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**STATE OF MINNESOTA**  
**DEPARTMENT OF HUMAN SERVICES**

**In the Matter of the Proposed  
Adoption of the Department of  
Human Services Permanent Rules  
Governing the Minnesota Family  
Planning Program Section 1115  
Demonstration Project, Minnesota  
Rules, Parts 9505.5300 to 9505.5325.**

**STATEMENT OF NEED AND  
REASONABLENESS**

**INTRODUCTION**

This Statement of Need and Reasonableness meets the requirements of Minnesota Statutes, sections 14.131 and 14.23. It summarizes the evidence and arguments supporting the need for and reasonableness of the rules for the Minnesota Family Planning Program Section 1115 Demonstration Project (demonstration project), Minnesota Rules, Parts 9505.5300 to 9505.5325.

The 2001 Minnesota Legislature enacted legislation<sup>1</sup> directing the commissioner of the Department of Human Services (department) to establish a Medical Assistance (MA) demonstration project to determine whether improved access to coverage of pre-pregnancy family planning services reduces MA and Minnesota Family Investment Program (MFIP) costs.<sup>2</sup> In order to establish an MA demonstration project, the department must submit a section 1115 demonstration project proposal to the Centers for Medicare and Medicaid Services (CMS) for approval. A section 1115 demonstration project allows CMS to waive state compliance with specific requirements of Title XIX for the purposes of an experimental, pilot, or demonstration project. The demonstration project must test new policy, be subject to evaluation, and be budget neutral over the life of the project.

In August 2001 the department published official notice of a public meeting to receive comments on the section 1115 demonstration project proposal. The public meeting was held in September 2001 and comments were accepted throughout the development of the proposal.

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<sup>1</sup> Minnesota Laws 2001, First Special Session, Chapter 9, Article 2, section 55.

<sup>2</sup> Minnesota Statutes, section 256B.78 (2001).

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In 2001 several states received federal approval for family planning demonstration projects. However, a shift in CMS policy regarding single-focus waivers, and later Health Insurance Flexibility and Accountability (HIFA) waivers, precluded Minnesota from securing similar authority and significantly delayed final waiver submission. In July 2002 the department submitted a separate, section 1115 demonstration project proposal to CMS. In July 2004 CMS approved the demonstration project.

Minnesota was approved to provide family planning services to men and women between the ages of 15 and 50 whose household incomes are at or below 200 percent of the federal poverty guidelines (FPG). The demonstration project was approved for a five-year period beginning with the date of implementation. Implementation of the demonstration project is scheduled for July 2006.

Demonstration project approval is contingent upon Minnesota's compliance with the demonstration project's Special Terms and Conditions (STC). The STC outlines the overall operation of the demonstration project, but does not provide detail on demonstration project policies. In the past, CMS has used an operational protocol to document the operating policies and administrative guidelines that the State and CMS agreed to during the course of the demonstration project negotiation and approval process. CMS has opted not to use an operational protocol for this demonstration project. The absence of detailed policies in either statute or operation protocol necessitates administrative rulemaking for this demonstration project. The proposed rule consolidates the eligibility requirements found in: the Minnesota's Family Planning Program Section 1115 Demonstration Project Proposal; the July 20, 2004, demonstration project approval letter from CMS; the STC for the demonstration project; and the negotiations between the department and CMS, into one place.

#### **ALTERNATIVE FORMAT/ACCOMMODATIONS**

Upon request, this Statement of Need and Reasonableness can be made available in an alternative format, such as large print, Braille or cassette tape. To make a request, contact Tracy Hoisington, P.O. Box 64989, St. Paul, MN, 55164-0989, phone: (651) 431-2316, or email: [tracy.hoisington@state.mn.us](mailto:tracy.hoisington@state.mn.us). You can also contact us through the Minnesota Relay Service at (800) 627-3529 (TDD), 7-1-1 or (877) 627-3848 (speech to speech relay service)

#### **WITNESSES**

The department does not intend to call any non-agency witnesses.

#### **BACKGROUND**

Unintended pregnancies occur frequently. Over half of the pregnancies in the United States are unintended.<sup>3</sup> Unintended pregnancies have economic and social consequences. In 2000, over 31% of Minnesota births were covered by federally-funded

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<sup>3</sup> The Alan Guttmacher Institute, "Contraception Counts: Minnesota," 2004. [http://www.guttmacher.org/pubs/state\\_data/states/minnesota.html](http://www.guttmacher.org/pubs/state_data/states/minnesota.html)

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Medicaid.<sup>4</sup> Children born to women enrolled in MA or MinnesotaCare automatically receive health care for the first year of life. Many of these birth and first year of life costs can be attributed to unintended pregnancies.

Unintended pregnancies have health consequences for women and children. Children born as a result of an unintended pregnancy: are more likely to face fetal exposure to alcohol, tobacco, drugs, and environmental toxins; are at risk for pre-term delivery and low birth-weight; and are more likely to be abused or neglected.<sup>5</sup> Women who experience an unintended pregnancy are at greater risk of domestic violence, depression, deterioration in mental health status, and distress during childbirth.<sup>6</sup> With an unintended pregnancy, the mother is less likely to seek prenatal care in the first trimester and more likely not to obtain prenatal care at all.<sup>7</sup> Unintended pregnancies may result in induced abortions. In fact, half of women who become pregnant unintentionally decide to have an abortion.<sup>8</sup>

Unintended pregnancies occur among all socioeconomic levels, but are more common among the poor. Poor women are the least likely to have the resources necessary to access family planning services and the most likely to be affected negatively by an unintended pregnancy. Nationally, only 23% of women 15-44 with incomes below the poverty level had any private insurance in 2002.<sup>9</sup> Only half of all women who are at risk for an unintended pregnancy and need publicly-subsidized family planning services are getting them.<sup>10</sup>

Unintended pregnancies occur among all age groups, but are more common among teens.<sup>11</sup> Eight in ten teenage pregnancies are unintended.<sup>12</sup> Nationally, more than 80 percent of young mothers end up in poverty and reliant on welfare.<sup>13</sup> In the MFIP Longitudinal Study, 49 percent of participants in the new applicant sample and 57 percent

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<sup>4</sup> National Governor's Association, "MCH Update 2002: State Health Coverage for Low Income Pregnant Women, Children and Parents," June 2003. <http://www.nga.org/cda/files/MCHUPDATE02.pdf>

<sup>5</sup> Sarah S. Brown and Leon Eisenberg, Editors; Committee on Unintended Pregnancy, Institute of Medicine, "The Best Intentions: Unintended Pregnancy and the Well-Being of Children and Families," National Academy Press, 1995.

<sup>6</sup> Sarah S. Brown and Leon Eisenberg, Editors; Committee on Unintended Pregnancy, Institute of Medicine, "The Best Intentions: Unintended Pregnancy and the Well-Being of Children and Families," National Academy Press, 1995.

<sup>7</sup> Office of Disease Prevention and Health Promotion, U.S. Department of Health and Human Services, "Healthy People 2010: Objective for Improving Health, Chapter 9," 2000. <http://www.healthypeople.gov/Document/HTML/Volume1/09Family.html>

<sup>8</sup> Adam Sonfield, The Alan Guttmacher Institute, "Preventing Unintended Pregnancy: The Need and the Means," December 2003. <http://www.guttmacher.org/pubs/tgr/06/5/gr060507.html>

<sup>9</sup> Adam Sonfield, The Alan Guttmacher Institute, "Preventing Unintended Pregnancy: The Need and the Means," December 2003. <http://www.guttmacher.org/pubs/tgr/06/5/gr060507.html>

<sup>10</sup> Office of Disease Prevention and Health Promotion, U.S. Department of Health and Human Services, "Healthy People 2010: Objective for Improving Health, Chapter 9," 2000. <http://www.healthypeople.gov/Document/HTML/Volume1/09Family.html>

<sup>11</sup> Office of Disease Prevention and Health Promotion, U.S. Department of Health and Human Services, "Healthy People 2010: Objective for Improving Health, Chapter 9," 2000. <http://www.healthypeople.gov/Document/HTML/Volume1/09Family.html>

<sup>12</sup> The Allen Guttmacher Institute, Contraception Counts: Minnesota, 2004 [http://www.guttmacher.org/pubs/state\\_data/states/minnesota.pdf](http://www.guttmacher.org/pubs/state_data/states/minnesota.pdf)

<sup>13</sup> Robin Hood Foundation, 1996.

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in the ongoing recipient sample were teens when their first child was born.<sup>14</sup> Although Minnesota ranks low in teen pregnancy as a whole, teen pregnancy is still a critical issue facing Minnesota, with 20 teen pregnancies occurring each day in the state.<sup>15</sup>

Data compiled by the Minnesota Department of Administration shows that rates of teenage pregnancy vary greatly by race and ethnicity.<sup>16</sup> Minnesota teens of color have a disproportionately high pregnancy, compared to the overall rate. In 2000, the pregnancy rate per 1,000 girls, ages 15 to 17 ranged from 102.7 per thousand for African Americans to 15.0 per thousand for Whites. For Hispanics the rate was 88.6 per thousand, for American Indians 75.9 per thousand, and for Asian/Pacific Islanders 59.2 per thousand. Since 1992 the rate of teen pregnancies in Minnesota has decreased in the White, American Indian and Black/African American populations, but increased among Asian/Pacific Islander and Hispanic teens. It has dropped most dramatically in the Black/African American population, from 169.71 per thousand, in 1992 to 102.7 per thousand, in 2000.

Increased access to family planning services reduces the number of unintended pregnancies, which results in decreased economic and social costs. Each year, publicly-subsidized family planning services prevent an estimated 1.3 million unintended pregnancies.<sup>17</sup>

The goal of the demonstration project is to show that making family planning services available to low-income individuals will reduce the number of unintended pregnancies and result in improved health outcomes for women and children and longer average intervals between the birth of each child in a family. A reduction in unintended pregnancies will also result in cost-savings for Minnesota's publicly-funded health care programs. It is anticipated that publicly-funded health care programs will save costs by reducing the amounts spent on pregnancy-related costs, and costs for infants through the first year of life.

### STATUTORY AUTHORITY

The Commissioner is authorized by Minnesota Statutes, section 256B.04, subdivision 2 to adopt rules ensuring that the MA program is carried out in an efficient, economic and impartial manner.

### REGULATORY ANALYSIS

**A description of the classes of persons who will probably be affected by the proposed rule, including classes that will bear the costs of the proposed rule and classes that will benefit.**

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<sup>14</sup> "MFIP Longitudinal Study: Special Report on Teen Mothers," January 2003.

<http://edocs.dhs.state.mn.us/lfsrver/Legacy/DHS-4450H-ENG>

<sup>15</sup> <http://www.health.state.mn.us/news/pressrel/teenpreg050405.html>

<sup>16</sup> <http://www.mnplan.state.mn.us/mm/indicator.html?Id=6&G=23>

<sup>17</sup> Office of Disease Prevention and Health Promotion, U.S. Department of Health and Human Services, "Healthy People 2010: Objective for Improving Health, Chapter 9," 2000.

<http://www.healthypeople.gov/Document/HTML/Volume1/09Family.html>

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The individuals and entities affected by the proposed rule are counties, providers of family planning services and individuals eligible for the demonstration project. County entities may act as a provider of services or arrange with other parties to provide services. Providers of family planning services will benefit from the proposed rule because the demonstration project will expand coverage of family planning services to people who currently may not have coverage. Providers of family planning services who want to be reimbursed under the demonstration project must be Minnesota Health Care Program (MHCP) enrolled providers. Providers, who were not already MHCP enrolled providers, may need to train or hire staff to do the billing required for reimbursement, or contract with other parties who could provide billing services. However, this cost can be mitigated through use of MN-ITS, the department's free, web-based billing system for use by MHCP enrolled providers. The department offers state-wide training on MN-ITS and ongoing support in the form of a call center.

Providers, who choose to determine presumptive eligibility, will benefit from the proposed rule because they will be able to grant immediate coverage at the point of service to individuals who appear to be eligible for the demonstration project. This ensures that the covered services provided at that visit will be reimbursed by the demonstration project. However, providers who elect to determine presumptive eligibility may need to train or hire staff or reassign staff. There may also be expenses related to copying, faxing, mailing and data entry.

Individuals eligible for the demonstration project will receive free family planning services that in the past, they may have had to pay for out-of-pocket. Individuals who meet presumptive eligibility requirements for the demonstration project will benefit by having immediate coverage at the point of service.

**The probable costs to the agency and to any other agency of implementing and enforcing the proposed rule and any anticipated effect on state revenues;**

The goal of the demonstration is to show that a reduction in unintended pregnancies will save money in the department's publicly-funded health care programs and in MFIP. Therefore, it is anticipated that department costs of covering family planning services under the demonstration project will be offset by the savings that will occur by reducing unintended pregnancies that would otherwise have been paid for by Medicaid.

Federal Medicaid funding for family planning services provided under the demonstration project is available at a 90% matching rate. This means that for every dollar the department spends on family planning services provided under the demonstration project, the federal government will reimburse the state \$.90. In addition to covering family planning services and supplies, the demonstration project will also cover the diagnosis and treatment of sexually-transmitted diseases (STDs) provided as part of a family planning visit. These ancillary services are reimbursed at a 50% matching rate.

The department currently estimates that the five-year demonstration project will save the department 10.5 million dollars in the first three years of the demonstration

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project.<sup>18</sup> The department anticipates savings of about 10 million dollars per year for the following two years.

The department must hire staff to implement this program and to administer family planning cases. The demonstration project will be implemented in phases. Phase 1 is scheduled to begin July 1, 2006. In Phase 1, the state, not counties, will determine eligibility and manage demonstration project cases. Counties will not be significantly affected in Phase 1. Phase 2 will begin when HealthMatch, the state's automated health care eligibility computer system is implemented. At that time, county agencies will be responsible for the administration of some demonstration project cases. This will affect county work load and may affect administrative costs.

The department has hired one employee to implement this program and will spend approximately \$336,000 to include the demonstration project on the Medicaid Management Information System (MMIS), which is the department's current eligibility and claims processing system and HealthMatch, the department's new health care eligibility computer system, which is under development.

The Minnesota Department of Health has also hired a half-time employee to help implement this demonstration project.

**A determination of whether there are less costly methods or less intrusive methods for achieving the purposes of the proposed rule;**

There is no less costly method or less intrusive method for the department to improve access and availability of family planning services through a section 1115 demonstration project. The CMS requires that the department have enforceable standards to carry out the program. The proposed rules are the enforceable standards that will be used to carry out the program.

**A description of any alternative methods for achieving the purposes of the proposed rules that were seriously considered by the department and the reasons they were rejected in favor of the proposed rule;**

Amending Minnesota's MA statute, Minnesota Statutes, Chapter 256B, was considered but rejected. The proposed rule amendment achieves the same goal without requesting that the legislature place overly-detailed protocols into state statute.

A change in internal policies was considered and rejected because there is no statutory language or operational protocol to rely on. Internal policies are not enforceable standards suitable for governing providers and enrollees.

**The probable costs of complying with the rule, including the portion of the total costs that will be borne by identifiable categories of affected parties. Such as classes of governmental units, businesses or individuals.**

Providers who elect to provide covered services to demonstration project enrollees face implementation costs and ongoing costs of billing under the demonstration

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<sup>18</sup> Minnesota Department of Human Services February 2006 Forecast.

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project. Family planning providers who elect to determine presumptive eligibility will face implementation and operational costs.

Providers were not able to make reliable cost estimates for this program regarding the program's costs and benefits to the provider's agency. Providers may be able to recover some of the costs of providing this service from the fees they receive by providing this service on fee-for-service basis.

As stated above, counties' human services agencies will administer some demonstration project cases. This may result in administrative costs.

**A description of the probable costs or consequences of not adopting the rule, including those costs or consequences borne by identifiable categories of affected parties, such as separate classes of government units, businesses or individuals.**

If the demonstration project rule is not adopted, there would not be a demonstration project, because the project will not have sufficient administrative structure to meet the requirements of the agreement between the state and federal governments. If the agreement is not met, the federal funds will not be available to be paid under the agreement. Enrollees who would qualify for this program will not have the services paid for by this program, so they must either pay for the service or not use the service. Providers also would not have the funds available to provide services to enrollees.

**An assessment of any differences between the proposed rule and existing federal regulations and a specific analysis of the need for and reasonableness of each difference;**

The proposed rule complies with federal regulations to the extent they were not waived under the demonstration project. To the extent that federal regulations were waived under the demonstration project, the proposed rule follows the STC agreement for the demonstration project. The rules also comply with state statute, which may not be identical to federal requirements.

**A description of how the department, in developing the rules, considered and implemented the legislative policy supporting performance-based regulatory systems set forth in section 14.002; and**

The proposed family planning rule is designed to offer flexibility to providers by allowing any MHCP enrolled provider currently allowed to provide family planning services to participate in the demonstration project. It also offers flexibility by offering providers the option to determine presumptive eligibility. Presumptive eligibility also increases the effectiveness of the demonstration project by eliminating some of the barriers to enrollment.

The rule, wherever feasible, aligns family planning policies with current MA eligibility policies in an effort to create consistency among the programs, simplify the eligibility-determination process, promote a clearer understanding of policies for

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applicants and enrollees, and reduce impediments to movement between health care programs.

**A description of the department's efforts to provide additional notification under section 14.14, subdivision 1a, to persons or classes of persons who may be affected by the proposed rule or must explain why these efforts were not made**

The department's additional notice plan seeks to notify all persons and organizations who may be interested in the proposed rules that the department is able to identify through reasonable means. The department will notify those who have registered with the department under Minnesota Statutes, section 14.14, subdivision 1a, to receive rulemaking notices. The department also intends to notify:

- (A) Family Planning Special Project grantees;
- (B) advisory committee members; and
- (C) all others who request notification.

Information about the rule will also be included on the Minnesota SAFPlan website. Minnesota SAFPlan is a coalition of providers, advocacy organizations and individuals committed to assuring that a full range of affordable family planning services are available and accessible to women, men and families throughout Minnesota. Information about the rule will also be included on the Minnesota Department of Health website. The department will forward information about the rule to the Minnesota Medical Association and Minnesota Nursing Association. These organizations will review the information and determine whether to include it in their publications.

The department will send a copy of all Notices to be published in the *State Register* to all persons on the mailing list we compile. Along with the Notice of Hearing, the department will include a statement that a copy of the proposed rules will be sent to anyone who contacts the department for that purpose. Notice of the proposed rules will also be published on the department's internet home page.

**An explanation of what effort the agency made to obtain any information that it states could not be ascertained through reasonable effort.**

An Advisory Committee met to discuss the proposed rule on February 6, 2006. Advisory Committee members are listed in Attachment A. The advisory committee is comprised of persons who are knowledgeable in the fields of family planning policy and providing family planning services through public and private agencies. Rule drafts were mailed to committee members for comments and suggestions. Committee members were asked to provide estimates of the cost of rule compliance. The department did not receive specific estimates of the cost of the rule from committee members. The department did receive general cost comments about the rule which are included in this statement of need and reasonableness.

**CONSULT WITH FINANCE ON LOCAL GOVERNMENT IMPACT**



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As required by Minnesota Statutes, section 14.131, the department has consulted with the Commissioner of Finance. The department did this by sending the Commissioner of Finance copies of the documents sent to the Governor's Office for review and approval by the Governor's Office, prior to the department's publication of the Notice of Intent to Adopt. The documents included: the Governor's Office Proposed Rule and SONAR Form; two copies of the rule; and two copies of the SONAR. The documents were sent on May 19, 2006 to the Governor's Office and Commissioner of Finance. The Department of Finance sent a letter dated May 31, 2006 with its comments.

## **COST OF COMPLYING FOR SMALL BUSINESS OR CITY**

The rules are proposed pursuant to a specific federal regulatory mandate. The federal law that mandates the proposed rules is discussed in more detail above. Therefore, under Minnesota Statutes, section 14.127, subdivision 4 (b), no small business or small city can claim a temporary exemption from the proposed rules.

Participation in the demonstration project will be voluntary, therefore, only providers who participate in the program are governed by the rules. If a provider chooses to participate in the demonstration project, the provider must follow the program's rules in order to be paid through the program. Therefore, the effect of the provider waiving compliance with the rules would be that they would not be paid through the program for the services they provide.

## **RULE-BY-RULE ANALYSIS**

### **9505.5300 APPLICABILITY**

Minnesota Rules, parts 9505.5300 to 9505.5325 govern the operation of the Minnesota Family Planning Program Section 1115 Demonstration Project. It is necessary and reasonable to govern the administration of this demonstration project with rules, because rules provide interested parties with needed information about how the program will operate and who is eligible for the program.

### **9505.5305 DEFINITIONS**

#### **Subpart 1. Scope.**

This provision is needed to clarify that the definitions apply only to Minnesota Rules, parts 9505.5300 to 9505.5325, the proposed rule. It is reasonable to define terms for specific rule parts to remove possible misunderstanding about the use of the terms in the rule and to ensure uniform application of the definitions within the rules.

#### **Subp. 2. Applicant.**

This definition is necessary, because the term is used throughout the rule to identify persons who apply for the demonstration project, but are not yet enrolled in and

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covered by the demonstration project. The definition is reasonable, because it differentiates between people who seek coverage and those who have been determined eligible.

**Subp. 3. Certified family planning services provider.**

This definition is necessary because the term is used throughout the rule to distinguish between providers who may determine presumptive eligibility and providers who may not. It is reasonable because it describes providers who have agreed to abide by department standards for determining presumptive eligibility. It is reasonable to expect providers who make preliminary eligibility determinations on behalf of the department to meet standards that ensure quality decision making.

**Subp. 4. Commissioner.**

This definition is necessary because the term is used throughout the rule as an abbreviation for the lengthier “Commissioner of the Minnesota Department of Human Services or the Commissioner’s designee.” The term is used to shorten the length of the rule. It is reasonable to use an abbreviation to delete unnecessary words in a reference frequently repeated in the rules.

It is reasonable to include within the definition persons to whom the Commissioner has the authority to delegate the functions described in the rule parts because Minnesota Statutes, section 15.06, subdivision 6, permits this delegation and it would be physically impossible for the Commissioner to personally perform all the tasks assigned to the Commissioner in the rules and applicable statutes.

**Subp. 5. Contraception management services.**

It is necessary to define the term “contraception management services” because it is used in the rule to describe the type of services covered by the demonstration project. It is a reasonable definition because Attachment B of the STC limits coverage of services under the demonstration to certain procedures provided as a part of contraceptive management.

**Subp. 6. Countable income.**

It is necessary to define “countable income” because it is used in the rule and it is open to several possible interpretations. The definition is reasonable because not all income is used to determine a person’s eligibility for the demonstration project. It is reasonable, for ease of drafting, to condense all of the income rules in part 9505.5310, subpart 1, Item A, subitem (4), clauses (a) to (d), into one term.

**Subpart 7. County Agency.**

It is necessary to define “county agency”, because county agencies must be distinct from other entities who may be referred to as an “agency”. The definition is reasonable, because it is similar to the definition of the term in statutes related to the rule.

**Subp. 8. Demonstration project.**

This definition is necessary to clarify the specific meaning of the term “demonstration project” as it is used in the rule. The term is used throughout the rule as

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an abbreviation for the lengthier “Minnesota Family Planning Program Section 1115 Demonstration Project.” It is reasonable to use an abbreviation to remove unnecessary words in a reference frequently repeated in the rule.

**Subp. 9. Department**

This definition is necessary to clarify the specific meaning of the term “Department” as it is used in the rules. The term is used throughout these rule parts as an abbreviation for the lengthier “Minnesota Department of Human Services”. The abbreviation is used to shorten the length of the rule. It is reasonable to use an abbreviation to delete unnecessary words in a reference frequently repeated in the rules.

**Subp. 10. Enrollee.**

It is necessary to define the term “enrollee”, because the rule establishes requirements for enrollees. The definition is reasonable because it distinguishes between people enrolled in the demonstration project and people who are not enrolled in the demonstration project.

**Subp. 11. Family planning services provider.**

It is necessary to define this term to distinguish between providers who can be reimbursed for services provided under the demonstration project and those who cannot. For example, dentists are providers who are not eligible for reimbursement under the waiver because providing family planning services is not within their scope of practice.

This definition is reasonable because it generally is consistent with the requirements of part 9505.0280, subpart 3 of providers who can provide family planning services under MA. It is reasonable for brevity, consistency and accuracy to refer to the rules governing the MA program. It is reasonable to add clinical nurse specialists, laboratories, ambulatory surgical centers, and physician assistants to the definition because these providers may also provide services covered by the demonstration project.

**Subp. 12. Family size.**

It is necessary to define “family size” because it is open to several possible interpretations. During negotiations with CMS the department agreed that the family size would include the individual plus their spouse and their children under age 21. The definition is reasonable, because it is consistent with the standards used to determine MA eligibility for families and children for individuals age 21 and older. It differs from the standard used to determine family size for individuals under age 21 in MA for families and children program, which counts parents and siblings in the family size of individuals under age 21. It is reasonable not to count parents and siblings in the family size of individuals under age 21, because the income of parents and siblings is not counted when determining eligibility for individuals under age 21. This definition promotes consistency among the programs, simplifies the eligibility-determination process, and promotes a clearer understanding of the MHCP policies for applicants and enrollees, while recognizing that demonstration project eligibility is determined differently for individuals under age 21.

**Subp. 13. Minnesota Health Care Program.**

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This definition is necessary to clarify the specific meaning of the term “Minnesota Health Care Program” as it is used in this rule. It is reasonable, for ease of drafting, to use this phrase to delete unnecessary words in a reference frequently repeated in the rule.

**Subp. 14. Presumptive eligibility.**

This definition is necessary because presumptive eligibility is a separate type of eligibility that is determined by a certified family planning services provider, which differs from on-going eligibility determined by the state or county agency. The definition is reasonable because it states the basic requirements of presumptive eligibility: it is temporary; it is determined by a certified family planning services provider; and it is determined at the point of service.

**Subp. 15. Qualified non-citizen eligible for Medical Assistance with federal financial participation.**

It is necessary to define this term because only non-citizens who are eligible for federal financial participation under MA are eligible for the demonstration project. This definition is reasonable because it is similar to the requirements of Minnesota Statutes, section 256B.06, subdivision 4, that governs which non-citizens are eligible for federally funded MA. It is reasonable for brevity, consistency and accuracy to cite the statute governing the MA program.

**Subp. 16. Resident.**

It is necessary to define this term because only Minnesota residents are eligible for the demonstration project and the term is open to several possible interpretations. This item is necessary to set criteria which distinguish residents from non-residents so that eligibility is clearly established. It is reasonable to follow the MA definition of resident in part 9505.0030 to promote consistency among the programs, simplify the eligibility-determination process, and promote a clearer understanding of Minnesota Health Care Program policies for applicants and enrollees. It is reasonable for brevity and accuracy to cite the rule governing the MA program.

**9505.5310 DEMONSTRATION PROJECT ELIGIBILITY, APPLICATION, ENROLLMENT AND DOCUMENTATION.**

**Subpart 1. General eligibility.**

**A.** This subpart, as detailed in items A to D, is necessary to inform affected persons of the eligibility requirements for the demonstration project. Potential applicants need eligibility information to decide whether to apply or to determine whether their eligibility was determined correctly.

**(1)** It is necessary and reasonable to limit eligibility to citizens and qualified non-citizens because federal regulations limit the provision of MA to citizens and qualified non-citizens and this federal requirement was not waived by CMS. Therefore, the department has federal authority only to cover citizens and certain qualified non-citizens under the demonstration project.

**(2)** It is necessary and reasonable to limit eligibility to residents of Minnesota because federal regulations limit the provision of MA to residents of

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Minnesota and this federal requirement was not waived by CMS. Therefore, the department only has federal authority to cover Minnesota residents under the demonstration project.

(3) It is necessary to limit eligibility to individuals at least 15 years of age but under age 50, because the department only has federal approval to cover individuals between the ages of 15 and 50. It is reasonable to begin coverage at age 15 because, as discussed in the Background section, Minnesota teens are at high risk for unintended pregnancies. It is reasonable to end coverage at age 50, rather than an earlier age, because many people under age 50 need family planning services.

(4) It is necessary to limit eligibility to individuals with income at or below 200% FPG, because the department only has federal approval to cover individuals with incomes at or below 200% FPG.

It is necessary to explain how income is calculated under the demonstration project, so that interested persons will know which standard was used. The income calculation for the demonstration project will closely follow the calculation used for families and children in MA. Both programs will exclude the same types of income and count the same types of earned and unearned income. It is reasonable to use the same categories of income as are used for families and children in the MA program to create consistency among the programs, and promote a clearer understanding of policies for applicants and enrollees.

The demonstration project will not use MA's income methodologies for the earned income disregards and deductions. Use of MA's earned income disregards and deductions methodologies would have the effect of raising the demonstration project's income eligibility standard. Therefore, some potential enrollees would have income over 200% FPG. Not using the MA income methodologies is necessary and reasonable because the approved income standard is 200% FPG and the department and CMS agreed not to use the income methodologies of MA regarding income disregards and deductions.

The demonstration project will follow the deeming requirements used for families and children in the MA program, except that we will not deem income from a family member to the enrollee under age 21. It is reasonable to follow MA deeming requirements for simplicity and ease of administration. However, it is reasonable to have different deeming requirements for individuals under 21, because many teens do not know the income of their family members, nor do they have access to that income to pay for family planning services.

(5) It is necessary and reasonable to exclude pregnant women from the demonstration project, because pregnant women do not need family planning services during their pregnancy.

(6) It is necessary and reasonable to limit eligibility to individuals who do not have MHCP coverage or coverage in other health service programs administered by the department, because Minnesota agreed to this requirement during its negotiations with CMS. Most individuals with MHCP coverage have access to family planning services.

(7) It is necessary to exclude institutionalized individuals from the demonstration project, because this is a federal Medicaid requirement that was not waived by CMS. It is reasonable to refer to the federal regulation defining "institutionalized individual" to ensure consistency with federal law.

**B.** It is necessary to distinguish this application process from the process used for other publicly-funded health care programs that require the signature of a parent or guardian for individuals under age 18 to receive coverage. The demonstration project covers services that individuals under age 18 can consent to receive without parental consent. Therefore, it is reasonable to allow those individuals under age 18 who want to protect their health and prevent pregnancy, but are concerned about parental involvement, to have access to a program that will pay for services they can consent to receive.

**C.** It is necessary to establish that there are no asset requirements for the demonstration project because this is frequently an eligibility requirement in public assistance programs. It is reasonable not to have any asset requirements because CMS did not require this as a condition of eligibility for the demonstration project and because it is a barrier to enrollment.

**D.** It is necessary to require that applicants and enrollees report available third party payers because the department is federally required to identify liable third party resources to pay for services furnished to enrollees. It is also necessary to establish that there is an exception to this general rule for individuals who have privacy concerns about providing third party liability information. It is reasonable to allow this exception because reporting third party liability may be a barrier to receiving services for enrollees who are covered by insurance as a dependent or could be entitled to medical support through a non-custodial parent. The policy holder may be notified of the dependent's use of a covered service. The notice to the policy holder has the effect of removing the enrollee's privacy and discloses the use of the service to the policy holder. The department believes that the loss of an enrollee's privacy through a third party payment requirement is an impediment to program participation for persons who have insurance coverage as dependents. Therefore, the usual third party reporting requirement is waived for this program, if an enrollee claims that third party payment information would cause the loss of the enrollee's privacy.

**Subp. 2. Presumptive eligibility.**

**A.** It is necessary to establish the eligibility requirements for presumptive eligibility, because they differ from the eligibility requirements for ongoing eligibility. It is reasonable to limit the eligibility requirements for presumptive eligibility, because it eliminates barriers to enrollment that result from verification requirements or complex eligibility rules. Residency, age, income, pregnancy, and current MHCP enrollment are eligibility factors that a provider can quickly evaluate. Presumptive eligibility is a reasonable way to expand eligibility for the demonstration project and provide prompt service, because it eliminates delays in eligibility determinations.

It is necessary to establish who will determine presumptive eligibility and the information that this determination will be based on. It is reasonable to limit presumptive eligibility determinations to providers who have agreed to follow the rules established by the department. The information used to determine presumptive eligibility is reasonable, because it is in keeping with the department's negotiations with CMS.

**B.** It is necessary to establish when the presumptive eligibility period begins and ends, so providers and individuals will know when they have coverage. It is reasonable to begin coverage the first day of the month presumptive eligibility is determined, because MA eligibility usually begins with the first day of the month of

application. It is reasonable to end coverage at the end of the month following the month presumptive eligibility was determined because this provides enough time for an individual to complete an application for ongoing coverage and have eligibility determined without having a break in coverage. Federal Medicaid law, 42 CFR part 435.914(b) allows Minnesota to provide eligibility for an entire month if the person satisfies all eligibility factors at anytime during the month.

**C.** It is necessary and reasonable to clarify that third party liability requirements apply during the presumptive eligibility period and that the exception for privacy concerns also applies during the presumptive eligibility period.

**D.** It is necessary to limit how often an individual can be determined presumptively eligible, because this determination is not subject to the same scrutiny and verifications required by a full eligibility determination. The purpose of presumptive eligibility is to give coverage to people at the time they need and want family planning services and to make it easy for them to follow through with a full application. Presumptive eligibility is a tool to facilitate the ultimate goal of enrolling people in the demonstration project for one year. It is reasonable to limit it to once a year because individuals who follow-through with a full eligibility determination and are determined eligible would have family planning coverage for one year. Limiting the use of presumptive eligibility is reasonable, because presumptive eligibility is not intended to be used by persons not qualified for the program as a method to renew their program participation after they were determined to be ineligible.

### Subp. 3. **Enrollment.**

It is necessary to establish exactly what a person must do to enroll in the program, so that an interested person will know the requirements. It is reasonable to require that an applicant use forms provided by the department to ensure that the department has all the required data and legal authorizations and to simplify the eligibility determination process.

**A.** This provision is necessary to clearly inform affected persons about the department's or county agency's responsibility to determine eligibility in a timely manner. Forty-five days is reasonable because it aligns with the MA requirement to determine eligibility for non-disabled and non-pregnant applicants.

**B.** It is necessary to specify the date on which eligibility for the demonstration project begins so providers and enrollees will know exactly when they have coverage. Federal Medicaid law, 42 C.F.R. part 435.914(b) allows Minnesota to provide eligibility for an entire month if the enrollee satisfies all eligibility factors at anytime during the month. It is reasonable for the demonstration project to allow coverage to begin the first of the month, because is it consistent with other MHCP program policy and is administratively efficient. It is reasonable to allow an individual to submit a written request for demonstration project coverage, followed by a completed application, because it is consistent with MA policy. Adopting similar policies creates consistency among the programs and promotes a clearer understanding of program policies.

**C.** It is necessary to specify how the presumptive eligibility period and the eligibility begin date for ongoing demonstration project eligibility will interact, because it is open to several interpretations. It is reasonable to keep the presumptive

eligibility period separate from the eligibility period for ongoing coverage, because it is administratively easier, less confusing for enrollees, and easier for computer system programming. It is also reasonable to provide continuity of care to enrollees.

**Subp. 4. Application and documentation.**

**A.** It is necessary and reasonable to explain the conditions under which coverage will end. It is reasonable not to act on increases in income or family size before one year has passed, because it balances the goal of providing continuous eligibility in an administratively efficient manner with the need to re-apply annually.

(1) It is necessary and reasonable to end coverage upon death because family planning services are no longer necessary.

(2) As discussed above, this item is necessary and reasonable because federal regulations limit the provision of MA to residents of Minnesota. This requirement was not waived by CMS.

(3) It is necessary and reasonable to allow voluntary termination because ending coverage is consistent with the wishes of the enrollee and there is no reason to provide coverage to someone who does not want it.

(4) As discussed above, this item is necessary and reasonable because Minnesota agreed to this requirement during its negotiations with CMS.

(5) This item is necessary and reasonable because Minnesota only has federal approval to cover people up to age 50.

(6) As discussed above, this item is necessary and reasonable because pregnant women have no need for family planning services.

(7) As discussed above, this item is necessary and reasonable because it was not waived by CMS.

(8) As discussed above, this item is necessary and reasonable because federal regulations limit the provision of MA to citizens and qualified non-citizens. This requirement was not waived by CMS.

**B.** It is necessary and reasonable to require documentation of income because federal approval for the demonstration project requires that enrollees annually provide verification that they meet the income requirements for eligibility.

**C.** It is necessary and reasonable to require an annual application, because federal approval of the demonstration project was conditioned on an annual redetermination of eligibility. In the department's experience, more frequent redeterminations are administratively costly and do not improve the program. It is reasonable that the department would provide the necessary forms to ensure that the needed information is collected.

**D.** The requirement to provide documentation of immigration status is necessary and reasonable because it is required by federal law and was not waived by CMS. It is further necessary and reasonable to require the department and county agencies to verify immigration status because federal law, 8 USC, title 8, section 1642, requires that the department use the Systematic Alien Verification for Entitlements system to confirm immigration status in some situations. It is reasonable to cite to Minnesota Statutes, section 256.01, subdivision 18 to ensure consistency with state law.

**E.** It is necessary to notify enrollees of the requirement to report certain changes and the time period for reporting the change. Federal law requires the MA



program “to implement procedures to assure that recipients make timely and accurate reports of any change in circumstances which may affect their eligibility.” See 42 CFR 435.916(b). A person must know the meaning of “timely” so that he or she can properly fulfill the responsibility to report a change. A ten-day period is reasonable because it is consistent with the usual period of an advance notice to applicants and aligns with the reporting requirements used in MHCP. A penalty for failing to report a change is reasonable because a requirement to report changes without a penalty has little force. A change in income or family size during the eligibility year do not disqualify an enrollee according to item A.

**F.** This section is necessary to allow the department to verify whether the applicant’s or enrollee’s information is accurate and whether the applicant or enrollee is eligible. Immigration status and income are always verified, as established in items B and D.

There may be times when eligibility information must be verified. For example, this could occur when the department or county agency receives conflicting information. Refusal to sign a release of information form is construed as a refusal to verify information because many verifications are unreliable unless the department or county agency directly contacts third parties. It is reasonable to end eligibility if an applicant or enrollee refuses to verify information, because the refusal may conceal facts which would cause the person to be determined ineligible. Therefore, this part is reasonable, because it ensures that eligibility is granted only to persons whose eligibility is confirmed and because it is consistent with state law and federal regulations. Federal law provides some exceptions for not providing a social security number. It is necessary and reasonable to adopt the exceptions mandated by federal law. It is reasonable to cite to federal regulations and to be consistent with federal law.

**G.** The requirement to document citizenship status is necessary and reasonable, because it is required by federal law for federally-funded health care programs. It is reasonable to not require documentation of citizenship at the presumptive eligibility screening, because CMS has stated that states should not delay eligibility determinations while waiting for the citizenship documentation. CMS has also stated that documentation of citizenship is not needed for presumptive eligibility.

**H.** This item is necessary to clarify that the applicant has a right to withdraw his or her application whenever the applicant chooses. It is reasonable to adopt the policies followed in MA to create consistency among the programs and promote a clearer understanding of policies.

#### **Subp. 5. Enrollment.**

It is necessary to ensure that individuals applying on a demonstration project application understand that they are only applying for the demonstration project and that the department will not look at eligibility for MHCP based on the information on the demonstration project application. This is a reasonable policy because it facilitates enrollment in the demonstration project, by using a simplified application form designed to collect only information necessary to determine eligibility for the demonstration project. The amount of information needed to determine eligibility for the demonstration project is limited. The amount of information needed to determine eligibility for the MHCP is much greater. Therefore, it is reasonable to require an individual to complete

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the department's health care application to be determined for MHCP eligibility. The department's health care application provides the most reliable and orderly format for a determination of MHCP eligibility.

The department's health care application collects enough information to determine demonstration project eligibility. Therefore, it is reasonable to use the information provided on the department's health care application, and updated at required renewals, to determine demonstration project eligibility, if authorized by the person completing the department's health care application. It is anticipated that in the future the department will have computer systems capable of automatically determining eligibility for all health care programs, including the demonstration project.

**Subp. 6. Confidentiality.**

This requirement is necessary, because numerous state and federal laws govern the release of private data. It is important to explicitly state that these laws apply to the demonstration project, because without assurance that information about demonstration project enrollment and receipt of services is confidential, many eligible individuals, especially teens, will not seek family planning services. It is reasonable for brevity and accuracy to cite the laws governing the release of private information.

Item E is necessary because the department's experience shows that future state and federal legislation affecting the treatment of private information will be enacted. It is reasonable to incorporate this item in rule to avoid repeated costly minor rule changes and to be able to promptly comply with these future laws.

**Subp. 7. Notices.**

Stakeholders have emphasized that confidentiality is essential for the success of the demonstration project. Potential enrollees, especially teens, will not seek family planning services if they believe that the services are not confidential. A reasonable way to address this concern is to allow applicants and enrollees to designate an alternative address to send notices to, so that they do not need to receive health care related correspondence at their home address.

## **9505.5315 PROVIDERS OF FAMILY PLANNING SERVICES**

**Subpart 1. Certified family planning services provider requirements.**

This subpart is necessary to establish what a provider must do to become a "certified family planning services provider." Only "certified family planning services providers" may make presumptive eligibility determinations. It is reasonable to limit certification to "family planning services providers", because only these type of providers can provide family planning services and be reimbursed under the demonstration project.

**A.** It is reasonable to require the provider to sign the Business Associate Agreement, because the department requires all individuals and entities considered "business associates" under the Health Insurance Portability and Accountability Act of 1996, 42 U.S.C. section 1320(d) and codified at 45 C.F.R. parts 160 and 164 (HIPAA) to sign a Business Associate Agreement. Providers who determine presumptive eligibility are considered business associates under HIPAA.

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**B.** It is reasonable to require providers to complete training, because these providers will be acting as agents of the department and granting temporary eligibility for the demonstration project. It is essential that providers understand the rules and procedures for making presumptive eligibility determinations to ensure program integrity and to protect applicant and enrollee confidentiality.

**C.** It is essential that individuals understand presumptive eligibility is temporary, that it only covers certain services, and that a person must complete the application for a full eligibility determination. It is reasonable to require that providers who make the presumptive eligibility determination explain the process to interested persons.

**D.** It is reasonable to require the provider to help interested persons complete the forms, because the provider needs accurate information to make the presumptive eligibility determination.

**E.** It is reasonable to require the provider to check the department's eligibility verification system, because this system will contain information necessary for the presumptive eligibility determination, including: whether the person currently has MHCP coverage and whether the person has had presumptive eligibility in the past 12 months.

**F.** This item is reasonable, because it makes it clear that the provider must actually make a determination. The provider cannot guess at eligibility. It is reasonable to require a provider to actually make presumptive eligibility determinations, if they have agreed to do so, because it is essential that applicants know where they can go to get the determination.

**G.** Individuals granted presumptive eligibility or denied presumptive eligibility need to know their status. Therefore, it is reasonable to require the provider to give these notices at the time of the presumptive eligibility determination. In addition, the department is required by CMS to give information on primary care services to people screened for presumptive eligibility. It is necessary and reasonable for the provider to give these notices at the time the presumptive eligibility determination is made.

**H.** This requirement is necessary and reasonable because the department may need a copy of the forms in order to act on them, for use in audits or fraud investigations, or for record retention purposes.

**I.** This requirement is necessary and reasonable because the department may be subject to an audit or involved in a fraud investigation that would require information from a provider. Further, the department is required by CMS to evaluate the demonstration project. This evaluation could require information from a provider.

#### **Subp. 2. Covered services.**

It is necessary to clarify that this is a publicly-subsidized health care program and only the health services approved by CMS will be paid for under the demonstration project. It is necessary and reasonable to include any future changes required by CMS to the demonstration projects list of covered services and other changes required by CMS, because the department must abide by the requirements of CMS, including any of CMS's future amendments to the list of covered services. It is reasonable to include this for the information of applicants, enrollees and providers. It is reasonable to incorporate by

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reference the list of covered services, for the sake of brevity and accuracy and because services covered may change.

Minnesota currently covers family planning services for people enrolled in the MHCP. Fewer family planning services will be provided under the demonstration than the family planning services currently covered under the MHCP. For example, services related to pregnancy or increasing fertility will not be covered under the demonstration, because the demonstration is focused on averting pregnancy. The demonstration will cover family planning services and screening, testing, and counseling for sexually transmitted diseases, such as HIV, when performed in conjunction with a family planning visit. The demonstration will not cover abortions, infertility treatments, inpatient services, or the treatment of HIV/AIDS.

**Subp. 3. Payment for services.**

**A.** It is necessary and reasonable to state that cost-sharing requirements do not apply to family planning services, because we do not have federal approval to require cost-sharing under the demonstration project.

**B.** It is necessary for providers to understand how services will be reimbursed. It is reasonable to reimburse on a fee-for-service basis, because it provides the most flexibility for enrollees. Enrollees can see any MHCP enrolled provider who provides family planning services. Fee-for-service is also administratively easier for this program. There is no need for the enrollee to enroll in a health plan and there is no need for the department to contract with networks.

**C.** It is necessary to notify providers and individuals found presumptively eligible that the services will be covered even if the enrollee is found not to be eligible for ongoing coverage, because this may not be clear. It is reasonable to cover services provided during the presumptive eligibility period, so that providers are not reluctant to provide services and enrollees are not reluctant to seek services during the presumptive eligibility period.

**D.** Because this is a publicly-funded health care program, it is necessary to manage the program in a fiscally responsible manner. It is reasonable to clarify that demonstration project benefits are secondary to any other plan of insurance or benefit program. The Medicare Prescription Drug, Improvement, and Modernization Act of 2003, Public Law 108-173 (Medicare Part D) provides that states cannot pay for drugs that could be covered under this law. Therefore, it is necessary and reasonable to exclude coverage of family planning drugs covered by Medicare Part D for individuals eligible for or enrolled in Medicare Part D.

**E.** This item is necessary and reasonable, because it is consistent with the statutory requirement of cooperation with state and federal authorities in any reasonable manner as may be necessary to qualify for federal aid. This rule is necessary to ensure that the surveillance and utilization review rules apply to the demonstration. It is reasonable to refer to the rules for the sake of brevity and consistency among department rules.

**9505.5325 APPEALS**

**Subpart 1. Notice.**

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Federal regulations require a 10-day advance notice be sent to the applicant or enrollee when the department takes an action affecting the applicant's or enrollee's eligibility. This subpart is necessary to inform affected persons of their rights. It is necessary to list exceptions to these requirements. It is reasonable, for rule brevity and accuracy, as well as for the information of aggrieved persons, to reference the MA rules and statutes governing notification when services or eligibility are reduced.

**Subp. 2. Appeal process.**

The availability of appeal hearings is necessary to provide departmental review of possible errors by the department. This subpart is necessary to inform affected persons of their rights. It is necessary to list exceptions to these requirements. It is reasonable, for the sake of brevity and accuracy, as well as to avoid confusion about the proper procedure, to simply reference MA rules and statutes.

**Subp. 3. Denial of presumptive eligibility.**

It is necessary to clarify that a denial of presumptive eligibility is not a formal denial of eligibility for the demonstration project and therefore, is not subject to the standard notice and appeal rights. The denial is the provider's determination, based on preliminary information, that the applicant does not meet the eligibility requirements. In this situation, an appeal is not the most practical method to challenge a provider's denial of presumptive eligibility. The applicant's best recourse is to file a demonstration project application for a formal determination of demonstration project eligibility. This approach is reasonable, because it is faster than the appeals process, it will result in a trained eligibility worker reviewing the applicant's eligibility requirements, and it avoids provider involvement in the appeal process. Additionally, the applicant may appeal a formal denial of demonstration project eligibility, so the applicant has not lost any appeal rights.

**CONCLUSION**

**Based on the foregoing, the proposed rules are both needed and reasonable.**

**Date: JUNE 5, 2006.**