

Minnesota Attorney General: Administrative Rules Proceedings

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Version 3
August 20, 2018

Our File # 586

Permanent Rule X

Temporary Rule _____

RULES REVIEW CHECKLIST

DATE RULES RECEIVED 4/9 DUE DATE 4/29

Resubmitted and Received _____

a. Returned to Agency w/o Filing w/Secretary of State _____
b. Approved 5/2 Date Sent Back to Agency 5/2

- -

1. Rules as Adopted 2.204 ✓ 2.207 ✓
2. Rules as Proposed 2.204 ✓ 2.207 ✓
3. Certificate of Board's Authorizing Resolution, where applicable N/A
4. Order for Hearing ✓ 12.13.79.
5. Notice of Hearing ✓
   Sufficiency ✓
6. Secretary of State's List ✓ (one copy only)
7. Certificate of Acquisition of Secretary of State's List ✓
8. Secretary of State's Certification of Delivery of Secretary of State's List to Agency ✓
9. Affidavit of Mailing ✓
   At least 30 days prior to hearing ✓
10. Publication in State Register ✓ copy not submitted but see HE report, page 2.
    At least 30 days prior to hearing ✓
11. Statement of Need and Evidence 2.204 ✓ 2.207 ✓ See "originals" file for attachments
12. Hearing Examiner's Report ✓
13. Agency's Findings of Fact ✓ incorporated in #15 - order adopting
14. Certificate of Board's Resolution Adopting Rules, where applicable N/A
15. Order Adopting ✓
16. Report of Chief Hearing Examiner ✓
17. Order Approving Incorporation by Reference, where applicable N/A
18. Certificate of Compliance with Rulemaking Procedures ✓
19. Copy of Notice of Intent to Solicit Outside Opinion, where applicable ✓
20. Petition by Public, where applicable N/A

Our File: #586

ADMIN 1000 (Rev. 1/78)
SF-00006-01

STATE OF MINNESOTA

DEPARTMENT ATTORNEY GENERAL

Office Memorandum

TO : ALAN A. HELD
Special Assistant
Attorney General

DATE: May 2, 1980

FROM : JERRY ANDERSON
Special Assistant
Attorney General

PHONE: 296-1288

SUBJECT: Rules as Approved In the Matter of the Department of Public Welfare's Proposed Adoption of Amendments to Rule 204 (12 M.C.A.R. § 2.204) Foster Care-Children, and Proposed Adoption of a New Rule 207 (12 M.C.A.R. § 2.207) Protective Services to Children

Enclosed herewith are the rules you have submitted for approval. These rules have been approved by this office and filed with the Secretary of State. Note that they have NOT been filed with the State Register; this must be done promptly by your agency.

Upon receipt and before transmittal to your agency, however, it is important that you recheck these rules as to:

1. Affixation of the stamps of the Attorney General and Secretary of State to the last page of the rules;

2. Coverage by these stamps of all rules submitted; and

3. Inclusion of all pages of the rules in the approved set.

Directly following the approved rules is a complete set of required documents and transcript which must be retained with the rules by you or your agency.

If you have any questions in this regard, please contact me.

JA/bw
Enclosure
cc: Duane Harves
Susan Robertson

no copy.

STATE OF MINNESOTA

COUNTY OF RAMSEY

BEFORE ARTHUR E. NOOT

COMMISSIONER OF PUBLIC WELFARE

In the Matter of the Department of Public Welfare's Proposed Adoption of Amendments to Rule 204 (12 M.C.A.R. § 2.204) Foster Care - Children, and Proposed Adoption of a New Rule 207 (12 M.C.A.R. § 2.207) Protective Services to Children

ORDER ADOPTING THE RULE

A hearing on the proposed adoption of amendments In the Matter of the Department of Public Welfare's Proposed Adoption of Amendments to Rule 204 (12 M.C.A.R. § 2.204) Foster Care - Children, and Proposed Adoption of a New Rule 207 (12 M.C.A.R. § 2.207) Protective Services to Children occurred before Hearing Examiner Natalie L. Gaull on December 13, 1979, at 9 a.m. in the Centennial Office Building, Fourth Floor, Room A, St. Paul, Minnesota. The Department of Public Welfare (DPW) served proper notice of the hearing upon all persons, associations, and other interested groups registered for that purpose with the Secretary of State.

The following persons testified for DPW at the hearing: Zetta Feder and Paul Spears. All interested groups and persons had an opportunity to testify at the hearing. Pursuant to the order of the Hearing Examiner, the record was held open for 15 days for the submission of written comments and statements.

Based upon all of the records and the proceedings, the Hearing Examiner made Findings of Fact, Conclusions, and a Recommendation which are contained in the Report of the Hearing Examiner dated January 28, 1980 which is attached hereto and marked "Exhibit A." As required by Minn. Stat. § 15.0412, subd. 4 (1978), the Report was available to all affected persons for at least five days.

Having considered all of the evidence presented, the relevant records, files, and proceedings, the applicable statutory standards

ADMIN 1000 (Rev. 1/78)

STATE OF MINNESOTA

Office Memorandum

DEPARTMENT ATTORNEY GENERAL

TO : Jerry Anderson
Special Assistant
Attorney General
Department of Administration

DATE: April 29, 1980

FROM : Alan A. Held AAH
Special Assistant
Attorney General
Department of Public Welfare

PHONE: 6-8406

SUBJECT: DPW Rules 204 and 207

By this memorandum, I authorize you to make the following changes to correct the typographical errors in the rules submitted to you in the matter of the proposed adoption of amendments to Rule 204 (12 M.C.A.R. § 2.204) and Rule 207 (12 M.C.A.R. § 2.207):

1. In DPW Rule 204 B.A. the word "persons" should be deleted and in its place inserted "person."

2. In DPW Rule 204 C.1.a. the word "relatives'" should be deleted and in its place inserted "relative's."

3. In DPW Rule 207 C.1.f.(1)(b) delete the word "his" and insert in its place the word "him."

With these changes, the rule should be ready for filing. Please feel free to contact me if you have any questions.

AAH/rmm

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ATTORNEY GENERAL
ADMINISTRATIVE AGENCIES

and criteria, and after confirming the reasonableness of and the need for these Rules,

IT IS ORDERED that the Findings of Fact and Conclusions of the Hearing Examiner are hereby adopted and incorprated herein with the exception of Finding of Fact 24 and the corresponding portion of Conclusion 4 containing the exception; this Finding and its corresponding Conclusion are rejected. In addition, the Commissioner makes the following findings of fact identified in brackets by the section of the rule and the corresponding paragraph of the Hearing Examiner's Report.

FINDINGS OF FACT

Rule 204

1.[A.2.-12] DPW recognizes that in certain situations, a foster care placement may not be temporary. Therefore, the word "temporary" has been eliminated from section A.2.

2.[B.1.-13] DPW recognizes that in some situations, the purpose of foster care is not aimed at reuniting the family. Therefore, the words "geared toward reuniting the family" have been eliminated from section B.1.

3.[B.4.-14] Licensed foster family homes do not provide services to related children since homes providing such services are not licensed due to an exemption in Minn. Stat. § 245.791(1) (1978). Therefore, the definition cannot be amended by striking the word "unrelated" in section B.4. if it is to be consistent with Minnesota law.

4.[B.9.-17] The Ramsey County Welfare Department suggests that "cousin" be included in the definition of relative in section B.9. to be consistent with AFDC rule definitions. DPW does not accept this recommendation because the relationship of cousin is

distant enough to require the same services and regulations required for non-relatives. For similar reasons the Public Welfare Licensing Act, Minn. Stat. § 245.782, subd. 10, does not exclude cousins, as it does other relatives, from licensing requirements. Moreover, the purposes of Rule 204 are different from those of AFDC and, as a result, their rule definitions need not be consistent with each other. The purposes of Rule 204 do relate to the purposes of the Public Welfare Licensing Act and with DPW Rule 1 (Standards for Foster Family Care and Group Family Foster Care).

5.[C.1.b.(2)(a)(viii)-20] The language of section C.1.b.(2)(a)(viii) is broad enough to cover cases where both the original order grants authority to return the child to the parents' home and where the original order does not grant such authority; it is not inconsistent with either practice. Consequently, no amendment need be made to recognize the former practice.

6.[C.1.c.-24] The Hearing Examiner finds that section C.1.c., which prescribes procedures for making major decisions affecting the child, is necessary but unreasonable because the term "major decisions" is vague. The term "major decisions" appeared in the original rule and was not added by the clarifying amendments to that section of the rule. Minn. Stat. § 15.052, subd. 3(4) limits the authority of the Hearing Examiner in making a report to "proposed agency action." Since the term "major decisions" does not constitute proposed agency action, the Hearing Examiner lacks jurisdiction to issue a finding upon the term's reasonableness. As a result, this finding is rejected.

7.[C.1.d.(1)-26] Legal Advocacy for the Developmentally Disabled in Minnesota has expressed its concern and the Hearing Examiner has concurred with a corresponding recommendation concerning section C.1.d.(1) that there be specific planning for the special

educational needs of handicapped children and that there be explicit agreements regarding the roles to be played by the child's parents, foster parents, and the agency representative. Accordingly, DPW adds the following requirement to the written service plan provisions in section C.1.h.(1)(a)(viii): "The actions to be taken for meeting the special educational needs of the child, including the responsibilities of the foster parents and the child's parents." This addition to the requirements for the written service plan does not constitute a substantial change because the intent of the statute and, in turn, this general portion of the rule, is to assure that there is a clear understanding from the outset, by a written plan, of the services to be provided to the child and the responsibilities of the interested parties during placement.

8.[C.1.g.-29] The Department makes the following findings in response to the comments of the hearing examiner on section C.1.g:

The Region 7 Social Service Supervisors Organization expressed concern that subdivisions (1) and (3) are duplicative by requiring two medical examinations prior to placement. The subdivisions are not duplicative since neither subdivision (3) nor 12 M.C.A.R. 2.061 requires that EPSDT be offered or provided to a child prior to placement in foster care.

Legal Advocacy suggested that subdivision (5), requiring written authorization for obtaining routine health care, should be clarified to include parental consent whenever possible. Since the foster child's parents will provide written authorization to the agency, at the time they enter into the placement agreement, consenting to the provision of routine health care, subsequent consents will not be necessary.

St. Louis County is in error in its comment that EPSDT is a requirement for all children; EPSDT is required for only those children eligible for the Medical Assistance Program.

Ramsey County commented that the word "provided" should be changed to "offered" with regard to EPSDT. Concerning those cases involving parents who may or may not accept EPSDT services, the Ramsey County suggested change is valid. In other situations, however, the agency must provide the services and no "offer" is made (e.g., dependent/neglected state wards and where the child's parents are not available). Therefore, to clarify the agency's role in this matter and to provide necessary flexibility, DPW amends paragraph C.1.g.(3) to read:

> (3) Assuring that the Early and Periodic Screening, Diagnosis and Treatment (EPSDT) services are offered and/or provided pursuant to 12 M.C.A.R. 2.061 to all children eligible for the Medical Assistance Program;

9.[C.1.h.-30] As noted above in Finding 7, DPW has amended section C.1.h. to address educational planning for the child. In addition, section C.1.h.(1)(d) has been revised to be consistent with the remainder of the section by deleting "by the agency" and therefore reads in part: "A detailed visitation plan shall be prepared and shall include, but . . . ." This does not constitute a substantial change because C.1.h.(1)(a) already prescribes that the agency, the parents, and the child (rather than the agency alone) shall develop the service plan which includes the visitation rights and obligations of the parents.

10.[C.1.i.-32] Region VII North and the Hearing Examiner suggest that section C.1.i. places an excessive burden on the agency and foster parents by requiring permission each time the child is taken out of state when the family borders a state line and crosses it frequently. To clarify the present language and

make clear that an agency may provide blanket permission when a family crosses state lines regularly for routine purposes, the rule has been amended by adding a sentence to section C.1.i. to read as follows:

> However, the agency may provide specifically defined blanket permission for departures from the State where a family regularly departs the State for an identified routine purpose.

This addition does not constitute a substantial change because the agency's permission must still be obtained for any plan to take the child out of the state and the original language was broad enough to permit and did not prohibit an agency from granting blanket permission in appropriate circumstances.

11.[C.1.k.-33] In accordance with the suggestion of Legal Advocacy for Developmentally Disabled Persons in Minnesota, section C.1.k.(2) has been amended to read:

> (2) Parent(s) shall pay for the cost of care in a manner consistent with their ability to do so and with any applicable state laws and rules.

Rule 207

12.[C.1.g.-41] Winona County Department of Social Services suggested that investigation of institutional neglect and abuse should not be handled by the county but by the agency responsible for licensure. DPW does not accept this suggestion. Incidents of child neglect or abuse in a licensed institution require two separate responses and should be addressed by two separate authorities. First, the needs of the child for protection from further abuse must be addressed. Pursuant to Minn. Stat. § 626.556, subd. 10 (1978), the responsibility for providing protective services for the child, as well as conducting the attendant investigation, rest with the local or county welfare agency. Second, monitoring the

institution's failure, if any, to prevent and manage adequately incidents of child neglect or abuse must be addressed. In the case of residential and day care facilities, the Public Welfare Licensing Act [Minn. Stat. §§ 245.781 to 245.813 (1978)] locates this responsibility with the Commissioner of Public Welfare. In the case of hospitals and nursing homes, the Minnesota Department of Health is responsible for licensing and regulation pursuant to Minn. Stat. §§ 144.50 to 144.56 and Minn. Stat. § 144A.01 et seq.

IT IS FURTHER ORDERED that these rules identified as Rules 204 and 207 of the Rules of the Minnesota Department of Public Welfare are adopted this 24 day of March, 1980, and after this day Rules 204 and 207 shall read in their entirety as set forth in the attached Exhibits B and C, pursuant to the authority vested in me, and pursuant to Minn. Stats. Chapters 15, 245, 256, 257, and 626.

Dated: March 24, 1980

STATE OF MINNESOTA
DEPARTMENT OF PUBLIC WELFARE

ARTHUR E. NOOT
Commissioner

AG working copy ADOPTED RULE 204

12 MCAR 2.204, Foster Care - Children

A. Introduction.

1. This rule governs the administration and provision of foster care services to children and their families by the local social service agency when the agency has placement and supervisory responsibilities.

2. The purpose of foster care services to children is to provide substitute family or group care for a child while an intensive effort is made to correct or improve the condition necessitating placement in order to reunite the family or, in the failure of this, to provide some other permanent plan.

3. Foster care services shall be provided only after services aimed at preventing the need for placement of a child in foster care have been considered, provided, or refused by the child's family.

B. Definitions.

1. Foster Care Service: The service which provides substitute twenty-four-hour-a-day family or group home care for a planned period of time, provides experiences and conditions which promote normal growth, and provides to the child, the child's family, and the foster parents casework services and other treatment or community services.

2. Local Social Service Agency: Local agency under the authority of the County Welfare Board or Human Service Board or Board of County Commissioners which is responsible for social services.

3. State Agency: Minnesota State Department of Public Welfare.

4. Foster Family Home: A family licensed under 12 MCAR 2.001 to provide twenty-four-hour-a-day care in their home to children who are unrelated to the family.

5. Group Home. A facility licensed by the Minnesota Department of Public Welfare as a group family foster home under 12 MCAR 2.001 or as a group home under 12 MCAR 2.008 or certified by the Department of Corrections as a group foster home or licensed or approved by an Indian tribe with the authority to do so.

6. Voluntary Placement: Placement in which the local social service agency assumes responsibility for the placement of a child after the agency has determined, in conjunction with the child's parent(s) or legal guardian and the child, if possible, that such placement is in the best interest of the child and his family.

7. Legal Custody: Legal custody is defined by law as the right to care, custody and control of a child and requires the removal of the child from his or her parent(s) or legal guardian for the child's welfare and/or safety. Legal custody is for a specified length of time, but not to exceed one year.

8. Custodian: Any persons who is under a legal obligation to provide care and support for a child.

9. Relative: Any of the following persons related to the child by marriage, blood or adoption: parent, grandparent, brother, sister, stepparent, stepsister, stepbrother, niece, nephew, uncle, or aunt.

C. Services to children in foster care.

1. Service delivery.

a. Placement in licensed facility. With the exception of placement in a relatives' home, the local social service agency shall place a child in a licensed foster family or group home except in emergencies when an unlicensed foster home may be selected. In these emergency cases, the agency shall assure that application for licensure is made within 30 days of the child's placement if the child is expected to remain in the home for 30 days or longer.

b. Legal basis for placement.

(1) The local social service agency shall obtain the proper authority to place a child in foster care, either through written consent of the child's parent(s) or legal guardian (voluntary placement) or with an order of the court (legal custody).

(2) Responsibilities in court ordered and voluntary placements.

(a) When legal custody is given to a local social service agency, that agency shall:

(i) avoid precipitous movement of the child without orderly pre-placement planning and preparation. When removal of the child is not emergent, the agency shall request permission of the court for time to place the child in an orderly fashion and, upon being granted this request, shall proceed to effect the placement according to the requirements of rule and statute.

(ii) provide information, evaluations and recommendations to assist the court in arriving at appropriate decisions and actions with regard to the child and the child's family;

(iii) provide the court written reports and recommendations prior to the expiration of any order giving the agency responsibility for the child;

(iv) inform the foster parents of court hearings which pertain to any foster child in their care;

(v) report to the court the placement of a child out of the jurisdiction of the court. Copies of such notification shall be forwarded to the child's parent(s) or legal guardian;

(vi) request the court to order any special treatment and care needed by the child if the child's parent or legal guardian fails to provide it;

(vii) obtain for its record a copy of the court's findings, decisions, disposition of the case and any other information which may aid the county in providing services to the child;

(viii) obtain the permission of the court before terminating foster care and returning the child to his or her parent(s);

(ix) obtain the written consent of the parent(s) or legal guardian and the court if a child under legal custody is to be placed in a facility outside of the state. If the parent(s) or legal guardian refuse or fail to give consent, the court's written consent is sufficient.

(b) When a child is placed in foster care by voluntary agreement between the local social service agency and the parent(s) or legal guardian, the agency shall:

(i) obtain the parent(s)' or legal guardian's written consent prior to the placement;

(ii) require the parent(s) or legal guardian to agree to provide reasonable notice before seeking return of the child from placement so that the agency may prepare for the orderly return of the child in no more than 30 days.

c. Major decisions affecting child. The local social service agency shall obtain the written consent of the child's parent(s) or legal guardian for major decisions affecting the child. If the parent(s) or legal guardian fail to give consent, and it is essential to the child's health or well-being, a court order shall be obtained which will provide the authority to secure whatever is needed for the child. Whenever there is a question as to what shall be regarded as a decision requiring parental or judicial consent, the agency shall consult the court.

d. Relationship to other agencies and institutions. The local social service agency shall establish formalized agreements with those agencies and institutions which, in conjunction with the local social service agency, are serving a particular child. The purpose of such agreements is to ensure optimum cooperative planning and provision of services.

(1) Schools.

(a) Prior to foster care placement, the local social service agency shall involve in the placement planning the child's present school and the one which he may attend in order to assure that the child's social, educational and extracurricular needs will be met. The agency shall initiate contact with the schools.

(b) If a child is to remain in the same school, the local social service agency shall notify the school at such time as the child is to be placed in foster care or when the child is to be moved to another facility.

(2) Other social service agencies.

(a) The local social service agency shall not place a child in another county without the approval of the other county local social service agency.

(b) When a local social service agency requests services of another agency in effecting a placement, or receives such a request for service from another agency, there shall be a written agreement defining the responsibilities for services to be delivered, methods for evaluation and procedures for handling foster care payments.

e. Group homes. The local social service agency shall provide for the utilization of group homes for children requiring such services.

(1) The choice of facility and length of stay shall be determined by the needs of the child for the specific services offered by the facility.

(2) The child's service plan shall state the rationale for placement of the child in a group facility.

(3) The local social service agency shall provide or arrange for services not available in the group facility.

f. Practice components of service. All local social service agencies, in delivering foster care services, shall:

(1) provide at least one pre-placement visit for the child to the foster or group home. This requirement is waived for newborn infants being placed from a hospital into a foster home.

(2) provide help to the child in his initial adjustment to the foster home through the placement worker's visit to the home within four days of the placement;

(3) plan with the parent(s) for a parent visit with the child within a week of the placement;

(4) provide casework to the child on a planned regular basis, at least twice a month for the first three months and as frequently as necessary thereafter.

(5) provide or arrange for casework and other indicated services to the child's family on a planned regular basis, and at least twice a month, to help them:

(a) fulfill their roles and responsibilities as parents to the placed child;

(b) remedy the conditions which necessitated placement;

(c) prepare for the child's return home or, if this return home is not possible, involve them in making an alternative plan;

(d) develop and maintain a constructive relationship with their child through a carefully planned and executed program of communication and visitation;

(6) provide assistance to the foster parents or group home operators with their responsibilities of incorporating the child into their family or facility. The foster parents and group home operators shall be provided a telephone number and an additional back-up number to call during the hours the agency is closed.

(7) provide follow-up services to the family and child when the child returns home to assist with the adjustment and to prevent recurrence of the circumstances which led to placement;

(8) evaluate, in conjunction with the foster parents or group home operators, the placement experience when a child leaves the facility to ascertain the facility's potential for future placements.

Those requirements listed under C.1.f. "Practice components of service" which may not be applicable for children under state guardianship as dependent/neglected or for placements of children in emergency facilities in crisis situations may be waived. The agency may also waive those requirements under C.1.f. "Practice components of service" which may be contrary to the child's best interests but must document the rationale behind such waivers.

g. Provision for meeting health needs. The local social service agency shall meet the health and dental needs of every child by:

(1) assuring that each child has a health examination prior to placement or, in emergency situations, within two weeks thereafter;

(2) assuring that a child's ongoing health and dental needs are met;

(3) assuring that the Early and Periodic Screening, Diagnosis and Treatment (EPSDT) services are offered and/or provided pursuant to 12 MCAR 2.061 to all children eligible for the Medical Assistance Program;

(4) providing the foster or group home with information about the child's immunizations and other pertinent health data with instructions for the record to be kept up-to-date;

(5) providing to the foster or group home a written authorization for obtaining routine health care for the child with clear instructions as to who is to provide the care and how the billing is to be handled.

h. Service plan and review. For those children who are placed in foster family homes, group homes or relatives' homes (unless placement with the relative is planned to be permanent) and for whom the local social service agency has placement and/or supervisory responsibility, the agency shall comply with the following requirements:

(1) Service Plan.

(a) The agency shall develop, in conjunction with the child's parent(s), or other custodian, the child's legal guardian, and if possible, the child, a service plan which includes:

(i) the specific reasons for the placement of the child in a foster home, including a description of the problems or conditions in the home of the parent or parents which necessitated removal of the child from his home;

(ii) the specific actions to be taken by the parent or parents of the child to eliminate or correct the problems or conditions identified in clause (1), and the time period during which the actions are to be taken;

(iii) the financial responsibilities and obligations, if any, of the parents for the support of the child during the period the child is in the foster home;

(iv) the visitation rights and obligations of the parent or parents during the period the child is in the foster home;

(v) the social and other supportive services to be provided to the parent or parents of the child, the child, and the foster parents during the period the child is in the foster home;

(vi) the date on which the child is expected to be returned to the home of his parent or parents;

(vii) the nature of the effort to be made by the social service agency responsible for the placement to reunite the family.

(viii) the actions to be taken for meeting the special educational needs of the child including the responsibilities of the foster parents and the child's parents.

(b) The agency shall advise the parents of their right to receive assistance from any person or social service agency and their right to legal counsel in the preparation of the service plan.

(c) In those situations where the child's condition or behavior may require change before placement can be terminated, the service plan shall include actions to be taken or progress to be made by the child while in placement.

(d) The visitation plan shall be detailed and shall include, but not be limited to, the date and conditions of the first visit, specific days of visits, specific hours for beginning and ending of visits and special conditions of visitation.

(e) The agency shall explain to the parents that if the parents are unable to correct the conditions necessary for their child's return home, they could lose their parental rights.

(f) If the agency cannot comply with any service plan requirement, the agency shall document the reason in the record.

(2) Six-month administrative review of service plan. The local social service agency shall provide an administrative, supervisory, or conference review at least every six months for each child in placement to determine the appropriateness and adequacy of the service plan. The review shall include persons other than or in addition to the service worker responsible for the case. The administrative review may be waived if the court has reviewed the service plan within that six-month period.

(3) Review of service plan with parents and child. Within 180 days of the child's initial placement, if the child is still in foster care, the local social service agency shall review the service plan, including in the review all persons involved in the plan's preparation. The review may be waived if the court has reviewed the plan within the 180 day period.

i. Child's or foster parents' absence from foster home. The local social service agency's permission must be obtained any time the foster family and/or child are to be away from the licensed foster care facility within the state for a period exceeding three nights or, if the child leaves the state, for any period of time. However, the agency may provide specifically defined blanket permission for departures from the state where a family regularly departs the state for an identified routine purpose.

j. Protecting the child's heritage. The local social service agency shall provide for the preservation of the child's religious, racial, cultural and ethnic heritage through:

(1) placement if possible and indicated in a foster home of similar background;

(2) education of the foster parents as to the importance of the heritage to the child;

(3) education of the foster parents as to the customs and values of the particular group;

(4) assistance to the foster parents or group home operators, so that they will be better able to provide a home which is accepting and supportive of the child's cultural, religious, racial, or ethnic identity.

k. Financial arrangements and funding considerations.

(1) The local social service agency and the parent(s) shall evaluate the various resources available to meet the costs of care.

(2) Parent(s) shall pay for the cost of care in a manner consistent with their ability to do so and with any applicable state laws or rules.

(3) If the local social service agency establishes that the parent(s) are able to meet some or all of the costs of care, but are unwilling to do so, the following courses of action are indicated:

(a) For a child under legal custody, the local social service agency shall make a written report to the court for determination by the judge of the parents' responsibility to reimburse the agency.

(b) For a child placed by voluntary agreement, the local social service agency shall file a dependency or neglect petition with the court and ask the court to establish the parents' responsibility to reimburse the agency.

(4) The local social service agency shall make the payments directly to foster parents and other providers of care.

l. Rates paid to foster home.

(1) Rates paid for children in foster care shall be uniform regardless of funding source, and maintenance rates paid for children in foster care shall be established pursuant to 12 MCAR 2.044. This requirement is waived when the local social service agency is being reimbursed pursuant to 12 MCAR 2.030, Cost of Care for Mentally Retarded or Epileptic, or Emotionally Handicapped Children.

(2) When foster care is provided for a child through contract with another public or private agency, maintenance payments to the cooperating agency's foster care facilities shall be determined according to 12 MCAR 2.044. If the local social service agency is contracting for administrative or social service costs, payments to the cooperating agency shall be an amount which is additional to the maintenance rates established in 12 MCAR 2.044.

m. Foster care benefits up to age 21.

(1) Within the six months prior to a child's 18th birthday, the local social service agency shall advise the child, the child's parents or legal guardian, and the foster parents of the availability of benefits up to age 21 of the foster care program.

(2) Upon the request of a person between the ages of 18 and 21 who is not under state guardianship as dependent/neglected and who had been receiving foster care benefits immediately prior to his or her 18th birthday and who is in foster care at the time of the request, or upon the request at any time between the ages of 18 and 21 of a person who had been under state guardianship as dependent/neglected, the local social service agency shall develop, in conjunction with the foster child and other appropriate parties, a specific plan related to that person's vocational, educational, social or maturational needs and shall assure that any maintenance or counseling benefits are tied to that plan.

D. Foster home recruitment and development.

1. The local social service agency shall attempt to recruit and license a sufficient number and variety of foster homes in order to be able to meet the particular needs of each child needing placement.

2. The local social service agency shall provide for the development of foster parents by:

a. provision of training on an ongoing basis;

b. provision of opportunities to attend educational workshops and conferences;

c. provision of opportunities for recognition.

3. The local social service agency shall involve the foster parents on an advisory basis in the development of policies and procedures pertaining to foster care.

4. Before recommendation for relicensure, the local social service agency shall evaluate with the foster parents factors in the home pertinent to continued utilization of the home as a foster care resource. These factors shall include the services provided by both the foster family and the agency and an evaluation of the year's placement experiences. A copy of the evaluation shall be given to the foster family.

5. The local social service agency shall assess the foster care applicant's or foster care provider's capacity for accepting children of another race, religion, color or national origin. If the family's reason for refusing to accept such children is based upon racism or bigotry, that is, negative attitudes toward people of a particular race, religion, color or national origin, the agency shall, in the case of a new applicant, refuse to recommend the home for licensure. If the agency ascertains the existence of racism or bigotry in a licensed foster family home, the agency shall, at time of relicensure, establish a plan for phasing the home out of the foster care program and no additional children shall be placed in the home.

ED/p

MS 393.07 — stat. auth. AG working copy ADOPTED - 207

MINNESOTA RULE DPW 207 - PROTECTIVE SERVICES TO CHILDREN

A. Introduction

1. This rule governs the administration and provision of protective services to children through local social services agencies.

2. The purpose of a child protective service system is to carry out community responsibility for safeguarding the rights and welfare of children whose parents/caretakers are unable or unwilling to do so, or whose parents/caretakers actively violate their children's rights or jeopardize their welfare.

B. Definitions

1. Local Social Service Agency: Local agency under the authority of the county welfare or human services board or county board of commissioners which is responsible for social services.

2. State Agency: Minnesota Department of Public Welfare.

C. Administration and organization of protective services program.

1. Local social service agency responsibility in the delivery of child protective services.

a. Any child in Minnesota who is in need of protection is to receive such service in the county in which the child lives or is found, irrespective of family income and legal or poor relief settlement of the child or family.

b. The local social service agency must accept all complaints alleging that a child has been physically or sexually abused or neglected. Neglect includes conditions or actions which threaten either the child's physical health or the child's mental health. Upon receiving such complaints, the local social service agency shall immediately notify the local police or sheriff's department.

(1) All reports shall be assessed at the time they are received to determine the agency's initial response.

(a) For complaints alleging that a child is abandoned, life threatened, or likely to experience physical injury due to abuse an immediate on site contact with the family and/or child is required.

(b) When a child is not in need of immediate care but is allegedly physically or sexually abused, the local social service agency shall contact the family within 24 hours.

(c) When child is not in need of immediate care but is allegedly neglected, the local social service agency shall contact the family within 72 hours.

(d) Reports for which no response is required include those which do not fall within the parameters of child maltreatment (although a referral to a more appropriate agency may be made); those which do not contain enough information to be investigated; or those which concern a complaint that has recently been investigated and determined to be unsubstantiated.

(2) Where contacts with the family are required the child protection worker shall assess the validity of the complaint.

(3) If upon the initial assessment there appears to be substance to the complaint, the child protection worker shall attempt to determine the following:

(a) the risk posed if the child or children involved remain in the home environment;

(b) the current physical and/or emotional condition of the child or children involved, as well as an assessment of prior injuries;

(c) the name, address, age, sex and relationship of the alleged perpetrators to the involved child/children;

(d) family composition, including the name, age, and sex of the child or children involved.

(4) If the child protection worker determines that neither neglect nor abuse are present but that the family may be experiencing problems, the worker may:

(a) offer the family such services as may be appropriate;

(b) inform the family of the agency's availability and willingness to work with the family upon request.

(5) If the child protection worker determines that the child is in need of immediate care due to circumstances or surroundings that jeopardize the child's physical or mental health or welfare, the parents must be given the opportunity to voluntarily place the child or seek an alternative that, in the worker's judgment, assures the safety of the child.

(6) If when given the opportunity, the parents are unwilling or unable to cooperate, the child protection worker shall petition the court for immediate custody of the child or seek the assistance of a peace officer in taking the child into custody.

c. Where the need for protective intervention has been established, the local social service agency shall, whenever possible, provide services that preserve the child within the family unit while at the same time assuring the child a safe environment. Such services may include, but are not limited to:

(1) family counseling

(2) homemaking services

(3) referral to parent support organizations or to courses in parenting or child care such as may be available in the community.

d. If services necessary to provide the child a safe environment are rejected, the child protection worker shall petition the court for authorization to intervene.

e. When the need for removal of a child from its home is considered necessary but not emergent, the local social service agency shall request permission of the juvenile court for sufficient time to place the child in an orderly fashion.

(1) When a child is under legal custody and has been removed from its home, the local social service agency shall obtain the consent of the child's parents for major decisions affecting the child. If the parents fail to consent, and the decision is essential to the child's health and safety, a court order may be obtained.

(2) The local social service agency shall obtain the written consent of the child's parents, and a court order, if a child under legal custody is to be placed in a facility outside the state. If the parents refuse or fail to give consent, a court order is sufficient.

(3) The local social service agency shall provide the court written reports and recommendations at such times as the court may direct or prior to the expiration of any order giving it responsibility for a child. Such reports shall contain information sufficient to support the recommendation and to enable the court to make a decision in the child's best interest.

f. Local social service agency responsibility in accepting reports of acts of prostitution or involvement in the production of obscene material or performances by persons under 18 years of age.

(1) Upon receiving a report of juvenile prostitution or juveniles involved in the production of obscene material or performances, the local social service agency shall:

(a) assess the victim's circumstances to determine the need for protective services;

(b) provide counseling and assistance to the victim in order to encourage and support her/him in discontinuing in prostitution; or involvement in the production of obscene acts or material;

(c) offer the victim and the victim's family such services as may be needed to:

(i) protect the victim

(ii) preserve or reestablish family relationships.

(d) If such services are rejected, inform the victim and family of the agency's responsibility and authority to seek juvenile court intervention.

(2) If immediate custody is necessary to protect the victim or to restrain the victim from engaging in prostitution, or involvement in in the production of obscene acts or material, the protective service worker shall request a juvenile court order granting the agency temporary legal custody.

g. When child maltreatment is reported in a state supervised or licensed facility, including a foster home, the local social service agency shall:

(1) immediately contact the facility to determine the validity of the report;

(2) where such reports are valid, the local social service agency shall:

(a) assess present risk to the child and assure steps are taken to protect the child;

(b) as soon as possible, inform the child's parents or guardians of the incident;

(c) when an incident involves a child placed out of his/her home county, inform the agency responsible for the child's placement;

(d) make an oral report to the state agency within 24 hours. Such reports shall include:

(i) the identity of facility in which the incident occurred, the name, age and sex of the victim and the name and status of the alleged perpetrator if known;

(ii) the nature and extent of the child's injuries, measures taken to assure necessary treatment and protection, and the name of the protective services worker responsible for investigating the incident.

h. Every incident of suspected physical or sexual abuse or neglect reported to the local social service agency shall be reported to the state agency on forms provided by the state agency.

(1) Such reports shall be sent to the state agency within 20 days of receipt of the report.

(2) Reports to the state agency are for statistical information only. The identity of the victim, the victim's family and suspected perpetrator should not be included on the copy of the report sent to the state agency.

i. The local social service agency shall assess and classify and record all reports as either substantiated, unsubstantiated, or unable to substantiate within 90 days of receiving the initial report. At the conclusion of the assessment the subjects of the report shall be notified in writing of the agency's determination of the classification of the report. The subjects of the report shall also be informed of their right to review the report subject to applicable Minnesota law.

(1) Records relating to substantiated reports.

(a) Records relating to reports made pursuant to Minn. Stat. 626.556 which are supported by evidence and information obtained during the assessment, and are determined by the agency to be substantiated, shall be destroyed seven years following the date of the final entry in the case record.

(b) The name of the individual submitting a report which is determined to be substantiated shall be disclosed only upon court order, or with the knowledge and consent of the person making the report.

(2) Records relating to unsubstantiated or false reports made pursuant to Minn. Stat. 626.556 shall be destroyed immediately, upon determination that they are unsubstantiated and the name of the individual submitting the report shall be disclosed upon request of the subject of the report.

(3) Records relating to reports which upon initial assessment cannot be substantiated to the satisfaction of the local social service agency may be kept for one year. Since there is substance to the reports, and they are, therefore, not unsubstantiated, the name of the individual making the report shall not be disclosed unless the report is later found to be unsubstantiated, or one year passes, or with the knowledge and consent of the person making the report.

2. Administrative requirements.

a. The local social service agency must provide for the availability of protective services 24 hours per day, seven days a week, for response to emergencies.

b. Every local social service agency shall designate a member of staff to be responsible for the protective services program.

c. Each agency shall designate a licensed facility which can be available seven days a week for the emergency care of abused or neglected children.

(1) The local social service agency must designate a staff member to be responsible for placements in such facility under such conditions as it deems necessary.

(2) Emergency placements shall not exceed 30 days.

d. Every local social service agency shall coordinate its child protection activities with other agencies involved with the child's family and may:

(1) participate as a member of a team utilizing a multidisciplinary approach;

(2) not assign its primary statutory responsibility to another agency.

IR/hgs

APPROVED AS TO FORM AND LEGALITY

APR 29 1980 19____

WARREN SPANNAUS, ATTORNEY GENERAL

BY _____

SPECIAL ASSISTANT ATTORNEY GENERAL

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED
MAY - 2 1980

Joan Anderson Growe
Secretary of State

2:30 p.m.

Our File #586

ADMIN 1000 (Rev. 1/78)
SF-00006-01

STATE OF [redacted]NESOTA

DEPARTMENT ATTORNEY GENERAL

Office Memorandum

TO : FILE

DATE: April 29, 1980

FROM : JERRY S. ANDERSON
Special Assistant
Attorney General

PHONE: 296-1288

SUBJECT: Department of Public Welfare's Rules 204 (Foster Care) and 207 (Protective Services to Children)

During a telephone conversation on April 28, 1980, I advised Alan Held, AG attorney for D.P.W., that the above-referenced rules appeared to have a couple of typographical errors. He agreed to send a memo authorizing me to make the corrections. Therefore, I approved the rules on this date and will file them with the Secretary of State upon receipt of Alan Held's memo.

In addition to the above corrections, we discussed the statutory authority for the promulgation of Rule 207. Alan pointed out that Minn. Stat. sec. 393.07, which was not mentioned in the record, was a more explicit grant of authority for the Commissioner of Public Welfare to make rules. Based on this section, in combination with the other statutes cited in the record and federal funding requirements, I concluded that there was statutory authority to make Rule 207.

JSA/bw

Proposed Amendments

12 MCAR 2.204, Foster Care - Children

A. Introduction.

1. This rule governs the administration and provision of foster care services to children and their families by the local social service agency~~.~~ when the agency has placement and supervisory responsibilities.

2. The purpose of foster care services to children is to provide temporary substitute family or group care for a child while an intensive effort is made to correct or ~~ameliorate~~ improve the condition necessitating placement in order to reunite the family or, in the failure of this, to provide some other permanent plan.

3. Foster care services shall be provided only after services aimed at preventing the need for placement of a child in foster care have been considered, provided, or refused by the child's family.

~~3.~~B. Definitions.

1. Foster Care Service: The ~~twenty-four-hour-a-day~~ service which provides substitute twenty-four-hour-a-day family or group home care for a planned period of time, provides experiences and conditions which promote normal growth, and provides to the child, ~~and his~~ the child's family~~.~~, and the foster parents~~a full range of~~ casework services and other treatment or community services geared toward reuniting the family.

2. Local Social Service Agency: Local agency under the authority of the County Welfare Board or Human Service Board or Board of County Commissioners which is responsible for social services.

3. State Agency: Minnesota State Department of Public Welfare.

4. Foster Family Home: A family ~~home~~ licensed under 12 MCAR 2.001 to provide twenty-four-hour-a-day care in their home to children who are unrelated to the family.

~~5.--Group Home.--A specialized facility which provides care on a twenty-four-hour-a-day basis for a group of not more than ten children.~~

5. Group Home. A facility licensed by the Minnesota Department of Public Welfare as a group family foster home under 12 MCAR 2.001 or as a group home under ~~12 MCAR 2.008~~ or certified by the Department of Corrections as a ~~juvenile judges'~~ group foster home or licensed or approved by an Indian tribe with the authority to do so.

6. Voluntary Placement: Placement in which the local social service agency assumes responsibility for the placement of a child after ~~it~~ the agency has determined, in conjunction with the child's parent(s), and the child, if possible, or legal guardian that such placement is in the best interest of the child~~.~~ and his family. ~~The agency must obtain the parent(s) written consent.~~

Agency Ex. 3A

7. Legal Custody: Legal custody is defined by law as the right to care, custody and control of a child and requires the removal of the child from his or her parent(s) or legal guardian for ~~his~~ the child's welfare and/or safety. Legal custody is for a specified length of time, but not to exceed one year.

8. Custodian: Any person who is under a legal obligation to provide care and support for a child.

9. Relative: Any of the following persons related to the child by marriage, blood or adoption: parent, grandparent, brother, sister, stepparent, stepsister, stepbrother, niece, nephew, uncle, or aunt.

~~B.~~C. Services to children in foster care.

1. Service delivery.

a. Placement in licensed facility. With the exception of placement in a relatives' home, the local social service~~An~~ agency ~~must~~ shall place a child in a licensed foster family or group home except in emergencies when an unlicensed foster home may be selected. In these emergency cases, the agency shall assure that application for licensure ~~must be~~ is made within 30 days ~~of~~ of the child's placement if the child is expected to remain in the home for 30 days or longer.

b. Legal basis for placement.

(1) The local social service agency ~~must have~~ shall obtain the proper authority to place a child in foster care, either through written consent of the child's parent(s) or legal guardian (voluntary placement) or with an order of the court (legal custody).

(2) Responsibilities in court ordered and voluntary placements.

~~(2)~~(a) When legal custody is given to a local social service agency, that agency shall:

~~(a)~~(1) avoid precipitous movement of the child without orderly pre-placement planning and preparation. When removal of the child is not emergent, the agency shall request permission of the ~~juvenile~~ court for time to place the child in an orderly fashion and, upon being granted this request, ~~may~~ shall proceed ~~to do so~~ to effect the placement according to the requirements of rule and statute.

~~(a)~~(ii) provide information, evaluations and recommendations to assist the court in arriving at appropriate decisions and actions with regard to the child and ~~his~~ the child's family;

(iii) provide the ~~juvenile~~ court written reports and recommendations prior to the expiration of any order giving the agency responsibility for the child;

(iv) inform the foster parents of court hearings which pertain to any foster child in their care;

~~(b)~~(v) report to the court the placement of a child out of the jurisdiction of the court. Copies of such notification shall be forwarded to the child's parent(s)~~.~~ or legal guardian;

~~(c)~~(vi) request the court to order any special treatment and care needed by the child if the child's parent or legal guardian fails to provide it;

~~(d)~~(vii) obtain for its record a copy of the court's findings, decisions, disposition of the case and any other information which may aid the county in providing services to the child;

~~(b)~~(viii) obtain the permission of the ~~juvenile~~ court before terminating foster care and returning the child to his or her parent(s);

~~(c)--Obtain-the-written-consent-of-the-child's-parent(s)-for-major-decisions-affecting-the-child;-such-as-nonemergency-surgery.--If-the-parent(s)-fail-to-give-consent;-and-it-is-essential-to-the-child's-health-or-well-being;-a-court-order-shall-be-obtained-which-will-provide-the-authority-to-secure-whatever-is-needed-for-the-child.-Whenever-there-is-a-question-as-to-what-shall-be-regarded-as-a-decision-requiring-parental-or-judicial-consent;-the-agency-shall-consult-the-court.~~

~~(d)~~(ix) obtain the written consent of the parent(s) or legal guardian and the court if a child under legal custody is to be placed in a facility outside of the state. If the parent(s) or legal guardian refuse or fail to give consent, the court's written consent is sufficient.

(b) When a child is placed in foster care by voluntary agreement between the local social service agency and the parent(s), or legal guardian the agency shall:

(i) obtain the parent(s)' or legal guardian's written consent prior to the placement;

(ii) require the parent(s) or legal guardian to agree to provide 30 days' notice to the agency before removing the child from placement.

c. Major decisions affecting child. The local social service agency shall ~~(c)Obtain~~ obtain the written consent of the child's parent(s) or legal guardian for major decisions affecting the child~~;--such-as-non-emergency-surgery.~~ If the parent(s) or legal guardian fail to give consent, and it is essential to the child's health or well-being, a court order shall be obtained which will provide the authority to secure whatever is needed for the child. Whenever there is a question as to what shall be regarded as a decision requiring parental or judicial consent, the agency shall consult the court.

~~c.~~d. Relationship to other agencies and institutions. The local social service agency shall establish formalized agreements with those agencies and institutions which, in conjunction with the local social service agency, are serving a particular child. The purpose of such agreements is to ensure optimum cooperative planning and provision of services.

~~(1)--Juvenile-Court.--The-local-social-service-agency-shall:~~

~~(2)~~(1) Schools.

(a) Prior to foster care placement, the local social service agency shall involve in the placement planning the child's present school and the one which he may attend in order to assure that the child's social, educational and extracurricular needs will be met. The agency shall initiate contact with the schools.

~~(i)--The-local-social-service-agency-is-responsible for-initiating-contact-with-the-schools;~~

~~(ii)--The-responsibility-for-meeting-the-child's-educational-needs-is-that-of-the-school-district-in-which-the-child-resides;~~

(b) If a child is to remain in the same school, the local social service agency shall notify the school at such time as the child is to be placed in foster care or when the child is to be moved to another facility.

~~(3)~~(2) Other social service agencies.

(a) The local social service agency shall not place a child in another county without the approval of the other county local social service agency.

~~(b)--The-local-social-service-agency-shall-not-evaluate for-licensing-a-foster-home-in-another-county-without-the-approval-of-the other-county's-local-social-service-agency;~~

~~(c)~~(b) When a local social service agency requests services of another agency in effecting a placement, or receives such a request for service from another agency, there shall be a written agreement defining the responsibilities for services to be delivered, methods for evaluation and procedures for handling foster care payments.

~~d.~~e. Group homes. The local social service agency shall provide for the utilization of group homes for children requiring such services.

(1) The choice of facility and length of stay shall be determined by the needs of the child for the specific services offered by the facility.

(2) The child's service plan shall state the rationale for placement of the child in a group facility.

(3) The local social service agency shall provide or arrange for services not available in the group facility.

~~e.~~f. Practice components of service. All local social service agencies, in delivering foster care services, shall:

~~(1)--Involve-the-parent-and-child-in-the-development-of-the service-plan;~~

~~(2)~~(1) provide at least one pre-placement visit for the child to the foster or group home. This requirement is waived for newborn infants being placed from a hospital into a foster home.

(2) provide help to the child in his initial adjustment to the foster home through the placement worker's visit to the home within four days of the placement;

(3) plan with the parent(s) for a parent visit with the child within a week of the placement;

~~(3)--Provide-casework-and-other-indicated-services-to-all children-regardless-of-funding-source;~~

(4) provide casework to the child on a planned regular basis, at least twice a month for the first three months and as frequently as necessary thereafter.

~~(4)~~(5) provide or arrange for casework and other indicated services to the child's family on a planned regular basis, and at least twice a month~~;~~ to help them:

(a) ~~Help-them~~ fulfill their roles and responsibilities as parents to the placed child;

(b) ~~Help-them-to~~ remedy the conditions which necessitated placement;

(c) ~~Help-them~~ prepare for the child's return home or, if this return home is not possible, involve them in making an alternative plan;

~~(5)~~(d) ~~Provide-ongoing-help-to-the-child-and-his-natural--family-toward-developing-and-maintaining~~develop and maintain a constructive relationship with their child through a carefully planned and executed program of communication and visitation;

(6) provide ~~ongoing~~ assistance to the foster parents or group home operators with their responsibilities of incorporating the child into their family or facility. The foster parents and group home operators shall be provided a telephone number and an additional back-up number to call during the hours the agency is closed.

(7) provide follow-up services to the family and child when the child returns home to assist with the adjustment and to prevent recurrence of the circumstances which led to placement;

(8) evaluate, in conjunction with the foster parents or group home operators, the placement experience when a child leaves the facility to ascertain the facility's potential for future placements.

Those requirements listed under C.1.f. "Practice components of service" which may not be applicable for children under state guardianship as dependent/neglected or for placements of children in emergency facilities in crisis situations may be waived. The agency may also waive those requirements under C.1.f. "Practice components of service" which may be contrary to the child's best interests but must document the rationale behind such waivers.

~~f.~~g. Provision ~~of~~ for meeting ~~medical~~ health needs. The local social service agency shall meet the ~~medical~~ health and dental needs of every child by:

(1) assuring that each child has a ~~pre-placement physical~~ health examination prior to placement or, in emergency situations, within two weeks thereafter; ~~in emergency situations;~~

(2) assuring that a child's ongoing ~~medical~~ health and dental needs are met;

(3) assuring that the Early and Periodic Screening, Diagnosis and Treatment (EPSDT) services are provided pursuant to 12 MCAR 2.061 to all children eligible for the Medical Assistance Program;

~~(3)~~(4) providing the foster or group home with information about the child's immunizations and other pertinent ~~medical~~ health data with instructions for the record to be kept up-to-date;

~~(4)~~(5) providing to the foster or group home a written authorization for obtaining routine ~~medical~~ health care for the child with clear instructions as to who is to provide the care and how the billing is to be handled.

h. Service plan and review. For those children who are placed in foster family homes, group homes or relatives' homes (unless placement with the relative is planned to be permanent) and for whom the local social service agency has placement and/or supervisory responsibility, the agency shall comply with the following requirements:

(1) Service Plan.

(a) The agency shall develop, in conjunction with the child's parent(s), or other custodian, the child's legal guardian, and, if possible, the child, a service plan which includes:

(i) the specific reasons for the placement of the child in a foster home, including a description of the problems or conditions in the home of the parent or parents which necessitated removal of the child from his home;

(ii) the specific actions to be taken by the parent or parents of the child to eliminate or correct the problems or conditions identified in clause (1), and the time period during which the actions are to be taken;

(iii) the financial responsibilities and obligations, if any, of the parents for the support of the child during the period the child is in the foster home;

(iv) the visitation rights and obligations of the parent or parents during the period the child is in the foster home;

(v) the social and other supportive services to be provided to the parent or parents of the child, the child, and the foster parents during the period the child is in the foster home;

(vi) the date on which the child is expected to be returned to the home of his parent or parents;

(vii) the nature of the effort to be made by the social service agency responsible for the placement to reunite the family.

(b) The agency shall advise the parents of their right to receive assistance from any person or social service agency and their right to legal counsel in the preparation of the service plan.

(c) In those situations where the child's condition or behavior may require change before placement can be terminated, the service plan shall include actions to be taken or progress to be made by the child while in placement.

(d) A detailed visitation plan shall be prepared by the agency and shall include, but not be limited to, the date and conditions of the first visit, specific days of visits, specific hours for beginning and ending of visits and special conditions of visitation.

(e) The agency shall explain to the parents that if the parents are unable to correct the conditions necessary for their child's return home, they could lose their parental rights.

(f) If the agency cannot comply with any service plan requirement, the agency shall document the reason in the record.

(2) Six-month administrative review of service plan. The local social service agency shall provide an administrative, supervisory, or conference review at least every six months for each child in placement to determine the appropriateness and adequacy of the service plan. The review shall include persons other than or in addition to the service worker responsible for the case. The administrative review may be waived if the court has reviewed the service plan within that six-month period.

(3) Review of service plan with parents and child. Within 180 days of the child's initial placement, if the child is still in foster care, the local social service agency shall review the service plan, including in the review all persons involved in the plan's preparation. The review may be waived if the court has reviewed the plan within the 180 day period.

~~h.~~i. Child's or foster parents' absence from foster home. The local social service agency's permission must be obtained any time the foster family and/or child are to be away from the licensed foster care facility within the state for a period exceeding three nights~~.~~ or, if the child leaves the state, for any period of time.

~~i.~~j. Protecting the child's heritage. The local social service agency shall provide for the preservation of the child's religious, racial, cultural and ethnic heritage through:

(1) placement if possible and indicated in a foster home of similar background;

(2) education of the foster parents as to the importance of the heritage to the child;

(3) education of the foster parents as to the customs and values of the particular group;

(4) ~~Help~~ assistance to the foster parents or group home operators, ~~if indicated, in their working with the child with regard to his cultural~~, so that they will be better able to provide a home which is accepting and supportive of the child's cultural, religious, racial, or ethnic identity.

~~j.~~k. Financial arrangements and funding considerations.

~~(2)~~(1) The local social service agency and the parent(s) shall evaluate the various resources available to meet the costs of care.

~~(3)~~(2) ~~In accordance with applicable Minnesota law,~~ Parent(s) shall pay for the cost of care in a manner consistent with their ability to do so.

~~(4) When a child's parent(s) are unable to pay the costs for foster care, the responsibility shall be assumed by the local social service agency of the child's legal settlement.~~

~~(5)~~(3) If the local social service agency establishes that the parent(s) are able to meet some or all of the costs of care, but are unwilling to do so, ~~it shall make a written report to the court for determination by the judge of the parents' responsibility to reimburse the agency.~~ the following courses of action are indicated:

(a) For a child under legal custody, the local social service agency shall make a written report to the court for determination by the judge of the parents' responsibility to reimburse the agency.

(b) For a child placed by voluntary agreement, the local social service agency shall file a dependency or neglect petition with the court and ask the court to establish the parents' responsibility to reimburse the agency.

~~(1)~~(4) The local social service agency ~~is responsible for~~ shall make the payments directly to foster parents and other providers of care.

~~(6) In any dispute as to county of financial responsibility the local social service agency providing or arranging services shall pay for such care and services pending final determination of the county of financial responsibility.~~

~~(7) When no provision is otherwise made by law for the care, examination or treatment of a child, the costs shall be paid by the welfare fund of the responsible county.~~

~~k.~~l. Rates paid to foster home.

(1) Rates paid for children in foster care shall be uniform regardless of funding source, and maintenance rates paid for children in foster care shall be established pursuant to ~~DPW Rule 44.~~12 MCAR 2.044. This requirement is waived when the local social service agency is being reimbursed pursuant to 12 MCAR 2.030, Cost of Care for Mentally Retarded or Epileptic, or Emotionally Handicapped Children.

(2) When foster care is provided for a child through contract with another public or private agency, maintenance payments to the cooperating agency's foster care facilities shall be determined according to 12 MCAR 2.044. If the local social service agency is contracting for administrative or social service costs, payments to the cooperating agency shall be an amount which is additional to the maintenance rates established in 12 MCAR 2.044.

m. Foster care benefits up to age 21.

(1) Within the six months prior to a child's 18th birthday, the local social service agency shall advise the child, the child's parents or legal guardian, and the foster parents of the availability of benefits up to age 21 of the foster care program.

(2) Upon the request of a person between the ages of 18 and 21 who is not under state guardianship as dependent/neglected and who had been receiving foster care benefits immediately prior to his or her 18th birthday and who is in foster care at the time of the request, or upon the request at any time between the ages of 18 and 21 of a person who had been under state guardianship as dependent/neglected, the local social service agency shall develop, in conjunction with the foster child and other appropriate parties, a specific plan related to that person's vocational, educational, social or maturational needs and shall assure that any maintenance or counseling benefits are tied to that plan.

~~g. Service record. The local social service agency shall maintain a service record for each child that provides, in addition to general service plan requirements, accountability for:~~

~~(1)--The authority to place the child;~~

~~(2)--Implementation of foster care services as spelled out in Practice Components of Service;~~

~~(3)--Medical care provided to the child;~~

~~(4)--Record of the child's placements;~~

~~6.--Resource development~~

~~i.~~D. Foster home recruitment and development.

~~a.~~1. The local social service agency shall attempt to recruit and license a sufficient number and variety of foster homes ~~to allow for a choice in the selection of a home for a child;~~ in order to be able to meet the particular needs of each child needing placement.

~~b.~~2. The local social service agency shall provide for the development of foster parents by:

~~(1)~~a. provision of training on an ongoing basis;

~~(2)~~b. provision of opportunities to attend educational workshops and conferences;

~~(3)~~c. provision of opportunities for recognition. ~~such as an annual recognition dinner, service awards and publicity through the news media;~~

~~(4)~~3. The local social service agency shall involvement ~~of~~ the foster parents on an advisory basis in the development of policies and procedures pertaining to foster care.

~~(c)~~4. Before recommendation for relicensure, the local social service agency, ~~in conjunction~~ shall evaluate with the foster parents, ~~shall evaluate the home before recommendation for relicensure, to assess~~ factors in the home pertinent to continued utilization of the home as a foster care resource. These factors shall include the services provided by both the foster family and the agency and an evaluation of the year's placement experiences. A copy of the evaluation shall be given to the foster family.

5. The local social service agency shall assess the foster care applicant's or foster care provider's capacity for accepting children of another race, religion, color or national origin. If the family's reason for refusing to accept such children is based upon racism or bigotry, that is, negative attitudes toward people of a particular race, religion, color or national origin, the agency shall, in the case of a new applicant, refuse to recommend the home for licensure. If the agency ascertains the existence of racism or bigotry in a licensed foster family home, the agency shall, at time of relicensure, establish a plan for phasing the home out of the foster care program and no additional children shall be placed in the home.

ED/o

STATE OF MINNESOTA

OFFICE OF HEARING EXAMINERS

ROOM 300 – 1745 UNIVERSITY AVENUE
ST. PAUL, MINNESOTA 55104
(612) 296-6910

January 28, 1980



Commissioner Arthur E. Noot
Department of Public Welfare
Fourth Floor, Centennial Office Bldg.
Saint Paul, Minnesota 55155

Re: In the Matter of the Department of Public Welfare's Proposed Adoption of Amendments to Rule 204 (12 MCAR § 2.204) Foster Care - Children, and Proposed Adoption of a New Rule 207 (12 MCAR § 2.207) Protective Services to Children. Docket No. DPW-80-020-NG.

Dear Commissioner Noot:

Enclosed and served upon you by mail, please find the Report of the Hearing Examiner in the above-entitled matter. I also enclose the official record, including Tapes Nos. 1216 and 228.

Sincerely,

Natalie L. Gaull

NATALIE L. GAULL
Hearing Examiner

Telephone: 612/296-8114

NLG:sw
Encs.

DPW-80-020-NG

STATE OF MINNESOTA
OFFICE OF HEARING EXAMINERS

FOR THE DEPARTMENT OF PUBLIC WELFARE

In the Matter of the Department of Public Welfare's Proposed Adoption of Amendments to Rule 204 (12 MCAR § 2.204) Foster Care - Children, and Proposed Adoption of a New Rule 207 (12 MCAR § 2.207) Protective Services to Children.

REPORT OF THE HEARING EXAMINER

The above-entitled matter came duly on for hearing before Natalie L. Gaull, Hearing Examiner, on December 13, 1979, at 9:00 a.m. in the Centennial Office Building, Room A, Fourth Floor, 658 Cedar Street, Saint Paul, Minnesota.

This proceeding is a rules hearing held pursuant to Minn. Stat. Ch. 15 to determine whether the proposed rules should be adopted. Copies of this Report are available for review from the Department of Public Welfare (hereinafter "Department") and from the Office of Hearing Examiners. Members of the Agency Panel included: Alan Held, Special Assistant Attorney General; Zetta Feder; Dwaine Lindberg; and Paul Spears.

Pursuant to Minn. Stat. § 15.0412, subd. 4 (1978), this Report shall be available for review to all affected individuals upon request for at least five days. Thereafter, the Commissioner of Public Welfare shall, if he proposes to adopt the rules as originally proposed or amended, submit a copy of the Order Adopting Rules, a copy of any additional agency findings, a copy of the rules as originally proposed, and a copy of the rules as adopted to the Chief Hearing Examiner for review pursuant to Minn. Stat. § 15.052, subd. 4 (1978). The submission to the Chief Hearing Examiner shall precede review by the Attorney General. The Chief Hearing Examiner shall complete his review and submit his report to the Commissioner on the issues of substantial changes in the rule and compliance with Minn. Stat. § 15.0412 (1978) within ten calendar days. The Commissioner will be responsible for filing the rules with the Attorney General and for notifying persons who have indicated that they wish to be notified of such filing.

Based upon all the records and proceedings herein, the Examiner makes the following:

FINDINGS OF FACT

Procedural Requirements

1. On October 26, 1979, the Department submitted the following documents to the Chief Hearing Examiner:

(a) The Notice of Hearing proposed to be issued.
(b) The Order for Hearing proposed to be issued.
(c) A copy of the proposed rules.

(d) A Statement of the estimated length and number of people expected to attend the hearing.

2. On November 5, 1979, the Department mailed the Notice of Hearing to all persons and associations who had registered their names with the Secretary of State, and to all Minnesota county welfare departments, all Minnesota human service boards, all Minnesota area mental health boards, and all Minnesota state hospitals.

3. On November 12, 1979, the Notice of Hearing and a copy of the proposed rules were published at 4 State Register 759.

4. On November 15, 1979, the Department filed the following documents:

(a) The Order for Hearing.
(b) The Notice of Hearing as mailed.
(c) The proposed rules.
(d) The Statement of Need and Reasonableness.
(e) Affidavit of Receipt of the Secretary of State's list.
(f) Certificate of Delivery of the Secretary of State's list.
(g) Affidavit of Mailing.
(n) Affidavit of Additional Mailing.

5. The documents were available for inspection at the Office of Hearing Examiners from the date of filing to the date of the hearing.

6. The record remained open through December 28, 1979, for the receipt of written comments and statements. Any comments received after that date were not considered by the Examiner.

Statutory Authority

7. Rule 204 The Department cites Minn. Stat. § 256.01, subd. 2, (2); Minn. Stat. § 257.175; Minn. Stat. § 245.802; and Minn. Stat. § 256E.05, subd. 3(b) (Supp. 1979) as statutory authority for proposed rule 204. Minn. Stat. § 256E.05, subd. 3(b) (Supp. 1979) authorizes the Commissioner of Public Welfare to eliminate or revise all applicable Department rules as appropriate to accommodate Sections 256E.01 to 256E.12, the Community Social Services Act. Foster care is within the purview of that Act. Minn. Stat. § 256.01, subd. 2(2) authorizes the Commissioner to administer and supervise all child welfare activities, to supervise child caring and child placing agencies and institutions, to advise the care of children in boarding and foster homes or in private institutions and to perform all functions relating to the field of child welfare now vested in the State Board of Control. Although this section does not specifically grant rulemaking power in this area to the Commissioner, it is sufficient authority when read in conjunction with the other sections cited. Minn. Stat. § 257.175 contains similar references to the general duties of the Commissioner of Public Welfare concerning enforcement of all laws for protection of defective, illegitimate, dependent, neglected and delinquent children. Again, specific rulemaking authority is not granted, but may be derived when the section is read in conjunction with the other cited statutes. Minn. Stat. § 245.802 authorizes the Commissioner to develop and promulgate rules and regulations for the operation and maintenance of day care and residential facilities and agencies. It also authorizes the Commissioner to conduct a comprehensive review of the rules promulgated under Laws 1976, Ch. 243, Secs. 2 - 14 once every five years. The Examiner finds that the Commissioner has statutory authority to adopt 12 MCAR § 2.204.

8. Rule 207 The Department cites four statutes as authority to promulgate proposed rule 207. Minn. Stat. § 245.813 deals with neglect and abuse at any licensed facility or agency. However, it does not authorize the Commissioner to adopt rules with regard thereto. Minn. Stat. § 256E.05, subd. 3(b) authorizes the Commissioner to eliminate or revise all applicable Department rules as appropriate to accommodate Sections 256E.01 to 256E.12, the Community Social Services Act. Child protection falls within the purview of that Act. Minn. Stat. § 256.01, subd. 2(2) generally authorizes the Commissioner to administer and supervise all child welfare activities to promote the enforcement of laws protecting defective, illegitimate, dependent, neglected and delinquent children and to license and supervise child caring and child placing agencies and institutions. It also authorizes the Commissioner to perform all functions relating to the field of child welfare now vested in the State Board of Control. This section does not authorize the Commissioner to adopt the proposed rules. The Department also cites Minn. Stat. § 626.556, which is a statute generally dealing with reporting of maltreatment of minors. That statute also does not specifically authorize the Commissioner to adopt rules with regard thereto. However, the four statutes cited when read in conjunction with one another do provide statutory authority to adopt the proposed rule.

Amendments

9. At the hearing, the Agency proposed to amend 12 MCAR § 2.204 C.1.b.(2)(b)(ii) to read as follows:

> (ii) require the parents or legal guardian to agree to provide reasonable notice before seeking return of the child from placement so that the agency may prepare for the orderly return of the child in no more than 30 days.

10. The Agency also noted that the reference in 12 MCAR § 2.008 had been deleted only as a result of a typographical error and should be included in the proposed amendment.

Legal Discussion - Rule 204

11. There was no comment or question either at the hearing or in writing, with regard to the following sections of the proposed rule: A.1.; A.3.; B.2.; B.3.; B.8.; C.1.b.(1); C.1.b.(2)(a)(1), (ii), (iii), (v), (vi), (vii); C.1.d.(2)(b); C.1.e.; C.1.f.(1), (6), (8); C.1.g.(2), (4); C.1.h.(1)(a), (b), (c), (e), (f); C.1.h.(2); C.1.j.; C.1.k.(1), (4); C.1.l.(2); D.1.; D.2.b., c. The Examiner finds that the Statement of Need and Reasonableness and the testimony presented at the hearing by the Agency demonstrate that the preceding sections are needed and reasonable as proposed.

12. 12 MCAR § 2.204 A.2. defines the purpose of foster care as providing "temporary substitute family or group care for a child while an intensive effort is made to correct or improve the condition necessitating placement in order to reunite the family or, in the failure of this, to provide some other permanent plan." Comments submitted by Hennepin County Community Services Department (hereinafter "Hennepin County") indicate that the use of the word

"temporary" does not recognize that in a significant number of situations foster care does involve a long-term plan. In addition, Legal Advocacy for Developmentally Disabled Persons in Minnesota (hereinafter "Legal Advocacy") submitted testimony indicating that foster care may be the least restrictive setting in a long-term care situation for developmentally disabled children. Therefore, they request that the definition be amended to include the existence of foster care as a permanent option for developmentally disabled children. In written response, the Department indicated that the word "temporary" could be eliminated without making a substantial change in the rule. The Examiner recommends that change or any other which will recognize the use of foster care as a long-term placement in certain situations. If that change were made, this section as proposed would be reasonable and necessary.

13. 12 MCAR § 2.204 B.1. defines foster care service. That definition indicates that foster care service is "geared toward reuniting the family". Russell Cain, Social Service Supervisor of Region VII North Welfare Department (hereinafter "Region VII North"), submitted written comment indicating that the purpose of foster care is not always to reunite the family and that those words should be struck from the definition. This comment seems consistent with comments addressed to 12 MCAR § 2.204 A.2. The Examiner recommends this change to the Department. Definitions are necessary to promote a uniform understanding of the rule. However, the definition chosen must correctly define the purpose of foster care service in order to be considered reasonable. This section is reasonable and necessary if it is amended as noted above.

14. 12 MCAR § 2.204 B.4. defines a foster family home as a family licensed under 12 MCAR § 2.001 to provide twenty-four-hour-a-day care in their home to children who are unrelated to the family. Region VII North submitted written comment indicating that under some circumstances foster care homes do provide services to related children. Therefore, the word "unrelated" should be stricken from the definition. If, that assertion is true, then the section of the rule should be amended. If the definition accurately reflects those children to whom foster care is provided, it is necessary and reasonable.

15. 12 MCAR § 2.204 B.6. defines voluntary placement and requires parental approval. St. Louis County Social Services Department (hereinafter "St. Louis County") indicates that the language of the proposed rule seems to weaken the security of placements by allowing an exception to parental approval. It is unclear to the Examiner how the language of the proposed amendment accomplishes that. Hennepin County notes that the definition should be amended to specifically include that the child is returned to the parents upon demand in order to be consistent with the provisions of the Indian Child Welfare Act. The Examiner finds that the section, as proposed, is reasonable and necessary.

16. 12 MCAR § 2.204 B.7. defines legal custody. Region VII North submitted written comment questioning whether the law required the agency to remove the child from his parent or legal guardian in order to have legal custody. Legal Advocacy submitted comment indicating that the definition of legal custody should be clarified or expanded to specifically state the operative effect of legal custody. Specifically, whether having legal custody

means that the county or foster parents can sign for a child's special education, obtain medical care without the natural parents' permission or similar decisions. The Examiner finds that this section, as proposed, is necessary and reasonable.

17. 12 MCAR § 2.204 B.9. defines relative. Ramsey County Welfare Department (hereinafter "Ramsey County") suggests that "cousin" be included in the definition of relative so that it would be consistent with AFDC rules. The Examiner finds that this could be accomplished without constituting a substantial change. The section as proposed is reasonable and necessary.

18. 12 MCAR § 2.204 C.1.a. provides that placement must be in a licensed facility unless it is a relative's home or an emergency case. St. Louis County indicates that this exception for emergency placements subverts present licensing requirements. Hennepin County submitted comment indicating that the term "emergency" needs further clarification and that under these circumstances, the rule appears to be in conflict with 12 MCAR § 2.001. The Department indicated that it saw no conflict. The Department may wish to clarify "emergency". The section, as proposed, is reasonable and necessary.

19. 12 MCAR § 2.204 C.1.b.(2)(a) outlines the responsibility for service delivery in court ordered and voluntary placements. 12 MCAR § 2.204 C.1.b.(2)(a)(iv) requires the Agency to inform the foster parents of court hearings which pertain to any foster child in their care. The Minnesota Foster Parents Association submitted comment indicating that the language should be revised so that the agency would be required to "inform the foster parents of court hearings which pertain to any foster child in their care and solicit foster parents' opinions when preparing written reports and recommendations for the court." The Association notes that foster parents can very often provide vital information relating to a placement. Hennepin County notes that the proposed language is acceptable only so long as it is clear that the foster parents do not have standing in the court action. The Department indicated that this rule does not determine whether foster parents have standing. The Examiner finds that this section, as proposed, is reasonable and necessary.

20. 12 MCAR § 2.204 C.2.b.(2)(a)(viii) requires the local social service agency which has legal custody of a child to obtain the permission of the court before terminating foster care and returning the child to his or her parents. Hennepin County notes that the rule does not recognize that frequently the court grants such authority in the original order. If, that is the case, this portion of the rule could be amended to reflect actual procedures without constituting a substantial change. However, if the authority is granted in the original order, then the agency has obtained the permission of the court. The Examiner finds that this section, as proposed, is reasonable and necessary.

21. 12 MCAR § 2.204 C.1.b.(2)(a)(ix) requires the Agency having legal custody of the child to obtain the written consent of the parents or legal guardian if the child is to placed in a facility outside of the state. If the parent or legal guardian refuses or fails to give consent, the court's written consent is sufficient. Hennepin County notes that the authority of the court

should be sufficient, but the parents should be informed of the court's decision. Legal Advocacy submitted comment indicating that this section of the rule should be changed to require consent of parent or guardian for a change or placement either within or outside of the State of Minnesota. Ramsey County suggested that this requirement be deleted unless it is required by statute. The Examiner finds that this section, as proposed, is reasonable and necessary.

22. 12 MCAR § 2.204 C.1.b.(2)(b)(i) provides that when a child is placed in foster care by voluntary agreement, the Agency shall obtain the parents' or legal guardian's written consent prior to the placement. Ramsey County suggests that this section be deleted noting that the temporary placement agreement which they use is sufficient. The Examiner finds that this section is reasonable and necessary.

23. 12 MCAR § 2.204 C.1.b.(2)(b)(ii) requires the parent or legal guardian to agree to provide reasonable notice before seeking return of the child from placement so that the Agency may prepare for the orderly return of the child in no more than 30 days. Prehearing comment was primarily directed to the provision prior to the amendment noted Finding 9. However, there was comment at the hearing indicating that the amended provisions still did not constitute return of the child on demand. The Department indicates that the provision is necessary to provide for a orderly transition. The Examiner finds that the proposed section, as amended, is reasonable and necessary.

24. 12 MCAR § 2.204 C.1.c. prescribes the method for dealing with major decisions affecting the child. Hennepin County submitted testimony indicating that the concept of "major" is ambiguous. This position was also supported by Legal Advocacy and Region 7 Social Service Supervisors Organization (hereinafter "Region 7 Supervisors"). The Department submitted written comment indicating that it was more appropriate to include guidelines as to what constitutes a major decision in the Department's Social Service Manual than in the rule because of the potential variance from one situation to another. The Examiner finds that term "major decisions" is vague. The Examiner also finds that any additional definition of the term must appear in the rule and cannot be contained only as a guideline in the Department's Social Service Manual for the reasons set forth in the Memorandum attached hereto and incorporated by reference herein. The Examiner finds that this section, as proposed, is necessary, but unreasonable.

25. 12 MCAR § 2.204 C.1.d. requires local social service agencies to establish formalized agreements with those agencies which also serve the child. Hennepin County submitted written comment indicating that meaning of formalized agreement was unclear, and that maintenance of working relationships with other agencies should not require some form of written contract. The Examiner finds that the term "formalized agreements" is somewhat ambiguous and recommends that it should be more clearly defined so that persons utilizing this rule will understand its requirements. However, the Examiner finds that this section, as proposed, is necessary and reasonable.

26. 12 MCAR § 2.04 C.1.d.(1) deals with schools. The amendment to that section provides that the agency shall initiate contact with the schools. Region VII suggested that the language be amended as follows:

Prior to foster care placement, the local social service agency shall notify the child's present school of impending placement. The school in which the child is to be placed should also be notified of the pending placement. The agency shall initiate contacts with the school.

Hennepin County submitted written comment indicating that in many situations, good social work practice would place the responsibility of notifying the schools on the parents when competent and willing to do so. Written comment from Legal Advocacy indicated that this section should be amended to include a section dealing with the question of children who receive special education services. They note that federal and state laws provide for involvement of parents or surrogate parents in the development and implementation of programs of special education for handicapped students. They note that the responsibilities of the parent or foster parent with respect to special education rights should be made clear. The Department responded to this comment indicating that the issue could be addressed either as a guideline in the Department's Social Service Manual or by amendment to Section C.1.h.(1), Service Plan. The Examiner notes that the issue could not be addressed as a guideline for the reasons set forth in the Memorandum attached hereto and incorporated by reference. The Examiner recommends that the issue should be addressed in the rule. However, the Examiner finds that this section of the rule is reasonable and necessary as proposed.

see p. 6

C.1.h(1)(a)(vii) for additional clause

27. 12 MCAR § 2.204 C.1.d.(2)(a) provides that a local social service agency shall not place a child in another county without the approval of the other county local social service agency. Hennepin County submitted written comment indicating that it is not always possible to obtain such approval due to court or other involvement not under the control of the Agency. Legal Advocacy submitted written comment indicating that the rule should be amended to clearly indicate that natural parents must be involved in those decisions. The Examiner finds that the section, as proposed, is reasonable and necessary.

28. 12 MCAR § 2.204 C.1.f. deals with practice components of foster care services. Hennepin County submitted written comment and oral testimony expressing opposition to and concern with attempting to spell out casework practices in a rule. They note that certain minimum standards need to be established, but feel that it is unrealistic to define requirements regardless of circumstances. Hennepin County also indicates that it already has established practice guidelines. This position was more strongly stated by Region VII North in written comment. That comment indicated opposition against legislating casework practice, but felt that it was appropriate to suggest casework practices. Legal Advocacy suggested tnat the waiver provisions of that section should be extended to cover the situation where the child is under state guardianship as dependent/neglected or when an emergency placement is made. Legal Advocacy notes that requiring documentation of waivers will help ensure rational and careful decision making. The Department did not specifically respond to the general objection with regard to requiring specific components of foster care services. However, that choice represents a policy choice on the part of the Department.

12 MCAR § 2.204 C.1.f.(2) requires the placement worker to visit the foster home within four days of the placement. Comments from Ramsey County also addressed to subsections (3), (4) and (5) suggest that the local agency should determine the number and frequency of visits. In addition to objecting to the Department specifying standards, Ramsey County notes that they could not meet those standards given their present case load and staff allocation. The Department notes that the four-day period was chosen as a method of balancing the need for children to be assisted in adjusting to a new environment against the flexibility necessary for proper functioning of the social worker. Selection of a four-day requirement permits the social worker to visit the following Monday if placement were on a Wednesday or Thursday. Hennepin County submitted written comment with regard to Subdivision (7) indicating that follow-up services to the family and child after the child returns home is not a requirement applicable in all circumstances. The Examiner finds that 12 MCAR § 2.204 C.1.f. is necessary and reasonable.

29. 12 MCAR § 2.204 C.1.g. deals with provisions for meeting health needs of the foster child. Region VII North submitted comment indicating that this is an attempt to legislate items which should be a part of good practices. Although they would not object if these were non-mandatory guidelines, Region VII North points out that it is not always possible for local agencies to meet those time frames. The Region 7 Supervisors submitted written comment indicating that Subdivisions (1) and (3) were duplicative in that they appear to require two medical exams for preplacement. Legal Advocacy suggested that the subsection requiring written authorization for obtaining routine health care should be clarified to include parental consent whenever possible. St. Louis County submitted written comment indicating that the EPSDT is currently a requirement on all placements. Ramsey County submitted written comment indicating that the word "provided" should be changed to "offered" with regard to the EPSDT. They indicate that they can only offer that service and that the parent makes the decision. The Examiner suggests that the Department consider these comments in light of the local agency's ability to provide the services required, although the Department has the authority to determine that specific deadlines should be set for provision of these services as a matter of policy. The Examiner finds that this section of the rule, as proposed, is necessary and reasonable.

30. 12 MCAR § 2.204 C.1.h. deals with requirements of the service plan. The Minnesota Foster Parents Association submitted written comment indicating their strong support for this provision as a method for ensuring that children are not held in the foster care system indefinitely. Region VII North suggested that language be added giving the agency more flexibility such as "the agency shall respond as to the plan in each of the following areas." This would permit the agency to indicate that certain of those areas are not applicable to a given situation. Legal Advocacy commented that the section presumes that there is a problem with the parents which results in a foster home being needed for the child. They suggest that the service plan section should include a clause requiring the description of any handicapping conditions of the child which necessitated placement. They also suggest that this section of the rule should include a section regarding responsibility for the special

education program of the child. Legal Advocacy indicates that in some cases, there has been confusion as to which person is responsible for exercising the rights of tne child under the special education laws and regulations. The Department declined to make changes consistent with Legal Advocacy's suggestions because it can be inferred that a description of the child's handicapping condition is included in existing language and because it is not in the best interests of a placed child to be labeled by spelling out his or her problems. Although the Department of Public Welfare has the authority to decide as a matter of policy that the languge specific to handicapped children will not be included, tne Examiner questions the reasons which they have chosen. Ramsey County submitted written comment indicating that Subsection (d) dealing with the detailed visitation plan should include language indicating that it must be developed by the agency, parents and the facility. However, they also suggest that the rule need not be so detailed if it reflects the mandate of Chapter 602 and includes the visitation rights and obligations of the parents. Comment submitted by Hennepin County indicates that it is impossible to develop an overall detailed plan on day of placement. The Examiner finds tnat this section, as proposed, is reasonable and necessary.

31. 12 MCAR § 2.204 C.l.h.(3) provides for review of the service plan with parents and child. Hennepin County indicates that the Department must clarify language requiring "all" persons involved in the plan's preparation to be included in its review. The Department has responded that the statute in question refers to "the persons" and that the proposed language is sufficiently clear. The Examiner finds that this section of the rule, as proposed, is reasonable and necessary.

32. 12 MCAR § 2.204 C.l.i. deals with the child's or foster parents' absence from the foster home. Legal Advocacy suggests that that section be amended to include a section on obtaining permission for some absence from the child's natural parents. Region VII North submits written comment indicating that the intent of the section is good. However, if a county borders closely on another state, the family would have to notify the Agency every time they crossed the state line to go shopping. They suggest that a criteria of three nights for out-of-state visits would be more reasonable. Ramsey County submitted written comment indicating that the parents should give permission for travel and not the agency. The Examiner finds that the issue raised by Region VII North is a very important one. The current wording of the rule would require permission every time the child left the state for any period of time. This would create total chaos in border cities and does not effectuate the purpose of the provision. The Examiner finds that the language as submitted is not reasonable. However, substitution of more specific language would solve that problem. The Examiner finds that this section is necessary.

complied with

33. 12 MCAR § 2.204 C.l.k. deals with financial arrangements and funding considerations. Subdivision (2) provides that parents will pay for the cost of care in a manner consistent with their ability to do so. Comment submitted by Legal Advocacy indicates that the language should be amended as follows: "In any manner consistent with their ability to do so and any applicable state laws or rules." They indicate that this is necessary because the Cost of Care Program governed by DPW Rule 30 applies to mentally retarded children in

foster care. The Department has indicated that they are willing to add this provision. Subdivision (3) of that section sets forth the procedure to be followed if the local social service agency establishes that the parents are able to meet some or all of the cost of care, but are unwilling to do so. Comment suggested by Hennepin County indicates that the rule should be expanded to require parents to secure other available resources such as making application for insurance benefits or medical assistance benefits. Ramsey County submitted written comments suggesting that Subdivision (3)(b) of this section be deleted because a petition of neglect/dependency is inappropriate and unjustified in this situation. The Department's response explains the reason for choosing that methodology. The Examiner finds that this section, as proposed and amended, is reasonable and necessary.

_34. 12 MCAR § 2.204 C.1.l. deals with rates paid to foster homes. Hennepin County submitted written comment questioning why rates should be waived when the source of funding is under Rule 30. They suggest that rates should be uniform and adequate. St. Louis County submitted written comment indicating that the rules seem to provide an exception to all rates being determined through the use of Rule 44, AFDC Foster Care. The Examiner finds this section of the rule is reasonable and necessary.

35. 12 MCAR § 2.204 C.1.m. deals with provision of foster care benefits to age 21. St. Louis County submitted written comment indicating that this section of the rule seems to expand the local agency's responsibility for financial responsibility and social planning for non-state wards. They suggest that this section needs clarification. St. Louis County indicates that it is more appropriate for the local agency to determine if the child should receive continued benefits than for the decision to be left to the child as appears from the proposed rule. Region 7 Supervisors submitted written comment indicating that Rule 204 should allow only adults over 18 to receive benefits when the service plan requires completion of a school program. Other eligible adults should be covered under adult foster care. They also point out potential conflicts between this section and Rule 51. The comment questioned where funding will come from when state and federal funding ends at age 19, indicating that the language should be in terms of "may" rather than "shall". Region VII North submitted written comment indicating that they have no problem with providing foster care payments up to age 21, but that the state should be willing to participate in reimbursement of foster care funds between ages 18 and 21. The Minnesota Foster Parents Association supports this provision as a way of easing the financial burden of continuing care which has been placed directly on foster parents. Ramsey County submitted comment suggesting tnat this section be deleted since it should be covered in the adult's and not the children's program. Stearns County Social Services submitted written comment questioning the legal basis for requiring continued benefits up to age 21. They also point out that this is discriminatory as regards children in the AFDC program for whom funding ends at age 19. The Department submitted a response indicating that Minn. Stat. § 260.40 (1978) provides that for purposes of benefits of any program for foster care or children under state guardianship that were available on June 1, 1973, the age of majority shall be 21. The Department indicates that it agrees with Stearns

County, and that there are fiscal burdens on the counties, but that revisions should be made to the statute. The Examiner finds that the section, as proposed, is reasonable and necessary.

36. 12 MCAR § 2.204 D. deals with foster home recruitment and development. Subsection 2.a. requires the local social service agency to provide training on an on-going basis to potential foster parents. Region VII North submitted written comment indicating that provision of training on an on-going basis is required as part of the licensing of foster homes. They suggested that this requirement should be reflected in the rule. Subsection 3. requires the local social service agency to involve foster parents on an advisory basis in the development of policies and procedures pertaining to foster care. Region VII North submitted written comment indicating that it was a good idea and:

> [t]he very reason why rules such as this should not be used to legislate practice and procedures in the development of foster care programs. It seems foolish to have the state through rules tell the agency what to do and then have as a part of that requirement some type of rubber stamp advisory board that is simply supposed to say, "yes, that is okay to do", unless the board has some type of policy-making decision around policies and procedures pertaining to foster care, it seems foolish to have one.

Comment submitted by Legal Advocacy suggests local social service agency should involve natural parents who have used or are using foster care on the advisory board. Region 7 Supervisors suggested that Subdivisions 4. and 5. dealing with evaluation prior to recommendation for relicensure and evaluation of foster care applicants' or providers' potential racism or bigotry should be deleted from this rule and included in Rule 1. Ramsey County Welfare suggested that Subdivision 5. dealing with bigotry should be deleted. They note that unless a foster parent states that he or she is bigoted, it is an area which is impossible to measure and would thus not be possible to enforce. Although the Examiner finds that Ramsey County's suggestion has merit, the Department notes in its Statement of Need and Reasonableness that the requirement is necessary so that Minnesota will be in conformance with Federal Civil Rights requirements. If, in fact, this subsection is required by federal law, then the Examiner finds it is necessary and reasonable. The Examiner finds that 12 MCAR § 2.204 D. is necessary and reasonable as proposed.

no change.

Legal Discussion - Rule 207

37. Rule 207 governs the administration and provision of protective services to children through local social service agencies. It is being amended as a result of changes in Minn. Stat. § 626.556, effective August 1, 1978, which renders the current rule inadequate for the purpose of specifying all child protective services required of the local social service agency. Because of the extensive structural revisions in the rule, the rule was presented as being deleted completely and having a new rule substituted. However, there are actually few new substantive provisions with major reorganization of existing provisions.

deletion printed in SR. 11.12.78

38. There has been no written or oral comment with regard to the following sections of the rule: A.; B.; C.1.c., d., and e.; C.1.h. and i.; and

C.2. The Examiner finds that the Statement of Need and Reasonableness and testimony presented at the hearing by the Department demonstrates that the preceding sections are needed and reasonable as proposed.

39. 12 MCAR § 2.207 C.1. deals with local social service agency responsibility in the delivery of child protective services. Subdivision a. therein provides:

> Any child in Minnesota who is in need of protection is to receive such service in the county in which the child lives or is found, irrespective of family income and legal or poor relief settlement of the child or family.

Comment submitted by Region 7 Supervisors indicates that this language is ambiguous and causes friction between counties, multi-county school districts and similar entities. They suggest that the county which has responsibility for child protection services should be more clearly defined. The Statement of Need and Reasonableness indicates that this language is identical to that in the current rule, and is necessary to ensure that the child receives needed protection. Subsection b. provides that the local social service agency must accept all complaints alleging that a child has been physically or sexually abused or neglected. It also requires the local social service agency to notify the local police or sheriff's department upon receiving such complaints. St. Louis County submitted written comment indicating that this section of the rule is not clear as to who should make the onsite contact when reports are received. They suggest that the rule should be more specific in clarifying maltreatment and abuse situations and that it is unclear as to whether state licensed facilities include foster homes or also residential treatment centers. The Department notes that with the exception of the provision tnat local agencies report complaints to law enforcement which is mandated by Minn. Stat. § 626.556, subd. 3, the requirements are consistent with those currently under Rule 207. Region 7 Supervisors also notes that the provision in Subdivision (b)(5) requiring the child protection worker to give the child's parents an opportunity to voluntarily place the child should be amended to provide an exclusion in certain situations such as incest. The Examiner finds that these sections as proposed are necessary and reasonable.

40. 12 MCAR § 2.207 C.1.f. defines the local social service agency's responsibility in accepting reports of acts of prostitution or involvement in the production of obscene material or performances by persons under age 18. This addition was supported by St. Louis County Social Services. Region 7 Supervisors questions whether Subdivision (2) therein needs further clarification to specify whether the court must be petitioned. The Examiner finds that this section as proposed is necessary and reasonable.

41. 12 MCAR § 2.207 C.1.g. deals with child maltreatment reported in a state supervised or licensed facility. The Winona County Department of Social Services submitted lengthy comment on this section indicating that investigation of institutional neglect or abuse should not be handled as a child protection matter, but should be handled by the agency responsible for licensing. Since counties do the licensing for foster care and family day care, they should be responsible for those investigations. Larger facilities such as state hospitals, residential treatment centers and facilities for the

retarded should be handled by the Department of Public Welfare. The Examiner suggests that the Department consider this comment. The Examiner finds that this section of the rule is necessary and reasonable. no change

42. In addition to these comments, the Le Sueur County Welfare Department submitted comment indicating that Rule 207 contains excess wording much of which can be omitted.

Based upon the foregoing Findings of Fact, the Hearing Examiner makes the following:

CONCLUSIONS

1. That the Department of Public Welfare gave proper notice of the promulgation of the proposed rule.

2. That the Department of Public Welfare has statutory authority to take the action proposed, to wit the promulgation of the proposed rules.

3. That the Department of Public Welfare has fulfilled all relevant, substantive and procedural requirements of law or rule.

4. That the Department of Public Welfare has demonstrated the need for and the reasonableness of the proposed rules by affirmative presentation of facts in the record with the exception of those sections of the proposed rules noted in the Findings of Fact.

Based upon the foregoing Conclusions, the Hearing Examiner makes the following:

RECOMMENDATION

It is recommended that the proposed rules be adopted by the Department of Public Welfare with consideration given to the Findings of Fact herein.

Dated: January 28, 1980.

NATALIE L. GAULL
Hearing Examiner

MEMORANDUM

The Department of Public Welfare may not define a vague term contained in the proposed rule by developing more detailed guidelines to be included in its Social Service Manual. The Administrative Procedure Act defines rule at Minn. Stat. § 15.0411, subd. 3 as follows:

> Subd. 3. "Rule" includes every agency statement of general applicability and future effect, including the amendment, suspension, or repeal thereof, made to implement or make specific the law enforced or administered by it or to govern its organization or procedure, but does not include (a) rules concerning only the internal management of the agency or other agencies, and which do not directly affect the rights of or procedure available to the public; or (b) rules of the commissioner of corrections relating to the internal management of institutions under his control and those rules governing the inmates thereof prescribed pursuant to section 609.105; or (c) rules of the division of game and fish published in accordance with section 97.53; or (d) rules relating to weight limitations on the use of highways when the substance of such rules is indicated to the public by means of signs; or (e) opinions of the attorney general.

The definition or indicia of "major decision" is within this definition and does not come within the statutory exceptions. Further, Minn. Stat. § 15.0412, subd. 3 provides as follows:

> Subd. 3. Each agency shall adopt rules setting forth the nature and requirements of all formal and informal procedures related to the administration of official agency duties to the extent that those procedures directly affect the rights of or procedures available to the public.

The procedures to be followed by local social service agencies with regard to "major decisions" concerning foster children directly affect the rights of those children. Therefore, the definition of "major decision" must be included in the rule, if it is to have the full force and effect of law.

This issue has been directly addressed in McKee v. Likins, 261 N.W.2d 566 (1977) in which the Court held that a policy bulletin issued by the Commissioner of Public Welfare requiring that payments be made under the Minnesota medicaid statute for elective non-therapeutic abortions was invalid because it constituted a rule within the meaning of the Administrative Procedure Act and was not issued pursuant to public notice and hearing requirements.

Therefore, the Department must include all definitions and procedures in the rule and may not cover such matters by means of guidelines.

N.L.G.

MINNESOTA RULE DPW 207 - PROTECTIVE SERVICES TO CHILDREN - PROPOSED

A. Introduction

1. This rule governs the administration and provision of protective services to children through local social services agencies.

2. The purpose of a child protective service system is to carry out community responsibility for safeguarding the rights and welfare of children whose parents/caretakers are unable or unwilling to do so, or whose parents/caretakers actively violate their children's rights or jeopardize their welfare.

B. Definitions

1. Local Social Service Agency: Local agency under the authority of the county welfare or human services board or county board of commissioners which is responsible for social services.

2. State Agency: Minnesota Department of Public Welfare.

C. Administration and organization of protective services program.

1. Local social service agency responsibility in the delivery of child protective services.

a. Any child in Minnesota who is in need of protection is to receive such service in the county in which the child lives or is found, irrespective of family income and legal or poor relief settlement of the child or family.

b. The local social service agency must accept all complaints alleging that a child has been physically or sexually abused or neglected. Neglect includes conditions or actions which threaten either the child's physical health or the child's mental health. Upon receiving such complaints, the local social service agency shall immediately notify the local police or sheriff's department.

(1) All reports shall be assessed at the time they are received to determine the agency's initial response.

(a) For complaints alleging that a child is abandoned, life threatened, or likely to experience physical injury due to abuse an immediate on site contact with the family and/or child is required.

(b) When a child is not in need of immediate care but is allegedly physically or sexually abused, the local social service agency shall contact the family within 24 hours.

(c) When child is not in need of immediate care but is allegedly neglected, the local social service agency shall contact the family within 72 hours.

(d) Reports for which no response is required include those which do not fall within the parameters of child maltreatment (although a referral to a more appropriate agency may be made); those which do not contain enough information to be investigated; or those which concern a complaint that has recently been investigated and determined to be unsubstantiated.

(2) Where contacts with the family are required the child protection worker shall assess the validity of the complaint.

(3) If upon the initial assessment there appears to be substance to the complaint, the child protection worker shall attempt to determine the following:

(a) the risk posed if the child or children involved remain in the home environment;

(b) the current physical and/or emotional condition of the child or children involved, as well as an assessment of prior injuries;

(c) the name, address, age, sex and relationship of the alleged perpetrators to the involved child/children;

(d) family composition, including the name, age, and sex of the child or children involved.

(4) If the child protection worker determines that neither neglect nor abuse are present but that the family may be experiencing problems, the worker may:

(a) offer the family such services as may be appropriate;

(b) inform the family of the agency's availability and willingness to work with the family upon request.

(5) If the child protection worker determines that the child is in need of immediate care due to circumstances or surroundings that jeopardize the child's physical or mental health or welfare, the parents must be given the opportunity to voluntarily place the child or seek an alternative that, in the worker's judgment, assures the safety of the child.

(6) If when given the opportunity, the parents are unwilling or unable to cooperate, the child protection worker shall petition the court for immediate custody of the child or seek the assistance of a peace officer in taking the child into custody.

c. Where the need for protective intervention has been established, the local social service agency shall, whenever possible, provide services that preserve the child within the family unit while at the same time assuring the child a safe environment. Such services may include, but are not limited to:

(1) family counseling

(2) homemaking services

(3) referral to parent support organizations or to courses in parenting or child care such as may be available in the community.

d. If services necessary to provide the child a safe environment are rejected, the child protection worker shall petition the court for authorization to intervene.

e. When the need for removal of a child from its home is considered necessary but not emergent, the local social service agency shall request permission of the juvenile court for sufficient time to place the child in an orderly fashion.

(1) When a child is under legal custody and has been removed from its home, the local social service agency shall obtain the consent of the child's parents for major decisions affecting the child. If the parents fail to consent, and the decision is essential to the child's health and safety, a court order may be obtained.

(2) The local social service agency shall obtain the written consent of the child's parents, and a court order, if a child under legal custody is to be placed in a facility outside the state. If the parents refuse or fail to give consent, a court order is sufficient.

(3) The local social service agency shall provide the court written reports and recommendations at such times as the court may direct or prior to the expiration of any order giving it responsibility for a child. Such reports shall contain information sufficient to support the recommendation and to enable the court to make a decision in the child's best interest.

f. Local social service agency responsibility in accepting reports of acts of prostitution or involvement in the production of obscene material or performances by persons under 18 years of age.

(1) Upon receiving a report of juvenile prostitution or juveniles involved in the production of obscene material or performances, the local social service agency shall:

(a) assess the victim's circumstances to determine the need for protective services;

(b) provide counseling and assistance to the victim in order to encourage and support her/his in discontinuing in prostitution; or involvement in the production of obscene acts or material;

(c) offer the victim and the victim's family such services as may be needed to:

(i) protect the victim

(ii) preserve or reestablish family relationships.

(d) If such services are rejected, inform the victim and family of the agency's responsibility and authority to seek juvenile court intervention.

(2) If immediate custody is necessary to protect the victim or to restrain the victim from engaging in prostitution, or involvement in in the production of obscene acts or material, the protective service worker shall request a juvenile court order granting the agency temporary legal custody.

g. When child maltreatment is reported in a state supervised or licensed facility, including a foster home, the local social service agency shall:

(1) immediately contact the facility to determine the validity of the report;

(2) where such reports are valid, the local social service agency shall:

(a) assess present risk to the child and assure steps are taken to protect the child;

(b) as soon as possible, inform the child's parents or guardians of the incident;

(c) when an incident involves a child placed out of his/her home county, inform the agency responsible for the child's placement;

(d) make an oral report to the state agency within 24 hours. Such reports shall include:

(i) the identity of facility in which the incident occurred, the name, age and sex of the victim and the name and status of the alleged perpetrator if known;

(ii) the nature and extent of the child's injuries, measures taken to assure necessary treatment and protection, and the name of the protective services worker responsible for investigating the incident.

h. Every incident of suspected physical or sexual abuse or neglect reported to the local social service agency shall be reported to the state agency on forms provided by the state agency.

(1) Such reports shall be sent to the state agency within 20 days of receipt of the report.

(2) Reports to the state agency are for statistical information only. The identity of the victim, the victim's family and suspected perpetrator should not be included on the copy of the report sent to the state agency.

i. The local social service agency shall assess and classify and record all reports as either substantiated, unsubstantiated, or unable to substantiate within 90 days of receiving the initial report. At the conclusion of the assessment the subjects of the report shall be notified in writing of the agency's determination of the classification of the report. The subjects of the report shall also be informed of their right to review the report subject to applicable Minnesota law.

(1) Records relating to substantiated reports.

(a) Records relating to reports made pursuant to Minn. Stat. 626.556 which are supported by evidence and information obtained during the assessment, and are determined by the agency to be substantiated, shall be destroyed seven years following the date of the final entry in the case record.

(b) The name of the individual submitting a report which is determined to be substantiated shall be disclosed only upon court order, or with the knowledge and consent of the person making the report.

(2) Records relating to unsubstantiated or false reports made pursuant to Minn. Stat. 626.556 shall be destroyed immediately, upon determination that they are unsubstantiated and the name of the individual submitting the report shall be disclosed upon request of the subject of the report.

(3) Records relating to reports which upon initial assessment cannot be substantiated to the satisfaction of the local social service agency may be kept for one year. Since there is substance to the reports, and they are, therefore, not unsubstantiated, the name of the individual making the report shall not be disclosed unless the report is later found to be unsubstantiated, or one year passes, or with the knowledge and consent of the person making the report.

2. Administrative requirements.

a. The local social service agency must provide for the availability of protective services 24 hours per day, seven days a week, for response to emergencies.

b. Every local social service agency shall designate a member of its staff to be responsible for the protective services program.

c. Each agency shall designate a licensed facility which can be available seven days a week for the emergency care of abused or neglected children.

(1) The local social service agency must designate a staff member to be responsible for placements in such facility under such conditions as it deems necessary.

(2) Emergency placements shall not exceed 30 days.

d. Every local social service agency shall coordinate its child protection activities with other agencies involved with the child's family and may:

(1) participate as a member of a team utilizing a multidisciplinary approach;

(2) not assign its primary statutory responsibility to another agency.

HR/hgs

204

STATE OF MINNESOTA
DEPARTMENT OF PUBLIC WELFARE

IN THE MATTER OF THE PROPOSED AMENDMENTS
TO 12 MCAR 2.204 (DPW RULE 204) GOVERNING
THE ADMINISTRATION OF FOSTER CARE SERVICE
TO CHILDREN AND THEIR FAMILIES.

STATEMENT OF NEED AND
REASONABLENESS 204

12 MCAR 2.204 governs the administration and provision of foster care service for children and their families. The primary reason for the Department of Public Welfare's proposal of revisions to this rule is to aid in the effective implementation of M.S. 257.071 which became effective July 1, 1978. In addition, revisions will be proposed which will make provisions of the Rule consistent with other rules, standards, policies and practices which have developed since 12 MCAR 2.204 was promulgated.

Three years ago, the Department of Public Welfare promulgated 12 MCAR 2.204. The Department was then and continues to be committed to the need to establish standards which will ensure 1) that when foster care is temporary, it is indeed temporary, 2) that appropriate services are provided to the child, the child's parents, and the foster parents so that a child may return home at the earliest possible date or, if this return home is impossible, that another permanent plan is made, and 3) that the foster care placement itself provides a child some opportunities for healthy growth rather than being simply another damaging experience for the child.

A revolution is occurring nationwide due to the concern over the plight of children in foster care. It is estimated that perhaps 100,000 of the 400,000 children in placement are lost in the system. Studies indicate that the average length of stay in foster care ranges from five to ten years.

Agency Ex 8

Yet, numerous projects, such as Chestang and Heyman's project in Chicago[1] (See Attachment A), and the Oregon Project[2] (See Attachment B), have illustrated that work with the foster child's family can help to alter the circumstances which led to placement and that work with the child can reduce the potential damage to the child from the placement experience.

Minnesota has been one of the forerunners in the country in efforts to actively improve its foster care system. Copies of the existing 12 MCAR 2.204 have been requested from the Department by numerous state agencies and national organizations interested in promoting improved foster care services. The recently passed foster care law, M.S. 257.071, is exemplary in its thrust toward reuniting families.

It is in the spirit of the current demand sweeping the nation for better foster care service and the Department's dedication to serving children that the proposed revisions to 12 MCAR 2.204 are offered.

This statement of need and reasonableness of proposed revisions of 12 MCAR 2.204 will follow the rule section by section.

A. Introduction

The introduction to this rule identifies the need and purpose of foster care service to children.

1. This is revised to make clear that the requirements of this rule govern only those foster care situations in which the local social service agency has the authority and responsibility for the placement and supervision of a child. It is to make clear that the rule would not govern the following two situations: 1) situations in which a child is living in a relative's home where there has been an independent agreement between the child's parent and the relative (with no agency involvement); and 2) situations in which a person who is caring for a relative's child applies to the agency for AFDC and is under no obligation to involve the agency in the placement decision nor under any obligation to involve the agency in the placement decision nor under any obligation to receive supervision from the agency.

2. The word "temporary" has been added to highlight and emphasize the fact that substitute care for a child must be temporary. The word "improve" is substituted for the word "ameliorate" because it more clearly says what is intended.

3. Because separating a child from his or her family may be a very painful and sometimes traumatic experience for a child and the child's family, this provision ensures that before foster care is utilized, consideration is first given or efforts are first made to keep the family intact.

1. Leon W. Chestang and Irmgard Heymann, "Reducing the Length of Foster Care," Social Work, January, 1973, pp. 88-92.
2. Victor Pike, "Permanent Planning for Foster Children: The Oregon Project," Children Today, Nov.-Dec., 1976, p. 22.

B. Definitions

1. Foster Care Service.

The transposition of the phrase 24-hour-a-day service is to make clearer that it is the family or group home care that is on a 24-hour-a-day basis rather than the service.

The words "full range of" are stricken to eliminate unnecessary verbiage.

The words "reuniting the family" have been added to make the goal of foster care more explicit. Adding services to the foster parents as part of the definition of foster care service is because of the essential role that they play in achieving the goal of reuniting the family.

2. Local Social Service Agency.

The phrase "Board of County Commissioners" is added because the Community Social Service Act, Chapter 324, provides this authority be given to this Board.

4. Foster Family Home.

The word "home" is struck in order to place emphasis on the evaluation of the family members to assess their potential for caring for foster children. While the physical facility itself must meet basic health and safety standards, of prime consideration for licensure are the characteristics of the family.

5. Group Home.

Group home has been redefined because there has been some confusion as to which group homes the rule applies. The more specific definition of "group home" is to clarify the confusion.

6. Voluntary Placement.

"the agency" has been substituted for "it" to correct any possible ambiguity. The inclusion of the child in the planning for placement is consistent with the increasing consideration being given to the rights of children to play a part in matters involving them. The new law, M.S. 257.071, which requires the inclusion of the child, if possible, in the development of the case plan, recognizes the importance of such participation by the child.

"Legal guardian" has been added since a child's legal guardian has the authority to enter into an agreement with a local social service agency to place the child in foster care. The amendment corrects the oversight in the present rule.

The sentence, "The agency must obtain the parent(s) written consent", has been struck because it is now covered under C. 1. b. (2) (b) (i).

7. "Legal guardian" has been added since legal custody may be a disposition of the court not only when a child is removed from his or her parents for welfare or safety reasons, but also when a child is removed from a legal guardian. The amendment corrects the oversight in the present rule.

8. A definition for "custodian" is added because C. 1. h. (1) (a) uses the word, "custodian". The purpose of C. 1. h. (1) (a) is to implement M.S. 257.071 which requires that when a child is placed in foster care, a case plan is developed and signed by the child's parent, "or other custodian".

The definition for "custodian" excludes any persons who may have temporary custody of a child without any legal obligations toward that child. This ensures that an agency is not required to include in the case planning any persons with only casual or transient interest in or involvement with the child. If, for example, a parent has left the child with a neighbor and the parent cannot be found, it would be inappropriate to require the agency to involve that neighbor in case planning for the child. This does not, however, prevent an agency from including additional parties in the case planning process if it is deemed appropriate.

9. A definition for "relative" has been added because C. 1. h. uses the word "relative". The purpose of C. 1. h. is to implement M.S. 257.071 by identifying the population of children to whom the statute applies.

To maintain consistency and avoid confusion within the total foster care program, the definition used for "relative" is that used in 12 MCAR 2.001, (DPW Rule 1), which establishes the standards for the licensing of foster family and group foster family homes. Persons with this degree of relationship to a child need not be licensed in order to care for the child.

C. Services to children in foster care.

1. a. This statement has been amended because the present rule is in error in suggesting that an agency must place a child only in a licensed home in nonemergency situations; the agency may also place the child in a relative's home in nonemergency situations and a relative's home is not required to be licensed.

The 30-day requirement has been added because the present rule is in error in suggesting that for all emergency placements, application for licensure is required within 30 days; M.S. 245.791, (2), and 12 MCAR 2.001, (DPW Rule 1) require application for licensure within 30 days of the child's placement only if it is anticipated that the child will remain in the home for 30 days or longer.

1. b. Legal basis for placement.

(1) "shall obtain" is substituted for "must have" for the purpose of clarity.

(2) (a) (i) The present rule is inconsistent in using only the word "court" in some places, and the words "juvenile court" in other places. For purposes of consistency within the rule, and because it is self-evident that wherever "court" is used it means the court dealing with juvenile matters, the word "juvenile" has been struck. It has also been struck in C. 1. b. (2) (a) (iii) and C. 1. b. (2) (a) (viii).

The phrase, "to effect the placement according to the requirements of rule and statute" is added for the purpose of clarity.

(2) (a) (iv) Foster parents believe that they often have an understanding of the child that may be important for court planning or court determination of the disposition for the child. They complain, however, that the social worker may not take account of their views. Therefore, if they were to have knowledge of the time set for a court hearing, they could communicate directly with the court.

~~2. (c)~~ This provision has not been eliminated; it has been moved to become C. 1. c., "Major decisions affecting the child". The present rule contains this provision only under the section making requirements of the agency when legal custody is given to the agency. By moving the requirement out of Section b., "Legal basis for placement", and allowing it to stand alone as Section c., "Major decisions affecting the child", it now applies to <u>all</u> children in placement, whether voluntarily placed or under legal custody. That the agency must have the proper authority to make major decisions regarding <u>any</u> child in placement goes without saying; the present rule, by oversight, neglected to make this clear.

(2) (b) The proposed revised rule has been restructured to include the specific requirements not only for children placed by court order but also for those placed by voluntary agreement.

(2) (b) (i) repeats a requirement already in the Rule (in C. 1. b. (1)).

(2) (b) (ii) For many reasons, placing a child through a voluntary agreement with the parents is preferable to obtaining legal custody. This notice requirement seeks to prevent the problem of parents' removing children precipitously, causing possible upset or trauma to the child. Such notice is considered important in order to allow for the child's return to be planned and orderly.

While the agency may not be able to enforce a 30-day notice if a parent insists upon immediate return of the child, it is hoped that this kind of agreement may discourage an abrupt or precipitous removal.

d. Relationship to other agencies and institutions.

d. ~~(1) Juvenile Court.--The local social service agency shall:~~
For clarity and better form, the provisions under this section have been moved and appear under b. (2) (a).

d. (1) (a) (i) and d. (1) (a) (ii).
It is proposed that d. (1) (a) (ii) be eliminated from the Rule because this requirement already exists in statute. Therefore, for the sake of form, d. (1) (a) (i) has been moved to d. (1) (a) to read, "The agency shall initiate contact with the schools."

d. (2) (b) This standard is eliminated due to the policy of the Department's Licensing Division that only the county in which a foster home is located may evaluate and recommend the home for licensure.

f. Practice components of service.

~~(1)~~ This has been eliminated because it repeats what now exists in statute, M.S. 257.071.

(1) It is proposed that the requirement of the preplacement visit be waived for newborn infants being placed from a hospital into a foster home. This waiver is reasonable because requiring a preplacement visit might necessitate the child's having to remain in the hospital beyond the time the child needs hospital care. This would not be in the child's best interest. In addition, it could be an ordeal for an infant to be taken by a social worker out of the hospital, to a home, and back to the hospital again.

(2) Separation from family along with placement in a strange home can be a traumatic experience for a child. Children have reported being confused, shocked, anxious and fearful. Many believe that the placement is their fault. Many feel rejected or abandoned. Many experience despair. An early visit by the social worker to the foster home is essential to helping the child with this dramatic change in his life. It is reasonable and necessary to offer the placed child as much help as possible to help reduce the damage to the child that placement could mean.

The requirement that the social worker visit within four days of the placement is reasonable and allows for flexibility. Five days is too long a period for the child to wait. Three days does not allow enough flexibility, for it means that if the placement is on a Wednesday or Thursday, the social worker would be obliged to visit on the weekend. By allowing four days, some flexibility is gained; only Tuesday and Wednesday placements would require a visit in less than four days. For a Thursday placement, the visit could wait until Monday. For a Friday placement, if Monday were a legal holiday, the visit could take place on the following Tuesday.

(3) The profession generally accepts parent-child visiting as crucial during foster care, both for the well-being of the child as well as for increasing the likelihood of the child's eventual return home. Studies by David Fanshel are cited in this regard (See Attachments C and D)[3, 4]. In recognition of this, M.S. 257.071 requires a visitation plan when a child is placed in a foster home.

A parent visit shortly after the child's placement is particularly important for a number of reasons: to minimize the sense of abandonment, to provide the child reassurance that his parents still care about him, and to help the parents establish a pattern at the outset of placement, thereby reducing the risk of their losing interest and "drifting away".

3. David Fanshel, "Parental Visiting of Children in Foster Care: Key to Discharge?," Social Service Review, Dec. 1975, pp. 493-514.

4. David Fanshel, "Parental Visiting of Foster Children: A Computerized Study", Social Work Research and Abstracts, 1977, pp. 2-9.

Agencies used to allow a "honeymoon period" in order for the child to get "adjusted" in a new foster home. This is a thing of the past. A number of years ago, a major study by the World Health Organization found that allowing for this adjustment period turned out, in the long run, to be detrimental for the placed children. While on the surface the child seemed to "settle down" better without the disruption of seeing his family, social and emotional problems emerged in later years which were traced to the child's feeling of confusion, abandonment or rejection experienced at the time of placement.

So, child-placing agencies came to recognize that the child needed to visit with the parents soon after placement, within a few days, if possible, and that the pattern of frequent and regular visits should be established from the outset. Key to the parents' "owning the problem" is their recognition of the importance of regular and meaningful contact with their child during the placement period and their acceptance of their responsibility from the outset in carrying out the visiting plan.

(3) Deleted. This provision has been deleted because it is unnecessary to state in this rule. 12 MCAR 2.160, (DPW Rule 160), Administration of Minnesota Public Social Services, Section C. 2. e., identifies foster care service as a mandatory service. Therefore, the service is already specified in a Department rule as one which must be provided by the local social service agency to any person needing or requesting the service, regardless of funding source.

(4) While the existing rule requires that there be provision of casework and other indicated services to the child, it does not specify the frequency of the help to be given to the child.

The reasons for the frequency of casework help to the child, that is, "at least twice a month for the first three months . . ." have been touched upon earlier in this statement of need when discussing the need for a contact by the social worker within a few days following placement. Separation from family and placement in a strange home is a difficult experience for a child and such a placement could be traumatic and shattering. While once-a-week help from a caseworker is closer to what most children need and while the child is likely to need this frequent help over longer than a three-month period, the Department is concerned about lack of staff resources at the local level. A number of county social workers have indicated that the proposed requirement could be managed; they did not question the desirability of and need for regular and frequent casework service to the child.

(5) Clearly, the intent of M.S. 257.071 is that every effort be made to reunite the family. This intent cannot be realized without close work with the family. The frequency of casework service to the child's family, would be most effective on a once-a-week basis, but the Department recognizes the realities of lack of local agency staff to accomplish this. On the other hand, it would be unrealistic to expect that <u>less</u> frequent contact than twice a month would alter the circumstances which led to the child's placement. Here again is perceived the need to compromise what <u>needs</u> to be done in the interest of setting a reasonable standard.

(5) (d) This phrase has been deleted and replaced by the words "develop and maintain" in order to better fit the format of the section.

(6) The amendment is to assure that, in the event of an emergency, a foster parent will be more likely to get assistance.

(8) The phrase "listed under f. Practice components of service" has been added to make clear that a waiver may be exercised only for the standards under "f. Practice components of service".

The Department recognizes that there are situations in which one or another practice requirement may be contrary to a particular child's best interest. For this reason, a waiver provision is proposed which may be exercised for any of the standards under "f. Practice components of service."

g. Provision for meeting health needs.

In this section, the word "health" is substituted for "medical" because "health" is broader in scope and better describes the responsibility a local agency has in meeting a child's health needs.

Since the EPSDT Program applies to all foster children and is mandatory for some, the Department considers it helpful to local agencies to build a statement into this rule but does not consider it necessary to reiterate the details of the requirements which already exist in rule. Therefore, a cross-reference is made to DPW Rule 61.

h. Service plan and review.

This section is proposed in order to implement M.S. 257.071. Although the statute uses the words "case plan", we are using the term "service plan" here to maintain consistency and to avoid confusion since 12 MCAR 2.160, (DPW Rule 160), Administration of Minnesota Public Social Services, as well as Department manual and guideline materials use "service plan" rather than "case plan".

The law intends that foster care should be a <u>temporary</u> substitute placement for a child, rather than a situation in which a child may drift on and on away from his own family with little being done to reunite the family. The Department is as concerned as the rest of the nation about the estimated one-third of all foster children who are "lost in the system", that is, living in foster care when they might be returned home or placed in an alternative permanent situation if a return to home is not possible. The intent of the law, therefore, is to assure that whenever an agency removes a child, the agency has the responsibility to provide planning with the child's family and intensive services toward the end of returning that child home. C. 1. h. defines the population of children for whom it is believed M.S. 257.071 is intended - children who, by and large, are placed in foster care due to conditions or circumstances existing in their own homes and who might be returned home or adopted if return is not feasible.

Some have questioned whether children placed in relatives' homes should be included in the requirements of the statute. The Department believes it is reasonable that those children placed and supervised by the agency in a relatives' home on a temporary basis be protected by the statute.

Children who have been placed by an independent arrangement between relatives, without agency involvement, would not be included; if, however, the agency has placed the child in the relatives' home and is, therefore, responsible for the plan and supervision, it is just as imperative to provide planning and intensive services in order to return the child to the original home as when a child is placed by the agency in the home of nonrelatives. The child placed with the relative on a permanent basis would be excluded, for the determination has already been made that return of the child to his or her own parents is not desirable. To illustrate, if the agency places a child with an aunt due to conditions in the child's own home, the agency makes a service plan and works with the parents. If after 18 months in a voluntary placement, the child still cannot be returned home, the agency petitions the court for dependency or neglect. If the court finds dependency or neglect and orders legal custody be with the agency, nothing prevents the agency from continuing the placement with the aunt. The same effort has been made to return this child to the home of his or her parents as that made for the child living in the home of a person unrelated to the child.

Some have proposed excluding the mentally retarded child from coverage by the statute. They believe that the child, in her or her own home, constitutes and unnecessary hardship on the rest of the family and that adoption is not feasible. The Department believes that mentally retarded children or physically handicapped or socially maladjusted teenagers, for that matter, are placed in foster homes for the same reasons as other children. They should have the same right to protection under the statute as other children placed outside of their parents' homes. If the family of a mentally retarded child cannot cope with the child, and if that child could be adopted by another family, it is unfair to prevent the child from gaining a permanent home.

There may very well be circumstances in which placement of the child is not due to inadequacies or rejection by the parent, e.g., when there are lack of program resources in the parents' community. In these situations, the Department believes that parents can be helped to understand and accept the requirements of the law. The Department believes the parent could be helped to accept and become comfortable with a petition for "dependency" based upon M.S. 260.015 Subd. 6 (b), that the child is in need of special care and treatment required by his physical or mental condition and the child's parent, guardian or other custodian is unable to provide such care and treatment, or 260.015, Subd. 6 (c), that the child's parent, guardian or other custodian for good cause desires to be relieved of his care and custody.

In short, it is difficult to draw a line which excludes any group of children from the requirement of the statute, for to do so would require judgments that certain groups of chidlren, be they mentally retarded, physically or emotionally handicapped or socially maladjusted, are in placement due solely to their own condition, rather than their parents' condition, circumstances or behavior. They could be denied the planning, the review of plan, and the intensive agency work toward the goal of their return to their own home. They could be denied the possibility of adoption should the return home not be feasible.

h. (1) (a) (i) thru (vii) The reason for reiterating the components of the case plan required by M.S. 257.071 is because the Department believes this reiteration of what is in statute is crucial to the ability of persons affected by the rule to comprehend its meaning and effect.

h. (1) (b) Under M.S. 257.071, parents have a right to receive assistance from any person or social service agency as well as a right to legal counsel in the preparation of the service plan. Since the parents are not likely to know their rights under the law, the Department considers it reasonable that the local agency be required to advise the parents of these rights.

h. (1) (c) This requirement has been made because, although the statute does not explicitly require that action to be taken by the child be included in the service plan, the intent of the law is to identify the circumstances or conditions making placement necessary, and in light of these, to plan a course of action to change these circumstances with the goal of returning the child home as soon as possible. Since the child's condition or behavior is frequently a factor in placement, it is reasonable and necessary to identify this in the service plan.

C. 1. h. (1) (d) M.S. 257 requires a visitation plan. Study after study has documented the relationship of parent-child visiting to a child's eventual return home, leading to the conclusion that the importance of these parent-child contacts cannot be too strongly emphasized. Extensive research by David Fashel at Columbia University (See Attachments C and D) revealed that visiting behavior of parents proves to be the best indicator of whether or not a child will return home. Fanshel found that the 61% of the children whose parents engaged in no visiting in the early period of placement were still in care at the end of five years, whereas this was true of 31% of those whose parents visited frequently but irregularly and 27% of those who visited on all occasions permitted by the agency.

In order for the visiting plan to accomplish the objectives of the statute, reuniting of the family in as short a time as possible, there must be many factors considered in developing the plan and there must be specificity in the plan. It is important that the written plan includes details so that it is clear to the parents, the foster parents, the child and the agency who will be visiting (or should not visit), how long the visits will last, where the visits will take place (or should not take place), when the visits will be (or should not be), if there are particular activities which may or may not be conducive to accomplishing the objectives of the visitation.

It is reasonable to require that the plan for the first visit be spelled out. C. 1. f. (3) on page 6 of this statement of need outlines the importance of the first visit between parent and child. The date for that visit, where the visit is to take place, and who will be visiting, are all important for parents, child, and foster parents to agree upon so that the plan fits everyone's schedule. It is so important for that first visit to have a good chance for "success"! The success of the first visit may very well affect the foster

parents' attitude toward the parents of the child, the parents' attitude toward the foster parents and toward the fact that the child is in placement, and the visit, of course, may have profound meaning for the child. In short, the success or failure of the first visit could play a major factor in determining the success or failure of future visits, not to mention the success or failure of the placement itself.

It is reasonable to require that the specific days of subsequent visits and specific hours for beginning and ending of the visits be spelled out, for they are essential details to include in the visitation plan. Everyone needs to know what to expect of one another in order to avoid distrust, frustration, anger and disappointment. It is unfair to a foster parent to have to be available at home a whole day or evening, not knowing when the parent may be coming to pick up the child and when the parent will be returning the child. The foster parent could carry on with his own schedule if he knows that the parent is picking up the child at 1:00 p.m. and returning the child at 4:00 p.m. This reduces the possibility of resentment by the foster parent that his life is unfairly and unnecessarily disrupted by parent-child visiting. We want foster parents to encourage and support the visiting. They are more likely to do so if the plan takes their own needs into consideration.

If is difficult for a child to wait around with uncertainty, not knowing when a parent will come or when the visit will end. If the visit is scheduled for "Saturday afternoon", that child may be watching at the window from noon until 3:00 p.m., but if the child knows that he can expect the parent at 3:00 p.m., he can be using his time to better advantage than waiting around, such as joining his friends at play. The object of visiting is to make it a positive, rather than a negative, experience; specificity in the plan makes this more possible. Uncertainty is a difficult experience for a child. Therefore, it is reasonable that when the visits ends, the child should know when to expect to see his parents again. If the visiting plan is specific as to days and times of the next visit, this uncertainty may be avoided, and the child, the parents, and the foster parents are able to plan their own schedules accordingly.

If there are any special conditions of visitation, they are essential to include in the written plan. For example, if a particular individual has abused the child and is not to be allowed to visit or is not to be allowed to be in the parents' home when the child visits, it is important that everyone understand this. The best assurance that it is clearly understood and not forgotten is to spell it out in writing.

A very important reason for spelling out the details of the visitation plan is that the parents and agency have something very specific to work with in determining the parents' interest, or lack of interest, in the child. If, for example, the parents frequently miss specifically scheduled visits or are frequently late for scheduled visits, it permits the agency and parents to measure in tangible terms what may be the parents' lack of commitment to the child, and reduces the hazard of vague, subjective, impressionistic generalizations about parental interest or lack of it.

h. (1) (e) M.S. 257.071 states that the parents must be "notified" that placement in a foster home could result in termination of their parental rights. The Department believes that the intent of the law was to explain to the parents, rather than to send them a written notice. The intent is not to frighten parents or discourage the placement of children when such placement is in the best interests of the children. The act of placement in itself is not the basis for potential termination of parental rights; rather the conditions or circumstances which necessitated foster care and which, if uncorrected, could make it impossible to return the child home may lead to termination of parental rights. The decision to terminate, therefore, is based solely on whether a child's family can or cannot meet the child's basic health and welfare needs, not on whether or not it has been necessary to place a child in foster care.

h. (1) (f) The Department considers it reasonable to require the local agency to account for any noncompliance with the law or rule in order to better enable the Department to review and evaluate the agency's performance. There may well be situations in which compliance with the letter of the law would be inappropriate or not in the best interests of the client. The agency's accounting for this in the record makes it clear that the agency is not ignoring law or rule, but rather exercising proper judgment in the particular situation.

h. (2) Six-month administrative review of service plan.

As a "check and balance", it is reasonable that more than one professional, that is, someone in the placing agency in addition to or other than the social worker responsible for planning and service to the foster care case review the appropriateness and adequacy of the plan. Administrative, supervisory or conference reviews have been specified to indicate that an administrative review may take any number of forms.

h. (3) Review of service plan with parents and child.

M.S. 257.071 requires this review of the service plan, for voluntary placements only, 180 days after the child's initial placement. The Department believes this review is very important in order to assure ongoing planning between agency and parents for all children and, therefore, considers it reasonable to expand the requirement to all children, whether placed voluntarily or through court order. The waiver of this requirement for court-ordered placements where there has has been a court review is because an additional review would be redundant.

The statute requires the review of the plan "180 days after the initial placement of the child..." The Department's best reading of the intent of the 180 day review in the law is that no child stay in foster care more than 180 days without a review of the plan. Circumstances in a case may, however, indicate a review in less than 180 days. The Department would consider it unfortunate if the review became a mechanistic exercise. This could happen if an agency decided to postpone a review after 120 or 150 days to 180 days in order to be in compliance with the law, or if the agency were to have an unnecessary review at 180 days when a review at 120 days and again at seven months would make more sense.

i. Child's or foster parents' absence from foster home.

For the child's protection, it is reasonable to require that a child not leave the jurisdiction of the state without the agency's consent, regardless of the length of time the child is expected to be gone. Retrieving the child from another state can be very difficult and time-consuming since a Minnesota court order is not automatically or readily enforceable in another state and, therefore, must be converted to an order of the court of the state where the child is found. It can be difficult if the officials of the other state do not wish to honor the expressed desire of officials of this state.

j. (4) The revision of wording in this standard is for the purpose of making more explicit what is meant by the assistance the agency is to be providing foster parents and group home operators toward the preservation of the child's heritage.

k. (2) The phrase has been struck because it is unnecessary.

k. ~~(4)~~ This has been eliminated because it reiterates what is already in statute.

k. (3) (b) It is the Department's view that a parent's refusal to assume financial responsibility for his child, within his ability to do so, is a form of neglect. It is considered reasonable in these situations that the agency seek legal custody from the court, thereby making it possible for the court to order the parents to pay an appropriate amount.

k. (4) This has been revised for the sake of clarity.

k.-~~(6)~~-and-~~(7)~~- These have been omitted because they reiterate what is already in statute and are not crucial to the ability of persons affected by the rule to comprehend its meaning and effect.

l. Rates paid to foster home.

(1) This requirement has been revised to reflect certain funding realities. The purpose of the requirement is to assure that maintenance payments for children made to foster care facilities are uniform, whether the child is funded by local all county funds or by AFDC-FC. This uniformity means complying with the maintenance rate schedule established by the Department in 12 MCAR 2.044, (DPW Rule 44), the AFDC rule.

The waiver is added because it is not possible to pay the same maintenance rates required by 12 MCAR 2.044, (DPW Rule 44), when an agency is following the formula required by 12 MCAR 2.030, (DPW Rule 30).

(2) The reason for this requirement is because the Department wants to assure that each child's maintenance needs are adequately met. Therefore, it is important that uniform maintenance rates be paid to providers for the care of all foster children for whom the local social service agency is responsible. There have been situations in which a local social service agency has contracted

with another agency for the placement and supervision of a child in foster care. The cooperating agency has, in turn, taken money from the maintenance allocation to cover the agency's administrative costs. This amendment would assure that if there are administrative or social service costs required by the cooperating agency, that these be paid as an amount additional to the maintenance rates established by the Department as necessary for meeting the child's maintenance needs.

m. Foster care benefits up to age 21.

With the passage of the law decreasing the age of majority to age 18, the purpose of M.S. 260.40 was to avoid cutting off benefits to persons between the ages of 18 and 21 already in foster care.

The reason for advising the child, the child's parents or legal guardian and the foster parents of the child's rights under the law is to assure that any persons who may be concerned about the child's welfare and about planning for the child's future know of potential benefits to the child who has been in foster care immediately prior to his or her 18th birthday. An additional reason for advising foster parents is because they might be affected by whether or not a child applies for benefits.

Since the person from 18 to 21 should be capable of participating actively in a plan and does not need parental consent, only the child is required to play an active role in the development of the plan. The inclusion of other "appropriate parties" allows for flexibility as to whether others should or should not be included in the plan development.

A distinction is made between the children under state guardianship as neglected/dependent and other children in the foster care program. 12 MCAR 2.171 (DPW Rule 171) provides that state wards may apply and get benefits at any time up to age 21, regardless of when they apply. This is reasonable. For other foster children, however, it would not be reasonable for maintenance or counseling benefits to be provided upon demand with no restrictions. No restrictions could mean that a child who had been in foster care for only three months at age seven could at age 17-1/2 apply for maintenance payments to be paid until age 21. No restrictions could mean that a person who had been a foster child at age 17-1/2 could decide at age 20 to demand maintenance payments even though he had been maintaining himself for the previous two years. Since the intent of M.S. 260.40 was to assure that a child in foster care at age 18 was not suddenly cut off from benefits, the intent here is to assure that this happen.

g. Service record, (deleted).

This section has been eliminated because it is considered internal management and internal management requirements are unnecessary to require in rule.

D. Foster home recruitment and development.

1. An agency may be required to carry on recruitment efforts but it has no control over whether, in fact, its recruitment efforts will be effective. Therefore, this is amended because while it is reasonable to require that the agency has a recruitment program, it is not reasonable to require that its recruitment efforts must be successful.

2. c. It is considered inappropriate and unnecessary to include the examples in rule. Such examples can be provided in administrative manual material.

3. The additional phrase is necessary to achieve a sentence structure consistent with the other requirements in this section.

4. This has been revised to make it consistent with 12 MCAR 2.001, (DPW Rule 1).

5. This requirement is necessary so that Minnesota will be in conformance with federal civil rights requirements. It was developed following a study by the Civil Rights Office of the Department of HEW and its purpose is to insure against discrimination.

Arthur E. Noot
Commissioner

November 15, 1979
Date

STATE OF MINNESOTA

Department of Public Welfare

IN THE MATTER OF THE PROPOSED ADOPTION OF 12 MCAR 2.207 (DPW RULE #207) GOVERNING THE ADMINISTRATION AND PROVISION OF PROTECTIVE SERVICES TO CHILDREN THROUGH LOCAL SOCIAL SERVICE AGENCIES.

STATEMENT OF NEED AND REASONABLENESS

207

This rule is being promulgated due to changes in Minn. Stat. 626.556, effective August 1, 1978, which renders current Rule #2.207 inadequate for the purpose of specifying all child protective services required of the local social service agency. Major changes affecting local social service agencies include requirements that they accept reports and investigate incidents of suspected juvenile prostitution, and that they notify the local police or county sheriff's office of all reports of child abuse/neglect received. The balance of the rule is essentially the same with regard to requirements for local agencies. It has, however, been reorganized and rephrased for the purposes of accommodating the necessary new material and for adding order and clarity. Most of the requirements in the revision remain the same as those in the current rule. However, the nature and extent of structural changes are such that deleting and underlining would be inexpedient and would greatly impede the reader's comprehension.

The introduction and definitions are identical to those contained in current Rule #2.207, the only change being that definitions are listed under a separate heading for the purpose of adding order and clarity. The definitions, moreover, were, and remain consistent with those in other rules promulgated by the Department of Public Welfare.

C. Administration and Organization of Protective Service Program

This section is proposed in order to outline the process by which local social service agencies carry out their mandate to accept and investigate all allegations of child abuse/neglect and to provide protective services to children.

1.a. This is identical to the language in the current rule and is necessary in order to identify the local social service agency responsible for responding to the child abuse/neglect complaints, and to ensure that the child receives needed protection regardless of its status or the status of its parents.

1.b. This is proposed to ensure implementation of the statutory requirement that local social service agencies receive and investigate all child abuse/neglect complaints, and that agencies report all complaints received to local law enforcement. With the exception of the provision that local agencies report complaints to law enforcement, which is mandated by Minn. Stat. 626.556, Subd. 3, the requirements in subsections 1.a. and 1.b. are consistent with those currently prescribed by Rule #2.207.

Dawn, Ex. 10

(1)(a)(b)(c) These requirements also currently exist in Rule #2.207 and are retained to ensure that the local agency respond within a time period appropriate to the circumstances described in the report. Suggested federal standards propose that all complaints be responded to within 24 hours. However, immediate responses where children are in danger, and responses within 24 and 72 hours where children are abused but not in danger, and neglected but not needing immediate protection, are reasonable in that they allow the local agency autonomy of judgment as well as the flexibility needed to determine priority in the deployment of its child protection staff.

(d) This, too, is currently required by Rule #2.207 and is being retained to help ensure that child protection staff not investigate complaints that would unnecessarily involve them in matters not pertaining to child protection. In addition, it would be unreasonable to require local agencies to investigate reports they know to be unfounded.

(2)(3)(a)(b)(c)(d) These provisions are essentially the same as those presently required by 2.207. However, they are stated more explicitly for the purpose of clarity, and are retained as the minimal items of information needed to determine which actions are necessary to protect the child/ren.

(4)(a)(b) These, also, are already required by existing Rule #2.207 and are retained because although an assessment may rule out the presence of physical abuse or neglect, it often discloses problems for which the family may use assistance. Although not a requirement, it is also retained for completeness.

(5) This assures that local agencies allow parents the opportunity to cooperate in efforts to protect the child. It is in the existing rule and is retained since it is reasonable not to invoke legal authority when the family is willing and able to cooperate to protect the child without court intervention.

(6) This present requirement of Rule #2.207 is retained to clarify the local agency's authority and responsibility to act to protect children whose parents are unable or unwilling to do so. This is also necessary to meet the requirements of Minn. Stat. 626.556, Subd. 10.

c.(1)(2)(3) This is required by current Rule #2.207 and is retained in compliance with Minn. Stat. 260.011, Subd. 2, in order "...to preserve and strengthen the minor's family ties whenever possible, removing him from the custody of his parents only when his welfare, safety and protection of the public cannot be adequately safeguarded without removal...."

d. This requirement also currently exists in 2.207 and is retained to make clear to the local agency its authority and responsibility to take legal action when necessary in order to provide the services needed to guarantee a child's health or safety. This provision is also consistent with Minn. Stat. 626.556, Subd. 10.

e. This is consistent with DPW Rule #2.204 requiring that the agency "...request permission of the juvenile court for time to place the child in an orderly fashion...." This is necessary in order to ensure appropriate pre-placement planning, and to prepare the child emotionally for removal from the home. It is also included here to add completeness to 2.207.

(1)(2) These requirements already exist in 2.207 and are proposed here to ensure that the child's parents have the opportunity to exercise their legal rights in major decisions affecting their children while in placement.

It is reasonable that the parents be given the opportunity to be involved in major decisions since their continued involvement with their children will increase the likelihood of reconciliation where reconciliation is appropriate. At the same time, it is necessary that the local agency have the autonomy to respond to emergencies or to take steps to protect a child's health and safety should the parents refuse. This requirement is also consistent with DPW Rule #2.204.

(3) This is currently in Rule #2.207 and is retained in order to clarify the local agency's responsibility as mandated by Minn. Stat. 260.191, Subd. 2. Also, it is reasonable that the local agency provide the court with information sufficient to enable the court to make decisions which will be appropriate and in the child's interests. Although this essentially paraphrases the statute, it is included to make the rule as complete as possible with regard to the local agency's responsibility.

f. Subsections under f. are new and are proposed as a result of new legislation, Minn. Stat. 626.556 effective August 1, 1978, and August 1, 1979, requiring local agencies to respond to and investigate all reports of juvenile prostitution and the involvement of minors in the production of obscene material or performances. These provisions are necessary to define the responsibility of local social service agencies upon receiving such reports. The requirements in these subsections are considered reasonable since they are both within, and consistent with the role and authority of local social service agencies to investigate, and to offer protective services to abused children. For example, f.(1)(a), assessing the victim's circumstances, is a component of the investigation as required by Minn. Stat. 626.556, Subd. 10, which also authorizes the provision of social services as clarified by subsections f.(1)(b)(c) of the proposed rule. Subdivisions (i)(ii) reflect public policy as stated in Section 1, Subd. 1. A. of Minn. Stat. 626.556. Subsections C.1.f. (1) (d) and C.1.f.(2) of the proposed rule are also authorized by Subd. 10, of the reporting law.

g. The requirements outlined in subsections under g. already exist to some degree in present Rule #2.207 but are retained and rephrased here to further specify the local agency's responsibility for investigating child abuse/neglect complaints in which staff members of state supervised agencies or licensed child care facilities are alleged perpetrators. (1)(2)(a) are consistent with Minn. Stat. 626.556, Subd. 10, requiring immediate investigation and steps to protect the child. Subsection (2) (b) is proposed to safeguard the

right of the parent to have knowledge of his/her child's state of health and safety. (2)(c) is proposed since it is both necessary and reasonable that the agency responsible for placement and for permanent planning for the child be notified. Without such notification, the agency would be unable to carry out its responsibility to the child and his/her family. Such responsibility might include, for example, collaboration with the investigatory agency to find a safer or more appropriate placement for the child.

(d) This is proposed so that the state agency can obtain the information necessary to meet its obligation to conduct a prompt independent investigation of alleged incidents of institutional child abuse/neglect. Minn. Stat. 245.813, Subd. 8, requires that the state agency, in such cases, conduct an immediate investigation. However, twenty-four hours is proposed as reasonable time for the local agency to notify the state agency since such incidents sometimes occur during hours when the state agency is closed. It is also reasonable to allow the local agency sufficient time to gather the necessary information to make its report. (d) (i)(ii) are necessary to identify the information needed by the state agency to initiate its independent investigation.

h. This is presently required by existing Rule #2.207. It is necessary so that the state agency can obtain the data needed to plan and administer the child abuse/neglect program in the state, and prepare the annual child abuse/neglect report. The annual report interprets the data. Also, the data are sent to the National Clearinghouse where they are used to compile the national report.

(1) Twenty (20) days is considered reasonable to ensure timely submitting of the reports while allowing the local agency time to collect the required data.

(2) This, also is stated in current Rule #2.207 and is necessary to assure such anonymity to the subjects of the reports as is required by Minn. Stat. 626.556, Subd. 11.

i. This is contained in current Rule #2.207 and is considered necessary to clarify the local agency's responsibility according to Minn. Stat. 626.556, Subd. 10 and 11. Ninety (90) days is considered a reasonable period of time for determining the status of a report.

(1)(a)(b)(2)(3) Minn. Stat. 626.556, Subd. 11 is very specific in its criteria for the retention and destruction of records. These criteria are also currently in Rule #2.207 and are retained for the purpose of completeness.

2.a. This is necessary to ensure that the local agency provide for response to child abuse/neglect complaints during hours that the agency is closed. The phrase "...must provide for the availability of protective services...." allows considerable flexibility while ensuring procedures for responding to emergencies. Such provisions may include, for example, arrangements with local law enforcement agencies which are also authorized to respond to emergency reports.

b.c.(1) These are presently required by Rule #2.207 to ensure the delegation of responsibility within the agency for providing protection to children and to ensure the availability of care in emergency situations. Also, it is reasonable that certain homes be designated for emergencies and equipped to respond to problems children experience in emergency placements.

(2) It is important that a child not remain in a temporary and uncertain situation longer than necessary. Emergency shelter often involves uncertainties in such areas as school attendance. It is necessary, therefore, that permanent plans be made to ensure a measure of security and stability. Thirty (30) days is considered a reasonable length of time within which to assess a child's alternatives and establish a plan for his/her continuing care. Additionally, Title XX reimbursement may be used only for thirty days for emergency placements.

d. This proposal is necessary so that there will not be overlapping or disparity of goals, objectives and procedures between agencies. It is also important that clients and families not experience inconsistencies among agencies regarding expectations. Subdivision (1) is offered as an option since a team approach often enhances such coordination.

(2) This proposal exists in the present Rule #2.207 and is considered necessary since a local agency's delegation of child protective services would be inconsistent with its legal mandate and would also tend to confuse the local community as to which agency is responsible for such services. Since individuals are encouraged to report suspected incidents of child abuse, it is necessary that the local community not be confused as to who is to receive such reports.

November 14, 1979
DATE

Arthur E. Noot
Commissioner

S/giv

DPW-80-020-NG

STATE OF MINNESOTA
OFFICE OF HEARING EXAMINERS

FOR THE DEPARTMENT OF PUBLIC WELFARE

IN THE MATTER OF THE DEPARTMENT OF PUBLIC WELFARE'S PROPOSED ADOPTION OF AMENDMENTS TO RULE 204 (12 MCAR § 2.204) FOSTER CARE - CHILDREN, AND PROPOSED ADOPTION OF A NEW RULE 207 (12 MCAR § 2.207) PROTECTIVE SERVICES TO CHILDREN.

ORDER OF THE CHIEF HEARING EXAMINER

WHEREAS, a hearing was held on December 13, 1979, before Natalie L. Gaull, a Hearing Examiner of the State Office of Hearing Examiners, on the above-entitled matter in compliance with Minn. Stat. § 15.0412, subd. 4; and

WHEREAS, the Report of the Hearing Examiner made pursuant to Minn. Stat. § 15.052, subd. 3, was issued to the Department of Public Welfare (hereinafter "Department") on January 28, 1980; and

WHEREAS, the Department has now determined to adopt rules pursuant to Minn. Stat. § 15.0412, subd. 4; and

WHEREAS, the Deparment has submitted said rules to the Chief Hearing Examiner for review pursuant to Minn. Stat. § 15.052, subd. 4, and 9 MCAR § 2.110; and

WHEREAS, the Chief Hearing Examiner finds that the final proposed rules are not substantially different from those proposed at the public hearing and that the Department has met all requirements of Minn. Stat. § 15.0412, subd. 4.

NOW, THEREFORE, upon receipt of this Order, the Department has the responsibility of submitting the complete hearing record and the rules as adopted by the Department to the Attorney General, notifying all persons who requested to be informed that the hearing record has been submitted to the Attorney General, and publishing in the State Register, all pursuant to Minn. Stat. § 15.0412, subd. 4.

Dated this 1st day of April, 1980.

Duane R. Harves

DUANE R. HARVES
Chief Hearing Examiner

STATEMENT OF COMPLIANCE WITH

MANUAL OF RULE MAKING PROCEDURES

I, Special Assistant Attorney General, Alan Held, do hereby declare that I have examined the proposed rules and all related documents and that, based on them and my personal familiarity with the applicable procedures, the Manual of Rule Making Procedures has been followed. Any exceptions are noted below.

Alan A. Held

Special Assistant Attorney General

Dated: April 9, 1980

STATE OF MINNESOTA

DEPARTMENT OF PUBLIC WELFARE

IN THE MATTER OF THE DEPARTMENT OF PUBLIC WELFARE'S PROPOSED ADOPTION OF AMENDMENTS TO RULE 204 (12 MCAR 2.204) FOSTER CARE - CHILDREN, AND (12 MCAR 2.207) PROTECTIVE SERVICES TO CHILDREN

AFFIDAVIT OF MAILING

DIANE LYNN HIRTE, being first duly sworn, deposes and says:

That on the 5 day of November, 1979, at the City of St. Paul County of Ramsey, State of Minnesota, she served the attached Notice of Hearing by depositing in the United States mail at said City of St. Paul, a true and correct copy thereof, properly enveloped, with postage prepaid, to all persons and associations at the addresses listed on the attached Certificate of the Secretary of State.

Diane Lynn Hirte

Subscribed and sworn to before me

this 7 day of November, 1979.

Margaret Holtz

Notary stamp ok on original 4/14/80 JUW

Agency Ex. 6

STATE OF MINNESOTA

DEPARTMENT OF PUBLIC WELFARE

RECEIVED

IN THE MATTER OF THE DEPARTMENT OF PUBLIC WELFARE'S PROPOSED ADOPTION OF AMENDMENTS TO RULE 204 (12 MCAR 2.204) FOSTER CARE - CHILDREN, AND PROPOSED ADOPTION OF A NEW RULE 207 (12 MCAR 2.207) PROTECTIVE SERVICES TO CHILDREN

AFFIDAVIT OF RECEIPT OF THE SECRETARY OF STATE'S LIST

DIANE LYNN HIRTE, being duly sworn on oath deposes and says:

1) That she is an employee of the Special Services Division of the Department of Public Welfare for the State of Minnesota.

2) That on the 5 day of November, 1979, she went to the Secretary of State's office for the State of Minnesota and requested a current list of all representatives of associations or other interested groups or persons who had registered their names with the Secretary of State for the purpose of obtaining notices of public hearings relating to the promulgation of rules pursuant to M.S. 15.0412.

3) That on the 5 day of November, 1979, in response to the above request, the Secretary of State provided her with such a list, a copy of which is attached hereto and incorporated by reference.

Further affiant sayeth not.

Diane L. Hirte

Subscribed and sworn to before me

this 5 day of November, 1979.

Margaret L. Holt

Notary stamp OK on original 4/14/80 JVW

Appeal Ex-5

STATE OF MINNESOTA

DEPARTMENT OF PUBLIC WELFARE

IN THE MATTER OF THE DEPARTMENT OF PUBLIC WELFARE'S PROPOSED ADOPTION OF AMENDMENTS TO RULE 204 (12 MCAR 2.204) FOSTER CARE - CHILDREN, AND PROPOSED ADOPTION OF A NEW RULE 207 (12 MCAR 2.207) PROTECTIVE SERVICES TO CHILDREN

CERTIFICATE OF DELIVERY OF THE SECRETARY OF STATE'S LIST

I hereby certify that the attached 332 labels 4 sheets constitute the complete list of persons, associations, and other interested groups who as of 9:00 o'clock A.M. this 5th day of November, 1979 have requested pursuant to M.S. 1976, 15.0412 Subd. 4, that their names be placed on file with the Secretary of State for the purpose of receiving notice of public hearing on proposed rules on the subject captioned above.

SECRETARY OF STATE

Joan Anderson Growe

BY

Donna M. Scott

Agency Ex. 4

STATE OF MINNESOTA

DEPARTMENT OF PUBLIC WELFARE

IN THE MATTER OF THE DEPARTMENT OF PUBLIC WELFARE'S PROPOSED ADOPTION OF AMENDMENTS TO RULE 204 (12 MCAR 2.204) FOSTER CARE - CHILDREN, AND PROPOSED ADOPTION OF A NEW RULE 207 (12 MCAR 2.207) PROTECTIVE SERVICES TO CHILDREN

AFFIDAVIT OF ADDITIONAL MAILING

DIANE LYNN HIRTE, being first duly sworn, deposes and says:

That on the 5 day of November, 1979, at the City of St. Paul, County of Ramsey, State of Minnesota, in addition to mailing the attached Notice of Hearing to all persons and associations listed on the Secretary of State's list, she also served the attached Notice of Hearing by depositing in the United States mail at said City of St. Paul, a true and correct copy thereof, properly enveloped, with postage prepaid to the following agencies:.

All Minnesota County Welfare Departments
All Minnesota Human Service Boards
All Minnesota Area Mental Health Boards
All Minnesota State Hospitals

Diane L. Hirte

Subscribed and sworn to before me

this 7 day of November, 1979.

Margaret Nelli

Agency #7

STATE OF MINNESOTA
DEPARTMENT OF PUBLIC WELFARE

RECEIVED
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OFFICE OF HEARING
EXAMINERS

IN THE MATTER OF THE DEPARTMENT OF PUBLIC WELFARE'S PROPOSED ADOPTION OF AMENDMENTS TO RULE 204 (12 MCAR 2.204) FOSTER CARE - CHILDREN, AND PROPOSED ADOPTION OF A NEW RULE 207 (12 MCAR 2.207) PROTECTIVE SERVICES TO CHILDREN

NOTICE OF HEARING

Notice is hereby given that a public hearing in the above-entitled matter will be held pursuant to Minn. Stat. § 15.0412, subd. 4, in the Centennial Office Building, Room A, Fourth Floor, 658 Cedar Street, St. Paul, Minnesota on December 13, 1979 commencing at 9:00 A.M.

All interested or affected persons will have an opportunity to participate concerning the rules captioned above. Statements may be made orally and written material may be submitted. In addition, whether or not an appearance is made at the hearing, written statements or material may be submitted to George Beck, Hearing Examiner, Office of Hearing Examiners, 1745 University Avenue, St. Paul, Minnesota 55104 (612) 296-8108 either before the hearing or within five (5) working days after the close of the hearing. The hearing examiner may keep the record open for a longer period not to exceed 20 calendar days. All such statements will be entered into and become part of the record.

12 MCAR 2.204 was promulgated April 16, 1976. It govern the administration and provision of foster care service for children and their families. Foster care service is defined as a twenty-four-hour-a-day service which provides substitute family or group home care for a planned period of time, provides experiences and conditions which promote normal growth, and provides a full range of casework and other treatment or community services to the child and his family.

The primary reasons for the Department of Public Welfare's proposal of amendments to this rule are to aid in the effective implementation of legislation enacted since the promulgation of the rule (Minn. Stat. 157.071), to clarify the counties' responsibilities under a statute enacted in 1973 (Minn. Stat. 260.40) and to clarify Department policies.

The rule contains a three part introduction. The third part of the introduction has been added to highlight the importance of efforts to keep families intact when possible and appropriate, thus limiting foster care placement.

The rule contains an extensive definition section in which the term "group home" has been redefined and "custodian" and "relative" have been newly defined.

Agency Ex. 1

The major portion of the rule contains standards for the delivery of services to children in foster care. To clarify the present rule, the section detailing when placement in licensed facilities is required has been revised. The local agency responsibilities in court-ordered and voluntary placements have been clarified by separating these into two sections. There is added the requirement that in court-ordered placements the agency inform foster parents of court hearings pertaining to any child in their care, and the requirement in voluntary placements that the agency require the child's parents or guardian to agree to provide 30 days' notice to the agency before removing the child from placement.

There are sections on major decisions affecting the child, on relationship with the schools, and on protecting a child's heritage.

The subsection on relationship between social service agencies and other agencies or institutions contains a deletion regarding an agency's need to obtain approval from another agency if it wants to evaluate for licensing a foster home in another county.

The section on practice components of service contains a number of revisions including an overall waiver option for any requirement that is not in the foster child's best interest; a waiver of the pre-placement visit for newborn infants being placed from a hospital into a foster home; specific requirements for a placement worker's initial visit to a newly-placed child, parents' initial visit with a newly-placed child, worker visits with the foster child in the first three months of placement, and worker contacts with a foster child's family.

The section on meeting a child's health needs requires the local agency to assure that the Early and Periodic Screening, Diagnosis and Treatment services are provided to all children eligible for the Medical Assistance Program.

A new section has been added to interpret the foster care laws, Minn. Stat. 257.071. This section defines the population group to whom the law applies, the components of the written foster care service plan, and adds a requirement of a six-month administrative review of the service plan.

The rule has been revised to require that the agency's permission be obtained anytime the foster child leaves the state.

Parts of the section on financial arrangements and funding have been deleted because they already exist in statute.

The section on rates paid to foster homes is amended to waive, in certain situtations, the requirement of payments of rates based upon the schedule in 12 MCAR 2.044. The section also addresses rate requirements when a county agency contracts with another agency.

The section on foster care benefits up to age 21 interprets and clarifies the requirements of Minn. Stat. 260.40.

Added to the section dealing with foster home recruitment and development are phrases already required by 12 MCAR 2.001 and a requirement that if an agency learns that new applicants or presently licensed foster care providers demonstrate attitudes of racism or bigotry, the agency may not renew the foster home license.

Minor wording changes for clarity have been made in several sections.

The purpose of the Rule 207 (12 MCAR 2.207) is to clarify the responsibility of local social service agencies in the delivery of protective services to children who are alleged to be physically or sexually abused or neglected, or who are threatened with abuse or neglect.

Rule 207 contains an introduction stating the scope of its authority along with the purpose of the child protection system. It also contains definitions consistent with those in other rules promulgated by DPW.

Section C contains standards and procedures for the administration of Child Protective Services at the county agency level. This includes standards and procedures for accepting and investigating reports of abuse/neglect in the child's own home, as well as in institutions, the services to be provided and the agency's responsibility to report to the state agency. It also includes local social service agency responsibility for investigating reported incidents of juvenile prostitution and children involved in the production of obscene materials or performances. Finally, it contains local agency responsibility for keeping and destroying records relating to complaints and for the provision of emergency services.

The statutory authority for 12 MCAR 2.204 is Minn. Stat. § 256.01, subd. 2, (2); Minn. Stat. § 257.175; Minn. Stat. § 245.802; Minn. Stat. § 256E.05, subd. 3(b) (Supp. 1979). 4

The statutory authority for 12 MCAR 2.207 is Minn. Stat. § 245.813; Minn. Stat. § 256E.05, subd. 3(b) (Supp. 1979); Minn. Stat. § 256.01, subd. (2) 2; and Minn. Stat. § 626.556.

Adoption of neither Rule 204 nor Rule 207 will result in $100,000 additional annual expenditures by local public bodies. 10

Copies of the proposed rule are now available and at least one free copy may be obtained by writing to Paul Spears, Department of Public Welfare, Centennial Building, St. Paul, MN 55155, Telephone: 612/296-6740. Additional copies will be available at the door on the date of the hearing.

Notice is hereby given that 25 days prior to the hearing a statement of need and reasonableness will be available for review at the agency and at the Office of Hearing Examiners. This statement of need and reasonableness will include a summary of all of the evidence which will be presented by the agency at the hearing justifying both the need for and the reasonableness of the proposed and amended rules. Copies of the statement of need and reasonableness may be obtained from the Office of Hearing Examiners at a minimal charge. 9

Any person may request notification of the date on which the hearing examiner's report will be available, after which date the commissioner may not take any final action on the rules for a period of five (5) working days. Any person may request notification of the date on which the hearing record has been submitted to the Attorney General by the agency. If you desire to be so notified, you may so indicate at the hearing. After the hearing, you may request notification by sending a written request to the hearing examiner, in the case of the hearing examiner's report, or to the agency, in the case of the agency's submission or resubmission to the Attorney General.

In addition, please be advised that Minn. Stat. Ch. 10A requires each lobbyist to register with the State Ethical Practices Board within five (5) days after he commences lobbying. A lobbyist is defined in Minn. Stat. Section 10A.01, Subd. 11 as amended by Minn. Laws 1979, Chapter 59, Section 3, as any individual:

(a) Engaged for pay or other consideration, or authorized by another individual or association to spend money, who spends more than five hours in any month or more than $250, not including his own travel expenses and membership dues, in any year, for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials: or

(b) Who spends more than $250, not including his own traveling expenses and membership dues, in any year for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials.

The statute provides certain exceptions. Questions should be directed to the Ethical Practices Board, 41 State Office Building, Saint Paul, Minnesota 55155, telephone (612) 296-5615.

Dated: October 29, 1979

Arthur E. Noot
Commissioner of Public Welfare

STATE OF MINNESOTA

DEPARTMENT OF PUBLIC WELFARE

RECEIVED
NOV 1 1979
OFFICE OF REGISTRAR
EXAMINER

IN THE MATTER OF THE DEPARTMENT OF PUBLIC WELFARE'S PROPOSED ADOPTION OF AMENDMENTS TO RULE 204 (12 MCAR 2.204) FOSTER CARE - CHILDREN, AND PROPOSED ADOPTION OF A NEW RULE 207 (12 MCAR 2.207) PROTECTIVE SERVICES TO CHILDREN

ORDER FOR HEARING

IT IS HEREBY ORDERED that a public hearing on the above-captioned rules be held in the Centennial Office Building, Room A, Fourth Floor, 658 Cedar Street, St. Paul, Minnesota on December 13, 1979 commencing at 9:00 A.M. and continuing until all persons have had an opportunity to be heard.

IT IS FURTHER ORDERED that a Notice of Hearing be mailed to all persons or representatives of associations or other interested groups who have registered their names with the Secretary of State for that purpose.

IT IS FURTHER ORDERED that the Notice of Hearing be published in the State Register.

Arthur Noot by Mary Elstad

Dated: October 26, 1979

Agency Ex. 2