and the behaviors of the mentally ill persons. Training clients in independent living skills requires yet another set of knowledge and skills along with an understanding of mental illness. Requiring a multidisciplinary staff is reasonable because it ensures staff will be qualified in the various disciplines related to the services to be provided to the clients. The requirement of a multidisciplinary staff also is consistent with the definition of "day treatment" in Minnesota Statutes, section 245.462, subdivision 8. Persons qualified in recreation therapy or in training clients in independent living skills may not be mental health professionals. Requiring the staff to be under the clinical supervision of a mental health professional is reasonable because it is consistent with Minnesota Statutes, section 245.462, subdivision 25 which requires a mental health professional to take oversight responsibility for mental health service delivery. The clinical supervision requirement also is consistent with the definition of "day treatment" in Minnesota Statutes, section 245.462, subdivision 8. Finally it is reasonable to limit the activities provided to the client to those specified in the client's individual treatment plan as the individual treatment plan is based on the needs identified as a result of the client's diagnostic assessment and identifies the services that are medically necessary and appropriate to meet those needs.

Subpart 16. Payment limitation; noncovered services provided by day treatment program.

A day treatment program may offer its clients activities other than those related to health services. This subpart is necessary to identify such services that may be part of the service continuum of a day treatment program but which are not reimbursable under medical assistance because they are not health related services. See part 9505.0210 for the general requirements applicable to covered services, including day treatment programs. Items A, B, and D specify certain programs whose purpose is not related to the client's mental health. Item C is consistent with part 9505.0220, item L which states a health service that is not provided directly to the recipient is not eligible for medical assistance payment. Item E is reasonable because the provision of outpatient services to recipients with primary diagnoses of alcohol or other drug abuse are subject to the standards in parts 9530.5000 to 9530.6500 and 9530.6600 to 9530.6655. Item F is reasonable because a day treatment service provided in the client's home is not consistent with the requirement of Minnesota Statutes, section 245.462, subdivision 8 that day treatment be provided in a group setting. Item G is reasonable as it is consistent with the limit for group psychotherapy. See subparts 9 and 15 and their SNRs. Item H limits the length of time that may be spent daily on activities other than psychotherapy services. The one hour limitation is reasonable because it is consistent with the goal of day treatment, which is to reduce or relieve mental illness by means of group psychotherapy and intensive therapeutic services. The therapeutic services may include individual psychotherapy or family psychotherapy. See the definition of day treatment in subpart 1 and the length of psychotherapy sessions in subpart 9

and its SNR for the limit applicable to group psychotherapy sessions. Limiting the amount of time available each day for day treatment program services other than psychotherapy provides the program the time necessary to conduct group psychotherapy for a length of time consistent with what is available to clients who are not in a day treatment program. Item I is reasonable because participation in meal preparation and eating are not mental health activities.

Subpart 17. Payment limitation; service to determine the need for or to evaluate the effectiveness of prescribed drugs

Drugs are prescribed to treat some persons with mental illness. Minnesota Statutes, section 151.37 establishes who may prescribe and administer drugs. Thus, evaluation of a prescribed drug for its effectiveness in treating a mentally ill person is limited by statute to a physician or to a registered nurse acting under the supervision of a physician. (See also part 9505.0345.) This subpart is necessary to set the medical assistance payment standards for this service to a client. This subpart is consistent with Minnesota Statutes, section 151.37 and with part 9505.0345. It is reasonable because the evaluation of prescribed drugs falls within the scope of medical practice and requires the skill and training of a physician. Requiring a nurse who is evaluating a client's prescribed drugs to be under the supervision of a physician who is on site at least 50 percent of the time the service is being provided is reasonable as it is consistent with the supervisory requirement of Minnesota Statutes, section 151.37 and enables the nurse to consult with or receive direction from the responsible physician in

a timely manner. It is also reasonable to require the physician who supervises the nurse evaluating the prescribed drug to be employed by or under contract to the provider as it is the provider who has an agreement with and is accountable to the department for services provided in return for medical assistance payment. The department has become aware of confusion among some consumers of mental health services about the meaning of the terms "medication management" and "evaluation of the effectiveness of a prescribed drug." Some consumers of mental health services mention to their therapists during a psychotherapy session their impressions of their reactions to prescribed medication. Thus, defining the phrases "evaluation of the effectiveness of a drug prescribed in a client's individual treatment plan" and "evaluation of a client's prescribed drugs" is necessary to set a standard for medical assistance payment purposes and avoid the confusion about drug evaluation that may arise when a client talks to the client's case manager or other mental health service provider who is not qualified to evaluate drugs with respect to the client's distress, symptoms, and ability to function. (The client's case manager or other mental health service provider who is not qualified to evaluate prescribed drugs should refer the client to a person who is qualified to evaluate prescribed drugs. The definition is reasonable because it clearly describes the function of the evaluation, that is, adjusting the client's medication.

Subpart 18. Payment limitation; explanation of findings.

This subpart sets a limit on a covered service that is provided on behalf of a recipient. An explanation of findings informs persons who are responsible

for the recipient's care or who interact frequently with the recipient about the results of the recipient's diagnostic assessment and the treatment program recommended for the recipient. It also provides an opportunity for the person receiving the explanation to ask questions about the care necessary and appropriate for the recipient and an opportunity for the mental health professional to make recommendations about the recipient's necessary and appropriate care. See the definition in subpart 1, item G and its SNR. The term "covered service" is used to distinguish between services eligible for medical assistance payment and those that are not so eligible. See part 9505.0175, subpart 6 which defines "covered service". It is necessary and reasonable to designate an explanation of findings as a covered service because such a designation will avoid possible misunderstanding and ensure that a service which is necessary and appropriate to the recipient's care and treatment will be eligible for medical assistance payment. 42 CFR 440.230 and Minnesota Statutes, section 256B.04, subdivision 15 require the department to establish service limits that are based on medical necessity or utilization control. This subpart is necessary to set the medical assistance standard for paying a provider who performs this service. The service limit of four one-hour sessions per recipient per calendar year to be used in one-hour blocks is a 400% increase above the present medical assistance limit for this service. The advisory committee believed that a limit of four one-hour sessions per recipient per calendar year is reasonable because the needs of most recipients can be served within this time. However, the advisory committee suggested that extending the length of the session might be necessary in the circumstances set forth in subparts 5 to 7 which permit additional time to complete a diagnostic assessment. It is reasonable to

assume that more than one hour is required for an explanation of findings after a diagnostic assessment of a recipient whose complex condition requires an extended diagnostic assessment as authorized according to subparts 5 to 7 because of the complexity of his or her case and difficulty in communication between the client and the mental health professional. For example, if a recipient has multiple health problems affecting the recipient's mental health and behavior, completing the explanation may take 3 hours. Thus, in these circumstances it is reasonable to allow the total of four hours to be used in any manner necessary to explain the findings because it recognizes the correlation between the time that a diagnostic assessment takes and the time necessary to explain the findings to all persons involved in the recipient's care. Requiring the provider to obtain the recipient's authorization to release information is necessary and reasonable because the requirement protects the recipient's expectation of having the information remain private and protects the rights of the recipient to make an informed choice. Additionally the requirement is consistent with Minnesota Statutes, section 13.42 concerning certain medical data that may be released only to the subject of the data unless the subject has given "an informed consent" to authorize disclosure as required under Minnesota Statutes, section 13.05, subdivision 4 (d). See also Minnesota Statutes, section 13.46 regarding mental health data and subparts 19 and 20 and their SNRs.

Subpart 19. Authorization to access or release information about a recipient.

This subpart is necessary and reasonable to inform affected persons of a

condition applicable to receiving medical assistance payment. The department does not want to pay medical assistance funds to persons who are not paying attention to statutory and regulatory requirements. This subpart informs affected persons of a condition to receive payment and thereby avoid possible misunderstanding and confusion. It is necessary for mental health professionals to share information about recipients so that persons providing the recipient's care or services are fully aware of the factors affecting the recipient when they make decisions about the recipient's needs, the recipient has access to and receives services that are necessary and appropriate for the recipient, the services are coordinated, and duplication of services is avoided. At the same time, the recipient's right to privacy should also be protected. This part is necessary to establish a standard to protect the recipient's privacy and to enable sharing of information. Under Minnesota Statutes, section 13.42, some medical information is medical data (medical records) and is private and may be released only to the subject of the data unless the subject has given "an informed consent" to authorize disclosure as required under Minnesota Statutes, section 13.05, subd. 4 (d). Also, Minnesota Statutes, section 13.46 contains prohibitions on disclosure of mental health data. Release of other types of medical information and welfare data is not covered by Minnesota Statutes, section 13.05, subdivision 4 (d) but it is reasonable to request the recipient authorize access to this information because such a request protects the right of the recipient to make an informed choice whether to authorize access. This subpart therefore specifies the items of information that must be on the form a recipient signs to authorize access to information. Requiring a separate form to be completed and signed for each authorization is necessary and reasonable to

avoid confusion and inform the recipient authorizing the release and the person or persons who will provide the information. Limiting the authorization to one year is consistent with Minnesota Statutes, section 13.05, subdivision 4 (d) (7) which requires a specific statement as to the expiration date of the authorization "which should be within a reasonable period of time, not to exceed one year...."

Items A to E are necessary and reasonable because they specify the information being requested. Item F is necessary and reasonable because it states how the information will be used and enables the recipient to make an informed decision. Item G is necessary and reasonable because it safeguards the recipient's privacy by limiting access to a definite period of time. Item H is necessary and reasonable because revocation may be appropriate, and even necessary, under some circumstances and the recipient should be informed that he or she can revoke consent to access records.

Subpart 20. Authorization to provide service or to access or release information about a recipient who is a child.

This subpart is necessary and reasonable because it informs affected persons of a condition that must be met to obtain medical assistance payment. The department does not want to pay medical assistance funds to persons who are not paying attention to statutory and regulatory requirements. This subpart is reasonable because it reduces confusion and avoids possible misunderstandings. See the SNR of subpart 19 for the justification of the information required to be on the form.

A child's parent, legal representative, or primary caregiver has the responsibility to provide for the safety, health, and well being of the child. This responsibility includes making decisions about the need for, type of, and source of the child's medical care including mental health services. It is the right of the parent to choose the services and to authorize use of information about the child. However, certain circumstances affect the parent's rights and responsibilities in regard to the child. This subpart is necessary to establish that parents have the right to choose services and authorize access to information except under certain circumstances. Items A and B are reasonable because they are consistent with the statutes cited within them, Minnesota Statutes, section 144.342, 144.341, 253B.03, subdivision 6, paragraph (4), and 260.191, subdivision 1, paragraph (a), clause (4). Furthermore limiting the exception in item B to the circumstance in which the parent, legal representative, or primary caregiver with whom the child is living is hindering or impeding the child's access to health service is reasonable because the exception is based on doing what is necessary to protect the health of the child. Item C is reasonable because it is consistent with a court's authority to make decisions about the child according to Minnesota Statutes, chapter 260. Requiring the mental health professional to request the child to authorize the services and release of information if item A or B applies is consistent with the statutes cited within items A and B. Requiring the mental health professional to request the guardian ad litem to authorize the service or access to information if item C applies is consistent with the duties of a guardian ad litem appointed by the court.

Subpart 21. Payment limitation; psychological testing.

This subpart specifies the conditions and limits which apply to medical assistance payment for psychological testing. 42 CFR 440.240 and Minnesota Statutes, section 256B.04, subdivision 15 require the department to establish service limits that are based on medical necessity and utilization control. Minnesota Statutes, section 256B.04, subdivision 12 requires the department to "place limits on the frequency with which the same or similar services may be covered by medical assistance for an individual recipient."

This subpart is necessary to set the conditions and limits applicable to psychological testing. Psychological tests differ in their length, complexity, ease of scoring, and interpretation. Therefore it is reasonable to reimburse psychological testing according to the psychological test used as this provides a way to reimburse the provider in a systematic and objective manner related to the service that is provided to the recipient. It is also reasonable as it assures uniformity of payments for the same service and meets the requirement of operating the medical assistance program statewide in a uniform manner as specified in Minnesota Statutes, section 256B.04, subdivision 2. The advisory committee in its meetings with staff discussed the number of psychological instruments necessary to obtain a complete picture of the recipient's condition and the length of time required to administer and score the tests, interpret the results, meet face-to-face with the recipient, and prepare the testing report. Most members of the advisory committee believed the testing could be completed within an 8-hour period. The maximum payment established in this subpart, eight times the hourly rate for an hour of individual psychotherapy, was found to be

acceptable by most members of the advisory committee. It is the methodology used by other third party payers such as Blue Cross and Blue Shield of Minnesota. Thus, the medical assistance payment limitation is reasonable because it meets the need of the client and the provider in obtaining a full and accurate testing, is consistent with present practice of other third party payers, and ensures that all providers of psychological testing are subject to the same limit on payment for providing the testing. The following components of psychological testing are, according to the advisory committee, essential aspects of all respected tests. A face-to-face interview between the recipient and the psychologist responsible for the testing is used to obtain information necessary to determine whether the results of the testing are accurate and their interpretation is valid. Accuracy and validity are necessary so that the mental health provider receiving the report of the psychological testing can rely on the information in completing the diagnostic assessment or recommending the most effective and appropriate treatment plan. Additionally, the department's expert witnesses believe that a face-to-face interview as part of validating the psychological test is necessary and reasonable to provide an opportunity to check the validity of tests which in some cases are administered by someone other than a mental health professional (and may be paper and pencil or computer completed tests.) The requirement of a face-to-face interview was reviewed and accepted by the advisory committee as consistent with the prevailing standard among mental health professional who do psychological testing. Thus requiring a face-to-face interview is necessary and reasonable as, according to the department's expert witness, it reflects the prevailing community standard and customary practice, provides the mental health

professional accurate information and a valid interpretation of the recipient's testing, and is in the best interest of the recipient. (See part 9505.0210 in regard to general requirements to be a covered service under medical assistance.) Requiring the report resulting from the psychological testing to be signed by the psychologist conducting the face-to-face interview is reasonable because the psychologist is accountable for validating the testing. It is also reasonable to require the signed report resulting from the testing to be placed in the recipient's record as this report is evidence of compliance with this subpart, provides an audit trail, and is available from the provider to other mental health professionals who are providing the recipient's mental health services.

Many activities are necessary to complete a psychological test and provide the recipient's mental health professional with information necessary to design the most appropriate and effective treatment. The activities include test administration, scoring, and interpretation; the face-to-face interview to validate the testing; the required written report of the results. The testing is of limited if any value to the recipient's mental health provider if necessary information is missing. It is reasonable to include within the medical assistance payment for the service all the activities necessary to complete the testing because medical assistance payment is based on the full provision of the necessary service.

The Board of Psychology is the authority established in Minnesota Statutes, section 148.90 to grant licenses to persons meeting the requirements for licensure under Minnesota Statutes, section 148.91, subdivision 4. Thus requiring the psychologist conducting psychological testing to have stated competence in the area of psychological testing to the Board of Psychology is

consistent with the Board's statutory authority to determine who is qualified in psychological practice. Additionally the requirement is reasonable because it is the prevailing community standard of practice that such testing be done by or under the supervision of a licensed psychologist or licensed consulting psychologist according to the advisory committee.

Subpart 22. Eligible vendors of mental health service before September 1, 1990 and Subpart 23. Eligibility to receive medical assistance payment for mental health service beginning September 1, 1990.

Subpart 22 sets standards for medical assistance payment for mental health services when they are provided by a person who is an employee of a provider and subpart 23 sets standards for medical assistance payment for mental health services by a person who meets the definition of mental health professional found in Minnesota Statutes (1988), section 245.462, subdivision 18. 42 CFR 440.60 requires individual service vendors to be licensed practitioners under state law. At present medical assistance recognizes only physicians, licensed consulting psychologists, and licensed psychologists as psychotherapy providers as the scope of practice of these licensed professions includes psychotherapy and their licensure attests to their meeting the minimum standards required to practice. They are the only individualts currently licensed under Minnesota law to provide psychotherapy. Under several statutes, however, additional types of professionals will be licensed by September 1990. (Minnesota Statutes, 1987 supplement, section 148B.18, subdivision 10 broadened the definition of qualified mental health professional to include an independent clinical social worker who has the qualifications in section 148B.21, subdivision 6;

or a psychiatric nurse with a master's degree from an accredited school of nursing, licensed under section 148.211, with at least two years of post-master's supervised experience in direct clinical practice. Additionally, Minnesota Statutes, section 245.462, subdivision 18 was amended in 1988 to include within the definition of mental health professional a person licensed under Minnesota Statutes, section 148B.21, subdivision 6 as an independent clinical social worker. According to Ms. Mary Ann Murphy, Executive Director of the Office of Social Work and Mental Health Boards, the majority of those eligible to be licensed under Minnesota Statutes, sections 148B.21 to 148B.23 will be grandparented in and be licensed under the emergency rules of the Board of Social Work by June 30, 1989. Another group of persons eligible for licensure will be identified through examinations being given in October 1989 and April 1990 and will be issued licenses by July 1, 1990.) The department believes it needs additional time to enroll all qualified applicants as providers and to ensure that the number of providers is sufficient to provide the medically necessary and appropriate services to medical assistance recipients. Licensure of independent clinical social workers creates a new category of persons eligible to enroll as providers of mental health services under the medical assistance program. (See 42 CFR 440.60 which requires medical assistance service providers to be licensed.) The provisions of these subparts reflect a transition period extending to September 1, 1990 that is necessary and reasonable to allow the department time to enroll licensed independent clinical social workers as providers. The proposed rule will remove the medical assistance payment eligibility of mental health services provided under supervision by persons who are mental health practitioners and who may not qualify for licensure

under the new requirements. Mental health services similar to those now being provided by these persons through the medical assistance program will continue to be needed but must be provided by persons qualified as mental health professionals. However, the elimination of the eligibility of mental health practitioners will reduce the number of qualified persons who are available to provide covered mental health services. Mental health practitioners may choose to improve their skills and training so they qualify for licensure as independent clinical social workers and become enrolled providers of mental health services. Those who choose to improve their skills and training need time to complete the requirements. Thus the date of September 1, 1990 also is reasonable because it allows such persons sufficient time to complete the requirements necessary to qualify for and obtain the licensure required under Minnesota Statutes, section 148B.21 to 148B.23 and thereby become eligible to enroll as providers of mental health services. Furthermore a transition period extending to September 1, 1990 is reasonable because the additional time is necessary to ensure there will be a large enough pool of enrolled mental health professionals to provide mental health services throughout the state. (It should be noted that the type and scope of mental health services are not being reduced as a result of elimination of the medical assistance payment eligibility of a service performed by a person other than a mental health professional.)

Items A and B of subpart 22. Minnesota Statutes, sections 245.461 to 245.486 authorize a person qualified as a mental health professional to provide the clinical services, including clinical supervision, specified in these sections, including the mental health services specified in this part. Clinical supervision is defined in Minnesota Statutes, section 245.462, subdivision 25 as "the oversight responsibility of a mental health

professional for individual treatment plans, service delivery, and program activities." A mental health professional meets the standard required to provide mental health services without clinical supervision. However, because under the medical assistance program only persons holding the appropriate licenses are eligible to be providers and to supervise the medical assistance services provided by persons who are not providers, it is reasonable to require mental health professionals who are not yet licensed to be supervised during the transition period. As stated above, this also is consistent with 42 CFR 440.60. Furthermore, it is reasonable to permit the supervision of these mental health professionals to be provided by persons whose licenses include mental health services within their scopes of practice but who may not have special training in the area of mental health as such a person is acting in accordance with licensure under state law. In addition, the mental health professional has the qualifications to provide clinical services related to mental health. (See 42 CFR 440.60 in regard to licensure to be a medical assistance service provider.) However, a mental health practitioner is not defined as a person qualified to provide clinical services and is qualified at a lesser level of training and experience than a mental health professional. (Minnesota Statutes, section 245.462, subdivision 17.) Therefore, it is reasonable to require a mental health practitioner to be supervised by a person who meets the qualificiations of a mental health professional because this requirement assures that the supervisor has knowledge and experience specifically in the area of mental health and meets the federal requirements regarding licensed practitioners cited in 42 CFR 440.60. Therefore, it is reasonable to limit the supervision to a psychiatrist, licensed psychologist, or licensed consulting psychologist because these persons are qualified as mental health professionals under

Minnesota Statutes, section 245.462, subdivision 18. It is also reasonable to require the supervisor to be a provider because a provider has agreed to and is accountable to the department for meeting the standards of the medical assistance program. It should be noted that before September 1, 1990, a mental health professional who is an employee of a mental health center does not have to be a provider but in this circumstance the services would have to be under clinical supervision and would receive only 50 percent of the usual medical assistance reimbursement amount.

Subpart 23. It is also reasonable to require day treatment provided by a mental health practitioner or any other person who is not a mental health professional to be clinically supervised by a mental health professional as the mental health practitioner is not licensed under state law and has not been determined to meet the minimum qualifications to be a mental health professional. The clinical supervision of the mental health practitioner by the mental health professional is necessary top receive medical assistance payment. It is reasonable because it is in the interest of the client and assures supervision by a person experienced in clinical services in the area of mental health when necessary and appropriate for the client who is receiving the service. It should be noted that beginning September 1, 1990, a mental health professional has to be a provider even if the professional is employed by a mental health center that is also a provider. This requirement prevents duplicate billings for the same services as the department requires both provider numbers on the billing invoices as check.

Subpart 24. Payment limitation; person completing requirements for licensure as mental health professional.

Minnesota Statutes, section 245.462, subdivision 18 defines who is qualified to be a mental health professional. The requirements include both academic or professional training and supervised experience. Persons who have completed or nearly completed their academic work possess the knowledge of the field of mental health but are not yet experienced. They gain the experience in a supervised placement or internship designed to complete the licensure requirements or in another type of clinically supervised experience. This subpart is necessary to permit these persons to provide psychotherapy services in a manner consistent with their gaining sufficient experience to fully qualify for licensure. This subpart is reasonable because it is consistent with the statutory requirements related to who is a mental health professional and also assists the academically trained person to gain the supervised clinical experience necessary to qualify for licensure. In addition it assures that medical assistance payment is made for these persons' services only if they are appropriately supervised and work in a setting that facilitates interaction with mental health professionals. Finally, supervision by a provider is consistent with the medical assistance requirement that medical assistance service providers be licensed. (42 CFR 440.60.)

Subpart 25. Individual treatment plan.

An individual treatment plan, and the diagnostic assessment preceding the plan's development, are used to identify medically necessary services and

direct the most appropriate way to provide services to the individual. This subpart is necessary to clarify that medical assistance payment is available only for services provided in accordance with a client's individual treatment plan and to set the standard applicable to the client's individual treatment plan. A standard is necessary to assure compliance with Minnesota Statutes, section 256B.04, subdivision 2 which requires the department to administer medical assistance program in a uniform manner throughout the state. This subpart requiring the individual treatment plan to be based on the information and outcome of the client's diagnostic assessment is consistent with Minnesota Statutes, section 245.462, subdivision 14 and 245.467, subdivision 1 which specifies the criteria applicable to mental health services required by the Minnesota Comprehensive Mental Health Act. It is reasonable to require the client's individual treatment plan to be developed by the mental health professional providing the client's treatment no later than the end of the first psychotherapy session after completion of the diagnostic assessment because prompt development of the plan assures that services identified during the diagnostic assessment as needed by the client, the goals and objectives of the treatment, the treatment strategy, the schedule for accomplshing treatment goals and objectives, and the person responsible for the treatment will be implemented in a coordinated, planned method that encourages effectiveness and efficiency and promotes understanding between the client and the mental health professional about what to expect from treatment. See subparts 5 and 6 and their SNRs for the exception which requires the mental health professional conducting the extended diagnostic assessment to develop the individual treatment plan. This subpart also is consistent with Minnesota Statutes, section 245.467,

subdivision 3 which requires the client to be involved, to the extent possible, in all phases of developing and implementing the individual treatment plan. It also is consistent with the requirement of Minnesota Statutes, section 245.467, subdivision 3 that the plan must be reviewed every 90 days after its development. Requiring the plan to be revised if necessary following the review is reasonable as the plan is to be based on the current needs of the client which may change during the course of treatment.

It is reasonable to require the mental health professional to request the client, or in the case of a child, the child's parent, primary caregiver, or other person authorized by statute to act for the child, to sign the individual treatment plan and any revision of the plan as the signature is evidence that the client or the person responsible for the client has had an opportunity to review the plan. Providing an exception to this request requirement also is reasonable because such a request may be inappropriate to a client's mental health status. Requiring the mental health professional to note on the plan a client's refusal to sign and the reason for the client's refusal is reasonable as the note provides evidence that the request was made but the client refused for the noted reason. Finally it is reasonable to require the mental health professional to note on the plan the reason a client was not requested to sign because the note provides evidence that the provider acted on the basis of professional judgment of the client's mental status.

Subpart 26. Documentation of the provision of mental health service.

Minnesota Statutes, section 256B.04, subdivision 15 requires the department

to safeguard against unnecessary or inappropriate use of medical assistance services and to use both prepayment and postpayment review systems to determine if utilization is reasonable and necessary. The reliability of a postpayment review system depends on the recordkeeping of the providers. Minnesota Statutes, section 256B.04, subdivision 2 requires the department to administer the medical assistance system uniformly throughout the state. Thus, this subpart is necessary to specify the standards applicable to records that providers are required to keep about mental health services to clients. Information about the date, type, length, and scope of service and the name of the service provider is reasonable because it provides an audit trail. Information about contacts with other persons interested in or responsible for the client is also a reasonable requirement because it enables the department to monitor and verify the accuracy of services billed to the department. Requiring the documentation to be completed promptly after the provision of the service is reasonable because the required information is most readily at hand promptly after the service is given and thus the requirement can be completed without unduly burdening the provider. It is also reasonable because the information is more likely to be accurate if recorded promptly.

Subpart 27. Excluded services.

This subpart is necessary to inform providers and recipients about the ineligibility of certain services for payment under part 9505.0323.

Item A. This item is consistent with part 9505.0210, item A (1) which limits

eligibility for medical assistance payment to services that are determined by prevailing community standards or customary practice and usage to be medically necessary. The item is also consistent with 42 CFR.440.230 (d) and Minnesota Statutes, section 256B.04, subdivision 15.

Item B. Subparts 6, 11, 14,and 16 authorize the provision of certain mental health services beyond the limits set on covered services in part 9505.0323 provided that authorization to provide the additional service is obtained from the department before the service is provided. This item is necessary and reasonable because it reminds providers of an action that is required to receive medical assistance payment and informs them of the consequences of failing to take the action.

Item C. Medical assistance payment is based on the premise that a service provided to a recipient is medical necessary. A person who is not mentally ill does not need services designed to treat mental illness. However some mental health services might be necessary before the determination is completed. These services are related to meeting an emergency (one hour of psychotherapy before the assessment is completed), the diagnostic assessment which is the method of determining whether a person is mentally ill, the explanation of the findings of the assessment to those determined to be mentally ill and those determined not to be mentally ill. Therefore, this item is necessary and reasonable because it enables recipients to receive prompt services necessary to meet an emergency or determine whether they have a mental illness.

Item D. This item informs providers that the consequence of failing to

provide required clinical supervision in providing a client's mental health service is the ineligibility of the service for medical assistance payment. This provision is reasonable because both the advisory committee and the prevailing community standard support the concept that mental health services provided by persons whose training, education, and experience are still being completed must be clinically supervised to assure quality, competence, and access to a mental health professional when necessary. The clinical supervision provides a safeguard in the interest of the client in addition to meeting the reqirement that medical assistance be paid only to licensed providers.

Item E. This item clarifies that mental health services provided outside of the client's individual treatment plan are not eligible for medical assistance payment. This part requires that all mental health services to a client be based on the results of a diagnostic assessment and that a treatment plan be developed that specifies the services needed to address the client's diagnosis. The requirement assures that the client's mental health services are appropriate and directed toward an identified need. Thus, mental health services provided without addressing a need identified in the individual treatment plan can be considered either not medically necessary or inappropriate for the client. This item is reasonable because medical assistance does not pay for unnecessary or inappropriate services.

Item F. That a neurological examination is a very specialized service calling for specialized training and education is a community standard recognized by the Board of Psychology in listing psychologists with

competency in the area of neurological evaluation. It is reasonable to use this listing as a criterion of eligibility for payment of a neurological examination as Minnesota Statutes, sections 148.49 to 148.98 authorizes the Board of Psychology to make judgments about qualifications of psychologists. A neurological examination is generally within the scope of practice of a psychiatrist. The item was reviewed and found by the advisory committee to be consistent with the community standard applicable to neurological examinations.

Item G. This item is necessary to inform providers about the consequences of failing to complete an action required to receive medical assistance payment. Part 9505.0220, item P requires as a condition of eligibility for medical assistance payment that a health service other than an emergency health service provided to a recipient in a long-term care facility be in a recipient's plan of care or ordered in writing by the recipient's physician. This item is consistent with the requirement of part 9505.0220, item P.

Item H. This item is necessary to inform providers of the consequences of failing to take an action required to receive medical assistance payment. This item is consistent with 42 CFR 483.440 and 483.460 which became effective October 3, 1988 in regard to written individual service plans for residents of an intermediate care facility for the mentally retarded. See Federal Register, Vol. 53, No. 107, June 3, 1988, pp. 20448 et. seq.)

Item I. This item is necessary to clarify that a drug evaluation that does not comply with the standard of subpart 17 is not eligible for medical

assistance reimbursement. This item is reasonable because it informs affected persons and avoids possible misunderstanding.

Item J. Medical assistance payment eligibility requires that a recipient's service be medically necessary for the recipient. See 42 U.S.C. section 1396, and Minnesota Statutes, section 256B.04, subdivision 15. This item is necessary and reasonable because it clarifies that the standard applies to court ordered services and thus avoids possible misunderstandings about the responsibility of medical assistance to pay for services ordered by the court only for legal purposes.

Items K and L. The medical assistance program requires that a recipient's service be a medical service that is medically necessary for the recipient. See 42 U.S.C., section 1396 and Minnesota Statutes, section 256B.04, subdivision 15. These items are necessary and reasonable to clarify that services that do not directly address the recipient's physical or mental health are not eligible for medical assistance payment.

Item M. This provision is necessary to specify a medical assistance payment eligibility standard applicable to staff training. Staff training is a requirement to obtain certification as a long-term care facility under 42 CFR Subpart K, 442.314, and 483.430. Furthermore, part 9549.0035 specifies that costs incurred by a long-term care facility in meeting certification requirements are costs that are includable in the facility's daily payment rate. Thus, a mechanism already exists for long-term care facilities to receive medical assistance payment for staff training. This item is reasonable because it is consistent with the requirement of safeguarding

against duplicate payments specified in Minnesota Statutes, section 256B.04, subdivision 15. However, staff training related to a particular client's individual treatment plan or plan of care may be necessary because of the unique nature of the client's physical or mental health. Such training would be in addition to the staff training included in the costs reported by the facility under part 9549.0035. Thus, this item is reasonable because it clarifies which staff training costs are eligible for medical assistance payment and assures payment for services necessary to meet a client's needs.

Item N. This item is necessary to inform providers of mental health services that child and adult protection services provided directly or indirectly by a governmental entity are not eligible for medical assistance payment. These services have traditionally been funded through other more appropriate funding sources as they do not primarily focus on the the recipient's mental health. Thus the item is reasonable because it is consistent with the continued use of other resources to pay for services that are not primarily mental health services. The item is also consistent with the requirements of safeguarding the expenditure of medical assistance funds specified in Minnesota Statutes, section 256B.15, subdivision 15.

Item O. This item clarifies that mental health services other than psychological testing, as defined in this part, are not eligible for medical assistance payment if the recipient is an inpatient who has been admitted for purposes of psychiatric treatment. Mental health services to a recipient admitted to a hospital for treatment of a psychiatric care must be managed by a physician. Physicians (psychiatrists), by virtue of Board Certification,

are recognized as skilled in providing all mental health services. Additionally the diagnostic category payment rates established for inpatient hospital services to treat mental illnesses under parts 9500.1090 to 9500.1155 includes certain ancillary services as well. Thus, it would be an inappropriate expenditure of medical assistance funds to reimburse providers for services that physicians are already providing. However, psychological testing is a service that is customarily conducted not by the physician admitting the recipient or providing the inpatient hospital services. See subpart 21 and its SNR concerning the eligibility of psychological testing for eligibility for separate medical assistance payment. It is an area that requires specialized knowledge that is usually only possessed by psychologists with a competency in psychological testing. Thus it is reasonable to provide that this service can be provided without subjecting it to the payment limitations placed on other mental health services.

Item P. It is necessary and reasonable to specify that psychological testing, diagnostic assessment, explanation of findings, and psychotherapy services provided by an entity whose purpose is not health related are not eligible for medical assistance payment as this clarification avoids possible misunderstandings and is consistent with the requirements of Minnesota Statutes, section 256B.04, subdivision 15. This restriction prevents the abuse or perversion of the statutory intent for the use of medical assistance funds which does not authorize medical assistance funds for entities whose primary purposes are non-medical in nature. For example, the Division of Vocational Rehabilitation of the Department of Jobs and Training is a federal program with its own funding sources that assesses a person's vocational

skills and assists the person to match these skills with appropriate vocations. It is reasonable that such entities whose focus is non-medical continue to use their present sources as medical assistance is a medical program.

Items Q and R. Minnesota Statutes, section 256B.04, subdivisions 15 requires the department to safeguard the expenditure of medical assistance funds and requires their use be limited to medically necessary medical services. Fund-raising activities and community planning are not medical services. Therefore, this item is consistent with the statutory requirement. It is necessary and reasonable to inform affected persons of a medical assistance payment eligibility standard and thereby avoid misunderstanding.

EXPERT WITNESSES

The Department will not present expert witnesses other than Department staff members to testify on behalf of the Department concerning the provisions of these proposed rules.

February 10, 1989

SANDRA S. GARDEBRING, Commissioner
Department of Human Services

MEDICAL ASSISTANCE MENTAL HEALTH SERVICES ADVISORY COMMITTEE

Dr. F. O. Anderson, Suite 303, 701 25th Avenue South, Minneapolis, MN 55454-1490

Dr. Robert C. Barron, Minnesota Psychologists in Private Practice, 689 Southdale Medical Building, 6545 France Avenue South, Edina, MN 55434

Dr. Lee Beecher, Minnesota Psychiatric Society, Suite 121 Creekside Professional Building, 6600 Excelsior Blvd., St. Louis Park, MN 55426

Ms. Sionagh Black, 1811 Second Avenue South, Apt. 23, Minneapolis, MN 55403

Al Brown, Human Development Center, 1401 East First Street, Duluth, MN 55805

George Carr, Mental Health Assoc. of MN, 328 East Hennepin, Minneapolis, MN 55414

Ms. Susan Erbaugh, Minneapolis Children's Medical Center, 2525 Chicago Avenue South, Minneapolis, MN 55404

Richard Flenniken, Anoka-Metro Regional Treatment Center, 3300 Fourth Avenue North, Anoka, MN 55303

Anne Henry, Legal Advocacy, 222 Grain Exchange Building, 323 Fourth Avenue South, Minneapolis, MN 55415

Ms. Elizabeth Horton, National Societies for Clinical Social Work, 3141 Dean Court #C1101, Minneapolis, MN 55416

Alan Ingram, National Association of Social Workers, Minnesota Chapter, 480 Concordia Avenue, St. Paul, MN 55103

Ms. Chari Konerza, Minnesota Medical Association, Suite 400, 2221 University Avenue Southeast, Minneapolis, MN 55414

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Lyonel Norris, Minnesota Mental Health Law Project, 222 Grain Exchange Building, 323 Fourth Avenue South, Minneapolis, MN 55414

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Norma Schleppengrill, Mesaba Regional Medical Center, Hibbing, MN 55746

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Ms. Sherri Viland, Dakota Mental Health Center, 744 - 19 Avenue North South St. Paul, MN 55075

CURRICULUM VITAE

THOMAS JOHN MALUEG, M.D.
5409 MALIBU DRIVE
EDINA, MN 55436
612/933-8676

EDUCATION:

University of Wisconsin, Madison, WI
B.S. - 1957 (major: psychology)
M.D. - 1961

Internship - St. Mary's Hospital, San Francisco, CA - 1961-62

Residency Training Program in Psychiatry - University of Wisconsin Hospitals, Madison, WI - 1962-65
Chief Resident - 1965

PROFESSIONAL CERTIFICATIONS:

Board Certified in Administrative Psychiatry by the American Psychiatric Assn. - May, 1982

Board Certified in Psychiatry by the American Board of Psychiatry and Neurology - October, 1968

CHRONOLOGY OF PROFESSIONAL POSITIONS:

April, 1985 to the present - Chairman, Department of Mental Health, Group Health, Inc., Minneapolis, MN

1976 - 1985 - Executive Director, Oakland County (MI) Community Mental Health Services Board

1975 - 1976 - Clinical Director, Outagamie County (WI) Mental Health Services, Appleton, WI

1969 - 1975 - Private Practice of Psychiatry, Riverside/Nicollet Clinic, Neenah-Menasha, WI

1967 - 1969 - Service Chief/Adult Female Admissions Unit, Winnebago State Hospital, Winnebago, WI

1965 - 1967 - Lt. Cmdr. in US Navy Medical Corps
Service Chief/40-bed Open Ward Inpatient Unit
US Naval Hospital, Oakland, CA
Senior Medical Officer/Outpatient Psychiatry
US Naval Dispensary, Treasure Is., San Francisco

1966 - 1967 - Consultant at Contra Costa County (CA) Mental Health Center, Martinez, CA

1967 - 1985 - Forensic psychiatry

PROFESSIONAL ACTIVITIES:

Michigan Psychiatric Society -

1) 1983 - 85 - Task Force on Public Mental Health Policy

2) 1979 - 85 - Chairperson/Subcommittee on Oakland County (MI) Project for Cooperation between Public and Private Sector

3) 1980 - 85 - Credentials Committee

4) 1980 - 82 - Program Committee

State of Michigan Dept. of Mental Health -

1) 1982 - 85 - Medical Advisory Committee

2) 1981 - 84 - Mental Health Advisory Committee on Deafness

1983 - 85 - Mental Health Assn. of Michigan Task Force to Study Feasibility of Public/Private Contracting for Acute Psychiatric Inpatient Treatment - Chairman

1983 - 85 - Michigan Assn. for Mental Health Board of Directors

1977 - 85 - SAAC of Comprehensive Health Planning Council of Southeastern Michigan

1979 - 85 - Michigan Community Placement Guideline Committee

1981 - 85 - St. Joseph's Mercy Hospital's (Pontiac, MI) Adolescent Mental Health Advisory Council

1979 - 85 - Joint Action Committee of the Michigan Assn. of Community Mental Health Directors and Michigan Assn. of Community Mental Health Boards

1975 - 76 - Lake Winnebago Area (WI) Health Systems Agency Board of Directors

1975 - 76 - State of WI Division of Mental Hygiene Committee for the Study of Long-Term Care of Chronic Psychiatric Patients

ADDITIONAL AFFILIATIONS:

1980 - 85 - Advisory Board, Orchard Hills Psychiatric Clinic, Farmington, MI

1980 - 85 - Advisory Board, Lakewood Psychiatric Clinic, Birmingham, MI

1977 - 85 - Asst. Clinical Professor, Dept. of Psychiatry, Michigan State University, East Lansing, MI

1977 - 85 - Asst. Clinical Professor, Dept. of Community Health Sciences, Michigan State University, East Lansing, MI

1974 - 75 - Consultant to Unified Health Services, Shawano-Waupaca Counties (WI)

1970 - 76 - Lecturer/Winnebago Mental Health Institute Residency Program, teaching seminar in Basic Psychoanalytic Theory

1970 - 71 - Consultant to the Winnebago (WI) County Health Center

OFFICES HELD:

1974 - 75 - Secy./Treasurer of Winnebago (WI) County Medical Society

1970 - 75 - Board of Directors of Riverside (now Nicolet) Clinic, Neenah, WI, holding offices of Vice-President and Secretary

1970 - 74 - Chairman/Recruiting Committee of Riverside Clinic, Menasha, WI

PROFESSIONAL MEMBERSHIPS: (at present)

American Psychiatric Assn.

American Assn. of Psychiatric Administrators

Michigan Psychiatric Assn. (transfer to MN pending)

Hennepin County Medical Society

ADDITIONAL TRAINING:

American Psychiatric Assn. Sponsored Courses have included:

-- "Administration in Psychiatry: the Administrator"
-- "Administration in Psychiatry: Fiscal Management"
-- "Improving Skills in Clinical Supervision"

-- "Value Dilemmas and Community Mental Health Policies"
-- "Primary Prevention in Psychiatry: Myth or Reality"
-- "Medical Psychiatric Units: Administrative and Clinical Perspectives"
-- "Costs and Cost Effectiveness in the DRG Era: What Can Be Done?"
-- "Diagnostic Related Groupings (DRGs)"

1981 - MI Dept. of Mental Health Executive Development Program, Part I

1982 - Management Training Seminar, sponsored by Oakland County (MI), Oakland University, and University of Detroit

Part I: 88 hrs.: "Problem Solving Approach to Management"

1983 - Part II: 56 hrs.: "Behavioral Science in Management"

COMMUNITY ACTIVITIES:

1983 - 85 - Volunteer Psychiatric Consultant to Catholic Social Services of Oakland County (MI)

1970 - Lecturer for Drug Awareness Program for Neenah, WI Public Schools

PERSONAL:

Age: 52

Married; two children, aged 17 and 26

APPENDIX B

David Paulson

MEDICAL UNDERGRADUATE: University of Minnesota, M.D. June 1973

GRADUATE MEDICAL: Residency in Psychiatry, University of Minnesota Hospitals, July 1973 - June 1976

PROFESSIONAL ACTIVITIES: Private practice, Adult Psychiatry, 1976 to present, currently affiliated with Hennepin Faculty Associates

Consultant - Hastings State Hospital, 1976-1977

Part-time fellowship - consultation liaison, Psychiatry, University of Minnesota Hospitals, 1976-1977

Consultant - DHS (1981 to present)

Medical director - HMO Minnesota Behavioral Services Clinic, Metropolitan Medical Center, 1985-1987

CURRENT ACTIVITIES: Executive committee, Hennepin County Psychiatric Society

Foundation for Health Care Evaluation (prior activities)

Member - Medical Standards & Practices Committee

Chairman - Psychiatric Advisory Committee

Chairman - Chemical Dependency Task Force

CERTIFICATIONS: Certified in adult psychiatry - American Board of Psychiatry & Neurology