

Minnesota Attorney General: Administrative Rules Proceedings

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

STATE OF MINNESOTA

DEPARTMENT ATTORNEY GENERAL

Office Memorandum

TO : ARTHUR E. NOOT
Commissioner
Department of Public Welfare

DATE: Oct. 16, 1980

Attn: BOB HAMPER

FROM : JERRY S. ANDERSON
Special Assistant
Attorney General

PHONE: 296-1288

SUBJECT: Rules as Approved In the matter of the Proposed Adoption of the new Rule 209 "day Care for Children" and the Repeal of Existing Rule 162 "Allocation of Title XX Funds to County Welfare"

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.

JSA/bw
Encl.
cc: Duane Harves
Susan Robertson

ADMIN 1000 (Rev. 1/78)

STATE OF MINNESOTA

DEPARTMENT ATTORNEY GENERAL

Office Memorandum

TO : Jerry Anderson
Special Assistant
Attorney General

DATE: October 14, 1980

FROM : John L. Kirwin JLK
Special Assistant
Attorney General

PHONE: 296-6628

SUBJECT: Proposed DPW Rule 209

As you know, you called me last week to point out several typographical or grammatical errors in the version of the Proposed DPW Rule 209 that was sent to you for review. At your suggestion, I am attaching three copies of pages 2, 5, 7, 10, 13, 16, 17 and 18 of the rule. Each of your suggested changes has been made on these pages, and the Department of Public Welfare requests that these pages be substituted for the similarly numbered pages in the rule sent to you for review.

Your assistance is appreciated.

JLK:lm

RECEIVED
OCT 14 1980
ATTORNEY GENERAL
ADMINISTRATIVE AGENCIES

Our File 636

Permanent Rule X

Temporary Rule _____

RULES REVIEW CHECKLIST

DATE RULES RECEIVED 9/26 DUE DATE 10/16

Resubmitted and Received _____

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

- -

1. Rules as Adopted ✓
2. Rules as Proposed ✓
3. Certificate of Board's Authorizing Resolution, where applicable N/A
4. Order for Hearing ✓
5. Notice of Hearing ✓ 1.28.80
   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 A) ✓ B) Additional mailing ✓
   At least 30 days prior to hearing ✓ 12.17.79
10. Publication in State Register copy not submitted but see HE ¶2
    At least 30 days prior to hearing ✓ 12.24.79
11. Statement of Need and Evidence A) .162 ✓ B) .209 ✓
12. Hearing Examiner's Report ✓
13. Agency's Findings of Fact ✓ incorporated in #15 -
14. Certificate of Board's Resolution Adopting Rules, where applicable N/A.
15. Order Adopting ✓ with attached memo
16. Report of Chief Hearing Examiner ✓
17. Order Approving Incorporation by Reference, where applicable ? see HE ¶12 and FofF 2.
18. Certificate of Compliance with Rulemaking Procedures ✓
19. Copy of Notice of Intent to Solicit Outside Opinion, where applicable ✓ 1.23.78
20. Petition by Public, where applicable _____
21. Submission to AG, Notice of ✓

STATE OF MINNESOTA
COUNTY OF RAMSEY

ARTHUR E. NOOT, COMMISSIONER
DEPARTMENT OF PUBLIC WELFARE

In the matter of the Proposed Adoption of the new Rule 209 "Day Care for Children" and the Repeal of Existing Rule 162 "Allocation of Title XX Funds to County Welfare"

ORDER ADOPTING RULE 209 AND REPEALING RULE 162

The above entitled matter was heard before Hearing Examiner, Harry Seymour Crump, on January 28, 1980, beginning at 9:00 a.m. in the Minnesota Historical Society Building, St. Paul, Minnesota. The Department of Public Welfare (DPW) served proper notice as required by Minn. Stat. §15.0412, Subd. 4 (1978) upon all persons, associations, and other interested groups registered with the Secretary of State for that purpose.

At said hearing, the proposed rule and request for the repeal of an existing rule as published in 4 State Register 1018 on December 24, 1979 were considered. John L. Kirwin, Special Assistant Attorney General, appeared on behalf of DPW and Estelle Griffen, Day Care Specialist, testified on behalf of DPW regarding the adoption of Proposed Rule 209. Alan A. Held, Special Assistant Attorney General, appeared on behalf of DPW and John Brenneman, Service Administration Generalist, testified on behalf of DPW regarding the repeal of Rule 162. The hearing continued until all interested groups and persons had an opportunity to be heard. Pursuant to order of the Hearing Examiner, the record was held open for twenty (20) days for the submission of written comments and statements.

Based upon all the records and proceedings, the Hearing Examiner made Findings of Fact and a Recommendation which are contained in the Report of Hearing Examiner dated March 20, 1980. Said Report is attached hereto as Exhibit A.

Pursuant to the requirements of Minn. Stat. §15.0412, Subd. 4 (1978) this Report was available to all affected persons for at least five (5) days.

Having considered all of the evidence adduced and upon the records, files and proceedings herein, the applicable statutory standards and criteria, and having confirmed the need for the adoption and repeal of above captioned rules and the reasonableness thereof,

NOW THEREFORE, IT IS ORDERED,

That the Findings, Conclusions and Recommendation of the Hearing Examiner, as contained in the Report of the Hearing Examiner, are, with exceptions made below, hereby adopted and incorporated herein.

The Findings of Fact of the Hearing Examiner are enumerated 1 through 35 in his Report. The Commissioner accepts Findings of Fact 1-10, 13-15, 17-20, 22-33 and 35 and has incorporated the recommendations by the Hearing Examiner. The Commissioner accepts but makes limited modifications in Findings of Fact 11, 20, 21 and 34. Additional comments on the need and reasonableness of these changes are stated in the Commissioner's Finding of Fact which follows. The Commissioner rejects the Hearing Examiner's Finding of Fact 12 and 16 and makes his own Findings of Fact below.

The Commissioner of Public Welfare, based upon all the records and proceedings herein, makes the following:

FINDINGS OF FACT

1. In Finding 11, the Hearing Examiner recommended a change in the definition for "Direct Day Care Service Provider". The Commissioner accepts the recommendation and amends Section A, Part 3, Subpart h. to read: P.2.

> "h. Direct Day Care Service Provider -- a person or entity who provides ~~direct~~ care for <u>one or more</u> children <u>for pay in a home or center as a substitute for the parent(s) of the children.</u>

The Commissioner has modified the definition recommended by the Hearing Examiner by deleting the words "group day care home" between "home" and "or" in the above language change. The deletion of these words was necessary to avoid repetition and to maintain flexibility in the kind of "home" care that is included in this rule. The kinds of home-oriented day care being addressed in the rule appear in context with the standards. The Commissioner finds this change reasonable and necessary to clarify which groups of providers are being addressed in the rule.

2. In Section A, Part 3, Subpart d. of the proposed rule, "certification" is defined as the "action taken by the state or county agency to indicate that a provider meets federal day care requirements". Section C, Part 2 sets out the procedure, and some standards for certification. In Finding 12, the Hearing Examiner concludes that the references to federal requirements in the above referenced sections constitute incorporations by reference within the meaning of Minn. Stat. §15.0412, Subd. 4 (1978) (the incorporation provision is now contained in Minn. Stat. §15.0412, Subd. 4a pursuant to amendment by Minn. Laws 1980, Chapter 615 §6). He recommends that a date as to which the reference to federal requirements relate should be specified in the rule. He also recommends that the agency obtain the permission of the chief hearing examiner to make the reference. P. 1

For reasons set forth in the accompanying memorandum, the Commissioner finds that the references to federal requirements do not constitute incorporation of those requirements in the proposed rule. Consequently, the Commissioner does not find it necessary (or appropriate) to specify a date as to which the references pertain.

3. Section B, Part 1, Subpart a.(2) of the rule as proposed provides for the composition of CCAC membership and prohibits compensation of members except for expenses. Some commenters at the hearing suggested that counties be given the option to reimburse CCAC members who attend meetings, as a method of encouraging attendance.

The Department recognized this potential benefit, and recommended that the subpart be amended as follows:

"(2) The membership shall be volunteer ~~and will serve without compensation but may be reimbursed for its expenses~~ but may be compensated for participation in functions of official business if the social service agency(ies) should wish to implement such a plan. Reimbursement for expenses and compensation shall be determined by the agency(ies).

The Hearing Examiner found that the proposed amendment was necessary and reasonable and did not constitute a substantial change. The Commissioner adapts those findings and amends the rule accordingly. He also recommended that the permissive language be changed to mandatory language or that criteria for decision should be specified. The language initially proposed would have prohibited counties from compensating CCAC members other than for expenses. Some counties requested that the prohibition be removed from the rule, and the Department's proposed amendment does just that. Under the amendment, counties are neither required to nor prohibited from compensating CCAC members. The only requirement is that, if they choose to do so, they may do so according to a plan. The Commissioner finds that it is reasonable and necessary to give this option to the counties. p.3

4. In Finding 20, the Hearing Examiner recommends the inclusion of additional language to clarify Section C, Part 2, Subpart b. which covers the local social service responsibility for certification of family day care homes. The Commissioner has also eliminated the language which named the federal day care regulations to be met. Since the hearing, the federal government has changed the name of the regulations to "Health Education and Welfare Day Care Requirements" and probably will make another change within the very near future as that agency no longer includes the Education Office and is called Health and Human Services.

The Commissioner accepts the recommendation and has modified and amended Section C, Part 2, Subpart b.(1)-(3) to read:

"(1) The local social service agency is responsible for certification of family day care homes and group family day care homes that meet federal requirements. ~~(Federal Interagency Day Care Requirements (FIDCR) and Federal Regulations.)~~" p.11
"(2) Relative and one-family exemptions from licensing do not apply when federal funds are used."
"(3) Unless the local social service agency has determined that the home or provider do not have the capability of providing a healthy and safe environment for the children in care, the following providers need not meet licensing and certification requirements to receive payments from federal funds."
(a) Providers who provide child care three hours or less in a 24-hour period.
(b) Providers who give less than 30 days of care in any 365 day period.

Current Subpart b.(2) becomes Subpart b.(4), and current Subpart b.(3) becomes Subpart b.(5).

This addition is reasonable and necessary to distinguish between licensing standards and federal requirements regarding certain exemptions which are a part of DPW Rule 2. These requirements also appear in the standard setting for "in-home" day care providers in Section C, Part 2, Subpart c. The language with the title of the regulations needs to be eliminated because of the ongoing language/title change at the federal level.

5. In Finding 21, the Hearing Examiner recommends that language in Section C, Part 2, Subpart c.(2) giving local social service agencies discretion concerning the application of certification standards to certain providers so that the standard is mandatory, yet flexible. By reference in Finding 20, the Hearing Examiner makes the same recommendation concerning the Department's proposed language in Section C, Part 2, Subpart b.(2). The Commissioner accepts the recommendation and amends Section C, Part 2, Subpart c.(2) to read:

> "(2) Unless the local social service agency has determined that the provider does not have the capability of providing a healthy and safe environment for the children in care, the following providers need not meet the certification requirements to receive payment from federal funds:"

p. 12

This additional phrase is necessary and reasonable to mandate the standard yet allow for the necessary flexibility for professional judgment. A similar amendment is made to Section C, Part 2, Subpart b.(2). These amendments are not substantial changes.

p. 11

6. In Finding 34, the Hearing Examiner recommended a language change in Section E, Part 1, Subpart c. to provide for the needed time to implement a competency-based training and assessment program for day care providers.

The Commissioner accepts the recommendation and has amended Section E, Part 1, Subpart c. to read:

> "c. ~~On an annual basis~~ When the local social service agency has been trained ~~the local social service agency~~ they shall make available a competency-based assessment for each family day care provider who makes application for the assessment. The Department shall furnish the necessary materials and training for agency staff to initiate the program."

p. 19

The Commissioner finds that this amendment is necessary and reasonable and is not a substantial change but clarifies the original intent of the proposed statement.

7. The Commissioner finds that all provisions of the proposed rule, as amended, are necessary and reasonable, and that none of the amendments are substantial changes from the rule as proposed.

IT IS FURTHER ORDERED, that this Rule identified as 12 MCAR 2.209 - Day Care for Children of the Rules of the Minnesota Department of Public Welfare is adopted this 3 day of September, 1980 and after this day, Rule 209 shall read in its entirety as set forth in the attached Exhibit B, pursuant to the authority vested in me, and pursuant to Minn. Stat. Chapters 15 and 256.

IT IS FURTHER ORDERED that Rule 162 is repealed this 3 day of September, 1980.

Dated: September 3 1980

STATE OF MINNESOTA
DEPARTMENT OF PUBLIC WELFARE

ARTHUR E. NOOT
COMMISSIONER

DR-A

Attachment

MEMORANDUM

In Finding 12 of his Report in this matter, the Hearing Examiner found that certain references to federal standards constituted "incorporations by reference." He recommended that the permission of the Chief Hearing Examiner be obtained for the references and that the rule specify a particular date as to which the federal standards were incorporated. In Finding 2 of the attached Order, the Commissioner finds that the references to federal standards are not incorporations by reference. In order to understand the Commissioner's position on this issue, it is necessary to explore the regulatory background.

Rule 209 will govern the administration and provision of day-care services by local social service agencies throughout Minnesota to children and their families. The primary source of funding for the provision of direct day-care services as contemplated by Rule 209 is monies received from the federal government under Title XX of the Social Security Act. The federal government has made these funds available to states for payment to providers of day-care services to eligible children, but only when the providers meet standards specified in federal regulation. The federal regulations provide, at 45 C.F.R. § 228.42(a) (1979) that:

> (a) FFP [federal financial participation] is available for child care services provided under a services plan only where the following standards are met:
>
> (1) In-home care. (i) When homemaker service is utilized for this purpose, it meets standards established by the State or by an Indian tribal council, in accordance with § 228.13, which are reasonably in accord with recommended standards of national standard setting organizations concerned with this type of home care for children.
>
> (ii) When other caretakers are utilized for this purpose, such care meets standards established by the State or by an Indian tribal council, in accordance with § 228.13, which, as a minimum, cover the caretaker's age, health, capacity and available time to properly care for children; minimum and maximum hours to be allowed per 24 hour day for such care; maximum number of children that may be cared for in the home at any one time; and proper feeding and health care of the children.

(2) Out-of-home care. (i) Facilities used to provide day care outside a child's own home are licensed by the State, an Indian tribal council, in accordance with § 228.13, or approved as meeting the standards for such licensing.

(ii) Such facilities and care meet the 1968 Federal Interagency Day Care Requirements, except that:

(A) Subdivision III of such requirements with respect to educational services is recommended but not required.

(B) Required staffing standards for children under age 3 in day care centers and group day care homes are: 1 adult for each child under 6 weeks of age: 1 adult to 4 children, ages 6 weeks through 36 months. (States may, at their option, require fewer children per adult.)

(C) Required staffing standards for school age children in day care centers are: at least 1 adult to 15 children, ages 6-10; and at least 1 adult to 20 children; ages 10-14.

The quoted portion of the regulation closely follows the enabling legislation, 42 U.S.C. § 1397a(a) (9)(A).

As can be seen from the regulation, the state is required to set standards which "in-home" day-care providers must meet in order to be eligible for payment from Title XX funds. The state has set these standards in Part C.2.c.(3) of Rule 209.

With respect to "out-of-home" day-care providers, however, the federal regulations provide that FFP is available for payment for services only where (1) the provider is licensed by the state and (2) the provider meets specified federal requirements (designated as the 1968 Federal Interagency Day Care Requirements).

In order for Minnesota to take advantage of the federal funds available for child care services, the state (or the county) must determine that the conditions the federal government has placed upon the use of those funds are satisfied. In Part A.3.c. of the proposed Rule 209, this process is called "certification."

As stated above, the Hearing Examiner found that, by referring to the federal standards which must be met in order for day care providers to be eligible for payment from federal funds, the rule had incorporated those standards by reference.

A. Specifying Federal Standards

The hearing examiner has recommended that the rule, if it refers to federal standards, should state the specific standards being referred to and the date of the federal standards to which the reference pertains. These recommendations are apparently based upon the principle that a body with legislative or rulemaking authority may not delegate that authority to another entity.

The proscription against delegating legislative authority to another governmental entity is universally recognized. The Minnesota Supreme Court set out the principle in the case of Wallace v. Commissioner of Taxation, 289 Minn. 220, 194 N.W.2d 588 (1971). In that case, a Minnesota statute provided that the term "gross income" as used in the Minnesota tax laws means the "adjusted gross income as computed for federal income tax purposes as defined in the law of the United States for the taxable year." The Court held that the legislature's adoption of the definition of "adjusted gross income" from the federal law must be limited to the federal law as it existed at the time the Minnesota statute was passed. The Court said:

> In considering the issue of whether a change in Federal law may alter the force and effect of provisions in a prior state law governing the same subject, it may be said that the principle which controls is that a state legislature may not delegate its legislative powers to any outside agency, including the Congress of the United States. The reason for this rule is that changes in the foreign legislation may not fit the policy of the incorporating legislature and the person subjected to the change law would be denied the benefit of the considered judgment of his legislature on the matter. The basic objection derives from the principle that laws should be made by elected representatives of the people responsible to the electorate for their acts. That principle is expressed in Minn. Const. art. 9, § 1, which states in part: "The power of taxation shall never be surrendered or contracted away."

289 Minn. at 226, 194 N.W.2d. at 591.

It is important to note that the Minnesota legislature could have included a complete definition of "gross income" for the purpose of the Minnesota law, or it could have adopted a definition of the term from any of a number of sources. The legislature chose

to adopt, for the purposes of the Minnesota law, the definition of "adjusted gross income" from federal law. The Court held that, if the definition were not fixed to the federal definition of "adjusted gross income" at the time the state law was passed, in effect, the legislature would be delegating its legislative authority to the federal government.

The significant point is that the authority and responsibility to set the conditions of Minnesota's taxation scheme lay with the legislature. It could not constitutionally relinquish that authority to the federal government.

In Rule 209, the Department is not delegating its rulemaking authority to the federal government. The federal government unquestionably has authority to set conditions on the receipt of federal funds. The state is not electing the federal standards as the standards which will be applied in determining who may receive the federal funds, but instead recognizes that the federal requirements must be met in order for providers to be paid from federal funds.

For the state to purport to incorporate the Federal requirements as of a specific date would produce an unacceptable and legally incorrect result. If the federal government changes the conditions upon which it will make federal monies available, the state and the counties cannot then distribute those funds in a manner inconsistent with the new conditions imposed by the federal government.

To the Commissioner's knowledge, no Minnesota case has directly dealt with the delegation issue in a factual context like this. However, the Texas Supreme Court has made it clear that a legislative decision to pay for a certain service only if the service is eligible for federal reimbursement is not a delegation of the state legislative authority. In the case of State v. City of Austin, 160 Tex. 348, 331 S.W.2d. 737 (1960), a Texas law provided for reimbursement of the costs of utility relocation caused by highway projects. The Court said:

> By the terms of Article 6674-w-4, reimbursement for relocation costs is conditioned upon the eligibility of such relocation for Federal participation. Petitioner argues that a change in the conditions and extent of Federal participation would modify the legal obligation of the State of Texas to utility owners, both private and municipal, and that the statute is therefore an unconstitutional delegation of legislative power to the United States, its Congress and agencies. . . .
>
> The law was complete when it left the hands of the Legislature and was not to become operative upon the happening of some contingency or future event. A change in the percentage of Federal participation will naturally affect the amount which the state receives by way of reimbursement, but will not alter in any way the obligation of the state to the utilities. No part of the expense will be paid by the state, of course, if the relocation is not eligible for Federal participation, but in making this provision the Legislature was simply establishing a class of relocation projects for which the utilities will be entitled to reimbursement. It is our opinion that the classification is reasonable and that the law is not unconstitutional as a delegation of legislative power.

331 S.W.2d at 746.

The principle of the Austin case applies with equal force here. The state has determined to pay for day-care services insofar as federal funds are available to reimburse the state for that payment. However, the determination of whether federal funds are available can only be made by reference to the conditions set forth in the federal regulations applicable at the time the determination is made. Under the Austin case, this does not constitute a delegation of legislative or rulemaking authority to the federal government.1/

1/ A substantially identical law, concerning reimbursement for relocation of utilities if federal participation were available, was sustained against constitutional attack on other grounds in the case of Minneapolis Gas Co. v. Zimmerman, 253 Minn. 164, 91 N.W.2d 642 (1958). The Court held that the legislature did not violate the constitutional prohibition against "special legislation" when it singled out for state payment those utilities and projects for which federal reimbursement was available.

It is abundantly clear that, by making reference to federal requirements for receipt of federal funds, Rule 209 does not delegate state rulemaking authority to the federal government. Rather, Rule 209 simply recognizes that the federal requirements must be met in order for federal funds to be used, and the rule sets out an administrative scheme for making that determination. Consequently, specifying the specific regulations and dates of those regulations to which the references pertain is not necessary or reasonable.

B. Permission of Chief Hearing Examiner

Because the hearing examiner concluded that references to Rule 209 were incorporations by reference, he recommended that permission be sought from the chief hearing examiner pursuant to Minn. Stat. § 15.0412, subd. 4 (1978). That subdivision provides in relevant part:

> The notice in the state register shall include the full text of the rule proposed for adoption; provided that, with the approval of the chief hearing examiner, the agency may incorporate by reference provisions of federal law or rule or other materials from sources which the chief hearing examiner determines are conveniently available for viewing, copying and acquisition by interested persons. The chief hearing examiner shall not approve incorporation by reference of materials which are less than 3000 words in length or which would require less than five pages of publication in the state register. . . .2/

The quoted language provides that the notice in the State Register shall contain "the full text of the Rule proposed for adoption." The provision that outside material may be incorporated by reference is an exception to this general rule. Here, the federal requirements for the receipt of Title XX funds were not proposed for adoption at the Rule 209 hearing. The federal government had promulgated those standards through its

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2/ Under Minn. Laws 1980, ch. 615, § 6, the quoted material was recodified to Minn. Stat. § 15.0412, subd. 4a. The amendment was effective August 1, 1980. Because this rule was pending for the Commissioner's Order at that time, it is not clear whether the new or the old version of the law should be applied. However, it is not particularly important since the language of the new and the old law are substantially identical for these purposes.

administrative processes. The state could not choose to adopt or reject those conditions. Comments by members of the public concerning their support for or opposition to the federal requirements would be of no consequence.

The law does not provide that every reference to federal rules or other material outside the proposed rule must have the permission of the chief hearing examiner. It is only an incorporation by reference which must receive the chief hearing examiner's sanction.

State rules contain many true incorporations by reference. Many examples are contained in the State Building Code. The Commissioner of Administration is authorized by statute to set standards for building construction. He has done so through the State Building Code contained in 2 MCAR §§ 1.0101-1.18901.

A review of the State Building Code shows that the Commissioner of Administration has promulgated detailed standards expressly set forth in state rule to govern many aspects of building construction. In some areas of construction, however, the Commissioner has chosen to adopt existing codes by reference, rather than to formulate his own detailed code. Examples are the 1976 Uniform Building Code (2 MCAR § 1.10111), the 1978 National Electrical Code (§ 1.18601) and the 1976 Minnesota Plumbing Code (§ 1.18701).

By choosing to incorporate the existing codes of outside standards-setting organizations, the Commissioner of Administration made those codes a part of the state rule. In the words of Minn. Stat. § 15.0412, subd. 4 (1978), those outside codes were part of "the rule proposed for adoption." Members of the public could have challenged the appropriateness of the codes, or any part of them, and the Commissioner of Administration could have responded with appropriate changes in his proposal. In Rule 209, however, the Commissioner of Public Welfare could not make changes in the federal conditions upon the use of funds.

Based on the above, the Commissioner finds that the references to federal requirements in Rule 209 are not incorporations by reference as that term is used in Minn. Stat. § 15.0412, subd. 4 (1978), and consequently, the approval of the chief hearing examiner for the references is not necessary.

A. Introduction

1. This rule governs the administration and provision of day care services by local social service agencies for children and their families.

2. The authority for this rule and for the administration of day care services for children is found in: Minnesota Statutes 256.01, 256.011, 256E.02, 256E.05, and 15.0412, Subdivision 3; Public Laws 93-647 and 94-401; and 45 CFR §§228.13 and 228.42.

3. Definitions

a. Child - A person 14 years of age or younger.

b. Child Development Training - Training by an accredited institution or courses approved by the local social service agency designed to maintain or improve the quality of care for children.

c. Certification - The action taken by the state or county agency to indicate that a day care service provider meets federal day care requirements.

d. Certified Day Care Provider - A direct day care service provider who has received certification by the state or county agency.

e. Commissioner - The Commissioner of Public Welfare.

f. Day Care Resource - Any person or entity providing direct or indirect day care services.

g. Day Care Service - The less than 24-hour-a-day service which provides care for children as a substitute for or supplement to parental care for a planned period of time.

h. Direct Day Care Service Provider - A person or entity who provides care for one or more children for pay in a home or center as a substitute for the parent(s) of the children.

i. Indirect Day Care Service Provider - A person or entity which provides support services to direct day care service providers, including training, planning and coordination, toy lending libraries, health services which are intended to improve the quality of care for children.

j. In-Home Day Care - Day care services in the child's own home.

k. Lead Agency - An agency designated by the Commissioner as having primary responsibility for the local Child Care Advisory Committee.

l. Local Child Care Advisory Committee (CCAC) - A citizens' group approved by the Commissioner to advise the local social service agency on day care services.

m. Local Social Service Agency - County Board of Commissioners or other agency designated by the county board as responsible for social services.

n. State Agency - Minnesota State Department of Public Welfare.

B. Resource Development

1. Planning and Coordinating Day Care Resources and Development - To insure a system of planning and coordinating among multidisciplined per-

sons and entities that affect day care services, including both direct and indirect day care service providers, the social service agency or combination of agencies shall establish and/or maintain a local Child Care Advisory Committee (CCAC).

a. The Child Care Advisory Committee

(1) The local CCAC shall serve no less than one county but may, by agreement of the County Boards of Commissioners or Human Services Boards, encompass two or more contiguous counties.

(2) Composition of a CCAC: The membership of the CCAC shall be no fewer than seven persons and shall be representative of the racial minorities, ethnic groups, socioeconomic groups and geographical area served. The membership shall be volunteer but may be compensated for participation in functions of official business if the social service agency(s) should wish to implement such a plan. Reimbursement for expenses and compensation shall be determined by the agency(s). The membership shall include:

(a) One-third (1/3) parents who use day care services;

(b) Providers of direct day care services. The providers who are recruited and selected shall reflect the varying kinds of day care resources in the area. Wherever feasible, it shall include at least one person from each kind of direct day care service provider in the county or geographic area.

(c) Indirect service providers, including local social service agencies and/or boards, health services, early childhood educators, public schools and community groups.

(3) Responsibilities of a CCAC: The local CCAC shall cooperate with the social service agency to achieve the following:

(a) Coordination among day care resources, public and private service agencies and persons;

(b) Public information and parent education regarding the developmental needs of children;

(i) The CCACs shall develop a public education and information program to communicate to the community the need for day care resources and services as identified in a needs study or assessment.

(ii) The CCACs shall advise the local social service agency regarding tools and stratagems to communicate to parents needing day care services the importance of quality care and child development experiences during the child's early years.

(c) Identification of local day care needs;

(d) Community interest in the development of needed day care resources and services;

(e) Coordination and planning for training of day care providers and parents;

(f) Funding plans for the development of day care resources, implementation of a sliding fee for day care services and the use

of Title XX funds for providing direct services to eligible children; and

(g) Other day care activities as the CCAC and/or lead agency deems necessary and appropriate.

(4) Organizational Structure: Each CCAC shall have an organizational plan (bylaws and charter) to govern the activities of the committee and to perpetuate its membership through a democratic process. Where no organizational plan currently exists or has not been approved by the Commissioner, the CCAC shall prepare one for its operational use. The organizational plan of each CCAC shall be submitted to the Commissioner for approval within one year after the CCAC is formed and functioning or within one year after the promulgation of this rule, whichever is later.

b. The Lead Agency

(1) Lead Agency Designation: The commissioner shall biennually designate a local social service agency or other community agency to serve as the lead agency for the local CCAC.

(a) Single County - If the CCAC area encompasses only one county, the lead agency is the social service agency unless the Commissioner designates an alternate;

(b) Multi-County - If the CCAC area encompasses more than one county, the Commissioner shall designate one county or community agency to serve as the lead agency for that geographic area. The following procedures shall be followed in the determination of a lead agency:

(i) The Commissioner shall issue an announcement to all local social service agencies in that CCAC area of intent to

designate a lead agency for the local CCAC and solicit their recommendation for this designation.

(ii) The Commissioner shall direct that any recommendations from the local social service agencies be made within 45 days after the issuance of the announcement.

(iii) After the 45-day recommendation period, the Commissioner shall designate a lead agency and notify all of the agencies and the CCAC chairperson of that decision within 30 days following the recommendation or the end of the 45 days recommending period.

(2) Lead Agencies Responsibilities

(a) Coordinate and Supervise CCAC Functioning: The lead agency shall work with the CCAC as a representative of all local social service agencies in the geographic area served by the CCAC.

(i) Planning the CCAC's Activities: On an annual basis, the lead agency shall plan with the local social service agencies in the CCAC area to establish priorities for determining the CCAC calendar of advisory activities.

(ii) Communicate to CCAC and Local Social Service Agencies: The lead agency shall communicate with the CCAC regarding the local social service agencies plans and decisions for delivering day care services each planning year. The lead agency shall communicate the CCAC recommendations to each local social service agency being served.

(iii) Coordination of Resources for the CCAC: The lead agency shall serve as the recipient of financial and service resources

from all social service agencies for distribution to the CCAC to maintain its functioning.

(iv) Monitoring of the CCAC: The lead agency shall annually, or at shorter intervals if needed, monitor the activities of the local CCAC according to criteria established in the CCAC's charter and bylaws.

(b) Development of the CCAC: To develop or redevelop a local CCAC the Commissioner shall inform the lead agency or other designate of the need to facilitate the establishment or reestablishment of a new CCAC.

(i) Notification - Within 30 days after notification by the Commissioner, the lead agency or designated agency shall notify, by written announcement, all licensed child care providers and, by public notice, all other interested persons in the geographic area of its intent to develop or redevelop the local CCAC.

(ii) Within 60 days of the Commissioner's request, the lead agency shall convene a public meeting of the child care community (providers, support services and parent recipients of day care services) and temporarily preside at such meeting until the persons present elect their own leadership and establish a working agenda.

(iii) When a new or reestablished CCAC has been organized, the county board(s) (or human service board(s) where such boards have responsibility for social services) within the geographic service area shall review and recommend to the Commissioner approval or

disapproval of the CCAC applicant within 60 days of the applicant's request for approval. Reasons for approval or disapproval shall be stated in writing to the applicant and the Commissioner.

(iv) When the applicant CCAC has the approval (disapproval) of the county board(s) or human service board(s), it shall apply to the Commissioner for recognition as the CCAC for the geographic service area.

(v) The Commissioner shall recognize or withhold recognition of the applicant within 45 days of the receipt of the application. If recognition is withheld, the Commissioner shall inform the applicant and lead agency of the deficiencies and identify conditions to be met.

(c) Provide Resources: The lead agency shall provide resources (money and services), consultation, technical assistance and other needed support as mutually agreed upon by the functioning CCAC and the lead agency on behalf of all local social service agencies being served.

2. Development of Day Care Resources

The local social service agency shall recruit day care resources to meet the community's day care needs.

a. There shall be diversity in kinds of day care resources developed.

(1) There shall be diversity in direct day care service providers.

(a) There shall be diversity in the type of direct day care service resource (in-home, family day care, group family day care, center); ages of children served (infants, toddlers, preschool, school-age); number of children to be served; and program that meets individual children's needs (e.g., enrichment, children with special needs).

(b) There shall be diversity in location of direct day care service provider resources including all major geographic areas where the service is needed so that the services are accessible to all parents and children who need it.

(c) There shall be diversity in programs to include day care provider resources that meet developmental, ethnic, cultural, and bilingual language needs.

(2) There shall be diversity in indirect day care resources to support and improve the quality of day care services.

(a) There shall be resources that directly support the day care service delivery such as: toy lending libraries; health and social services, program facilitators, substitute providers and periodic training programs.

(b) There shall be ongoing support service resources that provide professional expertise and training to all direct and indirect service providers.

b. Planning and Coordination: Each social service agency shall provide or purchase planning and coordination services to ensure a system of

information and referral of direct day care service providers to parents, as well as other community services; consultation and technical assistance to providers seeking funding from existing resources; coordination between direct day care service providers, day care resources and community and governmental agencies, needs assessments, and planning for training activities.

c. Funds for Development: Potential day care providers shall be informed about funds available to them for meeting startup costs or licensure requirements.

C. Day Care Regulations - The local social service agency shall provide the following services to individuals and groups that plan to be licensed and/or certified as a day care providers.

1. Licensing

a. Group Day Care Centers:

(1) The local social service agency shall refer any inquiry on establishing a new group day care center to the Licensing Division of Public Welfare for licensure as defined in 12 MCAR 2.003.

(2) The local social service agency shall refer all operating unlicensed day care centers to the Licensing Division of Public Welfare.

b. Family Day Care Homes: The local social service agency shall inform all inquirers regarding family day care licensure of the standards as defined in 12 MCAR 2.002 and provide the necessary consultation and inspec-

tions pursuant to the requirements in the licensure standards. If the applicant meets the family day care licensing requirements, the local social service agency shall recommend the home to the state agency for state licensure.

2. Certification

All day care providers that care for children whose day care services are paid for with federal funds must be certified as meeting federal requirements for receipt of such funds.

a. Group Day Care Centers: The Licensing Division of the state agency is responsible for certification of group day care centers.

b. Family Day Care Homes:

(1) The local social service agency is responsible for certification of family day care homes and group family day care homes that meet federal requirements.

(2) Relative and one-family exemptions from licensing do not apply when federal funds are used.

(3) Unless the local social service agency has determined that the home or provider do not have the capability of providing a healthy and safe environment for the children in care, the following providers need not meet licensing and certification requirements to receive payment from federal funds:

(a) Providers who provide child care three hours or less in a 24-hour period.

(b) Providers who give less than 30 days of care in any 365 day period.

(4) The local social service agency shall provide information regarding certification to each family day care or group family day care provider and provide consultation and services to those who wish to be certified to care for children placed by the social service agency. If they meet the federal requirements, the agency shall certify them and shall recertify them annually. If at any time after certification, the local social service agency determines that a family day care provider does not meet the requirements for certification, the local social service agency shall revoke the certification.

(5) Records shall be maintained by the county agency on forms developed by the state agency as documented evidence that the home meets certification requirements.

c. In-Home Day Care Providers:

(1) The local social service agency is responsible for certification of in-home day care providers and shall certify those providers who meet the provider's standards set out below. If, at any time, after certification, the local social service agency determines that the provider does not meet these standards, the local social service agency shall revoke certification.

(2) Unless the local social service agency has determined that the provider does not have the capability of providing a healthy and safe environment for the children in care, the following providers need not meet the certification requirements to receive payment from federal funds:

(a) Providers who provide day care three hours or less in a 24-hour period.

(b) Providers who give less than 30 days of care in any 365-day period.

(3) The following standards are established by the state agency as meeting the federal requirements for in-home day care providers:

(a) Provider's Standards

(i) The provider shall be at least 18 years of age. A waiver of this standard may be granted by the local social service agency to a younger person (other than a child) who possesses sufficient maturity to assure compliance with standards of care required by this rule and who has an adult on call for emergency assistance. In any event, there shall be no more than two preschool children placed in the care of a person under 18 years at any one time.

(ii) The provider shall have experience and demonstrated competence in caring for children.

(iii) The provider shall supply evidence to the local agency that he/she has had a negative intradermal tuberculin test or chest X-ray within the past year. If the test is negative, he/she need not have one thereafter. If the test is positive, the provider must have a chest X-ray each year for five years.

(iv) The provider shall supply a statement from his/her physician dated within six months prior to the application, and

annually thereafter, that the applicant has received a physical examination and is receiving all necessary continuing medical treatment to assure that he/she remains physically capable of caring for young children.

(v) The in-home provider shall not have any of the following conditions unless the agency staff believes that the condition will not adversely affect the care of children.

(aa) Has committed an act of child battering, child abuse or molesting as defined by the Child Abuse Reporting Law;

(bb) Uses alcohol or drugs, such that its effects are evident during the hours the children are in care, or has an uncontrolled addiction to drugs or alcohol, either currently or within the past 12 months;

(cc) Has had own child(ren) in foster care within the previous 12 months, unless the primary reason for such placement was the physical illness of the parent, the mental retardation of the child or a temporary foster placement of an infant being relinquished for adoption;

(dd) Has demonstrated behavior patterns which include acts of violence to persons of any age or negligence toward the applicant's own children.

(vi) The in-home provider shall provide nutritionally sound meals that follow the family's feeding plan, observing hours and kinds of food as planned by parent(s). When parents do not provide foods in the four basic food groups, the provider has the responsi-

bility of alerting the parents to the nutritional requirements of young children.

(vii) The in-home day care provider shall plan and establish a learning environment appropriate for the family and age level of the child. Materials, activities, and space shall be used to provide the child with opportunities to develop to his fullest potential physically, emotionally, socially, intellectually and psychologically.

(b) Service Standards

(i) In-home day care providers shall care for no more than the following number of children (including their own children) at any one time:

(aa) Five children if all are of preschool age (0 - 5 years).

(bb) Six children if one or more of the children are of school age (6 - 14 years).

(ii) The in-home provider shall provide care for no more than 14 hours per day. A waiver of this standard shall be granted by the local agency for a family emergency or other similar circumstances until the parent or agency has had the opportunity to plan more comprehensive care by a homemaker for the child(ren). The waiver shall not exceed a period of ten days for any one situation or circumstance.

(4) Each certified in-home day care provider shall be recertified annually.

(5) Records shall be maintained by the local social service agency on forms developed by the state agency as documented evidence that the in-home providers meet certification requirements.

d. Training - Each certified family day care or in-home day care provider shall participate in a minimum of four (4) hours of child development training within the first three months of service and 16 hours of child development training annually thereafter or qualify as exempt from training for three years on the basis of qualifying for a credential on Minnesota's competency-based assessment program for family day care providers.

e. Appeal of Certificaiton Denial, Nonrenewal or Revocation: The local social service agency shall promptly notify by certified mail or personal service any applicant or day care provider whose certification is proposed to be denied, revoked, or not renewed by the local social service agency. This notification shall state the grounds for such action and shall inform the applicant or provider of his/her right to appeal the action. Any applicant or provider whose certificaiton is proposed to be denied, revoked or not renewed may appeal to the Commissioner by mailing written notice of appeal to the Commissioner within 20 days after receipt of the proposal for denial, revocation, or nonrenewal. Upon receiving a timely written notice of appeal, the Commissioner shall give the applicant or provider reasonable notice and opportunity for a prompt hearing in accordance with Minnesota Statutes 15.0418-15.0422. If the Commissioner finds that the health, safety, or rights of children in day care are in imminent danger, he shall immediately suspend the provider's certification, subject to subsequent notice and hearing as provided in this paragraph.

D. Service Delivery

The local social service agency must meet the following standards in providing services to all Social Service clients where day care is a needed service:

1. The local social service agency shall maintain a staff to fulfill the responsibilities described in this rule.

2. The local social service agency shall make available supportive services for children in direct day care resources to assure quality of care for children in the facility or home.

3. The local social service agency shall maintain an accurate resource file on all day care/child development services and resources in the geographic area to be served.

4. The local social service agency shall make available services to assist parents in planning for the day care placement of their children to assure services that meet the children's individual needs.

a. The local social service agency shall inform the parent(s) about the eligibility requirements for financial assistance with the payment of day care services as described in the agency's social service.

b. The local social service agency shall plan with the parent(s) to develop the child's service plan as a basis for selecting a certified day care center or provider that has a program and environment that meets the child's individual developmental needs.

c. The following procedures shall be used to select the day care providers for children needing day care services.

(1) The local social service agency shall recommend at least two certified resources or providers that meet the child's programmatic needs and the parents' transportation needs.

(2) The parent(s) shall be given the opportunity for a preplacement visit with each day care provider recommended by the agency.

(3) The parent(s) shall be given an opportunity to recommend to the local social service agency which day care he/she wishes to use for the care of the child or may recommend an alternative that meets certification standards and more nearly fits the family and child's needs.

(4) The local social service agency shall make available day care services in the day care resource (center, family day care home or in-home provider) selected and agreed upon by the agency, the parent(s) and provider, based on the assessed needs of the child as documented in the service plan for the child.

d. The local social service agency placement worker shall visit the child(ren) at least once annually to assure that the child is making progress toward the goals in his/her service plan.

e. The local social service agency shall assume responsibility for health and dental assessments for each child placed in day care as part of a casework plan, determine parental or agency responsibility for payment of the service, and assist parents of these children in making arrangements for treatment as recommended by the person(s) making the assessment(s).

E. Training

1. Provider Training

a. The local social service agency shall assume responsibility for the maintenance and/or improvement of the quality of day care services provided by all family day care and in-home day care providers.

b. The local social service agency shall make available a minimum of twenty-four hours of child development training annually. The training provided shall include courses such as: family life, human growth and development, child rearing, child nutrition, first aid and child care program skills.

c. When the local social service agency has been trained, they shall make available a competency-based assessment for each family day care provider who makes application for an assessment. The Department shall furnish the necessary materials and training for agency staff to initiate the program.

2. Social Service Agency Staff Training

The local social service agency shall make available child development training for staff responsible for day care services.

a. All day care licensing staff shall complete six hours of child development training each year.

b. All new day care licensing staff shall complete six hours of training in the licensing process within six months of their employment on this assignment. This training shall be in addition to the child development training as identified in "a" above.

c. Placement workers who work with families in planning day care services shall be given the opportunity to participate in the child development training.

d. Each day care licensor who wishes to improve his/her skills in assessing the competency of a family day care provider shall be given the opportunity to participate in a competency-based training program.

LJ/rule

APPROVED AS TO FORM AND LEGALITY

10/15 1980

WARREN SPANNAUS, ATTORNEY GENERAL

BY _____

SPECIAL ASSISTANT ATTORNEY GENERAL

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED
OCT 15 1980
Joan Anderson Growe
Secretary of State
3:10 PM

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

FINDINGS OF FACT

Procedural Requirements

1. On December 5, 1979, the Department filed the following documents with the Chief Hearing Examiner:

(a) A copy of the proposed rules.
(b) The Order for Hearing proposed to be issued.
(c) The Notice of Hearing proposed to be issued.
(d) A Statement of the number of persons expected to attend the hearing and estimated length of the Agency's presentation.

2. On December 24, 1979, a Notice of Hearing and a copy of the proposed rules were published at 4 State Register 1018.

3. On December 17, 1979, the Department mailed the Notice of Hearing to all persons and associations who had registered their names with the Secretary of State for the purpose of receiving such notice.

4. On December 31, 1979, the Department filed the following documents:

(a) The Order for Hearing.
(b) The Notice of Hearing as mailed.
(c) The Affidavit of Receipt of the Secretary of State's list.
(d) The Affidavit of Mailing the Notice to all persons on the Secretary of State's list, and Affidavit of Additional Mailing.
(e) The Secretary of State's Certificate and list.
(f) The Statement of Need and Reasonableness.
(g) The Notice of Intent to Solicit Outside Opinion was published on January 23, 1978, at 2 State Register 1410. Twenty-four responses were received and made a part of the record herein. The Notice was published pursuant to Minn. Stat. § 15.0412, subd. 6 (1978).
(h) The names of Department personnel who will represent the Agency at the hearing together with the names of any other witnesses solicited by the Agency to appear on its behalf.

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

5. The record remained open through February 19, 1980, for the receipt of written comments and statements. Approximately 40 written comments were received and made a part of the record herein.

6. The Department offered the following exhibits into the record at the hearing:

Exhibit A - a copy of the Notice of Intent to Solicit Outisde Opinion published in the State Register.

Exhibit B - a copy of the fiscal note that the Department filed with the Legislature, pursuant to Minn. Laws 1975, Ch. 434, § 22.

Exhibits C through I - written comments received prior to the hearing.

Exhibit J - a study of the appropriateness of Federal Interagency Day Care Requirements conducted by the U.S. Department of Health, Education and Welfare.

Exhibit K - a copy of the current Federal Interagency Day Care Requirements.

Exhibit L - a copy of proposed federal day care requirements.

Exhibit M - a copy of a Department study of day care services in Minnesota.

Copies of the Statement of Need and Reasonableness were made available for the public at the hearing.

Statutory Authority

7. The Agency bases its authority to adopt the proposed rule and amendments on Minn. Stat. §§ 256.01 (1978), 256.011 (1978), 256E.02 (Supp. 1979), and 256E.05 (Supp. 1979). Minn. Stat. § 256.011, subd. 1 (1978) provides in relevant part:

> If, when and during such time as grants-in-aid are provided by the federal government for relief of the poor and accepted by this state, such aid shall be administered pursuant to and in accordance with rules and regulations promulgated and adopted by the commissioner of public welfare. . . .

8. Title XX funds are available from the federal government for use by the states to provide day care services. Federal regulations require states to establish standards, see, 45 C.F.R. § 228.13 (1979), and Federal Interagency Day Care Requirements must be satisfied for Title XX funds to be available. See Id. § 228.42.

9. The proposed rule and amendments are promulgated in accordance with the authority given to the Commissioner of Public Welfare by the applicable Minnesota Statutes listed in Paragraph 7.

Need and Reasonableness

Proposed Repeal of 12 MCAR § 2.162

10. 12 MCAR § 2.162 provides a formula for allocation of Title XX funds. Subsequent to the adoption of that rule, the Minnesota Legislature established its own formula for allocation, found in Minn. Stat. § 256E.07 (Supp. 1979). Accordingly, 12 MCAR § 2.162 has been superseded by statute. This rule received no comments.

The Hearing Examiner finds the repeal of this rule to be needed and reasonable.

Proposed Adoption of Rule 209

11. Proposed Rule 209 governs the administration and provision of day care services by local social service agencies for children and their families. At the hearing, most of the people offering testimony expressed their general support for the rule. Some thought that the proposed Rule 209 did not go far enough. A few objected to certain provisions which are discussed below.

A. Introduction. The introduction to Rule 209 sets forth its scope, statutory authority for promulgation, and a list of 14 definitions. Section A, Part 3, Subpart h. defines a "Direct Day Care Service Provider" as one "who provides direct care for children". Commentors suggested that the definition be changed to include program components. The Department recommended, in its post-hearing comments, that the definition be modified to read, "Direct Day Care Service Provider--A person or entity who provides ~~direct~~ care for one or more children for pay in a home, group day care home or center as a substitute

for the parent(s) or the chidren." The Hearing Examiner recommends that the new definition proposed by the Department become part of the rule. This change is both needed and reasonable, and it does not appear to be a substantial change in the rule.

complied p.2

12. Section A, Part 3, Subpart c. defines "Certification" as "the action taken by the state or county agency to indicate that a day care service provider meets federal day care requirements". Current Federal Interagency Day Care Requirements (hereinafter "FIDCR") were introduced by the Department at the hearing as Exhibit K. Proposed FIDCR were introduced by the Department as Exhibit L. Both exhibits became part of the record at the hearing.

A question arises whether the "Certification" definition incorporates these federal requirements by reference. Section C, Part 2 of Rule 209 covers certification, and Subpart b.(1) refers specifically to FIDCR as requirements that must be met by day care homes before they can be certified by the local social service agency. Certification is a process that the Department will use to determine compliance with federal requirements. Federal requirements or standards are not set out the rule.

The counsel for the Department stated in his post-hearing comment that child care service eligibility must be determined according to the standards set forth in the federal regulation.

The "Certification" definition also provides that it is the "action" to be taken that indicates that federal standards are satisfied. The specific action to be taken is not set forth in the definition, nor is it described in Section C, Part 2. Certification, as it operates in this rule, appears to require that day care providers meet federal standards. This method is incorporating federal standards by reference.

The rule should state specifically which federal standards must be met before a day care provider can obtain certification. An effective date for the federal standards also should be included. After making these changes, those provisions in the rule affected by the term "certification" should be approved by the Chief Hearing Examiner for incorporation by reference prior to the final stage of the rule process, provided they are more than five pages in length or more than 3,000 words. See, Minn. Stat. § 15.0412, subd. 4 (1978).

no change p.1 see memo attached to Order Adopting FoF 2

13. The remaining portions of Section A are found by the Hearing Examiner to be both needed and reasonable. Public comment was favorable and offered general support.

14. B. Resource Development. Section B sets forth requirements for establishing Child Care Advisory Committees (hereinafter "CCACs") and designating lead agencies to plan, provide, coordinate, and administer day care services and resources on a local level. Section B, Part 1 mandates the creation of a CCAC in a certain geographical area. Most people offering comments supported the use of CCACs. Several other comments strongly opposed the requirement that CCACs be used in every part of the state. Several comments stated that the law mandated citizen participation in developing social service plans herein, but left the method of participation to the discretion of the local level. Commentors pointed out that no other rule or statute makes the creation of a local CCAC mandatory, and questioned its legality.

The Department demonstrated that many CCACs already are being used in many parts of the state, and that CCACs seem to work quite well and that the CCAC is a reasonable method for implementing the planning process. These arguments are set forth in the Statement of Need and Reasonableness, a part of the record in this proceeding. The Hearing Examiner finds that the formation of a CCAC to carry out the requirements of the Community Social Services Act is a reasonable interpretation of Minn. Stat. § 256E, et seq. (Supp. 1979), although the term of CCAC is not expressly used in the statute. This provision is needed and reasonable.

15. Section B, Part 1, Subpart a.(1) permits a CCAC to "encompass two or more contiguous counties within the boundaries of one Governor's Economic Region." One comment proposed that this portion of the rule should be more flexible and permit any contiguous counties to coordinate their efforts, without regard to a Governor's Economic Region. The Department has established perimeters of CCAC consistent with limitations in Minn. Stat. § 256E.08, subd. 10 (Supp. 1979). However, the limitation in the statute did not apply to CCACs.

The Hearing Examiner suggests that Section B, Part 1, Subpart a.(1) be changed by deleting the phrase "within the boundaries of one Governor's Economic Region." This change would give counties using CCACs greater flexibility to coordinate their efforts with other counties.

complied Rules As Prop. P. 3

16. Section B, Part 1, Subpart a.(2) of Rule 209 covers membership composition of CCACs, and prohibits compensation for membership excepting reimbursement for expenses. Some comments expressed a desire that counties be given the option to reimburse CCAC members who attend meetings, as a method to encourage attendance.

The Department has recognized this potential benefit, and has recommended a change; the second sentence of Subpart a.(2) should be deleted and replaced with two sentences reading: "The membership shall be volunteer but may be compensated for participation in functions of official business if the social service agency(s) should wish to implement such a plan. Reimbursement for expenses and compensation shall be determined by the agency(s)."

new language inserted P. 3

The Hearing Examiner finds that this amendment appears not to constitute a substantial change and that it is needed and reasonable. However, the permissive language should be changed to mandatory language or criteria for the social service agency(s) to act should be included.

permissive language not changed no criteria included see Fof 3

17. Section B, Part 2, Subpart a.(2)(b) provides for training of day care service providers "who lack skills in working with the kinds of children and parents being served." One comment recomended deletion of the quoted language so that the rule would require training for all providers.

The Department recognized that this change would offer more clarity, and recommended a corresponding amendment deleting the language specified above.

The Hearing Examiner recommends that this change be accepted. It is needed and reasonable, and does not present a substantial change in the rule.

complied Res P. P. 10

18. Section B, Part 2, Subpart b. covers planning and coordination services, including referral of day care service providers to other community services. Responding to public comment, the Department has recommended a change including referral of service providers to parents.

This appears not to constitute a substantial change, and it is both needed and reasonable. Section B, Part 2, Subpart b. should be amended so that line 3 reads "information and referral of direct day care service providers to parents as well as other community services".

complied p. 10

19. Many public comments offered general support for the remaining provisions of Section B. The Hearing Examiner finds that all of these other provisions are needed and reasonable and affirmatively supported by the Department's Statement of Need and Reasonableness.

20. C. Day Care Regulations. Section C, Part 2, Subpart b. covers local social service agency responsibility for certification of family day care homes.

In response to public comment, the Department has urged a change to include specific language governing exemptions, which is a part of the current federal regulations. Subpart b.(2) is amended to read:

> (2) Relative and one-family exemptions do not apply when federal funds are used. At the discretion of the agency, the following providers need not meet licensing and certification requirements to receive payment from federal funds.
>
> (a) Providers who provide child care three hours or less in a 24 hour period.
>
> (b) Providers who give less than 30 days of care in any 365 day period.

inserted p. 11, 12

Current Subpart b.(2) would become Subpart b.(3), and current Subpart b.(3) would become Subpart b.(4).

This change is needed and reasonable. Except for the term mentioned in paragraph 21, the Hearing Examiner recommends that the language become part of Rule 209, and it appears not to constitute a substantial change.

21. Section C, Part 2, Subpart c.(2) lists providers who need not meet certification requirements to receive payment from federal funds. One comment suggested clarification in the languge to be certain this matter was within the discretion of the local agency.

The Department accepted the suggestion that the first sentence of Subpart c.(2) be changed so that it begins with the phrase, "At the discretion of the agency."

The Hearing Examiner finds that a change offers the desired clarity and flexibility, and is needed and reasonable. However, the Department should change the wording, "At the discretion" to include a mandatory but flexible term. It does not constitute a substantial change in the rule.

See new language p. 11

22. Section C, Part 2, Subpart c.(3)(a)(v) sets forth standards for in-home day care providers. Subparagraph (aa) pertains to violence against children, and subparagraph (bb) pertains to drug and alcohol abuse.

In response to one comment offered at the hearing, the Department seeks to amend these subparagraphs. The Department proposes that subparagraph (aa) read: "Has committed an act of child battering, child abuse or molesting as defined by the Child Abuse Reporting Law," and that the first two lines of subparagraph (bb) read: "Uses alcohol or drugs, such that its effects are [portion deleted] evident during the hours ~~they~~ the children are in care,". . . .

complied p. 11

Both suggested changes make the standards for in-home day care providers more clear, and accordingly, are found by the Hearing Examiner to be needed and reasonable. Neither amendment appears to constitute a substantial change.

23. Section C, Part 2, Subpart c.(3)(a)(vi) requires in-home providers to offer nutritionally sound meals. One comment observed that this requirement cannot be fulfilled unless the child's parents make a proper choice of food available.

Accordingly, the Department has urged an amendment that adds a second sentence reading: "When parents do not provide foods in the four basic food groups, the provider has the responsibility of alerting the parents of the nutritional requirements of young children." inserted p. 14

Because this change clarifies the in-home provider's duty, it is needed and reasonable. Furthermore, this amendment does not represent a substantial change.

24. In response to testimony at the hearing, the Department has offered an amendment to Section C, Part 2, Subpart c.(3)(a)(vii) covering additional duties regarding child development, and a new Subpart c.(3)(a)(viii) covering child health and safety. The Department recognizes, and the Hearing Examiner agrees, that these amendments are substantial changes. Accordingly, it would not be proper to change the rule to reflect these considerations at this time. new sections not included

25. Section C, Part 2, Subpart c.(3)(b)(ii) limits in-home provider care to 12 hours per day as part of the provider service standards. It also provides that this standard may be waived for a period not to exceed five days when special circumstances or an emergency are present.

One written comment requested that the 12 hours per day limitation be extended to 14 hours per day to accommodate schedules of some parents who are required to work longer hours. Several other comments requested that the five-day waiver be lengthened to more easily accommodate emergencies.

To cover these situations, the Department has proposed that Subpart c.(3)(b)(ii) be changed to read as follows:

> (ii) The in-home provider shall provide care for no more than 14 hours per day. A waiver of this standard may be granted by the local agency for a family emergency or other circumstances until the parent or agency has had the opportunity to plan more comprehensive care by a homemaker for the child(ren). The waiver shall not exceed a period of ten days for any one situation or circumstance. changed p. 25

The Hearing Examiner finds that these amendments do not constitute a substantial change, and that they are needed and reasonable. The term "other circumstances" should be clarified, perhaps by adding the word "similar" between the two words. The term "may" should be changed to "shall". complied p. 25

26. Section C, Part 2, Subpart d. relates to provider training. This Subpart was the subject of some controversy, both at the hearing and in the written comments. Some comments indicated the family day care training standard should be excluded since it is included in another existing rule. Many people expressed the thought that less training would be sufficient, one suggested that more training would be appropriate, and other comments offered

their support for this provision as it is presently worded. Comments including one from an expert in the field felt that the training requirements in this rule are minimal. The competency of providers due to the impact on young children and the level of priority of day care to agencies if less training was required were of strong concerns to the commentors.

The importance of training is emphasized by the Department in its Statement of Need and Reasonableness, in Exhibit J--a study of the appropriateness of FIDCR conducted by the U.S. Department of Health, Education and Welfare, and in Exhibit M--a Department study of day care in Minnesota. The Hearing Examiner finds that the training requirements contained in Subpart d. as proposed are needed and reasonable.

27. Section C, Part 2, Subpart e. covers the procedural aspects of denying or revoking certification. Notice of adverse action must be given by certified mail.

One comment suggested that this Subpart be amended to permit notice by personal service as well as certified mail. The Department has recommended that the amendment be accepted by adding the phrase "or personal service" after the phrase "certified mail". complied P. 16

The Hearing Examiner finds this change to be needed and reasonable. Furthermore, it appears not to constitute a substantial change in the rule.

28. Apparently Subpart e. permits a local social service agency to revoke a day care provider's certification without prior notice and an opportunity to be heard. Potentially, this could violate constitutional due process. Cf. Goldberg v. Kelly, 397 U.S. 254, 267-68 (1970) (Fourteenth Amendment due process requires notice and opportunity for hearing before termination of benefits to AFDC recipient).

To avoid this potential problem, the Hearing Examiner recommends a change in Subpart e. to require that a day care provider receive notice and an opportunity to be heard before any revocation of the certification becomes effective.

Counsel for the Department recognized this need for change, and suggested that the phrase "proposed to be revoked" be substituted for the word "revoked" wherever that word appears in Subpart e. Furthermore, counsel proposed to add two sentences at the end of Subpart e.: complied P. 16

> If the Commissioner finds that the health, safety or rights of children in day care are in imminent danger, he shall immediately suspend the provider's certification, subject to subsequent notice and hearing as provided in this paragraph. If the Legislature authorizes such hearings to be held pursuant to Minnesota Statutes 256.045, such hearings shall be held under that section rather than under sections 15.0418--.0422.

added P. 16 — not added

While otherwise complying with due process rights, these changes also cover emergency situations, and permit flexibility within limits prescribed by the Legislature.

The Hearing Examiner finds that these amendments do not constitute a substantial change the rule, and that they are needed and reasonable. However, the last sentence relating to proposed legislation should be deleted because no authority exists for that provision of appeal by providers under Minn. Stat. § 256.045.

29. Public comment offered general support for the remaining provisions of Section C. The Department's Statement of Need and Reasonableness supports those provisions. The Hearing Examiner finds that they are needed and reasonable as written.

30. D. Service Delivery. Section D, Part 4, Subpart a. concerns the obligation of the local social service agency to inform parents of eligibility for assistance for day care services. The Subpart refers to sliding fee rates, and uses the term "free day care". One comment suggested deleting reference to sliding fees because they are not used in every county. Another comment suggested deletion of the word "free" because it seems inappropriate.

The Department has proposed an amendment to Subpart a. so that it would read: "The local social service agency shall inform the parent(s) about the eligibility requirements for [portion deleted] financial assistance with the payment of day care service as described in the agency's social service plan." This amendment would alleviate both concerns expressed by the public. p. 17

The Hearing Examiner finds that this change appears not to be substantial, and is needed and reasonable.

31. Section D, Part 4, Subpart c.(3) gives parents the opportunity to choose the day care provider. As one comment noted, the language does not clearly specify that the recommended provider must meet certification requirements.

The Department seeks to change this provision and clarify the ambiguity. Under the amendment, the last two lines would read, "the care of the children or may recommend an alternative that meets certification standards and more nearly fits the family and children's needs." p. 18

The Hearing Examiner finds that this change appears not to be substantial, and is needed and reasonable.

32. Section D, Part 4, Subpart e. requires local social service agencies to provide health and dental assessments for each child. Several comments questioned whether the precise role of the agency under this provision was clear.

The Department has recommended that this Subpart be changed to read: R as P p. 18

> e. The local social service agency shall assume responsibility [portion deleted] for health and dental assessments for each child placed in day care as part of a case work plan, determine parental or agency responsibility for payment of the service and assist parents of these children in making arrangements for treatment as recommended by the person(s) making the assessment(s). . . . p. 18

This amendment appears not to constitute a substantial change in the rule, but does give the desired clarification. The Hearing Examiner finds that it is needed and reasonable.

33. The Hearing Examiner finds the remaining provisions of Section D to be needed and reasonable. Public comment provided a general expression of favorable support for Section D, as well as the Department's Statement.

34. E. Training. Section E, Part 1, Subpart c. requires local social service agencies to make an annual competency-based assesssment available for each day care provider who applies for such an assessment. Some comments expressed opposition to this provision because some local social service

agencies do not have the capability of making competency-based assesments at present.

Responding to this concern, the Department has suggested that the provision be changed to read: "c. When the local social service agency has been trained [portion deleted] the agency shall make available a competency-based assessment for each family day care provider who makes application for the assessment." F of F. 6.

The Hearing Examiner finds that this amendment is needed and reasonable, and does not present a substantial change in the rule. However, the Department is urged to include in the proposed rule appropriate language indicating that the Department will furnish materials and training to implement the program. complied p. 19

35. Although some opposition was expressed to the remaining portions of Section E, most of the public comments were highly favorable. Dr. Dan Gartrell, Assistant Professor and Director of Child Development Training at Bemidji State University, testified that the training requirements do not go far enough.

The Hearing Examiner finds that the remaining provisions of Section E are both needed and reasonable.

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

CONCLUSIONS

1. The Department of Public Welfare gave proper notice of the promulgation of proposed Rule 209 and the proposed repeal of 12 MCAR § 2.162.

2. The Department has statutory authority to take the action proposed, the adoption of 12 MCAR § 2.209, and the repeal of 12 MCAR § 2.162.

3. The Department has fulfilled all relevant substantive and procedural requirements of law or rule.

4. The Department has demonstrated the need for and the reasonableness of the proposed rule and amendments by an affirmative presentation of facts in the record.

5. The Department has demonstrated the need for and the reasonableness of the repeal of 12 MCAR § 2.162.

6. The Department will be required to seek aproval from the Chief Hearing Examiner to incorporate federal standards by reference into Rule 209.

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

RECOMMENDATION

It is recommended that proposed Rule 209 be adopted, and that 12 MCAR § 2.162 be repealed by the Department of Public Welfare as recommended by the Hearing Examiner.

Dated: March 20, 1980.

Harry Seymour Crump

HARRY SEYMOUR CRUMP
Hearing Examiner

A. Introduction

1. This rule governs the administration and provision of day care services by local social service agencies for children and their families.

2. The authority for this rule and for the administration of day care services for children is found in: Minnesota Statutes 256.01, 256.011, 256E.02, 256E.05, and 15.0412, Subdivision 3; Public Laws 93-647 and 94-401; and 45 CFR §§228.13 and 228.42.

3. Definitions

a. Child - A person 14 years of age or younger.

b. Child Development Training - Training by an accredited institution or courses approved by the local social service agency designed to maintain or improve the quality of care for children.

c. Certification - The action taken by the state or county agency to indicate that a day care service provider meets federal day care requirements.

d. Certified Day Care Provider - A direct day care service provider who has received certification by the state or county agency.

e. Commissioner - The Commissioner of Public Welfare.

f. Day Care Resource - Any person or entity providing direct or indirect day care services.

g. Day Care Service - The less than 24-hour-a-day service which provides care for children as a substitute for or supplement to parental care for a planned period of time.

h. Direct Day Care Service Provider - A person or entity who provides ~~direct~~ care for children.

i. Indirect Day Care Service Provider - A person or entity which provides support services to direct day care service providers, including training, planning and coordination, toy lending libraries, health services which are intended to improve the quality of care for children.

j. In-Home Day Care - Day care services in the child's own home.

k. Lead Agency - An agency designated by the Commissioner as having primary responsibility for the local Child Care Advisory Committee.

l. Local Child Care Advisory Committee (CCAC) - A citizen's group approved by the Commissioner to advise the local social service agency on day care services.

m. Local Social Service Agency - County Board of Commissioners or other agency designated by the county board as responsible for social services.

n. State Agency - Minnesota State Department of Public Welfare.

B. Resource Development

1. Planning and Coordinating Day Care Resources and Development - To insure a system of planning and coordinating among multidisciplined persons and entities that affect day care services, including both direct and indirect day care service providers, the social service agency or combination of agencies shall establish and/or maintain a local Child Care Advisory Committee (CCAC).

a. The Child Care Advisory Committee

(1) The local CCAC shall serve no less than one county but may, by agreement of the County Boards of Commissioners or Human Services Boards, encompass two or more contiguous counties ~~within the boundaries of one Governor's Economic Region.~~ deleted per HE TP 15

(2) Composition of a CCAC: The membership of the CCAC shall be no fewer than seven persons and shall be representative of the racial minorities, ethnic groups, socioeconomic groups and geographical area served. The membership shall be volunteer ~~and will serve without compensation~~ but may be ~~reimbursed~~ for expenses. The membership shall include: deleted per HE TP 16

(a) One-third (1/3) parents who use day care services;

(b) Providers of direct day care services. The providers who are recruited and selected shall reflect the varying kinds of day care resources in the area. Wherever feasible, it shall include at least one person from each kind of direct day care service provider in the county or geographic area.

(c) Indirect service providers, including local social service agencies and/or boards, health services, early childhood educators, public schools and community groups.

(3) Responsibilities of a CCAC: The local CCAC shall cooperate with the social service agency to achieve the following:

(a) Coordination among day care resources, public and private service agencies and persons;

(b) Public information and parent education regarding the developmental needs of children;

(i) The CCACs shall develop a public education and information program to communicate to the community the need for day care resources and services as identified in a needs study or assessment.

(ii) The CCACs shall advise the local social service agency regarding tools and stratagems to communicate to parents needing day care services the importance of quality care and child development experiences during the child's early years.

(c) Identification of local day care needs;

(d) Community interest in the development of needed day care resources and services;

(e) Coordination and planning for training of day care providers and parents;

(f) Funding plans for the development of day care resources, implementation of a sliding fee for day care services and the use of Title XX funds for providing direct services to eligible children; and

(g) Other day care activities as the CCAC and/or lead agency deems necessary and appropriate.

(4) Organizational Structure: Each CCAC shall have an organizational plan (bylaws and charter) to govern the activities of the committee and to perpetuate its membership through a democratic process. Where no organizational plan currently exists or has not been approved by the Commissioner, the CCAC shall prepare one for its operational use. The organizational plan of each CCAC shall be submitted to the Commissioner for approval within one year after the CCAC is formed and functioning or within one year after the promulgation of this rule, whichever is later.

b. The Lead Agency

(1) Lead Agency Designation: The commissioner shall biannually, designate a local social service agency or other community agency to serve as the lead agency for the local CCAC.

(a) Single County - If the CCAC area encompasses only one county, the lead agency is the social service agency unless the Commissioner designates an alternate;

(b) Multi-County - If the CCAC area encompasses more than one county, the Commissioner shall designate one county or community agency

to serve as the lead agency for that geographic area. The following procedures shall be followed in the determination of a lead agency:

(i) The Commissioner shall issue an announcement to all local social service agencies in that CCAC area of intent to designate a lead agency for the local CCAC and solicit their recommendation for this designation.

(ii) The Commissioner shall direct that any recommendations from the local social service agencies be made within 45 days after the issuance of the announcement.

(iii) After the 45-day recommendation period, the Commissioner shall designate a lead agency and notify all of the agencies and the CCAC chairperson of that decision within 30 days following the recommendation or the end of the 45 days recommending period.

(2) Lead Agencies Responsibilities

(a) Coordinate and Supervise CCAC Functioning: The lead agency shall work with the CCAC as a representative of all local social service agencies in the geographic area served by the CCAC.

(i) Planning the CCAC's Activities: On an annual basis, the lead agency shall plan with the local social service agencies in the CCAC area to establish priorities for determining the CCAC calendar of advisory activities.

(ii) Communicate to CCAC and Local Social Service Agencies: The lead agency shall communicate with the CCAC regarding the local social service agencies plans and decisions for delivering day care services each planning year. The lead agency shall communicate the CCAC recommendations to each local social service agency being served.

(iii) Coordination of Resources for the CCAC: The lead agency shall serve as the recipient of financial and service resources from all social service agencies for distribution to the CCAC to maintain its functioning.

(iv) Monitoring of the CCAC: The lead agency shall annually, or at shorter intervals if needed, monitor the activities of the local CCAC according to criteria established in the CCAC's charter and bylaws.

(b) Development of the CCAC: To develop or redevelop a local CCAC the Commissioner shall inform the lead agency or other designate of the need to facilitate the establishment or reestablishment of a new CCAC.

(i) Notification - Within 30 days after notification by the Commissioner, the lead agency or designated agency shall notify, by written announcement, all licensed child care providers and, by public notice, all other interested persons in the geographic area of its intent to reorganize or redevelop the local CCAC.

(ii) Within 60 days of the Commissioner's request, the lead agency shall convene a public meeting of the child care community (providers, support services and parent recipients of day care services) and

temporarily preside at such meeting until the persons present elect their own leadership and establish a working agenda.

(iii) When a new or reestablished CCAC has been organized, the county board(s) (or human service board(s) where such boards have responsibility for social services) board(s) within the geographic service area shall review and recommend to the Commissioner approval or disapproval of the CCAC applicant within 60 days of the applicant's request for approval. Reasons for approval or disapproval shall be stated in writing to the applicant and the Commissioner.

(iv) When the applicant CCAC has the approval (disapproval) of the county board(s) or human service board(s), it shall apply to the Commissioner for recognition as the CCAC for the geographic service area.

(v) The Commissioner shall recognize or withhold recognition of the applicant within 45 days of the receipt of the application. If recognition is withheld, the Commissioner shall inform the applicant and lead agency of the deficiencies and identify conditions to be met.

(c) Provide Resources: The lead agency shall provide resources (money and services), consultation, technical assistance and other needed support as mutually agreed upon by the functioning CCAC and the lead agency on behalf of all local social service agencies being served.

2. Development of Day Care Resources

The local social service agency shall recruit day care resources to meet the community's day care needs.

a. There shall be diversity in kinds of day care resources developed.

(1) There shall be diversity in direct day care service providers.

(a) There shall be diversity in the type of direct day care service resource (in-home, family day care, group family day care, center); ages of children served (infants, toddlers, preschool, school-age); number of children to be served; and program that meets individual children's needs (e.g., enrichment, children with special needs).

(b) There shall be diversity in location of direct day care service provider resources including all major geographic areas where the service is needed so that the services are accessible to all parents and children who need it.

(c) There shall be diversity in programs to include day care provider resources that meet developmental, ethnic, cultural, and bilingual language needs.

(2) There shall be diversity in indirect day care resources to support and improve the quality of day care services.

(a) There shall be resources that directly support the day care service delivery such as: toy lending libraries; health and social services, program facilitators, substitute providers and periodic training programs.

(b) There shall be ongoing support service ~~providers~~ that provide professional expertise and training to all direct and indirect service providers ~~who lack skills in working with the kinds of children and parents being served.~~ HE #17

b. Planning and Coordination: Each social service agency shall provide or purchase planning and coordination services to ensure a system of information and referral of direct day care service providers to other community services; consultation and technical assistance to providers seeking funding from existing resources; coordination between direct day care service providers, day care resources and community and governmental agencies, needs assessments, and planning for training activities.

c. Funds for Development: Potential day care providers shall be informed about funds available to them for meeting startup costs or licensure requirements.

C. Day Care Regulations - The local social service agency shall provide the following services to individuals and groups that plan to be licensed and/or certified as a day care providers.

1. Licensing

a. Group Day Care Centers:

(1) The local social service agency shall refer any inquiry on establishing a new group day care center to the Licensing Division of Public Welfare for licensure as defined in 12 MCAR 2.003.

(2) The local social service agency shall refer all operating unlicensed day care centers to the Licensing Division of Public Welfare.

b. Family Day Care Homes: The local social service agency shall inform all inquiries regarding family day care licensure of the standards as defined in 12 MCAR 2.002 and provide the necessary consultation and inspections pursuant to the requirements in the licensure standards. If the applicant meets the family day care licensing requirements, the local social service agency shall recommend the home to the state agency for state licensure.

2. Certification

All day care providers that care for children whose day care services are paid for with federal funds must be certified as meeting federal requirements for receipt of such funds.

a. Group Day Care Centers: The Licensing Division of the state agency is responsible for certification of group day care centers.

b. Family Day Care Homes:

(1) The local social service agency is responsible for certification of family day care homes and group family day care homes that meet federal requirements ~~(Federal Interagency Day Care Requirements ((FIDCR)) and federal regulations)~~.

(2) The local social service agency shall provide information regarding certification to each family day care or group family day care provider and provide consultation and services to those who wish to be certified to care for children placed by the social service agency. If they meet the federal requirements, the agency shall certify them and shall recertify them annually. If at any time after certification, the local social service agency determines that a family day care provider does not meet the requirements for certification, the local social service agency shall revoke the certification.

(3) Records shall be maintained by the county agency on forms developed by the state agency as documented evidence that the home meets certification requirements.

c. In-Home Day Care Providers:

(1) The local social service agency is responsible for certification of in-home day care providers and shall certify those providers who meet the provider's standards set out below. If, at any time, after certification, the local social service agency determines that the provider does not meet these standards, the local social service agency shall revoke certification.

(2) The following providers need not meet the certification requirements to receive payment from federal funds:

(a) Providers who provide day care three hours or less in a 24-hour period.

(b) Providers who give less than 30 days of care in any 365-day period.

(3) The following standards are established by the state agency as meeting the federal requirements for in-home day care providers:

(a) Provider's Standards

(i) The provider shall be at least 18 years of age. A waiver of this standard may be granted by the local social service agency to a younger person (other than a child) who possesses sufficient maturity to assure compliance with standards of care required by this rule and who has an adult on call for emergency assistance. In any event, there shall be no more than two preschool children placed the care of a person under 18 years at any one time.

(ii) The provider shall have experience and demonstrated competence in caring for children.

(iii) The provider shall supply evidence to the local agency that he/she has had a negative intradermal tuberculin test or chest X-ray within the past year. If the test is negative, they need not have one thereafter. If the test is positive, the provider must have a chest X-ray each year for five years.

(iv) The provider shall supply a statement from his/her physician dated within six months prior to the application, and

annually thereafter, that the applicant has received a physical examination and is receiving all necessary continuing medical treatment to assure that he/she remains physically capable of caring for young children.

(v) The in-home provider shall not have any of the following conditions unless the agency staff believes that the condition will not adversely affect the care of children.

(aa) Has committed an act of child battering, child abuse or molesting;

(bb) Uses alcohol or drugs, such that its effects are ~~detrimental to~~ the children during the hours they are in care, or has an uncontrolled addiction to drugs or alcohol, either currently or within the past 12 months;

(cc) Has had own child(ren) in foster care within the previous 12 months, unless the primary reason for such placement was the physical illness of the parent, the mental retardation of the child or a temporary foster placement of an infant being relinquished for adoption;

(dd) Has demonstrated behavior patterns which include acts of violence to persons of any age or negligence toward the applicant's own children.

(vi) The in-home provider shall provide nutritionally sound meals that follow the family's feeding plan, observing hours and kinds of food as planned by parent(s).

(vii) The in-home day care provider shall plan and establish a learning environment appropriate for the family and age level of the child. Materials, activities, and space shall be used to provide the child with opportunities to develop to his fullest potential physically, emotionally, socially, intellectually and psychologically.

(b) Service Standards

(i) In-home day care providers shall care for no more than the following number of children (including their own children) at any one time:

(aa) Five children if all are of preschool age (0 - 5 years).

(bb) Six children if one or more of the children are of school age (6 - 14 years).

(ii) The in-home provider shall provide care for no more than ~~12~~ hours per day. A waiver of this standard may be granted by the local agency for a family emergency or other circumstances until the parent or agency has had the opportunity to plan more comprehensive care for the child(ren). The waiver shall not exceed a period of ~~five~~ days for any one situation or circumstance.

(4) Each certified in-home day care provider shall be recertified annually.

(5) Records shall be maintained by the local social service agency or form developed by the state agency as documented evidence that the in-home providers meet certification requirements.

d. Training - Each certified family day care or in-home day care provider shall participate in a minimum of four (4) hours of child development training within the first three months of service and 16 hours of child development training annually thereafter or qualify as exempt from training for three years on the basis of qualifying for a credential on Minnesota's competency-based assessment program for family day care providers.

e. Appeal of Certification Denial, Nonrenewal or Revocation: The local social service agency shall promptly notify by certified mail any applicant or day care provider whose certification is denied, revoked, or not renewed by the local social service agency. This notification shall state the grounds for such action and shall inform the applicant or provider of his/her right to appeal the action. Any applicant or provider whose certification is denied, revoked or not renewed may appeal to the Commissioner by mailing written notice of appeal to the Commissioner within 20 days after receipt of denial, revocation, or nonrenewal. Upon receiving a timely written notice of appeal, the Commissioner shall give the applicant or provider reasonable notice and opportunity for a prompt hearing in accordance with Minnesota Statutes 15.0418-15.0422.

D. Service Delivery

The local social service agency must meet the following standards in providing services to all Social Service clients where day care is a needed service:

1. The local social service agency shall maintain a staff to fulfill the responsibilities described in this rule.

2. The local social service agency shall make available supportive services for children in direct day care resources to assure quality of care for children in the facility or home.

3. The local social service agency shall maintain an accurate resource file on all day care/child development services and resources in the geographic area to be served.

4. The local social service agency shall make available services to assist parents in planning for the day care placement of their children to assure services that meet the children's individual needs.

a. The local social service agency shall inform the parent(s) about the eligibility requirements for ~~free day care services and sliding fee rates for those not eligible for free services but eligible for partial pay for services on a sliding fee schedule~~.

deletion HE #30

b. The local social service agency shall plan with the parents to develop the child's service plan as a basis for selecting a certified day care or provider that has a program and environment that meets the children's individual developmental needs.

c. The following procedures shall be used to select the day care providers for children needing day care services.

(1) The local social service agency shall recommend at least two certified resources or providers that meet the child's programmatic needs and the parents' transportation needs.

(2) The parent(s) shall be given the opportunity for a preplacement visit with each day care provider recommended by the agency.

(3) The parent(s) shall be given an opportunity to recommend to the local social service agency which day care he/she wishes to use for the care of the children or may recommend an alternative that more nearly fits the family and children's needs.

(4) The local social service agency shall make available day care services in the day care resource (center, family day care home or in-home provider) selected and agreed upon by the agency, the parent(s) and provider, based on the assessed needs of the child as documented in the service plan for the child.

d. The local social service agency placement worker shall visit the child(ren) at least once annually to assure that the child is making progress toward the goals in his/her service plan.

e. The local social service agency shall ~~provide~~ health and dental assessments for each child placed in day care as part of a casework plan and assist parents of these children in making arrangements for treatment as recommended by the person(s) making the assessment(s). HE 32

E. Training

1. Provider Training

a. The local social service agency shall assume responsibility for the maintenance and/or improvement of the quality of day care services provided by all family day care and in-home day care providers.

b. The local social service agency shall make available a minimum of twenty-four hours of child development training annually. The training provided shall include courses such as: family life, human growth and development, child rearing, child nutrition, first aid and child care program skills.

c. ~~On an annual basis, the local social service agency~~ shall make available a competency-based assessment for each family day care provider who makes application for an assessment.

2. Social Service Agency Staff Training

The local social service agency shall make available child development training for staff responsible for day care services.

a. All day care licensing staff shall complete six hours of child development training each year.

b. All new day care licensing staff shall complete six hours of training in the licensing process within six months of their employment on this assignment. This training shall be in addition to the child development training as identified in "a" above.

c. Placement workers who work with families in planning day care services shall be given the opportunity to participate in the child development training.

d. Each day care licensor who wishes to improve his/her skills in assessing the competency of a family day care provider shall be given the opportunity to participate in a competency-based training program.

HR/hla

DPW-80-025-HC

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE DEPARTMENT OF PUBLIC WELFARE

IN THE MATTER OF THE DEPARTMENT OF PUBLIC WELFARE'S PROPOSED ADOPTION OF A NEW RULE 12 MCAR § 2.209 (DPW RULE 209), DAY CARE FOR CHILDREN, AND REPEAL OF 12 MCAR § 2.162 (DPW RULE 162), ALLOCATION OF TITLE XX FUNDS TO COUNTY WELFARE.

REPORT OF THE CHIEF HEARING EXAMINER

WHEREAS, a hearing was held on January 28, 1980, before Harry Seymour Crump, a Hearing Examiner of the State Office of Administrative Hearings, 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 on March 20, 1980; and

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

WHEREAS, the Department of Public Welfare has submitted said rules to the Chief Hearing Examiner for review pursuant to Minn. Stat. § 15.052, subd. 4, and Rule 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 of Public Welfare has met all requirements of Minn. Stat. § 15.0412, subd. 4.

NOW, THEREFORE, upon receipt of this Report, the Department of Public Welfare 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 17th day of September, 1980.

DUANE R. HARVES
Chief Hearing Examiner

DPW-80-025-1+C

RECEIVED
DEC 31 1979
OFFICE OF HEARING EXAMINERS

STATE OF MINNESOTA
DEPARTMENT OF PUBLIC WELFARE

IN THE MATTER OF THE PROPOSED ADOPTION OF 12 MCAR 2.209 GOVERNING THE ADMINISTRATION OF DAY CARE SERVICE TO CHILDREN AND THEIR FAMILIES

STATEMENT OF NEED REASONABLENESS

(B)

In 12 MCAR 160, the Department of Public Welfare identifies day care for children as one of the child welfare services to be included in the state's comprehensive social services plan which describes how Title XX funds will be used in Minnesota. The Community Social Services Act requires the Commissioner of Public Welfare to set standards for the administration of social services by the counties. This rule is proposed to establish procedures and standards for fulfilling the Commissioner of Public Welfare's responsibility to: 1) develop needed day care resources that will provide care for children while their parents are at work or in training; 2) maintain or improve the quality of day care provided to children so that each child will grow and develop to his fullest potential in a nurturing and protective setting; and, 3) to assure that the delivery of the day care services will meet federal regulations, including the Federal Interagency Day Care Requirements (FIDCR) and state licensing standards (12 MCAR 2.002) in order to qualify for Title XX funds as provided in the Social Security Act.

12 MCAR 2.209 is a new rule. Its purpose is to govern the administration of day care services for children and their families. The procedures established in this rule are consistent with those already established by state and federal governments. The rule adds standards for in-home day care providers whose services are paid for with Title XX dollars.

Children in their formative years are dependent upon the adults around them for nurturance and protection from environments that could adversely affect their growth and development. In establishing these procedures and standards, an attempt has been made to follow child growth and development program practices which are supported by philosophies based on current literature and research of a substantial nature conducted over the past three or four years.

The statements of need and reasonableness for this proposed rule follow section-by-section.

Section A. Introduction

Part 1. Introductory Statement - This statement is needed to define the service area to be governed by this rule. It is reasonable in that it recognizes and is consistent with the state's organizational structure for the delivery of social services -- a county-administered and state-supervised system (Minnesota Statutes, Chapter 256.01, 256.011, 256E.02 and 256E.05).

Part 2. Authority - The following statutes, laws and regulations provide authority for promulgation of this rule:

(1) Minn. Stat. §256.01, Subd. 2 (2), makes the Commissioner of Public Welfare responsible for the administration and supervision of all child welfare activities including the licensing and supervision of child-caring agencies and institutions.

(2) Minn. Stat. §256.011, Subd. 1, provides that grants-in-aid received from the federal government for welfare purposes shall be administered according to rules promulgated by the Commissioner.

(3) Minn. Stat. §256E.02 provides that community social services shall be administered by the county board under the supervision of the Commissioner.

(4) Minn. Stat. §256E.05 provides that the Commissioner shall supervise the community social services administered by the counties through standard-setting, technical assistance, approval of county plans, preparation of a state plan, evaluation of community social services programs and distribution of public funds, shall design and implement a method of monitoring and evaluating social service programs within the state and shall assure compliance within applicable standards and guidelines, as well as the state and county social service plans.

(5) Title XX of the Social Security Act, particularly Public Laws 93-647 and 94-401, provides federal funds to the states for provision of social services, including day care services, and sets conditions on the services provided with those funds.

(6) 45 C.F.R. §§228.13 and 228.42 set standards for the provision of day care services.

(7) Federal Interagency Day Care Requirements (FIDCR) set forth requirements for the provision of day care services. These requirements are incorporated by reference in Public Law 93-647 and 45 C.F.R. §228.42.

(8) Minn. Stat. §15.0412 provides that state agencies shall adopt rules setting forth agency procedures which directly affect the public.

Part 3. Definitions - The following definitions are necessary to determine the meaning of the defined terms in this rule. They are reasonable in that they reflect the interpretations of those terms that are used in social service planning, federal laws and regulations and state statutes and regulations.

Subpart a. Child - It is necessary to define child in order to establish the age group affected by the rule. It is reasonable to define the maximum age as 14 years as most children over this age need less adult supervision and nurturance and can care for themselves with limited parental guidance. Ages 0-14 years are also the ages used in the current state licensing rules and the federal regulations for day care services.

Subpart b. Child Development Training - The definition is necessary in order to establish the parameters by which certain activities for the improvement of day care services can be identified as meeting the

training requirements established in this rule. It is reasonable to require that this training be intended to improve the quality of care for the children and not for the purpose of providing career development opportunities for the provider.

It is reasonable to require that the courses be approved by the local social service agency or offered by an accredited institution so that there is some assurance that the quality and content of the course is such that the training will improve the ability of the provider to care for children.

Subpart c. Certification - It is reasonable to define the word "certification" in this way as it describes the means that Minnesota will use to identify those providers who meet the requirements of federal regu-

Subpart d. Certified Day Care Provider - This definition is reasonable as it is consistent with the action taken to qualify a provider to serve families whose day care service is paid for with federal dollars.

Subpart e. Commissioner - It is reasonable to include this definition as it eliminates the necessity of repeating the phrase every time it is used in this rule.

Subpart f. Day Care Resource - It is necessary for the clarity of this rule to have a term to describe both direct and indirect service providers. The term "day care resource" is a reasonable description of the included activities.

Subpart g. Day Care Service - It is necessary to provide this definition because the term is broadly used and needs to be more specific for this rule. It is reasonable in that it sets limits to the hours of service that can be used and called day care. It is consistent with the definitions used in federal regulations (Federal Interagency Day Care Requirements) and the Department's licensing rules (12 MCAR 2.001, 12 MCAR 2.002 and 12 MCAR 2.003) as separate from foster care.

Subpart h. Direct Day Care Service Provider - This definition is necessary to identify the differences between direct and indirect day care service providers as used in this rule. It is reasonable in that this reference generally implies that the person (or facility) being referred to comes into direct contact with the children and reflects current usage in practice.

Subpart i. Indirect Day Care Service Provider - This definition is necessary to make a distinction between direct and indirect day care service providers as those terms are used in this rule. It is a reasonable definition as it is currently in common usage as meaning other than those providers that are working directly with the children.

Subpart j. In-Home Day Care - This definition is necessary to distinguish this kind of care as different from family day care. It is reasonable in that the term is self-descriptive and consistent with the term as used in federal regulations 45 C.F.R. §228.42.

Subpart k. Lead Agency - The definition of a lead agency is unique to this rule and is necessary and reasonable to identify and fix responsibility for the local CCAC as set out elsewhere in the rule.

Subpart l. Local Child Care Advisory Committee (CCAC) - The definition is necessary to identify this committee and to refer to it in abbreviated form throughout the rule. It is reasonable to use this term as it has been in common usage for the past four years and refers to committees established at that time.

Subpart m. Local Social Service Agency - This definition is necessary and reasonable to assure that the use of the term in this rule is consistent with its use in other rules and the state's comprehensive social service plan.

Subpart n. State Agency - This definition is necessary and reasonable to provide an abbreviated reference to the Department of Public Welfare. This is consistent with the use of the term in other rules governing social services.

Section B. Resource Development

Part 1. Planning and Coordination - The state and county agency are required to plan for, develop, and coordinate day care services at the state level and in each community. In current day care service practices, there already are a number of people involved. It is necessary to establish a systematic method of getting all of these people together so that there will be a constructive-cooperative rather than a destructive-competitive approach to the development, service delivery, and improvement of day care services for families and children.

Subpart a. The CCAC - The use of a CCAC is a reasonable method for implementing the planning process as it is representative of the parents needing day care services, as well as the direct and indirect day service providers. The local CCAC's have been effective for assessing community needs and preparation of funding plans for the development of day care resources in the past few years and have been operating effectively and successfully in most geographic areas of the state.

It is reasonable to have the county social service delivery system responsible for the development, maintenance, and facilitation of the local CCAC because past experience has demonstrated that, in those instances in which the agencies have participated constructively with the advisory group, the quality of the coordination efforts and delivery of day care services has improved. Where agency staff is not partici-

pating or participating defensively, the quality of service delivered by the agency and the advisory group has generally been less effective. Where agency staff is participating, the involvement of all providers is broad and more representative of all day care resources in the area. Where the agency is not actively involved, the CCAC has a tendency to represent one or two interest groups and becomes a vehicle for perpetuating self-interests.

Subpart a. (1) CCAC Service Area - It is necessary and reasonable to determine a minimum geographic area to be served by a CCAC. The smallest unit is that of one county as that is the unit of government that plans for and implements a social service program, including day care services, for the citizens who live there. It is also necessary to allow more than one contiguous county to be served by a single CCAC as the population base for day care services may benefit by grouping together for certain administrative, planning and support services such as training and coordination of health and social services. It is also reasonable to establish the outside boundaries of a CCAC to be no larger than a governor's economic region so that distances will not be too great for the effective function of the committee. The limitation to one economic region is consistent with limitations in the Minn. Stat. §256E.08 and 12 MCAR §2.160.

Subpart a. (2) Composition of CCAC - The constituency of the advisory groups is designed to reflect the diversity in disciplines, population groups, and families and economic status of the community. The CCAC is designed to provide input from providers, recipients of service and supportive service groups to the local social service agency.

Effective day care service needs a broad constituency representing a wide variety of multidisciplined groups. It is reasonable to expect day care to have a social service representation in that the social service agency serves families - both parents and children - and has the responsibility for directly planning and providing day care services for about one-fourth of the children receiving day care services. The CCAC needs representation from educators in the community who have been trained in child development studies. These persons have an understanding of programming which provides for early environments in which the children in care have intellectual, social, emotional and physical experiences to help each person grow toward his fullest potential. The CCAC needs representation from health services providers in the community. These persons have skills in developing health environments to protect children from unhealthy conditions that could damage them physically, psychologically or socially. The CCAC should have representation from persons in the business community who understand the economics of day care. These persons can provide input for planning day care services which will be cost efficient and cost effective. The CCAC should also have representation from persons who are consumers of day care services (parents of children in day care). These persons can provide input to assure that there is quality day care services at a cost that parents can afford.

It is necessary and reasonable to provide that no compensation be paid CCAC memberhsip in the performance of its advisory responsibilities because of the limited funding available for day care services at both the state and local level. Reimbursement for expenses is necessary to assist the representatives, particularly parents, in full and regular participation on the committee.

Subpart a. (2) (a) Parent Participants - Federal studies of the effects of parent participation in planning programs for young children have demonstrated that the involvement of parents has resulted in their own growth and understanding of the benefits of child development experiences for their children and has provided direction to the providers that improved the quality of services for children. This requirement is reasonable and necessary to assure adequate representation of parent-consumers in the planning for day care services in their community as they and their children are the persons most affected by the service. One-third parent representation has been demonstrated to be effective in the functioning of the Minnesota Child Care and Development Advisory Committee.

Subpart a. (2) (b) Direct Service Providers - This requirement is necessary and reasonable because the direct day care service providers in the community are directly affected by the recommendations made by a CCAC and the actions taken by the local social service agency. These providers are generally very aware of the service and economic value of the service they provide to the community. Direct day care service providers are the basic determiners of the quality of care given and often speak for the children and the families served. The requirement for diversity of direct service providers is to make certain that there is at least one voice representing each type of direct day care service providers in the community so that all interests are considered in the decisions made by the CCAC. This procedure is already operational in most existing CCACs.

Subpart a. (2) (c) Indirect Service Providers - This requirement is necessary to assure that the CCAC includes professionals from the community who have expertise in disciplines that affect the quality of care and child development experiences for all young children. It is a reasonable requirement as has been demonstrated in the past years by existing CCACs.

Subpart a. (3) Responsibilities of CCAC - The responsibilities of the local CCAC as established in this rule are specific enough to provide direction, but open enough to allow for creativity in planning to meet the needs of the child care community, as well as the social service agency. A listing of these responsibilities are necessary to assure that the CCAC will be responsive to certain parts of the social service delivery system.

Subpart a. (3) (a) Coordination - Coordination among child care resources is necessary to maximize the positive utilization of all day care resources in the community. This responsibility is reasonable because there already exists a variety of resources that would benefit from coordination and cooperation.

Subpart a. (3) (b) Public Information - This requirement is necessary because day care as a service is not well understood in many Minnesota communities. Some county board members and community leaders see day care as an indication that parents (especially mothers) are not assuming their rightful responsibility for the care of their children. For these people, day care is seen as a destroyer of the family rather than a sup-

port to it. It is reasonable to place the responsibility with the CCAC because the CCAC membership has within it a nucleus of persons who are knowledgeable about the research and literature that supports the positive effects of quality child care on the family.

Subpart a. (3) (b) (i) This provision places on the CCAC the responsibility for direct education described in Subpart a. (3) (b) immediately above.

Subpart a. (3) (b) (ii) This requirement is necessary to provide the assistance of the CCAC to the local social service agency regarding parent education in day care selection. The persons on the CCAC represent disciplines other than that generally found in the agency (e.g., health, education, and child development). This requirement is reasonable as has been demonstrated by the kind of contribution some existing CCACs have made to their local social service agencies.

Subpart a. (3) (c) Needs Assessment - The accomplishment of this responsibility is needed to implement all other CCAC functions. As representatives of the broad county or multi-county community, the CCAC can assess needs informally, but can also design tools and strategies for completing a more formal needs survey. This standard is reasonable as it has been successfully demonstrated by a number of CCACs who planned for the distritution of funds from the Child Care Facilities Act.

Subpart a. (3) (d) Development of Day Care Resources and Services - This requirement is necessary to assist the social service agency(ies) with their responsibility for the development of resources and services. The one-to-one informal communication about needed day care resources of CCAC members with their friends is often more effective than the more formal communication done by the local social service agency or other community groups. This standard is reasonable in that it has been successfully implemented by currently functioning CCACs to obtain services such as training programs, toy lending libraries, health clinics, family day care homes and coordination.

Subpart a. (3) (e) Coordination and Planning for Training - It is necessary to coordinate all service delivery efforts and training so that resources meet the needs of persons to be served and do not waste personal energy or become ineffective because of duplication and overlapping. This responsibility is reasonable in that it is already being done in many CCACs as demonstrated in mini-grant programs, parent assistance fund, training workshops, development of news stories and releases, and the development of day care services brochures.

Subpart a. (3) (f) Funding - This requirement is necessary to assure that the counties' state and federal day care dollars intended for day care resource development and delivery of day care services are used for these purposes. In the cooperative planning effort the CCAC and local social service agency are more likely to use their resources effectively to meet the local community's day care needs. This provision is reasonable because the CCACs have already assumed a very active role in preparing funding plans for the development and provision of day care services. They have developed skills and expertise to achieve local day care service goals as identified in the community.

Subpart a. (3) (g) Other Responsibilities - This requirement is reasonable and necessary to encourage local social service agencies and CCACs to develop creative and worthwhile activities that meet the day care service needs of each local community.

Subpart a. (4) CCAC Charter or Bylaws - It is necessary to include this provision so that local CCACs proceed in an orderly fashion to accomplish the goals as determined by the community and the agency. This provision is reasonable because current practice has demonstrated that CCACs that have a well-planned charter and/or bylaws have functioned productively and are more self-disciplined in monitoring their own activities and membership constituency. It has been demonstrated that there is a high correlation between the level of funding and the development of day care resources in the community. Licensed capacity has increased to meet the community needs for number of children to be served. Direct and indirect resources have developed to meet the needs of day care providers, as well as children served. The requirement of state approval is necessary as a monitor to assure that membership representation and the planned responsibilities of the CCAC are consistent with those described in this rule.

The time frame of one year is necessary to make certain that this task is completed in a reasonable amount of time. In the past, CCAC groups have accomplished this function in a year's time.

Subpart b. (1) Lead Agency Designation - It is reasonable and necessary to provide for a single agency to provide staff support for the CCAC to carry out the other responsibilities set forth in this part of the rule.

Subpart b. (1) (a) Lead Agency for Single County CCAC - It is necessary to include this statement for clarification in other parts of the rule where the term "lead agency" is used and to provide an alternative for another community agency to serve as the "lead agency" where individual county social service agencies choose to have this responsibility placed with another service agency.

Subpart b. (1) (b) Lead Agency Selection (Multicounty) - This rule spells out specific guidelines for establishing a local CCAC with time frames for accomplishing the task. It is necessary to include this provision to assure a democratic procedure to involve the community in establishing an advisory group and to establish time frames to assure that the replacement or renewal of the lead agency is not postponed for long periods of time, leaving the CCAC without support or direction.

Subpart b. (1) (b) (i) Notice to Local Social Service Agency - The Commissioner's announcement of intent to solicit recommendation for a lead agency designation is reasonable and necessary to assure that: 1) the process for selection is facilitated promptly, 2) the child care community will be assured of an orderly and democratic procedure in this determination, and 3) that each local social service agency will be assured of services by a CCAC and have an opportunity to participate in the selection.

Subpart b. (1) (b) (ii) Time Limit for Recommendations - The time limit for recommendations is necessary to assure that the Commissioner's designation can be made within a reasonable time. Forty-five (45)

calendar days is a reasonable amount of time for the agencies as it makes possible the placement of this decision-making step on the regular agenda for the County Board of Commissioners meetings to eliminate the necessity of calling a special meeting.

Subpart b. (1) (b) (iii) Lead Agency Selection - This provision is necessary to assure that a lead agency will be selected promptly and to give notice to the local social service agencies of the time limit for the decision. This procedure is reasonable because it provides the necessary time for the Commissioner to seek further input from the child care community, if needed, to make the decision of a lead agency to service the CCAC.

Subpart b. (2) Lead Agency's Responsibility - It is necessary to identify some of the major responsibilities of the lead agency to a CCAC to assure that the necessary technical assistance and other resources are provided to keep the CCAC functioning at its optimum level. This is necessary to assure that families and their children, as well as day care providers have input into day care social services that affect them. These standards are reasonable in that most of them are already in effect and are in the spirit of the Community Social Services Act which places responsibility for major service delivery planning and allocation of funds at the local community level.

Subpart b. (2) (a) Coordinate and Supervise CCAC Functioning - This standard is included in the rule as necessary and reasonable to assure that all local social service agencies in a CCAC area are serviced by the CCAC and that the CCAC has the needed supervision to function effectively assuming the responsibilities as determined by the agencies and the CCAC membership. Specific coordination and supervisory functions are described in the following subparts.

Subpart b. (2) (a) (i) Planning the CCAC's Activities - This standard is reasonable and necessary to establish guidelines for the CCAC so that it will provide input to local social service agencies around issues and concerns of the County Boards of Commissioners as a service for the constituents it represents. It is a reasonable standard as has been demonstrated by the past functioning of some existing CCACs.

Subpart b. (2) (a) (ii) Communication with CCACs and Local Social Service Agencies - This standard is necessary to assure that all local social service agencies will recieve the necessary communications to and from the CCAC to fulfill the standards assigned to the CCAC and strengthen the functioning of it. It is a reasonable standard in that most local social services supervisors are already meeting on a regular basis.

Subpart b. (2) (a) (iii) Coordination of Resources for the CCAC - This standard is necessary to assure that all local social service agencies serviced by a CCAC participate in the responsibilites for its functioning. Included in the rule are procedures for securing and providing for the

fiscal support needed for the expenses of a CCAC's operation as appropriate to the goals established by all participating agencies. This standard is reasonable as many of the local social service agencies are already functioning in this capacity on behalf of a single county or multi-county CCAC.

Supbart b. (2) (a) (iv) Monitoring of the CCAC - This standard is reasonable and necessary to assure that the resources of a CCAC are used effectively to accomplish its long and short-range goals of advisory services to the local social service agencies in the CCAC area.

Subpart b. (2) (b) Development of the CCAC - This section of the rule is necessary to provide for the monitoring of a CCAC and its effectiveness in fulfilling the responsibilities as established in this rule. It is also necessary to provide a mechanism for developing a new CCAC or replacing a nonfunctioning or adversely functioning one to assure a democratic process for the organization or reorganization.

Subpart b. (2) (b) (i) Notification - This standard is necessary to establish the listing of persons to be officially notified regarding the establishment of a CCAC, the kind of notices to be used and the time frame in which it is to be done. These procedures assure that the local child care community will be involved in the organization or reorganization and to avoid long periods of time during which a CCAC is not functioning or is functioning adversely. The 30-day time frame for this activity is reasonable as it gives the lead agency sufficient time to get notices into the community media, yet does not delay the action for stopping a poorly functioning CCAC from activities which could negatively affect the delivery of day care services.

Subpart b. (2) (b) (ii) CCAC Reorganization Meeting - The 60-day time frame to convene a reorganization meeting of the CCAC is necessary for the selection of a meeting place and to provide for sufficient notice to all interested persons. The 60-day time frame is a reasonable time for public participants, as well as agency staff to schedule for their participation in the meeting. It is necessary to provide a mechanism for conducting the meeting in an orderly fashion. It is logical and reasonable for the lead agency to assume the presiding role for the public gathering.

Subpart b. (2) (b) (iii) Board Recommendation - This provision is necessary so that the county or human service boards, the official decision-makers regarding local social services, will be involved in the process of CCAC selection and recommendation to assure that the CCAC has the support of the community and to provide for planning and distribution of funds at the local level as described in the Community Social Services Act. The rule also provides a mechanism for dealing with the selection of a single CCAC where more than one emerges and seeks recognition by the community and the Commissioner.

The 60-day time frame for agency board action is reasonable because it allows the board to deal with the problem or decision at one of

their regularly scheduled meetings. A shorter time could require the agency to call for a special meeting of the board to deal with this action.

Subpart b. (2) (b) (iv) CCAC Application for Recognition - This procedure is necessary as part of the monitoring process of a CCAC and to assure that the child care community has input in the establishment of a CCAC and are a part of its membership. It is a reasonable procedure because it follows established action patterns in practice by local social service agencies, boards, and the state agency.

Subpart b. (2) (b) (v) Commissioner's Recognition of a CCAC - This requirement identifies the procedure the Commissioner will use in the recognition process and the time frame by which it is to be accomplished. It is necessary that the Commissioner make a decision within a specified time and that notice of any deficiencies be given so that the applicant may correct them. This standard is reasonable in that 45 days allows for adequate communication between the state agency and the CCAC applicant to correct deficiencies yet does not allow for procrastination to accomplish the task.

Supbart b. (2) (c) Provide Resources - A volunteer group needs staff if it is to function effectively and with full participation of all of its members. The local social service agency day care staff works with day care resource development. The local social service agency also has needed resources available for the functioning of a CCAC. Services and resources that may be needed by a CCAC include: duplicating, telephone, mailing, training in group work, consultation, development of planning skills, and working with volunteers. This requirement is reasonable as most of the needed resources are already available in the local social service agency. It has been demonstrated in practice that those CCACs that are working closely with the local social service agencies have been the most productive.

Part 2. Development of Day Care Resources - In this section of the rule, responsibility for the development of day care provider and support services is placed with the county. Development of local resources is most effectively accomplished by local agencies. This division of responsibility is in accordance with Minn. Stat. Chapter 256E.

Subpart a. Diversity in Kinds of Resources - This requirement is necessary to provide direction and assure diversity in styles, program, location, and types of day care service providers. The diversity is needed by the agency and the community to assure physical accessibility to parents and children needing day care services in environments that meet individual children's developmental needs. This requirement is reasonable because most communities already have a diversity in kinds of day care service providers available and is necessary to fulfill other requirements of this rule.

Subpart a. (1) (a) Diversity in Types of Direct Day Care Service Providers - This provision is needed to define the kinds of direct service providers needed to meet the needs of children currently receiving day care services. The provision is reasonable as these client groups have already been identified in social service planning and are needed to meet the agency's responsibilities under Section D, 4.c.(1) of this rule.

Subpart a. (1) (b) Diversity in Location - This requirement is necessary to meet the day care service needs of all persons in the county so that parents and children using day care services will not experience undue hardships involving transportation to place the child in care or the need for nearness of child to parent in case of an emergency. The requirement is reasonable in that the varieties of direct day care service providers have capabilities for serving large or small populations.

Subpart a. (1) (c) Diversity in Program - This requirement is reasonable and necessary to assure parents and children in day care services that the cultural and developmental needs of their children will be met. Current research shows that where the conditions listed in this requirement are not being met, children in day care services suffer identity problems and are developmentally delayed.

Subpart a. (2) Indirect Day Care Resources - This standard is needed in this rule to provide for the kind of support services needed to improve the quality of day care services. Direct day care service providers need ongoing support to enrich and revitalize their planning efforts to maintain good services to the children in their care. Some of these services are directly affective, others are supportive. This standard is reasonable because many of the service systems in our society are specialized and planned to provide this needed support for families and children.

Subpart a. (2) (a) Direct Support - This provision is necessary as no one provider can afford to purchase or hire this kind of assistance, yet the supports are needed to meet the children's health and developmental needs. It is reasonable as many of these supports already exist in the community and where they do not exist, strategies for their development are in existence.

Subpart a. (2) (b) Ongoing Support - This standard is necessary to provide professional expertise for those direct day care service providers who have had no formal or informal training in child development, family needs dynamics and interaction, health and safety. This basic understanding is necessary for the less intuitive provider and provides a base for understanding of the intuitive provider. This requirement is reasonable in that the state agency has been developing and continues to develop these resources in every geographic area of the state through staff development and statewide contracts which have prepared printed materials, filmstrips, and developed trainers in community schools and colleges.

Subpart b. Planning and Coordination Services - This provision is necessary to provide ongoing coordination of day care providers, day care support services, and parent groups. In some counties, this continuing effort cannot be accomplished by a volunteer group such as the CCAC, and will need to be provided by the local social service agency or purchased from a community agency. This provision is necessary and reasonable because, where planning and coordination services currently exist, the general condition of day care service is of better quality.

Subpart c. Funds for Day Care Development - The state appropriation for day care services has been used to encourage and support the development and maintenance of day care resources and services. In addition, Title XX dollars have been categorically earmarked for day care services as a part of the plan to help day care providers meet federal requirements. (45 C.F.R. §228.51 (c)(1)(i).) These funds are distributed to the local social service agency, but the purpose for their use remains the same. This requirement is necessary to assure that potential providers are made aware of the existence of such funding. The requirement is reasonable in that the planning for the use of state day care dollars is currently in practice and statistics verify that day care resource development has been responsive in direct proportion to the funding.

Section C. Day Care Regulations

Part 1. Licensing - Day care providers are regulated in Minnesota through licensure under other rules and statutes. The following provisions are necessary to define the responsibility of the local social service agency in the licensing process.

Subpart a. (1) Day Care Center Licensing - Group day care centers are licensed under 12 MCAR §2.003 by the Licensing Division in the state agency. The provision is reasonable in that it provides that the local social service agency shall refer inquiries concerning this type of license to the state agency.

Subpart a. (2) Unlicensed Operations - All operating day care facilities should be licensed. The local social service agency is in a position to know about unlicensed facilities. It is reasonable to place responsibility with the local social service agency for referring unlicensed operations to the state agency.

Subpart b. Family Day Care Licensing - The local social service agency's responsibility for licensing is set forth in 12 MCAR §2.002. Its inclusion here is necessary and reasonable so that this duty may be placed in context of the local social service agency's other day care responsibilities.

Part 2. Certification - Public Laws 93-647 and 94-401 as implemented by 45 CFR §228.42 of the federal regulations requires that all providers and facilities that care for children whose day care services are paid for with

federal funds must meet certain standards as identified in the Federal Interagency Day Care Requirements (FIDCR). This statement is necessary to identify clearly which day care resources need certification in addition to licensing and to provide a procedure for certification by the local social service agency.

Subpart a. Day Care Centers - This statement is necessary to clarify the responsible authority for implementation of certification. It is reasonable that the state agency should certify day care centers that meet the federal requirements, since the state agency already evaluates them for licensure purposes.

Subpart b. Family Day Care Homes - This section of the rule is described in more detail because the total responsibility for implementation is placed with the county social service agency.

Subpart b. (1) Local Social Service Agency's Responsibility - The Federal Interagency Day Care Requirements (FIDCR) were established by the federal government to assure quality of care for children in certain situations where the services are paid for with federal funds. This standard is necessary to assure that the state agency (and local social service agencies) are in compliance with federal regulations which are required as a prerequisite to receive Title XX funds. (45 C.F.R. §228.42.) The requirement that certification be done by the local social service agency is reasonable in that the county agency staff already evaluates family day care homes. In Minnesota, the licensing standards and certification standards vary slightly so the certification process requires little more than that which is already in place and is consistent with the licensing process.

Subpart b. (2) Certification Process - This section of the rule describes the process for consultation, technical assistance, and issuance of the certification and is necessary to assure that all providers who wish to be certified and meet the requirements receive certification. This process and responsibility is reasonable as it is consistent with the licensing process.

Subpart b. (3) Records - This requirement is necessary to place the responsibility for record keeping in the local agency where the records will be available for state or federal agency monitoring. The requirement is reasonable as it is consistent with the agency's responsibility for keeping the licensing study records on file in the agency.

Subpart c. In-Home Day Care Standards - In-home day care standards are required in federal regulations (45 C.F.R. §228.42). That regulation requires that the state agency establish standards for in-home day care providers in order to receive federal funds for these services. The standards must include standards for age, health of the provider, ages and number of children in care, and ability of the provider to provide this service.

To the extent that it is feasible, the standards established for in-home day care services are similar to the requirements for family day care providers where the environment and care are similar. This similarity is essential to assure the same quality of care and minimize the movement of providers from family care to in-home care settings if standards were less stringent.

These standards are necessary to assure quality of care for children who are placed in in-home day care and to qualify the state to pay for this service with Title XX dollars. They are reasonable in that they address the specific requirements identified in the federal regulations and are generally consistent with family day care licensing standards.

Subpart c. (1) Local Social Service Agency Responsibility - This section of the rule is needed to place the responsibility for certification with the local social service agency. The responsibility is reasonable as it is consistent in function with current family day care licensing.

Subpart c. (2) Exemptions from Certification -

Subpart c. (2) (a) Less than Three Hours - The exclusion of certain day care service providers from certification is needed for two reasons. The first reason is, for certain situations, the major responsibility for care and early developmental experiences is clearly with the parent(s). Many families use "babysitting" services for a few hours a day and on an irregular basis. In these situations, the need for assuring a healthy environment for growing children can largely be determined by the parent(s). This standard is reasonable as the "baby-sitting" group of providers is so large that the imposition of these standards on them would be unrealistic in terms of the time needed by the local agency to accomplish the certification process for the service being rendered.

Subpart c. (2) (b) Less than 30 Days - Secondly, many providers of in-home care for children work with the family to provide day care services fcr a specific occasion and for a short period of time helping the family during the time there is a family crises or short-term emergency. Many times, these in-home providers are relatives or close friends of the family and known to the children. They generally practice child rearing similarly to that of the child's parents. This standard is reasonable in that in most of these situations, the care given comes on short notice and there is not sufficient time for the local social service agency to complete the certification process and the children in care are not generally subjected to an unhealthy environment. Also, the risk in the quality of day care services provided is less likely to be damaging to the child's normal growth and development in the short period of time that the service is provided.

Subpart c. (3) In-Home Standards - Part (a) of this subpart of the rule provides specific requirements which must be met personally by the in-home provider. Part (b) establishes specific standards which must be met by the local social service agency while delivering day care services to

children in their own homes. These standards are required by the federal regulations which place the responsibility for their establishment with the state agency (45 C.F.R. §242.42 (a)(1)(ii)). The standards must include competence, age, health, capacity and available time to properly care for children, minimum and maximum hours to be allowed per 24-hour-a-day for such care, maximum number of children to be cared for at any one time and proper feeding and health care of the children.

Subpart c. (3) (a) (i) Age of Provider - This standard is needed to assure that the person being certified has the maturity to make wise decisions during times of emergency when caring for young children, and also has the experience and maturity to understand child development principles and practices as presented in the training of providers for this service. In some cases, the local social service agency needs the option of waiving the requirement and selecting a younger person (15-17 years) as some adolescents are competent caregivers, particularly if they have a "back-up" adult. The standard limiting the number of children to be cared for by a younger person is necessary to protect the caretaker, as well as the children in care. It is reasonable and necessary to limit the number of children in care because young children have frequent immediate needs or the individual children's behaviors are in conflict with each other or with the caretaker, requiring the caretaker to work with one child at a time. Thus, it is reasonable to limit the number of preschool children in care of a person under 18 years of age.

Subpart c. (3) (a) (ii) Experience of Provider - It is necessary and reasonable to require that providers are experienced and competent.

Subpart c. (3) (a) (iii) Tuberculin Test - This standard was defined by the State Department of Health to be the minimal criteria for assuring that children are free from being exposed to this highly infectious respiratory disease by the provider. It is necessary to maintain this standard for the protection of children in day care. It is reasonable in that it is consistent with the family day care licensing standard and is already being implemented by the family day care licensing staff.

Subpart c. (3) (a) (iv) Provider's Health - This standard is reasonable and necessary to make sure that children in day care have providers with sufficient physical energy to work and play with them while they are in care. Young children are active as a natural part of their growth and learning and place high demands on the adult(s) caring for them.

Subpart c. (3) (a) (v) Conditions of Provider that Preclude Certification - It is reasonable and necessary to establish criteria for identifying those conditions of providers which are likely to be detrimental toward a healthy environment for children. The specificity in the standard is needed to help the local social service agency staff identify those conditions which could be a basis for denial of certification. The standards are flexible so that the local agency staff can make exceptions based on professional judgment according to standards set forth in the rule. This standard is reasonable as it is consistent with good practice and is also required for family day care licensure.

Subpart c (3) (a) (v) (aa) Child Battering - This standard is reasonable and necessary to provide reasonable assurances that children in care with an in-home day care provider will not be victims of a child abusive person.

Subpart c. (3) (a) (v) (bb) Alcoholism or Drugs - This standard is necessary to provide protection to children in in-home day care from an adult who is not functioning rationally while under the influence of chemicals. The standard is reasonable in that it does not interfere with a caretaker's life style yet protects children during the time they are in care.

Supbart c. (3) (a) (v) (cc) Children in Foster Care - While all foster care placements of children are not directly related to poor or ineffective parenting, this standard does establish a necessary step in the total evaluation of an in-home day care provider to care for other people's children. The standard is reasonable in that it provides the opportunity for a professional judgment of the social worker regarding the applicant's capability to provide a nurturing and constructive parenting environment.

Subpart c. (3) (a) (v) (dd) Violence in Behavior Patterns - This standard is necessary to protect children from being placed in the care of persons who use violence as a means of correction and discipline and to assure them of a nurturing parent substitute while in day care. The standard is reasonable in that children would be adversely affected by negative or punitive parenting.

Subpart c. (3) (a) (vi) Child Nutrition - In-home providers do not generally plan the children's meals for the day, but do control times of eating and snacking. This standard is necessary to place the responsibility for working with the parent to make certain that foods for nutritious snacks and meals are supplied and that children are fed at appropriate times. This standard is reasonable as it supports a continuity of health habits necessary for the child's growth and development.

Subpart c. (3) (a) (vii) Learning Environments - Care in the child's own home must not be custodial in plan and philosophy. Healthy child development and stimulation does not happen accidently. Planning a healthy learning environment is essential to provide growth and developmental experiences suitable for the child's normal intellectual growth. This standard is reasonable as it is consistent with good nurturance practices and consistent with the requirements for family day care. This standard also appears in the proposed federal regulations for family day care homes (Proposed FIDCR §71.50).

Subpart c. (3) (b) Service Standards - The service standards apply to the child-placing agency and are not the responsibility of provider. They are needed to meet federal regulations (45 CFR §228.42 and Proposed FIDCR §71.64) which are consistent with quality child development practices.

Subpart c. (3) (b) (i) Number of Children in Care - This standard is necessary to assure that all children in care get the necessary adult attention to maintain good health and receive the kind of care that fosters the children's natural growth and development. The standard is reasonable as it is consistent with the adult-child ratio standards established for family day care, yet it provides for exceptions in unusual family situations.

Subpart c. (3) (b) (ii) Hours of Care - This standard is necessary to assure parents and children that the substitute caretaker has the physical energy to provide good care for the children. It is reasonable in that it accommodates the working parents who need travel time to and from work if they are working an eight-hour a day job.

Subpart c. (4) Annual Recertification - Federal regulations require that the state's in-home standards are in place on a continuing basis. Home and provider situations change from year to year. An annual recertification requirement is necessary to provide the agency with the responsibility and opportunity to reassess the quality of care that an in-home provider gives. Recommendations for training and compliance with standards can be assessed and conditions for renewal of the certificate established. This standard is necessary to assure compliance with the federal requirements. (45 C.F.R. §228.42.)

Subpart c. (5) Records - This procedure is included in the rule to clarify where the official records for in-home certification will be maintained. It is reasonable because the records for family day care and in-home day care are already in the local social service agency. It is at this location that the records are available for state and/or federal monitoring activities.

Subpart d. Provider Training - In a 1977 state monitoring assessment of out-of-home day care services, the findings showed that child development activities were not in practice nor were they seen as important by most family day care providers (MINNESOTA Out-of-Home Child Day Care Review, page 13). Even though the providers may have responded to the growth and developmental needs of their own children, they saw their family day care home as a "babysitting" service, a place where children are placed in a safe and protective environment. The practices were custodial.

The importance of training for day care providers is supported by the preliminary findings by Abts Associates in a National Day Care Study in 1975-78. The findings of the study are reported in The Appropriateness of Federal Interagency Day Care Requirements (FIDCR): Report of Findings and Recommendations, U.S. Department of Health, Education and Welfare, 1978, pp. 45-47. The study shows a definite relationship between quality of care and caregiver specialization in child-related training.

This standard is necessary to assure quality of care for children in in-home and family day care settings. This standard is reasonable in that training in child development has been identified as the content of the specialized training which had the most positive effects on quality

of care in day care programs. The four clock hour (4) minimum training for new providers is reasonable and necessary to assure sufficient in-depth exploration and study of a child development principle that changes care-giving behavior. The annual requirement of sixteen clock hours (16) of training in child development is necessary to provide this exploration, study and practice of more than one child development principle in a year. Ongoing training on an annual basis is necessary to upgrade the quality of care-giving behaviors related to positive cognitive and emotional development of children (The Appropriateness of FIDCR ---, pages 43-44). The training requirements are reasonable to fit into a providers personal time as the annual training could be done at the rate of one-half day or eight evenings of two hours each in a three month span.

The competency-based assessment program for family day care has been developed in Minnesota for family day care providers through a Title XX staff development training contract. It has been tested statewide with local social service agency staff and licensed and certified family day care providers. A provider who can demonstrate competency may be exempt from the clock-hour type of training class, but it does not prohibit the provider from attendance if desired.

The three year exemption is reasonable and necessary to assure that providers update their competence with current research and training. The body of knowledge in early childhood education is a rapidly expanding one which makes it essential for persons working with young children to keep updated in this field.

This standard is reasonable as it places the emphasis on the development or maintenance of competence rather than "sitting-through" prescribed courses for a particular number of hours to meet a training requirement. The training approach for competency-based training is to provide each candidate with an individualized, self-paced performance-based assessment. This standard is reasonable as it is a training alternative for the provider and has been demonstrated nationally in the Head Start program. The Child Development Associate (CDA) program initiated in Head Start has issued 3124 CDA credentials prior to May, 1978. (The Appropriateness of the FIDCR ---, p. 50).

Requirements for child development training are also found in federal requirements (FIDCR VI. 1, 2) and the proposed Federal Interagency Day Care Requirements (71.12 and 1.52). This section of the rule is reasonable and necessary as it places responsibility for participating in training activities on the provider in order to meet certification requirements.

Subpart e. Appeal of Certification, Denial, Nonrenewal or Revocation - Providers or prospective providers are entitled to an appeal if the local social service agency takes adverse action and the client feels that his rights have been violated. The appeal mechanism is reasonable as it complies with the Minnesota Administrative Procedures Act (Minn. Stat. §15.0418 - §15.0422) and is consistent with the procedure for appeal of licensing matters under Minn. Stat. §245.801.

Section D. Service Delivery - This part of the rule establishes service delivery standards for the local social service agency. These standards are necessary for establishing a plan for children in the day care component of social services and to assure parents and their children the kind of care that will maintain and nurture the children's healthy development while the parents are away. This requirement is reasonable and necessary to meet federal regulations for planning with clients (FIDCR IV. 3, 4, and Proposed FIDCR §71.62 (1) (3)).

Part 1. Day Care Staff in Social Service Agency - It is reasonable and necessary to require the local service agency to staff itself sufficiently to fulfill its obligations under this rule.

Part 2. Provision of Support Services - The local social service agency has the option of providing or purchasing support services which are essential to the health and well-being of children in day care. This standard is reasonable and necessary to meet federal regulations which require social services to families and health and dental screenings and treatment for children (FIDCR V. 2, 3, 5 and Proposed FIDCR §71.56 (1)). Health and dental screenings and treatment are available to most of the agencies' day care clients through the Federal Early Periodic Screening, Diagnosis and Treatment (EPSDT) program. Others are eligible for Medical Assistance. Some parents may wish to assume the fiscal responsibility for this service for their children.

Part 3. Resource Listing for Information and Referral - This procedure is necessary to provide the local social service agency's placement workers with an annotated listing of certified day care providers who have spaces available to children who need and are eligible for the service in a location that is accessible to the parent. The procedure is reasonable if the federal requirements are to be met and children and parent(s) are to receive the necessary kinds of services described elsewhere in this rule.

Part 4. Planning and Placement in Day Care Resources - In the interest of children and ultimately their parents, it is necessary that local agency staff and parents plan for the day care placement of the children to assure that the day care experiences meet the children's individual needs. This standard is also necessary to comply with 12 MCAR §2.160 and federal regulations which requires a service plan for children in day care (FIDCR IV. 3, 4). It is reasonable in that it already is in practice in most local social service agencies. Working cooperatively with parents is imperative to this planning. The standard is necessary to describe the process for local social service agency staff who work with parents to make placement plans for children in day care.

Subpart a. Informing Parents About Services - This standard is reasonable and necessary to assure that parents are informed of the monetary resources that are available to them to help pay for the day care services that are needed.

Subpart b. Planning with Parents - This procedure is necessary to deetermine the kind of day care placement children should have. It is reasonable as it is the kind of service planning generally accomplished by social workers who provide planning services for families.

Subpart c. (1) Choice of Day Care Provider - This procedure is necessary to assure the parents of children in day care services a choice of vendor and to meet federal requirements (FIDCR IV. 3, 4 and Proposed FIDCR §71.22 B (2)). Selection of day care providers for fee paying parents has always been an option. Parents who receive service from the local social service agency should have equal rights. Parental choice is also another way to support the standard that children are placed with day care providers that will provide them with the kind of experiences that will result in adequate care and a healthy environment for normal growth and development. This procedure is reasonable in that it indicates a minimum number of options which is not prohibitive in cost or availability to each county in the state.

Subpart c. (2) Preplacement Visit - This procedure is necessary to provide the parents with the opportunity to talk with potential providers to examine their attitudes toward the developmental needs of their children and for the provider to assess how the child will fit into the center or home. It is also required in federal regulations (FIDCR IV, 3, 4 and VIII 2 and Proposed FIDCR §71.22). It is reasonable that the parents have this opportunity as it is consistent with policies and good social work practices already in place for many day care center and family day care programs.

Subpart c. (3) Parents Recommendation of Provider - This requirement is necessary to provide the parents with the ultimate responsibility for the care and well-being of their children. This part of the rule is reasonable because it provides a practical way of dealing with agency responsibility and parent responsibiltiy in the resource selection process.

Subpart c. (4) Selection of Provider - This requirement is needed to assure that the actual placement of the children in day care is made on the basis of a plan which provides the kind of environment that meets the child's developmental needs and is agreed upon by the parent, the provider and the agency.

Subpart d. Visits to Children - This standard is necessary to provide a regular checkpoint to assure the local social service agency that the day care service plan for each child is being met as it fits into the family's service plan and to meet the federal requirements (FIDCR IV, 3 and 4). This standard is reasonable as social workers are currently working toward a strong family unit that is eventually self-sufficient and that children will grow in normal healthy home and day care environments.

Subpart e. Health and Dental Assessments - This standard is necessary to meet the federal (FIDCR V, 3, 5) and state (12 MCAR §2.002, V. A) day care service requirements so that children's health difficulties

may be treated at an early age and that all children in care will not come in contact with some children who carry infectious or contagious health conditions. The standard is reasonable for the well-being of children and the health requirement is already operative under the state's licensing requirements.

Section E. Training

Part 1. Certified Provider Training - The requirement for the provision of training of day care providers is needed to assure the availability of child development training on a regular and continuing basis and to meet the federal regulations (FIDCR VI. 1, 2 and Proposed FIDCR §71.52). The purpose of the training opportunities is to assure that current providers of family and in-home day care services can develop competence while meeting the day care training requirements described elsewhere in the rule. (Section C. Part 2, d. of this rule) in child development practices to improve their competencies in meeting the needs of young children.

Subpart a. Agency Responsibility for Training - This part of the rule is necessary to place the responsibility for quality of care in family day care homes and in the child's own home by an in-home day care provider with the local social service agency. It is reasonable and necessary to establish a regular and continuing program of child development training at the local social service agency level to assure accessibility of training to all providers in that area and to meet the federal requirements (FIDCR VI. 1, 2). The local social service agency does assess quality of care as a part of the annual relicensing study so can best identify local day care provider training needs.

Subpart b. Training Availability - This standard is necessary to provide adequate training opportunities to meet the training requirements of in-home and family day care providers as required in this rule in Section C. 2, d. The standard is reasonable as the delivery of the training by a local social service agency may be secured by direct service, purchase of service, or payment of training costs using Title XX Staff Development dollars for all providers (and agency staff) who care for children whose services are paid for with Title XX or other federal dollars (excluding Head Start).

Supbart c. Competency-based Assessments - This standard is included in this rule to assure that in-home and family day care providers may have the option to have their competencies assessed and secure training to help them develop the competencies in which they are deficient. It is a reasonable standard because the local social service agency day care staff will have the opportunity to receive the training in a statewide staff development contract for fiscal year 1980.

Part 2. Local Social Service Agency Staff Training - Because most local social service agency staff assigned to day care service have had little or no training in child development principles and practices or in licensing consultation process, there is a need to establish requirements for their training. An understanding of child growth and development

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STATE OF MINNESOTA

DEPARTMENT OF PUBLIC WELFARE

IN THE MATTER OF THE DEPARTMENT OF PUBLIC WELFARE'S REPEAL OF RULE 12 MCAR 2.162 (DPW RULE 162), ALLOCATION OF TITLE XX FUNDS TO COUNTY WELFARE DEPARTMENTS

STATEMENT OF NEED AND REASONABLENESS

(A)

The need to repeal this rule arises because Minn. Stat. § 256E.07 (Supp. 1979) enacted into law a formula for allocation of Title XX funds. This new formula supersedes the previous formula contained in DPW Rule 162.

This rule is repealed as of October 1, 1979, to correspond to the end of the federal fiscal year. The federal fiscal year is the time period during which the previous Title XX allocation was in effect.

No expert witnesses will be called to testify.

Dated: 12-27-79

Wesley Restad for
Arthur E. Noot
Commissioner

JS/glnn

IN THE MATTER OF THE DEPARTMENT OF PUBLIC WELFARE'S PROPOSED ADOPTION OF A NEW RULE 12 MCAR 2.209 (DPW RULE 209), DAY CARE FOR CHILDREN, AND REPEAL OF 12 MCAR 2.162 (DPW RULE 162), ALLOCATION OF TITLE XX FUNDS TO COUNTY WELFARE

AFFIDAVIT OF MAILING

NOTICE OF SUBMITTAL TO THE ATTORNEY GENERAL

LINDA M. NELSON, being first duly sworn, deposes and says:

That on the 26th day of September, 1980, at the City of St. Paul, County of Ramsey, State of Minnesota, she served the attached Notice 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 who had so requested to be notified.

Linda M. Nelson

Subscribed and sworn to before me this 26th day of September, 1980.

Dorothy Haider



IN THE MATTER OF THE DEPARTMENT OF PUBLIC WELFARE'S PROPOSED ADOPTION OF A NEW RULE 12 MCAR 2.209 (DPW RULE 209) DAY CARE FOR CHILDREN, AND REPEAL OF 12 MCAR 2.162 (DPW RULE 162), ALLOCATION OF TITLE XX FUNDS TO COUNTY WELFARE

To all Interested Persons:

Pursuant to your request and in accordance with Minnesota Statutes, Section 15.0412, subdivision 4 and Rule HE 102, PLEASE TAKE NOTICE that the above-captioned rule(s) have been submitted to the Attorney General's Office on September 26, 1980 for review as to form and legality. Pursuant to Rule ATTYGEN 305, any person may question the legality of the above-captioned rules within ten (10) days after receipt of the rule by the Attorney General. Thereafter, the Office of the Attorney General shall conduct its review. If you desire to question the legality of the above-captioned rules you should direct your comments to the Attorney General's Office, G-25 Administration Building, 50 Sherburne Avenue, Saint Paul, Minnesota 55155.

If you are interested in determining what changes, if any, were made in the proposed rules after the hearing and before submission to the Attorney General you may contact Estelle Griffen, Department of Public Welfare, Centennial Office Building, St. Paul, Minnesota 55155. Telephone (612) 296-3910.

Robert J. Hamper

AUTHORIZED SIGNATURE

Rule 209

If you wish to be notified when the Hearing Examiner's Report is available, please put your name and address on one of the envelopes supplied.

RULE HEARING REGISTER

PLEASE PRINT CLEARLY

NAME	REPRESENTING	COMPLETE ADDRESS	TELEPHONE	CHECK HERE IF YOU WISH TO MAKE A STATEMENT AT THE HEARING	CHECK HERE IF YOU WISH TO BE NOTIFIED BY THE AGENCY WHEN THE HEARING RECORD HAS BEEN SUBMITTED TO THE ATTORNEY GENERAL
Dan Gartrell	Title XX Training Project	Box 132 BSU, Bemidji, MN	218/755-2073	yes	yes
Wm Russell Cain	Region VIII North Welfare	Marshall, MN	507/537-1441	YES	YES
Shirley [illegible]ynik	Ramsey County Human Services	160 E Kellogg Blvd St Paul 55101	298-4467	Yes	Yes
W. Gary Wing	Child Care Council of RC	6 West 5th St, SP 55102	222-0541	✓	✓
Bob Franseen	Stearns County - CCAC Cimmin.	5445 River Rd N.E. Sauk Rapids 56379	255-6031		✓
John Buzzell	DPW	Cent. Bldg St. Paul	296-2539		
Ray Wey	DPW	" " " "	296-2703		
[illegible]	"	" " " "	296-3970		
Roger Engstrom	Hennepin County	300 So. 6th ST, Mpls 55487	348-3850	yes	yes
Curt Vining	" "	" " "	348-3587	No	yes
Earl Newberg	Anoka "	Court House Anoka 55304	421-4760		
Liz Thompson	Carver "	Court House Chaska 55318	448-3661	~~yes~~	yes
Joan Preston	" "	" " " "	" "		
Dale Anderson	Greater Mpls Day Care	111 E. Franklin, Mpls 55404	871-3103	yes	yes
Louise Hancock	St. Louis County Soc. Serv.	422 W 3rd St. Duluth 55606	218 727-8231	YES	YES
Sherrie Smith	St. Louis Co CCAC	2627 E. 7th St Duluth 55812	218-728-4812	✓	
David Allen	Toys'n Things Training & Res Ctr	906 N. Dale St, St. Paul 55103	612-488-7284	yes	yes
Jim Nicholie	Child Care Resource Center	3602 4th Ave. S. Mpls. 55407	828-5261	yes	yes
DON STREI	MN. CO. WELFARE DIRECTORS ASN.	12816 MISS. RD. NW, ELK RIVER, MN 55330	441-1211	YES	

If you wish to be notified when the Hearing Examiner's Report is available, please put your name and address on one of the envelopes supplied.

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Rachael Hofstad	Olm County Soc. Serv		288-9388	✓	
Carla Stacker	"				
Barb Thul	Scott Co. Human Services	Court House, Shakopee, MN	455-7750		
Tuttle Shelard	Olmsted Co. 4-C	1312 N.W 1st - Rochester	507 288 9388	✓ yes	✓
Jerry Norberg Ferguson	DPW	4th Fl Cent. Bldg, St. Paul	296-5764		
Cherie Kotilnek	DPW	" " "	" 3829		

If you wish to be notified when the Hearing Examiner's Report is available, please put your name and address on one of the envelopes supplied.

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Ellie Norbert	DSS - DPW	Centennial Office, St. Paul	6-6575		
Mary Lou Gilstad	Univ of Minn	206 Westbrook Hall - Mpls	376-7424		
Sue Tarsett	Hennepin Co. Family Day Care	610 10-22 14th St. Mpls, 55408	823-7237		X
Clayton Hagen	DSS - DPW	CENTENNIAL BLDNG	6 2279		
Lois A. Burnes	Bemidji State Univ. also Region IV SCDC	14 So. California Ave., Morris MN	612 589-3063		
Darlan Hansen	Univ of Minn. Elem Educ - Burton Hall		373-2285	X	X
Shirley Bosch	Kandiyohi Cty Family Service	905 W. Litchfield / Willmar, Mn.	235-8317	X	X

STATE OF MINNESOTA

DEPARTMENT OF PUBLIC WELFARE

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IN THE MATTER OF THE DEPARTMENT
OF PUBLIC WELFARE'S REPEAL OF
RULE 12 MCAR 2.162 (DPW RULE
162), ALLOCATION OF TITLE XX
FUNDS TO COUNTY WELFARE
DEPARTMENTS

Person testifying on behalf of the Department regarding the repeal of this rule.

John Brenneman
Service Administration Section
Social Services Division
612/296-3979

JS/glrr

STATE OF MINNESOTA
DEPARTMENT OF PUBLIC WELFARE

In the Matter of the Department
of Public Welfare's Proposed Adoption
of a New Rule 209 (12 MCAR 2.209) -
Day Care for Children

Agency Personnel Who
Will Testify at the
Public Hearing

The following person from the Department of Public Welfare will testify and will be available for questiosn at the public hearing of the above proposed rule on January 28, 1979.

Estelle Griffen, Specialist
Day Care Services

Bureau of Social Services
Division of Social Services

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STATE OF MINNESOTA

DEPARTMENT OF PUBLIC WELFARE

IN THE MATTER OF THE DEPARTMENT OF PUBLIC WELFARE'S PROPOSED ADOPTION OF A NEW RULE 12 MCAR 2.209 (DPW RULE 209), DAY CARE FOR CHILDREN, AND REPEAL OF 12 MCAR 2.162 (DPW RULE 162), ALLOCATION OF TITLE XX FUNDS TO COUNTY WELFARE

NOTICE OF HEARING

A public hearing concerning the above-entitled matter will be held at the Minnesota Historical Society Building, 690 Cedar Street (corner of Central), Weyerhaeuser Room, Second Floor, St. Paul, Minnesota, on January 28, 1980 commencing at 9:00 a.m. The proposed rule 12 MCAR 2.209 or repeal of 12 MCAR 2.162 may be modified as a result of the hearing process. Therefore, if you are affected in any manner by either of these rules, you are urged to participate in the rule hearing process.

Following the agency's presentation at the hearing, all interested or affected persons will have an opportunity to ask questions and make comments. Statements may be made orally or 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 the Hearing Examiner, Harry Seymour Crump, 1745 University Avenue, Room 300, St. Paul, MN 55104 (612) 296-8111, either before the hearing or within five working days after the close of the hearing. The hearing examiner may, at the hearing, order that the record be kept open for a longer period not to exceed 20 calendar days. The rule hearing procedure is governed by Minn. Stat. §§ 15.0411-15.0417 and 15.052, and by 9 MCAR §§ 2.101-2.112 (Minnesota Code of Agency Rules). If you have any questions about the procedure, call or write the hearing examiner.

Twenty-five 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 rule. Copies of the Statement of Need and Reasonableness may be obtained from the Office of Hearing Examiners at a minimum charge.

12 MCAR 2.209 is a new rule. It governs the administration and provision of day care services by local social service agencies for children and their families. The procedures established in this rule are consistent with those already established by state and federal governments. Day care service is defined as the less than 24-hour-a-day service which provides care for children as a substitute for or supplement to parental care for a planned period of time.

The primary reasons for the Department of Public Welfare's proposal of this rule are to fulfill the Commissioner's responsibility to: 1) develop needed day care resources that will provide care for children while their parents are at work or in training; 2) maintain or improve the quality of day care provided to children so that each child will grow and develop to his fullest potential in a nurturing and protective setting; and, 3) to assure that the delivery of the day care services will meet federal regulations, including the Federal Interagency Day Care Requirements (FIDCR) and "In-Home" day care standards in order to qualify for Title XX funds as provided in the Social Security Act.

The rule has an introductory section and four (4) major service standards and/or procedures. They are: 1) Resource Development; 2) Regulations; 3) Service Delivery; and, 4) Training. The introductory section of the rule contains the statement of purpose, statute and federal regulation authority and a section on definition of terms as they are used in this rule. The section on resource development gives procedures for establishing, maintaining and functioning of Child Care Advisory Committee's (CCAC's); the development of direct and indirect day care service providers and the necessary support systems; planning and coordination of day care resources and services; and the use of funds for the development of day care resources. The section on day care regulations includes procedures for licensing and certifying family day care homes; establishes standards for in-home day care providers and training requirements for family day care and in-home day care providers; and the right of the provider to appeal a denial or revocation of a license or certificate if he/she feels that the action of the agency is not justified. The section on service delivery establishes standards which assure young children and their parents that the day care placement will be in an environment that will meet each child's developmental as well as health and safety needs. The section on training includes standards for the provision of training for the direct day care service providers and establishes training standards for the local social service agency staff who are responsible for the licensing, planning, training and delivery of day care services.

12 MCAR 2.162 governs the allocation of Title XX funds in Minnesota. The rule contains a definition of terms relevant to the allocation of funds, a description of the allocation procedure, the formula to be used for allocation of funds, and the procedure for reallocation of unused funds.

The statutory authority for 12 MCAR 2.209 is: Minnesota Statutes 256.01, 256.011, 256E.02, 256E.05, and 15.0412, Subdivision 3; Public Laws 93-647 and 94-401; 45 CFR §§ 228.13 and 228.42.

The statutory authority for 12 MCAR 2.162 (MS 393.07) has been superseded by the passage of chapter 324, The Community Social Services Act, which establishes an allocation formula in law. The allocation formula in chapter 324 was implemented effective October 1, 1979.

The expenditure for implementation of 12 MCAR 2.209 is estimated at $289,050 annually or $578,100 biannually. Of these costs, $188,000 ($94,000 annually) are additional costs currently not operational in most local public bodies. These costs are for the training of family day care and in-home day care providers and local social service agency day care staff. Seventy-five percent (75%) of these costs are reimbursable under Title XX staff development monies. The local match of twenty-five percent (25%) is an eligible expense of state day care dollars now in the county agency. A detailed "Estimate of Expenditures" may be obtained by writing to Estelle Griffen, Department of Public Welfare (address listed below).

The repeal of 12 MCAR 2.162 will not result in additional expenditures for local public bodies.

Copies of the proposed rule 12 MCAR 2.209 are now available and at least one free copy may be obtained by writing to Estelle Griffen, Department of Public Welfare, Centennial Building, St. Paul, MN 55155, telephone (612) 296-3910,

John Brenneman, (612) 296-3979 (same address) will provide free copies of the repealed 12 MCAR 2.162. Additional copies of both rules will be available at the hearing. If you have any questions on the content of the proposed rule 12 MCAR 2.209, contact Estelle Griffen and contact John Brenneman with questions on 12 MCAR 2.162.

Any person may request notification of the date on which the hearing examiner's report will be available, after which date the agency may not take any final action on the rules for a period of five working days. Any person may request notification of the date on which the hearing record has been submitted or resubmitted 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.

Minn. Stat. ch. 10A requires each lobbyist to register with the State Ethical Practices Board within five days after he or she commences lobbying. A lobbyist is defined in Minn. Stat. § 10A.01, subd. 11, 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, St. Paul, MN 55155, telephone (612) 296-5615.

Dated: December 4, 1979

Arthur E. Noot
Commissioner of Public Welfare

STATE OF MINNESOTA

DEPARTMENT OF PUBLIC WELFARE

IN THE MATTER OF THE DEPARTMENT OF PUBLIC WELFARE'S PROPOSED ADOPTION OF A NEW RULE 12 MCAR 2.209 (DPW RULE 209), DAY CARE FOR CHILDREN, AND REPEAL OF 12 MCAR 2.162 (DPW RULE 162), ALLOCATION OF TITLE XX FUNDS TO COUNTY WELFARE

ORDER FOR HEARING

IT IS HEREBY ORDERED that a public hearing on the above-captioned rules be held in the Minnesota Historical Society Building, 690 Cedar Street (corner of Central), Weyerhauser Room, second floor, St. Paul, Minnesota, on January 28, 1980, 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, 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.

Dated: December 4, 1979

Arthur Nootby W.P.

Arthur E. Noot
Commissioner

STATEMENT OF COMPLIANCE WITH

MANUAL OF RULE MAKING PROCEDURES

Re: In the Matter of the Department of Public Welfare's Proposed Adoption of a New Rule 12 MCAR 2.209, Day Care for Children, and Repeal of 12 MCAR 2.162, Allocation of Title XX Funds to County Welfare

I, Special Assistant Attorney General, John L. Kirwin, 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.

John L. Kirwin

Special Assistant Attorney General

Dated: September 25, 1980