1/23/90

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STATE OF MINNESOTA
DEPARTMENT OF HUMAN SERVICES

In the Matter of Proposed Amendments to Department of Human Services Rules Governing Chemical Dependency Care for Public Assistance Recipients (Minnesota Rules, part 9530.6655) and the Consolidated Chemical Dependency Treatment Fund (Minnesota Rules, parts 9530.7000, 9530.7012, 9530.7015, 9530.7020, 9530.7022, and 9530.7024)

STATEMENT OF NEED AND REASONABLENESS

Introduction

The proposed amendments affect two series of DHS rule parts (parts 9530.6600 to 9530.6660 and parts 9530.6800 to 9530.7030) known informally as Rule 25 and Rule 24 respectively. Both rules were promulgated in 1987 as mandated by Minnesota Statutes, section 254B.03, subdivision 5 to implement Laws of Minnesota 1986, chapter 394, sections 8 to 20. That legislation created a consolidated chemical dependency treatment fund, appropriated funds to counties for chemical dependency treatment costs, and removed funds for chemical dependency treatment from medical assistance, general assistance medical care, and general assistance funds.

Rule 25 (parts 9530.6600 to 9530.6660) became effective January 1, 1987. These rule parts establish criteria for county social service agencies to use when determining the appropriate level of care needed by a public assistance recipient seeking chemical dependency treatment. Only part 9530.6655 is open for amendment at this time.

Rule 24 (parts 9530.6800 to 9530.7030) was adopted in June of 1987. These rule parts govern administration of the Consolidated Chemical Dependency Treatment Fund (CCDTF). Parts 9530.7000, 9530.7012, 9530.7015, 9530.7020, 99530.7022, and 9530.7024--the rule parts open to amendment--govern definitions, client eligibility criteria, client responsibility to pay for treatment, and the sliding fee schedule.

The proposed amendments address problems which have been identified in the implementation of Rules 24 and 25. The proposed changes result from information the department gathered by surveying counties and by monitoring county files and procedures. The parts proposed for amendment have been identified as the rule parts most difficult for counties to consistently

interpret and apply. The amendments are intended to facilitate counties' interpretation and application of the rule parts.

Minnesota Statutes, section 254B.03, subdivision 5 authorizes the commissioner to "adopt rules as necessary" to implement Laws of Minnesota 1986, chapter 394, sections 8 to 20. Minnesota Statutes, chapter 14 establishes procedures that an agency must follow in adopting rules.

Procedure

The DHS Chemical Dependency Program Division provided numerous opportunities for public participation and comment during the development of the proposed amendments. Notices of Solicitation of Outside Opinion were published in the State Register on August 15, 1988 for amendments to the CCDTF administration rule and on October 24, 1988 for amendments to the appeals process in the rules governing chemical dependency care for public assistance recipients.

The department gathered comment on the proposed amendments by surveying counties about the effectiveness of the treatment fund since its implementation and by presenting drafts of the proposed amendments to the Alcohol and Other Drug Abuse Advisory Council established under Minnesota Statutes, section 254A.04, the American Indian Advisory Council established under Minnesota Statutes, section 254A.035, and the Association of County Social Services Directors rules committee.

The department also presented the draft amendments at a series of department-sponsored training sessions for county social service agencies and chemical dependency treatment providers held in Bemidji on November 14 and 15, 1988; Duluth on November 30 and December 1, 1988; Willmar on December 5 and 6, 1988; and Owatonna on December 7 and 8, 1988.

Over 300 copies of draft amendments were distributed and discussed at the various meetings. All comments and criticisms received were considered by department staff. The department received ten written comments as a result of the Notices of Solicitation and various committee reviews of drafts. These written comments have been submitted as part of the rulemaking record.

The department notified all county agencies on the department's certified mailing list of the proposed amendments, as well as all vendors of chemical dependency programs contained in the Directory of Chemical Dependency Programs in Minnesota 1988/89. The directory list is part of the department's additional mailing list for these amendments.

The need for and reasonableness of the amendments to the adopted rule provisions are established in the following statement of need and reasonableness.

9530.6655 APPEALS.

Subpart 1. Client's right to a second assessment. The substitution at line 35 is necessary to reflect the fact that part 9500.1463 has been repealed and the referenced appeal rights have been shifted to Minnesota Statutes, section 256.045. Applying Minnesota Statutes, section 256.045 is reasonable because that section governs state agency hearings as they apply to prepaid health plans under contract to the commissioner under chapter 256B.

Subp. 2. Client's right to appeal. Adding length of placement as an appealable issue is necessary to make explicit a right the department believed was implicit in part 9530.6655 as adopted. That the provision as adopted does not offer clients the protection the department intended became apparent when an appeal was filed and the appeals referee found no jurisdiction because length of placement was not specifically mentioned in part 9530.6655 as adopted. The department intended length of placement to be an appealable issue to protect clients from arbitrary or premature termination of their placement in a treatment program.

During the amendment process, the department received both written and verbal comments requesting that the right to appeal length of placement be extended to treatment providers when they disagreed with the length of stay determined for a client by a county.

The proposed amendment does not give providers the right to appeal length of stay but limits that right to clients. This position is consistent with the belief that the purpose of the provision is to protect the client's right to receive services rather than the provider's right to provide services. It is also consistent with Minnesota Statutes, 1989 Supplement, section 256.045, subdivision 5 which specifically excludes providers from the appeals process addressed in section 256.045.

It has been the experience of most treatment vendors that if the treatment provider finds the client cannot complete treatment in the time allocated by the county at the time of assessment, the county will extend the length of placement at the provider's request. Such extensions are routine and occur frequently.

Subp. 3. Length of placement appeal, service continuation. This provision is necessary to strike a balance between the need for cost containment and the client's need for continued treatment. Department rules typically allow clients to continue receiving the disputed service for the roughly 90 days it takes for the appeal to be resolved. Providing chemical dependency treatment services, however, presents a unique situation and one which warrants establishing a specified end date for services.

When a client is in chemical dependency treatment the client is vulnerable to influence or pressure from the treatment provider. Counties' comments on the draft amendments indicated concern that some treatment providers would

encourage clients to appeal length of placement in order to enable the provider to continue receiving income from the county while the appeal was pending. The department acknowledges the necessity of having a date certain at which services under appeal would stop. Chemical dependency treatment is expensive--the average cost of one inpatient treatment placement is $3,296--and treatment fund allocations are finite (44 counties exceeded their allocation during fiscal year 1988). At the same time, however, the department also acknowledges the necessity of ensuring that a client has sufficient time to complete a program.

To reconcile these two needs, the department proposes to establish an end-of-service date that allows a client to stay a specified amount of time beyond the original county-determined termination date. The amount of time allowed in each of the four program areas referenced in items A to D is equal to the average length of stay of clients in each of the four program areas between January 1 and December 31, 1988. (The total number of clients in the population on which average length of stay was calculated is 17,000. For data and detail, see the department's Report on the Status of the Consolidated Chemical Dependency Treatment Fund which has been entered into the hearing record as an exhibit item.)

It is reasonable to use average length of stay as the basis for determining how much time to allow beyond the proposed service termination date because an amount of time equal to the average length of stay for 1988 plus the amount of time initially authorized by the county is enough time for most clients to achieve program completion. At the same time, the total of time initially authorized and time equal to average length of stay is considerably less than the 90 days typically allowed for appeal resolution.

At line 13, subpart 3 necessarily indicates that services must continue according to the subpart regardless of provisions in the governing host county contracts to give county agencies and vendors notice that the service extensions proposed in rule would supersede the county contracts.

The department does not find it necessary to provide a right to appeal when the client wishes to reduce the length of treatment. The client is not compelled to continue participating in treatment unless placed under commitment by probate court. Nor is a treatment vendor compelled to keep a client in treatment for the entire period authorized by the county. The vendor may discharge the client at any time if the client is failing to benefit from treatment, violates facility rules established by the treatment program, or completes treatment objectives. Length of stay and discharge for committed clients are governed by Minnesota Statutes, chapter 253B and thus are not addressed by these rule parts.

Subp. 4. Length of placement appeal criteria. Establishing appeal criteria is necessary to help ensure that standards governing appeals are uniformly and consistently applied. It is reasonable to require, as item A does, that usual and customary length of placement be considered because this consideration establishes a known and accepted industry standard against

which the appealed length of placement can be measured.

Considering, as item B does, whether the client has achieved stated objectives is a reasonable standard because continuing treatment for a client who has already achieved his or her placement goals is not fiscally prudent. It is similarly reasonable to assess whether the recipient is benefiting from the placement as stipulated in item C. Continuing a detrimental placement or one which produces no progress is not a sensible use of public funds and may prove harmful to a client. Continued placement may not be necessary if the aftercare plan which addresses a client's needs has addressed the continuing needs of the client. Hence the reasonableness of the requirement in item D.

9530.7000 DEFINITIONS.

Subp. 13. Income. This subpart specifies what does and does not count as income for purposes of determining a client's eligibility for the Consolidated Chemical Dependency Treatment Fund and whether a client or a responsible relative will be responsible for a fee. The amendment is necessary to correct the subpart as written in its treatment of court-ordered payments for child support and health insurance premiums. As adopted, the subpart creates an inequity by requiring persons who receive court-ordered child support and health premium payments to report those payments as income but not allowing persons who pay court-ordered child support or health premiums to deduct the payments from ordinary income.

It is reasonable to exclude court-ordered child support and health insurance premium payments from consideration when determining an individual's eligibility for public funds to pay for treatment costs because the money expended to make the court-ordered payments is not available to the individual. The money, therefore, cannot reasonably be considered as a means of support for the individual's basic living expenses or treatment costs.

Subp. 17a. Policyholder. While the department seeks to reduce complexity and inequity by limiting financial responsibility to household members (see statement of need and reasonableness for part 9530.7020, subpart 1, item B), it does not seek to absolve third party payors of the obligation to pay for covered services.

The definition of "policyholder" is necessary to facilitate implementation of the amendments to part 9530.7020, subpart 1, item C, and subpart 2, which provide for a determination of third party payment source responsibility for a client's treatment costs. It is necessary to include a definition of "policyholder" because the policyholder may be a person outside the client's household and who is therefore no longer included within the definition of "responsible relative".

The definition is reasonable because it provides that the policyholder be an individual who has an applicable policy which covers the client, and that the policy be a source of payment for treatment costs if it obligates the payor to pay for all or part of a client's treatment costs. It is reasonable for

the state to recognize the availability of a third party payment source for treatment costs and to apply for payment to that source if there is an obligation to pay by a third party. This is the case because public funds allocated for treatment will go further when the state actively pursues making allowable collections from private sources.

Subp. 18. Rehabilitation program. A technical amendment to this subpart is necessary to make the rule consistent with statutory changes to the Human Services Licensing Act, chapter 245A, and to be consistent with the program definitions used in parts 9530.4100 to 9530.4450 (Rule 35) which govern licensure of chemical dependency programs. Part 9530.4100, subpart 22, items B, C and D define the category II, III or IV programs licensed under parts 9530.4100 to 9530.4450. Category II, III, and IV programs are licensed as "rehabilitation programs". Category I programs are not included in the definition of rehabilitation program because they are detoxification programs and are funded separately through the Community Social Services Act rather than the Consolidated Chemical Dependency Treatment Fund.

Subp. 19. Responsible relative. Amending the definition of "responsible relative" is necessary to make the definition consistent with the proposed change in part 9530.0720 from "family" to "household." The proposed definition is reasonable because it, like the "household" language at part 9530.7020, narrows the scope of financial responsibility for a client to persons living in the client's household. It is reasonable to require both the "living with" and "married to" tests of responsibility because this approach clarifies how responsibility is to be allocated when an adult lives within the household of a client but is not the spouse of the client.

Subp. 21. Vendor. Requiring vendors to apply for participation as providers in the medical assistance (MA) program addresses a situation that causes the state to forfeit roughly $70,000 in federal money every year. Several Minnesota vendors meet the MA program requirements to be providers whose services to MA recipients can be underwritten in part by federal funds. But because those vendors have not submitted an application form to the MA program requesting MA provider status, they do not have it. When these eligible-but-not-enrolled vendors treat MA-eligible clients, the full cost of treatment is paid by the state. If the vendors were enrolled, the federal government would share in the cost of treatment.

The department necessarily addresses an identified forfeiture of federal funds because of the department's responsibility to maximize federal financial participation. Requiring all vendors affected by the rule to apply for MA provider status is a reasonable way to try to ensure that all eligible-but-not-enrolled providers will become enrolled. The application process involves completing a single form and there is no fee. The potential benefit of enrolling vendors that already meet the provider eligibility requiremnts offsets the time required of individual vendors (some of whom will not be eligible) to complete the form. The provision does not require vendors that do not meet the eligibility requirements to participate as MA providers to become eligible.

9530.7012 VENDOR AGREEMENTS.

Adding this rule part is necessary to inform local agencies and vendors of the requirement for a cost-per-unit service measure mandated under part 9550.0040, subpart 2 (Rule 160). Grants or contracts to purchase community social services must specify the unit cost of the services provided, either by hour, day, week, or month.

The rule part is also necessary because the federal medical assistance program will reimburse the CCDTF for certain payments to treatment vendors made on behalf of medical assistance clients. Sometimes the reimbursement is for the full cost of care and sometimes it is for treatment services only, depending on such factors as client age and program size and type. To accurately bill for the federal share, the department must be able to distinguish rehabilitation services costs from room and board costs.

It is reasonable to require counties to include this information in the vendor agreements because it is a uniform method of obtaining the data. Each vendor must have a host county agreement to be eligible for Consolidated Chemical Dependency Treatment Fund payments according to Minnesota Statutes, chapter 254B.03, subdivision 1.

It is necessary to define "rehabilitation services costs" because the term as used in part 9530.7012 serves as a standard to which vendors and buyers of services can be held and which vendors and buyers need to know in order to bill and reimburse correctly. It is reasonable to define "rehabilitation services costs" in terms of part 9530.4100, subpart 23, because that rule part governs the provision of rehabilition services in programs licensed under parts 9530.4100 to 9530.4450 and funded under parts 9530.7000 to 9530.7030--the rule governing the consolidated chemical dependency treatment fund. It is reasonable to allow vendors to include related administrative costs as billable costs because rehabilitation services cannot be provided without administrative oversight.

The specific rule parts cited are reasonable because parts 9530.4320 and 9530.4330 describe health and medical services and parts 9530.4380, 9530.4390 and 9530.4400 list the rehabilitation services licensed programs are required to make available to their clients. All CCDTF vendors are licensed and all thus provide these services. It is reasonable as a point of clarification to indicate that vendors of inpatient acute care hospital services are exempt from separating costs.

9530.7015 CLIENT ELIGIBILITY UNDER THE CONSOLIDATED CHEMICAL DEPENDENCY TREATMENT FUND.

Subp. 2. Client eligibility to have treatment initially paid for from the Consolidated Chemical Dependency Treatment Fund. The amendment to item B is necessary to make client eligibility characteristics and program terminology in this rule part consistent with part 9530.7024 as proposed for

amendment. The changes in characteristics and terminology are reasonable because the proposed language makes the subpart consistent with the program definitions in the Human Services Licensing Act, chapter 245A, and with the program category definitions in Rule 35 which governs licensure of chemical dependency programs, parts 9530.4100 to 9530.4450.

9530.7020 COUNTY RESPONSIBILITY TO DETERMINE CLIENT ELIGIBILITY FOR CONSOLIDATED CHEMICAL DEPENDENCY TREATMENT FUNDS AND CLIENT'S ABILITY TO PAY FOR TREATMENT.

Subpart 1. Local agency duty to determine client eligibility and ability to pay. Ability to pay is highlighted to make explicit what is implicit in the subpart as written. The highlighting is done for purposes of clarity. Requiring the use of standardized forms prescribed by the department to determine eligibility and ability to pay is necessary to help ensure that eligibility criteria are uniformly applied to all clients seeking publicly financed treatment. The department has found through its monitoring and review of treatment fund eligibility determinations that individual counties, and sometimes individual eligibility workers within counties, are employing different forms to determine and record eligibility information. Such practices have resulted in variable application of rule provisions.

It is reasonable to attempt to promote standardization by requiring the use of forms prescribed by the department because it is the department that is responsible for ensuring the uniformity, the department that has the overview of all the factors that can affect eligibility, and the department that administers the fund.

The proposed change in item B from "family" to "household" represents a necessary attempt to solve the problems presented by asking counties to determine "family" size and, subsequently, "family" income. Making these determinations has been a source of many of the errors the department has found in monitoring county implementation of the rule parts.

One of the difficulties with the use of "family" is that the rules as written have been interpreted to require consideration of the income of individuals who do not live with the client but who are considered family. The following two examples demonstrate the problem with the term "family" as it is currently used in item B.

Example 1. The client has severed his or her relationship with a spouse, but is not divorced from the spouse. Because the couple are still legally married, the spouse, whether living in a household with the client or not, is still a responsible relative and a member of the "family" under the current rule. If the client refuses to contact the spouse or the spouse refuses to verify income, the client must be denied services. This situation occurs most often in the case of a battered woman.

Example 2. The client is a child living in a single parent household. If the estranged, but not legally divorced, parent refuses to provide income

verification, the client must be denied services. Moreover, if the estranged parent provides information which results in a client fee, it is the custodial parent who gets the bill. Variations of this example could be a noncustodial parent who pays child support and ends up with a client fee in addition to court-ordered support payments or a noncustodial parent who does not pay his or her court- ordered support obligation and is not likely to pay a client fee.

Under the current rule if the responsible relative is a remarried parent, the responsible relative's new spouse and children have been interpreted to be part of the "family."

Substituting "household" for "family," thus limiting financial responsibility to a client's household, is reasonable because it will allow for more consistent application of the eligibility criteria, reduce the number of variables county agencies must assess to determine eligibility, and enhance the opportunity of persons to receive needed chemical dependency treatment.

Because the term "household" is used to determine whose income is available to contribute to the cost of a client's treatment, the term must encompass all persons the person with income is obligated to support.

Item B, subitem (1) is a reasonable description of a minor child's household because it includes those persons in the household who are legally responsible for the child (parents) and those persons for whom the parents are responsible (minor siblings).

Item B, subitem (2) is a reasonable description of an adult's household because it considers the client's income, that of his or her spouse, and all of the children those incomes support.

Item B, subitem (3) reasonably allows including persons in out-of-home placement in household size if a household member contributes to the cost of the person's care. The inclusion is reasonable because all persons the household income supports should be counted in determining how much income is available to pay for the cost of chemical dependency treatment.

Adding a reference to policyholder at item C is necessary to allow the state to access the resources of an individual who has chemical dependency treatment coverage through insurance or a health maintenance organization. Minnesota Statutes, section 254B.06 requires the commissioner to assume responsibility for all collections from "persons determined to be partially responsible for the cost of care of an eligible person receiving services." It is reasonable to obligate an individual who is already responsible for the treatment costs of a client to contribute toward the costs of the client's care before public funds are expended. It is reasonable for the state to recognize the availability of a third party payment source for treatment costs and apply for payment to that source if there is an obligation to pay.

The substitutions at item E are necessary for consistency and clarity.

Changing the term "family" to "household" follows the change explained at item B. The term "department" is substituted for the term "commissioner" to leave no question that the form comes from the department and not the county. The rule as written is subject to interpretation on that point because while the term "commissioner" is frequently used interchangeably with the term "department," "commissioner" may also refer to county agencies which are frequently delegated to act on behalf of the commissioner. Making it clear that the form in question is from the department is necessary to facilitate the process of filling in and returning the correct form.

Subp. 1a. Redetermination of client eligibility and ability to pay a fee. Adding item A is necessary to address a situation not addressed in the rule as written--what the local agency is to do about redetermining eligibility and obligation to pay for recipients who are in extended rehabilitation programs and who are not covered by subpart 4 as written (part 9530.7024 as proposed for adoption). The rule needs to address the situation because there are clients, such as those on methadone, who may be receiving extended treatment for the rest of their lives. It is reasonable to reassess treatment fund eligibility and sliding fee responsibilities periodically to ensure that client benefits and payments reflect the client's current situation. It is reasonable to redetermine every six months because the total obligation on the sliding fee scale is based on what an individual with a specific income can pay in a six month period. Six month redetermination will therefore insure a continuous assessment of a reasonable fee.

The changes to items B, C, D, and E are necessary to make the rule consistent with the Human Services Licensing Act, Minnesota Statutes, chapter 245A, and with the program category definitions used in parts 9530.4100 to 9530.4450 (Rule 35) governing licensure of chemical dependency programs. The amendments are reasonable because they clarify which programs are meant in terms of licensed program categories and thus provide a common definition which can be consistently applied statewide. The exclusion of custodial parents of minor children and the addition of Category III programs in item E are necessary to be consistent with new part 9530.7024 as proposed.

Subp. 2. Client, responsible relative, and policyholder obligation to cooperate. Requiring the policyholder as well as the client and responsible relative to provide the information and verification required in the subpart is necessary to support the local agency in meeting its responsibility to determine the availability of a third party payment source under subpart 1, item C. If a policyholder has a policy that may be applied to a client's treatment costs, it is reasonable to require the policyholder to cooperate in making the benefits known and available. This requirement is consistent with Minnesota Statutes, section 254B.06, subdivision 1 which requires the commissioner to make all collections from persons determined to be partially responsible for the cost of care of an eligible person receiving services under the CCDTF.

Subp. 3 [Repealed]. Repealing subpart 3 is necessary to remove the

1988-specific numbers in subpart 3 as written and to replace the 1988 fee schedule with a system (emphasis added) for determining obligation and fees. The approach to determining fee schedules indicated in new part 9530.7022 meets the need to keep the rule current on data related to obligation and fees without having to revise the rule annually.

Subp. 4. [Repealed] To facilitate use of a frequently consulted part of the rule, the department has made a separate rule part (9530.7024, CLIENT FEES FOR CATEGORY III AND IV PROGRAMS) out of what was part 9530.7020, subpart 4, Halfway house client fees. New part 9530.7024 incorporates the amendments proposed to former part 9530.7020, subpart 4. Repealing the subpart and showing the new part as all new material was recommended by the Revisor of Statutes...

9530.7022. PAYMENTS BY CLIENT OR RESPONSIBLE RELATIVE; FEE SCHEDULE.

Subpart 1. Payments by a client or responsible relative. Subp. 2. Fee schedule. Subparts 1 and 2 are necessary to replace the 1988-specific fee schedule repealed in part 9530.7020 with a system for determining obligation. This need arises because it is reasonable to base obligation and fee determinations on up-to-date indicators and indices, such as state median income, that are subject to change. It is further reasonable for the rule to communicate current information on these points. It is not reasonable to keep the rule current on specific numbers (emphasis added) by amending the rule annually through the rulemaking process because of the time and expense involved. The rulemaking process, with its emphasis on public input and public scrutiny, is required for changes in how the schedule is applied, to whom it is applied, how it was developed, or how frequently it is updated. The annual changes in fees would address none of those changes.

As an alternative to amending the rule annually, the department has chosen to add a new rule part number and describe in it how the numbers in the repealed fee schedule were arrived at. As the figure for most recent state median income changes annually, the schedules will be revised annually and published in the State Register as described in subparts 1 and 2. The new rule part is added to facilitate use of a frequently consulted part of the rule.

9530.7024 CLIENT FEES FOR CATEGORY III AND IV PROGRAMS.

This new rule part incorporates changes to what was formerly part 9530.7020, subpart 4, Halfway house-client fees, and adds new material as well. Designating a separate rule part to describe these specific fees is done to facilitate use of a frequently consulted part of the rule. Changing "halfway house" to "Category III and IV program" is necessary to make the language in this rule consistent with the licensed program categories established in parts 9530.4100 to 9530.4450 and to make it clear that the rule part as amended includes clients in extended care (Category III) as well as clients in halfway houses (Category IV).

It is reasonable to include clients in extended care as well as clients in halfway houses because several halfway houses have converted their licensing status from Category IV to Category III since these rules were adopted. The programs are, however, serving the same clientele the programs served as category IV or halfway houses so the same reasoning about the client's ability to pay applies. It is also reasonable to include Category III clients in this particular sliding fee scale because Category III clients on Supplemental Security Income (SSI) may have their payments suspended if the client is not charged for basic needs provided in the program. The inclusion, moreover, is authorized in Minnesota Statutes, 1989 Supplement, section 254B.04, subdivision 2.

The reasoning about ability to pay is that program III or IV clients to whom the particular sliding fee established in this subpart applies (i.e., clients who are in halfway houses, who have no responsible relatives, and who are not custodial parents of a minor child) are not likely to be contributing to a household while they are in a halfway house or extended care facility. It is therefore assumed that such a client can apply more of the client's income to the client's cost of care than would be the case if the client were also contributing to a household or supporting a child. Establishing the separate scale is authorized by Minnesota Statutes, section 254B.04, subdivision 2.

The income disregards based on Minnesota Statutes that are established at Item A are necessary to allow a client to set some money aside so the client has funds available when he or she completes the program and wants to establish an independent living situation. It is reasonable to apply the disregard to unearned as well as earned income because the client's need for funds to establish an independent living situation is the same regardless of the source of income.

The deductions allowed for child support payments at Item B are necessary because the money that goes to make the payment is no longer available to be applied toward the client's treatment costs. Allowing the deductions is reasonable because the department wants to encourage clients to pay child support while they are in treatment.

The verification required by item B is necessary to ensure that only payments that have actually been made are deducted. Allowing the deductions without verification would risk needless spending of public funds in the form of greater amounts paid from the Fund toward clients' treatment costs than needed to be spent because the disregard should not have been made. It is unreasonable to expend public resources for need that is not verified.

To treat custodial and noncustodial parents equitably, it is also necessary to allow the disregard in situations where, for example, single parents are separated from their children only for the duration of treatment. In such cases, there is no court order to set the amount of the payment and hence the amount of the allowable deduction. It is therefore necessary to establish standards for determining the amount of the deduction. It is reasonable to

use as a standard for limiting the disregard the support standard in state regulations governing programs for families with dependent children because the AFDC standard is relevant to child support and can be uniformly applied statewide. Requiring local agencies to record the method used to verify a client's payments is necessary to aid in monitoring compliance with this subpart. It is reasonable to expect the local agency to verify the payments because it is the local agency's duty to determine client eligibility for funding and knowing whether the payments were made is a necessary part of the determination.

It is necessary to add the words "board and lodging expenses for" to item C to make the language in the rule consistent with Minnesota Statutes, section 254B.04, subdivision 2, which states that "the commissioner shall establish aseparate fee scale for recipients of chemical dependency transitional rehabilitation services that provides for the collection of fees for board and lodging expenses. . ." It is reasonable to make this change to ensure that the rule provision is consistent with statute and that clients are not charged more than the legislature intended.

Changing "commissioner" to "department" in item D is necessary because the term "department" means only the department of human services, while the term "commissioner" could be construed to include county agencies which are frequently delegated to act on behalf of the commissioner. In this instance, it is important to make it clear that the form to be used is the form supplied by the department. The changes in reference at item E are technical and necessary to make the item consistent with other proposed amendments in this part. Item F is necessarily added to ensure compliance with the applicable provisions of Minnesota Statutes, section 256D.06, subdivision 1b.

Expert Witnesses

If the proposed amendments should go to public hearing, the department does not plan to use expert witnesses from outside the department to testify on its behalf.

Small Business Consideration

The requirements of Minnesota Statutes, section 14.115 do not apply. Programs and services governed by these rule parts are service businesses regulated by government bodies for standards and costs and are therefore exempt from Minnesota Statutes, section 14.115 under subdivision 7 (c).

Date: 9/5, 1990

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