

Minnesota Attorney General: Administrative Rules Proceedings

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Version 3
August 20, 2018

TO Attorney General
Administration Division

FROM Bob Hampek
DPW

SUBJECT: Rules 18 & 34

DATE: 4-16-81

STATE OF MINNESOTA
DEPARTMENT OF PUBLIC WELFARE
CENTENNIAL OFFICE BUILDING
ST. PAUL, MINNESOTA 55155

The above rules are submitted for your review for form & legality according to 1 MCAR § 1.202.

Please address any questions concerning these rules to Alan Held at 6-8406.

cc Alan Held

SIGNED Bob Hampek

AN EQUAL OPPORTUNITY EMPLOYER

DPW-696b
(4-77)

6-2794

Our File No. 690

RULE REVIEW CHECKLIST

DATE RULE RECEIVED 4/16
DATE FOR REVIEW 4/20
DATE DUE 5/6

Adopted w/a hearing X
Adopted w/o a hearing
Temporary rule

Approved 5/4 Disapproved Returned to Agency 5/5

Resubmitted Due
Approved Disapproved Returned to Agency

Date filed w/Secretary of State 5/5

✓ Rule as Adopted

✓ Rule as Proposed See SR

✓ Order Adopting 3.24.81 incorporates F of F.

✓ Notice of Intent to Solicit Outside Opinion - SR 5/12/80 and 7/2/80

✓ Order for rulemaking
10.17.80 Date of Hearing

N/A Certificate of Board's Authorizing Resolution

✓ Notice of rulemaking
✓ Sufficiency

✓ Affidavit of Mailing Notice of rulemaking
9.12.80 At least 30 days prior to hearing/~~adoption~~

✓ Mailing list Certificate

✓ Publication in State Register
9.15.80 At least 30/~~20~~ days prior to hearing/~~adoption~~

✓ Hearing Examiner's Report

✓ Chief Hearing Examiner's Report(s)
12.16.80 Approving H.E.'s Report
4.8.81 Approving agency action

✓ Agency's Findings of Fact incorporated in Order Adopting

N/A LCRAR Report or agency Affidavit but see 4/8 and 6/30 memos from LCRAR

N/A Certificate of Board's Resolution Adopting Rules

N/A Order Approving Incorporation by Reference

✓ Statement of Need and Reasonableness

N/A Petition for Adoption of a Rule

? Record (includes transcript ~~or tape~~, exhibits, comments received by agency, requests for a hearing, and other relevant materials)
comments rec'd by agency not submitted.

✓ Certificate of Compliance w/Rulemaking Procedures

✓ Affidavit of Mailing Notice of Submission to Attorney General

✓ Notice of Submission to the Attorney General

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: 5/5/81

ATTN : Robert J. Hamper
Department of Public Welfare

FROM : JERRY S. ANDERSON
Special Assistant
Attorney General

PHONE: 6-4692

SUBJECT: In the Matter of the Proposed Adoption of 12 MCAR § 2.018 and the Proposed Amendment of 12 MCAR § 2.034 Concerning Programs for Mentally Retarded Persons

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. Please 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 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 to the rules in the approved set.

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

JSA/gy

Enc.

cc: Duane Harves
Susan Robertson

AG Copy

STATE OF MINNESOTA

COUNTY OF RAMSEY

COMMISSIONER ARTHUR E. NOOT

DEPARTMENT OF PUBLIC WELFARE

In the Matter of the Proposed Adoption of 12 MCAR § 2.018 and the Proposed Amendment of 12 MCAR § 2.034 Concerning Programs for Mentally Retarded Persons

ORDER ADOPTING RULES 18 AND 34

The above entitled matter was heard before Phyllis A. Reha, Hearing Examiner, on the 17th day of October, 1980, at 9:30 a.m., in the State Office Building, Room 57, St. Paul, Minnesota. The hearing continued on October 22, 1980, at 9:00 a.m., in the State Office Building, Room 81, St. Paul, Minnesota. The Department of Public Welfare (DPW) served proper notice, as required by Minn. Stat. § 15.0412, subd. 4 (1980), upon all persons, associations, and other interested groups registered with the Secretary of State for that purpose.

At the hearing, the proposed adoption of Rule 18 and proposed amendments to Rule 34, which were published at 5 State Register 41 on September 15, 1980, were considered. Alan Held and Ellen Dubuque, Special Assistant Attorneys General, appeared as counsel for DPW and the following persons appeared to testify on behalf of DPW: Ardo Wrobel, Director, Mental Retardation Division; John Buzzell, Director, Division of Licensing; Robert Meyer, Program Specialist, Mental Retardation Division; Warren Bock, Deputy Director, Mental Retardation Division; Clyde Johnson, Director, Duluth Regional Care Center. 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 through November 12, 1980, for the submission of written comments and statements.

Based upon all of the records and proceedings, the Hearing Examiner made Findings of Fact and Conclusions which are contained in the Report of the Hearing Examiner dated December 12, 1980. A copy of this Report is attached hereto as Exhibit A.

Pursuant to the requirement of Minn. Stat. § 15.0412, subd. 4.d. (1980), this Report was available to all interested persons for at least five days before the Commissioner adopted this order.

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 of Rule 18 and amendments to Rule 34 and the reasonableness thereof,

IT IS ORDERED that the Findings of Fact, Conclusions, and Recommendation of the Hearing Examiner and Order of the Chief Hearing Examiner, dated December 16, 1980, are hereby adopted and incorporated herein. In addition, the Commissioner makes the following findings of fact identifying in brackets the relevant section of the rule and the corresponding paragraph of the Hearing Examiner's Report.

FINDINGS OF FACT

Rule 34

1. [A.4.c.-12] In substantial compliance with the Hearing Examiner's recommendation and in order to more completely indicate the proper license an applicant must obtain, subsection A.4.c. is amended to read as follows:

> Applicants must have, or have applied for, a Supervised Living Facility license from the State Department of Health, Minn. Reg. MDH 391-401; and, in the case of a Commissioner approved extension of the residential program for family homes of four or fewer residents, a foster home license or certification from the Department of Public Welfare.

The recommendation of Lois Zimmerman, Program Compliance Officer of Cambridge State Hospital, that subsection A.4.c. be amended to reflect that appropriate licenses include intermediate care facility (ICF) and skilled nursing facility (SNF) is not adopted by the Commissioner. Both ICF and SNF are not licenses but consist of levels of Medicaid certification. As a result, they are not licenses that could be required of a Rule 34 facility. Of the various Minnesota Department of Health (MDH) licenses, only the

supervised living facility (SLF) license is consistent with Rule 34 goals since it establishes an appropriate, home-like residential setting where the basic programming for the mentally retarded may occur. Other MDH licenses contain programmatic elements that conflict with Rule 34 principles. By contrast the SLF license addresses only health, safety, and sanitation issues which have been eliminated from Rule 34.

2. [A.4.e.-13] For the reasons set forth by the Hearing Examiner, the Commissioner adopts the Hearing Examiner's recommendation and substitutes the word "shall" for "may" in subsection A.4.e.

3. [A.4.f.-14] The amendment proposed by Sheldon R. Schneider is not necessary since the purpose of his proposed amendment is satisfied by the amendment to subsection A.4.c. above which provides that SLF licensure is not needed for an extension of a Rule 34 program to fewer than five residents at one location. Instead, DPW foster care licensure is required. Thus, no variance for facilities serving fewer than five residents is necessary since SLF licensure is not required for such facilities.

4. [A.5.c.-15] The Commissioner does not accept the suggestion that denials of variance requests should be entitled to an appeal pursuant to Minn. Stat. Ch. 15. Minn. Stat. § 245.801 (1980) confers a right to appeal only when an application for licensure has been denied and when an existing license has been subject to a proposal to suspend, revoke, or make it probationary. Minnesota law does not require administrative appeal procedures when a variance to a promulgated rule is not granted. Generally, if a variance is not granted when an applicant or operator fails to comply with a significant standard, negative licensing action in the nature of a denial, suspension, revocation, or the making of a license probationary results. Since such results give rise to an opportunity to appeal, the right to appeal exists in all significant cases.

5. [A.6.d.-16] The Commissioner adopts the suggestion of Ed Van Allen of the Ramsey County Human Services Department that a representative of the local social service agency should be on the interdisciplinary team and amends subsection A.6.d. to read as follows:

> "Interdisciplinary team." A team consisting, at a minimum, of the resident, the resident's legal guardian (if any), local social service agency representative and the program director or program staff member. Other persons relevant to a particular resident's needs may be included. The interdisciplinary team is responsible for the development and evaluation of the resident's individual program plan and determination of need for the residential program.

6. [A.6.v.-20] For the reasons set forth in her Report, the Commissioner adopts the recommendation of the Hearing Examiner and amends subsection A.6.v. to read as recommended.

7. [B.3.i.(4)-23] To provide consistency with the definition in A.6.v., the Commissioner adopts the recommendation of the Assistant Administrator of Program Services at Faribault State Hospital and deletes the word "Physical" from subsection B.3.i.(4).

8. [D.2.a.-27] The Commissioner accepts the recommendation of the Hearing Examiner and withdraws his post-hearing amendment and further deletes the words "any and" from subsection D.2.a.

9. [D.1.f.(7)] Solely for grammatical reasons, the Commissioner amends subsection D.1.f.(7) by inserting the word "the" between the words "of" and "right."

10. [E.3.d-29] Since the portion of this amendment relating to staff ratios has been withdrawn, the heading for this subsection must be changed accordingly. Therefore, the Commissioner amends subsection E.3.d. by striking "ratios" and inserting in lieu thereof "needs."

Rule 18

11. [B.3.c.] At the outset of the hearing, the Commissioner proposed amending subsection B.3.c. by inserting "in accordance with this rule" at the end of the first sentence after "provided." This amend is adopted in order to clarify that the

materials and information to be submitted by applicants apply just to services to be provided under Rule 18.

12. [B.3.f.-34] For the reasons set forth by the Hearing Examiner, the Commissioner adopts the Hearing Examiner's recommendation and substitutes the word "shall" for "may" in subsection B.3.f.

13. [C.7-37] The Commissioner does not adopt the recommendation of Legal Advocacy for Developmentally Disabled Person in Minnesota that subsection C.7 be amended to provide that the client be allowed to choose others to serve on the interdisciplinary team. Inclusion on the team of the client's legal guardian and others relevant to the client's needs provide sufficient flexibility to insure that the client's interests are adequately served. Additionally, since the program director may not work daily with the client, the Commissioner amends this subsection by inserting the phrase "or a SILS staff member" after the words "program director."

14. [C.11.-38] The key terms in the definition of "mentally retarded" are technical terms well understood among those serving in this field and, as a result, do not require further clarification. Additionally, to retain consistency with the definition of "mentally retarded" in Rule 185, the Commissioner has decided not to alter the proposed definition in subsection C.11.

15. [D.1.h.-49] In order to clarify that the required medical examination includes dental needs, the Commissioner amends subsection D.1.h. by inserting "and dental" after "medical."

16. [D.3.a.(3)-42] The Commissioner adopts the amendment by the Hearing Examiner for the reasons stated in her report and deletes the words "personal finances" and inserts in lieu thereof "money management."

17. [D.3.a.(7)-50] Solely for grammatical reasons, the Commissioner amends subsection D.3.a. by deleting "or" and inserting in lieu thereof "of."

18. [D.3.a.(9), (10), and (11)-43] For the reasons set forth in paragraph 43 of the Hearing Examiner's Report, the suggestion of Legal Advocacy for Developmentally Disabled Persons in Minnesota to include additional subparagraphs D.3.a.(9), (10), and (11) in the form set forth by the Hearing Examiner in paragraph 43 is adopted.

19. [E.-44] The suggestion of the Health Board of the Metropolitan Council to add a new section (2) providing for a mechanism for consumer and public participation in the development and review of the facility's policies and practices is not adopted at this time by the Commissioner. This amendment would constitute a major change in the administration of Rule 18 facilities and, therefore, requires further study before it should be adopted.

20. [E.3-45] For the reasons set forth by the Hearing Examiner, subsection E.5 is amended by deleting "may" and inserting in lieu thereof "shall."

21. [E.6.a.(8)-48] Since quarterly reviews are required by Rule 18, the Commissioner amends subsection E.6.a.(8) by inserting after "IPP" the words "client quarterly reviews."

IT IS FURTHER ORDERED that, pursuant to the authority vested in me by Minn. Stat. Chapter 15, 245, 246, 252, and 252A, these rules, identified as Rules 34 and 18 of the Rules of the Minnesota Department of Public Welfare are adopted this day and shall read in their entirety as set forth in the attached Exhibits B and C.

Dated: March 24, 1981

STATE OF MINNESOTA
DEPARTMENT OF PUBLIC WELFARE

ARTHUR E. NOOT
Commissioner

AG Copy - corrected version

12 MCAR § 2.018 Standards for the provision of semi-independent living service (SILS) to people who are mentally retarded.

A. Statutory authority.

1. Minn. Stat. § 252.28 (1978), ~~and~~ as amended, ~~(1980)~~ Laws ~~of~~ 1980, ch. 612, provide for the determination of need, location, and program of public and private residential and day care facilities and services for mentally retarded children and adults. This statute further provides that the commissioner shall establish uniform rules, regulations, and program standards for each type of residential and day facility or service for more than four retarded persons.

2. Minn. Stat. §§ 245.781-245.~~814~~, 812, Public Welfare Licensing Act, provide for the development and promulgation of rules and regulations for the operation and maintenance of day care and residential facilities and agencies, for granting, suspending, and revoking licenses and provisional licenses. It also provides that no individual, corporation, partnership, voluntary association, or other organization may operate a day care or residential facility or agency unless licensed to do so by the Commissioner.

B. Introduction.

1. Statement of purpose.

a. To establish standards for the provision of services to mentally retarded persons whose dependency requires services above the level of

food and lodging, but who do not need 24-hour per day care or supervision, as provided in residences licensed under 12 MCAR § 2.034.

b. To assist clients in achieving their highest potential in self-sufficiency and independence in the least restrictive environment.

c. To insure that an individual program plan is developed with each client, and each client receives those services he needs to achieve or maintain independence.

d. To prescribe minimum program standards for semi-independent living services.

2. Applicability.

a. This rule applies to any person, organization or association engaged in the operation and provision of semi-independent living services (SILS) to adults who are or may be mentally retarded, as provided and defined in 12 MCAR § 2.185 A.4.~~h~~r~~k~~k. and ~~i~~m. This rule sets forth the requirements for any individual, organization, or association providing SILS to more than four mentally retarded adults to be licensed pursuant to Minn. Stat. § 252.28, and Minn. Stat. §§ 245.781-245.8~~14~~, .812, the Public Welfare Licensing Act.

b. Licensure under this rule does not require concurrent compliance with other Department of Public Welfare licensing rules or with Minnesota Health Department Supervised Living Facility Standards promulgated under Minn. Stat. § 144.56.

c. This rule does not govern the living arrangement of clients. Semi-independent living services licensed under this rule may be provided to persons living in a variety of ordinary community settings other than state hospitals and community residential facilities licensed under 12 MCAR § 2.034 and supervised living facility standards. Community living arrangements in which SILS are provided may include the following, but not be limited to: client's own home, foster home, apartment or rooming house.

3. Procedures for licensing.

a. Application for determination of need for SILS shall be made to the county board or its designee. Procedures for determination of need shall be as provided for in 12 MCAR § 2.185 D.

b. Upon notification that a need for the service has been found by the commissioner, application for license may be made to the commissioner.

c. Applicants shall submit such materials and information as may be required by the commissioner to make proper determination of the nature and adequacy of the services to be provided. Application for license shall not be considered complete until all required documents have been received by the commissioner~~.~~ in accordance with this rule.

d. Any SILS provider desiring to renew a license shall submit an application at least 30 days prior to expiration of the license. A renewal license may be issued for a period up to two years at the discretion of the commissioner.

e. The license or a formal letter of denial, including reasons for denial, shall be issued within 90 days after receipt of the completed

application. The initial license issued to any new SILS provider shall be provisional for a designated period of time not to exceed one (1) year (Minn. Stat. § 245.783, subd. 3).

f. ~~If, in the licensing procedure or enforcement of these standards, the commissioner finds that to require a provider to comply strictly with one or more provisions of this rule will result in undue hardship, and if the SILS provider is in substantial compliance with the standards of this rule, a provisional license not to exceed one year may be granted to allow the SILS provider reasonable time to conform with these standards.~~ Provisional license shall be granted by the commissioner under the terms of Minn. Stat. § 245.783, subd. 3.

g. When a specific requirement cannot be met or an innovative alternative is desirable, a ~~waiver~~ variance must be requested in writing. The ~~waiver~~ variance request shall state (a) the reason the current requirement cannot be met, (b) the proposed alternative, and (c) the date the alternative or requirement shall be met, not to exceed one year. No ~~waiver~~ variance shall be granted that would ~~affect~~ threaten the health, safety or rights of clients.

4. Technical provisions.

a. Failure to comply with these standards or applicable state law shall be cause for denial, revocation or suspension of license.

b. Denial, revocation or suspension of license may be appealed pursuant to Minn. Stat. ch. 15, the Minnesota Administrative Procedures Act.

c. The provisions of this rule shall be severable. If any clause, sentence or provision is declared illegal or of no effect, the validity of the remainder of this rule and its applicability shall not be affected.

d. Any provision of this rule which is inconsistent with any state or federal law is superseded by that law.

C. Definitions.

1. "Applicant." Any adult referred to the SILS provider for services. The term may also refer to an applicant for licensure under this rule.

2. "Client." Adults who need more than ~~room and board,~~ food and lodging, but less than 24-hour per day program of service and supervision, receiving services as provided in this rule.

3. "Commissioner." Commissioner of Public Welfare or designee.

4. "County board." That body of duly elected officials responsible for the governance of its county under the authority of Minn. Stat. §§ ~~275.02-275.55.~~ 375.02-375.55. When a human service board has been established under Minn. Stat. §§ 402.02-402.10, it shall be considered to be the county board, for purposes of this rule.

5. "Individual program plan (IPP)." A detailed plan for each client which sets forth both short-term and long-term goals with detailed methods of achieving movement toward the individual service plan of the local social service agency.

6. "Individual service plan." An analysis by the local social service agency of services needed by the client, including identification of the type of residential placement, if needed, and the general type of program required by the client to meet the assessed needs within a specified period of time.

7. "Interdisciplinary team." A team consisting, at a minimum, of the client, the client's legal guardian (if any), local social service agency representative and the program director~~r~~, or SILS staff member. Other persons relevant to a particular client's needs may be included. The interdisciplinary team is responsible for the development and evaluation of the client's individual program plan and determination of need for semi-independent living services.

8. "Legal guardian." A person(s) appointed under Minn. Stat. ch. 252A or ch. 525 as guardian or conservator of the person (or estate or both) of anyone who has been legally judged to be incompetent to manage his or her person or estate. The Commissioner of Public Welfare may be appointed as guardian or conservator.

9. "Local social service agency (LSSA)." A local agency designated and authorized by the county board ~~of~~ or human service board, to be responsible for providing social services. Social services include the case management and referral of applicants for semi-independent living services.

10. "May." Indicates that the provisions or practices stated in this rule are permitted.

11. "Mentally retarded person." A mentally retarded person refers to any person who has been diagnosed as having significantly subaverage intellectual functioning existing concurrently with demonstrated deficits in adaptive behavior and manifested during the developmental period.

12. "Normalization." To provide the client with a normal existence. If this is not possible, to provide the person with the alternative which is least restrictive. This includes making available to the client patterns and conditions of everyday life that are as close as possible to the norms and patterns of the mainstream of society.

13. "Provider." An individual, organization or association which exercises general direction over the policies and provision of SILS, and is responsible for the welfare of individuals being served.

14. "Semi-independent living services (SILS)." A system of services that includes training, counseling, instruction, supervision and assistance provided in accordance with the client's individual program plan. Services may include assistance in budgeting, meal preparation, shopping, personal appearance, counseling and related social support services needed to maintain and improve the client's functioning. Such services shall not extend to clients needing 24-hour per day supervision and services. Persons needing a 24-hour per day program of supervision and services shall not be accepted or retained in a semi-independent living service.

15. "Shall." Indicates that the requirement, provision, or practice stated in this rule is mandatory.

D. Program and service standards.

1. Admission. The provider shall maintain written policies and procedures, which shall be available to the local social service agency and to the general public, covering the following:

a. Pre-admission and admission procedures.

b. Pre-requisite client skills for admission.

c. Admission criteria including age, type and degree of handicap.

d. Nondiscriminatory practices with regard to race, creed, sex or national origin.

e. Description of services.

f. Discharge procedures.

g. Cost rates for services and arrangements available for payment.

h. The requirement that each client must have a current medical and dental examination.

i. Waiting lists and selection priorities.

2. Comprehensive assessments.

a. Behavioral assessments.

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(1) A ~~standardized~~ behavioral assessment, conducted by SILS staff at least annually, shall objectively describe the behavioral status of the client. The assessment instrument must be acceptable to the LSSA.

(2) Upon admission, the behavioral assessment shall be completed prior to the development of the individual program plan. This assessment may use data from any appropriate assessment conducted within the previous 12 months.

b. Physical assessment.

(1) Upon admission, there shall be a medical examination of the client conducted by a licensed physician within one year preceding admission, or one month following admission which includes re-evaluation date or schedule recommended by the physician.

(2) There shall be a record of dental examination in the client's record, and re-examination schedule recommended by the dentist.

c. Additional assessments determined to be needed by the inter-disciplinary team shall be conducted or arranged by the provider.

3. Individual program plan (IPP). The provider shall have a letter of referral from the HE 41 responsible local social service agency, including a copy of the individual service plan, for each client.

The interdisciplinary team shall evaluate each client's needs, and identify those needs having priority, within 30 days of admission. An annual individual program plan (IPP) for each client shall thereafter be established and evaluated to meet client needs.

a. The IPP shall be based on needs identified in the behavioral assessment, and on the individual service plan of the local social service agency, which shall include at least the following areas:

(1) Training in meal planning, meal preparation and shopping.

(2) Training in first-aid skills, responding to emergencies and symptoms of illness.

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(3) Training in money management. ~~of personal finances.~~

(4) Training in self-administration of prescription and nonprescription medication.

(5) Training in the use of the telephone and other public utilities.

(6) Development of the client's social, recreational and transportation abilities.

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(7) Specific training plan concerning the development ~~or~~ of more appropriate behaviors for clients displaying inappropriate behaviors.

(8) Training in matters of personal appearance and hygiene.

(9) Training in apartment or living environment maintenance, when indicated.

(10) Training in use of community resources including but not limited to police, fire, hospital emergency resources.

(11) Training in rights and responsibilities of community living.

b. The IPP shall establish program goals and behavioral objectives stated in measurable terms which specify the time limit for achieving each behavioral objective. The IPP shall also identify the person(s) responsible for implementation of the IPP.

c. The IPP shall describe the services to be provided, and how they will be obtained.

d. The annual IPP shall be reviewed at least quarterly by staff. The reviews shall include written report of:

(1) Client's progress toward goals and behavioral objectives.

(2) Need for continued services and any recommendation concerning alternative services and/or living arrangements.

(3) Recommended change in guardianship status (if any).

E. Administrative standards.

1. The provider shall have a written statement of the SILS program philosophy, purpose and goals which:

a. Is consistent with the principles of normalization.

b. Includes expected client outcomes.

c. Is available to the public.

d. Is reviewed by the provider at least annually and revised as needed.

2. The SILS provider shall be responsible for program direction for all clients, which shall include the provision, continuation and coordination of services in accordance with the client's IPP.

3. The provider ~~may~~ shall employ ~~one or more~~ a program directors, and may employ more than one to assist in program direction.

4. The provider may employ other staff to carry out the programs for clients, providing that such staff are under the supervision of a qualified program director.

a. The program director shall have at least a bachelor's degree in a field related to mental retardation services, and at least one year experience in working with mentally retarded persons. Five years' experience in working full-time with clients under professional supervision in a developmental program for mentally retarded persons may be substituted for a bachelor's degree if in the judgment of the Commissioner such experiences result in ability to perform the duties of the program director.

b. The program director shall insure that all clients ~~know-how~~ HE 4b have demonstrated the ability to contact a staff person for assistance in an emergency.

c. The program director shall insure that the SILS program is in conformance with applicable civil rights and affirmative action laws.

5. Discharge.

a. Except in an emergency, planning for discharge shall be made only with prior involvement of the client, LSSA representative and guardian (if any).

b. Planning for termination of services by the provider shall include referral to any follow-up services the LSSA considers necessary.

c. The provider shall provide counseling about the advantages and disadvantages of termination of services to the client and/or legal guardian, if requested by the client or the LSSA.

d. The provider shall prepare a discharge summary which includes:

(1) A summary of findings, events, and progress during the period of services to the client.

(2) Written evidence of the reason for discharge.

(3) If discharged to another service, specific recommendations for future programming shall be included in the discharge summary and transmitted to the LSSA of responsibility. A copy may be sent to the

receiving service provider.

e. In the event of death of a client:

(1) The provider shall notify the LSSA and guardian or responsible relative.

(2) The date, time and circumstances of the client's death shall be recorded in the client's record.

(3) If the client dies unattended by a physician, the coroner or medical examiner shall be notified.

(4) ~~Records~~ A copy of the records HE 47 of the deceased client shall be transmitted to the local social service agency.

6. Client records.

a. The SILS provider shall maintain a record for each client, which contains the following information:

(1) Client's name, address and telephone number, birth date, and date of admission to and discharge from SILS.

(2) Name, address and phone number of legal guardian (if any) and person to contact in an emergency.

(3) Record of current medication prescription and adverse reactions to drugs (if any).

(4) Special diet needs and food allergies (if any).

(5) Name and address of the client's LSSA case manager.

(6) Name and address of the client's physician or clinic and dentist.

(7) The results of behavioral and physicial assessments conducted within the past twelve months and the LSSA's individual service plan.

(8) The client's IPP~~,~~ and quarterly reviews. HE 48

(9) Any physician's and dentist's orders within the past two years, including special instructions for self-medication, care and treatment. HE 49

(10) Summary of professional service delivery during the past year, including specialized therapy, and the client's progress in therapy.

(11) Summary of client's progress or lack of progress in previous programs, job skills and employment history.

(12) Client's current place of employment or day program.

(13) A complete record of the client's funds if such funds are managed by the SILS provider.

b. Access to client records.

(1) All information contained in the client's record shall be

handled in a manner consistent with the Government Data Practices Act, Minn. Stat. §§15.162-15.~~174.~~ .1699. The client shall have access to his record upon request, with accommodations for interpretation that meets his needs.

(2) The provider shall be responsible for the safekeeping of client records, and for securing them against loss or use by unauthorized persons.

(3) The client's record shall be removed from the provider's jurisdiction and custody only in accordance with a court order, subpoena, or statute.

(4) The provider shall have written policies governing access, duplication and dissemination of information.

(5) Written consent of the client or guardian (if any) shall be required for the release of information concerning the client to persons not otherwise authorized to receive it. The client's record shall specify the information requested to be released, purpose for which the information is released and expiration date for release of information.

(6) All client records shall be maintained by the provider following discharge of the client for at least two years.

7. Client rights.

a. The provider shall have written policies and procedures concerning the exercise and protection of client human and civil rights,

which shall be available to LSSA, clients, guardians.

b. The provider shall have complaint procedures which shall include:

(1) The name and telephone number of persons who may be contacted in order to register a complaint.

(2) The time schedule established for registration of complaints.

(3) The time limits for decisions to be made by the provider.

c. The provider shall inform clients of their right to appeal the suspension, reduction or termination of services to the Commissioner pursuant to Minn. Stat. §256.045 as a social service appeal.

d. Upon request of the client, the provider shall instruct and assist clients in how to obtain legal assistance.

e. The provider shall have a written statement of policies and procedures that protect the financial interests of the clients.

f. If the provider manages the client's money, the following shall be recorded:

(1) Written permission from the client or his legal guardian.

(2) Reasons the provider is to manage the client's money.

(3) A complete record of the use of the client's money and reconciliation of the account.

g. Clients who work for the SILS provider shall be considered employees of the provider with all the rights and privileges of an employee.

8. The provider shall have a current written description of its organization, which includes the major operating services and person(s) having administrative responsibility, available to the local social service agency.

9. The provider shall have written personnel policies available to staff. The policies shall include:

a. Application and hiring procedures.

b. Provisions for non-discrimination.

c. Description of probationary period, if any, and procedures for annual performance evaluation.

d. Procedures for suspension and dismissal.

e. Employee benefits.

f. Grievances and appeal procedures.

g. Prohibition of mistreatment, neglect, or abuse of clients, and mandatory reporting of any mistreatment, neglect or abuse.

h. Plans for staff orientation, training.

i. Prohibition of the use of any aversive or deprivation procedures.

10. The provider shall have a written plan and procedure in case of fire, severe illness, accident, severe weather and missing persons.

a. Orientation in emergency procedures shall be recorded for each client and employee within one month of admission or employment.

b. This plan shall be reviewed quarterly with clients.

11. The provider shall maintain records of financial transactions and agreements with the referring LSSA.

12. The provider shall have a written plan for establishing service rates, which shall include at least 30-day advanced notice of change in rates.

13. Living arrangements.

a. When living arrangements are provided by the SILS provider as a part of the SILS program, the living arrangements are not subject to this rule, and therefore need not be licensed. ~~facilities.~~ Living arrangements are subject to applicable health, safety, sanitation and zoning codes. When living arrangements are provided as a part of the SILS program plan, the provider shall assure the local social service agency that the living arrangements are in conformance with the client's individual program plan,

and applicable health, safety, sanitation and zoning codes. Living arrangements so provided shall include provisions for the preparation of meals, sleeping, bathing, mail, and access to telephone and transportation.

b. When living arrangements are not provided as a part of the SILS program, the provider may assist the local social service agency and client as agreed upon in:

(1) Choosing and arranging for a appropriate living environment.

(2) Developing client skills in choosing and making living arrangements.

(3) Developing client skills in shopping, seeking employment, paying rent and other bills, and in the use of public transportation and other community services.

BR/hua

APPROVED AS TO FORM AND LEGALITY
5-4 1981
WARREN SPANNAUS, ATTORNEY GENERAL
BY
SPECIAL ASSISTANT ATTORNEY GENERAL

STATE OF MINNESOTA
DEPARTMENT OF STATE
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Secretary of State
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Rule As Adopted

Department of Public Welfare

12 MCAR §2.034 Standards for the operation of residential programs and services for persons who are mentally retarded.

A. General Provisions.

1. Scope.

a. This rule governs the operation of any ~~facility or service~~ residential program engaged in, or seeking to engage in, the provision of residential or domiciliary service for mentally retarded individuals, and it sets forth the requirements necessary for such a residence to be licensed.

b. Cost of boarding care outside of home or state institution is reimbursable by the state for care of children under 18 years of age in facilities licensed by the Department of Public Welfare. All participating facilities serving more than four mentally retarded children must be licensed under these regulations prior to participation.

c. Federal programs under the Social Security Act, as amended, require certification of participating facilities. All participating facilities serving more than four mentally retarded persons must be licensed under these regulations prior to certification.

2. Purpose.

a. The purpose of this rule is to establish the minimum standards for the operation of residential programs and services for mentally retarded persons residing in Licensed Supervised Living Facilities.

b. The purpose of Minn. Stat. §252.28 and this rule is to establish and protect the human right of mentally retarded persons to a normal living situation, through the development and enforcement of minimum requirements for the operation of residential programs. Moreover, this rule serves an educational purpose in providing guidelines for quality service.

3. Statutory basis.

a. Minn. Stat. §256.01 charges the Commissioner of Public Welfare with general responsibility for service to mentally retarded persons.

b. Minn. Stat. §245.072 creates a mental retardation division in the Department of Public Welfare to "coordinate those laws administered and enforced by the Commissioner of Public Welfare relating to mental retardation and mental deficiency which the Commissioner may assign to the division."

c. Minn. Stat. §252.28 charges the Commissioner of Public Welfare with the responsibility for licensing of residential facilities and services for mentally retarded persons.

4. Procedure for licensing.

a. Application shall be made to the Commissioner of Public Welfare, who may determine the need, location, and program of facilities and services seeking to be licensed or relicensed under these regulations. In making this determination, the Commissioner shall be guided by this rule and other state agency rules promulgated under Minn. Stat. §252.28, Subd. 1.,including 12 MCAR 2.185.

b. Applicants shall submit such materials and information as may be required to make a proper determination of the nature and adequacy of the residential program to be provided.

c. Applicants must have, or have applied for, a Supervised Living Facility license from the State Department of Health Minn. Reg. MHD 391-401; and, in the case of a Commissioner approved extension of the residential program for family homes of four or fewer residents, a foster home license or certification from the Department of Public Welfare.

d. A residential program desiring to renew its license shall submit an application at least 45 days prior to expiration of the license. A renewal license may be issued for a period of up to two years at the discretion of the Commissioner.

e. ~~If, in the licensing procedure or enforcement of these rules, the Commissioner finds that to require a residential program to comply strictly with one or more provisions of these rules will result in undue hardship, and if the residential program is in substantial compliance with the intent and purpose of these rules, a provisional license may be granted to allow reasonable time to conform to these rules.~~ Provisional license shall be granted by the Commissioner under terms of Minn. Stat. §245.783, Subd. 3.

f. A residential program may request in writing a ~~waiver~~ variance of a specific provision of the rule. The request for a ~~waiver~~ variance must cite the provision of the rule in question, reasons for requesting the ~~waiver~~ variance, the period of time not to exceed one year the licensee wishes to have the provision ~~waived~~ varied and the equivalent measures planned for assuring that programmatic needs of residents are met. ~~Waivers~~

Variances granted by the Commissioner shall specify in writing the time limitation and required equivalent measures to be taken to assure that programmatic needs are met. ~~Waivers~~ Variances denied by the Commissioner shall specify in writing the reasons for the denial. No ~~waiver~~ variance shall be granted that would ~~adversely affect~~ threaten the health, safety or rights of residents.

5. Refusal or revocation of license.

a. Failure to comply with these regulations or applicable state laws shall be cause for refusal or revocation of license.

b. Failure to be licensed as a Supervised Living Facility by the Minnesota Health Department (Chapter Twenty Three: MHD 391-401, or its successor) shall be cause for refusal or revocation of license.

c. Revocation, suspension or denial of a license may be appealed pursuant to Minn. Stat. Chapter 15.

6. Definitions.

a. Ambulatory - The ability to walk independently and at least negotiate any barriers, such as ramps, stairs, corridors, doors, etc., without assistance as may be necessary to get in and out of the facility.

b. Executive Officer - The individual appointed by the governing body (see below) of a residential program to act in its behalf in the overall management of the facility. Job titles may include, but are not limited to, superintendent, director and administrator.

c. Governing Body - The policy-making authority, whether an individual or a group, that exercises general direction over the affairs of a

residential program and establishes policies about its operation and the welfare of the individuals it serves. The governing body is responsible for the operation of the residential program and for compliance with this rule.

d. Interdisciplinary Team - ~~A general term used in this rule to refer to persons representing professions, disciplines, or service areas as are relevant in each particular case, and including parents and the referring agency (see below). The interdisciplinary team shall evaluate the resident's needs, plan an individualized program to meet identified needs, and periodically review the resident's response to his program.~~ A team consisting, at a minimum, of the resident, the resident's legal guardian (if any), local social service agency representative and the program director or program staff member. Other persons relevant to a particular resident's needs may be included. The interdisciplinary team is responsible for the development and evaluation of the resident's individual program plan and determination of need for the residential program. HE 16

e. Legal Incompetence - The legal determination that a resident is unable to exercise his full civil and legal rights and that a guardian (see parent below) is required.

f. Living Unit - A resident-living unit that houses the primary living group (see below) and provides access to bedroom, living room, recreation/activity room, dining room, kitchen, and bathroom.

g. Living Unit Staff - Individuals who conduct the resident-living program; resident-living staff.

h. May - Indicates that the provisions or practices stated in this rule are permitted.

i. Mental Retardation - Refers to persons who have been diagnosed as having significantly subaverage intellectual functioning existing concurrently with demonstrated deficits in adaptive behavior, and manifested during the developmental period.

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j. Mobile - Ability to move independently from place to place with the use of devices such as walkers, crutches, wheelchairs, wheeled platforms, etc.

k. Multiple-Handicapped - In addition to mental retardation, an orthopedic, incoordinative, or sensory disability that culminates in significant reduction of mobility, flexibility, coordination, or perception and that interferes with an individual's ability to function independently.

l. Nonambulatory - Inability to walk independently.

m. Nonmobile - Inability to move independently from place to place.

n. Normalization Principle - The principle of letting persons who are mentally retarded obtain an existence as close to the normal as possible, making available to them patterns and conditions of everyday life that are as close as possible to the norms and patterns of the mainstream of society.

o. Parent - The general term used in this rule to refer to the natural parent, or other person who fills the legal or social role of the natural parent (i.e., represents the rights and interests of the mentally

retarded persons as if they were his own). May include an advocate as one who acts on behalf of a resident to obtain needed services and the exercise of his full human and legal rights; legal guardian as one appointed by a court; guardian of the person as one appointed to see that the resident has proper care and protective supervision in keeping with his needs; guardian of the property as one appointed to see that the financial affairs of the resident are handled in his best interests; guardian ad litem as one appointed to represent a resident in a particular legal proceeding; public guardian as a public official empowered to accept court appointment as a legal guardian (i.e., the Comissioner of Public Welfare or his agent); or testamentary guardian as one designated by the last will and testament of a natural guardian.

p. Primary-Living Group - That group characterized by face-to-face relations that are personal, spontaneous, and typically (although not necessarily) long lasting. Members of a primary group are drawn together by the intrinsic value of the relations themselves rather than by a commitment to an explicit goal. The family is an example of a primary group.

q. Program - The general term used in this rule to refer to all people, events, and environments that lead to a purposeful outcome (goal or objective) for the individual resident. These ~~services~~ programs include, but are not limited to, training and maintenance of the individual; the design, furnishing, and use of space; staff and staffing patterns; and professional and volunteer services.

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r. Resident - The general term used in this rule to refer to an individual who receives service in a residential program (see below),

whether or not such individual is actually in residence in the facility. The term thus includes individuals who are being considered for residence in a facility and individuals who were formerly in residence in a facility. (A residential program, on the other hand, may use the term "resident" to refer only to those individuals actually in residence.)

s. Referring Agency - The general term used in this rule to refer to the local social service agency responsible for establishment and implementation of case management plans for individuals and particular families with mental retardation problems and for the provision of specific financial or case-work services to these individuals and families. In Minnesota, the county board is charged with administrative responsibility for these duties. Responsibility for these duties may be delegated to the local social service agency.

t. Resident-Living - Pertaining to residential or domiciliary services.

u. Residential Program - A general term used in this rule to refer to the program of services to residents of a Supervised Living Facility <u>or of a licensed or certified foster home approved by the Commissioner as an extension of the residential program</u> which has an administrative organization and/or structure for the purpose of providing care, food, lodging, training, supervision, habilitation and treatment as needed for more than four mentally retarded individuals on a 24-hour per day basis. Residential programs may also be known as, but are not limited to group homes, child-caring institutions, boarding-care homes, nursing homes, state hospitals, public institutions, and regional centers. HE 19

v. Restraint - Any physical device ~~or chemical substance~~ that limits the free and normal movement of body or limbs. Chemical substances administered for the purpose of controlling maladaptive behavior are deemed restraints. Mechanical supports used in normative situations to achieve proper body position and balance shall not be considered restraints. HE 20

w. Rhythm of Life - Relating to the normalization principle (see above), under which making available to mentally retarded persons patterns and conditions of everyday life that are as close as possible to the norms and patterns of the mainstream of society means providing a normal rhythm of the day (in relation to arising, getting dressed, participating in play and work activities, eating meals, retiring, etc.) normal rhythm of the week (differentiation of daily activities and schedules), and normal rhythm of the year (observing holidays, days with personal significance, vacations, etc.).

x. Seclusion - Involuntary removal from social contact with others, in a separate room.

y. Shall - Indicates that the requirement, provision, or practice stated in this rule is mandatory.

z. Supervised Living Facility - A general term used in this rule to refer to the facility ~~in which the health, treatment, comfort, safety and well-being of persons is provided. Supervised Living Facilities are~~ licensed by Minnesota Health Department, in accordance with Minn. Stat. §144.56 (1971). HE 21 ?

aa. Time-Out - Time out from positive reinforcement. A behavior modification procedure in which, contingent upon the emission of undesired

behavior, the resident is removed from the situation in which positive reinforcement is available.

B. The resident-living unit.

1. Grouping and organization of living units.

a. The resident-living unit (subsequently called living unit) shall be small enough to ensure the development of meaningful interpersonal relationships among residents and between residents and staff.

(1) The living unit is that unit which houses the primary living group. It may be a group home, foster home, ward, wing, floor, etc.

(2) The living unit shall contain bedroom, living room, bathroom, recreation room, and connecting areas. It may contain dining room and kitchen. Facilities with more than four mentally retarded persons in residence on November 17, 1972 shall be deemed to be in substantial compliance with this provision, except that the living unit shall contain bedroom and living room areas.

(3) The living unit shall be physically, socially and functionally differentiated from areas for developmental and remedial services (see Part C of this rule) and shall simulate the arrangements of a home in order to encourage a personalized atmosphere for residents.

(4) The size of the living unit shall be based upon the needs of the residents, but the living unit shall provide for not more than 16 residents.

b. The living unit or complex of such units shall house both male and female residents to the extent that this conforms to the prevailing

cultural norms and unless contraindicated by program plan. Such living arrangements shall include provision for privacy and for appropriate separation of male and female residents.

c. The living unit shall not be a self-contained program unit unless contraindicated by program plans of the particular residents being served, and living unit activities shall be coordinated with developmental and remedial services in which residents engage outside the living unit.

d. Residents shall be allowed free use of all space within the living unit, with due regard for privacy and personal possessions.

e. Each resident shall have access to a quiet, private area where he can withdraw from the group.

f. Outdoor active play or recreation areas shall be readily accessible to all living units.

g. Interior and exterior doors shall not be locked except to protect the resident from clear and present danger, or in conjunction with a behavior modification program (see Part B-3 i. of this rule). In no case shall locked doors be a substitute for program or staff interaction with residents.

2. Physical plant.

a. Design.

(1) The living unit shall be physically self-contained. Walls defining the living unit shall extend from floor to ceiling.

(2) The interior design of the living unit shall simulate the functional arrangements of a home to encourage a personalized atmosphere for a small group of residents unless it has been demonstrated that another arrangement is more effective in maximizing the development of specific residents being served.

(a) Space shall be arranged to permit residents to participate in different kinds of activities, both in groups and singly.

(b) Space shall be arranged to minimize noise and permit communication at normal conversation levels.

(c) Walls defining each room in the living unit shall extend from floor to ceiling.

(3) Bedrooms shall accommodate from one to four residents.

(4) Doors to bedrooms:

(a) Shall not have vision panels.

(b) Shall not be capable of being locked, except where residents may lock their own bedroom doors, as consistent with their program.

(5) There shall be provision for residents to mount pictures on bedroom walls.

(6) Space outside the bedroom shall be provided for equipment for daily out-of-bed activity for all residents not yet mobile, except those who have a short-term illness or those for whom out-of-bed activity is a threat to life.

(7) Toilet areas shall be located in such places as to facilitate training toward maximum self-help by residents.

(a) Water closets, showers, bathtubs, and lavatories shall approximate normal patterns found in homes, unless specifically contraindicated by program needs.

(b) Toilets, bathtubs, and showers shall provide for individual privacy unless specifically contraindicated by program needs.

b. Furnishings and equipment.

(1) Furnishings shall be appropriate to the physiological, emotional and developmental needs of each resident.

(2) Dining areas shall:

(a) Be furnished to stimulate maximum self-development, social interaction, comfort, and pleasure.

(b) Promote a pleasant and home-like environment and be attractively furnished and decorated and of good acoustical quality.

(c) Be equipped with tables, chairs, eating utensils, and dishes designed to meet the developmental needs of each resident.

(3) Each resident shall have access to drinking water in the living units.

(4) Equipment shall be provided for toilet training, as appropriate, including equipment for use by the multiple-handicapped.

c. Safety.

(1) Residents shall receive appropriate instruction in safety precautions and procedures.

(2) First-aid equipment, approved by a physician, shall be maintained on the premises in a readily available location, and staff shall be instructed in its use.

(3) Applicable requirements of the State Fire Marshal or his agent shall be met.

3. Staff-resident relationships and activities.

a. The objective in staffing each living unit shall be to maintain reasonable stability in the assignment of staff, thereby permitting the development of a consistent interpersonal relationship between each resident and one or two staff members. Provisions shall be made to ensure that the efforts of the staff are not diverted from these responsibilities by excessive housekeeping and clerical duties, or other nonresident-involved activities.

b. The primary responsibility of the living-unit staff shall be to devote their attention to the care and development of the residents.

(1) Living-unit staff shall be responsible for the development and maintenance of a warm, family, or home-like enviroment that is conducive to the achievement of optimal development by the resident.

(2) Living-unit staff shall train residents in activities of daily living and in the development of self-help and social skills.

c. Living-unit staff shall participate in assessment, program planning, and evaluation activities relative to the development of the resident (see Part C of this rule). A program plan for each resident shall be available to staff in each living unit.

d. The rhythm of life in the living unit shall resemble the cultural norm for the residents' nonretarded age peers unless a departure from this rhythm is justified on the basis of maximizing the residents' human qualities.

(1) Residents shall be assigned responsibilities in the living units commensurate with their interests, abilities, and program plans, in order to enhance feelings of self-respect and to develop skills of independent living.

(2) Multiple-handicapped and nonambulatory residents shall:

(a) Spend a major portion of their waking day out of bed.

(b) Spend a major portion of their waking day out of their bedroom areas.

(c) Have planned daily activity and exercise periods.

(d) Be rendered mobile by various methods and devices.

(3) All residents shall have planned periods out-of-doors on a year-round basis.

(4) Except as limited by program plan, residents shall be instructed in how to use, and shall be given opportunity for freedom of

movement.

(5) Birthdays and special events should be individually observed.

e. Residents' views and opinions on matters concerning them shall be elicited and given consideration in defining the processes and structures that affect them.

f. Residents shall be instructed in the free and unsupervised use of communication processes. Except as denied individual residents by program plan, this may include:

(1) Having access to telephones for incoming and local outgoing calls.

(2) Having access to pay telephone, or the equivalent, for outgoing long distance calls.

(3) Opening their own mail and packages and generally doing so without direct surveillance.

(4) Not having their mail read by staff, unless requested by the resident.

g. Residents shall be permitted personal possessions, such as toys, books, pictures, games, radios, arts and crafts material, religious articles, toiletries, jewelry, and letters.

h. Regulations shall permit normal possession and use of money by residents.

(1) Residents shall be trained in the use of money.

(2) Allowance or opportunities to earn money shall be available to residents.

i. There shall be provisions for prompt recognition of behavior problems, as well as appropriate management of behavior in the living unit. These provisions shall be subject to review by a research, review, and/or human rights committee (see E.2.d.(2) of this rule).

(1) There shall be a written statement of policies and procedures for the control and discipline of residents that:

(a) Is directed to the goal of maximizing the growth and development of the residents.

(b) Is available in each living unit.

(c) Is available to parents.

(d) Provides for resident participation, as appropriate, in the formulation of such policies and procedures.

(2) Corporal punishment shall not be permitted.

(3) Residents shall not discipline other residents, except as part of an organized self-government program that is conducted in accordance with written policy.

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(4) ~~Physical~~ Restraint shall be employed only when absolutely necessary to protect the resident from injury to himself or to others; and restraint and seclusion shall not be employed as punishment, for the convenience of staff, or as a substitute for program.

(a) The facility shall have a a written policy that defines the uses of restraint, the staff members who may authorize its use, and a mechanism for monitoring and controlling its use.

(b) This policy shall be available in each living unit.

(c) Totally enclosed cribs and barred enclosures shall be considered restraints.

(5) Each use of restraint and seclusion shall be recorded in the resident's record. This record shall include:

(a) A description of the precipitating behavior.

(b) Expected behavioral outcome.

(c) Actual behavioral outcome.

(6) Rooms used for seclusion:

(a) Shall be furnished with a bed and bedding, a chair, a commode, and a lavatory.

(b) Shall afford proper access to drinking water.

(7) Chemical restraint shall not be used excessively, as punishment, for the convenience of staff, as a substitute for program, or in quantities that interfere with a resident's program. Each use of a behavior-controlling drug shall be recorded in the resident's record. This record shall include:

(a) A description of the behavior to be modified.

(b) Expected behavioral outcome.

(c) Possible side or secondary effects.

(d) Date for review or termination.

(e) Actual behavioral outcome.

(8) Behavior modification programs involving the use of time-out devices or the use of noxious or aversive stimuli shall be conducted only with the consent of the affected resident's parent and shall be described in written plans that are kept on file in the facility.

4. Health, hygiene, and grooming.

a. General.

(1) Procedures shall be established for:

(a) Monthly weighing of residents, with greater frequency for those with special needs.

(b) Quarterly measurement of height, until the age of maximum growth.

(c) Maintenance of weight and height records. Every effort shall be made to ensure that residents maintain normal weights.

(2) Provisions shall be made to furnish and maintain in good repair, and to train residents in the use of, dentures, eyeglasses, hearing aids, braces, etc., prescribed by appropriate specialists.

b. Residents shall be trained to exercise maximum independence in health, hygiene, and grooming practices, including bathing, brushing

teeth, shampooing, combing and brushing hair, shaving, and caring for toenails and fingernails.

(1) Each resident shall be assisted in learning normal grooming practices with individual toilet articles that are appropriately available to that resident.

(2) Living unit staff shall be instructed in each resident's daily oral care program and shall be responsible to see that it is carried out.

(a) Whenever possible, the resident shall be instructed in, and learn to carry out, his own program of daily oral care.

(b) Dental care practices should ~~encourage~~ include the use of newer equipment, such as electric toothbrushes and ~~water picks, as described.~~ oral water irrigators or lavages as prescribed. HE 24

(c) Individual brushes shall be properly marked, used, and stored.

(d) Teeth shall be brushed daily with dentifrice.

(3) Hair cutting and styling, in an individualized manner consistent with current style, shall be accessible to all residents.

(4) For residents who require such assistance, cutting of toenails and fingernails by trained personnel shall be scheduled at regular intervals.

(5) Each resident shall have a shower or tub bath as needed.

(a) Residents' bathing shall be conducted at the most independent level possible.

(b) Residents' bathing shall be conducted with due regard for privacy.

(c) Individual washcloths and towels shall be used.

(6) Female residents shall be helped to attain maximum independence in caring for menstrual needs. Menstrual supplies shall be of the same quality and diversity available to all women.

c. Residents shall be instructed in the use of drinking units.

(1) Those residents who cannot use the unit shall be given the proper daily amount of fluid at appropriate intervals adequate to prevent dehydration.

(2) A drinking unit shall be available to, and usable by, mobile nonambulatory residents, as needed.

(3) Special cups and noncollapsible straws shall be available when needed by the multiple-handicapped.

(4) If the drinking unit employs cups, only single-use, disposable types shall be used.

d. Every resident who does not eliminate appropriately and independently shall be engaged in a toilet training program. Residents who are incontinent shall be immediately bathed or cleansed, upon voiding or soiling unless specifically contraindicated by a plan for toilet training; and all soiled clothing shall be changed.

5. Clothing.

a. Each resident shall have an adequate allowance of neat, clean, fashionable, and seasonable clothing.

(1) Each resident shall have his own clothing that is, when necessary, inconspicuously marked with his name, and he shall use this clothing.

(2) Such clothing shall make it possible for residents to go out of doors in inclement weather and to make a normal appearance in the community.

(3) Nonambulatory residents shall be dressed daily in their own clothing, including shoes, unless contraindicated by program plan.

(4) Washable clothing shall be designed for multiple-handicapped residents being trained in self-help skills.

(5) Clothing for incontinent residents shall be designed to foster comfortable sitting, crawling and/or walking, and toilet training.

b. Residents shall be trained and encouraged to:

(1) Select and purchase their own clothing as independently as possible, preferably utilizing community stores.

(2) Select their daily clothing.

(3) Dress themselves.

(4) Change their clothes to suit the activities in which they engage.

(5) Maintain (launder, clean, and mend) their clothing as independently as possible.

6. Food Service.

a. Food services shall recognize and provide for the physiological, emotional, cultural and developmental needs of each resident.

(1) There shall be a written statement of goals, policies, and procedures that governs food service.

(2) The diet provided shall include foods that stimulate chewing, unless contraindicated by program plan.

b. Residents shall have opportunity to be trained and participate in food preparation and service.

c. All residents, including the mobile nonambulatory, shall eat or be fed in dining rooms, except when contraindicated by program plan.

(1) All residents, including the mobile nonambulatory, shall eat at a table.

(2) Dining arrangements shall be based upon a plan to meet the needs of the residents and the requirements of their programs.

(a) Dining and serving arrangements shall provide for a variety of eating experiences (e.g., cafeteria and family style), and, when appropriate, for the opportunity to make food selections with guidance.

(b) Unless justified on the basis of meeting the program needs of the particular residents being served, dining tables shall

seat small groups of residents (typically four to six at a table) and include both sexes.

(3) Dining rooms shall be supervised and staffed for the direction of self-help eating procedures and to ensure that each resident receives an adequate amount and variety of food.

(4) Staff members shall be encouraged to eat with those residents who have semi-independent or independent eating skills.

(5) For residents not able to get to dining areas, food service practices shall permit and encourage maximum self-help and shall promote social interaction and a pleasant meal time experience.

d. Residents shall be provided with systematic training to develop eating skills, utilizing adaptive equipment when it serves the developmental process.

(1) A plan for the remediation of eating problems shall be implemented for all residents with special disabilities. This plan shall be consistent with the individual's developmental needs.

(2) Living-unit staff shall be trained in and shall utilize proper feeding techniques when a resident must be fed.

(a) Residents shall be fed in an upright position.

(b) Residents shall be fed in a manner consistent with their developmental needs (for example, infants shall be fed in arms).

(c) Residents shall be fed at normal comsumption rates, and the time allowed for eating shall be such as to promote the development

of self-feeding abilities, to encourage socialization, and to provide a pleasant mealtime experience.

C. Developmental and Remedial Services

1. General provisions.

a. In addition to resident-living services detailed in B of this rule, residents shall be provided with developmental and remedial services called for by individual assessment and program plan. These services may be provided in two ways:

(1) Within the facility and by staff employed by the residential program, except that developmental services, as here defined, shall not be provided in the living unit unless contraindicated by the assessed needs of the particular residents being served.

(2) Outside of the facility and by agreement between the facility and other agencies or persons.

b. All developmental and remedial services, as here defined, shall be rendered outside of the facility, whenever possible, and when rendered in the facility, such services must be at least comparable to those provided in the community.

2. Assessment.

Residential program staff shall participate in regular-at least annual-assessment of each resident. The assessment shall cover behavioral and physical status of the resident and shall be conducted by an interdisciplinary team.

a. Behavioral assessment.

(1) Shall utilize objective description to the greatest degree possible.

(2) Shall include the resident, when he is capable of participation, and data supplied by his parents, when appropriate, and by living unit staff.

(3) Shall include, but not be limited to, the following areas:

(a) Educational assessment. All school-age children shall be assessed annually in accordance with guidelines of a properly designated school authority, in order to determine eligibility for public school class. School-age is defined as four years to 21 years for mentally retarded children and shall not extend beyond secondary school.

(b) Self-care skills.

(c) Economic skills.

(d) Language development.

(e) Number and time concepts.

(f) Domestic occupation.

(g) Vocational skills.

*(h) Maladaptive behavior and emotional disturbances.

* A residential program shall be in substantial compliance with these provisions when the American Association of Mental Deficiency Adaptive Behavior Scale, or the Minnesota Developmental Programming System (MDPS), is used for behavioral assessment.

b. Physical assessment.

(1) Physical assessment for children shall be performed as recommended by the Council on Pediatrics.

(2) Physical assessment for adults shall be performed at least annually and shall include, but not necessarily be limited to:

(a) Physical examination.

(b) Blood count.

(c) Urinalysis.

(3) Drug assessment: A resident who receives daily medications for a chronic condition shall have a planned and recorded schedule for examination and review of his medication regimen. Use of prescribed medications shall not be continued past the scheduled time for examination. Persistent deviancy in use of a drug by a resident, or adverse reaction to a drug, shall be considered in adjustment of the resident's program plan.

(4) Physical and motor assessment shall be performed at least annually for persons under 16 years of age, and as needed thereafter.

(5) Speech and language assessment shall be performed annually for persons under 16 years of age, and as needed thereafter.

(6) Vision assessment shall be performed annually.

(7) Hearing assessment shall be performed annually for persons under ten years of age, and thereafter when hearing change is suspected.

(8) Dietary assessment shall be performed at least every 90 days for residents receiving a therapeutic diet.

(9) Psychological assessment shall be performed at least every three years for persons under 16 years of age, and as needed thereafter. Current psychological assessment data (less than one year old) available from the referring agency may be utilized to comply with this requirement.

3. Program and treatment plan. Residential program staff shall participate with an interdisciplinary team including ~~Developmental Achievement Center~~ daytime developmental staff, in the formulation of an individualized program and treatment plan for each resident. Facility staff shall be responsible for implementation of the plan.

a. General provisions: The formulation of individualized program and treatment plans shall:

(1) Define specific and time-limited objectives for behavioral and physical development.

(2) Consider the proper exercise of the residents' and parents' civil and legal rights, including the right to adequate service.

(3) Define needed services without consideration of the actual availability of desireable options.

(4) Investigate and weigh all available and applicable services.

(5) Determine the resident's need for remaining in the facility.

(6) Consider the need for (continued) guardianship or conservatorship or restoration to capacity of the resident.

b. Developmental services: All developmental services utilized by residents shall be provided by persons, facilities, or services licensed or certified to provide these services.

(1) Developmental services shall be utilized to promote the intellectual, physical, affective, and social development of each individual, and may include:

(a) Developmental achievement services.

(b) Educational services.

(i) All school-age children shall attend public school class unless specifically excluded by the responsible school district. A school program operated by the facility shall meet the standards of the State Department of Education and the local school district.

(c) Recreational services.

(d) Religious services.

(e) Sheltered-workshop services.

(f) Social-work services.

(g) Vocational-training and placement services.

c. Health services:

(1) Health services shall be utilized:

(a) To maintain an optimal general level of health for each resident.

(b) To maximize function, prevent disability, and promote optimal development of each resident.

(2) Residents who are members of an organized religious group opposed to any health practices may be excused from regulations applying to personal health upon written request by the resident or his parents; but they shall be subject to requirements for control of outbreaks of infectious disease.

4. Evaluation. Residential program staff shall participate with an interdisciplinary team in the evaluation of all services utilized by residents as reflected by each resident's level of functioning.

a. This evaluation shall include evaluation of resident movement toward objectives stated in the program plan.

b. The evaluation shall include the views of the resident and his parents.

c. The evaluation shall include the views of the program advisory committee (see Part E. 2.) and appropriate agencies.

D. Admission and release procedures.

1. General provision.

a. No resident shall be admitted to a residential program prior to its being licensed.

b. The number of residents admitted to the program shall not exceed its licensed program capacity.

c. The residential program shall make descriptive information available to the public that includes, but is not limited to:

(1) Preadmission and admission services and procedures.

(2) Limitations of age, length or place of residence, and type or degree of handicap.

(3) Developmental and remedial services provided by program staff.

(4) Developmental and remedial services provided by agreement with other agencies or persons.

(5) Means for individual programming for residents in accordance with need.

(6) The plan for grouping residents into living units.

(7) Release and follow-up services and procedures.

d. The residential program shall have an admission and release committee (see E.2.d.(3) of this rule) that shall:

(1) Include consumers and their representatives, interested citizens, and relevantly qualified professions.

(2) Review all applications and advise the administration of the residential program on selection, admission, and release of residents.

e. The laws, regulations and procedures on admisison, readmision, and release shall be summarized and available for distribution.

f. Admission and release procedures shall:

(1) Encourage voluntary admission upon application of the resident or his parent.

(2) Give equal priority to persons of comparable need, whether application is voluntary or by a court.

(3) Facilitate emergency, partial, and short-term care when feasible.

(4) Ensure the rights and integrity of the resident and his parent.

(5) If respite care services are provided, there shall be a written policy defining respite care which includes:

(a) Minimum and maximum time limit.

(b) Conditions and procedures for admission (emergency; vacations; etc.).

(c) Age and developmental level. Respite care admissions must approximate the standard admission criteria.

(d) Description of services provided.

(e) Type of services to be provided.

(f) Charges for respite care.

(6) Ensure the resident the maximum opportunity to participate in admission and release decisions.

Ord. Adopt #9

(7) Ensure the resident is informed of the right to appeal the suspension, reduction, termination or denial of services to the Commissioner of Public Welfare pursuant to Minn. Stat. §256.045 as a Social Service appeal.

g. Upon determination of the possible inadmissability of a resident, the residential program shall consult with the referring agency and with his parents.

2. Selection and eligibility.

a. The residential program shall provide information on eligibility requirements and application materials upon ~~any and~~ all requests. HE 27

b. Residents and their parents shall be free to apply directly to the program for service. However, placement for service shall be made by the responsible local social service agency.

c. Residential programs shall admit residents without regard to race, creed, or national origin, and accord equal treatment to all persons.

d. When admission is not an optimal measure, but must, nevertheless, be implemented, its inappropriateness shall be clearly acknowledged; and plans shall be initiated for the continued and active exploration of alternatives.

e. The determination of legal incompetence shall be separate from the determination of the need for services, and admission to the program shall not automatically imply legal incompetence.

3. Admission.

a. For each resident admitted, there shall be a written program plan stating the services he needs or a written statement of the procedure and timetable for development of the program line.

b. Prior to admission, the resident and his parent shall be counseled on the relative advantages and disadvantages of admission to the program.

c. Prior to admission, the resident and his parent shall be encouraged to visit the program and the living unit in which the resident is likely to be placed.

d. Prior to admission of a school-age child, residential program staff shall notify the local school district.

e. Upon admission, each resident shall be placed in his living unit, and he shall be isolated only upon medical orders issued for specific medical reasons.

4. Release.

a. Planning for release, the residential program staff shall involve the referring agency, the resident, and his parent.

b. At the time of release, a summary of findings, progress, and plans shall be recorded and transmitted with the resident.

c. Procedures shall be established so that:

(1) A parent who requests the release of a resident is counseled about the advantages and disadvantages of such release.

(2) The court or other appropriate authorities are notified when a resident's release might endanger either the individual or society.

d. At the time of release, physical examination for signs of injury or disease shall be made in accordance with procedures established by the residential program.

e. Except in an emergency, release shall be made only with the prior knowledge, and ordinarily the consent, of the referring agency, the resident, and his parents.

E. Administrative policies and practices.

1. The residential program shall have a written statement clearly defining its philosphy, purpose, and function.

a. This statement shall be consistent with the current status of knowledge and information available on residential services.

b. This statement shall be consistent with the principle of normalization.

2. The residential program shall have a written statement defining its administrative and organizational structure.

a. The governing body shall exercise general direction and establish policies on the operation of the program and the welfare of the residents.

b. The governing body shall appoint an executive officer of the program.

(1) The qualification of the executive officer shall be determined by the governing body and be consistent with the training and education needed to meet the stated goals of the program.

(2) The governing body shall delegate to the executive officer the authority and responsibility for management of the affairs of the program.

c. The residential program shall be administered and operated in accordance with sound management principles.

(1) The type of administrative organization of the program shall be appropriate to the program needs of the resident.

(2) The program shall have a table of organization that shows the governing and administrative responsibilities of the program.

d. The residential program shall provide for meaningful and extensive consumer representation and public participation in its operation. If consumer representatives, interested citizens, and relavently qualified

relevantly

professionals are not represented on the governing body, an advisory body composed of such representation shall be appointed by the governing body.

(1) The advisory body shall sit ad hoc to the governing body and to the chief executive officer and provide consultation and assistance as appropriate.

(2) The advisory body may function as the program research review and human rights committee.

(3) The advisory body may function as the admission and release committee. (See Part D. 1.d. of this rule.)

3. Personnel policies, practices, and staff to resident ratios.

a. Personnel policies.

(1) There shall be written personnel policies, which shall be made available to each staff member.

(a) The hiring, assignment, and promotion of employees shall be based on their qualifications and abilities, without regard to sex, race, creed, age, disability, marital status and ethnic or national origin.

(b) Personnel policies shall include but not be limited to:

(i) Qualifications, job description, salary schedule, and benefits for all positions.

(ii) A policy prohibiting mistreatment, neglect, or abuse of residents, and mandating the report of any mistreatment, neglect or abuse to the executive officer.

(iii) Procedure for suspension and/or dismissal of an employee for cause.

(c) There shall be a staff person responsible for implementation of these policies.

b. Staff assignments.

(1) There shall be sufficient, appropriately qualified, and adequately trained personnel to provide program service in accordance with program's statement of services provided (see Part C. of this rule) and with the standards specified in this document.

(a) There shall be staff on duty or call at night to ensure adequate care and supervision.

(b) There shall be staff on duty or call to assist all residents in an emergency.

(c) There shall be staff on duty or call so that provision of residential service is not dependent upon the use of unpaid residents or volunteers.

(i) Residents shall not replace staff or be used in lieu of staff in any area of work unless they are reimbursed commensurate with ability and production.

(ii) Residents shall not be involved in the care (feeding, clothing, and bathing), training, or supervision of other residents unless they are adequately supervised, have the requisite humane judgment, and have been specifically trained in necessary skills.

(d) All staff shall be administratively responsible to a person whose training and experience is appropriate to the program.

(e) The title applied to all staff shall be appropriate to the kind of residents with whom they work and the kind of interaction in which they engage.

(2) The use of volunteers shall be encouraged to strengthen services in a manner consistent with the purposes of the program.

c. Staff training.

(1) There shall be a staff-training program that is appropriate to the size and nature of the program and that includes, but is not limited to:

(a) Orientation for all new employees, to acquaint them with the philosophy, organization, program, practices, and goals of the residential program.

(b) Induction training for each new employee, in order that his skills in working with the residents are increased.

(c) Continuing in-service training to update and improve the skills and competencies.

(2) There shall be a record of all staff training on file.

d. Staffing ~~ratios~~ needs.

(1) The determination of staff needs shall include consideration of staff members' experience and training, as well as the overall ratio of staff to residents.

(2) The number of available direct care resident living staff shall be related to each resident's degree of handicap and his training needs.

~~(3)--The-minimum-overall-ratios-of-resident-living-staff necessary-to-provide-24-hour-supervision-shall-be-as-follows:~~

~~(a)--For-units-including-children-under-the-age-of-six years;-severely-and-profoundly-retarded;-persons;-severely-physically-handicapped-persons;-and-residents-who-are-aggressive;-assaultive;-or-security risks;-or-who-manifest-severely-hyperactive-or-psychotic-like-behavior;-the overall-staff-to-resident-ratio-(allowing-for-a-five-day-work-week-plus holiday;-vacation;-and-sick-time)-is-1:2:~~

~~(b)--For-units-serving-moderately-retarded-residents requiring-habit-training;-the-overall-staff-to-resident-ratio-is-1:2.5:~~

~~(c)--For-units-serving-residents-in-vocational-training programs-and-adults-who-work-in-sheltered-employment-situations;-the-staff to-resident-ratio-is-1:5:~~

~~(4)~~ (3) Staff to resident ratios during peak programming hours (evenings and weekends) shall be optimized by appropriate scheduling around residents' day programs.

~~(5)--If-a-residential-program-determines-that-a-different staff-ratio-is-needed-to-comply-with-the-provisions-of-this-rule;-a-letter shall-be-submitted-to-the-Commissioner-for-approval:--Criteria-for-approval shall-be:~~

~~(a) Extraordinary medical, behavioral or developmental needs of residents.~~

~~(b) Possible changes that could be effected in staff assignment, deployment, or qualification to optimize utilization of existing staff.~~

~~(c) Relevance of the proposed change in staff ratio to (a) and (b) above.~~

4. The residential program shall have a written statement outlining a plan of financing that gives assurance of sufficient funds to enable it to carry out its defined purposes.

a. Budget management shall be in accordance with sound accounting principles.

b. A residential program charging for services shall have a written schedule of rates and charge policies, which shall be available to the resident, his parent, referring agencies, and the public.

5. An individual record shall be maintained in the facility for each resident.

a. All information contained in the resident's records shall be handled in a manner consistent with the Government Data Practices Act. The resident shall have access to his record upon request.

b. All entries in the resident's record shall be legible, dated and authenticated by the signature and identification of the individual making the entry.

c. All records shall contain basic demographic information, to be entered at the time of admission, including reason for referral and individual program plan.

d. Recorded information shall be in sufficient detail and adequate to:

(1) Plan and evaluate the resident's program.

(2) Provide a means of communication among all persons contributing to the resident's program.

(3) Furnish documentary evidence of the resident's progress or regression and of his general response to his program.

(4) Serve as a basis for study, evaluation, and development of services provided by the residential program.

(5) Protect the legal rights of the resident, his parent, the residential program, and staff.

(6) Serve as a basis for evaluation of all services utilized by residents.

e. When it is necessary for residential program staff to supervise the use of personal funds, a record of these funds shall be maintained as a part of the resident's record.

LJ/Rule

01

APPROVED AS TO FORM AND LEGALITY
5-4 1981
WARREN SPANNAUS, ATTORNEY GENERAL
BY Jerry Anderson
SPECIAL ASSISTANT ATTORNEY GENERAL

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED
MAY - 5 1981
Joan Anderson Growe
Secretary of State
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Rule As Adopted

Department of Public Welfare

12 MCAR §2.034 Standards for the operation of residential programs and services for persons who are mentally retarded.

A. General Provisions.

1. Scope.

a. This rule governs the operation of any ~~facility or service~~ residential program engaged in, or seeking to engage in, the provision of residential or domiciliary service for mentally retarded individuals, and it sets forth the requirements necessary for such a residence to be licensed. HE 11

b. Cost of boarding care outside of home or state institution is reimbursable by the state for care of children under 18 years of age in facilities licensed by the Department of Public Welfare. All participating facilities serving more than four mentally retarded children must be licensed under these regulations prior to participation.

c. Federal programs under the Social Security Act, as amended, require certification of participating facilities. All participating facilities serving more than four mentally retarded persons must be licensed under these regulations prior to certification.

2. Purpose.

a. The purpose of this rule is to establish the minimum standards for the operation of residential programs and services for mentally retarded persons residing in Licensed Supervised Living Facilities.

b. The purpose of Minn. Stat. §252.28, and this rule is to establish and protect the human right of mentally retarded persons to a normal living situation, through the development and enforcement of minimum requirements for the operation of residential programs. Moreover, this rule serves an educational purpose in providing guidelines for quality service.

3. Statutory basis.

a. Minn. Stat. §256.01, charges the Commissioner of Public Welfare with general responsibility for service to mentally retarded persons.

b. Minn. Stat. §245.072, creates a mental retardation division in the Department of Public Welfare to "coordinate those laws administered and enforced by the Commissioner of Public Welfare relating to mental retardation and mental deficiency which the Commissioner may assign to the division."

c. Minn. Stat. §252.28, charges the Commissioner of Public Welfare with the responsibility for licensing of residential facilities and services for mentally retarded persons.

4. Procedure for licensing.

a. Application shall be made to the Commissioner of Public Welfare, who may determine the need, location, and program of facilities and services seeking to be licensed or relicensed under these rules. In making this determination, the Commissioner shall be guided by this rule and other state agency rules promulgated under Minn. Stat. §252.28, Subd. 1.,including 12 MCAR 2.185.

b. Applicants shall submit such materials and information as may be required to make a proper determination of the nature and adequacy of the residential program to be provided.

c. Applicants must have, or have applied for, a Supervised Living Facility license from the State Department of Health Minn. Reg. MHD 391-401; and, in the case of a Commissioner approved extension of the residential program for family homes of four or fewer residents, a foster home license or certification from the Department of Public Welfare.

d. A residential program desiring to renew its license shall submit an application at least 45 days prior to expiration of the license. A renewal license may be issued for a period of up to two years at the discretion of the Commissioner.

e. ~~If, in the licensing procedure or enforcement of these rules, the Commissioner finds that to require a residential program to comply strictly with one or more provisions of these rules will result in undue hardship, and if the residential program is in substantial compliance with the intent and purpose of these rules, a provisional license may be granted to allow reasonable time to conform to these rules.~~ Provisional license shall be granted by the Commissioner under terms of Minn. Stat. §245.783, Subd. 3.

f. A residential program may request in writing a ~~waiver~~ variance of a specific provision of the rule. The request for a ~~waiver~~ variance must cite the specification of the rule in question, reasons for requesting the ~~waiver,~~ variance, the period of time not to exceed one year the licensee wishes to have the provision ~~waived~~ varied and the equivalent measures planned for assuring that programmatic needs of residents are met. ~~Waivers~~

Variances granted by the Commissioner shall specify in writing the time limitation and required equivalent measures to be taken to assure that programmatic needs are met. ~~Waivers~~ Variances denied by the Commissioner shall specify in writing the reasons for the denial. No ~~waiver~~ variance shall be granted that would ~~adversely affect~~ threaten the health, safety or rights of residents.

5. Refusal or revocation of license.

a. Failure to comply with these regulations or applicable state laws shall be cause for refusal or revocation of license.

b. Failure to be licensed as a Supervised Living Facility by the Minnesota Health Department (Chapter Twenty Three: MHD 391-401, or its successor) shall be cause for refusal or revocation of license.

c. Revocation, suspension or denial of a license may be appealed pursuant to Minn. Stat. Chapter 15.

6. Definitions.

a. Ambulatory - The ability to walk independently and at least negotiate any barriers, such as ramps, stairs, corridors, doors, etc., without assistance as may be necessary to get in and out of the facility.

b. Executive Officer - The individual appointed by the governing body (see below) of a residential program to act in its behalf in the overall management of the facility. Job titles may include, but are not limited to, superintendent, director and administrator.

c. Governing Body - The policy-making authority, whether an individual or a group, that exercises general direction over the affairs of a

of self-feeding abilities, to encourage socialization, and to provide a pleasant mealtime experience.

C. Developmental and Remedial Services

1. General provisions.

a. In addition to resident-living services detailed in B of this rule, residents shall be provided with developmental and remedial services called for by individual assessment and program plan. These services may be provided in two ways:

(1) Within the facility and by staff employed by the residential program, except that developmental services, as here defined, shall not be provided in the living unit unless contraindicated by the assessed needs of the particular residents being served.

(2) Outside of the facility and by agreement between the facility and other agencies or persons.

b. All developmental and remedial services, as here defined, shall be rendered outside of the facility, whenever possible, and when rendered in the facility, such services must be at least comparable to those provided in the community.

2. Assessment.

Residential program staff shall participate in regular-at least annual-assessment of each resident. The assessment shall cover behavioral and physical status of the resident and shall be conducted by an interdisciplinary team.

a. Behavioral assessment.

(1) Shall utilize objective description to the greatest degree possible.

(2) Shall include the resident, when he is capable of participation, and data supplied by his parents, when appropriate, and by living unit staff.

(3) Shall include, but not be limited to, the following areas:

(a) Educational assessment. All school-age children shall be assessed annually in accordance with guidelines of a properly designated school authority, in order to determine eligibility for public school class. School-age is defined as four years to 21 years for mentally retarded children and shall not extend beyond secondary school.

*(b) Self-care skills.

*(c) Economic skills.

*(d) Language development.

*(e) Number and time concepts.

*(f) Domestic occupation.

*(g) Vocational skills.

*(h) Maladaptive behavior and emotional disturbances.

b. Physical assessment.

see HE 25 - proposed changes in this section not made

* A residential program shall be in substantial compliance with these provisions when the American Association of Mental Deficiency Adaptive Behavior Scale, or the Minnesota Developmental Programming System (MDPS), is used for behavioral assessment.

this Footnote should be located at bottom of previous page

(1) Physical assessment for children shall be performed as recommended by the Council on Pediatrics.

(2) Physical assessment for adults shall be performed at least annually and shall include, but not necessarily be limited to:

(a) Physical examination.

(b) Blood count.

(c) Urinalysis.

(d) Determination of freedom from tuberculosis.

(3) Drug assessment: A resident who receives daily medications for a chronic condition shall have a planned and recorded schedule for examination and review of his medication regimen. Use of prescribed medications shall not be continued past the scheduled time for examination. Persistent deviancy in use of a drug by a resident, or adverse reaction to a drug, shall be considered in adjustment of the resident's program plan.

(4) Physical and motor assessment shall be performed at least annually for persons under 16 years of age, and as needed thereafter.

(5) Speech and language assessment shall be performed annually for persons under 16 years of age, and as needed thereafter.

(6) Vision assessment shall be performed annually.

(7) Hearing assessment shall be performed annually for persons under ten years of age, and thereafter when hearing change is suspected.

(8) Dietary assessment shall be performed at least every 90 days for residents receiving a therapeutic diet.

(9) Psychological assessment shall be performed at least every three years for persons under 16 years of age, and as needed thereafter. Current psychological assessment data (less than one year old) available from the referring agency may be utilized to comply with this requirement.

3. Program and treatment plan. Residential program staff shall participate with an interdisciplinary team including ~~Developmental Achievement Center~~ daytime developmental staff, in the formulation of an individualized program and treatment plan for each resident. Facility staff shall be responsible for implementation of the plan.

HE 26

a. General provisions: The formulation of individualized program and treatment plans shall:

(1) Define specific and time-limited objectives for behavioral and physical development.

(2) Consider the proper exercise of the residents' and parents' civil and legal rights, including the right to adequate service.

(3) Define needed services without consideration of the actual availability of desireable options.

(2) The number of available direct care resident living staff shall be related to each resident's degree of handicap and his training needs.

~~(3) The minimum overall ratios of resident living staff necessary to provide 24-hour supervision shall be as follows.~~

HE 29

~~(a) For units including children under the age of six years, severely and profoundly retarded, persons, severely physically handicapped persons, and residents who are aggressive, assaultive, or security risks, or who manifest severely hyperactive or psychotic-like behavior, the overall staff to resident ratio (allowing for a five day work week plus holiday, vacation, and sick time) is 1:2.~~

~~(b) For units serving moderately retarded residents requiring habit training, the overall staff to resident ratio is 1:2.5.~~

~~(c) For units serving residents in vocational training programs and adults who work in sheltered employment situations, the staff to resident ratio is 1:5.~~

~~(4)~~ (3) Staff to resident ratios during peak progamming hours (evenings and weekends) shall be optimized by appropriate scheduling around residents' day programs.

~~(5) If a residential program determines that a different staff ratio is needed to comply with the provisions of this rule, a letter shall be submitted to the Commissioner for appproval. Criteria for approval shall be:~~

(d) All staff shall be administratively responsible to a person whose training and experience is appropriate to the program.

(e) The title applied to all staff shall be appropriate to the kind of residents with whom they work and the kind of interaction in which they engage.

(2) The use of volunteers shall be encouraged to strengthen services in a manner consistent with the purposes of the program.

c. Staff training.

(1) There shall be a staff-training program that is appropriate to the size and nature of the program and that includes, but is not limited to:

(a) Orientation for all new employees, to acquaint them with the philosophy, organization, program, practices, and goals of the residential program.

(b) Induction training for each new employee, in order that his skills in working with the residents are increased.

(c) Continuing in-service training to update and improve the skills and competencies.

(2) There shall be a record of all staff training on file.

d. Staffing ~~ratios~~ needs. HE 29

(1) The determination of staff needs shall include consideration of staff members' experience and training, as well as the overall ratio of staff to residents.

Rule as Adopted HG copy shows changes from R as P. pages showing errors

12 MCAR § 2.018 Standards for the provision of semi-independent living service (SILS) to people who are mentally retarded.

A. Statutory authority.

1. Minn. Stat. § 252.28 (1978), ~~and~~ as amended, ~~(1980)~~ Laws ~~of~~ 1980, ch. 612, provide for the determination of need, location, and program of public and private residential and day care facilities and services for mentally retarded children and adults. This statute further provides that the commissioner shall establish uniform rules, regulations, and program standards for each type of residential and day facility or service for more than four retarded persons.

2. Minn. Stat, §§ 245.781-245.~~814~~, 813, Public Welfare Licensing Act, provide for the development and promulgation of rules and regulations for the operation and maintenance of day care and residential facilities and agencies, for granting, suspending, and revoking licenses and provisional licenses. It also provides that no individual, corporation, partnership, voluntary association, or other organization may operate a day care or residential facility or agency unless licensed to do so by the Commissioner.

B. Introduction.

1. Statement of purpose.

a. To establish standards for the provision of services to mentally retarded persons whose dependency requires services above the level of

food and lodging, but who do not need 24-hour per day care or supervision, as provided in residences licensed under 12 MCAR § 2.034.

b. To assist clients in achieving their highest potential in self-sufficiency and independence in the least restrictive environment.

c. To insure that an individual program plan is developed with each client, and each client receives those services he needs to achieve or maintain independence.

d. To prescribe minimum program standards for semi-independent living services.

2. Applicability.

a. This rule applies to any person, organization or association engaged in the operation and provision of semi-independent living services (SILS) to adults who are or may be mentally retarded, as provided and defined in 12 MCAR § 2.185 A.4.h. and i. This rule sets forth the requirements for any individual, organization, or association providing SILS to more than four mentally retarded adults to be licensed pursuant to Minn. Stat. § 252.28, and Minn. Stat. §§ 245.781-245.~~814,~~ .813, the Public Welfare Licensing Act.

b. Licensure under this rule does not require concurrent compliance with other Department of Public Welfare licensing rules or with Minnesota Health Department Supervised Living Facility Standards promulgated under Minn. Stat. § 144.56.

c. This rule does not govern the living arrangement of clients. Semi-independent living services licensed under this rule may be provided to persons living in a variety of ordinary community settings other than state hospitals and community residential facilities licensed under 12 MCAR § 2.034 and supervised living facility standards. Community living arrangements in which SILS are provided may include the following, but not be limited to: client's own home, foster home, apartment or rooming house.

3. Procedures for licensing.

a. Application for determination of need for SILS shall be made to the county board or its designee. Procedures for determination of need shall be as provided for in 12 MCAR § 2.185 D.

b. Upon notification that a need for the service has been found by the commissioner, application for license may be made to the commissioner.

c. Applicants shall submit such materials and information as may be required by the commissioner to make proper determination of the nature and adequacy of the services to be provided. Application for license shall not be considered complete until all required documents have been received by the commissioner~~,~~ in accordance with this rule. Order Adopt. #11

d. Any SILS provider desiring to renew a license shall submit an application at least 30 days prior to expiration of the license. A renewal license may be issued for a period up to two years at the discretion of the commissioner.

e. The license or a formal letter of denial, including reasons for denial, shall be issued within 90 days after receipt of the completed

application. The initial license issued to any new SILS provider shall be provisional for a designated period of time not to exceed one (1) year (Minn. Stat. § 245.783, subd. 3).

f. ~~If, in the licensing procedure or enforcement of these standards, the commissioner finds that to require a provider to comply strictly with one or more provisions of this rule will result in undue hardship, and if the SILS provider is in substantial compliance with the standards of this rule, a provisional license not to exceed one year may be granted to allow the SILS provider reasonable time to conform with these standards.~~ Provisional license shall be granted by the commissioner under the terms of Minn. Stat. § 245.783, subd. 3.

HE 34

g. When a specific requirement cannot be met or an innovative alternative is desirable, a ~~waiver~~ variance must be requested in writing. The ~~waiver~~ variance request shall state (a) the reason the current requirement cannot be met, (b) the proposed alternative, and (c) the date the alternative or requirement shall be met not to exceed one year. No ~~waiver~~ variance shall be granted that would ~~affect~~ threaten the health, safety or rights of clients.

HE 35

4. Technical provisions.

a. Failure to comply with these standards or applicable state law shall be cause for denial, revocation or suspension of license.

b. Denial, revocation or suspension of license may be appealed pursuant to Minn. Stat. ch. 15, the Minnesota Administrative Procedures Act.

c. The provisions of this rule shall be severable. If any clause, sentence or provision is declared illegal or of no effect, the validity of the remainder of this rule and its applicability shall not be affected.

d. Any provision of this rule which is inconsistent with any state or federal law is superseded by that law.

C. Definitions.

1. "Applicant." Any adult referred to the SILS provider for services. The term may also refer to an applicant for licensure under this rule.

2. "Client." Adults who need more than ~~room and board,~~ food and lodging, HE 36 but less than 24-hour per day program of service and supervision, receiving services as provided in this rule.

3. "Commissioner." Commissioner of Public Welfare or designee.

4. "County board." That body of duly elected officials responsible for the governance of its county under the authority of Minn. Stat. §§ ~~275.02-275.55.~~ HE 33 373.02-373.55. When a human service board has been established under Minn. Stat. §§ 402.02-402.10, it shall be considered to be the county board, for purposes of this rule.

5. "Individual program plan (IPP)." A detailed plan for each client which sets forth both short-term and long-term goals with detailed methods of achieving movement toward the individual service plan of the local social service agency.

6. "Individual service plan." An analysis by the local social service agency of services needed by the client, including identification of the type of residential placement, if needed, and the general type of program required by the client to meet the assessed needs within a specified period of time.

7. "Interdisciplinary team." A team consisting, at a minimum, of the client, the client's legal guardian (if any), local social service agency representative and the program director~~.~~, or SILS staff member. HE 37 Other persons relevant to a particular client's needs may be included. The interdisciplinary team is responsible for the development and evaluation of the client's individual program plan and determination of need for semi-independent living services.

8. "Legal guardian." A person(s) appointed under Minn. Stat. ch. 252A or ch. 525 as guardian or conservator of the person (or estate or both) of anyone who has been legally judged to be incompetent to manage his or her person or estate. The Commissioner of Public Welfare may be appointed as guardian or conservator.

9. "Local social service agency (LSSA)." A local agency designated and authorized by the county board ~~of~~ or human service board, to be responsible for providing social services. Social services include the case management and referral of applicants for semi-independent living services.

10. "May." Indicates that the provisions or practices stated in this rule are permitted.

11. "Mentally retarded person." A mentally retarded person refers to any person who has been diagnosed as having significantly subaverage intellectual functioning existing concurrently with demonstrated deficits in adaptive behavior and manifested during the developmental period.

12. "Normalization." To provide the client with a normal existence. If this is not possible, to provide the person with the alternative which is least restrictive. This includes making available to the client patterns and conditions of everyday life that are as close as possible to the norms and patterns of the mainstream of society.

13. "Provider." An individual, organization or associaiton which exercises general direction over the policies and provision of SILS, and is responsible for the welfare of individuals being served.

14. "Semi-independent living services (SILS)." A system of services that includes training, counseling, instruction, supervision and assistance provided in accordance with the client's individual program plan. Services may include assistance in budgeting, meal preparation, shopping, personal appearance, counseling and related social support services needed to maintain and improve the client's functioning. Such services shall not extend to clients needing 24-hour per day supervision and services. Persons needing a 24-hour per day program of supervision and services shall not be accepted or retained in a semi-independent living service.

15. "Shall." Indicates that the requirement, provision, or practice stated in this rule is mandatory.

D. Program and service standards.

1. Admission. The provider shall maintain written policies and procedures, which shall be available to the local social service agency and to the general public, covering the following:

a. Pre-admission and admission procedures.

b. Pre-requisite client skills for admission.

c. Admission criteria including age, type and degree of handicap.

d. Nondiscriminatory practices with regard to race, creed, sex or national origin.

e. Description of services.

f. Discharge procedures.

g. Cost rates for services and arrangements available for payment.

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h. The requirement that each client must have a current medical and dental examination.

HE 39

i. Waiting lists and selection priorities.

(8) Training in matters of personal appearance and hygiene.

(9) Training in apartment or living environment maintenance, when indicated. HE 43

(10) Training in use of community resources including but not limited to police, fire, hospital emergency resources. HE 43

(11) Training in rights and responsibilities of community living. HE 43

b. The IPP shall establish program goals and behavioral objectives stated in measurable terms which specify the time limit for achieving each behavioral objective. The IPP shall also identify the person(s) responsible for implementation of the IPP.

c. The IPP shall describe the services HE 50 to be provided, and how they will be obtained.

d. The annual IPP shall be reviewed at least quarterly by staff. The reviews shall include written report of:

(1) Client's progress toward goals and behavioral objectives.

(2) Need for continued services and any recommendation concerning alternative services and/or living arrangements.

(3) Recommended change in guardianship status (if any).

E. Administrative standards.

1. The provider shall have a written statement of the SILS program philosophy, purpose and goals which:

a. Is consistent with the principles of normalization.

b. Includes expected client outcomes.

c. Is available to the public.

d. Is reviewed by the provider at least annually and revised as needed.

2. The SILS provider shall be responsible for program direction for all clients, which shall include the provision, continuation and coordination of services in accordance with the client's IPP.

3. The provider ~~may~~ shall employ ~~one or more~~ a program director~~s~~, and may employ more than one to assist in program direction.

4. The provider may employ other staff to carry out the programs for clients, providing that such staff are under the supervision of a qualified program director.

a. The program director shall have at least a bachelor's degree in a field related to mental retardation services, and at least one year experience in working with mentally retarded persons. Five years' experience in working full-time with clients under professional supervision in a developmental program for mentally retarded persons, may be substituted for a bachelor's degree if in the judgment of the Commissioner such experiences result in ability to perform the duties of the program director.

which shall be available to LSSA, clients, guardians.

b. The provider shall have complaint procedures which shall include:

(1) The name and telephone number of persons who may be contacted in order to register a complaint.

(2) The time schedule established for registration of complaints.

(3) The time limits for decisions to be made by the provider.

c. The provider shall inform clients of their right to appeal the suspension, reduction or termination of services to the Commissioner pursuant to Minn. Stat. §256.045 as a social service appeal.

d. Upon request of the client, the provider shall instruct and assist clients in how to obtain legal assistance.

e. The provider shall have a writtern statement of policies and procedures that protect the financial interests of the clients.

f. If the provider manages the client's money, the following shall be recorded:

(1) Written permission from the client or his legal guardian.

(2) Reasons the provider is to manage the client's money.

(3) A complete record of the use of the client's money and reconciliation of the account.

g. Clients who work for the SILS provider shall be considered employees of the provider with all the rights and privileges of an employee.

8. The provider shall have a current written description of its organization, which includes the major operating services and person(s) having administrative responsibility, available to the local social service agency.

9. The provider shall have written personnel policies available to staff. The policies shall include:

a. Application and hiring procedures.

b. Provisions for non-discrimination.

c. Description of probationary period, if any, and procedures for annual performance evaluation.

d. Procedures for suspension and dismissal.

e. Employee benefits.

f. Grievances and appeal procedures.

g. Prohibition of mistreatment, neglect, or abuse of clients, and mandatory reporting of any mistreatment, neglect or abuse.

h. Plans for staff orientation, training.

i. Prohibition of the use of any aversive or deprivation procedures.

10. The provider shall have a written plan and procedure in case of fire, severe illness, accident, severe weather and missing persons.

a. Orientation in emergency procedures shall be recorded for each client and employee within one month of admission or employment.

b. This plan shall be reviewed quarterly with clients.

11. The provider shall maintain records of financial transactions and agreements with the referring LSSA.

12. The provider shall have a written plan for establishing service rates, which shall include at least 30-day advanced notice of change in rates.

13. Living arrangements.

a. When living arrangements are provided by the SILS provider as a part of the SILS program, the living arrangements are not subject to this rule, and therefore need not be licensed. ~~facilities.~~ HESO Living arrangements are subject to applicable health, safety, sanitation and zoning codes. When living arrangements are provided as a part of the SILS program plan, the provider shall assure the local social service agency that the living arrangements are in conformance with the client's individual program plan,

and applicable health, safety, sanitation and zoning codes. Living arrangements so provided shall include provisions for the preparation of meals, sleeping, bathing, mail, and access to telephone and transportation.

b. When living arrangements are not provided as a part of the SILS program, the provider may assist the local social service agency and client as agreed upon in:

(1) Choosing and arranging for a appropriate living environment.

(2) Developing client skills in choosing and making living arrangements.

(3) Developing client skills in shopping, seeking employment, paying rent and other bills, and in the use of public transportation and other community service.

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2. The grant activities are inconsistent with community action activity as defined in this rule.

3. The applicant cannot demonstrate adequate fiscal management capabilities as required in federal Office of Management and Budget Circulars A-102 and A-110.

4. The applicant fails to respond to a request for revision of the application, supplementary information or other required documents to bring said application into compliance with this rule.

G. A Minnesota Economic Opportunity Grant may be terminated by the Commissioner upon 30 days written notice to the grantee if any of the following occur:

1. The grantee's community action agency designation is withdrawn by the federal Community Services Administration.

2. The grantee violates the provisions of the grant.

3. The grantee fails to submit grant reporting requirements established in accordance with this rule.

H. Grantee responsibilities. The grantee must obtain prior written approval from the department in order to alter its grant program from the manner in which it was described in the approved grant.

The grantee must comply with all federal and state regulations which apply to the general operation of the agency and to specific projects and grants which are co-funded by the federal or state government and this act.

I. Grantee reporting requirements. By acceptance of a grant award under this act, the grantee agrees to supply all grant activity information required by the department. The specific reporting requirements will be made known to eligible grantees at the same time that they are notified of eligibility to apply for a grant under the act.

The grantee must provide evidence of having a management information system that can produce auditable reports of client services as required by the department.

J. Appeals. An applicant or grantee may appeal a denial or termination of a grant award. The appeal must be in writing and must be signed by the community action agency executive director and the chairperson of the agency board of directors.

The appeal must be sent to the commissioner within 30 calendar days of receipt of notification of denial or termination. Upon such appeal the commissioner shall order a hearing in accordance with the contested case provisions of Minn. Stat. ch. 15.

Department of Public Welfare
Mental Health Bureau

Proposed Rule 12 MCAR § 2.018 and Proposed Amendment to 12 MCAR § 2.034 Concerning Programs for Mentally Retarded Persons

Notice of Hearing

A public hearing concerning the above rules, 12 MCAR § 2.018 (Rule 18) Standards for the provision of semi-independent living programs to people who are mentally retarded., and 12 MCAR § 2.034 (Rule 34) Standards for operation of residential programs and services for persons who are mentally retarded., will be held at the State Office Building, Room 57, Wabasha Street, (between Aurora and Fuller), St. Paul, MN 55155 on October 17, 1980 commencing at 9:00 a.m.. The proposed rule, 12 MCAR § 2.018 (Rule 18), and proposed amendment to 12 MCAR § 2.034 (Rule 34), may be modified as a result of the hearing process. Therefore, if you are affected in any manner by 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 and written material may be submitted. In addition, whether or not an appearance is made at the hearing, written statements or material may be submitted to Jon Lunde, Hearing Examiner, Office of Administrative Hearings, Room 300, 1745 University Avenue, St. Paul, MN 55104, telephone (612) 296-5938, 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.

KEY: RULES SECTION — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language. **PROPOSED RULES SECTION** — Underlining indicates additions to existing rule language. ~~Strike outs~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material."

Notice is hereby given that 25 days prior to the hearing a Statement of Need and Reasonableness will be available for review at the agency and at the Office of Administrative Hearings. 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 Administrative Hearings at a minimal charge.

12 MCAR § 2.018

Rule 18 establishes standards for the provision of semi-independent living services (SILS) to mentally retarded adults whose dependency requires services above the level of food and lodging, but below the level of a 24-hour per day program of care and services as provided in facilities licensed under Rule 34.

The provision of semi-independent living services as an organized program of support services needed to promote and achieve client independence, is a relatively recent development in Minnesota. The department is proposing a new rule because it was found that Rule 34 does not effectively apply to persons who no longer need a 24-hour per day program.

Semi-independent living services are not being provided to approximately 140 mentally retarded adults. While receiving SILS, the clients live in a variety of ordinary community living arrangements. Such living arrangements include, but are not limited to; client's own home, foster home, apartment or rooming house. The rule governs the provision of services to clients, but does not govern the client's place of residence. Such places in which the clients reside are subject to the ordinary community health, safety, sanitation and zoning codes. Such places of residence are not considered health care facilities.

The use of this type of living arrangement will increase in the future as more mentally retarded people are integrated into the community.

The proposed rule contains:

a. Statutory authority for promulgation of the rule.

b. Statement of purpose.

c. Provision that the rule applies to persons, organizations and associations engaged in the operation and provision of SILS to adults who are mentally retarded.

d. Procedures for licensing.

e. Appeal rights pursuant to Minn. Stat. ch. 15, Minnesota Administrative Procedures Act.

f. Definition of terms used in the rule.

g. Program and service standards which include admission standards, and provision for comprehensive behavioral and physical assessments. Individual program planning is required, which includes goal objectives and methods in:

(1) Training in health planning, meal preparation and shopping.

(2) Training in first aid skills, responding to emergencies and symptoms of illness.

(3) Training in management of personal finances.

(4) Training in self-administration of prescription and nonprescription medication.

(5) Training in the use of the telephone and other public utilities.

(6) Development of the client's social, recreational and transportation abilities.

(7) Development of more appropriate behaviors for clients displaying inappropriate behaviors.

(8) Training in matters of personal appearance and hygiene.

h. Administrative standards regarding responsibility for program direction, employment of staff, discharge of clients, client records, access to records, client rights regarding complaints and appeals, and living arrangements.

12 MCAR § 2.034

The provisions of the current Rule 34 establish standards for the operation of residential facilities and services for persons who are mentally retarded. The rule applies to any person, corporation, partnership, voluntary association or state hospital which provides services in a residential facility serving more than four mentally retarded people.

Rule 34 was originally promulgated in November, 1972, to implement Minn. Stat. § 252.28, which directs the Commissioner of Public Welfare to license programs and services for mentally retarded persons residing in community facilities and state hospitals.

The rule seeks to protect the human and civil rights of mentally retarded people in Minnesota by establishing a standard of normalized living and developmental services for residents of community and state hospital facilities. Such standards encompass the several functional levels of residents and any additional sensory, behavioral or physical disabilities that they may have.

Within this general framework, the rule establishes standards that require family-like primary living units that are small enough to ensure the development of meaningful interpersonal relationships among residents and between residents and staff. Primary living units may not have more than four persons to a bedroom, and no more than 16 residents per living unit. Such living units must have bedrooms, living room, bathroom, recreation room and connecting areas.

The rule establishes standards for staff in order to maintain a warm, friendly home-like environment that is conducive to optimal development of the residents. Standards further require an individual program plan for each resident which requires assessment of needs, development of goals, and the provision of specific developmental and remedial services.

The rule also requires that developmental and remedial services be provided outside of the living units, and, if possible, away from the facility. This is established as a standard to approximate normal living situations. The rule specifies standards for residents who also have physical or behavioral handicaps that need special treatment and services.

The rule prohibits corporal punishment and establishes that restraint and seclusion may be employed only to protect the resident from injuring himself or others.

In addition, the rule:

1) specifies the scope, purpose and statutory authority of the rule,

2) establishes procedures for licensing,

3) defines terms used in the rule,

4) establishes standards for the health, hygiene and grooming of residents,

5) provides standards for food service, medical care, admission and discharge of residents, and

6) administrative policies and practices.

The provisions of the proposed amendment to Rule 34 are intended to:

a. Eliminate health and safety standards from Rule 34. The Minnesota Department of Health's rule on supervised living facility standards (Chapter Twenty-three; MHD 391-401) is the applicable health and safety standard for all residential facilities licensed under Rule 34 (Minn. Stat. § 252.28), need not be duplicated in DPW rule.

b. Prescribe minimum overall staff-to-resident ratios. The staff ratios proposed are the same as those prescribed in Rule 34 facilities that are also certified as Intermediate Care Facilities for Mentally Retarded (ICF/MR). The proposed amendment to the rule establishes the same staffing ratios in the facilities that are not certified ICF/MR facilities.

c. Update the rule regarding the laws, rules, practices and definitions that have affected the rule since adoption of Rule 34 in November 1972.

The agency's authority to adopt proposed Rule 18 and amendments to Rule 34 are contained in Minn. Stat. §§ 252.28 and 245.781-245.814.

The agency estimates that there will be no cost to local public bodies in the State to implement these rules for the two years immediately following their adoption within the meaning of Minn. Stat. § 15.0412, subd. 7 (1978).

Copies of the proposed rule are now available and at least one free copy may be obtained by writing to Kay Brown, Department of Public Welfare, Centennial Building, St. Paul, MN 55155, telephone (612) 296-2682. Additional copies will be available at the hearing. If you have any questions on the content, contact Ardo Wrobel, Department of Public Welfare, (612) 296-2160.

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

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(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, Minnesota 55155, telephone (612) 296-5615.

August 28, 1980

Arthur E. Noot
Commissioner of Public Welfare

Rule as Proposed (all new material)

12 MCAR § 2.018 Standards for the provision of semi-independent living service (SILS) to people who are mentally retarded.

A. Statutory authority.

1. Minn. Stat. § 252.28 (1978), and, as amended, (1980) Laws of 1980, ch. 612, provide for the determination of need, location, and program of public and private residential and day care facilities and services for mentally retarded children and adults. This statute further provides that the commissioner shall establish uniform rules, regulations, and program standards for each type of residential and day facility or service for more than four retarded persons.

2. Minn. Stat. §§ 245.781-245.814, Public Welfare Licensing Act, provide for the development and promulgation of rules and regulations for the operation and maintenance of day care and residential facilities and agencies, for granting, suspending, and revoking licenses and provisional licenses. It also provides that no individual, corporation, partnership, voluntary association, or other organization may operate a day care or residential facility or agency unless licensed to do so by the Commissioner.

B. Introduction.

1. Statement of purpose.

a. To establish standards for the provision of services to mentally retarded persons whose dependency requires services above the level of food and lodging, but who do not need 24-hour per day care or supervision, as provided in residences licensed under 12 MCAR § 2.034.

b. To assist clients in achieving their highest potential in self-sufficiency and independence in the least restrictive environment.

c. To insure that an individual program plan is developed with each client, and each client receives those services he needs to achieve or maintain independence.

d. To prescribe minimum program standards for semi-independent living services.

2. Applicability.

a. This rule applies to any person, organization or association engaged in the operation and provision of semi-independent living services (SILS) to adults who are or may be mentally retarded, as provided and defined in 12 MCAR § 2.185 A.4.h. and i. This rule sets forth the requirements necessary for any individual, organization, or association providing SILS to more than four mentally retarded adults to be licensed pursuant to Minn. Stat. § 252.28, and Minn. Stat. §§ 245.781-245.814, the Public Welfare Licensing Act.

b. Licensure under this rule does not require concurrent compliance with other Department of Public Welfare licensing rules or with Minnesota Health Department Supervised Living Facility Standards promulgated under Minn. Stat. § 144.56.

c. This rule does not govern the living arrangement of clients. Semi-independent living services licensed under this rule may be provided to persons living in a variety of ordinary community settings other than state hospitals and community residential facilities licensed under 12 MCAR § 2.034 and supervised living facility standards. Community living arrangements in which SILS are provided may include the following, but not be limited to: client's own home, foster home, apartment or rooming house.

3. Procedures for licensing.

a. Application for determination of need for SILS shall be made to the county board or its designee. Procedures for determination of need shall be as provided for in 12 MCAR § 2.185 D.

b. Upon notification that a need for the service has been found by the commissioner, application for license may be made to the commissioner.

c. Applicants shall submit such materials and information as may be required by the commissioner to make proper determination of the nature and adequacy of the services to be provided. Application for license shall not be considered complete until all required documents have been received by the commissioner.

d. Any SILS provider desiring to renew a license shall submit an application at least 30 days prior to expiration of the license. A renewal license may be issued for a period up to two years at the discretion of the commissioner.

e. The license or a formal letter of denial, including reasons for denial, shall be issued within 90 days after receipt of the completed application. The initial license issued to any new SILS provider shall be provisional for a designated period of time not to exceed one (1) year (Minn. Stat. § 245.783, subd. 3).

f. If, in the licensing procedure or enforcement of these standards, the commissioner finds that to require a provider to comply strictly with one or more provisions of this rule will result in undue hardship, and if the SILS provider is in substantial compliance with the standards of this rule, a provisional license not to exceed one year may be granted to allow the SILS provider reasonable time to conform with these standards.

g. When a specific requirement cannot be met or an innovative alternative is desirable, a waiver must be requested in writing. The waiver request shall state (a) the reason the current requirement cannot be met, (b) the proposed alternative, and (c) the date the alternative or requirement shall be met not to exceed one year. No waiver shall be granted that would affect the health, safety or rights of clients.

4. Technical provisions.

a. Failure to comply with these standards or applicable state law shall be cause for denial, revocation or suspension of license.

b. Denial, revocation or suspension of license may be appealed pursuant to Minn. Stat. ch. 15, the Minnesota Administrative Procedures Act.

c. The provisions of this rule shall be severable. If any clause, sentence or provision is declared illegal or of no effect, the validity of the remainder of this rule and its applicability shall not be affected.

d. Any provision of this rule which is inconsistent with any state or federal law is superseded by that law.

C. Definitions.

1. "Applicant." Any adult referred to the SILS provider for services. The term may also refer to an applicant for licensure under this rule.

2. "Client." Adults who need more than room and board, but less than 24-hour per day program of service and supervision, receiving services as provided in this rule.

3. "Commissioner." Commissioner of Public Welfare or designee.

4. "County board." That body of duly elected officials responsible for the governance of its county under the authority of Minn. Stat. §§ 275.02-275.55. When a human service board has been established under Minn. Stat. §§ 402.02-402.10, it shall be considered to be the county board, for purposes of this rule.

5. "Individual program plan (IPP)." A detailed plan for each client which sets forth both short-term and long-term goals with detailed methods of achieving movement toward the individual service plan of the local social service agency.

6. "Individual service plan." An analysis by the local social service agency of services needed by the client, including identification of the type of residential placement, if needed, and the general type of program required by the client to meet the assessed needs within a specified period of time.

7. "Interdisciplinary team." A team consisting, at a minimum, of the client, the client's legal guardian (if any), local social service agency representative and the program director. Other persons relevant to a particular client's needs may be included. The interdisciplinary team is responsible for the development and evaluation of the client's individual program plan and determination of need for semi-independent living services.

8. "Legal guardian." A person(s) appointed under Minn. Stat. ch. 252A or ch. 525 as guardian or conservator of the person (or estate or both) of anyone who has been legally judged to be incompetent to manage his or her person or estate. The Commissioner of Public Welfare may be appointed as guardian or conservator.

9. "Local social service agency (LSSA)." A local agency designated and authorized by the county board of human service board, to be responsible for providing social services. Social services include the case management and referral of applicants for semi-independent living services.

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10. "May." Indicates that the provisions or practices stated in this rule are permitted.

11. "Mentally retarded person." A mentally retarded person refers to any person who has been diagnosed as having significantly subaverage intellectual functioning existing concurrently with demonstrated deficits in adaptive behavior and manifested during the developmental period.

12. "Normalization." To provide the client with a normal existence. If this is not possible, to provide the person with the alternative which is least restrictive. This includes making available to the client patterns and conditions of everyday life that are as close as possible to the norms and patterns of the mainstream of society.

13. "Provider." An individual, organization or association which exercises general direction over the policies and provision of SILS, and is responsible for the welfare of individuals being served.

14. "Semi-independent living services (SILS)." A system of services that includes training, counseling, instruction, supervision and assistance provided in accordance with the client's individual program plan. Services may include assistance in budgeting, meal preparation, shopping, personal appearance, counseling and related social support services needed to maintain and improve the client's functioning. Such services shall not extend to clients needing 24-hour per day supervision and services. Persons needing a 24-hour per day program of supervision and services shall not be accepted or retained in a semi-independent living service.

15. "Shall." Indicates that the requirement, provision, or practice stated in this rule is mandatory.

D. Program and service standards.

1. Admission. The provider shall maintain written policies and procedures, which shall be available to the local social service agency and to the general public, covering the following:

a. Pre-admission and admission procedures.

b. Pre-requisite client skills for admission.

c. Admission criteria including age, type and degree of handicap.

d. Nondiscriminatory practices with regard to race, creed, sex or national origin.

e. Description of services.

f. Discharge procedures.

g. Cost rates for services and arrangements available for payment.

h. The requirement that each client must have a current medical examination.

2. Comprehensive assessments.

a. Behavioral assessments.

(1) A standardized behavioral assessment, conducted by SILS staff at least annually, shall objectively describe the behavioral status of the client. The assessment instrument must be acceptable to the LSSA.

(2) Upon admission, the behavioral assessment shall be completed prior to the development of the individual program plan. This assessment may use data from any appropriate assessment conducted within the previous 12 months.

b. Physical assessment.

(1) Upon admission, there shall be a medical examination of the client conducted by a licensed physician within one year preceding admission, or one month following admission which includes re-evaluation date or schedule recommended by the physician.

(2) There shall be a record of dental examination in the client's record, and re-examination schedule recommended by the dentist.

c. Additional assessments determined to be needed by the inter-disciplinary team shall be conducted or arranged by the provider.

3. Individual program plan (IPP). The provider shall have a letter of referral from the local social service agency, including a copy of the individual service plan, for each client.

The interdisciplinary team shall evaluate each client's needs, and identify those needs having priority, within 30 days of admission. An annual individual program plan (IPP) for each client shall thereafter be established and evaluated to meet client needs.

a. The IPP shall be based on needs identified in the behavioral assessment, and on the individual service plan of the local social service agency, which shall include at least the following areas:

(1) Training in meal planning, meal preparation and shopping.

(2) Training in first-aid skills, responding to emergencies and symptoms of illness.

(3) Training in management of personal finances.

(4) Training in self-administration of prescription and nonprescription medication.

(5) Training in the use of the telephone and other public utilities.

(6) Development of the client's social, recreational and transportation abilities.

(7) Specific training plan concerning the development or more appropriate behaviors for clients displaying inappropriate behaviors.

(8) Training in matters of personal appearance and hygiene.

b. The IPP shall establish program goals and behavioral objectives stated in measurable terms which specify the time limit for achieving each behavioral objective. The IPP shall also identify the person(s) responsible for implementation of the IPP.

c. The IPP shall describe the service to be provided, and how they will be obtained.

d. The annual IPP shall be reviewed at least quarterly by staff. The reviews shall include written report of:

(1) Client's progress toward goals and behavioral objectives.

(2) Need for continued services and any recommendation concerning alternative services and/or living arrangements.

(3) Recommended change in guardianship status (if any).

E. Administrative standards.

1. The provider shall have a written statement of the SILS program philosophy, purpose and goals which:

a. Is consistent with the principles of normalization.

b. Includes expected client outcomes.

c. Is available to the public.

d. Is reviewed by the provider at least annually and revised as needed.

2. The SILS provider shall be responsible for program direction for all clients, which shall include the provision, continuation and coordination of services in accordance with the client's IPP.

3. The provider may employ one or more program directors to assist in program direction.

4. The provider may employ other staff to carry out the programs for clients, providing that such staff are under the supervision of a qualified program director.

a. The program director shall have at least a bachelor's degree in a field related to mental retardation services, and at least one year experience in working with mentally retarded persons. Five years' experience in working full-time with clients under professional supervision in a developmental program for mentally retarded persons, may be substituted for a bachelor's degree if in the judgment of the commissioner such experiences result in ability to perform the duties of the program director.

b. The program director shall insure that all clients know how to contact a staff person for assistance in an emergency.

c. The program director shall insure that the SILS program is in conformance with applicable civil rights and affirmative action laws.

5. Discharge.

a. Except in an emergency, planning for discharge shall be made only with prior involvement of the client, LSSA representative and guardian (if any).

b. Planning for termination of services by the provider shall include referral to any follow-up services the LSSA considers necessary.

c. The provider shall provide counseling about the advantages and disadvantages of termination of services to the client and/or legal guardian, if requested by the client or the LSSA.

d. The provider shall prepare a discharge summary which includes:

(1) A summary of findings, events, and progress during the period of services to the client.

(2) Written evidence of the reason for discharge.

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(3) If discharged to another service, specific recommendations for future programming shall be included in the discharge summary and transmitted to the LSSA of responsibility. A copy may be sent to the receiving service provider.

e. In the event of death of a client:

(1) The provider shall notify the LSSA and guardian or responsible relative.

(2) The date, time and circumstances of the client's death shall be recorded in the client's record.

(3) If the client dies unattended by a physician, the coroner or medical examiner shall be notified.

(4) Records of the deceased client shall be transmitted to the local social service agency.

6. Client records.

a. The SILS provider shall maintain a record for each client, which contains the following information:

(1) Client's name, address and telephone number, birth date, and date of admission to and discharge from SILS.

(2) Name, address and phone number of legal guardian (if any) and person to contact in an emergency.

(3) Record of current medication prescription and adverse reactions to drugs (if any).

(4) Special diet needs and food allergies (if any).

(5) Name and address of the client's LSSA case manager.

(6) Name and address of the client's physician or clinic and dentist.

(7) The results of behavioral and physical assessments conducted within the past twelve months and the LSSA's individual service plan.

(8) The client's IPP.

(9) Any physician's orders within the past two years, including special instructions for self-medication, care and treatment.

(10) Summary of professional service delivery during the past year, including specialized therapy, and the client's progress in therapy.

(11) Summary of client's progress or lack of progress in previous programs, job skills and employment history.

(12) Client's current place of employment or day program.

(13) A complete record of the client's funds if such funds are managed by the SILS provider.

b. Access to client records.

(1) All information contained in the client's record shall be handled in a manner consistent with the Government Data Practices Act, Minn. Stat. §§ 15.162-15.174. The client shall have access to his record upon request, with accommodations for interpretation that meets his needs.

(2) The provider shall be responsible for the safekeeping of client records, and for securing them against loss or use by unauthorized persons.

(3) The client's record shall be removed from the provider's jurisdiction and custody only in accordance with a court order, subpoena, or statute.

(4) The provider shall have written policies governing access, duplication and dissemination of information.

(5) Written consent of the client or guardian (if any) shall be required for the release of information concerning the client to persons not otherwise authorized to receive it. The client's record shall specify the information requested to be released, purpose for which the information is released and expiration date for release of information.

(6) All client records shall be maintained by the provider following discharge of the client for at least two years.

7. Client rights.

a. The provider shall have written policies and procedures concerning the exercise and protection of client human and civil rights, which shall be available to LSSA, clients, guardians.

b. The provider shall have complaint procedures which shall include:

(1) The name and telephone number of persons who may be contacted in order to register a complaint.

(2) The time schedule established for registration of complaints.

(3) The time limits for decisions to be made by the provider.

c. The provider shall inform clients of their right to appeal the suspension, reduction or termination of services to the commissioner pursuant to Minn. Stat. § 256.045 as a social service appeal.

d. Upon request of the client, the provider shall instruct and assist clients in how to obtain legal assistance.

e. The provider shall have a written statement of policies and procedures that protect the financial interests of the clients.

f. If the provider manages the client's money, the following shall be recorded:

(1) Written permission from the client or his legal guardian.

(2) Reasons the provider is to manage the client's money.

(3) A complete record of the use of the client's money and reconciliation of the account.

g. Clients who work for the SILS provider shall be considered employees of the provider with all the rights and privileges of an employee.

8. The provider shall have a current written description of its organization, which includes the major operating services and person(s) having administrative responsibility, available to the local social service agency.

9. The provider shall have written personnel policies available to staff. The policies shall include:

a. Application and hiring procedures.

b. Provisions for non-discrimination.

c. Description of probationary period, if any, and procedures for annual performance evaluation.

d. Procedures for suspension and dismissal.

e. Employee benefits.

f. Grievances and appeal procedures.

g. Prohibition of mistreatment, neglect, or abuse of clients, and mandatory reporting of any mistreatment, neglect or abuse.

h. Plans for staff orientation, training.

i. Prohibition of the use of any aversive or deprivation procedures.

10. The provider shall have a written plan and procedure in case of fire, severe illness, accident, severe weather and missing persons.

a. Orientation in emergency procedures shall be recorded for each client and employee within one month of admission or employment.

b. This plan shall be reviewed quarterly with clients.

11. The provider shall maintain records of financial transactions and agreements with the referring LSSA.

12. The provider shall have a written plan for establishing service rates, which shall include at least 30-day advanced notice of change in rates.

13. Living arrangements.

a. When living arrangements are provided by the SILS provider as a part of the SILS program, the living arrangements are not subject to this rule, and therefore need not be licensed facilities. Living arrangements are subject to applicable health, safety, sanitation and zoning codes. When living arrangements are provided as a part of the SILS program plan, the provider shall assure the local social service agency that the living arrangements are in conformance with the client's individual program plan, and applicable health, safety, sanitation and zoning codes. Living arrangements so provided shall include provisions for the preparation of meals, sleeping, bathing, mail, and access to telephone and transportation.

b. When living arrangements are not provided as a part of the SILS program, the provider may assist the local social service agency and client as agreed upon in:

(1) Choosing and arranging for an appropriate living environment.

(2) Developing client skills in choosing and making living arrangements.

(3) Developing client skills in shopping, seeking employment, paying rent and other bills, and in the use of public transportation and other community service.

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Amendments as Proposed

12 MCAR § 2.034 Standards for the operation of residential ~~facilities~~ programs and services for persons who are mentally retarded.

A. General provisions.

1. Scope.

a. ~~These regulations~~ This rule governs the operation of any ~~facility or service~~ residential programs engaged in, or seeking to engage in, the provision of residential or domiciliary service for mentally retarded individuals, and it ~~they~~ sets forth the requirements necessary for such a residence to be licensed.

b. Cost of boarding care outside of home or state institution is reimbursable by the state for care of children under 18 years of age in facilities licensed by the Department of Public Welfare. All participating facilities serving more than four mentally retarded children must be licensed under these regulations prior to participation.

c. Federal programs under the Social Security Act, as amended, require certification of participating facilities. All participating facilities serving more than four mentally retarded persons must be licensed under these regulations prior to certification.

2. Purpose.

a. The purpose of this rule is to establish the minimum standards for the operation of residential programs and services for mentally retarded persons residing in Licensed Supervised Living Facilities.

b. The purpose of ~~the licensing law~~ Minn. Stat. § 252.28 and ~~these regulations~~ this rule is to establish and protect the human right of mentally retarded persons to a normal living situation, through the development and enforcement of minimum requirements for the operation of residential ~~facilities and services~~ programs. Moreover, ~~these regulations~~ this rule serves an educational purpose in providing guidelines for quality service.

3. Statutory basis.

a. Minn. Stat. § 256.01 charges the Commissioner of Public Welfare with general responsibility for service to mentally retarded persons.

b. Minn. Stat. § 245.072 creates a mental retardation division in the Department of Public Welfare to "coordinate those laws administered and enforced by the Commissioner of Public Welfare relating to mental retardation and mental deficiency which the Commissioner may assign to the division."

c. Minn. Stat. § 252.28 charges the Commissioner of Public Welfare with the responsibility for licensing of residential facilities and services for mentally retarded persons.

4. Procedure for licensing.

a. Application shall be made to the Commissioner of Public Welfare, who may determine the need, location, and program of facilities and services seeking to be licensed or relicensed under these regulations. In making this determination, the commissioner shall be guided by ~~the~~ this rules ~~in this and subsequent sections~~ and ~~by the state advisory board created and established to assist him in carrying out the provisions of this act.~~ other state agency rules promulgated under Minn. Stat. § 252.28, subd. 1., including 12 MCAR § 2.185.

b. Applicants shall submit such materials and information as may be required to make a proper determination of the nature and adequacy of the ~~facility or service~~ residential program to be provided.

c. Applicants must have, or have applied for, a Supervised Living Facility license from the State Department of Health, MHD 391-401.

d. ~~c.~~ A ~~facility or service~~ residential program desiring to renew its license shall submit an application at least 45 days prior to expiration of the license. ~~All licenses shall expire one year after date of issuance unless sooner revoked.~~ A renewal license may be issued for a period of up to two years at the discretion of the commissioner.

e. ~~d.~~ If, in the licensing procedure or enforcement of these rules, the commissioner finds that to require a ~~facility or service~~ residential program to comply strictly with one or more provisions of these rules will result in undue hardship, and if the ~~facility or service~~ residential program is in substantial compliance with the intent and purpose of these rules, a provisional license may be granted to allow reasonable time to conform to these rules.

f. A residential program may request in writing a waiver of a specific provision of the rule. The request for a waiver must cite the provision of the rule in question, reasons for requesting the waiver, the period of time not to exceed one year the licensee wishes to have the provision waived and the equivalent measures planned for assuring that programmatic needs of residents are met. Waivers granted by the commissioner shall specify in writing the time limitation and required equivalent measures to be taken to assure that programmatic needs are met. Waivers denied by the commissioner shall specify in writing the reasons for the denial. No waiver shall be granted that would adversely affect the health, safety or rights of residents.

5. Refusal or revocation of license.

a. Failure to comply with these regulations or applicable state laws shall be cause for refusal or revocation of license.

b. Failure to be licensed as a Supervised Living Facility by the Minnesota Health Department (Chapter Twenty Three: MHD 391-401, or its successor) shall be cause for refusal or revocation of license.

~~b. The right of fair hearing and appeal shall be honored in accordance with Minnesota law.~~

c. Revocation, suspension or denial of a license may be appealed pursuant to Minn. Stat. ch. 15.

6. Definitions.

a. "Ambulatory." ~~Able~~ The ability to walk independently and at least negotiate any barriers, such as ramps, stairs, corridors, doors, etc., without assistance as may be necessary to get in and out of the facility.

b. "Executive Officer." The individual appointed by the governing body (see below) of a ~~facility~~ residential program to act in its behalf in the overall management of the facility. Job titles may include, but are not limited to, superintendent, director and administrator.

~~c. Facility—A general term used in this Rule to refer to a residential or domiciliary service that has a physical plant and an administrative organization and/or structure for the purpose of providing room, board, training, and supervision for more than four mentally retarded individuals on a 24-hour basis. These facilities include, but are not limited to, group homes, child caring institutions, board and lodging homes, boarding care homes, nursing homes, state hospitals, institutions, and regional centers. Facility consists of one or more living units (see below).~~

c. ~~d.~~ "Governing body." The policy-making authority, whether an individual or a group, that exercises general direction over the affairs of a ~~facility~~ residential program and establishes policies about its operation and the welfare of the individuals it serves. The governing body is responsible for the operation of the residential program and for compliance with this rule.

d. ~~e.~~ "Interdisciplinary team." A general term used in this ~~Rule~~ rule to refer to persons representing professions, disciplines, or service areas as are relevant in each particular case, and including parents and the referring agency (see below). The interdisciplinary team shall evaluate the resident's needs, plan an individualized program to meet identified needs, and periodically review the resident's response to his program.

e. ~~f.~~ "Legal incompetence." The legal determination that a resident is unable to exercise his full civil and legal rights and that a guardian (see parent below) is required.

f. ~~g.~~ "Living unit." A resident-living unit that houses the primary living group (see below) and provides access to bedroom, living room, recreation/activity room, dining room, kitchen, and bathroom.

g. ~~h.~~ "Living unit staff." Individuals who conduct the resident-living program; resident-living staff.

h. ~~i.~~ "May." Indicates that the provisions or practices stated in this ~~Rule~~ rule are permitted.

i. ~~j.~~ "Mental retardation." Refers to persons who have been diagnosed as having significantly subaverage ~~general~~ intellectual functioning ~~that originates during the developmental period and is associated~~ existing concurrently with ~~impairment~~ demonstrated deficits in adaptive behavior~~.~~, and manifest during the developmental period.

j. ~~k.~~ "Mobile." ~~Able~~ Ability to move independently from place to place with the use of devices such as walkers, crutches, wheelchairs, wheeled platforms, etc.

k. ~~l.~~ "Multiple-handicapped." In addition to mental retardation, an orthopedic, incoordinative, or sensory disability that culminates in significant reduction of mobility, flexibility, coordination, or perception and that interferes with an individual's ability to function independently.

l. ~~m.~~ "Nonambulatory." ~~Unable~~ Inability to walk independently. ~~or without assistance.~~

m. ~~n.~~ "Nonmobile." ~~Unable~~ Inability to move independently from place to place.

n. ~~o.~~ "Normalization principle." The principle of letting ~~the~~ persons who are mentally retarded obtain an existence as close to the normal as possible, making available to them patterns and conditions of everyday life that are as close as possible to the norms and patterns of the mainstream of society.

o. ~~p.~~ "Parent." The general term used in this ~~Rule~~ rule to refer to the natural parent, or other person who fills the legal or social role of the natural parent (i.e., represents the rights and interests of the mentally retarded persons as if they were his own). May include an advocate as one who acts on behalf of a resident to obtain needed services and the exercise of his full human and legal rights;

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legal guardian as one appointed by a court; guardian of the person as one appointed to see that the resident has proper care and protective supervision in keeping with his needs; guardian of the property as one appointed to see that the financial affairs of the resident are handled in his best interests; guardian ad litem as one appointed to represent a resident in a particular legal proceeding; public guardian as a public official empowered to accept court appointment as a legal guardian (i.e., the Commissioner of Public Welfare or his agent); or testamentary guardian as one designated by the last will and testament of a natural guardian.

p. ~~q.~~ "Primary-living group." That group characterized by face-to-face relations that are personal, spontaneous, and typically (although not necessarily) long lasting. Members of a primary group are drawn together by the intrinsic value of the relations themselves rather than by a commitment to an explicit goal. The family is an example of a primary group.

q. ~~r.~~ "~~Service~~ Program." The general term used in this ~~Rule~~ rule to refer to all people, events, and environments that lead to a purposeful outcome (goal or objective) for the individual resident. These services include, but are not limited to, training and maintenance of the individual; the design, furnishing, and use of space; staff and staffing patterns; and professional and volunteer services.

r. ~~s.~~ "Resident." The general term used in this ~~Rule~~ rule to refer to an individual who receives service ~~from~~ in a residential ~~facility~~ program (see below), whether or not such individual is actually in residence in the facility. The term thus includes individuals who are being considered for residence in a facility and individuals who were formerly in residence in a facility. (A residential ~~facility~~ program, on the other hand, may use the term "resident" to refer only to those individuals actually in residence.)

s. ~~t.~~ "Referring agency." The general term used in this ~~Rule~~ rule to refer to the local social service agency responsible for establishment and implementation of case-~~work~~ management plans for individuals and particular families with mental retardation problems and for the provision of specific financial or case-work services to these individuals and families. In Minnesota, the county ~~welfare~~ board is ~~created by law and~~ charged with administrative responsibility for these duties. Responsibility for ~~certain of~~ these duties ~~is~~ may be delegated to the ~~county welfare director~~ local social service agency. ~~(see Administrative Manual 1-7100 and Social Service Manual II-8251 and 8255.)~~

t. "Resident-living." Pertaining to residential or domiciliary services.

~~e. Facility.~~

u. "Residential program." A general term used in this ~~Rule~~ rule to refer to ~~a residential or domiciliary service that has a physical plant and~~ the program of services to residents of a Supervised Living Facility which has an administrative organization and/or structure for the purpose of providing care, food, lodging, ~~room, board,~~ training, ~~and~~ supervision, habilitation and treatment as needed for more than four mentally retarded individuals on a 24-hour per day basis. ~~These facilities include~~ Residential programs may also be known as, but are not limited to group homes, child-caring institutions, ~~board and lodging homes~~ boarding-care homes, nursing homes, state hospitals, public institutions, and regional centers. ~~Facility consists of one or more living units (see above).~~

v. ~~u.~~ "Restraint." Any physical device or chemical substance that limits the free and normal movement of body or limbs. Mechanical supports used in normaltive situations to achieve proper body position and balance shall not be considered restraints.

w. ~~v.~~ "Rhythm of life." Relating to the normalization principle (see above), under which making available to ~~the~~ mentally retarded persons patterns and conditions of everyday life that are as close as possible to the norms and patterns of the mainstream of society means providing a normal rhythm of the day (in relation to arising, getting dressed, participating in play and work activities, eating meals, retiring, etc.) normal rhythm of the week (differentiation of daily activities and schedules), and normal rhythm of the year (observing holidays, days with personal significance, vacations, etc.).

x. ~~w.~~ "Seclusion." Involuntary removal from social contact with others, in a separate room.

y. ~~x.~~ "Shall." Indicates that the requirement, provision, or practice stated in this ~~Rule~~ rule is mandatory.

z. ~~y~~ "Supervised Living Facility." A general term used in this rule to refer to the facility in which the health, treatment, comfort, safety and well-being of persons is provided. Supervised Living Facilities are licensed by Minnesota Health Department, in accordance with Minn. Stat. § 144.56 (1971).

aa. ~~z.~~ "Time-out." Time out from positive reinforcement. A behavior modification procedure in which, contingent upon the emission of undesired behavior, the resident is removed from the situation in which positive reinforcement is available.

B. The resident-living unit.

1. Grouping and organization of living units.

a. The resident-living unit (subsequently called living unit) shall be small enough to ensure the development of meaningful interpersonal relationships among residents and between residents and staff.

(1) The living unit is that unit which houses the primary living group. It may be a group home, foster home, ward, wing, floor, etc.

(2) The living unit shall contain bedroom, living room, bathroom, recreation room, and connecting areas. It may contain dining room and kitchen. Facilities with more than four mentally retarded persons in residence on ~~the effective date of this Rule~~ November 17, 1972 shall be deemed to be in substantial compliance with this provision, except that the living unit shall contain bedroom and living room areas.

(3) The living unit shall be physically, socially and functionally differentiated from areas for developmental and remedial services (see Part ~~III~~ C of this ~~Rule~~ rule) and shall simulate the arrangements of a home in order to encourage a personalized atmosphere for residents.

(4) The size of the living unit shall be based upon the needs of the residents, but the living unit shall provide for not more than 16 residents.

b. The living unit or complex of such units shall house both male and female residents to the extent that this conforms to the prevailing cultural norms and unless contraindicated by program plan. Such living arrangements shall include provision for privacy and for appropriate separation of male and female residents.

c. The living unit shall not be a self-contained program unit unless contraindicated by program plans of the particular residents being served, and living unit activities shall be coordinated with developmental and remedial services in which residents engage outside the living unit.

d. Residents shall be allowed free use of all space within the living unit, with due regard for privacy and personal possessions.

e. Each resident shall have access to a quiet, private area where he can withdraw from the group.

f. Outdoor active play or recreation areas shall be readily accessible to all living units.

g. Interior and exterior doors shall not be locked except to protect the resident from clear and present danger, or in conjunction with a behavior modification program (see Part B.-3.i. of this ~~Rule~~ rule). In no case shall locked doors be a substitute for program or staff interaction with residents.

2. Physical plant.

a. Design.

(1) The living unit shall be physically self-contained. Walls defining the living unit shall extend from floor to ceiling.

(2) The interior design of the living unit shall simulate the functional arrangements of a home to encourage a personalized atmosphere for a small group of residents unless it has been demonstrated that another arrangement is more effective in maximizing the development of specific residents being served.

(a) Space shall be arranged to permit residents to participate in different kinds of activities, both in groups and singly.

(b) Space shall be arranged to minimize noise and permit communication at normal conversation levels.

(c) Walls defining each room in the living unit shall extend from floor to ceiling.

(3) Bedrooms shall: accommodate from one to four residents.

~~(a) Be on or above grade level.~~

~~(b) Be outside rooms.~~

~~(c) Accommodate from one to four residents.~~

~~(d) Provide at least 60 square feet per resident, exclusive of closet space.~~

(4) Doors to bedrooms:

(a) Shall not have vision panels.

(b) Shall not be capable of being locked, except where residents may lock their own bedroom doors, as consistent with their program.

(5) There shall be provision for residents to mount pictures on bedroom walls.

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(6) Space outside the bedroom shall be provided for equipment for daily out-of-bed activity for all residents not yet mobile, except those who have a short-term illness or those for whom out-of-bed activity is a threat to life.

(7) Toilet areas shall be located in such places as to facilitate training toward maximum self-help by residents.

(a) Water closets, showers, bathtubs, and lavatories shall approximate normal patterns found in homes, unless specifically contraindicated by program needs.

(b) Toilets, bathtubs, and showers shall provide for individual privacy unless specifically contraindicated by program needs.

~~(c) There shall be at least one water closet of appropriate size for each six residents.~~

~~(d) There shall be at least one lavatory of appropriate size for each six residents.~~

~~(e) There shall be at least one tub or shower of appropriate size for each eight residents.~~

b. Furnishings and equipment.

(1) Furnishings shall be appropriate to the physiological, emotional and developmental needs of each resident.

~~(2) Each resident shall be provided with:~~

~~(a) A separate bed of proper size and height.~~

~~(b) A clean, comfortable mattress.~~

~~(c) Bedding appropriate to the climate.~~

~~(d) A place of his own for personal belongings.~~

~~(e) Individual furniture, such as a chest of drawers, table or desk, and an individual closet with clothes racks and shelves.~~

~~(f) A mirror; tilted mirrors shall be available to mobile nonambulatory residents.~~

~~(g) Private storage space for clothing in the bedroom area, and accessible to all, including mobile nonambulatory residents.~~

~~(h) Individual racks or other drying space for washcloths and towels.~~

(2) ~~(3)~~ Dining areas shall:

(a) Be furnished to stimulate maximum self-development, social interaction, comfort, and pleasure.

(b) Promote a pleasant and home-like environment and be attractively furnished and decorated and of good acoustical quality.

(c) Be equipped with tables, chairs, eating utensils, and dishes designed to meet the developmental needs of each resident.

(3) ~~(4)~~ Each resident shall have access to drinking water in the living units.

(4) ~~(5)~~ Equipment shall be provided for toilet training, as appropriate, including equipment for use by the multiple-handicapped.

c. Safety ~~and sanitation~~.

~~(1) There shall be written plan and procedures, which are clearly communicated to, and periodically reviewed with, staff and residents, for meeting emergencies such as fire, serious illness, severe weather, and missing persons.~~

~~(a) The plan and procedures shall include, but not be limited to:~~

~~(i) Plans for assignment of staff and residents to specific tasks and responsibilities.~~

~~(ii) Instructions relating to the use of alarm systems and signals.~~

~~(iii) Information on methods of fire containment.~~

~~(iv) Systems for notification of appropriate persons.~~

~~(v) Information on the location of fire-fighting equipment.~~

~~(vi) Specification of evacuation routes and procedures.~~

(1) ~~(b)~~ Residents shall receive appropriate instruction in safety precautions and procedures.

(2) First-aid equipment, approved by a physician, shall be maintained on the premises in a readily available location, and staff shall be instructed in its use.

(3) Applicable requirements of the State Fire Marshal or his agent shall be met.

~~(4) Applicable requirements of the State Department of Health or its agent shall be met.~~

~~(5) Applicable requirements of state or local building code shall be met.~~

3. Staff-resident relationships and activities.

a. The objective in staffing each living unit shall be to maintain reasonable stability in the assignment of staff, thereby permitting the development of a consistent interpersonal relationship between each resident and one or two staff members. Provisions shall be made to ensure that the efforts of the staff are not diverted from these responsibilities by excessive housekeeping and clerical duties, or other nonresident-involved activities.

b. The primary responsibility of the living-unit staff shall be to devote their attention to the care and development of the residents.

(1) Living-unit staff shall be responsible for the development and maintenance of a warm, family, or home-like environment that is conducive to the achievement of optimal development by the resident.

(2) Living-unit staff shall train residents in activities of daily living and in the development of self-help and social skills.

c. Living-unit staff shall participate in assessment, program planning, and evaluation activities relative to the development of the resident (see ~~Part III~~ C. of this ~~Rule~~ rule). A program plan for each resident shall be available to staff in each living unit.

d. The rhythm of life in the living unit shall resemble the cultural norm for the residents' nonretarded age peers unless a departure from this rhythm is justified on the basis of maximizing the residents' human qualities.

(1) Residents shall be assigned responsibilities in the living units commensurate with their interests, abilities, and program plans, in order to enhance feelings of self-respect and to develop skills of independent living.

(2) Multiple-handicapped and nonambulatory residents shall:

(a) Spend a major portion of their waking day out of bed.

(b) Spend a major portion of their waking day out of their bedroom areas.

(c) Have planned daily activity and exercise periods.

(d) Be rendered mobile by various methods and devices.

(3) All residents shall have planned periods out-of-doors on a year-round basis.

(4) Except as limited by program plan, residents shall be instructed in how to use, and shall be given opportunity for freedom of movement.

(5) Birthdays and special events should be individually observed.

e. Residents' views and opinions on matters concerning them shall be elicited and given consideration in defining the processes and structures that affect them.

f. Residents shall be instructed in the free and unsupervised use of communication processes. Except as denied individual residents by program plan, this may include:

(1) Having access to telephones for incoming and local outgoing calls.

(2) Having access to pay telephone, or the equivalent, for outgoing long distance calls.

(3) Opening their own mail and packages and generally doing so without direct surveillance.

(4) Not having their mail read by staff, unless requested by the resident.

g. Residents shall be permitted personal possessions, such as toys, books, pictures, games, radios, arts and crafts material, religious articles, toiletries, jewelry, and letters.

h. Regulations shall permit normal possession and use of money by residents.

(1) Residents shall be trained in the use of money.

(2) Allowance or opportunities to earn money shall be available to residents.

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i. There shall be provisions for prompt recognition of behavior problems, as well as appropriate management of behavior in the living unit. These provisions shall be subject to review by a research, review, and/or human rights committee (see ~~Part V.B.~~ E.2.d.(2) of this ~~Rule~~ rule).

(1) There shall be a written statement of policies and procedures for the control and discipline of residents that:

(a) Is directed to the goal of maximizing the growth and development of the residents.

(b) Is available in each living unit.

(c) Is available to parents.

(d) Provides for resident participation, as appropriate, in the formulation of such policies and procedures.

(2) Corporal punishment shall not be permitted.

(3) Residents shall not discipline other residents, except as part of an organized self-government program that is conducted in accordance with written policy.

(4) ~~Except in conjunction with a behavior modification program, physical~~ Physical restraint shall be employed only when absolutely necessary to protect the resident from injury to himself or to others; and restraint and seclusion shall not be employed as punishment, for the convenience of staff, or as a substitute for program.

(a) The facility shall have a written policy that defines the uses of restraint, the staff members who may authorize its use, and a mechanism for monitoring and controlling its use.

(b) This policy shall be available in each living unit.

(c) Totally enclosed cribs and barred enclosures shall be considered restraints.

(5) Each use of restraint and seclusion shall be recorded in the resident's record. This record shall include:

(a) A description of the precipitating behavior.

(b) Expected behavioral outcome.

(c) Actual behavioral outcome.

(6) Rooms used for seclusion:

(a) Shall be furnished with a bed and bedding, a chair, a commode, and a lavatory.

(b) Shall afford proper access to drinking water.

(7) Chemical restraint shall not be used excessively, as punishment, for the convenience of staff, as a substitute for program, or in quantities that interfere with a resident's program. Each use of a behavior-controlling drug shall be recorded in the resident's record. This record shall include:

(a) A description of the behavior to be modified.

(b) Expected behavioral outcome.

(c) Possible side or secondary effects.

(d) Date for review or termination.

(e) Actual behavioral outcome.

(8) Behavior modification programs involving the use of time-out devices or the use of noxious or aversive stimuli shall be conducted only with the consent of the affected resident's parent and shall be described in written plans that are kept on file in the facility.

4. Health, hygiene, and grooming.

a. General.

(1) Procedures shall be established for:

(a) Monthly weighing of residents, with greater frequency for those with special needs.

(b) Quarterly measurement of height, until the age of maximum growth.

(c) Maintenance of weight and height records. Every effort shall be made to ensure that residents maintain normal weights.

~~(2) Policies and procedures for the care of residents with infections and contagious diseases shall conform to state and local health department regulations.~~

~~(3) Orders prescribing bed rest shall be self-terminating in three days unless renewed by a physician's order.~~

(2) ~~(4)~~ Provisions shall be made to furnish and maintain in good repair, and to train residents in the use of, dentures, eyeglasses, hearing aids, braces, etc., prescribed by appropriate specialists.

b. Residents shall be trained to exercise maximum independence in health, hygiene, and grooming practices, including bathing, brushing teeth, shampooing, combing and brushing hair, shaving, and caring for toenails and fingernails.

(1) Each resident shall be assisted in learning normal grooming practices with individual toilet articles that are appropriately available to that resident.

(2) Living unit staff shall be instructed in each resident's daily oral care program and shall be responsible to see that it is carried out.

(a) Whenever possible, the resident shall be instructed in, and learn to carry out, his own program of daily oral care.

(b) Dental care practices should encourage the use of newer equipment, such as electric toothbrushes and water picks, as described.

(c) Individual brushes shall be properly marked, used, and stored.

(d) Teeth shall be brushed daily with dentifrice.

(3) Hair cutting and styling, in an individualized manner consistent with current style, shall be accessible to all residents.

(4) For residents who require such assistance, cutting of toenails and fingernails by trained personnel shall be scheduled at regular intervals.

(5) Each resident shall have a shower or tub bath as needed.

(a) Residents' bathing shall be conducted at the most independent level possible.

(b) Residents' bathing shall be conducted with due regard for privacy.

(c) Individual washcloths and towels shall be used.

(6) Female residents shall be helped to attain maximum independence in caring for menstrual needs. Menstrual supplies shall be of the same quality and diversity available to all women.

c. Residents shall be instructed in the use of drinking units.

(1) Those residents who cannot use the unit shall be given the proper daily amount of fluid at appropriate intervals adequate to prevent dehydration.

(2) A drinking unit shall be available to, and usable by, mobile nonambulatory residents, as needed.

(3) Special cups and noncollapsible straws shall be available when needed by the multiple-handicapped.

(4) If the drinking unit employs cups, only single-use, disposable types shall be used.

d. Every resident who does not eliminate appropriately and independently shall be engaged in a toilet training program. ~~(1)~~ Residents who are incontinent shall be immediately bathed or cleansed, upon voiding or soiling unless specifically contraindicated by a plan for toilet training; and all soiled clothing shall be changed.

~~(2) Persons shall wash their hands after handling an incontinent resident.~~

5. Clothing.

a. Each resident shall have an adequate allowance of neat, clean, fashionable, and seasonable clothing.

(1) Each resident shall have his own clothing that is, when necessary, inconspicuously marked with his name, and he shall use this clothing.

(2) Such clothing shall make it possible for residents to go out of doors in inclement weather and to make a normal appearance in the community.

(3) Nonambulatory residents shall be dressed daily in their own clothing, including shoes, unless contraindicated by program plan.

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(4) Washable clothing shall be designed for multiple-handicapped residents being trained in self-help skills.

(5) Clothing for incontinent residents shall be designed to foster comfortable sitting, crawling and/or walking, and toilet training.

b. Residents shall be trained and encouraged to:

(1) Select and purchase their own clothing as independently as possible, preferably utilizing community stores.

(2) Select their daily clothing.

(3) Dress themselves.

(4) Change their clothes to suit the activities in which they engage.

(5) Maintain (launder, clean, and mend) their clothing as independently as possible.

6. Food service.

a. Food services shall recognize and provide for the physiological, emotional, cultural and developmental needs of each resident.

(1) There shall be a written statement of goals, policies, and procedures that ~~is prepared and reviewed periodically in consultation with a nutritionist or dietitian.~~ governs food service.

~~(2) A nutritionally adequate diet that meets the current Recommended Daily Dietary Allowances, Food and Nutrition Board, National Academy of Science, shall be provided.~~

(2) ~~(3)~~ The diet provided shall include foods that stimulate chewing, unless contraindicated by program plan.

~~(4) When food services are not directed by a nutritionist or dietitian, regular, planned, and frequent consultation with a qualified nutritionist or dietitian should be utilized.~~

~~(a) Records of consultations and recommendations shall be maintained by the facility.~~

~~(b) An evaluation procedure shall be established to determine the extent of implementation of the consultant's recommendation.~~

~~(5) Menus shall be kept for six months.~~

b. Residents shall have opportunity to be trained and participate in food preparation and service.

c. All residents, including the mobile nonambulatory, shall eat or be fed in dining rooms, except when contraindicated by program plan.

(1) All residents, including the mobile nonambulatory, shall eat at a table.

(2) Dining arrangements shall be based upon a plan to meet the needs of the residents and the requirements of their programs.

(a) Dining and serving arrangements shall provide for a variety of eating experiences (e.g., cafeteria and family style), and, when appropriate, for the opportunity to make food selections with guidance.

(b) Unless justified on the basis of meeting the program needs of the particular residents being served, dining tables shall seat small groups of residents (typically four to six at a table) and include both sexes.

(3) Dining rooms shall be supervised and staffed for the direction of self-help eating procedures and to ensure that each resident receives an adequate amount and variety of food.

(4) Staff members shall be encouraged to eat with those residents who have semi-independent or independent eating skills.

(5) For residents not able to get to dining areas, food service practices shall permit and encourage maximum self-help and shall promote social interaction and a pleasant meal time experience.

d. Residents shall be provided with systematic training to develop eating skills, utilizing adaptive equipment when it serves the developmental process.

(1) A plan for the remediation of eating problems shall be implemented for all residents with special disabilities. This plan shall be consistent with the individual's developmental needs.

(2) Living-unit staff shall be trained in and shall utilize proper feeding techniques when a resident must be fed.

(a) Residents shall be fed in an upright position.

(b) Residents shall be fed in a manner consistent with their developmental needs (for example, infants shall be fed in arms).

(c) Residents shall be fed at normal consumption rates, and the time allowed for eating shall be such as to promote the development of self-feeding abilities, to encourage socialization, and to provide a pleasant mealtime experience.

~~e. Modified diets shall be:~~

~~(1) Prescribed by a qualified person, with a record of the prescription kept on file.~~

~~(2) Planned, prepared, and served by persons who have received adequate instruction.~~

~~(3) Reviewed every 90 days and adjusted as needed.~~

C. Developmental and remedial services.

1. General provisions.

a. In addition to resident-living services detailed in ~~Part H~~B. of this ~~Rule~~ rule, residents shall be provided with developmental and remedial services called for by individual assessment and program plan. These services may be provided in two ways:

(1) Within the facility and by staff employed by the ~~facility~~ residential program, except that developmental services, as here defined, shall not be provided in the living unit unless contraindicated by the assessed needs of the particular residents being served.

(2) Outside of the facility and by agreement between the facility and other agencies or persons.

b. All developmental and remedial services, as here defined, shall be rendered outside of the facility, whenever possible, and when rendered in the facility, such services must be at least comparable to those provided in the community.

2. Assessment.

~~Facility~~ Residential program staff shall participate in regular—at least annual—assessment of each resident. The assessment shall cover behavioral and physical status of the resident and shall be conducted by an interdisciplinary team.

a. Behavioral assessment.

(1) Shall utilize objective description to the greatest degree possible.

(2) Shall include the resident, when he is capable of participation, and data supplied by his parents, when appropriate, and by living unit staff.

(3) Shall include, but not be limited to, the following areas:

(a) Educational assessment. All school-age children shall be assessed annually in accordance with guidelines of a properly designated school authority, in order to determine eligibility for public school class. School-age is defined as ~~five~~ four years to 21 years for mentally retarded children and shall not extend beyond secondary school.

*(b) Self-care skills.

*(c) Economic skills.

*(d) Language development.

*(e) Number and time concepts.

*(f) Domestic occupation.

*(g) Vocational skills.

*(h) Maladaptive behavior and emotional disturbances.

b. Physical assessment.

*A ~~facility~~ residential program shall be in substantial compliance with these provisions when the American Association of Mental Deficiency Adaptive Behavior Scale, or the Minnesota Developmental Programming System (MDPS), is used for behavioral assessment.

(1) Physical assessment for children shall be performed as recommended by the Council on Pediatrics~~, Standards of Child Health Care (Evanston, Illinois: 1967)~~.

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(2) Physical assessment for adults shall be performed at least annually and shall include, but not necessarily be limited to:

(a) Physical examination.

(b) Blood count.

(c) Urinalysis.

(d) Determination of freedom from tuberculosis.

~~(3) Dental assessment shall be performed at least annually. Dental examinations for children shall begin by three years of age.~~

(3) ~~(4)~~ Drug assessment: A resident who receives daily medications for a chronic condition shall have a planned and recorded schedule for examination and review of his medication regimen. Use of prescribed medications shall not be continued past the scheduled time for examination. Persistent deviancy in use of a drug by a resident, or adverse reaction to a drug, shall be considered in adjustment of the resident's program plan.

(4) ~~(5)~~ Physical and motor assessment shall be performed at least annually for persons under 16 years of age, and as needed thereafter.

(5) ~~(6)~~ Speech and language assessment shall be performed annually for persons under 16 years of age, and as needed thereafter.

(6) ~~(7)~~ Vision assessment shall be performed annually.

(7) ~~(8)~~ Hearing assessment shall be performed annually for persons under ten years of age, and thereafter when hearing change is suspected.

(8) ~~(9)~~ Dietary assessment shall be performed at least every 90 days for residents receiving a therapeutic diet.

(9) ~~(10)~~ Psychological assessment shall be performed at least every three years for persons under 16 years of age, and as needed thereafter. Current psychological assessment data (less than one year old) available from the referring agency may be utilized to comply with this requirement.

3. Program and treatment plan. ~~Facility~~ Residential program staff shall participate with an interdisciplinary team including Developmental Achievement Center staff, in the formulation of an individualized program and treatment plan for each resident. Facility staff shall be responsible for implementation of the plan.

a. General provisions. The formulation of individualized program and treatment plans shall:

(1) Define specific and time-limited objectives for behavioral and physical development.

(2) Consider the proper exercise of the residents' and parents' civil and legal rights, including the right to adequate service.

(3) Define needed services without consideration of the actual availability of desirable options.

(4) Investigate and weigh all available and applicable services.

(5) Determine the resident's need for remaining in the facility.

(6) Consider the need for (continued) guardianship or conservatorship or restoration to capacity of the resident.

b. Developmental services. All developmental services utilized by residents shall be provided by persons, facilities, or services licensed or certified to provide these services.

(1) Developmental services shall be utilized to promote the intellectual, physical, affective, and social development of each individual, and may include:

(a) ~~Daytime activity services.~~ Developmental achievement services.

(b) Educational services.

(i) All school-age children shall attend public school class unless specifically excluded by the responsible school district. A school program operated by the facility shall meet the standards of the State Department of Education and the local school district.

(c) Recreational services.

(d) Religious services.

(e) Sheltered-workshop services.

(f) Social-work services.

(g) Vocational-training and placement services.

c. Health services: ~~All health services utilized by residents shall be provided by persons or facilities licensed or certified to provide such services.~~

(1) Health services shall be utilized:

(a) To maintain an optimal general level of health for each resident.

(b) To maximize function, prevent disability, and promote optimal development of each resident.

~~(2) Health services may include, but not be limited to:~~

~~(a) Audiology and speech services.~~

~~(b) Dental services.~~

~~(c) Dietary services.~~

~~(d) Hospital services.~~

~~(e) Medical services.~~

~~(f) Nursing services.~~

~~(g) Pharmacy services.~~

~~(h) Physical and occupational therapy services.~~

~~(i) Psychological services.~~

(2) ~~(3)~~ Residents who are members of an organized religious group opposed to any health practices may be excused from regulations applying to personal health upon written request by the resident or his parents; but they shall be subject to requirements for control of outbreaks of infectious disease.

4. Evaluation. ~~Facility~~ Residential program staff shall participate with an interdisciplinary team in the evaluation of all services utilized by residents as reflected by each resident's level of functioning.

a. This evaluation shall include evaluation of resident movement toward objectives stated in the program plan.

b. The evaluation shall include the views of the resident and his parents.

c. The evaluation shall include the views of the ~~facility~~ program advisory committee (see E.2.) and appropriate agencies.

D. Admission and release procedures.

1. General provision.

a. No resident shall be admitted to a ~~facility~~ residential program prior to its being licensed.

b. The number of residents admitted to the ~~facility~~ program shall not exceed its licensed ~~space and~~ program capacity.

c. The ~~facility~~ residential program shall make descriptive information available to the public that includes, but is not limited to:

(1) Preadmission and admission services and procedures.

(2) Limitations of age, length or place of residence, and type or degree of handicap.

(3) Developmental and remedial services provided by ~~facility~~ program staff.

(4) Developmental and remedial services provided by agreement with other agencies or persons.

(5) Means for individual programming for residents in accordance with need.

(6) The plan for grouping residents into living units.

(7) Release and follow-up services and procedures.

d. The ~~facility~~ residential program shall have an admission and release committee (see E.2.d.(3) of this ~~Rule~~ rule) that shall:

(1) Include consumers and their representatives, interested citizens, and relevantly qualified professions.

(2) Review all applications and advise the administration of the ~~facility~~ residential program on selection, admission, and release of residents.

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e. The laws, regulations and procedures on admission, readmission, and release shall be summarized and available for distribution.

f. Admission and release procedures shall:

(1) Encourage voluntary admission upon application of the resident or his parent.

(2) Give equal priority to persons of comparable need, whether application is voluntary or by a court.

(3) Facilitate emergency, partial, and short-term care when feasible.

(4) Ensure the rights and integrity of the resident and his parent.

(5) If respite care services are provided, there shall be a written policy defining respite care which includes:

(a) Minimum and maximum time limit.

(b) Conditions and procedures for admission (emergency; vacations; etc.).

(c) Age and developmental level. Respite care admissions must approximate the standard admission criteria.

(d) Description of services provided.

(e) Type of services to be provided.

(f) Charges for respite care.

(6) Ensure the resident the maximum opportunity to participate in admission and release decisions.

(7) Ensure the resident is informed of right to appeal the suspension, reduction, termination or denial of services to the Commissioner of Public Welfare pursuant to Minn. Stat. § 256.045 as a Social Service appeal.

g. Upon determination of the possible inadmissibility of a resident, the ~~facility~~ residential program shall consult with the referring agency and with his parents.

2. Selection and eligibility.

a. The ~~facility~~ residential program shall provide information on eligibility requirements and application materials upon any and all requests.

b. Residents and their parents shall be free to apply directly to the ~~facility~~ program for service. However, placement for service shall be made by the responsible local social service agency.

c. ~~Facilities~~ Residential programs shall admit residents without regard to race, creed, or national origin, and accord equal treatment to all persons.

d. When admission is not an optimal measure, but must, nevertheless, be implemented, its inappropriateness shall be clearly acknowledged; and plans shall be initiated for the continued and active exploration of alternatives.

e. The determination of legal incompetence shall be separate from the determination of the need for services, and admission to the ~~facility~~ program shall not automatically imply legal incompetence.

3. Admission.

a. For each resident admitted, there shall be a written program plan stating the services he needs or a written statement of the procedure and timetable for development of the program line.

b. Prior to admission, the resident and his parent shall be counseled on the relative advantages and disadvantages of admission to the ~~facility.~~ program.

c. Prior to admission, the resident and his parent shall be encouraged to visit the ~~facility~~ program and the living unit in which the resident is likely to be placed.

d. Prior to admission of a school-age child, ~~facility~~ residential program staff shall notify the local school district.

e. Upon admission, each resident shall be placed in his living unit, and he shall be isolated only upon medical orders issued for specific medical reasons.

~~f. Upon admission, current medical evaluation by a physician shall be made available.~~

4. Release.

a. Planning for release, the ~~facility~~ residential program staff shall involve the referring agency, the resident, and his parent.

b. At the time of release, a summary of findings, progress, and plans shall be recorded and transmitted with the resident.

c. Procedures shall be established so that:

(1) A parent who requests the release of a resident is counseled about the advantages and disadvantages of such release.

(2) The court or other appropriate authorities are notified when a resident's release might endanger either the individual or society.

d. At the time of release, physical examination for signs of injury or disease shall be made in accordance with procedures established by the ~~facility.~~ residential program.

e. Except in an emergency, release shall be made only with the prior knowledge, and ordinarily the consent, of the referring agency, the resident, and his parents.

E. Administrative policies and practices.

1. The ~~facility~~ residential program shall have a written statement clearly defining its philosophy, purpose, and function.

a. This statement shall be consistent with the current status of knowledge and information available on residential services.

b. This statement shall be consistent with the principle of normalization.

2. The ~~facility~~ residential program shall have a written statement defining its administrative and organizational structure.

a. The governing body shall exercise general direction and establish policies on the operation of the ~~facility~~ program and the welfare of the residents.

b. The governing body shall appoint an executive officer of the ~~facility~~ program.

(1) The qualification of the executive officer shall be determined by the governing body and be consistent with the training and education needed to meet the stated goals of the ~~facility~~ program.

(2) The governing body shall delegate to the executive officer the authority and responsibility for management of the affairs of the ~~facility~~ program.

c. The ~~facility~~ residential program shall be administered and operated in accordance with sound management principles.

(1) The type of administrative organization of the ~~facility~~ program shall be appropriate to the program needs of the resident.

(2) The ~~facility~~ program shall have a table of organization that shows the governing and administrative responsibilities of the ~~facility~~ program.

d. The ~~facility~~ residential program shall provide for meaningful and extensive consumer representation and public participation in its operation. If consumer representatives, interested citizens, and relevantly qualified professionals are not represented on the governing body, and advisory body composed of such representation shall be appointed by the governing body.

(1) The advisory body shall sit ad hoc to the governing body and to the chief executive officer and provide consultation and assistance as appropriate.

(2) The advisory body may function as the ~~facility~~ program research review and human rights committee. ~~(See Part B. 3. of this Rule).~~

(3) The advisory body may function as the admission and release committee. (See D.1.d. of this ~~Rule~~ rule.)

3. Personnel policies, ~~and~~ practices~~.~~, and staff to resident ratios.

a. Personnel policies.

(1) There shall be written personnel policies, which shall be made available to each staff member.

(a) The hiring, assignment, and promotion of employees shall be based on their qualifications and abilities, without regard to sex, race, creed, age, disability, marital status and ethnic or national origin.

(b) Personnel policies shall include but not be limited to:

(i) Qualifications, job description, salary schedule, and benefits for all positions.

(ii) A policy prohibiting mistreatment, neglect, or abuse of residents~~.~~, and mandating the report of any mistreatment, neglect or abuse to the executive officer.

(iii) Procedure for suspension and/or dismissal of an employee for cause.

(c) There shall be a staff person responsible for implementation of these policies.

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b. Staff assignments.

(1) There shall be sufficient, appropriately qualified, and adequately trained personnel to provide ~~facility~~ program service in accordance with ~~facility's~~ program's statement of services provided (see C. of this ~~Rule~~ rule) and with the standards specified in this document.

(a) There shall be staff on duty or call at night to ensure adequate care and supervision.

(b) There shall be staff on duty or call to assist all residents in an emergency.

(c) There shall be staff on duty or call so that provision of ~~facility~~ residential service is not dependent upon the use of unpaid residents or volunteers.

(i) Residents shall not replace staff or be used in lieu of staff in any area of work unless they are reimbursed commensurate with ability and production.

(ii) Residents shall not be involved in the care (feeding, clothing, and bathing), training, or supervision of other residents unless they are adequately supervised, have the requisite humane judgment, and have been specifically trained in necessary skills.

(d) All staff shall be administratively responsible to a person whose training and experience is appropriate to the program.

(e) The title applied to all staff shall be appropriate to the kind of residents with whom they work and the kind of interaction in which they engage.

(2) The use of volunteers shall be encouraged to strengthen services in a manner consistent with the purposes of the program.

c. Staff training.

(1) There shall be a staff-training program that is appropriate to the size and nature of the ~~facility~~ program and that includes, but is not limited to:

(a) Orientation for all new employees, to acquaint them with the philosophy, organization, program, practices, and goals of the ~~facility~~ residential program.

(b) Induction training for each new employee, in order that his skills in working with the residents are increased.

(c) Continuing in-service training to update and improve the skills and competencies.

(2) There shall be a record of all staff training on file.

~~d. Employee health.~~

~~(1) Each employee, at the time of his employment, shall present evidence of a current medical examination that shall include a report of freedom from tuberculosis.~~

~~(2) The facility shall determine and ensure that all staff members are free of communicable disease.~~

~~(3) When an employee has been absent from work for more than three days due to illness, the executive officer may request that a statement of freedom from infectious disease from the employee's physician be provided upon the employee's return to work.~~

~~(4) The executive officer may require that an employee have a medical examination when a reasonable suspicion of contagious disease exists.~~

~~(5) When an unusual number of cases of similar illness occur among staff, a physician or local public health official shall be called upon for assistance in appropriate prevention and control measures.~~

d. Staffing ratios.

(1) The determination of staff needs shall include consideration of staff members' experience and training, as well as the overall ratio of staff to residents.

(2) The number of available direct care resident living staff shall be related to each resident's degree of handicap and his training needs.

(3) The minimum overall ratios of resident living staff necessary to provide 24-hour supervision shall be as follows:

(a) For units including children under the age of six years, severely and profoundly retarded persons, severely physically handicapped persons, and residents who are aggressive, assaultive, or security risks, or who manifest severely hyperactive or psychotic-like behavior, the overall staff to resident ratio (allowing for a five day work week plus holiday, vacation, and sick time) is 1:2.

(b) For units serving moderately retarded residents requiring habit training, the overall staff to resident ratio is 1:2.5.

(c) For units serving residents in vocational training programs and adults who work in sheltered employment situations, the staff to resident ratio is 1:5.

(4) Staff to resident ratios during peak programming hours (evenings and weekends) shall be optimized by appropriate scheduling around residents' day programs.

(5) If a residential program determines that a different staff ratio is needed to comply with the provisions of this rule, a letter shall be submitted to the commissioner for approval. Criteria for approval shall be:

(a) Extraordinary medical, behavioral or developmental needs of residents.

(b) Possible changes that could be effected in staff assignment, deployment, or qualification to optimize utilization of existing staff.

(c) Relevance of the proposed change in staff ratio to (a) and (b) above.

4. The ~~facility~~ residential program shall have a written statement outlining a plan of financing that gives assurance of sufficient funds to enable it to carry out its defined purposes.

a. Budget management shall be in accordance with sound accounting principles.

~~b. There shall be an annual audit of the fiscal activity of the facility.~~

b. ~~c.~~ A ~~facility~~ residential program charging for services shall have a written schedule of rates and charge policies, which shall be available to the resident, his parent, referring agencies, and the public.

5. An individual record shall be maintained in the facility for each resident.

a. All information contained in the resident's records shall be ~~considered privileged and confidential, and written consent of the resident or his parent shall be required for the release of information to persons not otherwise authorized to receive it.~~ handled in a manner consistent with the Government Data Practices Act. The resident shall have access to his record upon request.

b. All entries in the resident's record shall be legible, dated and authenticated by the signature and identification of the individual making the entry.

c. All records shall contain basic demographic information, to be entered at the time of admission, including reason for referral and individual program plan.

d. Recorded information shall be in sufficient detail and adequate to:

(1) Plan and evaluate the resident's program.

(2) Provide a means of communication among all persons contributing to the resident's program.

(3) Furnish documentary evidence of the resident's progress or regression and of his general response to his program.

(4) Serve as a basis for study, evaluation, and development of services provided by the ~~facility.~~ residential program.

(5) Protect the legal rights of the resident, his parent, the ~~facility,~~ residential program, and staff.

(6) Serve as a basis for evaluation of all services utilized by residents.

e. When it is necessary for ~~facility~~ residential program staff to supervise the use of personal funds, a record of these funds shall be maintained as a part of the resident's record.

~~f. Medical records.~~

~~(1) There shall be a permanent medical and dental record in the facility that shall include, but is not limited to:~~

~~(a) The name of the resident's physician, dentist, or clinic.~~

~~(b) The dates of examinations and treatments.~~

~~(c) Any special instructions and treatments.~~

~~(2) When a resident receives specialized therapeutic services, a record of therapies provided and the resident's progress in these therapies shall be maintained.~~

KEY: RULES SECTION — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language. PROPOSED RULES SECTION — Underlining indicates additions to existing rule language. ~~Strike outs~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material."

(3) When a resident receives a therapeutic diet, a record of the diet shall be maintained, except when responsibil maintenance of the resident's own therapeutic diet is warranted by program plan.

(4) When a resident receives a medication, a record of the prescription and administration of the medication sl maintained. Adverse reactions to medication, and the report to the physician of the same, shall be recorded.

(5) When a resident is hospitalized, a summary of the hospitalization shall be requested. The summary shall inc listing of medications and treatment recommended at discharge, as well as directions for follow-up care and further examin

6. Emergency and unusual occurrence.

a. In the event of an emergency or unusual occurrence, such as hospitalization, serious illness, accident, imminent d death, the resident's parent or others who maintain a close relationship with him shall be notified. The wishes of the resident parent about religious matters shall be determined and followed as closely as possible.

b. In case of accident:

(1) Appropriate measures for the care and safety of the resident shall be undertaken.

(2) An accident report shall be made for use by the facility program.

(3) In case of injury of unknown or uncertain cause, all legal requirements shall be complied with. This inclu Minnesota law related to reporting of possible child abuse.

c. When a resident dies:

(1) The date, time, and circumstances of the resident's death shall be recorded in his record.

(2) If the resident dies in the facility, the coroner's office shall be notified.

(3) Assistance in making funeral and burial arrangements shall be rendered upon request.

(4) Personal belongings shall be handled in a responsible and legal manner.

(5) Records of a deceased resident shall be retained for a period of seven years following death.

SUPREME COURT

Decisions Filed Friday, September 5, 1980.

Compiled by John McCarthy, Clerk

49933, 49960/447 In the Matter of the Welfare of Valerie Karge and Walter Cook, Children. Mower County.

Where there is clear and convincing evidence that a parent is unwilling or incapable of correcting conditions which led to a findin children are dependent, it is proper to terminate her parental rights.

Affirmed. Otis, J. Took no part, Amdahl, J.

50094/142 In the Matter of the Trust Created by Maude H. Schroll for the Benefit of Laurence H. Dorcy, Jr. on March Laurence H. Dorcy, Jr., primary life beneficiary, Appellant, v. The First Trust Company of St. Paul, Trustee. Ramsey

A provision in an irrevocable inter vivos trust requiring a successor to be a corporate trustee may not be revoked by agreement of the all living beneficiaries where the trust creates interests in unborn beneficiaries and a guardian ad litem appointed to represent thos does not consent to the revocation.

Affirmed. Otis, J. Took no part, Amdahl, J.

49793/161 Luverne R. Ruberg, et al v. Skelly Oil Company, Appellant, Keith C. Engen and Carl Lundgren, co-partne Lundgren and Engen Excavating, Applit Zimm, d.b.a. Standard Heating Company of Duluth. St. Louis County.

In this negligence action arising out of a gas explosion, the trial court committed no prejudicial error by including in the jury instruction regarding superseding cause.

Defendant gas supplier was liable for damages caused by a gas explosion where it had reasonable notice of a potential danger and fai remedy that danger.

Under the comparative negligence statute, Minn. Stat. § 604.01 (1976), where two separate defendants are each liable to compens for an indivisible injury, they are jointly and severally liable for the whole damage award.

Affirmed. Otis, J. Took no part, Amdahl, J.

Exhibit A

DPW-81-004-PR

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE DEPARTMENT OF PUBLIC WELFARE
MENTAL RETARDATION DIVISION

In the Matter of the Proposed Adoption of 12 MCAR § 2.018 and Proposed Amendment of 12 MCAR § 2.034 Concerning Programs for Mentally Retarded Persons.

REPORT OF THE HEARING EXAMINER

The above-entitled matter came on for hearing before Hearing Examiner Phyllis A. Reha on October 17, 1980, at 9:30 a.m. in the State Office Building, Room 57, St. Paul, Minnesota. The hearing continued on October 22, 1980, at 9:00 a.m., in the State Office Building, Room 81, St. Paul, Minnesota. The hearing continued until all persons had an opportunity to be heard.

This Report is part of the rulemaking proceeding pursuant to Minn. Stat. Ch. 15 to determine whether the proposed rules and rule amendments concerning programs for the mentally retarded should be adopted by the Department of Public Welfare (DPW). A copy of this Report may be obtained from the Office of Administrative Hearings for the cost of reproduction.

Members of the agency panel appearing at the hearing included: Ardo Wrobel, Director, Mental Retardation (Protection) Division; John Buzzell, Director, Division of Licensing; Robert Meyer, Program Specialist, Mental Retardation Division; Warren Bock, Deputy Director, Mental Retardation Division; Clyde Johnson, Director, Duluth Regional Care Center. Alan Held and Ellen Dubuque, Special Assistant Attorney Generals, appeared as counsel for the Mental Retardation Division, Department of Public Welfare.

Sixty-two persons signed the hearing register. Eighteen public witnesses appeared and spoke at the hearing. The Department submitted thirteen written exhibits at the hearing and two post-hearing written comments. Forty timely written comments were received from the public prior to the close of the record, which remained open through November 12, 1980 by order of the Hearing Examiner.

The Commissioner must wait at least five working days before taking any final action on the rules; during that period, this Report must be made available to all interested persons upon request.

Pursuant to the provisions of Minn. Laws 1980, Ch. 615, § 6, subd. 4d, this Report has been submitted to the Chief Hearing Examiner for his approval. If the Chief Hearing Examiner approves the findings of this Report, he will advise the Commissioner of actions which will correct the defects and the Commissioner may not adopt the rule until the Chief Hearing Examiner determines that the defects have been corrected. However, in the cases where the Chief Hearing Examiner identifies defects which relate to the issues of need or reasonableness, the Commissioner may either adopt the Hearing Examiner's recommendations to cure the defects or, in the alternative, if the

Commissioner does not elect to adopt the recommendations, he may submit the proposed rule to the Legislative Commission to Review Administrative Rules for the Commission's advice and comment. Provisions relating to this submission to the Commission may be found in Minn. Laws 1980, Ch. 615, § 6, subd. 4d.

If the Commissioner elects to adopt the recommendations of the Hearing Examiner and makes no other changes and the Chief Hearing Examiner determines that the defects have been corrected, then the Commissioner shall submit the rule to the Attorney General for review of form and legality. If the Commissioner makes changes in the rule other than those recommended by the Hearing Examiner, then he shall submit the rule, with the complete record, to the Chief Hearing Examiner for a review of the changes before adopting it and submitting it to the Attorney General. Procedures relating to this subsequent review by the Chief Hearing Examiner are set forth in Minn. Laws 1980, Ch. 615, § 6, subd. 4e.

When the Commissioner submits the rule to the Attorney General, he shall give notice on the day of submission to all persons who requested that they be informed of the submission to the Attorney General.

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

FINDINGS OF FACT

Procedural Requirements

1. On August 26, 1980, 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; and
(c) A statement of the number of persons expected to attend the public hearing and estimated length of time that would be necessary for the Department to present its evidence.

2. On September 15, 1980, the proposed rules were published at 5 State Register 41.

3. On September 15, 1980, the Department mailed the Notice of Hearing and proposed rules to all persons and associations who had registered their names with the Department of Public Welfare for the purpose of receiving notice of rulemaking activity. In addition, the Department mailed the Notice of Hearing and proposed rules to the following agencies:

(a) All Minnesota County Welfare Departments;
(b) All Minnesota Human Services Boards;
(c) All Minnesota area mental health boards;
(d) All Minnesota State Hospitals; and
(e) Rule 34 facilities and semi-independent living facilities.

4. There was solicitation of outside opinion and information in the development of the proposed rules and rule amendments. Notice of Intent to Solicit was published on July 2, 1979 at 3 State Register 2309 for proposed Rule 18, and on May 12, 1980 at 4 State Register 1783 for proposed amendments to Rule 34.

5. On September 19, 1980, the Department filed the following documents:

(a) The Order for Public Hearing;
(b) The Notice of Hearing;
(c) The Affidavit of Mailing;
(d) The rules as published in the State Register;

(e) The Statement of Need and Resonableness;
(f) The Notices of Intent to solicit Outside Information as published in the State Register; and
(g) A list of department personnel who will represent the Department.

The documents above were available for inspection at the Office of Administrative Hearings from the date of filing to the date of hearing.

6. The record remained open through November 12, 1980 for receipt of written comments and statements.

Statutory Authority

7. 12 MCAR § 2.034 (Rule 34). The specific statutory authority to adopt and promulgate the proposed rule amendments of Rule 34 is contained in Minn. Stat. § 252.28, subd. 2, which provides in part:

> The Commissioner of Public Welfare shall:
>
> (1) Establish uniform rules, regulations and program standards for each type of residential and day facility or service for more than four retarded persons, including state institutions under control of the Commissioner and serving mentally retarded persons.

The Department also cites Minn. Stat. §§ 245.782 through 245.814, the Public Welfare Licensing Act, which establishes the administrative procedures and authority of the Commissioner to carry out responsibilities in Minn. Stat. § 252.28. Other supportive authority cited by the Department for the establishment and revision of Rule 34 is contained in Minn. Stat. § 246.01, § 245.70, § 252A.11, subd. 5, and § 252A.01.

The Examiner finds that the Commissioner has statutory authority to adopt amendments to Rule 34.

8. 12 MCAR § 2.018 (Rule 18). Minn. Stat. § 252.28 authorizes the Commissioner to determine the need, location and program of public and private residential facilities and services for mentally retarded children and adults. The Act further directs the establishment of uniform rules, regulations, program standards, and the granting of licenses to each type of residential and day facility or service for more than four mentally retarded persons. Rule 18 is being promulgated under authority of Minn. Stat. § 252.28. Rule 18 regulates the provision of social developmental services to mentally retarded persons who live in ordinary community places of residence, such as apartments, hotels, rooming houses, foster homes, or owned family home. The provision of such services is subject to licensure under Minn. Stat. § 252.28, and therefore, comes under the Commissioner's authority to determine need, location and program prior to licensure. Minn. Stat. § 245.782 through .841, Public Welfare Licensing Act, establishes the administrative procedures and authority of the Commissioner to carry out his responsibilities under Minn. Stat. § 252.28. The Department cites additional supportive authority to promulgate the proposed Rule 18. See Minn. Stat. § 246.01, § 245.70, § 252A.11, subd. 5, and § 252A.01.

The Examiner finds that the DPW has the statutory authority to promulgate the new Rule 18 governing the provision of semi-independent living services to persons who are mentally retarded.

Need to Amend 12 MCAR § 2.034 (Rule 34)

9. Pursuant to legislative initiative taken in 1971 (Minn. Stat. § 252.28) to establish licensure programs for the mentally retarded, the Department of Public Welfare adopted its program license Rule 34 which sets the standards for living and opportunities for retarded people living in community residential facilities or state hospitals.

Through considerable involvement of the public, advocates and providers, professionals in the field as well as state and local agencies, the DPW developed Rule 34 in cooperation with the Minnesota Department of Health (MHD). Rule 34 was officially promulgated on November 17, 1972. (Tr. Vol. I, p. 15). The MHD subsequently developed a companion standard for supervised living facilities (SLF) for non-programatic matters of safety and sanitation.

Because there were overlaps and conflicts in the application and interpretation of Rule 34 with the SLF standards, the DPW recognized the need to revise and amend Rule 34 to eliminate those parts of the rule which duplicate the SLF standards. (DPW Ex. 13 and Tr. Vol. I, p. 17).

In 1974, an amended Rule 34 was brought to hearing; however, the amended rule was never promulgated. (DPW Ex. 13).

In 1976, the DPW Mental Retardation Division was awarded a federal grant from the U.S. Department of Health, Education and Welfare to develop model standards to assess the quality of residential services for persons who are mentally retarded. The staff of the DPW, along with a wide range of professionals in the mental retardation field worked on the model standards project for nearly three years. Although the DPW recognized serious problems with Rule 34, it decided to delay revision of the rule until after the model standards were complete. The final report on the model standards project was not published until January of 1980. The DPW plans to begin its thorough revision process of Rule 34 on or about January 15, 1981 with the appointment of a revision committee. (Tr. Vol. II, p. 73).

On April 16, 1980, the Legislative Commission to Review Administrative Rules (LCRAR) passed a motion recommending that the Department hold a hearing in comformity with Minn. Stat. § 15.0412 to eliminate those parts of Rule 34 which duplicates the Department of Health SLF standards. (DPW Ex. 13 and Tr. Vol. II, p. 65). Although the LCRAR was aware of the Department's intention to begin a thorough revision of Rule 34, the Commission believed that this recommendation would serve as a more immediate remedy of the existing problems with Rule 34. (DPW Ex. 13).

The LCRAR recommended that the DPW bring the matter to hearing within 60 days from the date of the resolution. At the DPW's request, the schedule was revised and the matter was delayed for approximately four months.

The LCRAR, at the Department's request, withdrew a recommendation that the Department develop and specify minimum standards for staff/participant ratios based on severity of disabilities, because the Department was not sure what the cost implications were. (DPW Ex. 13 and Tr. Vol. II, p. 64). The Commission, therefore, did not require the Department to go to hearing on the staffing ratios issue.

The Department chose four areas for revision in Rule 34:

1. Proposed deletion of SLF standards which are more properly the jurisdiction of the MHD (as per LCRAR recommendation).

2. Proposed staff to resident ratios.

3. Proposed waiver [sic] provisions.

4. Changes to update the rule. (DPW Ex. 7 and Tr. Vol. I, p. 17)

The Hearing Examiner finds that the Department has established a general need to amend Rule 34.

Discussion of Proposed Amendments to 12 MCAR § 2.034 (Rule 34)

10. Many of the rule amendments proposed by the Department are merely of a housekeeping variety or simply clarify the purpose and intent of the present language. This Report will not address those noncontroversial rule amendments which are adequately supported in the Statement of Need and Reasonableness.

Many public comments on the proposed amendments, both written and oral, were directed to areas within the rule which were not targeted by the DPW for revision at this time. The Hearing Examiner considers discussion of these areas inappropriate in this Report. The comments, however, are valuable and should be reviewed by the Department's revision committee during its major revision beginning in January of 1981.

Proposed deletion of the SLF standards contained in Rule 34 drew few negative comments. The Department has shown both the need and reasonableness for the deletion of the duplication with the SLF standards in their Statement of Need and Reasonableness and their oral testimony at the hearing. (See DPW Ex. No. 7). Therefore, those amendments or deletions dealing with the duplication of the SLF standards are hereby recommended for adoption by the Hearing Examiner.

11. 12 MCAR § 2.034 A.1.a. In its written comments dated November 7, 1980, the DPW proposed to amend this section by striking the words "facility or service" and replacing them with the words "residential program". References to facilities throughout Rule 34 has been changed to residential program. The amendment is proposed to maintain the internal consistency of the rules and was obviously an oversight in the original drafting. The proposed amendment does not create a substantial revision of the rule as published and together with the entire A.1.a. is declared by the Hearing Examiner to be needed and reasonable. so amended

12. 12 MCAR § 2.034 A.4.c. A.4.c. is a new subsection which requires applicants to have (or to have made application for) a SLF license from the State Department of Health. Testimony made in the public hearing raised a question as to whether the Department intended to exclude individual family homes from licensure under Rule 34 because they service fewer than five residents. The Department responded that the proposed amendment was not intended to exclude individual family homes from becomming an extention of the Rule 34 license, provided that such an extention is approved by the Commissioner. (Tr. Vol. II, p. 35 and Public Ex. 4).

Although an SLF license is limited to facilities for more than four residents, any residential facility for four or less residents is recognized as a foster home. Since a foster home is licensed or certified by the County Welfare Agency, it is considered to be adequate health and safety protection in lieu of an SLF license.

17

On October 30, 1980, the Department, in response to the public's concern, submitted a proposed amendment to A.4.c. by inserting the phrase "and, in the case of a Commissioner approved extension of the residential program for family homes of four or fewer residents a foster home license or certification from the DPW." The subsection now reads as follows:

> Applicants must have, or have applied for, a supervised living facility license from the State Department of Health. MHD 391-401. And, in the case of a Commissioner approved extension of the residential program for family homes of four or fewer residents, a foster home license or certification from the Department of Public Welfare. (DPW Written Comments No. 1)

so amended P.3.

The proposed amendment does not create a substantial revision of the rule as published as it clarifies the Department's intent. The Department should, however, correct the rule citation to read "Minn. Reg. MHD 391-401"; and correct the obvious punctuation errors by removing the period after the word "health" and changing the period after "MHD 391-401" to a semicolon. The rule as amended is found to be both needed and reasonable.

As a caveat, the DPW should consider the written comment by Lois Zimmerman, Program Compliance Officer of the Cambridge State Hospital (Public Ex. 4) regarding A.4.c., wherein she recommended the following amendment to reflect the Department's stated policy:

> Applicants must have, or have applied for an appropriate license from the State Department of Health, e.g. supervised living facility, intermediate care facility, skilled nursing facility, or foster home license.

The Department should determine whether this change should be adopted irrespective of the affirmative finding made by the Hearing Examiner. The adoption of the Zimmerman change would not be considered a substantial change from the rule as published.

13. 12 MCAR § 2.034 A.4.e. At the hearing the Department proposed to amend this section by striking the entire section and substituting the following: "Provisional licenses may be granted by the Commissioner under terms of Minn. Stat. § 245.783, subd. 3." The amendment is proposed to simplify the language of the originally proposed language. The amendment does simplify the language and is not a substantial change from the rule section as originally published. However, the use of the word "may" in this rule section makes it improper. It indicates that the Commissioner may grant a provisional license to one applicant and not to another, even though both applicants meet the terms of Minn. Stat. § 245.783, subd. 3. Furthermore, subdivision 3 of that statute provides that the Commissioner shall issue a provisional license for a period of not to exceed one year . . . as long as the applicable laws, rules and regulations cannot be met immediately . . . and the deviations do not threaten the health, safety or rights of persons to be served. A rule cannot be contrary to the language of a statute or to legislative intent. Can Manufacturers Institute Incorporated v. State, 289 N.W.2d 416 (Minn. Sept. 7, 1979).

By using the "may", the Department has granted its Commissioner more discretion than is permissible, and therefore, the Department has failed to comply with the specificity requirements of Minn. Laws 1980, Ch. 615, § 6,

subd. 3 (to be codified as Minn. Stat. § 15.0412, subd. 3). In order to correct this defect, the word "shall" must be substituted for "may". substituted p. 3

14. 12 MCAR § 2.034 A.4.f. At the hearing the Department proposed to amend A.4.f. by striking the word "waiver" whenever used, and substitute the word "variance". The change is proposed since the word "variance" is the term used in the 1980 Amendments to the Administrative Procedure Act. Also, in this same section, the Department proposed to strike the words "adversely affect" and substitute the word "threaten". "Threaten" is the term used in the Licensing Act and the amendment is proposed to conform to that language. Section A.4.f. as amended now reads as follows:

> A residential program may request in writing a variance of a specific provision of the rule. The request for a variance must cite the provision of the rule in question, reasons for requesting the variance, the period of time not to exceed one year the licensee wishes to have the provision varied and the equivalent measures planned for assuring that programmatic needs of residents are met. Variances granted by the Commissioner shall specify in writing the time limitation and required equivilent measures to be taken to assure that programmatic needs are met. Variances denied by the Commissioner shall specify in writing the reasons for the denial. No variance shall be granted that would threaten the health, safety or rights of residents.

so amended p. 3

There was written and oral testimony suggesting that the Department provide a permanent waiver to facilities who provide services to fewer than five residents. The following amendment was proposed by Sheldon R. Schneider, Executive Director of the Range Center, Inc.: "A permanent waiver [sic] of requirements for supervised living facility licensure be granted where the program provides residential services to fewer than five residents at one location." (Public Ex. 16A, p. 7). The Hearing Examiner finds the rule as written to be needed and reasonable; however, the Department should consider the recommendation of Mr. Schneider in light of the Department's stated policy that any residential facility for four or fewer residents is recognized as a foster home as long as it is licensed and certified by the County Welfare Agency of responsibility. Such a certified or licensed foster home is considered to be adequate health and safety protection in lieu of SLF standards. The suggested amendment of Mr. Schneider would be consistent with DPW stated intent. The adoption of the Schneider recommendation would not operate a substantial revision of the rule as originally published in the State Register.

15. 12 MCAR § 2.034 A.5.c. A.5.c. provides that the revocation, suspension or denial of a license may be appealed pursuant to Minn. Stat. Ch. 15. This is a new section developed to bring Rule 34 into compliance with Minn. Stat. § 245.801, subd. 4, which provides operators the right to appeal suspensions, revocations or denials of licenses pursuant to Ch. 15. Oral and written testimony submitted by several commentors urged the revision of this section to include the right to appeal a denial of a variance request. (Tr. Vol. I, p. 125 and Tr. Vol. II, p. 35). Although the rule as written appears to be reasonable and consistent with Minn. Stat. § 245.801, the Hearing Examiner suggests that the Department consider the following amendment:

> Revocation, suspension, denial of a license or denial of a variance request may be appealed pursuant to Minn. Stat. Ch. 15.

no change p. 4. See Ord. Adopt. #4

Adoption of the amendment would not create a substantial revision of the rule as published in the State Register and would be consistent with Minn. Stat. § 245.801.

16. 12 MCAR § 2.034 A.6.d. This section defines the term "interdisciplinary team". There was concern expressed by Ed Van Allen of the Ramsey County Human Services Department, to the apparent discrepancy between the definition of interdisciplinary team in Rule 34 as opposed to the definition of the same term in Rule 18. Rule 18 specifies that a representative from the local social service agency should be a member of the interdisciplinary team; but the definition in Rule 34 does not so specify. Mr. Van Allen urges the Department to consider the use of the Rule 18 definition in Rule 34. The Hearing Examiner finds this to be a sound recommendation.

Other commenters expressed the opinion that the interdisciplinary team should include the resident. In its November 7, 1980, post-hearing submission, the Department proposed to further amend this section, in response to the concern expressed by the public at the hearing that the definition of interdisciplinary team include the resident. The proposed amendment would not create a substantial change in the section as originally published. The rule, as amended, is found by the Hearing Examiner to be both needed and reasonable. However, the Department is urged to consider the recommendation of Mr. Van Allen. The adoption of Mr. Van Allen's proposal would not be a substantial change.

Rule 18 defin adopted p.5

17. 12 MCAR § 2.034 A.6.i. At the hearing the Department proposed to correct an error of spelling in this section by changing the word "manifest" to "manifested". This change is clerical in nature and together with the entire section is found to be both needed and reasonable.

✓ changed p.6

18. 12 MCAR § 2.034 A.6.q. As originally published, the Department did not propose to amend this section. However, in its November 7, 1980 post-hearing submission the Department proposed to strike the word "service" in the second line, and insert the word "programs". This amendment is offered for internal consistency and is found by the Hearing Examiner to be both needed and reasonable and not a substantial change from the rule as originally published.

✓ amended p.7

19. 12 MCAR § 2.034 A.6.u. In its October 30, 1980 post-hearing submission, the Department proposed to further amend this section by inserting the phrase "or of a licensed or certified foster home approved by the Commissioner as an extension of the residential program", after the word "facility" in the second line. This amendment is proposed for the same reasons as discussed in Finding 12. The discussion of the Hearing Examiner, relative to this amendment, in Finding 12 is hereby incorporated within this Finding by reference.

amended p.8

20. 12 MCAR § 2.034 A.6.v. A.6.v. defines the term "restraint" as any physical device or chemical substance that limits the free and normal movement of body or limbs. The proposed addition of the words "or chemical substance" was criticized by many public witnesses. (Public Exs. 11, 21C, 39 and Tr. Vol. I, p. 47). A written comment submitted by the Assistant Administrator of the Faribault State Hospital, Arnold A. Madow, stated that the phrase "or chemical substance" is too broad. (Public Ex. 11) The writer recommended deletion of that phrase and the addition of the following sentence:

Chemical substances administered for the purpose of controlling maladaptive behavior are deemed restraint.

The Health Board of the Metropolitan Council recommended deletion of the phrase and the substitution of the definition of "major tranquilizers" from the Welsch v. Noot, (U.S. Dist. Ct., Dist. of Minn., 4th Div.) (No. 4-72 Civil 451, Sept., 1980) consent decree. In paragraph 75, the decree states:

> Major tranquilizers must not be administered to residents for punishment, for the convenience of the staff, or as a substitute for program. (Public Ex. 21c, p. 2)

It is noted that "chemical substance" is not defined in Rule 34. Minn. Laws 1980, Ch. 615, § 6, subd. 3 (to be codified Minn. Stat. § 15.0412, subd. 3) states that rules must specify "the nature and requirements of all formal and informal procedures related to the administration of official duties to the extent that those procedures directly effect the rights or procedures available to the public." The rule, as written, is too vague so as to amount to a failure to comply with a substantive requirement of law, i.e. that the rule must be specific. In order to correct this defect, the following amendment is recommended to cure the substantive vagueness of the rule as written:

> "Restraint". Any physical device that limits the free and normal movement of body or limbs. Chemical substances administered for the purposes of controlling maladaptive behavior are deemed restraints. Mechanical supports used in normative situations to achieve proper body position and balance shall not be considered restraint.

so amended p.9

This proposed change clarifies when chemical substances are to be considered restraints and is, therefore, not considered a substantial change. It expresses the intent of the Department, but gives providers specific information. Without the proposed change, the rule is too vague to be enforced against providers in an area of health care where chemical substances are given as a matter of routine for the health of the residents.

The Department has shown the need and reasonableness for inclusion of a rule concerning chemical substances as restraints.

21. 12 MCAR § 2.034 A.6.z. At the hearing the Department proposed to strike the phrase "in which health, treatment, comfort, safety and well-being is provided. Supervised Living Facilities are." The section as amended now reads as follows:

> "Supervised Living Facilities." A general term used in this rule to refer to the facility licensed by Minnesota Health Department, in accordance with the Minn. Stat. § 144.56 (1971).

deleted p.9.

The deletion of the phrase as indicated above is offered for purposes of clarifying Department intent and is not, in the view of the Hearing Examiner, a substantial change. The section as amended is needed and reasonable.

22. 12 MCAR § 2.034 B.2.a.(3). This subsection is changed to exclude duplication of SLF standards. Hence, B.2.a.(3) formerly included the technical specifications for space, size and floor level, as well as accommodation number. The rule formerly required accommodation of from one to four residents as does the proposed change.

Several objections were made to this inclusion on the grounds that four unrelated persons in one bedroom is not "normalizing" in the sense that four unrelated adults do not unsually share one room. Barring studies showing the

impact of reducing the maximum persons allowed to share a room, it is the opinion of the Hearing Examiner that the proposed change should be permitted. A rule is not unreasonable simply because there is a more reasonable alternative. Federal Security Administrator v. Quaker Oats Company, 318 U.S. 218, 87 L.Ed. 724, 63 S.Ct. 589 (1943); see also Pitts v. Perluss, 27 Cal. Rptr. 19, 377 P.2d 83, 58 Cal. 2d 824 (1962). The Hearing Examiner, therefore, concludes that the proposed amendment to B.2.a.(3) cannot be said to be unreasonable. Reduction of the maximum number of adults within one bedroom would be a substantial change requiring a new rulemaking proceeding. A change of this nature may be appropriate however, and should be studied by the Department when it begins its major revision of the rule in January of 1981.

no change P. 12

23. 12 MCAR § 2.034 B.3.i(4). Written testimony from the Assistant Administrator of Program Services at the Faribault State Hospital, dated October 10, 1980, indicates that the word "physical" before "restraint" in this definition may be interpreted so as not to include chemical restraint. (Public Ex. 11). Therefore, deletion of the word "physical" was recommended.

For consistency with the definition in A.6.v., it is recommended that the rule be changed to exclude the word "physical", thereby making all restraint the subject of the rule. This was apparently the intention of the Department.

so changed P. 17

The change is not substantial in that it brings this rule into accord with A.6.v. The rule as proposed would read:

> Restraints shall be employed only when absolutely necessary to protect the resident from injury to himself or to others; and restraint and seclusion shall not be employed as punishment, for the convenience of the staff, or as a substitute for program.

(Note the similarity of this rule with the Welsch v. Noot definition of "major tranquilizers" discussed and reproduced in Finding 20 of this Report.)

The Department has satisfied the need and reasonableness for a rule concerning restraint. Since the proposed change is consistent with expressed Department intent (see Rule A.6.v.), the Hearing Examiner recommends adoption of the rule as herein amended.

24. 12 MCAR § 2.034 B.4.b.(2)(b). In its post-hearing submission dated November 7, 1980, the Department recommended the following amendment to this section:

> Dental care practices should include the use of newer equipment, such as electric toothbrushes and oral water irrigators or lavages as prescribed.

amended P. 20

This change was apparently proposed to respond to the written comments (Public Ex. 5) of Dr. Dennis J. Brandstetter, Chairman of the Minnesota Dental Association Legislative Committee. The proposed change accurately reflects modern dental practices and as such, is not a substantial change. The proposed amendment is, therefore, needed and reasonable.

25. 12 MCAR § 2.034 C.2.a.(3). In its post-hearing submission dated November 7, 1980, the Department proposed removing the asterisks before subsections (b) through (h) of this section, and instead placing one before subsection (b). This is not a substantial change, since the asterisk in front of subsection (a) (Educational Assessment) will include the subsections (b) through (h).

This change not made. P. 2

The Department also misplaced the footnote to which the asterisk refers. The Department proposes to move the footnote to the bottom of the page, after the completed text. This change is clerical in nature and is not a substantial change.

The amendments as proposed by the Department are found to be needed and reasonable.

26. 12 MCAR § 2.034 C.3. This section was originally amended to include within an interdisciplinary team, "Developmental Achievement Center Staff" in the formulation of a individualized program and treatment plan for each resident. The inclusion of Development Achievement Center Staff within this rule drew concern from several members of the public (Tr. Vol. II, p. 85 and Public Exs. 19 and 21C). The criticism related to the fact that not all residents go to Developmental Achievement Centers (DAC), and to include DAC staff in every interdisciplinary team was unreasonable and unnecessary. In response to the public's concern, the Department recommended the following revision to this proposed amendment in their November 7, 1980 post-hearing submission:

> Program and Treatment Plan. Residential program staff shall participate with an interdisciplinary team including daytime developmental staff in the formulation of an individualized program and treatment plan for each resident. Facility staff shall be responsible for implementation of the plan.

This change is not substantial since it makes a specific category a more general one. Compliance is applicable to all residents. The Department has shown the need for and reasonableness of the proposed change, and the Hearing Examiner recommends adoption of the rule as amended.

27. 12 MCAR § 2.034 D.2.a. Public testimony indicated that this rule section, although not targeted for change by the Department, was unreasonable in requiring information on eligibility requirements and application materials on "any and all" requests. (Tr. Vol. 1, p. 51, Tr. Vol. II, pp. 36 and 85). In response to this concern, the Department proposed to amend this rule section to delete the words "any and all" requests and replace them with the word "appropriate" requests. The proposed amendment causes vagueness problems. Unless the Department establishes criteria for the determination of what is appropriate, the proposed amendment is improper. The use of the word "appropriate" suggests that the residential program administrator could arbitrarily deny requests simply because he or she may not recognize it as appropriate.

By using the word "appropriate", the Department has granted to the residential program administrator more discretion than is permissible, and therefore, has failed to comply with a substantive requirement of law, i.e. that rule must be specific. Minn. Laws 1980, Ch. 615, § 6, subd. 3 (to be codified Minn. Stat. § 15.0412, subd. 3). In order to avoid this defect, the words "any and all" requests or simply "all" requests must be retained in this rule.

Although this subsection was not targeted by the Department for amendment, and consequently, no notice of proposed amendment to this subsection was published in the State Register, the Hearing Examiner finds that the subsection is sufficiently interrelated with the entire rule section that the post-publication amendment does not violate due process.

28. 12 MCAR § 2.034 D.2.b. The Department's proposed amendments in this rule require that the local social service agency make placement for services. Several witnesses felt that parents or clients know the best interests of the client, and consequently objected to this section. (Tr. Vol. I, p. 51 and Tr. Vol. II, pp. 36 and 85).

The Department responded that the County is the responsible counterpart agency to the Department and that under DPW Rule 185, the County's duty involves residential placement in determining the type of service needed for each client or potential resident. (Tr. Vol. II, p. 39.)

The Hearing Examiner concludes that the Department has demonstrated the need for and reasonableness of the proposed amendment and recommends that it be adopted as written.

29. 12 MCAR § 2.034 E.3.d.1. through 5. This rule addresses staffing ratios. The Department proposed to amend the rule by inserting portions from the federal Intermediate Care Facility Standards for the Mentally Retarded (ICF/MR). The Department maintains that it needs a guideline for staffing and has simply taken the language from the federal regulations (which is based on a medical model primarily for large state institutions) and inserted it within Rule 34. This proposed change drew comments from nearly every witness who spoke during the one and one-half days of testimony in this proceeding. There was apparent agreement by the witnesses that the inclusion of these ratios in Rule 34 would result in vague and arbitrary enforcement of these staff/resident ratios proposed. Various objections centered around the following reasons:

A. Providers stated that they had not been given sufficient opportunity to advise the Department on the ratios. Insufficient study was made as to the effects of implementation of the rule.

B. Providers stated that the LCRAR required deletion of SLF duplication, but did not require the inclusion of staff/resident ratios.

C. Providers feared that the minimum staff/resident ratio would become the maximum ratio, since the rule requires that the Commissioner must approve richer than minimum ratios.

D. The providers stated that the ICF/MR ratios were written for large state institutions and are not appropriate to the smaller Rule 34 facilities.

E. Providers complained that the staff/resident ratios are too vague because the rule does not explain how calcuation is to be made, who is to be counted, who is to do the counting, or when or where persons are to be counted.

F. Providers stated that the DPW failed to seek the advice of the Advisory Council for the Mentally Retarded and the Physically Handicapped as required by Minn. Stat. § 252.31.

As earlier indicated in Finding 9, the LCRAR recommended to the Department that it hold a hearing pursuant to Ch. 15 in order to eliminate those parts of Rule 34 which duplicated the SLF standards under the Minnesota Department of Health. Susan Robertson, Director of the LCRAR, testified that the Commission did not require inclusion of staff/resident ratios in the current rulemaking proceeding. She did, however, state that the agency could, in its discretion, do more than that required by the Commission in the course of a rulemaking proceeding. (Tr. Vol. II, pp. 60 through 68).

In its post-hearing submission, dated October 30, 1980, the Department commented that the public testimony at the hearing supported the continuation of staffing as provided by Rule 34 prior to these proposed amendments. Therefore, the Department has proposed deleting from the proposed amendments the reference to specific staff/resident ratios until such time as the ratios are further studied in its major revision to begin in January of 1981. The Hearing Examiner finds the Department's proposal to delete the specific staff/resident ratios to be a sound one. Although there is a need for the inclusion of staff/resident ratios in Rule 34, the Department failed to show that its proposed amendments were needed and reasonable. Simply lifting portions from the ICF/MR regulations, which were designed primarily for large state institutions, and placing them into a rule designed primarily for facilities with 16 or fewer residents indicates that application of the staff/resident ratios to all Rule 34 facilities would have been vague and arbitrary.

deleted p. 40,41

The Hearing Examiner concludes that the suggested deletion of the staff/resident ratios originally proposed and published in the State Register is considered to be a needed and reasonable proposal. Furthermore, since the October 30, 1980 proposed deletion merely reestablishes the language of the current rule, it is not considered to be a substantial change.

The Need for 12 MCAR § 2.018 (Rule 18).

30. Proposed Rule 12 MCAR § 2.018 is entirely new and is intended to apply to persons receiving semi-independent living services (SILS) with an ultimate goal of full independence where possible. The Department proposed this new rule because Rule 34 does not effectively apply to persons who no longer need a 24-hour a day program.

As community residential facilities have developed over the past eight years, it has become apparent that DPW Rule 34 has not adequately addressed the needs of mentally retarded people in the upper ranges of functioning. Such persons usually do not need a full-time, 24-hour per day program. Programming in Rule 34 facilities has resulted in an increasing number of residents who no longer need the full range of services provided in a Rule 34 facility and are ready for more independent living. Several SILS programs have been developed to provide support services while the client lives in a variety of ordinary community living arrangements. Semi-independent living services are currently being provided to 140 mentally retarded adults. This type of service will increase in the future as more mentally retarded people are integrated into the community.

In its Statement of Need and Reasonableness (DPW Ex. 7), the Department states that approximately 400 residents of Rule 34 facilities are ready for SILS. Rule 34 has proven to be an inappropriate standard for the provision of SILS. Previous attempts to license SILS facilities under Rule 34 were judged by the Commissioner to be ineffective and costly.

Discussion of Proposed Rule 12 MCAR § 2.018 (Rule 18).

31. Many sections of the proposed rules were not opposed, and this Report is generally limited to those that were opposed. A detailed discussion of

each section of the proposed rules is unnecessary. Such an analysis is contained in the Statement of Need and Reasonableness submitted by the Department. (DPW Ex. 7). The Examiner notes at this point that sections not commented on in this Report are hereby found to be needed and reasonable and that the Department has demonstrated this by an affirmative presentation of facts. With respect to the sections commented on in this Report, all of the concerns discussed on the record and in written comments have been carefully considered. The Hearing Examiner recommends adoption of the rule with minor revision as noted in the following Findings of this Report.

32. Proposed Rule §§ A.1. and 2. and B.1.a., b., c. and d. set forth the policy, authority and purpose of the proposed rules. The Department demonstrated the need for and reasonableness of these rule sections in its Statement of Need and Reasonableness and in oral and written testimony during the hearing. These sections drew little comment, and the Hearing Examiner recommends adoption of these sections as written.

33. At the date of the hearing on October 17, 1980, the Department proposed changes to §§ A.1., A.2., B.2.a., C.4., C.9., and 6.b. to correct errors in citation. These changes are not substantial. The Department has demonstrated the need and reasonableness of these amendments and they are hereby recommended by the Examiner for adoption.

34. 12 MCAR § 2.018 B.3.f. The Department proposed the deletion of this entire section in its amendments proposed at the hearing on October 17, 1980 (DPW Ex. 8). The new section would read as follows:

> Provisional licenses may be granted by the Commissioner under the terms of Minn. Stat. § 245.783, subd. 3.

This change is identical to the one discussed in Finding 13 of this Report. Although the change is not substantial, the use of the word "may" makes the rule section improper. (See discussion in Finding 13.) The Department must substitute the word "shall" for the word "may" in order to cure the substantive defect. complied p. 4

35. 12 MCAR § 2.018 B.3.g. The Department proposed to amend this section during the October 17, 1980 hearing by striking the word "waiver" whenever used, and substituting the word "variance". The Department also proposed to omit the word "affect" in the same section and substitute, therefore, the word "threaten".

These changes are identical to those discussed in Finding 14 of this Report and are recommended for adoption on the same basis. The Department has demonstrated the need and reasonableness for the changes. The amended rule will read:

> When a specific requirement cannot be met or an innovative alternative is desirable, a variance must be requested in writing. The variance requests shall state (a) the reason the current requirement cannot be met, (b) the proposed alternative, and (c) the date the alternative or requirement shall be met, not to exceed one year. No variance shall be granted that would threaten the health, safety or rights of clients.

so amended p. 4

36. 12 MCAR § 2.018 C.2. In its post-hearing submission, dated November 7, 1980, the Department proposed to amend the section to delete the words

"room and board" and to substitute the words "food and lodging". The proposed section now reads as follows:

> "Client". Adults who need more than food and lodging, but less than 24-hour per day program of service and supervision, receiving services as provided in this rule.

amended p. 5

The change is not substantial. The rule is both necessary and reasonable.

37. 12 MCAR § 2.018 C.7. The definition of "interdisciplinary team" caused a great deal of written and oral comment. (Tr. Vol. I, p. 164 and Public Exs. 8, 21B and 40). The major concern expressed was the client should be allowed to choose a representative or advocate to be included on the interdisciplinary team. Although this interpretation may be implicit in the statement "that other persons relevant to a particular client's needs may be included", the definition as written does not make explicit who shall choose the "other persons".

Written testimony from the Legal Advocacy for Developmentally Disabled Persons in Minnesota, dated November 12, 1980, (Public Ex. 40) recommended inclusion of the phrase "others at the request of the client" after the phrase "of the client". For purposes of clarification, the Hearing Examiner suggests the addition of that explicit language, although the rule is reasonable as written.

not added p. 6

Other testimony suggested inclusion of the phrase "or SILS staff member" after the words "program director". (Public Ex. 20). This change is also reasonable since testimony indicated that the program director may not work daily with the client. (Tr. Vol. I, p. 164). The Hearing Examiner suggests inclusion of "or SILS staff member" in the rule to give the rule the flexibility necessary to accomplish personal program planning.

included p. 6

However, the Department has established the need for and reasonableness of the rule as written. The suggestions are merely advisory and are recommended by the Hearing Examiner for consideration.

38. 12 MCAR § 2.018 C.11. The definition of "mentally retarded" person is restricted to those who manifest subaverage intellectual functioning and deficits in adaptive behavior manifested during the developmental period. This definition elicited a great deal of written comments from the public asking for the inclusion of those who manifest subaverage intellectual functioning and deficits in adaptive behavior caused by head trauma. (Public Exs. 30, 31, 32, 34, 35, 36 and 37).

The public's comments offered no data showing what impact this change would make on the Department. The recommendation seems reasonable to the Hearing Examiner, however, that if the end result is the same, the underlying cause of subaverage intellectual functioning (with those restrictions included in Rule 185) should not automatically disqualify a substantial number of citizens in need of identical services.

The definition as written is unclear. From the present wording, it is impossible to determine whether "and manifested during the developmental period" refers to the intellectual functioning or to adaptive behavior. In addition, there is not a definition of "developmental period" within the proposed rules. The phrase "and manifested during the developmental period"

could conceivably refer to the person or to the condition. Unless the terms "mentally retarded" and "developmental period" are technical definitions known to all in the field of mental retardation services, it is recommended that the definition of "mentally retarded" be refined and that the definition of "developmental period" be included within this rule.

Regardless of the comments, the definition cannot be said to be unnecessary or unreasonable as written.

39. 12 MCAR § 2.018 D.1. In its post-hearing submission of November 7, 1980, the Department proposed an addition to the list of categories on which a provider must maintain a written policy statement:

i. Waiting list and selection priorities.

The addition of this category is not a substantial change, but is a clarification of the written statement which each provider must make available to the public. The Department has shown the need and reasonableness of this addition.

40. 12 MCAR § 2.018 D.2.a.(1). In response to provider comment, (Tr. Vol. I, p. 152 and Public Ex. 40), the Department proposed the following deletion in its written comments dated November 7, 1980. The rule as amended eliminates "standardized" behaviorial assessment:

> A behavior assessment, conducted by SILS staff at least annually, shall objectively describe the behaviorial status of the client. The assessment instrument must be acceptable to the LSSA.

This is not a substantial change since the local social service agency still has control over the assessment instrument. The Department has demonstrated the need for and reasonableness of the rule as amended and the Hearing Examiner recommends its adoption.

41. 12 MCAR § 2.018 D.3. The Department proposed the addition of the word "responsible" to this rule (Written Comments dated November 7, 1980) in response to public testimony requesting clarity. (Tr. Vo. I, p. 160) The proposed section now reads as follows:

> Individual Program Plan (IPP). The provider shall have a letter of referral from the responsible local social service agency, including a copy of the individual service plan, for each client.

The change is not substantial since it merely clarifies the existing rule, and the proposed amendment along with the entire rule section is concluded to be needed and reasonable.

42. Proposed Rule 12 MCAR § 2.018 D.3.a.(3). Testimony was received indicating that "personal finances" should be changed to "money management" to encourage the possibility of training in all areas of finance as a step toward independent living. (Public Ex. 40).

The Hearing Examiner suggests the substitution, although the rule is reasonable as written.

43. Proposed Rule 12 MCAR § 2.018 D.3.a.(8). Written testimony (Public Ex. 40) from the Legal Advocacy for Developmentally Disabled Persons in Minnesota recommeded inclusion of the following:

> (9) Training in apartment or living environment maintenance, when indicated.

(10) Training in use of community resources included but not limited to police, fire, hospital emergency resources.

(11) Training in rights and responsibilities of community living.

The rationale for (10) above is that section (2) within this rule provision provides training in first aid skills and in responding to emergencies; and section (5) within this rule provision provides training in the use of the telephone. The commentors' proposed section (10) may be implicit within this rule; however, since rules must be clear and unambiguous, the Hearing Examiner suggests that the specific language proposed by the Legal Advocacy be included to prevent future confusion.

The addition of sections (9) and (11) also appear consistent with the Rule 18 goals and are consequently suggested for inclusion.

The proposed amendments are not substantial, but rather make complete the list proposed by the Department. The rule as written cannot be said to be constitutionally vague and has been shown to be needed and reasonable by the Department. The amendments are advisory and should be considered by the Department.

44. 12 MCAR § 2.018 E. The Health Board of the Metropolitan Council recommended an addition to Section E. in a memorandum dated October 13, 1980. (Public Ex. 21B). That group suggested inclusion of a new section (2) which would require renumbering of subsequent sections as follows:

> The administration shall provide for and be responsive to the appropriate participation of consumers, consumer representatives (e.g. parents, legal guardians) and representatives of the public in developing and/or reviewing the organization's policies and practices. This participation shall be through the governing body or the advisory committee which shall meet at ~~least semi-annually~~ and keep records of the meetings.

The Hearing Examiner finds merit in the suggestion and notes the absence of any similar policy statement in the rule. Therefore, the Hearing Examiner suggests that the Department study the policy reflected in the suggested amendment, and include it in the final draft of the rule if it is indeed consistent with state and department policy. This suggestion is advisory only. The rule as written has been shown to be needed and reasonable.

45. 12 MCAR § 2.018 E.3. There was testimony arguing against use of the word "may" in this section since "may" is permissive. (Tr. Vol. I, p. 154 and Public Exs. 40 and 41). This section is capable of the following construction: It is permissive to employ a program director. This does not appear to be Department intent. The section should be rephrased to indicate that the provider shall employ a program director and may employ more than one to assist in program direction.

Minn. Laws 1980, Ch. 615, § 6, subd. 3 (to be codified as Minn. Stat. § 15.0412, subd. 3) states that rules must specify "the nature and requirements of all formal and informal procedures related to the administration of official duties to the extent that those procedures directly affect the rights or procedures available to the public."

The public is greatly affected by whether the services of a program director is optional in SILS. The Department must change its rule to comply with

the statutory mandate of specificity. In order to correct this substantive defect, the Department must rephrase the section as suggested within this Finding. The rule is otherwise found to be needed and reasonable.

46. 12 MCAR § 2.018 E.4.b. In its post-hearing submission dated November 7, 1980, the Department proposed deletion of the words "know how" and substituting therefor the words "have demonstrated the ability". This section as amended would read as follows:

> Program director shall ensure that all clients have demonstrated the ability to contact a staff person for assistance in an emergency.

This is a technical change and it is not substantial. The need for and reasonableness of this rule as amended has been shown by the Department to be needed and reasonable.

47. 12 MCAR § 2.018 E.5.e.(4). The Department proposed the following change in its written comments dated November 7, 1980:

> A copy of the records of the deceased client shall be transmitted to the local social service agency.

The change is not substantial. The need and reasonableness of the rule has been demonstrated.

48. 12 MCAR § 2.018 E.6. It was recommended in written testimony by the Legal Advocacy for Developmentally Disabled Persons in Minnesota that a new section be added to include "client quarterly reviews". Since these reviews are mandated by Rule 18, the recommendation appears to be reasonable.

The rule as written nevertheless appears to be needed and reasonable; however, the adoption of the Legal Advocacy's suggestion would not cause a substantial change in the rule as published in the State Register.

49. 12 MCAR § 2.018 E.6.a.(9). The Department has proposed that §§ D.1.h. and E.6.a.(9) be changed to include dental care. (Written Comments dated November 7, 1980). This change is not substantial and presumably corrects an oversight in drafting rather than a deliberate omission. As proof of this, dental care is provided for in Rule 34. The inclusion of dental care within these sections is therefore not considered to be a substantial change from the rule as published in the State Register. Together with the entire section, the Department has established a need for and reasonableness of the proposed amendments.

50. Post publication revisions to Sections D.3.a.(7), D.3.c., and E.13. are apparently corrections to typographical errors and are, therefore, not substantial. Need and reasonableness are shown; the Hearing Examiner recommends adoption as amended.

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

CONCLUSIONS

1. That the DPW gave due, timely and legally adequate notice of the hearing.

2. That the DPW has met the procedural requirements of Minn. Laws 1980, Ch. 615, § 6, subd. 4 through subd. 4f (to be codified as Minn. Stat. § 15.0412, subd. 4 through subd. 4f).

3. That the DPW has demonstrated its statutory authority to adopt the proposed rules within the meaning of Minn. Laws 1980, Ch. 615, § 6, subd. 4c (to be codified as Minn. Stat. § 15.0412, subd. 4c), and has complied with all other substantive requirements of law or rule, except as noted in Findings 13, 20, 27, 34, and 45.

4. That the DPW has demonstrated the need for and reasonableness of the proposed rules by an affirmative presentation of facts in the record within the meaning of Minn. Laws 1980, Ch. 615, § 6, subd. 4c (to be codified as Minn. Stat. § 15.0412, subd. 4c).

5. That the additions to the proposed rules which were proposed after publication in the rules in the State Register are not substantially different from the rules as published in the State Register within the meaning of Minn. Laws 1980, Ch. 615, § 6, subd. 4d (to be codified as Minn. Stat. § 15.0412, subd. 4d).

6. That the Hearing Examiner has suggested action to correct the defects mentioned in Conclusions as noted in Findings 13, 20, 27, 34, and 45.

7. That due to Conclusions 3 and 6, this Report has been submitted to the Chief Hearing Examiner for his approval pursuant to Minn. Laws 1980, Ch. 615, § 6, subd. 4d (to be codified as Minn. Stat. § 15.0412, subd. 4d).

8. That a finding of need and reasonableness in regard to any particular rule should not preclude or discourage the DPW from further modification of the rules based on the recommendation contained in this Report and an examination of the public comments, provided that no substantial change is made from the rules as originally proposed and provided that the rule finally adopted is based upon facts appearing in the record.

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

RECOMMENDATION

It is hereby recommended that the proposed rules be adopted consistent with the Findings of Fact and Conclusions made above.

Dated: December 12, 1980.

Phyllis A. Reha

PHYLLIS A. REHA
Hearing Examiner

DPW-81-004-PR

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE DEPARTMENT OF PUBLIC WELFARE
MENTAL RETARDATION DIVISION

In the Matter of the Proposed Adoption of 12 MCAR § 2.018 and Proposed Amendment of 12 MCAR § 2.034 Concerning Programs for Mentally Retarded Persons.

ORDER OF THE CHIEF HEARING EXAMINER

The above-entitled matter came on for review by the Chief Hearing Examiner pursuant to the provisions of Minn. Laws 1980, Ch. 615, § 6, subd. 4d (to be codified as Minn. Stat. § 15.0412, subd. 4d) which provides in part:

> If the [hearing examiner's] report contains a finding that the proposed rule is substantially different from that which was proposed at the public hearing, or that the agency has not met the requirements of section 15.0412, subdivisions 4 through 4f, it shall be submitted to the chief hearing examiner for approval. If the chief hearing examiner approves the finding of the hearing examiner, he shall advise the agency of actions which will correct the defects, and the agency shall not adopt the rule until the chief hearing examiner determines that the defects have been corrected. If the chief hearing examiner determines that the need for and reasonableness of the rule has not been established pursuant to subdivision 4, clause (c), and if the agency does not elect to follow the suggested actions of the hearing examiner to correct that defect, then the agency shall submit the proposed rule to the legislative commission to review administrative rules for the commission's advice and comment. The agency shall not proceed to adopt the rule until it has received and considered the advice of the commission; provided, that the agency is not required to delay adoption longer than 30 days after the commission's receipt of the agency's submission.

Based upon a review of the record in this proceeding, the Chief Hearing Examiner hereby approves the Report of the Hearing Examiner in all respects and specifically as to any finding of substantial change or of failure to comply with Minn. Laws 1980, Ch. 615, § 6 (to be codified as Minn. Stat. § 15.0412, subd. 4-4f), or of failure to establish need for and reasonableness of the proposed rule, except as hereinafter noted.

1. Finding 20. The Finding and Conclusion of the Hearing Examiner that the addition of the words "or chemical substance" to Rule 12 MCAR § 2.034 A.6.v., where it is not defined anywhere in the rule, is too vague and lacking in specificity, is approved, as is the Examiner's proposal for curing the defect. However, the substantive requirements of law relating to vagueness and specificity include both the due process required by the Constitution and the definition of "rule" as found at Minn. Stat. § 15.0411, subd. 3, which states that a rule is an agency statement made to implement or make specific the law enforced or administered by the agency.

2. Finding 27. The Finding and Conclusion of the Hearing Examiner are approved. In this instance, the defect arose from the agency's response to

public concern over a rule which was not proposed for amendment, a laudible act by the agency. However, the agency need not have responded at all for the rule was never proposed for amendment. Therefore, the easiest way to cure the defect created by the amendment proposed is simply to retain existing language or, as the Examiner suggested, drop the words "any and".

3. Finding 45. The Finding, Conclusion and suggestion for curing the defect in this rule, as expressed by the Hearing Examiner, are approved. However, the Chief Hearing Examiner would add the same comments here as were made in Finding 20, above, relating to the vagueness and specificity concerns.

In order to correct the defects enumerated by the Hearing Examiner, the agency shall either take the action recommended by the Hearing Examiner or reconvene the rule hearing if appropriate. If the agency chooses to reconvene the rule hearing, it shall do so as if it is initiating a new rule hearing, complying with all substantive and procedural requirements imposed on the agency by law or rule.

If the agency chooses to take the action recommended by the Hearing Examiner, it shall, prior to submitting the rules to the Attorney General for review, submit to the Chief Hearing Exmainer a copy of the rules as initially published in the State Register, a copy of the rules as proposed for final adoption in the form required by the State Register for final publication, and a copy of the agency's Findings of Fact and Order Adopting Rules. The Chief Hearing Examiner will then make a determination as to whether the defect in regard to substantial change and the requirements of Minn. Laws 1980, Ch. 615, § 6 (to be codified as Minn. Stat. § 15.0412, subd. 4-4f) have been corrected.

Should the agency make changes in the rules other than those recommended by the Hearing Examiner, it shall also, prior to submitting the rule to the Attorney General, submit the complete record to the Chief Hearing Examiner for a review in regard to substantial changes.

Dated: December 16th, 1980.

DUANE R. HARVES
Chief Hearing Examiner

DPW Exh. No. 11
File No. DPW 81-004-PR
Date 10/17/80

sota State Plan of Program Operations and Administration for the Special Supplemental Food Program for Women, Infants and Children (WIC) Program. Copies of the draft Plan will be available for public inspection at Minnesota Department of Health district offices and local WIC projects after May 12, 1980.

The meeting will be held Tuesday, May 27, 1980, 10:00 a.m. in the Board Room, Minnesota Department of Health, 717 SE Delaware Street, Minneapolis, Minnesota. The meeting will conclude after all registered speakers have presented testimony.

Any citizen or group may submit either written or oral testimony at the meeting. Testimony will be given on a first come, first serve basis and will be limited to fifteen (15) minutes. Advance registration is requested.

For further information, contact the Minnesota Department of Health, WIC Program, 717 SE Delaware Street, Minneapolis, Minnesota (612) 296-5233.

George R. Pettersen, M.D.
Commissioner of Health

Minnesota State Retirement System

Regular Meeting, Board of Directors

Regular quarterly meeting of the Board of Directors, Minnesota State Retirement System, will be held on Friday, May 23, 1980, at 9:00 a.m. in the office of the System, 529 Jackson Street, St. Paul, Minnesota.

Pollution Control Agency Solid Waste Division

Notice of Intent to Solicit Outside Opinion Concerning A Proposed Rule Relating to Administration of a Grant Program for Solid Waste Management Planning Assistance Grants and for Waste Reduction and Source Separation Demonstration Project Grants

Notice is hereby given that the Minnesota Pollution Control Agency is considering adoption of rules that provide for administration of a program which would provide grants to political subdivisions for solid waste management planning assistance and for waste reduction and source separation demonstration projects.

The proposed rules are authorized by the Waste Management Act of 1980, Minn. Laws of 1980, ch. 564, Article 5, § 1, and Article 6, § 1. The proposed rules if adopted, would regulate the following aspects of administering the grant program:

1. Application and review procedures.
2. Criteria for eligibility.
3. Levels of local funding required.
4. Priority criteria for funding eligible projects.

All interested or affected persons or groups are requested to participate. Statements of information and comment may be made orally or in writing. Written statements of information and comment may be addressed to:

Mr. Donald J. Kyser
Minnesota Pollution Control Agency
Division of Solid Waste
1935 West County Road B-2
Roseville, Minnesota 55113
Phone: (612) 297-2704

Oral statements of information and comment will be received during regular business hours over the telephone at (612) 297-2704, and in person at the above address.

All statements of information and comment should be received by June 30, 1980. Any written material received by the Minnesota Pollution Control Agency shall become part of the hearing record.

May 5, 1980

Dale L. Wikre, Director
Division of Solid Waste

Department of Public Welfare Mental Health Bureau

Notice of Intent to Solicit Outside Opinion Concerning Revision of Rules Governing Community Mental Health Board and County Welfare or Human Service Board Responsibilities to Mentally Retarded Persons, and Standards of Operation for Residential Facilities for Mentally Retarded Persons

Notice is hereby given by the Minnesota Department of Public Welfare, Mental Health Bureau, has begun consideration of 1) specific language amendments to Rule 185 (12 MCAR § 2.185), concerning criteria and procedures for need

determination, mandated responsibilities of the county boards to individuals who are mentally retarded, and delivery of services, and 2) amendments in Rule 34 (12 MCAR § 2.034), concerning elimination of those parts of the rule which now duplicate Department of Health rules for Supervised Living Facilities, and certain other amendments concerning standards and staffing ratios.

Rule 185, Community Mental Health Board and County Welfare or Human Service Board responsibilities to individuals who are mentally retarded, governs the planning and provision of services to all individuals who are or may be mentally retarded.

Authority for the amendments to Rule 185 is contained in Chapter 324, Minnesota Laws of 1979, enacting Minn. Stat. § 265E.03, which states that the purpose of the Community Social Service Act (CSSA) is to establish a system of planning for and providing community social services administered by the boards of county commissioners of each county under the supervision of the Commissioner of Public Welfare.

Authority for the amendments to Rule 185 is contained in recommendation of the Legislative Commission to Review Administrative Rules, April 16, 1980, to hold a public hearing on Rule 185.

The purpose of the proposed changes in Rule 185 is to 1) amend the rule to effect legislative transfer of responsibility to the county boards of commissioners, as provided in the Community Social Services Act. Current designation of responsibilities to Community Mental Health Board and County Welfare or Human Service Board is no longer appropriate under provisions of the Community Social Services Act. The purpose of other proposed changes in Rule 185 is to submit certain provisions of DPW Instructional Bulletin #78-67, for public hearing in order to amend Section D, Paragraph 4, of the Rule.

Rule 34, Standards for the Operation of Residential Facilities and Services for Persons who are mentally retarded, governs the provision of residential services to persons who are mentally retarded.

Authority for Rule 34 amendments is contained in Minn. Stat. § 252.28, and recommendation of the Legislative Commission to Review Administrative Rules, April 16, 1980, to hold a public hearing on Rule 34.

The proposed changes in Rule 34 are to 1) eliminate those parts of the rule which duplicate Department of Health Supervised Living Facility rule (such duplications occurred in the SLF Rule after adoption of Rule 34), 2) update certain parts of the rule, and 3) add staffing standards and ratios.

All interested or affected persons or groups are requested to participate. Statements of information and comment may be made orally or in writing. Written statements of information and comment may be made addressed to:

Ardo Wrobel, Director
Mental Retardation Division
Centennial Office Building
St. Paul, MN 55155

Oral statement of information and comment will be received during regular business hours over the telephone at 612/296-2160.

All statement of information and comment must be received by June 1, 1980. Any written material received by the Department shall become part of the hearing record.

Board of Teaching

Notice of Intent to Solicit Outside Opinion Concerning A Proposed Rule Relating to the Licensure of Teachers of English/Language Arts

Notice is hereby given that the Board of Teaching is seeking information or opinions from sources outside the board in preparing to propose the adoption of a rule governing the licensure of Teachers of English/Language Arts. Any interested persons may submit data or views on this subject in writing or orally to:

Kenneth L. Peatross, Executive Secretary
Minnesota Board of Teaching
608 Capitol Square Building
550 Cedar Street
St. Paul, Minnesota 55101
(612) 296-2415

Any written materials received by the Board shall become part of the hearing record in the event that the rule governing this subject is promulgated.

April 30, 1980

Kenneth L. Peatross, Executive Secretary
Board of Teaching

Errata

At *State Register*, Volume 4, Number 42, April 21, 1980, under CONTENTS, ADOPTED RULES section: The entry "Examination and Licensing of Morticians, p. 1690" should be the only entry for Health Department, Manpower Division. The second and third entries (Urban Indian Housing Loan Program, p. 1692, and Accessibility Improvement Assistance Program, p. 1692) should have been designated as rules of the Housing Finance Agency.

State Planning Agency

The Minnesota Health Research Program

A Status Report

In January 1977 the Governor requested state financial support for research in biomedicine, dental care, the health delivery system and other health-related issues. Acting on the Gover-

DPW Exh. No. 10
No. DPW-81-004-PR
Date 10/17/80

Department of Public Welfare
Mental Health Bureau

Notice of Intent to Solicit Outside Opinion Regarding the Draft Rules Governing the Licensing of Developmental Achievement Centers and the Licensing of Semi-Independent Living Services to People Who Are Mentally Retarded

18

Notice is hereby given by the Minnesota Department of Public Welfare, Mental Health Bureau, has begun consideration of 1) a proposed rule 38 (12 MCAR § 2.038) governing the licensing of Developmental Achievement Centers and services for persons who are mentally retarded and/or cerebral palsied and 2) a proposed rule 18 (12 MCAR § 2.018) governing the licensing of semi-independent living services to people who are mentally retarded.

In order to determine the reasonableness and completeness of the draft rules, the Department of Public Welfare hereby requests information and comments from all interested individuals or groups concerning the subject matter of the proposed rule.

All interested or affected persons or groups are requested to participate. Statements of information and comment should be made in writing.

Written statements of information and comment may be addressed to:

Ardo Wrobel, Director
Mental Retardation Division
Department of Public Welfare
Centennial Office Building
St. Paul, Minnesota 55155

The draft rule 38 (12 MCAR § 2.038) if adopted, would supersede DPW Rule 3 (12 MCAR § 2.003) (1968 edition).

All statements of information and comment must be received by August 10, 1979. Any written material received by the Department shall become part of the hearing record.

Department of Transportation

Notice of Application and Opportunity for Hearing Regarding Petition to Abandon and Remove Certain Trackage Serving Geo. A. Hormel & Co., Austin, MN

Notice is hereby given that Chicago, Milwaukee, St. Paul and Pacific Railroad Company with offices at 900 First National Bank Building, Minneapolis, Minnesota 55402 has filed a petition with the Commissioner of Transportation pursuant to Minn. Stat. § 219.741 and § 218.041, Subd. 3 (10) to abandon and remove certain trackage serving Geo. A. Hormel & Co., Austin, Minnesota.

The petition recites among other matters: "That Geo. A. Hormel & Co. has advised the petitioner (Chicago, Milwaukee, St. Paul and Pacific Railroad Company) of its intentions to begin construction of a new Plant in August, 1979, and has requested the removal of all trackage not needed by said Plant, . . . (trackage to be removed by August 1, 1979 and trackage to be removed) at a date later than August 1, 1979.

That the trackage which petitioner (Chicago, Milwaukee, St. Paul and Pacific Railroad Company) seeks authority to remove serves no shipper other than Geo. A. Hormel & Co., and its removal will, therefore, not harm any other shipper and will benefit said Hormel & Co. The continued maintenance and operation of said trackage is no longer needed and its removal is necessary for future expansion and development of Hormel & Co.'s Plant at Austin, Minnesota."

Any person may file a written objection to the proposed action by means of a letter addressed to the Commissioner of Transportation, Transportation Building, Saint Paul, Minnesota 55155, not later than the date specified below. An objection must be received on or before July 23, 1979. The objection should state specifically how the objector's interest will be adversely affected by the proposed action.

Upon receipt of a written objection, the Commissioner will, with respect to the named petitioner, set the matter down for hearing. If no objections are received, the Commissioner may grant the relief sought by the petitioner.

If this matter is set for hearing, any person who desires to become a Party to this matter must submit a timely Petition

DPW Exh. No. 3
File No. DPW 81-004-PR
pw Date 10/17/80

STATE OF MINNESOTA

DEPARTMENT OF PUBLIC WELFARE

IN THE MATTER OF THE PROPOSED ADOPTION OF 12 MCAR § 2.018 AND PROPOSED AMENDMENT OF 12 MCAR § 2.034 CONCERNING PROGRAMS FOR MENTALLY RETARDED PERSONS.

ORDER FOR HEARING

IT IS HEREBY ORDERED that a public hearing on the above captioned rules be held at the State Office Building, Room 57, Wabasha Street, St. Paul, Minnesota, on October 17, 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 Department of Public Welfare for that purpose.

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

Dated: August 26, 1980

Arthur E. Noot
Commissioner

DPW Exh. No. 1
File No. DPW 81-004-PR
par Date 10/17/80

State of Minnesota
Department of Public Welfare

In the Matter of the
Proposed Adoption of
12 MCAR §2.018 and Proposed
Amendment of 12 MCAR §2.034
Concerning Programs for
Mentally Retarded Persons

NOTICE OF HEARING

A public hearing concerning the above Rules 12 MCAR §2.018 (Rule 18), Standards for the Provision of Semi-Independent Living Programs to People Who Are Mentally Retarded, and 12 MCAR §2.034 (Rule 34), Standards for Operation of Residential Programs and Services for Persons Who Are Mentally Retarded, will be held at the State Office Building, Room 57, Wabasha Street, (between Aurora and Fuller), St. Paul, MN 55155 on October 17, 1980 commencing at 9:00 a.m.. The proposed rule, 12 MCAR §2.018 (Rule 18) and proposed rule amendment 12 MCAR §2.034 (Rule 34) may be modified as a result of the hearing process. Therefore, if you are affected in any manner by these rules, you are urged to participate in the rule hearing process. 1

Following the agency's presentation at the hearing, all interested or affected persons will have an opportunity to ask questions and make comments. 2
Statements may be made orally and written material may be submitted. In addition, whether or not an appearance is made at the hearing, written statements or material may be submitted to Jon Lunde, Hearing Examiner, Office of Administrative Hearings, Room 300, 1745 University Avenue, St. Paul, MN 55104, telephone 612/296-5938, 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. 5 7

Notice is hereby given that 25 days prior to the hearing a Statement of Need and Reasonableness will be available for review at the agency and at the Office of Administrative Hearings. 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 Administrative Hearings at a minimal charge. 9

12 MCAR §2.018

Rule 18 establishes standards for the provision of semi-independent living services (SILS) to mentally retarded adults whose dependency requires services above the level of food and lodging, but below the level of a 24-hour per day program of care and services as provided in facilities licensed under Rule 34.

The provision of semi-independent living services as an organized program of support services needed to promote and achieve client independence, is a relatively recent development in Minnesota. The Department is proposing a new rule because it was found that Rule 34 does not effectively apply to persons who no longer need a 24-hour per day program. 3

Semi-independent living services are now being provided to approximately 140 mentally retarded adults. While receiving SILS, the clients live in a variety of ordinary community living arrangements. Such living arrangements include, but are not limited to; client's own home, foster home, apartment or rooming house. The rule governs the provision of services to clients, but does not govern the client's place of residence. Such places in which the clients reside are subject to the ordinary community health, safety, sanitation and zoning codes. Such places of residence are not considered health care facilities.

The use of this type of living arrangement will increase in the future as more mentally retarded people are integrated into the community.

The proposed rule contains:

a. Statutory authority for promulgation of the rule.
b. Statement of purpose.
c. Provision that the rule applies to persons, organizations and associations engaged in the operation and provision of SILS to adults who are mentally retarded.
d. Procedures for licensing.
e. Appeal rights pursuant to Minn. Stat. Chapter 15, Minnesota Administrative Procedures Act.
f. Definition of terms used in the rule.
g. Program and service standards which include admission standards, and provision for comprehensive behavioral and physical assessments. Individual program planning is required, which includes goal objectives and methods in:

    (1) Training in health planning, meal preparation and shopping.
    (2) Training in first aid skills, responding to emergencies and symptoms of illness.
    (3) Training in management of personal finances.
    (4) Training in self-administration of prescription and nonprescription medication.
    (5) Training in the use of the telephone and other public utilities.
    (6) Development of the client's social, recreational and transporation abilities.
    (7) Development of more appropriate behaviors for clients displaying inappropriate behaviors.
    (8) Training in matters of personal appearance and hygiene.

h. Administrative standards regarding responsibility for program direction, employment of staff, discharge of clients, client records, access to records, client rights regarding complaints and appeals, and living arrangements.

12 MCAR §2.034

The provisions of the current Rule 34 establish standards for the operation of residential facilities and services for persons who are mentally retarded. The Rule applies to any person, corporation, partnership, voluntary association or state hospital which provides services in a residential facility serving more than four mentally retarded people.

Rule 34 was originally promulgated in November, 1972, to implement Minn. Stat. §252.28, which directs the Commissioner of Public Welfare to license programs and services for mentally retarded persons residing in community facilities and state hospitals.

The Rule seeks to protect the human and civil rights of mentally retarded people in Minnesota by establishing a standard of normalized living and developmental services for residents of community and state hospital facilities. Such standards encompass the several functional levels of residents and any additional sensory, behavioral or physical disabilities that they may have.

Within this general framework, the Rule establishes standards that require family-like primary living units that are small enough to ensure the development of meaningful interpersonal relationships among residents and between residents and staff. Primary living units may not have more than four persons to a bedroom, and no more than 16 residents per living unit. Such living units must have bedrooms, living room, bathroom, recreation room and connecting areas.

The Rule establishes standards for staff in order to maintain a warm, friendly home-like environment that is conducive to optimal development of the residents. Standards further require an individual program plan for each resident which requires assessment of needs, development of goals, and the provision of specific developmental and remedial services.

The Rule also requires that developmental and remedial services be provided outside of the living units, and, if possible, away from the facility. This is established as a standard to approximate normal living situations. The rule specifies standards for residents who also have physical or behavioral handicaps that need special treatment and services.

The Rule prohibits corporal punishment and establishes that restraint and seclusion may be employed only to protect the resident from injuring himself or others.

In addition, the Rule:

1) specifies the scope, purpose and statutory authority of the Rule,
2) establishes procedures for licensing,
3) defines terms used in the Rule,
4) establishes standards for the health, hygiene and grooming of residents,
5) provides standards for food service, medical care, admission and discharge of residents, and
6) administrative policies and practices.

The provisions of the proposed amendment to Rule 34 are intended to:

a. Eliminate health and safety standards from Rule 34. The Minnesota Department of Health's Rule on Supervised Living Facility Standards (Chapter Twenty-three; MHD 391-401) is the applicable health and safety standard for all residential facilities licensed under Rule 34 (Minn. Stat. §252.28), need not be duplicated in DPW rule.

b. Prescribe minimum overall staff-to-resident ratios. The staff ratios proposed are the same as those prescribed in Rule 34 facilities that are also certified as Intermediate Care Facilities for Mentally Retarded (ICF/MR). The proposed amendment to the Rule establishes the same staffing ratios in the facilities that are not certified ICF/MR facilities.

c. Update the Rule regarding the laws, rules, practices and definitions that have affected the Rule since adoption of Rule 34 in November 1972.

The agency's authority to adopt proposed Rule 18 and amendments to Rule 34 are contained in Minn. Stat. §252.28 and 245.781-.814.

The agency estimates that there will be no cost to local public bodies in the State to implement these Rules for the two years immediately following their adoption within the meaning of Minn. Stat. §15.0412, subd. 7 (1978).

Copies of the proposed rule are now available and at least one free copy may be obtained by writing to Kay Brown, Department of Public Welfare, Centennial Building, St. Paul, MN 55155, telephone (612) 296-2682. Additional copies will be available at the hearing. If you have any questions on the content, contact Ardo Wrobel, Department of Public Welfare, 612/296-2160.

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, Minnesota 55155, telephone (612) 296-5615.

Dated: 8/28/80

Arthur E. Noot
Commissioner of Public Welfare

CS/gogg

DPW Exh. No. 4
File No. DPW 81-004 PR
per Date 10/17/80

STATE OF MINNESOTA

DEPARTMENT OF PUBLIC WELFARE

IN THE MATTER OF THE
PROPOSED ADOPTION OF
12 MCAR §2.018 AND PROPOSED
AMENDMENT OF 12 MCAR §2.034
CONCERNING PROGRAMS FOR
MENTALLY RETARDED PERSONS

AFFIDAVIT OF MAILING

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

That on the 12th day of September, 1980, at the City of St. Paul, County of Ramsey, State of Minnesota, she served the attached Notice of Hearing by depositing in the United States mail at said City of St. Paul, a true and correct copy thereof, properly enveloped, with postage prepaid, to all persons and associations who, as of this date, have registered with the Department to receive notice of rulemaking activity.

Linda M. Nelson

Subscribed and sworn to before me
this 12 day of September,
1980.

Margaret Holt



DPW Exh. No. 5
Case No. DPW-81-004 PR
per Date 10/17/80

STATE OF MINNESOTA

DEPARTMENT OF PUBLIC WELFARE

IN THE MATTER OF THE
PROPOSED ADOPTION OF
12 MCAR §2.018 AND PROPOSED
AMENDMENT OF 12 MCAR §2.034
CONCERNING PROGRAMS FOR
MENTALLY RETARDED PERSONS

AFFIDAVIT OF
ADDITIONAL MAILING

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

That on the 12th day of September, 1980, at the City of St. Paul, County of Ramsey, State of Minnesota, in addition to mailing the attached Notice of Hearing to all persons and associations listed on the Department of Public Welfare's mailing register, she also served the attached Notice of Hearing by depositing in the United States mail at said City of St. Paul, a true and correct copy thereof, properly enveloped, with postage prepaid to the following agencies:

All Minnesota County Welfare Departments
All Minnesota Human Service Boards
All Minnesota Area Mental Health Boards
All Minnesota State Hospitals
Rule 34 Facilities
Semi-Independent Living Facilities

Linda M. Nelson

Subscribed and sworn to before me
this 12 day of September,
1980.

Margaret Holt

MARGARET HOLT
NOTARY PUBLIC-MINNESOTA
RAMSEY COUNTY
My Comm. Expires Sept. 22, 1984

STATE OF MINNESOTA

COUNTY OF RAMSEY

CERTIFICATE

In the Matter of the
Proposed Adoption of
12 MCAR §2.018 and Proposed
Amendment of 12 MCAR §2.034
Concerning Programs for
Mentally Retarded Persons

I hereby certify that the list of persons, associations, and other interested groups who have requested, pursuant to Minn. Stat. §15.0412, subd. 4, that their names be placed on file with and maintained by the State Department of Public Welfare for the purpose of receiving notice of the proposed adoption of rules by this Department is accurate and complete as of 9:00 A.M, this 12th day of September, 1980.

Linda M. Nelson

DPW-81-004-PR

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE DEPARTMENT OF PUBLIC WELFARE
MENTAL RETARDATION DIVISION

In the Matter of the Proposed Adoption of
12 MCAR § 2.018 and Proposed Amendment
of 12 MCAR § 2.034 concerning programs
for mentally retarded persons.

ORDER OF THE CHIEF
HEARING EXAMINER

WHEREAS, a hearing was held on October 17 and October 22, 1980, before Phyllis A. Reha, 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 Hearing Examiner made pursuant to Minn. Stat. § 15.052, subd. 3, was issued to the Department of Public Welfare and;

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

WHEREAS, the Department has submitted said rules to the Chief Hearing Examiner for review pursuant to Minn. Stat. §§ 15.0412, subd. 4e and 15.052, subd. 4, and 9 MCAR § 2.111; and

WHEREAS, the Chief Hearing Examiner finds that in 12 MCAR S 2.034 A.4.c., as adopted, the rule citation reads "Minn. Reg. MDH 391-401". (Emphasis added.) According to Finding 12 in the Report of the Hearing Examiner and consistent with the Rules of the Minnesota State Board of Health, the proper cite is "Minn. Reg. MHD 391-401". The Department should make this clerical change before submitting its rules to the Attorney General and is not required to resubmit them to the Chief Hearing Examiner before doing so; and changed p. 3.

WHEREAS, the Chief Hearing Examiner finds that the final proposed rules are not substantially different from those proposed at the public hearing.

NOW, THEREFORE, upon receipt of this Order, the Department has the responsibility of submitting the complete hearing record and the rules as adopted by the Commissioner to the Attorney General and to publish in the State Register, all pursuant to Minn. Stat. § 15.0412, subd. 4e and 4f.

Dated: April 8th, 1981.

Duane R. Harves

DUANE R. HARVES
Chief Hearing Examiner

DPW Exh. No. 7
File No. DPW-81-004-PR
Date 10/17/80

STATE OF MINNESOTA
Department of Public Welfare

IN THE MATTER OF THE PROPOSED ADOPTION OF AMENDMENTS TO RULE 34 OF THE DEPARTMENT OF PUBLIC WELFARE GOVERNING THE LICENSING AND OPERATION OF RESIDENTIAL PROGRAMS FOR MENTALLY RETARDED PERSONS (12 MCAR 2.034).

STATEMENT OF NEED AND REASONABLENESS

I. Authority for the Establishment and Revision of Rule 34.

A. Principal authority.

1. Minn. Stat. §252.28 authorizes the Commissioner to determine need, location and program of public and private residential and day care facilities and services for mentally retarded children and adults. The act further directs the establishment of uniform rules, regulations, program standards, and granting of license to each type of residential and day facility or service for more than four mentally retarded persons, including state institutions under control of the Commissioner and serving mentally retarded persons.

2. Minn. Stat. §245.782 - .814, the Public Welfare Licensing Act, establishes the administrative procedures and authority of the Commissioner to carry out responsibilities in Minn. Stat. §252.28.

B. Supportive authority.

1. Minn. Stat. §246.01 establishes the Commissioner of Public Welfare as the state agency, as defined by the Social Security Act of the United States, and the laws of Minnesota, for all purposes relating to mental hygiene, including guardianship of mentally retarded wards, and administration of state hospitals.

2. Minn. Stat. §245.70 designates the Commissioner as the state agency to establish and administer a statewide plan for the construction, equipment, maintenance, and operation of any facilities for the care, treatment, diagnosis, or rehabilitation of mentally retarded. The Commissioner is authorized and directed to receive, administer, and expend any funds under any federal law or other sources for such purpose.

3. Minn. Stat. §252A.11, Subd. 5, establishes that the exercise of the Commissioner's authority over his wards shall be in a manner which least restricts the ward's personal freedom consistent with need for supervision and protection.

4. Minn. Stat. §252A.01 authorizes the Commissioner to supervise his wards and protect them from violation of their human and civil rights by assuring them needed social, financial, residential and habilitative services to which they are lawfully entitled.

II. Summary of the Rule.

A. Pursuant to legislative initiative taken in 1971 (Minn. Stat. §252.28) to establish licensure programs for the mentally retarded, the Department of Public Welfare (DPW) adopted its program license Rule 34, which sets the standards of living and opportunities for retarded people living in community residential facilities and state hospitals.

Through considerable involvement of the public, advocates and providers, professionals in the field, as well as state and local agencies, the DPW developed Rule 34 in cooperation with the Minnesota Health Department (MHD). The MHD subsequently developed a companion standard for Supervised Living Facilities (SLF) for nonprogrammatic matters of safety and sanitation.

Minnesota was the first state to establish the licensure of program activities. Rule 34 establishes statewide standards for the primary living units. It provides for individualized program planning for all residents and clearly requires that individual programs are to be carried out in a home-like atmosphere, in the least restrictive setting needed for an effective program. The Rule requires that developmental and remedial services be provided in addition to resident-living services outside the residential facility (i.e., Developmental Achievement Centers, sheltered workshops, schools, employment), whenever possible. This provision covering services outside of the residential facility addresses opportunities for a normal existence in order to make available patterns and conditions of everyday life as close as possible to the norms and patterns of mainstream society.

Rule 34 requires an annual assessment of each resident's physical and behavioral status, conducted by an interdisciplinary team, a program plan, delivery of services and evaluation of progress toward the objective of the program plan.

County boards of commissioners and human service boards pursuant to Minn. Stat. Chapter 256E, are responsible through a local social service agency for the planning and provision of services to welfare clients. This responsibility, as it relates to programs licensed under Rule 34, is designated in MCAR 2.185 (Rule 185). For this reason, the case manager of the county agency is a member of the facilities' interdisciplinary team to insure that the facilities' plan is in conformance with the goals and objectives of the county (referring agency).

Rule 34 establishes standards regarding the number of residents in an primary living unit, the grouping of residents, design of buildings, furnishing and equipping of living units, and matters of staff-residents relationship and activities. Corporal punishment cannot be used, and restraint and seclusion, when employed in conjunction with a behavior modification program, cannot be done as punishment, for convenience of staff or substitution for program.

III. Funding.

In order to achieve the goal of normalization to the furthest extent possible, Minnesota pioneered in obtaining federal funds under Title XIX for use in facilities for the mentally retarded. This in turn has enabled the state to pursue its policy of deinstitutionalization. These advantages are somewhat offset by the fact that the funding of community facilities under Title XIX, after licensed under Rule 34, carries with it a complicated system of quality assurance, utilization review, and survey by the Health Department for certification review prior to issuing a provider agreement and rate setting by DPW. The federal regulations for intermediate care

facilities mentally retarded (ICF/MR) that accompany the Title XIX funding of ICF/MR facilities allow participating states to adopt their own particular program model and Minnesota has adopted the developmental model (Minn. Stat. §252A.11, Subd. 5, MCAR 2.185 and MCAR 2.034).

The Department of Public Welfare is designated the administrating agency for purposes of the Title XIX program. Minn. Stat. §256B.065, Social Security Amendments provide that the Commissioner shall comply with requirements of 1972 (P.L. 92-603) necessary in order to avoid loss of federal funds, and shall implement by rule pursuant to the Administrative Procedures Act. Those provisions of state agencies supervising Title XIX of the Social Security Act.

IV. Need to Amend the Rule.

A. Overlapping provisions between Rule 34 and Supervised Living Facility Standards.

Supervised Living Facility (SLF) standards (7 MCAR 1.391-.401) have been developed by the Minnesota Health Department pursuant to a cooperative agreement with the DPW, under which the DPW regulates the habilitative, rehabilitative, and social service programs provided to residents of these facilities, and the Minnesota Health Department (MHD); Minn. Stat. §144.56 establishes a Supervised Living Facility as a facility, licensed by both the MHD and the DPW, in which appropriate programs and services are provided.

The SLF standards were promulgated in 1974, after promulgation of Rule 34, in 1972. This resulted in certain overlapping provisions that were submitted for public hearing in 1974, but for various reasons, were not adopted. These overlapping provisions continue to exist.

B. No staffing ratios in the existing rule.

The Rule does not contain specific minimum staff/resident ratios and staff qualifications. Although the federal Intermediate Care Facility Standards for Mentally Retarded (ICF/MR) specify ratios and qualifications, the several (11 or more) facilities not ICF/MR certified, are not currently subject to the ICF/MR ratios and qualifications. This has resulted in difficulty in determining adequate staffing and reimbursement for services by non-certified residential facilities.

C. No waiver provisions in the existing rule.

The rule does not contain specific waiver provisions. The rule was promulgated prior to enactment of Minn. Stat. §245.781-.814, the Public Welfare Licensing Act. Waivers are authorized in the Public Welfare Licensing Act, and have been included in DPW Rules 8, 35, and 36.

D. Updating the Rule.

In addition to the above, the Commissioner has selected certain other changes that are considered necessary and important to the purposes of the rule. These are also explained in the section-by-section analysis of the amendments.

Consideration was given to recommendations made in a staff study completed in December, 1978, by Robert Meyer, Program Consultant, Mental

Retardation Division, Department of Public Welfare. This study included various concerns expressed by the Rule 34 Task Force, 1974, as well as recommendations of licensing and rate-setting staff. Much of Mr. Meyer's study identified issues that were being studied and incorporated in the Model Standards Project, which was going on at the same time. The Model Standards Final Report, January, 1980, MR Division, DPW, has been distributed for comment and recommendations (Request Bulletin 80-26). More information, study and input from affected groups is needed before the Department is ready to propose major revisions of the Rule. Major revision of the Rule is not proposed at this time.

The Commissioner may propose the Model Standards Report as the vehicle for major changes in the licensing of programs for mentally retarded people.

V. Analysis.

A. All of the proposed amendments relate to the four categories of need as identified in Part IV above. Analysis is done on: Those changes brought about by the Supervised Living Facility Standards (Chapter 23: MHD 391-401), which are more properly jurisdiction of the Minnesota Health Department. The SLF standards, and proposed amendments to Rule 34 are the result of a Cooperative Agreement between the Departments of Welfare and Health (April 18, 1973). The agreement specifies that the Health Department is responsible for the establishment of health and safety standards for residential facilities, and the Department of Public Welfare will establish program standards specific to mentally retarded residents. DPWs regulations are not to include general health and safety standards or program standards which related to health (such as physical plant design, general sanitation, nutritional requirements and medication handling procedures).

B. Proposed staff-to-resident ratios.

C. Proposed waiver provisions.

D. Changes to update the rule.

VI. Step-by-step analysis of the rule concerning section V. above, is made in the context of the rule as follows: (please refer to the proposed rule for citation of the provision being analyzed).

The purpose of the change in the title of the rule is to entitle the rule as a residential program rule to distinguish it from Supervised Living Facility Standards.

A. <u>General provisions</u>.

1. Scope.

a. Change is made to conform to Minn. Stat. §15.041, Subd. 3, in which a rule is defined. <u>Hereafter, all similar changes regarding rule will not be cited again in this analysis</u>.

b. No change.

c. No change.

2. Purpose.

a. This new section is included in the rule because the amendments to this rule include deletions of sections which are repetitive of sections relating to health and safety provisions contained in Rules of the Minnesota Health Department (MHD), and therefore, the Supervised Living Facility (SLF) license of the MHD is a companion to licensure under Rule 34. The purpose of this section is to insure that provisions of the current Rule 34 which are deleted will be enforced by the Minnesota Health Department (Cooperative Agreement Between Minnesota Health Department and Minnesota Department of Public Welfare, April 18, 1973).

b. Change is made to cite the statute which authorizes the rule. Although Minn. Stat. §245.782, Subd. 6, defines residential facilities, this rule governs programs and services provided in facilities that are licensed by MHD, for health and safety purposes.

Although Minn. Stat. §252.28 authorizes licensure of residential facilities, and Minn. Stat. §245.782, Subd. 6, defines residential facilities, this rule governs the programs and services provided in the residential facilities. Therefore, Minnesota Health Department licenses the facility for health and safety purposes, and the Minnesota Department of Public Welfare licenses the program in the facility.

For these reasons the references to facilities throughout the rule is changed to residential facility or program for clarity and convenience of the user. Hereafter, all similar changes regarding changes from facility to residential program or program will not be cited again in this analysis.

3. Statutory basis: The statutory basis for the rule is unchanged.

4. Procedure for licensing.

a. The State Advisory Board created by Minn. Stat. §252.28, which is referred to in the original rule, no longer exists because the provisions for its operation has been repealed in 1976. The proposed in this section refers to the applicable rule (12 MCAR 2.185) which carries out the need determination authority of Minn. Stat. §252.28, Subd. 1.

b. See A.2.b.

c. The purpose in adding this amendment is to inform applicants that to be licensed under Rule 34, they must meet MHD SLF standards. This section clarifies intent to insure that uniform standards (Minn. Stat. §252.28, Subd. 2 (1)), are uniformly enforced in the residential facilities for mentally retarded persons, as defined in Minn. Stat. §245.782, Subd. 6.

d. This change is made to conform to authority granted in Minn. Stat. §245.783, Subd. 4.

e. See A.2.b.

f. This is a new section for the purpose of authorizing waivers. The authority for waiver can be found in Minn. Stat. §245.783, Subd. 3, which requires the Commissioner to issue a license if the requirements are substantially met. It is clear that the requirements do not have to be entirely met to receive a license. Where an applicant is expected to come into compliance within a year, the law requires that a provisional license can be issued. However, in order to satisfy the substantial compliance provision of the law in other circumstances,

and to assure equal treatment of applicants, a waiver provision is provided in the rule. The waiver provision comes within the meaning of Minn. Stat. §245.783, Subd. 3.

5. Refusal or revocation of license.

a. This addition is made to clarify that any laws that affect the facility or its program are applicable.

b. Amendment is made to clarify authority in Minn. Stat. §245.783, which provides that no agency may operate a residential facility unless licensed to do so by the Commissioner. SLF license is a required companion to licensure by the Commissioner.

c. Minn. Stat. §245.801, Subd. 4, provides to appeal pursuant to Minn. Stat. Chapter 15.

6. Definitions.

a. Ambulatory: Changed for uniformity with SLF definition.

b. See A.2.b.

c. Facility: This definition is eliminated in favor of identifying the differences between facility licensure under SLF, and program licensure under this rule. Therefore, new definitions of Supervised Living Facility and Residential Program are added below.

d. Governing body: This addition is made to clarify that the governing body is not only responsible for general direction, etc., but it is also responsible for the operation of the program and welfare of residents, and compliance with this rule because license is granted to the governing body.

e. This section is not being proposed for Amendment.

f. This section is not being proposed for Amendment.

g. This section is not being proposed for Amendment.

h. This section is not being proposed for Amendment.

i. This section is not being proposed for Amendment.

j. Mental retardation: This change is made to conform to definition of mental retardation in Rule 185 (12 MCAR 2.185), A.4.d.

k. Mobile: Change is made for uniformity with SLF definition.

l. This section is not being proposed for Amendment.

m. Nonambulatory: Change is made for uniformity with SLF definition.

n. Nonmobile: Change is made for uniformity with SLF definition.

o. Normalization principle: Change made to make the reference more personal.

p. This section is not being proposed for Amendment.

q. This section is not being proposed for Amendment.

r. Program: This is retitled as program, in order to be consistent with the general purposes of the rule, which is to license the residential program.

s. See A.2.b.

t. Referring agency: This change is made to conform to the Community Social Services Act (Minn. Stat. §256E.01-.12), which designates the county or human service board with responsibility for the planning and provision of social services. The local social service agency has specific meaning under definition in 12 MCAR 2.185. Rule 185 defines and governs the planning and provision of social services to persons who are or may be mentally retarded.

u. This section is not being proposed for Amendment.

v. Residential program: This amendment is made to define licensed residential programs in relation to provision in A.4.c., of the rule, and to clarify that such facilities may also be known by other names.

w. Restraint: This amendment is made because chemical substances are also considered to limit the free and normal use of the body.

x. Rhythm of life: See n. above.

y. This section is not being proposed for Amendment.

z. This section is not being proposed for Amendment.

aa. Supervised Living Facility: This is a new definition which clarifies that its use in the rule means only those facilities licensed by the Minnesota Health Department.

bb. This section is not being proposed for Amendment.

B. The resident living unit.

1. Grouping and organizaiton of living units.

a. No change in this section except in (2), which identifies the effective date of the initial Rule 34, and in (3) to correct the reference in the rule.

Sections b., c., d., e., and f. are not being proposed for Amendment.

g. Change is made to correct reference in the rule.

2. Physical plant.

a. Design: There is only one change in (3). The bedroom specification provisions are eliminated because SLF standards MHD 393 (e) adequately covers. The other change in this section is in (7) (c) (d) (e) are eliminated because provisions are adequate in MHD 393 (i).

b. Furnishing and equipment: Provision in (2) is eliminated because SLF Standards MHD 393 (f) (g) and (h) adequately cover.

c. Safety: Change is made because all sanitation provisions are adequately provided in the SLF standards.

(1) This section and all of its subsections are eliminated because MHD 399 adequately covers these provisions, except that matters of instruction of residents are retained in new (1).

(2) This section is not being proposed for Amendment.

(3) This section is not being proposed for Amendment.

(4) This section is no longer necessary because A.4.c. adequately covers.

(5) This is now provided in the SLF standards.

3. Staff-resident relationships and activities.

a. through h.: These sections are not being proposed for Amendment.

i. Changes in this section concern the rule reference. Section (4) eliminates behavior modification as an exception, because it is not intended to exempt behavior modification from the requirement that any form of restraint not be used for punishment or convenience of staff. Other matters concerning behavior modification are covered in section (8).

4. Health, hygiene and grooming.

a. No change.

(1) No change.

(2) This provision is eliminated in favor of provisions in SLF MHD 396.

(3) This provision is eliminated in favor of provisions in SLF MHD 396.

b. This section is not being proposed for Amendment.

c. This section is not being proposed for Amendment.

d. This section now incorporates (1), of the current rule, but makes no other changes. Section (2) is eliminated because this provision is adequately covered in MHD 396 (d).

5. Clothing: There are no amendments proposed in this entire section.

6. Food service.

a. Addition is made to better relate this section to the definition of the normalization principle. Other changes made in the remaining parts of this section are made because MHD 394 covers adequately.

b. This section is not being proposed for Amendment.

c. This section is not being proposed for Amendment.

d. This section is not being proposed for Amendment.

e. This part is eliminated because MHD 395 (e) covers adequately.

C. Developmental and remedial services.

1. General provisions.

2. Assessments: See A.2.b.

a. Behavioral assessment.

(1) This section is not being proposed for Amendment.

(2) This section is not being proposed for Amendment.

(3) This section is not being proposed for Amendment.

(a) Change is made to conform to the Special Education Laws which provide for mandatory education of handicapped children when they are four years of age.

There are no changes in (b) through (h), however, changes in the footnote are made to authorize the Minnesota Developmental Programming System (MDPS) as an authorized alternative to the Adaptive Behavior Scale. The MDPS - Case Management Battery, 1979 edition, was developed by the DPW in cooperation with the University of Minnesota, and is the most widely used assessment instrument in Minnesota. The MDPS, or other instrument of comparable validity and reliability, shall be used by the local social service agencies for behavioral assessment purposes, as provided in DPW Rule 185, C.2.c.(1).

b. Physical assessment.

(1) This change is proposed because MHD 396 (e) adequately covers.

(2) This section is not proposed for Amendment.

(3) This is eliminated because MHD 396 (e) is adequate. Section (4) is now renumbered (3).

(3) through (8).: These sections are not proposed for Amendment.

(9) This change is made to allow and encourage the sharing of psychological assessment data, whether it is produced by the residential program provider or the referring agency. In either case, it is necessary for case management and program planning purposes. Responsibilities regarding psychological assessment and diagnostic review are provided in Rule 185.

3. Program and treatment plan: These changes are made because DAC staff usually carry out developmental and remedial services in compliance with C.1.b., and C.3.b. (1), of this rule. Since placement is made by the referring agency in a residential facility and a DAC to carry out the LSSA's individual service plan, a coordinated approach between the two service providers is necessary and reasonable. Since the residential programs and

DACs are independent service providers, it is expected that the LSSA case manager take a lead role in resolving individual planning differences, and such provision has been recommended in proposed amendments to Rule 185.

a. See A.2.b.

(1) through (5) (DAC): These sections are not proposed for Amendment.

(6) This change is made to clarify that the intent is to consider whether continued guardianship is needed. The alternatives to guardianship are also stated for purposes of clarifying the provisions of Minn. Stat. §252A.01 - .21, the Mental Retardation Protection Act.

b. This section is not being proposed for Amendment.

(1) This section is not being proposed for Amendment.

(a) This part is changed to clarify that Minn. Stat. §252.261 designates daytime activity centers as developmental achievement centers.

(b) through (g): These sections are not being proposed for Amendment.

c. Health services: This is deleted because section A.4.c. in this rule provides for this.

(1) This section is not being proposed for Amendment.

(2) This is deleted because MHD 395 and 396 covers adequately.

(2) Renumbered only.

4. Evaluation: See A.2.b.

D. Admission and release procedures.

1. No change.

a. through e.: The changes in these sections relate to A.2.b.

f. No change.

(1) through (4): these sections are not being proposed for Amendment.

(5) Respite Care: Amendment is made because respite care is often needed by parents and the referring agencies for short-term emergency relief and training. Respite care is not considered ordinary residential care for training and treatment purposes. Rather, respite care is considered extraordinary, temporary relief for special purposes as provided in Minn. Stat. §252A.11, Subd. 3. Such care is ordinarily called respite care, which is arranged for by the referring agency and/or parents because of an emergency, special training need, or parental relief in stressful situations.

For these reasons, respite care resources need to be identified when they are provided, and admission procedures clarified so taht the provider is responsive to the emergency situations that often create the need for respite care.

(6) This section is not being proposed for Amendment.

(7) Appeal: This Amendment is made to insure protection of resident's right to appeal.

g. See A.2.b.

2. Selection and eligibility.

a. See A.2.b.

b. This addition is made to insure 1) that parents and their children who are receiving Medical Assistance, can exercise their rights under Minn. Stat. §256B.01, regarding free choice of vendor, and 2) that planning for the client is carried out in cooperation among the client, parents, and the case manager, as provided under Rule 185, C.3. (a) (b) and (e).

c. See A.2.b.

d. This section is not being proposed for Amendment.

e. See A.2.b.

3. Admission.

a. through e.: changes relate only to A.2.b.

f. This is deleted because of coverage under MHD 396 (b).

4. Release: Changes relate only to A.2.b.

E. Administrative policies and practices.

1. See A.2.b.

2. Changes related only to A.2.b.

3. Personnel policies and practices: Change in this title includes addition of staff to resident ratios, which is provided in the specific subsections governing ratios.

a. Personnel policies: No change except in (b) (ii), which is made to comply with Minn. Stat. (1980) Chapter 542, regarding the reporting of the neglect or abuse of vulnerable adults (Minn. Stat. §626.557).

b. Staff assignments: See A.2.b.

c. Staff training: See A.2.b.

d. Employee health: This section is deleted because it is adequately provided for in MHD 392 (j).

d. This is a new section on staffing ratios, which is taken from the staffing ratios for resident living staff which are applicable in Intermediate Care Facilities for Mentally Retarded (ICF/MR). This section also allows for change in the staffing ratio when it is needed to comply with the rule. Since the staffing ratios were originally established by the Joint Commission for the Accreditation of Hospitals (JCAH), and were subsequently adopted by the Department of Health, Education and Welfare in its ICF/MR regulations, the ratios were based on the larger state operated facilities and state hospitals. Strict application of these ratios in the smaller home-like facilities presents some problems of compliance with the rule, and therefore, the Department is also including in this section provision for change in staffing ratios.

Since the current rule does not provide for staffing ratios, enforcement of the provisions that require that staffing be adequate to meet the needs of the residents has been impossible. The staffing ratios provided in the ICF/MR regulations are the de facto standards for the ICF/MR certified facilities but are not the standard for the residential programs not so certified. Therefore, there is in effect, unequal application of the law which will be rectified by the establishment of uniform rules (Minn. Stat. §252.28).

For these reasons, the Department proposes a minimum staffing ratio and opportunity for changing that ratio when it is inadequate to comply with standards of the rule.

4. See A.2.b.

a. No change.

b. Section b. is eliminated because audit of fiscal activity is provided in Rule 52 (12 MCAR 2.052), which is the rate-setting rule that affects all programs licensed under Rule 34.

5. This section is not being proposed for Amendment.

a. Change is made to comply with provisions of Minnesota Government Data Practices Act.

b. This section is not being proposed for Amendment.

c. This section is not being proposed for Amendment.

d. See A.2.b.

e. See A.2.b.

f. Medical records: This is deleted because it is adequately provided for in MHD 397.

6. Emergency and unusual occurrences: This section is entirely eliminated because MHD 399 and 396 adequately cover. Subsection regarding resident death is provided adequately in MHD 392 (k).

VII. Expert Witnesses: No expert witness is called because the proposed amendments to Rule 34 are limited to the four areas of need identified in Part IV of this statement. The proposed amendments are not considered to be a major rewrite of the rule. Major revisions of the rule will be proposed through the Model Standards Project after there has been input and involvement of the individuals and groups affected by the rule, and after the Model Standards have been presented to the Legislature.

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dated

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ARTHUR E. NOOT
COMMISSIONER

BW/aca

DPW Exh. No. 13
File No. DPW-81-004-PR
par Date 10/17/80

LCRAR

Legislative Commission to
Review Administrative Rules

Rep. Wayne A. Simoneau
Chairman
Sen. Timothy J. Penny
Vice-Chairman

Susan P. Robertson
Executive Director

April 8, 1980

STAFF REPORT TO LEGISLATIVE COMMISSION TO REVIEW ADMINISTRATIVE RULES

Health Care Regulation, Part II - Rules Pertaining to Services for the Mentally Retarded

I. Introduction

The report which follows is a continuation of the study of health care regulations by the Legislative Commission to Review Administrative Rules (LCRAR) which was begun in June, 1979. On January 29, 1980, the first staff report on that study, which dealt with the regulation of nursing homes and boarding care homes, was presented to the LCRAR for its review and action. This report will focus on regulation of services for the mentally retarded.

Much of the material found in the staff report on regulation of nursing and boarding care homes is also applicable to services for the mentally retarded. Rather than duplicate all of it in this report, staff would especially urge a rereading of Part II, Federal v. State Regulation: The Issues of Overregulation and Duplication; and Part III, Commission's Scope of Authority and Options Available.

In the case of services for the mentally retarded, we are confronted with the same sort of division of authority and responsibility as was found in the regulation of nursing and boarding care homes. The Minnesota Department of Public Welfare is the lead state agency in overseeing services for the mentally retarded. The Department not only licenses facilities for the mentally retarded, but it also sets standards for program. The Department of Health has adopted regulations for Supervised Living Facilities (SLFs) to guarantee that basic standards of health, safety and sanitation are met in residential facilities for the mentally retarded. The Department of Health also certifies that the federal standards for Intermediate Care Facilities/Mentally Retarded are maintained. And the State Fire Marshal inspects for compliance with fire safety standards.

Due to the fact that neither the state or federal regulations are as strict for ICF/MR facilities as they are for Skilled Nursing Facilities(SNFs), the Commission has not received either the number or the variety of complaints that it did in regard to nursing homes. Basically, both the written submitted testimony as well as testimony offered at the hearings centered around three concerns: (1) the SLF regulations of the Minnesota Department of Health are duplicated in DPW's licensing

regulation, Rule 34; (2) providers of services for the mentally retarded are burdened unreasonably by multiple requirements to prove need for these services; and (3) the Department of Public Welfare(DPW)frequently issues policy bulletins that contain criteria which properly belong in rules which have gone through a public hearing.

Each of these concerns will be addressed separately. In addition , other DPW rules which have been complained of and are in the process of being redrafted will be discussed.

II. Department of Public Welfare Rule 34/Minnesota Department of Health Supervised Living Facility Regulations/Model Standards

Pursuant to legislative initiative taken in 1971(M.S. 252.28) to establish licensure programs for the mentally retarded, the Department of Public Welfare adopted its program license Rule 34 which sets the standards for living and opportunities for retarded people living in community residential facilities or in state hospitals.

Through considerable involvement of the public, advocates and providers, professionals in the field as well as state and local agencies, the DPW developed Rule 34 in cooperation with the Minnesota Department of Health(MDH). The MDH subsequently developed a companion standard for Supervised Living Facilities(SLF) for nonprogrammatic matters of safety and sanitation.

Minnesota was the first state to establish the licensure of all program activities. Rule 34 establishes statewide standards for the primary living units. It provides for individualized program planning for all residents and clearly requires that individual programs are to be carried out in a home-like atmosphere, in the least restrictive setting needed for an effective program. The Rule requires that developmental and remedial services be provided in addition to resident-living services outside the residential facility (i.e.,DAC, sheltered workshop, school, employment), whenever possible. This provision addresses the opportunity for a normal existence in order to make available patterns and conditions of everyday life as close as possible to the norms and patterns of mainstream society.

Rule 34 requires an annual assessment of each resident's physical and behavioral status, conducted by an interdisciplinary team, a subsequent program plan, delivery of services and evaluation of progress toward the objectives of the program plan.

In order to achieve the goal of normalization to the furthest extent possible, Minnesota pioneered in obtaining federal funds under Title XIX for use in facilities for the mentally retarded. This in turn has enabled the state to pursue its policy of deinstitutionalization. These tremendous advantages are somewhat offset by the fact that the funding of community facilities under Title XIX, after licensed under Rule 34, carries with it a complicated system of quality assurance, utilization review, and survey by the Health Department for certification review prior to issuing a provider agreement and rate setting by DPW. The federal regulations for intermediate care facilities/mentally retarded(ICF/MR) that accompany the Title XIX funding of ICF/MR facilities allow participating states to adopt their own particular program model and Minnesota has adopted the developmental model,

which is realized through the basic program standards of Rule 34. The ICF/MR regulations are rather specific and detailed and are in the historical measurement approach to regulation of services.

Some overlaps and conflicts are inevitable when regulations are applied and interpreted by different staff and different agencies. However, some of the conflict and overlap at the state level should be able to be alleviated. When the Minnesota Department of Health promulgated its SLF regulations, it was expected that DPW would remove the standards for health and sanitation from Rule 34, so that providers would not have to face the problem of two different departments inspecting for the same things.

In 1974 an amended Rule 34 was indeed brought to hearing to eliminate duplicative and contradictory regulations governing safety, health and sanitation. However, the amended rule was never promulgated because--we are told--DPW staff inadvertently misplaced the amended rule. (A copy of the amended rule is in Appendix A, p.11; the SLF regulations are in Appendix A(1) P.42) To date, DPW has not promulgated the amended rule and the duplicative and contradictory provisions remain in Rule 34.

The Department of Public Welfare is well aware of the need to revise and amend Rule 34. They have delayed doing so, however, because they feel that some substantial changes are necessary in addition to removing those parts of it which duplicate the SLF regulations.

By 1976, both the licensing division and the program division in DPW had come to realize that problems had resulted from multiple standards being enforced by multiple agencies. In addition, there was genuine concern that the federal ICF/MR regulations provided a medical, rather than a developmental, orientation to the provision of services for the mentally retarded.

In response to these concerns and issues, the Minnesota Department of Public Welfare,Mental Retardation Division, was awarded a federal grant from the U. S. Department of Health, Education and Welfare to: (1) develop model standards to assess the quality of residential services for persons who are mentally retarded; and (2) design a model "pro-active" survey process for implementing the standards that emphasizes technical assistance and staff development. The staff of DPW, along with a wide range of professionals in the mental retardation delivery system, worked on the Model Standards Project for nearly three years. In January, 1980, the final report was published, a copy of which was given to each Commission member at the March 5, 1980, meeting.

While the Model Standards Project was in progress,in July, 1978, DPW called a meeting of interested persons affected by Rule 34, in order to seek advice concerning possible revision. A number of recommendations for changes were brought forth at this time. A summary of them is attached in Appendix B,p.62. Two of these recommendations for change have been singled out by the chiefs of the licensing sections in both DPW and MDH as being especially necessary. They have to do with the ratio of staff to residents and with the qualifications of the person responsible for supervising and developing the individual program plans.

Rule 34 specifies that there must be adequate staff to implement the individual program plans. Because of its lack of clarity and specificity, this standard regulating staff/participant ratios has been unenforceable. However, programs licensed under Rule 34 and receiving Title XIX reimbursement do meet the staff/participant ratio specified in the ICF/MR regulations. ICF/MR regulations also require a qualified mental retardation professional (QMRP) be available to develop and implement the individual program plans, whereas Rule 34 has no specific standards regarding staff qualifications.

Of the 226 licensed residential facilities for mentally retarded, 211 are certified as meeting ICF/MR regulations. This means that 15 programs are licensed under Rule 34 only, and do not have to comply with any specific standards regarding staff/participant ratios and staff qualifications.

The lack of clear and specific minimum staff/participant ratios and staff qualifications has also resulted in difficulty in determining adequate staffing and reimbursing programs for that staffing.

Although it was agreed at the 1978 meeting that these were serious problems and that Rule 34 was in need of a thorough revision, it was decided to postpone action until after the Model Standards were completed. Now that the Model Standards Project has issued its final report, the Commission is presented with essentially three alternatives: (1) request DPW to hold a public hearing to eliminate standards in Rule 34 which duplicate the Department of Health's SLF regulations; (2) request DPW to hold a public hearing on Rule 34 to (a) eliminate the SLF duplications; (b) develop and specify minimum standards for staff/participant ratios based on severity of disabilities; (c) develop qualifications for the person responsible for supervising and developing the individual program plans; establish minimum amounts of time this person must spend per participant based on the severity of the participant's handicap; and (d) to make other changes as the Department thinks proper based on the review of Rule 34 conducted in 1978 and on testimony received since that time; (3) request DPW and MDH to conduct a public hearing on a joint rule based on the Model Standards, such joint rule to replace Rule 34 and the SLF regulations.

The staff has spent a great deal of time reviewing the existing rules as well as the Model Standards Final Report. All of these have been discussed extensively with staff of DPW and MDH. The mental retardation program division in DPW feels strongly that the Model Standards present the opportunity of going beyond the minimums to be attained for licensing; they also set goals for the achievement of optimum conditions. The program division maintains that the standards combine all applicable state and federal regulations into one document and that they ought to be adopted because they focus upon ensuring provision of residential services in accordance with the developmental model and the principle of normalization.

Supporters of the Model Standards admit that to be truly effective and non-duplicative, it would be essential for the Minnesota Department of Health to cooperate in their implementation and it would be very desirable to get a waiver from HEW to substitute the Model Standards for the ICF/MR regulations in Minnesota.

The staff of the licensing sections in both MDH and DPW have strong reservations about the Model Standards, at least in their present form. They object to the fact that the Model Standards do not deal directly either with staffing ratios or with the qualifications of the person responsible for supervising the individual plan of each resident. In addition, they feel that too many of the standards are permissive and nonobjective and thus would lead to confusion and difficulty in enforcement. Some persons in the Health Department feel that in the effort to stress the developmental model in the Model Standards, too little attention is paid to health issues. A large percentage of mentally retarded persons also suffer from various physical problems or handicaps; for some, the health problems are more serious than the mental retardation. Yet the Model Standards deal only peripherally or not at all with preventive health care, the teaching of health care or the training of staff in administering medications.

Finally, nearly everyone familiar with the delivery of services to the mentally retarded agrees that it will be extremely difficult to get a waiver from HEW to substitute the Model Standards for the ICF/MR regulations. If the waiver is not obtained, it would mean that providers and inspectors would be faced with medically oriented, precise technical regulations on the one hand (the ICF/MR regulations) and with goal oriented, programmatic standards based on the developmental model on the other (the Model Standards). This would not be a fatal flaw nor should it be looked on as an absolute barrier to adopting the Model Standards, but it would be a problem which would need to be addressed.

Neither the Commissioner of Health nor the Commissioner of DPW has as yet taken a formal position regarding implementation of the Model Standards. Further, there is some question as to whether or not legislative action would be required to permit their implementation. Yet it is clear that the need exists to revise Rule 34 and that this revision should not be delayed indefinitely. Therefore, the staff makes the following recommendation:

The staff recommends that the Commission request the Department of Public Welfare to hold a hearing in conformance with the provisions of M.S. 15.0412 on Rule 34 to (1) eliminate those parts of the rule which duplicate the SLF regulations under the Minnesota Department of Health; (2) develop and specify minimum standards for staff/participant ratios based on severity of disabilities; (3) develop qualifications for the person responsible for supervising and developing the individual program plans and establish minimum amounts of time this person must spend per participant based on the severity of the participant's handicap; and (4) make other changes as the Department finds necessary based on its review of the rule and on testimony received from interested persons.

This request would not be intended to preclude further effort towards implementing the Model Standards. Rather, it would serve as a more immediate remedy of the existing problems with Rule 34, while efforts continued to work out differences between DPW and MDH and the federal government regarding implementation of the Model Standards.

III. Certificate of Need Rules; DPW Need Determination

A concern was expressed by providers and some advocates for the mentally retarded regarding the need determination processes governing the development of community residential facilities for mentally retarded persons in Minnesota. For sometime the federal government has mandated 1122 Reviews for those facilities which plan to use Title XIX funds. Last year the Minnesota Legislature passed a Certificate of Need law (see Appendix C, p. 69), which was designed to bring Minnesota into compliance with the federal Certificate of Need (CON) law and regulations, and facilities for the mentally retarded are included in this law. The Minnesota Department of Health, under contract from the State Planning Agency, is now in the process of developing rules to implement this law. Once these rules are adopted, it is quite likely they will take the place of the 1122 Reviews.

In addition to this mandatory need review, the Department of Public Welfare is permitted to make its own separate need determination (M.S. 252.28). Providers assert that this need determination is duplicative and that DPW should discontinue it.

Some staff of the Association for Retarded Citizens (ARC) have voiced a concern that the draft CON rules do not take into account the special needs of the mentally retarded, in that the rules emphasize a medical model, rather than the developmental model favored by MR advocates. The advocates assert that this is evidenced by the fact that the rules are slanted toward medical facilities such as nursing homes and hospitals and that little thought has been given to the SLFs, which were developed to address the need for small, home-like facilities for the mentally retarded.

The objections were discussed with the following persons involved with the CON rules and with providing services to the mentally retarded:

Kent Peterson, MDH, leader of the rule drafting task force;
John Dilley, Director of Health Planning, State Planning Agency;
Marylee Fithian, Director of Developmental Disabilities Planning, State Planning Agency;
Ardo Wrobel, Director of Mental Retardation Division, DPW; and
Brian Osberg, Research Assistant to the House Health and Welfare Committee.

They all indicated that serious efforts have been made to take into account the concerns raised by MR advocates and providers and, where possible, changes have been made in the draft rules. Several separate meetings have been held with MR providers and advocates. However, the rules must be drafted in conformance with the law, and, as noted above, the federal law is very explicit as to what states must do if they wish to receive Medicare or Medicaid funds.

It appears that some of the objections of the MR advocates are really not with the proposed rules, but with the CON law itself. MR advocates are critical of the law in its definition of "consumer" since they maintain the definition is too broad. They would like to see it more narrowly defined to mean parent, parent advocate or client and they want MDH to include a member of ARC(Association of Retarded Citizens) in the membership of the Health Systems Agency. However, there is some question as to whether MDH can do this, since the law does not provide for it. The matter has been discussed with MDH as well as with staff of the legislative policy committees, and it is possible that an effort will be made to clarify or amend the law next year.

The issue of DPW's separate need determination was also discussed with this same group. The CON process is mandatory; the DPW need determination is permissive. According to M.S. 252.28, Subd. 1, the Commissioner of Public Welfare may (emphasis added) determine the need, location, and program of public and private residential and day care facilities and services for mentally retarded children and adults. The Minnesota Mental Retardation Act (M.S.252A.01-252A.21) establishes that it is the policy of the state to provide a coordinated approach to the supervision, protection and habilitation of its mentally retarded citizens and that this is to be supervised by the Commissioner of Public Welfare.

The Public Welfare Licensing Act(M.S. 245.781-245.90) provides that "state agencies and departments including, but not limited to, the state fire marshal, state building code, state commissioner of health and state planning agency, which are involved in the investigation and review of a facility or an applicant's qualifications shall direct their employees to report directly to the commissioner of public welfare on these matters and shall be subject to the rules promulgated by the commissioner with respect to the coordination of licensing and inspection functions."

Thus, it is clear that the Legislature intends to have the coordination of both program development and licensing under the direct supervision of the Commissioner of DPW. Staff of DPW maintain that its separate need determination is an integral, indispensable part of its effort to develop a program based on the normalization principle. This is because the normalization principle requires that mentally retarded persons be placed in the least restrictive setting possible, preferably in small, home-like situations. Under both the federal and state CON laws, it would be difficult to set limits on the size of a facility merely to make it conform to the normalization principle. But DPW can use its need determination process to limit the size of facilities according to the needs and disabilities of the persons they intend to serve.

Since it seems that DPW's separate need determination is essential, the question then becomes one of how best to coordinate it with the CON rules so that providers don't have to go through either duplicative or contradictory procedures in getting their proposals approved. This issue has been discussed at length by staff from MDH and DPW. In response to a request from MDH, the Commissioner of DPW has sent a memo to the Commissioner of Health in which he outlines the changes in the CON rules which he believes would foster a coordinated and effective approach to certifying need for mentally retarded facilities. A copy of that memo is in Appendix D, p.81. Staff at MDH have affirmed that most of those suggestions will be incorporated into the next draft of the rules.

It appears that good faith efforts are being made to address concerns raised by both advocates and providers for the mentally retarded. These advocates and providers will continue to have the opportunity to make their needs and desires known when MDH solicits opinion on the draft rules and at the rule hearing itself.

Therefore, the staff recommends that the Commission take no action on either the CON rules or on the necessity of DPW's need determination process at this time.

IV. DPW Policy Bulletins; Rule 185

The Association of Residences for the Retarded in Minnesota (ARRM) has complained to the LCRAR of DPW's use of policy bulletins or guidelines which contain criteria which properly belong in a formally promulgated rule. The issue of rules v. policy bulletins and guidelines has previously come before the Commission, as with the Agricultural Promotion Councils and the Department of Public Safety policy on issuing drivers' licenses to persons suffering mental or physical disabilities.

The Administrative Procedure Act requires that state agency rules be adopted in accordance with the rulemaking provisions of M.S. 15.0412. The Act defines "rule" as any agency statement of general applicability and future effect (M.S.15.0411, Subd.3). However, the same section of the law also provides that "rule" does not include rules concerning only the internal management of the agency or other agencies, and which do not directly affect the rights of or procedure available to the public. This exclusion was intended to give state agencies the discretion necessary to implement their own internal operating procedures. The difficulty comes when an agency maintains that a policy bulletin issued by it deals only with the agency's procedural administration of a law or rule, but citizens assert that the policy substantively affects the public at large. The difference in interpretation is made clear in the case of DPW's instructional bulletins which are intended to carry out the provisions of Rule 185.

Rule 185 deals with the responsibilities of Community Mental Health Boards and County Welfare or Human Services Boards to individuals who are mentally retarded. (A copy of the rule can be found in Appendix E, p. 86). The basic function of the rule is to provide for the individual case management of each retarded individual. This rule also contains the foundation for DPW's need determination process. DPW Rule 185 states that, "the (Community Mental Health Board) shall submit a letter of recommendation to the Commissioner concerning the need, location, and program for facilities and services applying for license under M.S. 252.28." This much of the need determination process was officially promulgated.

In order to clarify the procedures to be followed in submitting the letter of recommendation, the Department published Instructional Bulletin No. 78-8 which instructed the Boards in carrying out the need determination responsibility. This publication (1) stated the circumstances under which a Board would be required to complete a need assessment, (2) the procedures the Board must follow, (3) the criteria upon which the Board's decision must be based, and (4) the criteria for DPW approval.

This bulletin was subsequently augmented by Instructional Bulletin No. 78-67 which expanded upon the above criteria and included a required "letter of recommendation" for use by the Board. This format "letter" required (1) information about the type of funding plan to be used, (2) the identification of all developmental services to be used, and (3) identification of the "mental health area" from which residents would come. (Instructional Bulletin 78-67 is in Appendix F, p96).

Providers for the mentally retarded maintain that the procedures and criteria outlined in IB78-67 should be promulgated as part of Rule 185 itself, which would give the public the opportunity to comment on them and the agency(DPW) the opportunity to acquire information which could be useful in improving its policies.

At first glance it does appear that IB 78-67 contains criteria, nearly all of which should be promulgated as a rule. But a careful reading of Rule 185 and of the instructional bulletin makes this conclusion less certain. Much of the material contained in the bulletin is drawn directly from the rule, which has, of course, gone through public hearing. The parts of the instructional bulletin which are clearly questionable are those which deal with specific time frames for action (60 days, 20 days) and specific numbers which will compel a need assessment (establishment of a program for five or more individuals or increase in program by five or more individuals).

For these reasons, it would appear to be proper to request DPW to hold a hearing to amend Rule 185 so as to place the procedures and criteria for determining need for programs or facilities within the rule itself. Staff of DPW have indicated that this would be acceptable to the Department, especially since it would give them the opportunity to bring Rule 185 into conformance with the Community Social Services Act(CSSA). In addition, a number of advocates and providers have raised questions as to what is mandated and who is responsible for delivery since passage of the CSSA last year. A hearing also would give the Department the opportunity to develop a process that could be coordinated with the Certificate of Need rules being developed by the Department of Health.

Therefore, staff recommends that the Commission request the Department of Public Welfare to hold a hearing on Rule 185 with the objective being to include criteria and procedures for need determination within the rule itself as well as to clarify what services are mandated and who is responsible for their delivery following passage of the Community Social Services Act.

V. Issues Raised Relating to Other Rules on Mentally Retarded

In addition to the foregoing issues, questions were raised regarding rules which either have not been promulgated or are in the process of being redrafted.

A. Rule 18

This rule would establish standards for implementing a system for semi-independent living for mentally retarded adults. It has been in the planning stages for nearly three years and MR advocates are eager for it to be promulgated. At the present time there are approximately 200 retarded persons in semi-independent living facilities which are financed by the counties through the use of Title XX funds. But there are no state standards set for these living units. Rule 18 would set standards for existing units as well as for ones established in the future. Once the standards are set for establishing a system of semi-independent living for mentally retarded adults, DPW intends to request the Legislature to provide additional funds to make the system possible (a request was made this year, S.F. 844, but the bill did not pass). If this additional funding were obtained, approximately 500 mentally retarded adults could be placed in semi-independent living facilities. This would free up space in some residential facilities, which would then be available for persons now living in state hospitals. Thus, the system would foster the state's policy of deinstitutionalization.

Rule 18 has been drafted and is now before the assistant attorney general assigned to DPW for review and comment. The Department expects to go to hearing with the rule in the very near future.

Since the Department is ready to act on this matter and since the issue of funding is beyond the jurisdiction of the LCRAR, the staff recommends that the Commission take no action regarding Rule 18.

B. Rule 31

This existing rule sets the standards for the administration of Developmental Achievement Centers(DACs). The rule has been redrafted in order to conform with the requirements of the Community Social Services Act(CSSA).

The Community Social Services Act restructures the finance system for social services in Minnesota. It replaces certain Department of Public Welfare grant and subsidy programs with a standardized formula to funnel social service monies directly from the state to the counties.

This act returns basic decision-making responsibilities to elected bodies: the Legislature will be responsible for determining the appropriate amount of state social service aid, while local county boards are responsible for planning, budgeting and providing the services they consider to be most needed by their residents.

Under the Act, DPW has a supervisory role through setting standards and providing technical assistance to counties in their activities of need assessment, program development and program monitoring. The Department is charged with evaluating the effectiveness of county-provided social services and it must approve plans developed at the county level. Finally, the Department issues the quarterly aid payments to each county based on the formula established in the Act.

The county board of commissioners is responsible for assessing the needs of their residents, determining spending priorities, providing programs to meet those needs, and evaluating the effectiveness of the programs. Under this act, each

county is given the flexibility to develop an individualized social service system.

The county board is also granted substantial flexibility in discharging its authority. It could contract with public or private providers, enter joint power agreements with contiguous counties, utilize present county agencies, establish sliding fee scales, etc.

Each county is required to prepare and publish a biennial plan for social services and methods of participation by citizens and providers must be included. (To allow for initial continuity in services, a two-year "maintenance of effort" relative to funding for child care, mental health, chemical dependency, and mental retardation is required.)

The administrative procedures are changed in the redrafted Rule 31 to account for the fact that counties, rather than DPW, will now be making the grants. In this regard, the question was raised as to whether DPW ought to be promulgating rules when they would no longer be funding the programs. However, the CSSA not only gives DPW the statutory authority to set standards through rules, it directs the Department to do so. Although the manner in which state funds reach the counties has been changed, the fact that there are still state dollars involved has not changed. Thus, the state can and must continue to set standards for programs which involve the use of state funds.

Rule 31 is also being reviewed by DPW's assistant attorney general. As with Rule 18, the Department expects to take the rule to hearing within the very near future. Persons who have concerns with portions of the rule will have the opportunity to express them at the public hearing and to submit written testimony. Therefore, the staff recommends that the Commission take no action regarding Rule 31.

DPW Exh. No. 12
File No. DPW-81-004-PR
Date 10/17/80

LCRAR

Legislative Commission to
Review Administrative Rules

Rep. Wayne A. Simoneau
Chairman

Sen. Timothy J. Penny
Vice-Chairman

Marshall B. Whitted
Secretary

Susan P. Robertson
Executive Director

June 30, 1980

Mr. Arthur Noot
Commissioner, Department of Public Welfare
4th Floor, Centennial Office Building
658 Cedar Street
St. Paul, Minnesota 55155

Dear Commissioner Noot:

I am writing in regard to action taken by the Legislative Commission to Review Administrative Rules at its meeting on April 29, 1980. As you know, for the past six months the LCRAR has been reviewing regulations pertaining to health care. The report at the April 16 meeting dealt specifically with rules related to services for the mentally retarded.

The LCRAR is given the very broad statutory charge to "promote adequate and proper rules by agencies and an understanding upon the part of the public respecting them," (Minnesota Statutes, 3.965, Subd. 2.) In order to carry out this charge, the statute empowers the LCRAR to make recommendations to agencies for the purpose of promoting adequate and proper rules. By a majority vote of its members, the LCRAR may also require an agency to hold public hearings with respect to those recommendations, as provided in Minnesota Statutes, 3.965, Subd. 3.

On the basis of public hearings held to investigate various complaints about rules related to services for the mentally retarded, the seven commission members present at the April 29 meeting voted unanimously to make the following request:

> That the LCRAR request the Department of Public Welfare to hold a hearing in conformity with the provisions of M.S. 15.0412 on DPW Rule 34 to eliminate those parts of the rule which duplicate the SLF regulations enforced by the Minnesota Department of Health.

Other changes in the Rule can, of course, be proposed by the Department if it so desires. Amendments to the Rule which would address staffing ratios and qualifications were discussed by the Commission but it was decided to leave any changes in these areas up to the discretion of DPW.

However the LCRAR did pass the following motion:

The LCRAR shall request the Senate Health, Welfare and Corrections Committee, the House Health and Welfare Committee, the House Health, Welfare and Corrections Division of Appropriations, and Senate Finance Subcommittee on Health, Welfare and Corrections to review the fiscal and legal implications of implementing the Model Standards, including establishment of staffing ratios and staff qualifications, and to determine what, if any, legislative action is necessary before implementation of the Model Standards can occur.

In summary, the LCRAR, at its April 29, 1980 meeting, voted to request your department to hold a public hearing related to Rule 34 in conformity with the requirements of Minnesota Statutes, 15.0412 within 60 days after your receipt of this request.

If you have any questions or need additional information, either I or the Commission staff would be most willing to be of assistance. I have appreciated the cooperation of the Department of Public Welfare to date. The Commission is pleased to note that a hearing has been set on Rule 185, per our request, for July 28, 1980. I am hopeful that the issue referred to you on this date - Rule 34 - can be handled equally expeditiously so that the best possible services for the mentally retarded can be delivered in the most efficient manner.

Sincerely,

Wayne Simoneau

Wayne Simoneau
Chairman, LCRAR

WS:lsh

cc: Ardo Wrobel
Ellen Dubuque
John Buzzell

DPW Exh. No. 6
File No. DPW-81-004-PR
par Date 10/17/80

STATE OF MINNESOTA
DEPARTMENT OF PUBLIC WELFARE

IN THE MATTER OF THE PROPOSED
ADOPTION OF NEW RULE 12 MCAR 2.018
GOVERNING THE PROVISION OF SEMI-
INDEPENDENT LIVING SERVICES TO
PERSONS WHO ARE MENTALLY RETARDED
(RULE 18)

STATEMENT OF NEED AND REASONABLENESS

I. Statutory Authority

A. Principal Authority

1. Minn. Stat. §252.28 authorizes the Commissioner to determine the need, location and program of public and private residential facilities and services for mentally retarded children and adults. The act further directs the establishment of uniform rules, regulations, program standards, and the granting of licenses to each type of residential and day facility or service for more than four mentally retarded persons.

2. This Rule is being promulgated under authority of Minn. Stat. §252.28. Department of Public Welfare (DPW) Rule 18 regulates the provision of social developmental service to mentally retarded persons who live in ordinary community places of residence, such as apartments, hotels, rooming houses, foster homes, or own/family home. The provision of such services is subject to licensure under Minn. Stat. §252.28, and therefore comes under the Commissioner's authority to determine need, location and program prior to licensure.

3. Minn. Stat. §245.782 - .814, Public Welfare Licensing Act, establishes the administrative procedures and authority of the Commissioner to carry out his responsibilities under Minn. Stat. §252.28.

B. Supportive Authority

1. Minn. Stat. §246.01 establishes the Department (Commissioner) of Public Welfare as the state agency, as defined by the Social Security Act of the United States, and the laws of Minnesota, for all purposes relating to mental hygiene, including guardianship of mentally retarded wards, and administration of state hospitals.

2. Minn. Stat. §245.70 designates the Department (Commissioner) as the state agency to establish and administer a statewide plan for the construction, equipment, maintenance, and operation of any facilities for the care, treatment, diagnosis, or rehabilitation of mentally retarded. The Commissioner is authorized and directed to receive, administer, and expend any funds under any federal law or other sources for such purposes.

3. Minn. Stat. §252A.11, Subd. 5, establishes that the Commissioner's authority over wards shall be exercised in a way that least restricts the ward's personal freedom consistent with need for supervision and protection.

4. Minn. Stat. §252A.01 authorizes the Commissioner to supervise wards and protect them from violation of their human and civil rights by assuring them needed social, financial, residential and habilitative services to which they are lawfully entitled.

II. Need for the Rule

A. There are at least ten groups and individuals currently providing semi-independent living services to approximately 140 adults who are mentally retarded. These services are not now licensed. Several providers have been licensed under DPW Rule 34, and others have requested that they be licensed. The use of this type of living arrangement will increase in the future as more mentally retarded persons are integrated into the community.

1. DPW Rule 34 governs all services that constitute the program in all residential care facilities for mentally retarded. These facilities include community-based residential facilities and state hospitals, which serve a broad range of persons needing a 24-hour per day program of care and treatment and training.

2. As community residential facilities have developed over the past eight years, it has become apparent that DPW Rule 34 has not adequately addressed the needs of mentally retarded people in the upper ranges of functioning. Such persons usually do not need a full-time, 24-hour per day program. Programming in Rule 34 facilities has resulted in an increasing number of residents who no longer need the full range of services provided in a Rule 34 facility and are ready for more independent living. Several SILS programs have been developed to provide support services while the client lives in a variety of ordinary community living arrangements. Such services are entitled semi-independent living services (SILS), and are the subject of this rule.

3. Semi-independent living services includes a broad range of services needed to insure an orderly transition from full-time care and programming to independence. For those who cannot achieve independence, the SILS program supports the person at his highest level of functioning in a less restrictive setting.

4. DPW Rule 34 has proved to be an inappropriate standard for the provision of semi-independent living services. Previous attempts to license such services under Rule 34 were judged by the Commissioner to be ineffective and unnecessarily costly.

5. The provision of semi-independent living services are expected to be developed.

B. Additional semi-independent living services are expected to be developed.

1. It is known that approximately 10% of the 4,000 residents of Rule 34 facilities are ready for semi-independent living services. DPW is planning to develop additional SILS, so that services will be provided to persons in need of SILS.

III. Section-by-Section Analysis of Proposed Rule 18 (please refer to sections of the rule):

A. Statutory citation

1. Citations in sections 1 and 2 constitute the authority of the Commissioner to determine need, issue licenses and administer the licensing of semi-independent living services.

B. Introduction

1. Statement of purpose

This section is needed in the rule to identify the type of persons who may be served under the rule, and to clarify that the provision of services is to be done in the least restrictive environment consistent with Minn. Stat. §252A.01.

2. Applicability

a. This section is needed to clarify that the rule implements the provisions of Minn. Stat. §245.782 - .814, Public Welfare Licensing Act.

b. This is to clarify that other program license standards of the DPW are not applicable, and that Supervised Living Facility (SILS) standards of the Minnesota Health Department do not apply to SILS licensure. The reason for this is that SILS are provided to clients living in a variety of ordinary community housing, such as the client's own home, foster home, apartment or rooming house. None of these community living settings come within the definition of residential facilities in Minn. Stat. §782, Subd. 6, or the provisions of SLF standards in Chapter Twenty-three: MHD 391, the definitions, and the forward section of those standards.

c. This section clarifies that it is semi-independent living services which are licensed, and not the place of residence.

3. Procedures for Licensing

Sections a. and b. are needed to clarify that need determination must be made by the Commissioner prior to licensure, as authorized in Minn. State §252.28.

Sections c, d, and e. are needed to clarify procedures provided in Minn. Stat. §245.782 - .812.

Section g. includes specific provision for waiver which is based on Minn. Stat. §245.783, Subd. 3, which requires that the Commissioner issue a license if the requirements are substantially met. It is clear that the requirements do not have to be entirely met to receive a license. Where an applicant is expected to come into compliance within one year, the law requires that a provisional license can be issued. However, in order to satisfy the substantial compliance provision of the law in other circumstances, and to assure equal treatment of applicants, a waiver provision is provided in the rule. The waiver provision comes within the meaning of Minn. Stat. §245.783, Subd. 3.

4. Technical provisions

a. This section implements Minn. Stat. §245.781 - .812. This section also protects remaining parts of the rule if any portion is eliminated.

C. Definitions

1. Applicant: This definition clarifies use of the term in the rule regarding applicants for license. It also refers to mentally retarded adults who are applying, or have been referred for admission.

2. Client: This definition is made to simplify reference to persons served under provision of the rule.

3. Commissioner: This definition identifies the meaning of the term in regard to the Commissioner's authority to delegate responsibility for implementation of the rule.

4. County Board: County boards are defined in accordance with Minn. Stat. §256E.02, and incorporates human service boards in the definition.

5. Individual Program Plan: This definition is commonly used in program planning for individual clients by the service providing agencies. This definition attempts to differentiate responsibilities of the local social service agency and those of the service providers. This definition is taken from Rule 185, a.4.n.

6. Individual Service Plan: This definition is provided to identify responsibilities of the local social service agency as provided in Rule 185, A.4.n.

7. Interdisciplinary Team: This definition draws on common usage and accepted practice in decision-making on behalf of the client, Commissioner's responsibilities, and the rights of the client.

8. Legal Guardian: This definition clarifies the use of the term in the rule, in order to identify the meaning of the term in relation to Minn. Stat. §253A.01 - .21.

9. Local Social Service Agency: Defined to implement Minn. Stat. §256E.08, Subd. 2, regarding assignment of duties of the welfare director as described in Minn. Stat. §393.04.

10. May: This definition is intended to insure that where the term is used it is not a mandatory provision.

11. Mentally Retarded Person: This definition is drawn from DPW Rule 185, as is included for convenience of the provider.

12. Normalization: This definition is drawn from DPW Rule 185, B, the standards section, which applies to the planning and provision of services to individuals who are mentally retarded.

13. Provider: This definition is made to simplify reference to the individual, organization, or association holding a Rule 18 license.

14. Semi-Independent Living Services (SILS): The purpose of this definition is to define the range of services that constitute SILS, and to limit the provision of services to certain mentally retarded persons.

15. Shall: This definition is included to insure that when the term is used, the provision is mandatory.

D. Program and Service Standards

1. Admission: The purpose of this section is to require publication of admission criteria as a public document, so that the public will be knowledgeable about the services provided and the conditions governing admission.

2. Comprehensive assessment: The purpose of this section is to assure relevance of the plan to the needs of the client.

3. Individual program planning (IPP): This section is included to insure that the provision of services is directly related to the assessed needs of each client, and that progress is periodically evaluated. The purpose of this section is also to insure that each client is provided the kinds of services he needs to achieve self-sufficiency.

E. Administrative standards

1. The purpose of this section is to insure publication of information relevant to the SILS program for use by referring agencies and the public, so that they may be better equipped to determine whether the program is an appropriate resource.

2, 3, and 4. These section are needed to insure that the person, organization, association or corporation holding a SILS license is responsible for the client's program, and that although other employees may be delegated certain authority to carry out the program, the provider continues to be fully responsible for each client's program.

Subsections a, b, and c, of Section 4, are needed to establish a professional level of competence in program direction, and to allow substitution of experience if that person is otherwise capable of administering the program at a professional level of competence.

5. This is needed to protect the client from being discharged without the involvement of persons who are immediately affected. This section also insures that discharge is related to client needs and that there is an orderly transition to other services as needed. In the event of death, subsection (e) is included to insure proper communication, records and disposal of records.

6. This is needed to insure the availability of information pertinent to the client's program, and that the use of such information is limited to appropriate persons including the client.

7. This section concerning client rights is needed to insure that the client's right to social services, as provided under Rule 185 and this rule are adequately protected. The purpose of this section also insures that the client is knowledgeable about his right to appeal under provisions of Minn. Stat. §256.045.

8. This section is needed to insure that the local social service agency has sufficient information about the SILS program to determine whether to place a client for services.

9. The purpose of this section is to insure that employees understand the terms of their employment. This section further addresses any possible practices by staff that would contribute or give rise to abuse of vulnerable adults, as provided in Minn. Stat. (1980), Chapter 542, (§626.557).

This section prohibits noxious or painful stimuli on clients, and the withdrawal of goods or services or activities to which the client is ordinarily entitled.

10. Needed to safeguard the safety and health of clients.

11. Purpose is to assure that appropriate records are kept concerning the expenditures of public money for SILS services.

12. This section is needed to insure that the local social service agency has ample notification of change of rates in order to allow the agency time to make appropriate adjustments, and if necessary, to submit information to the county board for action.

13. This section concerns living arrangements.

a. Although the rule governs the provision of services to clients wherever they may live, the provision of living arrangements may also be a part of the provider's program, even though not licensed under this rule. There are several advantages to the provision of living arrangements to clients who need more than occasional support services. The purpose of this section is to insure that when living arrangements are provided as a part of the SILS program, the provider must assure that the arrangements are appropriate to the client's program and also in compliance with codes that are ordinarily applicable to that particular type of accommodation.

b. The purpose of this section is to clarify that when living arrangements are not provided as a part of the SILS program, the provider is expected, but not required to assist the client in arranging for an appropriate place to live.

IV. Expert Witnesses

Mr. Clyde Johnson, Director, Duluth Regional Care Center, Baldwin House, 2232 East First Street, Duluth, Minnesota, has agreed to testify concerning the work he has done regarding the development of the proposed rule. Mr. Johnson was the chairman of the Department appointed Task Force on Rule 18, which greatly assisted in preparation of the proposed rule.

_____
Dated

_____
ARTHUR E. NOOT
COMMISSIONER

I/Rule-33

In the Matter of the
Proposed Adoption of
12 MCAR §2.018 and Proposed
Amendment of 12 MCAR §2.034
Concerning Programs for
Mentally Retarded Persons

STATEMENT OF
COMPLIANCE WITH
RULEMAKING PROCEDURES

I, Special Assistant Attorney General, Alan Held, do hereby declare that I have examined the rules and all related documents and that, based on my examination and my personal familiarity with the applicable procedures, the Administrative Procedure Act, the rules of the Office of Administrative Hearings, and the rules of the Attorney General have been followed. Any exceptions are noted below.

Alan A. Held

Special Assistant
Attorney General

Dated: 4-15-81

In the Matter of the
Proposed Adoption of
12 MCAR §2.018 and Proposed
Amendment of 12 MCAR §2.034
Concerning Programs for
Mentally Retarded Persons

AFFIDAVIT OF
MAILING NOTICE OF
SUBMISSION TO THE
ATTORNEY GENERAL

STATE OF MINNESOTA)
) ss.
COUNTY OF RAMSEY)

Robert J. Hamper, being first duly sworn, deposes and says:

That on the 16th day of April, 1981, in the City of St. Paul, County of Ramsey, State of Minnesota, he served the attached Notice of Submission to the Attorney General by depositing in the State of Minnesota Central Mail System for United States mailing (or) United States mail at said City of St. Paul, a copy thereof, properly enveloped, with postage prepaid, on all persons and associations who requested notice that the rules in the above-entitled matter have been submitted to the Attorney General.

Robert J. Hamper

Subscribed and sworn to before me
this 16th day of April, 1981.

Margaret Holt

MARGARET HOLT
NOTARY PUBLIC-MINNESOTA
RAMSEY COUNTY
My Comm. Expires Sept. 22, 1984

In the Matter of the
Proposed Adoption of
12 MCAR §2.018 and Proposed
Amendment of 12 MCAR §2.034
Concerning Programs for
Mentally Retarded Persons

NOTICE OF
SUBMISSION TO THE
ATTORNEY GENERAL

Pursuant to your request and in accordance with Minnesota Statutes, section 15.0412:

PLEASE TAKE NOTICE that the above-captioned rules have been submitted to the Office of the Attorney General on this date, April 16, 1981, for review as to form and legality. Pursuant to 1 MCAR § 1.206 B., the Attorney General will not approve the rules for at least 10 calendar days after receipt to allow any person or association time to comment on the legality of the rules, after which that Office will complete its review. If you desire to comment on the legality of the above-captioned rules, you should direct your comments to the Office of the Attorney General, G-25 State Administration Building, 50 Sherburne Avenue, Saint Paul, Minnesota 55155, telephone (612) 296-7030. Please note that the above-cited rule of the Attorney General also provides that a copy of any written comments submitted to the Attorney General must be submitted simultaneously to this agency.

If you are interested in determining what changes, if any, were made in the proposed rules after the hearing/publication in the State Register and before submission to the Attorney General, you may contact Ardo Wrobel, Department of Public Welfare, 4th Floor, Centennial Building, Saint Paul, Minnesota 55155.

Robert J. Hamper