

1 Department of Human Services

2

3 Adopted Rules Relating to Special Needs Rate Exception for Very
4 Dependent Persons with Special Needs

5

6 Rules as Adopted

7 9510.1020 DEFINITIONS.

8 Subpart 1. Scope. The terms used in parts 9510.1020 to
9 9510.1140 have the meanings given them in this part.

10 Subp. 2. Case manager. "Case manager" has the meaning
11 given it in part 9525.0015 [Emergency], subpart 5.

12 Subp. 3. Client. "Client" means a person who is receiving
13 training and habilitation services or intermediate care facility
14 for the mentally retarded services funded under the medical
15 assistance program.

16 Subp. 4. Commissioner. "Commissioner" means the
17 commissioner of the Department of Human Services or a designated
18 representative.

19 Subp. 5. County. "County" means the county board of
20 commissioners for the county which provides case management
21 services to the client or the county board of commissioners'
22 designated representative.

23 Subp. 6. Degenerative disease. "Degenerative disease"
24 means a category of neurological impairment such as Hurler's
25 syndrome, tuberous sclerosis, Alzheimer's disease, or
26 Huntington's chorea with a disorganization of motor function or
27 chronic brain syndrome.

28 Subp. 7. Employee benefits. "Employee benefits" means
29 compensation actually paid to or for the benefit of the
30 employees other than salary. Employee benefits include group
31 health or dental insurance, group life insurance, pensions or
32 profit sharing plans, governmentally-required retirement plans,
33 sick leave, vacations, and in-kind benefits. Employee benefits
34 do not include payroll-related costs.

35 Subp. 8. Equipment. "Equipment" means aids designed to
36 increase a client's ability to live and function independently

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1 which are purchased for the client, remain the property of the
2 client and can be moved with the client upon discharge.

3 Subp. 9. Intermediate care facility for the mentally
4 retarded or ICF/MR. "Intermediate care facility for the
5 mentally retarded" or "ICF/MR" means a program licensed to serve
6 mentally retarded residents under Minnesota Statutes, section
7 252.28, and a physical plant licensed as a supervised living
8 facility under Minnesota Statutes, chapter 144, which together
9 are certified by the Minnesota Department of Health as an
10 intermediate care facility for the mentally retarded.

11 Subp. 10. Medical review team. "Medical review team"
12 means a group of physicians and social workers who are under
13 contract with the Department of Human Services to review a
14 medical and social history for the purpose of determining a
15 person's disability within the scope of the regulations of the
16 Social Security Administration.

17 Subp. 11. Provider. "Provider" means the person or entity
18 operating a licensed training and habilitation service or an
19 ICF/MR.

20 Subp. 12. Payroll-related costs. "Payroll-related costs"
21 means the employer's share of social security withholding taxes,
22 workers' compensation insurance or actual cost if self insured,
23 and state and federal unemployment compensation taxes or costs.

24 Subp. 13. Special needs rate exception payment. "Special
25 needs rate exception payment" means a payment established under
26 parts 9510.1020 to 9510.1140.

27 Subp. 14. Staff intervention. "Staff intervention" means
28 the direct client care provided by program personnel or outside
29 program consultants, or the training of direct care program
30 personnel by outside program consultants for the purpose of
31 addressing the client's needs as identified in the special needs
32 rate exception application.

33 Subp. 15. State hospital. "State hospital" means an
34 ICF/MR or nursing home owned and operated by the state of
35 Minnesota.

36 Subp. 16. Training and habilitation services. "Training

1 and habilitation services" means health and social services
2 provided under Minnesota Statutes, sections 252.21 to 252.261
3 and 256B.501. "Training and habilitation services" does not
4 include waived services as defined in Minnesota Statutes,
5 section 256B.501, subdivision 1.

6 9510.1030 APPLICABILITY AND PURPOSE.

7 Subpart 1. **Applicability.** Parts 9510.1020 to 9510.1140
8 establish procedures for counties and providers to follow to
9 seek authorization for a special needs rate exception for very
10 dependent persons with special needs and establish procedures
11 for determining the special needs rate exception payments for
12 training and habilitation services and for intermediate care
13 facilities for the mentally retarded. Parts 9510.1020 to
14 9510.1140 do not apply to persons with mental retardation who
15 reside in a state hospital.

16 Subp. 2. **Purpose.** The purpose of the special needs rate
17 exception is to provide to a specific client those staff
18 interventions or equipment whose costs are not included in the
19 per diem rate of the intermediate care facility for the mentally
20 retarded or the per diem rate of the training and habilitation
21 service. The special needs rate exception payment is intended
22 to fund short-term special needs for a specific client in order
23 to prevent the placement or retention of the client in a state
24 hospital. The special needs rate exception is only to be
25 allowed after all other funding sources or alternatives have
26 been exhausted.

27 9510.1040 APPLICATION TO BE COMPLETED BY PROVIDER.

28 Subpart 1. **Application.** The provider shall apply to the
29 county for a special needs rate exception to cover the cost of a
30 staff intervention or piece of equipment necessary to serve
31 clients eligible under part 9510.1050, subpart 2. A separate
32 application must be completed for each client unless the staff
33 intervention or equipment is shared by the clients identified.
34 If more than one client is included in the application, client
35 information must be submitted for each client. The application

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1 must include the information in subparts 2 to 4.

2 Subp. 2. Information about client's needs and methods used
3 to address needs. The provider shall:

4 A. identify the client including:

5 (1) name;

6 (2) name and address of the client's legal
7 representative;

8 (3) medical assistance identification number;

9 (4) date of admission or anticipated admission to
10 the provider's program;

11 (5) diagnosis;

12 (6) age;

13 (7) current residence; and

14 (8) current day program;

15 B. describe the client's special need or needs which
16 put the client at risk of state hospital placement or continued
17 state hospital placement;

18 C. describe the proposed staff intervention including:

19 (1) the amount of staff or consultant time
20 required;

21 (2) qualifications of the program staff or
22 outside consultants providing the intervention;

23 (3) type of intervention;

24 (4) frequency of intervention;

25 (5) intensity of intervention; and

26 (6) duration of intervention;

27 D. describe the equipment needed and the plan for use
28 of the equipment by the client;

29 E. identify the total cost and the unit cost of the
30 equipment or the staff intervention;

31 F. describe the modifications needed to integrate the
32 equipment and staff intervention into the client's individual
33 program plan;

34 G. describe the projected behavioral outcomes of the
35 staff intervention or the use of the equipment and when the
36 outcomes will be achieved;

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1 H. describe how the client's progress toward the
2 behavioral outcomes in item G will be measured and monitored by
3 the provider; and

4 I. describe the degree of family involvement with the
5 client.

6 Subp. 3. Information about provider. The provider shall
7 submit:

8 A. information identifying the provider including:

9 (1) name and address of the provider;

10 (2) name and address of the place where the staff
11 intervention and equipment will be delivered, if different from
12 subitem (1);

13 (3) name and telephone number of the person
14 authorized to answer questions about the application; and

15 (4) medical assistance provider number; and

16 B. an explanation of the efforts used to meet the
17 client's needs within the provider's current per diem rate,
18 including:

19 (1) modifications made to the individual program
20 plan;

21 (2) reallocation of current program personnel;

22 (3) use of any operating cost incentives or
23 allowances received by the provider under parts 9510.0500 to
24 9510.0890 or 12 MCAR SS 2.05301 to 2.05315 [Temporary];

25 (4) training and inservice provided to program
26 personnel for the year immediately preceding the date of the
27 provider's application to the county; and

28 (5) other available resources used.

29 Subp. 4. Supporting documentation. The provider shall
30 submit with the application the following:

31 A. A copy of the individual program plan including
32 the measurable behavioral outcomes which are anticipated to be
33 achieved by the client as a result of the proposed staff
34 intervention or the equipment.

35 B. For an ICF/MR, a copy of the most recent facility
36 profile as prepared by the quality assurance and review section

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1 of the Minnesota Department of Health. For a training and
2 habilitation service program, a description of the physical
3 condition, medical condition, and behavioral characteristics of
4 the clients currently served by the program.

5 C. Documentation of the provider's historical costs
6 on which the current per diem rate is based. An ICF/MR provider
7 shall submit a copy of the cost report submitted under parts
8 9510.0500 to 9510.0890 or 12 MCAR SS 2.05301 to 2.05315
9 [Temporary] on which the current per diem rate is based and a
10 copy of the most recent rate determination letter. A training
11 and habilitation service program shall submit a copy of the
12 translation worksheet required in 12 MCAR SS 2.0300-2.0304
13 [Temporary] and any adjustments made by the county or the
14 commissioner.

15 D. Work papers showing the method used to determine
16 the cost of the staff intervention and equipment identified in
17 subpart 2, item E, including the hourly wage of staff who will
18 implement the intervention, the unit cost of consultation or
19 training services, and the unit cost of equipment requested.

20 E. Documentation that any equipment requested in the
21 application is not available from the Department of Vocational
22 Rehabilitation or covered under parts 9500.0750 to 9500.1080.

23 F. Documentation that any consultant services
24 requested in the application are not services covered under
25 parts 9500.0750 to 9500.1080.

26 G. The name and address of any vendor or contractor
27 to be reimbursed by the special needs rate exception and the
28 name of the person or persons who will actually provide the
29 equipment or services if known.

30 H. A plan to decrease the client's reliance on the
31 proposed staff intervention.

32 9510.1050 COUNTY REVIEW OF PROVIDER'S APPLICATION.

33 Subpart 1. Criteria. The county shall determine if the
34 provider submitting the application and the client or clients
35 identified in the application meet the criteria in subparts 2 to
36 5. The county shall submit to the commissioner the applications

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1 which meet the criteria in subparts 2 to 5.

2 Subp. 2. Client eligibility. A client shall be eligible
3 for a special needs rate exception if the client meets the
4 criteria in items A to D:

5 A. the client is eligible for medical assistance
6 under Minnesota Statutes, chapter 256B;

7 B. the client is a resident of an ICF/MR;

8 C. the client is a person with mental retardation
9 according to the definition in part 9525.0015 [Emergency],
10 subpart 21 or has related conditions defined in Code of Federal
11 Regulations, title 42, section 435, and has at least one of the
12 following characteristics:

13 (1) severe maladaptive behavior as listed in unit
14 (a), (b), or (c);

15 (a) self-injurious behavior which is a clear
16 danger to the client such as ingesting inedibles; removing major
17 items of clothing; striking, biting, or scratching self; moving
18 into dangerous situations which clearly threaten or endanger the
19 client's life, sensory abilities, limb mobility, brain
20 functioning, physical appearance, or other major physical
21 functions; or

22 (b) aggressive behaviors which are a clear
23 danger to others such as striking, scratching, or biting others;
24 throwing heavy objects at others; attempting inappropriate
25 sexual activity with others; or pushing or placing others into
26 dangerous situations which clearly threaten or endanger their
27 life, sensory abilities, limb mobility, brain functioning,
28 sexual integrity, physical appearance, or other major physical
29 functions; or

30 (c) destructive behaviors which result in
31 extensive property damage;

32 (2) severe physical disabilities such as
33 deafness, blindness, or motor problems which require short-term
34 environmental orientation training;

35 (3) medical conditions as listed in unit (a) or
36 (b);

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1 (a) degenerative diseases diagnosed by a
2 physician as terminal; or

3 (b) short-term medical disabilities that can
4 be treated within the level of care the Minnesota Department of
5 Health certifies the ICF/MR to provide, such as temporary
6 immobility, intermittent catheterization, or post-operative
7 recuperation;

8 D. the client is at risk of placement in a state
9 hospital within 60 days or of remaining in a state hospital,
10 unless additional resources are provided through parts 9510.1020
11 to 9510.1140 due to:

12 (1) conditions and characteristics described in
13 item C; and

14 (2) the unavailability of other resources as
15 determined under subpart 4.

16 Subp. 3. General provider eligibility. A provider shall
17 be eligible for a special needs rate exception if the provider
18 meets the following criteria:

19 A. The existing program or services offered by the
20 provider cannot be modified to meet the client's needs within
21 the provider's approved per diem rates, including any operating
22 cost incentives or allowances as defined in 12 MCAR SS 2.05301
23 to 2.05315 [Temporary] or parts 9510.0500 to 9510.0890. Amounts
24 deposited in a funded depreciation account under 12 MCAR S
25 2.05304 [Temporary] C. shall not be affected by this item.

26 B. The provider's historical cost per diem does not
27 include the historical cost of providing the same or similar
28 clients with the same or similar staff interventions.

29 C. The provider is willing to serve or continue to
30 serve a client who is eligible for a special needs rate under
31 subpart 2 if the special needs rate exception is approved.

32 Subp. 4. Availability of other resources. The provider
33 shall be eligible for a special needs rate exception only if the
34 county determines that:

35 A. There are no other existing resources or services
36 covered under parts 9500.0750 to 9500.1080 available to meet the

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1 client's needs.

2 B. There are no other appropriate ICFs/MR, training
3 and habilitation services, or other services located within a
4 reasonable distance available to meet the person's needs within
5 their current rates. To determine if another ICF/MR, training
6 and habilitation service, or other service is appropriate for
7 the client, the case manager shall:

8 (1) Consider the placement preferences of the
9 client and family of the client. If the client cannot
10 communicate a preference, the client's legal representative must
11 be consulted.

12 (2) Consider whether the location of the
13 alternative ICF/MR training and habilitation service or other
14 service will impair the current level of family involvement.

15 (3) Consider the length of time that the client
16 will need the additional services.

17 Subp. 5. Evaluation of staff intervention and equipment
18 purchases. The county shall review the information submitted in
19 accordance with part 9510.1040 to determine if:

20 A. the proposed staff intervention and equipment are
21 allowable for purposes of reimbursement under parts 9510.1020 to
22 9510.1140;

23 B. all proposed services and service providers comply
24 with applicable professional and program licensure standards;

25 C. the proposed staff intervention and equipment
26 purchases meet the identified client needs; and

27 D. the provider has included a plan to decrease the
28 client's reliance on the proposed staff intervention which shall
29 ensure integration of the client into the existing program when
30 the special needs rate exception terminates.

31 9510.1060 COUNTY APPROVAL PROCESS.

32 Subpart 1. Time period. The county shall approve or deny
33 applications within ten working days of the date the complete
34 application was received from the provider. Approval or denial
35 shall be made in accordance with subparts 2 to 4.

36 Subp. 2. Consultation with county of financial

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1 responsibility. If the county which receives the provider's
2 application is not the county of financial responsibility, the
3 county which receives the provider's application shall consult
4 with the county of financial responsibility before approving the
5 provider's application. The county of financial
6 responsibility's statement of approval or objections must be
7 forwarded to the commissioner with the provider's approved
8 application or notice of denial. If the county of financial
9 responsibility's statement of approval or objections are not
10 forwarded to the commissioner, the county's application shall
11 not be considered complete.

12 Subp. 3. County approval or denial. The county shall
13 review the provider's application to determine if the
14 application is complete and meets the criteria in 9510.1020 to
15 9510.1140. The county shall approve the provider's application
16 if the application is complete and meets the criteria. The
17 county shall deny the provider's application if the application
18 is incomplete or does not meet the criteria unless the
19 provider's application can be adjusted to meet the criteria or
20 the county submits a written request for a variance under part
21 9510.1100.

22 Subp. 4. Notification. The county shall send the provider
23 and the client written notice of the county's decision on the
24 provider's application as soon as a decision is made or within
25 ten working days after receipt of the application, whichever
26 occurs first. If the county denies the provider's application,
27 the county shall notify the commissioner, provider, client, and
28 the client's legal representative of the reasons for the denial
29 in writing. The notice of the denial must state the specific
30 provisions of the provider's application on which the county
31 based the denial.

32 9510.1070 COUNTY'S APPLICATION TO COMMISSIONER.

33 If the county approves the provider's application, the
34 county shall apply to the commissioner for a special needs rate
35 exception within ten working days of the date of receipt by the
36 county from the provider of a complete application and

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1 supporting documentation. To apply for a special needs rate
2 exception, the county shall submit to the commissioner a copy of
3 the provider's approved application and supporting documentation
4 and the following documents:

5 A. documentation of the steps taken by the county to
6 determine client and provider eligibility in accordance with
7 parts 9510.1020 to 9510.1140, including documentation of the
8 conditions which put the client at risk of state hospital
9 placement or continued state hospital placement;

10 B. a copy of the client's most recent individual
11 service plan which states the decision to place or retain the
12 eligible client in a state hospital if the requested services
13 cannot be provided;

14 C. a copy of the client's most recent annual
15 individual program plan in the ICF/MR, individual program plan
16 in the training and habilitation service, most recent medical
17 evaluation signed by a physician, and most recent behavioral
18 assessments, including any programs for aversive and deprivation
19 procedures;

20 D. a copy of the client's state hospital discharge
21 plan, if the special needs rate exception is requested to
22 facilitate the client's discharge from a state hospital;

23 E. a copy of the client's screening document if one
24 was completed within 60 days of the date the county received a
25 complete application from the provider;

26 F. a copy of the county's plan to coordinate and
27 monitor the implementation of the client's individual service
28 plan;

29 G. a letter from the county of financial
30 responsibility stating approval of the changes in the individual
31 service plan if the county submitting the application is not the
32 county of financial responsibility; or if the county of
33 financial responsibility does not approve the changes, a letter
34 stating the reasons the county of financial responsibility does
35 not approve the changes and describing the actions, if any, to
36 be taken by the county of financial responsibility; and

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1 H. a description of the proposed services to be
2 provided by the day training and habilitation service and the
3 ICF/MR and how the services will be coordinated and monitored by
4 the county and the providers. If the special needs rate
5 exception is not requested for both the day training and
6 habilitation service and the ICF/MR, a written explanation must
7 be provided by the county.

8 9510.1080 COMMISSIONER'S DETERMINATION.

9 The commissioner shall review the county application to
10 determine if the requirements in parts 9510.1020 to 9510.1140
11 are satisfied in determining whether to approve or deny an
12 application for a special needs rate exception. The
13 commissioner shall notify the county, provider, the client, and
14 the client's legal representative of the decision within ten
15 working days of the date the commissioner receives a completed
16 application from the county. The special needs rate exception,
17 if approved by the commissioner, must be effective as of the
18 date the county submits a completed application to the
19 commissioner. If the commissioner denies the application, the
20 commissioner shall notify the county, provider, and client or
21 client's representative in writing of the reasons for the denial.

22 9510.1090 ESTABLISHING SPECIAL NEEDS RATE EXCEPTION PAYMENT.

23 Subpart 1. Established by commissioner. The commissioner
24 shall establish the special needs rate exception payment
25 according to subparts 2 to 5.

26 Subp. 2. Allowable costs. Unless otherwise reimbursable
27 by the Department of Vocational Rehabilitation or by direct
28 payments under parts 9500.0750 to 9500.1080, the following
29 costs, if approved by the commissioner in accordance with parts
30 9510.1020 to 9510.1140 and 12 MCAR S 2.05311 [Temporary] A., are
31 allowable for purposes of establishing the special needs rate
32 exception payment:

33 A. additional salary, employee benefits, and
34 payroll-related costs for direct care staff required to meet the
35 client's needs as identified in the provider's application;

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1 B. additional costs of services provided by a
2 licensed medical, therapeutic, or rehabilitation practitioner; a
3 mental health practitioner supervised by a board-certified
4 psychiatrist; or a licensed psychologist or licensed consulting
5 psychologist;

6 C. the costs of equipment required to meet the
7 client's needs as identified in the provider's application.

8 Subp. 3. Nonallowable costs. Only costs listed in subpart
9 2 are allowable for purposes of establishing the special needs
10 rate exception. All other costs shall be disallowed.

11 Subp. 4. Limitation. The combined per diem costs of
12 training and habilitation services, ICF/MR services, and the
13 special needs rate exception payment and any other special needs
14 rate exception payments in effect for the same client, shall not
15 exceed the medical assistance per diem cost of providing
16 services to mentally retarded persons in state hospitals. For
17 the purpose of determining this limitation, items A to F apply.

18 A. The training and habilitation services per diem in
19 effect on the date the provider's completed application is
20 submitted to the county must be multiplied by the number of days
21 the services are provided annually.

22 B. The ICF/MR's temporary or final payment rate in
23 effect on the date the provider's completed application is
24 submitted to the county must be multiplied by 365.

25 C. The special needs rate exception amount must not
26 exceed the total allowable of the costs in allowable under
27 subpart 2. If a special needs rate exception is necessary for a
28 client in both the ICF/MR and the training and habilitation
29 service program, the amounts of both special needs rate
30 exceptions must be combined. If the client is currently
31 receiving a special needs rate exception, that amount must also
32 be included.

33 D. The amounts determined in items A to C must be
34 combined and divided by 365 to determine the combined per diem
35 cost.

36 E. The state hospital medical assistance per diem

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1 rate must be the rate in effect on the date the provider's
2 completed application is submitted to the county.

3 F. If the per diem cost in item D exceeds the per
4 diem cost in item E, the commissioner shall deny the special
5 needs rate exception application unless the per diem cost can be
6 adjusted to meet the client's needs within the per diem cost in
7 item E or the commissioner grants a variance under part
8 9510.1100.

9 Subp. 5. Computation of special needs rate exception
10 payment. The special needs rate exception payment must be
11 calculated as follows:

12 A. The cost of additional equipment allowed in
13 accordance with subpart 2, item C shall be paid as a lump sum
14 payment during the first billing period following approval of
15 the special needs rate exception.

16 B. Except as provided in item C, in order to compute
17 the special needs rate exception payment for personnel costs,
18 the costs of additional personnel allowable according to subpart
19 2, items A and B, must be divided by the estimated number of
20 days the staff intervention will be needed.

21 C. In order to compute the special needs rate
22 exception payment for personnel costs which vary during the
23 estimated staff intervention period, the costs must be assigned
24 on a monthly basis proportionate to the actual personnel costs
25 incurred and then divided by the number of client days in the
26 month.

27 D. Costs computed under items B and C shall be
28 reimbursed as incurred and billed.

29 9510.1100 VARIANCE REQUEST.

30 Subpart 1. Variance request. The county may request a
31 variance from the commissioner to approve a provider application
32 which exceeds the limit in part 9510.1090, subpart 4 by up to 15
33 percent, if the provider meets the criteria in subpart 2.

34 Subp. 2. Eligible provider. A licensed provider of
35 training and habilitation services may apply for a variance if
36 the provider is not an ICF/MR and provides or plans to provide

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1 training and habilitation services to a client who resides in an
2 ICF/MR which has a per diem rate equal to or greater than 85
3 percent of the medical assistance per diem cost of providing
4 services to mentally retarded persons in the state hospitals.

5 Subp. 3. Submittal of request. The county shall submit
6 the written variance request, including documentation showing
7 that the provider meets the criteria for a variance, with the
8 county's application for the special needs rate exception
9 payment.

10 Subp. 4. Review of variance request; notification. The
11 commissioner shall review the variance request with the county's
12 application for the special needs rate exception payment. If
13 the county's application meets all of the requirements in parts
14 9510.1020 to 9510.1140 except the limitation in part 9510.1090
15 subpart 4 and the provider is eligible to apply for a variance
16 under subpart 2, the commissioner shall approve the request. If
17 the commissioner denies the variance request, the commissioner
18 shall notify the county, provider, client, and the client's
19 legal representative within ten days of receipt of the variance
20 request of the reasons for the denial.

21 9510.1110 EMERGENCY PROCEDURE.

22 Subpart 1. Definition. For the purposes of this part, an
23 emergency is either:

24 A. a postoperative condition resulting from unplanned
25 surgery or unanticipated complications resulting from planned
26 surgery which would result in continued placement in a hospital
27 or skilled nursing facility, loss of placement in a community
28 ICF/MR, and admission to a state hospital within 60 days; or

29 B. the sudden onset of self-injurious or aggressive
30 client behavior which results in an immediate danger to self or
31 others; which would result in immediate admission to the state
32 hospital in the absence of intervention.

33 Subp. 2. Emergency approval. In an emergency, the county
34 may approve the addition of staff necessary to intervene in the
35 emergency without obtaining prior approval of a special needs
36 rate exception from the commissioner if the county determines

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1 that all other client and provider eligibility is met. Only
2 staff costs shall be allowed under this part. No funds spent
3 will be reimbursed, even in an emergency, without the county's
4 approval. In an emergency, the county shall:

5 A. notify the commissioner by telephone no later than
6 the next working day and in writing within three working days of
7 the client's situation, and state in the notice a description of
8 the behaviors or medical condition requiring emergency
9 intervention and the actions taken by the provider to control
10 the behaviors;

11 B. require the provider to submit an application
12 completed in accordance with parts 9510.1020 to 9510.1140 within
13 ten working days; and

14 C. submit to the commissioner an application for a
15 special needs rate exception completed and submitted in
16 accordance with parts 9510.1020 to 9510.1140.

17 Subp. 3. **Reimbursement for emergency services.** A special
18 needs rate exception for the costs identified in part 9510.1090,
19 subpart 2, item A, for staff approved in accordance with subpart
20 2 shall be reimbursable for a period not to exceed two weeks
21 from the date the county notifies the commissioner of the
22 emergency. The provider shall submit an application to the
23 county completed in accordance with parts 9510.1020 to
24 9510.1140, for continuation of the special needs rate exception
25 for more than two weeks. The county shall notify the
26 commissioner if the provider fails to submit the application
27 required in subpart 2, item B, and the commissioner shall
28 discontinue the emergency special needs rate exception payment.

29 9510.1120 DURATION OF SPECIAL NEEDS RATE EXCEPTION.

30 Subpart 1. **Maximum length of time for a special needs rate**
31 **exception.** A special needs rate exception for a staff
32 intervention must be limited to one approval per eligible client
33 for a period of time not to exceed one year from the date of
34 receipt of the county application by the commissioner except as
35 provided in subpart 2.

36 Subp. 2. **Renewals.** If the county determines that a

1 special needs rate exception should be continued after the
2 period initially approved, the county shall submit a new
3 application in accordance with parts 9510.1020 to 9510.1140 at
4 least 30 days prior to the date the special needs rate exception
5 is scheduled to terminate. The county application for a renewal
6 must contain a program and fiscal evaluation demonstrating the
7 effectiveness of the initial special needs rate exception. A
8 special needs rate exception for a staff intervention must be
9 limited to ~~one-renewal~~ two renewals, each of one year or less,
10 per identified special need.

11 Subp. 3. Terminations. The commissioner may terminate the
12 special needs rate exception prior to the date stated in the
13 application upon recommendation by the county. The county may
14 recommend termination if:

15 A. the rate is no longer necessary because other
16 funds are available;

17 B. the rate is no longer necessary because a more
18 appropriate residential or day training and habilitation
19 placement is available;

20 C. there is evidence that the funds have not been
21 used for the purposes stated in the application;

22 D. the client's needs have changed and can be met
23 without the special needs rate exception; or

24 E. no progress has been made in rectifying the
25 identified problem area. This item shall not apply to services
26 provided to clients with degenerative diseases if the criteria
27 in subitems (1) to (4) are met:

28 (1) the service is required due to the
29 degenerative disease;

30 (2) the client's physician has determined that no
31 progress in the identified problem area can be expected;

32 (3) the county submitted the determination by the
33 client's physician to the commissioner with the first quarterly
34 program and fiscal review under part 9510.1130, subpart 2 and
35 requested an exception to this item; and

36 (4) the county's request for an exception to this

1 item has been reviewed by the state medical review team of the
2 Department of Human Services and the state medical review team
3 has verified that no progress in the identified problem area can
4 be expected.

5 The commissioner shall notify the county and the provider
6 15 days before discontinuing payments due to termination.

7 9510.1130 RECORDS, REPORTS, AUDITS, AND REPAYMENT.

8 Subpart 1. Records. The provider shall maintain complete
9 program and fiscal records and supporting documentation
10 identifying the services and costs provided under the special
11 needs rate exception. The costs must be maintained in
12 well-organized files and identified in accounts separate from
13 other facility or program costs. Costs authorized and approved
14 under these parts do not become part of a provider's historic
15 cost base for the purpose of setting rates under 12 MCAR SS
16 2.05301 to 2.05315 [Temporary] or parts 9525.1200 to 9525.1330.
17 The provider's records shall be kept for five years and be
18 subject to the maintenance schedule, audit availability
19 requirements, and other provisions of parts 9505.1750 to
20 9505.2150.

21 Subp. 2. Reports. The county shall submit items A and B
22 to the commissioner.

23 A. A quarterly program and fiscal review of the
24 overall effectiveness of the services to be provided under the
25 special needs allowance unless the commissioner determines that
26 a different schedule of reviews is needed to evaluate the
27 success of the program or redetermine the special needs rate
28 exception payment. The review must be submitted no more than 30
29 days after the end of each quarter in which a special needs rate
30 exception is in place and must include:

31 (1) the provider's compliance with the
32 application;

33 (2) the client's progress in attaining the
34 measurable behavioral outcomes in the individual program plan
35 for which the special needs rate exception was requested;

36 (3) the county and provider's plans to reduce

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1 reliance on the special needs rate exception; and

2 (4) changes implemented in the type, frequency,
3 or intensity of the staff intervention approved under parts
4 9510.1080 and 9510.1090.

5 B. A final report submitted within 90 days of
6 termination of a special needs rate exception which documents
7 the following:

8 (1) the extent to which the program goals
9 identified in the special needs rate exception application were
10 accomplished;

11 (2) the total amount of money paid to the
12 provider through the special needs rate exception payment for
13 equipment and actual costs and types of equipment purchased;

14 (3) the amount of expenditures incurred by the
15 provider for costs allowable under part 9510.1090 [Emergency],
16 subpart 2; and

17 (4) the total amount of unexpended funds
18 determined by subtracting subitem (3) from subitem (2).

19 Subp. 3. Audits. The commissioner may conduct program and
20 fiscal audits of any provider receiving a special needs rate
21 exception to identify any overpayments made to the provider and
22 ensure compliance with parts 9510.1020 to 9510.1140 [Emergency].

23 Subp. 4. Repayment. Any overpayments to the provider
24 included in the special needs rate exception payment must be
25 paid back to the medical assistance program within 60 days of
26 the date the provider receives the notice of overpayment from
27 the county or the commissioner. No retroactive payment must be
28 made if the provider's costs exceed the special needs rate
29 exception payment.

30 9510.1140 APPEALS.

31 Subpart 1. By provider. A provider whose application for
32 a special needs rate exception is denied or not acted on within
33 the deadlines in part 9510.1060, subpart 1, or whose special
34 needs rate exception is suspended, reduced, or terminated by the
35 county may appeal the action or decision to the commissioner.
36 The appeal must be submitted to the commissioner in writing

1 within 30 days of the date the provider received notification or
2 should have received notification of the action or decision.
3 The appeal must state the reasons the provider is appealing the
4 county's action or decision including the bases for the county's
5 action or decision which are disputed, the specific sections of
6 the provider's application which the provider is relying on for
7 the appeal, and an explanation of why the provider disagrees
8 with the county's action or decision.

9 The commissioner shall review the application and
10 supporting documentation submitted to the county and any
11 additional documents submitted with the appeal to determine if
12 the provider can prove by a preponderance of evidence that it is
13 eligible for a special needs rate exception and in compliance
14 with parts 9510.1020 to 9510.1140. Within 30 days of receipt of
15 the provider's appeal, the commissioner shall notify the
16 provider of the commissioner's decision. No special needs rate
17 exception payment will be made pending the outcome of the appeal.

18 Subp. 2. By county. If the county disagrees with the
19 commissioner's decision on the county application, the county
20 may appeal the decision to the commissioner and request
21 reconsideration. To be reconsidered, the appeal must be filed
22 in writing, with the commissioner, within ten days of the date
23 the commissioner gave notice to the county of the decision on
24 the county application. The appeal must state the reasons why
25 the county is appealing the commissioner's decision and present
26 evidence explaining why the county disagrees with the
27 commissioner's decision. Within 30 days of receipt of the
28 county's appeal, the commissioner shall review the evidence
29 presented in the county's appeal and send written notification
30 to the county of the commissioner's decision on the appeal. No
31 special needs rate exception payment shall be made pending the
32 outcome of the appeal. The commissioner's decision on the
33 appeal shall be final.

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